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RECEIVED-FPSC

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RECORDS AND
REPORTING

January 24, 2000

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

Via Hand Delivery

000079-SU

Re: Complaint by Sunset Ventures of Key West, Inc. against K.W. Resort Utilities Corp.

Dear Ms. Bayo:

Enclosed are an original and 15 copies of a Complaint by Sunset Ventures of Key West, Inc. against K.W. Resort Utilities Corp.

Please open a docket to consider this Complaint.

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

Thank you.

Sincerely,



B. Kenneth Gatlin

BKG/ldv
Enclosures

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Sunset Ventures of Key West,
Inc.

Complainant,

vs.

Docket No. _____

K.W. Resort Utilities Corp.

Respondent.

COMPLAINT

Sunset Ventures of Key West, Inc. (Sunset) files this its Complaint, pursuant to § 25-22.032, F.A.C., and § 25-30.560, F.A.C., against K.W. Resort Utilities Corp. (Utility) and states:

1. The name of the Complainant and the address of its principal place of business is:

Sunset Ventures of Key West, Inc.
5601 College Road
Key West, FL 33040

2. The person authorized to receive notices, pleadings, orders, and communications with respect to this Complaint is:

B. Kenneth Gatlin
Ruden, McClosky, Smith, Schuster
& Russell, P.A.
215 S. Monroe Street, Suite 815
Tallahassee, FL 32301
(850) 681-9027

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3. The Respondent's name and address is:

K.W. Resort Utilities Corp.
Post Office Box 2125
Key West, FL 33045-2125

Respondent has been issued Certificate No. 168S, which authorizes it to operate as a wastewater utility in Monroe County.

4. This complaint is filed pursuant to Rule 25-30.560, F.A.C., which provides as follows:

(1) Disputes concerning the application of these rules or concerning developer agreements may be referred to the Commission for disposition by the filing of a complaint in accordance with Rule Chapter 25-22, F.A.C.

(2) Upon the filing of a complaint, or during the pendency of a complaint, a party to the agreement may, after written demand to the utility for performance, make payments and perform acts as specified in the utility's service availability policy or as required in the developer's agreement, and the utility shall proceed with its performance pursuant to the service availability policy or developer's agreement pending resolution of the dispute by the Commission. However, the utility may request that the Commission relieve the utility of performance if the utility can show that performance is not in the best interests of its customers.

5. Sunset and Utility entered into a contract dated August 15, 1998, whereby Utility agreed to render wastewater service to Sunset's development in Monroe County, including sixty (60) residential condominiums, a commercial restaurant seating one hundred fifty people (150), a marina containing one hundred thirty nine (139) boat slips, with six (6) showers and

six (6) water closets for residents of the marina, a dock masters building with two (2) water closets, and a marina sales and service building with four (4) washing machines. A copy of the contract is attached hereto as Appendix "A".

6. The marina was placed in service and started receiving wastewater services from Utility on or about September 16, 1999.

7. There are four residential condominium buildings in various stages of construction. Each of these buildings contain fifteen (15) residential units. Each building, when completed, will need wastewater utility service from Utility. Utility is obligated to render such service. Building four (4) is complete and the certificate of occupancy has been issued. Unless service is provided by Utility an emergency will exist.

8. Utility notified Sunset orally, on or about January 18, 2000, that it intended to discontinue service to Sunset at both the condominiums and the marina and would refund service availability charges in the amount of \$338,580 paid by Sunset to Utility. Utility then locked and discontinued electrical service to the lift station serving the marina, thus creating a public health hazard. Such discontinuance of service by Utility is in violation of Rule 25-30.320, F.A.C.

9. On or about January 18, 2000, Utility poured concrete down the service main of condominium building four (4),

informing Sunset that this was done to prevent Sunset from commencing the discharge of wastewater into the utility system.

10. From information furnished to Sunset by Utility, it appears that Utility is attempting to discontinue and refuse service to Sunset because an employee of Sunset deposited wastewater from boats or boat holding tanks into the wastewater system at a pumping station near Sunset's marina. Sunset admits that such discharges took place between October 25, 1999, and January 16, 2000, and that a total of five hundred and twenty five gallons over that period were in fact dumped into a manhole by an employee of Sunset. Sunset has taken all reasonable steps to prevent such discharge from occurring again. The manhole, which was the point of such discharge, has now been locked and it is impossible to make such discharge.

11. Sunset has made all payments and performed all acts as specified in Utility's service availability policy or as required by the developer's agreement (Appendix "A") and hereby demands that Utility proceed with performance pursuant to its service availability policy and developer's agreement.

12. Utility's attempt to discontinue and refuse to render wastewater utility service to Sunset is a violation of the service availability agreement (Appendix "A") between the parties. Such action by Utility will cause irreparable harm to

Sunset and constitutes a health hazard to the surrounding population. There is no other wastewater utility service available to Sunset on any reasonable basis.

13. On the afternoon of January 19, 2000, an employee of Utility orally mentioned that Utility would turn on the electric power for the pump station serving the marina. The Utility employee also mentioned that the concrete would be removed from the service line serving building four (4). Utility has now restored electric power to the pump station and removed the concrete from the service line. However, there is no assurance that Utility will not take similar unauthorized and illegal actions. Utility needs to understand that its conduct is regulated by Florida law, including the rules of the Florida Public Service Commission.

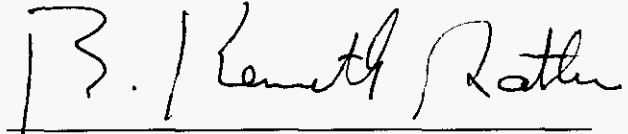
WHEREFORE, Sunset Ventures of Key West, Inc. hereby requests that the Commission:

1. Take jurisdiction over this matter.
2. Order K.W. Resort Utilities Corp. to render wastewater utility service to Sunset Ventures of Key West, Inc. pursuant to the contract dated August 15, 1998, attached hereto as Appendix "A".
3. Resolve any dispute between the parties as provided in Rule 25-30.560 and 25-22.032, F.A.C.

4. Order Utility to not disconnect service to Sunset, except as provided by Commission rules, and specifically to abide by Rule 25-30.560, F.A.C.

5. Grant such other relief as may be appropriate.

DATED this 24th day of January 2000.




B. Kenneth Gatlin
Fla. Bar No. 0027966
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Schuster & Russell, P.A.
215 S. Monroe Street
Tallahassee, FL 32301
(850) 681-9027

Attorneys for Sunset Ventures
of Key West, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Complaint has been furnished via facsimile and via overnight delivery to Doug Carter, General Manager, K.W. Resort Utilities Corp., 6450 Jr. College Road, Key West, Florida 33040, this 24th day of January 2000.



B. Kenneth Gatlin

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CONTRACT FOR WASTE WATER TREATMENT

WHEREAS, Sunset Ventures of Key West, Inc., (hereinafter referred to as "Owner") is developing Sunset Marina on Junior College Road, Stock Island, Key West, Florida; and

WHEREAS, Sunset Marina will consist of: 1.) sixty (60) residential condominiums, 2.) a commercial restaurant seating 150 people, 3.) a marina containing one hundred thirty-nine (139) boat slips, with six (6) showers and six (6) water closets for residents of the marina, 4.) a dock masters building with two (2) water closets, 5.) a marina sales and service building, with four (4) washing machines each numbered item constituting a component of the development; and

WHEREAS, Sunset Marina desires to hook into the KW Resort Utilities Corp., (hereinafter referred to as "Company") waste water treatment system and have the waste water treated by the waste water treatment plant; and

WHEREAS, KW Resort Utilities Corp., currently has sufficient capacity to treat waste water from the Sunset Marina community; and

WHEREAS, Company's franchise does not include Owner's property;

NOW, THEREFORE, based upon the representations stated and the mutual premises covenants and conditions contained herein, the parties agree as follows:

1. Company agrees to provide bulk services to Owner at Company's Wastewater Treatment Plant by Owner connecting to Company's collection system.

2. Owner hereby agrees to install, at its own cost and expense, the domestic waste water collection lines, pipes, manholes and lift stations, which may be required on its property and off its property, including the engineering cost to connect to the Company's collection system and all other facilities necessary to make it possible for the Company to provide adequate domestic waste water services. Before Owner commences any construction of the domestic waste water collection plant, Owner agrees to furnish Company evidence satisfactory to the Company that the contractor employed by the Owner has provided the Owner with the following, and agreed to the following:

- a. A 100% payment performance bond; *Worland-Whiting Stearns - 410*
- b. A one year guarantee against defects and workmanship and materials in the construction of all of domestic waste water lines, pipes, manholes and lift stations;
- c. Letter confirming that contractor has been in business for three (3) years. *Worland-Whiting Stearns 10-26-98*

3. Company agrees to cooperate with the Owner in good faith in making available to the Owner a connection with its existing collection lines or manholes or with the collection lines or

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manholes over which it exercises control in order to minimize expense and costs to Company as well as the Owner. It is the intent of the parties that the waste water collection lines, pipes, manholes and lift stations constructed by the Owner as described in paragraph 1 above connect to Company's collection system at the closest point as is practicably available considering existing circumstances and conditions.

4. Such domestic waste water collection lines, pipes, manholes and lift stations shall be designed and constructed with plans and specifications prepared by licensed engineers and be approved by the Company's engineers or representatives, and be in accordance with applicable governmental regulations. The cost of inspecting said plans by the Company's engineers shall be paid for by Owner. The Company shall have the right during construction to inspect and reject any work not complying with the said plans or being in violation of the applicable governmental regulations. The cost of the Company's inspections shall be paid for by the Owner. Salt water intrusion has been a problem in the Stock Island area and the Company has the right to insure that there is no salt water intrusion into the lines so constructed.

After construction, the said domestic waste water lines, pipes, manholes and lift stations shall be the property of the Owner however, the Company shall maintain and operate the collection system. As the domestic waste water systems of the Company are extended into the property, Owner will convey and grant to the Company, without cost to the Company, the following:

- a. Easement for ingress and egress to all of the water meters, lift stations, pumping stations and collection systems laid and installed by the Owner on the property pursuant to this Agreement; and
- b. The right to use lift stations by such instruments as designed by the Company; and Owner shall promptly and readily make available to Company all cost figures, records and other data requested by the Company.

It shall be the responsibility of the Company after conveyance to maintain, operate, repair or replace all pumping stations, lift stations, force mains, collection manholes installed by the Owner pursuant to this Agreement; both in the property and outside the property. Notwithstanding this Owner agrees to assign its one year guarantee against defects and workmanship and materials in the construction of all domestic waste water lines, pipes, manholes and lift stations to the Company.

At all times during the construction of the domestic waste water lines and related equipment Company shall have access to the construction and the right to inspect the construction to insure that the lines and related equipment are being installed in accordance with the plans and specifications prepared by or approved its engineers. Owner shall construct the domestic waste water disposal lines in such manner in insure that no water from air conditioning systems or swimming pools shall flow into the domestic waste water lines. Only domestic residential waste water in its strictest sense shall be discharged into the domestic waste water disposal system of the Company. Waste water from boats or boat holding tanks shall not be discharged into the system.

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The waste water treatment plant capacity charge of \$2,700.00 per equivalent residential connection is required. Institutions, recreation buildings, swimming pools, commercial or civic units will be reviewed by the Company to determine the number of ERCs. The charges for each component of the development shall be as listed on Exhibit "A" attached hereto.

The Owner's development plans for the residential condominiums call for four (4) separate buildings, each containing fifteen (15) condominium units. The Owner intends to obtain a separate building permit from the City of Key West for each building, and a corresponding certificate of occupancy for each building upon completion thereof. Plant capacity charges shall be payable by the Owner as follows:

One-fourth (1/4th) of plant capacity charges for each building upon receipt of the building permit for that building or that component of the development building permits have already been issued.

The remainder, i.e., three-fourths (3/4th), of plant capacity charges for each building upon receipt by the Owner of the first certificate of occupancy for that building or completion of the component which ever is earlier.

The Marina building, boat slips, marina sales and dock master building items number 3, 4 and 5 have already commenced construction. Twenty-Five (25%) percent of the capacity fee is due upon execution hereof and the balance upon completion of the improvements. The restaurant has not commenced construction however, at the time a building permit is issued twenty-five (25%) percent of the capacity reservation fee shall be paid and the balance upon completion.

Notwithstanding the foregoing, as the Company's plant capacity may be inadequate to treat all customers on Stock Island, in the event Owner has not commenced construction of any separate component of the development within eighteen (18) months herein, then Company by giving written notice shall have the right to terminate this Contract for that component and not provide service as to that component.

In the event, at a future date, the Company is required to incur costs in order to satisfy a federal, state, or county environmental pollution standard or standards, then in such event, Company shall recover such costs from its Owners having requested the plant capacity in accordance with the rules, regulations and approval of the Public Service Commission. It is understood and agreed that rates collected by the Company for waste water services from the Customer shall be charged only by approval of the Public Service Commission. A copy of the sample application form which must be filled out by each individual Owner is attached hereto and expressly made part hereof.

In consideration of the Company agreeing to treat the wastewater and supply bulk service to Owner for Owner's project which is outside of Company's franchise area, Owner agrees that the Company's charges are reasonable and proper and agrees not to protest or contest said capacity reservation fees and/or their calculations. In the event of a protest filed to the Florida Public Service

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Commission or any other court or agency, Owner and Company agree that Company may discontinue providing bulk service to Owner. Owner and any successors or assigns agree to pay the monthly service charges as provided by the Public Service Commission for other customers of the utility.

Dated August 15, 1998.

SUNSET VENTURES OF KEY WEST, INC.

[Signature]
President

KEY RESORT UTILITIES CORP.

[Signature]

EXHIBIT "A"

Owner will also build two (2) pools and two (2) pool buildings with washrooms. At the time the pool buildings commence construction, Company shall determine the appropriate ERC's and Owner shall pay Company based upon the ERC calculations an additional connection fee over and above the numbers calculated on Exhibit "A".

In addition, Company has already installed a portion of Owner's force main on the Key West Golf Club and Owner agrees to reimburse Company 1,000 for said installation.

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**PLANT CAPACITY CHARGE
SUNSET MARINA
KW Resort Utilities, Inc.**

Facility	Unit	No. of Units	Plant Capacity (kW)	Cost (\$/kW)	Service Flow (GPD)	Plant Capacity (kW)	Plant Capacity Charge (\$/yr)	Plant Capacity Charge
Condominiums	ea	60				60.0	\$2,700	\$162,000
Restaurant	seats	150	40	8,000	250	24.0	\$2,700	\$64,800
Boat Slips (includes showers & water closets in Marina Building)	ea	139	50	6,950	250	27.8	\$2,700	\$75,060
Dockmasters Building	water closets	2	200	400	250	1.6	\$2,700	\$4,320
Marina Sales & Services Building	washing machines	4	750	3,000	250	12.0	\$2,700	\$32,400
TOTAL						125.4	\$2,700	\$338,580

+ Pools.
AWS

EXHIBIT "A"