

3. As to Countryside 1st Addition, during the period in question, we were dealing with the RTC involving Landfair Subdivision, which was being foreclosed on. For whatever reason, Tradewinds Utilities, Inc. was included in Docket No 880552 and confusion between that docket and transferring the Landfair water and wastewater system to the RTC overshadowed everything. It was finally corrected in Docket No 921260. We originally signed the Developer's Agreement in August 1990 and construction commenced shortly thereafter and continued for approximately 12 months. Under the rules that prevailed at the time regarding making extension application after construction was completed, we unintentionally failed to follow through with the application process. The subdivision in question contained 128 lots and took about 5 to 6 years to build out. Service to residential customers began in April 1992, approximately 18 months following the Developer Agreement signing date.

Your understanding in this matter is respectfully requested.



Charles deMenzes
President

**WATER AND SEWER
UTILITIES
AGREEMENT**

THIS AGREEMENT, made and entered into this 1st day of August, 1990, by and between COUNTRYSIDE PARTNERS, INC. (hereinafter referred to as "Developer") and TRADEWINDS UTILITIES, INC. (hereinafter referred to as "Utility"):

W I T N E S S E T H:

IN CONSIDERATION of the mutual promises and covenants and other value flowing between the parties and intending to be legally bound, they agree as follows:

BACKGROUND

Developer is the owner of that certain real property described in Schedule A attached and made a part hereof on which it intends to develop approximately One Hundred Nineteen (119) Single Family lots. Said property is located south of Countryside Estates from Northeast 30th Court to Northeast 36th Ave and 42nd Place in Ocala, Marion County, Florida. Said property to be developed to be known as Countryside Estates First Addition.

Utility is the owner and operator of a water utility system and a sanitary sewer utility system located at the general vicinity of the intersection of Northeast 27th Court and Northeast 43rd Place.

The parties desire that Developer's real property shall be brought within the franchise area covered by Utility's water and sewer system so that Developer's project can be served by Utility's water and sewer systems.

IT IS THEREFORE AGREED THAT:

1. **Applications.** Both parties will cooperate in the filing of all necessary applications by Utility to bring Developer's property within Utility's franchise area. Developer shall provide Utility with all required information produced by Developer's Engineers, agents and employees that is necessary for Utility to make such application. Utility shall promptly apply for and diligently pursue such application, and Developer shall bear all expense in connection therewith.
2. **Plans.** Developer shall have plans prepared by a qualified engineer for construction of water and sewer lines from Developer's project to connect with Utility's existing lines at approximately the intersection of Northeast 43rd Place and Northeast 27th Court. During the design phase and upon completion thereof, Utility shall periodically review said plans and shall give final approval to the same before any construction is commenced.

3. Construction. Upon final approval of the plans by Utility's engineer, Developer shall, at its own cost and expense, construct the necessary water and sewer lines from Developer's project to connect with Utility's existing lines. It is contemplated by the parties that said construction will be in the Easterly right-of-way of Northeast 43rd Place. The exact location shall be agreed upon before commencement of construction.

4. On-Site Plans. Developer will also have a qualified engineer design all portions of the water supply and sewage collection system on Developer's site, and Utility's engineer shall have the right to review and approve same. No on-site construction of such facility shall commence until Utility has given final approval thereof.

5. Conveyance of Facilities. Upon completion of construction of the water and sewer lines from Developer's site to Utility's existing lines, and approval of such lines as constructed, both by the Utility and all appropriate governmental regulatory bodies, then the Developer shall convey said facilities from Developer's property line to the point where they tie into Utility's existing system, free and clear of all encumbrances, to Utility.

6. Upgrading. If Developer's plans for its project and the demands thus created upon Utility are such that Utility must incur any expense for upgrading either of its central system (as opposed to its distribution and collection systems), Developer shall bear all such upgrading costs as determined by Utility's qualified engineers and approved by Developer's qualified engineer's.

7. Work. All work to be performed by Developer hereunder shall be done by qualified engineers and contractors, and shall be in accordance with plans and specifications approved by Utility and in conformity with the requirements of all governmental regulatory bodies.

8. Sizing Facilities. The facilities to be constructed by Developer from Developer's site to Utility's existing system shall be of such size as will adequately serve Developer's development, as well as that reasonable to be expected from additional property owners in the area who may be expected to tie into such systems.

9. Developer's Obligations. All contributors and developers shall furnish to the Utility accurate information with regard to matters of engineering, construction of buildings and dwellings and proposed densities. Developers who increase their density factors and/or consumption requirements are liable for an adjustment in their total Contribution-in-Aid-of-Construction applicable to Developer's project.

10. Oversized Facilities. Utility may require the installation of oversized off-site lines and facilities to provide service for other properties in accordance with the master plan of the Utility. In this event, Contributor may be required to advance the cost and may then be the subject of a refundable advance agreement, as hereinafter provided, REFUNDABLE ADVANCES.

11. Design and Construction of On-site Facilities. Contributor shall design and/or construct the on-site facilities provided, however, such design, installation, and construction shall be subject to the prior approval of the Utility. In the alternative, Utility may design and install on-site facilities and require Contributors to pay the actual cost of design and construction, including all necessary fees.

12. Transfer of On-site Facilities. Contributor shall also be responsible for financing of the on-site facilities in such a manner as to permit transfer of ownership and control of the facilities to Utility free and clear of any impediment to the continuous unfettered enjoyment by the Utility. All transfers of the on-site facilities shall be a form reasonably satisfactory to the Utility and shall be accompanied by a satisfactory evidence of ownership free and clear of any liens and encumbrances.

13. Construction of Oversized Facilities. Utility may install or may require the installation of oversized lines or facilities on Contributor's property to provide service to other properties in accordance with the master plan of Utility. In this event, Contributor will be required to advance the entire cost, and the balance of the cost in excess of the cost to serve the Contributor may then be the subject of a refundable advance agreement as hereinafter provided.

14. Design by Independent Engineers. Utility shall recognize the design of water facilities prepared by a professional engineer registered in the State of Florida regularly engaged in the field of sanitary engineering, covering the design of developer's on-site water distribution system. Provided, however, that each such design shall be fully subject to the approval of Utility's engineer and shall conform in all respects to the criteria of Utility governing the installation of utility facilities ultimately to be accepted by Utility for ownership, operation and maintenance. Utility reserves the right to charge a fee, the actual cost to Utility, for reviewing such engineering plans and furnishing to Developer's engineer, various information regarding location and criteria. All designs of water distribution facilities are at all times subject to the approval of other agencies having jurisdiction over such design.

Provided, however, that the Utility will establish specifications based upon good engineering and utility construction practices, and shall provide such specifications to developers or their representative. Any such specifications shall be incorporated into the on-site system design and construction of the on-site distribution systems. In the event that such specifications are not incorporated into the on-site system design and construction, the Utility reserves the right to order suspension of further design or construction pending correction of the deficiencies.

15. Construction of Distribution System. The on-site distribution system may be constructed by the Developer or a sub-contractor employed by the Developer at his option. Provided, however, that in the event the Developer decides to construct and install or have constructed and installed, the distribution systems, the Developer shall, not less than thirty (30) days prior to commencing construction, furnish the Utility with a complete copy of the plans and specifications of the proposed on-site distribution system, and a list of proposed underground utility contractors. The Utility shall have twenty (20) days in which to determine the acceptability of the design, plans and specifications furnished to it by the Developer. If the Utility shall object to the design, plans and specifications or any part thereof, construction shall not commence pending the resolution of the Utility's objection.

16. Qualified Contractors. It is further provided that the Utility may issue, revise or amend a list of construction contractors who are qualified to construct and install water and sewer systems and facilities to the level desired by the Utility. The Utility further reserves the right to reject any construction contractor who the Utility believes or has reason to believe does not perform, construct, or install facilities in accordance with good engineering practices and generally accepted construction practices as practiced by the Utility.

17. Repairs and Maintenance Prior to Acceptance. Developer shall be responsible for and make any repairs or replacements as a result of any breakage, vandalism or other damage caused to Developer's proposed on-site distribution system, including, without limitation, meter boxes and Utility's meters, until final acceptance of Developer's on-site distribution system by Utility. After final acceptance of on-site distribution system, Developer shall indemnify and hold Utility harmless for the cost of any repairs for any breakage or other damage to distribution system from time of completion of said distribution system until completion of all buildings, roads, pavings, drainage and other construction on Developer's property necessary to complete the development. If, within ten (10) days of the receipt of Utility's notice of such breakage or any other damage, developer fails to make timely repairs and corrections, Utility shall have the option to make such repairs or replacements at Developer's cost.

18. Hold Harmless. Utility shall not be liable or responsible to Developer as a result of injury to property or persons, which said injury was created by "Force Majure" as employed herein shall be acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, wars, blockades, riots, acts or Armed Forces, epidemics, delays by carriers, inability to obtain materials or right-of-way on reasonable terms, acts of public authorities, acts of vandals or other third parties, or any other causes whether or not of the same kind as enumerated herein. Further, in no event shall the Utility be liable to Developer or any customer for any inconsequential, incidental, or punitive damages as a result of injury to property or person, regardless whether said injury was the result of acts of or within the control of Utility or others.

19. Conveyance Without Encumbrance. Developer shall, in accordance with the terms of this agreement, cause to be constructed and conveyed to Utility, free and clear of all encumbrances and at no cost to Utility, the extension of the water distribution system. Developer shall submit to Utility, engineering plans and specifications for the Developer's extension prepared by Developer's engineer, which plans and specifications shall be approved in writing by Utility prior to Developer's undertaking any construction. All construction of Developer's extension shall be done by contractors approved in advance by Utility as competent to perform such work, which said approval shall not be arbitrarily withheld. Following conveyance by Developer, developer's extension, additions, repairs and replacements thereto shall at all times remain the sole, complete and exclusive property of the Utility, and the Developer shall have no right or claim in and to the Developer's extension, but the Developer's extension shall be used for providing service to development.

20. Refusal of Service. Utility shall have the right to refuse to provide service to the Developer, the right to terminate service to any lot or building within Developer's property, in the event Developer defaults or fails to comply with any of the terms and conditions contained herein in a timely manner, and fails to cure such default or fails to comply within ten (10) days following receipt by Developer of Utility's notice of such default or failure to comply.

21. Providing Water During Construction. Utility shall not provide water for construction on an unmetered basis, and the Developer agrees that all charges, including minimum charges for water service, shall be paid from the date of meter installation in accordance with Utility's approved rate schedule. Developer shall not allow any agents, contractors, or subcontractors to tap, connect or otherwise draw water from any point of the water system except those designated metered supply points installed by the Utility.

22. Final Conveyance. Wherein the Utility agrees to accept systems built by others, each contributor (developer, builder, etc.) who has constructed portions of a water distribution system shall convey such component parts of the water distribution system to Utility by bill of sale, in form satisfactory to Utility's attorney, together with such evidence as may be required by Utility that the water system proposed to be transferred to Utility are free and clear of all liens and encumbrances. Developer shall be responsible for the "gross up" as defined by the Florida Public Service Commission under the formula set forth in Schedule A attached labelled "Tax Impact of CIAC". Said "gross up" shall be allocated and paid on a per lot basis as each lot is either sold by Developer or as service is initiated.

PROVIDED, HOWEVER, THAT AT ALL TIMES:

23. Customer Installation. Any facilities physically located within the customer's property lines shall not be transferred to Utility and shall remain the property of individual customers, their successors or assigns.

24. Acceptance of Lines. Utility shall not be required to accept title to any component part of the water distribution system until Utility's engineer has approved the construction of said lines; and water service (other than for construction purposes) is being provided by Utility for a minimum of one bonafide customer other than Developer, Developer's contractor or agent, for whom Utility must operate and maintain Developer's on-site distribution system to provide service; accepted the tests to determine that such construction is in accordance with the criteria established by Utility and thereafter evidenced its acceptance of such lines for Utility's ownership, operation and maintenance.

25. Cost Records and "As Built Plans". Contributor shall maintain accurate records establishing the construction costs of all utility facilities constructed by the contributor. Such costs information shall be furnished to Utility concurrently with the bill of sale, and such cost information shall be a prerequisite for acceptance by Utility of the portion of the water distribution system constructed by the contributor. Contributor shall also supply to the Utility a complete copy of "as built" plans signed by the engineer responsible for construction, and the supplying of such plans will be a prerequisite for the acceptance by the Utility of the portion of the water distribution system constructed.

Prior to Utility accepting facilities constructed by Developer, Developer shall comply with all terms of this agreement and shall:

A) Provide to Utility an accounting of the actual cost of the on-site distribution system together with copies of all paid bills and releases of liens received by the Developer, or his agent, in connection with the construction of the on-site water distribution systems;

B) Furnish Utility with a mylar sepia copy of the "as built" drawings of the Developer's construction of on-site distribution system;

C) Furnish, in form and substance acceptable to Utility, all of the following relating to the Developer's on-site distribution system:

- (i) All permits and governmental approvals obtained by Developer, it's contractors or agents;
- (ii) Engineer's Certifications;
- (iii) Bill of Sale with warranties of title;
- (iv) Easements pursuant to Paragraph 3;
- (v) As Built drawings certified by Developer's engineer;
- (vi) A listing of any repair costs incurred with regard to the on-site distribution construction;

26. Right to Refuse Connection and Service. Utility reserves the right to refuse connection and to deny the commencement of service to any customer seeking to be connected to portions of the water distribution system until such time as the provisions of this section have been fully met.

27. Easements and Rights-of-Way. As a prerequisite to the construction of any water distribution system proposed to be connected to the facilities by Utility, Contributors shall be responsible for obtaining all easements or rights-of-way necessary in connection with the installation of the proposed facilities and the master plan of Utility. All grants or conveyances shall be free and clear of all liens and encumbrances and in form proper for recording and satisfactory to Utility's Attorney. Utility reserves the right to require such easement of right-of-way to the point at which meter is proposed to be installed being the point at which the Utility's facilities join with customer's installation.

28. Inspections. The Utility shall have, at all times during the construction, the right to inspect the construction of the water facilities being built by the contributor, or his agents or employees, as set forth in this Policy and receive payment of fees referred to therein.

Such inspection is designed to assure Utility that water and sewer lines are installed in accordance with approved designs and are further consistent with the criteria and specifications governing the kind and quality of such installation. Utility further reserves the right to be present at tests of component parts of water distribution systems for the purpose of determining that the system, as constructed, conforms to Utility criteria for exfiltration, infiltration, pressure testing, line and grade. Such tests will be performed by the Developer or Developer's contractor, but only under the direct supervision of Utility engineer or authorized inspector.

29. Inspection Fees. Construction of facilities by a contributor (developer), which are to become a part of Utility's system, will be subject to inspection by the Utility. For this service, the Utility may charge an inspection fee based upon the actual cost to the Utility of inspection of facilities constructed by contributors of independent contractors for connection with the facilities of the Utility. Such inspection fee shall be paid by the contributor in addition to all other charges above stated, as a condition precedent to service. A copy of the engineer's statement for inspections will be furnished to contributor upon request.

30. Extensions Outside Certified Territory. Owners, builders or developers being potential consumers whose property lies outside the Utility's certificated area, may apply to the Utility for the extension of water distribution mains to said property.

Property service outside the Utility's territory involves formal notice and formal procedures before Florida Public Service Commission (Chapter 367.061, Florida Statutes), and, therefore, entails engineering, administrative, and legal expenses in addition to costs incurred by the Utility in providing service within its territory. Therefore the Utility will not be obligated to provide its services outside the territory unless the contributor agrees, in advance, to defray those additional expenses and pay to the Utility the estimated cost thereof subject to approval by the Florida Public Service Commission. The advance payment will be adjusted to conform with the actual expenses after proceedings have been concluded.

The Utility will further make such extensions outside the territory only if the extension and treatment plant reservation or expansion to serve such extensions are economically feasible as determined by a competent engineering study.

The Utility will not extend its facilities in situation where the extensions will result in the service to existing customers to suffer either as a result of reduction of capacity to provide its service to customers, or reduction of economic capability of the Utility to meet its financial commitments.

31. Refundable Advances. Utility may require, in addition to the contribution schedule set forth herein, a refundable advance by Contributor, Developer or Builder to further temporarily defray the cost of any major extension of water mains necessary to connect the subject property with the then terminus of Utility's water mains adequate to provide service to the subject property. The purpose of such refundable advance is to temporarily limit the Utility's investment in extended facilities based upon the economic feasibility of the cost of the extension versus the gross revenues anticipated and the time or time periods within which to realize such anticipated revenues. In the event Utility requires a refundable advance, contributor shall be entitled to receive from Utility a refund of such advance in accordance with a refund plan based upon the connection of other property owners served by the same extension of water and/or related to the occupancy of the subject property relating to the receipt of gross revenues. The amount advanced by Contributor shall be subject to refund by the Utility in cash, without interest, in annual installments for a period not to exceed seven (7) years from the date shown on the specific Refundable Advance Agreement. In no event shall a refundable advance exceed the anticipated cost to be incurred by the Utility in the extension of its water mains from its then present terminus to the nearest point on the property line of the subject property in the closest proximity to the first development. Requirements for refundable advances shall not include advances for the construction of water treatment plant facilities.

32. Special Contracts. Utility company will require special contracts for service to areas of development when the economic feasibility as defined in Rules 25-30.515(7), F.A.C. of service to such areas is not met by application of the above connection and Main Extension charges. Such special contracts may entail refundable advances, guaranteed revenues or other special deposits in order to make the main extensions to such areas feasible. Any special contract entered into will be filed with the Florida Public Service Commission and is subject to its approval.

33. Developer Agreement Required. The Contributor, Owner, Builder or Developer may be required to execute a "Developer's Agreement" setting forth such reasonable provisions governing contributor and Utility's responsibility pertaining to the installation of service facilities; the interconnection of plumber's lines with facilities of Utility; the manner and method of payment of "Contributions In Aid Of Construction"; matters of exclusive service rights by Utility; standards of construction or specifications; time commitments to "take and use water service"; engineering errors and omissions; rules, regulations and procedures of Utility; prohibitions against improper use of Utility's facilities and other matters normally associated with and contained in Developer's Agreement. Nothing contained in such Developer's Agreements shall be in conflict with this Extension Policy as included in the Utility's Tariff on file with the Florida Public Service Commission.

Should conditions warrant an agreement other than the Utility's standard agreement, Developer will be required to pay all actual costs for the services of an independent counsel or persons qualified to draft and prepare such agreement.

34. Approval by PSC. This agreement shall not become effective until it has been approved by the Florida Public Service Commission.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above stated.

Signed, sealed and delivered
in our presence as witnesses:

Betty Lou Schmit
As to Developer

By William Van de Ven
William Van de Ven

Betty Lou Schmit
As to Developer

By William J. Heck
William J. Heck

Betty Lou Schmit
As to Developer

By John E. Fabian
John E. Fabian

Charles deMendez
As to Utility

TRADEWINDS UTILITIES, INC.
By Charles deMendez
Charles deMendez, Pres.