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GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
SOUTH VALLEY SEWER DISTRICT
PO BOX 908
DRAPER UT 84020
BY: SSA, DEPUTY - WI 7 P.

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

Affects Parcel No.: 26-24-353-002
OWNER: Smith's Food & Drug Centers, Inc.
PROJECT: Smith's Marketplace

COMMERCIAL SEWER CONNECTION AGREEMENT

THIS AGREEMENT is made and entered into as of the 28 day of March, 2016 and between **SMITH'S FOOD & DRUG CENTERS, INC.**, whose address is 1550 South Redwood Road, Salt Lake City, Utah 84104, 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 Smith's Marketplace 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 5448 West Daybreak 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, the parties hereto 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 connection, review and inspection 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. Owner, at the time of the initial installation, shall install appropriate wyes in the sewer main line for each connection to be serviced, and extend lateral sewer lines to a point inside of any curb, gutter, and sidewalk within the property line of each connection or lot.

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 hereafter 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 any applicable 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 grocery category, consisting of 123,500 square feet.

d. Where required, Owner will design and install a separate interceptor pipe, interceptor and sampling manhole, hereinafter collectively referred to as the "Interceptor." The Interceptor shall be sized and designed to meet the pretreatment requirements of the District and comply with any required Discharge Permit(s). Owner further agrees to maintain and repair such interceptor line at owner's sole expense. Owner hereby agrees to indemnify and hold the District harmless, 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 and Fees.** The Owner hereby agrees to 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 existing sewer system until the then applicable impact fee therefor has been paid to the District. The applicable impact fees shall be those impact fees established by the District's Board of Trustees with respect to Owner's facilities to be served by 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 served by the Sewer Improvements at those rates which are 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 hereto and their respective heirs, representatives, agents, officers, employees, members, successors and assigns. The covenants contained herein shall be deemed to run with Owner's land which is located in Salt Lake County, Utah and is more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof. The parties hereto agree that a copy of this Agreement may be recorded in the office of the Salt Lake County Recorder, State of Utah.

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 **Treatment Capacity.** The District's obligation to provide sewer service hereunder is subject to and conditioned upon the availability of adequate 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 counter parts, 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.

"DISTRICT"

SOUTH VALLEY SEWER DISTRICT

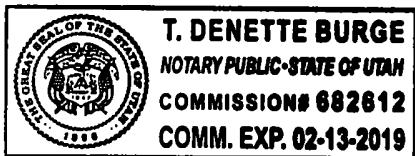
By: *Craig L. White*
Craig L. White, General Manager

DISTRICT ACKNOWLEDGMENT

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On the 28th day of March, 2016 personally appeared before me **Craig L. White**, who being by me duly sworn, did say that he is the General Manager of **SOUTH VALLEY SEWER DISTRICT**, a political subdivision of the State of Utah, and that said instrument was signed in behalf of the District by authority of its Board of Trustees and acknowledged to me that the District executed the same.

T. Denette Burge
Notary Public



“OWNER”

SMITH’S FOOD & DRUG CENTERS, INC.

By: *Steven M. Sorensen*

Its: VICE PRESIDENT
Title

STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

On the 15th day of MARCH, 2016, personally appeared before me STEVEN M. SORENSEN who being by me duly sworn did say that (s)he is the VICE PRESIDENT of **SMITH’S FOOD & DRUG CENTERS, INC.**, a corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of its bylaws or by a resolution of its Board of Directors; and acknowledged to me that said corporation executed the same.

Susan T. Thomson
Notary Public

My Commission Expires: 8-8-18

Residing in: SALT LAKE COUNTY, UT

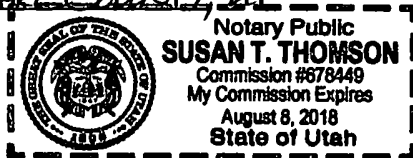


EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY BEING SERVED
LOT C-101, OF KENECOTT DAYBREAK VILLAGE 7A PLAT 1