

**MASTER PURCHASE AGREEMENT
(For Sale of Non-Potable Fresh or Salt Water)**

THIS MASTER PURCHASE AGREEMENT (this "Agreement") is made and entered into this _____ day of _____, 201___ (the "Effective Date"), by and between **BMB/SWC Ranches, Inc.**, a Texas Corporation (the "Company"), and _____, a(n) _____ (the "Purchaser") (collectively the "Parties").

In consideration of the mutual promises and agreements herein contained, the Company and the Purchaser do hereby contract and agree as follows:

1. **Purchases.** All sales of water by the Company to Purchaser, its affiliates and its contractors ("Purchase") which may be offered by the Company, either orally or in writing, and accepted by the Purchaser during the term of this Agreement shall be subject to and governed by all the terms and provisions of this Agreement to the same extent and with the same effect as if the terms and provisions herein were incorporated in any purchase order, either oral or written, any delivery ticket, invoice, and other papers or documents executed or passed between the Parties in connection with the subject matter herein (collectively "Purchase Order"). If there is a conflict between the provisions herein and any Purchase Order, then the provisions of this Agreement shall be controlling. Company agrees to sell water to Purchaser on a non-exclusive basis pursuant to the terms hereof and any applicable Purchase Order. Nothing herein shall require Purchaser to purchase any minimum quantity of water from Company or Company to sell to Purchaser any minimum quantity of water.
2. **Term.** This Agreement shall commence on the Effective Date and shall continue in full force and effect for a period of five (5) years from that date, unless sooner terminated by the parties as provided below (the "Primary Term"). Upon expiration of the Primary Term (and each Extended Term), this Agreement shall automatically renew for successive six (6) month periods (each such period an "Extended Term") until such time as the Agreement is terminated by the parties as set forth below. Either Party may terminate this Agreement at any time by giving the other five (5) business days prior written notice of such termination. Termination of this Agreement for any reason whatsoever shall not affect (1) any right or obligation of any Party which accrued or vested prior to such termination date, and which is hereby deemed to survive the termination of this Agreement or (2) any continuing obligation, liability or responsibility of the party which would otherwise survive the termination of this Agreement, including, without limitation, the indemnification obligations under this Agreement.
3. **Warranties.** Company shall install and maintain its meters and pumps at its water station in good working order. It shall calibrate its meter(s) no less than annually. All water sold by Company shall be for non-potable uses, regardless of quality of the water or the designation of such water as "fresh" water. **COMPANY MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, AND HEREBY SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE.** Purchaser acknowledges that all Purchases made hereunder are on an "as is, where is" basis.
4. **Access Point.** Company shall issue to Purchaser, for Purchaser's and its contractor's use, "fobs" to access water from Company's water station(s). Such fobs shall electronically open, close and record Purchaser's volume purchased. Purchaser shall at all times be liable to Company for the payment of such water taken pursuant to the use of one of Purchaser's fobs and for the return of such fob, ownership and risk of loss passing to Purchaser at Company's Meter. Company can deactivate any fob issued to Purchaser upon one (1) business day notice in the event that Purchaser desires to prohibit access to one of its agents, employees or contractors to whom it has issued a fob. Prior to the expiration of one (1) full business day following actual receipt of such termination notice by Company (or the earlier actual deactivation of such fob), Purchaser shall pay for any water invoiced to such fob. Purchaser shall be billed for water at Company's then current rates or at such rates agreed to in any applicable Purchase Order. Purchaser shall be charged \$50.00 for any fob lost or damaged while under Purchaser's or Purchaser's contractor's control and such amount for any fob not returned within thirty (30) days of deactivation or within ten (10) days of termination of this agreement, whichever comes first.
5. **Limit on Indemnity.** If the indemnities or insurance required in this Agreement hereunder are judicially determined to exceed the maximum limits

permissible under applicable law, then the indemnity and insurance requirements shall automatically be amended to conform to the maximum limits permitted under such law and will be liberally construed to effectuate the intent and enforceability of these provisions. Furthermore, for Purchases performed in the State of Texas and covered by TEX. CIV. PRAC. & REM. CODE ANN. §§ 121.001-007 (Vernon 1986 and 1992 Supp.), as amended, if deemed applicable by a court of applicable jurisdiction, (a) Section 6 below is subject to and expressly limited by the terms and conditions of that statute, and (b) that statute is incorporated herein.

6. INDEMNITIES.

(A) PURCHASER AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS COMPANY, ITS OFFICERS, DIRECTORS, EMPLOYEES OR THEIR INVITEES (THE "COMPANY GROUP"), FROM AND AGAINST ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER WITHOUT LIMIT AND WITHOUT REGARD TO THE CAUSE OR CAUSES THEREOF OR THE NEGLIGENCE OR FAULT (ACTIVE OR PASSIVE) OF ANY PARTY OR PARTIES INCLUDING THE JOINT OR CONCURRENT NEGLIGENCE OF A MEMBER OF COMPANY GROUP, ANY THEORY OF STRICT LIABILITY AND DEFECT OF PREMISES, ARISING IN CONNECTION HERewith IN FAVOR OF PURCHASER, PURCHASER'S EMPLOYEES, PURCHASER'S SUBCONTRACTORS OR THEIR EMPLOYEES, OR PURCHASER'S INVITEES (THE "PURCHASER GROUP"), INCLUDING BUT NOT LIMITED TO ANY CLAIM ON ACCOUNT OF BODILY INJURY, DEATH OR DAMAGE TO PROPERTY.

(B) EXCEPT FOR PHYSICAL DAMAGE TO COMPANY'S PREMISES OR THE IMPROVEMENTS LOCATED THEREON BY AN ACT OR OMISSION OF A MEMBER OF PURCHASER GROUP WHILE ON COMPANY'S PREMISES, WHICH PURCHASER HEREBY ASSUMES ALL LIABILITY FOR AND AGREES TO INDEMNIFY, DEFEND AND HOLD COMPANY HARMLESS THEREFROM, COMPANY AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS PURCHASER GROUP, FROM AND AGAINST ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER WITHOUT LIMIT AND WITHOUT REGARD TO THE

CAUSE THEREOF OR THE NEGLIGENCE OR FAULT (ACTIVE OR PASSIVE) OF ANY PARTY OR PARTIES INCLUDING THE JOINT OR CONCURRENT NEGLIGENCE OF PURCHASER, ANY THEORY OF STRICT LIABILITY AND DEFECT OF PREMISES, ARISING IN CONNECTION HERewith IN FAVOR OF A MEMBER OF COMPANY GROUP ON ACCOUNT OF BODILY INJURY, DEATH OR DAMAGE TO PROPERTY.

- (C) PURCHASER AGREES TO RELEASE, PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS COMPANY GROUP FROM ANY AND ALL CLAIMS, INCLUDING, WITHOUT LIMITATION, THE COST OF INVESTIGATION, CONTROL AND CLEANUP, ARISING OUT OF POLLUTION OR CONTAMINATION IN CONNECTION WITH THE WATER PURCHASED FROM COMPANY ONCE PURCHASER OR ITS CONTRACTOR TAKES DISTRIBUTION OF SAME FROM COMPANY'S ACCESS POINT, EVEN IF SUCH IS CONTRIBUTED TO OR CAUSED BY THE SOLE, JOINT, COMPARATIVE OR CONCURRENT NEGLIGENCE OF COMPANY GROUP.
- (D) Company and Purchaser acknowledge and agree that neither party shall be liable for any incidental, consequential, indirect or special damages, including, but not limited to, lost profits, business interruption, or lost production, whether arising under breach of warranty or contract, strict liability, indemnity or any other theory of liability.
- (E) Nothing in this paragraph 6 shall require Company to indemnify Purchaser Group for any claim, action, or demand resulting solely from a member of Purchaser Group's gross negligence or willful misconduct.
- (F) Nothing in this paragraph 6 shall require Purchaser to indemnify Company Group for any claim, action, or demand resulting solely from a member of Company Group's gross negligence or willful misconduct.
- (G) Each Party agrees to support its indemnity obligations under this paragraph 6 with insurance issued in accordance with the provisions of Exhibit A attached hereto and incorporated herein.
- (H) The indemnities under this paragraph 6 expressly survive termination of this

Agreement for claims arising or related to (i) any event occurring during the term of this Agreement or (ii) in any way related to the Purchase.

7. **Payment.** Purchaser shall pay all invoices due hereunder within ten (10) days of invoice date. Any payments not timely made shall accrue interest beginning on the 31st day following the invoice date at the maximum non-usurious rate allowed by law.
8. **Force Majeure.** Other than for the payment of monies due, neither the Company nor the Purchaser shall be liable to the other for any delays or damages or any failure to act due, occasioned or caused by reason of federal or state laws or the rules, regulations or orders of any public body or official purporting to exercise authority or control respecting the Purchase; Acts of God; adverse weather; or other extreme or unusual causes beyond the control of the Parties affected hereby. Such delays shall not be deemed to be a breach of or failure to perform under this Agreement if the party experiencing such force majeure delay notifies the other party promptly in writing of the cause for the delay and the probable duration thereof and takes all reasonable actions to remove the cause of the force majeure delay.
9. **Compliance with Federal, State, and Local Laws.** Company represents that it has complied with all applicable federal, state, and local laws, regulations, rules, ordinances, zoning requirements, licensing permit requirements and executive orders which may be applicable to this Agreement and the transactions contemplated hereunder. Some of the laws include but are not limited to the applicable provisions of the Environmental Protection Act, Fair Labor Standards Act, the Occupational Safety and Health Act, and any and all regulations and standards or amendments which may be applicable thereto.
10. **Notice.** All notices to be given with respect to this Agreement and applicable Purchase Orders, unless otherwise expressly provided for, shall be in writing and sent or delivered to the Company and to the Purchaser, respectively, at the addressees set forth herein, certified mail, return receipt requested.
11. **Assignment.** This Agreement shall not be assigned without the written consent of the Company. Notwithstanding the foregoing, Purchaser may assign its interest hereunder to the extent Purchaser sells all or a majority of its corporate securities or assets by providing notice to Company of same. No assignment hereunder shall relieve Purchaser of its duties or liabilities under this Agreement and any

Purchase performed by such an Assignee of Purchaser shall evidence Purchaser and Assignee's joint and several liability hereunder.

12. **Severability.** If any provision herein is invalid or unenforceable in any jurisdiction, the other provisions herein shall remain in full force and effect in such jurisdiction and the remaining provisions herein shall be liberally construed in order to effectuate the intent of the invalid or unenforceability of any provision herein in any jurisdiction shall not effect the validity or enforceability of any such provision in any other jurisdiction.
13. **Miscellaneous.**
 - (A) **Record Keeping.** For the purposes of permitting verification by the Purchaser of any amounts invoiced to or paid by the Purchaser, the Company shall keep and preserve, for not less than two (2) years from date of invoice all general ledgers, Purchase orders, receipts, disbursements journals, bids, bid proposals, price lists, and supporting documentation obtained in connection with performance of the Purchase (these items are collectively called "items"). At any time upon twenty-four (24) hours advance notice to the Company, Purchaser or its agents or representatives, including accountants, may, during regular business hours, examine or audit the items for which Purchaser is invoiced hereunder.
 - (B) **Reports.** Purchaser shall provide to Company an oral report, confirmed in writing as soon as practicable, of all accidents or occurrences on Company's premises resulting in death or injuries to Purchaser's employees, agents, contractors, invitees or any third parties, damage to Company's property, or physical damage to the property of Purchaser Group or any third party, arising out of or during the course of any Purchase. Purchaser shall furnish Company with a copy of all reports made by Purchaser to Purchaser's insurer, governmental authorities, or to others of such accidents or occurrences.
 - (C) **Successors and Assigns.** This Agreement shall inure to and be binding upon the Parties hereto and their legal representatives, heirs, successors and permitted assigns.
 - (D) **Attorney's Fees.** If any action at law or in

equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any other relief to which it may be entitled.

- (E) Counterparts. This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument.
- (F) Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any dispute arising under this Agreement shall lie solely in Midland County, Texas, the county in which the parties entered into this Agreement.
- (G) Corporate Authority. If any party to this Agreement is a legal entity, including, but not limited to, an association, corporation, joint venture, limited partnership, partnership, or trust, then that party represents to the other that this Agreement and the transactions contemplated in this Agreement and the execution and delivery have been duly authorized by all necessary corporate, partnership, or trust proceedings and actions including, but not limited to, action on the part of the directors, officers and agents of the entity, if said actions are required.
- (H) New Technology. The parties agree that Company, through its "fob" system is utilizing new, proprietary technology to implement this Agreement. Such technology may include procurement cards, master agreements which allow releases of goods, work or services, or the ability to receive orders electronically and provide by electronic means, inventory lists, merchandise lists, pricing, and such other data, communications and information as may be necessary to implement this agreement. Such technology is proprietary and all rights and interests therein belong solely to Company. Purchaser agrees that it shall keep Company's technology and methods confidential and shall not reverse engineer or assist any third party in developing similar or competing technology.

14. Added Special Provisions.

- (A) Drugs, Alcohol & Firearms. To help ensure a safe, productive Purchase environment, Company may establish a program designed to prohibit the use, transportation and possession of firearms, drugs and/or controlled substances, drug paraphernalia and alcoholic beverages on the Company's premises. Illegal drugs shall include, but not be limited to, marijuana, amphetamines, barbiturates, opiates, cocaine, codeine, morphine, hallucinogenic substances (LSD) and any similar drugs and/or chemical synthetics deemed hazardous by Company. Such programs, if established, upon notice shall apply to Purchaser's employees, agents, servant and contractors entering Company's premises on Purchaser's behalf. Purchaser's employees, agents, contractors and invitees shall abide the more stringent of Purchaser's or Company's drug, alcohol and firearm policy. Regardless of any specific drug policy in place, Company may request that Purchaser carry out drug and alcohol tests of its employees and/or that Purchaser carry out reasonable searches of individuals, their personal effects and vehicles when entering on and leaving Company's premises at any time, at scheduled times, or at random. Individuals found in violation will be removed from Company's premises immediately. Submission to such a search is strictly voluntary, however, refusal may be cause for not allowing that individual on the well site or Company's other premises. Purchaser shall (1) test, at Purchaser's expense, any individual involved in or related to an accident or injury on Company's premises within twelve (12) hours of such accident or injury and (2) submit to Company any drug or alcohol test results for any individual involved in or related to an accident or injury on Company's premises. It is Purchaser's responsibility to notify its employees, Purchasers, subcontractors, agents and invitees of this prohibition, the provisions of this paragraph and its enforcement and obtain any acknowledgement or release from any person in order to comply with this provision and applicable law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the day and year first written above.

COMPANY:

ADDRESS:

BMB/SWC Ranches, Inc.,
a Texas Corporation

By: _____
Name: _____
Title: _____

P. O. Box 2476
Carlsbad, New Mexico 88221-2746

PURCHASER:

ADDRESS:

a(n) _____
By: _____
Name: _____
Title: _____

EXHIBIT "A"

- A. Statutory Workers' Compensation Insurance and Employer's Liability Insurance in full compliance with applicable State and Federal laws and regulations where the Purchase is to be performed. This policy shall include a waiver of subrogation in favor of the Company Group (as defined in the Agreement). The Employer's Liability Insurance shall have minimum limits of:

\$1,000,000	Each Accident
\$1,000,000	Disease — Policy Limit
\$1,000,000	Disease — Each Occurrence

- B. Commercial General Liability Insurance with minimum limits of:

\$1,000,000	Per occurrence
\$2,000,000	General aggregate
\$1,000,000	Products/completed operations aggregate

The policy will be on a form acceptable to the Company, be endorsed to include the Company Group as additional insureds, and state that this insurance is primary as regards any other insurance carried by any indemnitee.

- C. Comprehensive Commercial Automobile Liability Insurance with minimum limits of \$1,000,000 combined single limit. The policy shall be on a standard form written to cover all owned, hired and non-owned automobiles, be endorsed to include the Company Group as additional insureds, and state that this insurance is primary insurance as regards any other insurance carried by any indemnitee.
- D. Umbrella Liability Insurance written on a following form umbrella excess basis above A, B and C with minimum limits of \$1,000,000. This policy shall be endorsed to include the Company Group as additional insureds.
- E. The Purchaser will require all of its contractors to procure insurance coverage (including all endorsements and waivers) similar to that required as to the Purchaser under the Agreement.
- F. In the event Purchaser is a self-insurer and the Company has consented to the Purchaser being a self-insurer as to any one or more of the risks to which coverage is herein required, evidence of such consent must be in writing and approved by a representative of the Company authorized to enter into such consent agreement. Furthermore, if the Purchaser (or any of its contractors) self-insures a risk as set forth in this section, the Purchaser (or any of its contractors) hereby waives any claim for damage or loss as to that risk in favor of the indemnities.

Evidence of the above coverage, or self-insurance, represented by Certificates of Insurance, or documents verifying the self-insurance, must be furnished to the Company upon request prior to the Purchaser starting Purchase. Certificates of Insurance shall specify the additional insured status mentioned above as well as any waiver of subrogation. Such Certificates of Insurance shall state that the Company will be notified in writing thirty (30) days prior to cancellation, material change or non-renewal of insurance. Renewal Certificates of Insurance will be furnished thirty (30) days prior to expiration of any coverage and will comply with the requirements stated above. It is expressly understood that the self-insurance permitted above does not contemplate the revocation of any State Workers' Compensation Act and does not relieve the Purchaser (or any of its contractors) of its statutory obligations under such Act.