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January 17, 2020

VIA ELECTRONIC FILING

Tennessee Public Utility Commission
502 Deaderick Street, 4th Floor
Nashville, TN 37243

Re: Petition of Cartwright Creek, LLC Requesting Approval of Proposed Capital
Improvements
Staff Data Request No. 1
Docket No. 19-00049

Attached for filing are the responses to Staff Data Request 1 in the above-captioned docket.

Sincerely,

BRADLEY ARANT BOULT CUMMINGS LLP

By:


Henry Walker

HW/dbi
Attachments

CARTWRIGHT CREEK, LLC
DOCKET NO. 19-00049 – CAPITAL IMPROVEMENT DISBURSEMENT
DISCOVERY REQUEST OF THE TENNESSEE PUBLIC UTILITY COMMISSION

Question:

1. Provide the latest monthly total escrow balance separated by (1) tap fees and (2) capital improvement surcharges.

Response:

The escrow balances at December 31, 2019 are as follows:

Tap Fees	\$88,682.67
Capital Improvement Surcharge	208,022.97
Total	\$296,705.64

CARTWRIGHT CREEK, LLC
DOCKET NO. 19-00049 – CAPITAL IMPROVEMENT DISBURSEMENT
DISCOVERY REQUEST OF THE TENNESSEE PUBLIC UTILITY COMMISSION

Question:

2. Identify any amounts that shareholders are proposing to contribute to the repairs and upgrades needed at the Grasslands System.

Response:

The current owner of Cartwright Creek, LLC is continuing to seek a buyer for the utility and has no plans for any new equity investment to fund capital improvements to the Grasslands System.

CARTWRIGHT CREEK, LLC
DOCKET NO. 19-00049 – CAPITAL IMPROVEMENT DISBURSEMENT
DISCOVERY REQUEST OF THE TENNESSEE PUBLIC UTILITY COMMISSION

Question:

3. Assuming the Commission approves the continuation of the \$7.50 monthly Capital Improvement Surcharge in Docket 19-00097, please discuss whether shareholders would be willing to fund the necessary repairs and upgrades upfront and then receive compensation via the monthly surcharge, including reasonable interest charges.

Response:

The current owner of Cartwright Creek, LLC is continuing to seek a buyer for the utility and has no plans for any new equity investment to fund capital improvements to the Grasslands System. Further, any new equity investment by the current owner of Cartwright Creek, LLC would complicate the terms for an eventual sale.

CARTWRIGHT CREEK, LLC
DOCKET NO. 19-00049 – CAPITAL IMPROVEMENT DISBURSEMENT
DISCOVERY REQUEST OF THE TENNESSEE PUBLIC UTILITY COMMISSION

Question:

4. Discuss Cartwright Creek's attempts to secure a loan for the outstanding amount needed to complete repairs and upgrades needed at the Grasslands System.

Response:

The current owners of Cartwright Creek, LLC have found that banks will not generally lend to a private wastewater utility that does not earn a continuing profit and is unable to mortgage property to provide collateral for a loan.

CARTWRIGHT CREEK, LLC
DOCKET NO. 19-00049 – CAPITAL IMPROVEMENT DISBURSEMENT
DISCOVERY REQUEST OF THE TENNESSEE PUBLIC UTILITY COMMISSION

Question:

5. Discuss in detail all repairs that have been made at the Grassland System that have yet to be paid.

Response:

Repairs that address the infiltration problems at Grasslands, which were described in Docket 19-00049 (pending) and Docket 19-00034 (approved), are ongoing. TDEC has required that this work be completed as part of a settlement agreement that is expected to be finalized by the end of January 2020. A bill for partial payment \$223,589.53, was sent to Cartwright Creek in December. Following the announcement of the cancellation of the TPUC January agenda conference, the partial payment was made out of escrow funds in order to ensure that the work continues until completion as required by TDEC.

CARTWRIGHT CREEK, LLC
DOCKET NO. 19-00049 – CAPITAL IMPROVEMENT DISBURSEMENT
DISCOVERY REQUEST OF THE TENNESSEE PUBLIC UTILITY COMMISSION

Question:

6. Discuss the repairs and upgrades the existing escrow funds will be used for and discuss the remaining repairs and upgrades that will be necessary, including amounts.

Response:

The repairs to the Grasslands facilities collection system will necessarily use all the current escrowed funds. Therefore, the first portion of any new escrowed funds will build a reserve that could be used in the event of an emergency at any of the four Cartwright Cree treatment and collection systems. Note that the \$7.50 per month per customer, with approximately 800 customers, is \$6,000 per month. Cartwright Creek would like to rebuild the reserve to at least \$50,000.

As Cartwright Creek has discussed in previous submittals to TPUC and TDEC, the Grasslands wastewater treatment facility is nearing 50 years old with many major upgrades and replacement needs, some of which are:

Rebuilding the main pump station - \$500,000
Reinforcing the existing treatment system walls - \$100,000
Addition of a mechanical influent screen - \$250,000
Improving the process air delivery system - \$50,000
Improving the sludge handling and dewatering equipment - \$100,000
Replacing the existing treatment system - \$4,000,000

Note that these estimates are “order of magnitude” estimates. Arriving at more accurate estimates will require the engineering design of each improvement.

CARTWRIGHT CREEK, LLC
DOCKET NO. 19-00049 – CAPITAL IMPROVEMENT DISBURSEMENT
DISCOVERY REQUEST OF THE TENNESSEE PUBLIC UTILITY COMMISSION

Question:

7. Assuming the Commission approves the continuation of the \$7.50 monthly capital Improvement Surcharge, provide an anticipated timetable for completing repairs and upgrades at Grasslands System.

Response:

Refer to the Company's response to TPUC1-7 in Docket No. 19-00097. At this time, major repairs can only be planned as the funds from tap fees and capital surcharges accrue. The exact amount of tap fees collected at this time is uncertain, making any future timetable unfeasible.

CARTWRIGHT CREEK, LLC
DOCKET NO. 19-00049 – CAPITAL IMPROVEMENT DISBURSEMENT
DISCOVERY REQUEST OF THE TENNESSEE PUBLIC UTILITY COMMISSION

Question:

8. Will future repairs be made at the Grasslands System prior to receiving funds via the Monthly Capital Surcharge (assuming it will be approved)?

Response:

The current owner of Cartwright Creek, LLC is continuing to seek a buyer for the utility and has no plans for any new equity investment to fund capital improvements to the Grasslands System. As a result, Cartwright Creek, LLC has no ready source of available cash to fund any major repairs or capital improvements to the Grassland system.

CARTWRIGHT CREEK, LLC
DOCKET NO. 19-00049 – CAPITAL IMPROVEMENT DISBURSEMENT
DISCOVERY REQUEST OF THE TENNESSEE PUBLIC UTILITY COMMISSION

Question:

9. Provide copies of all Cartwright Creek's contracts with developers.

Response:

Cartwright Creek, LLC has two developer contracts.

See Attachment TPUC1-9a for a copy of the contract with "The Troubadour Club" that was previously referred to as "The Hideaway" development.

See Attachment TPUC1-9b for a copy of the contract with the "Hardeman Springs" development.

SEWER AND WASTEWATER TREATMENT SYSTEM SERVICE AGREEMENT

This Sewer and Wastewater Treatment System Service Agreement (this "Agreement") is made and shall become effective this 12th day of August 2015 (the "Effective Date"), by and between Cartwright Creek, L.L.C., a Tennessee limited liability company ("Cartwright Creek") and Arrington National Development, LLC, a Tennessee limited liability company ("Owner") (singularly, "Party," and collectively, the "Parties") pursuant to which Cartwright Creek will provide to Owner the services described herein.

RECITALS

- A. Owner owns certain property in Williamson County, Tennessee, shown and/or described on Exhibit A hereto (the "Property"), on which it plans to build a residential development (the "Development"), including park, pool, clubhouse, golf course and other facilities and subdivision amenities (collectively, the "Development Amenities").
- B. Owner, Cartwright Creek and its consultants have designed and applied to the Tennessee Department of Environment and Conservation ("TDEC") and Williamson County and have received approval to build the Wastewater Treatment and Reuse Facilities ("WWTRF"), (defined in Paragraph 10.g. of this Agreement), consisting of a Wastewater Treatment Plant ("WWTP") (defined in Paragraph 10.c of this Agreement), a sewage collection system (the "Collection System") (defined in Paragraph 10.a. of this Agreement), and a treated wastewater irrigation system (the "Irrigation System") (defined by Paragraph 10.e. of this Agreement) on the Property and/or on a nearby property (together, the "Project").
- C. Owner has requested that Cartwright Creek, as a privately owned, wastewater treatment utility, holding a license from the Tennessee Regulatory Authority ("TRA"), operate the Project and to own the WWTP, the Collection System, and certain components of the Irrigation System, subject to the terms of this Agreement.
- D. Cartwright Creek desires to provide the requested services to Owner and also desires to ensure that the Project is designed and constructed in accordance with all applicable laws, regulations, and ordinances and that the Project is capable of being operated according to applicable wastewater regulations and in accordance with approvals granted to Cartwright Creek by the TRA.
- E. Owner and Cartwright Creek, in conjunction with CEC, Inc. and Sheaffer Wastewater Solutions, LLC, have designed the WWTRF for a phased approach to eventually serve the entire Development, including all 482 home sites, as well as the Development Amenities.
- F. Cartwright Creek has determined it can operate the designed WWTRF as per the drawing set prepared and compiled by CEC, Inc. dated May 17, 2013 (with August 22, 2014 revision date for final bid set), to meet all state, federal and county requirements under the TDEC State Operating Permit dated March 31, 2013.

NOW THEREFORE, upon the following consideration and mutual promises, the Parties hereby agree as follows:

- 1. INCORPORATION OF RECITALS AND EXHIBITS. The foregoing recitals and all attached Exhibits are hereby incorporated into this Agreement by reference.
- 2. CONDITIONS OF SERVICES. Cartwright Creek's obligations under this Agreement are expressly conditioned on the assumed "Basis for Scope of Services" provided in Exhibit B of this Agreement. Owner agrees not to change the Project such that it becomes inconsistent with the Basis for Scope of Services without the prior written approval of Cartwright Creek and corresponding adjustment in compensation identified in Paragraph 5 of this Agreement.

The Development will contain approximately 482 home sites/homes, plus the Development Amenities. This Agreement covers the design, construction, and operation of the WWTRF for Phase 1 and Phase 2 of the Development (as defined herein), consisting of 202 home sites and certain Development Amenities, with an aggregate wastewater flow rate of no more than 60,000 gallons/day. The WWTRF for Phase 1 and Phase 2 will be modified and/or expanded in accordance with State of Tennessee and Williamson County wastewater regulations to provide service for future phases of the Development and will continue to be owned and operated by Cartwright Creek. The design and construction of WWTRF expansion to serve the Development phases after Phase 1 and Phase 2 will be defined and included in modifications to this Agreement and/or future agreements between the Parties and nothing herein shall limit the Development Amenities and improvements served for Phase 1 and Phase 2 of the WWTRF.

3. COMMENCEMENT AND PERFORMANCE OF SERVICES.

- a. Operation. Upon completion of construction of the WWTRF in accordance with this Agreement, and upon receipt of all necessary State and county permit approvals, and upon final inspection and acceptance by Cartwright Creek, Owner shall transfer ownership of the Collection System, WWTP and the primary and secondary irrigation components of the Irrigation System to Cartwright Creek in fee simple estate, free and clear of any and all liens and encumbrances (the "Closing Date"). Cartwright Creek's responsibilities to operate and maintain the WWTRF shall commence on the Closing Date.

4. RESPONSIBILITIES OF THE PARTIES.

- a. Cooperation. Owner and Cartwright Creek agree to provide such information, execute and deliver any documents and to take such other actions as may be reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, in order to carry out the intent of this Agreement. Each Party agrees to comply with all State of Tennessee and Williamson County laws, rules and regulations applicable to the performance of its obligations hereunder. Owner and Cartwright Creek shall provide one another with all accurate and complete information concerning the Project that will assist efforts to assure that the operation and maintenance of the WWTRF will be cost effective and environmentally sound.
- b. Rights of Access. Owner warrants that it has, or will use, reasonable efforts to obtain the authority to, and hereby does, grant to Cartwright Creek all rights of access to all facilities to the extent reasonably necessary for Cartwright Creek to perform its duties and obligations required by this Agreement, including maintenance of the Collection System and operational monitoring of the Irrigation System, and emergency repairs, if necessary. Notwithstanding anything herein to the contrary, Cartwright Creek acknowledges and agrees that all such facilities, unless located within the WWTP Property or Property used for drip irrigation, shall be located in rights of way and/or Owner-approved easements, excluding branch lines to individual Development lots.
- c. Construction and Material Changes. Owner's construction of the Project shall be in accordance with the plans and specifications approved by TDEC and Williamson County, as may be modified from time to time, which plans and specifications may be reviewed and shall be reasonably acceptable to Cartwright Creek. Cartwright Creek or its representatives will observe the installation on an ongoing basis during construction. Construction not conforming to the plans and specifications will not be accepted by Cartwright Creek. Owner shall not make substantial changes in the design or construction of the Collection System, the WWTP, or the Irrigation System without Cartwright Creek's review and TDEC or Williamson County approval, to the extent such approval is necessary. Nothing herein is intended to limit or preclude or restrict Owner from accessing WWTRF for the purposes of making upgrades to the WWTP (including increasing facility capacity and/or adding additional equipment) in connection with the addition of Development lots beyond Phase 1 and Phase 2.
- d. Homeowner Covenants. Owner shall draft homeowners' association covenants and bylaws and provide the documents to Cartwright Creek for review prior to Closing Date (defined below); provided, however, that such documents shall be drafted and prepared in Owner's sole discretion. Without limiting the foregoing, the covenants shall provide to Cartwright Creek easements to service and maintain the components of the Collection System that are on common areas and lots within the Property. The covenants shall make the homeowners aware that each home is equipped with a Residential Grinder Pump, to be serviced by Cartwright Creek or its designated representative, at homeowner expense. The covenants shall also make the homeowners aware of the requirements for payment of monthly service fees and compliance with Cartwright Creek's Rules and Regulations (which shall be approved by Owner). The Covenants will provide Cartwright Creek with the right to file a lien against any lots in the Development for nonpayment of fees and/or shut off service, including removal of the Residential Grinder Pump.
- e. Williamson County Bonding. Article 20 of "Williamson County, Tennessee, Zoning Ordinance", effective January 1, 2013 (the "Zoning Ordinance") sets forth requirements for wastewater treatment facilities that collect, treat and land apply effluent. Section 20.08 of the Zoning Ordinance defines two types of bonds that are required for this Project, the "Performance Bond" and the "Maintenance Bond." Owner shall be solely responsible for satisfying Williamson County requirements for the Performance Bond and Maintenance Bond for the WWTP and the Collection System.

- f. Construction Certifications. Owner shall provide a set of as-built drawings for the WWTRF, signed and sealed by a licensed Tennessee professional engineer, certifying that the as-built drawings accurately depict the WWTRF as they have been built and that the same was built in substantial completion with the design approved by TDEC and Williamson County.
- g. Survey. Owner, at its expense, shall provide a survey (the "Survey"), dated after the completion of the WWTP, Collection System and Irrigation System, in accordance with Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys and complying with current standards adopted by the American Land Title Association on October 13, 2010, and the Board of Directors, National Society of Professional Surveyors on November 15, 2010, and certified to Cartwright Creek, of the WWTP Property. The Survey shall depict and include, without limitation, the following: (i) present location of any and all improvements, fences or structures located on the land, and the Survey shall show that there are no encroachments of adjacent improvements onto the WWTP Property; (ii) building lines and all easements whether recorded or visible (and if recorded, by specified reference to the record by document numbers and a separate legal description of all easements); (iii) access to public roads and highways and (iv) identification of storm sewers, sanitary sewers and water lines as they serve the WWTP Property from the respective main lines, stormwater detention/retention for the WWTP Property and the location of underground pipes carrying the stormwater from the WWTP Property to such offsite location. Without limitation of the foregoing, the Survey shall state the legal description of the WWTP Property, the square footage of the WWTP Property and any improvements or structures on the WWTP Property, and shall further state whether the WWTP Property is located in an area designated by an agency of the United States of America as being subject to flood hazards or flood risks.
- h. Certain Owner Representations, Warranties and Covenants. Owner warrants to Cartwright Creek that all materials and equipment furnished by Owner under this Agreement will be new unless otherwise specified, and all work will be of good quality, free from faults and defects and in conformance with the WWTRF plans and drawings. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Owner shall pay all sales, consumer, use and other similar taxes for the work or portions thereof provided by Owner which are legally enacted at the time bids are received, whether or not yet effective. Except as otherwise expressly provided herein, Owner shall secure and pay for the building permit and for all other permits and governmental fees, licenses and inspections necessary for the proper execution of the work. Owner shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the work. If Owner performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, Owner assumes full responsibility therefor and shall bear all costs attributable thereof.
- i. Right of First Refusal on Capacity. Notwithstanding anything to the contrary contained herein, until such time as all 482 lots and Development Amenities are connected to the WWTP, Cartwright Creek shall not sell any tap to a third party without first offering such tap to Owner.

5. COMPENSATION.

a. Compensation for Operations:

- i. Connection Fees. The Collection System, WWTP, and Irrigation System are being constructed at the sole cost of the Owner. There will be no connection fees due Cartwright Creek for the residential and Development Amenities within Phase 1 and Phase 2 or any other phase of the Development, with Property described in Exhibit A, up to a maximum of 482 equivalent dwelling units (EDUs) plus the Development Amenities, provided that the Owner designs and constructs the expansion of the wastewater treatment and reuse facilities for these phases. Owner shall have sole discretion in the amount and manner of collection of such connection fees from lot owners (which fees shall belong to Owner), subject to any applicable law.
- ii. Homeowner Monthly Service Fee. Each lot in the Development that is connected to Cartwright Creek's collection system and has any wastewater flowing to the Cartwright Creek collection system shall pay Cartwright Creek a monthly service fee as established in Cartwright Creek's approved tariff (the "Service Fee"). This Service Fee is the responsibility of each property owner to pay, as identified in Cartwright Creek's sewer services contract.

- b. Owner Maintenance Fee. Exhibit C contains the projected operating costs and related fees for operation and maintenance of the WWTRF during the first year following the Closing Date. Prior to a homeowner connecting to the WWTRF and paying the Service identified above, the owner of each lot (whether the Owner or a home builder who owns the lot) will pay the costs set forth below as the "Owner Maintenance Fee." The Owner Maintenance Fee will be payable until the earlier of (i) the fourth anniversary of the Closing Date, or (ii) until such time as there are 202 home sites and the Development Amenities (which, for purposes of this section, shall constitute one lot, for a total of 203 lots) are connected to the WWTRF as follows.
- i. On the Closing Date, the Owner will pay the Owner Maintenance Fee to Cartwright Creek a one-time amount equal to \$175,791.00 for the first year of operation. For the first year of operation, Cartwright Creek shall invoice a lot owner or builder that has closed on the purchase of a lot from Owner for the Owner Maintenance Fee. Any Owner Maintenance Fees collected by Cartwright Creek during the first year of operation shall be credited to Owners obligation to pay the Owner Maintenance Fee for year two. Owner shall provide Cartwright Creek notice of each lot closing, which shall include the date of closing, purchaser name and address.
 - ii. With respect to the second year following the Closing Date and each year thereafter, each lot owner (whether the Owner or a third party builder) shall pay to Cartwright Creek on a monthly basis the amount set forth on Exhibit D as the Owner Maintenance Fee. Cartwright Creek will invoice each lot owner monthly for the Owner Maintenance Fee. If a builder acquires a lot from the Owner after the start of a month, the builder will not be responsible for the Owner Maintenance Fee until the start of the next month. Cartwright Creek will not be responsible to provide a prorated bill for partial months.
- c. Owner Contribution in Aid of Construction. In addition to the wastewater plant constructed by the Owner and contributed to Cartwright Creek, the Owner shall also contribute funds to Cartwright Creek for the purpose of operating and maintaining the wastewater system until an economically feasible and self sustaining number of customers are connected. Owner shall pay Cartwright Creek \$100,000.00 for years one and two and \$125,000.00 for years three and four for a total of \$225,000.00 as follows:
- i. \$20,000.00 upon execution of this Agreement.
 - ii. \$80,000.00 payable on the Closing Date.
 - iii. \$125,000.00 the payable at the beginning of the third year.
- d. Operating Cost Reconciliation. Owner shall reimburse Cartwright Creek for actual costs incurred on Exhibit C to the extent such expenses exceeds the initial estimated amount paid by Owner to Cartwright Creek as identified on Exhibit C. The Parties have estimated such initial annual deposit to be \$175,791.00. Within 45 days at the end of each year, Cartwright Creek shall provide Owner an expense summary showing the actual costs incurred for operation of the Project. If the actual amount of such costs exceeds the amount of the deposit paid by Owner to Cartwright Creek, Owner shall reimburse Cartwright Creek for such amount within 15 days of billing by Cartwright Creek to Owner. If the actual amount of such costs is less than the amount of the deposit paid by Owner to Cartwright Creek, such amount shall be retained by Cartwright Creek and credited to the Owner Maintenance Fee owed by Owner to Cartwright Creek. In addition, Cartwright Creek shall prepare a revised Exhibit C upon completion of the Operating Cost Reconciliation and deliver to Owner as soon as reasonably practical with the first cost adjustment to be delivered to Owner one year from the date Cartwright Creek commences operation of the Project. The Owner Maintenance Fee shall be adjusted annually based on the Operating Cost Reconciliation calculation at the end of each year. Cartwright Creek agrees that it will use commercially reasonable efforts to operate the facility within the budgeted costs identified in Exhibit "C". Cartwright Creek agrees to cap cost overruns of \$25,000 for the following cost categories in Exhibit "C".
- Operating labor and transportation.
 - Administrative labor
 - Sampling and testing costs
 - Regular preventative maintenance cost
 - Grounds keeping, mowing
 - Permit and other fees required by regulatory agencies
 - Customer billing and accounting costs
 - Miscellaneous supplies

- i. At the end of the fourth year, the Owner will either (i) continue paying the Owner Maintenance Fee and reserve remaining taps with respect to unsold lots in Phase 1 and Phase 2, or (ii) elect to discontinue paying the Owner Maintenance Fee, in which case the Owner will forfeit the taps for any unsold lots in Phase 1 and Phase 2 to Cartwright Creek.
 - ii. As lots are sold to third party purchasers or builders, the Owner will ensure that the purchasers are aware, by including in owner's real estate sales contract that the Owner Maintenance Fee will become and continue as a responsibility of the lot purchasers until a home is occupied and the homeowner begins paying the monthly sewer service fee as identified in Paragraph 5.b.ii. The Owner Maintenance Fee will be reduced by the number of lots sold to third party purchasers or builders.
 - iii. Owner shall have the right to audit, at any time upon reasonable advance notice to Cartwright Creek, Cartwright Creek's books and records with respect to this Agreement and the WWTP (including the operating costs thereof).
- e. Documents to be delivered by Owner on the Closing Date. On the Closing Date, Owner shall deliver or cause to be delivered to Cartwright Creek directly or, if either party elects, through the Escrow, the following, each of which shall be in form reasonably satisfactory to Cartwright Creek and (if applicable) the Title Insurer:
 - i. A duly executed and acknowledged special warranty deed to the WWTP Property subject only to the Permitted Exceptions;
 - ii. Affidavit of Title;
 - iii. Bill of Sale;
 - iv. An affidavit to the effect that Seller is not a foreign person under Section 1445(b) of the United States Internal Revenue Code (FIRPTA);
 - v. GAP Undertaking or other Personal Undertaking as required by the Title Insurer;
 - vi. Certificate from Owners stating that all of Owners obligations under Paragraph 3 have been completed in accordance with this Agreement; and
 - vii. Such other instruments and documents as may be reasonably required in order to carry out the purposes of this Agreement.
- f. Title Insurance Policy. Owner shall provide on the Closing Date at its own expense a title insurance policy from a title insurance company which is retained by Owner and mutually agreed to by the Parties for the WWTP Property (the "Title Policy"), which shows title is in fee simple, free and clear of any and all liens and encumbrances, at the time of transfer of title to Cartwright Creek. The title insurance policy shall include the following endorsements, as applicable and/or available:
 - i. Zoning;
 - ii. Access;
 - iii. Owner's Comprehensive;
 - iv. Contiguity;
 - v. Survey;
 - vi. Subdivision;

- vii. Address;
- viii. Tax Parcel;
- ix. Utility Facility; and
- x. Deletion of Creditor Rights.

- g. Property Taxes. Owner shall pay for all property taxes due for the WWTP Property as of the Closing Date and shall prorate for property taxes not yet due and payable in the year after the Closing Date. In addition, Owner shall provide Cartwright Creek all financial information necessary to submit to the local county assessor to assist in efforts to reduce or accurately contest real estate taxes. Cartwright Creek shall keep all information confidential. All costs associated with contesting the real estate taxes shall be the responsibility of Owner.
- h. Spare Parts. The Owner's engineer shall prepare a list of recommended spare parts for the WWTRF based upon recommendations of the equipment suppliers and this list will be reviewed and accepted by Cartwright Creek. The Owner shall purchase the spare parts and deliver to Cartwright Creek within 30 days after the Closing Date.
- i. Residential Grinder Pump Service and Replacement. Cartwright Creek or its designated representative shall maintain the individual grinder pumps at the cost of the lot owner (whether Owner, builder or individual lot owner). Owner shall require through its contracts with home builders or through the homeowners restrictive covenants or other appropriate means that each builder constructing a home on a lot within the Property installs a grinder pump, service connection and fittings in accordance with the Collection System drawings approved by TDEC and Cartwright Creek's requirements. Owner shall also include in the homeowners restrictive covenants a grant of easement to Cartwright Creek for its right of access to the grinder pumps as provided in this Agreement. Cartwright Creek shall inspect and accept the installation of every grinder pump in accordance with the procedures listed in Exhibit D of this agreement. For the services performed by Cartwright Creek described in Exhibit D, Cartwright Creek shall be entitled to an inspection fee of not less than \$250.00 from the lot owner. Reinspections will result in an additional fee of \$50.00. All damages to the Collection System caused by the lot owner following final inspection shall be the sole responsibility of the lot owner, and Cartwright Creek shall have no recourse against Owner for such damages. Builder Purchase and Sales Agreement will provide that each lot owner will be responsible for any damage to the Collection System on their lot regardless of whether caused by the lot owner or another party.
- j. Withholding of Payments. In the event any dispute arises between Cartwright Creek and Owner with respect to this Agreement, the Parties will promptly undertake to resolve such dispute.
- k. Late Charges. Invoices shall be due on a Net 45 days' basis. Cartwright Creek may assess interest charges for any past due invoices at a rate not to exceed the lesser of (i) 10% per annum, or (ii) the maximum rate permitted by applicable law.
- l. Lien Rights and Right to Shut Off Service. In the event that payment of any fees due Cartwright Creek under this Agreement become delinquent by more than two (2) months, Cartwright Creek may file a lien against the property of the Owner or individual property owner (if the past due fee is the monthly service fee) to secure its claim to the past due fees, and/or shut off sewer and water service including removal of the grinder pump from the individual home until all past due amounts, including any accrued interest charges, are paid in full. Cartwright Creek shall notify the Owner or the individual property owner in writing at least 30 days prior to filing the lien or shutting off the sewer and water services, that Cartwright Creek intends to file the lien and/or shut off the sewer and water services unless the past due amount is received by the close of the 30 day notification period.

6. DEFAULT/TERMINATION.

- a. Prior to Closing Date. Cartwright Creek may terminate this Agreement by written notice to Owner if Owner fails to

comply with its obligations under Paragraph 3 of this Agreement and, after receiving written notice describing such failure from Cartwright Creek, Owner fails to take corrective actions within 30 days of notification. In the event of Owner's default prior to the Closing Date that is not cured within a reasonable period of time following notice to Owner, Cartwright Creek will not accept title to the Project and shall have no obligation to provide any sewer and wastewater service connections to Owner, its assignees or designees.

- b. Owner Default after the Closing Date. The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement by Owner:

i. If Owner fails to pay the Owner Maintenance Fees identified in Paragraph 5.b.iii or any other charges required to be paid by Owner under this Agreement.

ii. If Owner fails to promptly and fully perform any other covenant or condition in this Agreement and such failure continues for 15 days after written notice from Cartwright Creek to Owner.

iii. If Owner makes a general assignment for the benefit of creditors or if Owner files a voluntary petition or if a petition is filed against Owner in a proceeding under the Federal Bankruptcy Laws or other insolvency laws.

iv. If Owner violates any TDEC or Williamson County wastewater regulation or statute with respect to the operation of the system.

- c. Remedies. In the event of Owner default hereunder, then in addition to any other rights or remedies Cartwright Creek may have under any law, Cartwright Creek shall have the right, at Cartwright Creek's option, without further notice or demand of any kind, to do the following:

Terminate this Agreement and be entitled to recover as damages a sum equal to the Owner Maintenance Fees owed for years 1-4 of this Agreement. In addition, all taps for unsold lots shall be forfeited by Owner and transferred to Cartwright Creek for the sole and exclusive use of Cartwright Creek. Owner shall have the opportunity to cure any default within 15 days from the date Owner receives written notice of default from Cartwright Creek.

- d. Attorneys' Fees and Court Costs. The prevailing parties in litigation shall be entitled to collect reasonable attorneys' fees and costs from the non-prevailing party as ordered by a court of competent jurisdiction.

7. OPTION TO TERMINATE. Owner shall have the right to terminate this Agreement after the second year of operation upon the following terms and conditions.

- a. Owner shall provide Cartwright Creek 90 days notice prior to the expiration of the second year of operation that Owner desires to terminate the Agreement.
- b. Owner shall pay Cartwright Creek \$75,000.00 for legal and professional fees incurred for rate case.
- c. Cartwright Creek shall cooperate with Owner to complete the process to transfer Cartwright Creek's Certificate of Public Convenience and Necessity.
- d. Owner shall not have been in default with respect to the payment of any fees identified in Paragraph 5.

8. PROHIBITED AND RESTRICTED DISCHARGES. As provided in Paragraph 4.d. above, the homeowner covenants shall restrict potentially harmful substances from being flushed or discharged to the sewer and wastewater system.

9. OTHER TERMS AND CONDITIONS.

- a. Notices. Any notice required under this Agreement shall be in writing, personally delivered or sent by certified mail, postage prepaid, to the other Party at the address set forth below or to such other address as any Party may so designate in writing from time to time.

To: Cartwright Creek, LLC
Attn: Thomas L. Kolschowsky
800 Roosevelt Rd., A-120
Glen Ellyn, IL 60137

To: Arrington National Development, LLC
Attn: Phillip Broderick
ABP Capital, LLC
820 2nd Street
Encinitas, CA 92024

With a copy to the Parties' respective registered agent or counsel, as follows:

Cartwright Creek:

Owner:

To: Cartwright Creek, LLC
Attn: Bruce Meyer
1551 Thompson's Station Rd West
Thompson's Station, TN 37179

To: Bone McAllester Norton PLLC
Attn: Jack F. Stringham II
511 Union Street, Suite 1600
Nashville, TN 37219

- b. Force Majeure. In the event either Party's performance of this Agreement is delayed in connection with any circumstance beyond such Party's control including, without limitation, fires, floods, labor shortages, failure to secure materials as a result of strikes, riots, and national emergencies, but expressly excluding obligations of payment, then such Party may elect to suspend performance under this Agreement but only to the extent, and only for the period, that its performance is prevented by the event.
- c. Entire Agreement. This Agreement has been negotiated and prepared by and for the Parties equally and shall not be construed as having been drafted by one Party. When fully executed, it shall supersede all prior agreements, either oral or in writing. This Agreement shall constitute the entire agreement between the Parties and shall not be modified except through writing and signed by the Parties.
- d. Construction of Agreement. In the event that any part of this Agreement shall be declared void or unenforceable by any court having jurisdiction, such imperfection shall not affect the validity or enforceability of the remainder of this Agreement unless the result would be manifestly unconscionable. The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference. They do not purport to, and shall not be construed to, define, limit or extend the scope or intent of this Agreement. The terms, conditions, obligations and definitions contained in this Agreement are intended by the Parties to apply to all Exhibits attached unless expressly provided otherwise.
- e. No Waiver. The failure of a Party to insist upon the strict performance of the terms and conditions hereof shall not constitute a waiver of that Party's right to enforce the same in the event of a continuing or subsequent default on the part of the other Party.
- f. Choice of Law; Designation of Jurisdiction for Disputes; Venue. This Agreement is governed by and shall be construed in accordance with laws of the State of Tennessee without giving effect to any choice or conflict of law provision or rule (whether of the State of Tennessee or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Tennessee. The Parties mutually consent to the jurisdiction of the federal and state courts in Williamson County, Tennessee and agree that any action, suit or proceeding concerning, related to, or arising out of this Agreement and the negotiation of this Agreement will be brought only in a federal or state court in Williamson County, Tennessee and the Parties agree that they will not raise any defense or objection or file any motion based on lack of personal jurisdiction, improper venue, inconvenience of the forum or the like in any case filed in a federal or state court in Williamson County, Tennessee.
- g. No Third-Party Rights. Nothing in this Agreement (including any Exhibits) shall create, or be construed as creating, any express or implied rights in any person or entity other than the Parties except that Cartwright Creek and Owner are express third-party beneficiaries of any section that specifically names them.

- h. Counterparts. This Agreement may be executed in multiple counterparts including by email transmission, each of which is considered an original and shall be binding upon the Party who executed same, but all of such counterparts shall constitute the same Agreement.
- i. Authority. Both Parties hereby warrant that they are fully authorized to enter into this Agreement and to perform each of their respective obligations described.
- j. Subcontracting. Notwithstanding anything to the contrary in this Agreement, Cartwright Creek may subcontract any part of its obligations under this Agreement to a related entity, merged corporation without obtaining the prior consent of Owner, and provided, that no such subcontracting shall release Cartwright Creek from liability for the performance of its obligations hereunder.
- k. Independent Contractor. Owner and Cartwright Creek intend that an independent contractor relationship be created by this Agreement and nothing in this Agreement shall be construed as creating an agency, employer/employee relationship, partnership, joint venture, or other business group relationship except as otherwise expressly provided herein.
- l. Assignment and Delegation. Neither party shall assign, transfer, or otherwise dispose of any of its rights, nor delegate its obligations under this Agreement without the prior written consent of the other party, which consent shall not unreasonably withhold its consent. Either party may, without the other party's prior written consent, assign or transfer any of its rights or delegate its obligations under this Agreement to any affiliated or subsidiary entity of similar net worth. This Agreement will inure to the benefit of and be binding upon any successors and permitted assigns or designees.
- m. Change in Permit or Regulatory Requirements. Nothing in this Agreement shall be construed to prohibit Cartwright Creek from requiring an increase in the fees payable to Cartwright Creek under this Agreement in the event of a regulatory or permit change, including a change in the rate structure for Cartwright Creek and approved by the TRA.
- n. Indemnification. Each party (an "Indemnifying Party") does hereby defend, indemnify and save the other party (an "Indemnified Party") harmless from and against any and all claims, actions, damages, liabilities, expenses and costs of litigation in connection with loss of life, personal injury, and/or damage to property arising from or out of any occurrence in, upon, or at the Property, occasioned by any act or omission by the Indemnifying Party, its agents, contractors, subcontractors or invitees upon said Property, to the extent such act or omission results from the negligence or willful misconduct of the Indemnifying Party.
- o. Liability Following the Closing Date. Without limiting the foregoing, following the Closing Date, Cartwright Creek assumes any and all liability for any damages, losses, expenses, costs or other claims resulting from any damage to the WWTRF, except to the extent caused by Owner or its contractors, subcontractors or agents.
- p. Dispute Resolution. Disputes arising under this Agreement will be resolved by the TRA, subject to judicial review as provided by law. If the parties agree, or if the TRA rules that the agency lacks jurisdiction to resolve a dispute arising under this Agreement, the Parties may seek all available remedies at law or in equity.

10. DEFINITIONS.

- a. "Sewage Collection System" or "Collection System" means sewage collection pipes and easements granted to Cartwright Creek, which shall run from and include the grinder pump at each subdivided property in the Development served by the Project to wastewater collection pipelines and to the WWTP, as well as the pipe, valves, electrical controls, flow meters, and manholes installed within the easement. The Collection System does NOT include any real property interest in the subdivided, residential lots included in the Project, except that Cartwright Creek shall be granted a right of access to each lot for the purpose of maintaining, repairing, and replacing the Residential Grinder Pump serving each home, per Paragraph 4 of this Agreement.
- b. "Residential Grinder Pumps" means the sewage pumps to be provided by Environment One Corporation (E/one) or approved equivalent manufacturer. Each home served by the WWTP will be required to have a Residential Grinder Pump meeting the design specifications approved by Cartwright Creek to macerate the sewage and pump the wastewater

to the WWTP. Each Residential Grinder Pump shall be provided by the developer or builder and affixed to its corresponding residential property.

- c. "WWTP" means the wastewater treatment system designed by Owner's consulting engineers, Shaeffer International and Cartwright Creek including treatment equipment, building and Property.
- d. "WWTP Property" means the portion of the Property on which the WWTP is situated and the improvements located thereon.
- e. "Irrigation System" means the reclaimed wastewater irrigation pumps, pipe, drip irrigation piping, and other appurtenances for irrigating treated wastewater to the primary and secondary irrigation areas. It also includes the land designated and approved by TDEC and Williamson County for the primary and secondary irrigation areas.
- f. "Operations Costs" means the costs to operate and maintain the Collection System, WWTP and Irrigation System, including those items listed in Exhibit C and other reasonable and documented costs.
- g. "WWTRF" means the Collection System, Wastewater Treatment Plant and Irrigation System as defined above.
- h. "Phase 1 and Phase 2" means the portion of the Development collectively containing 202 homes and the Development Amenities, as approved by the Williamson County Planning Commission.
- i. "Section 1" means the portion of Phase 1 containing 98 homes and the golf course and clubhouse.

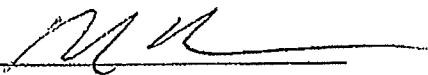
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date written above.

[Signature page follows]

[Signature page to Sewer and Wastewater Treatment System Service Agreement]


ARRINGTON NATIONAL DEVELOPMENT, LLC

CARTWRIGHT CREEK, L.L.C.

By: 

Name: Michael Persall

Title: President

By: 

Name: Thomas L. Kolsunowsky

Title: SVP/ Corporate Counsel

EXHIBIT A
Property Map and Legal Description
(to be provided by Owner)

EXHIBIT B
Cartwright Creek Requirements and Basis for Scope of Services and Construction

1. **Collection System:**
 - Consisting of a low-pressure design and containing: collection force mains installed in the streets, common areas, and on homeowner's properties; and, individual grinder pumps (E/One or approved equivalent) at every home.
 - Individual grinder pumps will be installed by the homebuilders in accordance with manufacturer's instructions and project drawings and Cartwright Creek's requirements. Cartwright Creek will inspect each grinder pump installation in accordance with Exhibit D. For the final inspection, the homebuilders' responsibility will include the services of a manufacturer's local representative.
 - Owner's contractor will install and test the collection system. Any and all collection lines installed prior to the date of this Agreement will be located, inspected, and retested by Owners contractor and supervised by a Cartwright Creek representative. Identified damage to the collection system and any of its components will be repaired by the Developer. If necessary, collection lines failing pressure tests will be excavated and repaired.
2. **Wastewater Treatment System:**
 - Will be constructed by the Owner on the site south of Cox Road, which is within Cartwright Creek's existing approved service area.
 - Will be a single cell, Sheaffer Wastewater Reclamation and Reuse System, with double synthetic liner, internal baffles, designed to treat the wastewater from Phase I (approximately 63,000 gallons per day of wastewater) to the quality required by the TDEC State Operating Permit (SOP) and applicable sections of Williamson County's zoning ordinance.
 - Will be constructed with a treated effluent storage cell(s) meeting Williamson County and TDEC requirements.
 - Will include, but not limited to, a treatment building, treatment equipment, air blowers, office, laboratory.
 - Will be designed and constructed so that additional facilities and equipment required to serve the homes in subsequent phases can be added with minimum reconstruction when required.
3. **Irrigation System:**
 - Will have area sufficient to serve up to approximately 63,000 gallons/day of wastewater from the Development. Primary irrigation area for Phase I of the development will be on the property south of Cox Road next to the wastewater treatment site. Secondary irrigation area required by Williamson County's zoning ordinances will be on the property south of Cox Road and the Williams property approximately ½ mile west of the wastewater treatment system site on Cox Road.
 - Will utilize subsurface drip irrigation and will be sized and designed to comply with Williamson County and TDEC regulations and guidelines, including primary and secondary irrigation areas required by the county.
 - The golf course may at some future time utilize treated WWTRF effluent for irrigation. The WWTRF being constructed and operated in accordance with this Agreement does not contain the treatment equipment and piping to enable treatment of effluent to the standards required by TDEC regulations and Williamson County for reuse on a golf course.
4. **Owner or Owner's engineer will:**
 - Complete the detailed construction plans and specifications, stamped by a licensed Tennessee professional engineer, for the Collection System, Wastewater Treatment System and Irrigation System south of Cox Road. After completion of construction, Owner shall provide Cartwright Creek as-built plans and specifications.
 - Complete the forms, fee payments, and appropriate copies of the above and submit to Williamson County and TDEC for approval.
5. **Construction:**
 - The Owner will fund and construct all components of the Collection System, Irrigation System, and Wastewater Treatment System.
 - The Owner will assign a Construction Manager to organize and coordinate the preconstruction and daily construction phase activities of the site. Cartwright Creek's Project Manager will assist the Owner's Construction Manager as requested and as Cartwright Creek feels is required to ensure the compliance with the design drawings and permits.
 - Any changes from the plans and specifications approved by TDEC for the Wastewater Treatment, Irrigation System, and Collection System will be submitted to Cartwright Creek for review and approval prior to implementing the change.
 - Cartwright Creek will review all equipment purchase orders prior to order being placed, shop drawings prior to equipment fabrication, and equipment condition when delivered. Any variance from plans and specifications will be provided in writing for resolution.

- Cartwright Creek will review the scope of work, schedules, and qualifications of contractors and subcontractors. Firms doing the construction work will have defined scopes of work and approved contracts and will have experience specific to this type of wastewater treatment Project.
- Cartwright Creek will insist on strict construction testing and QA/QC by qualified testing firms and engineers. This will include development of the procedures for testing soils not only in the building areas, but also for subgrade below synthetic liners and the soil liners of unlined cells.
- No foundations, underground piping, manholes, or other underground items will be backfilled without Cartwright Creek's inspection and acceptance.
- Pressure testing will be done on all gravity and pressure lines. Lines not passing the pressure test will be replaced or repaired in a manner acceptable to Cartwright Creek and re-tested until passing.
- Concrete cylinders will be poured and tested at the frequency outlined in the Owner's engineer's specifications. Backfill and other construction placing loads on concrete pours will not be done until the concrete strength passes.
- The synthetic liner contractor will be an Approved Installation Contractor (AIC) as recognized by the International Association of Geosynthetic Installers (IAGI).
- Equipment purchases will include 5 copies of operating and maintenance manuals and provisions for on-site startup services by factory technicians.

EXHIBIT C

Exhibit C
Cartwright Creek-Mystic Ridge Operating Costs and Fee Calculation
Revised 7/20/15

		<u>203 Units</u>	<u>Year 1</u>
Operating Labor and Transportation		\$81,788	\$84,268
Administrative Labor (Management, accounting, legal, engineering)		\$22,800	\$22,800
Sampling and Testing Costs		\$2,400	\$600
Regular preventative maintenance cost		\$12,000	\$6,000
Grounds keeping, mowing		\$4,120	\$3,340
Unscheduled maintenance and troubleshooting (Note 2)		\$0	\$0
Long term replacement/repair allowance		\$42,823	\$42,823
Electric Power		\$50,688	\$16,883
Utility costs		\$2,700	\$2,700
Insurance		\$7,500	\$7,500
Real Estate Taxes		\$5,000	\$5,000
Permit and other fees required by regulatory agencies		\$2,000	\$1,700
Customer billing and accounting costs		\$4,886	\$1,820
Misc. supplies		\$1,000	\$1,000
	Subtotal	\$230,718	\$146,814
Contingency	10%	\$23,072	\$14,681
	Subtotal	\$253,788	\$161,270
Cartwright Creek Profit	0%	\$23,732	\$14,615
	Subtotal	\$277,420	\$175,781
Annual Cost Per Lot	203 Note 1	\$1,415.06	\$865.66
Monthly Cost Per Lot		\$117.98	\$72.16

Notes

1. Units include 202 homes plus amenities center 1 one lot (undefined flow EDU)
2. Unscheduled maintenance included in contingency and included in annual true-up.
3. Assumes all service line and grinder pump maintenance paid by builders or homeowners.

EXHIBIT D
Grinder Pump and Service Line Inspection and Acceptance

Cartwright Creek will inspect and accept the grinder pump and service line connections through the following procedures:

1. Review and acceptance of lot plan or sketch prepared by the Builder showing location of pump, service line route, and connection to the collection force main. This plan or sketch will be used to confirm locations of pumps and piping in future inspections. Service lines running across the front of lots (due to pump and force main connection on opposite sides of the lots) will generally not be accepted. Cartwright Creek will not issue individual lot letters confirming sewer service availability (required for county building permits) until this plan or sketch can be reviewed and accepted.

2. First Inspection: After installation, the Owner, builder or the builder's subcontractor will request a first inspection in writing or email with a minimum of 5 working days notice in advance of the date needing inspection. The inspection will occur after the pump housing, drain line from the house to the pump housing and the service line from the pump housing to the force main service line connection are installed but not backfilled. The Builder will install and Cartwright Creek will inspect to insure:

- Service line is installed per the plan or sketch in #1 above, bedded with #57 stone or approved equivalent and installed no more than 3 foot below finished grade.
- Service line is connected to the low pressure connection system at the valves in the valve box provided by the developer
- That the valve box and riser are vertical and undamaged and that the valves are operable.
- Cleanout is provided on service line near the pump housing with access box at finished grade height.
- Tracer wire is installed the entire length of the service line (minimum No. 14 wire)
- Pump supplier furnished stainless flexible connection is installed on the pump discharge
- Pump housing cover is at the proper elevation
- A pressure test is conducted on the service line with water at 50 psig for 1 hour with no more than 5 psig pressure drop.
- It will be the builder's responsibility to correct any deficiencies in the installation, including but not limited to the above items.
- Cartwright Creek may require notice of backfilling so that it can inspect the final backfilling.

- Within 5 working days of the First Inspection, Cartwright Creek will issue a written inspection report which will include a description of the inspection, its findings, and deficiencies that need to be corrected. Cartwright Creek will also specify if re-inspection and/or retesting will be required prior to backfill. The service line and pump housing shall not be backfilled until receipt of this written confirmation from Cartwright Creek.

3. Final Inspection: When the grinder pump and service line is installed and backfilled, the pump control panel is installed and electrically connected to the pump and electric feed, and ready for operation, the builder will provide Cartwright Creek written notice (hard copy or email) that the pump is ready for final inspection and state the date that inspection will occur.

It will be the builder's responsibility to insure the pump system is ready for final inspection and contact Wascon (the local E/One pump supplier and service company) and schedule the inspection. The builder will notify Cartwright Creek of the inspection date with at least 5 working days in advance.

The builder will install and Cartwright Creek will inspect to ensure that:

- The bottom of the electrical panel is a minimum of 4 1/2 feet from the finished ground service at the home.
- The top of the pump housing is at the proper elevation
- The service line cleanout is accessible via a valve box at the proper height.
- The valve box at the low pressure main line connection is dry; free of dirt or debris, and that the shut off valve is operable.
- The pump housing the sump has been cleaned and does not contain paint, grease, or other debris.
- The Wascon representative has completed a "ready for service" evaluation on the installation including, but not limited to, confirmation of proper electrical characteristics, wiring, alarm operation, conduit sealing at both the pump and electrical panel, pump sump condition, pump condition. Fresh water will be available to run the pump system through at least 4 cycles with the pump exhibiting normal operating characteristics and no alarms. A written summary report will be provided from Wascon within 5 working days.

It will be the builder's responsibility to correct deficiencies in the installation, including, but not limited to the above items.

Within 5 working days after a completed and acceptable final inspection, Cartwright Creek will issue a letter of acceptance.

The Builder will ensure that the final inspection is scheduled so that it may be conducted with sufficient time for any deficiencies to be corrected prior to a home being closed to a private homeowner. Cartwright Creek reserves the right to refuse service to homes and homeowners that have not been issued a grinder pump acceptance letter.

SEWER AND WASTEWATER TREATMENT SYSTEM SERVICE AGREEMENT

This Sewer and Wastewater Treatment System Service Agreement (this "Agreement") is made and shall become effective this 24th day of October 2018 (the "Effective Date"), by and between Cartwright Creek, L.L.C., a Tennessee limited liability company ("Cartwright Creek") and Propst Hardeman Springs, LLC, an Alabama limited liability company ("Owner") (singularly, "Party," and collectively, the "Parties") pursuant to which Cartwright Creek will provide to Owner the services described herein.

RECITALS

- A. Owner owns certain property in Williamson County, Tennessee, shown and/or described on Exhibit A hereto (the "Property"), on which it plans to build a residential development (the "Development"), called Hardeman Springs.
- B. The Owner's Engineering Consultants have designed and have obtained approvals from the Tennessee Department of Environment and Conservation ("TDEC") and Williamson County to build the Wastewater Treatment and Reuse Facilities ("WWTRF"), (defined in Paragraph 10.g. of this Agreement), consisting of a Wastewater Treatment Plant ("WWTP") (defined in Paragraph 10.c of this Agreement), a sewage collection system (the "Collection System") (defined in Paragraph 10.a. of this Agreement), and a treated wastewater irrigation system (the "Irrigation System") (defined by Paragraph 10.e. of this Agreement) on the Property (together, the "Project").
- C. Cartwright Creek, as a privately owned, wastewater treatment utility, holding a license from the Tennessee Public Utilities Commission ("TPUC"), and a service territory that includes the Development, has been contacted by the Owner to operate and own the WWTP, the Collection System and Irrigation System, subject to the terms of this Agreement.
- D. Cartwright Creek desires to provide the requested services to Owner and also desires to ensure that the Project is designed and constructed in accordance with all applicable laws, regulations and ordinances and that the Project is capable of being operated according to applicable wastewater regulations and in accordance with approvals granted to Cartwright Creek by the State of Tennessee.
- E. The Owner's Engineering Consultant, SEC, Inc. ("SEC"), has designed the WWTRF to serve the entire Development, including all 118 home sites. The design is shown on an SEC drawing set entitled Hardeman Springs, STEP System Design, Wastewater Site Plan, dated 4/19/17 and a SEC State Operating Permit application entitled State Operating Permit Application, Hardeman Springs SD, signed and stamped 12/28/16. TDEC has issued a State Operating Permit SOP-17002.

NOW THEREFORE, upon the following consideration and mutual promises, the Parties hereby agree as follows:

- 1. INCORPORATION OF RECITALS AND EXHIBITS. The foregoing recitals and all attached Exhibits are hereby incorporated into this Agreement by reference.
- 2. CONDITIONS OF SERVICES. Cartwright Creek's obligations under this Agreement are expressly conditioned on the assumed "Basis for Scope of Services" provided in Exhibit B of this Agreement. Owner agrees not to change the Project such that it becomes inconsistent with the Basis for Scope of Services without the prior written approval of Cartwright Creek and corresponding adjustment in compensation identified in Paragraph 5 of this Agreement.

The Development will contain approximately 118 home sites in three (3) phases of 35 lots for Phase I, 42 lots for Phase II and 41 lots for Phase III.

Cartwright Creek shall be paid upon execution of this Agreement, a flat fee of \$12,000.00 for services provided in Exhibit B.

- 3. COMMENCEMENT AND PERFORMANCE OF SERVICES.
 - a. Operation. Upon completion of construction of the WWTRF in accordance with this Agreement, and upon receipt of all necessary State and county permit approvals, and upon final inspection and acceptance by Cartwright Creek, Owner shall transfer ownership of the Collection System, WWTP and the primary and secondary irrigation components of the Irrigation System to Cartwright Creek in fee simple estate, free and clear of any and all liens and encumbrances (the "Closing Date"). Cartwright Creek's responsibilities to operate and maintain the WWTRF shall commence on the Closing Date.

4. **RESPONSIBILITIES OF THE PARTIES.**

- a. **Cooperation.** Owner and Cartwright Creek agree to provide such information, execute and deliver any documents and to take such other actions as may be reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, in order to carry out the intent of this Agreement. Each Party agrees to comply with all State of Tennessee and Williamson County laws, rules and regulations applicable to the performance of its obligations hereunder. Owner and Cartwright Creek shall provide one another with all accurate and complete information concerning the Project that will assist efforts to assure that the operation and maintenance of the WWTRF will be cost effective and environmentally sound, including but not limited to: address and contact information of all contractors and subcontractors that will perform work on the property, copies of all contractor warranties and certificates of insurance.
- b. **Rights of Access.** Owner warrants that it has, or will use, reasonable efforts to obtain the authority to, and hereby does, grant to Cartwright Creek all rights of access to all facilities to the extent reasonably necessary for Cartwright Creek to perform its duties and obligations required by this Agreement, including maintenance of the Collection System and operational monitoring of the Irrigation System, and emergency repairs, if necessary. Notwithstanding anything herein to the contrary, Cartwright Creek acknowledges and agrees that all such facilities, unless located within the WWTP Property or Property used for drip irrigation, shall be located in rights of way and/or Owner-approved easements, excluding branch lines to individual Development lots.
- c. **Construction and Material Changes.** Owner's construction of the Project shall be in accordance with the plans and specifications approved by TDEC and Williamson County, as may be modified from time to time, which plans and specifications may be reviewed and shall be reasonably acceptable to Cartwright Creek. Cartwright Creek or its representatives will observe the installation on an ongoing basis during construction. Construction not conforming to the plans and specifications will not be accepted by Cartwright Creek. Owner shall not make substantial changes in the design or construction of the Collection System, the WWTP or the Irrigation System without Cartwright Creek's review and TDEC or Williamson County approval, to the extent such approval is necessary.
- d. **Homeowner Covenants.** Owner shall draft homeowners' association covenants and bylaws and provide the documents to Cartwright Creek for review prior to Closing Date (defined above); provided, however, that such documents shall be drafted and prepared in Owner's sole discretion. Without limiting the foregoing, the covenants shall provide to Cartwright Creek easements to service and maintain the components of the Collection System that are on common areas and lots within the Property. The covenants shall make the homeowners aware that each home is equipped with a Step Tank, to be serviced by Cartwright Creek or its designated representative, at homeowner expense. The covenants shall also make the homeowners aware of the requirements for payment of monthly service fees and compliance with Cartwright Creek's Rules and Regulations. The Covenants will provide Cartwright Creek with the right to file a lien against any lots in the Development for nonpayment of fees and/or shut off service, including removal, but not limited to, components within the Step Tank.
- e. **Utility Location Fees:** Cartwright Creek is a member of Tennessee 811 (TN811). Owner Developer, Builder, or Homeowner will be responsible for paying all fees from TN811 and Cartwright Creek's third party locating subcontractor (USIC) and Cartwright Creeks costs resulting from the property owner requesting utility locates from TN811 and/or Cartwright Creek.
- f. **Bonding.** Article 20 of "Williamson County, Tennessee, Zoning Ordinance", effective January 1, 2013 (the "Zoning Ordinance") sets forth requirements for wastewater treatment facilities that collect, treat and land apply effluent. Section 20.08 of the Zoning Ordinance defines two types of bonds that are required for this Project, the "Performance Bond" and the "Maintenance Bond." Owner shall be solely responsible for satisfying Williamson County requirements for the Performance Bonds and Maintenance Bonds for the WWTRF. In addition, Owner shall provide Cartwright Creek a maintenance bond in the amount of \$50,000.00 for the first three years of operation. The form of Letter of Credit shall be approved by Cartwright Creek prior to execution of this Agreement.
- g. **Construction Certifications.** Owner shall provide a set of as-built drawings for the WWTRF (paper copies, PDF, and AutoCAD), signed and sealed by a licensed Tennessee professional engineer, certifying that the as-built drawings

monthly service fee as established in Cartwright Creek's approved tariff (the "Service Fee"). This Service Fee is the responsibility of each property owner to pay, as identified in Cartwright Creek's sewer services contract.

- b. Owner Maintenance Fee. Exhibit C contains the projected operating costs and related fees for operation and maintenance of the WWTRF during the first year following the Closing Date. Prior to a homeowner connecting to the WWTRF and paying the Service identified above, the owner of each lot (whether the Owner or a home builder who owns the lot, or an individual property owner) will pay the costs set forth below as the "Owner Maintenance Fee." The Owner Maintenance Fee will be payable until the earlier of (i) the fourth anniversary of the Closing Date, or (ii) until such time as there are 118 homes constructed and sold.

i. On the Closing Date, the Owner will pay the Owner Maintenance Fee to Cartwright Creek a one-time amount equal to \$87,372.00. For the first year of operation, Cartwright Creek shall invoice a lot owner or builder that has closed on the purchase of a lot from Owner for the Owner Maintenance Fee. Any Owner Maintenance Fees collected by Cartwright Creek during the first year of operation shall be credited to Owners obligation to pay the Owner Maintenance Fee for year two. Owner shall provide Cartwright Creek notice of each lot closing, which shall include the date of closing, purchaser name and address.

ii. With respect to the second year following the Closing Date and each year thereafter, each lot owner (whether the Owner or a third-party builder) shall pay to Cartwright Creek on a monthly basis the amount set forth on Exhibit D as the Owner Maintenance Fee. Cartwright Creek will invoice each lot owner monthly for the Owner Maintenance Fee. If a builder acquires a lot from the Owner after the start of a month, the builder will not be responsible for the Owner Maintenance Fee until the start of the next month. Cartwright Creek will not be responsible to provide a prorated bill for partial months.

- c. Owner Contribution in Aid of Construction. In addition to the wastewater plant constructed by the Owner and contributed to Cartwright Creek, the Owner shall also contribute funds to Cartwright Creek for the purpose of operating and maintaining the wastewater system until an economically feasible and self-sustaining number of customers are connected. Owner shall pay Cartwright Creek ~~\$25,000.00~~ ^{10,000.00} per year as follows:

- i. \$10,000.00 upon execution of this Agreement,
ii. \$10,000.00 payable in the second year.
iii. \$10,000.00 the payable at the beginning of the third year.

- d. Operating Cost Reconciliation. Owner shall reimburse Cartwright Creek for actual costs incurred on Exhibit C to the extent such expenses exceeds the initial estimated amount paid by Owner to Cartwright Creek as identified on Exhibit C. The Parties have estimated such initial annual deposit to be \$87,372.00. Within 45 days at the end of each year, Cartwright Creek shall provide Owner an expense summary showing the actual costs incurred for operation of the Project. If the actual amount of such costs exceeds the amount of the deposit paid by Owner to Cartwright Creek, Owner shall reimburse Cartwright Creek for such amount within 15 days of billing by Cartwright Creek to Owner. If the actual amount of such costs is less than the amount of the deposit paid by Owner to Cartwright Creek, such amount shall be retained by Cartwright Creek and credited to the Owner Maintenance Fee owed by Owner to Cartwright Creek. In addition, Cartwright Creek shall prepare a revised Exhibit C upon completion of the Operating Cost Reconciliation and deliver to Owner as soon as reasonably practical with the first cost adjustment to be delivered to Owner one year from the date Cartwright Creek commences operation of the Project. The Owner Maintenance Fee shall be adjusted annually based on the Operating Cost Reconciliation calculation at the end of each year. Cartwright Creek agrees that it will use commercially reasonable efforts to operate the facility within the budgeted costs identified in Exhibit C.

- i. As lots are sold to third party purchasers or builders, the Owner will ensure that the purchasers are aware, by including in owner's real estate sales contract that the Owner Maintenance Fee will become and continue as a responsibility of the lot purchasers until a home is occupied and the homeowner begins paying the monthly sewer service fee as identified in Paragraph 5.b.ii.

accurately depict the WWTRF as they have been built and that the same was built in substantial completion with the design approved by TDEC and Williamson County.

- h. Survey. Owner, at its expense, shall provide a survey (the "Survey"), dated after the completion of the WWTP, Collection System and Irrigation System, in accordance with Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys and complying with current standards adopted by the American Land Title Association on February 23, 2016, and the Board of Directors, National Society of Professional Surveyors on November 15, 2010, and certified to Cartwright Creek, of the WWTP Property. The Survey shall depict and include, without limitation, the following: (i) present location of any and all improvements, fences or structures located on the land, and show that there are no encroachments of adjacent improvements onto the WWTP Property; (ii) building lines and all easements whether recorded or visible (and if recorded, by specified reference to the record by document numbers and a separate legal description of all easements); (iii) access to public roads and highways and (iv) identification of storm sewers, sanitary sewers and water lines as they serve the WWTP Property from the respective main lines, stormwater detention/retention for the WWTP Property and the location of underground pipes carrying the stormwater from the WWTP Property to such offsite location. Without limitation of the foregoing, the Survey shall state the legal description of the WWTP Property, the square footage of the WWTP Property and any improvements or structures on the WWTP Property, and shall further state whether the WWTP Property is located in an area designated by an agency of the United States of America as being subject to flood hazards or flood risks.
- i. Certain Owner Representations, Warranties and Covenants. Owner warrants to Cartwright Creek that all materials and equipment furnished by Owner under this Agreement will be new unless otherwise specified, and all work will be of good quality, free from faults and defects and in conformance with the WWTRF plans and drawings. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Owner shall pay all sales, consumer, use and other similar taxes for the work or portions thereof provided by Owner which are legally enacted at the time bids are received, whether or not yet effective. Except as otherwise expressly provided herein, Owner shall secure and pay for the building permit and for all other permits and governmental fees, licenses and inspections necessary for the proper execution of the work. Owner shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the work. If Owner performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, Owner assumes full responsibility therefor and shall bear all costs attributable thereof. If at any time within three (3) years following the date of completion and acceptance of the entire project (or such longer period as may be provided under warranties for equipment or materials): (1) any part of the materials furnished in connection with the work shall be or become defective due to defects in either labor or materials, or both or (2) Owner's work or materials, or both, are or were not in conformance with the WWTRF plans and drawings or supplementary or shop drawings, then the Owner shall upon written notice from Cartwright Creek immediately to replace or repair such defects or nonconforming material or workmanship at no cost to Cartwright Creek. Owner shall require similar guarantees from all vendors and for its subcontractors. Owner further agrees, on written demand of Cartwright Creek and during the course of construction, to immediately reexecute, repair or replace any work that fails to conform to the requirements of the WWTRF's plans and drawings, including this Agreement whether caused by faulty materials or workmanship, or both. In the event Owner shall fail or refuse to make such change on Cartwright Creek's written demand, Cartwright Creek shall have the right to have such work reexecuted, repaired, or replaced, to withhold from or backcharge to Owner or contractor or subcontractor all costs incurred thereby. Owner shall provide Cartwright Creek with copies of all guaranties or warranties that have been made to Owner by suppliers or subcontractors as required hereunder, together with an assignment of such warranties and guaranties to Cartwright Creek.

5. COMPENSATION.

a. Compensation for Operations:

- i. Tap Fees. Cartwright Creek's Tap Fee, approved in its TPUC approved tariff, will be due for each individual lot. The tap fee will be due from the builder or developer prior to construction, when the builder or developer requests the service letter required for the County building permit from Cartwright Creek.
- ii. Homeowner Monthly Service Fee. Each lot in the Development that is connected to Cartwright Creek's collection system and has any wastewater flowing to the Cartwright Creek collection system shall pay Cartwright Creek a

- e. Documents to be delivered by Owner on the Closing Date. On the Closing Date, Owner shall deliver or cause to be delivered to Cartwright Creek directly or, if either party elects, through the Escrow, the following, each of which shall be in form reasonably satisfactory to Cartwright Creek and (if applicable) the Title Insurer:
- i. A duly executed and acknowledged special warranty deed to the WWTP Property subject only to the Permitted Exceptions;
 - ii. Affidavit of Title;
 - iii. Bill of Sale;
 - iv. An affidavit to the effect that Seller is not a foreign person under Section 1445(b) of the United States Internal Revenue Code (FIRPTA);
 - v. GAP Undertaking or other Personal Undertaking as required by the Title Insurer;
 - vi. Certificate from Owners stating that all of Owners obligations under Paragraph 3 have been completed in accordance with this Agreement; and
 - vii. Such other instruments and documents as may be reasonably required in order to carry out the purposes of this Agreement.
 - vi. Special Warranty.
- f. Title Insurance Policy. Owner shall provide on the Closing Date at its own expense a title insurance policy from a title insurance company which is retained by Owner and mutually agreed to by the Parties for the WWTP Property (the "Title Policy"), which shows title is in fee simple, free and clear of any and all liens and encumbrances, at the time of transfer of title to Cartwright Creek. The title insurance policy shall include the following endorsements, as applicable and/or available:
- i. Zoning;
 - ii. Access;
 - iii. Owner's Comprehensive;
 - iv. Contiguity;
 - v. Survey;
 - vi. Subdivision;
 - vii. Address;
 - viii. Tax Parcel;
 - ix. Utility Facility; and
 - x. Deletion of Creditor Rights.
- g. Property Taxes. Owner shall pay for all property taxes due for the WWTP Property as of the Closing Date and shall prorate for property taxes not yet due and payable in the year after the Closing Date. In addition, Owner shall provide Cartwright Creek all financial information necessary to submit to the local county assessor to assist in efforts to reduce

or accurately contest real estate taxes. Cartwright Creek shall keep all information confidential. All costs associated with contesting the real estate taxes shall be the responsibility of Owner.

- h. Spare Parts. The Owner's engineer shall prepare a list of recommended spare parts for the WWTRF based upon recommendations of the equipment suppliers and this list will be reviewed and accepted by Cartwright Creek. The Owner shall purchase the spare parts and deliver to Cartwright Creek prior to the Closing Date.
- i. Step Tanks Installation and Service. Owner shall require through its contracts with home builders or through the homeowner's restrictive covenants or other appropriate means that each builder constructing a home on a lot within the Property installs a Step Tank and service line (from the Step Tank to the service box) in accordance with the drawings approved by TDEC and Cartwright Creek's requirements. Cartwright Creek shall inspect and accept the installation of every Step Tank in accordance with procedures to be provided to builders. For these services performed by Cartwright Creek, Cartwright Creek shall be entitled to an inspection fee of not less than \$250.00 from the lot owner. Re-inspections will result in an additional fee of \$75.00 for each reinspection. Procedures for inspection and acceptance of Step Tanks are outlined in Exhibit C.

On each individual lot, the Builder shall provide Cartwright Creek with a drawing of the lot and the planned location of the Step Tank and the routing of the service line from the Step Tank to the service box. Cartwright Creek will review and approve this drawing prior to issuing the service availability letter required to obtain the county building permit. Any changes to the location of the Step Tank and service line shown on the approved drawing that are requested by the Builders in writing and shall be approved by Cartwright Creek. Field modification of Cartwright Creek's common collection lines, if required by the builder and acceptable to Cartwright Creek, will be paid by the developer using contractors that Cartwright Creek selects and manages.

Cartwright Creek or its designated representative shall maintain the individual Step Tank at the cost of the lot owner (whether Owner, builder or individual lot owner). Owner shall include in the homeowner's restrictive covenants a grant of easement to Cartwright Creek for its right of access to the Step Tank as provided in this Agreement. Owner shall also include in the homeowner's restrictive covenants that the Cartwright Creek will maintain the Step Tank, including pump out, at the cost of the homeowner.

All damages to the Collection System caused by the lot owner shall be the sole responsibility of the lot owner and the Owner for such damages. Builder Purchase and Sales Agreement will provide that each lot owner will be responsible for any damage to the Collection System on their lot regardless of whether caused by the lot owner or another party.

- j. Withholding of Payments. In the event any dispute arises between Cartwright Creek and Owner with respect to this Agreement, the Parties will promptly undertake to resolve such dispute.
- k. Late Charges. Invoices shall be due on a Net 15 days' basis. Cartwright Creek may assess interest charges for any past due invoices at a rate not to exceed the lesser of (i) 10% per annum, or (ii) the maximum rate permitted by applicable law.
- l. Lien Rights and Right to Shut Off Service. In the event that payment of any fees due Cartwright Creek under this Agreement become delinquent by more than two (2) months, Cartwright Creek may file a lien against the property of the Owner or individual property owner (if the past due fee is the monthly service fee) to secure its claim to the past due fees, and/or shut off sewer and water service including removal of the effluent pump from the individual home until all past due amounts, including any accrued interest charges, are paid in full. Cartwright Creek shall notify the Owner or the individual property owner in writing at least 30 days prior to filing the lien or shutting off the sewer and water services, that Cartwright Creek intends to file the lien and/or shut off the sewer and water services unless the past due amount is received by the close of the 30-day notification period.

6. DEFAULT/TERMINATION.

- a. Prior to Closing Date. Cartwright Creek may terminate this Agreement by written notice to Owner if Owner fails to comply with its obligations under Paragraph 3 of this Agreement and, after receiving written notice describing such failure from Cartwright Creek, Owner fails to take corrective actions within 30 days of notification. In the event of Owner's default prior to the Closing Date that is not cured within a reasonable period of time following notice to Owner,

Cartwright Creek will not accept title to the Project and shall have no obligation to provide any sewer and wastewater service connections to Owner, its assignees or designees.

- b. Owner Default after the Closing Date. The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement by Owner:

i. If Owner fails to pay the Owner Maintenance Fees identified in Paragraph 5.b.iii or any other charges required to be paid by Owner under this Agreement.

ii. If Owner fails to promptly and fully perform any other covenant or condition in this Agreement and such failure continues for 15 days after written notice from Cartwright Creek to Owner.

iii. If Owner makes a general assignment for the benefit of creditors or if Owner files a voluntary petition or if a petition is filed against Owner in a proceeding under the Federal Bankruptcy Laws or other insolvency laws.

iv. If Owner violates any TDEC or Williamson County wastewater regulation or statute.

- c. Remedies. In the event of Owner default hereunder, then in addition to any other rights or remedies Cartwright Creek may have under any law, Cartwright Creek shall have the right, at Cartwright Creeks option, without further notice or demand of any kind, to do the following:

Terminate this Agreement and be entitled to recover as damages a sum equal to the Owner Maintenance Fees owed for years 1-3 of this Agreement. In addition, all taps for unsold lots shall be forfeited by Owner and transferred to Cartwright Creek for the sole and exclusive use of Cartwright Creek. Owner shall have the opportunity to cure any default within 15 days from the date Owner receives written notice of default from Cartwright Creek.

- d. Attorneys' Fees and Court Costs. The prevailing parties in litigation shall be entitled to collect reasonable attorneys' fees and costs from the non-prevailing party as ordered by a court of competent jurisdiction.

7. PROHIBITED AND RESTRICTED DISCHARGES. As provided in Paragraph 4.d. above, the homeowner covenants shall restrict potentially harmful substances from being flushed or discharged to the sewer and wastewater system.

8. OTHER TERMS AND CONDITIONS.

- a. Notices. Any notice required under this Agreement shall be in writing, personally delivered or sent by certified mail, postage prepaid, to the other Party at the address set forth below or to such other address as any Party may so designate in writing from time to time.

To: Cartwright Creek, LLC
Attn: Thomas L. Kolschowsky
800 Roosevelt Rd., A-120
Glen Ellyn, IL 60137

To: Propst Hardeman Springs LLC
Attn: Ben Hughey
305 Church Street SW, Suite 715
Huntsville, AL 35801

With a copy to the Parties' respective registered agent or counsel, as follows:

Cartwright Creek:

Owner:

To: Cartwright Creek, LLC
Attn.: Bruce Meyer
1551 Thompson's Station Rd West
Thompson's Station, TN 37179

To: _____
Attn.: _____

- b. Force Majeure. In the event either Party's performance of this Agreement is delayed in connection with any circumstance beyond such Party's control including, without limitation, fires, floods, labor shortages, failure to secure materials as a result of strikes, riots, and national emergencies, but expressly excluding obligations of payment, then

such Party may elect to suspend performance under this Agreement but only to the extent, and only for the period, that its performance is prevented by the event.

- c. Entire Agreement. This Agreement has been negotiated and prepared by and for the Parties equally and shall not be construed as having been drafted by one Party. When fully executed, it shall supersede all prior agreements, either oral or in writing. This Agreement shall constitute the entire agreement between the Parties and shall not be modified except through writing and signed by the Parties.
- d. Construction of Agreement. In the event that any part of this Agreement shall be declared void or unenforceable by any court having jurisdiction, such imperfection shall not affect the validity or enforceability of the remainder of this Agreement unless the result would be manifestly unconscionable. The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference. They do not purport to, and shall not be construed to, define, limit or extend the scope or intent of this Agreement. The terms, conditions, obligations and definitions contained in this Agreement are intended by the Parties to apply to all Exhibits attached unless expressly provided otherwise.
- e. No Waiver. The failure of a Party to insist upon the strict performance of the terms and conditions hereof shall not constitute a waiver of that Party's right to enforce the same in the event of a continuing or subsequent default on the part of the other Party.
- f. Choice of Law; Designation of Jurisdiction for Disputes; Venue. This Agreement is governed by and shall be construed in accordance with laws of the State of Tennessee without giving effect to any choice or conflict of law provision or rule (whether of the State of Tennessee or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Tennessee. The Parties mutually consent to the jurisdiction of the federal and state courts in Williamson County, Tennessee and agree that any action, suit or proceeding concerning, related to, or arising out of this Agreement and the negotiation of this Agreement will be brought only in a federal or state court in Williamson County, Tennessee and the Parties agree that they will not raise any defense or objection or file any motion based on lack of personal jurisdiction, improper venue, inconvenience of the forum or the like in any case filed in a federal or state court in Williamson County, Tennessee.
- g. No Third-Party Rights. Nothing in this Agreement (including any Exhibits) shall create, or be construed as creating, any express or implied rights in any person or entity other than the Parties except that Cartwright Creek and Owner are express third-party beneficiaries of any section that specifically names them.
- h. Counterparts. This Agreement may be executed in multiple counterparts including by email transmission, each of which is considered an original and shall be binding upon the Party who executed same, but all of such counterparts shall constitute the same Agreement.
- i. Authority. Both Parties hereby warrant that they are fully authorized to enter into this Agreement and to perform each of their respective obligations described.
- j. Subcontracting. Notwithstanding anything to the contrary in this Agreement, Cartwright Creek may subcontract any part of its obligations under this Agreement to a related entity, merged corporation without obtaining the prior consent of Owner, and provided, that no such subcontracting shall release Cartwright Creek from liability for the performance of its obligations hereunder.
- k. Independent Contractor. Owner and Cartwright Creek intend that an independent contractor relationship be created by this Agreement and nothing in this Agreement shall be construed as creating an agency, employer/employee relationship, partnership, joint venture, or other business group relationship except as otherwise expressly provided herein.
- l. Assignment and Delegation. Neither party shall assign, transfer, or otherwise dispose of any of its rights, nor delegate its obligations under this Agreement without the prior written consent of the other party, which consent shall not unreasonably withhold its consent. Either party may, without the other party's prior written consent, assign or transfer any of its rights or delegate its obligations under this Agreement to any affiliated or subsidiary entity of similar net

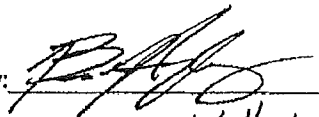
worth. This Agreement will inure to the benefit of and be binding upon any successors and permitted assigns or designees.

- m. Change in Permit or Regulatory Requirements. Nothing in this Agreement shall be construed to prohibit Cartwright Creek from requiring an increase in the fees payable to Cartwright Creek under this Agreement in the event of a regulatory or permit change, including a change in the rate structure for Cartwright Creek and approved by the TPUC.
- n. Indemnification. Each party (an "Indemnifying Party") does hereby defend, indemnify and save the other party (an "Indemnified Party") harmless from and against any and all claims, actions, damages, liabilities, expenses and costs of litigation in connection with loss of life, personal injury, and/or damage to property arising from or out of any occurrence in, upon, or at the Property, occasioned by any act or omission by the Indemnifying Party, its agents, contractors, subcontractors or invitees upon said Property, to the extent such act or omission results from the negligence or willful misconduct of the Indemnifying Party.
- o. Liability Following the Closing Date. Without limiting the foregoing, following the Closing Date, Cartwright Creek assumes any and all liability for any damages, losses, expenses, costs or other claims resulting from any damage to the WWTRF, except to the extent caused by Owner or its contractors, subcontractors or agents.
- p. Dispute Resolution. Disputes arising under this Agreement will be resolved by the TPUC, subject to judicial review as provided by law. If the parties agree, or if the TPUC rules that the agency lacks jurisdiction to resolve a dispute arising under this Agreement, the Parties may seek all available remedies at law or in equity.

10. DEFINITIONS.

- a. "Sewage Collection System" or "Collection System" means sewage collection pipes and easements granted to Cartwright Creek, which shall run from and include the Step Tank at each home, to the common wastewater collection pipelines to the WWTP, including pipe, valves, electrical controls, flow meters, service boxes and manholes installed within the easement. The Collection System does NOT include any real property interest in the subdivided, residential lots included in the Project, except that Cartwright Creek shall be granted a right of access to each lot for the purpose of maintaining, repairing, and replacing the Residential Grinder Pump serving each home, per Paragraph 4 of this Agreement.
- b. "Step Tank" means the sealed septic tank and effluent pump to be provided at each home in the Development. The Step Tank specifications shall be at a minimum per the engineering drawings described in Section F. Cartwright Creek may provide additional requirements for each Step Tank prior to home construction. Each Step Tank shall be provided by the developer or builder and affixed to its corresponding residential property. The individual, specialized septic tank installed at every home by the Developer or Builder and includes the effluent pump, control panel, internal level controls, and all internal and external devices and controls. The installation and operation of each Step Tank will be inspected and accepted by Cartwright Creek according to the procedures outlined in Exhibit D.
- c. "WWTP" means the recirculating sand filter treatment system designed by Owner's consulting engineers, including treatment equipment, building and Property.
- d. "WWTP Property" means the portion of the Property on which the WWTP is situated and the improvements located thereon.
- e. "Irrigation System" means the reclaimed wastewater irrigation pumps, pipe, drip irrigation piping, and other appurtenances for irrigating treated wastewater to the primary and secondary irrigation areas. It also includes the land designated and approved by TDEC and Williamson County for the primary and secondary irrigation areas.
- f. "Operations Costs" means the costs to operate and maintain the Collection System, WWTP and Irrigation System, including those items listed in Exhibit C and other reasonable and documented costs.
- g. "WWTRF" means the Collection System, WWTP, and Irrigation System as defined above.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date written above.

By: 
Name: Benjamin W. Hughey
Title: Member

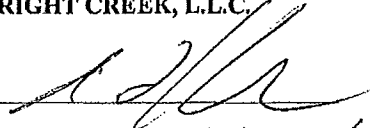
CARTWRIGHT CREEK, L.L.C.
By: 
Name: THOMAS L. KOLOSCH
Title: Sup/ Corporate Counsel

EXHIBIT A
Property Map and Legal Description

(to be provided by Owner)

EXHIBIT B
Basis for Scope of Services and Construction

1. Collection System:

- Consisting of a low-pressure design and containing: collection force mains installed in the streets, common areas, and on homeowner's properties; and an individual Step Tank at every home. The STEP tank specifications will be reviewed and approved by Cartwright Creek prior to the first installation.
- Individual Step Tanks will be installed and tested by the homebuilders in accordance with manufacturer's instructions and project drawings and Cartwright Creek's requirements. Cartwright Creek will inspect and accept each Step Tank during installation and prior to home closing. For the final inspection, the homebuilders' responsibility may include the services of a manufacturer's representative, at Cartwright Creek's discretion.
- Owner's contractor will install and test the collection system (exclusive of the Step Tank). If necessary, collection lines failing pressure tests will be excavated and repaired. The Owner will be responsible for repairs to the Collection System caused by homebuilders.

2. Wastewater Treatment System:

- Will be a recirculating sand filter system as shown on the engineering drawings, designed to treat 36,300 gallons per day of wastewater to the quality required by the TDEC State Operating Permit (SOP) and applicable sections of Williamson County's zoning ordinance.
- Will be constructed with a storage cell meeting Williamson County and TDEC requirements.
- Will include, but not limited to the recirculating sand filter, disc filter, UV disinfection equipment, pumps and controls, and a chain link perimeter fence meeting TDEC and Williamson County requirements.

3. Irrigation System:

- Will have area sufficient primary irrigation area to serve up to approximately 36,300 gallons/day of wastewater from the Development and secondary irrigation area meeting Williamson County and TDEC requirements.
- Will utilize subsurface drip irrigation and will be sized and designed to comply with Williamson County and TDEC regulations and guidelines, including primary and secondary irrigation areas required by the county.
- Will include a perimeter fence meeting TDEC and Williamson County requirements, but at minimum a four board split rail fence.

4. Owner or Owner's engineer will:

- Complete the detailed construction plans and specifications, stamped by a licensed Tennessee professional engineer, for the Collection System, WWTP, and Irrigation System. After completion of construction, Owner shall provide Cartwright Creek with stamped as-built plans and specifications in acceptable AutoCAD (with all reference and shape files) and PDF and two full sized hard copies.
- Complete the forms, fee payments, and appropriate copies of the above and submit to Williamson County and TDEC for approval.

5. Construction:

- The Owner will fund and construct all components of the Collection System, Irrigation System, and Wastewater Treatment System.
- Contractors selected for the installation of the various components of the WWTRF will have multiproject experience installing STEP tanks, recirculating sand filters and drip irrigation.
- The Owner will assign a Construction Manager to organize and coordinate the preconstruction and daily construction phase activities of the site. Unless otherwise agreed upon, the Owner's Construction Manager will be the notifier of Cartwright Creek's Project Manager for construction status, inspection requests, and construction questions.
- Cartwright Creek will inspect all phases of construction of the WWTRF for conformance with the design drawings, established engineering and construction practice, and Cartwright Creek's requirements. There shall be a preconstruction meeting where the inspection and testing requirements are established.
- Any changes from the plans and specifications approved by TDEC for the Wastewater Treatment, Irrigation System, and Collection System will be submitted to Cartwright Creek for review and approval prior to implementing the change.
- Cartwright Creek will review all equipment purchase orders prior to order being placed, shop drawings prior to equipment fabrication, and equipment condition when delivered. Any variance from plans and specifications will be provided in writing for resolution.

- Cartwright Creek will review the scope of work, schedules, and qualifications of contractors and subcontractors. Firms doing the construction work will have defined scopes of work and approved contracts and will have experience specific to this type of wastewater treatment Project.
- No foundations, underground piping, manholes, or other underground items will be backfilled without Cartwright Creek's inspection and acceptance.
- Pressure testing will be done on all gravity and pressure lines. Lines not passing the pressure test will be replaced or repaired in a manner acceptable to Cartwright Creek and re-tested until passing.
- Concrete cylinders will be poured and tested at the frequency outlined in the Owner's engineer's specifications. Backfill and other construction placing loads on concrete pours will not be done until the concrete strength passes.
- Equipment purchases will include 5 copies of operating and maintenance manuals and provisions for on-site startup services by factory technicians.
- After construction completion of the Wastewater Treatment and Irrigation Systems the Owner will conduct a performance test to verify that all mechanical, electrical, and instrumentation components are functioning as designed. The performance test will be complete and accepted by Cartwright Creek prior to closing.

EXHIBIT C

Exhibit C
Cortwright Creek/Hardeman Springs Operating Costs and Fee Calculation
Revised 1/18/18

		<u>203 Units</u>	<u>Year 1</u>
Operating Labor and Transportation		\$0	\$12,116
Administrative Labor (Management, accounting, legal, engineering)		\$0	\$5,800
Sampling and Testing Costs		\$0	\$2,800
Regular preventative maintenance cost		\$0	\$1,200
Grounds keeping, mowing		\$0	\$13,500
Unscheduled maintenance and troubleshooting (Note 2)		\$0	\$0
Long term replacement/repair allowance		\$0	\$23,333
Electric Power		\$0	\$2,400
Utility costs		\$0	\$2,100
Insurance		\$0	\$4,836
Real Estate Taxes		\$0	\$3,000
Permit and other fees required by regulatory agencies		\$0	\$1,000
Customer billing and accounting costs		\$0	\$1,200
Misc. supplies		\$0	\$600
	Subtotal	<u>\$0</u>	<u>\$73,646</u>
Contingency	10%	\$0	\$7,365
	Subtotal	<u>\$0</u>	<u>\$80,900</u>
Cortwright Creek Profit	8%	\$0	\$6,472
	Subtotal	<u>\$0</u>	<u>\$87,372</u>
Annual Cost Per Lot	118 Lots	\$0.00	\$740.44
Monthly Cost Per Lot		\$0.00	\$61.70

Notes

EXHIBIT D

Hardeman Springs STEP Tank and Service Line Inspection and Acceptance

Cartwright Creek will inspect and accept the Step Tank (tank, effluent pump, controls and piping per the definition in the Developer agreement) and service line connections through the following three steps:

1. Builder submittal of and Cartwright Creek's review and acceptance of a lot plan or sketch showing location of the Step Tank and service line route and connection to the service box on the collection force main. This plan or sketch will be used to confirm locations of tank and piping in future inspections. Unless this requirement is waived in writing, Cartwright Creek will not issue individual lot letters confirming sewer service availability (required for county building permits) until this plan or sketch can be reviewed and accepted. Issuance of the letter also requires payment of applicable tap and inspection fees.

2. First inspection: The Developer, the Builder, or the Builder's subcontractor will request a first inspection in writing or email with a minimum of 5 working days notice in advance of the date needing inspection. The inspection will occur after the tank, effluent pump, drain line from the house to the tank, and the service line from the pump to the service box are installed but not backfilled. The Builder will install, and Cartwright Creek will inspect to ensure that the Step Tank and service line are installed per the plan or sketch in #1 above and that the installation conforms with "Summary of Step Tank Installation Requirements" provided herein.

Within 5 working days of the First Inspection, Cartwright Creek will issue a written, via email, description of the inspection, its findings, and, if required, deficiencies that need to be reinspected. Cartwright Creek will also specify if reinspection and/or retesting will be required prior to backfill. It will be the builder's responsibility to correct any deficiencies in the installation, including but not limited to the above items and request reinspections in writing/email. The service line and tank will not be backfilled until receipt of this written confirmation from Cartwright Creek.

3. Final inspection: When the Step Tank and service line installation is complete and backfilled, the pump controls are installed and powered, and all components are ready for operation, the Builder will provide Cartwright Creek notice (hard copy/email) that the Step Tank is ready for final inspection. The Builder will notify Cartwright Creek of the inspection date with at least 3 working days in advance.

Cartwright Creek will inspect to ensure that the Step Tank and service line are installed per the plan or sketch in #1 above and that the installation conforms with Summary of Step Tank installation requirements provided herein. And that all components of the Step Tank are functional. Within 5 working days after a completed and acceptable final inspection, Cartwright Creek will issue a letter of acceptance. It will be the Builder's responsibility to correct deficiencies in the installation, including, but not limited to the above items and request reinspections in writing/email.

The Builder will ensure that the final inspection is scheduled so that it may be conducted with sufficient time for any deficiencies to be corrected prior to a home being closed to a private homeowner. Cartwright Creek reserves the right to refuse service to homes and homeowners that have not been issued a system acceptance letter.

Summary of Step Tank Installation Requirements

1. Stainless steel or other approved flex connection between pump outlet and first PVC pipe. No bends above 45 degrees in flex connection.
2. Tracer wire (12 gauge green coated) between tank and service box and tied into system tracer wire.
3. The existing service box and cover are vertical and undamaged and clean and that the valves are operable.
4. Cleanout on discharge side of pump within 3 feet of the tank. Accessible just below grade with a screwed, removable cap. Covered by a small service box, round or rectangular with removable cover
5. Control panel mounted no more than 25 feet from tank on building wall
6. Control panel height approximate "eye level". Distance between ground and bottom of panel no less than 48" and no more than 60 inches from finished grade.
7. All electrical connections to the control panel through the bottom of the box. No panel conduit entry from the back or sides, other than the bottom, will be accepted.
8. Conduit entries will be water tight and the wiring entry conduit opening sealed with putty or agreed upon sealer.
9. No fixed obstructions that limit access to either tank or control panel including shrubbery or other plantings.

10. 3" of bedding (sand, flat stone/river rock or #57 stone) minimum below entire length of service line.
11. No bends above 45 degrees in service line from pump to service box. 45-degree bends cannot be closer than 12"
12. Minimum 2' deep trench for service line. Maximum depth 3'.
13. Service line in CENTER of excavated trench for the entire length on backfill.
14. 2" PVC casing pipes under driveways, sidewalks. No bends or directional changes in casing pipe and carrier pipe.
15. Pressure test will be performed on each Step Tank prior to backfill, in accordance with procedures approved by Cartwright Creek.
16. Pressure test of service line may be required at Cartwright Creek's discretion. Piping will hold 75 psig for one hour. Test Pressure gauges will be 0-100 psig scale.
17. Driveways, sidewalks, patios, or other paved areas will not be allowed to partially or fully encompass service boxes or tanks.
18. If the service box needs to be moved for any reason, Cartwright Creek's sewer contractor will move the box to an agreed upon location and the builder will be responsible for reimbursement or direct paying Cartwright Creek's sewer contractor.
19. Damage caused by builder or subcontractor to the Cartwright Creek main collection force main or service boxes will be repaired by Cartwright Creek's sewer contractor and billed the responsible builder's contractor. All costs for cleanup of related sewage spills will be billed to the responsible builder's contractor.