



20090518000185300 1/10 \$39.00
 Shelby Cnty Judge of Probate, AL
 05/18/2009 10:46:19 AM FILED/CERT

STATE OF ALABAMA)
 :
 SHELBY COUNTY)

Prepared by:
 Donald N. Guthrie, Esq.
 Birmingham, AL

BENT RIVER SEWER SYSTEM TRUST INDENTURE

THIS TRUST INDENTURE agreement, (herein referred to as this "Trust Indenture"), made this the date last set forth below, by and between **COMMUNITY ENVIRONMENTAL SYSTEMS, INC.** formerly an Alabama Onsite Management Entity a corporation organized and existing under and by virtue of the laws of the State of Alabama, (herein referred to as "Utility"); **CANAAN SYSTEMS, INC.** an Alabama Onsite Management Entity a corporation organized and existing under and by virtue of the laws of the State of Alabama, (herein referred to as "Management Entity"); **MULTI-VEST, INC.**, an Alabama Corporation, (herein referred to as "Developer"); and **ONSITE WASTEWATER MANAGEMENT ENTITY ASSET HOLDING FOUNDATION, INC.**, a non-profit corporation organized and existing under and by virtue of the laws of the State of Alabama, (herein referred to as "Trust" or "Trustee"), as Trustee for the benefit of the parties herein described.

RECITALS

WHEREAS, Developer is the owner of a decentralized cluster sewer system being for the purpose of providing adequate sewer service to all properties connected to, or to be connected to, the Cluster System subject to the Rule 420-3-1-.49, Onsite Management Entities, (herein referred to as the "Rules") promulgated by the Alabama Department of Health pursuant Code of Alabama, including but not limited to § 22-25A-1 (2001) *et seq.* (herein referred to as the "Statute") and consisting of certain real property being more particularly described as set forth in **EXHIBIT "A"** attached hereto and made apart hereof, attached together with sanitary sewage wastewater treatment facilities, controls, collection lines, pumps, equipment and rights in easements and right-of-ways, and (herein individually and collectively referred to as the "Cluster System" or the "Trust Property"), and,

WHEREAS, Management Entity is an Alabama Certified Financially Viable Onsite Wastewater Management Entity pursuant to the Code of Alabama 22-25A-1 *et seq.* and the rules promulgated by the Alabama Department of Public Health.

WHEREAS, for the assurance of continuity of maintenance and operation of the Cluster System, the Alabama Department of Public Health (herein referred to as "ADPH") is required by the Statute to certify the operator of the Cluster System as a Management Entity in compliance with the Financial Viability requirements of the Statute, and,

WHEREAS, it is the intention and purpose of the Management Entity that such Cluster System shall be used and operated in compliance with the Statute and Rules in order to provide adequate disposal of wastewater sewage for each of the properties connected thereto, regardless of the ownership of the individual properties, and shall properly maintain the Cluster System to assure the continuance of the operation and maintenance of said system for the benefit of the present and future owners of properties connected thereto, and,

WHEREAS, the State of Alabama, the Developer and the Management Entity desire to protect the components of the Cluster System from any mortgage, judgment, lien or encumbrance that might jeopardize the continued operation of the Cluster System, and,

WHEREAS, the Management Entity and the ADPH agree that the Cluster System property shall be held in trust to best assure compliance with the Statute and Rules.

WITNESSETH

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NOW THEREFORE, for and in consideration of the undertakings of the Canaan Systems, Inc. to provide and assure the maintenance and operation of the Cluster System as aforesaid and the further sum of One-Dollar (\$1.00.) lawful United States funds in hand paid to each of the following companies for their interest in the property herein conveyed the Community Environmental Systems, Inc. Canaan Systems, Inc. and Multi-Vest, Inc. ATIMA, do each hereby grant, bargain and convey and assign to the Trustee, solely in its capacity as the Trustee of the Trust, its rights title and interest rights in the real and personal property the subject of this conveyance including the following:

(A) All its rights, title and interest in and to the real property described in **EXHIBIT "A"**, which is attached hereto and made a part hereof.

(B) All its rights, title and interest in the components, easement, (except that the Management Entity shall have and are granted all rights in easement as are reasonable necessary to the operation of the systems) personality and realty of the Cluster System, along with all appurtenances, including but not limited to the all sewage wastewater service lines, manholes, valves, pumps, pumping stations, controls, filters and the sewage wastewater treatment facility or facilities, whether primary, secondary or discharge lines to final disposal, disposal discharge, drip field, lagoon, or other disposal components of final disposal; whether heretofore constructed or to be constructed, including all easements incident to the ownership and operation of said Cluster System (the property conveyed pursuant to (A) and (B) are herein referred to collectively as "Trust Property").

Notwithstanding the foregoing, certain contingent future interest and remainder fee interest in the Trust Property is granted hereunder to the Developer or its successors or assigns (but with their express written acceptance thereof), if such entity is still in existence and if not to the official subdivision homeowner's association (but only with their express written acceptance thereof), by whatever name if no such is in existence and only thereafter to Management Entity which contingent remainder interest (herein referred to as the "Remainder Interest") shall arise only upon the occurrence of the conditions set forth herein below.

Further, Developer hereby warrants that there are no existing judgments, encumbrances, liens, or other encumbrances to the title of the Cluster System property conveyed hereunder, unless set out herein, which if attached hereto is made a part hereof.

Developer further warrants that said judgments, encumbrances, liens or indebtedness (if any) have been subordinated to this conveyance and are subject to this indenture.

This conveyance is subject to the conditions upon the trust and for the purposes set forth herein below:

1. This grant is for the benefit of the present and future owners of all and each of the properties now or hereafter connected to the said utility system as well as the holders of the mortgages covering each of the said properties, and Trustee shall hold the title to the property granted by this indenture until either (a) the Management Entity is taken over by either a governmental authority or public utility for maintenance and operation pursuant to a forfeiture declared by the ADPH pursuant to the Statute, (b) the Management Entity or a Cluster System is purchased by either a governmental authority or public utility for maintenance and operation and the Trust assets are transferred to another trust pursuant to the sales and purchase agreement approved by the ADPH, or (c) other adequate utility service is provided either by a governmental authority or public utility through means other than the operation of the utility and facilities now transferred to the Trustee herein. Upon the happening of any of such events at a time when

Management Entity is still operating and managing the Cluster System in accordance with the terms and provisions hereof, the Trustee shall immediately recover the property to the Remainder Interest after payment to Management Entity for any un-recovered cost of subsequent management and maintenance expense expended by Management Entity in the operation of the system, and thereafter this indenture shall be of no further effect.

2. The Management Entity agrees at all times to provide for an ADPH approved sewer fee at all times for each of the properties connected to the said Cluster System, upon receipt of proper service fees, service adequate for the safe and sanitary collection, treatment, and disposal of all domestic sewage from said dwelling in accordance with the 1972 Federal Water Pollution Act, as amended, of the U.S. Environmental Protection Agency (EPA), the rules and regulations adopted thereunder, the applicable Acts and Statutes of the State of Alabama and the rules and regulations adopted thereunder, and the Operating Permit issued by ADPH or Alabama Department of Environmental Management (herein referred to as "ADEM" and jointly ADPH and ADEM are referred to as the "Departments") as each jurisdiction may appear. The Management Entity further shall operate and maintain the Cluster System so as not to pollute the ground, air or water in, under or around said properties with improperly or inadequately treated sewage or with noxious or offensive gases or odors. The Management Entity further agrees to operate the Cluster System in accordance with the requirements of Department so as to produce a treated wastewater effluent of a quality satisfactory to the Department. Records of any and all tests conducted in connection with said Cluster System shall be kept and submitted by the Management Entity, as required by the Departments, and said records shall be open to inspection during regular business hours by the Departments and the owners of the properties connected to the said Cluster System. The Departments shall at all times have access to the subject Cluster System to conduct any and all tests that the Departments shall consider necessary to determine compliance with the said requirements. In any event, the Management Entity shall conduct all tests required by operating permits issued by the Departments and shall pay all costs in connection therewith. In the event the Departments shall determine that the operation of the Cluster System does not meet all applicable requirements, the Management Entity shall, with reasonable dispatch and at sole its cost, make any adjustment, repair, installation, or improvement that shall be necessary or recommended by the Department to bring the operation of the Cluster System up to the said requirements.

3. The Management Entity shall maintain said Cluster System at all times in good order and repair so that satisfactory service as aforesaid may be supplied to each of said properties as provided herein.

4. Until the happening of one of the events set forth under Paragraph numbered 1 above, should the Management Entity fail to operate and manage the Cluster System in the manner and under the conditions specified in Paragraphs numbered 2 and 3 above and should Management Entity fail, after notice in writing from the Department with jurisdiction to correct such failure with reasonable dispatch, then Trustee shall take immediate possession of the Cluster System for the purpose of operating and maintaining the same, and shall hold, use operate, manage, and control the same either itself or by or through the Alabama Department of Public Health, for whose benefit this trust is created and it shall take possession thereof for the purpose of operating the same, and in that event, the Trustee or the entity operating the Cluster System in its behalf or in the behalf of the ADPH for the beneficiaries of this trust, and all rights of the Management Entity to levy and collect a charge against each customer shall be subordinated to the Trustee.

5. In the event the Trustee takes possession of the Cluster System pursuant to the provisions of Paragraph numbered 4, the Management Entity shall have no further right, title or interest in the Cluster System or other property granted by this indenture and shall not be entitled to any portion of the proceeds resulting from any sales of such Cluster System or property; but the Trustee shall have the right to transfer such Cluster System to an onsite management entity

or governmental authority upon such terms or conditions as may be directed and approved by the ADPH or its successor.

6. In the event the Cluster System shall no longer be needed as a functioning wastewater system under conditions which dictate it will never again function as the wastewater disposal system for the various properties it is designed to serve, the title to the components of the Cluster System including but not limited to the back up generators, Pumps collection lines tanks, and controls along with all subject real property shall, after reimbursement to Management of any un-recovered investment in the operation and maintenance of the Cluster System, the Trust Property shall revert as follows: first to the Developer or its successors or assigns (but with their express written acceptance thereof), if such entity is still in existence and if not to the official subdivision homeowner's association (but only with their express written acceptance thereof), by whatever name if no such is in existence and only thereafter to Management Entity which contingent remainder interest (herein referred to as the "Remainder Interest") shall arise only upon the occurrence of the conditions set forth herein below to which a contingent remainder interest shall inure to the benefit of.

7. The Management Entity reserves the right to levy and collect a charge for services provided to the occupants of each of the properties connected to the Cluster System as approved pursuant to the Statute.

8. If it should become necessary at any future time for the Trustee, or any entity acting on behalf of the beneficiary of the Trust Indenture, to take over and manage the Cluster System under the provisions of this trust, then and in that event, the operator of the Cluster System shall be entitled to a Trustee's fee payable from the income of the Cluster System at a rate approved by the ADPH and based on the Alabama Public Service Commission "Operating Margin" method for computing the return, or in that case, the Trustee's fee.

9. The Trustee shall not assign the operation of the Cluster System to any entity without the prior written approval of ADPH.

10. Notwithstanding anything to the contrary herein, no transfer or sale of the Trust Property, either pursuant to Paragraphs numbered 1 or 4 hereof, or otherwise, shall operate to discharge, satisfy or in any way vitiate any mortgage or security instrument securing debt. Any transferee or purchaser of the Cluster System shall be obligated to the extent such secured debt is not paid from the Cluster System sales proceeds, to pay the balance according with the terms and conditions of the secured debt security instrument.

11. If the Trustee named herein shall cease to serve as Trustee before the termination this Trust Indenture, then a successor Trustee may be selected by the Management Entity with the approval of ADPH. To insure the continuity of the maintenance and operation of the Cluster System, approval of the successor Trustee must be obtained from ADPH prior to the release of the serving Trustee. If the Management Entity and ADPH are unable to agree on a successor trustee within thirty (30) days, then the serving Trustee, the Management Entity or ADPH may petition the Circuit Court or other court of competent jurisdiction of either Montgomery County or the county in which the Cluster System is situated, or the county in which the primary Alabama office of the Management Entity is situated to select and appoint a successor Trustee.

12. If at any time there shall exist any dispute with respect to the duties or any other obligations of the Trustee hereunder, or if at any time Trustee is unable to determine, to Trustee's sole satisfaction, the proper disposition of any portion of the Trust Property or Trustee's proper actions with respect to its obligations hereunder, or if the Management Entity or the ADPH have not within thirty (30) days of furnishing by Trustee of a notice of resignation pursuant to Paragraph numbered 10 hereof approved a successor to act hereunder, then Trustee may, in its sole discretion, take either or both of the following actions:

- (a) suspend the performance of any of its obligation under this Trust Indenture agreement until such dispute shall be resolved to the sole satisfaction of Trustee or until a successor Trustee shall have been appointed, as the case may be; and/or,
- (b) petition any court designated in Paragraph numbered 10 hereof, by means of an interpleader action or any other appropriate cause, for instruction with respect to such dispute or uncertainty, and pay into, or otherwise turn over to, such court the Trust Property for holding and disposition in accordance with the instructions of such court.

13. Trustee shall have no liability to the Management Entity or ADPH with respect to such suspension of performance or disbursement into court, specifically including any liability or claimed liability that may arise, or be alleged to have arisen, out of or as a result of any delay in or with respect to any action required or requested of Trustee, and the Management Entity hereby agrees and covenants to indemnify and hold the Trustee and the ADPH harmless from any claim, suit or action arising therefrom, including but not limited to attorneys fees and court cost.

14. The Trustee shall have no liability or obligation with respect to the Trust Property except for Trustee's misconduct or gross negligence. Trustee's sole responsibility shall be for the administration of the Trust Property in accordance with the terms of this Trust Indenture agreement. Trustee shall have no implied duties or obligations and shall not be charged with knowledge or notice of any fact or circumstances not specifically set forth herein. Trustee may rely on this instrument not only as to its due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained herein, which Trustee shall in good faith believe to be true and genuine, to have been signed or presented by the person or parties purporting to sign the same and to conform to the provisions of this Trust Indenture agreement. In no event shall Trustee be liable for incidental, indirect, special, consequential or punitive damages. Trustee shall not be obligated to take any legal action or commence any proceeding in connection with the Trust Property, this Trust Indenture agreement or appear in, prosecute or defend any such legal action or proceeding. Trustee may consult legal counsel selected by Trustee in the event of any dispute or question as to the construction of any of the provisions hereof, or of any other agreement or of Trustee's duties hereunder, and shall incur no liability and shall be fully protected from any liability whatsoever in acting in accordance with the opinion or instruction of such counsel. Management Entity shall promptly pay, upon demand, the reasonable fees and expenses of any such counsel.

15. From and at all times after the date of this Trust Indenture, Management Entity shall, to the fullest extent permitted by law and to the extent provided herein, indemnify and hold harmless Trustee and each director, officer, employee, attorney, agent, and affiliate of Trustee (collectively herein referred to as the "Indemnified Parties") against any and all actions, claims (whether valid or not), losses, damages, liabilities, cost and expenses of any kind or nature whatsoever, including without limitation reasonable attorney's fees, court cost and expenses, incurred by or asserted against any of the Indemnified Parties from and after the date hereof, whether direct, indirect or consequential as a result of or arising from or in any way relating to any claim, demand, suit, action or proceeding, whether threatened or initiated, including any inquiry or investigation by any person, asserting a claim for any legal or equitable remedy against any person under any statute or regulation, including but not limited to any federal or state security laws or regulations, or under any common law or equitable cause or otherwise arising from or in connection with negotiation, preparation, execution, performance or failure of performance of this Trust Indenture agreement or any transaction contemplated herein, whether or not any such Indemnified Party is a party to the action, proceeding, suit or the target of any such inquiry or investigation; provided, however, that no Indemnified Party shall have the right to be indemnified hereunder for any liability finally determined by a court of competent jurisdiction, subject to no further appeal, to have resulted solely from the gross negligence or willful misconduct of such Indemnified Party. Such Indemnified Party shall promptly notify Management Entity in writing, and Management Entity shall assume the defense thereof, including the employment of counsel and the payment of all expenses. Such Indemnified Party shall, in its sole discretion, have the right to employ separate counsel in any such action and to participate in the defense thereof, and

the fees and expenses of such counsel shall be paid by such Indemnified Party unless (a) Management Entity agrees to pay such fees and expenses, or (b) Management Entity shall fail to assume the defense of such action or proceeding or shall fail, in the reasonable discretion of such Indemnified Party, to employ counsel satisfactory to the Indemnified Party in any such action or proceeding, or (c) the named parties to any such action or proceeding includes both Indemnified Party or the Management Entity, and Indemnified Party shall have been advised by counsel that there may be one or more legal defenses available to it which are different from or additional to those available to Management Entity. All such fees and expenses payable by Management Entity pursuant to the foregoing sentence shall be paid from time to time as incurred, both in advance of and after the final disposition of such action or claim. All of the foregoing losses, damages, cost and expenses of the Indemnified Party shall be payable by management Entity upon demand by such Indemnified Party. The obligations of Management Entity under this Paragraph numbered 14 shall survive any termination of this Trust Indenture agreement and the resignation or removal of Trustee.

16. Trustee shall have no personal liability to Management Entity or ADPH or in connection with Trustee's duties and responsibilities hereunder. Any claims against Trustee shall be satisfied solely from the Trust property and not from the personal assets of Trustee. Nothing herein shall obligate Trustee to pay any of the secured or unsecured debts of the Cluster System or the Management Entity.

17. Whenever the words "Management Entity" occurs herein, it shall includes its successors, assigns, affiliates, or subsidiaries; and whenever the word "Trustee" occurs herein, it shall include any successors, assigns, affiliates or subsidiaries of the Trustee and the successor Trustee, its successors, assigns, affiliates, or subsidiaries.

18. The grantor warrants the Trust Property, as well as all equipment, materials tools, appurtenances, etc. associated with the normal daily operation and maintenance of the Cluster System hereafter acquired by management Entity, shall be made a subject to this Trust Indenture by recording of appropriate covenants, reservations, restrictions, or conditions in such a manner as is required by Alabama law to put all persons on notice that such properties have been subjected to the terms of this Trust Indenture.

19. Should a court of competent jurisdiction deem any provision of this Agreement unenforceable, that determination will not affect the enforceability of the remaining portions.

20. This Agreement shall be binding upon the Management Entity and the Trustee, and their respective heirs, executors, personal representative's successors, assigns, affiliates, or subsidiaries.

21. The use of one gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular, all as may be appropriate to the context in which they are used.

22. This contract states the entire agreement between the parties and merges in this Agreement all statements, representations and covenants heretofore made, and any other agreements not incorporated herein are void and of no force and effect.

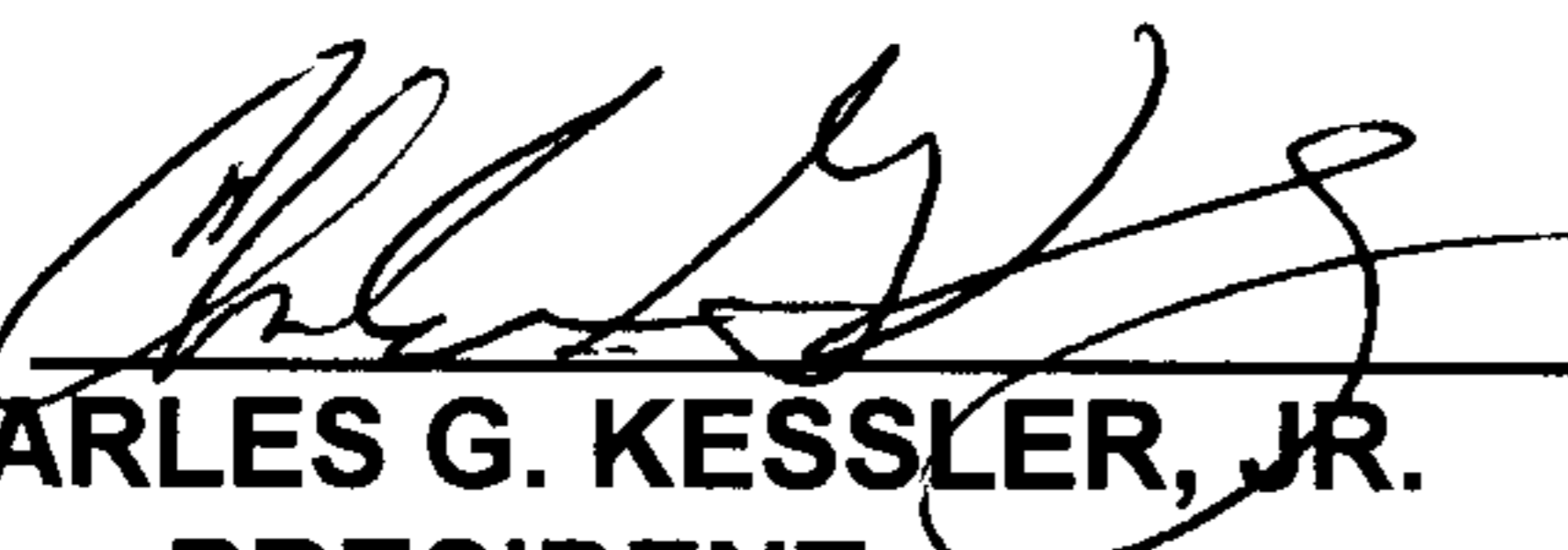
TO HAVE AND TO HOLD, all and singular the Trust Property unto Trustee, its successors and assigns forever; and Management Entity does hereby bind itself and its successors and assigns to warrant and forever defend all and singular the Trust Property unto the Trustee, its successors and assigns, from and against itself and its successors, lawfully claiming, or to claim the same, or any part thereof.

IN WITNESS WHEREOF, the duly authorized undersigned officers of each of the following MULTI-VEST, INC., COMMUNITY ENVIRONMENTAL SYSTEM, INC, and, CANAAN

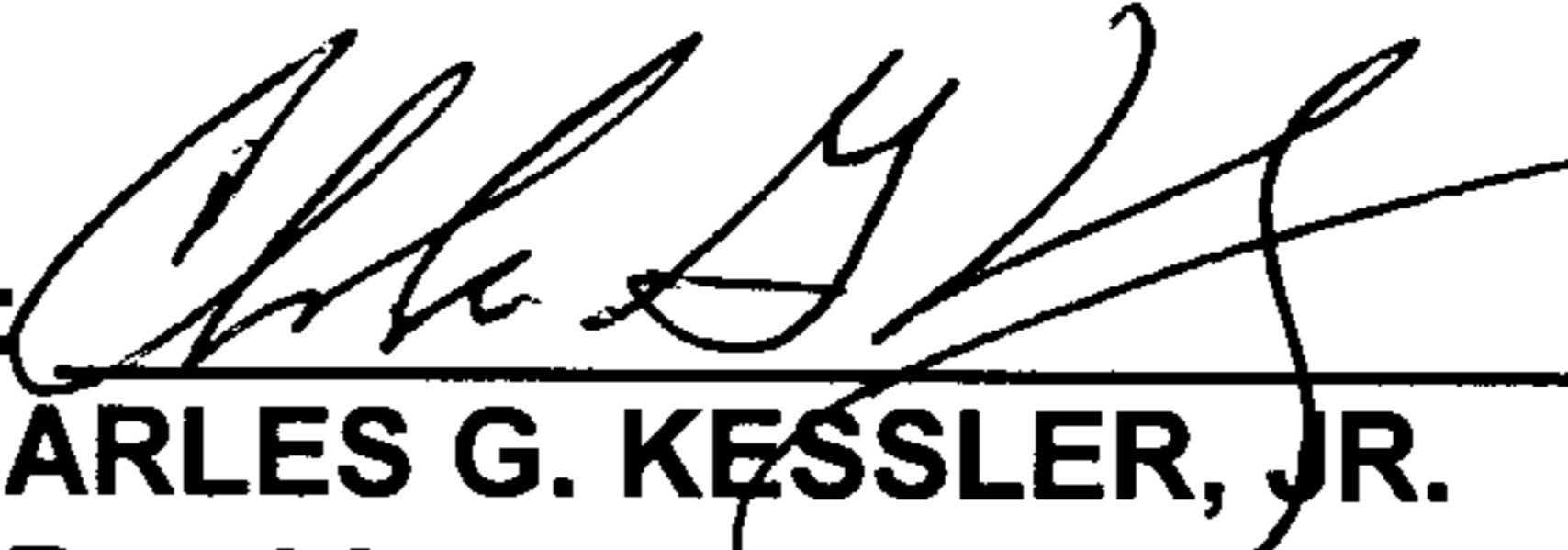


SYSTEMS, INC. have executed this Trust Indenture on this the 15th day of April, 2009. In entering into the agreements contained herein and executing the Trust Indenture, Kevin Ulch acts as Trustee of Onsite Wastewater Management Entity Asset Holding Foundation, Inc. and as representative of and by the authority of all persons, firms, government agencies, corporations or entities which are or may be beneficiaries under the trust hereby created.

DEVELOPER:
MULTI-VEST, INC.

By: 
CHARLES G. KESSLER, JR.
Its: **PRESIDENT**


FORMER UTILITY
COMMUNITY ENVIRONMENTAL

By: 
CHARLES G. KESSLER, JR.
Its: **President**

MANAGEMENT ENTITY:
CANAAN SYSTEMS, INC.

By: 
BOB R. GUTHRIE
Its: **PRESIDENT**

TRUSTEE:
ONSITE WASTEWATER
MANAGEMENT ENTITY
ASSET HOLDING FOUNDATION,
INC.


By: 
KEVIN ULCH,
Its: **CHAIRMAN OF TRUSTEE**

ACKNOWLEDGMENTS

STATE OF ALABAMA)
COUNTY OF Jefferson)

I, Donald N. Guthrie, the undersigned, a Notary Public in and for said County in said State, hereby certify that **CHARLES G. KESSLER, JR.**, whose name is signed to the foregoing instrument, as President of **MULTI-VEST, INC.** and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 15th day of April, 2009.





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Notary Public

My Commission Expires: 11/22/2013

STATE OF ALABAMA)
 COUNTY OF Jefferson)

I, Donald N. Guthrie, the undersigned, a Notary Public in and for said County in said State, hereby certify that **CHARLES G. KESSLER, JR.**, whose name is signed to the foregoing instrument, as President of **COMMUNITY ENVIRONMENTAL SYSTEMS, INC.** and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 15th day of April, 2009.

Notary Public

My Commission Expires: 11/22/2013

STATE OF ALABAMA)
 COUNTY OF Jefferson)


I, Donald N. Guthrie, the undersigned, a Notary Public in and for said County in said State, hereby certify that **BOB R. GUTHRIE**, whose name is signed to the foregoing instrument, as President of **CANAAN SYSTEMS, INC.** and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 15th day of April, 2009.

Notary Public

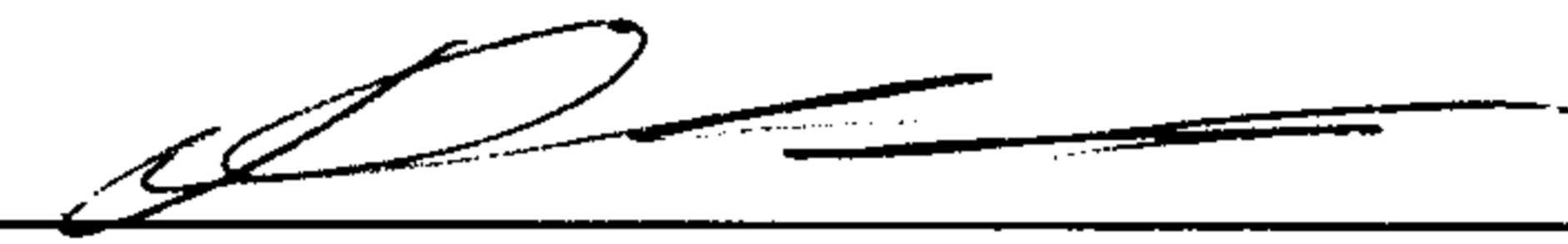
My Commission Expires: 11/22/2013

STATE OF ALABAMA)
COUNTY OF JEFFERSON)


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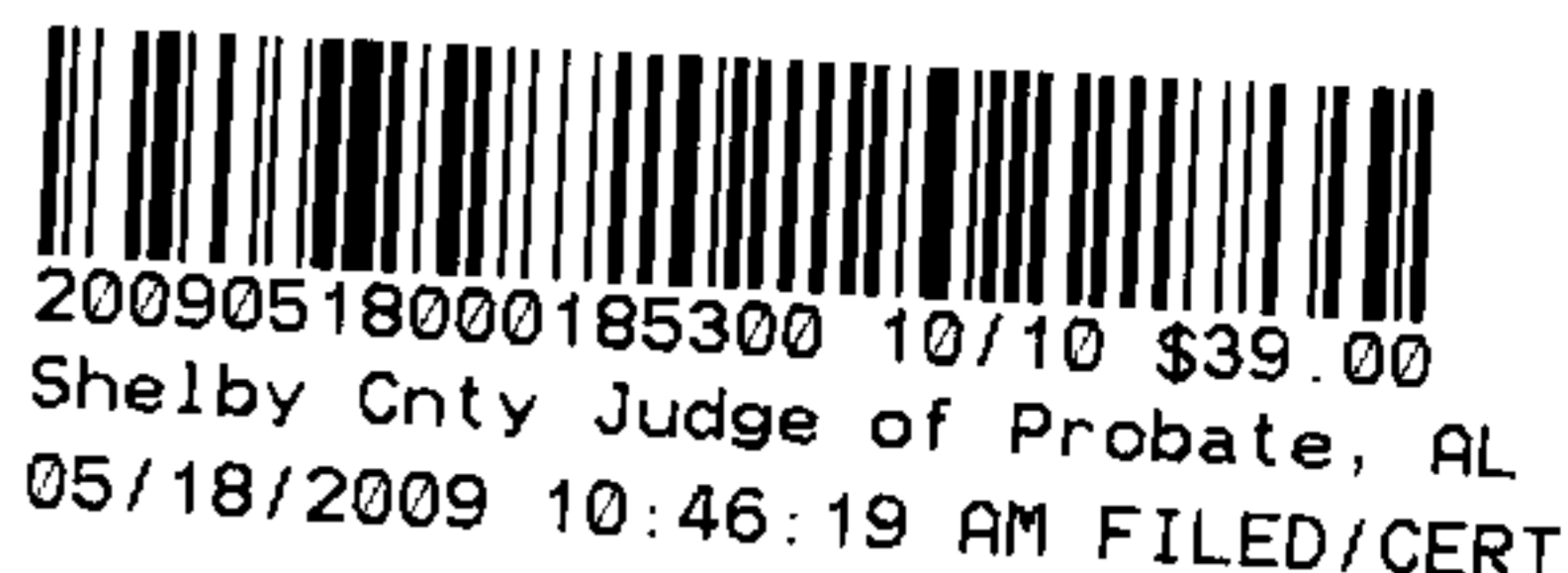
I, Donald N. Guthrie, the undersigned, a Notary Public in and for said County in said State, hereby certify that **KEVIN ULCH**, whose name is signed to the foregoing instrument, as CHAIRMAN OF TRUSTEES of **ONSITE WASTEWATER MANAGEMENT ENTITY ASSET HOLDING FOUNDATION, INC.** and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 15th day of April, 2009.



Notary Public
My Commission Expires: 11/22/09

EXHIBIT "A"
LEGAL DESCRIPTION



State of Alabama)
Shelby County)

Commence at the Northeast Corner of the Northeast Quarter of the Northwest Quarter of Section 20, Township 19 South, Range 2 West, thence South 88°38'14" East a distance of 12.38 feet to the Point of Beginning; thence South 88°38'14" East a distance of 332.28' to a point; thence South 02°20'41" East a distance of 451.70' to a point; thence South 77°37'09" West a distance of 98.93' to a point ; thence North 24°52'31" West a distance of 60.71' to a point; thence North 15°04'29" West a distance of 45.83' to a point; thence North 27°23'45" East a distance of 60.49' to a point; thence North 20°18'18" East a distance of 139.00' to a point; thence North 42°36'40" West a distance of 78.91' to a point; thence South 85°42'46" West a distance of 195.31' to a point; thence North 71°08'04" West a distance of 67.86' to a point; thence North 08°31'60" East a distance of 133.10' to the Point of Beginning. The herein described real property being in Shelby County, Alabama and containing 78,954.57 square feet or 1.81 acres more or less.