

AGREEMENT REGARDING WATER SYSTEM

This Agreement, made and entered into as of this 22nd day of JULY, 1983, by and between SOUTH WILLIAMSON DEVELOPMENT COMPANY, whose mailing address is P.O. Box 1539, Owensboro, Kentucky 42301 hereafter referred to as "the COMPANY", and POND CREEK WATER DISTRICT, a Water District duly organized under the laws of the Commonwealth of Kentucky, whose mailing address is Box 129, Belfry, Kentucky 41514, hereafter referred to as "WATER DISTRICT".

WITNESSETH:

The Water District proposes to install, operate and maintain a potable water system in the Pond Creek area of Pike County, to serve all feasible areas within the bounds of the said Water District. This proposed system will include, and encompass, the area presently being served by the potable water system now owned, operated and maintained by the Company and which presently serves that property which includes South Side Shopping Center, South Williamson, Kentucky, which such property is described in Exhibit A, attached hereto and incorporated by reference herein, and which such property is hereinafter referred to as "the Center Property".

The Company recognizes that the water system to be installed by the Water District will be of benefit to the Center Property and has agreed to cooperate with the Water District in the establishment of such system as more fully set out hereinafter.

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The Company and the Water District believe that the
of the Company's water system will be in the best
interest of the Users (which term as used herein shall mean
those persons or entities who, presently or hereafter, from
time to time and at any time, occupy or use any portion of
the Center Property or occupy or use any portion of any
improvements on the Center Property or who presently or
hereafter have the right to make use of any part of the water
system on the Center Property).

This Contract is subject to the approval of the
Public Service Commission of Kentucky, provided that unless
the Public Service Commission of Kentucky shall approve this
Contract in its entirety, either party shall have the option,
within 30 days after the issuance of an order of the Public
Service Commission disapproving any part of the Contract, to
cancel the Contract, whereupon it shall become null and void.
Otherwise, it shall remain effective.

ARTICLE I. Conveyance of System to Water District.

Effective on the Date of Conveyance, the Water District will
become the owner of and assume the management, operation and
maintenance of the present potable water system now owned by
the Company and which system is now furnishing water to Users
within the Center Property in the Pond Creek area (all such
Users being within the service area of the proposed Water
District system) and from which system the Company also
obtains portions of water it uses. From and after said Date
of Conveyance, the Water District shall be solely responsible
for the operation and maintenance of said system, and

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shall be relieved of any further responsibility or for the operation and maintenance of said system of and from the responsibility for the furnishing of water to the Users under the Company's water systems. It is the intent of this agreement that from and after the Date of Conveyance, the Company, having divested itself of said water system will no longer engage in the business of furnishing water to its present customers and Users and that from said Date, the Water District will assume all obligations of the Company to furnish water to the present Users, including the Company.

ARTICLE II. On the Date of Conveyance, the Company agrees and binds itself to transfer to the Water District by apt and appropriate instrument or instruments of conveyance, all of its interests, legal and equitable, in and to the existing facilities owned by it and which now comprise and are being utilized in the operation of its said water system, including but not limited thereto, all supplies, all water lines, all pump stations, all pump houses, all storage tanks, all treatment facilities, and any and all other items of supplies acquired by the Company for the operation of said systems. This transfer shall include all distribution lines up to within five (5) feet of the buildings and is not to include any lines within buildings on the property. The Company shall furnish all information in its possession as to all property being transferred including detailed maps of all line locations as well as any construction drawings of the facilities being transferred; any new surveys, maps

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drawings will be obtained by the Water District at its expense. It is understood and agreed that said property will be transferred on an "as is" basis. The Water District agrees to accept same. All instruments of conveyance shall be subject to the approval of the Water District.

ARTICLE III. Assistance Prior to Date of Conveyance.

Prior to the Date of Conveyance, the Company agrees to make available to the Water District any of its personnel who have knowledge of the operation of the Company's water system for such consultation and advice as may be requested by the Water District in its continued operation of the system. Any such assistance furnished by the Company during this transition period shall be at no cost or expense to the Water District. For a period of two months after the Date of Conveyance, the Company agrees to continue such assistance so long as the same does not result in any additional cost, expense or inconvenience to the Company. In the event that it becomes necessary that each User of the present system shall be required to sign a contract for water services with the District, it shall be the Company's responsibility to use its best efforts to obtain such contracts on forms furnished by the Water District.

ARTICLE IV. Date of Conveyance. The Date of

Conveyance shall be on a date mutually acceptable to the parties within 30 days after water from the District's system is made available to the Company provided all of the following conditions have been satisfied:

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- (a) The Water District has furnished adequate assurance to the Company that the Water District will be able to acquire and operate the system under this Agreement; including but not limited to assurance of necessary funding;
- (b) The Company has secured approvals of this Agreement from its lenders and any other party from whom approval may be necessary or desirable;
- (c) The Water District has commenced or is ready to commence construction.

In the event that the above contingencies are not satisfied prior to December 1, 1983, then either party may terminate this Agreement by written notice to the other party, in which event neither party shall have any further liability hereunder, unless the parties shall extend such date by mutual agreement. Until the Date of Conveyance, all risk of loss by fire or otherwise shall be that of the Company, and in the event that such loss or damage occurs, the Water District may, without liability, elect to accept conveyance of title on the Date of Conveyance, together with any applicable insurance proceeds then available.

ARTICLE V. Information to Water District. On or before the Date of Conveyance, the Company agrees to furnish to the Water District all available information it has in its possession relative to its existing water treatment and distribution systems, including but not limited thereto, the names and addresses of known customers, drawings or maps



system components, past water analyses records, copies of any permits, and any and all other information which it has relative to the operation of said systems and which may be of benefit to the Water District.

ARTICLE VI. Easements. The Company agrees to cooperate and assist, without any cost and expense to the Company, the Water District in acquiring or transferring all necessary easements and rights-of-way relative to the Water District. The Company will grant easements for the location of pump stations and the operation and maintenance of all parts of the water system facilities.

ARTICLE VII. Permits. The Company presently holds certain permits from local and state agencies relating to its operation of its water systems. On or before the Date of Conveyance, it is agreed that the Company and the Water District will, jointly and/or separately, notify the various public agencies who have granted the Company such permits that, effective as of the Date of Conveyance, all such permits will be surrendered and that the Company will no longer be the owner or operator of its said water systems, and that from that date, the Water District will be the legal owner and operator of said systems. The Water District will, if required by any of the respective public agencies, also give notification to such agencies to the same effect. Upon request by the Water District, and if permitted by the respective public agencies, the Company agrees to assign or transfer to the Water District any of such permits, if such are assignable, and agrees to cooperate with the

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District in effecting an orderly transfer of such permits to the Water District. If it becomes necessary for the Water District to obtain new permits from any public agency to enable it to operate the systems being transferred by the Company to the Water District, the Company agrees to cooperate with the Water District in doing all things that may be necessary to effect the issuance of such permit or permits, including but not limited thereto, the obtaining of any required approvals from the Public Service Commission of the Commonwealth of Kentucky.

ARTICLE VIII. Payment to Water District. The Company agrees to pay to the Water District, the sum of One Hundred Fifty Thousand (\$150,000.00) Dollars, such contribution to be used in the construction of said Water District system, on the Date of Conveyance or the commencement of construction of the water system by the Water District, whichever date is earlier, but in no event will such payment be required prior to the Closing.

ARTICLE IX. Present System. The Water District agrees to accept the transfer from the Company of its present facilities which the Company will convey to it on the Date of Conveyance. Effective on the Date of Conveyance, the Water District agrees to assume full responsibility and liability for the continued operation of said water systems and agrees to the continued operation and maintenance of same to the end that all present Users receiving water from the present systems, including the Company, will continue to be provided water service and that the systems being transferred to the

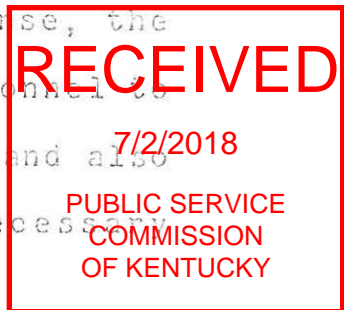
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Water District will be operated and maintained until the proposed new water system is completed and in operation. It is understood that the water supply for the systems being transferred by the Company to the Water District are at least partially from deep wells. It is expressly understood and agreed that the Company makes no representation or warranty as to the continued quantity of water from such sources and will assume no responsibility if such water sources should fail in the future. It is further understood and agreed, however, that until the new water system is installed by the Water District that the Water District will have access to such present water sources. It is further contemplated and agreed that, even after the new water system is operational and of service to the Users, the Water District shall continue to maintain the present water system, pumps and deep wells of the Company, so that the same will be available as an emergency back-up system. Any rights and privileges as to easements and rights-of-way transferred and granted to the Water District herein which are not incorporated into the new water system to be installed by the Water District shall revert to the Company on completion of the new Water system, and the Water District agrees to execute any instrument to effectuate such reverter.

ARTICLE X. Water District's Obligations. The Water District agrees to furnish, at its own expense, the necessary office facility and administrative personnel to operate the systems being acquired from the Company and also agrees to provide, at its own expense, the necessary



technical and administrative personnel and functions to acquire funding of the Water District project to the end result that the proposed water distribution system will be brought to completion.

ARTICLE XI. Notices. On or before the Date of Conveyance, the Water District and the Company will:

- (1) Jointly notify all public agencies which have issued permits to the Company in connection with its operation of said water system of the transfer of the water systems to the Water District and advising such agencies that the Water District will, after the Date of Conveyance, be solely responsible for the operation and maintenance of said systems and the furnishings of water to the Users.
- (2) On or before the Date of Conveyance, the Company will prepare a letter to be signed and mailed to all known customers of the existing water system advising and notifying them of the change of ownership. This letter shall be reviewed prior to being sent to the customers by a representative of the Water District for their concurrence of the contents. This letter shall fully set forth the districts obligations as well as each of the tenants obligations in a manner such as to avoid misunderstandings. The Company and the Water

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District shall jointly address any inquiries resulting from the letter.

ARTICLE XII. Services by Water District. The Water District agrees that the Company Water System will be one of the first customers to be serviced by the new water system, and that the same will be available by June 1, 1984. The Water District will furnish and maintain such water system for the Users under the same conditions relative to pressure as are currently being provided. All such water provided must exceed all minimum standards of the Commonwealth of Kentucky for use as potable water.

ARTICLES XIII. Rates; Surcharges. It is agreed and acknowledged that there will be no charges to the Company, nor any other payments or contributions to be made by the Company, except as specifically provided in this Agreement. Without limiting the foregoing, it is acknowledged and agreed that there shall be no "service connection" fees or other fees or items directly or indirectly related to the construction and operation of the existing water system or pump station to service the Center Property to be paid by the Company. Any new or expanded service shall be done in a manner mutually agreeable to both the company and the water district. With respect to Users in existence and making use of the water sytem at the time of the commencement of service by the Water District, it is agreed that there shall be no "service connection" fees charged to such "Users". With respect to any persons becoming Users after such date, it is agreed that

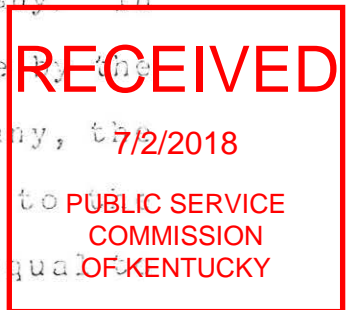
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"service connection" fees as are charged to other new customers of the Water District of the same size meter. All charges are to be made by the Water District to Users. The Water District will take monthly usage readings from meters of all Users. The Water District will invoice such Users directly. Invoices are to be based on the amount of usage at the rate as established by the Public Service Commission, or other applicable regulatory agency, plus a surcharge. The monthly surcharge shall be according to the size of the meter installed as follows:

<u>Size of Meter</u>	<u>Monthly Surcharge</u>
5/8"	\$11.30
3/4"	15.05
1"	33.88
1 1/2"	60.22
2"	80.30
3"	125.47

In the event that the Water District should hereafter elect to invoice for sprinkler "standby" charges, those charges shall be invoiced directly to Users and not to the Company. The Company shall have no obligation to make any payments whatsoever to the Water District except for the payments provided in Article VIII of this Agreement and such payments, if any, for which the Company may become liable in its capacity as a User.

ARTICLE XIV. Payments to the Company. The Water District agrees to make certain payments to the Company. In consideration of the transfers and payments to be made by the Company for the services to be rendered by the Company, the Water District agrees to make certain payments to the Company. The payments to be made shall be an amount equal to



the surcharges invoiced monthly by the Water District to Users as provided in the preceding paragraph. Such payments shall be made to the Company in cash by the Water District, and all such payments shall be made within 30 days after the end of each billing period, based upon surcharges invoiced during the preceding billing period. The water district shall continue to make payments in the manner prescribed until such time as the _____ Company has been paid an aggregate of \$300,000.00 and at such time the surcharge will cease to be imposed and the rates of the individual Users will be the same as other customers of the District.

ARTICLE XV. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. In the event of the conveyance of all or any part of the Center Property by the Company, then the Company shall have the right to assign its rights under this Agreement, in whole or in part, to such successor in title, and such successor shall thereby be entitled to the benefits and subject to the obligation so assigned.

ARTICLE XVI. Amendment. This Agreement may not be amended except in writing and executed by the parties hereto or their respective successors.

ARTICLE XVII. Applicable Law. This Agreement is made in and shall be construed pursuant to the Laws of the Commonwealth of Kentucky.

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EXECUTED in quintuplicate copies by the duly authorized officers of the parties as of the day and year first hereinabove written.

SOUTH WILLIAMSON DEVELOPMENT
COMPANY, By and Through Its
Partners

SOUTH SIDE ASSOCIATES

By: *Steve E. Harkin*

JVJ SOUTH WILLIAMSON JOINT
VENTURE

By: *R. E. G. Moore*
POND CREEK WATER DISTRICT

By: *Bell Ferris*
Chairman and
Duly Authorized Officer

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