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## Smoky Cove Log Home Resort

# Fax

*Docket # 03-00377*

<b>To:</b>	Darlene Standley, TRA Utilities Division Chief	<b>From:</b>	Sherry Hedrick
<b>Fax:</b>	615-741-2336	<b>Date:</b>	March 5, 2007
<b>Phone:</b>	615-741-2791	<b>Pages:</b>	7 including cover page
<b>Re:</b>	CHANGE OF SERVICE CLASSIFICATION FROM RESIDENTIAL TO COMMERCIAL		
		<b>CC:</b>	

Thank you for faxing a copy of the tariff page provided by Tennessee Wastewater Systems, Inc. (TWSI). Attached is a copy of the contract between TWSI and HP Development, LLC.

TRA docket No. 03-00377 establishes residential rates for Smoky Cove. TWSI did not notify Smoky Cove homeowners of their intent to request a change of service classification prior to submitting their request to TRA. If adequate notification had been provided, homeowners would have submitted comments on these proposed reclassifications.

The affected homes in Smoky Cove are used as overnight rentals. None of these homes have an annual occupancy rate of more than 50%. It is difficult to understand how commercial rates for these homes could be justified. An actual comparison between the monthly waste stream flow of a typical 3-bedroom home that is occupied 100% of the time by the owners and a 3-bedroom home that is used for overnight rentals would validate our opinion that residential rates are appropriate for these overnight rental homes.

We would appreciate your comments on this matter. Again, thanks for responding so quickly to my request for information.

Copy

**SMOKY COVE SUBDIVISION WASTEWATER SYSTEM  
MAINTENANCE AND MANAGEMENT CONTRACT**

This wastewater system maintenance and management contract, made and entered as of this ~~22~~<sup>23</sup> day of September, 2003, by and between, Tennessee Wastewater Systems, Inc., a Tennessee corporation, having a principle place of business in Nashville, Davidson County, Tennessee, herein referred to as "TWSI" and HP Development, LLC, a Tennessee limited liability company, having a principle place of business in Seymour, Sevier County, Tennessee, herein referred to as "HP Development, LLC":

WHEREAS, HP Development, LLC is developing a tract of real property located in Sevier County, Tennessee and is generally referred to herein as the Smoky Cove Subdivision project; and

WHEREAS, HP Development, LLC requires maintenance and management of a wastewater treatment, collection, and disposal system for the Smoky Cove Subdivision project, such that the wastewater system can become constructed and operational in phases to allow for the orderly development and sale of the property at various intervals as more fully described herein.

WHEREAS, Tennessee Wastewater Systems, Inc. is a utility recognized and regulated by the Tennessee Regulatory Agency and has the capability to manage and maintain the wastewater treatment, collection, and disposal system for the Smoky Cove Subdivision project, the parties hereto have entered into the following agreements:

**WITNESSETH**

1. HP Development, LLC is developing a tract of real property in Sevier County, Tennessee, containing approximately 94 acres more or less and such property is generally referred to herein as the Smoky Cove Subdivision development. The plat for the Smoky Cove Subdivision development as recorded in the Register's Office for Sevier County is attached hereto as Exhibit 1.

2. Upon completion by HP Development, LLC of all of TWSI's requirements as set forth herein, TWSI hereby agrees to own, operate, maintain, and manage the wastewater system for the property identified in Exhibit 1 and HP Development, LLC agrees for TWSI to have exclusive responsibility for the ownership, operation, maintenance, and management of the wastewater system as installed and as may be expanded from time to time.

3. HP Development, LLC agrees to provide TWSI with copies of all plans, specifications, drawings, and other documentation accompanying the design, construction, and installation and any expansion of the wastewater system. TWSI shall secure all necessary local, state, and federal permits, licenses, or other written approvals necessary for the operation of a wastewater system on the property identified as Exhibit 1.

4. The owner of record for each planned unit or parcel of property shown on Exhibit 1 or any future final platted lot for which a service connection to the wastewater system is installed or expanded, but for which no residence, building, or structure, has been constructed or attached to such service connection, shall pay TWSI a yearly sewer access fee of \$84.00 to defray the cost of testing and reporting for the sewer system to the State of Tennessee, in addition to any tap on fees or construction fees paid to Utility Capacity Corporation, Inc., in association with the connection between the wastewater system and service lines to any structures or units on each parcel of property. Such yearly sewer access fees for each unit or lot shown on Exhibit 1 shall be first payable on or before December 15, 2003, for all owners of record of December 1, 2003 and annually thereafter. Once residences, buildings, individual units, or structures on each parcel of property shown on Exhibit 1 or future final platted lots are connected to the wastewater system through a service connection, thereafter the annual sewer access fee referenced herein shall not apply. When HP Development, LLC, their designated developer or authorized realtor, sells a lot or a planned unit, it expressly agrees to include and disclose in the sales contract with the purchaser, the requirement to pay the annual access fee to TWSI for any units, lots, or undeveloped lots.

5. HP Development, LLC agrees to require as a condition of sale of each unit or lot that any building, residence, or other structure, constructed on the lot to be attached to the wastewater system, shall have a lockable shut off valve installed on the property owners side of the water meter on the water supply line to the unit, building, residence, or other structure. This shut off valve is for the exclusive use of Tennessee Wastewater Systems, Inc. in accordance with its wastewater service agreement with the property or unit owner and is to be used to shut off water supply to the unit, building, or structure, in the event that the monthly sewer fee is not paid.

6. To allow for maintenance and management of the initial wastewater system, HP Development, LLC, shall provide TWSI an all weather access road, the necessary power lines, and the necessary power drop to the initial wastewater treatment site and any sewer lift stations constructed as a component of the initial wastewater system. HP Development, LLC shall provide a written, platted, and recorded, five (5) foot sewerage and wastewater easement on each side of the center line of all wastewater structures

installed in the development other than those sewers and those wastewater connections which are located along the public right of way.

7. Tennessee Wastewater Systems, Inc. shall approve all plans and drawings accompanying the initial wastewater system and any additions or expansions to the system as installed or the additional capacity associated with the wastewater system. The actual construction and installation of the wastewater system and any expansions to same shall be subject to the final approval and final inspection of Tennessee Wastewater Systems, Inc. TWSI shall require a one (1) year warranty from the contractor installing the wastewater system, such that the contractor shall warrant that, for the first year after the initial wastewater system is accepted by TWSI, the contractor shall immediately repair, or cause to be repaired, all breaks, leaks, or defects of any type in the installation, construction, or materials included in the wastewater system. After the expiration of the one (1) year period, TWSI shall be responsible for the repair of all breaks, leaks, or defects of any type in the installation, construction, or materials used in the wastewater system.

8. HP Development, LLC agrees that Utility Capacity Corporation shall hold, manage, and access any excess capacity for the undeveloped or unimproved property for future use and expansion of the wastewater system consistent with the development plan identified and attached hereto. Once the wastewater system, or necessary sections thereof, are installed, completed, and functioning, those elements of the wastewater system shall be turned over or dedicated by the contractor to Tennessee Wastewater Systems, Inc. for ownership, operation, management, and maintenance of the wastewater system operations. Prior to the delivery or the turn over of the ownership, operation, maintenance, and management of the wastewater system to TWSI and the acceptance of same by TWSI, TWSI shall inspect and approve the initial wastewater system as installed and any expansions of such system as it may be expanded from time to time.

9. HP Development, LLC hereby grants TWSI an exclusive right to operate all of the wastewater collection, treatment, and disposal systems and the land on which said systems are located in the development shown on Exhibit 1 and HP Development, LLC hereby conveys to TWSI said exclusive right to operate all of said systems on lands therein without the necessity of any further contract, deed, conveyance, covenant, or easement, for a period of 99 years or so long as said system property is used and operated for wastewater collection, treatment, and disposal, whichever shall first occur. TWSI shall have the right to renew at any time said exclusive rights to operate all of the wastewater collection, treatment, and disposal systems, and the land on which said systems are located in the HP Development, LLC development shown on Exhibit 1. The wastewater

system and its related above ground and below ground components, including the areas they occupy, shall be shown on the final plat prepared by the Developer.

10. Upon installation, testing, approval, and acceptance for use by TWSI, all wastewater system improvements up to the property line of any lot shall become and remain the sole property of TWSI without the necessity of a formal conveyance from HP Development, LLC to TWSI. HP Development, LLC does hereby warrant that title to the same shall be free and unencumbered except for any encumbrances related to the development of the property.

11. HP Development, LLC agrees to execute, acknowledge, and deliver to TWSI any and all easements that may be necessary or appropriate as determined by TWSI for the construction, operation, and maintenance of TWSI's wastewater system, or portion thereof.

1. The HP Development, LLC warrants that, should its development include marketing brochures or other marketing materials, said brochures, materials, or agreements shall include paragraphs regarding and disclosing the development's wastewater system as operated by TWSI.

2. This agreement is valid only so long as HP Development, LLC remains the developer or owner of the project or the owner of the common areas of the project. This agreement is not assignable to or for the benefit of any other person or entity without TWSI's prior written consent. The HP Development, LLC commitments and covenants contained in Paragraph 4 shall survive the termination of this agreement as to HP Development, LLC. Nothing in this agreement shall be pledged, mortgaged, hypothecated, or utilized as collateral for any obligations of HP Development, LLC to any lenders, creditors, or third parties.

3. This agreement shall be governed and interpreted under the laws of the State of Tennessee without regard to any other choice of law statutes or procedures.

4. Should any part of this agreement be found or held invalid or unenforceable by any court or government agency, regulatory body, or utility regulatory commission, such invalidity or unenforceability shall not affect the remainder of this agreement which shall survive and be construed as if such invalidity or unenforceability part had not been contained therein.

5. This agreement cannot be amended except by a written agreement approved and signed by the authorized agents of both HP Development, LLC and TWSI.

6. HP Development, LLC; Utility Capacity Corporation; and Tennessee Wastewater Systems, Inc. and their respective officers and directors of each company are not agents, representatives, or employees of each other company and no party shall have the power to obligate or bind any other party in any manner except as otherwise expressly provided in this agreement. Nothing in this agreement shall operate or be construed to establish a partnership, limited partnership, or joint venture by and between HP Development, LLC; Tennessee Wastewater Systems, Inc.; Utility Capacity Corporation; any contractor selected by HP Development, LLC or any realtor, agent, or broker, authorized by HP Development, LLC in connection with the development of the HP Development, LLC project.

7. Neither party shall be in breach of this agreement by reason of its delay in performance or for failure to perform any of its obligations herein if such delay or failure is caused in whole or in part by strikes or other labor disputes, acts of God or the public enemy, riots, incendiaries, interference by civil or military authorities, compliance with governmental laws, rules, regulations, delays in transit or delivery, or subsequent events which are beyond its reasonable control or without its fault or negligence.

8. To ensure that any subsequent property owners, developers, lenders, or contractors have notice of these covenants, agreements, and the obligations contained therein regarding the operation and installation of the wastewater system, the Developer will include in all instruments conveying, offering, or describing any portion or all of the property and units described herein, specific reference to these covenants and agreements along with the recorded plat(s) referenced herein. The covenant and agreements contained herein are permanent and shall run with the land. This construction and expansion agreement, exclusive of the exhibits, may be recorded in the Register's Office for Sevier County, Tennessee.

Smoky Cove Subdivision  
Tennessee Wastewater Systems, Inc. Contract

September 9, 2003  
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HP Development, LLC

A handwritten signature in black ink, appearing to read 'Lynn Headrick', written over a horizontal line.

Lynn Headrick, Chief Manager  
HP Development, LLC

Tennessee Wastewater Systems, Inc.

A handwritten signature in black ink, appearing to read 'Michael W. Hines', written over a horizontal line.

Michael W. Hines, M.S., P.E., Vice-President  
Tennessee Wastewater Systems, Inc.