Committee: Rules Date: 11/02/21 Committee Date: 11/15/21	Author: Chrissi Nimmo Sponsor: Danny Callison, Mike Shambaugh, Victoria Vazquez

RESOLUTION NO. 66-21

COUNCIL OF THE CHEROKEE NATION

A RESOLUTION AUTHORIZING A LIMITED WAIVER OF SOVEREIGN IMMUNITY FOR THE PURCHASE OF PROPERTY FROM OKLAHOMA ORDINANCE WORKS AUTHORITY.

WHEREAS, the Cherokee Nation since time immemorial has exercised the sovereign rights of self-government in behalf of the Cherokee people;

WHEREAS, the Cherokee Nation is a federally recognized Indian Nation with a historic and continual government to government relationship with the United States of America;

WHEREAS, the Nation enjoys sovereign immunity from suit under federal and state law;

WHEREAS, the Nation has inherent sovereign power by virtue of its constitution and tribal law to enter into contractual agreements and execute such waivers necessary for such agreements;

WHEREAS, waivers of sovereign immunity must be approved by the Cherokee Nation Tribal Council;

WHEREAS, Cherokee Nation wishes to purchase real property from Oklahoma Ordinance Works Authority, for the construction of a Child Development Center;

WHEREAS, the proposed contract contains a limited waiver of Sovereign Immunity, strictly limited in scope to apply only to the Property and to Purchaser's obligations under the Agreement;

BE IT RESOLVED BY THE CHEROKEE NATION, that the Principal Chief and/or his designee are hereby authorized and directed to execute all documents or transactions necessary for Cherokee Nation to purchase real property from Oklahoma Ordinance Works Authority, for the construction of a Child Development Center, specifically including a limited waiver of Sovereign Immunity, strictly limited in scope to apply only to the Property and to Purchaser's obligations under the Agreement.

CERTIFICATION

The foregoing resolution was adopted by the Council of the Cherokee Nation at a duly called meeting on the 13th day of December, 2021, having 17 members present, constituting a quorum, by the vote of 17 yea; 0 nay; 0 abstaining.

Mike Shambaugh, Speaker
Council of the Cherokee Nation

ATTEST:

Dora Patzkowski, Secretary
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 16th day of December, 2021.

Chuck Hoskin, Jr., Principal Chief
Cherokee Nation

ATTEST:

Tina Glory Jordan, Secretary of State
Cherokee Nation

Cherokee Nation
Act/Resolution Proposal Form

☐ Act ☒ Resolution

TITLE:

A RESOLUTION AUTHORIZING A LIMITED WAIVER OF SOVEREIGN IMMUNITY FOR THE PURCHASE OF PROPERTY FROM OKLAHOMA ORDINANCE WORKS AUTHORITY.

DEPARTMENT CONTACT: Taralee Montgomery

RESOLUTION PRESENTER: Chrissi Nimmo

COUNCIL SPONSOR: Danny Callison, Mike Shambaugh, Victoria Vazquez

NARRATIVE:

Principal Chief and/or his designee are hereby authorized and directed to execute all documents or transactions necessary for Cherokee Nation to purchase real property from Oklahoma Ordinance Works Authority, for the construction of a Child Development Center, specifically including a limited waiver of Sovereign Immunity, strictly limited in scope to apply only to the Property and to Purchaser's obligations under the Agreement.

NOV 2 '21 PM3:49

ADMINISTRATIVE CLEARANCE

Dept/Program:

Signature/Initial Date

Executive Director:

Signature/Initial Date

Treasurer (Required: Grants/Contracts/Budgets):

Signature/Initial Date

Government Relations:

Signature/Initial Date

Administration Approval:

11/2/21

Signature/Initial CFJ Date

LEGISLATIVE CLEARANCE:

Legal & Legislative Coordinator:

11/2/21

Signature/Initial Date

Standing Committee & Date:

Rules 11/15/21

Chairperson:

Shambaugh

PURCHASE AND SALE AGREEMENT

(Cherokee Daycare Facility)

ARTICLE 1
PROPERTY/PURCHASE PRICE

1.1 ***CERTAIN BASIC TERMS:***

(a) ***Purchaser and Notice Address:***

CHEROKEE NATION,
ATTN: Real Estate Services, Ginger Reeves
Telephone: 918-822-2773
E-Mail: ginger-reeves@cherokee.org
Address: PO Box 948
Tahlequah, OK 74465

With a copy to:

Sara Hill, Attorney General
Telephone: (918) 453-5000
E-Mail: sara-hill@cherokee.org
Address: PO Box 1533
Tahlequah, OK 74465

(b) ***Seller and Notice Address:***

OKLAHOMA ORDNANCE WORKS AUTHORITY,
an Oklahoma public trust
ATTN: MR. DAVID STEWART
Address: P.O. Box 945
Pryor, OK 74362

-AND-

ATTN: MR. JASON STUTZMAN
Address: P.O. Box 945
Pryor, OK 74362

With a copy to:

DOERNER, SAUNDERS, DANIEL
& ANDERSON LLP
ATTN: MR. WILLIAM C. ANDERSON
Telephone: (918)-591-5283
E-Mail: wanderson@dsda.com
Address: 2 West 2nd Street, Suite 700
Tulsa, OK 74109

-AND-

DOERNER, SAUNDERS, DANIEL & ANDERSON LLP
ATTN: MR. NATHAN S. CROSS
Telephone: (918)-591-5252
E-Mail: ncross@dsda.com
Address: 2 West 2nd Street, Suite 700
Tulsa, OK 74109

(c)	***Date of this Agreement:***	**_____, 2021**
(d)	***Purchase Price:***	***TEN AND NO/100 DOLLARS ($10.00) AND OTHER GOOD AND VALUABLE CONSIDERATION***
(e)	***Earnest Money:***	***NONE***
(f)	***Closing Date:***	**_____, 2021 or such other date as mutually agreed upon by the parties**
(g)	***Title Company:***	***MAYES COUNTY ABSTRACT CO.*** 20 N. Adair Street Pryor, OK 74361 Telephone: 918-825-3074 Facsimile: 918-825-3571
(h)	***Broker:***	***NONE***
(i)	***Due Diligence Period:***	**60 days from execution of this Agreement**

1.2 ***PROPERTY:*** Subject to the terms of this Purchase and Sale Agreement (the **"Agreement"**), Seller agrees to donate and sell to Purchaser, and Purchaser agrees to accept and purchase from Seller, the following Real Property and any personal property (each of the foregoing items being defined collectively as the **"Property"**):

(a) The **"Real Property"** is as described in ***Exhibit "A"***, including, without warranty (except as otherwise provided herein or the documents delivered at the Closing), any easements or rights-of-way relating thereto, and all appurtenances thereunto belonging, and, without warranty (except as otherwise provided herein or the documents delivered at the Closing). The parties agree that the legal description provided in Exhibit "A" may be supplemented at a later date.

1.3 ***PURCHASE PRICE***: The Purchase Price (subject to the prorations and closing cost allocations as provided herein) shall be paid upon the full consummation of the transactions contemplated hereunder (the "**Closing**") by Purchaser to Seller as provided in Section 1.1(d) hereof.

1.4 ***PRESS RELEASE AND MEDIA EVENT:*** The parties agree to jointly issue a press release and host a media event at a mutually agreeable time and place regarding Seller's donation of the Property to Purchaser and Purchaser's development of the Daycare Facility (as referenced in Section 6.1 below) on the Property.

ARTICLE 2
INSPECTIONS

2.1 ***PROPERTY INFORMATION:*** Seller shall (to the extent such information is in the possession of Seller or its agents) provide to Purchaser copies of the items described on Schedule 2.1 (the **"Property Information"**) within ten (10) days of the Date of this Agreement.

2.2 ***CONFIDENTIALITY OF PROPERTY INFORMATION:*** Prior to the Closing Date, the Property Information and all other information furnished to, or obtained through inspection of the Property by, Purchaser, its affiliates, employees or agents relating to the Property (other than matters of public record or otherwise available to the public), will be treated by Purchaser, its affiliates, employees and agents as confidential, and unless legally required to do so, will not be disclosed by Purchaser to anyone other than to Purchaser's consultants, investors, attorneys, brokers, and lenders, or in any litigation between the parties.

2.3 ***INSPECTIONS IN GENERAL:*** During the Due Diligence Period, Purchaser, its agents, and employees shall have the right to enter upon the Property for the purpose of making such inspections as Purchaser may deem appropriate at Purchaser's sole risk, cost and expense. All of such entries upon the Property shall be at reasonable times and Purchaser shall notify Seller not less than twenty-four (24) hours prior to any entry upon the Property. If any inspection or test disturbs the Property,

Purchaser will restore the Property to the same condition as existed prior to the inspection or test. Purchaser shall defend, indemnify Seller and hold Seller, Seller's tenants, agents, members, and employees (the "**Indemnified Parties**") and the Property harmless from and against any and all losses, costs, damages, claims, or liabilities ("**Losses**") for physical damage or injury to persons or property and claims for nonpayment for services and materials arising out of or in connection with Purchaser's inspection of the Property as allowed herein, including but not limited to, mechanic's and materialmen's liens arising out of or in connection with Purchaser's inspection of the Property as allowed herein; provided, that Purchaser shall not be required to indemnify the Indemnified Parties or the Property, or both, to the extent that: (i) the Losses arise out of the negligence or willful misconduct of any of the Indemnified Parties or (ii) the Losses arise out of the discovery of an existing condition (except to the extent that Purchaser exacerbates the existing condition). Purchaser's indemnity herein shall survive termination of this Contract. Purchaser acknowledges that it is relying on its inspections of the physical and financial aspects of the Property in acquiring the Property and that the Due Diligence Period allows it an adequate opportunity to fully evaluate the Property and its suitability for Purchaser's purposes.

2.4 ***TERMINATION DURING THE DUE DILIGENCE PERIOD***: During the pendency of the Due Diligence Period and any extensions thereof, Purchaser, for any reason or no reason, shall have the absolute right, at Purchaser's sole discretion, to terminate this Agreement. Upon Purchaser's election to terminate pursuant to this Section 2.4, Purchaser shall return to Seller all information and materials provided to Purchaser pursuant to this Agreement, and the parties shall have no further obligations under this Agreement.

ARTICLE 3
TITLE/SURVEY REVIEW

3.1 ***SURVEY***: As soon after the execution of this Agreement as is practicable, Seller shall obtain, at Seller's sole cost and expense, a survey certified in a manner acceptable to Purchaser and the Title Company and prepared in accordance with the "Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys" jointly established and adopted by ALTA and NSPS effective February 23, 2021 and pursuant to the accuracy standards (as adopted by ALTA and NSPS and in effect on the date of the certification) for an ALTA/NSPS Land Title Survey and including items 1, 2, 3, 4, 6(a), 6(b), 7(a), 7(c), 8, 9, 11, 13, 16, 17 and 18 from Table A thereto (the "**Survey**").

3.2 ***ABSTRACT:*** Seller shall provide to Purchaser or the Title Company an abstract covering the Real Property (the "**Abstract**"). Purchaser shall pay all costs of updating the Abstract.

3.3 ***TITLE/SURVEY REVIEW AND CURE:*** Seller shall cause the Title Company to issue a commitment of title insurance covering the Property. Purchaser shall have five (5) days from Purchaser's receipt of the Survey to notify Seller in writing of any objections to title. If the Title Company revises any commitment to add or modify

exceptions or requirements that affect title to the Property, Purchaser may object to such matter by notice to Seller within five (5) business days after such revised title report or commitment is delivered to Purchaser. Seller may, but shall not be obligated to, attempt to cure any title objection by the Closing, save and except mortgages or liens of an ascertainable amount which Seller shall remove or cause to be released prior to or by the Closing. If Seller elects not to cure any title or survey objection, or fails to cure any such objection within five (5) days prior to the Closing, then Purchaser may either terminate this Agreement by written notice to Seller given on or before the Closing or waive such objections, in which event the Closing shall occur as contemplated herein and Purchaser shall accept the Property subject to such condition without reduction of Purchase Price. Purchaser shall pay all costs related to title examination and issuance of the commitment.

3.4 ***TITLE POLICY:*** At the Closing, the Title Company shall deliver to Purchaser a marked up base Owner's Commitment of Title Insurance (the "**Title Policy**"), issued by the Title Company dated the date and time of recording of the Deed in the amount designated by Purchaser, insuring Purchaser as owner of fee simple title to the Property subject to any easements reserved by Seller unto itself, the covenants and restrictions set forth in ***Exhibit "B"*** attached hereto and incorporated herein by reference and such exceptions as have been approved by Purchaser previously, if any (collectively the "**Permitted Exceptions**"). Any costs related to obtaining the Title Policy or the insurance thereunder shall be borne solely by Purchaser.

ARTICLE 4
RISK OF LOSS

4.1 ***DAMAGE OR CONDEMNATION:*** Risk of loss resulting from any condemnation or eminent domain proceeding which is commenced or has been threatened prior to the Closing, and risk of loss to the Property due to fire, flood or any other cause prior to the Closing, shall remain with Seller. If prior to the Closing the Property or any portion thereof shall be damaged, or if any portion of the Property shall be subject to a bona fide threat of condemnation or shall become the subject of any proceedings, judicial, administrative or otherwise, with respect to the taking by eminent domain or condemnation, Seller shall immediately notify Purchaser thereof after receipt of actual notice thereof by Seller, but in any event prior to the Closing. If the Property is materially damaged or a material portion of the Property is subject to eminent domain or condemnation, Purchaser may elect within ten (10) days after receipt of such notice, to terminate this Agreement (the "**Election Period**") or to proceed to the Closing. If the Closing Date is within the Election Period, then the Closing shall be extended to the next business day following the end of the Election Period. If Purchaser does not elect to terminate this Agreement, and in any event if the damage or taking is not material, this Agreement shall remain in full force and effect and the purchase contemplated herein, less any interest taken by eminent domain or condemnation, shall be effected and Purchaser shall accept an assignment from Seller of either the insurance or condemnation proceeds and receive a credit against the Purchase Price in an amount equal to the deductible of Seller's casualty insurance policy. For the purposes of this paragraph, "materially damaged" means damage costing an amount equal to or

exceeding $25,000.00 to repair or any damage that is uninsured (excluding the deductible under the insurance policy) and "material portion" as to a taking or condemnation means twenty-five percent (25%) or more of the total square footage of the Property.

4.2 ***NOTIFICATIONS***. Between the Date of this Agreement and the Closing, Seller shall promptly notify Purchaser of: (a) any condemnation or environmental, proceedings specifically relating to the Property of which Seller receives written notice after the Date of this Agreement, (b) any notices of violations of any legal requirements relating to the Property received by Seller or of which Seller becomes aware after the Date of this Agreement, or (c) any litigation of which Seller receives written notice or of which Seller becomes aware of after the Date of this Agreement that arises out of the operation of the Property.

ARTICLE 5
CLOSING

5.1 ***CLOSING:*** The Closing shall commence at 10:00 a.m. central time or such other time as the parties may mutually specify on the Closing Date at the offices of the Title Company.

5.2 ***CONDITIONS TO PURCHASER'S OBLIGATIONS TO CLOSE:*** In addition to such other conditions to Closing as are specified throughout this Agreement, the obligation of Purchaser to consummate the transaction contemplated hereunder is contingent upon the following:

(a) The representations and warranties of Seller contained herein shall be true and correct in all material respects as of the date of this Agreement and the Closing Date;

(b) There shall exist no pending action, suit or proceeding with respect to Seller or the Property before or by any court or administrative agency which seeks to restrain or prohibit, or to obtain damages or a discovery order with respect to, this Agreement or the consummation of the transaction contemplated hereby, or in which Purchaser would be required to participate in as a party following the Closing to protect its interest in the Property; and

(c) Seller has performed all of its obligations under this Agreement.

If any of the foregoing conditions to Purchaser's obligation to proceed with the Closing hereunder has not been satisfied as of the Closing Date or such earlier date as herein provided, Purchaser may, in its sole discretion, terminate this Agreement by delivering written notice to Seller on or before the Closing Date, or elect to close, notwithstanding the non-satisfaction of such condition, in which event Purchaser shall be deemed to have waived any such condition. If a condition precedent fails because of a

breach by Seller of an express obligation hereunder, then such failure shall be a default by Seller under this Agreement.

5.3 ***SELLER'S DELIVERIES IN ESCROW:*** On or before the Closing Date, Seller shall deliver in escrow to the Title Company the following:

(a) *Transfer Documents*: Seller shall deliver to Purchaser, the following transfer documents, the form for which shall each be agreed upon prior to the Closing:

(i) *Deed*: A General Warranty Deed (the **"Deed"**) in conformity with the custom in such jurisdiction and satisfactory to Purchaser and the Title Company, executed and acknowledged by the Seller and subject to Permitted Exceptions and any exception items on Schedule B of the Title Report approved by Purchaser pursuant to this Agreement.

(ii) *State Law Disclosures:* Such disclosures and reports as are required by applicable state and local law in connection with the conveyance of real property;

(iii) *Authority:* Evidence of the existence, organization and authority of Seller and of the authority of the persons executing documents on behalf of Seller reasonably satisfactory to Purchaser and the Title Company;

(iv) *Additional Documents:* Any additional documents that the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Agreement including the Title Company's standard lien and possession affidavit necessary to obtain the Title Policy with extended coverage;

(v) *Closing Statement*: A Closing Statement accurately reflecting the Purchase Price, cost allocations and prorations as herein provided for; and

(vi) *Certificate of Representations and Warranties*: A certificate certifying that each of Seller's representations and warranties in this Agreement is true and correct as of the Closing Date.

(b) *Right of First Refusal:* An executed Right of First Refusal Agreement in the same or substantially similar form as the document attached hereto as ***Exhibit "C"***.

5.4 ***PURCHASER'S DELIVERIES IN ESCROW:*** On or before the Closing Date, Purchaser shall deliver in escrow to the Title Company the following:

(a) *Purchase Price:* The Purchase Price which shall be delivered to Seller by the Title Company, plus or minus applicable prorations. The Purchase Price shall be deposited by Purchaser with the Title Company in immediate,

same-day federal funds wired for credit into the Title Company's escrow account.

(b) *State Law Disclosures:* Such disclosure and reports as are required by applicable state and local law in connection with the conveyance of real property;

(c) *Additional Documents:* Any additional documents that the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Agreement;

(d) *Closing Statement*: A Closing Statement accurately reflecting the Purchase Price for the Property, cost allocations and prorations as herein provided for; and

(e) *Right of First Refusal:* An executed Right of First Refusal Agreement in the same or substantially similar form as the document attached hereto as ***Exhibit "C"***.

5.5 ***POSSESSION:*** Seller shall deliver possession of the Property to Purchaser at the Closing subject to the Permitted Exceptions and any of Purchaser's previously approved exceptions reflected in the Title Policy.

5.6 ***COSTS/ESCROWS:***

(a) *Paid by Purchaser.* Purchaser shall pay: abstracting continuations, title exam fees and all costs associated with the preparation of the title commitment, the cost of the Title Policy and all other costs and charges of the closing and consummation of the purchase and sale transaction contemplated in this Agreement including but not limited to all recording, filing and documentary stamp charges and fees to record the documents evidencing the conveyance of the Property and transfer tax, if any, and one-half of the Title Company's closing fee.

(b) *Paid by Seller.* Seller shall pay all costs related to the Survey and one-half of the Title Company's closing fee.

(c) *Attorneys and Professional Fees*. Notwithstanding the foregoing, each party shall pay its own attorneys' fees and fees of any accountants and/or advisors incurred in connection with any transactions contemplated in this Agreement.

5.7 ***CLOSE OF ESCROW:*** Upon satisfaction or completion of the foregoing conditions and deliveries, the parties shall direct the Title Company to immediately record and deliver the documents described above to the appropriate parties and make disbursements according to the closing statements executed by Seller and Purchaser.

ARTICLE 6
ADDITIONAL COVENANTS

6.1 ***CONSTRUCTION OF IMPROVEMENTS:*** In addition to the consideration set forth in Section 1.1(d) above, Purchaser (or Purchaser's affiliate) shall, at its sole cost, improve the remaining two-lane segment of 530 Road, including obtaining rights of way or utility easements as may be needed for improving 530 Road and relocating utilities as necessary, between the point referenced as "STA 35+33.1" on the drawing attached hereto as ***Exhibit "D"*** and incorporated herein by reference (the "**Reference Point**") and South Elliot Street into a three-lane road comparable to the recently improved segment of 530 Road between Oakwood Drive and the Reference Point, pursuant to plans and specifications approved by Mayes County and/or the City of Pryor Creek, as applicable at the time of construction (the "**530 Road Improvements**"). Purchaser shall ensure that the 530 Road Improvements at the intersection of Elliot Street and 530 Road include all necessary grade changes, extensions, feathering-in or other improvements that extend into the Elliot Street intersection as may be required by Mayes County and/or the City of Pryor Creek. Purchaser (or Purchaser's affiliate) shall also, at its sole cost, construct a daycare facility on the Property (the "**Daycare Facility**"). The covenants and obligations of this Section 6.1 shall survive the Closing.

6.2 ***ANNEXATION:*** Purchaser acknowledges and agrees that the Property and any other property mutually agreed to by the parties, including the 530 Road Improvements, will be annexed into the City of Pryor Creek and represents and warrants to Seller that it will take all necessary steps to facilitate such annexation including granting of any easements required by the Pryor M.U.B. This annexation will, among other things, permit Purchaser to acquire water, sewer, gas and electric utilities from the Pryor M.U.B. Seller shall cooperate with Purchaser and assist in the annexation. Purchaser acknowledges and agrees that Seller's obligations regarding sewer collection shall be limited to providing a connection for the M.U.B. at approximately the southwest corner the Property as depicted on the drawing attached hereto and incorporated herein by reference as ***Exhibit "E"***. Purchaser further acknowledges and agrees that a process for construction permitting on the Property is governed by that certain Memorandum of Understanding Regarding MAIP/City of Pryor "The District" between Seller and the City of Pryor Creek, Oklahoma executed December 17, 2019, a copy of which is attached hereto as ***Exhibit "F"*** (the "**M.O.U.**"). Purchaser covenants warrants that it will abide by the MOU as it relates to the Property. The covenants and obligations of this Section 6.2 shall survive the Closing.

6.3 ***COMMENCEMENT OF CONSTRUCTION:*** Purchaser shall commence construction of both the 530 Road Improvements and the Daycare Facility on or before the six (6) month anniversary of the Closing and shall complete construction of both the 530 Road Improvements and the Daycare Facility within eighteen (18) months of commencement of construction. Seller agrees that the timeframes set forth above shall be subject to reasonable extensions, which extensions shall not be unreasonably withheld, provided that substantial progress toward commencement and/or completion of construction is being made. In the event that Purchaser fails to commence construction

and complete construction of both the 530 Road Improvements and the Daycare Facility within the timeframe set forth in this Section 6.3, or any extensions that may be agreed to, Purchaser shall be required to immediately offer the Property back to Seller for the same price of $10.00 set forth in Section 1.1(d) above which offer Seller shall, in Seller's sole discretion, have the freedom to accept or reject. The covenants and obligations of this Section 6.3 shall survive the Closing.

6.4 ***BUILDING AND SITE PLANS:*** Purchaser shall provide draft plans to Seller for review and comment provided, however, that Purchaser shall construct all improvements on the Property with materials and finishes complimentary and comparable to other structures located within the area known as "The District". The Parties agree that they will work together to engineer and create a stormwater detention/drainage plan for the Property that will accommodate stormwater runoff from proposed future development by Seller of the property adjacent to the north and northwest of the Property.

6.5 ***ADDITIONAL COVENANTS:*** The Parties agree that any deed from Seller to Purchaser shall include the covenants, restrictions and reservations to Seller set forth in ***Exhibit "B"*** attached hereto and incorporated herein by reference.

6.6 ***RIGHT OF FIRST REFUSAL:*** Purchaser acknowledges and agrees that part of the consideration for Seller to enter into this Agreement and consummate the transaction hereunder is Purchaser agreeing to grant Seller a continuing right of first refusal to repurchase the Property in the event that Purchaser elects to sell the Property after acquisition. Purchaser covenants and agrees that it will execute a Right of First Refusal Agreement on or before the Closing in the same or substantially similar form as the form attached hereto as ***Exhibit "C".*** Any Right of First Refusal covenant or Agreement, is subject to federal funding requirements contained in the Child Care and Development Block Grant (CCDBG) Act and related rules and regulations. Specifically, Seller understands any Right of First Refusal interest it may have under this agreements or any exhibits is subject to the following:

VIII. Protection of Federal Interest

(1) The Federal government has a continuing reversionary interest in property that is constructed, renovated, or otherwise acquired with Federal funds. This interest takes the form of restrictions on the use and disposition of the property in accordance with 45 CFR 75.318. Use of the facility constructed or renovated with CCDF funds during its useful life for other than the purpose for which the facility was funded, without the prior express written approval of the responsible ACF official, is prohibited. Facilities constructed or renovated with CCDF funds may not be mortgaged, used as collateral, sold or otherwise transferred to another party, without the prior written permission of the responsible ACF official. The Federal interest also is manifested in the requirement that ACF receive a share of the proceeds from any sale of the property, as determined by the Federal share provisions of 45 CFR 75.318. ACF may, at its sole

discretion, subordinate its interest in such property to that of a lender that finances the construction or renovation of the property.

(2) At the commencement of construction or major renovation of a facility with CCDF funds, the Tribal Lead Agency shall record a Notice of Federal Interest in the appropriate official records for the jurisdiction in which the facility will be located (unless the facility will be located on Tribal lands held in trust by the U.S. Government). A Notice is not required for a facility on Tribal lands held in trust by the U.S. Government; however, there is still a Federal interest in any facility constructed or renovated with CCDF funds. The Notice must be recorded in the official records and submitted to the OCC Regional Office within ten working days of the commencement of the construction or renovation.

ARTICLE 7
REPRESENTATIONS AND WARRANTIES

7.1 ***SELLER'S REPRESENTATIONS AND WARRANTIES***: As a material inducement to Purchaser to execute this Agreement and consummate this transaction, Seller represents and warrants to Purchaser that (as of the date hereof and the Closing Date):

(a) *Authority*: Seller has the full right and authority and will have obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby prior to the Closing. This Agreement has been, and all of the documents to be delivered by Seller at the Closing will be, authorized and properly executed and constitutes, or will constitute, as appropriate, the valid and binding obligation of Seller, enforceable in accordance with their terms.

(b) *Conflicts and Pending Action*: There is no agreement to which Seller is a party or, to Seller's knowledge, binding on Seller which is in conflict with this Agreement. There is no action or proceeding pending or, to Seller's knowledge, threatened against Seller or the Property, including condemnation proceedings, which challenges or impairs Seller's ability to execute or perform its obligations under this Agreement.

(c) *Litigation*: There is no litigation or arbitration or other legal or administrative suit, action, proceeding of any kind pending, or threatened or under investigation against or involving the Property, or any part thereof.

(d) *Special Assessments*: Seller has not received any written notice of any special assessment proceedings affecting the Property.

Each of the representations and warranties of Seller contained in this Section 7.1 is made on the Date of this Agreement; and shall be deemed remade by Seller, and shall be true in all material respects, as of the Closing Date.

Prior to the Closing Date, Seller shall notify Purchaser in writing of any facts, conditions or circumstances which come to Seller's knowledge that render any of the representations and warranties set forth in this Section 7.1 inaccurate or incomplete. If an updated representation or warranty has a materially adverse effect on the current use of the Property or Seller's ability to consummate the transaction contemplated by this Agreement, Purchaser's sole right and remedy as a result thereof shall be the right to terminate this Agreement by giving written notice thereof to Seller and neither party shall have any further rights or obligations, hereunder, except for those obligations that specifically survive this Agreement.

For purposes of this Agreement, phrases such as "to Seller's knowledge," the "best of Seller's knowledge," "of which Seller has knowledge" and like phrases shall mean current and actual, not constructive, knowledge.

7.2 ***PURCHASER'S REPRESENTATIONS AND WARRANTIES:*** As a material inducement to Seller to execute this Agreement and consummate this transaction, Purchaser represents and warrants to Seller that:

(a) *Organization and Authority:* Purchaser is a federally recognized Indian tribe, qualified to do business in the state in which the Real Property is located. Purchaser has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Purchaser at the Closing will be, authorized and properly executed and constitutes, or will constitute, as appropriate, the valid and binding obligation of Purchaser, enforceable in accordance with their terms.

(b) *Conflicts and Pending Action:* There is no agreement to which Purchaser is a party or to Purchaser's knowledge binding on Purchaser which is in conflict with this Agreement. There is no action or proceeding pending or, to Purchaser's knowledge, threatened against Purchaser which challenges or impairs Purchaser's ability to execute or perform its obligations under this Agreement.

Each of the representations and warranties of Purchaser contained in this Section 7.2 is made on the Date of this Agreement; and shall be deemed remade by Purchaser, and shall be true in all material respects, as of the Closing Date.

Prior to the Closing Date, Purchaser shall notify Seller in writing of any facts, conditions or circumstances which come to Purchaser's knowledge that render any of the representations and warranties set forth in this Section 7.2 inaccurate or incomplete

For purposes of this Agreement, phrases such as "to Purchaser's knowledge," the "best of Purchaser's knowledge," "of which Purchaser has knowledge" and like phrases shall mean current and actual, not constructive, knowledge.

ARTICLE 8
DEFAULT AND DAMAGES

8.1 ***DEFAULT BY PURCHASER***: In the event of Default by Purchaser, Seller shall have all remedies available to it at law and in equity.

8.2 ***DEFAULT BY SELLER***: In the event Seller defaults in any of its obligations under this Agreement prior to the Closing Date, Purchaser's sole remedy shall be to elect one of the following: (a) to terminate this Agreement or (b) to bring an action for specific performance.

ARTICLE 9
MISCELLANEOUS

9.1 ***PARTIES BOUND:*** Neither party may assign this Agreement without the prior written consent of the other, and any such prohibited assignment shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the respective legal representatives, successors, assigns, heirs, and devisees of the parties. Provided, however, Purchaser may assign this Agreement to an entity related to or affiliated with Purchaser or to an entity formed by Purchaser to acquire the Property. Purchaser shall provide written notice to Seller no less than ten (10) business days prior to the Closing of any permitted assignment hereunder.

9.2 ***HEADINGS:*** The article and paragraph headings of this Agreement are for convenience only and in no way limit or enlarge the scope or meaning of the language hereof.

9.3 ***INVALIDITY AND WAIVER:*** If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible and so long as each party obtains the principal benefits for which it bargained, the remainder of this Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such party's right to enforce against the other party the same or any other such term or provision in the future.

9.4 ***GOVERNING LAW:*** This Agreement shall, in all respects, be governed, construed, applied, and enforced in accordance with the law of the State of Oklahoma. Exclusive venue and jurisdiction of disputes related to this Agreement shall be the District Court of Mayes County, Oklahoma or the United States District Court for the Northern District of Oklahoma. Purchaser further agrees to a limited waiver of its sovereign

immunity strictly limited in scope to apply only to the Property and to Purchaser's obligations under this Agreement and the attachments hereto. The covenants, agreements, rights and obligations of this Section 9.4 shall survive the Closing.

9.5 ***SURVIVAL:*** Unless otherwise expressly stated in this Agreement, each of the covenants, obligations, representations, warranties and agreements contained in this Agreement (including specifically, but without limitation, those in Article 6 and Article 7) shall survive the Closing and the execution and delivery of the Deed required hereunder.

9.6 ***NO THIRD PARTY BENEFICIARY:*** This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions, or remedies to any person or entity as a third party beneficiary, decree, or otherwise.

9.7 ***ENTIRETY AND AMENDMENTS:*** This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings relating to the Property except for any confidentiality agreement binding on Purchaser, which shall not be superseded by this Agreement. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought. If at any time hereafter this Agreement shall be amended by Purchaser and Seller in writing, it shall not be necessary for the Title Company to join in or execute such amendment provided that no such amendment may specifically modify the Title Company's express obligations set forth in this Agreement. It is understood and agreed that an amendment to any time period or deadline set forth in this Agreement shall not be deemed an amendment to the Title Company's express obligations of this Agreement requiring the Title Company's acknowledgment. Copies of any amendment to this Agreement may be delivered by either party to the Title Company. Upon receipt of any such amendment, the Title Company agrees to observe and comply with the terms of any such amendment made in accordance herewith.

9.8 ***TIME:*** Time is of the essence in the performance of this Agreement.

9.9 ***ATTORNEY'S FEES:*** Should either party employ attorneys to enforce any of the provisions hereof, the party against whom any final judgment is entered agrees to pay the prevailing party all reasonable costs, charges, and expenses, including attorneys' fees, expended or incurred in connection therewith.

9.10 ***NOTICES:*** All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth in Paragraph 1.1 (with copies delivered as indicated). Any such notices shall be either (a) sent by overnight delivery for next business day delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by email, in which case notice shall be deemed delivered upon transmission of such notice and evidence of receipt of said transmission, or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. The attorneys for each party are authorized to give any notice specified in this Agreement on behalf of their respective clients. A party's address may be changed by written notice to the other party; provided,

however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

9.11 ***CONSTRUCTION:*** The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

9.12 ***CALCULATION OF TIME PERIODS:*** Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Property is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

9.13 ***EXECUTION IN COUNTERPARTS:*** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the parties may execute and exchange counterparts of the signature pages by telephone facsimile or by email with PDF attachments.

9.14 ***NO BROKER OR FINDERS FEE DUE:*** Purchaser and Seller represent and warrant each to the other that no broker or promoter was involved in the negotiations leading to the execution of this Agreement or brought it about either directly or indirectly and that any such claim made shall be the sole responsibility of the party on behalf of whom such claim is made without proration, setoff or contribution due from the other party.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written below.

"SELLER"

OKLAHOMA ORDNANCE WORKS AUTHORITY,
an Oklahoma public trust

By:_____
_____Chairman

Date: _____, 2021

"PURCHASER"

CHEROKEE NATION

By: _____
Chuck Hoskin, Principal Chief

Date: _____, 2021

EXHIBIT "A"

LEGAL DESCRIPTION

A tract of land situated in the Southwest Quarter of the Southeast Quarter (SW/4 SE/4) of Section 31, Township 21 North, Range 19 East of the Indian Base and Meridian, Mayes County, State of Oklahoma, being more particularly described as follows, to-wit:

Commencing at the Southeast Corner of said SW/4 SE/4, THENCE S88°25'26"W for a distance of 459.99 feet along the South Line thereof; THENCE N1°18'53"W for a distance of 40.00 feet to the POINT OF BEGINNING; THENCE S88°25'26"W for a distance of 410.00 feet; THENCE N1°18'51"W for a distance of 847.11 feet; THENCE N88°26'18"E for a distance of 870.00 feet to a point on the East Line of said SW/4 SE/4; THENCE S1°18'51"E for a distance of 437.00 feet along said East Line; THENCE S88°26'18"W for a distance of 460.01 feet; THENCE S1°18'53"E for a distance of 410.00 feet to the POINT OF BEGINNING.

Together with and subject to covenants, easements, and restrictions of record.
Contains 12.5874 acres, more or less.

(To be confirmed and/or supplemented by agreement of the parties after completion of Survey pursuant to Section 3.1)

EXHIBIT "B"

RESTRICTIVE COVENANTS

Purchaser, as part of the consideration hereof, also agrees to the following as covenants running with the land:

1. The Property will be used solely for purposes of a daycare facility or similar additional community resource and will not be used for unrelated commercial development, residential development of any type, speculative resale purpose, gas station or casino or gaming facility, smokeshop, marijuana growing or dispensary facility.

2. No industrial wastes or by-products produced on the Property or any part thereof shall be discharged directly or indirectly onto surrounding lands or into surrounding creeks, streams or water sheds, or discharged into or disposed of through the existing sewer system in violation of any applicable health, pollution or safety law or regulation.

3. No free-standing sign or billboard greater in height than six (6) feet shall be constructed, erected or maintained on the Property or any part thereof without the prior written consent of the Seller.

4. Purchaser shall maintain the Property, at its expense in a safe, clean and tenantable condition and in good order and repair, consistent in manner and appearance with a first-class property. Said maintenance shall include, without limitation, the following:

    a. Maintaining, repairing and resurfacing, when necessary, all paved surfaces in a level, smooth and evenly covered condition;

    b. Removing all snow, papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

    c. Maintaining, repairing and replacing, when necessary, all traffic directional signs, markers and lines;

    d. Operating, maintaining, repairing and replacing, when necessary, artificial lighting facilities including, but not limited to, poles, pole bases, wiring, lamps, ballasts, lenses, photocells, time clocks, and contactors;

    e. Maintaining all landscaped areas (including, without limitation, those on the perimeter of the Property, but in street right of way) in a first-class manner; maintaining, repairing and replacing, when necessary, automatic sprinkler systems and water lines; and replacing all grass, plants and shrubs and other

landscaping, as is necessary; and

f. Maintaining, repairing and replacing, when necessary, all storm drains, sewers and other utility lines and facilities not dedicated to the public or conveyed to any public or private utility which are necessary for the operation of the buildings and improvements located on the Property.

5. In the event Purchaser fails to perform any of the maintenance obligations set forth herein, which failure continues for a period of sixty (60) days after receipt of written notice from Seller specifying the particulars of such failure, such failure shall constitute a default and Seller may thereafter institute legal action against Purchaser for specific performance, declaratory or injunctive relief, monetary damages or any other remedy provided by law or equity and/or may perform the obligations of Purchaser specified in said notice of default and Seller shall be entitled to reimbursement from Purchaser for all costs and expenses incurred in connection therewith plus interest at a rate of eighteen percent (18%) per annum ("Default Rate").

EXHIBIT "C"

(Form of Right of First Refusal Agreement)

RIGHT OF FIRST REFUSAL AGREEMENT TO ACQUIRE REAL PROPERTY

THIS RIGHT OF FIRST REFUSAL AGREEMENT TO ACQUIRE REAL PROPERTY (this "**Agreement**") is made and entered into this ____ day of _____, 2021 (the "**Execution Date**"), by and between the **CHEROKEE NATION** ("**NATION**"), and **OKLAHOMA ORDNANCE WORKS AUTHORITY**, an Oklahoma public trust ("**OOWA**").

RECITALS:

A. NATION is the owner of certain real property and improvements thereon located in Mayes County, Oklahoma, and being more particularly described on ***Exhibit "A"*** attached hereto (collectively the "**Property**").

B. NATION desires to grant to OOWA a right of first refusal to acquire the Property as provided herein.

NOW, THEREFORE, in consideration of the premises, covenants and conditions herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, NATION and OOWA hereby agree as follows:

1. Grant of Right of First Refusal. NATION hereby grants to OOWA the right of first refusal to acquire the Property from NATION (the "**Right of First Refusal**") on the terms set forth herein.

2. Terms of Right of First Refusal. In the event NATION receives a bona fide letter of interest or intent from a third party offering to acquire the Property and specifying the purchase price, financial terms and timing of such purchase, but not necessarily including the customary terms and conditions found in real estate purchase contracts, including without limitation, terms relating to feasibility studies, title insurance, surveys, reserved easements and the like (the "**Third Party Letter**"), NATION shall notify OOWA in writing that NATION is prepared to sell the Property on the terms of the Third Party Letter (the "**NATION Notice**"). OOWA shall have a period of ninety (90) business days from receipt of the NATION Notice (the "**Refusal Period**") to determine if OOWA wants to acquire the Property on the terms set forth in the NATION Notice and shall provide written notice of such determination to NATION (the "**OOWA Notice**"). If OOWA notifies NATION that it does not want to acquire the Property on the terms set forth in the NATION Notice, or OOWA fails to notify NATION within Refusal Period, then NATION shall have the right to sell the Property to the third party on the terms set forth in the NATION Notice. If, during the Refusal Period, NATION and the prospective purchaser are not able to agree on the original terms communicated to OOWA in the NATION Notice but agree on

different terms, NATION shall provide OOWA immediate notice of such change in terms and OOWA shall have the greater of ten (10) days or the remaining number of days of the Refusal Period to exercise its rights hereunder. In the event OOWA elects to acquire the Property, NATION and OOWA shall enter into a Purchase and Sale Agreement (the "**Purchase and Sale Agreement**"), and this Agreement shall terminate. The Purchase and Sale Agreement shall contain customary terms and conditions found in real estate contracts, including without limitation, terms relating to feasibility studies, title insurance, surveys, reserved easements and the like. The Right of First Refusal is subject to federal funding requirements contained in the Child Care and Development Block Grant (CCDBG) Act and related rules and regulations.

3. Termination of Agreement. OOWA shall have the right at any time to terminate this Agreement by providing written notice to NATION (the "**Termination Notice**").

4. Notices. All notices or other communications hereunder shall be in writing and may be effected by personal delivery, email (including pdf or similar attachments) or registered or certified mail, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice to the other party in accordance with this Agreement. Notices delivered personally shall be deemed communicated as of actual receipt; and mailed notices shall be deemed communicated upon receipt, refusal or as of the first attempted date of delivery if unclaimed.

If to NATION:

Cherokee Nation
Attn: Ginger Reeves, Real Estate Services
PO Box 948
Tahlequah, OK 74465
Email: ginger-reeves@cherokee.org

If to OOWA:

Oklahoma Ordnance Works Authority
P.O. Box 945
Pryor, Oklahoma 74362-0945
Attention: David Stewart
Email: dstewart@maip.com

5. Memorandum. Upon execution of this Agreement, OOWA and NATION shall execute and record a Memorandum of Right of First Refusal Agreement to Acquire Real Property in the form of ***Exhibit "B"*** attached hereto (the "**Memorandum**"). Upon termination of this Agreement, OOWA shall, at the request of NATION, execute and record a written release, in form acceptable to NATION, of the Memorandum and OOWA's rights under this Agreement.

6. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal and personal representatives, successors and assigns.

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

IN WITNESS WHEREOF, NATION has executed this Agreement on the Execution Date.

"NATION"

CHEROKEE NATION,

By: _____
Name: Chuck Hoskin
Title: Principal Chief

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on the ____ day of _____, 2021, by Chuck Hoskin, Principal Chief of the Cherokee Nation.

_____
Notary Public

My Commission Expires: _____
Commission Number: _____

IN WITNESS WHEREOF, OOWA has executed this Agreement on the Execution Date.

"OOWA"

OKLAHOMA ORDNANCE WORKS AUTHORITY,
an Oklahoma public trust

By: _____
Name: _____
Title: _____Chairman

STATE OF OKLAHOMA)
) ss:
COUNTY OF MAYES)

The foregoing instrument was acknowledged before me this _____ day of 2021 by _____, _____ Chairman of the Oklahoma Ordnance Works Authority, a public trust, on behalf of the trust.

Given under my hand and seal of office the date and year above written.

_____
Notary Public

My commission expires:

_____

My commission number:

RIGHT OF FIRST REFUSAL AGREEMENT TO ACQUIRE REAL PROPERTY

EXHIBIT "A"

(Description of Real Property)

A tract of land situated in the Southwest Quarter of the Southeast Quarter (SW/4 SE/4) of Section 31, Township 21 North, Range 19 East of the Indian Base and Meridian, Mayes County, State of Oklahoma, being more particularly described as follows, to-wit:

Commencing at the Southeast Corner of said SW/4 SE/4, THENCE S88°25'26"W for a distance of 459.99 feet along the South Line thereof; THENCE N1°18'53"W for a distance of 40.00 feet to the POINT OF BEGINNING; THENCE S88°25'26"W for a distance of 410.00 feet; THENCE N1°18'51"W for a distance of 847.11 feet; THENCE N88°26'18"E for a distance of 870.00 feet to a point on the East Line of said SW/4 SE/4; THENCE S1°18'51"E for a distance of 437.00 feet along said East Line; THENCE S88°26'18"W for a distance of 460.01 feet; THENCE S1°18'53"E for a distance of 410.00 feet to the POINT OF BEGINNING.

Together with and subject to covenants, easements, and restrictions of record.
Contains 12.5874 acres, more or less.

(To be confirmed and/or supplemented by agreement of the parties after completion of Survey pursuant to Section 3.1)

RIGHT OF FIRST REFUSAL AGREEMENT TO ACQUIRE REAL PROPERTY

EXHIBIT "B"

(Form of Memorandum of Right of First Refusal Agreement to Acquire Real Property)

MEMORANDUM OF RIGHT OF FIRST REFUSAL AGREEMENT TO ACQUIRE REAL PROPERTY

THIS MEMORANDUM OF RIGHT OF FIRST REFUSAL AGREEMENT TO ACQUIRE REAL PROPERTY (this "**Memorandum**") is made and entered into this ____ day of _____, 2021, by and between the **CHEROKEE NATION ACTING BY AND THROUGH CHEROKEE NATION REAL ESTATE SERVICES,** a division of the Cherokee Nation ("**NATION**"), and **OKLAHOMA ORDNANCE WORKS AUTHORITY**, an Oklahoma public trust ("**OOWA**").

RECITALS:

A. NATION is the owner of certain real property and improvements thereon located in Mayes County, Oklahoma, and being more particularly described on ***Exhibit "A"*** attached hereto (collectively the "**Property**").

B. On the date of this Memorandum, NATION and OOWA entered into that certain Right of First Refusal Agreement to Acquire Real Property (the "**Right of First Refusal Agreement**"), whereby NATION granted to OOWA the right of first refusal to acquire the Property in the event NATION receives a bona fide third party offer to acquire the Property.

C. NATION and OOWA are executing this Memorandum to confirm the Right of First Refusal Agreement in a form that can be recorded in the real estate records of Mayes County, Oklahoma.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, NATION and OOWA hereby agree as follows:

1. Right of First Refusal Agreement. NATION and OOWA hereby ratify, confirm and agree to all of the terms and conditions contained in the Right of First Refusal Agreement. Provide that The Right of First Refusal is subject to federal funding requirements contained in the Child Care and Development Block Grant (CCDBG) Act and related rules and regulations.

2. Binding Effect. This Memorandum shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal and personal representatives, successors and assigns.

IN WITNESS WHEREOF, NATION and OOWA have caused this Memorandum to be executed as of the day and year first written above.

"NATION"

CHEROKEE NATION

By: _____
Name: Chuck Hoskin
Title: Principal Chief

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on the ____ day of _____, 2021, by Chuck Hoskin, Principal Chief of the Cherokee.

_____
Notary Public

My Commission Expires: _____
Commission Number: _____

IN WITNESS WHEREOF, OOWA have caused this Memorandum to be executed as of the day and year first written above.

"OOWA"

OKLAHOMA ORDNANCE WORKS AUTHORITY,
an Oklahoma public trust

By: _____
Name: _____
Title: _____ Chairman

STATE OF OKLAHOMA)
) ss:
COUNTY OF MAYES)

The foregoing instrument was acknowledged before me this _____ day of 2021 by _____, _____ Chair of the Oklahoma Ordnance Works Authority, a public trust, on behalf of the trust.

Given under my hand and seal of office the date and year above written.

_____
Notary Public

My commission expires:

_____

My commission number:

MEMORANDUM OF RIGHT OF FIRST REFUSAL AGREEMENT TO ACQUIRE REAL PROPERTY

EXHIBIT "A"

(Description of Real Property)

A tract of land situated in the Southwest Quarter of the Southeast Quarter (SW/4 SE/4) of Section 31, Township 21 North, Range 19 East of the Indian Base and Meridian, Mayes County, State of Oklahoma, being more particularly described as follows, to-wit:

Commencing at the Southeast Corner of said SW/4 SE/4, THENCE S88°25'26"W for a distance of 459.99 feet along the South Line thereof; THENCE N1°18'53"W for a distance of 40.00 feet to the POINT OF BEGINNING; THENCE S88°25'26"W for a distance of 410.00 feet; THENCE N1°18'51"W for a distance of 847.11 feet; THENCE N88°26'18"E for a distance of 870.00 feet to a point on the East Line of said SW/4 SE/4; THENCE S1°18'51"E for a distance of 437.00 feet along said East Line; THENCE S88°26'18"W for a distance of 460.01 feet; THENCE S1°18'53"E for a distance of 410.00 feet to the POINT OF BEGINNING.

Together with and subject to covenants, easements, and restrictions of record.
Contains 12.5874 acres, more or less.

(To be confirmed and/or supplemented by agreement of the parties after completion of Survey pursuant to Section 3.1)

EXHIBIT "D"

(Copy of Drawing of Existing 530 Road)

EXHIBIT "E"

(Copy of Drawing of Sewer Connection Location)

EXHIBIT "F"

(Copy of M.O.U.)

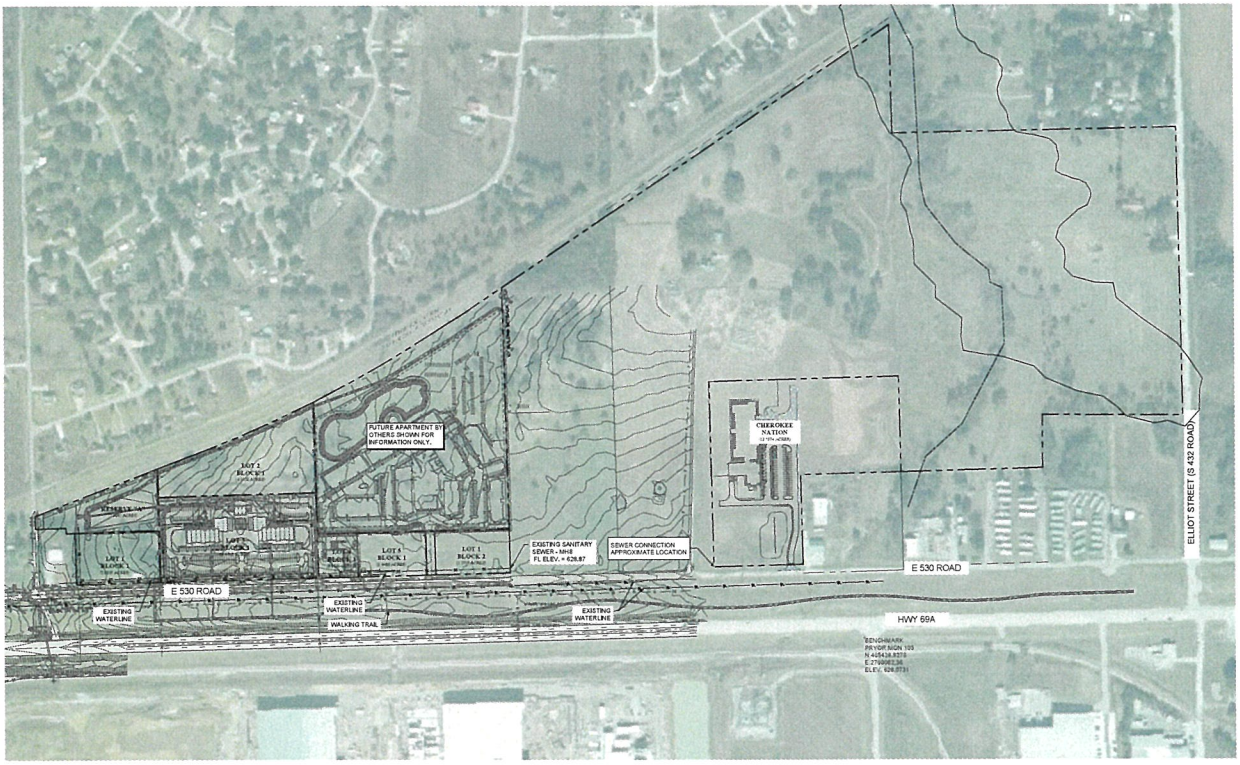
SCHEDULE 2.1

PROPERTY INFORMATION

1.) Copies of any surveys the Property
2.) Copies of any environmental reports affecting the Property.
3.) Copies of any geotechnical information affecting the Property.

5764639.9

EXHIBIT "E"



1 OVERALL SITE PLAN
SCALE: 1" = 200'-0"

CYNTERGY
810 SOUTH CINCINNATI
SECOND FLOOR
TULSA, OK 74119
918.877.6000
www.cyntergy.com

THIS DOCUMENT IS
PRELIMINARY
IN NATURE AND IS NOT
A FINAL, SIGNED AND
SEALED DOCUMENT

BILLY COX, PE
OWNER OF RECORD

OKLAHOMA ONE-CALL SYSTEM, INC.
1-800-522-6543
OR DIAL 811

MidAmerica

PRYOR, OKLAHOMA 74361

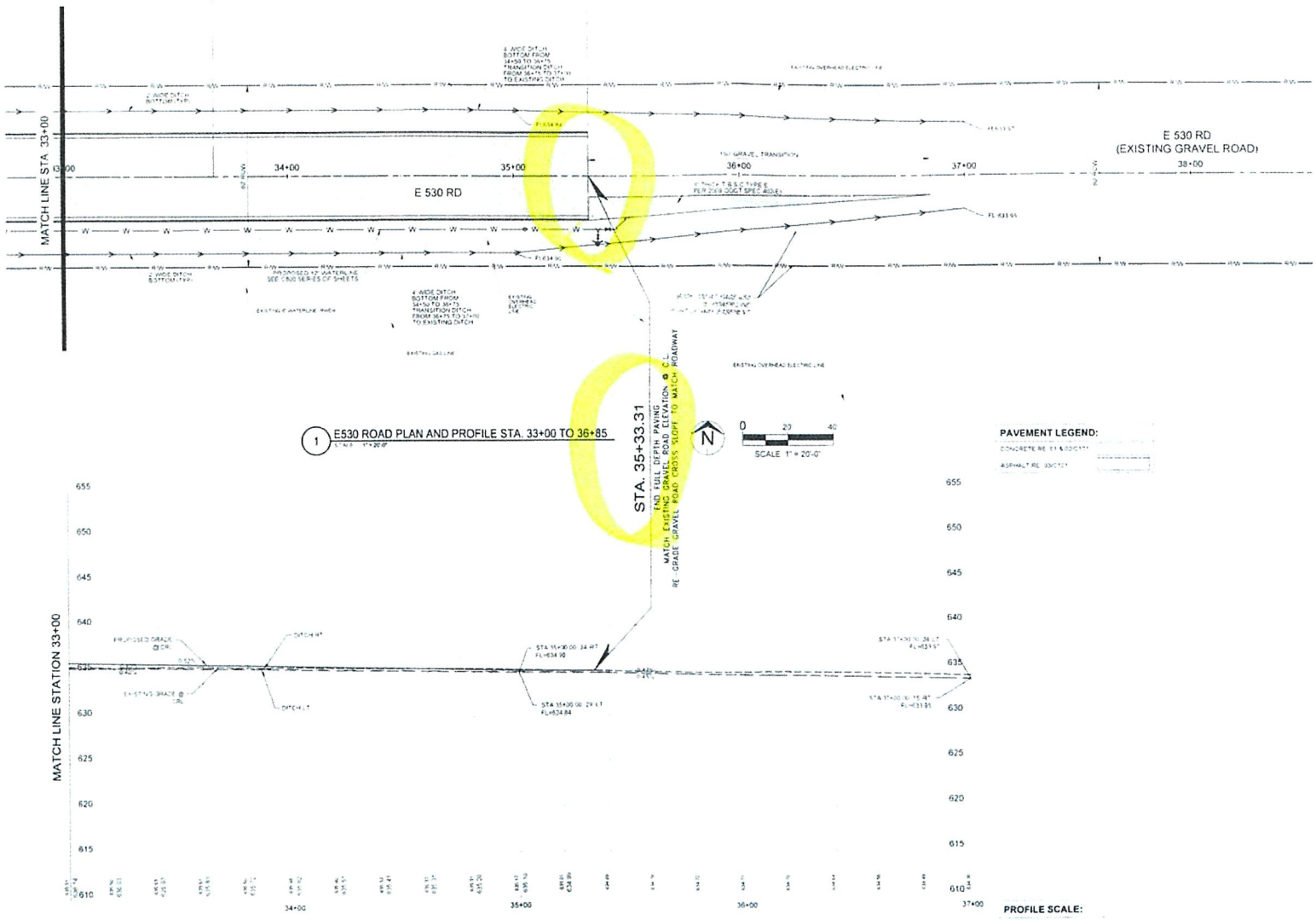
OVER ALL PROPERTY LAYOUT

ISSUES / REVISIONS

ISSUE DATE: 05/21/2021
CHECKED BY: BC
DRAWN BY: MC

SHEET NAME
OVERALL SANITARY SEWER AND WATER PLAN

SHEET NUMBER
CS103



CYNTERGY

MidAmerica INDUSTRIAL PARK

E530 ROAD

ISSUE DATE
CHECKED BY BDC
DRAWN BY AWD

E530 ROAD PLAN AND PROFILE STA. 33+00 TO 36+85

C404

MEMORANDUM OF UNDERSTANDING

REGARDING

MAIP/CITY OF PRYOR "THE DISTRICT"

WHEREAS, the Oklahoma Ordnance Works Authority (hereinafter MAIP) is in the process of developing certain property located adjacent to the City of Pryor Creek, Oklahoma City limits line south of Pryor along the North side of Hwy 69A and between U.S. Hwy 69 and South Elliott Street which said development is planned to take place in phases on various portions of the property; and

WHEREAS, the aforesaid development of property is foreseen by the City as beneficial and important to the economic interests and quality of life interests of the citizens of the City and MAIP foresees the development to be in the best interest of the continued strength and future development of the industrial park; and

WHEREAS, MAIP has determined that it would be in the best interest of the success of the development that the property be annexed to become part of the City, in whole or in part with one or more applications, whereby it would receive the benefit of city services of police protection, fire protection and other city services to assure the success of the development; and

WHEREAS, the City and MAIP deem it desirable and expedient to their mutual best interests in planning and implementation of the development that they enter into this Memorandum of Understanding (MOU) concerning MAIP's planned development and intention to seek annexation of property into the city limits of the City in the event that said annexation be approved by the City.

NOW THEREFORE the parties set forth this, their Memorandum of Understanding concerning same, as follows should the annexation be sought by MAIP and approved by the City:

PROPERTY ANNEXATION AND DEVELOPMENT IN PHASES

MAIP'S plans for development of the property is intended to be done in phases of development. The "Project Property" and legal description of the "Project Property" is set forth on "Exhibit A" to this MOU. When property is annexed into the City, the City inures to the obligation to extend to the annexed territory city services such as police protection and fire protection and other city services. MAIP acknowledges that the annexation of land in one or more applications involves a legal process by which it would make application for annexation and that the matter would then proceed through the legal process for annexation for approval or disapproval by the City with no present representation by the City Administration or City Council at the time of making of this Memorandum of Understanding that the annexation would be approved.

PROPERTY ZONING IN THE EVENT OF ANNEXATION

MAIP has presented its conceptual plans for the first phase and long-term ideas for the development of other portions of the property to the City. While the area involved in the development is not currently within the limits of the city and is not therefore part of the City's comprehensive plan, the City's impression of the first phase of the development and ideas expressed by MAIP for later developments to be made is that it appears consistent with the area zoning and uses being made of adjacent areas of the City which would be impacted by the proposed development. The City finds and represents to MAIP that

the specific proposed zoning as set forth on "Exhibit B" would be afforded to the property which is conducive to the accommodation of the MAIP plans and that the proposed zoning is consistent with property uses in the area of the property to be annexed. Further, the City finds and represents to MAIP that, although the specific zoning classification to be requested by MAIP at the time of the annexation of the "Future Development" areas shown on Exhibit B are not known at this time, zoning classifications consistent with residential, hospital, retail, childcare, public safety and other public services in the Future Development area would be afforded to this area and that such zoning is consistent with property uses in the area of such property.

BUILDING PROCESSES AND INSPECTIONS

The City has heretofore adopted the nationally recognized codes related to building and construction as set forth in Chapter 20 of Title 748 of the Oklahoma Administrative Code and Title 9 of the City Code for the City of Pryor Creek, Oklahoma. Additionally, the City has recently adopted its Unified Development Ordinance (UDO) codified in Title 10 of the City Code. These Codes are hereinafter referred to collectively as the "Codes" or "Code".

The parties to this MOU acknowledge that in the event that MAIP seeks and obtains annexation as contemplated by this MOU the resources of the City to accommodate the necessary plan reviews and building inspections to accommodate the anticipated quantity of same, and the attendant time requirements to meet construction schedules are limited and perhaps lacking to meet the corresponding needs of the parties related to these processes. To address this situation, it is the mutual understanding of the parties that a third-party contractor or contractors duly licensed/certified or otherwise qualified under the Codes will be retained to perform the functions of the necessary plan reviews, platting processes and construction inspections required under the aforesaid Codes. The contractor or contractors will be selected by MAIP with approval of the selection by the City. The fees incurred for the services performed by the Contractor or Contractors shall be at the expense of MAIP. Giving due regard to the fact that fees charged by the City for plan reviews and inspections are set in order to offset the cost to the City for the making of such reviews and inspections and not for the purpose of raising revenues the applicable fees for same scheduled to be charged by the City would be waived. The Contractor or Contractors' certification to the City in writing of approval of platting, plans and specifications and approval of inspections of construction in compliance with applicable Codes will be deemed satisfactory evidence by the City upon which to issue such building permits and certificates of occupancy or other documents as provided for under the Codes. Building Permit Fees charged by the City as set forth in "Appendix A" of the City Code will be charged to MAIP as same are set by Code for purposes of offsetting administrative costs and initial costs associated with the extension of city services related to new construction and development. It is the further understanding of the parties that time is of the essence to the mutual interests of the parties in the development processes. To the furtherance of these interests the City represents that it shall use all reasonable and practicable efforts to assure that approvals, permits and other necessary permissions or authorizations of the City concerning the project will be completed within a time period of Fifteen (15) days from submission for same by MAIP.

UTILITY EXTENSION

The Municipal Utility Department of the City, being a department of the City but governed by an independent board known as the Municipal Utility Board (MUB), is a necessary party to this agreement with respect to the provisions of utility services. Under the laws of annexation, the utilities of the city are

a city service to be extended according to, and in compliance with the applicable provisions of law to annexed territories.

The MUB being cognizant of the benefits to the citizens of the City of the development proposed to be made under this MOU, and in the event that MAIP applies for and is granted annexation of the land which is the subject of this agreement, acknowledges that it will perform extensions and/or plans for extension of utilities in accordance with the statutory requirements therefore and subject to all applicable laws and regulations to the development to be made. Extensions of utilities to be made shall be performed in accordance with the utilization of the usual and customary city documentation, when appropriate for this particular development, including documents commonly referred to as "Letter of Intent Standard Contract, "Standard Contract Checklist" and "Standard Development Payback Contract". The extension of utilities obligations of MUB following annexation are those as set forth on the Plat attached hereto as "Exhibit C". To the extent that Exhibit C does not cover any portion of the Property, the extension of utilities obligation of MUB following any annexation shall be subject to the express mutual agreement of MAIP and MUB.

PROMOTION OF "BUY LOCAL" PROGRAMS RELATING TO THE PURCHASE OF MATERIALS

The City and MAIP both find it important and in the best interest of the local community to encourage and promote the purchases of materials on a local level. To this end the parties intend to work together to attempt to identify and pursue "Buy Local" avenues to strengthen and aid the local community.

Miscellaneous

This MOU constitutes the entire agreement by and between the parties hereto related to the subject matter hereof and shall be governed by the laws of the State of Oklahoma. The invalidity of any provision of this MOU shall not invalidate the MOU or its remaining provisions.

Any previously existing MOU between the parties hereto covering all or any portion of the subject matter of this MOU is hereby released and terminated.

APPROVALS:

Oklahoma Ordinance Works Authority,
An Oklahoma public trust ("MAIP")

BY: _____ Dated: 12-17-19

Title: Chairman

Approved by the City Council for the City of Pryor Creek, Oklahoma in open session by majority vote on this 17th day of December, 2019.

The City of Pryor Creek,
An Oklahoma municipal corporation

BY: _____
Larry Lees, Mayor

Approved as to form and legality

K. Ellis Ritchie, City Attorney for Pryor Creek, Oklahoma

Attest: Eva Smith

Eva Smith, City Clerk for Pryor Creek, Oklahoma

Approved by the Municipal Utility Board for Pryor Creek, Oklahoma on this 16 day of December, 2019.

Jared Crisp, General Manager

Attest:

Board Secretary

5194620.2

EXHIBIT A

LEGAL DESCRIPTION

Five (5) contiguous parcels of land described as follows:

Parcel 1:

A tract of land situated in Southwest Quarter (SW/4) Section 31, Township 21 North, Range 19 East of the Indian Base and Meridian, Mayes County, Oklahoma, being more particularly described as follows to-wit:

Commencing at the Southwest Corner of said SW/4, THENCE N88°28'26"E for a distance of 140.00 feet along the South Line of said SW/4 to the POINT OF BEGINNING;
THENCE N1°35'52"W for a distance of 300.00 feet;
THENCE S88°28'24"W for a distance of 140.00 feet to a point on the West Line of said SW/4;
THENCE N1°35'54"W for a distance of 58.01 feet to a point on the Southerly Right-of-Way of the City of Tulsa's Water Line;
THENCE N69°01'14"E for a distance of 783.28 feet along said Southerly Right-of-Way;
THENCE along a curve to the left having a radius of 5804.05 feet for a distance of 591.29 feet, being subtended by a chord of N66°06'13"E for a distance of 591.03 feet, along said Southerly Right-of-Way;
THENCE S1°34'17"E for a distance of 603.22 feet;
THENCE N88°25'43"E for a distance of 877.10 feet;
THENCE S1°34'17"E for a distance of 240.50 feet to a point on the South Line of said SW/4;
THENCE S88°25'43"W for a distance of 999.72 feet along said South Line;
THENCE S88°28'26"W for a distance of 1022.72 feet along said South Line to the POINT OF BEGINNING.

Subject to and together with covenants, easements, and restrictions of record.
Contains 21.2726 acres, more or less.
This legal description was developed by G. Michael Finnell, L.S. #1107, on 12/13/2019.

LGL: D-RETAL1

AND

Parcel 2:

A tract of land situated in Southwest Quarter (SW/4) Section 31, Township 21 North, Range 19 East of the Indian Base and Meridian, Mayes County, Oklahoma, being more particularly described as follows to-wit:

Commencing at the Southwest Corner of said SW/4, THENCE N88°28'26"E for a distance of 1162.71 feet along the South Line of said SW/4;
THENCE N88°25'43"E for a distance of 999.72 feet along said South Line;
THENCE N1°34'17"W for a distance of 240.50 feet to the POINT OF BEGINNING;
THENCE S88°25'43"W for a distance of 877.10 feet;

THENCE N1°34'17"W for a distance of 603.22 feet to a point on the Southerly Right-of-Way of the City of Tulsa's Water Line;
THENCE along a curve to the left having a radius of 5804.05 feet for a distance of 690.48 feet, being subtended by a chord of N59°46'37"E for a distance of 690.07 feet, along said Southerly Right-of-Way;
THENCE N56°22'06"E for a distance of 275.15 feet along said Southerly Right-of-Way;
THENCE N88°23'37"E for a distance of 38.34 feet;
THENCE S1°34'17"E for a distance of 1080.17 feet to the POINT OF BEGINNING.

Subject to and together with covenants, easements, and restrictions of record.
Contains 16.9194 acres, more or less.
This legal description was developed by G. Michael Finnell, L.S. #1107, on 12/16/2019.

LGL: D-RETAL2

AND

Parcel 3:

A tract of land situated in Southwest Quarter (SW/4), the South Half of the Southwest Quarter of the Northwest Quarter (S/2 SW/4 NW/4), the West Half of the Southeast Quarter (W/2 SE/4), the North Half of the Southeast Quarter of the Southeast Quarter (N/2 SE/4 SE/4), and the South Half of Northeast Quarter of the Southeast Quarter (S/2 NE/4 SE/4) of Section 31, Township 21 North, Range 19 East of the Indian Base and Meridian, Mayes County, Oklahoma, being more particularly described as follows to-wit:

Commencing at the Southwest Corner of said SW/4, THENCE N88°28'26"E for a distance of 1162.71 feet along the South Line of said SW/4;
THENCE N88°25'43"E for a distance of 999.72 feet along said South Line to the POINT OF BEGINNING;
THENCE N1°34'17"W for a distance of 1320.67 feet;
THENCE N88°23'37"E for a distance of 487.94 feet;
THENCE N1°14'24"W for a distance of 330.51 feet to a point on the Southerly Right-of-Way of the City of Tulsa's Water Line;
THENCE N56°22'06"E for a distance of 1563.43 feet to a point on the East Line of said W/2 SE/4;
THENCE S1°18'51"E for a distance of 499.34 feet along said East line to the Northwest Corner of said S/2 NW/4 SE/4;
THENCE N88°24'14"E for a distance of 1320.86 feet along the North Line of said S/2 NW/4 SE/4 to the Northeast Corner thereof;
THENCE S1°23'13"E for a distance of 1321.91 feet along the East Line of said S/2 NW/4 SE/4 to the Southeast Corner of said N/2 SW/4 SE/4;
THENCE S88°25'27"W for a distance of 1322.54 feet along the South Line of said N/2 SW/4 SE/4 to the Southwest Corner thereof;
THENCE S1°18'54"E for a distance of 210.85 feet along the East Line of said W/2 SE/4;
THENCE S88°26'18"W for a distance of 460.01 feet;
THENCE S1°18'53"E for a distance of 450.00 feet to a point on the South Line of said W/2 SE/4;

THENCE S88°26'10"W for a distance of 1343.70 feet along said South Line to the POINT OF BEGINNING.

Subject to and together with covenants, easements, and restrictions of record.
Contains 112.7535 acres, more or less.
This legal description was developed by G. Michael Finnell, L.S. #1107, on 12/16/2019.
LGL: D-RETAL3

AND

Parcel 4:

A tract of land situated in Southwest Quarter of the Southwest Quarter (SW/4 SW/4) of Section 32, Township 21 North, Range 19 East of the Indian Base and Meridian, Mayes County, Oklahoma, being more particularly described as follows to-wit:

Beginning at the Northwest Corner of said SW/4 SW/4;
THENCE N88°22'34"E for a distance of 1322.13 feet along the North Line of said SW/4 SW/4 to the Northeast Corner thereof;
THENCE S1°29'45"E for a distance of 519.22 feet along the East Line of said SW/4 SW/4;
THENCE N85°16'26"W for a distance of 419.89 feet;
THENCE S1°29'45"E for a distance of 349.24 feet;
THENCE S1°33'09"E for a distance of 499.23 feet to a point on the South Line of said SW/4 SW/4;
THENCE S88°20'07"W for a distance of 336.25 feet along the South Line of said SW/4 SW/4;
THENCE N1°39'53"W for a distance of 85.00 feet;
THENCE S88°20'07"W for a distance of 168.93 feet;
THENCE N1°23'31"W for a distance of 565.00 feet;
THENCE S88°20'03"W for a distance of 402.07 feet to a point on the West Line of said SW/4 SW/4;
THENCE N1°23'13"W for a distance of 671.91 feet along said West Line to the POINT OF BEGINNING.

Subject to and together with covenants, easements, and restrictions of record.
Contains 25.9119 acres, more or less.
This legal description was developed by G. Michael Finnell, L.S. #1107, on 12/16/2019.
LGL: D-RETAL4

AND

Parcel 5:

A tract of land situated in Southwest Quarter (SW/4) Section 31, Township 21 North, Range 19 East of the Indian Base and Meridian, and in North Half (N/2) Section 6, Township 20 North, Range 19 East of the Indian Base and Meridian, Mayes County, Oklahoma, being more particularly described as follows to-wit:

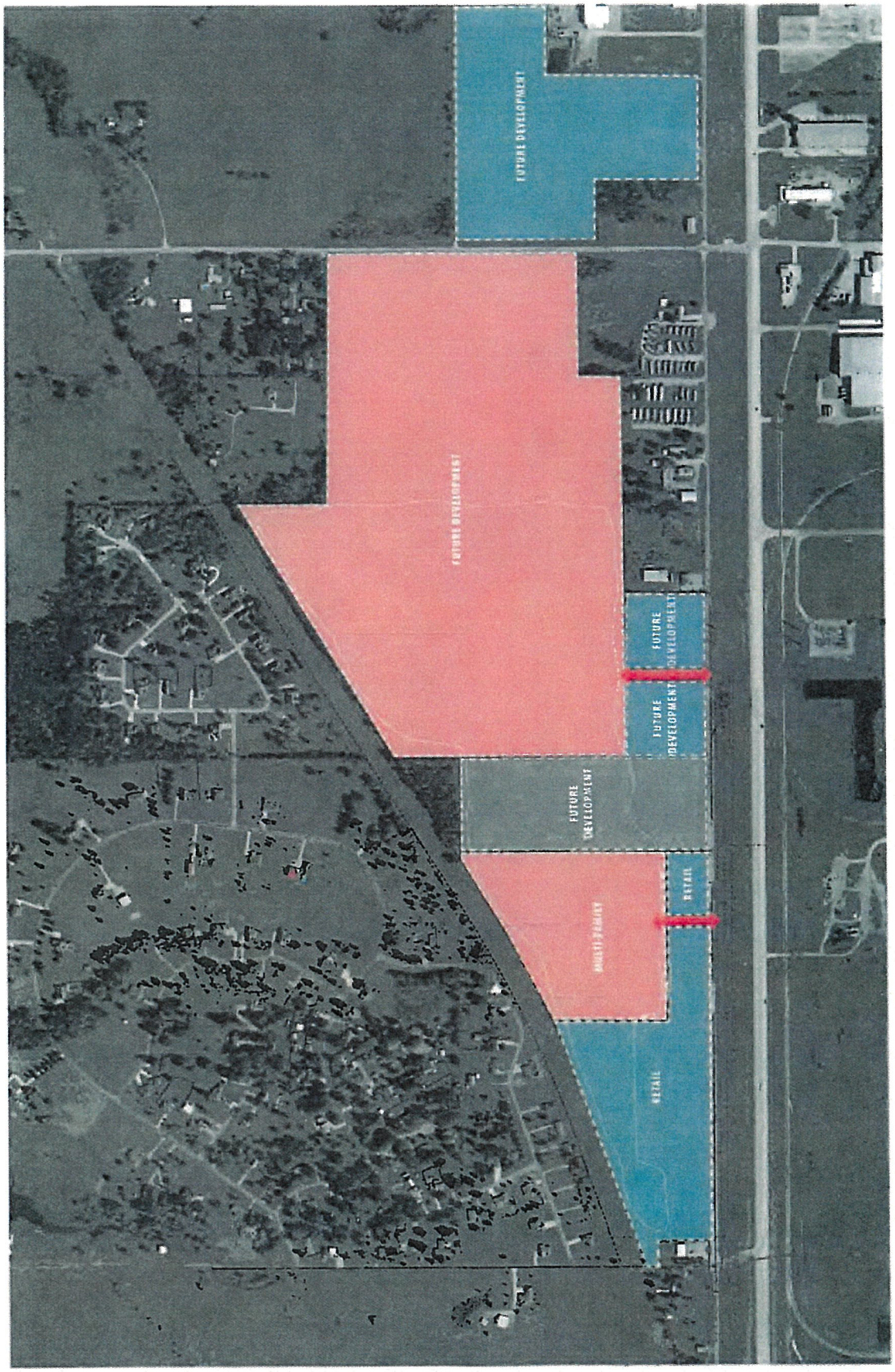
Beginning at the Southwest Corner of said SW/4;
THENCE N88°28'26"E for a distance of 140.00 feet along the South Line of said SW/4;

THENCE N1°35'52"W for a distance of 35.00 feet;
THENCE N88°28'26"E for a distance of 1022.75 feet;
THENCE N88°25'43"E for a distance of 999.70 feet;
THENCE S1°34'17"E for a distance of 35.00 feet to a point on the South Line of said SW/4;
THENCE S1°34'17"E for a distance of 35.00 feet;
THENCE S88°25'43"W for a distance of 999.70 feet;
THENCE S88°28'26"W for a distance of 1092.71 feet;
THENCE S1°35'54"E for a distance of 114.23 feet to a point on the Northerly Right-of-Way of State Highway No. 69A;
THENCE S88°28'27"W for a distance of 140.00 feet;
THENCE N1°35'54"W for a distance of 114.14 feet;
THENCE S88°24'23"W for a distance of 137.92 feet;
THENCE N1°35'37"W for a distance of 35.00 feet to a point on the North Line of said N/2;
THENCE N88°24'23"E for a distance of 207.91 feet along said North Line to the POINT OF BEGINNING.

Subject to and together with covenants, easements, and restrictions of record.
Contains 3.8966 acres, more or less.
This legal description was developed by G. Michael Finnell, L.S. #1107, on 10/16/2019.

LGL: D-RETAL5

5210074.1


FUTURE DEVELOPMENT
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FUTURE DEVELOPMENT
MULTI-FAMILY
RETAIL
RETAIL

EXHIBIT B

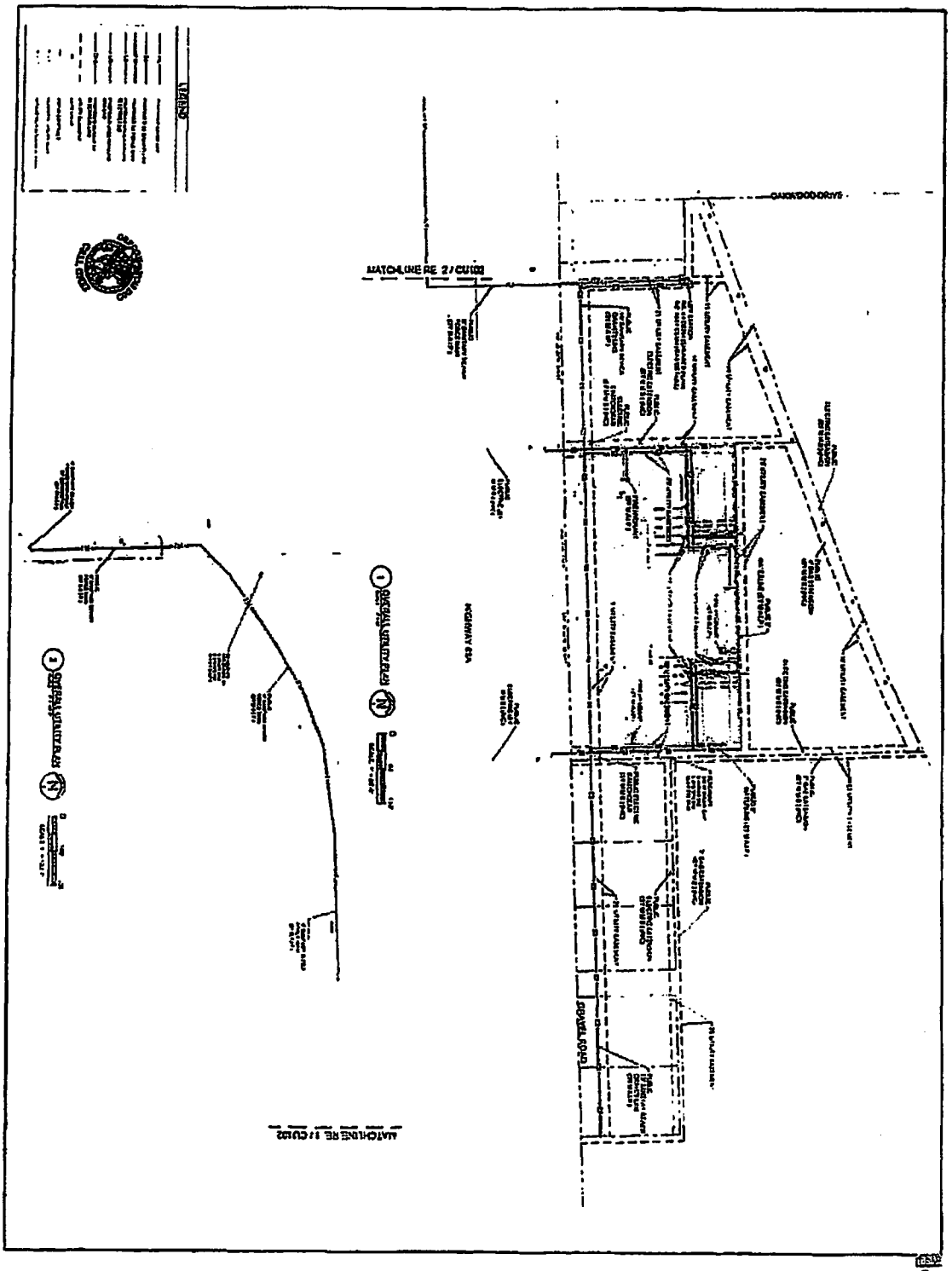
OAKWOOD DRIVE
MATCHLINE RE 2 / CU102
HIGHWAY 64
MATCHLINE RE 1 / CU102
LEGEND
THE DISTRICT
OKLAHOMA ORDNANCE WORKS AUTHORITY
CU101

EXHIBIT C