

ORIGINAL

YOUNG, VAN ASSENDERP, VARNADOE & ANDERSON, P. A.  
ATTORNEYS AT LAW

REPLY TO:

R. BRUCE ANDERSON  
TASHA O. BUFORD  
DANIEL H. COX  
DAVID P. HOPSTETTER\*  
C. LAURENCE KEESEY  
KENZA VAN ASSENDERP  
GEORGE L. VARNADOE  
ROY C. YOUNG

Tallahassee

September 17, 1999

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OF COUNSEL  
DAVID B. ERWIN  
A.J. JIM SPALLA

Blanca Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

In re: Docket No. 990975-SU - Application for Transfer of Certificate No. 281-S in Lee County from Bonita Country Club Utilities, Inc. to RealNor Hallandale, Inc.

Dear Ms. Bayo:

Enclosed please find the original and 15 copies of the Motion to Expedite Application for Transfer or in the Alternative to Take Other Specified Action for the Benefit of Customers. Copies have been mailed or hand delivered to the persons shown on the Certificate of Service.

Please be advised that the undersigned, acting Of Counsel for Young, van Assenderp, Varnadoe & Anderson, P. A., along with Roy C. Young, are participating with the firm of Grant, Fridkin, Pearson, Athan & Crown, P. A., in the representation of RealNor Hallandale, Inc. Copies of all pleadings, motions, objections, orders and other documents should be provided to each lawyer or law firm at the following addresses:

David B. Erwin  
127 Riversink Road  
Crawfordville, Florida 32327

Roy C. Young  
Young, van Assenderp, Varnadoe & Anderson  
225 South Adams Street  
Tallahassee, Florida 32301

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APP  
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SEC  
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JTH

DOCUMENT NUMBER-DATE

11183 SEP 17 99

FPSC-RECORDS/REPORTING

Blanca Bayo, Director  
Page #2  
September 17, 1999

Grant, Fridkin, Pearson, Athan & Crown, P. A.  
5551 Ridgewood Drive, Suite 501  
Naples, Florida 34108

Thank you for your attention to this filing.

Sincerely,

A handwritten signature in black ink, appearing to read "David B. Erwin". The signature is fluid and cursive, with a large initial "D" and "E".

David B. Erwin

DBE:jm

Enclosures

cc: Tyler Van Leuven  
Michael J. Miceli  
Wayde P. Seidensticker  
Roy C. Young  
Jeffrey Fridkin  
Helen Athan  
Keith Wickenden

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Transfer of Certificate )  
No. 281-S in Lee County from Bonita ) Docket No. 990975-SU  
Country Club Utilities, Inc. to RealNor )  
Hallandale, Inc. ) Filed:

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MOTION TO EXPEDITE APPLICATION  
FOR TRANSFER OR IN THE ALTERNATIVE TO  
TAKE OTHER SPECIFIED ACTION FOR THE BENEFIT OF CUSTOMERS

---

RealNor Hallandale, Inc., the Applicant in the above captioned docket, moves to expedite the application for transfer of Certificate No. 281-S and if the primary motion is denied to take other action as specified herein. In support of its motion, RealNor Hallandale, Inc. states as follows:

1. RealNor Hallandale, Inc. has the lawful authority to make this motion for the benefit of the customers who have in the past received sewer service from Bonita Country Club Utilities, Inc. (hereinafter BCCU). RealNor Hallandale, Inc. has been assigned the Certificate of Title to the BCCU sewage treatment system by Northern Trust Bank of Florida, N. A. The bank was issued the Certificate of Title by a court of competent jurisdiction, the Circuit Court for the Twentieth Judicial Circuit in and for Lee County, Florida, following the successful prosecution of a foreclosure action against BCCU. It is clear that the Certificate of Title conveyed, “(H) all permits, licenses, franchises, certificates, and other rights and privileges . . .”). (Emphasis supplied.) RealNor Hallandale, Inc. is the owner of Certificate 281-S. The Certificate was assigned to RealNor Hallandale, Inc., by Northern Trust Bank of Florida, N. A. The Amended Summary Final Judgment of Foreclosure, the Certificate of Title and the Assignment are attached as Exhibits C-1, C-2 and C-3 to the Application for Transfer of RealNor Hallandale, Inc. They are attached to this motion as Appendix A. Having received Certificate No. 281-S as the result of a foreclosure, RealNor Hallandale, Inc. now has a legal obligation to continue to provide “service without interruption,” as required by Section 367.071(6), Florida Statutes, which states as follows:

(6) Any person, company, or organization that obtains ownership or control over any system, or part thereof, through foreclosure of a mortgage or other

encumbrance, shall continue service without interruption and may not remove or dismantle any portion of the system previously dedicated to public use which would impair the ability to provide service, without the express approval of the commission. This provision may be enforced by an injunction issued by a court of competent jurisdiction.

2. The service provided to the customers is in grave danger of interruption. In order to provide uninterrupted, quality service to customers, RealNor Hallandale, Inc. hired Severn Trent Environmental Services, Inc. to operate and manage the utility system. A copy of the contract, executed on July 14, 1999, is attached as Exhibit B-1 to the Application for Transfer of RealNor Hallandale, Inc. The contract provides for comprehensive service to be provided for the annual amount of \$93,727.00, payable monthly in installments of \$7,810.58. The contract is attached to this motion as Appendix B.

The Area Manager for Severn Trent Environmental Services, Inc. is Michael Angel. Mr. Angel has made a detailed personal inspection of the former BCCU facilities, and he has concluded that due to a lack of maintenance, especially at the lift stations, there is a potentially immediate health hazard. Among many other problems, there is no operating emergency generator and it is obvious that serious problems would arise in the event of loss of electric power, as is common during hurricanes. Mr. Angel has estimated that repairs in the amount of approximately \$144,950 are required, and many repairs are needed immediately. Mr. Angel's affidavit is attached hereto as Appendix C.

3. RealNor Hallandale, Inc. is the only entity today that has the obligation and the ability to provide "service without interruption." The stock of BCCU has been unlawfully transferred to Platinum Coast Financial Corporation, Inc. (hereinafter PCFC), without prior approval of the Commission. Therefore, BCCU is no longer in possession of a valid Certificate of Authorization. Whereas RealNor Hallandale, Inc. has a statutory obligation to provide "service without interruption," PCFC has no lawful right to provide any service. Whereas RealNor Hallandale, Inc. has the resources to provide service, BCCU has not made needed repairs and is financially incapable of making repairs or providing service, even if BCCU had a treatment facility that would permit it to do so. In fact, BCCU has not even had enough money to prepare and file its 1998 Annual Report, in compliance with Commission Rule 25-30.110, F. A. C. Mr. Michael Miceli, the previous owner of all of the BCCU stock is in the midst of personal bankruptcy and remains subject to the jurisdiction of the bankruptcy court in the case styled: In Re: Michael J. Miceli, debtor, United States Bankruptcy Court, Middle District of Florida, Tampa Division, Case No. 96-05177-9P1. The financial situation for BCCU is bleak. Unless the Commission acts quickly, the



customers are in jeopardy. The above facts have been extracted from documents and transcripts in the bankruptcy and foreclosure proceedings, and pertinent portions are attached. The documents are attached hereto as Appendix D.

4. RealNor Hallandale, Inc. is not presently receiving any revenue and is shouldering the burden of operating and maintaining the sewer system for customers without any compensation. BCCU is currently receiving all revenue, but that money is not being used for the benefit of customers. There have been no repairs, but at least \$50,000 has recently been paid by BCCU to Bonita Springs Golf Club, another Michael J. Miceli company. See pages 34 and 39 of the deposition of Pam Pass, the transcript of which is attached hereto as part of Appendix D.

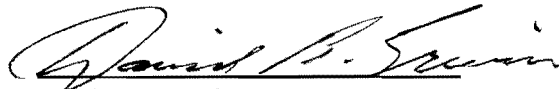
The Commission should not expect RealNor Hallandale, Inc. to assume the burden of paying for the operation and maintenance of the sewer system while someone else pockets all the revenue, and the Commission has the authority and ability to immediately rectify the situation.

5. RealNor Hallandale, Inc. respectfully submits that the Commission should do the following:
  - a) The Commission should immediately grant the transfer application, which would give RealNor Hallandale, Inc. the right to collect the revenue from customers to compensate RealNor Hallandale, Inc. for complying with its statutory obligation to provide “service without interruption.” The Commission could grant the transfer application pursuant to a proposed Agency Action Order (PAA).
  - b) If the Commission refuses to grant the transfer application in a PAA order, then the Commission, pursuant to Section 367.071(6), F. S., must relieve RealNor Hallandale, Inc. of its burden to provide service (without compensation) and place the burden on BCCU. The fact that BCCU has no facilities to treat sewage produced by customers suggests that this is not a good solution, but RealNor Hallandale, Inc. can not be required to provide free service without creating an unlawful taking of the property of RealNor Hallandale, Inc.
  - c) If the Commission grants the transfer pursuant to a PAA, and BCCU makes a lawful and valid protest of the PAA, then the Commission should, for the benefit of customers, and to prevent an unlawful taking of the property of RealNor Hallandale, Inc., authorize the creation of an escrow account into which would be placed all revenues received from sewer service customers or developers. Monies could be released from this escrow account for necessary and legitimate operations and needed repairs.

The Commission could establish conditions for withdrawal from the escrow account. Any money remaining in the escrow account after conclusion of the proceedings in the docket could be directed to the appropriate recipient.

WHEREFORE and in consideration of the above, RealNor Hallandale, Inc. moves that the Commission act in the manner set forth above for the reasons expressed.

RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of September, 1999.



David B. Erwin, of Counsel  
Young, van Assenderp, Varnadoe & Anderson

127 Riversink Road  
Crawfordville, Florida 32327  
Tel. (850) 926-9331

**CERTIFICATE OF SERVICE  
DOCKET NO. 990975-SU**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via  
U.S. Mail this 17<sup>th</sup> day of September, 1999 to the following:

Michael J. Miceli  
10200 Maddox Lane  
Bonita Springs, FL 34135

Wayde P. Seidensticker, Jr.  
Seidensticker & San Filippo, LLP  
1100 Fifth Avenue South, Suite 405  
Naples, FL 34102

Tyler Van Leuven  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850



David B. Erwin

COPY

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR LEE COUNTY, FLORIDA  
CIVIL ACTION

---

NORTHERN TRUST BANK OF FLORIDA, N.A.  
a National Banking Association

Plaintiff.

v.

CASE NO. 98-6169-CA-WCM

BONITA COUNTRY CLUB UTILITIES, INC.  
a Florida Corporation, THOMAS HEIDKAMP,  
CHAPTER 7, TRUSTEE, and all persons having  
or claiming by, through, under, or against any of  
the above parties and all parties having any right,  
title or interest in the subject property.

Defendants.

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**AMENDED SUMMARY FINAL JUDGMENT OF FORECLOSURE**

THIS CAUSE having come before the Court, upon the Motion of Plaintiff, Northern Trust Bank of Florida ("Northern Trust"), for the entry of an Amended Summary Final Judgment of Mortgage Foreclosure, and the Court having reviewed the pleadings, affidavits, having heard argument of counsel, and being otherwise fully advised in the premises, the Court finds as follows:

A. Each Defendant has been duly and regularly served, and the Court has jurisdiction over the parties and the subject matter of this action.

B. The Note, Mortgage, and Security Agreements sued upon in this action are in default as alleged in the complaint.

APPENDIX A

C. The Mortgage and Security Agreement sued upon by Northern Trust in this action constitute a valid lien upon the property therein described and further described as:

**TRACT "A"**  
(Fee Simple Title)  
(PART OF BONITA SPRINGS COUNTRY CLUB UNIT 2, LOT 1)

A PARCEL OF LAND, BEING PART OF LOT 1 OF BONITA SPRINGS COUNTRY CLUB UNIT 2, ACCORDING TO PLAT BOOK 30, PAGE 132 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 14, TOWNSHIP 47S, RANGE 25E AND LOT 1, PER THE RECORDED PLAT OF BONITA SPRINGS COUNTRY CLUB UNIT 2:  
THENCE NORTHERLY ALONG THE WEST PROPERTY LINE OF SAID LOT 1, N 00°46'57" E A DISTANCE OF 502.35 FEET TO THE POINT OF BEGINNING;  
THENCE CONTINUE ALONG THE WEST SIDE OF LOT 1 N 00°46'57" E A DISTANCE OF 164.19 FEET;  
THENCE N 88°03'31" E A DISTANCE OF 674.93 FEET;  
THENCE S 00°44'16" W A DISTANCE OF 164.18 FEET;  
THENCE S 88°03'31" W A DISTANCE OF 675.06 FEET TO THE POINT OF BEGINNING.  
CONTAINING 2.541 ACRES OF LAND MORE OR LESS.  
SUBJECT TO THE EASEMENTS AND RESTRICTIONS OF RECORD.

**TRACT "B"**  
(Leasehold Estate)  
(PART OF BONITA SPRINGS COUNTRY CLUB UNIT 2, LOT 1)

A PARCEL OF LAND, BEING PART OF LOT 1 OF BONITA SPRINGS COUNTRY CLUB UNIT 2, ACCORDING TO PLAT BOOK 30, PAGE 132 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
COMMENCING AT THE SOUTHWEST CORNER OF SECTION 14, TOWNSHIP 47S, RANGE 25 E AND LOT 1, PER THE RECORDED PLAT OF BONITA SPRINGS COUNTRY CLUB UNIT 2; THENCE EASTERLY ALONG THE SOUTH PROPERTY LINE OF SAID LOT 1 N 87°29'57" E A DISTANCE OF 440.42 FEET TO THE POINT OF BEGINNING;  
THENCE CONTINUE ALONG THE SOUTH LINE OF LOT 1 N 87°29'57" E A DISTANCE OF 235.38 FEET;  
THENCE N 00°44'16" E A DISTANCE OF 495.73 FEET;  
THENCE S 88°03'31" W A DISTANCE OF 235.26 FEET;  
THENCE S 00°44'16" W A DISTANCE OF 498.03 FEET TO THE POINT OF BEGINNING.

CONTAINING 2.681 ACRES OF LAND MORE OR LESS.  
SUBJECT TO THE EASEMENTS AND RESTRICTIONS OF RECORD.

TOGETHER WITH ALL OF THE LEASEHOLD INTEREST IN AND TO THAT CERTAIN LEASE, DATED NOVEMBER 9, 1995, OF THE REAL PROPERTY DESCRIBED ABOVE AS TRACT B, WHICH LEASE HAS BEEN EXECUTED BY BONITA COUNTRY CLUB UTILITIES AS THE LESSEE AND BY PLATNIUM COAST FINANCIAL CORP., A FLORIDA CORPORATION AS LESSOR:

TRACT "A" AND TRACT "B" WILL BE HEREINAFTER REFERRED TO AS THE "PREMISES" OR "PROPERTY".

TOGETHER WITH ANY AND ALL BUILDINGS AND OTHER IMPROVEMENTS, AND ALL FIXTURES IN OR ON SUCH BUILDINGS AND OTHER IMPROVEMENTS, NOW OR HEREAFTER SITUATED ON THE PROPERTY AND ALL ADDITIONS THERETO AND ALL RENEWALS, REPLACEMENTS AND REPLENISHMENTS THEREOF, INCLUDING ALL PERSONAL PROPERTY, THE HEATING AND AIR CONDITIONING UNITS, EQUIPMENT, MACHINERY, DUCTS AND CONDUITS, WHETHER DETACHABLE OR NOT, NOW OR HEREAFTER LOCATED IN AND ABOUT THE PROPERTY AND ALL ADDITIONS THERETO AND ALL RENEWALS, REPLACEMENTS AND REPLENISHMENTS THEREOF, AND PERSONAL PROPERTY NOW OR HEREAFTER LOCATED THEREON; AND

TOGETHER WITH ALL AND SINGULAR THE TENEMENTS, HEREDITAMENTS AND APPURTENANCES THERETO BELONGING OR IN ANYWISE THEREUNTO APPERTAINING, INCLUDING RIPARIAN AND/OR LITTORAL RIGHTS, ALL PERMITS AND LICENSES FOR MAINTAINING AND USING THE PREMISES, ANY EASEMENTS BENEFITING OR SERVING THE PROPERTY, ANY REVERSIONARY INTEREST IN ANY ROADS OR STREETS, AND ANY RIGHTS IN ANY EASEMENTS BENEFITING AND SERVING THE PROPERTY OR ANY PORTIONS THEREOF, AND THE RENTS, ISSUES AND PROFITS THEREOF, AND ALSO ALL THE ESTATE, RIGHT, TITLE, INTEREST AND ALL CLAIM AND DEMAND WHATSOEVER, AS WELL IN LAW AS IN EQUITY, OF BONITA COUNTRY CLUB UTILITIES, INC. IN AND TO THE SAME, INCLUDING, BUT NOT LIMITED TO, ALL RENTS, ISSUES, PROFITS, REVENUES, ROYALTIES, RIGHTS AND BENEFITS DERIVED FROM THE PREMISES FROM TIME TO TIME ACCRUING, WHETHER NOW EXISTING OR HEREAFTER CREATED, RESERVING TO BONITA COUNTRY CLUB UTILITIES, INC.

TOGETHER WITH ANY AND ALL IMPROVEMENTS (COLLECTIVELY THE "IMPROVEMENTS") NOW OR HEREAFTER ATTACHED TO OR PLACED, ERECTED, CONSTRUCTED OR DEVELOPED ON THE REAL PROPERTY ("PROPERTY"); (B) ALL FIXTURES, FURNISHINGS, EQUIPMENT, INVENTORY, AND OTHER ARTICLES OF PERSONAL

PROPERTY (COLLECTIVELY THE "PERSONAL PROPERTY") THAT ARE NOW OR HEREAFTER ATTACHED TO OR USED IN OR ABOUT THE IMPROVEMENTS OR THAT ARE NECESSARY OR USEFUL FOR THE COMPLETE AND COMFORTABLE USE AND OCCUPANCY OF THE IMPROVEMENTS FOR THE PURPOSES FOR WHICH THEY WERE OR ARE TO BE ATTACHED, PLACED, ERECTED, CONSTRUCTED OR DEVELOPED, OR THAT ARE OR MAY BE USED IN OR RELATED TO THE PLANNING, DEVELOPMENT, FINANCING OR OPERATION OF THE IMPROVEMENTS, AND ALL RENEWALS OF OR REPLACEMENTS OR SUBSTITUTIONS FOR ANY OF THE FOREGOING, WHETHER OR NOT THE SAME ARE OR SHALL BE ATTACHED TO THE IMPROVEMENTS OR THE PROPERTY; (C) ALL WATER AND WATER RIGHTS, TIMBER, CROPS, AND MINERAL INTERESTS PERTAINING TO THE PROPERTY; (D) ALL BUILDING MATERIALS AND EQUIPMENT NOW OR HEREAFTER DELIVERED TO AND INTENDED TO BE INSTALLED IN OR ON THE IMPROVEMENTS OR THE PROPERTY; (E) ALL PLANS AND SPECIFICATIONS FOR THE IMPROVEMENTS; (F) ALL CONTRACTS RELATING TO THE PROPERTY, THE IMPROVEMENTS OR THE PERSONAL PROPERTY; (G) ALL DEPOSITS (INCLUDING, WITHOUT LIMITATION, TENANTS' AND PURCHASERS' SECURITY DEPOSITS), BANK ACCOUNTS, FUNDS, DOCUMENTS, CONTRACT RIGHTS, ACCOUNTS, ACCOUNTS RECEIVABLE, COMMITMENTS, CONSTRUCTION AGREEMENTS, ARCHITECTURAL AGREEMENTS, GENERAL INTANGIBLES (INCLUDING, WITHOUT LIMITATION, TRADEMARKS, TRADE NAMES AND SYMBOLS), INSTRUMENTS, NOTES AND CHATTEL PAPER ARISING FROM OR BY VIRTUE OF ANY TRANSACTIONS RELATED TO THE PROPERTY, THE IMPROVEMENTS OR THE PERSONAL PROPERTY; (H) ALL PERMITS, LICENSES, FRANCHISES, CERTIFICATES, AND OTHER RIGHTS AND PRIVILEGES OBTAINED IN CONNECTION WITH THE PROPERTY, THE IMPROVEMENTS OR THE PERSONAL PROPERTY; (I) ALL PROCEEDS ARISING FROM OR BY VIRTUE OF THE SALE, LEASE OR OTHER DISPOSITION OF THE PROPERTY, THE IMPROVEMENTS, THE PERSONAL PROPERTY OR ANY PORTION THEREOF OR INTEREST THEREIN; (J) ALL PROCEEDS, IF ANY, (INCLUDING, WITHOUT LIMITATION, PREMIUM REFUNDS) OF EACH POLICY OF INSURANCE RELATING TO THE PROPERTY, THE IMPROVEMENTS OR THE PERSONAL PROPERTY; (K) ALL PROCEEDS, IF ANY, FROM THE TAKING OF ANY OF THE PROPERTY, THE IMPROVEMENTS, THE PERSONAL PROPERTY OR ANY RIGHTS APPURTENANT THERETO BY RIGHT OF EMINENT DOMAIN OR BY PRIVATE OR OTHER PURCHASE IN LIEU THEREOF (INCLUDING, WITHOUT LIMITATION, CHANGE OF GRADE OF STREETS, CURB CUTS OR OTHER RIGHTS OF ACCESS), FOR ANY PUBLIC OR QUASI PUBLIC USE UNDER ANY LAW; (L) ALL RIGHT, TITLE AND INTEREST OF BONITA COUNTRY CLUB UTILITIES, INC. IN AND TO ALL STREETS, ROADS, PUBLIC PLACES, EASEMENTS AND RIGHTS-OF-WAY, EXISTING OR PROPOSED, PUBLIC OR PRIVATE, ADJACENT TO OR USED IN CONNECTION WITH, BELONGING OR PERTAINING TO THE PROPERTY; (M) ALL OF THE LEASES, LICENSES,

OCCUPANCY AGREEMENTS, RENTS (INCLUDING WITHOUT LIMITATION, ROOM RENTS), ROYALTIES, BONUSES, ISSUES, PROFITS, REVENUES OR OTHER BENEFITS OF THE PROPERTY, THE IMPROVEMENTS OR THE PERSONAL PROPERTY, INCLUDING, WITHOUT LIMITATION, CASH OR SECURITIES DEPOSITED PURSUANT TO LEASES TO SECURE PERFORMANCE BY THE LESSEES OF THEIR OBLIGATIONS THEREUNDER; (N) ALL CONSUMER GOODS LOCATED IN, ON OR ABOUT THE PROPERTY OR THE IMPROVEMENTS OR USED IN CONNECTION WITH THE USE OR OPERATION THEREOF; (O) ALL RIGHTS, HEREDITAMENTS AND APPURTENANCES PERTAINING TO THE FOREGOING; AND (P) OTHER INTERESTS OF EVERY KIND AND CHARACTER THAT BONITA COUNTRY CLUB UTILITIES, INC. NOW HAS OR AT ANY TIME HEREAFTER ACQUIRES IN AND TO THE PROPERTY, IMPROVEMENTS, AND PERSONAL PROPERTY DESCRIBED HEREIN AND ALL PROPERTY THAT IS USED OR USEFUL IN CONNECTION THEREWITH, INCLUDING RIGHTS OF INGRESS AND EGRESS AND ALL REVERSIONARY RIGHTS OR INTERESTS OF BONITA COUNTRY CLUB UTILITIES, INC. WITH RESPECT THERETO.

D. The Court finds that \$11,443.50 is an appropriate and reasonable attorneys' fee for this action, and that 0 enhancement or reduction of the fee as requested is appropriate. Florida Patient's Compensation Fund v. Rowe, 472 So.2d 1145 (Fla. 1985). Accordingly, attorneys' fees in the amount of \$11,443.50 are awarded the attorney for Plaintiff. The Court finds that \$289.50 is an appropriate and reasonable amount of costs for this action. Accordingly, costs in the amount of \$289.50 are awarded to the Plaintiff.

E. As to each Defendant, there are no genuine issues and material facts, and Plaintiff is entitled to a judgment in its favor as a matter of law; accordingly, it is

**ORDERED AND ADJUDGED** that Northern Trust's Motion for the Entry of Final Summary Judgment of Mortgage Foreclosure against all Defendants is hereby **GRANTED**, and that Summary Final Judgment of Foreclosure (the "Judgment"), is hereby entered in accordance with the terms that follow:

1. There is due and owing from Defendant, BONITA COUNTRY CLUB UTILITIES, INC., ("BCCU"), to Plaintiff, Northern Trust, as of February 1, 1999, under the Note, Mortgage, and Security Agreement, the following sums:

a.) Principal balance:	\$478,013.10
b.) Accrued and unpaid Interest:	\$64,930.11
c.) Late Fees:	\$2,060.73
d.) Attorneys' fees and costs:	\$11,733.00
e.) Total amount due:	\$556,736.94

Which total is due as of the date hereof with interest thereafter at the legal rate, for which let execution issue.

2. If the total sum with interest at the rate prescribed by law and all costs of this action accrued subsequent to this Judgment are not paid within five (5) days from the date of this order, the Clerk of the Court, after publication of notice required by Chapter 45 of Florida Statutes, shall sell the property at public sale on ~~April 28, 1999~~ May 13, 1999, between 11:00 a.m. and 2:00 p.m., to the highest bidder for cash, by the north front door of the Lee County Courthouse, 1700 Monroe Street, in Fort Myers, Lee County, Florida, in accordance with the Florida Statutes §45.031, except the Clerk shall not conduct the sale unless Plaintiff or Plaintiff's representative is present to bid.

3. Plaintiff shall advance all subsequent costs of this action. If Plaintiff is not the successful bidder for the property at the sale, then the Clerk of this Court shall reimburse Plaintiff all costs advanced from the sale proceeds.



4. Plaintiff may be a bidder and a purchaser of the property at the foreclosure sale and, if the successful bidder of the property at the sale, then the Clerk shall credit Plaintiff's bid with all or any part of the following sums to pay the bid in full:

- (a) The full amount of the outstanding principal judgment amount;
- (b) All accrued interest;
- (c) Any and all additional costs; and
- (d) Reasonable attorneys' fees accruing subsequent to the date of the judgment in this cause.

5. If Plaintiff is not the successful bidder at such sale, then, immediately following the sale, the successful bidder shall pay the Clerk of the Court \$5,000 in cash or by cashier's check. If the successful bidder does not immediately tender the \$5,000, then the Clerk of the Court shall promptly recommence the bidding without further advertising that the sale will continue. The successful bidder shall have until 4:30 p.m. on ~~May 3,~~ <sup>May 17,</sup> 1999, to pay the clerk the full amount of its bid in cash or cashier's check.

6. If the clerk has not received the full amount of the bid in cash or cashier's check by 4:30 p.m. on ~~May 3,~~ <sup>May 17,</sup> 1999, then at 11:00 a.m., on ~~May 4,~~ <sup>May 18,</sup> 1999, the clerk shall reopen the bidding to complete the foreclosure sale without providing any further notice or advertisement except as hereafter provided. Plaintiff or Plaintiff's representative must be present to bid at the reopened foreclosure sale. If the sale is reopened, then the Clerk shall distribute the \$5,000 tendered following the 11:00 a.m. bidding in the manner and order prescribed for distributing the proceeds of the sale as described in paragraph 10 of this Order. The public and all bidders who are present at 11:00 a.m. when the sale was first held are invited to contact the clerk's office between the date of the first sale and 4:30 p.m. on ~~May 3,~~ <sup>May 17,</sup> 1999, to determine whether the

successful bidder has paid the clerk the full amount of the successful bid and the public and all bidders who are present at the first sale are invited to return to the location of this sale at 11:00 a.m. on ~~May 18,~~ <sup>May 18,</sup> 1999, in the event the bidding is reopened. The provisions in this paragraph shall be published as part of the notice of the foreclosure and shall be read by the clerk at the close of the bidding.

7. If Plaintiff is not the successful bidder at the reopened foreclosure sale, then, at the close of all bidding, the successful bidder shall pay the Clerk the full amount of its bid in cash or cashier's check.

8. Upon issuance of the certificate of sale at the earliest time provided by Chapter 45, Florida Statutes, Defendants, Bonita Country Club Utilities, Inc. a Florida Corporation, Thomas Heidkamp, Chapter 7, Trustee, and all persons claiming by, through, under, or against them since the filing of the Notice of Lis Pendens in this action shall be forever foreclosed of all right, title, interest, estate or claim in the property being sold, all rights of redemption shall expire and the purchaser at the sale shall be let into possession of the property.

9. Immediately after the conformation of the sale, whether occurring by the Clerk's issue of the certificate of title or upon the Court's order ruling on any objection to the sale, the Clerk shall, at Plaintiff's or the successful bidder's request, immediately issue a writ of possession of the property.

10. On filing the certificate of title, the Clerk shall distribute the proceeds of the sale in the following order:

- (a) By paying all of Plaintiff's cost of sale;
- (b) By paying Plaintiff's attorneys fees;
- (c) If Plaintiff is not the successful the bidder, by paying Plaintiff the full

outstanding principal amount, accrued interest, and any unpaid litigation costs and attorneys' fees;

(d) By paying for the documentary stamps affixed to the certificate.

11. Upon a sale being had in accordance with Chapter 45 of the Florida Statutes, and upon the Clerk filing the certificate of sale, and the certificate of title, the sale shall stand confirmed and the Defendants and all persons claiming by, through or under them, shall be forever barred and foreclosed of any equity or right of redemption whatsoever in and to the above-described property, and the purchaser at the sale shall be let into possession of the property; further any and all persons whosoever claiming against the subject property, by virtue of any liens or other interests unrecorded as to the date of the filing of Plaintiff's Lis Pendens with the Clerk of the Court shall be forever barred from asserting any such liens or other interests, and any such liens or other interests shall be discharged forever, in accordance with the Florida Statutes.

12. This court retains jurisdiction of this cause for the purposes of making all other orders and judgments as may be necessary and proper, including but not limited to, deficiency judgments, writs of assistance, determining claims to any surplus, awarding supplementary attorneys' fees and granting such other relief as may be appropriate.

DONE AND ORDERED in Chambers, Lee County, Florida, this 6 day of April 1999.

S/ WILLIAM C. McIVER

Honorable William C. McIver  
Circuit Court Judge

Conformed Copies to:  
Michael Miceli  
Michael Brundage, Esq.  
D. Keith Wickenden, Esq.

CHARLIE GREEN, CLERK CIRCUIT COURT  
S/ P. Wise  
4-21-99

FILED  
APR 21 1999  
LEE COUNTY CLERK OF COURT

EXHIBIT C-2

1050

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR LEE COUNTY, FLORIDA  
CIVIL ACTION

98146 PG2181

4677245

NORTHERN TRUST BANK OF FLORIDA, N.A.  
a National Banking Association  
Plaintiff,

v.

CASE NO. 98-6169-CA-WCM

BONITA COUNTRY CLUB UTILITIES, INC.  
a Florida Corporation, THOMAS HEIDKAMP,  
CHAPTER 7, TRUSTEE, and all persons having  
or claiming by, through, under, or against any of  
the above parties and all parties having any right,  
title or interest in the subject property.  
Defendants.

**FILED**

JUN 29 1999

CHARLES D. SMITH, CLERK  
CIRCUIT/COUNTY COURTS  
BY \_\_\_\_\_ D.C.

**ASSIGNMENT OF CERTIFICATE OF SALE AND  
RIGHT TO RECEIVE CERTIFICATE  
OF TITLE**

The undersigned, NORTHERN TRUST BANK OF FLORIDA N.A., is the Plaintiff in this action and the successful bidder at a foreclosure sale held on May 13, 1999 and thus has the right to receive a Certificate of Title to that certain property described in that certain Amended Summary Final Judgment of Foreclosure in the above-styled case pursuant to that certain Certificate of Sale issued on May 13, 1999 by the Clerk of Court also in the above-styled case. The undersigned hereby assigns all of its right, title and interest in the aforesaid Certificate of Sale and the right to receive such Certificate of Title to REALNOR HALLANDALE, INC., a Florida corporation.

NORTHERN TRUST BANK OF FLORIDA N.A.,  
a national bank association

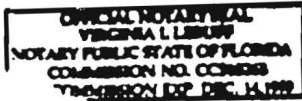
By: *Dolores R. Single*  
DOLORIS R. SINGLE, as Vice President

[Corporate Seal]

STATE OF FLORIDA )  
                                  ) §  
COUNTY OF COLLIER )

CR3146 PG2185

I HEREBY CERTIFY that the foregoing instrument was acknowledged before me this  
day of June, 1999, by \_\_\_\_\_ as Vice President of Northern Trust  
Bank of Florida N.A., a national banking association, who is personally known to me or who  
produced \_\_\_\_\_ as identification.



Virginia L. Lewis  
Notary Public - State of Florida  
Virginia L. Lewis  
Printed Name of Notary  
My Commission Expires: 12/14/99

§ 812.01, F.S. LAW NO. 89-10, B.C.C.L. Assignment of Commission of Notary Public

CHARLIE GREEN, CLERK  
LEE COUNTY, FL  
1999 JUL 16 PM 2:31

County of Lee,  
State of Florida

I, Charlie Green, Clerk of the Circuit Court in and for said County and State do hereby  
certify that the foregoing is a true and correct copy of ASSIGNMENT  
as filed in this office 7-16-99 at 12:31 PM and recorded in OR  
Book 3146, Page 2184 of the Public Records of Lee County, Florida  
witness my hand and official seal this 21<sup>ST</sup> day of JULY  
A.D. 1999

CHARLIE GREEN, Clerk  
[Signature] D.C.



EXHIBIT C-3

IN THE CIRCUIT COURT OF THE TWENTH JUDICIAL CIRCUIT  
IN AND FOR LEE COUNTY, FLORIDA  
CIVIL ACTION

NORTHERN TRUST BANK OF FLORIDA, N.A.  
a National Banking Association

Plaintiff,

v.

BONITA COUNTRY CLUB UTILITIES, INC.  
a Florida Corporation, THOMAS HEIDKAMP,  
CHAPTER 7, TRUSTEE, and all persons having  
or claiming by, through, under, or against any of  
the above parties and all parties having any right,  
title or interest in the subject property.

Defendants.

4677258

CASE NO. 98-6169-CA-WCM

Document Fee \$ 7.00  
Plaintiff Fee \$  
Charles Green, Clerk, Lee County  
Clerk's Office, Lee County, Fla.

20166152203

Handwritten notes and stamps, including a date stamp: JUN 14 01 2:05

CERTIFICATE OF TITLE

RECORDED BY  
TERRY MILLER, S.C.

The undersigned, CHARLIE GREEN, Clerk of the Circuit Court, certified that he executed and filed a Certificate of Sale in this action on May 13, 1999, for the property described herein, and that no objections to the sale have been filed within the time allowed for filing objections. The following property in Lee County, Florida:

TRACT "A"  
(Fee Simple Title)  
(PART OF BONITA SPRINGS COUNTRY CLUB UNIT 2, LOT 1)

A PARCEL OF LAND, BEING PART OF LOT 1 OF BONITA SPRINGS COUNTRY CLUB UNIT 2, ACCORDING TO PLAT BOOK 30, PAGE 132 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 14, TOWNSHIP 47S, RANGE 25E AND LOT 1, PER THE RECORDED PLAT OF BONITA SPRINGS COUNTRY CLUB UNIT 2;  
THENCE NORTHERLY ALONG THE WEST PROPERTY LINE OF SAID LOT 1, N 00°46'57" E A DISTANCE OF 502.35 FEET TO THE POINT OF BEGINNING;  
THENCE CONTINUE ALONG THE WEST SIDE OF LOT 1 N 00°46'57" E: A DISTANCE OF 164.19 FEET;  
THENCE N 88°03'31" E: A DISTANCE OF 674.93 FEET;  
THENCE S 00°44'16" W A DISTANCE OF 164.18 FEET;

APPERTAINING, INCLUDING RIPARIAN AND/OR TIDAL RIGHTS, ALL PERMITS AND LICENSES FOR MAINTAINING AND USING THE PREMISES, ANY EASEMENTS BENEFITING OR SERVING THE PROPERTY, ANY REVERSIONARY INTEREST IN ANY ROADS OR STREETS, AND ANY RIGHTS IN ANY EASEMENTS BENEFITING AND SERVING THE PROPERTY OR ANY PORTIONS THEREOF, AND THE RENTS, ISSUES AND PROFITS THEREOF, AND ALSO ALL THE ESTATE, RIGHT, TITLE, INTEREST AND ALL CLAIM AND DEMAND WHATSOEVER, AS WELL IN LAW AS IN EQUITY, OF IRONIA COUNTRY CLUB UTILITIES, INC. IS AND TO THE SAME, INCLUDING, BUT NOT LIMITED TO, ALL RENTS, ISSUES, PROFITS, REVENUES, ROYALTIES, RIGHTS AND BENEFITS DERIVED FROM THE PREMISES FROM TIME TO TIME ACCRUING, WHETHER NOW EXISTING OR HEREAFTER CREATED, RESERVING TO IRONIA COUNTRY CLUB UTILITIES, INC.

TOGETHER WITH ANY AND ALL IMPROVEMENTS (COLLECTIVELY THE "IMPROVEMENTS") NOW OR HEREAFTER ATTACHED TO OR PLACED, ERICED, CONSTRUCTED OR DEVELOPED ON THE REAL PROPERTY ("PROPERTY"); (B) ALL FIXTURES, FURNISHINGS, EQUIPMENT, INVENTORY, AND OTHER ARTICLES OF PERSONAL PROPERTY (COLLECTIVELY THE "PERSONAL PROPERTY") THAT ARE NOW OR HEREAFTER ATTACHED TO OR USED IN OR ABOUT THE IMPROVEMENTS OR THAT ARE NECESSARY OR USEFUL FOR THE COMPLETE AND COMFORTABLE USE AND OCCUPANCY OF THE IMPROVEMENTS FOR THE PURPOSES FOR WHICH THEY WERE OR ARE TO BE ATTACHED, PLACED, ERICED, CONSTRUCTED OR DEVELOPED, OR THAT ARE OR MAY BE USED IN OR RELATED TO THE PLANNING, DEVELOPMENT, FINANCING OR OPERATION OF THE IMPROVEMENTS, AND ALL RENEWALS OF OR REPLACEMENTS OR SUBSTITUTIONS FOR ANY OF THE FOREGOING, WHETHER OR NOT THE SAME ARE OR SHALL BE ATTACHED TO THE IMPROVEMENTS OR THE PROPERTY; (C) ALL WATER AND WATER RIGHTS, TIMBER, CROPS, AND MINERAL INTERESTS PERTAINING TO THE PROPERTY; (D) ALL BUILDING MATERIALS AND EQUIPMENT NOW OR HEREAFTER DELIVERED TO AND INTENDED TO BE INSTALLED IN OR ON THE IMPROVEMENTS OR THE PROPERTY; (E) ALL PLANS AND SPECIFICATIONS FOR THE IMPROVEMENTS; (F) ALL CONTRACTS RELATING TO THE PROPERTY, THE IMPROVEMENTS OR THE PERSONAL PROPERTY; (G) ALL DEPOSITS (INCLUDING, WITHOUT LIMITATION, TENANTS' AND PURCHASERS' SECURITY DEPOSITS), BANK ACCOUNTS, FUNDS, DOCUMENTS, CONTRACT RIGHTS, ACCOUNTS, ACCOUNTS RECEIVABLE, COMMITMENTS, CONSTRUCTION AGREEMENTS, ARCHITECTURAL AGREEMENTS, GENERAL INTANGIBLES (INCLUDING, WITHOUT LIMITATION, TRADEMARKS, TRADE NAMES AND SYMBOLS), INSTRUMENTS, NOTES AND CHATTEL PAPER ARISING FROM OR BY VIRTUE OF ANY TRANSACTIONS RELATED TO THE PROPERTY, THE IMPROVEMENTS OR THE PERSONAL PROPERTY; (H) ALL PERMITS, LICENSES, FRANCHISES, CERTIFICATES, AND OTHER RIGHTS AND PRIVILEGES OBTAINED IN CONNECTION WITH THE PROPERTY, THE IMPROVEMENTS OR THE PERSONAL PROPERTY; (I) ALL PROCEEDS ARISING FROM OR BY VIRTUE OF THE SALE, LEASE OR OTHER DISPOSITION OF THE PROPERTY, THE IMPROVEMENTS, THE PERSONAL PROPERTY OR ANY PORTION THEREOF OR

03146 P62205

03146 PG2206

CHARLIE GREEN, CLERK  
CIT. COURT, FLA.  
11th JUDGE 16 PM 12:35

INTEREST THEREIN, (5) ALL PROCEEDS, IF ANY, (INCLUDING, WITHOUT LIMITATION, PREMIUM REFUNDS) OF EACH POLICY OF INSURANCE RELATING TO THE PROPERTY, THE IMPROVEMENTS OR THE PERSONAL PROPERTY, (6) ALL PROCEEDS, IF ANY, FROM THE TAKING OF ANY OF THE PROPERTY, THE IMPROVEMENTS, THE PERSONAL PROPERTY OR ANY RIGHTS APPURTENANT THERETO BY RIGHT OF EXISTENT EASEMENTS OR BY PRIVATE OR OTHER PURCHASE IN THE FUTURE (INCLUDING, WITHOUT LIMITATION, CHANGE OF GRADE OF STREETS, CURB CUTS OR OTHER RIGHTS OF ACCESS, FOR ANY PUBLIC OR QUASI-PUBLIC USE UNDER ANY LAW); (7) ALL RIGHT, TITLE AND INTEREST OF BONITA COUNTRY CLUB UTILITIES, INC. IN AND TO ALL STREETS, ROADS, PUBLIC PLACES, EASEMENTS AND RIGHTS-OF-WAY, EXISTING OR PROPOSED, PUBLIC OR PRIVATE, ADJACENT TO OR USED IN CONNECTION WITH, BELONGING OR PERTAINING TO THE PROPERTY; (8) ALL OF THE LEASES, LICENSES, OCCUPANCY AGREEMENTS, RENTS (INCLUDING WITHOUT LIMITATION, ROOM RENT, ROYALTIES, BONUSES, ISSUES, PROFITS, REVENUES OR OTHER BENEFITS OF THE PROPERTY, THE IMPROVEMENTS OR THE PERSONAL PROPERTY, INCLUDING, WITHOUT LIMITATION, CASH OR SECURITIES DEPOSITED PURSUANT TO LEASES TO SECURE PERFORMANCE BY THE LESSEES OF THEIR OBLIGATIONS THEREUNDER); (9) ALL CONSUMER GOODS LOCATED IN, ON OR ABOUT THE PROPERTY OR THE IMPROVEMENTS OR USED IN CONNECTION WITH THE USE OR OPERATION THEREOF; (10) ALL RIGHTS, HEREDITAMENTS AND APPURTENANCES PERTAINING TO THE FOREGOING; AND (11) OTHER INTERESTS OF EVERY KIND AND CHARACTER THAT BONITA COUNTRY CLUB UTILITIES, INC. NOW HAS OR AT ANY TIME HEREAFTER ACQUIRES IN AND TO THE PROPERTY, IMPROVEMENTS, AND PERSONAL PROPERTY DESCRIBED HEREIN AND ALL PROPERTY THAT IS USED OR USEFUL IN CONNECTION THEREWITH INCLUDING RIGHTS OF EGRESS AND REGRESS AND ALL REVERSIONARY RIGHTS OR INTERESTS OF BONITA COUNTRY CLUB UTILITIES, INC. WITH RESPECT THERETO.

was sold to:  
REALTOR HALLADAY INC  
700 BRICKELL AVENUE MIAMI FL 33130

WITNESS my hand and the seal of this Court on 14 day of JULY, 1999.

COPIES SENT TO  
JEFFREY D. FRIDKIN ESQ  
MICHAEL MICELLI ESQ  
MICHAEL BRUNDAGE ESQ  
CHARLIE GREEN, CLERK CIRCUIT COURT  
BY: *CM Schifano*

CHARLIE GREEN  
Clerk of the Circuit Court  
By: *CM Schifano*  
Deputy Clerk



EXHIBIT B-1

AGREEMENT

FOR THE

OPERATION AND MAINTENANCE

OF

THE BONITA SPRINGS GOLF AND COUNTRY CLUB  
WASTEWATER FACILITY

AND FOR

THE ADMINISTRATION OF SEWER FEES  
BILLING AND COLLECTION FUNCTIONS

BETWEEN

SEVERN TRENT ENVIRONMENTAL SERVICES, INC.

AND

REALNOR HALLANDALE, INC.

JULY 14, 1999

*APPENDIX B*

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AGREEMENT FOR  
OPERATION AND MAINTENANCE  
OF  
BONITA SPRINGS GOLF AND COUNTRY CLUB  
WASTEWATER TREATMENT FACILITY  
AND FOR  
THE ADMINISTRATION OF SEWER FEES  
BILLING AND COLLECTION FUNCTIONS

THIS AGREEMENT, made and entered into this 14<sup>th</sup> day of July, by and between: Realnor Hallandale, Inc. (the "Client"), a corporation organized under the laws of the State of Florida and Severn Trent Environmental Services, Inc., a Texas corporation with its principal place of business at 16337 Park Row, Houston, Texas 77084 (hereinafter, the "Operator").

WHEREAS, the Client desires to hire the Operator to (i) operate the Client's Wastewater Collection System and Treatment Plant together with fourteen (14) Lift Stations and the Client's Effluent Disposal System and (ii) administer all sewer utility billing and collection functions;

WHEREAS, the Client has the authority under the laws of the State of Florida to enter into this Agreement; and,

WHEREAS, the Client has evaluated the Operator's qualifications and proposal and has determined it advantageous to enter into this Agreement with the Operator.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, and subject to the terms and conditions herein stated, the parties agree as follows:

ARTICLE I  
DEFINITIONS

*"Abnormal or Biologically Toxic Material"* is defined as any substance or combination of substances contained in the water or wastewater received at any of the Facilities in sufficient concentrations or amounts so as to either:

- (i) interfere with the biological processes necessary for the removal of organic and chemical constituents from the wastewater in a manner required to meet the discharge limits specified in the Client's wastewater discharge permit; or
- (ii) create effluent, sludges, or other material classified as a hazardous waste under RCRA.

Abnormal or Biologically Toxic Materials include, but are not limited to, heavy metals, phenols, cyanides, pesticides, herbicides, priority pollutants as listed by USEPA, or any substance that violates the local or USEPA standards for raw or finished water.

*"Adequate Nutrients"* is defined as nitrogen, phosphorus and iron contained in the wastewater influent flow received at the WWTP in such proportionate amounts relative to the minimum ratio of five (5) parts nitrogen, one (1) part phosphorus, and one half (0.5) part iron for each one hundred (100) parts BOD5.

*"Applicable Law"* -- those laws, rules, regulations, codes, orders, directives, guidelines, judgments, rulings, interpretations or similar requirements or actions of any federal, state, local government, agency or executive or administrative body of any of the foregoing, in each case that pertain to the (a) parties' respective responsibilities under this Agreement (b) operation or maintenance of the Facilities, (c) health and welfare of individuals working at or visiting the Facilities or performing tasks as provided herein, or (d) the collection, delivery, pretreatment or treatment of wastewater. This definition specifically includes the terms, conditions, requirements or schedules of any administrative or judicial settlement or enforcement related, in any way, to the Facilities or the collection, delivery, pretreatment or treatment of wastewater and to the discharge current permit issued for the WWTP.

*"Authorized Representative"* is defined in Section 4.1.

*"Base Compensation"* is defined in Section 6.1.

*"Baseline Levels"* is defined as the average daily wastewater influent flows and loads received at the WWTP during the prior twelve months of this Agreement.

*"Capital Expenditure"* is defined as any expenditure for equipment, major repair and replacement, or structure that significantly extends service life, represents a non-routine type of purchase, repair or replacement, and whose unit cost exceeds \$250.00.

*"Capital Expenditure Budget"* is defined in Section 6.2.

*"CERCLA"* is defined as the Comprehensive Environmental Response Compensation and Liability Act, as same may be amended from time to time.

*"Change of Law"* the occurrence of any of the events listed in (i) through (iv) below, which results or can reasonably be expected to result in either (a) the need to make a

capital improvement at any of the Facilities in order for the Operator to operate the Facilities in accordance with this Agreement and Applicable Law or (b) a direct increase or decrease to the cost of operating or maintaining the Facilities in accordance with this Agreement and Applicable Law:

(i) there is passed or promulgated any federal, state, or other local law, statute, ordinance, rule or regulation different from those existing on the date of execution of this Agreement;

(ii) there is passed or promulgated any amendment to, or change in, any federal, state, or other local law, statute, ordinance, rule or regulation following the date of this Agreement;

(iii) there comes into existence an order or judgment of any federal, state, or local court, administrative agency or other governmental body following the execution of this Agreement, containing interpretations of any federal, state, or other local law, statute, ordinance, rule or regulation relating to the operation or maintenance of the Facilities or the health and safety of the Operator's employees that is inconsistent with generally accepted interpretations in effect on the date of execution of this Agreement; provided that an order or judgment of any federal, state, or local court, administrative agency or other governmental body after the date of execution of this Agreement which determines that the Facilities have been operated in a manner inconsistent with the Operator's obligations hereunder shall not constitute a "Change of Law"; and

(iv) (a) there is imposed any condition different from those existing on the date of execution of this Agreement on the issuance or renewal, or (b) there shall be a suspension, termination, interruption, revocation, denial or failure of renewal (for reasons other than Operator fault or failure by the Operator to comply with the terms of this Agreement), of any official permit, license or necessary approval, including without limitation such of the foregoing as are issued or approved by the USEPA, the Occupational Safety and Health Administration or the State Environmental Department.

"*Clean Water Act*" is defined as the Federal Water Pollution Control Act, as same may be amended from time to time.

"*Commencement Date*" is defined in Section 5.1

"*Facilities*" is defined as the WWTP and the Client's Effluent Disposal System.

"*Force Majeure*" is defined in Section 8.8

"*Operator*" is defined as Severn Trent Environmental Services, Inc. and its permissible successors and/or assigns.

"*Process Residue*" is defined in Section 3.4.

"*Project*" is defined as the operation of the Facilities and the administration of sewer utility billing and collection functions, all as described in this Agreement.

"*RCRA*" is defined as the Resource Conservation Recovery Act, as same may be amended from time to time.

"*State*" is defined as the State of Florida.

"*Scope of Service*" is defined in Section 3.1.

"*Client*" is defined as Realnor Hallandale, Inc.

"*WWTP*" is defined as the Client's Wastewater Treatment Facility including the Wastewater Collection System, Sewer Lift Stations, Storm Water Collection System and related facilities.

## ARTICLE II PURPOSE

### *Section 2.1 - Purpose.*

During the term of this Agreement, the Client agrees to engage the Operator as an independent contractor to operate the Facilities and to administer the Client's sewer utility billing and collection functions. Each party hereto agrees that it will cooperate in good faith with the other, its agents and subcontractors to facilitate the performance of the mutual obligations set forth in this Agreement.

## ARTICLE III SCOPE OF SERVICE

### *Section 3.1 - General.*

The scope of service to be provided by the Operator under this Agreement will require the Operator to provide the labor, utilities, equipment and supplies necessary for the operation and maintenance of the Facilities and the administration of sewer utility billing and collection functions to the extent specifically set forth in this Article III (hereinafter, the "Scope of Service"):

### *Section 3.2 - Facilities Process Control and Effluent Standards.*

Subject to the Client's obligations and duties under this Agreement, the Operator shall manage and operate the Facilities in a manner designed to meet all the requirements of the existing wastewater discharge permits, as well as any other provision of Applicable Law. The Operator shall operate the Facilities to provide this level of treatment, provided that at all times wastewater flow does not exhibit the following characteristics:

(a) Hydraulic or organic loadings in excess of those consistent with the design standards of the Facilities observed over a thirty-day period; or,

(b) Any wastewater discharged to the WWTP that does not contain Adequate Nutrients.

In the event that influent flows do exhibit any such characteristics, the Operator shall provide the best treatment reasonably possible within the constraints of the Facilities design, physical limitations and existing loadings.

In the event that Abnormal or Biologically Toxic Material, is received at any of the Facilities, the Operator shall promptly notify the Client and use reasonable efforts to remove and/or reduce such material using the processes and equipment provided at the Facilities.

If such Abnormal or Biologically Toxic Material cannot be treated or removed using the processes and equipment provided at the Facilities, the Operator shall not be responsible for compliance with the Client's permit(s), the Clean Water Act, RCRA, CERCLA or with any other relevant provision of Applicable Law, or for any other consequence resulting from the receipt by the Facilities of such Abnormal or Biologically Toxic Material including, without limitation, any fines, penalties or damages resulting therefrom.

In the event that wastewater discharge violations occur following the Commencement Date, the Operator shall be responsible for fines, penalties, or damages for violations that may be imposed by Applicable Law if and to the extent such violations were within the reasonable control of the Operator and are the result of the negligence of the Operator. Prior to payment of any such fines, penalties or damages, the Operator reserves the right to contest government or private actions, suits or proceedings for violations through administrative procedures or otherwise.

During any Client approved construction or other modification of any of the Facilities, the Client and the Operator will work together to maintain access and minimize disruption and outages to the existing equipment and components. The Client and the Operator shall mutually develop a "Plan of Action" that will incorporate protection to the Facilities and the processes during any construction and/or other modification to the Facilities.

### ***Section 3.3 – Repair and Maintenance of the Facilities and Equipment.***

(a) The Operator shall perform all routine maintenance functions, consisting of preventative maintenance in accordance with manufacturers' specifications and/or approved "Operating and Maintenance" procedures developed for equipment and processes of the Facilities, preventative and corrective maintenance tracking and



scheduling and spare parts inventory control, cleaning and lubrication of service equipment, equipment inspections and adjustments, and building and grounds janitorial services for the Facilities and to all equipment and instrumentation provided to the Operator by the Client pursuant to this Agreement in accordance with standard industry practice.

(b) The Operator shall bear all costs, including electric power expense, associated with Operator's maintenance and repair obligations hereunder. All Capital Expenditures are part of the Capital Expenditure Budget and are the Client's responsibility as provided in Section 6.2 hereunder.

***Section 3.4 - Disposal of Process Residue.***

As the agent for the Client, the Operator shall dispose of screenings, grit and wastewater sludges ("Process Residue") either at an approved landfill or at an approved land application site designated and made available by the Client. Title and ownership of Process Residue shall remain with the Client notwithstanding such services by the Operator. The costs of disposal of Process Residue shall be included in the Base Compensation described in Section 6.1.

***Section 3.5 - Testing and Laboratory Analysis.***

Operator shall cause the performance of all sampling and laboratory analysis required by Client permits and necessary for process control. Laboratory procedures and analysis shall conform to the then current edition of Standard Methods for the Examination of Wastewater or shall be in accordance with testing requirements of the Client's permit(s).

The Operator shall prepare the data for all permit monitoring and operating reports and shall deliver and certify such results to the Client and to all required regulatory agencies. The Operator shall assist in the permitting process. The Client, however, shall at all times be responsible for maintaining all required permits for the Project.

The cost of monthly compliance sampling and laboratory analysis shall be included in the Base Compensation described in Section 6.1 herein.

***Section 3.6 - Technical Support.***

Operator's technical support group shall provide backup advice in process control, management, maintenance, engineering and plant repair as necessary to assist the Project staff and ensure performance of Operator's obligations under this Agreement.

***Section 3.7 - Utility Billing and Collection Duties.***

Operator shall be responsible for administering all sewer utility billing and collection functions and other administrative functions associated therewith. Bills shall be generated and mailed every month as soon as practical following meter readings.

### ***Section 3.8 - Staffing***

Operator shall assign and ensure that adequate employees of the Operator shall, at all times, be dedicated to the Facilities for not less than required by the current permit. Employees of the Operator shall be knowledgeable in the areas of wastewater treatment and billing operations. At all times during the term of this Agreement, at least five employees available to the Project shall be certified by the State to operate the Facilities. Operator shall furnish copies of said certifications to the Client upon request.

Operator shall provide training for personnel in areas of operation, maintenance, safety, supervisory skills, laboratory and energy management. A proper safety program will be implemented and all portions of that program will be adhered to.

### ***Section 3.9 - Odor and Noise Control.***

Operator shall operate the Facilities within the limits and capabilities of the Facilities to minimize odor and noise. Odor complaints received by the Operator shall be reported to the Client within forty-eight (48) hours and contain the name, address, phone number, date and time, Operator contract person, nature of odor, probable origin of the odor and the action the Operator will implement or has implemented to remedy and/or mitigate said odor. Remedial action shall be implemented as soon as practicable.

The Operator shall develop any additional reporting procedures on its initiative and/or on the specific written request by the Client and implement said procedures within five (5) working days subsequent to the approval of said procedures by the Client.

### ***Section 3.10 - Communications.***

Operator shall develop, within thirty (30) working days of the Commencement Date, an informational communications, publicity and community relations program, subject to the approval by the Client, in order to keep the Client informed about the operation and maintenance of the Facilities. The Operator shall prepare written summaries of all formal meetings with the Client and provide the Client with a copy. The Operator will deal in a professional manner with individuals and community groups concerned with any aspect of the operation of the Facilities, and/or with any process odor and/or other Project "Complaint Mitigation Plan" developed by and between the Operator and the Client.

### ***Section 3.11 - Management Information Systems.***

Operator shall install, to the extent necessary in the reasonable opinion of the Operator, computer hardware and software to provide a preventative maintenance management system and a computerized process control system for the Facilities. Upon termination of this Agreement, the computer hardware and software will remain the property of the Operator unless the Client wishes to purchase same but all data stored thereon shall be provided to the client on computer disc without charge.

### ***Section 3.12 - Reports.***

Operator shall maintain records of operations, maintenance, repair and improvement activities at the Facilities and shall prepare and submit to the Client a monthly report, delivered to the Client not later than twenty-one (21) working days following the end of

each month, including a narrative summary of operations and all data required for monthly reporting to local, state and federal agencies. The Operator also shall complete and submit the report forms required by the State for wastewater quality.

Once each year, at a time to be determined in advance by the Client, the Operator shall prepare and submit an annual report that records significant events of the past year, describes the status of operations at the Facilities and compares the status to planned activities.

***Section 3.13 – Ground Maintenance Services.***

Operator will perform, in a timely and efficient manner, typical routine ground maintenance tasks at the Facilities sites, including mowing, trimming and lawn care .

***Section 3.14 - Other Costs and Expenses.***

The Operator will not be required to pay for the following unless caused by its negligence:

1. Expenses resulting from a change in Scope of Services or physical change(s) of any of the Facilities.
2. Expenses resulting from a Change of Law.
3. All repairs necessitated by the occurrence of a disabling event qualifying under the definition of Force Majeure hereunder.
4. Expenses incurred by the Operator in providing emergency responses but only to the extent that the Operator incurs special, additional or extraordinary expenses which the Operator would not normally incur in operating and maintaining the Facilities as provided herein.
5. Sewage use fees associated with and/or equated to domestic wastewater usage and/or wastewater discharge.
6. Expenses related to municipal or private surveillance and alarm monitoring by third party vendors.
7. Fire protection.
8. Professional engineering fees.
9. Expenses arising from emergency repairs made outside of regular business hours.
10. Expenses resulting from hydraulic or organic loads observed over a three-month period that exceed Baseline Levels by more than 10%.

11. Expenses incurred and/or penalties assessed as a result of the existence at and/or the discharge to any of the Facilities of wastewater containing Abnormal or Biologically Toxic Material.
12. Expenses resulting from the influent flow of wastewater that does not contain Adequate Nutrients.
13. Payments made to subcontractors hired in the normal course of business with the approval of the Client or in connection with a Capital Expenditure.
14. Capital Expenditures as provided in Section 6.2 herein
15. Taxes as provided in Section 4.4 below.

The Client shall reimburse and/or compensate the Operator for all expenses incurred or paid by the Operator for items specified above within thirty (30) days of Operator's submission of Operator's invoices. Expenses subject to reimbursement shall include, but shall not be limited to, each of the items specified above, the costs of subcontractors hired by the Operator, Operator's own overtime and/or additional direct labor expenses, the costs of chemicals, electricity, fuels and other expendable supplies, etc. All costs or expenses subject to reimbursement (excluding any taxes as provided in Section 4.4 below) shall include an allocation of ten percent (10%) towards overhead and/or profit.

***Section 3.15 – Emergency Response.***

- (a) Operator shall provide emergency response when required such as extreme weather conditions, other natural or man made disasters; storm water collection and wastewater collection system failures and/or breakdowns including sewer lift stations, etc.
- (b) Operator shall, absent extraordinary circumstances, provide said emergency response within ninety (90) minutes of being notified of the existence of the emergency and the need to respond thereto.
- (c) All costs incurred by the Operator in providing emergency responses shall be borne by the Client but only to the extent that the Operator incurs special, additional or extraordinary expenses (such as overtime expenses paid to employees) which the Operator would not normally incur in operating and maintaining the Facilities as provided herein. All such costs shall be paid by the Client as provided in Section 3.14 above.
- (d) In the event of sudden damage or destruction of any of the Facilities or in the event of an emergency which in the reasonable judgment of the Operator is likely to result in material loss or damage to any of the Facilities or constitute a threat to human health or safety, the Operator may suspend operations either partially or totally and may make such emergency repairs as are necessary to mitigate or reduce such loss, damage or

threat. The Operator shall provide prompt notice to the Client of any such damage, destruction or threat and of any emergency repairs which have or will be taken. The Client and the Operator shall cooperate in good faith in pursuing reasonable measures to mitigate any threats to human health or safety.

***Section 3.16 – Litigation Support.***

At the request of the Client, the Operator will provide or arrange for, at the Client's expense, legal, regulatory or technical assistance in connection with the Client's defense or prosecution of any actions, claims, suits, administrative or arbitration proceedings or investigations, whether pending, threatened or newly initiated, relating to the Project.

For such services the Client shall pay the Operator its total costs incurred in its performance of such services multiplied by 1.08 provided that the Operator is not in any way responsible for the underlying reasons giving rise to such actions, claims, suits, administrative or arbitration proceedings or investigations as a result of its negligence or otherwise as a result of its failure to comply with the terms of this Agreement.

***Section 3.17 – Accounting Records.***

Operator shall maintain up-to-date financial records as they apply to the services rendered by the Operator under the terms of this Agreement. All records will be kept in accordance with the Operator's standard accounting practices and the NARUC uniform system of accounts and made available to the Client on fifteen (15) working days written notice.

***Section 3.18 – Inventory.***

(a) Within Ninety (90) days of the Commencement Date, Operator shall submit a written inventory of the vehicles, equipment, tools, materials, consumables and expendable supplies and spare parts at each of the Facilities. The Client shall have twenty (20) days to verify and accept Operator's list.

(b) At the termination of this Agreement, the Operator shall provide the Client with inventory in quantity and/or value equal to or greater than the initial inventory reasonable wear and tear excepted.

**ARTICLE IV**  
**RESPONSIBILITIES OF THE CLIENT**

***Section 4.1 – Client's and Operator's Representatives.***

On or before the Commencement Date, the Client and the Operator shall designate authorized representatives (the "Authorized Representative") to administer this Agreement. Either party to this Agreement shall provide written notice to the other party of any change to the Authorized Representatives within fifteen (15) days of said change.

***Section 4.2 - Permits.***

The Client shall be responsible for obtaining and maintaining all necessary permits and licenses and for the payment of all fees required for ownership and operation of the Facilities and the Client's equipment used in connection with the Project. The Operator shall provide all reasonable assistance to the Client in obtaining and maintaining all required State and federal permits associated with the operation of the Facilities.

***Section 4.3 – Compliance with Laws.***

The Client shall comply with Applicable Law as same pertains to the Project to the extent that the responsibility of complying with same is not specifically assumed by the Operator under the terms of this Agreement.

The Client shall be responsible for any fines or penalties arising out of noncompliance by the Client with Applicable Law except to the extent Operator is responsible pursuant to Section 3.2 above.

***Section 4.4 - Taxes.***

The Client shall be responsible for payment of all applicable real estate, personal property, utility, excise and sales tax applicable to the Facilities or the services provided for under this Agreement.

In the event the Operator is required to pay any sales tax or use taxes on the value of the services provided by the Operator hereunder or the services provided by any subcontractor of the Operator, such payments shall be reimbursed by the Client unless the Client furnishes a valid and properly executed exemption certificate relieving the Client and the Operator of the obligation for such taxes. In the event the Client furnishes an exemption certificate which is invalid or not applicable to services provided or procured from others by the Operator, the Client shall indemnify and reimburse the Operator for any taxes, interest, penalties and incremental costs, expenses or fees which the Operator may incur as a result of the Operator's reliance on such certificate within thirty (30) days of Operator's submission of an invoice to the Client for same.

***Section 4.5 – Support.***

The Client shall permit use by the Operator, without charge, of all equipment, structures and facilities under its ownership and presently assigned to the Project or as specified in future equipment or construction specifications. The Client shall provide the Operator with all information available to operate and maintain the Project.

***Section 4.6 – Combined Sewer Overflow.***

The Client shall be responsible for complying with applicable combined sewer overflow regulations under local, state and federal laws and the Operator shall not be responsible for any such noncompliance or resulting penalties or fines.

***Section 4.7 - Notice of Litigation.***

In the event that the Client or the Operator receives notice of or undertakes the defense or the prosecution of any action, claim, suit, administrative or arbitration proceeding or

investigation in connection with the Project and/or this Agreement, the party receiving such notice or undertaking such prosecution shall give the other party timely notice of such proceedings and will inform the other party in advance of all hearings regarding such proceeding.

***Section 4.8 - Disclosure of Information.***

The Client represents and warrants that it has disclosed, and will in the future disclose, any and all information it now has, or may have in the future, relating to the Project that may be relevant to the Operator in performing its duties and obligations.

***Section 4.9 - General Authority.***

The Client shall perform all duties and discharge all responsibilities and obligations relating to the operation and maintenance of the Project not expressly assumed by the Operator pursuant to the terms of this Agreement.

**ARTICLE V**  
**TERM AND TERMINATION**

***Section 5.1 - Term.***

This Agreement will commence on July 15, 1999 (the "Commencement Date") and will continue for a period of one (1) year. Thereafter, this Agreement shall be automatically renewed for a period of three (3) years unless cancelled in writing by either party at least one hundred and twenty (120) days prior to the expiration of the then current term.

***Section 5.2 - Termination.***

The failure of either party to comply with the terms of this Agreement shall constitute a default. Upon default by one party, the other party shall send written Notice of Termination. Such notice shall clearly specify the nature of the default and provide the defaulting party ninety (90) days to cure the default. If the default is capable of being cured within ninety (90) days but is not cured within ninety days, the Agreement shall terminate at midnight of the ninetieth day following receipt of the Notice. In the case of default that cannot be cured within ninety (90) days, this Agreement shall not terminate so long as the defaulting party has given written notice of the extension to the other party and the defaulting party has commenced and is diligently pursuing a cure. Evidence of such cure shall be provided from the party determined to be in default to the satisfaction of the other party.

In the event of termination of this Agreement for cause under the above paragraph, the Client shall pay Operator for the Services provided and invoiced by Operator up to the effective date of termination.

The Client shall have the right to terminate this Agreement without cause at any time during the term hereof by providing the Operator with a ninety (90) day prior written notice provided that (a) such termination is made as a result of the sale of the Facilities by

the Client and (b) simultaneously with such termination, the Client pays a fee (the Demobilization Fee") calculated as follows:

(i) If the termination is made effective prior to the first anniversary of this Agreement, the sum of (x) all monies owed the Operator on account of the Services provided through the date of termination; plus (y) an amount equal to fifteen percent (15%) of the total of all unearned portions of the Base Compensation remaining during the first year of this Agreement, or

(ii) If the termination is made effective subsequent to the first anniversary of this Agreement, the sum of (x) all monies owed the Operator on account of the Services provided through the date of termination; plus (y) an amount equal to Ten Thousand (\$10,000) Dollars.

## ARTICLE VI COMPENSATION

### ***Section 6.1 - Base Compensation.***

(a) For the period commencing on the Commencement Date, the Client shall pay the Operator an annual fee (the "Base Compensation") in the amount of Ninety Three Thousand Seven Hundred and Twenty Seven Dollars (\$93,727.00) in consideration for the Operator providing the services hereunder. The Base Compensation fee shall be payable in equal monthly installments of Seven Thousand Eight Hundred Ten and 58/100 (\$7,810.58) Dollars, in arrears, on the last day of each and every month for the duration of the Agreement.

(b) The amount of the Base Compensation shall be increased annually on each and every anniversary of the Commencement Date in a direct proportion to any percentage increase, if any, allowed by the Florida Public Service Commission ("PSC") for the then current contract year. Should increases be allowed by the PSC for any period(s) covering only portions of a contract year, all such increases in the Base Compensation shall be prorated to cover the identical period(s) of time.

### ***Section 6.2 - Capital Expenditure Budget.***

Commencing 45 days from the Commencement Date and on each anniversary of the Commencement Date during the term hereof, Operator shall prepare and submit a capital expenditures budget (the "Capital Expenditures Budget") for the succeeding year to the Client for approval. The Capital Expenditures Budget shall reflect the projected cost of all labor, materials, supplies, repairs, equipment, etc. necessary for each projected Capital Expenditure. At each anniversary of the Commencement Date, the Operator shall submit to the Client a written reconciliation of actual and budgeted Capital Expenditures. Payments for Capital Expenditures shall be made in accordance with the provisions of Section 3.14.



***Section 6.3 – Other Fees and Expenses***

The Client shall reimburse the Operator for all costs and expenses incurred by the Operator as enumerated in Section 3.14 of this Agreement in the manner provided by Section 3.14.

**ARTICLE VII  
RISK MANAGEMENT**

***Section 7.1 - Indemnification.***

**A. Claims by the Client.**

With respect to any and all claims by Client, the Operator agrees to indemnify and save harmless the Client and each of its elected or appointed officers, employees and agents from and against any claim, demands, suits, liabilities, losses and expenses incurred by the Client which are caused solely by the negligent acts or omissions of the Operator in the performance of its services under this Agreement; provided, however, that in the event that both Client and Operator are determined by a finding of fact to be negligent and the negligence of both is a proximate cause of such claim for damage, then in such event, Client and Operator shall each be responsible for the portion of the liability equal to their comparative share of the total negligence.

The Operator's liability to Client for any loss, damage, injury, claim or expense of any kind or nature caused directly or indirectly by the performance or nonperformance by the Operator of its obligations pursuant to this Agreement shall be limited to redress under the provisions of law.

**B. Claims by the Operator.**

The Client shall indemnify, defend and hold harmless the Operator, its directors, officers, employees and agents from and against any damages suffered by the Operator and from and against any and all claims, by persons or legal entities under local, state or federal laws arising as a result of the Client's (i) negligence and/or misconduct; (ii) breach of this Agreement; (iii) failure to comply with applicable laws and regulations; and/or (iv) failure to prevent the discharge of Abnormal or Biologically Toxic Material into the Client's water and/or wastewater systems.

***Section 7.2 – Operator's Insurance.***

The Operator shall maintain the following insurance during the term of this Agreement:

1. General Liability Insurance in the amount of not less than one million dollars (\$1,000,000) combined single limit for personal injury and property damage.

2. Worker's Compensation Insurance for all Operator employees employed at the Project, including Employer's Liability Insurance, in an amount that is consistent with State Law.
3. Automobile Liability Insurance in the amount of five hundred thousand dollars (\$500,0000) for collision, comprehensive, bodily injury and property damage.
4. Pollution Liability Insurance in the amount of \$3 million.

On or prior to the Commencement Date, the Operator shall furnish the Client with satisfactory proof of such insurance. These policies will be in effect on the Commencement Date.

The Client shall be included as an additional insured according to its interest during the term of this Agreement.

***Section 7.3 – Client Insurance.***

The Client will maintain property and structures liability insurance, flood and fire insurance policies, including extended coverage plus coverage for vandalism, theft and malicious mischief, to the full insurable value of the Facilities. The Operator shall be named as an additional insured according to its interest under this Agreement during the term of this Agreement.

Within thirty (30) calendar days of the Commencement Date, the Client shall furnish copies of such policies to the Operator with a certification or other evidence that the Operator has been designated as an additional insured.

The Client and the Operator agree that, with respect to insurance coverage carried by either party in connection with the Project, such insurance will provide for the waiver by the insurance carrier of any subrogation rights against the Client or against the Operator, as the case may be.

**ARTICLE VIII**  
**MISCELLANEOUS**

***Section 8.1 - Relationship.***

The relationship of the Operator to the Client is that of independent contractor and not one of employment. None of the employees or agents of the Operator shall be considered employees of the Client. For the purposes of all state, local and federal laws and regulations, the Client shall exercise primary management and operational and financial decision-making authority.

***Section 8.2 - Nondiscrimination.***

The Operator shall refrain from unlawful discrimination in employment and shall undertake appropriate affirmative action in performing its obligations under this Agreement.

***Section 8.3 - Entire Agreement; Amendments.***

This Agreement contains the entire agreement between the Client and the Operator and supersedes all prior or contemporaneous communications, representations, understandings or agreements. This Agreement may be modified only by a written amendment signed by both parties.

***Section 8.4 - Headings, Attachments and Exhibits.***

The headings contained in this Agreement are for reference only and shall not in any way affect the meaning or interpretation of this Agreement. The Attachments and Exhibits to this Agreement shall be construed as an integral part of this Agreement.

***Section 8.5 - Waiver.***

The failure on the part of either party to enforce its rights as to any provision of this Agreement shall not be construed as a waiver or its rights to enforce such provisions in the future.

***Section 8.6 - Assignment.***

This Agreement shall be binding upon the successors and assigns of each of the parties, but neither party shall assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

***Section 8.7 - Access and Inspection by the Client.***

The Client shall have the absolute right to inspect each of the Facilities at all times, in such a manner as not to disrupt regular operations by the Operator.

The Operator shall provide the Client with access, during normal business hours and upon reasonable prior notice, to the Operator's financial and operating records related to the Project for the purpose of auditing costs or verifying the Operator's performance under this Agreement.

***Section 8.8 - Force Majeure.***

A party's performance of any obligation under this Agreement, other than an obligation to pay money, shall be excused if, and to the extent that, the party is unable to perform because of events of acts of God, landslide, lightning, earthquake, hurricane, flood (not including reasonably anticipated weather conditions for the Client), acts of a public enemy, war, blockade, insurrection, riot, or civil disturbance, the acts of civil or military authority, quarantine restrictions, riots, strikes, lockouts or other labor disputes, commercial impossibility, epidemics, fires, explosions and bombings, the inability to obtain or delays in obtaining permits or other private or governmental approvals, or because of any other cause or causes beyond the reasonable control of the party seeking to be excused from performance (hereinafter "Force Majeure"). In any such event, the party unable to perform shall be required to resume performance of its obligations under this Agreement upon the termination of the event or cause which excused performance hereunder.

***Section 8.9 - Authority to Contract.***

Each party warrants and represents that it has full power and authority to enter into this Agreement and to perform its obligations, including any payment obligations, under this Agreement.

***Section 8.10 - Governing Law.***

The Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

***Section 8.11 - Notices.***

All notices will be in writing and will be delivered in person or transmitted by certified mail, return receipt requested. Notices required to be given to the Operator will be addressed to:

Severn Trent Environmental Services, Inc.  
5180 Tice St.  
Fort Myers, FL 33905  
Attn: Mike Angel, Sales and Marketing

Notices required to be given to the Client will be addressed to:

Realnor Hallandale, Inc.  
700 Brickell Ave  
Miami, FL 33131  
Attn: Manager

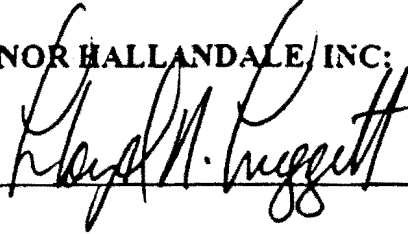
**Section 8.12 - Severability.**

Should any part of this Agreement for any reason be declared invalid or void, such declaration will not affect the remaining parts of this Agreement, which will remain in full force and effect as if the Agreement had been executed with the invalid portion eliminated.

**IN WITNESS WHEREOF**, the parties have duly executed this Agreement effective as of the date first set forth above.

**REALNOR HALLANDALE, INC:**

By: \_\_\_\_\_



Title: \_\_\_\_\_

Authorized Signer

**SEVERN TRENT ENVIRONMENTAL SERVICES, INC.**

By: \_\_\_\_\_



Ronald J. Gillam  
Regional Vice President

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR LEE COUNTY, FLORIDA  
CIVIL ACTION

NORTHERN TRUST BANK OF FLORIDA, N.A.  
a National Banking Association

Plaintiff,

v.

CASE NO.98-6169-CA-WCM

BONITA COUNTRY CLUB UTILITIES, INC.  
a Florida Corporation, THOMAS HEIDKAMP,  
CHAPTER 7, TRUSTEE, and all persons having  
or claiming by, through, under, or against any of  
the above parties and all parties having any right,  
title or interest in the subject property.

Defendants.

AFFIDAVIT OF MICHAEL ANGEL

STATE OF FLORIDA        )  
                                  ) §§:  
COUNTY OF COLLIER     )

BEFORE ME, the undersigned authority, personally appeared MICHAEL ANGEL, who,  
being first duly sworn, deposes and says as follows:

1. My name is MICHAEL ANGEL. I am over 18 years old, a citizen of the United  
States, and a resident of Lee County, Florida.

2. I am the Area Manager for Severn Trent Environmental Services ("Severn  
Trent"). Severn Trent is an operation and maintenance company for large municipal and  
privately owned utilities. Severn Trent operates in twenty states. I have been with Severn Trent  
for four years. Prior to my time at Severn Trent, I owned a company called Wastewater Doctor.  
This company operated and maintained wastewater treatment plants. I owned this company for

APPENDIX C

four years. Prior to owning Wastewater Doctor, I worked for Lee County Utilities in its wastewater operations.

3. I have a wastewater license issued by the Florida Department of Environmental Protection. This is a Class "A" license and the license number is 7629. I have a water license issued by the Florida Department of Environmental Protection. This is a Class "C" license and the license number is 8142. I also have an underground utility construction license issued by the Florida Department of Professional Regulations. The license number is CO57128.

4. I base this Affidavit upon personal knowledge.

5. Severn Trent contracted with Realnor Hallandale, Inc. to operate and maintain the wastewater treatment system that was formerly owned by Bonita County Club Utilities. Severn Trent began operating and maintaining the wastewater treatment and lift station facilities on July 14, 1999. Severn Trent has inspected the wastewater treatment and lift station facilities. Our inspection revealed numerous maintenance problems with the wastewater treatment and lift station facilities. Below is a list of repairs that must be done to the wastewater treatment and lift station facilities.

6. It is my opinion most of the listed repair items were deferred by BCCU prior to July 14, 1999. Indeed, the lack of maintenance we found, especially at the lift stations, poses a potentially immediate health hazard and does not comply with Florida Department of Environmental Protection regulatory requirements.

<b>Wastewater Treatment Plant and related facilities:</b>		<b>Estimated Cost</b>	<b>Ranking: #1 Immediate #2 Medium #3 Long</b>
<b>1</b>	<b>Blower belts (6) furnish and install</b>	<b>\$ 300.00</b>	<b>#1</b>
<b>2</b>	<b>Blower filter (2)</b>	<b>200.00</b>	<b>#1</b>

3	Generator	8,000.00	#1
4	Pressure gauges (2)	150.00	#2
5	Voltage monitor	500.00	#1
6	Photo Cell for lighting	150.00	#3
7	2" ball valves	300.00	#3
8	Boom #1 tracking	500.00	#2
9	Boom instrument bulbs	50.00	#3
10	Winch (2) for digesters	300.00	#3
11	Solids in CCC	1,000.00	#1
12	Barscreen	5,000.00	#3
13	Pressure wash, prime & paint	7,000.00	#3
14	Sandblast, prime, paint CCC	2,000.00	#3
15	Diesel containment	2,000.00	#1
16	Drying bed drainage and controls	5,000.00	#2
17	Pond berms restructuring, cleaning and hydraulics	40,000.00	#2
18	Backflow preventer	350.00	#1
19	Solids removed	3,000.00	#2

<b>Collection System:</b>	<b>Estimated Cost</b>	<b>Ranking: #1 Immediate #2 Medium #3 Long</b>
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1	Cleaning, televising, and smoke testing	20,000.00	#3
2	Manhole rehabilitation	5,000.00	#3
3	Lift station coating & rehabilitation	8,000.00	#3
4	Wild Turkey lift station	4,000.00	#1
5	Enoch Lane lift station	1,500.00	#3
6	Wood Ibis lift station	6,500.00	#1
7	Carnie Circle lift station	1,500.00	#3
8	Fenner Circle lift station	8,500.00	#1
9	Cypress Plantation lift station	2,000.00	#2
10	Bonita Pines lift station	10,000.00	#2
11	Eagle Point lift station	4,000.00	#3
12	Sandy Hollow lift station	12,000.00	#1
13	Carnustie Court lift station	1,500.00	#3

7. With respect to the emergency generator, which is noted as Item #3 under the wastewater treatment plant and related facilities section above, we found that the engine radiator was cracked, the oil was thick, the wiring bad, and the battery was dead. In my opinion, the emergency generator has not been serviced for several years, if at all. It is vital to have an operating emergency generator in the event that electricity is lost for an extended period of time.



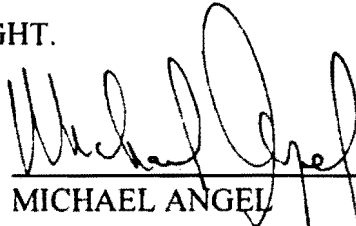
8. Each lift station is required to have two (2) pumps, as designed. This redundancy is needed to maintain the system in case one of the pumps goes out, so that the other pump can continue to run the system. Severn Trent's inspection of the lift stations found that about half of them were in a state of disrepair and either had some pumps not working or needed some type of electrical work. These items are reflected under the collections system section.

9. With respect to the Sandy Hollow lift station, which is Item #12 under the collections system section above, Severn Trent had to make emergency repairs because one lift station pump did not work. With respect to the Fenner Circle lift station, which is Item #8 under the collections system section above, both lift station pumps were burned up. This necessitated the taking of the backup pump at the Sandy Hollow lift station to use at the Fenner Circle, and the rental of a temporary aboveground pump for the Sandy Hollow lift station, until a new pump could be ordered.

10. The repair items noted under the Wastewater Treatment Plant and related facilities section, reveal that the plant needs a lot of maintenance, even though it is relatively new. This is especially true for the chlorine contact chamber ("CCC"), which is Item #11 in this section. The CCC is rusted, had an accumulation of solids and has the potential to overflow. Also, there are indications of needed repairs with the blowers, the barscreen, and an abundance of solids in the digester.

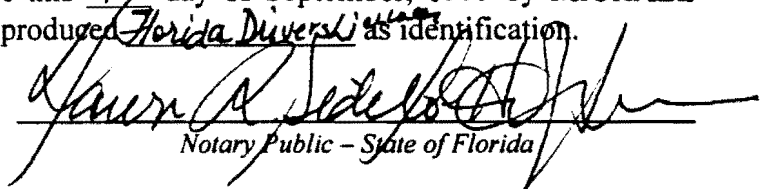
11. The bottom line is that if the repairs noted above are not done, there is a substantial and serious threat that the wastewater treatment and/or lift station facilities could fail, resulting in a loss of service and serious environmental contamination.

FURTHER AFFIANT SAYETH NAUGHT.

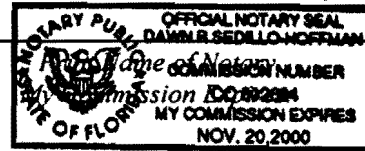


MICHAEL ANGEL  
SEVERN TRENT ENVIRONMENTAL SERVICES  
5180 Tice Street, Fort Myers, Florida 33905  
Ph: 941-693-7112

Subscribed and sworn to before me this 7<sup>th</sup> day of September, 1999 by MICHAEL ANGEL who is personally known to me or produced Florida Diversification as identification.



Notary Public - State of Florida



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IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN  
AND FOR COLLIER COUNTY, FLORIDA CIVIL ACTION

CERTIFIED COPY

NORTHERN TRUST BANK OF FLORIDA, N.A.,

Plaintiff,

v.

CASE NO.: 98-6169-CA-WCM

BONITA COUNTRY CLUB UTILITIES, INC.,  
a Florida Corporation, THOMAS HEIDKAMP,  
CHAPTER 7, TRUSTEE, and all persons having  
or claiming by, through, under, or against any of  
the above parties and all parties having any right,  
title or interest in the subject property,

Defendants. \_\_\_\_\_/

DEPOSITION OF PAMELA PASS

Upon oral examination, taken by Counsel  
for the Plaintiff on August 11, 1999,  
commencing at 10:30 a.m., at Bonita Country  
Club Utilities, Inc., 10200 Maddox Lane,  
Bonita Springs, Florida, before Traci L.  
Brantner, Registered Professional Reporter  
and Notary Public, State of Florida at Large.

*APPENDIX D*

1 APPEARANCES:

2 For the Plaintiff: JEFFREY D. FRIDKIN, ESQUIRE  
 3 KEITH WICKENDEN, ESQUIRE  
 4 Grant, Fridkin and Pearson  
 5 5551 Ridgewood Drive  
 Suite 501  
 Naples, Florida 34108

6 For the Defendants: WAYDE SEIDENSTICKER, JR., ESQUIRE  
 7 Seidensticker and San Filippo  
 8 110 Fifth Avenue South  
 Suite 405  
 9 Naples, Florida 34102

10 ALSO PRESENT: Michael Miceli

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WITNESS	PAGE
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Direct Examination by Mr. Fridkin-----	6

E X H I B I T S

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1-B	1995 Annual Report Information	11
1-C	1996 Annual Report Information	11
1-D	1997 Annual Report Information	11
2	1998 Regulatory Assessment Fee Report	18
3	1998 Year-End Reports	20
4	Sewer Tariff	29
5	Permit to Operate Through D.E.P.	30
6	Year-End General Ledger Audit Trail	32

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NUMBER	DESCRIPTION	PAGE ENTERED
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7	BCCU Aging Report as of July 22, 1999	33
8	Colonial Bank Statements for December '98 Through June '99	44
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(ALL EXHIBITS RETAINED BY COUNSEL.)

CERTIFICATE OF OATH

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STATE OF FLORIDA  
COUNTY OF COLLIER

I, the undersigned authority, certify that  
PAMELA PASS personally appeared before me and was duly  
sworn.

WITNESS my hand and official seal this 16th day  
of August, 1999.

*Traci L. Brantner*

Traci L. Brantner, RPR  
Notary Public  
State of Florida at Large  
My Commission Expires 12-22-00



1 Thereupon,

2 PAMELA PASS

3 Deponent, having been first duly sworn, upon her oath,  
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. FRIDKIN:

7 Q Ma'am, for the record, would you please state  
8 your name?

9 A Pamela Ann Pass.

10 Q And Mrs. Pass, you were in Judge McIver's  
11 courtroom, I guess it was, the day before yesterday?

12 A Yes, sir.

13 Q You're the same person that was identified as  
14 Pamela Pass in response to the questions that the judge  
15 asked?

16 A Yes.

17 Q Ms. Pass, who is your current employer?

18 A Platinum Coast.

19 Q That's called Platinum Coast Financial Services  
20 Corporation?

21 A Platinum Financial Corporation.

22 Q You're not an employee of Bonita Country Club  
23 Utilities, Inc., per se?

24 A Yes, I am as well.

25 Q Are you paid salary or compensation?



1 A Yes.

2 Q Are you compensated on a salary basis or hourly  
3 basis?

4 A Salary.

5 Q And what is the salary that Bonita Country Club  
6 Utilities, Inc. pays to you?

7 A \$350 per week.

8 Q Okay. Do you perform full-time tasks for Bonita  
9 Country Club Utilities, Inc.?

10 A Part-time.

11 Q So in addition to compensation for your part-time  
12 activities for Bonita Country Club Utilities, Inc., you  
13 provide other services for Platinum Coast?

14 A That's correct.

15 Q We're having this deposition in the clubhouse of  
16 something I believe known as the Bonita Golf and Country  
17 Club; is that correct?

18 A Bonita Springs Golf Club.

19 Q Are you -- do you have duties here at this  
20 facility that go beyond any duties that you do for Bonita  
21 Country Club Utilities, Inc.?

22 MR. SEIDENSTICKER: Object to the form.

23 THE DEPONENT: I'm not sure I understand.

24 DIRECT EXAMINATION CONTINUED

25 BY MR. FRIDKIN:

1           Q     What I'm asking you is, do you -- let me go about  
2 this a different way.

3                     The books and records of the Bonita Country Club  
4 Utilities, Inc. are maintained on the premises where we  
5 are now at the Bonita Springs Golf and Country Club?

6           A     Yes.

7           Q     Okay. And you would agree that there is other  
8 business occurring at this location beyond the business of  
9 Bonita Country Club Utilities, Inc.?

10          A     Yes.

11          Q     And other than the office records, if you will,  
12 the mailing of customer statements, the remitting of  
13 payments, there really isn't any business associated with  
14 Bonita Country Club Utilities, Inc. occurring at this  
15 location; would you agree with that?

16          A     Yes.

17          Q     Okay. But -- so then the question I had is, in  
18 terms of your day-to-day activity, Pam Pass, you perform  
19 other functions at this location beyond the work  
20 associated with Bonita Country Club Utilities, Inc.?

21          A     Yes.

22          Q     Okay. Do you have a title with Platinum Coast?

23          A     No.

24          Q     Okay. Do you perform services for Platinum Coast  
25 on -- strike that.

1                   Let me ask this a different way.

2                   Are you on a salary basis with Platinum Coast?

3                   A     Yes.

4                   Q     Do you work on a part-time basis for Platinum  
5                   Coast or a full-time basis?

6                   A     Full time.

7                   Q     Okay. And do -- does Platinum Coast compensate  
8                   you for all of the other functions and activities you do  
9                   around this premises?

10                  A     Yes.

11                  Q     Okay. You have been -- you have been subpoenaed  
12                  to come here today, and you have provided some records  
13                  that are on the table in front of us. I'm going to follow  
14                  the line as I believe it appeared in the subpoena, and ask  
15                  you to identify categories of documents. Then we're going  
16                  to mark the bundle, if you will, as exhibits.

17                                You were asked to bring with you the Bonita  
18                                Country Club Utilities, Inc. books and records adequate  
19                                for purposes of establishing the net book value of the  
20                                wastewater system.

21                                        Before I get into the particulars of that, let me  
22                                        ask you, do you recognize the term net book value of the  
23                                        wastewater system?

24                   A     To a certain extent.

25                   Q     It's a term that you have run into in the

1 presentation of annual reports to the Public Service  
2 Commission?

3 A Yes.

4 Q Did you get any specialized training to learn  
5 about how to do these reports to the Public Service  
6 Commission?

7 A No.

8 Q You recognize that, in annual reports to the  
9 Public Service Commission, Bonita Country Club Utilities,  
10 Inc. makes statements and representations to the Public  
11 Service Commission with respect to net book value of the  
12 wastewater system?

13 A Yes.

14 Q And you also recognize that those numbers go into  
15 the rate base calculations in terms of the amount that the  
16 Utility is authorized to charge its customers?

17 A Yes.

18 Q What documents have you brought to the table here  
19 that are responsive to the request for books and records  
20 adequate to determine the net book value of the water  
21 management system?

22 A The annual reports filed with the Public Service  
23 Commission.

24 Q Now, I'm going to start -- you've got a series of  
25 folders here that I believe I can -- can you confirm for

1 me that they appear to be 1994 annual report, 1995 annual  
2 report, 1996 annual report and 1997 annual report?

3 A Yes.

4 Q Okay. And I think -- let me get them in  
5 chronological order and mark them that way.

6 MR. SEIDENSTICKER: Do you want to mark them as a  
7 composite exhibit?

8 MR. FRIDKIN: No, I'm going to put 1-A, 1-B, et  
9 cetera.

10 MR. SEIDENSTICKER: Are you marking them by year?

11 MR. FRIDKIN: Yes.

12 (Plaintiff's Exhibit Numbers 1-A, 1-B, 1-C and  
13 1-D marked for identification.)

14 DIRECT EXAMINATION CONTINUED

15 BY MR. FRIDKIN:

16 Q For the record, can we confirm that I have marked  
17 the manila jackets that contain what is represented to be,  
18 in Plaintiff's Exhibit 1-A, the manila jacket that in  
19 inside of which is the 1994 annual report information for  
20 the Bonita Country Club Utilities, Inc.?

21 A Yes, sir.

22 Q And Exhibit 1-B is the annual report, regulatory  
23 information for Bonita Country Club Utilities, Inc. for  
24 year 1995?

25 A Yes, sir.

1 Q Exhibit 1-C is the annual report on Bonita  
2 Country Club Utilities, Inc. given to the Public Service  
3 Commission in 1996?

4 A Yes.

5 Q And Exhibit 1-D is the annual report filed with  
6 the Public Service Commission for 1997?

7 A Yes, sir.

8 MR. FRIDKIN: I'd like to go ahead and give our  
9 lady here something to start with.

10 (A discussion was held off the record.)

11 MR. FRIDKIN: If you would like to have a minute  
12 to look through there to see if there is any  
13 privileged information, go ahead.

14 MR. SEIDENSTICKER: She would know better than I  
15 would. I'll defer to the witness on that.

16 DIRECT EXAMINATION CONTINUED

17 BY MR. FRIDKIN:

18 Q I note -- strike that.

19 Ms. Pass -- is it Mrs. Pass?

20 A Yes.

21 Q Is your husband employed by Platinum Coast?

22 A No.

23 Q Has he ever been employed by Platinum Coast?

24 A No, not by Platinum Coast.

25 Q Is he employed at the Bonita Country Club, here

1 at this facility?

2 A Yes.

3 Q What does he do here?

4 A He runs Pass Golf Management, which operates the  
5 outside of the golf course.

6 Q Mrs. Pass, I do not see here a 1998 annual report  
7 to the Public Service Commission.

8 Has one been prepared?

9 A No.

10 Q Why not?

11 A I haven't done it yet.

12 Q Is a 1998 annual report due at a particular time?

13 A Yes.

14 Q When is it due?

15 A March 30th or 31st.

16 Q So the 1998 report was due March 30 or March 31  
17 of 1999?

18 A Yes.

19 Q Are work papers in a file someplace that will  
20 allow you to put together what you need for your '98  
21 annual report?

22 MR. SEIDENSTICKER: Object to the form.

23 THE DEPONENT: Do I still answer?

24 MR. SEIDENSTICKER: Yes.

25 THE DEPONENT: I've had a professional working

1 with me for the past two years creating the reports  
2 because we're now a Class B wastewater system. I've  
3 never done the report on a Class B, so I'm unsure  
4 whether I will be able to.

5 DIRECT EXAMINATION CONTINUED

6 BY MR. FRIDKIN:

7 Q Who is helping you?

8 A Barry Asmus out of Regulated Industries. It's a  
9 professional utility contracting --

10 Q Have you forwarded to Barry -- can you spell  
11 that?

12 A A-S-M-U-S.

13 Q What did you call it, Regulated Industries?

14 A Regulated Industries.

15 Q Where is that located?

16 A Miami.

17 Q And what have you sent to Barry Asmus, if  
18 anything, that would assist Mr. Asmus in preparation of  
19 the 1998 annual report for the Bonita Country Club  
20 Utilities, Inc.?

21 A I've sent him nothing.

22 Q Okay. So whatever -- so would it be fair to say  
23 that at this moment Bonita Country Club Utilities, Inc.  
24 has taken no steps to try to prepare any aspect of the  
25 1998 annual report to the Public Service Commission?



1 MR. SEIDENSTICKER: Object to the form.

2 THE DEPONENT: Yes.

3 DIRECT EXAMINATION CONTINUED

4 BY MR. FRIDKIN:

5 Q Now, what -- if you were going to give to Mr.  
6 Asmus that information that he would need -- strike that,  
7 and let me ask this a different way.

8 Is there anybody but -- are you the manager, if  
9 you will, of the Bonita Country Club Utilities, Inc.?

10 A Yes.

11 Q Have you been given any instructions by anybody  
12 else purporting to act on behalf of Bonita Country Club  
13 Utilities, Inc. to either prepare or not prepare a 1998  
14 annual report for Bonita Country Club Utilities, Inc.?

15 A No.

16 Q Is there some reason why you have not undertaken,  
17 as we sit here in August of 1999, any steps to prepare the  
18 1998 annual report to the Public Service Commission that  
19 was due on March 31 of 1999?

20 A You lost me.

21 MR. FRIDKIN: Could you read it back, please?

22 (The question was read back by the reporter as  
23 follows:

24 Q Is there some reason why you have not undertaken,  
25 as we sit here in August of 1999, any steps to prepare the

1 1998 annual report to the Public Service Commission that  
2 was due on March 31 of 1999?)

3 THE DEPONENT: You're asking me why I haven't  
4 done the report?

5 DIRECT EXAMINATION CONTINUED

6 BY MR. FRIDKIN:

7 Q Yes, ma'am.

8 A Financial reasons.

9 Q What are those financial reasons?

10 A Mr. Asmus required \$3,500 in order to begin  
11 preparation of the report, and we didn't have the funds.

12 Q Okay. Does Bonita Country Club Utilities, Inc.  
13 have \$3,500 today?

14 A No.

15 Q Okay. Did Bonita Country Club Utilities, Inc. --  
16 has Bonita Country Club Utilities, Inc. had \$3,500 at any  
17 time between March 31 of 1999 and today?

18 MR. SEIDENSTICKER: Object to the form.

19 You mean \$3,500 that wasn't otherwise committed  
20 somewhere?

21 DIRECT EXAMINATION CONTINUED

22 BY MR. FRIDKIN:

23 Q Have you had \$3,500?

24 MR. SEIDENSTICKER: Object to the form of the  
25 question.

## DIRECT EXAMINATION CONTINUED

1  
2 BY MR. FRIDKIN:

3 Q Do you understand my question?

4 A If you are asking, has there ever been \$3,500 in  
5 the account, probably, although it was allocated to pay a  
6 repair -- an immediate expense to the Utility.

7 Q So in other words, there have been ongoing  
8 operational expenditures of the Utility such that the  
9 Utility does not have the financial wherewithal to file  
10 its annual report?

11 A Correct.

12 Q And is there an annual fee required to be paid to  
13 the Public Service Commission in order to have the right  
14 to continue as a utility?

15 A Yes.

16 Q Has that fee been paid for 1998?

17 A Yes.

18 Q How much was that fee?

19 A \$9,800, around.

20 Q When was that paid?

21 A February.

22 Q And how is that calculated?

23 A It's a percentage of your revenues.

24 Q And somewhere in your records, do you have  
25 information from which a determination was made as to how

1 much you were going to pay; in other words, the  
2 mathematics accumulation?

3 A Yes.

4 Q Is that here on the table?

5 A No.

6 Q Where would that be located?

7 A In the office.

8 Q Is that in a file that you can easily get?

9 A Yes.

10 Q Could you get that and bring it to us, please?

11 A Yes.

12 (A brief recess was held.)

13 DIRECT EXAMINATION CONTINUED

14 BY MR. FRIDKIN:

15 Q Okay. You have brought with you -- tell me what  
16 you have brought here.

17 A This is a copy of the 1998 regulatory assessment  
18 fee report that's filed with the Commission and a copy of  
19 the check.

20 Q Okay.

21 (Plaintiff's Exhibit Number 2 marked for  
22 identification.)

23 DIRECT EXAMINATION CONTINUED

24 BY MR. FRIDKIN:

25 Q Would you confirm that what you're referring to

1 now we've just marked as Plaintiff's Number 2?

2 A Yes.

3 Q Okay. What information do you have from which  
4 one trying to file a 1998 annual report could determine  
5 the net book value of the assets of Bonita Country Club  
6 Utilities, Inc.?

7 MR. SEIDENSTICKER: Object to the form;  
8 speculation.

9 She's indicated already --

10 MR. FRIDKIN: Make your objection counsel.

11 MR. SEIDENSTICKER: -- she retained Mr. Asmus.

12 THE DEPONENT: I would take the financial records  
13 for '98 and carry them forward with the '97.

14 DIRECT EXAMINATION CONTINUED

15 BY MR. FRIDKIN:

16 Q When you say financial records, which financial  
17 records?

18 A The general ledger.

19 Q Okay. Is the general ledger here on the table?

20 A No.

21 Q Could you run one, please?

22 A Yeah.

23 (A brief recess was held.)

24 THE DEPONENT: This is a 1998 Bonita Country Club  
25 Utilities, Inc. balance sheet and transaction --

1 (Plaintiff's Exhibit Number 3 marked for  
2 identification.)

3 DIRECT EXAMINATION CONTINUED

4 BY MR. FRIDKIN:

5 Q I'm marking a folder as Plaintiff's Exhibit  
6 Number 3, and I'd like you to again explain for the record  
7 what information is in there that you would utilize or  
8 send to Mr. Asmus to utilize in connection with the net  
9 book value calculations.

10 A This is Bonita Country Club Utilities, Inc.  
11 year-end reports for 1998 that include the balance sheet,  
12 the summary trial balance, an income statement and general  
13 ledger.

14 Q Okay. There is a general ledger that would show  
15 both monies in and monies out with respect to Bonita  
16 Country Club Utilities, Inc. as of basically any date  
17 certain that you put as an end point in your computer?

18 In other words, for example, if I wanted to get a  
19 general ledger run for 1999 of Bonita Country Club  
20 Utilities, Inc. and, say, I wanted it to run from January  
21 1 to, say, July 15 of 1999, that's a simple matter for you  
22 to plug into the computer, that time period, commence  
23 date, end date, and that could print out?

24 A With the exception of the accrual accounts, which  
25 would be the accounts payable. That automatically cycles

1 in -- when you cycle your invoices, it shows up on general  
2 ledger even though you haven't actually received the  
3 payments for it.

4 Q How long would that take to run?

5 A Five minutes.

6 Q Could you print one?

7 A Yes.

8 MR. SEIDENSTICKER: Why don't we determine before  
9 you do that -- since she's getting up and breaking  
10 every few minutes getting documents, could you tell  
11 her what else you anticipate her to get?

12 MR. FRIDKIN: I honestly don't know. If I knew,  
13 I'd tell her, because I'm learning as I go about what  
14 she's got and what things are out there.

15 If you could run that through the current date,  
16 and we'll identify it. We'll have what we need in  
17 that file.

18 (A brief recess was held.)

19 DIRECT EXAMINATION CONTINUED

20 BY MR. FRIDKIN:

21 Q Is there anything else that one would need in  
22 order to be able to calculate the net book value other  
23 than what we've now seen here, at least to the best of  
24 your knowledge?

25 A I do not believe so.

1 Q Okay. You were asked to and did provide tax  
2 returns --

3 A Yes.

4 Q -- for Bonita Country Club Utilities, Inc.?

5 It appears that we've been provided tax returns  
6 for 1986 through 1993, plus 1994 and 1996, correct?

7 A Yes.

8 Q Are there 1995 tax returns?

9 A Yes.

10 Q But there is not a copy here?

11 A No, I don't have a copy.

12 Q Okay. Was a 1997 tax return prepared?

13 A That, I don't know.

14 Q Was a 1998 tax return prepared?

15 A I don't know.

16 Q Okay. Who would know?

17 A Vince Palmarri (phonetic) from Ray and Glick  
18 (phonetic).

19 Q Have you sent -- I take it -- Vince Palmarri with  
20 Ray and Glick, are they the preparers of these tax  
21 returns?

22 A Yes.

23 Q And have you provided to them that information  
24 which one would need to provide to them in order to enable  
25 a tax return to be prepared?



1 A Yes.

2 Q Okay. Do you know whether they have sought or  
3 received any lawful extensions of time to file tax  
4 returns?

5 A I don't know.

6 Q Okay. Is it a requirement as part of the Public  
7 Service Commission process that tax returns be provided?

8 A No.

9 Q You have brought before us two what look like  
10 drawers with account information?

11 A Yes.

12 Q Would you please tell us what that information --  
13 what those materials are?

14 A These are our manual customer cards that we log  
15 payments, addresses, locations.

16 Q Does Linda Gant personally do the penmanship that  
17 we see on those documents?

18 A Linda and Kathy.

19 Q Kathy?

20 A A part-time girl that works in the office.

21 Q What's her last name?

22 A Johnson.

23 Q Does she live here in Bonita?

24 A Yes.

25 Q Does she live within this subdivision?

1           A     No.

2           Q     Have you ever received prepayments from customers  
3 that, for their own convenience, pay in advance for  
4 services?

5           A     Yes.

6           Q     How are those prepayments handled in terms of  
7 recordkeeping?

8                     Are they noted somewhere?

9           A     They're posted on their cards that they have a  
10 credit balance, and it will also show up on the aging  
11 report.

12          Q     Okay. Are there other prepayments other than --  
13 for example, have you received deposits from condominiums  
14 or developments who are planning to provide hook-ups in  
15 the future?

16          A     No deposits, no.

17          Q     Okay. Have you received prepayment of hook-up  
18 fees?

19          A     Not prepayments. We've received impact fees.

20          Q     But you're confident that you never received  
21 prepayments?

22          A     Yes.

23                     MR. SEIDENSTICKER: Object to the form.

24                     Are you talking about prepayments for hook-up  
25 fees? Because she's already testified with regard to

1           prepayments that customers have paid that have been  
2           posted on the cards.

3           MR. FRIDKIN: I appreciate the clarification. I  
4           think you're right. The witness and I were talking  
5           about two different types of prepayments.

6                           DIRECT EXAMINATION CONTINUED

7           BY MR. FRIDKIN:

8           Q     And you did testify that there were times when  
9           customers would pay in advance; for example, if they're  
10          going away for the summer?

11          A     Correct.

12          Q     But in terms of prepayments for hook-ups, that's  
13          the one that you meant that you have not received?

14          A     I have received impact fee payments.

15          Q     In particular, one of these cards, for lack of a  
16          better description, Woodbridge C, slash, O, Mills Venture  
17          Group, I note that -- would you confirm for the record  
18          that this is an item that we pulled from the accounting  
19          cards, the manual accounting cards?

20          A     Yes.

21          Q     And do you note there at the top that it talks  
22          about prepayment and lots?

23                    Do you see that?

24          A     Yes.

25          Q     What is that all about?

1           A     Those are impact fees. He hasn't paid all his  
2 impact fees yet. He's just paid for 13.5 of them.

3           Q     Okay. How much did -- when you say he, how much  
4 did he pay in terms of, at least what's shown here, it  
5 says -- am I reading this right; prepay last 13.5 lots?

6           A     Right.

7           Q     That's a \$13,500 credit?

8           A     That's correct.

9           Q     That was a payment that was made towards lots  
10 that were anticipated someday to be hooked up but were not  
11 at that time hooked up?

12          A     He committed to 54 lots of which he's paid only  
13 13.

14          Q     How many has he hooked up, do you know?

15          A     Looks like three, according to the card.

16          Q     Are there discussions underway with this  
17 particular customer as relates to completing the hook-up  
18 process?

19          A     Yes.

20          Q     And what discussions have you had with the  
21 customer in that regard?

22          A     Getting our engineer to approve the plans of how  
23 it will tie into our system.

24          Q     When did you last have a conversation with a  
25 representative of Woodbridge on this subject or Mills

1 Venture Group?

2 A A week.

3 Q A week ago?

4 A Yeah.

5 Q Who are you talking with?

6 A Dan Mills.

7 Q Okay. And anybody else in the Bonita Country  
8 Club Utilities, Inc. organization talking with Mr. Mills  
9 besides yourself?

10 A To my knowledge -- I don't know.

11 Q Okay. To the best of your knowledge, would the  
12 answer be no?

13 MR. SEIDENSTICKER: She just said she didn't  
14 know.

15 MR. FRIDKIN: I have a right to clarify.

16 DIRECT EXAMINATION CONTINUED

17 BY MR. FRIDKIN:

18 Q My desire to clarify is, to the best of your  
19 knowledge, you're not aware of anybody else that's had any  
20 other conversations?

21 A No.

22 Q Okay. Have you made any requests for additional  
23 monies from Mills Venture Group?

24 A No.

25 Q Okay. Have you been offered monies from Mills

1 Venture Group?

2 A No.

3 Q How was it left with Dan Mills in your last  
4 conversation with him on this particular subject?

5 A His -- he was supposed to be submitting some  
6 drawings to our engineer for review.

7 Q Who is your engineer?

8 A TKW.

9 Q Okay. And which office of TKW?

10 A Fort Myers.

11 Q Is there a particular engineer that you use?

12 A Yes.

13 Q Who is that?

14 A Pat -- I don't recall.

15 Q Are there any other current users, customers that  
16 have prepaid lots similar to the situation involving Mills  
17 Venture Group?

18 A They're not prepayments. That may be what she  
19 wrote on the card. They're not prepayments.

20 When we commit to a development, we collect the  
21 impact fees because we've committed to that development.  
22 There have been instances where we worked out, because of  
23 financial reasons they couldn't come up with all the money  
24 up front, a deal with them so they didn't have to pay all  
25 at that time.

1 Q You used the term impact fees.

2 Is that a term that is utilized in the tariffs?

3 A Yes.

4 MR. FRIDKIN: Okay. And just for the record, the  
5 tariffs -- there is a yellow folder here I'm going to  
6 mark, I believe, four.

7 (Plaintiff's Exhibit Number 4 marked for  
8 identification.)

9 DIRECT EXAMINATION CONTINUED

10 BY MR. FRIDKIN:

11 Q Would you confirm what is Plaintiff's Exhibit  
12 Number 4?

13 A The sewer tariff.

14 Q And the impact fees are described somewhere in  
15 this document?

16 A Yes.

17 Q And this is the original document bearing the  
18 original penmanship of the Public Service Commission?

19 A Yes.

20 Q Does this contain what you understand to be your  
21 certificate of authorization to act as, at least from the  
22 Public Service Commission's perspective, a provider of  
23 wastewater treatment services?

24 A Yes.

25 Q And similarly, there is another group of

1 documents you brought with you here, which I'm marking as  
2 Plaintiff's Exhibit Number 5.

3 (Plaintiff's Exhibit Number 5 marked for  
4 identification.)

5 DIRECT EXAMINATION CONTINUED

6 BY MR. FRIDKIN:

7 Q I would ask you to please tell us what Exhibit  
8 Number 5 is?

9 A It's the Department of Environmental Protection  
10 Agency -- this would be our permit to operate through  
11 D.E.P.

12 Q And the facilities on Page 3 -- I'm sorry, it's  
13 Page 4 of Exhibit 5. It talks about -- it describes the  
14 facility, gives an address.

15 This 10200 Maddox Lane, is that the clubhouse  
16 we're sitting in right now?

17 A Yes, sir.

18 Q Okay. That's the office operations of the  
19 Utility?

20 A Yes.

21 Q And then it describes the treatment facilities as  
22 an extended aeration process domestic wastewater treatment  
23 facility, consisting of dual aeration basins with volume  
24 of 500,000 gallons, dual clarifiers, chlorine contact  
25 chambers, aerobic digestion basin.



1           That's the facilities that were -- that are on  
2 real property and leased property that was foreclosed by  
3 Northern Trust --

4           MR. SEIDENSTICKER: Object to the form.

5                           DIRECT EXAMINATION CONTINUED

6 BY MR. FRIDKIN:

7           Q    -- to your knowledge?

8           A    To my knowledge.

9           MR. SEIDENSTICKER: Could you read the question  
10 back?

11                       (The question was read back by the reporter as  
12 follows:

13           Q    And then it describes the treatment facilities as  
14 an extended aeration process domestic wastewater treatment  
15 facility, consisting of dual aeration basins with volume  
16 of 500,000 gallons, dual clarifiers, chlorine contact  
17 chambers, aerobic digestion basin.

18           That's the facilities that were -- that are on  
19 real property and leased property that was foreclosed by  
20 Northern Trust --)

21                           DIRECT EXAMINATION CONTINUED

22 BY MR. FRIDKIN:

23           Q    Did you want to see what I was reading from?

24           A    Yeah, please.

25           Q    It's Page 1 of 18 under treatment facilities.

1           Let's go over what some of this other information  
2 is that you brought.

3           Oh, somebody's apparently come in and dropped  
4 off -- would you identify what this document is, please?

5           A     This is the year-to-date general ledger audit  
6 trail for Bonita Country Club Utilities, Inc.

7                     (Plaintiff's Exhibit Number 6 marked for  
8 identification.)

9                             DIRECT EXAMINATION CONTINUED

10          BY MR. FRIDKIN:

11           Q     Would you confirm for the record that we've just  
12 marked what you have just described as Plaintiff's Exhibit  
13 6?

14           A     Yes.

15           Q     Mrs. Pass, would it be accurate to state that  
16 every dollar collected by Bonita Country Club Utilities,  
17 Inc. and every dollar expended out by Bonita Country Club  
18 Utilities, Inc. between the time period commencing January  
19 1, 1999, through August 11, 1999, should be reflected in  
20 this document, Exhibit 6?

21           A     I don't believe this reflects accounts receivable  
22 and payable, though. It doesn't give an accurate  
23 reflection of accounts receivable or payable.

24           Q     Is that a separate -- those are separate reports?

25           A     Yes.

1 Q What does it show, then?

2 A It will show all the -- all the checks written,  
3 all the -- and what account they were charged to. This  
4 would show, like, when a deposit's made.

5 It doesn't accurately reflect accounts receivable  
6 and payable, but there would be other reports to support  
7 that.

8 Q All right. And in terms of the difficulty --  
9 strike that, and let me ask this a different way.

10 Is there an accounts receivable report on the  
11 table right now?

12 A Yes.

13 Q Is this it?

14 A Yes, the aging report.

15 (Plaintiff's Exhibit Number 7 marked for  
16 identification.)

17 DIRECT EXAMINATION CONTINUED

18 BY MR. FRIDKIN:

19 Q I'm marking a computer printout as Exhibit 7.  
20 It's got a Post-It on there. It says BCCU aging report as  
21 of 7/22/99.

22 This shows the status as of the date of this run,  
23 which appears to be July 22, 1999?

24 A Yes.

25 Q Of all of the accounts receivable?

1 A Yes.

2 Q As of that date?

3 A Yes.

4 Q Does that -- does this document, Plaintiff's  
5 Exhibit 7, show all of the income that has come in to  
6 Bonita Country Club Utilities, Inc. since January of 1999?

7 A No. This report will just show who still has a  
8 balance.

9 Q Okay. Do I note correctly on this that on the  
10 13th of July of 1999, there was a Check Number 1302 in the  
11 amount of \$15,000 paid to Bonita Springs Golf Club by  
12 Bonita Country Club Utilities, Inc.?

13 A Yes.

14 Q What was that payment?

15 A Payment towards the accounts payable to the golf  
16 course.

17 Q What accounts are payable to the golf course?

18 A When the Utility doesn't have enough money to pay  
19 its bills, the golf course pays them quite often, and  
20 there is a substantial balance due the golf course.

21 Q Is there a separate book of account that shows  
22 the status of advances to Bonita Country Club Utilities,  
23 Inc. by this country club and then payments back out from  
24 Bonita Country Club Utilities, Inc. to this country club?

25 A Yes.

1 Q Where is that?

2 A Naples.

3 Q Where in Naples?

4 A My other office at 100 Gulf Shore Boulevard.

5 Q Now, 1400 Gulf Shore Boulevard, is that Gulf  
6 Shore Plaza?

7 A Yes.

8 Q That's that nice place by Loudermilk Park?

9 A Exactly.

10 Q First Watch is there?

11 A Yes.

12 Q Does Mr. Miceli have an office there?

13 A Yes.

14 Q Is it in Mr. Miceli's office that the book or  
15 record of payments or what you have described, I think, as  
16 advances from the golf course to the Utility and then  
17 payments back -- is it Mr. Miceli's office where the books  
18 are kept?

19 A It's Platinum Coast's office.

20 Q Is Mr. Miceli -- I think he testified in front of  
21 the judge yesterday that he's president of Platinum Coast?

22 A Yes.

23 MR. SEIDENSTICKER: We weren't in front of the  
24 judge yesterday.

25 MR. FRIDKIN: Counsel's correct.

## DIRECT EXAMINATION CONTINUED

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BY MR. FRIDKIN:

Q You know what I'm talking about, right?

A Yes.

Q It was the day before yesterday, wasn't it?

A Yes.

Q When you're having this much fun, all these days  
and kinds of things run together sometimes.

So Mr. Miceli is president of Platinum Coast?

A Yes.

Q And his office would have, then, the records that  
would show when these advances occurred from Bonita  
Country Club?

A Yes.

Q Now, can you show me anywhere on the general  
ledger audit trail where there is an indication of money  
coming in to Bonita Country Club Utilities, Inc. from what  
is seen here as Bonita Springs Golf Club?

A I don't show any monies having gone in for 1999.

Q Were there any -- do you have any records here  
that would show monies coming in to Bonita Country Club  
Utilities, Inc. from Bonita Country Club -- what is it  
called again?

A Bonita Springs Golf Club.

Q I want to go with the way this ledger describes

1 it. Bonita Springs Golf Club.

2 Anything here in this office showing money into  
3 Bonita Country Club Utilities, Inc. from Bonita Springs  
4 Golf Club in 1998?

5 A I have to look on the general ledger.

6 Q Could you take a moment and let's take a look and  
7 see?

8 A In 1998, I only show -- no, I do not show any  
9 money coming in.

10 Q Okay. Do you have that information for 1997 in  
11 terms of the general ledger to see if there was any money  
12 that came in in 1997?

13 MR. SEIDENSTICKER: You're specifically asking  
14 about any money coming in to Bonita Springs Golf and  
15 Country Club from Bonita Country Club Utilities,  
16 Inc.? Is that the question?

17 MR. FRIDKIN: No. I'm asking about monies coming  
18 in to the Utility from the Bonita Springs Golf Club.

19 MR. SEIDENSTICKER: Is this an okay breaking  
20 point for you?

21 MR. FRIDKIN: Yeah.

22 (A brief recess was held.)

23 MR. FRIDKIN: Was there a question pending?

24 (The question was read back by the reporter as  
25 follows:

1 Q Okay. Do you have that information for 1997 in  
2 terms of the general ledger to see if there was any money  
3 that came in in 1997?)

4 THE DEPONENT: No.

5 DIRECT EXAMINATION CONTINUED

6 BY MR. FRIDKIN:

7 Q How about for any prior year prior to 1998, would  
8 there be anything here that would show or evidence monies  
9 into Bonita Country Club Utilities, Inc. from something  
10 called Bonita Springs Golf Club?

11 A I'd have to go back year by year through the  
12 general ledger to find that.

13 Q Is there a file similar to the one we're copying  
14 here that has general ledgers; such as, for example,  
15 whatever the file is where we found it for 1998?

16 I think that file was the annual report file,  
17 wasn't it?

18 MR. SEIDENSTICKER: Object to the form.

19 THE DEPONENT: I don't know.

20 DIRECT EXAMINATION CONTINUED

21 BY MR. FRIDKIN:

22 Q Help me out.

23 Where did we find -- that was Exhibit 3 where we  
24 had the 1998 information.

25 Is there a BCCU year-end for 1997, 1996, 1995,



1 similar to Plaintiff's Exhibit Number 3?

2 A Yes.

3 Q Okay. And that was the document that you looked  
4 to to contain information summarizing the year before in  
5 terms of sources of money into Bonita Country Club  
6 Utilities, Inc.?

7 A Yes.

8 Q Okay. Why don't we mark -- why don't we mark --  
9 strike that.

10 Let me ask this a different way.

11 How far do they go back?

12 Do you have them for years and years going back?

13 A Quite a few years, yes.

14 Q All right. Did you look over Plaintiff's Exhibit  
15 Number 6 to see whether there were any monies from Bonita  
16 Springs Golf Club that came in in 1999?

17 A I did look, and, no, it does not appear that  
18 there is.

19 Q Okay. Now, by the way, if I'm reading  
20 Plaintiff's Exhibit Number 6 correctly, in addition to the  
21 \$15,000 that went out to Bonita Springs Golf Club on the  
22 13th of day of July of 1999, there was \$35,000 that came  
23 out of Bonita Country Club Utilities, Inc. and went to  
24 Bonita Springs Golf Club in May of 1999?

25 A Yes.

1 Q And do you know why that happened?

2 A Payment on the accounts receivable -- payable.

3 Q Payments on an account payable?

4 A Yeah.

5 Q Is there somewhere in Exhibit 6 where the amount  
6 of that account payable is reflected?

7 A No.

8 Q Is it carried on, you know, kind of a diminishing  
9 balance basis anywhere in the books?

10 A Yes.

11 Q Where? Can you show me?

12 A It's in the Naples office.

13 Q Oh, in the Naples office.

14 In Mr. Miceli's office?

15 A Platinum Coast.

16 MR. SEIDENSTICKER: Object to the form.

17 DIRECT EXAMINATION CONTINUED

18 BY MR. FRIDKIN:

19 Q In Platinum Coast's office?

20 A Yes.

21 Q And am I reading this correctly that, under rents  
22 category, which I believe is an account category of 1740,  
23 this same entity, whatever it is, Bonita Springs Golf  
24 Club, received a check in the amount of \$10,000 on March  
25 31 of 1999?

1 A Yes.

2 Q Why is BCCU, Inc. paying rent to something called  
3 Bonita Springs Golf Club; do you know?

4 A For use of office and clubhouse.

5 Q In other words, the business office here?

6 A Yes.

7 Q What is the period in which that payment is made?  
8 Is that an annual payment? Is that a monthly  
9 payment?

10 A It's whenever the Utility can pay.

11 Q Is there a written lease agreement at all?

12 A No. On the office or the clubhouse, no.

13 Q This is a charge that Bonita Springs Golf Club  
14 paid in March of 1999 as compensation for utilization of  
15 the business office?

16 A Yes.

17 Q Now, is there anybody at the Bonita Country Club  
18 Utilities, Inc. business office that's a full-time  
19 employee of Bonita Country Club Utilities, Inc.?

20 A No.

21 Q And is there -- in the office where this rental  
22 charge has occurred, which if I'm understanding the layout  
23 here is kind of behind the bar in the restaurant clubhouse  
24 area we're sitting in right now --

25 A Yes.

1 Q What's the percentage of the office space back  
2 there that's taken up with the business of Bonita Country  
3 Club Utilities, Inc.?

4 A I'd be guessing. About 25 percent.

5 Q By that guess, what you're describing is your  
6 best estimate of the amount of shelf space within that  
7 office that's taken up with the records of BCCU as opposed  
8 to other things?

9 MR. SEIDENSTICKER: Object to the form.

10 Her best guess. Estimate was your word.

11 THE DEPONENT: Yes.

12 DIRECT EXAMINATION CONTINUED

13 BY MR. FRIDKIN:

14 Q Do you know how much period of time this \$10,000  
15 payment in March of 1999 to Bonita Springs Golf Club  
16 covered?

17 A Not off the top of my head, no.

18 Q Did you receive directions from someone to write  
19 that check, Check Number 1236, to Bonita Springs Golf  
20 Club?

21 A Probably.

22 Q And who do you think probably gave you those  
23 directions?

24 A Michael Miceli.

25 Q Am I reading this correctly that under

1 contractual services, dash, BSG and CC, on March 9, 1999,  
2 there was a check, Number 1224, for \$2,370 payable to  
3 something called Pass Golf Management?

4 A Yes.

5 Q What was that?

6 A That was for repairs to our master station.

7 Q Tell me -- I notice that there is something  
8 called Bonita Golf Club rent paid on May 7 of 1999, Check  
9 Number 1255.

10 Could you explain that entry?

11 A It looks like it's a posting error that went in  
12 and went out.

13 Q They zeroed out all together?

14 A Yes.

15 Q Okay. Where does Bonita Country Club Utilities,  
16 Inc. do its banking today?

17 A First -- Colonial.

18 Q And you have brought with you the banking records  
19 for Bonita Country Club Utilities, Inc., for 1999 anyway?

20 A Yes.

21 Q For the record, please tell us what is in the  
22 document -- in the folder we're marking as Plaintiff's  
23 Exhibit Number 8.

24 A This is the monthly bank statements we received  
25 from Colonial Bank for the Bonita Country Club Utilities,

1 Inc. account.

2 (Plaintiff's Exhibit Number 8 marked for  
3 identification.)

4 DIRECT EXAMINATION CONTINUED

5 BY MR. FRIDKIN:

6 Q Could you tell us for the record what time period  
7 is covered, as best as you can determine?

8 A Looks like December '98 through June '99.

9 Q Okay. Throughout 1999 -- well, strike that.  
10 Let me go about this a different way.

11 (Plaintiff's Exhibit Number 9 marked for  
12 identification.)

13 DIRECT EXAMINATION CONTINUED

14 BY MR. FRIDKIN:

15 Q Let me hand you what we're marking as Plaintiff's  
16 Exhibit Number 9. This is another manila folder.

17 Could you tell us, please, what is encompassed  
18 within that manila folder?

19 A These are the monthly bank statements from  
20 Northern Trust from December '98 through July '99.

21 Q Okay. And can you tell me what the purpose of  
22 this particular account is, if you know?

23 A In prior years, that had been our operating  
24 account.

25 Q Okay. When did it cease to be your operating

1 account?

2 A I believe, in '98.

3 Q Okay. Is '98 when the Colonial Bank account got  
4 opened?

5 A Yes.

6 Q Okay. Was the entire balance in the Northern  
7 account, less \$82, plus or minus, moved from the Northern  
8 Trust Bank account to the Colonial Bank account?

9 A No.

10 Q Okay. Tell us what happened to the -- strike  
11 that.

12 Let me ask this a different way.

13 What was the original opening, if you know, of  
14 the Colonial Bank account?

15 A When?

16 Q No.

17 What was the source of funds for the original  
18 opening of the Colonial Bank account?

19 A I'd have to look. Off the top of my head --

20 Q Do you have something here that could tell you?

21 A Probably, yeah.

22 Q What would you look at that would tell you?

23 A I would ask Linda because she'll probably --  
24 there is probably a folder for Colonial Bank for the  
25 opening of the account.

1 Q Could you take a moment and see?

2 A Yes.

3 (A brief recess was held.)

4 MR. FRIDKIN: Is there a question pending?

5 (The question was read back by the reporter as  
6 follows:

7 What was the source of funds for the original  
8 opening of the Colonial Bank account?)

9 THE DEPONENT: A thousand dollar check was  
10 written from the Northern Trust account to open the  
11 Colonial Bank account.

12 DIRECT EXAMINATION CONTINUED

13 BY MR. FRIDKIN:

14 Q That thousand dollars, did that, in effect,  
15 constitute virtually the entirety of the balance of the  
16 Northern Trust account at the time?

17 A Not at that time, no.

18 Q What happened to the balance of the Northern  
19 account?

20 A Paying bills, that dwindled.

21 Q So, in effect, what -- the then balance of the  
22 Northern account was used to pay accounts as they became  
23 due but no new revenues were put into that account?

24 A That's correct.

25 Q Okay.



1 MR. SEIDENSTICKER: Could you read back the  
2 question and answer?

3 (The question and answer were read back by the  
4 reporter as follows:

5 Q So, in effect, what -- the then balance of the  
6 Northern account was used to pay accounts as they became  
7 due but no new revenues were put into that account?

8 A That's correct.)

9 DIRECT EXAMINATION CONTINUED

10 BY MR. FRIDKIN:

11 Q What I would like to do, Mrs. Pass, is, would you  
12 confirm that the Colonial Bank documents that you are  
13 referring to for 1998 are in the folder we have just  
14 marked as Plaintiff's Exhibit Number 9?

15 A Yes.

16 (Plaintiff's Exhibit Number 10 marked for  
17 identification.)

18 DIRECT EXAMINATION CONTINUED

19 BY MR. FRIDKIN:

20 Q And the Northern Trust Bank documents that you  
21 referred to are now in the folder which we're marking as  
22 Plaintiff's Exhibit Number 10?

23 A Yes.

24 (Plaintiff's Exhibit Number and 11 were  
25 marked for identification.)

## DIRECT EXAMINATION CONTINUED

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BY MR. FRIDKIN:

Q Please tell me what Plaintiff's Exhibit Number 11 is.

A It is for Bonita Country Club Utilities, the general ledger year-to-date audit trail for the bank account.

Q And when you say the bank account, we're talking about the Colonial Bank account at that point?

A Yes.

Q Is there a similar general ledger audit trail for monies in in terms of identifying the source of funds in?

A I believe it's reflected on this report.

Q Oh, okay. In other words, this report reflects monies in as well as monies out?

A That's correct.

Q Okay. And when it's reflecting monies in, is that in the entry that shows sales journal A.R. sales summary, for example?

A Most of time, that's when it's coming from things that went through accounts receivable. There will be some on rare occasions. There could be a deposit made that didn't actually go through the accounts receivable. There may not be any, but --

Q Okay. We see, for example, just picking somewhat

1 at random here by looking at the pages -- let's -- we have  
2 in May 7 of 1999 Milenela Partners made a \$31,200 payment?

3 A Yes.

4 Q And then on April 30 of 1999, the accounts  
5 receivable sales summary shows there was \$18,554.

6 Is that a typical monthly deposit made from your  
7 customers' remittances for utility service?

8 A That's not just one month. You'll find -- yes.  
9 There should probably be even more.

10 Q Do you know off the top of your head roughly what  
11 the monthly deposit is for customer payments to the  
12 Utility?

13 A No, not without looking.

14 Q When did the last -- strike that.

15 Let me ask this a different way.

16 In terms of billings for Bonita Country Club  
17 Utilities, Inc., do they go out monthly, bimonthly,  
18 quarterly, all of the above? How does it work?

19 A Monthly.

20 Q Okay. And on what -- is there a routine day of  
21 the month that they go out?

22 A The 20th.

23 Q The 20th of any given month?

24 A Yes.

25 Q So in terms of right now, in the current billing

1 cycle, monies are coming into Bonita Country Club  
2 Utilities, Inc. as a result of bills that went out on the  
3 20th of July?

4 MR. SEIDENSTICKER: Object to the form.

5 THE DEPONENT: We did not send out the bills of  
6 July 20th.

7 DIRECT EXAMINATION CONTINUED

8 BY MR. FRIDKIN:

9 Q Okay. Is part of that because of this issue that  
10 has arisen with respect to this lawsuit and some of the  
11 issues we're taking about here today?

12 A Yes.

13 Q So the -- as of today, the current status quo,  
14 the last billing cycle is running from bills that issued  
15 on the 20th of June?

16 A That's correct.

17 Q Okay. And at this current moment, the customers  
18 of Bonita Country Club Utilities, Inc. have not received  
19 any bills for July services?

20 A That's correct.

21 Q Okay. By the way, does the billing occur in  
22 advance?

23 In other words, if there is a June 20 bill, what  
24 service are they being billed for; you know, up until June  
25 19 or --

1 MR. SEIDENSTICKER: Billed in advance, is what  
2 you're asking?

3 MR. FRIDKIN: Yes.

4 DIRECT EXAMINATION CONTINUED

5 BY MR. FRIDKIN:

6 Q Are they billed in advance?

7 A The bill that goes out on the 20th is due on the  
8 1st for that month's service.

9 The June 20th bills that went out were for July  
10 service.

11 Q So at the current moment, the customers of Bonita  
12 Country Club Utilities, Inc. have not been billed, at  
13 least through your offices or by BCCU, for the August  
14 services?

15 A That's correct.

16 Q Okay. Have you received any instructions from  
17 anybody to send a bill?

18 A Yes.

19 Q Okay. Who gave you instructions to send a bill?

20 A Michael Miceli.

21 Q When did you receive those instructions?

22 A I don't recall exactly.

23 Q Within the last few days?

24 A No.

25 Q Okay.

1           A     Sometime around the 20th.

2           Q     The 20th of July?

3           A     July.

4           Q     But you have not done it, despite the  
5 instruction?

6           A     That's correct.

7           Q     Okay. Are you awaiting hearing from the Court as  
8 to what the Court wants you to do in that regard?

9           A     Yes.

10          Q     Okay. Is there a policy in place in terms of  
11 dealing with customers of the Utility who may be calling  
12 with billing inquiries, in light of -- you're aware of the  
13 newspaper articles that have run?

14          A     Yes.

15          Q     I'm sure that in this -- this is not a huge  
16 community.

17                   I'm sure that there is, you know, questions that  
18 have been raised by customers and brought to your  
19 attention?

20          A     Yes.

21          Q     What have you been telling customers?

22          A     In the beginning, we told them that they should  
23 remit the payments to us, that we would be sending our  
24 billings out. As of late, we've been telling them that we  
25 had a court date for Monday and that the Court would be

1 now changing to 12?

2 A Yes, sir.

3 Q Do I understand, Mrs. Pass, correctly that  
4 Exhibit 12 is a complete and total listing of that  
5 information in terms of who the customers are and what the  
6 current status of their accounts are?

7 A That is correct.

8 The balance reflected owed by the customers  
9 reflects billings that should have gone out on the 20th  
10 that we've held.

11 Q Okay.

12 A We actually cycled the bills, put them in  
13 envelopes, and they're ready to go out, so it's reflected  
14 in this report.

15 Q As having gone?

16 A As having gone but they're sitting here.

17 Q Okay. I've got you.

18 So that character or quality of billing would  
19 appear in the current column?

20 A That's correct.

21 MR. SEIDENSTICKER: Jeff, do you want to take a  
22 break and discuss the issue of the hearing?

23 MR. FRIDKIN: Okay. Let's go off the record.

24 (A discussion was held off the record.)

25 MR. SEIDENSTICKER: I believe that we've arrived

1 deciding who they should be sending the payments to.

2 MR. FRIDKIN: Let's take a brief recess here.

3 (A brief recess was held.)

4 (Plaintiff's Exhibit Number 11 marked for  
5 identification.)

6 DIRECT EXAMINATION CONTINUED

7 BY MR. FRIDKIN:

8 Q What I'm marking as Plaintiff's Exhibit 11, would  
9 you please for the record tell us what Exhibit 11 is?

10 A Exhibit 11 is the detailed customer listing for  
11 the Utility that indicates the customer's current mailing  
12 address, their up North address, their property location  
13 and any monies that are due on their account as of August  
14 10th.

15 MR. SEIDENSTICKER: Jeff, I had down on my notes  
16 that you had marked 11 as the Colonial Bank ledger  
17 audit trail.

18 Is that the one?

19 MR. FRIDKIN: That should be Exhibit 12. You're  
20 right.

21 (Plaintiff's Exhibit Number 12 marked for  
22 identification.)

23 DIRECT EXAMINATION CONTINUED

24 BY MR. FRIDKIN:

25 Q What you just referred to as Exhibit 11, we're



1 at a stipulation to alleviate the current issue of  
2 billing on the utility company that has not yet gone  
3 out, that should have gone out on July 20th up  
4 through and including the billing that we anticipate  
5 will be required to go out in August.

6 What we have stipulated, as a temporary resolve,  
7 is that Bonita Country Club Utilities, Inc. will be  
8 authorized by Northern Trust, Hallendale (phonetic)  
9 and counsel to proceed to send the billing out,  
10 receive revenues on the billing for July and August  
11 billing, in exchange for which Hallendale's counsel  
12 agree that they will be compensated at the existing  
13 payroll rate as established under the Staffing  
14 Concepts for the billing periods in question, which  
15 we understand at this point will just be July and  
16 will be August.

17 MR. FRIDKIN: And just to clarify, we're talking  
18 about BCCU will be authorized to deduct out of the  
19 revenue account payroll -- the contract payment to  
20 Staff Leasing equal to \$480 a week, let's clarify  
21 that's for Mrs. Pass at \$350 a week, and somebody  
22 named Kathy for 15 hours at \$8 an hour.

23 MR. SEIDENSTICKER: Actual expenses in addition  
24 to that for postage, that type of thing, office rent,  
25 which is \$500 a month, we've only got two months of

1 office rent we're dealing with, July and August, and  
2 the rents on the ponds that, to our knowledge, have  
3 not yet been paid.

4 MR. FRIDKIN: The rents on the ponds in terms  
5 of -- if they have not, and our understanding is a  
6 check went out, but if it hasn't, certainly out of  
7 that account current rent payments will be an  
8 authorized distribution out of that account in terms  
9 of the percolation pond, starting in July.

10 MR. SEIDENSTICKER: And this in no way, shape or  
11 form will pave Platinum Coast's rights or any other  
12 rights that may have accrued prior to this  
13 arrangement going into effect.

14 MR. FRIDKIN: Right.

15 We can agree that the -- any positions with  
16 respect to ultimate ownership of those funds are  
17 preserved. They're not resolved by this agreement.

18 The intent of this agreement is to, in effect,  
19 preserve the status quo and keep the funds in an area  
20 where they're answerable to the Utility for now only  
21 as part of the status quo. At the end of this  
22 two-month period, if there are remaining monies after  
23 payment of the agreed upon expenses, we will either  
24 resolve what gets those monies or we'll have the  
25 funds available for the Court to make the decision.

1 MR. SEIDENSTICKER: Right.

2 As far as these actual expenses, they will be  
3 entitled to compensation for undertaking these  
4 duties. We're not going to argue about these actual  
5 expenses that we have just enumerated on the record.

6 MR. FRIDKIN: Yes.

7 Let me say this, too.

8 MR. SEIDENSTICKER: Yes, you're in agreement to  
9 that?

10 MR. FRIDKIN: Yes, I'm in agreement to that.

11 I want to make a couple of comments.

12 The only person who will be allowed to make those  
13 disbursements out of the account is Mrs. Pass because  
14 we're comfortable, frankly, that Mrs. Pass will do  
15 the right thing and abide by the stipulation. Not  
16 that we're not comfortable with anybody else, but  
17 we're comfortable with Mrs. Pass that she will do the  
18 right thing.

19 We would only ask that, let's say, reasonably 48  
20 hours before any disbursement of any kind is made  
21 that the --

22 MR. SEIDENSTICKER: Statement.

23 MR. FRIDKIN: -- a statement or some indication  
24 of what the disbursement is will be faxed to our  
25 offices so that we can --

1 MR. SEIDENSTICKER: What is your fax number?

2 MR. FRIDKIN: It's 514-0377.

3 MR. WICKENDEN: And I have to add two things.

4 Can you tell us within 48 hours what the current  
5 rent is because obviously it can be figured out?

6 THE DEPONENT: Yeah, I have it all calculated in  
7 the Naples office.

8 MR. WICKENDEN: And we're going to have to send  
9 some type of letter out because I have sent a letter  
10 to all the customers saying, don't send them bills.  
11 I need to give me time, give me a day or two --

12 MR. SEIDENSTICKER: Something I might suggest to  
13 do -- are those bills already sealed and posted?

14 THE DEPONENT: No.

15 MR. SEIDENSTICKER: What you can do is insert  
16 something -- why don't you have it executed by you or  
17 someone on your behalf and something to the effect  
18 that the --

19 MR. WICKENDEN: Pending a resolution.

20 MR. SEIDENSTICKER: Yeah, that resolution is  
21 pending, and in the interim, for the month of -- that  
22 all past due billing for the month of July and August  
23 should be remitted to Bonita Country Club Utilities,  
24 Inc., and thereafter, they will be receiving any  
25 further direction in the mail for any billings for

1           September forward.

2           THE DEPONENT: It would show that we're both --

3           MR. WICKENDEN: I'll send it to you before I --

4           MR. SEIDENSTICKER: That's fine.

5           MR. WICKENDEN: Another question I had -- I know  
6 you gave me a list of customers. We sent that  
7 list -- using that list, we sent out a lot of these  
8 mailings, and we're getting returned to sender, no  
9 one by that address there.

10          THE DEPONENT: We have a lot of people that  
11 switch and go back up North, so their mailing address  
12 is -- but it's reflected in here.

13          MR. WICKENDEN: Maybe that was the problem.

14          THE DEPONENT: You got it at a time that we were  
15 switching over.

16          MR. FRIDKIN: The stipulation should include not  
17 only any -- I mean, the concept is any and every  
18 revenue of any kind or nature coming in to BCCU now,  
19 that would include impact fees and all these things  
20 now, go into the account to be treated this way,  
21 regardless of the source of revenue at this point.

22                 Is that understood and agreed?

23          MR. SEIDENSTICKER: Yeah.

24          MR. FRIDKIN: I think that to the extent that we  
25 have overlooked something in the course of this, we

1 can try to work it out. This is a good stipulation.

2 Let the record reflect we will be attaching  
3 copies of the exhibits, that all of the original  
4 exhibits are going to go back into the custody of  
5 Mrs. Pass and Bonita Country Club Utilities, Inc.,  
6 with the exception of Exhibits 6, 11, 7 and 12, which  
7 are computer runs, which if I understand correctly,  
8 we can take these copies ourselves.

9 THE DEPONENT: Yes.

10 MR. SEIDENSTICKER: I'd like to have a duplicate  
11 copy as well of those so I know what we have marked  
12 at the deposition.

13 (Plaintiff's Exhibit Number 13 marked for  
14 identification.)

15 DIRECT EXAMINATION CONTINUED

16 BY MR. FRIDKIN:

17 Q We have a photocopy of something that I want to  
18 mark as Plaintiff's Exhibit 13, and ask you before we sign  
19 off here to tell us what Exhibit 13 is?

20 A It's our Florida Public Service Commission  
21 certificate to operate our wastewater plant.

22 Q That's a copy?

23 A Copy.

24 Q And the original is here in your possession in  
25 the offices?

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A Yes.

MR. FRIDKIN: Okay. That's all I have.

MR. SEIDENSTICKER: She'll read.

(Deposition concluded at 12:45 p.m.)

CERTIFICATE

STATE OF FLORIDA

COUNTY OF COLLIER

I, Traci L. Brantner, RPR, Notary Public, State of Florida at Large, do hereby certify that, pursuant to notice in the above-entitled cause, PAMELA PASS was by me first duly sworn to testify the whole truth, and upon being examined, testified as is hereinabove shown, and the testimony of said witness was reduced to print by means of computer-assisted transcription under my personal supervision and that the said deposition constitutes a true record of the testimony given by the witness.

I further certify that the said deposition was taken at the time and place specified hereinabove and that I am neither of counsel nor solicitor to either party in said suit nor interested in the event of the cause.

WITNESS my hand and official seal in the City of Naples, County of Collier, State of Florida, this 16th day of August, 1999.



Traci L. Brantner, RPR  
 Notary Public  
 State of Florida at Large



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IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL  
CIRCUIT IN AND FOR LEE COUNTY, FLORIDA  
CIVIL ACTION

NORTHERN TRUST BANK OF )  
FLORIDA, N.A., )  
 )  
Plaintiff, )  
 )  
vs. ) File No. 98-6169  
 ) CA WCM  
BONITA COUNTRY CLUB UTILITIES, )  
INC., a Florida Corporation, )  
THOMAS HEIDKAMP, Chapter 7 )  
Trustee, and all persons having )  
or claiming by, through, under, )  
or against any of the above )  
parties and all parties having )  
any right, title or interest in )  
the subject property. )  
 )  
Defendants. )  
 )

TRANSCRIPT OF PROCEEDINGS  
(Motions)

Before the Honorable William C. McIver, Circuit  
Judge, at a motion held in the above-styled cause, at  
the Lee County Justice Center, Fort Myers, Florida, on  
the 9th day of August, 1999.

NOLEN-MARTINA REPORTING SERVICES  
2069 First Street  
Courtney Building, Suite 201  
Ft. Myers, Florida 33901  
(941) 334-6545  
FAX (941) 332-2913

COPY

APPENDIX D

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APPEARANCES:

JEFFREY D. FRIDKIN and D. KEITH WICKENDON,  
Attorneys at Law,  
GRANT, FRIDKIN, PEARSON, ATHAN & CROWN, P. A.,  
Pelican Bay Corporate Centre,  
5551 Ridgewood Drive, Suite 501,  
Naples, Florida 34108;  
representing the Plaintiff.

WAYDE P. SEIDENSTICKER, JR., Attorney at Law,  
SEIDENSTICKER & SAN FILIPPO, LLP,  
1100 Fifth Avenue South,  
Suite 405, Naples, Florida 34102;  
representing the Defendants.

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>
Michael Miceli	37		
Pamela Pass	42		
Linda Gant	45		

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Page</u>
	None	

1 MR. FRIDKIN: Jeff Fridkin on behalf of the  
2 Plaintiff, Northern Trust Bank and Hallendale.  
3 You have the emergency motion of the Judgment  
4 Plaintiff here, which is a foreclosing of a  
5 foreclosed mortgage holder who has had issued to  
6 it a certificate of title.

7 The property at issue in this case, Your  
8 Honor, is a private wastewater treatment  
9 facility, which serves residents of Lee County in  
10 the area of Bonita Springs, an area called the  
11 Bonita Springs Country Club.

12 While we are not sure how many of those  
13 people there are, Your Honor, we know there is  
14 somewhere between three hundred and eight hundred  
15 people currently being served by this wastewater  
16 facility.

17 We received a judgment from Your Honor in  
18 February of 1999. That judgment got amended in  
19 April of 1999, a foreclosure sale on that  
20 judgment was held.

21 MR. SEIDENSTICKER: Excuse me for one  
22 moment, just for purposes of clarification, I  
23 don't mean to interrupt counsel. But on a  
24 clarification, we are here on the Second Amended  
25 Emergency Motion for Supplementary Relief, Motion

1 for Writ of Possession and Motion for Preliminary  
2 Injunction that was served on August 4th, last  
3 week.

4 I just want to know what we are arguing,  
5 because I filed a Motion for Continuance based  
6 upon the notice of this motion; but be that as it  
7 may, I want to make sure we knew what we are  
8 arguing about today.

9 MR. FRIDKIN: Counsel, if you will allow me  
10 to finish, I'll be able, I think, to get the  
11 Judge to understand quite clearly what it is --  
12 what it is we are talking about.

13 MR. SEIDENSTICKER: There are three motions,  
14 I just wanted to make sure -- you identified a  
15 different one -- which one we are arguing?

16 MR. FRIDKIN: Actually, I have not  
17 identified anything, if you will allow me to --

18 THE COURT: Mr. Wickenden, and Mr.  
19 Seidensticker, let's avoid conversations back and  
20 forth. We'll go through the Court.

21 MR. SEIDENSTICKER: That is fine, Judge.

22 THE COURT: You wanted to address me on some  
23 issue now.

24 MR. SEIDENSTICKER: Well, Judge, I had filed  
25 a Motion for Continuance, based on the fact --

1 of this hearing -- based upon the fact that the  
2 motion, I understand that was being argued today  
3 was actually filed on August 4th. Three days  
4 notice, based on the emergency motion, I didn't  
5 feel is real adequate notice.

6 THE COURT: Hold on, I'll address that right  
7 now, Mr. Fridkin.

8 MR. FRIDKIN: Yes, sir.

9 THE COURT: When did you file the motion  
10 upon which you're bringing the hearing?

11 MR. FRIDKIN: I think the fundamental basis  
12 of the motion was put forth on July 30th, if  
13 memory serves correctly. There have been  
14 variations as the situation develops, and if I  
15 could explain that to the Court.

16 THE COURT: I am going to let him give me  
17 his statement concerning what he is asking, all  
18 right. And if there is some impediment, in your  
19 view, to his proceeding on that today, I'll hear  
20 from you before I go ahead and address the  
21 merits.

22 MR. SEIDENSTICKER: Thank you, Judge.

23 MR. FRIDKIN: That is sure fair, Your Honor.  
24 As I was telling the Court, you have here before  
25 you a foreclosure judgment that was entered both

1 personal to a stipulation that was entered into  
2 by a gentleman by the name of Heidkamp, who was  
3 the Federal Trustee in bankruptcy for an  
4 individual named Mr. Miceli. I think this is Mr.  
5 Miceli sitting next to me here.

6 MR. SEIDENSTICKER: That is true.

7 MR. FRIDKIN: Mr. Miceli was in bankruptcy,  
8 still is in bankruptcy, the best I know. He,  
9 prior to his bankruptcy, which existed prior to  
10 this lawsuit being brought by Northern Trust  
11 against Bonita Country Club Utilities, owned all  
12 the shares of Bonita Country Club Utilities.  
13 Those shares went into the control of the Federal  
14 Bankruptcy Trustee.

15 Mr. Miceli was served with process in this  
16 case, so was the Federal Bankruptcy Trustee.  
17 There is affidavits of service to that effect in  
18 the file. There was a hearing in open court  
19 where a final judgment of foreclosure was  
20 entered, not only personal to a stipulation, but  
21 personal to a noticed hearing.

22 THE COURT: You represent Northern Trust.

23 MR. FRIDKIN: That is correct, Your Honor,  
24 and its successor, Wilnor Hallendale, which is an  
25 assignee to whom the right to get the certificate

1 of title was transferred.

2 What followed, there were some amendments,  
3 and in April of this year, a final judgment of  
4 foreclosure was entered.

5 Among the various stipulations in this file,  
6 that Your Honor has, includes stipulations  
7 signed by Louie Amato, who was Mr. Miceli's  
8 lawyer in the bankruptcy proceedings. I think  
9 one of the things you're going to hear from Mr.  
10 Seidensticker is somehow these folks have been  
11 denied notice, but your certificate of title  
12 issued in July.

13 The reason we are here is because on the  
14 15th of July, as Northern Trust and it's  
15 successors moved into the position of taking  
16 control of this utility, we sought but were not  
17 provided, information concerning customers of the  
18 utility. In other words, there are certain books  
19 and records, all of which under the certificate  
20 of title, were conveyed to Northern Trust.

21 Um, we asked for the information concerning  
22 customers. We were, indeed, provided some  
23 information but not a complete list of  
24 information. We asked for information regarding  
25 the accounts of these wastewater service



1 customers.

2 We have been provided no information on that,  
3 and by that, I mean books of account showing  
4 status of their payments, um, status of deposits.  
5 We have learned, for example, in the now two and  
6 a half weeks that we have been operating this  
7 utility, that there are customers of the utility  
8 that have prepaid in some instances tens of  
9 thousands of dollars for services, for hookup  
10 fees and the like, where we have made requests,  
11 pursuant to our ownership interest that exist by  
12 virtue of certificate of title to get to, where  
13 are the bank accounts, what is the status of your  
14 customer security deposits, and we have been  
15 denied and deprived that opportunity to get that  
16 information.

17 We noticed some depositions, which were  
18 supplementary proceedings in aid of realizing an  
19 existing --

20 THE COURT: What is it, Mr. Fridkin, that  
21 you want the Court to do for you today?

22 MR. FRIDKIN: Today, what we would like the  
23 Court to do is this. We would like the Court to  
24 make an order directing the officers and  
25 employees of Bonita Country Club Utilities to pay

1 to or to provide to Northern Trust Bank  
2 forthwith, today in fact, because we have them  
3 here to give that information today, the location  
4 of bank accounts, as they existed as of July 15,  
5 which were transferred to us by virtue of the  
6 certificate of title.

7 We ask that they provide and deliver to us,  
8 and be directed by the Court to deliver to us  
9 today, the books of account with respect to the  
10 customers of Bonita Country Club Utilities, Inc.

11 We are asking the Court that they cooperate  
12 in delivering to us a copy of what the Public  
13 Service Commission calls a certificate of  
14 authorization. The original certificate of  
15 authorization that issued to Bonita Country Club  
16 Utilities is required by the PFC to be turned in  
17 as part of the application process that we have  
18 pending.

19 And the last thing we want is for Bonita  
20 Country Club Utilities, Inc., which is no longer  
21 providing any service, to stop interfering with  
22 our customer relationships by directing customers  
23 to send monies to their accounts as opposed to  
24 ours.

25 In our relief, we ask the Court to direct

1           that if Bonita Country Club Utilities, Inc.  
2           receives more monies for services from and after  
3           July 15 of 1999, that those monies be held in  
4           trust to be turned over to the operating entity,  
5           which is Wilnor Halendale, Inc., as the successor  
6           to Northern Trust Bank, and that is what our  
7           proposed form of order asks.

8           It further asks if there is inquiry made --  
9           the injunction we are asking for would provide,  
10          if there is inquiry made that the Bonita Country  
11          Club Utilities, Inc. not direct their customers  
12          or inquires away from Wilnor Halendale, Inc., but  
13          rather direct that any payments be sent to Wilnor  
14          Halendale, Inc., which is the entity providing  
15          the services.

16          I have some authority.

17          THE COURT: Yes, sir. Do you know what  
18          concerns me, Mr. Fridkin, is that this is on the  
19          schedule for fifteen minutes. And I think I am  
20          going to do my best to -- and I suspect Mr.  
21          Seidensticker, you have to a number of things you  
22          want to say.

23          MR. SEIDENSTICKER: Absolutely, Judge.

24          THE COURT: Let me declare a recess in the  
25          case temporarily, let you all get a coffee break,

1 maybe until quarter after 11:00, and then I am  
2 going to readdress this as soon as I can. But  
3 because this is going to take a little more time,  
4 than I think the 15 minutes that has been  
5 allocated, so if I have to go into my luncheon  
6 period, that is fine, but let me get rid of the  
7 other cases I have that have been scheduled for  
8 less time. And I will work this in, I can see if  
9 there is a problem that needs to be addressed  
10 and --

11 MR. FRIDKIN: Thank you, Your Honor.

12 MR. SEIDENSTICKER: Thank you, Judge.

13 THE COURT: We'll be coming back to this  
14 one, as soon as I can get to it, 11:15 or as soon  
15 thereafter as I can get to it, okay.

16 (Whereupon, a recess was taken until 11:25  
17 a.m.)

18 THE COURT: All right, Mr. Fridkin, before  
19 you get into case law and all that, let me just  
20 go back here and take a look at something,  
21 because I want to understand what it is.

22 Your client had a mortgage on real estate;  
23 is that right, or more than real estate?

24 MR. FRIDKIN: More than real estate, Your  
25 Honor. I have taken the liberty of highlighting

1 a copy of the certificate of title. It was,  
2 indeed, mortgage on real estate that contains a  
3 wastewater treatment facility, mortgage on  
4 leasehold estate, which contains some percolation  
5 ponds, and a whole, very inclusive list of  
6 personalty, all of which is part of the  
7 certificate of title in this case.

8 THE COURT: Mr. Seidensticker, what is your  
9 client's position?

10 MR. SEIDENSTICKER: Yes, Judge, well, aside  
11 from any procedural aspect, and assuming the  
12 Court is going to hear argument on the merits of  
13 the motion today. I was retained last week, but  
14 I have done my best to get up to speed, and I  
15 think I have a fairly good grasp of where we are  
16 right now, Judge.

17 That is this: Northern Trust, who is the  
18 one that held the mortgage on the real estate,  
19 also had requested for any improvements on the  
20 real estate for half a million dollars -- in  
21 exchange for the half million dollar loan.

22 It is a wastewater treatment plant that my  
23 client, up until very recently was running,  
24 billing for the wastewear treatment services,  
25 doing everything.

1           The Northern Trust Bank, upon foreclosure,  
2           had requested, from my review of the documents,  
3           had requested Your Honor to delay issuance of the  
4           certificate of title in order that they get their  
5           own management company up to speed to move in and  
6           presumptively take over the business.

7           And our big riff, Judge, in this case is  
8           that they, in essence, are asking this Court to  
9           come in and turn over lock, stock and barrel, an  
10          ongoing utility business that is worth about,  
11          according to my client's calculations, and they  
12          are in a position to offer testimony on that  
13          today, a million and a half dollars, when the  
14          actual judgment of foreclosure is about a half  
15          million dollars, and they are asking for  
16          injunctive relief and a lot of other  
17          extraordinary remedies, number one.

18          Number two, they do not have a certificate  
19          of authority issued that entitles them, based  
20          upon my understanding of Mr. Fridkin's  
21          introduction prior to the recess, their client  
22          has yet to obtain the certificate to entitle them  
23          to go out and bill these people for wastewater  
24          treatment. My client still has the certificates,  
25          still has everything.

1           The Public Service Commission has not yet  
2           issued them any authority to collect rents. They  
3           are asking this Court to require them to turn  
4           over, require my client to turn over all the  
5           information on their bank accounts, all the  
6           information on customer lists, et cetera, when in  
7           fact, my client obtained the stock through a  
8           bankruptcy proceeding from the Trustee to this  
9           corporation.

10           So basically, Judge, our big concern is that  
11           they want to have all of this information today,  
12           so they can take the whole business, in addition  
13           to the real estate and the improvements, and put  
14           it on the block and sell it, but not account for  
15           any of the difference that they get back over and  
16           above the money that was owed to them in the  
17           final judgment that you entered.

18           And they stand to obtain up to, upwards of a  
19           million dollar windfall on that, Judge, and that  
20           is a real concern, because there are other  
21           creditors out there from Bonita Country Club  
22           Utilities. And our big concern, Judge, is that  
23           it is appropriately, any profits and  
24           accounting --

25           THE COURT: Now you are in bankruptcy; is

1           that right? In other words, there was a release  
2           of stay only for the foreclosure --

3           MR. SEIDENSTICKER: No, there was no release  
4           of stay; that is another issue, Judge.

5           THE COURT: There was no release of stay?

6           MR. SEIDENSTICKER: Here is what happened.

7           THE COURT: If I don't have jurisdiction,  
8           why are we here?

9           MR. SEIDENSTICKER: Well, that is an issue,  
10          Judge.

11          MR. FRIDKIN: Your Honor, may I answer that  
12          question.

13          THE COURT: I'll allow you. I want to hear  
14          what he -- I am just trying to understand where  
15          we are, go ahead.

16          MR. SEIDENSTICKER: Judge, Mr. Miceli was in  
17          personal bankruptcy. Mr. Miceli was a guarantor  
18          of this loan, okay, for Bonita Country Club  
19          Utilities. What they did, they foreclosed on  
20          Bonita Country Club Utilities. They did not add  
21          Mr. Miceli as a guarantor in the actual action.

22          THE COURT: They can waive that, if they  
23          want.

24          MR. SEIDENSTICKER: Correct, they can.

25          However, one of the issues that involves whether



1 or not the stay was in fact, violated, in them  
2 obtaining a general judgment of foreclosure, is  
3 that as part of the settlement negotiations, that  
4 Mr. Miceli had with the Trustee, who I believe  
5 they have also subpoenaed to testify here today,  
6 the Trustee actually sold the right and interest  
7 in all of the stock, which Mr. Miceli held  
8 personally in Bonita Country Club Utilities, and  
9 any action against any assets held by the  
10 corporation arguably could be a violation of  
11 stay.

12 I do have some bankruptcy law to support  
13 that, if the Court wants to hear that issue  
14 today. But in essence, Judge, in a nut shell,  
15 our concern here today is that the bank is  
16 basically trying to obtain a lot of things that  
17 they are not necessarily entitled to at this time  
18 based on the law, based on Chapter 25-30 of the  
19 Public Service Commission Rules.

20 THE COURT: Let me ask you this. All right,  
21 now your client owns the stock in the  
22 corporation.

23 MR. SEIDENSTICKER: Correct.

24 THE COURT: And the corporation no longer  
25 has a wastewater treatment facility.

1           MR. SEIDENSTICKER: Well, they still have  
2           the books and records for the wastewater  
3           treatment, the permits, the licensing, the  
4           authority issued by the State, in order to  
5           entitle them, which my understanding is a  
6           nonassignable right, unless they have agreed to  
7           assign it.

8           THE COURT: That is up to the State, to get,  
9           to approve such assignments as there may be.

10          MR. SEIDENSTICKER: Correct, exactly.

11          THE COURT: The point is that your client  
12          owns stock in a corporation that used to own a  
13          wastewater treatment facility, which has been  
14          foreclosed upon, and now the bank owns the real  
15          estate. Mr. Fridkin has urged that I view it as  
16          if they own not only that, but some other assets  
17          as well, okay. Real estate is taken by way of  
18          foreclosure; other things, I mean have to be  
19          identified.

20                 I mean you know, I don't know, but it's  
21          clear to me that this is going to take some time.  
22          All right, Mr. Fridkin, how much time do you  
23          think you need to present your case with regard  
24          to the Court's -- are you going to call  
25          witnesses?

1 MR. FRIDKIN: I am not sure, I might, it  
2 depends. Can I answer a couple of your questions  
3 that might give you some sense this may not take  
4 as long as you think.

5 THE COURT: The point is, if you ask me to  
6 do something for you here today, that is going to  
7 require an evidentiary hearing --

8 MR. FRIDKIN: I think the evidentiary  
9 hearing, the evidentiary components are rather  
10 thin, they wouldn't take long. The key is to  
11 understand where we are in terms of a legal  
12 posture.

13 There is no question that Bonita Country  
14 Club Utilities, Inc. was never in bankruptcy. So  
15 that the bankruptcy jurisdiction -- and we are  
16 not here on the 1.540 challenge to the finality  
17 of the judgment. They had all the chance in the  
18 world to do that; they haven't done that.

19 Bonita Country Club Utilities, Inc., has  
20 never been in bankruptcy, so there is no  
21 bankruptcy issue. But to the extent there was,  
22 we did join the Trustee in bankruptcy, Mr.  
23 Miceli's Trustee, who voluntarily did enter an  
24 appearance and who stipulated to a final judgment  
25 in this case. So any issue that might have been

1           there, is gone. He is here in the event, to back  
2           any of that up, if we need to, I don't think we  
3           need to.

4           The real question here, are we entitled to  
5           the relief we are looking for in terms of  
6           emergency injunctive relief directing that the  
7           books be turned over. Our claim for that, Your  
8           Honor, is based primarily on subdivision H of the  
9           third page of the certificate of title. I am  
10          sorry, that is the permits.

11          THE COURT: What is that premised upon; it  
12          goes beyond the land description.

13          MR. FRIDKIN: Oh sure, Your Honor.~ What  
14          this is called is a chattel, what used to be  
15          called a chattel mortgage. We exercised the  
16          lawful right to foreclose on a personal property  
17          security interest under the U.C.C., it's section  
18          679.501.

19          THE COURT: Have you deposed them?

20          MR. FRIDKIN: No, I tried to, but they  
21          wouldn't allow me to do it.

22          MR. SEIDENSTICKER: Judge, I was retained  
23          last week. There were notices of taking  
24          depositions and subpoenas, I think issued on two  
25          days notice. I came in, picked up the phone,

1           tried to address some of the issues about the  
2           outstanding subpoenas.

3           I addressed a letter to the Court saying the  
4           big concern I had with the depositions were they  
5           asked them to bring all the books and records, so  
6           that they could basically take them and unjustly  
7           enrich themselves by turning around and selling  
8           the company with their books and records, which  
9           the right to which was disputed by my client in  
10          his bankruptcy proceeding, which is subject to a  
11          settlement agreement, which I believe has been  
12          authorized by the Court but has not been  
13          completely finalized in certain respects. That  
14          is still hanging out there.

15          One other issue, Judge, if I may approach, a  
16          one page document that I think the Court also  
17          needs to understand as a preliminary matter.  
18          This is a copy of the assignment of the  
19          certificate of sale and right to receive  
20          certificate of title.

21          Mr. Fridkin has indicated he is here on  
22          behalf of Northern Trust Bank.

23          THE COURT: He said he is also here for  
24          Halendale.

25          MR. SEIDENSTICKER: But they have not

1 entered an appearance in this action, Judge. And  
2 in fact, that's the real issue, because the  
3 certificate of sale indicated that Northern Trust  
4 bid one thousand up on the judgment of  
5 foreclosure, which is fine. But then there was a  
6 notice of assignment, and I don't know what type  
7 -- they want to foreclose on all of these books  
8 and records, and want to foreclose on more than  
9 just the land, and more than just the buildings,  
10 but we don't know what the deficiency is out  
11 there.

12 They filed a proof of claim in bankruptcy  
13 Court, and they filed a motion in this Court  
14 that is pending on a Motion for Deficiency. So  
15 they want to foreclose on all of these things,  
16 and we don't even know what the deficiency is at  
17 this point.

18 MR. FRIDKIN: Your Honor, if I may, if I  
19 could help to try to bring a little light.

20 THE COURT: Let me answer him. You have  
21 got, I was told, three to eight hundred people or  
22 homes that are depending on the operation of this  
23 treatment facility. Isn't there a Public Service  
24 entity that has to be consulted with regard to  
25 this?

1 MR. FRIDKIN: Correct, Your Honor. We have  
2 a pending, what is called a certificate of  
3 authorization issued through the Public Service  
4 Commission. The current holder of the  
5 certificate of authorization, it is an actual  
6 legal document, is Bonita Country Club.

7 THE COURT: Is Mr. Miceli an Officer/  
8 Director of the corporation?

9 MR. SEIDENSTICKER: He is the President of  
10 the corporation.

11 MR. FRIDKIN: Well, I don't know if he is or  
12 not. We have heard he resigned when there was a  
13 problem.

14 THE COURT: Whatever he is, he knows  
15 something about the properties. It seems to me  
16 we should proceed to have a deposition in aid of  
17 execution, because they are attempting to get the  
18 stuff they think they are entitled to pursuant to  
19 this certificate of title, whatever, and this is  
20 a person knowledgeable in that.

21 I don't know what you need to do to  
22 represent him, to assist in his, while he  
23 responds to questions. And then if it's a  
24 subpoena duces tecum, all right, and if he is  
25 laying claim to be able to retain books and

1 records --

2 I think it's interesting, because arguably  
3 he might be able to do that, as long as they are  
4 able to service the needs of the clientele or the  
5 land -- that benefit from the land that they  
6 hold.

7 MR. FRIDKIN: Now that, you hit the area  
8 that I would like to do evidence on, Your Honor.  
9 Because our claim for injunctive relief is  
10 premised on the point that the books of account,  
11 in particular, are unique properties subject to  
12 injunction and require delivery. Ordinarily, if  
13 we have, as we do in this certificate of title --

14 THE COURT: Let me go back, all right, to  
15 the Complaint and the instrument, let's just read  
16 what it says that was pledged. All of this stuff  
17 was pledged is what you're telling me.

18 MR. FRIDKIN: Yes, sir, all of it has gone  
19 all the way through foreclosure, and is now, by  
20 order of the Court, confirmed with the clerk, our  
21 property.

22 THE COURT: Right.

23 MR. FRIDKIN: So this isn't like we are in  
24 the middle of some stage here, it's our property  
25 now under sub G.



1 THE COURT: You bought it all.

2 MR. FRIDKIN: Yes, sir, we bought it all,  
3 and it includes all deposits, including without  
4 limitation, tenants and purchaser's security  
5 deposit, bank account funds.

6 MR. SEIDENSTICKER: If I could just  
7 interrupt, I think, I believe he is reading from  
8 the certificate of title and not the mortgage.

9 THE COURT: But that stuff, you have got to  
10 identify it first. Your step to identifying it  
11 is to --

12 MR. FRIDKIN: -- take the deposition.

13 THE COURT: -- to present evidence, okay.

14 MR. FRIDKIN: Which we are.

15 THE COURT: So I cannot order anything to be  
16 seized until it has been properly identified.

17 MR. FRIDKIN: Yes, sir, I respect that, and  
18 that is part of why we subpoenaed, we subpoenaed  
19 Mr. Miceli to be here.

20 We have Ms. Pam Pass, who is the office  
21 manager, who has advised us that under directions  
22 of her employer, she could not share with us the  
23 information, but I think we could very quickly --

24 THE COURT: Well, nonsense, if you set her  
25 down for a deposition, and you ask her questions,

1 unless there is some privilege, she will tell  
2 you, she will respond to the questions.

3 MR. FRIDKIN: I couldn't agree with you  
4 more, Your Honor. At Mr. Seidensticker's  
5 direction, she did not appear as noticed for the  
6 deposition.

7 MR. SEIDENSTICKER: Judge, what I did was in  
8 my motion, I addressed the documents they were  
9 requesting them to bring. They wanted carte  
10 blanche access to these documents.

11 I had no objection to them testifying, and I  
12 spoke about this to Mr. Wickenden, who is the  
13 associate who is handling this.

14 THE COURT: I don't want to sit here and  
15 preside over depositions, over discovery, that is  
16 not what the Court is supposed do, all right.

17 So before we proceed, your client apparently  
18 has some information that they believe they are  
19 entitled to, all right. If, in fact, your client  
20 has an interest in retaining originals, okay --  
21 because it would certainly seem as though at  
22 worst, they get to look at, inspect and copy what  
23 you have got, okay.

24 Take whatever steps you think you need to  
25 take, all right, I am not going to tell you what

1 to do. You may take a legal action in order to  
2 be able to retain this stuff.

3 MR. SEIDENSTICKER: That is my concern,  
4 Judge.

5 THE COURT: File motions or whatever. It  
6 would seem to me though, that we need to proceed  
7 with all deliberate speed, because I am concerned  
8 that there is a problem for the people.

9 I don't know how in the world the party who  
10 has acquired these assets is going to be able to,  
11 if the deal was, in this contract, that in order  
12 to get this loan all of this stuff was pledged,  
13 well then, that is the ball game, you see. All  
14 of the stuff was pledged and all of this stuff  
15 has been acquired.

16 MR. FRIDKIN: It's in there in black and  
17 white.

18 MR. SEIDENSTICKER: I think there are some  
19 issues here, Judge. And having just been, I am  
20 trying to get up to speed as quickly as I can.  
21 That is one of the reasons I asked for a  
22 continuance.

23 THE COURT: Why don't we go ahead and say --  
24 I don't know counselor, at what time could you  
25 take the depositions of these people?

1 MR. FRIDKIN: Tomorrow, Wednesday.

2 THE COURT: That is fine. Let's set the  
3 depositions and the Court, since I have got,  
4 everybody, there seems to be no impediment, the  
5 Court would direct that the officers and  
6 directors, such as those who have appeared before  
7 the Court with regard to Bonita Country Club  
8 Utilities, Incorporated, I have got Mr. Miceli  
9 and I am sorry.

10 MR. FRIDKIN: That is Pam.

11 THE COURT: That they should be deposed and  
12 bring with them, not necessarily to hand over,  
13 but certainly to be inspected, copied, whatever  
14 on Wednesday. And that will give this man an  
15 opportunity to research, whatever he needs to do,  
16 and then I could probably set a hearing, if need  
17 be, for Thursday morning.

18 MR. FRIDKIN: That would be fair, Your  
19 Honor.

20 THE COURT: Hopefully, if everything works  
21 out, then there will be no need for a hearing.

22 MR. FRIDKIN: That is perfect, Your Honor.  
23 That will probably work. Could we get Ms. Gant  
24 also, we may need information from her. She was  
25 subpoenaed to come here today. Mr. Wickenden

1           advised us she may have relevant information,  
2           also.

3           MR. SEIDENSTICKER: I don't think, Judge, if  
4           anybody doesn't have a conflict, I don't think  
5           that is a problem, as far as being able to  
6           testify. The one issue though that I am  
7           concerned about is we are back to the issue about  
8           who has got the right to these records, because  
9           once they have the right to inspect them, we  
10          might as well just turn them over and give them  
11          to him.

12          Our concern is the value of what they are  
13          seeking, and what my client, in my understanding,  
14          had bargained for in the bankruptcy proceedings  
15          was the right, as a stockholder of the  
16          corporation, in order to retain some of the  
17          proprietary books and records.

18          So I think there is an underlying issue on  
19          what Mr. --

20          THE COURT: Well, his status as stockholder,  
21          okay, is something different than owner of  
22          corporate records, okay. I mean he may own a  
23          hundred percent and he certainly may have a right  
24          to be able to have access to and preserve the  
25          records of that corporation. That is a legal

1 right, I would think.

2 MR. SEIDENSTICKER: It's the proprietor  
3 issue.

4 THE COURT: The records can't just  
5 disappear. It's a public corporation -- well,  
6 it's not a public corporation, it's a private  
7 corporation, but if he is a stockholder he should  
8 be able -- the law provides for even minority  
9 stockholders to be able to inspect the records  
10 and so on and so forth.

11 So as to who owns them, the proprietary  
12 issue, if there is a question, that is going to  
13 have to be raised in a pleading somewhere.

14 MR. SEIDENSTICKER: I have raised it in a  
15 Motion for Protective Order I filed when they  
16 tried to take their depositions, I think a week  
17 ago.

18 THE COURT: Okay, I am not going to protect  
19 your client, based on what you have told me  
20 today, from being deposed and from producing, so  
21 that these things can be inspected during the  
22 course of the deposition.

23 As far as turning them over, Mr. Fridkin,  
24 this is for you to ascertain the location of  
25 these items and also to be able to inspect and

1 copy them, all right.

2 MR. FRIDKIN: Yes, sir.

3 THE COURT: Now I understand you are saying  
4 gee, they will just use those to conduct the  
5 business and we are out. I think that they have  
6 the right, based on the foreclosure action.

7 MR. SEIDENSTICKER: That is what Mr.  
8 Wickenden had argued, based on the certificate of  
9 title, he would like the opportunity --

10 THE COURT: If there is some impediment to  
11 their operating this business, I think you need  
12 to raise that in something more formal than  
13 simply a Motion for Protective Order. Because my  
14 direction will be to the officers, directors and  
15 employees of that corporation, who have  
16 possession of the documents and knowledge of the  
17 whereabouts of these, that they should bring them  
18 with them to the deposition, and at this point  
19 only to be copied and inspected, because they  
20 have the property. And I mean at first blush,  
21 the certificate of title seems to cover that  
22 stuff.

23 MR. SEIDENSTICKER: I would not disagree  
24 that the certificate of title may. My concern is  
25 being able to review the actual mortgage and

1 security agreement that they foreclosed on, and  
2 make sure it was properly encompassed on.

3 THE COURT: Can you do that between now and  
4 Wednesday?

5 MR. FRIDKIN: I urge counsel to do that,  
6 Your Honor, because he will find --

7 THE COURT: Let's say Wednesday afternoon at  
8 1:30. Where, Mr. Fridkin, where would you --

9 MR. FRIDKIN: Well, we can work to the  
10 convenience, I don't care.

11 THE COURT: Where is your office?

12 MR. SEIDENSTICKER: We are both in Naples.  
13 Ms. Pass just advised, Mr. Wickenden has already  
14 been to the office and already reviewed all these  
15 documents.

16 THE COURT: I don't know what that is all  
17 about. It doesn't matter, he didn't do it in  
18 connection with the deposition.

19 MR. SEIDENSTICKER: Here is where I stand,  
20 just so I don't violate the Court's directives in  
21 that regard.

22 THE COURT: I don't want to go beyond the  
23 scope of saying -- you don't represent the  
24 corporation -- you don't really represent --

25 MR. SEIDENSTICKER: Yeah, I filed a notice.



1 THE COURT: -- but one of the officers.

2 MR. SEIDENSTICKER: I filed a notice on  
3 behalf of the corporation.

4 THE COURT: You are also representing the  
5 corporation?

6 MR. SEIDENSTICKER: Yes, I filed a notice on  
7 behalf of Bonita Country Club Utilities.

8 THE COURT: In that event, the corporation  
9 itself acts through its officers and through its  
10 employees, the employees -- are these both  
11 employees of the corporation?

12 MR. FRIDKIN: I believe we have the  
13 totality, but I don't really know the correct  
14 answer. I know Ms. Pass and Mrs. Gant are, um,  
15 employees. I don't know whether Mr. Miceli is  
16 employed or not; I don't know the correct answer.  
17 I know he is a signatory on a lot of things.

18 THE COURT: Well, certainly, Mr. Miceli is a  
19 very crucial and important witness with regard to  
20 questions that you have.

21 MR. FRIDKIN: Yes, sir.

22 THE COURT: Because you are going to have to  
23 try to locate and prove that you have ownership  
24 interest in various things, and you're entitled  
25 to be able to proceed with that forthwith. And I

1 understand time is of the essence, but I also  
2 understand it's not like we have to do it this  
3 afternoon. I have got other things I have to do  
4 today.

5 MR. FRIDKIN: I understand that, we are very  
6 grateful for the Court's time.

7 THE COURT: I sat a hearing Thursday  
8 afternoon. I do have some time Thursday morning,  
9 if we need to follow up on this.

10 MR. SEIDENSTICKER: Judge, is there any  
11 possible -- with due respect, Thursday and  
12 Friday, concerning my wife's business, I have got  
13 an out of town function on Thursday and Friday  
14 with her that has been long-standing, leaving  
15 Wednesday evening.

16 MR. FRIDKIN: How does late Wednesday look  
17 for Your Honor?

18 THE COURT: Okay. Then we will do the  
19 depositions in the morning, and set the hearing  
20 for 1:30 on Wednesday afternoon.

21 MR. SEIDENSTICKER: That is fine.

22 MR. FRIDKIN: Do you want to come to my  
23 office that is kind of halfway?

24 THE COURT: Mr. Fridkin, if you want to  
25 prepare an order, whereby the Court is

1           determining that -- I am directing that Mr.  
2           Miceli, as far as he is representing himself to  
3           be the President of the corporation, that he will  
4           attend the deposition in aid of execution on  
5           Wednesday morning.

6           That also, Mr. Fridkin has indicated that  
7           the subpoenas that have been issued for the other  
8           two ladies, they may be deposed say at -- I don't  
9           know how long you want to depose him.

10          MR. FRIDKIN: I can't imagine that these are  
11          going to take very long. We don't have great --

12          THE COURT: Well, then if that is the case,  
13          let's start them at 10:00 instead of 9:00, so  
14          every half hour.

15          MR. FRIDKIN: May I ask Your Honor, are  
16          these, in terms of the customer account records,  
17          the bank deposit records and the like, are they  
18          at the offices in Bonita? We should have the  
19          depositions at that offices in Bonita. There is  
20          probably a room.

21          THE COURT: That would be fine.

22          MR. FRIDKIN: That will minimize your  
23          inconvenience. You will have them right there.

24          THE COURT: The other side is, I don't know  
25          if they have copying facilities for any of the

1 documents that you wish to, if you are going to  
2 inspect them.

3 MR. FRIDKIN: We may just have a copier with  
4 us.

5 THE COURT: Whatever.

6 MR. SEIDENSTICKER: Judge, just so I am  
7 clear, if there is any proprietary issue of  
8 ownership or their right to inspect this, I have  
9 got to have that raised between now and  
10 Wednesday.

11 MR. FRIDKIN: Your Honor, let me point out  
12 because that is just a stall. There can't be a  
13 proprietary in the names and lists of customers.  
14 There can't be a proprietary -- and they are  
15 covered under the -- both under the pleadings,  
16 originally as they were filed, the certificate of  
17 title was taken from the documents where the  
18 foreclosure occurred.

19 How can there be a proprietary trade secret  
20 interest?

21 THE COURT: Mr. Wickenden, I am not going to  
22 -- God Bless you, and I understand that you would  
23 like to get that resolved. This gentleman, these  
24 ladies will be deposed on Wednesday, and the  
25 Court is so directing. They have represented

1 themselves to the Court today as being President  
2 and employees of the corporation.

3 MR. SEIDENSTICKER: I may have misspoken.  
4 Mr. Miceli is the President of Platinum Coast,  
5 that is the owner of the stock of Bonita Country  
6 Club Utilities.

7 THE COURT: Then he is not an officer or  
8 director of the corporation?

9 MR. SEIDENSTICKER: Right. I am not sure of  
10 the status of that right now, Judge.

11 MR. MICELI: President of Platinum Coast.

12 THE COURT: Who is the chief operating  
13 officer of the corporation?

14 MR. FRIDKIN: You mean Bonita Country Club  
15 Utilities, the utility company?

16 THE COURT: Who is the Chief Officer?

17 MR. MICELI: I was the President.

18 THE COURT: I understand. Who is the Chief  
19 Operating Officer of that entity right now?

20 MR. MICELI: The only way we could think of  
21 it is that the bankruptcy court --

22 THE COURT: Who proceeds to oversee the  
23 day-to-day operations of that entity up to the  
24 point the last time it was operational that you  
25 recall?

1 MR. SEIDENSTICKER: Prior to bankruptcy,  
2 Judge?

3 MR. MICELI: Did I lose that presidency  
4 on --

5 THE COURT: Let me go ahead and take a  
6 little testimony.

7 Thereupon,

8 MICHAEL J. MICELI,  
9 a witness, having been first duly sworn upon his oath,  
10 as follows:

11 DIRECT EXAMINATION

12 BY THE COURT:

13 Q. Would you state your full name for the  
14 record.

15 A. Michael J. Miceli, M-I-C-E-L-I.

16 Q. And your date of birth?

17 A. 6-22-34.

18 Q. And I apologize, date of birth, social  
19 security number. Whenever I am dealing with somebody  
20 I don't know I do that, to make sure the record is  
21 clear, so it's nailed down who I was talking to.

22 Your social security number, please.

23 A.

**REDACTED**

24 Q. Your current address?

25 A. 9517 Gulf Shore Boulevard.

1 Q. That is Naples?

2 A. I am sorry, Gulf Shore Drive in Naples,  
3 yes, Your Honor.

4 Q. Is there also a mailing address?

5 A. Well, that is the mailing address and  
6 apartment 201, and it's 600 -- no, I am sorry.

7 Q. Starts out with a 3?

8 A. 34, I think, 108.

9 Q. Okay, what is your relationship, if any, to  
10 Bonita Country Club Utilities, Incorporated?

11 A. Through my presidency in Platinum Coast  
12 Financial Corporation, who purchased all of the former  
13 interest that I had in the bankruptcy, in a settlement  
14 agreement, has purchased the rights to Bonita Country  
15 Club Utilities; and I am the President of Platinum  
16 Coast Financial, Your Honor.

17 Q. All right, historically, did you also have  
18 a position with Bonita Country Club Utilities?

19 A. Yes, Your Honor, I was the President there,  
20 too.

21 Q. Did you ever cease being President?

22 A. Well, at the purchase, at the purchase by  
23 Platinum Coast, I am the President of Platinum Coast.

24 Q. You could be the President of both, you  
25 could be the President of ten corporations if you want

1 to, I guess. Are you still, have you ever officially  
2 renounced and stepped down from your position as  
3 President of Bonita Country Club Utilities, Inc?

4 A. I don't know that that happened, Your  
5 Honor, it may have.

6 Q. You were President and may still be?

7 A. Yes, sir.

8 Q. Okay. Now, do you have personal knowledge  
9 as to the location of the books of account and records  
10 of the corporation of Bonita Country Club Utilities,  
11 Incorporated?

12 A. Yes, they should be in Bonita Springs at  
13 the offices of the Bonita Springs golf club.

14 Q. Okay. What is the address of that  
15 location, do you know?

16 A. 10200 Maddox Lane.

17 Q. All right, that is located on real estate  
18 that was foreclosed upon?

19 A. No, sir, no, Your Honor.

20 Q. That is a different --

21 A. -- different property.

22 Q. Okay, so that is not on that property?

23 A. No, Your Honor.

24 Q. All right. That Maddox Lane, is that  
25 Naples as well?



1 A. No, it's Bonita Springs.

2 Q. Bonita Springs. Now two ladies are sitting  
3 here in the gallery. Do you recognize them?

4 A. Yes, I do.

5 Q. Could you tell me who they are?

6 A. One is Linda Gant.

7 Q. Linda Gant, all right, what is --

8 A. The other is Pamela Pass.

9 Q. Tell me, what does Linda Gant do; what is  
10 her connection with the --

11 A. Linda Gant is the billings to the  
12 customers, and when she receives payments, she of  
13 course logs it in, and keeps records of it that way,  
14 makes the deposits.

15 Q. Okay, then Pamela Pass, what is her --

16 A. She's the overall manager of that utility  
17 and oversees the annual reports for the utility  
18 contracts with --

19 Q. She oversees the bookkeeping?

20 A. Yes, I am sure she does, too.

21 Q. How long has she worked there, to your  
22 knowledge?

23 A. Well, I have had the place for sixteen  
24 years, so she has been there all that time.

25 Q. Has she been the overall manager for

1 sixteen years or did she --

2 A. Yes, Your Honor.

3 Q. Okay. So she, in your opinion, Pamela Pass  
4 might be more knowledgeable about the overall  
5 operation than Linda Gant?

6 A. Quite possibly.

7 Q. Okay, Linda Gant handles collections?

8 A. Any collections, billings.

9 Q. Okay, and how long has Linda Gant been  
10 employed?

11 A. I am not sure, but I would say at least six  
12 years, five, six years.

13 THE COURT: Okay, now all right. Ms. Pass,  
14 may I, and counsel, if I could have you just move  
15 over a little bit, so I could have visual contact  
16 with my witnesses. Would you raise your right  
17 hand to be sworn please, both of you.

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1 Thereupon,

2

PAMELA PASS,

3 a witness, having been first duly sworn upon her oath,  
4 testified as follows:

5

DIRECT EXAMINATION

6

BY THE COURT:

7

Q. Could you, Ms. Pass, could you state your  
8 name.

9

A. Pamela Ann Pass.

10

Q. Okay, and your date of birth?

11

A. 4-19-58.

12

Q. Social security number?

13

A.

REDACTED

14

Q. And your address?

15

A. 10591 A-N-K-N-Y Lane, Bonita Springs.

16

Q. Okay, and are you -- as you have heard,

17

Mr. Miceli referred to you as the overall manager of

18

the entity, Bonita Cape Coral Utilities, Incorporated?

19

A. Yes, sir.

20

Q. And you have been employed in that capacity

21

for sixteen years?

22

A. Yes, sir.

23

Q. Okay, and you're knowledgeable concerning

24

the books of account, how the monies are kept, what

25

the expenses are?

1           A.     Yes, sir.

2           Q.     Okay.  And did you receive a subpoena to  
3 appear for a deposition?

4           A.     Yes, sir.

5           Q.     Did you attend that deposition?

6           A.     No, sir.

7           Q.     Why didn't you attend the deposition?

8           A.     By advice from counsel.

9                   MR. SEIDENSTICKER:  The one last week,  
10           Judge, I filed a Motion for Protective Order on,  
11           because it required her to produce certain  
12           documents, and I wrote the Court a letter  
13           requesting the earliest available date to have it  
14           heard.

15   BY THE COURT:

16           Q.     Okay.  The location where your offices are,  
17           that is some distance from where the treatment  
18           facility is; is that right?

19           A.     They are fairly close.

20           Q.     Fairly close?

21           A.     Yes, sir.

22           Q.     Okay, how has that been working since the  
23           facility has been foreclosed upon, the business is  
24           continuing?

25           A.     Yes, sir.  The offices are located within

1 the golf course clubhouse.

2 Q. Did you participate in the creation of the  
3 mortgage that was foreclosed upon in this action?

4 A. To a certain extent, yes, sir.

5 Q. Okay, did you sign any documents?

6 A. No.

7 Q. You just had knowledge about it?

8 A. Yes, sir.

9 Q. How long ago was it, the instrument itself,  
10 November of '95?

11 A. '95, yes, sir.

12 THE COURT: Okay, thank you.

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1 Thereupon,

2 LINDA GANT,

3 a witness, having been first duly sworn upon her oath,  
4 testified as follows:

5 DIRECT EXAMINATION

6 BY THE COURT:

7 Q. Could you state your name for the Court,  
8 please.

9 A. Linda Gant.

10 Q. And Ms. Gant, your date of birth, I am  
11 going to treat everyone equally horribly on this.

12 A. 12-14-56.

13 Q. And your social security number?

14 A. **REDACTED**

15 Q. And your current address?

16 A. 25104 Stillwell Parkway, and that is in  
17 Bonita Springs, also.

18 Q. In Bonita, all right. And you have been  
19 an employee with the Bonita Country Club Utilities,  
20 Incorporated for how long?

21 A. About ten years.

22 Q. Ten years. Time flies when you're having  
23 fun.

24 A. Yeah.

25 Q. And you are employed in what capacity?

1           A.       I make sure that the statements all get  
2 sent out on time, deposits are made, letters are sent  
3 out to new owners making them aware of their  
4 responsibility for paying their sewer bill, letters to  
5 customers when they have questions about the sewer and  
6 that sort of thing.

7           Q.       All right, and so who is your immediate  
8 supervisor?

9           A.       Pamela.

10          Q.       You work directly for Pam, and she  
11 basically oversees what you do?

12          A.       Uh-huh.

13                THE COURT:   Okay, all right now, Mr.  
14 Seidensticker, let me just ask you this.  What  
15 is, the corporation now borrowed money, and  
16 didn't repay it, had property that belonged to it  
17 foreclosed upon, okay.

18                The certificate of title, ostensibly,  
19 includes a whole host of different things beyond  
20 the real estate itself.

21                MR. SEIDENSTICKER:  Yes, Judge.

22                THE COURT:  Unspecified additional things.  
23 Mr. Fridkin, this is one of problems, I don't  
24 have a clue.

25                MR. SEIDENSTICKER:  That is a problem for

1 me, Judge. I am trying to figure out between the  
2 mortgage and certificate of title, what  
3 specifically --

4 THE COURT: Well, at first blush you see --  
5 and your position would be on behalf of the  
6 corporation, that it's entitled to continue doing  
7 its business?

8 MR. SEIDENSTICKER: Not necessarily, Judge,  
9 no. But some of the books and proprietary  
10 records that Platinum Coast purchased from Mr.  
11 Miceli in his personal bankruptcy action may  
12 entitle them to some sort of value.

13 THE COURT: Are you also representing  
14 Platinum?

15 MR. SEIDENSTICKER: Yes, Judge.

16 THE COURT: See, they are not a party, are  
17 they?

18 MR. SEIDENSTICKER: No, Judge, no, they are  
19 not.

20 THE COURT: Okay, this is what I am telling  
21 you. You may have some other steps you want to  
22 take. My notion is right now that certainly in  
23 light of the language that is in the mortgage,  
24 and I have looked at it, that certainly the  
25 successor in interest to Northern Trust Bank, and



1 Mr. Fridkin says he represents them, and they are  
2 not a party yet or they are?

3 MR. SEIDENSTICKER: No.

4 MR. FRIDKIN: No, they are successors to  
5 Northern.

6 THE COURT: Don't they own the certificate  
7 of title?

8 MR. FRIDKIN: Yes, sir, they do, but  
9 Northern has obligations to them, so Northern  
10 still has an interest.

11 THE COURT: You're acting on their behalf.

12 MR. FRIDKIN: Absolutely.

13 MR. SEIDENSTICKER: There has been no notice  
14 of appearance and no Motion To Intervene. And  
15 I did have a case on that issue, Judge, as to  
16 what standing Northern Trust has to come in, when  
17 they basically assign everything to this Wilnor  
18 Hallendale, where we don't know what exchange,  
19 what consideration.

20 THE COURT: The initial certificate of title  
21 was issued to Northern Trust.

22 MR. FRIDKIN: Wilnor Halendale.

23 MR. SEIDENSTICKER: What they did, the  
24 certificate of sale was issued to Northern Trust  
25 before the issuance of the certificate --

1 THE COURT: They assigned it.

2 MR. FRIDKIN: That is correct, Your Honor,  
3 we did. It doesn't effect our standing here.  
4 There is a rule on substitution of parties, that  
5 they become aware that there has been an  
6 assignment, as they clearly are. And should they  
7 desire to do it, they could put a notice, there  
8 is nothing in the rules. When they put a notice,  
9 we have ninety days to come in and change  
10 parties, it's a nonissue.

11 THE COURT: The key thing that I want to --  
12 whatever happens, my direction is that in light  
13 of Mr. Miceli's status as Past President and  
14 potentially present Executive Officer or Chief  
15 Executive Officer of the Bonita Country Club  
16 Utilities, Incorporated, he is directed to appear  
17 at their headquarters and give his deposition at  
18 10:00 a.m.

19 The deposition is duces tecum. The records,  
20 which -- by which that entity runs the business  
21 that utilizes the wastewater treatment facility  
22 that has been foreclosed upon.

23 I am not saying that he must say, here, I am  
24 turning these over to you, but he must have them  
25 available, so they can inspect them and copy

1           them; and in that sense, your Motion for  
2           Protective Order is denied.

3           I am not saying though that he must turn  
4           those over for them at this time, that can wait  
5           until a later hearing, but they are entitled to  
6           know that they exist, and that they are, where  
7           they are and that they do exist. See what I am  
8           saying?

9           MR. SEIDENSTICKER: But you're also  
10          permitting them to copy them as well?

11          THE COURT: Well, I don't know that they are  
12          going to sit there and copy all of the stuff, but  
13          I would think that, yes, in order to --  
14          otherwise you could say here it is.

15          They are able to, they may look at it, if  
16          they can look at it, they can also copy it. Now,  
17          if you are concerned about it, I would say that  
18          they, at this time, make no use of their copies  
19          from the standpoint of -- well, what use do you  
20          intend to make of the copies?

21          MR. FRIDKIN: Your Honor, it will have to do  
22          with the lists that they have are lists of the  
23          users of the wastewater treatment facility. So  
24          our goal is to find out what the status of their  
25          accounts are, what their addresses are, so we can

1           communicate with them.

2           THE COURT: I am making no determination  
3 today as to what your rights are with respect to  
4 those lists and whatnot.

5           MR. FRIDKIN: We will come back for that.

6           THE COURT: At the same time, I do believe  
7 that you have a right to know what your -- the  
8 property that has been acquired, okay, and  
9 regardless of the fact that Northern Trust has  
10 assigned it to someone else. This man says that  
11 he represents their interests as well, that is  
12 between, you know, so let's move on with this  
13 thing. I don't want to --

14           MR. FRIDKIN: Your Honor, a couple other  
15 categories of documents, if you will, one of the  
16 issues that has come up in our course of  
17 operation is we have been approached by people  
18 who have made --

19           THE COURT: Mr. Fridkin, if in fact there is  
20 a problem, that is the reason we have the 1:30  
21 hearing before the Court.

22           MR. FRIDKIN: Very good.

23           THE COURT: If there is an impediment raised  
24 on documents that you're entitled to, I want them  
25 to do it formally on the record, and then I can

1           make rulings on it. And anything you need to do  
2           between now and then to clear up concerns and  
3           interests like whether or not you can appear on  
4           behalf of the certificate holder, then if you  
5           need to do something else beyond what you have  
6           already done, fine. If not fine, I don't care.

7           MR. FRIDKIN: Fine, Your Honor.

8           MR. SEIDENSTICKER: May I have one moment?

9           THE COURT: Yes, sir.

10          MR. SEIDENSTICKER: Judge, there is one  
11          concern that I have. If obtaining copies of all  
12          of those books and records entitles them or  
13          facilitates their --

14          THE COURT: Counsel, the only thing I ask  
15          you is this. If you are going to instruct some  
16          witness not to respond to a question, it had best  
17          be premised upon some privilege.

18          MR. SEIDENSTICKER: That is not where I am  
19          going with this, Judge. My inquiry is this.  
20          Judge, if my witnesses show up and turn over all  
21          the documents for their inspection and or  
22          copying, as I understand your ruling, they have  
23          basically got the documents.

24                 My concern is that they basically turn  
25          around and utilize that information that they

1           have now obtained to go and sell the business or  
2           put the business on the block and make it  
3           salable. And assuming they go and sell it for a  
4           surplus of what the summary judgment of  
5           foreclosure you have entered, they are going to  
6           get a windfall for something Platinum Coast has  
7           already paid for in the bankruptcy or what I feel  
8           they may have some right to in the bankruptcy.

9           THE COURT: Let me ask you this, now here.  
10          I, you know, the tools for the business, you  
11          know, and what you can do with it and so on. I  
12          am not going to -- going to be able to make any  
13          pronouncement on that today -- it's too  
14          complicated a problem.

15          MR. SEIDENSTICKER: I know, Judge, that is  
16          why I asked for a continuance of the hearing for  
17          a couple days to get up to speed on it.

18          THE COURT: No, because their right to  
19          discovery is clear. Their right as to what they  
20          might do with what they have discovered, it  
21          doesn't really matter, because part of what they  
22          bargained for were arguably some of these things.

23          MR. SEIDENSTICKER: According to their  
24          position about this point.

25          THE COURT: According to their position, but

1 I am accepting it. Let's go look at it. If you  
2 want to, you can read it yourself.

3 MR. SEIDENSTICKER: The certificate of  
4 title, I understand, Judge.

5 THE COURT: No, I am talking about the  
6 mortgage and security agreement that is where the  
7 language comes from. So you know, if um, it  
8 would seem to me that the entity, in order to  
9 receive the five hundred thousand, said sure,  
10 we'll let you have all of this stuff if we don't  
11 pay this money.

12 They didn't pay the money, it was foreclosed  
13 upon. And so the certificate indicates not only  
14 real estate, but some other things as well. And  
15 discovering the location of what is arguably  
16 those other things is certainly something that  
17 they may do at this time, regardless of whether  
18 the Court later determines that they cannot make  
19 this use of it.

20 You know, before they could sell a business  
21 you're going to have an opportunity to give  
22 notice to prospective purchases that you have a  
23 claim or something like that, but you must do it  
24 consistent with the requirements of law, okay.

25 MR. FRIDKIN: Your Honor, we are very

1 grateful for your time, thank you, Your Honor.

2 MR. SEIDENSTICKER: Thank you.

3 (Whereupon, at 12:50 p.m. the hearing was  
4 concluded.)

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1 STATE OF FLORIDA )

2 COUNTY OF LEE )

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6 I, Betty G. Althoff, Court Reporter, 20th  
 7 Judicial Circuit of Florida, do certify that I was  
 8 authorized to and did stenographically report the  
 9 foregoing proceedings and that the typewritten  
 10 transcript, consisting of pages numbered 1 through  
 11 55, is a true record.

12

13

14

15 IN WITNESS WHEREOF, I have hereunto set my  
 16 hand this 30th day of August, 1999.

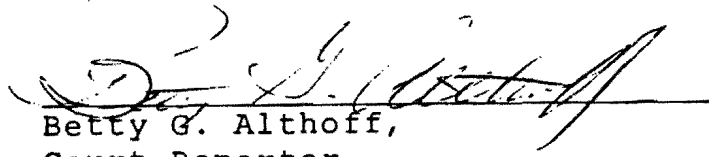
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Betty G. Althoff,  
 Court Reporter,  
 Notary Public,  
 State of Florida at Large.

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