

COPY

ORIGINAL

SEWER SERVICE AGREEMENT

THIS AGREEMENT, made this 20th day of November 2018

BY AND BETWEEN:

JACKSON TOWNSHIP MUNICIPAL UTILITIES AUTHORITY, a public body corporate organized and existing under the laws of the State of New Jersey, with offices at 135 Manhattan Street in the Township of Jackson, County of Ocean and State of New Jersey, 08527

(Hereinafter referred to as "Authority")

AND

SIX FLAGS THEME PARK, INC., a corporation of the State of Delaware, with local offices located at Route 537, P.O. Box 120, Jackson, New Jersey 08527

(Hereinafter referred to as "Six Flags")

AND

EL AT JACKSON, LLC
2465 Kuser Road, 3rd Floor
Hamilton, New Jersey 08690

(Hereinafter referred to as "Developer").

WITNESSETH:

WHEREAS, the Authority is a duly constituted corporate body politic created under the provisions of New Jersey Statute 40:14B-1, et seq., and holds the exclusive right and franchise to provide Sewer and Water Service to the lands within its district; and

WHEREAS, Six Flags is the owner of certain tracts of land located in the Township of Jackson, County of Ocean and State of New Jersey, more specifically and primarily Block 3101, Lot 11, hereinafter referred to as the "Six Flags Property"; and

WHEREAS, the Developer is the owner of a proposed 1,100 unit inclusionary subdivision, to be constructed in two phases, known as Jackson Parke and identified or to be identified on the municipal tax map as Lot 57.01, Block 17802 and Lots 5.01 and 5.04, Block 10401, in Jackson Township, New Jersey hereinafter referred to as the "Project"; and

JTMUA initials



Six Flags initials



Developer's initials



WHEREAS, the Developer wishes to connect its Project to the Authority's Sewer Collection System for the purpose of obtaining public Sewer Service; and

WHEREAS, the Authority will provide Sewer Service to the Developer subject to compliance with the Authority's Rules and Regulations and upon the terms and conditions as set forth herein; and

WHEREAS, the Project is situated on two parcels: one fronting on West Veterans Highway and one fronting on Perrineville Road; and

WHEREAS, the Developer has agreed to design, construct and install the Sewer System, Sewer Infrastructure Improvements and related appurtenances under the terms and conditions set forth herein in order to provide public sewer to its Project; and

WHEREAS, it is anticipated that the Authority will own the on-site Sewer System and off-site Sewer Infrastructure Improvements but the Developer has not yet formally applied for service. The within Agreement is being entered into to effectuate the replacement of the Main Pump Station (the "Replacement Main Pump Station") serving the Six Flags Property and to provide Sewer Service to the Project; and

WHEREAS, the within Agreement is contingent upon the Authority granting approval of the Developer's application and engineering plans, which will be finalized in accordance with the terms of this agreement; and

NOW, THEREFORE, in consideration of the sum of **ONE (\$1.00) DOLLAR**, and other good and valuable consideration, receipt whereof is hereby acknowledged, and in further consideration of the mutual promises, agreements and covenants contained herein, the parties hereto do mutually promise, covenant and agree as follows:

DEFINITIONS

1. For purposes of this Agreement, the following terms shall have the meanings hereinafter indicated:

- (a) Agreement - shall mean, when fully executed by both parties and dated, this agreement between the Authority, Six Flags and the Developer, together with all schedules annexed hereto, and such engineering plans as have or shall be given final approval by the Authority.
- (b) Authority - shall mean the Jackson Township Municipal Utilities Authority.
- (c) Connection Fees - means the fees charged by the Authority to unit owners pursuant to N.J.S.A. 40:14B-21 AND 22.
- (d) OCUA - shall mean the Ocean County Utilities Authority.
- (e) Parties - shall mean collectively the Authority, Six Flags and the Developer.



- (f) Plans - shall mean all drawings, plan views, sections, profiles, elevations, details, and notes, which have been submitted to and have been given final approval by the Authority.
- (g) Project - shall mean the 1,100 unit inclusionary residential subdivision known as Jackson Parke and identified on the municipal tax map at Lot 57.01, Block 17802 and Lots 5.01 and 5.04, Block 10401.
- (h) Project Site - shall mean those tracts of land upon which the project is to be built.
- (i) Rules and Regulations - shall mean the Authority's rules and regulations and/or by-laws adopted and in effect on the date of the Agreement for the management and regulation of the Authority's business and affairs and for use, maintenance, installation, construction, repair, renewal, relocation, removal and operation of the utility system, and all subsequently adopted amendments, supplements or revisions thereto, provided, however, that in the event that this Agreement and such Rules and Regulations conflict, then this Agreement shall govern.
- (j) Sewer Collection System - shall mean the sewerage infrastructure off-site of the project and maintained by the Authority for the general collection of sewage and transmission thereof to the Ocean County Utilities Authority for treatment and processing.
- (k) Sewer Infrastructure Improvements - shall mean all those sewer-related improvements including lines, pump stations, crossing, mains, force mains, connections, manholes, laterals and appurtenances not on the Project Site and installed by the Developer, or located on the Project Site not used for the sole and exclusive benefit of the Developer for this Project.
- (l) Sewer Service - shall mean the collection of sewage from the Project's Sewer System and transmission into the Sewer Collection System.
- (m) Sewer System - shall mean a complete sanitary sewerage collection system within the Project Site as shall be necessary to provide Sewer Service for the Project, which system shall be designed and constructed pursuant to the approved plans and the Rules and Regulations including mains, connections, manholes, and appurtenances.
- (n) Unit - shall mean one (1) residential or other service unit as defined in the Authority's Rules and Regulations.



SYSTEM IMPROVEMENTS

2. The Developer agrees, subject to the contingencies contained herein, to construct and install in accordance with the plans given final approval by the Authority, the Replacement Main Pump Station and thereafter, upon completion, certification thereof by the Authority's engineer, and acceptance by the Authority, to convey and dedicate said System to the Authority in accordance with the provisions hereof. The general parameters of the Replacement Main Pump Station will be as follows:

- (a) The Replacement Main Pump Station will have a design capacity of 1.5 MGD of which the Developer will be responsible for the cost for the first 0.8 MGD (0.3 MGD for the Developer and 0.5 MGD for Six Flags' current peak demands). As discussed in Paragraph 11, the Authority will permit sewer connection fee waivers for the upsizing cost;
- (b) A Septage Receiving Facility (the "SRF") will be installed for Six Flags' use in disposing of the animal waste from the Safari. This cost of this facility will also be eligible for sewer connection fee waivers to the Developer;
- (c) As previously stated, the Replacement Main Pump Station is currently envisioned to handle a build-out flow of 1.5 MGD. It will include a covered wet well (although it may be shallow as gravity flow is not anticipated) and it should have an operating range in excess of 26,250 gallons;
- (d) A split wet well may be considered due to the seasonal nature of the flows;
- (e) Energy dissipation manholes, and metering of the Six Flags flow, will be required prior to the wet well with a comminutor and the above referenced SRF;
- (f) A minimum of three (3) dry pit submersible pumps sized for at least 1,400 GPM will be required. The drives should be VFDs and be available to upsize to 2,600 GPM in the future. A 4th pump will be required if a split wet well is selected;
- (g) Backup Power. The existing generator may be evaluated for applicability;
- (h) SCADA will be integrated into the Authority's system;
- (i) Odor control will be critical due to the length of the force main and seasonal nature of the flows. The Developer will only be responsible to treat the sewage for odor control purposes at the Replacement Main Pump Station;
- (j) Demolition and/or rehabilitation of all unused structures will be required;
- (k) If the pump building is to be re-used, rehabilitation will be necessary due to the ferrous chloride corrosion of the metallic elements; and

- (1) The 50,000 linear foot Western Sewer Extension shall be evaluated by CCTV or other Authority approved methodology. If deficiencies are identified, the Developer and the Authority shall jointly have the option to undertake the necessary repairs and the Authority may further waive sewer connection fees for any work that is determined not to be the obligation of the Developer. The within Agreement will become null and void, upon 30 days prior notice to the parties, if deficiencies are identified and the Developer and the Authority cannot agree on a plan to address any such improvements and/or repairs.

To effectuate these changes, the Developer shall select from two (2) qualified engineering firms to design the Replacement Main Pump Station under the general conditions outlined above. The Developer will be responsible for selecting the Design Engineer and for paying all costs associated therewith for the design, permitting and construction other than the sewer connection fee waivers addressed in Paragraph 11 for upsizing the facility from 0.8 MGD to 1.5 MGD and for the SRF.

It should also be understood that the Authority and Six Flags will be entering into an updated Sewer Service Agreement concurrent with this Agreement to effectuate the terms herein. With that being said, Six Flags and the Authority will grant the Developer the right to connect to the Replacement Main Pump Station and the Western Sewer Extension with no further charges other than those which are typical and customary such as connections fees payable to the Authority.

3. The Developer shall be responsible for: A) insuring that the design of the Sewer System and Sewer Infrastructure Improvements, the method of connection to the facilities of the Authority, the installation and construction of the System and all other conditions required to be performed by the Developer in respect to the systems shall be in compliance with plans given final approval by the Authority, as well as with all existing rules, regulations, statutes, requirements, permits, approvals and/or orders of all controlling federal, state, county, and local agencies, as well as the Rules and Regulations of the Authority; B) obtaining all relevant federal, state, county and local permits and/or approvals necessary for the construction and installation of the Systems, provided that the Authority shall cooperate with the Developer in processing the applications for the subject approvals. It is anticipated that the Authority will be the applicant on NJDEP permits in which the Authority will ultimately own the infrastructure; and C) insurance that the System shall be constructed and installed in a good and workmanlike manner so as to afford continuous, uninterrupted Sewer Service to the Project.

4. The Developer agrees that it shall be fully responsible for obtaining all necessary on-site lands and on-site easements for the construction of the System at its own cost and expense. One exception to this requirement is that the Authority will provide a location and access for the Replacement Main Pump Station on Lot 28.01, Block 3101.

5. Prior to acceptance, the Developer shall furnish to the Authority an affidavit setting forth that the system, easements, and rights of way are free and clear of all liens and encumbrances.

6. (a) Prior to commencement of any work in connection with the construction and installation of the System, the Developer shall obtain final approval of the plans and specifications therefore, pay required fees and escrows, as allowed by law, provide required easements, and submit evidence of all necessary approvals and permits to the Authority.

(b) The Developer shall deposit or post with the Authority, such performance bonds, guaranties, sureties, letter of credit or other security guaranteeing the work to be constructed and installed in the amount of One Hundred Twenty Percent (120%) of the Project Engineer's estimate of cost of construction of the improvements that will ultimately be owned by the Authority, in accordance with the Authority's Rules and Regulations. These performance guarantees shall remain in full force and effect until released and replaced by the posting of the maintenance bond(s) as provided by Paragraph 10 of this Agreement.

7. The Developer acknowledges that upon installation and acceptance by the Authority of the System title to all facilities, including, without limitation, all lines, mains, manholes, structures, and appurtenances shall vest in the Authority without the necessity of a bill of sale, deed, or other documentation evidencing ownership, but Developer agrees to provide any and all such documentation as the Authority may request in order to provide further evidence of such conveyances.

8. Upon completion of the System or any section thereof, the Developer shall promptly notify the Authority in writing and the Authority shall conduct an inspection within thirty (30) days after receipt of such notice to determine that said System, as installed, has been constructed, installed and completed, under the supervision and inspection of the Authority's engineer, in accordance with the plans and specifications previously approved. The Authority shall notify the Developer in writing within twenty (20) days after said inspection as to the acceptance or rejection of said System, and if rejected, a list of unsatisfactory items which are to be corrected by the Developer, within sixty (60) days.

9. The Authority shall not be obligated to provide service to the Developer until such time as the System proposed to service the Developer has been approved to be entered into service.

10. Prior to acceptance of said System or section(s) thereof by Authority, the Developer shall furnish three sets of record drawing "as built" prints, one set of reproducible mylars of the System, satisfy all outstanding fees in accordance with the Rules and Regulations of the Authority and this Agreement and will post with Authority a maintenance bond, or at the Developer's option, cash or a letter of credit, in a face amount equal to fifteen (15%) percent of the performance bond, for said System, which bond, cash or letter of credit will remain in full force and effect for a period of two (2) years from the date of the certification of Authority's Engineer. Such maintenance bond or letter of credit shall be for the purpose of guaranteeing and securing the repair, correction or replacement of any portion of said System, which prove to be defective by virtue of its construction and/or installation. Upon the expiration of said two (2) year period from the date of acceptance as herein provide, the Developer shall make written request to Authority for a release of said maintenance bond, cash or letter of credit, and within forty-five (45) days from the date of receipt so such written request by Authority, Authority shall either:

JTMUA initials 

Six Flags initials 

Developer's initials 

a. Provide written evidence of the release of said maintenance bond, cash or letter of credit to the Developer by formal resolution, letter or physical return of said maintenance bond; or

b. Provide notice, in writing, to the Developer of those items, which must be repaired or corrected prior to the release of said maintenance bond, cash or letter of credit.

Said list, when provided, shall constitute the final list of items to be repaired insofar as the responsibility of the Developer is concerned under the written Agreement, and following the correction of said repair items, the Developer shall again give written notice to Authority of its compliance with said punch list and, within thirty (30) days from the receipt of said notice by the Authority, Authority shall comply with this provision as set forth in sub-paragraph (a) above. In case of emergency, the Authority shall have the right to make any necessary repairs to items covered by the maintenance bond, cash or letter of credit in order to insure continued service to the users of the System. The Authority may, after the performance of such emergency work, charge the Developer the reasonable cost thereof provided, however, that such emergency was caused by a defect in construction and installation of said System.

CONNECTION FEES

11. The Project will ultimately discharge sewage to the Replacement Main Pump Station which is to be constructed as part of the within Agreement.

The Developer and the Authority have agreed to waive sewer connection fees to upsize the Replacement Main Pump Station from 0.8 MGD to 1.5 MGD, for the cost of the Septage Receiving Facility, any mutually agreed repairs (if any) to the Western Sewer Extension as discussed in Paragraph 2(l) and the 3rd party costs incurred and paid by the Developer for the design and permitting of the SRF and the upsizing of the Replacement Main Pump Station (based upon the construction costs apportioned above). The amount of these sewer connection fee waivers will be formalized by an Amendment to the within Agreement and/or by a separate Agreement with the Developer. To further clarify, Six Flags will have no financial responsibility for the cost of the Replacement Main Pump Station.

CONTINGENCIES

12. (a) It is expressly understood and agreed that this Agreement and the performance thereof with respect to System Improvements by the Developer is subject to and contingent upon the Developer securing all development approvals required to be obtained from all Federal, State, County, Municipal and other governmental agencies as a precondition to the development of any particular phase or segment of the Project on the Project Site.

(b) The parties hereto fully understand that the United States Environmental Protection Agency, the New Jersey Department of Environmental Protection (the "NJDEP") and other governmental agencies may exercise jurisdiction over sanitary sewerage service and from time to time any promulgate rules and regulations outstanding sewer main extensions, permits issued by the NJDEP or any outstanding sewer permits issued by the Authority.

Notwithstanding the foregoing, the Authority hereby agrees that it shall fully cooperate with the Developer and that the Authority shall take all actions reasonably requested by the Developer so that all permits may be obtained so as to allow Water and Sewer Service to be provided to the entire Project at the times and in the amounts necessary. This may include being listed as the Owner on NJDEP permits for infrastructure which will ultimately be owned by the Authority.

GENERAL PROVISIONS

13. The Authority and Six Flags covenant and agree that the Developer shall be entitled to receive sewer service through the Replacement Main Pump Station to be owned, operated and maintained by the Authority subject to and contingent upon payment of relevant fees other than those waived by this agreement, in full compliance by the Developer with the Rules and Regulations of the Authority, and satisfaction of the terms and conditions set forth in this Agreement. The Developer is required to operate its infrastructure and facilities in accordance with all Local, County, State and Federal requirements until such time as the Developer receives Authority acceptance.

14. The Developer agrees that it shall not discharge or permit to be discharged or infiltrated through the Sewer System, any storm waters, surface water, ground water, swimming pool water, roof run-off, subsurface drainage, cellar water, cooling water or discharge of sump pumps. The Developer shall not discharge or permit to be discharged through the Sewer System any substance which will cause the Authority to pay a surcharge, penalty, fine or assessment to the Ocean County Utilities Authority (the "OCUA"), NJDEP or any other regulatory agency.

15. (a) The Developer agrees to commence construction on the Sewer Infrastructure Improvements within eighteen months of the date of the Agreement provided all contingencies herein are met and there are no legal actions pending contesting any approvals necessary for the construction and installation of the Sewer Infrastructure Improvements. This eighteen month period shall be extended for the period of delay caused by the Authority, the County of Ocean, acts of God or such acts as are beyond the control of the Developer. If construction has not been commenced within eighteen months, or any extension thereof agreed to by the Parties or to which the Developer is entitled as provided for hereinabove in this paragraph, then the Authority, upon forty-five (45) notice to the parties, at its option may terminate this agreement.

(b) It is further understood and agreed that in the event the Developer shall commence construction as aforesaid, and shall thereafter cease or substantially abandon the construction of the Project for a period of no less than two (2) consecutive months without cause, except where phasing of work is contemplated by this Agreement, then in the event only the Authority at its option and after having given the Developer forty-five (45) days written notice of its intention, may terminate the Agreement. The Authority shall be entitled to all Systems and appurtenances thereto conveyed by the Developer, which shall continue to vest in the Authority as well as any and all monies theretofore paid. The Authority may also take whatever actions against the Bond, Letter of Credit or other surety that was posted by the Developer in connection with the improvements.

16. The Developer hereby agrees to pay and/or reimburse the Authority for all inspection fees relative to this Agreement. Inspections shall cover all off-site and on-

site improvements. The Authority shall create and establish an escrow account for the purpose of receiving from the Developer and disbursing to the Authority's inspection unit fees incurred by the Authority respecting the within Agreement and the performance thereof. The Authority shall provide to the Developer upon request an accounting of the escrow account together with copies of all bills, which were paid from the escrow account. The Developer shall pay to the Authority upon request within ten (10) business days the sum necessary to maintain the escrow account balance at the required level. Any remaining escrow balance after all inspection services have been completed and paid for shall be refunded to the Developer.

17. The Developer, Six Flags and the Authority do hereby specifically confirm and acknowledge that the execution of the within Agreement by the Developer, Six Flags and the Authority is a voluntary act by the Developer, Six Flags and the Authority, and that the within Agreement, the terms and conditions contained herein, and the execution hereof in no way may be deemed or construed as resulting from coercion or other undue pressure or leverage from the Authority, Six Flags or the Developer, or any officer, employee, agent or representative of the Authority, Six Flags or Developer. The Developer, Six Flags and the Authority do further hereby acknowledge that the within Agreement has been negotiated by the parties for their mutual benefit. The Developer, Six Flags and the Authority acknowledge that they have been represented by competent counsel and that they have voluntarily entered into this Agreement knowing that they may have waived and relinquished certain legal rights and remedies.

18. The Developer may not assign this Agreement without the express written approval of the Authority after authorization by resolution, which approval shall not be unreasonably withheld.

19. Every notice, approval, consent or other communication authorized or required by this Agreement shall be effective if the same is in writing and sent, postage prepaid, by the United States registered or certified mail, return receipt requested, directed to the other parties at their addresses hereinafter mentioned, or such other address as any of the parties may designate by notice given from time to time in accordance with this paragraph. Every notice shall be deemed to have been given on the date the envelope containing such notice was postmarked as being mailed, as above provided, in a United States mailbox or post office, except as expressly otherwise provided. Notices necessary and provided in this Agreement shall be mailed to:

JACKSON TOWNSHIP MUNICIPALITY UTILITIES AUTHORITY

David A. Harpell, Executive Director
135 Manhattan Street
Jackson, New Jersey 08527

With a copy to:

William T. Hierung, Esq.
Hierung, Gannon & McKenna
29 Hadley Avenue
Toms River, New Jersey 08753
Attorney for Authority

And

SIX FLAGS THEME PARK, INC.

Leonard A. Turtora, Director of Operations
Route 537, P.O. Box 120
Jackson, New Jersey 08527

With a copy to:

Elnardo J. Webster, II, Esq.
Inglesino, Webster, Wyciskala & Taylor, LLC
600 Parsippany Road, Suite 204
Parsippany, New Jersey 07054-3715

And

EL AT JACKSON, LLC

Robert Calabro and
Mitch Newman, Esq.
2465 4265 Kuser Road, 3rd Floor
SY Hamilton, New Jersey 08690

With a copy to:

Corporate Counsel
Lennar Corporation
700 N.W. 107th Avenue
Miami, Florida 33172

20. This Agreement and the performance hereof shall be governed, interpreted, construed and regulated by the laws of the State of New Jersey.

21. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance shall, at any time or to any extent, by invalid or unenforceable, the remainder of this Agreement or the application of such term of provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

22. Except where a specific item, provision or section of this Agreement and/or the Plans shall otherwise provide, the Rules and Regulations shall govern the subject matter hereof. Where any term, provision or paragraph of this Agreement is contrary to a provision of the Rules and Regulations, the latter shall be deemed to have been waived. Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. This Agreement may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

23. The Authority and the Developer agree and do hereby indemnify and save harmless each other from and against any and all loss, damage, claims, actions, liability and expense, in contract or in tort, in connection with loss of life, bodily injury and/or property damage, if occasioned in whole or in part by any action or act of omission by another party, or any defect in workmanship, installation, construction, design, operation, inspection, maintenance or material of any part of the Sewer Collection System or Sewer Infrastructure Improvements furnished by the Developer, its contractors, subcontractors, or by any of the agents, servants, employees or material men of any of them subject to such statutes of limitation which may apply.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by their proper corporate officers and their proper corporate seal to be hereto affixed the day and year first above written.

ATTEST:

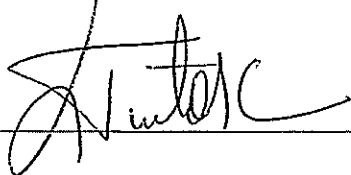

Secretary

(seal)

JACKSON TOWNSHIP MUNICIPAL
UTILITIES AUTHORITY

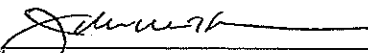

David A. Harpell, Executive Director

ATTEST:


John Winkler, President

(seal)

SIX FLAGS THEME PARK, INC.


John Winkler, President

ATTEST:


Mitchell Newman

(seal)

EL at Jackson, LLC

By: Lennar at Jackson, LLC, the Managing
Member

By: US Home Corporation, the Sole
Member


Robert Calabro, VP