

**FIFTH AMENDMENT TO
PURCHASE AND SALE AGREEMENT**

This Fifth Amendment to Purchase and Sale Agreement (“Fifth Amendment”) is made and entered into as of the ___ day of September, 2019 (“Effective Date”), by and between the Mayor and Aldermen of the City of Savannah, a municipal corporation organized under the laws of the State of Georgia (“Seller”), and Bryson-Read, LLC, a Georgia limited liability company (“Purchaser”).

WITNESSETH

WHEREAS, Purchaser and Seller are parties to that certain Purchase and Sale Agreement dated May 23, 2017 (“Original Agreement”), regarding real property more particularly described in the Purchase and Sale Agreement; as amended by that certain First Amendment to Purchase and Sale Agreement (“First Amendment”), dated February 17, 2018; as amended by that certain Second Amendment to Purchase and Sale Agreement (“Second Amendment”) dated July 16, 2018; and as amended by that certain Third Amendment to Purchase and Sale Agreement dated February 25, 2019 (“Third Amendment”); and the Fourth Amendment dated August 23, 2019 (“Fourth Amendment”); and

WHEREAS, in order to restore Oglethorpe Lane, Purchaser has made extensive modifications to its development plans, which include, but are not limited to, the restoration of Oglethorpe Lane; and

WHEREAS, in developing, planning, and revising plans for the Improvements and the proposed lane restoration based on requests from the Metropolitan Planning Commission and the Historic District Board of Review, Purchaser has incurred significant out-of-pocket costs and expenses; and

WHEREAS, Purchaser and Seller desire to amend the Agreement and to memorialize such terms in a written agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. Recitals. The Recitals set forth above are deemed by the parties to be true and correct and are incorporated herein by this reference to be binding upon the parties the same as if set forth in full in this paragraph.

2. Definitions. Any term not expressly defined in this Amendment shall have the definition contained in the Agreement.

3. Property. Section 1.1(a) of the Agreement is hereby amended and the following sentence shall be added to the end of this section:

(a) Property. The Seller shall reserve a 27 foot wide easement bisecting the property from East to West in order to restore Oglethorpe Lane; said easement being on, over, and across, but not under, the Property.

4. Easement Agreement. Seller shall reserve an easement to re-establish the former Lane in substantially the same form contained in that certain Easement Agreement attached hereto as Exhibit A and incorporated by reference herein. The Easement Agreement shall describe the improvements to the Lane, encroachments permitted within the Lane, and the contribution of each party to the Lane improvements. Purchaser shall, at its sole cost and expense, relocate all existing utilities located in or under the easement area created by the Easement Agreement. This Section 4 shall survive Closing.

5. Purchase Price. At and in the event of Closing, considering the impact associated with restoration of the lane and the numerous plan revisions undertaken to accommodate, Purchaser shall pay to Seller in cash, check or wired funds in United States currency the sum of Three Million Six Hundred Twenty-Two Thousand Seven Hundred Fifty-Eight and 00/100 Dollars (\$3,622,758.00).

6. Miscellaneous. This Fifth Amendment may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same instrument. The parties agree that they may reflect and confirm their agreement to be bound hereby, and their execution and delivery of this Fifth Amendment, by transmitting a signed copy hereof, by facsimile or by electronic messaging, to the other party hereto and to the Escrow Agent. This Fifth Amendment shall govern in the event of any conflict with the Agreement. The Agreement, as amended hereby, is ratified and reaffirmed, constitutes the binding obligation of the parties hereto, and remains in full force and effect. The undersigned have full power and authority to sign on behalf of the respective entity.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Fifth Amendment to be effective as of the date first set forth above.

SELLER:

PURCHASER:

**THE MAYOR AND ALDERMEN OF THE
CITY OF SAVANNAH**

BRYSON-READ LLC,
a Georgia limited liability company

By: _____
Name: Pat Monahan
Title: City Manager

By: Geyer Morris Company, LLC
a Texas limited liability company, its
Manager

By: _____
Name: _____
Title: _____

**EXHIBIT A TO FIFTH AMENDMENT
EASEMENT AGREEMENT**

AFTER RECORDING RETURN TO:

Hunter, Maclean, Exley & Dunn, P.C.
200 E. St. Julian Street, P.O. Box 9848
Savannah, GA 31401
Attn.: Harold B. Yellin

STATE OF GEORGIA

COUNTY OF CHATHAM

ACCESS AND UTILITY EASEMENT AGREEMENT

THIS ACCESS AND UTILITY EASEMENT AGREEMENT (this “Agreement”), is made and entered into this ___ day of _____, 2019 by and between **BRYSON-READ, LLC**, a Georgia limited liability company (“Bryson-Read”), and the **MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH, GEORGIA**, a municipal corporation of the State of Georgia (“City”).

W I T N E S S E T H:

WHEREAS, Bryson-Read is the owner of that certain property (including an area formerly known as Oglethorpe Lane) located in Savannah, Chatham County, Georgia, being more particularly described on Exhibit “A” attached hereto and incorporated herein (the “Bryson-Read Property”); and

WHEREAS, City is the owner of adjoining rights-of-way, Habersham Street and Price Street, located in Savannah, Chatham County, Georgia, (the “City Property”); and

WHEREAS, Bryson-Read is constructing a multifamily apartment project on property located adjacent to the City Property (the “Project”); and

WHEREAS, City has requested, and Bryson-Read has agreed to grant City, a non-exclusive easement within and across the Bryson-Read Property as more particularly shown on Exhibit “A-1” attached hereto and incorporated herein (the “Access Easement Area”); and

WHEREAS, Bryson-Read has requested, and City has agreed to grant Bryson-Read, an exclusive easement within and across the City Property as more particularly shown on Exhibit “A-2” attached hereto and incorporated herein (the “Drainage Easement Area”).

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) in hand paid at and before the execution and delivery of these presents, the above-mentioned recitals, the mutual covenants and conditions contained herein, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Bryson-Read and the City (the “Parties”) do hereby agree as follows:

1. Access Easement. Bryson-Read hereby grants, bargains, sells and conveys unto the City a non-exclusive easement on, across, through, over and upon, but not under, the Bryson-Read Property for pedestrian and vehicular access, ingress and egress to and from the City Property, as more particularly shown and described in Exhibit “A-1” attached hereto.

(a) Construction and Maintenance. Bryson-Read agrees to construct the following improvements within the Access Easement Area: grading and paving the Access Easement Area, and installing curbs, gutters, and curb cuts, as necessary (the "Easement Area Improvements") in accordance with City development standards, approvals, and permits; and plans approved by the City. City agrees to reimburse Bryson-Read, for the actual cost of the construction of the Easement Area Improvements; provided however, City’s obligation to reimburse shall be limited to a maximum reimbursement not to exceed one hundred fifty thousand dollars (\$150,000) (“Maximum Reimbursement”) for all costs involved with the Easement Area Improvements. Bryson-Read may, at its option and at its sole cost and expense, spend more than the Maximum Reimbursement for the construction of improvements that would be in the best interests of the Project, subject to approval by applicable authorities which may be needed for certain improvements. If City fails to pay any sum due to Bryson-Read, then the City shall be liable for interest on said sum from the date such amount becomes due until paid, at the statutory rate, plus costs of collection, including reasonable attorneys’ fees, incurred incident to the collection of the sums so due. Upon completion of the Easement Area Improvements, Bryson-Read shall keep all Easement Area Improvements in good order and repair, in a commercially reasonable manner, and maintained in good and safe working order at all times. Such maintenance shall include, but not be limited to repair, paving, and replacement of the Easement Area Improvements. All work and repairs shall be performed in a good and workmanlike manner, in accordance with all local and state laws and regulations government such matters.

(b) The Easement granted herein shall burden those portions of the Bryson-Read property which constitute the Access Easement Area and the same shall be for the benefit of the City.

(c) Disbursements. Bryson-Read shall apply for disbursements in accordance with the terms of this Agreement from time to time in order to complete the Easement Area Improvements. Upon compliance with the terms of this Agreement, City shall disburse in accordance with each request for disbursement submitted by Bryson-Read from time to time (each, a "Disbursement Request").

(d) Procedures for Disbursement. Each Disbursement Request submitted by Bryson-Read to City shall be in accordance with the following procedures and deliveries:

a. Form of Disbursement Request. To initiate each Disbursement Request, Bryson-Read shall prepare an Owner's Affidavit and Requisition for funds in the form attached hereto as Exhibit B, which shall be accompanied by invoices for all such costs submitted for payment with a Disbursement Request.

b. Use of Proceeds. With each Disbursement Request, Bryson-Read shall certify that the proceeds of the requested disbursement shall be used only for the payment or reimbursement of the items described in the Disbursement Request and represented by the invoices or other appropriate documentation submitted in connection with such Disbursement Request, which costs, expenses and fees have been actually incurred by Bryson-Read.

c. Frequency. Bryson-Read may not submit a Disbursement Request more frequently than monthly.

d. Advance of Funds. City shall advance by wire transfer into the designated account of Bryson-Read the amount of each Disbursement Request within twenty (20) days of receipt thereof.

2. Drainage Easement. City hereby grants, bargains, sells and conveys unto Bryson-Read a non-exclusive drainage easement on, across, through, over and upon the City Property, as more particularly shown and described in Exhibit "A-2" attached hereto, for the installation, modification, operation, use, and maintenance of storm water drainage lines, drop inlets, and related facilities. Bryson-Read shall be solely responsible for the cost of construction, installation, maintenance, and use of any improvements located within the Drainage Easement Area and such improvements shall be constructed in a good and workmanlike manner in accordance with all local and state laws and regulations governing such matters. Bryson-Read shall have the right to relocate, re-route, or modify the existing improvements located in the Drainage Easement Area, at its sole cost and expense, subject to the approval of the City, said approval shall not be unreasonably withheld. It is the intent of the Parties that the easements granted herein shall burden those portions of City Property which constitute the Drainage Easement Area and that the same property shall be for the benefit of Bryson-Read.

3. Permits. City will support any future requests by Bryson-Read for any extension or modifications of applicable permits consistent with terms and conditions of this Agreement.

4. Indemnification. To extent permissible by law and without waiver of sovereign immunity, each Party covenants and agrees to indemnify, and does hereby indemnify, hold harmless and defend the other Party, from and against any and all claims, suits, losses, costs,

damages, liabilities and expenses, including reasonable attorneys' fees, arising out of or in connection with, directly or indirectly, the construction, maintenance, occupancy, use, existence or location of the Easement Areas and the uses granted hereunder.

5. Effective Date. This Agreement shall not take effect until Bryson-Read receives a certificate of occupancy from the City of Savannah for the Project.

6. Entire Agreement. There are no other agreements or understandings, either oral or written, between the Parties affecting this Agreement or the subject matter covered by this Agreement, except as otherwise specifically provided for or referred to herein. This Agreement cancels and supersedes all previous agreements between the Parties relating to the subject matter covered by this Agreement. No change or addition to, or deletion of, any portion of this Agreement shall be valid or binding upon the Parties hereto unless the same is approved in writing by the Parties.

7. No Waiver. Any failure by a party hereto to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and such priority, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by the other party of the provisions of this agreement to be performed by the other party.

8. Enforceability. If any provision of this agreement is invalid or unenforceable as against any person or under certain circumstances, the remainder of this agreement and applicability of such provision to other persons or circumstances shall not be affected thereby. Each provision of this agreement, except as otherwise herein provided, shall be valid and enforceable to the fullest extent permitted by law.

9. Binding Effect. This Agreement and the easement granted herein shall be for the use and benefit of City and their guests, licensees and invitees and shall be binding upon and shall inure to the benefit of the Parties, and their respective successors and assigns.

10. No Third Party Rights. The benefit of this Agreement is intended to inure only to the Parties, and their successors and assigns, and nothing in this Agreement shall be construed as creating or giving rise to any rights in any third parties or deemed to confer any third party beneficiary status on anyone who is not one of the Parties hereto, or their successors and assigns.

11. Controlling Laws; Jurisdiction; Venue.

(a) This Agreement and provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Georgia and all duly adopted ordinances, regulations, and policies of Bryson-Read now in effect and those hereinafter adopted.

(b) The location for settlement of any and all claims, controversies, or disputes, and any litigation arising out of or relating to any part of this Agreement, or any breach hereof, shall be Chatham County, Georgia. The Parties consent and agree that venue of any civil action arising from or related to this Agreement shall exclusively lie in the State and Superior Courts of

Chatham County Georgia and the United States District Court for the Southern District of Georgia, Savannah Division, and the Parties hereby consent to the jurisdiction of those courts over them.

12. Captions and References; Interpretation. The captions and paragraph headings in this Agreement are for ease of reference only and are not intended to limit, describe, supplement or be part of this Agreement. Any reference in this Agreement to “Section” or “Exhibit” or “Schedule” shall refer to the corresponding Section or Exhibit of this Agreement, unless otherwise expressly indicated. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular form of nouns shall include the plural and vice versa. Whenever the word “including” is used, it shall have the same meaning as “including but not limited to” and “including without limitation.” Any reference in this Agreement to “herein” or “hereof” shall refer to this Agreement as a whole rather than being limited to the particular section or subsection in which such term is used.

13. Time. Time is of the essence in the performance of this Agreement by each of the Parties.

14. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall, for all purposes constitute one and the same agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed under seal as of the day and year above written.

MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH, a municipal corporation of the State of Georgia

Signed, sealed and delivered in the presence of:

Witness

Notary Public
My commission expires: _____

By: _____
Name: _____
Title: _____

Attest: _____
Name: _____
Title: _____

BRYSON-READ, LLC, a Georgia limited liability company

Signed, sealed and delivered in the presence of:

Witness

Notary Public
My commission expires: _____

By: _____
Name: _____
Title: _____

Attest: _____
Name: _____
Title: _____

Exhibit “A” to Easement Agreement

[Legal Description of Burdened Property]

Exhibit "A-1" to Easement Agreement

Depiction of Burdened Property

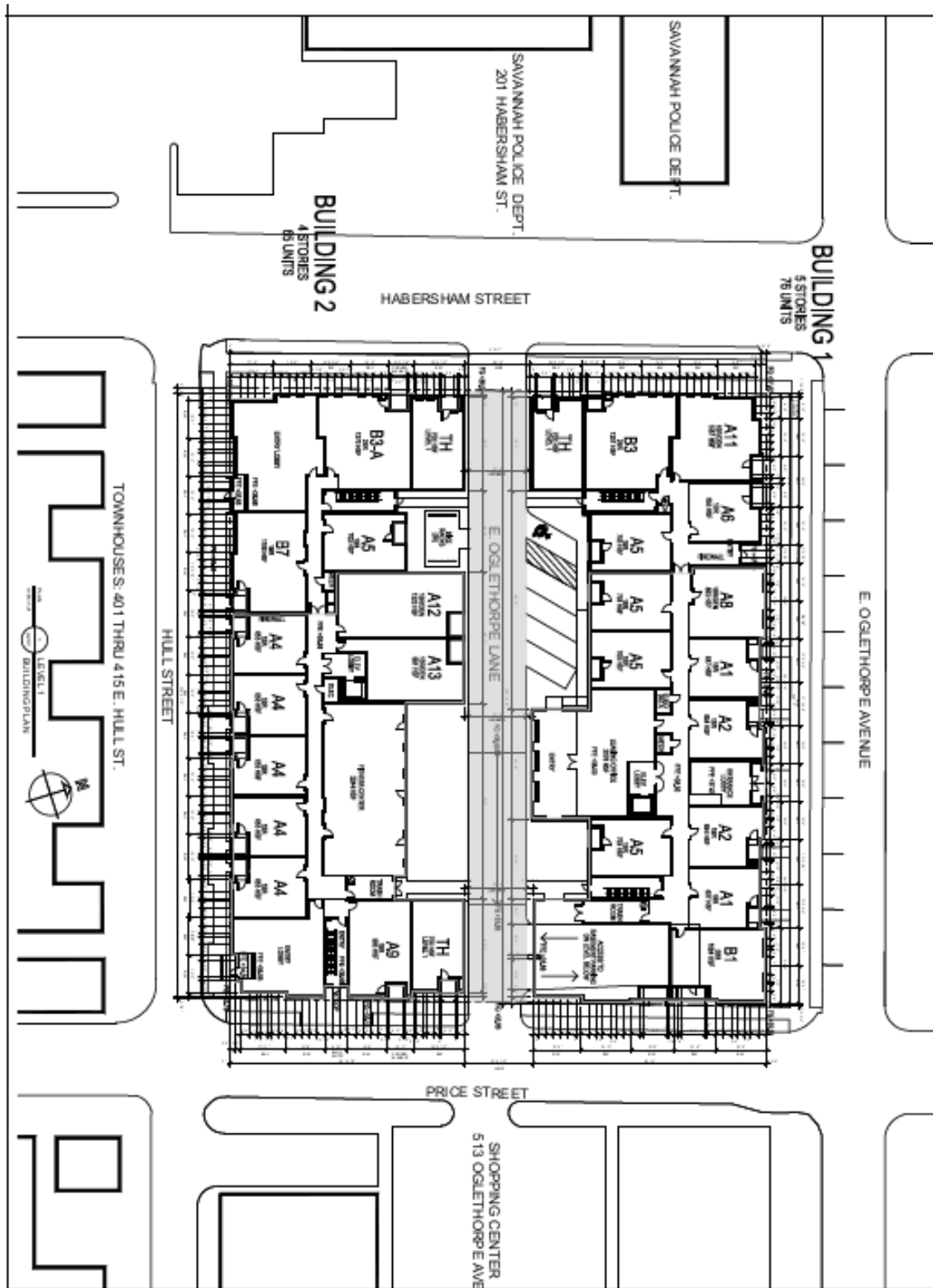


Exhibit "B" to Easement Agreement

Owner's Affidavit and
Requisition for Funds No. _____

Date: _____

To: City of Savannah
From: Bryson-Read, LLC - Developer
Re: 415 Oglethorpe Avenue ("Property"); Oglethorpe Lane – Lane Restoration ("Project")

The undersigned does hereby request and authorize payment totaling \$_____ as described and itemized on Schedule A, attached, and does hereby certify and guarantee that all amounts requested for labor and/or material are physically incorporated into the Lane Restoration, in compliance with the plans and specifications, with modifications approved by addressee above, or for services truly performed relating to the Property. All such payment requests, of the amounts actually due and billed or value of work in place and services performed.

The undersigned further certifies that no part of the payments requested include or contemplate rebates, commission or loans to the undersigned, their beneficiaries, agents or assigns, and that all amounts requested are solely for the named payees and for the purpose indicated and that this requisition includes all amounts outstanding and payable on the Property through _____.

The undersigned further certifies that to the undersigned's knowledge, no claims have been made to the affiant by, nor is any suit now pending on behalf of, any contractor, subcontractor, laborer or materialman and further that no chattel mortgages, conditional bills of sale, retention of title agreements, security agreements, financing statements or personal property leases have been given or are outstanding as to any fixtures, appliances or equipment which are now installed in or upon said real property, or the improvements thereon, except as indicated on Schedule B (if any), attached.

The undersigned hereby acknowledges the dependence others may place upon the statements contained herein. No obligation on the part of City of Savannah or their respective advisor(s), expressed or implied, is created by this requisition as to protection of the owner and/or contractor or assigns from mechanics' or materialmen's lien claims, and the owner and contractor, as agreed between them, shall be responsible for the procurement of required lien waivers, paid bills, and releases from both principal payees and all subordinate claimants thereunder, and the undersigned hereby covenants and agrees to hold City of Savannah and their agents and assigns harmless against any lien, claim or suit by the contractors, subcontractors, mechanics or materialmen in connection with the furnishing of said services, labor and material included in the requisition hereinabove described and all prior requisitions.

BRYSON-READ, LLC, a Georgia limited liability company

Signed, sealed and delivered in the presence of:

By: _____
Name: _____
Title: _____

Witness

Attest: _____
Name: _____
Title: _____

Notary Public
My commission expires: _____

Schedule A to Owner's Affidavit and
Requisition for Funds No. _____

Schedule B to Owner's Affidavit and
Requisition for Funds No. _____