

INFRASTRUCTURE IMPROVEMENT AGREEMENT AND CONSENT TO ANNEXATION
COUNTRY ACRES ADDITION – PHASE 1

THIS INFRASTRUCTURE IMPROVEMENT AGREEMENT AND CONSENT TO ANNEXATION (“Agreement”) is made and entered into this ____ day of _____, 2023, by and between the CITY OF GARDEN CITY, KANSAS, a Kansas municipal corporation (“CITY”), and PATRIOT LAND & DEVELOPMENT LLC, a Kansas limited liability company (“DEVELOPER”), together collectively referred to as the “Parties”.

RECITALS

A. DEVELOPER has acquired certain real property that is generally located in the South Half of the Northwest Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$) of Section Eleven (11), Township Twenty-four (24) South, Range Thirty-two (32) West of the 6th P.M. in Finney County, Kansas and that is to be developed into the subdivision known as the Country Acres Addition – Phase One; and

B. Said real property is not within the existing corporate limits of Garden City, Kansas and is not connected to the municipal water distribution system of CITY; and

C. DEVELOPER requested, and the Governing Body of CITY granted approval, to extend the municipal water distribution system located at or near the 4500 block of East Mary Street to the County Acres Addition subdivision via a water transmission line, which shall run east along East Mary Street from said point to the east side of North Farmland Road and then shall run south from East Mary Street to said subdivision and in, under, through, over, across, and upon the rights-of-ways and easements within said subdivision (for the purposes of these recitals only “Project”); and

D. DEVELOPER has agreed to pay the costs associated with the Project, except for certain costs to be paid by CITY, as specified herein, including, but not limited to, the costs of certain fire hydrants and the costs to increase the size of the waterline along East Mary Street and North Farmland Road from eight inches (8”) to twelve inches (12”); and

E. CITY desires for the construction of the Project to be governed by and comply with City Code and any regulations, rules, policies, and specifications of CITY; and

F. CITY desires for any future connections for the Property to the municipal water distribution system and for any future provision of municipal water service to the Property to be governed by and comply with City Code and any regulations, rules, policies, and specifications of CITY; and

G. CITY and DEVELOPER acknowledge that the extension of municipal water service to said property pursuant to this Agreement will significantly benefit DEVELOPER by providing the ability to improve the property; and

H. In exchange for the extension of municipal water service to said property, DEVELOPER desires to consent to the future annexation of said property pursuant to K.S.A. 12-520 and/or K.S.A. 12-534; and

I. The Parties desire to enter into this Agreement to define and express all of their respective rights, commitments, undertakings, and other obligations with respect to the extension of the water transmission line, the provision of municipal water service, and to the consent to annexation.

NOW, THEREFORE, in consideration of the foregoing recitals and in consideration of the mutual promises, covenants, and payments hereinafter set out, the Parties agree as follows:

1. **PROPERTY.** The real property to be serviced by the municipal water distribution system of CITY shall consist of all phases of the Country Acres Addition, which is generally located in the Northwest Quarter (NW¼) of Section Eleven (11), Township Twenty-four (24) South, Range Thirty-two (32) West of the 6th P.M. in Finney County, Kansas, and more particularly described as follows:

A tract of land in the Northwest Quarter (NW¼) of Section Eleven (11), Township Twenty-four (24) South, Range Thirty-two (32) West of the 6th P.M., Finney County, Kansas, more particularly described as follows: Beginning at the Northwest corner of said Northwest Quarter (NW¼) of said Section Eleven (11) being a found ½" R-bar and aluminum cap, Selley with KDOT and a ½" R-bar, CPS plastic cap set above; thence South 88°32'44" East on the North line of said Section Eleven (11) a distance of 1,981.38 feet to a found ½" R-bar, Windholz; thence South 01°26'29" West on the West line of Equine Ranches First Addition a distance of 2,310.42 feet to a found ½" R-bar, Windholz; thence North 88°33'31" West continuing on said West line a distance of 660.00 feet to a found ½" R-bar, Windholz; thence South 01°24'39" West continuing on said West line a distance of 340.37 feet to a found ½" R-bar, Windholz; thence North 88°26'01" West on the South line of said Northwest Quarter (NW¼) a distance of 1,320.31 feet to the West Quarter corner of said Section Eleven (11) being a found ½" R-bar, Matthews; thence North 01°24'52" East on the West line of said Section Eleven (11) a distance of 2,648.36 feet to the Point of Beginning, containing 115.30 acres, more or less ("Property").

2. **DEVELOPMENT PHASE.** For the purposes of this Agreement, the term "Phase One" shall mean those portions of the Property identified as *Country Acres Addition – Phase One*, according to the recorded plat thereof filed with the Office of the Register of Deeds of Finney County, Kansas in Book PENV, Page 522A on July 20, 2022, which is hereby incorporated by reference as if fully set forth herein.

3. **PROJECT.** The subject matter of this Agreement shall be a water transmission line to be constructed for the purposes of extending the municipal water distribution system of CITY to and throughout the Property, with any such water transmission line to begin at or near the 4500 block of East Mary Street and, thereafter, to run east along East Mary Street from said point to the east side of North Farmland Road and then to run south from East Mary Street to the Property and in, under, through, over, across, and upon the rights-of-ways and easements within Phase One of the Property ("Project"). The Project shall not include any labor, material, or equipment to be used for the purposes of making connections to the municipal water distribution system for any property owner owning real property within the Property.

4. **FUTURE PHASES.** In the event that DEVELOPER desires to subsequently develop the Property into future phases beyond Phase One, DEVELOPER shall enter into a written agreement with CITY to further extend the water transmission line for the purposes of extending the municipal water distribution system of CITY to each such future phase. DEVELOPER shall not extend the water transmission line of the Project to any such future phase without the written agreement of the CITY as further set forth in this paragraph.

5. **INFRASTRUCTURE IMPROVEMENTS.** The infrastructure improvements required for the Project shall generally consist of: (a) approximately Three Thousand Five Hundred (3,500.00) linear feet of twelve-inch (12.00") PVC waterline by open-cut or directional drill installation; (b) approximately Seven Thousand Seven Hundred (7,700.00) linear feet of eight-inch (8.00") PVC waterline by open-cut or directional drill installation; (c) connection to existing water distribution system; (d) gate valves; (e) fire hydrant assemblies; (f) dead-end assembly; (g) air release assembly; (h) miscellaneous appurtenances; (i) electrical; (j) minimal earthwork; (k) construction staking; (l) erosion control; (m) grass seeding; and (n) all other incidental and appurtenant work required to complete any such

improvements (“Infrastructure Improvements”). In addition thereto, the Infrastructure Improvements shall consist of any additional or different work that may be required by CITY pursuant to: (p) the *General Improvements Handbook* of CITY; (q) the *Water Specifications* of CITY; or (r) the *Waterline Infrastructure Plans* previously approved by CITY on or about February 17, 2022, including any subsequent revisions to such plans that are approved by CITY (“Waterline Infrastructure Plans”). The Infrastructure Improvements shall not include any labor, material, or equipment to be used for the purposes of making connections to the municipal water distribution system for any property owner owning real property within the Property. For the purposes of this Agreement, the term “Project” shall include any Infrastructure Improvements.

6. **CONSTRUCTION COMPLIANCE.** The Project and any Infrastructure Improvements shall be constructed in compliance with: (a) the *General Improvements Handbook* of CITY; (b) the *Water Specifications* of CITY; (c) any applicable provisions of any ordinance, law, or regulation of any local, state, or federal government, or agency thereof, including, but not limited to, the Code of Ordinances of the City of Garden City, Kansas (“City Code”); and (d) any plan, drawing, or document related to the design of the Project or any Infrastructure Improvements, including, but not limited to, the *Waterline Infrastructure Plans*, are hereby incorporated by reference as if fully set forth herein (“Plans”).

7. **RESPONSIBILITY FOR THE ADEQUACY OF DESIGN.** Any review performed by the City Engineer or CITY, including any of its employees, consultants, or agents, of any of the Plans submitted by DEVELOPER or its design professional is not intended to be and shall not be construed as CITY or the City Engineer undertaking, or otherwise assuming, any duty of DEVELOPER or its design professional to provide adequate and accurate Plans or to ensure that any such Plans conform with all applicable ordinances, laws, and regulations or with any design criteria established thereby or by this Agreement. The City Engineer and CITY, and any of its employees, consultants, and agents, make no representation, express warranty, or implied warranty to any person, corporation, company, association, firm, partnership, business trust, estate, joint venture, cooperative, or any legal or commercial entity concerning the adequacy or accuracy of any such Plans or any other work performed by DEVELOPER or its design professional. In the event that the City Engineer or CITY, or any of its employees, consultants, or agents, reviews or approves any such Plan that does not conform with any applicable ordinances, laws, and regulations or does not conform with any design criteria established thereby or by this Agreement, any such review or approval shall not constitute a waiver by the City Engineer or CITY of any such requirement, unless expressly waived in writing by CITY. Nothing in this Agreement shall limit any immunity or rights of the City under the Kansas Torts Claims Act. The provisions of this paragraph shall survive any termination or expiration of this Agreement.

8. **DESIGN REFERENCES.** Any service connections indicated on any of the Plans are for illustrative purposes only and shall in no way be construed as being part of the Project or the Infrastructure Improvements.

9. **INSPECTIONS AND TESTING.** The Infrastructure Improvements shall be subject to and shall pass all inspections and testing required by the Public Utilities Infrastructure Inspector of CITY.

10. **CONSTRUCTION MANAGEMENT.** The construction of the Project and any Infrastructure Improvements shall be managed by DEVELOPER, subject to Paragraph 9, Inspections and Testing, herein and Paragraph 6, Construction Compliance, herein.

11. **CONSTRUCTION COSTS.** DEVELOPER shall be responsible for the payment of any construction costs related to the Project and the Infrastructure Improvements, including, but not limited to, any costs associated with the permitting of the Infrastructure Improvements, any costs associated with any change orders, any costs associated with unexpected construction costs, any costs

associated with delays as provided for in Paragraph 28, Indemnification; Delays, herein, and any costs related to any errors or omissions contained in any of the Plans submitted by DEVELOPER or its design professional, including, but not limited to, the *Waterline Infrastructure Plans*, except as excluded by Paragraph 14, Exceptions, herein. In addition thereto, DEVELOPER shall pay CITY a flat fee of Seven Thousand Five Hundred Dollars (\$7,500.00) for the cost of providing inspections pursuant to Paragraph 9, Inspections and Testing, herein (“Inspection Fee”).

12. **OVERSIZING COSTS.** CITY shall be responsible for the payment of **One Hundred Eighty-five Thousand Two Hundred Forty and $\frac{75}{100}$ Dollars (\$185,240.75)** to DEVELOPER for the cost difference between the installation of an eight-inch (8”) waterline and a twelve-inch (12”) waterline to be installed along East Mary Street and North Farmland Road, subject to Paragraph 13, True-Up, herein (“Oversizing Cost”). CITY shall pay the Oversizing Cost within a reasonable time after: (a) the Infrastructure Improvements have been constructed to full completion; (b) the Infrastructure Improvements have passed all inspections and testing required by CITY pursuant to Paragraph 9, Inspections and Testing, herein; (c) DEVELOPER has provided and CITY has accepted a maintenance bond pursuant to Paragraph 18, Maintenance Bond, herein; and (d) all Infrastructure Improvements have been accepted pursuant to Paragraph 16, Acceptance of Construction, herein.

13. **TRUE-UP.** The Parties acknowledge and agree that the Oversizing Cost was determined by a quote issued on August 7, 2023 by Dreiling Construction, LLC, a Kansas limited liability company (“DREILING”), pursuant to Invoice No. 00230434, which is hereby incorporated by reference as if fully set forth herein. The Parties acknowledge and agree that said quote is reasonable. In the event that the actual costs to install a twelve-inch (12”) waterline along East Mary Street and North Farmland Road exceeds the costs reflected in said quote, CITY shall pay DEVELOPER for the difference in cost (“True-Up Cost”). In the event that the actual costs to install a twelve-inch (12”) waterline along East Mary Street and North Farmland Road is less than the costs reflected in said quote, the Oversizing Cost will be modified and reduced accordingly and CITY shall be under no obligation to pay DEVELOPER an amount of Oversizing Cost that is greater than such modified and reduced amount.

14. **EXCEPTIONS.** The following costs shall be the responsibility of CITY and DEVELOPER shall not be responsible for the payment of any such costs:

- a. Oversizing Cost;
- b. Any True-Up Cost; and
- c. CITY shall be responsible for any payment related to the purchase and installation of any fire hydrants required for the Project to be placed along East Mary Street and North Farmland Road.

15. **COMMENCEMENT OF CONSTRUCTION.** No construction of the Project or any Infrastructure Improvements shall commence until: (a) DEVELOPER has provided and CITY has accepted a performance bond pursuant to Paragraph 17, Performance Bond, herein; (b) the provisions of Paragraph 21, Grading, herein have been satisfied, including, but not limited to, the certificate of completion being approved by the City Engineer; (c) DEVELOPER complies with the provisions of Paragraph 22, Survey Control Information, herein; and (d) DEVELOPER complies with the provisions of Paragraph 23, Erosion Control, herein, and each of its subparagraphs.

16. **ACCEPTANCE OF CONSTRUCTION.** Director of Public Utilities of CITY shall accept all Infrastructure Improvements for purposes of title and maintenance after the occurrence of each of the following events: (a) the Infrastructure Improvements have been constructed in compliance with any specifications or requirements pursuant to Paragraph 6, Construction Compliance, herein, as determined in the sole discretion of the Director of Public Utilities of CITY; (b) the Infrastructure

Improvements have passed all inspections and testing required by CITY pursuant to Paragraph 9, Inspections and Testing, herein; (c) DEVELOPER has paid the Inspection Fee; and (d) DEVELOPER has provided and CITY has accepted a maintenance bond pursuant to Paragraph 18, Maintenance Bond, herein. No such acceptance shall be effective unless memorialized in a writing signed by the Director of Public Utilities of CITY. DEVELOPER acknowledges and agrees that, after such acceptance, all right, title, and interest in and to the Project and any Infrastructure Improvements shall remain that of CITY and that DEVELOPER shall have no right, title, or interest therein.

17. **PERFORMANCE BOND.** DEVELOPER shall, at its own cost, guarantee the completion of the Infrastructure Improvements, according to any specifications or requirements pursuant to Paragraph 6, Construction Compliance, herein, by providing a corporate surety performance bond that: (a) names the City of Garden City, Kansas as the sole obligee; (b) names DEVELOPER as the principal; (c) does not name any contractor or subcontractor as the principal; (d) is issued by a firm, which is authorized to do business in Kansas and is listed as a certified company on the annual Circular 570 of the United States Department of Treasury; (e) covers the period of time until full completion of all Infrastructure Improvements; and (f) has a face value in an amount determined by and approved by the City Engineer, which shall be in an amount not less than one hundred percent (100%) of the total estimated cost to fully construct the Infrastructure Improvements based on the costs of similar public infrastructure work available prior to the time the Notice to Proceed is issued. In addition thereto, any such bond shall be subject to or otherwise comply with Paragraph 19, Bonds – Controlling Terms and Conditions, herein and Paragraph 20, Bonds – Duty to Update, herein. Notwithstanding the foregoing, the DEVELOPER may elect to provide a bond alternative pursuant to Section 70-2:7.140 of the Subdivisions Regulations of the City of Garden City, Kansas, and amendments thereto, but only upon the condition that any such bond alternative complies with each provision included or referenced by this paragraph.

18. **MAINTENANCE BOND.** DEVELOPER shall, at its own cost, guarantee the quality of the Infrastructure Improvements by providing a corporate surety maintenance bond that: (a) names the City of Garden City, Kansas as the sole obligee; (b) names DEVELOPER as the principal; (c) does not name any contractor or subcontractor as the principal; (d) is issued by a firm, which is authorized to do business in Kansas and is listed as a certified company on the annual Circular 570 of the United States Department of Treasury; (e) is in force for a minimum period of one year after the date that all Infrastructure Improvements have been constructed to full completion and have been accepted pursuant to Paragraph 16, Acceptance of Construction, herein; and (f) has a face value in an amount determined by and approved by the City Engineer, which shall be in an amount not less than one hundred percent (100%) of the total estimated cost of the fully constructed Infrastructure Improvements based on the costs of similar public infrastructure work available prior to the time the Notice to Proceed is issued. In addition thereto, any such bond shall be subject to or otherwise comply with Paragraph 19, Bonds – Controlling Terms and Conditions, herein and Paragraph 20, Bonds – Duty to Update, herein. Notwithstanding the foregoing, the DEVELOPER may elect to provide a bond alternative pursuant to Section 70-2:7.140 of the Subdivisions Regulations of the City of Garden City, Kansas, and amendments thereto, but only upon the condition that any such bond alternative complies with each provision included or referenced by this paragraph.

19. **BONDS – CONTROLLING TERMS AND CONDITIONS.** Each and every term and condition of any performance bond, maintenance bond, or bond alternative that is proposed or provided to satisfy the requirements of Paragraph 17, Performance Bond, herein or Paragraph 18, Maintenance Bond, herein shall be subject to the approval of the City Engineer, the Director of the Neighborhood & Development Services department or any designee of such director, and the City Attorney or Assistant City Attorney, in their sole discretion. In addition thereto, the City Engineer, with the consent of the Director of the Neighborhood & Development Services department or any designee of such director, and the City Attorney or Assistant City Attorney, may require any additional terms and conditions that it deems necessary to protect the City's interests and may require the removal of any terms or conditions that it deems against the City's interests.

20. **BONDS – DUTY TO UPDATE.** In the event that the City accepts a performance bond, maintenance bond, or bond alternative that is provided to satisfy the requirements of Paragraph 17, **Performance Bond**, herein or Paragraph 18, **Maintenance Bond**, herein and in the event that the actual costs of the Infrastructure Improvements exceed the amount guaranteed by such bond, DEVELOPER shall update such bond as necessary to guarantee any such costs in excess of the original bond amount. DEVELOPER shall provide copies of any updated bond to CITY after the Infrastructure Improvements have been completed and prior to acceptance of such improvements by CITY.

21. **GRADING.** DEVELOPER shall perform, to a point of final grade, all grading that is required for the Project and any Infrastructure Improvements and that is within any existing or proposed rights-of-way and easements, including, but not limited to, the grading of all roadways, the grading of all ditching, and all overlot grading. Notwithstanding the foregoing, roadways need not include surfacing but, in any event, shall be completed to at least the top-of-subgrade. Upon completion of all grading required by this paragraph, DEVELOPER shall certify such completion to CITY, in writing. Upon such certificate of completion, the City Engineer shall determine whether the grading has been completed pursuant to this paragraph. Any such determination shall be in the sole discretion of the City Engineer, to the extent authorized by CITY. The approval of such certificate of completion by the City Engineer shall in no way be construed as a certification or finding by the City Engineer or CITY that each final grade is accurate or complete. Any grading pursuant to this paragraph shall be at the sole cost of DEVELOPER. Neither CITY nor any of its contractors or subcontractors shall be responsible for any site grading required for the Project or any Infrastructure Improvements. No construction of the Project or any Infrastructure Improvements shall commence until DEVELOPER has satisfied its obligations pursuant to this paragraph and until the City Engineer has approved the certificate of completion submitted by DEVELOPER.

22. **SURVEY CONTROL INFORMATION.** DEVELOPER shall have its land surveyor provide adequate survey control points and benchmarks to facilitate any construction staking required by the City Engineer or by CITY, or any of its contractors or subcontractors, to facilitate the Plans in relation to the Project or any Infrastructure Improvements. No construction of the Project or any Infrastructure Improvements shall commence until DEVELOPER has satisfied its obligations pursuant to this paragraph.

23. **EROSION CONTROL.** The Parties agree that any erosion control in support of the Project shall be conducted as set forth in this paragraph and each of its subparagraphs.

- a. **OBTAINING PLAN & PERMIT.** Prior to the commencement of construction for the Project, DEVELOPER shall: (a) obtain approval from the Kansas Department of Health and Environment (“KDHE”) for a *Stormwater Pollution Prevention Plan* (“SWP2 Plan”); and (b) obtain an authorization to discharge stormwater runoff from KDHE pursuant to an approved *Notice of Intent for Authorization to Discharge Stormwater Runoff from Construction Activities* under the *Kansas Water Pollution Control and National Pollutant Discharge Elimination System Stormwater Runoff from Construction Activities General Permit* (“Authorization to Discharge”). In addition thereto, DEVELOPER shall ensure that the waterline work for the Project is included within the scope of the “larger common plan of development” for the Authorization to Discharge.
- b. **MAINTAINING PLAN & PERMIT.** DEVELOPER shall ensure that the SWP2 Plan and the Authorization to Discharge that are issued to DEVELOPER pursuant to Subparagraph (a) of this paragraph remain active and valid prior to and during construction of the Project. DEVELOPER shall amend the SWP2 Plan as necessary to comply with any requirements of KDHE prior to and during construction of the Project.

- c. **IMPLEMENTING PLAN & PERMIT.** Prior to and during construction of the Project, DEVELOPER shall comply with any and all provisions, conditions, requirements, limits, and certifications related to the *Kansas Water Pollution Control and National Pollutant Discharge Elimination System Stormwater Runoff from Construction Activities General Permit*, the SWP2 Plan, the Authorization to Discharge, and any other requirements of the KDHE, including, but not limited to, implementing and maintaining any Best Management Practices (“BMP’s”) on or along any areas of the Project. Notwithstanding the foregoing, CITY, and its contractors and subcontractors, shall only be responsible for installing and maintaining erosion control measures, pursuant to the SWP2 Plan, along East Mary Street to the west of North Farmland Road. In addition thereto, CITY, and its contractors and subcontractors, shall only be responsible for reseeding and soil stabilization along East Mary Street to the west of North Farmland Road. DEVELOPER shall be responsible for all seeding and soil stabilization along any portions of North Farmland Road and East Mary Street that are adjacent to the Property and shall be responsible for all seeding and soil stabilization that is in, under, through, over, across, and upon the rights-of-ways and easements within the Property. DEVELOPER shall be responsible for any repairs to the erosion control measures, pursuant to the SWP2 Plan, that are put in place by DEVELOPER that are necessary for the installation of the Project and any Infrastructure Improvements.

24. **EFFECTIVE DATE.** The effective date of this Agreement shall be the date on which this Agreement is executed by the last of the two Parties (“Effective Date”).

25. **TERM AND TERMINATION.** This Agreement shall continue from the Effective Date and shall not be terminated by either party, except in the case of termination due to default pursuant to Paragraph 26, **Default**, herein or in the case of automatic termination of certain provisions as further set forth in this paragraph. The provisions of Paragraphs 10 through 14, herein shall terminate automatically upon the occurrence of each of the following: (a) full payment of the Oversizing Cost and any True-Up Cost, if applicable, by CITY; and (c) the full completion of the Project and any Infrastructure Improvements, with such completion to be determined in the sole discretion of CITY. Notwithstanding any of the foregoing provisions of this paragraph, the Parties may mutually agree to terminate this Agreement by written instrument signed by both Parties. Upon any termination of this Agreement pursuant to this paragraph, neither party shall have any further responsibility under this Agreement. Notwithstanding any of the foregoing provisions of this paragraph, the termination of this Agreement or any part thereof, by any means, shall not in any way terminate any provisions of this Agreement that run with the land or that, by their sense and context, are intended to survive the expiration or termination of this Agreement and any such provisions shall survive any such termination, including, but not limited to, the provisions of Paragraph 32, **Consent to Annexation**, herein, and each of its subparagraphs, unless any such provision is expressly stated in the written instrument signed by both Parties terminating this Agreement.

26. **DEFAULT.** Failure by either party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days after written notice thereof from the other Party shall constitute a default under this Agreement. Any such notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event such default is not cured within the thirty (30) days, the non-defaulting Party shall have all rights and remedies which may be available under law or equity including, without limitation, the right to institute an action for damage and to terminate this Agreement pursuant to Paragraph 25, **Term and Termination**, herein.

27. **NO AGENCY OR PARTNERSHIP.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any agency relationship or any partnership, joint venture, or any other business relationship between DEVELOPER and CITY.

28. **INDEMNIFICATION; DELAYS.** DEVELOPER shall indemnify, hold harmless, and defend CITY and any of its elected officials, employees, officers, directors, agents, contractors, and subcontractors from and against any and all costs and expenses, including, but not limited to, reasonable attorney fees and court costs, and all other amounts which CITY, or any of its elected officials, employees, officers, directors, agents, contractors, or subcontractors are or may become obligated to pay on account of any and all demands, claims, liabilities, or losses directly arising, alleged to have arisen out of, been related to, or in any way connected with the acts or omissions, including, but not limited to, any negligent or wrongful acts or omissions, of DEVELOPER, or any of its members, employees, or agents, in relation to this Agreement, including, but not limited to: (a) any breach of this Agreement by DEVELOPER; (b) any inadequacy, inaccuracy, or other deficiency of any Plans submitted by DEVELOPER or its design professional; (c) any nonconformance of any Plans submitted by DEVELOPER or its design professional with any applicable ordinance, law, or regulation or with any design criteria established thereby or by this Agreement; (d) any invalidity of any Plans submitted by DEVELOPER or its design professional under any applicable ordinance, law, or regulation; (e) any delay or nonconformity in satisfying the provisions of Paragraph 21, Grading, herein have been satisfied, including, but not limited to, delay relating to the certificate of completion; (f) any delay or nonconformity in satisfying the provisions of Paragraph 22, Survey Control Information, herein; (g) any delay or nonconformity in satisfying the provisions of Paragraph 23, Erosion Control, herein, and each of its subparagraphs, including, but not limited to, delay or nonconformity relating to the SWP2 Plan or the Authorization to Discharge; (h) any invalidity, unenforceability, illegality, or other deficiency relating to the SWP2 Plan or the Authorization to Discharge; and (i) any invalidity, unenforceability, illegality, or other deficiency of any provision of Paragraph 32, Consent to Annexation, herein, and any of its subparagraphs. Without limiting any of the foregoing, the provisions of this paragraph shall extend and apply to any delay, invalidity, unenforceability, illegality, or other deficiency that relates to the SWP2 Plan or the Authorization to Discharge and that is directly or indirectly caused by KDHE, any other agency of the State of Kansas, or any employee or agent thereof. The provisions of this paragraph shall apply regardless of whether such demands, claims, liabilities, or losses are for damages to property or for injury, illness, harm, or death of any person. The provisions of this paragraph shall survive any termination or expiration of this Agreement.

29. **WATER SERVICE.** Upon completion, inspection, acceptance of the Infrastructure Improvements and upon successful operation of the Project, CITY shall provide municipal water service to any locations within the Property via the Project, subject to any applicable provisions of the City Code, this Agreement, and any regulations, rules, policies, and specifications of CITY, and amendments thereto. CITY shall have no obligation to provide municipal water service to any location within the Property that does not comply with the terms and conditions of this Agreement, including, but not limited to, Paragraph 30, Connections, herein or Paragraph 31, Water Utility Charges, herein. **The provisions of this paragraph shall run with the land.**

30. **CONNECTIONS.** Any property owner owning real property within the Property desiring connection to the municipal water distribution system shall pay the service tap fee pursuant to Section 90-112 of the City Code, the service installation fee pursuant to Section 90-112 of the City Code, and any other fees required by City Code, which are in effect at the time of such connection. In addition thereto, any such connections shall be subject to any applicable provisions of the City Code, this Agreement, and any regulations, rules, policies, and specifications of CITY, and amendments thereto. **The provisions of this paragraph shall run with the land.**

31. **WATER UTILITY CHARGES.** The provision of municipal water service to any locations within the Property shall be conditioned upon the land owner or customer, as the case may be, paying the water utility charges for water service outside the corporate limits of CITY, as established by City Code and amendments thereto. **The provisions of this paragraph shall run with the land.**

TAKE NOTICE OF PARAGRAPH 32

CONSENT TO ANNEXATION

32. CONSENT TO ANNEXATION. The consent to annexation provided for in this paragraph and its subparagraphs shall be governed by each of the following provisions and all other provisions of this Agreement, with any terms used in this paragraph and its subparagraphs having the meanings respectively ascribed to them in the other parts of this Agreement if any such term is not otherwise defined below.

- a. DEVELOPER, as otherwise defined herein as PATRIOT LAND & DEVELOPMENT LLC, a Kansas limited liability company, hereby consents to annexation of the Property by the CITY OF GARDEN CITY, KANSAS, a Kansas municipal corporation ("CITY"), at the time that CITY determines it to be in the best interest of CITY to annex the Property to said city ("Consent to Annexation"), with the term "Property" being more particularly described as follows and, including, as otherwise defined in Paragraph 1 of this Agreement, to wit:

A tract of land in the Northwest Quarter (NW¹/₄) of Section Eleven (11), Township Twenty-four (24) South, Range Thirty-two (32) West of the 6th P.M., Finney County, Kansas, more particularly described as follows: Beginning at the Northwest corner of said Northwest Quarter (NW¹/₄) of said Section Eleven (11) being a found 1/2" R-bar and aluminum cap, Selley with KDOT and a 1/2" R-bar, CPS plastic cap set above; thence South 88°32'44" East on the North line of said Section Eleven (11) a distance of 1,981.38 feet to a found 1/2" R-bar, Windholz; thence South 01°26'29" West on the West line of Equine Ranches First Addition a distance of 2,310.42 feet to a found 1/2" R-bar, Windholz; thence North 88°33'31" West continuing on said West line a distance of 660.00 feet to a found 1/2" R-bar, Windholz; thence South 01°24'39" West continuing on said West line a distance of 340.37 feet to a found 1/2" R-bar, Windholz; thence North 88°26'01" West on the South line of said Northwest Quarter (NW¹/₄) a distance of 1,320.31 feet to the West Quarter corner of said Section Eleven (11) being a found 1/2" R-bar, Matthews; thence North 01°24'52" East on the West line of said Section Eleven (11) a distance of 2,648.36 feet to the Point of Beginning, containing 115.30 acres, more or less ("Property").

- b. This Consent to Annexation is hereby granted in exchange for CITY herein agreeing to extend municipal water service to the Property pursuant to this Agreement.
- c. This Consent to Annexation should be and is hereby considered to be granted pursuant to K.S.A. 12-520 and K.S.A. 12-534.
- d. DEVELOPER acknowledges and understands that a resolution, notice, or public hearing shall not be required as a prerequisite to the annexation of the Property, pursuant to K.S.A. 12-520a(f).

If to DEVELOPER: Patriot Land & Development LLC
Attn: Gary E. Spikes
5155 East Mary Street
Garden City, Kansas 67846
Telephone: [REDACTED]
Email: [REDACTED]

34. **GENERAL COVENANTS.**

- (a) **CHOICE OF LAW.** This Agreement shall be subject to, governed by, and construed according to the laws of the State of Kansas.
- (b) **JURISDICTION AND VENUE.** Any legal action to challenge or enforce the terms of the Agreement must be filed in the District Court of Finney County, Kansas. The parties hereto consent and agree to the exclusive jurisdiction of the State Courts sitting in Finney County, Kansas for all purposes.
- (c) **ATTORNEY FEES.** In the event that CITY takes any legal action to enforce or interpret the terms and conditions of this Agreement, whether through litigation or otherwise, including appeal, and in the event that CITY is a prevailing party, DEVELOPER shall be responsible for and shall pay all costs and expenses of CITY, including, but not limited to, reasonable attorney fees, court costs, and expert witness fees.
- (d) **WAIVER.** The rights and remedies of CITY under this Agreement, as well as those provided by law, shall be cumulative, and none shall be exclusive of any other rights or remedies. A waiver by CITY of any breach or default of DEVELOPER shall not be deemed or construed to be a continuing waiver of such breach or default nor as a waiver of or permission, expressed or implied, for any subsequent breach or default.
- (e) **CUMULATIVE REMEDIES.** All rights and remedies provided in this Agreement, as well as those provided by law or equity, are cumulative and not exclusive of any other rights or remedies, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, by ordinance, by resolution, or otherwise.
- (f) **MODIFICATIONS.** This Agreement shall not be modified, amended, or changed except by written agreement signed by each Party to this Agreement.
- (g) **NON-ASSIGNABILITY.** Neither Party may assign its rights and obligations hereunder without obtaining the prior written consent of the other Party. No assignor shall be released from any of its obligations or liabilities under this Agreement.
- (h) **BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of and be enforceable by the Parties, their respective successors and permitted assigns.
- (i) **COMPLETE UNDERSTANDING; PRIOR AGREEMENTS.** This Agreement represents the complete understanding between CITY and DEVELOPER as to the subject matter hereof. No inducements, representations, understandings, or agreements, whether oral or written, have been made or relied upon in the making of this Agreement, except those specifically set forth in this Agreement. This Agreement supersedes and terminates all prior written or oral negotiations, representations, warranties, statements, agreements, addendums to any agreements, and modifications to any agreements between CITY and DEVELOPER concerning the subject matter of this Agreement.

- (j) **SEVERABILITY.** If one or more parts or provisions of this Agreement are found or held unenforceable, void, illegal, or in any way invalid, any such part or provision shall be deemed to be severable from this Agreement and shall in no way affect the validity of the remaining parts or provisions of this Agreement, including, but not limited to, the provisions of Paragraph 32, Consent to Annexation, herein, and each of its subparagraphs.
- (k) **SURVIVABILITY.** Notwithstanding any termination or expiration of this Agreement, any provision that runs with the land or that, by its sense and context, is intended to survive the termination or expiration of this Agreement shall survive any such termination or expiration, including, but not limited to, the provisions of Paragraph 28, Indemnification; Delays, herein and Paragraph 32, Consent to Annexation, herein, and each of its subparagraphs, unless any such provision of said Paragraph 32 is expressly stated in the written instrument signed by both Parties terminating this Agreement.
- (l) **CHANGE OF LAW.** In the event any provision or part of this Agreement is invalid under applicable laws, such invalid provision or part shall automatically be considered reformed and amended so as to conform to all applicable legal requirements, or, if such invalidity cannot be cured by reformation or amendment, the same shall be considered stricken and deleted, but in neither such event or events shall the validity or the enforceability of the remaining valid portions hereof be affected thereby.
- (m) **CONSTRUCTION.** This Agreement has been arrived at by negotiation and shall not be construed against either Party to it or against the Party who prepared the last draft.
- (n) **HEADINGS; PARAGRAPH REFERENCES.** The headings used in this Agreement are intended for convenience of reference only and do not define or limit the scope or meaning of any provision of this Agreement. Any reference made in regard to a particular paragraph shall be construed as a reference to that paragraph and any of its subparagraphs or subparts, regardless of whether the paragraph is referenced by number, letter, or pronoun.
- (o) **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement. Delivery of signatures by electronic method, including electronic mail of PDF signature pages, shall have the same effect as an original signature.

35. **AUTHORITY OF CITY.** CITY hereby represents and warrants that, to the best of its collective knowledge and belief, it has full constitutional and lawful right, power, and authority, under current law, if applicable, to execute, deliver, and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be duly and validly authorized and approved by all necessary proceedings, findings, and actions of or by CITY. Accordingly, this Agreement constitutes the legal, valid, and binding obligation of CITY, enforceable in accordance with its terms.

36. **AUTHORITY OF DEVELOPER.** DEVELOPER hereby represents and warrants it has full company power to execute, deliver, and perform the terms and obligations of this Agreement and all of the foregoing has been duly and validly authorized by all necessary company proceedings. This Agreement constitutes the legal, valid, and binding obligation of DEVELOPER, enforceable in accordance with its terms. The provisions of this paragraph shall apply to each and every provision of this Agreement, including, but not limited to, the provisions of Paragraph 32, Consent to Annexation, herein, and each of its subparagraphs.

37. **REPRESENTATIVE CAPACITY FOR DEVELOPER.** Each undersigned person executing this Agreement for DEVELOPER represents and warrants that each such person is executing this Agreement in his capacity as a member of DEVELOPER, that each such person is authorized by DEVELOPER to execute this Agreement on behalf of DEVELOPER, and that each such person is authorized by DEVELOPER to bind DEVELOPER to this Agreement. The provisions of this paragraph shall apply to each and every provision of this Agreement, including, but not limited to, the provisions of Paragraph 32, Consent to Annexation, herein, and each of its subparagraphs.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date set forth herein.

CITY OF GARDEN CITY, KANSAS

By: _____
DEBORAH OYLER, as Mayor

ATTEST:

CELYN N. HURTADO, City Clerk

STATE OF KANSAS)
) ss.
COUNTY OF FINNEY)

THIS INSTRUMENT was acknowledged before me on the ____ day of _____, 2023 by DEBORAH OYLER and CELYN N. HURTADO, as Mayor and City Clerk, respectively, of the CITY OF GARDEN CITY, KANSAS, a Kansas municipal corporation.

Signature: _____
 [Notary Public]

Name: _____
 [Printed or Typed]

My Appointment Expires: _____

[ADDITIONAL EXECUTIONS AND ACKNOWLEDGEMENTS APPEAR ON NEXT PAGE]

