

GERALD T. BUHR, P.A.

ATTORNEY AT LAW

(813) 949-3681

(813) 949-3196 Fax/Data

11/16/96  
no postmark  
#3489  
\$750.00  
Jaf

Utilities  
Environment  
Land Use

Northfork Professional Center  
1519 Dale Mabry Highway, Suite 100  
Post Office Box 1647  
Lutz, FL 33549-1647

January 12, 1996

DEPOSIT    TREAS. REC.    DATE

D254          JAN 17 '96

Director, Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Dear Sir/Madam:

960063-54

Enclosed for filing please find the original and five (5) copies of Capital Sunbelt/Fund 84 Ltd.'s Application for Sale, Assignment or Transfer of Certificate or Facilities. We have also enclosed a check in the amount of Seven Hundred Fifty Dollars (\$750.00) representing the filing fee in this matter.

Thank you in advance for your timely attention to this matter. Should you have questions or need anything further from us at this time, please do not hesitate to call our office.

RECEIVED  
9 16 AM '96  
FLORIDA PUBLIC SERVICE COMMISSION

Sincerely,

GERALD T. BUHR, P.A.

By: Nanette J. Slusher  
Nanette J. Slusher  
Secretary to Gerald T. Buhr

NJS/bms

Enclosures

DOCUMENT NUMBER-DATE

00528 JAN 17 96

FPSC-RECORDS/REPORTING

**APPLICATION FOR SALE, ASSIGNMENT OR TRANSFER  
OF CERTIFICATE OR FACILITIES**

(Pursuant to Section 367.071, Florida Statutes)

TO: Director, Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

The undersigned hereby makes application for the sale, assignment or transfer of all (all or part) of Water Certificate No. N/A and/or Wastewater Certificate No. 271-S or facilities in Lee County, Florida, and submits the following information:

**PART I APPLICANT INFORMATION**

- A) The full name (as it appears on the certificate), address and telephone number of the applicant:

Capital Sunbelt/Fund 84 Ltd.  
Name of utility

( 813 ) 648 - 1001                      ( 813 ) 647 - 3992  
Phone No.                                      Fax No.

4075 Southfork Drive  
Office street address

Lakeland, Florida 33807  
City                                      State                                      Zip Code

P.O. Box 5252, Lakeland, Florida 33807-5252  
Mailing address if different from street address

N/A  
Internet address if applicable

- B) The name, address and telephone number of the person to contact concerning this application:

Gerald T. Buhr, Esquire                                      813 949-3681  
Name    Phone No.

1519 N. Dale Mabry Highway, Suite 100  
Street address

Lutz, florida 33549  
City                                      State                                      Zip Code

C) The full name (as it will appear on the certificate), address and telephone number of the buyer:

Sand Dollar Properties, Inc.

Name of utility

( 941 ) 466-7171

( 813 ) 466-8027

Phone No.

Fax No.

16299 San Carlos Boulevard

Office street address

Ft. Myers, Florida 33908

City

State

Zip Code

Mailing address if different from street address

Internet address if applicable

D) Indicate the organizational character of the buyer:  
(circle one)

Corporation

Partnership

Sole Proprietorship

Other:

(specify)

E) The date and state of incorporation or organization of the buyer:

August 31, 1977 in the State of Florida.

F) If the buyer is a corporation, list the names, titles, and addresses of corporate officers and directors. (Use additional sheet if necessary).

Harry D. Cutcher, President, 16299 San Carlos Boulevard,  
Ft. Myers, Florida 33908

Jeanne Cutcher, Vice President, Secretary and Treasurer,  
16299 San Carlos Boulevard, Ft. Myers, Florida 33908

- G) If the buyer is not a corporation, list the names, titles, and addresses of all persons owning an interest in the organization. (Use additional sheet if necessary.)

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N/A

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**PART II FINANCIAL AND TECHNICAL INFORMATION**

- A) Exhibit   A   - A statement indicating how the transfer is in the public interest, including a summary of the buyer's experience in water and/or wastewater utility operations, a showing of the buyer's financial ability to provide service and a statement that the buyer will fulfill the commitments, obligations and representations of the seller with regard to utility matters.
- B) List the names and locations of other water and/or wastewater utilities owned by the buyer and PSC certificate numbers, if any.

NONE

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- C) Exhibit   B   - A copy of the contract for sale and all auxiliary or supplemental agreements, which shall include, if applicable:
- (1) Purchase price and terms of payment.
  - (2) A list of and the dollar amount of the assets purchased and liabilities assumed or not assumed, including those of nonregulated operations or entities.
  - (3) A description of all consideration between the parties, for example, promised salaries, retainer fees, stock, stock options, assumption of obligations.

The contract for sale shall also provide for the disposition, where applicable, of the following:

- (a) Customer deposits and interest thereon;
  - (b) Any guaranteed revenue contracts;
  - (c) Developer agreements;
  - (d) Customer advances;
  - (e) Debt of the utility; and
  - (f) Leases.
- D) Exhibit       N/A       - A statement regarding the disposition of any outstanding regulatory assessment fees, fines or refunds owed.
- E) Exhibit       C       - A statement describing the financing the purchase.
- F) Exhibit       D       - A list of all entities upon which the applicant is relying to provide funding to the buyer, and an explanation of the manner and amount of such funding, which shall include their financial statements and copies of any financial agreements with the utility. This requirement shall not apply to any person or entity holding less than 10 percent ownership interest in the utility.
- G) Exhibit       E       - The proposed net book value of the system as of the date of the proposed transfer. If rate base (or net book value) has been established previously by this Commission, state the Order No. and date issued. Order No. 14060, Issued 2-5-85 Identify all adjustments made to update this rate base (or net book value) to the date of the proposed transfer.
- H) Exhibit       N/A       - A statement setting forth the reasons for the inclusion of an acquisition adjustment, if one is requested. (An acquisition adjustment results when the purchase price of the utility differs from the original cost calculation.)
- I) The full name, address and telephone number of the person who has possession of the books and records of the seller:

Robert Madden (813 ) 648-1001  
Name Phone No.

4935 Southfork Drive  
Street address

Lakeland, Florida 33807  
City State Zip Code

- J) Exhibit F - If the books and records of the seller are not available for inspection by the Commission or are not adequate for purposes of establishing the net book value of the system, a statement by the buyer that a good faith, extensive effort has been made to obtain such books and records for inspection by the Commission and detailing the steps taken to obtain the books and records.
- K) Exhibit G - A statement from the buyer that is has obtained or will obtain copies of all of the federal income tax returns of the seller from the date the utility was first established, or rate base was last established by the Commission or, if the tax returns have not been obtained, a statement from the buyer detailing the steps taken to obtain the returns.
- L) Exhibit H - A statement from the buyer that after reasonable investigation, the system being acquired appears to be in satisfactory condition and in compliance with all applicable standards set by the Department of Environmental Protection (DEP)

If the system is in need of repair or improvement, has any outstanding Notice of Violation of any standard set by the DEP or any outstanding consent orders with the DEP, the buyer shall provide a list of the improvements and repairs needed and the approximate cost to make them, a list of the action taken by the utility with regard to the violation, a copy of the Notice of Violation(s), a copy of the consent order and a list of the improvements and repairs consented to and the approximate cost to make them.

### **PART III NOTICE OF ACTUAL APPLICATION**

- A) Exhibit I - An affidavit that the notice of actual application was given in accordance with Section 367.045(1)(a), Florida Statutes, and Rule 25-30.030, Florida Administrative Code, by regular mail to the following:
- (1) the governing body of the municipality, county, or counties in which the system or the territory proposed to be served is located;
  - (2) the privately owned water and wastewater utilities that hold a certificate granted by the Public Service Commission and that are located within the county in which the utility or the territory proposed to be served is located;

- (3) if any portion of the proposed territory is within one mile of a county boundary, the utility shall notice the privately owned utilities located in the bordering counties and holding a certificate granted by the Commission;
- (4) the regional planning council;
- (5) the Office of Public Counsel;
- (6) the Public Service Commission's Director of Records and Reporting;
- (7) the appropriate regional office of the Department of Environmental Protection; and
- (8) the appropriate water management district.

Copies of the Notice and a list of entities noticed shall accompany the affidavit. THIS MAY BE A LATE-FILED EXHIBIT.

- B) Exhibit J - An affidavit that the notice of actual application was given in accordance with Rule 25-30.030, Florida Administrative Code, by regular mail or personal delivery to each customer of the system being transferred. A copy of the Notice shall accompany the affidavit. THIS MAY BE A LATE-FILED EXHIBIT.
- C) Exhibit K - Immediately upon completion of publication, an affidavit that the notice of actual application was published once in a newspaper of general circulation in the territory in accordance with Rule 25-30.030, Florida Administrative Code. A copy of the proof of publication shall accompany the affidavit. THIS MAY BE A LATE-FILED EXHIBIT.

**PART IV FILING FEE**

Indicate the filing fee enclosed with the application:

\$750.00 (for water) and \_\_\_\_\_ (for wastewater).

**Note:** Pursuant to Rule 25-30.020, Florida Administrative Code, the amount of the filing fee as follows:

- (1) For applications in which the utility to be transferred has the capacity to serve up to 500 ERC's, the filing fee shall be \$750.

- (2) For applications in which the utility to be transferred has the capacity to serve from 501 to 2,000 ERC's the filing fee shall be \$1,500.
- (3) For applications in which the utility to be transferred has the capacity to serve from 2,001 ERC's to 4,000 ERC's the filing fee shall be \$2,250.
- (4) For applications in which the utility to be transferred has the capacity to serve more than 4,000 ERC's the filing fee shall be \$3,000.

**PART V      OTHER**

- A) Exhibit     L     - Evidence that the utility owns the land where the utility treatment facilities are located. Or, where the utility does not own the land, a copy of the agreement which provides for the long term, continuous use of the land, such as a 99-year lease. The Commission may consider a written easement or other cost-effective alternative.
- B) Exhibit     M     - The original and two copies of sample tariff sheets reflecting the new name of the utility, the existing rates and charges and territorial description of the water and/or wastewater systems. Sample tariff(s) are attached.
- C) Exhibit     N     - The utility's current certificate(s) or, if not available, an explanation of the steps the applicant took to obtain the certificate(s).



**PART VI      AFFIDAVIT**

I Harry D. Cutcher (applicant) do solemnly swear or affirm that the facts stated in the foregoing application and all exhibits attached thereto are true and correct and that said statements of fact thereto constitute a complete statement of the matter to which it relates.

BY: *Harry D. Cutcher*  
Applicant's Signature

Harry D. Cutcher  
Applicant's Name (Typed)

President  
Applicant's Title \*

Subscribed and sworn to before me this 4<sup>th</sup>  
of January 1996.

OFFICIAL NOTARY SEAL  
HAZEL A. WILSON  
NOTARY PUBLIC STATE OF FLORIDA  
COMMISSION NO. CC403702  
MY COMMISSION EXP. AUG. 28, 1998

*Hazel A. Wilson*  
Notary Public  
HAZEL A. WILSON

\* If the applicant is a corporation, the affidavit must be made by the president or other officer authorized by the by-laws of the corporation to act for it. If the applicant is a partnership or association, a member of the organization authorized to make such affidavit shall execute same.

## Exhibit A

In this instance, the buyer, Sand Dollar Properties, Inc., has acquired the wastewater treatment facility in question through foreclosure proceedings. When the current certificate holder, Capital Sunbelt/Fund '84, Ltd., defaulted on its loan commitments, the prior owner and certificate holder, Sand Dollar Properties, Inc. (formerly F.M.B.C. Utilities, Inc.) and its principal, Harry Cutcher, accepted a deed in lieu of foreclosure on the Fort Myers Beach RV Resort and the wastewater treatment facility. Before the original sale to Capital Sunbelt in 1984, Mr. Cutcher was responsible for the operation of the wastewater treatment facility. For a three year period he properly managed the facility by hiring contract operators to run the plant. After Mr. Cutcher sold the RV park and wastewater treatment facility to Capital Sunbelt, however, the new owner entered into a bulk wastewater treatment agreement with Lee County whereby the system was interconnected to the County utility system. Since that agreement went into effect in 1988, the wastewater treatment plant has not been operational. Wastewater treatment services are now being performed by Lee County pursuant to the bulk wastewater treatment agreement. Mr. Cutcher has no intention of ever trying to bring the wastewater treatment facility back on line. It is, however, in the public interest that the certificates be transferred to the entity that is going to be responsible to the customers. The public interests will best be served by transferring the certificate back to Sand Dollar Properties, Inc.

## Exhibit B

Because the utility was acquired through default of the certificate holder as described in greater detail in Exhibit A, there was no contract for sale. Attached, however, are the documents involved in the transfer of the property from Capital Sunbelt/Fund '84, Ltd., to Sand Dollar Properties, Inc. Also included is the Agreement between Capital Sunbelt and Lee County for bulk wastewater treatment services entered into in 1989.

LAW OFFICES  
PHILIP L. BURNETT, P.A.  
2449 FIRST STREET  
POST OFFICE BOX 2238  
PORT MYERS, FLORIDA 33902

TELEPHONE  
(813) 334-1922

FAX  
(813) 334-7799

May 12, 1993

Bruce Fedor, Esquire  
Vice President  
BANCFLORIDA  
A Federal Savings Bank  
5801 Pelican Bay Boulevard  
Naples, Florida 33941

RE: SAND DOLLAR PROPERTIES, INC.'S  
Assumption of Loan from BancFlorida

Dear Mr. Fedor:

We are counsel to SAND DOLLAR PROPERTIES, INC. ("SAND DOLLAR") in connection with SAND DOLLAR'S assumption of the Mortgage with BANCFLORIDA, a Federal Savings Bank ("Lender"), the execution and delivery of the Loan Documents, as hereinafter defined, and with the consummation of the transaction contemplated thereby. Except a otherwise specified, capitalized terms used herein as defined in the Loan Documents shall have the respective meanings ascribed thereto herein.

We have examined the Commitment Letter, dated May 5, 1993, the Promissory Note, Assumption Agreement & Release of Liability, Notice of Future Advance and Receipt, Collateral Assignment of Intangibles, Further Assurance and Compliance Agreement, Waiver of Right to Jury Trial, Unconditional and Continuing Guaranty, Borrower's Closing Affidavit, Unanimous Consent of Board of Directors, Certification of Loan for Business Purposes, and UCC-3 (each individually, a "Loan Document," and collectively, the "Loan Documents") and the Minute Book of SAND DOLLAR, which contains original or copies certified of the certificates of incorporation and all amendments thereto, by-laws, and minutes of meetings of the Board of Directors.

Based upon the foregoing and subject to the assumptions, qualifications and limitations set forth below, it is our opinion that:

1. The Borrower has all requisite power and authority to enter into the Loan Documents to which the Borrower is a party and to perform the Borrower's obligations thereunder.
2. The Loan Documents to which the Borrower is a party and to which the Guarantors are a party and which Borrower and

Bruce Fedor, Esquire  
May 12, 1993  
Page 2

Guarantors have executed and are to deliver to Lender, constitute valid and binding obligations of the Borrower and the Guarantors enforceable in accordance with their respective terms.

3. The Guaranty of Guarantors, upon execution and delivery to Lender, is a valid and binding obligation of the Guarantors enforceable in accordance with its terms.

4. We have no current actual knowledge that any further approval, authorization or other action by, or filing with, any governmental authority is required in connection with the execution of any Loan Documents by the Borrower.

5. The execution and delivery of the Loan Documents, and the payment of the indebtedness evidenced by the Note, will not conflict with or result in any violation of (a) the Articles of Incorporation or the By-laws of SAND DOLLAR nor (b) to our current actual knowledge from the records made available to us by our client, any agreement, contract, instrument, order, writ, judgment or decree to which the Borrower is a party or to which the Borrower or the mortgaged property is subject.

6. The Borrower is a Florida Corporation which has been duly formed and is qualified to do business in the State of Florida within Lee County, Florida. The Borrower has the necessary power and authority to conduct its business as it is now being conducted.

7. The Assumption Agreement & Release of Liability is in a form sufficient to continue the lien created by the original mortgage on the real property described therein and to create a security interest in the personal property described therein, and the State UCC-1 and the County UCC-1 are in forms sufficient to perfect that security interest in favor of the Lender as secured party with respect to those items of personal property in which a security interest can be perfected by the filing of a financing statement. The recordation of the Assumption Agreement & Release of Liability and the County UCC-1 as provided by law in the Public Records of Lee County, Florida, will provide constructive notice of the lien of the mortgage against said real property and will perfect the Lender's security interest in the fixtures described therein. The filing of the State UCC-1 as provided by law in the office of the Florida Secretary of State will perfect the Lender's security interest with respect to the personal property described therein (other than fixtures) as to which a security interest can be perfected by the filing of a financing statement. In rendering the opinions expressed in this paragraph, we have assumed that the Borrower owns the mortgaged property and that the description thereof in the Assumption Agreement & Release of Liability, the

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May 12, 1993  
Page 3

County UCC-1 and the State UCC-1 is legally sufficient to enable a subsequent purchaser or mortgagee or secured party to identify such mortgaged property.

8. Once the Assumption Agreement & Release of Liability and Quit-Claim Deed from Capital Sunbelt Fund 84/Ltd. to SAND DOLLAR, the County UCC-1 or the State UCC-1 and the Subordination Agreement by and between FIRST INDEPENDENCE BANK OF FLORIDA, the Lender and SAND DOLLAR have been duly recorded and filed as described above, it is not necessary to re-record, re-register or re-file any of them or to record, register or file any other or additional documents, instruments or statements in order to maintain the perfecting of the liens and security interests evidenced thereby, except for the following: (a) the Florida Record Title Act, Section 712.01 et seq. of the Florida Statutes, requires the filing of a notice after the original recording date of the Mortgage (and within successive thirty (30) year periods after the filing of each such notice) in order to prevent the Mortgage lien from being extinguished under the Act; (b) Section 95.281 of the Florida Statutes provides that the lien of the Mortgage shall terminate after the expiration of twenty (20) years after the date of the Mortgage (unless the final maturity of the Loan is ascertainable from the recorded Mortgage, in which case the applicable period is five (5) years after the date of maturity), subject to the extension if the mortgagee records an extension agreement in the Public Records of the County in accordance with that statute; (c) the Florida Uniform Commercial Code requires the Lender to file continuation statements in each office in which a financing statement was filed within six (6) months prior to the expiration of each five (5) year period (measured from the date the financing statement was originally filed) in order to continue the perfected status of such security interest; (d) Section 679.306 of the Florida Uniform Commercial Code limits the continued perfection of security interests in certain kinds of proceeds of collateral; and (e) additional financing statements may be required to be filed if the Borrower changes its name, identity or organizational structure, or changes the jurisdiction in which its place of business (or, if the Borrower has more than one place of business, its chief executive office) or any of the personal property collateral is located, or transfers such collateral or any portion thereof to another person.

The opinions set forth in this letter are subject to the following assumptions, qualifications and limitations:

1. The enforceability of the Loan Documents in accordance with their respective terms is subject: (a) to the effect of any applicable bankruptcy, insolvency, fraudulent

Bruce Fedor, Esquire  
May 12, 1993  
Page 4

transfer, moratorium, reorganization and/or other laws affecting creditors' rights generally; (b) to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law), including the exercise of discretionary powers by any tribunal before which equitable remedies may be sought, including without limitation, specific performance and injunctive relief; and (c) to the provisions of the Florida Uniform Commercial Code and other applicable laws and judicial decisions limiting such enforceability, but such other laws and judicial decisions do not render the Loan Documents invalid as a whole, and there exist, in the Loan Documents or pursuant to applicable law, legally adequate remedies for a realization of the principal benefit and/or security intended to be provided by the Loan Documents.

2. We have assumed the authenticity of all documents submitted to us as originals, the genuineness of all signatures not witnessed by us, the legal capacity of natural persons and the conformity to authentic original documents of all documents submitted to us as copies.

3. Except for the Borrower, we have assumed that each other party to the Loan Documents has the requisite power and authority to enter into and perform its respective duties and responsibilities with respect to the Loan Documents and has duly authorized and executed and delivered the respective Loan Documents, and that such Loan Documents are valid, binding and enforceable against such other parties. We have further assumed that the Loan described herein complies with any lending limitations and other restrictions applicable to the Lender.

4. As to questions of fact material to our opinions, we have relied upon and assumed the correctness of representations by representatives of the Borrower and the factual representations and warranties set forth in the Loan Documents. We have no current actual knowledge of any factual information that would lead us to form a legal opinion that the representations and warranties we have relied upon contain any untrue statement of a material fact.

5. We are licensed to practice law only in the State of Florida, and we have not examined the laws of any other jurisdiction in connection with this opinion letter. Accordingly, the foregoing opinions apply only with respect to the present laws of the State of Florida or of the United States of America and we express no opinion with respect to the laws of any other jurisdiction.

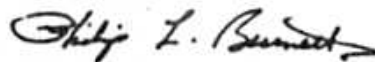
6. This opinion letter is rendered as of the date hereof, and we assume no obligation to advise you of changes which may be brought to our attention after that date.

Bruce Fedor, Esquire  
May 12, 1993  
Page 5

7. This opinion letter is limited to the matters expressly set forth herein, and no opinion is to be implied or may be inferred beyond the matters expressly so stated.

This opinion letter is rendered solely for the benefit of the addressee of this letter in connection with the Loan the subject matter hereof and may not be relied upon by any other person without our written consent. This opinion letter is not to be quoted or otherwise referred to in any financial statements or any other document, nor filed with or furnished to any governmental agency or other person, without our prior written consent.

Sincerely yours,



Philip L. Burnett

PLB/lm



Handwritten: 558-7594

# BancFlorida

FSB

May 5, 1993

Mr. Harry D. Cutcher  
c/o Sand Dollar Properties, Inc.  
16299 San Carlos Blvd.  
Fort Myers, FL 33908

RE: Assumption of BancFlorida Loan No. 20242618 and Future Advance in the amount of \$150,000.00

Dear Mr. Cutcher:

We are pleased to advise you that BANCFLORIDA, a Federal Savings Bank ("Bank") has approved your request for the assumption of the Capital Sunbelt Fund 84, Ltd., BancFlorida Loan No. 20242618 and a Future Advance in the amount of ONE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$150,000.00) (the "Loan"), the purpose for such Loan being the acquisition of Fort Myers Beach R.V. Resort, County of Lee, State of Florida (the "Property"). The Loan shall be subject to the terms set forth below and other conditions attached hereto and incorporated by reference herein.

A. Borrower. Borrower ("Borrower") shall be SAND DOLLAR PROPERTIES, INC., a Florida corporation. There shall be no change in the ownership or control of Borrower during the term of the Loan which must be current as of the effective date.

B. Guarantors. The following guarantors ("Guarantors") shall jointly and severally guarantee the payment of the Loan, and performance of the Loan and the Loan Documents:

Harry D. Cutcher  
Jeanne Cutcher

C. Loan Term. The maturity date of the Loan shall be June 1, 1996.

D. Payment of Principal and Interest. The Loan shall bear interest at the rate of eight and one-half percent (8.5%) per annum as of the effective date and amortized on the basis of seventeen (17) years.

Principal and interest shall be payable as follows:

On the first day of the month subsequent the closing and the first day of each month thereafter, Borrower shall pay the total sum on both the assumption and Notice of Future Advance of \$19,468.91 until June 1, 1996, when the entire principal balance plus all accrued interest shall be due in full. Upon default or

upon maturity of the Loan, the interest rate payable thereunder shall be the highest rate permitted by law.

E. Loan Fee. Borrower shall pay Bank a Loan Fee in an amount equal to Twenty Thousand Nine Hundred Seventy-Two and 82/100 Dollars (\$20,972.82) which shall be paid in full upon acceptance of this Commitment Letter.

F. Closing Date. The Loan shall be closed and all conditions to the disbursement thereunder shall be satisfied, not later than May 5, 1993. The Loan will be closed at the offices of the Bank's counsel or at such other place as Bank may elect.

G. Future Advance Disbursement. Upon closing, the monies from the Future Advance shall be deposited into an interest bearing BancFlorida account. Monies may be drawn from said account only upon the sole and specific written authorization of Bank. Authorization for release of the funds shall be based upon the following criteria:

1. Bank shall, at its sole discretion, approve the proposed improvements to the property and the contractor for the performance of the improvements;
2. After approval of the contractor, Bank shall be furnished copies of all signed contracts for improvements to the property; and
3. Upon completion of the improvements and presentation of invoices to Bank, payment shall be made directly to the contractor upon contractor's presentation of a contractor's affidavit and/or mechanic's lien release.

H. Representation and Warranties. Borrower hereby represents and warrants that:

1. All necessary actions have been taken to authorize the execution and delivery of this Commitment and the transactions contemplated thereby;
2. There is no litigation or similar proceeding threatened or pending against the Property or Borrower which may materially affect the ability of Borrower to perform its obligations hereunder other than \_\_\_\_\_;
3. There exists no event or circumstance which, with notice or lapse of time, or both, would constitute grounds for termination of this Commitment;
4. Borrower has, or prior to, or at, closing will have valid fee simple interest in and to the Property, free and clear of all liens, charges, claims, options and other encumbrances, subject only to exceptions approved in writing by Bank;

5. There are no outstanding or unpaid judgments against Borrower and all federal and state taxes, assessments or fees imposed upon Borrower or the Property have been paid.

6. No consent, approval or other authorization is required with respect to this transaction from any person or under any document by which Borrower is obligated or bound; and

7. Borrower, a Florida corporation is duly formed, validly existing and fully qualified to do business in the State of Florida with full power and authority to consummate the transactions contemplated hereby. Borrower shall update the above representations and warranties and furnish at closing such additional information, representations and warranties for it or any other relevant party as Bank may request in connection with the Loan.

I. Closing Conditions. Not less than five (5) business days prior to closing, Bank shall receive at Borrower's expense, such items as Bank may deem necessary or appropriate in order to show feasibility of repayment of the Loan and in order to provide security for the Loan, including without limitation, the following items, all satisfactory in form and content to Bank and its counsel:

1. Insurance. Borrower shall supply an original or certified copy (a complete copy of the entire policy which is certified on its face by the insurer or a notary public as a "True and Exact Copy of the Original Policy"), paid-in-full "all risk coverage" Hazard Insurance Policy in an amount equal to 100% (before co-insurance) of the full replacement cost of the improvements, (including all fixtures, equipment, chattels and personal property owned by Borrower and installed therein or appurtenant thereto, or otherwise attached to and a part of the real estate), which policy shall name Bank as mortgagee under a standard mortgagee clause without contribution, and provides ten (10) days unconditional notice of cancellation to mortgagee for non-payment of premium and thirty (30) days notice of cancellation for any other reason. Bank shall have the right to approve the insurance company or companies furnishing the coverages and the form and content of the policies and replacements thereof throughout the term of the Loan. All companies shall have an A.M. Best's Insurance Guide rating of A or above.

If the Property is in a Special Flood Hazard Area (as determined by Bank prior to closing or at any time as it may be redetermined during the term of the Loan), an original flood insurance policy must be provided in an amount equal to the lesser of the outstanding principal balance of the Loan or the maximum coverage available under the National Flood Insurance Program for the particular type of property to be mortgaged.

General Liability Insurance of (1) not less than \$1,000,000 combined limits, if the Loan amount is less than or equal to \$5,000,000 or (2) not less than \$2,000,000 combined limits, if the Loan amount is greater than \$5,000,000. The General Liability coverage must include Complete Operations, Contractual Liability and broad form Property Damage. A

Certificate of Insurance will be accepted as evidence of liability if the Master Policy is not available. In addition, evidence of Workers' Compensation insurance will be required.

2. Title Insurance. A Title Insurance Commitment in the Loan amount, which such additional and/or affirmative coverages acceptable to and required by Bank, issued on an American Land Title Association's standard Loan policy form, showing marketable title to the Property to be free and clear of all defects and encumbrances, except those approved by Bank in writing and its counsel. The title insurance underwriter and agent must be approved by Bank, and Bank must receive a closing protection letter for the agent. Copies of all instruments listed as title exceptions shall be attached to the Commitment and shall be subject to review and approval by Bank and its counsel. The BancFlorida Title Insurance requirements are incorporated herein by reference. The failure of Borrower to furnish Bank with the final mortgagee policy within forty-five (45) days of the closing shall constitute a default under the Loan documents.

3. Survey. Borrower shall deliver to Bank two (2) originals of a current survey of the Property by a registered surveyor, certified to Bank, the Title Company and Bank's counsel, and reflecting no conditions unsatisfactory to Bank, its counsel or the Title Company. The survey must show the total area of the Property to the nearest 1/100 of an acre, the location of all existing and proposed improvements, set back lines, encroachments, overlaps, all rights-of-way, easements by official record book and page, and with courses and distances so as to permit a metes and bounds description of the Property and of any item noted on the survey, and must also locate any coastal body of water within 150 feet of the Property. The survey must include a Surveyor's Certificate in favor of Bank, in form and substance acceptable to Bank and Title Company, and must include the flood elevation and flood zone designation of the Property. The Survey must meet the minimum technical standards specified in Chapter 21-111-6, Florida Administrative Code.

4. Corporate Authorizations. As to Borrower's formation and existence as a Florida corporation, Bank shall be furnished with:

- a. A current certificate of status from the Secretary of State of Florida and a current certificate authorizing the transaction of business in the state where the Property is located;
- b. A certified copy of the By-Laws of Borrower and all amendments;
- c. A certified copy of the Articles of Incorporation, and all amendments;
- d. A certificate of the Secretary of the Corporation stating that:
  - (1) Borrower is in good standing with all license, income and franchise taxes paid;

(2) No proceeding for the dissolution or liquidation has been commenced or is pending;

(3) A resolution (stated verbatim in the certificate) has been duly and unanimously adopted by the Board of Directors and remains in full force and effect authorizing the Corporation to enter into this Loan transaction and authorizing certain named officers to execute and deliver documents on behalf of and to bind the Corporation.

5. Payments. Borrower shall deliver to Bank evidence of payment of any outstanding liens, real and personal property taxes, sales and use taxes (if applicable) or other taxes, obligations or encumbrances against the Property or improvements thereon. Within ninety (90) days of closing, Borrower shall deliver to Bank evidence of payment of sewer assessment for 1990, 1991 and 1992.

6. Subordination. Borrower shall secure the subordination to the Loan of all loans payable by Borrower and Guarantors to any stockholder, officer, director or partner of Borrower or Guarantors, including loans payable to any affiliate, or subsidiary company, corporation, or any general or limited partnership group of which Borrower or Guarantor is stockholder or partner. No loans other than the BancFlorida first mortgage shall be secured by the real property without the written approval of BancFlorida.

7. Loan Documents. The following documents ("Loan Documents") shall be executed and delivered at closing on forms prepared by Bank's counsel:

a. Promissory Note (the "Note") executed by Borrower and payable to Bank for the Loan amount. In addition to such other terms and conditions as may be required by Bank's counsel, the Note shall provide for a late charge of five percent (5%) of any payment of principal and/or interest not received by Bank on its due date.

b. Assumption of the mortgage, which mortgage contains the following:

(1) In the event any payment is not received on its due date, the Loan may be declared in default and the entire principal balance together with interest thereon may be accelerated and declared to be immediately due and payable. The Loan Documents shall additionally provide that the outstanding balance due at maturity or by acceleration of the Loan will accrue interest at the maximum legal rate available.

(2) In the event Borrower sells, transfers, assigns, conveys, leases, or further encumbers all or any part of the Property constituting security for this Loan, or any interest therein, or if Borrower is not a natural person, any sale, conveyance or pledge of any stock or other interest in Borrower to any firm, person, partnership, corporation or other entity shall be an event of default, and Bank shall have the right to accelerate the entire principal balance together with interest thereon and declare same to be immediately due and payable.

(3) Other events of default as required by Bank.

(4) A security agreement as defined in the Florida UCC.

(5) No secondary or supplemental financing is permitted with respect to the Property without Bank's express written consent, which Bank may grant or withhold in its sole and absolute discretion.

(6) Any default under any of the Loan Documents shall be a default under any other loan made by Bank to Borrower or to any Guarantor or to any entity in any way related to any of them. Any default under any such other loan shall also be a default under this Loan, or, if the loan committed to herein has not yet been consummated, then at the option of Bank, a default under any other such loan shall constitute a default hereunder and shall render this Commitment null and void.

c. Owner's Affidavit.

d. Closing Statement.

e. Opinion Letter from Borrower's Counsel opining that Borrower is authorized to do business in the State of Florida, in compliance with all rules, regulations, ordinances, and orders of all governmental authorities and that there is not any threatened or pending action against Borrower by any court or administrative agency, that Borrower is authorized to execute the required Loan Documents at closing, that the Loan Documents are valid and fully enforceable according to their terms, that the Loan Documents create a valid lien on the real property, personal property, and other collateral in favor of Bank, that the Loan is not usurious, that the Property is properly zoned and in compliance with all rules and ordinances, and such additional matters as may be required by Bank's Counsel.

- f. Guaranty executed by each Guarantor.
- g. Affidavit as to use of Loan proceeds for business or commercial purposes.
- h. Such other documents as may be required under the terms of this commitment or as may otherwise be required by Bank or Bank's counsel to effectuate this Loan transaction, protect the interests of Bank, or comply with all applicable laws and regulations.

8. Fees and Costs. Borrower shall pay all Loan closing costs and Bank's counsel fees estimated to be \$1,500.00, pertaining directly or indirectly to the Loan, whether incurred prior to, at or subsequent to closing and without credit for any commitment fee previously paid. The Loan closing costs include, but are not limited to, documentary stamps, intangible tax, recording and filing fees, tax and flood service fees, survey, disbursement fees, appraisal fees, environmental audit fees, inspection fees, fees for certification of improvements, mortgagee title insurance premiums, and any and all other additional expenses or additional requirements imposed by Bank's counsel, Bank or the Title Insurer. All costs incurred by Bank subsequent to the acceptance of this Commitment shall be paid by Borrower and reimbursed to Bank regardless of whether the Loan closes.

9. Financial Statements. Borrower and Guarantors shall furnish annually during the term of the Loan, current financial statements as follows:

a. For each Corporate/Partnership/Joint Venture Borrower or Guarantor, fiscal year-end statements are required within 90 days but no later than 120 days from the fiscal year-end date and at such other intervals as may be required by Bank. All statements shall include a balance-sheet, income statement and any supplementary information necessary for a meaningful analysis of the statements. This supplementary information should include but not be limited to cash flow statements, income tax returns and accounts receivable agings. Unaudited financial statements must bear an original signature or include a transmittal letter with an original signature of a senior officer of Borrower/Guarantor or by the independent accountant who prepared the statement.

b. For each individual Borrower or Guarantor, an originally signed financial statement on Bank form is required within 60 days of the anniversary date of the prior statement and at such other intervals as may be required by Bank. The statement must include a balance sheet, statement of income and its sources, individual cash flows on all real estate projects and any applicable supporting schedules. If a joint statement, jointly held property should be clearly indicated and all persons whose financial interests are represented must sign the statement.

c. Borrower shall provide internally prepared statements quarterly within forty-five (45) days of the end of each quarter commencing with the quarter commencing May 1, 1993.

The financial statements required above are a material inducement for Bank committing to make this Loan, and any failure by Borrower or any Guarantor to provide the required financial statements during the term of the Loan shall be a material event of default and shall entitle Bank to accelerate the Loan at its option.

J. Additional Requirements. The Borrower's operating account with the subject park shall be maintained at BancFlorida; so long as there exists a balance to Bank, Borrower shall establish with the Bank an escrow account into which shall be deposited on the first day of each month an amount equal to one-twelfth (1/12) of the estimated Ad Valorem taxes on the real property. Such estimate shall be based on an amount not less than the prior years actual full Ad Valorem taxes on the real property. Upon closing, Borrower shall deposit with the tax escrow sufficient monies for the months of January through May 1993.

As a condition of this commitment, Borrower shall arrange for the subordination on that certain mortgage on the subject real property to the First Independence Bank of Florida and also a certain Purchase Money Wrap Around Mortgage by and between Harry D. Cutcher and Capital Sunbelt Fund 84, Ltd.

K. Not a Joint Venture. Notwithstanding anything to the contrary herein contained, Bank is not, by issuing this letter or by the ultimate consummation of the contemplated transaction, to be deemed a partner or joint venturer with Borrower.

L. Indemnification. Borrower hereby agrees to indemnify and hold Bank harmless from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses (including attorneys' fees), of whatever kind and nature that may be incurred by or asserted against Bank in connection with the development of the property or the use, occupation, or operation of the same or any other collateral encumbered by the Mortgage or other Loan Documents.

M. Waiver. No waiver of any provisions hereof by Bank shall constitute a waiver of any future matter of similar import or any other matter at any time in the future. This Commitment constitutes the entire understanding of the parties with respect to the matters referred to herein and no modification hereof shall be binding unless written and signed by the party against whom said modification is sought to be enforced. The terms of this Commitment shall survive the closing of the Loan and shall, by this reference, be deemed incorporated as part of the Loan Documents, except to the extent such terms are in conflict with the Loan Documents.



N. Termination of Commitment. If prior to closing, any one of the following events should occur, such occurrence shall constitute an Event of Default and this Commitment shall automatically become null and void and Bank shall have no obligation hereunder:

1. Borrower or Guarantors fail to comply with any requirement of this Commitment or any requirement imposed by Bank's counsel or Title Insurer.

2. Any representation, warranty or statement pertaining to this Commitment (whether or not contained herein), made by Borrower or Guarantors, or in any certificate, report or other writing delivered pursuant hereto is untrue or misleading as of the date made or ceases to be true.

3. There occurs any substantial change in the legal or equitable ownership of a controlling interest in Borrower or Guarantors, if in Bank's sole judgment such change materially and adversely affects the ability of Borrower or guarantors to perform in accordance with the Commitment.

4. Should Borrower, Guarantors, or any affiliate of Borrower (collectively referred to as "Borrower" for the purposes of this paragraph) have an adverse change in its financial condition (in the sole opinion of Bank), or should Borrower make any assignment for the benefit of creditors, or should a receiver, liquidator or trustee of Borrower or of any of Borrower's property be appointed, or should any petition for the Bankruptcy, reorganization or arrangement of Borrower, pursuant to the Federal Bankruptcy Act or any similar statute, be filed, or should Borrower be adjudicated a bankrupt or insolvent, or should Borrower in any proceeding admit its insolvency or inability to pay its debts as they fall due, or should Borrower, if a corporation, be liquidated or dissolved or its articles of incorporation expire or be revoked, or, if a partnership or business association, be dissolved or partitioned, or, if a trust, be terminated or expire, or should there be any undisclosed litigation in effect or pending involving Borrower which would materially and adversely affect the financial condition of Borrower. Borrower's closing hereunder shall constitute a representation by Borrower that it has suffered no adverse changes as herein described.

O. Not Assignable. Neither this commitment nor any of Borrower's rights hereunder shall be assignable without the prior written consent of Bank.

P. Fees. Bank shall not be obligated to pay any brokerage fee, finder's fee, charge or commission in connection with this Loan, and Borrower and Guarantors agree by acceptance hereof to indemnify and hold Bank harmless from any and all claims including, but not limited to, brokerage or similar claims arising out of or in any way connected with this transaction.

Q. No Party Beneficiary. This Commitment is issued solely for the benefit of Borrower. No other person or party shall be a beneficiary hereof or have any rights hereunder.

and no rights are conferred by this Commitment upon any other person or party, whether or not their name may be used or otherwise identified in this Commitment.

R. Governing Law, Interpretation. This Commitment and the Loan Documents to be delivered pursuant hereto shall be governed by the law of the State of Florida without reference to the choice of law rules or conflict of law rules of that state. The headings of sections and paragraphs in this Commitment are for convenience only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof. As used in the Commitment, the singular shall include the plural, and masculine, feminine, and neuter pronouns shall be fully interchangeable, where the context so requires. If any provisions of this Commitment, or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstance is adjudicated to be invalid, the validity of the remainder of this Commitment shall be construed as if such invalid part were never included herein. This Commitment may not be modified or amended in any manner except by a written instrument executed by Bank and Borrower. Time is of the essence of this Commitment. All exhibits to this Commitment shall be incorporated into and made a part of this Commitment.

S. Survival of Terms. The terms and conditions of this Commitment which bind and obligate the parties shall survive the closing of the Loan contemplated herein and shall be considered to be a part of the Loan Documents and agreement relating thereto, unless expressly modified or terminated by a document specifically referring to such terms and conditions executed at closing. A failure to comply with the terms and conditions hereof shall constitute an event of default under the note and any Loan Documents executed at such closing.

T. Litigation. In the event this Commitment or the Loan Documents evidencing the Loan become the subject of litigation or dispute between Borrower and Bank, the party prevailing shall be entitled to recover and receive from the other party the reasonable attorneys' fees and costs (including those for any appeal) incurred by the prevailing party.

BORROWER, GUARANTORS AND BANK HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON OR ARISING OUT OF UNDER OR IN CONNECTION WITH THIS COMMITMENT LETTER AND ANY AGREEMENT DOCUMENTS OR INSTRUMENTS CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BANK ENTERING INTO THIS COMMITMENT LETTER.

In the event that you have not executed and return the enclosed duplicate of this letter on or before May 5, 1993, this Commitment shall be void.

Very truly yours,

BANCFLO~~RIDA~~, a Federal Savings Bank

By: *Thomas E. Finlay*  
THOMAS E. FINLAY, First Vice President

ACCEPTED AND AGREED this \_\_\_ day of May, 1993.

SAND DOLLAR PROPERTIES, INC., a Florida  
corporation

By: \_\_\_\_\_  
HARRY D. CUTCHER, President

GUARANTORS

*Harry D. Cutcher*  
HARRY D. CUTCHER

*Jeanne Cutcher*  
JEANNE CUTCHER

PROMISSORY NOTE

\$150,000.00

Naples, Florida

The Undersigned, SAND DOLLAR PROPERTIES, INC., a Florida corporation, (hereinafter called "Maker" or "Obligor") promises to pay to the order of BANCFLOIDA, a Federal Savings Bank ("Holder"), at its office in Naples, Florida, or at such other place as Holder may from time to time designate, the principal sum of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) together with interest at the rate of eight and one-half percent (8.5%) per annum amortized on a seventeen (17) year basis. Payments of principal and interest shall be as follows: Commencing on June 1, 1993 and continuing on the first day of each month thereafter, Maker shall pay to Holder the sum of ONE THOUSAND THREE HUNDRED NINETY-TWO AND 44/100 (\$1,392.44) per month. Said monthly payments shall continue until June 1, 1996 when the entire principal and all accrued interest shall be due in full.

All payments hereunder shall first be credited to interest and lawful charges then accrued and the remainder to principal.

The indebtedness evidenced by this Note, and all other indebtedness of Obligor to Holder, however and whenever incurred or evidenced, whether primary, secondary, direct, indirect, absolute, contingent, sole, joint or several, due to become due, or which may be hereafter contracted or acquired, whether arising in the ordinary course of business or otherwise (hereinafter, with this Note, collectively called "Liabilities"), is secured by the following described property:

Lot 5 and the North 1/2 of Lot 6, Block 1, of that certain subdivision known as E.P. BATES PINE RIDGE TRUCK FARMS, according to the plat thereof recorded in Plat Book 3, Page 68, Public Records of Lee County, Florida.

AND

A tract of land lying in the NE 1/4 of Section 6, Township 46 South, Range 24 East, Lee County, Florida, being part of Lot 5, Block 2 of E.P. Bates Pine Ridge Truck Farms, as recorded in Plat Book 3, Page 68 of the Public Records of Lee County, Florida. Said tract being more particularly described as follows:

Commencing at the SE corner of Coastal Estates, a Mobile Home Subdivision, as shown on the plat recorded in Plat Book 29 on Page 78 and 79 of the Public Records of Lee County, Florida. Said point being on the west right-of-way line of Pine Ridge Road; thence run South 89 degrees 58' 19" West along the south line of said Coastal Estates for 992.00 feet to the point of beginning; thence run South 0 degrees 03' 04" East for 292.55 feet, thence run South 82 degrees 17' 46" West for 26.67 feet; thence run South 89 degrees 56' 56" West for 239.94 feet,

thence run North 0 degrees 37' 03" West for 100.30 feet; thence run North 89 degrees 56' 56" East for 74.77 feet; thence run North 0 degrees 37' 03" West for 66.00 feet; thence run North 89 degrees 22' 57" East for 12.00 feet; thence run North 0 degrees 37' 03" West for 46.00 feet; thence run South 89 degrees 22' 57" West for 12.00 feet; thence run North 0 degrees 37' 03" West for 83.89 feet to a point on the south line of said Coastal Estates, being also the north line of said Lot 5, Block 2 of E.P. Bates Pine Ridge Truck Farms; thence run North 89 degrees 58' 19" East along said line for 194.53 feet to the point of beginning.

including all proceeds thereof and rights in connection therewith, which property, together with additions and substitutions, is called the Collateral. Holder shall have such rights with respect to the Collateral as is authorized by law. If Obligor has other loans with Holder, or if Obligor takes out other loans with Holder in the future, collateral securing those loans will also secure this Note.

This Note is secured by that certain Mortgage and Security Agreement of even date, which Mortgage is a good and valid first lien upon the Collateral. It is expressly agreed that all of the covenants, conditions and agreements contained in the referenced Mortgage are hereby made a part of this Note.

Maker, endorser, surety, guarantor or other parties to this Note (all of whom are hereinafter collectively called "Obligor") jointly and severally agree as follows:

Additions to, releases, reductions or exchanges of or substitutions for the Collateral, payments on account of this loan or increases of the same, or other loans made partially or wholly upon the Collateral, may from time to time be made without affecting the provisions of this Note or the Liabilities of any party hereto. If any of the Collateral is personal property, Holder shall exercise reasonable care in the custody and preservation of the Collateral in its possession, and it shall be deemed to have exercised reasonable care if it takes such action for that purpose as Maker shall reasonably request in writing, but no omission to comply with any request of Maker shall of itself be deemed a failure to exercise reasonable care. Holder shall not be bound to take any steps necessary to preserve any rights in the Collateral against prior parties, and Maker shall take all necessary steps for such purposes. Holder or its nominee need not collect interest on or principal of any Collateral or give any notice with respect thereto.

If the Collateral shall at any time become unsatisfactory to Holder, or if Holder shall at any time deem itself insecure or upon default, Maker shall, at the option of Holder and in addition to all other remedies available to Holder, within ten (10) days after demand, deposit with Holder as part of the Collateral additional property which is satisfactory to Holder.

Obligor shall be in default hereunder upon: (a) nonpayment of any interest or principal hereunder when due; (b) failure of any Obligor to perform any agreement hereunder or otherwise a part of this loan transaction or to pay in full, when due, any Liabilities whatsoever

to Holder or any installment thereof or interest thereon, or failure to pay when due any premium upon any life insurance policy held as Collateral hereunder; (c) the death, dissolution, termination of existence, insolvency or business failure of any Obligor to this Note, appointment of a receiver of any part of the property of any such party, assignment for the benefit of creditors by or the commencement of any proceedings in bankruptcy or insolvency by or against Maker or any Obligor; (d) the entry of a judgment against any Obligor; (e) the issuing of any attachment or garnishment, or the filing of any lien against any property of any Obligor; (f) the taking of possession of any substantial part of the property of any Obligor at the instance of any governmental authority; (g) the merger, consolidation or reorganization of any Obligor; (h) the determination by Holder that a material adverse change has occurred in the financial condition of any Obligor from the condition set forth in the most recent financial statement of such Obligor heretofore furnished to Holder or from the condition of such Obligor as heretofore most recently disclosed to Holder in any manner; (i) falsity in any material respect of, or any material omission in, any representation or statement made to Holder by or on behalf of Obligor in connection with this Note; (j) the pledge, assignment, transfer or granting of a security interest by any Maker of any equity in any of the Collateral without the written consent of Holder; (k) failure of any Obligor to pay, in full, when due any other obligation or liability owed to Holder, whether such obligation shall exist currently or shall arise after the execution of this Note; or (l) failure to maintain operating account with Holder or the failure to maintain an Ad Valorem tax escrow account with the Holder.

Holder shall have all of the rights and remedies of a creditor, mortgagee and secured party under all applicable law. Without limiting the generality of the foregoing, if Holder shall deem itself insecure or upon the occurrence of any default hereunder, Holder may at its option and without notice or demand: (1) declare the entire unpaid principal and accrued interest accelerated and due and payable at once, together with any and all other Liabilities of any Obligor or any of such Liabilities selected by Holder; and (2) set off against this Note all money owed by Holder in any capacity to each or any Obligor whether or not due, and also set off against all other Liabilities of each Maker to Holder all money owed by Holder in any capacity to any Maker, and Holder shall be deemed to have exercised such right of setoff and to have made a charge against any such money immediately upon the occurrence of such default although made or entered on the books subsequent thereto. To the extent that any of the Collateral is personal property and Holder elects to proceed with respect to it in accordance with the Uniform Commercial Code, then unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Holder will give Maker reasonable notice of the time and place of any public or private sale thereof. The requirement of reasonable notice shall be met if such notice is mailed, postage prepaid, to any Maker at the address given below or at any other address shown on the records of Holder at least five (5) days before the time of sale. Upon disposition of any Collateral after the occurrence of any default hereunder, Maker shall be and shall remain liable for any deficiency; and Holder shall account to Maker for any surplus, but Holder shall have the right to apply all or part of such surplus (or to hold the same as a reserve) against any and all other Liabilities of each or any Maker to Holder.

Holder may, at any time whether or not this Note is due: (i) pledge or transfer this Note and its interest in the Collateral, whereupon Holder shall be relieved of all duties and responsibilities hereunder and relieved from any and all liability with respect to any Collateral so pledged or transferred, and pledgee or transferee shall for all purposes stand in the place of Holder hereunder and have all the rights of Holder hereunder; (ii) transfer the whole or any part of the Collateral into the name of itself or its nominee; (iii) vote the Collateral; (iv) notify Obligor on any Collateral to make payment to Holder of any amounts due or to become due thereon; (v) demand, sue for, collect or make any compromise or settlement it deems desirable with reference to the Collateral; (vi) take possession or control of any proceeds of the Collateral; and (vii) exercise all other rights necessary or required, in Holder's discretion, in order to protect its interests hereunder.

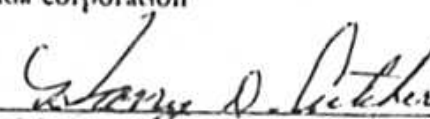
In no event shall Holder be entitled to unearned or unaccrued interest or other charges or rebates, except as may be authorized by law; nor shall any such party be entitled to receive at any time any such charges not allowed or permitted by law, or any interest in excess of the highest lawful rate. Any payments of interest in excess of the highest lawful rate shall be credited by Holder on interest accrued or principal or both; except that Maker shall have an option to demand refund as to any such interest or charges in excess of the highest lawful rate.

No delay or omission on the part of Holder in exercising any right hereunder shall operate as a waiver of such right or of any other rights under this Note. Presentment, demand, protest, notice of dishonor and all other notices are hereby waived by each and every Obligor. Obligor, jointly and severally, promises and agrees to pay all costs of collection and attorneys' fees of any suit, out of court, in trial, on appeal, in bankruptcy proceedings or otherwise, incurred or paid by Holder in enforcing this Note or preserving any right or interest of Holder hereunder. Any notice to Maker shall be sufficiently served for all purposes if placed in the mail, postage prepaid, addressed to or left upon the premises at the address shown below or any other address shown on Holder's records.

Each Obligor hereby expressly consents to any and all extensions, modifications and renewals, in whole or in part, including but not limited to changes in payment schedules and interest rates, and all delays in time of payment or other performance which Holder may grant or permit at any time and from time to time without limitation and without any notice to or further consent of any Obligor. Each Obligor shall also be bound by each of the foregoing terms and those contained in the guaranty portion hereof deemed to be a part of this Note, without the requirement that Holder first go against any security interest otherwise held by Holder.

SAND DOLLAR PROPERTIES, INC.,  
a Florida corporation

Date: May 7, 1993

By:   
HARRY D. GUTCHER, President

## ASSUMPTION AGREEMENT & RELEASE OF LIABILITY

WHEREAS, BANCFLORIDA, a Federal Savings Bank ("Lender"), loaned to F.M.B.C. UTILITIES, INC., a Florida corporation and HARRY D. CUTCHER, Trustee, the sum of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00), evidenced by Note and Mortgage dated September 2, 1983 and recorded in O.R. Book 1688, Page 2650 of the Public Records of Lee County, Florida; and a certain Loan Assumption and Modification Agreement dated May 27, 1988 and recorded in O.R. Book 1995, Page 833 of the Public Records whereby F.M.B.C. UTILITIES, INC., a Florida corporation and HARRY D. CUTCHER, Trustee sold the real property to CAPITAL SUNBELT FUND 84, LTD. a Florida Limited Partnership ("CAPITAL") and a Notice of Future Advance dated April 19, 1984 in the amount of THREE HUNDRED SEVENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$375,000.00) and recorded in O.R. Book 1722, Page 4108 of the Public Records of Lee County, Florida, and a Notice of Future Advance dated May 27, 1988 in the amount of TWO HUNDRED TWENTY-FIVE THOUSAND SIX HUNDRED FIFTY-SIX AND 08/100 DOLLARS (\$225,656.08) and recorded in O.R. Book 1995, Page 839 of the Public Records of Lee County, Florida and

WHEREAS, CAPITAL has sold said property to SAND DOLLAR PROPERTIES, INC., a Florida corporation, ("Purchaser"), and said Purchaser desires to assume and agrees to pay said indebtedness and perform all the obligations under said Note and Mortgage, and BANCFLORIDA is willing to consent to said transfer of title and assumption of said indebtedness for the following described property:

Lot 5 and the North 1/2 of Lot 6, Block 1, of that certain subdivision known as E.P. BATES PINE RIDGE TRUCK FARMS, according to the plat thereof recorded in Plat Book 3, Page 68, Public Records of Lee County, Florida.

AND

A tract of land lying in the NE 1/4 of Section 6, Township 46 South, Range 24 East, Lee County, Florida, being part of Lot 5, Block 2 of E.P. Bates Pine Ridge Truck Farms, as recorded in Plat Book 3, Page 68 of the Public Records of Lee County, Florida. Said tract being more particularly described as follows:

Commencing at the SE corner of Coastal Estates, a Mobile Home Subdivision, as shown on the plat recorded in Plat Book 29 on Page 78 and 79 of the Public Records of Lee County, Florida. Said point being on the west right-of-way line of Pine Ridge Road; thence run South 89 degrees 58' 19" West along the south line of said Coastal Estates for 992.00 feet to the point of beginning; thence run South 0 degrees 03' 04" East for 292.55 feet, thence run South 82 degrees 17' 46" West for 26.67 feet; thence run South 89 degrees 56' 56" West for 239.94 feet, thence run North 0 degrees 37' 03" West for 100.30 feet; thence run North 89 degrees 56' 56" East for 74.77 feet; thence run North 0 degrees 37' 03" West for 66.00 feet; thence run North 89 degrees 22' 57" East for 12.00 feet; thence run North 0 degrees 37' 03" West for 46.00 feet; thence run South 89 degrees 22' 57" West for 12.00 feet; thence run North 0 degrees 37' 03" West for 83.89



feet to a point on the south line of said Coastal Estates, being also the north line of said Lot 5, Block 2 of E.P. Bates Pine Ridge Truck Farms; thence run North 89 degrees 58' 19" East along said line for 194.53 feet to the point of beginning.

THEREFORE, in consideration of the mutual covenants and agreements herein contained, IT IS HEREBY AGREED AS FOLLOWS:

1. BancFlorida does hereby consent to the sale and conveyance of said premises by the aforesaid CAPITAL to said Purchaser;

2. The Purchaser does hereby assume and agree to pay said mortgage indebtedness evidenced by said Note and Mortgage, and to perform all of the terms and conditions provided therein it being agreed and understood that as of this date, said indebtedness is ONE MILLION NINE HUNDRED FORTY-SEVEN THOUSAND TWO HUNDRED EIGHTY-TWO AND 19/100 DOLLARS (\$1,947,282.19) and that the interest rate shall be eight and one-half percent (8.5%) per annum amortized on a seventeen (17) year basis. Payments of principal and interest shall be as follows: On June 1, 1993 and the first day of each month thereafter, Borrower shall pay the total sum on both the assumption and Notice of Future Advance of \$19,468.91 until June 1, 1996, when the entire principal balance plus all accrued interest shall be due in full. Upon default or upon maturity of the Loan; the interest rate payable thereunder shall be the highest rate permitted by law.

3. This Assumption Agreement and Release of Liability shall be subject to all the terms and conditions set forth in that certain commitment letter by and between the Lender and Purchaser dated April \_\_, 1993, a copy of which is attached hereto as Exhibit "A" and incorporated herein as though full rewritten.

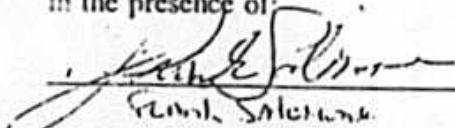
4. Capital Sunbelt Fund 84, Ltd., a Florida Limited Partnership is hereby fully released and held harmless from any and all liability hereunder as well as the liability under the Note and Mortgage referred to herein.

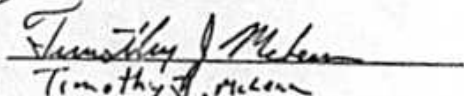
5. All other terms and conditions contained in the Note and Mortgage shall remain in full force and effect.

This assumption by said Purchaser and HARRY D. CUTCHER and JEANNE CUTCHER individually (Guarantor) is joint and several and shall bind them, their heirs, personal representatives, successors, and assigns.

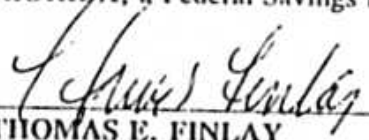
IN WITNESS WHEREOF, the parties have hereunto executed this instrument this 13 day of April, 1993.

Signed, sealed and delivered  
in the presence of:

  
Frank Salter

  
Timothy J. McLean  
(Print Names Below Signatures)

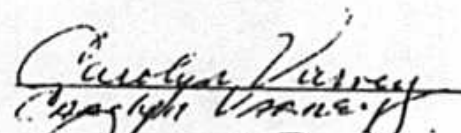
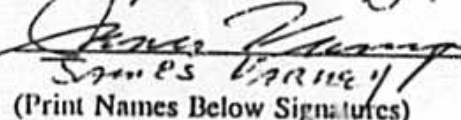
BANCFLOLIDA, a Federal Savings Bank

By:   
THOMAS E. FINLAY  
First Vice President

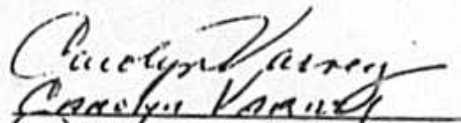
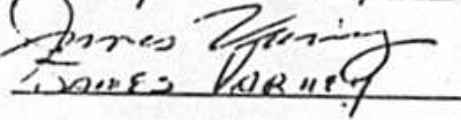
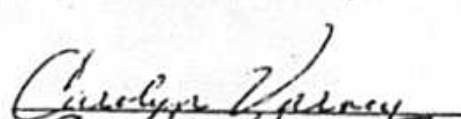
PURCHASER

SAND DOLLAR PROPERTIES, INC., a  
Florida corporation

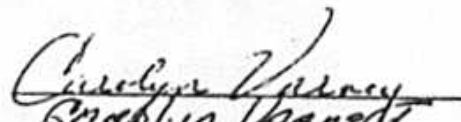
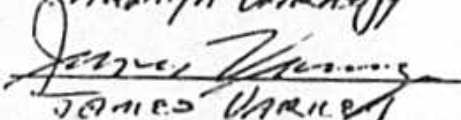
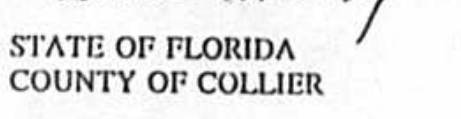
By:   
HARRY D. CUTCHER, President


  
  
Carolyn Varney  
James Varney  
(Print Names Below Signatures)

GUARANTOR

  
  
  
Carolyn Varney  
Carolyn Varney  
James Varney  
James Varney

  
HARRY D. CUTCHER

  
  
  
Carolyn Varney  
Carolyn Varney  
James Varney  
James Varney

  
JEANNE CUTCHER

STATE OF FLORIDA  
COUNTY OF COLLIER

I HEREBY CERTIFY that this day, before me, an officer duly authorized in the state and county aforesaid to take acknowledgements, personally appeared THOMAS E. FINLAY to me personally known to be a First Vice President of the corporation named as Mortgagee in

the foregoing instrument, and that he acknowledges under oath executing the same in the presence of two subscribing witnesses freely and voluntarily under authority duly vested in them by said corporation.

*Barbara J. ...*  
NOTARY PUBLIC, State of Florida  
Print Name: *BARBARA J. ...*  
My Commission Expires: *01/21/93*

STATE OF FLORIDA  
COUNTY OF

NOTARY PUBLIC, STATE OF FLORIDA  
MY COMMISSION EXPIRES AUGUST 21, 1993  
BONDING THRU AGENT'S NOTARY BROKERAGE

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the state and county aforesaid to take acknowledgements, to me personally known, appeared HARRY D. CUTCHER, as President of SAND DOLLAR PROPERTIES, INC., a Florida corporation, and who executed the foregoing instrument in each capacity and they acknowledged before me that they executed the same under oath.

*Carolyn Varney*  
NOTARY PUBLIC, State of Florida  
Print Name: *Carolyn Varney*  
My Commission Expires: *8/21/93*

STATE OF FLORIDA  
COUNTY OF

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE  
MY COMMISSION EXPIRES AUGUST 21, 1993  
BONDING THRU AGENT'S NOTARY BROKERAGE

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the state and county aforesaid to take acknowledgements, to me personally known, appeared HARRY D. CUTCHER and JEANNE CUTCHER and who executed the foregoing instrument in each capacity and they acknowledged before me that they executed the same under oath.

*Carolyn Varney*  
NOTARY PUBLIC, State of Florida  
Print Name: *Carolyn Varney*  
My Commission Expires: *8/21/93*

This instrument prepared by:  
BRUCE G. FEDOR, ESQUIRE  
5801 Pelican Bay Blvd.  
Naples, Florida 33963  
(813) 597-1611  
Florida Bar No. 949190

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE  
MY COMMISSION EXPIRES AUGUST 21, 1993  
BONDING THRU AGENT'S NOTARY BROKERAGE

## UNCONDITIONAL AND CONTINUING GUARANTY

THIS GUARANTY, made as of May 15<sup>th</sup>, 1993, by the undersigned, hereinafter referred to as the "Guarantor", to and for the benefit of BANCFLORIDA, a Federal Savings Bank, at Naples, Florida, hereinafter referred to as "the Bank".

### WITNESSETH:

WHEREAS, SAND DOLLAR PROPERTIES, INC., a Florida corporation ("Borrower") has applied to the Bank for the assumption of loan and a Notice of Future Advance ("Loan") in the total amount of TWO MILLION NINETY SEVEN THOUSAND TWO HUNDRED EIGHTY-TWO AND 19/100 DOLLARS (\$2,097,282.19) to be evidenced by a Promissory Note (the "Note") and secured by a Mortgage Agreement (the "Mortgage") encumbering property in Lee County, Florida; and

WHEREAS, the Bank is unwilling to approve said assumption and advance unless Guarantor guarantees the payment of the principal and interest, and any other charges provided for in the documents evidencing the Loan (the "Loan Documents"), including but not limited to the Note, the Mortgage, that certain Commitment Letter dated April 30, 1993 executed by Guarantor and Bank, and other Loan Documents, and the performance by Borrower of all of the covenants on its part to be performed and observed pursuant to the provisions thereof; and

WHEREAS, Guarantor desires to give such Guaranty to Bank in order to induce Bank to make said Loan.

NOW, THEREFORE, in consideration of the premises and for the purpose of inducing Bank to make the aforementioned Loan to Borrower, Guarantor:

1. Jointly and severally with any other guarantors, unconditionally and absolutely guarantees the due and punctual payment of the principal of the Note, the interest thereon and any other monies due or which may become due to Bank thereon or under the other Loan Documents and the due and punctual performance and Observance by Borrower of all the other terms, covenants and conditions of the Note, Mortgage and other Loan Documents, whether according to the present terms thereof, at an earlier or accelerated date or dates as provided therein, or pursuant to any extension of title or to any change or changes in the terms, covenants and conditions thereof now or at any time hereinafter made or granted, together with any and all indebtedness of Borrower under this loan transaction (all such indebtedness, obligation and liabilities sometimes referred to herein as the "Indebtedness").

2. Waives diligence, presentment, protest, notice of dishonor, demand for payment, extension of time of payment, notice of acceptance of this Guaranty, non-payment at maturity and indulgences and notices of every kind, and consents to any and all forbearances and extensions of the time of payment of or performance required under the Note and/or amounts due under the other Loan Documents and to any and all changes in the terms, covenants and

conditions thereof hereafter made or granted, and to any and all substitutions, exchanges, subordinations or releases of all or any part of the collateral therefor or persons liable thereon without affecting the continuing liability of Guarantor.

3. Agrees that it shall have no right to subrogation whatsoever with respect to the aforementioned indebtedness or to any monies due and unpaid thereon or any collateral securing the same, unless and until the Bank shall have received payment in full of all sums at any time evidenced or secured by the Mortgage and other Loan Documents.

4. Agrees that this Guaranty is an absolute, continuing and unlimited guaranty of payment and performance hereinabove specified without regard to the regularity, validity or enforceability of any liability or obligation of Borrower hereby guaranteed.

5. Agrees that this Guaranty may be enforced by the Bank without first resorting to or exhausting any other security or collateral or without first having recourse to the Note or other Loan Documents or any of the property covered by the Mortgage or other collateral through foreclosure proceedings or otherwise; provided, however, that nothing herein contained shall prevent Bank for suing on the Note or other Loan Documents or foreclosing or exercising its power of sale under the Mortgage or from exercising any other rights thereunder, and if such foreclosure or sale or other remedy is availed of, only the net proceeds therefrom, after deduction of all charges and expenses (including reasonable attorneys' fees) of every kind and nature whatsoever, shall be applied in reduction of the amount due on the Note, Mortgage and other Loan Documents and the Bank shall not be required to institute or prosecute proceedings to recover any deficiency as a condition of payment hereunder or enforcement hereof. At any sale of the security or collateral for the Indebtedness or any part thereof, whether by foreclosure, exercise of power of sale or otherwise, Bank may, at its discretion purchase all or any part of such collateral so sold or offered for sale for its own account and may apply against the amount bid therefor the balance due it pursuant to the terms of the Note, Mortgage or other Loan Documents.

6. Agrees that this Guaranty is irrevocable and the obligations of Guarantor hereunder shall terminate and cease only at the time Lender receives payment in full of all of the Indebtedness or Guarantor pays the Indebtedness in full.


7. Agrees that in the event it shall become necessary for Lender to employ an attorney for the purposes of enforcing the terms of this Guaranty, Guarantor agrees to pay any reasonable attorneys' fees, together with court costs and any other expenses of collection that might be incurred hereunder, irrespective of whether or not suit be brought hereunder.

8. Agrees that this Guaranty shall inure to the benefit of and may be enforced by Bank, and any subsequent holder or holders of the Note, Mortgage, other Loan Documents and other collateral and shall be binding upon and enforceable against the Guarantor and Guarantor's legal representatives or successors and assigns.

9. Acknowledges that Bank may assign the Note and other Loan Documents, in whole or in part and by participation, to another holder; and, Guarantor specifically agrees that, in such event, each such holder (whether Bank or another) shall have the right to enforce this Guaranty. Guarantor specifically consents that any action brought under this Guaranty against it may be brought and commenced in the State of Florida in any court of competent jurisdiction and venue therein and consents to the service of process issued from said court.

If there are limits under the laws of the State of Florida concerning amounts (whether interest, principal or other amounts) for which guarantors of the debts of another may be liable, then, in no event shall Guarantor be charged or assessed, nor shall he pay, any such amounts as defined by laws of Florida which would cause the total of such amounts for which he is liable hereunder to exceed the highest permissible or rate allowed by the laws of Florida, and any provision herein requiring payment in excess of such conventional rate is null and void as to such excess.

WITNESS THE EXECUTION hereof as of May 17, 1993.

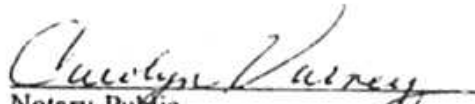
  
\_\_\_\_\_  
JEANNE CUTCHER

STATE OF FLORIDA

COUNTY OF COLLIER

Before me, a Notary Public for the county and state aforesaid, personally appeared JEANNE CUTCHER, who is personally known to me, and who, upon oath, acknowledged that she signed and delivered the foregoing Unconditional and Continuing Guaranty on behalf of said corporation, for the purposes therein named and expressed as its free and voluntary act.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 17 day of May, 1993.

  
\_\_\_\_\_  
Notary Public  
Print Name: Carolyn Varney  
My Commission Expires: 8/21/93

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE  
MY COMMISSION EXPIRES AUGUST 21, 1993  
BONDED THRU AVANT'S FIDELITY BONDERS

## COLLATERAL ASSIGNMENT OF INTANGIBLES

FOR VALUE RECEIVED, the sufficiency of which is hereby acknowledged, SAND DOLLAR PROPERTIES, INC., a Florida corporation, (hereinafter referred to as the "Assignor"), hereby assigns, transfers and sets over to BANCFLORIDA, a Federal Savings Bank, its successors, nominees, and assignees (hereinafter collectively referred to as "Lender"), all of its right, title and interest in and to any and all of Assignor's trade names including without limitation, any and all right, title and interest of Assignor in and to SAND DOLLAR PROPERTIES, trade marks, licenses, accounts receivable, service contracts, personal property contracts and leases, supplier contracts, intellectual property, governmental licenses and approvals and permits, utility tap-in rights, contract rights, warranties and other intangible personal property of any nature (all of said intangible personal property being hereinafter collectively referred to as the "Intangibles") related to Fort Myers Beach R.V. Resort, that certain trailer park located in Fort Myers, County of Lee, State of Florida on real estate located in Lee County, Florida (the "Real Estate") and subject to the following terms and conditions:

1. This Assignment is made as additional collateral and security for a loan made by lender to SAND DOLLAR PROPERTIES, INC., a Florida corporation ("Borrower") pursuant to that certain Mortgage and Security Agreement of even date herewith (the "Mortgage and Security Agreement"), which is evidenced by that certain Promissory Note and Assumption Agreement of even date, made by Borrower payable to the order of Lender in the total principal amount of TWO MILLION NINETY-SEVEN THOUSAND TWO HUNDRED EIGHTY-TWO AND 19/100 DOLLARS (\$2,097,282.19).
2. Subject to the provisions of the Mortgage and Security Agreement, Lender may, at its sole option, exercise its rights, benefits and privileges in and to any one or more of the Intangibles under this Assignment upon the occurrence of an Event of Default as defined under the Mortgage and Security Agreement and upon notice to Assignor that Lender is exercising its rights hereunder; however, this Assignment shall not constitute an assumption by Lender of any of the obligations of Assignor under any Intangibles unless and until Lender shall exercise its rights hereunder, but notwithstanding the foregoing Borrower shall continue to be liable for all obligations thereunder. Borrower and Assignor hereby agrees to protect, defend, indemnify and hold Lender harmless from and against any and all loss, cost, liability or expense (including but not limited to attorneys' fees and expenses) resulting from any failure of Borrower to perform and observe, at the time and in the manner therein provided, any of the covenants, agreements and obligations of Borrower contained in any of the Intangibles.
3. Assignor may continue to receive and exercise all of the rights, benefits and privileges under the Intangibles so long as Borrower is not in default in the due, prompt and complete performance and observance of the covenants, agreements and obligations of Borrower under the Mortgage and Security Agreement.
4. Borrower agrees to protect, defend, indemnify and hold Lender harmless from and against any and all loss, cost, liability or expenses (including but not limited to attorneys' fees and expenses) in connection with Lender's exercise of its rights hereunder.
5. Borrower hereby irrevocably constitutes and appoints Lender its true and lawful attorney-in-fact in Assignor's name or in Lender's name, or otherwise, to enforce all rights of Assignor

under any of the Intangibles, and such power of coupled with an interest, is irrevocable.

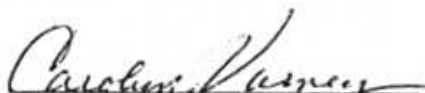
6. Assignor represents and warrants to Lender that, as of the execution hereof, Assignor: (i) has good, marketable, and indefeasible title to each of the Intangibles assigned herein to Lender (ii) that Assignor has the free and unencumbered right to convey the same to Lender; and, (iii) that Assignor will defend the transfer consummated hereby in favor of Lender against the lawful subsequent claims and demands of any other person or entity. Assignor also hereby covenants with Lender that, following the date hereof Assignor will provide to Lender, upon request, without additional consideration, all assistance reasonably requested by Lender to determine, and verify the nature, amount, and location of each of the Intangibles assigned hereby to Lender. Assignor also covenants that it shall make no changes in or amendments to any of the Intangibles, without the prior written consent of Lender, and shall not tender or accept a surrender or cancellation of the Intangibles, or further assign or create any further encumbrance or hypothecation of Assignor's interest under or to the Intangibles, without the prior written consent of Lender.


7. This Assignment and the agreements and undertakings of Assignor hereunder shall be binding upon Assignor and its successors and assigns and shall inure to the benefit of Lender and its heirs, successors and assigns and any purchaser of the Mortgage and Security Agreement, or any of them.

8. Assignor agrees to make, execute and deliver all such further or additional instruments as may be necessary to satisfy the intents and purposes hereof and to perfect the assignment made hereby.

IN WITNESS WHEREOF, Assignor has executed this Assignment as of this 12<sup>th</sup> day of May, 1993.

Signed, sealed and delivered  
in the presence of:

  
Print Name: CAROLYN VARNEY

  
Print Name: JAMES VARNEY

SAND DOLLAR PROPERTIES, INC., a  
Florida corporation

By:   
HARRY D. CUTCHER, President



## NOTICE OF FUTURE ADVANCE AND RECEIPT

Pursuant to Chapter 697.04(2) of the Florida Statutes, notice is hereby given by the undersigned, **BANCFLORIDA**, a Federal Savings Bank, f/k/a **NAPLES FEDERAL SAVINGS AND LOAN ASSOCIATION**, a corporation organized under the laws of the United States of America, as Mortgagee, under that certain Mortgage, Assignment of Rents and Security Agreement dated September 2, 1983, and recorded in O.R. Book 1688, Page 2650, of the Public Records of Lee County, Florida, as modified by a Loan Assumption and Modification Agreement dated May 27, 1988 and recorded in O.R. Book 1995, Page 833 of the Public Records of Lee County, Florida, in favor of **NAPLES FEDERAL SAVINGS AND LOAN ASSOCIATION**, a corporation organized under the laws of the United States of America, now known as **BANCFLORIDA**, a Federal Savings Bank, that **SAND DOLLAR PROPERTIES, INC.**, a Florida corporation, as Mortgagor, has been advanced the sum of **ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00)** under the provisions set forth in Article VI of the Mortgage referenced above.

The undersigned, **SAND DOLLAR PROPERTIES, INC.**, a Florida corporation, as Mortgagor, hereby acknowledges receipt of the sum of **ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00)** on **BANCFLORIDA**, a Federal Savings Bank, Mortgagee, as a mortgage loan under the provisions for future advances in the Mortgage, Assignment of Rents and Security Agreement dated September 2, 1983 and recorded in O.R. Book 1688, Page 2650, of the Public Records of Lee County, Florida as modified by a Loan Assumption and Modification Agreement dated May 27, 1988 and recorded in O.R. Book 1995, Page 833 of the Public Records of Lee County, Florida.

THE UNDERSIGNED, WARRANTS AND REPRESENTS THAT THEY HAVE NOT FILED FOR RECORD A NOTICE LIMITING THE MAXIMUM PRINCIPAL AMOUNT THAT MAY BE SECURED UNDER SAID MORTGAGE, PURSUANT TO FLORIDA STATUTE 697.04.

WITNESS our hands and seals this 2<sup>nd</sup> day of May, 1993.

Signed, sealed and delivered  
in the presence of:

WITNESSES:

[Signature]  
Print Name: Frank [unclear]

[Signature]  
Print Name: Timothy J. McLean

[Signature]  
Print Name: GAY B. Long

[Signature]  
Print Name: KAREN S. Roberts

STATE OF FLORIDA  
COUNTY OF COLLIER

BANCFLOIDA, a Federal Savings Bank

By: [Signature]  
THOMAS E. FINLAY

SAND DOLLAR PROPERTIES, INC., a  
Florida corporation

By: [Signature]  
HARRY D. CUTCHER, President

Before me personally appeared THOMAS E. FINLAY, to me personally known and known to me to be the individual described in and who executed the foregoing instrument as First Vice President of the above named corporation and acknowledged to and before me that he executed such instrument as such First Vice President of said corporation, and that said instrument in the free act and deed of said corporation, while under oath.

Witness my hand and official seal this 13 day of May, 1993.

[Signature]  
NOTARY PUBLIC CC 124305  
Print Name: BURESHED T. MANNING  
My Commission expires:

STATE OF FLORIDA  
COUNTY OF Collier

NOTARY PUBLIC STATE OF FLORIDA  
COMMISSION EXPIRES JULY 8, 1995  
BURESHED T. MANNING, GENERAL INS. UNDO.

Before me personally appeared HARRY D. CUTCHER, President of SAND DOLLAR PROPERTIES, INC., a Florida corporation, to me personally known and known to me to be the individual described in and who executed the foregoing instrument as President of the above named corporation and acknowledged to and before me that he executed such instrument as such of said corporation, and that said instrument in the free act and deed of said corporation, while under oath.

Witness my hand and official seal this 13 day of May, 1993.

*Shirley T. Bennett*  
NOTARY PUBLIC *SHIRLEY T. BENNETT*  
Print Name: *C.C. 124 P.S.*  
My Commission expires:

Prepared By:  
Bruce G. Fedor  
5801 Pelican Bay Boulevard  
Naples, Florida 33963  
(813) 597-1611  
Florida Bar No. 949190

NOTARY PUBLIC STATE OF FLORIDA  
COMMISSION EXPIRES: JULY 9, 1995  
BOWEN & BOWEN ATTORNEYS AT LAW, P.A.

RESOLUTIONS OF CORPORATE BOARD

Authority to Procure Loans  
Certified Copy

I HEREBY CERTIFY that I am duly elected and qualified secretary of SAND DOLLAR PROPERTIES, INC. and the keeper of the records and corporate seal of said corporation; that the following is a true and correct copy of resolutions duly adopted at a meeting of the Board of Directors thereof held in accordance with its by-laws in its office at 16299 San Carlos Blvd. Fort Myers, Fl. 33908 on the 26th day of November, 1993, and that the same are now in force.

Copy of Resolution

\*BE IT RESOLVED, That the President of this corporation, or his successors in office, are authorized for, on behalf of and in the name of this corporation to:

(a) Negotiate and procure loans without limit; To refinance Ft. Myers Beach RV Resort;

(b) Give security for any liabilities of this corporation to said Lender by pledge or assignment or a lien upon any personal property, tangible, of this corporation;

(c) Execute in such form as may be required by the Lender all notes and other evidences of such loans, all instruments of pledge, assignment or lien, and that note of the same shall be valid unless so signed or endorsed, provided, however, that the endorsement of promissory notes discounted may be effected by any one of them.

\*RESOLVED FURTHER, That said Lender be and it is hereby authorized and directed to pay the proceeds of any such loans as directed by the persons so authorized to sign, whether so payable to the order of any said persons in their individual capacities or not, and whether such proceeds are deposited to the individual credit of any said persons or not;

\*RESOLVED FURTHER, That this resolution shall continue in force, and said Lender may consider the holders of said offices and their signatures, respectively, to be and continue as set forth in the certificate of the secretary of this corporation accompanying a copy of this resolution when delivered to said Lender or in any similar subsequent certificate, until notice to the contrary in writing is duly served on said Lender.

I HEREBY FURTHER CERTIFY that the following named persons have been duly elected to the offices set opposite their respective names, that they continue to hold these offices at the present time, and that the appearing hereon are the genuine, original signatures of each respectively:

President: Garry D. Pether Vice President: Jeanne Critcher  
Treasurer: Jeanne Critcher Secretary: Jeanne Critcher

IN WITNESS WHEREOF I have hereunto affixed my name as secretary and have caused the corporate seal of said corporation to be affixed hereto this 26th day of November, 1993:

Secretary: Jeanne Critcher

I hereby certify that I am a director of said corporation and that the foregoing is a correct copy of resolutions passed as therein set forth, and that the same are now in full force.

Director other than Secretary: Garry D. Pether

GENERAL RELEASE

COMES NOW HARRY CUTCHER ("PARTY OF THE FIRST PART"), whose address is 2135 Crystal Drive, #37, Fort Myers, Florida 33907, for and in consideration of the sum of TEN DOLLARS (\$10.00) and OTHER VALUABLE CONSIDERATION paid by CAPITAL SUNBELT/FUND '84, LTD., a Florida limited partnership ("PARTY OF THE SECOND PART"), the receipt of which is hereby acknowledged, does hereby remise, release and forever discharge, and by these presents does for himself and his executors, administrators, successors and assigns of and from all, and all manner of 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 against the said Party of the Second Part, the Party of the First Part ever had, now have, or which their executors, administrators or assigns hereinafter, can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning to these presents, in relation to the Ft. Myers Beach R. V. Resort. The Party of the First Part has previously advised the Party of the Second Part that the Mortgage and Note in the original principal amount of \$500,000.00 previously given by the Party of the Second Part to the Party of the First Part has been assigned to FIRST INDEPENDENCE BANK OF FLORIDA and that this General Release shall have no force and effect upon said Mortgage and Note.

The foregoing notwithstanding, this General Release shall not effect any third party action which may occur against the Part of the Second Part and is only a Release as to the Party of the First Part and any action or cause of action which may originate as between them. Further, in the event it becomes necessary as a result of some action by a third party, the Party of the First Part may join the Party the Second Part in such action.

WITNESSETH:

sign [Signature]  
print Lisa Maitland

[Signature]  
HARRY CUTCHER

sign [Signature]  
print Jan C. Patterson

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 7th day of May, 1993, by HARRY CUTCHER, who is personally known to me or who has produced N/A as identification and who did take and oath.

NOTARY PUBLIC

sign [Signature]  
print Jan C. Patterson  
Commission No. CC-009164

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXPIRES MAY 7, 1994  
BONDED THRU GENERAL INS. UND.

THIS INSTRUMENT PREPARED BY:  
Peter A. McFarlane, Esquire  
Peter A. McFarlane, P.A.  
5015 South Florida Avenue #215  
Lakeland, Florida 33813

*Call L...  
to read Endorsement  
Assignment  
Tom Bette*



*Tom Bette*

# Fidelity National Title

INSURANCE COMPANY OF PENNSYLVANIA

Reading, Pennsylvania

A Fidelity National Title Company

## ENDORSEMENT

Attached to and forming part of Policy No. 80-0409  
of Fidelity National Title Insurance Company of Pennsylvania

Please be advised we have amended the aforesaid Policy as follows:

1. Date of Policy: April 29, 1993 at 9:00 a.m.
2. Amount of Insurance: \$2,097,282.19
3. Named of Insured: BancFlorida f/k/a Naples Federal Savings and Loan Association and/or its successors and assigns
4. Subject to Tax Certificates 9110704 and 9212364
5. Subject to possible outstanding ~~amendments~~ amendments pursuant to Resolution 90-03-27 in Official Record Book 2158, page 3499.
6. Mortgage in Official Record Book 1728, page 4229 must be subordinate to the mortgage and future advances being insured herein.

All other matters remain in full force and effect.

This Endorsement, when countersigned by an authorized signatory, is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto.

Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Signed and sealed this 5th day of May, 1993.

COUNTERSIGNED

Fidelity National Title  
INSURANCE COMPANY OF PENNSYLVANIA

*[Signature]*  
President

By: *Tom J. Bonetto*

AUTHORIZED SIGNATORY  
PLEASE PRINT NAME BELOW



ATTEST:  
*[Signature]*  
Secretary

Security Title and Guaranty Company

SECURITY TITLE AND GUARANTY COMPANY

4501 Tamiami Trail North  
Naples, Florida 33940

FILE NO.: 101

AGENT FILE NO:

ACCOUNT

PHILIP L. BURNETT, P.A.  
2449 FIRST STREET  
P.O. BOX 2258  
FORT MYERS, FL 33902

DATE

5/ 5/93

PROPERTY

RECORD OWNER

COMPANY CHARGES

Premium Fee	269.00
<b>TOTAL INVOICE AMOUNT:</b>	<b>269.00</b>

*Received Cash  
Sicil 2/2  
2nd floor*

*Pd ck. 111  
5-7-93*



# Fidelity National Title

INSURANCE COMPANY OF PENNSYLVANIA

Reading, Pennsylvania

ph- 263-7977

## CHANGE OF NAME ENDORSEMENT

This Company has changed its name from American Title Insurance Company to  
**FIDELITY NATIONAL TITLE INSURANCE COMPANY OF PENNSYLVANIA**

All forms are being reprinted with the new name designation.

In the meanwhile, wherever the name American Title Insurance Company appears in the attached form, it shall be deemed to be

Fidelity National Title Insurance Company of Pennsylvania.

Wherever any policy, endorsement or contract requires a notice or any other statement in writing to be sent to this Company, it should be addressed to its office at Post Office Box 01-5002, Miami, Florida 33101.

This Endorsement shall not be valid or binding until countersigned by an authorized signatory as designated below.

Signed and sealed this 5th day of May, 1993.

Fidelity National Title Insurance Company of Pennsylvania

Countersigned:

By Thomas J. Beretta  
Authorized Signatory



President W. King

Secretary Michael Murphy



Post-it brand MAY 05 '93 09:22

P.1/2

Fax Transmittal Memo 7672

To Philip Burnett

Company

Location

Fax # Telephone #

Comments

No. of Pages	2	Day's Date	5/3	Time
From	Don Benedetto			
Company	Fidelity National			
Location		Dept. Charge		
Fax #		Telephone #		
Original Disposition:	<input type="checkbox"/> Destroy	<input type="checkbox"/> Return	<input type="checkbox"/> Call for pickup	



# Fidelity National Title

INSURANCE COMPANY OF PENNSYLVANIA

Reading, Pennsylvania

A Fidelity National Title Company

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3. Named of Insured: BancFlorida f/k/a Naples Federal Savings and Loan Association and/or its successors and assigns
4. Subject to Tax Certificates 9110704 and 9212364
5. Subject to possible outstanding assessments pursuant to Resolution 80-03-27

QUIT CLAIM BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that CAPITAL SUNBELT/FUND 84, LTD., a Florida Limited Partnership, of the City of Lakeland, State of Florida, party of the first part, for and in consideration of the sum of TEN DOLLARS and OTHER GOOD AND VALUABLE CONSIDERATION lawful money of the United States, to it paid by SAND DOLLAR PROPERTIES, INC., a Florida corporation, of 16299 San Carlos Boulevard, Fort Myers Beach, Lee County, Florida 33908, party of the second part, the receipt whereof is hereby acknowledged, has transferred, delivered and Quit Claim and by these presents does transfer, deliver and Quit Claim unto the party of the second part, its successors, executors, administrators and assigns, whatever right, title and interest which the Party of the First Part has in the following goods and chattels:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN FOR THE GOODS AND CHATTELS BEING CONVEYED HEREBY.

TO HAVE AND TO HOLD the same unto the said party of the second part, its executors, administrators and assigns forever.

IN WITNESS WHEREOF, the said first party has signed and sealed these presents this 5th day of May, 1993.

Signed, sealed and delivered in the presence of us:

Signed: Joyce E. Evans  
Print Name: Joyce E. Evans

CAPITAL SUNBELT/FUND 84, LTD.  
a Florida Limited Partnership  
BY: Lawrence W. Maxwell, Pres.

Signed: Nancy J. Struchko  
Print Name: Nancy Struchko

STATE OF FLORIDA  
COUNTY OF ~~LEE~~ POLK

The foregoing instrument was acknowledged before me this 5th day of May, 1993, by Lawrence W. Maxwell as President of CAPITAL SUNBELT/FUND 84, LTD., a Florida Limited Partnership, on behalf of the Corporation. He ~~is~~ is personally known to me or has produced as identification and did take an oath.

Joyce E. Evans  
Notary Public, Joyce E. Evans  
Commission No. AA727298  
Commission Expires: 12/28/93

THIS INSTRUMENT PREPARED BY:

Peter A. McFarlane, Esquire  
Peter A. McFarlane, P.A.  
5015 South Florida Avenue #215  
Lakeland, Florida 33813

## FORT MYERS BEACH RV RESORT

EXHIBIT "A"Office Equipment:

2 4-drawer file cabinets  
 1 Smith Corona typewriter  
 1 Mita copy machine  
 1 GEM 2-door upright cooler  
 1 KMC chest freezer  
 1 Mailink safe  
 2 Desks  
 1 Texas Instruments Calculator  
 2 Sharp Calculators  
 1 OMRON cash register  
 1 Samson 20" TV  
 1 Oasis water cooler  
 1 Glass front show case  
 3 Telephones  
 1 Dirt Devil Vacuum Cleaner  
 1 3 pc. set office chairs

Apartment:

1 Sofa sleeper  
 1 Bedroom set - double bed, chest dresser  
 1 Night stand  
 1 Dinette table and Hutch  
 4 Chairs  
 1 Electric Range  
 1 Refrigerator

Maintenance Equipment:

1 1982 Ford Pickup Truck  
 1 Columbia Golf Cart  
 1 Club Car Cart w/dump body  
 1 Graveley Rider Lawn Mower  
 1 Lawnchief Mower  
 1 Barlo Mower  
 1 McLain Edger  
 1 Toro Edger  
 2 Ecko Blowers  
 2 Ecko Weed Eaters  
 1 Kioritz Weed Eater  
 1 Ecko Hedge Trimmer  
 1 Greenmachine Hedge Trimmer  
 1 Billy Goat Leaf Blower  
 1 4 weed sprayer  
 1 Compactor  
 1 Miscellaneous Tools

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT, entered into this day of May, 1993, by and between FIRST INDEPENDENCE BANK OF FLORIDA, 16780 San Carlos Boulevard, S.W., Fort Myers, Florida 33908, successor in interest to HARRY D. CUTCHER, F.M.B.C. UTILITIES, INC., and F.M. BEACH KAMPGROUND, INC. ("Subordinating Mortgagee"), BANCFLORIDA, A Federal Savings Bank, 5801 Pelican Bay Boulevard, Naples, Florida 33941 ("Priority Mortgagee"), and SAND DOLLAR PROPERTIES, INC. ("Owner").

WITNESSETH:

WHEREAS, the Owner owns the following described parcels of land located at 16299 San Carlos Boulevard, Fort Myers, Florida 33908, together with the buildings and improvements located on that property (collectively referred to as the "Property") and more fully described as follows:

PARCEL I:

*RV Park*  
Lot 5 and the North 1/2 of Lot 6, Block 1, E. P. BATES PINE RIDGE TRUCK FARMS according to the plat thereof recorded in Plat Book 3, Page 68, Public Records of Lee County, Florida, being part of Section 6, Township 26 South, Range 24 East, Lee County, Florida.

PARCEL II:

*Sewer plant*  
A tract of land lying in the NE 1/4 of Section 6, Township 46 South, Range 24 East, Lee County, Florida, being part of Lot 5, Block 2 of E. P. BATES PINE RIDGE TRUCK FARMS, as recorded in Plat Book 3, Page 68, of the Public Records of Lee County, Florida. Said tract being more particularly described as follows:

*to 1/4*  
Commencing at the SE corner of Coastal Estates, a Mobile Home Subdivision, as shown on the plat recorded in Plat Book 29, Pages 78 and 79, of the Public Records of Lee County, Florida. Said point being on the West right-of-way line of Pine Ridge Road; thence run S. 89°58'19"W along the South line of said Coastal Estates for 992.00 feet to the point of beginning; thence run S.0°03'04"E for 292.55 feet; thence run S.82°17'46"W for 26.67 feet; thence run S.89°56'56"W for 239.94 feet, thence run N.0°37'03"W for 100.30 feet; thence

run N.89°56'56"E for 74.77 feet; thence run N.0°37'03"W for 66.00 feet; thence run N.89°22'57"E for 12.00 feet; thence run N.0°37'03"W for 46.00 feet; thence run S.89°22'57"W for 12.00 feet; thence run N.0°37'03"W for 83.89 feet to a point on the South line of said Coastal Estates, being also the North line of said Lot 5, Block 2 of E. P. BAMES PINE RIDGE TRUCK FARMS; thence run N.89°58'19"E along said line for 194.53 feet to the point of beginning; containing 1.471 acres.

Together with easements previously owned by F.M.B.C. UTILITIES, INC. as set forth in Instrument dated February 28, 1983, and recorded in Official Records Book 1661, Page 2731, Public Records of Lee County, Florida.

Together with an easement over, under and across:

Lot 1, Block S, Fort Myers Beach Kampground Subdivision, Unit 1, recorded in Plat Book 35 at Page 47, and across Sunburst Lane and the E 286.61' of Stardust Drive. The easement described is for the purpose of maintenance of the berm located within the utility property described in PARCEL II above and for no other purpose; and

WHEREAS, the Owner's predecessors in interest, by an instrument dated September 2, 1983, granted and conveyed to the Priority Mortgagee a mortgage encumbering the Property, said mortgage being recorded in Official Records Book 1688, Page 2650 of the Public Records of Lee County, Florida, as amended and as modified most recently prior to the Owner's execution of that certain Assumption Agreement & Release of Liability on May 7, 1993, by that certain Loan Assumption and Modification Agreement, dated May 27, 1988, recorded on June 9, 1988, in the Official Records Book 1995, Page 833, Public Records of Lee County, Florida, in the principal amount of TWO MILLION FIFTY THOUSAND AND NO/100 DOLLARS (\$2,050,000.00); and

WHEREAS, the Owner's predecessors in interest, by an instrument dated May 29, 1984, granted and conveyed to the Subordinating Mortgagee a mortgage encumbering the Property and securing the payment of the principal sum of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) with interest ("Subordinated Mortgage"), which Subordinated Mortgage was recorded in Official Records Book 1728, at Page 4229, of the Public Records of Lee County, Florida; and

WHEREAS, the Owner is the successor in interest to CAPITAL SUNBELT/FUND 84, LTD., a Florida Limited Partnership, and the Owner has requested and the Priority Mortgagee has agreed to allow the Owner to assume the Mortgage in favor of the Priority Mortgage and to advance the Owner an additional ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00) by means of an instrument known as Notice of Future Advance and Receipt dated the 7th day of May, 1993, contingent upon the Subordinating Mortgagee agreeing to subordinate its mortgage to said funds, said funds to be used for improvements to the Property and to be disbursed by the Priority Mortgagee; and

WHEREAS, the parties to this Subordination Agreement desire that the lien of the Subordinating Mortgagee shall be postponed in lien and operation, in the full amount, to the lien and operation of the Priority Mortgage, as modified by that certain Assumption Agreement & Release of Liability and Notice of Future Advance and Receipt, dated the 7th day of May, 1993, i.e., an aggregate of TWO MILLION NINETY-SEVEN THOUSAND TWO HUNDRED EIGHTY-TWO AND 19/100 DOLLARS (\$2,097,282.19), and recorded on May \_\_, 1993, in Official Records Book \_\_, at Page \_\_ of the Public Records of Lee County, Florida, (hereinafter collectively referred to as the "Priority Mortgage").

NOW, THEREFORE, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and for other good and valuable consideration, the receipt of which is acknowledged by execution of this Subordination Agreement, the parties hereto, intending to be legally bound by this Subordination Agreement, agree as follows:

#### Subordination of Subordinated Mortgage

1. The Subordinated Mortgage is subordinated and postponed in lien, payment, and distribution on any judicial sale of the Property to the lien of the Priority Mortgage, as modified and amended, to the full extent and in the aggregate amount of all advances, renewals or extensions made or to be made by the Priority Mortgagee up to an aggregate amount of TWO MILLION NINETY-SEVEN THOUSAND TWO HUNDRED EIGHTY-TWO AND 19/100 DOLLARS (\$2,097,282.19). However, Priority Mortgagee agrees that any future advances above the \$2,097,282.19 Priority Mortgage will not be subordinated without the prior written consent of the Subordinating Mortgagee.

2. The subordination of the Subordinated Mortgage to the lien of the Priority Mortgage shall have the same force and effect as though the Priority Mortgage, as modified, had been executed, delivered, and recorded in the Public Records of Lee County, Florida, prior to the execution, delivery, and recordation of the Subordinated Mortgage.

OWNER

SAND DOLLAR PROPERTIES, INC.  
A Florida Corporation

sign [Signature]  
print DOROTHY H. MARTIN

BY: [Signature]  
HARRY D. CUTCHER, President

sign [Signature]  
print M. J. D. HALL

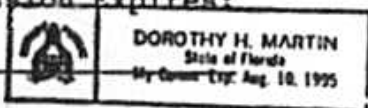
STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this  
11th day of May, 1993, by Sean Kelly, as  
Vice President of FIRST INDEPENDENCE BANK OF FLORIDA,  
successor in interest to HARRY D. CUTCHER, F.M.B.C. UTILITIES,  
INC., and F.M. BEACH KAMPGROUND, INC. RAYMOND BUILDING SUPPLY  
CORPORATION, on behalf of the corporation. He is personally known  
to me or has produced Personally Known as identification and  
did take an oath.

NOTARY PUBLIC

sign [Signature]  
print DOROTHY H. MARTIN  
Commission No. CC 11/26-24-2

My Commission Expires:



STATE OF FLORIDA  
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this  
\_\_\_\_\_ day of May, 1993, by \_\_\_\_\_, as First Vice  
President of BANCFLORIDA, on behalf of the corporation. He is  
personally known to me or has produced \_\_\_\_\_ as  
identification and did take an oath.

NOTARY PUBLIC

sign \_\_\_\_\_  
print \_\_\_\_\_  
Commission No. \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

**Default**

3. If any proceedings brought by the Subordinating Mortgagee, or by any successors or assigns of the Subordinating Mortgagee, against the Property, whether foreclosure proceedings are commenced on the Subordinated Mortgage or in execution of any judgment on the note or bond that it secures, the judicial sale in connection with the proceedings shall not discharge the lien of the Priority Mortgage, as modified. The foreclosure proceedings shall be specifically advertised as being under and subject to the lien and payment of the Priority Mortgage, as modified.

**Parties Bound**

4. This Subordination Agreement shall be binding on and inure to the benefit of the respective heirs, successors, and assigns of the parties.

This Subordination Agreement is given, executed, and delivered by the undersigned on the same day and year first written above.

WITNESSES:

**SUBORDINATING MORTGAGEE**

FIRST INDEPENDENCE BANK OF FLORIDA, successor in interest to HARRY D. CUTCHER, F.M.B.C. UTILITIES, INC., and F.M. BEACH KAMPGROUND, INC.

sign *M. J. Hill*  
print M. J. Hill  
sign *Dorothy A. Martin*  
print DOROTHY A. MARTIN

BY: *[Signature]*  
Vice President

**PRIORITY MORTGAGEE**

BANCFLOIDA, A Federal Savings Bank

sign \_\_\_\_\_  
print \_\_\_\_\_  
sign \_\_\_\_\_  
print \_\_\_\_\_

BY: *[Signature]*  
First Vice President

*to sign*



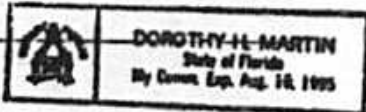
STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 11 day of May, 1993, by HARRY D. CUTCHER, as President of SAND DOLLAR PROPERTIES, INC., on behalf of the corporation. He is personally known to me or has produced KNOWN as identification and did take an oath.

NOTARY PUBLIC

sign *Dorothy H. Martin*  
print DOROTHY H. MARTIN  
Commission No. CC8126242

My Commission Expires:



THIS INSTRUMENT PREPARED BY:  
PHILIP L. BURNETT, ESQ.  
PHILIP L. BURNETT, P.A.  
Post Office Box 2258  
Fort Myers, FL, 33902  
(813) 334-1922

### Exhibit C

The reacquisition of the Fort Myers Beach R.V. Resort (including the wastewater treatment facility) was brought about through Sand Dollar Properties, Inc.'s assumption of BancFlorida Loan No. 29242618 with a future advance in the amount of \$150,000. The documents pertinent to that transaction are included in Exhibit B.

**Exhibit D**

**See Exhibits B and C above.**

Exhibit E

See PSC Order No. 14060 issued 2-5-85.

**Exhibit F**

**The books and records of Capital Sunbelt/Fund '84, Ltd. are available for inspection by the Commission through contacting the individual listed in response to paragraph I above.**

**Exhibit G**

**Copies of the federal income tax returns of Capital Sunbelt/Fund '84, Ltd. are available to the Commission through contacting the individual listed in response to paragraph I above.**

## Exhibit H

As indicated in Exhibit A, the system is not currently operational. Rather, it has been taken off line and is interconnected to the Lee County Public Utility System. As such, the system is not out of compliance with any applicable standards set by the Department of Environmental Protection.

Exhibit L.

See Exhibit B.



SEWER TARIFF

SAND DOLLAR PROPERTIES, INC.

(Name of Company)

FILED WITH FLORIDA PUBLIC SERVICE COMMISSION

Harry Cutcher  
Issuing Officer

President  
Title

NAME OF COMPANY Sand Dollar Properties, Inc.

SEWER TARIFF

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Rules and Regulations . . . . .	8.0 - 14.0
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Contracts and Agreements . . . . .	

Harry Cutcher  
Issuing Officer

President  
Title

NAME OF COMPANY Sand Dollar Properties, Inc.

TERRITORY SERVED

Please refer to description of territory served as filed in Docket Number 271-S, Order Number 8949, issued 7/12/79.

Township 46 South - Range 24 East

Section 6

Starting at an iron pin in the center of Pine Ridge Road marking the southeast corner of the northeast 1/4 of said section; Thence North 00 degrees, 38 minutes 50 seconds East a distance of 810.42 feet along the center line of Pine Ridge Road said center line being the east boundary line of said Section 6; Thence North 89 degrees, 50 minutes, 19 seconds West a distance of 33 feet to a point on the westerly right of way line of Pine Ridge Road to a POINT OF BEGINNING; Thence continue North 89 degrees, 50 minutes, 19 seconds West a distance of 2513.52 feet; Thence North 00 degrees, 36 minutes, 02 seconds West a distance of 492.98 feet; Thence North 89 degrees, 51 minutes, 42 seconds East a distance of 2518.16 feet; Thence South 00 degrees, 55 minutes, 50 seconds East a distance of 493.22 feet to the POINT OF BEGINNING.

Harry Cutcher  
Issuing Officer

President  
Title

NAME OF COMPANY Sand Dollar Properties, Inc.

MISCELLANEOUS

N/A

Harry Cutcher  
Issuing Officer

President  
Title

NAME OF COMPANY Sand Dollar Properties, Inc.

TECHNICAL TERMS AND ABBREVIATIONS

- 1.0 "COMPANY" - Sand Dollar Properties, Inc.
- 2.0 "CONSUMER" - Any person, firm, association, corporation, governmental agency or similar organization supplied with sewer service by the company.
- 3.0 "SERVICE" - Service, as mentioned in this tariff and in agreement with customers, shall be construed to include, in addition to all sewer service required by the customer the readiness and ability on the part of the company to furnish sewer service to the customer. Service shall conform to the standards set forth in Section 367.111 of the Florida Statutes.
- 4.0 "CUSTOMER'S INSTALLATION" - All pipes, shut-offs, valves, fixtures and appliances or apparatus of every kind and nature disposing sewage located on the customer's side of "Point of Collection" whether such installation is owned by customer, or used by customer under lease or otherwise.
- 5.0 "POINT OF CONNECTION" - The point where the company's pipes or meters are connected with pipes of the consumer.
- 6.0 "MAIN" - Shall refer to a pipe, conduit, or other facility installed to convey sewer service from individual service lines or other mains.
- 7.0 "SERVICE LINES" - The pipes of the company which are connected from the mains to point of collection.
- 8.0 "RATE SCHEDULE" - Refers to rates or charges for the particular classification of service.
- 9.0 "COMMISSION" - Refers to Florida Public Service Commission.
- 10.0 "CERTIFICATE" - Means the sewer certificate issued to the company by the Commission.
- 11.0 "CUSTOMER" - Means the person, firm or corporation who has entered into an agreement to receive sewer service from the Company and who is liable for the payment of that sewer service.

Harry Cutcher  
Issuing Officer

President  
Title

NAME OF COMPANY Sand Dollar Properties, Inc.INDEX OF RULES AND REGULATIONS

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Harry Cutcher  
Issuing Officer

President  
Title

NAME OF COMPANY Sand Dollar Properties, Inc.

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Harry Cutcher  
Issuing Officer

President  
Title

NAME OF COMPANY Sand Dollar Properties, Inc.

RULES AND REGULATIONS

- 1.0 POLICY DISPUTE - Any dispute between the company and the customer or prospective customer regarding the meaning or application of any provision of this tariff shall upon written request by either party be resolved by the Florida Public Service Commission.
- 2.0 GENERAL INFORMATION - The company's Rules and Regulations, insofar as they are inconsistent with any Statute, Law or Commission order shall be null and void. These Rules and Regulations are a part of the rate schedules, applications and contracts of the company and in the absence of specific written agreement to the contrary, they apply without modification or change to each and every customer to whom the company renders sewage service.

In the event that a portion of these Rules and Regulations are declared unconstitutional or void for any reason by any court of competent jurisdiction, such decision shall in no way affect the validity of the remaining portions of the Rules and Regulations for sewage service unless such court order or decision shall so direct.

The company shall provide service to all customers requiring such service within the territory described in its certificate upon such terms as are set forth in this tariff.

- 3.0 SIGNED APPLICATION NECESSARY - Sewage service is furnished only upon signed application or agreement accepted by the company and the conditions of such application or agreement are binding upon the customer as well as upon the company. A copy of the application or agreement for sewer service accepted by the company will be furnished to the applicant on request.

The applicant shall furnish to the company the correct name, street address or lot and block number, at which sewer service is to be rendered.

- 4.0 APPLICATIONS BY AGENTS - Applications for sewer service requested by firms, partnerships, associations, corporations and others, shall be rendered only by duly authorized parties. When sewer service is rendered under agreement or agreements entered into between the company and an agent of the principal. The use of such sewer service by the principal or agent shall constitute full and complete ratification by the principal of the agreement or agreements entered into between agent and the company and under which such sewer service is rendered.

Harry Cutcher  
Issuing Officer

President  
Title



NAME OF COMPANY Sand Dollar Properties, Inc.

- 5.0 WITHHOLDING SERVICE - The company may withhold or discontinue sewer service rendered under application made by any member or agent of a household, organization or business unless all prior indebtedness to the company of such household, organization or business for sewer service has been settled in full.

Service may also be discontinued for any violation by the customer or consumer of any rule or regulation set forth in this tariff.

- 6.0 EXTENSIONS - Extensions will be made to the company's facilities in compliance with the Rules/Orders/Tariff by the Commission.

- 7.0 LIMITATION OF USE - Sewer service purchased from the company shall be used by the consumer only for the purposes specified in the application for sewer service. Sewer service furnished to the consumer shall be for the consumer's own use and sewage shall be received directly from the consumer into the company's main sewer lines. In no case shall a consumer, except with the written consent of the company, extend his lines across a street, alley, lane, court, property line, avenue, or other way, in order to furnish sewer service for adjacent property, even though such adjacent property may be owned by him. In case of such unauthorized extension, sale or disposition is discontinued and full payment is made of bills for sewer service, calculated on proper classifications and rate schedules and reimbursement in full made to the company for all extra expenses incurred for clerical work, testing, and inspections.

- 8.0 CONTINUITY OF SERVICE - The company will at all times use reasonable diligence to provide continuous sewer service, and having used reasonable diligence, shall not be liable to the customer for failure or interruption of continuous sewer service. The company shall not be liable for any act or omission caused directly or indirectly by strikes, labor troubles, accident, litigations, breakdowns, shutdowns for emergency repairs, or adjustments, act of sabotage, enemies of the United States, Wars, United States, State, Municipal or other governmental interference, acts of god or other causes beyond its control. If at any time the company shall interrupt or discontinue its service for any period greater than one hour, all customers affected by said interruption or discontinuance shall be given not less than 24 hours notice.

Harry Cutcher  
Issuing Officer

President  
Title

NAME OF COMPANY Sand Dollar Properties, Inc.

9.0 TYPE AND MAINTENANCE - The customer's pipes, apparatus and equipment shall be selected, installed, used and maintained in accordance with the standard practice, conforming with the Rules and Regulations of the Company, and in full compliance with all laws and governmental regulations applicable to same. The company shall not be responsible for the maintenance and operation of the customer's pipes and facilities. The customer expressly agrees not to utilize any appliance or device which is not properly constructed, controlled and protected, or which may adversely affect the sewer service; and the company reserves the right to discontinue or withhold sewer service to such apparatus or device.

10.0 CHANGE OF CUSTOMER'S INSTALLATION - No changes or increases in customer's installation, which will materially affect the proper operation of the pipes, mains, or stations of the company shall be made without written consent of the company. The customer will be liable for any change resulting from a violation of this rule.

11.0 INSPECTION OF CUSTOMER'S INSTALLATION - All customer's sewer service installations or changes shall be inspected upon completion by competent authority to ensure that customer's piping, equipment, and devices have been installed in accordance with accepted standard practice and such local governmental or other rules as may be in effect. Where municipal or other governmental inspection is required by local rules or ordinances, the company cannot render sewer service until such inspection has been made and a formal notice of approval from the inspecting authority has been received by the company.

The company reserves the right to inspect the customer's installation prior to rendering sewer service and from time to time thereafter, but assumes no responsibility whatsoever for any portion thereof.

12.0 PROTECTION OF COMPANY'S PROPERTY - The customer shall exercise reasonable diligence to protect the company's property on the customer's premises, and shall knowingly permit no one but the company's agents, or persons authorized by law, to have access to the company's pipes and apparatus.

In the event of any loss, damage to property of the company caused by or arising out of carelessness, neglect or misuse by the customer, the cost of making good such loss or repairing such damage shall be paid by the customer.

Harry Cutcher  
Issuing Officer

President  
Title

NAME OF COMPANY Sand Dollar Properties, Inc.

- 13.0 ACCESS TO PREMISES - The duly authorized agents of the company shall have access at all reasonable hours to the premises of the customer for the purpose of installing, maintaining and inspecting or removing company's property, and other purposes incident to performance under or termination of the company's agreement with the customer and in such performance shall not be liable for trespass.
- 14.0 RIGHT OF WAY OR EASEMENTS - The customer shall grant or cause to be granted to the company and without cost to the company all rights, easements, permits, and privileges which are necessary for the rendering of sewer service.
- 15.0 BILLING PERIODS - Bills for sewer service will be rendered (Monthly, Bimonthly, Quarterly), bills are due when rendered and shall be considered as received by customer when delivered or mailed to sewer service address or some other place mutually agreed upon.

Nonreceipt of bills by customer shall not release or diminish obligation of customer with respect to payment thereof.

- 16.0 DELINQUENT BILLS - Bills are due when rendered, and if not paid within twenty (20) days thereafter become delinquent, and sewer service may then, after five (5) days written notice be discontinued. Service will be resumed only upon payment of all past-due bills and penalties, together with a reconnection charge established on the basis of the expenses incurred in the reconnection and restoration of service which shall be nondiscriminatory in its application. There shall be no liability of any kind against the company by reason of discontinuance of sewer service to the consumer for failure of the consumer to pay the bills on time.

No partial payment of any bill rendered will be accepted by the company, except by agreement with company, or by order of the Commission.

- 17.0 PAYMENT OF SEWER AND WATER SERVICE BILLS CONCURRENTLY - When both sewer and water service are provided by the company payment of any sewer service bill rendered by the company to a sewer service consumer shall not be accepted by the company without the simultaneous or concurrent payment of any water service bill rendered by the company. If the charges for sewer service are not so paid, the company may discontinue both sewer service and water service to the consumer's premises for nonpayment of the sewer service charges or if the charges for water service are not paid the company may discontinue both water service and

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President  
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sewer service to the customer's premises for nonpayment of the water service charge. The company shall not reestablish or reconnect sewer service and water service or either of such services until such time as all sewer service charges and water service charges and all other expenses or charges established or provided for by these Rules and Regulations.

18.0 EVIDENCE OF CONSUMPTION - The initiation or continuation or resumptions of water service to the premises shall constitute the initiation, continuation, or resumptions of sanitary sewer service to the premises, regardless of occupancy.

19.0 TAX CLAUSE - A municipal or county franchisee tax levied upon a water or sewer public utility shall not be incorporated in the rate for water or sewer service but shall be shown as a separate item on the utility's bills to its customers in such municipality or county.

This charge must be approved by the Commission before being incorporated in the customer's bills.

20.0 CHANGE OF OCCUPANCY - When change of occupancy takes place on any premises supplied by the company with sewer service, WRITTEN NOTICE thereof shall be given at the office of the company not less than three (3) days prior to the date of change by the outgoing customer, who will be held responsible for all sewer service used on such premises until such written notice is so received and the company has had reasonable time to discontinue sewer service. However, if such written notice has not been received, the application of a succeeding occupant for sewer service will automatically terminate the prior account. Customer's deposit may be transferred from one service location to another, if both locations are supplied by the company. Customer's deposit may NOT be transferred from one name to another.

For the convenience of its customers, the Company will accept telephone orders to discontinue or transfer sewer service and will use all reasonable diligence in the execution thereof. However, oral orders or advice shall not be deemed binding or be considered formal notification to the company.

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Issuing Officer

President  
Title

NAME OF COMPANY Sand Dollar Properties, Inc.

- 21.0 UNAUTHORIZED CONNECTIONS - SEWER - Connections to the company's sewer system for any purpose whatsoever are to be made only by employees of the company. Unauthorized connections render the service subject to immediate discontinuance without notice and sewer service will not be restored until such unauthorized connections have been removed and unless settlement is made in full and for sewer service estimated by the company to have been used by reason of such unauthorized connection.
- 22.0 ADJUSTMENT OF BILLS - When a customer has been overcharged or undercharged as a result of incorrect application of the rate schedule, or, if sewer service is measured by water consumption, a meter error is determined, the amount may be credited or billed to the customer, as the case may be.
- 23.0 CUSTOMER DEPOSIT - ESTABLISHMENT OF CREDIT - Before rendering service, the company may require an applicant for service to satisfactorily establish credit, but such establishment of credit shall not relieve the customer from complying with the utilities rules for prompt payment. Credit will be deemed so established if: (A) the applicant for service furnishes a satisfactory guarantor to secure payment of bills for the service rendered; (B) the applicant pays a cash deposit; (C) the applicant for service furnishes an irrevocable letter of credit from bank or a surety bond. The amount of initial deposit shall be the following according to meter size:

	<u>Residential</u>	<u>General Service</u>
5/8" x 3/4"	?	Two (2) times estimated monthly bill.
1"	N/A	N/A
1-1/2"	N/A	N/A
2"	N/A	N/A

The company may require, upon reasonable written notice of not less than 30 days, such request or notice being separate and apart from any bill for service, a new deposit, where previously waived or returned, or an additional deposit, in order to secure payment of current bills; provided, however, that the total amount of the required deposit shall not exceed an amount equal to the average actual charge for water and/or sewer service for two monthly billing periods for the 12 month period immediately prior to the date of notice. In the event the customer has had service less than 12 months, then the utility shall base its new or additional deposit upon the average actual monthly billing available.

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NAME OF COMPANY Sand Dollar Properties, Inc.

The company will pay interest on customer deposits at the rate of 6% per annum. The payment of interest will be made once each year as a credit on regular bills, and on final bills when service is discontinued. No customer depositor will receive interest on his deposit until at least six (6) months of continuous service, then interest will be paid from the date of the commencement of service. The company will pay or credit accrued interest to the customers account during the month of N/A each year.

After a residential customer has established a satisfactory payment record and has had continuous service for a period of 23 months, the company shall refund the customer's deposit provided the customer has not, in the preceding 12 months (a) made more than one late payment of the bill (after the expiration of 20 days from the date of mailing or delivery by the utility); (b) paid with a check refused by a bank; (c) been disconnected for nonpayment, or at any time, (d) tampered with the meter, or (e) used service in a fraudulent or unauthorized manner. Nothing in the rule shall prohibit the company from refunding a deposit in less than 23 months.

- 24.0 The company shall file with the Commission copies of all Guaranteed Revenue Contracts or special contracts for the sale of its product or services in a manner not specifically covered by its standard regulations or approved rate schedules prior to execution.

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NAME OF COMPANY Sand Dollar Properties, Inc.

INDEX OF RATE SCHEDULES

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Multi-Residential Service, MS . . . . .	18.0

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NAME OF COMPANY Sand Dollar Properties, Inc.GENERAL SERVICERATE SCHEDULE GSAVAILABILITY - Available throughout the area served by the company.APPLICABILITY - To any customer for which no other schedule applies.LIMITATIONS - Subject to all of the Rules and Regulations of this tariff and General Rules and Regulations of the Commission.

<u>RATE</u> -	<u>Meter Size</u>	<u>Base Facility Charge</u>	<u>Gallage Charge</u> (Per 1,000 Gallons)
	5/8" x 3/4"	\$ 4.25 <sup>1</sup>	\$1.58
	1"	\$ 10.63	\$1.58
	1-1/5"	\$ 21.25	\$1.58
	2"	\$ 34.00	\$1.58
	3"	\$289.00 <sup>2</sup>	\$1.58

MINIMUM CHARGE - BFC                      PER - Meter size per monthTERMS OF PAYMENT - Bills are due and payable when rendered and become delinquent if not paid within twenty (20) days. After five (5) days written notice, service may then be discontinued.<sup>1</sup>Love's Ice Cream Parlor uses this rate.<sup>2</sup>Ft. Myers Beach Resort uses this rate.Harry Cutcher  
Issuing OfficerPresident  
Title



NAME OF COMPANY Sand Dollar Properties, Inc.

RESIDENTIAL SERVICE

RATE SCHEDULE RS

AVAILABILITY - Available throughout the area served by the company.

APPLICABILITY - For sewer service for all purposes in private residences and individually metered apartment units.

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

RATE - Flat rate per connection<sup>3</sup> - \$10.25 per month.

MINIMUM CHARGE - \$10.25 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) days written notice, service may then be discontinued.

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<sup>3</sup>Coastal Estates Mobile Home Park uses this rate. It is billed and collected by the Homeowners Association.

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President  
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NAME OF COMPANY Sand Dollar Properties, Inc.

MULTI-RESIDENTIAL SERVICE

RATE SCHEDULE MS

AVAILABILITY - Available throughout the area served by the company.

APPLICABILITY - For sewer service to all master-metered residential customers including but not limited to condominiums, apartments and mobile home parks.

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

RATE - N/A

MINIMUM CHARGE -

TERMS OF PAYMENT - Bills are due and payable when rendered and become delinquent if not paid within twenty (20) days. After five (5) days written notice, service may then be discontinued.

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NAME OF COMPANY    Sand Dollar Properties, Inc.

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COPY OF CUSTOMER'S BILL . . . . .	22.0

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NAME OF COMPANY Sand Dollar Properties, Inc.

CUSTOMER'S GUARANTEE DEPOSIT RECEIPT

N/A

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NAME OF COMPANY Sand Dollar Properties, Inc.

APPLICATION FOR SEWER SERVICE

N/A

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COPY OF CUSTOMER'S BILL

[see last page of the master document]

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## Exhibit N

Certificate No. 271S is in the possession of Capital Sunbelt/Fund '84, Ltd. As noted in Exhibit A, this is not the usual sale-purchase situation. Sand Dollar Properties, Inc. acquired the utility as part of a foreclosure. The certificate was not provided as part of the transfer.