



PRIVATE SEWER AGREEMENT

THIS PRIVATE SEWER AGREEMENT is made and entered into on this day of August 24, 2023, by and between ASH CREEK SPECIAL SERVICE DISTRICT, a special service district organized and existing under the laws of the State of Utah (hereinafter referred to as "Ash Creek" or "district"), and SHADOW CANYON HOMEOWNERS ASSOCIATION (hereinafter referred to as "Shadow Canyon HOA"), a homeowners association organized for the use and benefit of the residents of Shadow Canyon Phase 1, Shadow Canyon Phase 2A, Shadow Canyon Phase 2B, Shadow Canyon Phase 2C, and Shadow Canyon Phase 2D.

Recitals:

A. Ash Creek is the governmental entity responsible for providing sewer service to the residents of Hurricane, LaVerkin and Toquerville, Utah, respectively.

B. Shadow Canyon Phase 1, Shadow Canyon Phase 2A, Shadow Canyon Phase 2B, Shadow Canyon Phase 2C, and Shadow Canyon Phase 2D, (hereafter the "Shadow Canyon Subdivisions") are separately recorded subdivisions included as part of a residential planned unit development, located at approximately 2300 South and 700 West in Hurricane, Utah, in accordance with the official plats and maps thereof on file at the office of the Washington County Recorder.

C. At the time of recording of said plats and maps, Ash Creek's rules and regulations required that, unless otherwise agreed, all sewer lines and related facilities in any residential development were to be installed in roads or streets dedicated to the use and benefit of the general public, which, upon completion of installation and construction, would become the property of Ash Creek, who thereafter would be responsible for maintenance, repair and replacement of said lines and facilities.

D. At the time of recording of said plats and maps, Ash Creek and the developer orally agreed that the sewer lines and related facilities serving said subdivisions would be constructed and installed within private roadways, streets or easements, and that such sewer lines and related facilities would be privately owned and privately operated, maintained, repaired and replaced by the developer or any homeowners association organized for the use and benefit of the residents.

E. The parties now desire to enter into a written agreement, reaffirming, memorializing and clarifying the terms of the oral agreement for private ownership, maintenance, repair and replacement of sewer lines and facilities within the Shadow Canyon Subdivisions.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and obligations contained herein, the parties hereto agree as follows:

1. Recitals A-E are incorporated herein as if fully set forth.
2. Shadow Canyon HOA acknowledges and agrees that it is the governing authority for the Shadow Canyon Subdivisions in accordance with the Third Amendment and Restated Declaration of Covenants, Conditions and Restrictions of Shadow Canyon Phase I, a residential planned unit development.
3. Ash Creek and Shadow Canyon HOA acknowledge and agree that all sewer lines and related facilities for the Shadow Canyon Subdivisions have been constructed and installed in private roadways, streets or easements within the subdivisions.
4. Ash Creek and Shadow Canyon HOA reaffirm that Shadow Canyon HOA shall, at its expense, be solely responsible and liable for maintenance, repair and replacement of all sewer lines and related facilities constructed within the Shadow Canyon Subdivisions, and that all operation, maintenance, repair or replacement of all such sewer lines and related facilities shall be in accordance with all applicable rules and regulations of Ash Creek Special Service District, as contained in said District's Rules of Operation and Construction Standards now in effect or as may be amended from time to time.
5. Upon request by Shadow Canyon HOA, Ash Creek may, for a reasonable cost and within a reasonable time frame, provide assistance in the maintenance, repair or replacement of said sewer lines and related facilities constructed or installed within the Shadow Canyon Subdivisions. In addition, Ash Creek shall inspect any repairs or replacement of said lines or facilities to insure compliance with District's Rules of Operation and Construction Standards.
6. As part of the necessary maintenance of the private sewer lines and facilities, Shadow Canyon is required to flush and clean the lines at least once every two (2) years.
7. Shadow Canyon HOA hereby agrees to waive any and all claims against Ash Creek, and, further, to indemnify, defend and hold Ash Creek harmless from and against any and all claims, demands, causes of action or lawsuits, for any damage or injury to persons or property which is in any way related to the ownership, maintenance, repair or replacement of said private sewer lines and related facilities, except where any such injury or damage is attributable to Ash Creek's negligent performance of any maintenance or repair work on said sewer lines and related facilities, or maintenance or repair work on any connected lines or facilities within the Shadow Canyon Subdivisions.
8. In the event of a breach or default in the terms of this agreement by either party, the breaching or defaulting party shall be liable for any damages caused by said breach or default, as well as payment for all costs and expenses incurred by the non-breaching or

defaulting party in enforcement of this agreement, including court costs and a reasonable attorneys fee.

8. This agreement shall continue in force and effect until such time that ownership of said sewer lines and related facilities is transferred to District.

9. This agreement shall be binding on Shadow Canyon HOA, its successors and assigns.

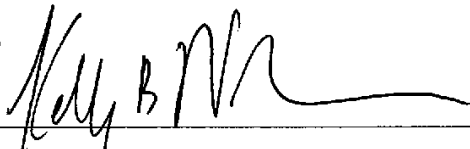
12. This agreement constitutes the entire agreement of the parties pertaining to the subject matter hereof. All other prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein.

13. Time is of the essence of this agreement.

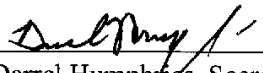
14. This agreement shall be construed under the laws of the State of Utah.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

ASH CREEK SPECIAL SERVICE DISTRICT

  
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Kelly Wilson, Chairman

Attest:

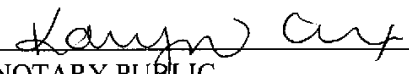
  
\_\_\_\_\_  
Darrel Humphries, Secretary

SHADOW CANYON HOA

  
\_\_\_\_\_  
Linda Gingras

STATE OF UTAH                     )  
  : ss.  
COUNTY OF WASHINGTON)

On the 24 day of August, 20 23 personally appeared before me  
Linda Gingras, who, being by me duly sworn, did say that he is the  
president of Shadow Mountain HOA and that he has signed the foregoing instrument for  
the reasons stated therein.

  
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NOTARY PUBLIC

