STATE OF FLORIDA
BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NO.050152-EU

IN RE: REVISIONS OR AMENDMENT TO RULE 25-6.049, FLORIDA ADMINISTRATIVE CODE - MEASURING CUSTOMER SERVICE

COMMENTS OF POWER CHECK CONSULTANTS

RESPECTFULLY SUBMITTED BY:

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BEFORE THE PUBLIC SERVICE COMMISSION

In re: Proposed revisions to Rule 25-6.049 F.A.C. Measuring Customer Service DOCKET NO.050152-EU

COMMENTS OF POWER CHECK CONSULTANTS WITH ATTACHMENTS

COMES NOW Power Check Consultants pursuant to ORDER NO. PSC - 06-0586 - PCO - EU of the FPSC, and files the following comments with attachments regarding the Commission's proposed amendments to Rule 25-6.049, Florida Administrative Code.

CASE BACKGROUND

Rule 25-6.049, F.A.C., pertains to measuring electric service of customers. Individual metering was codified by rule in the early 1980's. It's primary purpose was to promote energy conservation. The Commission believed when individual customers are directly responsible for paying for their electricity consumption they will be more inclined to conserve in order to minimize their bill.

As a result, the commission required condominiums to be individually metered. At the same time, the Commission made an exception for facilities that operated in a manner similar to hotels and motels. The new amendment to this exception now limits the exemption to only those condominiums that use 95% of their units for overnight occupancy.

COMMENTS

Over the past several years, the Commission granted 10 waivers of Rule 25-6.049. In each case, a resort condominium that was primarily a transient facility and operated in a manner

similar to hotels, was requesting the Commission grant a waiver to allow the facility to take service from the utility via master meter in lieu of individual metering. The Commission found that due to their nature or mode of operation, it was not practical to attribute usage in the resort condominiums to individual occupants. In the early cases the Commission was not as concerned with the number of condominium units used for transient rentals as they were with the nature of the operation of the facility. Where the resort condominium was registered for transient rentals with the Department of Business and Professional Regulation, and operated its facility like a hotel or motel, the Commission followed the rational that since guests were not billed for their use of electricity, but rather paid a bundled rate for the use of the room for a limited time, it was not practical to attribute usage to the individual occupants, and conservation would be better served by master metering.

The amendment to Rule 25-6.049, requiring 95% of the units in a condominium to be used for overnight occupancy, appears to go against this rationale. While the nature or mode of operation is still a factor, the exemption will only be allowed where 95% of the condominium units are used for overnight occupancy. This is true regardless of whether the condominium operates in a manner similar to a hotel, but only uses 85% of its units for overnight occupancy. The amendment implies that if a condominium operates like a hotel, but only has 85% of its units available for overnight occupancy, the Commission's energy conservation goals will not be met. To the best of Power Check's knowledge, there has been no evidence presented to show that a condominium

that operates in a manner similar to a hotel, with 85% of its units used for transient rentals, will not meet the goals of the Commission regarding energy conservation. The record of the PSC and experience of Power Check in this regard, suggest that the Commission goal of energy conservation will in fact be met when a condominium operates like a hotel, even though it does not use 95% of its units for over night occupancy.

ENERGY CONSERVATION GOALS

Power Check has been involved in 9 of the 10 waivers brought before the Commission concerning Rule 25-6.049. From this experience, the PSC goal of energy conservation appears to be better served when a resort condominium operating like a hotel is allowed to master meter. This is true regardless of whether the condominium has 75% of its units available for transient rentals or 95%. Our experience has shown that when a facility operates in a manner similar to a hotel, in general they use at a minimum, 75% of the condominium units for overnight occupancy. It is the nature or mode of operation that should be the determining factor. Power Check believes that the number of units used for over night occupancy should be a factor in determining whether a condominium operates like a hotel, but not the controlling factor.

In most of the waiver cases where the resort condominium has been master metered, it has placed the monthly electric expense in the operating budget of the condominium association. Since the manager of the resort (similar to the manager of a hotel) is

responsible for the budget, this creates closer attention paid by management to energy costs. Also, in each case the condominium association manager now receives the monthly electric bills rather than the bills being sent by the utility to hundreds of individual owners. This provides a basis for monthly review, and is the catalyst for closer scrutiny and more attention to energy conservation. This fact is supported by letters of two of the managers from the early waivers, Holiday Villas II and Sundestin. The letters are attached as Exhibits 1 and 2. Power Check has found in its research that most of the other facilities that have been granted waivers and implemented master metering have also experienced a heightened awareness and closer attention to energy conservation.

FAIR AND REASONABLE RATES

While energy conservation is the primary objective of the Commission in considering exemptions to the individual metering rule, the Commission has also considered the fairness of the rates for electricity in granting the exemptions.

When a condominium operates as a resort, in a manner similar to a hotel, the condominium incurs significantly more expenses than a primarily residential facility. Expenses for this type of facility are closer in nature to that of a hotel or motel. In addition to licenses and permits required to operate a transient facility, there are stricter health and safety rules imposed by the Department of Business and Professional Regulation

which require additional time, effort and money for compliance. There are also advertising expenses, management expenses, salary, and taxes that must be paid that are not typical expenses found in primarily residential condominium. And, there are penalties for failure to comply with DBPR rules for resort condominiums that do not exist for residential facilities.

Under similar factual circumstances, where the condominiums seeking waivers for master metering were regularly in competition with other hotels for room night business, the Commission has in essence said that what is a fair and reasonable rate for these facilities for electricity is the master meter rate paid by the hotels. Not the higher residential rate the condominiums would pay if they continued to be individually metered by the utility.

Power Check does not believe the amendment fulfills the goal of the commission to ensure fair and reasonable rates. Would it be fair for a condominium that operates like a hotel with all the accompanying expenses, to pay a higher rate for electricity because it used 85% of its units for overnight occupancy rather than 95%?

Power Check has seen no evidence that any of the waivers granted by the Commission for master metering resulted in hardship for any IOU, or caused any IOU to come back to the Commission for a rate case. In other words, the Commission was able, with minimum effect on the IOU's, to provide the opportunity for resort condominiums that operate like hotels, to master meter and secure a lower rate for electricity from the utility. Also, to our knowledge, there have been no complaints filed that allege it is unfair that the resort condominiums have

received the lower rates. This would appear to be in harmony with the Commission's objective to maintain fair and reasonable rates for the public, and is true for those condominiums that operate in a manner similar to hotels even though they do not use 95% of their units for overnight occupancy.

CRITERIA TO MASTER METER

In the case of Holiday Villas II, Dunes, and Sundestin, a few of the early waivers to come before the Commission regarding Rule 25-6.049, the Commission determined that as long as the condominiums were licensed by the Department of Business and Professional Regulation, and continued to operate like hotels, they could maintain master metering.

It was not until the waiver request was filed regarding Fontainebleau II, that the Commission made any change in its criteria. At that time, FP&L argued that the PSC should establish a stricter criteria to grant a waiver for master metering. FP&L argued for a 95% criteria. After considerable discussion at the agenda conference regarding various percentages, the Commission rejected the 95% criteria, and established that all or substantially all of the units must be used for transient rental.

Today, the Fontainebleau II, and the Atlantic, both properties that received waivers from the Commission, are operating first class hotels in South Florida. Their most recent annual reports filed with the Commission show respectively they have 88% and 85% of the total units available for transient rentals. The reports are attached as Exhibits 3 and 4.

Each property has full time staff equal to that of other luxury hotels. Both operate restaurants, spas, have room service, valet, concierge service, workout rooms, pools, and all the amenities of first class beach hotels. They each pay sales tax on room rentals, and collect and pay occupancy tax. Would it be fair and reasonable for these properties to be required to have individual meters and pay the higher residential electric rates? Or, under the guidelines of the Commission for fair and reasonable rates, is it more equitable that these properties that compete regularly with other major beach hotels and resorts in the area, be allowed to receive electric service via master meters at the same commercial rates as their competitors?

USAGE CHARCTERISTICS AND COST OF SERIVCE

It is Power Check's understanding that usage characteristics and cost of service are factors that are used by the Commission in establishing rates.

In all cases of the past waivers where Power Check has been involved, the usage characteristics of the resort condominiums were more similar to hotels and motels, than permanent residential occupants. The majority of the units in all the cases were used for vacation rentals with corresponding usage characteristics. This was true whether the percentage of units used for rentals was 84% or 95%.

In addition, the cost of a utility to serve a resort condominium that is master metered with 200 units, is not significantly different than a hotel that is master metered and

also has 200 units. In fact, when a property converts from individual metering to master metering there are savings that accrue to the IOU in the form of lower cost to read meters, lower administrative costs relating to billing of customers (1 bill vs 200), lower inventory costs (1 meter vs 200), and lower costs of maintenance on meters (1 vs 200).

The cost of service holds true for a master metered resort condominium regardless of the percentage of units used for overnight occupancy. The usage characteristics of the resort condominium in total would vary by the percentage of units used for rentals, but in all cases of the waivers granted by the Commission the usage characteristics were primarily transient, similar to hotels and/or motels.

REQUIREMENT TO INCLUDE 95% CRITERIA IN THE DECLARATION OF CONDOMINIUM CAN CONVERT THE PROJECT INTO A SECURITY

Finally, by requiring the resort condominium to include the new 95% criteria in the Declaration of Condominium, in the opinion of Carter N. McDowell, Attorney for the Miami firm of Bilzin, Sumberg, Baena, Price, and Axelrod, LLP, who represents clients such as: Turnberry Associates, Fontainebleau Resorts, Fortune International, The Related Company of Florida, and Starwood Hotels, such requirement would violate the letter and word of the SEC ruling and would almost certainly convert the condominium project into a security. Mr. McDowell's letter presented to the staff at workshop in December, 2005 is attached

as Exhibit 5, along with a copy of the corresponding SEC release regarding the subject. It is attached as Exhibit 6.

In Mr. McDowell's legal opinion the requirement to include the 95% criteria in the Declaration of Condominium is in essence a forced rental pool situation for the condominium if the owners wish to master meter. This forced rental pool situation appears to convert the condominium into a security under SEC guidelines. The result being that no condominium will likely seek the master meter option under the new rule.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and 15 copies have been been furnished on this 14th day of August, 2006, to Director, Division of the Commission Clerk and Administrative Services, Florida Public Service Commission, 2540 Shumard Oak Blvd, Tallahassee, Fl 32399-0862, and copies of the above and foregoing have been furnished to: Kenneth A. Hoffman, Esquire and John R. Ellis,Esquire,Rutledge,Ecenia,Underwood,Purnell,& Hoffman,P.A., P.O. Box 551, Tallahassee, Florida, 32302; and, Larry D. Harris, Esquire, Florida Public Service Commission, 2540 Shumard Oak Blvd, Tallahassee, Fl 32399-0862.

MARC D. MAZO of
POWER CHECK CONSULTANTS
14252 Puffin Court
Clearwater, Florida 33762
727-573-5787 - Voice
727-573-5675 - Fax

Resort Condominium Rentals
on the Gulf of Mexico

Holiday Villas II

June 12, 2003

Marc Mazo
Power Check Consultants
14252 Puffin Court
Clearwater, Fl 33762

Dear Marc:

I have no problem letting the Florida Public Service Commission know that we believe their decision to allow Holiday Villas II to master meter the resort was a positive step for energy conservation.

Holiday Villas II is extremely pleased with our master metering system. As a result of receiving one electric bill each month for all units, it is much easier to track usage. This helps identify problem areas and make corrections much faster than if we had to wait for our investor/owners who do not live in the units to receive their bill, analyze it, and then let us know if there appears to be a problem.

In addition, because of the master metering the electric expense for the units is included in our annual Association budget. As manager, I am responsible for operating the resort within budgetary guidelines approved each year by our Board of Directors. By including the expense within the budget, it serves to heighten my awareness and provide incentive to reduce energy costs where ever possible.

By receiving one master bill for all the units, it is my opinion that we watch the costs closer and are more inclined to take steps to conserve energy and reduce the costs. It is much easier to motivate our staff to make efforts towards energy conservation, i.e. improved maintenance, more awareness by housekeeping in thermostat control, or any other methods we learn for lowering our electric costs.

Yours very truly,

Marcus Paula
Manager

P.O. Box 729 · Indian Shores, Florida 34635 · Tel. 813-596-4852

SUNDESTIN RESORT
1010 E HWY 98
DESTIN, FL 32540

June 12, 2003

Marc Mazo
Power Check Consultants
14252 Puffin Court
Clearwater, Fl 33762

Dear Marc:

As you are aware, it took a little longer than we anticipated accomplishing the conversion to master metering; however, it appears to be a positive step for the resort that will lead to reduced energy consumption and lower electricity bills.

Based on the conversion, the homeowners' association now includes the cost of electricity for the units as a common expense within its annual budget. When individually metered, the cost of electricity for each unit was part of the association common expenses. As manager of the resort, I am responsible for operating within the budget guidelines adopted by the board of directors. Based on the inclusion of the electric within the annual budget I have become more attuned to watching this expense. Now that we receive one master electric bill for the units, it has heightened my awareness of this expense and helped generate more interest by me and our staff in insuring that steps are taken to reduce energy consumption where ever and when ever possible.

Housekeeping staff regularly helps our energy conservation efforts by closing curtains on the sun side of the resort after cleaning a unit, and by setting AC thermostats back to higher levels after guests have lowered them below what is necessary to cool the unit. Maintenance and engineering staff are now more motivated to accomplish preventive maintenance, and to quickly correct any problems identified by housekeeping that might create unnecessary use of electricity.

It is my opinion that for resorts that operate in a manner similar to hotels, regardless of whether they have some permanent occupants, or not, master metering will help conserve energy and reduce the costs of electricity.

Yours very truly,

Lino Maldonado

Lino Maldonaldo
General Manager

LUXURY LRI RESORTS
INTERNATIONAL

30th November 2005

Attention Florida Public Service Commission.

Ref: The Atlantic Hotel Condominium.
601 N. Ft. Lauderdale Beach Blvd
Fort Lauderdale, FL 33304

Dear Sirs,

Please be advised that the number of units sold to date at The Atlantic is 118. The number of units in the rental pool at this time amounts to 105. There a total of 124 units in the project, 6 remaining for sale.

Yours truly,

Maggie Fitzner
Owners Representative.
954-567-8090

Turnberry Associates

December 8, 2005

By Fedex

Blanca S. Bayo
Director
Division of the Commission Clerk
And Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Fontainebleau II/TL Fontainebleau Tower Limited Partnership
Docket No. 030557-EU
Order Nos PSC-03-0999-PAA-EU and PSC-03-1081-CO-EU

Ladies and Gentlemen:

We are filing this report pursuant to condition number 4 of the above referenced orders issued on September 5, 2003 and September 30, 2003 respectively. The first unit closing was on February 7, 2005.

As of November 30, 2005:

Number of Residential Units Sold: 462 of 462
Number of Residential Units entered into the voluntary rental program: 412

Please let me know if additional information is needed.

Thank you.

Sincerely,

TURNBERRY ASSOCIATES

Lori R. Hartglass
Associate General Counsel

LRH/gg
cc: Scott Barter (by e-mail)
Adam Klein (by e-mail)
Marc Mazo (by e-mail)

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MIAMI • TALLAHASSEE

Carter N. McDowell, P.A.
Direct Dial: (305) 350-2355
Direct Facsimile: (305) 351-2239
E-mail: cmcdowell@bilzin.com

December 15, 2005

VIA FACSIMILE & E-MAIL
& REGULAR MAIL

Marc Mazo, Senior Partner
Powercheck Consultants
14252 Puffin Court
Clearwater, FL 33762

Re: Florida Public Service Commission ("PSC") Proposed Rule Change to Rule 25-6.049 Re Master Metering

Dear Marc:

This letter will confirm our numerous conversations concerning the above-referenced rule change. As you know I represent Turnberry Associates, Fontainebleau Resorts, Fortune International, The Related Company of Florida, Starwood Hotels and other developers, all of whom are in the process of developing condominium hotel projects.

Condominium hotel projects are a unique product within the spectrum of real estate interests. They are very highly regulated on the local, state and indirectly on the federal level. Specifically, the Securities and Exchange Commission ("SEC") has examined Condominium Hotel products and projects and issued a letter ruling concerning the sale of condominium hotel units as to whether they constitute the sale of a real estate interest or a security. There are many factors set out in the SEC letter ruling that effect hotel condominiums but the most salient aspect of the letter ruling with regard to the proposed PSC rule change is that the SEC has specifically determined that a developer may **NOT CREATE A MANDATORY RENTAL POOL OR OTHER MECHANISIM WHICH WOULD EFFECTIVLY FORCE PURCHASERS OF THESE UNITS TO PLACE THEIR UNITS UP**

FOR RENTAL AS PART OF THE OPERATION OF THE OVERALL PROPERTY. Developers are even prohibited from establishing occupancy rules and regulations which would have the effect of forcing the purchasers of hotel condominium units into a rental pool. Under the SEC letter ruling, the imposition of temporal limitations requiring that a unit be utilized only for overnight occupancy and/or requiring participation in any type of rental pool or rental operation would convert these condominium hotel interest into a security subject to all of the regulations governing the trading and sale of securities. The conversion of a condominium hotel unit to a security would be effectively a "death sentence" for this type of real estate product. Real estate brokers could no longer sell the units, only registered security brokers and agents could sell them and there is a whole panoply of other regulations that would come to bear that are simply not workable.

It is my understanding from my discussions with you that the proposed rule change would require condominium hotel associations that wish to master meter to include in their declaration of condominium requirement that at least 95% of the units be used for "overnight occupancy." The inclusion of such a provision in a declaration of condominium for a condominium hotel would certainly violate the letter and word of the SEC ruling and would almost certainly covert that project into a security in accordance with the SEC letter ruling. In short such a rule would effectively prohibit any condominium hotel product from seeking a master meter. This would be a potential nightmare both logistically and operationally for this type of product.

In fairness, condominium hotel projects are permitted to enforce binding regulations such as zoning laws and other local government rules and regulations that are automatically applicable to the property. Hence, if a local zoning ordinance provides that a condominium hotel unit can not be occupied for more than 60 days at one time, that type of limitation may be imposed within the condominium documents, if and only if it is a preexisting regulation of general application to similarly situated properties. The SEC has gone so far as to say that a condominium hotel developer may not ever request that a local government adopt more stringent regulations without also running afoul of the securities regulations.

In this case the decision to seek a master meter for a condominium hotel project is clearly a voluntary act in that it requires a specific application and specific approval. Unlike a zoning regulation that is automatically applicable to a property, the decision to seek a master meter is a voluntary act by the developer of the project. There is no question in my mind, under the provisions of the SEC letter ruling, that if a developer were to seek a master meter and in so doing became subject to a requirement that 95% of the units be solely used for overnight occupancy that the developer would be in violation of the provisions of the SEC letter ruling and that the entire project would almost certainly

become a security subject to all of the applicable SEC rules and regulations. In short, the proposed rule would effectively prohibit any condominium hotel project from ever seeking a master meter. Hence, it is my belief that the proposed rule would create an undo hardship and economic burden on all future condominium hotel properties statewide.

Very truly yours,

Carter N. McDowell

CNM/mc

cc: Lori Hartglass, Esq.

Release No. 5347, Release No. 33-5347, 1973 WL 158443 (S.E.C. Release No.)
(Cite as: 1973 WL 158443 (S.E.C. Release No.))

S.E.C. Release No.

*1 Securities Act of 1933

GUIDELINES AS TO THE APPLICABILITY OF THE FEDERAL SECURITIES LAWS TO OFFERS AND SALES OF CONDOMINIUMS OR UNITS IN A REAL ESTATE DEVELOPMENT
January 4, 1973

The Securities and Exchange Commission today called attention to the applicability of the federal securities laws to the offer and sale of condonimium units, or other units in a real estate development, coupled with an offer or agreement to perform or arrange certain rental or other services for the purchaser. The Commission noted that such offerings may involve the offering of a security in the form of an investment contract or a participation in a profit sharing arrangement within the meaning of the Securities Act of 1933 and the Securities Exchange Act of 1934. [FN1] Where this is the case any offering of any such securities must comply with the registration and prospectus delivery requirements of the Securities Act, unless an exemption therefrom is available, and must comply with the anti-fraud provisions of the Securities Act and the Securities Exchange Act and the regulations thereunder. In addition, persons engaged in the business of buying or selling investment contracts or participations in profit sharing agreements of this type as agents for others, or as principal for their own account, may be brokers or dealers within the meaning of the Securities Exchange Act, and therefore may be required to be registered as such with the Commission under the provisions of Section 15 of that Act.

The Commission is aware that there is uncertainty about when offerings of condominiums and other types of similar units may be considered to be offerings of securities that should be registered pursuant to the Securities Act. The purpose of this release is to alert persons engaged in the business of building and selling condominiums and similar types of real estate developments to their responsibilities under the Securities Act and to provide guidelines for a determination of when an offering of condominiums or other units may be viewed as an offering of securities. Resort condominiums are one of the more common interests in real estate the offer of which may involve an offering of securities. However, other types of units that are part of a development or project present analogous questions under the federal securities laws. Although this release speaks in terms of condominiums, it applies to offerings of all types of units in real estate developments which have characteristics similar to those described herein.

The offer of real estate as such, without any collateral arrangements with the seller or others, does not involve the offer of a security. When the real estate is offered in conjunction with certain services, a security, in the form of an investment contract, may be present. The Supreme Court in Securities and Exchange Commission v. W. J. Howey Co., 328 U.S. 293 (1946) set forth what has become a generally accepted definition of an investment contract:

*2 "a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party, it being immaterial whether the shares in the enterprise are evidenced by formal certificates or by nominal interests in the physical assets

Exhibit L

employed in the enterprise." (298)
The Howey case involved the sale and operation of orange groves. The reasoning, however, is applicable to condominiums.

As the Court noted in Howey substance should not be disregarded for form, and the fundamental statutory policy of affording broad protection to investors should be heeded. Recent interpretations have indicated that the expected return need not be solely from the efforts of others, as the holding in Howey appears to indicate. [FN2] For this reason, an investment contract may be present in situations where an investor is not wholly inactive, but even participates to a limited degree in the operations of the business. The "profits" that the purchaser is led to expect may consist of revenues received from rental of the unit; these revenues and any tax benefits resulting from rental of the unit are the economic inducements held out to the purchaser.

The existence of various kinds of collateral arrangements may cause an offering of condominium units to involve an offering of investment contracts or interests in a profit sharing agreement. The presence of such arrangements indicates that the offeror is offering an opportunity through which the purchaser may earn a return on his investment through the managerial efforts of the promoters or a third party in their operation of the enterprise.

For example, some public offerings of condominium units involve rental pool arrangements. Typically, the rental pool is a device whereby the promoter or a third party undertakes to rent the unit on behalf of the actual owner during that period of time when the unit is not in use by the owner. The rents received and the expenses attributable to rental of all the units in the project are combined and the individual owner receives a ratable share of the rental proceeds regardless of whether his individual unit was actually rented. The offer of the unit together with the offer of an opportunity to participate in such a rental pool involves the offer of investment contracts which must be registered unless an exemption is available.

Also, the condominium units may be offered with a contract or agreement that places restrictions, such as required use of an exclusive rental agent or limitations on the period of time the owner may occupy the unit, on the purchaser's occupancy or rental of the property purchased. Such restrictions suggest that the purchaser is in fact investing in a business enterprise, the return from which will be substantially dependent on the success of the managerial efforts of other persons. In such cases, registration of the resulting investment contract would be required.

*3 In any situation where collateral arrangements are coupled with the offering of condominiums, whether or not specifically of the types discussed above, the manner of offering and economic inducements held out to the prospective purchaser play an important role in determining whether the offerings involve securities. In this connection, see Securities and Exchange Commission v. C. M. Joiner Leasing Corp., 320 U.S. 344 (1943). In Joiner, the Supreme Court also noted that:

"In enforcement of [the Securities Act], it is not inappropriate that promoters' offerings be judged as being what they were represented to be." (353)

In other words, condominiums, coupled with a rental arrangement, will be deemed to be securities if they are offered and sold through advertising, sales literature, promotional schemes or oral representations which emphasize the economic benefits to the purchaser to be derived from the managerial efforts of the promoter, or a third party designated or arranged for by the promoter, in renting the units.

In summary, the offering of condominium units in conjunction with any one of the

following will cause the offering to be viewed as an offering of securities in the form of investment contracts:

1. The condominiums, with any rental arrangement or other similar service, are offered and sold with emphasis on the economic benefits to the purchaser to be derived from the managerial efforts of the promoter, or a third party designated or arranged for by the promoter, from rental of the units.

2. The offering of participation in a rental pool arrangement; and

3. The offering of a rental or similar arrangement whereby the purchaser must hold his unit available for rental for any part of the year, must use an exclusive rental agent or is otherwise materially restricted in his occupancy or rental of his unit.

In all of the above situations, investor protection requires the application of the federal securities laws.

If the condominiums are not offered and sold with emphasis on the economic benefits to the purchaser to be derived from the managerial efforts of others, and assuming that no plan to avoid the registration requirements of the Securities Act is involved, an owner of a condominium unit may, after purchasing his unit, enter into a non-pooled rental arrangement with an agent not designated or required to be used as a condition to the purchase, whether or not such agent is affiliated with the offeror, without causing a sale of a security to be involved in the sale of the unit. Further a continuing affiliation between the developers or promoters of a project and the project by reason of maintenance arrangements does not make the unit a security.

In situations where commercial facilities are a part of the common elements of a residential project, no registration would be required under the investment contract theory where (a) the income from such facilities is used only to offset common area expenses and (b) the operation of such facilities is incidental to the project as a whole and are not established as a primary income source for the individual owners of a condominium or cooperative unit.

*4 The Commission recognizes the need for a degree of certainty in the real estate offering area and believes that the above guidelines will be helpful in assisting persons to comply with the securities laws. It is difficult, however, to anticipate the variety of arrangements that may accompany the offering of condominium projects. The Commission, therefore, would like to remind those engaged in the offering of condominiums or other interests in real estate with similar features that there may be situations, not referred to in this release, in which the offering of the interests constitutes an offering of securities. Whether an offering of securities is involved necessarily depends on the facts and circumstances of each particular case. The staff of the Commission will be available to respond to written inquiries on such matters.

By the Commission.

Ronald F. Hunt

Secretary

FN1. It should be noted that where an investment contract is present, it consists of the agreement offered and the condominium itself.

NC

LUXURYRESORT

SUNDIAL
a castle beach resort

STATEMENT

1451 MIDDLE GULF DRIVE
SANIBEL ISLAND, FLORIDA 33957-6518
(239) 472-4151

FOR RESERVATIONS CALL
800-237-4134

ROOM	ARRIVAL	DEPARTURE	FOLIO NO.		PAGE
J303	06/06/06	06/11/06	55140F	2 Adults	1

Mazo, Mr. Marc
14252 Pufin Ct
Clearwater, FL 33762

DATE	CODE	DESCRIPTION		CHARGES	CREDIT
05/30/06	ZAMX	XXXXXXXXXXX4018 0809	1		199.00
06/06/06	RMSPR	BEST AVAIL RATE	1	199.00	
06/06/06	TAX	Sales Tax	1	21.89	
06/07/06	LCPH	325-0604 5 (22:48)	1	0.75	
06/07/06	TAXPL	Local Comm Serv Tax	1	0.04	
06/07/06	TAXPS	State Comm Serv Tax	1	0.07	
06/07/06	RMSPR	BEST AVAIL RATE	1	199.00	
06/07/06	TAX	Sales Tax	1	21.89	
06/08/06	RMSPR	BEST AVAIL RATE	1	199.00	
06/08/06	TAX	Sales Tax	1	21.89	
06/09/06	RMSPR	BEST AVAIL RATE	1	199.00	
06/09/06	TAX	Sales Tax	1	21.89	
06/10/06	RMSPR	BEST AVAIL RATE	1	199.00	
06/10/06	TAX	Sales Tax	1	21.89	
06/11/06	ZAMX	XXXXXXXXXXX4018 0809	1		961.81
06/06/06	POS14	Crocodials #1480	3	37.00	
06/07/06	POS14	Crocodials #1617	3	18.50	
		Subtotals		$ 1160.81	$ 1160.81

PAID IN FULL --- THANK YOU!