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File Number: 19267-6

EASEMENT FOR UTILITY PIPELINES

THIS AGREEMENT, is made and entered into this _____ day of _____, 2019 by and between **NEW HAMPSTEAD HOLDINGS, LLC** (hereinafter "Grantor"), a public corporation and instrumentality of the State of Georgia, the **SAVANNAH ECONOMIC DEVELOPMENT AUTHORITY** (hereinafter "SEDA" or "Grantee"), and **THE MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH** (hereinafter "City" or "Grantee"), a municipal corporation organized and existing under the laws of the State of Georgia (the words "Grantor" and "Grantee" to include their respective successors and assigns where context requires or permits):

WITNESSETH:

WHEREAS, Grantees have requested an easement in, over, and across certain property owned by the Grantor for the purpose of constructing, operating, and maintaining water and wastewater infrastructure and utility piping, and for access thereto (as defined below, the "Utility Facilities") to serve the Savannah Economic Development Authority (SEDA) Manufacturing Center;

WHEREAS, the Grantor, under certain conditions is willing to confer unto SEDA a temporary access and construction easement across a portion of its property for the purpose of constructing and installing said Utility Facilities;

WHEREAS, upon completion and acceptance of said water and wastewater utility piping, SEDA will convey ownership, operation, and maintenance of the Utility Facilities, including all rights and responsibilities to the Easement Area, to the City;

WHEREAS, the Grantor, under certain conditions is willing to confer unto the City a perpetual utility and access easement across a portion of its property for the purpose of utilizing and maintaining said Utility Facilities;

WHEREAS, Grantor intends to convey the Easement Area to the Association, as defined below.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth and other valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, Grantor and Grantees agree as follows:

Article 1

Definitions

1.1 **“Association”** shall mean and refer to the New Hampstead Property Owners Association, Inc., any successor thereto designated by the Declaration.

1.2 **“Declaration”** shall mean and refer to the Declaration of Covenants, Conditions and Restrictions for New Hampstead, dated December 28, 2005, and recorded in Deed Book 299 Z, page 21, Chatham County, Georgia records, as supplemented and amended from time to time.

1.3 **“Easement Area”** shall mean and refer to that area shown as “50’ Utility Easement”, and “40’ Utility Easement” on the Utility Plat, as relocated from time to time pursuant to Section 2.2.

1.4 **“Tract”** shall mean and refer to the Easement Area and any adjoining property.

1.5 **“Utility Facilities”** shall mean and refer to water and waste water infrastructure, and utility piping, and a roadway for access thereto, to be constructed within the Easement Area by SEDA in accordance with plans and specifications acceptable to Grantor in its sole discretion.

1.6 **“Utility Plat”** shall mean and refer to that plat entitled “EASEMENT PLAT UTILITY EASEMENT BEING A PORTION OF PARCEL IV, THE NEW HAMPSTEAD DEVELOPMENT AREA,” prepared by Robert K. Morgan III, Georgia Registered Land Surveyor No. 3087, dated February 25, 2019, and recorded in Plat Record Book _____, page _____, Chatham County, Georgia, records.

Article 2 Easements

2.1. **Temporary Construction Easement.** Grantor hereby grants and conveys unto SEDA a temporary, non-exclusive access and construction easement over, under and across the Easement Area for the purpose of installing Utility Facilities. Upon completion of said construction work, this Temporary Construction Easement shall automatically terminate.

2.2 **Permanent Access and Utility Easement.** Grantor hereby grants and conveys unto the City a perpetual, non-exclusive access and utility easement over, under and across the Easement Area for the purpose of utilizing and maintaining the Utility Facilities.

Notwithstanding the foregoing, if the City abandons or fails to exercise the rights herein granted for a period of twelve (12) consecutive months, then in that event, upon written notice by Grantor to the City, the rights and privileges hereunder shall cease, and the easement, privileges, and rights herein granted shall revert to the Grantor, its successors or assigns as the owner of the Easement Area. The utility easement shall be considered abandoned at such time as the City shall cease to use and operate the Utility Facilities as conduits for the purposes for which it is being established for twelve (12) consecutive months.

The Grantor, its successor as Declarant under the Declaration, or the Association may relocate the Easement Area from time to time, provided that it pays all costs and expenses related thereto. The party relocating the Easement Area shall provide plans and specifications for the City's review and approval prior to commencing work, shall perform all work at its sole cost and expense, and shall coordinate inspection and approval of the work with the City at no cost to the City. Upon completion of the work, the parties shall execute an amendment to this Agreement confirming the new location of the Easement Area.

Article 3 Construction and Maintenance

3.1 **Construction.** SEDA shall construct and install utilities and an earthen access road within the Easement Area within 12 months after the date hereof at its sole cost and expense. SEDA agrees that it is accepting the Easement Area "as is" and that such work shall be performed at no cost or expense to Grantor.

Grantor and Grantees agree to the following construction parameters:

a. SEDA will secure a contractor to completely clear the Easement Area to allow for the installation of the Utility Facilities. SEDA's contractor will install the Utility Facilities in accordance with the latest City of Savannah standard construction specifications.

b. SEDA will construct an earthen access road as part of the Utility Facilities. SEDA will obtain necessary USACE and land disturbance, and erosion control permits to construct said road to match existing land contours and grade elevations.

c. SEDA will obtain permits for and install crushed stone and filter fabric at delineated USACE jurisdictional wetland crossings to aid in improving the access road. The amount of crushed stone and filter fabric will be limited to not more than 875 CY and 5,255 SY, respectively.

d. SEDA agrees to install one 16" water stub to the water line in the location designated by Grantor in order to create a loop system for proper pressure at SEDA's sole cost and expense. Grantor shall be allowed to tap into said stub when it develops the adjoining Property and shall not be required to pay any fee for physically connecting to the connection point via the one 16" tee and valve to be installed by SEDA as part of the original installation of the Utility Facilities. Nothing contained herein should be construed to prevent the City from charging capital cost recovery fees (sometimes generically referred to as "tap fees") as shall be applicable at the rate stipulated in the City Revenue Ordinance at the time of connection.

3.2 Maintenance.

(a) Upon completion of construction of the Utility Facilities pursuant to section 3.1 above, the City shall, subject to the other terms hereof, maintain such Utility Facilities in good operating order and repair, at its sole cost and expense.

(b) In the event that the Association reasonably determines that the grass, landscaping, trees and fencing within the Easement Area require mowing, cutting, trimming, maintenance or repairs in order to prevent a nuisance to the adjoining properties, and the City fails to commence and diligently pursue such work to completion within thirty (30) days after notice from the Association stating the nature of such necessary repairs, the Association shall have the right to complete said work and submit to the City a statement which shows all reasonable, direct, out-of-pocket, costs and expenses associated with such work. Notwithstanding the foregoing, if the City fails to complete said work within such thirty (30) day period due to adverse weather conditions, labor disputes, fire, unavoidable casualties or other causes beyond the City's control, the City may extend such thirty (30) day period for a reasonable time by sending a written notice to the Association specifying the cause of such unavoidable delay and a reasonable time to overcome such cause and complete such work. The City agrees to pay each Invoice within thirty (30) days of the Effective Date of the notice transmitting such bill. In the event that the City fails to pay an Invoice within such thirty (30) day period, then the outstanding balance thereof shall bear interest at the rate of twelve

percent (12%) per annum or the then highest rate allowable under applicable law, whichever is lower. Nothing contained herein shall be construed to allow the Association to perform work on any of the City's other Utility Facilities.

3.3 **Conditions of Work.** In the event that Grantees perform work, including repairs and maintenance, on the Easement Area pursuant to the terms of this Agreement (the "Work"):

(a) The Work shall be performed in such a manner so as not to unreasonably interfere with the use or operation of any adjoining Tract, including, without limitation, any interruption to any utility service to any improvements constructed on such other Tract;

(b) Upon the completion of any Work, the party performing the Work shall restore the other Tracts to the condition which existed immediately prior to such Work, except to the extent that such Tracts have been maintained or improved as a result of such Work;

(c) The owner of the party performing the Work shall obtain all necessary licenses and permits required for such Work and all Work shall be done and all improvements constructed in a good and workmanlike manner and shall be free and clear of all liens of contractors, subcontractors, laborers and materialmen and all other liens;

(d) All Work shall be performed, and all improvements constructed in accordance with all laws, ordinances, codes, rules and regulations of all governmental authorities having jurisdiction over such Work.

(e) The owner of a Tract performing the Work hereby indemnifies and holds harmless the owners of the other Tracts from and against any loss, damage or costs of any kind or nature (including reasonable attorneys fees) arising out of any Work performed pursuant to this Agreement, provided, however that this indemnity shall be limited to the value of the Tract owned by the party performing such Work as of the date hereof, and provided that if such loss, damage or costs were caused by the willful or negligent acts of the owner of the other Tracts, then the owner of such Tract shall not be protected or held harmless by this indemnity, to the extent such loss, damage or costs were caused by such willful or negligent acts.

Article 4 Miscellaneous

4.1 **Notices.** Notices given pursuant to this Agreement will be effective only if in writing and delivered (i) in person, (ii) by courier, (iii) by reputable overnight courier guaranteeing next business day delivery, (iv) if sent on a business day during the business hours of 9:00 a.m. until 7:00 p.m., eastern time, via email, if acknowledged by e-mail from at least one addressee, or, if a copy is sent by reputable overnight courier guaranteeing next business

day delivery, or (v) by United States certified mail, return receipt requested. All notices will be directed to the other party at its address provided below or such other address as either party may designate by notice given in accordance with this Section. Notices will be effective (i) in the case of personal delivery or courier delivery, on the date of delivery, (ii) if by overnight courier, one (1) business day after deposit with all delivery charges prepaid, (iii) if by email, on the date of delivery, provided that receipt is acknowledged or a copy of the notice is sent as required above, and (iv) in the case of certified mail, the earlier of the date receipt is acknowledged on the return receipt for such notice or five (5) business days after the date of posting by the United States Post Office. The notice addresses for notice are as follows:

Grantor: New Hampstead Holdings, LLC
750 Hammond Drive, Unit 17
Atlanta, GA 30328-5518
Attn: President and CEO
E-mail:

City: The Mayor and Alderman of the
City of Savannah, Georgia
P.O. Box 1027
Savannah, GA 31402
Attn: City Manager
E-mail:

SEDA: Savannah Economic Development Authority
131 Hutchinson Island Road, 4th Floor
Savannah, GA 31421
Attn: President and CEO
E-mail:

4.2 **Miscellaneous.** The easements, benefits and obligations created hereunder shall create mutual benefits and servitudes running with the title to the Easement Parcel. Each party hereto shall use and enjoy all easements created hereunder and benefiting said party in such a manner so as to not unreasonably interfere with the other party's use, enjoyment and development of its respective Tract. This Agreement shall bind and inure to the benefit of the parties hereto and their respective legal representatives, successors, heirs, grantees and assigns. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Agreement, nor in any way affect the terms and provisions hereof. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. The parties hereto shall not be entitled to rely upon any statement, promise or representation not herein expressed, and this Agreement shall not be modified or altered in any respect except by a writing executed by all parties hereto. This Agreement shall be governed by and construed and interpreted under the laws of the State of Georgia.

IN WITNESS WHEREOF, the parties to this agreement to be executed by proper officers and officials thereunto duly authorized and their respective seals affixed as of the day and year first written.

Signed, sealed and delivered in
the presence of:

NEW HAMPSTEAD HOLDINGS, LLC

Witness

By: _____
President/CEO

Notary Public

My commission expires:

[Notary Seal]

Signed, sealed and delivered in
the presence of:

**THE MAYOR AND ALDERMAN OF THE
CITY OF SAVANNAH, GEORGIA**

Witness

By: _____
City Manager

Notary Public

Attest: _____

My commission expires:

[Notary Seal]

Signed, sealed and delivered in
the presence of:

**SAVANNAH ECONOMIC DEVELOPMENT
AUTHORITY**

Witness

By: _____
President

Notary Public

My commission expires:

[Notary Seal]