

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE:)
)
PETITION OF BERRY'S CHAPEL)
UTILITY, INC. FOR A DECLARATORY) **DOCKET NO. 14-00075**
ORDER)

PETITION FOR DECLARATORY ORDER

Berry's Chapel Utility, Inc. ("BCUI") d/b/a Harpeth Wastewater Cooperative petitions the Tennessee Regulatory Authority to issue a declaratory order pursuant to TRA Rule 1220-1-2-.05 and T.C.A. § 4-5-223 concerning the applicability of T.C.A. § 65-4-109 to certain promissory notes issued by BCUI to Tyler L. Ring and John D. Ring. Copies of the promissory notes are attached as Exhibits A and B.

1. BCUI is a public utility as defined in T.C.A. § 65-4-101. It is now and was at the time of the issuance of the attached promissory notes subject to the jurisdiction of the Tennessee Regulatory Authority. See Berry's Chapel Utility, Inc. v. Tennessee Regulatory Authority, 2012 WL 6697288 (Tenn. Ct. App. 2012).

2. BCUI provides wastewater service to approximately 850 customers in Williamson County, Tennessee. BCUI is not engaged in interstate commerce.

3. On September 1, 2010, BCUI issued a promissory note to Tyler L. Ring in the principal amount of \$1,200,000.00, payable over twenty years. To secure payment of the note, BCUI granted Tyler L. Ring a security interest in all of BCUI's assets. See Exhibit A.

4. On September 1, 2010, BCUI also issued a promissory note to John D. Ring in the principal amount of \$1,200,000.00, payable over twenty years. To secure payment, BCUI also granted John D. Ring a security interest in all of BCUI's assets. See Exhibit B.

5. T.C.A. § 65-4-109, states, "No public utility shall issue any . . . bonds, debentures or other evidences of indebtedness payable in more than one (1) year from the date thereof until it shall have first obtained authority from the [Tennessee Regulatory] Authority for such proposed issue."

6. BCUI has never sought or obtained authority from the TRA to issue the promissory notes described in paragraphs 3 and 4.¹

RELIEF SOUGHT

BCUI asks the Authority to issue a declaratory order finding that (1) T.C.A. § 65-4-109 is applicable to the promissory notes described in paragraphs 3 and 4 and (2) in the absence of approval by the TRA, the issuance of the promissory notes violated T.C.A. § 65-4-109 and (3) since the promissory notes were issued in violation of state law, the promissory notes are not enforceable against BCUI.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS LLP

By: 

Henry Walker (B.P.R. No. 000272)
Bradley Arant Boult Cummings, LLP
1600 Division Street, Suite 700
Nashville, TN 37203
Phone: 615-252-2363
Email: hwalker@babbc.com

¹ When these promissory notes were executed on September 1, 2010, BCUI believed that the utility was not subject to the Authority's jurisdiction. See TRA Docket 11-00065, "Settlement Agreement," filed May 31, 2013, paragraph 25. On January 31, 2011, BCUI made an interest payment of \$2,000 each to Tyler and John Ring and another interest payment of \$2,000 each on March 13, 2011. No other payments of interest or principal have been made. The utility's current rates were established without regard to these notes, and the utility's pending rate case (Docket 14-00004) does not request any money for payment of these notes.

EXHIBIT A

PROMISSORY NOTE

\$1,200,000.00

Franklin, Tennessee
September 1, 2010

FOR VALUE RECEIVED, the undersigned Berry's Chapel Utility, Inc., a Tennessee corporation, Successor-in-Interest to Lynwood Utility Corporation, by merger (hereinafter referred to as the "Borrower") promises to pay to the order of Tyler L. Ring (hereinafter referred to as the "Lender") at any lending office in the state mentioned above or at such other place as the holder hereof may designate in writing, in current local funds, the sum of ONE MILLION TWO HUNDRED THOUSAND AND 00/100 DOLLARS (\$1,200,000.00).

Interest only shall be due and payable monthly beginning October 1, 2010 and on the same day each month thereafter until September 1, 2013 at which time principal and interest payments shall be due. During the first two (2) years of the Note interest shall accrue at the rate of two percent (2%) per annum. During the third (3rd) year of the Note interest shall accrue at the rate of two and one-half percent (2½%) per annum and thereafter until the maturity, interest shall accrue at the rate of three percent (3%) per annum. Beginning September 1, 2013, annual payments of the principal amount of Fifty Thousand and 00/100 Dollars (\$50,000.00) shall be due and payable, in addition to monthly interest payments, until August 31, 2030 (the "Maturity Date") at which time the entire principal balance and interest shall become due and payable.

SECURITY. This Note shall be secured by a junior deed of trust consisting of 5.89 acres identified as "Private Area" as shown the revised plat of Cottonwood Estates, of record in Plat Book 5, page 68, Register's Office for Williamson County, Tennessee, and all personal property and general intangibles of Borrower.

OTHER TERMS AND CONDITIONS. Unless otherwise provided herein, all payments shall be applied first to pay the accrued interest to date on the unpaid balance and next to the unpaid principal of the indebtedness.

A late charge of five (5%) percent shall be charged on the amount due, if payments not received within fifteen (15) days of the due date.

Any payment not made when due hereunder (whether by acceleration or otherwise) shall bear interest after maturity at the maximum effective contract rate of interest which the Lender may lawfully charge on the date such payment became due.

If this Note is placed in the hands of an attorney for collection, by suit or otherwise, or to protect any security given for its payment, or to enforce its collection, the undersigned will pay all the costs of collection and litigation, together with a reasonable attorney's fees, all of which shall be secured by any collateral pledged as security here for. The undersigned also agrees to pay any and all actual expenses including reasonable attorney's fees incurred by Lender in (i) successfully defending any action or inaction in connection with any aspect of the transaction evidenced by this instrument, or (ii) any action, whether or not successful, taken to protect or

enforce Lender's rights in any collateral related to the transaction evidenced by this instrument, provided, Borrower shall not be required to pay any such cost or attorneys fees in the event of Lender's negligence or misconduct in connection with the transactions contemplated herein.

The maker(s) and any endorsers or guarantors hereof waive protest, demand, presentment, and notice of dishonor, and agree that this Note may be extended, in whole or in part, without limit as to the number of such extensions, or the period or periods thereof, and without notice to or further assent from them or any other party liable hereon, all of whom will remain bound without notice and without affecting their liability hereon; and that additional makers, endorsers, guarantors, or sureties may become parties hereto, and that any present or future party may be released from liability hereunder, without notice, and without affecting the liability of any other maker, endorser, or guarantor.

In the event of any default in the prompt and punctual payment, when due, of this Note (or any installment thereof, whether of principal, interest, or principal and interest), or if the undersigned should become insolvent (as defined in the Uniform Commercial Code), or if a petition in bankruptcy be filed by or against any of the undersigned or if a receiver be appointed for any part of the property or assets of the undersigned or if any assignment for the benefit of creditors be made by the undersigned or if a judgment be entered against the undersigned, or upon the issuance of any writ, levy or process, valid or invalid which purports to restrict the undersigned with respect to any of his/her or their funds or property on deposit with or in the possession or custody or under the control of the Lender, or upon the dissolution of any party liable hereon, or in the event of any default in the prompt and punctual payment when due, of any other indebtedness or obligation to the Lender owed, now or hereafter, to secure the indebtedness evidenced hereby, or if any representation or warranty made by the undersigned pertaining to this credit shall prove to be false, untrue, or materially misleading, then and in any of such events, this Note shall, without notice or demand for payment (the same being expressly waived), be and become immediately due and payable for all purposes, at the option of the Lender.

In the event of any renewal or extension of the loan indebtedness evidenced hereby, unless the parties otherwise agree to a lower rate, the Lender shall have the right to charge interest at the highest of the following rates: (i) the maximum rate permissible at the time the contact to make the loan was executed; or (ii) the maximum rate permissible at the time the loan was made; or (iii) the maximum rate permissible at the time of such renewal or extension; or (iv) the maximum rate permitted by applicable federal law; it being intended that those statutes and laws, state or federal, from time to time in effect, which permit the charging of the higher rate of interest shall govern the maximum rate which may be charged hereunder. In the event that for any reason the foregoing provisions hereof shall not contain a valid, enforceable designation of a rate of interest prior to maturity or method of determining the same, then (unless this Note is a discounted, single-payment note) the indebtedness hereby evidenced shall bear interest prior to maturity at the maximum effective rate which may be lawfully charged by the Lender under applicable law.

Regardless of any provision herein, or in any other document executed in connection herewith, the holder hereof shall never be entitled to receive, collect, or apply, as interest hereon,

any amount in excess of the maximum contract rate which maybe lawfully charged by the holder hereof under applicable law; and in the event the holder hereof ever receives, collects or applies as interest, any such excess, such amount which would be excessive interest shall be deemed a partial prepayment of principal and treated hereunder as such; and, if the principal hereof is paid in full, any remaining excess shall forthwith be paid to the undersigned.

Notwithstanding the terms of the Note, Lender grants to Borrower the following: (a) A five (5) day grace period for any monetary payment due from Borrower to Lender; and (b) A fifteen (15) day cure period for any non-monetary default after written notice to Borrower.

In the event of a default hereunder, any money or other property at any time in the possession of the Lender belonging to any party liable hereon, and any deposits or other sums at any time credited by or due from the Lender to any party liable hereon, may at all times, at the option of the Lender, be held and treated as collateral security for the payment of this Note or any other liability of any of the undersigned, or any other party in any manner liable hereon to the Lender, whether due or not due. The Lender may, at anytime, at its option, and without notice, set off the amount due or to become due hereon against the claim of any of said parties against the Lender. To effect these rights, the undersigned and all parties liable hereon agree, upon request by the Lender, immediately to endorse, sign, and execute all necessary instruments and do hereby appoint the Lender (acting through any then officer thereof) as attorney-in-fact for them with authority to endorse any instrument requiring endorsement and to effect any transfer, and this appointment shall be irrevocable as long as the undersigned, or any other party liable hereon, shall be indebted to the Lender.

BERRY'S CHAPEL UTILITY, INC.

By: 

Tyler L. King, President

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C

SECURITY AGREEMENT

Debtor

BERRY'S CHAPEL UTILITY, INC.
321 Billingsly Court, Suite 4
Franklin, TN 37065

Secured Party

TYLER L. RING
P.O. Box 314
Franklin, TN 37065-0314

- Section 1. Security Interest; Obligation Secured.** Debtor hereby grants to Secured Party a security interest in, and grants, bargains, sells, conveys, assigns and transfers, subject to the terms hereof, the property rights described in Section 2 (herein called "**Collateral**") to secure payment or other performance of all of Debtor's obligations and liabilities to Secured Party whether now existing or hereafter existing, including the indebtedness for a term loan evidenced by a Promissory Note of even date herewith in the principal amount of One Million Two Hundred Thousand and 00/100 Dollars (\$1,200,000.00) (herein called "**Indebtedness**"). Debtor shall have the right to the possession and use of Collateral in any lawful manner not inconsistent with this Agreement until default hereunder.
- Section 2. Description of Collateral.** All of Debtor's assets as described in Exhibit "A" attached hereto and incorporated herein by reference as if copied verbatim.
- Section 3. Authorization to File Financing Statements.** Debtor hereby irrevocably authorizes Secured Party at any time and from time to time to file in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral (i) as all assets of Debtor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the State of Tennessee or such other jurisdiction, or (ii) as being an equal or less scope or with greater detail and (b) contain any other information required by Part 5 of Article 9 of the Uniform Commercial Code of the State of Tennessee or the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether Debtor is an organization, the type of organization and any organization identification number issued to Debtor, and (ii) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, as sufficient description of real property to which the Collateral relates. Debtor agrees to furnish any such information to Secured Party promptly upon request. Debtor has rights in or the power to transfer the Collateral and its title to the Collateral is free of all adverse claims, liens, security interests and restrictions on transfer or pledge except as created by this Agreement.

Section 4.

Representations, Covenants and Warranties of Debtor.

(a) Debtor will, at its cost and expense, execute, deliver, file or record (in such manner and form as Secured Party may require) financing statement(s) or other paper that may be necessary or desirable or that the Secured Party may request in order to create, reserve, perfect, validate or satisfy any security interest granted hereby or to enable Secured Party to exercise and enforce its rights hereunder. The right is expressly granted to Secured Party, in its discretion, to file one or more financing statements under the Uniform Commercial Code naming Debtor as Debtor and Secured Party as Secured Party and indicating therein the Collateral herein specified.

(b) Debtor will (i) keep such books and records pertaining to the Collateral at such office or offices of Debtor as shall be satisfactory to Secured Party; (ii) permit representatives of Secured Party at any time to inspect and make abstracts from Debtor's books and records pertaining to the Collateral; and (iii) furnish to Secured Party such information and reports regarding the Collateral and Debtor's financial status as Secured Party may from time to time require.

(c) Debtor will transmit to Secured Party promptly all information that it may have or receive which might in any way affect the value of the Collateral or Secured Party's rights or remedies with respect thereto.

(d) Debtor will not sell, assign or create a security interest in or otherwise encumber any of the Collateral to or in favor of anyone other than Secured Party, except as set out herein.

(e) Debtor will not use or permit the Collateral to be used for any unlawful purpose or in violation of any federal, state or municipal law, statute or ordinance.

(f) Debtor will indemnify Secured Party against all claims arising out of or in connection with Debtor's ownership or use of the Collateral.

(g) Debtor shall procure, keep in force, and pay for, insurance on said Collateral, in such amounts and forms, and against such risks, and with such insurers as may be acceptable to Secured Party and such policies evidencing said insurance shall be furnished to Secured Party. If Debtor fails to furnish said insurance or fails to pay the premiums therefor, Secured Party may do so or may obtain insurance of its interest only, adding the amount of any such premium thereof to the other amounts secured hereby, however, Secured Party is under no obligation nor duty to pay such premiums or perfect such insurance. Debtor hereby assigns to Secured Party any returned or unearned premiums which may be due upon cancellation of any of said policies for any reason whatsoever, and directs the insurers to pay Secured Party any amount so due, unless the Secured Party has been previously fully satisfied. In order to collect such returned or unearned premiums or the benefits of such insurance, the Secured Party or any of its officers, agents, or employees are hereby appointed

Debtor's attorney-in-fact to endorse any draft or check which may be payable to Debtor; any balance of insurance proceeds remaining after payment in full of all amounts owing to Secured Party shall be paid to Debtor. Such returned or unearned insurance premiums or the benefits of such insurance, may, at Secured Party's option, be used for other insurance or to repair, restore, or replace the Collateral, or may be applied to any indebtedness secured hereunder, and if the indebtedness is payable in installments, then the installments in inverse order, satisfying the final maturing installments first.

(h) Debtor will not permit any of the goods to be removed from the location specified herein, and Debtor will promptly notify Secured Party of any change of Debtor's residence, or in the location of the Collateral within the state, and Debtor will not remove the Collateral from the county of the Debtor's residence or from the county where the property is to be located as shown herein without the prior written consent of Secured Party, and will permit Secured Party to inspect the Collateral at any time.

(i) Debtor will not permit anything to be done that may impair the value of any of the goods or the security intended to be afforded by this Agreement.

(j) Debtor represents that the collateral described herein is unencumbered, free and clear of any liens.

Section 5. **Expenses.** Debtor will, upon demand, pay to Secured Party forthwith the amount of all expenses including the reasonable attorney's fees and legal expenses incurred by Secured Party in seeking to collect or enforce any rights in the Collateral and, upon any default by Debtor, in seeking to collect the Indebtedness.

Section 6. **General Authority.** Upon default on Debtor's part hereunder, Debtor hereby irrevocably appoints Secured Party as Debtor's true and lawful attorney-in-fact with full power of substitution, in Secured Party's name or Debtor's name or otherwise, for Secured Party's sole use and benefit, but at Debtor's cost and expense, to exercise at any time and from time to time all or any of the following rights with respect to all or any of the Collateral:

(a) To demand, sue for collection, receive and give acquittance for any and all monies due or to become due upon or by virtue thereof;

(b) To receive, take, endorse, assign and deliver any and all checks, notes, drafts, documents and other property taken or received by Secured Party in connection therewith;

(c) To settle, compromise, compound, prosecute or defend any action or proceeding with respect thereof;

(d) To sell, transfer, assign or otherwise deal in or with the same or the proceeds thereof, as fully and effectually as if Secured Party were the absolute owner thereof; and

(e) To extend the time of payment and to make any allowance and other adjustments with reference thereto; provided, however, the exercise by Secured Party of or failure to so exercise any such authority shall in no manner affect Debtor's liability to Secured Party hereunder or in connection with the indebtedness, and provided further, that Secured Party shall be under no obligation or duty to exercise any of the powers hereby conferred upon it and it shall be without liability for any act or failure to act in connection with the collection of, or the preservation of any rights under, any of the Collateral. Secured Party shall not be bound to take any steps necessary to preserve rights in any instrument or lease against prior parties.

Section 7. Events of Default, Acceleration. Any or all of the Indebtedness shall, at the option of Secured Party become immediately due and payable without notice or demand upon the occurrence of any of the following events of default:

(a) Default in the payment or performance of any Indebtedness, obligation or covenant contained herein or in any note or loan agreement, or other document evidencing any of the Indebtedness secured hereby; or

(b) Loss, destruction, sale (other than in the ordinary course of business) or unauthorized encumbrance of any of the Collateral; or

(c) Any warranty, representation or statement made or furnished to Secured Party by or on behalf of Debtor proves to have been false in any material respect when made or furnished; or

(d) Dissolution, termination of existence, insolvency, business failure, appointment of a receiver for any part of the property of, assignment for the benefit of creditors by or the commencement of any proceedings under any bankruptcy or insolvency law by or against the Debtor; or

(e) Permitting a judgment against Debtor to remain unsatisfied for more than thirty (30) days.

Section 8. Rights and Remedies on Default. Upon the occurrence of any such event of default, and at any time thereafter, Secured Party may exercise from time to time any rights and remedies available to it under applicable law. Any notice of intended disposition of any of the Collateral required by law shall be deemed reasonable if such notice is given at least five (5) days before the time of such disposition. Any proceeds of any disposition of the Collateral by Secured Party may be applied to the payment of expenses in connection with the Collateral, including reasonable attorney's fees and legal expenses, and any balance of such proceeds may be applied by Secured Party toward the payment of the Indebtedness in accordance herewith.

Section 9. General. Secured Party shall not be deemed to have waived any of Secured Party's rights hereunder or under any other agreement, instrument or paper signed by Debtor unless such waiver be in writing and signed by Secured Party. No delay or omission on the part of Secured Party in exercising any right shall operate as a waiver of such right or any other right. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion. Any notice from Secured Party to Debtor, if mailed, shall be deemed given when mailed, postage prepaid, addressed to Debtor at Debtor's address shown above, or at any other address of Debtor appearing on Secured Party's records. The covenants, representations, warranties and agreements herein set forth shall be binding upon Debtor, its heirs and assigns. Unless the context otherwise requires, all terms used herein which are defined in the Uniform Commercial Code in the State of Tennessee shall have the meanings therein stated.

IN WITNESS WHEREOF, the parties have executed this Agreement at Franklin, Tennessee, as of the 1st day of September, 2010.

DEBTOR:

BERRY'S CHAPEL UTILITY, INC.

BY: 

Tyler L. Ring, President

SECURED PARTY:


Tyler L. Ring

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EXHIBIT "A"

(a) All of Debtor's machinery, tools, equipment, furniture, furnishings and fixtures, of every kind and nature, movable or immovable, wherever located and whether now owned or hereafter existing, and all parts thereof and replacements, additions and accessions thereto (any and all such property being hereinafter referred to as the "Equipment");

(b) All of Debtor's inventory in all of its forms, wherever located and whether now or hereafter existing, and all accessions thereto and products thereof, including raw materials, materials awaiting manufacture, work-in-process, finished products, materials used or consumed in Debtor's business, and all warehouse receipts, bills of lading and other documents of title evidencing or representing any part thereof (collectively hereinafter referred to as "Inventory");

(c) All of Debtor's accounts, accounts receivable, chattel paper, instruments and other obligations of any kind, whether or not evidenced by an instrument or chattel paper, and whether or not it has been earned by performance (collectively hereinafter referred to as "Accounts Receivable" or "Receivables") whether now or hereafter existing, arising out of or in connection with the sale or lease of goods or the rendering of services or otherwise, and all rights now or hereafter existing in and to all security agreements, leases and other contracts securing or otherwise relating to any such Accounts Receivable;

(d) All of Debtor's customer lists, ledger and account cards, computer tapes, discs and printouts, and books and records of Debtor; and any and all other properties and assets of Debtor of whatever nature, tangible or intangible, wherever located and whether now or hereafter existing;

(e) All of Debtor's contract rights and general intangibles ("General Intangibles") of every kind, character and description, both now owned and hereafter acquired, including, without limitation, goodwill, trademarks, trade styles, trade names, patents, patent applications, and deposit accounts;

(f) All proceeds ("Proceeds") of any and all of the foregoing Collateral and, to the extent not otherwise included, all payments under insurance (whether or not Secured Party is the loss payee thereof), any indemnity, warranty, or guaranty, payable by reason of loss or damage to or otherwise with respect to any of the foregoing Collateral, and including, without limitation, all monies due or to become due in connection with any of the Collateral, guaranties and security for the payment of such monies, the right of stoppage in transit, and all returned or repossessed goods arising from a sale or lease thereof (although proceeds are covered, Secured Party does not authorize the sale or other transfer of any of the Collateral or the transfer of any interest in the Collateral, except for the sale of goods in the ordinary course of Debtor's business);

In each case, whether now owned or hereafter acquired by the Debtor and howsoever Debtor's interest therein may arise or appear (whether by ownership, lease, security interest, claim, or otherwise).

Tre Hargett
Secretary of State



State of Tennessee
Department of State

Uniform Commercial Code
312 Rosa L. Parks Avenue
6th Fl. Wm.R. Snodgrass Tower
Nashville, Tennessee 37243
(615) 741-3276

DATE: 09/03/10

To:

ORTALE KELLEY HERBERT & CRAWFORD
200 FOURTH AVENUE NORTH
P O BOX 198985
NASHVILLE, TN 37219-8985

RE:UCC1 Filing No. 110037684

DEBTOR INFORMATION

BERRY'S CHAPEL UTILITY INC
321 BILLINGSLEY COURT
SUITE 4
FRANKLIN, TN 37065

SECURED PARTY INFORMATION

TYLER L RING
P O BOX 314
FRANKLIN, TN 37065-0314

MATURITY DATE: 09/02/15

INDEBTEDNESS: \$0.00

This acknowledges the filing of the attached UCC1 document. Please review the above data to ensure database information corresponds with information on the submitted UCC form. In the event a discrepancy is found, please note the error and return the entire package to our office.

If we may be of any further service to you, please contact us at (615) 741-3276.

Enclosures: Original Documents

PAYMENT INFORMATION:	Paid Fees	Paid Taxes
	\$15.00	\$0.00

* Please retain for fee and tax purposes

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)
Douglas A. Brace, Esq. (615) 256-9999

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Douglas A. Brace, Esq.
Ortale, Kelley, Herbert & Crawford
200 Fourth Avenue North, Suite 300
P. O. Box 198985
Nashville, TN 37219-8985

RECEIVED - TENDERED FOR FILING
TENNESSEE SECRETARY OF STATE
09/02/10 02:05 PM
110-037684

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME
Berry's Chapel Utility, Inc.
OR
1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS

321 Billingsly Court, Suite 4
CITY Franklin STATE TN POSTAL CODE 37065 COUNTRY

1d. TAX ID# SSN OR EIN ADD'L INFO RE ORGANIZATION DEBTOR 1e. TYPE OF ORGANIZATION Inc. 1f. JURISDICTION OF ORGANIZATION TN 1g. ORGANIZATIONAL ID #, if any NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME
OR
2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS

CITY STATE POSTAL CODE COUNTRY

2d. TAX ID# SSN OR EIN ADD'L INFO RE ORGANIZATION DEBTOR 2e. TYPE OF ORGANIZATION 2f. JURISDICTION OF ORGANIZATION 2g. ORGANIZATIONAL ID #, if any NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE or ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME
OR
3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS

P. O. Box 314
CITY Franklin STATE TN POSTAL CODE 37065-0314 COUNTRY

4. This FINANCING STATEMENT covers the following collateral:

See Exhibit "A" attached hereto.

Maximum principal indebtedness for Tennessee recording tax purposes is \$-0-. Tax paid on \$1,200,000.00 under Deed of Trust of record in Book 5131, Page 343, Register's Office for Williamson County, Tennessee.

5. ALTERNATIVE DESIGNATION (if applicable): LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYER AG. LIEN NON-UCC FILING

6. This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (OPTIONAL FEE) All Debtors Debtor 1 Debtor 2

8. OPTIONAL FILER REFERENCE DATA

THIS INSTRUMENT PREPARED BY:
Douglas A. Brace, Reg. #3485
ORTALE, KELLEY, HERBERT & CRAWFORD
200 Fourth Avenue North
Nashville, TN 37219-8985

TENNESSEE DEED OF TRUST

PICK UP

THIS DEED OF TRUST ("Deed of Trust") is executed as of September 1, 2010, by Berry's Chapel Utility, Inc., a Tennessee not for profit corporation (hereinafter referred to as "Grantor") in favor of Douglas A. Brace, Trustee, Trustee (hereinafter referred to as "Trustee," said term reflecting always to the Trustee and his successors in trust), for the use and benefit of Tyler L. Ring, (hereinafter referred to as "Beneficiary"), and his successors and assigns, said term referring always to the lawful owner and holder of the indebtedness secured hereby.

WITNESSETH:

FOR AND IN CONSIDERATION of Ten (\$10.00) Dollars, cash in hand paid, and other good and valuable consideration, including the debt and trust herein provided, the receipt and sufficiency of all of which are hereby acknowledged, Grantor has this day bargained and sold, and does hereby transfer, assign and convey unto Trustee, all right, title and interest of Grantor in and to certain real property in Williamson County, State of Tennessee, more particularly described in Exhibit A which is attached hereto and incorporated herein by reference (the "Property"), together with all buildings, structures and improvements now or hereafter located thereon, all fixtures of every nature and description now or hereafter located therein or thereon, all easements, rights-of-way and other rights appurtenant thereto or used in connection therewith, all tenements, hereditaments and appurtenances thereto and all other property interests of Grantor therein (hereinafter collectively referred to as the "Premises");

TO HAVE AND TO HOLD the Premises to Trustee forever.

Grantor covenants that Grantor is lawfully seized of the Premises, has a good right to convey same, and that the same are unencumbered. Grantor further covenants and binds itself, its successors, heirs and representatives, to warrant and defend the title to the Premises to Trustee forever against the lawful claims of all persons.

But this conveyance is made IN TRUST for the following uses and trusts, and for no other purposes, to wit:

- (a) To secure to Beneficiary the payment of indebtedness in the principal amount of One Million Two Hundred Thousand and 00/100 Dollars (\$1,200,000.00), together with interest thereon, due or to become due to Beneficiary, evidenced by a Promissory Note (the "Note") made by Grantor payable to the order of Beneficiary. This Deed of Trust secures Grantor's payment of the indebtedness evidenced by the Note, principal and interest, and any extensions, modifications and/or renewals thereof and any notes given in payment of any such principal and/or interest.

THE MAXIMUM PRINCIPAL INDEBTEDNESS FOR TENNESSEE TAX RECORDING
PURPOSES IS \$1,200,000.00

- (b) To secure all sums due or to become due to Beneficiary pursuant to the terms of this Deed of Trust, with interest thereon as provided herein, and the faithful performance of all terms and conditions contained herein.
- (c) To secure the payment of all court costs, expenses and costs of whatever kind incident to the collection of any indebtedness secured hereby and the enforcement or protection of the lien of this conveyance, including without limitation reasonable attorney's fees, all of which Grantor agrees to pay to Beneficiary on demand.

Should the above-described indebtedness secured by this Deed of Trust (sometimes hereinafter collectively referred to as the "Secured Indebtedness") be paid in accordance with its terms when due and payable, and should Grantor perform all covenants herein contained in a timely manner, then this Deed of Trust shall be canceled and released by Beneficiary.

GRANTOR FURTHER COVENANTS AND AGREES WITH TRUSTEE AND BENEFICIARY AS FOLLOWS:

1. **COVENANTS OF GRANTOR WITH BENEFICIARY.** In addition to the Covenants and warranties hereinabove provided, Grantor further covenants and agrees with Beneficiary as follows:

- (a) **Performance Under Note.** To perform its obligations under the Note.
- (b) **No Liens or Assessments.** Not to permit any lien or assessment other than current taxes not delinquent, to encumber the Premises. Beneficiary has not consented and will not consent to the performance of any work or the furnishings of any materials which might be deemed to create a lien or liens superior to the lien hereof, either under T.C.A. §66-11-108, as the same may be amended from time to time, or otherwise.
- (c) **Insurance.** To maintain insurance on all buildings and other improvements on the Premises against damage by fire, windstorm and other risks normally insured against under so-called "extended coverage," in companies and amounts satisfactory to Beneficiary. All policies evidencing such insurance shall have attached thereto standard mortgagee riders making such insurance payable to Beneficiary as its interest may appear, and a certificate[s] of all such policies shall be deposited with Beneficiary.
- (d) **Maintenance, Waste, Use, Alterations and Encumbered Personalty.** To keep all buildings, fences and other improvements on the Premises in as good repair and condition as the same are in at this date, or shall be upon their construction, as the case may be, to permit no waste, and to permit no cutting of timber or removal of minerals. In the event of any destruction of or damage to the Premises, Grantor shall promptly restore the Premises to their condition prior to such damage or destruction, notwithstanding the insufficiency of any proceeds of insurance. Grantor shall not make or permit, without Beneficiary's written consent, (i) any use of the Premises for any purpose other than that for which the same are now used or intended to be used; (ii) any alterations of the buildings, improvements, fixtures, apparatus, machinery and equipment now or hereafter erected or located upon or otherwise constituting a part of the Premises; and (iii) any purchase, lease or agreement under which title is reserved in the vendor respecting any fixtures,

apparatus, machinery, equipment or personal property to be placed in or upon the Premises unless any such interest is subordinated to the lien of this Deed of Trust.

- (e) **Rents and Profits.** In the event any Event of Default (as hereafter defined) shall have occurred and be continuing under the provisions of this Deed of Trust or of the Note or other instrument evidencing all or any portion of the Secured Indebtedness, Beneficiary or its agent shall have the right forthwith to take possession of the Premises and to collect the rents and profits then owing or thereafter accruing therefrom, to be credited to the Secured Indebtedness in such order of priority as Beneficiary shall determine.
- (f) **Appointment of Receiver.** Grantor acknowledges the propriety of, and consents to, the appointment of a receiver for the Premises in the event that any action is commenced involving the Premises or to foreclose or exercise the power of sale under this Deed of Trust.
- (g) **Advancements by Beneficiary.** Beneficiary may, at its option, advance and pay all sums necessary to protect and preserve the Premises and/or to perform any of the covenants of Grantor hereunder. All sums so advanced by Beneficiary shall become a part of the Secured Indebtedness and shall bear interest from the date or dates of payment at the maximum contract rate of interest now or hereafter permitted by applicable law. Such sums may include, but are not limited to, insurance premiums, taxes, assessments and liens which may be or become prior and senior to the lien of this Deed of Trust as a lien on the Premises or any part thereof, and all costs, expenses and attorney's fees incurred by Beneficiary in respect of any and all legal or equitable proceedings which relate to this Deed of Trust or to the Premises.
- (h) **Condemnation.** In the event of a public taking or condemnation respecting any part of the Premises by proper authority, any damages paid or award allowed shall, at the option of Beneficiary, be applied first toward the satisfaction of the Secured Indebtedness in such order of priority as Beneficiary shall determine.
- (i) **Conveyance of Premises.** Grantor shall not convey, transfer, or assign other than permitted under paragraph 1.(b), above, any or all of its interest in the Premises without the prior written consent of Beneficiary. Beneficiary's consent to any such transfer, if given, shall not release or alter in any manner the liability of Grantor or anyone who has assumed or guaranteed or is otherwise liable for the payment of the Secured Indebtedness or any portion thereof. At the option of Beneficiary, the Secured Indebtedness shall be immediately due and payable in full in the event that Grantor conveys all or any portion of the Premises or any interest therein, or in the event that any of Grantor's equitable title thereto or interest therein shall be assigned, transferred or conveyed in any manner, without obtaining Beneficiary's prior written consent thereto, and any waiver or consent given by Beneficiary for any prior transfer shall not preclude Beneficiary from declaring the Secured Indebtedness due and payable for any subsequent transfer.

2. **EVENTS OF DEFAULT AND ACCELERATION.** The occurrence of any of the following events shall constitute an Event of Default hereunder unless the same has been cured within any applicable grace or cure period:

- (a) A default shall occur in the performance and/or payment of the Secured Indebtedness or any portion thereof;
- (b) Grantor shall default in the payment and/or performance of its obligations under this Deed of Trust or any other instrument or document now or hereafter further evidencing, securing or otherwise related to the Secured Indebtedness or any portion thereof;
- (c) Grantor shall abandon the Premises;
- (d) Any claim of priority to the lien of this Deed of Trust, whether by title, lien or otherwise, is asserted in any legal or equitable proceeding; or
- (e) A default shall occur in the performance and/or payment of any other indebtedness which is secured by a deed of trust or other instruments evidencing a security interest in the Premises, regardless of whether such security interest is prior or subordinate to the security interest granted hereunder.

Upon the occurrence of any Event of Default then, unless such default shall be cured within thirty (30) days from written notice by Beneficiary to Grantor, except for a default under Paragraph 2(a), above, which shall require no notice but which shall have a fifteen (15) day grace period, Beneficiary at any time thereafter may, at its option, accelerate the maturity of the Secured Indebtedness; all without notice of any kind.

Upon the occurrence of any Event of Default, Beneficiary shall provide Grantor written notice of the same and Grantor shall have the right, but not the obligation, to cure said default within thirty (30) days of said notice.

3. **REMEDIES.** Upon the occurrence of any Event of Default and the acceleration of the maturity of the Secured Indebtedness, in addition to any other remedies herein provided, Trustee is hereby authorized and empowered, upon giving twenty (20) days notice by three (3) publications in any newspaper, daily or weekly, published in the County wherein the Premises are wholly or partially located, to sell the Premises (or any part thereof) at the front door of the Courthouse in said County to the highest bidder for cash, for credit upon the Secured Indebtedness at the option of Beneficiary (if Beneficiary is the successful bidder), or upon such other terms as are satisfactory to Trustee and Beneficiary, at public outcry, free from any statutory right of redemption (including but not limited to that provided by Tennessee Code Annotated §66-8-101), the equity of redemption, homestead, dower, elective share, any right of appraisement or valuation and all other rights and exemptions of every kind, all of which are hereby expressly waived, and Trustee is authorized and empowered to execute and deliver a deed to the purchaser. Beneficiary may bid at any sale under this trust conveyance.

To the extent permitted by applicable law, any sale hereunder may be adjourned by Trustee and reset at a later date without additional publication; provided that an announcement to that effect be made at the scheduled place of sale at the time and on the date that such sale is originally set.

Grantor agrees that Trustee may, at any time after default in the payment of any part of the Secured Indebtedness, enter and take possession of the Premises, and Grantor further agrees that, in the event Trustee fails to enter and take possession of the Premises prior to selling same as herein provided, the purchaser shall nevertheless be entitled to immediate possession thereof upon the delivery to such purchaser by Trustee of a deed to said property.

At any time after the occurrence of an Event of Default, Beneficiary may at its option continue the abstract of title to the Premises or obtain other appropriate title evidence, and may add the cost thereof to the Secured Indebtedness.

In the event of Trustee's death, absence, inability or refusal to act at any time when action under the foregoing powers and trusts may be required or contemplated, or for any other reason at the option of Beneficiary, Beneficiary is hereby authorized to name and appoint a successor to execute this trust, and the title herein conveyed to the above named Trustee shall be vested in said successor without the necessity for any further conveyance.

In the event of a sale of the Premises under and by virtue of this trust, Grantor and all persons holding under it shall be and become the tenants at will of the purchaser, said tenancy to be terminable at the option of said purchaser upon five (5) days written notice unless otherwise agreed in writing by Beneficiary.

Upon any sale under this Deed of Trust, the proceeds will be applied by Trustee:

FIRST - To pay all the costs and charges of executing this trust, including attorneys' fees and the expenses of any litigation which may arise on account of the execution and enforcement of this trust, or in connection therewith as above provided.

SECOND - To pay all of the Secured Indebtedness, or any balance thereof then remaining unpaid, principal and/or interest, in such order of priority as Beneficiary shall determine in its sole discretion.

THIRD - The residue to be paid to Grantor or such other person or persons as may be lawfully entitled thereto.

4. **NONWAIVER; REMEDIES.** Delay by Beneficiary in the exercise of any of its rights or remedies hereunder shall not preclude the exercise thereof so long as an Event of Default has occurred and is continuing, and no failure of Beneficiary to exercise any of its rights hereunder shall constitute a waiver of any such rights nor preclude the exercise thereof with respect to any such Event of Default or any subsequent Event of Default hereunder, all such rights being continuing ones. Beneficiary may enforce any one or more of its rights or remedies hereunder successively or concurrently, and as often as deemed expedient by Beneficiary.

5. **SALE BY FORECLOSURE OF PRIOR ENCUMBRANCES.** In the event that this Deed of Trust shall now or at any time after the date hereof be subordinate to any other encumbrance on the Premises, Grantor hereby agrees that the lien of this conveyance shall extend to the entire interest of Grantor in the Premises conveyed hereby, and shall extend to the interest of Grantor in the proceeds from any sale of said Premises, whether by foreclosure of any such prior encumbrance or otherwise, to the extent any such proceeds exceed the amount necessary to satisfy such prior encumbrance(s). Any trustee or other person conducting any such sale or foreclosure is hereby directed to pay such excess proceeds to Beneficiary to the extent necessary to pay the Secured Indebtedness in full, notwithstanding any provision to the contrary contained in any prior encumbrance.

6. **EXTENSIONS, ETC.** Grantor and Beneficiary may agree to extend the time for payment and/or performance of all or any part of the Secured Indebtedness, or reduce, rearrange or otherwise modify the terms of payment thereof, or accept a note or notes therefor, all without notice to or the consent of any junior lienholder or any other person having an interest in the Premises subordinate to the lien of this Deed of Trust, and without the consent of Grantor if Grantor has then parted with title to the Premises. No such

extension, reduction, modification or renewal shall affect the priority of this Deed or Trust or impair the security hereof in any manner whatsoever, or release, discharge or otherwise affect in any manner the personal liability of any other person now or hereafter liable for payment of the Secured Indebtedness or any part thereof.

7. **FURTHER ASSURANCES.** Grantor agrees to furnish Trustee and Beneficiary with such further instruments, documents and certificates, and to take such further actions as Beneficiary may deem necessary or desirable in order to perfect and/or maintain the perfection and priority of the lien of this Deed of Trust on the Premises.

8. **GREATER ESTATE.** In the event Grantor is the owner of a leasehold estate or any other estate less than a fee simple with respect to any portion of the Premises and, prior to the satisfaction of the Secured Indebtedness and the cancellation of this Deed of Trust of record, Grantor obtains any greater estate or interest in the Premises, then such greater estate shall automatically and without further action of any kind on the part of Grantor, pass to Trustee and be and become subject to the lien of this Deed of Trust.

9. **SEVERABILITY.** If any provision(s) of this Deed of Trust or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Deed of Trust and the application of such provision(s) to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

10. **MISCELLANEOUS.** The defined terms and paragraph titles used herein are for convenience only, and do not limit the contents of this Deed of Trust. All rights and obligations hereunder shall extend to, and be binding upon, the respective heirs, representatives, successors and assigns of Grantor, Trustee and Beneficiary. When applicable, use of the singular form of any word shall mean or apply to the plural, and the masculine or neuter form shall mean and apply to the masculine, feminine or neuter gender as the case may be.

11. **NOTICE.** Except for the method of publishing notice of foreclosure described in Paragraph 3 hereof, any notice to the Grantor or the Beneficiary provided for in this Deed of Trust shall be given by mailing such notice by certified mail addressed as indicated below or to such other address(es) as the Grantor or Beneficiary shall specify in writing:

Beneficiary:

Tyler L. Ring
P. O. Box 314
Franklin, TN 37065-0314

With a copy to:

Douglas A. Brace, Esq.
Ortale, Kelley, Herbert & Crawford
200 Fourth Avenue North, 3rd Floor
P.O. Box 198985
Nashville, TN 37219-8985

Notices to Grantor shall, unless Grantor otherwise advises Beneficiary in writing, be addressed or delivered to:

Grantor:

Berry's Chapel Utility, Inc.
321 Billingsly Court, Suite 4
Franklin, TN 37067

Such notice shall be deemed to have been given when delivered in person or when deposited in any United States Post Office which accepts said certified mail.

Any notice provided for in this Deed of Trust shall be deemed to have been given to the appropriate party when given in the manner designated herein.

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust, or has caused this Deed of Trust to be executed, as of the day and year first above written.

GRANTOR:

BERRY'S CHAPEL UTILITY, INC.

By: 

Tyler L. Ring, President

STATE OF TENNESSEE]
COUNTY OF WILLIAMSON]

Before me, the undersigned, a Notary Public in and for the State and County aforesaid, personally appeared Tyler L. Ring with whom I am personally acquainted and who, upon oath, acknowledged himself to be President of Berry's Chapel Utility, Inc., a Tennessee not-for-profit corporation, and that as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as President.

WITNESS my hand and official seal of office, at Nashville, Tennessee this 1st day of September, 2010.

My Commission Expires:

F:\DAB\Lynwood Utility\Deed of Trust (Berry's Chapel) - Tyler.doc


NOTARY PUBLIC



NOTARY PUBLIC
Ruby Rainey
My Commission Expires
March 12, 2011
STATE OF TENNESSEE

Exhibit "A"

Land in the Sixth Civil District of Williamson County, Tennessee, described according to a survey by James L. Murphy, Jr. and Company, Engineer, dated May 31, 1973, and shown on the Revised Plan of Cottonwood Estates of record in Plat Book 5, page 68, in the Register's Office for Williamson County, Tennessee, as "Private Area" – Lynwood Utility Company, as follows:

Beginning at a point at the southwest terminus of a 25 foot public utility drainage and access easement located between Lots Nos. 120 and 121 on said Plan and extending across a portion of an area designated "Common Area" on said Plan, the southeast corner of this tract; thence North 56° 39' 44" West 372.34 feet to a point, the southwest corner of this tract; thence northeastwardly with a slight curve having a Delta of 5° 15' 38", a radius of 1,493.07 feet, a tangent of 68.59 feet, a distance of 137.08 feet to a point; thence North 35° 40' 16" East 173.10 feet to a point; thence 56° 39' 44" West 189.33 feet to a point in the center of the Harpeth River, passing the present southerly bank of said River at 168.49 feet; thence with the center of said River, North 70° 08' East 49.49 feet, North 59° 40' 00" East 100.0 feet, North 45° 30' 00" East 111.0 feet, North 38° 41' 00" East 87.79 feet, the northwest corner of the subject tract; thence leaving said River, South 56° 39' 44" East 413.36 feet to a point, the northeast corner of subject tract; thence South 33° 20' 15" West 325.00 feet to a point; thence South 32° 51' 40" West 309.56 feet to the point of beginning, containing 5.89 acres, more or less.

Being the same property conveyed to Lynwood Utility Corporation, a Tennessee corporation, now Berry's Chapel Utility, Inc., by merger, a Tennessee not for profit corporation, by Deed from Lynwood Utility Co., a Tennessee corporation, also known as Lynwood Utility Company, of record in Book 1428, page 48, in the Register's Office for Williamson County, Tennessee.

BK/PG:5131/343-350

10029870

TRUST DEED	
09/01/2010	01:17 PM
BATCH	187489
REG TAX	1377.70
TRN TAX	0.00
REC FEE	40.00
DP FEE	2.00
ARC FEE	0.00
TOTAL	1420.70

STATE OF TENNESSEE, WILLIAMSON COUNTY

SADIE WADE
REGISTER OF DEEDS

EXHIBIT B

PROMISSORY NOTE

\$1,200,000.00

Franklin, Tennessee
September 1, 2010

FOR VALUE RECEIVED, the undersigned Berry's Chapel Utility, Inc., a Tennessee corporation, Successor-in-Interest to Lynwood Utility Corporation, by merger (hereinafter referred to as the "Borrower") promises to pay to the order of John D. Ring (hereinafter referred to as the "Lender") at any lending office in the state mentioned above or at such other place as the holder hereof may designate in writing, in current local funds, the sum of ONE MILLION TWO HUNDRED THOUSAND AND 00/100 DOLLARS (\$1,200,000.00).

Interest only shall be due and payable monthly beginning October 1, 2010 and on the same day each month thereafter until September 1, 2013 at which time principal and interest payments shall be due. During the first two (2) years of the Note interest shall accrue at the rate of two percent (2%) per annum. During the third (3rd) year of the Note interest shall accrue at the rate of two and one-half percent (2½%) per annum and thereafter until the maturity, interest shall accrue at the rate of three percent (3%) per annum. Beginning September 1, 2013, annual payments of the principal amount of Fifty Thousand and 00/100 Dollars (\$50,000.00) shall be due and payable, in addition to monthly interest payments, until August 31, 2030 (the "Maturity Date") at which time the entire principal balance and interest shall become due and payable.

SECURITY. This Note shall be secured by a junior deed of trust consisting of 5.89 acres identified as "Private Area" as shown the revised plat of Cottonwood Estates, of record in Plat Book 5, page 68, Register's Office for Williamson County, Tennessee, and all personal property and general intangibles of Borrower.

OTHER TERMS AND CONDITIONS. Unless otherwise provided herein, all payments shall be applied first to pay the accrued interest to date on the unpaid balance and next to the unpaid principal of the indebtedness.

A late charge of five (5%) percent shall be charged on the amount due, if payments not received within fifteen (15) days of the due date.

Any payment not made when due hereunder (whether by acceleration or otherwise) shall bear interest after maturity at the maximum effective contract rate of interest which the Lender may lawfully charge on the date such payment became due.

If this Note is placed in the hands of an attorney for collection, by suit or otherwise, or to protect any security given for its payment, or to enforce its collection, the undersigned will pay all the costs of collection and litigation, together with a reasonable attorney's fees, all of which shall be secured by any collateral pledged as security here for. The undersigned also agrees to pay any and all actual expenses including reasonable attorney's fees incurred by Lender in (i) successfully defending any action or inaction in connection with any aspect of the transaction evidenced by this instrument, or (ii) any action, whether or not successful, taken to protect or

enforce Lender's rights in any collateral related to the transaction evidenced by this instrument, provided, Borrower shall not be required to pay any such cost or attorneys fees in the event of Lender's negligence or misconduct in connection with the transactions contemplated herein.

The maker(s) and any endorsers or guarantors hereof waive protest, demand, presentment, and notice of dishonor, and agree that this Note may be extended, in whole or in part, without limit as to the number of such extensions, or the period or periods thereof, and without notice to or further assent from them or any other party liable hereon, all of whom will remain bound without notice and without affecting their liability hereon; and that additional makers, endorsers, guarantors, or sureties may become parties hereto, and that any present or future party may be released from liability hereunder, without notice, and without affecting the liability of any other maker, endorser, or guarantor.

In the event of any default in the prompt and punctual payment, when due, of this Note (or any installment thereof, whether of principal, interest, or principal and interest), or if the undersigned should become insolvent (as defined in the Uniform Commercial Code), or if a petition in bankruptcy be filed by or against any of the undersigned or if a receiver be appointed for any part of the property or assets of the undersigned or if any assignment for the benefit of creditors be made by the undersigned or if a judgment be entered against the undersigned, or upon the issuance of any writ, levy or process, valid or invalid which purports to restrict the undersigned with respect to any of his/her or their funds or property on deposit with or in the possession or custody or under the control of the Lender, or upon the dissolution of any party liable hereon, or in the event of any default in the prompt and punctual payment when due, of any other indebtedness or obligation to the Lender owed, now or hereafter, to secure the indebtedness evidenced hereby, or if any representation or warranty made by the undersigned pertaining to this credit shall prove to be false, untrue, or materially misleading, then and in any of such events, this Note shall, without notice or demand for payment (the same being expressly waived), be and become immediately due and payable for all purposes, at the option of the Lender.

In the event of any renewal or extension of the loan indebtedness evidenced hereby, unless the parties otherwise agree to a lower rate, the Lender shall have the right to charge interest at the highest of the following rates: (i) the maximum rate permissible at the time the contact to make the loan was executed; or (ii) the maximum rate permissible at the time the loan was made; or (iii) the maximum rate permissible at the time of such renewal or extension; or (iv) the maximum rate permitted by applicable federal law; it being intended that those statutes and laws, state or federal, from time to time in effect, which permit the charging of the higher rate of interest shall govern the maximum rate which may be charged hereunder. In the event that for any reason the foregoing provisions hereof shall not contain a valid, enforceable designation of a rate of interest prior to maturity or method of determining the same, then (unless this Note is a discounted, single-payment note) the indebtedness hereby evidenced shall bear interest prior to maturity at the maximum effective rate which maybe lawfully charged by the Lender under applicable law.

Regardless of any provision herein, or in any other document executed in connection herewith, the holder hereof shall never be entitled to receive, collect, or apply, as interest hereon,

any amount in excess of the maximum contract rate which maybe lawfully charged by the holder hereof under applicable law; and in the event the holder hereof ever receives, collects or applies as interest, any such excess, such amount which would be excessive interest shall be deemed a partial prepayment of principal and treated hereunder as such; and, if the principal hereof is paid in full, any remaining excess shall forthwith be paid to the undersigned.

Notwithstanding the terms of the Note, Lender grants to Borrower the following: (a) A five (5) day grace period for any monetary payment due from Borrower to Lender; and (b) A fifteen (15) day cure period for any non-monetary default after written notice to Borrower.

In the event of a default hereunder, any money or other property at any time in the possession of the Lender belonging to any party liable hereon, and any deposits or other sums at any time credited by or due from the Lender to any party liable hereon, may at all times, at the option of the Lender, be held and treated as collateral security for the payment of this Note or any other liability of any of the undersigned, or any other party in any manner liable hereon to the Lender, whether due or not due. The Lender may, at anytime, at its option, and without notice, set off the amount due or to become due hereon against the claim of any of said parties against the Lender. To effect these rights, the undersigned and all parties liable hereon agree, upon request by the Lender, immediately to endorse, sign, and execute all necessary instruments and do hereby appoint the Lender (acting through any then officer thereof) as attorney-in-fact for them with authority to endorse any instrument requiring endorsement and to effect any transfer, and this appointment shall be irrevocable as long as the undersigned, or any other party liable hereon, shall be indebted to the Lender.

BERRY'S CHAPEL UTILITY, INC.

By: 

Tyler L. Ring, President

F:\DAB\Lynwood Utility\Promissory Note (Berry's Chapel).doc

C

SECURITY AGREEMENT

Debtor

BERRY'S CHAPEL UTILITY, INC.
321 Billingsly Court, Suite 4
Franklin, TN 37065

Secured Party

JOHN D. RING
P.O. Box 314
Franklin, TN 37065-0314

- Section 1. Security Interest; Obligation Secured. Debtor hereby grants to Secured Party a security interest in, and grants, bargains, sells, conveys, assigns and transfers, subject to the terms hereof, the property rights described in Section 2 (herein called "Collateral") to secure payment or other performance of all of Debtor's obligations and liabilities to Secured Party whether now existing or hereafter existing, including the indebtedness for a term loan evidenced by a Promissory Note of even date herewith in the principal amount of One Million Two Hundred Thousand and 00/100 Dollars (\$1,200,000.00) (herein called "Indebtedness"). Debtor shall have the right to the possession and use of Collateral in any lawful manner not inconsistent with this Agreement until default hereunder.
- Section 2. Description of Collateral. All of Debtor's assets as described in Exhibit "A" attached hereto and incorporated herein by reference as if copied verbatim.
- Section 3. Authorization to File Financing Statements. Debtor hereby irrevocably authorizes Secured Party at any time and from time to time to file in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral (i) as all assets of Debtor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the State of Tennessee or such other jurisdiction, or (ii) as being an equal or less scope or with greater detail and (b) contain any other information required by Part 5 of Article 9 of the Uniform Commercial Code of the State of Tennessee or the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether Debtor is an organization, the type of organization and any organization identification number issued to Debtor, and (ii) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, as sufficient description of real property to which the Collateral relates. Debtor agrees to furnish any such information to Secured Party promptly upon request. Debtor has rights in or the power to transfer the Collateral and its title to the Collateral is free of all adverse claims, liens, security interests and restrictions on transfer or pledge except as created by this Agreement.

Section 4. Representations, Covenants and Warranties of Debtor.

(a) Debtor will, at its cost and expense, execute, deliver, file or record (in such manner and form as Secured Party may require) financing statement(s) or other paper that may be necessary or desirable or that the Secured Party may request in order to create, reserve, perfect, validate or satisfy any security interest granted hereby or to enable Secured Party to exercise and enforce its rights hereunder. The right is expressly granted to Secured Party, in its discretion, to file one or more financing statements under the Uniform Commercial Code naming Debtor as Debtor and Secured Party as Secured Party and indicating therein the Collateral herein specified.

(b) Debtor will (i) keep such books and records pertaining to the Collateral at such office or offices of Debtor as shall be satisfactory to Secured Party; (ii) permit representatives of Secured Party at any time to inspect and make abstracts from Debtor's books and records pertaining to the Collateral; and (iii) furnish to Secured Party such information and reports regarding the Collateral and Debtor's financial status as Secured Party may from time to time require.

(c) Debtor will transmit to Secured Party promptly all information that it may have or receive which might in any way affect the value of the Collateral or Secured Party's rights or remedies with respect thereto.

(d) Debtor will not sell, assign or create a security interest in or otherwise encumber any of the Collateral to or in favor of anyone other than Secured Party, except as set out herein.

(e) Debtor will not use or permit the Collateral to be used for any unlawful purpose or in violation of any federal, state or municipal law, statute or ordinance.

(f) Debtor will indemnify Secured Party against all claims arising out of or in connection with Debtor's ownership or use of the Collateral.

(g) Debtor shall procure, keep in force, and pay for, insurance on said Collateral, in such amounts and forms, and against such risks, and with such insurers as may be acceptable to Secured Party and such policies evidencing said insurance shall be furnished to Secured Party. If Debtor fails to furnish said insurance or fails to pay the premiums therefor, Secured Party may do so or may obtain insurance of its interest only, adding the amount of any such premium thereof to the other amounts secured hereby, however, Secured Party is under no obligation nor duty to pay such premiums or perfect such insurance. Debtor hereby assigns to Secured Party any returned or unearned premiums which may be due upon cancellation of any of said policies for any reason whatsoever, and directs the insurers to pay Secured Party any amount so due, unless the Secured Party has been previously fully satisfied. In order to collect such returned or unearned premiums or the benefits of such insurance, the Secured Party or any of its officers, agents, or employees are hereby appointed

Debtor's attorney-in-fact to endorse any draft or check which may be payable to Debtor; any balance of insurance proceeds remaining after payment in full of all amounts owing to Secured Party shall be paid to Debtor. Such returned or unearned insurance premiums or the benefits of such insurance, may, at Secured Party's option, be used for other insurance or to repair, restore, or replace the Collateral, or may be applied to any indebtedness secured hereunder, and if the indebtedness is payable in installments, then the installments in inverse order, satisfying the final maturing installments first.

(h) Debtor will not permit any of the goods to be removed from the location specified herein, and Debtor will promptly notify Secured Party of any change of Debtor's residence, or in the location of the Collateral within the state, and Debtor will not remove the Collateral from the county of the Debtor's residence or from the county where the property is to be located as shown herein without the prior written consent of Secured Party, and will permit Secured Party to inspect the Collateral at any time.

(i) Debtor will not permit anything to be done that may impair the value of any of the goods or the security intended to be afforded by this Agreement.

(j) Debtor represents that the collateral described herein is unencumbered, free and clear of any liens.

Section 5. Expenses. Debtor will, upon demand, pay to Secured Party forthwith the amount of all expenses including the reasonable attorney's fees and legal expenses incurred by Secured Party in seeking to collect or enforce any rights in the Collateral and, upon any default by Debtor, in seeking to collect the Indebtedness.

Section 6. General Authority. Upon default on Debtor's part hereunder, Debtor hereby irrevocably appoints Secured Party as Debtor's true and lawful attorney-in-fact with full power of substitution, in Secured Party's name or Debtor's name or otherwise, for Secured Party's sole use and benefit, but at Debtor's cost and expense, to exercise at any time and from time to time all or any of the following rights with respect to all or any of the Collateral:

(a) To demand, sue for collection, receive and give acquittance for any and all monies due or to become due upon or by virtue thereof;

(b) To receive, take, endorse, assign and deliver any and all checks, notes, drafts, documents and other property taken or received by Secured Party in connection therewith;

(c) To settle, compromise, compound, prosecute or defend any action or proceeding with respect thereof;

(d) To sell, transfer, assign or otherwise deal in or with the same or the proceeds thereof, as fully and effectually as if Secured Party were the absolute owner thereof; and

(e) To extend the time of payment and to make any allowance and other adjustments with reference thereto; provided, however, the exercise by Secured Party of or failure to so exercise any such authority shall in no manner affect Debtor's liability to Secured Party hereunder or in connection with the indebtedness, and provided further, that Secured Party shall be under no obligation or duty to exercise any of the powers hereby conferred upon it and it shall be without liability for any act or failure to act in connection with the collection of, or the preservation of any rights under, any of the Collateral. Secured Party shall not be bound to take any steps necessary to preserve rights in any instrument or lease against prior parties.

Section 7. Events of Default, Acceleration. Any or all of the Indebtedness shall, at the option of Secured Party become immediately due and payable without notice or demand upon the occurrence of any of the following events of default:

(a) Default in the payment or performance of any Indebtedness, obligation or covenant contained herein or in any note or loan agreement, or other document evidencing any of the Indebtedness secured hereby; or

(b) Loss, destruction, sale (other than in the ordinary course of business) or unauthorized encumbrance of any of the Collateral; or

(c) Any warranty, representation or statement made or furnished to Secured Party by or on behalf of Debtor proves to have been false in any material respect when made or furnished; or

(d) Dissolution, termination of existence, insolvency, business failure, appointment of a receiver for any part of the property of, assignment for the benefit of creditors by or the commencement of any proceedings under any bankruptcy or insolvency law by or against the Debtor; or

(e) Permitting a judgment against Debtor to remain unsatisfied for more than thirty (30) days.

Section 8. Rights and Remedies on Default. Upon the occurrence of any such event of default, and at any time thereafter, Secured Party may exercise from time to time any rights and remedies available to it under applicable law. Any notice of intended disposition of any of the Collateral required by law shall be deemed reasonable if such notice is given at least five (5) days before the time of such disposition. Any proceeds of any disposition of the Collateral by Secured Party may be applied to the payment of expenses in connection with the Collateral, including reasonable attorney's fees and legal expenses, and any balance of such proceeds may be applied by Secured Party toward the payment of the Indebtedness in accordance herewith.

Section 9. General. Secured Party shall not be deemed to have waived any of Secured Party's rights hereunder or under any other agreement, instrument or paper signed by Debtor unless such waiver be in writing and signed by Secured Party. No delay or omission on the part of Secured Party in exercising any right shall operate as a waiver of such right or any other right. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion. Any notice from Secured Party to Debtor, if mailed, shall be deemed given when mailed, postage prepaid, addressed to Debtor at Debtor's address shown above, or at any other address of Debtor appearing on Secured Party's records. The covenants, representations, warranties and agreements herein set forth shall be binding upon Debtor, its heirs and assigns. Unless the context otherwise requires, all terms used herein which are defined in the Uniform Commercial Code in the State of Tennessee shall have the meanings therein stated.

IN WITNESS WHEREOF, the parties have executed this Agreement at Franklin, Tennessee, as of the 1st day of September, 2010.

DEBTOR:

BERRY'S CHAPEL UTILITY, INC.

BY: 

Tyler L. Ring, President

SECURED PARTY:


John D. Ring

EXHIBIT "A"

- (a) All of Debtor's machinery, tools, equipment, furniture, furnishings and fixtures, of every kind and nature, movable or immovable, wherever located and whether now owned or hereafter existing, and all parts thereof and replacements, additions and accessions thereto (any and all such property being hereinafter referred to as the "Equipment");
- (b) All of Debtor's inventory in all of its forms, wherever located and whether now or hereafter existing, and all accessions thereto and products thereof, including raw materials, materials awaiting manufacture, work-in-process, finished products, materials used or consumed in Debtor's business, and all warehouse receipts, bills of lading and other documents of title evidencing or representing any part thereof (collectively hereinafter referred to as "Inventory");
- (c) All of Debtor's accounts, accounts receivable, chattel paper, instruments and other obligations of any kind, whether or not evidenced by an instrument or chattel paper, and whether or not it has been earned by performance (collectively hereinafter referred to as "Accounts Receivable" or "Receivables") whether now or hereafter existing, arising out of or in connection with the sale or lease of goods or the rendering of services or otherwise, and all rights now or hereafter existing in and to all security agreements, leases and other contracts securing or otherwise relating to any such Accounts Receivable;
- (d) All of Debtor's customer lists, ledger and account cards, computer tapes, discs and printouts, and books and records of Debtor; and any and all other properties and assets of Debtor of whatever nature, tangible or intangible, wherever located and whether now or hereafter existing;
- (e) All of Debtor's contract rights and general intangibles ("General Intangibles") of every kind, character and description, both now owned and hereafter acquired, including, without limitation, goodwill, trademarks, trade styles, trade names, patents, patent applications, and deposit accounts;
- (f) All proceeds ("Proceeds") of any and all of the foregoing Collateral and, to the extent not otherwise included, all payments under insurance (whether or not Secured Party is the loss payee thereof), any indemnity, warranty, or guaranty, payable by reason of loss or damage to or otherwise with respect to any of the foregoing Collateral, and including, without limitation, all monies due or to become due in connection with any of the Collateral, guaranties and security for the payment of such monies, the right of stoppage in transit, and all returned or repossessed goods arising from a sale or lease thereof (although proceeds are covered, Secured Party does not authorize the sale or other transfer of any of the Collateral or the transfer of any interest in the Collateral, except for the sale of goods in the ordinary course of Debtor's business);

In each case, whether now owned or hereafter acquired by the Debtor and howsoever Debtor's interest therein may arise or appear (whether by ownership, lease, security interest, claim, or otherwise).

Tre Harzett
Secretary of State



State of Tennessee
Department of State

Uniform Commercial Code
312 Rosa L. Parks Avenue
6th Fl. Wm.R. Snodgrass Tower
Nashville, Tennessee 37243
(615) 741-3276

DATE: 09/03/10

To:

ORTALE KELLEY HERBERT & CRAWFORD
200 FOURTH AVENUE NORTH
P O BOX 198985
NASHVILLE, TN 37219-8985

RE:UCC1 Filing No. 110037683

DEBTOR INFORMATION

BERRY'S CHAPEL UTILITY INC
321 BILLINGSLEY COURT
SUITE 4
FRANKLIN, TN 37065

SECURED PARTY INFORMATION

JOHN D RING
P O BOX 314
FRANKLIN, TN 37065-0314

MATURITY DATE: 09/02/15

INDEBTEDNESS: \$0.00

This acknowledges the filing of the attached UCC1 document. Please review the above data to ensure database information corresponds with information on the submitted UCC form. In the event a discrepancy is found, please note the error and return the entire package to our office.

If we may be of any further service to you, please contact us at (615) 741-3276.

Enclosures: Original Documents

PAYMENT INFORMATION:	Paid Fees	Paid Taxes
	\$15.00	\$0.00

* Please retain for fee and tax purposes

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)
Douglas A. Brace, Esq. (615) 256-9999

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Douglas A. Brace, Esq.
Ortale, Kelley, Herbert & Crawford
200 Fourth Avenue North, Suite 300
P. O. Box 198985
Nashville, TN 37219-8985

RECEIVED - TENDERED FOR FILING
TENNESSEE SECRETARY OF STATE
09/02/10 02:05 PM
110-037683

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME Berry's Chapel Utility, Inc.				
OR		1b. INDIVIDUAL'S LAST NAME		
		FIRST NAME	MIDDLE NAME	SUFFIX
1c. MAILING ADDRESS 321 Billingsly Court, Suite 4		CITY Franklin	STATE TN	POSTAL CODE 37065
1d. TAX ID#	SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION Inc.	1f. JURISDICTION OF ORGANIZATION TN
			1g. ORGANIZATIONAL ID #, if any	<input type="checkbox"/> NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME				
OR		2b. INDIVIDUAL'S LAST NAME		
		FIRST NAME	MIDDLE NAME	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
				COUNTRY
2d. TAX ID#	SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION
			2g. ORGANIZATIONAL ID #, if any	<input type="checkbox"/> NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME				
OR		3b. INDIVIDUAL'S LAST NAME		
		FIRST NAME	MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS P. O. Box 314		CITY Franklin	STATE TN	POSTAL CODE 37065-0314
				COUNTRY

4. This FINANCING STATEMENT covers the following collateral:

See Exhibit "A" attached hereto.

Maximum principal indebtedness for Tennessee recording tax purposes is \$-0-. Tax paid on \$1,200,000.00 under Deed of Trust of record in Book 5131 Page 335, Register's Office for Williamson County, Tennessee.

5. ALTERNATIVE DESIGNATION (if applicable):	LESSEE/LESSOR	CONSIGNEE/CONSIGNOR	BAILEE/BAILOR	SELLER/BUYER	AG. LIEN	NON-UCC FILING
6. This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (Additional fee)	All Debtors	Debtor 1	Debtor 2		
8. OPTIONAL FILER REFERENCE DATA						

THIS INSTRUMENT PREPARED BY:
Douglas A. Brace, Reg. #3485
ORTALE, KELLEY, HERBERT & CRAWFORD
200 Fourth Avenue North
Nashville, TN 37219-8985

PICK UP

TENNESSEE DEED OF TRUST

THIS DEED OF TRUST ("Deed of Trust") is executed as of September 1, 2010, by Berry's Chapel Utility, Inc., a Tennessee not for profit corporation (hereinafter referred to as "Grantor") in favor of Douglas A. Brace, Trustee, Trustee (hereinafter referred to as "Trustee," said term reflecting always to the Trustee and his successors in trust), for the use and benefit of John D. Ring, (hereinafter referred to as "Beneficiary"), and his successors and assigns, said term referring always to the lawful owner and holder of the indebtedness secured hereby.

WITNESSETH:

FOR AND IN CONSIDERATION of Ten (\$10.00) Dollars, cash in hand paid, and other good and valuable consideration, including the debt and trust herein provided, the receipt and sufficiency of all of which are hereby acknowledged, Grantor has this day bargained and sold, and does hereby transfer, assign and convey unto Trustee, all right, title and interest of Grantor in and to certain real property in Williamson County, State of Tennessee, more particularly described in Exhibit A which is attached hereto and incorporated herein by reference (the "Property"), together with all buildings, structures and improvements now or hereafter located thereon, all fixtures of every nature and description now or hereafter located therein or thereon, all easements, rights-of-way and other rights appurtenant thereto or used in connection therewith, all tenements, hereditaments and appurtenances thereto and all other property interests of Grantor therein (hereinafter collectively referred to as the "Premises");

TO HAVE AND TO HOLD the Premises to Trustee forever.

Grantor covenants that Grantor is lawfully seized of the Premises, has a good right to convey same, and that the same are unencumbered. Grantor further covenants and binds itself, its successors, heirs and representatives, to warrant and defend the title to the Premises to Trustee forever against the lawful claims of all persons.

But this conveyance is made IN TRUST for the following uses and trusts, and for no other purposes, to wit:

- (a) To secure to Beneficiary the payment of indebtedness in the principal amount of One Million Two Hundred Thousand and 00/100 Dollars (\$1,200,000.00), together with interest thereon, due or to become due to Beneficiary, evidenced by a Promissory Note (the "Note") made by Grantor payable to the order of Beneficiary. This Deed of Trust secures Grantor's payment of the indebtedness evidenced by the Note, principal and interest, and any extensions, modifications and/or renewals thereof and any notes given in payment of any such principal and/or interest.

THE MAXIMUM PRINCIPAL INDEBTEDNESS FOR TENNESSEE TAX RECORDING
PURPOSES IS \$1,200,000.00

- (b) To secure all sums due or to become due to Beneficiary pursuant to the terms of this Deed of Trust, with interest thereon as provided herein, and the faithful performance of all terms and conditions contained herein.
- (c) To secure the payment of all court costs, expenses and costs of whatever kind incident to the collection of any indebtedness secured hereby and the enforcement or protection of the lien of this conveyance, including without limitation reasonable attorney's fees, all of which Grantor agrees to pay to Beneficiary on demand.

Should the above-described indebtedness secured by this Deed of Trust (sometimes hereinafter collectively referred to as the "Secured Indebtedness") be paid in accordance with its terms when due and payable, and should Grantor perform all covenants herein contained in a timely manner, then this Deed of Trust shall be canceled and released by Beneficiary.

GRANTOR FURTHER COVENANTS AND AGREES WITH TRUSTEE AND BENEFICIARY AS FOLLOWS:

1. **COVENANTS OF GRANTOR WITH BENEFICIARY.** In addition to the Covenants and warranties hereinabove provided, Grantor further covenants and agrees with Beneficiary as follows:

- (a) **Performance Under Note.** To perform its obligations under the Note.
- (b) **No Liens or Assessments.** Not to permit any lien or assessment other than current taxes not delinquent, to encumber the Premises. Beneficiary has not consented and will not consent to the performance of any work or the furnishings of any materials which might be deemed to create a lien or liens superior to the lien hereof, either under T.C.A. §66-11-108, as the same may be amended from time to time, or otherwise.
- (c) **Insurance.** To maintain insurance on all buildings and other improvements on the Premises against damage by fire, windstorm and other risks normally insured against under so-called "extended coverage," in companies and amounts satisfactory to Beneficiary. All policies evidencing such insurance shall have attached thereto standard mortgagee riders making such insurance payable to Beneficiary as its interest may appear, and a certificate[s] of all such policies shall be deposited with Beneficiary.
- (d) **Maintenance, Waste, Use, Alterations and Encumbered Personalty.** To keep all buildings, fences and other improvements on the Premises in as good repair and condition as the same are in at this date, or shall be upon their construction, as the case may be, to permit no waste, and to permit no cutting of timber or removal of minerals. In the event of any destruction of or damage to the Premises, Grantor shall promptly restore the Premises to their condition prior to such damage or destruction, notwithstanding the insufficiency of any proceeds of insurance. Grantor shall not make or permit, without Beneficiary's written consent, (i) any use of the Premises for any purpose other than that for which the same are now used or intended to be used; (ii) any alterations of the buildings, improvements, fixtures, apparatus, machinery and equipment now or hereafter erected or located upon or otherwise constituting a part of the Premises; and (iii) any purchase, lease or agreement under which title is reserved in the vendor respecting any fixtures,

apparatus, machinery, equipment or personal property to be placed in or upon the Premises unless any such interest is subordinated to the lien of this Deed of Trust.

- (e) **Rents and Profits.** In the event any Event of Default (as hereafter defined) shall have occurred and be continuing under the provisions of this Deed of Trust or of the Note or other instrument evidencing all or any portion of the Secured Indebtedness, Beneficiary or its agent shall have the right forthwith to take possession of the Premises and to collect the rents and profits then owing or thereafter accruing therefrom, to be credited to the Secured Indebtedness in such order of priority as Beneficiary shall determine.
- (f) **Appointment of Receiver.** Grantor acknowledges the propriety of, and consents to, the appointment of a receiver for the Premises in the event that any action is commenced involving the Premises or to foreclose or exercise the power of sale under this Deed of Trust.
- (g) **Advancements by Beneficiary.** Beneficiary may, at its option, advance and pay all sums necessary to protect and preserve the Premises and/or to perform any of the covenants of Grantor hereunder. All sums so advanced by Beneficiary shall become a part of the Secured Indebtedness and shall bear interest from the date or dates of payment at the maximum contract rate of interest now or hereafter permitted by applicable law. Such sums may include, but are not limited to, insurance premiums, taxes, assessments and liens which may be or become prior and senior to the lien of this Deed of Trust as a lien on the Premises or any part thereof, and all costs, expenses and attorney's fees incurred by Beneficiary in respect of any and all legal or equitable proceedings which relate to this Deed of Trust or to the Premises.
- (h) **Condemnation.** In the event of a public taking or condemnation respecting any part of the Premises by proper authority, any damages paid or award allowed shall, at the option of Beneficiary, be applied first toward the satisfaction of the Secured Indebtedness in such order of priority as Beneficiary shall determine.
- (i) **Conveyance of Premises.** Grantor shall not convey, transfer, or assign other than permitted under paragraph 1.(b), above, any or all of its interest in the Premises without the prior written consent of Beneficiary. Beneficiary's consent to any such transfer, if given, shall not release or alter in any manner the liability of Grantor or anyone who has assumed or guaranteed or is otherwise liable for the payment of the Secured Indebtedness or any portion thereof. At the option of Beneficiary, the Secured Indebtedness shall be immediately due and payable in full in the event that Grantor conveys all or any portion of the Premises or any interest therein, or in the event that any of Grantor's equitable title thereto or interest therein shall be assigned, transferred or conveyed in any manner, without obtaining Beneficiary's prior written consent thereto, and any waiver or consent given by Beneficiary for any prior transfer shall not preclude Beneficiary from declaring the Secured Indebtedness due and payable for any subsequent transfer.

2. **EVENTS OF DEFAULT AND ACCELERATION.** The occurrence of any of the following events shall constitute an Event of Default hereunder unless the same has been cured within any applicable grace or cure period:

- (a) A default shall occur in the performance and/or payment of the Secured Indebtedness or any portion thereof;
- (b) Grantor shall default in the payment and/or performance of its obligations under this Deed of Trust or any other instrument or document now or hereafter further evidencing, securing or otherwise related to the Secured Indebtedness or any portion thereof;
- (c) Grantor shall abandon the Premises;
- (d) Any claim of priority to the lien of this Deed of Trust, whether by title, lien or otherwise, is asserted in any legal or equitable proceeding; or
- (e) A default shall occur in the performance and/or payment of any other indebtedness which is secured by a deed of trust or other instruments evidencing a security interest in the Premises, regardless of whether such security interest is prior or subordinate to the security interest granted hereunder.

Upon the occurrence of any Event of Default then, unless such default shall be cured within thirty (30) days from written notice by Beneficiary to Grantor, except for a default under Paragraph 2(a), above, which shall require no notice but which shall have a fifteen (15) day grace period, Beneficiary at any time thereafter may, at its option, accelerate the maturity of the Secured Indebtedness; all without notice of any kind.

Upon the occurrence of any Event of Default, Beneficiary shall provide Grantor written notice of the same and Grantor shall have the right, but not the obligation, to cure said default within thirty (30) days of said notice.

3. **REMEDIES.** Upon the occurrence of any Event of Default and the acceleration of the maturity of the Secured Indebtedness, in addition to any other remedies herein provided, Trustee is hereby authorized and empowered, upon giving twenty (20) days notice by three (3) publications in any newspaper, daily or weekly, published in the County wherein the Premises are wholly or partially located, to sell the Premises (or any part thereof) at the front door of the Courthouse in said County to the highest bidder for cash, for credit upon the Secured Indebtedness at the option of Beneficiary (if Beneficiary is the successful bidder), or upon such other terms as are satisfactory to Trustee and Beneficiary, at public outcry, free from any statutory right of redemption (including but not limited to that provided by Tennessee Code Annotated §66-8-101), the equity of redemption, homestead, dower, elective share, any right of appraisement or valuation and all other rights and exemptions of every kind, all of which are hereby expressly waived, and Trustee is authorized and empowered to execute and deliver a deed to the purchaser. Beneficiary may bid at any sale under this trust conveyance.

To the extent permitted by applicable law, any sale hereunder may be adjourned by Trustee and reset at a later date without additional publication; provided that an announcement to that effect be made at the scheduled place of sale at the time and on the date that such sale is originally set.

Grantor agrees that Trustee may, at any time after default in the payment of any part of the Secured Indebtedness, enter and take possession of the Premises, and Grantor further agrees that, in the event Trustee fails to enter and take possession of the Premises prior to selling same as herein provided, the purchaser shall nevertheless be entitled to immediate possession thereof upon the delivery to such purchaser by Trustee of a deed to said property.

At any time after the occurrence of an Event of Default, Beneficiary may at its option continue the abstract of title to the Premises or obtain other appropriate title evidence, and may add the cost thereof to the Secured Indebtedness.

In the event of Trustee's death, absence, inability or refusal to act at any time when action under the foregoing powers and trusts may be required or contemplated, or for any other reason at the option of Beneficiary, Beneficiary is hereby authorized to name and appoint a successor to execute this trust, and the title herein conveyed to the above named Trustee shall be vested in said successor without the necessity for any further conveyance.

In the event of a sale of the Premises under and by virtue of this trust, Grantor and all persons holding under it shall be and become the tenants at will of the purchaser, said tenancy to be terminable at the option of said purchaser upon five (5) days written notice unless otherwise agreed in writing by Beneficiary.

Upon any sale under this Deed of Trust, the proceeds will be applied by Trustee:

FIRST - To pay all the costs and charges of executing this trust, including attorneys' fees and the expenses of any litigation which may arise on account of the execution and enforcement of this trust, or in connection therewith as above provided.

SECOND - To pay all of the Secured Indebtedness, or any balance thereof then remaining unpaid, principal and/or interest, in such order of priority as Beneficiary shall determine in its sole discretion.

THIRD - The residue to be paid to Grantor or such other person or persons as may be lawfully entitled thereto.

4. **NONWAIVER; REMEDIES.** Delay by Beneficiary in the exercise of any of its rights or remedies hereunder shall not preclude the exercise thereof so long as an Event of Default has occurred and is continuing, and no failure of Beneficiary to exercise any of its rights hereunder shall constitute a waiver of any such rights nor preclude the exercise thereof with respect to any such Event of Default or any subsequent Event of Default hereunder, all such rights being continuing ones. Beneficiary may enforce any one or more of its rights or remedies hereunder successively or concurrently, and as often as deemed expedient by Beneficiary.

5. **SALE BY FORECLOSURE OF PRIOR ENCUMBRANCES.** In the event that this Deed of Trust shall now or at any time after the date hereof be subordinate to any other encumbrance on the Premises, Grantor hereby agrees that the lien of this conveyance shall extend to the entire interest of Grantor in the Premises conveyed hereby, and shall extend to the interest of Grantor in the proceeds from any sale of said Premises, whether by foreclosure of any such prior encumbrance or otherwise, to the extent any such proceeds exceed the amount necessary to satisfy such prior encumbrance(s). Any trustee or other person conducting any such sale or foreclosure is hereby directed to pay such excess proceeds to Beneficiary to the extent necessary to pay the Secured Indebtedness in full, notwithstanding any provision to the contrary contained in any prior encumbrance.

6. **EXTENSIONS, ETC.** Grantor and Beneficiary may agree to extend the time for payment and/or performance of all or any part of the Secured Indebtedness, or reduce, rearrange or otherwise modify the terms of payment thereof, or accept a note or notes therefor, all without notice to or the consent of any junior lienholder or any other person having an interest in the Premises subordinate to the lien of this Deed of Trust, and without the consent of Grantor if Grantor has then parted with title to the Premises. No such

extension, reduction, modification or renewal shall affect the priority of this Deed or Trust or impair the security hereof in any manner whatsoever, or release, discharge or otherwise affect in any manner the personal liability of any other person now or hereafter liable for payment of the Secured Indebtedness or any part thereof.

7. **FURTHER ASSURANCES.** Grantor agrees to furnish Trustee and Beneficiary with such further instruments, documents and certificates, and to take such further actions as Beneficiary may deem necessary or desirable in order to perfect and/or maintain the perfection and priority of the lien of this Deed of Trust on the Premises.

8. **GREATER ESTATE.** In the event Grantor is the owner of a leasehold estate or any other estate less than a fee simple with respect to any portion of the Premises and, prior to the satisfaction of the Secured Indebtedness and the cancellation of this Deed of Trust of record, Grantor obtains any greater estate or interest in the Premises, then such greater estate shall automatically and without further action of any kind on the part of Grantor, pass to Trustee and be and become subject to the lien of this Deed of Trust.

9. **SEVERABILITY.** If any provision(s) of this Deed of Trust or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Deed of Trust and the application of such provision(s) to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

10. **MISCELLANEOUS.** The defined terms and paragraph titles used herein are for convenience only, and do not limit the contents of this Deed of Trust. All rights and obligations hereunder shall extend to, and be binding upon, the respective heirs, representatives, successors and assigns of Grantor, Trustee and Beneficiary. When applicable, use of the singular form of any word shall mean or apply to the plural, and the masculine or neuter form shall mean and apply to the masculine, feminine or neuter gender as the case may be.

11. **NOTICE.** Except for the method of publishing notice of foreclosure described in Paragraph 3 hereof, any notice to the Grantor or the Beneficiary provided for in this Deed of Trust shall be given by mailing such notice by certified mail addressed as indicated below or to such other address(es) as the Grantor or Beneficiary shall specify in writing:

Beneficiary:

John D. Ring
P. O. Box 314
Franklin, TN 37065-0314

With a copy to:

Douglas A. Brace, Esq.
Ortale, Kelley, Herbert & Crawford
200 Fourth Avenue North, 3rd Floor
P.O. Box 198985
Nashville, TN 37219-8985

Notices to Grantor shall, unless Grantor otherwise advises Beneficiary in writing, be addressed or delivered to:

Grantor:

Berry's Chapel Utility, Inc.
321 Billingsly Court, Suite 4
Franklin, TN 37067

Such notice shall be deemed to have been given when delivered in person or when deposited in any United States Post Office which accepts said certified mail.

Any notice provided for in this Deed of Trust shall be deemed to have been given to the appropriate party when given in the manner designated herein.

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust, or has caused this Deed of Trust to be executed, as of the day and year first above written.

GRANTOR:

BERRY'S CHAPEL UTILITY, INC.

By: 

Tyler L. Ring, President

STATE OF TENNESSEE]
COUNTY OF WILLIAMSON]

Before me, the undersigned, a Notary Public in and for the State and County aforesaid, personally appeared Tyler L. Ring with whom I am personally acquainted and who, upon oath, acknowledged himself to be President of Berry's Chapel Utility, Inc., a Tennessee not for profit corporation, and that as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as President.

WITNESS my hand and official seal of office, at Nashville, Tennessee this 1st day of September, 2010.

My Commission Expires:

F:\DAB\Lynwood Utility\Deed of Trust (Berry's Chapel) #2.doc


NOTARY PUBLIC



NOTARY PUBLIC
Kucye Rainey
My Commission Expires
March 12, 2011
STATE OF TENNESSEE

Exhibit "A"

Land in the Sixth Civil District of Williamson County, Tennessee, described according to a survey by James L. Murphy, Jr. and Company, Engineer, dated May 31, 1973, and shown on the Revised Plan of Cottonwood Estates of record in Plat Book 5, page 68, in the Register's Office for Williamson County, Tennessee, as "Private Area" - Lynwood Utility Company, as follows:

Beginning at a point at the southwest terminus of a 25 foot public utility drainage and access easement located between Lots Nos. 120 and 121 on said Plan and extending across a portion of an area designated "Common Area" on said Plan, the southeast corner of this tract; thence North 56° 39' 44" West 372.34 feet to a point, the southwest corner of this tract; thence northeastwardly with a slight curve having a Delta of 5° 15' 38", a radius of 1,493.07 feet, a tangent of 68.59 feet, a distance of 137.08 feet to a point; thence North 35° 40' 16" East 173.10 feet to a point; thence 56° 39' 44" West 189.33 feet to a point in the center of the Harpeth River, passing the present southerly bank of said River at 168.49 feet; thence with the center of said River, North 70° 08' East 49.49 feet, North 59° 40' 00" East 100.0 feet, North 45° 30' 00" East 111.0 feet, North 38° 41' 00" East 87.79 feet, the northwest corner of the subject tract; thence leaving said River, South 56° 39' 44" East 413.36 feet to a point, the northeast corner of subject tract; thence South 33° 20' 15" West 325.00 feet to a point; thence South 32° 51' 40" West 309.56 feet to the point of beginning, containing 5.89 acres, more or less.

Being the same property conveyed to Lynwood Utility Corporation, a Tennessee corporation, now Berry's Chapel Utility, Inc., by merger, a Tennessee not for profit corporation, by Deed from Lynwood Utility Co., a Tennessee corporation, also known as Lynwood Utility Company, of record in Book 1428, page 48, in the Register's Office for Williamson County, Tennessee.

BK/PG:5131/335-342

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TRUST DEED	
09/01/2010	01:17 PM
BATCH	187489
MTG TAX	1377.70
TRN TAX	0.00
REC FEE	40.00
OP FEE	2.00
ARC FEE	0.00
TOTAL	1420.70

STATE OF TENNESSEE, WILLIAMSON COUNTY

SADIE WADE
REGISTER OF DEEDS