

ORIGINAL

State of Florida



Public Service Commission
-M-E-M-O-R-A-N-D-U-M-

COMMISSION
CLERK

03 JUL 11 AM 11:40

RECEIVED FPSC

DATE: July 11, 2003
TO: Division of the Commission Clerk and Administrative Services
FROM: Rosanne Gervasi - Office of the General Counsel - Economic Regulation Section
RE: Item 5 on 7/15/03 Agenda - Attachments A and B for Recommendation filed on 7/2/03 in Dockets Nos. 981079-SU and 020254-SU, concerning Hudson Utilities, Inc.

Attached to this memorandum are Attachments A and B, which should have been attached to the above-referenced recommendation. Attachment A is Hudson Utilities, Inc.'s Motion for Extension of Time to File Proof of Transfer of Territory and Exhibit 1 attached thereto, which is an unexecuted Commitment Letter from Lender's Republic Bank, United Bank, and W. R. H. Mortgage, Inc. (lenders). Attachment B is a copy of revised Exhibit 1, the fully executed Commitment Letter from the lenders, and a Term Sheet guaranteeing the terms of the loan.

RG/jb

DOCUMENT NUMBER DATE

06153 JUL 11 8

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for amendment)
of Certificate No. 104-S to extend)
service territory in Pasco County by)
Hudson Utilities, Inc., and request for)
limited proceeding.)
_____)

Docket No. 981079-SU

Filed: June 13, 2003

**MOTION FOR EXTENSION OF TIME
TO FILE PROOF OF TRANSFER OF TERRITORY**

Hudson Utilities, inc. ("Hudson"), by and through its undersigned attorneys, and pursuant to Rule 28-106.303, Florida Administrative Code, moves for an order granting an extension of time to file proof of the transfer of the Signal Cove territory from Pasco County to Hudson pursuant to Order No. PSC-99-1916, PAA-SU, and as grounds therefor states:

1. In Order No. PSC-99-1916-PAA-SU, issued September 27, 1999, the Commission granted Hudson's application amendment of Certificate No. 104-S to add territory in Pasco County, including an area known as the Signal Cove Subdivision ("Signal Cove"). The Order directed Hudson to "... file proof of the transfer of [the Signal Cove] territory from Pasco County to Hudson Utilities...".

2. Hudson is a Class B Utility serving approximately 2,300 residential and 115 commercial customers in Pasco County. Hudson provides wastewater collection service and contracts with Pasco County for wastewater treatment service. Signal Cove is adjacent to the southern boundary of Hudson's wastewater collection system. The subdivision includes approximately 382 existing buildings, approximately 131 of which are connected to wastewater

DOCUMENT NUMBER DATE
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FPSC-COMMISSION CLERK

collection facilities currently owned and operated by Pasco County. The remaining buildings in the subdivision are on septic tanks.

3. Signal Cove is located in an area of Pasco County which has been federally designated as a flood plain area unsuitable for the efficient use of septic tanks and drain fields. The comprehensive land use plan adopted by Pasco County pursuant to Chapter 380, Florida Statutes, calls for coastal areas including Signal Cove to be provided with sanitary sewer collection and treatment systems. Pasco County, however, does not generally provide such wastewater collection facilities. Prior to the opening of the instant docket, the Signal Cove Homeowners, including residents of the buildings currently receiving wastewater collection service as customers of Pasco County unanimously voted for and signed a petition expressing their support of a proposal to request Pasco County to approve the transfer of the Signal Cove territory to Hudson. By an "Addendum to Bulk Wastewater Treatment Agreement with Hudson Utilities" (the "Agreement") it was agreed that the Signal Cove territory would be transferred to Hudson "... at such time as [Hudson] connects its force main to the wastewater collection system presently serving the existing county customers." Thus, under the Agreement, the timing of the transfer is dependent upon completion of construction by Hudson of an additional collection system and force main to serve the remaining buildings in Signal Cove that are currently on septic tanks.

4. Hudson fully intends to complete the construction of necessary to satisfy the Agreement and finalize the transfer of Signal Cove. By way of historical background, Hudson requested and has been granted previous extensions of time to file proof of the transfer of the Signal Cove territory. Hudson has always recognized the need for commercial financing to construct the facilities for Signal Cove and the Commission granted extensions of time to allow Hudson to secure

the financing. Unfortunately, it became abundantly clear that Hudson could not be approved for the commercial financing necessary to the Signal Cove project without an increase in Hudson's service availability charges. Therefore, on March 19, 2002, Hudson filed an Application for Increase of Service Availability Charges to assist in the securing of financing. In Order No. PSC-02-1626-PAA-SU (the "Order") issued November 25, 2002, the Commission granted Hudson's request to increase its service availability charges in order to allow Hudson to secure the necessary financing for the completion of Signal Cove.

5. Pursuant to a prior Order (Order No. PSC-02-1166-PCO-SU, issued August 26, 2002), Hudson, on September 18, 2002, filed a projected timetable for the completion of the transfer of the Signal Cove territory. Hudson indicated to the Commission that it expected that commercial financing would be obtained approximately 60 days after the Order becomes final. Upon approval by the Commission of the requested service availability charge increase, Hudson continued its diligent efforts to secure commercial financing for the construction of the facilities. Based upon Hudson's good faith estimate that commercial financing would be obtained approximately 60 days after the Order, the Commission ordered Hudson to complete construction of the Signal Cove area by June 30, 2003.

6. Hudson has, at all times, been vigilant in seeking commercial financing. Unfortunately, despite Hudson's good faith estimate that the financing would be secured within approximately 60 days of the Order, Hudson was unable to secure a firm financial commitment from commercial lenders until June 12, 2003.

7. On June 12, 2003, Hudson received from W.R.H. Mortgage, Inc. a commitment letter from Lender's Republic Bank, United Bank and W.R.H. Mortgage, Inc., that effectively grants

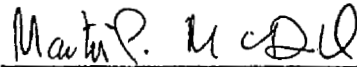
Hudson the financing necessary to complete the Signal Cove project (the "Commitment"). Attached hereto as Exhibit 1. The above banks and W.R.H. Mortgage have agreed to reduce the interest rate Hudson currently owes on two existing loans and issue a new construction loan. The commitment to renew and extend the existing loans expires on July 25, 2003, or if the loan does not close by August 11, 2003. Additionally, according to the commitment, the closing of the loans contemplated are conditioned upon the Public Service Commission granting Hudson Utilities, Inc. an eight month extension to complete the construction necessary to serve the Signal Cove subdivision with additional extensions of time available to accommodate any avoidable construction delays. (See Commitment page 3).

8. Hudson has contacted the Office of Public Counsel ("OPC") to determine whether OPC objects to this Motion for Extension of Time. OPC has not yet advised the undersigned whether it objects to this Motion for Extension of Time.

9. For the foregoing reasons, Hudson Utilities respectfully requests that the Commission grant an eight month extension to Hudson to allow for the construction of the Signal Cove subdivision, with potential additional extensions of time available to accommodate any avoidable construction delays, and further requests that the Commission not issue a Rule to Show Cause Order as Hudson is maintaining its diligence in filing proof of the transfer of the Signal Cove territory.

DATE: JULY 2, 2003

Respectfully submitted,



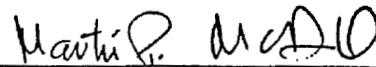
Kenneth A. Hoffman, Esq.
Martin P. McDonnell, Esq.
Rutledge, Ecenia, Purnell & Hoffman, P.A.
P. O. Box 551
Tallahassee, FL 32302
(850) 681-6788
Counsel for *Hudson Utilities, Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by United States Mail to the following this 13th day of June, 2003.

Samantha Cibula, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 370
Tallahassee, Florida 32399

Jack Shreve, Esq.
Steve Presnell, Esq.
Office of Public Counsel
111 West Madison Street
Room 812
Tallahassee, Florida 32399-1400



Martin P. McDonnell, Esq.

Hudson\motionforextension

June 12, 2003

Robert Bammann, President
Hudson Utilities, Inc.
d/b/a/ Hudson Bay Company
14832 U.S. Highway 19, Suite 6
Hudson, FL 34667

RE: RENEWAL & EXTENSION OF SENIOR LOAN
NEW CONSTRUCTION LOAN
RENEWAL & EXTENSION OF SUBORDINATE LOAN

Dear Mr. Bammann:

We are pleased to notify you that Republic Bank, a Florida banking corporation ("Republic") and its participant lender ("United Bank") (Republic and United Bank shall be known collectively as the Senior Lender) and WRH Mortgage, Inc. ("Subordinate Lender" and "Construction Lender") have approved your request for the renewal and extension of the above-referenced Senior and Subordinate Loans as well as a new Construction Loan to be used for the expansion of your wastewater system. Additional terms of these loans are outlined as follows:

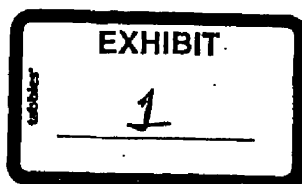
Senior Loan Amount: The amount of the Senior Loan shall equal the outstanding balance of the existing senior loan between Hudson Utilities, Inc. and Republic Bank at the time of the closing of the loan or approximately \$3,804,108.94. ("Senior Loan").

Construction Loan Amount: The outstanding amount of the new Construction Loan shall not exceed \$1,800,000. The permitted uses and other general terms of this loan are summarized in the Term Sheet attached hereto.

Subordinate Loan Amount: The amount of the Subordinate Loan shall equal the outstanding balance of the existing subordinate loan between Hudson Utilities, Inc. and WRH Mortgage, Inc. or approximately \$600,000. ("Subordinate Loan").

Additional Terms & Conditions: All other terms, conditions and covenants detailed in the existing Loan Documents (including Guaranties) shall continue under the renewed and extended Senior and Subordinate Loans and shall be expanded to apply to the new Construction Loan, subject to modifications necessary to reflect the changes indicated in the Term Sheet attached hereto.

Loan Documents: The general form of the existing loan documents shall be used but will be edited to conform to the terms summarized in the attached Term Sheet as well as to incorporate any other modifications that are deemed appropriate and are acceptable to all parties to the transaction.



Loan Closing: The Closing of the Loans contemplated herein are conditioned upon:

1. Action by the Public Service Commission granting Hudson Utilities, Inc. an 8-month extension to complete the sewer system improvements to the Signal Cove Subdivision (Phase I of the planned expansion), with additional extensions of time available to accommodate any unavoidable construction delays.
2. Opinion letter from Borrower's attorney affirming Hudson Utilities' legitimate franchise rights to the service area that includes the Signal Cove Subdivision and the Sea Pines Subdivision (Phases I and III of the planned expansion).
3. Delivery of copies of the certificate of authorization and the tariff that officially document the Borrower's franchise rights and franchise areas.
4. Opinion letter from Borrower's attorney affirming Hudson Utilities' legitimate rights to serve and collect service fees from those customers within the Signal Cove Subdivision that are presently served by Pasco County, including rights to assume ownership of the sewer infrastructure (including easement rights) presently used by Pasco County to serve those customers.
5. Further requirements as may be recommended by legal counsel.

Distribution of Cash Flow: The cash flows from the operation of the sewer system shall be applied as outlined below.

1. Net Operating Revenue includes ordinary operating revenue less ordinary operating expenses. Ordinary operating revenue includes all revenue from the operation of the sewer system, excluding lump-sum impact fees and principal and interest payments associated with impact fee promissory notes. Ordinary operating expenses include those expenses incurred in connection with the normal operation of the sewer system and exclude capital costs incurred to expand the sewer system and debt service. Net Operating Revenue shall be distributed in the following priority:
 - a. First, to scheduled principal and interest payable under the terms of the Senior Note, but excluding accelerated amortization available under the terms of the Senior Note;
 - b. Second, to interest payable under the terms of the Construction Note.
 - c. Third, to scheduled principal and interest payable under the terms of the Subordinate Note but excluding accelerated amortization available under the terms of the Subordinate Note;
 - d. Fourth, to fund the Repair and Replacement Account up to a balance of \$150,0000;
 - e. Fifth, 100% of all cash flow remaining after funding items (a) through (d) shall be applied to reduce the outstanding principal due under the Construction Note until the debt is retired;
 - f. Sixth, 100% of all cash flow remaining after funding items (a) through (e) shall be applied to reduce the outstanding principal due under the Senior Note until the debt is retired.
2. Impact fees include lump-sum cash payments of impact fees as well as principal and interest payments associated with impact fee promissory notes. Impact Fees shall be distributed in the following priority:
 - a. First, to any shortfall that may exist in the payment of scheduled principal and interest due under the terms of the Senior Note after applying available Net Operating Revenue, but excluding accelerated amortization available under the terms of the Senior Note;

DATE: JULY 2, 2003

- b. Second, to fund construction costs associated with Phase I and Phase III of the System plus emergency renewals and replacements, if needed;
- c. Third, 100% of all remaining Impact Fees shall be applied to reduce the outstanding principal due under the Construction Note until the debt is retired;
- d. Fourth, to any shortfall that may exist in the payment of scheduled principal and interest due under the terms of the Subordinate Note after applying available Net Operating Revenue;
- e. Fifth, to reduce the outstanding principal due under the Senior Note until the debt is retired.

Representations and Warranties: Hudson Utilities, Inc. and the Guarantors under the existing Senior and Subordinate Loans hereby reaffirm all of the representations and warranties given in conjunction with the original Loan Agreement dated May 7, 1997 and as subsequently modified and ratified on September 2, 2002.

Fees and Expenses: Hudson Utilities, Inc. shall be responsible for paying all reasonable transaction expenses (including legal fees) in addition to the various extension and placement fees detailed in attached Term Sheet.

Commitment Expiration Date: This commitment to renew and extend the existing Senior and Subordinate will expire on July 25, 2003, if not accepted in writing by that date, or if the Loan does not close by August 11, 2003, unless otherwise extended in writing.

Unless provided in the Loan documents, the provisions contained herein will survive the closing of the Loan. This commitment is not intended to be all-inclusive, and other terms and conditions will be included in the Loan and security documents.

Lender shall be under no obligation to fund this commitment should there be any material adverse change in the Borrower's position, or if it is determined that Borrower has failed to provide Lender material information. In the event of any of these contingencies, Lender shall have no further liability under this commitment.

It is understood and agreed that this commitment cannot be sold, transferred or assigned to any person, partnership, or other entity without the express written consent of Lender. This commitment will survive the Loan closing and any subsequent agreements between the parties unless otherwise agreed in writing.

Sincerely,

REPUBLIC BANK, A Florida Corporation
("Senior Lender")

By: _____
Brigitta A. Lawton
Title: _____

UNITED BANK, A Florida Corporation
("Senior Lender")

By: _____
Cathy P. Swanson
Senior Vice President

WRH Mortgage, Inc., A Florida Corporation
("Subordinate and Construction Lender")

By: _____
William R. Hough
Chairman

Accepted and Agreed to this _____ day of June, 2003.

Hudson Utilities, Inc., a Florida Corporation
d/b/a Hudson Bay Company ("Borrower")

By: _____
Robert Bammann
President

Accepted and Agreed to this _____ day of June, 2003.

Guarantors

Robert Bammann, Individually

Charles E. Griffin, Individually

Mathew S. Griffin, Individually

Edith D. Griffin, Individually

June 12, 2003

Robert Bammann, President
Hudson Utilities, Inc.
d/b/a/ Hudson Bay Company
14832 U.S. Highway 19, Suite 6
Hudson, FL 34667

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NEW CONSTRUCTION LOAN
RENEWAL & EXTENSION OF SUBORDINATE LOAN

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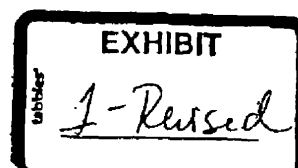
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4. Opinion letter from Borrower's attorney affirming Hudson Utilities' legitimate rights to serve and collect service fees from those customers within the Signal Cove Subdivision that are presently served by Pasco County, including rights to assume ownership of the sewer infrastructure (including easement rights) presently used by Pasco County to serve those customers.
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 - b. Second, to interest payable under the terms of the Construction Note.
 - c. Third, to scheduled principal and interest payable under the terms of the Subordinate Note but excluding accelerated amortization available under the terms of the Subordinate Note;
 - d. Fourth, to fund the Repair and Replacement Account up to a balance of \$150,0000;
 - e. Fifth, 100% of all cash flow remaining after funding items (a) through (d) shall be applied to reduce the outstanding principal due under the Construction Note until the debt is retired;
 - f. Sixth, 100% of all cash flow remaining after funding items (a) through (e) shall be applied to reduce the outstanding principal due under the Senior Note until the debt is retired.
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 - a. First, to any shortfall that may exist in the payment of scheduled principal and interest due under the terms of the Senior Note after applying available Net

- Operating Revenue, but excluding accelerated amortization available under the terms of the Senior Note;
- b. Second, to fund construction costs associated with Phase I and Phase III of the System plus emergency renewals and replacements, if needed;
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 - d. Fourth, to any shortfall that may exist in the payment of scheduled principal and interest due under the terms of the Subordinate Note after applying available Net Operating Revenue;
 - e. Fifth, to reduce the outstanding principal due under the Senior Note until the debt is retired.

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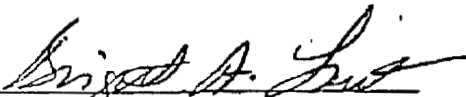
Unless provided in the Loan documents, the provisions contained herein will survive the closing of the Loan. This commitment is not intended to be all-inclusive, and other terms and conditions will be included in the Loan and security documents.

Lender shall be under no obligation to fund this commitment should there be any material adverse change in the Borrower's position, or if it is determined that Borrower has failed to provide Lender material information. In the event of any of these contingencies, Lender shall have no further liability under this commitment.


It is understood and agreed that this commitment cannot be sold, transferred or assigned to any person, partnership, or other entity without the express written consent of Lender. This commitment will survive the Loan closing and any subsequent agreements between the parties unless otherwise agreed in writing.

Sincerely,

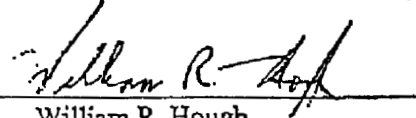
REPUBLIC BANK, A Florida Corporation
("Senior Lender")

By: 
Brigitta A. Lawton
Title: SVP

UNITED BANK, A Florida Corporation
("Senior Lender")

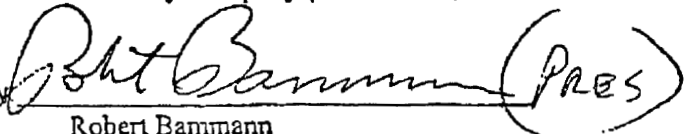
By: 
Cathy P. Swanson
Senior Vice President

WRH Mortgage, Inc., A Florida Corporation
("Subordinate and Construction Lender")

By: 
William R. Hough
Chairman

Accepted and Agreed to this 17TH day of June, 2003.

Hudson Utilities, Inc., a Florida Corporation
d/b/a Hudson Bay Company ("Borrower")

By:  (PRES)
Robert Bammann
President

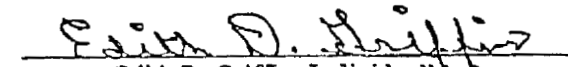
Accepted and Agreed to this ⁷² 17 day of June, 2003.

Guarantors


Robert Bammann, Individually


Charles E. Griffin, Individually


Mathew S. Griffin, Individually


Edith D. Griffin, Individually

Hudson Utilities, Inc.

Term Sheet

1. The Senior Notes presently outstanding and held by Republic Bank and United Bank will be renewed and extended for five years from the closing date. These Notes will have a senior lien on all assets and cash flows of Hudson Utilities, Inc. Interest rate will be a fixed rate of 6%. Amortization will be level over 20 years with principal and interest payments to start in the first month after closing. Maturity will be five years from dated date. The Banks will receive one point extension fee to be paid at the closing. The Notes will be repayable by the Company at any time without premium.
2. "The Construction Notes" will be represented by a line of credit in the maximum amount of \$1,800,000. This line of credit will be drawn upon to pay closing costs of the renewal and extension of the Senior Notes. The construction program will consist of Phase 1 and Phase 3 as described in the documents as presented by Hudson Utilities, Inc. The interest rate will be floating at prime plus $1\frac{1}{2}\%$ (based upon the Wall Street Journal prime) with interest payable monthly on the balance, with a cap rate of 8.75% and a floor rate of 4.75%. The plan of finance provides for the funding of the construction program by drawing all deposits in the Impact Fee Fund arising from service availability income on previously installed facilities as well as newly installed Phase 1 and Phase 3 facilities. 100% of Impact Fee monies will be utilized toward the construction program of Phase 1 and Phase 3. To the extent these Impact Fee monies are insufficient to fund the entire construction program, the line of credit will be drawn upon. On completion of construction, all Impact Fee Income received will be applied toward retirement of the Construction Notes until such Notes are 100% retired. The maturity date will be five years from dated date of the Note. The Notes may be prepaid at any time without premium. The lender will receive one point at the closing.
3. Subordinated Notes. The Subordinated Notes will bear interest at 12% payable monthly. The holder of the Notes will continue to have an extended stock option as previously granted which will be extended to the maturity date of the Notes which shall be ten years from the date of the closing. The Notes will be redeemable at a premium of 1% per annum for each year between the date of redemption and the stated date of maturity. An amortization rate of 20 years will commence 5 years after closing with a balloon in ten years after closing.
4. The existing covenants in the Loan Agreement will remain in place except for the following additional covenants:
 - a. Rate Covenant. Net Operating Income will cover current debt service by not less than 1.05% on a trailing 12 months basis.
 - b. Owner and management salaries will be subject to approval of an annual budget prepared by management and approved by WRH Income Properties, Inc. which approval will not be unreasonably withheld. WRH Income Properties, Inc. will receive an annual retainer in the amount of \$25,000 payable monthly for consulting services which will include advice and assistance on financial matters, budget matters and will include the servicing of all the debt. This consulting agreement will continue until July 1, 2008. WRH Income Properties, Inc. will receive one point placement fee on the Construction Notes and .5% placement and extension fee for the Senior Notes and the Subordinated Notes payable at the closing.
 - c. In addition to the 2 $\frac{1}{2}\%$ of Operating Revenues which are required to be deposited in the Repair and replacement Account, all surplus operating revenues after the closing will be applied to the Repair and Replacement Account until such amount is equal to \$150,000. Emergency needs in excess of amounts existing in the Renewal and Replacement Account may be drawn down from the Impact Fee Account by consent of the Construction Note Lender.
 - d. Monthly operating statements and balance sheets will be sent to all three lenders.

- e. Expansion of the System may be undertaken with consent of the Lenders, upon an engineer's certificate as to feasibility.

Accepted By:

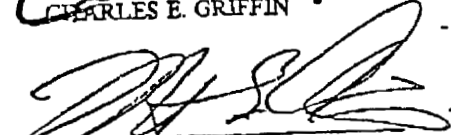
WRH INCOME PROPERTIES, INC.


By: _____

HUDSON UTILITIES, INC.


ROBERT BAMMANN


CHARLES E. GRIFFIN


MATHEW S. GRIFFIN

Sincerely,

REPUBLIC BANK, A Florida Corporation
("Senior Lender")

By: *Brigita A. Lawton*
Brigita A. Lawton
Title: *SVP*

UNITED BANK, A Florida Corporation
("Senior Lender")

By: *Cathy P. Swanson*
Cathy P. Swanson
Senior Vice President

WRH Mortgage, Inc., A Florida Corporation
("Subordinate and Construction Lender")

By: *William R. Hough*
William R. Hough
Chairman

Accepted and Agreed to this 17TH day of June, 2003.

Hudson Utilities, Inc., a Florida Corporation
d/b/a Hudson Bay Company ("Borrower")

By: *Robert Bammann (PRES)*
Robert Bammann
President