

COMMONWEALTH OF KENTUCKY
BEFORE THE UTILITY REGULATORY COMMISSION

* * * * *

In the Matter of

THE COMPLAINT OF VILLAGE GREEN)	
SUBDIVISION, INC., OLDHAM COUNTY,)	CASE NO.
KENTUCKY AGAINST ASH AVENUE)	7711
SANITARY SEWER COMPANY, INC.)	

O R D E R

On March 10, 1980 the Commission received a letter and enclosures from Harley N. Blankenship, Attorney, Louisville, Kentucky (Appendix "A") on behalf of Village Green Subdivision, Inc., Oldham County, Kentucky stating, among other things, that the tap-in charges of Ash Avenue Sanitary Sewer Company, Inc., (Ash Avenue) are excessive and, further, that Ash Avenue maintains that its Third Party Agreement is no longer in effect by virtue of the assumption of jurisdiction by the Commission over sewer utilities. Mr. Blankenship also contends that certain financing undertaken by Ash Avenue and the construction of additional facilities were not approved by the Commission.

The Commission, having considered the letter and enclosures and being advised, on its own Motion, ORDERS that this matter be and it hereby is set for hearing on April 17, 1980 at 1:30 p.m., Eastern Standard Time, in the Commission's offices at Frankfort, Kentucky.

IT IS FURTHER ORDERED That Ash Avenue Sanitary Sewer Company, Inc., shall appear at the scheduled hearing and present testimony relative to this matter.

Done at Frankfort, Kentucky, this 28th day of March, 1980.

UTILITY REGULATORY COMMISSION


For the Commission

ATTEST:

Secretary

HARLEY N. BLANKENSHIP

ATTORNEY AT LAW
237 SOUTH FIFTH STREET
LOUISVILLE, KENTUCKY 40202
(502) 668-8040

*Paul
3-10-80*

February 28, 1980

Commonwealth of Kentucky
Kentucky Utilities Regulatory Commission
730 Schenkel Lane
Frankfort, KY 40601

Attention Mr. Paul D. Hemon, Secretary

Dear Sir:

Enclosed is an original and one copy of this correspondence along with a deposition and Agreement appended.

The purpose of this communication is to initiate a complaint on behalf of Village Green Subdivision, Inc. against Ash Avenue Sanitary Sewer Company, Inc.

The gist of Village Green's Complaint is that the ~~attached agreement was never presented to the Public Service Commission nor the Kentucky Utilities Regulatory Commission for approval or permission to enforce same as part of Ash Avenue's tariff.~~

My client believes that the ~~tap-in charges~~ mentioned in the attached agreement are ~~excessive~~ and will result in recapture by Ash Avenue substantially in excess of its projected costs.

The undersigned has also learned that it is the position of the principals of Ash Avenue that their ~~third party agreement is no longer in force or effect by virtue of assumption of jurisdiction by KURC.~~

It has developed in the deposition that Ash Avenue has never had any contact with KURC other than with respect to the tariff which was filed in 1976 and made retroactive to December 12, 1974. None of the provisions of 807 KAR 25:060, Section 3 have been complied with, either with respect to an initial filing for a certificate of public convenience and necessity (Ash Avenue contends it is "grandfathered in") nor

Mr. Paul Hemon
February 27, 1980
Page 2

with respect to a tariff filing which my client believes should have been filed in conjunction with the execution of the attached agreement setting forth fees for tap-in privileges.

It is also apparent that the Kentucky Utility Regulatory Commission does not have on file a full and complete explanation of the inter-relationships between Ash Avenue Sanitary Sewer Company, Inc., its one sister development corporation and the ~~interlocking~~ relationships between the principals of two development corporations.


If the Kentucky Administrative Regulations apply, it is also believed by the undersigned that the issuance of 1,000 additional shares of stock this past year should have come before the Kentucky Utilities Regulatory Commission.

It also appears that the addition of plant mentioned in Ash Avenue's 1978 Annual Report, at page 2, line 52, from \$65,700 to \$101,910, should have come before the Kentucky Utilities Regulatory Commission in conjunction a proper request for permission to enforce the attached agreement.

It is my client's position that the attached agreement is not enforceable and is void because it violates the Kentucky Administrative Regulations promogated by the Kentucky Utilities Regulatory Commission.

We respectfully request your review of the attached deposition and agreement and advice thereon as to whether or not ~~a hearing may be necessary~~ to determine whether and to what extent the agreement may be enforced. If you desire a formal complaint be filed by Village Green Subdivision, Inc., kindly advise and I will have the appropriate petition forwarded.

Very truly yours,


Harley N. Blankenship

HNB:jg

Enclosure

CC: Ash Avenue Sanitary Sewer Co., Inc.
Hon. Woosley Caye, Attorney

OLDHAM CIRCUIT COURT

CASE NO. 78CI260

ASH AVENUE SANITARY SEWER COMPANY

PLAINTIFF

-VS-

VILLAGE GREEN SUBDIVISION

DEFENDANT

DEPOSITION FOR DEFENDANT

DEPONENT: JERRY OSBORNE

DATE: FEBRUARY 26, 1980

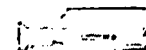
REPORTER: DONNA TATE

FEE:



FULTON & ASSOCIATES
REGISTERED PROFESSIONAL REPORTERS
110 WEST 1111 CITY BUNKERS
LOUISVILLE, MISSOURI 64012
PHONE 963-0111 FAX 963-9117

Language Services, Inc.



LANGUAGE SERVICES, INC.
1111 S. SERVICE

I N D E X

TESTIMONY OF JERRY OSBORNE:

PAGE

DIRECT EXAMINATION BY MR. BLANKENSHIP- - - - -

4

OLDHAM CIRCUIT COURT

CASE NO. 78CI260

ASH AVENUE SANITARY SEWER COMPANY

PLAINTIFF

-VS-

VILLAGE GREEN SUBDIVISION

DEFENDANT

THE FOLLOWING DEPOSITION OF
JERRY OSBORNE, IS BEING TAKEN PURSUANT TO NOTICE, AT
237 SOUTH FIFTH STREET, LOUISVILLE, KENTUCKY, ON
FEBRUARY 26, 1980, AT APPROXIMATELY 2:00 O'CLOCK P. M.,
UPON ORAL EXAMINATION AND TO BE USED FOR ALL PURPOSES
IN THE TRIAL OF THE ABOVE-ENTITLED CAUSE, IN ACCORDANCE
WITH THE KENTUCKY RULES OF CIVIL PROCEDURE.

A P P E A R A N C E S

FOR THE PLAINTIFF:

WOOLSEY CAYE, ESQUIRE
310 WEST LIBERTY BLDG.-SUITE 715
LOUISVILLE, KENTUCKY 40202

FOR THE DEFENDANT:

HARLEY N. BLANKENSHIP, ESQUIRE
237 SOUTH FIFTH STREET,
LOUISVILLE, KENTUCKY 40202

ALSO PRESENT:

MR. JACK FARLEY

JERRY OSBORNE, CALLED ON BEHALF OF THE DEFENDANT, AFTER HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND DEPOSED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BLANKENSHIP:

Q.1 FOR THE RECORD, STATE YOUR NAME, IF YOU WILL.

A. FRANCIS G. OSBORNE.

Q.2 AND, ARE YOU ALSO KNOWN AS JERRY OSBORNE?

A. YES.

Q.3 HAVE YOU EVER SIGNED YOUR NAME AS JERRY OSBORNE?

A. ALMOST NEVER.

Q.4 WHERE DO YOU LIVE, JERRY?

A. 800 SURREY LANE, ANCHORAGE.

Q.5 WHERE IS YOUR BUSINESS ADDRESS?

A. SAME ADDRESS.

Q.6 YOU'RE FAMILIAR WITH THE ASH AVENUE CORPORATION?

A. YES.

Q.7 THAT'S ASH AVENUE SANITARY SEWER

COMPANY?

A. YES.

Q.8 ARE YOU AN OFFICER IN THAT COMPANY?

A. YES.

Q.9 WHAT IS YOUR OFFICE?

A. PRESIDENT.

Q.10 ARE YOU A SHAREHOLDER?

A. YES.

Q.11 HOW MANY SHARES ARE OUTSTANDING?

A. LET'S SEE, THERE ARE ELEVEN

HUNDRED.

Q.12 AND, HOW MANY SHARES DO YOU OWN?

A. I OWN FOUR HUNDRED, AND ANOTHER

CORPORATION THAT I OWN OWNS ONE HUNDRED.

Q.13 WHAT CORPORATION IS THAT?

A. OSBORNE DEVELOPMENT CORPORATION.

Q.14 HOW MANY DIRECTORS ARE IN ASH

AVENUE?

A. THREE, I BELIEVE.

Q.15 WHO WOULD THEY BE?

A. MIKE HALL AND WOOLSEY CAYE.

Q.16 MIKE HALL AND WHO ELSE?

A. WOOLSEY CAYE.

Q.17 ARE YOU A SOLE STOCKHOLDER IN OSBORNE DEVELOPMENT CORPORATION?

A. YES.

Q.18 AND, ASH AVENUE, I BELIEVE, OWNS THE SEWER TREATMENT PLANT?

A. ASH AVENUE SANITARY SEWER COMPANY, YES.

Q.19 IS THERE ANOTHER CORPORATION THAT HAS ASH AVENUE IN IT AS PART OF THE TITLE?

A. NO.

Q.20 WHERE IS THAT PLANT LOCATED?

A. IT'S LOCATED ON ASH AVENUE IN HOLLY GIBSON ROAD IN OLDHAM COUNTY.

Q.21 WHEN WAS THAT PLANT CONSTRUCTED?

A. APPROXIMATELY 1974.

Q.22 NOW, DOES ASH AVENUE SANITARY SEWER COMPANY -- IT WON'T CAUSE ANY PROBLEM JUST TO REFER TO IT AS ASH AVENUE, WILL IT?

A. NO.

Q.23 DOES ASH AVENUE OWN ANY OF THE LINES THAT COME INTO THE PLANT?

A. YES.

Q.24 DO THEY OWN ALL THE LINES THAT COME

INTO THE PLANT?

A. YES.

Q.25 DID ASH AVENUE CONSTRUCT ANY OF THOSE LINES?

A. CONSTRUCTED THE LINES WITHIN THE TRUNK LINE, I GUESS, YOU WOULD CALL IT, THE RIGHT-OF-WAY GOING DOWN ASH AVENUE, THE STREET.

Q.26 WAS THAT TRUNK LINE CONSTRUCTED TO SERVE CONFEDERATE ACRES?

A. YES.

Q.27 DID YOU EXTEND THAT TRUNK LINE TO ANY OTHER SUBDIVISIONS?

A. NO, THAT TRUNK LINE WAS EXTENDED TO THE PROPERTY LINE BETWEEN CONFEDERATE ESTATES, OR ACRES, AND ASHBROOK SUBDIVISION, JUST TO THAT POINT.

Q.28 IS ASHBROOK SUBDIVISION ONE OF THE SUBDIVISIONS THAT ASH AVENUE SERVICES?

A. YES.

Q.29 WHO DEVELOPED ASHBROOK SUBDIVISION?

A. ASHBROOK DEVELOPMENT CORPORATION.

Q.30 ARE YOU INVOLVED IN THAT CORPORATION IN ANY WAY?

A. YES, I'M THE SOLE STOCKHOLDER AND

PRESIDENT.

Q.31 ARE THERE ANY OTHER STOCKHOLDERS?

A. THERE ARE NINE OTHERS.

Q.32 OTHER THAN CONFEDERATE ACRES AND ASHBROOK SUBDIVISION, WHAT OTHER SUBDIVISIONS ARE SERVICED BY THE PLANT?

A. VILLAGE GREEN SUBDIVISION, AND, THEN, AN INDIVIDUAL ACROSS FROM ASHBROOK, MRS. LEWIS IS SERVED, A ONE-HOUSE SITUATION.

Q.33 ANY OTHERS?

A. NO.

Q.34 I BELIEVE THE UTILITY REGULATORY COMMISSION REQUIRES THAT A MAP OF THE AREA YOU SERVE BE FURNISHED; HAVE YOU EVER CONSTRUCTED SUCH A MAP?

A. I DON'T RECALL AT THIS TIME; WE, AS I RECALL, WE COMPLIED WITH ALL THEIR RULES AND REGULATIONS AT THE TIME THE SEWER PLANT WAS CONSTRUCTED, AND WE RECEIVED A CONSTRUCTION PERMIT FROM THEM.

Q.35 WHEN DID YOU -- I GUESS, YOU RECEIVED THE CONSTRUCTION PERMIT PRIOR TO 1974, RIGHT?

A. YES.

Q.36 DID YOU ALSO RECEIVE A CERTIFICATE OF CONVENIENCE AND NECESSITY?

A. I WOULD HAVE TO REFER TO MY RECORDS TO ANSWER THAT, BUT I'M VAGUELY FAMILIAR WITH SOMETHING BY THAT NAME, BUT IT HAS BEEN AWHILE, SO, I CAN'T REALLY SAY.

Q.37 WOULD YOU PROVIDE ME WITH THAT INFORMATION, WHETHER OR NOT SUCH A CERTIFICATE WAS SOUGHT AND OBTAINED?

A. YES.

MR. CAYE: I THINK THAT THE SEWER PLANT WAS IN OPERATION BEFORE WHAT WAS THEN THE PUBLIC SERVICE COMMISSION -- BEFORE THE PUBLIC SERVICE COMMISSION ASSUMED JURISDICTION OVER PRIVATE PLANTS, AND, ~~I THINK, IT WAS GRANDFATHERED IN,~~ BUT WE'LL CHECK ~~IT AND GET BACK TO YOU.~~

MR. BLANKENSHIP: THAT'S A GOOD POINT.

BY MR. BLANKENSHIP:

Q.38 I HAVE A COPY OF YOUR ANNUAL ~~REPORT THAT WAS FILED~~ FOR THE YEAR ENDED DECEMBER 31, '78 AND IT LISTS THE UTILITY PLANT AT THE BEGINNING OF '78 AS THREE HUNDRED EIGHT THOUSAND FIVE HUNDRED FIFTY-SIX DOLLARS; IS THAT THE ACTUAL COSTS OF THE PLANT?

A. I THINK THAT'S THE DEPRECIATED COSTS AT THAT TIME, I THINK; I WOULD HAVE TO LOOK AT THE -- LOOK AT IT TO TELL FOR SURE.

Q.39 AT THE BEGINNING OF THE YEAR?

A. UH-HUH. (WITNESS ANSWERING AFFIRMATIVELY) TO BRING IT CLOSER -- WELL, I WOULD HAVE TO LOOK AT IT -- THAT NUMBER SHOULD BE -- THE REASON I'M SAYING THIS IS THE PLANT ALSO PAID PRO RATA PORTION FOR THAT TRUNK LINE GOING UP TO THE PROPERTY LINE BETWEEN CONFEDERATE AND ASHBROOK, AND THAT'S A PART OF OUR MORTGAGE, BUT THEY DEPRECIATE THESE THINGS IN TEN OR FIFTEEN WAYS, SO, I WOULD SAY THAT'S AN ACCURATE COST AT THAT POINT.

Q.40 WHEN YOU SAY THE PLANT PAID A PRO RATA COST OF THE TRUNK LINE --

A. IT PAYS FOR ONE-THIRD; DIXIE CONSTRUCTION COMPANY PAID FOR ONE-THIRD; ASHBROOK DEVELOPMENT CORPORATION PAID FOR ONE-THIRD.

Q.41 WHO IS DIXIE CONSTRUCTION COMPANY?

A. THAT IS OWNED BY MIKE HALL, WHO OWNS CONFEDERATE ESTATES.

Q.42 DO YOU HAVE IN YOUR RECORDS ANY WHERE A PROJECTION AS TO HOW MANY LOTS, THE MAXIMUM

NUMBER OF LOTS YOUR PLANT MAY SERVE?

A. YES.

Q.43 WHAT'S THAT MAXIMUM NUMBER?

A. SEVEN HUNDRED FIFTY.

Q.44 IN LOOKING AT YOUR ANNUAL

STATEMENT SOMEWHERE IN HERE, THERE IS A LIST OF CUSTOMERS, AND YOU LIST EIGHT HUNDRED AND SOME ODD, AND A COMMENT HERE ON PAGE SEVEN, "POPULATION FOR WHICH PLANT IS DESIGNED INCLUDING POPULATION EQUIVALENT OF INDUSTRIAL WASTE LOAD", AND YOU LIST EIGHT HUNDRED FIFTY-SEVEN; IS THAT PEOPLE, OR HOUSES, OR LOTS, OR WHAT DOES THAT REPRESENT?

A. I'M NOT SURE, TO TELL YOU THE TRUTH; THE SEVEN HUNDRED FIFTY NUMBER I GAVE YOU IS WHAT THE STATE WATER POLLUTION CONTROL BOARD THINKS THAT A THREE HUNDRED THOUSAND GALLON PLANT CAN HANDLE.

Q.45 THAT'S STATE WATER POLLUTION?

A. UH-HUH. (WITNESS ANSWERING AFFIRMATIVELY)

Q.46 THAT'S A DIVISION OF THE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION?

A. YES.

Q.47 ALSO KNOWN AS DNREP. WHO PUT THAT EIGHT HUNDRED FIFTY-SEVEN FIGURE IN THAT REPORT?

A. I DON'T KNOW; I GUESS MY ACCOUNTANT DID.

Q.48 DOES THE -- OR DID THE MANUFACTURER OF THAT PLANT GIVE YOU ANY PROJECTIONS AS TO THE NUMBER OF HOUSEHOLDS THE THREE HUNDRED THOUSAND GALLON CAPACITY PLANT COULD SERVE?

A. NO.

Q.49 THEY JUST SOLD YOU A THREE HUNDRED THOUSAND GALLON CAPACITY PLANT?

A. NO, WE BOUGHT A THREE HUNDRED THOUSAND GALLON CAPACITY PLANT FROM THEM.

Q.50 THERE WAS NO REPRESENTATION ABOUT ITS RATING, OR ANYTHING AT THAT TIME?

A. NO.

Q.51 NOW, DOES THIS -- THIS IS LOCATED IN OLDHAM COUNTY, OR JEFFERSON COUNTY?

A. OLDHAM.

Q.52 DOES THE OLDHAM COUNTY HEALTH DEPARTMENT EXERCISE ANY JURISDICTION OVER THE PLANT?

A. NOT TO MY KNOWLEDGE.

Q.53 THIS FIGURE IN YOUR ANNUAL REPORT

"TOTAL GALLONS RECEIVED ON A MAXIMUM DAY, THREE HUNDRED THOUSAND;" DO YOU EVER RECEIVE THREE HUNDRED THOUSAND IN ANY ONE SINGLE DAY?

A. NOT AT THE PRESENT TIME; THAT'S THE CAPACITY THE PLANT WAS DESIGNED FOR.

Q.54 THAT'S THE CAPACITY?

A. UH-HUH. (WITNESS ANSWERING AFFIRMATIVELY)

Q.55 HAVE YOU EVER CHECKED IT WITH A FLOW METER TO SEE HOW MUCH YOU'RE AVERAGING ON A DAILY BASIS?

A. NO.

Q.56 DO YOU HAVE ANY IDEA HOW MUCH YOU'RE USING ON A DAILY BASIS?

A. I COULD GIVE YOU AN ESTIMATE.

Q.57, COULD YOU DO IT WITH A PERCENTAGE OF THREE HUNDRED THOUSAND?

A. YEAR, JUST -- I CAN RUN IT HERE REAL QUICKLY--I WOULD SAY TWENTY PERCENT OF THAT IS PROBABLY RUNNING SIXTY THOUSAND GALLONS.

Q.58 I BELIEVE YOUR REPORT INDICATES THAT THAT'S FOR ONE HUNDRED ELEVEN LOTS, IS THAT --

A. UH-HUH. (WITNESS ANSWERING

AFFIRMATIVELY)

Q.59 I'M NOT TRYING TO PUT WORDS IN YOUR MOUTH; I'LL SHOW IT TO YOU, IF YOU WANT TO SEE IT. (WHEREUPON, THE ABOVE-MENTIONED INSTRUMENT WAS TENDERED TO THE WITNESS.)

A. AT THAT POINT AND TIME, THERE WERE THAT MANY ON IT; THERE ARE MORE ON IT NOW.

Q.60 END OF '76, THERE WAS ONE HUNDRED ELEVEN?

A. YES.

Q.61 HOW MANY ARE ON IT NOW?

A. I THINK APPROXIMATELY ONE HUNDRED FIFTY

Q.62 THAT ONE HUNDRED FIFTY IS SPLIT BETWEEN VILLAGE GREEN, ASHBROOK, CONFEDERATE -- JUST THREE OF THEM?

A. THREE, AND, THEN, THE ONE.

Q.63 AND, THE ONE INDIVIDUAL?

A. UH-HUH. (WITNESS ANSWERING AFFIRMATIVELY)

Q.64 DO YOU KNOW HOW MANY ARE IN VILLAGE GREEN THAT ARE TAPPED-ON NOW?

A. I CAN GIVE IT TO YOU WITHIN,

PROBABLY, TWO OR THREE, IF THAT WOULD BE SATISFACTORY.

Q.65 YES.

A. LOOKS LIKE SIXTY-NINE.

Q.66 SIXTY-NINE IN VILLAGE GREEN?

A. UH-HUH. (WITNESS ANSWERING

AFFIRMATIVELY)

Q.67 AND, ASHBROOK?

A. LET'S SEE, I WOULD SAY IN ASHBROOK,
PROBABLY, FORTY, FORTY IN ASHBROOK, TO THE BEST OF MY
RECOLLECTION.

Q.68 THAT WOULD LEAVE THIRTY-ONE IN

CONFEDERATE?

A. UH-HUH. (WITNESS ANSWERING

AFFIRMATIVELY)

Q.69 DO YOU HAVE A CONTRACTUAL

AGREEMENT WITH CONFEDERATE ACRES?

A. WITH DIXIE CONSTRUCTION COMPANY.

Q.70 WITH DIXIE CONSTRUCTION, OR

CONFEDERATE ACRES?

A. YES.

Q.71 IS IT IN ANY WAY SIMILAR WITH THE

AGREEMENT WITH VILLAGE GREEN?

A. IT'S EXACTLY THE SAME, EXCEPT FOR

THE TAP-ON FEE.

Q.72 HOW DO THE TAP-ON FEES DIFFER?

A. DIXIE CONSTRUCTION PAYS ONE HUNDRED DOLLARS PER YEAR LESS THAN VILLAGE GREEN.

Q.73 AND, THAT SCALE IS GRADUATED --

A. GOES UP EACH YEAR.

Q.74 GOES UP EACH YEAR, SIMILAR TO VILLAGE GREEN?

A. UH-HUH. (WITNESS ANSWERING AFFIRMATIVELY)

Q.75 WHAT WAS THE DATE OF THE AGREEMENT WITH DIXIE, DO YOU KNOW?

A. I BELIEVE, IT WAS FEBRUARY 22D, 1978.

Q.76 DID WE EVER ESTABLISH A DATE FOR --

A. EXCUSE ME, DID YOU ASK FOR VILLAGE GREEN OR CONFEDERATE?

Q.77 CONFEDERATE.

A. OKAY.

Q.78 DID WE EVER ESTABLISH A DATE FOR THE VILLAGE GREEN CONTRACT?

A. UH-HUH. (WITNESS ANSWERING AFFIRMATIVELY) I ESTABLISHED IT AS FEBRUARY 1ST, 1978.

Q.79 IT SAID '77, BUT THERE WAS SOME QUESTION ABOUT THAT, AS I RECALL.

A. IT WAS NOT SIGNED UNTIL 1978.

Q.80 THAT'S THE DATE JACK FARLEY'S SIGNATURE IS NOTARIZED, I BELIEVE.

A. UH-HUH. (WITNESS ANSWERING AFFIRAMTIVELY)

Q.81 SOMETHING IS TYPED IN THERE, 1 DAY FEBRUARY.

DO YOU ALSO HAVE A CONTRACT WITH ASHDROOK?

A. YES.

Q.82 DO YOU KNOW WHEN IT WAS DATED?

A. FEBRUARY 22D, '78, TO THE BEST OF MY KNOWLEDGE.

Q.83 DOES IT HAVE THE SAME PAY SCHEDULE AS CONFEDERATE?

A. YES.

Q.84 DID DIXIE CONTRIBUTE THEIR SEWER TREATMENT LINES TO ASH AVENUE?

A. YES.

Q.85 DID THEY RECEIVE ANYTHING IN RETURN FOR THOSE LINES?

A. NO.

Q.86 DID CONFEDERATE CONTRIBUTE ITS LINES -- I'M SORRY -- DID ASHBROOK CONTRIBUTE ITS LINES?

A. YES.

Q.87 DID ASHBROOK RECEIVE ANYTHING FOR THE LINES?

A. NO.

Q.88 AND, YOU ALSO REQUIRED VILLAGE GREEN TO CONTRIBUTE THEIR LINES?

A. YES.

Q.89 DID VILLAGE GREEN RECEIVE ANYTHING IN RETURN FOR THEIR LINES?

A. NO.

(REPORTER'S NOTE: AT THIS POINT, MR. JACK FARLEY ENTERS THE ROOM.)

Q.90 DID YOU HAVE AN OCCASION, IN YOUR ACCOUNTING, TO ESTABLISH A VALUE FOR ANY OF THE LINES THAT YOU TOOK AS CONTRIBUTION FROM THOSE CORPORATIONS, OR SUBDIVISIONS?

A. NO, NOT TO MY KNOWLEDGE.

Q.91 IS THERE ANY PARTICULAR REASON WHY ASHBROOK AND CONFEDERATE SUBDIVISIONS PAY ONE HUNDRED LESS PER YEAR ON THE TAX-IN RATES?

A. YES, BECAUSE WE CONTRIBUTED ONE-THIRD EACH TO THE TRUNK LINE, THE OVERSIZED TRUNK LINE THAT GOES DOWN ASH AVENUE TO THE SEWER PLANT.

Q.92 WHAT'S THE TOTAL NUMBER OF LOTS IN CONFEDERATE, DO YOU KNOW?

A. I THINK, THE TOTAL NUMBER THAT ARE BEING DEVELOPED BY DIXIE CONSTRUCTION COMPANY IS SOMEWHERE IN THE NEIGHBORHOOD OF ONE HUNDRED THIRTY, THAT'S --

Q.93 IS THAT THE TOTAL NUMBER ON THEIR PRELIMINARY PLAN; OR THE TOTAL NUMBER YOU EXPECT TO COME IN THE PLANT?

A. IT'S THE TOTAL NUMBER ON THE PRELIMINARY PLAN.

Q.94 AND, NOW ABOUT ASHBROOK -- IS DIXIE THE ONLY CONTRIBUTOR, OR DEVELOPER, IN CONFEDERATE?

A. YES, AND ASHBROOK HAS APPROXIMATELY TWO HUNDRED TWENTY-FIVE.

Q.95 THAT'S ON THEIR PRELIMINARY PLAN?

A. UH-HUH. (WITNESS ANSWERING AFFIRMATIVELY)

Q.96 AND, HOW MANY DO YOU EXPECT FROM

VILLAGE GREEN?

A. I UNDERSTOOD THERE WAS GOINT TO BE ONE HUNDRED FORTY-FOUR LOTS IN THE VILLAGE GREEN.

Q97 I COME UP WITH FIVE HUNDRED NINETY-NINE HOUSES, AND YOU'RE AUTHORIZED SEVEN HUNDRED FIFTY?

A. UH-HUH. (WITNESS ANSWERING AFFIRMATIVELY)

Q.98 WHAT PLANS DO YOU HAVE FOR THE OTHER ONE HUNDRED FIFTY-LOT CAPACITY?

A. NONE AT THIS TIME. I THINK YOU'RE MISTAKEN ON THE NUMBER OF HOUSES ON THAT, FOUR HUNDRED NINETY-NINE.

Q.99 YOU'RE RIGHT. MR. FARLEY VOLUNTEERED THERE IS ONLY ONE HUNDRED FORTY IN VILLAGE GREEN.

A. I'M NOT SURE ABOUT THE NUMBER; THERE MAY BE MORE THAN THAT IN CONFEDERATE. MY CALCULATION WAS THERE WERE APPROXIMATELY FIVE HUNDRED FIFTY HOUSES, WHICH ARE PLATTED, OR WILL BE BUILT, IN THOSE THREE SUBDIVISIONS THAT WILL GO IN THE SEWER PLANT; THAT THE APPROXIMATE NUMBER.

Q.100 THAT'S FOR THE AREA?

A. UH-HUH. (WITNESS ANSWERING AFFIRMATIVELY)

Q.101 WHEN IS YOUR NEXT ANNUAL REPORT DUE TO BE FILED WITH KURC?

A. MARCH 15TH, I THINK.

Q.102 HAS ASH AVENUE ADOPTED A TARIFF FOR THIS PLANT OPERATION?

A. YOU MEAN BY THAT A MONTHLY CHARGE?

Q.103 NO, A TARIFF THAT YOU WOULD FILE AND HAVE APPROVED BY THE KENTUCKY UTILITIES REGULATORY COMMISSION.

A. NO, WE WERE NOT REQUIRED TO; WE WERE GRANDFATHERED.

Q.104 SO, YOU'VE NEVER HAD AN OCCASION TO REQUEST PERMISSION TO -- FORMAL PERMISSION -- TO ENFORCE THESE AGREEMENTS THAT YOU HAVE WITH THESE THREE SUBDIVISIONS?

A. NO, WE HAVE NEVER APPEARED BEFORE THE PUBLIC SERVICE COMMISSION.

Q.105 SO, AS FAR AS YOU KNOW, THE REGULATORY COMMISSION KNOWS NOTHING ABOUT ASH AVENUE'S OPERATIONS, OTHER THAN WHAT THEY FIND IN THE ANNUAL REPORT?

A. NO, WE HAVE SENT THE -- WE HAVE SENT THEM A LETTER; WE FILED A FORM TELLING THEM WHAT WE WERE GOING TO CHARGE; WE HAVE NOT FILED A FORM REQUESTING --

MR. CAYE: I DON'T THINK HE UNDERSTOOD YOUR QUESTION.

MR. BLANKENSHIP: WELL, WHY DON'T YOU RESTATE THE QUESTION, BECAUSE YOUR ATTORNEY HANDED ME SOMETHING WHILE YOU WERE SPEAKING, SO, I'LL LET YOU ANSWER THE QUESTION AND I'LL CONSIDER WHAT MR. CAYE JUST SAID.

BY MR. BLANKENSHIP:

Q.106 HAVE YOU EVER FILED A TARIFF WITH UTILITY REGULATORY COMMISSION?

A. YES.

Q.107 WHEN WAS THAT?

A. APPARENTLY, FEBRUARY -- EXCUSE ME -- DECEMBER 12, 1974, WAS THE EFFECTIVE DATE OF IT, AND IT WAS, I GUESS, IT WAS CHECKED FEBRUARY 27TH, 1976, ACCORDING TO THE PUBLIC SERVICE COMMISSION.

Q.108 GIVEN RETROACTIVE EFFECT TO DECEMBER 12TH?

A. DEFER. (WITNESS ANSWERING)

AFFIRMATIVELY)

Q.109 THAT'S THE TEN DOLLARS A MONTH PLUS TAXES?

A. YES.

Q.110 IS THERE ANY PARTICULAR REASON WHY YOUR TARIFF DOESN'T MENTION TAP-ON CHARGES?

A. OTHER THAN THE -- WE WERE NOT REQUIRED TO, NO.

Q.111 IS THERE A THIRD-PARTY BENEFICIARY AGREEMENT WITH RESPECT TO THESE, THE OPERATION OF THIS PLANT?

A. YEAH, I THINK THERE IS -- LIBERTY NATIONAL BANK IS THE THIRD PARTY -- PUT IT THIS WAY, THEY WERE, NOW, WITH THE PUBLIC SERVICE COMMISSION HAVING JURISDICTION, I DON'T KNOW THAT THEY ARE NOW OR NOT.

MR. CAYE: I MIGHT STATE, IF YOU WANT ME --

MR. BLANKENSHIP: ANYTHING WOULD BE HELPFUL.

MR. CAYE: I THINK AT ONE TIME THERE WAS ONE, HARLEY, AND, I THINK, IT WAS CONDITIONED ON IT BEING UNTIL SUCH TIME AS JURISDICTION WAS ASSUMED BY PUBLIC AGENCY, OR THE PUBLIC SERVICE COMMISSION, SO,

I DON'T THINK THAT THIRD-PARTY BENEFICIARY AGREEMENT WOULD BE OPERATIVE NOW. I THINK WHEN THE PUBLIC SERVICE COMMISSION TOOK OVER JURISDICTION, I THINK, THAT THAT TERMINATED THE THIRD-PARTY BENEFICIARY AGREEMENT; THAT'S MY RECOLLECTION.

BY MR. BLANKENSHIP:

Q.112 SO, IT'S YOUR POSITION THERE IS NO THIRD-PARTY AGREEMENT IN FORCE RIGHT NOW, AS FAR AS --

A. NOT TO MY KNOWLEDGE.

Q.113 AT LEAST, THAT'S MR. CAYE'S POSITION.

MR. CAYE: THAT'S MY RECOLLECTION.

BY MR. BLANKENSHIP:

Q.114 MR. OSBORNE, IN THIS LITIGATION, WE'RE GOING TO REQUEST A COPY OF YOUR TAX RETURNS FOR ASH AVENUE SANITARY SEWER TREATMENT COMPANY FOR THE YEAR '74 TO DATE; YOU CAN CONSULT WITH YOUR ATTORNEY, AND WE WOULD LIKE TO ASK YOU TO PRODUCE THOSE BY AGREEMENT AND WITHOUT A SUBPOENA.

MR. CAYE: I'LL GET BACK TO YOU.

BY MR. BLANKENSHIP:

Q.115 DO YOU HAVE ANY CORRESPONDENCE FROM THE PUBLIC SERVICE COMMISSION, OR THE PRESENT BOARD

DECLARING THAT ASH AVENUE SEWER TREATMENT COMPANY IS GRANDFATHERED IN, SO TO SPEAK, OR IS EXEMPT FROM THE ADMINISTRATIVE REGULATIONS AND STATUTES WITH RESPECT TO THE OPERATION OF THE SEWER TREATMENT PLANTS?

A. TO THE BEST OF MY KNOWLEDGE, IT WAS NOT REQUIRED, IF YOU HAD YOUR PLANT IN OPERATION BEFORE THAT DATE, YOU WERE AUTOMATICALLY, THERE WAS NO -- YOU DIDN'T HAVE TO BE CERTIFIED, JUST GRANDFATHERED, YOU AUTOMATICALLY WERE, AND THAT'S THE WAY THE LEGISLATION READ, AS I UNDERSTAND IT.

Q.116 . SO, YOU WOULD RELY ON THE ENABLING LEGISLATION FOR THE KENTUCKY UTILITY REGULATORY COMMISSION; IS THAT WHAT YOU'RE SAYING?

A. UH-HUH. (WITNESS ANSWERING AFFIRMATIVELY)

MR. CAYE: I THINK, LIKE JERRY SAYS, I THINK, THIS PLANT WAS IN OPERATION BEFORE THE TIME, BEFORE THE PUBLIC SERVICE COMMISSION ASSUMED JURISDICTION OVER THEM, AND WHEN THEY DID ASSUME JURISDICTION OVER THE PRIVATE PLANTS, I DON'T KNOW WHETHER THEY WROTE A LETTER TO US, OR I DON'T REMEMBER THE MECHANICS OF IT, BUT THEY JUST ASKED US TO FILE OUR TARIFFS WITH THEM, AND, I THINK, THAT'S WHAT HE DID, AND,

I THINK, THAT'S WHAT I JUST SHOWED YOU, AND, I THINK, THAT'S THE ONLY THING OF AN ORDER -- I DON'T THINK WE EVER GOT AN ORDER LIKE YOU DO -- A CONVENIENCE -- AN ORDER OF CONVENIENCE AND NECESSITY LIKE YOU DO IN A NORMAL UTILITY CASE.

BY MR. BLANKENSHIP:

Q.117 WAS THERE'S BEEN NO TARIFFS FILED SINCE THE ONE YOU JUST SHOWED ME, THOUGH?

A. NO.

Q.118 DO YOU HAVE AN EXTRA COPY OF THAT; I'LL HAVE A COPY MADE FOR YOU.

DID ASHBROOK DEVELOPMENT CORPORATION CONTRIBUTE ANY PROPERTY, OTHER THAN THE LINES?

A. CONTRIBUTE ANY PROPERTY OTHER THAN THE LINES, NO.

Q.119 OTHER THAN THE TAP-IN FEES, ET CETERA?

A. NO.

Q.120 WOULD IT BE POSSIBLE FOR YOU TO GIVE ME AN APPROXIMATION OF THE AMOUNT OF FOOTAGE OF LINES THAT YOU RECEIVED FROM ASHBROOK?

A. NO, BUT, I BELIEVE, IT'S IN THAT

REPORT THERE. (WITNESS INDICATING) WE HAVE ONLY DEVELOPED ONE SECTION.

Q.121 IS THE DOLLAR AMOUNT, OR THE --

A. NO, IT'S THE FOOTAGE.

Q.122 FOOTAGE?

A. YES.

Q.123 I WENT THROUGH IT, AND I DIDN'T SEE IT; YOU MIGHT BE MORE FAMILIAR THAN I AM.

A. I DON'T KNOW WHETHER WE DIFFERENTIATED -- NO, WE DIDN'T DIFFERENTIATE BETWEEN THE DIFFERENT SUBDIVISIONS, HERE IT IS -- NO, I CAN TELL YOU, BUT I DON'T HAVE THE INFORMATION OFFHAND.

Q.124 COULD YOU GIVE ME THE FOOTAGE AND SUBJECT TO YOU VERIFYING IT LATER ON, OR WOULD YOU NOT HAZARD A GUESS?

A. IF I WERE TO HAZARD A GUESS, I WOULD SAY WE PROBABLY HAVE CONTRIBUTED ABOUT TWO THOUSAND FEET OF LINE.

Q.125 ASHBROOK?

A. YES.

Q.126 HOW ABOUT CONFEDERATE?

A. LET'S SEE, THREE.

Q.127 THREE THOUSAND?

A. YEAH, THEIR LOTS ARE A LOT
BIGGER.

Q.128 HOW ABOUT VILLAGE GREEN, DO YOU
HAVE ANY IDEA ON THAT ONE?

A. I HAVE NO IDEA.

Q.129 DURING 1978, THERE WAS AN
ADDITIONAL ONE THOUSAND DOLLARS IN CAPITAL STOCK THAT
CAME INTO ASHBROOK; WHO WAS THE SUBSCRIBER TO THAT
STOCK?

A. OSBORNE DEVELOPMENT CORPORATION.

Q.130 ON YOUR BALANCE SHEET IN YOUR
ANNUAL REPORT, THERE'S AN ITEM CALLED UNAPPROPRIATED
RETAINED EARNINGS; COULD YOU TELL ME IN LAYMAN'S TERMS
WHAT THAT MEANS?

A. I'LL SHOW YOU -- I'LL SHOW IT TO
YOU, IF YOU LIKE. IF I SEE IT, I MIGHT BE ABLE TO TELL
YOU.

Q.131 IT'S ON PAGE TWO, LINE THIRTY-ONE.
(COUNSEL TENDERS THE ABOVE-
MENTIONED INSTRUMENT TO THE WITNESS.)

A. NO, I COULD NOT SAY.

Q.132 DO YOU KNOW WHO COULD EXPLAIN THAT
FIGURE TO ME?

2025 RELEASE UNDER E.O. 14176

A. THE ACCOUNTANT.

Q. 133 THE ACCOUNTANT?

A. UR-HUH. (WITNESS ANSWERING AFFIRMATIVELY)

MR. BLANKENSHIP: MR. CAYE, DO YOU THINK IT WOULD BE POSSIBLE TO GET THE ACCOUNTANT TO WRITE AS A SHORT NOTE EXPLAINING THAT ENTRY, OR WOULD YOU WANT ME TO TAKE HIS DEPOSITION?

MR. CAYE: NO.

MR. BLANKENSHIP: LINE THIRTY-ONE ON PAGE TWO.

MR. CAYE: LETTER FROM -- WHO IS THAT --

THE WITNESS: DOUG NOTYKE, EXPLAINING WHAT IT IS.

MR. BLANKENSHIP: YES, EXPLAINING HOW IT'S DERIVED AND WHAT CREATED THE DIFFERENCE FROM ONE OH FIVE TO ONE HUNDRED FIFTY-FIVE THOUSAND.

MR. CAYE: AND, WHY IT CHANGED?

THE WITNESS: YES.

MR. CAYE: DURING THE YEAR?

MR. BLANKENSHIP: YES.

BY MR. BLANKENSHIP:

Q.134 MR. OSBORNE, ALSO IN LINE FIFTY-TWO, THERE IS A FIGURE CONTRIBUTIONS AND AID OF CONSTRUCTION; THERE'S TWO FIGURES DOWN THERE, ONE AT THE BEGINNING AND END, AND I WONDER IF YOU'RE AWARE OF HOW THOSE TWO FIGURES WERE DEVELOPED?

A. NO.

Q.135 SEE MR. KOTTKE FOR THAT, ALSO?
MR. CAYE: SAME THING.

BY MR. BLANKENSHIP:

Q.136 SO, IN 1979, IF YOU -- IF MY FIGURES ARE RIGHT, YOU'VE GONE FROM ONE HUNDRED ELEVEN TO ONE HUNDRED FIFTY; YOU'VE ADDED APPROXIMATELY THIRTY-NINE LOTS?

A. TO THE BEST OF MY KNOWLEDGE, YES.

Q.137 AND, THAT WOULD BE APPROXIMATELY THIRTY-NINE THOUSAND DOLLARS?

A. YES.

Q.138 APPROXIMATELY, I REALIZE IT MIGHT BE OFF A LITTLE BIT ONE WAY OR THE OTHER.

A. APPROXIMATELY.

Q.139 WOULD I ALSO HAVE TO GO TO MR. KOTTKE, OR PREVAIL UPON YOU TO DO SO, TO GET A COMPLETE

EXPLANATION OF THE NET OPERATING LOSS OF NINETEEN THOUSAND TWO HUNDRED SEVENTY DOLLARS?

A. I'M SURE WE COULD HAVE HIM PUT THAT IN THE LETTER.

Q.140 IT'S LINE TWENTY ON PAGE FIVE. LOOKING AT PAGE FIVE ON YOUR STATEMENT OF INCOME FOR THE YEAR, THIS IS '78, IT LOOKS LIKE YOU REPORTED NINE THOUSAND DOLLARS INCOME AND HAD INTEREST CHARGES OF THIRTY THOUSAND; THAT WOULD BE LINES ONE AND TWENTY-SIX?

A. UH-HUH. (WITNESS ANSWERING AFFIRMATIVELY)

Q.141 AND, I BELIEVE, ON YOUR BALANCE SHEET, YOU STARTED OFF WITH THREE THOUSAND DOLLARS CASH, WHICH IS LINE THIRTEEN ON PAGE TWO. AND, I'M JUST CURIOUS AS TO HOW YOU PAID THE INTEREST WITHOUT THE CASH GENERATED IN THE BUSINESS.

A. THE INTEREST WAS PAID BY TAP-ON FEES.

Q.142 OKAY. SO, THIS INCOME THAT YOU REPORT -- OKAY, THEN, IT WAS PAID-OUT OF THE -- IF I'M NOT MISTAKEN, THEN, IT WAS PAID-OUT OF THE CONTRIBUTIONS AND AID OF CONSTRUCTION?

A. THAT COULD BE WHAT THAT IS.

Q.143 WHICH IS LINE FIFTY-TWO, I GUESS,
ON YOUR BALANCE SHEET?

A. I DON'T KNOW THAT, BUT I KNOW
THE NINE THOUSAND DOLLARS YOU POINTED TO, THAT WAS THE
MONTHLY CHARGES LESS WHAT IT COSTS THE WATER COMPANY TO
COLLECT, IS WHAT THOSE ARE.

Q.144 IS THERE AN ABBREVIATION FOR
CONTRIBUTION AND AID OF CONSTRUCTION, OR DOES EVERYBODY
JUST SPIT IT OUT EVERY TIME THEY USE THE PHRASE?

MR. CAYE: I DON'T KNOW.

BY MR. BLANKENSHIP:

Q.145 I UNDERSTAND FROM THE ACCOUNTING
STANDPOINT, YOU DO NOT TREAT THAT AS INCOME?

A. WHAT IS THAT?

Q.146 THE CONTRIBUTIONS, IS THAT YOUR
UNDERSTANDING?

A. I'M NOT SURE, NOW, ON THE FEDERAL
TAX FORM; WE DO, BUT ON THE PUBLIC SERVICE COMMISSION
FORM, WE DON'T.

Q.147 I SEE.

A. YOU HAVE TO DO IT TWO DIFFERENT
WAYS.

Q.148 DO YOU HAVE ANY DOCUMENTATION,
OR AUTHORITIES, FROM EITHER THE PUBLIC SERVICE
COMMISSION, OR THE KENTUCKY UTILITY REGULATORY COMMISSION,
THAT ADVISE, OR DIRECT, YOU THAT YOU DO NOT HAVE TO
FILE A TARIFF WITH RESPECT TO THE CONTRIBUTIONS AND
AID OF CONSTRUCTION?

A. NO.

WITNESS EXCUSED

** ** * **

(THE DEPOSITION WAS CONCLUDED
AT APPROXIMATELY 2:45 O'CLOCK P. M.)

REPRODUCED BY G. C. CO. 1964

EXHIBIT A.

AGREEMENT

This Agreement ("Agreement") is made and entered into this ____ day of _____, 1977 by and between Ash Avenue Sanitary Sewer Company (the "Sewer Company"), a Kentucky corporation and VILLAGE GREEN SUBDIVISION, INC., a Kentucky corporation (the "Developer").

W I T N E S S E T H:

The Sewer Company is the owner of a sewage treatment plant located on Ash Avenue and Hawley Gibson Road in Oldham County, Kentucky that is equipped to receive and process up to 300,000 gallons per day of residential sewage and wastewater ("the Plant"); and

The Developer is developing a residential subdivision located adjacent to or near the Plant, known as VILLAGE GREEN SUBDIVISION, INC. (the "Subdivision"); and

The Developer desires to secure sewage and wastewater treatment services through the Plant for the homes constructed in the Subdivision; and

The Sewer Company is willing to furnish such services to the extent and upon all of the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties are agreed, and intending to be bound do hereby agree, as follows:

1. Obligations of the Sewer Company. Subject to the Developer's compliance with all of its obligations hereunder, and subject also to the applicable provisions, if any, of a certain "Third Party Beneficiary Contract" between the Sewer Company and the Liberty National Bank and Trust Company of Louisville dated September __, 1974, and subject also to any applicable regulations and orders of the Kentucky Public Service Commission, and subject also to any applicable

regulations and orders of federal, state, county and other governmental agencies and instrumentalities having or asserting jurisdiction over the Sewer Company and the Plant and other facilities and operations of the Sewer Company, the Sewer Company shall use its best efforts to operate and maintain the Plant to receive and process up to 400 gallons per day of sewage and wastewater delivered into its collection system from each of not more than a total of 140 residential housing units constructed within the Subdivision and shall use its best efforts to comply continuously with all laws, rules, regulations, orders and other commitments and obligations to which it and/or its facilities and operations are subject.

2. Obligations of the Developer. The Developer shall perform and comply fully with each of the following obligations.

(a) Construction of Subdivision Collection System. The Developer shall construct or cause to be constructed the sewers, property service connections, and any required lift stations and other collection facilities and equipment to serve the Subdivision ("Subdivision Collection System") and to connect the same with the Sewer Company's Ash Avenue Trunk Line at a point approved by the Sewer Company, all in accordance with the engineering plans and specifications therefor approved by the Kentucky Department for Natural Resources and Environmental Protection, Bureau of Environmental Quality, and any other governmental agencies and instrumentalities having or asserting jurisdiction thereover. The Developer shall provide, at its expense and without cost or expense to the Sewer Company, all machinery, tools and apparatus, labor and materials of every kind and description necessary to complete the construction and connection of the Subdivision Collection System

to the satisfaction of the Sewer Company. No storm water drains, roof downspouts, or ground water shall be introduced into the Subdivision Collection System. All connections shall be made with water-tight joints in accordance with local and state plumbing code requirements. All construction shall comply with all other building, health, or other codes and requirements applicable to the construction and with accepted engineering and construction practices. The Developer shall employ a registered civil engineer who shall furnish field engineering during construction of the Subdivision Collection System and shall also furnish "as-built" plans for the Subdivision Collection System to the Sewer Company. Engineers and other representatives of the Sewer Company and public agencies and instrumentalities shall have free and unrestricted access to the construction performed hereunder at all times, and the Sewer Company shall be given reasonable opportunity to inspect and test construction before it is covered.

(b) Maintenance and Repair of Subdivision Collection System. The Developer shall, at its expense and without cost or expense to the Sewer Company, maintain and repair the Subdivision Collection System until the Sewer Company shall have accepted the responsibility therefor from the Developer. Without limiting the generality of the foregoing, the Developer shall repair or replace sewers and property connections damaged, destroyed, or condemned in any manner from any cause whatever and shall keep such sewers and connections free of soil and construction debris.

(c) Conveyance of Subdivision Collection System. All right, title and interest in the Subdivision

Collection System and the easements therefor shall vest without further consideration in the Sewer Company upon its formal acceptance thereof, and they shall thereafter be and remain wholly in and under the possession, control, jurisdiction, and supervision of the Sewer Company. The Developer shall promptly prepare at its own expense and deliver to the Sewer Company a conveyance of the Subdivision Collection System and easements, in substantially the form of Exhibit A hereto; provided, however, that the Sewer Company shall have no obligation to accept any responsibility pursuant to such conveyance or otherwise until all of said subdivision lots have been connected to the Subdivision Collection System, unless and until the Subdivision Collection System has been completed, tested by an air pressure and/or other methods satisfactory to the Sewer Company, and repaired and/or cleaned to the satisfaction of the Sewer Company. In addition, the Developer shall prepare at its own expense and deliver to the Sewer Company any and all other deeds and documents reasonably deemed necessary by the Sewer Company to effectuate this provision.

(d) Payment of Subdivision Tap-In Fees. The Developer or the owner of each home to be constructed in the Subdivision shall pay or cause to be paid to the Sewer Company a tap-in fee for such home, as follows:

1. For 31 lots on which Developer has heretofore submitted application for FHA financing, the sum of \$600.00 per lot.
2. For each lot for which a tap-in fee is applied for in 1977 in addition to the aforementioned 31 lots, the sum of \$830.00 per lot.

5. For each lot for which a tap-on fee is applied for in 1978, the sum of \$930.00 and increasing \$100.00 per year per tap-on thereafter until all of Developer's lots have been connected on to Sewer Company's Plant.

The tap-on fee shall be paid on the 90 lots in Section 1 of Village Green Subdivision upon the sale by Developer of said lots. The tap-on fees on the remainder of Developer's lots shall be paid upon the closing of the construction loan on each lot, from the proceeds of said construction loan.

The Developer may at any time pre-pay one or more tap-in fees at the rate applicable in the year of such prepayment. The Developer shall thereafter designate the home(s) to which it proposes that such prepayment shall be applied; and, if the Developer is not otherwise in default hereunder, it shall not be charged an additional tap fee for such home(s), notwithstanding that the tap-in fee scale shall have increased since the date of such prepayment. Concurrent with the execution hereof, the parties have reconciled their accounts for tap-in fees presently due (or prepaid) hereunder and the Developer has paid (or been given evidence of a credit for) such tap-in fees. Prepaid tap-in fees are applicable solely to future connections and are not refundable by the Sewer Company under any circumstances, other than its willful refusal, without reasonable excuse, to furnish the service contemplated by this Agreement. That tap-in fees herein provided for shall be payable as herein provided, notwithstanding that the Sewer Company shall not have accepted responsibility for the Subdivision Collection System conveyed as

required in subparagraph (c) of this paragraph.

(e) User Fees; Compliance with Rules and Regulations. The Developer agrees that the owner of each home connected to the Plant (including the Developer where applicable) (1) shall pay, on or before the due date, all fees, rates, rentals, assessments, and charges for sewer service established, altered, or amended by the Sewer Company from time to time and applicable to sewer users in general or like users of a class, and (2) shall comply with and abide by such rules and regulations for the use of sewers adopted by the Sewer Company from time to time as are applicable to sewer users in general or like users of a class; and the Sewer Company may terminate this Agreement, and/or terminate sewer service, as to the Developer or any user or class of users if the Developer or any such user or class of users fails or refuses, after reasonable notice, to pay such fees, rates, rentals, assessments and charges or to comply with and abide by such rules and regulations; provided, however, that the Sewer Company shall continue, if practicable, to provide sewer service to all other users or classes of users.

(f) Amendment of Subdivision Restrictions. The Developer shall prepare, submit to the Sewer Company for approval or change, and thereafter file for record in the Office of the Clerk of the County Court of Oldham County an amendment to the recorded subdivision restrictions for the Subdivision setting forth the substances of subparagraphs (a), (b), (c), (d), and (e) of this paragraph 2 and subparagraphs (e) and (f) of paragraph 3.

3. Miscellaneous Provisions.

(a) Termination of Sewer Company's Obligation to Accept Additional Tap-Ins. The Sewer Company shall have no obligation to accept additional requests for tap-ins by the Developer after (1) December 31, 1980, or (2) in the case of any failure by the Developer to cure to the satisfaction of the Sewer Company any non-compliance with its obligations under paragraph 2 of this Agreement within 30 days after the Sewer Company gives notice of such non-compliance, on the 31st day following such notice.

(b) Remedies. Each party shall be entitled, in addition to all other rights it has at law or under this Agreement, to injunctive and other equitable relief for any violation of this Agreement.

(c) Notices. All notices permitted or required under this Agreement shall be in writing and delivered in person, or mailed by first class, certified or registered mail, return receipt requested,

(1) if to the Sewer Company to:

Ash Avenue Sewer Company
c/o 800 Surry Lane
Anchorage, Kentucky 40223

Attention: Mr. F. G. Osborne

(2) if to the Developer, to:

Village Green Subdivision, Inc.
P. O. Box 14387
Louisville, Kentucky 40207

Attention: Mr. Jack L. Farley

or to any other address that a party shall designate for itself by notice given in conformity herewith

and shall be deemed to have been given on the date of delivery in person or, if mailed, on the date of mailing.

(d) Entire Agreement; Amendment. This Agreement contains the entire agreement of the parties; and no representations, inducements, promises or agreements, oral or otherwise, not referred to herein shall be of any force or effect. Any amendment must be in writing and signed by the duly authorized officers of the parties.

(e) Severability. Any provision of this Agreement that is or shall become prohibited by law or court decree shall be ineffective to the extent of such prohibition without in any way invalidating or affecting the remaining provisions of this Agreement.

(f) No Waiver. No delay, waiver, omission, or forbearance on the part of the Sewer Company to exercise any right or power arising out of any breach or default by the Developer or any other of a home in the Subdivision of any of the terms, conditions, or covenants hereof shall constitute a waiver by the Sewer Company to enforce any such right or power as against the Developer or owner or as to any subsequent breach or default by the Developer or owner.

(g) Benefit. This Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, and legal representatives of the parties hereto.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized officers.

THE SEWER COMPANY

THE DEVELOPER

Ash Avenue Sewer Company

BY: J. G. Osborne
ITS: Pres.

BY: Jack L. Fuley
ITS: Pres

STATE OF KENTUCKY
COUNTY OF Jefferson

Before me, a notary public, in and for the aforesaid jurisdiction personally appeared J. G. Osborne, President of Ash Avenue Sewer Company, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed on behalf of the said company.

My Commission Expires: Feb. 1, 1980.

W. Carolyn McCune
Notary Public State of Ky.

STATE OF KENTUCKY
COUNTY OF Jefferson

Before me, a notary public, in and for the aforesaid jurisdiction, personally appeared Jack L. Fuley, President of Ash Avenue Sewer Company, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed on behalf of said company.

My Commission Expires: June 20, 1981.

Sharon P. Bagley State of Ky.
Notary Public

CONVEYANCE OF _____ SUBDIVISION SECTION _____
SANITARY SEWERAGE COLLECTION SYSTEM AND EASEMENTS

This Deed of Conveyance entered into between _____
_____, a Kentucky corporation, Party of the
First Part, and ASH AVENUE SANITARY SEWER COMPANY, a Kentucky
corporation, c/o 800 Surrey Avenue, Anchorage, Kentucky 40223,
Party of the Second Part,

W I T N E S S E T H:

WHEREAS, Party of the First Part is the record owner and
developer of _____ Subdivision Section _____, plat
of which is recorded in _____ Book _____, Page _____, in the office
of the Clerk of the County Court of Oldham County, Kentucky, and

WHEREAS, by Agreement entered into between the parties hereto,
it was agreed, among other things, that Party of the Second Part
would furnish sanitary sewer service to such subdivision and main-
tain and operate the sanitary sewer collection system therein, in
consideration in part for the conveyance to Party of the Second
Part of such sanitary sewerage collection system and the easements
necessary for the installation and maintenance thereof, and

WHEREAS, it was agreed in such Agreement that such conveyance
would be made upon completion of such collection system to the
sewer service system of Party of the Second Part, which connection
has now been completed,

NOW, THEREFORE, in consideration of the premises, and in
accordance with such Agreement, Party of the First Part does
hereby convey to Party of the Second Part all of the right, title
and interest of Party of the First Part in and to the easements
for sanitary sewers reserved on the plat of _____
Subdivision Section _____, recorded in _____ Book _____, Page _____,
in the office of the Clerk of the County Court of Oldham County,
Kentucky (being a portion of the property acquired by Party of

the First Part by deed recorded in Deed Book 170, Page 362, in said Clerk's office), provided however, there is reserved to Party of the First Part the same rights and privileges to use said easements as exist with respect to other members of the general public; and Party of the First Part does hereby further convey to Party of the Second Part all of Party of the Second Part's right, title and interest in and to the sanitary sewerage collection system located and contained in said sanitary sewer easements as described on said plat of Village Green Subdivision Section 1, together with any other portions of the sanitary sewer collection system serving said subdivision section, but which may be located outside of the said easements for sanitary sewers.

IN WITNESS WHEREOF, this instrument has been signed by Party of the First Part this 1 day of February, 1978.

By Jack Farley, Jr. President

STATE OF KENTUCKY)
COUNTY OF Jefferson) SS.

I, the undersigned Notary Public, in and for the State and County aforesaid, do hereby certify that the foregoing instrument of writing was this day produced to me in my County and acknowledged before me by Jack Farley, Jr., President of Williamson Park Subdivision No. 1, Inc., to be the act and deed of said corporation for all intents and purposes therein mentioned, and he further acknowledged that he was duly authorized by the Board of Directors of the said corporation to execute said instrument on its behalf.

Given under my hand and seal of office this 1 day of February, 1978.

My commission expires: July 20 1981.

Sharon D. Butler Notary Public, Jefferson Co., Ky.