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Attorneys at Law

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August 11, 1993

Mr. Steve Tribble, Director  
Division of Records and Reporting  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, Florida 32399-0650

HAND DELIVERY

RE: Docket No. 930673-SU  
Application for Amendment of Certificate No. 268-S  
in Lee County by SOUTH SEAS UTILITY COMPANY

Dear Mr. Tribble:

Enclosed for filing on behalf of South Seas Utility Company in the above docket is an original and fifteen copies of this letter and the enclosure discussed hereinbelow, submitted in response to James E. McRoy's August 2, 1993 letter.

As indicated in paragraph 1(d) of our application, South Seas Utility Company owns the wastewater treatment plant site. We provided therewith copies of a warranty deed and a subsequent quit claim deed prepared to correct the legal description. Mr. McRoy has required more detail regarding the difference between the two deeds and legal descriptions.

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In 1986, South Seas Plantation Company, an affiliate of South Seas Utility Company, underwent a major refinancing program. The lender required a comprehensive survey of the affected properties. In the course of that survey it was determined that the starting point previously used to determine the point of beginning in the legal description of various properties including the plant site was incorrect. To properly state the legal description for the plant site, the 1986 correctory quit claim deed was executed and recorded.

The correctory deed and the warranty deed describe the same 12.6 acre parcel. There were no boundary changes involved. Under the two deeds, South Seas Utility Company holds fee simple title to the treatment plant site.

RECEIVED & FILED

FPSC BUREAU OF RECORDS

DOCUMENT NUMBER DATE

08669 AUG 11 8

RECORDED

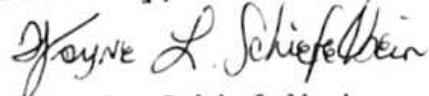
Letter to Steve Tribble  
August 11, 1993  
Page Two

As corroboration, we submit herewith a title insurance policy, issued in conjunction with financing obtained in 1988 for the treatment plant expansion that then occurred. The policy uses the corrected legal description for the 12.6 acre treatment plant site. Other parcels therein described refer to certain roadway and conservation easements not germane to Staff's inquiry.

By our August 3, 1993 letter, we have already fully responded to Mr. McRoy's remaining areas of concern.

Please acknowledge receipt of the foregoing by stamping the enclosed extra copy of this letter and returning same to my attention. Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script that reads "Wayne L. Schiefelbein". The signature is written in dark ink and is positioned above the typed name.

Wayne L. Schiefelbein

WLS/meg

American Land Title Association  
Loan Policy — 1970  
(Rev. 10-17-70 and 10-17-84)

POLICY  
OF  
TITLE  
INSURANCE



*Issued by*

**COMMONWEALTH**  
LAND TITLE INSURANCE COMPANY  
A Reliance Group Holdings Company

*Title Insurance Since 1876*

HOME OFFICE  
EIGHT PENN CENTER  
PHILADELPHIA, PA 19103

GUARDIAN TITLE  
SERVICES CORPORATION  
13391 McGregor Blvd.  
Fort Myers, FL 33907

SCHEDULE A

Policy No. 411-936997

File No. 12376

Effective Date: December 2, 1988 at 4:53 PM

Amount of Insurance: \$1,000,000.00

1. Name of Insured:

CHASE BANK OF FLORIDA, N.A., ITS SUCCESSORS AND/OR ITS  
ASSIGNS AS THEIR INTEREST MAY APPEAR.

2. The estate or interest in the land described in this Schedule  
and which is encumbered by the insured mortgage is a fee simple  
and is at the effective date hereof vested in:

SOUTH SEAS UTILITY COMPANY, A FLORIDA CORPORATION

3. The land referred to in this policy is described as follows:

SEE ATTACHED "SCHEDULE A" AND "SCHEDULE A CONTINUED"

4. The mortgage, herein referred to as the insured mortgage,  
and the assignments thereof, if any, as described as follows:

Mortgage executed by SOUTH SEAS UTILITY COMPANY to CHASE BANK  
OF FLORIDA, N.A.; given to secure the principal sum of  
\$1,000,000.00, by instrument dated December 2, 1988, recorded  
December 2, 1988, in Official Record Book 2033, page 1401, in the  
Public Records of Lee County, Florida.

I hereby certify this to be a true  
and complete copy of the original  
instrument.

Guardian Title Services Corporation

Countersigned: \_\_\_\_\_

By Marilyn A. Gray

"SCHEDULE A"

2158 JOHNSON STREET  
TELEPHONE (813) 334-0046  
TELECOPIER (813) 334-3661  
POST OFFICE BOX 1550  
FORT MYERS, FLORIDA  
33902-1550

CARLE JOHNSON  
1911-1988

DESCRIPTION  
WASTEWATER TREATMENT FACILITY  
PARCEL IN GOVERNMENT LOT 4  
SECTION 22 AND GOVERNMENT LOT 1  
SECTION 23, T. 45 S., R. 21 E.  
CAPTIVA ISLAND, LEE COUNTY, FLORIDA

A tract or parcel of land lying in Government Lot 4, Section 22 and Government Lot 1, Section 23, Township 45 South, Range 21 East, Captiva Island, Lee County, Florida which tract or parcel is described as follows:

From the 3/4" pipe marking the intersection of the south line of lands described in deed recorded in Deed Book 209 at page 71, Lee County Records with the curved westerly line of a roadway easement (50 feet wide) as described in an Amended Grant of Easement recorded in Official Record Book 1806 at page 3868, Lee County Records being also the northeasterly corner of South Seas Plantation Beach Homesites recorded in Plat Book 29 at pages 105 and 106, Lee County Records run northerly along said westerly line of said easement and the easterly line of Plantation Beach Club III as shown on Surveyor's Plat, Exhibit "1" to Condominium Declaration recorded in Official Record Book 1422 beginning at page 2218, Lee County Records along the arc of a curve to the right of radius 265 feet (chord bearing N 11° 38' 02" W) (delta 25° 16' 05") (chord 115.92 feet) for 116.87 feet to a point of tangency, N 01° 00' E for 122 feet to a point of curvature, northerly, northwesterly and westerly along the arc of a curve to the left of radius 113 feet (chord bearing N 23° 46' 18" W) (delta 49° 32' 36") (chord 94.69 feet) for 97.71 feet; thence run N 41° 27' 24" E along a line radial to said curve for 50 feet to the easterly line of said roadway easement described in said Amended Grant of Easement; thence run northeasterly and easterly along the arc of a curve to the right of radius 73.24 feet (chord bearing N 67° 57' 07" E) (delta 52° 59' 27") (chord 65.35 feet) for 67.74 feet to a point of tangency; thence run S 85° 33' 09" E for 14.32 feet to a point of curvature; thence easterly along the arc of a curve to the left of radius 140 feet (chord bearing N 86° 20' 21" E) (delta 16° 13' 00") (chord 39.49 feet) for 39.63 feet to a point of tangency; thence run N 78° 13' 50" E for 52.53 feet to a point of curvature; thence easterly along the arc of a curve to the right of radius 70 feet (chord bearing S 82° 26' 25" E) (delta 38° 39' 30") (chord 46.34 feet) for 47.23 feet to a point of tangency; thence run S 63°

CHAIRMAN  
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Wastewater Treatment Facility  
 October 18, 1988  
 Page 2

06' 40" E for 19.99 feet to a point of curvature; thence southeasterly and easterly along the arc of a curve to the left of radius 155 feet (chord bearing S 79° 27' 32" E) (delta 32° 41' 45") (chord 87.26 feet) for 88.45 feet to a point of tangency, passing through a point designated "A" at 65.01 feet along said arc; thence run N 84° 11' 36" E for 86.22 feet to a point of curvature; thence easterly along the arc of a curve to the left of radius 316.10 feet (chord bearing N 74° 58' 20" E) (delta 18° 26' 31") (chord 101.31 feet) for 101.75 feet to a point of reverse curvature; thence easterly along the arc of a curve to the right of radius 54.70 feet (chord bearing N 78° 07' 27" E) (delta 24° 44' 46") (chord 23.44 feet) for 23.63 feet to a point of tangency; thence run S 89° 30' 10" E for 601.41 feet to an intersection with the line common to said Sections 22 and 23; thence run S 08° 29' 50" W along said line for 10.10 feet to the the Point of Beginning.


From said Point of Beginning run N 89° 30' 10" W for 600 feet; thence run S 08° 29' 50" W, parallel with said section line, for 230 feet more or less to the waters of Bryant Bayou; thence run easterly, southeasterly and southerly along said waters for 290 feet more or less to an intersection with a line bearing N 89° 30' 10" W and 475 feet southerly from (as measured on a perpendicular) the Point of Beginning; thence run S 89° 30' 10" E along said parallel line for 450 feet more or less to an intersection with said line common to Sections 22 and 23; thence continue S 89° 30' 10" E along said parallel line for 680 feet more or less to the waters of Pine Island Sound; thence run northerly along said waters for 560 feet more or less to an intersection with a line bearing S 89° 30' 10" E and passing through the Point of Beginning; thence run N 89° 30' 10" W along said line for 505 feet more or less to the Point of Beginning.

TOGETHER WITH a roadway easement (20 feet wide) as described in Official Record Book 1848 at page 1837.

SUBJECT TO a conservation easement as described in Official Record Book 1983 at page 4023.

Containing 12.6 acres more or less.

Bearings hereinabove mentioned are Plane Coordinate for the Florida West Zone.

  
 W. BRITT POMEROY, JR.  
 Professional Land Surveyor  
 Florida Certificate No. 4448

SCHEDULE B, PART I

Policy No. 411-936997

File No. 12376

This policy does not insure against loss or damage by reason of the following exceptions:

NOTE: Unless Schedule B Part II is attached there are not subordinate matters that affect the title to the estate or interest referred to in Schedule A.

1. The lien of all taxes for the year 1989 and thereafter, which are not yet due or payable.
2. Unrecorded easements, discrepancies or conflicts in boundary lines, shortage in area and encroachments which an accurate and complete survey would disclose.
3. Deed from Trustees of the Internal Improvement Fund of the State of Florida recorded in Official Record Book 572, Pages 14 through 16, Public Records of Lee County, Florida, wherein said Board reserved unto itself and its successors, an undivided three-fourths interest in all of the phosphate minerals and metals that are or may be in, on or under said lands and an undivided one-half interest in all the petroleum that is on or under said land, with the privilege to mine and develop the same.
4. Resolution No. 65-9 for the Captiva Erosion Prevention District recorded in Official Record Book 1813, Page 3154, in the Public Records of Lee County, Florida.
5. Conservation Easement recorded in Official Record Book 1983, Page 4026, in the Public Records of Lee County, Florida.

CONTINUED ON NEXT PAGE





6. A portion of the property described herein lying under navigable waters, or being artificially created land in what was formerly navigable waters, it is subject to any and all rights of the United States of America arising by reason of its jurisdiction and control over navigable waters in the interest of navigation and commerce. This policy affirmatively insures, however, against any loss or damage which the insured may sustain by reason of the entry of a final order by a court of competent jurisdiction which requires removal of all or part of the improvements currently constructed on the land without adequate compensation for said improvements by reason of the exercise by the United States of America of its rights under the Navigational Servitude.

7. Affirmative Covenant recorded in Official Record Book 1986, Page 4039, in the Public Records of Lee County, Florida.

8. The nature, extent or existence of riparian rights, if any appurtenant to the subject property are neither guaranteed nor insured, and the riparian rights of others, as the same may affect subject property are hereby excepted.

9. The rights of the public to use any part of the herein described property lying under navigable waters for purposes of navigation, commerce or recreation.

10. The right of the State of Florida to regulate or prohibit dredge and fill operations in former sovereignty lands.

11. Notwithstanding the description of the land insured as shown in the policy, the policy insures only that part of said lands lying upland of the mean high water mark of Bryant Bayou and Pine Island Sound.



SCHEDULE B, PART II

Policy No. 411-936997

File No. 12376

In addition to the matters set forth in Part I of this Schedule, the title to the estate or interest in the land described or referred to in Schedule A is subject to the following matters, if any be shown, but the Company insures that such matters are subordinate to the lien or charge of the insured mortgage upon said estate or interest:

1. COLLATERAL ASSIGNMENT OF LEASES, RENTS AND CONTRACT RIGHTS by and between SOUTH SEAS UTILITY COMPANY AND CHASE BANK OF FLORIDA, N.A., dated December 2, 1988 and recorded December 2, 1988 in Official Record Book 2033, Page 1416, in the Public Records of Lee County, Florida.

**CONDITIONS AND STIPULATIONS**  
(Continued)

**5. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS**

The Company shall have the option to pay or otherwise settle for or in the name of an insured claimant any claim insured against or terminate all liability and obligations of the Company hereunder by paying or tendering payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred up to the time of such payment or tender of payment by the insured claimant and authorized by the Company. In case loss or damage is claimed under this policy by an insured, the Company shall have the further option to purchase such indebtedness for the amount owing thereon together with all costs, attorney's fees and expenses which the Company is obligated hereunder to pay. If the Company offers to purchase said indebtedness as herein provided, the owner of such indebtedness shall transfer and assign said indebtedness and the mortgage and any collateral securing the same to the Company upon payment therefor as herein provided.

**6. DETERMINATION AND PAYMENT OF LOSS**

(a) The liability of the Company under this policy shall in no case exceed the least of:

- (i) the actual loss of the insured claimant; or
- (ii) the amount of insurance stated in Schedule A, or, if applicable, the amount of insurance as defined in paragraph 2(a) hereof; or
- (iii) the amount of the indebtedness secured by the insured mortgage as determined under paragraph 8 hereof, at the time the loss or damage insured against hereunder occurs, together with interest thereon.

(b) The Company will pay, in addition to any loss insured against by this policy, all costs imposed upon an insured in litigation carried on by the Company for such insured, and all costs, attorneys' fees and expenses in litigation carried on by such insured with the written authorization of the Company.

(c) When liability has been definitely fixed in accordance with the conditions of this policy, the loss or damage shall be payable within 30 days thereafter.

**7. LIMITATION OF LIABILITY**

No claim shall arise or be maintainable under this policy (a) if the Company, after having received notice of an alleged defect, lien or encumbrance insured against hereunder, by litigation or otherwise, removes such defect, lien or encumbrance or establishes the title, or the lien of the insured mortgage, as insured, within a reasonable time after receipt of such notice; (b) in the event of litigation until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title or to the lien of the insured mortgage, as insured, as provided in paragraph 3 hereof; or (c) for liability voluntarily assumed by an insured in settling any claim or suit without prior written consent of the Company.

**8. REDUCTION OF LIABILITY**

(a) All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto; provided, however, such payments, prior to the acquisition of title to said estate or interest as provided in paragraph 2(a) of these Conditions and Stipulations, shall not reduce pro tanto the amount of the insurance afforded hereunder except to the extent that such payments reduce the amount of the indebtedness secured by the insured mortgage.

Payment in full by any person or voluntary satisfaction or release of the insured mortgage shall terminate all liability of the Company except as provided in paragraph 2(a) hereof.

(b) The liability of the Company shall not be increased by additional principal indebtedness created subsequent to Date of Policy, except as to amounts advanced to protect the lien of the insured mortgage and secured thereby.

No payment shall be made without producing this policy for endorsement of such payment unless the policy be lost or destroyed, in which case proof of such loss or destruction shall be furnished to the satisfaction of the Company.

**9. LIABILITY NONCUMULATIVE**

If the insured acquires title to the estate or interest in satisfaction of the indebtedness secured by the insured mortgage, or any part thereof, it is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage hereafter executed by an insured which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy.

**10. SUBROGATION UPON PAYMENT OR SETTLEMENT**

Whenever the Company shall have settled a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant, except that the owner of the indebtedness secured by the insured mortgage may release or substitute the personal liability of any debtor or guarantor, or extend or otherwise modify the terms of payment, or release a portion of the estate or interest from the lien of the insured mortgage, or release any collateral security for the indebtedness, provided such act occurs prior to receipt by the insured of notice of any claim of title or interest adverse to the title to the estate or interest or the priority of the lien of the insured mortgage and does not result in any loss of priority of the lien of the insured mortgage. The Company shall be subrogated to and be entitled to all rights and remedies which such insured claimant would have had against any person or property in respect to such claim had this policy not been issued, and if requested by the Company, such insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect such right of subrogation and shall permit the Company to use the name of such insured claimant in any transaction or litigation involving such rights or remedies. If the payment does not cover the loss of such insured claimant, the Company shall be subrogated to such rights and remedies in the proportion which said payment bears to the amount of said loss, but such subrogation shall be in subordination to the insured mortgage. If loss of priority should result from any act of such insured claimant, such act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against hereunder which shall exceed the amount, if any, lost to the Company by reason of the impairment of the right of subrogation.

**11. LIABILITY LIMITED TO THIS POLICY**

This instrument together with all endorsements and other instruments, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company.

Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the lien of the insured mortgage or of the title to the estate or interest covered hereby or any action asserting such claim, shall be restricted to the provisions and conditions and stipulations of this policy.

No amendment of or endorsement to this policy can be made except by writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

**12. NOTICES, WHERE SENT**

All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to Commonwealth Land Title Insurance Company, Eight Penn Center, Philadelphia Pennsylvania 19103.

—Valid Only If Schedules A and B Are Attached