

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In re:

Petition of Cartwright Creek, LLC to Change
and Increase Rates and Charges.

Docket No.: 09-00056

PETITION TO INTERVENE

The Waterbridge development ("Waterbridge") petitions the Authority to intervene as a matter of right in this proceeding pursuant to T.C.A. §4-5-310(a).

Waterbridge is a residential development located in Williamson County. Waterbridge is within the service area of Cartwright Creek¹ and, therefore, is required to purchase wastewater services from Cartwright Creek. For several months, the parties have been attempting to negotiate a contract under which Waterbridge will pay for, and Cartwright Creek will operate, a wastewater collection and treatment system to serve the Waterbridge development. Although Waterbridge remains optimistic that a contract can soon be finalized, Waterbridge files this petition in case the parties are unable to negotiate their differences and it becomes necessary for the TRA to resolve them. Waterbridge is also intervening because the rates and terms of service set forth in the proposed contract are subject to change in this rate proceeding.

¹ Under state law, Cartwright Creek is the only utility authorized to provide wastewater service in its service area. Unless Cartwright Creek surrenders the area or the Authority finds that the facilities of Cartwright Creek are inadequate to meet the reasonable needs of its customers or that the utility is unwilling or unable to provide the requested services, Waterbridge has no choice but to use this utility's wastewater services. T.C.A. §65-4-203.

Waterbridge is aware of, and will comply with, the proposed procedural schedule submitted by the Consumer Advocate Division. Waterbridge is not filing testimony in this case but, will participate, as necessary and appropriate, through the examination of the witnesses and the filing of briefs. Attached to this petition are copies of (a) the original contract proposed by Cartwright Creek (exhibits omitted) and (b) the most recent draft of a contract proposed by the Waterbridge development (exhibits omitted). Among the issues that remain to be resolved are (1) the jurisdiction of the TRA over this contract, and (2) the obligations of Waterbridge concerning vacant lot fees, tap fees, and the costs of filing bonds in Williamson County where the development is located. To the extent these and other issues affecting Waterbridge remain unresolved by the time of the hearing in this rate case, Waterbridge will ask the Authority to address them.

The pending contract between Waterbridge and Cartwright Creek is mentioned frequently in the petition and pre-filed testimony of Cartwright Creek. See, for example, petition at paragraphs 2 and 3, and testimony of Robert Cochrone at pp. 3, 7, 8, 12 and 13. The pre-filed testimony presumes that a contract has been, or shortly will be, completed. Unfortunately, that presumption may be inaccurate, and the inability of the parties to arrive at an agreement could have a material impact on the utility's future operations. For these reasons, consideration of these issues is both relevant and necessary to the resolution of this rate case.

Waterbridge has a legal interest in the outcome of this rate case and the granting of this petition to intervene will not delay the prompt and orderly handling of the proceedings. Waterbridge, therefore, asks that the petition to intervene be granted.

Respectfully submitted this ___ day of August, 2009.

Respectfully submitted,

BARDLEY ARANT BOULT CUMMINGS LLP

By: 

Henry Walker (No. 000272)

1600 Division Street, Suite 700

P.O. Box 340025

Nashville, Tennessee 37203

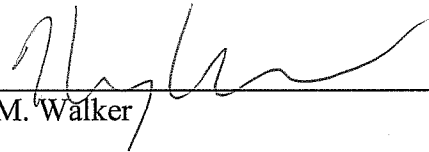
(615) 252-2363

Attorneys for Waterbridge.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a ~~true~~ [✓] and correct copy of this Petition has been served upon the following by U.S. Mail this ~~2~~ ² day of August, 2009.

Thomas L. Kolschowsky, Corporate Counsel
Sheaffer International, L.L.C.
As Manager of Cartwright Creek L.L.C.
800 Roosevelt Road, Suite A-120
Glen Ellyn, IL 60137



Henry M. Walker

SEWER AND WASTEWATER TREATMENT SYSTEM SERVICE AGREEMENT

DRAFT 8-21-09

This Sewer and Wastewater Treatment System Service Agreement (this "Agreement") is made and shall become effective this _____ day of August, 2009 (the "Effective Date"), by and between Cartwright Creek, L.L.C., a Tennessee limited liability company ("Cartwright Creek") and Waterbridge Development, Inc., a Tennessee (State of incorporation) corporation ("Owner") (singularly, "Party," and collectively, the "Parties") pursuant to which Cartwright Creek will provide to Owner the services described herein.

RECITALS

- A. Whereas, Owner owns a certain property in Williamson County, Tennessee, shown and legally described on Exhibit A herein (the "Property"), on which it plans to build a residential development (the "Waterbridge Development");
- B. Whereas, Cartwright Creek and its manager, Sheaffer International, LLC ("Sheaffer") have received from the Tennessee Department of Environment and Conservation ("TDEC") and the Williamson County Planning Commission permit approvals to build and operate a wastewater treatment plant as defined in Paragraph 8.b. of this Agreement (the "WWTP"), a sewage collection system as defined in Paragraph 8.a. of this Agreement (the "Collection System"), and a treated wastewater irrigation system as defined by Paragraph 8.c. of this Agreement (the "Irrigation System") on the Property.

- C. Whereas, Owner has requested Cartwright Creek, as a privately owned, wastewater treatment utility, holding a license from the Tennessee Regulatory Authority ("TRA"), to own and operate the WWTP, Collection System and Irrigation System;
- D. Whereas, Owner has entered into an agreement, identified on Exhibit B of this Agreement, with Sheaffer to review documents and inspect construction of the WWTP, Collection System and Irrigation System for conformance to the requirements of TDEC and Williamson County;
- E. Whereas, Cartwright Creek desires to provide the requested services to Owner and also desires to ensure that the WWTP, Collection System and Irrigation System is operated in accordance with the TDEC operating permit and with State and local laws, regulations, and ordinances, and in accordance with the "Certificate of Convenience and Necessity" ("CCN") granted to Cartwright Creek by the TRA;

Now therefore, upon the following consideration and mutual promises, the Parties hereby agree as follows:

- 1. INCORPORATION OF RECITALS AND EXHIBITS. The foregoing Recitals and all attached Exhibits are hereby incorporated into this Agreement by reference.
- 2. DUTIES OF CARTWRIGHT CREEK.
 - a. General. Upon Owner's completion of the conditions defined in Paragraph 3 of this Agreement, Cartwright Creek shall accept title to the Wastewater Treatment and Reuse Facilities, including the Residential Grinder Pumps, and provide sewer and wastewater treatment services for the Development.
 - b. Commencement of Services. Cartwright Creek's services under this Agreement shall commence at closing for the Wastewater Treatment and Reuse Facilities and

the property shown in Exhibit A of this Agreement. Cartwright Creek's agreement to close on the property shall be conditioned on Owner's completion of its obligations defined in Paragraph 3. of this Agreement. The Parties will use their best efforts to close within fourteen days following execution of this Agreement. If all the requirements set forth in Paragraph 3 other than the requirements of Paragraph 3b have been met, the parties agree to close and to complete the requirements of 3b within 30 days of closing.

3. DUTIES OF OWNER. Owner shall perform the following tasks prior to the "Closing:"
 - a. No Connection Fees. The Collection System, WWTP and Irrigation System are being constructed at the sole cost of the Owner. There will be no connection fees due Cartwright Creek for the residential units within the Development, for the property described in Exhibit A, up to a maximum of 225 equivalent dwelling units (EDUs) Should Cartwright Creek offer connections in excess of 225 EDUs, Cartwright Creek will offer those additional connections to the Owner at a rate which is just and reasonable and which takes into account the Owner's contribution to the costs of building the WWTP, the Collection System and Irrigation System.
 - b. Construction Certifications. Sheaffer, acting pursuant to the agreement in Exhibit B, shall provide a set of as-built plan drawings for the WWTP/Irrigation System. The Owner, acting pursuant to the Agreement in Exhibit B, shall provide a set of as-built plan drawings for the Collection System. Each set shall be signed and sealed by a professional engineer licensed to practice in the State of Tennessee, certifying that the as-built drawings accurately depict the WWTP, Collection

System and Irrigation System as it was built, and that the WWTP, Collection System and Irrigation System were built in substantial conformance with the design approved by the TDEC and Williamson County.

- c. Survey. Owner, at its expense, shall provide a plat of survey (the "Survey"), dated after the completion of the Wastewater Treatment and Reuse Facilities and made by a registered Tennessee land surveyor, in accordance with Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys and complying with current standards adopted by the American Land Title Association on October 5, 2005 and the Board of Directors, National Society of Professional Surveyors on October 24, 2005, and certified to Cartwright Creek.
- d. Homeowner Restrictive Covenants. Owner shall prepare homeowners' association restrictive covenants and bylaws and provide the document(s) to Cartwright Creek for review and approval ____ days prior to Closing. At a minimum, the association restrictive covenants shall identify Cartwright Creek or its assignee or designee as the sole provider of wastewater collection and treatment services and shall include the following:
 - i. Right of Access to Property. The association restrictive covenants shall include a grant of easement to Cartwright Creek or its assignee or designee to enter each homeowner's property and property owned by the homeowners' association to install, maintain, repair, improve or inspect the Collection System, Residential Grinder Pumps, and Water (Shutoff) Valve.

ii. Prohibited Substances. The association restrictive covenants shall identify substances potentially harmful to the wastewater system and prohibit residents from flushing or discharging such substances into the wastewater system.

e. Williamson County Bonding. Williamson County's Subdivision Regulations and Zoning Ordinances, which include "Article XII, Regulations for Wastewater Treatment and Land Disposal Systems, Williamson County, Tennessee, Amended : October 13, 2008" (the "Regulations") set forth bonding requirements for wastewater treatment facilities that land apply (irrigate) effluent. The Regulations include performance and maintenance bonding requirements that apply to the Collection System, WWTP, and Irrigation System. Until such time as the Regulations relieve the Owner of his bonding obligations, the Owner shall obtain and maintain the required bonds in such form and substance acceptable to Williamson County. Cartwright Creek shall contribute up to \$244,000.00 to the costs of these bonds. The Owner shall contribute up to \$120,000.00 to the costs of the bonds. To the extent the actual cost of the bonds is less than \$364,000.00, the maximum contributions of Cartwright Creek and the Owner will be reduced proportionally. Should a bond be called as a result of the acts or omissions of one party, that party shall indemnify the other for any loss up to the full amount of the bond.

f. Total Vacant Lot Fee. During the build-out of the Waterbridge Development, the Owner shall be responsible for the following:

i. To provide operating funds during the initial build-out, the Owner will pay a quarterly fee based upon the total number of unsold lots ("Total Vacant Lot Fee") and

calculated by multiplying a fee for each unsold lot ("Individual Vacant Lot Fee") by the number of unsold lots on the Waterbridge Development. The Individual Vacant Lot Fee shall be \$43.75 per quarter, subject to TRA review and approval.

ii. The Owner will pay the first Total Vacant Lot Fee within 7 working days of Closing in the amount of \$9,806.00. The Owner will continue paying the Total Vacant Lot Fee for four years from the date of Closing. Payments will be made on the first of each quarter and calculated based on the number of unsold lots on the last day of the previous quarter. At the end of the fourth year from the date of Closing and at the end of each year from the date of Closing thereafter, the Owner may elect to continue paying in the Total Vacant Lot Fee and reserve remaining taps or elect to discontinue paying, in which case the Owner will forfeit the tap for any unsold lots to Cartwright Creek.

iii. At the time of payment of the first Total Vacant Lot Fee, the Owner will also pay Cartwright Creek a deposit of \$9,806.00. The deposit will earn compound interest at the rate of 3% per year. Should the Owner fail to pay the Total Vacant Lot Fee within seven days of the due date, Cartwright Creek shall notify the Owner by certified mail of the default. If the Owner fails within fourteen days of the date of delivery to pay the Total Vacant Lot Fee, Cartwright Creek may deduct the Fee from the deposit. If the Owner fails within forty-five days to replace the amount deducted from the deposit, the Owner may not order additional taps until the deposit shortfall and all delinquent Total Vacant Lot Fees are paid. At the end of four years from the date of closing, Cartwright Creek shall return the deposit, including accrued interest, to the Owner or the parties may agree to apply all or part of the deposit to the Total Vacant Lot Fee.

iv. The Owner shall notify the purchaser of each unsold lot of the purchaser's obligation to pay a monthly vacant lot fee in accordance with the tariffs of Cartwright Creek as approved by the Tennessee Regulatory Authority.

g. Documents to be delivered by Owner at Closing. At the Closing Owner shall deliver or cause to be delivered to Cartwright Creek directly or, if either party elects, through Escrow, the following, each of which shall be in form reasonably satisfactory to Cartwright Creek and (if applicable) the Title Insurer:

i. A duly executed and acknowledged Warranty or Trustees Deed to the Property subject only to the Permitted Exceptions;

ii. Affidavit of Title;

iii. Bill of Sale;

iv. An affidavit to the affect that Seller is not a foreign person under Section 1445(b) of the United States Internal Revenue Code (FIRPTA);

v. GAP Undertaking or other Personal Undertaking as required by the Title Insurer;

vi. All documentation required by Section 1445 of the Internal Revenue Code of 1954, as amended from time to time (the "Code"), it being understood and agreed that Purchaser is authorized to withhold and deduct from the portion of the Purchase Price payable at Closing any and all amounts required by the Code; provided, however, that if Seller is not a "foreign person" as defined in the Code, Seller shall execute and deliver a Transferor's Affidavit in compliance with the terms of the Code, in form and substance reasonably satisfactory to counsel for Purchaser, in which event no such withholding shall be required;

vii. Copy of the final plat of subdivision for the Waterbridge Development identifying all utility easements known at that time.

h. Title Insurance Policy. Owner shall provide at Closing at its own expense a title insurance policy from a title company mutually selected by Owner and Cartwright Creek for the Wastewater Treatment and Reuse Facilities (the "Title Policy"), which shows title is in fee simple, free and clear of any and all liens and encumbrances, at the time of transfer of title to Cartwright Creek. The title insurance policy shall include the following endorsements:

- i. Zoning;
- ii. Access;
- iii. Owner's Comprehensive;
- iv. Survey;
- v. Subdivision;
- vi. Address;
- vii. Tax Parcel;
- viii. Utility Facility;
- ix. Deletion of Creditor Rights.

i. Property Taxes. Owner shall pay for all property taxes due for the Property reasonably as of the date of Closing and shall prorate for property taxes not yet due, but payable in the year after closing. In addition, Owner shall provide Cartwright Creek financial information necessary to submit to the local county assessor to assist in efforts to reduce or accurately contest real estate taxes. Cartwright Creek shall keep all information confidential.

- j. Residential Grinder Pump Service and Replacement. Cartwright Creek will own and maintain the individual grinder pumps. Owner shall require through its contracts with home builders or through the homeowners restrictive covenants or other appropriate means that each builder constructing a home on a lot within the Waterbridge Development installs a grinder pump, service connection, and fittings in accordance with the requirements of TDEC and subject to inspection by Cartwright Creek in accordance with its approved tariff. Owner shall also include in the homeowners' restrictive covenant notification to the homeowner that Cartwright Creek owns the grinder pumps and is responsible for the maintenance of the grinder pumps. The restrictive covenant shall include a grant of easement to Cartwright Creek for its right of access to the grinder pumps in, as provided in Paragraph 3.d.v of this Agreement. Cartwright Creek shall have the right to inspect every grinder pump installed upon 10 days' written notice to Owner or any third party purchaser or builder. Cartwright Creek shall be entitled to a fee as determined by its tariff.

4. TERMINATION. Prior to Closing, Cartwright Creek may terminate this Agreement by written notice to Owner if Owner fails to comply with its duties under Paragraph 3. of this Agreement and, after receiving written notice describing such failure from Cartwright Creek, Owner fails to take corrective actions.

5. OTHER TERMS AND CONDITIONS.

- a. Attorneys' Fees and Court Costs. The Parties in any dispute between the Parties arising from this Agreement shall be responsible for their own attorneys' fees and costs incurred in pursuing or defending such dispute.

- b. Notices. Any notice required under this Agreement shall be in writing, personally delivered or sent by certified mail, postage prepaid, to the other Party at the address set forth below or to such other address as any Party may so designate in writing from time to time.

To: Cartwright Creek, LLC
Attn: Manager
800 Roosevelt Rd., Suite B-214
Glen Ellyn, IL 60137

To: Waterbridge Development, Inc.
Attn: President
4521 Trousdale Drive
Nashville, TN 37204

With a copy to the Parties' registered agents, as follows:

Cartwright Creek, LLC
c/o Bruce Meyer
1551 Thompson's Station Rd West
Thompson's Station, TN 37179

Waterbridge Development, Inc.
c/o Henry Walker
1600 Division Street, Suite 700
Nashville, TN 37203

- c. Force Majeure. In the event either Party's performance of this Agreement is delayed in connection with any circumstance beyond such Party's control including, without limitation, fires, floods, accidents, labor shortages, failure to secure materials as a result of strikes, riots, and national emergencies, but expressly excluding obligations of payment, then such Party may elect to suspend performance under this Agreement but only to the extent, and only for the period, that its performance is prevented by the event. In the event that any suspension under this paragraph occurs for a period in excess of 45 days, either Party may elect to terminate this Agreement.
- d. Entire Agreement. When fully executed, this Agreement shall supersede all prior agreements, either oral or in writing. This Agreement shall constitute the entire agreement between the Parties and shall not be modified except through writing and signed by the Parties.

- e. Construction of Agreement. This Agreement shall become effective upon execution. Within seven days following execution, Cartwright Creek and the Owner will jointly file a copy of this Agreement with the TRA and request that the agency review and approve this Agreement. In the event that any part of this Agreement shall be declared void or unenforceable by the TRA, such imperfection shall not affect the validity or enforceability of the remainder of this Agreement unless the result would be manifestly unconscionable. The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference. They do not purport to, and shall not be construed to, define, limit or extend the scope or intent of this Agreement. The terms, conditions, obligations and definitions contained in this Agreement are intended by the Parties to apply to all exhibits attached unless expressly provided otherwise.
- f. No Waiver. The failure of a Party to insist upon the strict performance of the terms and conditions hereof shall not constitute a waiver of that Party's right to enforce the same in the event of a continuing or subsequent default on the part of the other Party.
- g. Choice of Law; Designation of Jurisdiction for Disputes; Venue. This Agreement is governed by and shall be construed in accordance with laws of the State of Tennessee without giving effect to any choice or conflict of law provision or rule (whether of the State of Tennessee or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Tennessee. The Parties mutually consent to the jurisdiction of the TRA and agree that any action,

suit or proceeding concerning, related to, or arising out of this Agreement and the negotiation of this Agreement will be brought before the TRA, subject to judicial review as provided by law. If the parties agree or if the TRA rules that the TRA does not have jurisdiction to rule on a particular issue, either party may invoke the provisions for arbitration, as set forth in Paragraph 5p, in order to resolve that issue. If one or more issues are submitted to arbitration as provided in Paragraph 5p, the parties may, in the interest of economy, agree to submit one or more additional issues to arbitration.

- h. No Third-Party Rights. Nothing in this Agreement (including any attachments) shall create, or be construed as creating, any express or implied rights in any person or entity other than the Parties except that Cartwright Creek and Owner are express third-party beneficiaries of any section that specifically names them.
- i. Counterparts. This Agreement may be executed in multiple counterparts including by facsimile transmission, each of which is considered an original and shall be binding upon the Party who executed same, but all of such counterparts shall constitute the same Agreement.
- j. Authority. Both Parties hereby warrant that they are fully authorized to enter into this Agreement and to perform each of their respective obligations described.
- k. Subcontracting. Notwithstanding anything to the contrary in this Agreement, Cartwright Creek may subcontract any part of its obligations under this Agreement to a related entity or merged corporation without obtaining the prior consent of Owner, provided, that no such subcontracting shall release Cartwright Creek from liability for the performance of its obligations hereunder.

- l. Independent Contractor. Owner and Cartwright Creek intend that an independent contractor relationship be created by this Agreement and nothing in this Agreement shall be construed as creating an agency, employer/employee relationship, partnership, joint venture, or other business group relationship except as otherwise expressly provided herein.
- m. Assignment and Delegation. Owner shall not assign, transfer, or otherwise dispose of any of its rights, nor delegate its obligations under this Agreement with the prior written consent of Cartwright Creek. If Owner requests such consent of Cartwright Creek, Cartwright Creek shall not unreasonably withhold its consent. Cartwright Creek may, without Owner's prior written consent, assign, transfer or otherwise dispose of any of its rights or delegate its obligations under this Agreement to (a) any affiliated or subsidiary entity; or (b) any person or entity qualified to perform the Wastewater Treatment and/or Additional Services. Such consent may not be unreasonably withheld. This Agreement will inure to the benefit of and be binding upon any successors and permitted assigns or delegates.
- n. Change in Permit or Regulatory Requirements. Nothing in this Agreement shall be construed to prohibit an increase or decrease in the fees payable to Cartwright Creek under this Agreement in the event of a regulatory or permit change, including a change in the rate structure for Cartwright Creek approved by the TRA.
- o. Dispute Resolution. All disputes and controversies between the parties arising out of or in connection with this Agreement, as to the existence, construction, validity, interpretation/meaning, performance, nonperformance, enforcement,

operation, breach, continuance, or termination thereof shall be submitted to the TRA as provided in Paragraph 5(g) and subject to the limitations described therein.

p. Arbitration.

i. Preliminary Procedures. If there are preliminary steps or procedures that would have to be followed under state law before a lawsuit could be commenced, those steps or procedures must be followed before the Arbitration can begin. Compliance with these state law provisions and any negotiations or settlement attempts made before the Arbitration do not constitute waiver of the Arbitration.

ii. Arbitration Fees. The parties agree to share equally the cost of filing fees and administrative fees charged in connection with the Arbitration. If one of the parties pays a fee to the arbitrator in the process of requesting or scheduling the Arbitration, the other party will reimburse the paying party for its half of the fee within 30 days of being requested to do so in writing. With regard to any other cost incurred in connection with the Arbitration, each party shall bear their own costs. If a party uses litigation to enforce this Arbitration provision or the Arbitration award, the court will award to the prevailing party its court costs and reasonable attorney's fees.

iii. Arbitration Procedure. Thirty (30) days after the controversy arises and all preliminary steps or procedures have been satisfied, either of the parties may demand Arbitration. The parties shall select a single arbitrator from the current year's list as maintained by the American Arbitration Association for the nearest geographical area/local municipality to the Property in question. If the parties are unable to agree on one arbitrator from

said list, then the parties will each choose one arbitrator from the list and those two arbitrators will then choose the single arbitrator who shall decide the case.

iv. Arbitration Award and Rules. The award rendered by the single arbitrator appointed pursuant to this Agreement shall be final and binding on all parties to the proceeding, and judgment on the award may be entered by either party in the highest court, state or federal, having jurisdiction. The appropriate Arbitration Rules and Mediation Procedures of the American Arbitration Association shall govern and control the Arbitration, and discovery in the form of document production and depositions shall be permitted, subject to the restrictions and conditions established by the Arbitrator.

v. Arbitration Defense. The parties agree that the Arbitration provisions of this Agreement shall be a complete defense to any suit, action, or proceeding instituted in any federal, state, or local court or before any administrative tribunal with respect to any controversy or dispute arising during the period of this Agreement, except that nothing herein shall preclude the parties from seeking injunctive or other equitable relief from a court of competent jurisdiction. The Arbitration provisions shall, with respect to the controversy or dispute, survive the termination or expiration of this Agreement and is binding on the parties and their respective successors and assigns. Nothing contained in this Agreement shall be deemed to give the arbitrator(s) any authority, power, or right to alter, change, amend, modify, add to, or subtract from any of the provisions of this Agreement.

6. DEFINITIONS.

- a. "Sewage Collection System," or "Collection System," means sewage collection pipe easements granted to Cartwright Creek, which shall run from the property line of each subdivided property in the Development served by the Waterbridge

Development to wastewater collection pipelines and to the WWTP, as designed by Owner's civil engineer, as well as the pipe, valves, electrical controls, flow meters, and manholes installed within the easement. The Collection System does NOT include any real property interest in the subdivided, residential lots included in the Waterbridge Development, except that Cartwright Creek shall be granted a perpetual right of access by permanent easement to each lot for the purpose of maintaining, repairing, and replacing the individual grinder pumps serving each home, per Paragraph 4.b.iv. of this Agreement, and a right of access to the potable water supply shut-off valve for each home, per Paragraph 4.e. of this Agreement.

- b. "Residential Grinder Pumps" means the individual sewage pumps at each home to be provided by the Owner or builder in accordance with the Waterbridge Development plans and specification and TDEC approvals.
- c. "Wastewater Treatment Plant" or "WWTP" means the wastewater treatment system designed by Owner's consulting engineers, including treatment equipment, building, and real property.
- d. "Irrigation System" means the primary and secondary irrigation land, and the reclaimed wastewater irrigation pumps, pipe, sprinklers, and other appurtenances for irrigating treated wastewater to the primary and secondary irrigation areas.
- e. "Wastewater Treatment and Reuse Facilities" means the Collection System, Wastewater Treatment Plant, and Irrigation System as defined above.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date written above.

Waterbridge Development, Inc.

Cartwright Creek, L.L.C.

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

SEWER AND WASTEWATER TREATMENT SYSTEM SERVICE AGREEMENT
DRAFT 6-1-09

This Sewer and Wastewater Treatment System Service Agreement (this "**Agreement**") is made and shall become effective this _____ day of June (*month*) 2009 (the "**Effective Date**"), by and between **Cartwright Creek, L.L.C.**, a Tennessee limited liability company ("Cartwright Creek") and **Waterbridge Development, Inc.**, a Tennessee (*State of incorporation*) corporation ("Owner") (singularly, "**Party**," and collectively, the "**Parties**") pursuant to which Cartwright Creek will provide to Owner the services described herein.

RECITALS

- A. **Whereas**, Owner owns a certain property in Williamson County, Tennessee, shown and legally described on Exhibit A herein (the "Property"), on which it plans to build a residential development (the "Waterbridge Development");
- B. **Whereas**, Owner and its consultants have designed and received from the Tennessee Department of Environment and Conservation ("TDEC") and the Williamson County Planning Commission permit approvals to build and operate a wastewater treatment plant as defined in Paragraph 8.b. of this Agreement (the "WWTP"), a sewage collection system as defined in Paragraph 8.a. of this Agreement (the "Collection System"), and a treated wastewater irrigation system as defined by Paragraph 8.c. of this Agreement (the "Irrigation System") on the Property.
- C. **Whereas**, Owner has requested Cartwright Creek, as a privately owned, wastewater treatment utility, holding a license from the Tennessee Regulatory Authority ("TRA"), to own and operate the WWTP, Collection System and Irrigation System;
- D. **Whereas**, Owner has entered into an agreement, identified on Exhibit B of this Agreement, with Cartwright Creek's manager, Sheaffer International, LLC, ("Sheaffer") to review documents and inspect construction of the WWTP, Collection System and Irrigation System for conformance to the design approved by the TDEC and Williamson County;
- E. **Whereas**, Cartwright Creek desires to provide the requested services to Owner and also desires to ensure that the WWTP, Collection System and Irrigation System is designed and constructed in accordance with the TDEC operating permit and with State and local laws, regulations, and ordinances, and in accordance with the "Certificate of Convenience and Necessity" ("CCN") granted to Cartwright Creek by the TRA;

Now therefore, upon the following consideration and mutual promises, the Parties hereby agree as follows:

- 1. **INCORPORATION OF RECITALS AND EXHIBITS.** The foregoing Recitals and all attached Exhibits are hereby incorporated into this Agreement by reference.
- 2. **DUTIES OF CARTWRIGHT CREEK.**
 - a. **General.** Upon Owner's completion of the conditions defined in Paragraph 3 of this Agreement, Cartwright Creek shall accept title to the Wastewater Treatment and Reuse Facilities, including the Residential Grinder Pumps, and provide sewer and wastewater treatment services for the Development.
 - b. **Commencement of Services.** Cartwright Creek's services under this Agreement shall commence at closing for the Wastewater Treatment and Reuse Facilities and the property shown in Exhibit A of this Agreement. Cartwright Creek's agreement to close on the property shall be conditioned on Owner's completion of its obligations defined in Paragraph 3. of this Agreement.
- 3. **DUTIES OF OWNER.** Owner shall perform the following tasks prior to the "Closing:"
 - a. **No Connection Fees.** The Collection System, WWTP and Irrigation System are being constructed at the sole cost of the Owner. There will be no connection fees due Cartwright Creek for the residential units within the Development, for the property described in Exhibit A, up to a maximum of 223 equivalent dwelling units (EDUs), provided the Owner completes the obligations outlined in Paragraph 3.f.

- b. Construction Certifications. Owner shall provide a set of as-built plan drawings for the WWTP/Irrigation System and a set of as-built plan drawings for the Collection System. Each set shall be signed and sealed by a professional engineer licensed to practice in the State of Tennessee, certifying that the as-built drawings accurately depict the WWTP, Collection System and Irrigation System as it was built, and that the WWTP, Collection System and Irrigation System was built in substantial conformance with the design approved by the TDEC and Williamson County.
- c. Survey. Owner, at its expense, shall provide a plat of survey (the “Survey”), dated after the completion of the Wastewater Treatment and Reuse Facilities and made by a registered Tennessee land surveyor, in accordance with Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys and complying with current standards adopted by the American Land Title Association on October 5, 2005 and the Board of Directors, National Society of Professional Surveyors on October 24, 2005, and certified to Cartwright Creek. The survey shall depict and include, without limitation, the following: (i) present location of any and all improvements, fences or structures located on the land, and the Survey shall show that there are no encroachments of adjacent improvements onto the Land; (ii) building lines and all easements whether recorded or visible (and if recorded, by specified reference to the record by document numbers and a separate legal description of all easements; (iii) access to public roads and highways and (iv) identification of storm sewers, sanitary sewers and water lines as they serve the Property from the respective main lines, stormwater detention/retention for the Property and the location of underground pipes carrying the stormwater from the Property to such offsite location. Without limitation of the foregoing, the Survey shall state the legal description of the Land, the square footage of the Land and any improvements or structures on the Land, and shall further state whether the Land is located in an area designated by an agency of the United States of America as being subject to flood hazards or flood risks.
- d. Homeowner Restrictive Covenants. Owner shall prepare homeowners’ association restrictive covenants and bylaws and provide the document(s) to Cartwright Creek for review and approval ____ days prior to Closing. At a minimum, the association restrictive covenants shall include the following:
 - i. Prohibited Substances. The association restrictive covenants shall identify substances potentially harmful to the Wastewater Treatment and Reuse Facilities, and prohibit residents from flushing or discharging such substances to the sewer or wastewater system. The provision shall include the payment of fines to Cartwright Creek by any residents violating this provision, and other appropriate remedies.
 - ii. Payment of Sewer Fees. The association restrictive covenants shall require each lot owner to pay sewer fees according to Cartwright Creek’s service rates. The service rates are defined in Cartwright Creek’s “Tariff,” which has been approved by the TRA and is subject to change upon TRA review and approval.
 - iii. Remedies for Non-payment of Sewer Fees – Lien Rights and Water (Shutoff) Valve. The association restrictive covenants shall include remedies available to Cartwright Creek for nonpayment of sewer fees. The remedies shall include, but not be limited to, Cartwright Creek’s right to enter the homeowner’s property to install a water (shutoff) valve and shut off homeowner’s water, and the right to file a lien against the homeowner’s property.
 - iv. Right of Access to Property. The association restrictive covenants shall include a grant of easement to Cartwright Creek or its assignee or designee to enter each homeowner’s property and property owned by the homeowners’ association to install, maintain, repair, improve or inspect the Collection System, Residential Grinder Pumps, and Water (Shutoff) Valve.
 - v. Grinder Pumps. The association restrictive covenants shall require each homeowner to sign and deliver to Cartwright Creek a certificate of installation and testing for the residential grinder pump to be located on the homeowner’s property. The certificate of installation shall be provided and signed by a factory authorized representative of Environment One (“EOne”) or a Cartwright Creek approved manufacturer, and shall certify: that the pump controls, and indicator alarms have been installed and tested and functioning properly; and that the homeowner has been given written instruction on alarm monitoring and notification requirements. The association restrictive covenants shall provide that Cartwright Creek shall own and maintain the grinder pump and will remain the property of Cartwright Creek.

- e. Williamson County Bonding. Williamson County's Subdivision Regulations and Zoning Ordinances, which include "Article XII, Regulations for Wastewater Treatment and Land Disposal Systems, Williamson County, Tennessee, Amended : October 13, 2008" (the "Regulations") set forth bonding requirements for wastewater treatment facilities that land apply (irrigate) effluent. The Regulations include performance and maintenance bonding requirements that apply to the Collection System, WWTP, and Irrigation System. The documents required to and the cost to obtain and maintain the Performance and Maintenance Bonds for the Collection System, WWTP, and Irrigation System shall be the responsibility of the Owner and shall be in the form and substance acceptable to Williamson County, Tennessee.
- f. Operating Reserve and Total Vacant Lot Fee. During the build-out of the Waterbridge Development, the Parties recognize that there will be a shortfall between the "Operations Costs" (consisting of items, such as, but not limited to, those listed in Exhibit C) and the revenue provided by the Service Fees paid by homeowners (the "Shortfall"). The Owner shall be responsible for the following:

- i) To provide operating funds during the initial build-out, the Owner will pay an annual fee based upon the total number of unsold lots ("Total Vacant Lot Fee") and calculated by multiplying a fee for each unsold lot ("Individual Vacant Lot Fee") by the number of unsold lots on the Waterbridge Development. The Individual Vacant Lot Fee shall be \$175.
- ii) As lots are sold to third party purchasers or builders the Owner will ensure that the purchasers are aware that the Individual Vacant Lot Fee will become and continue as a responsibility of the lot purchasers until a home is occupied and the homeowner begins paying the monthly sewer bill. The Owner's Total Vacant Lot Fee will subsequently reduce by the number of lots sold to third party purchasers or builders.
- iii) The Owner will pay the first Total Vacant Lot Fee within 7 working days of the execution of this Agreement in the amount of \$_____. The Owner will continue paying the Total Vacant Lot Fee for three additional years on the anniversary date of this Agreement. At the end of the fourth year, the Owner may elect to continue paying in the Total Vacant Lot Fee and reserve remaining taps or elect to discontinue paying, in which case, the Owner will forfeit the tap for any unsold lots to Cartwright Creek.
- iv) If during years one through four, the Owner fails to pay the Total Vacant Lot Fee within 15 days of the execution date or anniversary date thereof, the Owner shall loose the taps for the unsold lots.

- g. Documents to be delivered by Owner at Closing. At the Closing Owner shall deliver or cause to be delivered to Cartwright Creek directly or, if either party elects, through Escrow, the following, each of which shall be in form reasonably satisfactory to Cartwright Creek and (if applicable) the Title Insurer:

- i. A duly executed and acknowledged Warranty or Trustees Deed to the Property subject only to the Permitted Exceptions;

- ii. Affidavit of Title;
- iv. Bill of Sale;
- v. An affidavit to the affect that Seller is not a foreign person under Section 1445(b) of the United States Internal Revenue Code (FIRPTA);
- vi. GAP Undertaking or other Personal Undertaking as required by the Title Insurer;

- vii. All documentation required by Section 1445 of the Internal Revenue Code of 1954, as amended from time to time (the "Code"), it being understood and agreed that Purchaser is authorized to withhold and deduct from the portion of the Purchase Price payable at Closing any and all amounts required by the Code; provided, however, that if Seller is not a "foreign person" as defined in the Code, Seller shall execute and deliver a Transferor's Affidavit in compliance with the terms of the Code, in form and substance reasonably satisfactory to counsel for Purchaser, in which event no such withholding shall be required;
- viii. Such other instruments and documents as may be reasonably required in order to carry out the purposes of this Agreement.
- iv) Copy of the final plat of subdivision for the Waterbridge Development identifying easements to Cartwright Creek for repair and maintenance of the WWTP, Collection System and Irrigation System.
- h. Title Insurance Policy. Owner shall provide at Closing at its own expense a title insurance policy from First American Title for the Wastewater Treatment and Reuse Facilities (the "Title Policy"), which shows title is in fee simple, free and clear of any and all liens and encumbrances, at the time of transfer of title to Cartwright Creek. The title insurance policy shall include the following endorsements:
- i. Zoning;
- ii. Access;
- iii. Owner's Comprehensive;
- iv. Contiguity;
- v. Survey;
- vi. Subdivision;
- vii. Address;
- viii. Tax Parcel;
- ix. Utility Facility;
- x. Deletion of Creditor Rights.
- i. Property Taxes. Owner shall pay for all property taxes due for the Property as of the date of Closing and shall prorate for property taxes not yet due, but payable in the year after closing. In addition, Owner shall provide Cartwright Creek all financial information necessary to submit to the local county assessor to assist in efforts to reduce or accurately contest real estate taxes. Cartwright Creek shall keep all information confidential.
- j. Spare Parts. Owner shall provide spare parts as required on the Waterbridge Development drawings, such as Residential Grinder Pumps and further identified on Exhibit D, attached hereto and made a part hereof..
- k. Residential Grinder Pump Service and Replacement. Cartwright Creek will own and maintain the individual grinder pumps. Owner shall require through its contracts with home builders or through the homeowners restrictive covenants or other appropriate means that each builder constructing a home on a lot within the Waterbridge Development installs a grinder pump, service connection, and fittings in accordance with the Collection System drawings approved by TDEC and to be inspected by Cartwright Creek in accordance with its approved tariff. Owner shall also include in the homeowners restrictive covenant a grant of easement to Cartwright Creek for its right of access to the grinder pumps in, as provided in Paragraph 3.d.v of this Agreement. Cartwright Creek shall have the right to inspect every grinder pump installed upon 10 days written notice from Owner or any third party

purchaser or builder. Cartwright Creek shall be entitled to a fee as determined by its tariff, but not less than \$100.00.

4. **TERMINATION.** Cartwright Creek may terminate this Agreement by written notice to Owner if Owner fails to comply with its duties under Paragraph 3. of this Agreement and, after receiving written notice describing such failure from Cartwright Creek, Owner fails to take corrective actions within 30 days of notification. In the event of Owner's default, Cartwright Creek will not accept title to the WWTP, Collection System and Irrigation System and shall have no obligation to provide any sewer and wastewater service connections to Owner, its assignee or designee.

5. **OTHER TERMS AND CONDITIONS.**

- a. **Attorneys' Fees and Court Costs.** The Parties in any dispute between the Parties arising from this Agreement shall be responsible for their own attorneys' fees and costs incurred in pursuing or defending such dispute.
- b. **Notices.** Any notice required under this Agreement shall be in writing, personally delivered or sent by certified mail, postage prepaid, to the other Party at the address set forth below or to such other address as any Party may so designate in writing from time to time.

TO: Cartwright Creek, LLC
Attn: Manager
800 Roosevelt Rd., Suite B-214
Glen Ellyn, IL 60137

To: Waterbridge Development, Inc.
Attn: President
4521 Trousdale Drive
Nashville, TN 37204

With a copy to the Parties' registered agents, as follows:

Cartwright Creek, LLC
C/O Bruce Meyer
1551 Thompson's Station Rd West
Thompson's Station, TN 37179

Waterbridge Development, Inc.
C/O K. Thomas Sidwell
121 First Avenue South, Suite 200
Franklin, TN 37064

- c. **Force Majeure.** In the event either Party's performance of this Agreement is delayed in connection with any circumstance beyond such Party's control including, without limitation, fires, floods, accidents, labor shortages, failure to secure materials as a result of strikes, riots, and national emergencies, but expressly excluding obligations of payment, then such Party may elect to suspend performance under this Agreement but only to the extent, and only for the period, that its performance is prevented by the event. In the event that any suspension under this paragraph occurs for a period in excess of 45 days, either Party may elect to terminate this Agreement.
- d. **Entire Agreement.** This Agreement has been negotiated and prepared by and for the Parties equally and shall not be construed as having been drafted by one Party. When fully executed, it shall supersede all prior agreements, either oral or in writing. This Agreement shall constitute the entire agreement between the Parties and shall not be modified except through writing and signed by the Parties.
- e. **Construction of Agreement.** In the event that any part of this Agreement shall be declared void or unenforceable by any court having jurisdiction, such imperfection shall not affect the validity or enforceability of the remainder of this Agreement unless the result would be manifestly unconscionable. The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference. They do not purport to, and shall not be construed to, define, limit or extend the scope or intent of this Agreement. The terms, conditions, obligations and definitions contained in this Agreement are intended by the Parties to apply to all exhibits attached unless expressly provided otherwise.
- f. **No Waiver.** The failure of a Party to insist upon the strict performance of the terms and conditions hereof shall not constitute a waiver of that Party's right to enforce the same in the event of a continuing or subsequent default on the part of the other Party.

- g. Choice of Law; Designation of Jurisdiction for Disputes; Venue. This Agreement is governed by and shall be construed in accordance with laws of the State of Tennessee without giving effect to any choice or conflict of law provision or rule (whether of the State of Tennessee or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Tennessee. The Parties mutually consent to the jurisdiction of the federal and state courts in Williamson County, Tennessee and agree that any action, suit or proceeding concerning, related to, or arising out of this Agreement and the negotiation of this Agreement will be brought only in a federal or state court in Williamson County, Tennessee and the Parties agree that they will not raise any defense or objection or file any motion based on lack of personal jurisdiction, improper venue, inconvenience of the forum or the like in any case filed in a federal or state court in Williamson County, Tennessee.
- h. No Third-Party Rights. Nothing in this Agreement (including any attachments) shall create, or be construed as creating, any express or implied rights in any person or entity other than the Parties except that Cartwright Creek and Owner are express third-party beneficiaries of any section that specifically names them.
- i. Counterparts. This Agreement may be executed in multiple counterparts including by facsimile transmission, each of which is considered an original and shall be binding upon the Party who executed same, but all of such counterparts shall constitute the same Agreement.
- j. Authority. Both Parties hereby warrant that they are fully authorized to enter into this Agreement and to perform each of their respective obligations described.
- k. Subcontracting. Notwithstanding anything to the contrary in this Agreement, Cartwright Creek may subcontract any part of its obligations under this Agreement to a related entity or merged corporation without obtaining the prior consent of Owner, provided, that no such subcontracting shall release Cartwright Creek from liability for the performance of its obligations hereunder.
- l. Independent Contractor. Owner and Cartwright Creek intend that an independent contractor relationship be created by this Agreement and nothing in this Agreement shall be construed as creating an agency, employer/employee relationship, partnership, joint venture, or other business group relationship except as otherwise expressly provided herein.
- m. Assignment and Delegation. Owner shall not assign, transfer, or otherwise dispose of any of its rights, nor delegate its obligations under this Agreement without the prior written consent of Cartwright Creek. If Owner requests such consent of Cartwright Creek, Cartwright Creek shall not unreasonably withhold its consent. Cartwright Creek may, without Owner's prior written consent, assign, transfer or otherwise dispose of any of its rights or delegate its obligations under this Agreement to (a) any affiliated or subsidiary entity; or (b) any person or entity qualified to perform the Wastewater Treatment and/or Additional Services. This Agreement will inure to the benefit of and be binding upon any successors and permitted assigns or delegates.
- n. Change in Permit or Regulatory Requirements. Nothing in this Agreement shall be construed to prohibit Cartwright Creek from requiring an increase in the fees payable to Cartwright Creek under this Agreement in the event of a regulatory or permit change, including a change in the rate structure for Cartwright Creek approved by the TRA.
- o. Indemnification. Owner does hereby defend, indemnify and save Cartwright Creek harmless from and against any and all claims, actions, damages, liabilities, expenses and costs of litigation in connection with loss of life, personal injury, and/or damage of property arising from or out of any occurrence in, upon, or at the Property, occasioned wholly or in part by any act or omission by Owner, its agents or invitees upon said Property.
- p. Dispute Resolution. Except as provided herein with regard to injunctive or equitable relief, all disputes and controversies between the parties arising out of or in connection with this Agreement, as to the existence, construction, validity, interpretation/meaning, performance, nonperformance, enforcement, operation, breach, continuance, or termination thereof shall be submitted to "Arbitration" as provided in this Agreement.
- (i) PRELIMINARY PROCEDURES. If there are preliminary steps or procedures that would have to be followed under state law before a lawsuit could be commenced, those steps or procedures must be followed

before the Arbitration can begin. Compliance with these state law provisions and any negotiations or settlement attempts made before the Arbitration do not constitute waiver of the Arbitration.

- (ii) ARBITRATION FEES. The parties agree to share equally the cost of filing fees and administrative fees charged in connection with the Arbitration. If one of the parties pays a fee to the arbitrator in the process of requesting or scheduling the Arbitration, the other party will reimburse the paying party for its half of the fee within 30 days of being requested to do so in writing. With regard to any other cost incurred in connection with the Arbitration, each party shall bear their own costs. If a party uses litigation to enforce this Arbitration provision or the Arbitration award, the court will award to the prevailing party its court costs and reasonable attorney's fees.
- (iii) ARBITRATION PROCEDURE. Thirty (30) days after the controversy arises and all preliminary steps or procedures have been satisfied, either of the parties may demand Arbitration. The parties shall select a single arbitrator from the current year's list as maintained by the American Arbitration Association for the nearest geographical area / local municipality to the Property in question. If the parties are unable to agree on one arbitrator from said list, then the parties will each choose one arbitrator from the list and those two arbitrators will then choose the single arbitrator who shall decide the case.
- (iv) ARBITRATION AWARD AND RULES. The award rendered by the single arbitrator appointed pursuant to this Agreement shall be final and binding on all parties to the proceeding, and judgment on the award may be entered by either party in the highest court, state or federal, having jurisdiction. The appropriate Arbitration Rules and Mediation Procedures of the American Arbitration Association shall govern and control the Arbitration, and discovery in the form of document production and depositions shall be permitted, subject to the restrictions and conditions established by the Arbitrator.
- (v) ARBITRATION DEFENSE. The parties agree that the Arbitration provisions of this Agreement shall be a complete defense to any suit, action, or proceeding instituted in any federal, state, or local court or before any administrative tribunal with respect to any controversy or dispute arising during the period of this Agreement, except that nothing herein shall preclude the parties from seeking injunctive or other equitable relief from a court of competent jurisdiction. The Arbitration provisions shall, with respect to the controversy or dispute, survive the termination or expiration of this Agreement and is binding on the parties and their respective successors and assigns. Nothing contained in this Agreement shall be deemed to give the arbitrator(s) any authority, power, or right to alter, change, amend, modify, add to, or subtract from any of the provisions of this Agreement.

8. DEFINITIONS.

- a. "Sewage Collection System," or "Collection System," means sewage collection pipe easements granted to Cartwright Creek, which shall run from the property line of each subdivided property in the Development served by the Waterbridge Development to wastewater collection pipelines and to the WWTP, as designed by Owner's civil engineer, as well as the pipe, valves, electrical controls, flow meters, and manholes installed within the easement. The Collection System does NOT include any real property interest in the subdivided, residential lots included in the Waterbridge Development, except that Cartwright Creek shall be granted a perpetual right of access by permanent easement to each lot for the purpose of maintaining, repairing, and replacing the individual grinder pumps serving each home, per Paragraph 4.b.iv. of this Agreement, and a right of access to the potable water supply shut-off valve for each home, per Paragraph 4.e. of this Agreement.
- b. "Residential Grinder Pumps" means the individual sewage pumps at each home to be provided by the Owner or builder in accordance with the Waterbridge Development plans and specification and TDEC approvals.
- c. "Wastewater Treatment Plant" or "WWTP" means the wastewater treatment system designed by Owner's consulting engineers, including treatment equipment, building, and real property.
- d. "Irrigation System" means the primary and secondary irrigation land, and the reclaimed wastewater irrigation pumps, pipe, sprinklers, and other appurtenances for irrigating treated wastewater to the primary and secondary irrigation areas.

- e. **“Operations Costs”** means the costs to operate and maintain the Collection System, WWTP, and Irrigation System including those items listed in Exhibit C and other reasonable and documented costs.
- f. **“Wastewater Treatment and Reuse Facilities”** means the Collection System, Wastewater Treatment Plant, and Irrigation System as defined above.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date written above.

Waterbridge Development, Inc.

Cartwright Creek, L.L.C.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____