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DEVELOPER AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into this _____ day of 20___, by and between RURAL WATER DISTRICT No. 5 MCCURTAIN COUNTY, STATE OF OKLAHOMA (“District”) and _____, (“Developer”), each referred to as a Party and together the Parties.

WHEREAS, Developer is the promoter and subdivider of the property depicted on **Exhibit A**. The land described in **Exhibit A** lies within the boundaries of the District; and,

WHEREAS, Developer desires to obtain a connection to water main(s) and other infrastructure maintained and operated by the District to obtain potable water service for the lots depicted on the attached preliminary or final plat - **Exhibit B** (the “Project”) and,

WHEREAS, The District is willing to provide water service to said Project, subject to and conditioned on the performance on the part of the Developer of all obligations and duties set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual promises of the Parties hereto and other good and valuable consideration the adequacy of which is hereby acknowledged by the Parties, it is agreed by and between the District and the Developer as follows:

1. The foregoing recitals are incorporated by reference and made a part of this Agreement.
2. Developer shall comply with all District construction, material and labor standards and specifications for all water mains and water supply lines and including all appurtenances thereto including but not limited to valves, fittings, vaults, meter pits, meters, pump station, water tank, water tower, back-flow preventers, pressure reducing valves, pressure sustaining valves, etc.) to be designed and engineered by Developer at Developer’s sole cost and expense, to be approved by the District and the District’s engineer, and to be constructed by the District as to both on-site of the Project and off-site of the Project, for which the Developer shall pay for upon demand or in advance as required by the District all such construction and installation costs, including but not limited to all labor, material, equipment, insurance (liability, casualty, umbrella and workmen compensation), engineering, legal, governmental fees, permits, associated with, reasonably necessary or convenient for, or as required by the District and/or the Project.

3. Developer shall provide the District with a final recorded preliminary or final plat for the Project prior to the commencement of construction of any improvements for the Project, showing the number of lots proposed, legal description of Project, lot size for each lot, and utility easements or rights of way required by the District, and including covenants and restrictions for the protection against encroachment over, across, through or beneath any utility easement. Construction of any improvements proposed by the Developer for the Project (including but not limited to the addition of any physical improvement, movement of earth or any changes to the terrain of the Project) shall not commence unless and until such plat has been approved in writing by the District's Board of Directors and the District's engineer. Developer agrees to pay the fees charged by the District's engineer or engineers for review and approval of the Plat, the design of proposed water delivery infrastructure including approval of proposed utility easements, water main/line locations, type and dimension, plans and specifications, drawings, materials, etc. and Developer also agrees to pay for any hydraulic analysis or study or computerized model, which the District's engineer prepares or causes to be prepared in connection with the Project's water delivery system - both on-site and off-site. Any legal expense incurred by the District associated with any legal review of the project, plat and this development agreement, including any title examination if required by the District, shall be paid by the Developer.

4. Developer shall provide the District, simultaneous with the execution of this Agreement, a warranty deed reflecting ownership of the Project in the name of the Developer, for all the land comprising the Project. Developer agrees that ownership of the Project shall not change absent written approval from the District's Board of Directors except for the sale of lots, provided the lot purchaser has submitted an application for water service to the District.

5. The District shall perform the acquisition of materials and/or installation/construction of all on-site and off-site water mains or lines including appurtenances (pumps, valves, meters, meter pit/vault, elevated and/or ground and/or sub-surface tanks etc. required by the District associated with the delivery of water) required by the District, for the Project, at the Developer's expense which shall be promptly paid to the District upon demand by the District. The District shall have the sole and exclusive option, at the District's sole and exclusive discretion, to require the Developer, rather than the District, to perform the acquisition of materials and/or installation/construction of all on-site and off-site water mains or lines and other appurtenances ((pumps, valves, meters, meter pit/vault, elevated and/or ground and/or sub-surface tanks etc.) required by the District, for the Project, at the Developer's expense. In the event the District exercises its option to require the Developer, rather than the District, to perform the acquisition of materials and/or installation/construction of all on-site and off-site water mains or lines and other appurtenances (pumps, valves, meters, meter pit/vault, elevated and/or ground and/or sub-surface tanks etc.) required by the District, for the Project, at the Developer's expense, then in that event, the Developer agrees to pay the District fifteen percent (15%) of the engineering expense associated with the Project, to compensate the District for inspections which the District may undertake to examine and approve said installation/construction. In the event the District exercises its option as described above in this section, the Developer agrees to promptly remedy any non-compliance with plans and specifications approved by the District at Developer's cost, which are discovered during the inspection process undertaken during installation/construction or discovered thereafter.

6. After the District's Board of Directors has approved Exhibits A and B, following procedures adopted by the Board, the District shall proceed as the District deems appropriate in its sole and exclusive discretion to install/construct the water infrastructure, in compliance with Engineering Specifications and Drawings submitted by the Developer and approved by the District and the

District's engineer, for the construction and installation of the on-site and off-site water delivery system, at Developers sole cost and expense. Developer shall pay the District's engineer for all engineering of the on-site and off-site water delivery system to be constructed by the District for the Project.

7. The District will charge and the Developer agrees to pay an Impact Fee of \$2,000.00 per lot specified in the above referenced plat, for the Project.

8. The Impact Fee and all other applicable lot fees, inspection fees, engineering fees, ODEQ fees, and Health Department permit fees must be paid directly to the District, by the Developer, prior to the commencement of any construction on the Project. For the avoidance of doubt, all necessary licenses and approvals shall be obtained prior to the commencement of any construction associated with the Project, by the District or by the Developer if the District requires this, and all fees referenced herein, and associated with the Project shall be paid by the Developer prior to the commencement of any construction for the Project.

9. The Developer shall pay to the District a deposit fee equal to District's cost for meters and meter pits/vaults anticipated to be set during construction for each lot specified in the plat. Refunds to the Developer of the deposit, will be made incrementally as Benefit Unit Memberships are sold by the District to each lot purchaser/water service applicant. The deposit must be paid to the District before the commencement of any construction.

10. Engineering plans and specifications must be approved by the ODEQ and State Health Department prior to commencement of any construction and the Developer shall provide the District proof of such approvals before the commencement of construction if required/requested by the District.

11. Developer agrees that each Benefit Unit for each lot identified as part of the Project, will be approved individually by the District after application is submitted by each lot owner to the District. No guarantee for water service to said lots will be granted without application approval according to the By-Laws, Rules and Regulations of the District. Each water service applicant shall agree to be bound by the By-Laws, Rules and Regulations of the District as a condition to receiving water service from the District as the By-Laws, Rules and Regulations exist at the time of the application and as they may be amended thereafter. All "Developer Requirements" adopted by the District must be met prior to membership approval.

12. Water service by the District shall not be provided in areas which comprise or are identified by any governmental agency, as constituting floodplains, wetlands, or prime farmland.

13. Upon approval of the plat and Engineering Specifications and drawings by the District's engineer, no additional lots may be added to the Project without the express written permission of the District. The District may withhold such permission in its sole and exclusive discretion.

14. The Developer shall provide a signed copy of the Project's recorded (with the County Clerk) covenants clearly stating that no splitting of any lots regardless of lot size shall occur. One meter per lot will be provided at Developer or lot owner expense. Water service will not and shall not be provided to or for lots that have been split. The District will not permit dual connections, namely a single meter shall not be used to provide water service to more than one residential dwelling unit (permanent or mobile) situated on a single lot.

Supplemental Requirements and Conditions

15. The District shall have no obligation to provide potable water service to the Project or any lot within the Project unless and until all of the requirements of this Agreement have been fully and strictly complied with. The District shall have no obligation to provide potable water service to any lot within the Project unless and until an application for water service for the lot has been submitted to and approved by the District and the Benefit Unit fee has been fully paid to the District.

16. In addition to submission of the plat referenced above, the Developer shall submit to the District, prior to commencement of any construction and prior to approval of the plat and Project by the District's engineer, the following: (1) a right of way/utility easement map in electronic format as specified by the District's engineer, and (2) one (1) USB drive showing the location of all proposed water lines, line sizes, type of pipes (PVC, Polyethylene, metal, etc.), valves, meters, meter boxes/valves/pits, and other water infrastructure appurtenances - which are acceptable to the District's engineer.

17. Developer shall be responsible to obtain all off-site easements required by the District's engineer to facilitate water service to the Project. The cost associated with all off-site improvements, including but not limited to labor, material costs, water main extensions, pump station, elevated storage, easements, shall be paid for by the Developer. As such associated costs, including engineering and legal expense are incurred by the District associated with the Project, the Developer shall promptly pay to the District such costs and expenses.

18. Installation and testing of the water delivery system constructed by the District (or constructed by the Developer if the District exercises its option referenced in this Agreement), both on-site and off-site to the Project, shall be subject to inspection and approval by the District. All legal, engineering, inspection, installation/construction and testing costs incurred by the District shall be promptly paid by the Developer to the service provider or shall be reimbursed to the District.

19. No pumps of any type or nature shall be used in or for the withdrawal of water from any fire hydrant which may be installed, or made part of the water delivery system associated with the Project.

20. Developer shall warrant all aspects of the water delivery system constructed by the District (or constructed by the Developer if the District's option is exercised) and accepted/approved by the District for one year from the completion of construction of the Project. The Developer shall be responsible for and shall pay the cost associated with and incurred by the District in repairing and/or replacing any part of the said water delivery system constructed/installed by the District, if in the opinion of the District's engineer such repair and/or replacement is reasonably required due to defects in workmanship or materials. **This warranty shall not apply if the defects in workmanship or materials, are the sole and exclusive fault of the District.**

21. All easements and rights of way necessary for the extension of the District's water delivery system to and within the Project shall be provided, granted or obtained by the Developer and shall run with the land into perpetuity and be granted in favor of the District naming the District as the grantee, and containing terms and conditions acceptable to the District. Developer shall likewise provide perpetual easements or fee title in favor of the District on all tracts or areas on which any tanks, elevated storage or pump station or similar facilities may be constructed. Developer shall

submit to the District for examination and approval all required easements and rights of way in advance of any construction and shall provide evidence of good title to all perpetual easements and fee titles as shall be required by the District. For the avoidance of doubt, if any pump station(s), tank(s), standpipe(s), elevated storage, etc., is required for the Project in order to facilitate the delivery of water service, the District shall (or the Developer shall if the District exercises its option described in this Agreement) install/construct such infrastructure and the Developer shall be solely responsible to pay for all labor, material equipment, pumps, motors, devices and/or vessels, and SCADA, associated with such pump station(s), tank(s), standpipe(s), elevated storage or similar infrastructure. If the District exercises its option described in this Agreement, then Developer is responsible and shall convey said infrastructure to the District, at no cost to the District and Developer shall warrant title to same.

22. Upon completion of the water delivery system to be constructed by the District (or by the Developer if the District exercises its option referenced in this Agreement), and following approval of said water delivery system by the District and all governmental entities having jurisdiction, the Developer shall convey and dedicate said water delivery system and associated rights of way and/or easements to the District free and clear of any encumbrance or claim by any third party. Developer warrants title to said water delivery system and associated rights of way and/or easements. Developer shall also provide the District with evidence that all costs of construction, extensions and appurtenances if performed or acquired by the Developer, have been fully paid for and will further provide a statement of the total cost of the water delivery system and associated rights of way and/or easements if constructed or acquired by the Developer.

23. The District, by acceptance of said water delivery system, through grant or deed of dedication or otherwise, shall not be deemed to have assumed any pre-existing liability or obligations imposed upon or assumed by the Developer, or any third parties, in connection with the construction and maintenance of said water delivery system. It is expressly understood by and between the Parties that the District will not assume ownership, maintenance or liability for any amenities constructed by the Developer in the project such as a clubhouse, swimming or wading pool.

24. Developer agrees to and does indemnify, hold harmless and agrees to defend the District from any claim or action arising from the construction of the water delivery system and/or which arises from said labor and materials (latent defect) or any other event which arises from events which pre-date the conveyance of the water delivery system to the District.

24. Developer shall not assign or delegate any of its obligations and/or duties under this Agreement to any third party or person. Such assignment or delegation is strictly forbidden.

25. Developer shall provide all bonds required by Title 61, Oklahoma Statutes, §§ 1, *et seq.*

26. Force Majeure. The District shall not be liable or responsible to the Developer, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts beyond the District's reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": (a) acts of God; (b) flood, fire, earthquake, health emergencies, epidemics, pandemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) telecommunication

breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials; interruption or shortage in the source of water; and (i) other events beyond the reasonable control of the District.

27. In the event that any party institutes any legal suit, action, or proceeding against the other party to enforce the covenants contained in this Agreement (or obtain any other remedy in respect of any breach of this Agreement)/arising out of or relating to this Agreement, the prevailing party in the suit, action or proceeding shall be entitled to receive, in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action, or proceeding, including reasonable attorneys' fees and expenses and court costs.

28. This Agreement[, together with any other documents incorporated herein by reference and all related exhibits and schedules, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement, and the related exhibits and schedules (other than an exception expressly set forth as such in the schedules), the statements in the body of this Agreement shall control.

29. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto.

30. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

31. The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

32. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

33. This Agreement and all matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the State of Oklahoma without giving effect to any choice or conflict of law provision or rule whether of the State of Oklahoma or any other jurisdiction.

34. Any legal suit, action, or proceeding arising out of or based upon/relating to this Agreement or the transactions contemplated hereby or or thereby shall be instituted solely and exclusively in the District Court in and for McCurtain County, Oklahoma and each party irrevocably submits to the

exclusive jurisdiction of said court in any suit, action, or proceeding. The parties irrevocably and unconditionally waive any objection to venue of any suit, action, or proceeding in said court and irrevocably waive and agree not to plead or claim in said court that any such suit, action, or proceeding brought in said court has been brought in an inconvenient forum.

35. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by personal service (hand delivery) shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

36. Nothing herein shall be construed to create a joint venture or partnership between the parties hereto or an employer/employee or agency relationship. Developer shall be an independent contractor pursuant to this Agreement. Neither party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement, or undertaking with any third party.

Special Condition

37. Although the District will endeavor to provide water service within a reasonable time following satisfaction of all of the Developer’s obligations, and the water delivery system for the Project is fully completed and operational in accord with the terms and conditions of this Agreement, the District does not warrant or guarantee that water delivery will occur within or upon any specific date or deadline. The Parties expressly agree that the District shall not be liable for any delay in the provision of water service. In no event shall the District or any of its representatives be liable to the Developer or any third party for consequential, indirect, incidental, special, exemplary, punitive or enhanced damages or lost profits or revenues, or diminution in value, arising out of, relating to, or in connection with any breach of this Agreement, regardless of (a) whether such damages were foreseeable, (b) whether or not Developer was advised of the possibility of such damages and (c) the legal or equitable theory (contract, tort, or otherwise) upon which the claim is based.

[Developer formal corporate or LLC name]

Developer's Signature (authorized corporate officer or LLC managing member)

RURAL WATER DISTRICT No. 5, McCURTAIN COUNTY, STATE OF OKLAHOMA

By _____
Authorized Board Member

Note: The District is an employer and equal opportunity provider.

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866)632-9992 to request a form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue S.W., Washington, D.C. 20250-9410, by fax (202)690-7442 or email at program.intake@usda.gov.”