

**AGREEMENT FOR
CONSTRUCTION AND FINANCING
OF SEWER UPGRADES**

THIS Agreement for the Construction and Financing of Sewer Upgrades (hereinafter referred to as “**Agreement**”) is made as of the _____ day of _____, 20____ by and between DeKalb County, Georgia (hereinafter referred to as “**County**”) and **TAMA BAG FACTORY QBE LLC**, with its principal place of business located at 1777 Peachtree Street Suite 200, Atlanta, GA 30309 (hereinafter referred to, together with any entity to which it may assign its rights under this Agreement, as the “**Company**”).

WITNESSETH:

WHEREAS, the Company is undertaking the construction of a multifamily development with 281 residences and 10,000 square feet of commercial space located at 1845, 2nd Avenue, 1851 2nd Avenue, and 1939 Alexander Avenue, Decatur, GA, 30032 (the “**Project**”); and

WHEREAS, the Project will increase demand on the existing sanitary sewer infrastructure and lines serving the Project site; and

WHEREAS, the Project will require upgrading and expanding portions of the existing sanitary sewer infrastructure and lines to accommodate additional discharge of water into the Sewer System (the “**Improvements**”); and

WHEREAS, the County has previously adopted Section 25-177 of the Code of DeKalb County, as revised 1988, outlining a method of cost sharing between the County and a private developer when a proposed development would require expansion of the existing sanitary sewer system; and,

WHEREAS, due to the complex nature of the Improvements contemplated by this Agreement and the extent of the improvements and expansion of the sanitary sewer system beyond

just Company's use, the County's Department of Watershed Management or its contractors has agreed to complete the Improvements and Company has agreed to make a contribution towards the Improvements in an amount not to exceed \$279,500 as the appropriate method of cost sharing; and

WHEREAS, the purpose of this Agreement is for the parties to enter into a binding contract evidencing their agreement as to the installation and financing of the Improvements;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and in consideration of the mutual promises and undertakings contained herein, the parties hereto to hereby agree and consent to the following:

1. **Improvements**. The Improvements will consist of upgrades and expansion of certain portions of the DeKalb County sanitary sewer infrastructure and lines servicing 1845, 2nd Avenue, 1851 2nd Avenue, and 1939 Alexander Avenue, Decatur, GA, 30032 (the "Site"). The County, through its Department of Watershed Management and/or its contractor, will determine those portions of the sanitary sewer infrastructure and lines to be upgraded and expanded (the "Work") from the candidate areas impacted by the Project. The Work shall be completed to the extent necessary to generate 135,388 gallons per day in sewer capacity credits as calculated per DeKalb County's Capacity Assurance Banking Credit Program. The County's Department of Watershed Management, or other applicable department, shall operate and maintain the Improvements in accordance with applicable laws.
2. **Term of Agreement and Relevant Times**
 - a. This Agreement shall become effective upon the date of execution, and terminate on January 1, 2024, unless terminated earlier in accordance with the termination provision of this Agreement or extended by and through consent of the parties.
 - b. The County shall issue a Sewer Capacity In Lieu of Certification letter in relation to the Company's request for sewer capacity to facilitate the development of the Project within thirty (30) days of the execution of this Agreement.
 - c. The County agrees to have the Improvements required by Section 1 of this Agreement designed, constructed and operational no later than January 1, 2024

(the "County Improvements Completion Date").

- d. The County's conditional approval of Company's request for sewer capacity (the "Sewer Capacity Approval") will expire two (2) years from the date listed on the County's correspondence entitled "SEWER CAPACITY APPROVAL IN LIEU OF CERTIFICATION," (the "Expiration Date"). At that time, a new request for capacity must be submitted to the County for review and approval. Extensions of up to one (1) year will be considered if made in writing more than sixty (60) days prior to the Expiration Date. Notwithstanding the foregoing, the Sewer Capacity Approval shall not expire on the Expiration Date if the County's completion of the Improvements is delayed for any reason that is not attributable to the Company. Instead, in the event of such a delay, the Sewer Capacity Approval shall expire one (1) year after the delayed completion date for the Improvements (the "Delayed Completion Date").
- e. Any sewer capacity credits created are non-transferable by the Company unless the proposed transfer is to an affiliate of Company operating the Site for use related to the Project and consistent with this Agreement and DeKalb County's policies. Any sewer capacity credits created as a result of the Improvements that are in excess of those required by the Company, or an affiliate of Company, as reflected in this Agreement and in accordance with DeKalb County's policies shall remain in the control of the County.
- f. Prior to the County's completion of the Improvements, on or before the County Improvements Completion Date, the Company shall have the right to install all its sanitary sewer infrastructure including, but not limited to, any underground lines and manholes for the Project in accordance with its Land Disturbance Permit and connect to the public Sewer System. Any such connection to the public Sewer System shall be sealed and remain watertight. The Company shall not alter or remove such seal or discharge any wastewater into the public Sewer System from its newly constructed infrastructure until the Company's Contribution and any interest payments that may be due the County pursuant to this Agreement have been paid to the County in full under this Agreement.

3. Reimbursement of a Portion of Improvement Costs by Company

- a. Company agrees that upon completion of the Improvements and before Company shall be allowed access to the County's sanitary sewer system, Company shall reimburse the County a total amount not to exceed \$279,500.

- b. In no event shall the Company's Contribution, exclusive of any interest as defined in Section 3(e) of this Agreement, exceed \$279,500.
- c. Upon the completion of the Improvements, the County shall notify the Company that the work is completed via email to the following Company representative:
Craig Wasilewsky (cwasilewsky@perennialproperties.net)
- d. Upon the completion of the Improvements, the County shall provide an invoice reflecting the final amount of the Company's Contribution, including instructions for payment of such amounts, to the Company at the following address:
TAMA BAG FACTORY QBE LLC
c/o Perennial Properties
1777 Peachtree Street Suite 200
Atlanta, GA 30309
- e. In the event the Company's Contribution is more than sixty (60) days past due, the County may:
 - i. charge the Company interest at a rate of one-percent (1%) per month as to the outstanding amount of the Company's Contribution until the past due amount is paid to the County in full; and,
 - ii. refuse to allow the Company access to the County's sanitary sewer system and the Improvements until the past due amount of the Company's Contribution is paid to the County in full.

4. Requirements before Connection to the County's Sanitary Sewer System

- a. The Company agrees, prior to connecting to the County's sanitary sewer system, to comply with the following requirements:
 - 1. Install low-flow plumbing fixtures;
 - 2. Prevent discharge of fats, oils, and grease (FOG) into the wastewater collection system;
 - 3. Maintain caps on service line cleanouts for sewer laterals;
 - 4. Maintain private sewer service lines; and
 - 5. Ensure roof and floor drains are not connected to the wastewater system.
- b. If the Company fails to comply with the requirements listed above in Section 4(a), the County may terminate the approval to connect to the sanitary sewer system.

5. Termination. The parties agree that this Agreement shall terminate on the date on which

an amount equal to the Company's Contribution and any interest payments that may be due the County pursuant to this Agreement have been paid to the County in full under this Agreement; provided that the Improvements servicing the Site are operational after the Company connects to the sanitary sewer system. In the event the Improvements are not operational on the date on which the Company's Contribution and any necessary interest payments have been paid to the County, this Agreement shall not automatically terminate until the Expiration Date or the Delayed Completion Date, whichever is later.

6. Miscellaneous.

- a. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof.
- b. The recitals above are part of this Agreement.
- c. County may not assign its rights under this Agreement. The Company may not assign its rights under this Agreement except to an entity that will own or operate the Project, with the previous written consent of the County.
- d. Each individual executing this Agreement on behalf of a party represents and warrants to the other party that such individual is authorized to do so and that his signature binds the party on whose behalf he is executing this Agreement.
- e. County and the Company acknowledge, one to the other, that the terms of this Agreement constitute the entire understanding and agreement between the parties concerning the subject matter of this Agreement, and supersedes all prior oral or written agreements or understandings. No representation, oral or written, not incorporated in this Agreement shall be binding upon the County or the Developer. All parties must sign any amendments to the Agreement.
- f. In the event that state or federal laws or regulations enacted subsequent to the effective date of this Agreement and modifying such Agreement or the action or inaction of any other affected governmental jurisdiction to prevent or preclude compliance with one or more provisions of this Agreement or to require changes in plans, maps or permits approved by the County, the parties shall: (1) provide the other party with written notice of such state or federal restriction, provide a copy of such regulation or policy and a statement of conflict with the provisions of this Agreement, and (2) promptly meet and confer with the other party in a good faith and reasonable attempt to modify or suspend this Agreement to comply with such federal or state law or regulation.

- g. This Agreement is governed by the laws of the state of Georgia without regard to conflicts of law principles thereof. Should any party institute suit concerning this Agreement, venue shall be in the Superior Court of DeKalb County, Georgia. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation hereof.
- h. If a court of competent jurisdiction renders any provision of this Agreement (or portion thereof) to be invalid or otherwise unenforceable, that provision or portion thereof shall be severed and the remainder of this Agreement shall continue in full force and effect as if the invalid provision or portion thereof was not part of this Agreement. Any such holding materially affecting the commitments herein may be the subject of further negotiations for purpose of legally revising the consideration involved. No action taken pursuant to this Agreement shall be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained in this Agreement and should not operate or be construed as a waiver of any subsequent breach, whether of a similar or dissimilar nature.
- i. Nothing under this Agreement and no action taken pursuant hereto shall cause the County and Company to be treated as a partnership, joint venture, association, or other common entity.
- j. The parties agree to take all lawful actions, including the execution and delivery of such documents, instruments, petitions, Project approvals and certifications that may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent. Notwithstanding the foregoing, nothing in this Agreement shall be construed to compel the County to approve Project entitlements that do not comply with all applicable laws.
- k. This Agreement may be executed in separate counterparts. It shall be fully executed when each party whose signature is required has signed at least one counterpart even though no one counterpart contains the signatures of all of the parties to this Agreement.

- l. It is understood and agreed that no present or future consultant, member, agent, partner, director, commissioner, officer or employee of the parties shall be personally liable hereunder or pursuant to any other agreement executed in connection herewith.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in three (3) counterparts, each to be considered an original by their authorized representative.

**TAMA BAG FACTORY
DEVELOPMENT, LLC**

DEKALB COUNTY, GEORGIA

By: _____
Signature

Aaron Goldman, Manager

Signer:

Witness: Craig Wasilewsky

Michael L. Thurmond
Chief Executive Officer
DeKalb County, Georgia

ATTEST:

BARBARA H. SANDERS, CCC
Clerk to the Board of Commissioners
and Chief Executive Officer

APPROVED AS TO SUBSTANCE:

David Hayes
Director
Department of Watershed Management

APPROVED AS TO FORM:

County Attorney Signature