

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is entered into this _____ day of _____, 2016 between **SCP ACQUISITIONS, LLC**, a Georgia Limited Liability Company (hereinafter referred to as “**South City**”), and the **CITY OF AVONDALE ESTATES, GEORGIA**, a Georgia Municipal Corporation (hereinafter referred to as the “**City**”). South City and the City may hereinafter be referred to collectively as the “Parties” and individually as a “Party.”

WITNESSETH

WHEREAS, South City either owns or has contracted to acquire certain real property comprised of 3.18 acres located in Land Lot 248 of the 15th District of DeKalb County, the City of Avondale Estates, Georgia and as more particularly described by **Exhibit “A”** and incorporated herein and by this reference made a part hereof (the “**Overall Property**”); and

WHEREAS, in keeping with that certain Downtown Master Plan for the City of Avondale Estates updated March 20, 2014, and adopted by the City as a planning document (the “**Downtown Master Plan**”), South City intends to re-develop the Overall Property as a mixed use development in conformance with the terms of this Agreement and in material conformance with **Exhibits “B” through “O”** attached hereto (collectively, the “**Project Plans**”), such Exhibits “B” through “O” being incorporated herein and by this reference made a part hereof; and

WHEREAS, in accordance with the Project Plans, South City intends to (i) develop a park (the “**Public Park**”) upon the western portion of the Overall Property, as more particularly described on **Exhibit “P”** attached hereto and incorporated herewith (the “**Park Property**”), and (ii) upon completion of the Public Park, convey the Park Property to the City; and

WHEREAS, the remaining portion of the Overall Property that does not constitute the Park Property shall be referred to herein as the “**Subject Property**” and the improvements to be constructed on the Subject Property shall be referred to herein as the “**Project**”; and

WHEREAS, South City may desire to sell or convey a portion of the Subject Property to a third party and the Parties agree that, unless this Agreement is terminated or amended in accordance with the terms hereof, any subsequent owner of any portion of the Subject Property will be bound by the terms hereof; and

WHEREAS, the City has adopted that certain Ordinance Number 0605 (the “**Zoning Ordinance**”) which establishes certain zoning requirements with respect to the City’s Central Business District (as defined in the Zoning Ordinance); and

WHEREAS, the Subject Property lies within the City’s Central Business District; and

City _____
South City _____

WHEREAS, the Parties desire to agree on certain site-specific development controls that will apply to the Project and those agreements are set forth herein.

NOW, THEREFORE, in consideration of ten dollars in hand paid, other valuable consideration, and the mutual promises and agreements herein set forth, the parties hereto agree as follows:

1. **Recitals.** The above stated recitals are hereby incorporated into and made a part of this Agreement.
2. **Exemption of Project from Certain City Zoning Ordinance Provisions.**

The Project Plans include certain improvements that may not strictly comply with those certain articles and sections of the Zoning Ordinance identified below in Part B of this Section 2 (collectively, the “**Exempt Zoning Requirements**”). The Parties agree that, subject to Section 9(g) below, so long as the Project is developed in material conformance with the Project Plans, attached hereto as Exhibits “B” through “O” and listed below in Part A of this Section 2, the Subject Property and the Project are exempt from and are not required to comply with the Exempt Zoning Requirements. The City represents and warrants to South City that it has full power and authority to enter into this Agreement and enforce all the terms and provisions set forth herein. Furthermore, the City represents and warrants to South City that it has complied with all public processes, public hearings, and other applicable laws, regulations, and requirements necessary to authorize the City to enter into this Agreement, exempt the Subject Property and the Project from the Exempt Zoning Requirements, and enforce all the terms and provisions set forth herein.

A. Project Plans for the Project:

Exhibit B – The Site Plan (SP-01)

Exhibit C – The Sams Crossing perspective detailed elevation drawing (AR-06)

Exhibit D – The Hillyer Avenue perspective detailed elevation drawing (AR-05)

Exhibit E – The South/West perspective detailed elevation drawing (AX-07)

Exhibit F – The South/East perspective detailed elevation drawing (AX-08)

Exhibit G – Overall Elevations of Sams Crossing/Park and East College Avenue (U.S. 278) (A4-00A)

Exhibit H – Overall Elevations of Hillyer Avenue and Railroad (A4-00B)

Exhibit I – Sams Crossing Material Board

Exhibit J – Hardscape Plan (L1.0)

Exhibit K – Hardscape Plan (L1.1)

Exhibit L – Tree Protection Plan (L1.3)

Exhibit M – Landscape Plan (L1.4)

Exhibit N – Site Plan (Sheet 4)

Exhibit O – Grading Plan (Sheet 5)

B. Exempt Zoning Requirements:

- i. **Article 7** (“General Provisions”). Subject to Section 9(g) below, so long as the Project is developed in material conformance with the Project Plans, the Project is exempt from and is not required to comply with Article 7 of the Zoning Ordinance in its entirety.
- ii. **Article 11** (“District Development Standards”). Subject to Section 9(g) below, so long as the Project is developed in material conformance with the Project Plans, the Project is exempt from and is not required to comply with Article 11 of the Zoning Ordinance, except the following Sections of Article 11, which shall apply to the Project:
 - a. Article 11, Section 1113.05(I)(B)(1 and 2) regarding Open Space implementation and maintenance,
 - b. Article 11, Section 1113.06(I)(E) regarding placing utilities underground,
 - c. Article 11, Section 1113.08(II) regarding loading and screening,
 - d. Article 11, Section 1113.09(I)(C)(12) regarding parking facility illumination, and
 - e. Article 11, Section 1113.10(B and C) regarding storefront illumination and lighting;
- iii. **Article 12** (“Development Standards”). Subject to Section 9(g) below, so long as the Project is developed in material conformance with the Project Plans, the Project is exempt from and is not required to comply with Article 12 of the Zoning Ordinance except the following Sections of Article 12, which shall apply to the Project:
 - a. Article 12, Section 1201(VIII) regarding fire safety,

- b. Article 12, Section 1201(IX) regarding outdoor storage, and
- c. Article 12, Section 1204 (I and II) regarding parking areas.

3. Applicability of City Ordinances to the Project.

The Parties expressly agree that, except as otherwise expressly provided herein, all applicable City ordinances shall remain in full force and effect and the Project and Subject Property shall be governed by all such applicable City ordinances. Notwithstanding anything set forth in this Agreement or in any ordinance that is applicable to the Subject Property to the contrary, so long as the Project is developed materially in accordance with the terms of this Agreement, the zoning conformance status of the Project shall be deemed to be legally conforming in all respects.

4. Casualty or Condemnation.

In the event that all or any portion of the improvements to the Subject Property are substantially damaged by fire or other casualty or condemned, the owner of the Subject Property shall have the right to rebuild a new development on the Subject Property, and the improvements to be re-built (the “**New Project**”) shall be exempt from the Exempt Zoning Requirements and shall be deemed to be legally conforming in all respects so long as (a) the number of units in the New Project is the same or fewer than the number of units set forth in the Project Plans, (b) the building height of the New Project is the same or lower than the building height set forth in the Project Plans, and (c) the unit size of the New Project is the same or similar to the unit size set forth in the Project Plans. Provided however, that the plans and specifications related to the exterior design aesthetic of the New Project must be submitted to the City’s Architectural Review Board and approved before building permits for the New Project will be issued. For purposes of this Section 4, the improvements to the Subject Property shall be deemed to be substantially damaged by fire or other casualty or condemned if (i) the portion of the Subject Property that is damaged or destroyed has a cost of repair that is in excess of ten percent (10%) of the cost to construct the Project, as reasonably determined by South City, or (ii) the portion of the Subject Property that is condemned has a value in excess of ten percent (10%) of the cost to construct the Project, as reasonably determined by South City or such condemnation proceeding results in a violation of laws and/or applicable regulations.

5. Special Provisions.

In consideration of the mutual promises and covenants set forth herein, subject to Section 9(g) below, South City agrees to develop the Project in material conformance with the following special conditions, which the Parties recognize are not generally applicable to other developments within the City:

- A. Multi-family units: The Subject Property is permitted to include no more than 205 residential units. Such units must average at least 855 square feet per unit.

- B. Combination of Lots: As a pre-condition to obtaining any land disturbance permit for the Project, the Overall Property shall be combined into a single lot and a lot combination plat evidencing such single combined lot shall be recorded in the DeKalb County property records.
- C. Streetlights. All streetlights for the Project shall be 150w HPS King Luminaire Post-Top light fixtures on 12 foot mounting height Stresscrete fluted poles.

6. Permitted Uses for the Project.

The Parties recognize and acknowledge that (i) Article 9 of the Zoning Ordinance requires conditional use approval by the City for multi-family uses in the Central Business District Area 3 Zone and (ii) the Subject Property is within the Central Business District Area 3 Zone. Execution of this Agreement by the City is intended to and hereby does constitute the City’s conditional use approval for the multi-family aspect of the Project as required under Article 9 of the Zoning Ordinance, pursuant to Section 1115.03 of the Zoning Ordinance. The Parties agree that, upon execution of this Agreement, South City is not required to obtain any further approval from the City for the multi-family aspect of the Project under Article 9 of the Zoning Ordinance. Any use of the Subject Property other than the multi-family use shall be subject to the provisions of Article 9 of the Zoning Ordinance for the Central Business District Area 3 Zone.

7. Notices.

All notices, requests, demands or other communications hereunder shall be in writing and deemed given (a) when delivered personally (including by courier), or (b) on the third (3rd) day after said communication is deposited in the U.S. Mail, by registered or certified mail, return receipt requested, postage prepaid, or (c) on the next business day after said communication is delivered to a nationally recognized overnight courier (e.g. FedEx), addressed as set forth below:

If to South City: Mr. John Long
 South City Partners, LLC
 3715 Northside Parkway, Suite 1-310
 Atlanta, Georgia 30327

With a copy to: Mr. Mark Randall
 South City Partners, LLC
 3715 Northside Parkway, Suite 1-310
 Atlanta, Georgia 30327

If to the City: City of Avondale Estates
 Attention: Clai Brown, City Manager
 21 North Avondale Plaza
 Avondale Estates, Georgia 30002

With a copy to: Bob Wilson, Esq.
 Two Decatur TownCenter
 125 Clairemont Ave, Suite 420
 Decatur, Georgia 30030

8. Intentionally Deleted.

9. Miscellaneous Provisions.

a. The Parties hereby mutually represent that all necessary approvals for such Parties to enter into this Agreement have been detailed and that by virtue of the signatures herein below, the Parties acknowledge that they are authorized to execute this Agreement.

b. The Parties intend for this Agreement to be severable, and if any provisions shall be construed to be illegal or invalid for any reason, such illegal or invalid part of this Agreement shall not affect the legality or validity of the other provisions set forth herein, provided that the Project remains practicable in the absence of such invalid or illegal provision.

c. The Parties represent and acknowledge that in executing this Agreement they do not rely upon, and have not relied upon, any representation or statement made by any other Party by any other Party’s agents, representatives, or attorneys with regard to the subject matter, basis or effect of this Agreement except as specifically provided herein.

d. This Agreement shall be binding upon each of the Parties hereto and their heirs, administrators, representatives, executors, successors and assigns, and upon any corporations, partnerships, or business entities owned or operated by any of the Parties. This Agreement and the duties, covenants, and obligations hereby imposed constitute covenants running with the land, and are binding upon and shall inure to the benefit of the City and the owner of the Subject Property, and their respective heirs, successors, and assigns and their successors in title.

e. This Agreement may be executed in multiple counterparts, and all such counterparts shall be taken together so that they may constitute a completely executed Agreement between the Parties.

f. This Agreement may not be assigned by South City to any other party except to a firm, corporation, limited liability company, or other entity (i) that is controlled by or under common control with South City or (ii) that is under the day-to-day management of South City or an affiliate of South City. South City shall provide the City 10 days advance written of such assignment, except as otherwise expressly stated herein. Additionally, upon completion of development of the Project and issuance of all required certificates of occupancy, South City may assign this Agreement to any individual or entity, in connection with a sale of the Project and the Subject Property to such individual or entity.

City _____
South City _____

g. This writing represents the entire Agreement between the Parties. No amendment to this Agreement shall be effective unless consented to in writing by all Parties hereto. Notwithstanding anything in this Agreement to the contrary, minor modifications to the Project Plans may be approved by the City Manager on behalf of the City without the specific approval of the governing body, the City or any other party and without an amendment to this Agreement.

h. Upon completion of development of the Project, so long as the Project has been developed in material accordance with this Agreement (subject to Section 9(g)), if requested by South City, the City shall deliver to South City an estoppel certificate confirming that the Project is in compliance with all terms of this Agreement and that South City is in compliance with all terms of this Agreement.

i. The parties recognize that O.C.G.A. § 13-10-90, et seq., regarding illegal immigrants, and related state regulations may apply to the performance of certain work required for the Project whether performed by South City, or their agents, employees, contractors, subcontractors or assigns.

j. To the extent compliance with O.C.G.A. § 13-10-90, et seq. is required, South City agrees that it will be solely responsible for ensuring such compliance and agrees to indemnify, defend and hold harmless the City, its elected officials, administrators, other employees, and agents, for any fine or other penalty incurred by the City for a violation by South City of such act.

10. Development and Conveyance of Public Park

In consideration of the mutual promises and covenants set forth herein, South City agrees to (i) develop the Public Park upon the Park Property in accordance with the Project Plans, and (ii) convey the Park Property to the City for public use, all as more particularly set forth in this Section 10 below (the “**Park Property Conveyance**”). The Parties specifically agree as follows:

- A. Development of the Park Property. South City shall, at its sole expense, develop the Public Park upon the Park Property in material conformance with the Project Plans.
- B. Reduction of Building Permit Fees. In exchange for South City’s development of the Public Park and the Park Property Conveyance, the City shall reduce the total amount of the applicable building permit fees for the Project by forty percent (40%) (the “**Permit Fee Reduction**”). The City and South City agree that the Permit Fee Reduction is in consideration of the Park Property Conveyance; accordingly, the City shall not be required to pay South City a purchase price for the Park Property in connection with the Park Property Conveyance.
- C. Conveyance of the Park Property. Concurrently with South City’s receipt of the building permit for the Project and payment to the City of the applicable building permit fees, as reduced by the Permit Fee Reduction, South City, the City, and Escrow Agent (defined below) shall enter into an escrow agreement (the “**Escrow Agreement**”), pursuant to which: (i) South City shall deposit with Escrow Agent a

limited warranty deed (the “**Limited Warranty Deed**”) conveying fee simple title to the Park Property to the City; (ii) Escrow Agent shall hold the Limited Warranty Deed in escrow pending receipt of copies of the Release Documents (defined below) from South City or the City; and (iii) on the date that is ten (10) days after Escrow Agent’s receipt of copies of the Release Documents, Escrow Agent shall record the Limited Warranty Deed in the real property records of DeKalb County. For purposes of this Agreement, the term “**Escrow Agent**” means Fidelity National Title Insurance Company, 5565 Glenridge Connector, Suite 300, Atlanta, Georgia 30342, Attn: Linda Hart. For purposes of this Agreement, the term “**Release Documents**” means (x) a certificate of occupancy issued by the applicable governmental agency for the Project, and (y) a recorded copy of the Subdivision Plat (defined below) legally subdividing the Overall Property such that the Park Property and the Subject Property constitute two legally subdivided parcels.

- D. Acceptance and Dedication of the Park Property. The City hereby agrees (i) to accept fee simple title to the Park Property by Limited Warranty Deed pursuant to Subsection 10.C above, subject to the same encroachments, and other matters encumbering the Property on the date that South City takes title to the Park Property; provided, however, South City shall convey the Park Property to the City free and clear of any security deed, mechanic’s or materialmen’s liens, other liens, claim of lien, or notice of commencement and (ii) to dedicate the Park Property to public use as a public park within ten (10) days after accepting fee simple title to the Park Property. The City and South City agree that prior to the date on which the City dedicates the Park Property to public use, no person claiming by, through, or under the City shall have the right to access, enter upon, or use the Park Property for public use.
- E. Subdivision of the Overall Property. Prior to the Park Property Conveyance, and as a condition to issuance of a certificate of occupancy by the applicable governmental agency for the Project, the City agrees to approve and the Parties agree to record a subdivision with DeKalb County (the “**Subdivision Plat**”) to divide the Overall Property into two legally subdivided parcels: (i) the Park Property, and (ii) the Subject Property. This section is intended to and shall constitute approval pursuant to Section 1115.07 of the Zoning Ordinance.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement under seal the day and year first above written.

Attest:

City of Avondale Estates, Georgia
a Georgia Municipal Corporation

Gina Hill, City Clerk

Mayor Jonathan Elmore

[Municipal Seal]

Date: _____

Approved as to form:

Robert E. Wilson, City Attorney

SCP ACQUISITIONS, LLC,
a Georgia limited liability company

By: _____

Its Authorized Representative

Printed Name: _____

Date: _____

Witness:

Notary Public

City _____
South City _____