

**MAYOR**  
Shirley Sessions

**CITY COUNCIL**  
Barry Brown, Mayor Pro Tem  
Brian West  
Jay Burke  
Nancy DeVetter  
Spec Hosti  
Monty Parks



**CITY MANAGER**  
Dr. Shawn Gillen

**CLERK OF COUNCIL**  
Jan LeViner

**CITY ATTORNEY**  
Edward M. Hughes

## CITY OF TYBEE ISLAND

### AGENDA

## SPECIAL MEETING OF TYBEE ISLAND CITY COUNCIL

**April 20, 2022 at 3:00 PM**  
*Please silence all cell phones during Council Meetings*

#### Call to Order

#### Planning and Zoning Consideration

1. Subdivision of Land: Requesting New Subdivision - 708 Butler Avenue, Chris Koncul
2. Variance: Requesting Hammer Head in lieu of cul-de-sac, 708 Butler Avenue, Chris Koncul
3. Relevant Documents
  - Conservation Easement - Trees
  - Restrictive Covenants - 708 Butler
  - 708 Plat
  - Letter from Attorney
  - 708 Butler Easement

#### Adjournment

*Individuals with disabilities who require certain accommodations in order to allow them to observe and/or participate in this meeting, or who have questions regarding the accessibility of the meeting or the facilities are required to contact Jan LeViner at 912.472.5080 promptly to allow the City to make reasonable accommodations for those persons.*

**\*PLEASE NOTE:** Citizens wishing to speak on items listed on the agenda, other than public hearings, should do so during the citizens to be heard section. Citizens wishing to place items on the council meeting agenda must submit an agenda request form to the City Clerk's office by Thursday at 5:00PM prior to the next scheduled meeting. Agenda request forms are available outside the Clerk's office at City Hall and at [www.cityoftybee.org](http://www.cityoftybee.org).



#### THE VISION OF THE CITY OF TYBEE ISLAND

*"is to make Tybee Island the premier beach community in which to live, work, and play."*



#### THE MISSION OF THE CITY OF TYBEE ISLAND

*"is to provide a safe, secure and sustainable environment by delivering superior services through responsible planning, preservation of our natural and historic resources, and partnership with our community to ensure economic opportunity, a vibrant quality of life, and a thriving future."*

**P.O. Box 2749 – 403 Butler Avenue, Tybee Island, Georgia 31328-2749**  
**(866) 786-4573 – FAX (866) 786-5737**  
**[www.cityoftybee.org](http://www.cityoftybee.org)**



**File Attachments for Item:**

2. Variance: Requesting Hammer Head in lieu of cul-de-sac, 708 Butler Avenue, Chris Koncul

Fee  
Commercial \$500  
Residential \$200



Ch.#  
2995  
200.00

**CITY OF TYBEE ISLAND**  
**VARIANCE APPLICATION from the Tybee Island Land Development Code**

Applicant: Christopher F Koncal

Telephone #: 912-695-8925 Email Address: chris.koncal@koncalcontractors.com

Mailing Address P.O. Box 13921, Savannah, Georgia, 31416

\*Note: If the applicant is not the property owner as listed on the property deed, a letter from the listed owner(s), including a telephone number and address along with any other relevant information, authorizing the applicant to act in their behalf must be included in the application.

**PROCEDURE**

Application Requirements

All applications must be complete, including required supporting documents. **Drawings or surveys will be 11" X 17" or larger.** Incomplete applications will not be accepted and will delay review.

Application Deadline

Applications are due by 4:00 p.m. of the last day of the month before the next scheduled Planning Commission meeting.

Application Submittal

Return one copy of this completed application and all supporting documents to: Tybee Island Planning and Zoning, City Hall, 403 Butler Avenue / P.O. Box 2749 City of Tybee Island, GA 31328

Application Public Hearings

Applications will be heard at a public hearing before the Planning Commission on the third Monday of each month, followed by a final decision by City Council at another public hearing on the second Tuesday of the following month. Each hearing will be held at 7 p.m. at the Public Safety Building, 78 Van Horn Dr.

Property Address (Or General Location Description if no Address Assigned): 708 Butler Avenue

Tax Map/Parcel ID#: 40005 2006 Current Zoning: R-2

Existing use of Property: One (1) single family STVR with undeveloped land

Proposed use of Property: Subdivide land into ten (10) single family lots. Keep existing home.

Has the property been denied a variance in the past 12 months? If so, please provide brief details:

No

DESIGNATION OF AGENT

Kathryn McNeal White, as one of the Managing Members of KM Metter Farms II, LLC, (the "Company") as of the 2nd day of May, 2021, does hereby make, constitute, and appoint Christopher F Koncul, as the Company's designated point of contact for discussions with the Department of Natural Resources, the City of Tybee and Chatham County in connection with future work, permits, licenses and other developmental matters for the property known as 708 Butler Avenue, Tybee Island, Georgia.

The Company may, at any time, revoke this designation of agency. Otherwise, this designation of agency shall be deemed to be in full force and effect as to all persons, institutions, and organizations which shall act in reliance thereon.

IN WITNESS WHEREOF, William B. McNeal, as Managing Member for the Company has hereunto caused this instrument to be executed under the seal the day and year first above written.

Signed, sealed and delivered  
in the presence of:

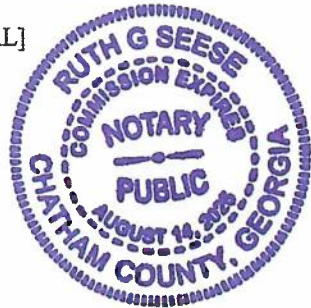
[Signature]  
Unofficial Witness

[Signature] (Seal)  
Kathryn McNeal White

[Signature]  
Notary Public

My Commission Expires:

[NOTARIAL SEAL]



## Variance Questionnaire:

1. Does the requested variance change the Tybee Island character designation for the property as described in the Master Plan? If so, provide a brief explanation.

This request will not change the Tybee Island character designation for the property.

2. Please explain the purpose of the requested variance and the intended development of the subject property if the variance is granted.

Requesting a hammerhead in lieu of a cul-de-sac. This request will best protect the historic McNeal cottage and preserve the natural drainage and vegetative open space. This request has been approved by the City of Tybee Fire Chief, Chief Knendck.

3. Please explain the specific provision within the Tybee Island Land Development Code from which the variance is requested.

The existing code requires a cul-de-sac on this private land. The requested hammerhead turn around will involve significantly less paving and allow for more vegetative open space.

4. Per the Tybee Island Land Development Code, the Tybee Island Planning Commission shall not make a recommendation on a variance from the terms of the Land Development Code unless it has met the following. Please explain how the requested variance meets each of the following:

A. The need for a variance arises from the condition that is unique and peculiar to the land, structures and buildings involved.

The variance is requested in order to best protect the historic McNeal cottage and preserve natural drainage and vegetative open space.

B. The variance is necessary because the particular physical surroundings, the size, shape or topographical condition of the property involved would result in unnecessary hardship for the owner, lessee or occupants as distinguished from a mere inconvenience.

Due to the dunes and dimensions of the property the variance will ensure that the character of the historic McNeal cottage can be preserved.

C. The condition requiring the requested relief is not ordinarily found in properties of the same zoning district as the subject property.

The requested relief is a better fit for this single private lane development, which is significantly lower density than existing zoning allows for.

D. The condition is created by the regulation in the Tybee Island Land Development Code and not by the action of the property owner or applicant.

The requested relief is from the strict code required. The variance request is intended to preserve the historic McNeal cottage, provide better drainage and vegetative open space and solely provide fire protection and other services more than they need to solely serve the development.

E. The granting of the requested variance will not conflict with Sec. 26-70-Amendments and modifications to the Fire Prevention Code of the Tybee Island Code of Ordinances or endanger the public.

Chief Kendrick, the city of Tybee fire chief, has reviewed and approved the requested variance.


F. The variance requested is the minimum variance that will make possible the reasonable use of the land, building or structures.

The requested variance will significantly help preserve the historic McNeal cottage, will maintain the natural drainage and vegetative open space and will be less impactful to the otherwise required cul-de-sac layout.

NOTE: This application must be accompanied by additional documentation, including drawings that include or illustrate the information outlined below.

- | REFERENCE     | DESCRIPTION  |
|---------------|--|
| 5-040 (D) (1) | Site plan and/or architectural rendering of the proposed development depicting the location of lot restrictions.   |
| 5-040 (D) (2) | Narrative describing the hardship and the reason for the variance request. ( <i>Hardship means the circumstances where special conditions, which were not self-created or created by a prior owner, affect a particular property and make strict conformity with the restrictions governing dimensional standards (such as lot area, width, setbacks, yard requirements, or building height) unnecessarily burdensome or unreasonable in light of the purpose of this code. Unnecessary hardship is present only where, in the absence of a variance, no feasible use can be made of the property.</i> )<br>Explain the hardship: <i>The hammerhead request will involve significantly less paving and protect the historic McNeal cottage and property. Preserve natural drainage and more vegetative open space.</i> |
| 5-040 (D) (3) | A survey of the property signed and stamped by a State of Georgia certified land surveyor.   |
| 5-090 (A) (1) | That there are unique physical circumstances or conditions beyond that of surrounding properties, including:<br><input type="checkbox"/> irregularity;<br><input type="checkbox"/> narrowness; or,<br><input type="checkbox"/> shallowness of the lot shape; or,<br><input checked="" type="checkbox"/> exceptional topographical or other physical circumstances, conditions, or considerations related to the environment, or the safety, or to historical significance, that is peculiar to the particular property; and;   |
| 5-090 (A) (2) | Because of such physical circumstances or conditions, the property cannot be developed in strict conformity with the provisions of the Land Development Code, without undue hardship to the property.<br><u>NOTE: Provide attachments illustrating conditions on surrounding properties and on the subject property, indicating uniqueness, etc.</u>   |
| 5-090 (B)     | <i>Height.</i> No part of any structure shall project beyond 35-feet above the average adjacent grade of a property except:<br>(1) See <u>section 2-010</u> , terms and definitions; height of building.<br>(2) The following items that were existing on the date of the adoption of this section; flag poles, television aerials, water towers and tanks, steeples and bell towers, broadcasting and relay towers, transmission line towers, and electric substation structures.   |

The Applicant certifies that he/she has read the requirements for Variances and has provided the required information to the best of his/her ability in a truthful and honest manner.

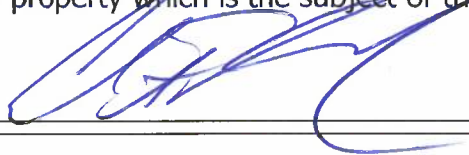
Signature of Applicant  Date 1/31/2022

5-090(C) *Variance longevity.* After a variance has been granted by the mayor and council it shall be valid for a period of 12 months from date of approval. Such approval is based on information provided in the application. Building permits may only be granted for plans consistent with the approved application. Any deviation from the information submitted will require separate approval by the mayor and council.

**CERTIFICATION AND AUTHORIZATION**

I hereby certify that, to the best of my knowledge and belief, the above listed information and all attached supporting documents are complete and accurate. I understand that this application will require public hearings by the Tybee Island Planning Commission and City Council. I have been made aware and I hereby acknowledge the scheduled hearing dates/times and location where this application will be considered. I also understand that review of this application will require a site visit, and I hereby authorize City staff and members of the Planning Commission and City Council to inspect the property which is the subject of this application.

Signature of Applicant \_\_\_\_\_



Date \_\_\_\_\_

1/31/2022

If within two (2) years immediately preceding the filing of the applicant's application for a zoning action, the applicant has made campaign contributions aggregating more than \$250 to the mayor and any member of Council or any member of the Planning Commission, the applicant and the Attorney representing the Applicant must disclose the following:

- a. The name of the local government official to whom the campaign contribution or gift was made;
- b. The dollar amount of each campaign contribution made by the applicant to the local government official during the two (2) years immediately preceding the filing of the application for this zoning action, and the date of each contribution;
- c. An enumeration and description of each gift having a value of \$250 or more made by the Applicant to the local government official during the two (2) years immediately preceding the filing of the application for this zoning action.

Disclosure of campaign contributions form attachment hereto:  Yes

Signature of Applicant \_\_\_\_\_



Date \_\_\_\_\_

1/31/2022

**STAFF USE ONLY**

Date received: 2/1/22

Received by: 

Fee Amount \$ 200.00

Check Number 2995

Date 1/20/22

**PUBLIC HEARING DATES:**

Planning Commission 2/14/22

City Council 3/

DECISION: (Circle One)      Approved

Denied

Approved with Conditions: \_\_\_\_\_





CITY OF TYBEE ISLAND

CONFLICT OF INTEREST IN ZONING ACTIONS

DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

Have you within the past two (2) years made campaign contributions or gave gifts having an aggregate value of \$250.00 or more to a member of the City of Tybee Island Planning Commission, or Mayor and Council or any local government official who will be considering the rezoning application?

YES \_\_\_\_\_ NO ✓

IF YES, PLEASE COMPLETE THE FOLLOWING SECTION:

NAME OF GOVERNMENT OFFICIAL	CONTRIBUTIONS OF \$250.00 OR MORE	GIFTS OF \$250.00 OR MORE	DATE OF CONTRIBUTION

IF YOU WISH TO SPEAK CONCERNING THE ATTACHED REZONING APPLICATION, THIS FORM MUST BE FILED WITH THE ZONING ADMINISTRATOR FIVE (5) DAYS PRIOR TO PLANNING COMMISSION MEETING IF CAMPAIGN CONTRIBUTIONS OR GIFTS IN EXCESS OF \$250.00 HAVE BEEN MADE TO ANY MEMBER OF THE PLANNING COMMISSION OR MAYOR AND COUNCIL.

Signature 

Printed Name Christopher F Kincaid

Date 1/31/2022

**Sec. 5-090. Variances.**

- (A) *Standards.* After an application has been submitted to the zoning administrator, reviewed by the planning commission, and a public hearing has been held by the mayor and council, the mayor and council may grant a variance from the strict application of the provisions in this Land Development Code only if the following findings are made:
- (1) That there are unique physical circumstances or conditions beyond that of surrounding properties, including irregularity, narrowness, or shallowness of the lot size or shape, or exceptional topographical or other physical conditions, peculiar to the particular property; and,
  - (2) That because of such physical circumstances or conditions, the property cannot be developed in strict conformity with the provisions of this Land Development Code, without undue hardship to the property.
- (B) *Height variances.* For height variances, in addition to other requirements, the petitioner shall be required to add two feet to each side yard setback for each one foot above 35 feet in height and have safe-guard consisting of sprinkler systems, smoke detectors and any other fire protection equipment deemed necessary at the time by mayor and council. Where a rear yard abuts a side yard of the adjacent lot, the petitioner shall be required to add two feet to the rear setback for each foot above the 35 feet height, and have safe-guards consisting of sprinkler systems, smoke detectors, and any other fire protection deemed necessary at the time by mayor and council.
- (C) *Variance longevity.* After a variance has been granted by the mayor and council it shall be valid for a period of 12 months from date of approval. Such approval is based on information provided in the application. Building permits may only be granted for plans consistent with the approved application. Any deviation from the information submitted will require separate approval by the mayor and council.
- (D) *[Reviewing variance applications.]* The staff, planning commission, and governing body, shall consider the factors stated herein in reviewing variance applications in taking action on a particular variance. In exercising the powers to grant variances, the mayor and council may attach any conditions to its approval which it finds necessary to accomplish the reasonable application of the requirements of these regulations.
- (E) *[Application approval.]* Notwithstanding any other provisions of the Code of Ordinances, the staff of the community development department through its department head may approve applications for variances without the need of public hearings and without the need of review by the planning commission or the mayor and council as follows:
- I. When either of the following circumstances exists:
    - a. The proposed improvement of alteration will not result in an expansion of the existing footprint of the existing structure; or
    - b. No additional encroachment into any setback shall be created by the proposed improvement, construction or addition.
  - II. When each of the following circumstances also exists:
    - a. No encroachment or construction of habitable space or other prohibited improvements will exist beyond the flood elevation; and
    - b. The requested improvements or construction will not violate existing zoning provisions.

This subsection shall have specific application to existing nonconforming structures as referred to in section 3-020.

If the staff of the building and zoning department finds that the request needs or should have additional review for any reason, it may request review by the planning commission and if the request is approved or rejected by the planning commission then the planning commission's determination shall control. For purposes of this section, a public hearing before the planning commission shall not be necessary. If the staff of the building and zoning department declines an applicant's request the applicant may apply for the granting of a variance which will follow the procedures applicable to variances in general specifically, those procedures described in sections 3-020 and 3-090 as well as the public hearing requirements referred to in section 5-060. In the event the staff request review by the planning commission and the planning commission rejects the request, the applicant may apply for the granting of a variance and follow the procedure applicable to such request before mayor and council.

(F) *Compliance with ordinances.* Notwithstanding any other provision of the Code of Ordinances, no application for a variance may be accepted nor may any variance be granted with respect to any property that is then not in compliance with the requirements of ordinances for the condition on which the variance is sought, unless the applicant files with the application a detailed written explanation of how, when, and by whom the need for a variance was created. In such a case, the planning commission shall make a recommendation to the mayor and council as to whether the variance should be approved or rejected or modified and the mayor and council, following a public hearing, may approve, reject or modify the variance request. In the event property is constructed in violation of the ordinances, the violation status remains until such time as the condition is rectified and placed in conformity with the ordinances. Violations of the ordinances may be subject to the enforcement provisions of this Code and all penalties permissible by law. A variance that is granted under this Ordinance does not excuse prior violations including those that have resulted or may result in enforcement action by the City of Tybee Island.

(Ord. No. 1999-27, 8-12-1999; Ord. No. 2002-08, 5-9-2002; Ord. No. 2002-08 Variances, amended 8-29-2001; Ord. of 8-11-2005; Ord. No.14-2010, 8-26-2010; Ord. No. 57-A-2014, § 1, 12-11-2014)

**File Attachments for Item:**

3. Relevant Documents

Conservation Easement - Trees

Restrictive Covenants - 708 Butler

708 Butler Façade Easement

708 Plat

Letter from Attorney

708 Butler Easement

When recorded, return to  
Klein Law Group, LLC  
15 Lake Street, Suite 210  
Savannah, Georgia 31411

**STATE OF GEORGIA**     )  
  )  
**COUNTY OF CHATHAM** )

**DEED OF CONSERVATION EASEMENT**

THIS DEED OF CONSERVATION EASEMENT (this “Deed”) is made this\_\_ day of \_\_\_\_\_, 2022, by and between CFK Properties, LLC, a Georgia Limited Liability Company, having an address at 15 Lake Street, Suite 230, Savannah, GA 31411 (the “Grantor”), in favor of City of Tybee Island, Georgia, ("Grantee").

**WITNESSETH:**

WHEREAS, Grantor is the sole owner in fee simple of certain real property in Tybee Island, Chatham County, Georgia, more particularly described in Exhibit “A” attached hereto and incorporated herein by this reference, commonly known as 708 Butler Avenue (the “Property”); and

WHEREAS, Grantor desires to grant a Deed of Conservation Easement on those certain Tree Conservation Easement Areas (“Conservation Areas”) shown on the certain Subdivision Plat prepared for CFK Properties, LLC by\_\_\_\_\_ dated \_\_\_\_\_, 2022; and

WHEREAS, the Conservation Areas possess significant natural, scenic, aesthetic, watershed, and open space and plant habitat features, and ecological air and water quality values (collectively the “Conservation Values”). In particular, said Conservation Values include, but are not limited to:

- The preservation of historically important land area within the meaning of paragraph 170(h)(d)(5) of US Code.
- The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem, within the meaning of paragraph 170(h)(d)(3) of US Code, specifically the protection of a relatively natural habitat for many species of amphibians, and osprey, buzzards, crows, pileated woodpeckers and various other woodpeckers, and many species of song birds, gray squirrels. Tracts of forestland such as this are rapidly disappearing from the landscape in and around this area, which is near Butler Avenue, Tybee Island.

WHEREAS, said Conservation Values are of great importance to Grantor, the people of the City of Tybee Island, Historic Savannah Foundation, Inc. and Chatham County, the people of the State of Georgia, and the public in general, and are worthy of preservation; and

WHEREAS, the preservation of the Property in its present state and proposed improved state will clearly enhance and preserve the Conservation Values; and

WHEREAS, preservation of this open space is in keeping with the following clearly delineated governmental conservation policies:

Georgia Conservation Easement Law [GA Code Sec. 44-10-1 et seq.];  
The Clean Water Act, 33 U.S.C. §§ 1251 et seq.

WHEREAS, the Conservation Values of the Property are documented in an inventory of relevant features of the Property, on file at the offices of Grantee and incorporated by this reference (the “Baseline Documentation”), which inventory consists of a collection of reports, maps, photographs, and other documentation which the parties agree provide, collectively, an accurate representation of the Property at the time of this Easement and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement; and

WHEREAS, Grantor intends that the Conservation Values of the Property be preserved and maintained by the continuation of land use patterns existing at the time of this Easement, including, without limitation, those relating to the quiet enjoyment of the land at the time of this Easement; and

WHEREAS, Grantor further intends, as the owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity in substantially its existing state; and

WHEREAS, by this Easement, Grantor and Grantee mutually intend that the Property be preserved in perpetuity in substantially its existing state, thereby furthering conservation protection and the preservation of the aforementioned Conservation Values; and

WHEREAS, Grantee is a publicly supported, municipal government; and

WHEREAS, Grantee is a qualified “holder” within the meaning of O.C.G.A. § 44-10-2; and

WHEREAS, Grantee agrees by accepting this Easement to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this generation and the generations to come;

NOW, THEREFORE, for and in consideration of TEN AND NO/100 DOLLARS (\$10.00) in hand paid at or before the sealing of these presents, the mutual intentions expressed in the foregoing recitals, the mutual covenants, terms, conditions and restrictions herein contained and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, and pursuant to the Official Code of Georgia Annotated §§ 44-10-1 et. seq., which

expressly authorizes the conveyance herein contained, Grantor have freely and voluntarily granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does freely and voluntarily grant, bargain, sell, alien, convey and confirm, unto Grantee and its successors and assigns, a perpetual, irrevocable, non-exclusive conservation easement (the "Conservation Easement") over, across and through the Property for the purposes hereinafter set forth. Grantee, by its execution hereof, accepts the foregoing grant of the Conservation Easement, and the recordation of this Deed of Conservation Easement shall constitute a "recordation of the acceptance" by Grantee within the meaning of O.C.G.A. § 44-10-3(b). Upon the recordation hereof, Grantee shall be entitled to enforce the Conservation Easement pursuant to O.C.G.A. § 44-10-4.

1. Purpose. It is the purpose of this Conservation Easement to assure that the Property will be retained forever predominantly in its present scenic, aesthetic, and undeveloped condition, and with its Conservation Values intact, and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property, as generally defined in the Baseline Documentation. Grantor intends that this Easement will confine the use of the Property to such activities as are consistent with the purpose of this Conservation Easement.

2. Rights of Grantee. To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Deed:

(a) To preserve and protect the Conservation Values of the Property;

(b) To enter upon the Property at reasonable times in order to monitor Grantor compliance with and otherwise enforce the terms of the Conservation Easement; provided that such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantors' use and quiet enjoyment of the Property; and

(c) To prevent any activity on or use of the Property that is inconsistent with the purpose of the Conservation Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to Paragraph 7 hereof.

3. Use Limitations. Any activity on, or use of, the Property which is inconsistent with the purpose of this Conservation Easement is prohibited. The Property shall be maintained in its current condition as a habitat for trees, plants and wildlife in a manner that is in keeping with the historic character of the City of Tybee Island, restricted from any development with buildings or otherwise or any use except for purposes defined in Paragraph 4 below. To prevent unkempt or damaged branches, the live oaks and palms shall be trimmed and pruned only with written or in-person approval of Grantee's arborist ("City Arborist"), which approval shall not be unreasonably withheld. Restricted to use by only the Butler Avenue Subdivision homeowners. It is mutually agreed and understood, however, that the Conservation Easement permits Grantor and their heirs and successors-in-interest to use the Property for all purposes, present and future, not inconsistent with the Conservation Easement. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

(a) The change, disturbance or impairment of the natural, scenic, and aesthetic features of the Property, except as expressly provided herein.

(b) Any residential, commercial or industrial use of, or activity on, the Property except as expressly set forth herein; or, the legal subdivision of the Property except as described in Reserved Rights.

(c) The construction or maintenance on the Property of any buildings, trailers, mobile homes, structures or other improvements, except as expressly permitted herein.

(d) The exploration for, or extraction of, oil, gas or other minerals, hydrocarbons, soils or other materials on or below the surface of the Property except as expressly permitted in Paragraph 4 herein.

(e) The burning of trash, garbage, yard cuttings or other refuse of any nature whatsoever on the Property.

(f) Any use or activity that causes or presents a risk of causing soil erosion or significant water pollution including without limitation excavation, land filling, dredging, and mining, except as described in Paragraph 4 and as otherwise expressly permitted herein. Excavation required for the construction of the improvements expressly permitted herein will be permitted.

(g) No outdoor advertising structures such as signs and billboards shall be displayed on the Property except as desirable or necessary in the accomplishment of the conservation and residential uses of the Property, and provided such signs do not significantly impair or interfere with the Conservation Values of the Property.

(h) The construction or extension of above ground utility systems.

(i) Any construction of permanent roads on the Property, or widening of the now existing roads on the Property, shown in said baseline data report, other than the construction of a permeable surface driveway or road as per the preliminary site plan approved by the City of Tybee on April 14, 2022, and the final site plan recorded in Plat Book \_\_\_\_, Page \_\_\_\_ of the records of the Superior Court of Chatham County, Georgia.

(j) No commercial antennas, radio towers or the like shall be installed on property.

(k) No cutting of the live oaks and/or palms except as necessary to prevent eminent hazard, disease, or fire, or as necessary to carry out Reserved Rights in Paragraph 4 hereof. The live oaks and palms shall be trimmed and pruned only with written or in-person approval of City Arborist, which approval shall not be unreasonably withheld. The goal is to maintain a permanent buffer in the Butler Avenue Subdivision between the highly trafficked areas of Tybee Island that are adjacent to Property.

(l) There shall be no disruption, alteration, pollution, depletion, or extraction on or from the Protected Property of existing surface or subsurface water flow or natural water sources, fresh water lakes, ponds and pond shores, marshes, creeks, or any other water bodies, nor shall any

activities or uses be conducted on the Protected Property that may reasonably be expected to cause detriment to water purity or alter natural water levels and/or flow in or over the Protected Property.

(m) There shall be no application of pesticides (including, but not limited to, insecticides, fungicides, rodenticides, and herbicides) on the Conservation Areas, except that pesticides may be used to manage or control invasive pests in a manner consistent with Best Management Practices at that time and which promotes the Purposes set forth in Paragraph 1 above.

4. Reserved Rights. Grantor reserve to themselves, and to their personal representatives, beneficiaries, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Conservation Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

(a) The right to take action reasonably necessary to prevent erosion on the Property or to protect public health or safety.

(b) The right to lease or to give, sell, assign or otherwise transfer the Property by operation of law or by deed, in each case subject and subordinate to this Conservation Easement.

(c) The right to trim and prune the branches of the live oaks and palms overhanging the right-of-way at a height of thirteen (13) feet or less, and those branches above thirteen (13) feet as necessary to protect the public safety so as to permit the passage of fire, police and other public safety vehicles. Written or in-person approval by Grantee's Fire Chief and City Arborist is required for trimming and pruning branches above thirteen (13) feet, which approval shall not be unreasonably withheld.

(d) The right to cut, burn or remove from the Protected Property nuisance exotic or non-native species plants, damage caused by storms, insects and other animals, acts of God, disease, fire, unauthorized acts of third-parties and other causes beyond the reasonable control of Grantor, brush, trees and other vegetation as reasonably necessary to construct and maintain the, driveway, utilities and other improvements and structures expressly permitted hereunder; except, however, any live oak or palm to be cut, burned, or removed only with written or in-person approval of City Arborist, which approval shall not be unreasonably withheld.

(e) Except as expressly provided herein, Grantor retain exclusive access to and use of the Property.

(f) Except as limited in this Deed, Grantor reserve all rights as fee owner of the Property, including, without limitation, the right to use the Property for all purposes not inconsistent herewith; and provided further, that Grantor hereby acknowledge that, pursuant to O.C.G.A. § 44-10-4(b), Grantee is a necessary party in any proceeding of or before any governmental agency which may result in a license, permit or order for any demolition, alteration or construction on the Property.



(g) The right to install underground utilities, including but not limited to wells, water lines and electricity or gas lines supporting the Property, provided, however, that such utilities are installed in a manner that is protective of specimen tree root systems.

(h) The right to create and maintain nature trails or wildlife edges on the Property, not wider than eight (8') feet, and comprising only natural materials. All impervious materials and surfaces are prohibited.

(i) The right to install fences, gates, benches, and lanterns supporting the Property.

(j) The right to install unlit signs during development of the Property.

5. Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities, including Paragraph 4(e), 4(f), 4(g) and 4(i), is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Conservation Easement. Whenever notice is required, Grantor shall notify Grantee in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Deed.

6. Grantee's Approval. Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor written request therefore. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Deed.

7. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this Deed or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Deed, to restore the portion of the Property so injured. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fail to begin curing such violation within the thirty (30) day period, or fail to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Deed, to enjoin the violation by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Deed or injury to any Conservation Values protected by this Deed, including damages for the loss of scenic, aesthetic, or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantors' liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under this Paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this Paragraph apply equally in the event

of either actual or threatened violations of the terms of this Deed, and Grantor agree that Grantee's remedies at law for any violation of the terms of this Deed are inadequate and that Grantee shall be entitled to the injunctive relief described in this Paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Deed, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

8. Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Deed against Grantor, including, without limitation, costs of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantor violation of the terms of this Deed shall be borne by Grantor, if Grantee prevails in any action to enforce the terms of this deed. If Grantor prevails in any action to enforce the terms of this Deed, Grantor costs of suit, including, without limitation, reasonable attorneys' fees, shall be borne by Grantee.

9. Grantee's Discretion. Enforcement of the terms of this Deed shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Deed in the event of any breach of any term of this Deed by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Deed or of any of Grantee's rights under this Deed. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

10. Waiver of Certain Defenses. Grantor hereby waive any defense of laches, estoppel, or prescription.

11. Acts Beyond Grantor's Control. Nothing contained in this Deed shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, acts of third parties, wildlife, insects and disease of plant, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

12. Access. No right of access by the general public to any portion of the Property is conveyed by this Easement.

13. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

14. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Deed, and shall furnish Grantee with satisfactory evidence of payment upon request; provided, however, that to the extent that the granting of the Conservation Easement shall entitle Grantor to a revaluation or other tax

relief, Grantee agrees to cooperate fully and promptly with Grantor in securing the benefits of the same as such; provided, further, that Grantor shall have no liability for the payment of Taxes, if any, levied upon or assessed against the Conservation Easement. Grantee is authorized but in no event obligated to make or advance any payment of taxes, upon three (3) days' prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by Grantor at the lesser of five percentage points over the prime rate of interest from time to time charged by the largest banking institution in Georgia or the maximum rate allowed by law.

15. Hold Harmless. Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively the "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence of any of the Indemnified Parties; (2) the existence or administration of this Deed. For the purpose of this paragraph 15, Grantor and Grantee agree that the duty owed by Grantor and Grantee and the other Indemnified Parties when physically upon the Property is that duty owed by an owner or occupier of land to a Licensee, as defined by Georgia law, and thus Grantor shall have no obligation of care or liability for personal injury or physical damage to any property beyond that owed to a Licensee

16. Extinguishment. If circumstances arise in the future such as render the purpose of this Deed impossible to accomplish, this Conservation Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction pursuant to O.C.G.A. § 44-10-4(c). The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property contemporaneously with, or subsequent to, such termination or extinguishment, shall be determined, unless otherwise provided by Georgia law at the time, in accordance with Paragraph 17 below. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this Deed.

17. Proceeds. This Conservation Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of this Paragraph 17, the parties stipulate to have a current fair market value determined by multiplying the fair market value of the Property unencumbered by the Conservation Easement (minus any increase in value after the date of this Deed attributable to improvements) by the ratio of the value of the Conservation Easement at the time of this Deed to the value of the Property, without deduction for the value of the Conservation Easement, at the time of this Deed, according to that certain Property Appraisal Report attached to the Baseline Report. The values at the time of this Deed shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this Deed, pursuant to Section 170(h) of the Internal Revenue Code of 1954, as amended. For the purposes of this Paragraph, the ratio of the value of the Conservation Easement to the value of the Property unencumbered by the Conservation Easement shall remain constant.

18. Condemnation. If the Conservation Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law and Paragraph 17 above, and Grantor and Grantee agree to join in all necessary and appropriate actions to recover the full value of such condemnation, including all incidental damages.

19. Assignment. The Conservation Easement is transferable, but Grantee may assign its rights and obligations under this Deed only to (Georgia Land Trust, Inc, and if it is not in existence at the time of said assignment) to an organization that is a qualified organization at the time of transfer under Section 170(h)(3) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable), and the applicable regulations promulgated there under, and authorized to acquire and hold conservation easements under Section 501(c)(3) and 170(h) of the Internal Revenue Code (or any successor provision then applicable). As a condition precedent to any such transfer, Grantee and its successors and assigns shall require a specific written assumption of and agreement to be bound by this Deed from each transferee hereunder, which assumption shall state that the purposes that the Conservation Easement is intended to advance shall continue to be carried out by such transferee. A copy of each such assumption shall be sent to grantor or the heirs, executors, administrators, personal representatives, successors or assigns of Grantor.

20. Subsequent Transfers and Transfer Fee. Grantor agrees to incorporate the terms of this Deed in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agree to give written notice to Grantee of the transfer of any interest at least sixty (60) days prior to the date of such transfer. The failure of Grantor to perform any act required by this Paragraph shall not impair the validity of this Conservation Easement or limit its enforceability in any way. There shall be assessed by the Grantee, and collected from all purchasers of the Protected Property, a transfer fee equal to one (1) percent of the sales price or other consideration paid in connection with the transfer of any interest in such Protected Property, which transfer fee shall be paid to the Grantee at the time of the transfer. This sum shall be placed in Grantee's stewardship fund, or such similarly named successor fund, to finance Grantee's efforts to uphold its duties and responsibilities under the Easement on the Protected Property as well as on Grantee's other protected properties. In the event of non-payment of such transfer fee, Grantee shall have the right to file a lien for such unpaid transfer fees which shall be a lien on the Protected Property but which lien shall be subordinate to this Easement and to the lien of any first mortgage on the Protected Property. Any such lien may be enforced and/or foreclosed in accordance with the laws of the State of Georgia. Grantee may require the Grantor and/or any subsequent purchaser to provide reasonable written proof of the applicable sales price, such as executed closing statements, contracts of sale, and copies of deeds or other such evidence. Any transfer subsequent to the conveyance of this conservation easement without consideration shall be exempt from the assessment of such transfer fee. An exchange of properties pursuant to Code §1031, or similar statute, shall be deemed to be for consideration based on the market value of the property received at the time of such transfer. Market value shall be determined by agreement of the Grantor and the Grantee, or in the absence of such agreement, by an MAI appraiser selected by the Grantee, whose appraisal fee shall be paid by the Grantee. Any transfer to Grantee shall be exempt from the assessment of such transfer fee.

21. Estoppel Certificates. Upon request by Grantee, Grantor shall within twenty (20) days execute and deliver to Grantee any document, including an estoppel certificate, which certifies Grantor' compliance with any obligation of Grantor contained in this Deed and otherwise evidences the status of this Easement as may be requested by Grantee.

22. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other hereunder shall be in writing and either served personally or sent by nationally-recognized, overnight courier service or U.S. registered or certified mail, postage prepaid, return receipt requested, addressed as follows (or to such other address as may be specified by any such party to the other hereunder by written notice delivered in accordance with this Paragraph 22:

To Grantor: CFK Properties, LLC  
c/o Chris Koncul  
15 Lake Street, Suite 230  
Savannah, GA 31411

With a copy to: Chris Klein  
Klein Law Group, LLC  
15 Lake Street, Suite 210  
Savannah, GA 31411

To Grantee: The City of Tybee Island  

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Tybee Island, GA 31328  
Attn: Mayor Shirley Sessions

With a copy to: Bubba Hughes, City Attorney  
Ellis Painter  
7 East Congress Street, 2<sup>nd</sup> Floor  
Savannah, GA 31401

Any notice or other communication mailed as hereinabove provided shall be deemed effectively given or received on the date of delivery, if personally served or if delivered by nationally recognized, overnight courier service, or on the date indicated on the return receipt, if sent by U.S. registered or certified mail as described above. If any notice mailed is properly addressed but returned for any reason, such notice shall be deemed to be effective notice given on the date of mailing.

23. Recordation. Grantor and Grantee agree that this Deed shall be promptly recorded in the official records of Chatham County, Georgia.

24. Amendment. If circumstances arise under which an amendment to or modification of this Deed would be appropriate, Grantor and Grantee are free to jointly amend this Deed; provided

that no amendment shall be allowed that will affect the qualification of this Conservation Easement or the status of Grantee under any applicable laws, including O.C.G.A. § 44-10-1, et seq., or Section 170(h) of the Internal Revenue Code of 1954, as amended, and any amendment shall be consistent with the purpose of this Deed, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Chatham County, Georgia.

25. General Provisions.

(a) **Controlling Law.** The interpretation and performance of this Deed shall be governed by the laws of the State of Georgia.

(b) **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Deed and the policy and purpose of O.C.G.A. § 44-10-1, et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Deed that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) **Severability.** If any provision of this Deed, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Deed, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Deed and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Paragraph 24 hereof.

(e) **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(f) **Joint Obligation.** The obligations imposed by this Deed upon Grantor shall be joint and several.

(g) **Successors and Assigns: Covenants, etc. Run With Land.** The covenants, terms, conditions and restrictions of this Deed shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and assigns, and shall continue as an easement and servitude running with the Property in perpetuity and enforceable against Grantor and all present and future owners, tenants and other holders of any interest in the Property. The benefits herein conferred upon Grantee shall be in gross and assignable by Grantee, but only in accordance with Paragraph 19 above. The terms "Grantor" and "Grantee", when used herein, shall be deemed to refer to Grantor or Grantee, as the case may be, and their personal representatives, heirs, executors, administrators, successors and assigns.

(h) Termination of Rights and Obligations. A party's rights and obligations under this Deed terminate upon transfer of the party's interest in this Deed or Property pursuant to the terms of Paragraphs 19 and 20 hereof, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(i) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

(j) Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

(k) Grantor' Representations and Warranties. Grantor hereby represent and warrant that they are seized of the Property in fee simple and has good right to grant and convey the Conservation Easement, that the Property is free and clear of any and all encumbrances, and that Grantee and its successors and assigns shall have the use of and enjoy all of the benefits derived from and arising out of the Conservation Easement.

(l) The Grantor covenant and represent that, to the best of their knowledge, no hazardous substance or toxic waste exists nor has been generated, treated, stored, used, disposed of, or deposited in or on the Protected Property, and that there are not now any underground storage tanks located on the Protected Property.

(m) Baseline Documentation. Grantee acknowledges, by its acceptance of the Conservation Easement, that Grantor' historical and present uses of the Property are compatible with the purposes of the Conservation Easement. In order to establish a present condition of the Conservation Values so as to be able to properly monitor future uses of the Property and assure compliance with the terms hereof, Grantee has prepared or caused to be prepared the Baseline Documentation. The Baseline Documentation shall be used to assist in establishing the condition of the Property as of the date of this Deed. Grantor and Grantee acknowledge and agree that, in the event that a controversy arises with respect to the nature and extent of Grantor's historical and present use or the physical condition of the Property subject to the Conservation Easement as of the date hereof, the parties may look beyond the Baseline Documentation, if necessary, to other relevant or material documents, surveys, reports and other evidence showing conditions at the time of execution of this Deed to assist in the resolution of the controversy. A copy of said baseline is kept at Grantee's place of business and is attached herein by reference.

TO HAVE AND TO HOLD the Conservation Easement unto Grantee and its successors and assigns, together with all and singular the rights, members and appurtenances thereof to the same being, belonging or in anywise appertaining, to the only proper use, benefit of Grantee forever. The covenants agreed to and the terms, conditions, restrictions and purposes imposed as aforesaid shall not only be binding upon Grantor but also its personal representatives, heirs, executors, administrators, successors and assigns, and shall continue as an easement and servitude running in perpetuity with the Property.

IN WITNESS WHEREOF, the Grantor and the Grantee have executed and sealed this document the day and year first above written.

**SIGNATURE PAGES FOLLOW**

DRAFT



Signed, Sealed and Delivered  
in the Presence of:

**GRANTOR:**  
**CFK Properties, LLC**

\_\_\_\_\_  
Witness

\_\_\_\_\_(L.S.)  
By: Christopher Koncul, Manager

[company seal]

\_\_\_\_\_  
Notary Public

Signed, Sealed and Delivered  
in the Presence of:

**GRANTEE:**  
**City of Tybee Island, GA**

\_\_\_\_\_  
Witness

\_\_\_\_\_(L.S.)  
By: Shirley Sessions, Mayor

\_\_\_\_\_  
Notary Public

Attest: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT "A"

DRAFT

**After Recording Please Return To:**

Weiner, Shearouse, Weitz,  
Greenberg & Shawe, LLP  
Attn: William W. Shearouse, Jr.  
14 E. State St.  
Savannah, GA 31401

STATE OF GEORGIA            )  
  )  
COUNTY OF CHATHAM        )

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
708 BUTLER AVENUE**

THIS DECLARATION of Covenants, Conditions and Restrictions for 708 Butler Avenue (hereinafter the “Declaration”), is made and entered into this \_\_\_\_ day of April, 2022, by CFK PROPERTIES, LLC, a Georgia limited liability company (hereinafter called “Developer” or “Declarant”).

**WITNESSETH:**

WHEREAS, Developer is the owner of the real property described in **Exhibit A** of this Declaration; and

WHEREAS, said real property is generally known as 708 Butler Avenue, and Developer desires to create thereon a planned community; and

WHEREAS, Developer desires to provide for the preservation and enhancement

of the property values and amenities in said community and for the maintenance of the property and the improvements thereon, and to this end desires to subject the property described on **Exhibit A**, to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, for the efficient preservation of the values and amenities in said community, the Developer has incorporated under the laws of the State of Georgia Butler Avenue Homeowners Association, Inc. as a non-profit corporation and hereby delegates and assigns to it the powers of owning, maintaining and administering the community properties and facilities, administering and enforcing the terms and provisions contained herein, collecting and disbursing the assessments and charges hereinafter created, and promoting the recreation, health, safety and welfare of the residents of 708 Butler Avenue.

NOW, THEREFORE, in consideration of the foregoing and of the covenants and agreements hereinafter made, the Developer declares that the real property described in **Exhibit "A"** is and shall be held, developed, transferred, sold, conveyed, occupied and used subject to this Declaration and the covenants, conditions and restrictions, easements, charges and liens hereinafter set forth.

## ARTICLE I

### DEFINITIONS

Section 1. **"Declaration"** shall mean the covenants, conditions and restrictions and all other provisions herein set forth in this document, as may from time to time be amended.

Section 2.     **“Association”** shall mean and refer to Butler Avenue Homeowners Association, Inc., its successors and assigns.

Section 3.     **“Developer”** shall mean and refer to CFK Properties, LLC, a Georgia limited liability company, and its successors and assigns, together with any successor to all or substantially all of the business of developing the property. All rights of the Developer, as Developer, hereinafter set forth shall cease when it no longer has an interest in developing the property.

Section 4.     **“Builder”** shall mean a person or entity to which Developer has sold an unimproved lot or lots for the purpose of constructing a residential dwelling thereon.

Section 5.     The **“Property”** shall mean and refer to the real property described on Exhibit A which has hereby become subject to this Declaration.

Section 6.     **“Common Area”** shall mean and refer to those areas of land, together with improvements thereon, now or hereafter conveyed or dedicated to the Association, or as shown on any recorded subdivision map of the Property and improvements thereto which are intended to be dedicated to the common use and enjoyment of the Association. Without limiting the generality of the foregoing, the following shall be Common Area: tree conservation easements, dune areas, beach walkovers and pedestrian access easements, tree protection fences, lagoons, open spaces and green spaces, buffers, easements, private drives or roads, stormwater detention ponds and development identification signs, together with improvements erected or maintained upon any of the foregoing.

Section 7.     **“Lot”** shall mean and refer to any plot of land shown upon any recorded subdivision map of the property with the exception of the Common Areas as heretofore

defined.

Section 8. “**Owner**” shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot, but excluding those having such interest as security for the performance of an obligation.

Section 9. “**Member**” shall mean and refer to Members of the Association and shall include any Owner and the Developer.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO

Section 1. Existing Property. The real property which is and shall be held, developed, transferred, sold, conveyed, used and occupied subject to this Declaration is located in Chatham County, Georgia, and more particularly described on Exhibit A attached hereto and by reference made a part hereof.

## ARTICLE III

### COMMON AREA

Section 1. Obligation of the Association. The Association, subject to the provisions of this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including furnishings and equipment related thereto) and shall keep the same in good, clean, attractive and sanitary condition, order and repair in compliance with standards set by the Architectural Review Board.

Section 2. Easement of Enjoyment and Easement of Ingress and Egress. Subject to the provisions herein, every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, and every

Member shall have a right of enjoyment in the Common Area. Each Owner has a non-exclusive easement for ingress and egress over the Common Area to the extent necessary to provide access to the Lot and for utilities serving that Lot. This right of access for ingress and egress cannot be suspended for violations of the terms and provisions of the Declaration or for non-payment of assessments.

Section 3. Extent of Easements. The easements of enjoyment and easements of ingress and egress created herein shall be subject to the following:

(a) The right of the Association to establish reasonable rules and regulations governing the use of the Common Areas and the personal conduct of Owners, occupants and guests thereon and to charge reasonable admission or other fees for special or extraordinary uses of the Common Areas;

(b) The right of the Association to suspend the right of a Member to vote on any Association matter for any period during which any assessment against said Member remains unpaid for more than thirty (30) days after notice;

(c) The right of the Association to encumber any or all of the Common Area as may be authorized herein, or in the Articles of Incorporation, or as granted to non-profit corporations under Georgia law (A lender's rights, in the event of default upon any encumbrance on the Common Areas, are limited to, after taking possession of such Common Areas, charging reasonable admission and other fees as a condition of continued enjoyment by Members, and, if necessary, to a wider range of users. Upon satisfaction of the encumbrance, such Common Areas are returned to the Association with full restoration of Members' rights.);

(d) The right of the Association to dedicate or transfer all or any part of the

Common Area owned by it to any public agency, authority, or utility for such purposes and subject to such conditions as are authorized by the Articles of Incorporation, this Declaration, or by Georgia law;

(e) The right of the Association, acting through the Board of Directors, without Member, mortgagee and agency approvals unless provided otherwise herein, to grant easements across the Common Areas for any purpose not inconsistent with the use of those areas by Members;

(f) The following rights are reserved by the Declarant:

(i) The right to use portions of the Common Areas for sales and marketing purposes;

(ii) The right to reserve easements across the Common Areas for development purposes;

(iii) The right to grant, terminate, or vacate easements across Common Areas for limited purposes such as installation and maintenance of utilities, storm water management, or provisions of services to units.

Section 4. Delegation of Use. A Member's rights of enjoyment to the Common Area and facilities shall extend to the members of his or her family and to his or her guests, subject to such general regulations as may be established from time to time by the Association.

Section 5. Title to Common Area. Title to the Common Area shall be conveyed by the Developer as follows:

(a) Contemporaneously herewith, the Developer has set aside and dedicated Common Area located within the Property. These parcels, together with the improvements



located thereon, shall be conveyed to the Association, free and clear of all liens and financial encumbrances, except as those contained herein.

(b) Other Common Area shall be conveyed by the Developer to the Association, free and clear of all liens and financial encumbrances, as shall be provided in supplementary declarations relating to such future facilities.

Section 6. Common Area Restrictions. Vehicular parking on the private rights-of-way within 708 Butler Avenue is prohibited. A fine shall be due and payable to the Association by the Property Owner associated with the vehicle violating this restriction, with the fine being computed at the rate of \$1000.00 per vehicle per day of violation.

The tree conservation easement areas designated on the recorded Subdivision Map of 708 Butler Avenue shall be perpetual. Any amendment to these Covenants which would delete such restriction or otherwise amend it is prohibited without approval of the City of Tybee Island, Georgia.

#### ARTICLE IV

##### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

(a) Class A Members shall be all Owners, with the exception of the Developer, and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be

exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) The Class B Member shall be the Developer . Until the Class “B” Control Period is terminated, the Class “B” Member shall have one vote, plus one vote for each vote held by Class “A” Members. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

(i) When one hundred percent (100%) of the total number of Lots planned in the master plan have been conveyed to Owners other than the Developer or a Builder;  
or

(ii) At such time as ten (10) years have elapsed since the filing of this Declaration or seven (7) years have elapsed since the filing of the last supplementary declaration.

Section 3. The affairs of the Association shall initially be managed by a Board of Directors as follows:

(a) During the Class B membership, the Board of Directors will consist of at least one (1) Director who shall be appointed by Declarant. After the Class B membership, the Board of Directors will consist of five (5) Directors elected by the Members. Election to the Board of Directors shall be by secret written ballot. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes will be elected. Cumulative voting is not permitted.

(b) Any Director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association.

(c) In the event of death, resignation, or removal of a Director, his successor shall be selected by the remaining members of the Board of Directors and shall serve for the unexpired term of his predecessor.

## ARTICLE V

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Developer, for each Lot owned within the property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (a) Annual assessments or charges, and
- (b) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs and attorney's fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Property at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be exclusively used to promote the recreation, health, safety and welfare of the residents in the Property and for the improvement and maintenance of the Common Area and to meet the

expenses of the Association, which shall adopt an annual operating budget. The Board of Directors is expressly authorized to levy assessments on behalf of the Association.

Section 3. Maximum Annual Assessment. Immediately following the conveyance of each Lot to an Owner, the annual assessment shall be One thousand five hundred and no/100 (\$1500.00) Dollars per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than Fifteen (15%) Percent above the maximum assessment for the previous year without a vote of the Membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased by a majority vote of the Members obligated to pay such assessment or with the written approval of Members entitled to cast a majority of the total number of authorized votes of Members obligated to pay such assessment.

(c) Certain fixed costs, anticipated or unanticipated, or increases therein, for insurance, taxes, recycling or waste disposal may be passed through to the Members by permitting an automatic increase in the maximum assessment which reflects those increases. The Board of Directors is expressly authorized to obtain appropriate insurance coverage on behalf of the Association.

(d) Notwithstanding the provisions contained herein with respect to the maximum annual assessment, a one time fee equal to five hundred and no/100's (\$500.00) for each Lot shall be assessed for a working capital fund for the Association's operation. Each Lot's

share of the working capital fund shall be collected and transferred to the Association at the time of closing of the sale of each Lot and maintained in a segregated account for the use and benefit of the Association. Amounts paid into the working capital fund are not to be construed as advance payment of regular assessments. (The purpose of the fund is to insure that the Association will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable.) Such working capital charge shall be in addition to the assessments levied by the Association, but shall be subject to all of the Association's rights with respect to the collection and enforcement of assessments and shall be a charge on the land and shall be a continuing lien upon the property against which each such charge is made.

(e) Also, notwithstanding the provisions contained herein with respect to the maximum annual assessments, the Association may levy and assess charges, costs and fees for the following matters, among others, in such reasonable amount(s) as the Board of Directors may determine in its discretion at any time from time to time, including charges to the Association by its managing agent or management company; copying of Association or other documents; return check charges; charges for telefaxes; long distance telephone calls; transfer charges or fees upon transfer of ownership of a Lot (including transfer fees assessed by a management company); charges for notices and demand letters; and other charges incurred by the Association for or on behalf of any Owner(s). All such charges, costs and fees shall be in addition to the assessments levied by the Association, but shall be subject to all of the Association's rights with respect to the collection and enforcement of assessments and shall be a charge on the land and shall be a continuing lien upon the property against which each such charge is made.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of the capital improvements upon the Common Areas, including fixtures of personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the vote of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 shall be sent to all members not less than thirty (30) days or more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast Sixty Seven (67%) Percent of all the votes of each class of Membership shall constitute a quorum. In the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subject meeting shall be one-half (2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to each Lot upon the conveyance of each Lot by the Developer to an Owner including Builders. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of

Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association.

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of Ten Percent (10%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. The following Property subject to this Declaration shall be exempt from the assessments, charges and liens created herein:

(a) All properties to the extent of any easement or any interest therein dedicated and accepted by the local public authority and devoted to public use;

(b) All Common Areas;

(c) All properties exempt from taxation by State and Local governments upon the terms and to the extent of such legal exemption;

Section 11. Exemption for Assessments for Property Owned by Declarant. The Declarant may be exempt from annual assessments on unoccupied Lots only during the Class B membership provided and for so long as Declarant shall fund all Association operating deficits. A Lot initially occupied or conveyed to an Owner, including Builders, other than the Declarant shall be fully assessed. The obligation to fund budget deficits is a lien against all the land owned by the Declarant, as appropriate, included within the Property.

## ARTICLE VI

### ARCHITECTURAL CONTROL

Section 1. The Architectural Review Board. An Architectural Review Board consisting of one (1) or more persons shall be appointed by the Developer. At such time as the Developer no longer has an interest in developing the Property, vacancies in the Architectural Review Board shall be filled by a majority vote of the remaining members of the Board.

Section 2. Purpose. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Property and of the improvements thereon in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography. The Architectural



Review Board shall promulgate standards and guidelines appropriate to the character of each increment, phase, or parcel of the Property. Such standards and guidelines shall be generally distributed among the Members.

Section 3. Conditions. No improvements, alterations, repairs, change of paint colors, excavations, changes in grade or other work which in any way alters the exterior of any Property or the improvements located thereon from its natural or improved state existing on the date such Property was first conveyed in fee by the Developer or Builder to an Owner or to the Association shall be made or done without the prior written approval of the Architectural Review Board, except as otherwise expressly provided in this Declaration. No building, fence, wall, residence, satellite dish or signage shall be commenced, erected, maintained, improved, altered, made, or done without the prior written approval of the Architectural Review Board.

Section 4. Procedures. In the event the Board fails to approve, modify, or disapprove in writing an application within sixty (60) days after plans and specifications in writing have been submitted to it, in accordance with adopted procedures, approval will be deemed granted. At least a majority of the Members of the Architectural Review Board, either in person or by telephone conference call, shall constitute a quorum. A majority vote of the Members of the Architectural Review Board shall be required for Review Board action.

## ARTICLE VII

### USE OF PROPERTY

#### Section 1. Protective Covenants.

(a) Nuisances. No nuisance shall be permitted to exist or operate upon any

Property so as to be detrimental to any other Property in the vicinity thereof or to its occupants. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Child and adult day care, garage sales, and outdoor clothes lines are expressly prohibited under this section. Amateur radio and marine base station antennas are prohibited.

(b) Restriction on Further Subdivision. No Lot shall be further subdivided or separated into smaller Lots by any Owner; provided that this prohibition shall not prohibit deeds of correction, deeds to resolve boundary line disputes and similar corrective instruments.

(c) Minimum Square Footages. The minimum square footage of a dwelling (heated) located on any Lot in the Subdivision shall be 1200 square feet for single story residences and 1550 square feet for two (2) story residences.

(d) Other Restrictions. The Architectural Review Board shall adopt general rules regarding the use of the Property, including but not limited rules to regulate animals, satellite dishes, antennas, signs, parking, storage and use of recreational vehicles, storage and use of machinery, use of outdoor drying lines, trash containers, planting, maintenance and removal of vegetation on the Property. Without limiting the generality of the foregoing, the following restrictions shall apply to the Property:

(i) No roof vents will be installed on the front side (street side) of any residence constructed in 708 Butler Avenue, and all roof vents shall be painted a color to match the color of the roof.

(ii) Any vinyl siding, the use of which shall have been approved by the Architectural Review Board according to the procedures set forth in Article VII hereof, shall be

of at least .040 gauge.

(iii) Local ordinances shall be followed with regards to pets.

(iv) All Lots shall only be used for single-family residential purposes.

No amendment to this Declaration which in any way expands this single-family residential purpose restriction shall be effective without such amendment being approved by the City of Tybee Island, Georgia.

(v) Leasing- Lots and improvements thereon may be leased only in their entirety, no fraction or portion may be leased without prior written Board approval, in its sole discretion. All leases shall require the tenants to comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other occupants and guests of the leased Lot to comply with this Declaration.

(e) Exceptions. The Architectural Review Board may alter or issue variances from any covenant or requirement expressed or implied by this Article or set forth in any restrictive covenants promulgated pursuant to this Declaration or any supplementary declaration. The issuance of a variance by the Architectural Review Board will not operate to set any precedent or otherwise preclude or negate the power and authority of the Architectural Review Board as set forth herein.

Section 2. Maintenance. To the extent that exterior maintenance is not provided for in this Declaration and any supplementary declaration, each Owner shall keep all Lots owned by him, and all improvements therein or thereon, in good order and repair and free of debris, including but not limited to the seeding, watering and mowing of all lawns, the pruning and

cutting of all trees and shrubbery, and the painting or other appropriate external care of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management.

In the event an Owner of any Lot shall fail to maintain said Lot and the improvements situated thereon, as provided herein, the Association, after notice to the Owner as provided in the By-Laws and approval of the Board of Directors, shall have the right to enter upon said Lot to correct drainage and to repair, maintain and restore the Lot and the exterior of the buildings and other improvements erected thereon. All costs related to such correction, repair, or restoration shall become a special maintenance assessment upon such Lot.

## ARTICLE VIII

### GENERAL PROVISIONS

Section 1. Enforcement. The Association, Declarant or any Owner shall have the right to enforce, by any proceeding at law or in equity, all provisions, restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, including rules and regulations promulgated pursuant to the authority set forth herein, the Articles of Incorporation, or the By-Laws of the Association. Owners shall be liable for costs and expenses incurred by the Association as a result of acts or omissions of such Owner or such Owner=s tenants, agents, employees, invitees, guests and household members in failing to comply with rules or regulations of the Association or other terms and provisions of this Declaration. Said costs and expenses shall include attorney's fees actually incurred. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in

no event be deemed a waiver of the right to do so thereafter. The Association, through its Board of Directors, shall also have the authority and power to levy fines in amounts as reasonably determined by the Association for the failure to comply with rules and regulations of the Association or other terms and provisions of this Declaration. Said fines shall be collected in the same manner as assessments and shall likewise constitute a lien upon the Lot of such Owner who has failed to comply or whose tenants, agents, employees, invitees, guests and household members have failed to comply. Such fines shall be payable to the City of Tybee Island Fire Department.

Section 1.1 Dispute Resolution and Limitation on Litigation.

(a) Notwithstanding any provision herein to the contrary, Declarant, the Association and its officers, directors, and committee members, all Owners (and tenants) subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (each being a "Bound Party"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Property without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 1.2 in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to:

(i) the interpretation, application, or enforcement of the Declaration, bylaws, rules, regulations, standards and guidelines governing the Association ("Governing Documents");

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of improvements within the Properties, other than matters of aesthetic judgment under Article VII, which shall not be subject to review; except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 1.2;

- a) any suit by the Association to collect assessments or other amounts due from any Owner;
- b) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve *the* Association's ability to enforce the provisions of Part Two of this Declaration (relating to creation and maintenance of community standards);
- c) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;
- d) any suit in which any indispensable party is not a Bound Party;  
and
- e) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 1.2(a), unless the party or parties against whom the Claim is made agree to toll the statute of

limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

Section 1.2 Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice to each Respondent and to the Board stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in Section 1.2(a) (or within such other period as the parties may

agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Chatham County area,

If the Claimant does not submit the Claim to mediation within such *time*, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each party shall bear its own costs of the mediation, including attorneys' fees, and each party shall share equally all fees charged by the mediator.

(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one noncomplying party, from all such parties in equal proportions)



all costs incurred in enforcing such agreement or award, including, without limitation, attorney& fees and court costs.

Section 1.3 Initiation of Litigation by Association

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of Members entitled to cast 75% of the total Class "A" votes in the Association, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the Class "B" Control Period;
- (b) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;
- (c) initiated to challenge ad valorem taxation or condemnation proceedings;
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section 1.3 shall not be amended unless by the Declarant or unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

Section 2. Severability. Invalidation of any one of these covenants or

restrictions by judgment or court order shall in no wise affect any other provisions, which shall remain in full force and effect.

Section 3. Amendment. Material amendments or extraordinary actions must be approved by Members entitled to cast at least Sixty-Seven (67%) Percent of the votes of Members present, in person or by proxy, and voting at any meeting of the Association held for such purpose. Notwithstanding the foregoing or any other provisions contained herein to the contrary, the Declarant reserves the right to make changes, revisions, or amendments necessary to comply with the requirements of HUD, Fannie Mae, Freddie Mac, or the VA.

(a) A material amendment includes adding, deleting or modifying any provision regarding the following:

- (i) Assessment basis or assessment liens;
- (ii) Any method of imposing or determining any charges to be levied against individual unit owners;
- (iii) Reserves for maintenance, repair or replacement of Common Area improvements;
- (iv) Maintenance obligations;
- (v) Allocation of rights to use Common Areas;
- (vi) Any scheme of regulation or enforcement of standards for maintenance, architectural design, or exterior appearance of improvements;
- (vii) Reduction of insurance requirements;
- (viii) Restoration or repair of Common Area improvements, or for reconstruction following condemnation or casualty loss;

(ix) The addition, annexation or withdrawal of land to or from the project, except as provided in Article II of this Declaration;

(x) Voting rights;

(xi) Restrictions effecting leasing or sale of Lots; or

(xii) Any provision which is for the express benefit of mortgagees.

(b) An extraordinary action includes:

(i) Merging or consolidating the Association (other than another non-profit entity formed for purposes similar to the subject Association);

(ii) Determining not to require professional management if that management has been required by the Association documents, a majority of eligible mortgagees or a majority vote of the Members;

(iii) Expanding the Association to include land not previously described as additional land which increases the overall land area of the project or number of lots by more than Ten (10%) Percent;

(iv) Abandoning, partitioning, encumbering, mortgaging, conveying or selling or otherwise transferring or relocating the boundaries of Common Areas (except for granting easements which are not inconsistent or which do not interfere with the intended Common Area use, dedicating Common area as required by a public authority, limited boundary line adjustments made in accordance with the provisions of this Declaration, or transferring Common Area pursuant to a merger or consolidation with a non-profit entity formed for purposes similar to the subject Association);

(v) Using insurance proceeds for purposes other than construction or repair of the insured improvements; or

(vi) Making capital expenditures (other than for repair or replacement of existing improvements) during any period of twelve (12) consecutive months costing more than Twenty (20%) Percent of the annual operating budget.

(c) Meetings of the Membership to approve a material amendment or extraordinary action shall require at least twenty-five (25) days advance notice to all members. The notice shall state the purpose of the meeting and contain a summary of any material amendments or extraordinary actions proposed. The notice shall contain a copy of the proxy that can be cast in lieu of attendance at the meeting. If the Association has, or is planned to have, 250 Members or less, the quorum for such a meeting shall be at least Twenty Percent (20%) of the total number of votes. If the Association has, or is planned to have, more than 250 Members but less than 1,000 Members, the quorum shall be at least Ten Percent (10%). If the Association has, or is planned to have, more than 1,000 Members, the quorum is at least Five Percent (5%).

(d) Any material amendment which changes the rights of any specific class of Members must also be approved by Members entitled to cast at least Fifty One (51%) Percent of the votes of all members of such class present, in person or by proxy, and voting at any meeting of the Association held in accordance with the provisions hereof, or at least Fifty One (51%) Percent of the total authorized votes of all members of such class.

(e) During the Declarant control period, all material amendments and extraordinary actions must have the approval of the VA, if the VA has guaranteed any loans secured by Lots in the project. Approval shall be deemed given should the VA not respond

within thirty (30) days of receipt of notice of material amendments and extraordinary actions.

Section 4. The following material amendments and extraordinary actions must be approved by Members entitled to cast at least 67% of the total authorized votes of all Members of the Association, including at least a majority of the total authorized votes entitled to be cast by Members other than the Declarant:

- (a) Termination of the Declaration or other termination of the planned unit development;
- (b) Dissolution of the Association except pursuant to a consolidation or merger; and
- (c) Conveyance of all common areas.

Section 5. All other amendments (other than material amendments or extraordinary actions) must be approved by at least a majority of the votes entitled to be cast by all Members present, in person or by proxy, and voting at any meeting of the Association at which a quorum is present, or in writing by Members entitled to cast at least a majority of the total authorized votes of all Members of the Association.

Section 6. Annexation. Additional residential property and Common Area may be annexed to the Property with the consent of two-thirds (2/3) of each class of Members, and as provided in Article III of this Declaration.

Section 7. Rights of Eligible Mortgagees. AEligible mortgagees@ are defined as those mortgagees who have provided notice to the Board of Directors of their interest and requested all rights afforded Aeligible mortgagees@. The following rights are granted to eligible mortgagees:

(a) Right to inspect Association documents and records on the same terms as Members;

(b) Notice of all material amendments to the Association documents;

(c) Notice of any extraordinary actions of the Association;

(d) Notice of any default by an Owner of any Lot subject to a mortgage held by the eligible mortgagee in paying assessments or charges to the Association which remains uncured for sixty (60) consecutive days.

Section 8. Term. These Covenants, Conditions and Restrictions shall be effective for a period of twenty (20) years from the date hereof, after which time they shall automatically renew for successive periods of ten (10) years each until such time as they may be terminated by the total authorized votes required under Article IX, Section 4 hereof.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the undersigned, being the Developer herein, has hereunto caused this instrument to be executed as of the day and year first above written as the date hereof.

DEVELOPER:

CFK PROPERTIES, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signed, sealed and delivered  
in the presence of:

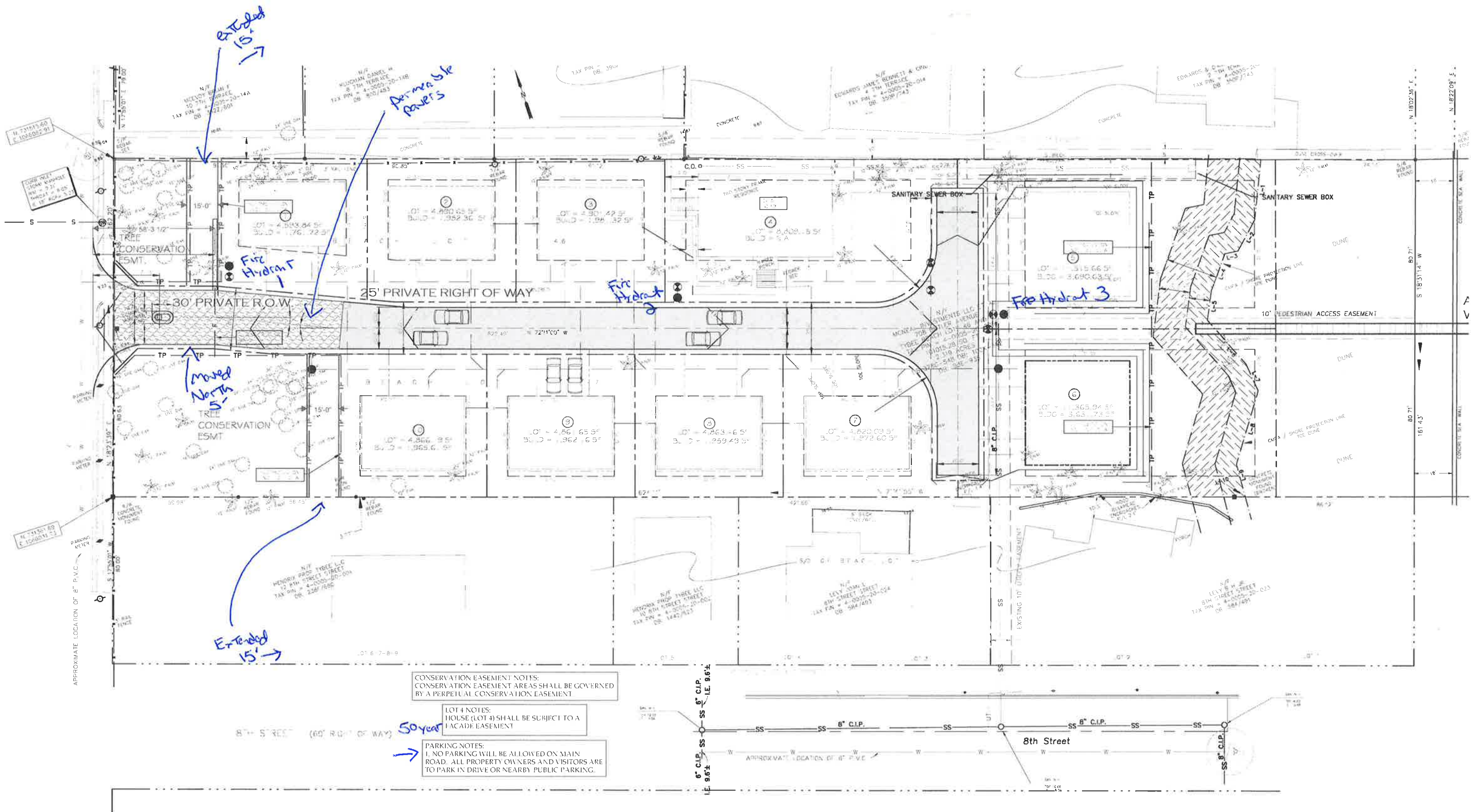
\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

**EXHIBIT A  
LEGAL DESCRIPTION**

*[Faint, large watermark text, possibly reading "DRAFT", is visible across the page.]*





# BOUHAN FALLIGANT

ATTORNEYS & COUNSELORS AT LAW

One West Park Avenue  
Savannah, GA 31401

April 14, 2022

Via Email

Dana Braun  
Ellis Painter  
dbraun@ellispainter.com

Chris Klein  
Klein Law Group, LLC  
chris@kleinlawgroup.net

Dear Dana and Chris,

I represent Historic Savannah Foundation, Inc. ("HSF") with regard to the property located at 708 Butler Avenue, Tybee Island, GA. This will confirm that HSF and Chris Koncul / CFK Properties, LLC have reached an agreement with regard to a Façade Conservation Easement for the historic McNeal cottage located at 708 Butler Avenue, Tybee Island, GA. The Façade Conservation Easement, and accompanying documents, will be signed upon our Executive Director, Sue Adler, returning from her trip out of the country. I believe Chris Klein sent you a draft of the easement. Please note that we have added two additional restrictions, specifically the term will be in perpetuity, not fifty years, and the interior antique flooring will be protected as well as the façade.

Sincerely,



Dolly Chisholm, attorney for Historic Savannah Foundation, Inc.

When recorded, mail copy to:  
Historic Savannah Foundation, Inc.  
P.O. Box 1733  
Savannah, GA 31402

STATE OF GEORGIA            )  
  )  
COUNTY OF CHATHAM        )

**RESERVED CONSERVATION EASEMENT AND PRESERVATION AGREEMENT**

This Reserved Conservation Easement and Preservation Agreement (hereinafter referred to as “Agreement”) is entered into this \_\_\_<sup>TH</sup> day of \_\_\_\_\_ 2022, by and between **CHRIS KONCUL** (hereinafter referred to as “Grantor”) and **HISTORIC SAVANNAH FOUNDATION, INC.**, a Georgia non-profit corporation (hereinafter referred to as “Grantee”) pursuant to the provisions of Sections 44-10-1 through 44-10-8 of the Official Code of Georgia, entitled the “Georgia Uniform Conservation Easement Act” for the purpose of preserving its exterior facades located in Chatham County, Georgia, being generally known as all that certain lot, tract or parcel of land situate, lying and being on Tybee Island, Chatham County, Georgia, and being known and designated as **708 BUTLER AVENUE, with a PIN# of: 0-0000-00-000, and being known as - Beach Lot -----, WARD 2 TYBEE.**

**WITNESSETH:**

**WHEREAS**, Historic Savannah Foundation, Inc., (“Grantee”) is a private, non-profit corporation incorporated in the State of Georgia and has received a determination of exemption by letter dated January 24, 1958 from the United States Internal Revenue Service under Section 501(c)(3) and Section 509(a)(1) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder. Grantee has as a principal corporate purpose the acquisition, improvement and preservation of property in and around Savannah, Georgia. Grantee is a qualified holder pursuant to the provisions of the Georgia Uniform Conservation Easement Act (O.C.G.A. Sections 44-10-1 through 44-10-8, herein, the “Act”); and

**WHEREAS**, Grantor is owner in fee simple of the property; and

**WHEREAS**, the property contains certain improvements thereon, including a historic, two-story, wood-frame beach house constructed in 1928; and

**WHEREAS**, Grantor and Grantee recognize the historical, architectural and cultural values and significance of the Property, and have the common purpose of conserving and preserving the aforesaid conservation and preservation values and significance of the property; and

**WHEREAS**, Both Grantor and Grantee desire that the entire structure and particularly its exterior facades located on the land described in the Deed to which this Agreement is attached be rehabilitated and sympathetically adapted for contemporary use while retaining its historically and architecturally significant features and protected and maintained in conformance with the provisions hereof; and

**WHEREAS**, the structure also contains certain interior features that are of significance, including hardwood floors; and

**WHEREAS**, Grantee is a private, tax-exempt, nonprofit organization whose primary purpose is the preservation and protection of Savannah and Chatham County's heritage; and

**WHEREAS**, Grantee is authorized to accept easements to protect historic property significant in state history and culture under the provisions of the Georgia Uniform Conservation Easement Act (O.C.G.A. Sections 44-10-1 through 44-10-8, herein, the "Act") provides for conservation easements to protect and preserve property significant in Georgia history and culture; and

**WHEREAS**, Historic Savannah Foundation will be the legal grantee of this easement, however, it will be monitored by the Tybee Island Historical Society due to their location and familiarity with the property, as per the provisions agreed upon and outlined in this easement; and

**WHEREAS**, such easements are legal tools used to protect and preserve the historical, architectural and cultural integrity of the property and its settings; and

**WHEREAS**, such easements confine the treatment of the exterior facades, and certain interior elements heretofore mentioned, to prevent undertakings that will impair or interfere with the conservation and preservation values; and

**WHEREAS**, the exterior facades' conservation and preservation values are documented in a set of reports, drawings, and photographs (hereinafter, "Baseline Documentation or Exhibit A") incorporated herein by reference, which Baseline Documentation the parties agree provides an accurate representation of the exterior facades as of the effective date of this grant. In the event of any discrepancy between the two counterparts produced, the counterpart retained by Grantee shall control; and

**WHEREAS**, the grant of an easement on the exterior facades will assist in preserving and maintaining the exterior facades and its historical, architectural and cultural features for the benefit of the people of the City of Savannah, the County of Chatham, the State of Georgia, and the United States of America; and

**WHEREAS**, to that end, Grantor desires to grant to Grantee, and Grantee desires to accept, an easement in perpetuity on the exterior facades pursuant to the Act;

**NOW, THEREFORE**, in furtherance of this common desire and in consideration of ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor grants to Grantee a perpetual, irrevocable conservation easement over, across, through and upon the exterior facades, as such a conservation easement is defined in the Act, all in accordance with such further terms and conditions set forth herein (the "Easement"), Grantee hereby accepts the Easement within the meaning of O.C.G.A. § 44-10-3(b), and Grantor and Grantee hereby further agree as follows:

1. *Documentation of the Exterior Facades*

In order to make more certain the full extent of Grantor's obligations and the restrictions on the exterior facades and certain interior elements, and in order to document the existing nature and condition of the exterior facades and interior elements is incorporated as Exhibit "A" (Baseline Documentation) appended to this Agreement. The Grantor has provided to the Grantee current photographs (Exhibit A)

of the exterior facades, interior elements, as well as an elevation drawing for rehabilitation purposes. The Grantor agrees that the nature and condition of the aforementioned on the date of execution of this Agreement is accurately documented by the photographic record, which shall be maintained for the life of this Agreement and the easement conveyed hereby in the Grantee's Conservation Easement file for the exterior facades.

2. *Rights of the Grantee*

Grantee agrees to hold this Agreement exclusively for preservation purposes. Any transfer by Grantee shall be conditioned upon the transferee being qualified in Grantee's opinion and agreeing to hold this Agreement exclusively for preservation purposes and continuing the preservation purpose which this Agreement was originally intended to carry out. "Qualified" means qualified within the meaning of the Georgia Uniform Conservation Easement Act (O.C.G.A. Sections 44-10-1 through 44-10-8). Grantee agrees to give written notice to Grantor at least thirty (30) days prior to the date of transfer.

3. *Right to Inspect*

The Grantor agrees that the Grantee, and its employees, agents, and designees shall have the right to inspect the exterior facades at all reasonable times, upon twenty-four (24) hours prior notice, in order to ascertain whether the conditions of this Agreement are being observed

4. *Monitoring duties and responsibilities*

All easements must be inspected at least once annually to ensure that Grantor is abiding by the terms of this agreement, to ensure no unauthorized changes have been made, and that the property is being well-maintained. Typically, this exterior inspection is conducted by Grantee during the summer months between June and August. Grantee shall be the legal holder of this easement - responsible for compliance and enforcement, but annual inspections and monitoring duties shall be the sole responsibility of the Tybee Island Historical Society (TIHS) by virtue of this agreement. Given the proximity of this property to TIHS staff, as well as their familiarity with the property, it is hereby agreed that for practical reasons TIHS shall conduct these regular inspections of the property using HSF's standard monitoring report, attached as Exhibit B. The monitoring report shall be submitted to HSF no later than September 1 of every year, along with as many current photographs needed to adequately document the condition of the property at that time. TIHS may make as many additional inspections as it deems necessary, as an appointee of Grantee, per the provisions outlined in paragraph #3 above.

5. *Notice*

Grantee shall be given prior written notice by Grantor of any proposed alterations to the exterior facades, as well as interior elements heretofore included, and have sufficient opportunity to respond to details of the proposal (measured drawings, sketches, renderings, etc.). The purpose of requiring notice to Grantee prior to undertaking certain permitted activities is to afford Grantee an adequate opportunity to provide comment on the proposal, accept or decline the proposal in whole or in

part, and monitor the activities in question to ensure that they are designed and carried out in a manner that is consistent with the purpose of this Agreement.

Grantor and Grantee agree that that the restrictions of this Agreement shall apply to the exterior facades of the building located on the exterior facades, and that no change to the exterior facades may be made by Grantor except as provided herein. Interior elements heretofore included are subject to regulation by this easement as well.

6. *Duration*

This Agreement is granted in perpetuity commencing on the date when this instrument is filed for record with the Clerk of Superior Court of Chatham County, Georgia.

7. *Restrictions on Activities that Would Affect Historically Significant Components of the Exterior Facades*

The Grantor agrees that no construction, alteration, remodeling, demolition or any other activity shall be undertaken or permitted to be undertaken on the exterior facades which would, in Grantee's opinion, affect its historical and architectural integrity e.g., exterior construction materials, architectural details, form, fenestration, color or height of the exterior facades, or adversely affect its structural soundness, without prior written permission of the Grantee affirming that such reconstruction, repair, cleaning, repainting, refinishing, rehabilitation, preservation, or restoration will be consistent with The Secretary of the Interior's Standards for the Treatment of Historic Properties (hereinafter referred to as the "Standards").

8. *Restrictions on Activities that Would Affect Historically Significant Interior Components*

Grantor agrees to retain and preserve the historically significant interior feature heretofore listed in this conservation easement, specifically the original hardwood floors, and conduct all work to conform with the above referenced Standards. Grantee is responsible to self-report directly to HSF once a year to demonstrate this element has been retained. This shall be accomplished by submitting date stamped, interior photos of the house to validate that the hardwood floors have been retained, preserved, and are being maintained.

9. *Duty to Maintain the Exterior Facades*

Grantor agrees at all times to maintain the exterior facades in a good and sound state of repair and to maintain the exterior facades according to the Standards so as to prevent deterioration and preserve the architectural and historical integrity of the Exterior facades in ways that protect and enhance those qualities that make the Exterior facades eligible for listing in the National Register of Historic Places.

Grantee agrees that in the event such above-scheduled work has not been commenced and completed within the stated time periods and/or in the event that Grantor attempts

to sell the exterior facades before commencing work then, in either event, Grantee shall have the right to revoke its approval of proposed changes.

10. *Agreement Shall Run With the Land; Conditions on Conveyance*

The conservation easement conveyed hereby shall run with the land and be binding on the Grantor, its successors, and assigns in perpetuity from the date of execution of this agreement. The Grantor agrees to insert an appropriate reference to this Agreement in any deed or other legal instrument by which it divests itself of either the fee simple title or other lesser estate in the exterior facades, or any part thereof.

11. *Transfer Fee*

Grantor understands that a transfer fee of \$500 is to be payable to Grantee each time the property changes hands. The buyer or recipient of the property will pay the fee to the Grantee at each subsequent closing to help defray costs associated with Grantee holding, monitoring, and enforcing the conservation easement.

(Initial: \_\_\_\_\_) I have read and understand this section

12. *Casualty Damage or Destruction*

In the event that the exterior facades or any parts of same shall be damaged or destroyed by fire, flood, windstorm, earth movement, or other casualty, the Grantor shall notify the Grantee in writing within thirty (30) days of the damage or destruction, such notification to include a description of emergency work, if any, which has already been completed. No repairs or reconstruction of any type, other than necessary temporary measures required by emergent circumstances to stabilize the exterior facades and/or to prevent further damage thereto or to provide for public safety, shall be undertaken by the Grantor without the Grantee's prior written approval indicating that the proposed work will meet the Standards. The Grantee shall give its written approval, if any, of any proposed work within sixty (60) days of receiving the request from the Grantor, and such approval shall not be unreasonably withheld. If, after reviewing the condition of the exterior facades, the Grantee determines that the features, materials, appearance, workmanship, and environment which made the exterior facades eligible for listing in the National Register of Historic Places have been lost or so damaged that its continued National Register listing is in question, the Grantee will notify the State Historic Preservation Officer in writing of such determination within thirty (30) days. Upon notification in writing to the Grantee by the Keeper of the National Register that, after evaluation, a decision has been made to remove the Exterior facades from the National Register, this Agreement and the easement conveyed hereby shall be void and of no further effect. A copy of said notification shall be recorded in the records of Chatham County, Georgia, to constitute notice of such termination of this easement conveyed hereby.

13. *Enforcement*

Grantee shall have the right to prevent and cause violations of the terms of this Agreement to be corrected. If the Grantee, upon inspection of the exterior facades, finds a violation, it may exercise its discretion to seek injunctive relief in a court having jurisdiction. Except when an ongoing or imminent violation will irreversibly diminish or impair the cultural, historical, or architectural importance of the exterior

facades, the Grantee shall give the Grantor sixty (60) days' written notice of the violation and opportunity to cure the violation before taking any formal action, including, but not limited to, any legal action. If a court of competent jurisdiction determines that a violation exists or has occurred, the Grantee may obtain an injunction to stop the violation, temporarily or permanently.

(Initial: \_\_\_\_\_) I have read and understand this section

14. *Violations*

Grantor will, at Grantor's expense, cure any breach or violation of the terms of this Easement after receiving notice or knowledge thereof and diligently pursues the cure to completion.

Upon any breach of the terms of this Agreement by Grantor, Grantee shall, in addition to the rights conferred on Grantee by the paragraph above, have the following rights which shall be cumulative and shall be in addition to any other rights and remedies available to Grantee, at law or in equity:

- (i.) to require restoration of the exterior facades to their condition at the time of the granting of this Agreement or to the enhanced condition of the exterior facades as a result of the requirements for repair, restoration or maintenance contained in this Agreement;
- (ii.) to enjoin any further breach or enforce any covenant hereof by action in an appropriate court of competent jurisdiction;
- (iii.) to recover damages for any breach of the conditions hereof or for the purpose of accomplishing the restoration of the exterior facades thereon by Grantee; and/or,
- (iv.) to enter upon the property, correct any such violation, and hold Grantor, their successors, and/or assigns, liable for the cost thereof, and, any amounts expended by Grantee to correct said violation shall accrue interest at the rate of two percent (2%) per month until paid. Any amounts so expended by Grantee, together with interest as aforesaid, shall constitute a lien upon the property, which lien may be foreclosed in the manner provided by the laws of the State of Georgia, and Grantor shall be liable for any costs and expenses incurred in connection therewith, including reasonable attorney fees.
- (v.) File a "Notice of Violation" with the Clerk of the Superior Court of Chatham County, State of Georgia, which shall act as an encumbrance on the title of the Property.
- (vi.) Charge penalty fees: If the Grantor or any successor or assign fails to comply with any of the terms found in this Covenant for Deed Restrictions at any time, HSF may utilize this remedy pursuant to the following and the law to enforce compliance:
  - The Grantor (or successor) shall first be given notice of any violation in writing (certified mail).
  - The Grantor (or successor) shall have one month (or 30 days) from receipt of the written violation to rectify the matter.
  - If the Grantor (or successor) fails to satisfactorily resolve said violation within the allotted time, HSF will fine the Purchaser \$1,000. Failure to pay the fine and resolve the issue within one month (or 30 days) will result in increased



finer. The initial amount will compound every month (each subsequent 30 days) by 20%. HSF may elect to collect on the fine at any time, utilizing the services of a third-party collection agency.

- A lien in the amount of the unpaid balance may be placed on the property.

Rights under this Agreement apply equally in the event of either actual or threatened violations of the terms of this Agreement. Remedies of law for any violation of the terms of this Agreement may be inadequate, and, in such event, injunctive relief, both prohibitive and mandatory, shall be appropriate in addition to such other relief to which the enforcing party may be entitled, including specific performance of the terms of this Agreement. (Initial: \_\_\_\_\_) I have read and understand this section

16. *Grantee's Remedies*

a) In the event Grantor is found to have violated any of its obligations, or if Grantor has required Grantee to seek expert advice outside the normal course of business, Grantor shall reimburse Grantee for any costs or expenses incurred in connection with Grantee's enforcement of the terms of this Agreement, including but not limited to all reasonable court costs, and attorney, architectural, engineering, and expert witness fees. Damages may be recovered for violation of the terms of this Agreement or injury to any preservation values protected by this Agreement, including reasonable damages for the remediation of lost scenic, aesthetic, environmental, and preservation values. Any damages recovered shall be applied to the cost of undertaking any corrective or remedial action on the exterior facades. Any costs of restoration or remediation necessitated by violation of the terms of this Agreement shall be borne by the party causing such violation.

17. *Grantee Hereby Warrants and Covenants*

a) Grantee is a Qualified Organization for purposes of §170(h) (3) of the Code, or a comparable provision in any subsequent revision of the Code. In the event that the Grantee's status as a Qualified Organization is successfully challenged by the Internal Revenue Service, then the Grantee shall promptly select another qualified organization for purposes of §170(h)(3) of the Code and transfer all of its rights and obligations under this Agreement to it.

b) In the event that Grantee shall at any time in the future become the fee simple owner of the exterior facades, Grantee covenants and agrees, in the event of a subsequent conveyance of the same to another entity, to create a new preservation easement containing the same restrictions and provisions as are contained herein, and either to retain such easement in itself or to convey such easement to a similar unit of federal, state, or local government, or local, state, or national organization whose purposes, *inter alia*, are to promote preservation of historical, cultural, or architectural resources, and which is a qualified organization under §170(h)(3) of the Code.

18. *Acts Beyond Control*

Nothing contained in the Agreement shall be construed to entitle Grantee to bring any action for any injury to or change in the exterior facades resulting from extraordinary causes, including, without limitation, fire, flood, storm, and earth movement, or from any

prudent action taken under emergency conditions to prevent, abate, or mitigate significant injury to the exterior facades resulting from such causes.

In the event that the exterior facades or any parts of same shall be damaged or destroyed by fire, flood, windstorm, hurricane, earth movement, or other casualty, Grantor shall notify Grantee in writing within thirty (30) days of the damage or destruction, such notification including what, if any, emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the exterior facades and to protect public safety, shall be undertaken by Grantor without Grantee's prior written approval. Within sixty (60) days of the date of damage or destruction, if required by Grantee, Grantor at its expense shall submit to the Grantee a written report prepared by a qualified restoration architect and an engineer who are acceptable to Grantor and Grantee; this report shall include the following:

- (i.) an assessment of the nature and extent of the damage;
- (ii.) a determination of the feasibility of the rehabilitation of the exterior facades and/or reconstruction of damaged or destroyed portions of the exterior facades; and
- (iii.) a report of such restoration/reconstruction work necessary to return the exterior facades to the condition existing at the effective date of this instrument.

b) If, after reviewing the report provided in paragraph ii above and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 19, Grantor and Grantee agree that the purpose of the Agreement will be served by such restoration/reconstruction, Grantor and Grantee shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the exterior facades in accordance with plans and specifications consented to by the parties up to at least the total of the casualty insurance proceeds available to Grantor.

c) If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 19, Grantor and Grantee agree that restoration/reconstruction of the exterior facades is impractical or impossible, or agree that the purpose of the Agreement would not be served by such restoration/reconstruction, Grantor may, but only with the prior written consent of Grantee, alter, demolish, remove, or raze one or more of the exterior facades, and/or construct new improvements on the exterior facades. Grantor and Grantee may agree to extinguish this Easement in whole or in part in accordance with the laws of the State of Georgia.

19. *Arbitration*

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 21, Grantor and Grantee are unable to agree that the purpose of the Agreement will or will not be served by such restoration/reconstruction, the matter may be referred by either party to binding arbitration and settled in accordance with the State of Georgia's arbitration statute then in

effect or in accordance with the following arbitration process: Within thirty (30) days of the receipt of a request by either party, the parties shall select a single arbitrator to hear the matter. If the parties are unable to agree on the selection of a single arbitrator, then each party shall name one arbitrator and the two arbitrators thus selected shall select a third arbitrator; provided, however, if either party fails to select an arbitrator, or if the two arbitrators selected by the parties fail to select the third arbitrator within fourteen (14) days after the appointment of the second arbitrator, then in each such instance a proper court, on petition of a party, shall appoint the second or third arbitrator or both, as the case may be, in accordance with state arbitration statute/other appropriate body of rules then in effect. The sole matter to be considered and determined pursuant to the arbitration shall be whether restoration/reconstruction of the exterior facades is impractical or impossible or whether the purpose of the Agreement would not be served by restoration/reconstruction following casualty loss. The matter shall be settled in accordance with state arbitration statutes/any other appropriate body of rules then in effect, and a judgment on the arbitration award may be entered in any court having competent jurisdiction over this dispute. The prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum and for all its costs and expenses related to such arbitration, including, without limitation, the fees and expenses of the arbitrators and attorneys' fees, which shall be determined by the arbitrator(s) and any court of competent jurisdiction that may be called upon to enforce or review the award.

20. *Prohibited Activities*

Grantor agrees that:

- a) Any activity on or use of the exterior facades inconsistent with the purpose of this Agreement is prohibited.
- b) In cleaning or painting the exterior of the exterior facades, sandblasting or other forms of abrasive cleaning will not be used.
- d) The placement or maintenance of signs, billboards, or any other outdoor advertising of any kind or nature on the exterior facades except for the following purposes:
  - (i.) signs required by the applicable local municipalities in connection with safety or traffic control;
  - (ii.) signs relating to the use or limitations on use applicable to the exterior facades;
  - (iii.) directional and regulatory signs relating to the exterior facades;
  - (iv.) signs of an informational or educational nature relating to the exterior facades, preservation values, and the purposes of this Agreement, all as approved by Grantee, which approval shall not be unreasonably withheld.
- e) Without the prior written permission of Grantee, no construction, alteration, remodeling, demolition, movement, or any other thing shall be undertaken or permitted to be undertaken on the exterior facades which would, in Grantee's opinion, affect either the exterior surfaces herein described, or increase or decrease the height, or alter the exterior facades or the appearance of the exterior facades, insofar as they are depicted in the photographs attached hereto and incorporated herein as Exhibit "A" or which would, in Grantee's opinion, adversely affect the structural soundness of the exterior facades.

f) Grantee shall be given prior written notice by Grantor of any proposed alterations to the exterior facades and have sufficient opportunity to respond to the proposal. The purpose of requiring notice to Grantee prior to undertaking certain permitted activities is to afford Grantee an adequate opportunity to provide comment on the proposal, accept or decline the proposal in whole or in part, and monitor the activities in question to insure that they are designed and carried out in a manner that is consistent with the purpose of this Agreement.

g) In cleaning or painting the exterior of the exterior facades, prior written permission of Grantee, as to the cleaning process(es) to be employed or the quality or color of paint to be used, if significantly different from that presently existing must first be obtained.

21. *Mortgage Holders*

Grantor and Grantee agree that the rights of holders of mortgages, deeds of trust, security deeds and similar encumbrances of the Property recorded after recordation of this Agreement (collectively, "Mortgagees") are subject and subordinate at all times to the rights of Grantee to enforce this Easement. The following provisions apply to all Mortgagees hereafter creating a mortgage, deed of trust, security deed or similar encumbrance (collectively, "Mortgage") on the Property:

a) If a Mortgage grants to a Mortgagee the right to receive the proceeds of condemnation proceedings arising from any exercise of power of eminent domain as to all or any part of the Property or the right to receive insurance proceeds as a result of any casualty, hazard, or accident occurring to or about the Property, the Mortgagee shall have a prior claim to the insurance and condemnation proceeds and shall be entitled to same in preference to Grantee until the Mortgage is satisfied and discharged, notwithstanding that the Mortgage is subordinate in priority to the Easement.

b) If a Mortgagee receives an assignment of the leases, rents, and profits of the Property as security or additional security for a loan, then the Mortgagee shall have a claim to the leases, rents, and profits of the Property and shall be entitled to receive same in preference to Grantee until said Mortgagee's debt is paid off, notwithstanding that the Mortgage is subordinate to the Easement.

c) Until a Mortgagee or purchaser at foreclosure obtains ownership of the Property following foreclosure of its Mortgage or deed in lieu of foreclosure, the Mortgagee or purchaser shall have no obligation, debt, or liability under the Easement.

d) Before exercising any right or remedy due to breach of the Agreement except the right to enjoin a violation hereof, Grantee may give all Mortgagees of record written notice describing the default and the Mortgagees shall have sixty (60) days thereafter to cure or cause a cure of the default.

e) Nothing contained in the above paragraphs or in the Agreement shall be construed to give any Mortgagee the right to extinguish this Agreement by taking title to the Property by foreclosure or otherwise.]

22. *Indemnification*

Grantor agrees to pay, protect, indemnify, hold harmless, and defend at its own cost and expense, Grantee, its agents, director, trustees, and employees, and

independent contractors from and against any and all claims, liabilities, expenses, costs, damages, losses, and expenditures (including reasonable attorney's fees and disbursements hereafter incurred) arising out of or in any way relating the administration, performed in good faith, of this Agreement, including, but not limited to, the granting or denial of consents hereunder, the reporting on or advising as to any condition on the Property, and the execution of work on the exterior facades. In the event that Grantor is required to indemnify Grantee pursuant to the terms of the Agreement, the amount of such indemnity, until discharged, shall constitute a lien on the Property.

23. *Amendments*

The parties may, by mutual written agreement, jointly amend this Agreement provided that no amendment shall be made that will adversely affect the qualification of this Agreement or the status of Grantee under any applicable laws, including those of the State of Georgia. Any such amendment shall be consistent with the protection of the conservation and preservation values of the exterior facades and the purpose of this Agreement; shall not affect its duration; shall not permit additional residential and/or commercial development on the Property other than the residential and/or commercial development permitted by this Agreement on its effective date; shall not permit any private inurement to any person or entity; and shall not adversely impact the overall architectural, historic, natural habitat, and open space values protected by this Agreement. Any such amendment shall be recorded in the land records of Chatham County, Georgia. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

Any such amendment shall not be effective unless it is executed in the same manner and with the same formalities as this Agreement, refers expressly to this Agreement, and is filed with the Clerk of Superior Court of Chatham County, Georgia.

24. *Effective Date; Severability*

The conservation easement granted hereby shall become effective upon its being filed in the Office of the Clerk of Superior Court, Chatham County, Georgia. A copy of this Agreement, as recorded, shall be provided to the Grantee for its conservation easement file. Should any part of this Agreement be held to be unlawful or unenforceable by a court, the validity of the remaining parts shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular part held to be invalid.

25. *Insurance*

Grantor shall keep the Property insured for the full replacement value against loss from the perils commonly insured under standard fire and extended coverage policies and shall also maintain comprehensive general liability insurance against claims for personal injury, death and Property damage of a type and in such amounts as would, in the opinion of Grantee, normally be carried on a Property protected by a similar easement. Furthermore, Grantor shall deliver to Grantee

fully executed copies of such insurance policies evidencing the aforesaid insurance coverage at the commencement of this grant and copies of new or renewed policies at least ten (10) days prior to the expiration of such policy. Grantee shall have the right to provide insurance at Grantor's cost and expense, should Grantor fail to obtain same. In the event Grantee obtains such insurance, the cost of such insurance shall be a lien on the Property until repaid by Grantor.

26. *Taxes*

Grantor shall pay any and all taxes assessed against the Property, including but not limited to ad valorem taxes for which Grantee might otherwise be liable;

27. *Transfer of Agreement*

In the event Grantee ceases to exist, no longer qualifies as a "qualified organization" under the provisions of the Georgia Uniform Conservation Easement Act (O.C.G.A. Sections 44-10-1 through 44-10-8) or a comparable provision in any subsequent revision of the Code, or determines that it no longer is able to enforce its rights under this instrument or that it no longer desires to enforce said rights, or is otherwise prevented from enforcing its rights under this instrument, Grantee shall as soon as practical convey all its rights under this instrument and deliver a copy of this instrument to another organization designated by the Grantee to ensure that the Agreement is enforced. Further, this Agreement is transferable by Grantee, but Grantee may assign its rights and obligations under this Easement only to any organization that is a qualified organization pursuant to the provisions of the Georgia Uniform Conservation Easement Act (O.C.G.A. Sections 44-10-1 through 44-10-8. As a condition of such transfer, Grantee shall require that the preservation values that this grant is intended to advance continue to be carried out. Grantee agrees to give written notice to Grantor of an assignment at least thirty (30) days prior to the date of such assignment.

28. *General Provisions*

a) *Controlling Law.* The interpretation and performance of this Agreement shall be governed by the laws of the State of Georgia. Activities prohibited by local ordinances are not permitted by this document.

b) *Construction.* Any general rule of construction to the contrary notwithstanding, this Agreement shall be construed liberally to effect the purpose of this Agreement and the policy and purposes of the Act. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Agreement that would render the provision valid shall be favored over any interpretation that would render it invalid.

c) *Severability.* If any provision of this Agreement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Agreement, or the application of such provision to persons or circumstance other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

d) *Entire Agreement.* This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions,

negotiations, understandings, or agreements relating to the Agreement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless in writing and recorded in the office of the [county] County Recorder.

e) *Joint Obligation.* The obligations imposed by this Agreement upon Grantor shall be joint and several.

f) *Successors.* The covenants, terms, conditions and restrictions of this Agreement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running with the property for ten years.

g) *Termination of Rights and Obligations.* A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Agreement or property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

h) *Heading.* The paragraph and other headings contained in this Agreement are for purposes of reference only and shall not limit, expand, or otherwise affect the construction of any of the provisions of the Agreement.

i) *Counterparts.* The parties may execute this instrument in two or more counterparts, which shall in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any of the parties. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

29. *Recordation*

Grantor shall record this instrument in a timely fashion in the official records of Chatham County, Georgia and may re-record it at any time as may be required to preserve its rights in this Easement.

30. *Subsequent Notification*

Grantor shall insert a reference to this Agreement in any subsequent deed, sales or purchase contract, financing instrument, or other legal instrument by which Grantor is divested of either the fee simple title to or equitable title, a possessory ownership of interest in the Property, or any part thereof. Grantor further agrees to give written notice to the Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer. Said reference shall be substantially as follows:

The Property conveyed herein is subject to a RESERVED CONSERVATION EASEMENT AND PRESERVATION AGREEMENT which controls the ability of any owner or other possessor of the exterior facades to alter its historic character and requires that the improvements thereon be maintained.

**SIGNATURE PAGES FOLLOW**

**GRANTOR:**  
**CHRIS KONCUL**

**By:** \_\_\_\_\_  
**Chris Koncul**

**Attest:** \_\_\_\_\_

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

[NOTARIAL SEAL]

**GRANTEE:**  
**HISTORIC SAVANNAH FOUNDATION, INC.,**  
**a Georgia non-profit corporation**

**By:** \_\_\_\_\_  
**Sue Adler, President & CEO**

**Attest:** \_\_\_\_\_

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

[NOTARIAL SEAL]



Consented to by:  
**TYBEE ISLAND HISTORICAL SOCIETY**  
**(Appointee of Grantee)**

By: \_\_\_\_\_  
**Sarah Jones, Executive Director**

**Attest:** \_\_\_\_\_

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

[NOTARIAL SEAL]

[EXHIBITS TO CONSERVATION EASEMENT FOLLOW]