

OFFICIAL
EXHIBITS

IURC
~~POB00006~~ IURC
EXHIBIT NO. 2
1-15-19 AT
DATE REPORTER

Cause No. 45144

IURC Exhibit 2

FILED

NOV 19 2018

STATE of INDIANA



INDIANA UTILITY
REGULATORY COMMISSION

INDIANA UTILITY REGULATORY COMMISSION
101 WEST WASHINGTON STREET, SUITE 1500 EAST
INDIANAPOLIS, INDIANA 46204-3419

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APPEAL BY VILLAGE GREEN OF THE)
CONSUMER AFFAIRS DECISION IN)
COMPLAINTS 123364, 123365, 123367,) CAUSE NO. 45144
AND 123394 CONCERNING THE BILLING)
OF WATER AND SEWER SERVICES.)

You are hereby notified that on this date the Indiana Utility Regulatory Commission ("Commission") has caused the following entry to be made:

Pursuant to 170 IAC 1-1.1-21(h) and 170 IAC 16-1-6(c), the Presiding Officers advise the parties of their intent to take administrative notice of the Settlement Agreement entered into by and between Village Green Mishawaka Holdings, LLC ("Village Green") and Mishawaka Utilities on April 26, 2018.

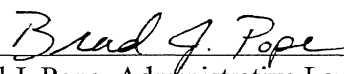
On June 14, 2018, following a June 11, 2018 Hearing on the matter, Judge John Broden of the St. Joseph Circuit Court denied Village Green's May 2, 2018 Motion for Protective Order in Village Green Mishawaka Holdings LLC v. Mishawaka Utilities, Case No. 71C01-1708-PL-000276. In the June 14, 2018 Order, Judge Broden found that the record did not support Village Green's contention that the Settlement Agreement should be protected under Trial Rule 24(C) nor that the documents in question are trade secret or proprietary information. Judge Broden also found that the general public should be able to view the Settlement Agreement as intended by the Indiana Access to Public Records Act.

The Presiding Officers, having reviewed the attached Settlement Agreement made publicly available by the South Bend Tribune on June 16, 2018, determine that it is relevant to the above-captioned proceeding and advise the parties of their intent to take administrative notice of it.

IT IS SO ORDERED.



David L. Ober, Commissioner



Brad J. Pope, Administrative Law Judge

November 19, 2018

Date

CONFIDENTIAL – FOR SETTLEMENT PURPOSES ONLY

**AGREEMENT REGARDING UTILITIES AT VILLAGE GREEN MOBILE HOME
PARK**

THIS AGREEMENT is entered into between Village Green Mishawaka Holdings, LLC (“VG”) and Mishawaka Utilities (“MU”). VG and MU may hereinafter be collectively referred to as the “Parties.”

The parties agree to the following:

1. VG agrees to pay MU \$150,824.18, by wire to MU’s bank by 12:00 PM EDT on April 30, 2018 (the “Initial Payment”). This represents the amounts due and owing through March 22, 2018 for water (\$102,320.77) and electric (\$48,503.41) services, combined. Upon receipt of the Initial Payment, MU hereby agrees to acknowledge that VG will no longer have any past due water or electric charges as of date of Initial Payment.

2. If MU does not receive payment of \$150,824.18 by 12:00 PM EDT on April 30, 2018, water service to Village Green Mobile Home Park in Mishawaka, Indiana will be discontinued on May 1, 2018.

3. Within twenty-four (24) business hours of receipt of \$150,824.18 on or before 12:00 PM EDT on April 30, 2018, MU will restore electric service to all electric accounts in the name of VG.

4. VG shall pay the remaining balance (\$17,073.37) of its utility invoice from MU dated 04/02/2018 (original total \$35,024.08) on or before 12:00 PM EDT on April 30, 2018. A payment of \$11,843.25 was paid by wire on April 19, 2018, and a payment of \$6,107.46 was paid by wire on April 25, 2018.

5. VG shall pay all subsequent utility invoices from MU, in their entirety, on or before their due dates. MU hereby acknowledges that VG shall retain the right to remit payment on any subsequent utility invoice in one or more payments. More specifically, VG shall have the right to remit payments for water, sewer and trash in separate wire transfers so long as the total amount due is received prior to the due date.

6. VG shall pay the remaining past due balance (after payments made in paragraphs 1 and 4 above) of \$172,782.52 in the following installments (the “Installment Payments”):

(1) \$57,594.18 due June 15, 2018

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(2) \$57,594.17 due July 16, 2018

(3) \$57,594.17 due August 15, 2018

VG shall be entitled to a one (1) business day cure period in the event any of the above payments are not received upon the agreed upon due dates.

7. Following the full completion of the Installment Payments, MU does hereby attest that it shall release the current sewer lien or any future amended sewer liens that MU has placed on the property. MU shall cooperate in the execution of any documents necessary to complete the release of the lien and shall be responsible for the recordation of the lien release.

8. Should VG sell the property at any time prior to August 15, 2018, VG shall pay any remaining past due balance, less the amount of any sewage lien duly recorded as of the date of sale in the office of the Recorder of St. Joseph County, Indiana. In the event of sale, MU hereby acknowledges that it shall cooperate in the execution of any documents necessary to complete the release of the lien and shall be responsible for the recordation of the lien release.

9. All payments shall be made by wire to MU's bank according to instructions previously provided to VG.

10. Failure by VG to make any of the Installment Payments, in their entirety, on or before the established deadlines shall subject VG to shutoff of water service to Village Green Mobile Home Park.

11. Confidentiality. Notwithstanding anything to the contrary contained in this Agreement, and subject only to any disclosure requirements which may be imposed upon the Parties under applicable state or federal laws, it is expressly understood and agreed by the Parties that: (a) this Agreement, any schedules, exhibits, conversations, negotiations and transactions relating hereto and/or contemplated hereby; and (b) all financial information, business records and other non-public information concerning the Parties which any of the Parties or their respective representatives has received or may hereafter receive, shall be maintained in the strictest confidence by the parties and their respective representatives, and shall not be disclosed to any person that is not associated or affiliated with any of the parties and involved in the transactions contemplated hereby, without the prior written approval of Parties, as applicable. The Parties hereto shall use their best efforts to avoid disclosure of any of the foregoing or undue disruption of any of the business operations or personnel of the Parties. Except for information generally available to the public, in the event that the transactions contemplated hereby shall not be

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consummated for any reason, each of the Parties covenants and agrees that neither it nor its representatives shall retain any documents, lists or other writings which they may have received or obtained in connection herewith or any documents incorporating any of the information contained in any of the same (all of which, and all copies thereof in the possession or control of themselves or their representatives, shall be returned to the original source of the material at issue or destroyed, if certified as to such destruction by an officer of such party).

12. Non-Disparagement. The Parties mutually agree to forbear from making, causing to be made, publishing, ratifying or endorsing any and all disparaging remarks, derogatory statements or comments made to any party with respect to either of them. Further, the Parties hereto agree to forbear from making any public or non-confidential statements with respect to any claims or complaints against either Party. The parties agree and acknowledge that this non-disparagement provision is a material term of this Agreement.

13. This agreement contains all of the agreements of the parties, and no oral agreements of any kind shall be binding upon the parties.

14. This agreement shall be binding upon the parties hereto, their officers, agents, employees, and successors in interest.

VILLAGE GREEN MISHAWAKA HOLDINGS, LLC

BY: 

Authorized agent for Village Green

Marissa Welner

Printed name

DATE: April 26, 2018

MISHAWAKA UTILITIES

BY: 

Jim Schrader, General Manager

DATE: April 26, 2018