



May 27, 2021

Ms. Kimberley Campbell, Chief Clerk
North Carolina Utilities Commission
4326 Mail Service Center
Raleigh, NC 27699

Re: W-218, Sub 553
Shadow Creek
Water Service
Wake County

Dear Ms. Campbell:

Please find agreement for Gardner Farms. If the Commission or Public Staff should have any questions or desire additional information concerning this matter, please contact me at 919-653-6963.

Sincerely,

A handwritten signature in black ink that reads "Nikita Collier". The signature is fluid and cursive.

Nikita Collier
New Business Coordinator

OFFICIAL COPY

May 27 2021

WATER UTILITY SYSTEM AGREEMENT

STATE OF NORTH CAROLINA
COUNTY OF WAKE

THIS AGREEMENT, made 13 day of May 2021 by and between **RP WELLONS LAND AND DEVELOPMENT LLC**, a North Carolina limited liability company, (hereafter "Developer" as defined below) and **AQUA NORTH CAROLINA, INC.**, a corporation, with its principal office in Cary, North Carolina, whose mailing address is 202 MacKenan Court, Cary, North Carolina 27511, (hereafter referred to as "Utility");

WITNESSETH:

WHEREAS, Developer is or shall be the owner of the certain lands in Wake County, North Carolina, known as Gardner Farms ("Subdivision"), which is located off James Austin Road, Wake County, North Carolina and is projected to have approximately 43 residential connections. It is further delineated on than certain site plan which is attached hereto as **Appendix 1**; and

WHEREAS, Developer is desirous of installing in Subdivision a Water Utility System (defined below) to provide water utility service to all those persons now or hereafter owning lots in Subdivision and requiring water utility service.

WHEREAS, Developer has requested Utility to purchase, own, and operate said Water Utility System after its construction by Developer.

WHEREAS, Utility is agreeable to purchasing, owning, and operating the completed Water Utility System upon the terms and conditions stated herein;

NOW, THEREFORE, for and in consideration of the promises and of the rights, powers and duties hereinafter set forth to be performed by each, Developer and Utility mutually agree as follows:

1. Definitions.

1.1. "Agreement" shall mean this Water Utility System Agreement for the design, construction, conveyance, and operation of the Water Utility System (defined below) that will serve Subdivision, including all exhibits and schedules hereto, if any, and as may be amended from time to time.

1.2. "Assets" shall mean all components of the Water Utility System, including additional components added during each Water Utility System Phase, which are

necessary or useful to provide water utility service to the Subdivision.

1.3. "Certificate" shall mean a Certificate of Public Convenience and Necessity, issued by the North Carolina Utilities Commission, authorizing the provision of water utility service to the Subdivision.

1.4. "Certificate Extension" shall mean an extension of Utility's rights under a Certificate.

1.5. "CIAC or Contribution in Aid of Construction" are defined in the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts as money, services, or property received by the utility company from customers, developers, or any other source at no cost to the utility company which offsets the acquisition, improvement, or construction costs of the utility's property, facilities, or equipment to be used to provide utility service. Forms of CIAC may include but not be limited to the following: (a) mains and appurtenances, plants and equipment or other property constructed by Developer and contributed to Utility pursuant to this Agreement; (b) Deeded Property contributed to Utility pursuant to this Agreement; (c) services performed by Developer (including its subcontractors) for constructing or transferring property contributed to Utility pursuant to 1.5(i) or 1.5(ii) and; (d) cash contributions (such as water capacity payments, capital recovery charges, wastewater capacity payments, or connection fees) owed or paid to Utility for expansion of plant or equipment.

1.6.

1.7. "Commission" shall mean the North Carolina Utilities Commission.

1.8. "DWR" shall mean the Division of Water Resources, Public Water Supply Section of the North Carolina Department of Environmental Quality.

1.9. "Declaration" shall mean a declaration of covenants, conditions and restrictions for lots within the Subdivision.

1.10. "Deeded Property" shall mean the well lot(s), perpetual easement(s) and other real property that are designated on the recorded plat or the Water Plans for the Water Utility System that are dedicated in connection with the Water Utility System, including but not limited to well sites, storage tank sites, treatment facility sites, treatment disposal sites, private easements and other real property which are needed for the construction, operation, maintenance, repair, and replacement of the Water Utility System.

1.11. "Developer" shall mean RP Wellons Land and Development, LLC, a North Carolina limited liability company, its successors and assigns, whose business address is PO Box 730, Dunn, NC 28335.

1.12. "Permit" or "Permits" shall mean the Water Utility System Permit and/or the Authorization to Construct issued by DWR, as the context requires.

1.13. "Service Line" shall mean the portion of the individual household water line for which the lot owner assumes responsibility for maintaining and for which Utility assumes no maintenance responsibility. The Service Line is that portion of the individual household water line that extends from the Utility's water meter to the home. The portion of the line extending from the water meter to the water main at or near the street shall not be included in the term "Service Line."

1.14. "Single Family Residential Equivalent" or "SFRE" shall be determined by meter size and is described further in the table below.

Meter Size	SFRE
<1"	1.0
1"	2.5
1.5"	5.0
2"	8.0
3"	15.0
4"	25.0
6"	50.0

1.15. "Water Plans" shall mean all final plans and specifications for the Water Utility System prepared by Developer's engineer and approved by Utility and DWR.

1.16. "Water Utility System" shall mean the: water wells, storage facilities, treatment facilities, distribution system, interconnection to Utility's Water Facilities, and other land, fixtures, and equipment used in the pumping, storage, treatment, and distribution of the water service and, if constructed, any additional components of the Water Utility System necessary to provide service to the lots of the Subdivision, including but not limited to: wells, well lots, easements, Deeded

Properties, treatment facilities, storage tanks, all water mains, hydrants, interconnections, services, meter boxes, meter yokes, backflow preventers, and other additional components of the Water Utility System necessary to serve water to the lots in the Subdivision.

1.17. "Water Utility System Phase" or "Phase" shall mean any discrete phase of construction of the Subdivision's Water Utility System which the Developer is to convey to Utility upon its completion.

1.18. "Water Utility System Service Line" shall include only that portion of an individual water line that extends from the Utility's water meter back to the Water Utility System's water main at or near the street, unless the water meter is not on the individual lot owner's property in which case Utility shall assume maintenance responsibility from the water main up to the lot owner's property line. The portion of the line extending from the water meter, or the property line if the water meter is not on the lot owner's property, to the house shall not be included in the term "Water Utility System Service Line." The Utility will assume and retain maintenance responsibility for the Water Utility System Service Line.

2. Design, Permitting & Installation.

2.1. Design & Permitting Requirements.

- a. Developer, at Developer's cost, shall cause Water Plans for the Water Utility System of the Subdivision to be designed by Developer's engineer. The final Water Plans shall be approved by both Utility and DWR. Such approval by Utility shall not be unreasonably withheld, conditioned or delayed. The Water Plans shall incorporate Utility's current specifications dated June 2019, as may be amended from time to time, into the design standards, a copy of which has been delivered to Developer and Developer acknowledges receipt thereof. The Water Plans shall include facilities and equipment for water production, treatment, storage, and distribution, including the interconnection to Utility's Water Facilities.
- b. Developer shall obtain all Permits necessary for the design and construction of the Water Utility System.
- c. Developer shall pay for the design and DWR permitting requirements of the Water Utility System. Said Permit shall name Utility as permittee.
- d. Utility and Developer agree that if the Subdivision includes irrigation

facilities for common open space areas, Developer, at Developer's cost, shall have the Developer's engineer incorporate the irrigation facilities into the Water Plans. Furthermore, Developer shall be required to design and construct the Water Utility System to provide water production to a minimum of at least 1.0 gpm per SFRE pursuant to **Section 2.3.a** of this Agreement. Developer shall obtain and pay for all County permits that are necessary in order to construct and operate irrigation facilities. Requirement of a second water meter for household irrigation will be in accordance with General Statute § 143-355.4(a) and Utility's specification requirements.

2.2. Construction of the Water Utility System. Developer shall construct the Water Utility System, , and assume all costs and expenses for doing so without reimbursement from Utility except as specified under **Sections 2.3.b, 2.3.c, 6, and 10.3** of this Agreement. Utility reserves the right to make periodic inspections of the Water Utility System throughout its construction. Such inspection should not be considered either a substitute for the Developer's engineer's duties and responsibilities to inspect the construction and installation of the Water Utility System or a waiver of any requirements applicable to the design or construction of the Water Utility System. As required by North Carolina General Statutes § 130A-317 and Rules Governing Public Water Supply Systems, 15A NCAC 18 C. 0305(a), neither Developer nor Utility shall construct or begin construction of any portion of the Water Utility System prior to approval of the Water Plans by DWR or prior to the issuance of an Authorization to Construct by DWR. However, after first obtaining written well site approval by an authorized representative of DWR, Developer may drill the well, perform the 24-hour well drawdown tests in accordance with any applicable regulations, and obtain the well water analyses as required for the submittal of the Water Plans to DWR. In the event that any fines or penalties are assessed against the Utility (as the applicant for the water system), the Engineer, or the Developer as a result of the Developer installing all or a portion of the Water Utility System without DWR approval, Developer shall pay any such fine or penalty -- or reimburse Utility for the amount of such fine or penalty -- prior to meters being installed or water service being provided in the Subdivision.

2.3. Well Lots, Production and Storage Requirements.

- a. Developer, pursuant to DWR's Rules Governing Public Water Supply Systems, shall provide one or more well lot(s) within the Subdivision that are approved by DWR as a public water supply for use in the Water Utility System and which further conforms to the requirements specified in **Section 10.2** of this Agreement. Said well(s) constructed upon the well lot(s) shall produce a minimum yield of 1.0 gallons per minute per single family residential

connection per the 24-hour well drawdown tests required by DWR. Because it is the experience of the Utility that well yield may gradually diminish over time, Developer, at Developer's cost, shall conduct a new 24-hour well drawdown test on any well that has not been constructed and placed in service within two (2) years of the date of the original 24-hour well drawdown test date. Upon completion of the new drawdown test and the well being placed in service, Developer shall be given production credit based on what the current 24-hour well drawdown showed in the well.

- b. Utility, as its investment, shall pay the Developer at Closing up to \$1,200 per well towards costs associated with each well's analytical testing for any well that is permitted by DWR and is placed in service to deliver water to the Subdivision. Should a well not be certified by the Developer's engineer and not receive final approval by DWR within two years of the date DWR issued its authorization to construct, and if the Developer has not transferred the well's assets to Utility within that time period, Developer shall be required to complete new analytical testing at Developer's cost to satisfy state and federal regulatory requirements for a community water system and in accordance with Utility's current specification requirements. Furthermore if, in accordance with Utility's current specification requirements, those analytical re-test results confirm that additional water treatment is necessary to treat the water quality of the well the Developer, at Developer's cost, shall have its engineer design and permit any treatment not originally approved by DWR. Developer, at Developer's cost, shall also be responsible for the construction of the additional treatment required.
- c. Developer agrees to pay all costs associated with hydro-pneumatic storage capacity needed to satisfy permitting and specification design requirements for the Subdivision; however, Utility agrees to pay the Department of Labor's storage tank inspection costs to satisfy the inspection certificate requirements outlined in North Carolina General Statutes § 95-69.16.

2.4. Contractors and Construction Warranty. Utility must approve, in writing and prior to the commencement of any work, all contractors and subcontractors that will be utilized to construct any portion of the Water Utility System. Attached hereto as **EXHIBIT 2.4 (a)** is a list of all utility contractors currently approved by Utility for water utility system installations. Utility shall update this list always having a minimum of three approved utility contractors. Developer may submit to Utility additional names of licensed contractors (including references) for investigation and

evaluation by Utility. Utility shall not unreasonably withhold, condition or delay approval of such additional contractors. At each Closing Developer shall provide Utility with a one-year warranty on the quality of materials, construction, and workmanship of all Water Utility System components installed to serve the Subdivision. Such warranties shall commence on the date of Closing of each Water Utility System Phase and shall be in similar format as the form attached hereto as **EXHIBIT 2.4 (b)**.

2.5. **Engineering Certification of Completion & Record Drawings.** Developer, at Developer's cost, shall have the engineer provide DWR and Utility with a signed and sealed letter from Developer's engineer certifying that the Water Utility System was constructed and completed in compliance with the approved Water Plans and applicable regulations. Said letter shall comply in form and substance with DWR regulatory requirements. Developer, at its expense, shall also provide Utility with an electronic copy of engineering 'as built' drawings of the Water Utility System in '.dwg' format and shall include the longitude and latitude of each valve in the drawings. Developer shall also provide, at its expense, copies of the as built drawings that shall depict the signature and seal of the professional engineer responsible for issuing the as-built drawings in '.pdf' format.

3. **Certificate of Public Convenience and Necessity.** Upon signing of this Agreement, issuance of the Permits and approval of the Water Plans by DWR, Utility will apply to the Commission as soon as may be practicable for a Certificate or for a Certificate Extension to provide water service to the Subdivision. It is mutually understood and agreed that the sale and conveyance of said Assets shall occur only after the granting of the Certificate or Certificate Extension by Commission and approval of the Water Plans and issuance of the Permit by DWR. Should the Commission fail to grant the Certificate or Certificate Extension and either party then terminates this Agreement, Utility agrees to: (i) request DWR to rescind or transfer any Permits issued in Utility's name and (ii) shall terminate or re-convey to Developer any Deeded Property Developer may have transferred to Utility pursuant to this Agreement.

4. **Monthly Water Rates and Fees.** Utility shall request permission from the Commission to charge its current tariff water rates and fees, including its approved water meter fee, as amended from time to time.

5. **Connection Fee.** There is no connection fee.

6. **Purchase Price Payments.** Utility, as Utility's investment, is purchasing, upon Closing, from Developer the total Assets complete and installed in accordance with the

Water Plans approved by DWR and Utility, regardless of being installed all at one time or in Phases. Based on extensive and costly treatment required to bring the water quality into compliance with regulatory requirements, Utility agrees the total purchase price paid by Utility for the Assets serving approximately 43 residential lots shall be \$1750 per SFRE. Said purchase price shall be payable quarterly based on the total number of SFRE's connected by Utility to the Water Utility System during the previous quarter. Payments shall be made on or about each January 15, April 15, July 15, and October 15. The compensation specified in this **Section 6** of this Agreement shall constitute the full and complete payment that Developer shall receive for the Water Utility System and Developer shall not receive any other compensation from Utility. Utility's obligation to make payments pursuant to this **Section 6** shall not begin until such time as Developer executes and delivers to Utility the Internal Revenue Service Form W-9.

6.1. Purchase price payments will include a gross up amount which shall be the product of multiplying the total amount of the purchase price payment pursuant to **Section 6** of this Agreement by .29828 (Certified Costs x .29828 = Grossed Up Tax Payment to Utility) for a total of \$522 for a total purchase price payment of \$2,272. The parties acknowledge and agree that the formula utilized in this paragraph to determine the amount of tax due is based upon the Tax Cuts and Jobs Act of 2017 ("TCJA"). In the event the TCJA is amended to provide a different formula, the amended formula shall be applicable hereunder on the effective date of the new formula. In the event it is determined the utility no longer needs to collect the tax, the tax will no longer be collected by Aqua. If Developer is constructing in phases that are approved by Aqua, then the requirements of this paragraph shall apply to each phase.

7. Written Certification of Costs. Developer before the Closing shall deliver to Aqua a written certification of the Developer's actual cost in the Water Utility System showing the cost of the entire Water Utility System including distribution facilities and engineering fees for the water system, which shall have a breakdown between the various components showing the vendors and appropriate amounts. Said Written Certification of Costs Form is attached hereto as **EXHIBIT 6**. The amount certified in the certification of costs shall be the water CIAC.

8. Recorded Subdivision Plats and Surveys. Upon its recording of any subdivision plat for Subdivision, Developer shall provide Utility with a copy of the recorded plat showing each lot to be served by the Water Utility System. A recorded plat shall include the designated well lot, described by metes and bounds and designated and approved as (i) a separate legal parcel or (ii) perpetual and exclusive easement, and utility and access easements in favor of Utility for ingress, egress,

regress in order to operate, maintain, repair, and replace the water mains and appurtenant equipment related to the water system. Developer shall also provide Utility with a current plot plan for each well lot showing improvements made to each well lot, including but not limited to the 100' radius around the center of the well head, the distance from the center of the well head to the nearest lot boundary line, the access road, water supply main, and any encumbrances.

9. Recorded Declarations. In the event that common areas in the Subdivision are encumbered by a Declaration, Developer shall exempt Utility, the Deeded Properties and all other components of the Water Utility System from all assessments, use restrictions, and architectural requirements under the Declaration. Utility agrees that should any building owned by Utility require future reconstruction, maintenance, or repairs, Utility shall use reasonable efforts to reconstruct the building to its appearance as of the Closing Date but only if recoverable in rates, otherwise, Utility shall construct pursuant to its current specifications and design standards. Developer shall insert into the Declarations easement language, in favor of Utility, allowing Utility unobstructed ingress, egress, regress, and access to operate, maintain, repair and replace the Water Utility System and appurtenant equipment located within the Subdivision. Developer shall also include language in the Declarations describing the lot owner's responsibility to: a) maintain the Service Line serving the lot in accordance with the provisions of **Section 1.13** of this Agreement; b) refrain from erecting any structure within the utility and access easements provided; and c) refrain from placing any contaminant within any well site easement provided to Utility for the Water Utility System. The Declarations shall further provide Utility with the right to unilaterally and immediately remove any structure or contaminant from easements provided to Utility for the Water Utility System if the lot owner, person, or entity introducing the source of contamination or erecting the structure fails to immediately remove it and, further, shall also require such lot owner responsible to reimburse Utility for all expenses associated with the removal of the structure or contaminant as well as any remediation Utility deems prudent. Furthermore, for all utility and access easements Developer shall also insert into the Declarations: (i) Utility is entitled to use the area as necessary and appropriate for the operation, maintenance, repair, interconnection and installation of the water mains and appurtenant water system equipment; (ii) the adjacent property owners refrain from erecting any structure within the utility and access easement provided, (iii) Utility is authorized to remove and keep removed all trees, roots, limbs, shrubs, underbrush and parts thereof including any other obstacles erected within the easement, (iv) the easement is maintained by the adjacent property owners; and (v) Utility is not responsible for replacing any trees, roots, limbs, shrubs, underbrush and parts thereof including any other obstacles erected within the dedicated easement.

10. Conveyance of the Water Utility System.

10.1. Closing Date. Upon receipt of the Certificate or Certificate Extension described in **Section 3** of this Agreement and the satisfaction of all conditions precedent to Utility's obligations, the Parties shall mutually agree upon a date for the transfer of the Assets. The effective time of the legal transfer hereunder shall be 12:01 a.m. on the day following the Closing Date. Closing shall take place at the offices of Utility located at 202 MacKenan Court, Cary, North Carolina or, by telecopy or electronic mail exchange of documents with originals to follow by overnight delivery. Utility is not obligated to provide water service to the Subdivision until Closing has occurred. At Closing Developer shall convey to Utility by deed, easement, and bill of sale, as appropriate, the Water Utility System Assets, and all rights to operate the Water Utility System installed in accordance with the approved Water Plans. Said Assets shall be free and clear of all liens and encumbrances. Said bill of sale shall be substantially similar in form and substance to that attached hereto as **EXHIBIT 10.1**. Upon Closing, Utility shall be the deemed the beneficial owner of the Assets.

10.2. DEEDS AND EASEMENTS FOR WATER SYSTEM.

- a. Well Lot Deed of Easement. In connection with the DWR permit application, Developer agrees to convey the well lot property to Utility by recorded, transferable, perpetual and exclusive deed of easement with well protective non-contamination provisions in a form satisfactory to the Utility in substantially similar form and substance to that attached hereto as **EXHIBIT 10.2.a**. The well lot shall conform to applicable county and DWR regulations and shall provide a minimum radius of 100 feet from the center of the well head. The non-contamination provisions shall prohibit any person or entity from using or placing any pesticide, herbicide, insecticide or any other contaminant within the easement or the use of such pesticide, herbicide or contaminant in a manner that causes it to intrude within the easement. A contaminant shall be defined as any substance identified as such pursuant to the Safe Drinking Water Act, by DWR, or by any other regulatory body having authority over the Water Utility System. The easement shall specifically prohibit parking or locating any vehicles, equipment, boats or any other type equipment which may contain chemicals, fuels, volatile organic compounds or hazardous substances within the boundaries of the easement. The Developer shall convey the well lot to Utility by perpetual and exclusive deed of easement which shall contain non-contamination language satisfactory to Utility. The well lot shall be free and clear of all liens and encumbrances.

- b. Well Access Easements. Each well lot shall front upon a publicly dedicated street. In the event a well lot does not front upon a publicly dedicated street, Developer shall convey to Utility a perpetual 20 foot wide access easement with a 10 foot wide gravel road to provide ingress, egress, regress, and access, across any property between the well lot and a publicly dedicated right of way, for the installation, operation, maintenance, repair and replacement of the well and any Water Utility System Assets located upon the well lot sites.
- c. Water Utility Main Easements. For any portion of the Water Utility System not located within public rights of way, Developer shall also convey to Utility a perpetual easement centered 10 feet on each side of the water mains within the Water Utility System for ingress, egress, regress, and access for the installation, interconnection, operation, maintenance, repair and replacement of the Water Utility System. These easements will be conveyed to Utility by an assignment and grant of easement that shall be in a form that is recordable with the county's register of deeds. The easements shall prohibit the erection of any building or structure within the right of way provided by the easement.
- d. Instruments and Documents of Conveyance and Transfer. All instruments and documents of conveyance and transfer, shall be in form, reasonably satisfactory to Utility and its counsel, as shall be necessary to effectuate transfer and assignment to, and vest in, Utility good and marketable title to the Water Utility System and all rights to operate the Water Utility System, including a Deed with a warranty of title for any fee parcels, the Grant and Assignment of Easements, and the Bill of Sale and Assignment

10.3. Title Insurance for the Water Utility System Property. At least 30 days prior to Closing, Developer shall obtain and pay for a title insurance commitment in the amount of \$50,000 for each Deeded Property. The title commitment shall insure that each Deeded Property shall be conveyed at Closing free and clear of all liens and encumbrances and will be insurable at normal rates. Developer shall provide Utility with a current final owner's title insurance policy at Closing. Utility, at Closing, shall reimburse the Developer the title insurance premiums Developer paid in connection with the issuance of the title insurance policy provided that Developer has first completed an IRS W-9 Form and delivered such form to Utility prior to Closing.

10.4. Pre-Closing Deliveries of Developer. Developer shall deliver to Utility at least 15 days prior to Closing:

- a. a copy of the DWR required letter from Developer's engineer certifying

that the Water Utility System is installed in compliance with the DWR and Utility approved Water Plans and applicable regulations as set forth in **Section 2.5**; and

- b. an electronic copy of engineering record drawings of the Water Utility System as constructed ("as-builts") completed by the engineer of record for the project as set forth in **Section 2.5**
 - c. a completed written certification of Developer's cost in the Water Utility System as set forth in **Section 7**.
 - d. a recorded subdivision plat and current well lot improvement survey as set forth in **Section 8**;
 - e. a copy of the recorded Declarations with the provisions as set forth in **Section 9**;
 - f. the title insurance policy for the Deeded Property as set forth in **Section 10.3** and delivered in accordance with the time frame specified in that Section;
 - g. a list of street addresses and lot numbers for each lot in the Subdivision that will served by the Water Utility System installed in a form substantially similar in a substance to that attached hereto as **EXHIBIT 10.4.g**;
 - h. a list of utility providers for the Water Utility System as set forth in **Section 11**.
- 10.5. Closing Deliveries of Developer. Developer shall furnish Utility with:
- a. a one-year warranty for the quality of construction on all Water Utility System components as set forth in **Section 2.4**;
 - b. an executed bill of sale for the Assets, recorded deeds, and easements for the Water Utility System in the form as provided in **EXHIBIT 10.1**;
 - c. final owner's title insurance policy for the Deeded Property as set forth in **Section 10.3**.
 - d. A release of any mechanics liens and a release of any interest by Developer in the Water Utility System.

- e. the tax gross up payment pursuant to **Section 12.1**.
- f. Representations and Warranties of Developer. Developer to provide a signed Certificate that represents and warrants the following:
 - 1. Developer is the owner of the Water Utility System and is in good standing under the laws of the State of North Carolina.
 - 2. Developer has full power and authority to sell, convey, assign, transfer and deliver the Water Utility System to Utility, including the well lot and grants of easement, and such transfers do not violate, conflict with or result in the breach of any term, condition or provision of any instrument, contract, lease, agreement, permit, certificate or other document to which Developer is a party or is otherwise bound or affected, or by which any of the Water Utility System may be bound or affected. Developer has good and marketable title to the Water Utility System, free and clear of all liens and encumbrances.
 - 3. All tangible property included in the Water Utility System is or will be in good operating condition at the time of conveyance.
 - 4. There are no known violations or noncompliance with the laws and regulations applicable to the Water Utility System or groundwater, nor of any environmental problems or concerns relating to the Water Utility System or groundwater.

10.6. Closing Requirements of Utility. Upon Closing Utility shall (i) reimburse the Developer the title premium fees pursuant to **Section 10.3**, (ii) pay \$1,200 analytical testing cost pursuant to **Section 2.3.b** (iii) transfer utilities for the Water Utility System to Utility's name as set forth in **Section 11**, and (iii) begin operation of the Water Utility System in accordance with the terms and conditions of its tariff and applicable regulations.

10.7. Conditions Precedent to Utility's Obligations. All obligations of Utility under this Agreement are subject to the fulfillment or satisfaction of each of the following conditions precedent. Utility may waive any or all of these conditions, provided, however, that no such waiver of a condition shall constitute a waiver by Utility of any of its other rights or remedies hereunder.

- a. Utility shall be satisfied with the condition of the Water Utility System to be acquired and the quality of construction thereof.
- b. Utility shall be satisfied with the quality of title for the Deeded Property

conveyed to Utility by Developer.

- c. Developer shall have received (i) final, non-appealable approval from Wake County for approval of a subdivision plan for approximately 44 lots which shall be a phased subdivision plan; and (ii) all required authorizations or approvals relating to the Water Utility System from any governmental authority with jurisdiction over the Water Utility System, if any.
 - d. Developer shall have performed and complied in all material respect with all agreements and conditions required by this Agreement to be performed or complied with by Developer prior to or at Closing(s).
 - e. All representations and warranties shall be true and correct as of the Closings, as evidenced by the Certificate(s) as set forth in **Section 10.5.f**.
 - f. Utility shall have received all governmental authorizations needed for the transfer of Assets including, but not limited to, an Order and Certificate of Public Convenience from the Commission, authorizing: (i) the transfer of Assets as contemplated by this Agreement; (ii) Utility to provide water service to the customers in the Subdivision; and (iii) the adoption of initial rates as requested by Utility pursuant to **Section 4** of this Agreement. Such governmental authorizations, orders and approvals, including those of the Commission, and other appropriate agencies, if so needed, shall be final and non-appealable, and in a form and substance reasonably satisfactory to Utility.
 - g. At Closing(s) the Water Utility System shall not be materially adversely affected by fire, explosion, earthquake, disaster, accident, cessation or interruption of utility or other services, flood, drought, lack of water supply, contamination of water supply, embargo, riot, civil disturbance, uprising, activity of armed forces or act of God or public enemy, or any other event or occurrence.
 - h. At Closing(s) no proceeding shall be pending or threatened before any court or governmental agency in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with this Agreement or in the consummation of the transactions contemplated hereby, and no investigation that might eventuate in any such suit, action or proceeding shall be pending or threatened.
- 11. Transfer of Utility Services.** Developer and Utility will cooperate to transfer, effective as of the date of Closing, any utility services, (telephone, electric and any

other utility service) that are in Developer's name and which are necessary to operate the Water Utility System. Developer shall provide Utility with the utility service provider's name, phone number, and account number(s) issued by the service provider for the utility service. Utility shall complete such transfer of services upon Closing and shall pay its prorated share of costs upon receipt of its first invoice from the provider. Developer shall construct the Water Utility System so that its components are metered separately from Developer's other facilities by each utility provider.

12. Taxes.

12.1 Tax Gross Up for CIAC. Prior to Closing, the Developer shall pay to Utility the grossed-up tax payment attributable to CIAC. Such amount shall be the product of multiplying the total amount of the certification of costs pursuant to **Section 7** of this Agreement by .29828 (Certified Costs x .29828 = Grossed Up Tax Payment to Utility). The parties acknowledge and agree that the formula utilized in this paragraph to determine the amount of tax due is based upon the Tax Cuts and Jobs Act of 2017 ("TCJA"). In the event the TCJA is amended to provide a different formula, the amended formula shall be applicable hereunder on the effective date of the new formula. In the event it is determined the utility no longer needs to collect the tax, the tax will no longer be collected by Aqua. The Utility will not Close and will not provide services until such grossed-up tax payment is paid to it. If Developer is constructing in phases that are approved by Aqua, then the requirements of this paragraph shall apply to each phase.

12.2. Developer and Aqua shall, if applicable, each pay 50% of the realty transfer tax on all real property conveyed as part of the Water Utility System, including such as may be levied on each subsequent Phase. Each Party shall bear their own costs related to the preparation for Closing. Aqua shall not be responsible for costs of property taxes on any Deeded Property with respect to which title is not conveyed to Aqua. Aqua shall only be responsible for real estate property which it owns.

13. General Provisions.

13.1 Execution of Future Agreements. After the execution of this Agreement, all new development agreements entered into by Developer for the Subdivision shall be consistent with the terms of this Agreement. Developer also warrants that it has not entered into any development agreements that are inconsistent with the terms of this Agreement.

13.2. Representations Regarding Fire Service. Developer acknowledges that Utility's sole obligation after Closing is to provide water utility service to lots within the Subdivision and that Utility does not provide, nor is the Water Utility System designed to provide, fire service. In this regard, Developer shall not make any representation that: (i) Utility will provide fire service; (ii) that the Water Utility System is designed or adequate to provide such service; or (iii) that fire service will be provided to lots within the Subdivision.

13.3. Representations, Warranties, Covenants and Agreements Survive Closing. All representations and warranties of Developer and Utility hereunder shall survive each Closing. Further, any covenant or agreement herein which contemplates performance after the time of any Closing shall not be deemed to be merged into or waived by the instruments delivered in connection with such Closing but shall expressly survive such Closing and continue to be binding upon the Parties.

13.4. Binding upon Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of Developer and Utility, and the successors and assigns of each. Neither party may assign this Agreement to a person or entity lacking the financial ability or expertise to perform its obligations hereunder.

13.5. No Third-Party Beneficiary Rights. Nothing expressed or implied in this Agreement will be construed as providing any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement to any third party.

13.6. No Agency, Partnership or Joint Venture Created. The Parties are and shall be independent to one another, and nothing herein shall be deemed to create an agency, partnership, or joint venture between them.

13.7. Counterparts. This Agreement may be executed in one or more counterpart signature pages (including facsimile counterpart signature pages), each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

13.8. Headings. The headings within this Agreement are inserted for convenience only and shall not be construed as a limitation or expansion of any term or provision of this Agreement.

13.9. Enforcement of Agreement. Each Party acknowledges and agrees that the other Party would be irreparably damaged if any of the provisions of this

Agreement are not performed in accordance with their specific terms and that any breach of this Agreement by a Party could not be adequately compensated in all cases by monetary damages alone. Accordingly, in addition to any other right or remedy to which a Party may be entitled, at law or in equity, it shall be entitled to enforce any provision of this Agreement by a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent any breach or threatened breach of any of the provisions of this Agreement, without posting any bond or other undertaking.

13.10. Waiver. The failure of a party to immediately assert its rights or an obligation of the other party hereunder shall not be deemed as a waiver of such right or obligation. No single waiver of any term, condition or provision of this Agreement shall be deemed to be, or construed as, a further or continuing waiver of any such term, condition or provision unless agreed to by written instrument.

13.11. Entire Agreement. This writing embodies the entire agreement and understanding between the parties hereto and there are no other agreements or understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No prior oral commitment shall be binding against either party.

13.12. Modifications in Writing. This Agreement may not be modified, amended or changed in any respect except in writing, duly signed by the parties hereto.

13.13. Limitation on Venue and Jurisdiction. The Parties agree that the state and federal courts in the State of North Carolina shall be the sole and exclusive venues for litigating any disputes concerning this Agreement and that litigation is limited to such court having jurisdiction over any dispute.

13.14. Governing Law. This Agreement shall be governed by the laws of the State of North Carolina, without regard to such state's conflict of law or choice of law rules.

13.15. Authority to Sign Agreement. Both persons signing this Agreement warrant they are fully authorized to sign this Agreement on behalf of Developer or Utility, to bind their respective part to the terms and conditions of this Agreement and that no further approvals or authorizations are needed to bind their respective parties to its terms.

13.16. Notices. All notices and other communications required or permitted hereunder shall be in writing and shall be sent either (i) personally by hand

delivery, (ii) by registered or certified United States first-class mail, postage prepaid, return receipt requested, (iii) by nationally recognized overnight courier, (iv) by facsimile addressed to the address or facsimile number indicated below (or at such other address or facsimile number as such Party or permitted assignee shall have furnished to the other Parties hereto in writing) or (v) electronic mail. All such notices and other written communications shall be effective on the date of delivery.

If to Developer, such notice shall be addressed to:


RP Wellons Land and Development, LLC
PO BOX 730
Dunn, NC 28335

If to Utility, such notice shall be addressed to:

Aqua North Carolina, Inc.
202 MacKenan Court, Cary, NC-27511
Attn: President
Telephone: 919.467.8712
Facsimile: 919.460.1788


IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on this date and year first noted above.

RP Wellons Land and Development, LLC


BY: Managing Member

5/12/2021
Date

AQUA NORTH CAROLINA, INC.


Shannon V. Becker, President

5/11/21
Date

Appendix 1

Subdivision Site Plan

