

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: February 16, 2016

TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk

FROM: Amber M. Norris, Public Utilities Supervisor, Division of Accounting & Finance *AMN*

RE: Docket No. 150071-SU - Application for increase in wastewater rates in Monroe County by K W Resort Utilities. Corp.

Please add the attached documents on the correspondence side of the docket file. The documents were hand-delivered by a representative of Monroe County, FL.

RECEIVED-FPSC
2016 FEB 16 PM 4:28
COMMISSION
CLERK



KW Resort Utilities Corp

6630 Front Street
Key West, FL 33040
305.295.3301
FAX 305.295.0143
www.kwru.com

FILE COPY
9-30-2015

Cert mail
on 9-30-2015

VIA US MAIL CERTIFIED

September 30, 2015

Mr. Michael Browning
Roy's Trailer Park Inc.
402 Applerouth Lane
Key West, FL 33040

RE: Additional Sewer Capacity Fees Due – 30 Day Notice

Mr. Browning,

During a recent water audit it was discovered that your property, Roy's Trailer Park Inc., was using a disproportionate amount of water to the number of households. The Utility and Roy's Trailer Park Inc. entered into an agreement, UTILITY AGREEMENT dated August 4, 2005, whereby the Utility would provide service to 103 Mobile homes.

The UTILITY AGREEMENT states in Paragraph 6(b) there are 103 Mobile homes representing a Total of 103 ERC's. Further in 6(c) it states that

"in the event there is additional water usage over and above the amount reserved in paragraph 6(b) above, (based on annual review) the Developer (Roy's Trailer Park Inc.) shall remit additional capacity reservation fees to Service Company (KW Resort Utilities Corp.) 30 days after notice by Service Company of additional fees due".

The Utility has found 347 residences within Roy's Trailer Park Inc. Therefore the amount of additional capacity reservation fees is 244 ERC's.

The additional capacity reservation fees due is \$658,800 = (244 ERC's x \$2700/ERC). The Utility asks that you remit payment on or before November 1, 2015.

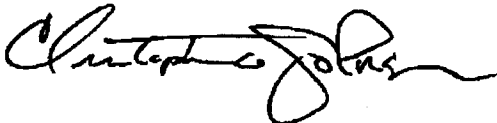
The Utility must also bill Roy's Trailer Park Inc. for the wastewater that is being treated, as all users must pay their fair share of the treatment cost. Roy's Trailer Park Inc. has been paying a monthly sewer bill based on a density of 103 private residences when in reality there are 347 private residences.

Therefore, Roy's Trailer Park Inc. will be billed monthly, beginning in October 2015, as follows:

One base rate for each of the 347 private residences totaling \$6,180 per month
347 private residences x \$17.81 base rate = \$6,180 per month base rate

And a gallonage charge of \$3.87 per 1,000 Gallons, 10,000 gallons maximum per private residence. The gallonage component of the monthly bill is \$3.87/1,000 gallons based on the actual Florida Keys Aqueduct Authority water meter reading for the specific billing period.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher A. Johnson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Christopher A. Johnson
President



KW Resort Utilities Corp

6630 Front Street
Key West, FL 33040
305.295.3301
FAX 305.295.0143
www.kwru.com

May 26, 2015

Sent Via Certified Mail

Key West Harbour Yacht Club
Mr. Richard Horn, General Manager
6000 Peninsular Ave.
Stock Island, FL 33040

Mr. Horn,
6000 Peninsular (Key West Harbour Yacht Club) has continued to develop and is generating more flow than was originally paid for. The original contract (June 17, 2004) reserved 110 ERC's and the current use is now 167 ERC's (see Exhibit D – ERC Calculation Sheet). Presently, the Utility has not been paid for the additional development. In the Agreement (UTILITY AGREEMENT of June 17, 2004) under 6(g) it states, in the event of a change of use or any change that might affect the flows Service Company (KWRU) will be notified and applicable Capacity Reservation Fees will be paid prior to discharge to the Central Sewer System.

167 ERC's current use
less 110 ERC's (Reserved in 2004)
57.0 ERC is the balance owed

57.0 ERC x \$2,700/ERC = \$153,900

The terms of UTILITY AGREEMENT to remit additional capacity fees to KWRU is 30 days after being noticed. As you are aware we have been working on this with your management team, land use consultants, and your attorney since October of last year. Please note that this letter (and calculations herein) does not account for the proposed restaurant expansion that was discussed.

KWRU asks that Key West Harbour Yacht Club pay Capacity Fees of \$153,900.00 for the redevelopment that has already occurred. Please remit total payment of \$153,900.00 to KW Resort Utilities Corp. failure to do so will result in the disconnection of the property on June 22, 2015.

Sincerely,

Christopher A. Johnson

Enclosures: UTILITY AGREEMENT, Addendum to June 17, 2004 UTILITY AGREEMENT, Exhibit D
CC: Public Service Commission

Horan, Wallace & Higgins LLP

608 WHITEHEAD STREET
KEY WEST, FLORIDA 33040

DAVID PAUL HORAN, P.A.*
R. BRUCE WALLACE, P.A.
CARA A. HIGGINS, P.A.**
DARREN M. HORAN
CARL R. STEVENS***

August 25, 2015

(305) 294-4585

(305) 294-3488

FAX (305) 294-7822

FAX (305) 294-4593

*ALSO MEMBER COLORADO BAR

**ALSO MEMBER NEW JERSEY & PENNSYLVANIA BAR

*** ALSO MEMBER CALIFORNIA BAR

Ashley Sybesma
Smith, Oropeza Hawks, PL
138-142 Simonton Street
Key West, Florida 33040

Re: KWRU Corp. – PSC Case No. 1186487W

Dear Ashley,

You requested our “bottom line” in addressing the 57 ERC in additional capacity fee addressed in Chris Johnson’s May 26th, 2015 letter. This is the basis for the KWRU demand for the \$153,900 payment.

In the ERC calculation sheet, it computes 203 “rack spaces” in Barn 1, 126 “dry racks” in Barn 2, 63 “dry racks” in Barn 3 and 12 “dry outside” = 404 boats in dry storage which KWRU calculates at .2 ERC each or 80.8 ERC in total. If we agree that each boat in dry storage could possibly produce 25 gallons of sewage a day (.1 ERC), then KWHYC would owe 40.4 ERC.

Chris calculated we owe 57 ERC in additional reserve capacity which included 80.8 ERC from boats in dry storage. Since this would leave KWHYC still owing 16.6 ERC (57 ERC – 40.4 ERC), we would pay \$44,820.00.

As we stated in our meeting, however KWRU wants to re-calculate additional capacity fees, please do so. The only thing that we are interested in paying is something less than \$50,000. This payment would include everything including our 150 seat restaurant.

Another way to look at it is we would have paid for 126.6 ERC in “reserve sewage capacity”. That’s 31,650 gallons of sewage a day or 981,150 gallons on a 31 day month. Since our highest potable water usage is 640,000 gallons, we will have paid for 35% more sewage than we have ever used in potable water.

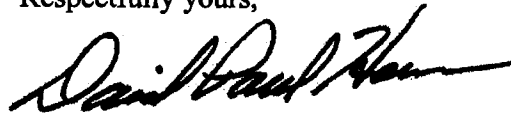
Ashley Sybesma
Smith, Oropeza Hawks, PL
August 25, 2015
Page 2

Chris mentioned that the PSC has charts of various wastewater producing businesses that compare total potable water flowing in to actual sewage delivered to the service company. When you are considering how to come up with an acceptable capacity fee analysis, you may want to see if there is a PSC chart on percent of sewage produced from potable water consumed by a marina. I did find a PSC potable water commitment for a marina with 25 wet slips and 240 dry racks with peak day dry storage traffic of 25%. It allowed 10 GPD for wet slips and 10 GPD for 60 dry storage for a total of 850 gallons per day.

I am sending a letter to the PSC explaining the KWHYC delay in responding to your August 6th response to our Complaint. I am requesting that all PSC consideration be stayed until September 1st. If we aren't settled by Friday, I will file our two letters (July 30th, 2015 and the letter that I provided to you) and this settlement offer will be withdrawn.

Jim Reynolds is originating a report for your consideration.

Respectfully yours,



DAVID PAUL HORAN
For the Firm

DPH:krh

RE# 00127480-000000
Key West Harbor Yacht Club
6000 Peninsular Avenue
Key West, FL 33040

Addendum to June 17, 2004 UTILITY AGREEMENT

This Addendum to June 17, 2004 UTILITY AGREEMENT ("Addendum") is an addendum to the UTILITY AGREEMENT a contract between KW Resort Utilities Corp., a Florida Corporation, having its offices at 6630 Front Street, Key West Florida 33040 (Service Company) and Elton J.Ming,Jr., Robert M. Ming and Donald L. Ming, having its office(s) located at 6000 Peninsular Ave. Key West, Florida 33040 (Developer) which is dated June 17, 2004("UTILITY AGREEMENT"). The UTILITY AGREEMENT is attached and made a part of this document, Key West Harbor Yacht Club is a successor to Elton J. Ming Jr., Robert M. Ming and Donald L. Ming and as such, Key West Harbour Yacht Club (Developer), having its offices located at 6000 Peninsular Ave, Key West, FL. 33040

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00), and the mutual covenants and agreements hereinafter set forth, and intending to be legally bound thereby, notwithstanding any terms in the UTILITY AGREEMENT to the contrary, Service Company and Developer agree as follows:

1. The parties agree that wherever there is any conflict between this Addendum and the UTILITY AGREEMENT, the provisions of this Addendum will control and the UTILITY AGREEMENT will be construed accordingly.
2. Developer acknowledges that the proposed redevelopment and the proposed redevelopment of the of the property will result in water usage that is over and above the amount reserved in paragraph 6b of the UTILITY AGREEMENT. Developer has supplied Service Company access to information necessary to determine the number of ERC's that corresponds to the redevelopment and proposed redevelopment of the property. From this information it has been determined that 57.0 additional ERC's are required for the redevelopment and proposed redevelopment of the property. The determination of the additional ERC's is more particularly described in Exhibit D attached hereto and incorporated herein.
3. Developer shall pay to Service Company a reservation fee (Capacity Reservation Fee), in the amount of Two Thousand Seven Hundred (\$2,700.00) dollars per E.R.C. connection to be reserved by Developer to serve the residential or commercial structures to be constructed in or upon the Property (individually, a Connection, collectively, the Connections). ERC's assigned to the property must remain with the property and, as such, are non-transferrable to other property.
4. Developer shall pay \$153,900.00 Capacity Reservation fee upon execution of the Addendum.

5. Developer shall pay (\$ 0.00) to Service Company, for engineering review and administrative costs related to processing construction plans and documents submitted by Developer pursuant to this Agreement. Developer shall also pay Service Company \$100.00 per hour for periodic inspections to be made by Service Company or its agents within thirty (30) days of submission by Service Company to Developer of invoices confirming time spent conducting such inspection services.

6. Service Company shall be entitled to collect a monthly fee from Developer for treatment of the wastewater corresponding to the additional flow generated from the redevelopment. Applicable fees, rates, and charges shall be paid to Service Company by the Developer in accordance with paragraph 5a of the UTILITY AGREEMENT.

IN WITNESS WHEREOF, Service Company and Developer have executed this Addendum as of January 6, 2015

SERVICE COMPANY:

DEVELOPER:

KW Resort Utilities Corp.

By: _____

by: _____

Print Name: Christopher A. Johnson
 Title: President
 Address: 6630 Front Street
 Key West, FL 33040

Print Name: _____
 Title: _____
 Address: _____

STATE OF FLORIDA)
) ss.
 COUNTY OF MONROE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by _____, as _____, a Florida corporation, on behalf of said corporation. He/she is personally known to me or who has produced _____ as identification.
 My Commission Expires:

STATE OF FLORIDA)
) ss.
 COUNTY OF MONROE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by _____, as _____, a Florida corporation, on behalf of said corporation. He/she is personally known to me or who has produced _____ as identification.
 My Commission Expires:



KW Resort Utilities Corp.

6630 Front Street
 Key West, FL 33040
 305.295.3301
 FAX 305.295.0143
 www.kwru.com

Exhibit D - ERC Calculation Sheet

Project Name Key West Harbor Yacht Club

Property Address 6000 Peninsular Avenue

RE # (s) 00127472-000000

Calculation used: Water Usage History or F.A.C. Chapter 64E

Barn 1						
	Rack spaces 203 x (0.2) ERC				40.6	ERC
Barn 2						
	Dry racks 126 x(0.2)				25.2	ERC
Engine repair SVC center in Barn						
Workshop area						
Office & storeroom (under AC)						
6 employee operation						
Boat Services/Group Office						
12' x 50' = construction style trailer adjacent to Barn 2						
4 work spaces						
Microwave/refrigerator/kitchenette area 2 piece bath						
approx 600 sq ft office						
					0.36	ERC
Note: The office in Barn 2 and the construction style trailer are used by the same employees (Engine Repair plus Boat Service Group = 6 total employees)						
Dry Storage Units						
South end Bldg	16 units x 1 gal = 16 gal				0.06	ERC
Barn 3						
Dry Racks	63	X	0.2		12.6	ERC
Storage Units	8				0.03	ERC

Washing Machines	750 gal x 2 machines		6	ERC
Market rate Condominiums				
3 Condominium		3 Market Rate Condo Units with Washer& drier	3	ERC
		3 lockouts	0.9	ERC
Resturant				
	100 seats x 40 gal/seat		16	ERC
	Employees 10 x 15 gal		0.6	ERC
Offices	3 offices		0.35	ERC
	575 sq ft			
SPA Gym	3 people per day			
Gym	40 people per day			
Men's locker room				
Women's locker room	10gal/person		1.72	ERC
Pool				
	Bar 4 person x 4 table on patio		2.88	ERC
	20 lounge chairs on beach			
	Pool 26 persons x 10gal/person			
	Pool turns over twice			
	(26x2) x 10 = 520 gal		2.08	ERC
Ship Store				
	Store			
	Bathroom 2 piece		0.8	ERC
Office	528 Sq ft			
Open Area	Leasing Agent			
	Harbor Master		0.32	ERC
Floor 2	Employee housing			
	3 units - 1 bedroom, Living Rm., Kitchen w/washer&dryer		3	ERC
Boat Slips				
	100 residence Wet			
	3 guest wet	103 wet @75 gpd	30.9	ERC
	12 dry outside	12 x (.2)	2.4	ERC
Tiki Bar				
	gathering place for boat slip owners/members	by law Key West Harbour		
	Yacht Club not allowed to operate Tiki as a bar		0	ERC

Crescent Dock Bath House

Mens Bath 2 piece bath w/shower

Womens Bath 2 piece bath w/shower

0 ERC

The only people who use this bath house are people in a wet slip

washer/drier/ice machine

3 ERC

Additional Dry Racks Reserved
and DEP Permitted

14.2

Total ERC's =

167

Date Calculated

5/26/2015

Signature

C. Johnson

UTILITY AGREEMENT

THIS UTILITY AGREEMENT (Agreement), dated as of the 17th day of June 2004, by and between Key West Resort Utilities, a Florida corporation, having its office(s) at 6450 College Road, Key West Florida 33040, (Service Company) and, (Elton J. Ming Jr., Robert M. Ming and Donald L Ming, Trustees), having its office(s) at 6000 Peninsular Ave Key West Florida. (Developer).

R E C I T A L S

- A. Developer is the owner of certain real property more particularly described on Exhibit A, attached hereto and made a part hereof (the Property).
- B. Service Company owns, operates, manages and controls a Central Sewage System and valve pits on private property and is willing to provide sanitary sewer services pursuant to this Agreement.
- C. Developer requests that Service Company provide central wastewater service to the Property as indicated on the plans prepared by Weiler Engineering for The South Stock Island sewer expansion. (Copy of plan sheet included as an exhibit).

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00), and the mutual covenants and agreements hereinafter set forth, and intending to be legally bound thereby, it is agreed as follows:

1. Definitions

Business Day shall mean any day of the year in which commercial banks are not required or authorized to close in New York, New York.

Capacity Reservation Fee as such term is defined in Section 6 hereof.

Central Sewage System shall mean the central collection, transmission, treatment and disposal system and appurtenant facilities owned and operated by the Service Company.

Connection as such term is defined in Section 6 hereof.

Customer shall mean any residential or commercial customer of Service Company.

Equivalent Residential Connections (ERC), shall be defined as one individual residential connection or, for commercial and other uses, the estimated flow based on the use and Chapter 64E-6 F.A.C., divided by the most recently approved Capacity Analysis rate per residential connection (currently 250 gallons per day per residential connection) also known as E.D.U..

Plans and Specifications as such term is defined in Section hereof.

Point of Delivery shall mean the point where the developer's pipe connects to the service company's pipe located at the developer's property line. The Service Company shall own the gate valve at the property line and all of the remaining vacuum lines down stream.

Property as such term is defined in the Recitals hereof.

Property Installations or System shall mean any service lines located on individual lots or parcels of the Property or to buildings located on the Property that connect to the Central-Sewage System, and may

include facilities located outside the Property, required to be installed by Developer, to connect facilities on the Property to the Central Sewage System.

Service Company's Affiliates shall mean any disclosed or undisclosed officer, director, employee, trustee shareholder, partner, principal, parent, subsidiary or other affiliate of Service Company.

Tariff shall mean Service Company's existing and future schedules of rates and charges for sewer service.

2. New System Construction

- (a) Prior to the construction and installation of the System, Developer shall, at its sole cost and expense, cause to be prepared and provide to Service Company plans and specifications of the system (Plans and specifications), which Plans and Specifications shall be prepared by engineers reasonably acceptable to Service company, and in accordance with all policies and practices of Service Company and all applicable laws and regulations and standards adopted by the Department of Environmental Protection and Monroe County.
- (b) Service Company shall approve or disapprove of the Plans and Specifications within thirty days (30) of receipt thereof by written notice to Developer.
- (c) Upon Developer's receipt of Service Company's written notice of disapproval of the Plans and Specifications, Developer shall promptly revise the Plans and Specifications in accordance with any requirements set forth by Service Company in its written notice of disapproval, and re-submit such revised Plan and specifications to Service Company for approval or disapproval. Service Company shall approve or disapprove of any revised Plans and Specifications with five (5) business days of receipt thereof by written notice to Developer.
- (d) Upon Developer's receipt of Service Company's written notice of approval of the Plans and Specifications, Developer may proceed with the construction and installation of the System. Developer shall notify Service Company seventy-two (72) hours prior to beginning construction. Construction and Installation shall be completed within four (4) months of Service Company's written notice of approval of the Plans and Specifications. All work shall be inspected by licensed and insured contractors and engineers reasonably acceptable to Service Company. In accordance with Chapter 62-604 F.A.C., Developer shall provide, at its sole cost, a Professional Engineer Registered in Florida to provide on-site observation during construction and testing and to certify that the System is constructed in compliance with the approved Plans and Specifications. All materials employed by Developer for the System shall be reasonably acceptable to Service Company. No portion or element of the System shall be covered or concealed until inspected by Service Company. Developer shall notify Service Company of Developer's readiness for inspection of the System, and Service Company shall inspect the System within two (2) business days after each such notice. Any portion of the System not inspected by Service Company within said time period, shall be deemed to have been accepted by Service Company. In the event that Service Company determines through any such inspection that any portion of the System does not fully comply with the Plans and specific conditions or applicable laws and regulations, Service Company shall notify Developer in writing of such noncompliance not more than two (2) business days after any such inspection and Developer shall immediately modify the System to insure that the System fully complies with the Plans and Specifications and applicable laws and regulations.
- (e) In the event Service Company discovers that any portion or element of the System has been installed, covered or concealed without the prior approval of Service Company, Developer shall,

upon written demand by Service Company, immediately dismantle or excavate such portion of the System at its sole cost and expense.

2. (f) The Service Company and the Developer agree that the Developer's presently operating sewage treatment system (which is located on the Property) will be connected to the Service Company's existing buffer tank located outside of the Property. The Developer will abandon the use of its existing treatment facility and will connect its sewer main to the aforesaid buffer tank (Point of Delivery). The Developer agrees to install the necessary sewer main (approximately 200 feet in length) to achieve the connection. The Developer will comply with the requirements of subparagraphs 2(a) through 2(e) with regard to the said new sewer main.

The Service Company may inspect and test the Developer's existing system and require Developer to make corrections if infiltration or leakage should be detected. The Developer will bear the cost of such repairs, testing and inspections and will pay the Service Company an administrative fee equal to 10% of the actual costs of property installations or repairs. (See paragraph 6e)

No other system changes will be required of the Developer until such time as substantial additional development occurs on the Property. If developer requests Utility to perform additional testing, Developer will reimburse for actual costs plus 10%.

3. System Records

Prior to Service Company's acceptance of all or any portion of the System for service, operation and maintenance or for service only, Developer shall deliver the following records and documents to Service Company:

- (a) Copies of all invoices and/or contracts for the construction and installation.
- (b) An affidavit signed by the Developer stating that there are no parts or portions of the System which are not included in the invoices and contracts noted in subsection (a) above, that said invoices and contracts accurately and fully reflect the total cost of the System and that the System is free and clear of all liens and encumbrances.
- (c) Lien waivers from all contractors, subcontractors, material people, and any other parties that provided labor, services or materials in connection with the construction of the System.
- (d) A reproducible Mylar and two (2) sets of blue line copies, accurately depicting all of the System as constructed and installed, and signed and sealed by the engineer and surveyor of record for the System.
- (e) Copies of the results of all tests conducted on the System.
- (f) Any other records or documents required by applicable law or required under the Tariff.
- (g) A certificate of completion of the System signed and sealed by the engineer of record.
- (h) A copy of the Department of Environmental Protection permit to construct the System and all inspection reports and approvals issued by the Engineer and the Department of Environmental Protection and any other applicable governmental authority or agency.

- (j) A bill of sale, in recording form, conveying all right, title and interest in and to the System, to Service Company free of any and all liens and encumbrances for that portion of the System located on the Service Company side of the Point of Delivery.

4. Property Rights

In those cases in which Service Company accepts all or any portion of the System for service, operation and maintenance, Developer shall convey the following property rights and interests for that portion of the System to Service Company:

- (a) A non-exclusive easement, in the form attached as Exhibit "B", for that portion of the Property of sufficient size to enable Service Company ingress and egress and to operate, maintain and replace such portions of the System not located within public rights-of-way. The foregoing easement shall be in effect for a period of time not less than the period during which the Service Company shall use the System to provide service to Customers.
- (b) A non-exclusive easement, in the form attached as Exhibit "B", of sufficient size to enable ingress, egress and access by Service company personnel or vehicles to any lift or pump station located on the Property. The foregoing easement shall be in effect for a period of time not less than the period during which the Service Company shall use the System to provide service to Customers.
- (c) Notwithstanding the foregoing easements, Developer retains all rights and privileges to utilize the Property in any manner it deems appropriate provided such use is not inconsistent with the purposes intended for such easements.

5. Section Intentionally Deleted.

6. Rates, Fees, Charges

- (a) All Customers will pay the applicable fees, rates and charges as set forth in the Tariff. Nothing contained in this Agreement shall serve to prohibit Service Company's right to bill or collect its rates and charges from Customers, nor to require compliance with any provision of its Tariff.
- (b) Developer shall pay to Service Company a reservation fee (Capacity Reservation Fee), in the amount of Two Thousand Seven Hundred (\$2,700.00) dollars per E.R.C. connection to be reserved by Developer to serve the marina, marina facilities, live-aboard vessels, non live-aboard vessels, commercial fishing vessels, residences and other sewage generators now located on the property as well as anticipated future development of the Property. Developer has agreed to connect all existing sewage generators located on the property to the Service Company's facilities, by November 1st, 2004. It has been determined that the total present and estimated future sewage treatment needs equal 110 EDU's.
- (c) Developer shall pay 1/3 (\$99,000) of the Capacity Reservation Fee upon execution of the Agreement, and will however be responsible for the remaining 2/3 (\$198,000) upon connection of the first building, notwithstanding the foregoing the developer may elect to choose the payment option as articulated in Section 7 of this Agreement.

Service Company shall have the right to cancel such reservation in the event of Developer's failure to comply with the terms of this Agreement. In the event there is additional water usage

over and above the amount reserved in paragraph 6b above, (based on an annual review) the developer shall remit additional capacity reservation fees to Service Company 30 days after notice by Service Company of additional fees due.

- (e) Developer shall pay to Service Company, for engineering services and applicable administrative fees necessary to review and approve construction plans and documents and for periodic inspection during construction and testing in the amount of \$(10% of developers on site sewer construction costs). Said payment is to be made upon submission of plans and documents.
- (f) In the event of default by Developer and the payment of fees hereunder, Service Company may cancel this agreement by giving 30 (thirty) days written notice of default and retain all payments hereunder as liquidated damages.
- (g) Developer agrees that in the event of a change of use or any change that might affect the flows (i.e. Addition of a restaurant) Service Company will be notified and the applicable Capacity Reservation fees will be paid prior to discharge to the Central Sewage System.
- (h) In the event the Developer determines that the treatment capacity reserved is in excess of that needed to develop the Property, the Developer may assign said excess capacity to another user, subject to review and approval by the Service Company. Said approval will not be unreasonably withheld. The Service Company may require that the compensation to be paid to the Developer for said assignment of treatment capacity not exceed the then existing approved tariff. Service Company may charge a reasonable administrative fee for processing the assignment.

7.

Payment Options:

- (a) The Property Owner must pay the Utility the entire cost of the Capacity Reservation Fee \$297,000 as provided for in Paragraph 6(c) above; or
- (b) The Property Owner must pay five (5) percent of the Capacity Reservation Fee, (said fee payable to Monroe County) and execute a Consent and Acknowledgment Agreement delivering both to Utility upon execution of the Utility Agreement, on a form provided by Utility and deliver both to Utility.

Property Owners who elect to finance the balance of the Capacity Reservation Fee will be required to execute a Consent and Acknowledgment Agreement along with this Utility Agreement. The Consent and Acknowledgment Agreement is undertaken in anticipation of the bonding of the Capacity Reservation Fee. The Consent and Acknowledgment Agreement sets forth the Property Owner's agreement to comply with the Wastewater Ordinance and acknowledges Property Owner's promise to pay the balance of the Capacity Reservation Fee to Monroe County pursuant to annual Wastewater Ordinance Assessments that will be levied by Monroe County for a period not to exceed twenty (20) years. The Wastewater Ordinance Assessments impose a lien against the subject property and provide a vehicle for Property Owners to finance the cost. Property Owner's electing to participate can expect to pay the remaining balance constituting ninety-five (95) percent of the Capacity Reservation Fee over a period of approximately twenty (20) years plus interest each year in the form of the Wastewater Assessment. To take advantage of the bond financing program, the Property Owner must execute the Consent and Acknowledgment Agreement, which is attached to this Agreement, in addition to paying the five (5) percent Capacity Reservation Fee.

- (d) The payment options referenced in this paragraph are only options to pay the balance of the Capacity Reservation Fee and are separate and distinct from monthly costs for sewer service, which remain the sole responsibility of the Property Owner.

8. **Absolute Conveyance**

Developer understands, agrees and acknowledges that Developer's conveyance of any and all easements, real property or personal property (including, without limitation, the System), or payment of any funds hereunder (including, without limitation, the Capacity Reservation Fee and Connection Charges), shall, upon acceptance by Service Company, be absolute, complete and unqualified, and that neither Developer nor any party claiming by or through Developer shall have any right to such easements, real or personal property, or funds, or any benefit which Service Company may derive from such conveyance or payments in any form or manner.

9. **Delivery of Service; Operation and Maintenance**

- (a) Upon Developer's full performance of its obligations under this Agreement, Service Company shall provide service to the Point of Delivery in accordance with the terms of this Agreement, all applicable laws and regulations and shall operate and maintain the Central Sewage System to the Point of Delivery in accordance with the terms and provisions of this Agreement. Said service shall be provided on or about November 2004.
- (b) Developer shall, at its sole cost and expense, own, operate and maintain any part of the System that has not been conveyed to Service Company pursuant to the terms and conditions of this Agreement.
- (c) Developer acknowledges that certain water quality standards must be met prior to influent entering the wastewater treatment plant (primarily chloride levels and excessive flows) and agrees to allow Service Company to monitor flows and water quality at Service Company's discretion at a point on the Developer's side of the Point of Delivery. If it is determined that substandard influent or excessive flows are entering the Central Sewage System via Developer's System, Developer agrees to isolate the source and to repair or replace the portion or portions of the faulty System in a manner acceptable to Service Company in accordance with this agreement.
- (d) In the event any portion of the Property is developed as a condominium, the condominium association shall be required to execute a maintenance agreement with respect to any portion of the System not conveyed to Service Company. Such maintenance agreement shall provide that if the condominium association fails to adequately maintain and repair the System, Service Company shall have the right to maintain and repair such System at the sole cost and expense of the condominium association.

10. **Repair of System**

In the event of any damage to or destruction of any portion of the Central Sewage System due to any acts or omissions by Developer, any Customer or their respective agents, representatives, employees, invitees or licensees, Service Company shall repair or replace such damaged or destroyed facilities at the sole cost and expense of responsible party. Developer shall operate, maintain and repair all other portions of the System not conveyed to Service Company at its sole cost and expense.

11. **Term**

This Agreement shall become effective as of the date first written above, and shall continue for so long as Service Company provides sewer service to the public.

12. **Default**

In the event of a default by either party of its duties and obligations hereunder, the non-defaulting party shall provide written notice to the defaulting party specifying the nature of the default and the defaulting party shall have five (5) days to cure any default of a monetary nature and thirty (30) days for any other default. If the default has not been cured within the applicable period (time being of the essence), the non-defaulting party shall be entitled to exercise all remedies available at law or in equity, including but not limited to, the right to damages, injunctive relief and specific performance. Service Company may, at its sole option, discontinue and suspend the delivery of service to the System in accordance with all requirements of applicable law and the Tariff if Developer fails to timely pay all fees, rates and charges pursuant to the terms of this Agreement.

13. **Excuse from Performance**

- (a) **Force Majeure.** If Service Company is prevented from or delayed in performing any act required to be performed by Service Company hereunder, and such prevention or delay is caused by strikes, labor disputes, inability to obtain labor, materials or equipment, storms, earthquakes, electric power failures, land subsidence, acts of God, acts of public enemy, wars, blockades, riots, acts of armed forces, delays by carriers, inability to obtain rights-of-way, acts of public authority, regulatory agencies, or courts, or any other cause, whether the same kind is enumerated herein, not within the control of Service Company (Force Majeure), the performance of such act shall be excused for a period equal to the period of prevention or delay.
- (b) **Governmental Acts** If for any reason during the term of this Agreement, other than the fault of Developer, any federal, state or local authorities or agencies fail to issue necessary permits, grant necessary approvals or require any change in the operation of the Central Sewage System or the System (Governmental Acts), then, to the extent that such Governmental Acts shall affect the ability of any party to perform any of the terms of this Agreement in whole or in part, the affected party shall be excused from the performance thereof and a new agreement shall be negotiated, if possible, by the parties hereto in conformity with such permits, approvals or requirements. Notwithstanding the foregoing, neither Developer nor Service Company shall be obligated to accept any new agreement if it substantially adds to its burdens and obligations hereunder.
- (c) **Emergency Situations** Service Company shall not be held liable for damages to Developer and Developer hereby agrees not to hold Service Company liable for damages for failure to deliver service to the Property upon the occurrence of any of the following events:
 - 1. A lack of service due to loss of flow or process or distribution failure;
 - 2. Equipment or material failure in the Central Sewage System or the System, including storage, pumping and piping provided the Service Company has utilized its best efforts to maintain the Central Sewage System in good operating condition; and

3. Force Majeure, unforeseeable failure or breakdown of pumping, transmission or other facilities, any and all governmental requirements, acts or action of any government, public or governmental authority, commission or board, agency, agent, official or officer, the enactment of any statute, ordinance, resolution, regulation, rule or ruling, order, decree or judgment, restraining order or injunction of any court, including, without limitation, Governmental Acts.

- (d) Notwithstanding any excuse of performance due to the occurrence of any of the foregoing events, Developer shall not be excused from payment of any fees, charges and rates due to Service Company under the terms of this Agreement (including without limitation, the Capacity Reservation Fee and Connection Charges).

14. Successors and Assigns

This Agreement and the easements granted hereby, shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

15. Indemnification

Developer shall indemnify, defend and hold Service Company and Service Company's Affiliates harmless from and against any and all claims, demands, causes of action, losses, damages, liabilities, costs and reasonable expenses, including, without limitation, attorneys fees and disbursements, suffered or incurred by Service Company or any of Service Company's Affiliates and arising out of or in connection with use, occupancy, or operation of the System, the Property, or the activities, errors, or omissions of Developer, its agents, employees, servants, licensees, invitees, or contractors on or about the Property, pursuant to terms and conditions of this Agreement. Developer's duty to indemnify shall also include, but not be limited to, indemnification from and against any fine, penalty, liability, or cost to Service Company arising out of Developer's violation or breach of any law, ordinance, governmental regulation, this Agreement requirement or permit applicable to the System or Developer's activities on or about the Property. The provisions of this Section 15 shall survive the termination of this Agreement.

16. Assignment of Warranties and Bonds

Developer shall assign any and all warranties, maintenance, completion and performance bonds and the right to enforce same to the Service Company which Developer obtains from any contractor constructing the System. Developer shall obtain a written warranty, completion, performance and maintenance bonds from its contractor for a minimum period of twelve (12) months. If Developer does not obtain such written warranty and performance and maintenance bonds from its contractor and deliver same to Service Company, then in such event, Developer agrees to warrant the construction of the System for a period of twelve (12) months from the date of acceptance by the Service Company.

17. Notices

All notices, demands, requests or other communications by either party under this Agreement shall be in writing and sent by (a) first class U.S. certified or registered mail, return receipt requested, with postage prepaid, or (b) overnight delivery service or courier, or (c) telefacsimile or similar facsimile transmission with receipt confirmed as follows:

If to Service Company:

Mr. Doug Carter, General Manager
6450 Junior College Road
Key West, Florida 33040
Fax (305) 294-1212

With a copy to:

Mr. Jeff Weiler, P.E.
Weiler Engineering
20020 Veterans Blvd.
Port Charlotte, Florida 33954
Fax (941) 764-8915

If to Developer:

Elton J. Ming
12001 NW 160th Av
Morrison, FL, 32668
352-528-4141
352-528-0103

With copy to:

Frank F. Harding Esq.
302 Southard St.
Key West, Florida 33040

18. **Tariff**

This Agreement is subject to all of the terms and provision of the Tariff. In the event of any conflict between the Tariff and the terms of this Agreement, the Tariff shall govern and control.

19. **Miscellaneous Provisions**

- (a) This Agreement shall not be altered, amended, changed, waived, terminated or otherwise modified in any respect or particular, and no consent or approval required pursuant to this Agreement shall be effective, unless the same shall be in writing and signed by or on behalf of the party to be charged.
- (b) All prior statements, understandings, representations and agreements between the parties, oral or written, are superseded by and merged in this Agreement, which alone fully and completely expresses the agreement between them in connection with this transaction and which is entered into after full investigation, neither party relying upon any statement, understanding, representation or agreement made by the other not embodied in this Agreement. This Agreement shall be given a fair and reasonable construction in accordance with the intentions of the parties hereto, and without regard to or aid of canons requiring construction against Service Company or the party drafting this Agreement.
- (c) No failure or delay of either party in the exercise of any right or remedy given to such party hereunder or the waiver by any party of any condition hereunder for its benefit (unless the time specified herein for exercise of such right or remedy has expired) shall constitute a waiver of any other or further right or remedy nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or any other right or remedy. No waiver by either party

of any breach hereunder or failure or refusal by the other party to comply with its obligations shall be deemed a waiver of any other or subsequent breach, failure or refusal to so comply.

- (d) This Agreement may be executed in one or more counterparts, each of which so executed and delivered shall be deemed an original, but all of which taken together shall constitute but one and the same instrument. It shall not be necessary for the same counterpart of this Agreement to be executed by all of the parties hereto.
- (e) Each of the exhibits and schedules referred to herein and attached hereto is incorporated herein by this reference.
- (f) The caption headings in this Agreement are for convenience only and are not intended to be a part of this Agreement and shall not be construed to modify, explain or alter any of the terms, covenants or conditions herein contained.
- (g) This Agreement shall be interpreted and enforced in accordance with the laws of the state in which the Property is located without reference to principles of conflicts of laws. In the event that the Florida Public Service commission loses or relinquishes its authority to regulate Service Company, then all references to such regulatory authority will relate to the agency of government or political subdivision imposing said regulations. If no such regulation exists, then this Agreement shall be governed by applicable principles of law.
- (h) Each of the parties to this Agreement agrees that at any time after the execution hereof, it will, on request of the other party, execute and deliver such other documents and further assurances as may reasonably be required by such other party in order to carry out the intent of this Agreement.
- (i) If any provision of this Agreement shall be unenforceable or invalid, the same shall not affect the remaining provisions of this Agreement and to this end the provisions of this Agreement are intended to be and shall be severed. Notwithstanding the foregoing sentence, if (I) any provision of this Agreement is finally determined by a court of competent jurisdiction to be unenforceable or invalid in whole or in part, (ii) the opportunity for all appeals of such determination have expired, and (iii) such unenforceability or invalidity alters the substance of this Agreement (taken as a whole) so as to deny either party, in a material way, the realization of the intended benefit of its bargain, such party may terminate this Agreement within thirty (30) days after the final determination by notice to the other. If such party so elects to terminate this Agreement, then this Agreement shall be terminated and neither party shall have any further rights, obligations or liabilities hereunder, except for any rights, obligations or liabilities which by this specific terms of this Agreement survive the termination of this Agreement.
- (j) In the event of any litigation arising out of or connected in any manner with this Agreement, the non-prevailing party shall pay the costs of the prevailing party, including its reasonable counsel and paralegal fees incurred in connection therewith through and including all other legal expenses and the costs of any appeals and appellate costs relating thereto. Wherever in this Agreement it is stated that one party shall be responsible for the attorneys fees and expenses of another party, the same shall automatically be deemed to include the fees and expenses in connection with all appeals and appellate proceedings relating or incidental thereto. This subsection (j) shall survive the termination of this Agreement.
- (k) This Agreement shall not be deemed to confer in favor of any third parties any rights whatsoever as third-party beneficiaries, the parties hereto intending by the provisions hereof to confer no such benefits or status.

- (1) Developer agrees that Service Company may, at its sole discretion, require certain allocations to the proposed collection and transmission systems for future connections. Developer further agrees that Service Company may, at its sole discretion, extend the sewer line for any reason. It is understood that there will be no reimbursement or additional credit.

(SIGNATURE PAGE IMMEDIATELY FOLLOWING)