

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into as of the ___ day of _____, 2019 by and between **SAVANNAH HARBOR PARTNERS, LLC**, a Georgia limited liability company (“SHP”), and **THE MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH**, a municipal corporation existing under the laws of the State of Georgia (“City”).

WITNESSETH:

WHEREAS, SHP, as Purchaser, and CSX Realty Development, LLC, as Seller, (“CSX”) entered into that certain Purchase and Sale Agreement dated November 1, 2018 (as amended, the “PSA”), pursuant to which SHP has agreed to purchase the property commonly known as Parcel 5, Savannah Harbor Subdivision, consisting of approximately 28.997 acres, more or less, and being more specifically described in Exhibit A attached hereto and incorporated herein by reference (the “Property”);

WHEREAS, SHP has completed the acquisition of the Property and intends to develop the Property in phases for mixed use commercial and residential purposes with the first phase of such development (“Phase 1”) being substantially in accordance with the Phase 1 Master Plan attached hereto as Exhibit B attached hereto and made a part hereof (“Phase 1 Master Plan”);

WHEREAS, subject to the terms of this Agreement, SHP has agreed to install certain infrastructure improvements in Phase 1 as shown in the Phase 1 Master Plan, including a Riverwalk, Parks, Streets and Sidewalks to enhance Phase 1 and its use by the public (the “Phase 1 Infrastructure Improvements”);

WHEREAS, the development of the Property in accordance with the Phase 1 Master Plan will serve as a natural enhancement and extension to the City's Historic District and will be a catalyst for additional development on Hutchinson Island; and

WHEREAS, the City believes that the proposed development of the Property, together with the development of a world class Marina, adjacent to Phase 1, will create tax revenue from commercial and residential development on the Property and will be in the best interests of the citizens of the City and, therefore, the City has agreed to reimburse SHP for certain costs of the Phase 1 Infrastructure Improvements, which said improvements shall be made available to the public;

WHEREAS, SHP and City desire to set forth their agreement for proposed development and cost sharing of the Phase 1 Master Plan and have agreed to enter into this Development Agreement to evidence such understandings, agreements and commitments.

NOW, THEREFORE, for and in consideration of the agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and SHP agree as follows:

1. Phase 1 Development. Phase 1 of the Property is located on Hutchinson Island across the Savannah River from the Historic District and is generally bounded by Slip 1 to the west, where the Marina will be located; Resort Drive/Grand Prize of America Avenue to the north; other property owned by SHP for future development to the east; and the Savannah River to the south. SHP intends to embark on the development of the Property as a planned unit

development known as “Savannah Harbor East” substantially in accordance with the Phase 1 Master Plan.

2. Phase 1 Master Plan. The Phase 1 Master Plan sets forth a proposed preliminary street grid and park system for the Project, together with certain pad sites for mixed-use commercial and mixed-use residential development by SHP, and its successors and assigns. Upon acquisition of the Property, SHP intends to initiate construction of the Phase 1 Infrastructure Improvements to be completed in conjunction with completion of the Marina and the Phase 1 Mixed Use Development, as that term is defined below.

SHP is under contract with and intends to convey the mixed residential/commercial development area identified as Block D and Block E on the Phase 1 Master Plan (the “Mixed Use Land”) to a residential/commercial developer (the “Mixed Use Developer”). The Mixed Use Developer intends to commence construction of a residential and commercial/retail development as soon as possible after the acquisition of the Mixed Use Land.

The Mixed Use Developer plans to construct an approximately 300-unit apartment project with parking for approximately 500 parking spaces and an approximately 36,000 square feet of retail space (the “Phase 1 Mixed Use Project”).

SHP intends, through affiliates, subsidiaries and/or third-parties, to construct additional mixed use residential and commercial developments on the remaining pad sites shown on the Phase 1 Master Plan as well as the additional Phase 2 property located adjacent to the Phase 1 property to the east, including hotels, office buildings, retail buildings and multifamily

residential apartments, in each case consistent with the planned unit development known as “Savannah Harbor Parcel 5-PUD”.

3. Project Infrastructure. SHP agrees to design and construct the Phase 1 Infrastructure Improvements in accordance with the Phase 1 Master Plan and all required approvals from the City, as follows:

(a) Sidewalks and Roadway Improvements. SHP shall be responsible for the construction and installation of all the sidewalks and roadway consistent with the Phase 1 Master Plan substantially in the areas identified on the Phase 1 Master Plan. The Sidewalks and Roadways shall be dedicated to or subject to perpetual easements in favor of the City for use by the public. The width and other dimensions of the Sidewalks and Roadways will be determined on a case by case basis, it being understood and agreed that Sidewalks and Roadways may vary in width throughout Phase 1. SHP and/or Mixed Use Developer intend to reserve certain rights in the dedication or perpetual easement grant of said Sidewalks and Roadways to City, including but not limited to the right to utilize said Sidewalks and Roadways for items such as foundations and above ground improvements, on street parking, awnings, door swings, building lighting and signage, outdoor tables and seating, all as mutually agreed by SHP and the City. The scope of work and the installation of the improvements in connection with the Sidewalks and Roadways shall be consistent with the Phase 1 Master Plan and City building requirements.

(b) Park Improvements. SHP hereby agrees to install the Waterfront Park and other park facilities shown on the Phase 1 Master Plan substantially at the location and with the configuration identified on the Phase 1 Master Plan. The installation of the Waterfront Park and other park facilities located on the Phase 1 Master Plan shall be consistent with the Phase 1 Master Plan and City building requirements.

(c) Riverwalk Improvements. SHP hereby agrees to build an extension of the portion of the Riverwalk to be located along the western boundary of the Property by constructing the Riverwalk from the sidewalk along Resort Drive southward to the Savannah River. The design and location of the Riverwalk extension shall be consistent with the Phase 1 Master Plan and City building requirements.

4. City Commitments to Fund Phase 1 Infrastructure Improvements. Subject to the provisions of this Agreement, the City agrees to pay to SHP, subject to and in accordance with a budget approved by SHP and the City, the hard and soft costs related to the development and construction and financing cost of the Phase 1 Infrastructure Improvements in accordance with the terms of this Agreement by issuance of a series of bonds (the “Phase 1 Bonds”) issued by the Downtown Savannah Authority (“DSA”), not to exceed \$12,500,000.00 for the construction of the Phase 1 Infrastructure Improvements.

(a) Purchase Obligation. City shall be obligated to purchase the Phase 1 Infrastructure Improvements upon completion of the Phase 1 Infrastructure Improvements on the following conditions and limited by the following requirements:

(i) The Phase 1 Infrastructure Improvements shall be competed in accordance with the plans and specifications approved by SHP and the City and dedicated to or perpetual easements granted to the City with respect thereto;

(ii) As to each of the Mixed Use Development or vertical development of one or more of the Future Phase 1 Development Sites as shown on the Phase 1 Master Plan (Blocks A, B, C and F) or any future development on the Phase 2 portion of the Property, SHP, the Mixed Use Developer and other Property developers, as applicable, shall have as to each development site within the Property (a) secured all City and other regulatory approval for the Mixed Use Development or such other development projects to be located on the Property, (b) secured financing for such Mixed Use Development or other development projects to be located on the Property and (b) have entered into binding construction contracts to construct the Mixed Use Development or other development projects to be located on the Property.

(iii) The City's obligation to purchase the Phase 1 Infrastructure Improvements shall be limited to an amount by which the projected additional City tax revenues (inclusive of ad valorem taxes, sales tax and hotel/motel taxes) resulting from development of the Mixed Use Development and other development projects to be located on the Property that meet the requirements set forth above in Section 4(a)(i) and (ii) equals one hundred and twenty five percent (125%) of the amount required to amortize the bond payments due as a result of the City's financing of its acquisition cost of the Phase 1 Infrastructure Improvements (based on a 25 year amortization of such debt), at all times limited to a maximum payment by the City for the Phase 1

Infrastructure Improvements of \$12,500,000. SHP shall have the right to require the City to reimburse SHP incrementally upon satisfaction of the foregoing requirements set forth above in Section 4(a)(i) and (ii) and this provision with respect to the development of the Mixed Use Development and/or future development projects located on the Property at any time on or before December 31, 2029.

(b) Bond Financing. City hereby agrees to enter into an intergovernmental agreement with DSA to cause DSA to issue Bonds sufficient and at such times as are necessary to fund the payment obligations of the City hereunder and City and SHP will cooperate and diligently proceed with the actions that are required by each such party to facilitate an anticipated closing(s) of the Bonds as requested by SHP upon meeting the requirements set forth herein for reimbursement of the Phase 1 Infrastructure Improvements costs on or before December 31, 2029.

5. Other Agreements. City and SHP further agree as follows with respect to additional work, future improvements and understandings between the parties affecting the Property:

(a) Dedication of Streets, Parks and Utilities. SHP shall record a plat (the “SHP Plat”) against the Property, by means of which SHP shall, among other things, establish the Mixed Use Development and the Future Development Sites as separate parcels, locate the Phase 1 Infrastructure Improvements shown on the Phase 1 Master Plan. Upon the installation and construction of the Phase 1 Infrastructure Improvements, SHP shall separately dedicate or grant perpetual easements to the City of the completed

Phase 1 Infrastructure Improvements, subject to the provisions of the Master Declaration for the Property.

- (b) Maintenance of Phase 1 Infrastructure Improvements. From and after the filing of the SHP Plat, the Owner's Association under the Master Declaration shall assume responsibility for the maintenance and repair of the Phase 1 Infrastructure Improvements dedicated or granted to the City by perpetual easement, which responsibility shall include the landscape, hardscape, irrigation, and lighting of the Riverwalk, Parks, Roadways and Sidewalks. SHP shall have the sole right to program activities on the Phase 1 Infrastructure Improvement and otherwise provide reasonable rules and regulations through the Owner's Association established under the Master Declaration for the use of the Phase 1 Infrastructure Improvements, provided that, subject to such programming and rules and regulations, the Phase 1 Infrastructure Improvements shall be available for public use.
- (c) New Curb-Cuts onto Resort Drive/Grand Prize of America Avenue. The City shall work with SHP and its contractors to establish and permit the curb-cuts into the Phase 1 as shown on the Phase 1 Master Plan from Resort Drive/Grand Prize of America Avenue.
- (d) Dock/Ferry Boat. City and SHP shall work in good faith to support SHP or the Marina operator's use and operation of docks and improvements located adjacent to the Riverwalk ("Marina Dock Facilities"), subject to applicable laws of the State of Georgia and rules and guidelines of the Department of Natural Resources and the

United States Army Corp of Engineers. The City will support the location of ferry boat service at the Marina Dock Facilities.

- (e) Open Container. SHP intends to file a petition with City to amend Section 6-1215 of the City Code of Ordinances to allow for open containers for the Property and City hereby agrees to support such request.

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

7. Due Diligence. The parties shall use reasonable diligence to meet their respective obligations described herein but shall not be liable to each other, or their successors or assigns, for damages, costs, attorneys' fees, reasonably and actually incurred (including costs or attorneys' fees on appeal) for breach of contract, or otherwise, for failure, suspension, diminution, or other variations of services occasioned by any caused Force Majeure.

8. Agency. SHP and City, 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.

9. Binding Nature of Agreement. This Agreement shall be binding upon, and shall inure to the benefit of the successors or assigns of the parties, and shall run with the Property and

be binding upon and inure to the benefit of any person, firm or corporation that may become the successor in interest, directly or indirectly, to the Property, or any portion thereof.

10. Controlling Laws:

- (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 City now in effect and those hereinafter adopted. Unless otherwise specified in this Agreement for particular issues, all City ordinances, rules, regulations and policies are applicable.
- (b) The location for settlement 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.

11. Miscellaneous:

- (a) 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. 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.

(b) 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. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. Notwithstanding the foregoing, (i) SHP may assign this Agreement, without the consent of City, to a parent, subsidiary or Affiliate of SHP or to an entity controlled by SHP; and (ii) City may assign or delegate certain rights and obligations under this Agreement, without the consent of SHP, to the Downtown Savannah Authority. Notwithstanding anything to the contrary herein, Mixed Use Developer shall be a third-party beneficiary to the rights of SHP herein to the extent that such rights apply to the Mixed Use Land and any Phase 1 Infrastructure Improvements to be installed on the Property benefitting the Mixed Use Land.

(c) Waiver; Time. No waiver or breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provisions of this Agreement or any succeeding breach of the same provision. No delay in acting with regard to any breach of any provision of the Agreement shall be construed as a waiver of such breach. Time is of the essence in the performance of the terms and provisions of this Agreement.

(d) 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” 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.

(e) Severability. In the event that any court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable, such provision shall be deemed an independent provision and such determination shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect and which shall be construed as to be valid and enforceable under applicable law.

(f) Letter of Assurance. Upon request of SHP or its lender for the Phase 1 Infrastructure Improvements, City hereby agrees to furnish a letter to SHP or said lender stating that (i) this Agreement is in full force and effect (or, if not, the reason that this Agreement is no longer in full force and effect), (ii) there are no defaults under this Agreement (or, if not, the nature of the default(s)), and (iii) all amounts due and payable hereunder have been paid in full (or, if not, the outstanding balances due and payable hereunder). City shall use its best efforts to furnish said letter within ten (10) days after request therefor.

(g) Notices. Any notice required or allowed to be delivered hereunder shall be in writing and be deemed to be delivered when (i) hand delivered to the person hereinafter designated, (ii) upon receipt as evidenced by delivery receipt if sent by a national overnight delivery service, (iii) sent by electronic mail or facsimile to the addresses or numbers below if a confirmed receipt, which includes the date and time of delivery, is provided, or (iv) upon receipt of such notice when deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to a party at the address set forth opposite the party's name below, or at such other address as the applicable party shall have specified, from time to time, by written notice to the other party delivered in accordance with:

If to City:	City of Savannah Attention: Patrick Monahan, City Manager City Hall 2 East Bay Street Savannah, GA 31401 Email: pmonahan@savannahga.gov Facsimile: (912) 238-0872
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with a copy to: Bates Lovett, City Attorney
Office of the City Attorney
2 East Bryan Street
Suite 436
Savannah, GA 31401
E-mail _____
Facsimile: (912) 535-3267

With a copy to: Lenny Panzitta, Esq.
200 St Julian Street
Suite 605
Savannah, Georgia 31401
lpantzitta@panzittalaw.com

If to SHP: Savannah Harbor Partners, LLC
C/O John E. Cay, III, Manager
22 Barnard Street
Suite 210
Savannah, Ga
31401
404 915-6465
E-mail: johncayiii@gmail.com

With a Copy to: Morris, Manning & Martin, LLP
24 Drayton Street, Suite 712
Savannah, Georgia 31401
Attn: Joseph R. Ross, Esq.

E-mail: ross@mmmlaw.com

(h) Exhibits. The following exhibits are attached hereto and incorporated by this reference herein:

Exhibit A: Legal Description

Exhibit B: Phase 1 Master Plan

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the day and year first above written.

**SAVANNAH HARBOR PARTNERS,
LLC**, a Georgia limited liability company

By: _____
John E. Cay, III
Title: Manager

CITY OF SAVANNAH, a Georgia municipal corporation

By: _____
Patrick Monahan
Title: City Manager

Attest: _____
Clerk of Council