

LANDSCAPE AND MAINTENANCE AGREEMENT

This Landscape and Maintenance Agreement (this "Agreement") is executed to be effective the 7 day of Septmeber 2021 ("Effective Date"), by and between SAVANNAH COMMUNITY ASSOCIATION (the "Association") and DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 10 (the "District").

RECITALS

1. The District is a political subdivision of the State of Texas operating under the provisions of Article XVI, Section 59 and Article III, Section 52 of the Texas Constitution and Chapters 49, 51, and, for limited purposes, 53, Texas Water Code, as amended, and contains the residential developments of Savannah, Artesia, and Arrowbrooke; and

2. The Association is a Texas nonprofit corporation serving the Savannah Development located within the District; and

3. The District the owner of certain property within the Savannah Development as shown on the attached Exhibit "A," which is incorporated into this Agreement and may be updated from time to time under the terms of this Agreement (the "District Property"); and

4. The Association is the owner of certain property within the Savannah Development as shown on Exhibit "A" (the "Association Property") and the Association has the obligation under its governing documents to maintain the Association Property (the "District Property" and the "Association Property" may be collectively known as the "Total Property"); and

5. As of the Effective Date, the Association is a party to a contract with a landscape service provider under which landscape maintenance services are provided to certain portions of the Savannah Development. For purposes of this Agreement, "Landscape Maintenance Services" shall mean such services including, but not limited to, mowing, trimming, edging, mulching, irrigating, fertilizing, pest control, and replacing as needed the landscaping within the property.

6. As of the Effective Date, the District was a party to a contract with a landscape service provider under which Landscape Maintenance Services are provided to certain portions of the Savannah Development.

7. The District and Association have determined it is in the best interests of the residents and property owners within the District that the Association and District formalize the rights and obligations of each party regarding the Landscape Maintenance Services provided within the Savannah Development; and

8. The District has the authority to enter into this Agreement pursuant to Section 49.213, Texas Water Code.

NOW, for and in consideration of the mutual promises, covenants, benefits, and obligations hereinafter set forth, the District and Association hereby covenant, agree and contract as follows:

ARTICLE I TERM AND TERMINATION

Section 1.01 Term. This Agreement shall be in full force and effect for a term of one (1) year from the Effective Date. At the end of the first year, this Agreement shall automatically renew for successive one (1) year terms unless either Party provides written notice to the other Party that it shall not renew the Agreement at least thirty (30) days before the end of the first term or any successive term.

Section 1.02 Termination. The Parties may agree to terminate this Agreement at any time by written mutual agreement. A party may unilaterally terminate this Agreement with or without cause upon thirty (30) days written notice to the other party; however, the agreement will continue for the remainder of the one (1) year term. In the event of termination of this Agreement, the Parties agree to cooperate in good faith in the orderly transition of landscape and maintenance services.

ARTICLE II IDENTIFICATION OF PROPERTY

Section 2.01 District Property. The District and Association acknowledge and agree that, for the purposes of this Agreement, the District Property is the District Property identified as such on Exhibit "A."

Section 2.02 Association Property. The District and Association acknowledge and agree that the Association Property is the Association Property identified as such on Exhibit "A."

ARTICLE III RIGHTS AND OBLIGATIONS

Section 3.01 District Owned and Maintained Land Except as provided for in Section 3.03 this Agreement, the Parties acknowledge that the District shall be responsible for the Landscape Maintenance Services for the tracts of land identified as "District Owned/Maintained" on the attached Exhibit "A." The level and quantity of Landscape Maintenance Services performed on the land covered by this Section 3.01 shall be at the sole discretion of the District.

The Parties acknowledge that the District Property along the southern side of Fishtrap Road and the western side of FM 1385 contains a recreational trail installed by the Association or its predecessor. The Parties agree that the Association shall be solely responsible for any irrigation facilities that serve the entirety of this recreational trail. The Parties agree that the District shall be responsible for a total of thirty-six (36) mows along such specific recreational trail per calendar year. The Association agrees to reimburse the

District on a monthly basis for the costs of eighteen (18) of such mows. The monthly amount due from the Association shall be equal to the cost of 1 ½ mows and shall be made to the District by the Association before the 5th day of every month during the term of this Agreement. Failure of the Association to make the monthly payments within 20 days of the due date shall be considered in default of this Agreement and the District shall direct its contractor to cease performance of the obligations on the recreational trail contemplated under this paragraph until the Association tenders payment to cure any default. At the beginning of the District's fiscal year if the costs of such mows have increased, the District will notify the Association of such increase and provide the new monthly payment amount.

The Parties acknowledge that the District owns certain tracts that are currently served by an irrigation meter operated by the Association. Those tracts are more formally identified by the Denton County Appraisal District as parcels 468211, 468210, and 468209 and the Association irrigation system meter (the "Irrigation Meter") is identified as service address 701-B SAVANNAH BLVD, PIN NUMBER: 00327201 by Mustang SUD. The District has future plans to construct District administrative facilities on these tracts, but until such time of construction, the tracts require irrigation service. The District agrees to reimburse the Association on a monthly basis for irrigation of the tracts referenced in this paragraph in the amount of the District's portion of the costs, which the Parties have agreed to be 35% of the monthly bill for the Irrigation Meter. The Association will invoice the District on a monthly basis, and payment will be due within thirty (30) days of presentation of the amount due.

The Parties agree that any existing trees planted by a developer or the Association inside a District greenbelt shall be maintained by the District at the District's sole discretion. The Parties acknowledge that such trees are intended to be maintained in a natural state and shall only be trimmed or pruned should the tree encroach on a resident's property or be deemed to be in a dangerous condition.

Section 3.02 Association Owned and Maintained Land The Parties acknowledge that the Association shall be responsible for the Landscape Maintenance Services for the tracts of land identified as "HOA Owned and Maintained" on the attached Exhibit "A." The level and quantity of Landscape Maintenance Services performed on the land covered by this Section 3.02 shall be at the sole discretion of the Association, but at no time shall the level of Landscape Maintenance Services be less than what is required of the Association under the Association's Bylaws and Declaration of Covenants, Conditions, and Restrictions for Savannah, including, but not limited to, the Association's obligations under Section 2.7.5 of the Declaration of Covenants, Conditions, and Restrictions for Savannah (collectively, the "Governing Documents").

Section 3.03 District Owned and Association Maintained Land The Parties acknowledge that the Association desires to provide an enhanced level of Landscape Maintenance Services to certain tracts of land owned by the District. Accordingly, the Association shall be responsible for the Landscape Maintenance Services for the tracts of land identified as "District Owned / HOA Maintained" on the attached Exhibit "A." The level of Landscape Maintenance Services performed on this land shall be at the reasonable discretion of the Association, but at no time shall the level of Landscape Maintenance Services be less than what is required of the Association on Association Property under the

Governing Documents, nor shall the level or quality of landscaping cause any District Property to become unsightly or fall into a state of overgrowth and/or disrepair. Prior to a change to the level of Landscape Maintenance Services provided under this Section 3.03 or any addition or removal of landscaping, drainage work, ground leveling, or any modification to District Property, the Association shall notify the District of such change, and the District shall have the right to review and approve or reject such change. The District will have ten (10) days from receipt of the notice under this section to notify the Association of its intent to approve or reject. Should the District fail to timely notify the Association, the change will be deemed approved by the District.

In addition to the above paragraph, except for trees planted in a District greenbelt (but outside the District right-of-way), any and all trees planted by a developer or the Association on District Property or within the District's right-of-way shall be maintained by the Association and the Association shall be responsible for any necessary maintenance, removal, or replacement of such trees. Further, the Association shall be responsible for all Landscape Maintenance Services within the District's right-of-way or along any trail system within District Property and any irrigation system located within the District's right-of-way or along any trail system within District Property shall be maintained by the Association and the Association shall be responsible for any necessary repairs or replacement of such irrigation system or landscaping.

The Association shall defend, indemnify, and hold harmless the District and any of its officials, officers, agents, and employees from and against any and all claims for damages, liability, losses and costs, including reasonable attorney's fees, which are asserted against and/or incurred by the District, but only to the extent caused by actions taken by the Association in performance under Section 3.03 of this Agreement.

To the extent allowed by law, the District shall defend, indemnify, and hold harmless the Association and any of its officers, directors, managers, and employees from and against any and all claims for damages, liability, losses and costs, including reasonable attorney's fees, which are asserted against and/or incurred by the Association, but only to the extent caused by actions taken by the District in performance under Section 3.03 of this Agreement.

Section 3.04. Performance and Insurance The Parties agree that each will ensure that any contractor that performs the Landscape Maintenance Services contemplated under this Agreement, then the Party who enters into the contract with the contractor shall require that the Contractor maintain, at all times when work is being performed or any employee of the contractor is on any property covered by this Agreement, comprehensive commercial liability insurance to protect that Party from any claim which may arise out of, or result from, the contractor's work. The Party shall ensure that it is named as an additional insured on such liability insurance policies. The policies of such liability will be written on an "occurrence" basis and will be in an amount not less than \$1,000,000 per occurrence and the contractor shall provide certificates of insurance upon request.

**ARTICLE IV
ADDITIONAL PROPERTY**

Section 4.01 Additional Property. Within 30 days following the recording of any final plat of any new subdivision within the Savannah Development, the Association and District agree to use their best efforts to supplement Exhibit "A" to this Agreement identifying and classifying the ownership of each area contained therein, and identifying each party's maintenance responsibilities for such areas.

**ARTICLE V
MISCELLANEOUS**

Section 5.01 Notices. Any notices required or permitted hereunder shall be in writing and either hand delivered, sent by overnight courier, facsimile transmittal or sent United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

If to Association: Savannah Community Association
701 Savannah Blvd.
Savannah, TX 76227
Attention: Manager
Phone: 972/346/3020

If to the District: Denton County Fresh Water Supply District No. 10
c/o Crawford and Jordan, P.C.
19 Briar Hollow Lane, Suite 245
Houston, Texas 77027
Attention: General Counsel
Phone: 713-621-3707
Fax: 713-621-3909

Any notices sent by United States mail shall be deemed received, whether or not actually received, on the second business day after the date on which the same is deposited in an official receptacle for the United States mail. If hand delivered, sent by overnight courier or facsimile transmittal, said notice shall be deemed received on the date of actual receipt.

Section 5.02 Modification. This Agreement shall be subject to change or modification only with the mutual written consent of the Parties.

Section 5.03 Entire Agreement. This Agreement constitutes the entire Agreement between the parties relative to the subject matter hereof; and there have not been and are no other agreements, covenants, representations or warranties between the parties other than those expressly stated therein or provided for herein. This Agreement replaces and supersedes any previous agreement between the parties regarding the content of this Agreement.

Section 5.04 Further Action. Each party hereby agrees that it will take all actions and execute all documents necessary to fully carry the purpose and intent of this Agreement.

Section 5.05 Binding Agreement. This Agreement shall be binding on the parties hereto and their respective successors and assigns.

Section 5.06 Representations. Each party represents and warrants that: (a) this Agreement is binding upon the and enforceable against each party in accordance with the provisions hereof; (b) such party has the authority to perform its duties and obligations under this Agreement; and (c) that the performance by such party of its duties and obligations under this Agreement will not violate any other agreement by which such party is bound.

Section 5.07 Recitals. The "Recitals" set forth in this Agreement are true and correct and are incorporated as part of this Agreement and form the basis upon which the Parties have entered into this Agreement.

Section 5.08 Exhibits. The exhibits attached to this Agreement are incorporated as part of this Agreement.

Section 5.09 Events of Default. Except as specifically provided for in this Agreement, no party shall be in default under this Agreement until notice of the alleged failure of such party to perform has been given (which notice shall set forth in reasonable detail the nature of the alleged failure and) and until such party has had a reasonable time to cure the alleged failure (such reasonable time determined based on the nature of the alleged failure but in no event longer than 30 days). If a party is in default under this Agreement, the non-defaulting party shall be entitled to all remedies available under applicable law including, but not limited to, specific performance, injunctive relief, mandamus relief, and damages.

Section 5.10 Venue. This Agreement shall be interpreted in accordance with the laws of the State of Texas, and venue for any action related to this Agreement shall be Denton County, Texas.

Section 5.11 Assignment. Neither the District nor the Association may assign this Agreement without the written consent of the other party.

Section 5.12 Governing Law. This Agreement shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties are expressly deemed performable in Denton County, Texas.

Section 5.13 Effect of Force Majeure. In the event a Party is rendered unable by force majeure to carry out any of its non-monetary obligations under this Agreement, in whole or in part, then the obligations of that Party, to the extent affected by the force majeure, shall be suspended during the continuance of the inability, provided however, that due diligence is exercised to resume performance at the earliest practical time. As soon as reasonably possible after the occurrence of the force majeure relied upon to suspend

performance, the Party whose contractual obligations are affected thereby shall give notice and full particulars of the force majeure to the other Party. The cause, as far as possible, shall be remedied with all reasonable diligence. Notwithstanding any terms to the contrary in this section, "force majeure" does not apply to the failure of a Part to timely make any payments required by the Agreement.

Section 5.14 Severability. The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section or other part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for an reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other party of this Agreement to other person or circumstances shall not be affected thereby and this Agreement shall be construed as if such invalid or unconstitutional portion had never been contained therein

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date defined herein.

District:

**Denton County Fresh Water Supply
District No. 10**

Attest:



Secretary, Board of Directors
Vice President

By: 

Name: Rob Adams

Title: President

Association:

Savannah Community Association

By: 

BRANDAN D. STORY, President

Attest:

By: 

Marger