

After recording return to:

Gwinnett County Law Department

## **DEVELOPMENT PARTICIPATION AGREEMENT**

**GWINNETT COUNTY, GEORGIA**

THIS DEVELOPMENT PARTICIPATION AGREEMENT (hereinafter, the "Agreement") is made this 15<sup>th</sup> day of Aug, 2017, by and between **GWINNETT COUNTY, GEORGIA**, a body corporate and politic and a political subdivision of the State of Georgia (hereinafter referred to as "Gwinnett County"), the **GWINNETT COUNTY WATER & SEWERAGE AUTHORITY**, a body corporate and politic and a political subdivision of the State of Georgia (hereinafter referred to as the "WSA") and **ACM SATILLA LN V, LLC**, a limited liability company organized under the laws of the State of Delaware and authorized to do business in Georgia, (hereinafter, "ACM Satilla"). Gwinnett County, the WSA and ACM Satilla may be referred to collectively as the "Parties." Gwinnett County and the WSA may be referred to collectively as the "Utility."

### **RECITALS**

WHEREAS, the WSA owns sewer facilities used to provide sewer service within the County, including but not limited to permanent sewer easements, manholes, gravity lines, force mains, sewer pump stations and other appurtenant facilities;

WHEREAS, Gwinnett County operates the sewer facilities and appurtenances owned by the WSA to provide sewer service to the public for compensation; and

WHEREAS, by Warranty Deed recorded on October 30, 2016, in Deed Book 53949, Page 784, Official Records of the Clerk of the Superior Court of Gwinnett County (hereinafter, the "Records"), ACM Satilla acquired certain real property located at Brown Road in unincorporated Gwinnett County and further identified as Tax Parcel Identification Number ("PIN") 7143 010, containing approximately 83.26 acres of land, (hereinafter, the "Property"); and

WHEREAS, the Parties have agreed that each of them will work together in good faith to construct a pump station and force main (the "Project") to provide sewer service to the Property; and

WHEREAS, ACM Satilla has requested, and Gwinnett County and the WSA have agreed to enter into this Agreement to obtain and to grant to the WSA certain non-exclusive permanent utility easements for the purposes of locating, maintaining, operating repairing, and replacing sanitary sewer lines and related appurtenances, along the alignment of the Project, subject to certain reservations, restrictions and agreements as set forth herein; and

WHEREAS ACM Satilla and the Utility have determined that building a gravity sewer line to serve the Property is highly unlikely due to topography and geological features so that any sewer pump station that may be required to be built to serve the Property will likely be maintained by the Utility for the duration of the station's useful life.

## **TERMS AND CONDITIONS**

For good and valuable mutual consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows.

### **I. Recitals**

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

### **2. Obligations of ACM Satilla.**

Except for the Obligations of the Utility as set forth in Paragraph 3 below, ACM Satilla shall be solely responsible for all costs of the Project, including but not limited to:

- a. Design, Plans and Specifications. ACM Satilla shall pay all costs to design the Project, including but not limited to the preparation of the Plans and Specifications for the Project, which shall comply with the "Developer Pump Station Standards" (hereinafter, the "Manual") adopted by the Gwinnett County Department of Water Resources in January 2014 and available on Gwinnett County's website; and
- b. Permits. ACM Satilla shall at its sole expense obtain all governmental approvals, licenses and permits as may be required to build the Project whether from Gwinnett County, the State of Georgia or the United States of America; and
- c. Right of Way.
  - i. ACM Satilla shall at its sole expense acquire all right of way for the Project including, but not limited to, all real estate rights, whether in fee simple or in permanent sewer easements, temporary construction easements or rights of entry from all property owners along the alignment for locating, constructing, installing, maintaining, operating, repairing, and replacing sanitary sewer lines and related appurtenances as may be necessary to design or build the Project;
  - ii. ACM Satilla shall at its sole expense and subject to the approval of the Utility, locate, dedicate a permanent access easement right of way and construct to the standards required by the Utility an access easement from a public right of way to the site of any sewer pump station that may be built on the Property in accordance with this Agreement; and

- d. Future Pump Station Operation and Maintenance Costs. ACM Satilla shall pay the Utility the future operation and maintenance fee for the pump station as outlined in the Gwinnett County 2015 Water and Sewer Rate Resolution (GCID Number 2014-1326); and
- e. Construction of the Project. ACM Satilla shall at its sole expense be responsible for construction of the Project; and
- f. Costs, overruns, changes. ACM Satilla shall pay all costs of the Project, including overruns and change orders.

### **3. Obligations of the Utility.**

The pump station phase-out charges shall be waived for the Property due to the unlikely potential for future pump station decommissioning. Both the Utility and ACM Satilla conducted extensive evaluations of gravity sewer alternatives, in lieu of a pump station, and gravity sewer was determined to be impracticable.

### **4. Reservation of Rights.**

Gwinnett County reserves the right to utilize all real estate rights acquired for the Project for any and all purposes not inconsistent with the property rights herein obtained.

### **5. 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.

### **6. Provision of Sewer Service to the Property.**

After the Project is completed, ACM Satilla may obtain sewer service to the development constructed on the Property subject in all instances to payment by ACM Satilla of the Utility's then-current connection fees and sewer system development charges for each connection that is made to the Utility's sewer system.

### **7. Entire Agreement.**

This Agreement constitutes the entire agreement between ACM Satilla with Gwinnett County and the WSA 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 Property or the Project, 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, the Property or the Project.

**12. Controlling law, Venue.**

This Agreement was made and shall be performed in Gwinnett County, Georgia, and shall be construed and interpreted under the laws of the State of Georgia. Venue to enforce this Agreement 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.**

Only a writing signed by each of the Parties may modify this Agreement.

**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.**

(a) Any notice or documentation must be sent to ACM Satilla LN V, LLC at:

ACM Satilla LN V, LLC  
C/O Satilla Capital Partners  
Attn. Mr. Paxton Griffin  
1720 Peachtree Street Suite 405  
Atlanta, Ga 30309  
(404) 260 0701

(b) Any notice or documentation must be sent to Gwinnett County at:

Gwinnett County Administrator  
Gwinnett Justice and Administration Center  
75 Langley Drive  
Lawrenceville, Georgia 30046

With a copy to:  
Gwinnett County Attorney  
Gwinnett Justice and Administration Center  
75 Langley Drive  
Lawrenceville, Georgia 30046

(c) Any notice or documentation must be sent to the WSA at:

Chairman  
Gwinnett County Water and Sewerage Authority  
684 Winder Highway  
Lawrenceville, Georgia 30045

With a copy to:  
Director  
Department of Water Resources  
684 Winder Highway  
Lawrenceville, Georgia 30045

(d) Notice via email is acceptable only as an additional method of notice to either regular or certified mail.

(e)

IN WITNESS WHEREOF, this Agreement has been signed, sealed and delivered by the parties on the date above written.

Signed, sealed and delivered in the presence of:



Unofficial Witness

  
Notary Public

[Notarial Seal]



ACM SATILLA LN V, LLC, a Delaware limited liability corporation

BY: Satilla Capital Partners

By:   
Paxton Griffin

Managing General Partner

Signed, sealed and delivered in the presence of:

Shia M. King  
Unofficial witness

GWINNETT COUNTY, GEORGIA

Charlotte J. Nash  
CHARLOTTE J. NASH, Chairman  
BOARD OF COMMISSIONERS

Debbie Graham Savage  
Notary Public  
[Notarial seal]  


ATTEST:

Debbie Graham Savage  
County Clerk  
(County Seal)  


Approved as to Form:

Jonell Stubb  
Senior Assistant County Attorney

Signed, sealed and delivered in the presence of:

Linda Benedict  
Unofficial witness

GWINNETT COUNTY WATER AND SEWERAGE AUTHORITY

By: H.S. Randall III  
H.S. Randall III, Chairman

Donna C. Boep  
NOTARY PUBLIC  
[Notarial seal]

Attest: Larry Genn  
LARRY GENN, P.E., Secretary

Approved as to Form:

William B. Brown  
Attorney