



**LAND DEVELOPMENT GUARANTEE**

This Land Development Guarantee (“Guarantee”) is made this 17<sup>th</sup> day of December, 2024 by and between the City of Tontitown, Arkansas (the “City”) and Selah Meadows LLC, the owner(s) of property located at Morsani & Klenci Berkeley Rae, recorded as instrument number \_\_\_\_\_ at the Washington County Circuit Clerk and Recorder and represented by Kevin Higgins, Member (name and title where ownership is titled in a corporation or business name), collectively hereinafter, (“Developer”).

**WHEREAS**, it is the responsibility of the City to protect the health, safety and welfare of the citizens of the City, and this responsibility extends to ensuring the orderly development of land in the City within the parameters established by the laws of the State of Arkansas and the City of Tontitown, Arkansas; and

**WHEREAS**, the Developer requests plat approval to construct a development known as Berkeley Rae, located at Morsani & Klenci and identified as Berkeley Rae (the “Development”), subject to conditions (“Conditions”) as incorporated hereinafter (the “Plan”), and has submitted for such approval from the Tontitown Planning Commission on Oct 22<sup>nd</sup>; and

**WHEREAS**, in accordance with the request for Approval, the Developer is seeking the approval of certain Conditions from the City; and

**WHEREAS**, the City Code requires certain guarantees related to requested Conditions, and the parties agree that such guarantees shall pertain to the improvements as based upon the code and regulations as well as plan approval Conditions for the Development; and

**WHEREAS**, the City code also requires that when an owner/developer requests plat approval, the owner/developer shall agree to guarantee the installation or ensure the completion of the improvements; and

**WHEREAS**, the Developer desires to develop the aforementioned Development in compliance with the plan and Conditions of approval, and all applicable Federal, State, and City laws, ordinances and regulations; and

**WHEREAS**, the City desires to ensure that the approved Conditions contain the timeline and means of construction and reference of amenities and performance bonding for private and public improvements, as based upon City code and regulations as well as plan approval and Conditions, and

**WHEREAS**, the Developer requests approval of the plat for the Development and freely enters into this Guarantee in reference to the aforesaid Development.

**NOW, THEREFORE**, in consideration of the foregoing premises, the conditions, and promises hereinafter set forth, the Developer agrees to be legally bound as follows:

1. In order to secure the City’s approval of the Conditions, the Developer shall comply with the plans of Development that are approved by the Planning Commission of the City and any Conditions which are duly approved by the City. The Conditions are attached to this Guarantee by Exhibit “A”. The Developer acknowledges that the Conditions shall be completed before final approval, including the issuance certificates of plat approval, unless another timeline is expressly provided for in the attached Conditions. The Developer agrees that the Conditions shall run with the land

until such time as subsequent approvals are provided or the Conditions are changed through the City's development process.

2. It is the Developer' responsibility to make sure that all contractors, subcontractors, agents, successors and assigns of the Development are fully aware of the approved plans and the Conditions for the Development.
3. The Developer shall, prior to the start of any site preparation activity, including clearing, grubbing, grading, etc., obtain from the City, all appropriate permits in accordance with the requirements of the Tontitown Code, the Conditions and this Guarantee. Violations shall subject the Developer to any fines and penalties pursuant thereto and shall, in addition, permit the City to suspend, cancel or revoke any permits issued concerning the Development and take any other remedial actions for under applicable law.
4. Developer covenants, promises and agrees to build, construct and install all private improvements, in accordance with the plan and those associated construction drawings submitted to the City including but not limited to all access drives, parking, streets, sidewalks, walkways, gutters, stormwater management facilities, curbs, water lines, sewers, utilities, landscaping and any facilities to be owned, maintained or operated by a private entity such as an individual, partnership, corporation or homeowners' association and constructed in accordance with the construction standards as approved on the aforementioned set of plans.
5. Developer shall provide a bond or financial surety as required by the City Code in the amount of value of purchase and construction or installation of the improvements as set forth in the Conditions.
6. If the improvements guaranteed through the bonds are not as required by the Code, the City may, at its sole discretion, execute the bonds and shall direct the completion of the required work as per the approved plan and associated construction drawings. The Developer agrees to take all measures necessary to assist with the City's execution of the bonds.
7. Developer shall indemnify completely, defend and save harmless the City of Tontitown, its elected and appointed officers, agents and employees from any and all costs and damages, losses, claims, suits and actions including cost of defense and attorney's fees which the City of Tontitown, its elected and appointed officers, agents and employees may sustain or suffer by reason of Developer failing to adequately and properly perform the terms and conditions of this Guarantee including the construction of public and private improvements.
8. The Developer shall obtain all other required City, County, State and Federal Permits and approvals and shall abide by the rules and regulations governing said permits and approvals in effect at the time of issuance.
9. During construction, the Developer, its contractors, sub-contractors and builders shall keep public roads, highways surrounding the property and other public property, which are used by vehicles entering and leaving the construction site, in good repair, clean and free of mud, dust, debris and trash, and shall maintain existing drainage patterns on all roadways. The City shall withhold final approvals until any required repairs are made, or clean-up performed, at the satisfaction of the City to public streets and property caused by the aforementioned construction.
10. During construction, the Developer shall police the construction area daily, keeping the same safe and free and clear of all rubbish, refuse, brush, debris and discarded building materials so as not to

create a public nuisance. The Developer may accumulate said material in an area approved by the City until such time as the accumulated matter is removed from the site by the Developer, provided that the City, at its sole discretion, may require the removal of said material. The Developer shall remove from the site and dispose of all rubbish, refuse, brush, debris and discarded building materials, leaving the Development free and clear of the same prior to the release of any remaining financial security or final acceptance of any public improvements. The burning of any construction rubbish, refuse, debris is not permitted.

11. Prior to commencement of any site preparation activity or construction, the Developer shall comply with all requirements and regulations in effect at the time of plan/plat approval with respect to hauling equipment and building materials on overweight restricted city roads.
12. Developer specifically agrees that any permits issued in accordance with appropriate City ordinances, shall automatically be revoked by it or its contractors or subcontractors or builders' failure to comply with any portion of this Guarantee, after notification to the Developer and his subsequent failure to correct such condition within forty-eight (48) hours of notification. The exception shall be made for dust and mud where the Developer shall be required to immediately correct such violation.
13. The Developer hereby gives specific permission for the City, its employees, agents or contractors to conduct inspections on its property. These inspections may take place at any time and with any frequency as the City deems appropriate in order to insure construction in accordance with approved Conditions. Where the Developer proposes to offer proposed improvements to the City, the Developer shall notify the City twenty-four (24) hours prior to the following activities: excavating, embankment construction, detention ponds, storm sewers, utility lines, base course, binder course, wearing course and seeding.
14. The Developer agrees to comply with all regulations, approvals and specifications enacted or promulgated by the Federal Government, Arkansas Department of Environmental Protection, as part of the coordinated, comprehensive stormwater management plan. The Developer agrees that the City shall have the sole right to determine and to approve the location and number of fire hydrants it deems necessary for the protection of the development. All costs and expenses relating to the installation of the fire hydrants shall be borne by the Developer.
15. The developer shall maintain all storm water detention and best management practices as required by City ordinances or shall be subject to penalties thereof.
16. The Developer shall provide to the City one (1) electronic copy of the as-built plans in PDF and DWG formats with approved Engineer certification and two (2) paper copies of all site improvements prior to formal acceptance and/or final release of any financial security related thereto, including landscaping plans which shall be sealed by a registered landscape architect.
17. During construction of all phases, parking for vehicles related to the construction activities shall be arranged so as not to create a potential traffic hazard at the direction of the City.
18. Developer shall not erect, nor permit any agent, employee, contractor or subcontractor of the Developer, including but not limited to builders, real estate agents, contractors, etc., to erect any sign related to the development that is not permitted by the City code.

19. All erosion and sedimentation controls shall be installed and maintained in accordance with an approved by the Storm Water Pollution Prevention Plan (SWPPP) prior to any other construction activity occurring at the Development.
20. The Developer shall be responsible to immediately revegetate and/or stabilize all areas of disturbed soil within a development in accordance with the approved plans.
21. It is specifically understood that this Guarantee is binding upon the Developer, its successors, assigns, agents, representatives, and officers, but that any partial or whole transfer of construction rights, approvals or agreements, shall subject the transferee and all transferee's contractors and subcontractors to all provisions of this Guarantee and all other rules, regulations, statutes and ordinances of Tontitown. It is further specifically understood that the Developer may not assign or transfer its rights hereunder without prior, written and duly authorized consent of the City.
22. The Developer shall protect, indemnify and save harmless Tontitown and its officers, employees, attorneys, and agents against them from any and all liabilities, suits, actions, claims, demands, losses, expenses and costs of every kind and nature (including costs of defense and attorney's fees) incurred by, or asserted or imposed against, Tontitown and its officers, employees, attorneys and agents, or any of them, by reason of any accident, injury (including death) or damage to any person or property which occurs or is alleged to have occurred in connection with the development of the property described in this Guarantee.
23. Neither this Guarantee nor any item hereof may be changed, waived, discharged, or terminated orally, but only by an instrument in writing by all parties hereto.
24. It is expressly agreed that nothing contained in this Guarantee shall be construed to contain a covenant, either expressed or implied either to create any obligation of Tontitown, Arkansas that is not consistent with the City code.
25. This Guarantee does not create an obligation or relationship such as a partnership, joint venture, or other similar legal relationship under the laws of any state or the federal government.
26. Nothing in this Guarantee shall operate as, or be construed as, a waiver, limit, modification, nullification, or alteration, of the tort immunity and other rights and immunities afforded by law to the City of Tontitown, including but not limited to those immunities set forth in Ark. Code. Ann. § 21-9-301.
37. This Guarantee shall be interpreted and construed in accordance with the laws of the State of Arkansas, and any dispute with respect to it and the rights and duties thereby created shall be litigated in Washington County, Arkansas.

IN WITNESS WHEREOF, the Developer, having read, understands and freely agrees.

**DEVELOPER:**

By: 

Title: member

## **EXHIBIT A**

In addition to the minimum design and construction requirements, as set forth by City Code, the Developer agrees to build a portion of Morsani AVE, beginning at the western most boundary and ending at the intersection of Morsani AVE and Klenc RD according to the modified cross-section as presented in the Preliminary Planset and approved by the City Engineer. The modified cross-section shall include all required improvements, including but not limited to a minimum a 26' driving width, curb and gutter, storm sewer, and sidewalk as well as standard ROW dedication for half-street improvements.

Per the minimum standards as set forth in Tontitown Development Code, the Developer is responsible for half street improvements along the Development fronting any street or road reflected on the Master Street Plan. For this project, this includes:

- 840' linear feet of Fletcher AVE to a Collector
- 787' linear feet of Klenc RD to a Collector
- 1,144' linear feet of Morsani AVE to a Collector

At the time of this agreement, the City of Tontitown lacks the Right of Way necessary to connect the required improvements associated with Fletcher AVE to Klenc RD. In lieu of construction this portion of Fletcher AVE, the City of Tontitown has opted to spend the value of this improvements on Morsani AVE. Per the Opinion of Probable Construction Cost prepared by Crafton Tull on October 10th, 2024, the cost of these improvements totals \$297,073.67.

Per the Preliminary Plat submittal, the Developer has proposed a modified section of Morsani AVE improvements extending from the property's western boundary to the intersection of Klenc RD. This includes a complete rebuild of Morsani AVE in addition to the required added lane requirements, including and but not limited to, removal of existing paving, removal of unsuitable subgrade materials, placement of new subgrade materials, placement of base materials, and new asphalt paving (2" binder and 2" surface course) as directed by the City Engineer. Per the Opinion of Probable Construction Cost prepared by Crafton Tull on October 10th, 2024, the cost of these improvements totals \$211,705.07.

In addition, the Developer agrees to construct the additional offsite road improvements along Klenc RD, specifically the portion along the eastern boundary of Parcel 830-37722-002, currently owned by Phillip & Maxine Luong to match the required improvements on both the north and south sides of the property. This includes subgrade, base, asphalt paving, curb and gutter, and sidewalk and excludes required storm system improvements needed for the development. Per the Opinion of Probable Construction Cost prepared by Crafton Tull on October 10th, 2024, the cost of these improvements totals \$45,815.64.

In addition, the Developer has agreed to upgrade the existing water on the north side of Morsani AVE to an 8" water main to a total value of \$39,552.96. Watermain improvements include new 8" PVC watermain, additional fire hydrants, existing service tie overs, and cutting and capping existing watermain. All construction work in regards to the watermain shall be in accordance with the Arkansas Department of Health as well as the City of Tontitown Standard Water and Sewer Specifications, June 25, 2018. Final plans for the offsite watermain upgrade along Morsani AVE to be approved by the Public Works Department.

Per this agreement, the City agrees to the improvements as shown on the Preliminary Plat submittal and to cost share the difference between the Developer's responsibility for half road improvements and the proposed modified section of Morsani AVE, Klenc RD improvements, and watermain improvements. All proposed and agreed to improvements to be completed at the time of Final Plat.

This Guarantee does not abrogate the Developer's responsibility for the payment of all fees, as required by City Code, for the Development, including but not limited to standard development fees as well as Transportation, Public Safety, Water, and Sewer Impact Fees as well as all such fees for the commercial lot associated with the Development in addition to Transportation Impact Fees for said commercial lot.



October 10, 2024  
 Renley Rae Collector OPC  
 Tontitown, Arkansas

300 N College Ave, Suite 317, Fayetteville, AR  
 479.636.4838

## Quantity Takeoff

For Site Work, Utilities, & Paving

	Quantity	Unit	Unit Cost	Total
<b>SITWORK</b>				
<b>Earthwork</b>				
Mobilization	1	LS	\$5,000.00	\$5,000.00
Undercut (1' Assumed)	608	CY	\$5.00	\$3,040.00
Backfill with Select Fill	608	CY	\$20.00	\$12,160.00
Erosion Control	1	LS	\$5,000.00	\$5,000.00
Sub-total				\$25,200.00
<b>Storm Drainage</b>				
18" RCP	250	LF	\$55.00	\$13,750.00
24" RCP	500	LF	\$75.00	\$37,500.00
Sub-Total				\$51,250.00
<b>Drainage Structures</b>				
4' Inlet Extensions	6	EA	\$400.00	\$2,400.00
4' Diameter Reinforced Concrete Curb Inlet	5	EA	\$4,500.00	\$22,500.00
Sub-Total				\$24,900.00
<b>SITWORK TOTAL</b>				\$101,350.00
<b>STREETS &amp; PAVING</b>				
<b>Pavements</b>				
2" Binder + 2" Surface	1,590	SY	\$42.00	\$66,780.00
6" Class 7 Aggregate Base Course	1,730	SY	\$16.00	\$27,680.00
Subgrade Preparation	1,731	SY	\$3.00	\$5,192.33
Curb & Gutter	842	LF	\$19.00	\$15,998.00
Handicap Ramps w/ Truncated Domes	4	EA	\$500.00	\$2,000.00
12' Concrete Trail	1,123	SY	\$65.00	\$72,973.33
Sub-Total				\$190,623.67
<b>Miscellaneous</b>				
Street Trees	17	EA	\$300.00	\$5,100.00
Sub-Total				\$5,100.00
Street & Paving Sub-Total				\$195,723.67
<b>STREETS &amp; PAVING TOTAL</b>				\$195,723.67
<b>CONSTRUCTION GRAND TOTAL</b>				\$297,073.67



300 N College Ave, Suite 317, Fayetteville, AR  
479.636.4838

October 10, 2024  
Renley Rae Collector OPC  
Tontitown, Arkansas

**Quantity Takeoff**  
For Site Work, Utilities, & Paving

	Quantity	Unit	Unit Cost	Total
<b>SITWORK</b>				
<b>Earthwork</b>				
Demolition of Existing Street	1,948	SY	\$8.00	\$15,585.78
Mobilization	1	LS	\$7,500.00	\$7,500.00
Undercut and Backfill (1' Assumed)	2,143.04	CY	\$25.00	\$53,576.11
Erosion Control	1	LS	\$12,500.00	\$12,500.00
<b>SITWORK TOTAL</b>				<b>\$89,161.89</b>

**UTILITIES**  
Water Service

**OFFSITE IMPROVEMENTS TO WATERMAIN UPGRADE FOR PORTION ALONG MORSANI AVE TO EQUAL \$39,552.96.  
PLANS TO BE APPROVED BY PUBLIC WORK PRIOR TO CONSTRUCTION PLAN APPROVAL.**

**STREETS & PAVING**

<b>Pavements</b>				
4" Asphalt (2" Binder, 2" Surface) (Collector)	1,948	SY	\$42.00	\$81,825.33
6" Class 7 Aggregate Base Course (Collector)	2,143	SY	\$16.00	\$34,288.71
Subgrade Preparation (Collector)	2,143	SY	\$3.00	\$6,429.13
<b>STREETS &amp; PAVING TOTAL</b>				<b>\$122,543.18</b>

<b>CONSTRUCTION GRAND TOTAL</b>				<del>\$371,986.07</del>
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**\$251,258.03**





300 N College Ave, Suite 317, Fayetteville, AR  
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October 10, 2024  
Klenc Improvements  
Tontitown, Arkansas

## Quantity Takeoff

For Site Work, Utilities, & Paving

	Quantity	Unit	Unit Cost	Total
<b>SITWORK</b>				
<b>Earthwork</b>				
Sawcut 1' inside Existing EOA and Demo	1	LS	\$3,200.00	\$3,200.00
Remove & Replace Existing Driveway	1	LS	\$4,250.00	\$4,250.00
Mobilization	1	LS	\$1,500.00	\$1,500.00
Traffic Control	1	LS	\$2,000.00	\$2,000.00
Undercut and Backfill (1' Assumed)	248	CY	\$25.00	\$6,200.00
Erosion Control	1	LS	\$1,000.00	\$1,000.00
<b>SITWORK TOTAL</b>				\$18,150.00
<b>STREETS &amp; PAVING</b>				
<b>Pavements</b>				
4" Asphalt (2" Binder, 2" Surface) (Collector)	226	SY	\$42.00	\$9,482.67
6" Class 7 Aggregate Base Course (Collector)	248	SY	\$16.00	\$3,973.69
18" Standard Curb & Gutter	229	LF	\$23.00	\$5,267.00
Subgrade Preparation (Collector)	248	SY	\$3.00	\$745.07
Sidewalk	126	SY	\$65.00	\$8,197.22
<b>STREETS &amp; PAVING TOTAL</b>				\$27,665.64
<b>CONSTRUCTION GRAND TOTAL</b>				\$45,815.64