

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application of)
NORTH FORT MYERS UTILITY, INC.)
for extension of wastewater)
service in Lee County, Florida.)

Docket No. 981781-SU

EMERGENCY MOTION TO
IMPLEMENT RATES AND CHARGES

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COMMUNICATIONS

Applicant, NORTH FORT MYERS UTILITY, INC. ("NFMU"), by and through its undersigned attorneys, requests that this Commission allow it to implement its rates and charges, subject to refund, during the pendency of this proceeding and in support thereof states:

1. On August 24, 1998, NFMU and Snowbirdland Vistas, Inc. and MHC-DeAnza Financing Limited Partnership ("Park Owner") entered into a Wastewater Agreement whereby NFMU would provide wastewater service to Buccaneer Estates mobile home community. Buccaneer Estates residents were previously receiving wastewater service from Park Owner and paying for such service as a part of their lot rent; thus, such system was exempt from Commission jurisdiction.

2. Park Owner's wastewater system was not in compliance with environmental regulations and had been ordered to interconnect with NFMU. As such, the Park Owner, pursuant to Chapter 723, Florida Statutes, passed through to the residents the service availability charges it was obligated to pay to NFMU. Instead of paying NFMU directly for the service availability charges, the Park Owner

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assigned to NFMU the pass through charges which Park Owner is to receive from the residents pursuant to Chapter 723, Florida Statutes. A copy of the Assignment and Assumption Agreement is attached hereto as Exhibit "A".

3. The Wastewater Agreement was filed with the Commission in accordance with Rule 25-30.550, Florida Administrative Code, and was approved by the Commission in accordance with that Rule. Implicitly, the Commission did not believe any other applications were necessary to implement the Wastewater Agreement. NFMU did not believe any application was necessary since its Tariff excluded the certificated service area of Buccaneer Water Service, and Buccaneer Water Service did not have a wastewater certificate. Subsequently, Steve Reilly of the Office of Public Counsel, read to the undersigned a pleading which was filed ten years ago which could be construed as excluding Buccaneer Estates from NFMU's service area even though it did not possess a wastewater certificate. It should be noted that Buccaneer Estates was excluded from NFMU's service area in 1988 at the request of Park Owner, which is the same party which entered into the Wastewater Agreement with NFMU.

4. The Park Owner, pursuant to Chapter 723, Florida Statutes, notified the residents of the interconnection with NFMU, that its pass through charges had been assigned to NFMU, and that beginning December 1, 1998, it would receive monthly bills for wastewater service from NFMU. A copy of that Notice is attached hereto as Exhibit "B".

5. In order to facilitate signing up to Buccaneer Estates residents, representatives of NFMU recently went to Buccaneer Estates, instead of having the residents have to travel to NFMU's office, although the office is not very far from Buccaneer Estates. Residents were picketing the location where NFMU's representatives were and discouraging other residents from signing up with NFMU. Virtually no one signed up.

6. Although NFMU has yet to send any residents of Buccaneer Estates a bill for wastewater service, based upon a memorandum being circulated by the residents within Buccaneer Estates, it is believed that the residents expect to receive wastewater service for free and will not be making any payments to NFMU. A copy of the Memo is attached hereto as Exhibit "C".


7. If this Application is protested, then it is likely to be twelve to eighteen months before a final resolution. During that time, a significant amount of revenue will accrue. As a result, this will require each resident to make a substantial payment at the conclusion of the proceeding and NFMU will receive no revenue even though it will be providing residents with wastewater service. There will be no prejudice to anyone if NFMU is allowed to collect its tariff rates from the residents of Buccaneer Estates, if such rates are held subject to refund.

WHEREFORE, NFMU requests this Commission enter an Order allowing it to collect its Tariff rates and the pass through charges assigned by Park Owner from the residents of Buccaneer

Estates during the pendency of this proceeding and to hold such rates and charges subject to refund with appropriate security.

Respectfully submitted on this
7th day of December, 1998, by:

ROSE, SUNDSTROM & BENTLEY, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
(850) 877-6555

By: 
MARTIN S. FRIEDMAN
For the Firm

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Emergency Motion to Implement Rates and Charges has been forwarded via U.S. Mail to Steve Reilly, Esquire, Office Of Public Counsel, 111 West Madison Street, Suite 812, Tallahassee, FL 32301-1906 on this 7th day of December, 1998.


MARTIN S. FRIEDMAN

nfm\buccaneer\emergency.mot

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") made and entered into this 24th day of August, 1998, by and between **SNOWBIRDLAND VISTAS, INC.**, an Illinois corporation and **MHC-DeANZA FINANCING LIMITED PARTNERSHIP**, an Illinois Limited Partnership, hereinafter jointly referred to as "Owner", and **NORTH FORT MYERS UTILITY, INC.**, a Florida corporation, hereinafter referred to as "Service Company".

WHEREAS, Owner owns or controls a wastewater collection, treatment and disposal system serving lands located in Lee County, Florida, and described in Schedule 1, attached hereto and made a part hereof as if fully set out in this paragraph and hereinafter referred to as the "Property", and the Property has been developed as Buccaneer Estates, which is a manufactured home community consisting of 971 manufactured home lots; and

WHEREAS, pursuant to that certain Wastewater Agreement of even date herewith by and between Owner and Service Company, which is by this reference incorporated herein and made a part hereof as if fully set out in this paragraph and hereinafter referred to as the "Wastewater Agreement", Service Company has agreed to provide, in accordance with the provisions of the Wastewater Agreement and Service Company's Service Availability Policy, central wastewater collection, treatment and disposal services to the Property and thereafter operate applicable facilities so that the occupants of the manufactured homes and other improvements on the Property will receive an adequate wastewater collection, treatment and disposal service from Service Company; and

WHEREAS, among other provisions, the Wastewater Agreement provides for the assignment by Owner to Service Company of Owner's right to collect from the "residents" (as such term is defined in the Wastewater Agreement) of the Property the "pass-through charges" relating to Owner's payment of the "connection charges" provided for in the Wastewater Agreement, and for the execution and delivery of this Agreement in connection with such assignment;

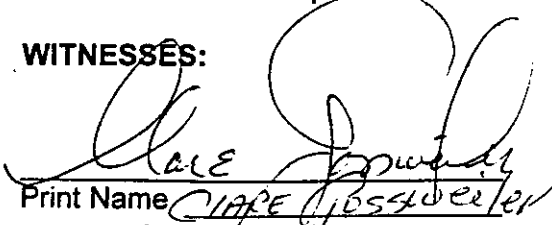
NOW THEREFORE, for and in consideration of the premises, the mutual undertakings and agreements herein contained and assumed, Owner and Service Company hereby covenant and agree as follows:

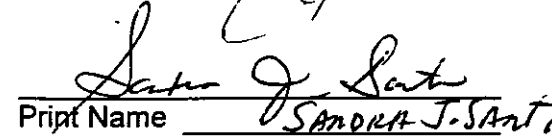
1.0 The foregoing recitations are true and correct and incorporated herein.

2.0 For the consideration set forth in the Wastewater Agreement, Owner hereby quitclaims, sells, assigns and conveys to Service Company (without recourse), and Service Company hereby accepts, purchases, assumes and acquires from Owner, all of Owner's right, title and interest in and to the pass-through charges. Without limiting the generality of the foregoing, the parties agree that Service Company shall have the sole right to collect the pass-through charges, and that Owner shall no responsibility for payment or collection of the same. Notwithstanding the foregoing, however, in the event that the residents file a lawsuit challenging Owner's right to assess the pass-through charges, Owner shall be responsible, at its expense, for defending such lawsuit.


IN WITNESS WHEREOF, Owner and Service Company have executed or have caused this Agreement, with the named Exhibits attached, to be duly executed in several counterparts, each of which counterparts shall be considered an original executed copy of this Agreement.

WITNESSES:

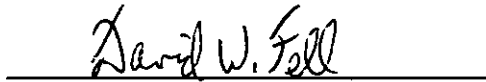

Print Name CLAIRE GOSSEWILER

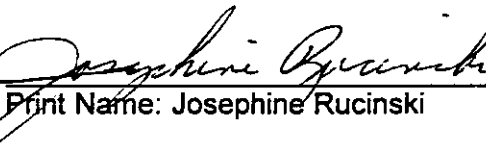

Print Name SANDRA J. SANTIN

NORTH FORT MYERS UTILITY, INC.

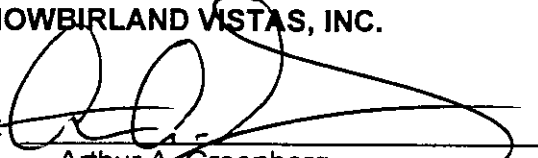
By: 
Print Name A.H. REEVES III
Its U.P.

WITNESSES:

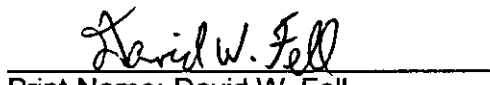

Print Name: David W. Fell

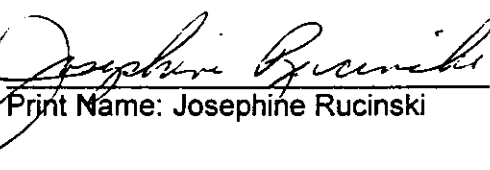

Print Name: Josephine Rucinski

SNOWBIRLAND VISTAS, INC.

By: 
Arthur A. Greenberg
Vice President


WITNESSES:


Print Name: David W. Fell


Print Name: Josephine Rucinski

MHC-DeANZA FINANCING LIMITED PARTNERSHIP

By: MHC-QRS DeAnza, Inc., its General Partner

By: 
Ellen Kelleher
Exec. Vice President/General Counsel

STATE OF FLORIDA)
) SS.
COUNTY OF Lee)

The foregoing instrument was acknowledged before me this 21st day of August, 1998, by AA Keenan III, as Vice President of North Fort Myers Utility, Inc., a Florida corporation, on behalf of the corporation. He/She is personally known to me or has produced Reasonable as identification.

Kathleen R. Shields
Notary Public
State of Florida at Large
My Commission Expires:

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)



The foregoing instrument was acknowledged before me this 21st day of August, 1998, by Arthur A. Greenberg as Vice President of Snowbirdland Vistas, Inc., an Illinois corporation, on behalf of the corporation. He is personally known to me or has produced a State of Illinois driver's license as identification.

Cheryl DePaula
OFFICIAL SEAL Notary Public
CHERYL DEPAULA State of Illinois
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES: 02/06/00 My Commission Expires: February 6, 2000

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 21st day of August, 1998, by Ellen Kelleher, as Executive Vice President/General Counsel of MHC-QRS DeAnza, Inc., a Delaware corporation, as General Partner of MHC-DeAnza Financing Limited Partnership, an Illinois limited partnership, on behalf of the partnership. She is personally known to me or has produced a State of Illinois driver's license as identification.

Cheryl DePaula
OFFICIAL SEAL Notary Public
CHERYL DEPAULA State of Illinois
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES: 02/06/00 My Commission Expires: February 6, 2000

This Instrument Prepared By: David W. Fell, Esquire, c/o Manufactured Home Communities, Inc., Two North Riverside Plaza, Suite 800, Chicago, Illinois 60606.

Schedule 1

Legal Description of Property

All that part of the Northwest quarter (NW 1/4) and that part of the Northeast quarter (NE 1/4) of the Southwest quarter (SW 1/4) of Section 35, Township 43 South, Range 24 East, lying Easterly of the Tamiami Trail (State Road No. 45) and lying Northerly of a line being the Northerly line of Dormier Heights according to plat recorded in Plat Book 22 at Page 28 of the Public Records of Lee County, Florida, and a Westerly prolongation of said Northerly line to the Easterly line of said Tamiami Trail.

Subject to the maintained right-of-way of Queens Road.

The Northeast quarter (NE 1/4) of said Section 35, EXCEPTING THEREFROM the Southwest quarter (SW 1/4) of the Southwest quarter (SW 1/4) of the Northeast quarter (NE 1/4), the South half (S 1/2) of the Southeast quarter (SE 1/4) of the Southeast quarter (SE 1/4) of the Northeast quarter (NE 1/4) and the following described parcel:

A tract or parcel of land lying in the Southwest quarter (SW 1/4) of the Northeast quarter (NE 1/4) of Section 35, Township 43 South, Range 24 East, Lee County, Florida, which tract or parcel is described as follows:

From the northwest corner of the Southwest quarter (SW 1/4) of the Southwest quarter (SW 1/4) of the Northeast quarter (NE 1/4) of said section run South 89 Degrees 48 Minutes 43 Seconds East along the North line of said fraction of a section along the southerly line of a roadway easement 25 feet wide for 395 feet to the Point of Beginning of the herein described parcel.

From said point of beginning run North 00 Degrees 09 Minutes 33 Seconds West parallel with the west line of said fraction of a section for 495 feet; thence run South 89 Degrees 48 Minutes 43 Seconds East parallel with the north line of said Southwest quarter (SW 1/4) of the Southwest quarter (SW 1/4) of the Northeast quarter (NE 1/4) for 610 feet; thence run South 00 Degrees 09 Minutes 33 Seconds East parallel with the West line of said fraction of a section for 700 feet; thence run North 89 Degrees 48 Minutes 43 Seconds West for 340.87 feet to an intersection with the east line of said Southwest quarter (SW 1/4) of the Southwest quarter (SW 1/4) of the Northeast quarter (NE 1/4); thence run North 00 Degrees 11 Minutes 58 Seconds West along said east line for 205 feet to the Northeast corner of said fraction of a section; thence run North 89 Degrees 48 Minutes 43 Seconds West along the North line thereof for 268.98 feet to the Point of Beginning.

TOGETHER WITH the hereinabove described roadway easement 25 feet wide. Bearings hereinabove mentioned are from the centerline survey of State Road No. 45.

Save and except that portion of the foregoing land described in that certain Order of Taking recorded in O.R. Book 1848, Page 1858, Public Records of Lee County, Florida.

The above includes all of Buccaneer Mobile Home Estates, Unit 1, a Subdivision, according to the plat thereof recorded in Plat Book 29, Pages 117 through 119, inclusive, in the Public Records of Lee County, Florida.

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EXHIBIT "F"
NOTICE OF PASS-THROUGH CHARGES

TO: Homeowners of Buccaneer Estates Manufactured Home Community

FROM: Snowbirdland Vistas, Inc.
MHC-DeAnza Financing Limited Partnership
Manufactured Home Communities, Inc.

DATE: August 24, 1998

RE: Pass-Through of System Capacity Charges
for Connection to North Fort Myers Utility, Inc. Central Wastewater System

This serves as notice pursuant to Sections 723.037 and 723.046, Florida Statutes, of a charge to be assessed by North Fort Myers Utility, Inc. (the "Utility") for "System Capacity Charges" in the total amount of \$448,602 (the "Total Connection Cost"), which is the total cost for connection of Buccaneer Estates Manufactured Home Community (the "Community") to the Utility's central wastewater collection, treatment and disposal system. The Total Connection Cost was computed at the Utility's standard rate of \$462 (the "Per Site Connection Cost") for each of the 971 manufactured home sites within the Community. Snowbirdland Vistas, Inc., MHC-DeAnza Financing Limited Partnership and Manufactured Home Communities, Inc., as the owners and managers of the Community (collectively, the "Community Owner"), have agreed to pay the Total Connection Cost to the Utility in advance on behalf of the residents of the Community (the "Residents"), subject to the obligation of the Residents to repay such amount as set forth herein.

Each Resident will have the option to pay the Per Site Connection Cost for such Resident's site either (i) in a single lump sum payment of \$462 on or before December 1, 1998, or (ii) in monthly installments of \$7.01 each (which amount includes interest on the unpaid balance of the Per Site Connection Cost from time to time at the rate of 10% per annum) on the first day of each calendar month over the eight-year period commencing December 1, 1998 and continuing through November 30, 2006 (the "Payment Period"). The payment schedule set forth herein is in accordance with Section 723.046, Florida Statutes.

Effective December 1, 1998, the Utility will begin billing the Residents directly on a monthly basis for the wastewater collection, treatment and disposal service provided by the Utility. Concurrently with the delivery of this notice, the Community Owner is assigning to the Utility the Community Owner's right to collect the Per Site Connection Cost for each site as described above. For the Residents electing to pay the Per Site Connection Cost in monthly installments as provided for above, the Utility will invoice these installments on separate monthly bills to be delivered to the Residents.

Effective December 1, 1998, the monthly base rent payable under each Resident's lot rental agreement will be reduced by \$6.07. This is the average monthly cost to the Community Owner of providing wastewater service to each site in the Community, the cost of which service has previously been included in the base rent. This average monthly cost was determined by averaging, on a per month basis, the cost to the Community Owner of providing wastewater

service to the Community over the past twelve (12) months. This change in lot rental amount is consistent with the disclosures made in the Community prospectus regarding "service charges".

SEWER PROBLEM

1. **Buccaneer Estates is not, I repeat, NOT in the North Fort Myers Utilities service area.**
2. **The problem is between MHC and North Fort Myers Utility as the Utility does not have a certificate issued by the Public Service Commission to operate in the Park.**

WHAT DO WE DO?

In consultation with the Office of the Public Counsel in Tallahassee, we have this recommendation:

**DO NOT SIGN ANY PAPERS COMMITTING
PAYMENT TO NORTH FORT MYERS UTILITY.
PUBLIC COUNSEL ADVISES THAT WE, THE
RESIDENTS OF THIS PARK, SHOULD NOT BE
DEALING WITH NORTH FORT MYERS UTILITY.**

Again, we are not in the North Fort Myers Utility's service area. Until the Public Service Commission issues a certificate authorizing North Fort Myers Utility to operate here in the Park, sit tight.

MHC must carry this problem until it is resolved.

You, the residents, must make up your minds as to what you want to do.

