

**STATE OF INDIANA
BEFORE THE FLOYD COUNTY
BOARD OF COUNTY COMMISSIONERS**

RESOLUTION NO. FCR- II

**A RESOLUTION CONSENTING TO THE SALE OF
COUNTRY VIEW SEWAGE PLANT, INC., UNDER THE
TERMS OF A CERTAIN FRANCHISE AGREEMENT**

Whereas, this Board of County Commissioners is a party to a certain franchise agreement with Country View Sewage Plant, Inc. ("Country View") dated April 3, 1978, a copy of which agreement is attached as **Exhibit A** (hereinafter the "Agreement"); and,

Whereas, the owner of Country View has reached agreement to sell all of his interest in said company to The Reynolds Group, Inc.; and,

Whereas, the Agreement requires that the franchise may not be "sold, assigned, leased, transferred, or encumbered" without the prior written consent of this Board; and,


Whereas, this Board finds the proposed sale of Country View to The Reynolds Group, Inc., to be in the best interests of the sewer users served by Country View.

Now, therefore, it is resolved that the Board of County Commissioners of Floyd County, Indiana, hereby consents to the sale of Country View Sewage Plant, Inc., inclusive of the franchise under **Exhibit A**, to the Reynolds Group, Inc.

This resolution shall be of full force and effect immediately upon its adoption.

So resolved this 4th day of FEBRUARY, 1997.

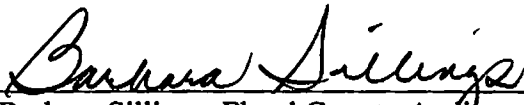
**BOARD OF COUNTY COMMISSIONERS
OF FLOYD COUNTY, INDIANA**

By: 
Larry Dennison, President of the Board

By: 
Mary Lou Hammond, Commissioner

By: 
Michael Schindler, Commissioner

Attest:

By: 
Barbara Sillings, Floyd County Auditor

FRANCHISE AGREEMENT

THIS AGREEMENT, made and entered this 23 day of April, 1978, by and between the BOARD OF COMMISSIONERS OF THE COUNTY OF FLOYD, hereinafter called the "Board" and COUNTRY VIEW SEWAGE TREATMENT PLANT, INC., hereinafter referred to as the "Corporation".

WITNESSETH:

WHEREAS, the Corporation intends to construct, operate and maintain a sewage disposal system for the benefit of those homes, buildings, and dwellings to be hereafter constructed and erected upon the real estate located in the County of Floyd, State of Indiana, and known as Country View Subdivision, as the same is more particularly described in Exhibit "A" hereto, which Exhibit is incorporated herein by reference and made a part hereof; and

WHEREAS, for this purpose, the Corporation has or will construct, lay and maintain sewer mains, lateral lines, man-holes, pumping stations, disposal plants, and all other facilities and appurtenances necessary for the purpose of providing adequate sewage collection and disposal to such homes, buildings and other improvements; and,

WHEREAS, the Board is empowered pursuant to the provisions of I.C. 1971, 17-1-14-11; I.C. 1971, 17-2-22-3; and, I.C. 1971, 17-2-2.5 to grant licenses, permits, or franchises with respect to the use of property located within Floyd County, Indiana, as the boundaries of same are defined by I.C. 1971, 17-1-1-23; and,

WHEREAS, the Board has determined that as the proposed undertaking of the Corporation is of such a nature as to affect the public interest, health and safety, the same should be permitted and allowed within the jurisdiction of the Board only upon those terms and conditions deemed necessary for the protection of said public interest, health and safety, as said terms and conditions are established by the laws of the United States of America, the State of Indiana, and hereinafter.

NOW THEREFORE, upon the following terms, conditions, stipulations and requirements, the Board of Commissioners of the County of Floyd, State of Indiana, hereby grants Country View Sewage Treatment Plant, Inc., a limited franchise for the construction, operation and maintenance of a sewage treatment facility and system within Floyd County, to-wit:

CHARACTER OF FRANCHISE: The franchise hereby granted is of a limited nature, is not exclusive and shall not preclude the grant by the Board of a similar license, permit or franchise within the territorial jurisdiction of Floyd County, Indiana, upon proper application.

FRANCHISE TERRITORY: The territory encompassed by this franchise, unless and until hereafter increased or decreased by the Public Service Commission of the State of Indiana or this Board, shall include and be limited to the perimeter boundaries of Country View Subdivision, as the same are defined and delineated by Exhibit "A", hereto.

TERM OF FRANCHISE: The term of this franchise shall be for a determinate period of 99 years unless the same shall be sooner terminated, curtailed or revoked by action of the Board.

RESPONSIBILITIES OF CORPORATION: The Corporation shall at all times during the term of this franchise provide for each of the buildings, residences and other improvements constructed or located upon and within the franchise territory, as herein defined, sewage disposal service which is adequate for the safe and sanitary collection, treat-

EXHIBIT A.

ment and disposal of all domestic sewage generated by or derived from said buildings, residences, and/or improvements. In this undertaking, the Corporation shall operate and maintain the sewage disposal system constructed in accordance with this franchise, including the sewage treatment plant(s) in a manner so as not to pollute the ground, air, or water in, under or around the franchise territory with improperly or inadequately treated sewage or with noxious or offensive gases or odors. In satisfaction of this requirement, the Corporation shall operate the entire sewage disposal system in accordance with the regulations, orders and directives of the Environmental Protection Agency, Indiana State Board of Health, Stream Pollution Control Board of the State of Indiana, the Public Service Commission of the State of Indiana, the New Albany Floyd County Health Department, and/or any other governmental entity or authority having jurisdiction therein.

CONSTRUCTION OF FACILITIES: The construction of the sewage disposal facility which is the subject of this franchise, shall be constructed in accordance with the directive of the Stream Pollution Control Board, the same being dated the 11th day of August, 1977, as the same may be hereafter modified or amended. A copy of the directive of said Board is attached hereto and made a part hereof as Exhibit "B". Prior to the commencement of operation of the sewage disposal facilities which are the subject to this franchise, the Corporation shall tender to the Board, or its designee, evidence, in writing, of the compliance with and satisfaction of each of the requirements delineated therein, as well as final approval of said installation by the Stream Pollution Control Board and/or other governmental entity or agency having jurisdiction.

ACQUISITION OF FACILITIES: On or before the effective date of this franchise, the Corporation shall acquire, by deed or grant, title to the real estate upon which the sewage disposal plant shall be erected and shall likewise acquire title to all sewer mains, lateral lines, manholes, pumping stations and all other facilities and appurtenances necessary for the operation of the sewage disposal facility. In addition, and where applicable and necessary, the Corporation shall acquire from the owner, as aforesaid, all and any easements which may be necessary to permit the operation and maintenance of said facility, as the same are more particularly set forth in Exhibit "C" hereto. During the term of this franchise, the Corporation shall pay and satisfy any and all taxes and assessments legally levied with respect to any upon all of the real estate, facilities, and appurtenances which are the subject of this grant and which are acquired by said Corporation pursuant to and in conformity therewith, and shall hold same free and clear of liens and encumbrances except as may hereafter be permitted by the Board.

INSPECTION OF FACILITIES: For and during the term of this franchise, representatives of the Environmental Protection Agency, State Board of Health, Stream Pollution Control Board of the State of Indiana, Public Service Commission of the State of Indiana, New Albany-Floyd County Health Department, and/or any other governmental entity or agency having jurisdiction, shall, by the Corporation, be granted at all times free and open access to the sewage disposal facility which is the subject of this grant for the purpose of conducting any and all inspections and/or tests necessary to insure compliance by the Corporation with applicable laws, regulations, and directives, and any and all records required or permitted to be maintained by said Corporation shall be open to inspection by said representatives.

SEWER USE CHARGES: The Corporation is granted the right and privilege to establish and collect as a charge or charges for sewer services provided and rendered to the owners or occupants of each of the buildings, residences and other improvements included within the franchise territory as may be permitted and allowed by the Public Service Commission of the State of Indiana in accordance with the provisions of I.C. 1971, 8-1-2-89 or other applicable law or statute. E

ESCROW AGREEMENT: Contemporaneously with the grant of this franchise, the Corporation shall conclude, with an escrow agent acceptable to the Board, an Escrow Agreement conditioned upon the faithful performance by the Corporation of the terms and provisions of this franchise, said Escrow Agreement to incorporate the following terms, conditions and provisions:

1. **ESCROW FUND:** The Escrow Agreement contemplated hereby shall provide for the creation of an Escrow Fund equal to 25% of the present replacement costs of the plant, equipment and appurtenances to be installed upon the franchise territory, as defined herein, by the Corporation pursuant to the terms of this grant. During each of the first four calendar years of the term of this franchise, the Corporation shall contribute toward the establishment of said escrow fund, a sum equal to 25% of the total value thereof, which said annual contribution(s) may be derived from the sewer use charges levied by the Corporation pursuant hereto, or otherwise as may be deemed appropriate by the Corporation. Thereafter, the Corporation shall be obligated to contribute such amounts to said escrow fund as shall be necessary to replenish same and/or to maintain said fund at a value equal to 25% of the then current replacement value or cost of said plant, equipment and appurtenances as aforesaid.

2. **INVESTMENT OF ESCROW FUND:** The Escrow Agent designated in said Escrow Agreement shall be authorized and empowered to invest and reinvest such sums as shall be, from time to time, contributed to said escrow fund by the Corporation, and the income so derived from such investment by the escrow agent shall be credited to said fund as the same accrues. All sums contributed by the Corporation to said fund or derived from the investment thereof shall remain the property of the Corporation, subject only to this franchise and the terms and conditions of this Escrow Agreement.

3. **WITHDRAWAL OF ESCROW FUNDS:** Upon the written application of the Board and the Escrow Agent, the corporation shall be entitled to withdraw from the escrow fund such sums as shall be necessary, from time to time, for the replacement and/or repair of the plant, equipment and appurtenances which are the subject of this agreement; PROVIDED, such withdrawal shall not be permitted for the day to day or normal maintenance thereof. Such sums as may be withdrawn by the Corporation for the purposes delineated herein shall be replaced and recontributed to said escrow fund by the Corporation on or before the 12th month following the date of such withdrawal thereof; PROVIDED, that such replacement shall not be required if as the result of such withdrawal the escrow fund is not reduced below the minimum total value permitted by the terms and provisions of the Escrow Agreement.

4. **DEFAULT:** Contemporaneously with the execution of the Escrow Agreement, the Corporation shall deliver to the Escrow Agent a Warranty Deed naming the Board as grantee and being sufficient to convey to said Board, in fee simple, free and clear of liens and encumbrances, the sewage disposal facilities, equipment, appurtenances, easements and real estate to be utilized by the Corporation pursuant to this franchise in the provision of sewage disposal services within the franchise territory. In the event that the Board, upon the default of the Corporation in the terms and conditions of this franchise, shall elect to acquire the sewage disposal facility, as provided herein, the Escrow Agent shall for and on behalf of the Corporation, deliver said warranty

in the terms and conditions of this franchise, shall elect to acquire the sewage disposal facility, as provided herein, the Escrow Agent shall, for and on behalf of the Corporation, deliver said warranty deed to the Board, and by such delivery convey the property described therein. In addition, the Corporation shall in a like manner deliver to the Escrow Agent an assignment of the escrow fund created hereby, which assignment shall be delivered to the Board contemporaneously with and upon the same terms and conditions as the warranty deed addressed herein.

5. **WITHDRAWAL OF INTEREST:** In the event that the accrued interest upon the escrow fund shall cause the total of said fund to exceed 35% of the then total replacement cost of the plant, equipment, and appurtenances subject to this franchise, the Corporation shall be entitled to withdraw from said fund an amount by which the total value of the escrow fund exceeds 35% of said total replacement cost.

6. **TERMINATION OF FRANCHISE:** In the event of the termination of this franchise, except upon the default of the Corporation, the Escrow Agent shall deliver to the Corporation the balance of the escrow fund, including accrued interest thereon, remaining upon the date of termination of this grant.

7. **COST** The Corporation shall bear all costs associated with the administration and enforcement of the Escrow Agreement and the escrow fund created thereby.

DEFAULT: In the event that it should be determined by any governmental entity or agency having jurisdiction that the operation by the Corporation of the Sewage Disposal System does not meet the minimum standards established by applicable law, regulation or directive, the Corporation shall immediately, at its sole cost and expense, make any adjustment, repair, installation or improvement to its facilities that shall be necessary or required or recommended by such governmental entity to cause the operation of said facility to comply with said law, regulation, or directive. In the event, however, that the Corporation shall default therein, and said default shall remain and continue for a period of 5 days after written notice to the Corporation of such default is tendered by any governmental agency or entity having jurisdiction, then in that event, and in addition to any other remedy at law or in equity available for the enforcement of this franchise or other law, regulation, or directive violated by the Corporation by reason of such default, the Board may acquire the sewage disposal facility which is the subject of this grant and thereafter repair, operate and maintain same in accordance with the provisions of I.C. 1971 8-1-2-89 (m).

ASSIGNMENT: This franchise and no interest hereunder shall be sold, assigned, leased, transferred or encumbered by the Corporation except with the prior written consent of the Board.

RECORDATION: A copy of this Franchise Agreement shall be placed of record in the Office of the Recorder of Floyd County, Indiana, at the ... of the ... of the ... of Country View Subdivision. In

RECORDATION: A copy of this Franchise Agreement shall be placed of record in the Office of the Recorder of Floyd County, Indiana, at the time of the recordation of the plat of Country View Subdivision, in such manner as is required by the laws of the State of Indiana to place all persons on notice that the property in said subdivision is conveyed subject to the terms and conditions of this franchise.

TERMINATION OF FRANCHISE: In the event of the termination of this franchise, except on the default of the Corporation, the respective rights, obligations and duties of the Board and the Corporation, respectively, shall be determined and governed by the laws of the State of Indiana.

APPLICABLE LAW: This franchise shall be construed, interpreted and applied in accordance with the laws of the State of Indiana, and a finding that one or more provisions hereof violate or are in contravention thereof shall not affect the balance or remainder hereof.

BINDING EFFECT: The terms of this franchise shall extend to and be binding upon the successors and where applicable, the assigns of the Corporation. —

