

RESOLUTION R- 4553

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING A SEWER FACILITY AGREEMENT WITH CONTINENTAL DIVIDE LLC AND AUTHORIZING THE CITY MANAGER TO SIGN SAID AGREEMENT ON BEHALF OF THE CITY OF KIRKLAND.

WHEREAS, the improvement of public health is furthered by the development of adequate sanitary sewer systems; and

WHEREAS, the Washington State Legislature enacted the Municipal Water and Sewer Facilities Act (Chapter 35.91 RCW) in furtherance of this goal and authorized municipalities to enter into agreements with property owners for the construction of sanitary sewer facilities and the reimbursement of such owners by "latecomers"; and

WHEREAS, The City of Kirkland concludes entering into this agreement will promote the goal of the improvement of public health;

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager is hereby authorized and directed to execute, on behalf of the City, the Sewer Facility Agreement between the City and Continental Divide LLC. A copy of this Agreement is attached as Exhibit A.

Passed by majority vote of the Kirkland City Council in open meeting this 7th day of March, 2006.

Signed in authentication thereof this 7th day of March, 2006.


MAYOR

Attest:



City Clerk

EXHIBIT A



SEWER FACILITIES AGREEMENT PURSUANT TO CHAPTER 35.91 REVISED CODE OF WASHINGTON

THIS AGREEMENT made and entered into this day, pursuant to RCW Chapter 35.91, between the City of Kirkland, a non-charter optional code city, hereinafter referred to as "City" and Continental Divide LLC hereinafter referred to as "Developer":

WITNESSETH

Section 1. Developer does hereby agree to construct, at its sole expense, the SEWER FACILITIES described in EXHIBIT 1, attached hereto and by this reference incorporated herein, all in accordance with the specifications and standards of the City of Kirkland pertaining to sewer construction and installation.

Section 2. Upon completion of said sewer facilities to the satisfaction of the Kirkland Director of Public Works, and acceptance thereof by the City of Kirkland, said facility shall become the property of the City of Kirkland and a part of its sewer system with full power of the City of Kirkland to charge for its use such sewer connection and service rates and charges as the City of Kirkland may be authorized by law to establish, and all further maintenance operation costs of said facility shall be borne by the City of Kirkland.

Section 3. The benefit area to be served by said facility is described and designated on EXHIBIT 2 attached to this agreement and by this reference incorporated herein. Said Exhibit is a map showing the total benefit area and delineating thereon that portion of the benefit area owned by Developer. EXHIBIT 3 attached to this agreement and by this reference incorporated herein is a listing of each lot or parcel within the benefit area including the lot or parcel legal description and the lot or parcel's "pro rata share" of the cost of construction of the sewer facilities. EXHIBIT 4 identifies those lots or parcels owned by Developer and not subject to the provisions of Section 4 of this agreement.

Section 4. Any owner of any real property located within the benefit area (other than those properties designated in EXHIBIT 2 as Developer's properties) who shall hereafter tap into or use said sewer facility (including not only connecting directly into, but also to users connecting laterals or branches connected thereto) shall, prior to such tap in or use, pay to the City of Kirkland, in addition to any connection or other change required by the ordinances of the City of Kirkland to be paid upon connecting to a sewer facility, their fair pro rata share of the cost of construction of said facility.

Section 5. For the purposes of determining such "fair pro rata share" the cost of construction of said facility shall be considered to be \$40,634.00, provided, however, the City may adjust said cost to reflect the true and final cost of construction of said facility. The "FAIR PRO RATA SHARE" of the cost of construction as designated on EXHIBIT 3, and is hereby approved by the City of Kirkland.

Section 6. Within sixty (60) days after receipt by the City of any "fair pro rata share," the City shall disburse said sum, less fifteen (15) percent thereof to be retained by the City of Kirkland to cover costs of administering the provisions of this agreement, to Developer at 7545 126th Avenue Kirkland WA until such time as Developer shall have received the total sum of \$13,646.80, or the expiration of fifteen (15) years from the date of this agreement, whichever event shall first occur. Thereafter, any amount of charge made or received by the City to tap into or use said facility shall be retained by the City. It shall be the duty of the Developer to advise the City of any change in the Developer's mailing address.

Section 7. The provisions of this agreement shall not be effective as to any owner of real property designated in EXHIBIT 3, other than Developer, until such time as this agreement shall have been recorded in the Office of the King County Department of Elections and Records and then only as to such real property owners as tap into or connect into said facility subsequent to such recording. City shall not be required to disburse any "fair pro rata share" to Developer which may not be lawfully collected from such real property owner at the time said real property taps into or connects to said facility.

Section 8. In the event the cost, or any part thereof, of a or sewer improvement, whether local or general, is or will be assessed against the owners of real property and such improvement will be connected into or will make use of the facility constructed pursuant to this agreement and the cost thereof was not contributed to by the owners of said real property, there shall be included in the Engineer's estimate for the hearing or any such improvement, separately itemized, and in such assessments, a sum equal to the amount provided for in this agreement as a fair pro rata share due from such owners in accordance with the provisions of this agreement.

Section 9. No person, firm, or corporation, other than Developer's, as to the real property identified as owned by Developer in EXHIBIT 4 hereto, shall be granted a permit or authorized to tap into or use said facility or extensions thereof without first paying their fair pro rata share as herein provided.

DATED at Kirkland, Washington, this _____ day of _____.

CITY OF KIRKLAND:

DEVELOPER:

CITY MANAGER FOR THE City of Kirkland
KIRKLAND WHO IS AUTHORIZED TO
EXECUTE THIS AGREEMENT ON
BEHALF OF SAID CITY BY VIRTUE
OF RESOLUTION NO. _____

By: _____

By: _____

(Sign in blue ink)

(Individuals Only)

OWNER(S) OF REAL PROPERTY (INCLUDING SPOUSE)

(Individuals Only)

STATE OF WASHINGTON)
) SS.
 County of King)

On this _____ day of _____, _____, before me, the undersigned, a
 Notary Public in and for the State of Washington, duly commissioned and
 sworn, _____ personally appeared

_____ and
 _____ to
 me known to be the individual(s) described herein and who executed the
 Sewer Facilities Agreement and acknowledged that
 _____ signed the same
 as _____ free and voluntary
 act and deed, for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year first above
 written.

 Notary's Signature

 Print Notary's Name

Notary Public in and for the State of Washington, Residing at:

My commission expires: _____

(Partnerships Only)

OWNER(S) OF REAL PROPERTY

(Name of Partnership or Joint Venture)_____
By General Partner_____
By General Partner_____
By General Partner**(Partnerships Only)**STATE OF WASHINGTON)
County of King) SS.On this _____ day of _____, _____, before me, the undersigned, a
Notary Public in and for the State of Washington, duly commissioned and
sworn, _____ personally appeared _____ and_____
_____ to me, known to
be _____ general _____ partners _____ of
_____, the partnership that
executed the Sewer Facilities Agreement and acknowledged the said
instrument to be the free and voluntary act and deed of each personally and of
said partnership, for the uses and purposes therein set forth, and on oath
stated that they were authorized to sign said instrument.WITNESS my hand and official seal hereto affixed the day and year first above
written._____
Notary's Signature_____
Print Notary's Name

Notary Public in and for the State of Washington, Residing at:

My commission expires: _____