IN THE SUPREME COURT OF FLORIDA

CASE NO. 66,690

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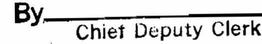

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| CITY OF SUNRISE, FLORIDA, a municipal corporation,<br><br>Appellant,<br><br>v.<br><br>TOWN OF DAVIE, FLORIDA, a political subdivision of the State of Florida, THE STATE OF FLORIDA, and the taxpayers, property owners and citizens of the Town of Davie, Florida, including non-residents owning property or subject to taxation therein and all others having or claiming any right, title or interest in property to be affected by the issuance of the Bonds, herein described or to be affected thereby,<br><br>Appellees. | ) |

**ON APPEAL FROM THE CIRCUIT COURT**
**OF THE SEVENTEENTH JUDICIAL CIRCUIT**
**IN AND FOR BROWARD COUNTY, FLORIDA**

# ANSWER BRIEF OF APPELLEE TOWN OF DAVIE, FLORIDA ON THE MERITS

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## PREFACE

This Answer Brief shall use the following abbreviations and reference forms:

"(A. _____)" for references to the Appendix to the Initial Brief filed by the Appellant City of Sunrise;

"(D.A. ____)" for references to the Appendix to this Answer Brief;

"Davie" for the Appellee Town of Davie; and

"Sunrise" for the Appellant City of Sunrise.

## STATEMENT OF THE FACTS

The Appellant City of Sunrise's Statement of the Facts contains assertions of facts that are inconsistent with the evidence presented in this cause before the Circuit Court. See Brief for Appellant at 2, ¶4 through 3, ¶2. By misapprehending the factual circumstances of this proceeding, the City of Sunrise has cast doubt upon the reliability of its own Statement of the Facts and its argument concerning the scope of a bond validation proceeding, which is predicated thereon. Accordingly, Appellee TOWN OF DAVIE cannot accept the Appellant's Statement of Facts and finds it necessary to set forth its own statement. See Fla. R. App. P. 9.210(c)(1985).

The Town of Davie filed its complaint to validate approximately $35,000,000 of water and sewer revenue bonds in the Circuit Court on the 10th day of January, 1985, for the primary purpose of financing the acquisition and construction of additions, improvements, and extensions to its present water and sewer system (A. 1-7). On February 6, 1985, the City of Sunrise filed a Motion to Intervene in the decision styled above, seeking to become a party to the validation proceeding for Davie's water and sewer revenue bonds (A. 8-12). The following day, the Circuit Court heard argument of both counsel on the merits of Sunrise's motion to intervene (DA. 26-44).

The Town of Davie's original complaint and supporting exhibits did identify certain capital projects for which the bond



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issues in question were to be spent, even though such a recitation was not statutorily required under the provisions of section 75.04 of the Florida Statutes. One of these enumerated projects fell within an area arguably capable of being served by the City of Sunrise water and sewer system. At the time of hearing, however, the Town of Davie introduced appropriate evidence showing its deletion of the disputed project from the proposed service area (DA. 7) and so announced that intent for the record (DA. 11-12, 14, 17, 19).

Notwithstanding that amendment, Sunrise continued its attempts to intervene. In the hearing on its motion, the essence of the evidence presented on behalf of Appellant was that, although Sunrise expressed concern with matters collateral to the scope of a Chapter 75 proceeding, it merely wanted to "come forth and put its concerns before the Court" (DA. 38, 39) and in no respect challenged the validity of the water and sewer revenue bonds themselves (counsel for Sunrise: "But as we stand before you today, we are not here trying to say their bonds are invalid" DA. 36; "The City of Sunrise is no longer seeking specific relief by way of declaring bonds invalid for any reason" DA. 30), or the Town of Davie's efforts to comply with the applicable validation procedures (DA. 33). Moreover, contrary to the City of Sunrise's assertions in its Brief that the Circuit Court "summarily denied [its] . . . motion without taking any evidence, testimony, or allowing a proffer thereof by Sunrise," _see_ Brief for Appellant

at 3, ¶1, counsel for Sunrise proffered both motions and exhibits to the Circuit Court (DA. 39 & 40) and was allowed to cross-examine Davie's witness in the bond validation proceeding (DA. 15-17), but made no substantial attempt to introduce testimony or any other evidence in support of its allegations in its motion to intervene (comment by counsel for Sunrise referring to the possible testimony of an engineer attending the hearing; DA. 36). Furthermore, the Circuit Court, after hearing argument by the Sunrise City Attorney on two separate occasions, determined that Appellant had failed to establish its right to intervene in this chapter 75 proceeding and thereby denied its motion (A. 20). The Circuit Court entered a final judgment in favor of Appellee on February 7, 1985, validating the Town of Davie's water and sewer revenue bonds at issue here (A. 13 - 19). One month later, the City of Sunrise filed this appeal of the Circuit Court's final order denying its Motion to Intervene (DA. 1). No notice of appeal was directed to the Final Judgment validating the Davie bond issue.

## ARGUMENT

**I. THE CIRCUIT COURT PROPERLY DENIED THE CITY OF SUNRISE'S MOTION TO INTERVENE IN THE TOWN OF DAVIE'S BOND VALIDATION PROCEEDING, SINCE SUNRISE LACKED STANDING TO INTERVENE UNDER SECTION 75.07 OF THE FLORIDA STATUTES.**

In its Order, the Circuit Court denied Sunrise's Motion to Intervene (A. 20). The apparent basis for the Circuit Court's

determination was that because Sunrise was not a property owner, taxpayer, citizen, or person under section 75.07 of the Florida Statutes, Appellant lacked standing to intervene in this bond validation proceeding. In so ruling, the Circuit Court properly construed the applicable statute and the legal effect of the evidence, requiring this Court's affirmance of that determination.

Section 75.07 of the Florida Statutes provides for the intervention of "any property owner, taxpayer, citizen or person interested" in the proceeding required to validate a government bond. Fla. Stat. § 75.07 (1984). Nevertheless, the City of Sunrise has failed to demonstrate in its Motion to Intervene or Brief the manner in which it qualifies under any of these enumerated categories. Sunrise's Motion to Intervene merely paraphrased the provisions of section 75.05 (requirement that order to show cause be directed to particular entities) and section 75.07 (intervention and hearing) (A.11); its Brief simply asserts in vague generalizations that it is a person interested in this validation proceeding. See Brief for Appellant at 5, ¶ 1 & ¶ 2. Although apparently relying upon its status as a "person" to support its standing to become a party to the Town of Davie's bond validation proceeding (DA. 34 & 35), the City of Sunrise fails to substantiate by fact or law any basis for its claim of party status as an intervenor in this chapter 75 proceeding.



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Moreover, the City of Sunrise's reliance upon its status as a "person" under section 75.07 of the Florida Statutes is misplaced. Although chapter 75 does not define "person" for purposes of bond validation, section 1.01(3), the definitional section of the Florida Statutes, describes the word "person" to include "individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, syndicates, fiduciaries, corporations, and all other groups or combinations." Fla. Stat. § 1.01(3) (1984). In comparison, section 1.01(10) states that the terms "public body," "body politic," or "political subdivision" include "counties, cities, towns, . . . and all other districts in this state." Id. § 1.01(10) (emphasis added). Accordingly, it logically follows that the Legislature's use of the word "person" in chapter 75 does not include a municipality, but instead demonstrates that it considered cities as "public bodies," "bodies politic," or "political subdivisions" and not "persons." See Duval County v. Charleston Lumber & Manufacturing Co., 45 Fla. 256, 33 So. 531, 533 (Fla. 1903) (concluding that the word "person" used in a garnishment statute may extend to a corporation, but cannot be held to include public quasi corporations, such as counties); 1967-1968 Op. Att'y Gen. 176, 177 (1968); 82 C.J.S. Statutes § 317, at 557 (1984) ("In general, the word 'person' used in a statute will not be construed so as to include the sovereign, whether the United States, or a state or an agency thereof, or a city, or town") (emphasis added).

Furthermore, although there is authority to the effect that the word "persons" may mean and include _municipal_ corporations, such a meaning is subject to the legislative intent of the particular statute at issue "as it is expressed or as it may be gathered from the purpose of the Act, the administrative construction of it, other legislative acts bearing upon the subject, and all circumstances surrounding and attendant upon it." _City of St. Petersburg v. Carter_, 39 So. 2d 804 (Fla. 1949). Thus, despite this Court's consideration of municipal corporations as within the contemplation of the Legislature as "corporations" or "persons" in several statutes, _see_, _e.g._, _Hargrove v. Town of Cocoa Beach_, 96 So.2d 130 (Fla. 1957); _Parker v. City of Jacksonville_, 82 So.2d 131 (Fla. 1955); _City of Lakeland v. Amos_, 106 Fla. 873, 143 So. 744 (1932); _City of Sebring v. Avant_, 95 Fla. 960, 117 So. 383 (1928), these cases merely illustrate that the question whether the CITY OF SUNRISE is a "person" for purposes of its status as an intervenor under section 75.07 of the Florida Statutes is one of legislative intent, and "must be resolved by taking into account the totality of the circumstances surrounding the enactment of the particular statute involved." _Village of el Portal v. City of Miami Shores_, 362 So.2d 275, 276 (Fla. 1978).

Upon review of the Act in question, it is evident that the term "persons" does not include municipalities for several reasons. First, the Legislature employs the words "munici-



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pality," "political district," and "political subdivision" throughout chapter 75, illustrating that it knew how to specifically refer to cities when they were contemplated. See, e.g., United States v. Anderez, 661 F.2d 404 (5th Cir. 1981) (starting point in interpreting statutes must be language of statutes themselves); Lee v. Gulf Oil Corp., 148 Fla. 612, 4 So.2d 868 (Fla. 1942) (in construing a statute, court must assume that legislature used particular wording advisedly and for a purpose); Ocasio v. Bureau of Crimes, 408 So.2d 751 (Fla. 3d DCA 1982) (legislature's deliberate use of different terms in different portions of the same statute is strong evidence that it intended different meanings); Leigh v. State, 298 So.2d 215 (Fla. 1st DCA 1974) (when terms and provisions of statute are plain, legislature is presumed to have meant what it said). Consequently, it is a necessary assumption that the Legislature was aware of its selection of terms and chose to specifically exclude municipalities from the operation of section 75.07 of the Florida Statutes. See, e.g., Devin v. City of Hollywood, 351 So.2d 1022 (Fla. 1976) (under the rule of statutory construction, "expressio unius est exlusio alterius", the special mention of one thing in a statute implies the exclusion of the other); Baeza v. Pan American/ National Airlines, Inc., 392 So.2d 920 (Fla. 3d DCA 1980) (a statute that enumerates or forbids matters is ordinarily construed as excluding those not expressly mentioned).



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Second, the legislative purpose underlying the enactment of section 75.07 is to allow those private individuals or associations directly affected by the issuance of the bonds through user fees, special assessments, public service taxes, or otherwise to attack its validity. Sunrise's motion to intervene expresses no immediate impact from validation of the bonds at issue. No taxes or revenues of Sunrise are pledged or encumbered by the bonds and, at best, Sunrise is only an outsider to the issues within that proceeding. Sunrise's interest in challenging the Davie bond validation is at most indirect, representing a concern with a possible loss of revenues if Davie should become a competitor in the water and sewer business. Thus, even if Sunrise would lose revenues from the construction of Davie's water and sewer system project, the CITY OF SUNRISE does not possess a sufficient stake in the outcome of the bond validation proceeding to give it party status as an intervenor.

Accordingly, from a reading of the entire Act, it is apparent that the Legislature was concerned with the status of the defendants in a bond validation proceeding, allowing those parties directly impacted and burdened by the political entity's incurring of the bonded debt to challenge the bonds' validity. To hold otherwise would result in an absurd construction of the statute, prohibited by normal tenants of statutory construction. See Dorsey v. State, 402 So.2d 1178 (Fla. 1981) (it is a well settled principle that statute must be construed to avoid

absurd results); In Interest of J.L.P., 416 So.2d 1250 (Fla. 4th DCA 1982) (in construing legislation, court must avoid any construction that would produce unreasonable, absurd, or ridiculous consequence). An interpretation of section 75.07 that would allow Sunrise standing in the bond validation proceeding below would similarly permit, as an example, the City of Panama Beach to intervene in a Davie bond violation proceeding, even though Panama Beach is without any direct interest in the bonds at issue and four hundred (400) miles away. The Legislature could not have intended such an absurd result.

In sum, the Circuit Court's order denying Sunrise's Motion to Intervene rests primarily on its interpretation of the intervention provision of section 75.05 of the Florida Statutes. This interpretation is in accordance with the legislative intent underlying the statute and the cases interpreting such statutory enactments. This is the reasoning of the Circuit Court and it should be sustained on that basis alone.

## II. THE CIRCUIT COURT PROPERLY DENIED THE CITY OF SUNRISE'S MOTION TO INTERVENE, BECAUSE THE ISSUES RAISED THEREIN WERE COLLATERAL TO THIS BOND VALIDATION PROCEEDING.

After hearing argument of counsel and otherwise considering the merits of the City of Sunrise's position, the Circuit Court in its Order dated February 8, 1985, denied Sunrise's Motion to Intervene in this bond validation proceeding (A. 20). Although failing to cite any specific grounds for this

conclusion in its Order, the Circuit Court apparently determined that the issues raised in Sunrise's motion were beyond the proper scope of this proceeding, and thus, it was unnecessary to allow Appellant a further opportunity to present testimony and other evidence in support of concerns irrelevant to this appeal.

In its Motion to Intervene, Appellant Sunrise did not challenge any of the proceedings leading to approval of the bond issue or Davie's authority to raise the required funds by this bond issue. Instead, Sunrise's primary concern was that the Town of Davie would be financing a capital project that would allegedly be within Sunrise's "exclusive" water and sewer service area (A. 8 - 10). Rather than confront this extraneous issue in the bond validation proceeding, Appellee Town of Davie adopted a resolution limiting the scope of its water and sewer project by the exclusion of those areas purportedly subject to Sunrise's alleged service areas (DA. 49-50). Thus, despite Sunrise's contention that the validity of the Town of Davie's water and sewer revenue bonds is at issue because of Davie's alleged extension of water and sewer facilities into an area that the City of Sunrise is presently servicing, Appellant Sunrise has failed to allege facts that show any such controversy. There is nothing in the proposed bond issue earmarked for Davie's water and sewer system that contemplates the intrusion into the City of Sunrise's alleged service area, as evidenced by Davie's resolution of February 5, 1985 (DA. 49-50) and testimony presented in the final

hearing before the Circuit Court (Petitioner's Exhibit 8; DA. 5, 11 - 15); nor does the bond issue contemplate using any revenues, customers, or charges from those western areas allegedly in Sunrise's service zone in retirement of the water and sewer revenue bonds (DA. 16-17).

More importantly, Appellant's motion and brief merely raise questions of law challenging the legality of Davie's use of the bond revenues, see Brief for Appellant at 2, ¶4 through 6, ¶1; (A. 8 - 10), not the validity of the town's funding methods. As the case law substantiates, such legal issues are beyond the scope of a bond validation proceeding, see State v. City of Daytona Beach, 431 So.2d 981, 983 (Fla. 1983) (questions on the financial and economic feasibility of a proposed inter-local agreement supporting county revenue bonds are beyond the scope of judicial review in a validation proceeding); State v. Leon County, 400 So.2d 949 (Fla. 1981) (Supreme Court's function in reviewing bond validation proceedings is restricted to determining whether the governmental agency issuing the bonds had the power to act and whether it exercised that power in accordance with the law); City of Gainesville v. State, 366 So.2d 1164, 1166 (Fla. 1979) (contestants' challenge of ratemaking and the use of revenues in chapter 75 proceeding found to be collateral issues to be raised in separate proceedings), and more importantly, are irrelevant to Sunrise's claim of intervention. In a decision similar to the case at hand, this Court in McCoy Restaurants,



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Inc. v. City of Orlando, 392 So.2d 252 (Fla. 1980), determined that a lease agreement between an aviation authority empowered to issue revenue bonds as the city's agent and a restauranteur contesting the legality of such bonds was collateral to the bond validation proceeding, consequently concluding that the restauranteur lacked standing to challenge the validity of the underlying lease agreement in that same proceeding. The McCoy Restaurants decision supports Davie's contention that Sunrise lacked standing to intervene and contest the use of the proposed revenue funding, and precludes this Court's consideration of questions on underlying contracts or other extraneous issues in a chapter 75 proceeding. See Glatstein v. City of Miami, 399 So.2d 1005 (Fla. 3d DCA 1981) (discussing McCoy Restaurants). As this Court so aptly stated:

> It was never intended that proceedings instituted under the authority of this chapter to validate governmental securities would be used for the purpose of deciding collateral issues or other issues not going directly to the power to issue the securities and the validity of proceedings with relation thereto.

State v. City of Miami, 103 So.2d 185, 188 (Fla. 1958) (emphasis added). Accord State v. Sunrise Lakes Phase II Recreation District, 383 So.2d 631 (Fla. 1980). For this reason alone, Appellant has presented no justiciable issue relevant to this proceeding from which this Court could properly sustain Sunrise's appeal of the Circuit Court order denying its motion, further establishing the correctness of the lower court's ruling.



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In support of this appeal, however, Sunrise cites Rianhard v. Port of Palm Beach District, 186 So.2d 503 (Fla. 1966), and City of Pinellas Park v. Cross-State Utilities Co., 205 So.2d 704 (Fla. 2d DCA 1968). See Brief for Appellant at 4, ¶2 and 6, ¶1. In Rianhard, the Supreme Court of Florida determined that the circuit court's validation of an issue of revenue certificates without first affording the appellants, who intervened below as respondents, the opportunity to present evidence in opposition to the validation was proper and within the lower court's discretion, as was the circuit court's ruling denying appellants' motion for a continuance or a further hearing. Rianhard, 186 So.2d at 504. This Court explained that the lower court had notified the intervenors as required by law to be ready to present their objections to the validation, an opportunity which they chose to forego at the initial hearing on the validation of the revenue certificates, since they made no effort to submit or proffer evidence at that time. Id. Thus, although concluding that the grant of a further hearing in a chapter 75 proceeding is within the circuit court's discretion, the Rianhard Court went on to hold that a lower court's denial of an intervenor's proffer of evidence is not erroneous if the questions of the law presented in the validation proceeding were dispositive of the cause and additional testimony or other evidence was unnecessary. Id. at 504-505.

This holding is not inconsistent with section 75.07 of the Florida Statutes, which provides for the intervention of certain enumerated parties. Contrary to Sunrise's assertions in its Brief, see Brief for Appellant at 4, ¶2 through 5, ¶1, section 75.07 merely contemplates that the Circuit Court, in reaching a final determination, determine all questions of law and fact based upon the material evidence presented in the hearing by those parties with standing. Certainly, Sunrise does not intend to argue that the Circuit Court must consider all evidence that is offered at the final hearing regardless of its source or relevancy. Such an interpretation of section 75.07 would frustrate the intent of chapter 75 "that validations [of issues of revenue certificates] be expedited at the earliest time reasonably possible." Id. Rianhard, 186 So.2d at 505. Furthermore, Appellant Sunrise has not shown that, indeed, the Circuit Court failed to consider those issues raised in Appellant's motion. In fact, the record in the case at bar indicates to the contrary, revealing that the Circuit Court provided Appellant with an opportunity to be heard (DA. 29 - 43), notwithstanding the court's subsequent Order denying Sunrise's standing to intervene in this bond validation proceeding (A. 20).

In its Brief, the City of Sunrise also relied upon the case of City of Pinellas Park v. Cross-State Utilities Co., supra. See Brief for Appellant at 5, ¶1. Contrary to Sunrise's assertions, the Cross-State Utilities decision neither supports

Appellant's claim of intervention nor its challenge to the validation of the Town of Davie's revenue bonds. The Second District Court of Appeal simply held that the Cross-State Utilities Company was entitled to injunctive relief limiting the City of Pinellas Park's extension of its water and sewer facilities into an adjacent area serviced by the utility company under an exclusive contract to provide such services with Pinellas County, when the city had failed to adopt an ordinance demonstrating its exercise of chapter 180 powers. Id. at 706. As illustrated in the record, the Town of Davie has complied with the provisions of chapter 180 of the Florida Statutes by its enactment of Ordinance No. 84-69 and Resolution No. 85-17, evidencing its authority to create a service area for the purpose of constructing and maintaining a sewer and water system therein. Moreover, as distinguished from the instant proceeding, the City of Pinellas was attempting to expand its water and sewer service area beyond its corporate boundaries into a franchise area, a feat which the Town of Davie has never contemplated (A. 1-7). For these reasons, the Cross-State Utilities opinion has little precedential value in this appeal and is limited to the findings of the Trial Judge as contained in that cause. Id. at 705.

Even if the the Town of Davie's plans contemplated such construction, the City of Sunrise's reliance on section 180.06 of the Florida Statutes as justification for its attempt to prevent the Town of Davie from constructing water and sewer improvements

within Davie's own municipal boundaries is mistaken for several reasons. First, it should be noted that municipal powers under chapter 180 of the Florida Statutes are limited in their geographic scope and although municipalities are permitted to exercise their powers beyond their municipal boundaries, ". . . said corporate powers shall not extend or apply within the corporate limits of another municipality." Fla. Stat. § 180.02(2)(1984).

Second, even assuming that Sunrise was permitted to exercise some form of extra-territorial powers with Davie's consent, the City of Sunrise never alleged that it had obtained Appellee's consent in the portions of its Motion challenging Appellee's bond validation proceeding. Finally, even if statutory authority existed for its exercise of extra-territorial power, it was necessary that Sunrise show a clear right to the relief furnished under section 180.06 of the Florida Statutes by alleging that it had complied with all the applicable statutory prerequisites.* Even assuming the propriety of this forum to resolve this collateral issue, Sunrise's motion contained insufficient allegations of the conditions precedent necessary

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* Chapter 180 requires that a municipality desiring to establish a service "zone or area" under its terms do so by means of a specified and detailed ordinance or resolution, Fla. Stat. § 180.03(1) (1984), subsequent to a public hearing at which any objections to the proposed service area must be heard. _Id_. § 180.03(2). The municipality must follow the initial ordinance or resolution with another ordinance or resolution with specific findings, which remedies any sustained objections received. _Id_. § 180.04.



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for the Circuit Court to determine whether Appellant's challenge to Davie's use of the bond revenues under section 180.06 of the Florida Statutes is warranted, and thus, Appellant was not entitled to the protection of that statute. Fla. Stat. § 180.06 (1984); see Cross-State Utilities, supra; City Gas Company v. Miller Gas Co., 137 So.2d 836 (Fla. 3d DCA 1962). Moreover, even if it has interpreted section 180.06 correctly, the City of Sunrise has failed to set forth the necessary facts to bring this Appeal within the purview of the statute. Accordingly, without sufficient allegations of its compliance with the prerequisite conditions of section 180.06 or this statute's application to this appeal, the City of Sunrise's attack on Davie's revenue bonds is without statutory authority and, therefore, the Circuit Court properly denied its Motion to Intervene as deficient in this respect.

## CONCLUSION

For the reasons stated above, Appellee Town of Davie requests that this Court affirm the Final Order of the Circuit Court denying Appellant Sunrise's Motion to Intervene in its entirety.

Respectfully submitted,

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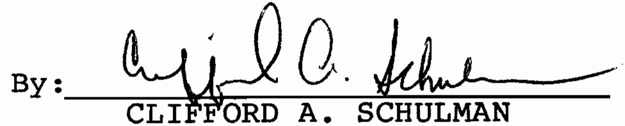
By: 
CLIFFORD A. SCHULMAN

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief was mailed/hand-delivered this ____ day of April, 1985 to ARTHUR B. PARKHURST, ESQ., and GRAFTON N. CARLSON, ESQ., 1167 Southeast Fourth Avenue, Fort Lauderdale, Florida 33316; BARRY S. WEBBER, ESQ., Town Attorney for Town of Davie, P.O. Box 8549, Hollywood, Florida 33084, and FREDERICK J. DAMSKI, ESQ., Assistant State Attorney, Economic Crime Unit, 200 Southeast Sixth Street, Suite 504, Fort Lauderdale, Florida 33301.

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