

**ASSIGNMENT OF AND FOURTH AMENDMENT TO
DENVER SOUTHEAST SUBURBAN WATER AND SANITATION DISTRICT
SERVICE AGREEMENT
(THE CANYONS)**

This ASSIGNMENT OF AND FOURTH AMENDMENT TO DENVER SOUTHEAST SUBURBAN WATER AND SANITATION DISTRICT SERVICE AGREEMENT (THE CANYONS) (this “**Assignment and Amendment**”) is made and entered into as of this ____ day of _____, 2020 by and between DENVER SOUTHEAST SUBURBAN WATER AND SANITATION DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**Denver Southeast District**”), HT CANYONS SOUTH DEVELOPMENT LP, a Delaware limited partnership (the “**Developer**”), and the CROWFOOT VALLEY RANCH METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**Crowfoot District**”) (individually, each a “**Party**” and collectively the “**Parties**”).

RECITALS

A. The Denver Southeast District and Mississippi Partnership, a Colorado general partnership made and entered into that certain Denver Southeast Suburban Water and Sanitation District Service Agreement (The Canyons) (the “**Original Service Agreement**”), which was recorded in the office of the Clerk and Recorder for Douglas County, Colorado at Reception No. 2005000493 on January 3, 2005.

B. The Original Service Agreement set forth the terms and conditions on which the Denver Southeast District will provide services to the real property located in Douglas County, Colorado and more particularly described in Exhibit A of the Service Agreement (the “**Property**”).

C. All of Mississippi Partnership’s obligations under the Original Service Agreement were assumed pursuant to that certain Assignment and Assumption Agreement by and between Mississippi Partnership and Canyons South LLC, a Delaware limited liability company (“**Canyons South**”), dated January 25, 2005, and recorded in the office of the Clerk and Recorder for Douglas County, Colorado at Reception No. 2005069820.

D. The Denver Southeast District and Canyons South made and entered into that certain Amendment to Denver Southeast Suburban Water and Sanitation District Service Agreement (The Canyons), (the “**Amendment to Service Agreement**”), dated the 29th day of May, 2009, and recorded in the office of the Clerk and Recorder for Douglas County, Colorado at Reception No. 2009041897 on June 2, 2009.

E. All of Canyons South’s obligations under the Original Service Agreement and Amendment to Service Agreement were assumed pursuant to that certain Assignment

and Assumption Agreement by and between Canyons South and LC Macanta, LLC, a Delaware limited liability company (“**Macanta**”), dated October 31, 2011, and recorded in the office of the Clerk and Recorder for Douglas County, Colorado at Reception No. 2011069278 on November 3, 2011.

F. All of Macanta’s obligations under the Original Service Agreement and Amendment to Service Agreement were assumed pursuant to that certain Assignment and Assumption Agreement by and between Macanta and Canyons South, dated December 23, 2011, and recorded in the office of the Clerk and Recorder for Douglas County, Colorado at Reception No. 2013005423 on January 22, 2013.

G. The Denver Southeast District and Canyons South made and entered into that certain Second Amendment to Denver Southeast Suburban Water and Sanitation District Service Agreement (The Canyons), (the “**Second Amendment to Service Agreement**”), dated the 16th day of November, 2016, and recorded in the office of the Clerk and Recorder for Douglas County, Colorado at Reception No. 2016086230 on November 29, 2016.

H. The Denver Southeast District and Canyons South made and entered into that certain Third Amendment to Denver Southeast Suburban Water and Sanitation District Service Agreement (The Canyons), (the “**Third Amendment to Service Agreement**”, dated the 19th day of July, 2017, and recorded in the office of the Clerk and Recorder for Douglas County, Colorado at Reception No. 2017050688 on July 26, 2017. The Original Service Agreement, Amendment to Service Agreement, Second Amendment to Service Agreement and Third Amendment to Service Agreement are may be collectively referred to herein as the “**Service Agreement**”.

I. All of Canyons South’s obligations under the Service Agreement were assumed by the Developer pursuant to that certain Assignment of Denver Southeast Suburban Water and Sanitation District Service Agreement (the Canyons) by and between Canyons South and the Developer, dated April 17, 2019.

J. The Developer wishes to assign certain rights and responsibilities under the Service Agreement to the Crowfoot District and the Crowfoot District wishes to accept certain rights and responsibilities under the Service Agreement from the Developer; and the Denver Southeast District wishes to consent to such assignment.

K. The Crowfoot District wishes to further assign certain rights and responsibilities under the Service Agreement to the Town of Castle Rock (“**Castle Rock**”); and the Denver Southeast District wishes to consent to such assignment.

L. The Parties wish to amend the Service Agreement to acknowledge such assignment.

M. Undefined capitalized terms used below have the same meanings as set forth in the Service Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective agreements of the Parties contained herein, the Parties agree as follows:

COVENANTS AND AGREEMENTS

1. **Assignment**. The Developer hereby assigns and delegates to the Crowfoot District, and the Crowfoot District hereby accepts and assumes from the Developer, the Developer's rights and obligations under Paragraphs 4 and 10 of the Service Agreement, unless specified in below in this Assignment and Amendment. The Parties acknowledge the Developer is not assigning or delegating to the Crowfoot District, and the Crowfoot District is not accepting or assuming from the Developer any other rights or obligations under the Service Agreement, other than those detailed under Paragraphs 4 and 10 of the Service Agreement. The Denver Southeast District hereby consents to such assignment.

2. **Amendment to Paragraph 4 of Original Service Agreement**. Paragraph 4 of the Original Service Agreement is hereby amended and restated in its entirety to read as follows:

The Crowfoot District shall construct, at no cost to the Denver Southeast District, the interceptor line required to connect the points of individual sewage discharge within the Property to a point of connection with the Denver Southeast District's sewer system (the "**Interceptor**"). As of the date hereof, the Denver Southeast District's 10" wastewater line is extended to existing manhole 2A located east of Raintree Drive Right of Way, and will continue to, and beyond, the metering station shown on the approved Canyons South Filing No. 1 Proposed Pinery Offsite Sanitary Sewer Plans, Sheet SS2, attached hereto as **Exhibit A** (the "**Metering Station**"). The Crowfoot District shall own and maintain the Interceptor between the Metering Station and the points of individual discharge from individual lots within the Property. The Denver Southeast District shall own and maintain the Interceptor and its appurtenances from and including the Metering Station to the Denver Southeast District's sewage treatment plant (the "**Plant**"). If it becomes necessary to locate any portion of the Interceptor outside the Property, the Denver Southeast District shall obtain sufficient construction and maintenance easements to permit the Crowfoot District to construct any portion of the Interceptor that is located outside the Property, and to allow the ongoing maintenance of such portion of the Interceptor by the Party designated such responsibility under this Agreement. The timing of the construction of the Interceptor shall be at the discretion of the Crowfoot District. However, it is intended the Crowfoot District will assign some or all of its rights and obligations under this Paragraph 4, including those related to ownership and maintenance of the Interceptor, to Castle Rock and the Denver Southeast District hereby consents to such assignment, provided that such

assignment is done pursuant to an Extra-Territorial Wastewater Service Intergovernmental Agreement in substantially the same form as shown in **Addendum 1** attached hereto (the “**Wastewater Service IGA**”).

3. ***{{This Section may be removed, as the 4” Raw Water Service Line has been completed.}}*** **Addition of Paragraph 4.2 to Service Agreement.** Paragraph 4.2 is hereby added to the Service Agreement as follows:

4.2 Prior to or contemporaneously with completion of the Interceptor, the Crowfoot District shall construct a 4” raw water service line, on the terms and conditions set forth in the **Addendum 2** attached hereto.

4. **Amendment to Paragraph 10 of Service Agreement.** Paragraph 10 of the Service Agreement is hereby amended and restated in its entirety to read as follows:

As of the date hereof the Denver Southeast District has sold and the Developer has purchased 973 single family units of Wastewater Treatment Capacity in the Plant (the “**Taps**”), which is the total number of Taps to be issued to the Developer under this Paragraph 10. Provided, however, that additional Taps may be issued for wastewater treatment capacity pursuant to Paragraph 11 of this Agreement.

Until physical connection is made to the Denver Southeast District’s service lines, all Taps issued to the Developer pursuant to this Paragraph 10 shall be deemed an “**Unutilized Tap(s)**” subject to Service Charges as provided in Paragraph 15 of this Agreement; which Service Charges shall remain an obligation of the Developer to the Denver Southeast District. Consistent with Paragraph 15, the Denver Southeast District shall make monthly inquiry to Castle Rock for a list of addresses at which water taps were issued by Castle Rock within the preceding month and within the area described on Exhibit A, and for purposes of this Paragraph 10, it will be assumed by the Parties that Taps associated with any properties listed have made a physical connection to the Denver Southeast Districts’ service lines and are deemed a “**Utilized Tap(s).**” Utilized Taps are not subject to Service Charges related to Unutilized Taps.

In addition, the Parties expressly acknowledge that the rights to the wastewater treatment capacity related to the Taps (the “Capacity”) are not absolute until such time as it is deemed a Utilized Tap. Until such time, the rights to the Capacity related to such Unutilized Taps are contingent upon ongoing payment of Service Charges related to Unutilized Taps by the Developer to the Denver Southeast District pursuant to Paragraphs 15 and 21 herein and the Parties further acknowledge the rights of the Denver Southeast District to lien any real property within the area described on Exhibit A owned by the Developer for unpaid Service Charges related to such Unutilized Taps.

It is intended that Castle Rock will provide wastewater service to the Property, pursuant to the Wastewater Service IGA and an Intergovernmental Agreement between the Denver Southeast District and Castle Rock in substantially the same form as shown in **Addendum 3** attached hereto.

The Developer hereby assigns its rights to the Capacity to the Crowfoot District under the Assignment and Amendment; however, such assignment shall be incremental and the assignment of Capacity for each Tap shall occur at the time it is deemed a Utilized Tap. It is further intended that the Crowfoot District will assign some or all of its rights and obligations under this Paragraph 10, including those related to its rights in the Capacity to Castle Rock and the Denver Southeast District hereby consents to such assignment, provided that such assignment is completed pursuant to the terms of the Wastewater Service IGA.

5. **Amendment to Paragraph 34 of Service Agreement.** Paragraph 34 of the Original Service Agreement is hereby amended and restated in its entirety to read as follows:

Notices. All notices, demands, requests or other communications to be sent by one Party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee or by courier delivery via Federal Express or other nationally recognized overnight air courier service, by electronically-confirmed facsimile transmission, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the Denver Southeast District: Denver Southeast Suburban Water and
Sanitation District
d/b/a Pinery Water and Wastewater District
5242 Old Schoolhouse Road
Parker, Colorado 80134

With a copy to: Folkestad Fazekas Barrick & Patoile, P.C.
18 S. Wilcox St., Suite 200
Castle Rock, CO 80104
Attn: Joe Kinlaw, General Counsel

To the Developer: HT Canyons South Development LP
1144 15th Street, Suite 3675
Denver, Colorado 80202
Attn: Chad Murphy

To the Crowfoot District: Crowfoot Valley Metropolitan District No. 1
141 Union Boulevard, Suite 150
Lakewood, Colorado 80228
Attn: Ann Finn

With a copy to: Collins Cockrel & Cole, PC
390 Union Boulevard, Suite 400
Denver, Colorado 80228
Attn: Matthew Ruhland

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with Federal Express or other nationally recognized overnight air courier service, upon electronic confirmation of facsimile transmission, or three (3) business days after deposit in the United States mail. By giving the other Parties at least ten (10) days' written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

6. **Effect of this Assignment and Amendment.** Except as amended herein, the Service Agreement remains unchanged and in full force and effect.

7. **Governing Law.** This Assignment and Amendment shall be governed by and construed in accordance with the laws of the State of Colorado.

8. **Severability.** If any covenant, term, condition, or provision under this Assignment and Amendment shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

9. **Counterparts.** This Assignment and Amendment may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

10. **Paragraph Headings.** Paragraph headings are inserted for convenience of reference only.

HT CANYONS SOUTH DEVELOPMENT LP

By: HT Canyons South Development LLC, its general partner

By: HT Canyons South LP, its sole member

By: Hines Canyons South LLC, its general partner

By: Hines Canyons South Associates LP, its sole member

By: Hines Investment Management Holdings Limited
Partnership, its general partner

By: HIMH GP LLC, its general partner

By: Hines Real Estate Holdings Limited
Partnership, its sole member

By: JCH Investments, Inc., its general
partner

By: _____
Name: Robert W. Witte
Title: Senior Managing Director

STATE OF _____)
)ss.
COUNTY OF _____)

The foregoing Assignment of and Fourth Amendment to Denver Southeast Suburban Water and Sanitation District Service Agreement (The Canyons) was acknowledged before me this ____ day of _____, 2020, by Robert W. Witte as Senior Managing Director of JCH Investments, Inc., as general partner of Hines Real Estate Holdings Limited Partnership, as sole member of HIMH GP LLC, as general partner of Hines Investment Management Holdings Limited Partnership, as general partner of Hines Canyons South Associates LP, as sole member of Hines Canyons South LLC, as general partner of HT Canyons South LP, as sole member of HT Canyons South Development LLC, as general partner of HT Canyons South Development LP, on behalf of said entities.

WITNESS my hand and official seal.

My commission expires: _____

(S E A L)

Notary Public

By: _____
_____, Chair

_____ , _____

Acknowledged before me by _____, and _____, as Secretary of the Denver Southeast Suburban Water and Sanitation District this _____ day of _____, 2020.

Notary Public

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