

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into as of the ___ day of December, 2024 (“Effective Date”) by and between **THE RESERVE AT SAVANNAH HARBOR HOMEOWNERS ASSOCIATION, INC.**, a Georgia domestic non-profit corporation (“HOA”), **SAVANNAH HARBOR OWNER, LLC**, a Delaware limited liability company (“Declarant”), and **THE MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH**, a municipal corporation existing under the laws of the State of Georgia (“City”). Collectively, the City, Declarant and HOA are referenced herein collectively as the “Parties.”

WITNESSETH:

WHEREAS, City is the owner of the public rights-of-way and sites for public use located with The Reserve at Savannah Harbor, Phase 1, as more particularly described and depicted in Plat Book 42-S, Pages 165-A to 165-S, Chatham County, Georgia records (“The Reserve”) in Savannah, Georgia; said rights-of-way and sites for public use including, but not limited to, the areas identified on the plat as Mary Musgrove Park and Susie King Taylor Square, greeter pavilion (aka guardhouse), monument signage and the landscaped entranceway connecting with Wayne Shackelford Boulevard (the “City Property”); and

WHEREAS, the HOA, which has as its members the property owners within The Reserve, is the owner of the non-public common areas within The Reserve; and

WHEREAS, HOA and Declarant are jointly seeking to make certain landscape and hardscape improvements (the “Public Improvements”) to the City Property at The Reserve.

WHEREAS, the Public Improvements will provide public benefits including, but not limited to, enhancing the beautification and public enjoyment of the City Property and reducing associated operating and maintenance costs to the City.

WHEREAS, the City, Declarant and HOA desire to enter into this Agreement to articulate and memorialize their obligations to one another with respect to the construction, operations, and maintenance of the Public Improvements.

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

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

2. **City Agreements**. The City hereby agrees to the following:

(a) **Right of Access**. City grants Declarant and HOA the non-exclusive right of access and use of the City Property to develop, use, and maintain the Public Improvements as described herein.

- (b) Design, Construction/Installation, Reimbursement, Cost-Share, and Cap.
- i. Design and Construction/Installation. HOA and/or Declarant, as the case may be, will design and construct and/or install all Public Improvements, upon mutual approval of the design of same by City and HOA/Declarant, and subject to City permitting process, as set forth herein.
 - ii. Reimbursement. The City hereby commits up to \$100,000 of Tree Funds as is necessary to reimburse HOA and/or Declarant for the design, construction, and installation of the mutually approved Public Improvements.
 - iii. Procurement Procedure. HOA and/or Declarant shall comply with State statutes and City ordinances when procuring any design, construction, and installation of the Public Improvements subject to reimbursement. This includes, but is not limited to, obtaining at least three competitive quotes for each intended purchase or contract to be obtained from a particular vendor or contractor which exceeds \$5,000.00. Records of such competitive quotes shall be maintained by HOA and/or Declarant and shall be made available to the City upon request. For any single purchase or contract valued in excess of \$25,000.00, HOA and/or Declarant shall consult with an assigned City Purchasing Department Representative who shall determine and approve the proposed method of procurement to be implemented; which may include a public bid or piggy-back contract of a prior competitively bid state or cooperative contract. Any procurement by HOA and/or Declarant pertaining to the Public Improvements not in compliance with the requirements of this section shall not be eligible for reimbursement and shall be the sole responsibility of HOA and/or Declarant.
 - iv. Reimbursement Procedure. The City hereby agrees to reimburse HOA and/or Declarant for all the costs (“Costs”) associated with the approved Public Improvements within thirty (30) days of receiving the following: (i) reasonable evidence of the completion of each Improvement in accordance with the Plans, in a good and workmanlike manner, and in accordance with the construction fee schedule and (ii) any invoices and documentation reasonably requested by the City, including receipts or invoices. Costs shall include, but shall not be limited to: labor, materials, supplies, and necessary professional services.
 - v. No Fees. HOA and/or Declarant agrees that the Costs for the approved reimbursable Public Improvements shall not include any fee payable to the HOA and/or the Declarant, and that the management, oversight, administration, and other services provided in connection with the construction of the Public Improvements shall be done at no cost to City, except as expressly set forth in this Agreement.

vi. Limitation. The City shall expressly have no obligation to fund any Costs for the Public Improvements in excess of \$100,000 (the “Reimbursement Cap”). Any Costs incurred by HOA and/or Declarant in excess of the Reimbursement Cap shall be paid by HOA and/or Declarant.

(c) Cost Share. HOA and/or Declarant will assume all costs of operations and maintenance of the Public Improvements. Notwithstanding the foregoing, City will assume and promptly pay (or reimburse Declarant and/or HOA, as applicable) all costs for the utilities of irrigation water and electricity serving the City Property.

3. **HOA Agreements.** HOA and Declarant hereby agree as follows:

(a) Permitting. HOA and Declarant will prepare landscape architecture, engineering or other plans of the Public Improvements for review, approval, and permitting by the City; said review, approval, and permitting to not be unreasonably withheld. Neither HOA nor Declarant shall commence construction of any work on City Property until such review, approval, and permitting is completed.

(b) Performance Bond. HOA and Declarant will provide a performance bond in favor of the City to secure its obligation to complete and maintain the Public Improvements. City may call upon this bond and use the proceeds to complete the Public Improvements if HOA or Declarant default, beyond any period of notice and cure, on their respective obligations as stated herein.

(c) Diligent Completion. HOA and Declarant agree, upon and after commencement of construction, to work diligently to complete the Public Improvements in an expedited and timely manner. Notwithstanding the foregoing, HOA and Declarant agree to complete the Public Improvements within twelve (12) months of the issuance of all permits and approvals necessary for the work to commence.

(d) Licensure. HOA and Declarant shall oversee the construction of the Public Improvements to ensure that they are constructed in a good and workmanlike manner. Before the date on which the construction starts, HOA and Declarant, or the agents, contractors, or subcontractors of HOA or Declarant, shall obtain, and at all times during the term of this Agreement shall maintain, all necessary licenses and consents and comply with all relevant laws, regulations, rule, regulations and ordinances applicable to the provision of the construction of the Public Improvements and Infrastructure.

(e) Management and Administration. HOA and Declarant shall be responsible for all HOA and Declarant personnel (which includes, without limitation, employees, subcontractors and independent contractors) and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments, and disability benefits.

(f) Dedication and Ownership. All Public Improvements shall be dedicated and donated by HOA or Declarant to the City upon satisfactory completion of construction.

(g) No Mechanic's Liens. HOA and Declarant, in the exercise of its obligations herein, or in the performance of any duties under this Agreement, shall not cause or permit any mechanic's or materialman's lien to attach to or to be perfected or enforced against the City Property on which HOA or Declarant performs work or causes work to be performed. If by reason of any alterations, repair, labor performed or materials for or on behalf of HOA or Declarant any mechanics or other lien shall be filed, claimed, perfected or otherwise established as provided by law against the City Property on which HOA or Declarant performs work or causes work to be performed, HOA or Declarant, as the case may be, shall discharge or remove the lien by bonding or otherwise, within thirty (30) days after notice from the City.

(h) Omissions. HOA and Declarant shall be responsible to the City for acts and omissions of HOA's and Declarant's employees, subcontractors and their agents and employees, and other persons or entities performing all or portions of the work to construct the Improvements for or on behalf of HOA and Declarant or any of their subcontractors. Upon request by the City and after payment, HOA, Declarant and/or its subcontractors shall provide interim and/or final lien waivers (as the case may be) in the standard Georgia forms.

(i) Maintenance. HOA and Declarant shall be solely responsible for the maintenance and care of the Public Improvements to maintain a professional and attractive appearance. In the event the Public Improvements fall into disrepair or become unkept and in poor conditions, then HOA or Declarant shall promptly replace and/or repair the failing component or improvements to maintain a professional and attractive appearance.

(j) Insurance. During the term of this Agreement, HOA and Declarant shall, at its own expense, maintain and carry in full force and effect with financially sound and reputable insurers, commercial general liability with limits no less than \$2,000,000.00 per occurrence and \$3,000,000.00 in the aggregate, including bodily injury and property damage and completed operations and advertising liability, which policy will include contractual liability coverage insuring the activities of HOA under this Agreement. Upon City's request, HOA and Declarant shall provide the City with a certificate of insurance from HOA's and Declarant's insurer evidencing the insurance coverage specified in this Agreement. The certificate of insurance shall name the City as an additional insured. HOA and Declarant shall provide the City with 30 days' advance written notice in the event of a cancellation or material change in HOA's and Declarant's insurance policy. Except where prohibited by law, HOA and Declarant shall require its insurer to waive all rights of subrogation against the City's insurers and the City. HOA shall, to the extent required by applicable law, also provide Workers Compensation and Employers Liability covering \$500,000.00 and shall provide a certificate of insurance to the City evidencing such coverage upon executing this Agreement.

(k) Hold Harmless and Indemnification. HOA and Declarant shall each indemnify, defend, and hold harmless the City and its officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys'

fees, fees and the costs of enforcing any right to indemnification under this Agreement, and the cost of pursuing any insurance providers, incurred by Indemnified Party (collectively, "Losses"), relating to, arising out of or resulting from: (i) any claim of a third party arising out of or occurring in connection with HOA's or Declarant's, as the case may be, negligence, willful misconduct, or breach of this Agreement, (ii) any negligent or willful acts and/or omissions of either HOA, Declarant and/or their respective employees, agents, other contractors or subcontractors and/or (iii) performance of the construction of the Improvements.

4. **Force Majeure.** The Parties shall use reasonable diligence to perform the work 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 attorney's fees on appeal) for breach of contract, or otherwise, for failure, suspension, diminution, or other variations of services occasioned by any cause beyond the control and without the fault of the Parties. Such causes may include but shall not be limited to, Acts of God, acts of other governmental entities, strikes, lockouts or unavailability of materials.

5. **Agency.** HOA, Declarant and the City, and their agents, contractors, or subcontractors, shall perform all activities that are outlined in this Agreement as independent entities and not as agents of each other.

6. **Controlling Laws; Jurisdiction; Venue.**

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

(b) The location for settlement of any and all claims, controversies, or disputes, and any litigation arising out of or relating to any part of this Agreement, or any breach hereof, shall be Chatham County, Georgia. The Parties consent and agree that venue of any civil action arising from or related to this Agreement shall exclusively lie in the State and Superior Courts of Chatham County, Georgia and the United States District Court for the Southern District of Georgia, Savannah Division, and the Parties hereby consent to the jurisdiction of those courts over them.

7. **Miscellaneous.**

(a) Except as amended by this Agreement, all terms and conditions of the Lease shall remain in full force and effect. The undersigned hereby ratify, confirm and reaffirm the Lease, as hereby modified and amended. In the event of a conflict between the terms of the Lease and the terms of this Agreement, the terms of this Agreement shall control.

(b) There are no other agreements or understandings, either oral or written, between the Parties of 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.

(c) No Assignment. This Agreement shall not be assignable in whole or in part by a Party without the prior written consent of the other Parties; provided, however, Declarant may assign all of its rights hereunder to the successor “Declarant” pursuant to the relevant recorded declaration governing The Reserve. 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.

(d) Strict Performance. No failure by a Party to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement or to exercise a right or remedy shall constitute a waiver. No waiver of any breach shall effect or alter this Agreement, but each and every covenant, condition, agreement and term of this Agreement shall continue in full force and effect with respect to any other existing or subsequent breach.

(e) 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”, “subsection”, “Exhibit” or “Schedule” shall refer to the corresponding Section, subsection, Exhibit, or Schedule 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.

(f) 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.

(g) Default. HOA or Declarant, as the case may be, shall be in default under this Agreement if HOA and Declarant fails to perform any of its respective duties and obligations stated herein and does not cure or remedy such failure to perform within fifteen (15) calendar days after receipt of written notice from the City with respect thereto; provided, however, that, if such failure to perform shall necessitate longer to cure than such fifteen (15) day period, then such cure period shall be extended for such period of time as is reasonably necessary to cure such failure to perform if HOA or Declarant commences such cure within fifteen (15) days after receipt of written notice from the City and thereafter proceeds diligently and in good faith to cure.

- i. Upon the occurrence of a default by HOA or Declarant under this Development Agreement, the City may, in addition to any other remedy provided to the City under law and/or equity, pursue any one or more of the following remedies, separately or concurrently or any combination, without further notice or demand whatsoever:

- ii. City may terminate the HOA's or Declarant's rights under this Development Agreement by giving HOA or Declarant written notice of such termination.
- iii. With or without terminating the HOA's or Declarant's rights under this Agreement, City may bring an action against HOA or Declarant to recover all damages, recoverable at law, suffered, incurred or sustained by City in connection with such default.

Notwithstanding anything to the contrary contained herein, in no event shall any party hereto be liable hereunder for any punitive, special, indirect, and/or consequential damages such party may suffer or incur, and each party hereto unconditionally and irrevocably acknowledges and agrees that the individual officers, members, managers, shareholders, and agents of each party hereto shall not be personally liable for any obligations hereunder, which acknowledgement and agreement shall survive the termination of this Agreement.

(h) 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, date and time is provided (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 HOA: The Reserve at Savannah Harbor
Homeowners Association, Inc.
c/o Savannah Harbor Owner, LLC
6260 Avalon Blvd
Alpharetta, GA 30004
Attn: Jason Joseph, President
Phone: 678-802-4919
Email: jj@trilogyc.com

with a copy to: c/o Savannah Harbor Owner, LLC
6260 Avalon Blvd
Alpharetta, GA 30004
Attn: Legal Dept.
Phone: 678-802-4919
Email: legal@trilogyc.com

If to Declarant: Savannah Harbor Owner, LLC
6260 Avalon Blvd
Alpharetta, GA 30004
Attn: John Boniface, Chief Development Officer
Phone: 678-802-4919
Email: john@trilogyc.com

with a copy to: c/o Savannah Harbor Owner, LLC
6260 Avalon Blvd
Alpharetta, GA 30004
Attn: Legal Dept.
Phone: 678-802-4919
Email: legal@trilogyic.com

If to the City: City of Savannah
Attention: Jay Melder, City Manager
City Hall, P.O. Box 1027
Savannah, Georgia 31402
Phone: (912) 651-6415
Facsimile: (912) 238-0872
Email: jay.melder@savannahga.gov

with a copy to: Bates Lovett, City Attorney
Office of the City Attorney
Post Office Box 1027
Savannah, Georgia 31402
Phone: (912) 525-3092
Email: blovett@savannahga.gov

David Keating, Sr. Director of Real Estate
Post Office Box 1027
Savannah, Georgia 31402
Phone: (912) 651-6521
Email: dkeating@savannahga.gov

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[EXECUTION ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, each of the Parties has executed and delivered this Agreement under seal as of the date first above written by and through its duly authorized officer or representative.

HOA:

**THE RESERVE AT SAVANNAH HARBOR
HOMEOWNERS ASSOCIATION, INC.,**
a Georgia domestic non-profit corporation

By: _____
Name: Jason Joseph
Title: President

DECLARANT:

SAVANNAH HARBOR OWNER, LLC,
a Delaware limited liability company

By: _____
Name: John Boniface
Title: Authorized Signatory

[CITY EXECUTION CONTINUED ON THE FOLLOWING PAGE]

CITY:

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

By: _____

Name: _____

Its: _____