

**SITE SPECIFIC AGREEMENT – RE: PHASE I, UNITS 5 & 6 OF ASH TREE
PROPERTIES, III (67 LOTS)**

This Site Specific Agreement (the "Agreement") is made and entered into December 8, 2015 by and among LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, hereinafter "LFUCG"; JESSAMINE-SOUTH ELKHORN WATER DISTRICT, hereinafter "JSEWD"; CITY OF NICHOLASVILLE, KENTUCKY; hereinafter "CITY"; ASH TREE PROPERTIES III, LLC, hereinafter "ASH TREE"; and BALL HOMES, LLC, hereinafter "BALL".

WITNESSETH:

WHEREAS, ASH TREE currently owns real estate located in Jessamine County, Kentucky, identified as Phase 1 Ash Tree Unit 5 and 6, as more particularly described in Exhibit "1" and as shown on the Site Plan in Exhibit "2", attached hereto (the "Property"); and

WHEREAS, BALL has entered into a contract with ASH TREE to purchase the Property; and

WHEREAS, BALL has agreed to fulfill the terms of this Agreement and has agreed to be fully and co-extensively bound by the terms and conditions of this Agreement; and

WHEREAS, ASH TREE has agreed to fulfill the terms of this Agreement and has agreed to be fully and co-extensively bound by the terms and conditions of this Agreement; and

WHEREAS, the parties acknowledge that there is limited sanitary sewer capacity available; and

WHEREAS, the parties further acknowledge the importance of and the interrelationship of storm water as it may impact sanitary sewer collection and conveyance; and

WHEREAS, conditioned upon the agreement of the developing parties (BALL and ASH TREE, hereinafter collectively identified as "DEVELOPER") to comply with and subject to the terms and conditions of this Agreement, JSEWD and LFUCG are willing to provide sanitary sewer service to the Property.

NOW, THEREFORE, for and in consideration of the premises, the mutual undertakings and agreements herein contained and assumed, DEVELOPER, JSEWD and LFUCG hereby covenant and agree as follows:

1. **Sewer Capacity**. The parties agree that the sanitary sewer capacity needed to provide service to the Property shall not exceed **12,864** gallons per day (average daily flow) for sewage collection and conveyance.

2. Agreement to Serve. Conditioned upon DEVELOPER's full compliance with the LFUCG'S Code of Ordinances, including but not limited to Chapter 16, all administrative regulations, rules, practices and procedures of the LFUCG Department of Environmental Quality and Public Works (i.e. Procedures Manuals for Infrastructure Development, Sanitary Sewers and Pump Stations), and the rates, rules and regulations of JSEWD and Jessamine County relating to operation and use of the sanitary sewer system, as may be amended from time to time, (all entities' regulations hereinafter referred to as the "Code") and subject to the terms and conditions of this Agreement, upon the completion of the construction of the sanitary sewer facilities by DEVELOPER, JSEWD and LFUCG agree to permit connection of the sanitary sewer facilities installed by DEVELOPER to the existing facilities of LFUCG and JSEWD, if any, and to provide sanitary sewer utility service to the Property. DEVELOPER expressly agrees that the constructed sanitary sewer facilities shall be conveyed to JSEWD upon completion of construction and approval for acceptance. Although it is expressly acknowledged by DEVELOPER that JSEWD may require that there be connections to the Property sanitary sewer system provided to adjoining properties, DEVELOPER expressly agrees that it shall not make any agreements with (relative to capacity reservation or otherwise) or permit any adjoining property owner access to or use of the sanitary sewer or storm water facilities to be constructed without the prior written authorization from JSEWD and LFUCG.

It is understood and agreed by the parties that this Agreement shall in no way constitute, nor shall be construed to be, a reservation of sanitary sewer treatment capacity for DEVELOPER by JSEWD or LFUCG, or an agreement by JSEWD and LFUCG to collect, convey, treat or in any way manage storm water. In order to secure a reservation of sanitary sewer capacity for the improvements shown in Exhibit 1, the DEVELOPER must meet all terms and conditions of the Code, more specifically LFUCG Code of Ordinances Chapter 16, Article XIII, Sanitary Sewer Capacity Assurance Program (CAP). Furthermore, the parties hereto agree that in the event DEVELOPER fails to complete all requirements under this Agreement within **548** days from the date of same, this agreement shall automatically expire and become a nullity, but only as to facilities not constructed and connections not made.

3. Connection Fees. DEVELOPER agrees to pay the sum approved by the Kentucky Public Service Commission and, in addition, the amount of LFUCG sewer connection fees provided in the Code to JSEWD ("Connection Fees"). Said Fees are in consideration for the sewage collection, conveyance and treatment by JSEWD and LFUCG. The Connection Fees shall be paid upon the issuance of letter of acceptance by JSEWD to DEVELOPER pursuant to Section 7(c) hereof related to the Property's sanitary sewer system or any part thereof.

4. Additional Fees. In addition to the Connection Fees heretofore referenced, DEVELOPER agrees to pay the full cost of sewer service to the Property, including, but not limited to the following additional charges and fees (the "Additional Fees"):

- (a) DEVELOPER shall have paid all reasonable charges assessed by JSEWD and LFUCG for plan review, construction inspection, testing, and other services of JSEWD and/or LFUCG in any way related to the sanitary

sewer system.

- (b) DEVELOPER shall pay all sanitary sewer use fees ("Sewer User Fee") as provided in the Code, as may be amended from time to time. The Sewer User Fee is generally based on water consumption and DEVELOPER agrees to have the local water company which provides water to the Property, or any part thereof, provide duplicate billings to JSEWD, P.O. Box 731, Nicholasville, Kentucky 40340-0731. JSEWD will calculate and bill DEVELOPER or the appropriate user for such Sewer User Fees, which shall be due and payable as set forth in the Code. All unpaid Sewer User Fees shall be subject to a late penalty and interest as set forth in the Code. Further, JSEWD shall be entitled to recover all its costs of collection of same, including reasonable attorney fees.
- (c) If required, DEVELOPER shall pay a surcharge for odor control chemicals on a monthly or less frequent basis as determined by JSEWD. LFUCG retains, in perpetuity, the right to approve or disapprove the use of any odor control chemical for the Property. .
- (d) Pre-treatment permit fees/ Extra strength fees (when applicable) shall be paid to LFUCG in accordance with the Code, Section 16-46 and Schedule B of Section 16-59.

5. Lien To Secure Payment of Connection Fees and Additional Fees. JSEWD shall have a lien against the Property to secure the payment of all Connection Fees and Additional Fees, interest, penalties and the costs of collection, including reasonable attorney fees. The lien shall attach to the Property, or applicable part thereof, as the Connection Fees and/or Additional Fees become past due without necessity of filing any lien statement by JSEWD.

6. Sanitary Sewer and Storm Water Management Installations. To induce JSEWD and LFUCG to provide sanitary sewer service to the Property, DEVELOPER agrees to construct, according to the plans and specifications approved by JSEWD and LFUCG as reflected in Exhibit "3", all on site and off-site installations and facilities required by LFUCG to connect to the existing facilities of LFUCG and JSEWD, if any, to provide sanitary sewer service to the Property, including but not limited to all equipment, fixtures, pumps, lines, mains, manholes, lift stations, pumping stations, laterals, service connections, and to obtain appurtenances thereto together with all real property, easements and rights of way as necessary. To also induce JSEWD and LFUCG to provide sanitary sewer service to the Property, DEVELOPER shall size and construct, at its sole cost and expense, the proposed sanitary sewer facilities in a manner that provides the sanitary sewer capacity necessary to service all 1) developed/un-served upstream properties; 2) undeveloped upstream properties in accordance with JSEWD'S Sanitary Sewer Master Plan, LFUCG Watershed, North Jessamine County, Kentucky, Jessamine-South Elkhorn Water District, March 2006. The construction of infrastructure to serve developed/unserved and undeveloped upstream properties is in no way an approval or endorsement by LFUCG to provide future sanitary sewer service to those properties. Future developers of properties upstream of the

Property may be required to improve downstream LFUCG infrastructure in order to secure a Site Specific Agreement for those properties. To further induce JSEWD and LFUCG to provide sanitary sewer service to the Property, DEVELOPER agrees to construct, according to the plans and specifications approved by the CITY, JSEWD, LFUCG and the Kentucky Division of Water as reflected in Exhibit "4", all on-site storm water facilities. The procedures for the design and construction of the storm water system shall comply with the same procedures outlined in numerical paragraph seven (7) herein for sanitary sewer systems, except that the applicable regulations for storm water management installations shall be substituted for those applicable to sanitary sewers and the appropriate authority exercising control over stormwater management (City of Nicholasville) shall inspect and accept the storm water management installations. The foregoing improvements, both sanitary and storm water systems, may be referred to as the "Improvements" and Exhibits "3" and "4" may be referred to as the "Plans".

If the Improvements will require a pump station, the peak discharge into the JSEWD and/or LFUCG gravity system shall be specified by JSEWD and LFUCG. Design of the pump station shall include a meter capable of recording all flow discharging from the pump station. Odor control facilities shall be constructed as directed by JSEWD and LFUCG. LFUCG retains, in perpetuity, the right to approve or disapprove the use of any odor control chemical for the Property. If any pump stations are classified as "temporary" on the Plans, DEVELOPER will, at its own cost and secured by a bond or a letter of credit, connect to the gravity line as same becomes available and shall remove such "temporary" stations.

7. Procedures for the Property Sewer System. DEVELOPER agrees that the design and construction of the Improvements shall be subject to and in accordance with the Code and all administrative regulations, rules, practices and procedures of the LFUCG Department of Environmental Quality and Public Works, Jessamine County and JSEWD relating to the Improvements, and the following requirements, whether or not these requirements are contained in the foregoing ordinances, regulations, administrative rules, practices and procedures:

- (a) During construction of the Improvements, Jessamine County, JSEWD and LFUCG shall have the right to inspect such installations, including but not limited to the materials, equipment, piping, and connections to determine compliance with the approved Plans and JSEWD shall also have the right to halt construction, if necessary, in the event of non-compliance by DEVELOPER. JSEWD agrees to issue a written stop work order to the DEVELOPER if requested to do so, in writing, by LFUCG. DEVELOPER shall also provide JSEWD and LFUCG with periodic written certifications by DEVELOPER's engineer that all construction is in full compliance with the approved Plans and any applicable permits or other requirements.
- (b) At least seven (7) days prior to final inspection by JSEWD and LFUCG, DEVELOPER shall provide JSEWD and LFUCG with two (2) sets of mylars of the "as-built" plans, prepared by DEVELOPER's engineer, showing the location of all installations related to the Improvements as constructed. DEVELOPER shall provide JSEWD five (5) sets of as-built

paving and storm water drainage plans, two (2) copies of the recorded subdivision plat of the Property and two(2) copies (DVD and inspection log) of a TV inspection of the sanitary sewer system. DEVELOPER shall also deliver to JSEWD, seven (7) days prior to final inspection, its engineer's certification and test results of the Improvements.

- (c) Upon completion of construction of the Improvements or any part thereof, DEVELOPER's engineer shall deliver a signed certificate of completion to JSEWD certifying to JSEWD and LFUCG that the construction is completed, that the construction has been completed in accordance with all permits, approved Plans, and any applicable legal requirements, and as constructed it will function for the purpose for which it was designed. DEVELOPER shall provide proof satisfactory to JSEWD that all contractors, sub-contractors, materialmen and laborers have been paid in full. Upon receipt of all of the above, payment of all fees, a deed of conveyance of the sanitary sewer system, and final inspection by JSEWD and LFUCG of the Property sanitary sewer and stormwater conveyance system, a letter of acceptance of the Property sanitary sewer system shall be delivered to DEVELOPER by JSEWD. No connection of any building located on the Property to the sanitary sewer system shall occur prior to the issuance of said letter of acceptance.

8. Use of Property Sanitary Sewer System. The use of the Property sanitary sewer system shall be subject to full compliance with the Code. All connections of any building constructed on the Property, or any part thereof, to the Property sanitary sewer system shall require a tap-on permit and approval by the JSEWD and LFUCG. Any connection of a building to the Property sanitary sewer system without a tap-on permit, inspection and approval may result in immediate disconnection by JSEWD.

9. Representation and Warranties of DEVELOPER. In order to induce JSEWD and LFUCG to enter into this Agreement, DEVELOPER hereby represents and warrants to JSEWD and LFUCG as follows:

- (a) DEVELOPER is duly organized, validly existing, and in good standing under the laws of the Commonwealth of Kentucky. DEVELOPER has all requisite power and authority to enter into and perform the obligations contemplated by this Agreement. The execution and delivery of this Agreement and the performance of the obligations contemplated hereby have been duly authorized by all necessary action on the part of DEVELOPER. This Agreement has been duly executed and delivered by DEVELOPER and constitutes the legal, valid and binding obligation of DEVELOPER enforceable against it in accordance with its terms.
- (b) The execution and delivery of this Agreement does not, and the performance of the obligations contemplated herein will not conflict with

or result in any violation of, or default under any provision of, DEVELOPER's organizational documents, or any other agreement to which DEVELOPER is a party.

- (c) DEVELOPER covenants to obtain any consent, approval or authorization of any third party required in connection with DEVELOPER's execution and delivery of this Agreement or the performance by DEVELOPER of the obligations contemplated herein has been obtained.
- (d) DEVELOPER has good, valid and marketable title to the Property, free and clear of all liens, encumbrances, leases, restrictions, or other agreements except as referenced on the permitted exceptions attached hereto and incorporated herein as Exhibit "5".
- (e) DEVELOPER warrants that the Improvements will be constructed and installed in accordance with the Plans and that all materials, supplies and equipment incorporated into the work will be new and free from any and all defects, whether latent or patent, in workmanship. DEVELOPER agrees to repair and replace, at its own expense, all of the work which may prove to be defective, for a period of three (3) years after the date of acceptance by JSEWD, relative to the sanitary sewer system, and for a period of one (1) year after the date of DEVELOPER's engineer's certification relative to the storm sewer system. Each of the time periods shall be secured by a warranty bond or letter of credit posted in favor of JSEWD by DEVELOPER which bond or letter of credit shall not be released without prior written approval of LFUCG.
- (f) There are no: (i) Hazardous Materials (as defined below) located on the Property or which have been released into the environment, or discharged, placed or disposed of at on or under the Property in violation of any Environmental Laws (defined below); (ii) underground storage tanks which have been located on or under the Property.

The term "Hazardous Materials" means and includes, without limitation:

(i) Those substances included within the definitions of "hazardous substances", "hazardous materials", "toxic substances" or "solid waste" in any of the Environmental Laws (defined below);

(ii) Those substances listed in the U. S. Department of Transportation Table or amendments thereto (49 CFR 172.101) or by the U.S. Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and any amendments thereto);

(iii) Those other substances, materials and wastes which are or

become classified as hazardous or toxic by any such law, regulation or ordinance; and

(iv) Any material, waste or substance which is any of the following: (A) asbestos-containing material; (B) polychlorinated biphenyls; (C) radon gas; (D) urea formaldehyde foam insulation; (E) petroleum, petroleum product or derivation thereof; (F) designated or listed as a "hazardous substance" pursuant to section 311 or section 307 of the Clean Water Act (U.S.C. section 1251 at set seq.); (G) explosive; or (H) radioactive.

(v) The term "Environmental Laws" means all federal laws, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes related to the protection of the environment and government and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Materials in the rules, regulation, policies, guidelines, interpretations, permits, decisions, orders and directives or federal, state, and local governmental agencies and authorities with respect thereto.

(g) DEVELOPER is designated as the party that is responsible for compliance with all erosion/sediment control measures (Best Management Practices) during construction.

(h) That neither JSEWD, nor LFUCG have made any representation or guarantee that any sanitary sewer capacity has been reserved for the undeveloped portion of DEVELOPER's property as described in Exhibit "1" or otherwise and that the capacity approved is for the area to be served as described in Exhibit "2".

10. Easement. DEVELOPER hereby grants to JSEWD, subject to the terms of this Agreement, the right to maintain and operate the sanitary sewer system. DEVELOPER agrees to provide a note on any subdivision plat related to the Property referencing dedication of the sanitary sewer system to JSEWD which reads that it is specifically subject to the terms and conditions of this Agreement. Upon request, DEVELOPER further agrees to execute and deliver a separate deed of easement or encroachment permit in a form reasonably acceptable to JSEWD, in its sole discretion, for all facilities, on-site and off-site, related to the portions of the sanitary sewer system, for which JSEWD will accept dedication and conveyance except for pump stations and access routes thereto, which, upon request, DEVELOPER agrees to convey in fee simple absolute to JSEWD by deed in a form acceptable to JSEWD, in its sole discretion. DEVELOPER hereby further agrees that the foregoing grant includes the right of ingress and egress to any part of the Property for the purpose of maintenance and operation of the sanitary sewer system. DEVELOPER and JSEWD agree to assign to LFUCG a right of access and ingress and egress to

the sanitary sewer system and to the Property.

11. Mortgage Liens. Mortgagees, if any, holding prior liens on the Property, or any part thereof, shall be required to subordinate their rights to the rights of JSEWD under this Agreement and the easement dedication herein contemplated.

12. Notices. All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing. All notices, demands and requests to be sent to either party shall be deemed to have been properly given or served by personal delivery or by depositing same in the United States mail, addressed to such party, postage paid and registered or certified with return receipt requested at the following address:

LFUCG
Department of Environmental
Quality and Public Works
200 East Main Street
Lexington, Kentucky 40507

With copy to: LFUCG
Department of Law
200 East Main Street
Lexington, Kentucky 40507

Jessamine-South Elkhorn Water District
P.O. Box 731
Nicholasville, KY 40340-0731

With copy to: Bruce E. Smith, Esq.
201 South Main Street
Nicholasville, KY 40356

“DEVELOPER”

Ball Homes, LLC
3609 Walden Drive
Lexington, KY 40517

Ash Tree Properties, III, LLC
AND 106 West Vine Street
Lexington, KY 40507

13. Indemnification. DEVELOPER shall indemnify and reimburse JSEWD and LFUCG for any and all claims, losses, liabilities, damages (including without limitation, fines, penalties, criminal or civil judgments and settlements), costs (including without limitation, court costs); and expenses (including without limitation, attorneys, engineers and accountants fees), (hereinafter "Loss" or "Losses") suffered or incurred by JSEWD and LFUCG, as a result of, or with respect to or arising from (a) any breach or inaccuracy of any representation or warranty of DEVELOPER herein; (b) any breach of or noncompliance by DEVELOPER with any covenant

or agreement of DEVELOPER contained in this Agreement; (c) any negligent or wrongful act of the DEVELOPER, its agents, employees, affiliates; and (d) Hazardous Materials or underground storage tanks that are located on or under the Property.

14. Compliance with Law. DEVELOPER agrees to comply with all federal, state and local laws, statutes, ordinances, regulations, and requirements. DEVELOPER agrees that the Property is subject to the Code and all regulations, administrative rules, practices and procedures of the LFUCG Department of Environmental Quality and Public Works, the JSEWD, and Jessamine County relating to sanitary and storm water management systems as set forth herein and agrees to fully comply with same.

15. Exhibit Incorporation by Reference. Exhibits 1, 2, 3, 4 and 5 attached hereto are hereby incorporated by reference as if set out fully herein.

16. Binding Effect, Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors, assigns, transferees, tenants, heirs, and personal representatives. DEVELOPER's rights hereunder shall not be assignable to any other person, except by a deed of conveyance whereby the Property, or a part thereof, is conveyed to such person.

17. Costs and Attorney's Fees. JSEWD and LFUCG shall be entitled to recover all costs and reasonable attorney fees incurred connected with the collection of Connection Fees or Additional Fees.

18. Amendment/Waiver. No modification, termination, assignment or amendment of this Agreement may be made, except by written agreement. Failure by any party to insist upon strict performance of any covenant, duty, agreement or condition in this Agreement or to exercise any right or remedy or a breach thereof shall not constitute a waiver of any breach or any such covenant, agreement, term or condition. Any party hereto, by notice and only by notice as provided in this Agreement, may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party hereto. No waiver shall affect or alter this Agreement but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

19. Covenants Running with Land. DEVELOPER, and its successors in title agree that all portions of the Property, whether designated as separate lots or otherwise, shall be required to comply with the terms of this Agreement and shall use the Improvements in accordance with the terms of this Agreement, which covenant shall be deemed a "Covenant Running with the Land", and reference shall be made to this Agreement, on any plat of the Property or any part thereof.

20. Undertakings. The parties will act reasonably when undertaking any submittal, review, approval, acceptance, or inspection required under this Agreement, provided, however, with respect to any review, approval, acceptance, or inspection of JSEWD or the LFUCG

which would be required under the law had the Property been located entirely in Fayette County, the standard practice of the LFUCG shall be deemed reasonable. Further by review, approval, acceptance or inspection, the JSEWD, City of Nicholasville, and LFUCG shall not assume responsibility for design, construction or installation of the Improvements and shall in no way be deemed to waive any rights available to JSEWD, City of Nicholasville, and LFUCG related to defects, omissions or failures in design, construction or installation.

21. Governing Law. This Agreement has been entered into and shall be interpreted under and governed by the laws of the Commonwealth of Kentucky. Further, the parties agree that any litigation related to the terms of this Agreement shall be brought in the Jessamine Circuit Court, Nicholasville, Kentucky and the parties acknowledge that venue shall be proper in such court.

If any court of proper jurisdiction finds or construes any provision contained herein to be unenforceable or invalid, then, and in that event, such finding or construction shall not invalidate the entire Agreement.

22. Captions. The captions of each section herein are for convenience only and shall not affect the construction hereof.

23. Multiple Copies. This Agreement may be signed in multiple copies, each of which shall be considered an original and entire document.

24. Entire Agreement. This Agreement contains the entire agreement and understanding between the parties hereto and incorporates and supersedes all oral agreements and understandings and it shall not be changed or supplemented unless done in a writing signed by all parties hereto.

IN WITNESS WHEREOF the parties have caused this document to be executed on the date and year first written.

LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT

BY: _____

ITS: MAYOR

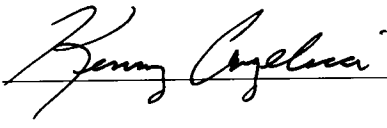
BALL HOMES, LLC

BY: 

NAME: Ray Ball

ITS: President

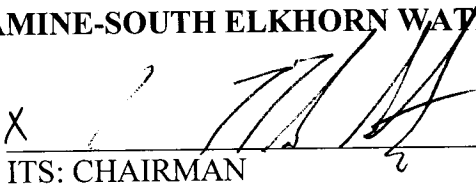
ASH TREE PROPERTIES, III, LLC

BY: 

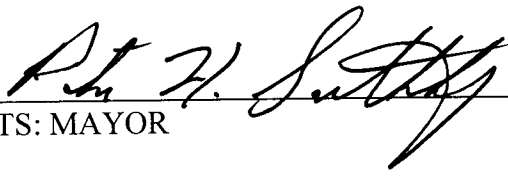
NAME: _____

ITS: _____

JESSAMINE-SOUTH ELKHORN WATER DISTRICT

BY: X 
ITS: CHAIRMAN

CITY OF NICHOLASVILLE

BY: 
ITS: MAYOR