

AGREEMENT

This Agreement is made effective as of the _____ day of _____, 2024, by and between the City of Cartersville (“City”), Manor Restorations, LLC (“Owner”) and Ashton Atlanta Residential, L.L.C. (“Developer”).

RECITALS:

WHEREAS, Developer is developing the project known as the Leakes Walk at Walnut Grove; and

WHEREAS, Developer’s civil engineering team, Goodwyn Mills Cawood, is coordinating sewer improvements for a development known as Leakes Walk at Walnut Grove; and

WHEREAS, an approximately 50-year-old, 1,540 linear foot segment of 36" concrete public sanitary sewer line traverses the property of interest from the intersection of Cummings Road and Milner Road to the southern boundary of the City's wastewater treatment plant; and

WHEREAS, said sewer line serves a significant portion of the City of Cartersville and due to the age of the sewer line and its importance to the City, the City has concerns regarding the effect that additional pressure will have on the sewer line caused by construction equipment during the development of the property. They also have concerns about the placement of fill soils deemed necessary to develop the site that will add up to four feet of cover above the sewer line; and

WHEREAS, Developer’s civil engineering firm, Goodwyn Mills Cawood, has prepared a plan that indicates the proposed site improvements around the sewer line, and the City has indicated the plan is acceptable. Copies of said site improvements and charts are attached hereto as Exhibit “A” and incorporated herein by reference; and

WHEREAS, due to the concerns of the City, the parties agree to the terms listed below

NOW, THEREFORE, for and in consideration of \$10.00 and other mutual promises, the receipt and sufficiency of which are hereby received, the parties agree as follows:

1. The easement around the sewer line will be expanded from 20 feet to 60 feet wide, and the easement will not be centered on the sewer line. The easement will not interfere with proposed lot lines or utilities

2. No new manholes will be proposed along the existing storm line, and no new manholes will be located within the expanded easement. Proposed sewer lines connecting to existing manholes are permitted within the easement.

3. Water, storm, power, and telecommunication service lines are permitted, in general, but will need to be reviewed for compliance, to cross over the existing sewer line to allow dry and wet utility access to the entire development.

4. The proposed storm line which will re-route the existing agricultural ditch running will not fall within the sewer easement. The existing offsite storm line under Cummings Road near the intersection of Milner Road that outfalls onto the site will not be adjusted. The existing culvert beneath what will be Riverscape Parkway that allows storm water to flow into the stream on site will not be adjusted in location or elevation.

5. The zone of influence will be measured from the outer edge of the trench box up to the proposed grade at 45 degrees. The trench will be 4 feet in width and measured 6" below the bottom of the pipe. No permanent structures will be proposed within the zone of influence.

6. A maximum of 4 feet of compacted fill will be added on top of the existing sewer line within the property limits.

7. In the two locations where the proposed road crosses the existing sewer line, an at grade concrete bridge extending the width of the road at the crossing will be provided above the existing sewer line to relieve daily traffic and maintain access for the city.

8. Only lightweight equipment and equipment traffic will be used within the expanded sewer easement limits for filling and compaction activities. No vibratory compaction measures will be used within the sewer easement limits.

9. Fencing will be provided along the sewer easement throughout construction and construction traffic will be limited over the existing sewer line as much as feasibly possible

10. The Owner and Developer will take full responsibility for the collapse or any damage caused by its operation in, over, or near the existing trunk sewer. If the existing sewer line is damaged during construction, the sewage will be temporarily pumped around the affected area and the line will ultimately be replaced with a 36" ductile iron pipe. The cost estimate for work is agreed upon between the development team and the City to be approximately \$1,044,051.33. A performance and maintenance bond must be provided which will include a ten (10%) contingency, which puts the final bond amount at approximately \$1,150,000.00, which bond is required during the construction of both Phase 1 and Phase 2 of the project and eighteen (18) months after completion of construction of both Phase 1 and Phase 2. If the bond amount is inadequate to pay for any repairs, the developer shall pay for the remaining amounts due. A repair if needed it will only be in the section between 2 manholes and not the entire length of pipe unless the pipe is damaged in both sections.

11. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth on the first page of this Agreement, or at such other address as has been previously

furnished in writing to the other party or parties. Such notice shall be deemed given when deposited in the United States mail.

12. Any and all exhibits referred to in this Agreement are, by reference, incorporated herein for all purposes.

13. The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

14. This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.

15. Time is of the essence. If any payment or any other condition, obligation, or duty is not timely made, tendered or performed by either party, then this Agreement, at the option of the party who is not in default, may be terminated by the non-defaulting party, in which case, the non-defaulting party may recover such damages as may be proper. If the non-defaulting party elects to treat this Agreement as being in full force and effect, the non-defaulting party shall have the right to an action for specific performance or damage or both.

16. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

17. This Agreement shall be governed by the laws of the State of Georgia, and venue and jurisdiction for any disputes shall be, the Bartow County Superior Court.

18. This Agreement shall inure to the benefit of, and be binding upon, the parties, their respective legal representatives, successors, heirs, and assigns; provided, however, that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.

19. During the entire duration of this Agreement, Owner and Developer must remain in compliance with Georgia Security and Immigration Compliance Act of 2007 and Georgia code § 13-10-91 and § 50-36-1.

20. Owner and Developer shall be required to be registered for and comply with Federal E-Verify requirements and the requirements of the Georgia Security and Immigration Compliance Act, O.C.G.A. § 13-10-91. Owner and Developer shall submit the required affidavit promulgated by the Georgia Department of Labor to affirm its compliance. "E-Verify" is an internet-based employment eligibility verification program, operated by the U.S. Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA), that allows

employers to electronically verify through an online government database the work eligibility of newly hired employees. E-Verify is administered by U.S. Citizenship and Immigration Services (USCIS).

21. Owner and Developer expressly agree to indemnify and hold harmless the City or any of its officers or employees from any and all claims, damages, liability, or court awards including attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including, but not limited to, any person, firm, partnership, or corporation, in connection with or arising out of any omission or act of commission by Owner or Developer or any of their employees or agents in performing work pursuant to this Agreement. In the even that any such suit or action is brought against the City, the City will give notice thereof to Owner and Developer.

22. Owner and Developer shall at their own expense keep in full force and effect during the term of this Agreement Statutory Worker's Compensation Insurance.

23. Owner and Developer shall not subcontract any task it is to perform under the terms of this Agreement without prior written consent of the City

24. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City, Owner and Developer, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the parties that any person other than the City, Owner or Developer receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

25. This Agreement may be executed in counterparts, and each counterpart shall constitute an original.

Signed, sealed and delivered
in the presence of:

Witness

Notary Public

My Commission Expires:

[NOTARY SEAL]

CITY OF CARTERSVILLE, a Municipal
corporation of the State of Georgia

By: _____
Matthew J. Santini, Mayor

Attest:

By: _____
Julia Drake, City Clerk

MANOR RESTORATIONS, LLC

Signed, sealed and delivered
in the presence of:

Witness

By: _____
Bernie Smith, Member/Manager

Notary Public

By: _____
Ruthie Smith, Member/Manager

My Commission Expires:

[NOTARY SEAL]

Signed, sealed and delivered
in the presence of:

(Developer Proper Corporate Entity Name)

Witness

By: _____
Signature

Notary Public

Print Name: _____

Title: _____

My Commission Expires:

[NOTARY SEAL]