

**INTERGOVERNMENTAL AGREEMENT BETWEEN GWINNETT  
COUNTY, GWINNETT COUNTY WATER AND SEWERAGE  
AUTHORITY AND DEKALB COUNTY**

THIS INTERGOVERNMENTAL AGREEMENT, (the “Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_ 2020, by and between GWINNETT COUNTY, a body corporate and politic and a political subdivision of the State of Georgia (hereinafter, “Gwinnett County”), the GWINNETT COUNTY WATER AND SEWERAGE AUTHORITY, a body corporate and politic and a political subdivision of the State of Georgia (hereinafter, the “WSA”), and DEKALB COUNTY, a body corporate and politic and a political subdivision of the State of Georgia (hereinafter, “DeKalb County”). DeKalb County, Gwinnett County, the WSA, are, collectively, the Parties.

**RECITALS**

WHEREAS, certain real property is located at 6945 Button Gwinnett Drive, lying in Land Lots 219 and 220, 6th District, Gwinnett County, and in Land Lots 317 and 318, 18th, District, City of Doraville, DeKalb County, and containing approximately 20.09 acres of land, as described by the metes and bounds set out in the survey document attached hereto and incorporated herein by reference as Exhibit “A”, (hereinafter, the “Property”); and

WHEREAS, there is a contract for the purchase and sale of the Property for development into an end-user distribution center (hereinafter, the “Project”); and

WHEREAS, there is a contract for the purchase and sale of the Property for development into an end-user distribution center (hereinafter, the “Project”) which is more particularly described in a Layout and Stacking Plan prepared by Eberly & Associates dated July 28, 2020, (hereinafter the “Plan”), a copy of which is attached hereto and incorporated herein by reference as Exhibit “B”; and

WHEREAS, as shown on Exhibit “B”, the Project shall contain an approximately 121,017 square foot building that will be constructed on the DeKalb County/Gwinnett County line with a portion of the project in both jurisdictions, will provide parking for employees of the Project and will provide parking spaces for semi-tractors and for delivery vans.

WHEREAS, the Developer of the Project is SEEFRIED INDUSTRIAL PROPERTIES, INC., (hereinafter, the Developer”) and the Owner of the Property is IMPROVE GEORGIA, LLC, (hereinafter, the “Owner”); and

WHEREAS, both the Developer and Owner are intended third-party beneficiaries of this Agreement made hereunder between Parties and are entitled to the rights and benefits hereunder and may enforce those provisions against Gwinnett County, WSA or DeKalb County as if they were Parties to this Agreement; and

WHEREAS, although DeKalb County provides water and sewer services within the City of Doraville, DeKalb County desires for Gwinnett County to provide all water and sewer services

for the Project, including that part of the Project which will be built in Doraville; and

WHEREAS, the Owner and the Developer agree that Gwinnett County shall provide all water and sewer services to the Project for the term of this Agreement; and

WHEREAS, on May 5, 2020, Gwinnett County issued a conditional sewer capacity certification #C2020-05-94, a copy of which is attached hereto and incorporated herein by reference as Exhibit "C" to provide sewer service to the Project at a peak flow of 5.09 gallons per minute discharging to the County's treatment works by allowing connection to existing sewer manhole (Facility ID # 232096); and

WHEREAS, Gwinnett County has capacity to provide potable water to the Project; and

WHEREAS, DeKalb County desires for Gwinnett County and the WSA to collect all fees, including then-current water system development charges and sewer system development charges, to perform all inspections and to issue all permits related to provision of water and sewer service to the Project and to the Property including that part of the Property which is located within Doraville; and

WHEREAS, pursuant to the provisions of Article IX, Section II, Paragraph III of the Constitution of the State of Georgia of 1983, as amended, and the general, special and local laws of the State of Georgia, DeKalb County, the WSA, and Gwinnett County, by and through their respective government authorities, are each authorized to enter into agreements with each other and with private persons for the provision of certain public services outside their jurisdictional limits; and

WHEREAS, in order to ensure the orderly, economical and logical provision of certain public services to the Project, the Parties hereto desire to enter into this Agreement to resolve any potential governmental conflicts between Gwinnett County, DeKalb County and the WSA concerning the terms and conditions whereby water and sewer services are provided to the entire Project,

NOW THEREFORE, in consideration of the sum of Ten and No/100ths Dollars (\$10.00), the foregoing recitals and the representations, warranties, covenants and agreements set forth herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereto hereby agree as follows:

## **TERMS AND CONDITIONS**

### **1. Recitals**

The above Recitals are true, correct, form a material part of this Agreement and are incorporated herein by reference.

## **2. Water and Sewer Service**

The Parties agree that the Developer shall construct the water and sewer facilities for the entire Project to Gwinnett County standards, that, after said water and sewer facilities are completed, inspected and tested, the Developer shall dedicate said facilities to the WSA and that the WSA shall own all of the water and sewer service facilities, easements for said facilities and appurtenances. Gwinnett County shall operate, maintain, inspect, replace and repair all water and sewer service facilities, easements and appurtenances. Gwinnett County shall issue all water and sewer permits for the Project, and Gwinnett County or its designee shall receive the applications for such services and collect in all instances the then-current connection fees, water system development charges and sewer system development charges for each connection that is made to Gwinnett County's water system and sewer system. Gwinnett County shall bill the Owner for water and sewer usage at the Project in accordance with Gwinnett County's standard practices, procedures, and rate resolutions. Neither DeKalb County nor Doraville nor any agent thereof, other than Gwinnett County or its designee, shall impose and collect any service fees, entitlement fees, impact fees, system development charges, tap fees or other fees on the Owner or any subsequent owner of the Project or Property for water or sewer service provided thereon.

## **3. Term and Termination**

- a) The Parties agree that the term of this Agreement (the "Term") shall begin at 12:00 a.m. on September 1, 2020 and each subsequent year thereafter for a total term of fifty (50) years, during or after the termination of which the parties may seek to renew or enter into a new agreement.
- b) This Agreement may be amended at any time by mutual consent of both parties so long as such amendment is in writing and approved by official action of the respective governing authority. Either party may terminate this Agreement with or without cause by giving ninety (90) days prior written notice to the other party.

## **4. Waiver by DeKalb County for Water and Sewer Service**

DeKalb County hereby waives any claim that it may have to provide water or sewer service to any part of the Property. Neither DeKalb County nor any agent thereof, other than Gwinnett County or its designee, shall impose and collect any service fees, entitlement fees, impact fees, water or sewer system development charges, tap fees or other fees on the Owner or any subsequent owner of the Property or the Project for water or sewer service within the Project.

## **5. Miscellaneous**

- (a) Signs shall be posted at the county boundary line, along the curb. The signs shall read "Entering Gwinnett County" on one side and "Entering DeKalb County" and "City of Doraville" on the other side.
- (b) This Agreement and the covenants of the Parties set forth herein are intended to run with the land and, subject to Section 9 hereof, shall be binding upon each of the Parties hereto and

any subsequent owner of the Project. This Agreement shall be recorded in the real property records of DeKalb County and Gwinnett County.

- (c) This Agreement shall not be binding upon the Parties hereto and may not be recorded until formal approval is granted by the appropriate authorities in each of Gwinnett County, the WSA and DeKalb County.
- (d) By its execution hereof, each of the Parties hereto represents and warrants to the other Parties hereto that:
  - i. all necessary actions and approvals have been taken or obtained, as the case may be, to authorize, approve and perform this Agreement;
  - ii. upon such execution, this Agreement shall be binding on such party, enforceable against such party in accordance with its terms, except (in the case of Improve Georgia) as such enforceability may be limited by general principles of bankruptcy and insolvency and similar laws relating to creditors' rights generally;
  - iii. there is no claim, litigation, proceeding or governmental investigation pending or, so far as is known to such party, threatened, against or relating to such party or the transactions contemplated by this Agreement which does or would reasonably be expected to affect materially and adversely the ability of such party to enter into this Agreement and to carry out its obligations as set forth in this Agreement; and
  - iv. any and all approvals required to be obtained by such party in connection with the execution, delivery and performance of this Agreement have been obtained.

## **6. Remedies**

- (a) In the event of a breach or attempted or threatened breach of the provisions of this instrument, the Parties agree that the remedy at law available to enforce this instrument would in all likelihood be inadequate, and therefore, the provisions of this instrument may be enforced by a mandatory or prohibitory injunction or decree of specific performance upon the application of the party which is enforcing the provision.
- (b) The remedies herein are in addition to and not in lieu of any other remedies available under applicable law.

## **7. Entire Agreement**

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, discussions, negotiations, and undertakings, whether written or oral, and there are no inducements, representations, warranties or understandings that do not appear within the terms and provisions of this Agreement.

**8. Severability**

If any provision of this Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, the remaining provisions shall remain in full force and effect as if the illegal or unenforceable provision had never been contained in this Agreement.

**9. Successors and Assigns**

The provisions of this Agreement shall be deemed and held to be easements, covenants and restrictions appurtenant to and running with the land, and shall bind and inure to the benefit of the parties and their successors, successors-in-title and assigns.

**10. Evidence**

The Parties agree that if Gwinnett County or the WSA is sued in subsequent litigation concerning the Project(s), and the facilities and appurtenances constructed on the Property to provide water and sewer service, the Agreement may be introduced into evidence.

**11. Attorneys' Fees**

Each party shall bear its own costs, expenses and claims to attorneys' fees incurred or arising out of the Agreement or the Projects.

**12. Controlling Law, Venue**

This Agreement was made and shall be performed in DeKalb County, Georgia and in Gwinnett County, Georgia, and shall be construed and interpreted under the laws of the State of Georgia. Venue to enforce this Agreement for any dispute arising out of the terms and conditions herein shall be solely in the Superior Court of Gwinnett County, Georgia, and all defenses to venue are waived.

**13. Further Assurances**

The Parties will sign any additional papers, documents and other assurances, and take all acts that are reasonably necessary to carry out the intent of this Agreement.

**14. Construction**

This Agreement has been jointly negotiated and drafted. This Agreement shall be construed as a whole according to its fair meaning. The language of this Agreement shall not be constructed for or against either party.

**15. Legal Advice**

In entering into this Agreement, the Parties acknowledge that their legal rights are affected by this Agreement and that they have sought and obtained the legal advice of their attorneys. Each

Party has made such an investigation of the law and the facts pertaining to this Agreement and of all other matter pertaining thereto as it or they deem necessary. They further represent that the terms of this Agreement have been completely read by them and that all terms are fully understood and voluntarily accepted by them.

**16. Amendment of Agreement**

No provision of this Agreement may be amended, modified or waived unless such amendment, modification or waiver is agreed to in a writing signed by each of the Parties hereto.

**17. Authority**

The signature of a representative of any Party to this Agreement is a warranty that the representative has authority to sign this Agreement and to bind any and all principals to the terms and conditions hereof.

**18. Headings**

The headings of the paragraphs contained herein are intended for reference purposes only and shall not be used to interpret the Terms and Conditions contained herein or the rights granted hereby.

**19. Time**

Time is of the essence with all duties and obligations set forth in this Agreement.

**20. Notice**

For purposes of this Agreement, notices and all other communications provided for herein shall be in writing and shall be deemed to have been given when delivered or mailed by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Gwinnett County:           Gwinnett County  
  Attention: County Administrator  
  75 Langley Drive  
  Lawrenceville, Georgia 30045-6935

If to the WSA:                    Gwinnett County Water and Sewerage Authority  
  Attention: Director, Department of Water Resources  
  684 Winder Highway  
  Lawrenceville, Georgia 30045

If to DeKalb County:           DeKalb County  
  Attention: Chief Executive Officer  
  1300 Commerce Drive  
  Decatur, Georgia 30030

August 14, 2020

**21. Originals**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement.

[SIGNATURE OF THE PARTIES APPEAR ON THE FOLLOWING PAGES]

August 14, 2020

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed, sealed and delivered by the Chief Executive Officer of DeKalb County, the Chairman of the Gwinnett County Board of Commissioners and the Chairman of the Gwinnett County Water and Sewerage Authority, each thereunto duly authorized to bind their respective Parties in accordance with the laws of the State of Georgia as of the day and year first above written.

Signed, sealed and delivered in the presence of:

DEKALB COUNTY

\_\_\_\_\_  
Unofficial Witness

By: \_\_\_\_\_  
Michael Thurmond,  
Chief Executive Officer

\_\_\_\_\_  
Notary Public

Attest: \_\_\_\_\_  
Printed Name:  
Title:

My commission expires:

[NOTARY SEAL]



August 14, 2020

Signed, sealed and delivered in the presence of:

GWINNETT COUNTY

\_\_\_\_\_  
Unofficial Witness

By: \_\_\_\_\_  
Charlotte J. Nash  
Chairman

\_\_\_\_\_  
Notary Public

Attest: \_\_\_\_\_  
Printed Name:  
Title:

My commission expires:

[NOTARY SEAL]

August 14, 2020

Signed, sealed and delivered in the  
presence of

GWINNETT COUNTY WATER AND  
SEWERAGE AUTHORITY

\_\_\_\_\_  
Unofficial Witness

By: \_\_\_\_\_  
Larry Genn  
Chairman

\_\_\_\_\_  
Notary Public

Attest: \_\_\_\_\_  
James Pirkle  
Secretary

My commission expires:

[NOTARY SEAL]

**Exhibit A**

TRACT 1

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOTS 317 AND 318; 18TH DISTRICT; CITY OF DORAVILLE; DEKALB COUNTY, GEORGIA, AND IN LAND LOT 219; 6TH DISTRICT; GWINNETT COUNTY, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TO FIND THE POINT OF BEGINNING, COMMENCE ON A POINT AT THE RIGHTS-OF-WAY INTERSECTION OF THE NORTHWESTERLY RIGHT-OF-WAY LINE FOR NORTHEAST EXPRESSWAY (RIGHT-OF-WAY VARIES) WITH THE EASTERLY RIGHT-OF-WAY LINE FOR PLEASANTDALE ROAD (RIGHT-OF-WAY VARIES); THENCE ALONG SAID RIGHT-OF-WAY LINE FOR NORTHEAST EXPRESSWAY, IN A NORTHEASTERLY DIRECTION, A DISTANCE OF 1,356.31 FEET TO A 5/8-INCH REBAR SET, SAID REBAR BEING THE POINT OF BEGINNING. THENCE LEAVING SAID RIGHT OF WAY LINE NORTH 31 DEGREES 11 MINUTES 07 SECONDS WEST, A DISTANCE OF 790.25 FEET TO A 1/2-INCH REBAR FOUND; THENCE NORTH 58 DEGREES 33 MINUTES 09 SECONDS EAST, A DISTANCE OF 650.00 FEET TO A POINT; THENCE SOUTH 31 DEGREES 07 MINUTES 55 SECONDS EAST, A DISTANCE OF 703.25 FEET TO A RIGHT-OF-WAY MONUMENT FOUND ON THE AFOREMENTIONED NORTHWESTERLY RIGHT OF WAY LINE FOR NORTHEAST EXPRESSWAY (RIGHT-OF-WAY VARIES); THENCE ALONG SAID RIGHT OF WAY LINE SOUTH 50 DEGREES 09 MINUTES 11 SECONDS WEST, A DISTANCE OF 468.79 FEET TO A POINT; THENCE ALONG SAID RIGHT-OF-WAY LINE SOUTH 52 DEGREES 51 MINUTES 57 SECONDS WEST, A DISTANCE OF 186.90 FEET TO AN AFOREMENTIONED 5/8-INCH REBAR SET, SAID REBAR BEING THE POINT OF BEGINNING.

TRACT 2

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 317; 18TH DISTRICT; CITY OF DORAVILLE; DEKALB COUNTY, GEORGIA, AND IN LAND LOTS 219 AND 220; 6TH DISTRICT; GWINNETT COUNTY, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TO FIND THE POINT OF BEGINNING, COMMENCE ON A POINT AT THE RIGHTS-OF-WAY INTERSECTION OF THE NORTHWESTERLY RIGHT-OF-WAY LINE FOR NORTHEAST EXPRESSWAY (RIGHT-OF-WAY VARIES) WITH THE EASTERLY RIGHT-OF-WAY LINE FOR PLEASANTDALE ROAD (RIGHT-OF-WAY VARIES); THENCE ALONG THE AFORESAID RIGHT-OF-WAY LINE FOR NORTHEAST EXPRESSWAY, IN A NORTHEASTERLY DIRECTION, A DISTANCE OF 2,012.00 FEET TO AN "X" FOUND IN CONCRETE, SAID "X" BEING THE POINT OF BEGINNING. THENCE LEAVING SAID RIGHT-OF-WAY LINE NORTH 31 DEGREES 07 MINUTES 55 SECONDS WEST, A DISTANCE OF 785.84 FEET TO A POINT; THENCE NORTH 43 DEGREES 57 MINUTES 35 SECONDS EAST, A DISTANCE OF 480.67 FEET TO A 5/8-INCH REBAR SET ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE FOR PONCE DE LEON CIRCLE (80-FOOT RIGHT-OF-WAY); THENCE LEAVING SAID RIGHT-OF-WAY LINE SOUTH 31 DEGREES 18 MINUTES 25 SECONDS EAST, A DISTANCE OF 860.56 FEET TO A 5/8-INCH REBAR SET ON THE NORTHERLY RIGHT-OF-WAY LINE FOR BUTTON GWINNETT DRIVE A/K/A NORTHEAST EXPRESSWAY (RIGHT-OF-WAY VARIES); THENCE ALONG SAID RIGHT-OF-WAY LINE SOUTH 54 DEGREES 12 MINUTES 15 SECONDS WEST, A DISTANCE OF 419.04 FEET TO A POINT; THENCE ALONG SAID RIGHT-OF-WAY LINE SOUTH 42 DEGREES 09 MINUTES 15 SECONDS WEST, A DISTANCE OF 51.67 FEET TO THE AFOREMENTIONED "X" IN CONCRETE, SAID "X" BEING THE POINT OF BEGINNING;

August 14, 2020

**Exhibit B**