

SNAP·A·GRAM

ORIGINAL

FROM:  
Jim Ogle  
Peoples Water Service Co. of Fl., Inc.

DATE: 9-26-01

TO:  
FPSC

ATTENTION OF:  
SUBJECT:  
Developer Agreement  
Laguna Pointe Cond.

Please file appropriately

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DATE

PEOPLES WATER SERVICE COMPANY OF FLORIDA, INC.  
DEVELOPER AGREEMENT  
PWSCF {Laguna Pointe Condominium}

THIS AGREEMENT made effective and thereby entered into this 17<sup>th</sup> day of September 2000, by and between Laguna Pointe, Inc., a Florida Corporation, hereinafter referred to as "Developer," and PEOPLES WATER SERVICE COMPANY OF FLORIDA, INC., a Florida corporation, hereinafter referred to as "Service Company"; and,

WHEREAS, Developer owns or controls lands located in Escambia County, Florida, and legally described in Exhibit "A", attached hereto and made a part hereof as if fully set out in this paragraph and hereinafter referred to as "Property", and Developer has plans to develop the Property by constructing thereon Laguna Pointe Condominium, a 40 unit condominium development; and,

WHEREAS, Developer desires that Service Company provide water service for Developer's property herein described; and

WHEREAS, Service Company is willing to provide, in accordance with the provisions of this Agreement and Service Company's Service Availability Policy (Policy), water service to the Property and thereafter operate applicable facilities so that the occupants of the improvements on the Property will receive adequate water service from Service Company.

NOW, THEREFORE, for and in consideration of the premises, the mutual undertakings and agreements herein contained and assumed, Developer and Service Company hereby covenant and agree as follows:

1.0 "SERVICE" - The readiness and ability on the part of Service Company to furnish and maintain water service to the Point of Delivery (pursuant to applicable rules and regulations of applicable regulatory agencies).

DISTRIBUTION CENTER  
2001 SEP 27 AM 8:58

Prepared by Jim Ogle,  
Assistant to the Manager for  
Peoples Water Service Company  
of Florida, Inc.  
905 Lownde Ave., Pensacola, Fl  
32507

DEVELOPER AGREEMENT PWSCF: {Laguna Pointe Condominium}

2.0 "SPECIFICATIONS" - Those specific minimum quality materials and construction requirements named, detailed, and described in written format as prepared by Service Company, and in effect at the execution of this Agreement, for the installation of the Off-Site water facilities, as named: "Minimum Construction Requirements and Specifications For Projects And Main Extensions For Water Facilities.

3.0 ASSURANCE OF TITLE. Not Applicable

4.0 CONNECTION CHARGES. Developer, or Developer's successors and/or assigns, by merger, consolidation, conveyance or otherwise, such as a builder independent of the Developer, as applicable, shall pay those Plant Capacity Charges as set forth in EXHIBIT "B" and those Miscellaneous Charges set forth in EXHIBIT "D" hereto. Payment of the connection charges does not and will not result in Service Company waiving any of its rates or rules and regulations, and their enforcement shall not be affected in any manner whatsoever by Developer making payment of same. Service Company shall not be obligated to refund to Developer any portion of the value of the connection charges for any reason whatsoever, nor shall Service Company pay any interest or rate of interest upon the connection charges paid.

5.0 CONSTRUCTION OF ON-SITE BY DEVELOPER.

All On-Site water lines past the point of the water meter are the responsibility of the developer or owner. Service Company will not be responsible for providing any maintenance or insuring that adequate fire flow is available without the installation of a pressure-boosting device.

DEVELOPER AGREEMENT PWSCF: {Laguna Pointe Condominium}

6.0 CONSTRUCTION OF OFF-SITE BY DEVELOPER. If Off-Site construction is deemed necessary by Service Company for said project, the Developer shall at Service Company's request perform said design and construction, as approved by Service Company before-hand, at sole cost by Developer. Any Off-Site construction required by Utility will be included in this Developer Agreement in Exhibit "E".

7.0 ENGINEERING AND PERMITS. Developer shall cause to be prepared two (2) copies of the applications for permits and three (3) sets of finalized engineering plans prepared and sealed by a professional civil engineer registered in the State of Florida. Plans shall show the on-site and off-site water distribution systems proposed to be installed to provide service to the Property. Developer shall cause its engineer to submit to Service Company specifications governing the material to be used and the method and manner of installation. All such plans and specifications submitted to Service Company's engineer shall meet the Specifications of Service Company and shall be subject to the approval of Service Company. No construction shall commence until Service Company and appropriate regulatory agencies have approved such plans and specifications in writing. When permits and approved plans are returned by appropriate regulatory agencies to Developer, Developer shall submit to Service Company two copies of the permits and approved plans.

8.0 PRECONSTRUCTION CONFERENCE. After the approval of plans and specifications by Service Company and appropriate regulatory agencies, Developer, or the engineer of record, shall set up a pre-construction conference with the engineer of record, the utility contractor, appropriate building official (s), all other utility companies involved in the development of the Property, and Service Company.

DEVELOPER AGREEMENT PWSCF: {Laguna Pointe Condominium}

9.0 NOTICE OF COMMENCEMENT OF CONSTRUCTION. Developer shall provide to Service Company's inspector, one calendar week notice prior to commencement of construction. Developer shall cause to be constructed, at Developer's own cost and expense, the on-site and off-site water distribution systems as shown on the approved plans and specifications.

10.0 INSPECTION OF CONSTRUCTION. During the construction of the water distribution systems by Developer, Service Company shall have the right to inspect such installations to determine compliance with the approved plans and specifications. The engineer of record shall also inspect construction to assure compliance with the approved plans and specifications. Service Company, engineer of record and utility contractor shall be present for all standard tests for pressure, bacteriological, and all other normal engineering tests to determine that the systems have been installed in accordance with the approved plans and specifications, and good engineering practices. Service Company's inspector through authority of Service Company's manager has the authority to make the final decision as to construction questions that arise in the field. Developer agrees to pay to Service Company, or Service Company's authorized agent, a reasonable sum to cover the cost of inspection of installations made by Developer or Developer's contractor, as reflected in EXHIBIT D.

11.0 CONSTRUCTION CERTIFICATION OF COMPLETION AND AS-BUILTS. Upon completion of construction, Developer's engineer of record shall submit to Service Company a copy of the signed certificate of completion submitted to the appropriate regulatory agencies. The engineer of record shall also prepare, certify and submit as-built water distribution system plans to the Service Company in the form of two ammonia print sets, one ammonia Mylar set.

DEVELOPER AGREEMENT PWSCF: {Laguna Pointe Condominium}

12.0 CONVEYANCE OF TITLE TO INSTALLATIONS. By these presents, Developer hereby transfers, subject to the completion of construction of facilities, to Service Company, title to the Off-Site system installed by Developer or Developer's contractor pursuant to the provisions of this Agreement. Such conveyance shall take effect at the time Service Company issues its final letter of acceptance. As further evidence of said transfer of title, upon the completion of the installation, but prior to the issuance of the final letter of acceptance and the rendering of service by Service Company, Developer shall:

13.0 BILL OF SALE. Convey to Service Company, by bill of sale in form reasonably satisfactory to Service Company, the Off-Site systems as constructed by Developer and approved by Service Company. This bill of sale shall include the final cost breakdown of the actual costs of installation of the Off-Site pipes, valves, fittings, and contracted services, as separated into distribution mains, transmission mains, fire hydrants, and services lines to individual subdivided properties.

14.0 CONSTRUCTION INVOICES. Provide Service Company with copies of invoices from contractor for installation of the Off-Site systems.

15.0 RELEASE OF LIEN FOR CONSTRUCTION INVOICES. Provide Service Company with copies of Release of Lien for said invoices.

16.0 MAINTENANCE BOND AND/OR WARRANTIES. Provide a maintenance bond in favor of Service Company in the amount of the entire cost of the Off-Site installations. Said cost will be determined after construction, but prior to acceptance of the system. The bond must extend for a period of one year from the date of final acceptance of Off-Site installations by Service Company. All manufacturer

DEVELOPER AGREEMENT PWSCF: {Laguna Pointe Condominium}

warranties that extend for a period exceeding this requirement shall be assigned to Service Company by Developer.

17.0 RELEASE OF LIEN FROM DEVELOPER. Provide to the Service Company an executed affidavit of release of liens in form reasonably satisfactory to Service Company for the Off-Site systems installed by Developer by reason of work performed or services rendered in connection with the installation of the Off-Site systems.

18.0 RIGHTS-OF-WAY AND/OR EASEMENTS. Further cause to be conveyed to public use in the official records of Escambia County all rights-of-way and/or easements covering all areas in which the Off-Site systems are installed, with adequate legal access to same, by recordable document in a form satisfactory to Service Company. Without limitation on the foregoing, each right-of-way and easement will provide that the Service Company can use said rights-of-way and/or easements and that easements will not be planted with any plants except grass or obstructed by any structure, and that Service Company shall have no obligation to replant any plants or repair any structures located within said easements, or rights-of-way.

19.0 FINAL LETTER OF ACCEPTANCE. Service Company agrees that the issuance of the final letter of acceptance for the Off-Site systems installed by Developer shall constitute the assumption of responsibility by Service Company for the continuous operation and maintenance of such system from that date forward, subject to the warranty period as detailed in this Agreement.

20.0 AGREEMENT TO SERVE. Upon the completion of construction of the Off-Site systems to the satisfaction of Service Company, Service Company covenants and agrees that it will connect or oversee, at Service Company's preference, the connection of the

DEVELOPER AGREEMENT PWSCF: {Laguna Pointe Condominium}

Off-Site systems installed by Developer to the facilities of Service Company in accordance with the terms and intent of this Agreement. Such connection shall at all times be in accordance with rules, regulations and orders of the applicable governmental authorities.

21.0 APPLICATIONS FOR SERVICE FOR CONSUMER INSTALLATIONS. In order to initiate water service to any parcel of the Property, Developer, builder, owner, or any occupant must follow Service Company's procedures for applying for water service. Upon Service Company's acceptance of the application for service, along with the collection of the appropriate fees, Service Company will allow the installation of the meter and turn on water service. Neither Developer, builder, nor any owner or occupant has authority to initiate water service for any reason.

22.0 CONSUMER INSTALLATIONS CONNECTIONS TO POINT OF DELIVERY. The responsibility for connecting the Consumer Installation to the Service Company at the Point of Delivery is that of the Developer or entity other than Service Company. The cost of constructing, operating, maintaining and repairing Consumer Installations shall be that of Developer or a party other than Service Company.

23.0 EXCLUSIVE RIGHT TO PROVIDE SERVICE. Developer, as a further and essential consideration of this Agreement, agrees that Developer, or the successors and assigns of Developer, shall not engage in the business or businesses of providing water services to the Property during the period of time Service Company, its successors and assigns, provide water services to the Property, it being the intention of the parties hereto that under the foregoing provision and also other provisions of this Agreement, Service Company shall have the sole and exclusive right and privilege to provide water services to the Property and to the occupants of such



DEVELOPER AGREEMENT PWSCF: {Laguna Pointe Condominium}

buildings or units constructed thereon. The sale or resale of water is strictly forbidden in any way or manner without the written consent of the Service Company.

24.0 RATES. Service Company agrees that the rates to be charged to Developer and individual consumers of water services shall be those set forth in the tariff of Service Company approved by the Florida Public Service Commission. Rates charged to Developer or consumers located upon the Property shall at all times be identical to rates charged for the same classification of service, as are or may be in effect throughout the service area of Service Company.

25.0 FUTURE RATES. However, notwithstanding any provision in this Agreement to the contrary, Service Company, its successors and assigns, may establish, amend or revise, from time to time in the future, and enforce rates or rate schedules and rules and regulations covering water services to the Property. However, all such rates and rate schedules and rules and regulations so established and enforced and shall at all times be reasonable and subject to regulations and approval by the Florida Public Service Commission, or as may otherwise be provided by law. Any such initial or future decreased or increased rates, rate schedules, and rules and regulations established, amended or revised and enforced by Service Company from time to time in the future, as provided by law, shall be binding upon Developer; upon any person or other entity holding by, through or under Developer; and upon any user or consumer of the water services provided to the Property by Service Company.

26.0 BINDING EFFECT OF AGREEMENT. This Agreement shall be binding upon and shall inure to the benefit of Developer, Service Company and their respective assigns and successors by merger,

DEVELOPER AGREEMENT PWSCF: {Laguna Pointe Condominium}

consolidation, conveyance or otherwise, subject to the provisions of paragraph 22.0 hereof.

27.0 NOTICE. Until further written notice by either party to the other, all notices provided for herein shall be in writing and transmitted by messenger, by mail, or by facsimile to Developer, at:

Mr. Greg Uzdevenes  
Laguna Pointe, Inc.  
17 West Cedar Street  
Pensacola, Florida 32501

Telephone: 850-456-6631

With a copy to the Service Company, at:

Peoples Water Service Company of Florida, Inc.  
Post Office Box 4815  
905 Lowndes Avenue  
Pensacola, FL 32507-0815  
Attention: Mark Cross, Manager or  
Jim Ogle, Assistant to the Manager  
Telephone: (850) 455-8552 Facsimile (850) 456-1010

With a copy to:

Rose, Sundstrom & Bentley  
2548 Blairstone Pines Drive  
Tallahassee, Florida 32301  
Attention: Martin S. Friedman

DEVELOPER AGREEMENT PWSCF: {Laguna Pointe Condominium}

28.0 LAWS OF FLORIDA. The laws of the State of Florida shall govern this Agreement and it shall be and become effective immediately upon execution by both parties hereto, subject to any approvals, which must be obtained from governmental authorities, if applicable.

29.0 LEGAL ENFORCEMENT. In the event the Service Company or Developer is required to enforce this Agreement by Court proceedings or otherwise, by instituting suit or otherwise, then the prevailing party shall be entitled to recover from the other party all costs incurred, including reasonable attorney's fees, including such fees and costs of any appeal.

30.0 FORCE MAJEURE. In the event that the performance of this Agreement by either party to this Agreement is prevented or interrupted in consequence of any cause beyond the control of either party, including but not limited to Act of God or of the public enemy, war, national emergency, allocation or of other governmental restrictions upon the use or availability of labor or materials, rationing, civil insurrection, riot, racial or civil rights disorder or demonstration, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, sinkhole or other casualty or disaster or catastrophe, unforeseeable failure or breakdown of pumping transmission or other facilities (which will be repaired by Service Company as soon as reasonably possible), governmental rules or acts or orders or restrictions or regulations or requirements, acts or action of any government or public or governmental authority or commission or board or agency or agent or official or officer, the enactment of any statute or ordinance or resolution or regulation or rule or ruling, order or decree or judgment or restraining order or injunction of any court, said party shall not be liable for such

DEVELOPER AGREEMENT PWSCF: {Laguna Pointe Condominium}

non-performance. This provision shall not be applicable to the payment of connection charges by Developer to Service Company.

31.0 INDEMNIFICATION. Developer agrees to indemnify and hold Service Company harmless from and against any and all liabilities, claims, damages, costs and expenses to which Service Company may become subject by reason of or arising out of this Agreement. This indemnification provision shall survive the actual connection to Service Company's water systems.

32.0 SURVIVAL OF AGREEMENT. The rights, privileges, obligations and covenants of Developer and Service Company shall survive the completion of the work of Developer with respect to completing the facilities and services to any development phase and to the Property as a whole.

33.0 COMPLETE AGREEMENT. This Agreement supersedes all previous agreements or representations, either verbal or written, heretofore in effect between Developer and Service Company, made with respect to the matters herein contained, and when duly executed, constitutes the agreement between Developer and Service Company. No additions, alterations or variations of the terms of this Agreement shall be valid, nor can provisions of this Agreement be waived by either party, unless such additions, alterations, variations or waivers are expressed in writing and duly signed by both parties.

34.0 BINDING OF AGREEMENT. The submission of this Developer Agreement for examination by Developer does not constitute an offer but becomes effective only upon execution thereof by Service Company.

DEVELOPER AGREEMENT PWSCF: {Laguna Pointe Condominium}

35.0 WAIVER OF COMPLIANCE. Failure to insist upon strict compliance of any of the terms, covenants, or conditions herein shall not be deemed a waiver of such terms, covenants, or conditions, nor shall any waiver or relinquishment of any right or power hereunder at any one time or times be deemed a waiver or relinquishment of such right or power at any other time or times.

36.0 REGULATORY APPROVAL. The parties hereto recognize that prior to the time construction may actually commence upon a program to carry out the terms and conditions of this Agreement, that Developer or Service Company, as applicable, may be required to obtain approval from various state and local governmental authorities having jurisdiction and regulatory power over the construction, maintenance and operation facilities to be installed. Service Company agrees that it will diligently and earnestly assist in making or make the necessary proper applications, as applicable, to all governmental authorities, and others and will pursue the same to the end that it will use its best efforts to obtain such approvals.

DEVELOPER AGREEMENT PWSCF: {Laguna Pointe Condominium}

IN WITNESS WHEREOF, Developer and Service Company have executed or have caused this Agreement, with the named Exhibits attached, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

WITNESSES: Laguna Pointe, Inc.

Name David A. Brannen Title: President  
Print Name David A. Brannen

Attest:  
Name: Gregory F. Uzdevens  
Print Name GREGORY F. UZDEVENS

STATE OF Florida ) COUNTY OF Escambia )

The foregoing instrument was acknowledged before me this 17th day of Sept, 2000, by, as David Brannen, and attested by, as Greg Uzdevens on behalf of Laguna Pointe, Inc., a Florida Corporation, who are personally known to me.

(Notary Seal)



Lottie L Rennspies

Print Name: \_\_\_\_\_  
Notary Public,  
State of Florida

DEVELOPER AGREEMENT PWSCF: {Laguna Pointe Condominium}

WITNESSES: PEOPLES WATER SERVICE COMPANY OF FLORIDA, INC.

Name: Sherlock S. Gillet Title: PRESIDENT

Print Name SHERLOCK S. GILLET

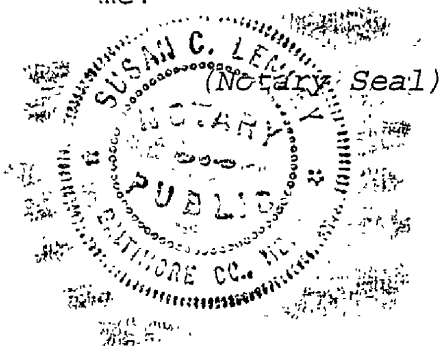
Attest:

Name: Leah M. Flanders

Print Name LEAH M. FLANDERS

STATE OF MARYLAND, COUNTY OF BALTIMORE

The foregoing instrument was acknowledged before me this 6TH day of SEPTEMBER, 2000, by SHERLOCK S. GILLET, as PRESIDENT, and attested by SHERLOCK S. GILLET JR., as VICE PRESIDENT, on behalf of Peoples Water Service Company of Florida, Inc., a Florida corporation, both of whom are personally known to me.



Susan C Lemley

Print Name: SUSAN C LEMLEY  
Notary Public  
State of Maryland at Large

My Commission Expires AUGUST 1, 2001

DEVELOPER AGREEMENT PWSCF: {Laguna Pointe Condominium}

EXHIBIT " A "

LEGAL DESCRIPTION (as furnished)

The west 200.00 feet of the South 400.00 feet of fractional Section 25, Township 3 South, Range 31 West, Escambia County, Florida, North of the Lagoon: also described as follows. :

Commencing at the Northwest corner of Section 25, Township 3 South, Range 31 West; thence run South along the West line of said Section 25 for 461.70 feet to the Point of Beginning: thence 90.00 left for 200.00 feet; thence 90.00 right for 400.00 feet, more or less, to the North shore line of the Big Lagoon; thence Westerly along the North shore line of the Big Lagoon for 200.00 feet; more or less, to the West line of Section 25; thence North along the West line of Said Section 25 for 400.00 feet, more or less, to the Point of Beginning.



DEVELOPER AGREEMENT PWSCF: {Laguna Pointe Condominium}

EXHIBIT "B"

CONTRIBUTIONS IN AID OF CONSTRUCTION

PLANT CAPACITY CHARGES

Upon execution of this Agreement, Developer or Developer's successors and/or assigns, agrees to pay Service Company the following Plant Capacity Charges to induce Service Company to reserve the following plant capacities for Developer's proposed connections. Developer understands that plant capacity is only reserved upon payment of plant capacity charges by Developer to Service Company. Said plant capacity charges to be paid by Developer are those which are set forth in Service Company's Service Availability Policy and Tariff approved by the Florida Public Service Commission and, accordingly, these charges may be changed from time to time with the approval of the Commission.

Residential Service or General Service  
Plant Capacity Charge Payment Schedule

<u>Meter Size</u>	<u>Number Meters</u>	<u>EMC Factor</u>	<u>Total EMC's</u>	<u>Charge /Meter</u>	<u>Total Charge</u>
5/8-inch		1.0		\$ 357	\$
3/4-inch		1.5		\$ 536	\$
1-inch		2.5		\$ 893	\$
1&1/2-inch		5.0		\$ 1,785	\$
2-inch		8.0		\$ 2,856	\$
3-inch		16.0		\$ 5,712	\$
4-inch		30.0		\$10,710	\$
6-inch		62.5		\$22,313	\$

Note: (1) EMC means Equivalent Meter Connection

(2) Plant Capacity Charge is the same as Impact Fee

DEVELOPER AGREEMENT PWSCF: {Laguna Pointe Condominium}

EXHIBIT "C"

METER SETTING FEES

Meter setting fees are not applicable in this project.

DEVELOPER AGREEMENT PWSCF: {Laguna Pointe Condominium}

EXHIBIT " D "

MISCELLANEOUS CHARGES

SERVICE COMPANY CHARGES TABLE  
 WHEN CONSTRUCTION IS DONE BY DEVELOPER

These costs and expenses are to be paid to Service Company by Developer, or Developer's successors and/or assigns, as applicable.

<u>Fee And/Or Expense Description</u>	<u>Amount</u>	<u>Time Amount is Due</u>
Project Concurrency Review Fee	\$75	With Application
WDS Plans and Spec Review Fee	\$100	When P&S Submitted
Company Attorney Review	<\$1,000	D.A. Execution
County Recording	Actual \$	D.A. Execution
Corporate Administration Fee	\$35/hour	WD/TS Acceptance
Construction Inspection Fee	\$22.50/hour	If >31 Days/By Mo.
Materials or Outside Services	Cost +10%	If >31 Days/By Mo.

The Developer is responsible for all costs associated with said On-Site and Off-Site connection to Service Company's Distribution mains. Upon completion on the On-Site connection, water may be supplied to the On-Site mains for pressure testing and disinfection purposes only with the expressed knowledge of the Service Company. The local Health Department officials must clear all bacteriological samples and Service Company must be in possession of the Florida Department of Environmental Protection, Construction Permit Clearance Letter, prior to any use of water. All applicable fees and documents identified in this document must be received before Service Company will provide water for other purposes. Service Company will not be responsible for any damages or claims brought forth by the refusal of the developer to install any pressure-boosting devices to aid in the adequate ability to suppress a fire.

DEVELOPER AGREEMENT PWSCF: {Laguna Pointe Condominium}

RCD Sep 18, 2001 02:53 pm  
Escambia County, Florida

Ernie Lee Magaha  
Clerk of the Circuit Court  
INSTRUMENT 2001-883708

EXHIBIT "E"

OFF-SITE CONSTRUCTION OF WATER LINES

The developer, at his expense, shall construct and connect a six-inch Off-Site water line approximately 800 feet along the existing right-of-way on Indigo Drive south to the point of connection with Laguna Pointe Condominium. The Off-Site water line construction must be approved by Service Company, flushed, pressure tested, and disinfected prior to connection to On-Site lines. All bacteriological testing must be completed and Service Company must be is receipt of the Construction Permit Clearance Letter signed by the Department of Environmental Protection before water is turned on for On-Site construction purposes. The developer, or his designee, will be responsible for applying for and receiving all applicable local, state and federal construction permits. Any and all fines or penalties brought forth by any governmental agency are the responsibility of the developer, not the Service Company.