

PHASE 1 PROJECT DEVELOPMENT AGREEMENT

THIS PHASE 1 PROJECT DEVELOPMENT AGREEMENT (the "Agreement") is entered into and effective as of the ___ day of May, 2018 by and among **THE MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH, GEORGIA**, a municipal corporation existing under the laws of the State of Georgia (hereinafter referred to as "City"), **DOWNTOWN SAVANNAH AUTHORITY** ("DSA"), a public corporation of the State of Georgia, **SRL LAND VENTURE LLC** ("SRL"), a Georgia limited liability company, and **EW MFR VENTURE I LLC** ("Developer"), a Georgia limited liability company.

R E C I T A L S :

WHEREAS, City and an affiliate of SRL have previously entered into that certain Amended & Restated Development Agreement dated as of August 3, 2017 (the "Master Development Agreement"), pursuant to which the parties agreed to certain terms relating to the redevelopment of the 55-acre site to be known as Eastern Wharf located in the city of Savannah, Georgia;

WHEREAS, Section 2 and Section 4 of the Master Development Agreement contemplate the development of a mixed-use project on a portion of Eastern Wharf, referred to therein as the "Phase 1 Project";

WHEREAS, SRL acquired Savannah River Landing effective as of September 20, 2017 and as of August __, 2018 has conveyed approximately 4.82 acres of the land known as Parcel C-6A in Eastern Wharf (the "Phase 1 Land") to Developer, an affiliate of SRL. The Phase 1 Land is more specifically described in Exhibit "A" attached hereto and incorporated herein by this reference and is pictorially shown on Exhibit "B" attached hereto and incorporated herein by this reference;

WHEREAS, as contemplated in Section 2 of the Master Development Agreement, Developer now intends to develop the Phase 1 Project on the Phase 1 Land, which shall consist of the Phase 1 Garage, the Phase 1 Apartment Project, and the Phase 1 Retail Project (each as defined in the Master Development Agreement);

WHEREAS, as contemplated in Section 4 of the Master Development Agreement, SRL, Developer, City and DSA now desire to evidence their agreement to collaborate on the construction of the Phase 1 Project and to coordinate with one another with respect to the design, development, construction, financing and ownership structure for the Phase 1 Project; and

WHEREAS, City and DSA have determined that it is in the best interests of City and DSA for City and DSA to enter into this Agreement and to effectuate the transactions described hereinabove and set forth in more detail in this Agreement.

WITNESSETH:

NOW, THEREFORE, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00), the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be

legally bound, agree as follows:

1. **Incorporation of the Recitals.** The recitals of this Agreement are incorporated herein as if fully set out below.

2. **Architect's Agreement.** Developer has entered into that certain AIA Standard Form of Agreement between Owner and Architect (the "Architect's Agreement") dated as of March 14, 2018 with Cooper Carry, Inc. ("Architect"), pursuant to which Architect has prepared detailed plans and specifications for the construction of the Phase 1 Project (the "Plans"). As provided in Section 2 of the Master Development Agreement, City has paid or shall pay Architect for the cost of the Plans to the extent that they relate to the Phase 1 Garage and SRL has paid or shall pay Architect for the cost of the Plans to the extent that they relate to the Phase 1 Apartment Project and the Phase 1 Retail Project. City and DSA have reviewed the Plans and have previously approved the Plans as provided to them by SRL, Developer and Architect.

3. **Construction Contract for the Phase 1 Project.** Developer has entered into that certain AIA Standard Form of Agreement Between Owner and Contractor dated as of _____, 2018 (the "Construction Contract") with Choate Construction Company for the construction of the Phase 1 Project. The Construction Contract includes two separate construction budgets, one for the Phase 1 Garage (the "Parking Garage Budget"), and the other for the Phase 1 Apartment Project and the Phase 1 Retail Project (the "Apartments and Retail Budget"). City and DSA have reviewed the Construction Contract and the Parking Garage Budget and have previously approved same. Developer and SRL have previously approved the Apartments and Retail Budget.

4. **Other Contracts.** Developer has entered into that certain Proposal Letter Agreement dated as of November 15, 2017 (the "Engineering Contract") with Thomas & Hutton Engineering Co. for the engineering work relating to the construction of the Phase 1 Project.

5. **Bond Authorization.** City and DSA have agreed to fund the construction of the Phase 1 Garage as set forth in the Parking Garage Budget. City and DSA intend to enter into an Intergovernmental Agreement, pursuant to which DSA shall issue its Taxable Revenue Bonds (City of Savannah SRL Parking Garage Project), Series 2018 (the "Parking Garage Bonds") on behalf of the City in the aggregate principal amount not to exceed THIRTY-THREE MILLION and NO/100 DOLLARS (\$33,000,000.00) for the construction of the Phase 1 Garage.

6. **Development Management Agreement/Disbursement Agreement.** DSA, City and Developer intend to enter into a Development Management Agreement in the form attached hereto as Exhibit "C", pursuant to which DSA and City shall engage Developer to act as the development manager to oversee the construction of the Phase 1 Garage in accordance with the Construction Contract, the Plans and the Parking Garage Budget. DSA and Developer also intend to enter into a Disbursement Agreement in the form attached hereto as Exhibit "D", pursuant to which Developer shall submit disbursement requests to DSA to have the construction costs relating to the Phase 1 Garage funded from the proceeds of the Parking Garage Bonds.

7. **Bond Financing Security Documentation.** In order to provide collateral to secure the obligation of Developer to convey the Phase 1 Garage to DSA upon completion of the Phase 1 Project, Developer intends to grant to DSA a first priority deed to secure debt (the "DSA Security").

Deed”) recorded against the Phase 1 Land. In addition, Developer intends to collaterally assign to DSA all of Developer’s right, title and interest in the Architect’s Agreement, the Construction Contract, the Engineering Contract and all other agreements with third parties relating to the construction of the Phase 1 Project.

8. **Financing for the Phase 1 Apartment Project and the Phase 1 Retail Project.**

Developer also intends to obtain a construction loan in the amount of FIFTY FOUR MILLION ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$54,100,000.00) (the “Loan”) from The Bank of the Ozarks (“Construction Lender”) for the construction of the Phase 1 Apartment Project and the Phase 1 Retail Project. In order to secure Developer’s obligations with respect to the Loan, Developer intends to grant to Construction Lender a second priority deed to secure debt (the “Junior Security Deed”) (which is junior to the DSA Security Deed) to be recorded against the Phase 1 Land. In addition, Developer intends to collaterally assign to Construction Lender (subordinated to the prior assignment thereof made to DSA as referenced in Section 7 above) all of Developer’s right, title and interest in the Architect’s Agreement, the Construction Contract, the Engineering Contract and all other agreements with third parties relating to the construction of the Phase 1 Project. DSA and Construction Lender shall enter into an intercreditor agreement/recognition agreement in order to provide the Construction Lender with certain cure rights with respect to a default by Developer under the DSA Security Deed and/or any of the other documents serving as collateral for the Parking Garage Bonds.

9. **Temporary Parking Lease Agreement.** Upon substantial completion of the Phase 1 Garage (and upon the issuance by City of a temporary certificate of occupancy for the Phase 1 Garage), Developer shall enter into a temporary parking lease agreement (the “Temporary Parking Lease”) with City to allow City to commence the use of portions of the Phase 1 Garage, with vehicular access permitted via the entrance facing the Marriott hotel property located to the west of the Phase 1 Garage. City’s right to use portions of the Phase 1 Garage shall be limited to those areas of the Phase 1 Garage that are not impacted or affected by the on-going construction of the Phase 1 Apartment Project and the Phase 1 Retail Project. City shall not be required to pay for the right to use portions of the Phase 1 Garage under the Temporary Parking Lease.

10. **Creation of Condominium Structure.** Upon substantial completion of the entire Phase 1 Project, Developer shall record against the Phase 1 Land that certain Declaration of Condominium of Eastern Wharf – Phase 1 (the “Condo Declaration”), together with the related condominium plans and plat, in the form attached hereto as Exhibit “E”. The Condo Declaration shall create three (3) separate condominium units, the “City Parking Garage Unit”, the “Apartments Unit” and the “Retail Unit”. Simultaneous with the recording the Condo Declaration, DSA shall release and cancel the DSA Security Deed, Developer shall convey fee simple title to the City Parking Garage Unit to DSA, Construction Lender shall modify the legal description on the Junior Security Deed to remove the legal description for the Phase 1 Land and to replace it with the legal descriptions for the Apartments Unit and the Retail Unit, and Developer shall convert Developer’s fee title in the Phase 1 Land to reflect fee title in the Apartments Unit and the Retail Unit.

11. **Parking Option Agreement.** At such time as the City Parking Garage Unit is conveyed to DSA, DSA shall enter into the Parking Option Agreement with SRL in the form attached hereto as Exhibit “F”, pursuant to which DSA shall grant to SRL (and to its successors

and assigns), as the owner(s) of the remainder of the land in Eastern Wharf, the option to lease parking spaces (not to exceed 800 parking spaces in total) in the Phase 1 Garage or in another city-owned parking garage to be developed at a later date at Eastern Wharf. The Parking Option Agreement shall provide that SRL (its successors and assigns) shall have the right to draw down additional parking spaces in the Phase 1 Garage in phases, as and when subsequent development projects are being contemplated on the land within the Eastern Wharf development. DSA shall agree to enter into subsequent parking lease agreements (substantially in the form attached to the Parking Option Agreement) with such developer entities at such time to evidence the parking arrangement between such developer and DSA. The parties shall record a memorandum of option against the City Parking Garage Unit to evidence the agreement to lease additional spaces in the future.

12. **Inspection.** During the pendency of construction of the Phase 1 Garage, Developer will permit DSA, City and their respective agents to have access to the Phase 1 Garage at reasonable times to conduct such surveys, studies, inspections and investigations as they shall deem appropriate.

13. **Notices.** All notices that may be or are required to be given to or made by either party to the other in connection with this Agreement will be in writing and shall be deemed to have been properly given if delivered in person, or sent by overnight commercial courier or by registered or certified mail, return receipt requested, to the addresses set out below, by facsimile transmission or email to the facsimile machine number or email address set out below with an original to follow promptly by certified mail, or at such other address, facsimile machine number or email address as specified by written notice and delivered in accordance herewith, to:

City: City of Savannah
Attention: City Manager 2 East Bay Street
City Hall, 4th Floor Post Office Box 1027
Savannah, Georgia 31401
Phone: (912) 651-6415
Facsimile: (912) 238-0872

with copy to: Office of the City Attorney
Attention: W. Brooks Stillwell, III, Esquire
6 East Bay Street
Gamble Building, 3rd Floor
Post Office Box 1027
Savannah, Georgia 31401
Phone: (912) 525-3092
Facsimile: (912) 525-3267

DSA: Downtown Savannah Authority
Attention: Chairman
2 East Bay Street
Savannah, Georgia 31401
Phone: (912) 651-6415
Facsimile: (912) 238-0872

with copy to: Office of the City Attorney
Attention: W. Brooks Stillwell, III, Esquire
6 East Bay Street
Gamble Building, 3rd Floor
Post Office Box 1027
Savannah, Georgia 31401
Phone: (912) 525-3092
Facsimile: (912) 525-3267

SRL or
Developer: Mr. A. Trent Germano
2870 Peachtree Street, Suite 122
Atlanta, GA 30305
trent@atgermano.com
Phone: (404) 580-0052

Mr. Reid Freeman
Regent Partners
3340 Peachtree Road, Suite 1400
Atlanta, GA 30326
rfreeman@regentpartners.com
Phone: (404) 995-1527

with copy to: Sheley, Hall & Williams, P.C.
Attention: David G. Williams, Esq.
303 Peachtree Street, Suite 4440
Atlanta, GA 30308
david@sheleyhall.com
Facsimile: (404) 880-1351

For purposes of this Agreement, the time of actual delivery, as evidenced by a signed receipt therefor, if made in person, or one day after deposit in the ordinary course of business, if by overnight commercial courier, or the date of postmark, if by mail, or on the date of written confirmation of receipt by facsimile machine or confirmation of receipt of the email, shall be deemed the date of any notice, demand or delivery. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of such notice, demand or delivery.

14. **Time of the Essence.** Time is of the essence in complying with the terms, conditions and agreements of this Agreement. Upon any failure of a party to perform in compliance with this Agreement, the other party will have all rights and remedies afforded to such party at law or in equity.

15. **Entire Agreement.** This Agreement contains the entire agreement of the parties hereto with respect to the subject matter hereof and no representations, inducements, promises or agreements, oral or otherwise, between parties and not expressly stated herein, will be of any force or effect.

16. **Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the parties hereto, their respective heirs, legal representatives, successors and permitted assigns.

17. **Amendment.** Any amendment to this Agreement will not be binding upon the parties hereto unless such amendment is in writing duly executed by the parties hereto.

18. **Governing Law; Venue.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Georgia. Any legal suit, action or proceeding against any party hereto arising out of or relating to this Agreement shall be instituted in any Federal Court in the Southern District of Georgia or state court in Chatham County, Georgia.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, each of the parties hereto has caused this instrument to be executed under seal as of the day and year first above written.

City:

**THE MAYOR AND ALDERMEN OF THE
CITY OF SAVANNAH**

By: _____
City Manager

DSA:

DOWNTOWN SAVANNAH AUTHORITY

By: _____
Chairman

SRL:

SRL LAND VENTURE LLC, a Georgia limited liability company

By: _____
Name: A. Trent Germano
Title: Manager

DEVELOPER:

EW MFR VENTURE I LLC, a Georgia limited liability company

By: _____
Name: A. Trent Germano
Title: Manager

Exhibit List:

- Exhibit "A" - Legal Description of Phase 1 Land
- Exhibit "B" - Pictorial Representation of Phase 1 Land
- Exhibit "C" – Development Management Agreement
- Exhibit "D" – Disbursement Agreement
- Exhibit "E" – Condominium Declaration
- Exhibit "F" – Parking Option Agreement

Exhibit "A" - Legal Description of Phase 1 Land

[attached hereto]

Exhibit "B" - Pictorial Representation of Phase 1 Land

[attached hereto]

Exhibit “C” – Development Management Agreement

[attached hereto]

Exhibit "D" – Disbursement Agreement

[attached hereto]

Exhibit "E" – Condominium Declaration

[attached hereto]

Exhibit "F" – Parking Option Agreement

[attached hereto]