RESOLUTION R19-1050

A RESOLUTION AUTHORIZING A DEVELOPMENT AGREEMENT PERTAINING TO THE PINE VIEW SUBDIVISION; AUTHORIZING THE CITY CLERK TO ATTEST SIGNATURES AND AFFIX THE OFFICIAL SEAL OF THE CITY, AS NECESSARY; REPEALING INCONSISTENT RESOLUTIONS; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the City of Stockbridge ("City") is a municipal corporation located within Henry County, Georgia duly organized and existing under the laws of the State of Georgia and is charged with providing public services to residents located within the corporate limits of the City; and

WHEREAS, the City finds it necessary and desirable to authorize a development agreement pertaining to the Pine View Subdivision which agreement also settles certain claims related to code violations;

THEREFORE, IT IS NOW RESOLVED BY THE CITY COUNCIL OF THE CITY OF STOCKBRIDGE, GEORGIA, AS FOLLOWS:

1. **Approval of Execution.** The City Council hereby approves the development agreement attached hereto as Exhibit A and the Mayor is hereby authorized to execute said contract with such changes as are recommended by the City Attorney.

2. **Documents.** The City Clerk is authorized to execute, attest to, and seal any documents which may be necessary to effectuate the amendment, subject to approval as to form by the City Attorney.

3. **Severability.** To the extent any portion of this Resolution is declared to be invalid, unenforceable or non-binding, that shall not affect the remaining portions of this Resolution.

4. **Repeal of Conflicting Provisions.** All City resolutions are hereby repealed to the extent they are inconsistent with this Resolution.

5. **Effective Date.** This Resolution shall be effective on the date of its approval by the City Council and Mayor as provided in the City Charter.

SO BE IT RESOLVED this 26th day of March, 2019.

Anthony S. Ford, Mayor

ATTEST:

VANESSA HOLIDAY, City Clerk (SEAL)

APPROVED AS TO FORM:

MICHAEL WILLIAMS, City Attorney

EXHIBIT A

Development Agreement

STATE OF GEORGIA

COUNTY OF HENRY

DEVELOPMENT AGREEMENT

Pine View Subdivision

City of Stockbridge, Georgia

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this 11th day of April, 2019, by and between the CITY OF STOCKBRIDGE, GEORGIA, a municipal corporation chartered under the laws of the State of Georgia (hereinafter "City") and DRAPAC GROUP 32, LLC, a Delaware limited liability company in good standing and qualified to do business in the State of Georgia ("Owner"). The real property covered by this Agreement ("Property") shall consist of the tract of land described in **Exhibit "A"**, which is incorporated herein by reference.

PREAMBLE

WHEREAS, the Property has been substantially developed as described in the Final Plat recorded in Plat Book 44, Pages 103 through 108 ("Final Plat"), in the office of the Clerk of the Superior Court of Henry County, State of Georgia, as a residential subdivision known as Pine View ("Pine View" or the "Subdivision"); and

WHEREAS, the Property previously was made subject to a prior development agreement, originally dated December 21, 2001 (Notice of Execution recorded on December 31, 2001, in Deed Book 4689, Page 317, Records of Henry County, Georgia), and amended on December 9, 2002, and January 24, 2006, between the City and various parties, and included other lands in addition to the Property (the "Prior Development Agreement"); specifically, the Prior Development Agreement also included a separate residential subdivision known as Pine Grove ("Pine Grove") and a separate commercial tract ("Commercial Tract"), with all three (3) parcels controlled under a single Planned Town Development ("PTD") zoning district in effect at that time (collectively the "Prior Master Development"); and

WHEREAS, subsequent events have caused the Prior Master Development to be divided into the three (3) separate projects of Pine View, Pine Grove and Commercial Tract, all of which are now under separate and unrelated ownership; and

WHEREAS, the City and Owner have determined that the Property which comprises the Pine View Subdivision should be segregated from the operation of the Prior Development Agreement, and instead should be governed in its entirety by the new terms and conditions of this Agreement; however,

the Prior Development Agreement shall continue in full force and effect as to the Pine Grove property and the Commercial Tract property, to the extent and as applicable to each; and

WHEREAS, this Agreement, therefore, shall exclusively and solely govern the ongoing development of Pine View, separate and distinct from any existing or future agreement(s) applicable to the Pine Grove and Commercial Tract, and the Prior Development Agreement is hereby released as to its applicability to the Pine View subdivision, and replaced in its entirety as to the Pine view Subdivision, by this Agreement.

NOW, THEREFORE, for and in consideration of the covenants and agreements hereinafter stated and for the sum of ONE AND 00/100 DOLLARS ($1.00) in hand paid, the receipt and sufficiency of which is hereby acknowledged and undisputed, the parties agree as follows.

AGREEMENT

1.

Release and Replacement of Prior Development Agreement

The City and Owner hereby agree to the release of the Prior Development Agreement in its entirety to the extent it applied to the Property, and its replacement in its entirety by this Agreement as applicable to the Property, and mutually acknowledge that the terms and conditions of this Agreement shall not apply to any current or future agreements relating to Pine Grove or the Commercial Tract. This Agreement going forward contains all of the terms and conditions exclusively for the ongoing development of the Property, and is legally independent from any other existing or future agreements which may apply to Pine Grove or the Commercial Tract. The Prior Development Agreement (Notice of Execution of Development Agreement recorded in Deed Book 4689, Page 317, Records of Henry County, Georgia), as heretofore amended, is hereby released, superseded and replaced as to the Property, by this Agreement.

2.

Ongoing Conditions for Development of the Property

A) **Owner's One-Time Contribution to Pine Grove Amenity.** The Prior Development Agreement assumed that the amenities within the Pine Grove subdivision (the "Pine Grove Amenities") also would be for the benefit of Pine View residents. The City has inspected the Pine Grove Amenities and determined that repairs and maintenance are required. As consideration for this Agreement, the Owner will make a one-time contribution of Twenty Thousand Dollars ($20,000.00) for the cost of certain repairs and restoration work to the Pine Grove Amenities as described on Exhibit B (hereinafter "the Pine Grove Amenity Restoration Contribution"). In addition, the Owner shall cause its affiliate, St. Bourke Development, to manage the repairs to the Pine Grove Amenities. Upon satisfactory

completion of the restoration work, the City agrees that the Owner's Pine Grove Amenity Restoration Contribution shall satisfy any and all of the Owner's obligations, at present or in the future, with regard to the Pine Grove Amenity, or for any other matter whatsoever concerning the Pine Grove project or the Commercial Tract. This Agreement also stipulates that the Pine View subdivision, and its residents, will have no access to, nor any financial or other obligations towards, the Pine Grove Amenity or any other aspect of the Pine Grove subdivision.

B) **Release of Prior Traffic Signal Payment Obligation**. In consideration for the foregoing Pine Grove Amenity Contribution, the City hereby releases and discharges the Owner from any responsibility for the prior Pine View owner's obligation to pay the City of a total of Twenty Thousand Dollars ($20,000.00) towards the installation of a traffic signal at the intersection of Valley Hill Road and Georgia Highway 42, which signal previously has been installed without such payment being made by the prior Pine view Owner.

C) **Residential Development Conditions for Pine View.** The following conditions shall apply to the ongoing development of Pine View Subdivision:

1) The maximum number of single-family homes shall continue to be seventy-seven (77).

2) A minimum of twenty percent (20%) of the Property shall be permanently set aside as open space, which condition is met by the previously recorded Final Plat.

3) Owner shall construct, at its sole cost, a walking trail/pathway within the Property at a location and length determined by the Owner. Said pathway may have a natural surface for those portions in natural areas, and may be paved (asphalt or concrete), at the Owner's option, in other areas. The construction of the pathway shall be completed prior to the issuance of the certificate of occupancy for the fiftieth (50th) residence within Pine View.

4) Single-family detached residential structures shall be subject to the following:

a) The minimum floor area (heated space), exclusive of garages, porches, basements or breezeways, shall be 1,800 square feet.

b) **Exterior materials of the front façade and two sides** shall be brick, stone, stucco, synthetic stone or hardiplank siding, or any combination thereof. The remaining **rear/back side** may be hardiplank siding or any other materials, except that vinyl siding shall not be used.

5) The Owner may, but shall not be required to, build a recreational amenity within the Pine View Subdivision of a scope and location as determined by Owner. In such event, the Owner shall determine the final design and dimensions of the amenity components as deemed suitable to the perceived market preferences for the Property. The plans for any such amenity shall be approved by the City, and will be constructed in accordance with the standards and

criteria of the City existing at the time permits are issued, and if such an amenity is proposed by the Owner, it shall be completed prior to issuance of a certificate of occupancy for the fiftieth (50th) residence within Pine View.

6) The Final Plat provides for rear alley access to Lots 1 through 38, and Lots 50 through 77. Owner, at its option, may convert any or all of those lots from rear- to front-access garages. Where such a conversion is made, Owner shall have the option to leave the alley pavement in place or to remove the pavement. If the alley pavement is removed, the Owner shall leave in place any existing drainage system, and may revise the Final Plat to remove reference to an alley and change the Twenty-foot Access Easement ("20' AE") to a Twenty-foot Drainage Easement ("20' DE").

D) Natural Resources. Unless otherwise specifically addressed in this Agreement or otherwise already provided on the Final Plat, the future development of the Property shall comply with all applicable laws and regulations, including but not limited to those promulgated by the Georgia Department of Natural Resources and its Environmental Protection Division for Big Cotton Indian Creek. The stormwater management improvements, protection of flood plains and wetlands, as well as other applicable site development regulations applicable to the development of Pine View, were approved by the City upon the recording of the Final Plat, and as such no modifications will be required. Ongoing construction of residences and the amenity (if the Owner elects to construct one) shall be subject to the Georgia Erosion & Sediment Control Act and any other applicable laws and regulations in force at the time of such construction.

3.

Water and Sewerage Services

Water and sewerage services to the Property shall be provided by the City, or its designee, upon the payment of connection fees consistent with the City's standard, non-discriminatory fee schedule for such fees in effect when building permits are issued.

Prior to construction, Owner shall meet the requirements set forth on **Exhibit C**.

4.

Covenants Running with the Land; Release of Prior Development Agreement

The terms and conditions of this Agreement shall be binding upon each party and its successors in title and shall run with the title to the Property. This Agreement shall be deemed automatically assigned to, and binding upon, any successor developer and/or builder who acquires title to the Property from the current Owner, and upon recordation of such deed of conveyance, the original owner shall be deemed released from this Agreement. Notice of this Agreement shall be filed of record in the office of the Clerk of the Superior Court of Henry County. The recordation of such Notice of this Agreement shall operate as a matter of law to remove the applicability and effect of the Prior Development Agreement as an encumbrance upon and title exception to the Property.

5.

Date of Effectiveness of this Agreement

This Agreement shall be effective between the parties, their successors and assigns, immediately upon execution of this Agreement by all parties hereto and recordation of the Notice of Execution of Development Agreement in the Records of Henry County, Georgia (the "Effective Date").

6.

Relation to City Ordinances

The Property was developed, and its Final Plat was accepted by the City and recorded, under the zoning ordinances and the Prior Development Agreement in effect during such development. It is agreed by the parties hereto that the Property is substantially complete in its site development and therefore legally vested under the prior zoning and ordinances applicable at such time, with the only remaining development being the construction of residential homes and potential amenity structures (at the Owner's election). Such future building construction shall be governed by the applicable City ordinances in effect at the time of such construction.

7.

Amendment and Modification of Agreement

This Agreement represents the entire understanding of the parties hereto, and any amendments, changes, additions or deletions shall be made in writing upon the mutual agreement of the parties, executed by the City and the Owner, or the Owner's assigns and successors in title.

8.

Binding Effect

This Agreement shall be binding upon the undersigned, their heirs, administrators, executors, successors and assigns. The parties expressly stipulate that there are no third party beneficiaries to this Agreement.

9.

Future Changes in Development Standards

The parties stipulate that the development of the Property to date has been accomplished in accordance with the development standards applicable to such development. All development

regulations, guidelines, standards, rules, and conditions of the City in effect as of the date of this Agreement, or changes in same in the future, shall only apply to the remaining, future development of the Property, beyond the date of this Agreement, unless such provisions conflict with the express conditions herein. In such event, the conditions herein shall control.

10.

Captions and Definitions

Captions, the description headings of the separate articles, sections and paragraphs contained in this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

11.

Severability and Authority

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

Each person executing or attesting this Agreement warrants and represents that he or she is fully authorized to do so. Each person also stipulates that he or she has been afforded an adequate opportunity to read this Agreement and to consult with an attorney prior to executing the same, and that all signatures are given knowingly, voluntarily, and with full awareness of the terms contained herein. The parties also agree that this Agreement has been prepared after negotiations and, as a result, neither party may be considered the sole author thereof and it should not be construed in favor or against either party by a court of competent jurisdiction.

12.

Applicable Law

The laws of the State of Georgia shall govern the validity, interpretation, performance and enforcement of this Agreement and any dispute involving this Agreement or the Property without regard to conflicts of laws principles.

13.

Rights Cumulative

All rights, powers and privileges conferred hereunder upon parties hereto shall be cumulative but not restrictive to those given by law. No waiver of any default hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by a party shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

In the event that Owner, its successors, or its assignees fail to comply with the terms of this Agreement, the City shall be authorized to refuse occupancy permits, construction permits, development permits, and to terminate construction and development of the Property. If Owner, its successors or assignees, or the City brings an action of any nature or description under this Agreement, the prevailing party shall recover all of its costs and expenses, including reasonable attorney's fees.

14.

Stipulation and Waiver

Owner knowingly and voluntarily waives any right to challenge the validity of this Agreement, in whole or in part, in a court of competent jurisdiction. In the event the City defaults under this Agreement, the Owner shall seek only injunctive, mandamus, or other equitable relief to enforce this Agreement, and shall not seek monetary damages relief from the City in connection with this Agreement. Each party agrees to execute this Agreement and any other documents necessary to encumber the Property so as to bind all successors in interest in a similar manner.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNES WHEREOF, the undersigned parties have hereto set their hands and affixed their seals this 11th day of April, 2019.

CITY:

CITY OF STOCKBRIDGE, GEORGIA

IN WITNES WHEREOF, the undersigned parties have hereto set their hands and affixed their seals this 11th day of Apr., 2019.

CITY:

CITY OF STOCKBRIDGE, GEORGIA

By:_____

Name/Title: _____

ATTEST:

_____

City Clerk

[Seal]

APPROVED AS TO FORM:

_____

City Attorney

OWNER:

DRAPAC GROUP 32, LLC

By: _____

Name/Title: Sebastian Drapac / Manager

Signed, sealed and delivered
Before me this 11th day of April, 2019

_____
Notary Public

[Seal]

ABIGAIL LONG
NOTARY PUBLIC
Fulton County
State of Georgia
My Comm. Expired Feb. 28, 2022

By: _____

Name/Title: Anthony S. Ford
MAYOR

ATTEST:

_____

City Clerk

[Seal]

APPROVED AS TO FORM:

_____

City Attorney

OWNER:

DRAPAC GROUP 32, LLC

By: _____

Name/Title: _____

Signed, sealed and delivered
Before me this 11 day of April, 2019

_____
Notary Public

[Seal]