

**MARR LAW, LLC**

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September 25, 2008

**FILED**

SEP 30 2008

Secretary of the Commission  
Missouri Public Service Commission  
Data Center  
P.O. Box 360  
Jefferson City, MO 65102

Missouri Public  
Service Commission

Re: Notice and Petition for Arbitration - Statement of Claim  
Shawnee Bend Development Co., L.L.C. v. Lake Region Water & Sewer Co.

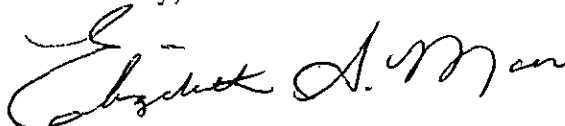
Greetings:

We enclose to you for filing an original Notice of Arbitration and Petition for Arbitration/Statement of the Claim with Exhibits for initial filing in the above referenced matter. If you would, please file stamp the enclosed copy and return it to this office in the enclosed self-addressed stamped envelope.

It is my understanding from conversation with the Data Center today that it is not required and is preferred and acceptable to submit one original unbound paper copy single-sided instead of 8 multiple bound duplex hard copies as described in the regulations. It is my understanding that the Data Center will be doing its own scanning, and that it is not required or helpful for me to send these documents on disk or CD.

If more is required, please advise.

Sincerely,



Elizabeth A. Marr

Enc.

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

SHAWNEE BEND DEVELOPMENT CO., LLC	)	
Missouri Charter Number LC0014864	)	
Petitioner/Developer,	)	
v.	)	Case No. _____
	)	
LAKE REGION WATER & SEWER CO. f/k/a	)	
FOUR SEASONS WATER & SEWER COMPANY	)	
Missouri Charter Number 00149504	)	
	)	
Serve registered agent:	)	
D & A Agency Services, Inc.	)	
3145 Broadway	)	
Kansas City, MO 64111	)	
Respondent/Company.	)	

**NOTICE OF ARBITRATION**  
**(PETITION FOR ARBITRATION)**  
**AND**

**STATEMENT OF CLAIM**  
**PURSUANT TO R.S.Mo. §386.230 AND CONTRACT**

COMES NOW Petitioner, Shawnee Bend Development Company, L.L.C., by and through the undersigned counsel, pursuant to R.S.Mo. §386.230 and the contract of the parties, and, for its complaint for arbitration and enforcement of contract against Respondent, states and alleges as follows:

**I. The Facts of the Case**

**A. The Parties and Jurisdictional Facts**

1. Petitioner, Shawnee Bend Development Company, L.L.C. (Charter No. LC0014864) is a Limited Liability Company duly organized which exists and is in good standing under the laws of the State of Missouri. (Exhibit 1 – Developer’s certificate of good standing and certified corporate records) (hereinafter referred to as DEVELOPER). DEVELOPER is the company which a residential real property subdivision known as THE VILLAGES AT SHAWNEE BEND located in Camden County, Missouri.

2. Respondent, Lake Region Water & Sewer Company (Charter No. 00149504) is a corporation duly organized and existing under the laws of the State of Missouri with its principal place of business located at 62 Bittersweet Road, Lake Ozark, Missouri, 64059 (Exhibit 2 – Company’s corporate records) (hereinafter referred to as COMPANY). COMPANY’s registered agent’s address is D & A Agency Services, Inc., 3145 Broadway, Kansas City, MO 64111. COMPANY was formerly known as Four Seasons Water & Sewer Company and is the same Missouri corporate identity as COMPANY. (Same Charter No. 00149504).

3. COMPANY has been authorized by the Missouri Public Service Commission (“PSC”) to provide water and sewer services within the area of the Lake of the Ozarks known as Shawnee Bend as both a water corporation and a sewer corporation and is therefore regulated by, and subject to, the jurisdiction of the Missouri Public Service Commission.

4. On or about April 10, 1998, DEVELOPER and COMPANY entered into a written contract, entitled, “AGREEMENT REGARDING THE INSTALLATION OF WATER MAINS, A WATER WELL, SANITARY SEWERS AND APPURTENANCES, AND ROAD CROSSINGS” (Exhibit 3) (hereinafter the Contract).

5. On or about April 16, 1999, COMPANY adopted, ratified and made its own in every respect, all tariffs, schedules rules, notices or other instruments filed with the Missouri Public Service Commission prior to May 15, 1999, by its predecessor, Four Seasons Water & Sewer Co., including, but not limited to, Rule 14 EXTENSION OF WATER MAINS dated July 2, 1997 and as revised July 22, 1997. In such action, COMPANY also represented to the PSC it had changed its name to Lake Region Water & Sewer Company on March 18, 1999. (Exhibit 4 – Adoption Notice - 4/16/1999 and Rules Governing Rendering of Water Service 1997).

6. Pursuant to the Contract at Article IV, Paragraph F, page 14, the parties agreed to submit disputes to the PSC with the commissioners to act as arbitrators under the provisions of 386.230 RSMo.

**B. The Facts of the Dispute – the contract and improvements**

7. Pursuant to the Contract and in reliance on COMPANY'S promise to pay, DEVELOPER agreed to construct, and did construct in a workmanlike manner, a water well, install water mains and sanitary sewers and appurtenances and road crossings at the VILLAGES AT SHAWNEE BEND in Camden County, Missouri, and DEVELOPER also conveyed to COMPANY real property rights, possession and control of the water well, water mains, sanitary sewers and appurtenances and necessary pipes valves and appurtenances in and adjacent to all road crossings to COMPANY (hereinafter the "improvements")
8. The COMPANY requested, knew about, acknowledged, comprehended and appreciated the benefit and value of the improvements.
9. COMPANY accepted the water and sewer facilities and construction, conveyed, (improvements) and has continuously retained them and exercised control over them and benefited from them. COMPANY has used the improvements to provide services to its customers for which it bills and to enhance its business, and the improvements are essential to the COMPANY's ability to provide water and sewer services to its customers.
10. COMPANY has not denied, and on 5/6/2008 admitted, the existence of the improvements acquired from the DEVELOPER and has made no defense or claim of deficiency or inadequacy of the improvements. (Exhibit 5 – 5/6/2008 letter from COMPANY attorney).
11. COMPANY has not paid DEVELOPER or any other person or entity for the improvements.

**Compensation due to DEVELOPER under the Contract provisions:**

12. Pursuant to the Contract, the COMPANY is obligated to pay DEVELOPER compensation based upon connections of COMPANY customers as follows (paraphrased):

- a. New Source Water Well – Contract Article I, Paragraph C (page 3) - One Thousand Dollars (\$1,000.00) per customer connection to the water well and systems to be paid within 30 days of the connection not to exceed the amount of cost of the original well and applicable appurtenances and only for the first ten years pursuant to and Rule 14 (c ) of the PSC Water Rules; AND
  - b. Trunk Sewer Line excess – Contract Article II, Paragraph C (page 6-7), and Exhibit B-1 – for capacity to benefit Company in excess of Developer's needs – \$28,950.00; AND
  - c. Trunk Sewer Line – PSC approved costs - Contract Article II, Paragraph C (page 7) to the extent PSC rules allow payments by Company to the Developer for the cost of the Trunk Line and appurtenances thereto, that all such payments shall be made by the Company to the Developer in accordance with such rules; AND
  - d. Installations in Road Crossings – Contract Article III, Paragraph C (page 10) - Three Hundred Seventy-Five Dollars (\$375.00) for each customer permanently connected to both the water and sewer system; Two Hundred Twenty-Five Dollars (\$225.00) for customers connected for just water service; and One Hundred Fifty Dollars (\$150.00) for customers connected for just sewer service, such amounts to be paid within 30 days from the date established in Article III, Paragraph C for each connection as compensation for the pipes, valves and appurtenances in the necessary road crossings; AND
  - e. Potential Modification of Payments for Road Crossings – Article III, Paragraph D (page 11) - To the extent that the PSC allows changes in the \$610.00 and \$280.00 fees which are directly attributable to the inclusion of costs for road crossings, the Company and Developer agree to change the \$375 amount in Article III.C. by the same percentage that the new connection fee bears to the \$610.00 and \$280.00 current connection fees, for all new connections made after such change is authorized by the PSC.
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13. The cost of the original well and appurtenances, including but not limited to well, pump, well house, pressure tank and equipment was One Hundred Seventeen Thousand and 00/100 Dollars (\$117,000.00).

14. As of October 2004, at least 58 customers were connected, (Exhibit 6 - 10/9/2007 letter from COMPANY to Morris); and since that date, more customers have been connected which number is now in excess of 117 homes. Therefore, pursuant to the Contract at Article I, Paragraph C (page 6) an amount of One Hundred Seventeen Thousand and 00/Dollars (\$117,000) is due from COMPANY to DEVELOPER as the amount to be paid is not to exceed the cost of the original water well and appurtenances (See 12.a. and 13. above and Ex. 6).

15. The Sewer Trunk Line excess capacity was constructed by DEVELOPER and therefore \$28,950.00 is due from COMPANY to DEVELOPER. (See 12.b. above; Ex. 6 also has admission from COMPANY re that amount.)

16. It is currently unknown, but may be ascertained through discovery, whether the PSC approved costs for the Sewer Trunk Line and appurtenances, but in that event, further amounts are due to be paid from COMPANY to DEVELOPER. (See 12.c. above.)

17. To date, approximately 130 customers have been permanently connected to both the water and sewer systems and therefore, pursuant to the Contract an amount of Three Hundred Seventy-Five Dollars (\$375.00) with any adjustments based upon PSC approval of increased connection fees is due from COMPANY to DEVELOPER for each such customer and therefore an estimated amount of at least Forty-eight Thousand, Seven Hundred and Fifty Dollars (\$48,750.00) is due from COMPANY to DEVELOPER, plus \$375 for each such customer over the above 130 customers, which numbers and information can be ascertained from COMPANY's records and through discovery. (See 12.d and 12.e. above.)

18. All of the amounts claimed herein by DEVELOPER are reasonable.

**C. Facts Regarding Requests for Payment and Refusal and Delay by COMPANY.**

19. DEVELOPER has satisfied its contract obligations and submitted its required documentation and financial information under the contract to the COMPANY, and has also provided an Affidavit from COMPANY's past officer to COMPANY's current management acknowledging that the information was received and that the contract obligations were known and acknowledged by COMPANY previously. (Exhibit 7 – Affidavit of Fritz Ritter, previous officer of COMPANY).

20. DEVELOPER has made direct contact with COMPANY in 2004 verbally and in writing and later with its attorneys to make its demand upon COMPANY for payment pursuant to the contract. It has done so in writing on multiple occasions from the time of construction to the present. COMPANY has knowingly, willfully and wrongfully delayed and refused to make payment.

21. On 1/23/2006, COMPANY resisted making payment to DEVELOPER, indicating that the new shareholders who purchased COMPANY shares in October 2004 did not know about the outstanding obligations to DEVELOPER. (Exhibit 8 – letter dated 1/23/2006 from COMPANY).

22. Then on 9/17/2007, COMPANY admitted responsibility for payment for connections for at least a partial period (since October 2004). By its letter COMPANY acknowledged an obligation and stated that it was "quite willing to make the necessary and proper payments for connections made *during our ownership period*," (emphasis added) which refers to the period beginning October 2004 – when the new shareholders purchased their interest. (Exhibit 9 – Letter dated 9/17/2007 from COMPANY).

However, even with that open admission, COMPANY has knowingly, willfully and wrongfully delayed and refused to pay DEVELOPER for even that partial period.

23. On 5/6/2008, COMPANY by letter from its attorney has now admitted that it is the same corporate entity as the entity in the contract, and denied that COMPANY ever took the position that it was not responsible because the current shareholders did not know about the obligation. Even with that admission, COMPANY has knowingly, willfully and wrongfully delayed and refused to make any payment to DEVELOPER.

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24. The question regarding the controversy has been addressed at least twice informally by the PSC with an e-mail response dated October 24, 2006 (Exhibit 10 – PSC e-mail of 10/24/2006 ) and a Missouri Public Service Commission MEMORANDUM dated April 25, 2007 (Exhibit 11 – PSC MEMORANDUM 4/25/2007). Both PSC responses indicated that DEVELOPER has basis for its claims for payment.

25. Informal voluntary resolution was not reached and despite the receipt of the PSC e-mail and MEMORANDUM noted above (Ex. 10 & 11), COMPANY has continued and persisted to knowingly, willfully and wrongfully delay and refuse to make payment to DEVELOPER.

26. DEVELOPER has made an offer of resolution, but COMPANY has refused to negotiate in good faith.

27. COMPANY has unreasonably denied and delayed its obligations without just grounds and has delayed resolution with attempts to direct responsibility away from itself and onto past individual shareholders or officers of the COMPANY, and by doing so, has in bad faith for an extended period of time ignored the fact that it is the same party with obligations under the contract as it was in 1998. (See Exhibit 9).

28. COMPANY's only stated basis for denial and defense against payment now is that it alleges it has not received an "itemized statement of all costs associated with the construction of said well," regarding the well, and "detailed information showing Developer's direct costs in making road crossings." (See Exhibit 5). DEVELOPER provided such information to COMPANY prior to October 2004 as established by Exhibit 7 - Affidavit of Fritz Ritter, COMPANY officer. DEVELOPER has advised COMPANY and has reason to believe that the COMPANY or the PSC may be in possession of all or part of such information now, as further discovery and data requests will establish. (Exhibit 12 – letter dated 6/6/2008 from DEVELOPER attorney).

29. As of 6/24/2008, COMPANY has refused payment and stated that it is not liable for the claims of DEVELOPER ((Exhibit 13 – letter dated 6/24/2008 from COMPANY attorney).

30. Despite reasonable efforts by DEVELOPER, no informal resolution has been achieved and an impasse has resulted.

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31. WHEREFORE, DEVELOPER hereby submits the controversy described herein to the PSC for arbitration pursuant to §386.230. COMPANY has acknowledged that the PSC is the forum where disputes will be resolved in the Contract and by its letter dated October 11, 2007.

## **II. The Law Applicable to the Case**

32. R.S.Mo. §386.230, permits the parties to submit this matter to the PSC for arbitration, and 4 C.S.R. 240, Chapter 2

33. R.S.Mo. §408.040 – interest on judgments

33. 35 Missouri Practice Contracts, Equity and Statutory Actions (2008)

34. Contract – (Ex. 1) in its entirety, and the following excerpts in particular:

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- Contract - Article I, Paragraph C (page 3) – New Source Water Well
  - Contract -Article II, Paragraph C (page 6-7) – Trunk Sewer Line Excess and Contract Exhibit B-1
  - Contract - Article II, Paragraph C (page 7) – Trunk Sewer Line – PSC approved costs. Contract - Article III, Paragraph C (page 10) - Installations in Road Crossings
  - Contract – Article III, Paragraph D (page 11) -Potential Modification of Payments for Road Crossings
  - Contract - Article IV, Paragraph F., page 14 Disputes
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35. Exhibit 2 – PSC Adoption Notice – 4/16/1999 with Rules 1997 in its entirety  
Excerpt of PSC Rules: Rule 14 – Extension of Water Mains,  
paragraphs (c ) and (f)(3)

## **III. The Rights and Claims of the Petitioner DEVELOPER**

36. **Contract and Rules Enforcement – Payment to DEVELOPER**

DEVELOPER claims that it is entitled to compensation and payment in amounts under the Contract and PSC Rules as identified above and as may be determined upon further discovery and data review.

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Further, in the event that the information previously provided is not located, or in the event that it cannot be recreated, then an alternative method or evidence of determining the cost or value of the water well and appurtenances and other costs required by the contract is requested and should be permitted, especially in light of the fact that the water well costs were just to establish a maximum amount of recovery under the contract for the provision of \$1,000 per connection.

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**37. Quantum meruit/unjust enrichment – (First Alternative Claim) – Payment for value and benefit of improvements.**

In the event the arbitrator determines the terms of the contract unenforceable for want of evidence regarding the costs or otherwise, then DEVELOPER makes its first alternative claim for payment from COMPANY based upon the value and benefit of the improvements, and for an opportunity to present evidence.

COMPANY has been unjustly enriched by DEVELOPER's effort and expense and by DEVELOPER's and allowing COMPANY to exercise control over the water well, water mains, sewers and road crossings and COMPANY has accepted revenues from water and sewer customers from the time connections to the systems first began and has received approvals and certifications for the right to provide water and sewer services to the public and bill for same.

Therefore, DEVELOPER has conferred a benefit upon the COMPANY (improvements) at its own expense and to its detriment; and COMPANY has acknowledged, appreciated and not denied the fact of such a benefit and that it has value; and COMPANY has accepted and retained the benefit without payment to DEVELOPER or anyone else in circumstances in which retention without payment to DEVELOPER or anyone else would be inequitable; and COMPANY has been, and will continue to be, unjustly enriched by further retention if no payment to DEVELOPER is required.

Further, in the event that the information previously provided is not located, or in the event that it cannot be recreated, then an alternative method or evidence of determining the cost or value of the water well and appurtenances and other costs required by the

contract is requested and should be permitted, especially in light of the fact that the water well costs were just to establish a maximum amount of recovery under the contract for the provision of \$1,000 per connection.

**38. Rescission and Restitution – (Second Alternative Claim) to void and set aside the contract and return improvements to DEVELOPER with restitution.**

COMPANY's failure to pay DEVELOPER for the construction and installation of water mains, water well, sanitary sewers and road crossings is a substantial and material breach of the contract warranting rescission of the contract and restitution to DEVELOPER.

As a result of COMPANY's failure to pay the costs associated with the construction and installation of the water well and mains, sanitary sewers and road crossings,

DEVELOPER remains the rightful owner of the improvements and real property and is entitled to the revenues generated from their operation. Further, restitution may be required of COMPANY.

**IV. Relief Sought**

**Enforcement of Contract**

**Request for Compensation under Contract Owed**

40. WHEREFORE, DEVELOPER prays and requests that a determination be made and an award or order be entered to enforce the contract and require COMPANY to pay to DEVELOPER:

- One Hundred Seventeen Thousand and 00/100 Dollars (\$117,000.00) which includes an amount of \$1,000 to be paid for each of the customers which is connected or has been connected to the water well (estimated at 117), said amount not to exceed the cost of the water well and appurtenances (\$117,000.00); AND
- One Thousand and 00/100 Dollars (\$1,000) for each customer connected to the water well after the date of the determination, award or order to the end of the tenth year after installation of the water well, not to exceed the cost of the water well and appurtenances (\$117,000.00); AND

- Twenty Eight Thousand, Nine Hundred, Fifty and 00/100 (\$28,950.00) for the Trunk Sewer Line – excess capacity to benefit COMPANY – pursuant to Contract and its Exhibit B-1; AND
- Forty-eight Thousand, Seven Hundred, Fifty and 00/100 Dollars (\$48,750.00) for the customers permanently connected to both the water and sewer which is estimated at 130 @ \$375.00 and with any adjustments due for each under the Contract for PSC approved costs; AND
- Three Hundred Seventy-five and 00/100 Dollars (\$375.00) and with any adjustments due under the Contract for PSC approved costs for each customer permanently connected to both the water and sewer after the date of the determination, award, or order; AND
- Any amounts due to DEVELOPER pursuant to the Contract as a result of COMPANY receipt of PSC approved increases in connection fees; AND
- Interest on the judgment at the rate of nine percent per annum on the amount to be paid by COMPANY; AND
- Attorneys fees, expenses and costs; AND
- Such other relief as is deemed just and proper, including any penalties permitted.

**First Alternative Relief Sought – Quantum Meruit/unjust enrichment**

41. As its First Alternative Relief Sought pursuant to its first alternative claim of quantum meruit/unjust enrichment, DEVELOPER requests an order which establishes the reasonable value and benefit of the improvements and/or the value of the effort and expense of DEVELOPER and which requires the payment of that amount to DEVELOPER with interest to avoid the unjust enrichment of COMPANY at DEVELOPER's expense and detriment, with interest, attorneys fees, expenses and costs, and such other relief as is deemed just and proper, including penalties if permitted.

OR

**Second Alternative Relief Sought**

**Rescission of Contract with Restitution, and  
Extinguishment of COMPANY's Rights to Facilities and Property  
and Set Aside of Same**

42. As is Second Alternative Relief Sought pursuant to its second alternative claim of rescission of Contract with Restitution upon material breach by COMPANY, DEVELOPER prays for a determination, award or order of judgment against COMPANY which will restore it to the status quo putting DEVELOPER in as good a position as it would have been if no contract had been made and restores to it the value of what it parted with, which should also account for the value of money lost over time.

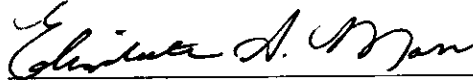
DEVELOPER requests:

- A determination from this court that the contract between DEVELOPER and COMPANY is rescinded and is null and void; AND
- A declaration that DEVELOPER is the lawful owner of the water well, water mains, sanitary sewer system, and road crossings, with an order that COMPANY relinquish said improvements and property; AND
- An order of restitution and compensation to DEVELOPER in the amount of \$194,700.00; AND
- Interest on the judgment at the rate of nine percent per annum on the amount to be paid by COMPANY; AND
- Attorneys fees, expenses and costs; AND
- Such other and further relief as is deemed just and proper, including penalties permitted.

43. All exhibits are incorporated herein by reference.

- 43. All exhibits are incorporated herein by reference.
- 44. An opportunity to obtain further information through discovery and data requests is requested.
- 44. An opportunity to provide briefs and further evidence is requested.
- 45. A hearing is requested.

Respectfully submitted,



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***Attorney for Petitioner/Developer***



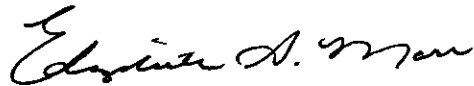
Gregory D. Williams, MO Bar #32272  
16533 N. State Highway 5  
P.O. Box 431  
Sunrise Beach, MO 65079  
(573) 374-8761  
(573) 374-8442  
***Attorney for Petitioner/Developer***

**CERTIFICATE OF MAILING**

I do hereby certify that on the 25<sup>th</sup> day of September, 2008, I have served a copy of the foregoing by depositing the same in the U.S. Mail, postage prepaid to:

Mark W. Comley  
Newman, Comley and Ruth  
601 Monroe Street, Suite 301  
P.O. Box 537  
Jefferson City, MO 65102-0537  
Attorney for Respondent/Company

Lake Region Water & Sewer Co  
c/o Registered Agent  
D & A Agency Services, Inc.  
3145 Broadway  
Kansas City, MO 64111



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