

THIRD AMENDMENT TO NONSTANDARD SERVICE AGREEMENT – ORCHARD RANCH 290-24-013 PW-2024-30-SER

**THIRD AMENDMENT TO
AGREEMENT FOR THE PROVISION OF NONSTANDARD
RETAIL WATER SERVICE
(Orchard Ranch)**

This Third Amendment for the Provision of Nonstandard Retail Water Service (the “Third Amendment”) is entered into by and between the West Travis County Public Utility Agency (the “WTCPUA”), a public utility agency operating pursuant to Chapter 572, Texas Local Government Code, and Clayton Properties Group, Inc. a Tennessee corporation, formerly known, and qualified to do business in Texas, as CMH Parks, Incl., doing business as Brohn Homes (“Developer”). Unless otherwise specified, the term “Parties” shall mean the WTCPUA and Developer, collectively.

WHEREAS, Developer and the WTCPUA have previously entered into that certain Agreement For the Provision of Nonstandard Retail Water Service dated July 23, 2018, as amended by the First Amendment on June 16, 2022 to extend the Reservation Period as defined in the 2018 NSSA.

WHEREAS, Developer and the WTCPUA executed a Second Amendment to the Agreement on January 16, 2024 to include provisions regarding the funding of facilities necessary for WTCPUA to provide water service to the Developer for the upsizing of an 8” waterline to a 16” diameter waterline associated with the Proposed Development.

WHEREAS, Developer and the WTCPUA desire to enter into this Third Amendment to amend the number of LUEs for domestic water from 73 LUEs of retail water service to 264 LUEs of retail water service, include the requirements for USFWS compliance.

NOW, THEREFORE, in consideration of the terms, conditions, and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree to the following:

ARTICLE 1

Section 1. Section 2.1 is deleted and replaced as follows:

Section 2.1 WTCPUA to Provide Service.

For and in consideration of Developer’s obligations, covenants and conditions set forth in this Agreement, WTCPUA agrees to provide up to 264 LUEs of domestic water service for Retail Customers located within the Proposed Development pursuant to the terms of this Agreement and the WTCPUA’s Rules and Policies. **Water is contingent on additional facilities being built that are required to serve this development and service will not be available until such facilities are constructed. In order to advance the required projects and assist with funding, the contingency will be removed upon full payment of impact fees.** In no event shall WTCPUA be obligated to provide retail water service to Retail Customers

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located within the Proposed Development that collectively exceed 264 LUEs of domestic water service. Such service shall not include irrigation meters. LUEs for irrigation meters may be available at a later date and will be subject to a separate service extension process under WTCPUA Rules and Policies.

Section 2. Section 2.3 is added to read as follows:

Section 2.3 USFWS Compliance. The Developer shall adopt one of the alternative water quality measures required for the Proposed Development as specified in that certain "Memorandum of Understanding" between the LCRA and the United States Fish and Wildlife Service (USFWS), dated May 24, 2000 (MOU) and the "Settlement Agreement and Stipulation of Dismissal" from the lawsuit, Hays County Water Planning Partnership, et. al. vs. Lt. General Robert B. Flowers, U.S. Army Corps of Engineers, Thomas E. White, Secretary of the Army, Gale Norton, Secretary of the Department of the Interior, and the Lower Colorado River authority, W.D. Tex. 2002 (No. AOOCA 826SS) (Settlement Agreement) including:

- (a) Measures approved by the USFWS through separate Section 7 consultation, or other independent consultation;
- (b) TCEQ optional enhanced measures, Appendix A and Appendix B to RG-348; or
- (c) U.S. Fish and Wildlife Service Recommendations for Protection of Water Quality of the Edwards Aquifer dated September 1, 2000.

Section 3. Section 3.3. (WTCPUA Reimbursement) is deleted in its entirety. The Parties acknowledge updated provisions are now the subject of a separate agreement executed of even date herewith.

Section 4. Section 4.1 is deleted and replaced as follows:

Section 4.1 Conditions Precedent to Commencement of Facilities Construction or Service. Except as provided in Section 4.2, Developer and WTCPUA agree that the WTCPUA is not required to approve commencement of facilities construction or commence retail water service to a Retail Customer in the Proposed Development until Developer and/or a Retail Customer has complied with WTCPUA Rules and Policies including:

Prior to release of plans for construction, the Developer shall pay all required engineering review fees, outside engineering and legal fees, inspection fees, reservation fees, and impact fees relating to all tasks required by the WTCPUA to provide service to the Proposed Development.

Prior to release of water meters for the Proposed Development, the Developer shall submit close out documents including a final plat and executed easements in

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a form and manner acceptable for WTCPUA recording per the WTCPUA close out check list, an executed Conveyance Agreement in a form and manner acceptable to the WTCPUA and pay all applicable fees due including but not limited to, any outstanding engineering review fees, outside engineering and legal fees and deposit replenishment billings, tap fees, meter-drop in fees and all other associated meter fees. All close out documents shall be submitted and approved by the PUA within 45 calendar days of substantial completion of the PUA approved project; otherwise, the project shall be considered expired and shall be subject to a new SER application and review process.

Each customer within the Proposed Development is encouraged to install and maintain a customer service pressure reducing valve located on the water service line located outside the respective customer's meter box.

Developer agrees and understands that the WTCPUA's commitment of 264 LUEs of water service runs with and is assigned to the Proposed Development.

Section 5. Section 4.2 is deleted and replaced as follows:

Section 4.2 **Impact Fees.** Developer agrees to pay such Impact Fees (current Impact Fees in effect at the time of payment) for 264 LUEs to the WTCPUA. Impact fees shall be paid prior to construction plan approval; however, Developer may choose to pay impact fees at any earlier time to avoid the assessment of annual reservations fees in accordance with Section 4.3, if the impact fee payment date is earlier than the annual due date of the reservation fees. Paid reservation will not offset or be credited against impact fee assessments.

Section 6. Section 4.3 is deleted and replaced as follows:

Section 4.3. **Reservation Fees.** Fees shall be calculated by multiplying the current Reservation Fee as contained in the WTCPUA Rules and Policies at the time of each anniversary of the date of the Written Service Commitment times the number of unused LUEs reserved for the Developer pursuant to this Agreement. Developer shall calculate and pay annual Reservation Fees for reserved water LUEs on each annual anniversary of the commencement of the Reservation Period ("Due Date"). If Developer pays the Reservation Fees prior to or on the Due Date, the LUEs for which Reservation Fees have been paid will be considered to be in "reserved status" for the next contract year in the Reservation Period. Reservation Fees are non-refundable and non-reimbursable. If Reservation Fees are not paid on the Due Date, such nonpayment shall be an event of default. **If Developer fails to pay Reservation Fees on the Due Date, the WTCPUA may terminate this Agreement, with immediate effect, by giving notice to the Developer.** Any remaining LUEs for which Reservation Fees are not paid will no longer be considered in "reserved status" and such nonpayment will be considered a breach of contract and Developer may be subject to any and all penalties and remedies applicable to a breach of this Agreement.

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Should Developer transfer or assign this Agreement, neither the reservation of nor right to reserve LUEs shall be automatically assigned to any future successor in interest of the Developer as a component of any assignment of this Agreement without express written consent of the WTCPUA.

Reservation Fees for the initial year of the Reservation Period must be paid not later than six (6) months from the date of the Written Service Commitment by the WTCPUA Board of Directors if a water meter or meters having up to 264 LUEs of water has not been installed in accordance with WTCPUA Rules and Policies. Any LUEs in reserved status, but which are connected and for which impact fees are paid during the six (6) month grace period, will be deducted from the number of LUEs for which the initial years' Reservation Fees are due.

Furthermore, the Developer agrees and understands that the WTCPUA's commitment of 264 LUEs of water service runs with and is assigned to the Proposed Development.

Section 7. All of the other terms and conditions of the Agreement remain in effect.

[Signature pages to follow]

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IN WITNESS WHEREOF, this instrument is executed on the Effective Date.

**WEST TRAVIS COUNTY PUBLIC UTILITY
AGENCY**

By:



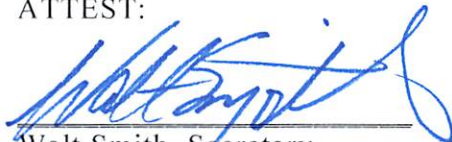
Scott Roberts

President, Board of Directors

Date:

6/20/24

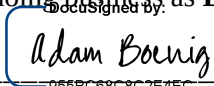
ATTEST:



Walt Smith, Secretary

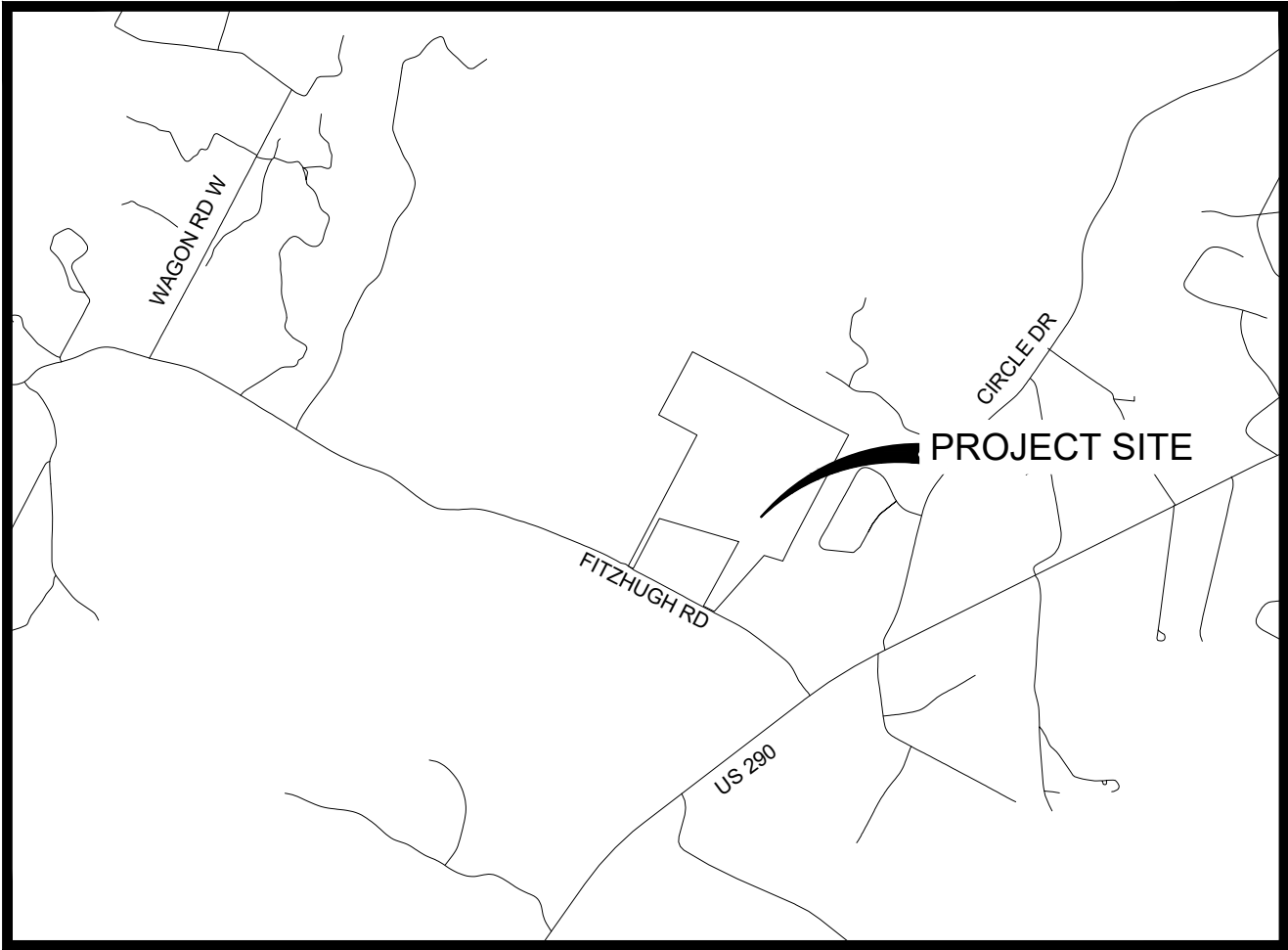
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CLAYTON PROPERTIES GROUP, INC., a Tennessee corporation, formerly known, and qualified to do business in Texas, as **CMH PARKS, INC.,** doing business as **BROHN HOMES**

By:  _____
Name: Adam Boenig _____
Title: Vice President _____
Date: 11/5/2024 _____

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EXHIBIT A



ORCHARD RANCH LOCATION MAP

H:\PROJECTS\1636 - BROOK HOMES\1741 - ORCHARD RANCH\CAD\EXHIBITS\ORCHARD RANCH LOCATION MAP.DWG DATE: 5/13/2024 8:13:17 AM BY: CRAWLS

PROJECT NO.	XXXX-XXXXX	DRAWN BY:	XXX
DATE:	XX/XX/20XX	CHECKED BY:	XX



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Austin, Texas 78759
Suite 140
(512)452-0371
FAX(512)454-9933
TBPELS FIRM #2946

Nonstandard Service Agreement – (_____)

EXHIBIT B
DEVELOPER FACILITIES