

**TUNE, ENTREKIN & WHITE, P.C.**

ATTORNEYS AT LAW

RECEIVED

JOHN C. TUNE  
1931-1983

ERVIN M. ENTREKIN  
1927-1990

*Of Counsel*  
JOHN D. FITZGERALD, JR.  
\* Rule 31 listed General Civil Mediator

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NASHVILLE, TENNESSEE 37238

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2007 SEP 20 PM 2:36

T.R.A. DOCKET ROOM

THOMAS V. WHITE  
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THOMAS C. SCOTT  
PETER J. STRIANSE  
HUGH W. ENTREKIN  
BEN H. CANTRELL \*  
JOHN P. WILLIAMS \*  
LESA HARTLEY SKONEY  
JOSEPH P. RUSNAK  
TODD E. PANTHER  
SHAWN R. HENRY  
T. CHAD WHITE  
STEPHEN A. LUND

September 20, 2007

**VIA HAND DELIVERY**

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

**Re: Turnberry Homes v. King's Chapel Capacity**

Dear Dr. Robinson:

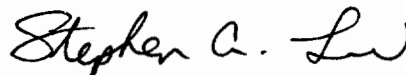
Pursuant to the T.R.A.'s September 18, 2007 order, please find enclosed Turnberry Homes' responses to the T.R.A.'s questions in anticipation of Monday's hearing.

Also enclosed are copies of the Affidavit of Richard J. Bell and Order Granting Injunctive Relief. Both documents are from the civil action in Williamson County. I mistakenly omitted the affidavit when I filed Turnberry Homes' other documents this past Monday. The Order has now been signed by Judge Davies and I thought it prudent to include for the T.R.A.'s records.

Feel free to contact me with any questions.

Sincerely,

**TUNE, ENTREKIN & WHITE, P.C.**



Stephen A. Lund

Enclosures as stated

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

<b>TURNBERRY HOMES, LLC,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>No. 07-00199</b>
	)	
<b>KING'S CHAPEL CAPACITY, LLC,</b>	)	
	)	
<b>Respondent.</b>	)	

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**TURNBERRY HOMES' RESPONSES TO THE PRELIMINARY QUESTIONS  
BY THE TENNESSEE REGULATORY AUTHORITY**

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Comes now the Petitioner, Turnberry Homes, LLC ("Turnberry Homes"), and respectfully answers the Tennessee Regulatory Authority's preliminary questions as follows:

1. Turnberry Homes has received approved sewer service from KCC for Lot 138. However, no sewer service agreement was ever executed. This was in keeping with the common practice between Turnberry Homes and KCC on all previous lots owned by Turnberry Homes in King's Chapel. Turnberry Homes has never been asked to execute a sewer service agreement or to pay for sewer services. Turnberry Homes is ready, willing and able to execute a sewer service agreement for Lot 138 should KCC require it.

2. Turnberry Homes paid for the collection tank for Lot 138 on June 14, 2007. Turnberry Homes paid Ashby Communities, LLC ("Ashby") directly for the tank by check in an amount of \$1,409.33. Turnberry Homes has never been asked to execute a sewer service agreement or to pay for sewer services for Lot 138. However, Turnberry Homes is ready, willing and able to pay for such services should KCC require

it, just as it has paid for such services on each lot previously owned by Turnberry Homes.

3. Turnberry Homes has opened the sewer service collection valve for Lot 138 on several occasions, all of which occurred after KCC closed the sewer service collection valve. Turnberry Homes initially received sewer services on or around June 14, 2007. Turnberry Homes contacted Wayne Stine, the project manager for Ashby about installing a collection tank for Lot 138. Just as he had for every lot prior to Lot 138, Mr. Stine installed the tank and turned it on. KCC closed the valve on or around August 14, 2007. As a result, Turnberry Homes re-opened the collection valve on or around August 15, 2007. Turnberry Homes again opened the collection valve on or around August 23, 2007 after Mr. Powell personally closed the valve on or around August 22, 2007. Turnberry Homes took these actions because sewer services are necessary for Turnberry Homes to obtain a use and occupancy certificate. A use and occupancy certificate is necessary in order for Turnberry Homes to sell the home on Lot 138.

4. The practice between Turnberry Homes, Ashby, and KCC for the 24 lots in King's Chapel that Turnberry Homes bought from Hang Rock was for Turnberry Homes to request and pay Ashby to install a collection tank on the lot. Once Ashby installed a collection tank on the lot and connected it to the on-site sewer system, KCC assumed responsibility for providing sewer services to the lot. Per this practice, Turnberry Homes requested a collection tank for Lot 138. However, KCC denied Turnberry Homes sewer service for Lot 138 on or around June 14, 2007 when Mr. Powell ordered Mr. Stine not to open the collection valve. KCC also denied Turnberry Homes sewer service for Lot

138 when it closed the collection valve on August 14, 2007 and August 22, 2007. KCC did not give Turnberry Homes any reason for this denial. In fact, Turnberry Homes first learned that it was refused service because of contractual issues between Turnberry Homes and Hang Rock, LLC when KCC responded to Turnberry Homes' complaint with the T.R.A.'s Consumer Services Division on July 30, 2007. Attached hereto as **Exhibit A** and incorporated herein by reference is a true and accurate copy of KCC's response.

5. Turnberry Homes has not received any bills for sewer service to Lot 138.

6. KCC closed the collection valve to Lot 138 on at least two occasions. Mr. Stine closed the collection valve the first time on or around August 14, 2007. Mr. Powell personally closed the collection valve the second time on or around August 22, 2007. According to KCC's response to the T.R.A.'s Consumer Services Division, the valve was closed because of contractual issues between Turnberry Homes and Hang Rock, LLC. Hang Rock is another entity controlled by Mr. Powell with its principal place of business located at 1413 Plymouth Drive, Brentwood, Tennessee 37027.

7. While KCC and Ashby are two distinct legal entities, for all intents and purposes, they are the same. Both KCC and Ashby list their principal place of business at 1413 Plymouth Drive, Brentwood, Tennessee 37027. This address also happens to be John Powell's personal residence. Mr. Powell is either the managing member or sole member of each entity. Ashby is the developer of the King's Chapel subdivision while KCC is the authorized public utility for King's Chapel. Mr. Powell is responsible for the day-to-day operations of both entities. The two have a service agreement for King's Chapel. The service agreement is attached hereto as **Exhibit B** and incorporated herein by reference.

8. According to his Affidavit filed in *Turnberry Homes v. King's Chapel Capacity*, Williamson County Chancery Court, No. 33796, Mr. Powell is the managing member of Ashby. As such, he controls the day-to-day operations of Ashby. Ashby's principal place of business is 1413 Plymouth Drive, Brentwood, Tennessee 37027. This address is also Mr. Powell's personal residence. Attached hereto as **Exhibit C** and incorporated herein by reference is a true and accurate copy of Mr. Powell's affidavit.

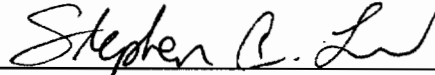
9. According to his Affidavit filed in *Turnberry Homes v. King's Chapel Capacity*, Williamson County Chancery Court, No. 33796, Mr. Powell is the sole member of KCC. As such, he is responsible for the day-to-day operations of KCC. KCC's principal place of business is 1413 Plymouth Drive, Brentwood, Tennessee 37027. This address is also Mr. Powell's personal residence.

10. Mr. Powell is a partner in Ashby. Turnberry Homes is unaware of the identity of the other partners, if any, in Ashby.

11. Not applicable to Turnberry Homes.

12. Not applicable to Turnberry Homes.

RESPECTFULLY SUBMITTED,



Todd E. Panther (#14438)  
Stephen A. Lund (#25531)  
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315 Deaderick Street  
Nashville, TN 37238-1700  
(615) 244-2770 - telephone  
(615) 244-2778 - fax  
*Attorneys for Turnberry Homes, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing document has been served, via the method(s) indicated below on the following counsel of record, this the 20th day of September, 2007.

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

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



Stephen A. Lund (#25531)

07-0461

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Writers Direct Dial  
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RECEIVED  
CONSUMER SERVICES DIVISION  
JUL 30 2007  
TN REGULATORY AUTHORITY

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

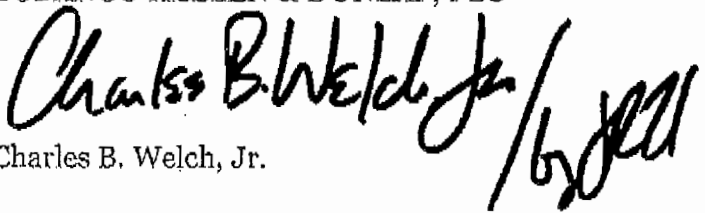
Chancery Court. The Utility is not a party to this litigation.

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

---

<sup>2</sup> *Id.*



WASTEWATER TREATMENT FACILITY SERVICE AGREEMENT

## RECITALS

## THE PARTIES

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

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

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

THE PERSONAL AND REAL PROPERTY CONTEMPLATED IN THIS  
AGREEMENT

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

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

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

## THE PURPOSE OF THIS AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21. INTERPRETATION. This Agreement has been submitted to the scrutiny of both parties and shall be given a fair and reasonable interpretation without consideration being given to its having been drafted by either party or such party's counsel.

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

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

By: [Signature]  
John Powell, Managing Member

Ashby Communities, LLC  
(A Tennessee Limited Liability Company)

By: [Signature]  
John E. Powell, Member

**ATTACHMENT A**

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

EXHIBIT C

IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE  
AT FRANKLIN

TURNBERRY HOMES, LLC, )

Plaintiff, )

V. )

No. 33796

KING'S CHAPEL CAPACITY, LLC, )

Defendant.

AFFIDAVIT OF JOUNE 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 ("Ashbv").

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.

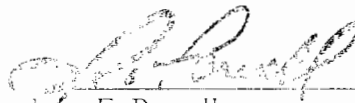
20. Not long after the February 22, 2007 in Docket No. 33291, in an effort to mitigate further, future problems with Turnberry Homes and to maintain the design integrity and property values within King's Chapel, Ashby attempted repurchase from Turnberry Homes' its remaining lots pursuant to the terms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

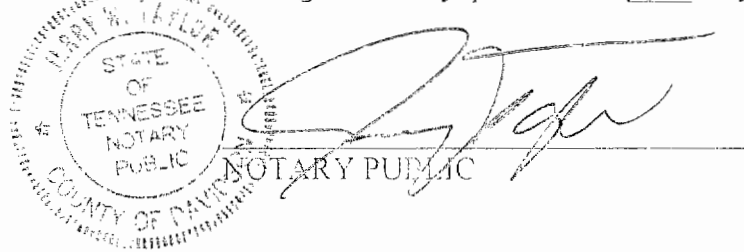
22. My attorneys sent a letter to Turnberry Homes' attorney informing them of Ashby's notice of default and contractual right to repurchase lot 138 and 139.

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.



My Commission Expires: 1-24-09

**RECEIVED**  
**IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE**

2007 SEP 20 PM 2:38

FILED  
WILLIAMSON COUNTY  
TENNESSEE

2007 SEP -4 PM 1:25

**TURNBERRY HOMES, LLC,**

T.R.A. DOCKET ROOM

ENTERED 9-19-07

Plaintiff,

v.

No. 33796

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

Defendants.

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**ORDER GRANTING INJUNCTIVE RELIEF**

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

**FINDINGS OF FACT**

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

DA

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

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

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

#### **CONCLUSIONS OF LAW**

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

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

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

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

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

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

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

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

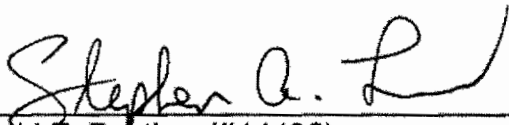
3. Provided that such holding tank and connection of sewer services comply with all applicable laws, regulations and code, KCC shall not refuse sewer services for Lot 139 regardless of the entity that installed the holding tank and connection of sewer services.

4. All other matters are reserved.

**ENTERED** on this the 19 day of Sept, 2007.

  
JUDGE ROBERT E. LEE DAVIES

APPROVED FOR ENTRY:


  
Todd E. Panther (#14438)  
Stephen A. Lund (#25531)  
TUNE, ENTREKIN & WHITE, P.C.  
AmSouth Center, Suite 1700  
315 Deaderick Street  
Nashville, TN 37238  
(615) 244-2770  
Attorneys for Turnberry Homes, LLC

**CERTIFICATE OF SERVICE**

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

- ( ) Hand
- ☒ Mail
- ( ) Fax
- ( ) Fed. Ex.
- ( ) E-Mail

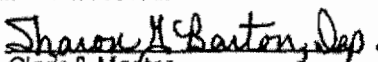
Charles B. Welch, Jr.  
Jamie R. Hollin  
618 Church Street, Suite 300  
Nashville, TN 37219

  
Stephen A. Lund (#25531)

**CLERK'S CERTIFICATE**

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

9-20-07  
Date

  
Sharon A. Barton, Dep.  
Clerk & Master

RECEIVED

FILED  
WILLIAMSON COUNTY  
CLERK'S OFFICE

IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE

TURNBERRY HOMES, LLC,

Plaintiff,

v.

KING'S CHAPEL CAPACITY, LLC,

Defendant.

T.R.A. DOCKET ROOM  
2007-09-10 AM 11:01

ENTERED

No. 33796

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AFFIDAVIT OF RICHARD J. BELL

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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.

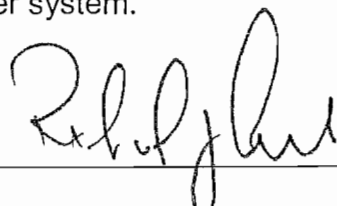
17. Turnberry Homes has paid Ashby the base price for Lot 139. Turnberry Homes cannot continue construction of the residence on Lot 139 until the residence has sewer services. Yet, KCC claims that it cannot provide sewer services until Turnberry Homes has paid Ashby in full for Lot 139. But, pursuant 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.

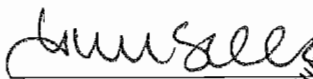
18. KCC has provided a holding tank for every lot owned by Turnberry Homes except for Lot 139. KCC, Ashby and Hang Rock are all controlled by Mr. Powell. In my opinion, KCC refuses service for Lot 139 out of spite for Turnberry Homes prevailing in the Ashby Action, and because of the on-going dispute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

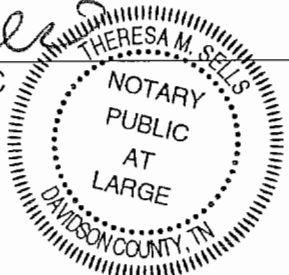
19. As a result of halting construction, Turnberry Homes will suffer significant, irreparable harm because it must indefinitely carry interest on Lot 139 and is unable to complete and sell the residence until KCC decides it wants to deliver the holding tank. It is impossible to determine the economic 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