

WATER AND SEWER AGREEMENT

STATE OF GEORGIA

CHATHAM COUNTY, GEORGIA

WHEREAS, River Street 1, LLC, a Georgia limited liability company, and 601 East River Street, LLC, a Georgia limited liability company, hereinafter collectively referred to as the Developer, is the developer of certain property consisting of approximately 4.02 acres as shown on the attached drawing entitled **River Street Utility Improvements** – Exhibit A prepared by Thomas & Hutton and dated October 24, 2019;

WHEREAS, Developer desires certain commitments from the City of Savannah, hereinafter referred to as the City, in regard to extending and making additions to existing water and sanitary sewer systems, or in regard to the construction of water distribution and sanitary sewer collection and disposal systems to serve said development; and

WHEREAS, the engineering design for said water and sanitary sewer systems has been, or will be, accomplished by competent professional engineers registered in the State of Georgia, hereinafter referred to as Engineer, and bids for the construction of said systems has been or will be requested.

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 the Developer, intending to be legally bound, agree as follows:

1. City shall approve and does hereby approve Thomas & Hutton who shall serve as the Engineer hereunder, and who shall be responsible for the engineering design and inspection in connection with the installation of the said water and sanitary sewer systems. The Developer shall be responsible for inspection during construction and to ensure the Engineer's conformance to area planning, adequacy of design, and conformance to City requirements regarding location, size and depth of lines, capacity and arrangement of lift stations and quality of construction. The Developer shall provide to the City a statement from the Engineer certifying that the materials and workmanship including pipes, bedding, joint restraints, valves, fire hydrants, manholes, lift station equipment and other related materials and work meet the City's specifications and standards. Upon request of the City, the certification shall be substantiated by material affidavits from suppliers and by applicable test results for inflow/infiltration, exfiltration, deflection, pressure, leaks, bacteria, compaction and other tests required by the City.
2. The Developer shall be responsible for the construction of the following:
 - (a) Water Distribution System – Approximately 700 linear feet of 10” water main will loop an existing dead end 6” water main serving a fire hydrant on River Street at the East Broad Street ramp to an existing 12” water main at the

intersection of River Street and East Bay Street. This loop will support and improve the domestic and fire water services needed to support the development of the Project, but will also provide an additional means of connectivity for the City's water system along River Street. Developer will pay 67% and City will pay 33% of the costs of the water distribution system.

- (b) Gravity Sewer System – An existing City gravity sewer system currently serves the Homewood Suites Hotel from the western portion of the site. This existing sewer system needs to be extended towards the east to provide sewer service to the Project. Approximately 400 linear feet of 8” sewer main along with the associated manholes and appurtenances is currently proposed to provide this sewer service. Developer will pay 100% of this cost and there will be no reimbursement from the City for this item of expense.
 - (c) Force Main – In order to increase the capacity of Pump Station #21, the City plans to install a new 8” force main to replace an aging existing 8” force main. The new force main will start at Pump Station #21 which is 0.25 miles west of the Project, and will connect to the existing force main within the River Street right-of-way adjacent to the Project. Approximately 1,250 linear feet of the new force main will be directional drilled and the remaining 300 linear feet will be direct buried. The City will pay 100% of the design and construction costs associated with this work.
 - (d) Storm Drainage System – As a result of the number of utilities being installed within the River Street right-of-way adjacent to the project site, approximately 125 linear feet of existing 24” storm drainage pipe will need to be relocated. This is necessary in order to meet the City's required clearances from adjacent utilities. Developer will pay 100% of this cost and there will be no reimbursement from the City for this item of expense.
3. Maximum Reimbursement. The maximum reimbursement from the City to Developer shall be \$1,299,512.42; provided, however either party shall have the right to request an amendment to the Maximum Reimbursement in the event of Unforeseen Conditions, Force Majeure or special conditions required by the City that would constitute a change in scope of work. Developer may, at its option and at its sole cost and expense, and with the prior written approval of the City, spend more than the Maximum Reimbursement for the construction of improvements if it feels that it would be in the best interests of the Project to modify or augment improvements above and beyond customary improvements.
 4. Procedures for Disbursement. Developer shall apply for disbursements in accordance with the terms of this Agreement from time to time in order to complete the improvements described herein. Upon compliance with the terms of this Agreement, City shall disburse in accordance with each request for disbursement submitted by Developer from time to time (each, a "Disbursement Request"). The Construction Plans are attached hereto as Exhibit B. The cost for

design and construction is attached hereto as Exhibit C. Each Disbursement Request submitted by Developer to City shall be in accordance with the following procedures and deliveries:

- (a) Form of Disbursement Request. To initiate each Disbursement Request, Developer shall prepare an Owner's Affidavit and Requisition for Funds in the form attached as Exhibit D, which shall be accompanied by invoices for all such costs submitted for payment with a Disbursement Request. With each Disbursement Request, Developer shall submit to City a review and approval of the GC's Requisition by Developer's Architect, which shall be evidenced by the Architect's execution of an AIA G702: Application and Certification for Payment (1992) or equivalent documentation to City ("Certified GC's Requisition").
 - (b) Use of Proceeds. With each Disbursement Request, Developer shall certify that the proceeds of the requested disbursement shall be used only for the reimbursement of the items described in the Disbursement Request and represented by the invoices or other appropriate documentation submitted in connection with such Disbursement Request, which costs, expenses and fees have been actually incurred by Developer.
 - (c) Frequency. Developer may not submit a Disbursement Request more frequently than monthly.
 - (d) Advance of Funds. City shall advance by wire transfer into the designated account of Developer the amount of each Disbursement Request within twenty (20) days of receipt thereof.
5. Supporting Documentation. With each Disbursement Request, Developer shall provide City with lien waivers for all sums disbursed in the prior month by the GC to its subcontractors. The lien waivers shall set forth the amounts to be received from said disbursements, the official capacity of the signatory to the waivers, and be properly acknowledged. Each such lien waiver, whether partial or final, must set forth that all lien rights are waived with respect to the total amount disbursed up to and including the last date upon which labor or material was supplied and for which payment was made. Statements, waivers, affidavits, supporting waivers, invoices, evidence of bonding, schedules of values and releases for the purposes of issuing interim mechanic's lien coverage all in form and substance satisfactory to the City in its reasonable discretion.
 6. The Developer shall provide the City with utility easements on the Developer's site necessary to operate and maintain the water mains, gravity sewer mains, and lift station and sanitary force main.
 7. A minimum of two (2) bids shall be obtained for all items for which the City will reimburse Developer. Original copies of the bids received for item 1 will be submitted to the City for review.

8. Any development which requires sanitary sewer main extension and/or involves storm sewer conduits will require televising by the City of Savannah televising crew. In accordance with the City of Savannah Televising Procedure Manual, the charge will be \$1.25 per linear foot plus a \$120.00 setup fee. This fee will be paid to the City of Savannah in addition to those fees as described in the most recent edition of the City of Savannah Revenue Ordinance. The televising fee shall not be reimbursed by City to the Developer.

9. As used herein, (a) "Force Majeure" shall mean any event that causes an increase in time and/or cost of construction of the Project, if and so long as such event is caused by natural disaster, fire, earthquake, floods, explosion, extraordinary adverse weather conditions, declared or undeclared war, terrorism, riots, protests, mob violence, inability to procure or a general shortage of labor, equipment, facilities, energy, materials or supplies in the open market, failure of transportation, unforeseen physical conditions, strikes, lockouts, actions of labor unions, condemnation, court orders, laws, rules, regulations, orders of governmental or military authorities or any event of force majeure customarily found in construction contracts used in the building construction industry in the vicinity of the Project and actually contained in the Developer's contract with its general contractor, so long as such cause is not within the control of the party undertaking same; and (b) "Unforeseen Conditions" shall mean environmental contamination not previously disclosed by any prior environmental report or those conditions encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the contract documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the contract documents.

IT IS FURTHER AGREED that the Developer shall render the City harmless for any claims and damages due to the work associated with the tie-in to existing water and sanitary sewer systems.

IT IS FURTHER AGREED that upon completion of the systems and all related facilities and the provision of two copies of "as built" drawings on Chronoflex Mylar, the City will, subject to approval of the City Manager, accept title thereto and assume responsibility for maintenance and operation of those portions located within public easements or rights-of-way, including water mains, sewer mains, and lift station and sanitary forcemain. This acceptance shall include all rights, title and interest that the Developer has in the water and sanitary sewer systems serving the said project and also all easements and/or rights-of-way required for the purpose of maintenance thereof.

IT IS FURTHER AGREED that the Developer will provide to the City a recordable plat(s) showing all utilities within public easements and/or rights-of-way to be owned and maintained by the City. This document shall be provided prior to construction. Should

installation deviate from the original recordable plat, the Developer will provide to the City a revised recordable plat showing all utilities in public easements and/or rights-of-way. Should the Developer fail to provide the revised plat, the City will not release the Project nor will a Certificate of Occupancy or water meter be issued.

IT IS FURTHER AGREED that as development proceeds under the terms of this agreement, and prior to occupancy, there will be a sanitary sewer tap-in fee paid to the City for each residential or equivalent residential unit, and there shall be a separate water meter installed and a water tap-in fee and a water meter installation fee paid for each residential or equivalent residential until based on those fees in effect at the time of the water and/or sewer connection, or as provided in the Revenue Ordinance.

IT IS FURTHER AGREED that this agreement between the City and the Developer may not be transferred or assigned in whole or in part without prior approval of the City, which approval shall not be unreasonably withheld, delayed or conditioned, and that any violation of this limitation shall terminate the City's obligation and forfeit the Developer's rights thereunder. Provided, however, this section shall in no way impair the Developer from developing the Property in phases or from selling portions of the Property to third parties who will be deemed third party beneficiaries of this Agreement.

IT IS FURTHER AGREED that all provision of law now or thereafter in effect relating to water and sewer service by the City of Savannah shall be applicable to this Agreement.

IT IS FURTHER AGREED that this agreement shall terminate ten (10) years after date of execution, after which the City shall not be liable for any further obligation thereunder. On this basis, this agreement shall expire _____, 2029.

[SIGNATURES ON NEXT PAGE]

IT WITNESS WHEREAS, the Developer and the City have caused this Agreement to be duly executed as of this ____ day of _____, 2019.

CITY:

The Mayor and Alderman of the
City of Savannah

By: _____
City Manager

Attest: _____
Clerk of Council

DEVELOPER:

601 East River Street, LLC

By: _____

Name: _____

Title: _____

River Street 1, LLC

By: _____

Name: _____

Title: _____

EXHIBIT A TO WATER AND SEWER AGREEMENT
EAST RIVER STREET PROJECT

EXHIBIT B TO WATER AND SEWER AGREEMENT
CONSTRUCTION PLANS

EXHIBIT C TO WATER AND SEWER AGREEMENT
COST FOR DESIGN AND CONSTRUCTION

River Street East Utility Extension Cost Sharing Proposal					
	<u>Total Cost</u>		<u>Developer Cost</u>		<u>City Cost</u>
Water Distribution System	\$ 629,162.60	\$	419,441.73	\$	209,720.87
Gravity Sewer System	\$ 517,021.20	\$	517,021.20	\$	-
Force Main	\$ 713,213.20	\$	-	\$	713,213.20
Force Main - Design Fees	\$ 108,425.00	\$	-	\$	108,425.00
Storm Drainage System	\$ 242,541.00	\$	242,541.00	\$	-
	Utility Extensions Sub-Total	\$	1,179,003.93	\$	1,031,359.07
	Contingency	\$	235,800.79	\$	206,271.81
	Utility Extensions Total Cost	\$	1,414,804.72	\$	1,237,630.88
			<u>Developer Cost</u>		<u>City Cost</u>
	Proposed Improvements Sub-Total	\$	1,414,804.72	\$	1,237,630.88
	Construction Management	\$	58,950.20	\$	51,567.95
	Utility Extension Cost Sharing Totals	\$	1,414,804.72	\$	1,289,198.83

EXHIBIT D TO WATER AND SEWER AGREEMENT

Owner's Affidavit and

Requisition for Funds No. _____

Date: _____

To: City of Savannah

From: _____, LLC

Re: _____ ("Property")

The undersigned does hereby request and authorize payment totaling \$ _____ as described and itemized on Schedule A, attached, and does hereby certify and guarantee that all amounts requested for labor and/or material are physically incorporated into the Lane Restoration, in compliance with the plans and specifications, with modifications approved by addressee above, or for services truly performed relating to the Property. All such payment requests are for amounts actually paid for work in place and/or services performed.

The undersigned further certifies that no part of the payments requested include or contemplate rebates, commission or loans to the undersigned, their beneficiaries, agents or assigns, and that all amounts requested are solely for the named payees and for the purpose indicated and that this requisition includes all amounts outstanding and payable on the Property through _____.

The undersigned further certifies that to the undersigned's knowledge, no claims have been made to the affiant by, nor is any suit now pending on behalf of, any contractor, subcontractor, laborer or materialman and further that no chattel mortgages, conditional bills of sale, retention of title agreements, security agreements, financing statements or personal property leases have been given or are outstanding as to any fixtures, appliances or equipment which are now installed in or upon said real property, or the improvements thereon, except as indicated on Schedule B (if any), attached.

The undersigned hereby acknowledges the dependence others may place upon the statements contained herein. No obligation on the part of City of Savannah or their respective advisor(s), expressed or implied, is created by this requisition as to protection of the owner and/or contractor or assigns from mechanics' or materialmen's lien claims, and the owner and contractor, as agreed between them, shall be responsible for the procurement of required lien waivers, paid bills, and releases from both principal payees and all subordinate claimants thereunder, and the undersigned hereby covenants and agrees to hold City of Savannah and their agents and assigns harmless against any lien, claim or suit by the contractors, subcontractors, mechanics or materialmen in connection with the furnishing of said services, labor and material included in the requisition hereinabove described and all prior requisitions.

[Signature Page to Follow]

_____, LLC, a Georgia
limited liability company

Signed, sealed and delivered in
the presence of:

By: _____
Name: _____
Title: _____

Witness

Notary Public
My commission expires: _____