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Crawfordville, Florida 32327

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October 15, 1999

Tyler Van Leuven  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Dear Tyler:

The issue of ownership of the BCCU sewage facilities will come before the Lee County Circuit Court on October 25, 1999, and you called me on October 14, 1999, to request a copy of the motion that will be heard.

I have obtained a copy from the Grant Law Firm by fax, and attached is the Third Amended Emergency Motion for Supplementary Relief in Case No. 98-6169-CA-WCM, filed on September 10, 1999.

If you need other materials that you believe might be in our possession, please feel free to request them, too.

Sincerely,



David B. Erwin

AFA \_\_\_\_\_  
APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMU \_\_\_\_\_  
CTR \_\_\_\_\_  
EAG \_\_\_\_\_  
LEG \_\_\_\_\_  
MAS \_\_\_\_\_  
OPC \_\_\_\_\_  
PAI \_\_\_\_\_  
SEC \_\_\_\_\_  
WAW \_\_\_\_\_  
OTH \_\_\_\_\_

DBE:jm  
Attachment

cc: Michael Miselli  
Roy C. Young  
Keith Wickenden

DOCUMENT NUMBER-DATE

12636 OCT 15 99

FPSC-RECORDS/REPORTING

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR LEE COUNTY, FLORIDA  
CIVIL ACTION

PLEASE RETURN  
(Date Stamped File Copy)

NORTHERN TRUST BANK OF FLORIDA, N.A.  
a National Banking Association

Plaintiff,

v.

CASE NO. 98-6169-CA-WCM

BONITA COUNTRY CLUB UTILITIES, INC.  
a Florida Corporation, THOMAS HEIDKAMP,  
CHAPTER 7, TRUSTEE, and all persons having  
or claiming by, through, under, or against any of  
the above parties and all parties having any right,  
title or interest in the subject property.

Defendants.

FILED LEE CO. FLORIDA  
CLERK OF COURTS  
99 SEP 10 PM 4:52  
BY \_\_\_\_\_ D.C.

**THIRD AMENDED EMERGENCY MOTION FOR SUPPLEMENTARY RELIEF**

Plaintiff, NORTHERN TRUST BANK OF FLORIDA, N.A. ("Northern Trust") for the benefit of REALNOR HALLANDALE, INC., pursuant to Rule 1.570(b) and (d), Florida Rules of Civil Procedure, moves this Court for supplementary relief, and states:

1. Rule 1.570 allows this Court to take steps necessary to effectuate its final orders by placing purchasers at foreclosure sales into possession of property purchased at such sales. Realnor Hallandale respectfully requests that this Court enter a writ of Replevin, replevying all sewer lines, lift stations, lift pumps, permits, licenses and certificates, which are vested in Realnor Hallandale under the Certificate of Title issued on July 15, 1999, as expressly authorized under Rule 1.570(b) and (d). The basis for the relief requested is found below.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

2. On April 6, 1999, this Court granted an Amended Summary Final Judgment of Foreclosure ("Final Judgment"). In paragraph 12 of the Final Judgment, this Court retained jurisdiction to make all other orders and judgments as may be necessary and proper.

3. The property at issue in this case is a wastewater treatment system, consisting of certain real property, equipment, accounts and licenses. This wastewater treatment system serves customers in the Bonita Springs Golf and Country Club development. Defendant, Bonita Country Club Utilities, Inc. ("BCCU") did not exercise its right of redemption after final judgment, and the Clerk of the Court, following a foreclosure sale, issued a Certificate of Title on July 15, 1999. Realnor Hallandale, Inc. is the assignee of Northern Trust Bank. A copy of the Certificate of Title and the Assignment are attached as *Composite Exhibit "A."*

4. Both the original mortgage and security agreement, as well as the Certificate of Title, describe the collateral now conveyed to Realnor Hallandale as including, but not limited to:

All permits and licenses for maintaining and using the premises, any easements benefiting or serving the property... and the rents, issues and profits thereof....

All rents, issues, profits, revenues, royalties, rights and benefits derived from the premises...

Together with any and all improvements (collectively the "Improvements") now or hereafter attached to or placed, erected, constructed or developed on the real property ("Property"); all fixtures, furnishings, equipment, inventory, and other articles of personal property (collectively the "Personal Property") that are now or hereafter attached to or used in or about the Improvements or that are necessary or useful for the complete and comfortable use and occupancy of the Improvements for the purposes for which they were or are to be attached, placed, erected, constructed or developed, or that are or may be used in or related to the planning, development, financing or operation of the Improvements ....

All permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Property, the Improvements or the Personal Property....

All right, title and interest of Bonita Country Club Utilities, Inc. in and to all streets, roads, public places, easements and rights-of-way, existing or proposed, public or private, adjacent to or used in connection with, belonging or pertaining to the Property...

Other interests of every kind and character that Bonita Country Club Utilities, Inc. now has or at any time hereafter acquires in and to the Property, Improvements, and Personal property described herein and all property that is used or useful in connection therewith, including rights of ingress and egress and all reversionary rights or interests of Bonita Country Club Utilities, Inc. with respect thereto.

5. Since July 15, 1999, Realnor Hallandale has been operating the entire wastewater treatment system under contract with Severn Trent Environmental Services. Although Realnor Hallandale has been in possession of, and operating, the entire wastewater treatment system, it has not been lawfully able to invoice customers for its services because it has not yet obtained the license, known as Certificate of Authority, from the Florida Public Service Commission ("PSC"), which is required to lawfully charge for these utility services. Despite requests, BCCU has failed to deliver its license from the PSC to Realnor Hallandale.

6. Realnor Hallandale applied to the PSC for a transfer of the Certificate of Authority on or about July 26, 1999. On September 3, 1999, Michael Miceli sent a written objection to the PSC regarding Realnor Hallandale's application for transfer of the Certificate of Authority. Attached as *Exhibit "B"* is a copy of such written objection in which Mr. Miceli makes false claims of continued ownership by BCCU of the very system clearly conveyed to Realnor Hallandale under the Certificate of Title. This Court should recall that only a month ago your Honor specifically asked Mr. Miceli about his affiliation with BCCU. Mr. Miceli, under

oath, told your Honor that he was not BCCU's president. Yet his letter to the PSC makes a different representation.

7. Mr. Miceli's letter to the PSC has delayed processing of Realnor Hallandale's application for transfer of the Certificate of Authority and jeopardizes the vital service the customers of the utility receive. The PSC staff counsel has advised that until these ownership questions are resolved by pronouncement from this Court, the PSC will take no action on transferring the Certificate of Authority.

8. The sewer lines, lift stations, and lift pumps, referenced in Mr. Miceli's letter, are "Personal Property" located on public "easements". The sewer lines, lift stations, and lift pumps benefit and serve the real property where the actual wastewater treatment plant (the "Improvements") is located, and are both "attached to", and "necessary" for the "complete" use of the Improvements.

9. Attached as *Exhibit "C"* and incorporated herein is a copy of the affidavit of Michael Angel. (The original has already been filed with the Court). Angel is the area manager for Severn Trent, and has personal knowledge of the wastewater treatment system. Angel's affidavit shows that the wastewater treatment system is in serious need of repair. Angel's affidavit further shows that if the repairs listed in his affidavit are not made, there is a substantial and serious threat that of irreparable harm because the wastewater treatment system could fail, which would result in a loss of service and serious environmental contamination. Angel estimated the cost of these repairs to be in the range of \$160,000.00. While Realnor Hallandale is committed to operating the system and maintaining service until such time as the PSC rules on its application to transfer the Certificate of Authority, it must have the benefit of clarification from this Court in the form of a Writ of Replevin for the Personal Property that can be supplied

to the PSC, thus confirming that Realnor Hallandale owns the entire wastewater treatment system.

10. There is a threat of immediate irreparable harm. Angel's affidavit shows that BCCU's lack of maintenance poses a potential immediate health hazard, and does not comply with Florida Department of Environmental Protection Regulatory requirements.

11. Instead of properly maintaining the utility as required by law, BCCU drained nearly \$100,000.00 of cash in what appear to be fraudulent transfers to insider entities controlled by Mr. Miceli. In just sixty (60) days prior to the issuance of the Certificate of Title, over \$50,000.00 was diverted to Mr. Miceli's country club, with no evidence in BCCU's records to justify the payments. (See Deposition of Pam Pass, pages 34 through 39, and Exhibit 7 thereto. This Deposition has already been filed with the Court.).

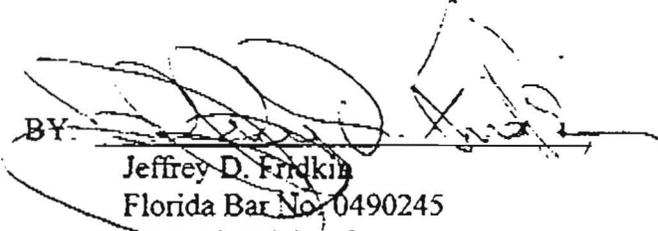
12. The Security Agreement and the Certificate of Title clearly give Realnor Hallandale ownership of the entire wastewater treatment system, including, but not limited to, sewer lines, lift stations, lift pumps, permits, licenses, certificates and all other Personal Property used for the purpose for providing wastewater treatment service to the customers of the community. Miceli's objection, and the uncertainty it has caused with the PSC, will indefinitely lengthen the PSC approval process, and thereby further jeopardize the safety of the community and integrity of the wastewater system, both of which BCCU has deliberately and unconscionably neglected.

13. By authority granted under Rule 1.570, this Court should clarify vesting the title to the entire wastewater treatment system in Realnor Hallandale by placing Realnor Hallandale into unquestionable possession of the system through a writ of replevin.

WHEREFORE, Realnor Hallandale respectfully requests that this Court enter a Writ of Replevin, vesting possession of all sewer lines, lift stations, lift pumps, permits, licenses and certificates in Realnor Hallandale pursuant to the Certificate of Title issued on July 15, 1999.

Respectfully submitted,

GRANT, FRIDKIN & PEARSON, P.A.

BY: 

Jeffrey D. Fridkin

Florida Bar No. 0490245

D. Keith Wickenden

Florida Bar No. 0897280

Pelican Bay Corporate Centre

5551 Ridgewood Drive, Suite 501

Naples, Florida 33963

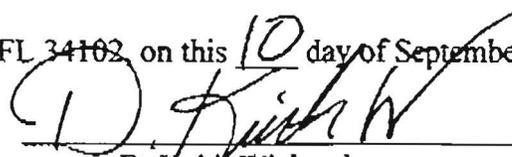
(941) 514-1000

(941) 514-0377 (fax)

Attorneys for Northern Trust Bank of Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been furnished via facsimile and U. S.: Michael Brundage, Esq., Hill, Ward & Henderson, P.O. Box 2231, Tampa, FL 33601-2231, and Wayde Seidensticker, Esq., Seidensticker & San Fillippo, 1100 5<sup>th</sup> Avenue South, Suite 405, Naples, FL 34102, on this 10 day of September, 1999.



D. Keith Wickenden

Florida Bar No. 0897280

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IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR LEE COUNTY, FLORIDA  
CIVIL ACTION

PLEASE RETURN  
(Date Stamped File Copy)

NORTHERN TRUST BANK OF FLORIDA, N.A.  
a National Banking Association

Plaintiff,

v.

CASE NO. 98-6169-CA-WCM

BONITA COUNTRY CLUB UTILITIES, INC.  
a Florida Corporation, THOMAS HEIDKAMP,  
CHAPTER 7, TRUSTEE, and all persons having  
or claiming by, through, under, or against any of  
the above parties and all parties having any right,  
title or interest in the subject property.

Defendants.

FILED FOR FLORIDA  
CLERK OF COURTS  
09 JUL -8 PM 2:05  
BY [Signature] O.C.

CERTIFICATE OF TITLE

The undersigned, CHARLIE GREEN, Clerk of the Circuit Court, certified that he executed and filed a Certificate of Sale in this action on \_\_\_\_\_, 1999, for the property described herein, and that no objections to the sale have been filed within the time allowed for filing objections. The following property in Lee County, Florida:

TRACT "A"  
(Fee Simple Title)  
(PART OF BONITA SPRINGS COUNTRY CLUB UNIT 2, LOT 1)

A PARCEL OF LAND, BEING PART OF LOT 1 OF BONITA SPRINGS COUNTRY CLUB UNIT 2, ACCORDING TO PLAT BOOK 30, PAGE 132 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 14, TOWNSHIP 47S, RANGE 25E AND LOT 1, PER THE RECORDED PLAT OF BONITA SPRINGS COUNTRY CLUB UNIT 2;  
THENCE NORTHERLY ALONG THE WEST PROPERTY LINE OF SAID LOT 1, N 00°46'57" E A DISTANCE OF 502.35 FEET TO THE POINT OF BEGINNING;  
THENCE CONTINUE ALONG THE WEST SIDE OF LOT 1 N 00°46'57" E A DISTANCE OF 164.19 FEET;  
THENCE N 88°03'31" E A DISTANCE OF 674.93 FEET;  
THENCE S 00°44'16" W A DISTANCE OF 164.18 FEET;

EXHIBIT  
Composite "A"

THENCE S 88°03'31" W A DISTANCE OF 675.06 FEET TO THE POINT OF BEGINNING.

CONTAINING 2.541 ACRES OF LAND MORE OR LESS.

SUBJECT TO THE EASEMENTS AND RESTRICTIONS OF RECORD.

**TRACT "B"**

(Leasehold Estate)

(PART OF BONITA SPRINGS COUNTRY CLUB UNIT 2, LOT 1)

A PARCEL OF LAND, BEING PART OF LOT 1 OF BONITA SPRINGS COUNTRY CLUB UNIT 2,

ACCORDING TO PLAT BOOK 30, PAGE 132 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 14, TOWNSHIP 47S, RANGE 25 E AND LOT 1, PER THE RECORDED PLAT OF BONITA SPRINGS COUNTRY CLUB UNIT 2; THENCE EASTERLY ALONG THE SOUTH PROPERTY LINE OF SAID LOT 1 N 87°29'57" E A DISTANCE OF 440.42 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUE ALONG THE SOUTH LINE OF LOT 1 N 87°29'57" E A DISTANCE OF 235.38 FEET;

THENCE N 00°44'16" E A DISTANCE OF 495.73 FEET;

THENCE S 88°03'31" W A DISTANCE OF 235.26 FEET;

THENCE S 00°44'16" W A DISTANCE OF 498.03 FEET TO THE POINT OF BEGINNING.

CONTAINING 2.681 ACRES OF LAND MORE OR LESS.

SUBJECT TO THE EASEMENTS AND RESTRICTIONS OF RECORD.

TOGETHER WITH ALL OF THE LEASEHOLD INTEREST IN AND TO THAT CERTAIN LEASE, DATED NOVEMBER 9, 1995, OF THE REAL PROPERTY DESCRIBED ABOVE AS TRACT B, WHICH LEASE HAS BEEN EXECUTED BY BONITA COUNTRY CLUB UTILITIES AS THE LESSEE AND BY PLATNIUM COAST FINANCIAL CORP., A FLORIDA CORPORATION AS LESSOR;

TRACT "A" AND TRACT "B" WILL BE HERINAFTER REFERRED TO AS THE "PREMISES" OR "PROPERTY".

TOGETHER WITH ANY AND ALL BUILDINGS AND OTHER IMPROVEMENTS, AND ALL FIXTURES IN OR ON SUCH BUILDINGS AND OTHER IMPROVEMENTS, NOW OR HEREAFTER SITUATED ON THE PROPERTY AND ALL ADDITIONS THERETO AND ALL RENEWALS, REPLACEMENTS AND REPLENISHMENTS THEREOF, INCLUDING ALL PERSONAL PROPERTY, THE HEATING AND AIR CONDITIONING UNITS, EQUIPMENT, MACHINERY, DUCTS AND CONDUITS, WHETHER DETACHABLE OR NOT, NOW OR HEREAFTER LOCATED IN AND ABOUT THE PROPERTY AND ALL ADDITIONS THERETO AND ALL RENEWALS, REPLACEMENTS AND REPLENISHMENTS THEREOF, AND PERSONAL PROPERTY NOW OR HEREAFTER LOCATED THEREON; AND

TOGETHER WITH ALL AND SINGULAR THE TENEMENTS, HEREDITAMENTS AND APPURTENANCES THERETO BELONGING OR IN ANYWISE THEREUNTO

APPERTAINING, INCLUDING RIPARIAN AND/OR LITTORAL RIGHTS, ALL PERMITS AND LICENSES FOR MAINTAINING AND USING THE PREMISES, ANY EASEMENTS BENEFITING OR SERVING THE PROPERTY, ANY REVERSIONARY INTEREST IN ANY ROADS OR STREETS, AND ANY RIGHTS IN ANY EASEMENTS BENEFITING AND SERVING THE PROPERTY OR ANY PORTIONS THEREOF, AND THE RENTS, ISSUES AND PROFITS THEREOF, AND ALSO ALL THE ESTATE, RIGHT, TITLE, INTEREST AND ALL CLAIM AND DEMAND WHATSOEVER, AS WELL IN LAW AS IN EQUITY, OF BONITA COUNTRY CLUB UTILITIES, INC. IN AND TO THE SAME, INCLUDING, BUT NOT LIMITED TO, ALL RENTS, ISSUES, PROFITS, REVENUES, ROYALTIES, RIGHTS AND BENEFITS DERIVED FROM THE PREMISES FROM TIME TO TIME ACCRUING, WHETHER NOW EXISTING OR HEREAFTER CREATED, RESERVING TO BONITA COUNTRY CLUB UTILITIES, INC.

TOGETHER WITH ANY AND ALL IMPROVEMENTS (COLLECTIVELY THE "IMPROVEMENTS") NOW OR HEREAFTER ATTACHED TO OR PLACED, ERECTED, CONSTRUCTED OR DEVELOPED ON THE REAL PROPERTY ("PROPERTY"); (B) ALL FIXTURES, FURNISHINGS, EQUIPMENT, INVENTORY, AND OTHER ARTICLES OF PERSONAL PROPERTY (COLLECTIVELY THE "PERSONAL PROPERTY") THAT ARE NOW OR HEREAFTER ATTACHED TO OR USED IN OR ABOUT THE IMPROVEMENTS OR THAT ARE NECESSARY OR USEFUL FOR THE COMPLETE AND COMFORTABLE USE AND OCCUPANCY OF THE IMPROVEMENTS FOR THE PURPOSES FOR WHICH THEY WERE OR ARE TO BE ATTACHED, PLACED, ERECTED, CONSTRUCTED OR DEVELOPED, OR THAT ARE OR MAY BE USED IN OR RELATED TO THE PLANNING, DEVELOPMENT, FINANCING OR OPERATION OF THE IMPROVEMENTS, AND ALL RENEWALS OF OR REPLACEMENTS OR SUBSTITUTIONS FOR ANY OF THE FOREGOING, WHETHER OR NOT THE SAME ARE OR SHALL BE ATTACHED TO THE IMPROVEMENTS OR THE PROPERTY; (C) ALL WATER AND WATER RIGHTS, TIMBER, CROPS, AND MINERAL INTERESTS PERTAINING TO THE PROPERTY; (D) ALL BUILDING MATERIALS AND EQUIPMENT NOW OR HEREAFTER DELIVERED TO AND INTENDED TO BE INSTALLED IN OR ON THE IMPROVEMENTS OR THE PROPERTY; (E) ALL PLANS AND SPECIFICATIONS FOR THE IMPROVEMENTS; (F) ALL CONTRACTS RELATING TO THE PROPERTY, THE IMPROVEMENTS OR THE PERSONAL PROPERTY; (G) ALL DEPOSITS (INCLUDING, WITHOUT LIMITATION, TENANTS' AND PURCHASERS' SECURITY DEPOSITS), BANK ACCOUNTS, FUNDS, DOCUMENTS, CONTRACT RIGHTS, ACCOUNTS, ACCOUNTS RECEIVABLE, COMMITMENTS, CONSTRUCTION AGREEMENTS, ARCHITECTURAL AGREEMENTS, GENERAL INTANGIBLES (INCLUDING, WITHOUT LIMITATION, TRADEMARKS, TRADE NAMES AND SYMBOLS), INSTRUMENTS, NOTES AND CHATTEL PAPER ARISING FROM OR BY VIRTUE OF ANY TRANSACTIONS RELATED TO THE PROPERTY, THE IMPROVEMENTS OR THE PERSONAL PROPERTY; (H) ALL PERMITS, LICENSES, FRANCHISES, CERTIFICATES, AND OTHER RIGHTS AND PRIVILEGES OBTAINED IN CONNECTION WITH THE PROPERTY, THE IMPROVEMENTS OR THE PERSONAL PROPERTY; (I) ALL PROCEEDS ARISING FROM OR BY VIRTUE OF THE SALE, LEASE OR OTHER DISPOSITION OF THE PROPERTY, THE IMPROVEMENTS, THE PERSONAL PROPERTY OR ANY PORTION THEREOF OR

