

This document prepared by,
or under the direction of, and
after recording return to:

Anthony Cotter, General Counsel
Office of the General Counsel
Tohopekaliga Water Authority
951 Martin Luther King Blvd.
Kissimmee, Florida 34741

Parcel ID Number:

TOHOPEKALIGA WATER AUTHORITY WATER AND WASTEWATER SYSTEM DEVELOPER'S SERVICE AGREEMENT

THIS AGREEMENT made and entered into this ____ day of _____, 2024, by and between _____, a _____ (hereafter "DEVELOPER"), and **TOHOPEKALIGA WATER AUTHORITY ("TOHO")**, an independent "Special District" created pursuant to Chapter 189, Laws of Florida.

RECITALS

1. DEVELOPER has or is about to develop property by erecting commercial improvements consisting of _____ on property described in Exhibit "A" attached to and incorporated in this Agreement (the "Property").

2. DEVELOPER is desirous of prompting the construction and/or maintenance of central water and wastewater facilities so to receive adequate service.

3. TOHO is willing to provide, in accordance with the provisions and stipulations hereinafter set out, and in accordance with all applicable laws, central water and wastewater service through central water and wastewater facilities, and to accept and operate a water distribution and wastewater collection system, and to thereafter operate such facilities so the occupants of the improvements constructed on the Property will receive adequate retail water and wastewater service from TOHO.

ACCORDINGLY, for and in consideration of the Recitals, the mutual undertakings and agreements herein contained and assumed, and other good and valuable consideration the receipt and sufficiency of which are acknowledged by the parties, DEVELOPER and TOHO hereby covenant and agree as follows:

SECTION 1. RECITALS. The above Recitals are true and correct, and form a material part of this Agreement.

SECTION 2. DEFINITIONS. The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

(1) "Service" - the readiness and ability on the part of TOHO to furnish water and/or wastewater service to each lot on the Property.

(2) "Point of Delivery or Distribution" - the point where the pipes of utility are connected with the pipes of the customer. Unless otherwise indicated, the point of delivery shall be at a point on the customer's lot line.

(3) "Contribution-in-aid-of-Construction" - The sum of money, and/or property, represented by the value of the water distribution and wastewater collection system constructed by DEVELOPER, which DEVELOPER covenants and agrees to pay to TOHO, as a contribution-in-aid-of-construction, to induce TOHO to continuously provide water and wastewater service to the Property.

SECTION 3. EASEMENT AND RIGHT OF ACCESS. DEVELOPER hereby grants and gives TOHO the exclusive right or privilege to construct, own, maintain, and operate the water and wastewater facilities in, under, over and across the present and future streets, roads, easements, reserved utility sites and public places on the Property as provided and dedicated to public use in the record plats, or as provided for in agreements, dedications or grants made otherwise and independent of said record plats. DEVELOPER hereby further agrees that the foregoing grants include the necessary right of ingress and egress to any part of the Property; that the foregoing grants shall be perpetual; that in the event TOHO is required or desires to install any additional water and wastewater facilities in lands within the Property lying outside the streets and easement areas described above, then DEVELOPER or the owner shall grant to TOHO, without cost or expense to TOHO, the necessary easement or easements for such "private property" installation; provided, all such "private property" installation by TOHO shall be made in such a manner as not to interfere with the then primary use of such "private property." TOHO covenants that it will use due diligence in ascertaining all easement locations; however, should TOHO install any of its facilities outside a dedicated easement area, DEVELOPER, the successors and assigns of DEVELOPER, covenant and agree that TOHO will not be required to move or relocate any facilities lying outside a dedicated easement area so long as the facilities do not interfere with the then or proposed use of the area in which the facilities have been installed. TOHO hereby agrees that all easement grants will be utilized in accordance with the established and generally accepted practices of the water and wastewater industry with respect to the installation of all its water and wastewater facilities in any of the easement areas; and DEVELOPER in granting easement herein, or pursuant to the terms of this instrument, shall have the right to grant exclusive or non-exclusive rights, privileges and easement to other entities to provide to the Property any utility services other than water and wastewater service.

SECTION 4. PROVISION OF SERVICE; PAYMENT OF RATES.

4.1. Upon the continued accomplishment of all the prerequisites contained in this Agreement to be performed by DEVELOPER, TOHO covenants and agrees that it will allow the connection of the water distribution and wastewater collection facilities installed by DEVELOPER to the central water and wastewater facilities of TOHO in accordance with the terms and intent of this Agreement. Such connection shall be in accordance with rules and regulations of the Department of Health and Rehabilitative Services and the Florida Department of Environmental Protection. TOHO agrees that once it provides water and wastewater service to the Property and DEVELOPER, or others have connected customer installations to its system, that thereafter, TOHO will continuously provide, in accordance with the other provisions of this Agreement, and of applicable laws, including rules and regulations and rate schedules, water and wastewater service to the Property in a manner to conform with all requirements of all governmental agencies having jurisdiction over the water and wastewater system of TOHO. DEVELOPER, its successors and assigns agree to timely and fully pay all applicable monthly rates, fees, and charges to TOHO and otherwise fully comply with TOHO's rules, regulations, and ordinances applicable to the provision of water and wastewater service.

4.2. DEVELOPER, its successors and assigns agrees to pay to TOHO for monthly service within thirty (30) days after statement is rendered by TOHO all sums due and payable as set forth in such statement. Upon failure or refusal to pay the amounts due on statements as rendered, TOHO may, in its sole discretion, terminate service.

4.3. DEVELOPER, its successors and assigns shall pay as a condition precedent impact fees and connection fees in accordance with TOHO's current rules, regulations, policies and ordinances.

SECTION 5. DESIGN, REVIEW, CONSTRUCTION, INSPECTION, AND CONVEYANCE OF FACILITIES.

5.1. To induce TOHO to provide water and wastewater service, and to continuously provide customers located on the Property with water and wastewater services, DEVELOPER hereby covenants and agrees to pay for the construction and to transfer ownership and control to TOHO as a contribution-in-aid-of-construction, the on-site and/or off-site water distribution and wastewater collection facilities referred to herein. All design and construction shall be in accordance with TOHO rules, regulations, policies, resolutions, ordinances and utility standards.

5.2. DEVELOPER shall pay TOHO to review engineering plans and specifications of the type and in the form as prescribed by TOHO, showing the on-site and/or off-site water distribution and wastewater collection facilities proposed to be installed to provide service to the subject Property. TOHO will advise DEVELOPER's engineer of any sizing requirements as mandated by TOHO's system extension policy and utility standards for the preparation of plans and specifications for facilities within the Property. If applicable, such detailed plans may be limited to a phase of the Property, and subsequent phases may be furnished from time to time. However, each such phase,

if applicable, shall conform to a master plan for the development of the Property and such master plan shall be submitted to TOHO concurrent with or prior to submission of plans for the first phase. All such plans and specifications shall be submitted to TOHO and no construction shall commence until TOHO has approved such plans and specifications in writing. After approval, DEVELOPER shall cause to be constructed, at DEVELOPER's expense, the water distribution and wastewater collection facilities as shown on all plans and specifications.

5.3. During the construction of the on-site and/or off-site water distribution and wastewater collection facilities by DEVELOPER, TOHO shall have the right to inspect such installation to determine compliance with the plans and specifications, adequacy of the quality of the installation, and further, shall be entitled to perform standard tests for pressure, filtration, line and grade, and all other normal engineering tests required by specifications and/or good engineering practices. Complete as-built plans shall be submitted to TOHO upon completion of construction.

5.4. By these presents, upon completion and approval by TOHO, DEVELOPER shall transfer to TOHO, all right, title, and interest, free and clear of any encumbrances whatsoever, to the on-site and/or off-site water distribution and wastewater collection facilities installed by DEVELOPER's contractor, pursuant to the provisions of this Agreement. Such conveyance is to take effect without further action upon the acceptance by TOHO of the said installation. As further evidence of said transfer to title, and upon the completion of the installation and prior to the rendering of service by TOHO, DEVELOPER shall convey to TOHO, by bill of sale, or other appropriate documents, in form satisfactory to TOHO's counsel, the complete on-site and/or off-site water distribution and wastewater collection facilities as constructed by DEVELOPER and approved by TOHO. DEVELOPER shall further cause to be conveyed to TOHO, all easements and/or rights-of-way covering areas in which on-site and/or off-site water distribution and wastewater collection facilities are installed by recordable document in form satisfactory to TOHO's counsel. All conveyance of easements and/or rights-of-way shall be accompanied by a title policy or other evidence of title, satisfactory to TOHO, establishing DEVELOPER's rights to convey such continuous enjoyment of such easements or rights-of-way for those purposes set forth in this Agreement to the exclusion of any other person in interest. The use of easements granted by DEVELOPER shall include the use by other utilities so long as such uses by electric, telephone, or gas utilities, or cable television do not interfere with use by TOHO. TOHO agrees that the acceptance of the on-site and/or off-site water distribution and wastewater collection facilities installed by DEVELOPER, for service, or by acceptance of the bill of sale, shall constitute that assumption of responsibility by TOHO for the continuous operation and maintenance of such system from that date forward.

5.5. All installations by DEVELOPER or its contractor shall be warranted for at least one (1) year from the date of acceptance by TOHO. Mortgagee(s), if any, holding prior liens on such properties shall be required to release such liens, subordinate their position and join in the grant or dedication of the easements or rights-of-way. The

water distribution and wastewater collection facilities shall be covered by easements if not located within platted or dedicated rights-of-way.

5.6. Payment of the contributions-in-aid-of-construction does not and will not result in TOHO waiving any of its rates, rate schedules or rules and regulations, and their enforcement shall not be affected in any manner whatsoever by DEVELOPER making the contribution. TOHO shall not be obligated for any reason whatsoever nor shall TOHO pay any interest or rate of interest upon the contribution. Neither DEVELOPER nor any person or other entity holding any of the Property by, through or under DEVELOPER, or otherwise, shall have any present or future right, title, claim or interest in and to the contributions or to any of the water and wastewater facilities and properties of TOHO, and all prohibitions applicable to DEVELOPER with respect to no refund of contributions, no interest payment on said contributions and otherwise, are applicable to all persons or entities. Any user or customer of water or wastewater services shall not be entitled to offset any bill or bills rendered by TOHO for such service or services against the contributions. DEVELOPER shall not be entitled to offset the contributions against any claim or claims of TOHO.

SECTION 6. EVIDENCE OF TITLE. At least thirty (30) days prior to TOHO's acceptance of the water distribution and wastewater collection facilities, at the expense of DEVELOPER, DEVELOPER agrees to either deliver to TOHO an Abstract of Title, brought up to date, which abstract shall be retained by TOHO, and remain the property of TOHO, or to furnish TOHO an opinion of title from a qualified attorney at law or a qualified title insurance company with respect to the Property, which opinion shall include a current report on the status of the title, setting out the name of the legal title holders, the outstanding mortgages, taxes, liens, and covenants. The provisions of this Section are for the exclusive rights of service contained in this Agreement. Any mortgage or lien holder having an interest in the Property shall be required to join in the grant of exclusive service rights set forth in this Agreement. Title standards shall be the same as those applicable to real estate generally adopted by the Florida Bar and in accordance with Florida law.

SECTION 7. OWNERSHIP OF FACILITIES. DEVELOPER agrees with TOHO that the on-site and/or off-site water distribution and wastewater collection facilities conveyed to TOHO for use in connection with providing water and wastewater services to the Property, shall at all times remain in the complete and exclusive ownership of TOHO, and any entity owning any part of the Property or any residence or building constructed or located thereon, shall not have the right, title, claim or interest in and to such facilities, or any part of them, for any purpose, including the furnishing of water and wastewater services to other persons or entities located within or beyond the limits of the Property.

SECTION 8. APPLICATION OF RULES, REGULATIONS, AND RATES. Notwithstanding any provision in this Agreement, TOHO may establish, revise, modify and enforce rules, regulations and rates covering the provision of water and wastewater service to the Property. Such rules, regulations and rates are subject to the approval of

TOHO's Board of Supervisors. Such rules and regulations shall at all times be reasonable and subject to regulation as may be provided by law or under contract. Rates charged to DEVELOPER or customers located upon the Property shall be identical to rates charged for the same classification of service. All rules, regulations and rates in effect, or placed into effect in accordance with the preceding, shall be binding upon DEVELOPER, upon any other entity holding by, through or under DEVELOPER; and upon any customer of the water and wastewater service provided to the Property by TOHO.

SECTION 9. PERMISSION TO CONNECT REQUIRED. DEVELOPER, or any owner of any parcel of the Property, or any occupant of any residences or buildings located thereon, shall not have the right to and shall not connect to any customer installation to the water and wastewater facilities of TOHO until approval for such connection has been granted by TOHO.

SECTION 10. BINDING AGREEMENT; ASSIGNMENTS BY DEVELOPER. This Agreement shall be binding upon and shall inure to the benefit of DEVELOPER, TOHO and their respective assigns and successors by merger, consolidation or conveyance. This Agreement shall not be sold, conveyed, assigned or otherwise disposed of by DEVELOPER without the written consent of TOHO first having been obtained. TOHO agrees not to unreasonably withhold such consent.

SECTION 11. NOTICES; PROPER FORM. Until further written notice by either party to the other, all notices provided for herein shall be in writing and transmitted by messenger, or by mail to:

TOHO: Executive Director
Tohopekaliga Water Authority
951 Martin Luther King Blvd.
Kissimmee, FL 34741

DEVELOPER:

SECTION 12. SURVIVAL OF COVENANTS. The rights, privileges, obligations and covenants of DEVELOPER and TOHO shall survive the completion of the work of DEVELOPER with respect to completing the water and wastewater facilities and services to any phase area and to the Property as a whole.

SECTION 13. ENTIRE AGREEMENT; AMENDMENTS; APPLICABLE LAW; ATTORNEY'S FEES. This Agreement supersedes all previous agreements or representations, either verbal or written, heretofore in effect between DEVELOPER and TOHO, made with respect to the matters herein contained, and when duly executed, constitutes the agreement between DEVELOPER and TOHO. No additions, alterations or variations of the terms of this Agreement shall be valid, nor can provisions of the

Agreement be waived by either party, unless such additions, alterations, variations or waivers are expressed in writing and duly signed. This Agreement shall be governed by the laws of the State of Florida, as well as all applicable local ordinances of TOHO and it shall be and become effective immediately upon execution by both parties hereto. In the event that TOHO or DEVELOPER is required to enforce this Agreement by court proceedings or otherwise, by instituting suit or otherwise, then TOHO or DEVELOPER shall be entitled to recover all costs incurred, including reasonable attorney's fees.

SECTION 14. DISCLAIMERS; LIMITATIONS ON LIABILITY.

14.1. STATUS. The parties deem each other to be independent contractors, and not agents of the other.

14.2. INDEMNIFICATION. DEVELOPER will indemnify, save and hold harmless TOHO against all liability, losses, damage or other expenses, including reasonable attorney's fees which may be imposed upon, incurred by or asserted against TOHO by reason of any negligence on the part of DEVELOPER or its employees, agents, contractors, licensees or invitees; any personal injury or property damage occurring on or about the property or any part thereof; or any failure on the part of DEVELOPER to perform or comply with any covenant required to be performed or complied with against TOHO by reason of any such occurrences, DEVELOPER will, at DEVELOPER's expense, resist or defend any such action or proceeding. Provided further, however, DEVELOPER shall have no obligation with respect to claims arising out of the intentional or negligent conduct of TOHO or its employees, agents, contractors, licensees or invitees or of third parties not included in the definitions above. The liability and immunity of TOHO is governed by the provisions of Section 768.28, Florida Statutes (2023), and nothing in this agreement is intended to extend the liability of TOHO or to waive any immunity enjoyed by TOHO under that statute. Any provisions of this agreement determined to be contrary to Section 768.28 or to create any liability or waive any immunity except as specifically provided in Section 768.28 shall be considered void.

14.3. FORCE MAJEURE. TOHO shall not be liable or responsible to DEVELOPER by reason of the failure or inability of TOHO to take any action it is required to take or to comply with the requirements imposed hereby or (or any injury to DEVELOPER or by those claiming by or through DEVELOPER, which failure, inability or injury is caused directly or indirectly by force majeure as hereinafter set forth). The term "force majeure" as employed herein shall mean acts of god, strikes, lock-outs, or other industrial disturbance; acts of public enemies, war, blockades, riots, acts of armed forces, militia, or public authority, epidemics; breakdown of or damage to machinery, pumps, or pipe lines; landslides, earthquakes, fires, storms, floods, or washouts; arrests, title disputes, or other litigation; governmental restraints of any nature whether federal, state, city, municipal or otherwise, civil or military; civil disturbances; explosions, failure or inability to obtain necessary materials, supplies, labor or permits or governmental approvals whether resulting from or pursuant to existing or future rules, regulations, orders, laws or proclamations whether federal, state, city, municipal or otherwise, civil or military; or by any other causes, whether or not of the same kind as enumerated herein,

not within the sole control of TOHO and which by exercise of due diligence TOHO is unable to overcome.

14.4. DISCLAIMER OF THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of and shall be binding upon the formal parties hereto and their respective authorized successors and assigns, and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a party to this agreement or an authorized successor or assignee thereof.

14.5. DISCLAIMER OF SECURITY. Notwithstanding any other provision of this agreement, DEVELOPER expressly acknowledges (1) that it has no pledge of or lien upon any real property (including, specifically, TOHO's system), any personal property, or any existing or future revenue source of TOHO (including, specifically, any revenues or rates, fees, or charges collected by TOHO in connection with TOHO's system) as security for any amounts of money payable by TOHO under this Agreement; and (2) that its rights to any payments or credits under this Agreement are subordinate to the rights of all holders of any stocks, bonds, or notes of TOHO, whether currently outstanding or hereafter issued.

14.6. AGREEMENT NOT A COMMITMENT FOR SCHEDULE. There shall be no liability whatsoever on the part of TOHO for failure to supply water and wastewater service to DEVELOPER according to DEVELOPER's needs or schedules. This agreement constitutes a promise of good faith and not a timetable for delivery of utility services.

SECTION 15. COVENANT NOT TO ENGAGE IN UTILITY BUSINESS. DEVELOPER, as a further consideration for this Agreement, agrees that it shall not (the words "shall not" being used in a mandatory definition) engage in the business of providing water and wastewater service to the Property during the period of time TOHO, its successors and assigns, provide water service to the Property, it being the intention of the parties hereto that the foregoing provision shall be a covenant running with the land and under said provision and also under other provisions of this Agreement TOHO shall have the sole and exclusive right and privilege to provide water and wastewater service to the Property and to the occupants of each residence, building or unit constructed thereon.

SECTION 16. RECORDATION. The parties hereto agree that an executed copy of this Agreement and Exhibits attached hereto shall be recorded in the Public Records of Osceola County, Florida at the expense of DEVELOPER.

SECTION 17. SEVERABILITY. If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained therein are not materially prejudiced, and if the intentions of the parties can continue to be effected. To that end, this Agreement is declared severable.

SECTION 18. AUTHORITY TO EXECUTE AGREEMENT. The signature by any person to this Agreement shall be deemed a personal warranty by that person that he has the full power and authority to bind any corporation, partnership, or any other business entity for which he purports to act hereunder.

SECTION 19. CAPACITY. Any specific reservations of capacity must be detailed within the body of this Agreement, under the heading "Special Conditions," and such capacity shall be so reserved, for a definite period of time only upon the payment of appropriate fee, or negotiated between the parties, by DEVELOPER to TOHO.

SECTION 20. ARMS LENGTH TRANSACTION. Both parties have contributed to the preparation, drafting and negotiation of this document and neither has had undue influence or control thereof. Both parties agree that in construing this Agreement, it shall not be construed in favor of either party by virtue of the preparation, drafting, or negotiation of this Agreement.

SECTION 21. SPECIAL CONDITIONS. The following Special Conditions are mutually agreed between DEVELOPER and TOHO.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, DEVELOPER and TOHO have executed or have caused this Agreement, with the named Exhibits attached, if any, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

TOHOPEKALIGA WATER AUTHORITY

By: _____
Todd P. Swingle, CEO/Executive Director

Attest: _____
Alison Smith, Executive Assistant
951 Martin Luther King Blvd.
Kissimmee, FL 34741

The form of this agreement has not been changed or modified from the standard form except for the inclusion of standard Special Conditions, which have been previously approved by the Board of Supervisors.

STATE OF FLORIDA
COUNTY OF OSCEOLA

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization, this ____ day of _____, 2024, by Todd P. Swingle, CEO/Executive Director of Tohopekaliga Water Authority, an independent "Special District" created pursuant to Chapter 189, Laws of Florida. He is personally known to me.

Signature of Person Taking Acknowledgment

Name of Acknowledger Typed, Printed or Stamped

Title or Rank

Serial Number, if any.

Signed, sealed and delivered in the presence of:

DEVELOPER

WITNESS #1

By: _____

Printed Name: _____

x _____

Its: _____

Print Name: _____

Address: _____

WITNESS #2

[Corporate Seal]

x _____

Printed Name: _____

Address: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization, this _____ day of _____ 2024, by _____, as _____ of _____, a _____ authorized to do business in the State of Florida, on behalf of the company/corporation. S/He is personally known to me or has produced as identification and did (did not) take an oath.

Signature of Person Taking Acknowledgment

Name of Acknowledger Typed, Printed or Stamped

Title or Rank

Serial Number, if any.

EXHIBIT A
Property Description
and Location Map

