

State of Florida



## Public Service Commission

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

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

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**DATE:** February 17, 2014  
**TO:** Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk  
**FROM:** Caroline M. Klancke, Senior Attorney, Office of the General Counsel  
**RE:** Docket No. 130086-SU- Complaint of K W Resort Utilities Corp. against Monroe County, Florida for alleged entitlement to collect certain capacity reservation fees for excess capacity used.

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Please place the attached Settlement Agreement in Docket No. 130086-SU. Thank you.

RECEIVED-FPSC  
14 FEB 17 AM 10:55  
COMMISSION  
CLERK

**SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") is entered into by and between MONROE COUNTY (the "County"), a political subdivision of the State of Florida, and K W RESORT UTILITIES CORP. ("KWRU"), a Florida corporation. The County and KWRU may be referred to individually as a "Party" and collectively as the "Parties."

**RECITALS**

WHEREAS, KWRU provides wastewater service to the public in the area of Monroe County, Florida, known as Stock Island pursuant to Certificate of Authority No. 168-S issued by the Florida Public Service Commission ("FPSC"); and

WHEREAS, the County currently receives wastewater service from KWRU, pursuant to that certain "Utility Agreement" (the "Utility Agreement") dated August 16, 2001, and as such is KWRU's customer; and

WHEREAS, the County and KWRU are also parties to that certain Capacity Reservation and Infrastructure Contract (the "CRI Contract") dated July 31, 2002; and

WHEREAS, on April 16, 2013, KWRU filed a "Complaint Before the Florida Public Service Commission" (the "Complaint") with the FPSC, and the FPSC has opened a docket (Docket No. 130086-

SU) for the purpose of addressing and processing KWRU's Complaint; and

WHEREAS, the Complaint consists of four counts: Count I seeks payment from the County of certain capacity reservation fees; Count II seeks payment from the County for corrected amounts billed by KWRU for wastewater treatment service provided to the County; Count III seeks clarification as to the current ownership of certain lift stations and a sewer main, collectively referred to as the "On-Site Facilities" in the Utility Agreement (the "On-Site Facilities"); and Count IV states a claim for payment from the County for services provided under the CRI Contract; and

WHEREAS, pursuant to the Utility Agreement, the County executed and tendered to KWRU a Bill of Sale dated January 20, 2010 (the "Bill of Sale", a copy of which is attached hereto as Exhibit A), conveying the On-Site Facilities to KWRU, but KWRU has not accepted the Bill of Sale; and

WHEREAS, the County has paid KWRU for any extra expense of operating the lift stations resulting from prisoner or staff disposal of debris into the system or failure to maintain its grease trap (the "Atypical Debris Removal Costs"); and

WHEREAS, pursuant to the Utility Agreement, the County pays KWRU for wastewater service based on water flows delivered to

the County's facilities by the Florida Keys Aquaduct Authority ("FKAA") and KWRU's reclaimed water main; and

WHEREAS, an unknown volume of the water delivered to the County's facilities evaporates from cooling towers located on the County's facilities (the "Evaporative Losses"); and

WHEREAS, in order to facilitate the timely and orderly negotiation of this Agreement, the County has requested and the FPSC has granted extensions of time for the County to file pleadings responsive to the Complaint; and

WHEREAS, the County wishes KWRU to accept a Grant of Water and Wastewater Easement for the Stock Island Fire Station (the "Fire Station Easement") in a form substantially similar to the form attached to this Agreement as Exhibit B; and

WHEREAS, the County and KWRU wish to resolve all claims, issues, and disputes between them arising from the Complaint in accordance with the terms and conditions set forth in this Agreement, and thereupon to close Docket No. 130086-SU via KWRU filing a motion for voluntary dismissal with prejudice; and

WHEREAS, the County and KWRU agree that these recitals are true and correct,

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and promises set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of

which is hereby acknowledged by the Parties, and intending to be legally bound hereby, the County and KWRU agree as follows:

**Specific Terms of Settlement**

1.1 **Payment to KWRU**. Within thirty (30) days of the Effective Date of this Agreement, the County shall pay KWRU five hundred thousand dollars (\$500,000.00) (the "County's Payment") to resolve all monetary claims raised by KWRU in the Complaint. The Parties agree that the County's Payment includes payment for additional Equivalent Residential Connections ("ERCs") as defined in the Utility Agreement, such that, upon KWRU's receipt of the County's Payment, the County will have paid for all capacity reservation fees applicable to Monroe County's wastewater flows at the Monroe County Sheriff's Office ("Sheriff's Office"), Monroe County jail and juvenile detention center ("Jail"), Bayshore Manor property ("Bayshore"), Society for the Prevention of Cruelty to Animals property ("SPCA") (collectively, "Subject Properties"). The Parties further agree that, for purposes of this Agreement, the Subject Properties' three-month peak average water flows are 139,401 gallons per day. This equates to a total of 674.27 ERCs, which constitutes the original capacity reservation of 454 ERCs as stated and contemplated under the Utility Agreement and the additional disputed 220.27 ERCs alleged in the Complaint. The County agrees that it will not, in any proceeding involving

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KWRU, assert that it is entitled to a refund from KWRU on any amounts previously paid for the Capacity Reservation Charges for the Subject Properties including the County's payment of \$500,000 as provided above. The Parties further agree that, if the Flow Meters contemplated by Paragraph 1.4 of this Agreement indicate that evaporative losses are occurring within the Subject Properties, the County reserves its right to assert a claim that such evaporative losses should be counted as an offset to any additional Capacity Reservation Charges demanded by KWRU for usage above 139,401 gallons per day (as measured by FKAA's meters). Any such claim asserted by the County will be resolved either through negotiations between the Parties or through other proceedings.

1.2 **Allocation of the County's Payment.** KWRU reserves the right, for its own internal accounting purposes, to account for and allocate the County's Payment made under Section 1.1 of this Agreement between the amounts claimed by KWRU under the separately enumerated counts of the Complaint as KWRU deems appropriate. If the County believes that such allocation of the County's Payment by KWRU may adversely affect the County in any future proceedings before the FPSC (or any successor entity having regulatory authority over KWRU's rates), the County reserves the right to challenge any such accounting or allocation in any such future regulatory proceedings.

1.3 **The On-Site Facilities.**

1.3.1 On the Effective Date of the Agreement, KWRU shall accept the Bill of Sale for the On-Site Facilities.

1.3.2 Upon receipt of the County's Payment, KWRU agrees that the County will have paid for all Atypical Debris Removal Costs incurred by KWRU through and including the Effective Date. After the Effective Date, the County shall continue to pay the Atypical Debris Removal Costs for the On-Site Facilities.

1.3.3 Commencing on the Effective Date of this Agreement, KWRU agrees to pay all maintenance costs (excluding Atypical Debris Removal Costs) associated with the On-Site Facilities.

1.4 **Evaporative Losses.** To determine the amount of Evaporative Losses occurring at the County's cooling towers, the County reserves the right to install a flow meter (or meters) (the "Flow Meter(s)") to measure the volume of water entering the County's facilities upstream of the cooling towers and the volume of wastewater entering the County's wastewater collection facilities downstream of the cooling towers. If the County installs such Flow Meter(s), KWRU shall have the right to inspect the Flow Meter(s) and determine if the Flow Meter(s) are properly calibrated. The Parties agree to cooperate in

resolving any disputes concerning the calibration of the Flow Meters.

1.5 **Fire Station Easement.** Upon the Effective Date of this Agreement, KWRU shall accept the Fire Station Easement.

1.6 **Voluntary Dismissal of Complaint.** Within three (3) business days of receipt of the County's Payment under Section 1.1 of this Agreement, KWRU shall file a motion with the FPSC to voluntarily dismiss the Complaint, with prejudice, and to close Docket No. 130086-SU.

1.7 **Amendment of Utility Agreement.** The Parties agree to amend the Utility Agreement, either by a separate amendment or through an Amended and Restated Utility Agreement, as may be deemed mutually desirable by the Parties, to reflect: (a) the County's payment for increased wastewater capacity and the establishment of a new baseline of total ERCs purchased by the County as provided for in Section 1.1 of this Agreement; (b) the conveyance of the On-Site Facilities to KWRU and provided for in Section 1.3 of this Agreement; and (c) the County's option to install the Flow Meter(s) as provided for in Section 1.4 of this Agreement.

1.8 **Mutual Releases.** The Parties agree that this Agreement resolves all disputes between the Parties arising from the Complaint and any claims Monroe County has for failure to deliver gray water prior to the date of the Complaint.

Accordingly, the Parties shall execute mutual releases (the "Mutual Releases") attached hereto as Exhibit C within ten (10) business days following the Effective Date of this Agreement.

1.9 **Effective Date.** The Parties acknowledge that this Agreement is subject to approval by the Monroe County Board of County Commissioners (the "Board"). KWRU agrees to execute the Agreement and forward the original to the Office of the County Attorney for placement before the Board for approval of the executed Agreement. The Effective Date of the Agreement is the date the Agreement is executed by the Mayor or the Mayor's designee.

2.0 **General Terms of the Settlement.**

2.1 **Binding Effect.** This Agreement shall inure to the benefit of and be fully binding upon the Parties and their respective successors, heirs, and assigns.

2.2 **Governing Law and Venue.** This Agreement shall be governed by, construed under, and enforced in accordance with the laws of the State of Florida without regard to the principles or provisions of its laws relating to conflicts with the laws of other states. The Parties hereby submit to the jurisdiction of the Public Service Commission as to any issues that are within the jurisdiction of the Public Service Commission and the jurisdiction of state and federal courts in

and for Monroe County, Florida as to all issues outside the Public Service Commission's jurisdiction.

2.3 No Oral Representations. In executing this Agreement, neither Party has relied upon any oral representations, understandings, terms or conditions, expressed or implied, that are not contained in and expressly set out in this Agreement.

2.4 Entire Agreement. This Agreement sets forth the entire agreement and understanding of the Parties as to the subject matter hereof, and supersedes all prior negotiations, understandings, and communications as to the subject matter hereof. Only the representations and promises included in this Agreement are binding on the Parties to this Agreement or on anyone acting for, associated with, or employed by any Party to this Agreement.

2.5 Amendments. No change, amendment, or modification of this Agreement shall be valid or binding upon the Parties unless such change, amendment, or modification is in writing and duly executed by all Parties.

2.6 No Waiver. The failure of any Party to (i) enforce any of the provisions of this Agreement, or (ii) require compliance with any of its terms at any time during the term of this Agreement, shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver

of the right of such Party thereafter to enforce any such provision.

2.7 **No Admission**. Each Party understands and acknowledges that this Agreement is a compromise of disputed claims and shall not be construed as an admission of guilt, liability, or the correctness of the other Party's claims concerning the Complaint or concerning any issue or matter raised therein. It is further understood and agreed that this Agreement shall not be admissible in evidence by one Party against another Party, in any action, cause of action, or proceeding, except in an action to enforce the terms of this Agreement.

2.8 **Headings**. Captions and headings used in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

2.9 **Exhibits**. Exhibits A-C attached to this Agreement are an integral part of the Agreement. Accordingly, Exhibits A-C are incorporated by reference in this Agreement.

2.10 **Counterparts**. This Agreement may be executed in counterparts, each one of which shall be deemed an original.

2.11 **Power & Authority**. Each Party represents and warrants to the other Party that: (i) it has the power and authority necessary to execute this Agreement and to consummate all transactions contemplated herein whether by authorization of its respective governing body, elected officials, corporate

officers, directors, shareholders, or partners; (ii) this Agreement constitutes its legal, valid, and binding obligation, enforceable against it in accordance with its terms; and (iii) the terms and conditions herein have been completely read by it and that it has sought out and received advice of counsel and that those terms are fully understood and voluntarily accepted by it.

2.12 Notices. All notices, demands, requests, consents or other communications required or permitted to be given or made under this Agreement shall be in writing, shall be expressly identified as such, and shall be: (i) delivered in person; (ii) sent by United States mail (certified with return receipt requested), or (iii) sent by overnight courier such as United Parcel Service or FedEx, and addressed to the intended recipient at the address set forth below:

If to KWRU:

Christopher Johnson, President  
KW Resort Utilities Corp.  
6630 Front Street  
Key West, Florida 33040

With a copy to:

Barton W. Smith, Esq.  
Smith | Oropeza, P.L.  
138 - 142 Simonton Street  
Key West, Florida 33040

If to Monroe County:

County Administrator  
Mr. Roman Gastesi  
1100 Simonton Street, Room 2-205  
Key West, Florida 33040

County Attorney  
Robert Shillinger  
1111 12<sup>th</sup> Street, Suite 408  
Key West, Florida 33040

or, as to any Party, at such other address as shall be designated by such Party in a written notice delivered to the other Party in compliance with the terms of this Section 2.12. All such notices, requests, demands and other communications shall be deemed to have been duly given or made, in the case of personal delivery, when actually delivered, or, in the case of registered or certified mail or overnight courier, when received, as documented by a delivery receipt or certificate made by the United States Postal Service or courier service, as applicable. General correspondence does not constitute notice under this Agreement.

2.13 **Remedies**. The Parties may enforce this Agreement by using any and all remedies available at law and in equity, including but not limited to specific performance and injunctive relief.

2.14 **No Construction Against Drafter**. This Agreement has been and shall be deemed jointly drafted and written by the

Parties, and accordingly, each Party expressly waives any right that it might otherwise have to raise or assert, in any venue or proceeding, that this Agreement should be construed or interpreted against the other Party based on an assertion that such other Party drafted, originated, or prepared the Agreement.

2.15 Additional Representations and Covenants. Each Party hereto represents and agrees that it has had the opportunity to seek and has sought from lawyers any such advice as that Party deems appropriate with respect to signing this Agreement or the meaning of this Agreement. Each Party has undertaken such independent investigation and evaluation as it deems appropriate and is entering into this Agreement in reliance on such independent investigation and evaluation, and not in reliance on any advice, disclosure, representation or information provided by or expected from the other Party or the other Party's lawyers. This Agreement is made in recognition that the Parties to this Agreement may have different understandings, information and contentions as to the relevant facts and law affecting the issues raised in the Complaint, and each Party is compromising its position to resolve the Parties' differences concerning the Complaint, and therefore no Party's misunderstandings or misinformation shall be a ground for rescission of this Agreement.

2.16 **Severability**. If a court of competent jurisdiction finally determines that any provision of this Agreement is invalid or unenforceable, then that provision shall be ineffective to the extent of such invalidity or unenforceability only, and the remaining provisions shall nevertheless continue in full force and effect. If the invalidation of any provision of this Agreement causes a material adverse impact on any Party's economic or financial position, the Parties agree to negotiate in good faith to develop and execute an amendment to this Agreement that restores and preserves, to the maximum extent permissible by law, the Parties' respective economic and financial positions under the Agreement before such invalidation.

2.17 **Attorneys' Fees and Costs**. Each Party shall bear its respective attorneys' fees and costs associated with resolving the Complaint through this Agreement.

2.18 **No Third-Party Benefits or Beneficiaries**. This Agreement does not confer, is not intended to confer, and shall not be construed as conferring any rights or remedies upon any person other than the Parties.

IN WITNESS HEREOF, the Parties intending to be legally bound,  
have duly executed this Agreement, as of the Effective Date  
first written above.

For KW RESORT UTILITIES CORP.:

By: *[Signature]*

Printed Name: Christopher Johnson

Title: President

Date: 10/23/2013

STATE OF FLORIDA

COUNTY OF

BEFORE ME, an officer duly authorized by law to administer  
oaths and take acknowledgement, personally appeared  
CHRISTOPHER JOHNSON, as President  
of KW Resort Utilities Corp. ("KWRU"), an organization  
authorized to do business in Florida, and \_\_\_ acknowledged and  
executed the foregoing Agreement as the proper official of KWRU  
for the uses and purposes mentioned in it, and \_\_\_ affixed the  
official seal of KWRU. X is personally known to me or \_\_\_  
produced his drivers' license as identification.

IN WITNESS OF THE FOREGOING, I have set my hand and  
official seal in the state and county aforesaid on this  
23 day of October, 2013.

Notary Public *Judi L. Irizarry*

My Commission Expires: March 22, 2015

NOTARY PUBLIC-STATE OF FLORIDA  
Judi L. Irizarry  
Commission # EE070830  
Expires: MAR. 22, 2015  
BONDED THRU ATLANTIC BONDING CO., INC.

BOARD OF COUNTY COMMISSIONERS,  
MONROE COUNTY, FLORIDA

By: Sylvia J. Murphy  
Mayor

Date: 12.13.13



Attest:  
Heavilin, CPA,  
Clerk of Circuit Court

By: H. Heavilin  
Deputy Clerk

Date: 12.13.13

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:

Natileene W. Casel  
NATILEENE W. CASSEL  
ASSISTANT COUNTY ATTORNEY  
Date: 11.5.2013

cx

**BILL OF SALE, ABSOLUTE**

KNOW ALL MEN BY THESE PRESENTS, that the COUNTY OF MONROE, FLORIDA, a political subdivision of the State of Florida, party of the first part, pursuant to an agreement entered on August 16, 2001, between the party of the first part and KW Resort utilities, Inc., party of the second part, does grant, bargain, sell, transfer and deliver unto KW Resort utilities, Inc., party of the second part, the following:

**Description:**

- 1) Lift Station serving the Monroe County Detention Facility Treatment Plant, on Stock Island;
- 2) Lift Station serving the Public Buildings and sewer main from the lift station to the Monroe County Detention Facility Treatment Plant, on Stock Island;
- 3) Lift Station constructed after August 16, 2001, and serving the Public Buildings at the Animal Shelter on College Road, Stock Island; and
- 4) The sewer main constructed after August 16, 2001, from the second lift station described above to the previously existing sewer main serving the Detention Facility, on Stock Island.

The four facilities described above are further described by depiction on the attached Sketch, incorporated herein by reference.

TO HAVE AND TO HOLD the same unto the said, forever.

And it does covenant to and with the said party of the second part that it is the lawful owner of said facilities; that they are free from all encumbrances; that it has good right to transfer ownership of the same as aforesaid; that said facilities are transferred to the party of the second part in "AS IS" condition with no warranties, express or implied, of any kind concerning the safety, working condition, or any other aspect of merchantability.

IN WITNESS WHEREOF, the said party of the first part has caused these presents to be signed in its name by its Chairperson and its seal to be affixed, attested to by its Clerk, the 2<sup>nd</sup> day of January 2009.

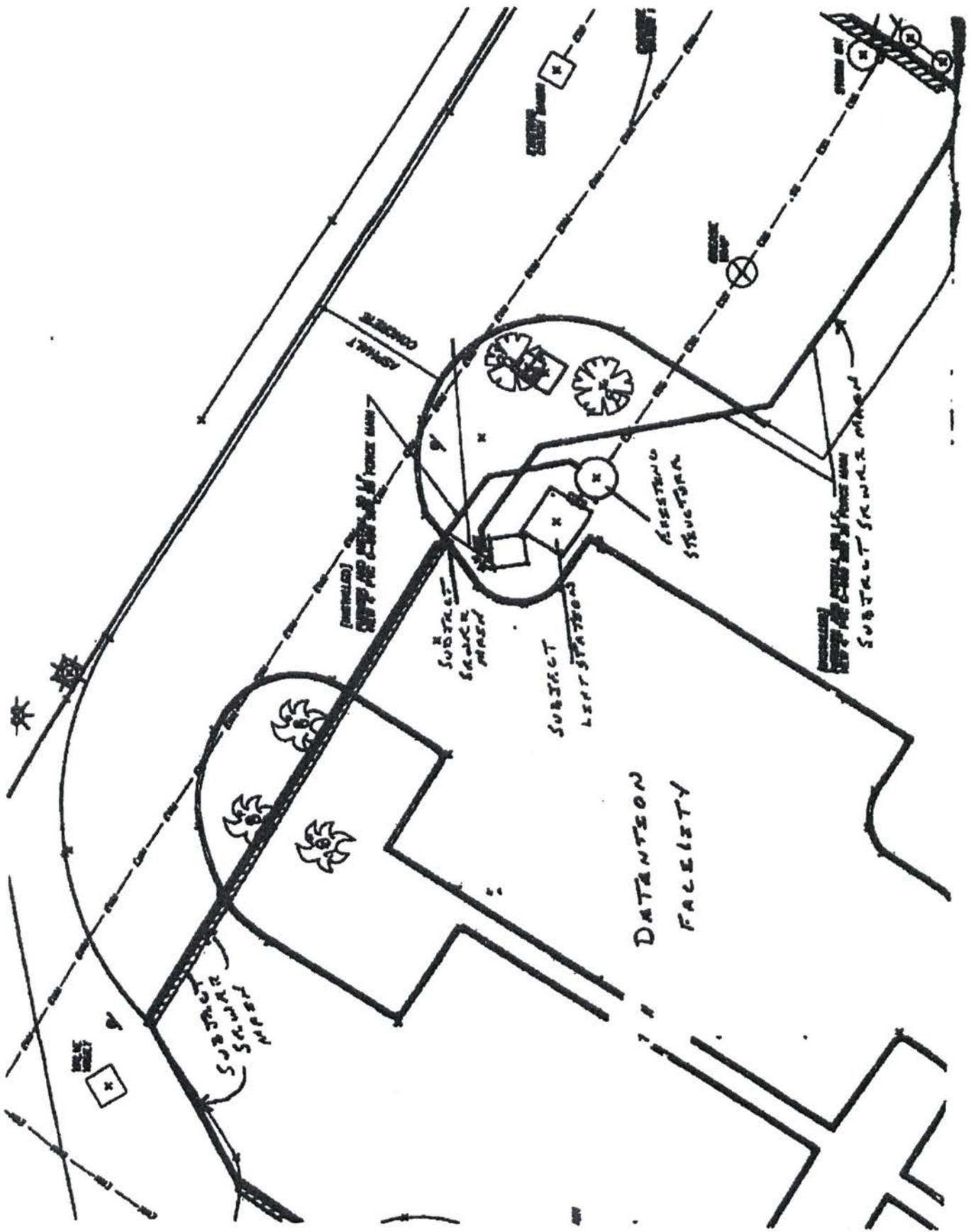
(SEAL)  
ATTEST: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

By [Signature]  
Deputy Clerk

[Signature]  
Mayor/Chairperson

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM  
[Signature]  
SUZANNE A. HUTTON  
LOCAL ATTORNEY  
12/22/09



80



JUNIOR COLLEGE ROAD

50' R/W

SUBTRACT  
SEWER  
MAIN

SUBTRACT LEFT STATION

1. E.(0.65)

CLEANOUT  
(TYPICAL)

ANIMAL

SHALTER

1. E.(2.2)

24'

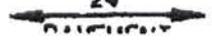


EXHIBIT B

This instrument is prepared by, or under the direction of:  
Nadlene W. Cassel, Esq.  
FBN 365785  
Assistant County Attorney  
Office of the Monroe County Attorney  
P.O. Box 1026  
Key West, Fl. 33041-1026

**GRANT OF WASTEWATER  
EASEMENT**

It is hereby agreed that Monroe County, a political subdivision of the State of Florida, (herein referred to as "Grantor") for and in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable considerations, the receipt of which is hereby acknowledged by Grantor, paid by the KW Resort Utilities Corporation (hereinafter referred to as "KWRU"), does grant, sell and convey, unto KWRU an easement under the following terms and conditions:

Grantor hereby grants to the KWRU an easement under, over, across and upon the following described property:

*A portion of MacDonald Avenue, lying South of Lots 11, 12, 13, 14, & 15, Block 31 and North of Lots 8, 9, & 10, Block 35, and Northerly of Maloney Avenue (as existing and constructed)  
"MALONEY'S SUBDIVISION OF STOCK ISLAND", a subdivision of Government Lots 1, 2, 3, 5, & 6, Section 35, Government Lot 2, Section 36, Government Lot 3, Section 26, and Government Lot 2, Section 34, all in Township 67 South, Range 25 East on Stock Island according to the plat thereof, as recorded in Plat Book 1 at Page 55 of the Public Records of Monroe County Florida, and being more particularly described as follows:*

*BEGIN at the Southeast corner of said Block 31; thence S 00°05'34" E along the Southerly extension of the Easterly line of said Block 31 for 60.00 feet to the Northeast corner of said Block 35; thence S 89°54'26" W along the North lines of said Lots 8, 9, & 10 for 142.91 feet to the Northerly Right-of-Way line of Maloney Avenue and a point on a curve, concave to the Southwest; having a radius of 985.40 feet, a central angle of 06°30'34", a cord bearing of N 73°15'02"W and a cord length of 111.89 feet; thence along the arc of said curve, an arc length of 111.95 feet to the Southerly Extension of the Westerly Line of said Lot 15; thence N 00°05'34" W along the Southerly extension of the Westerly line of said Lot 15 for 27.58 feet to the Southwest corner of said Lot 15, and also being the Northerly Right-of-Way line of MacDonald Avenue, thence N 89°54'26" E along the Southerly lines of said Lots 11, 12, 13, 14 & 15 of the Northerly Right-of-Way Line of MacDonald Avenue for 250.00 feet to the point of Beginning containing 13,145.43 square feet or 0.3018 acres, more or less.*

1. KWRU, its successors and assigns, shall have the right to construct, reconstruct, lay, install, operate, maintain, relocate, repair, replace, improve, remove, and inspect wastewater collection and transmission facilities, and all appurtenances thereto and shall have full right of ingress and egress thereto and therefrom over and across the easement area. Notwithstanding

the foregoing, however, no existing improvement shall be disturbed or removed, nor shall KWRU interfere with any other utility.

2. Grantor shall furnish and maintain the easement area free of and clear from any obstruction and shall not construct, place, or allow the placing or construction of any obstruction which would interfere with KWRU's safe or proper installation, operation, maintenance, inspection, or removal of the wastewater collection and transmission facilities, and all the appurtenances thereto located in the easement area, including any and all subsurface, aerial electrical utility service connections and subterranean components.. Grantor shall have the right to make any other use of the easement area which does not interfere with the KWRU's rights.
3. Any obstruction to the safe or proper operation, maintenance, inspection, or removal of KWRU wastewater collection and transmissions facilities, and all appurtenances thereto may be removed by KWRU upon notice to Grantor. At no time shall KWRU's use of the easement interfere with emergency operations of the Stock Island Fire Station.
4. Grantor shall bear the cost of any relocation or modification of said facilities when the change is necessitated by Grantor's requirements or those of any utility other than KWRU.
5. KWRU shall hold Grantor harmless for the acts and omissions of its officers, employees, agents and contractors, and upon the representation that KWRU is a public utility as defined by Florida Statutes Chapter 366, and upon representation that KWRU shall maintain suitable insurance or be self-insured, in amounts adequate to respond to any and all claims by the Grantee related to this easement.
6. All covenants, stipulations, terms, conditions, and provisions of this agreement shall extend to and be made binding upon respective successors and assigns of KWRU and Grantor. It is intended that this agreement shall be recorded and be binding upon future owners of the above described property and the KWRU, and all successors thereto.

7. The Grantor does hereby warrant it has full power of authority to grant this easement.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal this 23 day of October 2013.



ES: Amy Heavilin, Clerk  
[Signature]  
Deputy Clerk  
Date: 12.13.13

(GRANTOR)  
Board of County Commissioners of Monroe  
County, Florida

By: [Signature]  
Mayor  
Date: 12.13.13

KW Resort Utilities, Corp

By: [Signature]  
Print Name Christopher Johnson  
Title: President  
Date: 10/23/2013

STATE OF FLORIDA  
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this 23 day of OCT, 2013, by  
CHRISTOPHER JOHNSON, whose is BUSINESS on behalf of KWRU, who is personally  
known to me/has produced \_\_\_\_\_ as identification.

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:  
[Signature]  
NATILEENE W CASSEL  
ASSISTANT COUNTY ATTORNEY  
Date: 11-5-2013

[Signature]  
[Signature]

NOTARY PUBLIC-STATE OF FLORIDA  
Judi L. Irizarry  
Commission # EE070830  
Expires: MAR. 22, 2015  
BONDED THRU ATLANTIC BONDING CO, INC.

Copy for  
original execution  
by Mayor  
\*Original to be  
presented separately  
for recording purposes -  
[Signature]

EXHIBIT C

**SPECIFIC RELEASE OF CLAIMS**

THIS SPECIFIC RELEASE OF CLAIMS is entered into this 20<sup>th</sup> day of November 2013, between KW RESORT UTILITIES CORP. ("KWRU") and MONROE COUNTY, a political subdivision of the State of Florida ("Monroe County") (collectively, "Parties").

**RECITALS**

FOR AND IN CONSIDERATION of payment in the total amount of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) to KWRU, the undersigned Parties hereby release and forever discharge each other and their heirs, assigns, successors and representatives (hereinafter "Releasee(s)"), from any and all civil claims, administrative claims, counterclaims, defenses, civil or administrative demands, civil or administrative actions, civil or administrative causes of action or civil suits of any kind or nature whatsoever, that have been or could have been raised by either of the Parties in the Complaint filed by KWRU before the Florida Public Service Commission, Docket No. 130086-SU ("Complaint"), or in any other court, administrative proceeding, or any other venue whatsoever based on the subject matter and underlying facts of the Complaint.

The undersigned Parties hereby declare that the terms of this Specific Release of Claims have been completely read and are fully understood, and are voluntarily accepted for the purpose of making a full and final disposition of any and all civil claims that may lie against the released Parties, disputed or otherwise, on account of monetary damages, both economic and non-economic, and for the purpose of precluding forever any further or additional civil claims, administrative actions, or civil suits arising out of the facts alleged in the Complaint filed by KWRU. The Parties, their assigns, heirs, successors in interest and the like are precluded forever



from filing any civil claims or civil suits arising out of the aforementioned Complaint against the above-released Parties.

All parties agree to cooperate fully and to execute any and all supplementary documents and to take all additional actions that may be necessary and appropriate to give full force and effect to the terms and intent of this Release, including but not limited to a filing of a Notice of Dismissal with Prejudice by KWRU, and which are not inconsistent with its terms.

The undersigned Parties have been represented by counsel, SMITH OROPEZA, P.L. for KWRU, and GARDNER, BIST, WIENER, WADSWORTH, BOWDEN, BUSH, DEE, LAVIA & WRIGHT, P.A. and the MONROE COUNTY ATTORNEY'S OFFICE for Monroe County, and said counsel has explained the provisions of this Specific Release of Claims thoroughly and have answered all questions. The Parties acknowledge that this Release is entered into freely and voluntarily. This Specific Release of Claims may be executed in counter-parts, and shall be enforceable if executed separately by the parties.

[This section of the page intentionally left blank, signature page to follow.]



IN WITNESS HEREOF, the Parties intending to be legally bound, have duly executed this Agreement, as of the Effective Date first written above.

For KW RESORT UTILITIES CORP.:

By: *Christopher Johnson*

Printed Name: Christopher Johnson

Title: President

Date: 10/23/2013

STATE OF FLORIDA  
COUNTY OF MONROE

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgement, personally appeared CHRISTOPHER JOHNSON, as President of KW Resort Utilities Corp. ("KWRU"), an organization authorized to do business in Florida, and \_\_\_ acknowledged and executed the foregoing Agreement as the proper official of KWRU for the uses and purposes mentioned in it, and \_\_\_ affixed the official seal of KWRU. X is personally known to me or \_\_\_ produced his drivers' license as identification.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal in the state and county aforesaid on this 23 day of OCTOBER, 2013.

Notary Public Judi L. Irizarry Judi L. Irizarry  
My Commission Expires: MARCH 22, 2015

NOTARY PUBLIC-STATE OF FLORIDA  
Judi L. Irizarry  
Commission # EEO70830  
Expires: MAR. 22, 2015  
BONDED THRU ATLANTIC BONDING CO, INC.

**BOARD OF COUNTY COMMISSIONERS,  
MONROE COUNTY, FLORIDA**

By: *Sylvia J. Murphy*  
Mayor

Date: 12.13.13



**Ann Heavilin, CPA,  
Clerk of Circuit Court**

By: *A. Heavilin*  
Deputy Clerk

Date: 12.13.13

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:  
*Natileene W. Casel*  
NATILEENE W. CASSEL  
ASSISTANT COUNTY ATTORNEY  
Date: 11-5-2013

*[Handwritten mark]*

EXHIBIT B

This instrument is prepared by, or under the direction of:  
Natleene W. Cassel, Esq.  
FBN 365785  
Assistant County Attorney  
Office of the Monroe County Attorney  
P.O. Box 3026  
Key West, FL 33041-1026

**GRANT OF WASTEWATER  
EASEMENT**

It is hereby agreed that Monroe County, a political subdivision of the State of Florida, (herein referred to as "Grantor") for and in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable considerations, the receipt of which is hereby acknowledged by Grantor, paid by the KW Resort Utilities Corporation (hereinafter referred to as "KWRU"), does grant, sell and convey, unto KWRU an easement under the following terms and conditions:

Grantor hereby grants to the KWRU an easement under, over, across and upon the following described property:

*A portion of MacDonald Avenue, lying South of Lots 11, 12, 13, 14, & 15, Block 31 and North of Lots 8, 9, & 10, Block 35, and Northerly of Maloney Avenue (as existing and constructed) "MALONEY'S SUBDIVISION OF STOCK ISLAND", a subdivision of Government Lots 1, 2, 3, 5, & 6, Section 35, Government Lot 2, Section 36, Government Lot 3, Section 26, and Government Lot 2, Section 34, all in Township 67 South, Range 25 East on Stock Island according to the plat thereof, as recorded in Plat Book 1 at Page 55 of the Public Records of Monroe County Florida, and being more particularly described as follows:*

*BEGIN at the Southeast corner of said Block 31; thence S 00°05'34" E along the Southerly extension of the Easterly line of said Block 31 for 60.00 feet to the Northeast corner of said Block 35; thence S 89°54'26" W along the North lines of said Lots 8, 9, & 10 for 142.91 feet to the Northerly Right-of-Way line of Maloney Avenue and a point on a curve, concave to the Southwest; having a radius of 985.40 feet, a central angle of 06°30'34", a cord bearing of N 73°15'02" W and a cord length of 111.89 feet; thence along the arc of said curve, an arc length of 111.95 feet to the Southerly Extension of the Westerly Line of said Lot 15; thence N 00°05'34" W along the Southerly extension of the Westerly line of said Lot 15 for 27.58 feet to the Southwest corner of said Lot 15, and also being the Northerly Right-of-Way line of MacDonald Avenue, thence N 89°54'26" E along the Southerly lines of said Lots 11, 12, 13, 14 & 15 of the Northerly Right-of-Way Line of MacDonald Avenue for 250.00 feet to the point of Beginning containing 13,145.43 square feet or 0.3018 acres, more or less.*

1. KWRU, its successors and assigns, shall have the right to construct, reconstruct, lay, install, operate, maintain, relocate, repair, replace, improve, remove, and inspect wastewater collection and transmission facilities, and all appurtenances thereto and shall have full right of ingress and egress thereto and therefrom over and across the easement area. Notwithstanding

the foregoing, however, no existing improvement shall be disturbed or removed, nor shall KWRU interfere with any other utility.

2. Grantor shall furnish and maintain the easement area free of and clear from any obstruction and shall not construct, place, or allow the placing or construction of any obstruction which would interfere with KWRU's safe or proper installation, operation, maintenance, inspection, or removal of the wastewater collection and transmission facilities, and all the appurtenances thereto located in the easement area, including any and all subsurface, aerial electrical utility service connections and subterranean components.. Grantor shall have the right to make any other use of the easement area which does not interfere with the KWRU's rights.
3. Any obstruction to the safe or proper operation, maintenance, inspection, or removal of KWRU wastewater collection and transmissions facilities, and all appurtenances thereto may be removed by KWRU upon notice to Grantor. At no time shall KWRU's use of the easement interfere with emergency operations of the Stock Island Fire Station.
4. Grantor shall bear the cost of any relocation or modification of said facilities when the change is necessitated by Grantor's requirements or those of any utility other than KWRU.
5. KWRU shall hold Grantor harmless for the acts and omissions of its officers, employees, agents and contractors, and upon the representation that KWRU is a public utility as defined by Florida Statutes Chapter 366, and upon representation that KWRU shall maintain suitable insurance or be self-insured, in amounts adequate to respond to any and all claims by the Grantee related to this easement.
6. All covenants, stipulations, terms, conditions, and provisions of this agreement shall extend to and be made binding upon respective successors and assigns of KWRU and Grantor. It is intended that this agreement shall be recorded and be binding upon future owners of the above described property and the KWRU, and all successors thereto.

7. The Grantor does hereby warrant it has full power of authority to grant this easement.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal this 23 day of October 2013.



Amy Heavilin, Clerk

[Signature]  
Deputy Clerk  
Date: 12-13-13

(GRANTOR)  
Board of County Commissioners of Monroe  
County, Florida

By: [Signature]  
Mayor  
Date: 12-13-13

KW Resort Utilities, Corp

By: [Signature]

Print Name Christopher Johnson  
Title: President  
Date: 10/23/2013

STATE OF FLORIDA  
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this 23 day of Oct, 2013, by CHRISTOPHER JOHNSON, whose is BUSINESS on behalf of KWRU, who is personally known to me/has produced \_\_\_\_\_ as identification.

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:  
[Signature]  
NATILEEN W CASSEL  
ASSISTANT COUNTY ATTORNEY  
Date: 11-5-2013

[Signature]  
[Signature]

NOTARY PUBLIC-STATE OF FLORIDA  
Judi L. Irizarry  
Commission # EE070830  
Expires: MAR. 22, 2015  
BONDED THRU ATLANTIC BONDING CO., INC.