

**AN ORDINANCE APPROVING A SEWER SERVICE CONNECTION AGREEMENT FOR PROPERTY OWNED BY THE EMBERS BRANSON LLC LOCATED AT 139 IRISH LANE IN BRANSON AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

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**WHEREAS**, the Owner desires to connect the above listed City public utilities for service to the Owner's property; and

**WHEREAS**, pursuant to City Code §90-36(b), the City is authorized to enter into contracts to provide City utility services beyond its city limits; and,

**WHEREAS**, the safe and adequate supply of potable water and the safe and adequate disposal of wastewater, within the close proximity of the City limits is of importance to the City in regards to protecting public health and the environment; and,

**WHEREAS**, the Owner desires to build new facilities or structures not originally intended to be served by the Damsite and Spring Creek South Sewer Services and Exclusive Territorial Agreement between the Taney County Commission, Taney County Regional Sewer District and City of Branson; and,

**WHEREAS**, the Owner desires to enter into this Sewer Service Connection Agreement which provides provisions and requirements for connection to City public utilities of the property; and

**WHEREAS**, it is to the mutual benefit of the parties hereto to enter into this Agreement; and,

**WHEREAS**, the Owner acknowledges that The Property shall be subject to City ordinances, resolutions and other regulations of the City as outlined and described herein, and as they may be amended from time to time so as to prevent disasters, protect lives and protect property.

**WHEREAS**, the Board of Aldermen desires to approve the Sewer Service Connection Agreement.

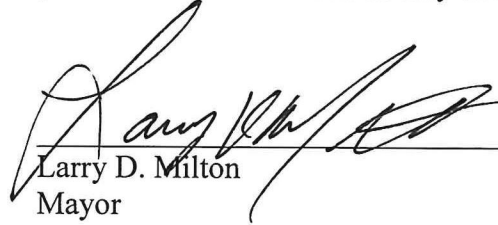
**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, MISSOURI, AS FOLLOWS:**

Section 1:     The Board of Aldermen hereby approves the Sewer Service Connection Agreement with The Embers Branson LLC, owners of 139 Irish Lane in Branson, Missouri as specified in the related specifications and substantial conformity with the terms shown on Exhibit "1" attached and incorporated by this reference as set out here in full, together with such changes therein as shall be approved by the officers of the City executing same which are consistent with the provisions and intent of this legislation and necessary, desirable, convenient or proper in order to carry out the matters herein authorized. The Mayor, City Administrator, and other appropriate City officials are hereby authorized to execute the Agreement and such additional documents and take any and all actions necessary, desirable, convenient or prudent in order to carry out the intent of this legislation.

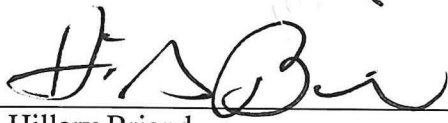
Section 2: This ordinance shall be in full force and effect upon and after its passage and approval.

Read, this first time on this 14<sup>th</sup> day of November, 2023.

Read, this second time, passed, and truly agreed to by the Board of Aldermen of City of Branson, Missouri this 14<sup>th</sup> day of November, 2023.

  
Larry D. Milton  
Mayor

ATTEST:

  
Hillary Briand  
City Clerk

APPROVED AS TO FORM:

  
City Attorney

Office Use Only  
 MASTER CONTRACT NUMBER:  
 C2023-0233

**SEWER SERVICE CONNECTION AGREEMENT**  
**FOR THE CONNECTION OF CITY UTILITIES OUTSIDE CITY LIMITS BETWEEN**  
**THE CITY OF BRANSON AND THE EMBERS BRANSON LLC**

Proximity to Corporate City Limits: Contiguous

Property Definition Commercial

Service(s) to be provided: Sewer

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, by and between THE EMBERS BRANSON LLC, located at 139 Irish Lane Branson, Missouri (hereinafter referred to as the "Owner") and the CITY OF BRANSON, a municipal corporation located in the State of Missouri, (hereinafter referred to as the "City.")

**WITNESSETH:**

**WHEREAS**, the Owner desires to connect the above listed City public utilities for service to the Owner's property (hereinafter referred to as "The Property"); and,

**WHEREAS**, pursuant to City Code §90-36(b), the City is authorized to enter into contracts to provide City utility services beyond its city limits; and,

**WHEREAS**, the safe and adequate supply of potable water and the safe and adequate disposal of wastewater, within the close proximity of the City limits is of importance to the City in regards to protecting public health and the environment; and,

**WHEREAS**, the Owner desires to build new facilities or structures not originally intended to be served by the Damsite and Spring Creek South Sewer Services and Exclusive Territorial Agreement between the Taney County Commission, Taney County Regional Sewer District and City of Branson; and,

**WHEREAS**, the Owner desires to enter into this Sewer Service Connection Agreement which provides provisions and requirements for connection to City public utilities of The Property and,

**WHEREAS**, it is to the mutual benefit of the parties hereto to enter into this Agreement; and,

**WHEREAS**, the Owner acknowledges that The Property shall be subject to City ordinances, resolutions and other regulations of the City as outlined and described herein, and as they may be amended from time to time so as to prevent disasters, protect lives and protect property.

**NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS AS SET FORTH HEREIN, IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:**

Sewer Service Connection Agreement  
 The Embers Branson LLC

1. OWNERSHIP:

The Owner represents that they are the sole Owner of The Property described in Exhibit "A" and shown in Exhibit "B", both attached hereto and made part of this Agreement, located in Taney County, Missouri, and agrees this Sewer Service Connection Agreement shall be recorded with the Recorder of Deeds of Taney County, Missouri, at the Owner's expense, and said Agreement shall be binding upon the parties hereto, their respective successors, heirs, transferees, administrators, contract purchasers, executors, grantees and assigns and shall constitute covenants running with The Property, or any portion thereof which may be sold, until the property is annexed by the City. Connection for service shall not be allowed until these documents are recorded and all costs are reimbursed to the City.

2. SEWER SERVICES:

The City shall allow the Owner to connect a private sanitary sewer service line(s) serving The Property to the City sewer collection system under the following conditions:

- a) Owner shall obtain, through the City Sewer Application process, a sewer connection permit for approval of a sewer service connection. Owner shall procure all required City sewer connection and inspection permits, and pay required system connection charges and inspection fees prior to connection to the City sewer system.
- b) Owner shall, at their expense, design, construct and install all necessary sewer service line(s) and any required private pumping equipment serving The Property described in Exhibit "A".
- c) Owner shall construct the sewer service line(s) and any required private pumping equipment to serve The Property in accordance with City Code.
- d) Owner agrees to allow the City to inspect and observe the construction of said sewer service line(s) and required private pumping equipment in order to ascertain and determine that the same are in compliance with City Code. Owner shall be responsible for testing the installed sewer service line(s) in accordance with City Code prior to connection to the City sewer system. City staff shall observe and confirm test results for compliance with City Code.
- e) Following approved inspection and testing, Owner shall be responsible for connection of the sewer service line(s) to the City sewer system in accordance with City Code and under the observance of City staff.
- f) Owner shall be responsible for the operation, maintenance and repair of the sewer service line(s) and any required private pumping equipment conveying wastewater from The

Property to the City sewer system. Maintenance shall be adequate to minimize, to the extent possible, Inflow & Infiltration (I&I) into the sewer service line(s). The City reserves the right to periodically monitor flows from the sewer service line to assure said flow does not exceed more than 250 percent (250%) of the daily average sewer flows during a wet weather event. Should I&I exceed this amount Owner shall take immediate action to mitigate the source and intrusion of I&I.

- g) Owner agrees that no other property owner shall be allowed to connect to the private sewer service line(s) serving The Property under this Agreement.
- h) Owner shall be assessed a monthly sewer user rate as established and amended by City Code.
- i) Owner agrees that within sixty (60) days of connection to the City sewer system Owner shall properly abandon, at Owner's expense, any previously utilized sewer handling or treatment system located on The Property. Abandonment of said system shall be in accordance with City Code.
- j) Any new structures or facilities constructed on The Property that utilize City services after the date of this agreement shall require additional permitting for approval of sewer connection to said facilities or buildings and shall be subject to additional connection and inspection fees.
- k) Both City and Owner agree that lack of adequate capacity in the City sewer mains, sewer treatment plants, or denial of the Missouri Department of Natural Resources to approve additional connections, shall be sufficient and adequate reasons to deny connection of additional structures or facilities on The Property.

### 3. EASEMENTS:

- a) If applicable, Owner shall, at Owner's expense, procure, have surveyed and recorded with the Taney County Recorder of Deeds any necessary public or private easements to connect water or sewer utilities serving The Property in order to effect this agreement.
- b) Owner shall procure and have dedicated to the City, at Owner's expense, all necessary public easement(s) of appropriate width, as determined by City code, for access to any publicly dedicated infrastructure as part of this project, whether on The Property or on any adjacent property.
- c) Any easement(s) shall be attached hereto and incorporated herein. No easements were required to affect this agreement.

### 4. ANNEXATION:



At this time, the City is not requiring an agreement for annexation. However, the parties acknowledge that customers outside the city limits may be subject to different rates than customers inside the city limits.

5. CONSTRUCTION AND DEVELOPMENT:

- a) Owner shall contact Missouri One-Call (Dig-Rite) prior to performing any construction activities involving any excavation for structures or utilities.
- b) Owner shall post bond in accordance with City code prior to making connection with public infrastructure. Owner shall be responsible to pay all costs associated with the repair of public infrastructure damaged by the Owner, their contractor or representatives.

6. LEGAL:

- a) Nothing contained in this Agreement shall constitute or be interpreted as a repeal of the City's ordinances or resolutions, or as a waiver of the City's legislative, governmental, or police powers to promote and protect the health, safety, and welfare of the City and its inhabitants.
- b) Nothing in this agreement shall be construed as the acceptance by the City of any of the mains, lines, pumps, or other infrastructure, within the property past the point of connection to the city lines.
- c) The parties agree that they will cooperate with one another in accomplishing the terms, conditions, and provisions of the Agreement, and will execute such additional documents as necessary to effectuate the same.
- d) This Agreement can only be modified in writing, signed by both parties, and approved by the City with passage of an ordinance. Such amendments shall be recorded with the Recorder of Deeds of Taney County, Missouri, shall be covenants running with The Property, binding upon all persons or entities having an interest in The Property subject to the amendment unless otherwise specified in the amendment.
- e) This Agreement embodies the entire agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement supersedes all previous communications, representations, or agreements, either verbal or written, between the parties.
- f) Owner agrees to indemnify and hold harmless the City and the City's officers, employees, agents, and contractors, from and against all liability, claims, causes of actions, and demands,

including attorney's fees and court costs, which arise out of or are in any manner connected with this Agreement or the operation hereunder, or with any other annexation or other action determined necessary or desirable by the City in order to effectuate the annexation of The Property, or which are in any manner connected with the City's enforcement of this Agreement. Owner further agrees to investigate, handle, respond to, and to provide defense for and defend against, or at the City's option, to pay the attorney's fees for defense counsel of the City's choice for, any such liability, claims, or demands. If final judgment be rendered against the City or its officers, agents or employees, finding them liable for the sole and direct actions of the City, then the City shall satisfy the same in full.

- g) As used in this Agreement, any reference to any provision of any City ordinance, resolution, or policy pertaining to construction and development is also intended to refer to any subsequent amendments or revisions to such ordinance, resolution, or policy, and the parties agree that such amendments or revisions shall be binding upon Owner.
- h) If The Property is found to be in violation of City code, as described herein, The Property may be subject to, in accordance with City policy, discontinuation of water service.
- i) The parties agree that if any part, term, portion, or provision of this Agreement is held by a Court of competent jurisdiction to be illegal or in conflict with any law of the State of Missouri, the validity of the remaining parts, terms, portions, or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, portion, or provision held to be invalid.

{REMAINDER OF PAGE INTENTIONALLY LEFT BLANK}

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the day and year first above written.

  
Ryan J. Meuer  
Company Manager

11/13/23  
Date

**CITY OF BRANSON, MISSOURI:**

\_\_\_\_\_  
Larry D. Milton  
Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Hillary Briand  
City Clerk

\_\_\_\_\_  
City Attorney



ACKNOWLEDGMENT OF PROPERTY OWNER(S)

STATE OF Missouri )  
COUNTY OF Taney ) ss

On this 13<sup>th</sup> day of November, 2023, before me personally appeared Ryan Meuer, to me known to be the persons described in and who jointly executed the foregoing Agreement, and acknowledged that they executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Branson, Missouri the day and year first above written.



/s/ Kristi Holland  
Notary Public

My term expires 2/15/2025

**ACKNOWLEDGMENT OF CITY OF BRANSON**

STATE OF MISSOURI     )  
  )ss  
COUNTY OF TANEY     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared (LARRY D. MILTON), and HILLARY BRIAND, CITY CLERK, known to me to be the persons who executed the within Agreement in behalf of the CITY OF BRANSON, and acknowledged that they executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in \_\_\_\_\_, \_\_\_\_\_ the day and year first above written.

/s/ \_\_\_\_\_

Notary Public

My term expires \_\_\_\_\_

Exhibit "A"

139 Irish Lane, Branson, Taney County, Missouri 65616, legally described as ALL OF LOT 1 OF GERTH AND SMITH SUBDIVISION, LOTS 1 AND 2, A MINOR SUBDIVISION RECORDED AT SLIDE K, PAGE 733 OF THE TANEY COUNTY RECORDER OF DEEDS OFFICE.

ALL OF LOT 2 OF GERTH AND SMITH SUBDIVISION LOTS 1 & 2, A MINOR SUBDIVISION RECORDED AT SLIDE K, PAGE 733 OF THE TANEY COUNTY RECORDER OF DEEDS OFFICE.

Exhibit "B"

