

1 A RESOLUTION APPROVING THE TRANSFER OF CERTAIN TREE CREDITS FROM
2 FULTON COUNTY, GEORGIA TO THE CITY OF SOUTH FULTON AND THE
3 ASSIGNMENT OF THAT CERTAIN DEVELOPMENT AGREEMENT AND EASEMENT
4 AGREEMENT FROM FULTON COUNTY, GEORGIA TO THE CITY OF SOUTH
5 FULTON; AUTHORIZING THE CHAIRMAN AND THE COUNTY MANAGER TO
6 EXECUTE ANY AND ALL DOCUMENTS NECESSARY TO EFFECTUATE THE
7 TRANSFER AND ASSIGNMENTS; AUTHORIZING THE COUNTY ATTORNEY TO
8 APPROVE AS TO FORM AND MAKE MODIFICATIONS AS NECESSARY PRIOR TO
9 EXECUTION; AND FOR OTHER PURPOSES.

10
11 **WHEREAS**, Fulton County, Georgia ("Fulton County") is a political subdivision of
12 the State of Georgia, existing as such under and by the Constitution, statutes, and laws
13 of the State; and

14 **WHEREAS**, on December 1, 1999, Fulton County adopted the Fulton County
15 Tree Preservation Ordinance and Administrative Guidelines (the "Ordinance") which
16 were effective January 1, 2000 and amended in September 2014; and

17 **WHEREAS**, the Ordinance was enacted to cultivate and encourage a high level
18 of tree preservation and to preserve, maintain, and replant trees within unincorporated
19 Fulton County; and

20 **WHEREAS**, in September 2009, Cowart Lake Ventures, L.P. ("Cowart"); Walton
21 Lakes, LLC; Legacy at Walton Lakes, L.P.; and Savannah Park, LLC, (collectively the
22 "Cowart Entities") entered into a Development Agreement and an Easement Agreement
23 with Fulton County whereby the Cowart Entities agreed to construct and allow the public
24 to access a trail network and approximately 53.5 acres of greenspace with Fulton
25 County providing maintenance of the same; and

26 **WHEREAS**, the trails and greenspace that the Cowart Entities constructed as
27 part of the Development Agreement constituted a conservation easement over this
28 property and were considered by Fulton County reasonable project improvements
29 benefiting the citizens of Fulton County and the surrounding area; and

1 **WHEREAS**, because, through the conservation easement, the Cowart Entities
2 were in essence donating significantly more trees to their project than was otherwise
3 required by the Ordinance, the Cowart Entities were credited with \$3,064,018.14 in Tree
4 Replacement Fund Credits; and

5 **WHEREAS**, due to the municipalization of much of unincorporated Fulton
6 County, these credits are held by Fulton County but must be utilized in areas that are
7 now incorporated and under the jurisdiction of the City of South Fulton; and

8 **WHEREAS**, Cowart has approached the City of South Fulton concerning utilizing
9 all of its remaining tree credits maintained by Fulton County, which is calculated to be
10 \$574,108.20, for use toward projects to be constructed in the City of South Fulton; and

11 **WHEREAS**, the City of South Fulton adopted its own tree preservation
12 ordinance, found in its Code of Ordinances at § 14-6001 et seq., and is agreeable to
13 allowing these credits to be utilized for projects within its jurisdictional boundaries; and

14 **WHEREAS**, the City of South Fulton has also expressed its willingness and
15 desire to assume maintenance responsibilities for the green space and trails the Cowart
16 Entities constructed as part of the Development Agreement and for which Fulton County
17 has maintenance responsibilities pursuant to the Easement Agreement; and

18 **WHEREAS**, the Fulton County Department of Real Estate and Asset
19 Management recommends approval of transferring the remaining \$574,108.20 in
20 Cowart tree credits to the City of South Fulton for use with projects to be constructed in
21 the City and the assignment of the Development Agreement and Easement Agreement
22 to the City of South Fulton; and

23 **WHEREAS**, pursuant to the Constitution of the State of Georgia, Article 9,
24 Section 2, Paragraph I, the Board of Commissioners of Fulton County "have legislative

power to adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government for which no provision has been made by general law and which is not inconsistent with this Constitution or any local law applicable thereto.”

NOW THEREFORE BE IT RESOLVED, that the Board of Commissioners of Fulton County, Georgia, hereby approves the conveyance of \$574,108.20 in Cowart tree credits to the City of South Fulton for utilization consistent with the City of South Fulton tree preservation ordinance, and which constitutes all of the remaining Cowart tree credits that were under the control of Fulton County.

BE IT FURTHER RESOLVED, that the Board of Commissioners hereby approves the assignment of the Development Agreement and the Easement Agreement from Fulton County to the City of South Fulton.

BE IT FURTHER RESOLVED, that the County Manager is authorized to execute any necessary documents in furtherance of effectuating the conveyance of the tree credits to the City of South Fulton.

BE IT FURTHER ORDAINED, that the County Attorney is authorized to approve the conveyance documents as to form and to make necessary modifications thereto prior to execution.

BE IT FINALLY RESOLVED, that this Resolution shall become effective upon its adoption and that all resolutions and parts of resolutions in conflict with this Resolution are hereby repealed to the extent of such conflict.

SO PASSED AND ADOPTED, this ____ day of August, 2021.

21-0549

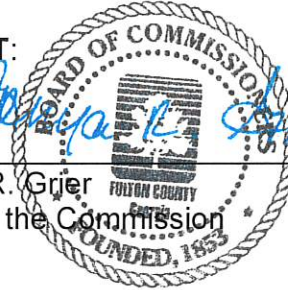
FULTON COUNTY BOARD OF
COMMISSIONERS:



Robert L. Pitts, Chairman

ATTEST:


Tonya R. Grier
Clerk to the Commission



APPROVED AS TO FORM:



Kaye Woodard Burwell
Interim County Attorney



RETURN TO:

Cross Reference To:

Deed Book 48599, Page 376,
Fulton County, Georgia Records

ASSIGNMENT OF EASEMENT
AND DEVELOPMENT AGREEMENT

THIS ASSIGNMENT OF EASEMENT AND DEVELOPMENT AGREEMENT (this "Assignment"), made and entered into as of the 16th day of August, 2021, by and between FULTON COUNTY, GEORGIA, a political subdivision of the State of Georgia ("Assignor"), and CITY OF SOUTH FULTON, STATE OF GEORGIA, a political subdivision of the State of Georgia ("Assignee").

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) cash in hand paid by each party to the other party, and other good and valuable considerations, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Assignment of Agreements. Assignor hereby assigns, conveys, transfers and sets over unto Assignee all of Assignor's right, title and interest in and to the following agreements (collectively, the "Assigned Agreements"):

- (a) Easement Agreement, dated September 16, 2009, by and between Walton Lakes, LLC, a Georgia limited liability company, Cowart Lake Ventures, L.P., a Georgia limited partnership, and Savannah Park, LLC, a Georgia limited liability company and Fulton County, Georgia, a political subdivision of the State of Georgia, recorded in Deed Book 48599, Page 376, Fulton County, Georgia Records; and

- (b) Development Agreement dated September 16, 2009, by and between The Legacy at Walton Lakes, L.P., a Georgia limited partnership, Cowart Lake Ventures, L.P., a Georgia limited partnership, Savannah Park, LLC, a Georgia limited liability company, and Walton Lakes, LLC, a Georgia limited liability company, as the "Property Owners," and Fulton County, a political subdivision of the State of Georgia.

2. Assumption. Assignee accepts the assignment of the Assigned Agreements, and Assignee hereby assumes and agrees to perform all of the obligations of Assignor under the Assigned Agreements arising from and after the date hereof.

3. Miscellaneous. Time is of the essence of this Assignment. This Assignment shall be interpreted and governed in accordance with the laws of the State of Georgia. This Assignment shall be binding upon and shall inure to the benefit of Assignor, Assignee, and their respective successors, successors-in-title, assigns, heirs, executors, administrators and representatives. The headings inserted at the beginning of each Paragraph are for convenience only and do not add to or subtract from the meaning of the contents of the Paragraph. This Assignment represents the entire and complete agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral and cannot be varied except by written agreement between the parties. Should any provision of this Assignment require judicial interpretation, it is hereby agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation hereof. Each party may rely upon a facsimile, other electronically transmitted signatures or "pdf" counterpart of this Assignment signed by the other party with the same effect as if such party had received an original counterpart signed by such other party.

4. Counterparts. To facilitate execution, this Assignment may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this Assignment to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals as of the day and year first above written.

FULTON COUNTY, STATE OF GEORGIA

Robert L. Pitts

Robert L. Pitts
Chairman, Fulton County Board of Commissioners

Signed, sealed and delivered
in the presence of:

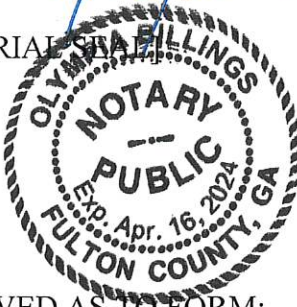
Kyle Woodard Burwell
Unofficial Witness

William B. Pitts
Notary Public

My commission expires: *4/16/2024*

Date of execution by notary
public: *8/16/2021*

[NOTARIAL SEAL]



ATTEST:

Tonya R. Grier

Tonya R. Grier, Clerk to the Commission



APPROVED AS TO FORM:

Kaye Woodard Burwell

Kaye Woodard Burwell
Interim County Attorney



By: _____