

**AMENDED AND RESTATED
WATER SERVICE AGREEMENT**

THIS AMENDED AND RESTATED WATER SERVICES AGREEMENT (this “Agreement”) dated as of _____, 2024 is entered into by and between AVION WATER COMPANY, INC., an Oregon corporation (“Avion”), and FNF NV BRASADA, LLC, an Oregon limited liability company (“Brasada”).

RECITALS

A. Avion is a private water company regulated by the Oregon Public Utility Commission and the Oregon Health Authority. It provides domestic and irrigation water in Crook County and Deschutes County, Oregon.

B. Brasada is the owner and developer of that certain destination resort and community situated in Crook County, Oregon, commonly known as Brasada Ranch (“Destination Resort”), including, but not limited to, the residences, overnight lodging units, and recreational, commercial and association facilities and improvements located within the Destination Resort. The Destination Resort master plan includes 750 residential and 375 overnight lodging units, commercial and recreational facilities, food and beverage services, and quasi-municipal landscaping.

C. Brasada is the successor in interest to land, systems, and improvements previously held by predecessor developers Eagle Crest, Inc., an Oregon corporation (“Eagle Crest”), and Brasada Ranch, Inc., an Oregon corporation (“Brasada Ranch”). Crook County Zoning Ordinance, Section 12.1 00(H), required Brasada’s predecessors to demonstrate that the proposed water facilities and water sources could reasonably serve the Destination Resort. Crook County and Avion have determined that Avion’s water system and water rights can reasonably serve the

estimated demands of the Destination Resort.

D. Avion is authorized to serve the Destination Resort under Oregon Revised Statutes (“ORS”) 540.510(3)(a), which provides that any water right issued to a municipality may be applied to beneficial use on lands to which the right is not appurtenant if: “(B) The use continues to be for municipal purposes and would not interfere with or impair prior vested water rights.” Pursuant to ORS 540.510(3)(b), Avion is a “municipality” because it qualifies as a water supplier as defined in ORS 448.115. Pursuant to Oregon Administrative Rules (“OAR”) 690-015-0140(2), the “municipal purposes” referenced in ORS 540.510(3) include quasi-municipal use. Pursuant to OAR 690-015-0140(1), a municipality may use water beneficially on any lands so long as the use continues to be for municipal purposes, the place and nature of use are compatible with local comprehensive plans, and the rate of use of water by the municipality does not exceed that allowed by its existing water rights.

E. Pursuant to Crook County Code Section 18.116.080(3)(b), Brasada is required to maintain a water facility master plan that estimates water demands for the Destination Resort at maximum build-out and identifies the water sources available to meet estimated demands at the Destination Resort and to provide an adequate water supply.

F. On April 29, 2003, Avion and Eagle Crest executed a Water Services Agreement (the “2003 Water Services Agreement”) to “provide domestic water, commercial water, dust control, fire protection, restoration, construction, limited irrigation water and other uses typical and usual for a municipality to the Destination Resort.” The 2003 Water Services Agreement contemplated that Eagle Crest would pay the cost for construction of an 8”-16” water main, if required, to the Destination Resort, as well as all engineering, construction, and installation for all pipelines and service connections interior to the project. Avion was to accept and thereafter

accept the interior pipelines and appurtenances for maintenance. Avion was obligated to lease any offsite pipeline if the project qualified for anticipated tax credits. The parties agreed Avion would be the sole provider of domestic water to the Destination Resort.

G. On April 19, 2005, Eagle Crest assigned its interest in the 2003 Water Services Agreement to Brasada Ranch, pursuant to that certain Assignment of Water Service Agreement.

H. On April 19, 2005, Avion and Brasada Ranch / Eagle Crest entered an Amendment to the 2003 Water Service Agreement. The amendment provided that:

1. Avion, at its cost, would install pumping and electrical equipment at Brasada's on-site well;
2. Avion, at its cost, would construct a minimum 760,000-gallon reservoir;
3. Avion, at its cost, would install various pumping stations needed for domestic and fire service;
4. At Brasada Ranch's cost, Avion would construct a 12-inch diameter, class 200 PVC mainline from Avion's existing Pronghorn main to the Destination Resort, with such line to be in service by November 1, 2008.
5. Eagle Crest's Oregon Water Resources Department Permit G-15855 ("Permit G-15855") would be used by Avion until November 1, 2008, or until the Pronghorn line was earlier finished. The amendment removed Avion's responsibility to satisfy certain Deschutes Basin requirements, including purchasing mitigation credits.

I. Following entry of the April 19, 2005, Amendment to Water Service Agreement, Avion constructed a 760,000-gallon reservoir and pumping stations for domestic and fire service. Avion has continually maintained and operated the Water System (as defined below) utilizing Brasada's two wells and Permit G-15855. Brasada Ranch and its successor, Brasada, have

annually purchased mitigation credits for water appropriation pursuant to Permit G-15855. Therefore, the mainline from Pronghorn to the Destination Resort was not constructed.

J. On or about March 6, 2007, Avion, on the one hand, and Brasada Ranch, RMG Development, Inc., an Oregon corporation, and Remington Ranch, LLC, an Oregon limited liability company (collectively, “Developers”), on the other hand, entered into a multiparty agreement that, together with amendments, concerned development of water service infrastructure to serve the destination resorts commonly known as Brasada Ranch, Hidden Canyon, and Remington Ranch (the “2007 Multi-Party Agreement”). The 2007 Multi-Party Agreement, as amended, identified events that would trigger requirements for the construction of infrastructure and a water transmission main to the Developers’ destination resorts. The PUC approved the 2007 Multi-Party Agreement on April 24, 2007. Despite the occurrence of triggering events, construction of the transmission line did not commence. All business entities comprising the Developers have been dissolved. To the parties’ knowledge, the 2007 Multi-Party Agreement was not assigned to Brasada, nor was consent for assignment provided in accordance with Section 13.15 of the 2007 Multi-Party Agreement.

K. By letter dated June 30, 2021, Avion informed Brasada that it would consider the 2007 Multi-Party Agreement terminated if the parties or their successors did not pursue amending and restating it. Brasada, the Developers, or their successors did not take action to amend or restate the 2007 Multi-Party Agreement.

L. On August 19, 2022, Avion and Brasada entered a Memorandum of Agreement (“MOA”) to construct a new third water well, assign water system infrastructure, and assign Permit G-15855. The MOA provides that in lieu of constructing a new water transmission line from outside the Destination Resort, Brasada will pay to construct a new, third basalt aquifer

well (“Third Well”) to serve as the primary water source for the Destination Resort. Brasada will likewise assign ownership of Permit G-15855 and all Brasada wells, existing water infrastructure, and future developer-constructed water infrastructure to Avion. Avion, in turn, will undertake all future management and operation of the water system to meet the demands of the Destination Resort, other than irrigation water provided by Central Oregon Irrigation District. The MOA also provides that Avion and Brasada will enter into a new Water Services Agreement.

M. Avion and Brasada desire to amend and restate the Original Agreement in its entirety as set forth in this Agreement.

AGREEMENT

NOW THEREFORE, the parties hereby agree as follows:

I. Avion’s Obligations. Avion hereby agrees to the following:

A. To provide water service to the Destination Resort for purposes typical and necessary for a destination resort community, including, but not limited to, domestic, commercial, recreational, fire protection, construction, and limited irrigation in accordance with any governing laws, rules, and regulations and in accordance with the terms of this Agreement.

B. Following completion of the Third Well (as defined below), as determined by Avion in its commercially reasonable discretion, Avion will accept from Brasada an assignment of Permit G-15855. Avion will thereafter be the holder of Permit G-15855 and solely responsible for the management and exercise of the permit in all aspects, including maintenance, water use reporting, satisfaction of mitigation requirements, claims of beneficial use, and development toward certification.

C. Avion will be solely responsible for the management, operation,

maintenance, and replacement of the existing Brasada wells, the Third Well, and all additional water system components constructed by Brasada or its predecessors and contributed to Avion as contribution in aid of construction or pursuant to this Agreement and the Original Agreement (the “Water System”).

D. To waive its systems development charges for all Brasada constructed development within the Destination Resort, subject to approval by the Oregon Public Utilities Commission. Avion shall use its commercially reasonable efforts to obtain the approval of the Oregon Public Utility Commission for such waiver. As used in this Agreement, Brasada constructed development shall include any development constructed by a successor entity to which Brasada has assigned its interests in the Destination Resort.

E. To work cooperatively with Brasada and Brasada’s engineers to develop, evaluate, and select the water distribution system design for future phases of the Destination Resort and Water System developments.

F. To comply with any applicable restrictions and satisfy any applicable requirements pursuant to and contained in the Deschutes Basin Ground Water Mitigation Rules (OAR 690-505-0600 et seq.), the Deschutes Basin Mitigation Bank and Mitigation Credit Rules (OAR 690-521-0100 et seq.), and any other restrictions and requirements that may be imposed from time to time by any federal, state, or local government or court of competent jurisdiction on the delivery and use of groundwater pursuant to this Agreement.

G. Following completion of construction of the Third Well, to develop and provide alternative sources of water, at Avion’s expense, in the event additional capacity or alternative sources are reasonably necessary to maintain an adequate water supply for the current and emerging demands of the Destination Resort, including the existing demand

forecast within the 2024 Brasada Ranch Water Management and Conservation Plan, or any demand projections imposed by state or local authorities. Avion’s delivery obligation shall include water to the Destination Resort in such quantities and volumes as allowed under Permit G-15855. For purposes of this Agreement, “at Avion’s expense” shall not prohibit Avion from recuperation of said expenses through published tariffs.

II. Brasada’s Obligations. Brasada agrees to the following:

- A. To pay the cost to drill and construct the Third Well.
- B. To work with Avion to identify a mutually agreeable location for the Third Well and execute all reasonably necessary rights of way and easements for constructing the Third Well and its addition to the Water System.
- C. To assign all ownership rights and titles to Brasada wells, existing and future Water System components, and Permit G-15855 to Avion upon construction completion of the Third Well.
- D. To pay and provide engineering, construction, and installation for all pipelines and service installations interior to the Destination Resort and the Water System within new land use phases, in accordance with Avion’s standard specifications. Avion shall provide Brasada with a written copy of such specifications within ten (10) days of the date of the written request. Avion will then accept the pipelines and appurtenances for maintenance in accordance with its existing maintenance policies and tariffs. Avion shall provide Brasada with a written copy of its current maintenance policies and tariff within ten (10) days of the date of the written request. Avion shall have the right to approve all final designs for any portion of the Water System constructed by Brasada, which shall not be unreasonably withheld, delayed, or conditioned.

E. To grant all reasonably necessary easements and rights-of-way to Avion for the construction and development of the Third Well and additional Water System improvements reasonably necessary to fulfill the purposes of this Agreement. Final locations and configuration of easements and rights-of-way granted pursuant to this provision shall be subject to Brasada's commercially reasonable discretion.

III. **Generally**. The parties hereby mutually agree as follows:

A. Avion and Brasada agree that Avion shall be the sole provider of water service to the Destination Resort for purposes typical and necessary for a destination resort community, including, but not limited to, domestic, commercial, recreational, fire protection, construction, and limited irrigation so long as Avion provides water service in accordance with any governing laws, rules and regulations and in accordance with the terms of this Agreement, and so long as Brasada obtains any required land use approvals relating to Avion's provision of water service. Avion and Brasada further agree that Brasada may pursue additional irrigation water from Central Oregon Irrigation District by pursuing and developing its own irrigation water rights or from any other water provider in accordance with Oregon law.

B. This Agreement is subject to approval by the Oregon Public Utility Commission of all of the terms and conditions, including but not limited to the waiver of systems development charges for Brasada-constructed development. Avion shall use commercially reasonable efforts to obtain such approval. All water service shall be subject to the fees and costs as allowed by the Avion Water Company tariff, as the same may be modified from time to time.

C. Avion's future provision of water service to undeveloped portions of the Destination Resort is subject to the approval of any land use applications necessary for the

Destination Resort. Avion shall cooperate with Brasada in connection with obtaining such approvals, provided, however, that in no event shall Avion be obligated to incur any costs or expenses in connection therewith.

D. Any controversy or claim arising out of this Agreement will be settled by arbitration before a single arbitrator in Crook County, Oregon. If the parties agree on an arbitrator, the arbitration will be held before the arbitrator selected by the parties. If the parties do not agree on an arbitrator, each party will designate an arbitrator, and the arbitration will be held before a third arbitrator agreed and selected by the designated arbitrators. The arbitration will be conducted in accordance with the then-current rules of the Arbitration Service of Portland, Inc. The resolution of any controversy or claim, as determined by the arbitrator, will be binding on the parties. Any party may seek from a court an order to compel arbitration or any other interim relief or provisional remedies pending an arbitrator's resolution of any controversy or claim. Any such action or proceeding – or any action or proceeding to confirm, vacate, modify, or correct the award of the arbitrator – will be litigated in courts located in Crook County, Oregon. Each party consents and submits to the jurisdiction of any court located in Crook County, Oregon. The prevailing party in the arbitration will be entitled to recover from the other party all expenses incurred in connection with the arbitration, including attorneys' fees.

E. Notwithstanding anything to the contrary contained in this Agreement, each of Avion and Brasada may seek a temporary restraining order or a preliminary injunction from any court of competent jurisdiction in order to prevent immediate and irreparable injury, loss, or damage, provided such party has commenced in good faith a dispute resolution proceeding pursuant to Section III, Paragraph D above. Once appointed, the arbitrator shall

have the power to modify or vacate such temporary restraining order or preliminary injunction or issue a restraining order or injunction.

F. Subject to the prohibition on assignments contained in Paragraph III, Section G below, this Agreement shall be binding upon the heirs, successors, and assigns of the parties hereto.

G. This Agreement may not be assigned or otherwise transferred without the prior written consent of either party. Said consent shall not be unreasonably withheld, delayed, or conditioned.

H. Brasada shall be permitted to disclose the terms and conditions of this Agreement to any permitting authority necessary for the continued development of the Destination Resort, as described herein.

I. Avion makes the following representations and warranties:

1. To Avion's actual knowledge, after the assignment of Permit G-15855, Avion has and will during the term of this Agreement have sufficient water rights to provide water service to the Destination Resort for purposes typical and necessary for a destination resort community pursuant to this Agreement.

2. Avion has obtained or will obtain, all permits or other governmental approvals necessary to carry out its obligations under this Agreement, including but not limited to any applicable mitigation requirements pursuant to and contained in the Deschutes Basin Ground Water Mitigation Rules (OAR 690-505-0600 et seq.) and the Deschutes Basin Mitigation Bank and Mitigation Credit Rules (OAR 690-521-0100 et seq.).

3. All water provided pursuant to this Agreement for domestic and commercial use shall meet all applicable drinking water standards established by federal, state,

and local government authorities.

J. In the event of a material breach hereunder by a party, which breach is not cured within thirty (30) days of receipt of written notice of such breach, or if such breach cannot be cured within such thirty (30) day period, ninety (90) days thereafter, the non-defaulting party shall, in addition to such remedies as may be available to it under applicable law, have the right to terminate this Agreement.

K. In the event of a change in applicable laws or regulations such that Avion's obligation to provide water hereunder is no longer a perpetual obligation, then commencing on the effective date of such change, the term of this Agreement shall be for an additional ninety-nine (99) years.

L. This Agreement and any other document to be furnished pursuant to the provisions hereof embody the entire agreement and understanding of the parties hereto as to the subject matter contained herein and therein. There are no restrictions, promises, representations, warranties, covenants, or undertakings other than those expressly set forth or referred to in this Agreement and such documents. This Agreement and such documents supersede all prior agreements and understandings among the parties with respect to the subject matter hereof and thereof, including without limitation the Original Agreement and any amendments thereto.

M. It is expressly understood and agreed that this Agreement is made and entered into for the sole protection and benefit of Avion and Brasada and their respective successors and assigns and, without the prior express written consent of Avion, Brasada, and any other parties hereto, no other person shall have any right to action hereon.

N. The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a

subsequent act that would have originally constituted a violation from having the effect of an original violation.

O. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

P. The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Such rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

Q. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

R. The recitals expressed above are incorporated by reference within the Agreement as if fully expressed herein. Each of the undersigned is authorized to enter this Agreement and bind their respective entity.

S. If a suit, action, or other proceeding of any nature whatsoever is instituted to enforce or interpret any provision of this Agreement or in connection with any dispute hereunder, the prevailing party shall be entitled to recover such amount as the court may adjudge reasonable as attorney's fees and all other fees, costs, and expenses of litigation at trial or on any appeal or review, in addition to all other amounts provided by law.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have executed and delivered this

Agreement effective as of the date first set forth above.

FNF NV BRASADA, LLC,
an Oregon limited liability company,

AVION WATER COMPANY, INC.,
an Oregon corporation

By: _____

By: _____

Name: _____

Name: Jason J. Wick

Title: _____

Title: President