

State of Georgia  
Effingham County

## PRE-DEVELOPMENT AGREEMENT

**THIS PRE-DEVELOPMENT AGREEMENT** (the “Agreement”) is made and entered into this [\_\_] day of [\_\_\_\_], 2022 (the “Effective Date”), by and between **SAVANNAH INDUSTRIAL DEVELOPMENT, LLC**, a Colorado limited liability company (the “Developer”), and **EFFINGHAM COUNTY**, a political subdivision of the State of Georgia, acting by and through its governing authority, the Board of Commissioners of Effingham County (the “County”).

### RECITALS:

**WHEREAS**, pursuant to that certain Master Development Agreement dated as of March 3, 2016, as amended by that certain Amendment to Master Development Agreement dated as of November 10, 2017 (the “Master Development Agreement”), a short-form version of which is recorded in Deed Book 2338, Page 461, Effingham County, Georgia records, the Effingham County Industrial Development Authority, a public body corporate and politic of the State of Georgia (the “Authority”) has appointed Developer to be its sole and exclusive agent and attorney-in-fact, and as its master developer, with respect to approximately 2,584 acres of land owned by the Authority, as more particularly described on **Exhibit A** attached hereto (such property, together with all other property now owned or hereafter acquired by Developer and developed therewith, is hereby referred to as the “Master Development Land”). Developer has developed, and continues to develop, the Master Development Land into an industrial complex known as the Savannah Gateway Industrial Hub (the “Master Development”); and

**WHEREAS**, to promote the Master Development and to accommodate the needs of the County with respect to its water treatment system, the Developer, the Authority, and the County desire to develop the Spray Field Area (as hereinafter defined) for the lease to and operation by the County of a Spray Field (as hereinafter defined), subject to and in accordance with the terms and provisions contained herein.

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants contained herein, and intending to be legally bound hereby, the Developer and the County agree as follows:

**WITNESSETH:**

**Section 1. Recitals.**

The foregoing recitals are incorporated herein by this reference as if they were set forth herein in their entirety.

**Section 2. Definitions.**

Various defined terms have the meanings ascribed to such terms in this Agreement. Without limiting the foregoing, the following terms have the following meanings:

A. “Development Costs” shall mean the actual, documented, third party costs incurred by the County for the construction, design and permitting of the Spray Field and related reuse line extension under Hodgeville Road.

B. “Initial Contribution” shall mean the actual, documented, third party costs incurred by the Developer to prepare the Spray Field Plans.

C. “Lease” shall mean the Lease Agreement by and between the Authority, by and through the Developer as its agent and attorney-in-fact, and the County, for the operation of the Spray Field within the Spray Field Area, a copy of which is attached hereto as **Exhibit C**.

D. “Reimbursement Contribution” shall mean an amount that is thirty percent (30%) of the Development Costs.

E. “Reserved Capacity” shall mean thirty percent (30%) of the total design capacity of the Spray Field, but no less than 30,000 gallons per day.

F. “Spray Field” shall mean an estimated one hundred thousand gallon per day (100,000 GPD) spray irrigation field to dispose of pre-treated municipal wastewater (and not, for the avoidance of doubt, untreated wastewater or so-called “gray water”).

G. “Spray Field Area” shall mean an approximately twenty (20) acre portion of the Master Development Land as generally depicted on **Exhibit B** attached hereto.

H. “Spray Field Plans” shall mean the professional design and engineering plans and specifications for the construction and development of the Spray Field.

**Section 3. Spray Field Development.**

A. Promptly after the date hereof, the Developer engage [\_\_\_\_\_] (the “**Design Professionals**”) to prepare the Spray Field Plans. The Developer shall fund the Initial Contribution to pay the Design Professionals for the Spray Field Plans.

B. Once the proposed Spray Field Plans have been completed by the Design Professionals to the satisfaction of the Developer, the Developer shall provide the County

with a copy of the proposed Spray Field Plans for its review, comment and approval. The County agrees to not to unreasonably withhold or condition its approval of the proposed Spray Field Plans, and to approve or provide specific comments to the proposed Spray Field Plans within ten (10) business days after submittal of same by the Developer to the County. The Developer shall cause the Design Professionals to promptly revise the proposed Spray Field Plans to address the County's comments and shall resubmit the revised Spray Field Plans to the County for approval or comment in the same manner as the initial proposed Spray Field Plans. This process shall repeat until both the Developer and the County have fully approved the Spray Field Plans.

C. Promptly following the mutual approval of the Spray Field Plans by both the Developer and the County, the County shall procure all applicable governmental and third party permits and approvals necessary for the County to construct the Spray Field, including, without limitation, the waiver of the 300' buffer in which the Spray Field Area is located (the "**Permits**").

D. The "Commencement Date" of the Lease is the date upon which both the Developer and the County have fully approved the Spray Field Plans and the County has obtained all necessary Permits. Promptly following the Commencement Date, the County shall diligently and continuously, at its sole cost and expense subject to the reimbursements set forth herein, develop and construct the Spray Field within the Spray Field Area in accordance with the Spray Field Plans.

E. Within thirty (30) days of the substantial completion of the Spray Field, the County shall provide the Developer written notice of the Spray Field completion (the "Completion Notice"), along with a certified accounting of the Development Costs. Within

thirty (30) days of receipt of the County's Completion Notice, the Developer may notify the County in writing of any objections to the construction of the Spray Field and/or to the accounting of the Development Costs (the "Objection Notice"). Within ten (10) days of receipt of the Developer's Objection Notice, the County shall by written notice to the Developer either accept the Developer's objections and correct any construction defects or non-conformities noted in such objections and/or adjust the accounting in accordance with Developer's Objection Notice, or it may dispute the Developer's objections. The parties agree to cooperate in good faith to resolve any construction defects, non-conformities and/or accounting disputes. If the parties are unable to resolve any such disputes amongst themselves within a reasonable time not to exceed sixty (60) days, the parties agree to submit such disputes to a neutral third party reasonably agreeable to the parties. For the avoidance of doubt, if either party fails to timely respond pursuant to the respective time periods provided this subsection, such failure to respond shall be deemed a waiver of such objection and response rights, as applicable.

F. Within thirty (30) days after the Completion Notice, or, if later, the final resolution or adjudication of the Development Costs, the Developer shall reimburse the County for a portion of the Development Costs in an amount equal to the Reimbursement Contribution, capped at a total amount of THREE HUNDRED THOUSAND AND 00/100 DOLLARS (\$300,000.00). The Initial Contribution incurred by Developer shall be fully credited toward the Reimbursement Contribution.

#### **Section 4. Development Incentives.**

A. The Developer shall have the right to connect the Master Development to the Spray Field for purposes of using up to, but not exceeding, the Reserved Capacity. The

County hereby agrees to reserve the Reserved Capacity for the Developer for use and sub-allocation within the Master Development. The County shall have the right to use all capacity of the Spray Field, other than the Reserved Capacity, for its own purposes.

B. The County hereby agrees to provide the Developer with credits against the Developer's reuse water capacity capital recovery fee and any sanitary sewer or other fees or charges that would otherwise be due and payable to the County with respect to the future development of the Master Development or portions thereof (the "**Water Reuse Credits**"), on a dollar-for-dollar basis in an amount equal to the Reimbursement Contribution. The Water Reuse Credits shall be irrevocably vested in Lessor as of the date upon which construction of the Spray Field is substantially completed, and shall thereafter be freely assignable by Developer, in its capacity as master developer under the Master Development Agreement, in its sole discretion to third parties who will develop improvements within the Master Development for which the reuse water capacity capital recovery fee would otherwise be due and payable.

C. The provisions of this Section 4 shall survive the expiration or termination of the Lease and this Agreement. Any unused Water Reuse Credits will survive the expiration or earlier termination of the Lease and this Agreement.

**Section 5. Term.**

Subject to Section 4.C. above, the "Term" of this Agreement shall become effective as of the Effective Date and shall continue in full force and effect until the expiration or earlier termination of the Lease in accordance with its terms, unless earlier terminated in accordance with Section 6 below.

**Section 6. Termination.**

This Agreement may be terminated as follows:

A. by Developer, in the event the County fails to commence or substantially complete construction or permit the reuse of the Spray Field on or prior to the date that is one (1) year from the Effective Date upon not less than thirty (30) days' prior written notice to the County; provided, however, that if within such thirty (30) day period, the County commits in writing to Developer to construct and thereafter commence the operation of the Spray Field within one hundred eighty (180) days after its receipt of such termination notice, and thereafter diligently and continuously abides by such commitment within such one hundred eighty (180) day period, then such termination shall be of no further force and effect and this Agreement shall continue in full force and effect; or

B. by either party, in the event of a material breach of this Agreement by the other party, effective immediately upon written notice if the defaulting party has first failed to cure such breach (if reasonably capable of cure) within 30 days of receipt of written notice of such breach; or

C. by either party, effective immediately upon written notice in the event the Lease terminates or expires by its terms.

**Section 7. Compliance with Laws.**

The parties shall comply with all existing and future federal, state, and local statutes, laws, ordinances, rules, and regulations in connection with the rights, duties, and obligations herein.

**Section 8. Governing Law; Forum Selection.**

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Georgia. Any action arising from this Agreement shall be filed in the Superior Court of Effingham County.

**Section 9. County Responsibility.**

The County shall be solely responsible for and shall pay any claims, losses, expenses, damages, causes of actions and liabilities of every kind and nature, including without limitation reasonable attorney's fees, to the extent caused by or are attributable to the construction or operation of the Spray Field or the activities of the County with the Spray Field Area.

**Section 10. Representations and Warranties of the Parties.**

Each party hereby represents and warrants to the other parties that it has full power and authority to execute this Agreement and to perform and carry out the obligations of such party contemplated herein and that this Agreement constitutes the legal, valid, and binding obligation of and enforceable against such party in accordance with the terms hereof.

**Section 11. Entire Agreement.**

This Agreement including all attached exhibits shall constitute the entire agreement between the parties related to the subject matter hereof and shall supersede all previous agreements, written or oral related to the subject matter hereof.

**Section 12. Modification of Agreement.**

Any modification or amendment to this Agreement shall be binding only if reduced to writing and approved and executed by all parties.

**Section 13. No Waiver.**



The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

**Section 14. Effect of Partial Invalidity.**

In the event that any part or subpart of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction, the parties agree that the remaining provisions shall be deemed to be in full force and effect. That portion deemed invalid shall be amended in writing to the minimum extent necessary to be considered valid and enforceable.

**Section 15. Paragraph Headings.**

The headings and subheadings within this Agreement are solely for the convenience of the parties and shall not be construed to modify, explain, or aid in the interpretation of this Agreement.

**Section 16. Notices.**

Any notice provided for or concerning this Agreement shall be in writing and shall be deemed sufficiently given upon receipt by certified or registered mail or hand delivery as follows:

If to the Authority:    Effingham County Industrial Development Authority  
                                  520 W. Third Street  
                                  Springfield, Georgia 31329  
                                  Attn: CEO

If to the County:        Effingham County Board of Commissioners  
                                  601 North Laurel Street

Springfield, Georgia 31329  
Attn.: County Administrator

If to Developer: Savannah Industrial Development, LLC  
c/o Broe Real Estate Group  
252 Clayton Street  
Denver, Colorado 80206  
Attn: Ronald J. Corsentino

With Copy to: Holland & Knight LLP  
1180 West Peachtree Street NE, Suite 1800  
Atlanta, Georgia 30309  
Attn: Matthew T. Joe

Any party may change its respective notice addresses by written notice to the other party.

**Section 17. Excusable Delay.**

No party hereto shall be liable to the other or any successor in interest for any loss, cost, or damage arising out of, or resulting from, non-performance or delayed performance of the terms of this Agreement where such non-performance or delayed performance is the result of circumstances or occurrences beyond the reasonable control of the responsible party (each, a “**force majeure**”), which, as used herein, shall be deemed to include, non-performance or delayed performance resulting from acts of God, strikes, lockouts, blockades, insurrections, riots, explosions, fire, floods, or any other cause not within the reasonable control of the responsible party. In no event shall any party be held liable to the other parties for consequential damages or economic losses arising from delayed performance; provided, however, that in the event the County fails to timely perform its obligations under this Agreement after written notice of default from the Developer,

then Developer shall, in addition to all other rights and remedies provided in this Agreement or in law or equity, be entitled, but not obligated, to complete the County's obligations hereunder, and, if Developer undertakes to and does complete all or a portion of the County's obligations hereunder, in accordance with Section 9 of the Effingham County Georgia Impact Fee Ordinance (or any successor provision), be entitled to a credit for the cost of such completion against any and all fees and/or other charges associated with, without limitation, the Developer's connection to the Spray Field, any reuse water service recovery fees and capacity fees related to any such Spray Field connections, and any sanitary sewer or other fees or charges otherwise chargeable by the County accruing to the Developer or for the Savannah Gateway Industrial Hub or the Master Development.

**Section 18. Assignment.**

This Agreement may be assigned in whole or in part by the Developer to any successor developer of the Master Development without the consent of the County, but otherwise may be assigned by the Developer only with the prior written approval of the County, which approval shall not be unreasonably withheld, conditioned, or delayed. The County may not assign this Agreement without prior written consent of the Developer, which consent may be withheld in the Developer's sole discretion. This Agreement shall bind and inure to the benefit of the parties hereto and their permitted successors and assigns.

**Section 19. No Partnership, Joint Venture, or Agency.**

The parties hereto are acting herein as independent parties. Nothing herein contained shall create or be construed as creating a partnership or joint venture relationship among two or more of

the parties and no party shall have the authority to bind any other party in any respect. Without limiting the foregoing, the Developer is an independent party and shall not be considered the agent.

**Section 20. Counterparts.**

The parties hereto may execute this Agreement in one or more counterparts (including by facsimile, digital, electronic, or “.PDF” signature), and all such counterparts shall be construed together and constitute one and the same instrument.

**Section 21. Construction of Agreement.**

The parties acknowledge that each party has participated in the negotiation and preparation of this Agreement. This Agreement shall be construed without regard to any presumption or other statute or rule of law requiring construction against the party causing the Agreement to be drafted.

[REMAINDER OF PAGE LEFT BLANK, SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF** the Developer has executed these presents under seal, and the County has caused these presents to be executed by their respective proper officer under seal, affixed, this as of the Effective Date.

**COUNTY:**

BOARD OF COMMISSIONERS OF  
EFFINGHAM COUNTY, GEORGIA

By: \_\_\_\_\_  
Wesley Corbitt  
Its: Chairman

Attest By: \_\_\_\_\_  
Stephanie Johnson  
Its: Clerk

EXECUTED IN THE PRESENCE OF:

\_\_\_\_\_  
WITNESS

Sworn to and subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

[ADDITIONAL SIGNATURE PAGE FOLLOWS]

**DEVELOPER:**

SAVANNAH INDUSTRIAL DEVELOPMENT, LLC

By: \_\_\_\_\_  
Name: Ronald J. Corsentino  
Its: Manager

EXECUTED IN THE PRESENCE OF:

\_\_\_\_\_

WITNESS

Sworn to and subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

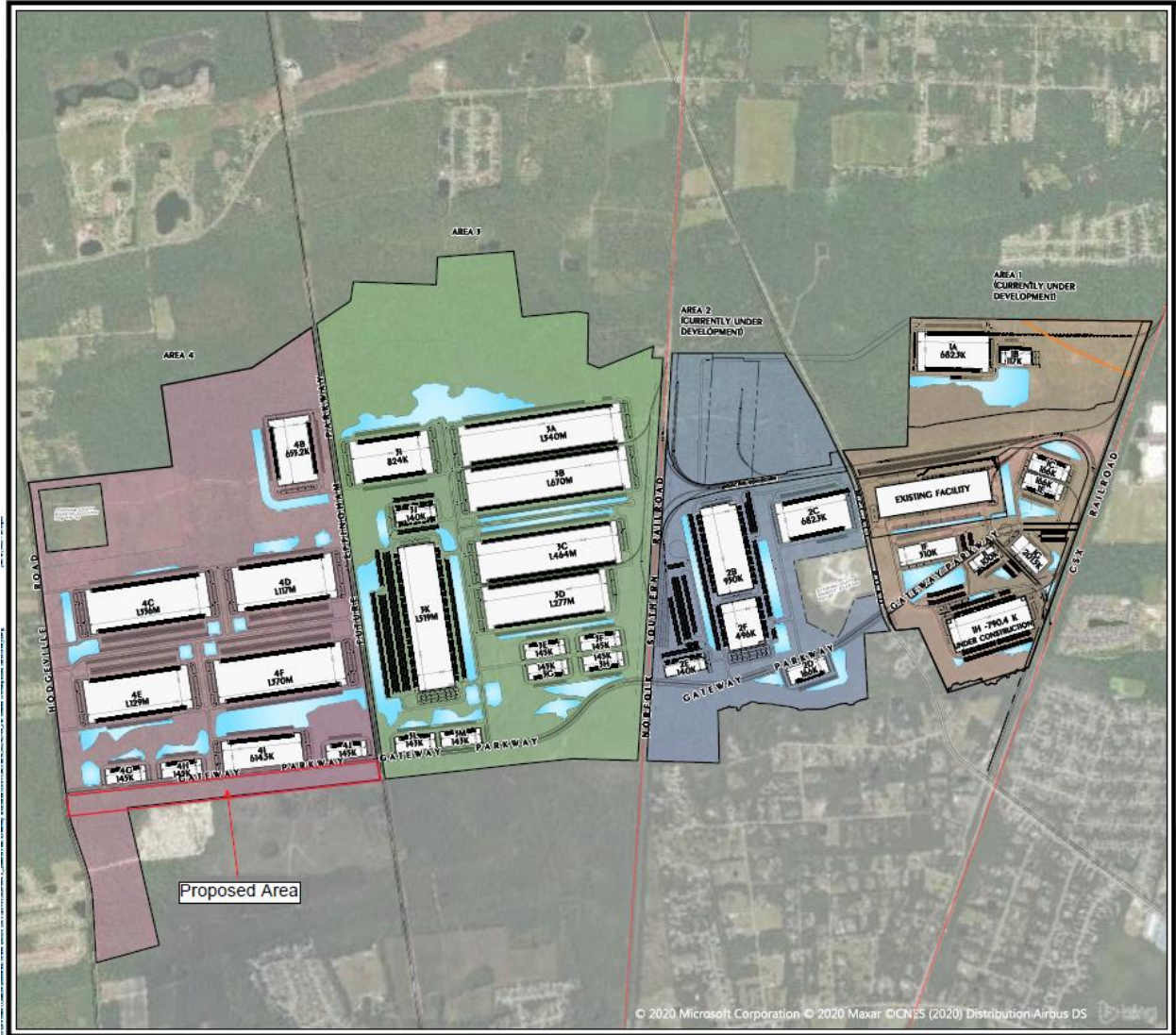
NOTARY PUBLIC

**EXHIBIT A**

**Legal Description of Master Development Land**

[To Be Attached]

**EXHIBIT B**  
**Proposed Spray Field Area**





**EXHIBIT C**

**Spray Field Lease Agreement**

[Attached]