

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Emergency Petition by D.R. Horton Custom Homes, Inc. to eliminate authority of Southlake Utilities, Inc. to collect service availability charges and AFPI charges in Lake County
In re: Complaint by D.R. Horton Custom Homes, Inc. against Southlake Utilities, Inc. In Lake County regarding collection of Certain AFPI

DOCKET NO. 981609-WS

DOCKET NO. 980992-WS

FILED: May 7, 2001

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JOINT MOTION FOR APPROVAL AND ADOPTION OF SETTLEMENT AGREEMENT

Pursuant to Rule 28-106.204, Florida Administrative Code ("FAC"), Southlake Utilities, Inc. ("Southlake"), and D. R. Horton Custom Homes, Inc., ("Horton"), by and through the undersigned attorneys, hereby jointly move the Florida Public Service Commission to approve and adopt the Settlement Agreement attached to this Motion, and as grounds therefore, state as follows:

- 1. A hearing before the Commission on the matters in these dockets is scheduled for August 24, 2001.
2. The parties have completed a negotiated settlement

ASP ___ of their dispute which addresses the concerns of the
CAF ___
CMP ___
COM 3 ___ respective parties, including, but not limited to, the
CTR ___ amount of refunds. An original of the Settlement Agreement
EGR ___
LEG 4 ___ by and between Southlake and Horton is attached to this
OPC ___
PAI ___
RGO ___ Motion.
SEC 1 ___
SER ___
OTH 1 ___

DOCUMENT NUMBER-DATE
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FPSC-RECORDS/REPORTING

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3. Settlements of disputes are favored under Florida law.

4. The approval and adoption of this Settlement Agreement by the Florida Public Service Commission will result in resolution which is factually accurate, fair, just, and reasonable for all entities, including all developers in Southlake's service area, and is in the public interest.

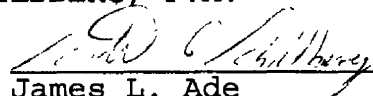
5. The settlement will result in the resolution of this matter and avoid a substantial expenditure of unnecessary time and expense for the Florida Public Service Commission and the parties.

6. WHEREFORE, Southside and Horton move the Florida Public Service Commission to approve and adopt the Settlement Agreement.

Respectfully submitted this 7th day of May 2001.

ADE & SCHILDBERG, P.A.

By:


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Attorneys for D. R. Horton
Custom Homes, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of the Joint Motion for Approval and Adoption of Settlement Agreement have been furnished by hand delivery, this 7th day of May 2001, to Blanca Bayo, Director, Department of Records and Reporting, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and a copy of the foregoing has been furnished to Rosanne Gervasi and Samantha Cibula, Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850 by hand delivery, and a copy of the foregoing has been furnished to F. Marshall Deterding, Rose, Sundstrom & Bentley, LLP, 2548 Blaiirstone Pines Drive, Tallahassee, Florida 32301 by hand delivery this 7th day of May 2001, and a copy of the foregoing has been furnished by hand delivery to F. Marshall Deterding, Esquire, Rose, Sundstrom & Bentley, LLP, 1548 Blaiirstone Pines Drive, Tallahassee, Florida 32301, and a copy of the foregoing has been furnished to James L. Ade and Scott G. Schildberg, One Independent Drive, Suite 2000, Jacksonville, Florida 32202, by Federal Express overnight delivery this 7th day of May 2001.

Scott G. Schildberg

Attorney

SETTLEMENT AGREEMENT

This Settlement Agreement ("Settlement Agreement") is entered into this 7th day of May, 2001, by and between D. R. Horton Custom Homes, Inc., a Delaware corporation, ("Horton"), and Southlake Utilities, Inc., a Florida corporation, ("Southlake").

WHEREAS, Southlake provides water and wastewater service in Lake County, Florida, pursuant to Florida Public Service Commission ("Commission") Certificate Nos. 533-W and 464-S; and

WHEREAS, Horton developed property in Southlake's certificated service area and paid service availability charges and Allowance for Funds Prudently Invested ("AFPI") charges to Southlake for Horton's developments; and

WHEREAS, a dispute subsequently arose over the amounts of Southlake's service availability charges and AFPI charges, and Horton filed the following two actions with the Commission: (1) a Complaint by D. R. Horton Custom Homes, Inc. against Southlake Utilities, Inc. in Lake County regarding collection of certain AFPI charges, Docket No. 980992-WS; and (2) an Emergency Petition by D.R. Horton Custom Homes, Inc. to eliminate authority of Southlake Utilities, Inc. to collect service availability charges and AFPI charges in Lake County, Docket No. 981609-WS; and

WHEREAS, the Commission initiated an investigation into Southlake's service availability charges and AFPI charges in Docket No. 981609-WS; and

WHEREAS, the parties have conducted extensive and costly investigations, including Southlake's employing highly qualified consultants who audited Southlake's records, performed analysis of the upcoming growth in Southlake's service area, reviewed the plant capacities and associated costs needed to satisfy the future demands for service in Southlake's service area, and determined the appropriate service availability charges, levels of contributions-in-aid-of-construction ("CIAC"), the amounts of refunds, and the identities of the recipients of refunds; and

WHEREAS, the parties believe that they have reached an accurate and correct resolution of this matter for Horton, all other developers in Southlake's service area, Southlake, and the Commission; and that the terms of this Settlement Agreement will result in a resolution which is factually accurate, fair, just, and reasonable for all entities, including all other developers in Southlake's service area; and

WHEREAS, the parties to this Settlement Agreement desire to compromise and settle the issues in these two dockets, rather than incur the expense and uncertainty of the outcome.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. AFPI Refunds. The parties have determined that a fair, just, and reasonable amount of refunds of AFPI charges to all developers in order to resolve the dispute is a total of \$403,614.79, as set forth on Exhibit A. Southlake shall make refunds of AFPI charges totaling \$403,614.79. The \$403,614.79 shall be the maximum amount of refunds of AFPI charges, including true up charges and interest, to be made by Southlake. The amounts to be refunded to each developer are set forth on Exhibit A. Only the developers listed on Exhibit A are entitled to AFPI refunds and only in the amounts set forth on Exhibit A. Specifically, as set forth on Exhibit A, Southlake shall make an AFPI refund of \$41,530.64 to Horton, and Horton acknowledges that such refund is a fair amount.

2. Service Availability Charge Refunds. Southlake has properly collected the service availability charges authorized by the Commission in Order No. 24564 and directed by the Commission in Order No. PSC-99-0027-PCO-WS to be collected subject to refund; provided, however, that the entities set forth on Exhibit B have not paid their full plant capacity charges and have an amount outstanding as set forth on Exhibit B. As a result of the investigations by the parties and consistent with the Staff's analysis, the parties have determined that Southlake's service availability charges should not be reduced and, accordingly, that it is neither appropriate nor correct to have any refunds of

service availability charges made. Southlake shall make no refunds of CIAC, including no refunds of service availability charges, to anyone, including Horton. Southlake shall make no reassessments of plant capacity charges pursuant to Water Tariff Sheet No. 31.0 and Wastewater Tariff Sheet No. 28.0 for structures existing on the date hereof. In the event that the entities listed on Exhibit B have not paid the outstanding amounts listed on Exhibit B at the time for the AFPI Refund, their respective AFPI Refunds shall be reduced by their respective outstanding plant capacity charge.

3. Plant Capacity Charges.

a. Charges from December 15, 1998, through the Effective Date. From December 15, 1998, through the Effective Date, as hereinafter defined, as authorized in Order No. 24564, Southlake's water plant capacity charges will be \$420.00 per equivalent residential connection ("ERC") or \$1.20 per gallon per day ("GPD") and Southlake's wastewater plant capacity charge will be \$775.00 per ERC or \$2.58 per GPD.

b. Charges following the Effective Date. As a result of the extensive investigation by all parties, the parties have determined that Southlake's plant capacity charges must be increased in order for Southlake's net CIAC to reach seventy-five percent (75%) of net plant at system buildout and that until the next proceeding

addressing the reserved issues as set forth in paragraph 10 of this Settlement Agreement, it is appropriate for Southlake to charge and collect a water plant capacity charge of \$433.00 per ERC and a wastewater plant capacity charge of \$970.00 per ERC. Until changed by the Commission in a future proceeding and following the Effective Date, Southlake's water plant capacity charge will be \$433.00 per ERC or \$1.24 per GPD, and Southlake's wastewater plant capacity charge will be \$970.00 per ERC or \$3.23 per GPD. The Commission's investigation of Southlake's service availability charges and AFPI charges shall be completed with its approval of this Settlement Agreement and confirmation that the terms of this Settlement Agreement have been completed.

c. GPD per ERC Factors. The water plant capacity charge is based upon an average day design of 350 GPD per ERC. The wastewater plant capacity charge is based upon an average day design of 300 GPD per ERC.

4. Penalties. Southlake has incurred extensive costs in this matter which are disproportionate to its size and financial condition and has prepared and provided an in-depth analysis of its service availability charges and AFPI charges. Southlake has cooperated with the parties and the Staff in a collective effort to determine the correct level of charges and refunds and to reach a

fair, just, and reasonable result. Southlake did not intend to violate Commission orders and acted in good faith to try to provide security for the potential refund. The customers of Southlake will be better served if their small utility company's assets are not depleted to pay penalties and can instead be used to support and enhance Southlake's provision of service. It is not appropriate for Southlake to pay any penalties in this matter and Southlake shall not pay any penalties in these dockets.

5. Application for Transfer. An Application for Transfer of Majority Organizational Control of Southlake, Docket No. 010507-WS ("Transfer Application") has been filed with the Commission. This Settlement Agreement is contingent upon the approval by the Commission of the Transfer Application. If the Commission does not approve the Transfer Application, then this Settlement Agreement shall become null and void and all parties released from any and all duties and rights hereunder.

7. Decision by the Commission. This Settlement Agreement is contingent upon the approval by the Commission of this Settlement Agreement in its entirety in its present form and without modification. In the event that the Settlement Agreement is not so approved without modification, it shall become null and void and all parties released from any and all duties and rights hereunder. This Settlement Agreement shall also become null and void if the Commission has not voted to approve this Settlement

Agreement without modification on or before May 31, 2001, and all parties released from any and all duties and rights hereunder.

7. Effective Date. The Effective Date for this Settlement Agreement is defined as the last to occur of the following: (1) the date of expiration of all appeals and protests of the Commission Order adopting this Settlement Agreement; and (2) the date of the expiration of all appeals and protests of the Commission Order approving the Transfer Application.

8. Date of Refund and Interest. The amount of the AFPI refunds shall be set as of the Effective Date and interest on the AFPI refunds shall commence accruing thirty (30) days after the Effective Date. The rate of the interest shall be as set forth in Rule 25-30.360, Florida Administrative Code. Southlake shall provide the refunds in exchange for and conditioned upon receipt of releases within ninety (90) days of the Effective Date.

9. Tariff Sheets. Southlake's tariff sheets shall not be revised in a manner which requires Southlake to make refunds of service availability charges based upon lower than anticipated water and wastewater usage.

10. Other Issues. Determination of all other issues not resolved by this Settlement Agreement, including but not limited to, the time when the plant sites were placed into service, the internal company costs (not contributed) related to mains installed or contributed by developers, the appropriate land balances for

Southlake, the levels of CIAC as of December 31, 1998, the reclassification of the unpaid AFPI refund to the Southlake Community Foundation from CIAC to equity, and the net book value of Southlake's systems as of December 31, 1998, shall be reserved and may be raised in future Commission proceedings.

11. Releases. All developers receiving an AFPI refund must execute a release in the form attached as Exhibit C prior to or contemporaneous with its receipt of said refunds; and as a condition to same.

12. Withdrawal of Complaint and Petition. Within ten (10) days of the Effective Date and concurrent with receiving its refund, Horton shall withdraw its complaint and petition with prejudice except as to all issues reserved in paragraph 10 of this Settlement Agreement.

13. Costs. Horton has incurred significant expenses in order to reach this settlement, which effort has benefited the other developers in Southlake's service area, and in order to reach an accurate fair, just, and reasonable resolution of this matter. Accordingly, Southlake agrees to reimburse Horton \$66,500.00 of Horton's costs, which includes Horton's attorneys' fees in these dockets. Except for this \$66,500.00, each party hereto shall bear its own costs and expenses relating to the matters contemplated in this Settlement Agreement including, without limitation, costs and expenses of its respective counsel.

14. No Other Consideration. The hereinabove recited consideration is the full, complete and entire consideration for this Settlement Agreement, and there is no agreement, oral or written, expressed or implied, whereby Horton is to receive at any time or in any event or upon the happening of any contingency or upon the development or discovery of any fact, circumstance or condition any further consideration of any kind whatsoever.

15. Non Admission. It is understood and agreed that this Settlement Agreement is a complete and final compromise of doubtful and disputed claims and that it is intended to avoid further litigation. This Settlement Agreement shall in no way be construed as an admission or acknowledgment of any type of liability or responsibility on the part of any party, and liability for any amount(s) paid is expressly denied.

17. Entire Agreement. This Settlement Agreement sets forth the entire agreement between the parties hereto. There is no part of the agreement between them regarding the premises which is not fully, completely, accurately and truly set forth herein.

17. Waiver or Modification. No waiver or modification of any term or condition of this Settlement Agreement shall be valid or binding unless in writing and executed by each of the parties hereto.

18. Authority to Sign. The signatories of this Settlement Agreement expressly warrant that they have the authority to enter

into this Settlement Agreement, that they understand the purport, tenor and effect of this Settlement Agreement and voluntarily place their signature hereto.

19. Additional Documents. The parties agree to execute any and all additional documentation necessary or desirable to effectuate this Settlement Agreement.

20. Non-Severability. If any one or more of the provisions of this Settlement Agreement is held invalid, then this entire Settlement Agreement shall become null and void.

IN WITNESS WHEREOF, the undersigned have executed this Settlement Agreement this 7th day of May, 2001.

Signed, sealed, and delivered

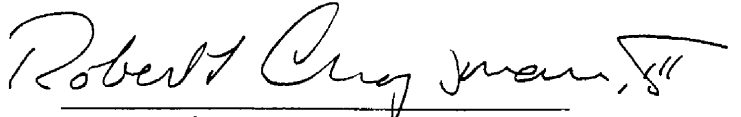
SOUTHLAKE UTILITIES, INC.

in the presence of:





Witnesses as to
Robert L. Chapman, III,
President



By: Robert L. Chapman, III
Its President

"SOUTHLAKE"

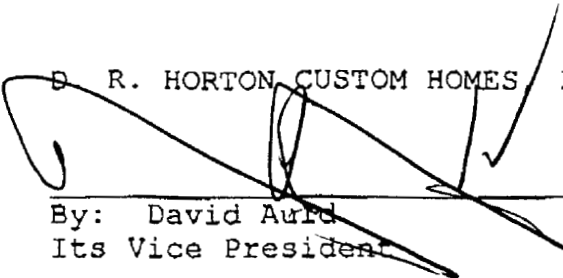
Signed, sealed, and delivered
in the presence of:

David Auld

David Moss

Witnesses as to David Auld
Vice President

D. R. HORTON CUSTOM HOMES INC.


By: David Auld
Its Vice President

"D. R. HORTON"

	AFPI		Total
	Water	Wastewater	
Summer Bay	\$30,455.08	\$2,275.22	\$32,730.31
Horton / Woodridge	\$35,141.36	\$28,417.28	\$61,558.64
Horton / Clear Crk	\$4,405.85	(\$24,433.85)	(\$20,028.00)
Jones / Stratford	\$39,988.32	\$59,936.37	\$99,902.69
Woodridge	\$534.31	\$34,546.19	\$35,080.50
Macchi	\$76.55	\$392.35	\$468.90
Ware Oil	\$2,572.92	\$1,858.83	\$4,431.75
Miller Bros	(\$550.39)	\$4,530.45	\$3,980.06
Winn Dixie	(\$713.96)	\$9,591.58	\$8,877.62
Worthwhile	\$3,273.32	\$112,089.44	\$120,362.76
Publix	\$4,650.98	\$39,281.30	\$43,932.28
Spur Station	\$397.72	\$3,087.49	\$3,485.21
First Federal	\$272.57	\$1,821.90	\$2,094.47
Colonay Homes	\$478.72	\$6,258.88	\$6,737.60
TOTAL	\$125,961.36	\$277,653.43	\$403,614.79

Outstanding Plant Capacity
Charges for Connections Made
As of March 31, 2001

<u>Development</u>	<u>Unpaid Water Plant Capacity Charges - Amount</u>	<u>Unpaid Wastewater Plant Capacity Charges - Amount</u>
Summer Bay	\$10,646.40	\$29,284.67
Wooldridge*	\$ 4,200.00	

*Wooldridge has paid \$8,525.00 in wastewater plant capacity charges for connections not made as of March 31, 2001.

EXHIBIT B

RELEASE

_____, a _____ corporation (the "first party"), for and in consideration of the sum of Ten Dollars (\$10.00) and the settlement and compromise of certain claims and other valuable considerations, received from or on behalf of Southlake Utilities, Inc., a Florida corporation (the "second party"), the receipt and sufficiency whereof are hereby acknowledged, (wherever used herein the terms "first party" and "second party" shall include singular and plural heirs, legal representatives, the assigns of individuals, subsidiaries and the successors and assigns of corporations, wherever the context so admits or requires),

HEREBY remises, releases, acquits, satisfies, and forever discharges the second party and the current, former, and future owners, operators, officers, directors, employees, representatives, attorneys, consultants, and agents of the second party from any and all manner of obligations, action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which the first party ever had, now has or which the first party and any personal representative, successor, heir or assign of the first party hereafter can, shall or may have, against the second party or the current, former, and future owners, operators, officers, directors, employees, representatives, attorneys, consultants, and agents of the second party, for, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the date of this Release, for any and all claims which were or which could relate to service availability charges, Allowance for Funds Prudently Invested Charges, Contributions-In-Aid-Of-Construction, guaranteed revenue charges, and Docket Nos. 980992-WS and 981609-WS before the Florida Public Service Commission.

Dated: _____, 2001

By: _____
Its _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing Release was acknowledged before me this ____ day
of _____, 2001, by _____ . He/she

- () is personally known to me;
- () produced _____ Driver License No. _____ as
identification; or
- () has produced _____ as
identification.

Notary Public
State of Florida
Commission number: _____
My commission expires: _____