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REPLY TO ALTAMONTE SPRINGS

CENTRAL FLORIDA OFFICE
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MARTIN S. FRIEDMAN, P.A.
VALERIE L. LORD

August 27, 2004

ORIGINAL

Ms. Blanca S. Bayo
Commission Clerk and Administrative Services Director
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Developer Agreement between Lake Utility Services, Inc., and Banyan Construction & Development, Inc., (Timberlane Subdivision)
Our File No.: 30057.82

Dear Ms. Bayo:

Pursuant to Commission Rule 25-30.550, Florida Administrative Code, enclosed is a copy of a Water Utility Agreement entered into between Lake Utility Services, Inc., and Banyan Construction & Development, Inc., for water service to the Timberlane Subdivision. Lake Utility Services, Inc.'s water treatment plants have total permitted capacity of 10,790 ERCs. The connected load for the current treatment plants is approximately 8,270 ERCs and this Water Utility Agreement is for 135 ERCs. There is sufficient capacity in LUSI's existing plants to provide water service pursuant to this Water Utility Agreement. This Water Utility Agreement will have no noticeable impact on the Utility's rates due to the amount of demand being placed on the LUSI water system, and resultant revenues.

CMP _____
COM _____ In accordance with the aforementioned Rule, we will deem this Agreement approved if we
do not receive notice from the Commission of its intent to disapprove within thirty days. Should
you have any questions regarding this Agreement, please do not hesitate to contact me.
CTR _____

ECR _____

GCL _____

OPC _____

MMS _____

RCA _____ MSF/mp

SCR _____ Enclosure

SEC 1 cc: Mr. Steve Lubertozzi (w/o enclosure)
Mr. Patrick Flynn, Regional Director (w/enclosure)

OTH _____

Very truly yours,



MARTIN S. FRIEDMAN
For the Firm

DOCUMENT NUMBER - DATE
09439 AUG 30 2004

WATER UTILITY AGREEMENT
TIMBERLANE SUBDIVISION
LAKE COUNTY, FLORIDA

THIS UTILITY AGREEMENT dated this ^{1st} ~~28~~ day of July 2004 by and between Lake Utility Services, Inc., a Florida corporation (hereinafter referred to as "Utility"), and Banyan Construction & Development, Inc., a Florida corporation (hereinafter referred to as the "Owner").

PREMISES

WHEREAS, Owner is the owner of approximately 80.29 acres of real property situated in Lake County, Florida, described with particularity in "Exhibit A" attached hereto and made a part hereof, which property is hereinafter referred to as the "Property"; and

WHEREAS, the Property may hereafter be developed and improved into a development consisting of approximately 135 residential building lots requiring water service (hereinafter referred to as the ("Development")); and

WHEREAS, Utility is the owner and operator of water production and distribution facilities within its certificated service area which encompasses the Property; and

WHEREAS, Utility has agreed to make its water service available to the Development on the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the premises hereof and the work to be done by Utility and the sums to be paid to Utility by Owner as described hereafter, Owner and Utility agree as follows:

1. EXCLUSIVE SERVICE TO THE PROPERTY. Owner hereby agrees and covenants that all improvements hereafter constructed on the Property shall be served exclusively by Utility's water facilities, and Owner further agrees that this grant and agreement shall be a covenant binding upon and running with title to the Property. Utility hereby agrees to make water

available to the Development hereafter constructed on the Property for the rates and under the conditions referred to in this Agreement. Utility agrees that such services shall be made available through Utility's facilities, which Utility has or intends to construct, and through the facilities to be constructed by Owner; provided, however, that if Utility is prevented by law or governmental regulation from constructing or expanding plants and facilities, or from providing such water service for any reason, Utility shall have no liability to Owner whatsoever except that Utility shall be obligated to return, without interest, any unearned contributed funds paid to Utility hereunder, and this Agreement shall thereupon be terminated, except with respect to portions of the Development which are then being served hereunder. Utility further agrees that the water service to be provided hereunder shall meet the current standards or requirements, as the case may be, of all state, local, and federal governmental agencies having jurisdiction over Utility; provided, however, that Utility shall not be responsible for any failure to meet or comply with said standards or requirements to the extent that such failure shall be occasioned by the inadequacy of the facilities to be constructed by Owner; and further, the acceptance of any such facilities by Utility shall not be an admission of, or acceptance of such responsibility. Utility hereby agrees to provide water service to the Development within nine (9) months after Owner shall make a written request for such service to Utility, but not before the Off-Site Improvements and On-Site Facilities on the Property described in Paragraphs 3 and 4 hereof, respectively, are completed in accordance with this Agreement.

2. CONTRIBUTION-IN-AID-OF-CONSTRUCTION (CIAC). Owner hereby agrees to contribute to Utility for aid in construction of plant facilities for each single-family dwelling unit constructed on the Property, the amount currently approved by the Florida Public Service Commission as of the date of this agreement. Said contribution shall hereinafter be referred to as the "Connection Contribution." The Connection Contribution, in the amount of \$52,900.00 shall be paid by Owner to Utility with the execution of this agreement. The payment of the Connection Contribution shall be paid in cash or cashier's check, or other funds acceptable to Utility. Utility shall have no obligation hereunder to advise any governmental authority by

execution of application, or otherwise, that it is providing service to a portion of the Development unless the Connection Contribution has been paid for the portion of the Development subject to such advice; provided however, so long as Owner is not in default under this Agreement, Utility will accommodate Owner, upon request, by furnishing Owner with a letter to addressees designated by Owner stating that upon payment required for Connection Contribution, Utility will furnish water service to the Development or a portion thereof. Under no circumstances shall Owner be entitled to any return of all, or any part of, any lump sum increment paid for Connection Contribution as described in this Paragraph 2 (unless Utility shall be unable to render services as described in Paragraph 1 hereof) and such lump sum Connection Contribution may be used by Owner only with respect to a portion of the Development constructed on the Property. The Connection Contribution shall be in lieu of any other tap-in or connection fees charged by Utility, but not in lieu of the following: (1) the cost of constructing off-site improvements in accordance with Paragraph 3 hereof, which shall be charged and paid in accordance with said Paragraph 3, (2) the rates and guaranteed revenue charges described in Paragraph 7 hereof, which shall be charged and paid separately in accordance with paragraph 7 hereof, and (3) meter installation fees as described in Paragraph 8 hereof, which will be charged and paid separately in accordance with said Paragraph 8 hereof.

3. OFF-SITE IMPROVEMENTS. In order to provide water service to the Development, certain off-site improvements will be constructed. These off-site improvements (the "Off-Site Improvements") shall be those improvements which are determined by Utility, in its sole discretion, to be necessary to transport water from Utility's plant, which will serve the Development, to the Development, including all lines, mains, valves, hydrants and other facilities necessary to serve Development. An estimate of the Off-Site Improvements is described in "Exhibit B" attached hereto and made a part hereof. As a condition precedent to the Utility's obligation to provide the service to the Development hereunder, Owner shall be responsible for constructing, at Owner's sole cost and expense, the Off-Site Improvements and interconnecting the Off-Site Improvements with Utility's existing water system at a point or points as specified

by Utility. The Off-Site Improvements shall be constructed in accordance with plans and specifications approved by Utility and in accordance with all requirements of Utility's standard engineering practices which it shall provide to Owner on request, and all applicable governmental and regulatory authorities. Owner shall convey the Off-Site Facilities to the Utility, at no cost or expense to the Utility. Such conveyance shall be by bill of sale, warranty deed or other appropriate instrument as determined by Utility to ensure Utility's ownership of the Off-Site Facilities, at its sole discretion, and shall be free and clear of all liens and encumbrances whatsoever. By conveyance of the Off-Site Facilities, Owner shall be deemed to have represented and warranted to Utility (1) that all costs therefor have been paid in full and that Utility will be furnished with such evidence thereof as it may reasonably require, and (2) that said Off-Site Facilities have been constructed in a good and professional manner, free from all defects, and that Owner will correct any defect occurring or discovered in said facilities within a period of one (1) year from the date of conveyance.

4. ON-SITE FACILITIES. When the Property is developed, Owner shall construct and install therein, at its own cost and expense, all necessary on-site water facilities (the "On-Site Facilities"), including generally all the water facilities of whatever nature or kind needed to connect the Development to be constructed on the Property to the Off-Site Improvements or the lines of Utility, and including specifically, all lines, mains, hydrants and service connections to serve the Development to be constructed on the Property. Owner agrees that the construction and installation of such On-Site Facilities shall be subject to the following:

A. The On-Site Facilities shall be constructed and installed by Owner only after the approval of the plans and specifications therefor by Utility. The plans and specifications shall be in accordance with the requirements of Utility's standard engineering practices and all applicable regulatory authorities, and Owner shall obtain approval thereof from such agencies prior to commencement of construction. Owner agrees to pay to Utility, a reasonable sum to cover the cost of reviewing the Owner's engineered plans. Such cost to review the plans shall be - \$300.00.

B. Upon approval of the plans and specifications by Utility, as provided in subparagraph A hereof, the On-Site Facilities shall be constructed strictly in accordance with such plans and specifications. Utility shall be advised as to the progress of such construction and afforded the right to make inspection of said construction; provided, however, Utility shall have no duty to make such inspections, and by making such inspections shall incur no responsibility for the correct installation or construction thereof. Owner agrees to pay to Utility, a reasonable sum to cover the cost of inspection of installations made by Owner or Owner's contractor. The cost of inspection shall be \$150.00

5. USE OF ON-SITE FACILITIES. At the time Owner desires to connect the On-Site Facilities constructed by it to Utility's water system with respect to any lot or project in the Development, and as a condition precedent for the right to make such connection, Owner shall convey to Utility, at no cost to Utility, the On-Site Facilities as Utility shall require. Such conveyance shall be by bill of sale, warranty deed or other appropriate instrument as determined by Utility, in its sole discretion, and shall be free and clear of all liens and encumbrances whatsoever. In the event that On-Site Facilities have been connected to Utility's systems without said conveyance, the requirement to convey said facilities to Utility shall not be waived and Utility may thereafter, at any time, require the conveyance of such facilities. In the event that Owner is unable or unwilling to convey to Utility such facilities for any reason whatsoever, Utility shall have the option to terminate this Agreement. Notwithstanding the foregoing, Utility shall not be required to accept such conveyance, or undertake the maintenance of any portion of the On-Site Facilities which are not in a public right-of-way and do not have adequate access easements to allow proper maintenance, which it shall, in its sole discretion, decide to leave as the property of, and the responsibility of, Owner. In addition, Utility shall not be obligated to make any connections until Utility has received the Engineer's certification that all construction has been performed in substantial conformance with the engineering plans and that all tests required by the Engineer and by Utility have been satisfactorily performed, and necessary approvals for use have been received from the Florida Department of Environmental Protection

or other governmental bodies responsible for the issuance of such approvals. The cost of all materials, construction tests and testing and installation for On-Site Facilities and line extensions shall be paid in full by Owner prior to the transfer to Utility. By conveyance of the On Site Facilities, Owner shall be deemed to have represented and warranted to Utility (1) that all costs therefor have been paid in full and that Utility will be furnished such evidence thereof as it may reasonably require, and (2) that said On-Site Facilities have been constructed in a good and professional manner, free from all defects, and that Owner will correct any defect occurring or discovered in said facilities within a period of one (1) year from the date of such conveyance.

6. RATES AND GUARANTEED REVENUE CHARGES The rates to be charged by Utility for water service to the Development hereafter built on the Property, and guaranteed revenue charges, shall be those rates and charges made by Utility to its customers which are from time to time approved by the Florida Public Service Commission, or by any other governmental regulatory body from time to time having jurisdiction over such matters. The guaranteed revenue charges shall be the payment to Utility by Owner for capacity reserved but not being used by an active customer. Owner shall begin paying guaranteed revenue charges at the time Owner shall request Utility to provide water service to the Property; provided, however, Owner shall not be required to pay any guaranteed revenue charges until the utility plant capacity needed to serve the lots or projects for which such charges are to be paid is completed and available to provide such service. Owner shall be obligated to pay such charges only on those projects or lots for which it pays CIAC and shall continue to pay such charges with respect to each lot or project until an active customer is connected on such lot or project. Utility reserves the right to withhold or disconnect service to any active customer, or to refuse to give or provide new or additional services to any active customer, at any time the charges are not paid on a current basis within twenty-five (25) days after the same are billed; provided that written notification of such delinquency has been made by Utility to such customer; provided, the failure of an active customer to pay sums due Utility shall not affect Owner's rights under this Agreement. The record owner of the lot or living unit being served by Utility, as the case may be, shall be

responsible for and shall save and hold harmless Utility for any loss or damages resulting from the exercise of said right to withhold or disconnect service to an active customer. Moreover, the service to the Development shall be subject to such other regulations from time to time lawfully imposed on Utility with respect to the operations of its water system, and except as limited by such regulations, the amounts of utility deposits, billing practices and times, liability for damage to Utility's Property and rate changes shall be exclusively within the discretion and control of Utility.

7. WATER METERS It is hereby agreed by the parties hereto that Utility shall install a water meter or water meters as Utility should deem to be necessary to serve the Development and the Property. Utility shall have the right to designate the number, type, quality and size of said meter or meters. The cost for said water meter or water meters and the labor charges associated with its installation shall be paid to Utility by Owner prior to installation of each such meter at the rate from time to time approved by the Florida Public Service Commission or any other governmental regulatory body from time to time having jurisdiction over such matters. Said sum shall be due and payable prior to the time of installation of said meter or meters. All water meters so installed shall remain the property of Utility.

8. TREATMENT PLANT SITE. Owner shall convey, by recorded deed, to Utility one (1) parcel of land suitable for use as a water treatment plant site, as described in "Exhibit C" and made a part hereof, for the consideration of the sum of One Dollar (\$1.00). Said water treatment plant site shall be of a suitable size to accommodate a ground storage tank, high service pumps and associated equipment for use in supplying potable water to the Development. Title to real estate shall be conveyed by General Warranty Deed in fee simple, free and clear of all liens and encumbrances, together with a title insurance policy containing only those exceptions which are acceptable to. Owner shall grant easements of ingress and egress and for the installation and maintenance of utility lines for the water treatment plant site parcel at no cost or expense to Utility. Construction of the facilities on aforementioned parcel will be at Utility's sole cost and expense.

9. PLATS. All plats of the Property, or portions thereof, filed among the Public Records of Lake County, Florida, or any other governmental unit, shall provide for such dedicated utility easements as may be reasonable and necessarily required for the purpose of serving the Property, or portions thereof with the water service to be provided hereunder.

10. SALE TO GOVERNMENTAL ENTITY. In the event Utility shall hereafter sell the utility systems, or any part thereof serving the Property, to the State of Florida, Lake County, or a duly constituted municipality, or any agency or entity under such State's, County or municipality's control, supervision or direction, Owner agrees that with respect to water and sewer service to the Property, the rules and regulations of such purchaser, and not the provisions of this contract, shall control, and that, upon assignment of this Agreement to the Purchaser, Utility shall be relieved of all further obligations hereunder.

11. NOTICES. Payments required to be made under the terms hereof and notices permitted, or required to be made under the terms hereof, shall be delivered to the parties at the respective addresses:

Utility: Lake Utility Services, Inc.
2335 Sanders Road
Northbrook, IL 60062
Attn: James L. Camaren, Chairman & CEO

Owner: Banyan Construction & Development, Inc.
301 North U.S. Hwy 27
Suite - G
Clermont, FL 34711
Attn: Frank Gammon, Senior Vice President

Any notices required or permitted hereunder shall be considered properly made if in writing and mailed by United States Mail, postage prepaid, to the addresses set forth herein.

12. TERM. The term of this Agreement shall be for a period of thirty (30) years from the date hereof, and from year to year thereafter.

13. MISCELLANEOUS.

A. Time is hereby made of the essence of this Agreement in all respects.

B. This Agreement constitutes the entire agreement of the parties and expressly supersedes all negotiations, previous agreements or representations whether verbal or written, and may not be amended in any way whatsoever except by a writing executed by both parties hereto in a manner equal in dignity to the execution of this Agreement.

C. This Agreement shall inure to the benefit of and be binding upon the heirs, successors, personal representatives and assigns of the parties hereto and shall constitute a covenant running with the Property.

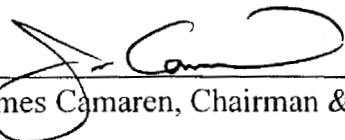
D. This Agreement shall be governed by the laws of the State of Florida.

E. This Agreement shall be effective upon proper execution by both parties hereto.

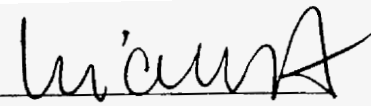
F. This Agreement shall be executed in several counterparts each of which if properly executed by both parties shall be considered an original.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their names and their seals to be hereunto affixed, by their proper officers thereunto duly authorized, on the day and year first above written.

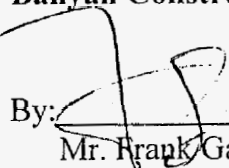
Lake Utility Services, Inc.

By: 
James Camaren, Chairman & CEO

ATTEST:



Banyan Construction & Development, Inc.

By: 
Mr. Frank Gammon, Senior Vice President

ATTEST:

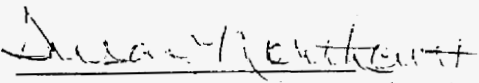

Susan Northcutt, Asst. Sec.

EXHIBIT A

TIMBERLANE

LEGAL DESCRIPTION:

THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 AND THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 6, TOWNSHIP 23 SOUTH, RANGE 26 EAST, ALSO DESCRIBED AS TRACTS 1, 2, AND 15, IN SECTION 6, TOWNSHIP 23 SOUTH, RANGE 26 EAST, MONTE VISTA PARK FARMS, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 27, PUBLIC RECORDS OF LAKE COUNTY, FLORIDA; TOGETHER WITH PORTIONS OF VACATED ROADS THAT LIE NORTH OF SAID TRACTS 1 AND 2, EAST OF SAID TRACT 1, AND THE NORTH 1/2 OF PLATTED ROAD THAT LIES SOUTH OF SAID TRACT 15 AND WITHIN SECTION 6, TOWNSHIP 23 SOUTH, RANGE 26 EAST, AS VACATED IN OFFICIAL RECORDS BOOK 1278, PAGE 1500, PUBLIC RECORDS OF LAKE COUNTY, FLORIDA.

TRACTS 16, 17, 18, 19 AND 30, IN SECTION 6, TOWNSHIP 23 SOUTH, RANGE 26 EAST, ACCORDING TO THE PLAT MONTE VISTA PARK FARMS, AS RECORDED IN PLAT BOOK 2, PAGE 27, PUBLIC RECORDS OF LAKE COUNTY, FLORIDA.

CONTAINING 80.29 ACRES, MORE OR LESS, AND BEING SUBJECT TO ANY EASEMENTS OR RIGHTS OF WAY OF RECORD.

EXHIBIT B

TIMBERLANE

100LF 24" Steel Casing @ \$35.00/LF	\$3,500.00
100LF 10" C900 DR18 PVC @ \$18.00/LF	\$1,800.00
(1) 10" RWGV Gate Valve	\$1,100.00
(1) 2" VB 2000 Blow Off	\$1,000.00
800LF 10" PVC Removal @ \$18.00/LF	<u>\$14,400.00</u>
Total Estimated Off Site Improvements Cost	\$21,800.00

EXHIBIT C

TIMBERLANE

DESCRIPTION:

BEGIN at the Southeast corner of Tract 17, MONTE VISTA PARK FARMS, according to the plat thereof as recorded in Plat Book 2, Page 27, Public Records of Lake County, Florida, also being the Southeast corner of the Northeast 1/4 of the Southeast 1/4 of the Northeast 1/4 of Section 6, Township 23 South, Range 26 East, thence run S 89°52'53" W along the South line of said Tract 17 for a distance of 194.42 feet; thence run N 00°05'38" W for a distance of 178.09 feet to the beginning of a non-tangent curve concave to the Northwest, having a radius of 180.00 feet and a chord bearing of N 43°10'39" E; thence run Northeasterly along the arc of said curve for a distance of 39.51 feet through a central angle of 12°24'30" to the end of said curve; thence run S 89°30'50" E for a distance of 169.78 feet to the East line of said Tract 17, also being the East line of said Northeast 1/4 of the Southeast 1/4 of the Northeast 1/4 of Section 6; thence run S 00°34'13" W along said East line for a distance of 205.01 feet to the Point of Beginning.

UTILITIES, INC.

2335 Sanders Road
Northbrook, Illinois 60062-6196
Telephone 847 498-6440
Facsimile 847 498-2066

August 4, 2004

Mr. Frank Gammon, Senior Vice President
Banyan Construction & Development, Inc.
Suite G
301 North U.S. Highway 27
Clermont, FL 34711

Re: Water Utility Agreement – Timberlane Subdivision – Lake County, Florida

Dear Mr. Gammon:

Enclosed please find one (1) fully executed original Water Utility Agreement – Timberlane Subdivision – Lake County, Florida for your files.

If you have any questions, please give me a call.

Sincerely,



Lisa A. Crossett
Director of Operations

LAC:sna

Enc.

cc: Patrick Flynn – Regional Director, Florida Region