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September 17, 2007

Chairman Eddie Roberson
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

VIA ELECTRONIC DELIVERY

filed electronically in docket office on 09/17/07

Re: Turnberry Homes, LLC v. King's Chapel Capacity, LLC—Docket No. 07-00199.

Dear Chairman Roberson:

Please find the original and 4 copies of the Reply in Opposition to Petition for Temporary Injunctive Relief filed on behalf of King's Chapel Capacity, LLC ("KCC") enclosed herewith. Accompanying this filing are all pleadings, motions, orders and transcripts filed on behalf of KCC in the Williamson County Chancery Court—Docket No. 33796 (the "Action"). Pursuant to an agreement between the parties' counsel and to reduce unnecessary duplication, Turnberry Homes, LLC will be responsible for submitting all its pleadings, motions, orders, and transcripts filed in the Action.

If I may be of further assistance in this matter, please do not hesitate to contact me. I am

Very truly yours,

FARRIS MATHEWS BRANAN
BOBANGO HELLEN & DUNLAP, PLC



Jamie R. Hollin

Enclosure

Cc: John E. Powell

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

TURNBERRY HOMES, LLC

Petitioner,

v.

KING’S CHAPEL CAPACITY, LLC

Respondent.

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Docket No. 07-00199

**RESPONDENT’S REPLY IN OPPOSITION TO
PETITION FOR TEMPORARY INJUNCTIVE RELIEF**

The Respondent, King’s Chapel Capacity, LLC (“KCC”), by and through undersigned counsel, hereby replies in opposition to the Petitioner’s request for a temporary injunction and respectfully states as follows:

Turnberry Homes, LLC (“Turnberry”) and Ashby Communities, LLC (“Ashby”) are parties to 3 separate lawsuits pending in the Williamson County Chancery Court (the “Court”) substantially similar to the Petition for Injunctive Relief filed on behalf of Turnberry (the “Petition”). KCC recently became a party to 1 of the lawsuits filed by Turnberry. Turnberry and Ashby have a disagreeable relationship based upon the interpretation of various rules and contracts applicable to the parties as it relates to the development of King’s Chapel Subdivision (the “Subdivision”) located in Williamson County, Tennessee. During all pertinent times described herein, KCC has had no authority to act in any way which would affect the business relationship of Ashby and Turnberry.

Turnberry maintains that it cannot obtain use and occupancy permits for Lots 138 and 139 in King's Chapel without sewer service. KCC has committed no act or failed in a duty to act that would prevent Turnberry from being issued use and occupancy permits from the appropriate authorities in Williamson County for Lots 138 and 139. Lots 138 and 139 in King's Chapel have access to sewer service. Thus, Turnberry has suffered no harm which would prevent it from selling the residences located on Lots 138 and 139.

At the Tennessee Regulatory Authority's ("Authority") Conference on September 10, 2007, the panel of Directors raised concerns and questions relative to turning on and turning off the sewer valve to Lot 138. Turnberry takes the position that it has availed itself of the remedy of self-help in regard to restoring sewer services to Lot 138. (Petition, ¶ 8). Turnberry has **never** received the required approval to receive sewer services to Lot 138. Turnberry has commandeered sewer service for itself and has been misappropriating sewer service without the authority to do so. Once this fact became known, the sewer valve was shut off immediately. Turnberry has since restored fraudulently obtained sewer services without permission to do so. Turnberry has never paid for sewer services to Lot 138—Turnberry is not KCC's customer. Turnberry's misappropriation of sewer service and trespassing on KCC's property is violation of Tennessee law.

WASTEWATER SYSTEM DEVELOPMENT

KCC caused the King's Chapel wastewater system to be designed to serve its proposed residential subdivision. The design of the wastewater system was then approved by TDEC and the Williamson Water & Wastewater authority. After application and a review of the plan as submitted to the Authority, the Authority granted

KCC a Certificate of Public Convenience and Necessity to operate the wastewater system in King's Chapel.¹

KCC subsequently entered into a contract with Ashby to pay for all construction costs for the wastewater system to be used on land and lots owned by Ashby. Ashby has and continues to pay for the complete construction of the wastewater system. Presently, the treatment and disposal portions of the wastewater system are complete. The collection system is 40% complete. As Ashby decides which area and lots to build-out the collection system, Ashby contributes the collection system to KCC (Contribution-In-Aid-of-Construction), allowing KCC to provide wastewater service. In other words, Ashby must first make sewer facilities available before KCC is capable of providing service to any lot in King's Chapel. Once the collection system is dedicated to KCC for specific lots and land, it becomes KCC property and KCC provides continual wastewater service. The relative issues between Turnberry and Ashby over whether lots owned by Turnberry in King's Chapel receive initial wastewater service are currently pending before the Court.

Turnberry has been a customer of KCC only on its model home that was sold several months ago to a homeowner. For that lot, Turnberry paid for sewer service because the house was occupied by a sales agent and utilized by prospective homebuyers during the day. Although Ashby instructs KCC as to when a lot is ready to be connected to the system, KCC and its agents or employees are responsible for all inspections and turning on the connection valve. KCC inspects the collection tank for construction debris and in several cases the collection tanks need to be pumped before KCC allows

¹ Docket No. 04-00335.

the initial connection requested by Ashby. In fact, the Turnberry Model Home collection tank had to be pumped because of construction debris.

Turnberry, on its own and without any authorization, turned the collection valve to the on position on Lot 138 allowing any possible construction debris to enter the collection, treatment, and disposal systems. Once this became known, KCC turned this valve off. Turnberry has constructed homes on 22 other lots in King's Chapel, but has never had wastewater service or connection valves turned on until the collection tanks were inspected and a homeowner/customer purchases the property and executes a sewer service subscription agreement.

PETITION FOR INJUNCTIVE RELIEF

KCC hereby responds to the correspondingly numbered paragraphs as set forth in the Petition:

1. Admitted.
2. Admitted.
3. Admitted that Hang Rock, LLC, Ashby Communities, LLC ("Ashby") and KCC are all Tennessee limited liability companies. It is denied that all three of these entities are "controlled" by Mr. John Powell.
4. Admitted.
5. Admitted that Lot 138 has a collection tank installed on the property. It is denied that Lot 139 does not have a collection tank installed on the property. Lot 139 has a collection tank installed on the property.
6. Admitted that Turnberry once owned 22 other lots in King's Chapel. Denied that Turnberry must purchase collection tanks from KCC or Ashby and that only

Electel could install collection tanks in King's Chapel. Admitted that Wayne Stine is the President of Electel. All remaining allegations are denied.

7. Denied that Turnberry purchases collection tanks from KCC. Denied that Turnberry requested a collection tank from KCC or Ashby for Lot 139. A collection tank has been installed on Lot 139. Turnberry is not prevented by KCC from obtaining a use and occupancy permit for Lot 139.

8. Turnberry is misappropriating sewer services from Lot 138. Turnberry took it upon itself and trespassed on KCC's property and initiated services without approval. Turnberry's allegation that it cannot obtain a use and occupancy permit for Lot 138 without sewer service is false. Turnberry possesses a use and occupancy permit for Lot 138.

9. Admitted.

10. Turnberry is misappropriating sewer service from KCC for Lot 138.

11. Admitted.

12. Admitted.

13. Denied. The Williamson County Chancery Court did not approve Turnberry's application for an injunction.

14. No response required.

15. Denied.

16. No response required.

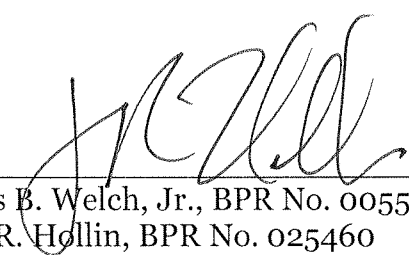
17. No response required.

18. Denied.

Respectfully submitted,

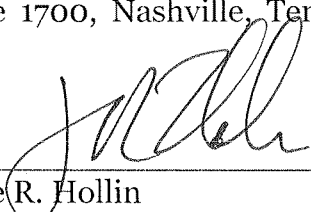
FARRIS MATHEWS BRANAN
BOBANGO HELLEN & DUNLAP, PLC

By: _____


Charles B. Welch, Jr., BPR No. 005593
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Email: cwelch@farrismathews.com
jhollin@farrismathews.com
Attorneys for King's Chapel Capacity, LLC

Certificate of Service

I hereby certify that a true and correct copy of the foregoing has been placed in the U.S. Mail, postage pre-paid, addressed to the Petitioner's attorney, **Todd E. Panther, Esq.**, and **Stephen A. Lund, Esq.**, Tune, Entrekin & White, P.C., located at 315 Deaderick Street, AmSouth Center, Suite 1700, Nashville, Tennessee, 37238 this 17th day of September, 2007.



Jamie R. Hollin

**IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE
AT FRANKLIN**

TURNBERRY HOMES, LLC,

Plaintiff,

v.

KING'S CHAPEL CAPACITY, LLC,

Defendant.

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No. 33796

DEFENDANT'S MOTION FOR CONTINUANCE

The Defendant, King's Chapel Capacity, LLC ("KCC"), by and through undersigned counsel, respectfully requests a continuance of the hearing in this matter set for Monday, August 13, 2007 at 1:30 p.m. As grounds for this motion, KCC respectfully submits the following:

1. KCC is a public utility as defined by Tenn. Code Ann. § 65-4-101 under the jurisdiction and subject to the regulatory control of the Tennessee Regulatory Authority ("Authority"). The Plaintiff filed a complaint with the Authority on July 11, 2007 addressing the same issues raised in the Verified Complaint. The complaint with the Authority is currently being investigated and has not been adjudicated;

2. Pursuant to Tenn. Code Ann. § 65-4-104, the Authority has "general supervisory and regulatory power, jurisdiction, and control over all public utilities, and also over their property, property rights, facilities, and franchises...";

3. Tenn. Code Ann. § 65-4-106 provides that "[t]his chapter [Title 65, Chapter 4] shall...be given a liberal construction, and any doubt as to the existence or

extent of a power conferred on the authority...shall be resolved in favor of the existence of the power, to the end that the authority may effectively govern and control the public utilities under its jurisdiction by this chapter”;

4. The Plaintiff's Verified Complaint is premature since their administrative remedies have not been exhausted. The Plaintiff would have the opportunity to appeal the Authority's ultimate decision pursuant to Tenn. Code Ann. § 65-4-121;

5. On the morning of Wednesday, August 8, 2007, Plaintiff's counsel contacted the law firm of Farris Mathews Branan Bobango Hellen & Dunlap, PLC inquiring whether the undersigned counsel would accept service of process for KCC. Plaintiff's counsel knew the undersigned was not the registered agent for service of process for KCC. The Plaintiff has been unable to serve process on KCC's registered agent, Mr. John Powell, since Mr. Powell is and has been out-of-state. The undersigned agreed to accept service after conferring with Mr. Powell via telephone. A copy of the Verified Complaint was delivered on the afternoon of August 8, 2007. However, Plaintiff's counsel merely informed the undersigned that the service was for a “complaint for an injunction.” Plaintiff's counsel omitted the fact that a hearing was set for Monday, August 13, 2007—less than 5 days after receipt of service;

6. During the brief telephone conference between the parties' counsel, Plaintiff's counsel was informed that Mr. Powell, KCC's managing member, was out-of-state and otherwise unavailable other than via telephone;

7. Upon learning of the scheduled hearing date, undersigned counsel contacted Plaintiff's counsel via email requesting a continuance to allow KCC a reasonable time to respond. This request was denied;

8. Mr. Powell has been out-of-state since August 3, 2007—the date the Verified Complaint was filed in this action;

9. Undersigned counselors returned to the office on August 8, 2007 from being out-of-state since August 3, 2007 and have a trial set for Monday, August 13, 2007 in another forum in Davidson County;

10. Plaintiff's counsel is attempting to proceed in this matter by ambushing KCC and their counsel to the prejudice of KCC. The Plaintiff will suffer no harm by a continuance and must wait to exhaust their administrative remedies. However, forcing KCC to participate in a hearing without being able to effectively communicate with its counselors on less than 5 days notice and in derogation of appropriate administrative procedures of the Authority will cause severe harm to KCC; and

11. Furthermore, Paragraph 27 of the Verified Complaint shows that the Plaintiff's damages are "\$210 per day [in interest] as a result of KCC's refusal to deliver a holding tank to Lot 139." Thus, the Plaintiff has an adequate remedy at law that can be satisfied by money damages as evidenced by its pleading.

WHEREFORE, based upon the foregoing, the Defendant respectfully requests a continuance of the August 13, 2007 hearing date set in this matter and an order dismissing the Plaintiff's request for injunctive relief since the Plaintiff has an adequate remedy at law.

Respectfully submitted,

FARRIS MATHEWS BRANAN
BOBANGO HELLEN & DUNLAP, PLC

By:



Charles B. Welch, Jr., BPR No. 005566

Jamie R. Hollin, BPR No. 025460

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Telephone: 615-726-1200

Facsimile: 615-726-1776

Email: cwelch@farrismathews.com

jhollin@farrismathews.com

Attorneys for Hung Rock, LLC

Certificate of Service

I hereby certify that a true and correct copy of the foregoing has been hand delivered to Plaintiff's attorney, **Todd E. Panther, Esq.** and **Stephen A. Lund, Esq.** Tune, Entrekin & White, PC at 315 Deaderick Street, AmSouth Center, Suite 1700, Nashville, Tennessee 37238, this the 9th day of August, 2007.



Jamie R. Hollin

NOTICE OF HEARING

THIS MATTER WILL BE HEARD VIA TELEPHONE CONFERENCE ON THURSDAY, AUGUST __, 2007 at _____. FAILURE TO PARTICIPATE MAY RESULT IN THIS MOTION BEING GRANTED BY DEFAULT.

IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE

FILED
WILLIAMSON COUNTY
CLERK

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;

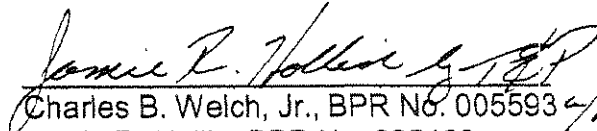
2. That, because Judge Davies is not available to hear Turnberry Homes' application for injunctive relief on Monday, August 13, 2007, the hearing should be continued until Friday, August 17, 2007 at 9:00 a.m.; and

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.

FARRIS MATHEWS BRANAN
BOBANGO HELLEN & DUNLAP, PLC

By:


Charles B. Welch, Jr., BPR No. 005593 *with permission*
Jamie R. Hollin, BPR No. 025460
618 Church Street, Suite 300
Nashville, TN 37219
(615) 726-1200
Attorneys for King's Chapel Capacity, LLC

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


Clerk & Master

FILED
WILLIAMSON COUNTY
CLERK
2007 AUG 17 AM 9:13

IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE
AT FRANKLIN

TURNBERRY HOMES, LLC,

Plaintiff,

v.

KING'S CHAPEL CAPACITY, LLC,

Defendant.

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No. 33796

ENTERED _____

DEFENDANT'S RESPONSE IN OPPOSITION TO THE
PLAINTIFF'S APPLICATION FOR TEMPORARY INJUNCTION

The Defendant, King's Chapel Capacity, LLC ("KCC"), by and through undersigned counsel, pursuant to Tenn. R. Civ. P. 65 and Rule 15 of the Local Rules of Practice, respectfully submits that the Plaintiff's application for a temporary injunction should be denied. In support of this response, KCC respectfully submits the following:

PARTIES

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. (Powell Aff. ¶ 3). Also, KCC is a public utility as defined by Tenn. Code Ann. § 65-4-101 under the jurisdiction and subject to the regulatory control of the Tennessee Regulatory Authority ("Authority"). (Powell Aff. ¶ 4). 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. (Verified Complaint ¶ 1).

JURISDICTION

Turnberry Homes filed a complaint with the Authority on July 11, 2007 addressing the exact same issues raised in the Verified Complaint. (Powell Aff. ¶ 6). Attached as Exhibit A and incorporated herein by reference is a true and correct copy of the Plaintiff's complaint filed with the Authority. The complaint with the Authority is currently being investigated and has not been adjudicated. (Powell Aff. ¶ 7).

Pursuant to Tenn. Code Ann. § 65-4-104, the Authority has "general supervisory and regulatory power, jurisdiction, and control over all public utilities, and also over their property, property rights, facilities, and franchises...." Furthermore, Tenn. Code Ann. § 65-4-106 provides that:

"[t]his chapter [Title 65, Chapter 4] shall...be given a liberal construction, and any doubt as to the existence or extent of a power conferred on the authority...shall be resolved in favor of the existence of the power, to the end that the authority may effectively govern and control the public utilities under its jurisdiction by this chapter."

Turnberry Homes' Verified Complaint is premature since their administrative remedies have not been exhausted. Turnberry Homes would have the opportunity to appeal the Authority's ultimate decision pursuant to Tenn. Code Ann. § 65-4-121. Tenn. Code Ann. § 65-4-121 provides:

"[a]ny appeal, order, decision, ruling or action of the authority affecting any utility as defined in § 65-4-101...shall be filed in a court of record of competent jurisdiction in the county in which the dispute or matters in controversy arose...."

The Tennessee General Assembly has "signaled its clear intent to vest in the [Authority] practically plenary authority over the utilities within its jurisdiction." Tennessee Cable Television Ass'n v. Tennessee Public Service Comm'n. 844 S.W.2d 151, 159 (Tenn. Ct. App.

1992) *perm. app. denied* (Tenn. Dec. 7, 1992). “Where there is an administrative procedure provided by statute, one claiming to have been injured must first comply with provisions of such administrative statute.” Slate v. Yoakum, 297 S.W.2d 635, 641 (Tenn. 1956). Accordingly, Turnberry Homes must wait to exhaust its administrative remedies before the Authority instead of being allowed to forum shop from place-to-place in derogation of the clear delegation of jurisdiction and authority over public utilities by the legislature to the Authority.

FACTS

KCC is the owner and operator of an onsite sewer system for King’s Chapel Subdivision (“King’s Chapel”) located in Williamson County, Tennessee. (Powell Aff. ¶ 3). KCC is a public utility as defined by Tenn. Code Ann. § 65-4-101. (Powell Aff. ¶ 4). KCC was issued a Certificate of Public Convenience and Necessity by the Authority in Docket No. 04-00335 to provide wastewater services to an area in Williamson County, Tennessee known as Ashby Communities—later to be named King’s Chapel. (Powell Aff. ¶ 5). Ashby Communities, LLC (“Ashby”), the Developer in King’s Chapel, arranged for the design and construction of the wastewater treatment system (the “System”) to take place and, paid for all labor, materials, and equipment necessary for the construction of the System in King’s Chapel. (Powell Aff. ¶ 10). On September 20, 2005, Ashby and KCC entered into a Wastewater Treatment Facility Service Agreement (the “Agreement”). (Powell Aff. ¶ 11). Attached as Exhibit B and incorporated herein by reference is a true and correct copy of the Agreement.

Pursuant to the terms of the Agreement, by reversionary warranty deed, Ashby must convey the System and the land necessary to operate the System in King’s Chapel to KCC subject to certain contractual restrictions when the System is complete. (Powell Aff. ¶ 12). The System is not complete at this time. (Powell Aff. ¶ 12). The Agreement between Ashby and

KCC contains many restrictions applicable to KCC for the delivery of wastewater services in King's Chapel. The most critical restriction in the parties' Agreement is the right to deny initial wastewater services or sewerage connections to lots in King's Chapel. The exclusive right to deny initial wastewater services is held by Ashby, not KCC. (Powell Aff. ¶ 13). In accordance with the terms of the Agreement, KCC is not authorized to provide initial wastewater services to any lots in King's Chapel unless and until KCC has received express authorization to do so by Ashby. (Powell Aff. ¶ 14). Ashby has not authorized KCC to provide wastewater services for lots 138 or 139. (Powell Aff. ¶ 15). If KCC were to provide wastewater services to any lots without authorization from Ashby, KCC would be in breach of the Agreement. (Powell Aff. ¶ 16).

Turnberry Homes entered into an agreement (the "Contract") with Hang Rock, LLC ("Hang Rock") through Hang Rock's agent, Ashby, to purchase 24 lots in King's Chapel located in Williamson County. (Verified Complaint ¶ 5). Attached as Exhibit C and incorporated herein by reference is a true and accurate copy of the Contract. The Plaintiff's Exhibit 1 to its Verified Complaint omits the Addendum to the Contract. The Plaintiff presented to the Court in Turnberry Homes, LLC v. Hang Rock, LLC, Docket No. 33131 as Exhibit 1 to its Complaint for Declaratory Judgment the omitted Addendum to the Contract exactly as KCC presents as Exhibit C hereto.

Mr. John Powell is the managing member of Ashby. (Powell Aff. ¶ 2). Turnberry Homes is involved in litigation with Ashby in the Chancery Court for Williamson County, Tennessee, Docket No. 33291 (the "Action"). (Verified Complaint ¶ 13). 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. (Verified Complaint ¶ 13). Attached as Exhibit D and incorporated herein by reference is a true and correct copy of the Contract's Revised Design Guidelines. On February 22, 2007, the Court heard Ashby's motion for a temporary injunction (the "Hearing"). (Verified Complaint ¶ 13). The Court found that Ashby's motion was not well-taken, denied the motion, and dissolved the temporary restraining order. (Verified Complaint ¶ 13).

At the Hearing, the Court also found the builder [Turnberry Homes] must ask for approval of its intended home design. (See Exhibit E). Attached as Exhibit E and incorporated herein by reference is a notarized copy of the transcript from the Court's order from the Hearing. Similarly, the Court found that the Developer [Ashby, the successor-in-interest to Hang Rock] has the right, pursuant to the Contract to revise the Contract's design guidelines. (See Exhibit E). Turnberry Homes built homes on lots 138 and 139 without approval from Ashby.

Not long after the Hearing, in an effort to mitigate further, future problems with Turnberry Homes and to maintain the design integrity and property values within King's Chapel, Ashby attempted repurchase Turnberry Homes' remaining lots pursuant to the terms of the Contract. (Powell Aff. ¶ 20). On March 2, 2007, Ashby wrote a letter to Mr. Richard J. Bell placing Turnberry Homes on "Notice of Material Default and Notice to Repurchase Lots 138 & 139" (the "Notice"). (Powell Aff. ¶ 21). Attached as Exhibit F and incorporated herein by reference is a true and correct copy of Ashby's March 2, 2007 letter to Mr. Bell. Furthermore, undersigned counselors sent a letter to the Plaintiff's counsel on March 30, 2007 informing Turnberry Homes of the Notice. (Powell Aff. ¶ 22). Attached as Exhibit G and incorporated herein by reference is a true and correct copy of the March 30, 2007 letter from the undersigned counselors to Plaintiff's counsel. Plaintiff's counsel replied on March 30, 2007 maintaining the

position that Ashby's claims had no merit. (Powell Aff. ¶ 23). Attached as Exhibit H and incorporated herein by reference is a true and correct copy of the March 30, 2007 reply letter from Plaintiff's counsel. On April 9, 2007, undersigned counselors replied to the March 30, 2007 from Plaintiff's counsel informing Turnberry Homes of its numerous violations of the Contract's Revised Design Guidelines. (Powell Aff. ¶ 24). Attached as Exhibit I and incorporated herein by reference is a true and correct copy of the undersigned counselors' April 9, 2007 letter and the attachments thereto to Plaintiff's counsel.

LAW AND ANALYSIS

Rule 65.04(2) of the Tennessee Rules of Civil Procedure provides:

“[a] temporary injunction may be granted during the pendency of an action if it is clearly shown by verified complaint, affidavit or other evidence that the movant's rights are being or will be violated by and adverse party and the movant will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action, or that the acts or omissions of the adverse party will tend to render such final judgment ineffectual.”

In determining whether to grant injunctive relief, Tennessee courts consider the following four factors:

a. whether the movant has shown a strong or substantial likelihood of success or probability of success on the merits:

b. whether the movant has shown irreparable injury:

c. whether the injunction could cause substantial harm to others; and

d. whether the public interest would be served by issuing the injunction.

A. THE PLAINTIFF'S CLAIMS HAVE NO MERIT.

The Plaintiff's claims are based upon KCC's alleged violations of Tenn. Code Ann. § 65-4-115 and Tenn. Code Ann. § 65-27-101 et seq. Addressing these statutes in reverse order,

Tenn. Code Ann. § 65-27-101 et seq. has absolutely no application to this proceeding and does not apply to KCC. Tenn. Code Ann. § 65-27-101 et seq. applies to water and waterworks companies. KCC is not a water or waterworks company. KCC is a public utility certificated by the Authority to provide wastewater services. Accordingly, any and all of Plaintiff's claims based upon any alleged violation of Tenn. Code Ann. § 65-27-101 et seq. have no merit.

A complete recitation of Tenn. Code Ann. § 65-4-115 provides the following:

“[n]o public utility shall adopt, maintain, or enforce any regulation, practice, or measurement which is unjust, unreasonable, unduly preferential or discriminatory, nor shall any public utility provide or maintain any service that is unsafe, improper, or inadequate, or withhold or refuse any service which can reasonably be demanded and furnished when ordered by the authority.” (Emphasis added).

KCC lacks the authority to initiate wastewater services and to deliver a collection tanks to any lots in King's Chapel. Ashby installs collection tanks and retains the exclusive right to designate to KCC the lots to receive wastewater services. KCC has no obligation to Turnberry Homes. Forcing KCC to deliver a collection tank and to initiate wastewater services to any lot would violate KCC's Agreement with Ashby. Ashby has not authorized KCC to provide wastewater services to lots 138 or 139.

Turnberry Homes alleges in Paragraph 17 of the Verified Complaint that its “request for a holding [collection] tank is a reasonable request in order to obtain sewer [wastewater] services.” (Verified Complaint, ¶ 17). Assuming arguendo this is a reasonable request and KCC had the authority to deliver a collection tank and provide wastewater services to lot 139, the reasonableness of the request alone, apparently relied upon by the Plaintiff, does not entitle Turnberry Homes to the immediate delivery of a collection tank or the provisioning of wastewater services. Tenn. Code Ann. § 65-4-115 provides, in pertinent part, that “...[no public

utility shall] withhold or refuse any service which can reasonably be demanded and furnished when ordered by the authority." (Emphasis added). KCC has no obligation to Turnberry Homes.

Not only is the Plaintiff's claim that it "cannot continue construction on lot 139" without merit, it is completely false. Attached hereto as Exhibit J and incorporated herein by reference is the affidavit and photograph attachments thereto of Mr. Tim Milazo. Mr. Milazo took 3 photographs of the completely constructed home located on lot 139 on August 10, 2007. (Milazo Aff. ¶ 6). Construction on lot 139 is complete. The Plaintiff's failure to receive a collection tank for lot 139 has caused no delays in construction. Therefore, the Plaintiff's claim that it cannot continue construction on lot 139 is false and without merit.

Plaintiff's claim that it "cannot market lot 139 until a holding tank is installed" is also without merit. Plaintiff is actively marketing lot 139 as evidenced by the sign in the front yard of lot 139 with the words "Turnberry Homesite #139 Available" along with a contact person's name and telephone number to call for information written thereon. (Exhibit J, Attachments 1, 2, & 3).

Plaintiff's claim that it "continues to carry interest on lot 139 in the amount of \$210 per day as a result of KCC's refusal to deliver a holding tank to lot 139" does not meet any factor for injunctive relief. Besides, the Plaintiff would most likely have to "carry" interest on lot 139 until the home is sold anyway. Thus, if proven to the satisfaction of the Court, the Plaintiff has an adequate remedy at law that can be satisfied by money damages as evidenced by its pleading. (Verified Complaint, ¶ 27). Based upon the foregoing reasons, the Plaintiff's claims have no merit, much less a substantial likelihood of success on the merits.

Plaintiff's over-riding theme throughout its Verified Complaint is that the actions of Mr. Powell, Ashby, and KCC are out of malice, spite, or ill-will toward Turnberry Homes. This is not true. As demonstrated by Exhibits F through I, Mr. Powell and Ashby attempted to resolve future disagreements with Turnberry Homes. To maintain design integrity, property values and its substantial investment in King's Chapel, Ashby sought its contractual right to repurchase lots 138 and 139. Turnberry Homes refused and continues to build homes in King's Chapel in clear violation of the Contract's related Revised Design Guidelines. Ashby has demonstrated to Turnberry Homes its numerous violations, yet Turnberry Homes does nothing about the violations. Turnberry Homes is the author of its own misfortune. Neither KCC or Ashby is motivated out of spite for the Plaintiff. Plaintiff's claims have no merit, much less a strong or substantial likelihood of success on the merits.

B. THE PLAINTIFF HAS NOT SHOWN IRREPARABLE INJURY.

The Plaintiff's claim that KCC has caused it to "carry" interest on lot 139, even if proven to the satisfaction of the Court, can be satisfied by money damages. Similarly, if proven, Plaintiff's claim of being unable to market lot 139 can be remedied by money damages. Injunctive relief is not available for the Plaintiff who has an adequate remedy at law. "Where there is a full, complete, and adequate remedy at law for an injury, it is not irreparable." Fort v. Dixie Oil Co., 95 S.W.2d 931, 932 (Tenn. 1936). The Plaintiff's claims are not irreparable.

The Plaintiff's remaining claim of being restrained from completing construction on lot 139 is false. The home on lot 139 is complete and is available for sale to any ready, willing, and able buyer as evidenced by the affidavit of Mr. Milazo and the attachments thereto. (Exhibit J, Milazo Aff. Attachments 1, 2, 3). Even if the Court were to find that the Plaintiff cannot continue construction on lot 139, money damages are an adequate remedy easily quantified.

C. AN INJUNCTION WILL CAUSE SUBSTANTIAL HARM TO KCC.

KCC does not deliver collection tanks to lots in King's Chapel. Pursuant to the terms of the Agreement between KCC and Ashby, Ashby has the exclusive right to designate to KCC the lots to be provided wastewater services. If KCC provides services to lot 139, KCC will be in violation of its Agreement with Ashby. KCC has no obligation to Turnberry Homes.

D. THE PUBLIC INTEREST WOULD NOT BE SERVED BY ISSUING AN INJUNCTION.

This case is not a matter of public interest. No homeowners are being refused wastewater services in King's Chapel. There is no threat to other homeowners in King's Chapel that lot 139 has not received a collection tank. Thus, no public interest would be served by issuing the injunction.

CONCLUSION

"Courts do not look with favor on mandatory injunctions, and they will rarely be granted." Growers Warehousing Corp. v. W.E. Sawyer Tobacco Co., 5 Tenn. App. 619, 1927 WL 2174 (Tenn. Ct. App. 1927) *cert. denied* (Tenn. Dec. 17, 1927). "It is a general rule that a mandatory injunction will not be granted except in extreme cases...." Smith v. Rodgers, 677 S.W.2d 1, 3 (Tenn. Ct. App. 1984) *perm. app. denied* (Tenn. Aug. 27, 1984). The Court should deny the Plaintiff's application for a mandatory injunction since the Plaintiff has an adequate remedy at law and to do so would penalize and cause severe harm to KCC. "A court of equity will not issue a mandatory injunction to enforce a penalty or work an injustice upon a defendant." Henry County v. Summers, 547 S.W.2d 247, 251 (Tenn. Ct. App. 1976) *cert. denied* (Tenn. Oct. 4, 1976).

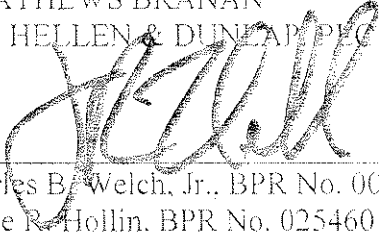
Based upon the foregoing and the entire record in this cause, King's Chapel Capacity, LLC respectfully requests that the Plaintiff's application for a mandatory injunction be denied

and the Verified Complaint dismissed, at least until its administrative remedies have been exhausted.

Respectfully submitted.

FARRIS MATHEWS BRANAN
BOBANGO HELLEN & DUNLAP P.C.


By:



Charles B. Welch, Jr., BPR No. 005593
Jamie R. Hollin, BPR No. 025460
618 Church Street, Suite 300
Nashville, Tennessee 37219
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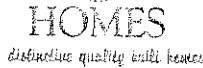
Certificate of Service

I hereby certify that a true and correct copy of the foregoing has been sent via First Class U.S. Mail to Plaintiff's attorney, **Todd E. Panther, Esq.** and **Stephen A. Lund, Esq.** Tune. Entekin & White, PC at 515 Deaderick Street, AmSouth Center, Suite 1700, Nashville, Tennessee 37238, this the 16th day of August, 2007.



Jamie R. Hollin

Exhibit A



Richard J. Bell
President

My name is Richard Bell and I am the president of Turnberry Homes. We are under contract to purchase 24 lots in the first phase of Kings Chapel located on Highway 96 in Arrington, Williamson County. John Powell is the president of Ashby Communities who developed all the lots in Kings Chapel and who is the owner and operator of an on site sewer system whose permit to act as a public utility was granted by the State of Tennessee.

We have purchased all of the lots for which we were contracted. Our only source of sewer is John Powell, the developer and on-site sewer owner. On our last home being constructed on lot 139 (a fully platted and approved building lot), Powell is refusing to provide and install the necessary holding tank required to hook-up to the on-site sewer system. He has provided this to all other previous lots we purchased and we are paid in full on all past such services. As Powell demands, we must pay him COD on all deliveries of the tank and its installation for which we are fully prepared to provide on lot 139. And yet, Powell refuses to provide us the right to hook-up to his sewer system. We have no other alternative, approved provider to hire to install this service as only Powell and Ashby Communities allow their own service.

As Powell is refusing to provide this service we must place the construction of our home on hold which will cause us financial loss in interest carry and inability to sell and transfer the property. We ask for your immediate assistance and intervention in this matter.

Richard J. Bell
CC

Todd, Panther, Tune, Entrekin and White

Turnberry Homes, LLC

215 Jamestown Park Road
Suite 201
Brentwood, TN 37027
615-376-2200
FAX 615-376-2362
www.urnberryhomes.com

Exhibit B

WASTEWATER TREATMENT FACILITY SERVICE AGREEMENT

RECITALS

THE PARTIES

The parties (Parties) to this Wastewater Treatment Facility Service Agreement ("Agreement") are:

Kings Chapel Capacity, LLC., ("KCC") a Tennessee Limited Liability Company authorized by the State of Tennessee to operate as a public utility. KCC operates wastewater treatment facilities and systems. Its office is located at 1413 Plymouth Drive, Brentwood TN 37027, and

Ashby Communities LLC., ("ASHBY") a Tennessee limited liability company that develops land for residential use and facilitates the acquisition of real and personal property to be used in the process of treating sewage and wastewater, provides the physical structures and systems necessary for sewage and wastewater customers to connect to and utilize sewage and wastewater treatment facilities. The primary office of ASHBY is located at 1413 Plymouth Drive, Brentwood, Tennessee 37027.

THE PERSONAL AND REAL PROPERTY CONTEMPLATED IN THIS AGREEMENT

The personal and real property to which this Agreement refers are a wastewater treatment collection system comprised of collection tanks located on residential lots and service lines to collection lines that route waste water through a pump station (Collection System) to the wastewater treatment facility basically comprised of a Recirculating Sand Filtration system (RSF Treatment Facility) and two appurtenant wastewater disbursement soil fields (Fields) and this agreement. The "Wastewater System" comprised of the basic three components the collection system, the RSF Treatment Facility and the Fields together with its integrated structures, land, and agreements and systems accomplishes the sanitary treatment of sewage and other water-borne waste products with customers specified by ASHBY.

The Wastewater System is generally located on property to be conveyed by a reversionary warranty deed from its former owner, ASHBY to KCC. The Facility will be legally described in a warranty deed contained in "Attachment A" to this Agreement, as

an actual incorporation to this Agreement. Both this Agreement and warranty deed contains restrictive covenants causing title to the Wastewater System and operational rights to revert to ASHBY LLC, or assigns, if the Facility no longer functions as a sewage and wastewater treatment facility or KCC is in material breach of this Agreement. ASHBY reserves the right to a permanent easement on all property to be conveyed for any purpose it may require, including easements for ingress and egress over fields. In the event ASHBY requires easements it will replace land or fields required by KCC to operate the wastewater treatment system.

THE PURPOSE OF THIS AGREEMENT

The purpose of this Agreement is to establish the rights and obligations of and between ASHBY and KCC respecting the Facility. KCC will operate the Facility conducting sanitation treatment of customer sewage and wastewater and will charge the customer a fee for the service and be responsible for all billings and collections. ASHBY will, at its sole discretion, arrange for and connect customers to the system. After connection the customer will belong to KCC

This Agreement does not establish a partnership, joint venture, association or other business relationship between the Parties. The Parties will not act in concert to share with each other profits or expenses, but instead are separate legal entities independently conducting separate and distinct profit-seeking activities.

NOW THEREFORE, in exchange for their mutual promises and covenants herein described, the Parties agree TO WIT,

1. KCC WILL OWN AND OPERATE THE FACILITY. KCC will own the Wastewater System after conveyance of the property to KCC by warranty deed (with reversion) granted by ASHBY, LLC. KCC will operate the Facility for the sole purpose of treating water-borne waste products presented to the Facility for treatment.

2. FACILITY OWNERSHIP AND OPERATING REQUIREMENTS AND PROHIBITIONS.

2.1. KCC will operate the Facility consistent with the regulations, dictates and demands of governing Tennessee Regulatory Authority, and the Tennessee Department of Environment and Conservation and will do so continuously except when prevented from doing so by catastrophic events beyond KCC control. In the event of a suspension of services provided by KCC, notwithstanding cause therefore, KCC will incur all expenses and financial burden necessary to expeditiously return the Wastewater System to fully functioning status.

2.2. KCC will accept for sewer and wastewater treatment at the Wastewater System any and all customers having written approval from ASHBY for sewer and

wastewater treatment at the Wastewater System. KCC will not accept for sewer and wastewater treatment at the Facility any sewer and wastewater customer not having written approval from KCC for treatment at the Facility.

2.3. KCC will maintain the property and surrounding areas wherein the wastewater system utilizes property in a manner that does not impede or otherwise interfere with the quiet enjoyment of property proximate to the Wastewater System.

2.4. KCC will maintain the growth or undergrowth including, without limitation, shrubs and grasses upon property which the Wastewater System utilizes in a manner consistent with the maintenance of other grounds within the development or business property.

2.5. KCC will not pledge, mortgage, leverage, assign, or otherwise encumber in any way its rights or interest in the Wastewater System.

2.6. KCC will make available to ASHBY or its assigns unlimited amounts of available post-treatment water.

3. FEEES FOR CUSTOMER SEWAGE AND WASTEWATER TREATMENT. KCC acknowledges that by this Agreement, and with respect to operating the Wastewater System, KCC revenues will be limited to earning and collecting reasonable service fees regulated by the TRA from KCC customers who present their sewage and wastewater to the Wastewater System for treatment.

4. IMPROVEMENTS AND PHYSICAL PROPERTIES CONNECTING CUSTOMERS TO THE FACILITY. ASHBY will construct the improvements connecting customer structures with the Wastewater System for the purpose of conveying sewage and/or wastewater from the customers to and through the Wastewater System from all private roads and private/or community property. ASHBY will construct improvements and physical properties connecting customer structures with the Wastewater System for the purpose of conveying sewage and/or wastewater from the customer to the Wastewater System from and across all state, county and federal highways and roads as well as all public areas and public property. ASHBY will incur and bear the entire cost of constructing customer Wastewater System connection or improvements and physical properties from and across all aforementioned state, county and federal highways and roads and public areas property as well as all customer—Wastewater System—connections improvements and physical properties completed by ASHBY. KCC agrees to abide by all state, county and federal regulations in the performance of its duties and obligations herein. Notwithstanding the foregoing and not by way of limitation, KCC agrees to provide ASHBY with an engineering plan reflecting where all related sewerage/waste water lines are or should be placed within any user property as well as showing the proper location of collection waste receptacles on each lot and/or user property.

5. TREATMENT ACCESS FEES. ASHBY will have the exclusive right to collect access fees from customers who, at the sufferance of ASHBY, connect their residence or business structures to the Wastewater System for treatment of sewer and wastewater generated by the customer. The access fee will serve to reimburse and remunerate ASHBY for direct and indirect costs incurred to initially connect the customer's structure to the Wastewater System. ASHBY is not obligated to accept potential customers KCC may recommend to be served by the Wastewater System, however KCC must accept all potential customers ASHBY may recommend subject only to capacity to accept same.

6. NO LIMITATIONS ON ASHBY CONSTRUCTING ADDITIONAL TREATMENT FACILITIES. This Agreement does not prevent ASHBY from establishing treatment facilities in addition to the Wastewater System contemplated in this Agreement, nor is ASHBY prevented from utilizing service providers other than KCC to operate a facility not contemplated in this Agreement.

7. NO ASSIGNMENT BY KCC OF THIS AGREEMENT. KCC will not assign or otherwise convey its rights and obligations under this Agreement, except as required by Tennessee regulatory authority and/or mandated by this Agreement. If under Tennessee regulatory authority a conveyance of KCC Agreement obligations were required, such shall be conducted in a manner that would not result in an interruption of service and obligations contemplated in this Agreement.

8. PERFORMANCE BOND COSTS. ASHBY will be responsible for securing the performance bonds required by Williamson County. KCC will reimburse ASHBY for the cost of performance bonds attributable to customers whose sewage and wastewater are treated by the Facility. The performance bond reimbursement due ASHBY from KCC will be paid upon invoice or upon any other schedule mutually agreed upon in writing. While providing these bonds and the letter of credit to secure same ASHBY has the right to deny initial wastewater or sewerage connections to any areas or land or lots. At such time as ASHBY sells land or lots and collects all proceeds from the sale of the lot or land, which sale anticipates the costs of securing bonds and connection costs same connections will not be denied in the area granted to KCC by the TRA. In the event ASHBY does not receive full payment on lots or land sold, or any other problems arise with homebuilders Ashby may deny initial connection to the Wastewater System. After a home has been sold to a homeowner and an occupancy permit has been issued by the County ASHBY may not deny connecting that home to the Wastewater System.

9. INDEMNIFICATION AGAINST PERFORMANCE FAILURE. In the event ASHBY incurs assessments or other costs resulting from ASHBY posting performance bonds, KCC will indemnify and pay ASHBY for 100% of any disbursements made or required to be made by the performance bonds, to a limit of one million U.S. dollars (\$1,000,000.00). Said payments will be made within ninety (90) days of each and every assessment or cost incurred.

10. PAYMENT FOR THE COST OF BUILDING THE WASTEWATER SYSTEM
ASHBY shall bear the responsibility of securing payment for the entire cost of

constructing the Wastewater System by an entity other than KCC. IN the event KCC ratifies it's tariff to include a rate which would repay ASHBY for the cost of this wastewater system, KCC will repay ASHBY for this cost as allowed by the TRA.

11. TERM. The temporal duration of this Agreement is unlimited, subject to applicable laws and the right of reversion contained herein.

12. AGREEMENT TERMINATION. Because this agreement regards sanitation services necessary for public health, it may be terminated in the event of material breach by KCC, and may not be terminated at the election of KCC.

13. REMEDIES IN THE EVENT OF BREACH. In view of the practical impossibility of determining by computation or legal proof the exact amount of damages resulting to ASHBY from a violation of the provisions of this Agreement by KCC, Five Hundred Thousand Dollars (\$500,000.00) is agreed upon as the liquidated damages for any breach of this Agreement by KCC, which KCC agrees to pay on demand upon affidavit of ASHBY stating that a breach of KCC has occurred. ASHBY shall have the right to set off that amount against any amount due or to become due to KCC from ASHBY. It is mutually understood that the fixing of the amount as liquidated damages shall not be construed as a release or waiver by ASHBY of any right to proceed in equity or otherwise to compel the fulfillment or prevent a violation by KCC of any of the provisions of this Agreement to include, without limitation KCC's obligation to assign the rights to operate the facility to ASHBY or assigns upon demand by ASHBY in the event of default by KCC. KCC acknowledges that a breach of the provisions herein by KCC will cause irreparable damages to ASHBY and KCC consents to injunctive relief if sought by ASHBY.

14. WAIVER. If either Party allows the other Party aberrations from this Agreement, such shall not operate or be construed to relieve any Party from strict adherence to this Agreement in the future.

15. INFORMATION EXCHANGE. The Parties agree to exchange information necessary to confirm and effect compliance with this Agreement, including but not limited to, KCC customer service fee collection documents from which performance bond reimbursement inures to ASHBY.

16. NOTICE. Notice shall be served on the Parties at their addresses as they appear in this Agreement, or at the primary business location of a Party if different.

17. ENTIRE AGREEMENT. This Agreement is the entire agreement between the Parties respecting the Facility, and no alteration, modification, or interpretation hereof shall be binding on the Parties unless made in writing and executed by both Parties.

18. APPLICABLE LAW. This Agreement shall be construed and enforced in accordance with the laws of the State of Tennessee.

19. CONFIDENTIALITY. The Parties agree to not disclose to persons or entities, except on a need-to-know basis, any information contained in this Agreement.

20. SEVERABILITY. If any passage, provision, or language contained in this Agreement is inconsistent with or offensive to governing law, the offending element shall be deemed inoperative, with the spirit and effect of the Agreement remaining intact to the extent possible.

21. INTERPRETATION. 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.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement this 20th day of September, 2005.

Kings Chapel Capacity, LLC.
(A Tennessee Limited Liability Company)

By: [Signature]
C. John Powell, Managing Member

Ashby Communities, LLC
(A Tennessee Limited Liability Company)

By: [Signature]
John E. Powell, Member

ATTACHMENT A

(A copy of the warranty deed will be attached and marked as "Attachment A." when available)

Exhibit C

FILED
 HUNTER COUNTY
 CLERK
 21.0001 01.001
 ENTERED _____

ADDENDUM TO LOT PURCHASE AGREEMENT

Seller and Builder agree to amend the purchase agreement for developed lots in Kings Chapel Subdivision on page 2 or 11 as follows:

#2. ... an additional premium to Seller on each lot equal to 17 1/2 % of the gross sales price of the lot and home... ~~however no lot price shall be greater than \$78,000.~~

[Signature]

Tumberry Home, LLC

9/8/04

Date

[Signature]

Asby Communities/ Hang Rock LLC

9/8/04

Date

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., 1415 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 KING'S CHAPEL. A Site Plan of KING'S 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 KING'S 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-Four (24) 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-Four Thousand (\$1,774,000.00), plus an additional premium to Seller on each lot equal to 17.5% 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 Developer's 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 REEL*

(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 entities 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:

ASBRY COMMUNITIES A TENNESSEE
TN LIMITED LIABILITY CO., AGENT FOR:
HANG ROCK, LLC
1415 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~~(6)~~ lots upon completion of Phase One, anticipated to be in August of 2004. *12*
3. Builder must thereafter complete a "Secondary Purchase" of six (6) additional lots within six months after the "initial purchase". *3*
4. Builder must thereafter complete the "Final Purchases" of six ³~~(6)~~ additional lots every three months following the "Secondary Purchase" of six ³~~(6)~~ lots until all 24 lot purchases have been completed.. *3*

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~~ *See A.*

Swimming Pool

~~Spring House, Natural Amenity, discovery, play area.~~ *See A.*

~~Fire Ring (old site base)~~ *See A.*

~~Large Park Acreage around this Area~~ *See A.*

Creek Access Area with Pavilion

~~Sports fields Area with Pavilion~~ *See A.*

722
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 22 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

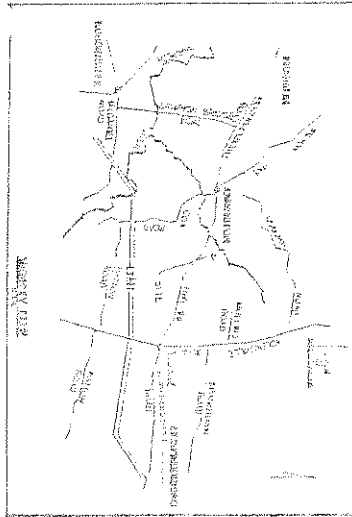


EXHIBIT 1

SITE PLAN
 MEADOWBROOK SUBDIVISION
 A PLANNED RESIDENTIAL CONSERVATION DEVELOPMENT
 ARIZONA: WILLIAMSON COUNTY, TEXAS

03028

1

MEADOWBROOK SUBDIVISION
 A PLANNED RESIDENTIAL CONSERVATION DEVELOPMENT
 ARIZONA: WILLIAMSON COUNTY, TEXAS

MEADOWBROOK SUBDIVISION
 A PLANNED RESIDENTIAL CONSERVATION DEVELOPMENT
 ARIZONA: WILLIAMSON COUNTY, TEXAS

Appendix I 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 true 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 sodded from the curb to a point one foot back on both sides from the front of the house.

Corner lots shall be sodded from both curbs to one foot back from the front corner of the house (corner closest 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 then 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

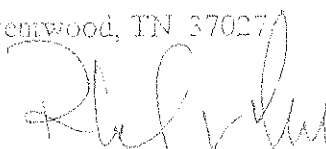
To Builder:

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-compaction 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 NOT'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 vents- 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 stream, 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 liner. 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.

Exhibit D

Design Guidelines

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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-compaction 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 first floor must have a minimum of 2000 square feet exclusive of Garages, porches, patios breezeways and basements. Total living area of entire home must be a minimum of 3000 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 6:12. 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 vents- 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.

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. No house should mix gridded and non-gridded windows. 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 - Must be operational with the same style as the home.

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. No home shall have a front entry or motor court type garage.
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:
- a. 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.
 - b. Swing sets, forts and sandboxes - must be natural wood.
 - c. 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 Meadowbrook. 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.

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 Meadowbrook, 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. To prevent silt collecting in roadways, ponds or streams, 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

The above Design Guidelines are attached to the KINGS CHAPEL APPROVED BUILDERS GROUP AGREEMENT and hereby made a part thereof.

Exhibit E

FILED
WILLIAMSON COUNTY
IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE
AT FRANKLIN

2007 MAR -5 PM 12:04

ENTERED 3-16-07

ASHBY COMMUNITIES, LLC,

Plaintiff,

v.

TURNBERRY HOMES, LLC,

Defendant.


Civil Action No. 33291

ORDER DISSOLVING TEMPORARY RESTRAINING ORDER
AND DENYING PLAINTIFF'S APPLICATION FOR TEMPORARY INJUNCTION

This matter came to be heard on February 22, 2007 upon the Plaintiff's application to convert the Temporary Restraining Order issued on February 16, 2007 to a temporary injunction under Tenn. R. Civ. P. 65.04. Upon consideration of the Plaintiff's Verified Complaint, the affidavits submitted by the Plaintiff, the response and affidavit of the Defendant, the entire record, and based upon the Court's findings of fact and conclusions of law that it made from the bench, a transcript of which is attached hereto and incorporated herein by reference, the Court finds that the Plaintiff's application for temporary injunction is not well taken and should be denied.

It is, therefore, ORDERED, ADJUDGED and DECREED that the Temporary Restraining Order issued on February 16, 2007 shall be and is hereby dissolved and the Plaintiff's Application for Temporary Injunction shall be and is hereby denied.

ENTERED this 16 day of March, 2007.


B. LEE DAVIES

DS

APPROVED FOR ENTRY:



Todd E. Panther (#14438)
Tune, Entekin & White, P.C.
AmSouth Center, Suite 1700
315 Deaderick Street
Nashville, TN 37238
(615) 244-2770 - telephone
(615) 244-2778 - fax
tpanther@tewlawfirm.com - e-mail

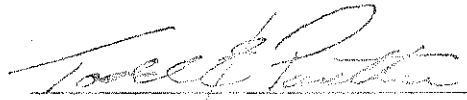
Attorney for Turnberry Homes, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been served, via the method(s) indicated below, on the following counsels of record, this the 2nd day of March, 2007.

- () Hand
- (☒) Mail
- () Fax
- () Fed. Ex.
- () E-Mail
- () CM/ECF

Charles B. Welch, Jr.
Farris Mathews Branan Bobango Hellen &
Dunlap, PLC
618 Church Street, Suite 300
Nashville, TN 37219


Todd E. Panther (#14438)

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.

3-19-07 Theresa A. Banton, Dep.
Date Clerk & Master

1 IN THE CHANCERY COURT
2 FOR WILLIAMSON COUNTY, TENNESSEE 03/05/07 @ 12:04p
FILED

3 ENTERED

BOOK PAGE
ELAINE B. BEELER, Clerk & Master

4 ASHBY COMMUNITIES, LLC,)
5 AGENCY FOR HANG ROCK, LLC,)

6 Plaintiff,)

7 vs.)

8 TURNBERRY HOMES, LLC,)

9 Defendant.)
-----)

CIVIL ACTION
NO. 033291

10
11
12 Judgement & Order of the Court

13 E. LEE DAVIES, JUDGE

14 February 22, 2007
15
16
17
18
19
20

21 ORIGINAL
22 -----

VOWELL & JENNINGS, INC.

Court Reporting Services

214 2nd Avenue North

Suite 207

Nashville, Tennessee 37201

(615) 256-1935
25

1 guidelines prohibit this type of configuration,
2 that is clearly controlled by the paragraphs
3 that you all have referred me to, paragraph 3 of
4 the design guidelines, and paragraph 3 of the
5 same paragraph -- paragraph 3 of the revised
6 design guidelines. I hold that they do not
7 prohibit this type of configuration; that when
8 it says "vehicular access to the garage is to be
9 from the rear or the side of the home," that's
10 what that means, that no home shall have a front
11 entry. What that means is no home shall have a
12 garage on the front of the house. That's, to
13 me, to be the reasonable interpretation of this
14 agreement. And so what I'm saying is even
15 though there was a breakdown in communication
16 between builder and the developer here, had
17 there not been -- and they've gotten into it,
18 the result would have been the same. I hold
19 that these guidelines don't prohibit what has
20 been done at this point in time. That does not
21 mean, of course, that the developer can't revise
22 this once again to make it clear, but the way
23 it's written at this point, I don't think it's
24 clear. In fact, I think it's just like I said.
25 If I were to consider to go further, that's on

1 the likelihood of the success issue. If I were
 2 to consider the balancing -- further balancing
 3 irreparable harm and a mandatory injunction,
 4 which is what this would amount to, and which
 5 the Court is -- we're all told to be very
 6 careful about mandatory injunctions, I just
 7 can't find that to be the case. I do not see
 8 irreparable harm. I'm not sure there is any harm
 9 except possibly some mad neighbors and the
 10 developer. I'm not sure how you quantify that.
 11 But until and unless they were able to come back
 12 in and show me some diminution of the entire
 13 module, that would be the only way I could award
 14 any damages. And as I've held, I don't think I
 15 can do that anyway because I don't think this --
 16 the design guidelines in their present form
 17 prohibit a garage on the side of the house,
 18 which is what this is. That's my order,
 19 gentlemen. The injunction is dissolved.

20 MR. PANTHER: I'll prepare an
 21 order, your Honor.

22 THE COURT: All right

23 MR. WELCH: Thank you, your Honor.

24 THE COURT: Yes, sir.

25 * * * * *

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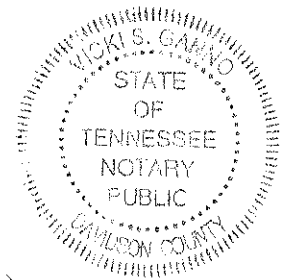
REPORTER'S CERTIFICATE

260 904

1 I, VICKI S. GANNO, RPR, CCR, a fully
2 qualified court reporter, do hereby certify that
3 I was present at and recorded to the best of my
4 skill and ability by machine shorthand all the
5 proceedings in the foregoing transcript; and
6 that said transcript is a true, correct, and
7 complete transcript to the best of my ability.

8 I further certify that I am not an
9 attorney or counsel of any of the parties, nor a
10 relative or employee of any attorney or counsel
11 connected with the action, nor financially
12 interested in the action.

13
14 SIGNED this 25th day of February, 2007.



15
16
17
18
19 *Vicki S. Ganno*

20 VICKI S. GANNO, RPR, CCR, Notary Public
21 State of Tennessee at Large
22 My Commission expires January 24, 2009
23
24
25

Exhibit F

Ashby Communities, LLC
Agent for Hang Rock, LLC
& Developer for King's Chapel Subdivision
1413 Plymouth Drive
Brentwood, TN 37027

March 2, 2007

Mr. Rick Bell, President
Turnberry Homes, LLC
210 Jamestown Park Drive, Suite 102
Brentwood, Tennessee 37027

Re: Notice of Material Default and Notice to Repurchase Lots 138 & 139.

Dear Mr. Bell:

Turnberry Homes, LLC ("Turnberry") is hereby notified that they are in material default. Turnberry's various instances of material default as defined in the Lot Purchase Agreement include, but are not limited to, the following:

Section 3 Default by Builder

- (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; and
- (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).

In the sole discretion of developer, Ashby Communities, LLC ("Ashby") finds that Turnberry has refused, on multiple occasions, to adhere to the signed contracts regulating construction in the King's Chapel Subdivision ("King's Chapel").

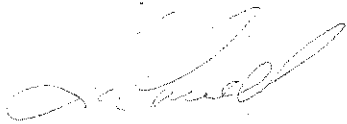
Turnberry ignores and refuses to respond to our letter dated November 13, 2006 concerning the home constructed on Lot 128. The construction of the home that now exists on Lot 128 is in clear violation of our agreement which puts your company again in material default.

Mr. Rick Bell
March 2, 2007
Page 2 of 2

You have failed to resolve or respond to complaints of Turnberry's business practices in King's Chapel. This allows us to immediately exercise remedies under the agreement without further notice.

Ashby finds Turnberry in default. Ashby has the right to repurchase all Lots owned by Builder at the price paid for such Lots by Builder. Since Turnberry has not started any construction on Lots 138 & 139, nor has Ashby given Turnberry written approval to begin any construction on these lots, please have your counsel contact our attorney, Mr. Charles B. Welch, Jr., to arrange the transactions.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Powell", written in dark ink.

John Powell

Exhibit G

FARRIS MATHEWS BRANAN
BOBANGO HELLEN & DUNLAP, PLC

ATTORNEYS AT LAW

HISTORIC CASTNER-KNOTT BUILDING
616 CHURCH STREET, SUITE 300
NASHVILLE, TENNESSEE 37219

Charles E. Welch, Jr.
cwelch@farrismathews.com

Telephone: (615) 726-1200
Facsimile: (615) 726-1776

Writers Direct Dial:
615-687-4330

March 30, 2007

Todd E. Panther, Esq.
Tune, Entekin & White, P.C.
315 Deaderick Street
AmSouth Center, Suite 1700
Nashville, Tennessee 37238-1700

VIA FACSIMILE & U.S. MAIL

Re: Ashby Communities, LLC and Turnberry Homes, LLC.

Dear Mr. Panther:

We understand that Ashby Communities, LLC ("Ashby") sent Mr. Rick Bell, President, Turnberry Homes, LLC ("Turnberry"), a Notice of Material Default and Notice to Repurchase Lots 138 and 139 dated March 2, 2007. Upon the basis of same, you notified us of Turnberry's offer to sell back Lot 138 less the expenses of obtaining the building permit on or about March 6, 2007. After conferring with our client, this offer was rejected since Ashby wanted to repurchase both Lots 138 and 139, not merely Lot 138.

Our client learned that Turnberry has begun construction on Lots 138 and 139 by clearing the lots and cutting down trees. The agreement between the parties allows Ashby to repurchase any lots owned by Turnberry in the event of default. The various instances of default claimed by Ashby include, without limitation, the shed-roof on Lot 128, building the home on Lot 147 in violation of the approved elevation, and the lack of approval for Lots 138 and 139.

Apparently, Turnberry is unwilling to meet its obligations under the terms of the agreement. We gladly welcome your thoughts on the matter prior to the initiation of further lawsuits between the parties. I would appreciate the opportunity to discuss these matters with you very soon.

Further, I would appreciate it if we could schedule a time and date to meet with one another to help narrow the issues in the declaratory judgment action. I will be unavailable this afternoon until Monday morning. However, if you are available today to discuss the matters herein, I direct you to call my associate, Jamie R. Hollin.

MEMPHIS DOWNTOWN: One Commerce Square, Suite 2000, Memphis, Tennessee 38102, (901) 259-7100 telephone, (901) 259-7150 facsimile

MEMPHIS EAST: 1100 Ridgeway Loop Road, Suite 400, Memphis, Tennessee 38110, (901) 259-7120 telephone, (901) 259-7180 facsimile

Todd E. Panther, Esq.
March 30, 2007
Page 2 of 2

Yours very truly,

FARRIS MATHEWS BRANAN
BOBANGO HELLEN & DUNLAP, PLC

A handwritten signature in cursive script that reads "Charles B. Welch, Jr.".

Charles B. Welch, Jr.

A handwritten mark, possibly initials or a signature, consisting of stylized letters.

Exhibit H

TUNE, ENTREKIN & WHITE, P.C.

THOMAS V. WHITE
JOHN W. HOLLEY, JR.
THOMAS C. SCOTT
PETER J. STRIANDE
HUGH W. ENTREKIN
BEN H. GANTRELL
JOHN P. WILLIAMS
LESA HARTLEY SKONEY
JOSEPH P. RUSNAK
TODD E. PANTHER
SHAWN R. HENRY
T. CHAD WHITE
STEPHEN A. LUND

ATTORNEYS AT LAW

AmSOUTH CENTER
SUITE 1700
315 DEADERICK STREET
NASHVILLE, TENNESSEE 37238
TEL (615) 244-2770 FAX (615) 244-2778

JOHN C. TUNE
1931-1993

ERVIN M. ENTREKIN
1927-1990

CH. C. GURLEY
JOHN D. FITZGERALD, JR.
*Now 31 West Central Office, LLC

March 30, 2007

VIA FACSIMILE 615-726-1776 & U.S. MAIL

Charles B. Welch, Jr.
Farris Mathews Branam Bobango
Hellen & Dunlap, PLC
618 Church Street, Suite 300
Nashville, TN 37219

Re: Ashby Communities, LLC v. Turnberry Homes, LLC;
Williamson County Chancery Civil Action No. 33291

Dear Chuck:

This is in response to your March 30, 2007 letter. I have already reviewed the correspondence between our clients concerning these issues, and I believe your client's position has no merit whatsoever. If you wish to offer any further explanation for the validity of your client's position than what is contained in the letters from your client, I will certainly consider them. Otherwise, I see nothing to discuss.

Sincerely,

TUNE, ENTREKIN & WHITE, P.C.



Todd E. Panther

TEP/vfj

c: Richard J. Bell (w/enc. via facsimile)

Exhibit I

FARRIS MATHEWS BRANAN
BOBANGO HELLEN & DUNLAP, PLC

ATTORNEYS AT LAW

HISTORIC CASTNER-KNOTT BUILDING
618 CHURCH STREET, SUITE 300
NASHVILLE, TENNESSEE 37219

Jamie R. Hollin
jhollin@farrismathews.com

Telephone: (615) 726-1200
Facsimile: (615) 726-1776

Writers Direct Dial:
615-687-4243

April 9, 2007

Todd E. Panther, Esq.
Tune, Entrekin & White, P.C.
315 Deaderick Street
AmSouth Center, Suite 1700
Nashville, Tennessee 37238-1700

VIA FACSIMILE & U.S. MAIL

Re: Ashby Communities, LLC and Turnberry Homes, LLC.

Dear Mr. Panther:

This matter has been referred to my attention by Mr. Charles B. Welch, Jr. In reply to your letter dated March 30, 2007 wherein you indicate your willingness to consider further explanation of our client's position, I submit to you the following:

(1) Turnberry Homes, LLC ("Turnberry") continues to violate the spirit and intent of the parties' agreement:

(2) Turnberry refuses to follow the plans submitted and approved by the developer. For example, the home built on Lot 147 was not constructed according to the plans submitted by Turnberry and approved by the developer. I have enclosed the drawings submitted by Turnberry and pictures of all the homes referenced herein for your convenience. Please note the front porch, extra roof pitch, and lack of operational shutters;

(3) Similarly, the home on Lot 144 is built contrary to submitted plans and approval. This home has vinyl shutters which are not functional. Pursuant to the Revised Design Guidelines on page 6, the shutters "[m]ust be operational with the same style as the home." Further, the home does not have a brick column near the front door as indicated in the approved drawing;

(4) The home on Lot 128 has a shed-roof and chimney that are not in conformance with the approved drawings; and

(5) The home on Lot 115 does not have arched windows in conformance with

Todd E. Panther, Esq.
April 9, 2007
Page 2 of 2

approved drawings. Also, the door-level face of the home has the same brick as the entire home.

In the spirit of cooperation and negotiation, we would like, at minimum, to reopen the discussion relative to your client's previous offer. We want to resolve these matters in the most convenient and inexpensive manner.

Very truly yours,

FARRIS MATHEWS BRANAN
BOBANGO, HELLEN & DUNLAP, PLC

A handwritten signature in dark ink, appearing to read "JRHollin", is written over the typed name.

Jamie R. Hollin

JRH/kz
Enclosures
Cc: John Powell

GRADE MAY VARY

FRONT ELEVATION
SCALE 1/8" = 1'-0"

1060

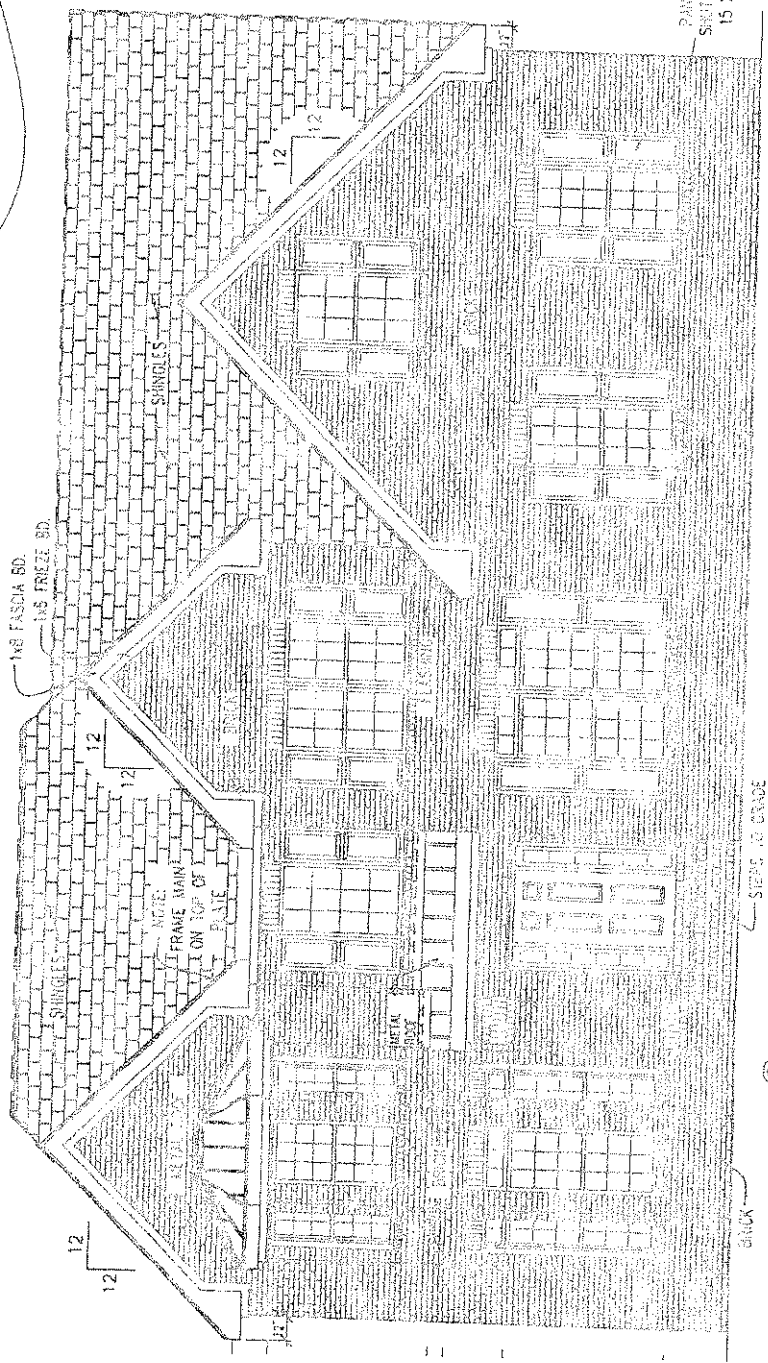
0010



04-01-2010



Pict 013



PANEELED
SHUTTERS
15 X 75

STEPS TO GRADE
AS NEEDED

FRONT ELEVATION
SCALE 1/8" = 1'-0"

No Dark Color

NOTE:

1. PROVIDE STEEL LINTELS @ ALL MASONRY OPENINGS (AS REQUIRED).
2. PROVIDE SCREENED SOFFIT VENTS @ 96" O.C. AROUND HOUSE.
3. PROVIDE VENTILATORS (AS REQUIRED).

It is the official of record of the information in this report.

BIRKDALE
PHSE 3 CAD

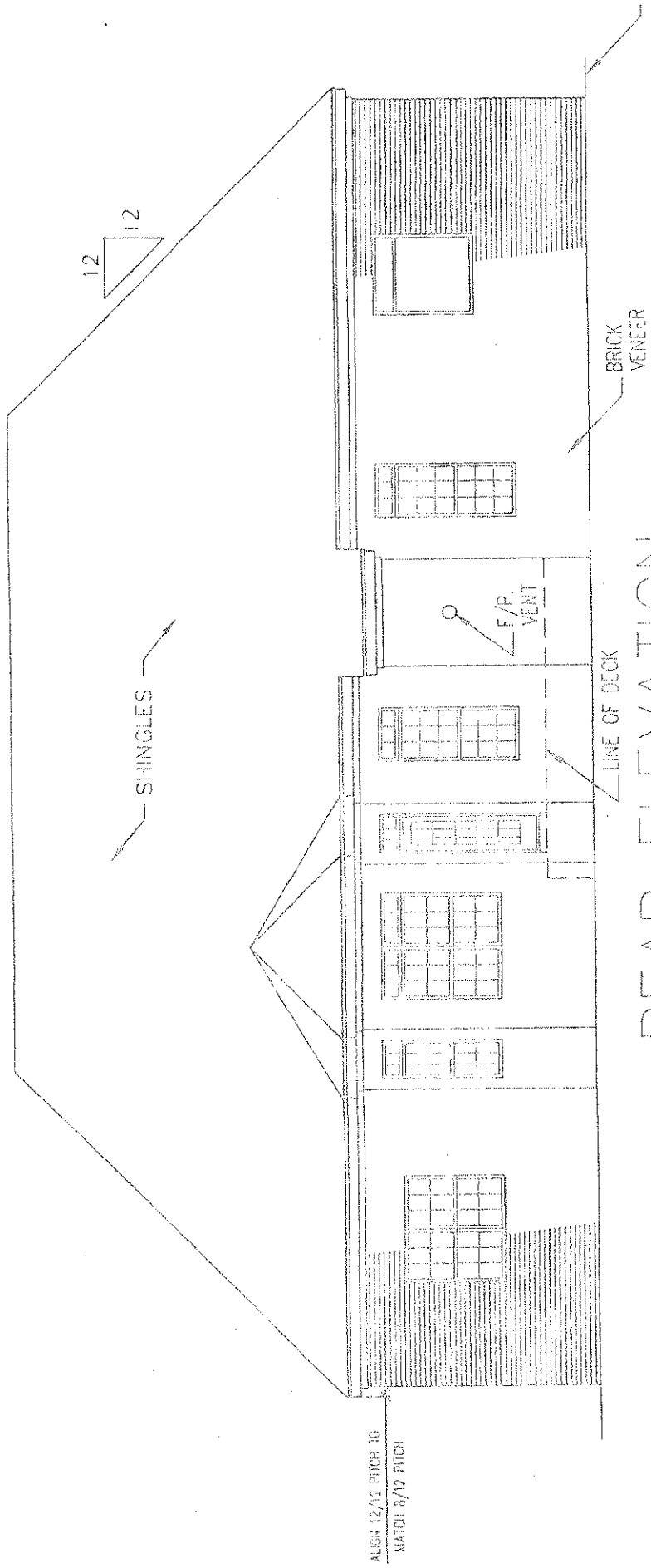
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/R
DRAW
BDD
JOB N

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0013



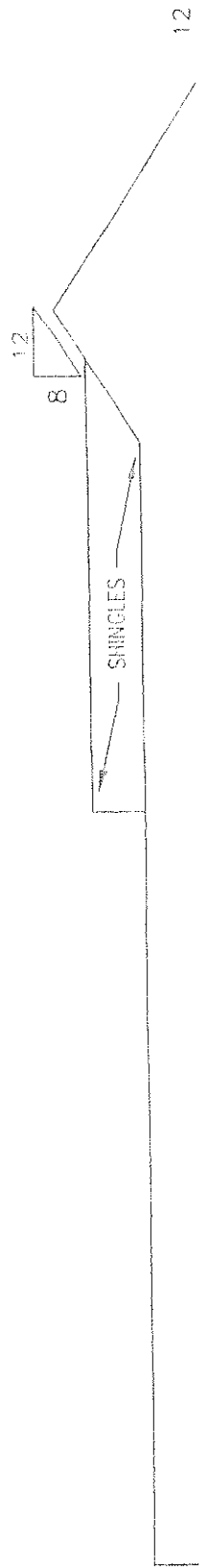
Pict 0611



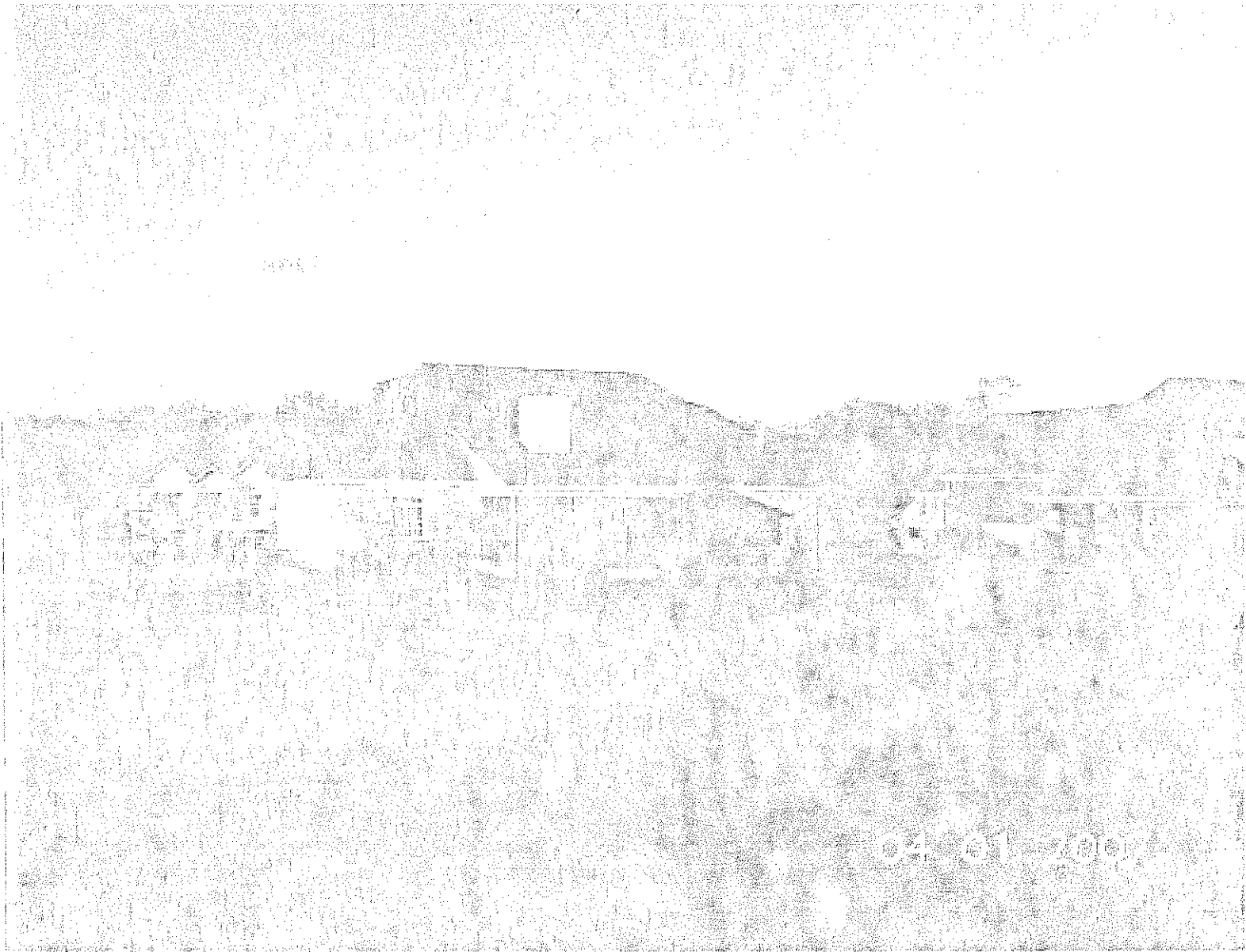
REAR ELEVATION

SCALE 1/8" = 1'-0"

ALIGN 12/12 PITCH TO
MATCH 3/12 PITCH



Pied 0211



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[illegible]

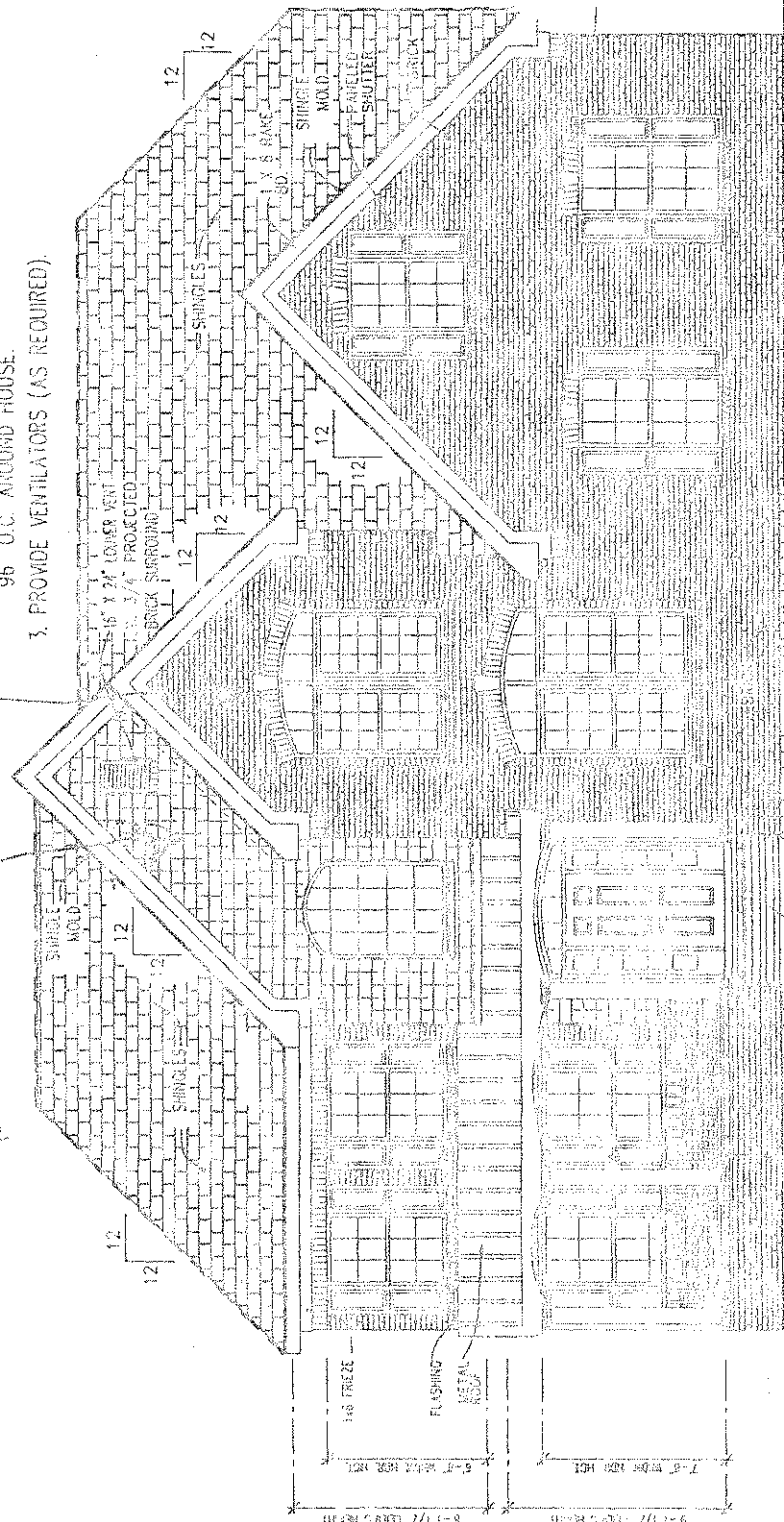
09
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1. PROVIDE STEEL LINTELS @ ALL MASONRY OPENINGS (AS REQUIRED).
2. PROVIDE SCREENED SOFFIT VENTS @ 96" O.C. AROUND HOUSE.
3. PROVIDE VENTILATORS (AS REQUIRED).

4 STUDS @ 16" O.C.
X 8" LAG BOLTS
CH STUD

C. ENGINEER

ING X 3 (NAIL @ EACH STUD)



المجلة
العلمية
للدراسات
الاسلامية
والاسلام
والمجتمع

CONFIDENTIAL

**STEPS TO GRADE
AS NEEDED**

THE BOOK

0015

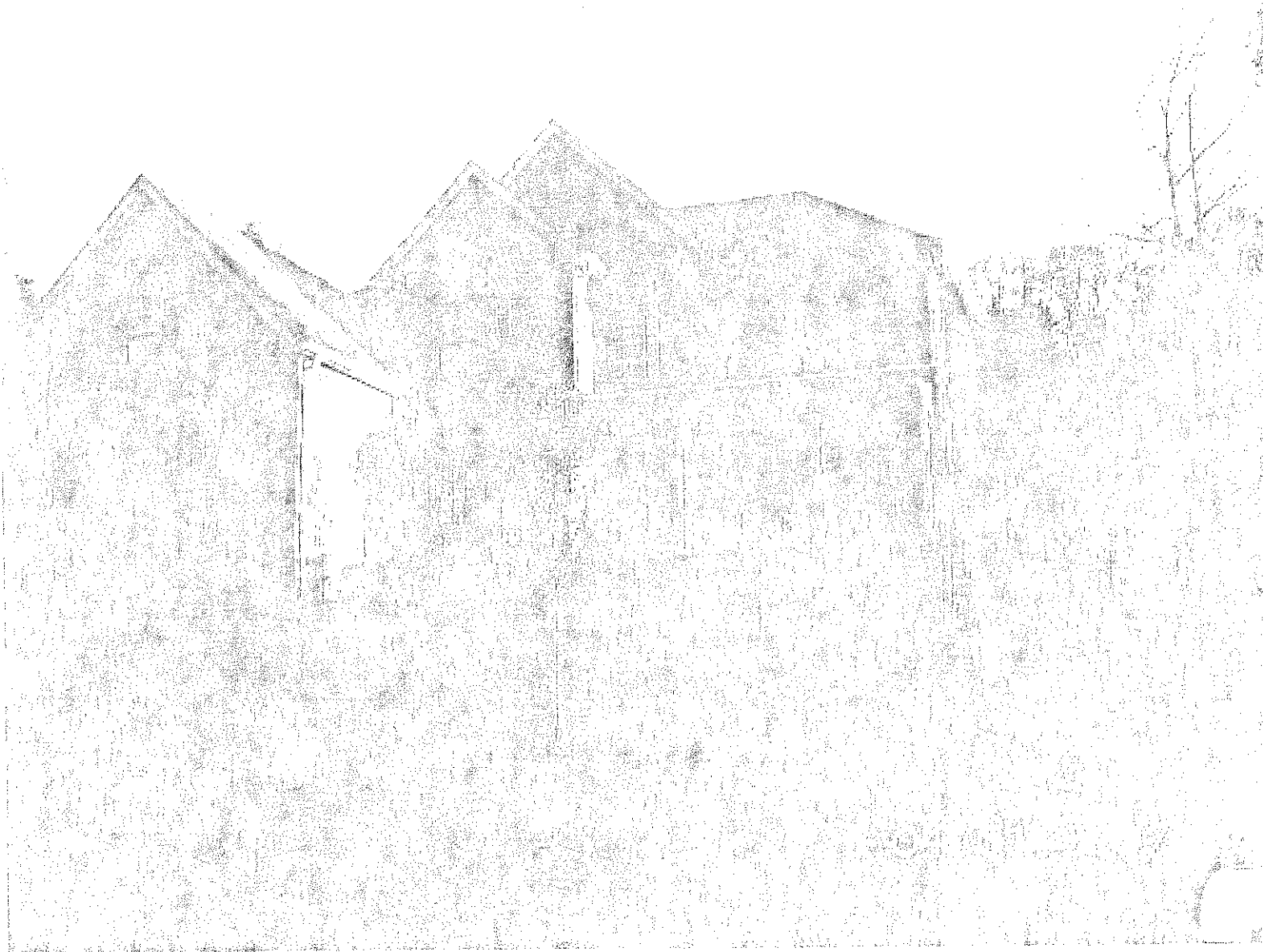


Exhibit J

IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE
AT FRANKLIN

TURNBERRY HOMES, LLC,)	
)	
Plaintiff,)	
)	
v.)	No. 35796
)	
KING'S CHAPEL CAPACITY, LLC,)	
)	
Defendant.)	

AFFIDAVIT OF TIMOTHY J. MILAZO

STATE OF TENNESSEE)
)
COUNTY OF WILLIAMSON)

Having first been duly sworn, Timothy J. Milazo states as follows:

1. I am an adult citizen and resident of Rutherford County, Tennessee; I am over 21 years of age; I am competent to testify in a legal proceeding; and I have personal knowledge of the facts contained in this affidavit.

2. I am the project manager for Ashby Communities, LLC in King's Chapel Subdivision ("King's Chapel).

3. On August 10, 2007, I worked in King's Chapel.

4. I am familiar with all the lots located in King's Chapel.

5. I am familiar with all the remaining lots owned by Turnberry Homes located in King's Chapel.

6. On August 10, 2007, I took 3 photographs of the home located on lot 139. A true and correct copy of the 3 photographs taken by me on August 10, 2007 of the home located on

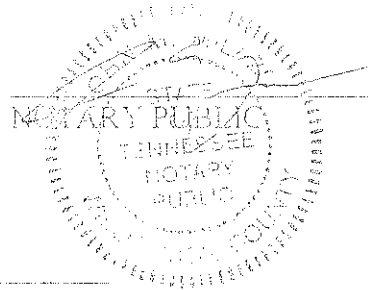
lot 139 are attached hereto and incorporated herein by reference respectively as Attachments 1,

2, & 3.

FURTHER, AFFIANT SAYETH NOT.

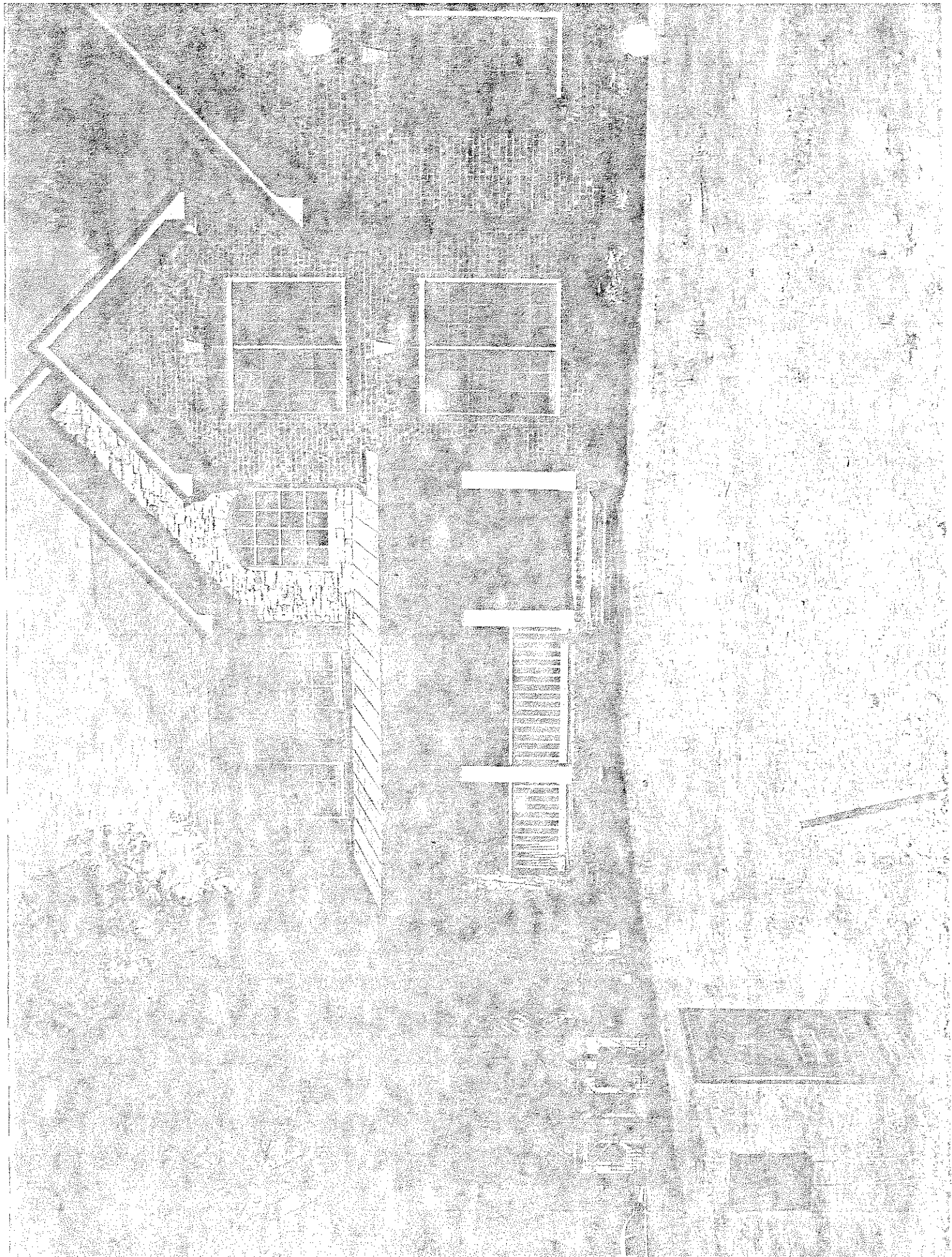
Tim Milaze
Timothy J. Milaze

Sworn to and subscribed before me the undersigned notary public this 16th day of August, 2007.



My Commission Expires: 3/7/09

Attachment No. 1



Attachment No. 2



Attachment No. 3

Attachment No. 3

Attachment No. 3



IN THE CHANCERY COURT FOR WILLIAMSON COUNTY,
AT FRANKLIN

FILED
WILLIAMSON COUNTY
CLERK
2007 AUG 17 AM 9:12

TURNBERRY HOMES, LLC,

Plaintiff,

v.

KING'S CHAPEL CAPACITY, LLC,

Defendant.

)
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)
)
)
)
)

No. 33796

ENTERED _____

AFFIDAVIT OF JOHN E. POWELL

STATE OF TENNESSEE)

COUNTY OF DAVIDSON)

Having first been duly sworn, John E. Powell states as follows:

1. I am an adult citizen and resident of Williamson County, Tennessee; I am over 21 years of age; I am competent to testify in a legal proceeding; and I have personal knowledge of the facts contained in this affidavit.

2. I am the sole, managing member of King's Chapel Capacity, LLC ("KCC"). I am also the managing member, with partners in Ashby Communities, LLC ("Ashby").

3. 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. KCC is the owner and operator of an onsite sewer system for King's Chapel Subdivision ("King's Chapel") located in Williamson County, Tennessee.

4. KCC is a public utility as defined by Tenn. Code Ann. § 65-4-101 under the jurisdiction and subject to the regulatory control of the Tennessee Regulatory Authority ("Authority").

5. KCC was issued a Certificate of Public Convenience and Necessity by the Authority in Docket No. 04-00335 to provide wastewater services to an area in Williamson County, Tennessee known as Ashby Communities—later to be known as King's Chapel.

6. Turnberry Homes, LLC ("Turnberry Homes") filed a complaint with the Authority on July 11, 2007.

7. Turnberry Homes' complaint with the Authority is currently being investigated and has not been adjudicated.

8. In KCC's response to the complaint filed by Turnberry Homes with the Authority, I directed my attorneys to reply that a collection tank has been installed on lot 139. This directive was a sloppy error on my part. I incorrectly thought there was a collection tank installed on lot 139; however, after a detailed review of my records I learned that a collection tank has not been installed on lot 139. A collection tank has been installed on lot 138, not lot 139. I had no intent to mislead my attorneys when answering the Turnberry Homes' complaint with the Authority. I will be filing this affidavit with the Authority to correct the error.

9. Turnberry Homes never called Ashby or me requesting to have a collection tank installed on lot 138. Instead, Turnberry Homes contacted the licensed contractor to have the collection tank installed on lot 138 without Ashby's knowledge. Ashby allowed the installation of the collection tank on lot 138 upon learning of the situation and realizing the collection tank was in transit to King's Chapel and the hole had already been dug. However, I instructed my contractor, Mr. Wayne Stine, to inform Turnberry Homes that no wastewater services would be

available on lot 138 unless and until KCC received express authorization to provision the service and that the utility's connection valve on the main line shall remain in the off-position. KCC has not received authorization from Ashby to allow connection to wastewater system (the "System"). I incorrectly thought there was a collection tank installed on lot 139; however, after a detailed review of my records I learned that a collection tank has not been installed on lot 139.

10. Ashby arranged for the design and construction of the System to take place, and paid for all labor, materials, and equipment necessary for the construction of the System in King's Chapel.

11. On September 20, 2005, Ashby and KCC entered into a Wastewater Treatment Facility Service Agreement (the "Agreement").

12. Pursuant to the terms of the Agreement, by reversionary warranty deed, Ashby must convey the System and the land necessary to operate the System in King's Chapel to KCC subject to certain contractual restrictions between Ashby and KCC when the System is complete. The System is not complete at this time.

13. Ashby holds the exclusive right to deny initial wastewater services, not KCC.

14. Pursuant to the terms of the Agreement, KCC is not authorized to provide initial wastewater services to any lots in King's Chapel unless and until KCC has received express authorization by Ashby to do so.

15. Ashby has not authorized KCC to provide wastewater services for lots 138 or 139.

16. If KCC were to provide wastewater services to any lot without authorization from Ashby, KCC would be in breach of the Agreement.

17. Turnberry Homes is not KCC's customer.

18. Turnberry Homes, or any other party, will not become a customer of KCC unless and until Ashby gives the authorization to KCC to provide initial wastewater services to the lot.

19. KCC owes no obligation to Turnberry Homes.

20. Not long after the February 22, 2007 in Docket No. 33291, in an effort to mitigate further, future problems with Turnberry Homes and to maintain the design integrity and property values within King's Chapel, Ashby attempted repurchase from Turnberry Homes' its remaining lots pursuant to the terms of the parties' agreement.

21. On March 2, 2007, Ashby wrote a letter to Mr. Richard J. Bell placing Turnberry Homes on "Notice of Material Default and Notice to Repurchase Lots 138 & 139."

22. My attorneys sent a letter to Turnberry Homes' attorney informing them of Ashby's notice of default and contractual right to repurchase lot 138 and 139.

23. Turnberry Homes attorney responded to foregoing letter from Ashby's attorney that Ashby's claims lacked merit.

24. My attorneys sent another letter on April 9, 2007 again advising Turnberry Homes of its numerous violations of the agreement between Hang Rock, LLC, Ashby, and Turnberry Homes.

FILED
 WILLIAMSON COUNTY
 CLERK

IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE
 AT FRANKLIN

2007 AUG 17 AM 9:20

TURNBERRY HOMES, LLC,

Plaintiff,

v.

KING'S CHAPEL CAPACITY, LLC,

Defendant.

)
)
)
)
)
)
)
)
)
)

No. 33796

ENTERED _____

SECOND AFFIDAVIT OF JOHN E. POWELL

STATE OF TENNESSEE)

)

COUNTY OF DAVIDSON)

Having first been duly sworn, John E. Powell states as follows:

1. I am an adult citizen and resident of Williamson County, Tennessee; I am over 21 years of age; I am competent to testify in a legal proceeding; and I have personal knowledge of the facts contained in this affidavit.

2. I am the sole managing member of King's Chapel Capacity, LLC ("KCC").

3. 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.

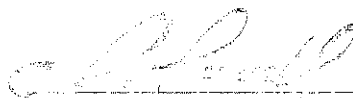
4. KCC is a public utility as defined by Tenn. Code Ann. § 65-4-101 under the jurisdiction and subject to the regulatory control of the Tennessee Regulatory Authority ("Authority").

5. KCC has no arrangement of any description with Turnberry Homes, LLC, to provide wastewater, sewer, facilities or services.

6. KCC does not construct or install wastewater sewer or facilities and has never constructed or installed such facilities.

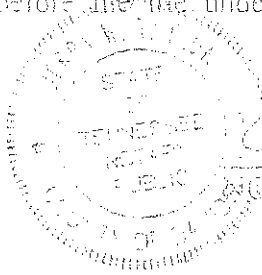
7. After the construction and installation of wastewater facilities by Ashby Communities, LLC, KCC inspects the facilities and either accepts ownership or rejects ownership based upon its specifications. In the event facilities are accepted, KCC takes ownership and responsibility for maintenance, repair, and service to its customers.

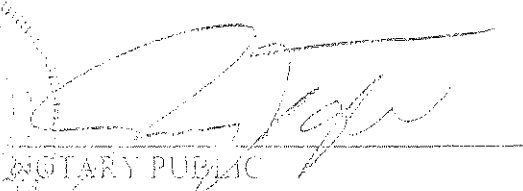
FURTHER, AFFIANT SAYETH NOT.



Jean E. Powell

Sworn to and subscribed before me the undersigned notary public this 16th day of August, 2007.





My Commission Expires:

1-24-09

FILED
WILLIAMSON COUNTY
JUN 10 1968

ENTERED _____

Defendant.

No. 33796

COUNTY OF WILLIAMSON

3. Electel, is licensed Tennessee contractor who is hired and paid by Ashby Communities LLC, ("Ashby") to install the original collection tanks, service lines, main lines, pump stations and other necessary components that make up the wastewater system at King's Chapel Subdivision ("King's Chapel"). Additionally, I am the project manager for the King's Chapel and Ashby, and I report to Mr. John Powell. I inform Mr. Powell of everything I see happening within King's Chapel that I think is unsafe. I also make him aware of poor construction practices and infractions that builders perform which are in conflict with their

contracts as approved builders and any features constructed on homes violating the design guidelines within the contracts. Mr. Powell also informs me on when homes are to begin construction.

4. Occasionally, Electel is hired by Kings Chapel Capacity, LLC ("KCC") to repair broken components or lines that are damaged during construction. We are also hired to connect or disconnect service lines between the collection tanks and the main wastewater collection lines.

5. An employee of Turnberry Homes, LLC ("Turnberry Homes") contacted me on or about June 7th 2015 to install a collection tank on lot 138 in Kings Chapel Subdivision.

6. Turnberry Homes is on a COD basis for services in King's Chapel. Turnberry Homes is the only builder in King's Chapel on a COD basis. Several months ago, I was directed by Mr. Powell of Ashby to place Turnberry on a COD basis. Following this directive, Turnberry Homes was placed on notice that no other collection tanks would be installed on their lots until payment was made for past services. After Turnberry Homes' past due payments were finally received, Turnberry Homes was permanently placed on COD for all future services.

7. Because of this COD arrangement when I install a tank Ashby the day of or a few days before I give Ashby notice because they mail a copy of an invoice to Turnberry for the tank with the lot number.

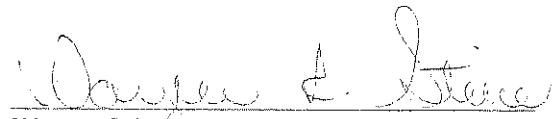
8. Builders know to arrange the tank installations with me as the hole for the collection tank must be dug and prepared and the collection tank must be ordered from Columbia Tennessee. The collection tank is delivered when the hole is ready. I do not dig a hole until I know a holding tank can be delivered. I do this because the hole is extensive and usually over six or seven feet deep and I do not wish to leave open holes in a subdivision overnight.

9. Mr. Powell was driving in King's Chapel as we were digging the hole for lot 138. I knew that Turnberry Homes had not received permission to build homes on lots 138 and 139. I also knew because of my past observations that Turnberry Homes had not been following the design guidelines for some time. I was ordered to fill the hole. However, the collection tank was currently in route to King's Chapel from Columbia, Tennessee. Mr. Powell allowed the installation of the collection tank and lines, but refused to allow sewer services to lot 138. Mr. Powell had no previous knowledge that I was installing the collection tank on lot 138.

10. On August 14, 2007, Mr. Powell in his capacity with KCC, directed me to check the shut-off valve at lot 138. To my surprise, it was turned on. I notified Mr. Powell and he ordered me to turn the valve off. I informed Turnberry Homes of my intentions.

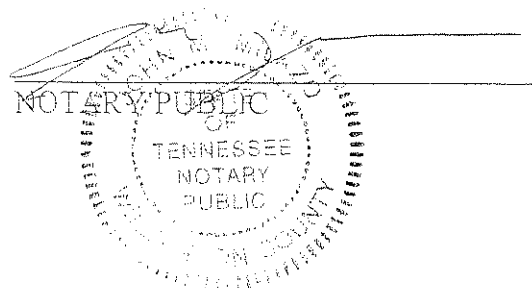
11. On August 15, 2007, employees of Turnberry Homes, known to me as Johnnie and Rick, notified me that they [Johnnie and Rick] had turned the valve back to "on" position. Johnnie and Rick have never received permission to place the valve in the "on" position. This act was done without approval from Ashby, KCC, or me. I was threatened by Johnnie and Rick not to return to the valve or I would face prosecution and arrest for trespassing. The sewer valve does not belong to Turnberry Homes, it's not located on Turnberry Homes' property, and Turnberry Homes has no authority over the valve whatsoever.

FURTHER, AFFIANT SAYETH NOT.


Wayne Stine

Sworn to and subscribed before me the undersigned notary public this 16th day of August, 2007.

My Commission Expires: 3/7/09



IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE
AT FRANKLIN

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

ANSWER OF KING'S CHAPEL CAPACITY, LLC
TO AMENDED VERIFIED COMPLAINT

Comes now the Defendant, King's Chapel Capacity, LLC ("KCC"), by and through undersigned counsel, and files this Answer to the corresponding numbered paragraphs of the Plaintiff's Amended Verified Complaint and would show unto the Court as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Denied.
5. Denied.
6. Admitted that Hang Rock, LLC and Turnberry Homes, LLC ("Turnberry Homes") entered into an agreement to purchase 24 lots in the first phase of the King's Chapel Subdivision located in Williamson County, Tennessee. It is denied that Exhibit 1 to the Amended Verified Complaint is a true and accurate copy of the agreement.
7. Admitted.

8. Admitted.
9. Denied.
10. Denied.
11. Denied.
12. Admitted.
13. Denied.
14. Denied.
15. Denied.
16. Denied.
17. Denied.
18. Admitted that Turnberry Homes re-opened the sewer service valve. All other allegations are denied.
19. Denied that this allegation accurately reflects Tenn. Code Ann. § 65-4-115.
20. Denied.
21. Denied.
22. Denied.
23. No response required.
24. Denied.
25. Denied.
26. Denied.
27. Denied.
28. No response required.
29. Denied.

- 30. Denied.
- 31. Denied.
- 32. Denied.
- 33. Denied.
- 34. Denied.
- 35. No response required.
- 36. Denied.
- 37. Denied.
- 38. Denied.

Respectfully submitted,

FARRIS MATHEWS BRANAN
BOBANGO HELLEN & DUNLAP, PLC

By:



Charles B. Welch, Jr., BPR No. 005593
Jamie R. Hollin, BPR No. 025460
618 Church Street, Suite 300
Nashville, Tennessee 37219
Telephone: 615-726-1200
Facsimile: 615-726-1776
Email: cwelch@farrismathews.com
jhollin@farrismathews.com
Attorneys for King's Chapel Capacity, LLC

Certificate of Service

I hereby certify that a true and correct copy of the foregoing has been sent via personal service addressed to Plaintiff's attorneys, **Todd E. Panther, Esq.** and **Stephen A. Lund, Esq.** Tune, Entrekin & White, PC at 315 Deaderick Street, AmSouth Center, Suite 1700, Nashville, Tennessee 37238, this the 7th day of September, 2007.



Jamie R. Hollin

**IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE
AT FRANKLIN**

TURNBERRY HOMES, LLC,)	
)	
Plaintiff,)	
)	
v.)	No. 33796
)	
KING'S CHAPEL CAPACITY, LLC,)	
)	
Defendant.)	

COMPETING ORDER DENYING 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 is the owner of record for Lot 139 in the King's Chapel Subdivision ("King's Chapel").
2. Turnberry Homes constructed a residence on Lot 139. In order to obtain sewer services, each lot must have a collection tank that connects to the onsite 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. King's Chapel Capacity, LLC ("KCC") operates the onsite sewer system and provides sewer services in King's Chapel. The developer of King's Chapel is Ashby.

4. In some instances, the practice between Turnberry Homes and Ashby for the 24 lots in King's Chapel that Turnberry Homes bought from Hang Rock was for Turnberry Homes to make appropriate arrangements with Ashby for the installation of a collection tank on each lot. After concluding Turnberry Homes had satisfied all requirements, Ashby would then make the necessary arrangements for the installation of a collection tank on the lot. Later, after receiving approval from Ashby, KCC would assume responsibility for providing sewer services to the lot. Although the parties sometimes followed this practice, Turnberry Homes has no contractual obligation to obtain a collection tank from Ashby.

CONCLUSIONS OF LAW

5. Any collection tank installed for Lot 139, shall comply with applicable law, regulations and codes.

6. Turnberry Homes has no legal or contractual obligation to obtain a collection tank for Lot 139 from Ashby. Accordingly, Turnberry Homes is not required to obtain a collection tank from Ashby.

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

1. Turnberry Homes may obtain a collection tank from an entity other than Ashby. Ashby shall have the right of first refusal to provide the installation of the collection tank for Lot 139. Upon written request from Turnberry Homes, Ashby shall have 10 days to arrange for the installation of the collection tank for Lot 139. In the event Ashby exercises this right of first refusal, Turnberry Homes shall pay Ashby the costs for the installation of the collection tank COD.

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

3. All other matters are reserved.


ENTERED on this the _____ day of _____, 2007.

JUDGE ROBERT E. LEE DAVIES

APPROVED FOR ENTRY:

FARRIS MATHEWS BRANAN
BOBANGO HELLEN & DUNLAP, PLC

By:



Charles B. Welch, Jr., BPR No. 005593
Jamie R. Hollin, BPR No. 025460
618 Church Street, Suite 300
Nashville, Tennessee 37219
(615) 726-1200
Attorneys for King's Chapel Capacity, LLC

Certificate of Service

I hereby certify that a true and correct copy of the foregoing has been sent via First Class U.S. mail, postage pre-paid addressed to Plaintiff's attorneys, **Todd E. Panther, Esq.** and **Stephen A. Lund, Esq.** Tune, Entrekin & White, PC at 315 Deaderick Street, AmSouth Center, Suite 1700, Nashville, Tennessee 37238, this the 10th day of September, 2007.



Jamie R. Hollin

IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE

**CERTIFIED
COPY**

TURNBERRY HOMES, LLC,
Plaintiff,

vs.

KING'S CHAPEL CAPACITY, LLC,
Defendant.

No. 33796

TRANSCRIPT OF PROCEEDINGS

Thursday, August 23, 2007

APPEARANCES:

For the Plaintiff:

Mr. Todd E. Panther
Tune, Entrekin & White
Suite 1700, AmSouth Center
315 Deaderick Street
Nashville, TN 37238

For the Defendant:

Mr. Charles B. Welch, Jr.
Mr. Jamie Hollin
Farris, Mathews, Branan, et al.
Suite 300
618 Church Street
Nashville, TN 37219

Reported By:

Patricia W. Smith, RPR, CCR

nashvillecourtreporters

P.O. Box 290903 Nashville, TN 37229

Office 615.885.5798 - Toll Free 800.552.3376

Fax 615.885.2621 www.ncrdepo.com

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

6
7 THE COURT: Good morning, Gentlemen.
8 How are you all?

9 MR. WELCH: Good morning.

10 MR. PANTHER: Good morning.

11 Thanks for hearing the case this
12 morning.

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

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

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

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

4 THE COURT: Right.

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

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

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

1 After that ruling, Your Honor has seen
2 in the materials that the defendant has now submitted
3 that a new dispute arose between Ashby and Turnberry
4 Homes, where Ashby, after they were unsuccessful on Lot
5 137 with the driveway, Ashby then started complaining
6 about Lots 138 and 139; that they had some problem with
7 the slope of a porch or a screened-in porch or some
8 such thing. And Turnberry has responded back to that.
9 And there is no claim that Ashby has filed against
10 Turnberry on these other lots that Ashby is concerned
11 about.

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

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

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

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

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

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

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

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

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

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

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

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

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.

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

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

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.

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

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.

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 --

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

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

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

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

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

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.

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 plaintiff's arguments.

25 The best I can tell from everything

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 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 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

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

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.

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

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?

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

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 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 than
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 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

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.

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 --

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.

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

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

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 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 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

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.

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 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 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

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

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.

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.

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 --

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.

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

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.

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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REPORTER'S CERTIFICATE

STATE OF TENNESSEE }

COUNTY OF DAVIDSON)

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

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

IN WITNESS WHEREOF, I have hereunto
affixed my official signature and seal of office this
27th day of August, 2007.

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

My Commission Expires:

July 19, 2008