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March 3, 2005

RECEIVED

MAR 3 3 2005

PUBLIC SERVICE  
COMMISSION

Ms. Beth O'Donnell  
Executive Director  
Public Service Commission  
211 Sower Boulevard  
P. O. Box 615  
Frankfort, Kentucky 40602-0615

Re: Elizabethtown Utilities, LLC  
Joint Application for Approval of Transfer, Case No. 2005-00022

Dear Ms. O'Donnell:

Please find enclosed for filing in the above referenced case, the original and 10 copies of the following documents:

- 1) Joint Applicants' Response To Commission Staff's Interrogatories And Requests For Production Of Documents;
- 2) Evidence Of Financial Integrity; and,
- 3) Petition For Confidential Treatment

Please note that attached to the original of the Petition For Confidential Treatment is the complete copy of the Financial Statement of Mr. Cogan. However the personal information contained in the financial statement has been removed from all other copies of this document, including the service copies.

Thank you for your attention to this matter.

Yours truly,

Robert C. Moore

cc: Marty Cogan  
Enclosures  
RCM/edl

COMMONWEALTH OF KENTUCKY

RECEIVED

BEFORE THE PUBLIC SERVICE COMMISSION

MAR 23 2005

In the Matter of:

PUBLIC SERVICE  
COMMISSION

JOINT APPLICATION OF AIRVIEW ) Case No. 2005-00022  
ESTATES, INC. AND ELIZABETHTOWN )  
UTILITIES, LLC FOR APPROVAL OF )  
TRANSFER OF WASTEWATER TREATMENT )  
PLANT TO ELIZABETHTOWN UTILITIES, LLC )

**JOINT APPLICANTS' RESPONSE TO COMMISSION STAFF'S INTERROGATORIES  
AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

Come the Joint Applicants, B & H, Inc., and Elizabethtown Utilities, LLC, and for their response to the Commission Staff's Interrogatories and Requests for Production of Documents, state as follows;

**INTERROGATORY NO. 1:** At page 3 of the application, Applicants state that, " Marty Cogan and Larry Smither, the members of Elizabethtown Utilities, LLC, have the necessary financial reserves to loan the limited liability company the funding necessary to assure continued operation of the plant."

**INTERROGATORY NO. 1(a):** Provide financial statements, tax returns, or other evidence of the financial integrity of Mr. Cogan and Mr. Smither.

**ANSWER TO INTERROGATORY NO. 1(a):** The current financial statement of Mr. Cogan has been submitted to the Commission with a Petition for Confidential Treatment simultaneously with the filing of these Resumes. The individual responsible for providing this information is Marty Cogan.

**INTERROGATORY NO. 1(b):** Under what circumstances do Mr. Cogan and Mr. Smither believe that it will be necessary to loan Elizabethtown Utilities money to operate the treatment plant?

Describe the expected loan amount, terms, and specific uses of the loan funds.

**ANSWER TO INTERROGATORY NO. 1(b):** The revenue earned from the operation of the Airview Estates wastewater treatment plant is anticipated to provide sufficient monies to pay for the normal operation of said wastewater treatment plant and sewer system. Additionally, the Commission has approved the collection of a surcharge to pay for necessary repairs to the system. Accordingly, Mr. Cogan and Mr. Smither do not anticipate that it will be necessary to make any loans to Elizabethtown Utilities in order to operate the treatment plant. It is impossible to state the amount of any loan needed, in the unlikely event that such a loan is necessary. The individuals responsible for providing this information are Marty Cogan and Larry Smither.

**INTERROGATORY NO. 2:** At page 4 of the application, Applicants' state, "[t]here is no one that the Joint Applicants are aware of that will be willing to participate in the execution of a third party beneficiary agreement."

**INTERROGATORY NO. 2(a):** Describe Elizabethtown Utilities efforts to obtain a third party beneficiary agreement.

**ANSWER TO INTERROGATORY NO. 2(a):** The Airview Estates wastewater treatment plant is not part of a new development. Therefore, there is no bank or other financial entity that would sign a third party beneficiary agreement. In the event that the Financial Statement of Mr. Cogan does not satisfy the applicable financial integrity requirement, Elizabethtown Utilities will provide an Irrevocable Letter of Credit to satisfy the evidence of financial integrity requested by the Public Service Commission. Therefore, a Third Party Beneficiary Agreement is unnecessary. The individual responsible for providing this information is Marty Cogan.

**INTERROGATORY NO. 2(b):** Provide the evidence of financial integrity that Elizabethtown Utilities will file in lieu of a third party beneficiary agreement.

**ANSWER TO INTERROGATORY NO. 2(b):** The Evidence of Financial Integrity has been filed with the Commission simultaneously with the filing of these Answers. See also the Financial Statement of Marty Cogan submitted with a Petition for Confidential Treatment. In the event that the Evidence of Financial Integrity filed with the Commission, and the Financial Statement of Mr. Cogan does not satisfy the applicable financial integrity requirement, Elizabethtown Utilities will provide an Irrevocable Letter of Credit to satisfy the evidence of financial integrity requested by the Public Service Commission. The individuals responsible for providing this information are Marty Cogan and Larry Smither.

**INTERROGATORY NO. 3** In Case No. 2004-00336, the Commission approved the proposed transfer of the utility assets of B&H, Inc. Richmond Utilities, LLC subject to the condition that "Richmond Utilities obtain an irrevocable letter of credit in the amount of \$20,000 with a minimum term of 10 years and payable to any receiver appointed by a court of competent jurisdiction to operate the B & H sewage treatment system upon Richmond Utilities or its successors' failure to properly operate that system or its abandonment of that system.,,"

**INTERROGATORY NO. 3(a):** Explain why, in light of this decision, Mr. Cogan and Mr. Smither did not obtain an irrevocable letter of credit in this proceeding.

**ANSWER TO INTERROGATORY NO. 3(a):** The Joint Applicants believe that the Evidence of Financial Integrity, the financial statement of Marty Cogan and the past history of the financial integrity of the wastewater treatment systems operated by the Joint Applicants should satisfy this requirement. However, should the Commission require the Joint Applicants to obtain an Irrevocable Letter of Credit, they will do so.

**INTERROGATORY NO. 3(b)** Will Elizabethtown Utilities proceed with the proposed

transfer if the Commission imposes a similar condition to the proposed transfer? If the response is no, provide a detailed explanation.

**ANSWER TO INTERROGATORY NO. 3(b):** Yes

**INTERROGATORY NO. 4.** At page 5 of their application, the Joint Applicants state, "Elizabethtown Utilities, LLC has filed a Notice of Adoption as described in 807 KAR 5,011." The referenced Notice, however, was not attached to the application. Provide a copy of the referenced Notice of Adoption of Elizabethtown Utilities.

**ANSWER TO INTERROGATORY NO. 4:** On February 15, 2005, the Joint Applicants filed an Amended Application for Approval of Transfer which states that Elizabethtown Utilities will file a Notice of Adoption as described in 807 KAR 5:011. This Notice of Adoption will be filed upon the approval of the Joint Application.

**INTERROGATORY NO. 5:** At page 2 of their application, the Joint Applicants state, "[t]he assets purchased by Elizabethtown Utilities, LLC, are described more fully in the Agreement, but include the Airview Estates Subdivision wastewater treatment plant, the wastewater collection system and any pump station related thereto, cash and cash equivalents and the sewer easements.." However, the Assets Purchase Agreement ("Agreement") does not indicate that cash and cash equivalents will be transferred to Elizabethtown Utilities. Will cash and cash equivalents (including the surcharge account) be transferred to Elizabethtown Utilities at closing?

**ANSWER TO INTERROGATORY NO. 5:** Yes, cash and cash equivalents, including the surcharge amount, will be transferred to Elizabethtown Utilities at closing.

**INTERROGATORY NO. 6:** In Case Number 2003-00494, Airview Estates was granted a surcharge to be used to replace the remote lift station, make repairs to the treatment plant, and video

inspect the gravity mains.. Numerous conditions were placed upon the surcharge, including a construction schedule indicating when repairs are to be made.

**INTERROGATORY NO. 6(a):** Provide a schedule comparing the amount of surcharge collections that have been billed as of January 15, 2005 with the amounts that have actually been collected and deposited.

**ANSWER TO INTERROGATORY NO. 6(a):** The surcharge is \$17.31 per customer per month and there 191 customers of the Airview Estates Wastewater Treatment Plant. The effective date of the surcharge was June 14, 2004. The first billing that included the surcharge was issued in July of 2004. The payments on the surcharge were first received in August of 2004. The total amount received as of January 5, 2005 is \$16,801.38 and the total amount received as of February 5, 2005, is \$19,494.58.

**INTERROGATORY NO. 6(b):** Is Elizabethtown Utilities aware of all of the conditions placed upon the surcharge and that failure to comply with those conditions will result in the revocation of the surcharge and the refunding of the monies already collected, plus interest?

**ANSWER TO INTERROGATORY NO. 6(b):** Yes

**INTERROGATORY NO. 6(c):** The construction schedule requires that the replacement of the remote lift station begin in the month of January 2005. Has Airview begun the replacement of its remote lift station? If not, when will the construction begin?

**ANSWER TO INTERROGATORY NO. 6(c):** Pursuant to the request of the operator of the the Airview Estates Wastewater Treatment Plant, the Public Service Commission authorized the delay of the construction schedule for a period of thirty (30) days. Therefore, replacement of the remote lift station has not begun.

**INTERROGATORY NO. 6(d):** Is Elizabethtown Utilities willing to agree to comply with the conditions placed on Airview's construction surcharge as a condition for approval of the proposed transfer?

**ANSWER TO INTERROGATORY NO. 6(d):** Yes

**INTERROGATORY NO. 6(e):** Will surcharge receivables as of the closing date be transferred to Elizabethtown Utilities? If not, how will these receivables be handled?

**ANSWER TO INTERROGATORY NO. 6(e):** Yes, surcharge receivables will be transferred to Elizabethtown Utilities.

**INTERROGATORY NO. 6(f):** Identify any affiliated companies that will be performing the surcharge construction at the Airview wastewater facilities. The response should include a description of the affiliated company's relationship to Elizabethtown Utilities, a description of the work that will be performed, and an itemized list of the costs.

**ANSWER TO INTERROGATORY NO. 6(f):** At this time no companies affiliated with Airview Estates, Inc., or Elizabethtown Utilities has been contracted with to perform the surcharge construction.

**INTERROGATORY NO. 6(g):** Describe the bidding process that Elizabethtown Utilities will use to ensure that the construction cost is reasonable.

**ANSWER TO INTERROGATORY NO. 6(g):** Elizabethtown Utilities will seek to obtain three competitive bids for construction work to be performed.

**INTERROGATORY NO. 7:** Identify any affiliated companies that will be providing services for Elizabethtown Utilities. This response should include the affiliate company's relationship to Elizabethtown Utilities, a description of the service that will be performed, and a list of the fees that will be charged to Elizabethtown Utilities. Describe the bidding process that Elizabethtown Utilities will use to ensure that the fees charged by the affiliated companies are competitive.

**ANSWER TO INTERROGATORY NO. 7:** Covered Bridge Utilities may be providing ongoing maintenance services at the Airview Estates Wastewater Treatment Plant after its conveyance to Elizabethtown Utilities. Additionally, Covered Bridge Utilities will be one of the bidders on the surcharge work. Elizabethtown Utilities will seek to obtain three competitive bids for plant operations and surcharge construction work to be performed.

**INTERROGATORY NO. 8:** At page 2 of their application, the Joint Applicants state, "[t]he property upon which the wastewater treatment plant is located is being leased to Elizabethtown Utilities, LLC.." Provide the terms of the lease.

**ANSWER TO INTERROGATORY NO. 8:** See attached proposed lease.

**INTERROGATORY NO. 9** At page 2 of the Agreement, in Section 2.1(a)(i), the Agreement refers to Exhibit A. Exhibit A, however, is not attached to the Agreement. Provide a copy of Exhibit A.

**ANSWER TO INTERROGATORY NO. 9:** See attached proposed lease.(Exhibit A)

**INTERROGATORY NO. 10:** At page 2 of the Agreement, there is a reference to an Agreed Order entered into by Airview in Environmental and Public Protection Cabinet vs. Airview Estates, Inc., Administrative File No. DOW-32651-037. Provide a copy of the Agreed Order.

**ANSWER TO INTERROGATORY NO. 10:** See attached Agreed Order. (Exhibit B)

**INTERROGATORY NO. 11:** Provide the journal entry that Elizabethtown Utilities proposes to record the transfer.

**ANSWER TO INTERROGATORY NO. 11:** The requested journal entry will be provided.

**INTERROGATORY NO. 12:** Refer to the Sewer Utilities Annual Report of Airview Estates to the Public Service Commission of Kentucky for the Year Ended December 31, 2003. Other Investments and Other Deferred Debits have balances of \$3,275 and \$1,085, respectively. Explain the nature of these accounts.. Will these assets be transferred to Elizabethtown Utilities?

**ANSWER TO INTERROGATORY NO. 12:** These assets, to the extent they remain, will be transferred to Elizabethtown Utilities.

**INTERROGATORY NO. 13:** Will customer accounts receivable as of the closing date be transferred to Elizabethtown Utilities? If not, how will these receivables be handled?



**ANSWER TO INTERROGATORY NO. 13:** Yes, customer receivables will be transferred to Elizabethtown Utilities.

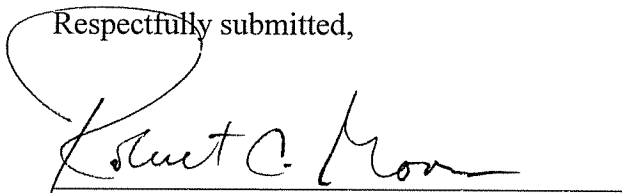
**INTERROGATORY NO. 14:** At page 3 of their application, the Applicants state, "Mr. Cogan is a licensed wastewater treatment plant operator in the Commonwealth of Kentucky." In Case No. 2004-00336, however, Richmond Utilities stated that Mr. Cogan's certification had expired. State the date that Mr. Cogan's wastewater treatment plant operator certification expired and describe the circumstances under which the certification was allowed to expire.

**ANSWER TO INTERROGATORY NO. 14:** An amended Application for Approval of Transfer was filed with the Commission on February 15, 2005. Paragraph 6 indicates that Mr. Cogan was previously a licensed wastewater treatment plant operator in the Commonwealth of Kentucky, but is not licensed at this time.

**INTERROGATORY NO. 15:** Provide a copy of Mr. Smither's wastewater treatment plant operators' license.

**ANSWER TO INTERROGATORY NO. 15:** See attached. (Exhibit C)

Respectfully submitted,

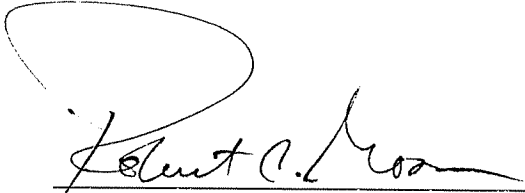


Robert C. Moore  
Hazelrigg & Cox, LLP  
415 West Main Street  
P.O. Box 0676  
Frankfort, Kentucky 40602-0676

### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed by hand delivery on Beth O'Donnell, Executive Director, Public Service Commission, P.O. Box 615, Frankfort, Kentucky 40602 and Fred Schlatter, 10411 Forest Garden Lane, Louisville, Kentucky 40223 on the 3<sup>rd</sup> day

of March, 2005.



Robert C. Moore





**LEASE**

This Lease is made and entered into at Louisville, Kentucky, this \_\_\_ day of \_\_\_\_\_, 2005, by and between JOE K. SCHLATTER, INC., referred to herein as "Lessor"; and ELIZABETHTOWN UTILITIES, LLC, referred to herein as "Lessee".

For acknowledged considerations, Lessor leases to Lessee and Lessee rents from Lessor the real property located in the City of Elizabethtown, County of Hardin, State of Kentucky, which is more particularly described as follows:

See Attachment A upon which the Airview Estates Wastewater Treatment Plant is located.

Said premises to be used and occupied for the operation of a wastewater treatment plant and any related use.

**SECTION 1**  
**TERM AND OPTION TO EXTEND TERM**

1.1 The term of this Lease is Ninety-Nine (99) years beginning on the \_\_\_ day of \_\_\_\_\_, 2005 and ending on the \_\_\_ day of \_\_\_\_\_, 2103.

**SECTION 2**  
**RENT**

Lessee shall pay an annual rental of \$1.00, beginning on the \_ day of \_\_\_\_\_, 2005, and payable in advance for each year during the term of this Lease.

**SECTION 3**  
**UTILITIES**

Lessee pays for all utilities, water, gas, electricity, sewage disposal, and heat used on the premises during the term of this Lease.

**SECTION 4**  
**TAXES**

Lessee is responsible for the payment of all real estate taxes and assessments of every nature levied on or against the premises and is responsible for the payment of all license taxes or other taxes on the business activity of the Lessee and on any personal property belonging to the Lessee and situated on the premises. Failure to pay the taxes when due shall constitute default under the terms of this Lease.

**SECTION 5**

Attachment A

## **MAINTENANCE AND IMPROVEMENTS**

5.1 Lessee will, at Lessee's expense, maintain and keep in good repair the premises.

5.2 Lessee may make reasonable alterations, additions and improvements to the premises including the erection of signs at Lessee's expense.

5.3 Upon termination of this Lease, Lessee will return the premises to the Lessor in good condition, and may choose to dismantle and remove the wastewater treatment plant located on the Leased Premises.

## **SECTION 6** **LIABILITY INSURANCE AND LIABILITY**

Lessee will, at Lessee's expense, secure and maintain liability insurance with an insurance company satisfactory to Lessor with Lessor as a named insured in the amount of \$100,000.00 per person, and \$300,000.00 per occurrence for all persons and \$100,000.00 for property damage. Lessee may, in lieu of delivering the original policies of insurance, deliver to Lessor insurance company certificates evidencing the coverage. Lessor is not liable for any injury or damage to persons or property occurring in or about the premises, and Lessee will hold Lessor harmless from responsibility for any and all such injuries and for all such damages arising from any cause whatsoever. Lessor is under no liability to Lessee arising from any discontinuance of heat or water, or both, caused by accident, breakage, strike, or otherwise; Lessor is not liable for damage of the property of the Lessor caused by rain, snow, water or steam that may leak into or flow from any part of the premises as a result of any defect in the roof or plumbing or any cause whatsoever, or for the loss or damage caused by the handling of electrical wires or lights.

## **SECTION 7** **CASUALTY INSURANCE AND CASUALTY DAMAGE**

7.1 Lessee will secure and constantly maintain, at Lessee's expense, insurance against loss and damage by fire with an extended coverage endorsement including lightning and windstorm, having a replacement cost endorsement, upon the buildings and other improvements erected on the premises. Lessee will cause such policy to name Lessor as additional insured on the policy.

7.2 If the premises are rendered totally or substantially untenable by fire or other casualty, this Lease terminates.

7.3 If the premises are so damaged that Lessee cannot continue to occupy the same or part of the same, the rent abates pro rata and Lessee may at his option repair the damage, or in the alternative, declare the Lease terminated. In no event is Lessor required to rebuild or repair the premises.

**SECTION 8**  
**WARRANTIES OF LESSOR**

Lessor warrants and covenants that Lessor is lawfully seized and possessed of good fee simple title to the premises and that Lessee, upon payment of rent, and performance of the covenants and conditions herein contained, will have quiet and peaceful possession of the premises during the Lease term and any extensions thereof. Lessee is acquainted with the entire premises and accepts the same in its present condition. Lessee assumes responsibility for the safety of the premises and for the suitability of the premises for Lessee's use. Lessor makes no other warranties, either expressed or implied.

**SECTION 9**  
**SUB-LEASE OR ASSIGNMENT**

Lessee may sub-let or assign the benefits of this Lease, providing written consent is obtained from Lessor, which written consent will not be unreasonably withheld. In the event of a sub-lease or assignment, Lessee remains liable for any default by a sub-tenant or assignee. No assent, expressed or implied, by the Lessor to one sub-lease is deemed an approval for any succeeding sub-lease.

**SECTION 10**  
**CONDEMNATION**

If at any time a substantial part or all of the premises be taken for any public or quasi public use under any statute or by right of eminent domain or by private purchase in lieu thereof by a body vested with the power of eminent domain, this Lease continues until the date of the taking, at which time the Lease terminates and Lessee has no rights in any award or purchase price paid by reason of the taking.

**SECTION 11**  
**MECHANICS OR MATERIALMAN'S LIEN**

Lessee will not do or suffer anything to be done whereby the premises are encumbered by lien and will, whenever and as often as any lien is filed against the premises purporting to be for labor or material furnished or to be furnished to the Lessee, discharge the same of record within Thirty (30) days after the date of filing. Notice is hereby given that Lessor is not liable for any labor or materials furnished or to be furnished to the Lessee on credit, and that no mechanics, materialman's, or other lien for any such labor or material attaches to or affects the reversionary or other estate or interest of Lessor in and to the real estate and improvements which are a part of the premises.

**SECTION 12**  
**ENTRY BY LESSOR**

Lessor may, individually or by agents, at all reasonable hours, enter and examine the

premises, or show the premises to persons wishing to rent or purchase the same, during Three (3) months preceding the termination of this Lease. Lessee will permit customary "for sale" or "for rent" notices or both to be exhibited on the premises during this Three (3) month period.

### **SECTION 13** **DEFAULT**

13.1 If Lessee defaults on the payment of rent and remains in default for a period of Sixty (60) days, such default, as Lessor's option, constitutes forfeiture of the Lease.

13.2 If Lessee violates any other term of this Lease and does not cease or cure the violation within Sixty (60) days after receiving written notice from the Lessor, or if Lessee abandons or vacates the premises before the end of any term of this Lease, or if Lessee is adjudicated a bankrupt or insolvent according to law, or makes an assignment for the benefit of creditors, or if a receiver, trustee or liquidator of Lessee's property is appointed and not discharged within Sixty (60) days then the occurrence of such act or omission, at Lessor's option, constitutes a forfeiture of the Lease.

13.3 If Lessee fails to perform any duties under this Lease or make any payments as required, after receiving Sixty (60) days notice in writing, Lessor may perform Lessee's duties and the cost of performance will be added to the rent and becomes immediately due and payable.

13.4 On any forfeiture, no demand is necessary for the recovery of the possession of the premises. Lessor may enter the premises, or any part, and take possession and expel the Lessee or other occupants and their effects, without being guilty of any trespass and Lessee nevertheless is liable for all future rentals or any rentals in arrears and breaches of covenants. Acceptance of rent subsequent to any forfeiture is not a confirmation or renewal of this Lease.

13.5 The failure of the Lessor or the Lessee to declare a breach or forfeiture of this Lease for violation of any term, condition or covenant is not a waiver of the right to declare a breach or forfeiture of this Lease upon the occurrence of any subsequent act or omission.

### **SECTION 14** **OCCUPATION AFTER TERMINATION**

If Lessee continues in possession, with or without the consent of the Lessor, after expiration of the term or after a forfeiture has occurred, Lessee will continue paying the amount of rent specified in this Lease and will continue to be subject to all of the terms and conditions of the Lease, except that Lessee is a tenant at the will of the Lessor and in no event a tenant from year to year or from month to month, and Lessee may be required to vacate the premises without notice and may be removed by legal process.

### **SECTION 15**



## **NOTICES**

All notices or communications which this instrument requires or permits to be given will be in writing and will be mailed or delivered to the respective addresses set forth below or to such other addresses as may be designated in writing by either party:

TO LESSOR AS FOLLOWS:        Joseph K. Schlatter, Inc.  
   3600 Leitchfield Road  
   Cecilia, KY 42724

TO LESSEE AS FOLLOWS:       Elizabethtown Utilities, LLC  
   1706 Bardstown Road  
   Louisville, Kentucky 40205

## **SECTION 16** **ENTIRE CONTRACT**

This Lease contains the entire contract between the parties relating to the demise of the premises and cannot be changed or terminated orally.

## **SECTION 17** **BENEFIT OF LEASE**

This Lease inures to the benefit of and is binding upon the heirs, Legatees, legal representatives, successors and assigns of the parties, subject to all of the terms, conditions and contingencies set forth.

## **SECTION 18** **APPLICABLE LAW**

This Lease is construed under the Laws of the State of Kentucky and the validity and applicability of its provisions as governed by those laws.

**SECTION 19**  
**TERMINOLOGY**

The term "Lessor" and the term "Lessee" are used to apply to the parties in the appropriate gender and number. The captions in this Lease are inserted only as a matter of convenience and for reference and in no way define, limit, amplify, or describe the scope of this Lease or the intent of any provision.

IN WITNESS WHEREOF, Lessor and Lessee have executed the Lease this day and year first above written.

JOE K. SCHLATTER, INC.  
LESSOR

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

ELIZABETHTOWN UTILITIES, LLC  
LESSEE

BY: \_\_\_\_\_

DATE: \_\_\_\_\_



**FILED**

FEB 15 2005

Office of Administrative Hearings

**COMMONWEALTH OF KENTUCKY  
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET  
DIVISION OF WATER  
FILE NO. DOW-32651-037**

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

PLAINTIFF

v.

**AGREED ORDER**

AIRVIEW ESTATES, INC.

DEFENDANT

\*\*\*\*\*

**WHEREAS**, the parties to this Agreed Order, the Environmental and Public Protection Cabinet (hereinafter "Cabinet") and Airview Estates, Inc. (hereinafter "Defendant"), state:

**STATEMENTS OF FACT**

1. The Cabinet is charged with the statutory duty of enforcing KRS Chapter 224 and the regulations promulgated pursuant thereto.

2. Defendant is a Kentucky corporation in good standing that operates a wastewater treatment plant (WWTP) in Airview Estates subdivision in Hardin County, Kentucky.

3. Defendant was issued Kentucky Pollutant Discharge Elimination System (KPDES) permit number KY0045390 to operate the WWTP. The permit expired February 28, 2003.

4. Authorized representatives of the Cabinet have alleged the following violations of KRS Chapter 224 and the regulations promulgated pursuant thereto occurred at the facility described in paragraph 2 above on August 28, 2003:

- a. Degrading the waters of the Commonwealth, violations of 401 KAR 5:031;
- b. Failing to reapply for a KPDES permit at least 180 days before expiration of the permit, violations of 401 KAR 5:060 and 401 KAR 5:065;

- c. Discharging pollutants without a KPDES permit, violations of 401 KAR 5:060;
- d. Discharging pollutants that would not meet KPDES program standards, violations of 401 KAR 5:065; and,
- e. Failing to properly operate and maintain the facility, violations of 401 KAR 5:005 and 401 KAR 5:065.

5. On September 4, 2003, the Cabinet issued Defendant a Notice of Violation for the violations alleged in paragraph 4 above.

6. Defendant neither admits nor denies the violations described above but accepts civil liability for those violations as alleged above.

**NOW THEREFORE**, in the interest of settling all civil claims and controversies involving the violations alleged above, the parties hereby consent to the entry of this Agreed Order and agree as follows:

**REMEDIAL MEASURES**

7. Defendant shall perform the following remedial measures by the dates specified herein:

- a. Defendant shall submit a completed application for a KPDES wastewater permit for the WWTP described in paragraph 2 above within seven (7) days of signing and returning this Agreed Order to the Cabinet. The application shall be submitted to Kentucky Division of Water, KPDES Branch, 14 Reilly Road, Frankfort, KY 40601;

- b. Defendant shall convey the WWTP described in paragraph 2 above to a third party, subject to the approval of the Public Service Commission. Defendant shall submit an application to approve the sale of the WWTP to the Public Service Commission within thirty (30) days of signing and returning the Agreed Order to the Cabinet; and,
- c. The Defendant shall remain solely responsible for compliance with the terms of KRS Chapter 224 and the regulations promulgated pursuant thereto, this Agreed Order, and any permit requirements until the WWTP described in paragraph 2 above is conveyed by Defendant to a third party in a sale approved by the Public Service Commission.

#### **CIVIL PENALTIES**

8. Defendant shall pay the Cabinet a civil penalty in the amount of five thousand dollars (\$5,000) for the violations alleged above. The amount of the civil penalty shall be tendered by Defendant to the Cabinet with the return of this signed Agreed Order.

9. Payment of civil penalties shall be by cashier's check, certified check, or money order, made payable to "Kentucky State Treasurer" and sent to the attention of Docket Coordinator, Office of Administrative Hearings, Environmental and Public Protection Cabinet, 35-36 Fountain Place, Frankfort, Kentucky 40601.

#### **MISCELLANEOUS PROVISIONS**

10. This Agreed Order addresses only those violations specifically described above. The Cabinet has relied upon the factual representations of the Defendant. Nothing contained herein shall

be construed to waive or to limit any remedy or cause of action by the Cabinet based on statutes or regulations under its jurisdiction and the Defendant reserves its defenses thereto. The Cabinet expressly reserves its right at any time to issue administrative orders and to take any other action it deems necessary, including the right to order all necessary remedial measures, assess penalties for violations, or recover all response costs incurred, and the Defendant reserves its defenses thereto.

11. This Agreed Order shall not prevent the Cabinet from issuing, reissuing, renewing, modifying, revoking, suspending, denying, terminating, or reopening any permit to the Defendant. The Defendant reserves its defenses thereto, except that the Defendant shall not use this Agreed Order as a defense.

12. Defendant waives its right to any hearing on the matters alleged herein. However, failure by Defendant to comply strictly with any or all of the terms of this Agreed Order shall be grounds for the Cabinet to seek enforcement of this Agreed Order in Franklin Circuit Court and to pursue any other appropriate administrative or judicial action under KRS Chapter 224 and the regulations promulgated pursuant thereto.

13. The Agreed Order may not be amended except by a written order of the Cabinet's Secretary or her designee. Defendant may request an amendment by writing the Director of Division of Enforcement at 14 Reilly Road, Frankfort, KY 40601 and stating the reasons for the request. If granted, the amended Agreed Order shall not affect any provision of this Agreed Order unless expressly provided in the amended Agreed Order.

14. The Cabinet does not, by its consent to the entry of this Agreed Order, warrant or aver in any manner that the Defendant's complete compliance with this Agreed Order will result in

compliance with the provisions of KRS Chapter 224 and the regulations promulgated pursuant thereto. Notwithstanding the Cabinet's review and approval of any plans formulated pursuant to this Agreed Order, the Defendant shall remain solely responsible for compliance with the terms of KRS Chapter 224 and the regulations promulgated pursuant thereto, this Agreed Order and any permit and compliance schedule requirements.

15. The provisions of this Agreed Order shall apply to and be binding upon the Defendant. The acts or omissions of the Defendant's officers, directors, agents, and employees shall not excuse the Defendant's performance of any provisions of this Agreed Order. The Cabinet reserves the right to seek enforcement of this Agreed Order against the successors and assigns of the Defendant, and the Defendant reserves its defenses thereto. The Defendant shall give notice of this Agreed Order to any purchaser, lessee or successor in interest prior to the transfer of ownership and/or operation of any part of its now-existing facility occurring prior to termination of this Agreed Order, shall notify the Cabinet that such notice has been given, and shall follow all statutory and regulatory requirements for a transfer. Whether or not a transfer takes place, Defendant shall remain fully responsible for payment of all civil penalties and response costs and for performance of all remedial measures identified in this Agreed Order.

16. The Cabinet agrees to allow the performance of the above-listed remedial measures and payment of civil penalties by Defendant to satisfy the Defendant's obligations to the Cabinet generated by the violations described above.

17. The Cabinet and Defendant agree that the remedial measures agreed to herein are facility-specific and designed to comply with the statutes and regulations cited herein. This Agreed




Order applies specifically and exclusively to the unique facility referenced herein and is inapplicable to any other site or facility.

18. This Agreed Order shall be of no force and effect unless and until it is entered by the Secretary or her designee as evidenced by her signature thereon. If this Agreed Order contains any date by which Defendant is to take any action or cease any activity, and the Secretary enters the Agreed Order after that date, then Defendant is nonetheless obligated to have taken the action or ceased the activity by the date contained in this Agreed Order.

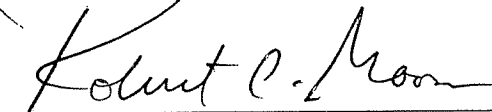
**TERMINATION**

19. This Agreed Order shall terminate upon Defendant's completion of all requirements described in this Agreed Order. Defendant may submit written notice to the Cabinet when it believes all requirements have been performed. The Cabinet will notify Defendant in writing of whether it intends to agree with or object to termination. The Cabinet reserves its right to enforce this Agreed Order, and Defendant reserves its right to file a petition for hearing pursuant to KRS 224.10-420(2) contesting the Cabinet's determination.

**AGREED TO BY:**

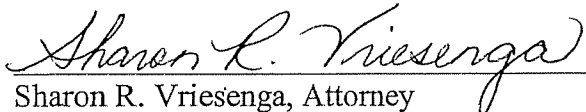
  
\_\_\_\_\_  
Fred H. Schlatter, Director  
Airview Estates, Inc.  
7819 Cardinal Hill Road  
Louisville, KY 40214

10-16-04  
Date

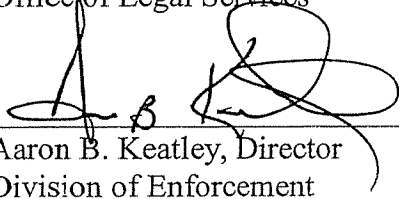
  
\_\_\_\_\_  
Robert C. Moore, Attorney for Airview Estates, Inc.  
415 West Main Street  
Frankfort, KY 40602-0676

10/20/04  
Date

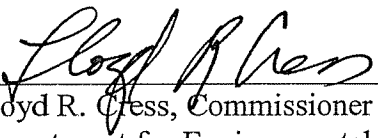
**APPROVAL RECOMMENDED BY:**

  
\_\_\_\_\_  
Sharon R. Vriesenga, Attorney  
Office of Legal Services

10/22/04  
Date

  
\_\_\_\_\_  
Aaron B. Keatley, Director  
Division of Enforcement

11/07/2004  
Date

  
\_\_\_\_\_  
Lloyd R. Cress, Commissioner  
Department for Environmental Protection

12/6/04  
Date

  
\_\_\_\_\_  
David A. Smart, Executive Director  
Office of Legal Services

12.21.04  
Date

**HAVE SEEN:**

  
\_\_\_\_\_  
Janet C. Thompson, Hearing Officer  
Office of Administrative Hearings

12-22-04  
Date

ORDER

Wherefore, the foregoing Agreed Order is entered as the final Order of the Environmental and Public Protection Cabinet this 10 day of February, 2005.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

  
\_\_\_\_\_  
LAJUANA S. WILCHER, SECRETARY

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing **AGREED ORDER** was mailed, postage prepaid, to the following persons this 15<sup>th</sup> day of February, 2005:

Fred H. Schlatter  
Airview Estates, Inc.  
7819 Cardinal Hill Road  
Louisville, KY 40214

Robert C. Moore  
415 West Main Street  
P.O. Box 676  
Frankfort, KY 40602-0676

and mailed, messenger, to:

Aaron B. Keatley, Director  
Division of Enforcement  
14 Reilly Road  
Frankfort, Kentucky 40601

Sharon R. Vriesenga, Attorney  
Office of Legal Services



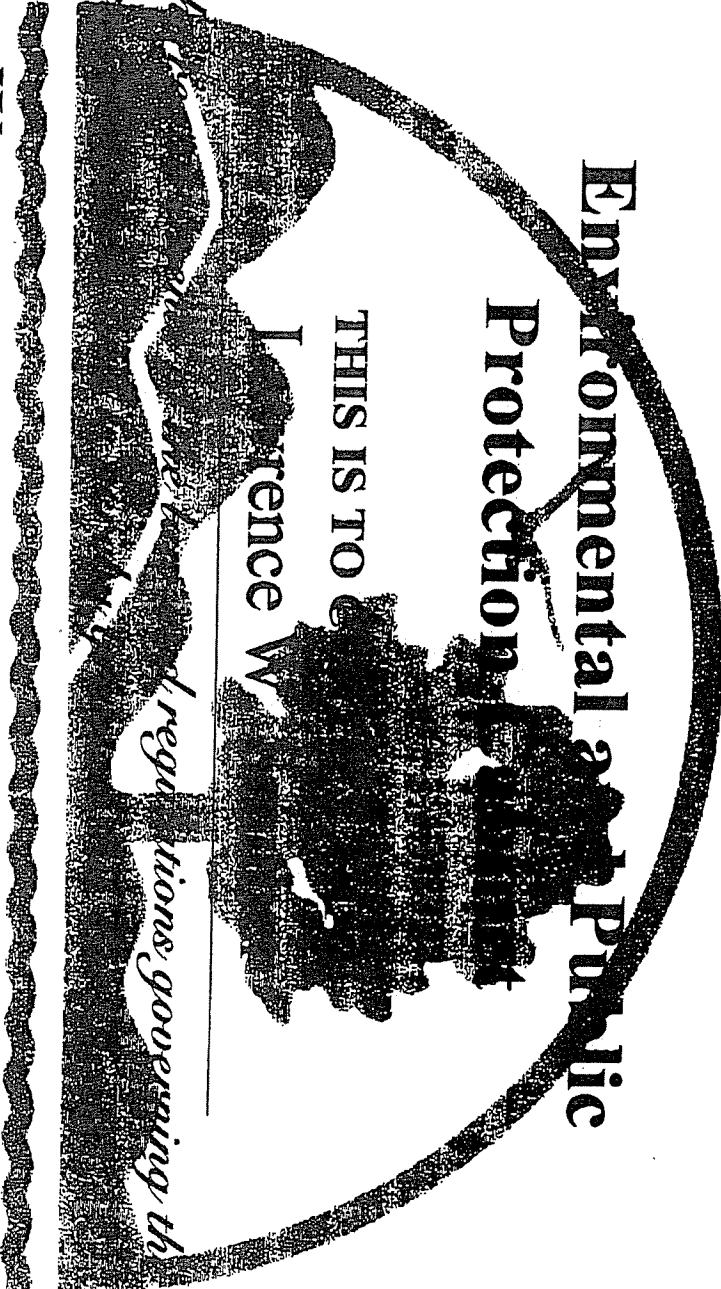
DOCKET COORDINATOR  
AO DEP LongForm-December 2002

Distribution:

LTS  
ADM  
JCT  
file  
DOW



# Environmental and Public Protection



*has fulfilled the requirements of the regulations governing the*  
*of Wastewater*  
*Certification*

## Wastewater Treatment Plant Operator

Class II Certification No. 13390

*Given under our hands this* 26<sup>th</sup> April, 2004  
*at Frankfort, Kentucky.*

*[Signature]*  
 DIRECTOR, DIVISION OF WATER

*[Signature]*  
 SECRETARY, ENVIRONMENTAL AND PUBLIC PROTECTION CABINET  
 COMMISSIONER, DEPARTMENT FOR ENVIRONMENTAL PROTECTION

**COMMONWEALTH OF KENTUCKY**

RECEIVED

**BEFORE THE PUBLIC SERVICE COMMISSION**

MAR 03 2005

In the Matter of:

PUBLIC SERVICE  
COMMISSION

JOINT APPLICATION OF AIRVIEW	)	Case No. 2005-00022
ESTATES, INC. AND ELIZABETHTOWN	)	
UTILITIES, LLC FOR APPROVAL OF	)	
TRANSFER OF WASTEWATER TREATMENT	)	
PLANT TO ELIZABETHTOWN UTILITIES, LLC	)	

**PETITION FOR CONFIDENTIAL TREATMENT**

Comes Applicant Elizabethtown Utilities, LLC, by counsel, and in support of its request for the designation of the Personal Financial Statement of Martin Glen Cogan as confidential material pursuant to 807 Kentucky Administrative Regulation Chapter 5:001, Section 7, states as follows:

1. The Commission Staff’s Interrogatory 1A stated “provide financial statements, tax returns, or other evidence of the financial integrity of Mr. Cogan and Mr. Smither.” In response to this interrogatory, Martin Glen Cogan is submitting the joint Personal Financial Statement for he and his wife, Nonie George Cogan.

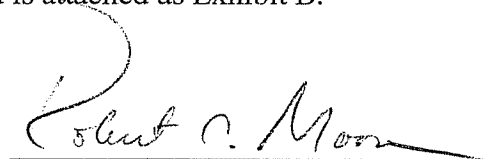
2. 807 Kentucky Administrative Regulation Chapter 5:001, Section 7, governs the treatment of confidential information filed with the Public Service Commission, and provides that documents and information that is exempt from disclosure under KRS 61.870, et seq., Kentucky’s Open Records Act, can be classified by the Commission as confidential.

3. KRS 61.878 (1)(a) exempts from open records review “Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly

unwarranted invasion of personal privacy”. Mr. and Mrs. Cogan’s Personal Financial Statement is comprised totally of information of a personal nature, the public disclosure of which would constitute a clearly unwarranted invasion of privacy. There is no valid reason that any individuals or entities other than the Public Service Commission Staff should be provided with information concerning Mr. Cogan’s assets and liabilities. Mr. and Mrs. Cogan’s Personal Financial Statement is also subject to confidential treatment based upon KRS 61.878 (1)(c) because this confidential information would give Mr. Cogan’s competitors an unfair commercial advantage if it were openly disclosed. Finally, this information should be treated as confidential pursuant to KRS 61.878 (1)(c)(2) as it is confidential information required to be disclosed to the Public Service Commission, is information generally recognized as confidential and it will be reviewed by the Public Service Commission in determining whether or not to grant Elizabethtown Utilities, LLC.’s request to approve the transfer to it of the Airview Estates Subdivision Wastewater Treatment Plant

4. A copy of Mr. and Mrs. Cogan’s Personal Financial Statement is attached hereto as Exhibit A and the portions of it which should be treated as confidential have been highlighted. The unredacted copy of Mr. And Mrs. Cogan’s Personal Financial Statement is attached only to the original of this Petition filed with the Commission pursuant to 807 KAR Chapter 5:001, Section 7.

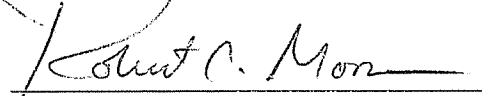
5. 10 copies of Mr. and Mrs. Cogan’s Personal Financial Statement with the portion of the material for which confidentiality is claimed being redacted is attached as Exhibit B.

  
Robert C. Moore



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was filed by hand delivery on Beth O'Donnell, Executive Director, Public Service Commission, P.O. Box 615, Frankfort, Kentucky 40602, and Fred Schlatter, 10411 Forest Garden Lane, Louisville, Kentucky 40223 , on this the 3<sup>rd</sup> day of March, 2005.

  
\_\_\_\_\_  
Robert C. Moore

Personal Financial Statement

**Martin Glenn Cogan**  
**Nonie George Cogan, D.M.D.**  
2223 Millvale Road  
Louisville, Kentucky 40205

June 1, 2004





















**COMMONWEALTH OF KENTUCKY**

RECEIVED

**BEFORE THE PUBLIC SERVICE COMMISSION**

MAR 23 2005

In the Matter of:

PUBLIC SERVICE  
COMMISSION

JOINT APPLICATION OF AIRVIEW ESTATES, INC., ) Case No. 2005-00022  
AND ELIZABETHTOWN UTILITIES, LLC )  
FOR APPROVAL OF THE TRANSFER OF )  
WASTEWATER TREATMENT PLANT TO )  
ELIZABETHTOWN UTILITIES, LLC )

**EVIDENCE OF FINANCIAL INTEGRITY**

The Joint Applicant, Elizabethtown Utilities, LLC, hereby submits the following information to the Public Service Commission of Kentucky ("Commission") to establish that it has the requisite financial integrity to operate the Airview Estates Subdivision Wastewater Treatment Plant in Elizabethtown, Hardin County, Kentucky.

1. Elizabethtown Utilities, LLC, is a Kentucky Limited Liability Company that was formed on July 16, 2004, in order to purchase the Airview Estates Subdivision Wastewater Treatment Plant. It is owned and operated by Marty Cogan and Larry Smither. Marty Cogan and Larry Smither own and/or held ownership interests in the below listed wastewater treatment plants located in Kentucky:

Covered Bridge Utilities wastewater treatment plant;

Glenview Utilities wastewater treatment plant;

Lake Columbia Utilities wastewater treatment

Furthermore, Marty Cogan has been an officer in the below listed wastewater treatment plants.

Countryside Utilities wastewater treatment plant;

Willow Creek Utilities wastewater treatment plant;

Orchard Grass Utilities wastewater treatment plant;

Hunter's Hollow Utilities wastewater treatment plant;

Bullitt Hills Utilities wastewater treatment plant;  
Brentwood Utilities wastewater treatment plant; and,  
Farmdale. Utilities wastewater treatment plant.

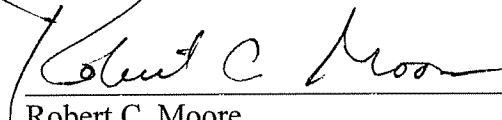
Throughout the operation of the above named wastewater treatment plants, these utilities paid their expenses in a timely manner and continued to operate over a number of years. The successful operation of the above named wastewater treatment plants by Marty Cogan and Larry Smither establishes that they have the financial wherewithal to operate the Airview Estates Subdivision Wastewater Treatment Plant.

2. Since September 1, 2004, Elizabethtown Utilities, LLC, has operated the subject wastewater treatment plant for Airview Estates, Inc., the current owner. The subject wastewater treatment plant has been operated in compliance with the applicable statutes and regulations. Furthermore, the expenses incurred in the operation of the subject wastewater treatment plant have been paid in a timely manner. The successful operation of the Airview Estates Subdivision Wastewater Treatment Plant establishes that Elizabethtown Utilities, LLC, has the financial wherewithal to operate same. Furthermore, Elizabethtown Utilities, LLC, will not assume any liabilities or obligations of Airview Estates, In connection with the transfer of the the assets of the Airview Estates Subdivision Wastewater Treatment Plant.

3. Mr. Cogan has a Master's Degree in Environmental Engineering from the University of Louisville's Speed Scientific School. Mr. Cogan has operated numerous wastewater treatment plants located in Kentucky over the last twenty (20) years. Mr. Smither, who is licensed by the Commonwealth of Kentucky as a wastewater treatment plant operator has extensive experience in wastewater treatment plant operation and design, has operated package wastewater treatment plants in Kentucky for over thirty (30) years.

WHEREFORE, Elizabethtown Utilities, LLC., respectfully requests the Public Service Commission to issue an Order finding that Elizabethtown Utilities, LLC, has the financial integrity to own and operate the Airview Estates Subdivision Wastewater Treatment Plant without the need to submit a 3<sup>rd</sup> Party Beneficiary Agreement.

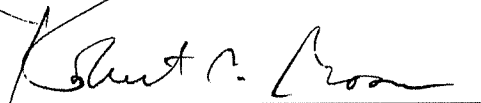
Respectfully submitted,



Robert C. Moore  
Hazelrigg & Cox, LLP  
415 West Main Street  
P.O. Box 0676  
Frankfort, Kentucky 40602-0676

#### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed by first class mail, postage prepaid, on Beth O'Donnell, Executive Director, Public Service Commission, P.O. Box 615, Frankfort, Kentucky 40602 and Fred Schlatter, ~~10411 Forest Garden Lane, Louisville, Kentucky 40223~~, on this the 3<sup>rd</sup> day of March, 2005.



Robert C. Moore