

REAL ESTATE AGREEMENT

THIS AGREEMENT made this day of _____ 2022, by and between **COLUMBUS, GEORGIA**, a consolidated city-county government, Post Office Box 1340, Columbus, Georgia 31902, (hereinafter "CITY"), and **HISTORIC COLUMBUS FOUNDATION, INC.**, a Georgia non-profit corporation, 14402nd Avenue, Columbus, Georgia 31901, (hereinafter "HCF").

WHEREAS, CITY owns Heritage Park and all of the improvements located thereupon, all as is more particularly shown on an aerial photograph thereof, attached hereto and made a part hereof as Exhibit "A", and which real property is more particularly described on Exhibit "B", attached hereto and made a part hereof; hereinafter "Heritage Park";

WHEREAS, CITY owns the promenade and all improvements located thereon, all as is more particularly shown in the area shaded in red on the aerial photograph thereof attached hereto and made a part hereof as Exhibit "C", and which real property is more particularly described on Exhibit "D", attached hereto and made a part hereof, hereinafter "Promenade", and

WHEREAS, HCF has proposed and the City has accepted an offer to have the City transfer the ownership of Heritage Park to HCF and have HCF move, at HCF's sole cost and expense, to the Promenade certain improvements located at Heritage Park, all in accordance with and pursuant to the Conceptual Plan attached hereto and made a part hereof as Exhibit "E" (hereinafter the "Concept Plan"), and the plans and specifications to be mutually agreed upon.

NOW THEREFORE, in consideration of the provisions hereof and the promises and agreements herein contained, the parties hereto do agree as follows:

1. Transfer by CITY.

(A) CITY agrees to convey to HCF, at a valuation, for the purpose of this Agreement, of \$500,000.00, Heritage Park. As part of such conveyance, HCF agrees to remove and relocate, at its sole cost and expense, certain improvements located at Heritage Park to the Promenade, as well as the residence, having a value of approximately \$173,610 located on the Promenade to Heritage Park, the cost of which removal and relocation is estimated at \$1,000,000.00. At the closing with respect to the conveyance of Heritage Park to HCF, HCF shall present to the CITY a certification by a financial institution located in Columbus, Muscogee County, Georgia. Such certification shall warrant to the CITY that HCF has on deposit, in a segregated account, earmarked for the purposes hereof; the sum of \$1,000,000.00 in readily available funds.

(B) Such removal and relocation shall be accomplished, within an eighteen (18) month period from the conveyance of such Heritage Park to HCF, in a first-class, proper, substantial, competent, and workmanlike manner under the supervision of a mutually acceptable architect and contractor, all in accordance with such Plans and Specifications, as approved by CITY and HCF, and in full compliance with all laws, statutes, ordinances, and regulations applicable to, and having an impact upon, the Historic District of Columbus, Georgia, and with HCF fully saving, indemnifying and holding CITY harmless from any and all costs arising therefrom, of whatsoever kind and nature. Historic Columbus or its vendors and contractors shall carry insurance coverage as outlined in Exhibit "F" for all initial construction and maintenance work performed at the Promenade and will name the City as an additional insured on such policy.

(C) The improvements presently located at Heritage Park and to be removed and relocated to the Promenade shall be used to interpret, with additional elements, the history of Columbus, Georgia. In addition, the existing improvements located at the Promenade shall be enhanced and improved in concert

with the overall Plans and Specifications calling for the renovation of the Promenade and in conjunction with the removal and relocation of such improvements from Heritage Park.

(D) As part of the consideration hereof and for a period of at least ten (10) years from the date of the completion of the work contemplate in paragraph (C) above, HCF agrees to assume responsibility for the upkeep and maintenance of the structures, improvements and museum elements to be located on the Promenade, saving, indemnifying and holding CITY harmless from any and all costs arising therefrom, either itself or through a contractor the following services at current levels: (i) security, (ii) trash collection, (iii) The CITY shall continue to provide general area maintenance and cleanup (iv) the maintenance of the amphitheater, and (v) rental management of the Promenade. HCF agrees to establish an ongoing maintenance account, hereinafter "OMA", in an initial sum of not less than \$100,000.00, to be used to keep and maintain the structures, improvements and museum elements located on the Promenade in a first-class condition. HCF shall provide an accounting to the CITY of its efforts and activities involving its maintenance duties with respect to the Promenade, on an annual basis, so as to evidence HCF's commitment to fund the upkeep and maintenance of the structures, improvements and museum elements on the Promenade in accordance herewith, which accounting shall be in form and substance satisfactory to the CITY. The CITY and HCF shall enter into a Memorandum of Understanding ("MOU") to memorialize their respective obligations as set forth herein, in a form mutually agreeable to the CITY and HCF, and the parties agree to negotiate such MOU in good faith. The MOU shall provide for an initial term of ten (10) years which may be renewed for a subsequent ten (10) period upon the agreement of the parties.

(E) HCF warrants and guaranties that HCF has sufficient sums on-hand with which to pay for such removal, relocation, rehabilitation, and restoration, all in accordance herewith and pursuant hereto, and such funds are and will continue to be sufficient to fund the OMA herein provided.

(F) The CITY shall, by appropriate quit claim deed, convey to HCF the property on which Heritage Park is located, free and clear of any and all liens and encumbrances, of whatsoever kind and nature, and subject, only, to such easements, reservations, and exceptions to title herein provided for. HCF covenants and agrees that all future deeds by HCF to a third party shall contain a restrictive covenant that the property being conveyed thereunder will only be used as single family residences and shall not be used for short-term rentals, which covenant shall survive the Closing.

(G) The CITY reserves unto itself; and unto its successors and assigns, whomsoever, as well as unto any and all applicable utility, or its successors and assigns, whomsoever, using same, any and all easements, if any, for water, sewer and/or any other utilities, of whatsoever kind and nature, with respect to the property to be conveyed to HCF on which Heritage Park is presently located, either of record, or now in place thereupon, and the CITY does further reserve, unto itself; and unto its successors and assigns, whomsoever, as well as unto any and all applicable utility, or its successors and assigns, whomsoever, using same, all rights in and to such easements, of whatsoever kind and nature, and the right to keep, maintain and enhance same, or to emplace additional easements and utilities, of whatsoever kind and nature thereupon, as well as access of ingress, egress and regress to and from same to accomplish any such maintenance, enhancement or emplacement. The CITY agrees to provide to HCF any and all drawings, agreements, surveys, plats, or other documentation of such easements, which are in the possession or control of the CITY at least 10 business days prior to Closing. Notwithstanding the foregoing, contingent on obtaining any necessary permits or approvals from the City or the applicable utility, HCF shall have the right, at its sole cost and expense to relocate any or all such utility lines in order to complete the contemplated development of Heritage Park as single-family housing.

(H) HCF shall, upon removal and relocation of the improvements presently located at Heritage Park to the Promenade, in accordance with all applicable laws, statutes, ordinances and regulations, perform

demolition and site work on such property in anticipation of it being subdivided into five (5) residential lots, which lots will be prepared and enhanced for the relocation of five (5) historic structures to be moved onto such respective lots in anticipation of such residences being sold to private individuals, who will complete the process of the renovation and rehabilitation thereof. All of such removal, relocation, renovation, and rehabilitation shall be in full compliance with the ordinances of the City of Columbus and the rules and regulations attendant to structures in the Historic District of same and shall be accomplished in a first-class, proper, substantial, competent, and workmanlike manner, all under the supervision of such mutually acceptable architect and contractor to CITY and HCF; all in accordance with such Plans and Specifications approved by CITY and HCF, and in full compliance with all laws, statutes, ordinances, and regulations applicable thereto, and having an impact upon the Historic District of Columbus, Georgia, with HCF fully saving, indemnifying and holding CITY harmless from any and all costs arising therefrom, of whatsoever kind and nature. The CITY shall waive City Inspections and Code and Engineering permit fees so long as the parcel is initially titled in the name of HCF and shall cooperate with HCF in any reasonable requests regarding rezoning and or subdivision approval.

1. Closing Documents. The CITY and HCF agree that such papers as may be necessary to carry out the terms of this Agreement shall be executed and delivered by them at the time the sale is consummated.

2. Closing. The conveyance of Heritage Park to HCF shall be consummated within sixty (60) days from the date of this Agreement, during which time HCF shall have the opportunity of having the title examined of such property to be acquired by it in accordance herewith. It is expressly understood and agreed between the parties hereto that time is of the essence of this Agreement. Should any purported legal defect be found in the title, then HCF shall furnish CITY with a written statement thereof within said period of days, and CITY given a reasonable time thereafter within which to correct the same not to exceed ninety (90) days from such written statement being furnished to the CITY in accordance herewith, unless by endorsement hereon more time is allowed. Otherwise, this Agreement shall be of no further consequence, force or affect, whatsoever, with no liability on the part of any party hereto, of whatsoever kind and nature, as if this Agreement had never been entered into.

3. Closing Costs. The parties hereto do agree that each shall bear their own respective closing costs, of whatsoever kind and nature, in regard to the conveyance contemplated herein, to include, but not be limited to, attorney fees, title insurance, title examination, document preparation, transfer taxes, and recording charges.

4. Entry. HCF and its agents, employees and contractors shall have the right to enter upon the Promenade and Heritage Park for the purpose of marking boundary lines and topographical surveys, environmental studies, soil tests, and such other tests, analyses, and investigations, as HCF may deem necessary or desirable, so long as said work does not interfere with the CITY's continued use and occupancy of the Promenade and Heritage Park, all at the sole cost and expense of HCF, fully saving, indemnifying and holding CITY harmless therefrom. In addition, HCF shall fully save, indemnify and hold CITY harmless from and against all mechanics, materialman's, or other liens and claims, whatsoever, resulting from the conduct of HCF in making any such entry on the Property, to include, but not be limited to, the actions of its agents, employees and contractors.

5. Broker. Each party hereto represents to the other party hereto that they have not engaged any broker or agent in connection with this Agreement. HCF hereby agrees to fully save, indemnify and hold the CITY harmless from and against any and all liability, loss, cost, damage, and expense (including, but not limited to, attorneys' fees and costs of litigation) that the CITY shall ever suffer or incur because of

any claim by any such broker, whether or not meritorious, for any fee, commission, or other compensation with respect hereto, resulting from the acts of HCF.

7. Possession. Possession of Heritage Park shall be given to the HCF as of the closing, and access and easement rights to the Promenade shall be given to HCF as of the closing so as to remove and relocate the improvements from Heritage Park to the Promenade and to renovate and rehabilitate the Promenade by HCF, all in accordance herewith and pursuant hereto.

8. Condition.

(18) HCF shall acquire Heritage Park, all in accordance herewith and pursuant hereto, in “AS IS, WHERE IS, WITH ALL FAULTS” condition, and with no warranties or guaranties, of any kind, whatsoever.

(B) Closing on Heritage Park, all in accordance herewith and pursuant hereto, shall signify that HCF has acquired Heritage Park in “AS IS, WHERE IS, WITH ALL FAULTS” condition, with no warranties, of whatsoever kind and nature, and that all preconditions and contingencies stipulated herein have been fully met to its satisfaction.

9. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors, and permitted assigns.

10. Entire Agreement; Modification. This instrument constitutes the entire agreement between the parties. It is entered into after full investigation, with neither party relying upon any statement or representation made by the other not embodied herein. HCF warrants and represents that it has inspected Heritage Park to be acquired by it and the Promenade to be renovated and rehabilitated in accordance herewith, and is thoroughly acquainted with their condition. This instrument may not be changed or terminated, orally, but only by an agreement duly executed and signed by the parties.

11. Notices. All notices hereunder shall be in writing and delivered personally or mailed by certified or registered mail, postage prepaid, return receipt requested, addressed to the parties at their above addresses.

12. Non-Waiver. No delay or failure by either party to exercise any right hereunder, and no partial or single exercise of such right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

13. Headings. Headings in this Agreement are for convenience and reference only and shall not be used to interpret or construe its provisions.

14. Governing Law. This Agreement shall be construed in accordance with and be governed by the laws of the State of Georgia.

15. Time of Essence. Time is of the essence of this Agreement.

16. Survival. ALL PROVISIONS HEREOF SHALL SURVIVE CLOSING.

17. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, but all of which together shall be one and the same agreement. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with

the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

18. **WAIVER OF JURY TRIAL. IN ORDER TO AVOID THE ADDITIONAL TIME AND EXPENSE RELATED TO A JURY TRIAL ON ANY MATTERS ARISING HEREUNDER OR RELATING OR CONNECTED IN ANY MANNER TO THIS AGREEMENT, IT IS AGREED BY THE PARTIES HERETO, FOR THEMSELVES, AND FOR THEIR RESPECTIVE SUCCESSORS AND/OR ASSIGNS, THAT THEY SHALL AND HEREBY DO WAIVE TRIAL BY JURY OF ANY MATTERS, INCLUDING ANY COUNTERCLAIMS, CROSS CLAIMS, OR THIRD-PARTY CLAIMS, AND INCLUDING ANY AND ALL CLAIMS OF INJURIES AND/OR DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, ANY AND ALL OF WHICH LEGAL PROCEEDINGS SHALL ONLY BE FILED IN THE SUPERIOR COURT OF MUSCOGEE COUNTY, GEORGIA, OR IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA. THE PARTIES HERETO HEREBY EXPRESSLY WAIVE ANY OTHER JURISDICTION OR VENUE WHETHER BY STATUTE OR OTHER LAW.**

(INITIALS)

(INITIALS)

This Agreement has been duly executed by the parties on the day and year first above written.

COLUMBUS, GEORGIA, a
consolidated city-county government
("CITY")

HISTORIC COLUMBUS
FOUNDATION, INC., a
non-profit corporation ("HCF")

By: _____
Its: _____

(SEAL OF CITY)

By: _____
Its: _____

(CORPORATE SEAL)

EXHIBIT "A"

Heritage Park and all of the improvements located thereupon, all as is more particularly shown on an aerial photograph thereof; attached hereto and made a part hereof as Exhibit "A"

EXHIBIT "B"

Heritage Park property is more particularly described on Exhibit "B"

EXHIBIT "C"

Promenade and all improvements

EXHIBIT "D"

Promenade real property is more particularly described on Exhibit "D"

EXHIBIT "E"

Concept Plan attached hereto and made a part hereof as Exhibit "E".

EXHIBIT "F"

Insurance requirements for performing work on City Property