

PREPARED BY AND RETURN TO:

McMICHAEL & GRAY, PC
2055 N. BROWN RD SUITE 250
LAWRENCEVILLE GA 30043-4920
FILE #: CONST-

CROSS REFERENCE:

Development Agreement at Deed Book 3426, Page
338, Bartow County, Georgia records.

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this "*Amendment*") is made and effective on the ____ day of _____, 2023 ("*Amendment Effective Date*") by and between THE CITY OF CARTERSVILLE, GEORGIA, a municipal corporation of the State of Georgia ("*City*") and SDH Atlanta LLC, a Georgia limited liability company ("*Developer*"), and JACKSON FARM 106, LLC, a Delaware limited liability company ("*Owner*"). The City and Developer are sometimes referred to collectively as the "*Parties*" or individually as a "*Party*".

WITNESSETH:

WHEREAS, the Parties previously entered into that certain Development Agreement with an Effective Date of December 16, 2021 and recorded in Deed Book 3426, Page 338, Bartow County, Georgia records (the "*Agreement*") for the terms upon which the Developer could develop its proposed project with approved variance conditions and to provide for payment and performance bonds; and

WHEREAS, the Parties desire to modify the Agreement as further set forth herein, and Owner as the vested title holder of the Property for which the Developer is improving agrees and consents to this Amendment.

AMENDMENT:

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. The Parties acknowledge and agree that the recitals set forth above are true and correct to the best of their knowledge, information, and belief and that these representations are material terms of this Amendment.
2. All capitalized terms defined in the Agreement shall have the same meaning when used in this Amendment.

3. Section 2.03.4 and Exhibit “B”(4) of the Agreement is amended to provide that Developer shall be granted six (6) additional months from the Amendment Effective Date ending at 11:59 pm, Eastern Time to complete the road topping for all interior roads beginning from STA 0-40 on Silo Drive. Developer will complete the interior roads in phases as follows:

- a. Developer will complete the base, binder, and topping of Phase 2, Unit 1 as reflected on Exhibit 1 prior to the approval of the final plat of Phase 2, Unit 1 by the City.
- b. Additionally, Developer will complete the road topping for Phase 1, Unit 1 as reflected on Exhibit 2 and Phase 1, Unit 2 as reflected on Exhibit 3 prior to the approval of the final plat of Phase 2, Unit 1 by the City.

4. Section 2.03.8 is added to the Agreement and provides that “as to any future or additional phases not otherwise addressed herein, the Developer shall complete the base, binder, and topping of the roads prior to the final platting of any new phase.”

5. Section 2.03.5 and Exhibit “B”(5) of the Agreement is amended to provide that “the Developer shall within 3 months from the date this Amendment is approved by both Parties shall submit plan revisions for the sidewalks along the frontage of Mission Road and said sidewalks shall be completed within ninety (90) days after the City’s approval of said submission and the City’s gas line and gas main relocation.”

6. Section 2.03.7 and Exhibit “B”(7) of the Agreement is amended to provide that, “notwithstanding the foregoing or any other term contained herein, the Parties agree that all variances granted pursuant to the Agreement shall be extended, renewed, and remain in full force and effect for six (6) additional months from the Amendment Effective Date until 11:59 pm, Eastern time or the time otherwise provided for in the Agreement, whichever is **later**.”

7. Section 2.03.2(f) and Exhibit “B”(2) of the Agreement is amended to include the following: “notwithstanding the foregoing or any other term contained herein, the Parties agree that all payment and performance bonds under the Agreement shall be extended, renewed, and remain in full force and effect for six (6) additional months from the Amendment Effective Date until 11:59 pm, Eastern time or the time otherwise provided for in the Agreement, whichever is **later**.”

8. Section 3.01 of the Agreement is amended to include the following, “notwithstanding the foregoing or any other term contained herein, the City agrees that all permits issued pursuant to the Agreement shall be extended, renewed, and remain in full force and effect for six (6) additional months from the Amendment Effective Date until 11:59 pm, Eastern time or the time otherwise provided for in the Agreement, whichever is **later**.”

9. Section 4.08 of the Agreement is amended to change the address for Notices for Developer as follows:

SDH Atlanta LLC
Attn: Scott Bowles
110 Village Trail
Suite 215
Woodstock, GA 30188
sbowles@smithdouglas.com
bstele@smithdouglas.com

With a copy to:

McMichael & Gray, P.C.
Attn: Randy McMichael
Attn: Nathan Byerly
2055 North Brown Rd NW
Suite 250
Lawrenceville, GA 30043
randy@mcmichaelandgray.com
nathan@mcmichaelandgray.com

10. Section 4.13 is hereby added to the Agreement and provides as follows: “the date for Developer’s performance obligations under the Agreement shall be automatically extended pro rata for the time Developer and/or its agents, contractors, subcontractors, employees, materialmen, or suppliers are prevented by causes beyond Developer’s control from performing. Such causes beyond Developer’s control include by way of illustration but are not limited to: (i) the unavailability of materials or supplies, (ii) fire, (iii) inclement weather, (iv) acts of God, (v) civil unrest, strikes, riots, lockouts or other labor disputes, (vi) differing or unexpected site conditions, (vii) casualties, (viii) changes in government regulations, (ix) increases in cost of materials or labor, (x) acts or delays of the City, governmental, administrative, or licensing agencies or authorities or their employees, (xi) government moratoria, (xii) declarations of war or national emergencies, or (xiii) delays occasioned by an epidemic, pandemic, or public health emergency (including but not limited to the Corona Virus, Covid-19, flu, disease, infection, contagion, bacteria, and all variations, strains, and mutations of the same). Provided however that Developer shall give City notice of these delays.”

11. This Amendment has been negotiated by the Parties and represents their mutual agreement; moreover, both Parties are sophisticated and have had the right to consult independent counsel of their choosing to advise them of the terms of this Amendment. Accordingly, no rule requiring contracts or terms be construed against the drafter shall apply to the terms of this Amendment.

12. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original and all of which, collectively, shall be one and the same instrument.

13. Except as amended herein, all terms and provisions of the Agreement, shall remain unmodified and in full force and effect. To the extent of any inconsistency between the Agreement and this Amendment, this Amendment shall control and prevail.

Signatures appear on the following page.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed on the Amendment Effective Date.

Signed, sealed, and delivered in the presence of:

CITY:

THE CITY OF CARTERSVILLE, of the County of Bartow, a political subdivision of the State of Georgia

Unofficial Witness

By: _____ (SEAL)
Matthew Santini in his capacity as Mayor of the City of Cartersville, Georgia

Notary Public

Attest: _____ (SEAL)
By: Julia Drake in her capacity as the Clerk of the City of Cartersville, Georgia

My commission expires:

[NOTARY SEAL]

[AFFIX CITY'S SEAL]

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed on the Amendment Effective Date.

Signed, sealed, and delivered in the presence of:

DEVELOPER:

SDH Atlanta LLC
a Georgia limited liability company

Unofficial Witness

By: _____ (SEAL)

Name: _____

Its: _____

Notary Public

My commission expires:

[NOTARY SEAL]

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF CARTERSVILLE, GEORGIA, A MUNICIPAL CORPORATION OF THE STATE OF GEORGIA (“**CITY**”) AND SDH ATLANTA LLC, A GEORGIA LIMITED LIABILITY COMPANY (“**DEVELOPER**”), AND JACKSON FARM 106, LLC, A DELAWARE LIMITED LIABILITY COMPANY (“**OWNER**”) FOR JACKSON FARM SUBDIVISION IS CONSENTED TO AND APPROVED BY OWNER, THIS ___ DAY OF _____, 20____.

IN WITNESS WHEREOF, the Owner has caused this Amendment to be executed on the date listed above.

Signed, sealed, and delivered in the presence of:

OWNER:

JACKSON FARM 106, LLC
a Delaware limited liability company

Unofficial Witness

By: Builder Capitol, LLC
a Delaware limited liability company
Its: Manager

Notary Public

By: Arizona Crows Next Ventures, LLC
an Arizona limited liability company
Its: Manager

My commission expires:

[NOTARY SEAL]

By: _____ (SEAL)
Name: William Southworth
Its: Sole Member