

# TENNESSEE REGULATORY AUTHORITY

RECEIVED

Eddie Roberson, Chairman  
Pat Miller, Director  
Sara Kyle, Director  
Ron Jones, Director



2007 SEP 18 PM 3:19

T.R.A. DOCKET ROOM

460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

September 18, 2007

## MEMORANDUM

To: Docket File

From: Carsie D. Mundy *CDM*  
Chief-Consumer Services Division

Subject: *In Re: Turnberry Homes' Formal Complaint for Injunctive Relief Against King's Chapel Capacity*  
Docket No. 07-00199

Attached is the Consumer Services Division informal complaint file of Turnberry Homes against King's Chapel Capacity which is being placed in this Docket file at the direction of General Counsel.

Attachments: 8

## Tevin Thompson - Wastewater Utility Refusal to Serve

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**From:** RonL Graham  
**To:** Mundy, Carsie  
**Date:** 7/12/2007 11:17 AM  
**Subject:** Wastewater Utility Refusal to Serve  
**CC:** Standley, Darlene

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Carsie,

I received a telephone call from Rick Bell a home builder of Turnberry Homes. He is building homes in the King's Chapel development where sewer service is provided by King's Chapel Capacity. The owner of KCC is John Powell. Mr. Bell stated that every time that he has needed a sewer hookup to one of his homes that John Powell has been difficult to work with. His current complaint is now that John Powell has told him that he will not provide service to a home that he has completed.

Darlene directed me to bring this matter directly to your attention. Mr. Bell insists that he is in need of some type of immediate action to force Mr. Powell to provide the service as required by the TRA. Mr. Bell's telephone number is 376-2201.

Ron

7/12 - 1:25pm - left message for Mr. Bell to call me

2:09pm - returned my call - emailed a consumer complaint form - [nick.bell@turnberryhomes.com](mailto:nick.bell@turnberryhomes.com)

## **Tevin Thompson - Re: Fwd: Wastewater Utility Refusal to Serve**

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**From:** RonL Graham  
**To:** Mundy, Carsie; Thompson, Tevin  
**Date:** 7/12/2007 11:51 AM  
**Subject:** Re: Fwd: Wastewater Utility Refusal to Serve  
**CC:** Standley, Darlene

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I omitted that I told Mr. Bell that he may need to file a complaint with Consumer Services and he said that he did not feel that this would provide the relief that he needs. Mr. Powell also told Mr. Bell that he could take him to court. Mr. Bell indicated that he thought someone with the Authority could contact Mr. Powell and remind him of his obligations to serve customers according to regulations approved in his tariff. I told him that I would speak to someone immediately and went to Darlene.

>>> Carsie Mundy 7/12/2007 11:32 AM >>>

Tevin:

Please contact this gentleman and give him instructions on how he can file a complaint.

Thanks,

Carsie

# TENNESSEE REGULATORY AUTHORITY

Eddie Roberson, Chairman  
Pat Miller, Director  
Sara Kyle, Director  
Ron Jones, Director



460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

## MEMORANDUM

TO: John Powell  
Kings Chapel Capacity, LLC  
1413 Plymouth Drive  
Brentwood, TN 37027

FROM: Carsie Mundy  
Chief, Consumer Services Division

DATE: July 13, 2007

SUBJECT: File Number 07-0461  
Rick Bell  
Turnberry Homes, LLC

\*\*\*\*\*

The enclosed is a complaint lodged against your company, which is self-explanatory. **I would appreciate your investigation of the complaint and a prompt written reply to my office within ten (10) working days.**

**If you want to fax the response that number is 615-741-8953.**

Thank you for your cooperation in this matter.

Enclosures

c: Jeffrey Watson, Investigator

**Consumer Complaint Questionnaire****RETURN TO**

Tennessee Regulatory Authority  
 Consumer Services Division  
 460 James Robertson Parkway  
 Nashville, TN 37243-0505  
 Facsimile (615) 741-8953

To complete this consumer complaint questionnaire by Internet, please visit our website at [www.state.tn.us/tra](http://www.state.tn.us/tra). Under "Links" click on **Consumer Services**. You can use this convenient method if you do not have documentation to attach to your complaint.

Your Name RICK BELL OF TURNBERRY HOMES LLC

Address 210 JAMESTOWN PARK DRIVE #102

City BRENTWOOD County WILLIAMSON State TN ZIP 37027

Home Phone ( ) Work/Contact Phone (615) 376-2201

E-mail Address RICK.BELL@TURNBERRYHOMES.COM

Is this complaint for your home or business phone number? ( ) SEE ABOVE

Write Phone # Here

What company is your complaint against? JOHN POWELL King's chapel Copies

Have you contacted the utility regarding your complaint? YES

Please describe your complaint briefly. Please mail or fax copies of any documentation, such as bills, that our office would need to file your complaint. PLEASE DO NOT STAPLE ANY DOCUMENTATION SENT TO OUR OFFICE.

SEE ATTACHED COMPLAINT



To: Tennessee Regulatory Authority  
From: Turnberry Homes  
Date: 7/11/07  
Re: John Powell/Ashby Communities at Kings Chapel

**Richard J. Bell**  
*President*

**Theresa M. Sells**  
*Chief Financial Officer*

**Nicky D. Wells**  
*Vice President  
Land Development Division*

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.

Respectfully

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.turnberryhomes.com](http://www.turnberryhomes.com)

TENNESSEE REGULATORY AUTHORITY  
460 JAMES ROBERTSON PARKWAY  
NASHVILLE, TENNESSEE 37243-0505

CERTIFIED MAIL™



7004 2510 0006 3767 5290  
7004 2510 0006 3767 5290

U.S. Postal Service™  
**CERTIFIED MAIL™ RECEIPT**  
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For delivery information visit our website at [www.usps.com](http://www.usps.com)

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark  
Here

John Powell  
Kings Chapel Capacity, LLC  
1413 Plymouth Drive  
Brentwood, TN 37027

For Instructions

FARRIS MATHEWS BRANAN  
BOBANGO HELLEN & DUNLAP, PLC

ATTORNEYS AT LAW

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

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

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

RECEIVED  
CONSUMER SERVICES DIVISION  
JUL 30 2007  
TN REGULATORY AUTHORITY

Writers Direct Dial.  
615-687-4230

July 30, 2007

Mr. Carsie Mundy, Chief  
Consumer Services Division  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

**Re: King's Chapel Capacity and Turnberry Homes, LLC**

Dear Mr. Mundy:

Our law firm has recently been engaged to represent King's Chapel Capacity (the "Utility") in response to a complaint filed by Richard J. Bell on behalf of Turnberry Homes, LLC ("Turnberry Homes") against the Utility [John Powell/Ashby Communities, LLC]. According to the letter dated July 11, 2007, Turnberry Homes asserts that the "Utility [Powell] is refusing to provide and install the necessary holding tank required to hook-up to the on-site (sic) sewer system."

Please be advised, however, a holding tank has been installed on lot 139 in King's Chapel Subdivision (the "Subdivision"). The Utility informed Turnberry Homes that there would be no sewer service for lots 138 and 139. The Subdivision's developer, Ashby Communities, LLC ("Ashby"), has notified the Utility not to connect these lots to the wastewater system and the Utility is following these instructions based upon the Wastewater Treatment Facility Service Agreement (the "Agreement") between the Utility and Ashby.

The Agreement gives Ashby the right to deny initial connection to the wastewater system if Ashby does not receive full payment on lots and land sold by Ashby to homebuilders in the Subdivision. The Utility would be in breach of the Agreement if it were to provide wastewater services to lots sold in King's Chapel without Ashby's prior approval. Certain contractual issues regarding full payment of lots and land sold by Hang Rock, LLC<sup>1</sup> to Turnberry Homes are in dispute and currently pending in the Williamson County

<sup>1</sup> Ashby Communities, LLC is the successor-in-interest to Hang Rock, LLC.



Mr. Carsie Mundy  
July 30, 2007  
Page 2 of 2


Chancery Court. The Utility is not a party to this litigation.

The Utility has never and will not deny wastewater services to an end use homeowner in the Subdivision while the litigation referenced herein is pending or otherwise. Therefore, since no residential wastewater subscribers have been denied or had their service interrupted, Turnberry Homes' complaint does not merit immediate regulatory intervention at this time. Until these matters are resolved, the Utility respectfully requests that the Tennessee Regulatory Authority dismiss this complaint or alternatively, hold the matter in abeyance until final disposition of the lawsuit between Turnberry Homes and Hang Rock, LLC.<sup>2</sup>

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



Charles B. Welch, Jr.

CBW/jrh  
Cc: John E. Powell

# TENNESSEE REGULATORY AUTHORITY

Eddie Roberson, Chairman  
Pat Miller, Director  
Sara Kyle, Director  
Ron Jones, Director



460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

July 13, 2007

Mr. Rick Bell  
Turnberry Homes, LLC  
210 Jamestown Park Drive #102  
Brentwood, TN 37027

Dear Mr. Bell:

The Tennessee Regulatory Authority ("TRA") has received your complaint against Kings Chapel Capacity, LLC. I have been assigned as the TRA investigator to your complaint.

A copy of your complaint has been forwarded to Kings Chapel Capacity, LLC with instructions that they provide the TRA a written reply to each issue outlined in your complaint. In accordance with TRA regulations, the company has up to ten (10) working days to respond. After obtaining the company's response, I will contact you to inform you of the company's position. In the meantime, if you have any additional information concerning your complaint that you feel would be beneficial to my investigation or if you have any questions, please feel free to call me at 1-800-342-8359 extension 215 during normal business hours.

Thank you for allowing the TRA to assist you with your problem. I will keep you advised of our progress to resolve your dispute with Kings Chapel Capacity, LLC.

Sincerely,

A handwritten signature in black ink that reads "Jeffrey Watson". The signature is stylized with a large, looped "J" and a cursive "Watson".

Jeffrey Watson  
Consumer Services  
jeffrey.watson@state.tn.us

c: File 07-0461

TRANSMISSION VERIFICATION REPORT

TIME : 08/07/2007 11:13  
NAME : TN REG AUTHORITY  
FAX : 615-741-8953  
TEL :  
SER.# : 000A7J361068

DATE, TIME	08/07 11:12
FAX NO./NAME	92442778
DURATION	00:01:13
PAGE(S)	04
RESULT	OK
MODE	STANDARD

## TENNESSEE REGULATORY AUTHORITY

Eddie Roberson, Chairman  
Pat Miller, Director  
Ron Jones, Director  
Sara Kyle, Director



460 James Robertson Parkway  
Nashville, TN 37243-0505  
615-741-2904 / 1-800-342-8359  
615-741-8953 (fax)

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### Consumer Services

**Date:** 8/7/07

**From:** Carsie Mundy

**Transmitting:** 4 page(s) including this cover page

**To:** Steve Lund

**Company:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**Fax:** (615) 244-2778

**Comments:**

# TENNESSEE REGULATORY AUTHORITY

Eddie Roberson, Chairman  
Pat Miller, Director  
Sara Kyle, Director  
Ron Jones, Director



460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

August 10, 2007

## VIA FACSIMILE AND U.S. MAIL

Mr. Richard J. Bell, President  
Turnberry Homes, LLC  
215 Jamestown Park Road, Suite 201  
Brentwood, Tennessee 37027

Charles B. Welch, Jr. Esq.  
Farris Mathews Branan Bobango Hellen & Dunlap, PLC  
Castner-Knott Building  
618 Church Street, Suite 300  
Nashville, Tennessee 37219

Dear Sirs:

In order to complete our evaluation of the complaint of Turnberry Homes, LLC ("Turnberry") against Kings Chapel Capacity ("King's Chapel"), both parties are requested to respond to the following questions:

1. The only issue in Turnberry's complaint concerns lot 139. The response of King's Chapel refers also to lot 138. What is the status of lot 138? Is there presently a holding tank at lot 138?
2. If a holding tank has been furnished at lot 139, describe in detail the work that remains to be done to hook-up the sewer system at lot 139?
3. Have the necessary payments been made for the sewer service requested by Turnberry at lot 139? If not, why not and what other payments are in dispute?
4. What is the specific nature of the litigation in Williamson County Chancery Court and what is the approximate time frame for resolution of this litigation? Should the resolution of the complaint be held in abeyance until then? If not, why not?
5. What is the relationship of Mr. John E. Powell to King's Chapel and to Ashby Communities, LLC?

Please provide this information no later than 2:00 pm on August 17, 2007. Should you have any questions regarding this request, please contact me at (615) 741-2904, ext. 157.

Sincerely,

Carsie Mundy, Chief  
Consumer Services Division

# TENNESSEE REGULATORY AUTHORITY

Eddie Roberson, Chairman  
Pat Miller, Director  
Ron Jones, Director  
Sara Kyle, Director



460 James Robertson Parkway  
Nashville, TN 37243-0505  
615-741-2904 / 1-800-342-8359  
615-741-8953 (fax)

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## Consumer Services

**Date:** 8/10/07

**From:** Carsie D. Mundy

**Transmitting:** 2 page(s) including this cover page

**To:** Charles B. Welch, Jr. Esq.

**Company:** Farris Mathews Branan Bobango Hellen & Dunlap, PLC

**Phone:** \_\_\_\_\_

**Fax:** (615) 726-1776

**Comments:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### Mission Statement:

The mission of the Tennessee Regulatory Authority is to promote the public interest by balancing the interests of utility consumers and providers while facilitating the transition to a more competitive environment

RECEIVED  
CONSUMER SERVICES DIVISION

AUG 13 2007

TN REGULATORY AUTHORITY

TO: Mr. CARLIE MUNDY	FROM: RICH BELL
CC:	DATE: 8/10
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER: 10
PHONE NUMBER:	
RE:	

Response TO QUESTION ON  
TURNBERRY HOMES VS  
KINGS' CHAPEL CAPACITY

THANK YOU!

---

210 James town Park Road Ste. 102, Brentwood, TN 37027

Phone: 615-376-7001 Fax: 615-376-6036

<http://www.turnberryhomes.com/>



August 10, 2007

**Richard J. Bell**  
*President*

Mr. Carsie Mundy  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tn. 37243-0505

**Theresa M. Sells**  
*Chief Financial Officer*

Dear Mr. Mundy,

**Nicky D. Wells**  
*Vice President*  
*Land Development Division*

We are in receipt of your correspondence concerning questions you have on the matter of Turnberry Homes' inability to get John Powell (Kings Chapel Capacity Utility Company) to install and provide sewer service to lot 139 of Kings Chapel in Williamson County. I will answer the questions as you pose them to us. I have also provided you an affidavit that I provided the Chancery Court of Williamson County concerning this matter. Due to the comprehensive nature of my affidavit, I will refer to its contents to answer some of your questions.

1. There is a holding tank installed and fully paid for on lot 138. The issue Charles Welch raises concerning providing sewer service to this particular lot is not clear to us. We thought the tank's installation thus provided this service. If this is not the case, then it is Turnberry's position that such refusal of service is wrongful and will request the district attorney to intervene.
2. There is no holding tank installed on lot 139 despite the false claims of Welch. We have requested a tank from John Powell, who controls Kings Chapel Capacity, on numerous occasions, but he refuses to deliver one to lot 139. We are fully prepared to pay for such service COD as he has required of us in the past. I personally have visited lot 139 and can attest that there is no tank installed on lot 139.
3. As stated in #2, we are prepared to pay COD for the tank and its installation as Powell has demanded in the past. The other payments Kings Chapel Capacity asserts concerns a matter that has nothing to do with sewer service or Kings Chapel Capacity but rather concerns the other entities owned by John Powell, they being Ashby Properties and Hang Rock LLC. Currently, there is nearly \$100,000 being held in escrow that will be dispersed to the prevailing party of a dispute over the net value of each lot. Contractually, Turnberry is obligated to purchase each lot (which it has) for \$74,000 each.

**Turnberry Homes, LLC**

215 Jamestown Park Road  
Suite 201  
Brentwood, TN 37027  
615-376-2200  
FAX 615-376-2362  
[www.turnberryhomes.com](http://www.turnberryhomes.com)

Upon the closing of a Turnberry home on the lot, a provision was entered into for Turnberry to provide an additional premium of 17.5% of the original sales amount to Powell less the initial \$74,000 paid. What is in disagreement is what is included in the 17.5% premium. This dispute has nothing to do with Kings Chapel Capacity refusal to provide sewer service. As a licensed operator of a public utility, Kings Chapel Capacity is obliged to provide such service and cannot attempt to leverage Turnberry into settling unrelated disputes Turnberry has with Kings Chapel Capacity's affiliated entities by using Kings Chapel Capacity's power as the only source of sewer service.

4. My attached affidavit outlines the nature of the litigation between Ashby and Turnberry. That litigation has been decided and has no bearing on the complaint before the Tennessee Regulatory Authority. Therefore, the resolution of this matter should not be held in abeyance.
5. All of Turnberry Home's dealings with Ashby have been through John Powell. Mr. Powell signed the lot purchase agreement for the Kings Chapel subdivision on behalf of Ashby. In that agreement Ashby is noted as the agent for hang Rock LLC. All of Turnberry's dealings with hang Rock have likewise been with Mr. Powell. Similarly, all of Turnberry's dealings with Kings Chapel Capacity have been with Powell. Every time Turnberry Homes orders a holding tank, it is through Powell. A search through the Secretary of State's website reveals that the principal place of business for Ashby, hang Rock and Kings Chapel Capacity are all located at Powell's personal residence at 1413 Plymouth Drive, Brentwood, Tennessee 37027. Powell is listed as the registered agent for both Ashby and hang Rock. Turnberry deals exclusively with Powell when communicating with Kings Chapel Capacity. Mr. Powell controls Ashby, hang Rock and Kings Chapel Capacity.

**Turnberry Homes, LLC**

210 Jamestown Park Drive  
Suite 102  
Brentwood, TN 37027  
615-376-7001  
FAX 615-376-6036  
[www.turnberryhomes.com](http://www.turnberryhomes.com)



Please intervene and order that Powell provide the service he swore to the State of Tennessee that he would provide when he was granted a license to operate a utility.

Thank you in advance for your assistance in this matter.

Respectfully,



Richard J. Bell

CC

Steve Lund/ Tune Entrekin and White  
file

**Turnberry Homes, LLC**

210 Jamestown Park Drive  
Suite 102  
Brentwood, TN 37027  
615-376-7001  
FAX 615-376-6036  
[www.turnberryhomes.com](http://www.turnberryhomes.com)

## TENNESSEE REGULATORY AUTHORITY

Eddie Roberson, Chairman  
Pat Miller, Director  
Sara Kyle, Director  
Ron Jones, Director



460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

August 10, 2007

**VIA FACSIMILE AND U.S. MAIL**

Mr. Richard J. Bell, President  
Turnberry Homes, LLC  
215 Jamestown Park Road, Suite 201  
Brentwood, Tennessee 37027

Charles B. Welch, Jr. Esq.  
Farris Mathews Branan Bobango Hellen & Dunlap, PLC  
Castner-Knott Building  
618 Church Street, Suite 300  
Nashville, Tennessee 37219

Dear Sirs:

In order to complete our evaluation of the complaint of Turnberry Homes, LLC ("Turnberry") against Kings Chapel Capacity ("King's Chapel"), both parties are requested to respond to the following questions:

1. The only issue in Turnberry's complaint concerns lot 139. The response of King's Chapel refers also to lot 138. What is the status of lot 138? Is there presently a holding tank at lot 138?
2. If a holding tank has been furnished at lot 139, describe in detail the work that remains to be done to hook-up the sewer system at lot 139?
3. Have the necessary payments been made for the sewer service requested by Turnberry at lot 139? If not, why not and what other payments are in dispute?
4. What is the specific nature of the litigation in Williamson County Chancery Court and what is the approximate time frame for resolution of this litigation? Should the resolution of the complaint be held in abeyance until then? If not, why not?
5. What is the relationship of Mr. John E. Powell to King's Chapel and to Ashby Communities, LLC?

Please provide this information no later than 2:00 pm on August 17, 2007. Should you have any questions regarding this request, please contact me at (615) 741-2904, ext. 157.

Sincerely,

Carsie Mundy, Chief  
Consumer Services Division

## IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE

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

## AFFIDAVIT OF RICHARD J. BELL

STATE OF TENNESSEE )  
COUNTY OF \_\_\_\_\_ )

Having first been duly sworn, Richard J. Bell 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 president of Turnberry Homes, LLC ("Turnberry Homes").
3. Turnberry Homes entered into an agreement with Ashby Communities, LLC ("Ashby") to purchase 24 lots in the first phase of the King's Chapel subdivision ("King's Chapel") located in Williamson County, Tennessee (the "Contract").
4. King's Chapel Capacity, LLC ("KCC") is the owner and operator of an on-site sewer system for King's Chapel. KCC has obtained permission from the Tennessee Regulatory Authority to act as the public utility for King's Chapel. KCC is the only source of sewer services in King's Chapel.

5. In order to have proper sewer services, a holding tank must be installed on each lot in King's Chapel. The holding tank is a necessity in order for the lot to safely hook into KCC's sewer system.

6. KCC requires the lot owners in King's Chapel to purchase the necessary holding tank and its installation from KCC and requires its customers to pay for the holding tank and installation in cash at the time of delivery ("COD"). KCC is affiliated with Ashby, and both KCC and Ashby are controlled by John Powell.

7. Mr. Powell also controls Hang Rock, LLC ("Hang Rock"). Ashby is the agent for Hang Rock.

8. Turnberry Homes has previously purchased holding tanks for 23 lots in King's Chapel. The only lot Turnberry Homes has not purchased a holding tank for is Lot 139. Turnberry Homes is currently constructing a residence on Lot 139.

9. Turnberry Homes called Mr. Powell and requested a holding tank for Lot 139. Mr. Powell refused, and continues to refuse, Turnberry Homes' request. Mr. Powell has given no reason directly to Turnberry Homes for KCC's refusal except that the parties are in a legal dispute.

10. Consistent with KCC's requirements, Turnberry Homes is ready, willing and able to pay KCC for the holding tank COD and has communicated this fact to KCC.

11. Turnberry Homes cannot continue construction of the residence on Lot 139 without KCC delivering and installing the holding tank. In addition, Turnberry Homes cannot acquire the holding tank from an alternate provider, as KCC's list of approved providers only includes KCC and Ashby.

12. On or around July 11, 2007, I filed a complaint on behalf of Turnberry Homes with the Tennessee Regulatory Authority against KCC. KCC filed a response with the Regulatory Authority on July 30, 2007. Attached collectively hereto as **Exhibit 1** and incorporated herein by reference are true and accurate copies of Turnberry Homes' complaint and KCC's response.

13. In its response, KCC asserts that a holding tank has been delivered and installed on Lot 139, and that KCC will not provide sewer services pursuant to an agreement KCC has with Ashby. According to KCC's response, the agreement "gives Ashby the right to deny initial connection to the wastewater system if Ashby does not receive full payment on lots and land sold by Ashby to homebuilders" in King's Chapel. Ashby is not a public utility and does not own the on-site sewer system. KCC is the utility service and owns the on-site sewer system.

14. KCC's assertion that a holding tank has been installed on Lot 139 is completely false. On August 8, 2007, I personally visited Lot 139. A holding tank must be installed below ground. Yet, there is no indication of ground disturbance where a holding tank would be. Further, a holding tank has an above-ground valve. But no above-ground valve exists on Lot 139. Finally, even if a holding tank has been installed on Lot 139, the tank is not tapped into the sewer system. Turnberry Homes cannot sell a home that is not connected to a sewer system.

15. Turnberry Homes is involved in litigation with Ashby in the Chancery Court for Williamson County, Docket No. 33291 (the "Ashby Action"). In the Ashby Action, Ashby obtained a temporary restraining order and sought an injunction requiring Turnberry Homes to tear down a home under construction that Ashby claimed violated

the Contract and the Contract's related design guidelines. On February 22, 2007, the Court heard Ashby's motion for a temporary injunction. The Court found that Ashby's motion was not well-taken, denied the motion, and dissolved the temporary restraining order.

16. Turnberry Homes is also involved in litigation with Hang Rock in the Chancery Court for Williamson County, Docket No. 33131 (the "Hang Rock Action"). In the Hang Rock Action, the parties dispute the contractual meaning of a clause providing a premium to Hang Rock for lots purchased by Turnberry Homes. The parties entered into an escrow agreement whereby the parties agreed to allow Turnberry Homes to close on its lots in King's Chapel and deposit the disputed amount of the premium in an escrow account pending resolution of the Hang Rock Action. The parties filed cross-motions for summary judgment. The Court heard the motions on July 23, 2007 and denied the motions. As a result, the Hang Rock Action is an on-going dispute and the amounts Hang Rock claims it is owed remain in escrow.

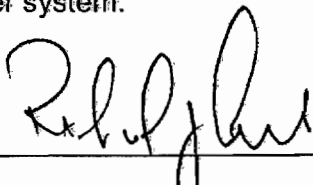
17. Turnberry Homes has paid Ashby the base price for Lot 139. Turnberry Homes cannot continue construction of the residence on Lot 139 until the residence has sewer services. Yet, KCC claims that it cannot provide sewer services until Turnberry Homes has paid Ashby in full for Lot 139. But, pursuant to the escrow agreement, the full amount that becomes due and owing cannot be determined until the residence is constructed and sold. In other words, KCC refuses service to Turnberry Homes because Turnberry Homes has not paid the full lot price to Ashby. But this "failure" is directly due to the fact that Turnberry Homes cannot continue construction on the

residence, and that the additional premium must be placed into escrow pursuant to Turnberry Homes' agreement with Hang Rock.

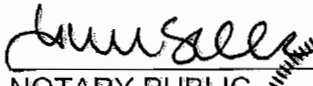
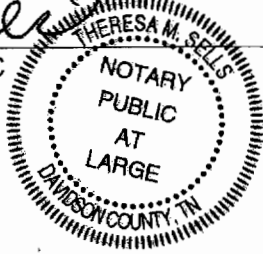
18. KCC has provided a holding tank for every lot owned by Turnberry Homes except for Lot 139. KCC, Ashby and Hang Rock are all controlled by Mr. Powell. In my opinion, KCC refuses service for Lot 139 out of spite for Turnberry Homes prevailing in the Ashby Action, and because of the on-going dispute regarding the premium amount Turnberry Homes is to pay Hang Rock in the Hang Rock Action.

19. As a result of halting construction, Turnberry Homes will suffer significant, irreparable harm because it must indefinitely carry interest on Lot 139 and is unable to complete and sell the residence until KCC decides it wants to deliver the holding tank. It is impossible to determine the economic harm of Turnberry Homes' inability to complete and sell the residence due to KCC's refusal to deliver and install the holding tank for Lot 139. Turnberry Homes will continue to suffer this harm until KCC delivers the holding tank (or permits Turnberry Homes to acquire the holding tank from a different vendor) and hooks it into the on-site sewer system.

**FURTHER AFFIANT SAYETH NOT.**

  
\_\_\_\_\_  
RICHARD J. BELL

Sworn to and subscribed before me the undersigned notary public this 10  
day of August, 2007.

  
NOTARY PUBLIC  


My Commission expires: MY COMMISSION EXPIRES:  
May 2, 2011



RECEIVED  
CONSUMER SERVICES DIVISION

AUG 20 2007

TN REGULATORY AUTHORITY

August 10, 2007

**Richard J. Bell**  
*President*

Mr. Carsie Mundy  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tn. 37243-0505

**Theresa M. Sells**  
*Chief Financial Officer*

Dear Mr. Mundy,

**Nicky D. Wells**  
*Vice President*  
*Land Development Division*

We are in receipt of your correspondence concerning questions you have on the matter of Turnberry Homes' inability to get John Powell (Kings Chapel Capacity Utility Company) to install and provide sewer service to lot 139 of Kings Chapel in Williamson County. I will answer the questions as you pose them to us. I have also provided you an affidavit that I provided the Chancery Court of Williamson County concerning this matter. Due to the comprehensive nature of my affidavit, I will refer to its contents to answer some of your questions.

1. There is a holding tank installed and fully paid for on lot 138. The issue Charles Welch raises concerning providing sewer service to this particular lot is not clear to us. We thought the tank's installation thus provided this service. If this is not the case, then it is Turnberry's position that such refusal of service is wrongful and will request the district attorney to intervene.
2. There is no holding tank installed on lot 139 despite the false claims of Welch. We have requested a tank from John Powell, who controls Kings Chapel Capacity, on numerous occasions, but he refuses to deliver one to lot 139. We are fully prepared to pay for such service COD as he has required of us in the past. I personally have visited lot 139 and can attest that there is no tank installed on lot 139.
3. As stated in #2, we are prepared to pay COD for the tank and its installation as Powell has demanded in the past. The other payments Kings Chapel Capacity asserts concerns a matter that has nothing to do with sewer service or Kings Chapel Capacity but rather concerns the other entities owned by John Powell, they being Ashby Properties and Hang Rock LLC. Currently, there is nearly \$100,000 being held in escrow that will be dispersed to the prevailing party of a dispute over the net value of each lot. Contractually, Turnberry is obligated to purchase each lot (which it has) for \$74,000 each.

**Turnberry Homes, LLC**

215 Jamestown Park Road  
Suite 201  
Brentwood, TN 37027  
615-376-2200  
FAX 615-376-2362  
[www.turnberryhomes.com](http://www.turnberryhomes.com)



Upon the closing of a Turnberry home on the lot, a provision was entered into for Turnberry to provide an additional premium of 17.5% of the original sales amount to Powell less the initial \$74,000 paid. What is in disagreement is what is included in the 17.5% premium. This dispute has nothing to do with Kings Chapel Capacity refusal to provide sewer service. As a licensed operator of a public utility, Kings Chapel Capacity is obliged to provide such service and cannot attempt to leverage Turnberry into settling unrelated disputes Turnberry has with Kings Chapel Capacity's affiliated entities by using Kings Chapel Capacity's power as the only source of sewer service.

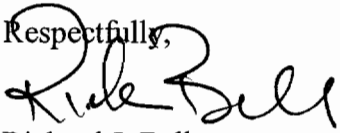
4. My attached affidavit outlines the nature of the litigation between Ashby and Turnberry. That litigation has been decided and has no bearing on the complaint before the Tennessee Regulatory Authority. Therefore, the resolution of this matter should not be held in abeyance.
5. All of Turnberry Home's dealings with Ashby have been through John Powell. Mr. Powell signed the lot purchase agreement for the Kings Chapel subdivision on behalf of Ashby. In that agreement Ashby is noted as the agent for hang Rock LLC. All of Turnberry's dealings with hang Rock have likewise been with Mr. Powell. Similarly, all of Turnberry's dealings with Kings Chapel Capacity have been with Powell. Every time Turnberry Homes orders a holding tank, it is through Powell. A search through the Secretary of State's website reveals that the principal place of business for Ashby, hang Rock and Kings Chapel Capacity are all located at Powell's personal residence at 1413 Plymouth Drive, Brentwood, Tennessee 37027. Powell is listed as the registered agent for both Ashby and hang Rock. Turnberry deals exclusively with Powell when communicating with Kings Chapel Capacity. Mr. Powell controls Ashby, hang Rock and Kings Chapel Capacity.

**Turnberry Homes, LLC**

210 Jamestown Park Drive  
Suite 102  
Brentwood, TN 37027  
615-376-7001  
FAX 615-376-6036  
[www.turnberryhomes.com](http://www.turnberryhomes.com)

Please intervene and order that Powell provide the service he swore to the State of Tennessee that he would provide when he was granted a license to operate a utility.

Thank you in advance for your assistance in this matter.

Respectfully,  


Richard J. Bell

CC

Steve Lund/ Tune Entrekin and White  
file

**Turnberry Homes, LLC**

210 Jamestown Park Drive  
Suite 102  
Brentwood, TN 37027  
615-376-7001  
FAX 615-376-6036  
[www.turnberryhomes.com](http://www.turnberryhomes.com)

**TENNESSEE REGULATORY AUTHORITY**

Eddie Roberson, Chairman  
Pat Miller, Director  
Sara Kyle, Director  
Ron Jones, Director



460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

August 10, 2007

**VIA FACSIMILE AND U.S. MAIL**

Mr. Richard J. Bell, President  
Turnberry Homes, LLC  
215 Jamestown Park Road, Suite 201  
Brentwood, Tennessee 37027

Charles B. Welch, Jr. Esq.  
Farris Mathews Branam Bobango Hellen & Dunlap, PLC  
Castner-Knott Building  
618 Church Street, Suite 300  
Nashville, Tennessee 37219

Dear Sirs:

In order to complete our evaluation of the complaint of Turnberry Homes, LLC ("Turnberry") against Kings Chapel Capacity ("King's Chapel"), both parties are requested to respond to the following questions:

1. The only issue in Turnberry's complaint concerns lot 139. The response of King's Chapel refers also to lot 138. What is the status of lot 138? Is there presently a holding tank at lot 138?
2. If a holding tank has been furnished at lot 139, describe in detail the work that remains to be done to hook-up the sewer system at lot 139?
3. Have the necessary payments been made for the sewer service requested by Turnberry at lot 139? If not, why not and what other payments are in dispute?
4. What is the specific nature of the litigation in Williamson County Chancery Court and what is the approximate time frame for resolution of this litigation? Should the resolution of the complaint be held in abeyance until then? If not, why not?
5. What is the relationship of Mr. John E. Powell to King's Chapel and to Ashby Communities, LLC?

Please provide this information no later than 2:00 pm on August 17, 2007. Should you have any questions regarding this request, please contact me at (615) 741-2904, ext. 157.

Sincerely,

Carsie Mundy, Chief  
Consumer Services Division

IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE

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

---

AFFIDAVIT OF RICHARD J. BELL

---

STATE OF TENNESSEE )  
COUNTY OF \_\_\_\_\_)

Having first been duly sworn, Richard J. Bell 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 president of Turnberry Homes, LLC ("Turnberry Homes").
3. Turnberry Homes entered into an agreement with Ashby Communities, LLC ("Ashby") to purchase 24 lots in the first phase of the King's Chapel subdivision ("King's Chapel") located in Williamson County, Tennessee (the "Contract").
4. King's Chapel Capacity, LLC ("KCC") is the owner and operator of an on-site sewer system for King's Chapel. KCC has obtained permission from the Tennessee Regulatory Authority to act as the public utility for King's Chapel. KCC is the only source of sewer services in King's Chapel.

5. In order to have proper sewer services, a holding tank must be installed on each lot in King's Chapel. The holding tank is a necessity in order for the lot to safely hook into KCC's sewer system.

6. KCC requires the lot owners in King's Chapel to purchase the necessary holding tank and its installation from KCC and requires its customers to pay for the holding tank and installation in cash at the time of delivery ("COD"). KCC is affiliated with Ashby, and both KCC and Ashby are controlled by John Powell.

7. Mr. Powell also controls Hang Rock, LLC ("Hang Rock"). Ashby is the agent for Hang Rock.

8. Turnberry Homes has previously purchased holding tanks for 23 lots in King's Chapel. The only lot Turnberry Homes has not purchased a holding tank for is Lot 139. Turnberry Homes is currently constructing a residence on Lot 139.

9. Turnberry Homes called Mr. Powell and requested a holding tank for Lot 139. Mr. Powell refused, and continues to refuse, Turnberry Homes' request. Mr. Powell has given no reason directly to Turnberry Homes for KCC's refusal except that the parties are in a legal dispute.

10. Consistent with KCC's requirements, Turnberry Homes is ready, willing and able to pay KCC for the holding tank COD and has communicated this fact to KCC.

11. Turnberry Homes cannot continue construction of the residence on Lot 139 without KCC delivering and installing the holding tank. In addition, Turnberry Homes cannot acquire the holding tank from an alternate provider, as KCC's list of approved providers only includes KCC and Ashby.

12. On or around July 11, 2007, I filed a complaint on behalf of Turnberry Homes with the Tennessee Regulatory Authority against KCC. KCC filed a response with the Regulatory Authority on July 30, 2007. Attached collectively hereto as **Exhibit 1** and incorporated herein by reference are true and accurate copies of Turnberry Homes' complaint and KCC's response.

13. In its response, KCC asserts that a holding tank has been delivered and installed on Lot 139, and that KCC will not provide sewer services pursuant to an agreement KCC has with Ashby. According to KCC's response, the agreement "gives Ashby the right to deny initial connection to the wastewater system if Ashby does not receive full payment on lots and land sold by Ashby to homebuilders" in King's Chapel. Ashby is not a public utility and does not own the on-site sewer system. KCC is the utility service and owns the on-site sewer system.

14. KCC's assertion that a holding tank has been installed on Lot 139 is completely false. On August 8, 2007, I personally visited Lot 139. A holding tank must be installed below ground. Yet, there is no indication of ground disturbance where a holding tank would be. Further, a holding tank has an above-ground valve. But no above-ground valve exists on Lot 139. Finally, even if a holding tank has been installed on Lot 139, the tank is not tapped into the sewer system. Turnberry Homes cannot sell a home that is not connected to a sewer system.

15. Turnberry Homes is involved in litigation with Ashby in the Chancery Court for Williamson County, Docket No. 33291 (the "Ashby Action"). In the Ashby Action, Ashby obtained a temporary restraining order and sought an injunction requiring Turnberry Homes to tear down a home under construction that Ashby claimed violated

the Contract and the Contract's related design guidelines. On February 22, 2007, the Court heard Ashby's motion for a temporary injunction. The Court found that Ashby's motion was not well-taken, denied the motion, and dissolved the temporary restraining order.

16. Turnberry Homes is also involved in litigation with Hang Rock in the Chancery Court for Williamson County, Docket No. 33131 (the "Hang Rock Action"). In the Hang Rock Action, the parties dispute the contractual meaning of a clause providing a premium to Hang Rock for lots purchased by Turnberry Homes. The parties entered into an escrow agreement whereby the parties agreed to allow Turnberry Homes to close on its lots in King's Chapel and deposit the disputed amount of the premium in an escrow account pending resolution of the Hang Rock Action. The parties filed cross-motions for summary judgment. The Court heard the motions on July 23, 2007 and denied the motions. As a result, the Hang Rock Action is an on-going dispute and the amounts Hang Rock claims it is owed remain in escrow.

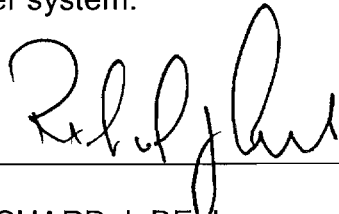
17. Turnberry Homes has paid Ashby the base price for Lot 139. Turnberry Homes cannot continue construction of the residence on Lot 139 until the residence has sewer services. Yet, KCC claims that it cannot provide sewer services until Turnberry Homes has paid Ashby in full for Lot 139. But, pursuant to the escrow agreement, the full amount that becomes due and owing cannot be determined until the residence is constructed and sold. In other words, KCC refuses service to Turnberry Homes because Turnberry Homes has not paid the full lot price to Ashby. But this "failure" is directly due to the fact that Turnberry Homes cannot continue construction on the

residence, and that the additional premium must be placed into escrow pursuant to Turnberry Homes' agreement with Hang Rock.


18. KCC has provided a holding tank for every lot owned by Turnberry Homes except for Lot 139. KCC, Ashby and Hang Rock are all controlled by Mr. Powell. In my opinion, KCC refuses service for Lot 139 out of spite for Turnberry Homes prevailing in the Ashby Action, and because of the on-going dispute regarding the premium amount Turnberry Homes is to pay Hang Rock in the Hang Rock Action.

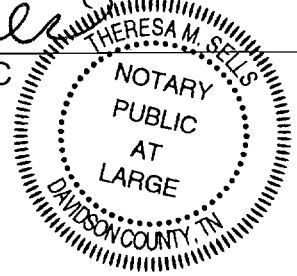
19. As a result of halting construction, Turnberry Homes will suffer significant, irreparable harm because it must indefinitely carry interest on Lot 139 and is unable to complete and sell the residence until KCC decides it wants to deliver the holding tank. It is impossible to determine the economic harm of Turnberry Homes' inability to complete and sell the residence due to KCC's refusal to deliver and install the holding tank for Lot 139. Turnberry Homes will continue to suffer this harm until KCC delivers the holding tank (or permits Turnberry Homes to acquire the holding tank from a different vendor) and hooks it into the on-site sewer system.

**FURTHER AFFIANT SAYETH NOT.**

  
\_\_\_\_\_  
RICHARD J. BELL

Sworn to and subscribed before me the undersigned notary public this 10  
day of August, 2007.

  
\_\_\_\_\_  
NOTARY PUBLIC



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



**FARRIS MATHEWS BRANAN  
BOBANGO HELLEN & DUNLAP, PLC**

ATTORNEYS AT LAW

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

RECEIVED  
CONSUMER SERVICES DIVISION

AUG 17 2007

TN REGULATORY AUTHORITY

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

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

Writers Direct Dial:  
615-687-4230

August 17, 2007

Mr. Carsie Mundy, Chief  
Consumer Services Division  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

**Re: King's Chapel Capacity, LLC and Turnberry Homes, LLC**

Dear Mr. Mundy:

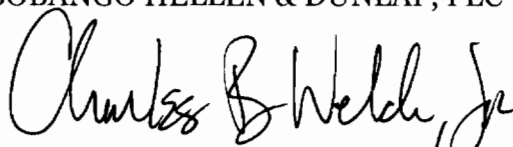
Please find the response of King's Chapel Capacity, LLC ("KCC") to data requests submitted to the parties in the referenced matter on August 10, 2007 enclosed herewith. Please be advised that the homes located on lots 138 and 139 are vacant. At no time has KCC denied wastewater services to a residential homeowner.

Also, KCC's initial response to the Turnberry Homes, LLC complaint asserted there was a holding tank already installed on lot 139. This was a mistake on Mr. John Powell's behalf. This matter has been addressed in the enclosed response and in the Affidavit of Mr. Powell. On behalf of KCC, we regret the error and appreciate this opportunity to make the correction.

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



Charles B. Welch, Jr.

Enclosures

CBW/jrh

Cc: John E. Powell (w/enclosures)



1. **The only issue in Turnberry's complaint concerns lot 139. The response of Kings Chapel refers also to lot 138. What is the status of lot 138? Is there presently a holding tank at lot 138?**

**Company Response:**

There is a holding tank already installed at lot 138. No arrangements have been made with a customer for services at this location and, therefore, the holding tank's wastewater service valve for lot 138 was left in the off position.

On August 14, 2007, King's Chapel Capacity, LLC ("KCC") checked the status of the wastewater service valve (the "Valve") at lot 138 and discovered that it had been turned to the on position, without permission, notice or satisfactory service arrangements. KCC has subsequently closed the Valve again.

2. **If a holding tank has been furnished at lot 139, describe in detail the work that remains to be done to hook-up the sewer system at lot 139?**

**Company Response:**

At present, there is no holding tank installed at lot 139. The home on lot 139 is vacant. KCC incorrectly advised its attorneys that a holding tank had been installed on lot 139. This was an error on KCC's part. KCC had no intent to mislead the Authority in its initial response to Turnberry's complaint. After a careful review of records, KCC corrects this mistake and informs the Authority, that a holding tank **has not** been installed on lot 139. Attached hereto as **Exhibit 1** and incorporated herein by reference is a true and correct copy of the affidavit of Mr. John E. Powell filed in the Williamson County Chancery Court in the matter Turnberry Homes, LLC v. King's Chapel Capacity, LLC, Docket No. 33796. Docket No. 33796 is a separate complaint filed by Turnberry against KCC seeking a mandatory injunction for the delivery of a holding tank and for the provisioning of wastewater services. KCC owes no obligation to Turnberry to deliver or install a holding tank. Attached hereto as **Exhibit 2** and incorporated herein by reference is a copy of Turnberry's Verified Complaint filed against KCC in Docket No. 33796.

In order to install a holding tank, a hole must be dug by a backhoe and a tank lowered into place. Holding tanks must be pre-ordered to arrive when the site is ready. After the tank has been installed, the contractor hooks the tank to the wastewater main where the shut-off valve for this lot is located. The builders are responsible for connecting the sewer outflow line from the house to the tank, which would normally take a few hours with the majority of the work involving trenching or ditch work, from the house to the holding tank.

3. **Have the necessary payments been made for the sewer service requested by Turnberry at lot 139? If not, why not and what other payments are in dispute?**

**Company Response:**

Payments from Turnberry to KCC are not in dispute. KCC has no tap fees or sewer connection fees in its tariff. Therefore, there are no required payments from Turnberry to KCC in order to initiate wastewater service.

However, payments from Turnberry to Ashby Communities, LLC (“Ashby”), the developer of Kings Chapel Subdivision (the “Subdivision”), for lots 138 and 139, are in dispute. The wastewater system at the Subdivision was first constructed and purchased by Ashby to be later contributed to KCC to own and operate. The wastewater facility contract between Ashby and KCC is reproduced in part below and restricts KCC’s wastewater service to **bona fide owners** of lots.

**2. FACILITY OWNERSHIP AND OPERATING REQUIREMENTS AND PROHIBITIONS.**

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.

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.

4. **What is the specific nature of the litigation in Williamson County Chancery Court and what is the approximate time frame for resolution of this litigation? Should the resolution of the complaint be held in abeyance until then? If not, why not?**

**Company Response:**

The litigation in Williamson County Chancery Court involves the contractual dispute between Turnberry and Ashby over the payment for and the ownership of lots 138 and 139 and whether KCC is obligated to deliver and install a holding tank and provide services to these lots. KCC cannot reasonably anticipate the conclusion of this litigation; however, an evidentiary hearing regarding the payment issue is set for November 19, 2007.

It is KCC's position that the TRA has exclusive jurisdiction to determine all issues regarding denial of services. Likewise, the Williamson County Chancery Court is the appropriate forum for the determination of the issues regarding lot ownership and payment dispute. Since the TRA's decision on the regulatory complaint will resolve itself after the Court rules in the two pending lawsuits in Williamson County, the complaint filed with the TRA should be held in abeyance until the litigation is resolved in the interest of judicial economy.

5. **What is the relationship of Mr. John E. Powell to Kings Chapel and to Ashby Communities, LLC?**

**Company Response:**

Mr. John E. Powell is the sole member of Kings Chapel Capacity, LLC, the wastewater provider to the Subdivision. Mr. Powell is one of two members of Ashby, the developer of the Subdivision.

The relationship between KCC and Ashby is defined under contract, which is reproduced in part as follows:

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.

IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE  
AT FRANKLIN

TURNBERRY HOMES, LLC,

Plaintiff,

v.

KING'S CHAPEL CAPACITY, LLC,

Defendant.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

No. 33796

---

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.

  
John E. Powell

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



  
NOTARY PUBLIC

My Commission Expires: 1-24-09

IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE

FILED  
WILLIAMSON COUNTY  
CLERK OF COURT

2007 AUG -3 AM 11:31

TURNBERRY HOMES, LLC, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 KING'S CHAPEL CAPACITY, LLC, )  
 )  
 Defendant. )

ENTERED \_\_\_\_\_

No. 33796

---

VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF

---

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

**THE PARTIES**

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

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

**JURISDICTION AND VENUE**

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

DEF/WITNESS COPY

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

### **FACTS**

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

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

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

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

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

10. Upon obtaining its certificate of authority from the Tennessee Regulatory Authority, Mr. Powell orally informed Turnberry Homes that Turnberry Homes would

have to purchase the requisite holding tank and installation services for each lot in King's Chapel from KCC or its one approved contractor. Mr. Powell has never reduced KCC's requirement to writing.

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

12. After the holding tanks were ordered and installed for approximately the first half of the lots Turnberry Homes owned, Mr. Powell orally informed Turnberry Homes that Turnberry Homes would have to pay for each subsequent holding tank COD. Pursuant to KCC's new requirement, Turnberry Homes called Mr. Powell and requested a holding tank for all of the remaining lots, except Lot 139. Within one week of ordering the tank, Mr. Powell's contractor delivered and installed the holding tank. Consistent with KCC's new requirement, Turnberry Homes paid for each holding tank COD.

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

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

14. In June 2007, after Turnberry Homes prevailed in the Action, Turnberry Homes requested that KCC provide a holding tank for Lot 139, on which Turnberry Homes is presently constructing a home. Turnberry Homes called Mr. Powell and informed him that Turnberry Homes is ready, willing and able to pay KCC for the holding tank for Lot 139 COD. KCC refuses to deliver the necessary holding tank to Lot 139 and refuses to provide any reason for its refusal. Turnberry Homes cannot continue construction on Lot 139, nor can it market Lot 139, until a holding tank is installed.

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

16. Pursuant to Tenn. Code Ann. §§ 65-27-101, *et seq.*, Turnberry Homes is prevented by law from purchasing and installing a holding tank from another vendor.

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

18. KCC's refusal of equipment is unjust, unreasonable, unduly preferential or discriminatory, and KCC's refusal to provide the necessary holding tank injures Turnberry Homes. In fact, it appears that KCC is refusing to provide the holding tank out of spite for Turnberry Homes prevailing in the Action. Turnberry Homes continues

to carry interest on Lot 139, cannot continue construction on Lot 139, and cannot market Lot 139 until a holding tank is installed. Turnberry Homes has no adequate remedy at law for the harm inflicted by KCC. Turnberry Homes will suffer immediate, irreparable harm, injury or damage if KCC continues to refuse delivery of a holding tank to Lot 139. Therefore, Turnberry Homes is entitled to a mandatory injunction commanding KCC to deliver and install a holding tank to Lot 139.

**COUNT I**  
**INJUNCTIVE RELIEF**

19. Turnberry Homes incorporates herein by reference the allegations contained in Paragraphs 1 through 18 of this Verified Complaint.

20. KCC requires its prospective customers to purchase a holding tank from KCC or KCC's one approved contractor. Pursuant to Tenn. Code Ann. §§ 65-27-101, *et seq.*, Turnberry Homes is prevented by law from purchasing and installing a holding tank from another vendor.

21. Turnberry Homes requested that KCC provide a holding tank for Lot 139, on which Turnberry Homes is presently constructing a home. Turnberry Homes called Mr. Powell and informed him that Turnberry Homes is ready, willing and able to pay KCC for the holding tank for Lot 139 COD. KCC refuses to deliver the necessary holding tank to Lot 139 and refuses to provide any reason for its refusal. Turnberry Homes cannot continue construction on Lot 139, nor can it market Lot 139, until a holding tank is installed.

22. KCC's refusal of equipment is unjust, unreasonable, unduly preferential or discriminatory, and KCC's refusal to provide the necessary holding tank injures Turnberry Homes. Turnberry Homes has no adequate remedy at law for the harm



inflicted by KCC. Turnberry Homes will suffer immediate, irreparable harm, injury or damage if KCC continues to refuse delivery of a holding tank to Lot 139.

23. Turnberry Homes is entitled to a mandatory injunction commanding KCC to deliver and install a holding tank to Lot 139.

**COUNT II**  
**TORTIOUS CONDUCT - ACTUAL DAMAGES**

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

25. KCC has a duty to provide sewer service to Lot 139 pursuant to Tenn. Code Ann. § 65-4-115, which states that no utility "shall adopt, maintain, or enforce any regulation, practice, or measurement which is unjust, unreasonable, unduly preferential or discriminatory, nor shall any public utility...withhold or refuse any service which can be reasonably demanded and furnished."

26. On or around June 15, 2007, Turnberry Homes requested that KCC provide a holding tank for Lot 139, on which Turnberry Homes is presently constructing a home. Turnberry Homes' request for a holding tank to Lot 139 is a reasonable request in order to obtain necessary sewer services. KCC has furnished holding tanks for each of the previous 23 lots within one week of Turnberry Homes calling Mr. Powell and requesting the holding tank.

27. KCC breached its duty to provide sewer service by refusing to deliver the necessary holding tank to Lot 139 and refusing to provide any reason for its refusal. Turnberry Homes 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.

28. As a result of KCC's wrongful refusal of service, Turnberry Homes is entitled to damages, including but not limited to, interest expense, lost profit, and prejudgment interest.

**COUNT III**  
**TORTIOUS CONDUCT - PUNITIVE DAMAGES**

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

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

31. Subsequent to the Action, Turnberry Homes requested a holding tank for Lot 139. Turnberry Homes' request is a reasonable request to obtain necessary sewer services. KCC refuses to deliver the necessary holding tank to Lot 139 and refuses to provide any reason for its refusal.

32. KCC's refusal is wrongful, intentional, and malicious. KCC's refusal is malicious because it is motivated by ill-will or personal spite for Turnberry Homes prevailing in the Action. As a result of KCC's wrongful, intentional, and malicious refusal, Turnberry Homes is entitled to punitive damages.

WHEREFORE, premises considered, Turnberry Homes prays as follows:

1. That the Court order an expedited hearing to determine whether a preliminary injunction should be issued;

2. That upon a trial on the merits, the Court issue a permanent injunction commanding KCC to deliver and install a holding tank to Lot 139 on a COD basis;

3. That the Court award it a judgment against KCC for its actual damages, including but not limited to, interest expense, lost profits, and prejudgment interest;

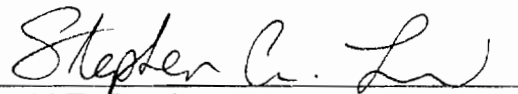
4. That the Court award it a judgment against KCC for punitive damages for KCC's wrongful, intentional, and malicious refusal of service;

5. That the Court award it a judgment against KCC for prejudgment interest and all costs of this action; and

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

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

RESPECTFULLY SUBMITTED,



Todd E. Panther (#14438)

Stephen A. Lund (#25531)

TUNE, ENTREKIN & WHITE, P.C.

AmSouth Center, Suite 1700

315 Deaderick Street

Nashville, TN 37238-1700

(615) 244-2770 - telephone

(615) 244-2778 - fax

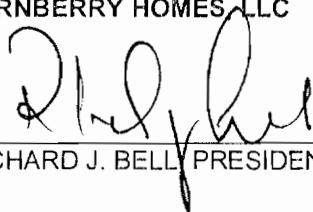
*Attorneys for Turnberry Homes, LLC*

**VERIFICATION**

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

TURNBERRY HOMES, LLC

BY:

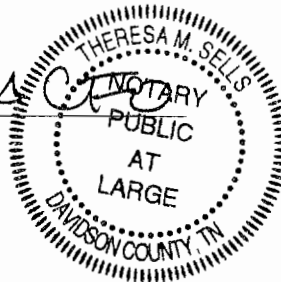
  
RICHARD J. BELL, PRESIDENT.

STATE OF TENNESSEE )  
COUNTY OF \_\_\_\_\_ )

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

**WITNESS** my hand and official seal at Nashville, Tennessee, on this 31 day of July, 2007.

  
NOTARY PUBLIC



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

FILED  
WILLIAMSON COUNTY  
CLERK & MASTER  
2007 AUG -3 AM 11:31

**Lot Purchase Agreement**

**For**

**Kings Chapel Subdivision**

ENTERED \_\_\_\_\_

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

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

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

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

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

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

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

## 2. PURCHASE

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

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

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

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

(c) Builder shall have a right of first refusal on lots 225 through 251 located in PHASE TWO east of boulevard, proportionate to rights of first refusal of other builders within the development, if not in default hereunder. Developer may not enter into a purchase agreement with any third party prior to ~~April 30, 2005~~ on lots 225 through 251 in PHASE TWO. However, this is subject to availability, current prices and readiness of additional Lots which shall be determined in Developer's sole discretion. *MARCH 15, 2006 Alice J.*

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.~~

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

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

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

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

## 8. REMEDIES

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

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

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

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

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

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

## **9. OTHER GENERAL PROVISIONS**

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

To Developer:

Ashby Communities LLC.  
1413 Plymouth Drive  
Brentwood, Tennessee 37027

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

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

To Builder:

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

---

### 10. INTERPRETATION/DUE DILIGENCE/CONFIDENTIALITY

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

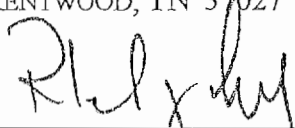
### 11. FACSIMILE TRANSMISSIONS

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

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

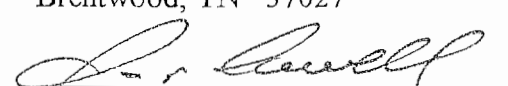
***Builder:***

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

  
By: Richard J. Bell  
Title: President

***Developer:***

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

  
By: John Powell  
Title: Member



## "ATTACHMENT TWO"

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

1. Builder must close the Twenty (24) lots within Twelve (12) months, in concert with other builder(s) from Lots 101 through 148 (Phase One) and may choose additional Lots 225 through 251 from Phase Two when those lots become available.
2. Builder must complete an "Initial Purchase" of six <sup>12</sup>~~(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 <sup>3</sup>~~(6)~~ additional lots every three months following the "Secondary Purchase" of six <sup>3</sup>~~(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~~ *Check A.*  
Swimming Pool  
~~Spring House, Natural Amenity, discovery, play area.~~ *Check A.*  
~~Fire Ring (old silo base)~~ *Check A.*  
~~Large Park Acreage around this Area~~ *Check A.*

Creek Access Area with Pavilion

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

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

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

#### Kings Chapel Church and Family Area

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

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

Landscaped Gated Entrance

ADDENDUM TO  
Lot Purchase Agreement  
For King's Chapel Subdivision

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

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

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

BUILDER:

Turnberry Homes, LLC

BY: 

RICHARD J. BELL, PRESIDENT  
CEO & CHIEF MANAGER

DEVELOPER:

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

BY: 

JOHN POWELL, MEMBER

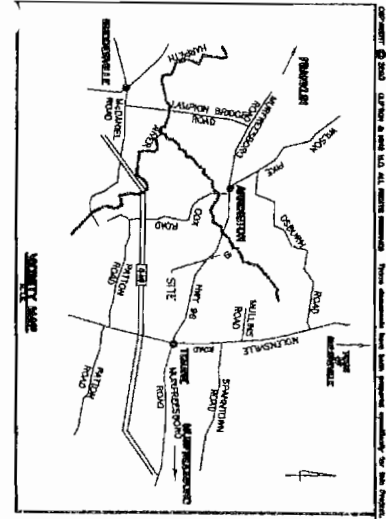


EXHIBIT 1

SITE PLAN  
MEADOWBROOK SUBDIVISION  
A PLANNED RESIDENTIAL CONSERVATION DEVELOPMENT  
ARRINGTON WILLIAMSON COUNTY, TENNESSEE

CLETON  
& KING, LLC  
SITE ENGINEER

SITE 28  
217 HADLEY DRIVE  
ARRINGTON, TN 37007  
DATE: 03/13/2013

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 03/13/2013 BY 60328

## **Appendix 1 Landscape Guidelines**

### **OBJECTIVES**

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

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

### **RESTRICTED PLANT MATERIALS**

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

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

### **SOD REQUIREMENTS**

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

Corner lots shall be soded from both curbs to one foot back from the front corner of the house (corner 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.

**ATACHMENT ONE**

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

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

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

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

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

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

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

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



## **1. APPROVAL**

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

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

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

## **2. APPROVED BUILDER GROUP**

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

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

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

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

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

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

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

### 3. APPROVED BUILDERS GROUP PAYMENT

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

#### **4. DEFAULT BY BUILDER**

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

#### **5. SALES AND MARKETING**

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

#### **6. DESIGN GUIDELINES**

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

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

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

To Developer:

Ashby Communities LLC.  
1413 Plymouth Drive  
Brentwood, Tennessee 37027

To Builder:

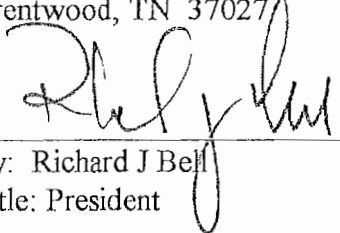
Turnberry Homes, Inc.  
Bright Hour Building  
210 Jamestown Park Dr. Suite 102  
Brentwood, TN 37027

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

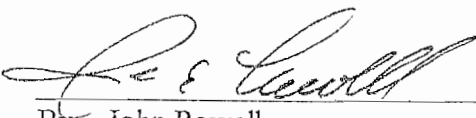
Builder:

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 KIINGS 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-compactable or unstable soil conditions.
- c. Compliance with any or all building codes, safety requirements, governmental laws, regulations or ordinances.
- d. Performance or quality of work of any contractor.

### **SITE AND DESIGN REVIEW PROCESS**

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

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

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

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

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

**Site Plan** - Two comprehensive plans acceptable to Williamson County.

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

### **Landscape Plan**

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

### **Floor Plans**

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

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

Single Story House design - Living Area minimum 2800 Square Feet

Exclusive of Garages, porches, patios, breezeways, and basements.

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

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

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

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

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

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

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



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

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

## **DESIGN CRITERIA**

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

### **Elements of Design**

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

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

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

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

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

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

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

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

### **Building Materials**

Building materials are expected to be of the highest quality.

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

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

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

**Roof** - Roofing material should be dimensional asphalt type shingles.

**Shutters** - Are not required to be operational.

### **Development Standards**

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

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

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

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

4. **Fences** - Fences or screens may be used, to enclose service areas, patios, swimming pools or other areas requiring privacy, however such plans must be submitted to the SDRC for approval prior to construction. Woven wire or chain link fences are prohibited; wood, masonry or plant materials are considered suitable components for fences and screens. Fences or walls may not extend to height greater than six (6) feet from ground level unless the Board and the adjoining lot owners consent.
5. **Antennae** - No outside antennae or device of any type other than an antenna for receiving normal television signals (typically eighteen (18) inches in diameter) shall be erected, constructed, placed or permitted to remain on any lot, house, or building. Television antennas must be located to the rear of the roof ridgeline, or centerline of the principal dwelling. No antennae shall be permitted to extend more than two (2) feet above the roof of the home nor shall any such antennae be erected on freestanding poles.
6. **Repetitive Designs** - Some house designs may be unacceptable for a particular lot because of similarity to homes in the immediate neighborhood. If, in the judgment of the SDRC, the massing, basic style, roofline, exterior materials, colors or other features of a home are too similar to its neighbors, the design will not be approved.
7. **Temporary Signs** - Permitted signs are subject to the Williamson County Sign Ordinance and approval by the SDRC and must comply with certain criteria. This includes REALTOR signs and Builder signs.
8. **Exterior Lighting Regulations** - Location and description of exterior lighting fixtures are subject to review and approval by the SDRC prior to installation. All lighting proposals are expected to show suitable restraint and concern for the impact of the proposal on neighboring properties. The following design standards shall apply:
  - a. Entry, garage, deck and terrace areas may be illuminated by post or wall mounted lighting fixtures, provided, Fixtures are lit by incandescent bulbs not greater than 60 watts each. Fixtures are in scale and harmony with the components of the house.
  - b. Landscape lighting, when made an integral part of landscape plan for the site shall be permitted. Provided that fixtures shall be the low 12-volt type and the power source shall be located below ground level fixtures concealed by planting. Clusters of specimen trees, shrubs or lone specimen trees (live oak, magnolia, etc.) may be illuminated by ground level fixtures concealed by planting. In general individual trees are not to be illuminated. Tree canopy down lighting when supplemented by up lighting is acceptable. Fixtures are to be glare free by use of baffles.
  - c. The following examples of exterior lighting are **unacceptable**:
    1. Fixtures using other than incandescent bulbs (high pressure sodium, mercury vapor and any light with a high Intensity Discharge rating)
    2. Strings of lights located in trees or shrubs or outlining portions of buildings, decks or benches (excluding holidays)
    3. Illuminated large areas of exterior walls
    4. "Moonlighting" large areas of the site

5. Wall, soffit or ground level fixture where lamps are not screened by baffles or planting from view of adjoining properties.
6. "Mushroom" type fixtures that, in the judgment of the SDRC, will have a detrimental affect of adjacent properties
7. Lighting fixture or illuminated areas located in a required side or rear yard setback.
8. Colored lighting is prohibited (excluding holidays)

**9. Playground Equipment** - All such equipment must be located on the rear of the lot and not in the property setbacks. Screening of playground equipment with shrubs or other plant material is recommended. As a "courtesy to your neighbor" the SDRC has established the following guidelines regarding specific playground equipment.

1. Tree house or site constructed playhouse - require approval of the SDRC prior to installation or erection. Tree houses should be natural wood. Playhouses may be painted an earth tone color or a color to match the home.
2. Swing sets, forts and sandboxes - must be natural wood.
3. Basketball backboards may not be located in front of the house. They are to be located in the turn around area of the driveway and are not to be of a permanent type.

**10. Statuary** - Statuary is defined as any stationary item that is used for decorative or ornamental purposes on the exterior of the home or in the surrounding yard, but is not permanently affixed to or part of the main dwelling unit. Statuary includes such items as lawn ornaments, garden statues and fountains. These items should be used with care and placed in such a manner as not to detract from the natural setting of Kings Chapel. The SDRC should be contacted for questions regarding the use and placement of statuary. The SDRC reserves the right to request removal of an item, which has not received SDRC approval.

## **11. CONSTRUCTION ACTIVITIES**

### **Pre-Construction Activities:**

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

### **During Construction**

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

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

### **Completion of Construction**

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

### **Receipt of Guidelines and Appendixes**

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