

ITEM# Agri. 2019-016 DATE 5, 28, 2019

**INTERGOVERNMENTAL  
AGREEMENT  
Between  
FULTON COUNTY, GEORGIA  
and  
THE CITY OF SOUTH FULTON, GEORGIA  
FOR INSPECTION AND PERMITTING SERVICES FOR THE  
ANTHEM AT RIVERSIDE PROJECT FOR SENIOR CITIZENS**

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THIS INTERGOVERNMENTAL AGREEMENT ("Agreement"), by and between Fulton County, Georgia ("County") and the City of South Fulton, Georgia ("City") entered into effective the 21<sup>st</sup> day of May, 2019.

**WITNESSETH**

**WHEREAS**, Fulton County, Georgia is a constitutionally created political subdivision of the State of Georgia (hereinafter "County"); and

**WHEREAS**, the City of South Fulton is a municipal corporation of the State of Georgia (hereinafter "City"); and

**WHEREAS**, except as otherwise provided by law, the Georgia Constitution of 1983, Article IX, Section 2, Paragraph 3, prohibits cities and counties from exercising governmental authority within each other's boundaries except pursuant to an Intergovernmental Agreement; and

**WHEREAS**, the Fulton County Housing Authority (the "Authority") and Prestwick Development Company (the "Developer") desire to develop and construct a housing project for senior citizens currently named the Anthem by Riverside Project (the "Project"); and

**WHEREAS**, the Project site lies predominately within the corporate boundaries of the City and in an unincorporated area of the County, as depicted on the Concept Plan and the Site Plan attached hereto as **Exhibit A** and **Exhibit B**, respectively, and incorporated herein by this reference; and

**WHEREAS**, the County and the City desire that all necessary permitting services relating to the Project shall be administered, processed, and issued, and enforced by the City; and

**WHEREAS**, the County and City desire to enter into this Agreement which grants the City the authority to administer, process, and issue all necessary permits for the Project lying within unincorporated Fulton County, and wherein the City agrees to administer, process, and issue and enforce all necessary permits pertaining to the Project.

**NOW THEREFORE**, in consideration of the following mutual obligations, the County and

City agree as follows:

## ARTICLE 1

### **PURPOSE AND INTENT**

- 1.1 The City shall provide development and building permit services related to the development and construction of the Project for senior citizens, being developed by the Fulton County Housing Authority and Prestwick Development Company, parts of which are located within portions of the City of South Fulton and unincorporated Fulton County, as these services are more defined in Article 4 of this Agreement. The County shall continue to provide permitting services for the Project related to sewer and access to County rights-of-way. The City of Atlanta shall continue to provide permitting services for the Project related to water service.
- 1.2 The County shall fully cooperate with the City and the Developer to facilitate annexation of the portion of the Project site that sits in unincorporated Fulton County into the City's corporate boundaries; provided that nothing herein is construed to prevent the County from exercising its discretion or impinge on the County's exercise of its authority over any annexation matter presented to the County.
- 1.3 The City shall, prior to the issuance of any building permits, obtain prior review and sign-off from Fulton County staff of any zoning plans.
- 1.4 Outside of the services authorized for the Project under this Agreement, nothing herein shall be construed as granting the City quasi-judicial or legislative rights to act within the boundaries of unincorporated Fulton County.

## ARTICLE 2

### **POWERS AND DUTIES**

In furtherance of the public purposes of this Agreement, the County and City hereby represent and warrant to each other the following:

2.1 Authority. Each party hereto expressly represents and warrants that (i) it has the power to make, deliver and perform this Agreement, and has taken all necessary action to authorize the execution, delivery and performance of this Agreement; (ii) this Agreement when executed will be legally binding upon the parties and enforceable in accordance with the terms hereof; and (iii) no further consent or approval of any other party not specifically mentioned herein is required in connection with the execution, delivery, performance, validity and enforcement of this Agreement, unless where required by law. Without limiting the generality of the foregoing, each party hereby expressly acknowledges and represents that it has officially adopted and otherwise approved this Agreement at a meeting of its governing authority in accordance with the Constitution and laws of the State of Georgia. To the knowledge of the County and the City, there are no actions, suits or proceedings pending or threatened, in any court or before any governmental authority, domestic or foreign against, by or affecting the County or City which

affect or question the validity or enforceability of this Agreement or of any action taken by the County or the City under this Agreement.

2.2 Public Purpose. This Agreement and the services contemplated herein are for the public welfare and benefit and are undertaken in accordance with the laws and Constitution of the State of Georgia. Without limiting the foregoing, the parties specifically and expressly warrant and represent, and do hereby find, that this Agreement (i) pertains to the provision of services and activities which the parties are by law authorized to undertake and provide; (ii) is otherwise authorized under the Intergovernmental Contracts Clause of the Georgia Constitution of 1983, Art. IX, Sec. III, Par. I (a); (iii) does not authorize the creation of new debt as contemplated by Ga. Const. of 1983, Art. IX, Sec. V. Par. I (a); and (iv) does not violate O.C.G.A. § 36-30-3(a) or otherwise prevent free legislation by any party in matters of government, and shall be binding and enforceable against the parties and their successors during the term hereof in accordance with its terms.

2.3 No Conflicting Agreements. The execution, delivery and performance of this Agreement will not violate or contravene any contract, undertaking, instrument or other agreement to which the County or the City is a party, or which purports to be binding upon said parties. Furthermore, the execution, delivery and performance of this Agreement does not violate the provisions of any party's enabling legislation or Code of Ordinances, or any statutory or decisional laws of the State of Georgia regarding similarly political subdivisions of said State. The representations and warranties contained in this Article shall be true and correct as of the date hereof and such representations and warranties, and the obligation of the County and the City to perform their respective obligations under this Agreement shall be expressly conditioned upon said representations and warranties being true and correct on the date hereof. Furthermore, each party hereto specifically acknowledges and agrees that it shall be forever estopped from making any claim, counterclaim, assertion, or other argument of any kind against the other party contrary to the representations and warranties set forth in this Agreement.

### ARTICLE 3

#### TERM

3.1 The term of this Agreement is for a period commencing May 31, 2019 at midnight and concluding on either of the following: (i) at midnight on May 30, 2020, (ii) the Project is completed, or (iii) the unincorporated area in which portions of the Project is located is annexed into a municipality, whichever occurs first.

#### 3.2 Termination.

3.2.1. Termination for Convenience. The parties may mutually agree to terminate this Agreement for convenience, with the consent and approval of the governing body of each party, by giving thirty (30) days advance written notice of termination.

### ARTICLE 4

## **PERMITTING AND INSPECTION SERVICES**

4.1 The City, its employees or any third-party under contract with the City and used by the City to perform permitting and inspection services for the Project, shall at all times remain qualified and approved by the State of Georgia to perform permitting and inspection services in accordance to the applicable building codes and other necessary codes, and shall at all times maintain proper qualifications to perform these and related services.

4.2 The City, through its employees or a third-party under contract with the City is hereby authorized to provide the following permitting, inspection, and related services for all aspects of the Project located within the City and within unincorporated Fulton County:

4.2.1 Permits and Building Inspections Components. The City is authorized and shall conduct all aspects of permitting and building inspections for the Project.

4.2.2 The Permitting component includes intake of all permit applications submitted for those portions of the Project located in unincorporated Fulton County. The City shall intake, process, issue, and handle payments for all portions of the Project as well as all other related development and Administrative Use Permits for the Projects located within the City and the unincorporated area of Fulton County. The City shall intake, process, route and process payments for all land disturbance permits and plat review applications to the Plan Review and Site Inspection Program, or any process adopted by the City similar to the County's Plan Review and Site Inspection Program.

4.2.3 Under the Building Inspections component, the City shall inspect all permitted construction related to the Project for compliance with current building (structural) electrical, plumbing and mechanical (HVAC) codes as required by State and County laws, and laws of the City.

4.2.4 The City perform all necessary administration and customer service functions necessary for the Project and those portions of the Project located within unincorporated Fulton County. Under no circumstances shall the City or the County be required to make payments, make purchases or acquire debt under this Agreement. Nor shall the City or County be required to perform any actions outside of ordinary regulatory, permitting, enforcement, administrative and inspection services which it is authorized to perform under federal, local and state law.

4.2.5 Plan review and Site Inspections Components. The City is authorized and shall conduct all aspects of plan review and site inspection for the

Project, to include those portions of the Project located within unincorporated Fulton County.

4.2.6 Under the Plan Review and Site Inspection component, the City shall review grading, storm water control, infrastructure placement and road layout on all applications for land disturbance permits and plat review, to include those portions of the Project located within unincorporated Fulton County.

4.2.7. For the Site Inspection component, the City shall inspect all permitted land disturbance activities for compliance with County, State, City and Federal Erosion and storm water controls and stream buffer protection, to include those portions of the Project located within unincorporated Fulton County.

4.2.7 For the Site Inspection component, the City shall also inspect the installation of all public infrastructure for compliance with Fulton County City standards, to include those portions of the Project located within unincorporated Fulton County.

4.3 Enforcement. The City is authorized to take enforcement action on all services provided under this Agreement for the Project, consistent with the laws, rules and regulations of the State of Georgia, Fulton County and the City.

## **ARTICLE 5**

### **RESPONSIBILITY FOR CLAIMS AND LIABILITY**

. It is hereby stipulated and agreed between the parties that, with respect to any claim or action brought by a third party and arising out of the activities described in this IGA or stems from any matter arising out of any act or omission by the parties in connection to the performance of this IGA, that each party shall only be liable for payment of that portion of any and all liability, costs, expenses, demands, settlements, or judgments resulting from the negligence actions or omissions of its own agents, officers, and employees. Either party may self-fund its obligations under this IGA. However, nothing herein shall be construed as a waiver of any party's sovereign immunity or the immunities available to the officials, officers and employees of the parties.

The City shall ensure that any contractor retained or selected to provide the services relating to the Project under this Agreement shall agree in to indemnify and hold harmless the County as well as the County's commissioners, officers, officials, employees, and agents, from and against any and all loss and/or expense which they or any of them may suffer or pay as a result of claims or suits due to, because of, or arising out of any and all such injuries, deaths and/or damage, irrespective of the County's negligence (except that no party shall be indemnified for their own sole negligence). The contractor, if requested, shall assume and defend at the contractor's

own expense, any suit, action or other legal proceedings arising there from in which the County is named as a party, and the contractor hereby agrees to satisfy, pay, and cause to be discharged of record any judgment which may be rendered against the County arising there from. Nothing herein shall be construed as a waiver of either the City's or the County's sovereign immunity or any immunities available to their respective officers, officials, employees or agents. The City shall ensure that the provisions of this Article are included in all contracts and subcontracts.

## ARTICLE 6

### INSURANCE

Prior to beginning work, the City shall obtain, and where applicable, cause its contractors to obtain and furnish certificates to the County in which the County is named as an "Additional Insured," for the following minimum amounts of insurance prior to the undertaking of any of the services relating to the Project under this Agreement:

A. Workers Compensation & Employer Liability Insurance (Statutory) in compliance with the applicable Georgia Workers Compensation Act. Employer Liability Insurance with limits of not less than \$1,000,000 per accident for bodily injury or disease.

B. Professional (Errors and Omissions) insurance with limits of liability of not less than \$1,000,000 per occurrence or claim / aggregate (coverage shall insure damage, injury and loss caused by error, omission or negligent acts related to the professional services to be provided under this Agreement.

B. Public Liability Insurance in an amount of not less than one hundred thousand dollars (\$100,000) for injuries, including those resulting in death to any one person, and in an amount of not less than three hundred thousand dollars (\$300,000) on an account of any one occurrence.

C. Property Damage Insurance in an amount of not less than fifty thousand dollars (\$50,000) from damages on account of any occurrence, with an aggregate limit of one hundred thousand dollars (\$100,000).

D. Valuable Papers Insurance in an amount sufficient to assure the restoration of any plans, drawings, field notes, or other similar data relating to the work covered by the Project.

Insurance shall be maintained in full force and effect during the life of the Agreement and until final completion of the Project. The scope and coverage of the insurance protection shall extend beyond the completion of the Project until the expiration of any applicable statutes of limitations. The City may self-fund its insurance obligations under this Agreement.

**ARTICLE 7**

**AMENDMENTS**

This Agreement may be modified at any time during the term by mutual written consent of both parties.

**ARTICLE 8**

**NOTICES**

All required notices shall be given by first class mail, except that any notice of termination shall be mailed via U.S. Mail, return receipt requested. Notices shall be addressed to the parties at the following addresses:

**If to the County:** Richard Anderson, County Manager  
141 Pryor Street, SW,  
Suite 1000  
Atlanta, Georgia 30303  
404-612-8335  
404-612-0350 (facsimile)

**With a copy to:** Patrise Perkins-Hooker, County Attorney  
141 Pryor Street, SW,  
Suite 4038  
Atlanta, Georgia 30303  
404-612-0246 (telephone)  
404-730-6324 (facsimile)

**If to the City:** Odie Donald, City Manager  
City of South Fulton  
5440 Fulton Industrial Blvd, S.W.  
Suite A  
Atlanta, Georgia 30336  
470.809.7204 (telephone)

**With a copy to:** Emilia C. Walker, City Attorney  
Fincher Denmark LLC  
8024 Fair Oaks Court  
Jonesboro, Georgia 30236  
770-478-9950 (telephone)  
770-471-9948 (facsimile)

**ARTICLE 9**

**NON-ASSIGNABILITY**

Neither party shall assign any of the obligations or benefits of this Agreement.

**ARTICLE 10**

**ENTIRE AGREEMENT**

The parties acknowledge, one to the other, that the terms of this Agreement constitute the entire understanding and Agreement of the parties regarding the subject matter of the Agreement.

**ARTICLE 11**

**SEVERABILITY**

If a court of competent jurisdiction renders any provision of this Agreement (or portion of a provision) to be invalid or otherwise unenforceable, that provision or portion of the provision will be severed and the remainder of this Agreement will continue in full force and effect as if the invalid provision or portion of the provision, were not part of this Agreement.

**ARTICLE 12**

**BINDING EFFECT**

This Agreement shall inure to the benefit of, and be binding upon, the respective parties' successors.

**ARTICLE 13**

**COUNTERPARTS**

This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument.

**ARTICLE 14**

**MISCELLANEOUS**

14.1 Cooperation. The parties agree to cooperate and coordinate the creation and the submittal to each other of any necessary reports, data or records that may be needed by each to carry out its essential functions and to comply with any reporting or auditing requirements of any



regulatory agency. Each party shall have the right to assert, retain and protect the confidential and/or proprietary nature of any documents created by it.

14.2 Governing Law. This Agreement and each provision hereof shall be construed under and governed by the laws of the State of Georgia.

14.3 Captions. The captions in this Agreement are for purposes of convenient reference only and form no part hereof.

14.4 Waiver. Failure of any party to pursue any remedy pursuant to the terms of this Agreement for any default by the other party or a party's waiver of any default or non-compliance by the other party shall not affect or impair either party's rights with respect to any subsequent default or non-compliance of the same or different nature. Furthermore, a party's delay or omission in asserting any right which the party may have hereunder will not constitute a waiver of such party's right or impair the party's right to assert such default or non-compliance by the other party.

14.5 Drafting of Agreement. This Agreement shall be construed without regard to the party or parties responsible for its preparation and shall be deemed as having been prepared jointly by the parties. Any ambiguity or uncertainty existing in this Agreement shall not be interpreted or construed against any party hereto. The parties hereto agree that no representations except those contained herein that have been made by any party to induce the execution of this Agreement by any other party.

14.6 Relationship of Parties. Notwithstanding anything in this Agreement to the contrary, neither shall have the power to bind or obligate the other except as expressly set forth in this Agreement.

14.7 Survival of Representations. All terms, conditions, covenants, warranties contained in any determination of this Agreement shall remain in effect until amended by the applicable governing authority.

14.8 No Third-Party Beneficiaries. This Agreement is made between and limited to the County and City, and is not intended, and shall in no event be construed to be, for the benefit of any person or entity other than the County and the City, and no other person or entity shall be considered a third-party beneficiary of this Agreement or otherwise entitled to enforce the terms of this Agreement for any reason whatsoever.

**IN WITNESS WHEREOF**, the City and County have executed this Agreement through their duly authorized officers on the day and year first above written.

**[SIGNATURES ON FOLLOWING PAGE]**

FULTON COUNTY, GEORGIA

*Robert L. Pitts*

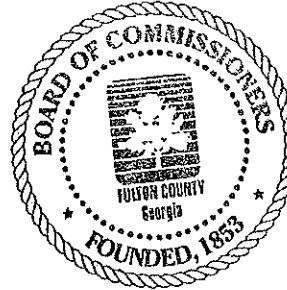
Robert L. Pitts, Chairman  
Fulton County Board of Commissioners

ATTEST

*Jesse A. Harris*

Jesse A Harris, Clerk to  
the Commission

SEAL



Approved as to Form:

*Patrise Perkins-Hooker*  
Patrise Perkins-Hooker  
Fulton County Attorney

CITY OF SOUTH FULTON, GEORGIA

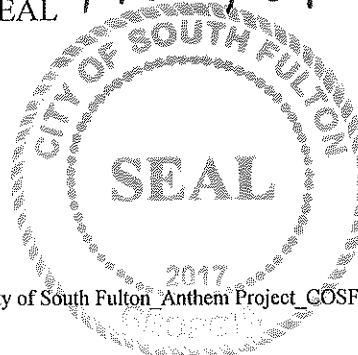
*Odie Donald*  
Odie Donald, City Manager

*S. Diane White*  
~~S. Diane White, CMC, City Clerk~~  
*Corey Adams*, Deputy City Clerk  
SEAL

Approved as to Form:

*Emilia C. Walker*

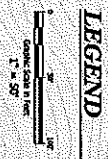
Emilia C. Walker, City Attorney



P:\CAProjects\BOC\Municipalization\City of South Fulton\5.15.19.IGA with City of South Fulton Anthem Project\_COSF.clean.docx

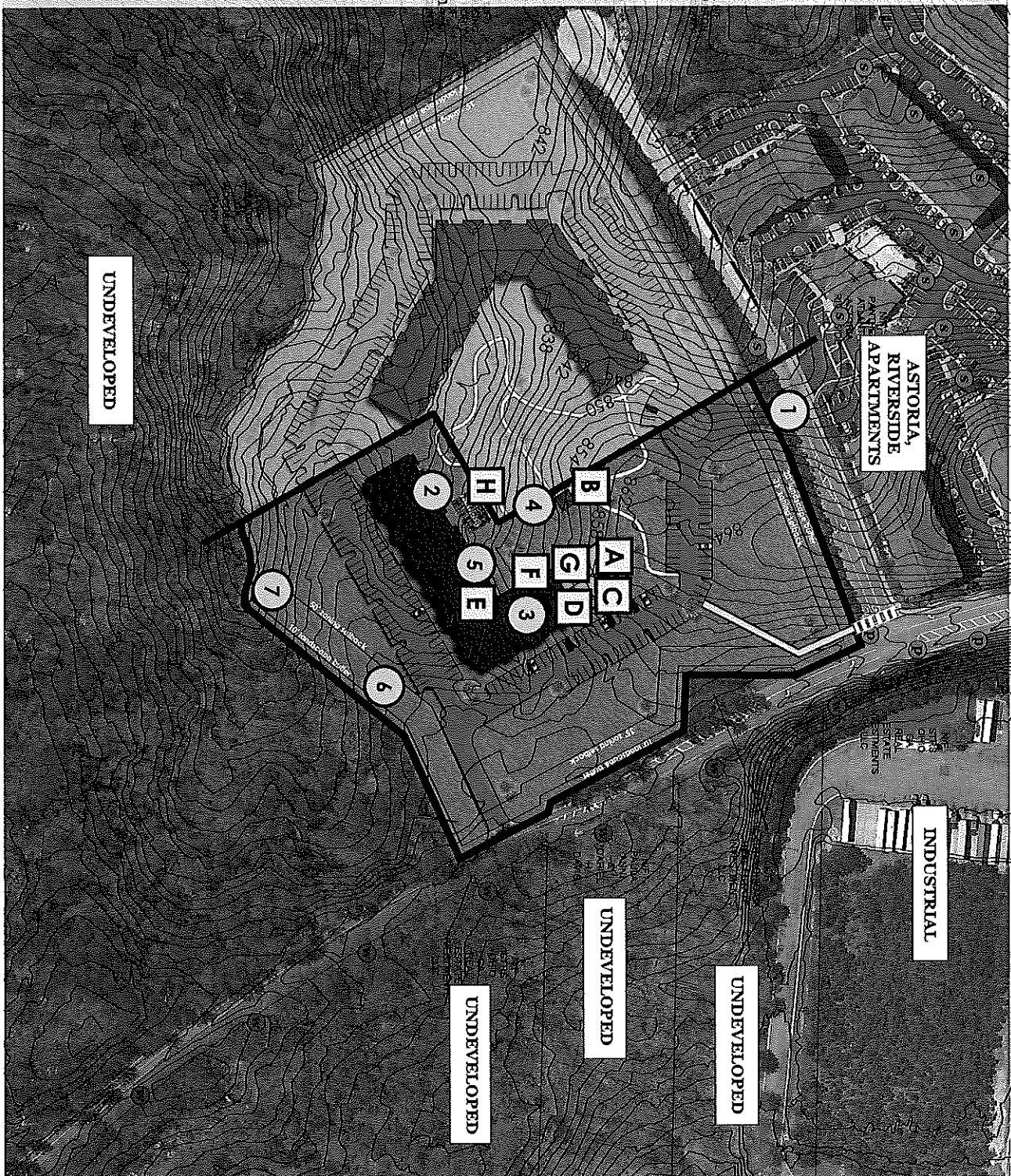
ITEM #: 19-0102B RM 2/6/19  
REGULAR MEETING

**EXHIBIT A**  
**CONCEPT PLAN**



**LEGEND**

- - water valve location
- - sewer manhole location
- - power pole location
- - site boundary
- - site features
- - site amenities



DRAWN BY: PP	PROJECT: <i>Anthem Apartments</i>	CLIENT: PRESTWICK COMPANIES 3715 NORTHSIDE PARKWAY, NW BLDG 200, SUITE 175 ATLANTA, GA 30327	STAMP:
SCALE: AS NOTED	DATE: 4/16/18		
PROJECT NUMBER: 1615	DRAWING NUMBER: Sheet 03		
DRAWING TITLE: Conceptual Site Plan			



WWW.GLAATL.COM

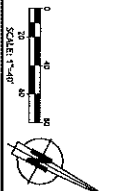
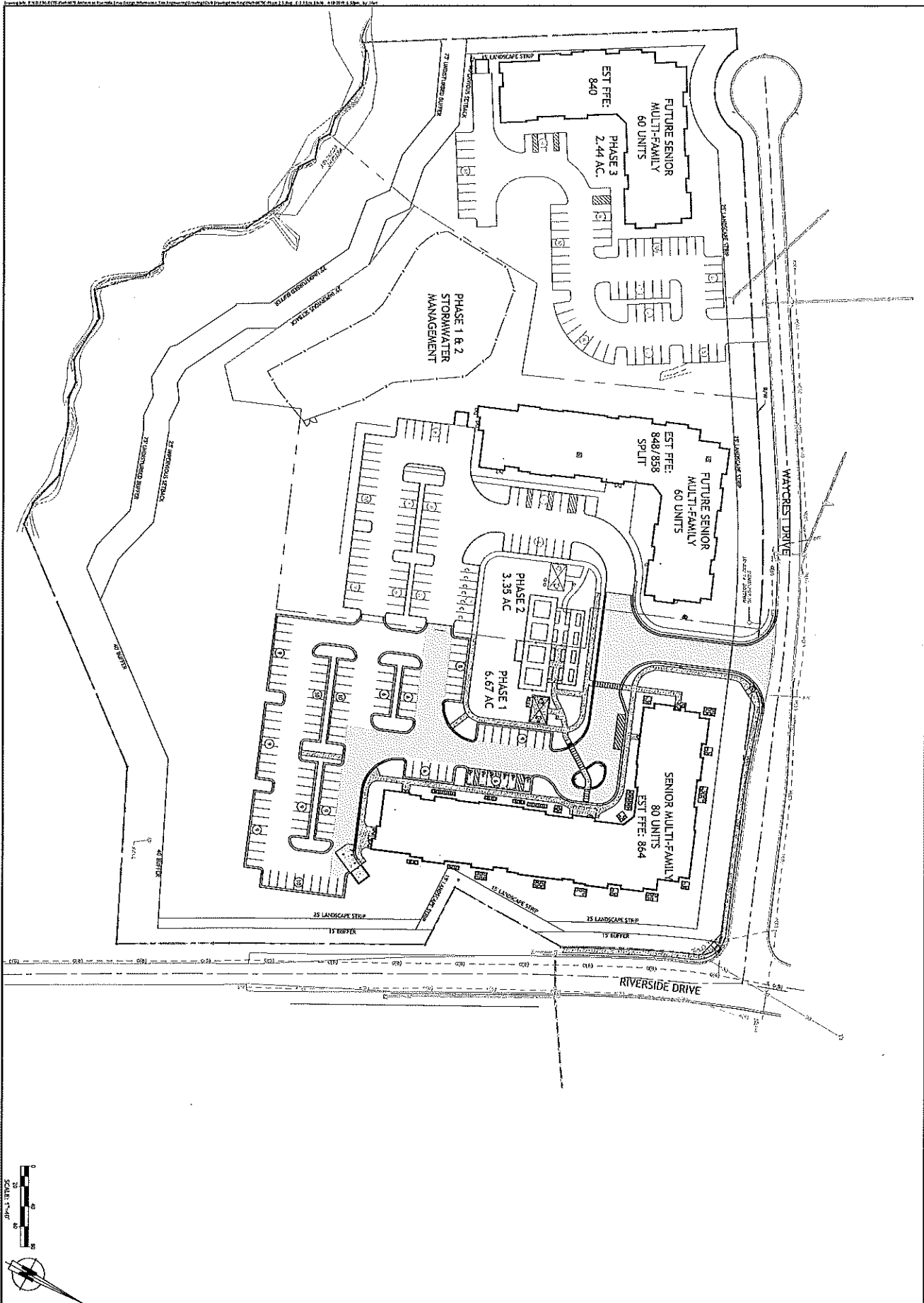
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G.L.A.-A.T.L.L.L.C.  
A T E C O R P O R A T I O N  
ATLANTA, GA 30327  
PHONE 404.222.0336  
FAX 404.222.0336  
WWW.GLAATL.COM

**EXHIBIT B**

**SITE PLAN**



**EX. A**

DATE: 01/15/2024

DRAWN BY: J. HARRIS

CHECKED BY: J. HARRIS

PROJECT: ANTHEM AT RIVERSIDE

SHEET NO.: 01

TOTAL SHEETS: 01

**ANTHEM AT RIVERSIDE**

INTERSECTION OF RIVERSIDE DR. AND WAYCREST DR. (SOUTHWEST QUADRANT)

CITY OF SOUTH FULTON, FULTON COUNTY

**MASTER SITE PLAN**

**LONG**

**ENGINEERING, INC.**

2350 HERITAGE COURT, STE 250  
ATLANTA, GA 30339  
TEL: 770.951.2495, FAX: 770.951.2496  
www.longeng.com



NO.	DATE	DESCRIPTION

**REVISIONS**

OWNER: FULTON COUNTY

SUBMITTAL: 01/15/2024

DRAWING NO.: 24-01