

## WATER MAIN EXTENSION AGREEMENT

This Water Main Extension Agreement (“**Agreement**”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014 (“**Effective Date**”), by and between the NORTHERN KENTUCKY WATER DISTRICT (“**District**”), and [NAME OF DEVELOPER] (“**Developer**”).

WHEREAS, the District supplies water to the Counties of Kenton and Campbell and parts of Boone in Northern Kentucky; and

WHEREAS, the Developer is desirous of constructing and/or extending certain water mains and related facilities and appurtenances thereto located at [NAME OF DEVELOPMENT], for the benefit of the Developer’s residential development; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Developer and the District agree as follows:

1. **PLANS.** Prior to the start of construction, the Developer, at its sole cost and expense, shall provide the District with detailed plans, drawings, and specifications stamped by an engineer licensed in the Commonwealth of Kentucky (“**Plans**”) for the construction, modification, relocation, and/or extension of all of those certain water mains and all related facilities and appurtenances thereto as set forth in the Plans (“**Work**”). Construction on the Work shall not commence until the Plans for the Work are approved in writing by the District, and the Kentucky Division of Water if applicable. If the District, or the Kentucky Division of Water if applicable, disapproves the Plans or any part thereof, the District shall notify the Developer of the reasons for such disapproval, and the Developer shall revise the Plans as necessary to cure the reasons for such disapproval, and Developer shall resubmit the Plans as revised until such time as the District, and the Kentucky Division of Water if applicable, shall approve the Plans. Once approved, the Developer shall not deviate in any manner from the Plans unless the District shall have expressly approved the deviation and, if not initially in writing, is confirmed promptly thereafter in writing (including e-mail). The Plans, as finally approved by the District, are hereby incorporated into this Agreement as if set forth fully herein.

2. **STANDARDS.** Unless otherwise agreed, The Work shall be performed at the sole cost and expense of the Developer, and the Developer shall be responsible for obtaining all necessary governmental approvals, permits, or licenses. All of the Work shall be performed by Developer, and the Developer’s employees, contractors, subcontractors and agents, strictly in a safe, good and workmanlike manner and in compliance with the Plans, all rules, regulations and standards adopted by the District in affect at the time of Plan approval, all federal, state, and local laws, ordinances, and codes, regulations, and all governmental approvals, permits, or licenses issued (collectively, the “**Standards**”). Any work not included in the Plans will be required of the Developer if such work is consistent with the Plans and reasonably inferable from them as being necessary to produce the intended results of the Plans.

3. **NO LIABILITY.** Neither the District, nor any of its commissioners, officers, employees, or agents shall be liable for any claim, demand, damage, loss, cost, or liability whatsoever suffered or claimed to be suffered by any person or entity on account of (a) the construction or performance of any Work, whether or not pursuant to the Standards; or (b) any physical inspection by the District of the Work, whether in-process or as-built. The review and approval of the Plans or any physical inspection of the Work by the District under this Agreement is solely for the benefit of the District, and shall not create any liability on behalf of the District in any manner whatsoever. The approval of the Plans or the Work by the District shall not in any manner constitute a warranty, representation, certification, promise, or guarantee on the part of the District that the Plans, or any of the Work performed pursuant thereto, are or will be in compliance with any of the Standards, and the Developer shall be exclusively and solely responsible to ensure that the Plans and all Work performed thereto comply in all respects with the Standards.

4. **CONTRACTORS.** Nothing contained in this Agreement or in the Plans shall be construed to create any contractual relationship of any kind between the District and any contractor, subcontractor, sub-subcontractor, materialmen, supplier, or laborer of Developer. Provided however, Developer hereby agrees that, without creating any liabilities or obligations on the part of the District, the District is an intended third-party beneficiary of any warranties that may be provided by Developer's contractors and related to the performance of the Work, Developer shall incorporate such third-party beneficiary language into any contracts entered into with its contractors for the performance of the Work, and the Developer hereby assigns to the District, and the District shall have the right (but not the obligation) to enforce, any such warranties as a third-party beneficiary. Any such contracts entered into by Developer shall be consistent with the terms and provisions of this Agreement.

5. **RESERVED.**

6. **SUPERVISION.** The Developer shall supervise and direct the Work, and shall be solely responsible for all construction means, methods, techniques, sequences, procedures, and coordinating all portions of the Work.

7. **ONE YEAR WARRANTY.** The warranty period for any applicable portion of the Work shall be for a period of one (1) year following the Acceptance Date (as defined) in Section 13), such date to be established in accordance with the records of the District (the "**Warranty Period**"). During the Warranty Period, the Developer and its contractor(s) performing the Work shall warrant that (a) all of the Work has been performed in a good and workmanlike manner, free from all defective materials and workmanship, and (b) all of the Work has been constructed and installed in strict compliance with all of the Standards and the Plans, and (c) all material and equipment installed, constructed, or supplied by Developer is new and of good quality, and suitable for its intended purpose. During the Warranty Period, the Developer and its contractor(s) shall be responsible for correcting all deficiencies in the Work, and for performing all repair of the water mains and related facilities and appurtenances constructed required to correct such deficiencies, including, but not limited to, adjusting valve boxes and fire hydrants, and performing grade changes ensuring that all water mains and related facilities and

appurtenances constructed have proper grade cover at all times. The District shall notify the Developer of any warranty repair items as soon as practicable, but, in no event, later than the expiration of the Warranty Period. Deficiencies in the Work shall be corrected by Developer or its contractor(s) not later than thirty (30) days following the date that any deficiency is discovered or upon notification by the District, except in the event of an emergency as determined in the District's sole discretion in which case the Developer and its contractor(s) shall correct the deficiency as soon as possible.

Developer hereby agrees that if the Developer fails to correct (within a reasonable time) any deficiency or properly maintain and repair the water mains and related facilities and appurtenances constructed during the Warranty Period, the District shall have the right (but not the obligation) to correct the deficiencies or make such repairs and maintenance, all at the Developer's sole cost and expense. The Developer shall reimburse the District for all costs and expenses incurred in correcting deficiencies or making such repairs and maintenance within thirty (30) days of receipt of an invoice from the District, which invoice shall summarize materials and hours charged to this job.

Notwithstanding the foregoing, the District's repair of any water leaks will not initiate the requirement for the Developer to post a surety, as set forth below, unless Developer does not pay the District's invoice within thirty (30) days of receipt of the invoice from the District.

Developer's and any contractor(s)' warranty hereunder shall specifically include the correction of any deficiencies that are caused by future ground or soil movement if caused by the Developer's or its contractor(s)' workmanship and if within the Warranty Period.

Developer hereby agrees that if the Developer or its contractor(s) fail to correct any deficiencies or make such repairs and maintenance within the time periods provided for under this Agreement, then Developer shall obtain a surety sufficient to District, by Letter of Credit or Warranty Bond reasonably acceptable to the District, naming the District as beneficiary or obligee in the amount of the District's estimated cost of repair.

The obligations contained in this Section 7 shall survive the completion of the Work and termination of this Agreement to the fullest extent permitted under Kentucky laws.

8. **REPRESENTATIONS AND WARRANTIES.** Developer hereby represents and warrants to the District as follows:

(a) Developer has full power and capacity to enter into this Agreement and carry out Developer's obligations under this Agreement, and any document to be delivered hereunder when duly executed and delivered will be a valid, legal and binding obligation of Developer;

(b) Developer will hire contractor(s) performing the Work that are professionally and fully qualified to act as the contractor under this Agreement;

(c) Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will violate or be in conflict with (i) any applicable provision of law; (ii)

any order of any court or governmental agency having jurisdiction over Developer, or (iii) any agreement or instrument to which Developer is a party or under which Developer is bound;

(d) Developer is the fee simple owner of all real property over, under, or upon which any part or portion of the Work will be constructed, located, or installed under this Agreement, and Developer has full power and authority to grant easements in, upon, or under such real property to the District;

(e) Developer has inspected the site where the Work will be performed, and Developer has determined that the land and the soil in which the Work will be constructed is stable and constitutes suitable conditions in which the Work may be performed and completed;

(f) Developer assumes full responsibility to the District for any and all acts or omissions of the Developer's subcontractors, sub-subcontractors, materialmen, suppliers, and laborers subject to the terms of the warranty.

9. **RESERVED.**

10. **UNFORESEEN CONDITIONS.** If Developer encounters or discovers any unforeseen or concealed condition, or any other condition which is at variance with or not anticipated by the Plans, Developer shall suspend the Work and immediately notify the District. Developer shall comply with the District's instructions, which, upon request by Developer, will be confirmed in a writing (including e-mail), as to resolving the unforeseen or concealed condition prior to re-commencing the Work. In instances where soil or ground stability is in question the Developer shall be responsible to provide all necessary geo-technical and engineering reports and analyses. If at any time during construction of the Work the District determines that the area in which any of the water mains and related facilities and appurtenances thereto are being installed is not a safe or suitable location, it will be the Developer's responsibility to relocate the water mains and related facilities and appurtenances to an alternate location as the District shall reasonably determine after consultation with and input from the Developer and its engineer.

11. **INSURANCE.** Developer or its contractor(s) (if Developer is not performing the Work directly), at its sole cost and expense, shall maintain throughout the performance of the Work commercial general liability insurance covering the legal liability of Developer and its contractor(s) against claims for bodily injury, death and/or property damage arising out of the performance of the Work, in such amounts not less than \$1,000,000 combined single limit for bodily injury or death and/or property damage in any one occurrence. A combination of primary and excess/umbrella policies may be utilized to meet the \$1,000,000 limit. Developer or its contractor(s) (if Developer is not performing the Work directly) shall also carry and maintain, at its sole cost and expense, builder's risk insurance. Developer shall provide the District certificates of insurance evidencing the coverages required under this Agreement prior to commencement of the Work and at such later times during the performance of the Work as the District may request.

12. **TERMINATION.** If Developer (i) defaults under this Agreement and does not cure the default within thirty (30) days after written notice from the District, or (ii) becomes a debtor in any bankruptcy or other insolvency proceedings, makes a general assignment for the benefit of creditors, or has a receiver appointed for any of its assets, then the District shall have the right but not obligation to terminate this Agreement upon delivering written notice to the Developer.

13. **ACCEPTANCE.** The District will accept ownership of the water mains and related facilities and appurtenances thereto upon satisfaction of all of the following conditions (the date of which shall be the “**Acceptance Date**,” which, without clear evidence to the contrary, shall be presumed to be the water main turn-on date (excluding turn-on for testing)):

- a. Developer shall not then be in default under this Agreement;
- b. The District shall have inspected the Work and determined the Work to be finally completed in accordance with the terms of this Agreement, such inspections to be to the District’s satisfaction in its sole and absolute discretion;
- c. The District shall have been granted all required easements pursuant to Section 13 of this Agreement; and,
- d. The Developer shall have delivered the redline plans and drawings to the District pursuant to Section 17 of this Agreement.

Developer hereby agrees to execute any written instrument or agreement to transfer title to the water mains and related facilities and appurtenances thereto as shall be reasonably requested by the District.

14. **INDEMNIFICATION.** The Developer hereby agrees to defend, indemnify, and hold harmless the District, its commissioners, officers, employees, and agents against any liability, loss, damage, demand, action, cause of action or expense of whatever nature (including, but not limited to, court costs and reasonable attorneys’ fees) which may result from (a) any loss, injury, death, or property damage sustained by any person, corporation, or other entity which arises out of or is caused by any act or omission of the Developer, its agents, employees, contractors, subcontractors, or sub-subcontractors, or (b) any breach of or default under this Agreement by Developer, its agents, employees, contractors, or subcontractors. This indemnity shall survive the completion of the Work and termination of this Agreement to the fullest extent permitted under Kentucky laws.

15. **EASEMENTS.** The Developer, at its sole cost and expense, shall grant to the District perpetual and irrevocable easements covering all water mains and related facilities and appurtenances constructed pursuant to the Plans. Such easements shall be in the Plat or recordable form, shall contain legal descriptions of the easements being granted, and shall otherwise be subject to the review and approval of the District’s legal counsel. If any easement must be obtained from any third party, the Developer shall be responsible for obtaining such

easements at its sole cost and expense. Should the Developer and the District mutually agree it is necessary for the District to obtain any easement pursuant to its power of condemnation, the Developer shall pay all costs and expenses of the condemnation action.

16. **RECORDS AND DOCUMENTS.** At any time upon request of the District, Developer shall provide the District with a copy of documents, instruments, and other written materials which in any way relate to the Work but only to the extent same are reasonably necessary for the District's adequate review of the submitted Plans or completion of the Work in accordance with this Agreement, including but not limited, surveys and plats, easements, plans, drawings, specifications, equipment manuals, and engineering and other technical reports (including geotechnical investigations and inspection reports, which may be required by the District depending where the Work will be performed).

17. **AS-BUILT PLANS.** Not later than thirty (30) days following completion of the Work, Developer shall deliver to the District "redline" plans and drawings depicting the Work as finally constructed, and shall reflect performance of the Work in strict compliance with all requirements of this Agreement and the Plans.

18. **TARIFF.** The Developer hereby acknowledges that this Agreement is subject to the terms of the District's Tariff. The Tariff is hereby incorporated herein by reference as if fully set forth herein. If any term or provision of this Agreement is in conflict with any term or provision of the Tariff, the terms and provisions of the Tariff shall control.

19. **TIME.** Time is of the essence of this Agreement.

20. **SUCCESSORS AND ASSIGNS.** This Agreement and all of the Developer's liabilities and obligations hereunder are binding upon Developer, its agents, successors and assigns.

21. **WAIVER.** The failure of the District to insist upon strict observance by the Developer of any of the terms, provisions, or conditions of this Agreement shall not be deemed a waiver of the District's right to insist upon strict observance thereafter, or to declare a default under this Agreement.

22. **AMENDMENTS.** No change, amendment, or modification of this Agreement shall be valid unless in writing and signed by the parties hereto or their respective successors and assigns.

23. **NOTICES.** All notices, demands and requests given or required to be given by either party hereto to the other party shall be in writing and shall be deemed to have been properly given if personally delivered, or sent by U.S. registered or certified mail, postage prepaid, return receipt requested, or by overnight delivery service, or by facsimile transmission, addressed as follows:

To District: Northern Kentucky Water District

Attn: Richard Harrison – Vice President  
2835 Crescent Springs Road  
Erlanger, Kentucky 41018  
Fax: \_\_\_\_\_

To Developer: [Name of Developer]  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_

or to such other address as the Developer or the District may from time to time designate by written notice.

24. **ENTIRE AGREEMENT.** This Agreement contains the entire and complete agreement of the parties hereto and supersedes all previous understandings, whether oral or written, relating to the subject matter hereof.

25. **COUNTERPARTS.** This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

26. **SEVERABILITY.** The provisions of this Agreement are severable. If any term, covenant or condition of this Agreement shall be held to be invalid, illegal or unenforceable in any respect, the remainder of this Agreement shall not be invalidated thereby, and this Agreement shall be construed without such provision.

27. **GOVERNING LAW.** This Agreement for all purposes shall be construed and enforced in accordance with the domestic laws of the Commonwealth of Kentucky.

28. **DRAFTER RULE.** No provisions of this Agreement shall be construed by the parties hereto, or any court or other judicial authority, against any party hereto by reason of such party's being deemed to have drafted or structured such provisions.

29. **RELATIONSHIP.** Nothing contained in this Agreement shall be deemed to create an employment relationship, joint venture, partnership, or any other legal or business relationship between the Developer and the District.

30. **ASSIGNMENT.** This Agreement is not assignable by the Developer to any third party without the written consent of the District, which consent will not be unreasonably withheld.

31. **RISK OF LOSS.** All risk of loss, damage, or injury to the water mains and related facilities and appurtenances thereto shall remain with the Developer until such time as the District shall have accepted ownership in accordance with the provisions of Section 13 of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement.

**DEVELOPER:**

**[NAME OF DEVELOPER]**

BY: \_\_\_\_\_

Title: \_\_\_\_\_

**DISTRICT:**

**NORTHERN KENTUCKY WATER DISTRICT**

BY: \_\_\_\_\_

Richard Harrison

Vice President

Engineering, Production, Distribution

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