WASTEWATER SERVICE AGREEMENT

THIS AGREEMENT, made and entered into this 12th day of June, 1995, by and between Cape Haze Marina Village, Incorporated, a Florida corporation, whose mailing address is Post Office Box 326, Placida, Florida, 33946, hereinafter referred to as "Developer", and Sandalhaven Utility, Inc., a Florida corporation, whose mailing address is 6800 Placida Road, Englewood, Florida 34224, hereinafter referred to as "Service Company".

W I T N E S S E T H :

WHEREAS, Service Company is properly authorized to operate a wastewater system in Charlotte County, Florida, and

WHEREAS, Developer owns certain real property in Charlotte County, Florida, which is composed of approximately 16 acres, is known as Cape Haze Marina Village, and is more particularly described as follows:

> The South one-half of Lot 25, lying West of County Road 775, GROVE CITY LAND COMPANY SUBDIVISION of Section 28, Township 41 South, Range 20 East, as recorded in Plat Book 1, Page 19, of the Public Records of Charlotte County, Florida.

Together with the lands described as:

> Commence at the Northeast corner of Lot 24, Grove City Land Company Subdivision of Section 28, Township 41 South, Range 20 East, as recorded in Plat Book 1, Page 19, of the Public Records of Charlotte County, Florida; thence with the East line of said Lot 24 and referring all courses of this description to said line (being South 01°02'17" West - assumed) South 01°02'17" West, a distance of 25.00 feet to a concrete monument found on the Southerly Right of Way line of Esther Street (50 Feet Wide) and for a Point of Beginning; thence continuing with said East line South 01°02'17" West a distance of 642.00 feet to the South line of said Lot 24, as monumented; thence with said South line and the extension thereof, South 89°56'02" West, a distance of 1080.77 feet to the Mean High Water Line of Lemon Bay; thence with the sinuosities of the Mean High Water Line in a Northerly direction of 370 feet, more or less, to a point in the mangroves; thence leaving the Mean High Water Line and running with the Bay side of a strip of mangroves in a Northeasterly direction 215 feet, more or less; thence leaving said mangroves and crossing the channel to this marina in a Northeasterly direction 115 feet, more or less, to the seaward face and the Westerly end of an existing concrete seawall; thence with the seaward face of said seawall the eight (8) following courses:
>
> 1) South 50°20'45" East, a distance of 42.31 feet to a drill hole set; thence

2) South 25°47'05" East, a distance of 54.45 feet to a drill hole set; thence

3) South 52°36'39" East, a distance of 5.92 feet to a drill hole set; thence

4) North 89°59'25" East, a distance of 234.57 feet to a drill hole set; thence

5) South 02°08'20" West, a distance of 24.04 feet to a drill hole set; thence

6) South 42°82'11" East, a distance of 48.10 feet to a drill hole set; thence

7) South 74°53'44" East, a distance of 42.46 feet to a drill hole set; thence

8) North 40°52'11" East, a distance of 80.01 feet to a drill hole set; thence

leaving the seaward face of the seawall North 00°00'39" East, a distance of 2.76 feet to a concrete monument found (PLS. No. 3889) at the Southwest corner of Parcel One, as shown on the Condominium Plat of Seagull Moorings, as recorded in Condominium Plat Book 5, Pages 8-A and 8-B of the aforementioned Public Records; thence with the South line of Parcel One South 89°54'58" East, a distance of 1.21 feet to the Northwest corner of Parcel Two, as shown on said Condominium Plat; thence with said Parcel Two, the three following courses: South 00°05'02" West, a distance of 28.50 feet; South 89°54'58" East, a distance of 440.04 feet to the seaward face of a seawall; thence along said face of seawall North 00°00'39" East, a distance of 28.50 feet to the Southeast corner of Parcel One; thence with the East line of Parcel One, North 00°00'39" East, a distance of 105.77 feet to a monument found on the aforementioned South right-of-way line of Esther Street; thence with said right-of-way line East a distance of 109.51 feet to the Point of Beginning.

Together with non-exclusive easement described as:

Commence at the Northeast corner of Lot 24, Grove City Land Company Subdivision of Section 28, Township 41 South, Range 20 East, as recorded in Plat Book 1, Page 19 of the Public Records of Charlotte County, Florida; thence along the East line of Lot 24, South 01°02'17" West, 25.00 feet; thence parallel to the North line of said Lot 24, West 109.51 feet; thence South 00°00'39" West, 149.52 feet to the Point of Beginning being the centerline of a 37.5 foot wide easement; thence along the centerline thereof North 89°54'58" West, 414 feet, more or less, thence South 54°00'00" West, 80 feet; thence North 89°54'58 West, 306 feet; thence North 26°10'00" West, 180 feet; thence North 71°10'00" West, 97 feet; thence South 61°30'00" West, 308 feet, more or less, to intersect the Eastern most right-of-way line of the intercoastal waterway.

hereinafter to referred to as "Developer's Property", and is about to improve said property (by developing a multifamily land use, together with ancillary improvements thereon), including boat slips, dry storage, offices, restrooms, clubhouse, pools and

a service area, all as shown in the plans and specifications for Cape Haze Marina Village, and

WHEREAS, Developer desires a connection to Service Company's wastewater system, hereinafter referred to as "Service Company's Utility System", and

WHEREAS, Developer recognizes and agrees that Service Company's obligations to provide wastewater service to Developer are at all times subject to governmental regulations, prohibitions, limitations and restrictions and that these factors are beyond the control and responsibility of Service Company.

NOW THEREFORE, in consideration of the promises, mutual undertakings and agreements herein contained and assumed, Developer and Service Company hereby covenant and agree as follows:

1.A. Developer shall, in accordance with the terms of this Agreement, construct and convey to Service Company, free and clear of all encumbrances and at no cost to Service Company, the complete wastewater system, including lift stations and force mains, necessary to provide wastewater utility service to the Developer's Property as shown on the approved engineering plans and specifications prepared by Developer's professional engineer. Developer's specifications and the installation of Developer's installed utility system must be in strict accordance with the latest revision of the Service Company's Rules and Regulations, Service Availability Policy and Underground Construction Specifications. In case of conflicts with County Codes, the County Codes shall in all instances govern. It shall be the responsibility of the Developer to provide an appropriate contract between the Service Company and the property owners association which is intended to be responsible for the maintenance and operation of the residential units to be constructed on Developer's property.

1.B. Initially and temporarily, in order to provide immediate service to the Developer's property, the Developer shall be permitted to connect the proposed 4" developer installed

force main to an existing force main owner by the Service Company which is located adjacent to State Road 776. However, the Developer, within thirty (30) days after receiving notice from the Service Company agrees to diligently permit and construct the required additional 4" force main from the temporary interconnection to its proper terminus at the Service Company's wastewater treatment plant. If the Developer fails or refuses to promptly complete the construction of the required additional 4" force main, the Service Company has the right, on written notice to Developer, to construct the required additional 4" force main at the Developer's expense. The Developer agrees to reimburse the Service Company within forty-five (45) days after receipt of the actual costs of construction which will include but not be limited to engineering fees, surveyor fees, permit fees and other out of pocket construction costs. In no event shall the Developer be required to pay any costs of expenses associated with obtaining easements for the construction of the additional force main. Service Company shall provide Developer with said easements at the time of notice to proceed with construction.

2. All engineering plans and specifications, prepared by Developer's engineer as provided in paragraph 1 above, shall be reviewed and approved by Service Company prior to Developer submitting said plans and specifications to any governmental agencies.

3. Service Company shall have the right, but not the obligation, to review and accept or reject any General Contractor(s) and/or Subcontractor(s) who propose to install wastewater mains, services, equipment or other related appurtenances prior to Developer entering into a contract or agreement with such contractor.

4. Service Company shall have the right, but not the obligation, to make inspections of all utility work as installation progresses. Service Company shall have the right to refuse to accept title to Developer's installed utility system or refuse to initiate any service until Developer's installed

utility system has passed tests arranged by Developer and witnessed by Service Company or Service Company's representatives to determine whether Developer's installed utility system is constructed in accordance with the approved engineering plans and specifications. Said tests may be performed upon completion of the system; upon completion of all buildings, roads, paving, drainage, or other construction with the right-of-way, easement areas or adjacent areas; and again prior to expiration of any warranty period.

5. In addition to the other costs herein described Developer agrees to pay any and all reasonable costs of inspecting, testing, leak location and any repairs deemed necessary by Service Company found as a result of said tests.

6. Completion of all tests and forms required herein must take place prior to initial acceptance of Developer's installed utility system. Initial acceptance shall be deemed to have occurred either upon Service Company's execution of the Florida Department of Environmental Protection Certificate of Completion or upon Service Company's other appropriate written acknowledgement that all requirements have been met.

7. Service Company shall not be required to accept Developer's installed utility system, will issue no certifications nor render any service, until all manhole lids and valve boxes are exposed at proper finish grade, all valves are operational, and all other requirements listed herein are completed.

8. Service Company's obligations under this agreement are contingent upon Service Company and Developer obtaining all necessary approvals from all governmental and regulatory agencies having jurisdiction. Developer hereby assumes all risk of loss as a result of the denial or withdrawal of the approval of any concerned governmental agency, or caused by any act of any governmental or regulatory agency which affects the ability of the Service Company to provide wastewater service to Developer

not within the sole control of Service Company [illegible] exercise of due diligence, Service Company could not overcome.

9. Developer shall not be liable to Service Company for the inability or failure of Developer either to obtain governmental approvals or permits, or to complete timely the construction of facilities required of Developer herein.

10. Developer shall provide to Service Company a bill of sale, recorded easements, lien waivers and releases together with the itemized list of materials showing the actual cost of Developer's installed utility system. Developer must also furnish Service Company with two (2) copies of the Record Plat of Developer's Property, if any, plus a mylar sepia and four (4) complete copies of "as built" drawings acceptable to Service Company, showing specific locations, both horizontal and vertical, of all facilities, including all valves, wastewater laterals, and other fittings within Developer's installed utility system. Service Company shall not certify, accept, or render any service until all requirements are completed in a manner acceptable to Service Company.

11. Developer's utility system, installed and conveyed to Service Company pursuant to the terms hereof, shall at all times remain the sole, complete and exclusive property of Service Company, its successors and assigns, and under the complete control of Service Company. The conveyance instrument will be the Bill of Sale, as specified previously herein.

12. This Agreement shall not prohibit or prevent Service Company from extending Service Company's Utility System in or to areas not referred to herein to serve other developers or consumers, so long as said extensions and the furnishings of said services do not interfere with the furnishing of the services provided by this Agreement.

13. The provisions of this Agreement shall not be construed as establishing a precedent in connection with the amount of any rates, fees, charges or contributions made by Developer, other customer, or other third party, or the acceptance thereof, on the

14. Developer warrants that Developer's installed utility system will be constructed in accordance with the approved engineering plans and specifications referred to herein and that the same will be free from any defects in materials or workmanship for a period of one (1) year following the date of initial acceptance by Service Company of Developer's installed utility system.

15. Final acceptance will be given by Service Company following completion of a one (1) year reinspection and correction of any deficiencies found at that time.

16. Developer agrees to pay all costs and expenses incurred by Service Company by reason of any breach of the warranties referred to in the previous paragraph.

17. Developer agrees to grant across or over Developer's Property, at no cost to Service Company, any and all easements and restrictive covenants as required for the operation, maintenance and extension of Developer's utility system. The easements for wastewater mains shall be shown on the engineering plans, documented in appropriate form, and recorded in the Public Records of Charlotte County, Florida, by Developer. Copies of the recorded easement instrument(s) shall be furnished to Service Company prior to initial acceptance of any Developer installed utility system.

18. Service Company represents that it has the wastewater treatment capacity and regulatory authority to enter into this Agreement and provide service to Developer. The wastewater capacity reserved by this Agreement is 11,290 gallons per day (GPD) as determined in accordance with Service Company's approved Rules, Regulations and Service Availability Policy. Based on information provided by Developer, and relied upon by Service Company, as outlined in that certain letter dated April 28, 1995 from Dufresne-Henry, Inc. to Cape Haze Marina Village, attached

hereto and made a part hereof, the number of ERC's has been determined to be 59.4. The wastewater capacity reserved by this Agreement, therefore, is 59.4 ERC's times 190 GPD/ERC = 11,290 GPD. In consideration for reserving this capacity, Developer will pay Service Company, simultaneous with the execution of this Agreement, total capacity charges of $74,295.00 plus the appropriate federal income tax amount of $22,788.00, for a total payment of $97,083.00. The federal income tax amount shall be held in escrow by Service Company in Englewood Bank in a segregated interest bearing account designated for Developer until no later than September 15, 1996, whereupon the amount in the account in excess of the amount needed to pay federal income tax on the connection charges paid by Developer shall be refunded to Developer, including interest, if any. Developer is hereby authorized to confirm the status of the account. If an additional income tax gross up amount is due, the Service Company has the right to provide the necessary documentation to support the same and the Developer hereby agrees to pay the additional tax within forty-five (45) days after notice by the Service Company. The maximum tax gross up percentage the Service Company might be entitled to in 1995, based on the existing corporate tax rates of 5.5% for State income tax purposes and a maximum federal marginal income tax rate of 39%, would be 73.4756%.

19. Any notices required or permitted to be given under this Wastewater Service Agreement shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express), transmitted by facsimile or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, and addressed as follows:

If to Service Company:

Sandalhaven Utilities
6800 Placida Road
Englewood, Florida 34224
ATTN: Mr. Robert W. Spade
FAX: (813) 697-5001
PHONE: (813) 697-3443

ATTN: Mr. George MacFarlane
FAX: (813) 379-2828
PHONE: (813) 371-8499

If to Developer:

Cape Haze Marina Village, Incorporated
Post Office Box 326
Placida, Florida 33946
ATTN: Mr. Ron Dittmar
FAX: (813) 473-9084
PHONE: (813) 473-9084

If to Escrow Agent:

Batsel, McKinley, Ittersagen,
Gunderson & Berntsson, P.A.
18401 Murdock Circle
Port Charlotte, Florida 33948
ATTN: Michael R. McKinley, Esquire
FAX: (813) 627-1000
PHONE: (813) 255-0684

Notices personally delivered or sent by overnight courier shall be deemed given on the date of delivery, notices transmitted by facsimile shall be deemed given when the receipt of the transmission is confirmed and notices mailed in accordance with the foregoing shall be deemed given three (3) days after deposit in the U.S. mail.

20. The parties further agree and recognize that certain contributions, fees, amounts and charges collected, and rules, regulations and operating procedures followed, by Service Company are subject to continuing approval and modifications by governmental or regulatory authorities having jurisdiction. Developer hereby agrees that it will pay to Service Company all contributions, fees, amounts and other charges in accordance with and be bound by all other provisions of, the Tariff approved for Service Company by governmental or regulatory authorities as being applicable at the time that connections are made, services are provided or other actions are taken by Service Company, except as otherwise provided in this Agreement. Developer further agrees that it will comply with all rules, regulations and operating procedures of Service Company approved for Service Company by governmental or regulatory authorities having

provide service to Developer's Property in excess of the wastewater treatment capacity as described in paragraph 18 above. In the event that all or part of Developer's Property requires additional wastewater treatment capacity, or facilities, to provide service to the Developer's Property, a new Service Agreement shall be negotiated and executed prior to granting the additional capacity or the installation of the additional facilities. Any such new Agreement shall be property executed and conform to the Rules and Regulations in effect at the time of the execution of the new Agreement. Service Company reserves the right to deny additional capacity reservation.

22. Developer shall pay to Service Company the full, actual amount of the surveying, engineering, legal, administrative, inspection and review costs incurred by Service Company in preparing and executing this Agreement; in extending the certificated area of Service Company to include all of Developer's Property; in conducting the review of the engineering plans and specifications; and in conducted observations, inspections and tests for the installation of developer installed and utility facilities to service Developer's Property. A five hundred dollar ($500.00) nonrefundable minimum deposit toward these costs shall be paid not later than the date of execution of this Agreement. The full amount of theses costs shall be paid by Developer to Service Company when they are known and prior to the rendering of service to Developer's Property. The final billing by Service Company for these charges shall credit any deposits paid. In no event shall Developer's obligation pursuant to this paragraph exceed $2,000.00.

23. All amounts payable to Service Company are due upon receipt of billing and will be considered delinquent if payment in full is not received by Service Company within thirty (30) calendar days of the date of the invoice. Developer agrees to

grounds for Service Company to withhold service from any portion of Developer's Project.

24. Service Company agrees to abide by the terms and conditions of its franchise and to use reasonable diligence at all times in order to be able to meet its obligations under the terms and conditions of this Agreement.

25. Developer and Service Company agree to conform to and be bound by, the then current terms and conditions of the documents itemized below as they may be amended from time to time, subject to the amounts paid pursuant to paragraph 18 of this agreement.

A. Schedule of Rates, Fees and Charges, effective December 19, 1984 pursuant to an Order of the Board of County Commissioners of Charlotte County, issued February 20, 1985.

B. Rules and Regulations, effective December 19, 1984, pursuant to an Order of Board of County Commissioners of Charlotte County, issued February 20, 1985.

C. Service Availability Policy, effective December 19, 1984, pursuant to an Order of Board of County Commissioners of Charlotte County, issued February 20, 1985.

26. Charlotte County Ordinance No. 86-25, including any amendments thereto, is incorporated by reference in this Agreement.

27. Deposit in the first class mails of the United States by either party shall be deemed to be adequate service for all notices required by or rising out of this Agreement.

28. If there is any litigation arising out of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

heirs, successors and assigns.

30. This Agreement supersedes any and all previous agreements or representations, either verbal or written, heretofore in effect between Developer and Service Company and made in respect to the matters contained herein, and when duly executed by all parties hereto, constitutes the complete Agreement between Developer and Service Company.

31. This Agreement is at all times subject to review and alteration by the Public Service Commission.

32. In the event that any provision of this Agreement is declared void by any Court of competent jurisdiction, such declaration shall in no way affect the validity of the remainder of this Agreement which shall remain in full force and effect.

Signed sealed and delivered in the presence of:

Witness

Witness

SANDALHAVEN UTILITY, INC., a Florida corporation

BY: _____
as its President

Witness

Witness

CAPE HAZE MARINA VILLAGE, INC., a Florida corporation,

BY: _____
as its President

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Revision Date: June 7, 1995 (8:00am)