

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the matter of the application of West Elm )  
Place Corporation for permission, approval, )  
and a certificate of convenience and necessity )  
authorizing it to construct, install, own, )  
operate, control, manage and maintain a sewer )  
system for the public in a portion of )  
Jefferson County, Missouri, and inside the )  
corporate limits of the city of Arnold by )  
expanding its existing certificated area )  
through a 60-foot wide corridor approximately )  
1200 feet in length. )

Case No. SA-93-331

APPEARANCES: Gary W. Duffy, Brydon, Swearngen and England, P.O. Box 456,  
312 East Capitol Avenue, Jefferson City, MO 65102, Attorney  
for West Elm Place Corporation.

William K. Haas, Assistant General Counsel, P.O. Box 360,  
Jefferson City, MO 65102, attorney for Staff of the Missouri  
Public Service Commission.

HEARING  
EXAMINER: Joseph A. Derque, III

REPORT AND ORDER

Procedural History

On May 26, 1993, West Elm Place Corporation (WEPC), initiated this docket by filing an application with the Commission requesting a certificate of convenience and necessity to construct, install, own, and operate a sewer system along a 60-foot wide corridor outside its current certificated area. On June 2, 1993, the Commission issued an order providing for appropriate notice and intervention by proper parties. On July 9, 1993, intervention was granted to Grace and Gale Powell and Jim Riddle, property owners along the proposed 60-foot corridor.

As the result of a prehearing conference held July 23, 1993, and subsequent negotiations, a motion to establish a procedural schedule was filed by WEPC on December 16, 1993, and this matter was finally heard and submitted to the Commission on March 7, 1994.

### Motions

At the evidentiary hearing, counsel for WEPC moved to dismiss the intervenors from the case as both intervenors failed to appear. No good cause was proffered by either of the intervenors as to why they failed to appear at the hearing. No request for continuance was made by either intervenor.

In accordance with 4 CSR 240-2.110(6), the Commission will grant the motion of WEPC and dismiss the applications to intervene of Gale and Grace Powell and Jim Riddle.

### Findings of Fact

WEPC is a corporation duly organized and existing under the laws of the State of Missouri, with its principle office and place of business at P.O. Box 456, Arnold, Missouri. WEPC is a public utility under the jurisdiction and regulation of the Commission, currently engaged in the provision of sanitary sewer service, with its service area located in parts of unincorporated Jefferson County, Missouri.

WEPC requests a certificate of convenience and necessity, pursuant to Section 393.170, RSMo. 1986, to construct an extension to its existing sewer system extending a distance of approximately 1400 feet within a 60-foot wide corridor located generally within the corporate limits of the City of Arnold, Missouri. The proposed extension extends from WEPC's existing western boundary of its Pomme Creek service area to a point inside the city limits of Arnold. The purpose of the extension is to allow for the construction of a sewer main from WEPC's certified service area to the system presently being operated by the City of Arnold, allowing WEPC to use the City of Arnold's waste treatment facilities.

In her testimony, the witness for WEPC stated that a feasibility study was made concurrent with Case No. SA-90-74 in which the proposed project was studied. The witness stated that the proposed project was the most economical and reasonable available. Testimony indicated that, without a connection to the treatment facilities of the City of Arnold, it would be

necessary for WEPC to construct its own waste treatment facilities. In addition, as the present sewer system is operated as a gravity flow system, an alternate route for the connection would likely involve the additional construction of lift stations and pumps to transport the waste. The witness stated that the proposed route was ideal in that it follows a creek and flows downhill into the City of Arnold's manhole without the need for more expensive installations.

The Staff presented evidence through the testimony of witness Martin Hummel which is corroborative of the evidence offered by WEPC. Witness Hummel stated that the proposal to connect with the City of Arnold was a sound one based on both economics and aesthetics. The transfer of waste to the City of Arnold for treatment was recommended as being preferable to the construction of a treatment facility in the WEPC service area. In addition, it was the opinion of the witness that the proposed location was a good one as it follows the natural drainage of the watershed. Witness Hummel recommended the certificate be granted.

The issue presented to the Commission for decision in this matter is whether the proposed project is necessary or convenient for the public service (See RSMo 393.170(3), 1986). The Commission finds that the evidence presented by both the Staff and WEPC is in agreement in that the proposed project, including the use of a 60-foot corridor as set out in WEPC's application, and the location of the proposed transfer sewer along the watershed of Pomme Creek, is the most economical, efficient, and aesthetic method of treating and disposing of the waste carried by the WEPC system. No contradictory evidence has been presented on the record.

The Commission, therefore, finds that the proposed transfer sewer project, as requested by WEPC in its application and attachments, incorporated herein by reference as Attachment A, is necessary and convenient for the public service and the requested certificate of convenience and necessity will therefore be approved.

### Conclusions of Law

The Commission has arrived at the following conclusions of law:

WEPC is a public utility engaged in the provision of sanitary sewer service in the State of Missouri and, therefore, subject generally to the jurisdiction of the Commission pursuant to Chapter 393, RSMo (Cum Supp. 1992).

In regard to the request by WEPC for a certificate of convenience and necessity, the Commission finds that such a certificate may be issued by the Commission upon a finding that the proposed project is necessary or convenient for the public service pursuant to Section 393.170(3) RSMo. 1986.

The Commission finds that, in accordance with the Code of State Regulations, Rule 4 CSR 240-2.110(6), it may dismiss the application of a party for failure to appear at a hearing without securing a continuance or without a showing of good cause.

#### IT IS THEREFORE ORDERED:

1. That the application for a certificate of convenience and necessity made by West Elm Place Corporation on May 26, 1993, is hereby granted for the specific purposes as set out in that application and attachments.

2. That, as the result of their failure to appear at the scheduled evidentiary hearing in this matter, the applications to intervene of Gale and Grace Powell and Jim Riddle are hereby dismissed.

3. That this order shall become effective on March 29, 1994.

BY THE COMMISSION



David L. Rauch  
Executive Secretary

(S E A L)

Mueller, Chm., McClure,  
Kincheloe and Crumpton, CC., Concur.  
Perkins, C., Absent.

Dated at Jefferson City, Missouri,  
on this 18th day of March, 1994.

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the matter of the application )  
of West Elm Place Corporation )  
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necessity authorizing it to )  
construct, install, own, operate, )  
control, manage and maintain a )  
sewer system for the public in a )  
portion of Jefferson County, )  
Missouri, and inside the corporate )  
limits of the City of Arnold by )  
expanding its existing certificated )  
area through a 60-foot wide )  
corridor approximately 1200 feet )  
in length. )

Case No. SA-93-331

FILED

MAY 26 1993

MISSOURI  
PUBLIC SERVICE COMMISSION

APPLICATION

Comes now West Elm Place Corporation ("Applicant"), pursuant to section 393.170 RSMo 1986 and 4 CSR 240-2.060, and for its application in this matter states as follows:

1. That Applicant is a corporation duly organized and existing under the laws of the State of Missouri with its principal office and place of business located at P.O. Box 456, Arnold, Missouri 63010-0456. It is a public utility under the jurisdiction of the Missouri Public Service Commission. By this application, Applicant seeks to provide regulated sewer service within a 60-foot wide corridor for a length of approximately 1,400 feet. The corridor extends from the existing westerly boundary of its Pomme Creek service area to a point inside the city limits of Arnold where the city's sewer manhole number 61 is located. The purpose of the extension through the corridor is to allow for the construction of a sewer main from West Elm's presently certificated area to the City of Arnold so that the City of Arnold's treatment

facilities may be utilized by Applicant.

2. That Applicant has been operating under the jurisdiction of this Commission since 1969, having received certificates in Case Nos. 16,489, 17,456, and SA-90-74, and as such requests a waiver of the requirement to file a certified copy of its Articles of Incorporation.

3. That a certified copy of a certificate of good standing of Applicant from the Office of the Secretary of State is attached hereto, incorporated herein by reference, and marked as Appendix A.

4. That all communications, correspondence and pleadings in regard to this Application should be directed to:

Mr. Lois L. Smith, President  
West Elm Place Corporation  
P.O. Box 456  
Arnold, Missouri 63010-0456  
(314) 464-0316

Gary W. Duffy, Attorney at Law  
Brydon, Swearingen & England P.C.  
312 East Capitol Avenue  
P.O. Box 456  
Jefferson City, Missouri 65102  
(314) 635-7166

5. That a metes and bounds description of the proposed service territory is attached and marked Appendix B.

6. That a plat showing the location and extent of the 60 foot corridor and its relationship to the existing Pomme Creek service area is attached and marked Appendix C.

7. That there is no separate "feasibility study" for this particular corridor attached to this application for the reason that its feasibility was an integral part of the feasibility study which was filed in Case No. SA-90-74 and the particulars on construction of a sewer line in this corridor were presented

therein as a part of that area certificate case. The reason for the corridor is to allow the placement of a sewer main which will connect Applicant's existing certificated area with the City of Arnold's system at an existing manhole owned by the City. A sewer main in this corridor was an underlying assumption in Case No. SA-90-74. Therefore, Applicant incorporates the feasibility study from that proceeding by reference herein.

8. Applicant has obtained the necessary municipal consents. A copy of the franchise ordinance is attached and marked Appendix D.

9. There are only three landowners affected by the requested application. Their names and addresses are:

Jim Riddle  
1985 Pomme Road  
Arnold, Missouri 63010

Alfred H. Geitz  
2139 Big Bill Road  
Arnold, Missouri 63010

Oreal Glatt  
2353 Big Bill Road  
Arnold, Missouri 63010

10. Applicant proposes to provide central sewer service in the corridor. Applicant is not aware of any other utility that provides that particular service within the area sought to be certificated.

11. The granting of this application is in the public interest in order to provide the advantages of central sewer service to the public as contemplated in Case No. SA-90-74. Applicant proposes to apply the same rates, charges, and rules and

regulations to the corridor as are presently applicable in the remainder of its service territory.

WHEREFORE, Applicant requests an order from the Commission granting it a certificate of public convenience and necessity for the services and area described herein.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Gary W. Duffy", is written over a horizontal line.

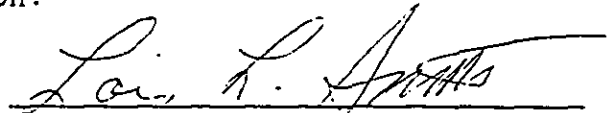
Gary W. Duffy  
BRYDON, SWEARENGEN & ENGLAND P. C.  
312 East Capitol Avenue  
P. O. Box 456  
Jefferson City, MO 65102-0456  
314/635-7166

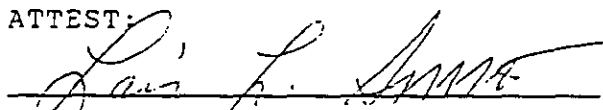


VERIFICATION

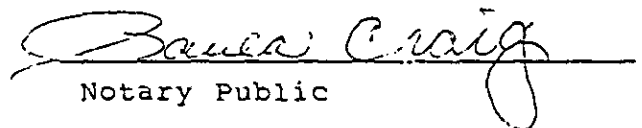
STATE OF MISSOURI     )  
                              ) ss  
COUNTY OF JEFFERSON )

On the 18<sup>th</sup> day of May, 1993, before me appeared Lois L. Smith, to me personally known, who, being by me first duly sworn, states that he is the president of West Elm Place Corporation and acknowledged that he had read the above and foregoing document and believes that the allegations therein are true and correct to the best of his information, knowledge and belief; that the above designated attorneys are authorized to file said application on behalf of West Elm Place Corporation; that he is aware of the provision appearing in Section 393.170 of the Revised Statutes of Missouri which states: "Before such certificate shall be issued a certified copy of the charter of the corporation shall be filed in the office of the Commission, together with a verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities"; that West Elm Place Corporation has received the required consent of the proper municipal authorities, as evidenced by the attachments to the application.

  
LOIS L. SMITH, President

ATTEST:  
  
Secretary, West Elm Place Corporation

Subscribed and sworn to before me this 18<sup>th</sup> day of May 1993.

  
Notary Public

My Commission expires:  
May 27, 1994

PAULA CRAIG, NOTARY PUBLIC  
State of Missouri, Jefferson County  
My Commission Expires May 27, 1994

# STATE OF MISSOURI



Judith K. Moriarty

SECRETARY OF STATE

CORPORATION DIVISION

## CERTIFICATE OF CORPORATE GOOD STANDING

I, JUDITH K. MORIARTY, SECRETARY OF STATE OF THE STATE OF MISSOURI, DO HEREBY CERTIFY THAT THE RECORDS IN MY OFFICE AND IN MY CARE AND CUSTODY REVEAL THAT  
WEST ELM PLACE CORPORATION

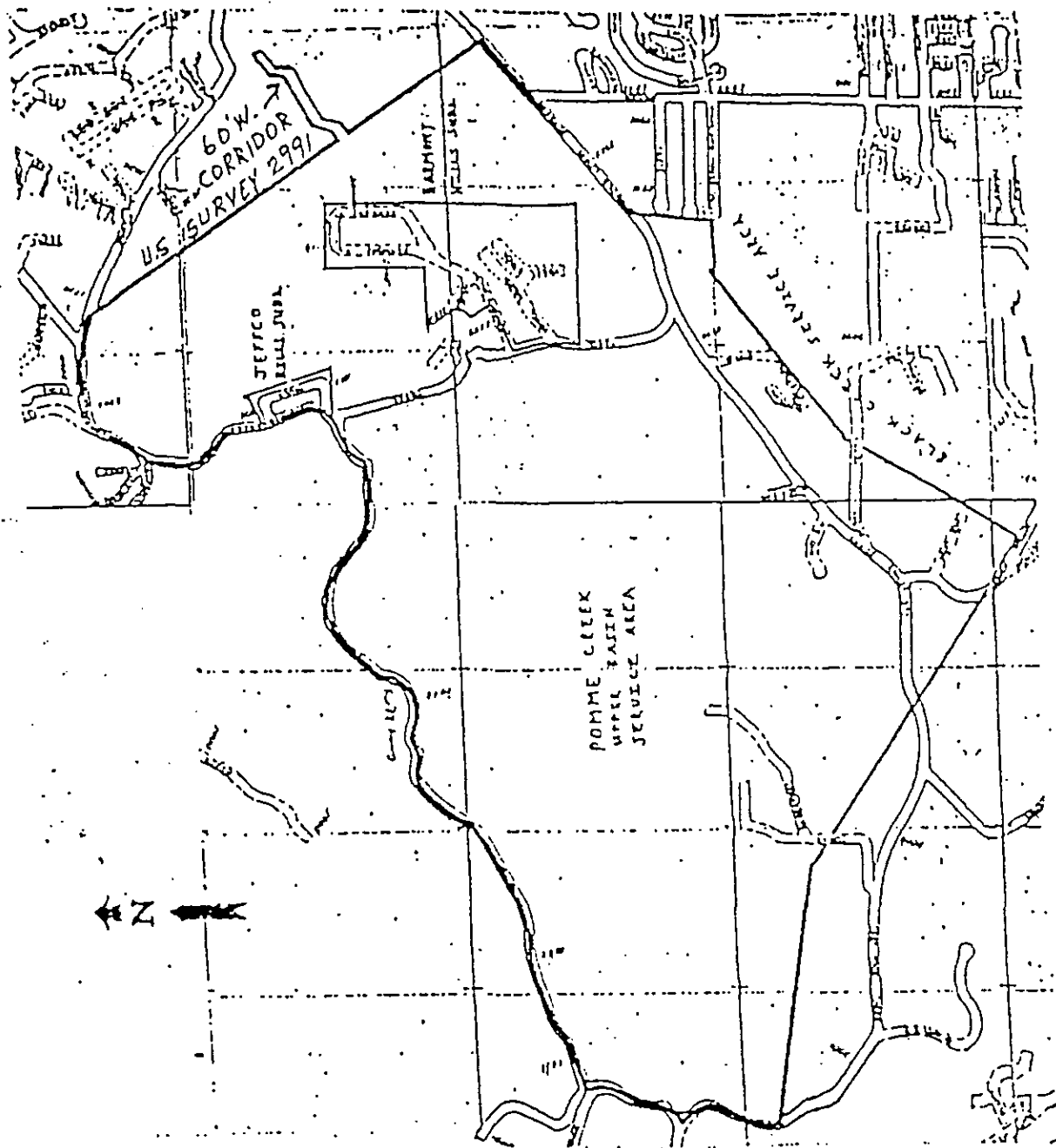
WAS INCORPORATED UNDER THE LAWS OF THIS STATE ON THE 24TH DAY OF AUGUST, 1966, AND IS IN GOOD STANDING, HAVING FULLY COMPLIED WITH ALL REQUIREMENTS OF THIS OFFICE.

IN TESTIMONY WHEREOF, I HAVE SET MY HAND AND IMPRINTED THE GREAT SEAL OF THE STATE OF MISSOURI, ON THIS, THE 24TH DAY OF MAY, 1993.

*Judith K. Moriarty*  
Secretary of State



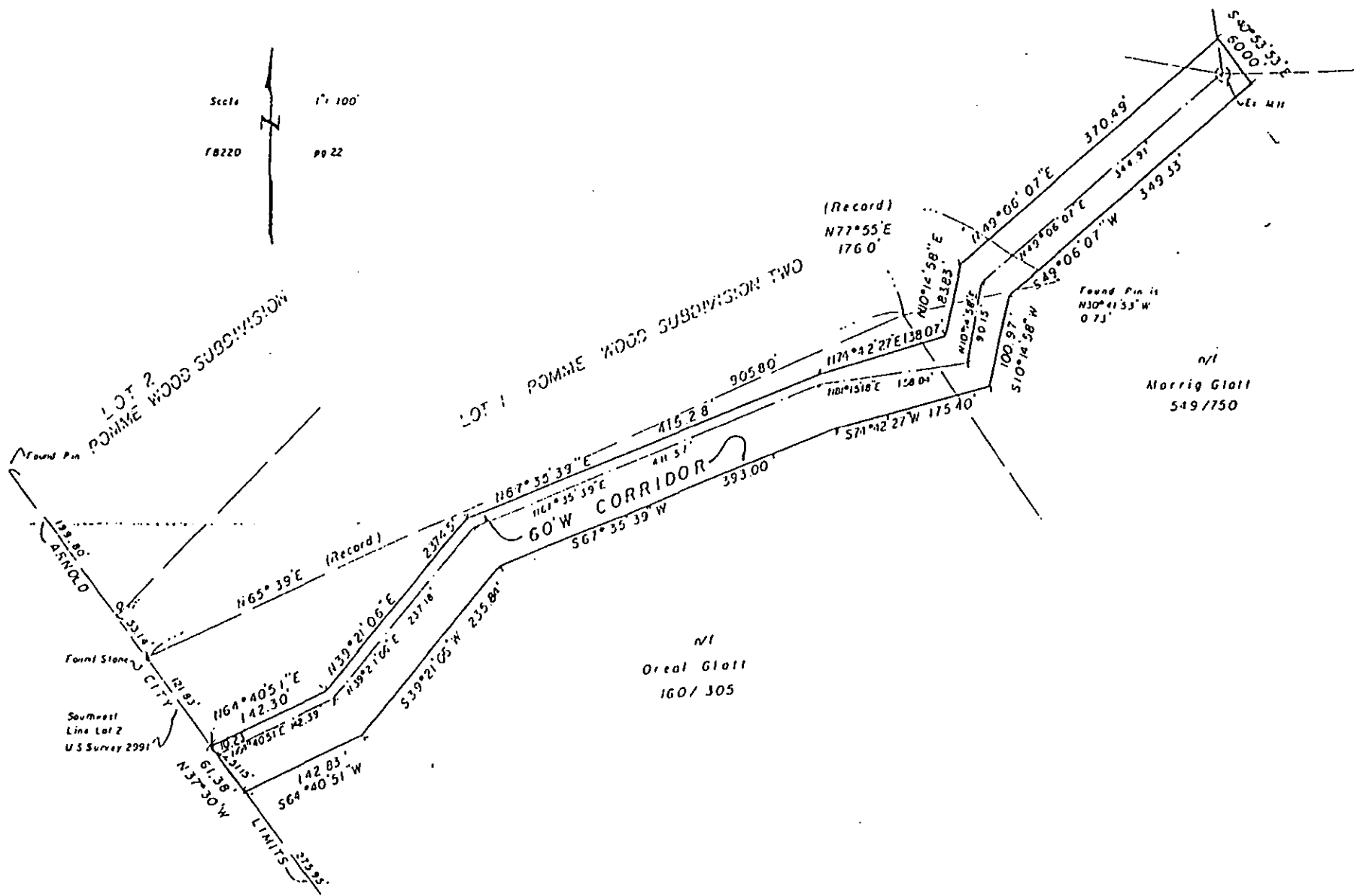
A sixty foot wide corridor across a portion of lot 2 of U.S. Survey 2991, Township 43 North, Range 5 East, Jefferson County, Missouri, said corridor being described as follows: Beginning at a point on the South West line of the aforementioned lot 2, said point being South 37 degrees 30 minutes East 121.83 feet from the most Southern corner of lot 1 of POMME WOOD SUBD. TWO, a subdivision filed for record in Plat Book 48 Page 20 of the Jefferson County Land Records, thence leaving said South West line and running along the Northern line of said corridor the following courses and distances North 64 degrees 40 minutes 51 seconds East 142.30 feet to an angle point, thence North 39 degrees 21 minutes 06 seconds East 237.45 feet to an angle point, thence North 67 degrees 35 minutes 39 seconds East 415.28 feet to an angle point, thence North 74 degrees 42 minutes 27 seconds East 138.07 feet to an angle point, thence North 10 degrees 14 minutes 58 seconds East 83.83 feet to an angle point, thence North 49 degrees 06 minutes 07 seconds East 370.49 feet to an angle point, thence leaving said Northern side of said easement South 40 degrees 53 minutes 53 seconds East 60 feet to a point on the Southern line of said sixty foot corridor, thence along said line the following courses and distances South 49 degrees 06 minutes 07 seconds West 349.33 feet to an angle point, thence South 10 degrees 14 minutes 58 seconds West 100.97 feet to an angle point, thence South 74 degrees 42 minutes 27 seconds West 175.40 feet to an angle point, thence South 67 degrees 35 minutes 39 seconds West 393.00 feet to an angle point, thence South 39 degrees 21 minutes 06 seconds West 235.84 feet to an angle point, thence South 64 degrees 40 minutes 51 seconds West 142.83 feet to a point in the South West line of the aforementioned lot 2, thence along said line North 37 degrees 30 minutes West 61.38 feet to the point of beginning.



- \* Indicates new rate or text
- + Indicates change

A 60'W CORRIDOR ACROSS PART LOT 2  
 U.S. SURVEY 2991, TOWNSHIP 43 NORTH, RANGE 5 EAST  
 Jefferson County, Missouri

Scale 1" = 100'  
 18220 pg 22



N/I  
 Oreal Glatt  
 160 / 305

N/I  
 Morrig Glatt  
 549 / 750

BILL NO. 1010

ORDINANCE NO. 1.62

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO WEST ELM PLACE CORPORATION. A MISSOURI CORPORATION, ITS SUCCESSORS AND ASSIGNS, TO LOCATE, OPERATE, AND MAINTAIN A SEWAGE SYSTEM IN THE CITY OF ARNOLD, MISSOURI. SETTING FORTH CONDITIONS ACCOMPANYING THE GRANTING OF THE FRANCHISE.

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BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ARNOLD, MISSOURI, AS FOLLOWS:

Section 1. SHORT TITLE:

This document shall be known and may be recited as the "West Elm Place Corporation Sewage System Franchise."

Section 2. DEFINITIONS:

For the purpose of this document, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

1. "City" is the City of Arnold, Missouri.

2. "Council" is the City Council of Arnold, Missouri.

3. "Sewage System", hereinafter referred to as "System", means a system of interceptor lines, collector lines, lateral lines, mains, pipes, conduit, manholes, pump stations, lift stations, and other equipment and/or facilities used or to be used primarily to collect, carry, pump, treat, and dispose of sewage.

4. "Sewage" means a combination of water-carried wastes from buildings, residences, business buildings, institutions, and industrial establishments, together with such groundwaters, surface waters, and stormwaters as may be present.

5. "Person" is any person, firm, partnership, association, corporation, joint venture, entity, company or organization of any kind.

6. "Grantee" is West Elm Place Corporation, or any person who succeeds West Elm Place Corporation, in accordance with the provisions of this Franchise.

Section 3. GRANT OF NON-EXCLUSIVE AUTHORITY:

A. There is hereby granted by the City to the Grantee the right and privilege to construct, erect, operate, and maintain a system in, upon, along, across, above, over, and under the streets, alleys, public ways, and public places not laid out or dedicated, and all extentions thereof, and additions thereto, within that portion of the City which is within the watershed area currently franchised to Grantee by the Missouri Public Service Commission.

B. The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant a similar use of said streets, alleys, public ways and places to any person at any time during the duration of this Franchise.

Section 4. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES:

The Grantee shall, at all times during the life of this Franchise, be subject to the provisions of this ordinance and all applicable federal, state, county, and city regulations, statutes, and ordinances.

Section 5. TERRITORIAL AREA INVOLVED:

This Franchise relates to that portion of the City limits of the City which is within the watershed area franchised to Grantee by the Missouri Public Service Commission and any such areas added thereto that is both within the limits of the City and the watershed area.

Section 6. CONSTRUCTION OF SYSTEM:

A. The System shall, as a minimum requirement, meet all applicable federal, state, county, and city rules, regulations, ordinances, statutes, requirements and specifications in existence on the date of passage of the ordinance incorporating this document and those issued subsequently as to the System. This shall not be construed to prohibit Grantee from exceeding the minimum requirement.

B. Plans and specifications to build any portion of the System shall be presented to the City in accordance with any and all regulations and ordinances of the City then in effect. Grantee, and its officers, directors, employees, agents and representatives shall comply with any and all regulations and ordinances of City applicable to the System and to them.

C. Construction of the System in City rights-of-way will be under the supervision of the Director of Public Works of the City of Arnold or his designee in accordance with City regulations and applicable City ordinances.

The location of the system, and the construction thereof, or any change or extension (or the removal thereof), in case said removal shall

necessitate the substantial disturbance of any street, alley, viaduct, elevated roadway, bridge or other public way shall be subject to the approval of the Director of Public Works of the City of Arnold or his designee.

Grantee shall place on file with the Director of Public Works of City "as built" plans showing the location and character of each component part of the System both already constructed and when constructed; and no portion of the System shall be erected, constructed or laid upon or in any street, alley, viaduct, elevated roadway, bridge, or other public way or any such tunnel, until a permit therefor is issued which shall indicate the time, manner and place of laying, constructing or erecting same.

If the location of any portion of the System, or the erection, laying or removal of the same, does not interfere unreasonably with ordinary travel and/or use of the streets, alley, viaducts, elevated roadways, bridges and public ways or any such tunnels of the City and otherwise complies with this Franchise (and except as in this Franchise expressly otherwise provided), the City shall approve the same and/or issue a permit or permits therefor.

D. Relocation or adjustment of Grantee's System or Franchise to accomodate public use of such rights-of-way shall be at Grantee's sole expense. In all cases (except as hereinafter expressly otherwise provided) where the City shall change the grade or width of any street, alley, or other public way, Grantee will, promptly and at its own expense, unless otherwise by ordinance provided, change or move its system or facilities so as to conform thereto, and all sidewalks, parkways or pavements disturbed by Grantee shall be restored by it to a good condition, and in the event that any such sidewalk, parkway or pavement shall become uneven, unsettled, or otherwise require repairing because of such disturbance by Grantee, then Grantee shall promptly, upon receipt of notice from the City so to do, cause said sidewalk, parkway or pavement to be repaired or restored to a good condition. Grantee further agrees that it will, in advance of any paving or repaving of any street, alley or other public way, and upon reasonable notice thereof, install and construct, at its own expense, all conduit, vaults and manholes reasonably necessary for its future use in said street, alley, or other public way, so as to prevent, so far as possible, the disturbance by Grantee of any pavement.

E. When any opening is made or work done in, on or under any street, alley, viaduct, elevated roadway, bridge or other public way or any such tunnel under any creek, river or waterway, or their several branches, within City for any purpose whatsoever by Grantee, said street, alley, viaduct, elevated roadway, bridge or other public way or any such tunnel shall be restored as promptly as possible to a condition satisfactory to City at the expense of the Grantee.



Section 7. LIABILITY AND INDEMNIFICATION:

A. Grantee shall, at its own and sole expense, defend, indemnify and hold City harmless from any and all claims, damages, penalties, judgements, costs, and expenses of every kind, which may arise or result by reason of or in consequence of the act or neglect of Grantee, its employees, agents, representatives, servants, or contractors to fully comply with the provisions of this Franchise, and will hold and keep harmless City from any and all claims, damages, penalties, judgements, costs and expenses caused by, or incident to, or in any manner resulting from the installation, construction, operation and/or maintenance of the system, provided prompt notice in writing of all claims for such damages, penalties, costs and expenses, and reasonable opportunity to defend against the same are given to Grantee by the City, together with all information thereon in its possession.

Grantee hereby expressly waives and releases any and all claims which it now has or may hereafter acquire against City arising from or growing out of any damages to the property of Grantee resulting from any act or omission of City, its agents and employees, occurring prior to the date of the passage and acceptance of this Franchise.

B. The Grantee shall pay and by its acceptance of this Franchise specifically agrees that it will pay all costs and expenses incurred by the City in defending itself with regard to all claims, damages, penalties, judgements, costs, and expenses mentioned in subsection 7(A) above. Costs and expenses shall include all out-of-pocket expenses, including but not limited to attorney's fees and court costs.

C. The Grantee shall maintain and by its acceptance of this Franchise specifically agrees that it will maintain throughout the term of this Franchise liability insurance insuring the City and the Grantee with regard to all claims, damages, penalties, judgements, costs, and expenses mentioned in subparagraph VII (A) above, with such insurance not being a limitation of Grantee's liabilities hereunder, in the minimum amount of:

1. Comprehensive general liability for operations and premises to include complete operations. \$500,000.00 for bodily injury or death resulting from any one accident.
2. \$250,000.00 for personal injury liability resulting from any one accident.
3. \$250,000.00 for property damage.
4. Workmen's Compensation insurance in accordance with the laws of Missouri.

D. Grantee shall provide Certificates of Insurance to the City, and that City shall be listed as an additional named insured thereon.

Section 8. SAFETY REQUIREMENTS:

A. The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

B. The Grantee shall install and maintain its System in accordance with all applicable laws, statutes, ordinances, rules, regulations and requirements of the United States, state, county and city and in such manner that they will not interfere with any installations of the City or of a public utility serving the City.

C. All structures and all lines, equipment, and connections in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of the City, wherever situated or located, shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good order and repair.

Section 9. CONDITIONS ON STREET OCCUPANCY:

A. All portions of the System installed or constructed by the Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets, alleys or other public ways and places.

B. In case of disturbance of any street, sidewalk, alley, public way, or paved area, the Grantee shall, at its own cost and expense and in a manner approved by the City, replace and restore such street, sidewalk, alley, public way, or paved area in as good a condition as before the work involving such disturbance was done, in accordance with the applicable provisions of Section 6 of this Franchise.

C. If at any time during the period of this Franchise the City shall lawfully elect to alter or change the grade of any street, sidewalk, alley, or other public way, the Grantee, upon reasonable notice by the City, shall remove, relay, and relocate that portion of its system affected at its own expense, in accordance with the applicable provision of Section 6 of this Franchise.

D. Any fixture placed in any public way by the Grantee shall be placed in such manner as not to interfere with the usual travel on such public way.

Section 10. CITY RIGHTS IN FRANCHISE:

A. The right is hereby reserved to the City or the City Council to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional regulations as it shall find necessary for the welfare and benefit of the City and its citizens in the exercise of the legislative and police power of the City; provided that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted.

B. The City shall have the right to inspect the maps, plans, and other like materials of the Grantee at any time during normal business hours.

C. The City shall have the right to supervise all construction of installation work performed subject to the provisions of this Franchise and make such inspections as it shall find necessary to insure compliance with the terms of this Franchise and other pertinent provisions of law.

Section 11. PAYMENT TO THE CITY:

The Grantee shall pay to the City annually an amount equal to three percent (3%) of the annual gross operating revenues taken in and received by it with respect to its operation of the System within the City during the year, for the use of the streets and other facilities of the City in the operation of the System and for the municipal supervision thereof. This payment shall be in addition to any other tax or payment to the City by the Grantee. As used in this section, gross operating revenues shall not include installation charges or city, county, state or federal taxes received by the Grantee.

The Grantee shall file annually with the City Clerk not later than sixty (60) days after the end of the Grantee's fiscal year, a verification by a certified public accountant, as to the gross income of Grantee for the preceding fiscal year, reflecting in such verification the amount of the Franchise fee resultant therefrom. The City shall have the right to inspect the books of West Elm Place Corporation during normal business hours. The provisions of this section shall only become effective upon approval of a majority of qualified voters as required by state law.

Section 12. FORFEITURE OF FRANCHISE:

A. In addition to all other rights and powers pertaining to the City by virtue of this Franchise or otherwise, the City reserves the right to terminate or cancel this Franchise and all rights and privileges of the Grantee hereunder in the event that the Grantee:

1. Violates any provision of this Franchise or any rule, order, or determination of the City or City Council made pursuant to this Franchise, except where such violation, other than subsection (2) below, is without fault;

2. Becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt;
3. Attempts to dispose of any of the facilities or property of its business in contravention of this ordinance;
4. Attempts to evade any of the provisions of this Franchise or practices any fraud or deceit upon the City or its citizens.

B. Such termination or cancellation shall be by ordinance duly adopted by the Council after forty-five (45) days notice by the Council to the Grantee of such intended action and pursuant to informal hearing by the Council of Grantee's position thereon, and shall in no way affect any of the City's rights under this Franchise or any provision of law.

#### Section 13. CITY'S RIGHT OF INTERVENTION:

Nothing in this Franchise shall operate to prevent the intervention by the City in any suit or proceeding to which the Grantee is a party.

#### Section 14. DURATION AND ACCEPTANCE OF FRANCHISE:

A. This Franchise and the rights, privileges, and authority hereby granted shall take effect and be in force from and after final passage hereof, as provided by law, and shall continue in force and effect for a term of twenty (20) years, provided that within thirty (30) days after the date of the passage of the ordinance incorporating this document, the Grantee shall file with the City Clerk its unconditional acceptance of this Franchise and promise to comply with and abide by all its provisions, terms and conditions. Such acceptance and promise shall be in writing duly executed and sworn to, by or on behalf of the Grantee before a notary public or other officer authorized by law to administer oaths.

B. Should the Grantee fail to comply with subsection (A) above, it shall acquire no rights, privileges, or authority under this Franchise whatever.

C. The Grantee shall have a right of renewal of this Franchise for succeeding additional terms of fifteen (15) years upon such terms as the City and Grantee may agree upon, subject to such city, county, state, or federal regulations as may be in effect as of the time of renewal.

#### Section 15. SEPARABILITY:

If any section, subsection, sentence, clause, phrase, or portion of this Franchise is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 16. EFFECTIVE DATE:

This Franchise shall be in full force and effect after its passage and approval unless otherwise provided by law.

PASSED AND APPROVED THIS 18th DAY OF February, 1988.

Attest:

Maureen Becker  
City Clerk

Robert H. Ems  
Mayor

Robert H. Ems  
Presiding Officer of City Council

1st reading: 2-18-88

2nd reading: 2-18-88

3rd reading: 2-18-88

This is to certify that on behalf of West Elm Place Corporation, the terms of this franchise agreement, as contained in this ordinance are unconditionally accepted.

Attest:

Lois Smith  
Secretary

Lois Smith  
Lois Smith, President and Secretary

State of Missouri )

) SS.

County of Jefferson )

On this 16th day of February, 1988, before me appeared Lois Smith, to me personally known, who being by me duly sworn, did say that he is the President and Secretary of West Elm Place Corporation, a corporation of the State of Missouri, and that the seal affixed and that said instrument was signed and sealed in behalf of said corporation, acknowledged said instrument to be the free act and deed of said corporation.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

My Commission Expires:

Rita A. Thompson  
Notary Public

RITA A. THOMPSON, NOTARY PUBLIC  
JEFFERSON COUNTY, STATE OF MISSOURI  
MY COMMISSION EXPIRES 10/7/91

2/16/88