# IN THE TENNESSEE PUBLIC UTILITY COMMISSION AT NASHVILLE, TENNESSEE

IN RE:	)	
	)	
PETITION OF TENNESSEE	)	
WASTEWATER SYSTEMS, INC., TO	)	<b>DOCKET NO. 19-00030</b>
AMEND ITS CERTIFICATE OF	)	
CONVENIENCE AND NECESSITY	)	

### **RESPONSE TO TPUC STAFF'S DATA REQUESTS**

1. Provide a copy of the map that includes all the specifics required by the Commission rules for CCNs. Specify the territorial boundary as "Area being requested for CCN".

**REPONSE:** See Exhibits 1A, 1B, and 1C.

2. Provide a copy of the cost estimate for the collection system that will be submitted to Williamson County.

**REPONSE:** This project is in Robertson County, not Williamson. Neither requires the submission of a cost estimate for the collection system. See Exhibit 2 for the estimate provided by the developer.

- 3. Provide copies (or an answer) regarding the following referred to in the LOU filed as Exhibit #14 to this Petition:
  - 1) The developer's agreement with TWS, referred to in paragraph 10 and paragraph 14 of the LOU;

**RESPONSE:** See Exhibit 4.

2) The Design/Build Agreement referred to in paragraph 14 of the LOU.

**RESPONSE:** See Exhibit 3.2

3) Since the LOU states that cost of tankage, components, etc. for each individual residence site and installation of sewer collection/reuse main lines, pump stations, and lot services are outside the scope of this agreement (paragraph 16 of LOU) and since all of the above are required to operate the sewer services,

provide a copy of an Agreement that states who will provide these parts to the sewer system and who will pay for these components.

**RESPONSE:** The developer is responsible for installing the collection system, pump stations, reuse mains, etc.... TWS is not involved with the installation of the collection system, until that portion of the system is inspected. The tanks are the responsibility of the developer, home builder, or lot owner (whoever builds the residence). This is addressed in the Sewer Service Agreement attached as Exhibit 4.

4. Provide a copy of the contract between the utility and the developer. TPUC Rule 1220-04-13-.17(2)(b)(3) requires evidence that the requisite property rights and public need exists for wastewater services in the proposed including (1) Letters from local governments and public wastewater utilities in or near the proposed area stating that they are unable or unwilling to service that area for twelve 12 months; (2) A copy of any application for a franchise and the franchise agreement, as applicable; (3) all contracts or agreements between the builder(s) of the treatment and/or collection system, the utility, and the property and/or subdivision developer that show entitlement or ownership to the land, system specifications, costs for the wastewater system, timeline for the system to be built, and rights to the system once it is completed. Documents presented by the applicant should be signed by all parties and bear marks or stamps, such as those provided by notaries or public officials, as necessary.

**RESPONSE:** See Exhibit 4.

5. There does not appear to be any amount in the budget regarding an equipment building. Will there be a building for the equipment and who will pay for it?

**RESPONSE:** Yes, there will be a building. Though not itemized, it is included in the cost to construct the system as it is a necessary part of the system. The developer pays this cost.

6. Paragraph 11 of the LOU between Adenus Solutions Group and Chelsea's Way states that "no home will be released to connect to the sewer collection system, or to the treatment and disposal system, until the Developer has paid all sewer development fees less applicable credits." Please explain in detail what applicable credits are. Also, include all journal entries that have been made or examples (including the account number) of future journal entries to be made with regard to "applicable credits."

RESPONSE: Currently, there are no applicable credits attributable to this project or the developer. The most common example of when a credit may be provided to a developer is that from time to time TWS may require piping to be upsized to accommodate other projects/future growth. The developer is responsible for installing the lines in the development, so the developer will install larger pipes and TWS credits back to the developer the difference between the larger installed pipes and what the developer was required to install (ie. 8" pipe instead of 6" pipe) for his project. This is not an issue where there is a sole onsite system constructed to serve a particular development as is the

case in this project. This comes into play more often where there is a regional plant and piping infrastructure needs to be expanded to accommodate additional development seeking to connect to the regional plant.

7. The LOU provided with this petition is between ASG and Chelsea's Way. Please provide any accounting entries between ASG, TWS and Chelsea's Way when receiving, spending and collecting the monies to be recorded on TWS books (include entries relating to TWS' costs for upsized piping for future developments).

**RESPONSE:** There are no TWS accounting entries responsive to this request.

8. Paragraph 7 of the LOU between ASG and the developer (Benny Neill) states that the Developer understands that the construction or expansion of the treatment system will require encroachment upon land areas already identified as reserve soils in order to meet County requirements. The developer agrees it will provide all necessary and required soils under this paragraph. Please explain and does this mean that the developer needs to get an additional reserve soil area approved by TDEC?

**RESPONSE:** The construction of the system will not encroach upon any lands that have already been identified as reserve soils. The development has adequate soils to accommodate the requested number of lots. The developer does not need to acquire any additional soils.

9. Who owns the property now? Please provide a name, an address and a phone number of the property owner and documents showing ownership.

**RESPONSE:** The property is presently owned by 31-W Realty, LLC. They are located at 7434 Cycle Lane, Goodlettsville, TN 370722. Phone number is 731-607-5566. See Exhibits 9A - State of Tennessee Real Estate Assessment Data and 9B the Purchase Agreement between 31-W Realty and the developer.

10. The area being requested in the petition states 167.96 acres; however, the map as well as the LOU state that there are 79 acres. Please explain.

**RESPONSE:** The subdivision will only encompass 79 acres, which is the land area identified on the map provided in response to data request No. 1. The 167.96 acres was the original scope of the project.

11. Will TWS be doing the tank and line inspections? Please provide the accounting entry/transactions that will be recorded, including all entities involved. Are these amounts included in the total costs (\$643,650)?

**RESPONSE:** Tank and line inspections are part of the \$800 per lot fee the utility collects from the developer. The total cost (\$643,650) is the estimated cost to construct the treatment and disposal system. This amount is not paid to TWS.

12. Please explain the difference between the tank inspection and the line inspection. Are these amounts standard pricing for TWS?

**RESPONSE:** The tank inspection is to make sure the 1500-gallon tanks at the houses are constructed and installed properly. The line inspection relates to the collection lines and ensuring they have been installed properly. Different system components that require different inspections.

13. Please provide a copy of the signed contract for fees, property, easements, tax remittance...

**RESPONSE:** See Exhibit 4.

14. The LOU between ASG and the developer provides in paragraph 15 that the developer agrees to post any bond amounts required by the RCPD. Has the developer also agreed to provide the bond required by the utility for an amount equal to or greater than the cost of the system as provided in contracts between the builder, developer and utility?

**RESPONSE:** Adenus Solutions Group, LLC is building the system. No bond will be required as ASG is an affiliate of TWS.

15. Does the \$87,000 that Chelsea's Way is paying for the Drip Field include the final construction of the drip fields and the reserve drip fields required by the county?

**RESPONSE:** The \$87,000 covers the cost for construction of the drip field. Robertson County, where this project is located, does not require reserve drip areas. That is a Williamson County requirement. Furthermore, reserve drip fields are not constructed. That is land that is reserved in the event the primary drip areas fail. If that land needs to be utilized due to a failure, then drip will be installed.

RESPECTFULLY SUBMITTED,

Jeff Risden (BPR No. 32769)

General Counsel

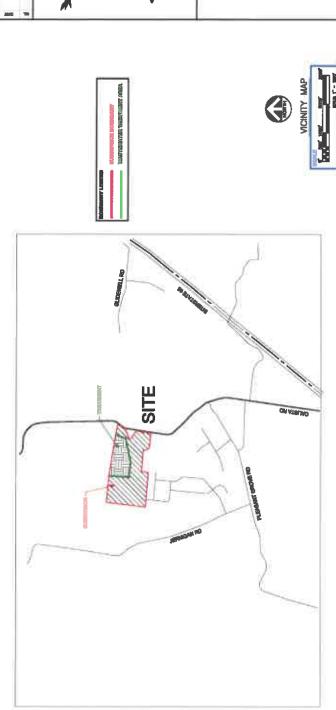
Tennessee Wastewater Systems, Inc.

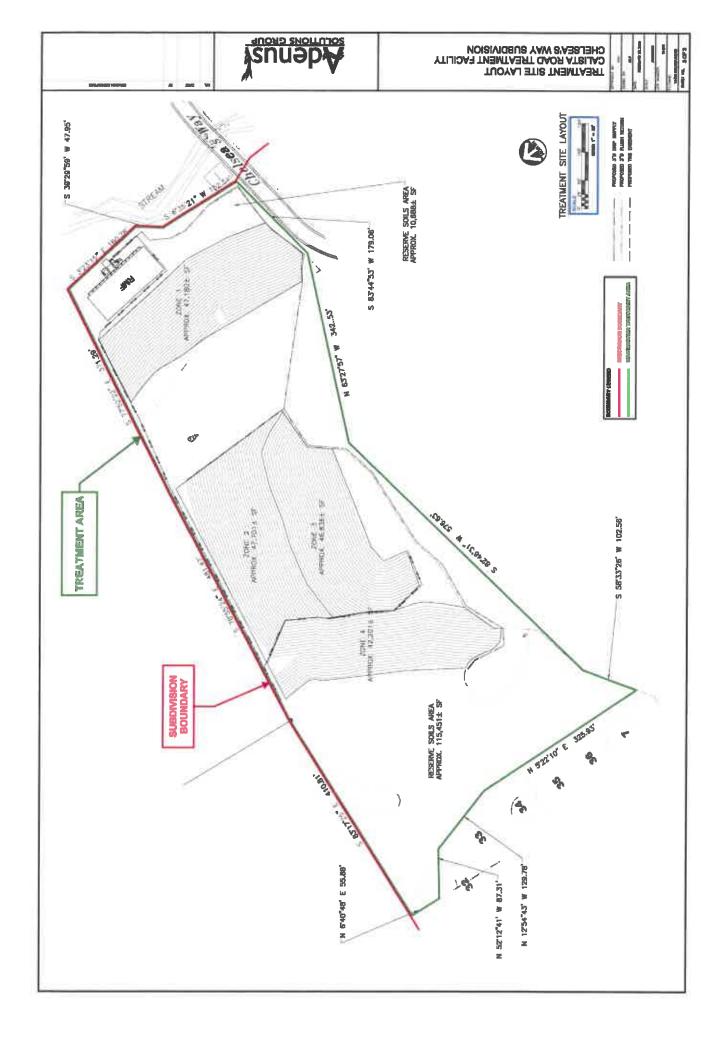
851 Aviation Parkway

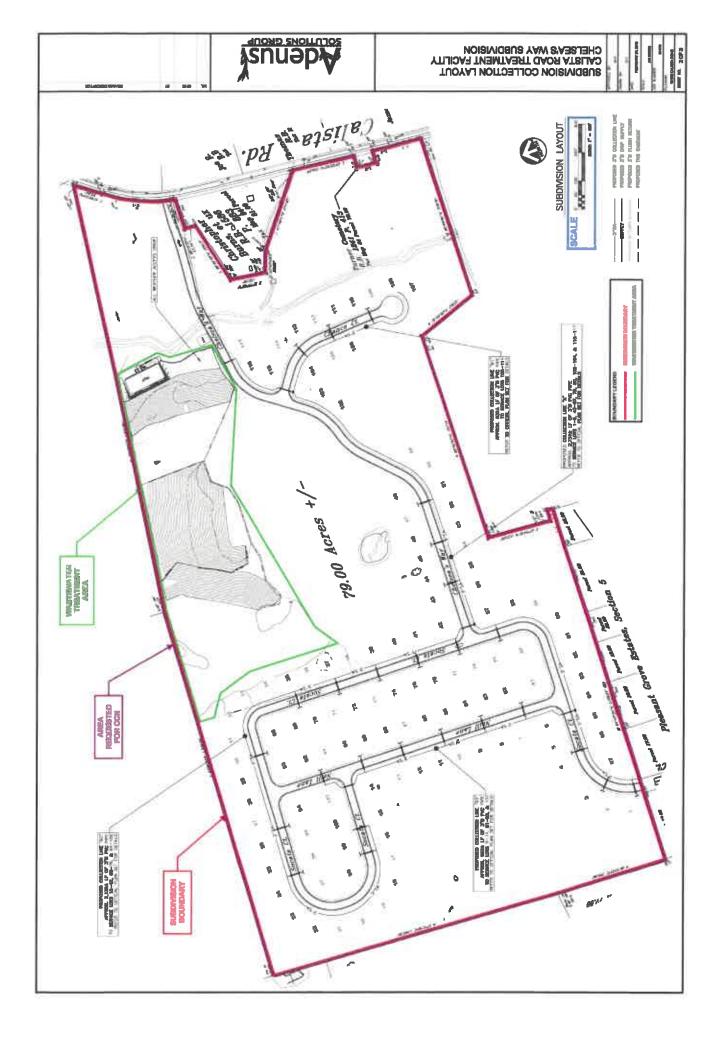
Smyrna, TN 37167

(615) 220-7171

jeff.risden adenus.com







### Cheisea's Way Subdivision / Calista Road Robertson County 25-Sep-18

### Design, Engineering & Construction Budget

Task Design & Engineering	<u>Units</u>	<u>C</u>	<u>ost</u>		Sub-	Total Budget		
Engineering Report	1	\$	12,000.00		\$	12,000.00		
Engineering Design	117		\$250	per lot	\$	29,250.00		
Grid Staking	8		\$250	per acre	\$	2,000.00		
State Operating Permit	1	\$	3,000.00		\$	3,000.00		
Engineering Coordination	1	\$	5,000.00		\$	5,000.00		
		SL	BTOTAL				\$	51,250.00
Construction of Treatment. Filter & infrastructure Access		\$	6,500.00		\$	6,500.00		
Filter System	1	\$	29,000.00		\$	29,000.00		
Monitoring System	1	\$	37,500.00		\$	37,500.00		
Double Dual Arkal	1	\$	38,000.00		\$	38,000.00		
Tanks	1	\$	17,000.00		\$	17,000.00		
Pumps & Equipment	1	\$	175,000.00		\$	175,000.00		
Drlp Field	1	\$	87,000.00		\$	87,000.00		
Fence - high tensile	4000	\$	4.50	foot	\$	18,000.00		
		St	UBTOTAL				\$	408,000.00
Construction Inspections Une Inspections	20	ė	750.00	each	Ś	15,000.00		
Tank Inspections - Prelimenary	117	·	225.00		\$	26,325.00		
Tank Inspections - Final	117	Ċ	225.00		\$	26,325.00		
Tally Hispertions - Final	417	·	JBTOTAL	eacii	3	20,323.00	Ś	67,650.00
Decidence TDFC and TDHC		36	BIUIAL				Þ	67,030.00
Regulatory TDEC and TPUC Filing Fees	1	\$	1,000.00		\$	1,000.00		
Legal Fees	1	\$	6,500.00		\$	6,500.00		
Coordination & Revisions	1	\$	7,500.00		\$	7,500.00		
		St	JBTOTAL				\$	15,000.00
							\$	541,900.00
Overhead - 12% Profit - 6%	\$ 541,900.00 \$ 606,928.00		12% 6%		\$ \$	65,028.00 36,415.68		
110115-070	y 000,320.00		U78		ş	30,413.00	\$	101,443.68
					TOTAL		\$	643,343.68

### CONSTRUCTION - DESIGN / BUILD AGREEMENT

#### RECITALS:

WHEREAS, Developer is the owner of a certain tract of real property (the "Property") consisting of unimproved land, located on Calista Road in Robertson County, Tennessee, and identified as Map 84, Parcel 79, which Property is more particularly identified on the Legal Description attached to this Agreement as Exhibit A, and depicted on the Site Map attached to this Agreement as Exhibit B;

WHEREAS, Developer desires and intends: (i) to develop a certain wastewater sewer collection, treatment, and disposal system (the "System") on the Property (the development of the System, hereinafter, the "Project"), the location, configuration, scope, size and description of which System and Project are more particularly detailed and set forth on the Plans and Specifications attached to this Agreement as Exhibit C; and (ii) to engage Contractor to provide to Developer certain design, engineering, construction, and development services (as more particularly described and identified in Section 1 below, the "Services") with respect to the Project; and

WHEREAS, Contractor desires and intends to provide the Services for the consideration and upon and subject to the terms, provisions and conditions set forth in this Agreement, and

WHEREAS Developer and Contractor each desire and intend to set forth their understandings and agreements with respect to the Project in this Agreement;

### AGREEMENT:

NOW, THEREFORE, for and in consideration of the sum of Six Hundred Forty-three Thousand Five Hundred and 00/100 Dollars (\$643,500.00), the foregoing, the terms, provisions and conditions set forth below, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer and Contractor hereby agree as follows:

- 1) SERVICES. Contractor agrees to perform, provide or cause to be performed or provided the permitting, engineering and design, construction, and coordination of the Project as follows:
  - a) Permitting: Coordinate, apply for and receive all permits required by applicable law from the State of Tennessee and all other governmental entities and agencies having authority over the Services (collectively "Governmental Authority").
  - b) Engineering and Design: Design the Treatment Facility System and receive approval of the System from Governmental Authority and Tennessee Wastewater Systems Inc. in accordance with the Specifications.
  - c) Construction Services: Construct the System in accordance with the Plans and

Specifications approved by Governmental Authority and Tennessee Wastewater Systems, Inc.

d) Work: Contractor shall furnish all labor, supervision, materials, equipment, tools, scaffolding, machinery, transportation, and supplies necessary to complete the installations and improvements (all of the foregoing, the "Work") shown and/or described in: the Plan and Specifications attached hereto as <a href="Exhibit C">Exhibit C</a> and those certain specifications (the "Specifications"), dated as of \_\_\_\_\_\_\_, entitled "Tennessee Wastewater Systems, Inc. — Rules and Regulations Governing the Design and Installation of Effluent Collection Systems and Recirculating Sand Filters," and attached hereto as Exhibit D.

The Work shall be performed in accordance with such Plans and Specifications in a good and workmanlike manner, and shall meet all industry standards, and all material and equipment used in the Work shall be new and meet or exceed the specifications required by Tennessee Wastewater Systems, Inc., except as otherwise expressly specified or agreed in writing. Contractor warrants that the equipment manufactured by it shall be free from defects in material and workmanship arising from normal usage for a period of one (1) year from delivery of said equipment, or if installed by Contractor, for a period of one (1) year from installation. Contractor warrants that for equipment furnished and/or installed but not manufactured by Contractor, Contractor will extend the same warranty terms and conditions which Contractor receives from the manufacturer of said equipment provided the Contractor has provided Developer in writing the names of such manufacturers and a copy of each of their warranties and Developer has not objected to the same in writing. For equipment installed by Contractor, if Owner provides written notice to Contractor of any such defect within thirty (30) days after the appearance or discovery of such defect, Contractor shall, at its option, repair or replace the defective equipment. These warranties do not extend to any equipment which has been repaired by others, abused, altered or misused, or which has not been properly and reasonably maintained. THESE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY AND FITNESS FOR A SPECIFIC PURPOSE, AND MAY BE ASSIGNED TO TENNESSEE WASTEWATER SYSTEMS, INC.

- e) Acceptance: Guarantee acceptance of the system by Tennessee Wastewater Systems, Inc. and passing of the final inspection by all Governmental Authority.
- f) General Coordination: As required and mutually agreed.
- g) No Liens Contractor shall complete the Work in accordance with the Plans and Specifications and the Work shall be free of any laborers', materialmens', mechanics', or any other liens on any part of the Work and Contractor shall not permit any such lien to be filed or otherwise imposed on the Property or any part thereof for any portion of the Work. In the event any such lien is filed against the Property, Contractor shall promptly cause such lien to be discharged in accordance with Tennessee Code Annotated Section 66-11-142 or in lieu thereof file a bond or other security for the payment of such lien in form and amount satisfactory to Developer.

### 2) COMPENSATION.

a) Payment for Services. Developer and Contractor agree that Contractor will be paid for providing the Services in phases according to the schedule below in 2b.

- b) Schedule of Payment. Developer will pay Contractor according to the following schedule:
  - a capacity development fee of \$ 5,500.00 per lot for 117 lots (\$643,500.00). Payment of the capacity development fees will be due as follows:
    - 15% due 10 business days after execution of this agreement
    - Monthly draws based upon percentage of completion in accordance with the Schedule of Values
    - Final Payment due when the system is accepted by Tennessee Wastewater Systems, Inc., Inc. and any permits required by Governmental Authority are issued.
- 3) ITEMS NOT INCLUDED IN THE WORK. The items shown on Exhibit E are not included in the Work and will be performed by the Developer.
- 4) REPRESENTATIONS, WARRANTIES AND COVENANTS OF DEVELOPER.
  Developer represents, warrants and covenants to, for and with Contractor as follows:
  - a) Developer is a sole proprietorship duly organized and validly existing under the laws of the State of Tennessee and is authorized to do business in the State of Tennessee and is legally entitled to own and lease its properties and to carry on its business as and in the places where such properties (including the Property) are now owned or operated;
  - b) Developer is the fee simple owner of the Property, which has not been conveyed, either a fee simple interest or leasehold interest, in whole or in part, to any other party, all contingent upon closing of the Property by the Developer;
  - c) Developer has the authority to execute this Agreement and perform its obligations hereunder, and the execution of this Agreement and performance of any duties hereunder will not conflict with, result in a breach by, constitute a default under or accelerate the performance provided by the terms of any law, or any rule or regulation of any governmental agency or authority or in any judgment, order, or decree of any court or other governmental agency to which Developer may be subject, any contract, agreement or instrument to which Developer is a party or by which Developer is bound or committed or constitute an event, which, with a lapse of time, action by a third-party and/or giving of notice, could result in the default under any of the foregoing or result in the creation of any lien, charge, or encumbrance upon any of the assets or properties of Developer;
  - d) Developer shall cooperate with Contractor in Contractor's performance of its obligations under this Agreement;
  - e) Developer shall deliver to Contractor copies of all notices and other material information relating to the Project or any portion thereof promptly after the receipt thereof by Developer;
  - f) Developer shall pay compensation to Contractor at the times and in the manner set forth above; and
  - g) Developer shall duly comply with and perform in all material respects the terms and

provisions on its part to be complied with or to be performed under this Agreement.

- 5) REPRESENTATIONS WARRANTIES AND COVENANTS OF CONTRACTOR. Contractor represents, warrants and covenants to, for and with Developer as follows:
  - a) Contractor is a Tennessee Limited Liability Company duly organized and validly existing under the laws of the State of Tennessee and is authorized to do business in the State of Tennessee and is legally entitled to engage in the business of being Contractor to perform its obligations hereunder;
  - b) Contractor has the authority to execute this Agreement and perform its obligations hereunder, and the execution of this Agreement and performance of any duties hereunder will not conflict with, result in a breach by, constitute a default under or accelerate the performance provided by the terms of any law, or any rule or regulation of any governmental agency or authority or in any judgment, order, or decree of any court or other governmental agency to which may be subject, any contract, agreement or instrument to which is a party or by which Contractor is bound or committed or constitute an event, which, with a lapse of time, action by a third-party and/or giving of notice, could result in the default under any of the foregoing or result in the creation of any lien, charge, or encumbrance upon any of the assets or properties of Contractor;
  - c) Contractor shall cooperate with Developer in Developer's performance of its obligations under this Agreement;
  - d) Contractor shall deliver to Developer copies of all notices and other material information relating to the Project or any portion thereof promptly after the receipt thereof by Contractor;
  - e) Contractor shall duly comply with and perform in all material respects the terms and provisions on its part to be complied with or to be performed under this Agreement.
  - f) Contractor hereby warrants all Sewer System improvements installed by Contractor according to the Services outlined in Exhibit C for one year from the date Tennessee Wastewater Systems, Inc. obtains 25% of the platted lots in the phase being connected to the system.
- 6) **DEFAULT OF DEVELOPER or CONTRACTOR.** Any one or more of the following events shall constitute an "Event of Default" by Developer or Contractor:
  - a) If Developer or Contractor fails to comply with or perform in any material respect any of the terms and provisions on its part to be complied with or to be performed under this Agreement;
  - b) If any one or more of the representations, warranties and/or covenants set forth above shall be or become untrue in any material respect or be breached; and/or
  - c) If Developer or Contractor commits a fraud, makes a material misrepresentation, or commits an action involving gross negligence or willful misconduct in connection with its duties or obligations under this Agreement.

- 7) REMEDIES IN EVENT OF DEFAULT BY DEVELOPER. Upon the occurrence of an Event of Default which remains uncured by Developer for a period of more than ten (10) days, after Contractor has given notice to Developer specifying such Default, Contractor shall have the following rights:
  - a) To terminate this Agreement immediately upon written notice to Developer and to receive immediate payment for all Services performed as of such date (including all reimbursables and incurred expenses [including with respect to ordered materials]);
  - b) To sue for monetary damages and/or injunctive relief; and/or
  - c) To pursue any other remedy available at law or in equity.
- 8) REMEDIES IN EVENT OF DEFAULT BY CONTRACTOR. Upon the occurrence of an Event of Default which remains uncured by Contractor for a period of more than ten(10) days, Developer has given notice to Contractor specifying such Default, Developer shall have the following rights:
  - a) To terminate this Agreement immediately upon written notice to Contractor and payment for all Services performed as of such date less the cost of all damages and losses suffered by Developer (including all reimbursables and incurred expenses [including with respect to ordered materials]);
  - b) To sue for monetary damages and/or injunctive relief; and/or
  - c) To pursue any other remedy available at law or in equity.
- 9) REUSE OF DOCUMENTS. All documents including any drawings and/or specifications prepared by Contractor relative to this Agreement are instruments of service. They are not intended or represented to be suitable for reuse by Developer or others on extensions of the Project or on any other project, and there shall be no reuse of any kind whatsoever without the prior written consent of Contractor, which consent may not be unreasonably be withheld. Provided however, Developer may use such documents in the event of a needed repair or restoration of the Work. Any reuse without written consent by Contractor is prohibited and will be at Developer's sole risk and without liability or legal exposure to Contractor; and Developer shall indemnify and hold harmless Contractor from all claims, damages, losses and expenses including attorney's fees arising out of or resulting therefrom. Any verification or adaptation will entitle Contractor to further compensation at rates to be agreed upon by Contractor, and any breach of this section by Developer will entitle Contractor to pursue its legal and equitable remedies against Developer for such breach. The provisions of this section shall survive completion of the Project and/or expiration or termination of this Agreement.
- 10) ACCESS TO THE SITE/JOBSITE SAFETY. Unless otherwise stated, Contractor will have access to the Property for activities necessary for the performance of the Services. Developer understands and agrees that Contractor is not responsible, in any way, for the means, methods, sequence, procedures, techniques, or jobsite safety of any activity (construction or otherwise) other than the Services.

### 11) INDEMNIFICATION.

- a) Developer shall indemnify, defend, and hold Contractor, its employees, officers, directors, and affiliates harmless from any loss, cost, expense, or damage claimed by third parties for property damage and/or bodily injury, including death, to the proportionate extent such loss, cost, expense, or damage arises from the negligence or willful misconduct of Developer, its employees, officers, or directors in connection with the Contract or project.
- b) Contractor shall indemnify, defend, and hold Developer, its employees, officers, directors, and affiliates harmless from any loss, cost, expense, or damage claimed by third parties for property damage and/or bodily injury, including death, to the proportionate extent such loss, cost, expense, or damage arises from the negligence or willful misconduct of Contractor, its employees, officers, or directors in connection with the Contract or project.
- c) In addition to the above, Developer shall further indemnify and hold Contractor harmless of, from, against and in respect of:
  - Any tax lien, levy, assessment, payment, liability, penalty or other deficiency, whether disputed or not, suffered or incurred by Contractor as a result of or arising out of Developer's ownership of the Property;
  - Any judgment, award, payment, settlement, cost or expense arising out of Developer's ownership of the Property, and rendered against or suffered or incurred by Contractor as a result of or with respect to any lawsuit or cause of action against or involving the Property;
  - iii) Any and all liabilities, whether disputed or not, suffered or incurred by Contractor as a result of or arising out of Developer's ownership of the Property; and/or
- d) The indemnifying party shall be responsible for any and all costs and expenses, including reasonable attorney's fees, arising in connection with any of the foregoing.
- e) The provisions of this section shall survive completion of the Project and/or expiration or termination of this Agreement.
- f) In addition to the above, Contractor shall further indemnify and hold Developer harmless of, from, against and in respect of:
  - Any tax lien, levy, assessment, payment, liability, penalty or other deficiency, whether disputed or not, suffered or incurred by Developer as a result of or arising out of Contractor's activities on the Property;
  - ii) Any judgment, award, payment, settlement, cost or expense arising out of Contractor's activities on the Property, and rendered against or suffered or incurred by Developer as a result of or with respect to any lawsuit or cause of action against or involving the such activities;
  - ii) Any and all liabilities, whether disputed or not, suffered or incurred by Developer as a result of or arising out of Contractor's activities on of the Property:

- 12) ENVIRONMENTAL INDEMNITY. In addition to the above, Developer represents, warrants and covenants to, for and with Contractor that there are no Hazardous Materials which have been generated and disposed of by Developer or which have been generated and disposed of by Developer and have migrated to the Property (including the ground water thereon) from any adjacent real estate owned, leased, or otherwise controlled by Developer, (except for those Hazardous Materials which may be stored on or about the Property in accordance with the Applicable Environmental Laws), as such terms are defined in the Applicable Environmental Laws, or in any regulations promulgated pursuant thereto, (ii) there are no underground storage tanks which are owned or operated by Developer located in or about the Property, (iii) Developer has not received any notice and to the actual knowledge of Developer no notice has been given to any party in the chain of title to the Property, by any person claiming any violation of, or requiring compliance with, any Applicable Environmental Laws, demanding payment or contribution for environmental damage; and (iv) to the actual knowledge of Developer no investigation, administrative order, consent order or agreement, litigation, or settlement with respect to Hazardous Materials located, on about or under all or a portion of the Property or contiguous or adjacent to the Property (provided that such contiguous or adjacent property is owned or controlled by Developer) is pending, or, to the actual knowledge of Developer, proposed, threatened or anticipated. To the extent that Developer breaches any of the aforementioned representations and Contractor is required by law to undertake any remedial or removal actions in connection therewith, as defined in the Applicable Environmental Laws, or to the extent that Contractor is otherwise liable to incur costs or may otherwise be held liable to any third party in connection with such breach or for any removal or remedial actions taken with respect thereto, then, within a reasonable period of time following receipt of notice thereof from Contractor, Developer shall indemnify Contractor and hold Contractor harmless from all liabilities, damages and costs incurred by Contractor with respect to such breach including, without limitation, all claims, liabilities, loss, costs or expenses arising from the incurrence of any penalties, charge or expenses with respect thereto in defending itself against any suit or action brought by such third party, and in paying or satisfying any judgment obtained by such third party against Contractor. The obligations of Developer under this section and the indemnity given hereunder shall survive the Closing.
- 13) INSURANCE. Contractor shall secure and maintain such insurance as will protect Contractor and Developer from claims of negligence, bodily injury, death, or property damage which may arise from the performance of Services. Developer shall maintain at all times during the Project and keep in force for the mutual benefit of Developer and Contractor, commercial general liability insurance against claims for personal injury, death or property damage occurring in, on or about the Property and/or areas adjacent to the Property, to afford protection to the limit of not less than \$2,000,000 combined single limit. Such insurance as described in the above sentences shall name Contractor as an additional insured,
- 14) DISPUTES RESOLUTION. It is agreed by both parties that all unsettled claims, counterclaims, disputes or other matters in question arising out of or related to this Agreement shall first be attempted to be resolved by mediation. This provision can be waived by the mutual consent of the parties, or by either party if a delay in initiating arbitration or the right to file a lawsuit would prejudice its rights.
- 15) MATERIALS. If the materials or equipment necessary for the Services and/or the Project to be completed in accordance with this Agreement shall become temporarily or permanently

unavailable for reasons beyond the control of Contractor, then in the case of such temporary unavailability, the time for performance of the Services and/or completion of the Project shall be extended to the extent thereof, and, in the case of a permanent unavailability, Developer shall have the right, in its sole discretion, either to terminate this Agreement or allow Contractor to proceed with the Services; provided, that if Developer elects to allow Contractor to proceed with the Services, Contractor (i) shall be excused from furnishing said materials or equipment that are unavailable for reasons beyond the control of Contractor, and (ii) shall be reimbursed for the difference between the cost of the materials or equipment permanently unavailable and the cost of a reasonably available substitute therefor which has been approved by Developer which approval shall not be unreasonably withheld or delayed.

### 16) MISCELLANEOUS.

- a) Entire Agreement. This Agreement shall constitute the entire contract between the parties and may not be modified except by an instrument in writing and signed by both of them.
- b) Construction. This Agreement shall be construed and enforced in accordance with the laws of the State of Tennessee.
- c) Notices. Any notice, demand, waiver or consent required or permitted hereunder shall be in writing and shall be given by hand delivery, national overnight courier service for delivery on the next business day, facsimile, telegram or prepaid registered or certified mail, with return receipt requested, addressed as follows:

### If to Developer:

Creasy Construction Attn: Benny Neill PO Box 786 Savannah, TN 38372

#### If to Contractor:

Adenus Solutions Group, LLC Attn: Matthew Nicks 849 Aviation Parkway Smyrna, TN 37167

Any such notice shall be deemed received when sent, if sent by overnight courier, email or by facsimile, or three (3) days after posting if sent by any other method. Any party may change its address for the purpose of notice by giving written notice in accordance with the provisions of this section.

- d) Attorney's Fees. In the event of litigation arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to the relief granted, all costs incurred, including reasonable attorney's fee.
- e) Section Headings. The article or section headings of this Agreement are for convenience of reference only and do not form a part hereof and do not in any way modify, interpret or construe the intentions of the parties.
- f) Waivers. Waiver by either party of any right for any default of the other parry, including a

waiver determined to occur as the result of an action or inaction, shall not constitute a waiver of any right for either a subsequent default of the same obligation or for any other default, past, present or future.

- g) Partial Invalidity. If any term, covenant or condition of this Agreement, or the application thereof to any person or circumstance, shall ever be held to be invalid or unenforceable, then in each event the remainder of this Agreement or the application of such term, covenant or condition to any other person or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected and each term, covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by Laws.
- h) Survival of Representations and Warranties. All warranties, representations, covenants, indemnities, and other agreements made in this Agreement shall survive completion of the Project and/or expiration or termination of this Agreement.
- i) Time, Time is of the essence with respect to every provision of this Agreement.
- j) Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be required. It shall not be necessary that the signatures on behalf of all parties appear on each counterpart hereof. All counterparts hereof shall collectively constitute a single agreement.
- k) Exhibits. THE EXHIBITS TO THIS AGREEMENT ARE AN INTEGRAL PART HEREOF AND BY THIS REFERENCE ARE INCORPORATED AS THOUGH FULLY SET FORTH HEREIN.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF. the parties have executed this Agreement to be effective as of the Effective Date.

### DEVELOPER:

Benny Neill

Creasy Construction
A Sole Proprietorship

By: Pony New

Title: owner

## **CONTRACTOR:**

Adenus Solutions Group, LLC a Tennessee Limited Liability Company

By:. Name:

Title:

# Exhibit A

# Legal Description - Property

Exhibit B

Site Map

# Exhibit C

# Project Description - Plans

Exhibit D

**Specifications** 

#### EXHIBIT B

- a. Site Assessment. The Contractor shall be provided with the following prior to any of the Services being rendered:
- i) 2' Interval Topographic Survey prepared by Registered Surveyor in the State of Tennessee, Extra High Intensity Soils Map prepared by a Certified Soil Scientist in the State of Tennessee, Boundary Survey and Preliminary Plat of the above-mentioned project, and any other relative site assessment information as required.
- b. Site Condition. Staking of the boundaries of "construction activity" and areas that are soil mapped for the System and maintaining the grid staking references until construction activity has begun. Developer must provide a clean (mowed, cleared, etc.) area for construction activity, as reasonably determined by Contractor. Contractor will clear treatment facility footprint and wooded drip areas.
- c. Access Road. Properly constructing and maintaining an access road as shown on Exhibit C, to include any permanent or temporary bridges or creek crossings, for construction activities on the Property and with respect to the Project that is capable of accommodating 80+ triple axle dump trucks. This access road must be constructed and passable for the intended purpose prior to the Contractor starting the Work. This access road is to be maintained by Developer until such time that Tennessee Wastewater Systems, Inc. accepts the system.
- d. Electrical Service. Providing Single Phase service (100-amp service) to the boundary of the parcel containing the Control Building of the Project, as designated on the Site Map and/or on the site plan to be prepared by Contractor, which electrical service shall be underground.
- e. Amenities. Any upgrades/amenities that are not specified as general construction activity according to the treatment site plan to be prepared by Contractor (e.g., Vinyl fencing, landscaping, custom brick/block work, etc.). Developer will install four (4) foot high fence around primary drip field disposal areas.
- f. Collection System. The installation of any and all aspects of the sewer collection system, to include the installation of any required Pump Stations, including excavation, plumbing, electrical service, setting any required meters and control panels, and finished grading. Developer agrees to install the forcemain from the outlet of any Pump Station(s) installed by the Developer, to the inlet of the Treatment Facility. Developer agrees to install the forcemain and reuse to the treatment facility and all drip field areas.

Ex. 4

### SANITARY SEWER SERVICE AGREEMENT

This Sanitary Sewer Service Agreement (the "Agreement") is made and entered as of this day of 20, by and between TENNESSEE WASTEWATER SYSTEMS, INC., a Tennessee corporation ("TWS") and Benny Neill / Creasy Construction, a Sole Proprietorship ("Developer").

### WITNESSETH:

WHEREAS, TWS has the ability and technology to own and operate a system for the processing and disposal of wastewater in Robertson County, Tennessee;

WHEREAS, Developer plans and intends to develop a residential development community presently known as Chelsea's Way Subdivision (the "Development"), located on Calista Road, Robertson County, Tennessee and identified as Map 84, Parcel 79, in Robertson County, TN described on Exhibit A attached hereto:

WHEREAS, Developer is responsible for constructing the wastewater treatment system along with the collection and disposal systems to serve the Development and has entered into a Construction-Design/Build Agreement (the "Construction Agreement") dated \_\_\_\_\_\_\_\_2019 with Adenus Solutions Group, LLC ("Contractor") to provide for the Contractor to construct the wastewater treatment and disposal systems in accordance with the Plans and Specifications so that TWS is able to serve the wastewater treatment and disposal needs of the Development;

WHEREAS, Developer has requested TWS to commit to serve the Development; and,

WHEREAS, TWS is willing and able to serve said Development upon the terms, provisions and conditions hereinafter set out, all of which are acceptable to the Developer.

NOW, THEREFORE, for and in consideration of the mutual covenants of the parties, and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

- 1. <u>Definitions</u>. In addition to the terms defined in the text of this Agreement, for purposes hereof, the following terms shall have the meaning ascribed to them below:
  - (a) "Applicable Laws" means all applicable constitutions, treaties, statutes, rules, regulations, ordinances, orders, directives, codes, judgments, decrees, injunctions, writs and determinations of any governmental or quasi-governmental authority.
  - (b) "Certified Installer" means a person who is certified by Adenus Technologies, LLC to construct and install the watertight tanks and service line connections within the Lot(s) of the Development.
  - (c) "Development" means that certain residential housing development owned and developed by Developer upon the Property and located adjacent and contiguous to the Sewage Facility Land.
  - (d) "Effective Date" means the date the last of the parties hereto executes this Agreement.
  - (e) "Event of Force Majeure" means a strike, lockout, labor dispute, embargo, flood, earthquake, storm, dust storm, lightning, fire, epidemic, act of God, war, national emergency, civil disturbance, rlot, act of sabotage or terrorism, restraint by court order or order of another

governmental authority, or any other occurrence beyond the reasonable control of the party in question; provided lack of necessary funds shall not be considered an "Event of Force Majeure" for purposes hereof.

- (f) "GSPD" means average gallons of sewage per day, calculated on a monthly basis. For example, if a customer of TWS released 300 gallons of sewage into the Sewer System in a thirty (30) day month, such customer would have released 10 GSPD during such month.
- (g) "Lot" or "Lots" shall mean a portion or portions of the Property, which are shown on a Plat after the Plat has been recorded in the County Register of Deeds which Lot (except as otherwise noted herein) is to be used for residential purposes.
- (h) "Lot Owner" or "Lot Owners" shall mean and refer to one or more persons who hold the record title to any platted Lot within the Property, including, but not limited to the Developer, which is part of the Property, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.
- (i) "Plans and Specifications" shall mean and refer to the plans and specifications for construction, installation and development of the Sewer System, as more particularly described on Exhibit C. attached hereto, which have been approved in writing by TWS. The Plans and Specifications shall also be in accordance with requirements of the State of Tennessee, Robertson County, and all Applicable Laws.
- (i) "Plat" shall mean a subdivision plat of all or a portion of the Property which shows roads, open space, residential Lots and Waste Water Lots.
- (k) "Property" shall mean and refer to the real property described on Exhibit A. attached hereto.
- (I) "TDEC" means the Tennessee Department of Environment and Conservation,
- (m) "TPUC" means the Tennessee Public Utility Commission and any successor thereto.
- (n) "Sewage Facility" shall mean and refer to that certain sewage treatment facility constructed by or for the Developer on the Sewage Facility Land which is to be operated by TWS upon conveyance to TWS by the Developer in accordance with this Agreement.
- (o) "Sewage Facility Land" means that land described on Exhibit B upon which the Sewage Facility is located, attached hereto.
- (p) "Sewer System" means the Sewage Facility Land permitted for 117 residential Lots, the Sewage Facility as more particularly described in the Plans and Specifications, including, but not limited to all lines, pipes, meters, lift stations, equipment, machinery, fixtures, trade fixtures, sastements and personal property used in connection with the operation thereof, whether or not located on the Sewage Facility Land or the Property, as the same may be altered, improved, modified, expanded or relocated from time to time.
- (q) "Sewer System Construction" means the construction of improvements for the Sewer System necessary to accommodate the Development as more particularly described in the Plans and Specifications.
- (r) "Wastewater Lot" means the same as shown on any Plat of the Property.
- (8) "Robertson County" or the "County" means Robertson County, Tennessee.

### 2. Compensation.

- (a) Developer will pay TWS a \$ 800.00 per Lot inspection and review fee. This amount is due when TWS signs a Subdivision Plat for the Lots within the Subdivision Plat as approved by the Robertson County, TN Planning Commission.
- (b) Taxes Developer is responsible for paying the corporate income tax as further explained in Paragraph 12(b).
- (c) TWS will withhold signing the final plat for the development until all fees associated with the construction and installation of the System have been paid in full by the Developer.

#### 3. Sanitary Sewer Service.

- (a) Dedication. From and after the date the Sewer System is completed in accordance with the Plans and Specifications approved by TWS, and upon the completion or satisfaction by Developer and TWS, of all the other terms and conditions set forth herein, TWS shall give written acceptance of the system to the Developer and shall provide sanitary sewer service to the Development.
- (b) Usage. Lot Owners shall only have the right to discharge sanitary sewage into the Sewer System, and the Lot Owners agree to use the Sewer System in a manner that complies with the "User Manual Do's and Don'ts for Effluent Collection Systems" attached hereto as Exhibit D. If sewer service to the Property is temporarily interrupted due to an Event of Force Majeure, TWS shall have no liability to the Developer or any Lot Owner on account of such interruption. In such event of temporary interruption, TWS shall use its best efforts to restore sewer service to the Property as quickly as possible. Developer represents and warrants that its contract of sale with each third-party purchaser or third-party builder of each Lot shall include in it the requirement that such person or entity must enter into a Sewer Service Agreement, in form and substance attached hereto as Exhibit E, by TWS.
- (a) Acceptance by TWS. Upon completion of the Sewer System by the Developer for each phase of the Development, approval of the Sewer System by TWS, payment of all fees due under Section 2(a) applicable to Lots contained in such phase and conveyed to TWS any Wastewater Lot applicable to such phase. TWS hereby agrees to and will accept contribution of the system as an expansion and improvement of the Sewage Facility and Sewer System and will commence providing sewer service for such phase.
- 4. **Permits.** TWS shall obtain and pay for all permits, licenses and other approvals necessary to allow TWS to deposit the applicable GSPD into the Sewer System, including, but not limited to, any regulatory approvals that must be obtained from TDEC, TPUC or any other governmental or quasi-governmental authority having jurisdiction over the Sewer System.

### 5. Sewer System Construction.

(a) Installation and Developer Responsibility. At its own expense and at no cost or expense to TWS, Developer shall furnish, install, lay and construct all of the Sewer System. The construction and installation of the Sewer System improvements shall be in strict accordance with the Plans and Specifications as approved by TWS. TWS shall inspect the construction of the improvements upon intervals determined by TWS. All Sewer System improvements shall be located as set forth in the Plans and specifications.

- (b) Delegation by Developer. The Plans and Specifications require that Developer must install watertight tanks and service connection lines within Lots in accordance with the Plans and Specifications, at Developer's expense. Should Developer authorize a Lot Owner or third-party builder to construct such watertight tanks and service connection lines within any Lot, Developer represents and warrants that it will require such person or entity to comply with the Plans and Specifications and bear all expense of compliance and insure that the installation work is performed by a Certified Installer.
- (c) Wastewater System Performance Bonds. The Developer shall post any bonds as required by TWS, Robertson County in accordance with County rules and regulations, and TPUC.
- (d) No Liens. Developer shall complete the development and construction of the Sewer System in accordance with the Plans and Specifications and the Sewer System shall be free of any laborers', materialmen's, mechanics', or other liens on any part of the Sewage Facility Land or the Sewer System and Developer shall not permit any such lien to be filed or otherwise imposed on any part of the Sewage Facility. In the event any such lien is filed against the Sewage Facility the Sewage Facility Land, or the System, Developer or Developer's contractor shall promptly cause such lien to be discharged or in lieu thereof file a bond or other security for the payment of such lien in form and amount satisfactory to TWS.
- 6. Conveyance and Transfer. Upon completion, Developer shall:
  - (a) convey by quit claim deed (the "Deed"), in the form attached hereto as Exhibit F, the Sewage Facility Land to TWS and provide title insurance policy, not to exceed \$150,000.00 (U.S. dollars);
  - (b) provide TWS with an owner's policy of title insurance issued by a nationally recognized title company showing the status of title to the Sewage Facility Land as free and clear of all material or interfering encumbrances (determined in TWS's sole discretion), including, but not limited to, any monetary liens, in the name of TWS for the full amount of the construction of the Sewage Facility and the value of the Sewage Facility Land (the "Title Policy");
  - (c) provide TWS with a survey of the Sewage Facility Land prepared by a surveyor or engineer licensed in the State of Tennessee sufficient to allow the title company to eliminate the standard printed exceptions in the owner's title policy pertaining to discrepancies in the area or boundary lines, encroachments, overlaps, improvements, or similar matters (the "Survey"), which Survey shall be certified to TWS and the title company;
  - (d) provide the TWS with "as-built" plans for the Sewar System;
  - (e) grant TWS a non-exclusive sewer line easement, in the form attached hereto as Exhibit G. across those portions of the Property lying within five (5) feet of either side of the sewer line within the Property.

All costs, fees and expenses related to the foregoing within this Section 6 shall be the sole responsibility of Developer, including, without limitation, recording fees, transfer taxes, title premiums, title endorsement charges and survey costs.

7. Developer Warrants. The Developer, by and through Contractor, hereby warrants all Sewer System improvements installed by Contractor pursuant to the provisions of this Agreement against defects in workmanship and materials for the particular phase being platted for a period of one (1) year from the date TWS obtains twenty-five percent (25%) of the platted lots in the phase being connected to the system. The Developer shall reimburse TWS upon demand for all costs and expenses incurred by TWS to repair all breaks, leaks or defects of any type whatsoever arising from any cause whatsoever occurring within one (1) year from the date TWS obtains twenty-five percent

(25%) of the platted lots in the phase connected to the Sewer System. The Developer may assign to TWS all warranties of the Contractor under the Construction Agreement but will remain responsible for insuring Contractor pays any costs in excess of the assigned warranties or repairs the Sewer System. The Developer hereby warrants that the Sewer System improvements shall be paid for in full and that no liens or encumbrances of persons claiming by, through or under the Developer shall remain in regard to the Sewer System improvements.

### 8. Representations and Warranties.

- (a) TWS represents, warrants and covenants to Developer that;
  - (1) TWS is a corporation duly organized and validly existing and in good standing under the laws of the State of Tennessee and is duly qualified to transact business in the State of Tennessee; and
  - (i) TWS has all necessary power to execute and deliver this Agreement and perform all its obligations hereunder without the consent or approval of any governmental authority; and
  - (ii) The execution, delivery and performance of this Agreement by the TWS does not conflict with or result in a violation of its organizational documents or Applicable Laws; and
  - (iv) The execution, delivery and performance of this Agreement by TWS does not conflict with or constitute a breach of, or constitute a default under, any contract, agreement or other instrument by which the TWS is bound; and
  - (v) TWS has not received notice of any litigation, administrative action, investigation or other governmental or quasi-governmental proceeding which would or could have an adverse effect upon its ability to fulfill all of its obligations under this Agreement; and
  - (vi) The execution, delivery and performance of this Agreement by TWS will not conflict with or result in a breach of any order, judgment, writ, injunction or decree of any court or governmental instrumentality; and
  - (vii) TWS is not a party to any voluntary or involuntary proceedings under any law relating to insolvency, bankruptcy, moratorium or creditors' rights.
  - (vii) All necessary permits as required by the State, County, and any other governing authority for the operation of the Sewage Facility have been or will be timely applied and obtained prior to commencement of the operation of the Sewage Facility.
- (b) Developer represents, warrants and covenants to the TSW that:
  - (i) Developer is a sole proprietorship duly organized and validly existing and in good standing under the laws of the State of Tennessee and is duly qualified to transact business in the State of Tennessee; and
  - (i) Developer has all necessary power to execute and deliver this Agreement and perform all its obligations hereunder, without the consent or approval of any governmental authority; and
  - (iii) The execution, delivery and performance of this Agreement by Developer does not conflict with or result in a violation of its organizational documents or Applicable Laws; and

- (iv) The execution, delivery and performance of this Agreement by Developer does not conflict with or constitute a breach of, or constitute a default under, any contract, agreement or other instrument by which Developer is bound; and
- (v) Developer has not received notice of any litigation, administrative action, investigation or other governmental or quasi-governmental proceeding which would or could have an adverse effect upon its ability to fulfill all of its obligations under this Agreement; and
- (vi) The execution, delivery and performance of this Agreement by Developer will not conflict with or result in a breach of any order, judgment, writ, injunction or decree of any court or governmental instrumentality; and
- (vii) Developer is not a party to any voluntary or involuntary proceedings under any law relating to insolvency, bankruptcy, moratorium or creditors' rights and;
- (vii) That to its knowledge all necessary permits as required by the State, County, and any other governing or regulatory authority have been applied or will be applied for by the Contractor and obtained prior to the construction of the Sewer Facility.

#### Default and Termination.

- (a) Notwithstanding anything to the contrary herein, TWS may, at all times prior to the completion of the Sewer System, terminate this Agreement in the event that:
  - (i) Developer has materially failed to perform its obligations with regard to construction of the Sewer System pursuant to the terms of this Agreement and in accordance with the Plans and Specifications and has failed to cure said failure within fifteen (15) calendar days after receiving written notice from TWS specifying in detail the nature of such failure; provided if such failure cannot reasonably be cured within said fifteen (15) calendar day period, then TWS may not terminate this Agreement if Developer has commenced to cure the failure within said fifteen (15) calendar day period and thereafter prosecutes such cure to completion with reasonably acceptable diligence; or
  - (i) Developer has defaulted in the payment to TWS of the fees set forth in Section 2(a) as and when required and fails to cure such default within fifteen (15) calendar days after notice from TWS thereof and thereafter prosecutes such cure to completion with reasonably acceptable diligence; or
  - A receiver, liquidator, or trustee of Developer shall be appointed by court order, or a petition to liquidate or reorganize Developer shall be filed against Developer under any bankruptcy, reorganization or insolvency law and such order or petition is not vacated or dismissed within sixty (60) calendar days, or Developer shall voluntarily file a petition in bankruptcy or request for reorganization under any provision of the bankruptcy reorganizational insolvency laws unless such petition is dismissed within sixty (60) calendar days after the filing thereof, or if Developer shall make an assignment of all or substantially all of its assets for the benefit of creditors, or if Developer is adjudicated bankrupt.
- (b) Developer may terminate this Agreement, at any time during the term of this Agreement prior to completion of the Sewer System, if a receiver, liquidator, or trustee of TWS shall be appointed by court order, or a petition to liquidate or reorganize TWS shall be filed against TWS under any bankruptcy, reorganization or insolvency law and such order or petition is not vacated or dismissed within sixty (60) calendar days, or TWS shall voluntarily file a petition in bankruptcy or request for reorganization under any provision

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of the bankruptcy reorganizational insolvency laws unless such petition is dismissed within sixty (60) calendar days after the filing thereof, or if TWS shall make an assignment of all or substantially all of its assets for the benefit of creditors, or if TWS is adjudicated bankrupt.

Further, Developer may terminate this Agreement in the event that TWS has materially failed to perform its obligations will regard pursuant to the terms of this Agreement and has failed to cure said failure or default within fifteen (15) calendar days after receiving written notice from Developer specifying in detail the nature of such failure; provided if such failure cannot reasonably be cured within said fifteen (15) calendar day period, then Developer may not terminate this Agreement if TWS has commenced to cure the failure within said fifteen (15) calendar day period and thereafter prosecutes such cure to completion with reasonably acceptable diligence.

### 10. Indemnification.

- a) Each party agrees to indemnify and hold harmless the other from, against and/or with respect to:
  - Any loss, expense, liability, damage, or deficiency resulting from any material misrepresentation, breach of warranty, or nonfulfillment of any covenant or agreement on the part of such party made or given in or with respect to this Agreement, or from any material misrepresentation in or omission from any certificate, schedule, exhibit or other document or instrument furnished or to be furnished to the other in connection with the transactions provided for in this Agreement, or from any gross negligence or willful misconduct of the other party; and/or
  - i) Any and all costs and expenses (including attorneys' fees) arising in connection with any of the foregoing.
- b) In addition to the above, Developer shall indemnify and hold TWS harmless of, from, against and in respect of:
  - Any tax lien, levy, assessment, payment, liability, penalty or other deficiency, whether disputed or not, suffered or incurred by TWS as a result of or arising out of Developer's ownership of the Property;
  - i) Any judgment, award, payment, settlement, cost or expense arising out of Developer's ownership of the Property, and rendered against or suffered or incurred by TWS as a result of or with respect to any lawsuit;
  - ii) Any and all costs and expenses (including attorneys' fees) arising in connection with any of the foregoing.
  - iv) Any violation of any permit requirement of the State of Tennessee, Williamson County, and any other governing or regulatory authority with jurisdiction over the construction of the sanitary sewer.
- c) The provisions of this section shall survive completion of the Project and/or expiration or termination of this Agreement.

- 11. <u>Environmental Indemnity</u>. In addition to the above, Developer represents, warrants and covenants to, for and with TWS that:
- (a) there are no Hazardous Materials which have been generated and disposed of by Developer or which have been generated and disposed of by Developer and have migrated to the Property (including the ground water thereon) from any adjacent real estate owned, leased, or otherwise controlled by Developer, (except for those Hazardous Materials which may be stored on or about the Property in accordance with the Applicable Environmental Laws), as such terms are defined in the Applicable Environmental Laws, or in any regulations promulgated pursuant thereto; and
- (b) there are no underground storage tanks which are owned or operated by Developer located in or about the Property; and
- (c) Developer has not received any notice and to the actual knowledge of Developer no notice has been given to any party in the chain of title to the Property, by any person claiming any violation of, or requiring compliance with, any Applicable Environmental Laws, demanding payment or contribution for environmental damage; and
- (d) to the knowledge of Developer, no investigation, administrative order, consent order or agreement, litigation, or settlement with respect to Hazardous Materials located, on about or under all or a portion of the Property or contiguous or adjacent to the Property (provided that such contiguous or adjacent property is owned or controlled by Developer) is pending, or, to the knowledge of Developer, proposed, threatened or anticipated.

To the extent that Developer breaches any of the aforementioned representations and TWS is required by law to undertake any remedial or removal actions in connection therewith, as defined in the Applicable Environmental Laws, or to the extent that TWS is otherwise liable to incur costs or may otherwise be held liable to any third party in connection with such breach or for any removal or remedial actions taken with respect thereto, then, within a reasonable period of time following receipt of notice thereof from TWS, Developer shall indemnify TWS and hold TWS harmless from all liabilities, damages and costs incurred by TWS with respect to such breach including, without limitation, all claims, liabilities, loss, costs or expenses arising from the incurrence of any penalties, charge or expenses with respect thereto in defending itself against any suit or action brought by such third party, and in paying or satisfying any judgment obtained by such third party against TWS. The obligations of Developer under this section and the indemnity given hereunder shall survive the Closing.

### 12. <u>Developer Obligations</u>.

(a) The Developer shall pay an annual wastewater capacity reservation fee of \$120.00 per platted Lot, or as may be amended from time to time by the TPUC, for each Lot owned that is not attached to the Sewer System. Should the Developer sell a Lot, the Developer agrees to include in the sales contract with the purchaser the requirement to pay to TWS an annual wastewater capacity reservation fee at the then current TPUC established rate to defray the cost of testing and reporting to the State of Tennessee. The fee shall be payable each year by December 15th for the owners of record as of December 1. When the Lot Owner attaches to the Sewer System and accepts service with the Sewer System, such Lot Owner shall pay a prorated fee for that year and the fee shall not be charged thereafter so long as the Lot Owner maintains service.

(b) Developer shall pay TWS the federal corporate income tax associated with the amount of the contribution of the wastewater system. The formula to be used to calculate the tax is as follows:

TR/(1-TR) \*C+P. TR is the current effective corporate tax rate which is presently 21%. C is the amount of cash provided to TWS and P is the amount (cost) of the property (real and personal) to be conveyed to TWS. The taxes shall be paid at the time the final Subdivision plat is presented to TWS for signature.

### 13. Operation, Maintenance and Improvements.

### (a) TWS shall:

- (i) perform all repairs, maintenance and replacements necessary to keep the Sewer System in a good working order; and
- (i) operate the Sewer System in compliance with Applicable Laws, including, but not limited to, all Applicable Laws related to human health, safety and the environment. To the extent reasonably possible, TWS shall perform all repairs, maintenance and replacements to the Sewer System in a manner that does not interfere with its ability to provide sewer service to the Property. In the event any repairs, maintenance or replacements to the Sewer System will result in an interruption of sewer service to the Property, TWS shall notify Developer thereof and use its best efforts to minimize the interference caused thereby, which efforts shall include, but not be limited to, working with Developer to schedule the repairs, maintenance and replacements so as to avoid or lessen the disruption. Service by TWS will be provided in compliance with its established tariff in effect at the TPUC.
- (b) Developer further agrees to execute, acknowledge and deliver to TWS any and all mutually agreed upon easements that may be necessary or appropriate as determined by TWS for the construction, expansion, access, operation and maintenance of TWS's Sewer System, or portion thereof provided such easements shall not interfere with the building envelope of any Lot.
- 14. Restrictive Covenants. Developer shall include, within any declaration or other instrument regarding restrictive covenants for the Development, a provision regarding the sewage disposal system set forth herein as drafted by TWS, in form and substance materially similar to the language as more particularly set forth in Exhibit H, attached hereto.
- 15. Water Valve Requirements. Developer is required to install a water shut off valve with an appropriate valve box in the water line on the customer's side of the water meter at each home in the subdivision. If the Developer sells the lot to allow another party to build on the lot, they must insure that the purchaser is notified of the water valve requirements.
- Assignment. Neither Developer nor TWS shall not have the right to sell, assign, transfer, lease or convey all or a portion of its rights hereunder without the prior written consent of the other party. Developer and TWS shall have the right to assign all of its rights under this Agreement to any party purchasing the Sewer System or the Property so long as such party assumes all of Developer or TWS's respective obligations hereunder. It is agreed that as used herein, "Developer" shall mean Developer and its respective successors, assigns, transferees and tenants, with the exception of customers purchasing completed homes on the Property, and "TWS" shall mean TWS and its respective successors and assigns.

#### 17. Miscellangous.

(a) Entire Agreement. This Agreement (i) constitutes the entire agreement and understanding of Developer and TWS with respect to the subject matter hereof, and (ii) may be amended only by a written instrument executed by Developer and TWS.

- (b) Governing Law. This Agreement shall be governed by and construed under the laws of the State of Tennessee.
- (c) Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.
- (d) No Waiver. No waiver of any provision of this Agreement shall be deemed to have been made unless expressed in writing and signed by the party charged therewith. No delay or omission in the exercise of any right or remedy accruing upon the breach of this Agreement shall impair such right or remedy or be construed as a waiver of such breach. The waiver by Developer or TWS of any breach shall not be deemed a waiver of any other breach of the same or any other provision of this Agreement.
- (e) Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining terms hereof will not be affected, and in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision will be added as a part of this Agreement that is as similar to the illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.
- (f) Prior Drafts. All negotiations, considerations, representations and understandings between Developer and TWS are incorporated herein. No inference shall be drawn from the addition, deletion or modification of any language contained in any prior draft of this Agreement.
- (g) Attorneys' Fees. If any legal proceeding is commenced to (i) enforce the terms of this Agreement or (ii) interpret the provisions contained herein, the prevailing party in such legal proceeding shall be entitled to recover its reasonable attorneys' fees, court costs and litigation expenses from the non-prevailing party.
- (h) Exhibits. TWS and Developer hereby acknowledge and agree that all exhibits referenced in this Agreement are attached hereto and incorporated herein by reference.
- (f) Relationship Between the Parties. This Agreement shall not be deemed or construed to create a partnership or joint venture between Developer and TWS or cause Developer or TWS to be liable or responsible in any way for the agreements, actions, liabilities, debts or obligations of the other.
- (i) Counterparts. This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed as original documents and all such counterparts shall together constitute one and the same instrument.

### SIGNATURE PAGE TO FOLLOW

# IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date.

TWS

TENNESSEE WASTEWAIL STEMS
a Tennessee curporation
By:
Name: Je Risten
Title: Chief Executive Officer
Developer
Thomas Notifi
Benny Neill
Creasy Construction
a Sole proprietorship
Pur Comment
Ву:
Name: Benny Neill
Liente Patril Lient
Title: 6 n 4

Personally appeared before me, White Public, Jeff Risden with whom I am personally acquainted and who acknowledged that he executed the within instrument for the purposes therein contained, and who further acknowledged that he is the Chief Executive Officer of Tennessee Wastewater Systems, the within named bargainer, a Tennessee corporation, and is authorized to execute this instrument on behalf of Tennessee Wastewater Systems.			
WITNESS my hand, at office, this 11 day of Desember . 20 20.			
STATE OF TENNESSEE NOTARY PUBLIC My Commission Expires: 12/81/2022			
Personally appeared before me.  Personally appeared before me.  With whom I am personally acquainted and who acknowledged that he/she executed the within instrument for the purposes therein contained, and who further acknowledged that he/she is the of the within named bargainer, a Sole Proprietorship, and is authorized to execute this instrument on behalf of			
WITNESS my hand, at office, this			
TENNESSEE NOTARY PUBLIC NOTARY			

### Exhibit A

# **Property**

# Exhibit C Plans and Specification

# USER MANUAL DO"S AND DON"TS

### For

### EFFLUENT COLLECTION SYSTEMS

Copy to be provided and can be viewed online at:

http://adenus.com/Adenus Homeowners Manual.ndf

### Exhibit E

### Sewer Service Aureement

DATE:	
PRINTED NAME	
ADDRESS OF PROPERTY	LOT#
MAILING ADDRESS	
TELEPHONE NUMBER	EMAIL ADDRESS

I hereby make application to Tennessee Wastewater Systems, Inc. ("TWS") for sewer service at the address of property stated above. In consideration of the undertaking on the part of TWS to furnish sewer service, I understand, covenant and agree as follows:

- I understand that the components of a sewer system have been installed on the property referred to above, which is owned or occupied by me, and which is to be connected with a wastewater disposal system owned and/or maintained by TWS. I warrant that any connection to and/or subsequent use to this system by the components on my property shall be in accordance with the Rules, Regulations and Plans of TWS. Regarding my usage of the system components on my property, which are owned by me, I covenant to follow the guidelines set forth in the <u>USER MANUAL</u> (Do's and Don'ts for an Effluent Collection System). Should I violate these Rules and/or abuse or damage my components, I understand that I must bear the expense to repair or replace the same in accordance with the Plans of TWS.
- I acknowledge TWS, its successors and assigns have a perpetual easement in, over, under and upon the above specified land as shown on the property plat, with the right to operate and repair all components of the sewer system on my property, including but not limited to the interceptor tank and the Interceptor Pump or Interceptor Gravity Tank systems. I further grant TWS permission to enter upon my property for any reason connected with the provision or removal of sewer service or collection therefore.
- For all other plumbing and structures on the property, including the outfall line to the interceptor tank, I agree that I am responsible for all operation and repair thereof.
- 4. I hereby authorize TWS to purchase and install a cutoff valve on my side of my water meter and grant TWS exclusive right to use such valve in accordance with its Rules and Regulations. However, the use of this valve does not in any way relieve me of my obligation to pay for water service to the service provider.
- 5. I understand and agree to promptly pay for service at the then current schedule of rates and fees and agree to abide by and be subject to TWS's billing and cutoff procedures. Should I not pay in accordance with TWS's Rules, I agree to pay all costs of collection, including attorney fees.
- I accept the current Rules and Regulations and the Rates and Fees Schedule and agree to abide by any
  amendments to such Schedules.
- 7. I agree that this Agreement shall remain in effect for as long as I own, reside upon or rent the above-described property. When such circumstances no longer exist, I agree to provide notice to TWS at least thirty (30) days in advance of my vacating the property.

SUBSCRIBER'S SIGNATURE

# Exhibit F

# Form of Deed

# QUITCLAIM DEED

I, [	owledged, do conve State of Tennessee	by and warrant c, Grantee's Su	to <i>[name q</i> ccesors and
assigns forever, all right, title and interest of the situated in [			
In witness, I, [/, have set my hand to the year].	nis instrument this	// day	of [month
Signed: Print Name:			
ACKNOWLEDGEMENT			
The foregoing instrument was sworn to and			
is personally known to me or has produced		as iden	tification.
Signature of Notary			
My Commission Expires:			

### Exhibit G

# Form of Sewer Line Easements

Tennessee Wastewater Systems, Inc.	Subdivision
851 Aviation Parkway	Book
Smyrna, TN 37167	Page
DEED FOR EASEMENT FOR WASTEN	vater system lines & equipment
This Deed made by and between Wastewater Systems, Inc., a public utility company,	. LLC, Grantor, and Tennessee
	ESSETH:
WHEREAS, Grantor owns a certain Subdivision in t Tennessee, the same being the land conveyed to them Book #, Page # Register's Office	n by of record in Deed
WHEREAS, Grantee's Contractor is installing waste subdivision property for the purpose of installing a s	
WHEREAS, it is the desire of the Grantor to grant a installation, operation and maintenance of wasteward lands.	
and install wastewater lines and equipment [Is this wastewater lines and equipment and to opunder and across their land. Said easement shall be a	consideration and other good and valuable aknowledged, does hereby grant, give and convey al right and non-exclusive easement to lay, construct work in the Plans of the construction that the estate, maintain and repair said wastewater system twenty (20) foot construction easement with a set on either side of the wastewater lines) and parallel give and convey to Grantee a perpetual right to cut, ions, and for the purpose of the constructions, said lines along, over and across the area which is
It is agreed and understood that the contractor for Gr done to the fences and any other structures at the tim lines and shall cleanup and re-grass according to pre-	
Grantor will give notice of this deed to each and all o	of his assigns of the subject property.
As used where, the singular includes the plural and the	he masculine includes the feminine.

IN WITNESS WHEREOF, th	_	nands and seals on the	aday of
	GRANTOR:		
	Ву:	e-spe	
	GRANTEE: TENNESS	ee wastewater	SYSTEMS, INC
	Ву:		
STATE OF TENNESSEE			
COUNTY OF			
State and County aforesaid,	d before me, the undersigned a the forenamed bargainers, and who acknowledged the ex- in.	L 28	, with whom I
Witness my hand ar	nd official seal on this the	day of	, 20
		NOTARY PUBLIC	
MY COMMISSION EXPIR	RES:		

### Exhibit H

### Restrictive Covenants

### SPECIAL PROVISIONS REGARDING WASTEWATER DISPOSAL

- Section 1. <u>Wastewater System</u>. The Property and each Residential Unit located thereon shall be served by a wastewater treatment and disposal system to be operated by the Wastewater Utility. Each Owner, by purchase of a Residential Unit [or Lot], agrees to enter into an agreement regarding the Wastewater System with such Wastewater Utility in form and substance satisfactory to such Wastewater Utility as approved by the Tennessee Public Utility Commission, and to abide by any rules, regulations or other requirements of such Wastewater Utility regarding the Wastewater System ("<u>Do's & Don'ts for Effluent Collection Systems</u>").
- Section 2. <u>Wastewater Utility.</u> No individual wastewater disposal system shall be permitted on any Residential Unit. The Wastewater System of the Property will be owned and operated by the Wastewater Utility, a public utility company, which is regulated by the Tennessee Public Utility Commission. Water and sewer lines will be installed to the line of each Residential Unit. It will be the responsibility of a Lot Owner who is building a home to extend these lines to the dwelling and install components per the specifications of the Wastewater Utility.

### Section 3. System Requirements.

- (a) The Wastewater System being installed requires the Owner of each Residential Unit to purchase and install a tank system on the Residential Unit when constructing a building and before occupancy of the dwelling. After installation of the tank is accepted by the Wastewater Utility, all maintenance, service and/or replacement will thereafter be the responsibility of the Wastewater Utility. The Owner by accepting a deed to a Residential Unit in the Vineyard Valley subdivision grants a convenience easement onto and across the property to the Wastewater Utility responsible for maintenance of the collection lines and sewer tank system. The Owner shall purchase and install, at the Owner's expense, a tank system of a size, shape, and nature as required by and in compliance with specifications as provided to the then Owner by the Wastewater Utility.
- (b) Each Owner shall be required to ensure that a water shut-off valve with an appropriate valve box is installed in the water line on the Owner's side of the water meter at each residence built on a Residential Unit within the Property. The valve shall comply with specifications established by the Wastewater Utility.
- (c) The Wastewater Utility will authorize the Owner to discharge wastewater into the Wastewater System only after the Wastewater Utility has inspected and approved the equipment installation.
- Section 4. Owner Responsibilities. The Owner agrees that by accepting a deed to a Residential Unit and by installing and using the tank system that such Owner will not knowingly discharge nor allow to be discharged any material, chemical, solid or liquid into the Wastewater

System that will create an environmental hazard or that will cause damage to any part of the Wastewater System.

### Section 5. Fees.

- (a) A stand-by fee for each Residential Unit is charged by the Wastewater Utility until a dwelling is constructed and connected to the Wastewater System and the Owner signs up for service. The amount of the stand-by fee is set by the Tennessee Public Utility Commission and is \$120.00 per year as of the date of adoption of this Declaration, or as may be amended in the future by the Tennessee Public Utility Commission. Such fee shall be paid by the Owner of each Residential Unit by December 15<sup>th</sup> of each year, and shall be paid by the record Owner of such Residential Unit as of December 1<sup>st</sup> of such year.
- (b) In order to secure wastewater service to a home, the Owner will be required to enter into a service agreement with the utility. The monthly rate for wastewater service is set by the Tennessee Public Utility Commission.
- Section 6. <u>Survival</u>. The terms and conditions of this Article in its entirety shall survive closing of the sale of any Residential Unit and acceptance of a deed thereto and shall not be merged therein and shall be binding upon successive Owners of each Residential Unit.



Home

New Search

Return to List

**County Number: 074** 

County Name: ROBERTSON

Tax Year: 2019

01 - PUBLIC

# **Property Owner and Mailing Address**

Jan 1 Owner: 31-W REALTY LLC 7434 CYCLE LANE **GOODLETTSVILLE, TN 37072** 

# **Property Location**

Address: CALISTA RD 3339

Map: 096 Grp: Ctrl Map: 096 Parcel: 033.00 Pi: S/1: 000

### Value Information

Reappraisal Year: 2018

Land Mkt Value: \$413,500 Land Use Velue: \$149,200 Improvement Value: \$157,700 Improvement Value: \$157,700 Total Market Appraisal: \$571,200 Total Use Appraisal: \$306,900 Assessment %: 25

Assessment: \$76,725

03 - PUBLIC / INDIVIDUAL

# **General Information**

11 - AGRICULTURAL Class:

City#: 771 City: WHITE HOUSE 85D1: 000 SSD2: 000 District: Mkt Aren: Wee # Bldgs: # Mobile Homes: 0

**Utilities - Electricity:** 

Utilities - Gas / Gas Type: 00 - NONE Zoning:

## Subdivision Data

Utilities - Water / Sewer:

Subdivision: GREENBELT '82

Plat Bk: Plat Pg: Block: Lot:

# **Additional Description**

098 098 018.00 000

### SIXTH AMENDMENT TO REAL ESTATE PURCHASE AGREEMENT

This Sixth Amendment to Real Estate Purchase Agreement (the "Sixth Amendment") is made by and between Benny Neill ("Purchaser") and 31-W Realty, LLC ("Seller") subject to all of the following terms and conditions:

Agreement Modified by this Sixth Amendment. Purchaser and Seller execute this Sixth Amendment with the intent to modify, as identified and described herein, the Real Estate Purchase Agreement executed by and between Purchaser and Seller on September 25, 2017, along with its preceding amendments, and concerning that 78.99 acre property located at Calista Road, Robertson, County, Parcel Number 084 079.00, Tennessee, together with all rights, privileges, interests, easements, buildings and appurtenances belonging or in any wise pertaining thereto (collectively, the "Property").

Extension of Approval Period. Beginning April 20, 2019, in exchange for Purchaser's monthly payment to Seller of Two Thousand Six Hundred Dollars and Zero Cents (\$2,600.00) on or before the 20<sup>th</sup> of the then-current month (the "Monthly Fee"), the Seller will extend the Approval Period referenced in the Agreement by one calendar month, to the 20<sup>th</sup> of the following month (e.g. Purchaser's payment to Seller of \$2,600.00 on or before April 20, 2019 shall extend the Approval Period to May 20, 2019), said monthly extension commencing immediately upon expiration of the original Approval Period and any previous extensions thereto (the "Monthly Extensions"). Provided that Purchaser timely and fully tenders each Monthly Fee to Seller in accordance with the terms herein, Seller consents to Monthly Extensions through September 20, 2019, which would extend the Approval Period to October 20, 2019.

Monthly Fees are Not Earnest Money. Purchaser understands and agrees that no Monthly Fee nor any portion thereof shall be deemed to be Earnest Money or Additional Earnest Money under the Agreement or any Amendment thereto.

No Further Modifications to the Agreement. No other terms, conditions, or provisions within the Agreement are intended to be modified by this Sixth Amendment.

EXECUTED on this the 19th day of April, 2019.

Seller
31-W Realty, LLC
Ist Way Dy

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EXECUTED on this the 19th day of April, 2019.

Purchaser Benny Neill /s/	Seller 31-W Realty, LLC /s/