

AGREEMENT FOR WASTEWATER SERVICE  
UTILITIES, INC. OF SANDALHAVEN, FLORIDA

Hacienda Del Mar

This Agreement is entered into this 24<sup>th</sup> day of February, 2003 by and between Hacienda Del Mar, LLC, a Florida Limited Liability Company, (hereinafter referred to as "Developer"), and Utilities, Inc. of Sandalhaven, a Florida corporation (hereinafter referred to as "Utility").

WITNESSETH

WHEREAS Developer is the owner of or is duly authorized to act on behalf of the owners of certain real estate in Charlotte County, Florida, hereinafter referred to as "Property" and more fully described in Exhibit 1 attached hereto, and

WHEREAS, Developer is in the process of developing the Property into seven (7) multi-story buildings consisting of 112 condo units, hereinafter referred to as "Development", and

WHEREAS, Utility is engaged in the business of furnishing wastewater and reuse service to the public in its service territory as authorized by its Certificate of Public Convenience and Necessity which encompasses the Property, and

WHEREAS, Developer desires Utility to provide wastewater and reuse service within the Property and Utility desires to provide wastewater and reuse service to the Property according to the terms and conditions of this Agreement.

WHEREFORE, in consideration of the mutual covenants as hereinafter set forth, the parties hereto agree as follows:

ARTICLE I

Representations and Warranties of Developer

Developer represents and warrants:

1. That Developer is the owner of or is duly authorized to act on behalf of the owners of the Property, and,
2. That Developer will cooperate fully with the Utility in any and all applications or petitions to public authorities deemed necessary or desirable by Utility in connection with the construction and

- installation of the wastewater system contemplated by this Agreement.
3. That Developer will convey to the Utility or provide by recorded subdivision plats such easements or rights of way as the Utility may require for the Utility's performance of its obligations under this Agreement. Any such plats, conveyances or licenses will be in form satisfactory to Utility's legal counsel.

## ARTICLE II

### Construction and Installation of Collection Facilities by Developer

1. The Developer hereby agrees to construct and install the complete wastewater collection facilities throughout the Property, and complete necessary reuse facilities throughout the property, as well as all necessary off-site interconnection facilities and system upgrades (hereinafter collectively referred to as "**Facilities**") including but not limited to wastewater and reuse mains, valves, services, lift stations and other facilities as are reasonably required to provide adequate wastewater and reuse service (in accordance with applicable governmental standards) to all dwelling units and facilities to be constructed within the Property. Developer shall be responsible for interconnecting the Facilities with adequate diameter wastewater and reuse mains to Utility's existing wastewater and reuse systems at points as specified by Utility.
2. The Facilities to be constructed by Developer pursuant to Paragraph 1 of this Article II when installed will meet the reasonable needs of the customers within the Property. All plans, specifications and construction shall be in accordance with applicable standards, requirements, rules and regulations and agencies of the State of Florida and respective County authority.
3. All materials used shall be new, first-class, and suitable for the uses made thereof.
4. Developer guarantees all construction, materials, workmanship, and the trouble-free operation of the Facilities for nine months after completion of each phase or section.
5. Developer shall save and hold Utility harmless from and against all suits or claims that may be based upon any injury to any person or

property that may occur in the course of the performance of the construction of both the Facilities by Developer or by anyone acting on Developer's behalf, or under Developer's supervision and control, including but not limited to claims made by employees of Developer, and Developer shall, at its own cost and expense, pay all costs and other expenses arising therefrom, or incurred in connection therewith, including reasonable attorneys' fees.

6. All of the off-site Facilities installed by Developer pursuant to this Agreement shall become the property of Utility as installed. Developer shall execute all conveyances, licenses and other documents reasonably requested by Utility as necessary or desirable in its opinion to ensure its ownership of, ready access to, and operation of the Facilities. Developer shall furnish Utility with lien waivers in a form satisfactory to Utility's counsel from Developer and from all suppliers, subcontractors and all others who furnish labor, equipment, materials, rentals, or who perform any services in connection with the Facilities construction herein.
7. Developer shall, prior to the transfer to Utility of the Facilities, grant permanent, assignable easements satisfactory to Utility, authorizing Utility to own, operate and maintain the off-site Facilities and providing reasonably adequate rights of access and working space for such purposes.
8. Developer shall, upon transfer to Utility of the off-site Facilities, provide to Utility operating manuals, permits, as-built drawings, and all other information reasonably required to operate, maintain, and repair the off-site Facilities.

### ARTICLE III

#### Developer Contribution/Connection Fees

Developer agrees to pay Utility within 60 days of execution of this Agreement, the Commission approved connection fees and review fee for service.

### ARTICLE IV

#### Utility Service, Rates and Charges

1. Upon installation of the Facilities and completion of the



interconnection by Developer, Utility agrees to supply all customers within the Property with adequate and customary wastewater service, and to operate, maintain and repair all Facilities as indicated herein, after acceptance by Utility and issuance of operational approvals by all regulatory authorities.

2. RATES AND GUARANTEED REVENUE CHARGES. The rates to be charged by Utility for wastewater and reuse services to the Development hereafter built on the Property, and guaranteed revenue charges, shall be those rates and charges made by Utility to its customers which are from time to time approved by the Florida Public Service Commission, or by any other governmental regulatory body from time to time having jurisdiction over such matters. The guaranteed revenue charges shall be the payment to Utility by Developer for capacity reserved but not being used by an active customer. Developer shall begin paying guaranteed revenue charges at the time Developer shall request Utility to provide wastewater and reuse service to the Property; provided, however, Developer shall not be required to pay any guaranteed revenue charges until the utility plant capacity needed to serve the projects, units or facilities for which such charges are to be paid is completed and available to provide such service. Developer shall be obligated to pay such charges only on those projects, units or facilities for which Developer pays Connection Fees, or has provided equivalent consideration as provided in Article III, Developer Contribution/Connection Fees, and shall continue to pay such charges with respect to each project, unit or facilities until an active customer is connected on such project, unit or facilities. Utility reserves the right to withhold or disconnect service to any active customer, or to refuse to give or provide new or additional services to any active customer, at any time the charges are not paid on a current basis within twenty-five (25) days after the same are billed; provided that written notification of such delinquency has been made by Utility to such customer; provided, the failure of an active customer to pay sums due to the Utility shall not affect Developer's rights under this Agreement. The record owner of the project, unit or facilities being served by Utility, as the case may be, shall be responsible for and shall save and hold harmless Utility for

any loss or damages resulting from the exercise of said right to withhold or disconnect service to an active customer. Moreover, the service to the Development shall be subject to such other regulations from time to time lawfully imposed on Utility with respect to the operations of its wastewater and reuse systems, and except as limited by such regulations, the amounts of utility deposits, billing practices and times, liability for damage to Utility's Property and rate changes shall be exclusively within the discretion and control of Utility.

#### ARTICLE V

##### General

1. This Agreement is intended to be performed in the State of Florida and shall be governed by the laws of the State of Florida.
2. In the event that, in accordance with this Agreement, the construction and installation of the Facilities contemplated by this Agreement have not commenced within **nine (9)** months of the date of this Agreement, neither party hereto shall have any further or other obligation hereunder, despite the nature of the delay.
3. Except as provided for in this Agreement, neither party to this Agreement shall be liable to the other for failure, default or delay in performing any of its obligation hereunder, if such failure, default or delay is caused by strikes or other labor problems, by forces of nature, unavoidable accident, fire, acts of the public enemy, interference by civil authorities, acts or failure to act, decisions or orders or regulations of any governmental or military body or agency, office or commission, delays in receipt of materials, or any other cause, whether of similar or dissimilar nature, not within the control of the party affected and which, by the exercise of due diligence such party is unable to prevent or overcome, except as otherwise provided for herein. Should any of the foregoing events occur, the parties hereto agree to proceed with diligence to do what is reasonable and necessary so that each party may perform its obligations under this Agreement.
4. The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof in any instance by either party shall not be construed as a general waiver or relinquishment on its part of any such provisions, but the same shall, nevertheless, be and remain

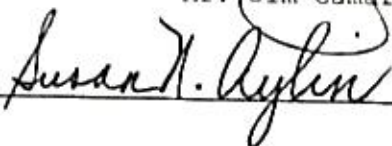


in full force and effect.

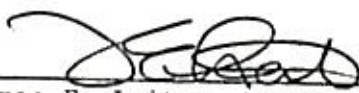
5. Utility agrees to indemnify Developer, its successors and assigns, and hold Developer harmless against any loss, damage, liability, expense or cost accruing or resulting from any misrepresentation or breach of any representation, warranty or agreement on the part of Utility under this Agreement; Developer agrees to indemnify Utility, its successors and assigns, and hold it and them harmless against any loss, damage, liability, expense or cost of Utility, accruing or resulting from any misrepresentation or breach of any representation, warranty or agreement on the part of Developer under this Agreement or from any misrepresentation in or material omission from any certificate or other document furnished or to be furnished to Utility by Developer.
  6. This Agreement sets forth the complete understanding between Developer and Utility, and any amendments hereto to be effective must be made in writing.
  7. Notices and correspondence required hereunder shall be given to Developer and to Utility at the following addresses, or at any other addresses designated in writing by either party subsequent to the date hereof:  
  
If to Utility: Utilities, Inc. of Sandalhaven  
2335 Sanders Road  
Northbrook, Illinois 60062  
Attn: Mr. Jim Camaren, Chairman & C.E.O.  
  
If to Developer: Hacienda Del Mar, LLC  
& Thomas E. Leiter  
309-A Main Street  
Peoria, IL 61602
- Delivery when made by registered or certified mail shall be deemed complete upon mailing.
8. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
  9. The Exhibits to this Agreement are a part hereof and are hereby incorporated in full by reference.
  10. If this Agreement is not executed prior to February 28, 2003 then the terms and conditions contained herein will be waived, with no further obligations or responsibilities to either party.
- IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year above first written.

Utilities, Inc. of Sandalhaven

By   
Mr. Jim Camaren, Chairman & Chief Executive Officer

ATTEST: 

Hacienda Del Mar, LLC

By   
Mr. Thomas E. Leiter, Manager and President

ATTEST: 

**EXHIBIT "A"****PARCEL ONE:**

A parcel of land lying and being in Section 33, Township 41 South, Range 20 East, Charlotte County, Florida, described as follows:

Begin at SE corner of the NE 1/4 of fractional Section 33, Township 41 South, Range 20 East; thence N  $89^{\circ}37'56''$  W, along the South line of said NE 1/4, 138.61 feet to the Westerly right-of-way line of State Road No. 775 (100 foot right-of-way); thence continue along said South line of said NE 1/4, 963.21 feet to the Easterly right-of-way line of the Intracoastal Waterway; thence N  $29^{\circ}39'50''$  W, along said Easterly right-of-way of the Intracoastal Waterway, 1505.83 feet; thence S  $89^{\circ}45'28''$  E, along the South line of a 30 foot platted street as shown on Plat of Delaney & Treloars Subdivision of fractional Section 33, Township 41 South, Range 20 East, recorded in Plat Book 1, Page 12, of the Public Records of Charlotte County, for a distance of 519.81 feet; thence S  $00^{\circ}22'55''$  W, along the West line of a 30 foot platted street, 659.91 feet; thence S  $89^{\circ}41'42''$  E, along the South line of a 30 foot platted street, 687.00 feet; thence N  $00^{\circ}22'55''$  E, along the East line of a 30 foot platted street, 268.95 feet to said Southwesterly right-of-way line of State Road No. 775; thence S  $28^{\circ}47'00''$  E, along said Southwesterly right-of-way, 1047.25 feet, to the point of beginning.



**EXHIBIT "A"****PARCEL TWO:**

All that portion of those lands lying between the Easterly mean high water line of Lemon Bay and the Westerly parcel line of a parcel of land reference as Tract 11, as described in Official Records Book 611, Page 742, and Official Records Book 614, Page 458, Public Records of Charlotte County, Florida. Said lands lying between and being bounded on the North and South by the Westerly extension of the Northerly and Southerly parcel lines of said Tract 11. Together with and subject to a canal right-of-way easement over said lands as described in Official Records Book 25, Page 563, and Official Records Book 176, Page 266, Public Records of Charlotte County, Florida. All lying and being in Section 33, Township 41 South, Range 20 East, Charlotte County, Florida.

EXHIBIT "A"

PARCEL THREE:

That portion of all vacated roadways and rights-of-way adjacent and contiguous to the property described in the Warranty Deeds recorded in Official Records Book 2027, Page 2127 and Official Records Book 2027, Page 2133, of the Public Records of Charlotte County, Florida, which, by operation of law, become vested in and part of contiguous real property.