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*Carl A. Bertoch, P.A.*  
*Attorney at Law*

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FILE COPY**

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CARL A. BERTOCH  
(MEMBER FLORIDA AND OHIO BAR)

OF COUNSEL:  
ROBERT L. UNDERWOOD, III  
(MEMBER D.C. BAR ONLY)

September 28, 1995  
HAND DELIVERED

Richard Redeman  
Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399

RE: Knight Island Utilities, Inc.

941044-WS

Dear Mr. Redeman:

Pursuant to your letter of August 30, 1995, we submit the following:

1. As of this date, we have attempted to record the by-laws with the Secretary of State's office. They do not accept by-laws for filing. Please advise us of any actions required by you on this point;
2. As to "turnover", Knight Island Utilities is a Florida not-for-profit corporation whereby each member has the right to vote. The members elect a Board and that Board governs the corporation;
3. In our letter of June 27, we indicated that the proof of ownership would be provided in the form of a deed. After speaking with Knight, we realized that a lease had been used in the past. We have enclosed a copy of the most recent version of that lease as "proof of ownership".

ACK \_\_\_\_\_  
 AFA \_\_\_\_\_  
 APP \_\_\_\_\_  
 CAF \_\_\_\_\_  
 CMU \_\_\_\_\_  
 CTR \_\_\_\_\_  
 EAG \_\_\_\_\_  
 LEG   1   \_\_\_\_\_  
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 WAS   1   \_\_\_\_\_  
 OTH \_\_\_\_\_

DOCUMENT NUMBER-DATE  
09658 SEP 29 1995  
FPSC-RECORDS/REPORTING

Please contact me with any questions. Thank you for your assistance in this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'RLU', with a stylized flourish at the end.

Robert L. Underwood

Enclosure

RLU/lf

*Carl A. Bertoch, P.A.*  
*Attorney at Law*

**LEASE**

**DATED: September 1, 1995**

**KNIGHT ISLAND UTILITIES INC.,**  
**a Florida not-for-profit corporation**

**("LESSEE")**

**and**

**ISLAND HARBOR BEACH CLUB, LTD.,**  
**a Florida partnership**

**and**

**CHARLOTTE HARBOR LAND COMPANY, INC.,**  
**a Florida corporation**  
**(Jointly as "LESSOR")**

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**LEASE**

THIS LEASE is made and entered into this 1st day of September 1995, by and between ISLAND HARBOR BEACH CLUB, LTD., a Florida partnership and CHARLOTTE HARBOR LAND COMPANY, INC., a Florida corporation, jointly as ("LESSOR"), and KNIGHT ISLAND UTILITIES INC., a Florida not-for-profit corporation ("LESSEE").

**WITNESSETH:**

WHEREAS, LESSOR is the owner of the water and sewer utility system on Palm Island known as the Knight Island Utility as described on Exhibit A attached hereto (the "Utility System"); and

WHEREAS, LESSEE wishes to lease Utility System for purposes of operating a utility; and

WHEREAS, LESSEE has examined Utility System and is fully informed of its condition.

NOW, THEREFORE, for and in consideration of the above and the mutual covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, LESSOR hereby demises and leases to the LESSEE, and LESSEE hereby leases Utility System from LESSOR,

TOGETHER, with (i) all real property, buildings, tenements, hereditaments, and appurtenances belonging or in any way appertaining to Utility System and improvements thereon; (ii) all equipment, transmission lines and other personal property used in connection with the utility system; and (iii) any easements inuring to the benefit of Utility System or LESSOR as the owner thereof,

TO HAVE AND TO HOLD the Utility System unto LESSEE, its successors and permitted assigns, for a term commencing on the Commencement Date (as hereinafter defined) and expiring on the anniversary, unless this Lease shall sooner terminate as hereinafter provided.

AND, LESSOR and LESSEE covenant and agree as follows:

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LESSOR Initial

\_\_\_\_\_  
LESSEE Initial

**ARTICLE I**  
**CERTAIN DEFINITIONS**

Section 1.01. As used herein:

- A. "Anniversary Rent Date" means the day one year from the Commencement Date.
- B. "Commencement Date" means the first date on which rent begins to accrue.
- C. "Event of Default" has the meaning set forth in Article 14.
- D. "Hazardous Materials" means, without limitation, any flammable explosives, radioactive materials hazardous materials, hazardous wastes, hazardous or toxic substances or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§1801, et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. §§6901, et seq.), the regulations and any other federal, state or local environmental law, ordinance, rule or regulation.
- E. "LESSOR" means ISLAND HARBOR BEACH CLUB, LTD., a Florida partnership and CHARLOTTE HARBOR LAND COMPANY, INC., a Florida corporation, jointly, their successors and/or assigns.
- F. "Lease Year" means the twelve-month period beginning on the Commencement Date and any Anniversary Date of the lease.
- G. "Lease Term" means the term which commences on the Commencement Date and ends Thirty (30) years thereafter and further includes any renewals of this lease.
- H. "Utility System" means the Equipment, Land and Improvements which constitute the water and sewer utility system and the improvements necessary to operation.
- I. "Prime Rate" means the prime commercial lending rate from time to time announced by Sun Bank and Trust/Charlotte County, N.A. to be in effect at its office in Port Charlotte, Florida, or such other standard as shall then be recognized by the banking community as having replaced the "prime rate".
- J. "Qualified Depository" means a bank or trust company with principal offices in Florida, having a capital and surplus account of at least Twenty Million Dollars (\$20,000,000.00), and otherwise acceptable to LESSOR in its reasonable discretion.
- K. "LESSEE" means KNIGHT ISLAND UTILITY INC., a Florida not-for-profit corporation. "LESSEE" also means any successors and/or assigns of LESSEE permitted under Article 13.

LESSOR initial

LESSEE initial

L. "Termination of this Lease" means the expiration of the term of this Lease or any sooner termination of the term of this Lease pursuant to any of the provisions hereof.

## ARTICLE 2 RENT

Section 2.01. Net Annual Basic Rent. LESSEE shall pay to LESSOR during the Lease Term in lawful money of the United States of America at the address of the LESSOR specified herein or at such place as LESSOR may from time to time designate, a net annual basic rental, over and above the other and additional payments to be paid by LESSEE as hereinafter provided, in monthly payments in advance of the first day of each month as follows:

Consideration of Thirty-Six Thousand Dollars (\$36,000.00) and such other consideration as may be agreed upon shall be paid upon execution of this document which shall be the net annual basic rent and shall be paid in monthly payments. All rental payments shall be accompanied by all applicable sales taxes.

The net annual basic rental shall be paid to LESSOR without notice, demand or set-off and is hereinafter sometimes called the "basic rent".

Section 2.02. The Lease Term shall automatically extend for periods of five years each unless otherwise terminated herein. Such termination shall include any default in the performance of any condition of this lease for which a notice of default has been given to the LESSEE. Either LESSEE or LESSOR may prevent extension of the lease term by providing the other party with notice thereof at least 60 days prior to the end of the Lease Year then in effect, such notice to be made in accordance with Article 20 hereof.

Section 2.04. Net Lease. This Lease shall be deemed and construed to be a "net lease" in every respect and LESSEE shall pay to LESSOR in addition to the net annual basic rent all Impositions as defined in Section 3.01, all state and other sales taxes charged from time to time on the rental, and other amounts required to be paid by LESSEE hereunder.

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LESSEE initial

ARTICLE 3  
PAYMENT OF TAXES, ASSESSMENTS, ETC.

Section 3.01. LESSEE's Payments of Impositions. LESSEE shall pay (subject as hereinafter provided), before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof, all real estate taxes, assessments, impact fees, water and sewer rates and charges, license and permit fees and other governmental levies and charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature which arises by, through, under or in connection with LESSOR's ownership of the Utility System subject to this Lease (collectively, the "Impositions") which are assessed, levied, confirmed, imposed or become a lien upon the Utility System and the sidewalks or streets in front of or adjoining the Land, or which become payable, during the term of this Lease; however, excluded from the definition of Impositions shall be any franchise corporate, succession, capital levy, stamp, transfer, income, excess profits, revenue or franchise tax imposed on LESSOR. If, by law, any Imposition is payable or at the option of the taxpayer may be paid in installments (whether or not interest shall accrue on the unpaid balance) in such installments as may become due during the term of this Lease and before any fine, penalty, interest or cost may be added thereto for non-payment thereof. In addition, any Imposition relating to a fiscal period of a taxing authority, a part of which period is included within the Lease Term and a part of which is included in a period of time before the Commencement Date or after the Termination of this Lease, shall (whether or not such Imposition shall be assessed, levied, confirmed, imposed or become a lien upon the Utility System, or shall become payable, during the Lease Term) be appropriately prorated between LESSOR and LESSEE.

Section 3.02. Time for Payment of Impositions. Subject to the provisions of Sections 3.01 and 3.03, LESSEE shall pay any bill, invoice or other documentation for an Imposition before the due date, and shall furnish to LESSOR within maximum discount period within thirty (30) days after the date when any Imposition is paid or payable, official receipts of the appropriate taxing authority, or other evidence reasonably satisfactory to LESSOR, evidencing the payment thereof.

Section 3.03. LESSEE's Right to Contest Impositions. LESSEE shall have the right to contest the amount or validity, in whole or in part, of any Imposition by appropriate proceedings, and, notwithstanding Section 3.01, LESSEE may defer payment of such Imposition if LESSEE complies in every respect with any statutory procedure providing for such contest (including, for example, the tender into escrow of the contested amount or the posting of a bond or other security) or if no such procedure exists then prior to the due date of such Imposition, LESSEE shall have deposited with an escrow agent acceptable to LESSOR the amount of all interest and penalties in connection therewith and all charges which may or might be assessed against or become a charge on the Utility System or any part thereof in said proceedings, unless the Utility System or any part thereof would by reason of such postponement or deferment be in imminent danger of being forfeited or lost. In lieu of the cash deposit referred to above, LESSEE may deposit such other security as shall be reasonably satisfactory to LESSOR. Upon the termination of such contest proceedings, LESSEE shall immediately pay the amount of such Imposition or part thereof as finally determined in such proceedings, the payment of which may have been deferred during the prosecution of such proceedings, together with any costs, fees, interest, penalties or other liabilities in connection therewith, and upon such payment any deposit made pursuant to this Section shall be returned together with interest, if any, earned thereon. If, at any time during the continuance of such proceedings, LESSOR shall reasonably deem the amount deposited to be insufficient, LESSEE shall, within 15 days after demand, deposit with the escrow agent such additional sum as LESSOR may

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reasonably request, and upon failure of LESSEE so to do, the amount theretofore deposited may be applied to the payment of such Imposition, and the interest and penalties in connection therewith and any costs, fees or other liability accruing in any such proceedings, and the balance, if any, shall be returned to LESSEE. LESSOR shall join in any such proceedings or permit the same to be brought in its name if required by law. LESSOR shall not be subjected to any liability for the payment of any costs or expenses in connection with any such proceedings and LESSEE shall indemnify and hold LESSOR harmless from any such Imposition and penalties or interest thereon which have been paid by LESSEE, or which have been paid by LESSOR and for which LESSOR has been fully reimbursed.

Section 3.04. Evidence of Impositions. Any certificate, advice or bill showing non-payment of an Imposition received from the appropriate official designated by law to make or issue the same or to receive payment of any Imposition shall be evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill.

Section 3.05. Rendering of Bills for Impositions. If any bill, invoice or other documentation for an Imposition is rendered to LESSOR, LESSOR shall deliver it to LESSEE.

#### ARTICLE 4 INSURANCE

Section 4.01. Hazard Coverage. During the Lease Term, LESSEE shall insure the Utility System for the mutual benefit of LESSOR and LESSEE as Follows:

From and after the Commencement Date and throughout the entire term of this Lease, LESSEE shall maintain:

1. All-risk property insurance, including earth movement and flooding (if the Utility System is in Flood Zone A or V) in amounts sufficient to prevent LESSOR or LESSEE from being a co-insurer within the terms of the applicable policies, and, in any event, in any amount not less than 100% of the then full insurable value (as hereinafter defined) of the Utility System;
2. Insurance covering such other hazards and in such amounts as LESSOR may reasonably require provided that such insurance is then customarily maintained in the Utility System of similar construction, use and class in the area in which the Utility System are located.

For all purposes of this Lease, "full insurable value" means the actual replacement cost of the Utility System (excluding foundation and excavation costs) without physical depreciation and said "full insurable value" shall be determined at the request of LESSOR by one of the insurers or by an architect, appraiser or appraisal company, selected and paid by LESSEE and reasonably acceptable to LESSOR, but such determination shall not be required to be made more frequently than once every twenty-four (24) months. In the event of a dispute between LESSOR and LESSEE as to the "full insurable value", the limits of the insurance to be carried pursuant to Subsections 2 and 3 of this Section, the form of or limits of insurance to be carried pursuant to Subsection 4 of this Section, or the limits of the insurance required by LESSOR pursuant to Section 4.02, such limits shall be deemed reasonable if the limits required do not exceed the limits then customarily maintained by prudent operators of Utility System of similar construction, use and class in the area in which the Utility System are located. Until the resolution of any

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dispute referred to in this Section 4.01, LESSEE shall carry insurance as required by LESSOR, subject to reimbursement from LESSOR of Excess insurance premiums if the decision in the arbitration is in favor of LESSEE.

**Section 4.02. Liability Coverage.** In addition, at all times during the Lease Term, LESSEE shall maintain insurance for the mutual benefit of LESSOR and LESSEE against claims for bodily injury and property damage, under a policy of commercial general public liability insurance, with such limits as may reasonably be required by LESSOR from time to time, but not less than One Million Dollars (\$1,000,000.00) per person with respect to injury or death and One Million Dollars (\$1,000,000.00) per occurrence for property damage, and shall also maintain an excess ("umbrella") liability policy or policies with total coverage of not less than Ten Million Dollars (\$10,000,000.00) initially (with such Ten Million Dollars (\$10,000,000.00) minimum amount being adjusted upward annually in proportion to the increase since the initial year of the Lease Term in the consumer price index and announced from time to time by the U.S. Department of Labor for all items and all urban consumers, or in the event such index is discontinued, then such other comparable index selected by LESSOR); however, if the amount of such excess liability coverage is not available or results in an unreasonably high cost, then LESSEE, with prior written approval of LESSOR, may maintain a lesser amount of excess liability coverage which is equal to the amount of such coverage that would be carried by a reasonable, prudent operator of a Utility System in southwest Florida that is similar in size, construction, and use to the additional insured on all liability policies maintained by LESSEE or any affiliates of LESSEE. References to "LESSEE" in the immediately preceding sentence shall include all assignees of LESSEE permitted under the terms of this Lease.

**Section 4.03. Requirements for Insurers and Policies.** All insurance provided for under this Lease shall be effected under valid, enforceable policies issued by insurers licensed in the state of Florida having an approved Best rating of A+ or better, and otherwise reasonably acceptable to LESSOR. Upon the execution of this Lease, the original policies procured by LESSEE pursuant to Sections 4.01 and 4.02 (or certificates thereof) shall be delivered to LESSOR. At least thirty (30) days prior to the expiration date of any policy, the original renewal policy (or certificates thereof) for such insurance shall be delivered by LESSEE to LESSOR together with satisfactory evidence of payment of the premium thereon. All policies referred to in Sections 4.01 and 4.02 shall, to the extent then generally obtainable, contain agreements by the insurers that (a) any loss shall be payable as hereinafter provided, notwithstanding any act or negligence of LESSEE which might otherwise result in forfeiture of said insurance, (b) such policies shall not be canceled except upon thirty (30) days' prior written notice to each named or additional insured and loss payee, and (c) the coverage afforded thereby shall not be affected by the performance of any work in or about the Utility System.

**Section 4.04. Adjustment of Losses.** All policies of insurance required under this Article 4 shall name LESSOR and LESSEE as insureds as their respective interest may appear. Losses under the policies referred to in Section 4.01 shall be adjusted with the insurance companies by LESSEE and in the case of any particular casualty resulting in damage or destruction reasonably estimated to exceed three percent (3%) of the full insurance value of the Utility System, no such adjustment shall be made without the prior approval of LESSOR. If LESSOR's approval is required it shall not be unreasonably withheld or delayed.

LESSOR initial

LESSEE initial

Section 4.05. Payment of Losses. Losses under all policies referred to in Section 4.01 shall be payable to a Qualified Depository designated by LESSEE in a notice given to the insurance companies and to LESSOR promptly following the occurrence of the casualty. All such policies shall expressly provide that the loss thereunder shall be adjusted and paid as provided in Section 4.04 and this Section.

Section 4.06. Application to Restoration. Any loss paid to LESSEE pursuant to Section 4.05 under any insurance policy referred to in Section 4.01 shall be held by LESSEE in trust for application to the cost of restoring, repairing, replacing or rebuilding the Utility System, if such is required under Article 8. Any losses paid to the Qualified Depository pursuant to Section 4.05 under any policy referred to in Section 4.01 shall be used for the restoration and repair of the Utility System, if such is required under Article 8, in which case they shall be disbursed by it in accordance with Article 10.

Section 4.07. Blanket Policies. Nothing in this Article shall prevent LESSEE from taking out insurance of the kind and in the amounts and with companies provided for under Sections 4.01, 4.02 and 4.03 under a blanket insurance policy or policies which cover other properties as well as the Utility System, provided, however, that any such policy of insurance provided for under Section 4.01 shall specify therein, or LESSEE shall furnish LESSOR with a written statement from the insurers under such policies specifying the amount of the total insurance allocated to the Utility System, which amount shall be not less than the amount required by Section 4.01 to be carried.

Section 4.08. Deductibles. All insurance provided for under Section 4.01 may contain loss deductible clauses in such maximum amounts as LESSOR shall approve. In the event of a dispute between LESSOR and LESSEE as to the amount which may be deductible under a policy, such dispute shall be determined by arbitration in the manner provided in Article 17.

**ARTICLE 5**  
**LESSOR'S RIGHT TO PERFORM LESSEES COVENANTS:**  
**ADDITIONAL RENT**

Section 5.01. Performance by LESSOR. If LESSEE shall at any time fail (a) to pay any Imposition in accordance with Article 3, (b) to take out, pay for, maintain or deliver any of the insurance policies provided for in Article 4, (c) to cause any lien of the character referred to in Article 11 to be discharged as therein provided or (d) to perform any other act on its part to be performed under this Lease, after the giving of any applicable notice and expiration of any applicable grace or cure periods provided for under this Lease, LESSOR may, without being obligated to do so, without further notice or demand upon LESSEE, and without waiving or releasing LESSEE from any of its obligations under this Lease, (i) pay any Imposition payable by LESSEE pursuant to Article 3; (ii) take out, pay for and maintain any of the insurance policies provided for in Article 4; (iii) discharge any lien of the character referred to in Article 11 as therein provided; or (iv) perform any such other act on LESSEE's part to be performed under this Lease.

Section 5.02. Reimbursement/Interest. All sums paid by LESSOR pursuant to Section 5.01 and all necessary incidental costs and expenses paid to or incurred by LESSOR with respect to third parties in connection with the performance of any act by LESSOR pursuant to said Section, together with interest thereon from the date of making such expenditure by LESSOR at a rate 2% above the Prime Rate shall be payable by LESSEE to LESSOR within ten (10) days after demand therefore accompanied by evidence reasonably establishing that the expenditure has been made.

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LESSOR initial

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LESSEE initial

Section 5.03. Additional Rent. All sums which may become payable to LESSOR by LESSEE as provided for in this Article and all other charges and expenses of whatsoever nature which LESSEE is required to pay pursuant to this Lease shall be deemed additional rent hereunder and subject to the cure rights of LESSEE, as set forth in this Lease. LESSOR shall have (in addition to any other right or remedy of LESSOR) the same rights and remedies in the event of the nonpayment of any such sums by LESSEE as in the case of default by LESSEE in the payment of the basic rent.

#### ARTICLE 6

#### COVENANTS AGAINST WASTE AND TO REPAIR AND MAINTAIN THE UTILITY SYSTEM

Section 6.01. No Waste. LESSEE shall not cause or permit any waste, damage or injury to the Utility System .

Section 6.02. Hazardous Materials. LESSEE shall promptly notify the LESSOR of any notice of a violation of any federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials.

A. LESSEE shall keep the Utility System , or cause the Utility System to be kept free of Hazardous Materials.

B. Without limitation to the foregoing, LESSEE shall neither cause nor permit: (1) the Utility System to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable federal, state and local laws or regulations; (2) a release of Hazardous Materials into the Utility System or any other property as a result of any intentional or unintentional act or omission on the part of the LESSEE or any of its Lessees or sublessees.

C. LESSEE shall comply with, and ensure compliance by all its lessees and sublessees with, all applicable federal, state and local laws, ordinances, rules and regulations related to Hazardous Materials, whenever and by whomever enacted or made effective. LESSEE shall obtain and comply with, and ensure that all lessees and sublessees obtain and comply with, any and all approvals, registrations or permits required under such laws, ordinances, rules and regulations.

D. LESSEE shall conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions on, from or affecting the Utility System in accordance with (1) all applicable federal, state and local laws, ordinances, rules, regulations and policies, and (2) the orders and directives of all federal, state and local government authorities.

Section 6.03. Repair. LESSEE shall use all reasonable efforts to keep the Utility System and adjoining Land clean and in good condition. LESSEE shall make all repairs (including structural repairs) and replacements necessary to maintain the utility system as a first class Utility System. LESSEE shall indemnify and hold LESSOR harmless from and against all claims, loss, liability or damage made against or sustained by LESSOR in connection with any defects, damages, repairs or replacements with respect to the Utility System. LESSEE shall at all times ensure that the Utility System is maintained in a first class condition, both interior and exterior, and shall perform or cause to be performed such specific items or repair or maintenance in accordance with this Section as requested in writing by LESSOR from time to time.

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LESSOR initial

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LESSEE initial

Section 6.04. No Removal. After completion of the Utility System, LESSEE shall not remove or permit the removal of any of the Utility System unless other equipment at least equal in value and utility shall be promptly substituted therefore or a new Utility System is to be constructed.

**ARTICLE 7**  
**COMPLIANCE WITH ORDERS, ORDINANCES, ETC.**

Section 7.01. Compliance Requirement. Throughout the Lease Term, LESSEE shall promptly comply with (a) all laws and ordinances and the orders, rules, regulations and requirements of all federal, state and municipal governments and appropriate departments, commissions, boards and officers thereof, and the orders, rules and regulations of the Board of Fire Underwriters which has jurisdiction or any other body hereafter constituted exercising similar functions, which may be applicable to the Utility System and the sidewalks and curbs adjoining the Land or to the use or manner of use of the Utility System, and (b) the requirements of all policies of public liability, fire and all other policies of insurance at any time in force with respect to the Utility System as required under Section 4.01 and 4.02.

Section 7.02. LESSEE's Right to Contest. LESSEE shall have the right to contest by appropriate legal proceedings, in the name of the LESSEE or LESSOR or both, without cost or expense to LESSOR, the validity or application of any law, ordinance, order, rule, regulation or requirement, of the nature herein referred to, and if, by the terms of any such law, ordinance, order, rule, regulation or requirement, compliance therewith pending the prosecution of any such proceeding may legally be held in abeyance without any lien, charge or liability of any kind being incurred against the Utility System and without subjecting LESSOR to any criminal liability of any nature for failure so to comply therewith, LESSEE may postpone compliance therewith until the final determination of any proceedings, provided that all such proceedings shall be prosecuted with due diligence and dispatch, and if any lien, charge or civil liability is incurred by reason of non-compliance, LESSEE may nevertheless make the contest and delay compliance as aforesaid, provided that LESSEE furnishes to LESSOR security, reasonably satisfactory to LESSOR, against any loss or injury by reason of such noncompliance or delay and prosecutes the contest with reasonable diligence. Provided that LESSEE complies with all the provisions of the Article, LESSOR shall execute and deliver any papers which may be necessary or proper to permit LESSEE to contest the validity or application of any such law, ordinance, order, rule, regulation or requirement.

**ARTICLE 8**  
**DAMAGE TO OR DESTRUCTION OF THE UTILITY SYSTEM**

Section 8.01. Damage/Repair. In case of damage to or destruction of any of the Utility System by fire or any other cause, similar or dissimilar, insured or uninsured, LESSEE shall restore, repair, replace or rebuild the Utility System as nearly as may be practicable to the condition, quality and class in which the same was in immediately prior to such damage or destruction, or with such changes or alterations (including demolition of the Utility System) as LESSEE shall elect to make in conformity with Article 10. Such restoration, repairs, replacement or rebuilding of the Utility System shall be commenced with reasonable promptness and prosecuted with due diligence.

Section 8.02. No Abatement. In the event of any damage or destruction to the Utility System, the basic rent and other sums payable hereunder shall not be abated.

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LESSOR initial

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LESSEE initial

ARTICLE 9  
CONDEMNATION

Section 9.01. Total Taking. If there shall be a total taking or constructive total taking of the Utility System in condemnation proceedings, by deed in lieu of condemnation or by any right or eminent domain, this Lease shall terminate on the date such taking and the basic rent and other rents, Impositions and other charges payable by LESSEE hereunder shall be apportioned and paid to the date of such taking. "Constructive total taking" means a taking of such scope that the untaken portion of the Utility System is insufficient to permit the restoration of the Utility System so as to constitute a complete, rentable system, capable of producing a proportionately fair and reasonable net annual income (a) after the payment of (i) all operating expenses thereof and (ii) the basic rent, as reduced to the extent provided in Section 9.05, and (b) after performance of all covenants and agreements herein provided to be performed by LESSEE. As used above, the term "operating expenses" shall be deemed to exclude depreciation or amortization of capital expenditures and income taxes and franchise taxes of LESSEE. In the event of a dispute between LESSOR and LESSEE as to whether or not there has been a constructive total taking, such dispute shall be determined by arbitration in the manner provided in Article 17; provided, however, that if LESSEE shall have concluded that there has not been a constructive total taking this Lease shall continue in full force and effect subject to the other provisions of this Article.

Section 9.02. Rights of Parties. In the event of any such total taking or constructive total taking, both LESSOR and LESSEE shall have the right to enter an appearance in such proceeding, file a claim for damages, and present evidence as to the value of their respective losses resulting from the taking. LESSOR and LESSEE shall be entitled to receive directly from the condemning authority such portion of the award as relates to their respective losses. If LESSEE chooses to appeal the decision of the body rendering the award, LESSEE acknowledges that such appeal may affect the amount of and/or the payment of LESSOR's portion of the award. LESSEE agrees, in order to avoid a delay in making any portion of the award not in dispute available to LESSOR, to cooperate with LESSOR and the condemning authority during the pendency of the appeal in making arrangements with the condemning authority to allow payment promptly to LESSOR of any portion of the award which is not in dispute and which LESSEE agrees in good faith is justly due LESSOR for such taking. LESSEE further agrees that LESSOR does not waive any right, if LESSEE's appeal has the effect of reducing LESSOR's award, to contest any appeal by LESSEE.

Section 9.03. Partial Taking. In the event of a taking less than a total taking or a constructive total taking, this Lease shall not terminate or be affected in any way, except as provided in Section 9.05, and LESSOR and LESSEE shall have the right to enter an appearance in such proceedings, file a claim for damages and present evidence as to the value of their respective losses resulting from the taking. In addition, the provisions set forth in Section 9.02 above, pertaining to appeals and disbursement of condemnation proceeds not in dispute shall apply to less than a total taking or a constructive total taking pursuant to this Section. The portion of the condemnation proceeds payable to LESSEE under this Section shall be used for the restoration and repair of the Utility System, and in the event such portion of the condemnation proceeds is less than three percent (3%) of the full insurable value of the Utility System immediately preceding such taking, these proceeds shall be paid in trust for application to the cost of restoring, repairing, replacing or rebuilding of the Utility System, and in the event such portion of the condemnation proceeds equals or exceeds three percent (3%) of the full insurable value of the Utility System immediately preceding such taking, such proceeds shall be paid to a Qualified Depository designated by LESSEE, and the portion so paid shall be disbursed by it in accordance with Article 10.

LESSOR initial

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Section 9.04. Restoration. In the event of a taking less than a total taking or a constructive total taking, and whether or not the condemnation proceeds shall be sufficient for the purpose, LESSEE shall proceed with due diligence to restore, repair, replace or rebuild the remaining part of the Utility System to substantially its former condition to the extent reasonably practicable or with such changes or alterations (including demolition of the Utility System) as LESSEE may elect to make in conformity with Article 10.

Section 9.05. Partial Termination. In the event of a taking of the character referred to in Section 9.03, this Lease shall terminate as to the portion of the Utility System so taken and from and after the date of such taking the annual basic rent shall abate for the remainder of the term of this Lease by an amount equal to the prorata rent of the square footage of the taking of the amount of the condemnation proceeds paid to LESSOR.

Section 9.06. Temporary Taking. If the whole or any part of the Utility System, or of LESSEE's leasehold estate under this Lease, shall be taken in condemnation proceedings or by any right of eminent domain for temporary use or occupancy, the foregoing provisions of this Article shall not apply and LESSEE shall continue to pay, in the manner and at the times herein specified, the full amounts of the basic rent and all additional rents and other charges payable by LESSEE hereunder, and, except only to the extent that the LESSEE may be prevented from so doing pursuant to the terms of the order of the condemning authority, LESSEE shall perform and observe all of the other terms, covenants, conditions and obligations hereof upon the part of LESSEE to be performed and observed, as though such taking had not occurred. LESSEE shall be entitled to receive the entire amount of the condemnation proceeds made for such taking, whether paid by way of damages, rent or otherwise, unless such period of temporary use or occupancy shall extend beyond the termination of this Lease, in which case the condemnation proceeds shall be apportioned between LESSOR and LESSEE upon receipt thereof as of the date of termination of this Lease. LESSEE shall, upon the expiration of any such period of temporary use or occupancy during the term of this Lease, restore the Utility System, as nearly as may be reasonably practicable, to the condition in which the same was immediately prior to such taking, subject to LESSEE's rights to make changes or alterations pursuant to Article 10. Any portion of the condemnation proceeds received by LESSEE as compensation for the cost of restoration of the Utility System shall, if such period of temporary use or occupancy shall extend beyond the term of this Lease, be paid to LESSOR on the date of termination of this Lease to the extent not theretofore disbursed by LESSEE in connection with restoration of the Utility System.

Section 9.07. Arbitration. If the order or decree in any condemnation or similar proceeding shall fail separately to state the amount to be awarded to LESSOR and the amount to be awarded to LESSEE under Section 9.02 or 9.03 or the amount of the compensation for the restoration of the Utility System under Section 9.03 or 9.06, and if LESSOR and LESSEE cannot agree thereon within ninety (90) days after the final award or awards shall have been fixed and determined, any such dispute shall be determined by arbitration in the manner provided in Article 17.

Section 9.08. Lender's Rights. In addition to LESSOR and LESSEE, any holder of a mortgage on LESSOR's fee interest in the Land shall have the right to participate in any condemnation proceeding for the purpose of protecting their rights hereunder.

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**ARTICLE 10**  
**DISBURSEMENT OF DEPOSITED MONIES**

Section 10.01. Deposited Sums. All sums of the character referred to in Sections 4.05 and 9.03 (collectively, the "Deposited Sums") paid to or deposited with a Qualified Depository ("Depository"), shall be disbursed in the manner hereinafter provided.

Section 10.02. Disbursement. From time to time as any restoration, repair, replacement or rebuilding of the Utility System or any portion thereof damaged or destroyed by fire or any other cause, or not taken in a proceeding of the character described in Section 9.03, progresses (collectively, the "work"), disbursement of the Deposited Sums shall be made (subject to the provisions of Section 10.04) in such manner and subject to such requirements as the Depository shall reasonably impose in order to insure that the work shall be completed in a good, workmanlike, and timely manner free of any lien against the Utility System. After the completion of the work the balance of the Deposited Sums shall be disbursed to LESSEE.

Section 10.03. Disbursement Upon Termination. If this Lease shall be terminated pursuant to the default provisions of Article 14 prior to the disbursement of the Deposited Sums or any part thereof, LESSOR may notify the Depository thereof (with a copy to LESSEE) and thereupon the Depository shall have no further right or obligation to disburse any of the Deposited Sums to LESSEE, but shall disburse the same to or for the account of LESSOR upon LESSOR's direction to do so.

Section 10.04. Depository's Deductions. The Depository shall have the right to deduct from the Deposited Sums its reasonable charges for acting as Depository hereunder.

**ARTICLE 11**  
**MECHANIC'S LIEN**

Section 11.01. LESSEE shall not suffer or permit any mechanic's liens to be filed against the Utility System by reason of work labor, services or materials supplied or claimed to have been supplied to LESSEE or anyone holding any interest in the Utility System or any part thereof through or under LESSEE. If any such mechanic's lien shall at any time be filed against the Utility System, LESSEE shall, within sixty (60) days after actual notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise as permitted by Florida law. If LESSEE shall fail to cause such lien to be discharged within the period aforesaid, then LESSOR may discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by depositor or by bonding proceedings, and in any such event LESSOR shall be entitled, if LESSOR so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowance. LESSOR's interest in the Land shall not be subject to mechanic's liens resulting from any work or improvements contracted for by or through LESSEE, and nothing in this Lease shall be deemed or construed in any way as constituting the consent or request of LESSOR, express or implied by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnish of any materials for any specific improvement, alteration to or repair of the Utility System or any part thereof, nor as giving LESSEE a right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any mechanic's lien against LESSOR's interest in the Utility System. At LESSOR's request, LESSEE shall execute in recordable form a memorandum containing certain of the provisions set forth in this Article 11.

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## ARTICLE 12

### USE: SURRENDER OF THE UTILITY SYSTEM : INSPECTION OF THE UTILITY SYSTEM

Section 12.01. Use. Utility System shall be used only for operation and maintenance of Utility System as a first class water and sewer utility system. LESSEE shall not use or allow Utility System or any part thereof to be used or occupied for any unlawful purpose or for any purpose which violates any laws, rules, regulations, deed restrictions or ordinances, or any certificate of occupancy affecting the use of the Utility System.

Section 12.02. Surrender of Utility System. Upon the termination of this Lease, LESSEE shall surrender to LESSOR the Utility System in good order and repair (except in the event of termination upon a total taking or constructive total taking in condemnation proceedings or pursuant to Section 8.01), reasonable wear excepted and also except as LESSEE may have been prevented from maintaining the Utility System in good order and repair by occupation thereof by any entity having the power of eminent domain which shall have taken the temporary use thereof and shall then be in possession thereof. Upon such termination, LESSEE shall also deliver to LESSOR files, plans, records, registers and all other papers and documents which may be necessary or appropriate for the proper operation and management of the Utility System. Upon such termination LESSEE shall have the right to remove its personal property from the Utility System provided that LESSEE is not in default under this Lease.

Section 12.03. Inspections. LESSEE shall permit LESSOR and its authorized representatives to enter the Utility System at all reasonable times during usual business hours upon reasonable advance notice for the purpose of inspecting the same and shall permit LESSOR and its authorized representatives to enter the Utility System at all reasonable times during usual business hours upon reasonable advance notice for the purpose of exhibiting the same to prospective purchasers or mortgagees of LESSOR's fee title.

Section 12.04. Limits/Indemnity. LESSOR will exercise any right to entry under this Article in a manner designed to minimize interference with normal business operations.

## ARTICLE 13

### ASSIGNMENT AND SUBLETTING

Section 13.01. Assignment. Except as specifically provided for in this Article 13, this Lease may not be assigned by LESSEE or encumbered without the prior written consent of LESSOR at its sole discretion. For purposes of this Article, the term "assignment" shall include any direct or indirect change in control of LESSEE.

## ARTICLE 14

### DEFAULT PROVISIONS

Section 14.01. Default. Each of the following shall constitute an event of default (an "Event of Default") by LESSEE under this Lease:

A. If LESSEE shall fail to pay when due the basic rent, any imposition, or any other monetary obligation imposed on LESSEE under this Lease and such default shall continue for a period of ten (10) days after written notice thereof, specifying such default, shall have been given by LESSOR to LESSEE;  
or

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B. If LESSEE shall fail to perform any other (non-monetary) covenant or agreement on the part of LESSEE to be performed hereunder, and such default shall continue for a period of thirty (30) days after written notice thereof, specifying such default, shall have been given by LESSOR to LESSEE; provided, however, in the case of a default which cannot with due diligence be remedied by LESSEE within a period of thirty (30) days, if LESSEE shall commence within such thirty (30) day period to remedy the default and thereafter shall prosecute the remedying of such default with all due diligence, the period of time after the giving of such notice within which to remedy the default shall be extended for such period as may be necessary to remedy the same with all due diligence;

C. If any abandonment of the Utility System by LESSEE shall continue for a period in excess of five (5) days after written notice, specifying and describing such default, shall have been given by LESSOR to LESSEE;

D. If LESSEE makes an assignment for the benefit of creditors; or makes an admission in writing of any inability to pay debts as they come due; or files a petition under bankruptcy laws; or is adjudicated as bankrupt or insolvent; or fails to have dismissed within sixty (60) days from the filing thereof any bankruptcy or similar proceeding instituted against it;

Section 14.02. Remedies. If any Event of Default occurs, and the same is not cured within the applicable grace or cure periods stated in Section 14.01, LESSOR shall have the following specific rights and remedies and such other rights and remedies as may be provided by statutory law, common law, or elsewhere in this Lease (and all of such rights and remedies shall be deemed separate and cumulative and the election of one remedy shall not exclude any other remedy):

A. LESSOR may, at LESSOR's option, elect to terminate this Lease, and if LESSOR so elects it shall notify LESSEE of the termination date and all right, title and interest of LESSEE hereunder shall expire as fully and completely as if that day were the date herein specifically fixed for the expiration of the term of this Lease, and LESSEE will then quit and surrender the Utility System to LESSOR, but LESSEE shall remain liable as hereinafter provided. Upon the termination of this Lease pursuant to any of the provisions of this Article, it shall be lawful for LESSOR, without formal demand or notice of any kind, to reenter the Utility System by summary dispossession proceedings or any other action or proceeding authorized by law and to remove LESSEE therefrom without being liable for any damages therefor.

B. LESSOR may recover possession of Utility System pursuant to any summary dispossession proceedings or other proceedings or remedy available to it by law or by statute, without terminating this Lease, and shall make reasonable efforts to relet Utility System or any part of parts thereof, and shall receive and collect the rents therefore applying the same first to the payment of such expenses as LESSOR may have incurred in recovering possession of Utility System, and for putting the same in good order or condition, and preparing or altering the same for re-rental, and reasonable expenses, commissions and charges paid by obligations of LESSEE hereunder. Any such reletting herein provided for may be the remainder of the term of this Lease or for a longer or shorter period.

C. LESSOR shall entitled to collect from LESSEE the basic rent, additional rent and all other charges required to be paid by LESSEE up to the time of termination, if any, of this Lease, or of recovery of possession of the Utility System by LESSOR without termination of this Lease, as the case may be, and thereafter LESSEE shall, if required by LESSOR, pay to LESSOR until the end of the term of this Lease

LESSOR initial

LESSEE initial

the equivalent of the amount of all the basic rent reserved herein, additional rent and all other charges required to be paid by LESSEE, less the net proceeds of reletting if any, and the same shall be due and payable by LESSEE to LESSOR on the rent days LESSEE shall pay to LESSOR the net amount of the deficiency then existing after crediting any surplus of the net proceeds of said reletting, if any, over the amount of all the basic rent, additional rent and all other charges required to be paid by LESSEE which may have theretofore accrued.

D. Under any of the circumstances hereinbefore mentioned in which LESSOR shall have the right to hold LESSEE liable upon the rent days herein specified to pay LESSOR the equivalent of the amount of the basic rent, additional rent and all other charges required to be paid by LESSEE less the net proceeds of reletting, if any, LESSOR may elect instead of holding LESSEE so liable, to recover against LESSEE as damages for loss of the bargain, and not as a penalty, an aggregate sum which, is equal to (i) the net worth at the time of the award of the amount by which the basic rent, additional rent and all other charges required to be paid by LESSEE hereunder which would have been earned after termination of this Lease or the recovery of possession of the Utility System by LESSOR without termination of this Lease, as the case may be, until the time of the award exceeds the amount of rental loss which LESSEE proves could have been reasonably avoided by LESSOR; (ii) the worth at the time of the award of the amount by which the basic rent, additional rent and all other charges required to be paid by LESSEE hereunder for the balance of the Lease Term from the time of the award exceeds the amount of such rental loss that LESSEE proves can be reasonably avoided; and (iii) any other amount necessary to compensate LESSOR for all detriment proximately caused by LESSEE's failure to fulfill its obligations under this Lease. The "worth at the time of the award" referred to in the foregoing subparagraph (i) shall include interest at the statutory rate in the State of Florida, and the "worth at the time of the award" referred to in subparagraph (ii) shall be computed using the then-current Prime Rate as the discount rate.

Section 14.03. Waiver of Jury Trial. LESSOR and LESSEE waive and shall waive any and all right to a trial by a jury in the event that summary or other proceedings shall be instituted by LESSOR pursuant to this Article 14 to dispossess LESSEE of the Utility System.

#### ARTICLE 15 INDEMNIFICATION

Section 15.01. By LESSEE. LESSEE shall indemnify and hold LESSOR harmless against and from any and all claims by or on behalf of any person or entity arising from the conduct or management of or from any work or thing whatsoever done in or on or with respect to Utility System, and shall also indemnify and hold LESSOR harmless against and from any and all claims arising during the term of the Lease from any condition of Utility System of any sidewalk or other property adjoining the Land which LESSEE is obligated hereunder to maintain, or of any passageways or space therein or appurtenant to or adjoining the Land, or arising from any breach or default on the part of the LESSEE in the performance pursuant to this Lease, or arising from any act of negligence or alleged act of negligence of LESSEE, or any occupant of Utility System or any part thereof, or of its or their agents, contractors, servants, employees, invitees, licensees or of trespassers or arising from any accident, injury or damage whatsoever caused to any person or property occurring during the term of this Lease in or about Utility System, of upon or under the sidewalks or other property adjoining the Land which LESSEE is obligated hereunder to maintain, and from and against all judgments, costs, expense (including attorney's fees at the trial and all appellate levels) and liabilities incurred in or about any such claim or action or proceeding brought

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LESSEE initial

therein; and in case any action or proceeding be brought against LESSOR by reason of any such claim, LESSEE upon notice from LESSOR shall defend such action or proceeding by counsel reasonably satisfactory to LESSOR. Counsel furnished by LESSEE's insurance carrier shall be satisfactory to LESSOR. The indemnification provided herein for LESSOR shall not be deemed to immunize LESSOR from any liability it might incur by virtue of being a sublease or an adjoining land owner.

Section 15.02. By LESSOR. LESSOR shall indemnify and hold LESSEE harmless against and from any and all claims by or on behalf of any person arising from any act of negligence or alleged act of negligence of LESSOR its agents, contracts, servants, employees, invitees or licensees in or on or with respect to the Utility System, and shall also indemnify and hold LESSEE harmless against and from all judgments, costs, expenses (including attorney's fees at the trial and appellate levels) and liabilities incurred with respect to any such claim; and in case any action or proceeding be brought against LESSEE by reason of any such claim, LESSOR upon notice from LESSEE shall defend such action or proceeding by counsel reasonably satisfactory to LESSEE.

#### ARTICLE 16 LITIGATION AND ATTORNEYS' FEES

In the event of any litigation arising out of or in connection with this Lease, the prevailing party shall be entitled to recover all costs, including reasonable attorneys' fees at the trial and all appellate levels. Venue for any legal action shall be in Charlotte County, Florida. The parties waive any right to a trial by jury. All provisions of this Lease shall be governed by and construed under Florida law.

#### ARTICLE 17 ARBITRATION

Section 17.01. Place/Means. In such cases where this Lease provides for the determination of any matter by arbitration the same shall be settled and finally determined by arbitration conducted in Charlotte County, Florida, in accordance with the Rules of the American Arbitration Association or its successor, except that the arbitrators shall be selected as provided in Section 17.02, and judgment upon the award rendered therein may be entered in any court having jurisdiction thereof, however, such award shall be final and binding notwithstanding that judgment thereon may not have been entered. The persons conducting the arbitration shall not have the right to modify the provisions of this Lease.

Section 17.02. Method. In each instance where this Lease provides for the determination of a matter by resort to arbitration, such arbitration shall be conducted as follows: the party desiring such arbitration shall give notice to that effect to the other party, specifying therein the name and address of the persons designated to act as arbitrator on its behalf. Within thirty (30) days after the service of such notice, the other party shall give notice to the first party specifying the name and address of the person designated to act as arbitrator on its behalf. If either party fails to notify the other party of the appointment of its arbitrator, as aforesaid, within or by the time above specified, then the appointment of the second arbitrator shall be made in the same manner as hereinafter provided for the appointment of a third arbitrator in a case where the two arbitrators appointed hereunder and the parties are unable to agree upon such appointment. The arbitrators so chosen shall meet within ten (10) days after the second arbitrator is appointed and if, within thirty (30) days after such first meeting the said two arbitrators shall be unable to agree upon the decision as to the question being arbitrated, they shall appoint a third arbitrator

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who shall be a competent and impartial person; and in the event of their being unable to agree upon such appointment within fifteen (15) days after the time aforesaid such third arbitrator shall be selected by the parties if they can agree thereon within a further period of fifteen (15) days. If the parties do not so agree, then either party, on behalf of both, may request such appointment by the Chief Judge of the Circuit Court on Charlotte County, Florida, of such third arbitrator, and the other party shall not raise any question as to the court's full power and jurisdiction to entertain the application and make the appointment. In the event of the failure, refusal or inability of any arbitrator to act, his successor shall be appointed within ten (10) days by the party which appointed said arbitrator and if said party shall fail so to appoint such successor, or in case of the third arbitrator, his successor shall be appointed as hereinbefore provided. Any appraiser selected or appointed as an arbitrator pursuant to this Section shall be a utility engineer, and shall have been doing business as an appraiser in Charlotte, Lee or Sarasota Counties, Florida for a period of at least fifteen (15) years before the date of his appointment as arbitrator hereunder. All arbitrators chosen or appointed pursuant to this Section shall be sworn fairly and impartially to perform their duties as such arbitrator. The decision of the arbitrators shall be given within sixty (60) days after the appointment of such third arbitrator. A decision in which any two arbitrators concur or, if two arbitrators do not concur, the decision of the third arbitrator shall in all cases be binding and conclusive upon the parties and judgment upon the decision may be entered in any court having jurisdiction. Each party shall pay the fee and expenses of its respective arbitrator and both shall share equally the fee and expense of the third arbitrator, if any.

**ARTICLE 18**  
**REMEDIES: LIMITATION OF LIABILITY**

Section 18.01 The specified remedies to which LESSOR or LESSEE may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means or redress to which the party may be lawfully entitled in case of any breach or threatened breach by the other party of any provision of this Lease. The failure of a party to insist in any one or more cases upon the strict performance of any of the covenants of this Lease or to exercise any option herein contained shall not be construed as a waiver or a relinquishment for the future of such covenant or option. A receipt by LESSOR of the basic rent or additional rent with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by either party of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by such party. Notwithstanding anything to the contrary contained in this Lease, neither party nor its partners, officers, directors or shareholders shall have any personal liability hereunder and each party agrees to look solely to the other party's interest in Utility System to satisfy any judgment or for the collection of any damages. In addition to the other remedies in this Lease provided, either party shall be entitled to the restraint by injunction of the violation, or attempted to threatened violation, of any of the covenants, conditions or provisions of this Lease.

**ARTICLE 19**  
**CERTIFICATES OF LESSOR AND LESSEE**

Section 19.01. Either party hereto shall, at any time and from time to time, upon not less than twenty (20) days prior notice from the other party, execute, acknowledge and deliver to the other party a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified and stating the modifications), and the dates to which the basic rent and other charges have been paid in advance, and stating whether or

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LESSEE initial

not the best knowledge of the signer of such statement the other party is in default in keeping, observing or performing any covenant or agreement contained in this Lease, and such statement delivered pursuant to this Section may be relied upon by the other party or any purchaser, sublessee or mortgagee of its estate, by reliance on such statement may not extend to any default as to which the signer shall have had no actual knowledge, after due inquiry.

**ARTICLE 20**  
**NOTICES**

Section 20.01. Any notice, demand, request, approval or other communication (a "notice") which, under the terms of this Lease or under any statute, must or may be given by either party hereto, must be in writing, and must be given by hand delivery with signed receipt or by mailing the same by certified mail return receipt requested or by an overnight courier service which provides a signed receipt addressed to the respective parties at their addresses set forth below. Notices shall be deemed given when hand-delivery (with a signed receipt) has been effected, when hand-delivery has been attempted and reasonable evidence is returned indicating that delivery and/or signing of a receipt was refused, or when the return card for certified mail or a receipt or courier service has been returned showing delivery has been made or has been refused by the recipient. Either party may designate by notice in writing given in the manner herein specified a new or other address to which a notice shall thereafter be so given.

**ARTICLE 21**  
**COVENANTS OF LESSOR**

Section 21.01. Exclusive Possession. LESSOR shall deliver exclusive possession of the Utility System to LESSEE on the Commencement Date.

Section 21.02. Good Title. LESSOR covenants that it will have good and marketable title to Utility System subject only to the matters set forth on Exhibit B. As long as LESSEE is not in default hereunder, LESSOR will defend LESSEE in the quiet enjoyment of the Utility System against the claims of all persons except as set forth on Exhibit B.

Section 21.03. Easements. LESSOR will cooperate with and join LESSEE in the execution of any reasonable easements involving the Utility System which are necessary for LESSEE's use of the Utility System hereunder.

Section 21.04. Toxic Wastes. LESSOR represents that it has neither dumped, stored or deposited nor authorized the dumping, storing or depositing of any hazardous substances or toxic wastes (as these terms are defined under federal, state and local law) in or on the Land. LESSOR also represents that as the Commencement Date there are, to the best of LESSOR's knowledge, no hazardous substances or toxic wastes (as these terms are defined under federal, state or local law) in or on the Land.

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**ARTICLE 22**  
**NO BROKER**

Section 22.01. Each party represents to the other that it has dealt with no broker in connection with this Lease and will indemnify and hold the other party harmless with respect to the claims of any broker whom the indemnifying party has dealt with.

**ARTICLE 23**  
**MEMORANDUM OF LEASE**

Section 23.01. This Lease shall not be recorded in the public records of any county in the State of Florida or elsewhere unless requested by the other party to do so. Such recording shall be done by the preparation and recording a Memorandum of Lease at the expense of the requesting party.

**ARTICLE 24**  
**TITLE TO IMPROVEMENTS**

Section 24.01. All materials and equipment incorporated into the Utility System and any improvements on Utility System and all appurtenances and additions thereto shall become the property of and belong to the LESSOR.

**ARTICLE 25**  
**INVALIDITY OF PARTICULAR PROVISIONS**

Section 25.01. If any provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

**ARTICLE 26**  
**COVENANTS TO BIND AND BENEFIT THE RESPECTIVE PARTIES**

Section 26.01. Except as otherwise specifically set forth herein, the covenants and agreements herein contained shall bind and inure to the benefit of LESSOR and LESSEE and their respective successors and assigns but this shall not be construed to permit any assignment by LESSEE except as otherwise authorized in this Lease.

**ARTICLE 27**  
**MISCELLANEOUS**

Section 27.01. This Lease is not intended to and shall not constitute any joint venture or other relationship between LESSOR and LESSEE other than a LESSOR/LESSEE relationship. The headings and captions used herein are for reference purposes only and are not to be considered in construing the terms of this Lease. This Lease constitutes the entire agreement between LESSOR and LESSEE on the

LESSOR initial

LESSEE initial

subject matter set forth herein, and any prior agreements, representations or discussions not incorporated herein are void and of no effect. This Lease may only be modified by a writing signed by both parties and duly witnessed. This Lease may be signed in multiple counterparts with each such document being considered an original.

**ARTICLE 28  
UTILITY**

Section 28.01. The parties hereto expressly acknowledge and agree that the value of the Utility System is founded on its continued operation as a first class water and sewer system. Accordingly, any reference herein to Utility System shall include the improvements which constitute the Utility System and the improvements necessary to maintain the operation of the Utility System. Further, any damage to the Utility System which prohibits or negatively affects the ability to maintain a first class Utility System shall be considered equivalent to damage to the Utility System.

IN WITNESS WHEREOF, LESSOR and LESSEE have duly executed and delivered this Lease as of the day and year first above written.

Asst:

**LESSOR:**

WITNESSES:

ISLAND HARBOR BEACH CLUB, LTD.,  
a Florida partnership

Sharon L. Wallace  
[Signature]

By: CHARLOTTE HARBOR LAND COMPANY, INC., General  
Partner, [Signature], 1/22/05

**LESSOR:**

WITNESSES:

CHARLOTTE HARBOR LAND COMPANY, INC.,  
a Florida corporation

(Corporate Seal)

[Signature]  
Sharon L. Wallace

By: [Signature], President







**Exhibit A**

**LEGAL DESCRIPTION**

**Land, plant, , improvements used to operate the  
water and sewer utility system known as "Knight Island Utility"  
on Palm Island, Florida,  
on a parcel of property  
described as follows:**

**SEE EXHIBIT A-1**

**This lease does include the non-utility land uses or non-utility property located on the above described parcel**

EXHIBIT A-1

**LEGAL DESCRIPTION WATER & SEWER UTILITY**

A tract of land lying in Government Lot 5, Section 29, Township 41 South, Range 20 East, Palm Island, Charlotte County, Florida adjacent to Palm Island Village Condominium, a condominium recorded in Condominium Book 4, Pages 24A through 24E of the Public Records of Charlotte County, Florida more particularly described as follows:

Commence at the Northeast corner of said Palm Island Village Condominium: thence S-33°-22'-19"-E along the Easterly line of said Palm Island Village Condominium a distance of 263.02 feet for the **POINT OF BEGINNING**: thence continue S-33°-22'-19"-E along said Easterly line a distance of 85.00 feet: thence S-56°-37'-41"-W a distance of 85.00 feet: thence S-56°-37'-41"-W a distance of 85.00 feet: thence N-33°-22'-19"-W a distance of 85.00 feet: thence N-56°-37'-41"-E a distance of 85.00 feet to the **POINT OF BEGINNING**.  
Containing 0.127 acres.

**AND**

A tract of land lying in Section 29, Township 41 South, Range 20 East, Charlotte County, Florida described as follows:

Commence at the Intersection of the Southerly line of the North 1/2 of said Section 29 with the Northeasterly right-of-way line of Gulf Boulevard as shown on the Plat of Palm Island Estates, Unit No. 1 recorded in Plat Book 3 on Page 59 of the Public Records of Charlotte County, Florida; thence N-89°-58'-58"-E along the Southerly line of the North 1/2 of said Section a distance of 456.44 feet to the Easterly line of U.S. Government Lot 5 of said Section 29; thence N-00°-01'-02"-E a distance of 132.74 feet to the **POINT OF BEGINNING**; thence return S-00°-01'-02"-E along said Easterly line a distance of 132.74 feet to the aforementioned Southerly line of the North 1/2 of said Section; thence S-89°-58'-58"-W along said Southerly line a distance of 389.27 feet to a point which lies 67.17 feet N-89°-58'-58"-E of the aforementioned intersection of said Southerly line with the Northeasterly right-of-way line of Gulf Boulevard; thence N-33°-22'-19"-W a distance of 285.00 feet; thence N-56°-37'-41"-E a distance of 440 feet, more or less, to the Mean High Water Line of Knight Pass; thence Southeasterly along said Mean High Water Line a distance of 220 feet, more or less, to its intersection with a line which bears N-17°-12'-57"-W from the point of beginning; thence S-17°-12'-57"-E along said line a distance of 176 feet, more or less, to the **POINT OF BEGINNING**, containing 4 acres, more or less.

**Exhibit B**

**EXCEPTIONS TO TITLE WHICH UTILITY SYSTEM ARE SUBJECT TO**

**(NONE)**