

## WATER EXTENSION AGREEMENT

THIS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Public Water Supply District No. 2 of St. Charles County, Missouri, 100 Water Drive, P.O. Box 967, O'Fallon, St. Charles County, Missouri 63368 ("District") and \_\_\_\_\_, ("Developer").

WHEREAS, District is a political corporation of the State of Missouri organized and existing under the provisions of Sections 247.010 et seq. R.S.Mo. 1994 and providing public water supply and sewage collection and treatment in portions of St. Charles and Warren Counties, Missouri; and

WHEREAS, Developer owns approximately \_\_\_\_ acres of land within the boundaries of District which Developer will develop as \_\_\_\_ lots for \_\_\_\_\_ purposes ("Development") the legal description of which is marked Exhibit "A", attached hereto and incorporated herein by reference; and

WHEREAS, District desires to serve Development and Developer desires to have District serve Development.

NOW, THEREFORE, in consideration of the mutual agreements, conditions and covenants herein contained, the parties hereto agree as follows:

### 1. DEVELOPMENT MAINS, PRODUCTION FACILITIES AND CONNECTION FEES.

1.1 Developer shall construct, at Developer's sole cost and expense, all water mains, valves, hydrants and appurtenances as well as any required wells, tanks or other production facilities ("Water System") necessary to serve the Development in accordance with plans and specifications approved by District's engineer. Upon completion of construction of the Water System by Developer, either (a) when each phase is constructed if the Development is constructed in phases, or

(b) when all construction is completed if the Development is not constructed in phases, Developer shall convey all of Developer's right, title and interest in and to the Water System excluding service lines to District by Bill of Sale free and clear of any and all liens, claims or encumbrances of whatever kind or nature.

1.2 All of the construction of the Water System shall be in accordance with the District's Rules and Regulations.

1.3 Developer shall pay to District all connection fees due District in accordance with District's Rules and Regulations as are now in force or as they may be hereafter amended.

## 2. SOLE SUPPLY.

The Developer shall not connect or permit to be connected any other public or private water supplier to the Water System constructed by Developer to serve the Development. District shall be the sole supplier of water to the Development unless connection to another supplier of water is ordered by any Federal or State agency with the lawful authority to order such a connection or a court of competent jurisdiction. District shall have the right to contest such connection order and no such connection shall be made until all appeals of the connection order have been concluded.

## 3. MAINTENANCE BOND.

The Developer shall not be relieved of his obligation to maintain the Water System until the same is accepted by the District in writing; provided however, that upon acceptance of the Water System by the District the Developer shall be required to execute a maintenance bond, post a letter of credit or deposit cash pursuant to an escrow agreement with the District to ensure that the Water System is installed properly and that such construction has been performed in a workmanlike manner. The maintenance bond, letter of credit or cash escrow agreement shall provide that:

- a. If within one (1) year from the date of acceptance of the Water System by the District

the Water System shall disclose poor workmanship in the execution of said work, or it shall appear that defective materials were utilized therein, or in the event the Developer or any party working on behalf of the Developer shall cause damage to the Water System or cause any condition by grading or otherwise that would impede proper maintenance of the Water System, then said maintenance bond, letter of credit or cash escrow agreement shall remain in full force and effect, otherwise to be void. The maintenance bond, letter of credit or cash escrow agreement as required for the first year shall be in the amount of twenty percent (20%) of the estimated cost of the Water System but not less than \$5,000 or approved by the District Engineer. The form and legality of the maintenance bond, letter of credit or cash escrow agreement shall be approved in a consistent manner by the District's Counsel prior to acceptance thereof.

And,

b. If after the first year but within three (3) years from the date of acceptance of the Water System by the District, the Developer or any party working on behalf of the Developer shall cause damage to the Water System or cause any condition by grading or otherwise that would impede proper maintenance of the Water System, then said maintenance bond, letter of credit or cash escrow agreement shall remain in full force and effect, otherwise to be void. If there are no outstanding work items or payments due, disputes between the parties, or other matter which would cause the District to hold the 20% maintenance bond, letter of credit or cash escrow agreement, then the District will require that the amount of the maintenance bond, letter of credit or cash escrow agreement as required from the end of year one (1) to the end of year three (3) shall be decreased to an amount equal to five percent (5%) of the estimated cost of the Water System but not less than \$5,000 or as approved by the District Engineer. The form and legality of the maintenance bond, letter of credit or cash escrow agreement shall be approved in a consistent manner by the

District's Counsel prior to acceptance thereof.

And,

c. In the event that the Developer who has posted a maintenance bond, letter of credit or cash escrow agreement with the District transfers title of the Water System prior to full release of the maintenance bond, letter of credit or cash escrow agreement, the District may accept a replacement maintenance bond, letter of credit or cash escrow agreement from the successor developer in the form, and amount, allowed by the District at the time of property transfer. Upon receipt of the replacement maintenance bond, letter of credit or cash escrow agreement, the District shall release the original maintenance bond, letter of credit or cash escrow agreement in full and release the prior developer from all further obligations with respect to the Water System improvements.

#### 4. AUTHORITY.

The parties hereto covenant and warrant to each other that each has full right, power and authority to execute this Agreement and have the power to grant all rights and perform all duties and obligations hereunder.

#### 5. ASSIGNMENT.

This Agreement shall not be assignable without the express written consent of the parties hereto.

#### 6. SUCCESSORS AND ASSIGNS.

This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives, assigns, and all owners of land within the Development.

#### 7. MISCELLANEOUS.

a. Developer hereby acknowledges that it is aware that money damages may not be a sufficient remedy for a violation or threatened violation of the terms of this Agreement and that

District therefore shall be entitled to specific performance or other equitable relief for any such violation or threatened violation.

b. The prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorney's fees and court costs, including appeals, if any.

c. This Agreement constitutes the entire Agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Agreement must be in writing and executed by both parties.

d. This Agreement shall be construed in accordance with the laws of the State of Missouri.

e. If any provision of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement which shall continue in full force and effect.

f. Notices required to be given shall be given to the following address:

District:

Public Water Supply District No. 2 of St. Charles County, Missouri  
100 Water Drive  
P.O. Box 967  
O'Fallon, Missouri 63366

with a copy to:

Mark C. Piontek, Esq.  
Lewis, Rice & Fingersh, L.C.  
1200 Jefferson Street  
Washington, Missouri 63090

Developer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto affix their hand and seal the day and year first above written.

DISTRICT:

Public Water Supply District  
No. 2 of St. Charles County,  
Missouri

\_\_\_\_\_  
Denis Raab, President

(Seal)

Attest:

\_\_\_\_\_  
Kim Cantrell, Clerk

DEVELOPER:

\_\_\_\_\_  
  
\_\_\_\_\_

(Seal)

Attest:

\_\_\_\_\_  
Name:

Title:

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(BY DISTRICT)

State of Missouri        }  
                                      }  
County of St. Charles }        SS:

On this \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me personally appeared \_\_\_\_\_, to me, personally known, who, being by me duly sworn, did say that (s)he is the Board President of Public Water Supply District No. 2 of St. Charles County, Missouri, and that said instrument was signed and sealed on behalf of said District, by authority of its Board of Directors; and said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said District.

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.

\_\_\_\_\_  
Notary Public

My Term Expires: