

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of the ___ day of _____, 2018 (the "Effective Date") by and between **WEDP-FUND I, LLC**, a Georgia limited liability company ("WEDP"), and **THE MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH**, a municipal corporation existing under the laws of the State of Georgia (the "City", and, together with WEDP, the "Parties").

WITNESSETH:

WHEREAS, WEDP is the owner of certain property commonly known as 703 Louisville Road, bearing PIN# 2-0030 -05-001 and consisting of 1.64 acres, more or less (the "Gateway Property");

WHEREAS, the Gateway Property abuts the Springfield Canal, and is located on the west side of Savannah between the landmark historic district (the "Historic District") and the City's planned Canal/Arena District bounded roughly by Louisville Road, Stiles Avenue, W. Gwinnett Street and Highway 17 (the "Canal/Arena District");

WHEREAS, WEDP intends to develop the Gateway Property into a first class multi-family residential development which will serve as a gateway entrance to the Canal/Arena District (the "Gateway Project"); and

WHEREAS, the City believes that WEDP's development of the Gateway Project on the terms and conditions set forth herein is in the best interest of the citizens of the City.

NOW, THEREFORE, for and in consideration of the agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and WEDP agree as follows:

1. The Gateway Property.

(a) Location. The Gateway Property is located west of the Historic District and is generally bounded by Louisville Road to the north, the Springfield Canal to the east and south, and the northbound off-ramp from Highway 17 (providing an exit onto Louisville Road) to the west. The Gateway Property is across Louisville Road and just west of the southernmost brick viaduct over the Springfield Canal, dating from 1852.

(b) Vacant Building. The Gateway Property currently contains a one story brick building dating from 1929, which is now vacant (the "Vacant Building").

(c) Zoning. The Gateway Property is zoned P-RIP-D, or Planned Residential-Institutional-Professional, Medium Density. The P-RIP-D zoning classification allows the development of up to 100 dwelling units per gross acre of residential land, and requires

one off-street parking space for each unit within a multi-family development. Development of the Gateway Property is further limited to the Student Housing Project that was approved by the City in 2016 (see below), until a new general development plan for the Gateway Property is approved by the City.

(d) Zoning History / Student Housing Project. The Gateway Property was re-zoned to P-RIP-D in November 2016, at the request of a previous developer (unaffiliated with WEDP) who intended to develop a 140-unit student housing project on the Gateway Property (the “Student Housing Project”). In connection with the 2016 re-zoning, the Metropolitan Planning Commission (“the “MPC”) and City Council approved a site plan (the “Current Site Plan”) which detailed the proposed Student Housing Project. The Current Site Plan, a copy of which is attached hereto as **Exhibit A**, did not contemplate the planned Canal Expansion (as discussed below), and did not contain significant modifications of the existing bank of the Canal as it abuts the Gateway Property at its current level and location. The Student Housing Project, as detailed in the Current Site Plan, remains the sole permitted use for the Gateway Property until a new general development plan is approved by the City.

(e) Ownership. The previous developer was ultimately unable to develop the Student Housing Project, and subsequently sold to WEDP its rights to acquire the Gateway Property. WEDP purchased the Gateway Property on April 26, 2018.

2. The Gateway Project. WEDP intends to set aside the plans for the Student Housing Project, and instead to create the Gateway Project, which will serve as a link for vehicular and pedestrian traffic between the Historic District to the east and north, and the Canal/Arena District to the west and south. The Gateway Project will include the following details:

(a) Units. The Gateway Project will contain approximately 250 market-rate apartments.

(b) Parking. The Gateway Project will contain approximately 1.4 parking spaces per residential unit. This is far greater than both the minimum ratio required by the P-RIP-D zoning classification (1.0 per unit), and the ratio planned under the previously proposed Student Housing Project (1.24 per unit).

(c) Zoning / General Development Plan. The Gateway Project will not require the Gateway Property to be re-zoned from its current P-RIP-D classification. However, because the Gateway Project will constitute a significant upgrade from the Student Housing Project approved in 2016, WEDP has prepared a new general development plan which will be subject to review by the MPC and approval by the City.

(d) Canal Expansion. The Gateway Project contemplates that the Canal Expansion (discussed below) may result in the widening of the Canal from its current 65 foot width.

(e) Canal Bank Reinforcements. The Gateway Project will include a

reinforced and beautified canal bank where the Gateway Property borders the Springfield Canal (as defined below, the “Canal Bank Reinforcements”).

(f) Surplus Property. The Gateway Project will require the City to sell to WEDP certain surplus property within the Springfield Canal right-of-way (as defined below, the “Surplus Property”), to allow the Gateway Project to be integrated into the improved bank of the expanded Canal.

3. **Canal Expansion**. As an independent objective, the City acknowledges its intent to widen and/or re-route the Springfield Canal (the “Canal”) in order to provide adequate drainage for stormwater runoff and floodwater in the Canal/Arena District (the “Canal Expansion”). The City has not yet finalized the specific terms of the Canal Expansion. Design alternatives to achieve the desired stormwater drainage include the following options:

(a) Canal Bypass. This option involves the construction of a separate channel of the Canal (a “Canal Bypass”) which would allow stormwater to flow down two alternate channels – the current channel and the “bypass” channel – before re-merging farther downstream and entering the Savannah River. Depending on its design and location, the construction of a Canal Bypass might allow the portion of the Canal adjacent to the Gateway Property to remain at its current width of 65 feet, if the additional capacity needed can be achieved through the Canal Bypass alone.

(b) Canal Widening. This option involves widening the current channel of the Canal in certain areas to provide additional drainage capacity. If a Canal Bypass is not constructed, the City’s engineers (Thomas & Hutton) anticipate that in order to provide the necessary drainage, the current channel of the Canal abutting the Gateway Property would need to be widened from its current width of approximately 65 feet to a width of approximately 86 feet; provided, that the expanded width of the Canal may be less or more than 86 feet depending on the precise measurement location.

(c) Combination of Bypass and Widening. This option involves a combination of a Canal Bypass and the widening of the current channel of the Canal. Any widening of the Canal done in conjunction with the construction of a Canal Bypass would likely be to a width of less than the 86 foot width discussed above.

The City and its engineers do not yet know which option they will choose to provide the necessary drainage for the area. As a result, depending on this decision, once the Canal Expansion is completed, the Canal will likely be anywhere from 65 feet to 86 feet wide where it abuts the Gateway Property.

4. **Surplus Property**. The Parties hereto acknowledge that in order to provide sufficient acreage for the Gateway Project and to integrate the Gateway Project with an expanded Canal, WEDP requires control over an approximately 1.0 acre parcel of land (as defined below, the “Surplus Property”) to be carved out of the 175 foot-wide right-of-way for the Canal owned by the City (the “Canal ROW”). The City agrees to sell the Surplus Property to WEDP according to the following terms:

(a) Identification of Surplus Property. The Surplus Property to be sold by the City to WEDP is the portion of the Canal ROW that lies between the current southern/eastern boundary of the Property and the northern bank of an expanded Canal. The 1.0 acre size of the Surplus Property assumes that the Canal will be widened to an approximate width of 86 feet. The Surplus Property is indicated by the blue hatching on the preliminary site plan attached hereto as **Exhibit B** (the "Gateway Site Plan").

(b) Designation of Surplus Property as "Surplus". As a first step in the sale process, the City hereby agrees to designate the Surplus Property as "surplus" as defined by the City of Savannah Code of Ordinances (the "City Code").

(c) No Bid Process or Notice Required. The City agrees and acknowledges that: (1) due to the relatively small size and shape of the Surplus Property and its location between the Gateway Property and the Canal, the Surplus Property is not capable of being developed or used independently; and (2) the Surplus Property does not abut any Property other than the Gateway Property. Accordingly, pursuant to Section 36-37-6(g) of the Official Code of Georgia Annotated (the "O.C.G.A."), the City may sell the Surplus Property to WEDP without submitting the sale to a bid process or otherwise notifying the owner(s) of any abutting property(ies).

(d) Sale Price. The sale price for the Surplus Property (the "Sale Price") shall be ONE HUNDRED TWENTY THOUSAND AND NO/100 DOLLARS (\$120,000.00), which is the appraised fair market value of the Surplus Property as determined by Stephen Ham Appraisal Company, an MAI-certified appraiser. The Sale Price for the Property shall be paid by WEDP at the closing of the sale of the Surplus Property.

(e) Purchase and Sale Agreement. Upon the City's designation of the Surplus Property as surplus, WEDP and the City agree to use best efforts to negotiate and execute a Purchase and Sale Agreement for the Surplus Property (a "PSA"). The PSA will contain, at minimum, the following terms:

- Identification of Surplus Property via survey
- Sale Price (as defined above)
- Due Diligence Period extends through January 31, 2019
- Closing within 30 days after expiration of Due Diligence Period

5. Canal Bank Reinforcements. WEDP and the City agree that in order to provide an aesthetic, visually integrated connection between the Gateway Project and the Canal, the northern bank of the Canal will require the installation of certain structural reinforcements where the Canal abuts the Gateway Property (the "Canal Bank Reinforcements").

(a) Responsibility. WEDP will design and construct the Canal Bank Reinforcements at its sole cost and expense. WEDP's investment in the Canal Bank Reinforcements will be no less than One Million, Five Hundred Thousand Dollars (\$1,500,000).

(b) Structural. The Canal Bank Reinforcements will consist of a system of fixed reinforcements driven into the ground along the Canal bank, which will support a fixed bank and the buildings above the bank, and will resist erosion of the bank.

(c) Design and Materials. The design and materials of the Canal Bank Reinforcements will be proposed by WEDP and subject to the City's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

(d) Location and Timing. WEDP will construct the Canal Bank Reinforcements on the edge of the Surplus Property where it abuts the Canal Bank. The timing of WEDP's construction of the Canal Bank Reinforcements shall be mutually agreed upon by the City and WEDP.

(e) Dedication to the City Upon Completion. As soon as practicable following WEDP's completion of the Canal Bank Reinforcements, WEDP shall dedicate and convey to the City the Canal Bank Reinforcements.

6. Reversion. In order to ensure that WEDP will diligently pursue the design and construction of the Gateway Project, WEDP agrees to re-convey to the City the Surplus Property in the event that WEDP has not commenced construction of the superstructure of the Gateway Project on the earlier of: (i) the date which is eighteen (18) months after all development permits necessary for the development of the Gateway Project have been issued by the City and/or its applicable departments; and (ii) three (3) years after the Surplus Property is conveyed to WEDP.

7. Consideration. The City and WEDP agree that it is in the best interest of all Parties for the City to sell to WEDP all of its right, title and interest in and to the Surplus Property.

8. Gateway Project General Development Plan. WEDP shall make all commercially reasonable efforts to prepare and submit to the MPC a general development plan (the "Gateway Project GDP") no later than sixty (60) days after the Effective Date hereof. The Gateway Project Site Plan shall include the terms set forth in Section 2 hereof. Pursuant to the City Code, the MPC shall evaluate and submit the Gateway Project GDP to the City Council with its recommendation.

9. Permitting. WEDP shall prepare and submit to the applicable City departments applications for all standard permits necessary to develop the Gateway Project (each, a "Development Permit"). By entering into this Agreement, the City makes no express or implied warranty as to the feasibility or the intended use of the Gateway Project, or as to whether any specific Development Permit sought by WEDP shall be available or issued by the applicable City department upon WEDP's application therefor. WEDP agrees to work with the City in any application made by the City for necessary permits relating to the Gateway Project, including the Canal Expansion.

10. Louisville Road Construction Timing. The parties acknowledge that the City may, at some point, desire to widen Louisville Road where it abuts the Gateway Property in connection with a planned beautification or improvement of Louisville Road. Since major construction along Louisville Road could negatively affect the marketability of the Gateway Project, the City will endeavor to minimize major construction along the Louisville Road corridor until after July 2021; provided, that in the event that the City should determine that major construction along Louisville Road is necessary before such date, the City will not be responsible for damages to the marketability of the Gateway Project.

11. Due Diligence. The parties shall use reasonable diligence to meet their respective obligations described herein but shall not be liable to each other, or their successors or assigns, for damages, costs, attorneys' fees, reasonably and actually incurred (including costs or attorneys' fees on appeal) for breach of contract, or otherwise, for failure, suspension, diminution, or other variations of services occasioned by any caused Force Majeure.

12. Agency. WEDP and the City, and their respective agents, contractors or subcontractors, shall perform all activities that are outlined in this Agreement as independent entities and not as agents of each other.

13. Binding Nature of Agreement. This Agreement shall be binding upon, and shall inure to the benefit of the successors or assigns of the parties, and shall run with the Gateway Property and be binding upon and inure to the benefit of any person, firm or corporation that may become the successor in interest, directly or indirectly, to the Gateway Property, or any portion thereof.

14. City Manager Approval. The City and WEDP acknowledge and agree that the Parties will execute one or more amendments to this Agreement which shall provide greater detail with respect to the rights, duties and obligations of each party hereto. The approval of this Agreement by City will authorize the City Manager to execute amendments to this Agreement that are in furtherance of the terms and conditions contained herein.

15. Controlling Laws.

(a) This Agreement and provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Georgia and all duly adopted ordinances, regulations, and policies of the City now in effect and those hereinafter adopted. Unless otherwise specified in this Agreement for particular issues, all City ordinances, rules, regulations and policies are applicable.

(b) The location for settlement of any and all claims, controversies, or disputes, arising out of or relating to any part of this Agreement, or any breach hereof, shall be Chatham County, Georgia.

16. Miscellaneous.

(a) Entire Agreement. There are no other agreements or understandings, either

oral or written, between the parties affecting this Agreement or the subject matter covered by this Agreement, except as otherwise specifically provided for or referred to herein. This Agreement cancels and supersedes all previous agreements between the parties relating to the subject matter covered by this Agreement. No change or addition to, or deletion of, any portion of this Agreement shall be valid or binding upon the parties hereto unless the same is approved in writing by the parties.

(b) No Assignment. This Agreement is a contract for specialized services and is personal to the parties, and shall not be assignable in whole or in part by a party without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any attempted assignment without prior written consent shall be void and of no force or effect. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. Notwithstanding the foregoing, WEDP may assign this Agreement, without the consent of the City, to a parent, subsidiary or affiliate of WEDP or to an entity controlled by WEDP.

(c) Waiver; Time. No waiver or breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provisions of this Agreement or any succeeding breach of the same provision. No delay in acting with regard to any breach of any provision of the Agreement shall be construed as a waiver of such breach. Time is of the essence in the performance of the terms and provisions of this Agreement.

(d) Captions and References; Interpretation. The captions and paragraph headings in this Agreement are for ease of reference only and are not intended to limit, describe, supplement or be part of this Agreement. Any reference in this Agreement to "Section" or "Exhibit" shall refer to the corresponding Section or Exhibit of this Agreement, unless otherwise expressly indicated. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular form of nouns shall include the plural and vice versa. Whenever the word "including" is used, it shall have the same meaning as "including but not limited to" and "including without limitation." Any reference in this Agreement to "herein" or "hereof" shall refer to this Agreement as a whole rather than being limited to the particular section or subsection in which such term is used.

(e) Severability. In the event that any court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable, such provision shall be deemed an independent provision and such determination shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect and which shall be construed as to be valid and enforceable under applicable law.

(f) Letter of Assurance. Upon request of WEDP or its lender for the Gateway Project, the City hereby agrees to furnish a letter to WEDP or said lender stating that (i) this Agreement is in full force and effect (or, if not, the reason that this Agreement is no longer in full force and effect), (ii) there are no defaults under this Agreement (or, if not, the nature of the default(s)), and (iii) all amounts due and payable hereunder have been

paid in full (or, if not, the outstanding balances due and payable hereunder). The City shall use its best efforts to furnish said letter within ten (10) days after request therefor.

(g) Notices. Any notice required or allowed to be delivered hereunder shall be in writing and be deemed to be delivered when (i) hand delivered to the person hereinafter designated, (ii) upon receipt as evidenced by delivery receipt if sent by a national overnight delivery service, (iii) sent by electronic mail to the addresses or numbers below if a confirmed receipt, which includes the date and time of delivery, is provided, or (iv) upon receipt of such notice when deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to a party at the address set forth opposite the party's name below, or at such other address as the applicable party shall have specified, from time to time, by written notice to the other party delivered in accordance with:

If to the City: City of Savannah
Attn: Roberto Hernandez, City Manager
City Hall
2 East Bay Street
Savannah, GA 31401
Email: rhernandez@savannahga.gov

with a copy to: W. Brooks Stillwell, City Attorney
Office of the City Attorney
6 East Bay Street, 3rd Floor
Savannah, GA 31401
Email: bstillwell@savannahga.gov

If to WEDP: WEDP-Fund I, LLC
Attn: L. Robert DeMoura
46 Mary Street
Charleston, SC 29402
Email: Robert.DeMoura@gmail.com

with a copy to: Mr. Michael Bolen
Live Oak 24, Inc.
Email: mikebolen@me.com

and with a copy to: Mr. Paul Scott
Email: ps31416@aol.com

and with a copy to: Bouhan Falligant LLP
Attn: John D. Northup III, Esq.
One West Park Avenue
Savannah, GA 31401
Email: jdnorthup@bouhan.com

(h) Exhibits. The following exhibits are attached hereto and incorporated by

this reference herein:

Exhibit A: Current Site Plan

Exhibit B: Gateway Site Plan

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

WEDP-FUND I, LLC,
a Georgia limited liability company

By: _____ (SEAL)
Name:
Its:

**THE MAYOR AND ALDERMEN OF THE
CITY OF SAVANNAH,**
a Georgia municipal corporation

By: _____ (SEAL)
Name: Roberto Hernandez
Its: City Manager

EXHIBIT A

CURRENT SITE PLAN

EXHIBIT B

GATEWAY SITE PLAN