

## **AGREEMENT FOR SALE AND PURCHASE OF ASSETS**

This Asset Purchase Agreement (“Agreement”) is made on this 10<sup>th</sup> day of December, 2019, by and between FOXFIRE UTILITY COMPANY, INC., a Missouri for-profit S-corporation and Garah F. Helms, Co-Trustee of the Rick and Janet Helms Revocable Trust dated 8/29/2014, its sole shareholder (collectively the “Seller”) and OZARKS CLEAN WATER COMPANY, a Missouri non-profit 501(c)(3) water and sewer corporation (“Buyer”), upon the terms and conditions set forth herein (“this Agreement”).

### **RECITALS**

A. Seller operates a water and sewer company (the “Business”) known as “Foxfire Utility Company” which is regulated by the Missouri Public Service Commission;

B. Seller wishes to sell and Buyer wishes to purchase certain of Seller’s assets used in connection with the Business, including the goodwill of the company;

C. This contemplated sale will transfer substantially all of Seller’s assets to Buyer upon the terms and conditions set forth herein,

NOW, THEREFORE, in consideration of the above and of the mutual covenants and promises contained in this Agreement, the parties agree as follows:

### **I. PURCHASE AND SALE**

**1.01 Sale of the Assets.** At Closing, Seller shall sell, assign, transfer and convey to Buyer, and Buyer shall purchase, the assets of the Business described in “Exhibit A” [Asset List] and “Exhibit B” [Assignment and Bill of Sale] attached hereto and made a part hereof (the “Assets”). Any of the Business’ assets or contractual rights not specifically listed in “Exhibit A” and “Exhibit B” are specifically excluded from this sale, including without limitation, all cash, cash equivalents, and accounts receivable as of the date of Closing. Although Buyer is not acquiring the accounts receivable of Seller, after Closing, if Buyer receives any of Seller’s accounts receivable, such sums shall be paid to Seller upon Buyer’s receipt of same. The transfer of the Assets shall be made at Closing by delivery of the executed Assignment and Bill of Sale. Any real estate included in the assets will be conveyed at Closing by General Warranty Deed, in the form shown as **Exhibit C**, attached hereto.

**1.02 Condition of Assets.** The Assets will be sold on the Closing Date in their present location and in their present condition, ordinary wear and tear between the date of this Agreement and the Closing Date being excepted. The Assets are sold AS IS. OTHER THAN AS SPECIFICALLY SET FORTH HEREIN, THERE ARE NO WARRANTIES, EITHER EXPRESSED OR IMPLIED, THAT THE ASSETS ARE MERCHANTABLE OR FIT FOR ANY PARTICULAR PURPOSE. Seller, prior to Closing,

will provide Buyer full and sufficient access to the Assets for Buyer's inspection and examination.

**1.03 Sale of Real Estate.** Seller has good and marketable title to those parcels of real property and those easements or any right-of-way used in the operation of the Business, together with all fixtures, fittings, buildings, structures and other improvements erected therein or thereon (the "Real Property"). . Seller has good and marketable title to the Real Property free and clear of all options, leases, covenants, conditions, easements, agreements, claims, and other encumbrances of every kind and there exists no restriction on the use or transfer of such property.

**A. Necessary Approvals.** Seller shall obtain all required permits, licenses, consents, approvals and authorizations of all governmental authorities, including the Missouri Public Service Commission, or any other entity having jurisdiction over the Real Property for the sale of same to Buyer.

**B. Proper Zoning.** The Real Property is properly classified under applicable zoning Laws, ordinances, and regulations for the current and continued operation of the System on the Real Property. No Proceeding is pending or threatened which could adversely affect the zoning classification of the Real Property.

**C. Taxes and Encumbrances.** There is no unpaid property tax, levy or assessment against the Real Property (except for Liens relating to Taxes not yet due and payable), nor is there pending or threatened any condemnation Proceeding against the Real Property or any portion thereof. No part of any Improvements on the Real Property encroaches upon any property adjacent thereto or upon any easement, nor is there any encroachment or overlap upon the Real Property known to Seller.

**D. Title Commitment and Policy.** Within sixty (60) days of the execution of this Agreement, Seller will obtain a commitment for title insurance, at Seller's expense, issued by **Tri-Lakes Title & Escrow, L.L.C.**, a company authorized by the State of Missouri to insure titles, insuring good and merchantable title to the Real Property, free and clear of all liens and encumbrances, excepting taxes for the current year, and free and clear of all other defects except those against which said company is willing to insure as of the date of Closing. The title commitment will also include an endorsement for easement rights unless such endorsement is waived by Buyer upon Buyer's satisfaction of the state of title related to easements utilized by Seller in the operation of the Business. In the event that the title commitment discloses any such liens or defects, and in further event that such liens or defects cannot be removed by Seller and said title insurance company refuses to insure against them, then Buyer may, upon written option given to Seller within sixty (60) days from Buyer's receipt of the Commitment, elect to either (i) accept title subject to such liens or defects and

consummate this Agreement or (ii) terminate this Agreement. In the event that Buyer elects to timely terminate this Agreement based on the Seller's refusal to remove or cure any liens or defects in title, Buyer shall be entitled to any amounts advanced as closing costs, and neither Seller nor Buyer shall have any further liability, one unto the other, under this Contract. Title Insurer must be willing to issue, at or immediately following Closing, the Policy in the form required and in the full amount of the allocated purchase price for the real estate with Buyer and Buyer's designees each as a named insured, with the premium therefore to be paid by Buyer.

**1.04 Franchise Agreement.** [Intentionally Omitted].

**1.05 Payment of Liabilities.** Other than debts, liabilities and obligations specifically assumed by Buyer in this Agreement, Seller agrees to indemnify, defend and hold Buyer harmless from any and all debts, liabilities and obligations accruing or arising out of facts occurring *before* the Closing Date and connected with the Business. Buyer shall indemnify, defend and hold Seller harmless from any and all debts, liabilities and obligations accruing or arising out of facts occurring *after* the Closing Date and connected with the Business. Seller does not provide warranties on its labor and does not provide warranties on materials supplied beyond the manufacturer's warranty for goods and materials sold, if any. Accordingly, Seller shall not be required to perform any warranty related work after Closing. To the extent that any valid warranty claim is made with respect to goods or materials sold by Seller prior to Closing, Buyer agrees to assist the customer with the processing of any such warranty claim from and after Closing.

Whenever either party shall learn through the filing of a claim or the commencement of a proceeding or otherwise of the existence of any liability for which the other party is or may be responsible under this Agreement, such party shall notify the other party promptly and furnish such copies of documents (and marked originals thereof available), and any other information as such party may have which may be used or useful in the defense of such claims and shall afford the other party full opportunity to defend the same in the name of any party and shall generally cooperate with the other party in the defense of any such claim.

**1.06 Assumed and Excluded Liabilities.** Except as and to the extent specifically provided in this paragraph, paragraph 1.05 above and specifically listed on "**Exhibit D**" attached hereto, Buyer shall not assume or otherwise be in any respect responsible for any liabilities or obligations whatsoever of the Business or of Seller.

Buyer is not assuming and shall not be obligated to pay any obligations or liabilities of Seller or of the Business including by way of example, and not by way of limitation, any

of the following:

**A.** Any liability or obligation relating to any environmental laws and regulations or any environmental condition or claim arising or accruing *on or prior to* the Closing Date;

**B.** Any taxes (1) payable or due with respect to the business, assets or the operations of Seller for activities *prior to or on* the Closing Date; or (2) incident to or arising as a consequence of the negotiation or consummation, by Seller of this Agreement and the transactions contemplated hereby, excluding any sales, transfer or other tax relating to the sale of the Assets to Buyer;

**C.** Any liability or obligation arising *on or prior to* the Closing Date or relating to the Closing to any employees, agents or independent contractors of Seller, whether or not employed or retained by Buyer after the closing date, or under any benefit arrangement with respect thereto, including any employee benefit plan or other such plan or arrangement. Notwithstanding the above, Buyer does agree to re-employ all current Business employees and will provide them with comparable salary and benefits;

**D.** Any liability insured against to the extent that liability is or will be payable by an insurer; and

**E.** Any liabilities of Seller for failure to perform any of its covenants contained in this Agreement.

## **II. PURCHASE PRICE**

**2.01 Amount.** The Purchase Price of the Assets is One Million Two Hundred Eighty-Five Thousand Four Hundred Dollars (\$1,285,400.00), which shall be allocated to the Assets as set forth in "**Exhibit E**" attached hereto and made a part hereof.

**2.02 Earnest Money; Manner and Time of Payment.** With execution of this Agreement, Buyer shall pay to Seller Earnest Money (the "Earnest Money") in the amount of Ten Thousand and no/100 Dollars (\$10,000.00), which will be held by Tri-Lakes Title & Escrow, L.L.C., 800 State Highway 248 Ste 4-a, Branson, MO 65616 (417-334-1114) in trust until Closing and applied to the Purchase Price. Buyer shall pay to Seller in cash or readily available funds at Closing the balance of the Purchase Price by paying (a) \$30,000 in cash or readily available funds and (2) the balance in accord with the terms of a promissory note as set forth below.

**2.03 Prorations, Prepaid Items, and Attorney Fees.** All taxes, maintenance fees, utility charges, and service contract charges and similar expenses shall be prorated as of Closing. To the extent possible, said prorations shall be computed and paid at Closing. All rights in any deposits and/or prepaid expenses of any *vendor* who provides services to Seller shall be retained by Seller and will not be transferred to Buyer at Closing. Any prepaid deposits paid to Seller that are still held by Seller for any *customer* of Seller shall be transferred to Buyer at Closing. Each party hereto shall pay its own expenses incident to this Agreement and the transactions evidenced hereby, including, but not limited to, all fees for legal counsel and accountants.

### **III. REPRESENTATIONS AND WARRANTIES**

**3.01 No Breach.** Each party warrants that this Agreement constitutes the legal, valid and binding obligation of such party hereto and is enforceable in accordance with its terms.

**3.02 Finder and Brokers.** Each party warrants that no finder's fees, brokerage or agent's commissions or other similar payments are payable by any party hereto to any third party by reason of this Agreement or as a result of any party's use of any finder, broker, agent, or other intermediary in connection with the negotiations relating to this Agreement or the transactions contemplated herein.

**3.03 Title to Assets.** Seller warrants that it is, or will be at Closing, the owner of marketable title in and to the Assets, free and clear of all liens and encumbrances, except for those expressly stated in this Agreement, including without limitation personal property taxes accrued through the Closing Date, such personal property taxes being the responsibility of the Seller, and Seller's attorney shall withhold from Seller's proceeds such amounts required to pay all such taxes, together with penalties and interest, if any.

**3.04 Good Standing.** Seller represents and warrants that it is and will be at Closing in good standing under the laws of the State of Missouri with full authority to enter into this Agreement and the transactions contemplated herein. Buyer represents and warrants that it is and will be at Closing in good standing under the laws of the State of Missouri and further represents and warrants that it has taken all actions necessary to transact and do business in the State of Missouri, so that it has full authority to enter into this Agreement and the transactions contemplated herein.

**3.05 Seller's Specific Representations and Warranties.** Seller specifically represents and warrants to Buyer that:

**A.** Seller shall not transfer, convey, encumber, lease or otherwise assign or dispose of any Asset, nor any interest therein, outside of the ordinary course of business, without the express written consent of Buyer, nor shall Seller cause, create or allow any additional lien, claim or encumbrance, of any kind or character, to be placed upon any Asset or any interest therein;

**B.** Except as specifically disclosed to Buyer in writing, Seller has no liabilities or obligations with respect to the Business or the Assets, either direct or indirect, matured or unmatured or absolute, contingent or otherwise, which have resulted in or will result in a lien on any of the Assets or which will interfere with Buyer's use of the Assets following the Closing;

**C.** Other than those liabilities or obligations disclosed by Seller to Buyer, Seller has not entered into, nor has any obligation or liability with respect to, any employment or consulting agreement, employee leasing agreement, executive compensation plan, collective bargaining agreement, deferred compensation agreement, supplemental retirement income agreement, split dollar insurance plan, bonus plan, employee pension plan or retirement plan, employee profit sharing plan, employee stock purchase or stock option plan, severance agreement or any other agreement or arrangement providing for remuneration or benefits to current or former employees of Seller or their dependents. Except as disclosed to Buyer in writing, Seller does not have any liability to any person presently or formerly employed by it in connection with the operations of its business for any arrears in wages, salaries, deferred compensation, supplemental retirement income, overtime pay, vacation, time off, or pay in lieu of vacation or time off (other than for normal wage accruals with respect to the Seller's current pay period) or for any other payments or penalties for failure to comply with any statute, law, rule, regulation or agreement relating to or affecting the Business, nor is there any basis known to Seller for any such liability.

**D.** **“Exhibit F”** attached hereto contains all leases and/or contracts that affect the Business or Assets which are being assigned to Buyer, and there exists no event of default and no event, occurrence, condition or act has occurred which, with the giving of notice or the lapse of time or both would become a default under any of the leases or contracts identified. Seller has not violated any of the terms or conditions under any of the leases or contracts, and all of the terms, conditions and covenants to be performed by any other party under any such lease or sublease have been fully performed. Seller agrees to assign the leases and/or contracts disclosed on **“Exhibit F”** to Buyer at Closing. Buyer shall assume no liability and shall not assume any contract or lease of Seller unless such is listed in **“Exhibit F”**.

**E.** No civil, criminal, administrative or other suit, action, decree, arbitration or legal, administrative or other proceeding, controversy or investigation ("Litigation") is pending or, to the best of seller's knowledge, threatened against the Seller or any of its property, assets or rights which might adversely affect the Business or the financial or other condition of the Seller or any of the Assets or which would prevent the execution and delivery of this Agreement by the Seller or prevent consummation of the transactions contemplated by this Agreement. For the purposes of this Agreement, any individual shall be deemed to have knowledge of a particular fact or other matter if (a) such individual is actually aware of such fact or other matter or (b) a prudent individual would reasonably be expected to discover or otherwise become aware of such fact or other matter after reasonable investigation. Seller is not subject to nor in default with respect to any order, writ, injunction, judgment or decree of any federal, state, local or foreign court, department, agency or instrumentality, or any settlement of any Litigation, nor has the time period of the Seller's compliance with respect to any of the same been extended or stayed. Seller is not presently a party to any legal action to recover moneys due to, or damages sustained by, the Seller in respect of the Business or the Assets of the Seller except as disclosed above.

**F.** Seller has withheld all amounts required by law or agreement to be withheld from the wages or salaries of its employees, and is not liable for any arrears of wages or any Tax or penalties for failure to comply with the foregoing. The Seller has paid over, and will pay over, to the appropriate governmental agencies or depositories, at the time or times required by law (without any extensions or stays), all "employment taxes" and "withholding taxes" relating to its employees.

**G.** Seller has conducted its business in compliance with, and to the best of Seller's Knowledge, Seller is not in violation of, applicable laws, ordinances, rules, regulations and orders of federal, state, local and foreign jurisdictions, governments, regulatory bodies and courts (including, without limitation, any and all applicable building, zoning and licensing laws, ordinances, regulations or orders affecting the location, size and function of the Seller's assets, all environmental laws and regulations and any and all applicable laws, regulations, orders, decrees or requirements relating to securities, properties, business, products, advertising, sales or employment practices, terms and conditions of employment, occupational safety, health and welfare, conditions of occupied premises, product safety, liability for civil rights and rights of disabled persons). Seller has not received any claim or notice that the Seller has not complied in all respects in the operation of its business and related properties with such laws, rules, regulations and orders. Seller has all authorizations, licenses, permits and

consents required to be obtained from federal, state, local or foreign authorities with respect to the ownership or use of its assets or the operation of its Business.

**H.** To the best of Seller's Knowledge, Seller is complying and has complied with all environmental laws and regulations, and no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed or commenced or threatened against it alleging any failure so to comply. Seller has obtained all permits, licenses and other authorizations which are required with respect to the Seller's operations, as well as the transactions contemplated hereby, under all environmental laws and regulations and is in full compliance therewith.

**I.** The Seller has not received any notice, oral or written, which indicates or suggests that any of the representations and warranties contained in this Agreement are not true and complete in all respects.

**J.** No representation or warranty made by Seller in this Agreement or any Exhibit hereto contains or will contain any untrue statement of any fact or omits or will omit to state or reflect any fact required to be stated or reflected therein of necessary to make the statements contained herein and therein not misleading.

**K.** Except as otherwise expressly provided in this Agreement, all representations, warranties, covenants and indemnifications made by the parties in this Agreement or in any certificate, schedule, statement, document or instrument furnished hereunder or in connection with the negotiation, execution and performance of this Agreement shall survive the closing for the period of the statute of limitations applicable thereto, including the period of any waiver or extension thereof.

**L.** This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency or other similar laws affecting the rights of creditors generally and by general principles of equity. Seller has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and the transaction documents and to consummate the contemplated transactions. Without limiting the generality of the foregoing, Seller has duly authorized the execution, delivery, and performance of this Agreement and no other corporate proceeding on the part of Seller is necessary to authorize the execution, delivery and performance of this Agreement. This Agreement has been, and the transaction documents will be, duly executed and delivered by Seller.

Neither the execution, delivery nor performance by Seller of this Agreement or the transaction documents nor the consummation by it of the contemplated transactions will contravene, conflict with or result in a violation of any provisions of the charter or bylaws or other governing document of Seller.

**M.** Independent of and in addition to the foregoing representations and warranties contained in this Article, neither this Agreement nor any written statement, list, certificate or other information furnished by or on behalf of Seller in response to specific requests made by Buyer or its representatives or attorneys contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading.

**N.** Except as set forth in “**Exhibit G**”, no approval, consent, waiver or authorization or, or registration, declaration or filing with, exemption by, or any notice to, any governmental authority or other regulatory body is required to be made obtained or given by the Seller which would be necessary in order for Seller to transfer the Assets or for Buyer to operate the Business,

#### **IV. CONDITIONS TO BUYER’S OBLIGATIONS**

The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or at Closing, of each of the following conditions precedent, any of which may be waived in writing by Buyer:

**4.01 Performance.** Seller shall have performed all covenants and agreements to be performed by it, to the extent such are required to be performed at or prior to Closing, and all representations set forth in this Agreement shall be true in all respects as of the Closing.

**4.02 Licenses and Permits.** Buyer shall have secured and obtained all necessary permits, licenses and approvals of all governmental authorities necessary for Buyer to operate the Business. Seller shall obtain approval for the sale of the Assets from the Missouri Public Service Commission prior to the Closing and shall comply with any post-closing requirements of the Missouri Public Service Commission related to the sale of the Assets and the surrender of Seller’s PSC certificate of authority.

**4.03 Acquisition of the Premises.** [Intentionally omitted].

**4.04 Franchise Rights.** [Intentionally omitted].

**4.05 Due Diligence.** Buyer shall have been reasonably satisfied with its due diligence review of legal, financial, and customer materials of Seller. Seller shall have used its reasonable best efforts to provide Buyer with documents requested and related to the Assets or any third-party consent required for this sale.

**4.06 No Suit, Action or Other Proceeding.** As of the Closing, no suit, action or other proceeding or injunction or final judgment relating thereto shall be threatened or be pending before any court or governmental or regulatory official, body or authority in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby, and no investigation that might result in any such suit, action, proceeding, injunction or judgment shall be pending or threatened, except for any Litigation disclosed herein.

**4.07 Third Party Consents.** All consents and waivers by third parties that are required for the transfer of the Assets to the Buyer or that are required for the consummation of the transactions contemplated hereby, or that are required in order to prevent a breach of or a default under or a termination or modification of any lease, license or other agreement relating to the Business or the Assets to which the Seller is a party will have been obtained, and, releases of any and all security interests excluding those related to the Assumed Liabilities held by third parties on the Assets required by Buyer will have been obtained, all on terms reasonably satisfactory to the Buyer. A list of such required third-party consents shall also be included in “**Exhibit G**” hereto. Copies of such consents and/or waivers shall be delivered to Buyer at closing.

**4.08 Financing.** [Intentionally omitted as Buyer has or will have readily available funds for the sums required to be paid at Closing].

**4.09 Closing Deliveries of Seller.** Seller shall deliver or cause to be delivered to Buyer, together with funds sufficient to pay all taxes necessary for the transfer, filing or recording thereof, the following documents:

**A.** An assignment and bill of sale and general warranty deed for all of the acquired Business assets substantially in the form of Exhibits B and C; and

**B.** All consents and approvals from governmental authorities, and third parties under contracts, necessary to ensure that Buyer will continue to have the same full rights with respect to the Business assets as Seller had immediately prior to the consummation of the contemplated transactions; and

**C.** A payoff letter from each lender from which Seller has incurred indebtedness for borrowed money which is outstanding, if any, and a release of all encumbrances relating to the Business or Assets executed, filed and/or recorded by the holder of or parties to each such encumbrance, if any, in each case in substance and form reasonably satisfactory to Buyer and its counsel; and

**D.** An affidavit, as provided in Section 1445(b)(2) of the Internal Revenue Code, stating under penalties of perjury that Seller is not a foreign person within the meaning of Section 1445(f)(3) of the Code; and

**E.** A warranty deed to the Real Property (including easements) and any other deeds, bills of sale, assignments, certificates of title, documents and other instruments of transfer and conveyance as may reasonably be requested by Buyer, each in form and substance reasonably satisfactory to Buyer; and

**F.** A copy of tax clearance certificate indicating Seller has no tax due and dated within ten (10) days of Closing from the Missouri Department of Revenue; and

**G.** A Certificate of good standing issued by the Secretary of State of Missouri for Seller dated not earlier than ten (10) business days prior to Closing; and

**H.** An agreed upon Exhibit E Allocation of Purchase Price.

**4.10 No Material Adverse Effect.** Buyer shall have determined that there shall not have occurred any event or circumstance which, individually or in the aggregate, has had or could reasonably be expected to have a material adverse effect on the Assets.

## **V. CONDITIONS TO SELLER'S OBLIGATIONS**

The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or at Closing, of each of the following conditions precedent, any of which may be waived in writing by Seller:

**5.01 Performance.** Buyer shall have performed all covenants and agreements to be performed by it hereunder, to the extent such are required to be performed at or prior to Closing and shall have delivered executed Exhibits to this Agreement as Closing deliverables to give effect to the covenants herein.

**5.02 Licenses and Permits.** Buyer shall have secured and obtained all necessary permits, licenses and approvals of all governmental authorities necessary for Buyer to operate the Business.

**5.03 Payment of the Purchase Price.** Buyer shall tender the payment of the Purchase Price required hereunder as follows:

- A. Cash or readily available funds at Closing in the amount of \$40,000; and
- B. A fully executed Promissory Note in the form attached hereto as **Exhibit H**.

**5.04 Consent of Franchisor.** [Intentionally omitted].

## **VI. CLOSING AND RISK OF LOSS**

**6.01 Closing Date.** As used herein, Closing or Closing Date shall be on or before Thursday, the 12<sup>th</sup> day of January, 2023 at 1:00 p.m. at Tri-Lakes Title & Escrow, L.L.C. 800 State Highway 248 Ste 4-a, Branson, MO 65616 (417-334-1114) or at such other location, date, and time as agreed upon by the parties. All payments to be made and documents to be delivered on the Closing Date shall be made at such a time and at such place as are agreed upon by the parties so all Closing Deliveries are timely provided.

**6.02 Risk of Loss.** The risk of loss to any of the Assets shall remain with Seller until Closing, and this Agreement shall be cancelled without further obligation on either party in the event of any total loss, destruction, or damage to the Assets by reason of fire or other casualty which would prevent the operation of the Business as of Closing.

**6.03 Failure of Condition.** In the event of a failure of a condition to Buyer's obligations as set forth in Section 4 of this Agreement, which is not waived by Buyer, the Earnest Money shall be refunded to Buyer and Buyer shall have the right to seek specific performance of this Agreement or any other rights or remedies at law or in equity. In the event of failure of a condition to Seller's obligation as listed in Section 5 of this Agreement, which is not waived by Seller, the Earnest Money shall be retained by Seller and Seller shall have the right to seek specific performance of this Agreement or any other rights or remedies at law or in equity.

## **VII. MISCELLANEOUS**

**7.01 Consulting Services.** [Intentionally omitted].

**7.02 Sales Tax.** It is not contemplated that any sales tax will be due on the sale of the Assets. If any sales tax is due, the Buyer will pay the sales tax.

**7.03 Debts and Liabilities; Revenue.** Seller shall pay all the debts and liabilities incurred in connection with operating the Business *prior to* Closing, except as set forth herein. Seller shall be entitled to all income and revenues of the Business *prior to* Closing. Buyer shall pay all the debts and liabilities incurred in connection with operating the Business *after* Closing. Buyer shall be entitled to all income and revenue of the Business *after* Closing, except as provided herein regarding accounts receivable due Seller for pre-Closing sales or services.

**7.04 Employees.** [Intentionally Omitted –No Employees to Transition].

**7.05 Covenant Not to Compete.** Seller agrees that it will not engage in any business that is in direct competition with the Business sold hereunder.

**7.06 Indemnification by Seller.** Seller hereby indemnifies and holds Buyer harmless from and against any and all claims, demands, suits, losses, liabilities, costs and expenses, including reasonable attorney's fees, reasonably incurred by Buyer and arising in connection with any of the following:

**A. Liabilities of Seller.** All actual liabilities and obligations of Seller, and all claims and demands made in respect thereof, *at or prior to Closing*, relating to or arising from the ownership, operation or control of the Assets or of the Business prior to Closing; provided, however, that Buyer is not indemnified hereunder with regard to those liabilities, obligations, claims and demands made in respect thereof, which are assumed by Buyer hereunder; and

**B. Breach of Agreement.** The failure of Seller to perform and observe any covenant, condition or agreement on Seller's part to be performed, satisfied or observed under this Agreement.

**C. Continuing Indemnity.** Subject to the terms of this Article 7, Seller hereby agrees to fully pay, protect, defend, indemnify and hold harmless Buyer and the past, present and future officers, directors, shareholders, partners, employees, agents, attorneys, representatives, successors and assigns of Buyer in their capacities as such (collectively the "Indemnified Persons"), from any and all damages, claims or liabilities arising out of, resulting from, relating to or caused by: (i) any inaccuracy in or breach of (or any claim by any third party alleging or constituting an inaccuracy or breach of) any representation or warranty of, or any

failure to perform or nonfulfillment of any provision or covenant contained in this Agreement or any other transaction document by Seller; (ii) all liabilities and/or duties of Seller accruing *prior to* the Closing Date, and any encumbrance affecting the Business assets; (iii) assessments, charges and other similar claims due or owing, directly or indirectly, by Seller or otherwise as a result of or on account of the Business or Assets at any time *prior to* the Closing Date; (iv) the ownership and/or operation of any of the acquired assets *prior to* Closing; (v) any proceeding now existing or hereafter arising and relating to the acquired assets and arising from events or matters occurring *prior to* the Closing Date; (vi) any excluded assets; (vii) any and all taxes imposed on or arising from the transfer of the acquired assets or any other taxes due and owing by Seller regarding or relating to the operation of the Business *prior to* Closing; (viii) intercompany accounts payable and accounts receivable by and among Seller and/or its respective affiliates; (ix) transaction costs and expenses incurred by Seller in connection with this Agreement or the contemplated transactions; or (x) the Lawsuit.

**7.07 Indemnification by Buyer.** Buyer hereby indemnifies and holds Seller harmless from and against any and all claims, demands, suits, losses, liabilities, costs and expenses, including reasonable attorney's fees, reasonably incurred by it and arising in connection with any of the following:

**A. Liabilities of Buyer.** All actual liabilities and obligations of Buyer, and all claims and demands made in respect thereof, arising after Closing by reason of Buyer's ownership or operation of the Assets, or by reason of Buyer's express assumption of such liabilities and obligations hereunder; and

**B. Breach of Agreement.** The failure of Buyer to perform and observe any covenant, condition or agreement on the part of Buyer to be performed, satisfied or observed under this Agreement.

**C. Continuing Indemnity.** Subject to the terms of this Article 7, Buyer hereby agrees to fully pay, protect, defend, indemnify and hold harmless Seller and the past, present and future officers, members, employees, agents, attorneys, affiliates, parents, representatives, successors and assigns of Seller in their capacities as such (collectively the "Indemnified Persons"), from any and all damages, claims or liabilities arising out of, resulting from, relating to or caused by: (i) any inaccuracy in or breach of (or any claim by any third party alleging or constituting an inaccuracy or breach of) any representation or warranty of, or any failure to perform or nonfulfillment of any provision or covenant contained in this Agreement or any other transaction document by Buyer; (ii) all liabilities

and/or duties of Buyer accruing *after* the Closing Date; (iii) assessments, charges and other similar claims due or owing, directly or indirectly, by Buyer as a result of or on account of the Business or Assets at any time *after* the Closing Date; (iv) the ownership and/or operation of any of the Assets *after* Closing; (v) any proceeding arising and relating to the acquired assets and arising from events or matters occurring *after* the Closing Date; (vi) any and all taxes imposed on or arising from the transfer of the Assets; (vii) intercompany accounts payable and accounts receivable by and among Buyer and/or its respective affiliates; or (viii) transaction costs and expenses incurred by or on behalf of Buyer in connection with this Agreement or the contemplated transactions.

**7.08 Breach of Agreement at or Prior to Closing.** Time is of the essence regarding the transactions to be consummated at Closing and any unreasonable delay in performing any of the obligations of either of the parties under this Agreement shall constitute a breach of this Agreement by the delaying or defaulting party.

**7.09 No Other Representations.** Other than as specifically set forth herein, Seller has made no representations or warranties to Buyer and Buyer has relied on no other representations or warranties relating to the Business, including without limitation, any representation or statement regarding the financial history, condition, or prospects of the Business or the Assets sold hereunder.

**7.10 Amendment.** No term or provision of this Agreement may be altered, amended, waived, or modified except by written instrument signed by or on behalf of the party to be charged therewith.

**7.11 Waiver.** Any term or provision of this Agreement may be waived at any time by the party which is entitled to the benefits thereof. No waiver by any party of any breach of term or provision hereof shall be deemed a waiver of any other or subsequent breach.

**7.12 Construction; Captions.** This Agreement shall be construed as a whole according to its fair meaning and neither strictly for nor against either Seller or Buyer. The unenforceability or invalidity of any paragraph or subparagraph of this Agreement shall not affect the validity of the balance of the Agreement. When the context so requires, the singular number includes the plural and vice versa. The paragraph captions and headings in this Agreement are for convenience and reference purposes only, and do not in any way affect the meaning or interpretation of this Agreement.

**7.13 Assignment.** Neither party may assign this Agreement or any interest therein to any person or entity without the prior written consent of the other party hereto;

however, Buyer may freely assign this Agreement to an entity formed by Buyer or Buyer's counsel for the purpose of consummating this transaction.

**7.14 Cooperation.** Each of the parties promise to exercise its best efforts in the utmost good faith to perform, comply with and otherwise satisfy each of the conditions to be satisfied by such party hereunder, and to close this transaction in a timely manner.

**7.15 Further Assurances.** The parties hereto shall execute and deliver at Closing, and from time to time thereafter, such other and further documents and instruments as may reasonably be required to effectuate or record the transfer, assignment and assumption of properties, rights and obligations under this Agreement; provided, however, that such delivery and execution shall not place an unreasonable burden or expense on the party providing them.

**7.16 Notices.** All notices and other communications required or permitted to be given under this Agreement shall be in writing, and shall either be delivered personally or sent by United States Mail; certified, return receipt requested, addressed as follows:

|    |  |          |  |
|----|--|----------|--|
| a. | To Seller:<br>Foxfire Utility Co.<br>C/O Rick Helms<br>PO Box 610<br>Ozark, Missouri 65721 | copy to: | Christiaan D. Horton<br>2805 S. Ingram Mill Rd.<br>Springfield, MO 65804<br>chorton@cecb.com |
|----|--|----------|--|

|    |           |          |   |
|----|-----------|----------|---|
| b. | To Buyer: | copy to: | Harry Styron<br>302 E Church St<br>Ozark MO 65721<br>hs@styronlaw.com |
|----|-----------|----------|---|

|  |
|--|
| c/o David Casaletto<br>PO Box 636<br>11 Oak Drive<br>Kimberling City, MO 65686 |
|--|

or to such other address or addresses as the parties may from time to time furnish to each other by notice. Notices given hereunder shall be deemed given when delivered personally or, if sent by mail, at the time of delivery as indicated on the duly completed Postal Service Return Receipt.

**7.17 Entire Agreement.** This Agreement represents the entire understanding of the parties hereto, and supersedes all other and prior memoranda and agreements between the parties and their agents, if any.

**7.18 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but which when taken together shall constitute one and the same instrument.

**7.19 Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successor and permitted assigns.

**7.20 Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Missouri.

**7.21 Termination of Agreement.** Anything herein or elsewhere to the contrary notwithstanding, this Agreement may be terminated by written notice of termination on or before the Closing only as follows:

**A.** by mutual consent of Seller and Buyer;

**B.** By Buyer, (1) at any time if any of the representations, warranties, covenants and agreements of Seller contained in this Agreement were incorrect in any material respect when made or at any time thereafter, but only if Buyer provides Seller with a 30-day Notice regarding same and an opportunity to timely cure; (2) at Closing if any of the covenants of the Seller pending the Closing have not been satisfied by Closing; or (3) if any of the conditions to Buyer's obligations contained in Section IV of this Agreement have not been fulfilled or satisfied as reasonably determined by Buyer or otherwise waived by Buyer.

**C.** By Seller, (1) at any time if any of the representations, warranties, covenants and agreements of Buyer contained in this Agreement were incorrect in any material respect when made or at any time thereafter, but only if Seller provides Buyer with a 30-day Notice regarding same and an opportunity to timely cure; (2) at Closing if any of the covenants of the Buyer pending the Closing have not been satisfied by Closing; or (3) if any of the conditions to Seller's obligations contained in Section V of this Agreement have not been fulfilled or satisfied as determined by Seller or otherwise waived by Seller.

**7.22. Confidentiality.** Except insofar as necessary to comply with the obligations created by this Agreement, the Parties agree that the terms of this Agreement shall be and remain strictly confidential, and they promise and covenant not to disclose, publicize, or cause to be disclosed or publicized in any manner, directly or indirectly, any of the terms and conditions of this Agreement except (i) to their accountants, auditors, banks, insurance agents and brokers,

insurance companies or adjusters, financial advisors, and attorneys, provided such persons are informed of, and abide by, this confidentiality requirement; (ii) in the case of affiliated or related entities, to their owners, shareholders, officers, and directors for business reasons; (iii) to state and federal taxing or regulatory authorities who must provide consents or approvals; (iv) as necessary to enforce this Agreement; and (v) as legally required by applicable law.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement through their duly authorized agents as of the day and year first above written.

**SELLER:**

**Foxfire Utility Co., Inc.  
Company**  
A Missouri Sub-S Corporation

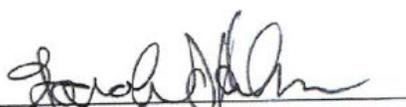
By:   
Garah F. Helms, President

**BUYER:**

**Ozarks Clean Water**  
A Missouri non-profit  
Corporation

By:   
David Casaletto, President

AND

By:   
Garah F. Helms, Co-Trustee  
of the Rick and Janet Helms  
Revocable Trust dated 8/29/2014  
  
Being the Sole Shareholder of Foxfire

**EXHIBITS**

- A. Asset List
- B. Assignment and Bill of Sale
- C. General Warranty Deed for Real Property
- D. Assumed Liabilities
- E. Allocation of Purchase Price
- F. Leases & Contracts Assigned
- G. Third Party Consents
- H. Form Promissory Note
- I. Security Agreement (Accounts Receivable)
- J. Deed of Trust on Real Property

**EXHIBIT A****Asset List**

Equipment and Inventory as is categorized as follows:

1. Well
2. Submersible pump and controls
3. Wellhouse
4. Disinfection equipment
5. Standpipe
6. Complete water distribution system including all valves, hydrants, pressure regulating valves, valve pits, water meters, water meter pits and all piping up to the point of discharge from water meters.
7. Complete wastewater treatment plant including building, chemical feed equipment, controls, blowers, valves tanks, disinfection system, tanks and walkways.
8. Complete wastewater collection system including all gravity piping downstream of point of connection of customer service lines, all manholes and lids.
9. Complete wastewater pump station including two HFE vacuum prime pumps, controls, wet well and station enclosure.

All data stored on the computers, including but not limited to: sales history, inventory, customer database, archived customer invoices, and any other stored data.

Paper files of business records;

List of suppliers, vendors, service providers currently used by Seller (Buyer must establish new accounts with Buyer's credit references);

The company name and any marketing materials, trade or service names, logos, registered fictitious names and intellectual property related to those specific items is not an Asset sold hereunder. However, the trade secrets, know how, and other knowledge and/or information necessary to operate the Business on a day to day basis is an Asset sold hereunder.

# ASSIGNMENT AND BILL OF SALE

THIS INSTRUMENT is made on this \_\_\_\_ day of January, 2023, by and between FOXFIRE UTILITY COMPANY, INC., a Missouri for-profit S-corporation and Garah F. Helms, Co-Trustee of the Rick and Janet Helms Revocable Trust dated 8/29/2014, its sole shareholder (collectively the “Seller”) and OZARKS CLEAN WATER COMPANY, INC., a Missouri non-profit 501(c)(3) water and sewer corporation (“Buyer”).

WHEREAS, Seller and Buyer are parties to the Asset Purchase Agreement dated the \_\_\_\_ day of December, 2019 (the “Agreement”), the provisions of which are incorporated herein by reference and made a part hereof; and

WHEREAS, the Agreement requires the delivery by Seller to Buyer of an Assignment and Bill of Sale conveying certain assets owned and used by Seller in connection with the Business known as Foxfire Utility Company and the assignment of certain executory customer contracts;

NOW, THEREFORE, in consideration of payment of the Purchase Price of One Million Two Hundred Forty-Five Thousand Four Hundred Dollars (\$1,245,400.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller hereby bargains, sells, transfers, assigns and conveys to Buyer certain personal tangible and intangible property owned by Seller and listed on Exhibit A attached hereto and incorporated herein along with all Business contracts identified in Exhibit F attached hereto, if any.

IN WITNESS WHEREOF, Seller, by its authorized officer, has executed this Assignment and Bill of Sale as of the date first above written.

**Foxfire Utility Company, Inc.**  
A Missouri Sub-S Corporation

By: \_\_\_\_\_  
Rick Helms, President

AND

By: \_\_\_\_\_  
Garah F. Helms, Co-Trustee  
of the Rick and Janet Helms  
Revocable Trust dated 8/29/2014

BEING THE SOLE SHAREHOLDER OF FOXFIRE

**Exhibit C -- Real Property / Form Deed on Transfer (Well & WWTP) and  
Easements**

**EXHIBIT D**

**ASSUMED LIABILITIES**

None

**EXHIBIT E****ASSET ALLOCATION  
IRS FORM 8594 TO BE COMPLETED BY THE PARTIES**

|                      |    |           |
|----------------------|----|-----------|
| Fixtures & Equipment | \$ | 520,000   |
| Real Property        | \$ | 251,240   |
| Goodwill             | \$ | 514,160   |
| Total:               | \$ | 1,285,400 |

No Class I Assets are the subject of this Sale (cash and equivalents)

No Class II Assets are the subject of this Sale (stock and securities)

No Class III Assets are the subject of this Sale (assets marked-to-market annually & AR)

Class IV Assets (inventory) are included with this Sale

Class V Assets (FF&E) are included with the Sale

Class VI Assets (section 197 intangibles) are included with the Sale

Section 197 intangibles include: Workforce in place; Business books and records, operating systems, or any other information base, process, design, pattern, know-how, formula, or similar item; Any customer-based intangible; Any supplier-based intangible; Any license, permit, or other right granted by a government unit; Any covenant not to compete entered into in connection with the acquisition of an interest in a trade or a business; and Any franchise, trademark, or trade name (however, see exception below for certain professional sports franchises). The term “section 197 intangible” does not include any of the following:

An interest in a corporation, partnership, trust, or estate; Interests under certain financial contracts;

Interests in land; Certain computer software; Certain separately acquired interests in films, sound recordings, video tapes, books, or other similar property; Interests under leases of tangible property; Certain separately acquired rights to receive tangible property or services; Certain separately acquired interests in patents or copyrights; Interests under indebtedness; Professional sports franchises acquired before October 23, 2004; and Certain transactions costs.

See section 197(e) for more information.

Class VII Assets (good will) are included with the Sale

**EXHIBIT F**

**CONTRACTS / LEASES ASSIGNED/ASSUMED TO/BY BUYER**

Customer Contracts

**EXHIBIT G**  
**THIRD PARTY CONSENTS**

PSC Approval

**PROMISSORY NOTE**

Exhibit H

**Borrower:** Ozarks Clean Water Co.  
**11 Oak Drive, Kimberling  
 City, MO 65686**

**Lender:** **Garah F. Helms, Co-Trustee  
 of the Rick and Janet Helms  
 Revocable Trust dated 8/29/2014**

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**Principal Amount:** \$1,245,400.00

**Date:** January \_\_\_\_, 2023

**Promise to Pay.** FOR VALUE RECEIVED, the undersigned, Ozarks Clean Water Company a Missouri non-profit corporation (“Borrower”), promises to pay to the order of Garah F. Helms, Co-Trustee of the Rick and Janet Helms Revocable Trust dated 8/29/2014 (the “Trust”), on behalf of the Trust, and its settlors and beneficiaries, successors or assigns (“Holder”) at the address set forth above or at such other place or places as the Holder hereof may from time to time designate in writing, the principal sum of One Million Two Hundred Forty Five Thousand Four Hundred Dollars (\$1,245,400.00), in lawful money of the United States of America. This Note shall accrue interest from the date hereof until maturity, whether by acceleration or otherwise at a rate equal to **2.5%** per annum (the “Interest Rate”). The installments shall be amortized over a period of twenty (20) years.

**Payment.** The outstanding principal sum and all accrued interest thereon shall be due and payable as follows: in monthly installments of **\$6599.41**, payable on the tenth day of each month beginning on the tenth day of February, 2023 and on the same day of each month thereafter, through the tenth day of February, 2043. Principal and interest for each payment shall be allocated in accordance with the attached amortization schedule.

**Late Payment Charge.** If a payment is late by more than ten (10) days, Borrower will be charged a late fee equal to 2.5% of the unpaid portion of the regularly scheduled payment.

**Prepayment.** There shall be no penalty for prepayment of this Note.

**Default.** Each of the following shall constitute an event of default (“Event of Default”) under this Note:

**Payment Default.** Borrower fails to make any payment when due under this Note.

**Other Defaults.** Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any other agreement between Lender and Borrower or (1) the determination by Lender that a material adverse change has occurred in the financial condition of Borrower; (2) the Lender in good faith deems itself insecure and its prospect of payment impaired; or (3) the occurrence of any material uninsured damage to or loss, theft or destruction of any of the collateral pledged as security for this Note

**Dissolution or Insolvency.** The dissolution or the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

**Lender's Rights Upon Default.** Upon the occurrence of an Event of Default then, or at any time thereafter during any such event, upon ten (10) days prior written notice to the undersigned, the outstanding principal balance hereunder, accrued interest, and any other amount due under the Note or any other agreement by and between Borrower and Lender, shall, at the option of the Holder hereof, immediately become due and payable and the total of such sums, including accrued interest (if permitted by law), shall bear interest from the time of exercise of such option until the same is paid at a rate equal to five percent (5%) above the Interest Rate. The failure of the Holder to exercise said option shall not preclude the Holder from exercising any other right which the Holder may be entitled to exercise upon the occurrence of any such event, and the failure to exercise the option herein granted or any other right which the Holder may be entitled to exercise shall not constitute a waiver of the right to exercise said option or any other right upon the subsequent occurrence of any such event.

**Security.** Borrower has pledged certain collateral, including real estate located in Stone County, Missouri, and accounts receivable of Borrower relating to customers of the Foxfire Utility system as security for the obligations of Borrower hereunder. Borrower and any guarantor hereby acknowledge and agree that all other collateral which Lender may at any time acquire from any other sources in connection with any obligations of Borrower to Lender shall constitute collateral or cross-collateral for all obligations, without apportionment or designation as to particular obligations, of Borrower or any guarantor owed to Lender, and Lender shall have the right, in its sole discretion, to determine the order in which Lender's rights in or remedies against all such collateral are to be exercised and which types of the collateral or which portions of the collateral are to be proceeded against and the order of application of proceeds of the collateral as against particular obligations of Borrower.

**Attorney's Fees.** Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender the amount Lender pays in connection with the collection. This includes, subject to any limits under applicable law, Lender's attorney's fees and Lender's legal expenses whether or not a lawsuit is filed, including attorney's fees and expenses for bankruptcy proceedings and appeals. If not prohibited by applicable law, Borrower will also pay any court

costs, in addition to all other sums provided by law.

**Governing Law.** This Note will be governed by, construed and enforced in accordance with federal law and the laws of the State of Missouri. This Note has been accepted by Lender in the state of Missouri.

**Choice of Venue.** If there is a lawsuit, Borrower agrees that the exclusive jurisdiction for same shall be in the Circuit Court of Greene County, Missouri, and Borrower hereby waives any objection to jurisdiction and venue in said Court.

**Interest Rate.** Notwithstanding anything contained herein to the contrary, in no event shall interest accrue under this Note or any other agreement now or hereafter given in connection with or as security for this Note at a rate in excess of the highest applicable rate permitted by law and if interest (including any charge or fee held to be interest by a court of competent jurisdiction) in excess thereof shall be due or paid, any such excess shall constitute a payment and be applied to the principal hereof.

**Successor Interests.** The terms of this Note shall be binding upon Borrower, and upon Borrower's successors and assigns, and shall inure to the benefit of the Lender and its personal representatives, trustees, successors and assigns.

**Assignment.** The Holder of this Note shall have the right to make partial assignments, full assignments and/or endorsements of this Note without the prior written consent of the undersigned.

**General Provisions.** Presentment and demand for payment, notice of non-payment, protest, protest of non-payment, notice of dishonor or default and any and all lack of diligence and suit are hereby waived by all parties liable hereon. All endorsers, guarantors, sureties or other persons who may now or hereafter be liable for the payment of this Note, by endorsing, guaranteeing or assuming this Note, consent to all of the terms and conditions herein contained and agree that this Note may be modified, extended or renewed in whole or in part, without notice, including (a) the impairment, substitution, exchange or release at any time or times of all or any part of any security or collateral security now or hereafter furnished, (b) the release of, or the impairment of the right of recourse against, the maker or any endorser, guarantor, surety or any other person now or hereafter liable hereon, (c) the substitution of renewal or extension notes for this Note, (d) the modification of any terms of this Note or any other agreement now or hereafter given in connection with or as security for this Note, and (e) any changes in the rate of interest hereon or the imposition of any fees whether authorized under this Note or any other agreement now or hereafter given in connection with or as security for this Note.

**Waiver of Jury Trial.** **BORROWER AND LENDER HEREBY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING WHICH PERTAINS DIRECTLY OR INDIRECTLY TO THIS LOAN, THE SECURED OBLIGATIONS, OR ANY**

**ALLEGED TORTUOUS CONDUCT OR BREACH OF CONTRACT OR DUTY BY BORROWER OR LENDER OR WHICH, IN ANY WAY, DIRECTLY OR INDIRECTLY, ARISES OUT OF OR RELATES TO THE RELATIONSHIP BETWEEN BORROWER AND LENDER, REGARDLESS OR WHETHER SUCH ACTION OR PROCEEDING IS ASSERTED IN THE FORM OF A DIRECT CLAIM, COUNTERCLAIM, CROSS-CLAIM OR OTHERWISE.**

**Counterpart Execution.** This Note may be executed in multiple or separate counterparts, each of which shall constitute an original, and together all of such counterparts shall constitute a single binding instrument. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

**Integration.** This Note and the other Loan Documents constitute the sole agreement of the parties with respect to the transaction contemplated hereby and supersede all oral negotiations and prior writings with respect thereto.

**No Implied Waiver.** Lender shall not be deemed to have modified or waived any of its rights or remedies hereunder unless such modifications or waiver is in writing and signed by Lender, and then only to the extent specifically set forth therein. A waiver in one event shall not be construed as continuing or as a waiver of or bar to such right or remedy in a subsequent event. After any acceleration of, or the entry of any judgment on, this Note, the acceptance by Lender of any payments by or on behalf of Borrower on account of the indebtedness evidenced by this Note shall not cure or be deemed to cure any Default or reinstate or be deemed to reinstate the terms of this Note absent an express written agreement duly executed by Lender and Borrower.

**Waiver.** Borrower, jointly and severally, waives demand, presentment, protest, notice of dishonor, notice of protest and diligence of collection of this Note. Borrower consents to any and all extensions of time, renewals, waivers, or modifications that may be granted by Lender with respect to the payment or other provisions of this Note, and to the release of any collateral, with or without substitution. Borrower agrees that Borrower, endorsers, guarantors and sureties may be added or released without notice and without affecting Borrower's liability hereunder. The liability of Borrower shall not be affected by the failure of Lender to perfect or otherwise obtain or maintain the priority or validity of any security interest in any collateral. The liability of Borrower shall be absolute and unconditional and without regard to the liability of any other party hereto.

**Partial Invalidity.** The invalidity or unenforceability of any one or more provisions of this Note shall not render any other provisions invalid or unenforceable. In lieu of any invalid or unenforceable provision, there shall be added automatically a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible.

**Binding Effect.** The covenants, conditions, waivers, releases, and agreements contained in this

Note shall bind, and the benefits thereof shall inure to, the parties hereto and their respective heirs, executors, administrators, successors and assigns; provided, however, that this Note cannot be assigned by Borrower without the prior written consent of Lender, and any such assignment or attempted assignment by Borrower without consent shall be void and of no effect with respect to Lender.

**Modifications.** This Note may not be supplemented, extended, modified or terminated except by an agreement in writing signed by the party against whom enforcement of any such waiver, change, modification or discharge is sought.

**Severability.** If any provision of this Note or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Note and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

**Notices.** Any notice required to be given or furnished under this Note shall be in writing and shall be deemed to have been duly served, given or delivered:

if to Lender, when actually received and signed for by the particular division or person specified herein after having been sent certified United States mail (return receipt requested) and addressed as specified herein; or

if to Borrower, either (1) when delivered at the address appearing on the books and records of Lender as that of Borrower or (2) when deposited in the United States mail, postage prepaid (or sent certified United States mail) and addressed to Borrower at the address appearing on the books and records of Lender as that of Borrower or (3) when sent by fax machine to the fax number of Borrower appearing on the books and records of Lender as that of Borrower.

If to Borrower, at the address provided on page 1 of this Note

If to Lender, at the address provided on page 1 of this Note

With a copy to:           Christiaan D. Horton, Esq.  
                                  Carnahan, Evans, Cantwell & Brown, P.C.  
                                  2805 S. Ingram Mill Rd.  
                                  Springfield, MO 65804

Either party may change the address to which such notice is to be delivered or mailed, by furnishing written notice of such change to the other party in the manner authorized above, but no such notice of change shall be effective unless and until received by such other party.

**ORAL OR UNEXECUTED AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR FORBEAR FROM ENFORCING REPAYMENT OF A DEBT INCLUDING PROMISES TO EXTEND OR RENEW SUCH DEBT ARE NOT ENFORCEABLE, REGARDLESS OF LEGAL THEORY UPON WHICH IT IS BASED THAT IS IN ANY WAY RELATED TO THE CREDIT AGREEMENT. TO PROTECT YOU (GUARANTOR) AND US (LENDER) FROM MISUNDERSTANDING OR DISAPPOINTMENT. ANY AGREEMENTS WE REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS WRITING, WHICH IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN US, EXCEPT AS WE MAY LATER AGREE IN WRITING TO MODIFY IT.**

**OZARKS CLEAN WATER COMPANY  
A Missouri non-profit corporation**

By: \_\_\_\_\_

Its: President

STATE OF MISSOURI            )  
  ) ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, a Notary Public, personally appeared \_\_\_\_\_ to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he is the President of Ozarks Clean Water Company, that this Note was executed with and under the authority of the Board of Directors of the Company, and that the he executed this Note on behalf of the Company as the Company’s free act and deed.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed my official seal in the county and state aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

[Stamp]

# SECURITY AGREEMENT

Exhibit I

**THIS SECURITY AGREEMENT** (this “Agreement”), is made and entered into as of this \_\_\_\_ day of January, 2023, by and between **Ozarks Clean Water Company**, a Missouri non-profit Corporation, (“OCWC”), and **Garah F. Helms, Co-Trustee of the Rick and Janet Helms Revocable Trust dated 8/29/2014** (“Helms”).

## RECITALS:

**WHEREAS**, OCWC and Helms are parties to that certain Promissory Note dated of even date herewith (as amended, restated, supplemented or modified from time to time, the “Note;” unless otherwise defined herein, capitalized terms are used herein as defined in the Note); and

**WHEREAS**, in consideration of the extension of credit and other financial accommodations provided by Helms to OCWC as set forth in the Note, OCWC has agreed to secure its obligations under the Note as set forth herein.

**NOW, THEREFORE**, in consideration of the premises and the agreements, provisions and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Pledge.** As security for the payment and performance by OCWC of the Obligations (as defined herein), OCWC hereby grants, pledges and collaterally assigns to Helms a first priority security interest in all of OCWC’s right, title and interest in, to and under the following property, whether now owned by or owing to, or hereafter acquired by or arising in favor of OCWC, wherever located (collectively, the “Collateral”) that was purchased by OCWC from Foxfire Utility Company, Inc.:

(a) The Accounts Receivable of OCWC relating to the former customers of Foxfire Utility Company, Inc. (the “Pledged Interests”), and all distributions, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Pledged Interests, including, but not limited to, any subscription rights, new certificates (if any), new membership interest, additions, renewals, replacements, amendments or other rights that are now or hereafter declared, issued, paid or distributed or that are now or hereafter payable or distributable with respect to the Pledged Interests;

(b) Any subscription or other rights or options issued in connection with the Pledged Interests, and, if exercised by OCWC, all new membership interests or other securities so acquired by OCWC in connection with the Pledged Interests, which shall immediately be assigned and delivered to Helms and held under the terms of this Agreement in the same manner as the

Pledged Interests originally pledged hereunder; and

(c) Any and all proceeds and products, whether tangible or intangible, direct or indirect, of any of the foregoing.

2. **Security for Obligation.** This Agreement and the Collateral secure the prompt payment, in full when due, whether at stated maturity, or by acceleration or otherwise, and performance of the Note and the obligations thereunder (the “Obligation”).

3. **Delivery of Collateral.** If the Collateral is ever certificated, all certificates representing or evidencing the Collateral shall be delivered to and held by or on behalf of Helms pursuant hereto, and shall be accompanied by duly executed, undated instruments of transfer or assignment endorsed in blank, all in form and substance satisfactory to Helms. In addition, if applicable, Helms shall have the right at any time to exchange certificates or instruments representing or evidencing the Collateral for certificates or instruments of smaller or larger denominations.

4. **Representations and Warranties of OCWC.** OCWC hereby represents and warrants to Helms (which representations and warranties shall survive the execution and delivery of this Agreement and the making of the loans under the Note) as follows:

(a) OCWC has good and valid title to all of the Collateral, free and clear of all liens and other encumbrances (except for statutory liens and except as expressly contemplated by this Agreement), and OCWC hereby represents and warrants that she has the requisite authority to pledge, assign and transfer the Collateral to Helms as provided herein, and shall have such authority with respect to any substituted or replacement collateral. As of the date hereof, there are no existing options, warrants, calls or commitments of any character whatsoever relating to the Collateral presently owned by OCWC.

(b) The execution, delivery and performance by OCWC of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized. This Agreement has been duly executed and delivered by OCWC and constitutes the legal, valid and binding obligation of OCWC, enforceable against OCWC in accordance with its terms, subject to the effect of any applicable bankruptcy, moratorium, insolvency, reorganization or other similar law affecting the enforceability of creditors' rights generally and to the effect of general principles of equity which may limit the availability of equitable remedies (whether in a proceeding at law or in equity).

5. **Covenants of OCWC.** OCWC hereby covenants that, until such time as the obligations have been satisfied and paid in full, OCWC, at its own expense, shall perform and observe each and all of the following covenants:

(a) OCWC shall maintain and defend the title to the Collateral and the liens of Helms thereon and shall not create, incur or assume any pledge, security interest, encumbrance, lien or charge of any kind against the Collateral (including on any unpaid dividends or other distributions or payments with respect to the Collateral) or OCWC's rights as holder thereof (other than pursuant to this Agreement and the Note).

(b) OCWC, at its expense, shall promptly execute, acknowledge and deliver all such instruments and take all such action as Helms from time to time may reasonably request to perfect and protect the lien granted or purported to be granted hereby or to enable Helms to exercise and enforce his rights and remedies hereunder with respect to the Collateral.

6. **Remedies.** Upon the occurrence of an Event of Default, Helms may exercise any and all rights of a secured party under the Uniform Commercial Code, as adopted and in effect in the State of Missouri (the "UCC") (whether or not the UCC applies to the affected collateral), under applicable law, or as otherwise herein provided. Without limiting the foregoing, upon the occurrence of an Event of Default, Helms is authorized and empowered (a) to transfer and register in his name or in the name of his nominee the whole or any part of the Collateral; (b) to collect and receive all cash dividends and other distributions made thereon; and (c) exercise as to such Collateral all the rights, powers and remedies of an owner. All cash proceeds received by Helms in respect of any sale of, collection from, or other realization upon all or any part of the Collateral may, in the discretion of Helms, be held by Helms as collateral for, and/or then or at any time thereafter (after payment of any amounts payable to Helms) be applied in whole or in part by Helms against all or any part of the Obligations in accordance with the terms of the Note. Any surplus of such cash or cash proceeds held by Helms and remaining after payment in full of all the Obligations shall be paid over to OCWC or to whomsoever may be lawfully entitled to receive such surplus. OCWC agrees that she shall not interfere with any right, power and remedy of Helms provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, or the exercise or beginning of the exercise by Helms of any one or more of such rights, powers, or remedies hereunder.

7. **Expenses.** OCWC shall pay all reasonable and actual out-of-pocket costs and expenses (including reasonable attorneys' fees and allocated fees of in-house counsel) incurred by Helms in connection with the enforcement or protection of his rights in connection with this Agreement and the Note, including all out-of-pocket expenses and attorneys' fees incurred during any workout, restructuring or related negotiations. All amounts due under this Section shall be payable immediately after written demand therefor.

8. **Hold Harmless.** OCWC will hold harmless Helms, and his agents and representatives, from and against any and all claims, liabilities, investigations, losses, damages, actions, and demands by any party against Helms or any of them resulting from any breach or alleged breach by OCWC of any representation or warranty made hereunder, or otherwise arising

out of this Agreement, unless, with respect to any of the above, Helms is judicially determined to have acted with willful misconduct. This **Section 10** shall survive termination of this Agreement.

9. **Limitation on Helms's Duty in Respect of Collateral.** Helms shall use commercially reasonable care with respect to the Collateral in his possession or under his control. The powers conferred on Helms hereunder are solely to protect his interest in the Collateral and shall not impose any duty upon him to exercise any such powers. Except for the safe custody of any Collateral in his possession and the accounting for monies actually received by him hereunder, Helms shall have no duty as to any Collateral or any income thereon, as to ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Collateral, whether or not Helms has or is deemed to have knowledge of such matters, or as to the taking of any necessary steps to preserve rights against any parties or any other rights pertaining to any Collateral.

10. **Security Interest Absolute.** All rights of Helms and security interests hereunder, and all obligations of OCWC hereunder, shall be absolute and unconditional irrespective of: (a) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from this Agreement or the Note, including any increase in the Obligations; (b) any taking, exchange, release or non-perfection of any other collateral, or any taking, release or amendment or waiver of or consent to departure from any guaranty, for the Obligations; or (c) any manner of application of collateral, or proceeds thereof, to all or any of the Obligations, or any manner of sale or other disposition of any collateral for all or any part of the Obligations or any other assets of OCWC.

11. **Termination.** This Agreement shall continue in full force and effect until full performance and indefeasible payment in full in cash or good federal funds of all Obligations. Notwithstanding any other provision of this Agreement or the Note, no termination of this Agreement shall affect Helms's rights or any of the Obligations existing as of the effective date of such termination until the Obligations have been fully performed and indefeasibly paid in cash or good federal funds in full. The liens granted to Helms hereunder and any financing statements filed pursuant hereto and the rights and powers of Helms hereunder shall continue in full force and effect until all of the Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted) have been fully performed and indefeasibly paid in full in cash.

12. **Severability.** If any provision or any part of any provision of this Agreement shall be determined to be invalid, unenforceable or illegal for any reason, such provision shall be entirely severable from, and shall have no effect upon, the remainder of this Agreement. Any such invalid, unenforceable or illegal provision shall be subject to partial enforcement to the extent necessary to protect the intent of the parties hereto. The parties further agree to alter the balance of this Agreement in order to render the same valid and enforceable.

13. **No Waiver; Cumulative Remedies.** Neither OCWC nor Helms shall by any act, delay, omission or otherwise be deemed to have waived any of their rights or remedies hereunder, and no waiver shall be valid unless in writing, signed by such waiving party, and then only to the extent therein set forth. A waiver by OCWC or Helms, as the case may be, of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which OCWC or Helms would otherwise have on any future occasion. No failure to exercise, or any delay in exercising on the part of any OCWC or Helms, any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided are cumulative and may be exercised singly or concurrently, and are not exclusive of any rights or remedies provided under any agreement, including the Note, or by operation of law or otherwise.

14. **Waivers.** None of the terms or provisions of this Agreement may be waived, altered, modified or amended except by an instrument in writing, duly executed by the parties hereto. OCWC hereby waives: (a) notice of acceptance of this Agreement by Helms; (b) notice of presentment, protest and notice of dishonor or non-payment as to the Note or any other instrument that evidences the indebtedness, except to the extent provided herein or in the Note; and (c) notice of any acceleration of the Note, except as provided herein or in the Note. OCWC further waives any right OCWC may have, by statute or otherwise, to require that Helms seek recourse first against any other person, or to realize upon any collateral for the Obligations other than the Collateral, as a condition precedent to enforcing Helms's lien, security interest and security title under this Agreement in the Collateral.

15. **Notices.** All notices and other communications under this Agreement must be in writing. Such notices shall be deemed to have been given if delivered personally, sent by facsimile (with confirmation), mailed by certified mail, or delivered by an overnight delivery service (with confirmation) to the parties at the addresses or facsimile numbers (or at such other address or facsimile number as the Party may designate by like notice to the other Party) shown on the signature page hereof. Any notice or other communication shall be deemed given (a) on the date of personal delivery, (b) at the expiration of the third day after the date of deposit in the U.S. mail, or (c) on the date of confirmed delivery by facsimile or overnight delivery service.

16. **Entire Agreement; Amendment.** This Agreement, the Note, and the other documents and instruments referred to herein and therein and to be delivered pursuant hereto and thereto constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof. No amendment, modification or alteration of the terms or provisions of this Agreement shall be binding unless the same shall be in writing and duly executed by the parties hereto.



**Exhibit J – Form Deed of Trust****DEED OF TRUST**

1. **THE PARTIES.** This Deed of Trust is entered into and effective this \_\_\_\_ day of \_\_\_\_\_, 2023, by and among OZARKS CLEAN WATER COMPANY a Missouri non-profit corporation, (hereinafter “Grantor”), with a mailing address of \_\_\_\_\_, Christiaan D. Horton (hereinafter “Trustee”), with a mailing address of 2805 S. Ingram Mill Road, Springfield, Missouri 65804, and Garah F. Helms, Co-Trustee of the Rick and Janet Helms Revocable Trust dated 8/29/2014 (hereinafter collectively “Lender” or “Grantee”), with a mailing address of: \_\_\_\_\_.
  
2. **CONVEYANCE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined below) and Grantor's performance under this Deed of Trust, Grantor irrevocably grants, bargains, sells and conveys to Trustee, in trust for the benefit of Lender, with power of sale, all his interest in the property described below, generally consisting of approximately \_\_\_\_ acres, more or less, located in Stone County, Missouri and as more particularly described as:
 

**[See Exhibit A Legal Description]**

Together with all rights, easements, appurtenances, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as “Property”).
  
3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Deed of Trust at any one time shall not exceed One Million Two Hundred Five Thousand Dollars U.S. (\$1,205,000.00). This limitation of amount does not include interest and other fees and charges validly made pursuant to this Deed of Trust. Also, this limitation does not apply to advances made under the terms of this Deed of Trust to protect Lender's security and to perform any of the covenants contained in this Deed of Trust.
  
4. **DEBT SECURED.** The term “Secured Debt” as used herein shall mean:
  - A. Debt incurred under the terms of that certain Promissory Note of even date herewith in the principal amount of One Million Two Hundred Forty-Five Thousand Dollars U.S. (\$1,245,400.00) (the terms of the Promissory Note being expressly incorporated by reference herein).
  
  - B. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise, protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Deed of Trust.
  
5. **ASSURANCE OF PAYMENT.** Grantor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt and this Deed of Trust. Once full payment is made of all Secured Debt, this Deed of Trust shall be immediately released.
  
6. **WARRANTY OF TITLE and NO MERGER.** Grantor warrants that Grantor is or will be lawfully seized of the estate conveyed by this Deed of Trust to the extent that Foxfire Utility Company, Inc., conveyed marketable title to Grantor, and has the right to irrevocably grant, convey and sell the Property to Trustee, in trust, with power of sale. Grantor also warrants that the Property is unencumbered, except for encumbrances of record as of the date of this instrument.

7. **PRIOR SECURITY INTERESTS.** Grantor warrants and affirms that there is no other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property prior to this Deed of Trust.
8. **DEFENSE OF TITLE.** Grantor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Grantor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Grantor's payment. Grantor will defend title to the Property against any claims that would impair the lien of this Deed of Trust. Grantor agrees to assign to lender, as requested by Lender, any rights, claims or defenses Grantor may have against parties who supply labor or materials to maintain or improve the Property.
9. **DUE ON SALE OR ENCUMBRANCE.** Lender, may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien or encumbrance, or the transfer or sale of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Deed of Trust is released.
10. **TRANSFER OF AN INTEREST IN THE GRANTOR.** If the Grantor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if:
  - A. A beneficial interest in Grantor is sold or transferred,
  - B. There is a change in either the identity or number of members of a partnership or similar entity,
  - C. There is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity.However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Security Instrument.
11. **ENTITY WARRANTIES AND REPRESENTATIONS.** If Grantor is an entity other than a natural person (such as a corporation or other organization), Grantor makes to Lender the following warranties and representations which shall continue as long as the Secured Debt remains outstanding:
  - A. Grantor is duly organized and validly existing in the Grantor's state of incorporation or organization. Grantor is in good standing in all states in which Grantor transacts business. Grantor has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Grantor operates.
  - B. The execution, delivery and performance of this Security Instrument by Grantor and the obligation evidenced by the Secured Debt are within the power of Grantor, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.
  - C. Other than previously disclosed in writing to Lender, Grantor has not changed its name within the last ten (10) years and has not used any other trade or fictitious name. Without Lender's prior written consent, Grantor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Secured Debt is satisfied.
12. **PROPERTY CONDITION.** Grantor will keep the Property in good condition and make all repairs that are reasonably necessary. Grantor shall not commit or allow any waste, impairment, or deterioration of the Property. Grantor will keep the Property free of noxious weeds and grasses. Grantor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Grantor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Grantor will notify Lender of all demands, proceedings, claims, and actions against Grantor, and of any loss or damage to the Property.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Grantor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from, any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Deed of Trust and Grantor shall not partition or subdivide the Property without Lender's prior written consent.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender shall give Grantor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property shall be entirely for Lender's benefit and Grantor will in no way rely on Lender's inspection.

13. **AUTHORITY TO PERFORM.** If Grantor fails to perform any duty or any of the covenants contained in this Deed of Trust, Lender may, without notice, perform or cause them to be performed. Grantor appoints Lender as attorney in fact to sign Grantor's name or pay any amount necessary for performance. Lender's right to perform for Grantor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Deed of Trust. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.
14. **ASSIGNMENT OF LEASES AND RENTS.** Grantor irrevocably assigns, grants, bargains and conveys to Lender as additional security all the right, title and interest in the following:
- A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to, any extensions, renewals, modifications or replacements (Leases).
  - B. Rents, issues and profits, including but not limited to, security deposits, minimum rents, percentage rents, additional rents, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Grantor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement.

Grantor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Grantor may collect, receive, enjoy and use the Rents so long as Grantor is not in default. Grantor will not collect in advance any Rents due in future lease periods, unless Grantor first obtains Lender's written consent. Upon default, Grantor will receive any Rents in trust for Lender and Grantor will not commingle the Rents with any other funds. When Lender so directs, Grantor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses. Grantor agrees that this Deed of Trust is immediately effective between Grantor and Lender. This Deed of Trust will remain effective during any statutory redemption period until the Secured Debts are satisfied. Unless otherwise prohibited or prescribed by state law, Grantor agrees that Lender may take actual possession of the Property without the necessity of commencing any legal action or proceeding. Grantor agrees that actual possession of the Property is deemed to occur when Lender notifies Grantor of Grantor's default and demands that Grantor and Grantor's tenants pay all Rents due or to become due directly to Lender. Immediately after Lender gives Grantor the notice of default, Grantor agrees that either Lender or Grantor may immediately notify the tenants and demand that all future Rents be paid directly to Lender.

As long as this Assignment is in effect, Grantor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Grantor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Grantor or any party to the Lease defaults or fails to observe any applicable law, Grantor will promptly notify Lender. If Grantor neglects or refuses to enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance.

Grantor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Grantor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect, or preserve the Property, except for

losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Grantor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

15. **DEFAULT.** Grantor will be in default if any of the following occur:
- A. Any party obligated on the Secured Debt fails to make payment when due;
  - B. A breach, of any term or covenant in this Deed of Trust or any other document executed for the purpose of creating, securing or guarantying the Secured Debt;
  - C. The making or furnishing of any verbal or written representation, statement or warranty to Lender that, is false or incorrect in any material respect by Grantor or any person or entity obligated on the Secured Debt;
  - D. The death, dissolution, or insolvency of, appointment of a receiver for, or application of any debtor relief law to Grantor or any other person or entity obligated on the Secured Debt;
  - E. A good faith belief by Lender at any time that Lender is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment is impaired or the value of the Property is impaired; or
  - F. A material adverse change in Grantor's business including ownership, management, and financial conditions, which Lender in its opinion believes impairs the value of the Property or repayment of the Secured Debt.

16. **REMEDIES ON DEFAULT.** In some instances, federal and state law will require Lender to provide Grantor with notice of the right to cure, or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Deed of Trust in a manner provided by law if Grantor is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the terms of the Secured Debt, this Deed of Trust and any related documents, including without limitation, the power to sell the Property. If there is a default, Trustee shall, in addition to any other permitted remedy, at the request of the Lender, advertise and sell the Property as a whole or in separate parcels at public auction to the highest bidder for cash and convey absolute title free and clear of all right, title and interest of Grantor at such time and place as Trustee designates. Trustee shall give notice of sale including the time, terms and place of sale and a description of the Property to be sold, as required by the applicable law in effect at the time of the proposed sale. Upon sale of the Property and to the extent not prohibited by law, Trustee shall make and deliver a deed to the Property sold which conveys absolute title to the purchaser, and after first paying all fees, charges and costs, shall pay to Lender all moneys advanced for repairs, taxes, insurance, liens, assessments and prior encumbrances and interest thereon, and the principal and interest on the Secured Debt, paying the surplus, if any, to Grantor. Lender may purchase the Property. The recitals in any deed of conveyance shall be prima facie evidence of the facts set forth therein.

All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy on Grantor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

17. **EXPENSES AND COLLECTION COSTS.** Except when prohibited by law, Grantor agrees to pay all of Lender's expenses if Grantor breaches any covenant in this Deed of Trust. Grantor will also pay on demand any amount incurred by Lender for insuring, inspecting, preserving or otherwise protecting the Property and Lender's security interest. These expenses will bear interest from the date of the payment until paid in full at the highest interest rate in effect as provided in the terms of the Secured Debt. Grantor agrees to pay all costs and expenses incurred by Lender in collecting, enforcing or protecting Lender's rights and remedies under this Deed of Trust. This amount may include, but is not limited to, attorneys' fees, court costs, and other legal expenses. This Deed of Trust shall remain in effect until released. Grantor agrees to pay for any recordation costs of such release.
18. **CONDEMNATION.** Grantor will give Lender prompt notice of any pending or threatened action, by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Grantor authorizes Lender to intervene in Grantor's name in any of the above described actions or claims. Grantor assigns to Lender the proceeds of any award or claim for damages

connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Deed of Trust. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

19. **INSURANCE.** Grantor agrees to maintain insurance as follows:
- A. Grantor shall keep the Property insured against loss by fire, flood, theft and other hazards and risks reasonably associated with the Property due to its type and location. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding two sentences can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Grantor subject to Lender's approval, which shall not be unreasonably withheld. If Grantor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Deed of Trust.  
All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "loss payee clause." Grantor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Grantor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Grantor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Grantor.  
Unless otherwise agreed in writing, all insurance proceeds shall be applied to restoration or repair of the Property or to the Secured Debt, whether or not then due, at Lender's option. Any application of proceeds to principal shall not extend or postpone the due date of scheduled payment nor change the amount of any payments. Any excess will be paid to the Grantor. If the Property is acquired by Lender, Grantor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.
  - B. Grantor agrees to maintain comprehensive general liability insurance naming Lender as an additional insured in an amount acceptable to Lender, insuring against claims arising from any accident or occurrence in or on the Property.
20. **ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Grantor will not be required to pay to Lender funds for taxes and insurance in escrow.
21. **APPLICABLE LAW; SEVERABILITY; INTERPRETATION.** This Security Instrument is governed by §443.055 of the Revised Statutes of Missouri and the laws of the State of Missouri, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.
22. **SUCCESSOR TRUSTEE.** Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee without any other formality than the designation in writing. The successor trustee, without conveyance of the Property, shall succeed to all the title, power and duties conferred upon Trustee by this Deed of Trust, and applicable law.
23. **LEASE OF THE PROPERTY.** Trustee hereby leases the Property to Grantor until this Security Instrument is either satisfied and released or until there is a default under the provisions of this Security Instrument. This Property is leased upon the following terms and conditions: Grantor, and every person claiming an interest in or possessing the property or any part of it, shall pay rent during the term of the lease of one cent per month, payable on demand, and without notice or demand shall and will surrender peaceable possession of the Property to Trustee upon default or to the purchaser of the Property at the foreclosure sale.
24. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Deed of Trust, or to any other address designated in writing. Notice to one grantor will be deemed to be notice to all grantors.

