

**Dorothy Menasco**

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**From:** Ann Bassett [abassett@lawfla.com]  
**Sent:** Tuesday, January 27, 2009 4:04 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** Docket No. 080642-GU  
**Attachments:** 2009-01-27, FPUC's Amended Petition.pdf

The person responsible for this electronic filing is:

Norman H. Horton, Jr.  
Messer, Caparello & Self, P.A.  
P.O. Box 15579  
Tallahassee, FL 32317  
(850) 222-0720  
[nhorton@lawfla.com](mailto:nhorton@lawfla.com)

The Docket No. is 080642-GU Petition of Florida Public Utilities Company to Resolve a Territorial Dispute with Peoples Gas System

This is being filed on behalf of Florida Public Utilities Company

Total Number of Pages is 26

Amended Petition of Florida Public Utilities Company to Resolve a Territorial Dispute.

Ann Bassett  
Messer, Caparello & Self, P.A.  
2618 Centennial Place (32308)  
P.O. Box 15579  
Tallahassee, FL 32317  
Direct Phone: 850-201-5225  
Fax No. 850-224-4359  
Email Address: <[abassett@lawfla.com](mailto:abassett@lawfla.com)>  
Web Address: <[www.lawfla.com](http://www.lawfla.com)>

1/27/2009

DOCUMENT NUMBER - DATE

00670 JAN 27 8

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Public Utilities Company to resolve a territorial dispute with Peoples Gas System )
Docket No. 080642-GU
Filed: January 27, 2009

AMENDED PETITION OF FLORIDA PUBLIC UTILITIES COMPANY TO RESOLVE A TERRITORIAL DISPUTE

Pursuant to Section 366.04(3)(b), Florida Statutes and Rules 25-7.0472, and 28-106.202, Florida Administrative Code, Florida Public Utilities Company ("FPUC") hereby submits its amended petition and requests the commission to resolve a territorial dispute between FPUC and Peoples Gas System, and states:

- 1. The Petitioner's name and address are:

Florida Public Utilities Company
P.O. Box 3395
West Palm Beach, FL 33402-3395
Telephone: 561-832-2461

- 2. The names, addresses, and telephone numbers of the persons to whom all notices and other documents should be sent are:

Norman H. Horton, Jr.
Messer, Caparello & Self, P. A.
2618 Centennial Place
Tallahassee, FL 32308
Telephone: 850-222-0720

Marc Seagrave
Florida Public Utilities Company
P.O. Box 3395
West Palm Beach, FL 33402-3395

- 3. Section 366.04(3), Fla. Stats., confers on the Commission the jurisdiction to resolve territorial disputes between natural gas utilities. Specifically, Section 366.04(3) provides in relevant part:

In the exercise of its jurisdiction, the commission shall have the authority over natural gas utilities for the following purposes:

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FPSC-COMMISSION CLERK

(b) To resolve, upon petition for a utility or on its own motion, any territorial dispute involving service areas between and among natural gas utilities. In resolving territorial disputes, the commission may consider, but not be limited to consideration of, the ability of the utilities to expand services within their own capabilities and the nature of the area involved, including population, the degree of urbanization of the area, its proximity to other urban areas, and the present and reasonably foreseeable future requirements of the area for other utility services.

(c) For purposes of this subsection, "natural gas utility" means any utility which supplies natural gas or manufactured gas or liquefied gas with air admixture, or similar gaseous substance by pipeline, to or for the public and includes gas public utilities, gas districts, and natural gas utilities or municipalities or agencies thereof.

To implement this authority, the Commission has adopted Rule 25-7.0472, Florida Administrative Code, Territorial Disputes for Natural Gas Utilities.

4. FPUC and People's Gas are natural gas utilities within the meaning of Section 366.04(3)(b) and as such, are subject to the Commission's statutory jurisdiction to resolve territorial disputes.

FPUC owns and operates natural gas distribution systems and provides service to customers in portions of Volusia, Seminole, Marion, Palm Beach, Broward and Martin Counties Florida. Of specific application to this dispute is area served and to be served in Martin County.

Peoples Gas System ("Peoples Gas") is a division of Tampa Electric Company and operates natural gas distribution systems in several areas of Florida, including Stuart in Martin County.

5. As will be described in this petition, a territorial dispute exists between FPUC and Peoples Gas regarding the intention and efforts of each to serve customers within Martin County. The Commission has jurisdiction to resolve the territorial dispute pursuant to Section 366.04(3)(b), Florida Statutes. FPUC filed its Petition to Resolve a Territorial Dispute on October 15, 2008. Thereafter, Peoples filed a Motion to Dismiss Petition or, in the Alternative,

For More Definite Statement. Subsequent to this filing, the Staff conducted a conference call among the parties during which each party reviewed their positions with respect to the dispute. At the conclusion, FPUC was requested to provide clarification and additional information.

6. On November 13, 2006, in Order No. PSC-06-9948, the commission approved a territorial agreement between FPUC and Indiantown Gas Company (“IGC”). Pursuant to that agreement, FPUC is and will be serving customers in Martin County in the vicinity of Indiantown. Although this area is not part of the current dispute, the agreement does substantiate that FPUC has had the intent since that time to expand natural gas facilities into Martin County. On March 18, 2008, FPUC filed with the commission a request to revise its tariff sheet that specifically describes its service territory within Martin County to include the area west of the St. Lucie River FPUC intended to provide natural gas service. *See*, FPUC, FPSC Gas Tariff, Second Revised Sheet, No. 5.1 effective May 1, 2008, attached as Exhibit A. Generally, the territory to be served consists of those portions of Martin County not served by IGC or the area east of the St. Lucie River and the Stuart area served by Peoples. Pursuant to this authority, FPUC is currently serving customers in a portion of Martin County and has taken steps to expand to additional customers, either through conversion of existing propane customers and / or expansion of existing lines through which natural gas is being billed to customers within the development known as Canopy Creek.

7. Peoples Gas currently provides natural gas service to customers in portions of Martin County that are for the most part east of the St. Lucie River and in and around the City of Stuart.

8. This dispute arises because of actions undertaken by Peoples to expand their lines to areas served by FPUC and/or areas known to Peoples to be areas in the expansion plans of FPUC. Specifically, as will be explained herein FPUC has undertaken to provide gas service to

customers in areas west of the Florida Turnpike. Peoples does not currently provide service to customers west of the Turnpike but has begun construction of a section of pipe that has extended under the Turnpike into the service area of FPUC. It is this incursion which gives rise to the petition, Exhibit "A" defines the service area of FPUC as approved by the Commission and additional exhibits define and describe the areas currently served.

9. Within the area shown in Exhibit "A" FPUC has installed lines to provide service to customers in an area bordered on the south by SW Martin Highway, the west by SW Boatramp Avenue, the north by SW Busch Street and the east by SW 48<sup>th</sup> Avenue (See Ex. B). FPUC also currently serves propane customers in several areas between the St. Lucie Canal and the Turnpike with an underground system which it plans to convert to natural gas.

10. Subsequent to the installation of the FPUC lines and after PSC approval of the FPUC territory, Peoples began construction of a line running east to west on SW Martin Hwy and under the Florida Turnpike (See Ex. B) in the direction of areas served by FPUC and / or areas known by Peoples to hold customers currently served by FPUC or in the expansion plans of FPUC. As construction began on the east side of the Turnpike, FPUC contacted Peoples to inquire as to who they intended to serve by installing the line and to express the fact that the line was being installed in FPUC territory. FPUC asked Peoples to halt construction until a resolution to the matter could be agreed upon. Despite the concerns expressed by FPUC, Peoples informed FPUC that their intent was to complete the full scope of the project which was to install a line as herein described. Peoples did not offer a reason for the installation, nor did it name a customer the line would serve and no immediate explanation was provided to explain their activity. The line under the turnpike may be described as little more than a stranded piece of pipe to which no customer has been identified for the line to serve. It is apparent that Peoples did not installed the

line as part of any future expansion plans as evidenced by the fact that they marketed propane in the area on behalf of FPUC.

11. Following the initial inquiry as to this situation, FPUC and Peoples have had numerous conversations regarding the installation of the stranded line installed under the Turnpike. Officials of both companies agreed to provide a senior management representative that would meet on-site and jointly survey the area in dispute. The purpose of the meeting would be to ensure that both parties were aware of each company's intentions and to agree upon a solution that would be jointly recommended to each party's corporate executives that could end the dispute and be beneficial to both parties and their customers. Both representatives met, surveyed the area and discussed the matter in detail. At the meeting FPUC was informed that in addition to the stranded line under the Turnpike, Peoples' intent was to install a new line from their existing gate station located east of the St. Lucie River that is adjacent to the east side of the Florida Turnpike and just north of S. Kanner Hwy (SR 76) (See Ex. B) running north generally along a route that follows SW High Meadow Ave to SW Martin Hwy then east along that road then turning north on SW Mapp Rd. to SW Martin Downs Blvd. then east to the west shore of the St. Lucie River. The explanation given was that this line was to be installed in order to tie into existing mains serving the east side of the St. Lucie River in the City of Stuart and this would allow Peoples to loop their system in order to improve reliability and capacity. Still no explanation was given as to the intended purpose of the line under the Turnpike. FPUC reiterated that they were already serving a development west of the Turnpike, Canopy Creek with natural gas facilities temporarily supplied by propane but the customers were being billed for natural gas. FPUC also advised Peoples that it had a contract with a commercial customer Southeastern Printing, and that it was FPUC's intent to provide natural gas service to Southeastern per the customer's request. FPUC mentioned that its intention was to provide service to the

aforementioned customers who were already being served and to any other customer that requested natural gas in its territory. Following the survey of the area and the discussions that ensued afterwards the recommendations jointly agreed upon at the meeting are as follows: (1) FPUC would amend its territorial boundary to exclude all areas east of the Florida Turnpike in Martin County. The Turnpike, which runs north and south through the county, would serve as the east-west boundary between the companies. (2) Peoples would install a new line from their existing gate station near the turnpike and SR 76 north and connect to their line installed under the turnpike at Hwy 714 and continue east along the aforementioned route, under the St. Lucie waterway and connect to their existing natural gas facilities serving Stuart on that side of the river. (3) Peoples would install a master meter near the intersection of Hwy 714 and SW 42<sup>nd</sup> Ave N, which is located at the end of Peoples line that was installed under the turnpike. FPUC would agree to purchase natural gas from Peoples to supply its customers within its territory until such time FPUC completes the installation of its planned permanent natural gas facilities to supply the area. Once FPUC completes the installation of the facilities it was agreed that the master meter location could serve as a back up to both parties systems in the event of a line break or other emergency.


12. As far back as December 2006, FPUC received requests from Kolter Homes, the developer of Canopy Creek, for the company to provide the development with natural gas. An agreement was reached between FPUC and Kolter Homes dated April 2<sup>nd</sup>, 2007. (See Ex. C). Southeastern Printing was also a customer who signed up for service and important to note that this customer was signed by Teco Partners for FPUC. (Ex. D). FPUC is advised that Southeastern Printing was informed that Peoples had no interest in serving the Palm City area west of the Turnpike with natural gas. It was and is the intent of FPUC to serve areas west of the turnpike with natural gas due in part to the request of Kolter Homes. Additionally, FPUC had

already expanded into the vicinity of the Indiantown area of Martin County which in both cases is clear evidence that FPUC has had expansion plans for Martin County for several years prior to the installation of the stranded line by Peoples. FPUC has the capacity, the capability to expand and the ability to provide efficient, reasonable service to customers within the service area described in Exhibit A. The actions of Peoples demonstrates an intent by Peoples to intrude into an area where FPUC is currently serving customers and an area where additional customers have requested natural gas service from FPUC. Despite reasonable recommendations put forth by representatives of both companies, Peoples continues to expand into the areas disputed, has not been willing to agree on a reasonable solution to this matter which creates the circumstances between the parties which the Commission has the authority to resolve.

**WHEREFORE**, FPUC requests the Commission to enter its order resolving this dispute and directing Peoples Gas to cease and desist any construction or extension of natural gas distribution facilities within the service area of FPUC as described on Exhibit A.

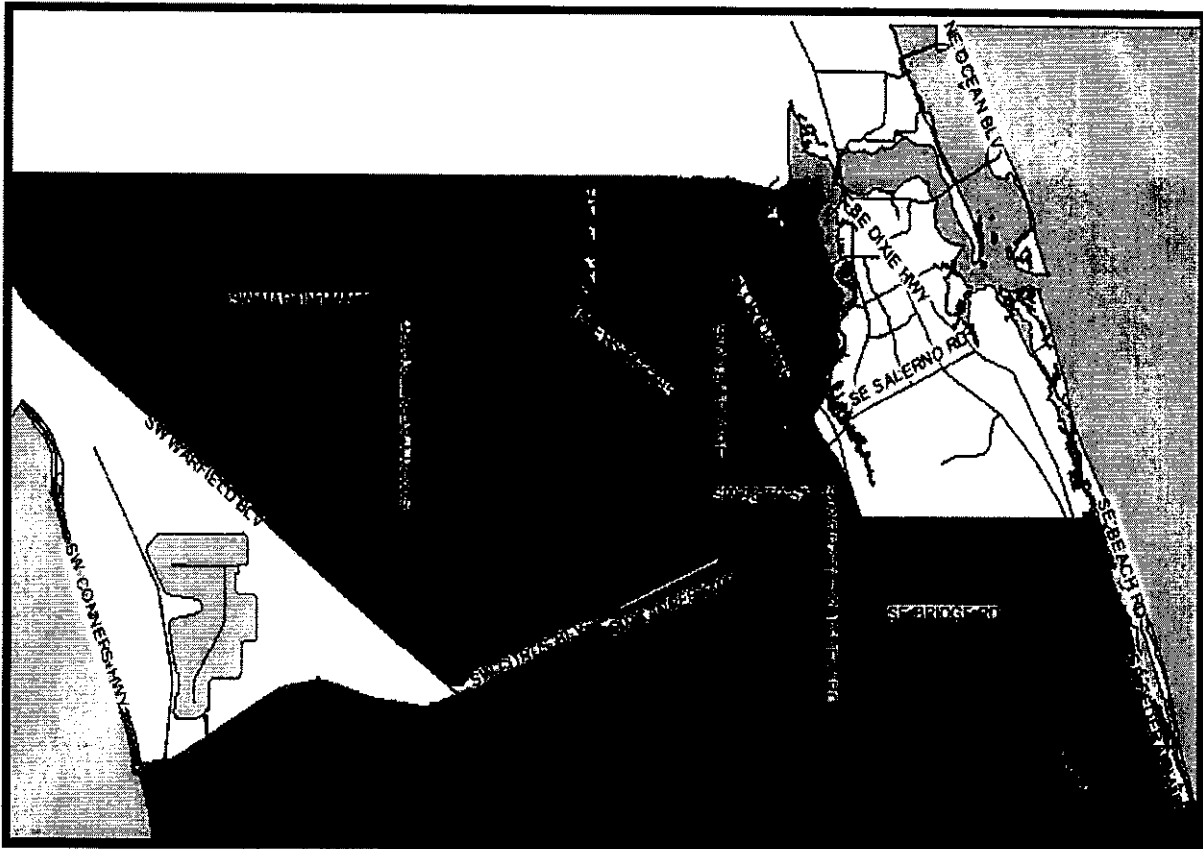
Dated this 27<sup>th</sup> day of January, 2009.

MESSER, CAPARELLO & SELF, P.A.  
2618 Centennial Place (32308)  
Post Office Box 15579  
Tallahassee, FL 32317  
(850) 222-0720

  
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NORMAN H. HORTON, JR., ESQ.  
Attorneys for Florida Public Utilities Company



SOUTH FLORIDA DIVISION – MARTIN COUNTY TERRITORY



Issued by: J. T. English, President & CEO

Effective: May 1, 2008

EXHIBIT "A"

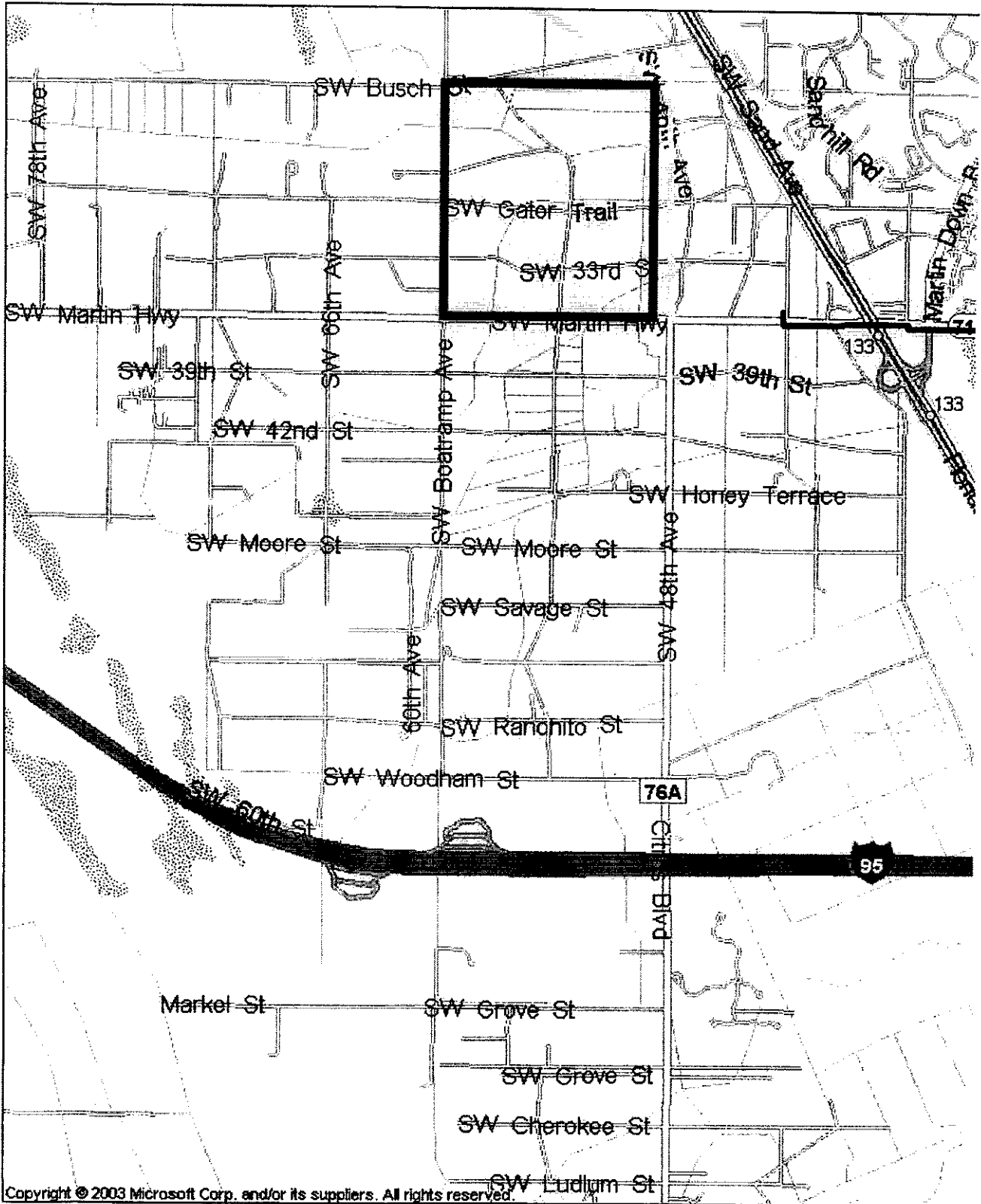


EXHIBIT "B"

## DEVELOPER AGREEMENT

THIS DEVELOPER AGREEMENT (this "Agreement") is made and entered into effective this 2<sup>nd</sup> day of April, 2007 (the "Effective Date"), by and between Florida Public Utilities Company, a Florida corporation ("Company"), and **EF MINUS S LLC.**, a Florida limited liability company ("Developer") (Company and Developer may sometimes be collectively referred to as the "Party" or "Parties").

### WITNESSETH

WHEREAS, Developer intends to build a community named **Canopy Creek**, consisting of, among other improvements, approximately **two hundred ninety four (294)** residences, located in **Martin County**, Florida (the "Project"). A legal description of the Project is attached hereto as Exhibit "A" and incorporated herein by this reference; and

WHEREAS, Company desires to install, at its sole cost and expense, a natural gas distribution system, initially supplied by propane, within the Project in order to make service available in a reasonable timeframe to owners, occupants and residents of the Project and Developer has agreed to permit Company to install such a system to service the Project, pursuant to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Company and Developer hereby agree as follows.

#### 1. Installation of Gas Distribution System.

1.1. Installation. Company agrees to install a natural gas distribution system within the residential portions of the Project, to be initially supplied by propane gas, including all necessary distribution lines, meters, storage tanks and ancillary facilities (collectively, the "Gas Distribution System") as Company deems reasonably necessary to provide propane initially followed by natural gas service to owners, occupants and residents within the Project. Company understands that time is of the essence and will from time to time, install additional lines, meters and ancillary facilities ("System Extensions") which Company deems reasonably necessary to extend the Gas Distribution System to other areas of the Project in order to supply gas service to non-residential portions of the Project that apply for and qualify for gas service from Company. For purposes of this Agreement, the term "Gas Distribution System" shall include any System Extensions that are added by Company.

1.2. Location. The location of the gas lines or extensions to the system and all infrastructure and improvements relating to any part of the Gas Distribution System shall be subject to Developer's prior written approval, which approval shall not be unreasonably withheld or delayed. Prior to commencing installation

Florida Public Utilities Company  
Project: Canopy Creek  
Builder/Developer Natural Gas Agreement  
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FPI Initials: MS  
Date: 4/2/07  
Builder Initials: MS  
Date: 4/2/07

EXHIBIT "C"

of the Gas Distribution System, Company shall provide, for Developer's review and comment, plans and specifications in accordance with which the Gas Distribution System is to be installed ("Gas Distribution System Plans and Specifications"). Upon completion of installation of each three thousand (3000) linear feet of the Gas Distribution System (each being a, "Completed Portion"), Company shall commence restoration of those portions of the Project disturbed by Company during installation of the Completed Portion at its sole cost and expense. Restoration work shall be completed so that the surface of the land shall be restored to substantially the same condition existing immediately prior to commencement of the installation of the Completed Portion. Company shall be responsible for repairs to any damage caused to existing improvements that were damaged as a result of the installation or maintenance of the Gas Distribution System.

1.3. Preparation for Installation and Easements.

1.3.1. Developer agrees to provide adequate physical and legal access (including the easements described below) to all areas of the Project where portions of the Gas Distribution System are to be installed and such additional portions of the Project as are reasonably necessary for Company to access, maintain and operate the Gas Distribution System. Within fifteen (15) days after Developer approves the location of all or any portion of the Gas Distribution System (in accordance with Section 1.2 hereof), Developer shall grant to Company (or cause the owner of the appropriate property to grant to Company) such easements as are reasonably necessary for Company to construct, operate, maintain and repair the Gas Distribution System within the Project. Company shall maintain the Gas Distribution System at its sole cost and expense.

1.3.2. Developer has provided Company a plat of all or a portion of the Project (recorded in Official Records Book 16, Page 39, Public Records of **Martin County**, Florida), which depicts the location of streets, lots and easements encompassed therein (the "Plat"). If additional plats ("Additional Plats") are created for the Project, Developer shall make a reasonable effort to provide Company a copy thereof within ten (10) days after recording. The Plat and all Additional Plats (whether or not provided to Company) shall be collectively referred to herein as "Project Plats". Notwithstanding any provision contained herein to the contrary and in addition to the easements referenced in Section 1.3.1 hereof, Developer hereby grants Company an easement over those portions of the Project designated on Project Plats as a utility easement or right-of-way (public or private) (or other similar designations) for purposes of installing, operating, maintaining, repairing and replacing the Gas Distribution System at Company's sole cost and expense.

FPU Initials: MS  
Date: 3/22/07  
Builder Initials: MS  
Date: 4/2/07

1.3.3. Developer reserves the right to relocate any easement granted to Company if Developer deems such relocation to be necessary for the development of the Project. If Company has not installed the portion of the Gas Distribution System proposed to be installed in the relocated easement, but has commenced the design and engineering thereof prior to the date Company receives written notice from Developer of its desire to amend an easement, Developer shall be required (prior to amendment of the easement) to reimburse Company for Company's actual, out-of-pocket expenses incurred in redesigning and/or reengineering the applicable portion of the Gas Distribution System. If Developer desires to relocate any easement relating to a portion of the Gas Distribution System after the system has been installed, Developer must first, (i) obtain Company prior written consent (which consent shall not be unreasonably withheld or delayed) and (ii) reimburse Company for all costs incurred by Company in relocating the Gas Distribution System, including, but not limited to the cost of redesigning and/or reengineering the Gas Distribution System, and the cost of all materials and labor therefore.

1.4. Coordination of Installation. Company agrees to cooperate with Developer with respect to the construction of the Gas Distribution System so as to minimize interference with or delay to Developer's construction and development of the Project. Developer has provided Company a copy of its anticipated construction schedule for the Project, a true and correct copy of which is attached hereto as Exhibit "B" and incorporated herein (the "Developer's Construction Schedule"). Developer acknowledges that Company will rely upon the Developer's Construction Schedule for purposes of coordinating its acquisition of materials, mobilization of equipment and labor at the worksite and installation of the Gas Distribution System. All required permits with respect to the construction and on-going use of the Gas Distribution System are at the sole cost and expense of Company.

1.5. Ownership of Gas Distribution System: Maintenance. Notwithstanding any provision contained herein to the contrary, the Gas Distribution System shall remain the exclusive property of Company at all times during the term of this Agreement and following its expiration or earlier termination. Company shall have the sole obligation and responsibility for the maintenance of the Gas Distribution System at Company's sole cost and expense. Company shall at all times maintain the Gas Distribution System in accordance with the requirements of all appropriate governmental and regulatory agencies.

1.6. Supply Date. Subject to any delay caused by Force Majeure or the actions or inactions of Developer, Company agrees that the Gas Distribution System shall be complete and operational to provide propane gas service to the first completed residential structure utilizing propane gas service, in the Project, at least ten (10) calendar days prior to the issuance of Certificate of Occupancy (CO) for the first residential structure within the Project.

1.7. Company will at all times conduct business in an ethical and professional business like manner. The Company, its officers, directors, employees and sub-contractors will adhere to the highest standards of personal conduct at all times during and after the installation of the Distribution System.

**2. Minimum Gas Compliant Units; Installation of Internal Piping**

**2.1. Minimum GCU.**

2.1.1. Developer acknowledges that Company will make a substantial economic investment in order to construct the Gas Distribution System and that Company is willing to undertake such investment given Company's anticipated usage of the Gas Distribution System by current and future owners, occupants or residents in the Project. In consideration for the substantial investment made by Company in constructing the Gas Distribution System and the mutual covenants contained herein, Developer agrees that all **two hundred ninety four (294)** residential units ("Minimum Required GCU") in the Project shall have installed therein (a) a conventional gas water heater not less than 75 gallons or a large gas tankless water heater, (b) a gas range or gas cook top, (c) a gas clothes dryer, and (d) (31) 400,000 btu pool/spa heaters. Each residential unit constructed in compliance with the foregoing two (2) sentences shall be referred to herein as a "Gas Compliant Unit" or "GCU" and each of the appliances installed in a GCU shall be referred to herein as an "Appliance" and collectively as the "Appliances". Developer also agrees to install gas pool/spa heating unit(s) to heat the community pool/spa and install gas for water heating for use in clubhouse facility. In addition, Developer agrees that two model residential units in the Project shall have installed therein (a) a conventional gas water heater not less than 75 gallons or a large tankless water heater (b) a gas range or gas cook top, (c) a gas dryer (d) a gas fireplace (e) a built-in gas grill (f) a gas pool/spa heater and (g) a gas generator.

2.1.2. Developer shall, within fifteen (15) days after completion of the last GCU in the Project, pay Company an omission fee ("Omission Fee") equal to the Omission Rate (as hereinafter defined) multiplied by the integer obtained by subtracting the actual number of GCU in the Project from the Minimum Required GCU. The Omission Rate shall equal **\$1,067.57** x (1+ (Time x .04)). Time shall mean the number of years (and partial years) between the Effective Date and the date upon which the Omission Fee is paid. If the Developer fails to pay the omission rate pursuant to this agreement, nothing contained in this Section 2.1.2 shall be construed as limiting other remedies available to Company as result of the Developer's failure to comply with the Minimum Required GCU requirement set forth herein.

2.2. Installation. Developer shall provide all labor, materials, equipment and supervision to install (at no cost to Company) (a) each Appliance and (ii) all internal piping, venting and other equipment (the "Internal Piping") necessary to service the gas appliances installed in each GCU and to connect same to the external gas meter installed by Company at an external location (reasonably selected by Company) at each GCU.

2.3. Ownership of Internal Piping, Appliances and External Piping.

2.3.1. All piping, meters, vents, tanks and other equipment installed by company between the main line of the Gas Distribution System and the external meter installed by Company at each GCU (including such meter) (the "External Piping") shall be the exclusive property of the Company. Company shall at all times maintain the External Piping, including the meter, in accordance with the requirements of all appropriate governmental agencies.

2.3.2. The Internal Piping and the Appliances shall be the exclusive property of the Developer and its successors and assigns. Developer or the successor or assign of Developer with respect to each GCU shall at all times during and following the expiration or earlier termination of this Agreement, service, maintain, repair and replace the Internal Piping and the Appliances.

2.3.3. Company shall convert all appliances specified in this Agreement to Natural Gas at its sole cost and expense. Company warrants to Developer that gas fuel line installed within the homes in the Project will not need to be modified to convert from propane to natural gas. Company further warrants to Developer that no material modifications to the Gas Distribution System will be required to convert from propane to natural gas.

2.3.4. Each end user will be required to establish an account with Company and shall be solely liable for gas consumed at their premises. The Project clubhouse owner/operator shall be required to establish an account with Company and shall be solely liable for gas consumed at the clubhouse premises. Subject to the rights in Florida Statutes 720 of any association formed to govern the Project, ("Association"), such Association shall establish gas accounts and shall be solely liable for any location within the Project that is to be served by gas that the Association is either responsible for, is owned by and or part of the Association.

3. Payment to Developer for each GCU.

3.1. Company shall pay Developer the applicable amount set forth in the payment schedule attached hereto as Exhibit "C" for each Qualified GCU (as hereinafter defined) constructed in the Project (the "GCU Payment"). A GCU shall be

deemed a Qualified GCU only after (a) the Company commences supplying natural gas service to the unit (i.e., the GCU is occupied by a rate paying customer), and (b) Company receives a Compliance Affidavit from Developer with respect to said unit in the form attached hereto as Exhibit "D".

3.2. GCU Payments shall be made quarterly by Company to Developer for the term of this Agreement in the following manner:

- 3.2.1. For Qualified GCU that received natural gas service from the Company for the first time ever between January 1 and March 31 of each year, payment shall be made on April 25 of such year;
- 3.2.2. For Qualified GCU that received natural gas service from the Company for the first time ever between April 1 and June 30 of each year, payment shall be made on July 25 of such year;
- 3.2.3. For Qualified GCU that received natural gas service from the Company for the first time ever between July 1 and September 30 of each year, payment shall be made on October 25 of such year.
- 3.2.4. For Qualified GCU that received natural gas service from the Company for the first time ever between October 1 and December 31 of each year, payment shall be made on January 25 of the next year.

4. **Successors, Assigns And Assignment.** The Developer and the Company each bind itself, its successors, assigns and legal representatives to the other party in respect to all covenants, agreements and obligations contained in this Agreement. If Developer desires to convey to other builders or developers any or all of the land upon which the Project is to be constructed, such conveyance may not be undertaken and shall not be effective until such builder or developer expressly assumes all of the obligations and responsibilities of Developer hereunder (to the reasonable satisfaction of Company). Similarly, if Developer desires to assign this Agreement or any portion hereof to a homeowner's association, as a condition of such assignment, the homeowner's association shall pass a valid and appropriate resolution expressly assuming all of the obligations and responsibilities of Developer hereunder (such resolution being to the reasonable satisfaction of Company).

5. **Force Majeure.** Neither Party shall be liable to the other for any failure to perform pursuant to the terms and conditions of this Agreement to the extent such performance was prevented by an event of Force Majeure. The term "Force Majeure" shall mean Acts of God, strikes, lockouts, or other industrial disturbance, acts of the public enemy, wars, riots, epidemics, industrial disturbances that affect the Parties or its customers, breakage or non-foreseeable accident to machinery or lines of pipe, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the Party whose performance is affected and which, in each of the above cases, by the exercise of due diligence such Party is unable to prevent or overcome.



utilizing commercially reasonable efforts; such term shall likewise include the inability of a Party to acquire, or delays on the part of such Party in acquiring at reasonable cost and by the exercise of reasonable diligence, servitudes, rights of way, grants, permits, permissions, licenses, materials or supplies which are required to enable such Party to fulfill its obligations hereunder. The Party whose performance is excused by an event of Force Majeure shall promptly notify the other Party in writing of such occurrence and its estimated duration, shall promptly remedy such Force Majeure if and to the extent reasonably possible and shall resume such performance as soon as possible; provided, however, that neither Party shall be required to settle any labor dispute against its will.

6. **Duration.**

6.1. **Expiration; Automatic Extension.** Subject to Subsection 6.2 hereof, this Agreement shall automatically expire on 4/2/2027. The term of this Agreement shall be automatically extended for terms of one (1) year periods unless written notice is provided at least ninety (90) days but no greater than one hundred twenty (120) days prior to the expiration of the initial term of this Agreement or any extension thereto by one Party to the other Party that it will not allow the extension of the term of this Agreement.

6.2. **Early Termination.** Notwithstanding any provision contained herein to the contrary, either Party may terminate this Agreement by providing the other at least fifteen (15) days prior written notice if the Minimum Required GCU have been constructed and Company has made the GCU Payment therefore.

6.3. **Survival of Easements.** Notwithstanding the expiration or earlier termination of this Agreement (regardless of the cause therefore), the easements created herein and required to be granted herein shall survive, and the rights, privileges and responsibilities created therein shall not be adversely affected by, the termination or expiration of this Agreement

7. **Notices.** Any notices sent by either party to the other pursuant to this Agreement shall be sent by either U.S. mail, postage prepaid, return requested, or by receipted overnight national delivery service (e.g., Federal Express), and shall, if not sooner received, be deemed received three (3) business days after deposit in the United States Mail, or one business day after receipt by any overnight national delivery service, as aforesaid. All notices shall be addressed to each party at the following address, or such other address as either party may hereafter designate to the other party in writing:

If to Developer: EF MINUS S, L.L.C.  
1601 Forum Place, Suite 805  
West Palm Beach, FL 33401  
Attn: Doug Bruk  
Cc: Tim Carlow  
Fax No. 561.686.1515  
Phone No. 561.682.9500

If to Association: Canopy Creek Property Owners' Association  
Doug Bruk, President  
c/o Kolter Communities  
1601 Forum Place, Suite 805  
West Palm Beach, FL 33401

If to Company: Florida Public Utilities Company  
401 South Dixie Highway  
West Palm Beach, Florida 33401-5807  
Attn: Marc Seagrave, Director of Marketing  
Fax No. 561.833.8562  
Phone No. 561.838.1714

8. **Governing Law: Dispute Resolution.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without reference to the laws of any other jurisdiction. Developer and Company agree to submit any disputes arising under this agreement to non-binding mediation; provided, that applicable statutes of limitation will be tolled during the pendency of such mediation. In the event Company and Developer cannot in good faith agree on a mediator within fifteen (15) days of the request of either party for mediation, or, if the parties remain in dispute following mediation, any such dispute will be resolved by final, binding arbitration. Arbitration shall be accomplished expeditiously in **Palm Beach County, Florida**, and shall be conducted by the American Arbitration Association (in accordance with its rules) which will appoint three arbitrators, one of which must be an attorney. The arbitrators shall render a written judgment accompanied by findings of fact and conclusions of law, which are subject to review by the appellate courts of the State of Florida. Judgment upon the award rendered by the arbitrator(s) may be entered in any Court having jurisdiction thereof. The parties shall share equally the arbitrators' fees and costs until the prevailing party is determined or the parties have agreed in writing to an alternate allocation of fees and costs. In any suit or arbitration proceeding brought by either party, the prevailing party will be entitled to recover attorneys' fees, costs and expenses actually incurred by the prevailing party in such suit or arbitration proceeding or in any appeal. The parties consent that any arbitration may be consolidated with any other arbitration concerning this Agreement to which Company or Developer is a party and that a dispute shall not be submitted to such binding arbitration if there are any third parties who are not subject to such

binding arbitration but who are proper parties to such dispute. This Section 8 shall survive expiration or any termination of this Agreement.

9. **Indemnity.**

- 9.1. Company agrees to protect, defend, reimburse, indemnify and hold the Developer, its agents and employees and each of them, hereinafter collectively referred to, for the purposes of this paragraph, as Developer, free and harmless from and against any and all claims or damages (including attorneys' fees) incurred by Developer by reason of the negligent or intentional installation of the Gas Distribution System by Company; provided however, that Company shall not be responsible to Developer for damages resulting out of bodily injury or damages to property which are attributable to the negligent acts or omissions of Developer, its respective agents, servants, employees, officers, tenants, residents or homeowners.
- 9.2. Developer agrees to protect, defend, reimburse, indemnify and hold the Company, its agents, and employees and each of them, hereinafter collectively referred to, for the purposes of this paragraph, as Company, free and harmless from and against any and all claims or damages (including attorneys' fees) incurred by Company by reason of the negligent or intentional acts of Developer and its respective agents, servants, employees, officers, tenants, residents or homeowners; provided however, that Developer shall not be responsible to Company for damages resulting out of bodily injury or damages to property which are attributable to the negligent acts or omissions of Company.
- 9.3. This Section 9 shall survive the expiration or early termination of this Agreement.

10. **Damages to Property; Limitation on Liability.**

- 10.1. Any damage to the Project caused by Company, its agents or employees, shall be promptly repaired to the reasonable satisfaction of Developer at Company's expense. Any damage caused to Company's equipment by Developer, its agents, employees, contractors, subcontractors, tenants, residents or homeowners shall be promptly repaired by Company at Developer's expense. Developer will take all reasonable precautions to notify its agents, employees, contractors, subcontractors, tenants, residents and homeowners of the location of Company's equipment. Developer and or Association shall not be responsible for subcontractors, tenants, residents and homeowners not in privity with the Developer and or Association.

- 10.2. Company shall have no liability to Developer or any third party for any special, indirect, incidental or consequential damages or loss of any kind, including, without limitation, damages for personal injury, loss of profits or savings, loss of use, or any other damages, whether based on strict liability, or negligence, whether resulting from installation, use or maintenance of the Gas Distribution System, breach of this Agreement or otherwise, except for direct, specific damages to the extent caused by Company's negligence or misconduct.
11. **Miscellaneous.** This Agreement constitutes the entire understanding and agreement between the Parties and supersedes any and all prior negotiations, understandings or agreements with respect to this subject matter. This Agreement may be amended only by written instrument signed by both of the Parties. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under Florida law, but if any provision of this Agreement or the application thereof to any Party or circumstance is prohibited by or invalid under applicable law, that provision shall be effective only to the extent of such prohibition or invalidity, without invalidating the remaining provisions of this Agreement or the application of the same. Nothing contained herein shall be construed as a joint venture, partnership or any other similar relationship between Company and Developer. The captions, headings, titles, and subtitles herein are inserted for convenience of reference only and are to be ignored in any construction of the provisions of this Agreement. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties, and their respective successors and assigns, and no assignment shall relieve either Party of such Party's obligations hereunder without written consent of the other Party. This Agreement shall be subject to all applicable laws, rules, orders, permits, and regulations of any federal, state, or local governmental authority having jurisdiction over the Parties, their facilities, or the transactions contemplated. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one in the same instrument.
12. **Recording.** This Agreement may be recorded by Company among the Public Records of the County in which the Project is located.
13. **Exclusivity.** During the term of this Agreement and for any subsequent terms thereafter, Developer agrees that Company has an exclusive right to provide propane gas and or natural gas services to the Project and that Developer, successors or assigns will not grant, or allow others to grant any easement or right-of-way or allow for purposes of delivering propane and or providing natural gas service of any kind. Developer certifies that there is no existing contractual agreement with any third party for the provision of natural gas service to the Project, with the exception of this Agreement.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective duly authorized officers as of the date first above written.

COMPANY:

FLORIDA PUBLIC UTILITIES COMPANY,  
a Florida corporation

Witnesses:

Sign: [Signature]  
Print: LEO STEPHENSON

By: [Signature]  
Name: MARC S. SEAGRAVE  
Title: Director of Marketing & Sales

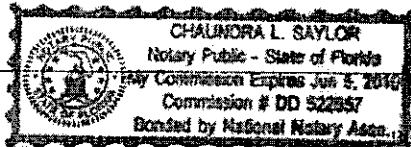
Sign: [Signature]  
Print: [Signature]

STATE OF FLORIDA

COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, personally appeared March 30, 2007, as Marc S. Seagrave, Director of Marketing and Sales of FLORIDA PUBLIC UTILITES COMPANY, a Florida corporation, who is personally known to me, and who acknowledged to and before me that he/she executed the foregoing instrument freely and voluntarily on behalf of said corporation.

[Signature]  
NOTARY PUBLIC, STATE OF FLORIDA  
Print Name: Chaundra L. Saylor  
My Commission Expires: \_\_\_\_\_  
(AFFIX NOTARY SEAL)



FPU Initials: MS  
Date: 3/30/07  
Builder Initials: MS  
Date: 3/30/07

**DEVELOPER:**

**EF MINUS S, L.L.C.**  
a Florida limited liability corporation

Witnesses:

Sign: [Signature]  
Print: Leonilde Diaz

By: [Signature]

Name: Doug BRUK

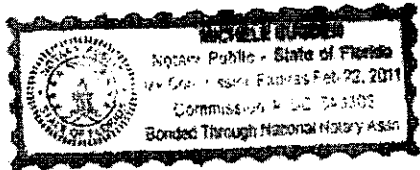
Title: SENIOR PROJECT MANAGER  
EF MINUS S, LLC

Sign: [Signature]  
Print: Anne Williams

STATE OF FLORIDA  
COUNTY OF MARTIN

BEFORE ME, the undersigned authority, personally appeared Doug BRUK, as MANAGER of EF MINUS S, L.L.C., a Florida limited liability corporation, who is either personally known to me or who provided \_\_\_\_\_ as identification, and who acknowledged to and before me that he/she executed the foregoing instrument freely and voluntarily on behalf of said corporation.

[Signature]  
NOTARY PUBLIC, STATE OF FLORIDA  
Print Name: MICHELLE SWEDEN  
My Commission Expires: Feb 22 2011  
(AFFIX NOTARY SEAL)



# Florida Public Utilities Commercial Propane Gas Service Agreement

THIS EQUIPMENT LEASE & GAS SUPPLY AGREEMENT FOR COMMERCIAL SERVICE ("Agreement") is made and entered into this 8 day of Oct, 2007 by and between Florida Public Utilities Company, with its local office at 401 S. Dixie Hwy WPB, FL 33401 ("COMPANY") and Southeastern Printing, ("CUSTOMER").

Customer Phone Number: (772) - 287 - 2141 Alt Phone Number: ( ) - -

Federal Employer Identification Number 65 - 0717119 DUNS # \_\_\_\_\_

Installation Address: 6313 Port Way, Palm City Florida 34990 ("Premises")

Property Owner's Name: Progressive Properties - Woody S

Property Owner's Address: \_\_\_\_\_

Property Owner's Phone: (772) - 286 - 2363

COMPANY agrees to provide, install and/or lease to CUSTOMER and CUSTOMER agrees to purchase/lease from COMPANY for the term of this Agreement the following equipment (collectively the "Propane Gas Equipment") in accordance with the terms and conditions herein provided:

1. 2 1450's gallon underground/aboveground propane storage tank(s), together with any required first stage regulator(s) for the total sum of \$0.
2. All exterior first stage gas piping between storage tank(s) and second stage regulator(s) for a sum of \$0
3. All necessary interior second stage fuel line piping, regulator, equipment connections, turn on, and initial adjustments for a sum of \$0.
4. Remote monitor unit services and related facilities for a sum of \$0 per (monthly / semi annually or annually), with a one time installation fee of \$0.
5. Deposit - \$5000 (A Doc Stamp Fee of \$10.00 will be charged to CUSTOMER if COMPANY provides financing for merchandise or installation work).
6. Safety Check Fee \$0

Tank(s)/ Equipment Provided to Customer by Company

1 AG/UG gal tank 1450 AG/UG gal tank 1450 AG/UG gal tank \_\_\_\_\_ AG/UG gal tank \_\_\_\_\_  
Company Owned Remote Tank Monitor Unit SR # \_\_\_\_\_ Other \_\_\_\_\_

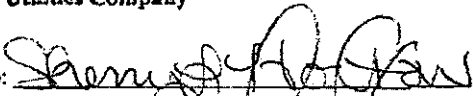
CUSTOMER agrees to purchase from COMPANY all of CUSTOMER'S requirements for ("Propane Gas") at the initial rate \$0.36 margin above Mt. Belleview index average as published by BPN's weekly Propane Newsletter on the third Monday of the Month. (See Section 6.2) Customer shall be billed a customer charge / tank rent rate of 8.00 per month during the term of this Agreement. CUSTOMER shall not permit and state law prohibits the filling of the Propane Gas Equipment by any person, firm, corporation, company, or entity other than COMPANY.

In Witness Whereof, the parties hereto have caused this Agreement to be executed the day and year first above written.

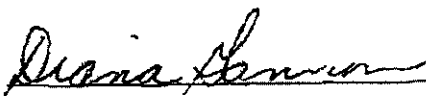
"COMPANY"  
Florida Public Utilities Company

"CUSTOMER"

FPU Rep (sign):



Signature:



FPU Rep (print): Sherry Horton





TERMS AND CONDITIONS

1. **TERM:** This Agreement shall be effective as of the date gas service has been turned on, and shall remain in effect for a term of five (5) years and thereafter shall be on a continuing basis, month to month, until canceled by either party to this Agreement with sixty (60) days prior written notice. If the CUSTOMER cancels this Agreement for any reason prior to the expiration of the initial five (5) year term, the CUSTOMER shall pay to Company \$3648.00, which represents the retail value of labor and materials for installation. This liability is owed to COMPANY by CUSTOMER and cannot be passed on to a third party without the written consent of COMPANY, in COMPANY'S sole discretion.
2. **LEASED EQUIPMENT:** "Leased Equipment" shall mean and be deemed to include any and all appliances, cylinders, storage tanks, remote tank monitoring units, equipment and piping furnished by COMPANY, including, without limitation the Propane Gas Equipment listed on Page 1 hereof. CUSTOMER acknowledges that the Leased Equipment can be detached from the real estate without injury or damage thereto. If CUSTOMER desires to have the Leased Equipment moved to another location, and COMPANY consents to such move, COMPANY will perform the services at CUSTOMER'S expense at COMPANY'S then current charges. The Leased Equipment shall at all times remain the sole and exclusive property of COMPANY. CUSTOMER shall not cause any lien to be placed on the Leased Equipment. CUSTOMER shall not permit and state law prohibits the filling of the Leased Equipment by any person, firm, corporation, company, or entity other than COMPANY.
3. **LOSS AND DAMAGE:** CUSTOMER assumes the entire risk of loss or damage to the Leased Equipment. CUSTOMER agrees to reimburse COMPANY for any loss or damage sustained to all or a portion of the Leased Equipment (reasonable wear and tear excepted) upon receipt of such billing notice from COMPANY. If the damage equals or exceeds the market value of the Leased Equipment, upon receipt of full payment by CUSTOMER, COMPANY will assign title to the CUSTOMER.
4. **ALTERATIONS:** CUSTOMER agrees that all repairs, additions, alterations or modifications to the Leased Equipment will be made only by COMPANY, and CUSTOMER will not allow any interruption in service to be corrected by any person other than a COMPANY representative. CUSTOMER will not terminate or initiate service without notifying COMPANY. CUSTOMER understands that a review of the system is necessary for safety reasons after installations and after any service interruption, alteration or modification of the gas system.
5. **AVAILABILITY OF PRODUCT:** COMPANY shall use its best efforts to provide an uninterrupted supply of Propane Gas. If the COMPANY is unable to do so for any reason, CUSTOMER shall release and hold COMPANY harmless for all loss or damage arising therefrom. COMPANY may, in the event of curtailed supply, distribute its available gas equitably among its customers. In no event will the COMPANY be liable for any loss or damage arising therefrom.
6. **RATES AND TERMS:** CUSTOMER will pay each invoice for the Leased Equipment, Propane Gas delivered or services rendered under this Agreement within (20) days of the date of the billing notice. In the event CUSTOMER fails to make full payment within thirty (30) days of the date of the billing notice, COMPANY may at its option, (i) suspend all service under this Agreement without further notice, and/or (ii) terminate this Agreement and remove the Leased Equipment from the Premises. CUSTOMER agrees to pay any and all attorney's fees and all legal costs incurred or obligated by COMPANY in enforcement and/or collection of this Agreement or any sums payable hereunder. CUSTOMER shall be obligated to pay COMPANY for collection agency costs associated with a breach of this agreement. No breach or termination shall release CUSTOMER from any indebtedness or liability to the COMPANY. If full payment is not received within twenty (20) days of the billing notice, a late payment charge in the amount of 18% APR, or the maximum rate allowed by Florida law, or \$5.00, whichever is larger, will be added to the amount due COMPANY.

**DELIVERY:** The Propane Gas shall be delivered to CUSTOMER at the Premises and installed in storage tank(s). If a vapor meter is installed, delivery shall occur and CUSTOMER'S responsibility for payment of the Propane Gas shall commence as the Propane Gas passes through the meter. If no meter is installed, delivery shall occur and CUSTOMER'S responsibility for payment of the Propane Gas shall commence at the time the Propane Gas is delivered into the storage tanks.

**PROPANE RATE:**

COMPANY agrees to supply Propane Gas to the propane storage tank(s) located at the Premises at the rate of \$7.14 per gallon / therm, as of 0 / 0 / 00. This rate is based on COMPANY'S cost of product at the time of delivery and is subject to adjustment up or down without notice.

or  
COMPANY agrees to supply Propane Gas to the propane storage tank(s) located at the Premises at a margin of \$0.36 margin above Mt. Belleview index average as published by BPN's weekly Propane Newsletter on the third Monday of the Month. This rate is based on COMPANY'S current policy and is subject to change or modification upon notice to CUSTOMER. (Should the index referenced in this paragraph become unavailable during the term of this agreement, COMPANY shall assign an alternate index and immediately notify CUSTOMER in writing.)

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Initials

*MJS DJS*

whichever, the insolvency or bankruptcy of the CUSTOMER, or the breach of any one or more of the covenants or obligations herein provided, COMPANY shall have the right to pursue any remedy available at law or equity, terminate this Agreement, exercise the rights herein provided, and/or enter the Premises and remove the Leased Equipment without notice. COMPANY shall invoice CUSTOMER the cost of labor and materials for the removal of the Leased Equipment. COMPANY shall invoice CUSTOMER the cost of Leased Equipment deemed by COMPANY to be unremovable or Leased Equipment, if removed, would result in damage to the property. In the case of above or underground Leased Equipment, CUSTOMER will be charged \$ 1650 for the full cost of removal of the tank(s) and equipment, and, if applicable, a termination fee of \$0 for discontinued use of remote monitoring equipment and services. No breach or termination shall release CUSTOMER from any indebtedness or liability to the COMPANY.

**USE OF TANK:** To assure safety in delivery and servicing, CUSTOMER agrees not to allow any other supplier or servicing agent to supply or attempt to supply gas or service the Leased Equipment.

7. **EQUIPMENT RENTAL/MAINTENANCE:** CUSTOMER shall be responsible for the costs for the repair or maintenance of the Leased Equipment necessitated by the misuse of the Leased Equipment or breach of this Agreement. The Leased Equipment shall be used only as permitted under this Agreement and shall remain located at all times at the Premises. CUSTOMER agrees to comply with all terms of this Agreement with respect to the use and operation of the Leased Equipment.

8. **TAXES OR PERMITS:** CUSTOMER shall pay all property taxes, license, permit or other fees imposed on the Leased Equipment. If any such expense is paid by COMPANY, CUSTOMER agrees to reimburse COMPANY within (10) days of the date of the billing notice.

9. **ACCESS:** CUSTOMER hereby grants COMPANY the right to enter the Premises, subject to applicable governmental laws, regulations or rules, in connection with this Agreement. COMPANY shall have access to, ingress and egress from, the Premises for the purpose of installing maintaining or removing the Leased Equipment and delivering Propane Gas. CUSTOMER shall bear any expense necessary to make the Leased Equipment accessible to COMPANY including bringing underground equipment to ground level for removal.

10. **CUSTOMER REPRESENTATIONS:** CUSTOMER hereby represents and warrants to COMPANY (i) that CUSTOMER has full power and lawful authority to grant COMPANY the rights herein set forth and to enter into this Agreement; (ii) that it shall be lawful and permissive for COMPANY and COMPANY shall have the right to enter upon the Premises for the purpose and reasons herein set forth; (iii) that the Leased Equipment shall not become a fixture, but shall be and always remain the personal property of COMPANY and freely severable by COMPANY; (iv) that the Leased Equipment shall not be removed by anyone from the Premises without prior written consent of COMPANY and then only under the terms and conditions herein provided. CUSTOMER shall indemnify and hold COMPANY harmless from any and all damages from any breach of CUSTOMER'S representations and warranties herein.

11. **TERMINATION:** CUSTOMER agrees that upon the termination of this Agreement, no money will be refunded for any Propane Gas left in the tank until a restocking fee, labor fee, and any maintenance expense, mileage fee, or pumping fee has been deducted from the value of the Propane Gas, which will be determined by COMPANY'S market price for gas on the day the equipment is removed.

12. **LIABILITY:** The CUSTOMER releases and discharges the COMPANY from any liability on account of the injury or death of any person or the loss or damage to any property which may arise from the Propane Gas, Leased Equipment or any material or services performed in connection with this Agreement.

COMPANY shall not be responsible for landscaping and / or property damage including but not limited to: curbs, culverts, septic tanks, sidewalks, driveways, trees, shrubs, fences, walls, sprinkler lines, electric lines, structural foundations and appurtenances due to the delivery of propane gas and or the installation, trenching or removal of the propane gas equipment.

COMPANY shall not be responsible for any loss or damage arising from any delay in the installation of the Leased Equipment or the delivery of Propane Gas.

CUSTOMER agrees to protect, defend, reimburse, indemnify and hold the COMPANY free and harmless from and against any and all claims or damages (including attorneys' fees) arising by reason of the CUSTOMER'S negligence, willful act or omission, or breach of this Agreement by CUSTOMER or CUSTOMER'S respective agents, servants, employees or officers.

13. **REMOVAL OR SUBLEASE:** CUSTOMER agrees, that CUSTOMER will not move, loan, lease, sublease, rent or dispose of the Leased Equipment in manner whatsoever, without the written consent of COMPANY. CUSTOMER further agrees to notify COMPANY prior to any sale or change of title or ownership of the Premises. This Agreement cannot be assigned by the CUSTOMER without written consent of Company, which consent may be withheld in COMPANY'S sole discretion. COMPANY may assign this Agreement without notice to, or consent of the CUSTOMER.

14. **RECORDING OF AGREEMENT:** This Agreement or a memorandum thereof may be recorded in the public records in the county where the Premises is located or such other jurisdiction as COMPANY deems appropriate. CUSTOMER hereby consents to the recording of this Agreement or a memorandum thereof and will cooperate in the facilitation of recording.

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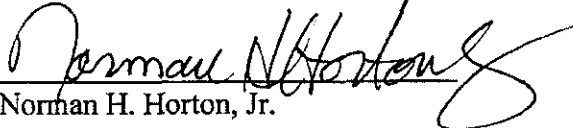
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by U.S. Mail this 27<sup>th</sup> day of January, 2009.

Keino Young, Esq.  
Office of General Counsel  
Florida Public Utilities Company  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Ms. Paula K. Brown  
Peoples Gas System  
Regulatory Affairs  
P. O. Box 111  
Tampa, FL 33601-0111

Ansley Watson, Jr.  
Macfarlane Ferguson & McMullen  
P.O. Box 1531  
Tampa, Florida 33601-1531

  
Norman H. Horton, Jr.