

## SEWER CONNECTION AND EXTENSION AGREEMENT

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This Sewer Connection and Extension Agreement (“Agreement”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the City of Santa Clara, a Utah municipal corporation (“City”), and \_\_\_\_\_, a \_\_\_\_\_ Double Dragon Investments, LLC, a Utah limited liability company (“Developer”).

### RECITALS

WHEREAS, Developer has proposed to de-annex from the City of St. George, and to annex to the City of Santa Clara, approximately twenty-four (24) acres of real property which is not currently serviced by public sewer lines (said property referred to hereafter as the “Annex”); and

WHEREAS, the Annex is currently subdivided, or Developer intends to subdivide it, into approximately 95eighty-five (85) residential lots, and Developer desires that the City of Santa Clara provide public sewer service to said lots; and

WHEREAS, the City is willing to provide sewer service to the Annex, subject to the terms and conditions set forth in this Agreement.

NOW THEREFORE in consideration of their mutual promises and covenants set forth herein, and for other good and valuable consideration, the parties agree as follows:

1. Recitals Incorporated: The recitals set forth above, including but not limited to the definitions set forth therein, are hereby incorporated as binding terms and provisions of this Agreement.

2. Annexation Condition: The effectiveness of this Agreement will be conditioned upon Developer’s obtaining from both the City of St. George and the City of Santa Clara whatever approvals may be required to accomplish the ~~deannexation~~de-annexation of the Annex from St. George, and its annexation into Santa Clara. The City makes no representations or guarantees of any kind regarding the outcome of said process, and reserves all administrative and legislative rights and powers to review such matter as it may come before the boards and councils of the City. In the event that the parties choose to execute this Agreement prior to the final approval of the annexation, and the annexation is not thereafter accomplished before June 30, 2019, this Agreement shall no longer be valid and the parties will be required to enter a new agreement should they still desire to address the matters set forth herein.

3. Sewer Service: Subject to the conditions set forth herein, the City agrees that Developer may connect to the City’s public sewer system, and City will provide sewer service to up to ninetyeighty-five (9585) residential lots in the Annex, which service will be comparable to that already provided throughout the City.

4. Developer Responsibilities: Developer shall be responsible for all of the following:

a. *Connection Fee.* Developer will pay to the City a connection fee totaling ~~\$126,400~~117,432.00 (the “Connection Fee”), which includes ~~\$85,200~~76,232.00 for capital costs and \$41,200.00 for operation and maintenance costs of the City’s public sewer system. Payment shall be due and payable not later than thirty (30) days after approval of the annexation. In the event that Developer subdivides and desires to connect more than 9585 total units in the Annex, the City shall have the right to require payment by Developer of additional fees to account for the increased impacts of development upon the City sewer system. The amount of such additional fees shall be determined by the City prior to the connection of the additional units, in similar manner as the calculation of the initial Connection Fee. No credit against or refund of the Connection Fee will be given in the event that Developer subdivides or connects fewer than the anticipated 85 units.

b. *Flow Meter.* Developer will pay City the full labor and equipment cost for installation of a meter at the intersection of Pioneer Parkway and Lava Flow Drive, to measure flow from the sewer extension servicing the Annex (the “Sewer Extension”).

c. *Reimbursement of Costs and Fees.* Developer will reimburse to City the actual engineering costs and attorney fees expended by the City in conjunction with this Agreement and the Sewer Extension. The City may invoice Developer at its discretion for such costs and fees, and Developer shall be responsible to pay the same not later than thirty (30) days following the date of such invoice.

d. *Construction of Sewer Extension.* Developer will construct the Sewer Extension, and shall pay all costs of said construction, consistent with this Agreement and all applicable City standards. The City shall have the right to review and approve construction drawings prior to the commencement of construction of the Sewer Extension or any part thereof. The Sewer Extension shall also be subject to all City ordinances, regulations and requirements applicable to infrastructure to be dedicated for public benefit, including but not limited to requirements for inspection prior to acceptance of dedication, and warranty bonding.

5. Construction Specifications: Developer shall comply with the following in construction of the Sewer Extension.

a. *Construction Standards.* The Sewer Extension shall be installed permanently to grade and meet all applicable City construction standards.

b. *Route.* The Sewer Extension shall follow generally the route depicted on the map attached hereto as “Exhibit A,” which begins in the northwest at the former location of the boundary between St. George and Santa Clara cities, near the northern terminus of Kiva Trail; then extends southeast down Kiva Trail to the nearest intersection with Tacheene Drive; then south down Tacheene Drive to the location of an existing sewer lift station at the intersection of Tacheene Drive and a future roadway; then south and east down the future roadway; then south to the point of connection with the existing sewer system near the intersection of Pioneer Parkway and Lava Cove Drive.

c. *Connection for Future Extension.* Developer shall provide an eight inch (8") connection at the northwest terminus of the Sewer Extension, at the boundary between the Annex and the property to the west, for the benefit of future development.

d. *Pioneer Parkway Extension.* Developer shall also install a lateral line west along Pioneer Parkway twenty feet (20') from the point of connection with the existing sewer system.

6. Grant of Public Utility Easements. In any location where the Sewer Extension is not installed in an existing easement or dedication owned by the City, Developer shall be responsible to convey or grant to the City such public utility easements as may be required to facilitate future operation, repair, and maintenance of the Sewer Extension as part of the overall City sewer system. Said easements shall be in the width and scope required, as reasonably determined by the City. The Sewer Extension shall not be deemed complete, nor shall it be accepted by the City, until such easements are conveyed and appropriate written grants in form satisfactory to the City are filed in the office of the Washington County Recorder. The City may require Developer to provide a title report or reports, at Developer's expense, to confirm the status of title of any parcel upon which such easements will be conveyed. In any event where the granting of such easements requires the consent or participation of any person or entity not a party to this Agreement, Developer shall be solely responsible to secure such consent or participation.

7. Indemnification. Developer shall indemnify and hold City harmless from any and all claims for liability or damage (including attorney fees and costs) that may arise or be related to its installation of the Sewer Extension or any part thereof, including any claims brought by or against Developer or its principals, agents, employees, contractors, or assigns, or against City, due to Developer's construction of the Sewer Extension, including claims for interruption of service. Developer shall promptly pay for or repair any damage it causes to any portion of the City's existing sewer system.

8. Entire Agreement: This Agreement constitutes the entire Agreement between the parties, and supersedes all previous contracts, correspondence and documentation relating to the subject matter that may have previously been formed by the parties.

9. Successors and Assigns: This Agreement shall inure to the benefit of, and be binding on, each party thereto and their respective successors and assigns. This agreement runs with the property. This agreement runs with the property and any successor(s) to Developer as title owners of the property shall, without requiring any formal assignment hereof, be Developer's legal successor to the rights and obligations set forth herein. However, in the event Developer has multiple successors, the City shall not be required to bifurcate this Agreement or install only a portion of the sewer system.

10. Modifications: A modification of, or amendment to, any provision contained in this Agreement shall be effective only if the modification or amendment is in writing and signed by all parties. Any oral representation or modification concerning this Agreement shall be of no force or effect.

11. Interpretation: Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law; but, if any provision of this Agreement shall be invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of the Agreement.

12. Applicable Law: This Agreement shall be governed, interpreted, and construed by the laws of the State of Utah, including all procedural laws and the applicable statute of limitations. Any default of this Agreement shall be deemed to have occurred in the State of Utah.

13. Titles and Headings: Titles and headings of paragraphs of this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement.

14. Default: In the event of any default hereunder by Developer, this Agreement may be suspended by the City, with written notice to Developer of the suspension and thirty (30) days to cure such default. In the event that the default is not cured, or substantial effort made to cure, by Developer within thirty (30) days of the notice, City shall have the right to terminate this Agreement without further notice or recourse to Developer.

15. City Council: This Agreement is subject to the final approval of the Santa Clara City Council, and its effectiveness expressly conditioned thereon.

16. Acknowledgment: The parties acknowledge that they have had an opportunity to fully examine this Agreement and completely understand the terms herein. The parties acknowledge that they have full authority to execute this Agreement and that they sign this Agreement with the intention to bind themselves and their successors and assigns, and they further acknowledge that they sign this Agreement of their own free will and choice, with a full understanding of all the applicable terms and conditions. Further, both parties agree that the execution of this document does not alter or modify any normal rights that either party may have.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2019.

DEVELOPER:

CITY:

Double Dragon Investments, LLC

\_\_\_\_\_  
Rick Rosenberg, Mayor

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Chris Shelley, Recorder

# EXHIBIT "A"

## To Sewer Connection and Extension Agreement

