

REAL PROPERTY TRADE AGREEMENT

THIS REAL PROPERTY TRADE AGREEMENT (this “Agreement”) is made as of December ____, 2019 (the “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 (“City”), and **THE SAVANNAH COLLEGE OF ART AND DESIGN, INC.**, a Georgia non-profit corporation (“SCAD”).

RECITALS

WHEREAS, O.C.G.A. 36-37-6 governs the disposition of municipal real property and provides an exception to the public bidding and auction processes by authorizing municipalities to trade or exchange real property in cases where the property so acquired by exchange shall be of equal or greater value than the property previously belonging to the municipal corporation; subject to certain notice and appraisal conditions; and

WHEREAS, SCAD is or will be the owner certain real property and improvements (the “SCAD Real Property”) as described in Section 1.1 herein and located on the undeveloped land of the City of Savannah, Georgia, described on Exhibit A attached hereto and made a part hereof; and

WHEREAS, City is the owner of real certain real property and improvements as described in Section 1.2 and located in the City of Savannah, Georgia and individually known as (i) the “Oglethorpe Avenue Property” as more particularly described on Exhibit B-1 attached hereto and made a part hereof; (ii) the “Warner Street Property” as more particularly described on Exhibit B-2 attached hereto and made a part hereof; (iii) the “Louisville Road Property” as more particularly described on Exhibit B-3 attached hereto and made a part hereof; and (iv) the “Liberty Street Property” as more particularly described on Exhibit B-4 attached hereto and made a part hereof (collectively the “City Real Property”).

WHEREAS, SCAD desires to trade the SCAD Real Property with the City in exchange for the City Real Property, and the City does further desire to trade the City Real Property in exchange for the SCAD Real Property.

NOW, THEREFORE for in and in consideration of the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and SCAD do hereby agree as follows:

ARTICLE I

AGREEMENT TO TRADE; PROPERTY DESCRIPTION

1.1 Agreement to Trade. Subject to the terms and conditions hereinafter set forth, SCAD shall convey to City, and City shall accept from SCAD, the following:

- (a) the SCAD Real Property;
- (b) any and all fixtures and personal property owned by SCAD and located upon or used in connection with the SCAD Real Property, including, without limitation, any signs or signage rights (the “SCAD Personal Property”);

(c) all of SCAD's right, title and interest in and to all contracts and agreements relating to the development, upkeep, repair, maintenance or operation of the SCAD Real Property (collectively, the “SCAD Operating Agreements”);

(d) all of SCAD's right, title and interest in and to any and all other (i) warranties and guaranties (express or implied) issued to SCAD in connection with the SCAD Real Property; (ii) entitlements, zoning letters, variances, site or plan approvals, licenses, permits, certificates of occupancy and other consents or approvals from governmental authorities or private parties which relate to the SCAD Real Property and (iii) plans, specifications, drawings, reports, studies, books, records and other documents pertaining to the SCAD Real Property (the “Intangibles”).

All of the foregoing in this Section 1.1 is referred to collectively as the “SCAD Real Property.”

1.2 Agreement to Trade. Subject to the terms and conditions hereinafter set forth, City shall convey to SCAD, and SCAD shall accept from City, the following:

(a) the City Real Property;

(b) any and all personal property owned by City and located upon or used in connection with the City Real Property, including, without limitation, any signs or signage rights (the “City Personal Property”);

(c) all of the City's right, title and interest in and to all oral or written agreements (if any) pursuant to which any portion of the City Real Property is used or occupied by anyone other than City (the “City Leases”);

(d) all of City's right, title and interest in and to all contracts and agreements relating to the development, upkeep, repair, maintenance or operation of the City Real Property (collectively, the “City Operating Agreements”);

(e) all of City's right, title and interest in and to any and all other (i) claims, warranties and guaranties (express or implied) issued to City in connection with the City Real Property; (ii) entitlements, zoning letters, variances, site or plan approvals, licenses, permits, certificates of occupancy and other consents or approvals from governmental authorities or private parties which relate to the City Real Property; (iii) other intangible property associated with the use or operation of the City Real Property, including specifically, without limitation, the use of any and all trade names or logos used by City in the operation of the City Real Property; and (iv) plans, specifications, drawings, reports, studies, books, records and other documents pertaining to the City Real Property (the “Intangibles”).

All of the foregoing in this Section 1.2 is referred to collectively as the “City Real Property.”

ARTICLE II

INSPECTION PERIOD

2.1 Inspection Period. SCAD and its officers, employees, agents and consultants shall have a period of time commencing on the Effective Date and terminating one hundred twenty (120) days after the Effective Period (the “Inspection Period”), in which to undertake, at SCAD’s sole cost and expense, such evaluations, analyses, studies, physical inspections (including

without limitation soil borings, percolation and additional environmental site assessments) and assessments and other investigations of and concerning the City Real Property as SCAD considers necessary for SCAD and their consultants to (a) review and evaluate the physical characteristics of the City Real Property and any and all such improvements thereon and to perform certain work or inspections in connection with such evaluation; (b) investigate and evaluate the title and condition of the City Real Property; (c) review and evaluate contracts, agreements, obligations and similar matters applicable to the City Real Property; (d) determine the suitability of the City Real Property for SCAD's intended use or development; and (e) investigate all other matters relevant to SCAD's acquisition, ownership, development and use of the City Real Property. SCAD shall be liable for all damage or injury to any person or property resulting from any such inspections, whether caused by the acts of SCAD or any of their employees, agents, contractors, consultants or representatives, and SCAD shall indemnify and hold harmless the City from any liability, claims and expenses (including, without limitation, mechanics liens and/or reasonable attorney's fees and costs) resulting therefrom. SCAD shall restore the City Real Property to substantially the same condition as it existed prior to SCAD's activities set forth in this Section 2.1 and this obligation shall expressly survive the termination of this Agreement. Notwithstanding anything in this Section 2.1 to the contrary, SCAD shall not be responsible for any damages or claims that result from the discovery by SCAD during its investigations of any condition affecting the City Real Property that existed prior to the Effective Date.

(a) Right of Entry. The City hereby grants SCAD and SCAD's officers, employees, consultants, agents and assigns, the right of entry upon the City Real Property at reasonable times and upon at least twenty-four (24) hours prior notice from the Effective Date up to and including the earlier of (i) the Closing Date or (ii) termination of this Agreement.

(b) Right to Terminate. In the event the results of inspections, investigations and evaluations set forth in Section 2.1 above are, in SCAD's sole and absolute discretion, unacceptable to SCAD for any reason whatsoever and SCAD notifies the City in writing of that fact prior to expiration of the Inspection Period, then this Agreement shall automatically terminate, and neither SCAD or the City shall have any liability to the other except to the extent that either SCAD or the City is in default or has breached any of their obligations hereunder or with respect to any liability that expressly survives the termination of this Agreement. If SCAD does not notify the City of the termination of this Agreement prior to the expiration of the Inspection Period, then SCAD's right to terminate this Agreement under this Section 2.1 shall thereafter be void.

(c) Mutual Agreement. Notwithstanding any provision contained herein to the contrary, SCAD and the City, may by mutual agreement, shorten the Inspection Period as described herein and any time period in this Agreement that is based on the expiration of the Inspection Period shall be adjusted accordingly.

2.2 Concept Plans; Building Plans and Specifications.

(a) SCAD shall cause conceptual plans ("Concept Plan") to be prepared at its sole cost and expense by a designer of its choice who shall consult with the City in preparing such plans, and SCAD shall deliver such Concept Plan within thirty (30) days of the Effective Date. Once the Concept Plan has been approved by the City, SCAD shall cause working drawings ("Plans and Specifications") to be prepared at its sole cost and expense by a designer of its choice who shall consult with the City in preparing such Plans and Specifications. The Plans and Specifications will be in sufficient detail to allow SCAD (i) to calculate the cost of construction of all improvements,

including Hard Costs, and Soft Costs that will constitute the SCAD Real Property, and (ii) to obtain a building permit for the construction of the SCAD Real Property. As used herein, "Hard Costs" shall mean all costs incurred to construct the improvements in question, including but not limited to the cost of materials, labor, equipment and equipment rental fees; and "Soft Costs" shall mean costs associated with the planning, design and coordination of the construction project, including but not limited to the following: permitting fees, fees paid to architects, engineers, consultants, appraisers, (including the costs of any on site testing); project management fees in the amount of four percent (4%) of the cost of work to be performed; reasonable and customary expenses for prosecution of work to be performed; fees paid to utility providers until completion of the project; insurance premiums until completion of the project; and fees paid to municipal authorities.

(b) Within five (5) days after SCAD provides the City with its Plans and Specifications and a calculation of its guaranteed maximum price ("Stipulated Sum") to construct such improvements ("Plan Delivery Notice"), the City shall approve the Plans and Specifications and the Stipulated Sum or set forth in writing in sufficient detail its reasons for not approving same. If the City does not approve the Plans and Specifications and the Stipulated Sum, then SCAD will revise its Plans and Specifications or Stipulated Sum, as the case may be, and SCAD will again provide a Plan Delivery Notice to City and the City will have five (5) days after the Plan Delivery Notice to approve the Plans and Specifications and Stipulated Sum or set forth in writing in sufficient detail its reasons for not approving same. This process shall continue until Plans and Specifications and the Stipulated Sum have been approved, but in no event shall this process extend beyond the expiration date of the Inspection Period. Once Plans and Specifications and the Stipulated Sum have been approved ("Plan Approval Date"), the Plans and Specifications shall become a part of this Agreement as Exhibit C as if such plans were originally made a part of this Agreement and the Stipulated Sum shall be deemed to be the value of the SCAD Real Property for all purposes under this Agreement. In the event of any change order by the City, the cost of the change order shall be added to the Stipulated Sum and the value of the SCAD Real Property shall be adjusted accordingly.

(c) Upon Plan Approval Date, SCAD shall promptly commence the construction of the SCAD Real Property in accordance with the Plans and Specifications and shall use commercially reasonable efforts to complete said construction in a timely manner.

ARTICLE III **TITLE EXAMINATION AND SURVEY**

3.1 Survey. SCAD shall have thirty (30) days from the Effective Date to cause O & M Title Co., as the Title Company under this Agreement, to examine record title to the City Real Property (the "Initial Title Examination") and to notify the City of any objections affecting marketability of title to the City Real Property based on matters of record title other than the following: (i) general utility easements of record, if any, serving the City Real Property; (ii) ad valorem taxes and special assessments not yet due and payable with respect to the City Real Property; and (iii) such other survey or title matters as expressly permitted by SCAD in writing or deemed waived pursuant to this Agreement (the "Permitted Exceptions"). If upon examination of record title, title is found to be defective or objectionable, and SCAD notifies the City in writing of such defects or objections as provided above, then the City shall have until thirty (30) days after the expiration of the Inspection

Period to cure any such defects or objections. In the event that the City fails to cure any such identified defects or objections within the period hereinabove set out, then SCAD, at its option, may elect to:

- (a) waive any such title defect or objection and consummate the transaction; or
- (b) terminate this Agreement by written notice to the City, and thereafter no party to this Agreement shall have any rights, obligations or liabilities hereunder and this Agreement shall be null and void and of no further force and effect.

3.2 Title Examination. From and after the date of the Initial Title Examination, SCAD may from time to time during the term of this Agreement make further examinations of the title to the City Real Property, and SCAD may object to any matters of title first appearing of record after the Initial Title Examination by giving the City written notice of any such defects or objections. The City shall thereafter have until the date of Closing in which to cure any such defect or objection. If the City is unable or refuses to cure such additional title objections, then the SCAD shall be entitled to exercise the same rights enumerated in Sections 3.1(a) and 3.1(b) of this Agreement.

3.3 Notwithstanding anything to the contrary herein, City shall be obligated to cure all mortgages, deeds to secure debt, liens, security interests and similar encumbrances of a monetary nature, regardless of whether SCAD notifies the City of an objection thereto pursuant to Section 3.1 of this Agreement. In the event that the City fails to cure the matters described in the immediately preceding sentence, SCAD shall have all rights and remedies under this Agreement with respect thereto.

ARTICLE IV

SCAD'S REPRESENTATIONS, WARRANTIES AND COVENANTS

4.1 Representations, Warranties and Covenants of SCAD. In addition to the other representations, warranties and covenants of SCAD contained in this Agreement, SCAD hereby represents, warrants and covenants to City, to the best of SCAD's knowledge, as of the Effective Date and as of the Closing Date, the following:

(a) SCAD has, and at the Closing shall have, the right to and will convey to City, good and marketable fee simple title to the SCAD Real Property free and clear of any and all liens, assessments, easements, security interests and other encumbrances. SCAD has made no other contract or agreement that is now of any force or effect whatsoever to sell, convey or otherwise dispose of the SCAD Real Property or any portion thereof, and SCAD shall not sell or dispose of the SCAD Real Property or any portion thereof, or enter into any other contract or agreement from and after the Effective Date and prior to Closing to sell, assign or convey any right, title or interest whatsoever in or to the SCAD Real Property (except as approved in writing by City).

(b) There are no parties in possession of any portion of the SCAD Real Property as lessees or tenants at sufferance.

(c) There are no leases, contracts, agreements or other encumbrances affecting the SCAD Real Property. SCAD shall not further encumber the SCAD Real Property or grant or allow any lien or encumbrance on the SCAD Real Property (which will not be satisfied or released at or before Closing), or enter into any new service contract, lease, restriction, easement,

encumbrance or other agreement with respect to the SCAD Real Property or modify the terms or conditions of any existing leases, contracts, encumbrances or other agreements with respect to the SCAD Real Property, without the prior written consent of City.

(d) There are no mechanic's liens, Uniform Commercial Code liens or unrecorded liens against the SCAD Real Property, and SCAD shall not allow any such liens to attach to the SCAD Real Property prior to Closing that will not be satisfied out of the Closing proceeds. All obligations of SCAD arising from the ownership and operation of the SCAD Real Property and any business operated on the SCAD Real Property, including, but not limited to, taxes, leasing commissions, salaries, contracts, and similar agreements, have been paid or will be paid prior to Closing. Except for obligations for which provisions are made in this Agreement for prorating at the Closing, there will be no obligations of SCAD with respect to the SCAD Real Property outstanding as of the Closing.

(e) There are no judgments or decrees of any court, tribunal, agency, or instrumentality, domestic or foreign, having jurisdiction against SCAD, that in any way affect the SCAD Real Property or that could constitute a lien or at some future time may be perfected into a lien upon any of the SCAD Real Property, and there is no pending or, to SCAD's knowledge, threatened litigation, judicial or administrative action or proceeding, condemnation/eminent domain or assessment affecting the SCAD Real Property. SCAD shall promptly advise City of any litigation, judicial or administrative action, condemnation or assessment affecting the SCAD Real Property that is instituted or that becomes threatened after the Effective Date.

(f) The SCAD Real Property is not subject to any claims of creditors or to any bankruptcy proceeding.

(g) SCAD has received no notice from any governmental authority or third party concerning, and otherwise has no knowledge of, any violation of the SCAD Real Property under any applicable laws, ordinances, codes, statutes, regulations, covenants or restrictions relating to the SCAD Real Property which have not heretofore been corrected. If SCAD receives notice of or otherwise becomes aware of any such violation, SCAD shall disclose same to City within five (5) days of such notice or of becoming aware of same.

(h) SCAD has not received written notice from any governmental authority or third party relating to any discharge, release or storage of any hazardous or toxic substances, waste or materials on, under, within or from the SCAD Real Property or regarding any violation of the SCAD Real Property under any applicable environmental law, and to SCAD's knowledge, there has been no discharge, release or storage of any hazardous or toxic substances, waste or materials on, under, within or from the SCAD Real Property, and no dumpsite, landfill or underground tanks or containers are or have been located on the SCAD Real Property.

(i) This Agreement has been duly executed and delivered by SCAD, constitutes the valid and binding obligation of SCAD, and is enforceable against SCAD in accordance with its terms. The execution, delivery and performance of this Agreement, and the consummation of the transaction contemplated hereby, will not result in any breach of, or constitute any default under, or result in the imposition of any lien or encumbrance against, the SCAD Real Property, under any agreement or other instrument to which SCAD is a party or by which SCAD or the

SCAD Real Property might be bound or, to SCAD's knowledge, under any applicable law, rule, regulation, judgment, order or decree of any governmental instrumentality or court, domestic or foreign, having jurisdiction over SCAD or its properties. All necessary parties whose signatures are required to bind SCAD and to convey the SCAD Real Property pursuant to this Agreement have executed this Agreement on behalf of SCAD.

(j) SCAD is not a "foreign person" within the meaning of the Internal Revenue Code, as amended, Sections 1445 and 7701 or the regulations promulgated thereunder, and SCAD shall execute and deliver to City at Closing a certificate certifying to same in accordance with Section 6.2 below.

(k) Neither SCAD nor any of its affiliates, and none of its respective employees, officers, directors, representatives or agents are, nor will they become, a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control (the "OFAQ"), of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

(l) After the Effective Date, SCAD shall not cause, permit or allow any hazardous or toxic substances or materials to be stored, placed, installed or released on, in, under or from the SCAD Real Property.

Each of the representations and warranties set forth above and elsewhere in this Agreement are true, correct and complete as of the Effective Date and will be true, correct and complete as of the Closing Date.

4.2 Survival. All of SCAD's representations and warranties in this Agreement shall survive Closing for a period of one (1) year and shall inure to the benefit of City, its successors and assigns. Accordingly, if City (or its successors or assigns) discovers after Closing that any of SCAD's representations or warranties has been misrepresented or is inaccurate, then City (or its successors or assigns) may seek damages from SCAD resulting from such breach, provided that any such legal claim related thereto must be filed within one (1) year after the Closing Date. Warranties of title herein and in the Deed, however, shall not lapse or be subject to the foregoing limitation.

ARTICLE V

CITY'S REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 Representations, Warranties and Covenants of the City. In addition to the other representations, warranties and covenants of City contained in this Agreement, City hereby represents, warrants and covenants to SCAD, as of the Effective Date and as of the Closing Date, the following:

(a) City has, and at the Closing shall have the right to and will convey to SCAD, good and marketable fee simple title to the City Real Property free and clear of any and all liens, assessments, easements, security interests subject to the parking encumbrance and other encumbrances except for the City Permitted Exceptions. City has made no other contract or agreement that is now of any force or effect whatsoever to sell, convey or otherwise dispose of the City Real Property or any portion thereof, and City shall not sell or dispose of the City Real Property or any portion thereof, or enter into any other contract or agreement from and after the Effective Date and prior to Closing to sell, assign or convey any right, title or interest whatsoever in or to the City Real Property (except as approved in writing by SCAD).

(b) There are no parties in possession of any portion of the City Real Property as lessees or tenants at sufferance.

(c) There are no leases, contracts, agreements or other encumbrances affecting the City Real Property other than the City Permitted Exceptions. City shall not further encumber the City Real Property or grant or allow any lien or encumbrance on the City Real Property (which will not be satisfied or released at or before Closing), or enter into any new service contract, lease, restriction, easement, encumbrance or other agreement with respect to the City Real Property or modify the terms or conditions of any existing leases, contracts, encumbrances or other agreements with respect to the City Real Property, without the prior written consent of SCAD.

(d) There are no mechanic's liens, Uniform Commercial Code liens or unrecorded liens against the City Real Property, and City shall not allow any such liens to attach to the City Real Property prior to Closing that will not be satisfied out of the Closing proceeds. All obligations of City arising from the ownership and operation of the City Real Property and any business operated on the City Real Property, including, but not limited to, taxes, leasing commissions, salaries, contracts, and similar agreements, have been paid or will be paid prior to Closing. Except for obligations for which provisions are made in this Agreement for prorating at the Closing, there will be no obligations of City with respect to the City Real Property outstanding as of the Closing.

(e) There are no judgments or decrees of any court, tribunal, agency, or instrumentality, domestic or foreign, having jurisdiction against City, that in any way affect the City Real Property or that could constitute a lien or at some future time may be perfected into a lien upon any of the City Real Property, and there is no pending or, to City's knowledge, threatened litigation, judicial or administrative action or proceeding, condemnation/ eminent domain or assessment affecting the City Real Property. City shall promptly advise SCAD of any litigation, judicial or administrative action, condemnation or assessment affecting the City Real Property that is instituted or that becomes threatened after the Effective Date.

(f) The City Real Property is not subject to any claims of creditors or to any bankruptcy proceeding.

(g) The City has received no notice from any governmental authority or third party concerning, and otherwise has no knowledge of, any violation of the City Real Property under any applicable laws, ordinances, codes, statutes, regulations, covenants or restrictions

relating to the City Real Property which have not heretofore been corrected. If City receives notice of or otherwise becomes aware of any such violation, City shall disclose same to SCAD within five (5) days of such notice or of becoming aware of same.

(h) To the best of its knowledge and recollection, City has not received written notice from any governmental authority or third party relating to any discharge, release or storage of any hazardous or toxic substances, waste or materials on, under, within or from the City Real Property or regarding any violation of the City Real Property under any applicable environmental law, and to City's knowledge, there has been no discharge, release or storage of any hazardous or toxic substances, waste or materials on, under, within or from the City Real Property, and no dumpsite, landfill or underground tanks or containers are or have been located on the City Real Property.

(i) This Agreement has been duly executed and delivered by City, constitutes the valid and binding obligation of City, and is enforceable against City in accordance with its terms. The execution, delivery and performance of this Agreement, and the consummation of the transaction contemplated hereby, will not result in any breach of, or constitute any default under, or result in the imposition of any lien or encumbrance against, the City Real Property, under any agreement or other instrument to which City is a party or by which City or the City Real Property might be bound or, to City's knowledge, under any applicable law, rule, regulation, judgment, order or decree of any governmental instrumentality or court, domestic or foreign, having jurisdiction over City or its properties. All necessary parties whose signatures are required to bind City and to convey the City Real Property pursuant to this Agreement have executed this Agreement on behalf of City.

(j) City is not a "foreign person" within the meaning of the Internal Revenue Code, as amended, Sections 1445 and 7701 or the regulations promulgated thereunder, and City shall execute and deliver to City at Closing a certificate certifying to same in accordance with Section 6.3 below.

(k) To City's knowledge, there are no threatened or endangered species or their habitat affecting the Property.

(l) Neither City nor any of its affiliates, nor any of its respective partners, members, shareholders or other equity owners, and none of its respective employees, officers, directors, representatives or agents are, nor will they become, a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control (the "OFAC"), of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

(m) After the Effective Date until the Closing Date, City shall (a) operate the City Real Property in the same manner as the City Real Property has been operated, and (b)

maintain the City Real Property in the same condition and in the same manner as existed on the Effective Date, except for ordinary wear and tear and any casualty loss. Specifically, without limiting the generality of the foregoing, City shall not (i) cause, permit or allow any hazardous or toxic substances or materials to be stored, placed, installed or released on, in, under or from the City Real Property, or (ii) without the prior written consent of SCAD, alter the natural topography and vegetation currently existing on, in or about the City Real Property, including, but not limited to the cutting, burning or removal of any trees, removing any topsoil, dumping of any soil, fill or other matter, or altering the natural flow of any water courses located on the City Real Property, or (iii) without the prior written consent of SCAD, change (or apply for a change to) the current zoning of the City Real Property or seek or obtain other entitlements for the City Real Property, or seek or allow any change in the availability of utilities (water, sewer, electric, gas or telephone) or access to the City Real Property, or engage in any development, leasing, construction or other similar activities at the City Real Property, or (iv) without the prior written consent of SCAD, cause or permit any additional liens, encumbrances, easements or other exceptions to title other than the City Permitted Exceptions.

(n) Each of the representations and warranties set forth above and elsewhere in this Agreement are true, correct and complete as of the Effective Date and will be true, correct and complete as of the Closing Date.

5.2 Survival. All of City's representations and warranties in this Agreement shall survive Closing for a period of one (1) year and shall inure to the benefit of SCAD, its successors and assigns. Accordingly, if SCAD (or its successors or assigns) discovers after Closing that any of City's representations or warranties has been misrepresented or is inaccurate, then SCAD (or its successors or assigns) may seek damages from City resulting from such breach, provided that any such legal claim related thereto must be filed within one (1) year after the Closing Date. Warranties of title herein and in the Deed, however, shall not lapse or be subject to the foregoing limitation.

ARTICLE VI **CONDITIONS TO CLOSING**

6.1. Condition to SCAD's Closing Obligations. SCAD's obligations to consummate the transaction contemplated hereunder are conditioned upon the following: (i) all of City's representations and warranties in this Agreement being true and correct on the date hereof and as of Closing Date #1 and Closing Date #2 (as hereinafter defined); (ii) the City must remove all above-ground storage tanks from the Louisville Road Property prior to Closing #1; and (iii) the City must obtain a quitclaim deed from the State of Georgia with respect to the Warner Street Property prior to Closing #1. In the event that the preceding conditions precedent have not been satisfied on at or before Closing #1 or Closing #2, as the case may be, then SCAD may, at its option, elect by written notice to City (i) to proceed to Closing, and if Closing occurs SCAD will be deemed to have waived any claim for failure of a condition precedent to be satisfied, (ii) to terminate this Agreement, or (iii) to allow City additional time to cure such matter and to extend the Closing Date accordingly (and if such matter is not cured by the end of such extension period, then SCAD may elect either (i) or (ii) above). The foregoing, however, does not and is not intended to limit the provisions of Section 9.2 of the Agreement with respect to a breach or default by City.

6.2 Condition to City's Closing Obligations. City's obligations to consummate the transaction contemplated hereunder are conditioned upon the following: (i) all of SCAD's representations and warranties in this Agreement being true and correct on the date hereof and as of Closing Date #1 and Closing Date #2; and (ii) with respect to Closing #2, SCAD must construct certain improvements in accordance with the Plans and Specifications to be prepared by SCAD during the Inspection Period. In the event that the preceding conditions precedent have not been satisfied on or before Closing #2, then City may, at its option, elect by written notice to SCAD (i) to proceed to Closing #2, and if Closing #2 occurs City will be deemed to have waived any claim for failure of a condition precedent to be satisfied; or (ii) to allow SCAD additional time to cure such matter and to extend the Closing #2 accordingly. The foregoing, however, does not and is not intended to limit the provisions of Section 9.1 of this Agreement with respect to a breach or default by SCAD.

ARTICLE VII

CLOSING

7.1 The Closing Date. The consummation of the transaction contemplated by this Agreement (the "Closing") shall take place as two (2) closings at the offices of the Hunter Maclean, 200 East Saint Julian Street, Savannah, Georgia. The first closing shall take place on or before January 31, 2020, at which time the City shall convey to SCAD the Warner Street Property and the Louisville Road Property ("Closing #1"). The second closing shall take place ten (10) days after SCAD substantially completes the SCAD Real Property pursuant to Section 8.1 of this Agreement at which time the City shall convey to SCAD the Oglethorpe Avenue Property and the Liberty Street Property and SCAD shall convey to the City the SCAD Real Property ("Closing #2").

7.2 SCAD's Obligations at Closing #1. Subject to the terms, conditions and provisions hereof and contemporaneously with the performance by City of its obligations set forth in this Agreement, SCAD shall deliver or cause to be delivered to City the following items at the Closing, the forms of which shall be agreed to at least five (5) days prior to Closing:

- (a) A closing statement executed by SCAD; and
- (b) Such other documents, instruments, certificates and matters that the Title Company may reasonably require in order to consummate the transactions contemplated hereby and to issue the Owner's Title Policy in accordance with this Agreement.

7.3 City's Obligations at Closing #1. City shall deliver or cause to be delivered to SCAD the following items at the Closing:

- (a) A limited warranty deed (the "Deed") executed by City, conveying to SCAD good and marketable fee simple title to the Warner Street Property and the Louisville Road property, subject only to the City Permitted Exceptions;
- (b) A bill of sale and general assignment executed by City, conveying and assigning to SCAD the City's right, title and interest in and to all of the City Personal Property, if any, located at the Warner Street Property and the Louisville Road property;
- (c) A certificate of non-foreign status executed by the City;

(d) A closing statement executed by the City; and

(e) Such other documents, instruments, certificates and matters that the Title Company may reasonably require in order to consummate the transactions contemplated hereby and to issue the Owner's Title Policy in accordance with this Agreement.

7.4 SCAD's Obligations at Closing #2. Subject to the terms, conditions and provisions hereof and contemporaneously with the performance by City of its obligations set forth in this Agreement, SCAD shall deliver or cause to be delivered to City the following items at the Closing, the forms of which shall be agreed to at least five (5) days prior to Closing:

(a) A bill of sale and general assignment executed by SCAD, conveying and assigning to City SCAD's right, title and interest in and to all of the SCAD Real Property;

(b) A certificate of non-foreign status executed by SCAD;

(c) A closing statement executed by SCAD; and

(d) Such other documents, instruments, certificates and matters that the Title Company may reasonably require in order to consummate the transactions contemplated hereby.

At Closing, SCAD shall deliver exclusive possession of the SCAD Real Property to City and, promptly following Closing, deliver to City all files, records and other information relating to the SCAD Real Property.

7.5 City's Obligations at Closing #2. City shall deliver or cause to be delivered to SCAD the following items at the Closing, the forms of which shall be agreed to during the Inspection Period:

(a) A limited warranty deed executed by City, conveying to SCAD good and marketable fee simple title to the Oglethorpe Avenue Property, subject only to the City Permitted Exceptions, and which deed shall also contain restrictions for the Oglethorpe Avenue Property which (i) will prohibit SCAD from removing the Police Barrack transom marker shown as Exhibit D attached hereto; and (ii) will create a façade maintenance easement for the portion of the Oglethorpe Property facing Oglethorpe Avenue;

(b) A limited warranty deed executed by City, conveying to SCAD good and marketable fee simple title to the Liberty Street Property, subject only to the City Permitted Exceptions;

(c) A bill of sale and general assignment executed by City, conveying and assigning to SCAD the City's right, title and interest in and to all of the City Personal Property, if any, located at the Oglethorpe Avenue Property and the Liberty Street Property;

(d) A certificate of non-foreign status executed by the City;

(e) A closing statement executed by the City; and

(f) Such other documents, instruments, certificates and matters that the Title Company may reasonably require in order to consummate the transactions contemplated hereby and to issue the Owner's Title Policy in accordance with this Agreement.

7.6 Closing Costs. SCAD shall pay all costs associated with the transfer of the SCAD Real Property to the City including, without limitation, transfer and documentary stamps and the cost of recording the deeds, if any. City shall pay all costs associated with the transfer of the City Real Property to SCAD, including, without limitation, transfer and documentary stamps, and the cost of recording the deeds, if any. SCAD and City shall each pay its own attorneys' fees incurred in connection with this transaction. SCAD and City shall each pay for their respective title premiums for the issuance of an Owner's Title Policy with respect to any properties acquired at Closing.

7.7 Reconciliation. Notwithstanding any provision contained here in to the contrary, SCAD and the City agree that in no event shall the value of the City Real Property exceed the value of the SCAD Real Property. As used herein, the value of the SCAD Real Property shall mean the Stipulated Sum approved by the City to construct improvements pursuant to Section 2.2(b) herein. As used herein, the value of the City Real Property shall mean the sum of the following: (i) \$5,700,000.00 for the Oglethorpe Avenue Property; (ii) \$125,000.00 for the Warner Street Property; (iii) \$5,500,000.00 for the Louisville Road Property; and (iv) \$1,500,000.00 for the Liberty Street Property, all of which values have been verified and substantiated by appraisals prepared for the City. In the event that the value of the SCAD Real Property shall exceed the value of the City Real Property by more than \$100,000.00 then SCAD and City agree to use best efforts to determine additional City property to be swapped with SCAD, so that the differential in values shall be no more than \$100,000.00.

ARTICLE VIII **CONSTRUCTION OF SCAD REAL PROPERTY**

8.1 Construction. SCAD shall construct the SCAD Real Property in accordance with the Plans and Specifications set forth on Exhibit "C" attached hereto and by this reference made a part hereof, and SCAD shall diligently prosecute said construction to completion. Except as specifically provided in this Agreement, the City shall accept the SCAD Real Property at Closing in Substantially Complete condition. "Substantially Complete" shall mean the substantial completion of SCAD's work as set forth in Exhibit "C" and the following conditions have been fulfilled (collectively referred to as the "Delivery Conditions"): (a) utilities including (i) water, (ii) gas, (iii) sewer (which is charged based on the water meter), (iv) electricity, and (v) telephone service, are separately metered and in good working order; (b) the SCAD Real Property is in compliance with applicable laws, rules, regulations and building codes, in good mechanical and structural condition and with access to the building in compliance with the Americans Disabilities Act; (c) the building and foundations are structurally sound and the floor slab of the premises is ready for covering; (d) the roof is structurally sound and water tight; (e) the parking lot is paved and striped; and (e) all doors and glazing/glass of the building are installed and in good working order. Upon SCAD's completion of all the foregoing Delivery Conditions, SCAD shall notify City in writing ("Delivery Notice") that all Delivery Conditions have been fulfilled and SCAD is ready to convey the SCAD Real Property. As soon as practical, but in no event more than five (5) days after receipt of Delivery Notice, City will inspect the SCAD Real Property ("Delivery Inspection") to insure that all Delivery Conditions have been fulfilled. If the Delivery Inspection confirms that all Delivery Conditions are substantially completed, then City will evidence its approval by written notice to SCAD and the date the City received the

Delivery Notice shall conclusively be deemed to be the “Substantial Completion” of the SCAD Real Property. If it is determined at the time of Delivery Inspection that all Delivery Conditions have not been satisfied, then the City will not be required to accept delivery of the Premises at that time. Once SCAD has completed or corrected the deficiency in the Delivery Conditions, then SCAD will again provide a Delivery Notice to City and arrange for another Delivery Inspection. This process shall continue until all Delivery Conditions have been fulfilled.

8.2 Acceptance of SCAD Real Property. Within the four-week period after the determination of the Substantial Completion Date, the City shall provide SCAD with written notice of any punch list items to be performed by SCAD pursuant to the Plans and Specifications. Any defect or variance not so set forth shall be deemed waived by the City. Upon the expiration of the four (4) week period, the SCAD Real Property shall be conclusively deemed to have been accepted by the City, unless the City shall have given the aforesaid notice. If Tenant shall notify Landlord of any contended defects during the four (4) week period, the Premises shall be conclusively deemed accepted by Tenant subject to the defects or variances set forth in the notice.

ARTICLE IX **DEFAULT AND REMEDIES**

9.1 Default by SCAD. In the event SCAD shall be in breach or default of any of its representations, warranties, covenants or obligations under this Agreement, City shall have all rights and remedies available at law or in equity including, without limitation, the right to enforce specific performance of this Agreement.

9.2 Default by City. In the event City shall be in breach or default of any of its representations, warranties, covenants or obligations under this Agreement, SCAD shall have all rights and remedies available at law or in equity including, without limitation, the right to enforce specific performance of this Agreement.

9.3 No Termination After Closing #1. Notwithstanding the foregoing or any other provision in this Agreement to the contrary, the parties acknowledge and agree that, after Closing #1, neither party shall have the right to terminate this Agreement.

ARTICLE X **MISCELLANEOUS**

10.1 Notices. Any notice to be given or to be served upon any party hereto in connection with this Agreement must be in writing, and shall be given by hand delivery, certified or registered mail, facsimile transmission or overnight courier, and shall be deemed to have been given and received (i) on the date of hand delivery to the office of the recipient, (ii) two (2) days after the date a certified or registered letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail, (iii) if served by fax, when receipt of such fax has been confirmed by sender's equipment, or (iv) one (1) day after such notice is deposited with a reputable overnight courier (such as Federal Express or UPS) for next day delivery. Such notices shall be given to the parties hereto at the following addresses:

If to SCAD: Savannah College of Art and Design, Inc.
342 Bull Street
Savannah, Georgia 31401
Attention: Brad Grant
bgrant@scad.edu

With copies to: Hunter, Maclean, Exley & Dunn, P.C.
Post Office Box 9848
Savannah, Georgia 31412-0048
Attention: Harold B. Yellin
hyellin@huntermaclean.com

If to City: City Manager
City of Savannah
Post Office Box 1027
Savannah, Georgia 31402

With copies to: Director of Real Estate Services
City of Savannah
Post Office Box 1027
Savannah, Georgia 31402
dkeating@savannahga.gov

With copies to: City Attorney
City of Savannah
Post Office Box 1027
Savannah, Georgia 31402

Any party hereto may, at any time by giving fifteen (15) days written notice to the other party hereto, designate any other address in substitution of the foregoing address to which such notice shall be given. Notices from either party may be given by any of its legal counsel designated above.

10.2 Brokerage Fees and Commissions. Neither SCAD nor City has contacted any real estate broker, agent, finder or similar person in connection with the negotiation and execution of this Agreement or the transactions contemplated hereby, and SCAD and City represent and warrant to the other that no other broker, agent, realtor, finder or other intermediary or similar person has been involved with or engaged or employed by such party in connection with the transaction contemplated by this Agreement, and no fees, commissions or other amounts of a similar nature have been paid or are or will be due and owing to any other person or entity.

10.3 Entire Agreement. This Agreement embodies and constitutes the entire agreement and understanding between the parties hereto with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement.

10.4 Modification. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except as provided herein or by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

10.5 Applicable Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Georgia.

10.6 Headings. Descriptive headings are used in this Agreement for convenience only and shall not control, limit, amplify or otherwise modify or affect the meaning or construction of any provision of this Agreement.

10.7 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

10.8 Time of Essence: Business Days. Time is of the essence of this Agreement and of each covenant and agreement that is to be performed at a particular time or within a particular period of time. However, if the final date of any period which is set out in any provision of this Agreement or the Closing Date falls on a Saturday, Sunday or legal holiday under the laws of the United States, or the State of Georgia, then the time of such period or the Closing Date, as the case may be, shall be extended to the next date which is not a Saturday, Sunday or such legal holiday.

10.9 Invalid Provision. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provision or by its severance from this Agreement.

10.11 Multiple Counterparts; Electronic Transmission. This Agreement may be executed in a number of identical counterparts, each of which for all purposes is deemed an original, and all of which constitute collectively one agreement, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart. The Agreement may be executed by facsimile or e-mail, and a facsimile signature (or signature transmitted by e-mail) shall constitute an original signature and executed facsimile or e-mail counterparts (or copies thereof) shall each be treated as an original.

10.12 Construction. All of the terms and provisions of this Agreement have been negotiated by SCAD and the City with the assistance of their respective legal counsels. Therefore, it is the intent of SCAD and the City that this Agreement shall not be construed for or against either of the parties hereto, and that neither of the parties hereto be deemed the draftsmen of this Agreement.

[Signature Pages Follow]

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

SAVANNAH COLLEGE OF ART AND DESIGN, INC., a Georgia non-profit corporation

By: _____

Name: _____

Title: _____

Sworn to and subscribed before me this _____ day of December, 2019.

Notary Public
My Commission Expires:

(AFFIX NOTARIAL SEAL)

**MAYOR AND ALDERMEN OF THE CITY
OF SAVANNAH**, a municipal corporation
organized under the laws of the State of Georgia

By: _____
Patrick C. Monahan
City Manager

Sworn to and subscribed before me this
_____ day of December, 2019.

Notary Public
My Commission Expires:

(AFFIX NOTARIAL SEAL)

EXHIBIT A

(to Real Property Trade Agreement dated as of December __, 2019, by and between The Mayor and Aldermen of the City of Savannah and The Savannah College of Art and Design, Inc.)

SCAD REAL PROPERTY

EXHIBIT B

(to Real Property Trade Agreement dated as of December __, 2019, by and between The Mayor and Aldermen of the City of Savannah and The Savannah College of Art and Design, Inc.)

CITY REAL PROPERTY

Exhibit B-1: Oglethorpe Avenue Property

Exhibit B-2: Warner Street Property

Exhibit B-3: Louisville Road Property

Exhibit B-4: Liberty Street Property

EXHIBIT B-1

(to Real Property Trade Agreement dated as of December __, 2019, by and between The Mayor and Aldermen of the City of Savannah and The Savannah College of Art and Design, Inc.)

OGLETHORPE AVENUE PROPERTY

EXHIBIT B-2

(to Real Property Trade Agreement dated as of December __, 2019, by and between The Mayor and Aldermen of the City of Savannah and The Savannah College of Art and Design, Inc.)

WARNER STREET PROPERTY

EXHIBIT B-3

(to Real Property Trade Agreement dated as of December __, 2019, by and between The Mayor and Aldermen of the City of Savannah and The Savannah College of Art and Design, Inc.)

LOUISVILLE ROAD PROPERTY

EXHIBIT B-4

(to Real Property Trade Agreement dated as of December __, 2019, by and between The Mayor and Aldermen of the City of Savannah and The Savannah College of Art and Design, Inc.)

LIBERTY STREET PROPERTY

EXHIBIT C

(to Real Property Trade Agreement dated as of December __, 2019, by and between The Mayor and Aldermen of the City of Savannah and The Savannah College of Art and Design, Inc.)

PLANS AND SPECIFICATIONS

(to be attached)

EXHIBIT D

(to Real Property Trade Agreement dated as of December __, 2019, by and between The Mayor and Aldermen of the City of Savannah and The Savannah College of Art and Design, Inc.)

TRANSOM SIGN