

When Recorded Return to:
Craig L. White
South Valley Sewer District
P.O. Box 629
Riverton, UT 84065

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06/23/2021 10:27 AM \$0.00
Book - 11195 Pg - 2129-2136
RASHELLE HOBBS
RECORDER, SALT LAKE COUNTY, UTAH
SOUTH VALLEY SEWER DISTRICT
PO BOX 629
RIVERTON UT 84065
BY: ZHA, DEPUTY - M I 8 P.

Affects Parcel No.: 26-13-301-003-0000

OWNER: CC DAYBREAK LLC

PROJECT: Novel Daybreak – Buildings A-D

COMMERCIAL SEWER CONNECTION AGREEMENT

THIS AGREEMENT is made and entered as of the 23 day of June, 20 21 and between **CC DAYBREAK LLC**, whose address is 227 W. TRADE STREET STE 1000 Charlotte, NC 28202, hereinafter referred to as the “Owner,” and the **SOUTH VALLEY SEWER DISTRICT**, a political subdivision of the State of Utah, whose address is 1253 W Jordan Basin Ln, Bluffdale, UT 84065, hereinafter referred to as the “District.”

WITNESSETH:

WHEREAS, the Owner proposes to install a sewer line or sewer lines, laterals, manholes and related structures and facilities (hereinafter, “Sewer Improvements”), as a part of the Novel Daybreak – Building A-D development, which Sewer Improvements will be connected to the District’s sewer system in order to provide for collection, transmission, treatment, and disposal of sewage from Owner’s land; and

WHEREAS, the proposed Sewer Improvements are to be located on Owner’s land at approximately 5502 W South Jordan Parkway, in South Jordan City, Utah; and

WHEREAS, the District, in accordance with its rules and regulations, will not allow connection of the Sewer Improvements to the District’s sewer system or otherwise approve or accept any work by the Owner unless an agreement is made to assure completion of the Sewer Improvements according to the District’s Design Standards and Construction Specifications and the plans and profile drawings approved by the District; and

WHEREAS, Owner desires to connect all units in single building to the sewer main owned by the District with a common sewer lateral; and

WHEREAS, the parties desire to reduce their respective understandings and agreement to writing.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Installation of Improvements.**

a. **Plans and Specifications.** The Owner shall provide a set of plans and profile drawings of the Sewer Improvements and sewer system design for review and acceptance by the District. This design shall also provide for additional capacity for tributary areas if the District so directs. The District engineer will thereafter approve or reject the Owner's plans and drawings.

b. **Installation.** After compliance with all District requirements, including payment of all applicable fees and costs, a preconstruction conference may be held with the Owner and the District's engineer and/or inspectors. Upon satisfactory compliance with all of the foregoing requirements, the Owner shall proceed to install in a workman-like manner at Owner's sole cost and expense, the Sewer Improvements as shown on the plans and profile drawings approved by the District and in accordance with the District's Design Standards and Construction Specifications. If the Sewer Improvements are not commenced within one (1) year from date of this Agreement, Owner shall resubmit plans for review and approval by the District engineer. All work shall be subject to District testing, inspection and approval before the same is covered or interconnected with the main outfall lines constructed by the District. If the work is covered before such testing, inspection and acceptance, the District may require the line to be uncovered for testing and inspection and may disconnect the Owner's system from the District's sewer system. The actual interconnection of Owner's sewer system with the District's main outfall line or lines shall be done at a time and in a manner approved by the District at the Owner's expense.

c. **Connection to District Lines.** Owner's Sewer Improvements shall not be connected to the District lines until Owner has fully performed Owner's obligations set forth in this Agreement.

2. **Rules and Regulations.** The Owner hereby agrees at all times to abide by the established rules and regulations of the District, including but not limited to, the payment of fees and charges as the same shall become due, construction of the Sewer Improvements in accordance with the District's Design Standards and Construction Specifications and complying with all pretreatment requirements of the District.

3. **Owner's Representations and Agreement.** Owner hereby represents and agrees that:

a. Owner is the owner of the real property for which this Agreement is made;

b. Owner hereby grants the District and its designees the full right to enter upon all property within Owner's development to inspect the Sewer Improvements at any time.

c. Owner understands that Owner's facility or facilities will be served by the Sewer Improvements and that the impact fees calculated and charged by the District will be based on 400 multifamily units.

1. **Lateral Ownership and Responsibility.** Laterals are not owned or maintained by the District. Laterals are the property of Owner, who shall be solely responsible for operating and maintaining the sewer laterals which serves Owner's Property.

2. **Lateral Responsibility.** Owner hereby assumes all liability and responsibility for any sewer backups, together with any and all resulting damages to any persons or property or the units located on Owner's Property, caused or in any manner arising out of the sewer lateral serving Owner's Property.

3. **Future Development.** In the event Owner's Property is hereafter subdivided or otherwise further developed, in any manner, each unit thereon, including all existing units, will be immediately and separately connected to the sewer main owned by the District. All expenses associated with such development shall be borne by the Owner.

d. Where pretreatment facilities are required, Owner shall design and install a separate interceptor pipe, interceptor, sampling manhole, or amalgam separator hereinafter collectively referred to as the "Pretreatment Facilities." The Pretreatment Facilities shall be sized and designed to meet the pretreatment requirements of the District and shall comply with any required Discharge Permit(s). Owner shall maintain and repair such Pretreatment Facilities at owner's sole expense. Owner shall indemnify and hold harmless the District, its officers, employees, engineers, agents and representatives from any liability, expense, claims or damages of any nature which may arise from the operation and maintenance of the Interceptor herein.

4. **Costs of Development and Fees.** The Owner shall bear the total costs of constructing all Sewer Improvements required for the servicing of Owner's development (including extensions from existing District sewer mains to the development, the sewer collection system within the development, and laterals to each lot, parcel, building or connection within the development). No lot or parcel of real property or building shall be connected to any portion of the District's sewer system until all applicable fees, including impact fees, have been paid to the District. The applicable fees shall be those in effect at the time of connection to the District's sewer system. Owner's initial impact fee shall be paid to the District by Owner based upon the District's fee schedule established for Owner's initial designated facility or facilities. The District may charge and Owner shall pay additional impact fees if a change of use occurs in Owner's facilities at those rates in effect on the date when the additional impact fees are actually paid to the District.

5. **Binding Effect.** This Agreement shall inure to the benefit of, and be binding upon, the parties and their respective heirs, representatives, agents, officers, employees, members, successors and assigns. The covenants contained herein shall be deemed to run with the land described in Exhibit "A" attached hereto and by this reference made a part hereof. The parties acknowledge and agree that a copy of this Agreement may be recorded in the office of the appropriate County Recorder.

6. **Default.** In the event either party hereto defaults on any of the covenants and agreements contained herein, the defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, incurred by the other party in enforcing its rights hereunder whether incurred through litigation or otherwise.

7. **Conveyance and Treatment Capacity.** The District's obligation to provide sewer service is subject to and conditioned upon the availability of adequate conveyance and treatment capacity at the sewer treatment facilities serving the District and shall be subject to any limitations, requirements and regulations which may be established and enacted from time to time by the District's Board of Trustees or the governing body of the sewer treatment facility serving Owner's land and/or development, or by any other governmental entity having jurisdiction over the parties hereto.

8. **Counterparts.** The fact that the parties hereto execute multiple but identical counterparts of this Agreement shall not affect the validity or efficacy of their execution, and such counterparts, taken together, shall constitute one and the same instrument, and each such counterpart shall be deemed an original.

9. **Severability.** Should any portion of this Agreement for any reason be declared invalid or unenforceable, the invalidity or unenforceability of such portion shall not affect the remaining portions of the Agreement which shall be deemed in full force and effect as if this Agreement had been executed with the invalid portions eliminated.

10. **Waiver.** No waiver of any of the provisions of this Agreement shall operate as a waiver of any other provision, regardless of any similarity that may exist between such provisions, nor shall a waiver in one instance operate as a waiver in any future event. No waiver shall be binding unless executed in writing by the waiving party.

11. **Bonds.** This Agreement does not alter any obligation of Owner to provide bonds under applicable ordinances of any city or county having jurisdiction over Owner's development.

12. **Time of Essence.** The parties agree that time is of the essence in the performance of all duties herein.

13. **Captions.** The captions preceding the paragraphs of this Agreement are for convenience only and shall not affect the interpretation of any provision herein.

14. **Governing Law.** This Agreement and the performance hereunder shall be governed by the laws of the State of Utah.

15. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and no prior or contemporaneous promises, representations, warranties or understandings between the parties regarding the subject matter hereof which are not contained herein shall be of any force or effect.

16. **Amendments.** Any amendment to this Agreement shall be made in writing and signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first above written.

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY BEING SERVED

BEG NW COR LOT M-104, KENNECOTT DAYBREAK VLGE 10 N PL 2; S 65.15 FT; SE'LY ALG 167 FT RADIUS CURVE TO L 106.53 FT (CHD S 18°16'27" E 104.73 FT); S 36°32'54" E 179.28 FT; S 53°27'06" W 66 FT M OR L; N 36°32'54" W 179.28 FT; S 53°27'06" W 483 FT; S 36°32'54" E 179.28 FT; N 53°27'06" E 325.21 FT M OR L; S 36°32'54" E 66 FT; S 53°27'06" W 325.02 FT; S 36°32'54" E 202.66 FT; S 40°41'59" E 155.75 FT; S 53°27'06" W 841.29 FT M OR L; S 53°27'06" W 11.63 FT; NW'LY 553.85 FT ALG A 1136.50 FT RADIUS CURVE TO R; N 667.63 FT; NE'LY 424.63 FT ALG A 304 FT RADIUS CURVE TO L (CHD N 40°48'17" E 390.94 FT); SE'LY TO THE W LINE OF SOUTH JORDAN PKWY; S 18.97 FT M OR L; E 44.50 FT; S 89.94 FT; SE'LY 20.07 FT ALG A 265.50 FT RADIUS CURVE TO L (CHD S 2°09'57" E 20.07 FT); E 0.50 FT; SE'LY 148.967 FT ALG A 265 FT RADIUS CURVE TO L (CHD S 20°26'39" E 147.02 FT); N 53°27'06" E 30.50 FT; NW'LY 149.59 FT ALG A 234.5 FT RADIUS CURVE TO R (CHD N 18°16'27" W 147.06 FT); N 89.94 FT; E 203.48 FT M OR L TO BEG. (BEING PT LOT T3 KENNECOTT MASTER 1 AMD). 19.66 AC M OR L. 10389-8681 10453-3681