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MARTIN S. FRIEDMAN, P.A.  
VALERIE L. LORD

REPLY TO ALTAMONTE SPRINGS

December 10, 2004

HAND DELIVERY

Ms. Blanca Bayo  
Commission Clerk and Administrative Services Director  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399

RECEIVED-FPSC  
01 DEC 10 PM 3:30  
COMMISSION CLERK

Re: Docket No. 041391-WS Application for Acknowledgment of Condemnation of Land and Facilities by the Barefoot Bay Water and Sewer District and Cancellation of Certificate Nos. 294-S and 338-W  
Our File No.: 31099.03

Dear Ms. Bayo:

Enclosed please find for filing in the above-referenced docket the original and fifteen (15) copies of Burkim Enterprises, Inc.'s Application for Acknowledgment of Condemnation of Land and Facilities by the Barefoot Bay Water and Sewer District and Cancellation of Certificate Nos. 294-S and 338-W.

Should you have any questions regarding this filing, please do not hesitate to give me a call.

Very truly yours,

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

MARTIN S. FRIEDMAN  
For the Firm

MSF/mp  
Enclosures

cc: Mr. Keith Burge (w/enclosure)  
Eden Bentley, Assistant County Attorney (w/enclosure)

M:\1 ALTAMONTE\BURKIM\CONDEMNATION (.08)\PSC Clerk 01.ltr.wpd

DOCUMENT NUMBER-DATE  
13075 DEC 10 3  
FPSC-COMMISSION CLERK

BEFORE THE PUBLIC SERVICE COMMISSION

IN RE: Application by Burkim Enterprises,  
Inc. for acknowledgment of condemnation  
of land and facilities to the Barefoot Bay  
Water and Sewer District and  
Cancellation of Certificate Nos. 294-S  
and 338-W

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CASE NO. 041391-WS

**APPLICATION FOR ACKNOWLEDGMENT OF CONDEMNATION OF LAND AND  
FACILITIES BY THE BAREFOOT BAY WATER AND SEWER DISTRICT AND  
CANCELLATION OF CERTIFICATE NOS. 294-S AND 338-W**

Applicant, BURKIM ENTERPRISES, INC. ("Utility") by and through its undersigned attorneys and pursuant to Section 367.071 (4) (a), Florida Statutes, and Rule 25-30-038 (4), Florida Administrative Code, hereby files this Application for acknowledgment of the condemnation of the Utility's land and facilities by the Barefoot Bay Water and Sewer District ("District"), and cancellation of Certificate Nos. 294-S and 338-W, and in support thereof states:

1. The name, address and telephone number of the Utility is:

Burkim Enterprises, Inc.  
2340 Northeast Dixie Drive  
Jensen Beach, FL 34597  
PHONE: (772) 334-4557

2. The name, address and telephone number of the representative of the Utility to contact concerning this Application is:

DOCUMENT NUMBER-DATE  
13075 DEC 10 8  
FPSC-COMMISSION CLERK

Martin S. Friedman, Esquire  
Valerie L. Lord, Esquire  
Rose, Sundstrom & Bentley, LLP  
600 S. North Lake Boulevard  
Suite 160  
Altamonte Springs, FL 32701  
PHONE: (407) 830-6331

3. The name, address and telephone number of the District is:

Barefoot Bay Water and Sewer District  
C/o Brevard County Utility Services Department  
2725 Judge Fran Jamieson Way  
Building A, Suite 213  
Melbourne, FL 32940  
PHONE: (321) 633-2091

4. The name, address and telephone number of the representative of the District to contact concerning this Application is:

Eden Bentley, Assistant County Attorney  
Office of the County Attorney  
2725 Judge Fran Jamieson Way  
Building C, 3<sup>rd</sup> Floor  
Viera, FL 32940  
PHONE: (321) 633-2090

5. On November 29, 2004, the Circuit Court for the Eighteenth Judicial Circuit issued an Order of Taking relating to all of the water and wastewater facilities and all other property relating thereto belonging to the Utility in Brevard County, Florida, more fully described in the Order of Taking ("Facilities"). A true and correct copy of the Order of Taking is attached hereto as Exhibit "A". On December 1, 2004, the District deposited the amount of its good faith estimate of the value of the Facilities into the Registry of the Court. A true and correct copy of the Notice of Deposit is attached hereto as Exhibit "B".

6. The Order of Taking provided that, on depositing the required amount into

the Registry of the Court, the District, a political subdivision of the State of Florida, was vested with title to the Facilities, and that the District was entitled to possession of fee simple interest to the Facilities.

7. - The District is a “governmental authority” and is subject to approval “as a matter of right” pursuant to pursuant to Section 367.071 (4) (a), Florida Statutes.

8. Although the Utility was authorized to collect customer deposits, it chose not to do so. Thus, there are no customer deposits of which to dispose.

9. The Utility has no outstanding regulatory assessment fees or fines at this time. The Utility will file Regulatory Assessment Fee Reports and pay the regulatory assessment fees for 2004 through the date of closing no later than March 31, 2005.

10. There are no current dockets in which the Utility is a party.

11. Due to the unusual nature of the method by which the District decided to condemn the Facilities, the Utility has no knowledge of any public hearing that was held pursuant to Section 190.0125, Florida Statutes, or if the District considered, among other things, the most recent available income and expense statement, balance sheet, and statement of rate base for regulatory purposes and contributions-in-aid-of-construction. The Utility is therefore unable to provide verification of compliance with Section 367.071 (4)(a), Florida Statutes.

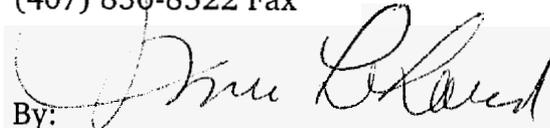
12. The Brevard County Board of County Commissioners, sitting as the District, took formal action on August 24, 2004, to acquire the assets of the Utility by quick take condemnation.

13. The Utility's original Certificate Nos. 294-S and 338-W are attached hereto as Exhibit "C".

WHEREFORE, Applicant, BURKIM ENTERPRISES, INC., requests this Commission grant the Utility's Application, acknowledge the condemnation of the Utility's assets by the District, and cancel Certificate Nos. 294-S and 338-W.

Respectfully submitted on this 17<sup>th</sup>  
day of December, 2004, by:

ROSE, SUNDSTROM & BENTLEY, LLP  
600 S. North Lake Boulevard  
Suite 160  
Altamonte Springs, Florida 32701  
(407) 830-6331  
(407) 830-8522 Fax

By: 

MARTIN S. FRIEDMAN  
VALERIE L. LORD

EXHIBIT "A"

[ORDER OF TAKING]

IN THE CIRCUIT COURT OF THE  
EIGHTEENTH JUDICIAL CIRCUIT,  
IN AND FOR BREVARD COUNTY,  
FLORIDA

CASE NO: 05-2004-CA-023957-XXXX-XX

BAREFOOT BAY WATER & SEWER  
DISTRICT, a dependent special district legal entity  
and public body organized and existing under the  
laws of the State of Florida,

Petitioner,

v.

BURKIM ENTERPRISES, INC., a Florida  
corporation; FIDELITY FEDERAL BANK &  
TRUST; ROD NORTHCUTT, Brevard County  
Tax Collector; and ALL PARTIES CLAIMING  
INTEREST BY, THROUGH, UNDER OR  
AGAINST THE NAMED DEFENDANTS; and if  
any of the Defendants or all Defendants are  
deceased, THE UNKNOWN SPOUSE, HEIRS,  
DEVISEES, GRANTEEES, CREDITORS,  
LIENORS, OR OTHER PARTIES CLAIMING  
BY, THROUGH, UNDER, OR AGAINST ANY  
SUCH DECEASED DEFENDANT OR  
DEFENDANTS IF ALIVE AND IF DEAD THEIR  
UNKNOWN SPOUSE, HEIRS, DEVISEES,  
LEGATEES, GRANTEEES, CREDITORS,  
LIENORS, OR OTHER PARTIES CLAIMING  
BY, THROUGH, UNDER OR AGAINST ANY  
SUCH DECEASED DEFENDANT OR  
DEFENDANTS,

Respondents/Defendants.

---

NOV 30 2004

COPY

### ORDER OF TAKING

This matter came before the Court for hearing on November 29, 2004, and it appearing that proper notice was first given to all the Respondents, and all persons having or claiming any equity, lien, title or other interest in or to the real property described in the Petition, and that the Petitioner

has applied to this Court for an Order of Taking, and the Court being otherwise fully advised in the premises, upon consideration, it is therefore:

ORDERED AND ADJUDGED:

1. That the Court has jurisdiction of the subject matter and the parties to this cause.
2. That the pleadings in this cause are sufficient, and that the Petitioner is properly exercising its delegated authority.
3. That the estimate of value filed in this cause by the Petitioner was made in good faith, and based upon a valid appraisal.
4. That the Petitioner is entitled to possession of the properties described in Exhibit "A", prior to the entry of a Final Judgment, upon payment into the Registry of this Court, the deposit hereafter specified; and that the said deposit of money will fully secure the persons law fully entitled to compensation, as will be determined ultimately by Final Judgment of this Court, and which said sum of money to be deposited is in no instance less than the value of each parcel of said land, as fixed by the estimate of value as set by the Petitioner; that the title to the property shall be in the name of Brevard County, Florida, a political subdivision of the State of Florida.
5. PROVIDED FURTHER, that the said sum of money in the total amount of \$1,200,000.00 shall be deposited in the Registry of this Court on or before December 19, 2004 which shall be within twenty (20) days from the date of Order. Upon making such deposit, the Petitioner shall notify in writing, all attorneys of record, and those Respondents not represented by counsel, that the deposit has been made, and Petitioner shall be entitled to possession of the fee simple interest that the Petitioner is claiming in the property described in the Petition, without further notice or order of this Court.

If Petitioner shall default in the depositing of said sum of money within the time provided, this Order shall be void and of no further force or effect.

DONE AND ORDERED in Chambers at Viera, Brevard County, Florida, this 29<sup>th</sup> day of November, 2004.

Original Signed By  
JOHN DEAN MOXLEY  
Circuit Court Judge

---

John D. Moxley, Jr.  
Circuit Judge

I hereby certify that a conformed copy of the above has been furnished by U.S. Mail to the individuals listed on the attached service list, this 29<sup>th</sup> day of November, 2004.

K. Neitz  
Judicial Assistant

## Exhibit "A"

### Legal Description of Wastewater Plant Site

ALL THAT PART OF THE SOUTH 1/3 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 10, TOWNSHIP 30 SOUTH, RANGE 38 EAST, BREVARD COUNTY, FLORIDA, LYING WEST OF THE FLORIDA EAST COAST RAILWAY RIGHT OF WAY AND LYING EAST OF A LINE 592 FEET WESTERLY OF THE WEST RIGHT OF WAY LINE OF SAID FLORIDA EAST COAST RAILWAY AS MEASURED AT RIGHT ANGLES OF SAID RIGHT OF WAY LINE.

### Legal Description of Water Plant Site

A PORTION OF SECTIONS 10 AND 11, TOWNSHIP 30 SOUTH, RANGE 38 EAST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF THE NORTHEAST ONE QUARTER OF SAID SECTION 10, THENCE N. 00.03'59" W. A DISTANCE OF 246.18 FEET TO THE POINT OF BEGINNING. THENCE CONTINUE N. 00.03'59" A DISTANCE OF 30.13 FEET TO POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 261.27 FEET AND A CENTRAL ANGLE OF 23.48'02"; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 108.53 FEET TO A POINT OF TANGENCY; THENCE N. 23.52'01" W. A DISTANCE OF 116.81 FEET; THENCE N. 66.07'59" E. A DISTANCE OF 91.74 FEET ON TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF FLORIDA EAST COAST RAILWAY; THENCE S. 23.52'01" E. ALONG SAID WESTERLY RIGHT OF WAY LINE A DISTANCE OF 305.78 FEET; THENCE N. 89.56'12" W. A DISTANCE OF 137.98 FEET TO THE POINT OF BEGINNING.

### Easements

ALL EASEMENTS IN FAVOR OF THE PUBLIC OR UTILITY SERVICES, CONNECTICUT GENERAL UTILITIES, INC. IN THE PLAT OF SNUG HARBOR VILLAGE V, SECTION 01 PLAT BOOK 29, PAGE 29 OR THE SNUG HARBOR CONDOMINIUM DOCUMENTS AT OFFICIAL RECORDS BOOK 2880, PAGE 1567 AND AMENDMENT TO DECLARATION OF CONDOMINIUM OF SNUG HARBOR LAKES, A CONDOMINIUM AT OFFICIAL RECORDS BOOK 2979, PAGE 0915. ALL EASEMENTS CONTAINED IN THE ASSIGNMENT OF EASEMENTS AT OFFICIAL RECORDS BOOK 4213, PAGE 0445 AND ALL EASEMENTS FOR INGRESS AND EGRESS OR OTHER INTERESTS NECESSARY TO THE OPERATION OF THE WATER OR WASTEWATER SYSTEM OPERATED BY BURKIM ENTERPRISES, INC.

## Service List

Eden Bentley, Assistant County Attorney  
Brevard County Attorney's Office  
2725 Judge Fran Jamieson Way  
Building C  
Viera, Florida 32940

Martin S. Friedman, Esquire  
Rose, Sundstrom & Bentley, LLP  
600 S. North Lake Blvd., Suite 160  
Altamonte Springs, Florida 32701-6177

Michael A. Paasch, Esquire  
Mateer Harbert, P.A.  
P.O. Box 2854  
Orlando, Florida 32802-2854

Edward D. Welch, Esquire  
Fidelity Federal Bank & Trust  
205 Datura Street, 4th Floor  
West Palm Beach, Florida 33401-5604

EXHIBIT "B"  
[NOTICE OF DEPOSIT]

IN THE CIRCUIT COURT OF THE  
EIGHTEENTH JUDICIAL CIRCUIT,  
IN AND FOR BREVARD COUNTY,  
FLORIDA

CASE NO: 05-2004-CA-023957-XXXX-XX

BAREFOOT BAY WATER & SEWER  
DISTRICT, a legal entity and public body  
organized and existing under the laws of the State  
of Florida,

Petitioner,

v.

BURKIM ENTERPRISES, INC., a Florida  
corporation; FIDELITY FEDERAL BANK &  
TRUST; ROD NORTHCUTT, Brevard County  
Tax Collector; and ALL PARTIES CLAIMING  
INTEREST BY, THROUGH, UNDER OR  
AGAINST THE NAMED DEFENDANTS; and if  
any of the Defendants or all Defendants are  
deceased, THE UNKNOWN SPOUSE, HEIRS,  
DEWISEES, GRANTEES, CREDITORS,  
LIENORS, OR OTHER PARTIES CLAIMING  
BY, THROUGH, UNDER, OR AGAINST ANY  
SUCH DECEASED DEFENDANT OR  
DEFENDANTS IF ALIVE AND IF DEAD THEIR  
UNKNOWN SPOUSE, HEIRS, DEWISEES,  
LEGATEES, GRANTEES, CREDITORS,  
LIENORS, OR OTHER PARTIES CLAIMING  
BY, THROUGH, UNDER OR AGAINST ANY  
SUCH DECEASED DEFENDANT OR  
DEFENDANTS,

Respondents/Defendants.

COPY OF COURT ORDER  
SCOTT ELLS  
2004 DEC -1 A 8:29  
FILED IN OFFICE  
VIERA BRANCH 01

NOTICE OF DEPOSIT

Petitioner, BREVARD COUNTY, FLORIDA, hereby notifies all Respondents that  
pursuant to the Court's Order, the good faith estimate of \$1,200,000.00 for the parcels being  
condemned was deposited on December 1, 2004.

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Deposit has been furnished by U. S. Mail to the individuals listed on the attached service list this 1 day of December, 2004.

OFFICE OF THE COUNTY ATTORNEY  
2725 Judge Fran Jamieson Way  
Building C, 3<sup>rd</sup> Floor  
Viera, FL 32940  
(321) 633-2090

By: *Eden Bentley*  
Eden Bentley, Assistant County Attorney  
Florida Bar No. 370908  
Attorney for Petitioner

Service List

Martin S. Friedman, Esquire  
Rose, Sundstrom & Bentley, LLP  
600 S. North Lake Blvd., Suite 160  
Altamonte Springs, Florida 32701-6177

Michael A. Paasch, Esquire  
Mateer Harbert, P.A.  
P.O. Box 2854  
Orlando, Florida 32802-2854

Edward D. Welch, Esquire  
Fidelity Federal Bank & Trust  
205 Datura Street, 4th Floor  
West Palm Beach, Florida 33401-5604

EXHIBIT "C"

[ORIGINAL CERTIFICATES]

FLORIDA PUBLIC SERVICE COMMISSION

Certificate Number

338 - W

Upon consideration of the record it is hereby ORDERED that authority be and is hereby granted to:

BURKIM ENTERPRISES, INC.

Whose principal address is:

2340 N.E. Dixie Highway  
Jensen Beach, FL 34957-5952 (Brevard County)

to provide water service in accordance with the provision of Chapter 367, Florida Statutes, the Rules, Regulations and Orders of this Commission in the territory described by the Orders of this Commission.

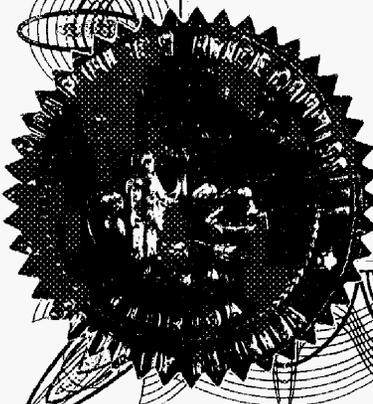
This Certificate shall remain in force and effect until suspended, cancelled or revoked by Orders of this Commission.

ORDER	10147	DOCKET	810007-WS
ORDER	PSC-01-1628-FOF-WS	DOCKET	001501-WS
ORDER	PSC-02-1712-FOF-WS	DOCKET	020553-WS
ORDER		DOCKET	
ORDER		DOCKET	
ORDER		DOCKET	

BY ORDER OF THE  
FLORIDA PUBLIC SERVICE COMMISSION

*Blanca L. Bayo*

Commission Clerk and Administrative Services Director



**FLORIDA PUBLIC SERVICE COMMISSION**

Certificate Number

294 - S

Upon consideration of the record it is hereby ORDERED that authority be and is hereby granted to:

BURKIM ENTERPRISES, INC.

Whose principal address is:

2340 N.E. Dixie Highway  
Jensen Beach, FL 34957-5952 (Brevard County)

to provide wastewater service in accordance with the provision of Chapter 367, Florida Statutes, the Rules, Regulations and Orders of this Commission in the territory described by the Orders of this Commission.

This Certificate shall remain in force and effect until suspended, cancelled or revoked by Orders of this Commission.

ORDER	10147	DOCKET	810007-WS
ORDER	PSC-01-1628-FOF-WS	DOCKET	001501-WS
ORDER	PSC-02-1712-FOF-WS	DOCKET	020553-WS
ORDER		DOCKET	
ORDER		DOCKET	
ORDER		DOCKET	

BY ORDER OF THE  
FLORIDA PUBLIC SERVICE COMMISSION

*Blanca L. Bay*

Commission Clerk and Administrative Services Director

