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**ORIGINAL**

February 23, 2001

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RECORDS AND  
REPORTING

Blanca S. Bayo, Director  
Division of Records & Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Betty Easley Building, Room 110  
Tallahassee, FL 32399-0850

**Via Hand Delivery**

Re: Docket No. 001219-WU  
Request for Approval of Revisions to Water Tariff in Lee County by MHC-  
DeAnza Financing Limited Partnership d/b/a Buccaneer Water Service.

Dear Ms. Bayo:

Enclosed for filing, on behalf of MHC-DeAnza Financing Limited Partnership d/b/a Buccaneer  
Water Service, are an original and fifteen copies of a Petition to Approve Service Tariff and for Variance  
from Rule 25-30.320(2).

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.

Please contact me if you have any questions.

Sincerely,

RUDEN, McCLOSKEY, SMITH,  
SCHUSTER & RUSSELL, P.A.

*Kathryn G.W. Cowdery*  
Kathryn G.W. Cowdery  
Attorney

RECEIVED & FILED

*me*  
FPSC-BUREAU OF RECORDS

KGC/lv  
Enclosures

cc: Jennifer Brubaker, PSC, Division of Legal Services (via hand delivery)

Joint Administrative Procedures Committee (via hand delivery)  
600 S. Calhoun Street  
The Holland Building, Room 120  
Tallahassee, FL 32399-1300

TAL:33171:1

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for Approval )  
of Revisions to Water Tariff ) Docket No. 001219-WU  
in Lee County by MHC-DeAnza )  
Financing Limited Partnership ) Filed: February 23, 2001  
d/b/a Buccaneer Water Service )

PETITION TO APPROVE SERVICE TARIFF  
AND FOR VARIANCE FROM RULE 25-30.320(2)

The petitioner, MHC-DeAnza Financing Limited Partnership d/b/a Buccaneer Water Service ("Buccaneer Water") hereby requests that the Florida Public Service Commission (the "PSC") approve its proposed service tariff, and, pursuant to § 120.542(5), Fla. Stat. (2000), and Ch. 28-104, Fla. Admin. Code, requests a variance from Fla. Admin. Code R. § 25-30.320(2), and as grounds therefor states:

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

MHC-DeAnza Financing Limited Partnership d/b/a  
Buccaneer Water Service  
c/o Manufactured Home Communities, Inc.  
Two North Riverside Plaza, Suite 800  
Chicago, Illinois 60606-2682  
Phone: (312) 279-1400  
Fax: (312) 279-1710

2. The name, address, telephone number, and fax number of the attorney representing the petitioner is:

Kathryn G.W. Cowdery  
Ruden, McClosky, Smith, Schuster & Russell, P.A.  
215 South Monroe Street, Suite 815  
Tallahassee, Florida 32301

Phone: (850) 681-9027  
Fax: (850) 224-2032

3. The variance is requested from Fla. Admin. Code § 25-30.320(2), Refusal or Discontinuance of Service (the "Rule"), which states, in part:

(2) As applicable, the utility may refuse or discontinue service under the following conditions provided that, unless otherwise stated, the customer shall be given written notice and allowed a reasonable time to comply with any rule or remedy any deficiency  
. . . .

The Rule then lists in subsections (a) through (g) ten conditions under which service may be discontinued by the utility. Relevant here, subsection (g) states:

(g) For nonpayment of bills, including nonpayment of municipal sewer service under circumstances specifically provided in section 159.18(2), F.S., . . .  
. . . [subject to notice provisions].

The Rule does not specify in subsections (a) through (g) the conditions under which Buccaneer Water seeks to have authority to discontinue water service, and for this reason Buccaneer Water seeks a variance in order to allow for discontinuance of water service under the conditions as set forth herein.

4. The Florida Administrative Code Annotated states that the Rule implements Florida Statutes §§ 367.081, 367.111, and 367.121. None of these rules specifically address the issue of discontinuance of service, or the circumstances under which a utility may discontinue service. Sec. 367.081, Rates; procedure

for fixing and changing, does not specifically address the issue of discontinuance of service. Sec. 367.111, Service, addresses the requirement that a utility provide service to the area described in its certificate of authorization and that such service be safe, efficient and sufficient as is prescribed by certain parts of Florida Statutes chapters 403 and 373. Section 367.121, Powers of commission, (1) states, in part, that in the exercise of its jurisdiction, the PSC shall have power to prescribe service rules to be observed by each utility, and to adopt rules pursuant to §§ 120.536(1) and 120.54 to implement and enforce the provisions of Ch. 367. Section 367.121 also grants the PSC the authority to do all things necessary or convenient to the full and complete exercise of its jurisdiction and the enforcement of its orders and requirements.

5. On August 11, 2000, Buccaneer Water filed proposed tariff sheets for approval with the PSC's Division of Records & Reporting. (See Attachment "A" hereto). In relevant part, proposed Service Rule 17.0 reads as follows:

17.0 BUCCANEER ESTATES MOBILE HOME PARK - PAYMENT OF WASTEWATER BILLINGS TO PARK OWNER - The Company may discontinue water service to any customer within Buccaneer Estates Mobile Home Park who fails to pay when due said customer's pro rata share of the monthly wastewater services billing submitted to the owner of Buccaneer Estates Mobile Home Park, or said owner's designee, for wastewater services provided to Buccaneer Estates Mobile Home Park. The Company shall not consider a customer delinquent in paying said wastewater billing until the twenty first day after

said billing has been mailed or presented to the customer for payment.

Notice provisions as required by the provisions of the Rule are included in proposed Service Rule 17.0. Buccaneer Water seeks approval of this tariff language because it effectuates the provisions of that certain Final Wastewater Settlement Agreement ("Agreement"), approved by the PSC on August 1, 2000, in PSC Docket No. 981781, Application for Amendment of Certificate No. 247-S to Extend Service Area by the Transfer of Buccaneer Estates in Lee County to North Fort Myers Utility, Inc. A copy of the Agreement is attached hereto as Attachment "B". The parties to the Agreement are Buccaneer Estates Homeowners Association (the "HOA"), North Fort Myers Utility, Inc. ("NFMU"), and Snowbirdland Vistas, Inc., MHC-DeAnza Financing Limited Partnership, and Manufactured Home Communities, Inc. (collectively, "Park Owner").

#### 6. Background

a. Buccaneer Water Services was organized in October, 1981 to provide service to Buccaneer Estates Mobile Home Park in North Fort Myers (the "Park"). The Park was purchased by the current owner in 1994, and the water and wastewater utilities serving the Park were part of that purchase. Snowbirdland Vistas, Inc. owns record title to the Park as nominee for MHC-DeAnza Financing Limited Partnership

("MHC-DeAnza"). The Park Owner originally provided both water and wastewater service to the Park. Wastewater service was provided by the Park Owner's exempt wastewater utility system as part of the lot rental amount. Water service was and continues to be provided by Buccaneer Water.

b. The wastewater utility system serving the Park was transferred to NFMU pursuant to PSC Docket No. 981781, Order No. PSC-99-2444-AS-SU, following a protest by the HOA to application of NFMU's monthly rates and connection fees.

c. Following the PSC's approval of the transfer of the wastewater utility system to NFMU, and the filing of an appeal by Mr. Joe Devine, et al., a significant number of customers refused to pay their wastewater bills. Rather than disconnect the wastewater customers, mediated settlement was attempted and successfully accomplished through execution of the Agreement.

d. The Agreement was itself, pursuant to paragraph 8 therein, contingent upon the execution of a separate settlement agreement relating to certain litigation between the HOA and the Park Owner (the "Confidential Settlement Agreement," a copy of which is attached hereto as Attachment "C"). The Confidential Settlement Agreement was executed on or about July 26, 2000, by the HOA, an individual customer (Mr. Jack Colvin), and the Park Owner. A significant concession by the Park Owner in agreeing

to the Confidential Settlement Agreement was that rather than NFMU providing service to the Park's residents as its customers, the Park Owner would be a bulk service customer of NFMU and pass on its wastewater billing from NFMU to the residents as an exempt reseller. As consideration for this concession, the HOA and Mr. Colvin agreed that if a resident did not pay his or her pass on wastewater bill to the Park Owner, Buccaneer Water could disconnect water service until such time as the wastewater bill was paid. The specific language provided for in paragraph 5 of the Confidential Settlement Agreement is:

In lieu of NFMU continuing to bill the Homeowners directly for the Wastewater Services, each month from and after July 1, 2000, MHC or its designee will pass on to each Homeowner, as contemplated in paragraphs 4, 5 and 6 of the Wastewater Settlement, such Homeowner's pro rata share (i.e., one nine hundred seventy first (1/971)) of the monthly billing submitted to MHC by NFMU for Wastewater Services provided to the entire Park. Said pass on billing to each Homeowner may be billed separately by MHC or its designee, or may be included by MHC, as a separate line item, within the monthly bill for rent submitted by it to each Homeowner. The Parties agree that upon approval of the Wastewater Settlement by the PSC, said pass on billing to the Homeowners shall be deemed authorized by law within the meaning of s. 723.031(5)(c), Florida Statutes. Moreover, should a Homeowner fail to pay any such pass on billing when due, then MHC or its designee may discontinue potable water service to such Homeowner until such amount is paid, in addition to any other remedy provided by law.

e. Due to the confidential nature of the Confidential Settlement Agreement, and the focus of all concerned to gain expeditious PSC approval of the Agreement, the

Confidential Settlement Agreement was not submitted for review as part of Docket No. 981781.

f. All parties to the Agreement and the Confidential Settlement Agreement, including the HOA, were represented by attorneys and advised as to the terms of those agreements.

7. The specific facts that demonstrate a substantial hardship or a violation of principles of fairness that would justify approval of the proposed discontinuation of service tariff, and a variance from the Rule, are as follows:

a. The terms of the Confidential Settlement Agreement provide that it be construed in accordance with and governed by the laws of Florida. Pursuant to law, the proposed water tariff should be approved by the PSC, and a rule variance approved, if required, in order to effectuate the terms of the mediated settlement between the parties, which allow discontinuance of water service to any customer who does not pay his or her pass on wastewater billing to the Park Owner. Approval of the proposed tariff is consistent with fundamental principles of fairness, in that all parties have agreed to the discontinuance tariff language, which formed a part of the consideration for the Agreement. Approval of the proposed water tariff is critical to upholding that consideration. It would violate the tenets of fundamental fairness and result in a substantial hardship for the Park Owner to have agreed to other



provisions of the Confidential Settlement Agreement and the Agreement, including its agreement to be the wastewater utility customer rather than the Park's residents being individual wastewater utility customers, and then to have a substantial portion of the consideration for that agreement denied.

b. Approval of the proposed tariff is in the public interest because it supports through mediated settlement a fair and reasonable resolution of what was a rancorous dispute between multiple parties. The legal system favors the settlement of disputes by mutual agreement between the contending parties. Gulf Coast Elec. Co-op v. Johnson, 727 So. 2d 259 (Fla. 1999). The Florida Supreme Court has stated that this general rule applies with equal force in utility service agreements, and that such settlement agreements should be upheld if as a whole they contain no detriment to the public. Utilities Comm'n of New Smyrna Beach v. Fla. Pub. Serv. Comm'n, 469 So. 2d 731, 732-33 (Fla. 1985). The proposed tariff revision language contains no detriment to the public, and in fact results in a substantial benefit.

c. The Confidential Settlement Agreement provision allowing disconnection of water service to any customer who does not pay his or her pass on wastewater billing to the Park Owner is analogous to the policy considerations behind Rule 25-30.320(1)(g), F.A.C., which allows a privately regulated water

utility to disconnect service to a customer which has not paid its wastewater bill to an exempt governmental utility service provider. In that case, the PSC has no jurisdiction over the governmental authority providing wastewater service which is exempt pursuant to § 367.022(2), Fla. Stat. (2000). Nevertheless, the PSC exercises its authority over the jurisdictional entity, the water utility, to allow the water utility to disconnect water service to any customer which does not pay its bill to the exempt wastewater utility service provider. Likewise, in this case, the PSC has no jurisdiction over the Park Owner, which is an exempt reseller of the wastewater utility service pursuant to § 367.022(8), Fla. Stat. (2000). Nonetheless, the PSC may exercise its jurisdiction over Buccaneer Water in order to effectuate the terms of the mediated settlement agreement, by allowing Buccaneer Water the authority to disconnect water service to those customers who have not paid their pass on wastewater charge to the exempt reseller. Approval of the proposed tariff allows the Park Owner as an exempt reseller to be treated the same as similarly situated exempt governmental entities pursuant to Fla. Admin. Code R. Sec. 25-30.320(2)(g).

8. The variance requested would serve the purposes of the underlying statute because:

a. Approval of the proposed water tariff is within the jurisdiction and broad discretion of the PSC pursuant to § 367.011(2) and (3) Fla. Stat. (2000), and within the PSC's authority to prescribe service rules pursuant to § 367.121(1), Fla. Stat. (2000).

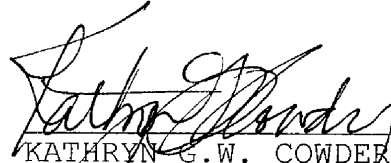
b. There is no prohibition on the approval of the proposed tariff in either Ch. 350 or 367, Fla. Stat., and neither will any adverse precedent be set. The approval of this petition for variance should be limited to the facts of this case which are based on a mediated settlement agreement between the parties.

c. The proposed tariffs are consistent with the intent of the Rule, as discussed in paragraph 7 c., above.

WHEREFORE Buccaneer Water respectfully requests that the PSC:

- 1) Exercise its jurisdiction over this Petition;
- 2) Approve the proposed tariffs;
- 3) Grant a permanent variance from Rule 25-30.320(2) as aforesaid; and
- 4) Grant any other relief deemed appropriate.

Respectfully submitted this 23<sup>rd</sup> day of February 2001.



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Attorneys for MHC-DeAnza  
Financing Limited Partnership  
d/b/a Buccaneer Water Service

WATER TARIFF

INDEX OF RULES AND REGULATIONS

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Extensions .....	8.0	6.0
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(Continued to Sheet No. 6.1)



Donald Barton  
General Manager

WATER TARIFF

(continued from Sheet No. 6.0)

	<u>Sheet Number</u>	<u>Rule Number</u>
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Unauthorized Connections - Water .....	12.1	20.0
Withholding Service .....	8.0	5.0

Donald Barton  
General Manager

## WATER TARIFF

(Continued from Sheet No. 10.0)

- 14.0 RIGHT OF WAY OR EASEMENTS - The customer shall grant or cause to be granted to the Company, and without cost to the Company, all rights, easements, permits, and privileges which are necessary for the rendering of water service.
- 15.0 BILLING PERIODS - Bills for water service will be rendered monthly as stated in the rate schedule and shall become due when rendered and be considered as received by the customer when delivered or mailed to the water service address or some other place mutually agreed upon. Non-receipt of bills by the customer shall not release or diminish the obligation of the customer with respect to payment thereof.
- 16.0 DELINQUENT BILLS - Bills are due when rendered. However, the Company shall not consider the customer delinquent in paying any bill until the twenty-first (21) day after the Company has mailed or presented the bill to the customer for payment. Water service may then be discontinued only after the Company has mailed or presented within five (5) working days written notice to the customer in accordance with Rule 25-30.320, Florida Administrative Code. Water service shall be restored only after the Company has received payment for all past-due bills and reconnect charges from the customer.

There shall be no liability of any kind against the Company for the discontinuance of water service to the consumer for that customer's failure to pay the bills on time.

Partial payment of a bill for water service rendered will not be accepted by the Company, except by the Company's agreement thereof or by direct order from the Commission.

- 17.0 BUCCANEER ESTATES MOBILE HOME PARK - PAYMENT OF WASTEWATER BILLINGS TO PARK OWNER - The Company may discontinue water service to any customer within Buccaneer Estates Mobile Home Park who fails to pay when due said customer's pro rata share of the monthly waste-

(Continued to Sheet No. 12.0)

Donald Barton  
General Manager

(Continued from Sheet No. 11.0)

water services billing submitted to the owner of Buccaneer Estates Mobile Home Park, or said owner's designee, for wastewater services provided to Buccaneer Estates Mobile Home Park. The Company shall not consider a customer delinquent in paying said wastewater billing until the twenty first day after said billing has been mailed or presented to the customer for payment.

Water service may be discontinued due to delinquency in payment of customer's wastewater billing only after the customer has been given at least 5 working days' written notice. Such notice shall be separate and apart from any bill for water service. Water service shall be restored only after all past due wastewater billings have been paid by the customer to the park owner or its designee, and the Company has received payment for all reconnect charges.

18.0 TAX CLAUSE - A municipal or county franchise tax levied upon a water or wastewater public utility shall not be incorporated into the rate for water or wastewater service but shall be shown as a separate item on the utility's bills to its customers in such Municipality or County.

19.0 CHANGE OF OCCUPANCY - When change of occupancy takes place on any premises supplied by the Company with water service, written notice thereof shall be given at the office of the Company not less than three (3) days prior to the date of change by the outgoing customer. The outgoing customer shall be held responsible for all water service used on such premises until such written notice is so received by the Company and the Company has had reasonable time to discontinue the water service. However, if such written notice has not been received, the application of a succeeding occupant for water service will automatically terminate the prior account. The customer's deposit may be transferred from one service location to another, if both locations are supplied by the Company; the customer's deposit may not be transferred from one name to another.

(Continued to Sheet No. 12.1)

Donald Barton  
General Manager



## WATER TARIFF

(Continued from Sheet No. 12.0)

Notwithstanding the above, the Company will accept telephone orders, for the convenience of its customers, to discontinue or transfer water service from one service address to another and will use all reasonable diligence in the execution thereof. However, oral orders or advice shall not be deemed binding or be considered formal notification to the Company.

- 20.0 UNAUTHORIZED CONNECTIONS - WATER - Connections to the Company's water system for any purpose whatsoever are to be made only by employees of the Company. Any unauthorized connections to the customer's water service shall be subject to immediate discontinuance without notice. Water service shall not be restored until such unauthorized connections have been removed and until settlement is made in full to the Company for all water service estimated by the Company to have been used by reason of such unauthorized connection.

(Continued to Sheet No. 13.0)

Donald Barton  
General Manager

## WATER TARIFF

(Continued from Sheet No. 12.1)

- 21.0 METERS - All water meters shall be furnished by and remain the property of the Company and shall be accessible and subject to its control. The customer shall provide meter space to the Company at a suitable and readily accessible location within the premises to be served and also provide adequate and proper space for the installation of the meter and other similar devices.
- 22.0 ALL WATER THROUGH METER - That portion of the customer's installation for water service shall be so arranged to ensure that all water service shall pass through the meter. No temporary pipes, nipples or spaces are permitted and under no circumstances are connections allowed which may permit water to by-pass the meter or metering equipment.
- 23.0 ADJUSTMENT OF BILLS - When a customer has been overcharged or undercharged as a result of incorrect application of the rate schedule, incorrect reading of the meter, incorrect connection of the meter, or other similar reasons, the amount may be credited or billed to the customer as the case may be pursuant to Rule 25-30.350, Florida Administrative Code.
- 24.0 ADJUSTMENT OF BILLS FOR METER ERROR - When meter tests are made by the Commission or by the Company, the accuracy of registration of the meter and its performance shall conform with Rule 25-30.262, Florida Administrative Code, and any adjustment of a bill due to a meter found to be in error as a result of any meter test performed whether for unauthorized use or for a meter found to be fast, slow, non-registering, or partially registering, shall conform with Rule 25-30.340, Florida Administrative Code.
- 25.0 METER ACCURACY REQUIREMENTS - All meters used for measuring the quantity of water delivered to a customer shall be in good mechanical condition and shall be adequate in size and design for the type of service which they measure. Before being installed for the rendering of water service to a customer, every water meter, whether new, repaired, or removed from service for any cause, shall be adjusted to register within prescribed accuracy limits as set forth in Rule 25-30.262, Florida Administrative Code.

(Continued to Sheet No. 14)

Donald Barton  
General Manager

07/07/00 PRE 11:00 FAX 2200317 FILE NO. 222 10/12 '00 10-2 PRUCE INDUSTRIES CON LIT 000 000 4504

## FINAL WASTEWATER SETTLEMENT AGREEMENT

This Agreement made and entered into this \_\_\_ day of June, 2000 by and among the Buccaneer Homeowners Association, Inc. ("Homeowners"), for and on behalf of the residents of Buccaneer Estates in North Fort Myers, Florida, Snowbirdland Villas, Inc., and MHC-DeAnza Limited Partnership, Manufactured Home Communities, Inc. ("Owner") and North Fort Myers Utility, Inc. ("NFMU"), as follows.

### RECITATIONS:

- a. Dispute has arisen between the above-captioned parties relative to the manner and method of delivery of wastewater services and payment therefor to the Homeowners, owner, and NFMU;
- b. The parties have met in voluntary mediation on May 24, June 2, June 6 and June 12 before the Honorable William G. Salomone, as Mediator, as well as with the participation of the Florida Public Service Commission staff and the Public Counsel of the State of Florida and have reached amicable resolution of the outstanding issues between them relative to the provision of wastewater services; and
- c. The parties hereby memorialize their agreement as follows:
  1. The foregoing recitations are true, correct, and incorporated herein as though fully set forth;
  2. For and in consideration of the agreement set forth below, each party hereto releases the other from any and all claims it has against the other relative to the provision of wastewater services set forth herein;
  3. In compromise and settlement of the issues between the parties, Owner will pay at Closing to NFMU a portion of the appropriate connection charge for the 971 units within Buccaneer Estates in the amount of \$180,000;
  4. Subject to the provisions of paragraph (6) hereinafter, NFMU will bill Owner monthly according to its approved Florida Public Service Commission approved bulk rate, plus an agreed upon amount of \$1.93 per unit within Buccaneer Village per month for services rendered on and after July 1, 2000, and owner will pay NFMU for such services in the ordinary course of business;
  5. Owner will bill Homeowners on a pro rata flat rate of one nine hundred and seventy first (1/971st) per residential lot for the total of such wastewater services monthly;
  6. NFMU will re-compute its billing for service rendered to the homeowners for wastewater treatment subsequent to September 1, 1999, through June 30, 2000, and will collect for said ten months in arrears by rendering its normal bill for the months of July, 2000 through the end of March 2001, plus re-computed bills for each month commencing in September, 1999 and concluding for services rendered May, 2000 in order that NFMU will be made whole on its arrears. Essentially, this means that NFMU's invoices will be approximately double that which it would otherwise normally be entitled to through the month of April, 2000. For bills rendered on and after April 1, 2001, therefore, billing would be at the normal NFMU tariff rate plus an agreed upon fee for maintenance of the onsite system as described herein above, or at an expected approximate amount of \$12.15 per dwelling unit per month thereafter;
  7. Concurrently with the Closing hereon, NFMU will issue refund checks to all of those homeowners within Buccaneer Estates who have paid NFMU directly for service rendered subsequent to September, 1999;
  8. This Agreement is executed in connection with a complete settlement of all outstanding claims of the Homeowners against the Owner, pursuant to Chapter 723, F.S., and otherwise which will be stated further and in greater detail in a separate definitive agreement between homeowners and owner, the approval thereof being a condition precedent to the lawful effectiveness hereof; and
  9. Each party hereto, for itself, its successors and assigns hereby releases and discharges the other from and against any claim that it may have against the other save and except for the matters contained herein and the separate writing between the homeowners and the owner as

described in Paragraph 8 above and each party shall dismiss any pending actions that it now has against the other, including the pending appeal of the Final Order of the Florida Public Service Commission now pending before the First District Court of Appeal and filed by Messers Devine, Gill, and Ludington, with prejudice and without cost.

10. Closing shall occur within one week of approval of this agreement by the Florida Public Service Commission, if necessary and approval by the Homeowners and Owner of the definitive agreement referenced herein.

11. Any subsequent Owner of NFMU shall bill in a basis of its Tariff for similar wastewater services.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day above first written.

BUCCANEER HOMEOWNERS ASSOCIATION, INC.

BY: Joseph F. Devine  
Joseph F. Devine, President

Attest:

\_\_\_\_\_  
Secretary

SNOWBIRDLAND VISTAS, INC.,  
MHC-DeANZA Financing Limited Partnership,  
MANUFACTURED HOME COMMUNITIES, INC.

BY: Howard Walker  
Howard Walker, Chief Executive Officer

Attest:

\_\_\_\_\_

NORTH FORT MYERS UTILITY, INC.

BY: A. A. Reeves  
A. A. Reeves, Vice President

Attest:

\_\_\_\_\_

Joseph F. Devine  
Joseph F. Devine

\_\_\_\_\_  
Donald Gill

\_\_\_\_\_  
Ronald Ludington

CONFIDENTIAL SETTLEMENT AGREEMENT

THIS CONFIDENTIAL SETTLEMENT AGREEMENT (the "Agreement"), made this \_\_\_\_\_ day of July, 2000, by and between MHC-DEANZA FINANCING LIMITED PARTNERSHIP, an Illinois limited partnership, MANUFACTURED HOME COMMUNITIES, INC., a Maryland corporation, and SNOWBIRDLAND VISTAS, INC., an Illinois corporation (individually and collectively referred to as "MHC"), on one hand, and BUCCANEER HOMEOWNERS' ASSOCIATION, INC., a Florida corporation ("ASSOCIATION"), and JACK COLVIN, as putative class representative ("COLVIN") (ASSOCIATION and COLVIN are collectively referred to as "PLAINTIFFS"), on the other hand.

WITNESSETH

WHEREAS, MHC is the owner and operator of that certain manufactured home community located in North Fort Myers, Florida, and commonly known as Buccaneer Estates Mobile Home Park (the "Park");

WHEREAS, MHC d/b/a Buccaneer Water Service currently provides potable water service to the lots in the Park (the "Lots");

WHEREAS, ASSOCIATION is the homeowners association formed by the owners of homes located in the Park (the "Homeowners") pursuant to the provisions of Section 723.075, Florida Statutes, which has the powers and duties set forth in Chapter 723, Florida Statutes;

MHC 243023-001007  
7/24/2000 141837.3



*[Handwritten signature]*

WHEREAS, ASSOCIATION has all necessary consents and authority to represent the interests of the Homeowners and is authorized to enter into this Agreement on their behalf and bind them to the terms hereof;

WHEREAS, pursuant to that certain Wastewater Agreement dated August 24, 1998 (the "Wastewater Agreement"), MHC agreed to sell the wastewater collection system installed in the Park (the "Park Wastewater System") to NORTH FORT MYERS UTILITY, INC. ("NFMU"), and NFMU agreed to provide central wastewater collection, treatment and disposal services (the "Wastewater Services") to the Park and the Homeowners;

WHEREAS, NFMU subsequently applied to the Florida Public Service Commission (the "PSC") for an amendment to its Certificate of Authorization to include the Park within its wastewater service area (the "Application"), at PSC Docket No. 981781-SU (the "PSC Proceeding");

WHEREAS, the PSC approved the Application by Order No. PSC-00-0370-FOF-SU (the "Order"), from which Order three of the Homeowners, Messrs. Donald Gill, Joseph Devine and Ronald Ludington, acting individually (the "Appellants"), appealed to the Florida First District Court of Appeals (the "Appeal"), which Appeal remains pending;

WHEREAS, PLAINTIFFS filed suit against MHC in the Circuit Court for Lee County, Florida (the "Court"), sub nom. *BUCCANEER HOMEOWNERS' ASSOCIATION, INC., and JACK COLVIN v. SNOWBIRDLAND VISTAS, INC., MHC-DEANZA FINANCING LIMITED PARTNERSHIP and MANUFACTURED HOME COMMUNITIES, INC.*, Case No. 99-1733 CA LG (the "Litigation"), wherein PLAINTIFFS asserted various claims relating to certain lot rental increases at the Park, as well as to certain pass-through charges, pass-on charges and alleged

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reductions in service at the Park arising out of NFMU's provision of Wastewater Services to the Homeowners, which claims MHC has denied;

WHEREAS, NFMU has provided notice to many of the Homeowners that NFMU intends to disconnect their homes from the Park Wastewater System unless the Homeowners pay all outstanding invoices for the Wastewater Services;

WHEREAS, the Florida Office of Public Counsel filed a Petition for Emergency Variance or Waiver on behalf of the Homeowners in the PSC Proceeding, seeking a withdrawal of NFMU's authority to disconnect the Homeowners from the Park Wastewater System;

WHEREAS, ASSOCIATION and NFMU have reached a settlement and compromise of their existing disputes, as reflected in that certain Final Wastewater Settlement Agreement (the "Wastewater Settlement"), a copy of which is attached hereto as Addendum "A," which Wastewater Settlement contemplates certain agreements and actions by MHC in order to be effective;

WHEREAS, the Wastewater Settlement is expressly conditioned upon settlement between ASSOCIATION and MHC of the Litigation; and

WHEREAS, the parties hereto (sometimes individually referred to as a "Party" and collectively referred to as the "Parties") are entering into this Agreement in order to settle, resolve and dispose of all disputed issues between them, including those asserted or assertable in the Litigation, and their entering into this Agreement shall not be construed as an admission of liability or responsibility on behalf of any Party;

A handwritten signature in black ink, appearing to be 'J. B. Co.' or similar, written over a large, stylized flourish or scribble.

NOW, THEREFORE, the Parties, in consideration of the mutual covenants, conditions, promises and undertakings contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

1. The foregoing recitals are hereby acknowledged as true and correct. Said recitals, together with the Wastewater Settlement, are hereby incorporated into, and made material terms of, this Agreement.

2. Except as provided in paragraph 9 hereof, this Agreement is entered into by the Parties for the purpose of settling all claims, demands, concerns and disputes between and among them, as relating to the Park and otherwise, including, without limitation, those matters alleged or inferred from the allegations and records in the Litigation.

3. This Agreement is made and executed without any implication of wrongdoing or admission of liability by any Party and with the intent of all Parties to fully cooperate in implementing this Agreement.

4. Each Party represents and warrants that it has full authorization and legal authority to establish the legally binding rights, obligations and duties as expressed herein or contemplated hereby, and shall hold harmless the other Parties to the extent any claims or demands are made arising out of, or relating to, the matters expressed herein, regardless of how proximate or remote.

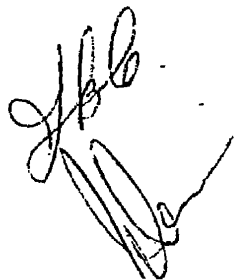
5. Subsequent to the execution of the Wastewater Agreement, each Homeowner received from MHC a reduction in his or her monthly base lot rental amount in the amount of Six and 07/100 dollars (\$6.07), in recognition of the facts that NFMU thereafter provided the Wastewater Services for the Homeowners and that NFMU thereafter billed the Homeowners



directly each month on account thereof. In lieu of NFMU continuing to bill the Homeowners directly for the Wastewater Services, each month from and after July 1, 2000, MHC or its designee will pass on to each Homeowner, as contemplated in paragraphs 4, 5 and 6 of the Wastewater Settlement, such Homeowner's pro rata share (*i.e.*, one nine hundred seventy first (1/971)) of the monthly billing submitted to MHC by NFMU for Wastewater Services provided to the entire Park. Said pass on billing to each Homeowner may be billed separately by MHC or its designee, or may be included by MHC, as a separate line item, within the monthly bill for rent submitted by it to each Homeowner. The Parties agree that upon approval of the Wastewater Settlement by the PSC, said pass on billing to the Homeowners shall be deemed authorized by law within the meaning of s. 723.031(5)(c), Florida Statutes. Moreover, should a Homeowner fail to pay any such pass on billing when due, then MHC or its designee may discontinue potable water service to such Homeowner until such amount is paid, in addition to any other remedy provided by law. To the full extent required by s. 723.037, Florida Statutes, if at all, ASSOCIATION, on behalf of itself and the Homeowners, hereby waives prior written notice of the foregoing provisions.

6. Notwithstanding the terms of the Park's Prospectuses and/or any prior notices, understandings, leases or other agreements, other than for Lots occupied by Homeowners pursuant to Lifetime Lease Agreements ("Lifetime Tenants"):

- a. for rental years commencing between July 1, 2000, and June 30, 2001, the monthly base lot rental amount for each Lot in the Park shall not exceed an amount equal to one hundred three percent (103%) of the monthly base lot rental amount in effect for such Lot for the immediately preceding



rental year. To the extent that the monthly base lot rental amount paid by a Homeowner for July 2000 and/or August 2000 exceeds one hundred three percent (103%) of the monthly base lot rental amount in effect for the immediately preceding year, MHC will credit such excess against the base lot rental amount owing by such Homeowner for September 2000. To the full extent required by Chapter 723, Florida Statutes, if at all, ASSOCIATION, on behalf of itself and the Homeowners, hereby waives prior written notice of this provision;

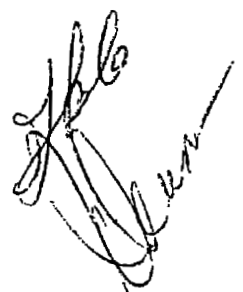
- b. for rental years commencing between July 1, 2001, and June 30, 2002, the monthly base lot rental amount for each Lot in the Park shall be increased to an amount equal to one hundred three and one-half percent (103.5%) of the monthly base lot rental amount in effect for such Lot for the immediately preceding rental year;
- c. for rental years commencing between July 1, 2002, and June 30, 2003, the monthly base lot rental amount for each Lot in the Park shall be increased to an amount equal to one hundred four percent (104%) of the monthly base lot rental amount in effect for such Lot for the immediately preceding rental year;
- d. for rental years commencing between July 1, 2003, and June 30, 2004, the monthly base lot rental amount for each Lot in the Park shall be increased to an amount equal to one hundred plus x percent (10x%) of the monthly base lot rental amount in effect for such Lot for the immediately preceding



- year, where  $x$  equals the greater of four or the annual percentage increase in the "Consumer Price Index for All Urban Consumers, All Items" prepared by the Bureau of Labor Statistics of the United States Department of Labor (the "CPI") for the calendar year ending December 31, 2002. For example, should the annual percentage increase in the CPI for the calendar year ending December 31, 2002, equal 4.25%, then for rental years commencing between July 1, 2003, and June 30, 2004, the monthly base lot rental amount would equal 104.25% of the monthly base lot rental amount in effect for the immediately preceding rental year; and
- e. for rental years commencing between July 1, 2004, and June 30, 2005, the monthly base lot rental amount for each Lot in the Park shall be increased to an amount equal to one hundred plus  $y$  percent ( $10y\%$ ) of the monthly base lot rental amount in effect for such Lot for the immediately preceding year, where  $y$  equals the greater of four or the annual percentage increase in the CPI for the calendar year ending December 31, 2003.

7. For Lots occupied by Homeowners pursuant to a Lifetime Lease Agreement, the monthly base lot rental amount for each such Lot will continue to be determined annually in accordance with the terms of the Lifetime Lease Agreement in effect for the Homeowner occupying such Lot.

8. Beginning with the rental year commencing July 1, 2000, and continuing through the rental year commencing July 1, 2004, MHC will contribute \$10,000.00 each rental year to



ASSOCIATION's social fund, said monies to be used for social functions which are open to the Homeowners generally.

9. Concurrently with the execution and delivery of this Agreement, PLAINTIFFS shall cause their attorneys to dismiss, with each party to bear its own costs and attorney fees, the Second Amended Complaint filed in the Litigation, with prejudice as to Counts I through IV, and without prejudice to the right, if any, of one or more Lifetime Tenants to refile a complaint in the Court asserting the claims asserted in Counts V and VI.

10. The Wastewater Settlement is conditioned upon its execution by the Appellants, as well as upon their dismissal of the Appeal with prejudice and without costs. Should any of the Appellants fail to execute the Wastewater Settlement, or fail to dismiss the Appeal with prejudice and without costs, by August 15, 2000, then this Agreement shall be void *ab initio* and of no further force or effect.

11. ASSOCIATION does hereby, for and on behalf of itself, each of the Homeowners, their respective successors and assigns, and the respective officers, directors, shareholders, members, executors, administrators, attorneys, successors and assigns of each, and COLVIN, on behalf of himself, his successors and assigns (collectively, the "PLAINTIFF Parties"), release, remise, acquit, satisfy and forever discharge MHC, its respective affiliates, parents and subsidiaries, and the respective officers, directors, shareholders, partners, members, attorneys, successors and assigns of each (collectively, the "MHC Parties"), of and from any and all manner of actions, causes, causes of action, suits, claims and demands whatsoever, in law or in equity, which any of the PLAINTIFF Parties ever had or now has, or hereafter can, shall or may have, against any of the MHC Parties, for, upon or by reason of (i) any and all claims



asserted or assertable in the Litigation, (ii) any and all claims arising out of any of the transactions contemplated in the Wastewater Agreement, and (iii) any and all claims relating to increases in base lot rental amounts at the Park for rental years commencing July 1, 2000, and earlier; provided, however, that the terms of this release do not apply to the performance by MHC of the obligations created by this Agreement.

12. Each of the parties comprising MHC does hereby, for and on behalf of itself and the other MHC Parties, release, remise, acquit, ratify and forever discharge each of the PLAINTIFF Parties of and from any and all manner of actions, causes, causes of action, suits, claims and demands whatsoever, in law or in equity, which any of the MHC Parties ever had or now have, or hereafter can, shall or may have, against any of the PLAINTIFF Parties, for, upon or by reason of (i) any and all claims asserted or assertable in the Litigation, (ii) any and all claims arising out of any of the transactions contemplated in the Wastewater Agreement, and (iii) any and all claims relating to increases in base lot rental amounts at the Park for rental years commencing July 1, 2000, and earlier; provided, however, that the terms of this release do not apply to the performance by the PLAINTIFF Parties of the obligations created by this Agreement, including without limitation, the obligations (i) to pay when due the pass on billings for Wastewater Services, as contemplated in paragraph 5 hereof, and (ii) to pay when due amounts owing as base lot rental amounts for Lots in the Park, as contemplated in paragraph 6 hereof.

13. The Parties shall, at any time and from time to time following the execution hereof, execute and deliver all such further instruments or documents and take all such further

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actions as may be reasonably necessary or appropriate in order to carry out more effectively the intent and purposes of this Agreement.

14. The Parties intend that the performance of all duties, obligations and activities contemplated hereunder be done in strict compliance with the terms, provisions and procedures contained herein.

15. With respect to the claims, causes of action and contractual rights released pursuant to this Agreement, each Party represents and warrants that it has not in any manner assigned, pledged or otherwise transferred to anyone, or any entity, any interest in any such claim, cause of action or contractual right hereby released, and that each claim, cause of action and contractual right described herein is fully and finally discharged, settled and satisfied. Each Party agrees to indemnify and hold the other Parties harmless from any and all damages, costs, expenses, attorneys' fees and liabilities incurred by the other Parties by reason of any breach of this representation and warranty by the indemnifying Party.

16. Each Party represents and warrants to the other Parties that it has carefully reviewed this Agreement, has had such opportunity as it thought necessary to consult with counsel of its choice concerning this Agreement, fully understands its terms, and entered into it freely and voluntarily.

17. This settlement is the compromise of disputed claims and the settlement provided for in this Agreement does not constitute an admission of any fact, claim or allegation, or indicate, imply or admit the truth of any allegation or claim in any pleading or other paper or document served or filed in the Litigation.

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18. This Agreement incorporates, embodies, expresses and supersedes all agreements and understandings, written or oral, between or among the Parties regarding the subject matter hereof, and this Agreement may not be altered or modified except in writing duly executed by all Parties.

19. This Agreement shall be deemed to constitute a contract made and entered into under the laws of the State of Florida, and for all purposes this Agreement shall be construed in accordance with and governed by the laws of the State of Florida.

20. The legal rights and obligations provided for in this Agreement shall inure to the benefit of and be binding upon the MHC Parties and the PLAINTIFF Parties, and their respective successors and assigns.

21. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement.

22. The Parties agree that all terms and provisions of this Agreement shall remain confidential and shall not be disclosed to persons other than the Parties, and their respective legal counsel, absent court order or otherwise under compulsion of law. In addition, the Parties agree not to disclose information relating to this Agreement to any third parties, absent the collective prior written consent of all other Parties, except that the terms and provisions of this Agreement may be disclosed to the Homeowners and to others if necessary to enforce compliance with this Agreement, in a court of law or otherwise.

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23. Each Party agrees not to make any written or oral statements that disparage any other Parties, or entities or individuals released hereby, as relating to their business acumen, character or reputation.

24. In the event of any ambiguity in any term or condition set forth in this Agreement, and notwithstanding which Party(ies) was(were) responsible, in whole or in part, for the drafting of such language, the subject term(s) and/or condition(s) shall not be construed against any Party. Rather, it is the express intent of the Parties that if such instances arise, the most reasonable interpretation and construction of such language, term(s) and/or condition(s) shall apply.

25. In the event of any disputes arising pursuant to or relating to the terms of this Agreement, said disputes shall be resolved by binding arbitration administered by the American Arbitration Association. The hearing locale for any such arbitration shall be in Fort Myers, Florida. In any such arbitration, the prevailing Party(ies) shall be entitled to recover its(their) attorney's fees, costs and expenses from the non-prevailing Party(ies). The Parties specifically agree and stipulate that any arbitrator assigned to arbitrate any such dispute shall have the authority to determine which Party(ies) is(are) the prevailing Party(ies) and make an award of attorney's fees, costs and expenses accordingly.

**[The rest of this page is intentionally left blank]**





IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered as of the day and year first above written.

MHC-DEANZA FINANCING LIMITED PARTNERSHIP

David W. Fell  
Witness

By: MHC-QRS DEANZA, INC.  
Its: General Partner

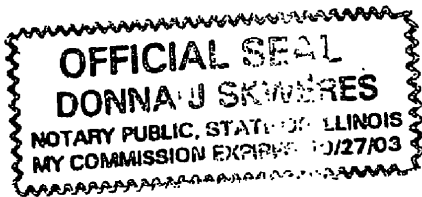
Cheryl DePaula  
Witness

By: Howard Walker  
Name: Howard Walker  
Its: CEO

STATE OF ILLINOIS)  
COUNTY OF COOK )

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the jurisdiction aforesaid to take acknowledgments, personally appeared Howard Walker, known to me to be the person who executed the foregoing instrument on behalf of MHC-QRS DEANZA, INC., as General Partner of MHC-DEANZA FINANCING LIMITED PARTNERSHIP, and acknowledged before me that s/he executed the same on behalf of said entity as such General Partner.

WITNESS my hand and seal this 25<sup>th</sup> day of July, 2000, in the County and State first above written.



Donna J. Skweres  
Signature of Notary Public (SEAL)  
State of Illinois  
Name: Donna J. Skweres  
Commission No.: 498003  
My commission expires: 10/27/03

Personally known ✓ or Produced as identification \_\_\_\_\_

MANUFACTURED HOME  
COMMUNITIES, INC.

David W. Fell  
Witness

By: Howard Walker

Name: Howard Walker

Cheryl DePaula  
Witness

Its: CEO

STATE OF ILLINOIS)  
COUNTY OF COOK )

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the jurisdiction aforesaid to take acknowledgments, personally appeared Howard Walker, known to me to be the person who executed the foregoing instrument on behalf of MANUFACTURED HOME COMMUNITIES, INC., and acknowledged before me that s/he executed the same on behalf of said entity.

WITNESS my hand and seal this 25<sup>th</sup> day of July, 2000, in the County and State first above written.



Donna J. Skweres  
Signature of Notary Public (SEAL)  
State of Illinois  
Name: Donna J. Skweres  
Commission No.: 498003  
My commission expires: 10/27/03

Personally known ✓ or Produced as identification \_\_\_\_\_

SNOWBIRDLAND VISTAS, INC.

David W. Fell  
Witness

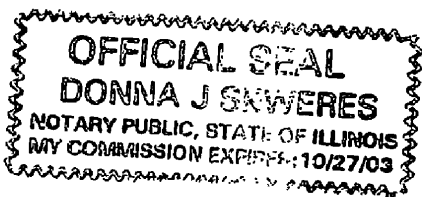
Cheryl DePaula  
Witness

By: Jennifer L. Usher  
Name: Jennifer L. Usher  
Its: Asst. Vice President

STATE OF ILLINOIS)  
COUNTY OF COOK )

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the jurisdiction aforesaid to take acknowledgments, personally appeared Jennifer Usher, known to me to be the person who executed the foregoing instrument on behalf of SNOWBIRDLAND VISTAS, INC., and acknowledged before me that s/he executed the same on behalf of said entity.

WITNESS my hand and seal this 25<sup>th</sup> day of July, 2000, in the County and State first above written.



Donna J. Skweres  
Signature of Notary Public (SEAL)  
State of Illinois  
Name: Donna J. Skweres  
Commission No.: 498003  
My commission expires: 10/27/03

Personally known  or Produced as identification

**BUCCANEER HOMEOWNERS' ASSOCIATION, INC.**

By:

Name:

Its:

*Joseph Devine*  
Joseph DEVINE  
PRES. BHOA

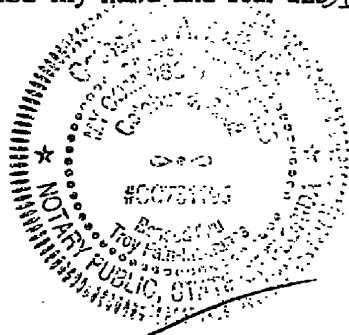
*Lorraine J. Coffey*  
Witness  
Lorraine J. Coffey

*Catherine A. Battaglia*  
Witness  
Catherine A. Battaglia

STATE OF FLORIDA )  
COUNTY OF LEE )

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the jurisdiction aforesaid to take acknowledgments, personally appeared Joseph Devine known to me to be the person who executed the foregoing instrument on behalf of BUCCANEER HOMEOWNERS' ASSOCIATION, INC., and acknowledged before me that s/he executed the same on behalf of said entity.

WITNESS my hand and seal this 25 day of July, 2000, in the County and State first above written.



*Catherine A. Battaglia*  
Signature of Notary Public (SEAL)  
State of Florida  
Name: Catherine A. Battaglia  
Commission No.: 00781195  
My commission expires: Oct 6, 2002

Personally known  or Produced as identification \_\_\_\_\_

