

IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE

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WILLIAMSON COUNTY
CLERK & MASTER

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TURNBERRY HOMES, LLC,

Plaintiff,

v.

KING'S CHAPEL CAPACITY, LLC,
and ASHBY COMMUNITIES, LLC,

Defendants.

No. 33796

07-00199

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2007 SEP 17 AM 2:39
T.A. DOCKET ROOM
ENTERED

AMENDED VERIFIED COMPLAINT

Comes now the Plaintiff, Turnberry Homes, LLC, and respectfully states as follows:

THE PARTIES

1. Turnberry Homes, LLC ("Turnberry Homes") is a Tennessee limited liability company organized and validly existing under the laws of the State of Tennessee with its principal place of business located at 210 Jamestown Park, Suite 102, Brentwood, Williamson County, Tennessee.

2. Upon information and belief, King's Chapel Capacity, LLC ("KCC") is a Tennessee limited liability company organized and validly existing under the laws of the State of Tennessee with its principal place of business located at 1413 Plymouth Drive, Brentwood, Williamson County, Tennessee.

3. Upon information and belief, Ashby Communities, LLC ("Ashby") is a Tennessee limited liability company organized and validly existing under the laws of the

State of Tennessee with its principal place of business located at 1413 Plymouth Drive, Brentwood, Williamson County, Tennessee.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this cause pursuant to Tenn. Code Ann. § 16-11-101.

5. Venue in this Court is proper pursuant to Tenn. Code Ann. § 20-4-101, *et seq.* as all parties are located in Williamson County, Tennessee.

FACTS

6. Turnberry Homes entered into an agreement with Hang Rock, LLC ("Hang Rock") through Hang Rock's agent, Ashby, to purchase 24 lots in the first phase of the King's Chapel subdivision ("King's Chapel") located in Williamson County, Tennessee (the "Contract"). Attached as **Exhibit 1** and incorporated herein by reference is a true and accurate copy of the Contract.

7. Pursuant to the Contract, Turnberry Homes purchased 24 lots in Phase I of King's Chapel. One of the lots that Turnberry Homes purchased is Lot 139.

8. Upon information and belief, KCC is the owner and operator of an on-site sewer system for King's Chapel. Upon information and belief, KCC has obtained a permit from the State of Tennessee to act as a public utility. KCC is the only source of sewer services in King's Chapel.

9. KCC represents that Ashby is the owner of the on-site sewer system for King's Chapel and that it has a service agreement ("Agreement") with Ashby. KCC also represents that pursuant to the Agreement, Ashby has the exclusive right to deny initial sewer services and connections to lots in King's Chapel.

10. Upon information and belief, Ashby is not a public utility and is not authorized by the State of Tennessee to provide sewer services. Pursuant to Tenn. Code Ann. § 65-4-113, KCC is prevented from transferring "all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity, to any other individual, partnership, corporation, or any other entity without first obtaining approval of the [Tennessee Regulatory] [A]uthority."

11. Upon information and belief, John Powell is the manager and/or chief member of KCC. Upon information and belief, Mr. Powell is also the chief member of Hang Rock and Ashby. All of Turnberry Homes' dealings with Hang Rock, Ashby and KCC have been through Mr. Powell.

12. Each lot in King's Chapel must have a holding tank installed. The holding tank is a necessity in order to safely hook into the on-site sewer system.

13. Upon obtaining its certificate of authority from the Tennessee Regulatory Authority, Mr. Powell orally informed Turnberry Homes that Turnberry Homes would have to purchase the requisite holding tank and installation services for each lot in King's Chapel from Ashby or KCC's one approved contractor. Although there is no contractual requirement for Turnberry Homes to use Ashby or KCC's approved contractor, unless Turnberry Homes uses that contractor, KCC would deny Turnberry Homes sewer services.

14. Pursuant to the Contract, Turnberry Homes purchased 24 lots in Phase I of King's Chapel. For approximately the first half of the lots, Turnberry Homes called Mr. Powell and requested the delivery and installation of the holding tank. Within one week of ordering the tank, Ashby or KCC's contractor delivered and installed the holding

tank. Ashby then invoiced Turnberry Homes for the cost. Turnberry Homes paid Ashby for each holding tank by check.

15. After the holding tanks were ordered and installed for approximately the first half of the lots Turnberry Homes owned, Mr. Powell orally informed Turnberry Homes that Turnberry Homes would have to pay for each subsequent holding tank COD. Although there is no contractual requirement for Turnberry Homes to pay COD for holding tanks, pursuant to KCC or Ashby's new demand, Turnberry Homes called Mr. Powell and requested a holding tank for all of the remaining lots, except Lot 139. Within one week of ordering the tank, Ashby or KCC's contractor delivered and installed the holding tank. Consistent with KCC and/or Ashby's new requirement, Turnberry Homes paid for each holding tank COD.

16. Turnberry Homes is involved in litigation with Ashby in the Chancery Court for Williamson County, Docket No. 33291 (the "Action"). Ashby is affiliated with KCC, and both Ashby and KCC are controlled by Mr. Powell. In the Action, Ashby obtained a temporary restraining order and sought an injunction requiring Turnberry Homes to tear down a home under construction that Ashby claimed violated the Contract and the Contract's related design guidelines. On February 22, 2007, the Court heard Ashby's motion for a temporary injunction. The Court found that Ashby's motion was not well-taken, denied the motion, and dissolved the temporary restraining order.

17. In June 2007, after Turnberry Homes prevailed in the Action, Turnberry Homes requested that KCC and/or Ashby provide a holding tank for Lot 139, on which Turnberry Homes is presently constructing a home. Turnberry Homes called Mr. Powell and informed him that Turnberry Homes is ready, willing and able to pay KCC for the

holding tank for Lot 139 COD. KCC and/or Ashby refuse to deliver the necessary holding tank to Lot 139. Turnberry Homes cannot obtain a use and occupancy certificate for the home on Lot 139, nor can it sell the home until a holding tank is installed and sewer services are provided.

18. On or around August 14, 2007, KCC and/or Ashby came onto Turnberry Homes' Lot 138 and shut off the sewer service valve. Such interference injures Turnberry Homes. Turnberry Homes subsequently re-opened the sewer service valve. On or around August 21, 2007, KCC and/or Ashby again shut off the sewer service valve.

19. Pursuant to Tenn. Code Ann. § 65-4-115, no utility "shall adopt, maintain, or enforce any regulation, practice, or measurement which is unjust, unreasonable, unduly preferential or discriminatory, nor shall any public utility...withhold or refuse any service which can be reasonably demanded and furnished."

20. Pursuant to Tenn. Code Ann. §§ 65-27-101, *et seq.*, Turnberry Homes is prevented by law from tapping into the sewer service system without KCC's permission.

21. Turnberry Homes' request for a holding tank to Lot 139 is a reasonable request in order to obtain sewer services. KCC and/or Ashby have furnished holding tanks for each of the previous 23 lots within one week of Turnberry Homes calling Mr. Powell and requesting the holding tank.

22. KCC and/or Ashby's refusal to provide a holding tank is unjust, unreasonable, unduly preferential or discriminatory, and such refusal to provide the necessary holding tank injures Turnberry Homes. Similarly, KCC and/or Ashby's interference with Lot 138 injures Turnberry Homes. In fact, it appears that KCC and/or

Ashby are refusing to provide the holding tank and are interfering with Lot 138 out of spite for Turnberry Homes prevailing in the Action. Turnberry Homes continues to carry interest on Lot 139, cannot obtain a use and occupancy certificate for the home on Lot 139, nor can it sell the home until a holding tank is installed and sewer services are provided. Turnberry Homes has no adequate remedy at law for the harm inflicted by KCC and/or Ashby. Turnberry Homes will suffer immediate, irreparable harm, injury or damage if KCC and/or Ashby continue to refuse delivery of a holding tank to Lot 139 and if KCC and/or Ashby further interfere with Lot 138. Therefore, Turnberry Homes is entitled to a mandatory injunction commanding KCC and/or Ashby to deliver and install a holding tank to Lot 139 and a prohibitory injunction commanding KCC and/or Ashby to refrain from further interfering with Lot 138.

COUNT I
INJUNCTIVE RELIEF

23. Turnberry Homes incorporates herein by reference the allegations contained in Paragraphs 1 through 22 of this Amended Complaint.

24. KCC and/or Ashby require their prospective customers to purchase a holding tank from Ashby, KCC or their one approved contractor. Turnberry Homes has paid Ashby for every holding tank. Pursuant to Tenn. Code Ann. §§ 65-27-101, *et seq.*, Turnberry Homes is prevented by law from tapping into the sewer service system without KCC's permission.

25. Turnberry Homes requested that KCC and/or Ashby provide a holding tank for Lot 139, on which Turnberry Homes is presently constructing a home. Turnberry Homes called Mr. Powell and informed him that Turnberry Homes is ready, willing and able to pay KCC and/or Ashby for the holding tank for Lot 139 COD. KCC

and/or Ashby refuse to deliver the necessary holding tank to Lot 139. KCC's transfer to Ashby of the authority to provide or deny sewer services is a violation of Tenn. Code Ann. § 65-4-113 and injures Turnberry Homes. Turnberry Homes cannot obtain a use and occupancy certificate for the home on Lot 139, nor can it sell the home until a holding tank is installed and sewer services are provided.

26. KCC and/or Ashby's refusal to provide a holding tank is unjust, unreasonable, unduly preferential or discriminatory, and such refusal to provide the necessary holding tank injures Turnberry Homes. Similarly, KCC and/or Ashby's interference with Lot 138 is unjust, unreasonable, unduly preferential or discriminatory, and such interference injures Turnberry Homes. Turnberry Homes has no adequate remedy at law for the harm inflicted by KCC and/or Ashby. Turnberry Homes will suffer immediate, irreparable harm, injury or damage if KCC and/or Ashby continue to refuse delivery of a holding tank to Lot 139 and if KCC and/or Ashby continue to interfere with Lot 138.

27. Turnberry Homes is entitled to a mandatory injunction commanding KCC and/or Ashby to deliver and install a holding tank to Lot 139. Turnberry Homes is also entitled to a prohibitory injunction commanding KCC and/or Ashby to refrain from further interfering with Lot 138.

COUNT II
TORTIOUS CONDUCT - ACTUAL DAMAGES

28. Turnberry Homes incorporates herein by reference the allegations contained in Paragraphs 1 through 27 of this Amended Complaint.

29. KCC has a duty to provide sewer service to Lot 138 and Lot 139 pursuant to Tenn. Code Ann. § 65-4-115, which states that no utility "shall adopt, maintain, or

enforce any regulation, practice, or measurement which is unjust, unreasonable, unduly preferential or discriminatory, nor shall any public utility...withhold or refuse any service which can be reasonably demanded and furnished."

30. KCC has an identifiable prospective business relationship with Turnberry Homes. Ashby and KCC are both controlled by Mr. Powell. Therefore, Ashby knows of KCC's prospective business relationship with Turnberry Homes. As a result, Ashby has a duty to refrain from interfering with KCC and Turnberry Homes' prospective business relationship.

31. On or around June 15, 2007, Turnberry Homes requested that KCC and/or Ashby provide a holding tank for Lot 139, on which Turnberry Homes is presently constructing a home. Turnberry Homes' request for a holding tank to Lot 139 is a reasonable request in order to obtain necessary sewer services. KCC and/or Ashby have furnished holding tanks for each of the previous 23 lots within one week of Turnberry Homes calling Mr. Powell and requesting the holding tank. Further, KCC and/or Ashby entered onto Turnberry Homes' Lot 138 and shut off the sewer service valve.

32. KCC breached its duty to provide sewer service by: 1) transferring such authority to Ashby in violation of Tenn. Code Ann. § 65-4-113; 2) refusing to deliver and install the necessary holding tank to Lot 139; and 3) interfering with Lot 138 when it shut off Lot 138's sewer service valve. Turnberry Homes continues to carry interest on Lot 139 in the amount of \$210 per day as a result of KCC and/or Ashby's refusal to deliver a holding tank to Lot 139.

33. Ashby breached its duty to refrain from interfering with KCC and Turnberry Homes' prospective business relationship by: 1) obtaining authority from KCC to permit or deny sewer services in violation of Tenn. Code Ann. § 65-4-113; 2) instructing KCC or its one approved contractor to refuse delivery and installation of a holding tank to Lot 139, or Ashby itself refusing such delivery; and 3) interfering with Lot 138 by instructing KCC or its one approved contractor to shut off Lot 138's sewer service valve, or Ashby itself shutting off Lot 138's sewer service valve. As a result of Ashby's interference with Turnberry Homes' prospective business relationship with KCC, Turnberry Homes has suffered damages.

34. As a result of KCC and/or Ashby's wrongful refusal of service and interference with Turnberry Homes' prospective business relationship with KCC, Turnberry Homes is entitled to damages, including but not limited to, interest expense, lost profit, and prejudgment interest.

COUNT III
TORTIOUS CONDUCT - PUNITIVE DAMAGES

35. Turnberry Homes incorporates herein by reference the allegations contained in Paragraphs 1 through 34 of this Amended Complaint.

36. Turnberry Homes is involved in litigation with Ashby in the Chancery Court for Williamson County, Docket No. 33291 (the "Action"). Ashby is affiliated with KCC, and both Ashby and KCC are controlled by Mr. Powell. In the Action, Ashby obtained a temporary restraining order and sought an injunction requiring Turnberry Homes to tear down a home under construction that Ashby claimed violated the Contract and the Contract's related design guidelines. On February 22, 2007, the Court heard Ashby's

motion for a temporary injunction. The Court found that Ashby's motion was not well-taken, denied the motion, and dissolved the temporary restraining order.

37. Subsequent to the Action, Turnberry Homes requested a holding tank for Lot 139. Turnberry Homes' request is a reasonable request to obtain necessary sewer services. KCC and/or Ashby refuse to deliver the necessary holding tank to Lot 139. Similarly, KCC and/or Ashby interfered with Turnberry Homes when KCC and/or Ashby entered Lot 138 and shut off the sewer service valve. This interference and refusal of service is unjust, unreasonably, unduly preferential, or discriminatory.

38. KCC and/or Ashby's refusal and interference are wrongful, intentional, and malicious. Such refusal and interference are malicious because they are motivated by ill-will or personal spite for Turnberry Homes prevailing in the Action. As a result of KCC and/or Ashby's wrongful, intentional, and malicious refusal and interference, Turnberry Homes is entitled to punitive damages.

WHEREFORE, premises considered, Turnberry Homes prays as follows:

1. That the Court order an expedited hearing to determine whether a preliminary injunction should be issued;
2. That upon a trial on the merits, the Court issue a permanent injunction commanding KCC and/or Ashby to deliver and install a holding tank to Lot 139 on a COD basis and to refrain from further interfering with Lots 138 and 139;
3. That the Court award it a judgment against KCC and/or Ashby, jointly and severally, for its actual damages, including but not limited to, interest expense, lost profits, and prejudgment interest;

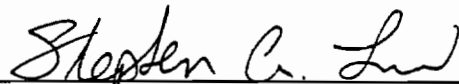
4. That the Court award it a judgment against KCC and/or Ashby, jointly and severally, for punitive damages for KCC and/or Ashby's wrongful, intentional, and malicious refusal of service;

5. That the Court award it a judgment against KCC and/or Ashby, jointly and severally, for prejudgment interest and all costs of this action; and

6. That Turnberry Homes have such other and further relief to which it may be entitled.

THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY PROCESS IN THIS CASE.

RESPECTFULLY SUBMITTED,



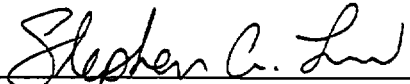
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Attorneys for Turnberry Homes, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing document has been served, via the method(s) indicated below on the following counsel of record, this the 22 day of August, 2007.

- ☒ Hand
- ☐ Mail
- ☐ Fax
- ☐ Fed. Ex.
- ☒ E-Mail

Charles B. Welch, Jr.
Jamie R. Hollin
618 Church Street, Suite 300
Nashville, TN 37219



Stephen A. Lund (#25531)

VERIFICATION

I, RICHARD J. BELL, after being first duly sworn, make oath that I am the President of TURNBERRY HOMES, LLC, a Tennessee limited liability company, that I am familiar with the facts stated above and the statements contained in the foregoing Complaint; and I hereby verify that they are true and correct.

TURNBERRY HOMES, LLC

BY:

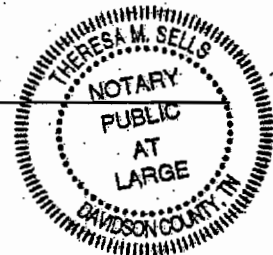

RICHARD J. BELL, PRESIDENT.

STATE OF TENNESSEE)
COUNTY OF Davidson)

Personally appeared before me, the undersigned, a Notary Public in and for said County and State, the within named Richard J. Bell, with whom I am personally acquainted (or proved to me upon satisfactory evidence), and who, upon oath, acknowledged himself to be the President of TURNBERRY HOMES, LLC, the bargainer, a corporation, and that he as such President, being authorized so to do, executed the within instrument for the purposes therein contained by signing the name of the corporation by himself as such President.

WITNESS my hand and official seal at Nashville, Tennessee, on this 22 day of August, 2007.


NOTARY PUBLIC



My commission expires: **MY COMMISSION EXPIRES:**
May 2, 2011

Lot Purchase Agreement For Kings Chapel Subdivision

THIS AGREEMENT (the "Agreement") is made and entered into this 13th day of September 2005 (the "effective date" being designated below) by and between Hang Rock, LLC a Tennessee Limited Liability Company, (hereinafter referred to as the "Seller") c/o Ashby Communities a Tennessee Limited Liability Co., 1413 Plymouth Drive, Brentwood, Tennessee 37027 (hereinafter referred to as the "Developer") and Turnberry Home, LLC, a Tennessee Limited Liability Company (hereinafter referred to as "Builder").

WHEREAS, the Seller is the owner of certain real property in Williamson County, Tennessee, and has contracted with Developer to develop said property; and

WHEREAS, the Developer is now establishing an Approved Builder Group in connection with the portion of KING'S CHAPEL being those Lots listed on the "Exhibit Two" attached to this Contract, which may be amended by Developer from time to time, prior to execution of this Agreement by Builder and Developer(collectively the "Lots" and individually a "Lot"). The group of Lots within the schedule are further described substantially in accordance with the Phase One of KING'S CHAPEL prepared by Clifton & King LLC which is incorporated herein by reference as if copied verbatim; and

WHEREAS, in order to ensure adherence to the highest standards of construction, to enhance the quality of architectural control and design, and to ensure that the homes built within the project conform to the size and square footage requirements as determined by the developer for each section, the developer has maintained the right to establish a list of approved general contractors who shall have the right to build residential dwellings within the Project subject to the Developer's reserve rights set forth herein and in the "Agreement for Approved Builder Group" which is attached to and made a part hereof (see "Attachment One") :

NOW, THEREFORE, for and in consideration of the above premises and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the aforementioned parties hereby agree as follows:

1. **PROPERTY DESCRIPTION**, Seller owns certain real estate, described as Phase One, located in Williamson County, Tennessee which Seller has contracted developer to develop. Developer has developed and intends to develop property into single family residential lots as part of a phased community known as KINGS CHAPEL. A Site Plan of KINGS CHAPEL is attached as "Exhibit One". The final legal description of each of the lots shall be determined as of the time of the recording of the Subdivision final plat containing such lot. The Subdivision shall consist of Common Areas and individual sites intended for residential use. Such sites are designated for use as the site for a Conventional Home as defined in the Declaration. The Subdivision is subject to that certain Declaration of Covenants, Conditions and Restrictions for KINGS CHAPEL dated,

_____, 2005 of record in Book _____, page _____, of the Register's Office for Williamson County, Tennessee (such Declaration as it now exists and as it may be amended, modified, restated or made applicable to additional real property in the future). The Declaration provides for the creation of a property owner's association known as KINGS CHAPEL COMMUNITY ASSOCIATION, INC. to serve as an association of homeowners in the Subdivision. Seller agrees to sell to Builder and Builder agrees to purchase from Seller, on the terms and conditions stated in the Agreements, on the following basis:

2. PURCHASE

The Builder agrees to purchase Twenty-five (25) Lots, in Phase One, with a minimum base price for each lot of SEVENTY FOUR THOUSAND DOLLARS, (\$74,000.00) and a collective total base purchase price for the Lots of ONE MILLION Seven Hundred & Seventy-Six Thousand (\$1,776,000.00), plus an additional premium to Seller on each lot equal to 17 1/2 % of the gross sales price of the lot and home with all standard upgrades as reflected on the original lot sales contract agreement, less the base price paid for the lot in accordance with the following terms:

(a) Builder agrees to purchase during the term of this agreement (as hereinafter defined) the specified number of Lots in accordance with the take down schedule (the "Schedule") attached hereto as "Attachment Two". A refundable payment of One Thousand and no/100 Dollars (\$1,000.00) shall be paid by Builder to Developer for Builder's listing under the Approved Builders Group. An amount equal to this payment will be credited against the purchase price of the last Lot purchased by Builder. In addition to the above described payment, Builder shall, within thirty (30) days of the Effective Date of this Agreement, provide Developer with a letter of credit payable to Developer in the amount of One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00) (the "Deposit"). The Deposit shall be held by Developer to secure Builder's obligations herein. The Letter of Credit shall be returned to Developer at the closing of the last lot contracted to be purchased if Builder is not in default herein, unless Builder, with Developer's written consent, elects to "roll over" or "repledge" said deposit to secure additional purchases.

(b) The estimated day of Substantial Completion, defined necessary utilities and building permits, curbs, infrastructure per County requirements and completed entrance being available to the Lots in Phase One, in accordance with the Developer's requirements of all governmental authorities) for PHASE ONE of KING'S CHAPEL is estimated to be on or about October 15, 2005. Developer at its discretion will determine the Substantial Completion Date of PHASE TWO. When Developer believes that all Lots have been substantially completed (i.e., utilities and building permits being available to the Lots in accordance with the requirements of all governmental authorities), Developer shall furnish written notice (the "Substantial Completion Notice") thereof to builder at the address specified herein. Upon receipt of the Substantial Completion Notice, Builder or it's designated agents, shall have a period of ten (10) days within which to inspect the Lots (the "Inspection Period") and to conduct such other investigations or studies as it or they deem necessary. The failure of Builder to notify Developer of any objections within such ten (10) day Inspection Period shall be deemed to be Builder's agreement that all conditions to Substantial Completion have been satisfied and that Substantial Completion has

that all conditions to Substantial Completion have been satisfied and that Substantial Completion has occurred. If Builder gives Developer notice of any condition of Substantial completion which has not occurred or been performed, Developer shall within fifteen (15) business days from Developers receipt of such notice correct any work or defect which Builder has reasonably designated as being unsatisfactory. In the event Developer is unable to cure Builder's objections within such fifteen (15) day period, Developer shall immediately so notify Builder in writing, whereupon Builder shall elect (by delivering written notice to Developer) within ten (10) days after Builder's receipt of Developer's notice, to either: (i) waive such objections and continue this agreement in full force and effect, or (ii) terminate this Agreement, in which later event, the letter of credit (Deposit) shall immediately be returned to Builder, and neither Builder nor Developer shall have any further obligations hereunder. The "**Substantial Completion Date**" shall mean the later to occur of: (i) the date that Builder is deemed to have accepted all of the conditions of Substantial Completion (by Builder's failure to timely object to any such conditions or waiver of same), or (ii) three (3) days after Developer has satisfied all of Builder's objections to the Substantial Completion Notice, if Builder shall have timely made any such objections. The times specified for performance by Developer, including without limitation the designated date of Substantial Completion, shall be extended commensurate with any delay occasioned by any fact or event beyond the Developer's control to include, inclement weather, governmental action, non-availability of materials, etc.

(c) Builder shall have a right of first refusal on lots 225 through 251 located in PHASE TWO east of boulevard, proportionate to rights of first refusal of other builders within the development, if not in default hereunder. Developer may not enter into a purchase agreement with any third party prior to ~~April 30, 2005~~ on lots 225 through 251 in PHASE TWO. However, this is subject to availability, current prices and readiness of additional Lots which shall be determined in Developer's sole discretion.

March 15, 2006 Rec'd

Notwithstanding the foregoing, Builder acknowledges that Developer is under no obligation to have ready for sale any such additional Lots unless a specific time frame is separately agreed to, in writing, by and between Builder and Developer.

(d) It is expressly understood and agreed that Builder's desire to purchase additional Lots during this first Contract or to purchase additional Lots in subsequent Contract Years is conditioned upon Builder having completed the acquisition of all Lots required to be purchased by Builder pursuant to existing obligations to purchase Lots.

(e) All closings to take place with Developer's designated closing agent with each party having and bearing the costs of its own legal representation. Closing of the purchase of the initial SIX (6) Lots shall take place as specified on the take down Schedule and all subsequent Lot purchases shall close in accordance with the terms of the take down schedule for such additional Lot purchases. Builder's failure to close Lot purchases during the initial Contract in accordance with the Schedule and the terms of this Agreement or Builder's failure to close a Lot purchase during any, subsequent Contract Year in accordance with the take down schedule applicable thereto shall constitute a material default hereunder subject to Developer's rights and remedies as provided in this Agreement. Builder agrees that construction of a house on all Lots shall commence within one year after Builder's acquisition of the initial Lots and shall continue uninterrupted until completed. Houses

built shall be subject to a "matrix" wherein no house built on either side, directly across and diagonally across from any house built shall be the same. No later than thirty (30) days prior to a scheduled closing of a Lot purchase, Builder shall submit to Developer for approval through the Site Development Review Committee ("SDRC"), the plans and specifications for the houses to be constructed by Builder on said Lots. Builder agrees that Builder shall commence construction of new spec houses on Lots closed within thirty (30) days and (30) days after a third-party with whom Builder has entered into a contract for the sale and purchase of another Lot and house thereon has received final loan approval and has removed all contingencies to the contract for such purchase, or within thirty (30) days after entering into such contract if there is no financing contingency in such contract. Builder agrees, to maintain a fully completed, furnished and landscaped model and have at least five (5) houses under continuous construction at all times subject to having sufficient lots available for construction under this Agreement to comply.

(f) Title Insurance is to be paid by Developer which shall be subject to standard exceptions, examination of title, individual Lot surveys, transfer taxes and filing and recording fees, if any, imposed on the sale and conveyance of the Lots shall be the responsibility of the Builder; provided, however, that if upon examination title is found to be defective and not remedied by Developer prior to closing, Developer agrees to reimburse Builder for its out of pocket costs incurred to the date title is found to be defective and incurable. Developer shall pay the cost of preparing the general warranty deed.

(g) At closing of each Lot purchase, Developer shall deliver, or cause to be delivered, to Builder the following; (i) a General Warranty Deed conveying fee simple title to the Lot to Builder; (ii) Developer shall execute and deliver such other documents as are customarily executed by a developer in connection with the conveyance of similar property in Williamson County, Tennessee; and (iii) Developer shall deliver to Builder possession of the Lot being purchased upon receipt by Developer of the total purchase price for such Lot.

(h) At the closing, Builder shall deliver, or cause to be delivered, to Developer the following; (i) Builder shall pay to Developer the total purchase price for the Lot being purchased in the form of cash, cashier's check or immediately available wire-transferred funds; and (ii) Builder shall execute and deliver such other documents as are customarily executed by a buyer in connection with the purchase of similar property in Williamson County, Tennessee.

(i) Developer shall pay all taxes and assessments, for the years prior to the year of closing. All taxes and assessments for the Lot(s) for the year of closing shall be prorated as of the closing date. If the amount of taxes and/or assessments for any year are not known at the time of a closing, the proration shall be based on the latest information available. After said amounts of taxes and/or assessments are known, adjustments, if needed, will be made between the parties.

(j) Builder agrees to contract to purchase Lots in existing phases of the Development before selecting Lots from new phases. Developer may designate Lots in the Development which will not be subject to selection by the Builder.

(k) Each spec and custom house constructed by Builder in the Project shall be in accordance with plans and specifications approved by Developer for such house and in accordance with the Design Guidelines and the SDRC as further defined in The Agreement for Approved Builders Group. Builder shall commence and continue with the uninterrupted construction of homes within the time limits provided herein.

3. DEFAULT BY BUILDER

Occurrence of any one of the following events shall constitute a material default by the Builder of the terms and conditions of this Agreement and shall be sufficient cause for termination of this Agreement:

(a) Cessation of Work. Builder's ceasing work on exterior construction of any house in the Project for a period of thirty (30) consecutive working days (unless such cessation is with the consent of the Developer). Builder's obligation herein shall apply only to the completion of all work relating to the exterior of the house and landscaping;

(b) Other Defaults and Liens. Builder's failure to secure the immediate removal of any lien or other encumbrances affecting Builder's Lots or developer's interests;

(c) Bankruptcy. A filing of any bankruptcy petition, voluntary or involuntary, by or against Builder;

(d) Financial Obligations. The existence of any condition which, in the Developer's discretion, indicates that Builder, is financially unable to meet its financial obligations as it pertains to the Project;

(e) Performance. A recurring series of events or circumstances which indicates that Builder is unable or unwilling to resolve complaints related to the performance of Builders' contractual commitments to construct houses in the Project or otherwise perform its obligations under this Agreement, such determination shall be made in the sole discretion of developer;

(f) Deviation from Plans and Specifications and Design Guidelines and Declaration. The development and construction of a residential unit which is not in accordance with or deviates from the plans and specifications therefore approved by the Developer, the Design Guidelines or Declaration and/or SDRC (Site Design and Review Committee);

(g) Fire or Casualty. Should a residential unit be materially damaged or destroyed by fire or other casualty, which is not adequately covered by insurance (as determined by the Developer) and Builder's failure to effect the full and complete repair or restoration of same in accordance with the approved plans therefore;

(h) Litigation. Any suit shall be filed against Builder which, if adversely determined, could impair the ability of Builder to perform any of its obligations hereunder or under the Declaration;

(i) Levy Upon the Property. A levy shall be made under any legal process on a Lot or a residential unit, and such levy is not removed within thirty (30) days following such levy;

(j) Attachment of Liens to Property. Attachment of any involuntary lien of any kind or character upon a Lot or a residential unit, which lien is not removed within thirty (30)

days after attachment, except for real property taxes due but not in default, or for real property taxes which are being contested in good faith by Builder and for which Builder provides reserves, additional security or collateral, or a bond in amount, form and substance satisfactory to the Developer;

(k) Contractual Default. If Builder fails to perform under any of the terms, covenants and provisions of this Agreement, including, but not limited to, Builder's failure to close the purchase of Lots during the initial Contract or any subsequent Contract Year, in accordance with the take down schedule for such Contract as well as the closing schedule and terms specified herein; or

(l) Failure to Complete Construction. Builder's failure to complete the construction of a home on a lot within twelve (12) months after commencing construction thereof. The twelve (12) month completion period for completing construction of a home on a lot may be extended in writing by mutual agreement of Developer and Builder.

(m) Any other default of any obligation contained or referenced herein by Builder.

To the extent that Developer's failure to complete the obligations described herein is due to events or occurrences beyond Developer's control, including but not limited to strikes, riots, acts of God, war, or governmental laws, regulations or restrictions or failure of other parties to complete their obligations, such shall not constitute a default by Developer and Developer's time frame to complete such obligations shall be extended to extent of such delay.

4. SALES AND MARKETING

Builder shall be responsible for its' own sales and marketing of the lots and homes it has or is purchasing herein within the Development. Developer agrees to provide office space, in the square footage and monthly rental which may be mutually agreed upon, within a common sales building for use by all approved Builders and/or Builders' brokers and sales representatives should they require or desire it. Builder shall be responsible for its and/or its agent's compliance with all marketing and signage requirements as may be promulgated by Developer from time to time, to include, a limitation on "For Sale" signs to no greater than 3' x 3' and "Model Home" signs no greater than 4' x 8'.

5. PARTY REPRESENTATIONS

(a) Developer agrees that the Project shall be completed substantially in accordance with the master plan of the Project as approved by the Williamson County Regional Planning Commission or other applicable governmental authority. The Project shall include the amenities listed on "Exhibit Three" attached hereto.

(b) Builder represents and warrants to Developer that Builder is in the business of building residences and is acquiring the Lots covered by this Agreement solely for the purpose of engaging in the business of constructing a residential building thereon and selling the Lots with a completed residence thereon to a bona fide third-party. Builder further represents that he/she/it has the current financial capability of fulfilling the Builder's obligations herein. Builder may not sell or

convey any Lot purchased hereunder except as a Lot under contract to be improved with a completed residence thereon. In the event Builder fails to commence the construction of a home on any Lot within twelve months (12) after the date of the closing of the purchase of the Lot, Developer shall have the right at any time thereafter to repurchase such Lot from Builder for the purchase price paid by Builder for such Lot. Developer shall not be required to reimburse Builder for any expenses, interest or taxes incurred by Builder in connection with the Lot. The deed conveying each Lot to Builder shall incorporate the provisions hereof. Further, Developer shall have the right to assign this repurchase right to any other Builder in the Approved Builders Group for the Project.

(c) During the construction of a house, both Builder and Developer will keep the construction sites reasonably clean of trash and debris, bush hog vacant lots and immediately upon completion of a house shall remove all trash and debris from the Lot. Builder and Developer agrees not to dump trash or debris on any other Lot in the Project. Builder shall install silt fences to keep adjacent Lots free from trash or debris. Builder and Developer shall take reasonable care not to cause damage to or deposit mud, dirt, or debris on roads, gutters, sidewalks, street trees, roadbeds, unpaved rights-of-way or other common elements or amenities of the Project. Either Builder's or Developer's failure to abide by the terms of this provision or make such corrections within a reasonable time, shall constitute a material default under this Agreement and Builder and Developer shall have all rights and remedies provided to Builder or Developer in this Agreement and those under law for a default by Builder or Developer under this Agreement. Further, Builder and Developer shall be liable for any such damage caused by Builder or Developer or Builder's or Developer's subcontractors, and agrees to promptly repair any such damage or reimburse Developer or Builder for the costs to repair damage.

(d) Builder agrees to finish grading work on each Lot as is necessary to affect proper drainage for the Lot. Developer shall not be responsible for the correction of any drainage problems. Builder shall obtain NOI from the State of Tennessee for each lot before construction is started and otherwise comply with all state, federal and local laws, rules, ordinances and requirements.

6. ASSIGNMENT

(a) This Agreement may be assigned by Developer.

(b) Builder may not assign or convey its rights under this Agreement without the express written consent of Developer, which consent may not be unreasonably withheld. Any assignment in violation of this provision shall be null and void. Developer's consent to one assignment shall not be deemed a consent to any subsequent assignments.

7. GENERAL CONDITIONS

(a) Builder shall take title to all Lots subject to the Design Guidelines, "SDRC" approvals, the Declaration, Deed Restrictions, the Charter and By-Laws of the homeowner's association for the Project, easements and other matters shown on the plat, and other pertinent documents related to the operation of the Project.

~~(b) The purchase price does not include the tap fee for water and sewer service or any other applicable utility fees. The initial sewer service (capacity) connection fee is \$6,000.00 per lot.~~ *OUT*

(c) Developer shall hold meetings, as it deems appropriate, each Year to discuss general business relating to the Development including, but not limited to, market conditions for residential subdivisions, status of new phases, if any, for the Project, potential new residential developments of Developer and any areas of concern regarding the Project.

(d) All terms, conditions and provisions of this Agreement shall survive the closing of Builder's purchase of a Lot and shall continue to remain in full force and effect and shall not merge with the delivery of a deed.

(e) It is agreed that if any claims for brokerage fees or agents commissions are ever made against Developer in connection with this transaction, all such claims shall be handled and paid by the party whose actions or alleged commitments form the basis of such claim. It is further agreed that each party agrees to indemnify and hold the other harmless from and against any and all such claims or demands with respect to any brokerage fees or agents' commissions or other compensation asserted by any person, firm, or corporation in connection with this Agreement or the transaction contemplated hereby Builder specifically represents to Developer that Builder knows of no legitimate claims for any brokerage fees or agents commissions in conjunction with this purchase.

Failure by either party to meet or comply with any provision, obligation or duty or other requirements pursuant to this Agreement shall constitute a material default ("Default"). Each of the parties shall be entitled to the following respective "Remedies".

8. REMEDIES

(a) Developer's Remedies: If Builder defaults in any of its obligations under this Agreement, and such default is not caused by Developer, Developer shall be entitled to, in addition to any other available remedy, (i) waive the contractual obligations of Builder in writing; (ii) to extend the time for performance by such period of time as may be mutually agreed upon in writing by the parties hereto; or (iii) to terminate this Agreement, in which event Developer shall retain the earnest money and Program Deposit and, if applicable, present the unconditional letter of credit for payment with funds being retained by the Developer as full liquidated and agreed damages, the parties hereby agreeing that such sum constitutes the parties' reasonable estimate, and therefore the parties hereby fix, after reasonable endeavor to fix damages.

Liquidated damages as herein defined shall not include, architectural, signage, maintenance obligations and unforeseen liens and other encumbrances upon Builder's property herein not supported by assets or improvements in excess of 150% of the lien or obligation. By way of example, but not in limitation of Developer's rights herein, is the scenario wherein Builder borrows money upon the lot purchased to build a house keeps the money and does not build the house leaving a lot encumbered by an excessive mortgage without corresponding improvements thereon. Under

such circumstances Builder agrees that Developer may seek recovery beyond the liquidated damages described herein. Additionally, the Builder shall be removed from the Approved Builders Group for the Project and Builder's right to build in the Project shall be terminated and Developer shall have the right to repurchase all Lots owned by Builder at the price paid for such Lots by Builder. In the event of default by Developer hereunder, Builder's sole remedy will be to terminate this Agreement and receive a return of the Letter of Credit (Deposit) and any additional earnest money deposit.

(b) **Builder's Remedies.** If Developer defaults in any of its obligations under this Agreement, and such default is not caused directly or indirectly by Builder, Builder shall be entitled to (i) waive Developer's default; (ii) extend the time for Developer's performance for a period of time mutually agreed upon in writing by Developer and Builder in order for Developer to cure the default; or (iii) terminate this Agreement, in which event Developer shall refund to Builder the Deposit and earnest money held by Developer and/or return the unconditional letter of credit to Builder, and Builder shall be entitled to no additional damages.

(c) **Notice and Right to Cure.** Each party shall be entitled to written notice of any default and shall have thirty (30) days from receipt of such notice to cure such default prior to the exercise of any remedy provided herein, unless otherwise provided herein. Notwithstanding any notice provisions herein to the contrary, if Builder commits the same or substantially the same action which constitutes default more than two (2) times during the initial contract or any subsequent year if the term is extended, such Builder shall not be entitled to further notice and right to cure but Developer shall be immediately entitled to exercise Developer's remedies hereunder without further notice.

(d) **Costs and Expenses.** In the event of a default by either party, the non-defaulting party shall be entitled to recover from the defaulting party all costs and expenses (including reasonable attorney's fees) incurred by the non-defaulting party in enforcing this Agreement.

9. OTHER GENERAL PROVISIONS

This Agreement shall be construed in accordance with the laws of the State of Tennessee. This Agreement shall be binding upon the parties hereto, their heirs, successors, and/or assigns (however, assignment hereunder by Builder is prohibited unless Developer consents). Developer reserves the right to waive any conditions hereunder; however, a waiver of default or other condition by Developer must be in writing, and shall not constitute a waiver of any future or additional default or condition by Developer. All notices to Developer under the Agreement shall be deemed properly delivered when and if personally delivered, delivered by overnight private courier service, or mailed by United States mail, registered or certified, postage prepaid, addressed as follows (or at such substitute address as the parties may specify in writing from time to time):

To Developer:

Ashby Communities LLC.
1413 Plymouth Drive
Brentwood, Tennessee 37027

Builder. All notices to Builder under the Agreement shall be deemed properly delivered when and if posted upon any lot purchased by or under contract to the Builder, personally delivered, delivered by

overnight private courier service, mailed by United States mail, registered or certified, postage prepaid, sent via facsimile, or addressed as follows (or at such substitute address as the parties may specify in writing from time to time)

To Builder:

Turnberry Homes, LLC
210 Jamestown Park Drive, Suite 102
Brentwood, TN 37027

10. INTERPRETATION/DUE DILIGENCE/CONFIDENTIALITY

This Agreement has been submitted to the scrutiny of both parties and shall be given a fair and reasonable interpretation without consideration being given to its having been drafted by either party or such party's counsel. Builder warrants and represents, by its signature below, that it has completed all due diligence Builder deemed necessary and upon independent investigation has satisfied itself as to all matters relating to this "Agreement" prior to the execution hereof. Builder further agrees to hold the terms of this Agreement, including the price paid for the lots described herein, CONFIDENTIAL, and shall not disclose, discuss or otherwise communicate the terms of this Agreement to any other Builder, entity or persons other than those persons or entites who require such information in the performance of their services, obligations or duties to or on behalf of Builder to include, without limitation, financial institutions, accountants and attorneys.

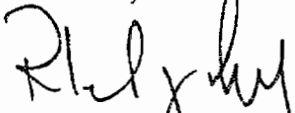
11. FACSIMILE TRANSMISSIONS

A facsimile copy of this instrument and any signatures hereof shall be considered for all purposes as originals.

The undersigned have caused this Agreement to be executed by the duly authorized officers on the day and date hereinabove written.


Builder:

TURNBERRY HOMES, LLC
TN LIMITED LIABILITY CO
210 JAMESTOWN PARK DR., SUITE 210
BRENTWOOD, TN 37027


By: Richard J. Bell
Title: President

Developer:

ASHBY COMMUNITIES A TENNESSEE
TN LIMITED LIABILITY CO., AGENT FOR:
HANG ROCK, LLC
1413 Plymouth Drive
Brentwood, TN 37027


By: John Powell
Title: Member

"ATTACHMENT TWO"

Builder agrees to complete the purchase of the Twenty Four (24) lots referred to in the "Lot Purchase Agreement for Kings Chapel Subdivision" to which this Attachment is appended and at a price designated therein within 12 months of the "Substantial Completion Date" upon the following conditions and schedule:

1. Builder must close the Twenty (24) lots within Twelve (12) months, in concert with other builder(s) from Lots 101 through 148 (Phase One) and may choose additional Lots 225 through 251 from Phase Two when those lots become available.
2. Builder must complete an "Initial Purchase" of six ^{12 Aug}~~(6)~~ lots upon completion of Phase One, anticipated to be in August of 2004.
3. Builder must thereafter complete a "Secondary Purchase" of six (6) additional lots within six months after the "initial purchase".
4. Builder must thereafter complete the "Final Purchases" of six ^{3 Aug}~~(6)~~ additional lots every three months following the "Secondary Purchase" of six ^{3 Aug}~~(6)~~ lots until all 24 lot purchases have been completed..

Turnberry has chosen the following 24 lots from Phase One of Kings Chapel.

101	102	103	105
108	111	115	118
120	124	125	128
131	132	133	136
137	138	139	142
143	144	147	148

EXHIBIT THREE

AMENITIES KINGS CHAPEL

~~Clubhouse~~ *Phase A*
Swimming Pool
~~Spring House, Natural Amenity, discovery, play area.~~ *Phase A*
~~Fire Ring (old silo base)~~ *Phase A*
~~Large Park Acreage around this Area~~ *Phase A*

Creek Access Area with Pavilion

~~Sports fields Area with Pavilion~~ *Phase A*

732
Over 150 acres of Open Space, a large portion of which will be left open for area wildlife.

Hiking Trails with pedestrian bridges which cross several creeks that exist on the property. Electric Golf carts will be allowed on some of these trails

Kings Chapel Church and Family Area

This Church is replicated on the exact same site using much of the same brick it was originally built with. This Church can be used for the Sales Center and then turned into an Amenity when Clubhouse is built. Clubhouse can also serve as Sales Center.

Kings Chapel Family Area, to the West of Kings Chapel there will be a large open space area with a landscaped lawn suitable for Tents. Adjacent to this area will be permanent restrooms built to accommodate both the chapel and this landscaped area. This area can be used for family reunions, private parties, and weddings etc.

Landscaped Gated Entrance

ADDENDUM TO
Lot Purchase Agreement
For King's Chapel Subdivision

This Addendum is made as of the 26 day of July, 2004 by and between Hang Rock, LLC, c/o Ashby Communities, LLC ("Developer") and Turnberry Homes, LLC ("Builder") and is hereby made a part of Lot Purchase Agreement For King's Chapel Subdivision (the "Agreement") between the parties.

Notwithstanding anything to the contrary contained in the Agreement, the parties that in the event any lots Builder purchases are determined after closing to have deficiencies in construction, Developer agrees to correct any such deficiencies within 30 days of notice from Builder or to reimburse Builder the cost of correcting such deficiencies if Developer fails to make such corrections within said 30 day period.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date first above written.

BUILDER:

Turnberry Homes, LLC

BY: 

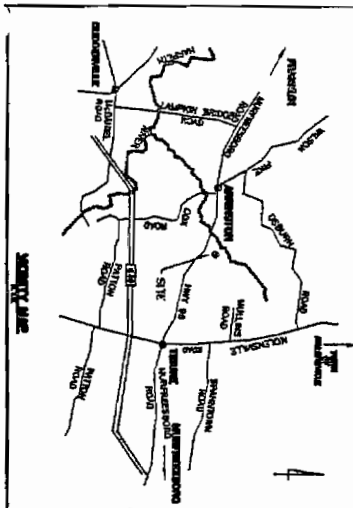
RICHARD J. BELL, PRESIDENT
CEO & CHIEF MANAGER

DEVELOPER:

Hang Rock, LLC, c/o Ashby Communities, LLC

BY: 

JOHN POWELL, MEMBER



SITE PLAN
MEADOWBROOK SUBDIVISION

A PLANNED RESIDENTIAL CONSERVATION DEVELOPMENT
ARRINGTON WILLIAMSON COUNTY, TENNESSEE

**CLETON
& KING, LLC**
6788 MIDWINTER

SETH W. DOW
217 WEST STREET
FRANKLIN, TN 37064
PHONE (615) 391-0043
FAX (615) 391-0913

Appendix 1 Landscape Guidelines

OBJECTIVES

Considerable effort has been expended on careful land planning, conservation and the enhancement of the natural environment at Kings Chapel. There are areas of large open spaces, creek and water systems have been protected, every back yard has open space behind the lot which will promote wildlife and give the homeowner a truer sense of privacy. Suitable landscaping for the new home site is an essential part of this effort to create a quality development sensitive to its existing surroundings, therefore, as mandated by the covenants. Landscaping in accordance with the approved Landscape Plan must be substantially completed within 10 days after completion of construction. The entire front yard and side yard of the lot situated on a corner lot must be covered in sod. The extent of the front boundary shall be the rear of the main body of the home. A landscaping plan will be reviewed with two major concerns in mind:

1. Landscaping must be adequate to properly complement the house and site as well as the surrounding properties.
2. Approved Builders are expected to spend approximately \$2,000 for Landscaping per home, not including the cost of sod.
3. The following proposals will be denied:
 - a. Unwarranted removal of trees
 - b. The use of highly sheared topiary or stylized plants
 - c. Intensive use of plants with forms or colors not native to the area
 - d. Large, unplanted windowless area
 - e. Use of crushed stones, bricks or gravel as mulch
 - f. Use of concrete animals where they may be seen from the street

RESTRICTED PLANT MATERIALS

There is no plant that is specifically prohibited at Kings Chapel; however, there are some that should be used with great discretion. Generally, they include plants that are associated with exotic effects (like a contrived attempt to achieve a Florida tropical or

Arizona desert effect). Variegated foliage, which creates a stark contrast with surrounding foliage and background and the use of ornamental statuary, is not recommended.

SOD REQUIREMENTS

Houses on a typical lot, not a corner, shall be soded from the curb to a point one foot back on both sides from the front of the house.

Corner lots shall be soded from both curbs to one foot back from the front corner of the house (corner closet to drive way) and one foot back from the remaining corners that will front the side street.

EXHIBIT B

Community Merchandising Guidelines KINGS CHAPEL

Developer and Builder mutually agree to show their best efforts in the execution of the following Community Merchandising Guidelines:

1. The entrance, fully landscaped, is kept fresh and is cleaned every Friday before noon. (Developer's Responsibility)
2. Every Friday, the streets are swept as needed. (Developer's Responsibility)
3. Each Friday, the site entrance sign, on-site directional and off-site directional are checked to be sure they are neat, clean and level. (Developer's Responsibility)
4. The Developer does not leave any equipment, material or supplies in the phase with Home construction that will not be used within the next thirty (30) days. (Developer's Responsibility)
5. Any home under construction can only have debris in their front yard while the basement is going in, the home is being framed and during the time the brick goes on the house. Otherwise, the home and lot shall be cleaned by Friday of each week.
6. Any materials that are in a house that are not needed for that house are to be removed each week, so the house may be shown.
7. Every home on site is swept out on Friday, starting at the time home is being framed.
8. Every Friday, all the debris should be picked up from all lots so there is nothing blowing around the site for the weekend. There should be no dead shrubs or trees on site.
9. Omitted
10. If any construction office or storage trailers are needed they are put in a pre-designated spot (not necessarily convenient to production).

11. Walk boards: all homes under construction need to be accessible for the front door (walk boards need to be sturdy and safe). Temporary stairs with railings to be constructed.
12. Any excessive mud on the streets will be removed as soon as possible by the responsible party. Under no circumstances will mud be left on the streets after Friday night.
13. Weeds will be cut on a weekly basis on the front and sides of lots.
14. Builder and Builder's subcontractors are to park so as not to obstruct traffic flow through the neighborhood.
15. Kings Chapel golf carts and restrooms are for the use of Individual Home (lot) buyers. Builders are encouraged to use them, if they bring prospective buyers to the project.

ATTACHMENT ONE

**AGREEMENT
For
APPROVED BUILDER GROUP
Kings Chapel Subdivision**

THIS AGREEMENT (the "Agreement") is made and entered into this 26 day of July 2004, by and between Ashby Communities a Tennessee Limited Liability Co., 1413 Plymouth Drive, Brentwood, Tennessee 37027 (hereinafter referred to as the "developer") and Turnberry Homes Inc. a Tennessee Corporation, 210 Jamestown Park Dr., Brentwood, Tennessee 37027 (hereinafter referred to as "builder").

WHEREAS, the developer is developing a residential subdivision in Williamson County, Tennessee, known as **KINGS CHAPEL**; and

WHEREAS, the Developer Is establishing an Approved Builder Group in connection with a portion of **KINGS CHAPEL** being the open space and Lots (collectively the "Lots" and individually a "Lot") shown on the **Exhibit A** (the group of Lots listed thereon being collectively referred to herein as the "Project") being further described substantially in accordance with the Phase One Section and Phase Two Section of **KINGS CHAPEL** prepared by Clifton & King, LLC which is incorporated herein by reference as if copied verbatim; and

WHEREAS, in order to ensure adherence to the highest standards of construction and to enhance the quality of architectural control and design, the developer has maintained the right to establish a list of approved general contractors who shall have the right to build residential dwellings within the Project subject to the Developer's reserve rights set forth in Paragraph 2 below; and

WHEREAS, the Developer has established an Approved Builder Group for the Project in furtherance of these objectives; and

WHEREAS, the Builder desires to participate in the Approved Builders Group, and builder has entered into an attached **LOT PURCHASE AGREEMENT**, which is attached hereto and made a part of:

NOW, THEREFORE, for and in consideration of the above premises and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the aforementioned parties hereby agree as follows:

1. APPROVAL

The builder is hereby approved by Developer and shall be included on the list of Approved Builders for the KINGS CHAPEL SUBDIVISION. All Approved Builders shall be included on the list of Approved Builders submitted to any individual Lot purchasers in the Project who intend to build a home.

Neither this Builder nor any other Approved Builder has been given assurance by the Developer that this approval shall be construed as a guarantee of future contracts for the construction of homes by any third party. Rather, the Developer will make the list of Approved Builders available in its entirety and to adhere to the terms and conditions set forth in this Agreement.

The "Approved Builder Status" of builder is in direct relation to the Lot Purchase Agreement attached hereto. If builder is in default or the Lot Purchase Agreement has expired and not renewed by Developer than Builder shall no longer be recognized as an Approved Builder

2. APPROVED BUILDER GROUP

The Developer warrants that the Approved Builder Group shall be established and maintained in accordance with the following conditions:

(a) The list of Approved Builders for the Project shall be determined by Developer and shall be limited to a minimum of three (3) and a maximum of ten (10) builders (collectively the "Approved Builder Group"). The total number of Approved Builders is at Developer's discretion, but is not to exceed ten (10) Approved Builders. Except as provided in Paragraph 2(c) below, this number shall not be increased without the written consent of at least two-thirds (2/3) of the builders then in the Approved Builder Group. The total number of approved builders in Phase One is to be limited in number to two (2).

(b) The Developer will not grant approval to engage in the construction of a house for a Custom Lot purchaser in the Project to any builder not approved and accepted as an Approved Builder. The "KINGS CHAPEL project" has approximately 188 Custom Lots (Custom Lots are 1/2 acre plus all having open space in rear of Lots) and approximately 27 (2 – 15 acre larger than Custom Lots most of which are on Western side of Arrington Creek) larger Estate type Lots. Approved Builders will be allowed to build on the larger Estate Lots and Developer will encourage any individual Larger Estate Lot

purchasers to consider the Builders in the Approved Builder Group, however, given the price on these few Larger Estate Lots and the anticipated price point of the homes to be constructed on those Lots Developer feels that these Larger Estate Lots should not be restricted to The Approved Builder Group.

(c) Throughout the term of this Agreement, as extended, and as long as the Project has the maximum number of Approved Builders as specified in Paragraph 2(a) of this Agreement, Developer shall have the right to sell custom Lots in the Project to individual purchasers for residential lots of similar size, location and quality; provided, however, such selling price may be higher than the price at which Builder may purchase Lots in the Project. Such individual purchaser of a Custom Lot (approximately ½ acre) must execute at the closing of the Custom Lot purchase a letter of intent requiring such purchaser to enter into a construction contract with an Approved Builder in the Project and to start construction of a house on the Lot within ninety (90) days or such time as determined by the Developer after such purchaser's closing of the purchase of said Lot or Developer shall have the right to repurchase the Lot. If at any time during the term of this Agreement, as extended, the Builders Group for the Project has less than the maximum number of Builders as specified in Paragraph 2(a) of this Agreement, then in such event, Developer shall have the right to sell Lots in the Project to individual purchasers in accordance with the terms and conditions specified in this Paragraph 2(c); provided, however, any such individual purchaser must execute at the closing of the Lot purchase a letter of intent requiring such purchaser to enter into a construction contract with a Builder in the Approved Builder Group for the Project and to start construction of a house on the Lot within ninety (90) days of such time as Determined by the Developer after such purchaser's closing of the purchase of said Lot or Developer shall have the right to repurchase the Lot. The rights of re-purchase specified in this paragraph may be assigned to any Builder in the Approved Builders Group and if Builder repurchases the Lot, such will count towards Builder's purchase requirements as specified in this Agreement.

(d) All Approved Builders in the Project, without exception, shall be required to adhere to and comply with the Community Merchandising Guidelines (**Exhibit B**), and The Design Guidelines (**Exhibit C**)

(e) Nothing herein shall be construed to prohibit: (i) establishment by Developer in Developer's discretion of additional Approved Builders' or other builders' in other projects or in connection with other lots in Kings Chapel under terms established by Developer; or (ii) addition of lots by Developer in Developer's discretion to the definition of Lots included in the Project.

3. APPROVED BUILDERS GROUP PAYMENT

A payment of One Thousand and No/1 00 Dollars (\$1,000.00) shall be paid to the Developer upon execution of this Agreement. The payment shall be in the form of a cash payment to Developer.

4. DEFAULT BY BUILDER

Occurrence of any one of the Defaults listed in the attached KINGS CHAPEL LOT PURCHASE AGREEMENT shall constitute a default herein and shall be sufficient cause for termination of this Agreement. In the event of any default by Builder hereunder this Agreement shall be terminated without further obligation of the parties hereto. Additionally, the Builder shall be removed from the Approved Builders Group for the Project and Builder's right to build in the Project shall be terminated and Developer shall have the right to repurchase all Lots owned by Builder at the price paid for such Lots by Builder. In the event of default by Developer hereunder, Builder may terminate this Agreement and receive a return of the Builders Group Payment.

5. SALES AND MARKETING

Builder and Developer shall abide by Community Sales guidelines attached hereto as Exhibit "B".

6. DESIGN GUIDELINES

Builder agrees to pre submit all house plans along with possible elevations for the first 24 lots in Phase One on which homes are to be constructed. These plans / elevations should be submitted and approved before construction begins on the model home. Builder has agreed to spend Two Thousand dollars landscaping each Home, therefore it is not necessary to submit landscape plans. However, Builder agrees to adhere to and build homes and landscape lots in accordance with the Design Guidelines (architectural and landscaping) for the Project (the "Design Guidelines") attached hereto as Exhibit "C" as established by Developer as same may be revised from time to time.

This Agreement shall be construed in accordance with the laws of the State of Tennessee. This Agreement shall be binding upon the parties hereto, their heirs, successors, and/or assigns (however, assignment hereunder by Builder is prohibited unless Developer consents). Developer reserves the right to waive any conditions hereunder; however, a waiver of default or other condition by Developer must be in writing, and shall not constitute a waiver of any future or additional default or condition by Developer. All

notices to Developer and Builder under the Agreement shall be deemed properly delivered when and if personally delivered, delivered by overnight private courier service, or mailed by United States mail, registered or certified, postage prepaid, addressed as follows (or at such substitute address as the parties may specify in writing from time to time):

To Developer:

Ashby Communities LLC.
1413 Plymouth Drive
Brentwood, Tennessee 37027

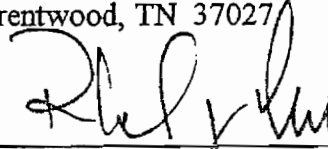
To Builder:

Turnberry Homes, Inc.
Bright Hour Building
210 Jamestown Park Dr. Suite 102
Brentwood, TN 37027

The undersigned have caused this Agreement to be executed by the duly authorized officers on the day and date hereinabove written.

Builder:

Turnberry Homes, Inc.
210 Jamestown Park Dr.
Brentwood, TN 37027


By: Richard J Bell
Title: President

Developer:

Ashby Land Development Company LLC
1413 Plymouth Drive
Brentwood, TN 37027

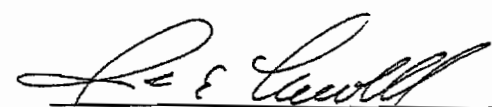

By: John Powell
Title: Manager

EXHIBIT C

DESIGN GUIDELINES WITH APPLICATION FOR SITE AND DESIGN APPROVAL KINGS CHAPEL

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Appendix 1 - Landscape Guidelines

Appendix 2 - Application for Design Review

DESIGN GUIDELINES AND REVIEW PROCEDURES

PURPOSE

The purpose of this *design criteria* is to outline for property owners, their architects and builders, useful information and requirements that will be helpful in the design and construction of homes at Kings Chapel and to explain *The Site and Design review process*. The primary goal of The Site and Design review committee (hereinafter referred to as SDRC) is to review the applications, site plans, design plans, along with specifications, materials and samples submitted, to determine if the proposed structure conforms in appearance and construction criteria with the standards and policy as set forth by the Developer. The SDRC does not assume responsibility for the following:

- a. The structural adequacy, capacity or safety features of the proposed improvement or structure.
- b. Soil erosion, un-compactible or unstable soil conditions.
- c. Compliance with any or all building codes, safety requirements, governmental laws, regulations or ordinances.
- d. Performance or quality of work of any contractor.

SITE AND DESIGN REVIEW PROCESS

The Site and Design Review Committee (SDRC) prior to construction MUST approve plans for all new construction, alterations or additions. If during construction modifications to previously approved plans become necessary or desirable, such modifications are to be promptly submitted to SDRC for review and approval prior to implementation. Approval granted by the SDRC should require re-approval and be subject to current development regulations if the authorized work has not commenced within thirty (30) days of the date of issuance. Unless a construction date has been approved by the SDRC which date has been planned to occur after thirty (30) days

SDRC meetings will be scheduled bimonthly or more frequently when needed. Applicants should contact the Developer for the date of the next meeting. Applicants do not attend SDRC meetings unless requested by the Committee.

Applications for review shall be submitted to the Developer (Sales Center) no later than 5:00 pm one week prior to the meeting date. Applications shall be made on a form (Appendix B)

available from the Developer. The SDRC will call builder in the event applications are incomplete before the meeting. If there should be no response from Builder incomplete applications will be returned, without action.

Applications, shall consist of two complete sets of plans and a completed SDRC Submittal Form (Appendix B). On each set of drawings and the first page of all other documents please include the lot number, street name, applicant's name, building contractor and date of drawings. Documents to be submitted include:

Site Plan - Two comprehensive plans acceptable to Williamson County.

- a. Scale 1" = 20'
- b. Must show setbacks and easements as shown on recorded plat
- c. Provide a tree survey that identifies species, condition, location, and diameter of all trees 8" or larger
- d. Indicate any trees to be removed by an X and reasons for removal. Approval will be granted for removal of trees necessary for construction.
- e. Drawings shall indicate storm water drainage flow for all areas of the lot. Drainage considerations for individual home sites play an important part in the ecological balance of the community. Water runoff for each individual site must be handled by adequately sloping all areas so that runoff can be directed to natural drain areas or storm drainage facilities. It is important to incorporate this into both your site plan and landscape plan. Builder at Developers discretion may be required to obtain NOI's on particular lots.

Landscape Plan

By completion of construction, a landscape plan shall be submitted to the Board for approval. The landscape plan shall be superimposed over the site plan and will indicate the location, numbers and species of all proposed plants, trees, shrubs and ground cover. Landscaping in accordance with the approved plan shall be completed within 60 days after construction is completed. Sod shall be required in front yards and side yards (ten feet behind the front plane of the building). If a home sits on a corner lot the two sides of the property facing the road must be sodded.

Floor Plans

- a. Submit two (2) sets of plans providing all interior and exterior dimensions. One set of plans will be returned to the builder after review with the remaining set to be held by the SDRC for reference purposes. The SDRC reserves the right to request more details to fully describe the home and its components.
- b. Scale 1/4" = 1'

- c. Include door and window symbols and schedules
- d. Show all patios, decks, fences, walls, arbors, trellises, steps to grade, and other structures. It is necessary to show all deck detailing in such a way that it blends with the home
- e. Show four (4) side elevations
- f. Show cornice detail and wall sections
- g. Show heated and total square footage

Single Story House design - Living Area minimum 2800 Square Feet
Exclusive of Garages, porches, patios, breezeways, and basements.

Two Story House Design - Living Area of both floors must have a minimum of 3000 combined square feet exclusive of Garages, porches, patios breezeways and basements.

- h. Show all exterior openings and explanation of front entry detail
- i. Indicate all exterior materials

Submission of Typical Building Materials - Both the names of proposed exterior Materials and samples of same will accompany the application as listed below. An application will not be considered complete without these exterior samples.

- a. Name, grade, description and sample of roofing to be used.
- b. Name, grade and color of siding applied
- c. A typical example of brick to be used
- d. Exterior trim paint sample

SDRC Response - The Committee may offer specific suggestions for further study that may resolve any design problems found by the Committee. The Committee can, however, reject an application for the following reasons among others.

- 1. Insufficient information to adequately evaluate the design or design intent
- 2. Poor overall design
- 3. Incompatible design elements
- 4. Inappropriate design concept or design treatment
- 5. A design found to have an adverse effect on the character of Meadowbrook or its residents
- 6. A repetitious design

The Committee will not normally comment on or reject a home because of its interior

elements, except in cases where those features affect the exterior appearance.

Commencement of Construction - Upon written approval, owner/builder may proceed with construction.

DESIGN CRITERIA

The paragraphs, which follow, provide specific guidelines for consideration in planning your new home. The overall impact of a home design involves issues of taste and judgment, which cannot be completely reduced to measurable standards of size, setback, roof pitch, etc. A home, which meets all the statistical criteria, may be unacceptable to Kings Chapel if its overall aesthetic impact is unacceptable in the judgment of the SDRC.

Elements of Design

Roofs - Roof forms should be gabled or hipped with a minimum pitch of 8:12. This pitch may be lower if the roof is concealed behind a balustrade or parapet. Flat roofs are generally unacceptable and may only be used for conditions such as a sunroom or connector element. Shed roofs are discouraged. All roof penetrations such as attic, dryer and plumbing bents- and roof elements such as gutters should be treated to match the roof color or appropriate material.

Doors - Paneled doors are required for the main entry. Single or double doors are acceptable. Other exterior doors may be glazed with fully divided lights. The style and proportions of the doors should be in keeping with the front door and the style of the house. Garage doors shall be paneled.

Chimneys - Chimneys should be properly scaled and designed in the same style as the house. Exterior chimneys must be constructed of brick to match the exterior of the building and extend to grade with a foundation.

Overhangs - Overhangs should suit the style of the house and be appropriate for the roof pitch

Cornice - The cornice should be detailed with ornamentation appropriate for the design of the house. Under no circumstance should cornice be omitted from the design. No vinyl or masonite cornice allowed.

Decks - Columns 12" x 12" or 12" diameter built with the same material as the house are encouraged. If wood posts are used, they should be a minimum of 6" x 6" with a base and capital detailing and shall be painted or stained to compliment the home.

Columns - The style of columns should be appropriate to the style of the house and should be proportionate to the house. If columns are used for small porches, a minimum of 6" x 6" post is acceptable with base and capital detailing.

Foundations - Exposed foundations are acceptable if used to elevate the first floor of the house or to take advantage of a sloping site by adding a basement level to the house provided exposed concrete is veneered with brick or rock. No exposed concrete block is permitted for foundations.

Building Materials

Building materials are expected to be of the highest quality.

Exterior Finish - Exterior veneer must be brick. Fiberboard siding, aluminum siding, vinyl siding, Masonite or other composite materials are not permitted. Wire cut brick is not permitted. Log homes are not permitted. Variances may be applied for in specific areas of the exterior finish where brick may not be appropriate. Where plans dictate that interior gables or cantilevers are to be used builders may use Masonite or Hardy Plank for those exterior finishes.

Windows - Windows may be wood, vinyl-clad wood, aluminum clad wood, or full vinyl windows. Lintels and sills may be wood, brick, stone, or pre-cast concrete. Houses must be consistent in the use of window grids. All windows will be gridded. Adequate exterior detailing of windows on all four sides is strongly encouraged.

Glass - Glass may be double paned. Glass must be clear except master bath window may be glass blocks or obscure for privacy. Reflective glass is unacceptable. Colored or stained glass is discouraged. Glass type must meet code requirements.

Roof - Roofing material should be dimensional asphalt type shingles.

Shutters - Are not required to be operational.

Development Standards

Specific development standards relating to land use, building type, building quality, minimum living area and location of dwellings and structures on lots shall be observed.

1. **Service area and Gas Service Entrances** - Each home shall provide an area or areas on the site to accommodate air conditioner compressors, garbage cans, or other ancillary residential functions that by nature present an unsightly appearance. These service areas shall be screened from view, on all sides, by an enclosure that is an integral part of the site development plan using materials and colors that are harmonious with the home it serves. Natural gas meters and associated piping may be located outside of an enclosed service area in order to assure adequate ventilation. In such cases, the meter and piping should be painted the background color and screened with shrubbery or a low fence. Gas meters should be located to the sides or immediate rear of homes.

2. **Driveways and Off-Street Parking** - All homes will have a defined driveway constructed of concrete, pavers, exposed aggregate or other materials approved by the SDRC. Where a lot fronts on more than one street, the lot shall be entered from the street designated by SDRC.

3. **Garages** - Each dwelling shall provide for the storage of not less than two (2) automobiles within a space totally enclosed by walls and a roof and providing an overhead garage door(s) for vehicular access. The inside walls of garages must be finished. Vehicular access to garages is to be from the rear or side of the home. Courtyard entries will be permitted.

4. **Fences** - Fences or screens may be used, to enclose service areas, patios, swimming pools or other areas requiring privacy, however such plans must be submitted to the SDRC for approval prior to construction. Woven wire or chain link fences are prohibited; wood, masonry or plant materials are considered suitable components for fences and screens. Fences or walls may not extend to height greater than six (6) feet from ground level unless the Board and the adjoining lot owners consent.

5. **Antennae** - No outside antennae or device of any type other than an antenna for receiving normal television signals (typically eighteen (18) inches in diameter) shall be erected, constructed, placed or permitted to remain on any lot, house, or building. Television antennas must be located to the rear of the roof ridge line, or centerline of the principal dwelling. No antennae shall be permitted to extend more than two (2) feet above the roof of the home nor shall any such antennae be erected on freestanding poles.

6. **Repetitive Designs** - Some house designs may be unacceptable for a particular lot because of similarity to homes in the immediate neighborhood. If, in the judgment of the SDRC, the massing, basic style, roofline, exterior materials, colors or other features of a home are too similar to its neighbors, the design will not be approved.

7. **Temporary Signs** - Permitted signs are subject to the Williamson County Sign Ordinance and approval by the SDRC and must comply with certain criteria. This includes REALTOR signs and Builder signs.

8. **Exterior Lighting Regulations** - Location and description of exterior lighting fixtures are subject to review and approval by the SDRC prior to installation. All lighting proposals are expected to show suitable restraint and concern for the impact of the proposal on neighboring properties. The following design standards shall apply:

- a. Entry, garage, deck and terrace areas may be illuminated by post or wall mounted lighting fixtures, provided, Fixtures are lit by incandescent bulbs not greater than 60 watts each. Fixtures are in scale and harmony with the components of the house.
- b. Landscape lighting, when made an integral part of landscape plan for the site shall be permitted. Provided that fixtures shall be the low 12-volt type and the power source shall be located below ground level fixtures concealed by planting. Clusters of specimen trees, shrubs or lone specimen trees (live oak, magnolia, etc.) may be illuminated by ground level fixtures concealed by planting. In general individual trees are not to be illuminated. Tree canopy down lighting when supplemented by up lighting is acceptable. Fixtures are to be glare free by use of baffles.
- c. The following examples of exterior lighting are **unacceptable**:
 1. Fixtures using other than incandescent bulbs (high pressure sodium, mercury vapor and any light with a high Intensity Discharge rating)
 2. Strings of lights located in trees or shrubs or outlining portions of buildings, decks or benches (excluding holidays)
 3. Illuminated large areas of exterior walls
 4. "Moonlighting" large areas of the site

5. Wall, soffit or ground level fixture where lamps are not screened by baffles or planting from view of adjoining properties.
 6. "Mushroom" type fixtures that, in the judgment of the SDRC, will have a detrimental affect of adjacent properties
 7. Lighting fixture or illuminated areas located in a required side or rear yard setback.
 8. Colored lighting is prohibited (excluding holidays)
- 9. Playground Equipment** - All such equipment must be located on the rear of the lot and not in the property setbacks. Screening of playground equipment with shrubs or other plant material is recommended. As a "courtesy to your neighbor" the SDRC has established the following guidelines regarding specific playground equipment.
1. Tree house or site constructed playhouse - require approval of the SDRC prior to installation or erection. Tree houses should be natural wood. Playhouses may be painted an earth tone color or a color to match the home.
 2. Swing sets, forts and sandboxes - must be natural wood.
 3. Basketball backboards may not be located in front of the house. They are to be located in the turn around area of the driveway and are not to be of a permanent type.
- 10. Statuary** - Statuary is defined as any stationary item that is used for decorative or ornamental purposes on the exterior of the home or in the surrounding yard, but is not permanently affixed to or part of the main dwelling unit. Statuary includes such items as lawn ornaments, garden statues and fountains. These items should be used with care and placed in such a manner as not to detract from the natural setting of Kings Chapel. The SDRC should be contacted for questions regarding the use and placement of statuary. The SDRC reserves the right to request removal of an item, which has not received SDRC approval.

11. CONSTRUCTION ACTIVITIES

Pre-Construction Activities:

1. No lot is to be cleared or construction otherwise started without approval of the plans for that lot by the SDRC.
2. Approval by the board does not preclude the necessity for obtaining a building permit from Williamson County.
3. There is no dumping available at Kings Chapel nor is there a pit for obtaining fill dirt.

During Construction

1. All ingress and egress to the lot should be made through the designated driveway location. The use of wood or other materials for easy access across the curb will not be permitted except during normal working hours. Such materials shall not be stored in the roadway when not in use. Damage to curbs, streets and common areas as a result of construction will be charged to the builder.

2. The prevent silt collecting in roadways, ponds or strewns, the builder is to maintain erosion control until the site has been landscaped. The placement of silt fencing is to be used along the edge of the roadway and along any property line that borders a stream or pond.
3. Only trees marked and indicated to be removed on the approved site plan may be removed. No materials are to be stored within the drip line of any tree 8+ inches in diameter.
4. The use of adjoining properties for access to the site or for the storage of materials is forbidden.
5. A "dumpster" shall be used on each site. Dumpsters located in side or rear yards are encouraged. Pickup of construction debris shall be made daily and "dumpsters" are to be emptied immediately when they become full. A trash barrel should be maintained on each site for the disposal of small trash and eating litter. Unsightly building sites hurt the image of our community and constitute a nuisance and will be handled in accordance with the Approved Builder Group.
6. Portable toilets are required for all building sites and must be in place at the time the building foundation work commences. Portable toilets must be removed upon completion of the home. Portable toilets must be positioned ten feet from the curb and preferably adjacent to the driveway of each home.
7. Parking of vehicles by the builder, subcontractors, workmen and construction material delivery personnel shall be upon the construction site when practical. When parking on the street is necessary due to non-availability of space on the lot, such parking shall be on the side of the street where the construction is taking place. Parking on other private property is prohibited.
8. Sounds from radios or other non-construction activities that can be heard from adjoining properties or the street constitute a nuisance and are therefore prohibited.

Completion of Construction

The property owner and builder are responsible for the removal of all building debris, signs and electrical stub pole from the site and the surrounding area.

Receipt of Guidelines and Appendixes

The above Design Guidelines along with the attached Appendixes A, and B, are attached to the KINGS CHAPEL APPROVED BUILDERS GROUP AGREEMENT and hereby made a part thereof.

IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE

FILED
WILLIAMSON COUNTY
CLERK'S OFFICE

2007 AUG 16 PM 12:22

ENTERED 8-21-07

TURNBERRY HOMES, LLC,

Plaintiff,

v.

KING'S CHAPEL CAPACITY, LLC,

Defendant.

No. 33796

AGREED ORDER

This cause came to be heard on August 10, 2007, upon the Defendant's Motion for a Continuance and upon the Plaintiff's Motion for Permission to Present Oral Testimony. Upon a review of the record and argument of counsel, the Court finds as follows:

1. Due to ongoing litigation in front of the Honorable Robert E. Lee Davies involving the same or substantially similar parties, this cause should be tried in front of Judge Davies;

2. That, because Judge Davies is not available to hear Turnberry Homes' application for injunctive relief on Monday, August 13, 2007, the hearing should be continued until Friday, August 17, 2007 at 9:00 a.m.; and

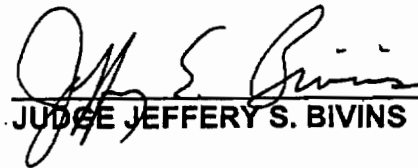
3. That oral testimony at the hearing on Turnberry Homes' application for injunctive relief is unnecessary.

It is therefore **ORDERED, ADJUDGED, and DECREED** that this matter be transferred to Judge Davies' docket.

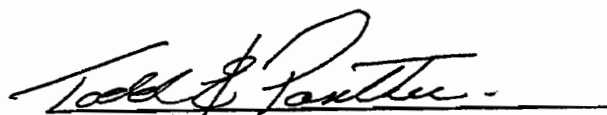
It is further **ORDERED, ADJUDGED, and DECREED** that the Defendant's Motion to Continue is well-taken and is granted, and that the hearing on the Defendant's application for injunctive relief shall be continued from August 13, 2007 to August 17, 2007 at 9:00 a.m.

It is further **ORDERED, ADJUDGED, and DECREED** that the Plaintiff's Motion for Permission to Present Oral Testimony is not well-taken and is denied, and that the hearing on the Defendant's application for injunctive relief shall be on affidavits and pleadings pursuant to Local Rule 15.02.

ENTERED on this the 21st day of August, 2007.


JUDGE JEFFERY S. BIVINS

APPROVED FOR ENTRY:


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CLERK'S CERTIFICATE

I hereby certify that a true and exact copy of
foregoing has been mailed or delivered to
all parties or counsel of record.

8-23-07

Date

Shirley Goss
Clerk & Master

1 IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE

2
3
4 TURNBERRY HOMES, LLC,)

5 Plaintiff,)

6 vs.)

No. 33796

7 KING'S CHAPEL CAPACITY, LLC,)

8 Defendant.)

9
10 -----
11
12 TRANSCRIPT OF PROCEEDINGS

13 Thursday, August 23, 2007
14 -----

15 APPEARANCES:

16 For the Plaintiff: Mr. Todd E. Panther
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17 Suite 1700, AmSouth Center
315 Deaderick Street
18 Nashville, TN 37238
19 For the Defendant: Mr. Charles B. Welch, Jr.
Mr. Jamie Hollin
20 Farris, Mathews, Branan, et al.
Suite 300
21 618 Church Street
Nashville, TN 37219

22
23
24 Reported By:

25 Patricia W. Smith, RPR, CCR

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(The aforementioned cause came on to be heard on Thursday, August 23, 2007, beginning at approximately 8:09 a.m., before the Honorable R.E. Lee Davies, Judge, when the following proceedings were had, to-wit:)

THE COURT: Good morning, Gentlemen. How are you all?

MR. WELCH: Good morning.

MR. PANTHER: Good morning.

Thanks for hearing the case this morning.

I am Todd Panther, representing Turnberry Homes. I need to give you a little bit of history because, as Your Honor is aware, Turnberry now has three cases with entities that are controlled in some fashion by the same individual, Mr. Powell.

The one lawsuit is Turnberry versus Hang Rock. That is the lawsuit that we were last -- counsel was last before you on, where there is a dispute over the terms of the purchase price provision of the construction contract.

I need to inform you that when that dispute arose -- disputes happen. And it's happily that the parties decided to create an arrangement where

After that ruling, Your Honor has seen in the materials that the defendant has now submitted that a new dispute arose between Ashby and Turnberry Homes, where Ashby, after they were unsuccessful on Lot 137 with the driveway, Ashby then started complaining about Lots 138 and 139; that they had some problem with the slope of a porch or a screened-in porch or some such thing. And Turnberry has responded back to that. And there is no claim that Ashby has filed against Turnberry on these other lots that Ashby is concerned about.

I say that all to you because all of that preceded Turnberry Homes calling Mr. Powell and asking for a holding tank on Lot 139.

THE COURT: Just so I'll understand, is the holding tank a septic tank? Or is it something else?

MR. PANTHER: It's not a septic tank, because there is a sewer line. It is a sewer line, but it is related to the waste disposal system. It's on the lot itself, like a septic tank would be, but the effluent from the house flows into the septic -- into the holding tank, which is on the lot, before it then is deposited into the sewer lines that are in the road. Okay?

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the money that's in dispute could be escrowed at these closings, which is what's being done. So when Your Honor rules -- we've set that case for trial.

THE COURT: Right.

MR. PANTHER: When Your Honor rules, if Turnberry is right, Turnberry will get that money; if Mr. Powell and Hang Rock is right, they'll get that money.

That's important to bring to your attention, because one of the reasons that is given by the defendant in this case, King's Chapel, is Turnberry hasn't paid what it is owed. So King's Chapel is denying -- they claim that they can deny sewer service because Turnberry hasn't paid Hang Rock what Hang Rock claims is owed. And that is in dispute. That will be resolved by you when that case comes to trial.

The other lawsuit that is pending before you is a separate entity of Mr. Powell's -- this one called "Ashby." And in that lawsuit, Ashby filed suit against Turnberry, claiming that a home should be torn down and rebuilt because the driveway was on a side of the street that they felt it shouldn't be on. Your Honor ruled and denied their application for a temporary injunction and dissolved their restraining order.

THE COURT: And Ashby provides the sewer service; is that right?

MR. PANTHER: Well, see, and that's a bit of a moving target for Turnberry Homes.

What we know from their materials that the defendant submitted, King's Chapel is the utility provider. It is King's Chapel who is responsible for providing sewer service to these lots. What King's Chapel has submitted is this internal agreement between King's Chapel itself and Ashby where, according to Mr. Powell's two agreements, Ashby can direct King's Chapel not to provide sewer service to particular lots. And I can point --

THE COURT: Well, what's the relationship between Ashby and King's Chapel with regard to the sewer service? Who -- who does what? Who is supposed to do what?

MR. PANTHER: Yes. What the defendant -- and I need to say what the --

THE COURT: Tell me what they say, because I've read theirs and it kind of looked to me like King's Chapel provides the tanks, but it's up to Ashby to provide the service?

MR. PANTHER: I don't think so. And --

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1 THE COURT: Is that how it works?
 2 MR. PANTHER: -- if I could, I think
 3 the best way to answer your question is to look at the
 4 defendant's materials. They included in their
 5 materials, behind tab B of this agreement --
 6 THE COURT: All right. Got it.
 7 MR. PANTHER: Okay? Turn to page 3 of
 8 that agreement, paragraph 4.
 9 THE COURT: Okay.
 10 MR. PANTHER: The first sentence of
 11 the paragraph entitled "Improvements in Physical
 12 Property" --
 13 Do you see where I am, Judge?
 14 THE COURT: Paragraph number 4 on page
 15 3, "Ashby will construct improvements"?
 16 MR. PANTHER: Right.
 17 THE COURT: Yeah.
 18 MR. PANTHER: So what this says is
 19 that Ashby is supposed to provide -- in this agreement
 20 between KCC and Ashby, Ashby is supposed to provide the
 21 holding tank and the connecting lines from the holding
 22 tank to the sewer service.
 23 And if you look at the previous page,
 24 paragraph 2.2, the last two lines of the page, what
 25 happens is once Ashby connects all their materials on

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1 the lot, then Ashby turns over the sewer service to
 2 KCC, and then KCC is supposed to provide the sewer
 3 services to the lots.
 4 So what the defendants maintain is
 5 that --
 6 THE COURT: So KCC runs the plant.
 7 MR. PANTHER: That's right. And
 8 provides -- well, and maintains the sewer lines --
 9 THE COURT: Yeah.
 10 MR. PANTHER: -- once --
 11 THE COURT: Once they're connected.
 12 MR. PANTHER: Right.
 13 THE COURT: And charges the fee.
 14 MR. PANTHER: That's right.
 15 THE COURT: The monthly fee or
 16 whatever it is.
 17 MR. PANTHER: Exactly.
 18 THE COURT: All right.
 19 MR. PANTHER: And one other point I
 20 want to bring to your attention while you have the
 21 agreement in front of you, and that is on page 4,
 22 paragraph 8.
 23 THE COURT: I'm trying to get kind of
 24 a handle. Maybe this is the wrong kind of comparison.
 25 But you know the development, the older development out

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1 there off Hillsboro Road, River Rest? River Rest?
 2 It's the Grassland community.
 3 MR. PANTHER: Yes.
 4 THE COURT: You know, they have their
 5 own sewer system -- Cartwright, I think -- when they
 6 built that subdivision out there. And they have their
 7 own sewer system. I know that, because I lived across
 8 the street, and I didn't have it. And they would never
 9 let us hook up to it. That's how I'm familiar with it.
 10 But that's what they did, you know, they --
 11 I guess Cartwright would be analogous
 12 to what KCC does. I don't know who actually put the
 13 tanks in and connected it, but Cartwright, you know,
 14 they have their own little plant up there in the hills
 15 behind River Rest, and they provide the sewer service.
 16 So that's what we're talking about;
 17 right?
 18 MR. PANTHER: Yes, very similar to
 19 that.
 20 THE COURT: Okay. Now, go ahead. You
 21 wanted to tell me about paragraph -- page 4?
 22 MR. PANTHER: Page 4, paragraph 8. It
 23 is the last five lines of the paragraph.
 24 THE COURT: "In the event Ashby" --
 25 MR. PANTHER: Yes.

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1 And according to this agreement
 2 between --
 3 Go ahead and read that.
 4 THE COURT: Yeah, let me read it.
 5 MR. PANTHER: I don't want to talk
 6 while you're reading.
 7 THE COURT: "In the event Ashby does
 8 not receive full payment" --
 9 (Pause.)
 10 Okay.
 11 MR. PANTHER: What this -- what this
 12 means is that according to this internal agreement
 13 between Powell's companies, they have agreed between
 14 themselves that if Ashby says that one of the builders
 15 hasn't done what Ashby thinks it's supposed to do, then
 16 KCC is supposed to deny services to the builder.
 17 And that's the position. I don't
 18 think that -- from all the materials that the
 19 defendants have submitted, I think that's their
 20 position; that their position is that the amount that
 21 Hang Rock says is due hasn't been paid. We agree that
 22 there's a dispute there. Ashby says that there's some
 23 problem with the design guidelines on these other lots.
 24 We dispute that. They haven't filed any claims. They
 25 haven't asked for any injunctive relief. There's no

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<p>1 litigation pending regarding these other lots. Ashby 2 just says they're dissatisfied. But that doesn't 3 entitle a utility provider to deny utility services -- 4 sewer services under state law. 5 The utility service has an obligation 6 to provide utility services to lot owners in Williamson 7 County, and the utility service can't abdicate that 8 responsibility, can't hide behind some internal 9 agreement between the provider and Ashby, its 10 affiliated entity. 11 So really all we're asking for is for 12 Your Honor to -- well, one point, I need to backtrack 13 just a minute. 14 There is no -- there is no requirement 15 in any of the materials that the defendants have 16 submitted that Turnberry has to get this holding tank 17 from Ashby. There's no requirement anywhere. And I 18 would ask them to show it to me, if they can, because I 19 don't think they will. 20 So Turnberry should be able -- 21 THE COURT: If you got your holding 22 tank from somebody else, I take it your client can move 23 forward with selling the house. 24 MR. PANTHER: Yes. The only reason 25 why Turnberry hasn't gone out in the marketplace and</p>	<p>1 MR. PANTHER: I need -- 2 THE COURT: Do you? 3 MR. PANTHER: I do. I need the Court 4 to order KCC to provide services once they're 5 connected, and I need the Court to order KCC not to 6 insist that the holding tank and the connecting lines 7 be installed by somebody other than Ashby. 8 THE COURT: You're not asking me to 9 order KCC to provide the tank? 10 MR. PANTHER: No. No. 11 THE COURT: Just once it's installed 12 to provide the service. 13 MR. PANTHER: Yes. 14 THE COURT: Okay. 15 MR. PANTHER: Now, what -- as I said 16 to you a moment ago and I want you to understand, this 17 has been a bit of a moving target. Because according 18 to the plaintiff's materials, we didn't know until they 19 submitted their materials that this internal agreement 20 between KCC and Ashby existed. We thought when we 21 filed this that it was KCC who was providing the 22 holding tank. And we thought it was -- 23 In fact, it was -- when KCC responded 24 to the Tennessee Regulatory Authority, they didn't 25 mention anything about Ashby is the one that provides</p>
Page 11	Page 13
<p>1 gotten somebody else who does this, to provide the 2 holding tank, is because, according to Mr. Powell, 3 you've gotta use Ashby. And -- 4 THE COURT: Well, if you don't, you 5 breach their contract or whatever. 6 MR. PANTHER: There is -- well, I -- 7 there is no agreement between Turnberry and Ashby, 8 Turnberry and KCC, or Turnberry and anyone else that 9 Turnberry has gotta use Ashby. 10 Now, it may affect the agreement 11 between Mr. Powell's related companies, Ashby and KCC, 12 but that doesn't have a bearing on Turnberry. 13 Turnberry should be able -- if Ashby 14 doesn't want to go provide the tank, Turnberry should 15 be able to hire somebody else, go out and install the 16 tank, and have KCC provide the utility services -- 17 sewer services. The only reason they can't is because 18 of this extra contractual requirement that you've gotta 19 use Ashby. And there is no requirement. That's just 20 something that Mr. Powell wants. Mr. Powell wants it, 21 because he's got the ability, if Ashby isn't happy, to 22 deny services. And that's just not right. 23 THE COURT: Doesn't that -- if that's 24 true then, you don't really need the mandatory 25 injunction.</p>	<p>1 the tanks. So Turnberry thought that it was KCC that 2 was refusing the tank, and that's why our initial 3 complaint was worded the way it is. 4 It was only until we found out that 5 there was this internal agreement where Ashby was 6 really providing the tank and then turning everything 7 over to KCC that it became apparent to us that you 8 don't have to order KCC to provide the tank; you just 9 have to order them to provide services once everything 10 is installed. 11 THE COURT: Okay. If they -- if they 12 don't provide the service, I take it then what you have 13 is your house ready to go, ready to sell with a big 14 disclaimer that you can't go to the bathroom. 15 MR. PANTHER: That's right. Well -- 16 THE COURT: I love that. 17 MR. PANTHER: That's right. 18 THE COURT: I guess you just tell them 19 to put a little potty-let out there and use it. 20 MR. PANTHER: Right, for a \$400,000 21 home. I mean, I don't know the price, but it's a very 22 expensive home. And there's a picture of it that they 23 have supplied. 24 THE COURT: Yeah, I saw that. 25 MR. PANTHER: It's a beautiful house.</p>

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<p>1 THE COURT: It's a nice house. 2 MR. PANTHER: It's a beautiful house. 3 The other thing about their argument 4 that just is incredulous is that one of the reasons 5 that they say that they're not providing service is 6 because the amount that Hang Rock claims is due hasn't 7 been paid. Well, that amount that they claim is due 8 doesn't end up getting paid until the home closes to a 9 homeowner. Remember that it's 17 and a half percent of 10 the contract price. Remember? And they contend that 11 that contract price is the amount shown in the closing 12 statement between Turnberry and the end user. There 13 won't be a closing between Turnberry and the end user, 14 because there's no service. So we can't do the very 15 thing that they say is the reason why they've denied 16 service. 17 THE COURT: Now, they correctly point 18 out that, you know, mandatory type of injunctions are 19 very rarely granted. 20 MR. PANTHER: They are. 21 THE COURT: And they say that this is 22 a situation for which you would have an adequate remedy 23 at law. Can you address that point? 24 MR. PANTHER: Be glad to. Two points 25 to make. One is --</p>	<p>1 work, so I can make sure. 2 MR. PANTHER: As you can see, the 3 house is built and ready to go. 4 THE COURT: Right. 5 MR. PANTHER: Turnberry Homes can't 6 sell it, so they're incurring interest carrying costs 7 while the house sits there. That is -- that is an 8 element of damage. That's a money damage. That's an 9 adequate remedy at law. That's not what I'm talking 10 about. 11 What I'm talking about -- and the 12 reason why we don't have an adequate remedy at law is 13 because we can't get sewer services and therefore can't 14 sell the house until KCC provides service. So -- and 15 that cannot be rectified with a money damage award. We 16 cannot get some other provider than KCC to provide 17 sewer services for this lot. We just can't. Because 18 they are the only sewer provider. And that is what 19 triggers, what warrants injunctive relief. 20 One other point to make -- 21 THE COURT: I see. So, in other 22 words, this house could sit there in perpetuity. 23 MR. PANTHER: Yes. 24 THE COURT: Until they decide to 25 provide sewer service. And, in theory, they could</p>
Page 15	Page 17
<p>1 THE COURT: Because I'm going to ask 2 them, when they get up, "How?" But I want to hear your 3 side of how you can under this scenario. 4 MR. PANTHER: Well, because KCC 5 controls the sewer service, unless KCC either 6 voluntarily or by your order accepts sewer service, 7 we're dead in the water. 8 Like you point out, we would have to 9 disclaim to an owner that you can't -- there's no 10 sewer. We've got a really nice tent. 11 THE COURT: Yeah. 12 MR. PANTHER: So -- 13 THE COURT: So in all probability, of 14 course, the house, it won't get sold. 15 MR. PANTHER: That's right. 16 THE COURT: And how would you 17 calculate your damages? Because that's what we're 18 talking about. If you could calculate your damages, we 19 would have a remedy at law. 20 MR. PANTHER: There is a remedy at law 21 that pertains to the loss attributable to Turnberry as 22 a result of not being able to close this house earlier 23 than they otherwise would. No question about that; 24 there's an adequate remedy at law on that. 25 THE COURT: Tell me how that would</p>	<p>1 never decide -- 2 MR. PANTHER: Right. 3 THE COURT: -- to provide sewer 4 service. 5 MR. PANTHER: That's right. That's 6 right. 7 THE COURT: All right. 8 MR. PANTHER: One other point to make, 9 and that is their adequate -- their administrative 10 remedy -- that we haven't exhausted our administrative 11 remedies. 12 They claim that because Turnberry made 13 a complaint with the Tennessee Regulatory Authority, 14 that that complaint has to work its way through until 15 Your Honor would be able to take this up. A few points 16 to make on that. 17 One, the statute doesn't require 18 Turnberry to make a complaint with the Regulatory 19 Authority. The statute doesn't prohibit litigation to 20 redress a wrong that's being committed. And the -- the 21 administrative remedies would kick in. 22 If say, for instance, the Tennessee 23 Regulatory Authority made a ruling that Turnberry felt 24 impacted it negatively and Turnberry wanted the 25 Tennessee Regulatory Authority to reverse whatever</p>

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<p>1 decision it might have made, then I would agree that to 2 change some ruling that the Tennessee Regulatory 3 Authority might make, Turnberry would have to exhaust 4 its administrative remedies as to the Authority. But 5 that's different from this case. 6 This would be analogous to someone 7 making a complaint against a realtor with the Tennessee 8 Real Estate Commission or against a home builder with 9 the Tennessee Board for Licensing Contractors. They 10 have supervisory authority over their members just like 11 the Regulatory Authority has authority over utility 12 providers. 13 So they are different and can be 14 concurrent processes. And Turnberry has made a 15 complaint because it feels that KCC is acting contrary 16 to the law. But that doesn't divest your jurisdiction. 17 THE COURT: Does the Regulatory 18 Authority have the authority to order them to provide 19 the service, the sewer service? 20 MR. PANTHER: Your Honor, without 21 looking at the statute, I can't answer that question. 22 While the defendants are making their argument, I'll 23 try to look that up. 24 THE COURT: Okay. Did you -- I mean, 25 is that -- what were you complaining about? What did</p>	<p>1 to litigation. 2 THE COURT: Yeah. 3 MR. PANTHER: And there is no 4 requirement. 5 I found the letter that Turnberry 6 wrote to the Tennessee Regulatory Authority requesting 7 assistance. In the defendant's materials it's tab A, 8 so you can see exactly what they asked for. 9 THE COURT: Okay. 10 (Pause.) 11 Okay. 12 MR. PANTHER: In reading the letter, I 13 think it corrected an earlier statement that I made. 14 In the last paragraph, Turnberry does 15 ask for the TRA to assist and intervene. It does not 16 go so far as to ask that they order KCC to provide 17 service, but that's certainly what they want. 18 THE COURT: Well, I read this letter 19 and basically read it as, "What can you do to help us? 20 We're stuck." 21 MR. PANTHER: Right. That's right. 22 THE COURT: And I don't know. I don't 23 know what they can do. That's why I was asking you to 24 check that out. I don't know if they have the 25 authority to order them to provide the service or not.</p>
Page 19	Page 21
<p>1 you want the Regulatory Authority to do in your 2 complaint that you filed? 3 MR. PANTHER: I'm looking for the -- 4 I'm looking for the letter so I can answer you 5 specifically. 6 THE COURT: Okay. 7 MR. PANTHER: I feel certain, though, 8 that Turnberry was simply trying to get sewer service 9 for its lot. No question about it. Much like a 10 homeowner tries to get relief from a contractor for 11 what they believe is a violation of the Tennessee 12 contractor licensing law or against an agent against 13 the brokers statute. 14 THE COURT: The administrative issue, 15 for instance, I know with a discrimination claim you do 16 have to go through the EEOC before you can get into 17 court. I'm pretty sure about that. 18 MR. PANTHER: I think that's right. 19 THE COURT: Because I think the 20 statute requires that. 21 MR. PANTHER: That's exactly right. 22 THE COURT: But you're saying the 23 statute doesn't require that in this area. 24 MR. PANTHER: No, as a -- no. I 25 would -- the term I would use is a condition precedent</p>	<p>1 MR. PANTHER: Well, as -- 2 THE COURT: Or whether they could just 3 put some sanction on them that would be so burdensome 4 they would want to provide the service. 5 MR. PANTHER: I'll try to -- 6 THE COURT: Pull their license or -- I 7 don't know. 8 MR. PANTHER: I'll try to ascertain 9 that while -- 10 THE COURT: Okay. 11 MR. PANTHER: -- the defendants are 12 making their statements to you. 13 THE COURT: All right. 14 MR. PANTHER: Any further questions, 15 Judge? 16 THE COURT: I think I've got it. 17 MR. PANTHER: Okay. Good. Thank you 18 very much. 19 THE COURT: Mr. Welch. 20 MR. WELCH: Thank you, Your Honor. 21 I'm Chuck Welch, on behalf of King's Chapel Capacity. 22 I've heard a lot of new stuff here 23 this morning, and I'm having a hard time getting my 24 arms around the plaintiffs arguments. 25 The best I can tell from everything</p>

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1 that's been filed in this proceeding, the petition for
2 an injunction, for a mandatory injunction, was for a
3 holding tank.

4 THE COURT: That's what I thought it
5 was for.

6 MR. WELCH: And I've not heard -- this
7 is the first time I've heard that the plaintiffs are
8 asking the Court to order the utility to provide
9 services. And I'll get to all that in just a second.

10 And just one comment as to the other
11 lawsuits, the best I can tell has nothing to do with
12 why we're here this morning. We'll be answering this
13 complaint, and we'll be filing a counterclaim.

14 There is an involved and complex
15 situation regarding the right to ownership of the lots
16 and a contractual dispute. And the Court will get to
17 that -- the Court will have that before it. It's just
18 not here today.

19 THE COURT: Okay.

20 MR. WELCH: So anything Mr. Panther
21 said this morning about these other lawsuits I suggest
22 to Your Honor is just totally irrelevant.

23 THE COURT: Well, let me ask you this.
24 Is it going to be an issue that -- the lot in question
25 is 139; right? It looks like it is.

1 trying to figure out, you know, where you guys were
2 coming from.

3 So your clients may be saying, well,
4 we want to buy the house back?

5 MR. WELCH: Well --

6 THE COURT: Or we're entitled to buy
7 the house back.

8 MR. WELCH: -- they said before the
9 houses were constructed that they would like to buy the
10 lots back. Now --

11 THE COURT: Are they saying they just
12 want to buy the lot back and Turnberry can have the
13 house?

14 MR. WELCH: No, sir.

15 THE COURT: Okay.

16 MR. WELCH: I would like to take that
17 position. That would be a pretty good position to
18 take, to --

19 THE COURT: We'll send a skid loader
20 over there and just pick it up.

21 MR. WELCH: I'm afraid that might be a
22 little tough.

23 THE COURT: All right.

24 MR. WELCH: Let me --

25 THE COURT: Well, the reason I was

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1 MR. WELCH: Well, it is. However, I
2 think 138 will also become an issue as we move along.

3 THE COURT: Okay. Well, is it going
4 to be an issue of who owns Lot 139? Or is that
5 undisputed that Turnberry does own it? Or is that
6 going to be a --

7 MR. WELCH: We would -- we --
8 Your Honor, Turnberry has title to the property at this
9 point in time.

10 THE COURT: Okay.

11 MR. WELCH: But Ashby will be
12 asserting a right, a contractual right that gives it an
13 interest over and above where the parties -- or where
14 the plaintiffs would suggest that they are right now.
15 And that interest is that --

16 It's part of -- it's part of our
17 response, Your Honor, Ashby gave notice to Turnberry
18 before any lots -- any houses were started on the
19 property that they had a right, pursuant to the
20 contract, to repurchase the lots because of a breach of
21 the contract.

22 And that's going to get pretty
23 involved, Your Honor, but I'm here today on the
24 injunction.

25 THE COURT: That's fine. I was just

1 asking is because -- I don't want to get into mediation
2 here, but it kind of -- as you guys kind of slug this
3 out, it kind of seems like it would be prudent to
4 finish this house one way or the other, and then we can
5 fight about the money. Because as long as you haven't
6 finished it, aren't we -- isn't everybody kind of
7 getting hurt? I mean, that's just my sense of it, but
8 maybe I'm wrong.

9 MR. WELCH: Let me -- let me -- let
10 me -- and that's true that -- Your Honor is right on
11 point with that, and that's what it'll come down to is
12 argument about the money.

13 But let me -- let me just give a
14 little bit of background about where we are with the
15 utility.

16 THE COURT: Okay. Yeah, tell me about
17 the utilities.

18 MR. WELCH: Our court reporter --
19 Ms. Trish -- and I have the -- and Mr. Hollin -- have
20 the dubious distinction to having seen these on-site
21 systems develop down at the Tennessee Regulatory
22 Authority. We have represented not only King's Chapel
23 Capacity but others. And it's -- the on-site
24 wastewater sewer treatment facility is a new
25 phenomenon, much to the chagrin of local -- many local

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1 governments. Because it's taken thousands and
2 thousands of acres in Williamson County that couldn't
3 otherwise be developed because it didn't have sewer
4 service and allowed for sewer service so that there
5 could be the development. Of course, that hurts local
6 governments because they don't have the infrastructure
7 to take care of the population that they didn't expect
8 would be coming in, causing a lot of problems
9 otherwise.

10 But it's not much unlike the typical
11 situation with the developer --

12 THE COURT: Was I right then talking
13 about River Rest? Was I -- is that what you --

14 MR. WELCH: Yes, Cartwright is a -- is
15 a -- is --

16 THE COURT: Is one of those little
17 independent --

18 MR. WELCH: Yes, sir.

19 THE COURT: -- sewer -- is it sewer --
20 What should we call it? It's a
21 sewer --

22 MR. WELCH: It's an on-site sewer
23 system.

24 THE COURT: On-site sewer system.

25 MR. WELCH: Yes, sir.

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1 THE COURT: And they -- they run it at
2 a profit, I guess; right? It's not a governmental
3 entity.

4 MR. WELCH: It's regulated by the
5 Tennessee Regulatory Authority, and their rates are
6 regulated.

7 THE COURT: Okay.

8 MR. WELCH: And their rate of return
9 is regulated.

10 THE COURT: Okay.

11 MR. WELCH: Now, again, it's not much
12 unlike what we've known for years. You know, a
13 developer goes out, and he can either get sewer to the
14 property through -- in Tennessee it's mostly
15 municipalities that provide the sewer service.

16 THE COURT: Right. Right. I guess
17 once it gets in the city limits, then the city -- don't
18 they have to provide sewer service?

19 MR. WELCH: They -- they do.

20 THE COURT: Okay.

21 MR. WELCH: And the extraordinary
22 thing about all this is that -- and we've told our
23 clients over the years, you will disappear. Because
24 when you are annexed -- you're exactly right -- the
25 municipality has to provide the service. They're not

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1 going to do it with an on-site system. They're going
2 to have their centralized system available, and the
3 on-site system is gonna disappear.

4 THE COURT: Oh, you mean, so they'll
5 actually go out and dig another ditch and hook up a
6 whole other sewer system?

7 MR. WELCH: Well, that's a little
8 speculative on my part. But I can assure you that
9 these things are --

10 THE COURT: If I was a taxpayer, I
11 would kind of have a revolt, wouldn't I? I mean, I've
12 already got a sewer system. Why do I have to pay for
13 another one? I'm just thinking.

14 MR. WELCH: Well, but you don't
15 have --

16 THE COURT: See what I'm saying?

17 MR. WELCH: I understand what you're
18 saying.

19 THE COURT: You're going to charge me
20 taxes so you can build a sewer system and I've already
21 got one.

22 MR. WELCH: I suggest to Your Honor
23 there will be a line formed trying to get on the
24 centralized system.

25 THE COURT: Because it's a lot better?

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1 MR. WELCH: It's a lot better.

2 THE COURT: Okay.

3 MR. WELCH: These are good, but the
4 centralized system is a lot better.

5 THE COURT: Well, I lived over there
6 on McIntyre Court, which is on the other side of Moran,
7 and we all -- they had septic tanks.

8 MR. WELCH: Right.

9 THE COURT: I'm sure you've read about
10 those problems, how those things have been around so
11 long everybody is having failures. They're just worn
12 out.

13 MR. WELCH: This is the -- this is the
14 answer. The on-site system is the answer to the septic
15 tank. There's so many problems with the septic tank,
16 and the on-site system has now allowed for all this
17 development, because it is good enough to -- you don't
18 have to sell that septic tank to a homeowner.

19 THE COURT: Okay.

20 MR. WELCH: But in any event, again,
21 not much different than the situation we've always had.
22 A developer would come and, you know, one of the things
23 he would have to consider in developing a piece of
24 property is, Can I get sewer?

25 THE COURT: I take it he's out in the

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1 county. We're not in the city limits.
2 MR. WELCH: Well, even in the city.
3 THE COURT: Okay.
4 MR. WELCH: Even in the city, there's
5 property that doesn't have sewer. So the developer has
6 to run the sewer line to the city, and he has to pay
7 for it.
8 THE COURT: Okay.
9 MR. WELCH: Now, the homeowner pays to
10 connect.
11 THE COURT: Oh, I'm sure. And the
12 homeowner ultimately pays for that running of the line
13 in the price of the home.
14 MR. WELCH: That's usually the way
15 business operates, Your Honor.
16 THE COURT: Okay.
17 MR. WELCH: So not any different here.
18 So what happens here -- and this is the usual, if
19 not -- I don't think there's an exception. The
20 developer --
21 And I will say this, what's a little
22 unique about this situation is the developer and the
23 utility are basically the same person, although there's
24 other members involved.
25 THE COURT: Okay.

1 in the public right-of-way --
2 THE COURT: Right.
3 MR. WELCH: -- to the main plant.
4 Again, not any different than what
5 we've always had, because the developer always had to
6 pay to bring the sewer to the developed property.
7 Now, also like the usual situation,
8 the utility has to accept it. It has to accept it.
9 You can't just come in there and throw something in
10 that's not going to fit into the system or is going to
11 otherwise frustrate our provisioning of services to
12 others. It has to be according to these specs.
13 THE COURT: When you say "the
14 utility," who is the utility in this case?
15 MR. WELCH: In this case it's King's
16 Chapel Capacity.
17 THE COURT: Okay. King's Chapel
18 says -- they have to say, "Oh, we've got to accept this
19 system before we agree to provide the service."
20 MR. WELCH: Right. They're under no
21 obligation to accept it if it doesn't meet the specs.
22 Now, that's -- it's not a difficult
23 situation, because the specs are developed through the
24 Tennessee Department of Conservation and Environment
25 They're also reviewed by the Tennessee Regulatory

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1 MR. WELCH: They're basically the same
2 person.
3 So the developer comes in, and he
4 can't -- he can't attach to the municipality. So what
5 he does -- and he avoids that cost. But he's got
6 another cost; he's gotta build the system. And then
7 he's gotta find a provider. And King's Chapel Capacity
8 is that provider. It applied some three years ago for
9 a certificate of public convenience and necessity to
10 provide sewer services, and it was awarded that
11 authority and has the authority, as Mr. Panther says,
12 to serve that area.
13 Now, that's not exclusive authority,
14 and we've been battling that out down at the Tennessee
15 Regulatory Authority for a couple of years now.
16 So the developer pays for the system,
17 finds the provider, and dedicates that property, gives
18 it to him.
19 THE COURT: The on-site plant or
20 whatever is --
21 MR. WELCH: Gives him the whole
22 system.
23 THE COURT: Okay.
24 MR. WELCH: Which would include the
25 lines on the street, running down the street to the --

1 staff, and they're -- we've got those before we start,
2 so you know what you've gotta do.
3 THE COURT: Okay.
4 MR. WELCH: And so now we have the
5 developer puts in the facilities and offers it to the
6 utilities. Until that's dedicated, the utility can't
7 do anything.
8 THE COURT: Okay.
9 MR. WELCH: And in this case it hasn't
10 been dedicated. In this case it hasn't even been put
11 in yet.
12 THE COURT: The line is not in yet.
13 MR. WELCH: The line is in. Because
14 the line, Your Honor, would be put in -- let's say,
15 okay, we're gonna do phase one over here.
16 THE COURT: Okay.
17 MR. WELCH: I'm gonna put my lines in
18 there first.
19 THE COURT: The line is in and the
20 plant is in, I guess.
21 MR. WELCH: The plant is in, yes, sir.
22 THE COURT: So the only thing that's
23 not in is the tank.
24 MR. WELCH: The tank and the
25 connecting lines.

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1 THE COURT: For the tank and the line
 2 that runs from the tank to the big line.
 3 MR. WELCH: Yes, sir.
 4 THE COURT: Okay.
 5 MR. WELCH: That has not been put in.
 6 THE COURT: And I know why. You guys
 7 are just --
 8 MR. WELCH: Well, and, you know,
 9 the -- we're here about the wrongful denial of sewer
 10 service --
 11 THE COURT: Can I ask you a question?
 12 Well, what if they go out and say, "Okay, we're going
 13 to get -- we'll put our own tank in, and we'll connect
 14 it up?"
 15 MR. WELCH: As long as it's the right
 16 tank, put in the right way, it'll be accepted.
 17 THE COURT: Okay. I -- I -- I sense
 18 agreement here, because they -- you're not going to put
 19 in a sub-par tank, are you, Mr. Panther?
 20 MR. PANTHER: No, no.
 21 THE COURT: That would just cause more
 22 problems.
 23 MR. WELCH: So, Your Honor, why are we
 24 here this morning?
 25 THE COURT: Yeah, I --

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1 MR. WELCH: If he can put in his own
 2 tank, why are we here?
 3 THE COURT: I think maybe they're
 4 being cautious. They don't want y'all to get mad at
 5 them if they decide to put their own tank in.
 6 MR. WELCH: These parties are way
 7 beyond mad on both sides.
 8 THE COURT: Okay. They don't want you
 9 to come in and hammer them if they --
 10 But it sounds to me right at this
 11 point then he doesn't need an injunction from me.
 12 MR. WELCH: No, sir.
 13 THE COURT: It sounds like he can put
 14 his tank in and connect it up. And once he does that
 15 and -- provided he puts the right tank in, uses the
 16 right connector, then KCC is ready to provide the
 17 service.
 18 Is that -- am I missing something? Is
 19 that correct?
 20 MR. PANTHER: It is from our
 21 perspective.
 22 MR. WELCH: Well, let me -- if I
 23 could, just let me answer that.
 24 THE COURT: And then start getting
 25 paid.

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1 MR. PANTHER: Sure.
 2 MR. WELCH: Ashby doesn't have any
 3 obligation at all to provide a holding tank, to provide
 4 the connections to KCC's -- the utility's lines at all.
 5 There's no contractual obligation to do that.
 6 THE COURT: Who's been doing it in
 7 the -- in all these other cases? Who provides --
 8 MR. WELCH: It's the developer.
 9 MR. PANTHER: Ashby.
 10 THE COURT: So it is Ashby.
 11 MR. WELCH: Well, it's -- it's -- yes,
 12 sir, they had it done.
 13 THE COURT: Right. I'm just asking
 14 how has it been done.
 15 MR. WELCH: Yes, sir. Per agreement.
 16 THE COURT: Per agreement. And
 17 they're getting paid for it, but for some reason they
 18 don't want to do this one.
 19 MR. WELCH: Actually -- well, of
 20 course, they don't want to do this one.
 21 THE COURT: Okay. Well, I'm not
 22 inclined to make them do it, but I'm certainly inclined
 23 to -- if they don't want to, I'm going to let Turnberry
 24 do it.
 25 MR. WELCH: Turnberry could do it if

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1 they do it right. That'll be okay, I think.
 2 THE COURT: Okay. And then if -- if
 3 there's not a good reason from KCC for not providing
 4 that service, I am going to be upset.
 5 MR. WELCH: Well, and I suggest to
 6 Your Honor you won't be the only one.
 7 The Tennessee -- the wrongful denial
 8 of service -- and I think if Your Honor will take a
 9 look at their regulatory powers and jurisdiction, it's
 10 exclusive on the wrongful denial of service.
 11 THE COURT: So that's up to them, not
 12 to me? Is that what you're telling me?
 13 MR. WELCH: Yes, sir.
 14 THE COURT: Okay. I'm not being
 15 snooty. I just wanted to know.
 16 MR. WELCH: Yes, sir.
 17 THE COURT: Okay.
 18 MR. WELCH: I believe that's
 19 exclusive -- that part of it is exclusive jurisdiction.
 20 THE COURT: Okay. Because it seems to
 21 me that would almost become -- it depends on how you
 22 look at it -- mandatory or prohibitive. An injunction
 23 could go down that says you may not deny service.
 24 MR. WELCH: And if it's a wrongful
 25 denial, that's exactly what the Tennessee Regulatory

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1 Authority will tell them.
 2 However, the -- when the -- when the
 3 utility down at the Tennessee Regulatory Authority gets
 4 the certificate of public convenience and necessity to
 5 provide the service of -- the authority to provide that
 6 service, they will file their contract between the
 7 developer and the utility, and that's there for review
 8 by the Tennessee Regulatory Authority. And these
 9 contracts are approved by the Tennessee Regulatory
 10 Authority.

11 So if there's restrictions in those
 12 contracts that are reasonable that would affect
 13 service, they'll take a look at it, and they'll say
 14 this is either wrongful denial or it's not.

15 And let me tell Your Honor something
 16 else. If it were a homeowner, a consumer, which is --
 17 the Tennessee Regulatory Authority's charge is to
 18 protect the consumer -- that's the main theme of
 19 everything they do, in electricity and telephone and
 20 everything -- there would be serious problems.

21 THE COURT: Sure. Well, we can't get
 22 to that stage because no one in their right mind would
 23 buy a house without a sewer -- without some --

24 MR. WELCH: Well, you can't get a
 25 building occupancy permit.

1 here?

2 MR. WELCH: No, sir.

3 THE COURT: Okay.

4 MR. WELCH: And if I can just say one
 5 thing about the -- about the irreparable harm.

6 If some catastrophic event happened --
 7 and, you know, you had a dialogue with Mr. Panther
 8 about, well, you can't use the house; it can sit there
 9 in perpetuity.

10 Well, if some catastrophic event
 11 happened and the entire house and lot were totally
 12 destroyed and there was nothing but an abyss, we could
 13 calculate his damages. We know what he has invested.
 14 We know what his interest rate is to carry. All the
 15 component parts of determining what his damages are are
 16 very easily quantifiable in money, money damages.

17 THE COURT: So in theory, if there was
 18 a refusal to provide service, then I guess what I would
 19 have to do is say, okay, I'm going to let them put on
 20 proof of what they could sell the house for had it
 21 had -- if it had service -- and come up with a number
 22 of what the house would sell for, and then that would
 23 be the damage that they would be entitled to.

24 MR. WELCH: Absolutely.

25 THE COURT: You know, 800, 900

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1 THE COURT: Okay.

2 MR. WELCH: You can't take possession
 3 of it.

4 So what we have here is a developer --
 5 I mean, is a home builder that has money invested.
 6 There is a dispute between really Ashby -- King's
 7 Chapel. And I say King's Chapel. That's a different
 8 personality here, even though John Powell is the chief
 9 manager of that LLC. You know, he's got this
 10 regulatory layer, and King's Chapel, therefore, has
 11 sort of a different personality, because you have to
 12 comply with these rules.

13 THE COURT: Yeah, but Mr. Powell calls
 14 the shots for both.

15 MR. WELCH: Well, Mr. Powell certainly
 16 calls the shots for Ashby, although he does have a
 17 partner, another member of the LLC, which is an equal
 18 partner. But he is the chief manager.

19 But when he calls the shots from
 20 King's Chapel, his calling the shots is restricted.

21 THE COURT: Sure.

22 MR. WELCH: Because there is a -- and
 23 we just got through adopting a set of rules for these
 24 on-site sewer systems.

25 THE COURT: Okay. Well, is Mr. Powell

1 thousand dollars is what we're talking about.

2 MR. WELCH: Sure.

3 THE COURT: I don't know what the
 4 house is worth. I'm just --

5 MR. WELCH: Right.

6 THE COURT: Is that what you're saying
 7 then?

8 In other words, if I were to find that
 9 your client wrongfully is withholding this service,
 10 which makes their property worthless, then in a sense
 11 you've condemned it in a way.

12 MR. WELCH: Exactly.

13 THE COURT: You have condemned it.

14 And, therefore, they're entitled to whatever they can
 15 show that house would have sold for on the open market
 16 with a working sewer system.

17 MR. WELCH: Absolutely.

18 THE COURT: Okay. That seems like a
 19 high game of risk your client is engaging in, to me.
 20 Isn't it? To be responsible for the entire purchase
 21 price of the house?

22 MR. WELCH: I don't think so,
 23 Your Honor, and I'll tell you why.

24 THE COURT: Okay. I mean, if they
 25 lose.

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1 MR. WELCH: There's no obligation on
2 Ashby -- certainly not any obligation on the utility.
3 The utility doesn't own -- ultimately. Well, it -- I
4 don't -- I guess it ultimately owns the tank. And it
5 has an easement. But there's no obligation on the
6 utility to construct and install, none whatsoever,
7 and --

8 THE COURT: Oh, you're talking about
9 the tank and hook it up.

10 MR. WELCH: The tank or the connecting
11 lines or anything else that would be constructed --

12 THE COURT: Okay. Well, I think
13 Mr. Panther would agree with that. He says he has
14 looked at the contract and there doesn't appear to be
15 any obligation for them to purchase it from you; it's
16 just that's the way it's been done. And I assume
17 that's because things run a lot smoother. If they
18 purchase it from you, they're much more likely to get
19 service and not have hiccups and that kind of thing, I
20 guess.

21 MR. WELCH: And one of the -- one of
22 the problems we have, Your Honor, let me remind you
23 about the first lawsuit we were -- that Mr. Panther
24 talked about.

25 You found for the defendant on the

1 municipality.

2 THE COURT: Right.

3 MR. WELCH: If the engineer comes out
4 and the TDEC guy comes out and they say it's okay and
5 cover it up, then we don't have anything to argue down
6 at the Tennessee Regulatory Authority.

7 THE COURT: Well, the reason I was
8 asking if Mr. Powell was here, I was just going to ask
9 you, it just would seem to me he's -- isn't he kind
10 of -- by not -- by saying I'm not going to provide the
11 tank, I don't know -- maybe it's not a big deal --
12 isn't he kind of cutting himself out of some money he
13 could be making? It seems that way.

14 MR. WELCH: His claim, I don't think,
15 will go away if he goes ahead and puts the tank in.

16 THE COURT: I just was curious --

17 MR. WELCH: And his major problem is
18 Turnberry again did not file design review plans, did
19 not show the utilities or engineer that would inspect
20 that tank where it was going. And I think he's just
21 fed up with trying to cooperate.

22 THE COURT: He's -- he's mad.

23 MR. WELCH: And he doesn't have any
24 obligation to put the tank in.

25 THE COURT: Right. Oh, I'm not saying

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1 driveway issue. There were reasons for that. But
2 Your Honor also said the home builder needs to submit
3 design review plans for these houses. We were looking
4 at the transcript; I think we filed it with our
5 response. That didn't happen this time either. I
6 mean, what do the Turnberry folks -- what are they
7 trying to do?

8 Those design review plans will show
9 where that tank goes. And when that tank is installed
10 but not covered up, an engineer -- an engineer and a
11 sewer operator, which is licensed by TDEC, have to look
12 at it.

13 THE COURT: Probably somebody from
14 codes, too, I guess.

15 MR. WELCH: Yes, sir. And so they'll
16 come out and look at it and say, "It's okay to cover
17 up, and we'll accept that" or they won't. It's like
18 any inspection you have in the construction process.

19 THE COURT: And if they don't, you
20 aren't gonna provide the service; right?

21 MR. WELCH: That's right.

22 THE COURT: If they don't get a clean
23 bill of health from those inspections.

24 MR. WELCH: It won't -- that part of
25 it, I submit to Your Honor, will not be up to the

1 he does. I'm just looking at it from more of an
2 objective businessman. I would go, well, I'd just as
3 soon make a few extra bucks here. But if he doesn't
4 want to, that's up to him.

5 Well, fellas, I don't think at this
6 point we really have a dispute. I don't think the
7 plaintiff is entitled to an injunction, because I don't
8 think they need one.

9 MR. PANTHER: I think --

10 THE COURT: I think they can go in and
11 put their tank in. And then if it's inspected, it
12 passes the inspection, let's hook it up.

13 MR. WELCH: Certainly at this point if
14 Mr. Panther is actually requesting -- which I've heard
15 for the first time this morning -- if he's really
16 asking this Court to instruct or enjoin the utility to
17 provide those services, at the very minimum it's
18 premature. We don't have anything to connect to.

19 THE COURT: Right. And your clients
20 are not objecting to him putting his own tank in as
21 long as they do it correctly and use the right tank.
22 Is that -- that's what I heard you say. Is that
23 correct?

24 MR. WELCH: Certainly the purchase of
25 the tank I could agree to. And I don't want to mislead

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1 the Court, nor do I want to be bound by the fact that
2 I'm not sure about the installation.

3 THE COURT: Well, does your guy want
4 to install it?

5 MR. WELCH: He would want it installed
6 by somebody that knows how to install them. And these
7 home builders typically do not know how to install
8 them.

9 THE COURT: Okay. Do you know who
10 that would be?

11 MR. WELCH: I do not. I mean, it
12 would be done -- on these other lots that we've talked
13 about, it's been done at the direction of Ashby. But I
14 don't think that Ashby has its own employees or -- it
15 would have a contractor that would know how to do that.
16 It wouldn't have its own employees that come in and do
17 it.

18 THE COURT: I mean, it doesn't sound
19 to me like it would be terribly difficult to put a tank
20 in the ground, but I'm sure it's got to be level and
21 it's got to flow correctly.

22 MR. WELCH: Well, the biggest problem
23 Your Honor, is they break.

24 THE COURT: The what?

25 MR. WELCH: They break.

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1 THE COURT: Oh, they break.

2 MR. WELCH: If you don't know how to
3 handle them.

4 THE COURT: If you're putting them in
5 and you're rough with them, they break the tank?

6 MR. WELCH: Well, in fact, my
7 understanding -- obviously, I've not done any of this
8 kind of work, but it's my understanding that just
9 sitting on unlevel ground will break them.

10 THE COURT: Just the weight?

11 MR. WELCH: Yes.

12 THE COURT: Well, Mr. Panther, have
13 you -- what do you think?

14 MR. PANTHER: Your Honor, I just want
15 to avoid leaving here and not getting sewer service.

16 THE COURT: Okay.

17 MR. PANTHER: Now, can I address
18 something?

19 THE COURT: I want you to avoid that,
20 too, because that means I have to come back in here and
21 deal with this mess.

22 MR. PANTHER: I don't want to deal
23 with this mess.

24 THE COURT: No pun intended.

25 MR. PANTHER: The only reason

1 Turnberry has gone to Ashby for these tanks is because
2 they were told they had to. There's an affidavit from
3 a Wayne Stein that the defendant submitted, whose job
4 it is to install these holding tanks for Ashby or
5 King's Chapel. We'll use him.

6 Your Honor, it's never been about not
7 installing it correctly. It's been about having to go
8 to Ashby and Ashby refusing.

9 And so if Your Honor will rule that
10 provided Turnberry installs the tank -- give Ashby ten
11 days to do it. And if Ashby doesn't do it in ten days,
12 Turnberry is entitled to use whoever they want to --
13 provided they do it correctly -- to install the tank.

14 And once it's done correctly, Ashby is
15 obligated to accept it. That's all we're asking for.
16 That's all he's ever been asking for.

17 THE COURT: As long as we define
18 "correctly" by passing whatever inspections are
19 required.

20 MR. PANTHER: Yes.

21 Now, I need to --

22 THE COURT: Because I don't want to
23 get into a fight on that.

24 MR. PANTHER: Correct.

25 I need to bring to your attention,

1 TDEC doesn't inspect it; the county doesn't inspect it,
2 because it's private. Okay?

3 THE COURT: Who does?

4 MR. RICHARD BELL: No one.

5 THE COURT: Nobody? So these have
6 been put in without anybody checking them?

7 MR. PANTHER: Ashby. And Ashby's --
8 or KCC's sole contractor who Turnberry has had to use.

9 THE COURT: Okay. Well, it sounds to
10 me like what I ought to do is let you buy that tank, if
11 you want to buy it, and have him install it.

12 MR. PANTHER: Fine.

13 MR. WELCH: But, Your Honor, Ashby is
14 not a party to what we're here on today. Ashby is not
15 a party. The only defendant we're talking about here
16 today is the utility.

17 THE COURT: Well, they need to move
18 forward with this house. And I want to be fair to both
19 sides.

20 And based on what I've heard, I'm
21 going to allow Turnberry to purchase their own tank,
22 and I am going to give Ashby first right of refusal so
23 that if they wish to install this tank pursuant to
24 their specifications, they will have -- ten days sounds
25 reasonable to me.

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1 Unless, Mr. Welch, you think that's
2 unreasonable.

3 MR. WELCH: They're ordered and
4 shipped, Your Honor. They're not -- they're not
5 manufactured or sold locally.

6 THE COURT: I would say ten days from
7 the date it's on site.

8 MR. WELCH: Delivered by the
9 third-party vendor?

10 THE COURT: Right. Ten days from the
11 date it reaches the property in question. Then Ashby
12 has first right of refusal to install it and get paid
13 for it. If they don't want to, then Turnberry is --
14 it's their discretion.

15 And I won't look kindly on, if that
16 happens, Ashby coming in and whining about it later.
17 In fact, I may just preclude them altogether, because
18 they had the opportunity to do it just like they wanted
19 to. So I better not hear from them that they're
20 whining about it after the fact, when I gave them the
21 chance. Now, that's fair. That's common sense. You
22 don't come back on that.

23 MR. WELCH: Common sense would have
24 done a lot, Your Honor, in the relationship between
25 these two people, but for --

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1 But that's one way to approach it is
2 everything is fine, but when you get on that stand
3 you're by yourself, I can't help you, and you're gonna
4 get ripped to pieces because you're unreasonable.

5 MR. WELCH: Well, you know,
6 Your Honor, I appreciate that, and there's been
7 unreasonableness, and it's been on both sides.

8 THE COURT: And I'm not saying that --

9 MR. WELCH: It's been on both sides.
10 Because I was amazed when I found out there had been no
11 design review submitted on this lot after what we went
12 through in the first proceeding.

13 THE COURT: Yeah.

14 MR. RICHARD BELL: You wouldn't accept
15 the application.

16 THE COURT: Unh-unh. Now, see, that's
17 the kind of thing I won't allow. We're not gonna do
18 that.

19 And you'll need to know it's -- it's a
20 fresh slate every time we come in here, because I
21 barely remember the driveway thing. So don't -- don't
22 worry about, you know, "Oh, the judge has a bad
23 impression." I really don't. But I have impressions
24 today. We'll come back, and I'll -- we'll start all
25 over again. I'm just -- I'm just trying to help you

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1 THE COURT: I know. I can tell --

2 MR. WELCH: -- whatever reason, we've
3 abandoned that.

4 THE COURT: Well, I can tell --

5 Well, you know what? In some
6 respects, Mr. Welch, it's your duty to get a hold of
7 Mr. Powell and get him in a headlock or whatever you
8 need to do and say, "Look, do you really want to act
9 this way, because it's" -- I've had this conversation
10 with my clients before. And it goes like this, because
11 I've had it happen to me.

12 They sound really tough in their
13 office: "We're gonna go in and we'll show those SOBs,
14 by golly." And then that guy gets on the stand and he
15 starts getting torn apart by Mr. Panther. And when he
16 gets off, I look at my client and I say, "Man, I bet
17 you felt like a fool up there, didn't you?" And he
18 goes, "God, I did." I said, "Because it sounded great
19 when you're in there with all your buddies and your
20 lawyer. But once you get on that stand, you're kind of
21 on that island by yourself, and it really -- it doesn't
22 sound great, and you look stupid."

23 And I think a good lawyer ought to
24 tell that to his client. I do. And I'm not saying you
25 haven't. You may have been beating him over the head.

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1 guys, kind of tell you how I see this today.

2 I, frankly, don't understand your
3 client's position, because he's hurting himself. He
4 could be making some money, but he's -- you know, he's
5 coming in here and arguing and paying you money.
6 That's good for you.

7 MR. WELCH: Well, Your Honor, I'm
8 going to have this part of the transcript typed up, and
9 I'm going to give it to him.

10 THE COURT: Okay. Nothing against
11 him. I just -- I'm telling you I don't understand it
12 as a businessman. I'm trying to look at it like a
13 businessman.

14 MR. WELCH: Sure.

15 THE COURT: I can understand it if
16 this were a divorce case. Because, you know, everybody
17 is just mad and running around with their head cut off;
18 they don't care how much it costs, as long as they jab
19 it into the other guy. But you guys aren't going
20 through a divorce, thank goodness. So buck up.

21 All right. Anything else?

22 MR. PANTHER: I don't think so.
23 Should we reduce that last -- your comments to an
24 order, make that an order?

25 THE COURT: Not all this stuff.

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1 MR. PANTHER: No, no, not all that
2 stuff. Of course not. But the --

3 THE COURT: Yeah, I want an order -- I
4 want an order on what I ruled on, how we're going to
5 proceed on this issue of the tank.

6 MR. PANTHER: I'll do that. Thank
7 you, Your Honor.

8 MR. WELCH: We appreciate it, Your
9 Honor.

10 THE COURT: You bet. Good to see both
11 of you.

12 (Proceedings adjourned at
13 9:12 a.m.)
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1 REPORTER'S CERTIFICATE

2 STATE OF TENNESSEE)

3 COUNTY OF DAVIDSON)

4 I, Patricia W. Smith, Registered
5 Professional Reporter, with offices in Nashville,
6 Tennessee, hereby certify that I reported the foregoing
7 proceedings at the time and place set forth in the
8 caption thereof; that the proceedings were
9 stenographically reported by me; and that the foregoing
10 proceedings constitute a true and correct transcript of
11 said proceedings to the best of my ability.

12 I FURTHER CERTIFY that I am not
13 related to any of the parties named herein, nor their
14 counsel, and have no interest, financial or otherwise,
15 in the outcome or events of this action.

16 IN WITNESS WHEREOF, I have hereunto
17 affixed my official signature and seal of office this
18 27th day of August, 2007.
19
20
21

22 PATRICIA W. SMITH, REGISTERED
23 PROFESSIONAL REPORTER AND NOTARY
24 PUBLIC FOR THE STATE OF TENNESSEE

25 My Commission Expires:
July 19, 2008

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IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE

TURNBERRY HOMES, LLC,)	ENTERED _____
)	
Plaintiff,)	
)	
v.)	No. 33796
)	
KING'S CHAPEL CAPACITY, LLC,)	
and ASHBY COMMUNITIES, LLC,)	
)	
Defendants.)	

ORDER GRANTING INJUNCTIVE RELIEF

This cause came to be heard on August 23, 2007, upon Turnberry Homes, LLC's ("Turnberry Homes") application for injunctive relief. Pursuant to Tenn. R. Civ. P. 65.04(6), the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Turnberry Homes owns Lot 139 in the King's Chapel subdivision.
2. Turnberry Homes constructed a residence on Lot 139. However, Turnberry Homes cannot obtain a use and occupancy certificate for Lot 139 without sewer services. Without a use and occupancy certificate, Turnberry Homes cannot sell the residence on Lot 139. In order to obtain sewer services, each lot must have a holding tank that connects to the on-site sewer system.
3. Turnberry Homes bought Lot 139 from Hang Rock. According to the Lot Purchase Agreement between Turnberry Homes and Hang Rock, Ashby Communities, LLC ("Ashby") is the agent for Hang Rock. Hang Rock is owned and controlled by John Powell. King's Chapel Capacity, LLC ("KCC") operates the on-site sewer system and

provides sewer service in King's Chapel. The developer of King's Chapel is Ashby, which is owned and controlled by Mr. Powell. Mr. Powell also owns and controls KCC.

4. Except for Lot 139, the practice between Turnberry Homes, Ashby, and KCC for the 24 lots in King's Chapel that Turnberry Homes bought from Hang Rock was for Turnberry Homes to request and pay Ashby to install a holding tank on the lot. Once Ashby installed a holding tank on the lot and connected it to the on-site sewer system, KCC assumed responsibility for providing sewer services to the lot. Although the parties followed this practice, Turnberry Homes has no contractual obligation to obtain a holding tank from Ashby.

5. In keeping with the foregoing practice, Turnberry Homes contacted Mr. Powell to request a holding tank and the connection of sewer services for Lot 139. Although there was some confusion at the time as to which of Mr. Powell's entities Turnberry Homes was dealing with, it is clear from the record that a holding tank and the connection of sewer services for Lot 139 was refused.

CONCLUSIONS OF LAW

6. Any holding tank, and the connection of sewer services for Lot 139, shall comply with applicable law, regulations and codes.

7. Turnberry Homes has no legal or contractual obligation to obtain a holding tank and the connection of sewer services for Lot 139 from Ashby or KCC. Accordingly, KCC may not require Turnberry Homes to obtain a holding tank and the connection of sewer services from Ashby.

8. Provided the holding tank and the connection of sewer services for Lot 139 comply with all applicable laws, regulations and codes, KCC shall not refuse sewer

services for Lot 139 in the event Turnberry Homes obtains a holding tank and the connection of sewer services from an entity other than Ashby.

9. Unless Turnberry Homes is able to obtain a holding tank and the connection of sewer services for Lot 139, Turnberry Homes will be irreparably harmed, as it will be unable to sell the residence on Lot 139. Further, the provision of sewer services is in the public interest, and the harm to KCC and/or Ashby is minimal.

It is, therefore, **ORDERED, ADJUDGED and DECREED** as follows:

1. Turnberry Homes may obtain a holding tank from an entity other than Ashby. In keeping with the parties' practice, Ashby shall have the right of first refusal to provide the connection of sewer services for Lot 139. Upon written request from Turnberry Homes, Ashby shall have 10 days to provide the connection of sewer services for Lot 139. In the event Ashby exercises this right of first refusal, Turnberry Homes shall pay the reasonable cost for such connection of sewer services COD.

2. In the event Ashby does not exercise its right of first refusal, Turnberry Homes may obtain the connection of sewer services from an entity other than Ashby.

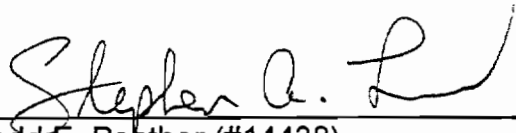
3. Provided that such holding tank and connection of sewer services comply with all applicable laws, regulations and code, KCC shall not refuse sewer services for Lot 139 regardless of the entity that installed the holding tank and connection of sewer services.

4. All other matters are reserved.

ENTERED on this the ____ day of _____, 2007.

JUDGE ROBERT E. LEE DAVIES

APPROVED FOR ENTRY:



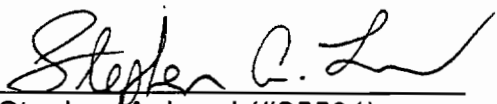
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing document has been served, via the method(s) indicated below on the following counsel of record, this the 31st day of August, 2007.

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