

Case Assignment and Scheduling Record

Section 1 - Division of Records and Reporting (RAR) Completes

Docket No. 981913-WS Date Docketed: 12/21/1998 Title: Petition for waiver of Rule 25-30.110(3), F.A.C., by CHC, VII, Ltd. in Polk County.
 Company: CHC, VII, Ltd.

Official Filing Date: _____
 Last Day to Suspend: _____ Expiration: _____

Referred to: _____
 ("(") indicates OPR)

ADM AFA APP CAF ONJ EAG GCL (LEG) RAR RRR MAM

Section 2 - OPR Completes and returns to RAR in 10 workdays.

Time Schedule

Program/Module A11(b)

Staff Assignments

OPR Staff A Crosby, C Ferguson

Staff Counsel C Ferguson

OCRs (MAM) S Clapp

() _____

() _____

() _____

() _____

**WARNING: THIS SCHEDULE IS AN INTERNAL PLANNING DOCUMENT.
 IT IS TENTATIVE AND SUBJECT TO REVISION.
 FOR UPDATES CONTACT THE RECORDS SECTION: (850) 413-6770**
 Current CASR revision level

0

Due Dates

Previous Current

1. FAW Notice Filed	NONE	01/28/1999
2. Staff Recommendation	NONE	03/04/1999
3. Agenda - Regular	NONE	03/16/1999
4. PAA Order - Automatic Closing	NONE	04/06/1999
5. FAW Notice Filed	NONE	05/06/1999
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Recommended assignments for hearing and/or deciding this case:

Full Commission Commission Panel _____
 Hearing Examiner _____ Staff _____

Date filed with RAR: 12/30/1998

Initials: OPR _____
 Staff Counsel _____

Section 3 - Chairman Completes

Assignments are as follows:

- Hearing Officer(s)

Commissioners						Hrg. Exam.	Staff
ALL	JN	DS	CL	GR	JC		
X							

- Prehearing Officer

Commissioners					ADM
JN	DS	CL	GR	JC	
					X

Where panels are assigned the senior Commissioner is Panel Chairman; the identical panel decides the case.
 Where one Commissioner, a Hearing Examiner or a Staff Member is assigned the full Commission decides the case.

Approved: _____
 Date: 12/30/1998

C

M E M O R A N D U M

April 5, 1999

RECEIVED-FPSC

99 APR -5 AM 9:19

RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (FERGUSON) *CF PJ*
RE: DOCKET NO. 981913-WS - PETITION FOR WAIVER OF RULE 25-30.110(3), F.A.C., BY CHC, VII, LTD. IN POLK COUNTY.

99-0639-FOF

Attached is a NOTICE OF PROPOSED AGENCY ACTION ORDER GRANTING PETITION FOR WAIVER OF RULE 25-30.110(3), F.A.C., AND REQUIRING THE UTILITY TO FILE AN AFFIDAVIT CERTIFYING REVENUES TO DETERMINE REGULATORY ASSESSMENT FEES FOR 1996 AND 1997, to be issued in the above-referenced docket.

(Number of pages in order - 7)

CF/dr

Attachment

cc: Division of Water and Wastewater (Clapp)
Division of Legal Services (Crosby)

I:\981913-0.CF

2/1

STATE OF FLORIDA

PUBLIC SERVICE COMMISSION

DOCKET NO. 981913-WS
PETITION OF CHC VII, LTD. FOR
WAIVER OF RULE 25-30.110(3), F.A.C.

1. Notice of Appearance
2. Affidavit of Raymond L. Moats and Exhibits to same:
 - a) August 30, 1994 Southwest Florida Water Management District Consent Order
 - b) September 12, 1996 correspondence to Billie Messer, with Application for Declaratory Statement Relating to Exemption from Regulation or Nonjurisdictional Finding
 - c) August 10, 1998 correspondence from John D. Williams, Bureau Chief of the Public Service Commission.

Place in correspondence
side of file

Handout
3/14/99
Agenda
Item 61

STATE OF FLORIDA

PUBLIC SERVICE COMMISSION

DOCKET NO. 981913-WS
PETITION OF CHC VII, LTD. FOR
WAIVER OF RULE 25-30.110(3), F.A.C.

NOTICE OF APPEARANCE

COMES NOW the undersigned, Ronald L. Clark, Esquire, of Clark & Campbell, P.A., being duly admitted to the practice of law in the State of Florida, and hereby enters his appearance on behalf of CHC VII, Ltd. in the above-styled cause.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to Cleveland Ferguson, Esquire, counsel for the State of Florida, Public Service Commission, on this 16th day of March, 1999.



RONALD L. CLARK, ESQUIRE
Clark & Campbell, P.A.
Post Office Box 6559
Lakeland, Florida 33807-6559
(941) 647-5337
Attorneys for CHC VII, Ltd.
Florida Bar Number: 205192

STATE OF FLORIDA
PUBLIC SERVICE COMMISSION

DOCKET NO. 981913-WS
PETITION OF CHC VII, LTD. FOR
WAIVER OF RULE 25-30.110(3), F.A.C.

AFFIDAVIT OF RAYMOND L. MOATS

STATE OF FLORIDA:
COUNTY OF POLK:

Before me, the undersigned authority, personally appeared Raymond L. Moats, who being first duly sworn, deposes and says based on personal knowledge:

1. The Affiant is the Vice President of CRF Management Co., Inc., the general partner of the Petitioner herein, CHC VII, Ltd., a Florida limited partnership.

2. The Petitioner is the owner of two retiree mobile home parks in Polk County, Florida, Swiss Golf Mobile Home Park and Hidden Golf Mobile Home Park ("CHC VII Parks") regulated by Chapter 723, Florida Statutes. Petitioner owns and operates systems providing potable water and wastewater treatment services to the CHC VII Parks ("CHC Systems"). The Petitioner rents lots to mobile home owners in the CHC VII Parks.

3. On August 30, 1994, the Southwest Florida Water Management District ("District"), mandated by written Consent Order (copy attached as Exhibit "A") ("Order"), that the Petitioner begin charging specific monthly water charges separately from base rent, with higher rates charged for higher usage. The District set the amounts to be charged in the Order. The purpose of the required rates were to force tenants of the CHC VII Parks to conserve water or pay higher rates.

4. The CHC VII Systems and five (5) other utility systems serving retiree mobile home parks owned (both the parks and the systems) by affiliates of the Petitioner ("Five Systems") came

under Public Service Commission ("PSC") jurisdiction on May 14, 1996. I attended the meeting with various Polk County, Florida utilities in August, 1996 and discussed the certification requirements and exemptions thereto for the CHC VII Systems and the Five Systems with Ms. Billie Messer, Regulatory Analyst Supervisor for the PSC.

5. Given the circumstances described above, it was conveyed to me at that meeting that an exemption from PSC certification should be pursued. Of course, Billie Messer gave me no guarantees or promises that any exemption would be granted.

6. The Petitioner's attorneys, Clark & Campbell, P.A., then prepared and supplied to Ms. Messer an Application for Declaratory Statement Relating to Exemption from Regulation or Nonjurisdictional Finding ("Application") via cover letter that stated:

"I have enclosed my client's Application for Declaratory Statement Relating to Exemption from Regulation or Nonjurisdictional Finding for your review and comment. After your review, please discuss with me the exemption applications relating to the remaining mobile home parks owned by my client's affiliates in Polk County, Florida."

A copy of the cover letter and Application are attached as Exhibit "B" hereto. It was clearly the Petitioner's intent to request Ms. Messer's comments on the Application of the CHC VII Systems, as she had suggested, and then to file the exemption applications for the Five Systems.

7. The Petitioner did not receive any response or comments to its Application filed on approximately September 12, 1996 until almost two (2) years later, when in July, 1998, Billie Messer called the Petitioner's attorneys and advised that the exemption could not be granted and that a letter would be forthcoming. The PSC, through its Bureau Chief, responded by letter dated August 10, 1998, a copy of which is attached hereto as Exhibit "C."

8. In Exhibit "C," John Williams, Bureau Chief stated:

"The Commission received your letter requesting a declaratory statement regarding the jurisdictional status of Swiss Golf and Hidden Golf Mobile Home Parks in Polk County on September 16, 1996. I first must apologize again, for this delay in responding to your letter. The document was misplaced and only recently "rediscovered" by staff. After having several discussions on this matter with our legal staff, it appears that these two mobile home parks will be required to file for an original certificate as a utility in existence."

Mr. Williams concluded his letter by indicating the following:

"Therefore, Swiss Golf and Hidden Golf Mobile Home Parks should complete and file an application for an original certificate as soon as possible. Two applications are included with this letter. The applications should be submitted no later than October 16, 1998."

9. In fact, the applications for certification which were required to be filed by the Petitioner two (2) months from its receipt of the August 10, 1998 letter were filed, together with applications from the Five Systems, two (2) days prior to the deadline.

10. The PSC staff then requested by letter dated October 21, 1998 that the Petitioner file annual reports and regulation assessment fees for 1996 and 1997 within sixty (60) days.

11. The Petitioner, through Norman F. Mears, Senior Utility Consultant of Rhema Business Services, Inc., then filed a request that the PSC not require the remittance of the regulatory assessment fees until January 1, 1999, the date that the owners of the CHC VII Parks and the mobile home parks served by the Five Systems were first able to pass on these fees to the tenants of the parks (Notice must be given ninety (90) days in advance of January 1. Since the Petitioner and the owners of the parks served by the Five Systems were not aware of the PSC's decision until August, 1998, no notice of pass-on was given until September, 1998), and for waiver of the 1996 and 1997 annual reports (based upon substantial hardship and principles of fairness ("Waivers")).

12. In the event that the Waivers are not granted, the Petitioner would be required to prepare annual reports for six utilities for 1996 and 1997.

13. The Petitioner and its affiliates owning the Five Systems do not employ a sufficient staff to prepare twelve prior-year annual reports (six systems times two years).

14. In the event that the Waivers are not granted, the Petitioner and its affiliates owning the Five Systems would be required to retain an outside entity, as well as an accounting consultant, to prepare the two prior-year annual reports. The cost of this is expected to exceed \$36,000.00 (6 reports times 2 years times an estimated \$3,000.00 per report). Additionally, the approximate regulatory assessment for 1996 and 1997 would exceed a total of \$50,000.00 for the CHC VII Systems and the Five Systems. If the Waivers are not granted, the total cost of compliance is estimated to be \$86,000.00.

15. Due to the foregoing and the limited financial and human resources of the Petitioner and the owners of the Five Systems, as well as the substantial cost of outsourcing the preparation of the prior-year annual reports, a decision by the PSC to deny the requested Waivers and to require annual reports for 1996 and 1997 and payment of regulatory assessments beginning in 1996, would constitute a substantial hardship to the Petitioner and the owners of the Five Systems and would violate principles of fairness.

16. The CHC VII Parks and the owners of the parks served by the Five Systems charged the following amounts prior to implementing the 4.5% regulatory assessment pass-on as of January 1, 1999:

Utility Systems Ownership
Anglers Cove West, Ltd.

Parks Served
Anglers Cove
Anglers Cove West

Monthly Base Water and Wastewater)
\$15.00

b) CHC VII, Ltd.	Swiss Golf Hidden Golf	\$15.00
c) Four Lakes Golf Club, Ltd.	Four Lakes	\$25.00
d) Hidden Cove, Ltd.	Hidden Cove	\$15.00
e) Plantation Landings, Ltd.	Plantation Landings	\$12.00
f) SV Utilities, Ltd.	Hidden Cove East Hidden Cove West Swiss Village	\$15.00

These rates are significantly below public utility residential rates in Polk County (Polk County charges \$31.95 monthly for wastewater and a minimum of \$7.69 monthly for water for a total of \$39.64).

17. At all stages of the application process, the Petitioner and the owners of the Five Systems have fully and completely cooperated with the PSC and responded to all requests in a timely manner.

18. I have personal knowledge of the facts stated herein.



 RAYMOND L. MOATS

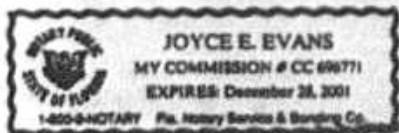
STATE OF FLORIDA:
 COUNTY OF POLK:

Sworn to and subscribed before me this 15th day of March, 1999 by RAYMOND L. MOATS, who is personally known to me or _____ who is known to me by evidence of identification of _____, and who did take an oath.



 NOTARY PUBLIC

My Commission Expires: _____



Joyce E. Evans

 (Name of Notary typed, printed or stamped)

BEFORE THE SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

ORDER NO. SWF-94-

IN RE: CHC VII, LTD., A FLORIDA LIMITED PARTNERSHIP
WATER USE PERMIT NUMBER 207187.02 AND
WATER USE PERMIT APPLICATION NO. 207187.04
DOAH CASE NO. 93-6914
POLK COUNTY, FLORIDA

CONSENT ORDER


Pursuant to Sections 120.57(3) and 373.083(2), Florida Statutes (F.S.), this Consent Order is entered into between the Southwest Florida Water Management District, hereinafter referred to as the "District", and CHC VII, Ltd., a Florida limited partnership, hereinafter referred to as "CHC VII", to settle certain matters at issue between the parties. The parties hereby voluntarily agree to the following findings of fact, conclusions of law and corrective actions.

FINDINGS OF FACT

1. The District is the administrative agency of the State of Florida charged with the responsibility to conserve, protect, manage and control water resources within its boundaries and to administer and enforce Chapter 373, F.S., and the rules promulgated thereunder as Chapter 40D, Florida Administrative Code (F.A.C.).

2. CHC VII's mailing address is Post Office Box 5252, Lakeland, Florida 33807. CHC VII is the owner of and supplies water to two mobile home parks, Swiss Golf Mobile Home Park and Hidden Golf Mobile Home Park, both located in Sections 27 and 35, Township 27 South, Range 26 East in Polk County, Florida ("Parks").

EXHIBIT "A"



3. On August 25, 1989, the District issued Water Use Permit No. 207187.02 ("Permit") to CHC VII for the Parks. The Permit had an expiration date of August 25, 1999.

4. On April 8, 1993, CHC VII applied for a modification to the Permit to add a previously unauthorized surface water withdrawal for irrigating an existing golf course. CHC VII's application was denied. CHC VII appealed the denial in Case No. 93-6914 before the Division of Administrative Hearings ("Appeal").

5. The water use permit application was denied because 1) CHC VII's per capita water rate was greater than 150 gpd, 2) CHC VII had not adopted, or proposed to adopt, a water conservation oriented rate structure, and 3) CHC VII had not conducted an adequate water audit of the water supply system.

6. The District and CHC VII have agreed to resolve certain disputed issues under the Appeal as described herein.

CONCLUSIONS OF LAW

7. The District has jurisdiction over this matter pursuant to Sections 373.069(2)(d), 373.103(1), 373.216 and 373.219, F.S., and Rule 40D-2.041, F.A.C.

8. The use of water without a permit, as described in paragraph 4, constitutes a violation of Section 373.219, F.S., and Rule 40D-2.041, F.A.C.

9. CHC VII is not exempt by law or District rule from obtaining a water use permit.

10. Failing to have a per capita water rate less than 150 gpd is a violation of Section 7.1.1.1 of the Basis of Review incorporated by reference into Rule 40D-2.091, F.A.C.

15. CHC VII shall have totalizing, non-resettable water meters in place for the Parks for all mobile home lots located therein by January 1, 1995. Such meters shall be in working condition and have a margin of error of +/- 5%. A maintenance program shall be implemented to assure the working condition and accuracy of the meters.

16. CHC VII shall submit a water audit in accordance with District rules for the initial three months of water meter operation in each Park (January 1, 1995 through March 31, 1995) by no later than April 30, 1995, and will thereafter submit audits in accordance with District rules and permit conditions. If any water audit reflects unaccounted for water in excess of 12%, a plan and schedule of remedial action shall be submitted to the District along with the water audit. After approval by the District, the plan shall be implemented by CHC VII in accordance with the approved schedule.

17. CHC VII shall implement within the Parks the water conservation plan set out below by January 1, 1995. CHC VII will notify the residents of each of the Parks of the water conservation plan by rule change to permit implementation as of January 1, 1995. CHC VII will make diligent efforts consistent with Florida law to require that the Parks' residents comply with the water conservation plan described in subparagraphs c and d below, but CHC VII cannot guarantee compliance by the residents. CHC VII acknowledges that further conservation efforts will be necessary if it exceeds its permitted pumpage quantities.

a. All common areas in the Parks shall be irrigated no more than twice weekly with a duration not exceeding 15 minutes per irrigation period and only during the following day and time periods:

Parks with even addresses: Tuesday and Saturday between 6:00 a.m. and 10:00 a.m.

Parks with odd addresses: Wednesday and Sunday between 6:00 a.m. and 10:00 a.m.

b. The golf course fairways and roughs shall be irrigated no more than thrice weekly for May, June, July, August, September and October, twice weekly for November, March and April, and once weekly for December, January and February. The duration of each irrigation period shall not exceed 30 minutes. Further, all golf course irrigation shall occur during non-daylight hours. Greens and tees may be irrigated as needed; however, in no event may irrigation exceed the permitted quantities. The golf course water usage is not included in the 150 gpd per capita calculation described in paragraph 22 below.

c. All single wide mobile home lots in the Parks shall be irrigated no more than twice weekly with a duration not exceeding 15 minutes per irrigation period and only during the following day and time periods:

Even addresses: Tuesday and Saturday between 4:00 p.m. and 8:00 p.m.

Odd addresses: Wednesday and Sunday between 6:00 a.m. and 10:00 a.m.



d. All double wide mobile home lots in the Parks shall be irrigated no more than twice weekly with a duration not exceeding 12 minutes per irrigation period and only during the following day and time periods:

Even addresses: Tuesday and Saturday between 4:00 p.m. and 8:00 p.m.

Odd addresses: Wednesday and Sunday between 6:00 a.m. and 10:00 a.m.

18. CHC VII shall initiate, consistent with Florida law, the water conservation rate structure set out below within the Parks by no later than January 1, 1995. CHC VII will properly notify the residents of the requirements of the water conservation rate structure to permit the foregoing implementation.

a. There shall be a minimum monthly charge of \$5.00 for the first 8,000 gallons of water per mobile home lot for all residents of the Parks with a prospectus permitting such a charge.

b. All residents shall be charged monthly \$1.25 for every 1,000 gallons of water or part thereof in excess of 8,000 gallons up to 10,000 gallons.

c. All residents shall be charged monthly \$2.00 for every 1,000 gallons of water or part thereof in excess of 10,000 gallons.

19. CHC VII may increase the charges described in paragraph 18 above in future years. Such charges are for water usage only and do not include any charge for sewer service to the residents in the Parks.

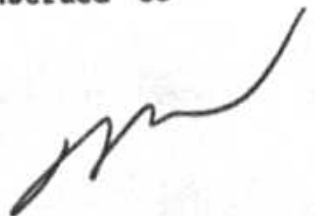
20. The parties acknowledge that the implementation of the water conservation rate structure could be prevented or affected by subsequent order of a court of competent jurisdiction.

21. CHC VII shall within 30 days of approval of this Consent Order by the District Governing Board submit an amended application for a water use permit in accordance with the terms of this Consent Order and including all other hydrologic and other supporting information called for by the permit application form or required by District rules or the Basis of Review. CHC VII will diligently pursue obtaining a modified water use permit. Once the modified water use permit is issued, CHC VII and the Parks will fully comply with all of its terms and conditions.

22. CHC VII acknowledges that the water use permit issued to it will be based on a per capita rate of 150 gallons per day. Any pumpage over that authorized in the permit may subject CHC VII to further enforcement action by the District.

23. If it becomes necessary for CHC VII to request extensions of time in responding to requests for additional information associated with the permit application due to circumstances beyond its control, CHC VII shall submit in writing its reasons for an extension of time to the District's Permitting Director in Bartow. It is agreed that the District will not unreasonably withhold the granting of a reasonable request for extension.

24. For each day of delay beyond any due date specified in this Consent Order, CHC VII shall pay to the District fifty dollars (\$50.00) per day. This provision shall not be construed to



preclude the District's right to undertake other administrative or civil action as appropriate in the event any due date is not met.

25. CHC VII hereby waives any right to an administrative hearing or judicial review of the terms of this Consent Order.

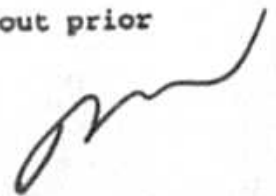
26. This Consent Order shall not relieve CHC VII of the need to comply with all other applicable federal, state and local laws, regulations or ordinances.

27. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69, 373.063(1) and 373.129, F.S.

28. The District expressly reserves and retains the right to initiate appropriate legal action against CHC VII to prevent or prohibit the future violation of any applicable statutes, rules, orders or permit conditions, except as allowed and addressed in this Consent Order.

29. For and in consideration of the complete and timely performance by CHC VII of its obligations under this Consent Order, the District waives its right to seek judicial imposition of any penalties for the existing violations described in this Consent Order, and further waives its right to pursue any other action related thereto; provided, however, the District does not waive its right to pursue action against CHC VII and seek penalties for any future violations of the water use permit to be issued to CHC VII, including any pumpage beyond the quantities authorized in the permit.

30. CHC VII shall allow authorized representatives of the District access to the Parks at all reasonable times without prior



consent or notice for the purpose of determining compliance with this Consent Order, with Chapter 373, F.S., and with the rules of the District.

31. The effectiveness of this Consent Order is subject to review and approval by the District Governing Board. In the event the Governing Board does not approve this Consent Order, this Consent Order shall be null, void and of no legal effect. After this Consent Order has been executed by CHC VII and the Executive Director of the District, CHC VII may not withdraw its approval of, or terminate, this Consent Order under any circumstances unless the District Governing Board fails to approve this Consent Order.

32. Upon approval of this Consent Order by the District Governing Board, CHC VII shall dismiss the Appeal, each party therein to bear their own costs and fees.

CHC VII, LTD., a Florida limited partnership

By: CENTURY REALTY FUNDS, INC., its general partner

By: Raymond L. Moats
Raymond L. Moats,
Its Vice President

Date: 8/30/94

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

By: Peter G. Hubbell
Peter G. Hubbell,
Executive Director

Date: _____

Jay E. Evans
Witness

Witness

Approved by the Governing Board of the Southwest Florida Water Management District this _____ day of _____, 1994, in Brooksville, Hernando County, Florida.

By: _____
Joe L. Davis, Jr., Chairman

Attest: _____
Sally Thompson, Secretary

Filed this _____ day of _____, 1994.

(Seal)

Agency Clerk

www.cflwater.com

LAW OFFICES
CLARK & CAMPBELL, P.A.
PROFESSIONAL ASSOCIATION

4740 CLEVELAND HEIGHTS BOULEVARD
POST OFFICE BOX 8559
LAKELAND, FLORIDA 33807-8559
(841) 847-5337
FAX NO. (841) 847-5012

RONALD L. CLARK
TIMOTHY F. CAMPBELL
BERNARD H. GENTRY
DANIEL MEDINA, LL.M.

OF COUNSEL
GEORGE A. BOOE
REGISTERED PATENT ATTORNEY
ADMITTED IN FLORIDA, LOUISIANA
AND NEW JERSEY

September 12, 1996

Ms. Bellie Messer,
Regulatory Analyst Supervisor
Florida Public Service Commission
Division of Water and Waste Water
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

Dear Ms. Messer:

As I indicated in my message, I represent CHC VII, Ltd., a Florida limited partnership, owner of Swiss Golf Mobile Home Park and Hidden Golf Mobile Home Park in Polk County, Florida. I have enclosed my client's Application for Declaratory Statement Relating to Exemption from Regulation or Nonjurisdictional Finding for your review and comment. After your review, please discuss with me the exemption applications relating to the remaining mobile home parks owned by my client's affiliates in Polk County, Florida.

I look forward to your comments and working with you in this matter.

Best personal regards.

Sincerely,


Ronald L. Clark

RLC/sjp

Enclosure

EXHIBIT "B"

**APPLICATION FOR DECLARATORY STATEMENT RELATING TO
EXEMPTION FROM
REGULATION OR NONJURISDICTIONAL FINDING**

I. System Owner and Address of Owner - CHC VII, Ltd., a Florida limited partnership, Post Office Box 5252, Lakeland, Florida 33807-5252; (941) 647-1581.

II. System Address - Old Lucerne Park Road, Winter Haven, Florida.

III. Contact Person - Ronald L. Clark, Esquire, Clark & Campbell, P.A., Post Office Box 6559, Lakeland, Florida 33807-6559; (941) 647-5337 or Raymond L. Moats, Post Office Box 5252, Lakeland, Florida 33807-5252; (941) 647-1581.

IV. Nature of Owner Entity - Owner is a Florida limited partnership organized and in good standing under the laws of the State of Florida.

V. Statement - Owner is aware that pursuant to Section 87.06, Florida Statutes, whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in Sec. 775.082, Sec. 775.083, or Sec. 775.084, Florida Statutes.

VI. Exemption Applied For - Section 367.022(5), Florida Statutes. Owner is the landlord and provides water and waste water services solely to tenants of its mobile home parks. The charges for water and waste water are required by Florida Statutes, Chapter 723 (water and waste water), and the Southwest Florida Water Management District (water only) to be set out in writing to the tenants of the parks. The service area for the parks are shown in Exhibit "A" attached hereto which are commonly known as Swiss Golf Mobile Home Park and Hidden Golf Mobile Home Park. One version of a standard rental agreement used in the parks is attached as Exhibit "B".

VII. Background and Facts

The Owner owns and operates two mobile home parks in Polk County, Florida which are comprised of a total of 865 mobile home rental lots served by the owner's utility with various amenities, including club houses, pools and a golf course. The Owner rents its lots to retirees who own their own mobile home and make a monthly lot rent payment to the Owner. The Owner and the mobile home parks are governed by the provisions of Chapter 723, Florida Statutes, entitled Mobile Home Park Lot Tenancies ("Chapter 723"). The Owner and the mobile home parks are also within the Southwest Florida Water Management District and are governed by its rules and more specifically are governed by its explicit Order dated August 31, 1994, a copy of which is attached as Exhibit "C" ("Order"). As a result of Chapter 723 and the Order, the Owner is required to specifically set out monthly charges for waste water and water services. Waste water and water services are provided by the Owner, are essential services, and not user fees, as defined in Chapter 723. Any change in rates are subject to the scrutiny of the Division of Mobile Homes, the Southwest Florida Water

Management District and must be in compliance with the Order and Chapter 723.

VIII. Argument

Section 723.004 of Chapter 723, describes the unique relationships between the mobile home owner and mobile home park owner:

Once occupancy has commenced, unique factors can affect the bargaining of position of the parties and can affect the operation of market forces. Because of those unique factors, there exist inherently real and substantial differences in the relationship which distinguish it from other landlord-tenant relationships.... This chapter is created for the purpose of regulating the factors unique to the relationship between mobile home owners and mobile home park owners in the circumstances described herein. It recognizes that when such inequalities exist between mobile home owners and mobile home park owners as a result of such unique factors, regulation to protect those parties to the extent that they are affected by the inequalities, while preserving and protecting the rights of both parties, is required.

As a result, Chapter 723 expressly preempts to the State all regulation and control of mobile home lot rents in mobile home parks and all those matters relating to their unique landlord-tenant relationship. The legislature expressly declares in Section 723.004(2) and (3) that the law governing the unique landlord-tenant relationship is preempted to the State and Chapter 723. The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation ("Division") is charged in Section 723.005, Chapter 723, with enforcing and ensuring compliance with Chapter 723 and the rules thereunder.

Chapter 723 at Section 723.003(2) defines "lot rental amount" as all financial obligations, except user fees, which are required as a condition of tenancy. User fees are not included in the term "lot rental amount" since user fees are "non-essential optional services". See Section 723.003(12). The interpretation of the definitions in Chapter 723 have been reinforced by a ruling in the Nineteenth Judicial Circuit, Indian River County. The Court states that:

Florida Statute 723.033(2) defines "lot rental amount" as all financial obligations, except user fees, which are required as a condition of tenancy. Since section 723.033(12), Florida Statutes, defines "user fees" as those charges for "nonessential optional" services, then water and sewer charges and governmentally mandated assessments are charges for essential, non-optional services, which are then a "financial obligation" comprising a component of the total "lot rental amount". MLH Property Managers Inc. vs. Clyde Cox, CA 92-363 CA 19 (Fla. 1993).

As a result, what is commonly referred to as lot rent, under Chapter 723, must specifically describe and set out the charge for essential services, e.g., waste water and water. The charges for water and waste water are only described because Chapter 723 requires it. These rates cannot be increased

except in accordance with Chapter 723 and are subject to the provisions of Section 723.037, 723.038, and 723.039 of Chapter 723. If a rate must increase the circuit court has the authority to declare the lot rent increase unenforceable. Any increase is subject to the mediation and arbitration of the foregoing sections. Unfortunately, if the Commission were to have jurisdiction over any rate charged, the mediation and arbitration provisions and the circuit court's authority under Chapter 723 would be meaningless or even worse for the Commission, the circuit court could and would likely ignore any Commission approval of a rate statute and makes its own decision as to the rate.

In order to qualify for an exemption pursuant to Section 367.022(5), and Rule 25-30.060(3)(e), Florida Administrative Code, the landlord must provide water and/or wastewater service without specifically charging for the service(s). The Commission has interpreted this to mean that any charges for such services must be included as nonspecific portions of the rent. Under Chapter 723, mobile home parks are required to disclose all charges, including charges for water and/or wastewater service. It appears that the language of these two statutes place any mobile home park owner in a bind between Chapter 723, which require disclosure and Chapter 367, which state that disclosure will then require economic regulation.

Under Section 367.01(2), Florida Statutes, the Commission has "exclusive jurisdiction over each utility with respect to its authority, service, and rates." However, Section 367.011(3), Florida Statutes, states:

The regulation of utilities is declared to be in the public interest, and this law is an exercise of the police power of the state for the protection of public health, safety, and welfare. The provisions of this chapter shall be liberally construed for the accomplishment of this purpose.

The public health and safety of residents of these mobile home parks are already protected under the guidelines of Chapter 723 and by the Southwest Florida Water Management District. Chapter 723 defines the provision of water and wastewater service in this instance as essential services comprising a component of the total "lot rental amount" rather than a separate "user fee". To subject these rates to Commission regulation would be inconsistent with the legislative intent of the statute to allow a liberal construction of the chapter's provisions in the regulation of utilities to the public and would be an impractical exercise of jurisdiction and not in the short or long run be in the best interests of the mobile home park customers.

If the Commission asserts regulation over the "lot rental amount" in these parks it will not be in the best interest of mobile home owners as the rates would then increase by at least the regulatory assessment fee of 4.5% and the cost of preparing the annual report. Regulation by the Commission will almost certainly otherwise increase the rates in these mobile home parks, since the current water and wastewater charge is significantly less than the cost based rates which would be required by the Commission. The most significant issue if the Commission regulates is the significant conflict that will exist if a rate which is set by the Commission is determined to be a rate which is unreasonable in the Chapter 723 mediation, arbitration and judicial process. The Circuit Court, if it finds that the

rate increase is unreasonable, could reduce or roll those rates back and the Commission would then be in the unenviable position of filing an action against the park owner to enforce its regulations. This situation obviously results in a legal impossibility to the park owner. How can the Commission enforce its rate requirement when a circuit court orders the park owner not to charge that rate? Superimposed on such an impossible situation is the Southwest Florida Water Management District which requires a conservation rate structure as part of their water conservation plan. Truly for the good of the park owner, the park residents and everyone concerned, the Commission should find that the exemption requested exists.

IX. Delay in Implementing if the Commission Finds No Exemption Exists

If the Commission finds that the exemption herein requested does not exist, it is extremely critical that the regulatory assessment charge and any new rate not take effect until January 1, 1998. The park owner, in accordance with Chapter 723, may only increase the lot rental amount (which as previously described includes water and wastewater charges) one time per year. Lot rental increase notices must be sent 90 days in advance of the lot rental amount increase and the increase (no water and wastewater increase is taking effect) taking effect as of January 1, 1997, has been mailed. The park owner cannot therefore again increase the lot rental amount until January 1, 1998. As a result, no new rate structure can be implemented prior to January 1, 1998.

CHC VII, Ltd.

By: 
CRF Management Co., Inc.
its general partner, by
its President, Raymond L. Moats

J:\CENTURY\CHC\IN\EXEMPTION.APP

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL A:

The NW 1/4 and the West 1/2 of the NE 1/4, Section 35, Township 27 South, Range 26 East, Polk County, Florida.

AND

That part of Lots 1 and 2 of H.S. RIGGINS SUBDIVISION, recorded in Plat Book 3, Page 38, of the public records of Polk County, Florida described as: Begin at the intersection of the West line of said Lot 1 with the Southerly right-of-way line of U.S. Highway 17 and 92 and run N 76°26'39" E along the said Southerly right-of-way line, 77.08 feet; thence S 00°12'46" E, 107.97 feet; thence N 89°40'14" E, 256.50 feet; thence S 00°12'46" E, 287.00 feet to a point on the South boundary of said Lot 1; thence S 89°40'14" W along said South boundary, 331.50 feet to the West boundary of said Lot 1; thence N 00°12'46" W along said West boundary, 168.72 feet; thence S 89°47'12" W, 13.00 feet; thence N 00°12'46" W, 165.53 feet; thence N 76°26'39" E, 13.36 feet to a point on said West boundary of Lot 1; thence N 00°12'46" W along said West boundary, 40.00 feet to the Point of Beginning.

AND

All of Lot 9 of said H.S. RIGGINS SUBDIVISION, recorded in Plat Book 3, Page 38, of the public records of Polk County, Florida.

AND

PARCEL B:

The N 1/2 of the SW 1/4 and the NW 1/4 of the SE 1/4 of Section 35, Township 27 South, Range 26 East, Polk County, Florida.

EASEMENT PARCEL A

That certain easement for ingress and egress as granted by that certain easement recorded in Official Records Book 2324, Page 1567, of the public records of Polk County, Florida, across the following described property lying South of the North 1/2 of the SW 1/4 of Section 35, Township 27 South, Range 26 East:

A 50-foot easement, 25.0 feet either side of the centerline described as follows: Commence at the Southwest corner of the Southeast 1/4 of Section 35, Township 27 South, Range 26 East, Polk County, Florida, run N 89°41'14" E, along the South line of said Section 35, a distance of 43.0 feet to the Point of Beginning, thence run N 1°34' W 785.03 feet to the point of curve of a curve concaved Southwesterly whose radius is 316.63 feet; thence run Northwesterly along said curve an arc distance of 193.71 feet (central angle of 35°03'16") to the point of tangent; thence run N 36°37'16" W, 368.0 feet to the point of curve of a curve concaved Northeasterly whose radius is 798.37 feet; thence run Northwesterly along said curve an arc distance of 149.56 feet (central angle of 10°44') to the point of tangent; thence run N 25°53'16" W 145.55 feet to the point of curve of a curve concaved Northeasterly whose radius is 305.30 feet; thence run Northwesterly and Northeasterly along said curve an arc distance of 193.28 feet (central angle of 36°16'20") to the point of tangent; thence run N 10°23'04" E 149.58 feet to the point of curve of a curve concaved Northwesterly whose radius is 345.04 feet; thence run Northeasterly and Northwesterly

along said curve an arc distance of 194.67 feet (central angle of $32^{\circ}19'30''$) to the point of tangent; thence run N $21^{\circ}56'26''$ W, 315.37 feet to the point of curve of a curve concaved Easterly whose radius is 432.43 feet; thence run Northerly along said curve an arc distance of 196.55 feet (central angle $26^{\circ}02'30''$) to the point of tangent; thence run N $4^{\circ}06'04''$ E, 218.48 feet to a point in the South line of the Northwest 1/4 of said Section 35 and the end of said easement. Said point being S $89^{\circ}45'19''$ W 541.72 feet of the Southeast corner of the Northwest 1/4 of said Section 35.

AND

EASEMENT PARCEL B

A perpetual nonexclusive road and utility easement granted by that certain easement recorded in Official Records Book 2317, Page 1984, of the public records of Polk County, Florida, across the following described property:

Beginning at the Northeast corner of Section 34, Township 27 South, Range 26 East, Polk County, Florida, run thence S $0^{\circ}33'05''$ E along the East boundary of said Section 34, 49.66 feet, thence run N $45^{\circ}11'53''$ W, 70.46 feet to a point in the North boundary of said Section 34, thence run N $89^{\circ}49'14''$ E along said North boundary, 49.66 feet to the Point of Beginning.

AND

PARCEL C:

Part of the "preservation area" as designated on the plat of SWEETWATER GOLF AND TENNIS CLUB, according to plat thereof recorded in Plat Book 85, Pages 46, 47, and 48, public records of Polk County, Florida and being further described as follows:

That portion of the Southwest quarter of the Southwest quarter of Section 26, Township 27 South, Range 26 East, Polk County, Florida, described as follows:

Begin at the Southwest corner of said Section 26; thence North $00^{\circ}10'13''$ West along the West line thereof a distance of 1324.25 feet to the North line of said Southwest quarter of the Southwest quarter; thence North $89^{\circ}36'41''$ East along said North line a distance of 150.00 feet; thence South $08^{\circ}45'53''$ East a distance of 1338.31 feet to the South line of said Section 26; thence South $89^{\circ}34'38''$ West along said South line a distance of 350.00 feet to the POINT OF BEGINNING.

SWISS GOLF & TENNIS CLUB MOBILE HOME PARK
LEASE AGREEMENT

PENDING
APPROVAL

THIS LEASE made and entered into this _____ day of _____, 19____ by and between CHC VII, Ltd, known as Swiss Golf & Tennis Club Mobile Home park, hereinafter called the "Community" and _____ hereinafter called the Owner-tenant.

WITNESSETH, that in consideration of the covenants herein contained, on the part of the said Owner-tenant to be kept and performed, the said Community does hereby release to the said Owner-tenant the following described property: Street: _____ Lot No.: _____

TO HAVE AND TO HOLD the same from the _____ day of _____, 19____, until the 31st day of December, the said Owner-tenant paying the initial monthly base rental of \$_____ from the beginning of this Lease until the 31st day of December, 19____. Annual monthly base rental increases for the calendar years 19____ and subsequent years will be based on no less than \$5.00 or the increase in the Consumer Price Index (defined as the United States Department of Labor Consumer Price Index, U.S. City Average, All Urban Consumers, 1967 equals 100) (CPI), whichever is greater. Lease renewals and increases will become effective the first day of January of each year thereafter and will be a part of the Lease Agreement for that year.

Base rent will also be increased in calendar years subsequent to the initial year by any increase in real estate or other taxes and assessments by a state or local government. Such increases in taxes and assessments will be based on a pro-rata computation among all lots in the mobile home park and will be charged to all residents to whom this Prospectus is applicable. The mobile home owner shall be notified of the increase in base rent at least ninety (90) days prior to the increase.

Rental payments are due on or before the 1st day of each month for that month, at the place designated by the Community.

The Owner-tenant covenants and agrees to the following:

1. To make no unlawful, improper, or offensive use of the property.
2. To comply with the Rules & Regulations of the Park. A copy of said Rules & Regulations has been furnished to the Owner-tenant.
3. That the Lease is governed by Chapter 723, Florida Statutes (Florida Mobile Home Act) as currently in effect at the time of execution of this document, the provisions of which are incorporated herein by reference.
4. Actions by the Owner-tenant which constitute grounds for eviction under Section 723.061, Florida Statutes, shall be a violation of this Lease. Failure of the Community to evict a tenant for violation of any one of the grounds set forth in Section 723.061, Florida Statutes, or for any grounds provided for in this Lease, shall not waive the right for the Community to consider any subsequent violation of the same grounds, or the violation of any other grounds, a breach of this Lease by Owner-tenant so long as permitted by Chapter 723, Florida Statutes.

5. As provided in the Rules & Regulations, rules and regulations may be modified, eliminated, or additional rules and regulations adopted by the Community upon giving the Owner-tenant notice thereof as required by law and said Rules & Regulations in accordance with Chapter 723, Florida Statutes.

APPROVED

SWISS GOLF & TENNIS CLUB MOBILE HOME PARK
LEASE AGREEMENT

THIS LEASE made and entered into this _____ day of _____, 19____, by and between CHC VII, Ltd., known as Swiss Golf & Tennis Club Mobile Home park, hereinafter called the "Community" and _____ hereinafter called the Owner-tenant.

WITNESSETH, that in consideration of the covenants herein contained, on the part of the said Owner-tenant to be kept and performed, the said Community does hereby release to the said Owner-tenant the following described property:
Street: _____, Lot No.: _____.

TO HAVE AND TO HOLD the same from the _____ day of _____, 19____, until the 31st day of December, the said Owner-tenant paying the initial monthly base rental of \$____ from the beginning of this Lease until the 31st day of December, 19____. Annual monthly base rental increases for the calendar years 19____ and subsequent years will be based on no less than \$5.00 or the increase in the Consumer Price Index (defined as the United States Department of Labor Consumer Price Index, U.S. City Average, All Urban Consumers, 1967 equals 100) ("CPI"), which ever is greater. Lease renewals and increases will become effective the first day of January of each year thereafter and will be a part of the Lease Agreement for that year.

Base rent will also be increased in calendar years subsequent to the initial year by any increase in real estate or other taxes and assessments by a state or local government. Such increases in taxes and assessments will be based on a pro-rata computation among all lots in the mobile home park and will be charged to all residents to whom this Prospectus is applicable. The mobile home owner shall be notified of the increase in base rent at least ninety (90) days prior to the increase.

Rental payments are due on or before the 1st day of each month for that month, at the place designated by the Community.

The Owner-tenant covenants and agrees to the following:

1. To make no unlawful, improper, or offensive use of the property.
2. To comply with the Rules & Regulations of the Park. A copy of said Rules & Regulations has been furnished to the Owner-tenant.
3. That the Lease is governed by Chapter 723, Florida Statutes (Florida Mobile Home Act) as currently in effect at the time of execution of this document, the provisions of which are incorporated herein by reference.
4. Actions by the Owner-tenant which constitute grounds for eviction under Section 723.061, Florida Statutes, shall be a violation of this Lease. Failure of the Community to evict a tenant for violation of any one of the grounds set forth in Section 723.061, Florida Statutes, or for any grounds provided for in this Lease, shall not waive the right for the Community to consider any subsequent violation of the same grounds, or the violation of any

6. This Lease and the privileges contained herein are not assignable, and said Lease is only valid as long as those executing this Lease reside upon the premises set forth in this Lease, and are in full conformance of all provisions of this Lease and the park Rules & Regulations, except that a new home owner may assume, in writing, the balance of the annual Lease through December 31, of the year of purchase in accordance with Chapter 723, Florida Statutes.

7. Owner-tenant expressly understands and agrees that, upon execution of this Lease, all prior leases, rental agreement, negotiations, and other agreements between the parties regarding the lot leased are hereby terminated, void, and of no legal force and effect.

8. Storm Drainage is included in the lot rental amount and charged in accordance with Sections VII and VIII(J) of the Prospectus.

9. Other financial obligations of the Owner-tenant, not including user fees, are as follows:

Users & Charges

Yard Maintenance (not charged unless owner fails to maintain yard) \$ _____ per cut

Water and Sewer ~~up to 8,000 gallons~~ ~~excess per 1,000 gal. over 8,000 up to 10,000~~ ~~excess per 1,000 gal. over 10,000~~
\$ _____
\$ _____
\$ _____

lots 1001 through 1086 charged by the City of Winter Haven in accordance with its current rates

Tree Trimming/Removal, Debris Removal (not charged unless Owner-tenant fails to provide services himself) \$ _____

Late Check Charge \$ _____

Bad Check Charge \$ _____

Extra Resident Fee \$ _____

Debris Removal charged in accordance with Section VIII(K) of the Prospectus

Governmental Assessments, Fees, Surcharges, Charges charged in accordance with Section VIII(J) of the Prospectus

The fees will be charged and increased as set out in Sections VIII(F) through (K) of the Prospectus. No services are included in the lot rental amount other than those services stated above.

10. The Community reserves the right to pass on and pass through charges in accordance with the Prospectus and Chapter 723, Florida Statutes.

11. Owner-tenant(s) acknowledge that they have read the foregoing, the Rules & Regulations, and the Prospectus, and that Owner-tenant was offered the foregoing Lease prior to occupancy.

We have read and understand this Agreement and agree to the terms set out herein.

WITNESS our hands and seals of the date set out above.

Owner-tenant

Community Representative

Owner-tenant

The fees will be charged and increased as set out in Sections VIII(F) through (K) of the Prospectus. No services are included in the lot rental amount other than those services stated above.

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We have read and understand this Agreement and agree to the terms set out herein.

WITNESS our hands and seals of the date set out above.

Owner-tenant

Community Representative

Owner-tenant

BEFORE THE SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

ORDER NO. SWF-94-81

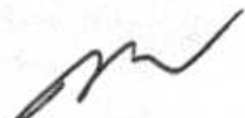
IN RE: CHC VII, LTD., A FLORIDA LIMITED PARTNERSHIP
WATER USE PERMIT NUMBER 207187.02 AND
WATER USE PERMIT APPLICATION NO. 207187.04
DOAH CASE NO. 93-6914
POLK COUNTY, FLORIDA

CONSENT ORDER

Pursuant to Sections 120.57(3) and 373.083(2), Florida Statutes (F.S.), this Consent Order is entered into between the Southwest Florida Water Management District, hereinafter referred to as the "District", and CHC VII, Ltd., a Florida limited partnership, hereinafter referred to as "CHC VII", to settle certain matters at issue between the parties. The parties hereby voluntarily agree to the following findings of fact, conclusions of law and corrective actions.

FINDINGS OF FACT

1. The District is the administrative agency of the State of Florida charged with the responsibility to conserve, protect, manage and control water resources within its boundaries and to administer and enforce Chapter 373, F.S., and the rules promulgated thereunder as Chapter 40D, Florida Administrative Code (F.A.C.).
2. CHC VII's mailing address is Post Office Box 5252, Lakeland, Florida 33807. CHC VII is the owner of and supplies water to two mobile home parks, Swiss Golf Mobile Home Park and Hidden Golf Mobile Home Park, both located in Sections 27 and 35, Township 27 South, Range 26 East in Polk County, Florida ("Parks").



3. On August 25, 1989, the District issued Water Use Permit No. 207137.02 ("Permit") to CHC VII for the Parks. The Permit had an expiration date of August 25, 1999.

4. On April 8, 1993, CHC VII applied for a modification to the Permit to add a previously unauthorized surface water withdrawal for irrigating an existing golf course. CHC VII's application was denied. CHC VII appealed the denial in Case No. 93-6914 before the Division of Administrative Hearings ("Appeal").

5. The water use permit application was denied because 1) CHC VII's per capita water rate was greater than 150 gpd, 2) CHC VII had not adopted, or proposed to adopt, a water conservation oriented rate structure, and 3) CHC VII had not conducted an adequate water audit of the water supply system.

6. The District and CHC VII have agreed to resolve certain disputed issues under the Appeal as described herein.

CONCLUSIONS OF LAW

7. The District has jurisdiction over this matter pursuant to Sections 373.069(2)(d), 373.103(1), 373.216 and 373.219, F.S., and Rule 40D-2.041, F.A.C.

8. The use of water without a permit, as described in paragraph 4, constitutes a violation of Section 373.219, F.S., and Rule 40D-2.041, F.A.C.

9. CHC VII is not exempt by law or District rule from obtaining a water use permit.

10. Failing to have a per capita water rate less than 150 gpd is a violation of Section 7.1.1.1 of the Basis of Review incorporated by reference into Rule 40D-2.091, F.A.C.

11. Failing to have a water conservation oriented rate structure is a violation of Section 7.1.1.2 of the Basis of Review incorporated by reference into Rule 40D-2.091, F.A.C.

12. Failing to conduct an adequate water audit is a violation of Section 7.1.1.3 of the Basis of Review incorporated by reference into Rule 40D-2.091, F.A.C.

CORRECTIVE ACTIONS

13. CHC VII shall pay to the District a penalty of one thousand five hundred dollars and no cents (\$1,500.00) and compensation for District enforcement costs in the amount of seven hundred fifty dollars and no cents (\$750.00) for a total of two thousand two hundred fifty dollars and no cents (\$2,250.00) by certified check or money order within ten (10) days of approval of this Consent Order by the District's Governing Board. If mailed, the address for payment is:

Office of General Counsel
Southwest Florida Water Management District
2379 Broad Street
Brooksville, FL 34609-6899

14. CHC VII shall install totalizing, non-resettable water meters on the golf course and the common areas of the Parks within 60 days of approval of this Consent Order by the District Governing Board. Common areas include the clubhouse and pool areas, entranceways, boulevards, and other irrigated areas in the Parks, excluding individual mobile home lots. Such meters shall be in working condition and have a margin of error of +/- 5%. A maintenance program shall be implemented to assure the working condition and accuracy of the meters.

15. CHC VII shall have totalizing, non-resettable water meters in place for the Parks for all mobile home lots located therein by January 1, 1995. Such meters shall be in working condition and have a margin of error of +/- 5%. A maintenance program shall be implemented to assure the working condition and accuracy of the meters.

16. CHC VII shall submit a water audit in accordance with District rules for the initial three months of water meter operation in each Park (January 1, 1995 through March 31, 1995) by no later than April 30, 1995, and will thereafter submit audits in accordance with District rules and permit conditions. If any water audit reflects unaccounted for water in excess of 12%, a plan and schedule of remedial action shall be submitted to the District along with the water audit. After approval by the District, the plan shall be implemented by CHC VII in accordance with the approved schedule.

17. CHC VII shall implement within the Parks the water conservation plan set out below by January 1, 1995. CHC VII will notify the residents of each of the Parks of the water conservation plan by rule change to permit implementation as of January 1, 1995. CHC VII will make diligent efforts consistent with Florida law to require that the Parks' residents comply with the water conservation plan described in subparagraphs c and d below, but CHC VII cannot guarantee compliance by the residents. CHC VII acknowledges that further conservation efforts will be necessary if it exceeds its permitted pumpage quantities.

a. All common areas in the Parks shall be irrigated no more than twice weekly with a duration not exceeding 15 minutes per irrigation period and only during the following day and time periods:

Parks with even addresses: Tuesday and Saturday between 6:00 a.m. and 10:00 a.m.

Parks with odd addresses: Wednesday and Sunday between 6:00 a.m. and 10:00 a.m.

b. The golf course fairways and roughs shall be irrigated no more than thrice weekly for May, June, July, August, September and October, twice weekly for November, March and April, and once weekly for December, January and February. The duration of each irrigation period shall not exceed 30 minutes. Further, all golf course irrigation shall occur during non-daylight hours. Greens and tees may be irrigated as needed; however, in no event may irrigation exceed the permitted quantities. The golf course water usage is not included in the 150 gpd per capita calculation described in paragraph 22 below.

c. All single wide mobile home lots in the Parks shall be irrigated no more than twice weekly with a duration not exceeding 15 minutes per irrigation period and only during the following day and time periods:

Even addresses: Tuesday and Saturday between 4:00 p.m. and 8:00 p.m.

Odd addresses: Wednesday and Sunday between 6:00 a.m. and 10:00 a.m.

d. All double wide mobile home lots in the Parks shall be irrigated no more than twice weekly with a duration not exceeding 12 minutes per irrigation period and only during the following day and time periods:

Even addresses: Tuesday and Saturday between 4:00 p.m. and 8:00 p.m.

Odd addresses: Wednesday and Sunday between 6:00 a.m. and 10:00 a.m.

18. CMC VII shall initiate, consistent with Florida law, the water conservation rate structure set out below within the Parks by no later than January 1, 1995. CMC VII will properly notify the residents of the requirements of the water conservation rate structure to permit the foregoing implementation.

a. There shall be a minimum monthly charge of \$5.00 for the first 8,000 gallons of water per mobile home lot for all residents of the Parks with a prospectus permitting such a charge.

b. All residents shall be charged monthly \$1.25 for every 1,000 gallons of water or part thereof in excess of 8,000 gallons up to 10,000 gallons.

c. All residents shall be charged monthly \$2.00 for every 1,000 gallons of water or part thereof in excess of 10,000 gallons.

19. CMC VII may increase the charges described in paragraph 18 above in future years. Such charges are for water usage only and do not include any charge for sewer service to the residents in the Parks.

20. The parties acknowledge that the implementation of the water conservation rate structure could be prevented or affected by subsequent order of a court of competent jurisdiction.

21. CHC VII shall within 30 days of approval of this Consent Order by the District Governing Board submit an amended application for a water use permit in accordance with the terms of this Consent Order and including all other hydrologic and other supporting information called for by the permit application form or required by District rules or the Basis of Review. CHC VII will diligently pursue obtaining a modified water use permit. Once the modified water use permit is issued, CHC VII and the Parks will fully comply with all of its terms and conditions.

22. CHC VII acknowledges that the water use permit issued to it will be based on a per capita rate of 150 gallons per day. Any pumpage over that authorized in the permit may subject CHC VII to further enforcement action by the District.

23. If it becomes necessary for CHC VII to request extensions of time in responding to requests for additional information associated with the permit application due to circumstances beyond its control, CHC VII shall submit in writing its reasons for an extension of time to the District's Permitting Director in Bartow. It is agreed that the District will not unreasonably withhold the granting of a reasonable request for extension.

24. For each day of delay beyond any due date specified in this Consent Order, CHC VII shall pay to the District fifty dollars (\$50.00) per day. This provision shall not be construed to

preclude the District's right to undertake other administrative or civil action as appropriate in the event any due date is not met.

25. CHC VII hereby waives any right to an administrative hearing or judicial review of the terms of this Consent Order.

26. This Consent Order shall not relieve CHC VII of the need to comply with all other applicable federal, state and local laws, regulations or ordinances.

27. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69, 373.083(1) and 373.129, F.S.

28. The District expressly reserves and retains the right to initiate appropriate legal action against CHC VII to prevent or prohibit the future violation of any applicable statutes, rules, orders or permit conditions, except as allowed and addressed in this Consent Order.

29. For and in consideration of the complete and timely performance by CHC VII of its obligations under this Consent Order, the District waives its right to seek judicial imposition of any penalties for the existing violations described in this Consent Order, and further waives its right to pursue any other action related thereto; provided, however, the District does not waive its right to pursue action against CHC VII and seek penalties for any future violations of the water use permit to be issued to CHC VII, including any pumpage beyond the quantities authorized in the permit.

30. CHC VII shall allow authorized representatives of the District access to the Parks at all reasonable times without prior

consent or notice for the purpose of determining compliance with this Consent Order, with Chapter 373, F.S., and with the rules of the District.

31. The effectiveness of this Consent Order is subject to review and approval by the District Governing Board. In the event the Governing Board does not approve this Consent Order, this Consent Order shall be null, void and of no legal effect. After this Consent Order has been executed by CHC VII and the Executive Director of the District, CHC VII may not withdraw its approval of, or terminate, this Consent Order under any circumstances unless the District Governing Board fails to approve this Consent Order.

32. Upon approval of this Consent Order by the District Governing Board, CHC VII shall dismiss the Appeal, each party therein to bear their own costs and fees.

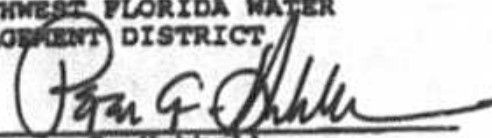
CHC VII, LTD., a Florida
limited partnership

By: CENTURY REALTY FUNDS, INC.,
its general partner

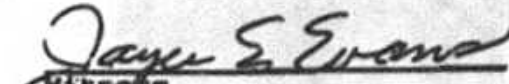
By: 
Raymond L. Hoats,
Its Vice President

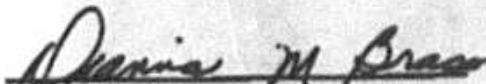
Date: 8/30/94

SOUTHWEST FLORIDA WATER
MANAGEMENT DISTRICT

By: 
Peter G. Hubbell,
Executive Director

Date: 8/30/94


Jay E. Evans
Witness


Dennis M. Bras
Witness

Approved by the Governing Board of the Southwest Florida Water Management District this 31st day of August, 1994, in Brooksville, Hernando County, Florida.

By: Joe L. Davis, Jr.
Joe L. Davis, Jr., Chairman

Attest: Sally Thompson
Sally Thompson, Secretary

Filed this 1st day of September, 1994.
Lennie Rishy
Agency Clerk

(Seal)

WFLA-TV

STATE OF FLORIDA

Commissioners:
JULIA L. JOHNSON, CHAIRMAN
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.



DIVISION OF WATER & WASTEWATER
CHARLES H. HILL
DIRECTOR
(850) 413-6900

Public Service Commission

August 10, 1998

Mr. Ronald L. Clark
Clark & Campbell, P.A.
P.O. Box 6559
Lakeland, Florida 33807-6559

RE: Application for Declaratory Statement Regarding Exemption from Regulation for Swiss Golf Mobile Home Park and Hidden Golf Mobile Home Park in Polk County, Florida

Dear Mr. Clark:

This letter is to reiterate the phone conversation between the Commission Staff and you on July 29, 1998. [The Commission received your letter requesting a declaratory statement regarding the jurisdictional status of Swiss Golf and Hidden Golf Mobile Home parks in Polk County on September 16, 1996. I first must apologize again, for this delay in responding to your letter. The document was misplaced and only recently "rediscovered" by staff. After having several discussions on this matter with our legal staff, it appears that these two mobile home parks will be required to file for an original certificate as a utility in existence.

The information submitted with the initial request for declaratory statement states that these two parks operate under Chapter 723, Florida Statutes, which regulates "lot rental" amounts to be charged to tenants. This Chapter further requires that all fees included in "lot rental" amounts must be identified to the tenants. You also stated that the Southwest Florida Water Management District required the installation of meters and the billing of metered rates to customers, to promote water conservation.

As you correctly pointed out, the Commission does not regulate "lot rental" amounts. However, it does regulate investor owned utilities and those charges billed for utility service. Both mobile home parks qualify as utilities under the definitions in Section 367.021(12), Florida Statutes, because they "provide water or wastewater service to the public for compensation". Once a specific charge for water or wastewater service is broken out of the lot rent, the landlord/tenant exemption contained in Section 367.022 (5), Florida Statutes, no longer applies. Further, it does not appear that these parks would qualify for any of the other exemptions contained in Section 367.022, Florida Statutes.

Mr. Ronald L. Clark

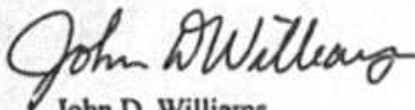
Page 2

August 10, 1998

The Commission encountered a similar situation to that of your clients in asserting jurisdiction over the Lake Yale system in Lake County. In that case, the mobile home park had been including water service to tenants as a nonspecific part of lot rental. However, the St. Johns River Water Management District fined the park for excessive usage and required that meters be installed and metered rates be billed to customers. This changed the exempt status of the park, and required that it be certificated as a utility in existence. This decision was codified in Docket No. 930133-WS, Order No. PSC-94-0171-FOF-WS, issued February 2, 1994, a copy of which is attached. Also attached is a copy of Section 367.022, Florida Statutes, which specifies other exemption categories.

Therefore, Swiss Golf and Hidden Golf Mobile Home Parks should complete and file an application for an original certificate as soon as possible. Two applications are included with this letter. The applications should be submitted no later than October 16, 1998. If you have further questions about this requirement or the application itself, please feel free to contact Ms. Billie Messer at (850) 413-6990.

Sincerely,



John D. Williams
Bureau Chief

Enclosures

cc: Division of Water and Wastewater (Hill, Messer)
Division of Legal Services (Jaber, Crosby)

STATE OF FLORIDA

Commissioners:
JOE GARCIA, CHAIRMAN
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.



DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

March 4, 1999

RECEIVED-FPSC
99 MAR -5 AM 10:49
RECORDS AND
REPORTING

CHC, VII, Ltd.
P.O. Box 5252
Lakeland, Florida 33807-5252

Re: Docket No. 981913-WS - Petition for waiver of Rule 25-30.110(3), F.A.C., by
CHC, VII, Ltd. in Polk County.

To whom it may concern:

Enclosed is a copy of the Staff Recommendation filed in this matter on March 4, 1999. The Commission is expected to consider this Recommendation at its March 16, 1999, Agenda Conference which will be held in Room 148, Betty Easley Conference Center, in Tallahassee beginning at 9:30 a.m.

If you wish to attend, please arrive promptly at the beginning of the Agenda Conference, as we cannot state the exact time at which this item will be heard. You are welcome to come to this Agenda Conference and observe and/or participate in the discussion of this item. If you have any questions, please feel free to call me at (850) 413-6185.

Sincerely,

Cleveland Ferguson, III
Staff Attorney

CF/dr

cc: Division of Water and Wastewater (Clapp)
Division of Records and Reporting

1:081913RL.CP

STATE OF FLORIDA

Commissioners:
JOE GARCIA, CHAIRMAN
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.



DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

March 4, 1999

Mr. Norman Mears
Rhema Business Services
1344 Vickers Drive
Tallahassee, Florida 32303-3041

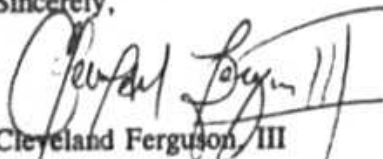
Re: Docket No. 981913-WS - Petition for waiver of Rule 25-30.110(3), F.A.C., by
CHC, VII, Ltd. in Polk County.

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Sincerely,


Cleveland Ferguson III
Staff Attorney

CF/dr

cc: Division of Water and Wastewater (Clapp)
Division of Records and Reporting

1:981913RL.CF

MEMORANDUM

RECEIVED-EPSC

January 7, 1999

99 JAN -7 AM 11:42

RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (CROSBY) *[Signature]*
RE: DOCKET NO. 981913-WS - PETITION FOR WAIVER OF RULE 25-
30.110(3), F.A.C., BY CHC, VII, LTD. IN POLK COUNTY.

99-DD163-PCD-125

Attached is an ORDER AUTHORIZING QUALIFIED REPRESENTATIVE STATUS, to be issued in the above-referenced docket.

(Number of pages in order - 2)

MUST GO TODAY

ALC/dr

Attachment

cc: Division of Water and Wastewater (Clapp)
Division of Legal Services (Ferguson)

I:\981913A.ALC

2/1

STATE OF FLORIDA

Commissioners:
JULIA L. JOHNSON, CHAIRMAN
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

DIVISION OF RECORDS & REPORTING
BLANCA S. BAYO
DIRECTOR
(850) 413-6770



Public Service Commission

December 22, 1998

Norman F. Mears, Consultant
Rhema Business Services, Inc.
1344 Vickers Drive
Tallahassee, Florida 32303-3041

Re: Docket No. 981913-WS

Dear Mr. Mears:

This will acknowledge receipt of a petition for waiver of Rule 25-30.110(3), F.A.C., by CHC, /II, Ltd. in Polk County, which was filed by this office on December 21, 1998 and assigned the above-referenced docket number. Appropriate staff members will be advised.

Mediation may be available to resolve any dispute in this docket. If mediation is conducted, it does not affect a substantially interested person's right to an administrative hearing. For more information, contact the Office of General Counsel at (850) 413-6078 or FAX (850) 413-6079.

Division of Records and Reporting
Florida Public Service Commission