

ESCROW AGREEMENT

This Escrow Agreement (the “Agreement”) is made as of the ____ day of October, 2020, by and among THE MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH, a municipal corporation organized under the laws of the State of Georgia (the “City”); DSI REALTY COMPANY III, LLC, a Georgia limited liability company (“DSI”), and McCORKLE, JOHNSON & McCOY, LLP (“Escrow Agent”).

RECITALS:

WHEREAS, City and DSI entered into that certain Easement Agreement pursuant to which City will grant an access and utility easement to DSI and others over and across a certain parcel of land as described on Exhibit “A”; and

WHEREAS, as consideration and in exchange for the easement, DSI has covenanted to make certain Additional Improvements to City Property as described in the Easement Agreement; and

WHEREAS, the cost of the design, permitting and construction of such Additional Improvements to City Property shall be greater than or equal to \$200,000 (“Cost of the Additional Improvements”) and DSI shall place Two Hundred Thousand Dollars (\$200,000.00) (“Escrow Funds”) to cover the Cost of the Additional Improvements into an Escrow Account as security to City that the work will be completed; and

WHEREAS, the Parties hereto desire to enter into this Agreement to provide for the deposit and disposition of the Escrow Funds for the Additional Improvements to City Property.

NOW THEREFORE, in consideration of the above recitals, the mutual promises set forth herein and other good and valuable consideration, the Parties agree as follows:

1. **ACCEPTANCE OF ESCROW AGENT.** Escrow Agent hereby agrees to act as escrow agent in accordance with the terms and conditions set forth in the herein below. All fees to Escrow Agent shall be borne solely by DSI.
2. **DEPOSITS OF ESCROW FUNDS BY DSI.** At Closing (as defined in the Easement Agreement) Escrow Agent shall receive from City an escrow deposit in the amount of the Escrow Funds.
3. **DEPOSIT OF ESCROW FUNDS BY ESCROW AGENT.** Escrow Agent may deposit such funds in its custodial or escrow accounts with any reputable trust company, bank, savings bank, savings association, or other financial services entity which is insured by the Federal Deposit Insurance Corporation. It is understood that Escrow Agent shall be under no obligation to invest the funds deposited with it on behalf of any depositor, nor shall it be accountable for any earnings or incidental benefit attributable to the funds which may be received by Escrow Agent while it holds such funds. Deposits held by Escrow Agent shall be subject to the provisions of applicable state statutes governing unclaimed property. If any Party instructs Escrow Agent to deposit the

Escrow Funds in an interest-bearing account, then upon the depository institution's request, the Purchaser or Seller, as applicable, must execute the appropriate Internal Revenue Service and other documentation, including, without limitation, documents required to comply with the Patriot Act, for the giving of taxpayer identification information relating to this account, and such Party shall pay all legal fees and expenses associated with said accounts and requirements.

4. **DISBURSEMENT OF ESCROW FUNDS.** DSI shall notify City following completion of the Additional Improvements. DSI may draw on the Escrow Funds by presenting invoices from its contractor(s) for actual completed work, which invoices will be reviewed by the City and the engineer who designed the plans for the Additional Improvements to ensure that all work has been completed in a competent and professional manner in compliance with the plans and specifications for the work.

5. **DEFAULT AND/OR DISPUTES.** In the event written notice of default or dispute is given to the Escrow Agent by any Party, or if Escrow Agent receives contrary written instructions from any Party, the Escrow Agent will promptly notify all Parties of such notice. Thereafter, Escrow Agent will decline to disburse funds or to deliver any instrument or otherwise continue to perform its escrow functions, except upon receipt of a mutual written agreement of the Parties or upon an appropriate order of court. In the event of a dispute, the Escrow Agent is authorized to deposit the escrow into a court of competent jurisdiction for a determination as to the proper disposition of said funds. In the event that the funds are deposited in court, the Escrow Agent shall be entitled to file a claim in the proceeding for its costs and counsel fees, if any.

6. **PERFORMANCE OF DUTIES.** In performing any of its duties under this Escrow Agreement, or upon the claimed failure to perform its duties hereunder, Escrow Agent shall not be liable to anyone for any damages, losses or expenses which may occur as a result of Escrow Agent so acting, or failing to act, unless due to Escrow Agent's gross negligence or malicious misconduct. Accordingly, Escrow Agent shall not incur any such liability with respect to (i) any good faith act or omission given with respect to any questions relating to the duties and responsibilities of Escrow Agent hereunder, or (ii) any good faith act or omission in reliance upon any document, not only as to its due execution and to the validity and effectiveness of its provisions but also as to the truth and accuracy of any information contained therein, which Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by the proper person or persons and to conform with the provisions of this Escrow Agreement.

7. **LIMITATIONS OF LIABILITY.** Escrow Agent shall not be liable for any loss or damage resulting from the following:

(a) The effect of the transactions described under the Easement Agreement or this Escrow;

(b) The default, error, act or failure to act by any Party under the Easement Agreement or this Escrow Agreement;

(c) Any loss, loss of value or impairment of funds which have been deposited in escrow while those funds are in the course of collection or while those funds are on deposit in a depository

institution if such loss or loss of value or impairment results from the failure, insolvency or suspension of a depository institution; or

(d) Escrow Agent's compliance with any legal process including but not limited to, subpoena, writs, orders, judgments and decrees of any court whether issued with or without jurisdiction and whether or not subsequently vacated, modified, set aside or reversed.

8. TERMINATION. In the event the Additional Improvements to City Property are not fully designed and construction commenced within three (3) years of the date of this Agreement, this Agreement can be extended upon the mutual written consent of all Parties hereto and, if not so extended, the Escrow Agent shall distribute the Escrow Funds to City to complete the Additional Improvements.

9. RELEASE OF PAYMENT. Except as specifically set forth in this Escrow Agreement, payment of all funds so held in escrow by the Escrow Agent, in accordance with the terms, conditions and provisions of this Escrow Agreement, shall fully and completely discharge and exonerate the Escrow Agent from any and all future liability or obligations of any nature or character at law or equity to the Parties hereto or under this Escrow Agreement.

10. NOTICE. Any notice required or permitted to be given under this Agreement shall be deemed given if delivered personally to an officer or general partner of the Party to be notified or sent by (a) United States registered or certified mail, postage prepaid, return receipt requested, or (b) national overnight courier service, and addressed as set forth below. Any Party giving notice shall also provide a contemporaneous copy of the same notice to Escrow Agent.

If to City:

Copy to:

And:

And:

If DSI:

If to Escrow Agent: McCorkle, Johnson & McCoy, LLP
319 Tattnell Street
Savannah, Georgia 31401
Attn: Robert L. McCorkle, III

or such other address as may be designated by either Party by written notice to the other. Except as otherwise provided in this Lease, every notice, demand, request or other communication hereunder shall be deemed to have been given or served upon actual receipt thereof. Accordingly, a notice shall not be effective until actually received. Notwithstanding the foregoing, any notice mailed to the last designated address of any person or Party to which a notice may be or is required

to be delivered pursuant to this Agreement shall not be deemed ineffective if actual delivery cannot be made due to a change of address of the person or Party to which the notice is directed or the failure or refusal of such person or Party to accept delivery of the notice.

11. **SUCCESSORS AND ASSIGNS.** This Escrow Agreement shall be binding upon and inure to the benefit of the Parties respective successors and assigns.

12. **GOVERNING LAW; JURISDICTION.** This Escrow Agreement shall be governed by and construed in accordance with the Laws of the State of Georgia. Any disputes or controversies arising out of this Agreement shall be adjudicated by the appropriate court located in Chatham County, Georgia.

13. **COUNTERPART EXECUTION; FACSIMILE EXECUTION.** This Agreement may be executed in counterparts, each of which shall be deemed an original regardless of the date of its execution and delivery. All such counterparts together shall constitute one and the same document. Any facsimile signature of either Party shall be deemed the equivalent of an original signature and binding on such Party for all intents and purposes under the Agreement and as a matter of law.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date set forth above.

MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH

By: _____
City Manager

DSI COUNTRY CLUB, INC.

By: _____
Its: President

ESCROW AGENT:

McCORKLE, JOHNSON & McCOY, LLP

By: _____
Robert L. McCorkle, III, Partner

EXHIBIT "A"

[See Attached]

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