

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

THIS AGREEMENT FOR CONSTRUCTION AND FINANCING OF SEWER UPGRADES (this “Agreement”) is made as of the ___ day of March, 2023 by and between **DEKALB COUNTY, GEORGIA**, a political subdivision of the State of Georgia (the “County”), and **DECATUR EAST PHASE II, LP**, a Georgia limited partnership, with its principal place of business located at 1718 Peachtree Street NW, Suite 684, Atlanta, Georgia 30309 (the “Company”) and together with the County, the “Parties”).

WITNESSETH:

WHEREAS, the Company is undertaking the construction and development of an 80-unit age-restricted multifamily residential housing apartment complex to be known as Decatur East Phase II (the “Project”) located at 515 E. Freeman St., Decatur, DeKalb County, Georgia 30030 (the “Project Site”); 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; and

WHEREAS, the County has previously adopted Section 25-177 of the Code of DeKalb County, as revised 1988 (hereinafter “Code”), 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 the Company’s use, the County’s Department of Watershed Management and/or its contractors have agreed to complete the Improvements and the Company has agreed to make a contribution towards the Improvements in the amount of \$97,000 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 contemplated herein;

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 hereby agree and consent to the following:

- Improvements**. The County, through its Department of Watershed Management and/or its contractors, agrees to upgrade and expand certain portions of the existing sanitary sewer infrastructure and lines servicing the Project Site from the candidate areas impacted by the Project (the “Improvements”) to accommodate additional discharge of water into the County’s current sewer system from the construction of the Project. The Improvements, once completed, shall generate 44,400 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. **Completion of Improvements and Relevant Times.** In recognition of the imposed placed-in-service requirement for the Project no later than December 31, 2024, the resulting necessity to complete the construction and installation of the Improvements before then, and the possible severe consequences, including, but not limited to, the loss/recapture of low-income housing tax credits awarded to finance the Project and the loss of \$15,000,000 in equity acquired to construct Project, for failing to meet the placed-in-service requirement with respect to the Project, the County agrees that the Improvements will be designed, constructed and operational no later than November 1, 2023 (the “Completion Date”) unless this Agreement is terminated as provided herein or the Completion Date is extended by a written agreement executed by the Parties.

The County’s approval of Company’s request for sewer capacity 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.

3. **Allocation of Cost.**

- a. The County shall pay all costs associated with the design, construction and installation of the Improvements. It is anticipated the total cost of the design, construction and installation of the Improvements (the “Cost of Improvements”) will be \$194,000.

- b. 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 of \$97,000.
- c. In no event shall the Company's Contribution, exclusive of any interest as defined in Section 3(e) of this Agreement, exceed \$97,000.
- 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:

Decatur East Phase II, LP
c/o Christina Davis
1718 Peachtree Street NW
Suite 684, Atlanta GA 30308
- e. In the event the Company's Contribution is more than thirty (60) days past due, the County may:
 - 1) charge 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,
 - 2) refuse to allow 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 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. Sewer Credits. Any sewer capacity credits created are non-transferable by the Company unless the proposed transfer is to an affiliate of Company operating the Project 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.

6. Termination. The Company may, for its own convenience, elect to terminate this Agreement by delivering to the County a written notice of termination specifying the effective date of termination (the "Termination Date"). Such written notice of termination shall be provided to the County at the following address:

Department of Watershed Management
Planning & Development Division
178 Sams Street, Building 1, A2600
Decatur, GA 30030

The written notice of termination shall be delivered to the County at least thirty (30) days prior to the Termination Date. In the event the Company terminates this Agreement as provided herein before the completion of the Improvements, the Company agrees to reimburse the County as follows:

- 1) Where the Company terminates this Agreement before May 1, 2023, the Company's Contribution shall be adjusted to \$0.
- 2) Where the Company terminates this Agreement after May 1, 2023, the Company's Contribution shall be adjusted to reflect 50% of the actual costs incurred by the County in furtherance of the construction and installation of the Improvements from the date of this Agreement through the Termination Date.

Where the Company exercises its termination right under this section, the County's approval of Company's request for sewer capacity will terminate. The sewer capacity request process will be reinstated and the Company will be required to submit a new request for capacity for review and approval.

7. Miscellaneous.

- a. The recitals above are incorporated herein as if fully forth in this Agreement.
- b. The 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.
- c. 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.
- d. The 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 Company.
All Parties must sign any amendments to the Agreement.

- e. 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.
- f. 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.

- g. 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.
- h. This Agreement may be signed in any number of counterparts, each of which shall, for all purposes constitute one and the same agreement.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement as of the date and year first above written.

COUNTY:

DEKALB COUNTY, GEORGIA

By: _____
Michael L. Thurmond
Chief Executive Officer
DeKalb County, Georgia

ATTEST:

Barbara H. Sanders, CCC
Clerk of 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

[Signatures Continue on Following Page]

COMPANY:

DECATUR EAST PHASE II, LP,
a Georgia limited partnership

By: Decatur East Phase II Partners, LLC,
a Georgia limited liability company
Its: General Partner

By: New Columbia Residential, LLC,
a Georgia limited liability company
Its: Managing Member

By: _____
Carmen Chubb, President