After Recording Return to:

HunterMaclean

200 East Saint Julian Street

Savannah, GA 31401

**RECIPROCAL ACCESS AND UTILITY EASEMENT AGREEMENT**

STATE OF GEORGIA

COUNTY OF CHATHAM

This Reciprocal Access and Utility Easement Agreement (“Agreement”) is made as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2023 (“Effective Date”), by and between 2163 Montgomery Street, LLC, a Georgia limited liability company (“First Party”) and 1985 Properties, LLC, a Georgia limited liability company (“Second Party”), as grantee (First Party and Second Party, each, a “Party” and collectively, the “Parties”).

**BACKGROUND**

A. First Party is the owner of those certain tracts or parcels of real property located in the City of Savannah, Chatham County, Georgia (“County”), as more particularly described in Exhibit A attached hereto and incorporated by reference herein (“First Party Property”).

B. Second Party is the owner of those certain tracts or parcels of real property located in the County, as more particularly described in Exhibit B attached hereto and incorporated by reference herein (“Second Party Property”), which Second Party Property is located adjacent to the First Party Property (The First Party Property and the Second Party Property each, the “Property”, and are sometimes hereinafter referred to collectively as the **“**Properties**”**).

C. Parties desire to enter into this Agreement to evidence that First Party grants to Second Party a non-exclusive access and utility easement over, upon, and across the First Party Property and Second Party grants to First Party a non-exclusive access and utility easement over, upon, and across the Second Party Property, as more particularly described in Exhibit C attached hereto (“Easement Area”) to allow for pedestrian, vehicular, and utility access to, from, and between Montgomery Street and the First Party Property and Second Party Property, under the terms and conditions of this Agreement.

**AGREEMENT**

1. Grant of Easements

(a) First Party hereby grants, transfers and conveys unto Second Party, its successors and assigns, a permanent, non-exclusive easement on, over, and across the Easement Area for pedestrian, vehicular, and utility access to, from, and between Montgomery Street and the Second Party Property, and on such other portions of the First Party Property to the extent reasonably necessary for the construction, installation, repair, and maintenance of the Easement Area.

(b) Second Party hereby grants, transfers and conveys unto First Party, its successors and assigns, a permanent, non-exclusive easement on, over, and across the Easement Area for pedestrian, vehicular, and utility access to, from, and between Montgomery Street and the First Party Property, and on such other portions of the Second Party Property to the extent reasonably necessary for the construction, installation, repair, and maintenance of the Easement Area.

(c) First Party and Second Party each hereby agree, for themselves and their successors and assigns, not to interfere with, block, or otherwise prohibit access on all or a portion of the Easement Area or either Party’s Property except as is reasonably necessary in order to complete construction of, installation, or maintenance and repair on, the Easement Area; provided that, except in the event of an emergency, the party performing such installation, repair, or maintenance shall provide at least fifteen (15) days prior written notice of such closure and work to the other Party, and shall use reasonable efforts to limit such blocked access as much as reasonably possible so as not to unreasonably disturb or interfere with access between Montgomery Street and the First Party Property and Second Party Property.

2. Construction of Improvements. In accordance with the obligations in Section 1(C), First Party, may construct and install the road and utility improvements within the Easement Area. Any work carried out in the construction of improvements shall conform to applicable standards of the City of Savannah. Upon competition of the construction and installation of the road and utility improvements, Second Party shall immediately reimburse First Party for Second Party’s pro-rata share of such work, which pro-rata share is hereby agreed by the Parties to be: (i) First Party – 25%; Second Party – 75% (“Pro-Rate Share”). During any period of construction, First Party shall, at its sole cost and expense, replace or repair any portion of the Second Party’s Property damaged by, or in connection with, construction work and shall restore the damaged property to substantially the same condition as existed prior to any damage. If Second Party shall fail to pay any sum due to First Party within thirty (30) days of completion of the improvements, then Second Party shall be in default, and as defined in Section 7 of this Agreement, First Party, in addition to its other rights and remedies, may cure such default, and Second Party shall reimburse the First Party for all actual reasonable costs and expenses (together with interest thereon at the highest lawful rate) incurred by the First Party in connection with the cure of such default and First Party may additionally

3. Maintenance*.*

(a) Upon completion of any easement improvements (“Easement Improvements”), Second Party shall maintain the Easement Improvements in good order and repair, and in a commercially reasonable manner. Such maintenance shall include, but not be limited to repair, paving, striping, installation, repair, and replacement of the Easement Improvements within the Easement Area and any measures reasonably necessary to maintain the Easement Improvements and Easement Area in a good and operable, and clean and neat condition, in a manner consistent with the standards which would be equal in quality at least to that maintained by owners and occupants of facilities of the same or comparable type and quality which are in the vicinity of the Properties.

(b) Second Party shall be solely responsible for any and all of the cost to maintain the Easement Improvements within the Easement Area. If Second Party shall fail to pay any sum due to any general contractor or subcontractor within thirty (30) days of completion of the maintenance, then Second Party shall be in default, and as defined in Section 7 of this Agreement, and First Party, in addition to its other rights and remedies, may cure such default, and Second Party shall reimburse the First Party for all actual reasonable costs and expenses (together with interest thereon at the highest lawful rate) incurred by the First Party in connection with the cure of such default.

(d) Neither party hereto shall use, deposit or permit the use or deposit of any hazardous material or toxic waste or other harmful substances on or within the Easement Area.

4. Insurance. For the term of this Agreement, each Party shall maintain general commercial liability insurance with respect to its interest in and its activities on their respective properties, including the Easement Area, as the case may be, on an “occurrence” form with an occurrence limit of not less than $1,000,000 and an aggregate limit of not less than $2,000,000 with the other Party named as an additional insured, provided either Party may increase the amount of insurance required from time to time by a percentage equal to the percentage change in the Consumer Price Index statistics published by the United States Bureau of Labor from the Effective Date to the January date immediately preceding the requested change. Comparisons shall be made using the index entitled, “U.S. City Average/All Items and Major Group Figures for all Urban Consumers Atlanta-Sandy Springs-Roswell Area (1982-84 = 100),” or the nearest comparable data on changes in the cost of living, if such index is no longer published. Upon the written request of First Party or Second Party (not to be made more than once per calendar year except in the event of a default under this Agreement), each Party shall provide the other Party with a certificate of insurance naming other Party, as applicable, and any of their mortgagees as additional insureds under such insurance policy(ies) within 14 days from request.

5. Indemnity.

(a) Second Party shall indemnify and hold First Party and its officers, directors, shareholders, members, partners, employees, agents, representatives, tenants, licensees, guests, invitees, successors and assigns harmless from and against any and all actual damages, liability, loss, cost and expense, including, reasonable attorneys’ fees and court costs (but excluding incidental and consequential damages, lost profits, revenues or other economic losses), in connection with any claims, causes of action, suits, litigation or other process instituted by any third party, judgments, and cost of defense: (A) for bodily injury or alleged bodily injury or death to persons, or property damage or alleged property damage, arising or alleged to have arisen out of the exercise or use of the Easement Area, or Easement Improvements by Second Party or any Person exercising Second Party’s rights under this Agreement, including Second Party’s contractors, employees, representatives, agents, tenants, licensees, or invitees; (B) in connection with any mechanic’s or materialmen’s lien or liens asserted, claimed or filed against the First Party Property or Second Party Property, including the Easement Area, by any contractor or subcontractor of the Second Party or any Person exercising its rights under this Agreement, including Second Party’s contractors, employees, representatives, agents, tenants, licensees, or invitees; and (C) for any fines or expenses, including reasonable attorney’s fees, incurred by First Party as a result of any violation of applicable law by Second Party or any Person exercising Second Party’s rights under this Agreement, including Second Party’s contractors, employees, representatives, tenants, licensees, or invitees, unless caused by the gross negligence or willful misconduct of its officers, directors, shareholders, members, partners, employees, agents, representatives, tenants, licensees, guests, invitees, successors and assigns.

(b) First Party shall indemnify and hold Second Party and its officers, directors, shareholders, members, partners, employees, agents, representatives, tenants, licensees, guests, invitees, successors and assigns harmless from and against any and all actual damages, liability, loss, cost and expense, including, reasonable attorneys’ fees and court costs (but excluding incidental and consequential damages, lost profits, revenues or other economic losses), in connection with any claims, causes of action, suits, litigation or other process instituted by any third party, judgments, and cost of defense: (A) for bodily injury or alleged bodily injury or death to persons, or property damage or alleged property damage, arising or alleged to have arisen out of the exercise or use of the Easement Area, or Easement Improvements by First Party or any Person exercising First Party’s rights under this Agreement, including First Party’s contractors, employees, representatives, agents, tenants, licensees, or invitees; (B) in connection with any mechanic’s or materialmen’s lien or liens asserted, claimed or filed against the First Party Property or Second Party Property, including the Easement Area, by any contractor or subcontractor of the First Party or any Person exercising its rights under this Agreement, including First Party’s contractors, employees, representatives, agents, tenants, licensees, or invitees; and (C) for any fines or expenses, including reasonable attorney’s fees, incurred by Second Party as a result of any violation of applicable law by First Party or any Person exercising Second Party’s rights under this Agreement, including First Party’s contractors, employees, representatives, tenants, licensees, or invitees, unless caused by the gross negligence or willful misconduct of its officers, directors, shareholders, members, partners, employees, agents, representatives, tenants, licensees, guests, invitees, successors and assigns .

(c) Notwithstanding the foregoing, each Party hereby releases the other Party from any claim, loss or damage to the Easement Area or Easement Improvements now or hereafter located thereon, by reason of fire or other casualty, regardless of origin, including the negligence of the other Party, to the extent insured or insurable under a standard fire and extended coverage/all-risk insurance policy (or similar casualty insurance policy).

6. Covenants Run With Land; Binding Agreement; Term; No Use Restrictions. All provisions of this instrument should be interpreted as running with the land, so that the provisions hereof are binding upon and inure to the benefit of the Parties and their respective successors and assigns, including, without limitation, any mortgagee or grantee under security deed acquiring an interest in any portion of the property that is the subject of this Agreement by reason of foreclosure, deed or assignment in lieu of foreclosure or purchase at foreclosure sale. Notwithstanding anything to the contrary contained herein, First Party and Second Party, and their respective successors in interest, shall only be obligated under this Agreement to the extent the terms hereof relate to the period during which they own the First Party Property or the Second Party Property, as applicable. The purpose of this Agreement is the grant and establishment of the easements, rights and privileges stated in this Agreement, none of which are intended to be “covenants restricting land to certain uses” for purposes of O.C.G.A. Section 44-5-60, or any similar law or statute.

7. Self-help. If either Party fails to perform its obligations under this Agreement within fifteen (15) days following delivery of written notice from the non-defaulting Party to the defaulting Party, then in addition to its other rights and remedies, the non-defaulting Party shall be entitled to cure such default and perform the obligations of the defaulting Party; provided, however, if such failure cannot through the exercise of reasonable diligence be cured within such fifteen (15) days, a default shall not be deemed to have occurred so long as the allegedly defaulting Party commences its curative efforts within such fifteen (15) day period and diligently prosecutes same to completion within a reasonable time. Within thirty (30) days following demand, the defaulting Party shall reimburse the non-defaulting Party for all actual reasonable costs and expenses (together with interest thereon at the highest lawful rate) incurred by the non-defaulting Party in connection with the cure of such default.

8. Estoppel Certificates. Upon the written request of either Party to the other Party, such other Party shall, within ten (10) days after receipt of a written request therefore, submit a certified statement in writing to the requesting Party, and any purchaser or mortgagee or proposed purchaser or mortgagee of such requesting Party: (a) that this Agreement is in full force and effect, (b) that to the knowledge of the Party so certifying, there has been compliance with all terms and provisions hereof by both Parties, and that to the knowledge of the Party so certifying, there are no defaults by either Party (or if there are any such defaults or non-compliance the Party so certifying shall state the nature of same), and (c) the amount of any expenses payable by a Party under this Agreement, and an acknowledgement that such expenses have been paid current, or a statement as to the amount of expenses owing, if any.

9. Miscellaneous.

(a) Notice. Except for legal process, which may also be served as provided by law, any notice or communication required or permitted under this Agreement will be in writing and be sent either by: (i) personal delivery service with charges billed to shipper; (ii) nationally recognized overnight delivery service (such as Federal Express or United Parcel Service) with charges billed to shipper; (iii) United States Mail, postage prepaid, registered or certified mail, return receipt requested; or (iv) electronic mail, or other telecopy transmission (i.e. Portable Document File, etc. delivered via electronic mail), in which case notice shall be deemed received when the facsimile or other telecopy or electronic transmission is received. Any notice or communication which cannot be delivered because of a failure to provide notice of a change of address as provided in this Agreement or for which delivery is refused will be considered to have been given and received on the date of attempted delivery. Any notice or communication required or permitted under this Agreement will be addressed to the Parties as stated on the signature page to this Agreement for the Party and the address of record for the Property owned by the Party in the Glynn County Tax Commissioner’s office. Any Party may change its address for notice purposes by providing written notice of a change of address to the other Party as stated in this section.

(b) Enforcement; Attorney Fees. Either Party may enforce this Agreement by an action or proceeding at law or in equity against any Person violating or attempting to violate or circumvent the requirements of this Agreement, to restrain violations, to enjoin violations, and to recover damages for violations. These remedies are distinct and cumulative remedies, and the exercise of any of them will not preclude the right to exercise any or all other rights and remedies which may be available at law or in equity. If a Party undertakes legal action to enforce any right or remedy under this Agreement, the prevailing Party will be entitled to recover from the other Party reasonable costs and expenses in connection with such legal action including, but not limited to, court costs and attorney’s fees.

(c) Governing Law; Severability; Conflicts. This Agreement will be interpreted, construed and enforced in accordance with the laws of the State of Georgia. If any provision of this Agreement, or the application of a provision to any person, is held to be invalid by a court of competent jurisdiction, the remainder of this Agreement, and the application of the provision to any person or circumstance, other than the person or circumstance to which it is held invalid, will not be affected. In the event of any conflict between any provision of any requirement of any governmental entity having jurisdiction over the Properties or any provision of this Agreement, the more restrictive provision will control.

(d) Headings. The section headings and captions of this Agreement are for the convenience and reference of the parties and in no way define, limit, or describe the scope or intent of this Agreement or any part thereof.

(e) Entire Agreement; Amendment; Interpretation. This Agreement contains the entire agreement of the Parties with respect to its subject matter, and no representations, inducements, promises or agreements, oral or otherwise, not expressly stated in this Agreement have any force or effect. This Agreement may not be amended without the prior written consent of the First Party and Second Party. Both Parties have participated, or had the opportunity to participate, equally in the drafting of this Agreement. No provision of this Agreement will be construed against or interpreted to the disadvantage of any Party by any court or other governmental or judicial authority by reason of such Party having or being deemed to have structured or dictated it.

(f) Custom or Practice; No Waiver. No failure of either Party to exercise any power or right granted by this Agreement, or to insist upon strict compliance with any obligation specified in this Agreement, and no custom or practice at variance with the terms of this Agreement, will constitute a waiver of such right or power or a waiver of the right of any such Party to demand exact compliance with its terms. No waiver of any right or obligation arising under this Agreement will be binding on either Party unless it is in writing and signed by the Party against whom enforcement is sought.

(g) Grants to Third Parties. First Party may, without the prior consent of Second Party, grant to any person, corporation, partnership, trust, or other legal entity any easement, license, or other right for the use of the Easement Area, at any time and from time to time, subject to the terms of this Agreement and provided that any such grant shall be concurrent with, and shall not unreasonably interfere with or impede the exercise of Second Party’s rights under this Agreement.

(h) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

(i) Easement Only; No Public Dedication; Matters of Record; Exhibits. This Agreement grants easements and does not convey fee simple title to nor any other interest in the Property or any other property. Nothing contained in this Agreement creates any easements or use rights in the general public or constitutes a public dedication for any public use whatsoever. The easements are private easements and no one other than the Parties and their successors and assigns are granted an easement by virtue of this Agreement. The Easement Area is subject to all matters of record. Exhibits A through C are incorporated by reference.

(l) Disclaimers and Assumption of Risk. The easements are granted in the “as is where is” condition of the Easement Area, may contain dangerous conditions. Except as expressly stated in this Agreement, neither Party has made any guaranties, warranties, or representations of any kind or character, oral or written, past or present, express or implied, with respect to the Easement Area. Use of any portion of the Easement Area by a Party, under this Agreement is at such Party’s own risk.

[Signature Pages Follow]

This Agreement is executed by First Party and Second Party as of the date set forth above.

**FIRST PARTY:**

**2163 MONTGOMERY STREET, LLC**, a Georgia limited liability company

By:

Name:

Title:

Address:

Signed, sealed and delivered on

the \_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 2023

in the presence of:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

(AFFIX NOTARIAL SEAL)

This Agreement is executed by First Party and Second Party as of the date set forth above.

**SECOND PARTY:**

**1985 PROPERTIES, LLC**, a Georgia limited liability company

By:

Name:

Title:

Address:

Signed, sealed and delivered on

the \_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 2023

in the presence of:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

(AFFIX NOTARIAL SEAL)

**EXHIBIT A**

Legal Description of First Party Property

[ ]

End of Legal Description.

**EXHIBIT B**

Legal Description of Second Party Property

[ ]

End of Legal Description.

**EXHIBIT C**

Easement Area

[ ]