

STATE OF GEORGIA        )  
  )  
COUNTY OF BARROW     )

**AGREEMENT FOR RESERVED  
SEWER TREATMENT CAPACITY**

**THIS AGREEMENT FOR RESERVED SEWER TREATMENT CAPACITY** ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, by and between **BARROW COUNTY**, a political subdivision of the State of Georgia (the "County"), and \_\_\_\_\_ (the "Developer").

**WITNESSETH:**

**WHEREAS**, the Barrow County Board of Commissioners is committed to ensuring the continuation of quality growth and development in Barrow County and supplying adequate sewer service to support such growth and development;

**WHEREAS**, the County maintains a system for reserving sewer capacity in order to provide predictability for developers, to allow the County to forecast future need for sewer services, and to allow the County to fund facilities needed to provide such services;

**WHEREAS**, the County desires to sell and reserve to Developer, and Developer desires to reserve and purchase from the County, a certain amount of sewer treatment capacity as set forth herein; and

**WHEREAS**, the County has authority to enter into this Agreement pursuant to the provisions of Article 9, Section 2, Paragraph 3 of the Georgia Constitution.

**NOW, THEREFORE**, for mutual consideration and the covenants hereinafter set forth, the sufficiency of which is hereby acknowledged, the County and Developer, intending to be legally bound, agree as follows:

1.     RESERVED SEWER CAPACITY. Developer is constructing a development known as \_\_\_\_\_ (the "Development"). The Development is proposed to be located on real property (the "Property") located at the following address: \_\_\_\_\_, identified as Barrow County Tax Parcel Number \_\_\_\_\_. The Development will require sewer capacity on or after the following date: \_\_\_\_\_ (the "Reservation Date"). The County does hereby reserve to Developer a total of \_\_\_\_\_ GPD of sewage treatment capacity in the \_\_\_\_\_ sewer plant (herein called the "Reserved Capacity") for the limited purpose of providing sewage treatment for the Development. The Reserved Capacity will be subject to the provisions of the Barrow County Sewer Capacity Allocation Ordinance (the "Sewer Ordinance"), codified at Sec. 90-125 of the Barrow County Code of Ordinances.

2.     CONNECTION TO COUNTY SEWER LINE. Developer shall pay, or cause to be paid, all costs associated with the Developer's sewage collection system to allow the extension of sewage treatment service from the connection point approved by the County on the County's sewer lines to points within the Development, which sewage collection system shall include, but

not be limited to, construction of infrastructure, development of sewer lines, sewer line work, and acquisition of easements necessary to deliver the capacity to the connection point approved by the County. Any public sanitary sewer infrastructure, lines, and/or systems installed, or caused to be installed, by Developer shall be constructed in accordance with all applicable state and local laws, ordinances, regulations and rules and shall be subject to the review and approval of the plans and specifications by the County and subject to inspection and approval by the County of the installation of said infrastructure, lines, and/or systems. Upon completion by Developer and approval by the County of said sanitary sewer infrastructure, lines, systems, and easements according to the County's requirements, such infrastructure, sewer lines, systems, and easements shall be submitted to the County for dedication and, upon acceptance by the County (which shall not be unreasonably withheld), shall become part of the County's sewer system.

3. SERVICE CHARGES. In accordance with the County's regulations and based upon the volume of discharge of sewage from the Development into the applicable sewer treatment facility, the end users of sewer service provided hereunder shall be invoiced on a monthly basis by the water service provider for services rendered at a rate to be determined in the discretion of the County and the water service provider, when applicable, and in accordance with applicable law. Service charges and surcharges may be changed by the County from time to time as determined in the sole discretion of the County, the water service provider, and in accordance with applicable law.

4. PROHIBITION AGAINST INDUSTRIAL DISCHARGE. The Developer, and any successors, assigns, and end users, shall not discharge any industrial waste from the Development into the County sewage treatment system, unless Developer, or its successors, assigns, and end users, have entered into a separate industrial user sewer agreement with the County. For purposes of this provision, "industrial waste" shall mean any waste, sewage, effluent or discharge from a new or existing non-domestic source which is regulated under the federal Clean Water Act, Section 307 (b), (c) or (d), as amended, 33 U.S.C. § 1317 (b), (c) and (d), and any federal, state or local regulations pursuant thereto. Without limiting any of the foregoing, the Developer and any successors, assigns, and end users shall comply with the Barrow County Sewer Use Ordinance, codified at Chapter 90, Article IV of the Barrow County Code of Ordinances.

5. TRANSFER OF RESERVED CAPACITY; EXTENSION OUTSIDE DEVELOPMENT. No portion of the Reserved Capacity shall be sold, transferred, or assigned to any other person or entity without the written consent of the Barrow County Board of Commissioners. Furthermore, no portion of the Reserved Capacity shall be used by Developer or any other person or entity for any development located outside the Development without the written consent of the Barrow County Board of Commissioners. Any attempted assignment of Reserved Capacity without written approval shall be invalid and ineffective. Developer hereby agrees that, upon receiving such written approval to assign the Reserved Capacity or portion thereof, Developer shall indemnify, defend, and hold Barrow County harmless in the event that any individual or entity makes a claim to any right or entitlement in the Reserved Capacity, other than a claim made by Developer's assignee, as such assignee is identified in the written approval. This obligation to indemnify, defend and hold harmless shall include all amounts associated with any adverse claim to the Reserved Capacity. Developer shall also ensure that any individual or entity receiving an assignment of the Reserved Capacity pursuant to this Agreement shall be bound

to the terms and conditions of this Agreement and shall assume the rights and obligations of Developer moving forward; provided that Developer's obligation to indemnify, defend, and hold Barrow County harmless, as such obligations are described herein, shall survive any assignment of this Agreement or transfer of the Reserved Capacity to an assignee.

6. RESERVATION OF EASEMENT FOR FUTURE SEWER LINES. Developer and any successors, assigns, and end users shall reserve on all final plats an easement along all natural drainage areas to the boundaries of the Development for the purpose of running future sewer lines to the County's sewer system. Said easement shall be a minimum of 20 feet and adequate to install said lines. After future sewer lines are installed, easement width may be reduced with the written consent of the County.

7. NO LIABILITY FOR THIRD-PARTY FAILURE. Developer, on behalf of any successors, assigns, and end users, acknowledges and agrees that the County shall have no liability to any owner of the Property for the failure of any third party to do or perform any act, including, without limitation, any failure by a third party to grant the County necessary permits, to pay the cost of installing all or any part of a sewage collection system or to grant an easement upon which Developer may be dependent in order to connect Developer's sewage collection system to the County's sewer system.

8. REPURCHASE. If Developer has failed to begin use of the Reserved Capacity within two years of the date of this Agreement (as evidenced by failure to tap on to the County sewer system) the County may in its sole discretion elect to repurchase the entire Reserved Capacity by providing the Developer notice and opportunity to respond, and thereafter returning the purchase price. If Developer has failed to fully use the Reserved Capacity within four years of the date of this Agreement (as evidenced by fewer than the expected number of tap-ons to the County sewer system), the County may in its sole discretion elect to repurchase any unused Reserved Capacity by providing the Developer notice and opportunity to respond, and thereafter returning the purchase price.

9. STATUS OF DEVELOPMENT; WITHDRAWAL OF SEWER CAPACITY. The County and the Developer understand and agree that due to the limited amount of sewer capacity available to the County, the Developer shall furnish status reports to the County at twelve (12) month intervals from the date hereof and thereafter, showing the status of utilization of the Reserved Capacity until completion. These reports shall be in sufficient detail to show the status of contracts, closings, construction, and occupancy dates. If the Developer has not utilized all of its Reserved Capacity within four (4) years from the date of this Agreement (as evidenced by fewer than the expected number of tap-ons to the County sewer system), the Developer shall have thirty (30) days to notify the County in writing of its intent to retain the remaining unused Reserved Capacity until the next anniversary of the Agreement, and shall notify the County annually thereafter as long as Reserved Capacity remains unused. If the Developer fails to provide the required notice of intent to retain unused Reserved Capacity or fails to respond to the County's notice of intent to repurchase unused Reserved Capacity or any portion thereof (pursuant to Paragraph 8), the County shall provide one written follow-up notification. If the County does not receive a response from the Developer within thirty (30) days after the sending of the follow-up notification, the County may deem any remaining unused Reserved Capacity forfeited, in which

event the Developer shall have no right, title, or interest to such Reserved Capacity and will not be entitled to any refund of the purchase price of the Reserved Capacity.

10. DEVELOPER'S REPRESENTATIVE. Developer shall designate at least one officer or employee to represent it in all matters arising under this Agreement. Such person(s) shall have authority to act for Developer regarding its performance hereunder. Developer shall notify the County in writing of such designation and any subsequent changes to the designated officer or employee. At this time, Developer designates \_\_\_\_\_ as its authorized representative.

11. HEALTH AND SAFETY. Developer shall be responsible for safety and security related to and during the performance of the services contemplated in this Agreement and shall take all measures necessary to ensure that it and its contractors, subcontractors and other persons or firms engaged by or through Developer provide and maintain a safe working environment and properly protect (i) all persons at or in proximity to the services, including those in adjacent locations, from risk of injury and danger to health; and (ii) property and equipment from damage or loss.

12. SCHEDULE OF PERFORMANCE. The parties acknowledge and agree that, as of the date hereof, the County may not have adequate current sewage treatment capacity to provide the Reserved Capacity for treatment, but that the County intends to construct additional treatment capacity to be available by the Reservation Date. Developer understands and acknowledges that due to weather, permitting and other factors outside the County's control, the County may not be able to provide the reserved capacity by the Reservation Date, but the County will use its best efforts to cause the additional capacity to be completed as quickly as possible if not available by the Reservation Date. Notwithstanding the County's inability to make complete assurances as to the timing of availability of capacity to Developer, Developer agrees and acknowledges that it gains a valuable benefit under this Agreement to have capacity reserved for Developer when such capacity is available.

13. CONSTRUCTION OF AGREEMENT. The parties acknowledge that they have read, understand and have had the opportunity to be advised by legal counsel as to each and every one of the terms, conditions, and restrictions of this Agreement, and the parties agree to the enforcement of any and all of these provisions and execute this Agreement with full knowledge of these. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the provision shall not apply a presumption that the terms hereof shall be more strictly construed against any 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 document. This Agreement constitutes the parties' entire agreement and supersedes all prior written and oral understandings of the parties regarding the reservation of sewer capacity for the benefit of the Development. No representation, promise or inducement not included in this Agreement shall be binding upon any party hereto. The parties shall be bound only by the provisions contained herein and by any subsequent modifications agreed to in writing by both parties. If any provision of this Agreement is found to be unenforceable, the parties shall be bound by the remaining provisions of this Agreement in the same manner as if such unenforceable

provision had not been included herein, it being the intention of the parties that all provisions of this Agreement are severable.

14. FORCE MAJEURE. In the event any party to this Agreement is rendered unable wholly or in part by a “force majeure” event to carry out its obligations under this Agreement, other than its obligations to make payments due, then the party affected by the force majeure shall give written notice with explanation to the other party promptly. Following such notice, the effective obligations of the party giving notice shall be suspended, but only during the continuance of the event of force majeure, provided due diligence is demonstrated in seeking remedy to the cause. As used in this paragraph, the term “force majeure” shall mean, acts of God, acts of public enemies, wars, blockades, insurrections, riots, epidemics, landslides, earthquakes, fires, floods, adverse weather conditions in excess of typical weather conditions reasonably anticipated, washouts, civil disturbances, explosions, labor disputes, inability with reasonable diligence to obtain materials and any other cause not within the reasonable control of the party claiming a suspension despite its due diligence, not to include lack of funds.

15. NO WAIVER. The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any terms and conditions of this Agreement, shall not be construed as thereafter waiving such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

16. APPLICABLE LAW AND DISPUTE RESOLUTION. This Agreement shall be interpreted and the rights and obligations of the parties shall be determined in accordance with the laws of the State of Georgia. The parties hereby submit to the exclusive jurisdiction of the Barrow County Superior Court for the purposes of all proceedings arising out of or relating to this Agreement.

17. TERM. This Agreement shall terminate when all rights and obligations of the parties have been satisfied or discharged, or upon repurchase by or forfeiture of all Reserved Capacity to Barrow County consistent with Paragraphs 8 and 9 above, provided however, that the County shall continue beyond the term of this Agreement to provide treatment services to the end users of Reserved Capacity that has not reverted to the County.

18. NOTICE. Any notice required by this Agreement shall be in writing and shall be deemed sufficiently given when personally delivered, sent by Federal Express or similar receipted, overnight courier service billed to sender, or sent by certified mail or registered mail if sent to the addresses of each party as set forth below:

If to the County:  
Barrow County Board of Commissioners  
Attn: County Manager  
30 N. Broad Street  
Winder, GA 30680

If to Developer:  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

19. COUNTERPARTS. This Agreement may be executed in separate counterparts. It shall be fully executed when each party whose signature is required has signed at least one counterpart even though no one counterpart contains the signatures of all parties.

20. SOVEREIGN IMMUNITY. Nothing contained in this Agreement shall be construed to be a waiver of Barrow County's sovereign immunity or any individual's qualified, good faith or official immunities.

21. SUCCESSORS AND ASSIGNS. Subject to the provision of this Agreement regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the respective parties.

22. AUTHORITY TO CONTRACT. The individual executing this Agreement on behalf of Developer covenants and declares that it has obtained all necessary approvals of Developer's board of directors, stockholders, general partners, limited partners or similar authorities to simultaneously execute and bind Developer to the terms of this Agreement.

**[SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the fully authorized officials of Barrow County and the fully authorized officers of Developer have respectively caused this Agreement to be entered into on behalf of Barrow County and Developer and the seals of Barrow County and Developer to be affixed hereto on the date and year first above written.

BARROW COUNTY, GEORGIA

By: \_\_\_\_\_  
Its: County Manager

[COUNTY SEAL]

SIGNED, SEALED, AND DELIVERED  
in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public  
[NOTARY SEAL]  
My Commission Expires:  
\_\_\_\_\_

DEVELOPER

By: \_\_\_\_\_  
Its: \_\_\_\_\_

[SEAL]

SIGNED, SEALED, AND DELIVERED  
in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public  
[NOTARY SEAL]  
My Commission Expires:  
\_\_\_\_\_