

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

City Clerk
City of Meridian
33 E. Broadway Avenue
Meridian, ID 83642

**TEMPORARY CONSTRUCTION EASEMENT AND
AGREEMENT FOR CONNECTION TO SEWER SERVICE:
136 E IDAHO AVE, MERIDIAN, ID 83642-0000**

This TEMPORARY CONSTRUCTION EASEMENT AND AGREEMENT FOR CONNECTION TO SEWER SERVICE (“Agreement”) is made this ___ day of _____, 2024 (“Effective Date”), by and between the City of Meridian, a municipal corporation organized under the laws of the State of Idaho, whose address is 33 East Broadway Avenue, Meridian, Idaho (“City”), and DAY SIDE LP, owner of the property at 136 E IDAHO AVE, Meridian, Idaho (“Property Owner”) (collectively, “Parties”).

WHEREAS, Property Owner is the owner of the property at **136 E IDAHO AVE**, Meridian, Idaho, Ada County parcel no. R5672000760, LOT 9 W 10' OF LOT 10 BLK 5 (“Property”);

WHEREAS, the sewer line serving Property is currently located in the alley to the north of the Property;

WHEREAS, in Spring 2024, pursuant to its authority under Idaho Code section 50-332, the City of Meridian will begin a public works project that includes installing a new sewer main along E. Idaho Avenue, from Meridian Road to 6th Street (“Project”);

WHEREAS, to improve efficiency and long-term viability of sewer service to properties along E. Idaho Avenue from Meridian Road to 6th Street, including the Property, the City has offered to assess the feasibility of rerouting the plumbing serving Property to connect to the new sewer line along E. Idaho Avenue, and, if it is feasible, to cause such work to be completed at the City’s expense; and

WHEREAS, Property Owner has accepted this offer and wishes to authorize City 1) to initiate the feasibility assessment, and 2) if the City determines that it is feasible, to include in the scope of work for the Project the rerouting of the plumbing serving the building at Property and its connection to the new sewer line;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, and in consideration of the mutual promises and covenants herein contained, and in consideration of the recitals above, which are incorporated herein, the Parties agree as follows:

I. COMMITMENTS BY CITY.

- A. FEASIBILITY ASSESSMENT.** Within one hundred and eighty (180) days of execution of this Agreement, City shall conduct an assessment of the structural integrity, plumbing condition, and other factors and risks related to the feasibility of replumbing the building at Property to connect to the new sewer main to be placed in the right-of-way along E. Idaho Avenue.
- B. IF NOT FEASIBLE.** If, in the City's sole discretion, it is not feasible to replumb the building at Property and connect it to the new sewer main to be placed in the right-of-way along E. Idaho Avenue, the City will take no further action with regard to the Property.
- C. IF FEASIBLE.** If, in the City's sole discretion, it is feasible to replumb the building at Property to connect it to the new sewer main to be placed in the right-of-way along E. Idaho Avenue, City shall:
1. Add this work to the scope of work for the Project, and shall complete such work at the City's sole expense. This work shall include restoration of the interior and exterior of the Property to its general pre-Project condition, as nearly as is feasible.
 2. Contact Property Owner to provide details regarding scheduling, timeline, and the next steps for completion of this work.
 3. Select and hire a licensed plumber to install all related plumbing and infrastructure necessary to connect the building at Property to the new sewer main along E. Idaho Avenue. Such work shall be completed in accordance with the regulations of the Building Services Division of the City of Meridian Community Development Department, the City of Meridian Public Works Department, and any and all other applicable rules or laws.
 4. As practicable, provide notice to Property Owner of any need to access the Property and building thereon in order to complete City's obligations under this Agreement.
- D. PROVISION OF SEWER SERVICES.** At all times, City shall provide sewer services to the Subject Property, subject to necessary stoppages due to construction, and all applicable laws and City ordinances. City shall bill Property Owner for sewer usage according to the metering, accounting, and billing system in place under Meridian City Code and the policies and practices of the City of Meridian.

II. COMMITMENTS BY PROPERTY OWNER.

- A. EASEMENT; RIGHT OF ENTRY.** Property Owner authorizes the City, its consultants, agents, employees and/or contractors, a temporary easement over and across the Property, and the right to enter the Property and all buildings thereon, in order to complete all necessary work to fulfill City's obligations under this Agreement. City shall have and hold the temporary easement and right of entry until the Project is complete. Property Owner shall notify the occupant(s) of the building located on Property of the terms of this Agreement and instruct such occupant(s) to provide access to City, its consultants, and/or its contractors as necessary to complete the work described by this Agreement.

- B. NO GUARANTEE.** Property Owner acknowledges that City may not elect to reroute the sewer service from the existing main in the alley to the new main in the right-of-way along E. Idaho Street. The City may decline to reroute the plumbing from the building on Property, if such work is not feasible, in City's sole discretion.
- C. PAYMENT FOR CITY SERVICES.** Upon connection to and whenever Property is connected to the City's sewer system, regardless of the location of such connection, Property Owner shall pay to City all applicable fees and costs for services provided, as such fees are calculated and billed by City as set forth herein and established by law or City policy or ordinance. The exclusive remedy for any disputes, objections, or appeals regarding such fees and costs shall be with the Board of Adjustment, under the procedures set forth in Meridian City Code.
- D. OPERATION AND MAINTENANCE.** Upon connection to and at all times Property is connected to the City's sewer system, regardless of the location of such connection, Property Owner shall be solely responsible for any and all costs related to operation and maintenance of all portions and functions of the plumbing between the sewer line and the Property served by the City sewer system.
- E. ACKNOWLEDGMENT OF SCOPE OF WORK.** Property Owner acknowledges that construction related to the rerouting of plumbing and installation of new plumbing may require the temporary removal of landscaping, walkways, walls, flooring, and other structural aspects of the building at Property. While City shall restore the interior and exterior of the Property to the condition they were in prior to the Project, Property Owner shall be responsible for any other repair, maintenance, or other work where the need for same is revealed by the removal of walls and floors in order to complete the work contemplated by this Agreement. City shall not be responsible for any repair to structural, electrical, mechanical, or other systems at Property, even if such necessity is revealed by work undertaken pursuant to this Agreement or any other aspect of the Project.
- F. WAIVER.** Property Owner acquits and forever discharges the City of Meridian, its employees, and agents, from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses and additional compensation, including attorney fees, which Property Owner now has or may later realize in relation to any expense of any type related this Agreement or to Project, whether such expense is foreseen, unforeseen, known, or unknown. Except as may be provided in any written warranty provided by the contractor completing the work contemplated by this Agreement, Property Owner shall be solely responsible for any structural, electrical, mechanical, or other malfunction or damage occurring after completion of the work contemplated by this Agreement, and shall not make any claim or demand, or bring any cause of action against City for same.
- G. INDEMNIFICATION.** Property Owner acknowledges that provision of services under this Agreement may carry risks of property damage, property loss, personal injury, illness, and/or death, some of which risks are unknown, and, with that knowledge, Property Owner hereby assumes all such risks and hazards. Property Owner shall indemnify, save, and hold harmless the City and any and all of its employees, agents, volunteers, and/or elected officials from any

and all losses, claims, and judgments for damages or injury to persons or property, and from any and all losses and expenses caused or incurred by Property Owner or Property Owner's tenants, agents, employees, guests, and/or business invitees.

III. GENERAL PROVISIONS.

- A. TERM.** This Agreement shall become effective on the Effective Date first written above, and shall be effective through the earlier of completion of the Project or September 30, 2024, unless earlier extended or terminated by the Parties.
- B. RECORDATION.** City shall record this Agreement against the Property, at City's cost.
- C. TERMINATION.** If City determines that Property Owner has failed to comply with any term or condition of this Agreement, violated any of the covenants, agreements, and/or stipulations of this Agreement; engaged in fraud, dishonesty, or any other act of misconduct in the performance of this Agreement; or if either Party willfully or negligently defaults in, or fails to fulfill, its material obligations under this Agreement; the other Party shall have the right to terminate the Agreement by giving written notice to the defaulting party of its intent to terminate, and shall specify the grounds for termination. The defaulting party shall have seven (7) days after receipt of such notice to cure the default. If the default is not cured within such period, this Agreement shall be terminated upon mailing of written notice of such termination by the terminating party.
- D. TERMINATION OR RESCISSION BY PROPERTY OWNER.** If, prior to initiation of construction as part of Project, Property Owner terminates this Agreement, and/or rescinds Property Owner's acceptance of City's offer to assess and potentially reroute the service line, for any reason, the City shall not be responsible for any costs related to the Project or the Project's impact on Property, other than connecting the Property's existing plumbing to the rehabilitated main when complete.
- E. CITY NOT RESPONSIBLE FOR OTHER COSTS.** Property Owner acknowledges and agrees that except as explicitly stated in this Agreement, the City will not be responsible for any costs Property Owner may incur as a result of or otherwise attributable to the Project, whether such costs are related to known or unknown risks or factors. Specifically, without limitation, City shall not be responsible for any lost business or other revenue during or attributable to the Project, nor for any plumbing- or sewer-related costs following Project completion.
- F. DAY-TO-DAY COMMUNICATIONS.** Communication between Property Owner and City regarding day-to-day matters (e.g., issues related to construction, property entry, scheduling, etc.) shall occur via e-mail or telephone. City shall provide Property Owner the name, e-mail address, and telephone number of specific City personnel ("City Contact") who shall serve as the liaison between City and Property Owner for all day-to-day matters. Property Owner shall provide City the name, e-mail address, and telephone number of the specific person ("Property Owner Contact") who shall serve as the liaison between Property Owner and City for all day-to-day matters.

G. ALL OTHER NOTICES. All other notices required to be given by either of the parties hereto shall be in writing and be deemed communicated when sent via e-mail, personally served, or mailed via United States mail, to the following personnel and address:

If to City:

City Clerk, City of Meridian
33 E. Broadway Ave.
Meridian, Idaho 83642
cityclerk@meridiancity.org

If to Property Owner:

DAY SIDE LP
726 S VISTA AVE
BOISE, ID 83705-0000

Either Party may change its address for the purpose of this section by delivering to the other Party written notification of such change, establishing a new address for noticing purposes, in accordance with the requirements of this section.

H. LIMITATION OF LIABILITY. City is not liable for consequential, indirect, incidental, special, exemplary, punitive, or enhanced damages arising out of or relating to any breach of this Agreement, whether or not such damages are foreseeable or Property Owner was advised of the possibility of such damages, regardless of the legal or equitable theory (contract, tort or otherwise) upon which the claim is based, and notwithstanding the failure of any agreed or other remedy of its essential purpose. This limitation of City's liability shall not apply to (i) liability resulting from City's gross negligence or willful misconduct and (ii) death or bodily injury resulting from City's acts or omissions.

I. FORCE MAJEURE. No Party will be liable for failure to perform any duty under this Agreement where such failure is due to or made impracticable by unforeseeable causes beyond the Parties' control and without the fault or negligence of the Parties, including, but not restricted to, acts of God or the public enemy, fire, flood, natural disaster, epidemic, strike, or order of any court or authorized agency.

J. BINDING UPON SUCCESSORS. Except as otherwise specifically provided herein, this Agreement shall be binding upon any and all owners of the Property, any and all subsequent owners thereof, and each and every other person acquiring an interest in the Property. Nothing herein shall, or shall be construed to, in any way prevent the sale or alienation of the Property, or any portion thereof, except that any sale or alienation shall occur subject to the provisions of this Agreement, and any successive owner or owners shall be both benefited and bound by the conditions and restrictions herein expressed.

K. SEVERABILITY. If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect any other provision or provisions contained herein.

L. THIRD-PARTY BENEFICIARIES. This Agreement is not intended to create, nor shall it in any way be interpreted or construed to create, any third-party beneficiary rights in any person or entity not a party hereto.

M. NO REAL PROPERTY INTEREST. It is expressly understood that this Easement does not in

any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Property to the City.

- N. ATTORNEY FEES.** Should any litigation be commenced between the Parties concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorney fees as determined by such court. This provision shall be deemed to be a separate contract between the Parties and shall survive, *inter alia*, any default, termination, or forfeiture of this Agreement.
- O. ENTIRE AGREEMENT.** This Agreement sets forth all promises, inducements, agreements, conditions, and understandings between City and Property Owner relative to the subject matter hereof, and there are no promises, agreements, conditions, or understandings, either oral or written, express or implied, between City and Property Owner, other than as are stated herein. Except as otherwise specifically provided herein, no subsequent alteration, amendment, change, or addition to this Agreement shall be binding upon the Parties unless set forth in writing and duly executed by both Parties or their successors in interest.
- P. NON-WAIVER.** Failure of either Party to promptly enforce the strict performance of any term of this Agreement shall not constitute a waiver or relinquishment of any Party's right to thereafter enforce such term, and any right or remedy hereunder may be asserted at any time after either party becomes entitled to the benefit thereof, notwithstanding delay in enforcement. All rights and remedies herein enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.
- Q. APPLICABLE LAW.** The validity, interpretation, performance and enforcement of this Agreement shall be governed by the laws of the State of Idaho, including, without limitation, Article VIII, Section 3, of the Idaho Constitution. Venue shall be in the courts of Ada County, Idaho.
- R. COMPLIANCE WITH LAWS.** Throughout the course of this Agreement, the Parties shall comply with all applicable laws, ordinances, and codes of Federal, State, and local governments. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Idaho, and the ordinances of the City of Meridian. The City's ordinances appertaining to the regulation, control, and use of its sewer and water systems, and any prospective amendments to and/or recodifications thereof, are specifically and without limitation incorporated into this Agreement as if set forth fully herein.
- S. ADVICE OF ATTORNEY.** Each party warrants and represents that in executing this Agreement, it has received independent legal and financial advice from its attorney and/or financial advisor, or has had adequate opportunity to seek such advice.
- T. WARRANTY OF AUTHORITY.** Each person executing and signatory to this Agreement represents and warrants that the execution, delivery, and performance of this Agreement has been duly authorized by all necessary action of each respective party; that such person is, at

the time of execution, duly authorized by the respective Party's governing body to bind such Party in all respects; and acknowledges and agrees that this Agreement is and shall be a valid and binding obligation upon the Parties to this Agreement.

U. **APPROVAL REQUIRED:** This Agreement shall not become effective or binding until approved by the City Council of the City of Meridian.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the Effective Date first written above.

PROPERTY OWNER:

Timothy Robert Day
Signature:
Timothy Robert Day
Name (printed)

STATE OF IDAHO)

) ss:
County of Ada)

I HEREBY CERTIFY that on this 26 day of February 2024, before the undersigned, a Notary Public in the State of Idaho, Timothy Robert Day personally appeared, proven to me to be the person who executed the said instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



Susan Korean
Notary Public for Idaho

Residing at Meridian, Idaho

My Commission Expires: 12/29/28

CITY OF MERIDIAN:

Attest:

Robert E. Simison, Mayor

Chris Johnson, City Clerk

STATE OF IDAHO)
) ss:
County of Ada)

On this ___ day of _____, 2024, before me, a Notary Public, personally appeared **Robert E. Simison** and **Chris Johnson**, know or identified to me to be the Mayor and Clerk, respectively, of the City of Meridian, who executed the instrument or the person that executed the instrument of behalf of said City, and acknowledged to me that such City executed the same. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for Idaho
Residing at _____, Idaho

My Commission Expires: _____