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IN REPLY REFER TO:

April 17, 2000

Tampa Office

VIA FEDERAL EXPRESS

Public Service Commission  
Records and Reportings  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Re: Docket No. 99-1486-WS

Gentlemen:

Enclosed please find the following for proper filing in the above-captioned case:

RESPONSE TO MOTION TO DISMISS OR STRIKE APPLICATION  
(Original and 15 copies, plus diskette)

Would you please be so kind as to stamp the enclosed copy of this transmittal letter when received and return same to this office in the enclosed stamped self-addressed envelope. Thank you.

Sincerely,

*Susan W. Fox*  
Susan W. Fox

(Signed for attorney to avoid delay)

AFA \_\_\_\_\_  
APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMU \_\_\_\_\_  
CTR \_\_\_\_\_  
EAG \_\_\_\_\_  
LEG I SWF/ce  
WAS \_\_\_\_\_  
CPC \_\_\_\_\_  
RFR \_\_\_\_\_ Enclosures  
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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE  
04749 APR 18 8  
FPSC-RECORDS/REPORTING

IN THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF FLORIDA

DOCKET NO. 99-1486-WS

In Re: Application of Ellis & Company, Ltd. (Holiday Mall) to be deleted from territory in Pasco County served by Floralino Properties, Inc.

**RESPONSE TO MOTION TO DISMISS OR STRIKE APPLICATION**

Ellis & Company, Ltd. ("Ellis"), responds to the Motion to Dismiss or Strike Application and requests the Commission to deny the motion and to continue to hold this matter in abeyance pending development of further data concerning alternatives for fire protection and potable water service.

**Background Facts**

Ellis owns and operates Holiday Mall in Pasco County, Florida. Holiday Mall is a large regional shopping mall containing approximately 157,752 square feet, with 18 retail stores, including a large Kash 'N Karry Supermarket which opened in December 1999.

Floralino is a Class "C" utility providing water service in Pasco County. According to its 1997 Annual Report, the utility had operating revenues of \$128,805, and operating expenses of \$127,313, resulting in net operating income of only \$1,492. The utility's service area is located in a water use caution area. Pasco County's water utility provides service to adjacent properties and has lines abutting the mall property.

In the most recent rate case (which was staff assisted because Floralino apparently does not have, and cannot afford the legal and technical services needed to present a non-staff assisted rate case), the utility had 697 residential customers and 30 general service customers.

DOCUMENT NUMBER-DATE

04749 APR 18 8

FPSC-RECORDS/REPORTING

See In re: Application of Floralino Properties, Inc., Docket No.: 94-0558-WU, Order No. PSC-95-0142-FOF-WU (January 31, 1995). The utility was built out and had had no customer growth since 1987. See id. at 2. These facts indicate that Floralino is a small, poorly financed utility that cannot increase production from its own wells or finance a major reconstruction of its water lines. The utility had not been in compliance with some of the PSC rules, and there were a number of complaints of low water pressure. See id. at 2-5.

In the summer of 1999, Ellis was in the process of performing testing of the fire sprinkler system for the new Kash 'N Karry store then under construction as required by fire safety codes. During the testing, Ellis's contractor, Taylor Fire Protection (a licensed fire safety contractor) tested Floralino's existing fire hydrants and determined that the water supply for fire protection was insufficient to support the minimum service requirements for the fire sprinkler system (A-1).<sup>1</sup> In these tests, the system pressure was well below system demand to supply the fire sprinklers for the new store, and was marginal for the current tenants' fire sprinkler systems. A representative of Floralino was present at the time the tests were taken and took steps to improve system PSI, and verified that all pumps, wells, and valves were operating, but the system still did not have sufficient PSI to meet demand.

During the course of testing, Taylor Fire Protection also discovered that Floralino's existing fire lines were not constructed using approved materials in accordance with national, state, and local standards for underground fire mains (A-9). Taylor Fire Protection further

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<sup>1</sup> The accompanying appendix contains the correspondence and other documents chronicling the factual history of Ellis' water problems with Floralino at Holiday Mall, and a copy of Floralino's Water Tariff.

discovered that 4" PVC piping was used to supply Floralino's fire hydrants contrary to national minimum standards (A-9). These deficiencies in the system construction materials create a danger of collapse when in use by fire pumper trucks to activate the fire sprinklers (A-9).

Floralino's only response to this testing was to propose to install a new 6" pressure sustaining valve to help maintain pressure (A-5). Floralino did not propose to replace the materials that were below code (A-5). Floralino did not propose any other system improvements or offer testing from its own fire safety contractors to show that its fire hydrants met safety codes. Instead, Floralino offered to let Ellis buy out its certificate rights for \$65,000 so that Pasco County could provide service (A-7).

Ellis was unable to complete the new Kash 'N Karry store, or obtain the necessary permits and certificates of occupancy to carry out its lease obligations to Kash 'n Karry without resolving the fire protection service issues. Therefore, on October 1, 1999, Ellis filed an Application for Deletion of Service Area asking that its property be deleted from Floralino's territory in order to allow the Mall to obtain water service from Pasco County.

After the petition was filed, Floralino, through its contractor H2O Utility Services, Inc., apparently conceding that it could not provide adequate fire protection service, sent a letter to this Commission releasing Holiday Mall from the certificated territory for fire protection only (A-13-14). In correspondence with Commission staff, Ellis notified the staff that it was not agreeing to be deleted as to fire protection only, unless and until Ellis receives a firm commitment from another utility to permanently provide fire protection service (A-15). The Commission staff contacted Floralino to notify that the request for cancellation of the fire protection tariff had not been accepted (A-15) (See Tariff at A-18).

Although Pasco County had initially agreed to provide fire service and a fire line was built to connect to Pasco County and the permit fees (\$5,000.00) and impact fees (\$27,500.00) were paid, Pasco County refused to provide service unless potable water service also could be provided by Pasco County. Floralino refused to grant Ellis a release as to potable water service, and ultimately, after several month of intense negotiations and delays, an agreement was reached whereby Pasco County would provide temporary fire protection service for 24 months, after which such service would not be available (A-16). This period of time was provided so that Ellis would have time to develop the needed data to resolve the issue before this Commission concerning the request for deletion from Floralino's territory. Ellis was required to pay approximately \$50,000 to build a water line to tap into the Pasco County water for temporary fire service.

As is apparent from these facts, Floralino was admittedly incapable of providing the water service promised in its tariff, and made no serious efforts to do so. This inadequacy precipitated a crisis of potentially hundreds of thousands of dollars in damages if Ellis were unable to utilize its recently constructed store, and potential liability exposure of millions of dollars in damages in the event that a fire occurred and the known deficiencies in fire protection prevented containment of the fire. Perils of loss of life, serious injury , and other irreparable losses were also created due to this lack of the fire safety service promised by Floralino's certificate and tariff.

Although Ellis was able to obtain alternate fire safety protection, this resolution was only temporary and was achieved at great expense to Ellis. Ellis paid expenses totaling about \$82,500 to connect to Pasco County for the water hook-up, and due to the complicated legal

issues created by the warring utilities, Ellis was also forced to incur substantial legal expenses to bring the temporary agreement to fruition. During this process, Ellis also suffered damages because it could not obtain a Certificate of Occupancy for its completed Kash 'N Karry store, and lost rents because it was forced to delay delivering possession of the premises to the Lessee. The announced grand opening of the new facility was also delayed.

In the four months since the Kash 'N Karry has been operating, Ellis has been attempting to evaluate its options for fire protection and to develop additional information concerning the adequacy of the potable water service provided by Floralino. Ellis has been in communication with Commission staff and has asked them to hold the petition in abeyance for a short while longer, and staff has expressed no problem with this.

Although Ellis does not yet have final data concerning Floralino's water pressure difficulties, other than the reports attached to the petition, it is apparent from this Commission's own orders that water pressure problems are nothing new to Floralino. In the last staff assisted rate case, the staff found that the low water pressure problems came from a lengthy drought and the fact that two of Floralino's five wells were not working. Order No. 95-0142 at 6. The Commission ordered Floralino to install a new motor/pump in Well No. 5 to stabilize the water level. See id. The Commission noted that the utility had one portable air compressor for maintaining the pressure in all five of its tanks, and that using one compressor had caused delays in maintaining adequate pressure during peak or difficult time periods because the compressor had to be moved from one plant to another. See id. The Commission found that it would be impractical to require the utility to keep individual automated air compressors at each treatment plant. See id. These facts seem to document that

Floralino is not likely to have the pressure necessary to deal with a catastrophic emergency such as a fire in a large commercial facility, if it must move its one compressor from place to place to pressurize its tanks. In the last rate case, only four of the wells were functional, and even when functional, one well is usually off line for scheduled maintenance. The order found, in the event of drought, the low level of the water table generally produced low pressure. See id. Still, the Commission found the capacity adequate because:

"The utility[']s] customers are senior citizens with few family members and its general service customers are mainly stores with light usage." In re: Application of Floralino Properties. Id. at 8.

The deli department of the new Kash 'N Karry store at Holiday Mall is a heavy water user. Based on the available data as well as the findings in the prior rate case, it appears that there may well be problems with the reliability and efficiency of the potable water service with this additional demand on the system.

This 1995 rate order also references many problems with the utility's aging distribution lines. The order also documents a failure to do routine maintenance on tanks, valves, and pump houses and prolonged neglect of utility easements. See id. at 10. As a result of this neglect, tree roots had developed which distorted the utility's buried distribution lines, and in some cases caused broken lines. See id. The order also notes that Floralino had no employees and used contract services exclusively. See id.

The Commission did not address the impact of low pressure on Floralino's ability to provide fire protection, but did adjust the tariffs for fire safety service in the last rate case. Among the rates approved in Floralino's rate case were a monthly "private fire protection

charge" of \$14.63 per hydrant. The order notes that, "The utility provides private fire protection for the Holiday Mall." Id. at 24. The amount of this charge was reduced to comply with Rule 25-30.465 since Floralino's prior charges exceeded the authorized amount under Commission rules. See id. Holiday Mall had consistently paid the tariff rates for fire protection service even when they were excessive.

Floralino had several other Staff assisted rate cases in the 1980s. These also document low water pressure problems. In re: Application of Floralino Properties, Docket No. 860146, Order No. 17907 (1987); In re: Application of Floralino Properties, Docket No. 880747, Order No. 20653 (1989). Apparently, low water pressure has been a consistent problem for Floralino. In the 1986 rate case, Floralino's gpm capacity was only .47 per customer, whereas AWWA standards require a minimum of 1.1 gpm per customer. Order No. 17907 at 4. (By the same standard, Floralino's current demand to satisfy residential customers alone would be 766.7 gpm, whereas Taylor Fire Protection found only 658 gpm capacity.) Similarly, the 1989 rate order observed that "Based on American Water Works Association standards, with allowance for fire flows, the capacity of Floralino's plant does not meet existing demand." Order No. 20653 at 8. As already shown, Floralino has not increased capacity since these orders were entered and has had difficulty keeping its five existing plants on line.

These orders also document a problem with Floralino maintaining service lines up to the customer's meter. This is significant because the construction manager for the Holiday Mall project, Kevin Halpin, described the pipes leading up to the Holiday Mall meters as being in a "crumbling" condition.



Further, the prior orders remind Floralino of its obligation to maintain the lines up to the customer meters. As such, the Commission found Floralino responsible for the defective mains and utility lines that provide both potable water and fire protection. Floralino did not adequately maintain those lines as to Holiday Mall, based on Mr. Halpin's observations.

**Argument in Response to Motion to Strike or Dismiss Application**

Floralino's motion contends that the Application for Deletion of Territory is an improper pleading before the Commission, and is null and void. Floralino is wrong. This Commission has considered and granted such petitions.

In Petition by Bonita Bay Ltd. Partnership to be Deleted From Territory in Lee County, served Harbor Utilities, Co., Inc., Docket No. 94-0659-WS; Order No. Commission-94-1453-FOF-WS, 94-FPSC 11:408 (Nov. 28, 1994), the Commission considered a petition from Bonita Bay, the owner of a proposed development asking "that its area be deleted from Harbor [Utilities Co.'s] territory." Id. According to the petition, Harbor did not have adequate capacity to provide service within the time required and had not demonstrated the ability to provide a satisfactory level of service in the past. Id. Further, according to the petition, service could be provided by an adjacent utility. In addition, Bonita Bay also argued that Harbor did not have the ability to meet minimum fire flow requirements. The Commission analyzed data concerning the utility's capacity and flows, and found that the flows exceeded the permitted plant capacity. Further, Harbor had not demonstrated any plans to upgrade the facilities. Harbor argued, however, that the Commission lacked jurisdiction to consider this request. Harbor's argument was rejected as follows:

"Section 367.111, Fla. Stat., gives the Commission the discretion to delete territory from a service area. Section 367.111, Fla. Stat., states:

'Each utility shall provide service to the area described in its Certificate of Authorization within a reasonable time. If the Commission finds that any utility has failed to provide service to any person reasonably entitled thereto or finds that extension of service to any such person could be accomplished only at an unreasonable cost and that addition of the deleted area to that of another utility company is economical and feasible, it may amend the Certificate of Authorization to delete the area not served or not properly served by the utility, or it may rescind the Certificate of Authorization.'

Although Chapter 367 does not expressly provide a mechanism by which a customer may request that his property be deleted from a utility's service area, § 367.111, Fla. Stat., as interpreted, means that the Commission, on its own motion, could delete a portion of a utility's service territory, if it finds that certain conditions with respect to service have not occurred. Even further, pursuant to § 367.011, Fla. Stat., the Commission could delete this territory in the interest of the public and for the protection of the public health, safety, or welfare.

\* \* \*

Based on all of the facts stated above, we hereby grant Bonita Bay's Petition for Deletion. The area described . . . shall be deleted from Harbor Utility Co., Inc.'s territory. The utility shall file a revised tariff sheets within 30 days . . . . The utility shall also return Certificate Nos. . . . for incorporation of the deletion."

In other instances, the Commission has taken similar action to protect customers who were unable to obtain adequate service. The Commission has issued an order to show cause why the Commission should not revoke a certificate based upon poor quality of service. See In re: Initiation of Show Cause Proceedings Against Sebring Country Estates Water Company, Docket No. 87-1308-WU; Order No. 20137, FPSC 10: 207 (Oct. 10, 1988).

In at least three instances, the deletion of service areas resulted from complaints filed by customers. For example, the Commission granted a deletion from the Certificate in response to a complaint by Indian River Plantation Co. that Souther Gulf Utilities was unable to provide adequate service. See In re: Complaint of Indian River Plantation Co. Against Southern Gulf Utilities, Inc., Docket No. 76-0934-W, Order No. 7658 (Feb. 23, 1977). The utility ultimately stipulated that it was unable to provide service, and the Commission, therefore, deleted the territory citing § 367.111(1). The same thing occurred in In Re: Complaint of Charles A. DuBois, Trustee, For Exclusion of Certain Property From the Certificated Territory of First Florida Utilities, Inc., Docket No. 74-077-WS, Order No. 6463 (Jan. 16, 1975). See also In Re: Complaint of Irene Z. Day vs. First Florida Utilities, Docket No. 7422-WS, Order No. 5145 (June 16, 1977).

The Commission has approved service by a utility other than the certificated utility where the following conditions were met: (1) it is in the public interest to approve one utility's request over the interest of the other utility, (2) there will be no duplication of existing facilities, and (3) the existing facilities, if there will be a duplication, are inadequate, or the person operating the facilities is unable, refuses or neglects to provide reasonable and adequate service. See In Re: Application for Amendment of Certificate Nos. 570-W and 496-S, Docket No. 98-0261-WS, Order No. 98-0730-PCO-WS, 98 FPSC 5:411 (May 26, 1998). In the latter case, the Commission cited § 367.045(5)(a), Fla. Stat., as the basis for this order.

In addition to the foregoing authorities, several Commission rules are relevant. First, Rule 25-30.520 states: "It is the responsibility of the utility to provide service within its certificated territory in accordance with the terms and conditions on file with the Commission." In Floralino's case, these terms and conditions include fire protection service as stated in its tariff.

Rule 25-30.225 requires a utility to design, construct, and install its plant to insure reasonably adequate and safe service to its customers, and to make reasonable efforts to warn and protect the public from any danger arising on account of its services. Rule 25-30.230 requires each water utility to provide pipes of suitable capacity from its main up to the customer's service control valve and meter box, and to provide such facilities at its own expense unless the tariff provides otherwise. Rule 25-30.250 requires the utility to make all reasonable efforts to provide continuous service. As shown above, Floralino's service failed to meet each of these requirements.

Floralino's motion expressly recognizes its duty to provide adequate service in accordance with its tariff, but states that failure to do so is merely cause for complaint to the Commission, rather than deletion from territory. As shown above, this Commission has granted deletion relief in response to both complaints and requests for deletion from territory. In the present circumstances, where Floralino has demonstrated no plans to provide adequate service, a mere complaint would appear to be futile and would have risked loss of life and property .

Floralino states that the present situation should fall under page 9.0 of Floralino's tariff, which applies to applications for extension of service. Further, according to Floralino, the

improvements would be made at the expense of the customer having the unique needs for service. There are several problems with this argument. First, this is not an extension of service, but a test on the fire flows available from the hydrants. Second, this is not an issue that can be resolved by building a line that the customer could pay for. The facts demonstrate that Floralino lacks adequate capacity to provide the service. There has been no indication that Floralino can increase its capacity enough to provide service.

Floralino states, "The Holiday Mall always has the option to accept the flows and pipes as-is, and make arrangements for fire flows on-site with their own pressure/storage tanks, emergency fire wells, and the like." This statement appears to disregard the utility's duty to provide service as described in the foregoing rules and promised in its tariff. In effect, Floralino is stating that if it cannot provide service, then Holiday Mall should be left to its own devices. Fortunately, the decisions of this Commission cited above, and statutory provisions provide more protection to the customer than Floralino would acknowledge.

Florida case law also provides protection for customers. Florida courts have held that utility service area disputes should be resolved by application of equitable principles "which appear to best serve the public and to be fair and equitable to legitimate competing interests." See City of Mt. Dora v. J. J.'s Mobile Homes, Inc., 579 So.2d 219 (Fla. 5<sup>th</sup> DCA 1991).

According to the court, these principles are as follows:

(1) In Florida, the basis for the right of both governmental and private entities to provide utility services to the public is statutory and the franchise right reaches equally and neither entity is, per se, superior or inferior to the other.

(2) A franchise right granted to an entity, either governmental or private, authorized by law to provide utility service to the public, may be exclusive as to both type of service and territory.

(3) The right (franchise) to provide utility services to the public carries a concomitant duty to promptly and efficiently provide those same services.

(4) The right (franchise) to provide utility services to the public in a franchise territory is inherently subject to and conditional upon the ability of the franchise holder to promptly and efficiently meet its duty to provide such services.

(5) When a public service entity, whether governmental or private has a . . . legal right to provide service in a particular territory, but does not have the present ability to promptly and efficiently meet its duty to do so, the public is entitled to be served by some other public service entity which does have the present ability to provide the needed service . . . .” Id.

See also City of Winter Park v. Southern States Utilities, Inc., 540 So.2d 178 (Fla. 5<sup>th</sup> DCA 1989) (“All corporations which voluntarily undertake to [provide public utility service] assume an obligation implied by law to render . . . to all of the public in the area sought to be served, a service reasonably adequate to meet the just requirement of those sought to be served.”); Lake Utility Services, Inc. v. City of Claremont, 727 So.2d 984 (Fla. 5<sup>th</sup> DCA 1999) (“The right to provide a utility service is conditioned upon the ability to be able to do so.”).

Floralino contends that its low pressure problems are not a basis for deletion of territory. Under the present circumstances, where the failure to provide adequate service will

endanger life and property, the lack of sufficient pressure is tantamount to a failure to provide service. Floralino claims that the orders detailing “previous low pressure problems” are in the remote past and therefore not relevant, but has not offered any testing to rebut the two tests submitted by Ellis showing that the pressure problems are still present.

Floralino complains about the lack of additional factual allegations in the petition. The only disputed fact, however, appears to be whether the testing of Floralino’s system by Taylor Fire Protection was indicative of Floralino’s actual ability to provide fire flows. This is the type of disputed issue that would be appropriate for an administrative hearing.

Ellis, however, has not asked the Commission to proceed on the stated facts, but has merely asked that the matter be held in abeyance for a period of time so that further data can be developed and alternatives examined. Some alternatives are discussed in paragraph 12 and 13 of the motion, and these issues also would be appropriate for an administrative hearing once this matter becomes ripe for hearing.

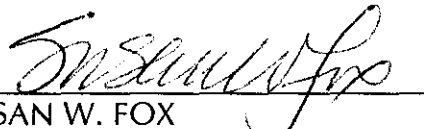
Floralino states in paragraph 13 that it stands ready to provide fire flow service to Holiday Mall “at Holiday Mall’s expense, pursuant to its tariff.” Since Floralino was already obliged to provide such service under its tariff, the purpose of this statement is not readily apparent. Moreover, Floralino’s tariffs do not provide for a charge directly to the customer for curing service problems. Rule 25-30.230 prohibits an extra charge unless provided by tariff. Thus, Floralino seems to be demanding payments from Holiday Mall without proper authorization by this Commission. This is apparent not only in the motion, but in the letter from Floralino demanding a payment of \$65,000 for release from its territory, despite its lack of adequate facilities to provide service. According to the Commission’s order in Bonita Bay,

construing § 367.111, Floralino's ability to rehabilitate its system to provide fire service would be an option only if achievable at reasonable cost. Otherwise, this Commission must allow Ellis to obtain service that is "economical and feasible" from Pasco County.

**Conclusion**

Based on the foregoing, Ellis has filed a proper Petition for Deletion From Floralino's Service Territory. The Motion to Dismiss or Strike the Petition must be denied.

In light of the rapidly changing events that took place September through December of 1999, resulting in the temporary fire protection service from Pasco County, and the need to develop reliable data and sound alternatives, Ellis requests an additional three months, up to and including July 15, 2000, to file an Amended Petition with appropriate factual details. This time frame will then allow 18 months to conduct the necessary administrative hearings and proceedings relating to Ellis' petition.

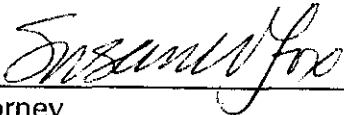


SUSAN W. FOX  
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P. O. Box 1531  
Tampa, FL 33601  
813-273-4212  
Attorneys for Ellis & Company, Ltd.



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished, by U.S. Mail, to Gerald T. Buhr, Esq., Post Office Box 1657, Lutz, Florida 33548-1657, Attorney for Floralino Properties, Inc.; and to Pasco County Utilities, Attn: Douglas S. Bramlett, Asst. County Administrator, 7530 Little Road, New Port Richey, FL 34654, this 17<sup>th</sup> day of April, 2000.

  
\_\_\_\_\_  
Attorney

# Taylor Fire Protection, Inc.

4647 Lown Street, St. Petersburg, FL 33714  
Phone (813) 522-3612 • FAX (813) 522-3773



## NEW AREA CODE 727

July 8, 1999

APPENDIX

Anchor Construction of Tampa, Inc.  
4501 West Ohio Avenue  
Tampa, FL 33614  
Attn: Kevin Halpin, Project Manager

Re: Kash N'Karry Store 1848  
Holiday Mall & Tenant Space Alterations  
Holiday, FL  
Fire Protection Water Supply

Gentlemen:

It has come to our attention, through trying to develop our fire sprinkler design for the above referenced project, that the fire protection water supply is insufficient to support the design requirements of a hydraulic system per NFPA13, for occupancies of this type.

This is based on two (2) water flow tests on 6/24/99 at 2:30p.m. and 7/7/99 at 2:00p.m. All testing equipment used was calibrated and all tests were conducted to NFPA13 standards for determining water supplies for fire sprinkler system usage.

The first test on 6/24/99 was conducted by Taylor Fire Protection, Inc. and the local utility company with the assistance of Anchor Construction. Two hydrants located on the eastside of the job site were used for the testing since they are closest to the point of connection of the backflow preventor which supplies all of the existing and proposed new sprinkler systems in question.

All static and residual readings were taken from hydrant #1 (please refer to drawing 1 attached) and all pitot and flow readings were taken from hydrant #2.

Test #1 results:	Static	70 psi
	Residual	35 psi
	Flow	686 gpm w/pitot of 14psi

Hydrant #2 was flowing for 7 minute with no change in pressure or flow.

**NOTE:** The local utility company representative went to the closest pump/well station to ensure that all 3 pumps were ready and online if needed.

Based on this information, Taylor Fire Protection Inc. hydraulically calculated the gridded sprinkler system, as was bid, for the Kash N'Karry store using both a 14.5 and 11.5 "K"-factor for extended coverage sprinklers. In both cases the water supply was insufficient. Please see below:

Sprinkler	Static PSI	Residual PSI	@	Flow GPM	System		
					Available PSI	Demand GPM	System PSI
K=14.5	70.0	35.0		686.0	32.4	713.4	35.7
K=11.5	70.0	35.0		686.0	32.6	711.2	46.1

Anchor Construction of Tampa, Inc.  
Page Two

The system demand in both calculations are over the curve by 3.3psi and 13.5 psi respectively.

We changed the head to 8.10 "K" factor and changed all head spacing to standard 130 square foot increasing the number of lines in the grid system and the number of sprinklers. This system would work (See below):

Sprinkler	Static PSI	Residual PSI	@ Flow GPM	Available PSI	System Demand GPM	System PSI
K=8.10	70.0	35.0	686.0	44.0	584.1	37.0

As you can see this design would have a pressure demand that is 7psi below the curve of this water supply.

**Note:** Keep in mind this is with the pump/well station on-line because of the flow test.

The second test on 7/7/99 was conducted by Taylor Fire Protection and Anchor Construction (assisting) to reverify the first test. The same test equipment was used in the same testing manner to the same NFPA13 standards.

Test #2 results: Static                      67 Psi  
Residual                                      25 Psi  
Flow    645 GPM w/Pitot of 12 Psi

Hydrant #2 was flowing for 7 minutes. The first two minutes residual pressure was at 35 psi. Then the pressure dropped to 25 psi and stayed.

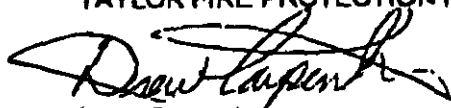
With this new data, Taylor Fire Protection Inc. recalculated the last system design utilizing the K=8.10 heads. It failed by exceeding the supply curve by 5 psi. We changed the sprinkler heads again using the standard head with a "K" factor of 5.60. Again the system design exceeded the water supply curve by 13.1 psi.

Understand that these flow tests may or may not have been conducted during the peak usage time for this area. We would like to suggest that the local utility company check to see that all utility valves supplying this project are fully opened and lines are unobstructed.

Please advise Taylor Fire Protection Inc. when and how this problem will be resolved so we can proceed with finishing our design. If we can be of further assistance in this matter, please feel free to contact us.

Respectfully,

TAYLOR FIRE PROTECTION INC.



Drew Carpenter  
Design/Sales

cc: Frank Mudano/Mudano Associates Architects, Inc.

LAW OFFICES  
**GOZA AND HALL, P.A.**  
28050 U. S. HWY. 19 NORTH  
SUITE 402, CORPORATE SQUARE  
CLEARWATER, FLORIDA 33761-2654  
TELEPHONE (727) 789-2825  
FAX (727) 788-8008

**VIA CERTIFIED MAIL  
AND REGULAR MAIL**

July 15, 1999

Mr. Tony Tubolino  
Floralino Properties, Inc.  
5147 Marine Parkway  
Suite C  
New Port Richey, FL 34652

**RE: HOLIDAY MALL / PASCO COUNTY, FLORIDA**

Dear Mr. Tubolino:

Please be advised that the undersigned represents the owner of the Holiday Mall, who is in the process of making extensive renovations and upgrading the shopping center. Your company presently provides the water service for fire protection to my client's property and the tenants located thereon.

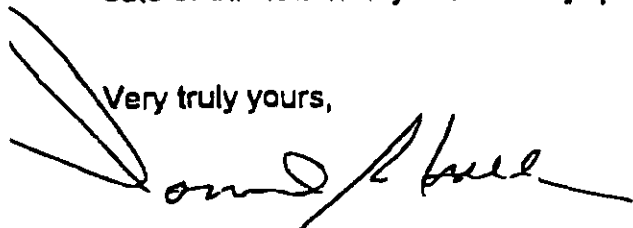
My client has advise me that an inspection and test was conducted by Taylor Fire Protection, Inc. when you were present, to determine the ability of your water system to provide the necessary flow and pressure to properly protect the Holiday Mall and it's tenants in the event of a fire. That test reflected that your system was not adequate and would fail to protect the shopping center and it's tenants in the event of a fire.

Under those circumstances, I am enclosing a Waiver and Release for you to sign which would release your company from providing the necessary water service to the Holiday Mall and it's tenants, and thereby allow my client to hook-up to the Pasco County water system. My client has been assured that the Pasco County water system would adequately provide the necessary requirements to protect the shopping mall and it's tenants in the event of a fire.

This would further relieve you of any further liability in the event of a fire, which could cause damage to my client's property and the tenants.

Please provide me with the signed Waiver and Release within seven (7) days from the date of this letter. If you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Donald R. Hall", written over a horizontal line. The signature is cursive and somewhat stylized.

Donald R. Hall

DRH/bb

enc.

cc: John Pace

Frank Mudano

**WAIVER AND RELEASE**

KNOW ALL PERSONS BY THESE PRESENTS, that **FLORALINO PROPERTIES, INC.**, ("Releasors"), in consideration of the connection by **ELLIS & CO., LTD.** to the Pasco County water system for water and fire protection for the Holiday Mall, does hereby release and cancel it's contract with **ELLIS & CO., LTD.**, The **HOLIDAY MALL** and **ALL OF THE HOLIDAY MALL TENANTS**, present and prospective, ("Releasees"), for the supply of water and fire protection and does further release the Releasees from any and all further requirements to connect and hook-up to the private water system provided by **FLORALINO PROPERTIES, INC.**, effective as of August 15, 1999, and further releases the Releasees from all actions, rights, causes of action, claims, suits, demands and damages of whatsoever kind or nature whether now known or not known, in law or in equity, which it now has or may hereafter have for or on account of any reason or any matter related to or arising from this Waiver and Release.

This Waiver and Release shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and assigns.

IN WITNESS WHEREOF, the Releasor has set its hand and seal on the date appearing under its respective signature.

Witnesses:

**FLORALINO PROPERTIES, INC.**

\_\_\_\_\_  
Print name: \_\_\_\_\_

By: \_\_\_\_\_  
Anthony Tubolino, President

\_\_\_\_\_  
Print name: \_\_\_\_\_

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 1999 personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, ANTHONY TUBOLINO, as President of FLORALINO PROPERTIES, INC., who is personally known to me or who has produced a Florida Driver's License as identification, and who executed the foregoing Waiver and Release and he acknowledged before me that he executed the same freely and voluntarily for the purposes therein expressed.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print Name of Notary  
My Commission Expires:

LAW OFFICES  
**GOZA AND HALL, P.A.**  
28050 U. S. HWY. 19 NORTH  
SUITE 402, CORPORATE SQUARE  
CLEARWATER, FLORIDA 33761-2654

TELEPHONE (727) 799-2625  
FAX (727) 796-8908

July 30, 1999

**CERTIFIED MAIL/RETURN RECEIPT REQUESTED  
AND REGULAR MAIL**

Mr. Anthony Tubolino  
Floralino Properties, Inc.  
5147 Marine Parkway, Suite C  
New Port Richey, FL 34652

Re: Holiday Mall, Holiday, FL  
U.S. Highway 19 and Moog Road  
Fire Protection Water Supply

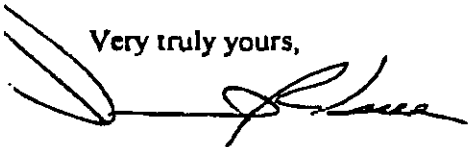
Dear Mr. Tubolino:

I received a telephone call from your son in connection with my letter of July 15, 1999, in which he indicated that he was in receipt of our letter. He further stated that your Company has an interconnect with the Pasco County Water System. He explained that that meant that if an emergency should arise, he would just connect into the Pasco County Water System.

This is not sufficient for fire protection for the Holiday Mall since if there is a fire at the Mall, there would need to be an immediate water supply sufficient to meet the need for fire protection. The tests done by Taylor Fire Protection, Inc. on your system reflect that your water supply is insufficient to provide adequate fire protection.

Therefore, this letter shall serve as notice to you under the Public Service Commission Rules that we are terminating your service for fire protection, and intend to hook up to the Pasco County Water System.

Very truly yours,



Donald R. Hall

cc: John Pace  
DRH:dn



LAW OFFICES  
**GOZA AND HALL, P.A.**  
28050 U. S. HWY. 19 NORTH  
SUITE 402, CORPORATE SQUARE  
CLEARWATER, FLORIDA 33761-2654  
TELEPHONE (727) 799-2625  
FAX (727) 796-8908

July 30, 1999

Mr. Douglas Bramlett  
Assistant County Administrator  
Pasco County Utility Services  
7530 Little Road  
Utility Building S205  
New Port Richey, FL 34654

Re: Holiday Mall, Holiday, FL  
U.S. Highway 19 and Moog Road  
Fire Protection Water Supply

Dear Mr. Bramlett:

Please be advised that I represent Ellis & Co., Ltd., who is the owner of the Holiday Mall which is undergoing extensive renovations in order to enable a Kash N'Karry Grocery Store to occupy a major portion of the shopping center.

The general contractor for my client has hired Taylor Fire Protection, Inc. located in St. Petersburg, Florida to design the fire sprinkler system and determine that the fire protection water supply is sufficient for this new Kash N'Karry Store. That Company performed two (2) tests of the waterflow system currently provided to this property by the private utility system of Floralino Properties, Inc. Those tests reflected that the fire protection water supply is insufficient to support the design requirements for this new Kash N'Karry Store at the Holiday Mall. The local utility company representative was present at the time those tests were taken.

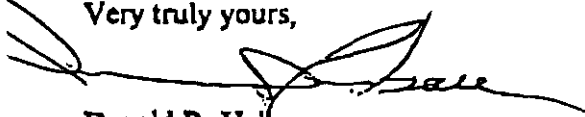
Since those tests reflected that the existing private water system is inadequate and deficient to provide adequate fire protection for the Holiday Mall, my client is requesting that we be allowed to hook up to the existing Pasco County Water System, which would provide us an adequate water supply for fire protection and safety of the tenants and guests at the Holiday Mall.

This letter shall serve as a written request for hook-up to the Pasco County Water System immediately in order to have the necessary water supply for adequate fire protection for the Holiday Mall. Since the renovations are in progress for the new Kash N'Karry Store, it is imperative that we be allowed to connect to the Pasco County Water System within the next two (2) weeks.

Mr. Douglas Bramlett  
Page 2

If you need any further information concerning this request, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "D. R. Hall", written over a horizontal line.

Donald R. Hall

cc: John Pace  
DRH:dn



August 2, 1999

Mr. Donald R. Hall  
Goza and Hall, P.A.  
28050 U.S. Highway 19 North  
Suite 402  
Clearwater, Florida 33761-2654

RE: Holiday Mall/ Floralino Properties, Inc.

Dear Mr. Hall:


This letter is a follow up to our conversation on August 2, 1999 regarding fire flow protection for the Holiday Mall development.

The fire flow inspection and test conducted by Taylor Fire Protection, Inc. was not representative of the flow and pressure capacity of the Colonial Manor water system, the current provider of potable water and fire flow to the Holiday Mall tenants. The Colonial Manor water system maintains two six-inch interconnects with the Pasco County water system; one interconnect is manually operated during emergencies, and the other is automatically opened according to the pressure in the Colonial Manor water distribution system. Neither interconnect was in operation at the time of the above-mentioned fire capacity test; therefore the test results are not representative of the full capacity of the Colonial Manor water system.

A new six-inch pressure sustaining valve will be installed between the 24-inch Pasco County water main and the Colonial Manor water distribution system at the existing site of the six-inch Hersey compound meter. This valve will automatically open the interconnect during high flow periods. We recommend that another fire flow test be conducted once the new valve is installed. Maintaining water service from the Colonial Manor water system will save your client an estimated \$20,000 in costs resulting from the material, labor and impact fees associated with the proposed hook-up to the Pasco County water system.

If you have any questions, please do not hesitate to contact me at our Holiday office.

Sincerely,

  
Nicholas Zubillaga  
Project Engineer

NZ/

CC: Anthony Tubolino, Floralino Properties, Inc.  
Gary Dorem, H<sub>2</sub>O Utility Services, Inc.

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Utility Management Operation Engineering Maintenance Construction Consulting Billing/Collection Laboratory  
1817 U.S. Highway 19 Holiday, Florida 34691 727/938-6463 727/938-9150 Fax 888/934-1926 Toll Free



# PASCO COUNTY, FLORIDA

RECEIVED

AUG 10 1999

GOZA and HALL, P.A.

DADE CITY (352) 521-4274  
LAND O' LAKES (813) 996-7341  
NEW PORT RICHEY (727) 847-8145  
FAX (727) 847-8064

UTILITIES SERVICES BRANCH  
PUB. WKS./UTILITIES BLDG., S-213  
7530 LITTLE ROAD  
NEW PORT RICHEY, FL 34654

August 5, 1999

Mr. Donald R. Hall  
Goza and Hall, P.A.  
28050 U.S. Hwy. 19 North  
Suite 402, Corporate Square  
Clearwater, FL 33761-2654

RE: Holiday Mall, Holiday, FL

Dear Mr. Hall:

In response to your inquiry regarding service from Pasco County, you must first obtain a service area release, in writing, from Floralino Properties, Inc. Pasco County cannot provide service within Florida Public Service Commission approved and certificated service area for a private utility without a formal written release. The release must be inclusive of both water and wastewater service.

Once the service area release is in hand, we can proceed and work with your project engineer to provide the necessary service connections.

Sincerely,

Douglas S. Bramlett  
Assistant County Administrator  
(Utilities Services)

DSB/BEK/mvv/22/hall

**FLORALINO PROPERTIES, INC.**

5147 MARINE PARKWAY - SUITE C  
NEW PORT RICHEY, FL 34652

Phone (727) 843-0064  
Fax (727) 846-7306

August 16, 1999

Goza and Hall, P.A.  
28050 U.S. Hwy. 19 North  
Suite 402, Corporate Square  
Clearwater, FL 33761-2654

RECEIVED  
AUG 29 1999

ATTENTION: Donald R. Hall

GOZA AND HALL, P.A.

RE: Water Service to Holiday Mall

Dear Mr. Hall:

As you know from the reply that H2O Utility Services, Inc. sent to you, Floralino Properties can provide all of the required water service and fire protection service with out any problem. However, it will facilitate us putting in the proper valves as noted by H2O. If we are going this route, we will request that the PSC allow us to increase the cost of valves, etc. to provide the proper service.

Floralino Properties, Inc. has no intention of giving up any of their service areas because we have much time and money involved in providing services to these areas. However, if you wish to purchase the water rights to service Holiday Mall, it may be for sale. We will review an offer to purchase these rights for \$65,000.00, to be paid at the time of transfer from Floralino Properties, Inc. to whomever you deem necessary and proper.

Sincerely,

  
Anthony Tubolino  
President

AT:lb

LAW OFFICES  
**GOZA AND HALL, P.A.**  
28050 U. S. HWY. 19 NORTH  
SUITE 402, CORPORATE SQUARE  
CLEARWATER, FLORIDA 33761-2654  
TELEPHONE (727) 799-2629  
FAX (727) 796-8908

August 16, 1999

Chairman  
Public Service Commission, State of Florida  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399

**RE: HOLIDAY MALL located in HOLIDAY, FLORIDA  
FIRE PROTECTION/WATER SERVICE PROVIDED BY FLORALINO PROPERTIES, INC.**

Dear Mr. Chairman:

Please be advised that the undersigned represents Ellis & Co., Ltd., who is the owner of the Holiday Mall in Holiday, Florida, which is undergoing extensive renovation to accommodate a new Kash N'Karry store at that mall. In addition, there are existing Tenants leasing space at the present time from my client at the Holiday Mall.

Floralino Properties, Inc. is a private company which has the franchise for providing water service, including adequate water for fire protection for my client's mall. My client had their fire sprinkler design company perform tests on the private water system of Floralino Properties, Inc. to determine if there was an adequate fire protection water supply. That company has furnished us with a report indicating that the fire protection water supply is insufficient to support the design requirements of the new Kash N'Karry store to be constructed at this location. I am enclosing a copy of that report dated July 9, 1999 for you information.

On behalf of my client, I have contacted Pasco County which has an adequate water supply for fire protection and requested that we be allowed to hook up to their system. However, Pasco County has indicated that we must obtain a release from the private supplier, Floralino Properties, Inc. A copy of that letter is attached for your records.

I have written Floralino Properties, Inc. several times, requesting a release from their water supply service and have had no response in writing from that company to date.

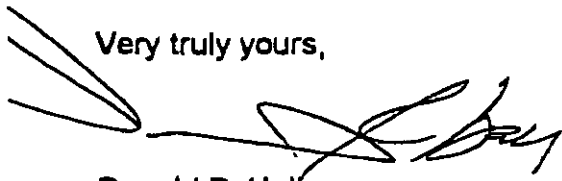
My client is very concerned about the safety of the existing Tenants, together with guests and invitees at the Holiday Mall. In addition, my client is further concerned about the fire safety and adequate water protection once the new Kash N'Karry store

has been completed.

Pursuant to the Public Service Commission Rule 25-30.325, we have given the private utility company reasonable notice of our intention to discontinue service. We have had no response to that request, and are therefore requesting action by your commission to take immediate steps to allow us to terminate the service with this private utility company, so that we can hook up to Pasco County's water system, which does have an adequate water protection system for fire safety.

It would be appreciated if you would furnish me with your concurrence in this matter no later than ten (10) days from the date of this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Donald R. Hall', written over a horizontal line.

Donald R. Hall  
DRH/bb  
cc: John Pace

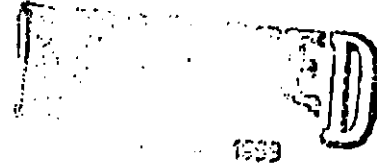
**Taylor Fire Protection, Inc.**

4647 Lown Street, St. Petersburg, FL 33714  
Phone (813) 522-3812 • FAX (813) 522-3773



NEW AREA CODE 727

August 31, 1999



GOZA and HALL, P.A.

Goza and Hall, P.A.  
28050 U.S. 19 North  
Suite 402, Corporate Square  
Clearwater, FL 33761-2654

Re: **Holiday Mall - Kash N' Karry/Retails**  
**Fire Sprinkler System water supply/demand**

Dear Mr. Hall:

In mid-May of this year, Taylor Fire Protection Inc. was contracted by Mudano Associates and Ellis & Company Ltd. to install an 8" x 8" wet tap and valve on the existing 8" fire line and extend a new 8" line north by 30 feet. (The existing 8" fire line does not have any shut-off valves.)

During our excavation, we found that the existing 8" fire line was not of approved materials in accordance with N.F.P.A. 24, local or state standards for underground fire mains. We also found 4" PVC, schedule 40 piping supplying fire hydrants. Again, this is clearly not in keeping with minimum standards requirements. This may account for some of the low flows recorded in our testing of June 24, 1999 and July 7, 1999. (Please refer to our letter of July 9, 1999 to Anchor Construction of Tampa, Inc. of which a copy is attached.)

Our review of H2O Utility Services, Inc. letter dated August 2, 1999 suggests that our fire flow tests were not representative of the full capacity of Colonial Manor water system when, in fact, it does represent what may occur in any 24 hour period should a fire break out as the system stands now. Not enough water and a system that doesn't meet standards!



Page Two  
Goza and Hall, P.A.

One of the first things a fire company responding to an alarm will do will be to attach it's 2,000 GPM pumper truck to the nearest fire hydrant and to the buildings sprinkler riser siamese and charge the system with 150 - 200 pounds of pressure. This will create a suction on the underground system that could collapse the underground main. This is one of the reasons there are standards for underground fire mains, materials and installation.

This life safety system must be able to function 24 hours a day at designed capacity at minimum. The installation of a new 6" pressure sustaining valve may help to maintain pressure and volume, but it's still supplying an out of code system.

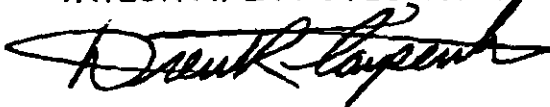
We have hydraulically calculated the most demanding area/hazard in the Kash N' Karry store to the current Pasco County water supply, through the new 8" proposed supply with a safety factor of 8 PSI. This is using high density/fire challenging sprinklers and allows for future development on the system.

We would like to suggest that the proposed 8" fire main from U.S. 19 North to the eastside of the property be considered as a first option because of the reliability of the source and system being installed in accordance with minimum fire standards.

We also recommend that the local fire authority be made aware of the current water supply situation for their own knowledge until this is rectified.

Respectfully,

TAYLOR FIRE PROTECTION INC.



Drew Carpenter  
Designer

cc: Mudano Associates  
Ellis & Co., Ltd.

LAW OFFICES  
**GOZA AND HALL, P.A.**  
28030 U. S. HWY. 19 NORTH  
SUITE 402, CORPORATE SQUARE  
CLEARWATER, FLORIDA 33761-2654  
TELEPHONE (727) 799-2625  
FAX (727) 796-8908

**FACSIMILE/MAIL**  
**(813) 929-1256**

September 2, 1999

Fire Marshall William Brown  
Pasco County Fire Rescue  
4111 Land O'Lakes Boulevard  
Suite 208  
Land O'Lakes, FL 34639

Re: Holiday Mall -- U.S. Highway 19 and Moog Road, Holiday, FL  
Fire Protection and Water Supply

Dear Fire Marshall Brown:

Pursuant to our telephone conversation of last week, enclosed please find a copy of the following:

1. Letter from H2O Utility Services, Inc., who evidently is a subcontractor for the private water provider, Floralino Properties, Inc.
2. The response letter from Taylor Fire Protection, Inc., who reviewed that letter from H2O Utility Services, Inc.

My client is very concerned that the existing water system does not provide adequate water supply for fire protection at the Holiday Mall. In addition, the proposed renovations to this Mall by my client will require an additional demand for water supply for adequate fire protection which the existing system does not provide.

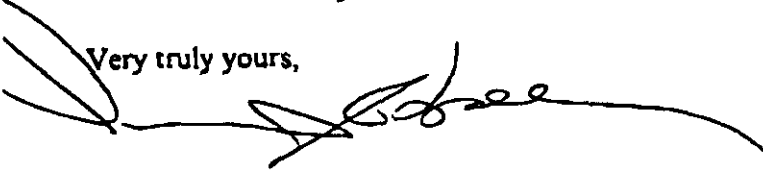
We would request that you immediately investigate this situation since this is a fire hazard and endangers my client, the tenants of that Mall, and the public in general should a fire occur at the Holiday Mall in Holiday, Florida.

Fire Marshall William Brown  
Page 2

If you concur with the report of Taylor Fire Protection, Inc., we would request that you require Pasco County to allow my client to hook up to the eight-inch (8") fire main provided by Pasco County so that there is adequate water supply for fire protection for the Mall.

Please advise me of your decision at your earliest convenience.

Very truly yours,

A handwritten signature in black ink, appearing to read "Donald R. Hall", written over a horizontal line.

Donald R. Hall

Enclosures

cc: John Pace, Ellis & Co., Ltd.  
DRH:dn

NEW 6" DOC. FOR LOCAL AUTHORITIES  
 ADDED TO EXISTING 8" CITY WATER MAIN  
 WITH TAPPING SIEVES + VALVE

TEST #1: 6:24 AM TO 2:30 PM  
 STATIC: 70 PSI  
 RESIDUAL: 25 PSI

TEST #1: (FLOWING)  
 STATIC: 70 PSI  
 FLOWING: 686 GPM @ 14 PSI (PILOT)

EXISTING 8" WATER MAIN  
 (SCH 40 PVC)

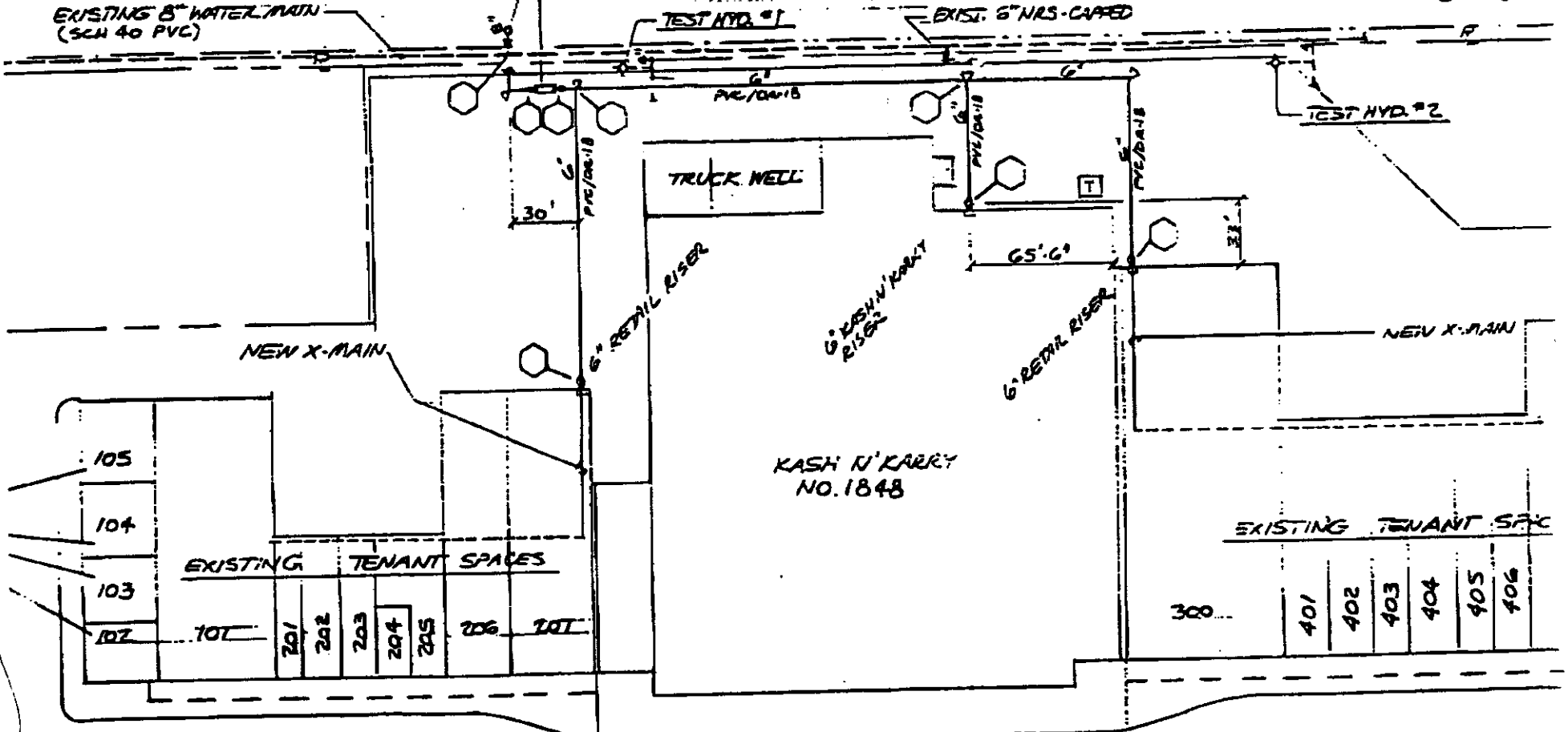
TEST #2: 1:11 PM TO 2:00 PM  
 STATIC: 67 PSI  
 RESIDUAL: 25 PSI

TEST #2: (FLOWING)  
 STATIC: 67 PSI  
 FLOWING: 625 GPM @ 14 PSI (PILOT)

TEST HYD. #1

EXIST. 6" NRS-CAPPED

TEST HYD. #2



EXISTING TENANT SPACES

105	104	103	102	101	201	202	203	204	205	206	207
-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----

EXISTING TENANT SPACE

300	401	402	403	404	405	406
-----	-----	-----	-----	-----	-----	-----

tree  
 US 19

TAYLOR FIRE PROTECTION, INC.

DRAWING 1 OF 1

LAW OFFICES  
**GOZA AND HALL, P.A.**  
28050 U. S. HWY. 19 NORTH  
SUITE 402, CORPORATE SQUARE  
CLEARWATER, FLORIDA 33761-2654  
TELEPHONE (727) 799-2025  
FAX (727) 796-8908

September 24, 1999

Thomas Walden  
Division of Water and Waste Water  
Public Service Commission, State of Florida  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

**RE: HOLIDAY MALL located in HOLIDAY, FLORIDA  
FIRE PROTECTION/WATER SERVICE PROVIDED BY FLORALINO PROPERTIES, INC.**

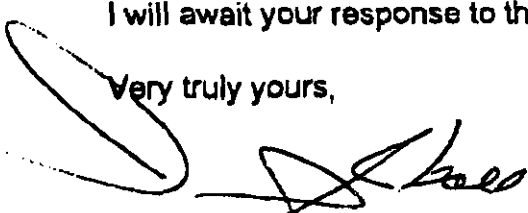
Dear Mr. Walden:

Pursuant to our telephone conversation this week concerning the above captioned matter, enclosed please find the following:

1. Letter received from H2O Utility Services, Inc., the subcontractor of Floralino Properties, Inc.
2. Latest letter received from Taylor Fire Protection, Inc., which disputes the above mentioned letter from H2O Utility Services, Inc.
3. All other correspondence from our file concerning this matter.

I will await your response to this matter at your earliest convenience.

Very truly yours,



Donald R. Hall  
DRH/bb  
enc.'s

STATE OF FLORIDA

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



DIVISION OF WATER & WASTEWATER  
DANIEL M. HOPPE, DIRECTOR  
(850) 413-6900

**Public Service Commission**

September 27, 1999

**RECEIVED**  
SEP 29 1999

Mr. Tony Tubolino, Manager  
Floralino Properties, Inc.  
5147 Marine Parkway, Suite C  
New Port Richey, FL 34652-3525

GOZA and HALL, P.A.

**Re: Inquiry No. 279370W, from Donald Hall, representing Holiday Mall, and fire flow**

Dear Mr. Tubolino:

Mr. Donald Hall, representing Holiday Mall, has written to the Commission requesting assistance in releasing the mall from the certificated territory of Floralino Properties, Inc., who provides water service now. The basis for this request is that a test by Taylor Fire Protection, Inc. of Floralino's water system has shown the water supply is insufficient to provide the needed fire flow to Kash N'Karry Store 1848 in Holiday Mall. A report by Taylor Fire Protection was enclosed, stating that the water supply from Floralino was insufficient for each of the four "K" factors for which tests were conducted. This report is enclosed for your review.

Mr. Hall states in his letter to the Commission that he has written to Floralino several times requesting a release and has not received a response. Pasco County's Utilities Service Branch has been contacted and apparently can provide the service once a release is given by Floralino for this customer.

If Floralino cannot provide the water service needed, a release is the easiest method to use to resolve this inquiry. Other options are available, including a release only for fire protection; upgrading Floralino's supply; or, an interconnect by Floralino with Pasco County, and reselling service to your customer.

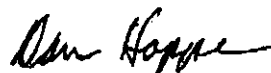
Mr. Tony Tubolino, Manager

Page 2

September 27, 1999

Please reply in writing within fifteen days what the utility's intention is and how quickly the solution can be achieved. If you have any questions, please call Tom Walden on my staff, at 850-413-6950.

Sincerely,



Daniel M. Hoppe  
Director

DMH/tjw

enclosure

cc: ✓ Donald R. Hall, Esquire  
John Williams, Chief, Policy Development  
Tom Walden



October 4, 1999

Mr. Daniel M. Hoppe, Director  
Division of Water and Wastewater  
Public Service Commission  
Capital Circle Office Center  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**RE: Florilino Properties, Inc. (Company Code WU075)  
Fire Service Release for Holiday Mall  
PN: 9821**

Dear Mr. Hoppe:

We are in receipt of your letter dated September 27, 1999 concerning Mr. Donald Hall's, representing Holiday Mall, request to be release from the certificated territory of Florilino Proprieties, Inc. (Certificate No. 153-W). The basis for the request is that fire flow tests showed that the Florilino water system could not provide sufficient fire flow for the improved Holiday Mall fire sprinkler system.

Florilino Properties, Inc. currently provides water and fire protection services to the Holiday Mall and its tenants. Your letter stated that a release only for fire protection is an available option to resolve Mr. Hall's inquiry. As requested by Mr. Hall's July 30, 1999 letter to Mr. Tubolino, Florilino Properties agrees to release the Holiday Mall from the certificated territory for FIRE PROTECTION ONLY.

THE RELEASE FOR FIRE PROTECTION IS GRANTED PROVIDED THAT ALL FEES ASSOCIATED WITH THE RELEASE FROM THE CERTIFICATED TERRITORY, AND ALL COSTS ASSOCIATED WITH THE CONSTRUCTION OF THE NEW FIRE PROTECTION LINE FROM THE PASCO COUNTY WATER SYSTEM, ARE THE SOLE RESPONSIBILITY OF HOLIDAY MALL. IN ADDITION, ALL COSTS ASSOCIATED WITH DISCONNECTING FIRE PROTECTION SERVICES TO THE HOLIDAY MALL FROM THE FLORILINO PROPERTIES WATER SYSTEM MUST BE REIMBURSED BY THE HOLIDAY MALL.

If you have any questions, please feel free to contact me at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicholas Zubillaga".

Nicholas Zubillaga  
Project Engineer

Approved for Transmittal by Anthony Tubolino, President, Florilino Properties, Inc.



Mr. Daniel M. Hoppe  
October 4, 1999  
Page Two

NZ/

CC: Tony Tubolino, Floralino Properties  
Tom Walden, PSC, via facsimile  
Donald Hall, Goza and Hall, via facsimile  
Susan W. Fox, MacFarlane Ferguson & McMullen, via facsimile  
File 9821

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**FLORALINO PROPERTIES, INC.**

5147 MARINE PARKWAY - SUITE C  
NEW PORT RICHEY, FL 34652

---

Phone (727) 843-0064  
Fax (727) 846-7306

October 18, 1999

Ms. Patty Christiansen, Esq.  
Legal Services  
State of Florida  
Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850


RE: Holiday Mall

Dear Ms. Christiansen:

Floralino Properties, Inc. is requesting an amendment to our Tariff whereby Sheet No. 19.0 (Fifteenth Revised Sheet No. 19.0) with regard to Fire Protection and Fire Protection Charge be deleted as of October 18, 1999.

Kindly leave this Sheet blank to be held for future use.

Sincerely,



Anthony Tubolino  
President

AT:lb

cc: Tom Walden  
Donald Hall, Esq.  
Susan Fox, Esq.  
Doug Bramlett

# MACFARLANE FERGUSON & McMULLEN

ATTORNEYS AND COUNSELORS AT LAW

900 HIGHPOINT CENTER  
106 EAST COLLEGE AVENUE  
TALLAHASSEE, FLORIDA 32301  
(850) 681-7381 FAX (850) 681-0281

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P.O. BOX 1531 (ZIP 33601)  
TAMPA, FLORIDA 33602  
(813) 273-4200 FAX (813) 273-4396

625 COURT STREET  
P. O. BOX 1669 (ZIP 33757)  
CLEARWATER, FLORIDA 33756  
(813) 441-8966 FAX (813) 442-8470

IN REPLY REFER TO:

November 24, 1999

Tampa

## VIA TELEFAX AND U.S. MAIL

Patty Christiansen  
Legal Department  
PUBLIC SERVICE COMMISSION  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Re: Ellis & Company, Ltd.'s  
Request for Deletion From Service Area of Floralino Properties, Inc.

Dear Ms. Christiansen:

This will confirm our conversation yesterday in which you advised me that the Commission would not act on Floralino's request for cancellation of its fire protection tariff unless and until Pasco County provides a firm commitment to permanently provide fire protection service.

You advised me that you would contact Floralino to provide notification that their request for cancellation of the fire protection tariff had not been accepted. I am also sending Floralino a copy of this letter, both to Mr. Tubolino directly, and to Nicholas Zubillaga who has been acting as agent for Floralino Properties.

As I explained to you, Ellis & Co., Ltd., has been placed in the untenable position of being unable to obtain adequate fire protection for its Holiday Mall property through the certificated provider, Floralino. Testing for water pressure has demonstrated that Floralino's fire flows were insufficient to meet fire safety codes. In addition, the lines used to supply its fire hydrants did not meet fire safety codes. Pasco County had initially agreed to provide service, and a fire line was built to connect to Pasco County with tap-in fees and impact fees having been paid. On November 10, 1999, when the tap of the water line was scheduled to take place, Pasco County suddenly refused to provide service unless potable water service could also be provided by Pasco County.

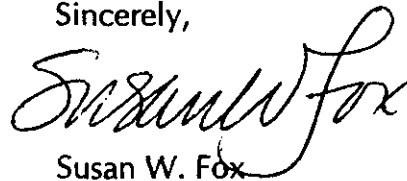
Patty Christiansen  
November 24, 1999  
Page 2

During the past two week, we have explored every avenue for resolving this fire safety crisis. Last night, the Pasco County Commission approved a temporary resolution of providing emergency temporary fire service pursuant to an agreement that still requires Floralino's written consent because the service is in Floralino's certificated area. My client's efforts to contact Floralino during the past two weeks have consistently resulted in no response whatsoever, but we hope that Floralino will respond to this reasonable request.

We do expect to be filing further documents with the PSC in the near future - - an amended petition for deletion of Holiday Mall from Floralino service area, or a request that Floralino be compelled to provide adequate service to the mall.

Thank you for taking the time to talk to me yesterday about this matter.

Sincerely,

A handwritten signature in cursive script that reads "Susan W. Fox". The signature is written in black ink and is positioned above the printed name.

Susan W. Fox

SWF/ce

cc: Anthony Tubolino  
Nicholas Zubillaga

AGREEMENT BETWEEN PASCO COUNTY AND ELLIS & CO., LTD.

THIS AGREEMENT is entered into by and between ELLIS & CO., LTD., a Florida limited partnership, owner of Holiday Mall, Holiday, Florida, (hereinafter referred to as "ELLIS"), and PASCO COUNTY, FLORIDA, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners (hereinafter referred to as "COUNTY").

WITNESSETH:

WHEREAS, ELLIS, owner of the Holiday Mall, has requested COUNTY to provide fire protection water services to Holiday Mall on a temporary emergency basis, since at ELLIS' request Floralino Properties, Inc., a private utility franchise, has released the Holiday Mall from fire protection and there is no present fire protection for the Holiday Mall; and

WHEREAS, although COUNTY did not create the emergency situation, COUNTY is willing to provide fire protection water services to Holiday Mall on a temporary emergency basis under the following terms and conditions.

NOW, THEREFORE, in consideration of the premises set forth hereinabove, the terms of which are incorporated herein, the mutual promises hereinafter set forth, the sufficiency and adequacy of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. COUNTY will provide fire protection water services to Holiday Mall on a temporary emergency basis for a period of twenty-four (24) months. ELLIS agrees to pay COUNTY normal monthly user charge rates as established and amended from time to time by COUNTY. ELLIS shall be responsible to secure and obtain all necessary COUNTY and state permits. ELLIS shall comply with and install all necessary back flow prevention devices and detector check valves as detailed in the County's Utilities Construction Standards Manual.

2. ELLIS represents and warrants that it has received from Floralino Properties, Inc. (Certificate No. 15B-W) a release of the Holiday Mall from Floralino Properties, Inc.'s territory for fire protection water services. A copy of Nicholas Zubillaga's letter on behalf of Floralino Properties, Inc. to Daniel Hoppe of the State of Florida Public Service Commission, dated October 4, 1999, is attached hereto and incorporated herein by reference. ELLIS acknowledges that COUNTY relies upon said representation, warranty and release.

3. ELLIS agrees as a condition precedent to this Agreement, to obtain and provide COUNTY a release by Floralino Properties, Inc. in favor of COUNTY for the COUNTY's providing fire protection water services to Holiday Mall in a form acceptable to the County Attorney.

4. To the fullest extent permitted by law, ELLIS hereby agrees to indemnify, defend, and hold harmless the COUNTY and all of its agents and employees, against and from any claim, loss, damage, cost, charge, or expense, including attorney's fees and costs, arising out of this Agreement.

5. This Agreement shall be binding upon the parties, their respective successors and assigns, and shall inure to the benefit of the parties, their successors and assigns.

6. In case any one or more the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any of the provisions hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, unless such unenforceable provision results in a frustration of the purpose of this Agreement or the failure of consideration.

7. The parties hereby agree that each have played an equal part in the negotiation and drafting of this Agreement, and in the event that any ambiguity should be

realized in the construction or interpretation of this Agreement, the result of such ambiguity shall be equally assumed and realized by each of the parties to this Agreement.

8. This Agreement embodies and constitutes the entire understanding between the parties with respect to the transactions contemplated herein.

9. Neither this Agreement, or any provision hereof, may be waived, modified, amended, discharged, or revoked, except as authorized by law pursuant to an instrument in writing signed by all parties.

10. This Agreement may be executed in multiple counterparts, all of which taken together shall constitute one (1) document.

11. This Agreement shall be governed by and construed by the laws of the State of Florida and venue for any action arising out of or relating to this Agreement shall be in Pasco County, Florida.

12. Each party represents to the other that the party has authority under all applicable laws to enter into this Agreement containing such covenants and provisions as contained in this Agreement.

IN WITNESS WHEREOF, the parties have caused these premises to be executed by their duly authorized representatives on this 23rd day of November, 1999.



ATTEST

(SEAL)

Jed Pittman  
Jed Pittman, Clerk

PASCO COUNTY, FLORIDA, a political  
Subdivision of the State of Florida, Grantor

By: Pat Mulieri

Pat Mulieri, Chairman  
Dated: November 20, 1999

**APPROVED**  
NOV 23 1999

ELLIS & CO., LTD.

By: John F. Pace

JOHN F. PACE  
Print Name

Its: EVP  
Title

STATE OF FLORIDA  
COUNTY OF

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of November, 1999, by John F. Pace, of ELLIS & CO., LTD., a Florida limited partnership, who is personally known to me (or has produced n.a. as identification).



Thomas J. Ehlinger  
Commission # CC 786930  
Expires JAN. 30, 2003  
BONDED 10000  
NOTARY PUBLIC STATE OF FLORIDA

[Signature]  
Printed Name  
Notary Public  
Serial Number (if any):  
My Commission Expires:

APPROVED AS TO LEGAL FORM AND CONTENT  
Office of County Attorney

[Signature]  
ATTORNEY





October 4, 1999

Mr. Daniel M. Hoppe, Director  
Division of Water and Wastewater  
Public Service Commission  
Capital Circle Office Center  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

RE: **Floralino Properties, Inc. (Company Code WU075)**  
**Fire Service Release for Holiday Mall**  
**PN: 9821**

Dear Mr. Hoppe:

We are in receipt of your letter dated September 27, 1999 concerning Mr. Donald Hall's, representing Holiday Mall, request to be release from the certificated territory of Floralino Proprieties, Inc. (Certificate No. 153-W). The basis for the request is that fire flow tests showed that the Florilino water system could not provide sufficient fire flow for the improved Holiday Mall fire sprinkler system.

Floralino Properties, Inc. currently provides water and fire protection services to the Holiday Mall and its tenants. Your letter stated that a release only for fire protection is an available option to resolve Mr. Hall's inquiry. As requested by Mr. Hall's July 30, 1999 letter to Mr. Tubolino, Floralino Properties agrees to release the Holiday Mall from the certificated territory for FIRE PROTECTION ONLY.

**THE RELEASE FOR FIRE PROTECTION IS GRANTED PROVIDED THAT ALL FEES ASSOCIATED WITH THE RELEASE FROM THE CERTIFICATED TERRITORY, AND ALL COSTS ASSOCIATED WITH THE CONSTRUCTION OF THE NEW FIRE PROTECTION LINE FROM THE PASCO COUNTY WATER SYSTEM, ARE THE SOLE RESPONSIBILITY OF HOLIDAY MALL. IN ADDITION, ALL COSTS ASSOCIATED WITH DISCONNECTING FIRE PROTECTION SERVICES TO THE HOLIDAY MALL FROM THE FLORILINO PROPERTIES WATER SYSTEM MUST BE REIMBURSED BY THE HOLIDAY MALL.**

If you have any questions, please feel free to contact me at your convenience.

Sincerely,

Nicholas Zubillaga  
Project Engineer

Approved for Transmittal by Anthony Tubolino, President, Floralino Properties, Inc.

# MACFARLANE FERGUSON & McMULLEN

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CLEARWATER, FLORIDA 33756  
(813) 441-8966 FAX (813) 442-8470

IN REPLY REFER TO:

December 1, 1999

Tampa

Patty Christiansen  
Legal Department  
PUBLIC SERVICE COMMISSION  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Re: Ellis & Company, Ltd.'s  
Request for Deletion From Service Area of Floralino Properties, Inc.

Dear Ms. Christiansen:

This is a clarification of our telephone conference last week. Ellis & Company, Ltd., is requesting the Commission not to act on Floralino Properties, Inc.'s request for deletion of its tariff as to fire safety. Although Ellis may be able to obtain emergency temporary service from Pasco County (assuming the parties come to terms on a temporary agreement), this is still in doubt and the responsibility for providing permanent service remains in dispute. Accordingly, we are asking you to hold the request for deletion of tariff in abeyance until this entire issue can be resolved. As explained in my prior letter, we do expect to be filing an Amended Petition in the near future that will address this issue.

Sincerely,



Susan W. Fox

SWF/ce

cc: Anthony Tubolino  
Nicholas Zubillaga

WATER TARIFF

FLORALINO PROPERTIES, INC.  
NAME OF COMPANY

FILED WITH  
FLORIDA PUBLIC SERVICE COMMISSION

NAME OF COMPANY: FLORALINO PROPERTIES, INC.

WATER TARIFF

FIRE PROTECTION CHARGE

RATE SCHEDULE FP

AVAILABILITY - Available throughout the area served by the Company.

APPLICABILITY - For Holiday Mall

LIMITATIONS - Subject to all of the Rules and Regulations of this tariff and General Rules and Regulations of the Commission.

BILLING PERIOD - Monthly

RATE - Monthly Charge per Hydrant \$15.70

MINIMUM CHARGE - \$15.70 per hydrant per month.

TERMS OF PAYMENT - Bills are due and payable when rendered and become delinquent if not paid within twenty (20) days. After five (5) working days written notice is mailed to the customer separate and apart from any other bill, service may then be discontinued.

EFFECTIVE DATE - May 16, 1999 Anthony Tubolino  
ISSUING OFFICER

TYPE OF FILING - 1998 Price Index President  
TITLE

NAME OF COMPANY Floralino Properties, Inc.  
WATER TARIFF

TERRITORY SERVED

CERTIFICATE NUMBER: 153-W

COMMISSION ORDER(s) APPROVING TERRITORY DESCRIPTION:

<u>ORDER NUMBER</u>	<u>DOCKET NUMBER</u>	<u>DATE ISSUED</u>	<u>TYPE</u>
5846	73135-W	September 11, 1973	ORIGINAL