

## DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** (this “Agreement”) is entered into and effective as of this 13th day of February, 2020, by and among **THE MAYOR AND ALDERMAN OF THE CITY OF SAVANNAH**, a municipal corporation existing under the laws of the State of Georgia (the “City”); **SAVANNAH ECONOMIC DEVELOPMENT AUTHORITY** (“SEDA”), a public corporation of the State of Georgia; and **ROCKINGHAM FARMS, LLC**, a Georgia limited liability company (“Rockingham Farms”).

### RECITALS:

**WHEREAS**, Rockingham Farms is the fee owner of approximately 1,125 acres of land (the “Site”) recently annexed into the City and located adjacent to the Veterans Parkway, being more specifically set forth on the map of the Site attached hereto as Exhibit A and incorporated herein by this reference;

**WHEREAS**, Rockingham Farms intends to develop the Site for warehousing, manufacturing and light industrial uses with the capacity for the construction of more than 10 million square feet of such uses (the “Project”);

**WHEREAS**, Rockingham Farms has agreed with SEDA to jointly market the Project with SEDA, and SEDA will acquire the Site from Rockingham Farms and lease the Site back to Rockingham Farms in order to facilitate the development and marketing of the Project, including the lease of tracts of land on of the Site to companies engaged in warehousing, manufacturing and light industrial businesses;

**WHEREAS**, the Site has limited vehicular access and the development of the Site requires the construction of an interchange connecting the Site with the Southwest Bypass on right-of-way owned by the City (the “Interchange”) and the installation of certain off-site infrastructure necessary to service the Site, including water and sewer connections (the “Infrastructure”), and City has agreed to construct the Interchange and install the Infrastructure;

**WHEREAS**, the City desires to engage Rockingham Farms to design and construct the Interchange and to design and install the Infrastructure in accordance with the terms of a fixed-price construction contract for the design and construction of the Interchange (the “Interchange Construction Contract”) and a fixed-price contract for the design and installation of the Infrastructure (the “Water and Sewer Agreement”);

**WHEREAS**, SEDA will enter into an intergovernmental agreement with the City (“Intergovernmental Agreement”) pursuant to which SEDA will issue one or more series of bonds (the “Bonds”) on behalf of the City in the aggregate principal amount not to exceed Thirty-Eight Million and No/100 Dollars (\$38,000,000.00), the proceeds of which shall be used for the design and construction of the Interchange and the design and installation of the Infrastructure, capitalized interest and bond financing and closing costs, and which bonds will have a twenty (20) year final maturity and provide for the payment of interest only for the first three (3) years after issuance of the Bonds;

**WHEREAS**, the Bonds will be secured by the Intergovernmental Agreement and an assignment by SEDA of the payments in lieu of taxes that it shall receive from lessees of tracts of land on the Site (the “PILOT Revenue”), and shall be further secured by the guaranty of Rockingham Farms of the debt service payments due under the Bonds for a period of five years from the issuance of the Bonds and by a cash reserve fund equal to the first five (5) years of debt service on the Bonds less the amount of the three-year capitalized interest reserve funded by the Bonds;

**WHEREAS**, SEDA will disburse the net proceeds of the Bonds to Rockingham Farms for payment of the design and construction expenses of the Interchange and the design and installation expenses of the Infrastructure on a progress draw basis pursuant to the terms of the Interchange Construction Contract and the Water and Sewer Agreement (collectively, the “Contracts”);

**WHEREAS**, the City will establish a maintenance sinking fund to provide funding for the future maintenance of the Interchange (the “Maintenance Sinking Fund”), which sinking fund will be funded from the PILOT Revenue paid to SEDA during the twelve-month period following the final payment of all principal and interest due under the Bonds and is estimated will be in the approximate amount of \$8 million;

**WHEREAS**, SEDA will assign ninety-five percent (95%) of the PILOT Revenue to the City and, until such time as the final payment of all principal and interest due under the Bonds has been made, the City shall apply such PILOT Revenue exclusively to (i) first, the payment of debt service on the Bonds, and (ii) next, the annual sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) to the City as a payment in lieu of taxes from Rockingham Farms, with any remaining funds to be applied to a reserve or sinking fund for the payment of the debt service on the Bonds; after the final payment of all principal and interest due under the Bonds has been made, for a period of twelve months the City shall apply such PILOT Revenue exclusively to the Maintenance Sinking Fund;

**WHEREAS**, the completion of the design and construction of the Interchange and the design and installation of the Infrastructure in accordance with the plans and specifications in the Contracts will be secured by a completion bond and the unconditional guaranty of Rockingham Farms;

**WHEREAS**, twelve months following the final payment of all principal and interest due under the Bonds, SEDA will convey back to Rockingham Farms for nominal consideration its fee interest in the Tracts;

**WHEREAS**, it is estimated that the Project will create more than 1,200 new jobs and that, after SEDA conveys the Tract back to Rockingham Farms, the additional annual ad valorem tax revenue will be in excess of \$10 million, to be shared among the City, Chatham County and the Savannah-Chatham County Board of Education; and

**WHEREAS**, the City has determined that it is in the best interests of the City for the City to enter into and to effectuate the transactions described hereinabove, including the Intergovernmental Agreement and the Contracts, and SEDA has determined that it is in the best interests of SEDA to acquire the Site and lease it back to Rockingham Farms, issue the Bonds and develop and market the Site jointly with Rockingham Farms.

**W I T N E S S E T H :**

**NOW THEREFORE**, of the sum of Ten and No/100 Dollars (\$10.00), the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. **Incorporation of the Recitals.** The recitals of this Agreement are incorporated herein as if fully set out below.

2. **Bond Authorization.** The City hereby agrees to enter into the Intergovernmental Agreement with SEDA to cause the issuance of the Bonds, on the following terms and conditions, and

SEDA, the City and Rockingham Farms will cooperate and diligently proceed with the actions that are required by each to facilitate the issuance and prompt closing of the Bonds:

- i. The Bonds shall be in aggregate principal amount not to exceed Thirty-Eight Million and No/100 Dollars (\$38,000,000.00);
- ii. Final maturity of the Bonds shall be twenty (20) years;
- iii. The debt service schedule for the Bond shall provide for the payment of interest only at a rate to be determined for the first three (3) years after issuance of the Bonds; and
- iv. The proceeds of the Bonds shall be used exclusively for the design and construction of the Interchange and the design and installation of the Infrastructure, capitalized interest and bond financing and closing costs.

3. **SEDA's Acquisition and Leaseback of Site.** Upon the issuance of the Bonds, Rockingham Farms shall convey the Site to SEDA and immediately lease the Site back to Rockingham Farms in order to facilitate the development and marketing of the Project. Twelve months following the final payment of all principal and interest due under the Bonds, SEDA shall convey the Site back to Rockingham Farms for the sum of One and No/100 Dollars (\$1.00), and the deed of conveyance of the Site from Rockingham Farms to SEDA shall recite this reconveyance obligation of SEDA.

4. **Project Development.** Rockingham Farms shall proceed to develop the Site for warehousing, manufacturing and light industrial uses with the capacity for the construction of more than 10 million square feet of such uses, and shall jointly market the Project with SEDA, including the lease of tracts of land on the Site to companies engaged in warehousing, manufacturing and light industrial businesses.

5. **PILOT Revenue.** Upon the lease or sublease by Rockingham Farms of any tract of land on the Site to a company engaged in the warehousing, manufacturing and light industrial business or to any other third party (hereinafter referred to as a "Tract Lessee") and continuing until such time as SEDA conveys the Site back to Rockingham Farms, the Tract Lessee shall agree to make an annual payment in lieu of taxes to SEDA in the amount of the ad valorem taxes that the Tract Lessee would otherwise be responsible for if the fee interest in the tract of land were owned by the Tract Lessee rather than by SEDA. Such obligation will be recited in the lease or sublease and shall be deemed to be a covenant running with the land and Rockingham Farms shall cause the Tract Lessee to execute and deliver any agreement or certificate reasonably required by SEDA to confirm or effectuate such obligation.

6. **Maintenance Sinking Fund.** The City will establish the Maintenance Sinking Fund to provide funding for the future maintenance of the Interchange. The Maintenance Sinking Fund will be funded from the PILOT Revenue paid to SEDA during the twelve-month period following the final payment of all principal and interest due under the Bonds.

7. **Distribution of PILOT Revenue.** SEDA shall be entitled to retain five percent (5%) of the PILOT Revenue as its fee for the accommodations that it is providing as set forth in this Agreement, and SEDA shall will assign the remaining ninety-five percent (95%) of the PILOT Revenue to the City, provided that, until such time as the final payment of all principal and interest due under the Bonds has been made and SEDA has conveyed the Site back to Rockingham Farms, the City shall apply such PILOT Revenue exclusively as follows:

(A) during each of the first three (3) years after the issuance of the Bonds, (i) first, to the payment of any interest on the Bonds owing after the interest payment allocated to that year from the three-year capitalized interest reserve funded by the Bonds, (ii) next, the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) to the City, and (iii) any remaining funds shall be applied to a reserve or sinking fund established by the indenture of trust for the Bonds for the payment of debt service on the Bonds;

(B) during each of the following years until the payment of all principal and interest due under the Bonds has been made, (i) first, to the payment of debt service on the Bonds, (ii) next, the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) to the City, and (iii) any remaining funds shall be applied to a reserve or sinking fund established by the indenture of trust for the Bonds for the payment of debt service on the Bonds; and

(C) for a period of twelve months after the final payment of all principal and interest due under the Bonds has been made, to the Maintenance Sinking Fund.

## 8. **Contracts.**

(a) **Interchange Construction Contract.** The City shall enter into the Interchange Construction Contract with Rockingham Farms, which shall provide for the design and construction of the Interchange for a fixed price approved by the City on a progress draw basis in accordance with plans and specifications approved by the City and with such other terms and provisions as reasonably requested by the City, including that Rockingham Farms shall assure that the subcontractor bids shall be consistent with the City's DBE policies. The obligations of Rockingham Farms to complete the design and construction of the Interchange in accordance with the price, plans and specifications in the Interchange Construction Contract will be secured by a completion bond and the unconditional guaranty of Rockingham Farms, both in form and substance acceptable to the City, it being the intention of the parties that the sole financial obligation of the City with regard to the design and construction of the Interchange is to pay the fixed price provided for in the Interchange Construction Contract on a progress draw basis, and that Rockingham Farms shall assume any and all other financial risks associated with the design and construction of the Interchange.

(b) **Water and Sewer Agreement.** The City shall enter into the Water and Sewer Agreement with Rockingham Farms, which shall provide for the design and installation of the Infrastructure for a fixed price approved by the City in accordance with plans and specifications approved by the City and with such other terms and provisions as reasonably requested by the City, including that Rockingham Farms shall assure that the subcontractor bids shall be consistent with the City's DBE policies. The obligations of Rockingham Farms to complete the design and installation of the Infrastructure in accordance with the price, plans and specifications in the Water and Sewer Agreement will be secured by a completion bond and the unconditional guaranty of Rockingham Farms, both in form and substance acceptable to the City, it being the intention of the parties that the sole financial obligation of the City with regard to the design and installation of the Infrastructure is to pay the fixed price provided for in the Water and Sewer Agreement on a progress draw basis, and that Rockingham Farms shall assume any and all other financial risks associated with the design and installation of the Infrastructure.<sup>1</sup>

9. **Guarantees of Rockingham Farms.** In addition to the completion guarantees referred to in Section 8 above, Rockingham Farms shall enter into a guaranty agreement with SEDA and the City whereby Rockingham Farms fully guarantees the debt service payments due under the Bonds for a period of five years from the issuance of the Bonds, and this guaranty shall be secured by a cash reserve fund to be deposited by Rockingham Farms with the City equal to the first five (5) years of debt service on the Bonds less the amount of the three-year capitalized interest reserve funded by the Bonds.

10. **Inspection.** During the pendency of construction of the Interchange and the installation of the Infrastructure, Rockingham Farms will cooperate with the City and its agents with respect to such surveys, studies, inspections and investigations as the City shall deem appropriate.

11. **City Manager Approval.** The parties acknowledge that the parties may need to execute one or more amendments to this Agreement which shall provide greater detail with respect to the rights, duties and obligations of each party. The approval of this Agreement by the City will authorize the City Manager to execute amendments to this Agreement that are in furtherance of the terms and conditions contained herein.

12. **Agency.** The City, SEDA and Rockingham Farms, and their respective agents, contractors or subcontractors, shall perform all activities that are outlined in this Agreement as independent entities and not as agents of each other.

13. **No Assignment.** This Agreement is a contract for specialized services and is personal to the parties, and shall not be assignable in whole or in part by a party without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any attempted assignment without prior written consent shall be void and of no force or effect. Notwithstanding the foregoing, Rockingham Farms may assign this Agreement or may assign or delegate certain of its rights and obligations under this Agreement, without the consent of the other parties, to a person or entity that controls, is controlled by, or is under common control with Rockingham Farms.

14. **Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the parties hereto, their respective heirs, legal representatives, successors and permitted assigns.

15. **Amendment.** Any amendment to this Agreement will not be binding upon the parties hereto unless such amendment is in writing duly executed by the parties hereto.

16. **Controlling Laws; Venue.**

(a) **Controlling Laws.** This Agreement and the 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 the City now in effect and those hereinafter adopted. Unless otherwise specified in this Agreement for particular issues, all ordinances, rules, regulations and policies of the City are applicable.

(b) **Venue.** The exclusive venue for resolution of any and all claims, controversies, or disputes arising out of or relating to any part of this Agreement, or any breach hereof, shall be Chatham County, Georgia, and the parties agree to submit to the jurisdiction of the federal and state courts situated in Chatham County, Georgia for any such resolution.

17. **Notices.** All notices that may be or are required to be given to or made by a party to another party in connection with this Agreement will be in writing and shall be deemed to have been properly given if delivered in person, or sent by overnight commercial courier or by registered or certified mail, return receipt requested, to the addresses set out below, or at such other address as specified by written notice and delivered in accordance herewith, to:

City: City of Savannah  
Attention: City Manager  
2 East Bay Street  
City Hall, 4th Floor  
Post Office Box 1027  
Savannah, Georgia 31401  
Phone: (912) 651-6415

with copy to: Office of the City Attorney  
6 East Bay Street  
Gamble Building, 3rd Floor  
Post Office Box 1027  
Savannah, Georgia 31401  
Phone: (912) 525-3092

SEDA: Savannah Economic Development Authority  
Attention: CEO  
131 Hutchinson Island Road, 4th Floor  
Savannah, Georgia 31421  
Phone: (912) 447-8450

with copy to: Jonathan B. Pannell, Esq.  
Gray Pannell & Woodward LLP  
24 Drayton Street  
Savannah, Georgia 31401-2729  
Phone: (912) 443-4040

Rockingham Farms Rockingham Farms 2704 Whatley Avenue  
2704 Whatley Avenue  
Thunderbolt, Georgia 31404  
Phone: (912) 313-0456

with copy to: W. Brooks Stillwell, III, Esq.  
Brooks Stillwell, LLC  
200 E. St. Julian Street, Suite 500  
Savannah, Georgia 31401  
Phone: (912) 484-1690

For purposes of this Agreement, the time of actual delivery, as evidenced by a signed receipt therefor, if made in person, or one day after deposit in the ordinary course of business, if by overnight commercial courier, or the date of postmark, if by mail, shall be deemed the date of any notice, demand or delivery. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of such notice, demand or delivery.

18. **Time of the Essence.** Time is of the essence in complying with the terms, conditions and agreements of this Agreement. Upon any failure of a party to perform in compliance with this Agreement, the other party will have all rights and remedies afforded to such party at law or in equity.

19. **Entire Agreement.** This Agreement contains the entire agreement of the parties hereto with respect to the subject matter hereof and no representations, inducements, promises or agreements, oral or otherwise, between parties and not expressly stated herein, will be of any force or effect.

20. **Number; Gender.** Whenever the context so requires, the singular number includes the plural and the plural includes the singular, and the gender of any pronoun includes the other genders.

21. **Captions and References.** As used herein, titles or captions of sections and subsections are inserted only as a matter of convenience and for ease of reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof. Any reference herein to Section or subsection shall refer to the corresponding Section or subsection of this Agreement, and any reference to parties shall refer to the parties to this Agreement.

22. **Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the parties hereto, their respective heirs, legal representatives, successors and permitted assigns.

23. **Amendment.** Any amendment to this Agreement will not be binding upon the parties hereto unless such amendment is in writing duly executed by the parties hereto.

24. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement or its terms to produce or account for more than one of such counterparts.

*[SIGNATURES ON NEXT PAGE]*

**IN WITNESS WHEREOF**, the City, SEDA and Rockingham Farms have caused this instrument to be executed under seal as of the day and year first above written.

City:

**THE MAYOR AND ALDERMAN OF THE CITY OF SAVANNAH**

By: \_\_\_\_\_  
City Manager

SEDA:

**SAVANNAH ECONOMIC DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_  
Chairman

Rockingham Farms:

**ROCKINGHAM FARMS, LLC**

By: \_\_\_\_\_  
Manager

**Exhibit List:**

Exhibit A – Site Map



**EXHIBIT A**

[To Development Agreement dated as of February 13, 2020, by and among The Mayor and Alderman of the City of Savannah, Savannah Economic Development Authority; and Rockingham Farms, LLC]

**SITE MAP**