

**MEMORANDUM OF UNDERSTANDING FOR WATER SERVICES
TO THE WOODLAWN ESTATES DEVELOPMENT**

THIS MEMORANDUM OF UNDERSTANDING FOR WATER SERVICES TO THE WOODLAWN ESTATES DEVELOPMENT (“**MOU**”) is made this ___ day of March, 2021, among the City of Lee’s Summit, Missouri, a municipal corporation (“**Lee’s Summit**”), the City of Lake Lotawana (“**Lake Lotawana**”) and the Lake Lotawana Community Improvement District (the “**District**”) (each is a “**Party**” and collectively the “**Parties**”).

WHEREAS, on December 10, 2020, Lee’s Summit and Woods Custom Homes, LLC (the “**Developer**”), entered into a Development Agreement (the “**Development Agreement**”) which is attached as **Exhibit A** and incorporated herein by reference, dealing the provision of water service by Lee’s Summit for a subdivision to be constructed on land generally located south and west of the intersection of State Highways 50 and 7 consisting of approximately 103.5 acres and located within the city limits of Lake Lotawana for the residential development project known as Woodlawn Estates Development (the “**Development**”) on property legally described and depicted in the Development Agreement;

WHEREAS, Lake Lotawana has approved a preliminary plat and zoning for the Development and Developer is preparing to construct necessary infrastructure for said Development as required by said plat and zoning;

WHEREAS, Lee’s Summit, Lake Lotawana and the District seek to establish their respective rights, duties and obligations for implementation of the Water Services to be provided by Lee’s Summit for the Development, and the Parties have freely negotiated in good faith and this MOU reflects the desires of the Parties.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Definitions.** Words or terms not defined elsewhere in this MOU shall have the meanings set forth in the attached Development Agreement. Additional words and terms as used in this MOU shall have the following meanings:

“**Water Service**” means the provision of water services by Lee’s Summit to all Property in the Development in accordance with all applicable Lee’s Summit City Code requirements, the Lee’s Summit Design and Construction Manual, other adopted policies and procedures in Lee’s Summit, and this MOU.

2. **Terms and Conditions for Water Service to the Development.** The Parties agree that Water Service shall be provided by Lee’s Summit under the following terms and conditions:

- A. **Water Services Generally.** Lee’s Summit will provide all Water Services to the Development in accordance with all applicable Lee’s Summit City Code requirements and other adopted policies and procedures in Lee’s Summit. Lee’s

Summit will follow its normal rules and procedures for the Water Service, as if the Development were located within the corporate limits of the City of Lee's Summit, notwithstanding that the Development is located within Lake Lotawana. All services to be provided by Lee's Summit shall be at the direction of the Lee's Summit Water Department.

- B. Tap Requests. All requests for water taps shall be directed to the Lee's Summit Water Department, and tap requests shall be reviewed and approved in accordance with Lee's Summit City Code requirements and applicable policies and procedures.
- C. Water Line Construction.
 - 1. All water line construction which is internal to the Development will be constructed by the Developer and inspected by Lee's Summit. Such construction shall be built to pursuant to the requirements of the Lee's Summit City Code and the Lee's Summit Design and Construction Manual, including the requirement for copper lines to be used between the water meter and the structure that is served by a particular water line.
 - 2. All such water lines shall be placed in an easement that is granted to Lee's Summit, and Lake Lotawana will facilitate the creation of such easements through the zoning and platting approval process. The District shall permit the City to have access along and over any of its easements for all actions and purposes of carrying out the provision or termination of water service to its customers within the Development.
- D. Permitting. All connections for Water Service in the Development shall be subject to the applicable Lee's Summit permitting processes.
- E. Meter and Water Line Inspections. All meter installations shall be inspected by Lee's Summit. The water line between the water main and the meter for a structure shall be inspected by Lee's Summit. Lake Lotawana shall be responsible for the inspection of all water lines between the meter for a particular structure and the structure, and such installation shall be in compliance with the requirements of the Lee's Summit City Code and Lee's Summit Design and Construction Manual.
- F. Other Inspections. Lee's Summit will provide all other inspection services pursuant to the Lee's Summit City Code and Lee's Summit Design and Construction Manual. The inspection of irrigation systems shall be provided by Lee's Summit. Lake Lotawana shall not be responsible for providing any inspection services except as set forth in paragraph E above.
- G. Water Fees and Charges. Fees for Water Service by Lee's Summit will be subject to the imposition of fees and billing process in accordance with all applicable Lee's Summit City Code requirements included all fees that are published in the Lee's Summit Schedule of Fees, as such schedule may be amended from time to time. Lee's Summit shall be solely responsible for establishing and billing all charges for

its water service, including but not limited to, connection, disconnection, re-connection fees, sewer rates, security deposits and collection charges.

- H. Termination of Services to a User. Lee's Summit shall be responsible for temporarily or permanently terminating Water Service to any individual user in accordance with applicable Lee's Summit policies and procedures. In addition, Lake Lotawana or the District may request that Water Services be temporarily or permanently terminated for a particular user by providing notice to Lee's Summit of the reason for such termination pursuant to Lake Lotawana or District adopted policies and procedures, with citation to the particular policy or procedure that has been violated by the user whose water service is requested to be temporarily or permanently terminated. In the event of any disputes or concerns as to whether Water Service should, in fact, be terminated for a user, the Parties agree to coordinate and communicate in good faith to resolve all outstanding issues and reach a prompt resolution as to the requested termination of services. The Parties agree that all provisions of Section 393.016, RSMo, shall be applicable and shall be followed as the terms of this paragraph are implemented. Nothing contained herein shall prevent the Lee's Summit from entering upon Lee's Summit easements or those of Lake Lotawana or the District to disconnect Water Service from a nonpaying customer, which decision shall be left to the discretion of Lee's Summit.
- I. Cooperation. The Parties agree to work in good faith to coordinate and communicate to carry out the terms of this MOU.

3. Indemnification.

- A. General Indemnity. To the extent allowed by law, each Party (as the "**Indemnifying Party**") shall indemnify, release, defend, be responsible for and forever hold harmless the other Party (the "**Indemnified Party**"), its officers, agents, employees, elected officials, and attorneys, each in their official and individual capacities, from and against all lawsuits, suits, actions, costs, claims, demands, damages, disability, losses, expenses, including reasonable attorney's fees and other defense costs or liabilities of any character and from any cause whatsoever, brought because of bodily injury or death received or sustained, or loss or damage received or sustained, by any person, persons, or property arising out of or resulting from any act, error, or omission of the Indemnifying Party or the Indemnifying Party's officers, agents, employees, or subcontractors, to the extent such loss or injury arises in connection with or on account of the Indemnifying Party's work or in consequence of any negligence in connection with the same, or on account of any poor workmanship, or on account of any act of commission or omission of the Indemnifying Party or of their agents or employees, or for any cause arising during the course of construction; provided, however, that the Indemnifying Party need not save harmless the Indemnified Party from claims, demands, losses and expenses arising out or to the extent caused by the negligence of the Indemnified Party, its employees or agents. This indemnification obligation shall survive the termination or expiration of this MOU. This indemnification obligation is not intended as a waiver of sovereign immunity or any other defense or immunity

available to either Party or any of its elected or appointed officials, agents, employees or contractors.

- C. **Notification of Claims.** With respect to any claims which are subject to indemnity hereunder, the Party seeking to be indemnified shall immediately notify the other Party of any and all claims filed against the Party seeking to be indemnified, and shall provide a copy of the same.
4. **Insurance.** The Parties agree to carry insurance as is customary and in the ordinary course of operations for each respective Party.
 5. **Remedies.** Each Party to this MOU agrees that if it fails to perform when due any act required by this MOU to be performed, then, in addition to whatever other remedies are available to the non-defaulting Party hereto, the non-defaulting Party shall have the right to enforce specific performance of this MOU against the defaulting Party.
 6. **Rights and Remedies Non-Exclusive.** No right or remedy conferred upon or reserved to any Party in this MOU is intended to be exclusive of any rights or remedies, and each and every right and remedy shall be cumulative and shall be in addition to every right and remedy given now or hereafter existing at law or in equity.
 7. **Non-Waiver.** No waiver of any condition or covenant contained in this MOU or of any breach thereof, shall be taken to constitute a waiver of any subsequent condition, covenant or breach.
 8. **Applicable Law.** This MOU shall be governed by and construed according to the laws of the State of Missouri.
 9. **Venue.** In the event this MOU is litigated, venue shall be proper only in the Circuit Court of Jackson County, and the Parties expressly waive any rights to venue inconsistent therewith.
 10. **Time of Essence.** Time is of the essence with respect to the duties and obligations set forth herein.
 11. **Representations.** Each Party represents and warrants that it (a) has made due and diligent inquiry into the facts and matters which are the subject matter of this MOU; (b) fully understands the legal effect of this MOU; and (c) is duly authorized and empowered to execute, deliver and perform this MOU according to its terms and conditions.
 12. **No Waiver of Breach.** No waiver of any condition or covenant contained in this MOU or any breach thereof shall be taken to constitute a waiver of any subsequent condition, covenant or breach.
 13. **Rules of Construction.** Each Party to this MOU has received independent legal advice from its attorneys of choice with respect to entering this MOU and the advisability of agreeing to the provisions herein. Because each Party has had its respective legal counsel review the terms of this MOU, the normal rules of construction to the effect that any

ambiguities in its terms be resolved against the drafting Party shall not be employed with regard to issues of its validity, interpretation, performance or enforcement.

14. **Assignment.** The MOU may not be assigned or transferred, in whole or part, to any other person, firm, corporation, or entity without the prior, express, written consent of the other Party, which consent shall not be unreasonably withheld. Lake Lotawana understands and acknowledges that Lee's Summit purchases water from third parties and all Water Services under this MOU are subject to the acquisition of water from such third parties and annual appropriation action of the Lee's Summit City Council in regard to approving contracts and the expenditure of funds for the acquisition of water that is provided by this MOU.
15. **Exhibits.** All Exhibits referenced in this MOU are incorporated into this MOU by such reference as if set forth in full in the text of this MOU.
16. **Notice.** Any notice required under the terms of this MOU shall be deemed to have been given as of the time of actual receipt, shall be sufficiently given if delivered to the intended individual in person or at the corresponding address designated in this MOU, and shall be made in writing at the following address or such other address as the party shall designate in writing:

To Lee's Summit:

Director or Water Services
220 SE Green Street
Lee's Summit, MO 64063

To Lake Lotawana:

Director of Planning
99 S. Lake Lotawana Drive
Lake Lotawana, MO 64068

To the District:

Lake Lotawana CID
c/o Dan Miller
Lamp Rynearson
9001 State Line Road
Suite 200
Kansas City, MO 64114

17. **Headings.** The paragraph headings contained herein are for convenience in reference and are not intended to modify, expand or limit the scope of any provision of the MOU.
18. **Severability.** Any provision of this MOU which is not enforceable according to law will be severed from this MOU, and the remaining provisions shall be enforced to the fullest extent permitted by law. If any one or more of the terms, provisions or conditions of this

MOU shall be declared unconstitutional, invalid, illegal or unenforceable by a court of competent jurisdiction, the validity of the remaining terms, conditions and provisions contained herein shall in no way be affected, prejudiced, limited or impaired thereby.

- 19.** **Counterparts.** This MOU may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.

[Remainder of this page intentionally left blank]

CITY OF LAKE LOTAWANA, MISSOURI

Nick Shigouri, *City Administrator*

Attest:

Lindsey Jorgensen, *City Clerk*

Approved as to form:

Corey Henry, *City Attorney*

Notary for City of Lake Lotawana

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

BE IT REMEMBERED, that on this ____ day of _____, 2021, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Nick SHigouri, the City Administrator of the City of Lee's Summit, Missouri, a City duly incorporated and existing under and by virtue of the laws of the State of Missouri, who are personally known to me to be the same person who executed, as such official, the within instrument on behalf of and with the authority of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

NOTARY PUBLIC

My Commission Expires:

EXHIBIT A
DEVELOPMENT AGREEMENT

[Attached]