



## **BIG PLAINS WATER AND SEWER SPECIAL SERVICE DISTRICT MEETING**

**BOARD OF DIRECTORS, REGULAR MEETING  
1777 N Meadowlark Dr, Apple Valley  
Wednesday, February 17, 2021 at 5:00 PM**

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### **AGENDA**

Notice is given that a meeting of the Water District of the Town of Apple Valley will be held on **Wednesday, February 17, 2021**, commencing at **5:00 PM** or shortly thereafter at **1777 N Meadowlark Dr, Apple Valley**.

**Chairman** | Harold Merritt

**Boardmembers** | Marty Lisonbee | Dale Beddo | Ross Gregeson | Jerry Jorgensen

Pursuant to the Executive Order issued by Governor Gary Herbert on March 18, 2020, regarding Electronic Public Meetings, please be advised that the Big Plains Water and Sewer Special Service District Meeting will be held electronically and will be broadcast via Zoom. Persons will be allowed to comment during the meeting via Zoom or by calling in. Meeting details and dial-in phone numbers will be provided when the agenda for the meeting is published on the Town website or via <https://www.utah.gov/pmn>

Zoom Meeting ID: 862 2270 5101

Zoom Link: <https://us02web.zoom.us/j/86222705101>

#### **CALL TO ORDER / PLEDGE OF ALLEGIANCE / ROLL CALL**

#### **DISCUSSION AND ACTION**

- [1.](#) Amendment to DA with Jepson Canyon
- [2.](#) Agreement with Kenstal, LLC (Property Easement)
3. Discussion and possible action on appointing attorney

#### **POLICIES / PROCEDURES**

#### **REQUEST FOR A CLOSED SESSION**

#### **ADJOURNMENT**

Interested persons are encouraged to attend public hearings to present their views. Comments can also be submitted in writing at least one day prior to the meeting by emailing [administrator@applevalley.gov](mailto:administrator@applevalley.gov). Comments submitted in writing will be read on the record during the meeting.

#### **THE PUBLIC IS INVITED TO PARTICIPATE IN ALL COMMUNITY EVENTS AND MEETINGS**

In compliance with the American with Disabilities Act, individuals needing special accommodations (Including auxiliary communicative aids and services) during this meeting should call 435-877-1190.

## FIRST AMENDMENT TO WATER AND SEWER AGREEMENT

THIS FIRST AMENDMENT TO WATER AND SEWER AGREEMENT (this "Amendment") is made as of February \_\_, 2021 (the "Amendment Date"), by and between BIG PLAINS WATER AND SEWER SPECIAL SERVICE DISTRICT (the "SSD") and LITTLE CREEK LAND COMPANY, LLC, a Utah limited liability company ("LCLC") and JEPSON CANYON RESORT DEVELOPMENT CO., INC., a Utah corporation ("JCRDC") (LCLC and JCRDC collectively referred to herein as "Developer").

### RECITALS:

WHEREAS, the SSD and Developer entered into that certain Water and Sewer Agreement, dated as of June 12, 2019 (the "Agreement"); and

WHEREAS, Seller and Purchaser have agreed to amend the Agreement as set forth herein; and

WHEREAS, except as otherwise expressly provided for herein, capitalized terms used herein shall have the meanings set forth in the Agreement.

### AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the SSD and Developer agree as follows:

1. Section 2.00 of the Agreement is amended to read as follows:

**2.00 PROJECTED WATER USE AND SSD INFRASTRUCTURE:** The SSD anticipates that the Project as described in the Master Plan will require 360 acre feet of water rights. The SSD represents and warrants that water lines and related infrastructure are in place, or will be installed prior to completion of the Water Facilities (defined below), to ensure delivery of water to the Property in the capacity needed for the Intended Uses.

2. Section 3.01 of the Agreement is amended to read as follows:

- 3.01 Water Facilities. Within eighteen (18) months after beginning construction on the first phase of the Project, Developer shall design and construct, at Developer's expense, a water tank to be located on a one-acre site on the southern edge of the Property, as depicted in the Master Plan (the "Water Tank"). The required capacity of the Water Tank shall not exceed one million gallons, unless otherwise agreed by Developer. Developer shall also design and construct, at Developer's expense, a water line connecting the Water Tank to the SSD's existing water line along State Highway 59, together with such valves, air vac stations, fire hydrants, blow off valves, flow meter and other appurtenances that may be required to connect all residential and commercial buildings in the Project to the SSD's existing water line along State Highway 59 (the "Internal Water Connections", referred to collectively with the Water Tank as the

**"Water Facilities").** All Water Facilities shall be designed and constructed in accordance with the SSD's engineering standards at the time of construction. If the SSD requires the Water Tank to have a capacity in excess of what is needed to service the Project exclusively, the SSD shall provide Developer a credit against impact fees applicable to the Project in an amount equal to the difference in cost between constructing a water tank with the minimum capacity required to service the Project and the cost of constructing a water tank with the capacity required by the SSD. Such cost difference shall be determined in a manner mutually agreeable to Developer and the SSD.

3. Section 3.02 of the Agreement is amended to read as follows:

3.02 Sewer. Developer shall cause to be designed and installed, at Developer's expense, a comprehensive sewer treatment system manufactured by Aquatech, or other vendor approved by the SSD in its reasonable discretion, to accommodate and treat all Project sewage (the "**Sewer System**"). The Sewer System shall be designed and constructed in accordance with the SSD's generally applicable engineering standards at the time of construction and final plans therefor shall be subject to the SSD engineer's review and approval. In addition, the Sewer System shall be in conformance with applicable law, including the requirements of the Department of Environmental Quality ("**DEQ**"). The Sewer System may be installed in phases, provided the Sewer System has sufficient capacity at all times to cover existing build out at the Project. On or before the later of (i) four (4) years after installation of the initial phase of the Sewer System, and (ii) the date on which a public sewer system serving the SSD is operational with capacity to meet the sewer treatment capacity requirements of the Project, the SSD and Developer shall evaluate the performance of the Sewer System and mutually agree whether to continue private sewer treatment at the Project or connect the Project to the public sewer treatment system.

4. Entirety and Amendments. The Agreement, as amended hereby, embodies the entire agreement between the parties and supersedes all prior agreements and understandings between the parties. There are no oral agreements or understandings between the parties that are not expressly set forth in the Agreement, as amended hereby.

5. Ratification. Except as specifically herein amended, all terms, provisions, conditions and exhibits contained in the Agreement are hereby confirmed, ratified and restated and shall remain unmodified and in full force and effect. In the event that any provision of this Amendment shall conflict with the terms, provisions, conditions, and exhibits of the Agreement, the terms, provisions, conditions and exhibits of this Amendment shall govern and control.

6. Governing Law. This Amendment shall be governed by, and construed in accordance with, the laws of the State of Utah.

7. Counterparts. This Amendment may be executed in any number of identical counterparts, or with multiple signature pages which, when assembled as a single document or, if not so assembled, when taken together shall be deemed to be fully effective and operative as an

original document; provided, however, that in making proof of this Amendment, it shall not be necessary for any Party hereto to produce or account for more than one such counterpart.

**[SIGNATURES BEGIN ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, each of Seller and Purchaser has caused this Amendment to be duly executed effective as of the Amendment Date.

**THE SSD:**

**BIG PLAINS WATER AND SEWER SPECIAL  
SERVICE DISTRICT**

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

STATE OF UTAH                                )  
                                                      ) ss.  
COUNTY OF WASHINGTON                )

On this \_\_\_\_ day of February, 2021, before me personally \_\_\_\_\_,  
personally known to me or proved to me on the basis of satisfactory evidence to be the person  
whose name is signed on the preceding document, and acknowledged before me that he signed it  
voluntarily for its stated purpose.

\_\_\_\_\_  
NOTARY PUBLIC

[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]

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**DEVELOPER:**

**LITTLE CREEK LAND COMPANY, LLC**

By: \_\_\_\_\_  
Henry Isaksen, Jr., Manager

**JEPSON CANYON RESORT  
DEVELOPMENT CO., INC.,**

By: \_\_\_\_\_  
Henry Isaksen, Jr. President

STATE OF UTAH                    )  
                                          ) ss.  
COUNTY OF WASHINGTON        )

On this \_\_\_\_ day of February, 2021, before me personally appeared Henry Isaksen, Jr., personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is signed on the preceding document, and acknowledged before me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
NOTARY PUBLIC

[END OF SIGNATURES]

## REVISION OF THE FIRST AMENDMENT TO THE WATER AND SEWER AGREEMENT-JEPSON CANYON

3.01 Water Facilities. At the beginning of construction of any public infrastructure of the Project, the Developer shall design and construct, at Developer's expense, a water tank to be located on a one-acre site on the southern edge of the Property, as depicted in the Master Plan. (the Water Tank). The required capacity of the Water Tank will be one million gallons. Developer shall also design and construct, at Developer's expense a water line connecting the Water Tank to the SSD's existing water line along State Highway 59, together with such valves, air vac stations, fire hydrants, blow off valves, flow meter and other appurtenances that may be required to connect all residential and commercial buildings in the Project to the SSD's existing water line along State Highway 59 (the "Internal Water Connections", referred to collectively with the Water Tank as the "Water Facilities"). All water facilities shall be designed and constructed in accordance with the SSD's engineering standards at the time of construction.

**DRAFT**

**PRIVILEGED SETTLEMENT NEGOTIATIONS  
NOT ADMISSABLE**

## **CANAAN SPRINGS WATER RIGHTS AND DEVELOPMENT AGREEMENT**

THIS AGREEMENT (“Agreement”) is made by and between **BIG PLAINS WATER AND SEWER SPECIAL SERVICE DISTRICT, a Utah special service district (“SSD”), and KENSTAL, LLC (“KENSTAL”)** and or assigns (collectively “Parties”).

WHEREAS, the parties hereto, in an effort to resolve legal misunderstandings and disputes that have arisen between them, desire with this Agreement to resolve said issues; and

WHEREAS, KENSTAL owns or has a beneficial interest in certain water rights listed in Exhibit A (“Water Rights”) located within the service area of SSD and originating in the source area known as Canaan Springs (“Springs”); and

WHEREAS, SSD has recently acquired other water rights (“Canaan Springs Rights”) also originating in the Springs and has received federal funding to improve said Springs; and

WHEREAS, SSD desires to acquire title to Water Rights from KENSTAL in order to consolidate ownership and control of all water rights originating from the Springs; and,

WHEREAS, KENSTAL is willing to convey Water Rights to SSD together with Canaan Springs Water to hold as a “Water Bank” for present and future development of KENSTAL’s real property within SSD’s service area; and

WHEREAS, SSD desires to obtain additional federal financing to continue to improve said Springs and install infrastructure to bring Springs water into the SSD system; and

WHEREAS, KENSTAL desires to receive a proportionate share of any increase in the flow and capacity of Springs (formula to be determined) as partial consideration for KENSTAL’s conveyance of Water Rights; and

WHEREAS, PARTIES desire to determine the formula and criteria for receiving KENSTAL’s new water connections for development of all KENSTAL’s property based on Water Rights and Canaan Springs Water; and

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

1. **Water Bank.** KENSTAL agrees to convey to SSD the Water Rights by deed

attached as Exhibit A for the exclusive benefit of KENSTAL, subject to the terms and conditions contained herein below. KENSTAL warrants that KENSTAL has good title to the Water Rights listed in Exhibit A, and that the Water Rights are free and clear of any liens or other encumbrances, except as specifically noted herein.

2. **Reciprocal Easements.** KENSTAL shall convey to SSD the easement described in Exhibit B. SSD shall assign to KENSTAL, rights of access under the BLM/Wilderness Land Lease Agreement, attached as exhibit C.

3. **Will Serve Letter.** Upon receipt of the conveyance of the Water Rights, SSD shall issue a Will Serve Letter to KENSTAL committing to provide residential connections for KENSTAL's proposed new subdivisions. The number of ERC's or equivalent residential connections committed by the SSD shall be based on the SSD's policies and KENSTAL demonstrating compliance with conservation and usage requirements as published by SSD. These requirements provide for one ERC per acre lot to .5 ERC for smaller than 1 acre lots. See Exhibit D.

4. **Canaan Springs Source Development.** SSD shall continue to develop and improve additional Spring sites where mutual Water Rights exist. KENSTAL will release Water Rights from the water bank to the SSD. The Water Rights released to the SSD will be committed to Kenstal in the form of will serve letter, adding allocation of water to service KENSTAL's development projects. The will serve commitment will, as stated in paragraph 3 of this agreement, be subject to the range of one ERC per acre lot to .5 ERC for smaller lots by adherence to the SSD conservation policy.

5. **Closing.** On or before February 25, 2021 KENSTAL shall transfer title to Water rights listed in Exhibit A to SSD and SSD shall deliver the will serve letter to KENSTAL.

6. **Springs Water Reservation.** SSD shall reserve all the Canaan Springs water ("Springs Water") including Water Rights, and the rights acquired from Canaan Spring Water Company, for use within the SSD service area and make such Water Rights available to be used exclusively to KENSTAL's additional real property holdings.

7. **Contingencies.** In the event that SSD shall be purchased, acquired or taken over by Washington County Water Conservancy District, or any other person or entity, KENSTAL shall be treated as a secured creditor in the amount of the number of unallocated acre feet of Springs Rights times the greater of fair market value or \$10,000.00 per acre foot and shall have the right to require payment in full upon the closing of any such transaction. In the event of dissolution of SSD, any Water Rights unallocated at that time shall be distributed back to KENSTAL, together with an assignment of the BLM lease agreement that provides access to the physical Springs.

8. **Settlement, Release and Indemnification.** Each party waives, releases, relinquishes and indemnifies for any actual or potential right, claim or cause of action against the other party, including or not limited to, asserting a claim against any employees, officers and directors of the other party as otherwise provided for in this agreement or arising hereunder.

**9. Dispute Resolution.** Any dispute arising between the parties under this agreement shall be governed by the laws of the State of Utah. The parties hereto agree to submit any such dispute to mediation prior to any judicial proceedings being commenced. The prevailing party in any such dispute, whether by mediation or judicial decree, shall be entitled to recover attorneys' fees and cost incurred in the enforcement of the terms of this agreement.

The foregoing constitutes the entire agreement of the parties.

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**KENSTAL:**

Kenstal LLC

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Kendra Webb Member Manager

**SSD:**

Big Plains Water and Sewer Special Service District

By: \_\_\_\_\_ Date: \_\_\_\_\_

**Acknowledged and Agreed:**

Town of Apple Valley

By: \_\_\_\_\_ Date: \_\_\_\_\_

EXHIBIT A

| <u>Water Right #</u> | <u>Quantity (acre feet)</u> |
|----------------------|-----------------------------|
| 81-1526              | 15.41                       |
| 81-2850              | 7.99                        |

After Recording Mail To:  
 ROGER J. SANDERS, P. C.  
 55 South 300 West, Suite 3  
 Hurricane, Utah 84737

EXHIBIT B

## WATER RIGHTS QUIT CLAIM DEED

FOR THE SUM of ten dollars (\$10.00) and other good and valuable consideration KENSTAL LLC., a Utah Limited Liability Company, GRANTOR, hereby Quitclaims all of Grantor's rights, title, and interest to Big Plains Water and Sewer Special Service District, Apple Valley, Utah the following described water rights in Washington County, State of Utah, to wit::

See Exhibit A

WITNESS the hand(s) of said grantor(s), this \_\_\_\_ day of January 2021.

KENSTAL LLC Utah Limited Liability Company

By: \_\_\_\_\_

Its:

State of Utah )

) ss

County of Washington )

On the \_\_\_\_ day of January, 2021, personally appeared before me \_\_\_\_\_, signer of the within instrument, who duly acknowledged to me that he/she executed the same, and that the within instrument was signed in behalf of said corporation.

\_\_\_\_\_  
 Notary Public.

