

**THIRD AMENDED PARTICIPATION AGREEMENT
FOR THE
MISTY LAKE DAM REPAIR PROJECT**

This THIRD AMENDED PARTICIPATION AGREEMENT FOR THE MISTY LAKE DAM REPAIR PROJECT (the “Agreement” or “Amend. 3” herein) is made on or as of the _____ day of June, 2025, by and between THE CITY OF NORMAN, an Oklahoma Municipal Corporation (the “City”); NORMAN MUNICIPAL AUTHORITY, an Oklahoma Public Trust (“NMA”); SUMMIT LAKES PROPERTY OWNERS ASSOCIATION (“Summit Lakes POA”); SUMMIT LAKE VILLAS PROPERTY OWNERS ASSOCIATION (“Summit Lake Villas POA”), and SUMMIT LAKES, L.L.C., as an Oklahoma limited liability company (“Developer”) which are collectively herein referred to as “Parties.” Further, the City and NMA may further be referred collectively to herein as the “City Parties” and Summit Lakes POA, Summit Lake Villas POA and the Developer may be referred collectively to herein as the “Private Parties.”

WITNESSETH:

WHEREAS, the Developer has Preliminary Platted a subdivision in the City of Norman located between 24th Avenue SE and 36th Avenue SE and south of Alameda Street known as Summit Lakes Addition, and Summit Lakes Villas Addition; and

WHEREAS, over the years Summit Lakes Addition has developed with ten (10) final plats that includes 542 platted lots with another 62 lots platted in Section 11 of Summit Lakes Addition and 66 platted lots in Summit Lakes Villas Addition; and

WHEREAS, there are seven lakes within the Summit Lakes Addition that function as a storm water drainage system: Misty Lake, Heron Lake, Drake Lake, Hidden Lake, Willow Lake, StarCrest Lake, and Secret Lake. Part of Misty Lake is also contained within the Summit Lake Villas Addition. All such improvements and amenities are currently owned, managed, maintained, and controlled by one or both Summit Lakes POA and Summit Lake Villas POA; and

WHEREAS, on or about March 16, 2011 the Summit Lakes POA was notified by the Oklahoma Water Resource Board (“OWRB”) that the dam associated with Misty Lake was being reclassified as a “high hazard” dam due to the potential downstream impacts on Alameda Street and nearby homes in event of a failure of the dam; and

WHEREAS, on March 20, 2015, the OWRB issued an Emergency Order and set an administrative hearing on April 14, 2015 due to the dangerous condition of the dam; and

WHEREAS, subsequent to that hearing, the OWRB issued a Consent Order on July 8, 2015 requiring the Summit Lakes POA to lower the lake level three feet below the emergency spillway and maintain that level until the dam was repaired; and

WHEREAS, following issuance of the Board's Emergency Order and Consent Order, the lake level at Misty Lake Dam was lowered and has been maintained at a minimum of three feet below the top of the emergency spillway; and

WHEREAS, the Consent Order also required the Summit Lakes POA to prepare and submit engineering plans and to make repairs as specified in the engineering plans; and

WHEREAS, engineering plans were submitted, and an EAP Level I was implemented as set out in the aforementioned orders. The submitted engineering plans, which were accepted and approved by the Board, included a subsurface drain system designed to address seepage from the dam; and

WHEREAS, upon completion of the engineering plans, the cost of necessary repairs was originally estimated to be within the range of \$595,000 to \$700,000; and

WHEREAS, the Parties entered into a Participation Agreement ("**Contract K-1617-137**"), on June 27, 2017, whereby the POAs and Developer intended to secure financing and to be repaid with private pro-rata POA lot assessments collected by the City through utility billing as set forth therein, in order to bring the Misty Lake dam up to the standard set forth in the engineering plans approved and accepted by the OWRB and whereby the City was to administer the improvement project as a Public Construction project through the Oklahoma Competitive Bidding Act; and

WHEREAS, the Participation Agreement provided that City would not let the improvement project until the POAs, in accordance with their respective covenants, approved the transfer of ownership of Misty Lake Dam to the City and approved an assessment in an amount not to exceed the smaller of \$547,470 or the revised engineering estimate less the agreed upon Developer's contributions; and

WHEREAS, the POAs, in accordance with their respective covenants, approved the transfer of ownership of Misty Lake Dam to the City and approved the assessments in the required amounts; and

WHEREAS, thereafter the POAs secured necessary funding for the project and the Parties entered into a First Amendment to the Participation Agreement ("**Contract K-1617-137 Amend. 1**"), which altered and supplemented terms regarding the delivery of the funds to the City for bid, addressed matters of potential project overages, and specified that the City would pursue the project with a Construction Manager at Risk ("CMaR") through a selection process involving all Parties; and

WHEREAS, the City put out Request for Qualifications ("RFQ") 2021-11 on July 1, 2021, and ultimately retained Downey Contracting, L.L.C. as CMaR in compliance with the selection process outlined in Contract K-1617-137 Amend. 1; and

WHEREAS, in accordance with Amend. 1, the private parties delivered the agreed funds, ultimately totaling SIX HUNDRED THREE THOUSAND FOUR HUNDRED SEVENTY EIGHT AND 95/100 DOLLARS (\$603,478.95), to the City to utilize with the CMAr project;

WHEREAS, pursuant to Contract K-1617-137 and Downey's CMAr Contract with the City, Contract K-2122-67 ("**Downey Contract**"), Downey publicly bid the Misty Lake Dam Repair project on December 9, 2021 and received bids which, when combined with Downey's CMAr costs, was estimated to create a total construction budget in excess of \$1,000,000.00, which was well beyond the Parties budget expectations for the Project; and

WHEREAS, the Parties determined that, due to unanticipated market conditions and other circumstances beyond their expectation or control, that the Participation, the Project could not proceed as the CMAr project addressed in Amend. 1; thus, the parties paid Downey for its pre-construction services totaling TEN THOUSAND DOLLARS (\$10,000.00), leaving a balance of FIVE HUNDRED NINETY-THREE THOUSAND FOUR HUNDRED SEVENTY-EIGHT AND 95/100 DOLLARS (\$593,478.95) in funds (hereinafter "Local Match Funds"), and moved forward considering alternative options for construction; and

WHEREAS, one such option considered for proceeding would be to amend this Participation Agreement to permit the project to proceed as a private construction project, subject to certain controls by the City, in order to best fulfill the original purpose of K-1617-137 and K-1617-137 Amend. 1. The parties expended considerable efforts to pursue this option, at the private parties' urging; and

WHEREAS, in March, 2024, the OWRB approached the parties regarding an opportunity for federal matching funding of 65% of total project costs were the City to apply for and be awarded a High Hazard Potential Dam Grant ("HHPD Grant"), and take the project forward as a publicly-bid contract, utilizing the Local Match Funds to satisfy the 35% local match for any funds ultimately awarded the Project by the HHPD Grant; and

WHEREAS, on March 26, 2024, the parties approved a Combined Second Amended Participation Agreement for the Misty Lake Dam Repair Project and Memorandum of Understanding for Future Agreements, and the City of Norman approved Resolution No. R-2324-134 authorizing City Staff to pursue the HHPD Grant opportunity; and

WHEREAS, City Stormwater Master Plan recommends public and private participation in order to ensure that necessary maintenance to key stormwater infrastructure occurs, especially in cases where property owners' associations are unable to perform such functions; and

WHEREAS, City of Norman is responsible for both of the two other high hazard dams located in the City of Norman by virtue of ownership (Hall Park) or lease obligation (Sutton Lake); and

WHEREAS, repair and maintenance of the Summit Lakes Addition storm water drainage system continues to be recognized as important to adequately address storm water retention and runoff concerns that could impact citizens of Norman who live in Summit Lakes Addition, as well as other citizens of Norman who may be impacted by a failure of the Misty Lake dam which is classified by the OWRB as a high hazard dam; and

WHEREAS, assistance from NMA to the POAs to adequately address the Summit Lakes and Summit Villas drainage systems is necessary to protect the health, safety, and welfare of its citizens and is in the best interest of the City of Norman; and

WHEREAS, the OWRB entered an updated Consent Order, No. OK12578, on September 19, 2023 (“2023 OWRB Consent Order,” attached as **EXHIBIT A**), which recognized and is consistent with the parties’ plans and agreements herein, and further entered its First Amendment of Second Consent Order on December, 17, 2024 (“2024 OWRB Consent Order,” attached as **EXHIBIT B**), which among other things adjusted compliance timelines in order to allow the POAs to pursue the HHPD Grant opportunity; and, at its October 17, 2023 meeting, the OWRB most recently renewed its approval of the construction plans for the Misty Lake Dam, as attached hereto as **EXHIBIT C** (the “Approved Construction Plans”); and

WHEREAS, the parties were formally notified by OWRB that an HHPD Grant had been awarded for the Misty Lake Dam Repair Project on June 5, 2025; in order to accept the grant as a Subrecipient of ORWB, the City of Norman must and has approved on June 24, 2025 a Rehabilitation of High Hazard Potential Dams Grant Agreement, Contract K-2425-137 (“HHPD Grant Agreement,” attached hereto as **EXHIBIT D**);

WHEREAS, the City remains obligated to accept permanent ownership and maintenance of the Misty Lake Dam following completion of the Misty Lake Dam Repair Project upon certification that the dam repairs have been made in accordance with sound industry standards as provided in the Approved Construction Plans and any changes thereto hereafter approved by the parties as set forth further herein; and

WHEREAS, transfer of ownership to the City shall be accomplished through means of first completing a lot line adjustment to reconfigure and identify a lot to ultimately be conveyed to the City by Special Warranty Deed in the form attached to this Amend. 3 as **EXHIBIT E**;

WHEREAS, this Amend. 3 also sets forth the proposed final terms for the parties’ implementation of the Misty Lake Dam Repair Project, in compliance with previous agreements and with the HHPD Grant Agreement, so that the awarded federal funding may be utilized, along with Local Match Funds, in order to proceed with bidding and construction of the Misty Lake Dam Repair Project;

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt of which are hereby acknowledged, and as reflected in the attached exhibits, the parties hereby enter into this Amend. 3, and agree as follows:

Participation Agreement Amend. 3

I. CONTINUED OBLIGATIONS RELATED TO THE DAM REPAIR PROJECT

SECTION 1.1. USE OF FUNDS FOR HHPD GRANT AGREEMENT AND PROJECT. The City is currently in possession of funds delivered by the Private Parties totaling FIVE HUNDRED NINETY-THREE THOUSAND FOUR HUNDRED SEVENTY-EIGHT AND 95/100 DOLLARS (**\$593,478.95**).

The City of Norman has been awarded an HHPD Grant totaling \$1.15 Million, consisting of 65% of eligible activity costs or \$747,500.00 (whichever is less) and a minimum local match of \$402,500.00. The Parties agree and acknowledge that the City and NMA shall retain these funds and pledge them in satisfaction of the local match obligations of the HHPD Grant Agreement.

Further, the POAs and Developer hereby pledge and commit all the funds in excess of the minimum local match required for the HHPD Grant Agreement (this excess totaling **ONE HUNDRED NINETY THOUSAND NINE HUNDRED SEVENTY-EIGHT and 95/100 (\$190,978.95)** (hereinafter "Excess Funds")) to be held by the City and NMA, and to be utilized as necessary to complete the Misty Lake Dam Repair Project in accordance with sound industry standards as provided in the Approved Construction Plans and any changes thereto hereafter approved by the parties as set forth further herein.

SECTION 1.2 PROJECT BIDDING.

(a) Public Competitive Bidding. To the extent required by law and the HHPD Grant Agreement, any and all contracts or portions thereof made pursuant to this Agreement shall be solicited in compliance with the Oklahoma Public Competitive Bidding Act of 1974, 61 O.S. §101, *et seq.*, as amended, including but not limited to any applicable bonding requirements, as well as any and all federal and other laws made applicable by virtue of the HHPD Grant Agreement.

(b) Bidding Process and HHPD Grant Compliance. Bidding documents shall be generated by the City of Norman, and the generation shall proceed as soon as is practicable following approval of this Amend. 3 and in compliance with the HHPD Grant Agreement. The City of Norman shall enter into and administer contracts relating to the Misty Lake Dam Repair Project in the same manner as other federally-funded and publicly-bid projects, and shall be responsible for compliance with the HHPD Grant Agreement. Nothing in this Amend. 3, nor any other provision of this K-1617-137 shall be construed to prevent the City's compliance with applicable state and federal laws and provisions. Further, the Private Parties shall cooperate in providing access, information, and approvals, if any, during the bidding and construction processes pursuant to this Agreement and HHPD Grant Agreement.

(c) City and NMA Bidding and Awarding Authority; Overages Identified Following Receipt of Bids. In the event that bids received for the Misty Lake Dam Project exceed the funded grant total of \$1.15 and the Excess Funds combined, or where project overages for necessary work is later identified, the Private Parties agree to expeditiously and in good faith engage in discussions to participate in and determine the funding of said

overages, and the Parties shall enter into such further agreements and/or delivery of funds as shall allow award of a contract for construction of the Project to proceed in a timely fashion. During said process the City shall be forthcoming in supplying any information reasonably necessary for the Private Parties' consideration in this regard.

This Agreement shall not be construed to place responsibility upon the City or NMA to solely identify or supply funding sources for overages identified upon receipt of bids, and the parties acknowledge the City and NMA's retained authority to reject any and all bids, or to select a contractor upon receipt of bids, in compliance with applicable laws and Agreements, including this Agreement and the HHPD Grant Agreement.

Finally, it is expressly understood and acknowledged by all Parties that the City's efforts to publicly bid and contract for the construction of the Misty Lake Dam Repair Project is entirely contingent upon the availability and receipt of the HHPD Grant funds, and that the continued availability, and assurance of availability, of those funds is a condition precedent to the City's obligation to proceed with bidding, contracting and construction pursuant to this Agreement, including all amendments thereto.

SECTION 1.3. RETURN OF FUNDS. In the event that the Parties do not ultimately utilize HHPD Grant funds to construct the Project, including a situation where the City has rejected all bids, the City agrees to release these funds at the direction of each Party, including to an identified designee, and pursuant to further agreement of the Parties, if any, in amounts set forth as follows:

(a) **Summit Lakes POA:** FOUR HUNDRED FORTY-FOUR THOUSAND FIFTY-THREE AND 37/100 DOLLARS (\$444,053.37), based upon the following:

- i. Return of its \$438,299.47 pro-rata construction cost contribution (*see herein* Section 1.1(a));
- ii. Return of \$2,204.74 from funds left over for engineering work performed by Parkhill (*see herein* Section 1.1(b)); and
- iii. Return of its \$6,882.50 Phase I material cost contribution (*see herein* Section 1.1(c)); and
- iv. Payment by Summit Lakes POA of \$3,333.34 toward the total owed by the City to Downey for CMAR services already provided.

(b) **Summit Lake Villas POA:** FIFTY-NINE THOUSAND ONE HUNDRED TWENTY-SIX AND 17/100 DOLLARS (\$59,126.17), based upon the following:

- i. Return of its \$53,372.26 pro-rata construction cost contribution (*see herein* Section 1.1(a));

- ii. Return of \$2,204.74 from funds left over for engineering work performed by Parkhill (*see herein* Section 1.1(b)); and
 - iii. Return of its \$6,882.50 Phase I material cost contribution (*see herein* Section 1.1(c)); and
 - iv. Payment by Summit Lake Villas POA of \$3,333.33 toward the total owed by the City to Downey for CMAR services already provided.
- (c) **Developer:** NINETY THOUSAND TWO HUNDRED NINETY-NINE AND 41/100 DOLLARS (\$90,299.41), based upon the following:
- i. Return of its \$55,798.27 pro-rata construction cost contribution (*see herein* Section 1.1(a));
 - ii. Return of \$4,069.47 from funds left over for engineering work performed by Parkhill (*see herein* Section 1.1(b));
 - iii. Return of its \$13,765.00 Phase I material cost contribution (*see herein* Section 1.1(c));
 - iv. Return of its \$20,000.00 lump sum contribution (*see herein* Section 1.1(d) herein); and
 - v. Payment by Developer of \$3,333.33 toward the total owed

In the event that only part of the funds in the City's possession are needed to complete construction of the Project, any surplus funds will be returned to the Private Parties pursuant to further agreement of the Parties and in a manner consistent with this Participation Agreement, all amendments and MOUs.

SECTION 1.4. POA ASSESSMENTS AND COLLECTION OF COSTS.

(a) **Collection of POA Assessments.** The POAs have sought and gained the approval of the property owners, in accordance with the procedures outlined in their respective covenants, for all such assessments based on each POA's pro-rata share of the actual final construction cost to be levied against each lot and paid over a ten (10) year period of an amount not to exceed the estimated cost of the repairs. The amount of the assessments shall be reduced by any amounts pre-paid by the owner(s) of each lot.

Upon final completion of the project improvements, the actual final costs of the project shall be verified by the POAs, including determination of such costs and amounts already paid by the owner(s) of each lot. Upon request by the POAs, or either of them, NMA/City will collect unpaid assessments levied against platted lots with City of Norman utility accounts through utility bills on a monthly basis with a \$1.00/month administrative charge. Any collections efforts by NMA/City will be only as directed, and upon such amounts as directed and determined by the POAs, which information may be verified by a

representative of the POA, as identified thereby. If necessary, upon completion of construction of the Project, the structure for assessment calculation and collection shall be set forth in addendums or further exhibits to this Agreement.

Any assessments that are subject to private financing may be remitted by the City directly to a Lender or other verified designee, at the subject POA's direction. Any assessments that are not subject to financing shall be tendered directly to the POA in the manner directed by the POA. The number of assessments pursuant to this Agreement, and the amounts thereof, may be modified at the direction of the subject POA, based upon the terms of the assessment approved by that POA. Any applicable financing interest may be collected by the City, at the direction of the subject POA, and based upon information verified by the subject POA. Each POA shall be responsible for the accuracy of all information it provides to the City/NMA in this regard and shall indemnify the City/NMA regarding the same.

(b) Developer Collection of Construction Costs. Developer shall take full responsibility for collection of any reimbursements attributable to Developer resulting from Developer's voluntary advance payments of the assessments of the Section 11 lots as agreed to in this Second Amended Amendment, and shall, according to Developer's sole and absolute discretion, opt to pursue any measures necessary to collect any reimbursements attributable to each Section 11 lot at the time of sale of each lot. Developer may, at Developer's sole and absolute discretion, obtain private financing to fund the advance assessments agreed to herein attributable to Section 11 lots. However, no provision of this Agreement shall be construed to place any responsibility on any other Party to collect, reimburse or assess the construction proceeds attributable to Section 11, nor place any responsibility upon the City to remit any funds to Developer or Developer's lender for any assessments attributable to Section 11 lots.

Developer's contributions and agreement herein are conditional and contingent upon the City approving this Agreement, and upon the POA's voting in approval of this Agreement and the release and waiver terms set out herein.

SECTION 1.5. POA OWNERSHIP OF COMMON AREAS; RIGHTS OF ACCESS.

(a) Ownership of Common Areas. Both POAs are governed by a Declaration of Covenants filed October 21, 1997 and August 5, 1999 respectively. Those covenants created Property Owners Associations. The Property Owners Associations own the common areas in their respective additions and are responsible for maintenance, repair and improvements to the common areas.

(b) Right of Access and Temporary Construction Easement. In addition to the Open Space and Drainage Easements dedicated by the applicable plat(s), and those set forth in the applicable covenants for each Property Owners' Association, both POAs hereby agree to and do herein grant the City a Temporary Construction Easement and right-of-access to construct the Project. The purpose of this easement is to grant the City of

Norman, and any contractor or subcontractor hired to accomplish the construction of the Misty Lake Dam Repair Project, the right to work on property owned or controlled by either POA, as is reasonable and necessary, and includes the right to use and remove any and all sand, rock, dirt, gravel, and other materials from the above-described tract. It is a condition of this Temporary Easement that it shall not be filed of record and that all rights conveyed to the City by this Temporary Easement right-of-access shall terminate upon completion of the Project as set forth herein, including the ultimate conveyance of the Transferred Property set forth in Section 1.6 herein. As necessary for the purposes of the Project, this Temporary Easement shall also inure to the benefit of the City's agents, contractors, successors and assigns until said completion of the Project.

SECTION 1.6. TRANSFERS TO THE CITY OF NORMAN; LOT LINE ADJUSTMENT; MAINTENANCE OF COMMON AREAS.

(a) **Transfer of Property.** The Summit Lakes POA and Summit Lake Villas POA agree to transfer and convey to the City of Norman (subject to the covenants, restrictions, reservations and exceptions as set forth in the Special Warranty Deed attached as EXHIBIT E), fee title ownership of the certain portions of POA property, along with any drainage and access easements over and across any portion of common areas remaining in the ownership of either POA as reasonably necessary to carry out the intent of this Agreement to ensure that the NMA/City can properly access, repair and maintain the Transferred Property, and which are currently under discussion and shall also be finalized in by future agreement of the Parties. The property to be transferred is demonstrated in the attached EXHIBIT F ("Transferred Property"), and upon successful completion of the survey and lot line adjustment by the POAs, shall be set forth in conveyances by a legal description to be ultimately accepted by the Norman City Council.

The NMA/City shall pay no monetary consideration for the Transferred Property. The NMA/City's acceptance of the Transferred Property shall be subject to the Special Warranty : (i) not include a right of general public access to the dam or lake for recreational or other purposes, (ii) provide that Summit Lakes POA and Summit Villas POA shall retain responsibility for general maintenance of the Transferred Property such as mowing, sidewalk maintenance, and litter control, and (iii) reserve to the POAs on behalf of their respective residents perpetual rights, easements and license to continue to go upon, traverse, and enjoy the Summit Lake Dam for recreational purposes which do not materially interfere with the performance of the City of Norman's duties and obligations to maintain the dam, as may later be further defined.

(b) **Maintenance Entrance and Fence Fronting Alameda Street.** For that portion of the **Transferred Property** abutting the northern property line fronting Alameda Street, the City hereby agrees and covenants to maintain a screen or barrier of like quality, style and height to the fence/screen currently in place along Alameda Street upon execution of this Agreement.

Further, the Parties hereby agree and acknowledge that City is entitled to construct a Maintenance Entrance off of Alameda Street, consisting of necessary curb cuts, paving

and replacement vegetation, and may install to a secured gate of like quality, style and height to accommodate necessary maintenance access on behalf of the City only. In the event that Excess Funds are available upon completion of the construction of the Project, the City is authorized to utilize that amount of Excess Funds necessary to construct said Maintenance Entrance as described. If upon completion of the Project, no funds, including Excess Funds are available, said Maintenance Entrance may be constructed by the City utilizing available City funds.

(c) **Lot Line Adjustment by POAs.** To facilitate the transfer of title to the Transferred Property to the City of Norman as aforesaid, the POAs agree to make application according to applicable laws, codes and regulations of the City of Norman, for a lot line adjustment facilitating transfer of the Transferred Property. The POAs shall obtain the survey and legal descriptions as necessary to facilitate lot line adjustment and the transfer of ownership to the City.

(d) **Completion of Construction; Acceptance by OWRB; City Responsibility for Maintenance of Misty Lake Dam.** The POAs shall be responsible to ensure that the transfers described herein will be sufficient, for the POA's purposes, to allow OWRB to recognize the City of Norman as the actual owner responsible for the safety and maintenance of the Misty Lake Dam for all purposes. The City of Norman agrees that concurrently with the transfer of the Transferred Property to the City of Norman, the City of Norman will execute and deliver to OWRB such notices of change of ownership and other related documents as are required or reasonably necessary, expedient or proper for OWRB to recognize the City as the actual owner of the Misty Lake Dam and to carry out the intent of this Agreement. These processes may be subject to and more fully set forth in a future agreement of the parties, if any.

(e) **Conditions Precedent Defined.** Satisfaction and release of the OWRB Consent Orders shall be a condition precedent to the City's obligation to accept ownership of the **Transferred Property** and to provide any release or waiver set forth herein. Further, the POAs shall not initiate, nor shall the City accept, the property transfers contemplated herein until: (a) completion of the Dam Improvements and provision of a lien release by all contractors and subcontractors; (b) filing of a Notice of Completion in accordance with OAC 785:25-7-6 with the OWRB, and (c) issuance of a Certificate of Completion by the OWRB in accordance with OAC 785:25-7-8 which Certificate for purposes of this Agreement shall be considered to be Satisfaction and Release of the OWRB Consent Orders (collectively herein the Conditions Precedent).

Upon satisfaction of the Conditions Precedent and acceptance by the City/NMA of the **Transferred Property**, which acceptance shall not be unreasonably delayed or withheld, the City of Norman shall accept ownership and maintenance responsibilities including, without limitation, dam safety inspections; preparing annual reports to OWRB relative to high hazard dam structure; and tree removal or such repairs necessary to maintain the structural integrity of the dam.

(f) **Currently Applicable Declaration(s) of Covenants for POAs (“POA Covenants”).** With respect to the **Transferred Property**, the Private Parties hereby agree as follows:

- (i) The **Transferred Property** shall not be considered “Lots” for the purposes of the POA Covenants;
- (ii) Neither the POAs nor the Developer shall enact rules or regulations, including amendments to the POA Covenants, in contravention or, in conflict with, or in any manner impeding the rights and obligations of any Party to this Agreement;
- (iii) Each POA shall maintain the general liability insurance now required by the POAs Covenants, in no less than the amounts provided, and listing the City and NUA as additional insured parties for the purposes of the **Transferred Property**;
- (iv) The POAs and each members’ easement of enjoyment of the **Transferred Property** shall not exceed those rights currently provided for in the respective POA covenants;
- (v) No POA may charge fees or impose limitations or conditions upon anyone’s permitted use of the **Transferred Property**, whether currently allowed by the POA Covenants or not;
- (vi) Neither the POAs nor the Developer shall construct any dock upon the **Transferred Property**. The only Lot currently permitted to construct a private dock on the Transferred Property is Lot 7 of Block 1 of Summit Lakes POA. No such dock is currently constructed but to the extent that any such dock is constructed in the future, it may only be constructed in accordance with the POA covenants now in place. The City and NUA shall use reasonable efforts to avoid damage or destruction to any such dock constructed, but where damage or destruction occurs, any repair or replacement shall be the responsibility of the applicable POA, and shall be subject to the insurances and indemnities provided herein and in the referenced **Special Warranty Deed**;
- (vii) The POAs shall maintain the sprinklers currently required by the POA Covenants;
- (viii) The **Transferred Property** shall be exempt from POA assessments;
- (ix) The City and NUA may utilize the Driveway Easement identified in Summit Lakes POA Declaration of Covenants, Paragraph 5.1, and the Common Drive identified in Summit Lake Villas POA Declaration of Covenants, Paragraph 6.1, as provided therein, including dam repair;
- (x) The **Transferred Property** shall be exempt from review by the Architectural Committee of either POA;

(xi) The POAs agree to faithfully enforce the respective POA Covenants now in place and applicable to the **Transferred Property** against any Association Member, Owner or any third party, as is reasonable to protect the City or NUA's interest in and ability to discharge duties with the respect to the **Transferred Property**;

(xii) The City or NUA may alter the fence on the North side of the **Transferred Property** (fronting Alameda), and shall remove any vegetation, as necessary to allow access to fulfill its obligations under the Agreement, but shall all times keep said access secure; and

(xiii) The POAs shall maintain the Lake fence found within the **Transferred Property**.

SECTION 1.7. MUTUAL RELEASE & WAIVER OF CLAIMS.

(a) **Mutual Release & Waiver of Claims by POAs and Developer.** The City has been provided a separate instrument of agreement executed by the Developer, and the POAs that evidences an agreement regarding obligations as to areas of mutual concerns regarding defense, waiver, release, dismissal, discharge, and relinquishment of all claims, demands, actions, and liabilities that may be or could be asserted against each or all of them jointly or severally in relation to Misty Lake Dam. Further, the POAs shall fully indemnify and defend the City and Norman Municipal Authority against any and all claims arising from the collection of those POA assessments referenced in Section 1.4 herein.

Upon completion and acceptance by the City of the Misty Lake Dam repair project as ultimately outlined in the parties' future final agreements, and excepting claims based upon workmanship in carrying out the Dam Improvements, and to the extent permitted by applicable law, the City, NMA, the POAs and Developer (each a "Releasor") severally covenant and agree to release, waive and forever discharge the each other party to this Agreement, and their respective officers, directors, employees, representatives, successors and assigns from any and all claims the Releasor had or may have had against any other party to this Agreement regarding the Misty Lake Dam, including but not limited to the design, planning, construction oversight, engineering, development, permitting, platting, seeping, leaking, maintenance, repair or failure of function, as may be related to the Misty Lake Dam. This covenant and agreement shall not extend to claims the POAs may have arising after completion and acceptance of the Misty Lake Dam repair project that relate to the City or the Norman Municipal Authority's efforts to fulfill the terms of this Agreement. Further, with respect to any claims based upon workmanship in carrying out the Dam Improvements, the POAs shall cooperate with the City in pursuing any such claims and hereby assigns the proceeds of any successful claims to the City and/or NMA, as applicable, for use in remedying any damage to the Transferred Property, including the Dam Improvements.

(b) **Costs & Attorney's fees, and no admission of liability.** Each party shall be responsible for their own attorney fees and costs as related to this Agreement. The parties agree that this Agreement is not an admission of guilt or liability on the part of any party under any federal, state or local law, whether statutory or common law. Liability for any and all claims is expressly denied by all parties to this Agreement.

ARTICLE II. GENERAL PROVISIONS

SECTION 2.1 NOTICES AND DEMANDS. Any notice, demand, or other communication under this Agreement shall be sufficiently given or delivered when it is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, or delivered personally to:

City: The City of Norman
P.O. Box 370
Norman, OK 73070
Attn: City Manager
With Copy to: City Attorney

Authority: Norman Municipal Authority
P.O. Box 370
Norman OK 73070
Attn: General Manager
With Copy to: General Counsel

Summit Lakes POA: Attn: Lew Goidell
President
109 Summit Bend
Norman, OK 73071

With a copy to:
William R. Dill
Attorney at Law
401 W. Main St. Ste. 444
Norman, OK 73069

Summit Lake Villas POA
Attn: Dana Purser
Acting President/Treasurer
200 72nd Ave NE
Norman, OK 73026

Developer: Summit Lakes, L.L.C.
1203 Brookhaven Blvd
Norman OK 73072

Attn: Evan Nixon

With Copy to:
Rieger Law Group PLLC
136 Thompson Drive
Norman, OK 73069
Attn: Sean Paul Rieger

In the event that any party wishes to replace or update the identification of the person(s) to be noticed under this Section, written notice of the replacement or updated identification, along with applicable contact information, as well as the time upon which the replacement or update becomes effective, shall be provided to all parties in compliance with this Section.

SECTION 2.2 FURTHER ASSURANCES. Each party agrees that it will, without further consideration, execute and deliver such other documents and take such other action, whether prior or subsequent to closing, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement. This paragraph applies to the further agreements of the Parties referenced throughout this Amend. 3.

SECTION 2.3 NATURE OF AGREEMENT. This Amend. 3 amends and supplements the Parties' Participation Agreement, and all previous Amendments, only insofar as set forth herein. Until such time as the Parties otherwise and further agreement, terms not amended herein shall remain in force and be construed, insofar as is possible, consistently with the terms of this Amend. 3.

SECTION 2.4 COUNTERPARTS. This Agreement may be executed in several counterparts, and all such executed counterparts shall constitute the same agreement. It shall be necessary to account for only one such counterpart in proving this Agreement.

IN WITNESS WHEREOF, the City, the Authority, the POAs, and the Developer, as Parties to this Third Amended Agreement, have caused this Third Amended Agreement to be duly executed and delivered as of the date first above written.

THE CITY OF NORMAN, OKLAHOMA

By: _____
Name: Larry Heikkila
Title: Mayor

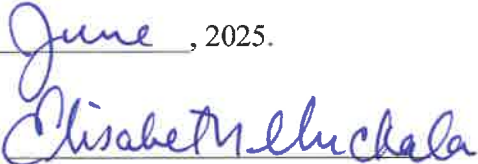
By: _____
Name: Brenda Hall
Title: City Clerk
(SEAL)

NORMAN MUNICIPAL AUTHORITY

By: _____
Name: Larry Heikkila
Title: Chairman

By: _____
Name: Brenda Hall
Title: Secretary
(SEAL)

Approved as to form and legality this 18 day of June, 2025.


City Attorney/ General Counsel

SUMMIT LAKES POA

By: _____

Lew Goidell, President

STATE OF _____, COUNTY OF _____, SS:

Before me, the undersigned, a Notary Public in and for said **Lew Goidell, President of the Summit Lakes Property Owners Association**, to me known to be the identical person(s) who executed the foregoing **Third Amended Participation Agreement for the Misty Lake Dam Repair Project** and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

WITNESS my hand and seal this _____ day of _____, 20____.

My Commission Expires: _____

Notary Public: _____

SUMMIT LAKE VILLAS POA

By: _____

Dana Purser, Acting President and Treasurer

STATE OF _____, COUNTY OF _____, SS:

Before me, the undersigned, a Notary Public in and for said **Dana Purser, Acting President and Treasurer of the Summit Lake Villas Property Owners Association**, to me known to be the identical person(s) who executed the foregoing **Third Amended Participation Agreement for the Misty Lake Dam Repair Project** and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

WITNESS my hand and seal this _____ day of _____, 20____.

My Commission Expires: _____

Notary Public: _____

SUMMIT LAKES, L.L.C.

By: _____

Name: by Evan Nixon as President of and on behalf of Cies Properties, Inc.,
as Manager and on behalf of Summit Lakes, L.L.C.,
and not in any individual or personal capacity

STATE OF _____, COUNTY OF _____, SS:

Before me, the undersigned, a Notary Public in and for said **Evan Nixon, President of Cies Properties, Inc., as Manager of Summit Lakes L.L.C.**, to me known to be the identical person(s) who executed the foregoing **Third Amended Participation Agreement for the Misty Lake Dam Repair Project** and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

WITNESS my hand and seal this _____ day of _____, 20____.

My Commission Expires: _____

Notary Public: _____