WATER AND WASTEWATER AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2007, by and between ILLINOIS-AMERICAN WATER COMPANY, an Illinois corporation, hereinafter referred to as "ILAWC" or the "Company" and Westminster Swanson Land Partners II, LLC, an Illinois limited liability company, as agent for Prairie Grove 1078 SPE, LLC, a Delaware limited liability company. Westminster Swanson Land Partners II, LLC is hereafter referred to as "Developer," for the purposes and consideration set forth hereinafter.

RECITALS

A. ILAWC is an Illinois corporation engaged in furnishing water and wastewater service in the State of Illinois.

B. In accordance with an agreement (the "Land Purchase Agreement") between WS Land Partners - Prairie Grove II, LLC (such Land Purchase Agreement being subsequently assigned from WS Land Partners – Prairie Grove II, LLC to Prairie Grove 1078 SPE, LLC) and Terra Cotta Realty Company ("Terra Cotta"), Prairie Grove 1078 SPE, LLC acquired approximately 1,077 acres of land (the "TC Acres"), legally described and shown on Attachment "A", which is attached hereto and made a part hereof. The TC Acres are located within a larger area of approximately 1,550 acres, defined as the "TC Land" in the Amended and Restated Purchase Agreement between Terra Cotta and ILAWC dated November 4, 2005 ("ILAWC/TC Agreement"), which is incorporated herein by reference and made a part hereof.

C. Developer acknowledges that it has reviewed the ILAWC/TC Agreement and ratifies its provisions. Developer agrees to comply with all obligations specified in the ILAWC/TC Agreement for "TC Land Entities," including, but not limited to, the provision of "Schedules" in accordance with the provisions of Section IV.C of the ILAWC/TC Agreement.

D. Developer plans to construct approximately one or more commercial structures and up to 1,405 residential units in the TC Acres. The TC Acres are referred to herein as the "Development."

E. ILAWC is willing and able to furnish water and wastewater public utility service to the Development in accordance with the terms of this Agreement and the ILAWC/TC Agreement, subject to ILAWC's applicable rates, rules, regulations and conditions of service as they now exist or as they may be amended in the future, and receipt of all required governmental approvals (including, but not limited to, issuance by the Illinois Commerce Commission ("Commission") of an order granting a Certificate of Public Convenience and Necessity ("Certificate") authorizing ILAWC to serve the TC Land, (and approval, to the extent required, of this Agreement and the ILAWC/TC Agreement)).

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and agreements set forth herein, the parties hereto agree as follows:

AGREEMENT

A. Water and Wastewater Facilities

1. In strict accordance with the terms of the ILAWC/TC Agreement (Section IV), ILAWC will provide at its sole cost and expense all design, engineering and construction costs, expenses and fees relating to its construction of the water backbone plant for the TC Acres ("TC Acres Water Backbone Plant"). Nothing in this Agreement shall be interpreted to alter ILAWC's rights or obligations under the ILAWC/TC Agreement with respect to the provision of water backbone facilities or any other matter for the TC Land (which includes, but is not limited to, the TC Acres). ILAWC agrees that the TC Acres Water Backbone Plant (subject to approval of the ILAWC/TC Agreement) will include a portion of the capacity of the water backbone plant that is part of the facilities defined in the ILAWC/TC Agreement as the "Existing Water Facilities." The TC Acres Water Backbone Plant also will include new wells, storage and such other water backbone facilities as ILAWC may deem appropriate in strict accordance with the terms of the ILAWC/TC Agreement. ILAWC shall also be responsible for and shall assume full responsibility and liability for all bonding costs, fees and expenses required of the Developer or any affiliated entity by all applicable units of government, if any, for its construction/expansion of the TC Acres Water Backbone Plant or any component thereof.

2. In strict accordance with the ILAWC/TC Agreement (Section V.G), ILAWC shall reserve 1.0 mgd of wastewater treatment capacity from the project defined in the ILAWC/TC Agreement as the "1.0 mgd Plant Expansion." As provided in the ILAWC/TC Agreement, such reservation of capacity covers all of the TC Land (including, but not limited to, the TC Acres), such combined area being defined in the ILAWC/TC Agreement as the "Sewer Facilities Area." Nothing herein shall be interpreted to alter ILAWC's rights or obligations with respect to the reservation of waste treatment capacity for the Sewer Facilities Area as set forth in the ILAWC/TC Agreement. Developer acknowledges that, as set forth in the ILAWC/TC Agreement, if at any time, future development of the Sewer Facilities Area (which includes without limitation all of the TC Land) exceeds 10,000 population equivalents ("P.E."), as reasonably determined by ILAWC, arrangements for additional wastewater plant that Developer or its assignees requires for the TC Acres or any other portion of the Sewer Facilities Area shall be made under ILAWC's then-effective Rules, Regulations and Conditions of Service or such other terms as the Commission may approve. It is understood that any contracts or arrangements that Developer may establish regarding the allocation of capacity of the 1.0 mgd Plant Expansion with any entity(ies) other than ILAWC are not binding on ILAWC. ILAWC's obligations shall be solely as defined in the ILAWC/TC Agreement. Developer also will construct for the Developments water mains and distribution facilities, and wastewater mains and collection facilities, including, but not limited to, lift stations etc. as identified in the Master Utility Plan approved by ILAWC.

3. ILAWC will at its expense furnish water meters and other appliances necessary to measure the water provided to customers within the Developments, which meters and appliances shall be installed by Developer.

4. Developer's proposed schedule for construction of the, water mains and distribution facilities and wastewater mains and collection facilities (the "Water/Wastewater Facilities") is set forth in Attachment "B," which is attached hereto and made a part hereof. Developer will advise ILAWC in writing of all changes in said schedule promptly after such changes become known to Developer.

5. Subject to: (a) the performance by Developer of all of its obligations for each Phase of construction as set forth in Attachment B; and (b) the receipt of all necessary permits, authorizations, governmental approvals for each Phase of construction as set for forth in Attachment B (including, but not limited to, issuance by the Commission of a Certificate authorizing ILAWC to serve the TC Land, and approval by the Commission of this Agreement and the ILAWC/TC Agreement to the extent required) and the like, ILAWC shall provide water and wastewater service within the Development for each such Phase of construction completed and transferred to ILAWC in accordance with the provisions of this Agreement.

B. <u>Construction of Facilities</u>

1. All plans, specifications and construction shall be in accordance with good utility practices, the plans and specifications for the Water/Wastewater Facilities as approved by ILAWC, and all rules, regulations, requirements and recommendations of any governmental authorities having or asserting jurisdiction. Prior to the commencement of engineering and construction by Developer, Developer shall procure the written approval of ILAWC of all engineering firms, contractors and subcontractors it proposes to utilize to design and construct the Water/Wastewater Facilities. All of said plans and specifications for each Phase of construction shall have all necessary approvals in writing of all governmental authorities, and the approval in writing of ILAWC before any construction is commenced. Plans and specifications as approved by ILAWC for the Water/Wastewater Facilities will be herein incorporated by reference and made part of this Agreement when so approved. ILAWC will attempt in good faith to enter into a franchise agreement with the Village of Prairie Grove relative to the provision of services contemplated herein; provided, however, that ILAWC shall have no obligation to enter into any franchise agreement that is not acceptable to ILAWC. Such franchise agreement shall incorporate (without limitation) provisions identifying required approvals for the design and construction of the Water/Wastewater Facilities.

2. Developer shall pay all costs associated with construction and installation of the Water/Wastewater Facilities, and construct the Water/Wastewater Facilities in accordance with plans and specifications approved by ILAWC.

3. [Requirement of Developer to provide letter of credit or performance bond – to be negotiated.]

4. ILAWC reserves the right to require construction and installation of water mains and sewer lines of a larger diameter than the Developer's service may require; provided, however, that ILAWC shall bear the cost difference between the larger diameter mains and the smaller diameter mains, and further provided that such request is made prior to the approval of the Master Utility Plan by any applicable unit(s) of government. If applicable,

payment of such difference shall be made at such time as Developer makes payment to such contractor(s) or subcontractor(s) for such larger diameter mains.

5. Developer and ILAWC agree that construction hereunder may proceed in Phases, as shown in the Schedule set forth in Attachment "B," and that all of the terms and conditions of this Agreement, including without limitation ILAWC's obligation to provide water and wastewater services as contemplated herein, shall apply to completed construction by Developer for each such Phase for all of the Water/Wastewater Facilities. For example, if Phase I of construction as described on Attachment B is complete, then such Phase of construction shall be deemed to be ready for approval by ILAWC for Final Acceptance as provided herein, and the Developer or Prairie Grove 1078 SPE, LLC, (as appropriate) shall transfer such completed Phase of construction to ILAWC as contemplated herein. ILAWC shall thereafter provide such water and/or wastewater services (as applicable) as contemplated herein. As provided in Section J hereof, the rates, rules and regulations applicable to services provided by ILAWC will be the then-effective rates, rules and regulations at the time that the services are provided (subject to such changes as the Commission may from time to time approve).

6. Developer shall obtain all requisite permits, easements and approvals in advance of each Phase of construction. Developer shall provide all engineering, plans and specifications, materials, transportation, equipment, power, labor, supervision, testing, insurance, bonds, and all else required to construct and place the Water/Wastewater Facilities into satisfactory operation in accordance with plans and specifications approved by ILAWC.

7. Developer shall comply with the inspection and testing requirements of ILAWC, which requirements shall be reasonable and shall not cause Developer any unwarranted material delays in the ordinary course of construction. Developer shall notify ILAWC at least forty-eight (48) hours in advance of when Water/Wastewater Facilities are ready for inspection and testing, and ILAWC shall inspect promptly after being so notified.

8. Developer and ILAWC agree that, while Developer is constructing the Water/Wastewater Facilities, ILAWC may designate and Developer shall pay for and cooperate with an inspector reporting to ILAWC regarding compliance with the applicable plans and specifications. The inspector may not be replaced or terminated by ILAWC without prior notice to the Developer. An invoice for the inspection service provided to Developer shall be paid by Developer not later than thirty (30) days after the date of the invoice. Developer shall submit copies of paid invoices together with corresponding lien waivers to ILAWC for all engineering and other services, materials installed, construction performed, equipment provided and materials purchased for construction of the Water/Wastewater Facilities at the actual cost thereof. The form of said invoices and lien waivers shall be as approved by ILAWC. Developer shall also submit to ILAWC the originals or complete and clear copies of all bills, statements, invoices, and all other evidences of expense received by Developer from subcontractors, vendors and others for all engineering and other services, materials installed, construction performed, equipment provided and materials purchased for construction of the Water/Wastewater Facilities, together with corresponding lien waivers for these or other evidences of payment by Developer in a form reasonably acceptable to ILAWC. In addition, Developer will provide such additional supporting data relative to the cost of the Water/Wastewater Facilities and lien waivers as ILAWC may reasonably request.

9. Storm water collection facilities shall not be connected to any sanitary sewer mains or collection facility installed pursuant to this Agreement. Furthermore, no connections shall be made to the Water/Wastewater Facilities or to any other facilities of ILAWC that are deemed to be illegal connections by the Environmental Protection Agency, any governmental authority having jurisdiction, or under any applicable law or regulation.

10. Developer agrees that its construction of the Water/Wastewater Facilities will be completed in Phases so as to enable ILAWC to provide public water and sewer service within the Development when requested to do so. Developer or its successors in interest shall notify ILAWC when a water and/or sewer service connection has been completed prior to any backfilling thereof. ILAWC shall inspect such service connection promptly and, if the connection is in ILAWC's reasonable judgment satisfactory, will authorize backfilling.

11. Upon completion of construction work, Developer shall remove all equipment belonging to it or used under its direction or by its contractor or its subcontractors, and shall dispose of all unused materials, rubbish, surplus excavated materials and debris in a manner reasonably acceptable to ILAWC. Developer shall repair all roads, sidewalks, parkways and all else affected by its work, which repairs shall be made in accordance with the reasonable requirements of ILAWC and all governmental authorities having jurisdiction.

C. <u>Transfer of Facilities</u>

1. Upon substantial completion of each Phase of the Water/Wastewater Facilities in a manner satisfactory to ILAWC and in compliance by Developer with the provisions of this Agreement for each such Phase of construction, Developer will transfer title to such completed Phase of construction of the Water/Wastewater Facilities to ILAWC. To transfer title, Developer shall execute and deliver to ILAWC a written bill of sale describing the Water/Wastewater Facilities with reasonable specificity. In such bill of sale, Developer shall represent and warrant to ILAWC that (i) the Phase of Water/Wastewater Facilities that are being transferred have been properly constructed and completed in accordance with the plans and specifications therefor; (ii) the Phase of Water/Wastewater Facilities that are being transferred are free and clear of all liens and encumbrances of any nature; and (iii) the Phase of Water/Wastewater Facilities that are being transferred have been inspected and approved by all governmental authorities having authority over the construction and installation of potable water systems.

2. ILAWC may, if it so elects, accept title to the Water/Wastewater Facilities, subject to satisfactory completion by Developer of such items as ILAWC may reasonably designate ("Punch List Items"). ILAWC's final acceptance of title ("Final Acceptance") will be deemed to occur on the date when ILAWC confirms in writing: (i) its acceptance from Developer of title to the completed Phase of the Water/Wastewater Facilities; and (ii) that all Punch List Items related to the complete Phase of the Water/Wastewater Facilities are complete to the satisfaction of ILAWC.

3. Upon the transfer of title to all or any portion of the Water/Wastewater Facilities to ILAWC, Developer shall retain no right, title, or interest in such transferred

Water/Wastewater Facilities. Prior to such transfer, all risk of loss shall be with Developer, and ILAWC shall have no right or interest in the Water/Wastewater Facilities.

4. Upon transfer of title to all or any portion of the Water/Wastewater Facilities by the Developer, all materials installed, facilities constructed and equipment provided by Developer in connection with the transferred Water/Wastewater Facilities and accepted by ILAWC shall become the sole property of ILAWC as installed, and full legal and equitable title thereto shall be vested in ILAWC, free and clear of any liens. At the time that title to all or any portion of the Water/Wastewater Facilities is transferred, Developer agrees to execute or cause to be executed such documents as counsel for ILAWC may reasonably request to evidence good and merchantable title to said transferred Water/Wastewater Facilities free and clear of all liens, including, but not limited to, deeds and/or bills of sale.

5. At the time that the Developer transfers title to all or any portion of the Water/Wastewater Facilities, the Developer, at Developer's expense, will provide to ILAWC the following (along with all such other documents as are required herein):

a. Certifications of all applicable permits and approvals, including, but not limited to, Construction Permits and Operating Permits, in accordance with plans and specifications approved by ILAWC, and signed by a professional engineer registered in the state of Illinois and any appropriate regulatory authorities relating to the transferred Water/Wastewater Facilities;

b. A complete set of "As-built" drawings certified by a professional engineer registered in the state of Illinois (using the form attached hereto and made a part hereof as Attachment "C"), showing by measurement the locations of the transferred Water/Wastewater Facilities including without limitation the water mains, hydrants, valves, wastewater mains, and service connections to all structures served from the Water/Wastewater Facilities constructed pursuant to this Agreement, and the location and invert elevation of all applicable manholes;

c. Recorded easements, final plats of Property, legal survey, and all permits relating to the transferred Water/Wastewater Facilities;

d. Final waivers of liens for materials and labor relating to the transferred Water/Wastewater Facilities;

e. Copies of final invoices as referred to in Paragraph B.9 hereof relating to the transferred Water/Wastewater Facilities:

f. Assignment of all applicable warranties provided to Developer by vendors, contractors, subcontractors or any other entity relating to the transferred Water/Wastewater Facilities.

6. Upon ILAWC's acceptance of title to the completed Phase of construction of the Water/Wastewater Facilities, Developer shall convey to ILAWC title to those parcels of land described in Attachment "D," which is attached hereto and made a part hereof relating to the completed Phase of the Water/Wastewater Facilities. For the transfer of title, Developer will execute such documents as counsel for ILAWC may reasonably request.

D. <u>Easements</u>

1. Upon transfer of title to all or any portion of the Water/Wastewater Facilities to ILAWC, Developer or Prairie Grove 1078 SPE, LLC as the case may be will by deed, plat or other means satisfactory to ILAWC grant to ILAWC perpetual easements within the Developments as may be reasonably necessary for ingress and egress, for the repair, maintenance or replacement of the transferred Water/Wastewater Facilities and for such access as is reasonably required to provide water and wastewater service in, to and through the Development relating to the transferred Water/Wastewater Facilities. Developer agrees to prepare and execute such documents as are reasonably required to establish the easements in form and content satisfactory to ILAWC, and to include such easements on all plats prepared for review by governmental authorities and for recording.

2. This Agreement shall be subject to Developer providing to ILAWC satisfactory evidence of perpetual easements and rights-of-way over, under, and across all portions of the main and pipeline routes, whether within the Developments or not, as may be necessary to serve each parcel or lot within the Developments relating to the transferred Water/Wastewater Facilities and to operate, repair, and maintain the Facilities. All easements and rights-of-way shall be perpetually free of obstacles that may interfere with the operation, maintenance, and use of the Water/Wastewater Facilities by ILAWC.

E. <u>Refunds to Developer</u>

1. ILAWC will refund for each new customer connection who contracts for at least one year's service at their property ("New Customer Connection") to a water main constructed by Developer within TC Acres (a "WM Water Main") during the first ten (10) year period following construction of a WM Water Main, an amount equal to one and one half (1½) times the average annual water revenue paid to ILAWC by other similarly situated customers. For this purpose and for purposes of Paragraph E.1, a new customer does not include a new owner or occupant of property previously connected to a WM Water Main. In no event shall the total amount of refunds to be paid by ILAWC to Developer under this Paragraph E.1 exceed the Developer's total cost for the construction of WM Water Mains, such amount being the limit of ILAWC obligations for refunds under this Paragraph E.1.

2. In addition, for each New Customer Connection to a WM Water Main for which the Developer has installed the portion of the customer service line which extends from the water main to the lot line of the new customer's property (the "Company Service Line"), ILAWC will pay to Developer a water service line refund equal to the cost of each Company Service Line.

3. In addition to refunds paid in accordance with other provisions of this Section E, ILAWC will refund to Developer an amount determined in accordance with the sewer collection main refund methodology ("Sewer Refund Methodology") approved by the Illinois Commerce Commission ("Commission") in ILAWC Water Company, Docket 01-0645. In accord with the Sewer Refund Methodology, ILAWC will refund to Developer one and one-half times the amount of estimated per customer annual sewer collection service revenue from a customer similarly situated to each "Original Prospective Customer," as defined in Docket 01-0645 (a customer who connects to a sewer main constructed by Developer ("WM Wastewater Main") and contracts for at least one year of sewer service, commencing within 30 days after the date that service from the WM Sewer Main is first available). In no event shall the total amount of refunds paid to Developer under this Paragraph E.3 exceed the total cost of constructing the WM Wastewater Mains, such amount being the limit of ILAWC's obligation to pay refunds under this Paragraph E.3.

4. ILAWC shall be entitled to extend water and wastewater mains from and beyond the terminus of WM Water Mains and WM Wastewater Mains. The parties hereto agree that Developer shall not be entitled to any form of refund or other reimbursement or compensation as the result of further extensions of water or wastewater mains from or beyond the main(s) installed by Developer pursuant to this Agreement for customers taking service from such further extensions or for the attachment of services or hydrants to such extensions.

5. ILAWC shall have no obligation to pay refunds to Developer under any provision of this Section E for a particular Phase of construction until all provisions of this Agreement relating to such Phase of construction that has been transferred to ILAWC have been substantially complied with by Developer.

F. <u>Warranties and Covenants</u>

1. Developer covenants it has all requisite contractual, corporate and statutory power and authority to enter into this Agreement, and all other agreements and documents contemplated hereby, without requirement of referendum or approval from any third party.

2. Developer guarantees all construction, materials and workmanship provided under this Agreement for one year after Final Acceptance of title by ILAWC in accordance with the provisions hereof. Developer warrants that all construction, materials and workmanship for the Water/Wastewater Facilities will be in accordance with the plans and specifications as approved by ILAWC.

3. Developer agrees that it will promptly correct all defects and deficiencies in construction, materials and workmanship upon request by ILAWC made subsequent to inspection by ILAWC. Developer, for a period of one (1) year after Final Acceptance by ILAWC, shall (1) do what is necessary to keep all hydrants at proper elevation, relative to surrounding grade; (2) repair promptly at no cost to ILAWC, or pay for the repair thereof by others, all water main and wastewater main breaks, hydrant damage, or any other damages to the Water/Wastewater Facilities and appurtenances thereto attributed directly or indirectly to construction by or for Developer, or any of its corporate affiliates or subcontractors. Inspection

and approval of the Water/Wastewater Facilities by ILAWC shall not waive any right of ILAWC under this Agreement.

4. It is the intention of the parties that the legal effect of this Agreement shall be that no mechanics' lien or claim may be filed or maintained by anyone including, but not limited to, any of the parties hereto, any contractor, subcontractor or materialman performing labor or furnishing materials for the Water/Wastewater Facilities. In furtherance of the foregoing provision, the parties agree that no contract or subcontract for either labor or materials performed or furnished in furtherance of this Agreement has been or shall be entered into prior to the expiration of ten (10) days after the date of the execution hereof.

5. Developer and ILAWC will cooperate fully with each other in all matters relating to obtaining all approvals of all governmental authorities required in order for ILAWC to provide water service to the Development. Developer agrees that, if it shall enter into a contract to sell the Development or any portion thereof, such contract shall incorporate this Agreement and the obligations imposed hereunder on any purchaser. Neither this Agreement nor any of the rights, duties or obligations of the Developer hereunder may be transferred or assigned (by operation of law or otherwise) by the Developer, except with the prior written approval of ILAWC.

6. ILAWC specifically reserves the right to withhold approval and to forbid connection of any of the Water/Wastewater Facilities to any facilities owned or operated by an entity other than ILAWC.

7. No provision in this Agreement shall relieve Developer of responsibility for negligence or faulty materials or workmanship, or the consequences thereof, within the extent and period provided by law.

G. <u>Indemnification</u>

1. Developer and Prairie Grove 1078 SPE, LLC, shall defend and hold harmless ILAWC from and against all actions, claims, fines, liabilities, causes of action, costs, losses and expenses of every kind and character (including without limitation reasonable attorneys' fees) resulting from, arising out of or relating to any breach of this Agreement by Developer and/or Prairie Grove 1078 SPE, LLC, and/or any action or inaction (actual or alleged) of them, or their employees, officers, agents, contractors or subcontractors which relates to the subject matter of this Agreement, except to the extent caused by the negligence or other fault of ILAWC or its employees, officers, agents, contractors or subcontractors.

2. The parties hereto agree that ILAWC has no responsibility, liability or obligation of any kind whatsoever with respect to the discharge, control, collection, detention, drainage or transmission of storm water or other non-sanitary flows with respect to the Developments and/or the design, construction and installation of any structure or facilities therein. Developer shall save and hold harmless ILAWC from and against all suits or claims against ILAWC that may be based upon, or that may be alleged to arise from or be based upon, any requirements or non-conformity with any permit, rule or regulation of the Illinois Environmental Protection Agency or any other governmental authority having jurisdiction over

the Developments with respect to the discharge, control, collection, detention, drainage or transmission of storm water or other non-sanitary flows with respect to the Developments and/or the design, construction and installation of any structure or facilities therein. ILAWC shall notify Developer in writing of any such suit or claim (or the threat thereof) promptly upon ILAWC first having knowledge thereof and shall give Developer full authority, information and cooperation in connection with the defense of such suit or claim by Developer. ILAWC retains the right to approve the attorneys hired by Developer or to select its own attorneys, the charges for which shall be paid by Developer.

3. ILAWC shall defend and hold harmless Developer and Prairie Grove 1078 SPE, LLC from and against all actions, claims, fines, liabilities, causes of action, costs, losses and expenses of every kind and character (including without limitation reasonable attorneys' fees) resulting from, arising out of or relating to any breach of this Agreement by ILAWC, and/or any action or inaction (actual or alleged) of ILAWC, or its employees, officers, agents, contractors or subcontractors which relates to the subject matter of this Agreement, except to the extent caused by the negligence or other fault of Developer or its employees, officers, agents, contractors or subcontractors.

4. Neither party to this Agreement shall be liable to the other for failure, default or delay in performing any of its obligations hereunder, other than for payment of money obligations specified herein, in case such failure, default or delay in performing any of its obligations specified herein is caused by strikes or other labor problems, by forces of nature, unavoidable accident, fire, acts of the public enemy, interference by civil authorities, passage of laws, orders of the court, adoption of rules, ordinances, acts, failures to act, decisions or orders or regulations of any government or military body or agency, office or commission, delays in receipt of material, or any other cause whether or not of similar nature, which is not within the control of the party affected and which, by the exercise of due diligence, such party is unable to prevent or overcome. Should any of the foregoing occur, the parties hereto agree to proceed with diligence to do what is reasonable and necessary so that each party may perform its obligations under this Agreement. Neither party shall in any event incur any liability to the other party hereto for incidental or consequential or other damages that may result from delays in initiating service or interruptions or other malfunctions of service.

5. Developer agrees that all assignees of Developer and Prairie Grove 1078 SPE, LLC, which become participants in the Development shall be additional parties to this Agreement. Developer shall inform ILAWC of the identity of each such assignee and shall cause each such assignee to execute documents that are satisfactory to ILAWC's counsel acknowledging the effect of this Agreement.

H. <u>Notice</u>

1. Any notice required or permitted to be given under this Agreement shall be deemed delivered and be effective on the date physically delivered to the party to whom notice is being provided or two (2) calendar days following the date on which the notice is deposited in the United States Mail, postage prepaid, certified delivery, and properly addressed to the party to whom notice is being provided, as follows.

To Developer: c/o Westminster Swanson Land Partners II, LLC
920 South Waukegan Road
Lake Forest, IL
Fax: (847) 234-6635

With copy to: Hal Karas
Whyte Hirschboeck Dudek S.C.
555 E. Wells Street
Suite 1900
Milwaukee, WI 53202
Fax: 414-223-5000

or such other addresses as Developer may advise ILAWC in writing; and:

to ILAWC: ILLINOIS-AMERICAN WATER COMPANY
Internationale Parkway
Woodridge, Illinois 60517-4924
Attn: Division Manager

With copy to: ILLINOIS-AMERICAN WATER COMPANY
727 Craig Road
St. Louis, MO 63141
Attn: Regional General Counsel

I. Commencement of ILAWC's Obligation to Serve

1. It is understood and agreed that ILAWC shall not be obligated or required to provide water or wastewater utility service to any dwelling, lot, or area within any completed Phase of the Development(s) unless all required governmental approvals pertaining to such completed Phase are obtained and Developer has performed and satisfied all duties, obligations, conditions, and requirements pertaining to such Phase imposed on Developer hereunder. Under no circumstances shall Developer cause the delivery of water or wastewater service to any structure or person without the prior written approval of ILAWC. Further, Developer shall not represent to or advise any party that water or wastewater service is available, unless authorized to do so by ILAWC in writing.

2. If necessary prior to the full performance of this Agreement, ILAWC shall, provided that any required governmental approval is obtained, provide temporary water service to Developer, and its respective contractors and subcontractors and employees, for construction-related purposes within the Developments. All construction water shall be metered, and Developer shall be billed for such water usage on the basis of ILAWC's then-current charges for its commercial customer class. Construction water service hereunder shall be subject to termination, upon five (5) days written notice, in the event any bill remains unpaid for more than thirty (30) days.

J. Applicability of ILAWC's Rules

1. This Agreement, and all rights and obligations hereunder, including those regarding water service within the Developments, shall be subject to the rules and all applicable rates, fees, charges, and tariffs of the ILAWC, as approved from time to time by the Commission.

2. ILAWC shall have the unilateral right to apply to the Commission for changes or modifications in any of its rates or charges and to alter or amend its terms and conditions of service and to otherwise charge for its services as may be authorized by the Commission from time to time.

K. Insurance

1. Developer shall furnish ILAWC with appropriate certificates of insurance, each containing a thirty-day notice clause (requiring that ILAWC be notified by the insurer at least 30 days prior to cancellation of the policy), and stating collectively that Developer or its contractor or subcontractors has the following insurance coverages:

a. Workmen's Compensation Insurance which provides statutory benefits required by the laws of the State of Illinois;

b. Comprehensive General Liability Insurance naming ILAWC as an additional insured in the following amounts: injury to any one person, not less than Three Million Dollars ($3,000,000.00) per incident, including accidental death, and not less than Three Million Dollars ($3,000,000.00) for any one incident; property damage, not less than Three Million Dollars ($3,000,000.00) for each incident.

L. Waiver

1. The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision but the same shall, nevertheless, be and remain in full force and effect.

M. Assignment/Binding Effect of Agreement

1. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided, however, that an assignment or other transfer of this Agreement or any rights or obligations hereunder by either party shall not be binding upon the other party or create any rights in the assignee until such assignment or other transfer is approved and accepted in writing by the non-assigning party,

except that (i) ILAWC may at its option, and without Developer's consent, assign this Agreement to an entity which succeeds to or acquires all or substantially all of ILAWC's operations and assets, and (ii) Developer or Prairie Grove 1078 SPE, LLC, may each, at their respective options and without any prior approval from ILAWC, assign its right to receive a payment otherwise due Developer or Prairie Grove 1078 SPE, LLC(as the case may be) under the terms hereof, but not its obligations or liabilities under this Agreement, to any other person or entity in accordance with this Agreement. Any such assignment by ILAWC shall relieve, release and discharge ILAWC from any further duty or responsibility under this Agreement. Notice of any such assignment shall be given in accordance with the Notice provisions specified in this Agreement.

N. <u>Other Provisions</u>

1. Notwithstanding anything to the contrary contained in this Agreement or otherwise, neither party shall under any circumstances be liable, whether based in contract, warranty, indemnity, tort (including negligence), strict liability or alternative tort remedies or any other theory of law, for any indirect, special, incidental, punitive or consequential damages whatsoever, regardless of whether such damages or expenses arise in whole or in part by any action or inaction on the part of the applicable party.

2. ILAWC may record this Agreement or a memorandum thereof in accordance with the laws of the State of Illinois.

3. It is agreed that ILAWC is not an agent of Developer and shall not incur any costs or expenses on behalf of Developer, and that Developer is not an agent of ILAWC and shall not incur any costs or expenses on behalf of ILAWC.

4. This Agreement, together with the attachments hereto and documents incorporated herein by reference, sets forth the complete understanding between Developer and ILAWC, and supersedes all prior negotiations, understandings, and agreements between the parties. No change in, addition to, or waiver of any of the provisions of this Agreement shall be binding upon any party unless in writing and signed by the party sought to be bound.

5. Nothing in this Agreement, express or implied, is intended, or shall be construed, to confer upon or give to any person, firm or corporation (other than the parties hereto and their permitted assigns) any rights or remedies under or by reason of this Agreement, or any term, provision, condition, undertaking, warranty, representation, indemnity, covenant or agreement contained herein.

6. This Agreement is subject to and conditioned upon the approval by the Commission of this Agreement and the ILAWC/TC Agreement to the extent that ILAWC deems such approval to be required. This Agreement is further subject to and conditioned upon issuance by the Commission of a Certificate authorizing ILAWC to serve the TC Land. If such approval of the Commission is not obtained or if such Certificate is not granted, either party may terminate this Agreement by providing the Developer with written notice and, in such event, the Agreement will be of no further force or effect.

7. This Agreement shall be governed by the laws of the State of Illinois.

8. Time is of the essence of this Agreement and each and every term contained herein.

9. For each and every provision of this Agreement that contains a requirement that a party obtain the approval or consent of the other party, either in advance or otherwise, or in writing or otherwise, such approval shall not be unreasonably withheld.

10. If any party fails to fulfill its obligations hereunder and such failure continues for thirty (30) days after written notice thereof is given by the non-defaulting party to the defaulting party, then the non-defaulting party may pursue any and all legal and equitable remedies against the defaulting party as permitted under applicable law.

11. The remaining portion of this page has been left intentionally blank, in order to accommodate the signature/approval page which follows.

IN WITNESS THEREOF, the parties have executed this Agreement by their authorized individuals to be effective as of the day, month, and year first above written.

ILLINOIS-AMERICAN WATER COMPANY

By:_____
Title: _____

ATTEST:

_____

WESTMINSTER SWANSON LAND PARTNERS II, LLC

By:_____
Title: _____

ATTEST:

_____

ATTACHMENT “A”

TO WATER AND WASTEWATER AGREEMENT

DATED

_____

BETWEEN

ILLINOIS-AMERICAN WATER COMPANY

AND

WS LAND PARTNERS - PRAIRIE GROVE II, L.L.C.

LEGAL DESCRIPTION -- TC ACRES

ATTACHMENT “B”

TO WATER AND WASTEWATER AGREEMENT

DATED

_____

BETWEEN

ILLINOIS-AMERICAN WATER COMPANY

AND

WS LAND PARTNERS - PRAIRIE GROVE II, L.L.C.

CONSTRUCTION SCHEDULE

ATTACHMENT "C"

CERTIFICATION BY ENGINEER

PROJECT NAME _____

The attached "RECORD" DRAWINGS pages _____through_____are, to the best of my knowledge and belief, a true and correct representation of the system installation, including locations of main, hydrants, valves and services in accordance with the approved plans and specifications prepared under my direction as signed and sealed by myself dated _____.

_____

Name of Engineering Firm

_____

Signature of Engineer Illinois P.E. Registration No. Date

SEAL

Developer Installed Water Main Illinois-American Water Company

ATTACHMENT “D”

TO WATER AND WASTEWATER AGREEMENT

DATED

_____

BETWEEN

ILLINOIS-AMERICAN WATER COMPANY

AND

WS LAND PARTNERS - PRAIRIE GROVE II, L.L.C.

LAND TO BE TRANSFERRED