



# Town of Hilton Head Island Community Services & Public Safety Committee

Monday, July 26, 2021 – 9:00 a.m.  
Benjamin M. Racusin Council Chambers

## AGENDA

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Due to a scrivener's error,  
the ordinance for the beach  
tent discussion has been  
updated.

The Community Services & Public Safety Committee meeting will be held in-person at Town Hall in the Benjamin M. Racusin Council Chambers. The outside doors will be opened to the public at 8:00 a.m., seating will be limited to no more than 80 individuals.

### 1. Call to Order

2. **FOIA Compliance:** Public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act and the requirements of the Town of Hilton Head Island.

### 3. Approval of Minutes

a. Regular Meeting - June 28, 2021

### 4. Appearance by Citizens

### 5. New Business

a. Consideration of the Cultural Affairs Strategic Plan

b. Consideration of an Ordinance Prohibiting the use of certain tents, cabanas and other similar shading devices within prescribed distances of public beach access points during certain times of the year.

c. Consideration of resolutions authorizing the Town to execute a permanent storm drainage easement for the property located at 3901 Main Street, and standard drainage agreements and access, drainage and maintenance easements with the Spanish Wells/Spanish Wells Club POA, Seagrass Landing POA, Yacht Cove POA, Wells East POA, Jarvis Creek Club POA, and Bermuda Pointe POA.

### 6. Adjournment

**Please note that a quorum of Town Council may result if four (4) or more of their members attend this meeting.**



**Town of Hilton Head Island  
Community Services &  
Public Safety Committee Meeting**  
Monday, June 28, 2021, 9:00 a.m.  
**Minutes**

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In accordance with the Town of Hilton Head Island Municipal Code Section 2-5-16, this meeting is being conducted virtually and can be viewed live on the [Town's Public Facebook](#) Page. Following the meeting, the video will be made available on the [Town's website](#).

**1. Call to Order**

Chairman Harkins called the meeting to order at 9:04 a.m.

- 2. FOIA Compliance:** Public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act and the requirements of the Town of Hilton Head Island.

**3. Approval of the Agenda**

Mr. Ames moved to approve the agenda. Ms. Becker seconded. By way of roll call, the agenda was approved by a vote of 4-0.

**4. Approval of the Minutes**

- a. Regular Meeting – May 24, 2021
- b. Special Meeting – May 25, 2021

Mr. Ames moved to approve the minutes as noted on the agenda. Ms. Becker seconded. By way of roll call, the agenda was approved by a vote of 4-0.

**5. Appearance by Citizens**

Public comments concerning today's Agenda items were to be submitted electronically via the Town's Open Town Hall Portal. The public comment period closed Friday, June 25, 2021 at 4:30 pm. At the conclusion of the Open Town Hall, there were no citizen comments. One citizen directly emailed the Town Clerk specific comments pertaining to the meeting and these were submitted to the committee. They are attached. Citizens who wished to speak at the Meeting had to call in no later than noon on Friday June 15, 2021. No citizen signed up to speak at this meeting.

**6. New Business**

- a. Burkes Beach Road Parking

The discussion started with a PowerPoint presentation (attached) regarding On-Street Parking at Burkes Beach Road by Jeff Buckalew, PE, and Interim Director of Infrastructure Services. The report began with recommendations from staff to re-open the existing 13 metered spaces at the end of Burkes Beach Road to the public. Staff also recommended the parking alongside the shoulder of Burkes Beach Road was to remain prohibited. Last fall, Our Plan was to include this in the capital improvements project and fund it in FY22. Since the Town is making improvements to Chaplin Park, staff has decided to include Burkes Beach Road in the Parks Improvement Plan. Staff will also be looking at a proper turn around at the end of Burkes Beach Road.

Marc Orlando, Town Manager, agreed that there is a need for some immediate fixes. Suggestions included to leave the shoulder as no parking, allow visitors to park in the metered spaces and signage improvements for clarity. It was recommended that the two parking spaces closest to the beach remain as no parking which would allow for a temporary turn-around area. Regular enforcement at peak times would be necessary to make sure visitors are using the parking spaces while respecting the neighborhood, the beaches, and the park. The long-term fix would be to include Burkes Beach Road as part of the Chaplin Park Master plan.

There was further discussion with the other Committee members. The number of cars driving in and out of that area is quite large and there is considerable congestion at peak times. There was additional conversation about the safety issues regarding backing-in and out of the metered spots as well as the turn-around area at the end of Burkes Beach Road. The Committee members agreed that opening the metered parking spots would continue to create a safety issue and this parking should be eliminated. There is parking off Castnet Drive and this would give additional parking to those using the beach.

Chairman Harkins made a motion to maintain no parking on Burkes Beach Road and the metered parking spaces with direction to the Town Manager to establish an appealing and safe, temporary solution with the addition of upgraded signage in the area. It was suggested that, moving forward, the Town accelerate a Beach Master Plan to manage the entire Island's beach access points and parking areas.

Ms. Becker moved to approve. Mr. Ames seconded. With no further discussion and by way of roll call, the motion carried by a vote of 4-0.

## **7. Adjournment**

By way of unanimous vote, the meeting was adjourned at 9:40 AM

### **Approved:**

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Phyllis Deiter, Assistant Town Clerk

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William D. Harkins, Chairman



# On-Street Parking Burkes Beach Road

June 28, 2021

## Community Services and Public Safety Committee

Jeff Buckalew, PE, Interim Dir. of Infrastructure Services

Town of Hilton Head Island



# Recommendation

- Staff recommends the existing metered spaces be re-opened to the public and the on-street (shoulder) parking along Burkes Beach Road remain prohibited.



# Past Discussion

- 4-7-20: TC passed an emergency ordinance to allow for towing, to include the on-street parking on Burkes Beach Road.
- 4-21-20: TC passed by way of resolution an affirmation to keep the public beach access and parking closed, including Burkes Beach Road, through 4.30.20.
- 4.28.20: TC discussed the above and took action to table any further decisions about the on-street parking until the 5.12.20 meeting.
- 5.12.20: TC passed the second reading of code updates related to parking/towing in Town limits. This ordinance did not specifically speak to Burkes Beach Road, but does declare unlawfully parked vehicles as a public nuisance, and allows for the towing of such vehicles.
- 5.12.20: Council was presented a staff recommendation to open up all public beach access and parking, to include Burkes Beach Road. Took action (6-1) to open the public beach access and parking, but to leave Burkes Beach Road parking blocked off. No formal resolution was considered.
- 10.20.20: TC took action (7-0) on a recommendation from the Community Services & Public Safety Committee to continue to prohibit parking on Burkes Beach Road. Staff was to look for a more permanent means of blocking off the on-street parking. No formal resolution was considered, this was based on a recommendation forwarded from the CSPS Committee.





# Existing Conditions



# Next Steps – Permanent Solution

- Chaplin Park Improvements - project scope shall include Burkes Beach Road
  - Pedestrian facilities along Burkes Beach Road
  - Turn-around at the end of Burkes Beach Road
  - Additional Parking
  - Wayfinding Signage Plan
  - Pedestrian facilities along Singleton Beach Drive
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- Burkes Beach Road is a County R/W



# Questions?





## MEMORANDUM

**TO:** Marc Orlando, ICMA-CM, Town Manager  
**FROM:** Jenn McEwen, Director of Cultural Affairs  
**VIA:** Diane Busch, Staff Attorney  
**RE:** Resolution for the Office of Cultural Affairs Strategic Plan  
**DATE:** June 16, 2021  
**CC:** Joshua A. Gruber, Esq., Deputy Town Manager  
Angie Stone, Assistant Town Manager

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**Recommendations:** The Mayor of the Town of Hilton Head Island (hereinafter, the “Town”) has been invited by Office of Cultural Affairs (hereinafter, “OCA”) and the Arts Council of Hilton Head (hereinafter, “Arts”) to approve the adoption of a strategic plan Resolution to address priorities for the OCA. Staff recommends approving the Resolution.

**Background:** The mission of OCA is to promote and support Hilton Head Island as a vibrant and diverse island that is celebrated locally, regionally and nationally for the ways in which arts and culture enrich and enhance the community. OCA utilizes a broad definition of arts and culture, which includes fine arts, but also creative expressions of traditional, ethnic, folk art, music, the history and heritage of the island, landmarks, parks, and natural resources and sites. The goal of OCA is to set forth the Town’s definition of arts and culture to encompass and reflect our community’s customs, beliefs and traditions.

In 2018, after six months of development with the Culture and Arts Advisory Committee, Town Council adopted a three-year strategic plan for the Office of Cultural Affairs. In fall of 2020, the volunteer members of the Arts Council of Hilton Head Advisory Committee worked on identifying items of interest in support of our three Creative Economy pillars: marketing, education and quality of life.

The OCA then took that product and worked with a facilitator from Carna Consulting over four work sessions to refine those items of interest into five overarching goals and detailed specific and measurable strategies to accomplish these goals over the next three years beginning FY 2022. The five strategic areas identified by the Arts Council of Hilton Head plan, adopted on February 22, 2021, as goals for the arts and cultural sector, include: marketing and communication; educational goals for the community; equity, diversity, and inclusion goals; public art goals; and National Arts and Humanities Month/Crescendo goals.

# Office of Cultural Affairs Strategic Plan

February 22, 2021

## **Mission Statement**

To promote and support Hilton Head Island as a vibrant cultural destination that enriches our diverse community.

## **Our Vision for the Future**

Hilton Head Island is recognized as a vibrant & distinctive destination known for its unique arts & culture assets that serve a diverse community and create a richer quality of life.

## **We Value**

- A community that celebrates & supports its artists and culture organizations
- Hilton Head Island's unique sense of place
- Accessibility to & awareness of cultural assets
- Life-long cultural learning
- Diversity & inclusion
- The contributions of the Gullah community & its rich local history
- The environment & natural resources
- Collaboration between cultural assets and other community interests

## **What will be different because of us?**

- Hilton Head Island will be a destination of choice for artists as well as art and culture lovers
- Arts and culture organizations will be strengthened because of professional development opportunities provided by the Office of Cultural Affairs
- There will be networking opportunities for artists and cultural administrators
- Resources will grow for artists and cultural organizations due to our promotional efforts
- Hilton Head Island's Public Art offerings, both temporary and permanent, will be curated in a more intentional and frequent way

# OVERVIEW OF OUR WORK

## Marketing and Communications

- Cultural/heritage tourism campaign(s)
- Deeper partnership with Chamber of Commerce
- General marketing and communications initiatives on behalf of the arts & culture community

## Education Activities

- Stronger partnerships with Public Schools to provide additional experiences for and engagement from students
- Annual professional development opportunities for artists and cultural administrators on the Island

## Diversity and Inclusion

- Annual professional development training opportunities in EDI for Island cultural orgs Develop organizational EDI policy and training materials for arts & culture organizations
- Support Gullah cultural preservation initiatives
- Support Latinx heritage initiatives

## Public Art

- Manage annual temporary sculpture exhibit along Shelter Cove pathway
- Identify location for small permanent pathway art exhibit
- Establish partnerships and funding to support new projects
- Grow impact and audience for annual Lantern Parade event.

## Annual Crescendo Celebration

- Expand marketing initiatives to promote annual Crescendo month-long celebration of the arts and culture
- **Develop more signature events for Crescendo**



### 3 Year Marketing & Communications Goals

#### Fiscal Year 2021/22

- Analyze success of Augmented Reality pilot program including number of hits and feedback on content. Create content for additional history sites if data is encouraging.
  - Bill & Jenn/**January 2022**
- Increase website visitors, e-newsletter list and social media followers by 10%
  - Jenn/**June 2022**
- Work with Chamber and Hilton Head History to create Heritage Tourism Marketing Campaign to launch prior to 250th Anniversary of the American Revolution (7/2026)
  - Jenn/**June 2022**
- Work with Courtney Young to assist in Gullah branding and promotion for the state of South Carolina.
  - Jenn/**June 2022**
- Promote public art offerings and expansion for regional and national media coverage to define HHI as an arts destination.
  - Jenn/**June 2022**

#### Fiscal Year 2022/23

- Launch Heritage Tourism Campaign with the Chamber & Hilton Head History
  - Jenn/**Dec 2022**
- Expand the Augmented Reality program to include all public art sites.
  - Bill & Jenn/**June 2023**
- Increase website visitors, e-newsletter list and social media followers by 10%
  - Jenn/**June 2023**
- Review successes of Gullah branding and promotions and determine next steps in expanding and growing.
  - Jenn/**June 2023**

#### Fiscal Year 2023/24

- Increase website visitors, e-newsletter list and social media followers by 10%
  - Jenn/**June 2024**
- Track results of Heritage Tourism Marketing Campaign and if successful use to launch similar Arts/Cultural Tourism Marketing Campaign.
  - Jenn/**June 2024**

Red projected completion date/Blue updates

### 3 Year Education Goals

#### Fiscal Year 2021/22

- Partner with the Arts Center and ISCA to expand current in-schools artist-in-residency program.
  - Miho/August 2021
- Commission local artists to paint murals at IB & HHHS.
  - Jenn/Sept 2021
- Document a proposal for subsidizing the \$25 student fee for arts participation and present to school leadership to see if there is support to move forward in identifying resources.
  - Jane & Dan/January 2022
- Offer professional development training seminar for arts & culture organizations – 1 annually based on survey results.
  - Jenn, Jane & Jeffrey/May 2022

#### Fiscal Year 2022/23

- Research funding opportunities for in-schools artist-in-residency program.
  - Miho & Jenn/August 2022
- Research possibility of facilitating grade level Island Culture Project including cost, arts & culture organization participation, any school hurdles, and potential funding avenues. The idea is for every student on the island (public & private) to experience the same cultural field trip for each grade.
  - Carol/Miho/Linda Develop and distribute survey to arts & culture organizations to determine what programs are in place by Sept 2022
  - Jenn hold conversations with local school administrators to determine feasibility by Sept 2022
  - Carol/Linda/Miho Explore funding mechanisms for transportation & organization charges for field trips by Dec 2022
- Survey A&C organizations and offer professional development training seminar for arts & culture organizations on survey results.
  - Jenn, Jane & Dan/May 2023

#### Fiscal Year 2023/24

- Review survey results from pilot artist-in-residency program to determine expansion.
  - Jenn/July 2023
- Develop concept proposal for Island Culture Project and present concept to curriculum leaders at school district for feedback. Take feedback and draft a pilot program for next school year.
  - Carol, Linda, Miho & Jenn/August 2023 for presentation; June 2024 for pilot implementation in Fall 2024
- Review feedback from previous professional development seminars to determine content and frequency for offerings moving forward.
  - Jenn/September 2023

Red projected completion date/Blue updates

### 3 Year Diversity & Inclusion Goals

#### Fiscal Year 2021/2022

- Offer annual EDI training to arts & culture organizations building off of feedback from initial training in March 2021
  - Jenn & Jane/**March 2022**
- Support Gullah preservation initiatives by supporting Gullah Museum mural installation
  - Jenn & Louise/**Sept 2021**
- Work with leaders in the Latinx community to develop a database of local Latinx artists of all genres
  - Jenn/**May 2022**
- Develop an organizational EDI self-assessment workbook and guide including EDI policy templates
  - Jenn, Jane, Jeffrey/**June 2022**

#### Fiscal Year 2022/2023

- Survey organizations to determine content needs and scheduling for annual EDI training seminars
  - Jenn & Jane/**March 2023**
- Review feedback from EDI workbook and offer more online resources through CultureHHI.org
  - Jenn, Jane & Jeffrey/**March 2023**
- Support Gullah cultural preservation by working with the Gullah Museum on the restoration of one of its exhibitions.
  - Jenn & Louise/**June 2023**

#### Fiscal Year 2023/2024

- Review previous EDI work to determine future goals
  - Jenn, Jane, Jeffrey/**Sept 2023**
- Survey organizations to determine content and scheduling for annual EDI training seminars
  - Jenn & Jane/**March 2024**
- Introduce Seats for Citizens program (actual name tbd) to facilitate getting empty seats to performances filled with students, educators, community volunteers, and low-income families.
  - Jenn & Jeffrey/**June 2024**

Red projected completion date/Blue updates

### 3 Year Public Art Goals

#### Fiscal Year 2021/22

- Create small permanent pathway exhibit
  - Jenn & Michael/**October 2021**
- Grow impact and audience for annual Lantern Parade event by 10% over 2019 attendance
  - Jenn/**November 2021**
- Manage annual temporary sculpture exhibit along Shelter Cove pathway expansion
  - Jenn & Michael/**October 2021**

#### Fiscal Year 2022/23

- Grow impact and audience for annual Lantern Parade event by 10% over previous year's attendance
  - Jenn/**November 2022**
- Manage annual temporary sculpture exhibit along Shelter Cove pathway expansion
  - Jenn & Michael/**October 2022**
- Research funding opportunities for a local Percent for Art program
  - Jane & Michael/**January 2023**

#### Fiscal Year 2023/24

- Grow impact and audience for annual Lantern Parade event by 10% over previous year's attendance
  - Jenn/**November 2023**
- Manage annual temporary sculpture exhibit along Shelter Cove pathway expansion
  - Jenn & Michael/**October 2023**
- Analyze research on Percent for Art program and draft proposal for potential solution and begin advocacy
  - Jane & Michael/**March 2024**

Red projected completion date/Blue updates

### 3 Year Crescendo Goals

#### Fiscal Year 2021/22

- Grow Crescendo brand recognition through strategic media buys and promotions in 50+ mile markets
  - Jenn/October 2021
- Grow Crescendo attendance through local and tourism marketing initiatives
  - Jenn & Crescendo Committee/October 2021
- Create a new signature event for Crescendo
  - Jenn & Crescendo Committee/October 2021

#### Fiscal Year 2022/23

- Grow Crescendo brand recognition through strategic media buys and promotions in 50+ mile markets
  - Jenn/October 2022
- Grow Crescendo attendance from previous year through local and tourism marketing initiatives
  - Jenn & Crescendo Committee/October 2022
- Create a new signature event for Crescendo (total of 3 including Lantern Parade)
  - Jenn & Crescendo/October 2022

#### Fiscal Year 2023/24

- Grow Crescendo brand recognition through strategic media buys and promotions in 50+ mile markets
  - Jenn/October 2023
- Grow Crescendo attendance from previous year through local and tourism marketing initiatives
  - Jenn & Crescendo Committee/October 2023
- Draft long-term strategy for the future of Crescendo (next 3 years)
  - Jenn & Crescendo Committee/December 2023

Red projected completion date/Blue updates

## Ongoing/Year-Round Work & Activities

- PR & Media Relations
- Grant Research & Writing
- Curating & Installation of Town Hall & Island Rec Gallery Halls
- Networking local business partnerships to support arts & culture activities
- Identifying outside funding for major projects and initiatives
- Speaking engagements
- Supporting Town leadership with new arts & culture opportunities
- Communicating arts and culture initiative, objectives, and best practices with Town Council, town staff, and other committees
- Continue to work with Chamber & VCB to represent Arts & Culture in tourism marketing initiatives and materials
- Managing the Town's Public Art Collection & Public Art Installations
- Provide support to external public art exhibits and partnerships such as at HHH
- Support Mitchelville and Coastal Discovery Museum efforts
- Advocate for initiatives toward creating a Cultural Arts District



# TOWN OF HILTON HEAD ISLAND

**TO:** Josh Gruber, *Deputy Town Manager*  
**FROM:** Diane Busch, *Staff Attorney/Prosecutor*  
**DATE:** June 7, 2021  
**SUBJECT:** Proposed Amended Beach Tent, Canopy, Shade Structures Ordinance

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**Recommendation:** Staff recommends that Town Council consider additional provisions to the beach Code regulating the time and location where certain types of shading devices may be permissibly utilized on the beach as set forth herein in order to maintain the highest level of public safety.

**Background:** In the summer of 2020, Community Services Associates, the property management company engaged to manage the Sea Pines Resort, brought to the attention of the Town challenges they were observing as a result of increased visitors to the beaches, bringing with them an increased number of beach tents, canopies, and shade devices. Early in the spring, 2021, beach season, members of the public also brought the issue to the attention of the Town. Town staff working on the beaches noticed the same trends and potential safety hazards. Particularly at times of high concentrations of people being present on the beach and in close proximity to the public beach access areas. The issues that arose include the following:

1. Tents, canopies, and other shade devices, whether tethered or affixed by their frames to the sand, impede the ability of lifeguards, other authorized personal, and emergency services personal to navigate and access the beaches;
2. These devices may also impede the ability of lifeguards to view the beach and water, which interferes with their ability to spot individuals who may need aid; and,
3. Finally, these devices, particularly when the wind intensifies, have a propensity to become airborne, adding further risk to beach goers from being struck.

The tents and canopies popular in the marketplace add a level of crowd and clutter to the beach which makes it impossible for the guards to maintain safety from historical issues such as tide and inexperienced swimmers. The shade coverings at issue are often 10'x10' or better, many of them are designed to attach to the sand via tethers pieces of fabric, at each corner, further impeding vision and access. Shading devices are still necessary on the public beaches for personal health purposes. Therefore, umbrellas that are not greater than 7 feet 6 inches in diameter shall be permitted at all times on the public beaches. Tents, cabana or other similar style shading devices shall not be permitted within 100 feet of a designated public beach access point during the time of Memorial Day to Labor Day.

Town Staff considered recommending such tents be permissible only behind the stand locations, yet determined the measure would not be sufficient. Because the beach shortens as the tide moves in, placement of the stands change throughout the day, which would mean constant tent placement changes.

**Summary:** The impact of the devices discussed above jeopardizes the public safety of beach goers to the Town of Hilton Head Island beaches. Staff recommends that Town Council adopt regulations setting forth the time and location where certain types of shading devices may be permissibly utilized on the beach in order to maintain the highest level of public safety.



**ORDINANCE NO. 2021-**

**PROPOSED ORDINANCE NO. 2021-**

**AN ORDINANCE TO AMEND CHAPTER 1 OF TITLE 8 (BEACHES, WATERWAYS, RECREATIONAL AREAS, AND ARTS), OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA; TO AMEND SECTIONS 8-1-112 AND 8-1-211, TO PROHIBIT CERTAIN SHADING DEVICES ON THE BEACH; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, the Town Council of the Town of Hilton Head Island did previously adopt Chapter One (1) of Title 8 of the Municipal Code of the Town of Hilton Head Island to regulate use of the beaches; and

**WHEREAS**, the Hilton Head Island beaches are a source of great recreational benefit and enjoyment for the many residents and visitors who regularly utilize the public beach areas; and

**WHEREAS**, during the period of time from Memorial Day through Labor Day, Hilton Head Island beaches can attract a sizable number of individuals who all desire to utilize the public beach; and

**WHEREAS**, Town Council finds that the proliferation of large beach tents, cabanas or other similar devices on the beach interferes with the ability of lifeguards and other public safety personnel to have an unobstructed view of the beach and waters near the beach, resulting in increased risks to beachgoers; and

**WHEREAS**, Town Council finds that the proliferation of large beach tents, cabanas or other similar devices on the beach interferes with the ability of lifeguards and other public safety personnel to quickly and safely navigate all areas of the beach; and

**WHEREAS**, Town Council finds that large beach tents, cabanas or other similar devices, whether attended or unattended, can become airborne in the wind that is prevalent on the beach, and that such devices present a risk to beach goers of harm; and

**WHEREAS**, Town Council desires to amend Chapter One (1) of Title 8 of the Municipal Code of the Town of Hilton Head Island to prohibit non-traditional shading devices on the beach.

**NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA; AND IT IS HEREBY ORDAINED BY THE AUTHORITY OF THE SAID COUNCIL:**

**NOTE: Underlined and bold-face typed** portions indicate additions to the Code and Provisions with a ~~strickethrough~~ shall be deleted from the Code.

**Section 1. Amendment.** That Section 8-1-112 of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby amended as follows:

Sec. 8-1-112. – Definitions.

Chapter 1 - BEACHES

Sec. 8-1-112. - Definitions.

For the purposes of this chapter, the following terms, phrases, words and their derivations shall have the meaning given herein:

- (1) *Beach* shall mean that area lying between the low water mark of the Atlantic Ocean, commencing at Port Royal Sound at the southern shore of Fish Haul Creek and the first property line of property lying closest in proximity to the water, hence southward along the Atlantic Ocean to Port Royal Sound at Port Royal Beach Club.

Additionally, "beach" shall mean that area lying between the low water mark of the Atlantic Ocean, commencing at Port Royal Sound at Port Royal Beach Club and the first property line of property lying closest in proximity to the water, hence southward along the Atlantic Ocean to the southern boundary of Tower Beach Club at Calibogue Sound, and shall extend out from the mean low water mark for a distance of one hundred fifty (150) yards into the water.

Additionally, "beach" shall mean that area lying between the low water mark of the Calibogue Sound, commencing at the southern boundary of Tower Beach Club and the property line of property lying closest in proximity to the water, hence northward along the Calibogue Sound to the southern shore of Braddock Cove at Calibogue Sound and shall extend from the mean low water mark for a distance of seventy-five (75) yards into the water.

- (2) *Boat* shall mean any watercraft, wind surfer, including sea planes when not airborne, sail boat, "jet ski", "aqua-trike" or similar type of watercraft.
- (3) *Designated area* shall be defined as any portion of the beach or areas between the setback line (as established by SC Code of Laws 48-39-280(B)) and the landward barrier line (both non-single family and single family development) designated by the Town Council for a special use (swimming, surfing, beaching of boats, etc.).
- (4) *Designated swimming areas* shall be the following sections of the beach described as follows: Coligny Circle area, from the northern boundary of the Breakers to the southern boundary of the Holiday Inn. For the town's public boardwalk at Alder Lane Beach Park, the designated swimming area shall include all lands seaward of the mean high-water line and within one hundred (100) feet on either side of the centerline. For the town's public boardwalk at Driessen Beach Park, the designated swimming area shall include all lands seaward of the mean high-water line and within four hundred (400) feet on either side of the centerline. For the town's public boardwalk at Folly Field Beach Park, the designated swimming area shall include all lands seaward of the mean high-water line and within one hundred (100) feet north of the centerline and two hundred (200) feet south of the centerline. For the Town's Islanders Beach Park, the designated swimming area shall include all lands seaward of the mean high-water line within two hundred (200) feet north of the centerline and one hundred (100) feet south of the centerline.
- (5) *Float* shall mean any nonmotorized raft, inner tube or similar structure designed for recreation purposes made of a rubber, plastic or other soft material.
- (6) *Motorboat* shall mean any boat or other type of vessel, which is propelled by any type of electric, internal combustion or other type of engine.
- (7) *Stunt kite* shall mean any kite which is capable of being manually maneuvered to perform flight patterns, to include rapid ascent and descent and various other gyrations.
- (8) *Dune or dune system* shall mean one (1) or a series of hills or ridges exhibiting varied topography, generally running parallel to the beach of wind-blown sand or one (1) or a series of hills or ridges of sand resulting directly or indirectly from restoration or beach renourishment, all of which may or may not be anchored by vegetation (e.g., sea oats) and is in the vicinity of the beach.
- (9) *Primary ocean front sand dunes* shall mean those dunes which constitute the front row of dunes closest to the Atlantic Ocean.
- (10) *Alcoholic liquors* shall mean any spirituous malt, vinous, fermented, brewed (whether lager or rice beer) or other liquors, or any compound or mixture thereof, by whatever name it is known, which contains alcohol and is used as a beverage.
- (11) *Leash* shall mean a chain, rope, strap or electronic device for leading or holding an animal in check.
- (12) *Designated water sports area* shall be the following section of the beach described as follows: For Collier Water Sports Park, designated water sports area shall include all lands seaward of the mean high water line from the southern boundary of the Folly and extend four hundred (400) feet to the south.

- (13) *Personal property* shall mean but is not limited to towels, tents (including tent frames), cabanas, umbrellas and other shading devices, beach chairs and other furniture, picnic tables, tiki huts, volleyball nets, hammocks, floats, sailboards, surfboards, kites, unpermitted boats as defined under sec. 8-1-611, beach toys, grills, nets, coolers, kayaks, general items for beach recreation, or similar items.
- (14) Umbrella shall mean a collapsible circular shade consisting of natural or synthetic fabric shade stretched over hinged ribs radiating from a central pole, with or without grounding lines or ropes with a diameter of no more than seven (7') feet six (6") inches.**
- (15) Shade Structure shall mean any device, other than an Umbrella, used or intended to be used to shade occupants from direct sunlight, wind or rain, whether partially or fully enclosed, mounted on one or more than one support legs or poles, with or without grounding wires or ropes, including but not limited to tarps, tents, cabanas or pavilions.**
- (16) **Designated Beach Access Areas shall mean the beach front, one hundred (100) feet, measured in both directions from the center of the beach access, for a total of two hundred (200) feet from the center line of the beach access point, in the following locations:**
- a) Alder Lane Beach Access, 2 Woodward Avenue;**
  - (b) Burkes Beach Access, 60 Burkes Beach Road;**
  - (c) Coligny Beach Park, 1 Coligny Circle;**
  - c) Driessen Beach Park, 64 Bradley Beach Road;**
  - d) Fish Haul Beach Park, 124 Mitchelville Road;**
  - e) Folly Field Beach Park, 55 Starfish Drive;**
  - f) Historic Mitchelville Freedom Park, 228 Beach City Road;**
  - f) Islanders Beach Park, 94 Folly Field Road; and,**
  - g) Sea Pines Beach Club, 87 North Sea Pines Drive.**
- (16) **Designated Beach Access Areas shall mean the beach front, one hundred (100) feet, measured in both directions from the center of the beach access, for a total of two hundred (200) feet from the center line of the beach access point, in the following locations:**
- a) Alder Lane Beach Access, 2 Woodward Avenue;**
  - (b) Burkes Beach Access, 60 Burkes Beach Road;**
  - (c) Coligny Beach Park, 1 Coligny Circle;**
  - c) Driessen Beach Park, 64 Bradley Beach Road;**
  - d) Fish Haul Beach Park, 124 Mitchelville Road;**
  - e) Folly Field Beach Park, 55 Starfish Drive;**

- f) Historic Mitchelville Freedom Park, 228 Beach City Road;*
- f) Islanders Beach Park, 94 Folly Field Road; and,*
- g) Sea Pines Beach Club, 87 North Sea Pines Drive.*

**Section 2. Amendment.** That Section 8-1-211 of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby amended as follows:

Sec. 8-1-211. Unlawful activities enumerated.

In order to assure the public health, safety, and welfare of all individuals using the beaches within the town, it shall be unlawful for any person to do any of the following activities on the beaches within the town:

- (1) *Vehicles prohibited.* The driving or operating of any motor vehicle of any kind or nature on the beach within the town; provided, however, that governmental vehicles operated while cleaning or working on the beach, law enforcement vehicles, emergency vehicles, or vehicles operating pursuant to a duly granted permit from the town shall be exempt from the application of this section. In addition, individuals who have physical handicaps 1) which are recognized by state law, and 2) which would otherwise preclude their use and enjoyment of the beach, may drive on the beach an appropriate small open motorized vehicle designed to transport one such handicapped individual, at speeds not in excess of ten (10) miles per hour.
- (2) *Operation of motorized watercraft (including, but not limited to, jet skis, motorboats, etc.).* The operation, anchoring or launching of motorized craft is prohibited within the police jurisdiction of the town, except that motorized watercraft (excluding jet skis, wave runners and boats of their class) shall be permitted to operate within the police jurisdiction of the town from that area commencing at the southern boundary of Tower Beach Club, hence northward along the Calibogue Sound to the southern shore of Braddock Cove at Calibogue Sound and extending from the mean low water mark for a distance of seventy-five (75) yards into the water. Authorized emergency watercraft shall not be prohibited from operation, anchoring or launching within the police jurisdiction of the town.
- (3) *Para-sailing.* No para-sailing operation shall be permitted within the police jurisdiction of the town.
- (4) *Sand-sailing.* The operation of a sand sailor or other wind powered vehicle on the beach during the hours of 10:00 a.m. to 6:00 p.m. from April 1st through September 30th of each year.
- (5) *Kites.* All kites will be under manual control. The use of "stunt" kites is prohibited in designated swimming areas. Elsewhere, the use of stunt kites is prohibited between the hours of 10:00 a.m. to 6:00 p.m. from April 1st through September 30th of each year.
- (6) *Glassware.* All forms of glassware are prohibited on the beach and in the water.
- (7) *Sleeping on beach after midnight.* Sleeping by persons on the beach between the hours of midnight and 6:00 a.m.

- (8) *Animals.* Except as provided herein, no person shall bring or allow any dog, or any other animal on the beach that is not at all times on a leash between the hours of 10:00 a.m. and 5:00 p.m. from April 1st through the Thursday before Memorial Day weekend and from the Tuesday after Labor Day weekend through September 30th. No person shall bring or allow any dog, or any other animal, on the beach between the hours of 10:00 a.m. and 5:00 p.m. from the Friday before Memorial Day weekend through the Monday of Labor Day weekend. No person shall bring or allow any dog or any other animal on the beach that is not on a leash or under positive voice control of the responsible person between 5:00 p.m. and 10:00 a.m. from April 1st through September 30th. No person shall bring or allow any dog or any other animal on the beach that is not on a leash or under positive voice control at any hour from October 1st through March 31st. Any violation of the provisions hereof may result in the owner of the animal being charged with a misdemeanor and the animal being seized by the appropriate animal control officer or law enforcement officer.

No person shall permit any excrement from any animal under that person's control to remain on the beach but shall dispose of same in a sanitary manner.

From April 1st through the Thursday before Memorial Day weekend and from the Tuesday after Labor Day weekend through September 30th of each year, dogs or any other animal, other than seeing-eye dogs, shall not be allowed in any designated swimming area unless on a leash and walking through the area between 10:00 a.m. and 5:00 p.m.

- (9) *Horses on the beach.* The riding or driving of horses on the beach except that an annual marsh tacky race, sponsored by the Native Island Business and Community Affairs Association or the Coastal Discovery Museum, is permitted to be conducted on the beach.
- (10) *Marine and wildlife.* In addition to any other applicable state or federal laws, no person shall physically harm, harass, or otherwise disturb any sea turtle, its eggs or hatchlings, any sea bird, its eggs or young, or any other beach fauna.

Beached or stranded sea turtles, whales, or dolphins shall be reported immediately to the proper authorities.

- (11) *Shark fishing.* The baiting or fishing for shark from the beach or inside of an area four hundred (400) yards from the water's edge along the beach.
- (12) *Fires.* Building fires for any purpose other than cooking. Fires for cooking purposes shall be limited to portable liquid fueled cooking stoves.
- (13) *Fireworks discharge.* The discharging of fireworks on the beach, except by permit from the town manager for planned fireworks displays.
- (14) *Disturbing the public peace.* It shall be unlawful for any person to attempt to attract the attention of the public to any political or commercial activity by the use of a loudspeaker or other sound amplification device, or to otherwise unreasonably disturb the peace of any person on the beach.
- (15) *Indecent exposure.* Nudity is prohibited on the beach.

- (16) *Disorderly conduct.* Public drunkenness or other disorderly conduct is prohibited on the beach.
- (17) *Commercialization.* No commercial activity shall be undertaken on the beach on [or] in the waters within the jurisdiction of the town, including the sale, solicitation or offer for sale of any product, real estate or real estate interest, service or activity, the rental or offer of rental of any real or personal property, the distribution of any material, handouts, bills, promotional brochures or similar items, except in conformity with the provisions of this chapter. (See Article III, "Franchising".) Except that an event to celebrate the anniversary of the sighting of Hilton Head Island or the anniversary of the incorporation of the town, or both, which is approved by the town, is permitted to be conducted on the beach at the approved location and time.
- Any person proposing to operate any commercial enterprise on private property contiguous to the beach shall be subject to all applicable provisions of this municipal code and must possess a valid town business license. (See Title 16 regarding development plan approvals.)
- (18) *Unauthorized wearing of lifeguard emblems, insignia, etc.* It shall be unlawful for any person in the public beach areas who is not certified in life saving and approved by the town or its agent to wear or display any badge, uniform, emblem, insignia or lettering designating, identifying or tending to identify said person to be a lifeguard.
- (19) *Litter on beach or in water.* No person shall place or deposit litter including but not limited to cans, garbage, waste or refuse, or any part thereof, on the beach or within the waters adjacent to the beach.
- (20) *Possession or consumption of alcoholic liquors, beer, or wine is prohibited on the beaches.* It shall be unlawful for any person to possess or consume any alcoholic liquors, beer, ale, porter, wine or any other similar malt or fermented beverage on the beaches as defined in Title 8, section 8-1-112(1) of the Municipal Code; provided, however, that when consumption is specifically authorized by permit or license of the S.C. Alcoholic Beverage Control Commission, the same shall be permitted.
- (21) *Open containers.* The possession of any opened container of alcoholic liquor, beer, or wine on the beaches shall be prohibited and shall constitute prima facie evidence of the consumption of the alcoholic liquor at the prohibited place.
- (22) *Digging holes and shovels.* Anyone digging a hole or creating a sand structure on the beach shall restore the sand to its natural condition before leaving the beach and no later than thirty (30) minutes prior to sunset as stated by the National Weather Service. Shovels, except those that are made of wood and/or plastic and that are less than thirty (30) inches in length and six (6) inches in width, shall be prohibited on the beach. No persons shall dig any hole to a depth greater than twelve (12) inches on the beach. Authorized personnel, including members of the Sea Turtle Patrol, town employees performing work related to beach preservation, and others approved by the town shall be exempt from the application of this section.
- (23) *Personal property left unattended.* Any personal property referenced in sec. 8-1-112 left unattended on the beach between the hours from sunset to sunrise as stated by the National Weather Service shall be deemed a public nuisance and the town or authorized

personnel shall dispose of them. Those who leave unattended or store personal property on the beach between the hours from sunset to sunrise do so at their own risk. The town and authorized personnel do not assume any liability for personal property left unattended or stored on the beach between the hours from sunset to sunrise.

**(24) From Memorial Day through Labor Day, inclusive, Shade Structures are prohibited in all Designated Beach Access Areas.**

**(25) Umbrellas and Shade Structures are prohibited on all areas of the Beach between the hours from sunset to sunrise as stated by the National Weather Service.**

### **Section 8-1-223 Use of Shade Structures on the Beach**

**(1) From Memorial Day through Labor Day, inclusive, Shade Structures are permitted on the Beach in areas other than in Designated Beach Access Areas, subject to the following:**

**(a) Shade Structures shall not exceed the maximum size of 12 feet by 12 feet or 144 square feet;**

**(b) Shade Structures shall have a maximum height of nine (9') feet from the sand upon which the Shade Structure is placed;**

**(c) Shade Structures shall not be placed within ten feet of any other Shade Structure;**

**(d) No Shade Structure may be tied, bound, joined, or connected in any manner to any other Shade Structure;**

**(e) Shade Structures shall be secured to the ground with stakes, weights or similar devices so as to prevent the Shade Structure from becoming windblown, Anchoring lines, tethers, or the like shall not extend beyond the perimeter of the Shade Structure.**

**(f) Shade Structures are prohibited on all areas of the Beach between the hours from sunset to sunrise as stated by the National Weather Service.**

**(2) From the day after Labor Day to the day before Memorial Day, Shade Structures are permitted in Designated Beach Access Areas, subject to the following:**

**(a) Shade Structures shall not exceed the maximum size of 12 feet by 12 feet or 144 square feet;**

**(b) Shade Structures shall have a maximum height of nine (9') feet from the sand upon which the Shade Structure is placed;**

**(c) Shade Structures shall not be placed within ten feet of any other Shade Structure;**

**(d) No Shade Structure may be tied, bound, joined, or connected in any manner to any other Shade Structure;**

**(e) Shade Structures shall be secured to the ground with stakes, weights or similar devices so as to prevent the Shade Structure from becoming windblown,**



**Anchoring lines, tethers, or the like shall not extend beyond the perimeter of the Shade Structure.**

**(f) Shade Structures are prohibited on all areas of the Beach between the hours from sunset to sunrise as stated by the National Weather Service.**

**Section 3. Severability.** If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**Section 4. Effective Date.** This Ordinance shall be effective upon its adoption by the Town Council of the Town of Hilton Head Island, South Carolina.

**PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021.**

THE TOWN OF HILTON HEAD  
ISLAND, SOUTH CAROLINA

\_\_\_\_\_  
John J. McCann, Mayor

ATTEST:

\_\_\_\_\_  
Krista Wiedmeyer, Town Clerk

First Reading:  
Second Reading:

APPROVED AS TO FORM:

\_\_\_\_\_  
Curtis L. Coltrane, Town Attorney

Introduced by Council Member:



# TOWN OF HILTON HEAD ISLAND

## *Infrastructure Services Department*

**TO:** Marc Orlando, Town Manager  
**VIA:** Josh Gruber, Deputy Town Manager  
Jeff Buckalew, Interim Director of Infrastructure Services  
**FROM:** Jeff Netzinger, Storm Water Manager  
**DATE:** June 16, 2021  
**SUBJECT:** Requests for Drainage Agreements and Easements

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### **Recommendation:**

Staff recommends the Town execute a permanent storm drainage easement for the property at 3901 Main Street, and standard drainage agreements and access, drainage and maintenance easements with the following six requesting property owners associations:

- Spanish Wells/Spanish Wells Club
- Seagrass Landing
- Yacht Cove
- Wells East
- Jarvis Creek Club
- Bermuda Pointe

### **Summary:**

The Town currently has similar drainage agreements and easements with eleven planned unit development partners. These potential new partners have requested service via drainage agreements with the Town. Contemporaneously, Town staff worked with the Town Attorney to update the standardized terms and conditions to use for new agreements and to replace existing agreements. All six of the requesting entities meet the qualifications for acceptance of new systems, including the presence of shared, common road rights-of-way within their respective private communities. All new agreements use the standard terms and conditions approved by the Town Council Finance and Administration Committee in October of 2020. The property owner of 3901 Main Street requests the Town accept maintenance responsibilities of the qualifying storm drainage system traversing the rear of the property via a permanent storm drainage easement.

### **Background:**

After the creation of the Storm Water Utility in 2001, the Town offered to accept maintenance responsibility of storm water systems located within planned unit developments. Between 2007 and 2012, the Town executed and delivered drainage agreements with eleven partners including Shipyard, Wexford, Long Cove, Sea Pines, Palmetto Dunes, Leamington, Shelter Cove, Port Royal, Indigo Run, Hilton Head Plantation, and Palmetto Hall. The recent agreement language standardization effort was initiated at the suggestion of the Town Council Finance and Administration Committee during a meeting in 2019. All existing and potential new partners had an opportunity to review the draft standardized terms and conditions and provide feedback in 2020. All feedback received was considered during the document revision process. The final version was presented and discussed during the October 6, 2020 Town Council Finance and Administration Committee meeting and the Committee voted to approve the revised standard language by a unanimous 3-0 vote.

**RESOLUTION 2021-\_\_\_\_\_**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION AND DELIVERY OF A “DRAINAGE EASEMENT AGREEMENT” WITH THE 3901 MAIN STREET PROPERTY OWNERS ASSOCIATION**

WHEREAS, The Town of Hilton Head Island, South Carolina, has negotiated a “Drainage Easement Agreement” by which the Town will be authorized to install, use and maintain drainage improvements on and through property owed by the 3901 Main Street Property Owners Association; and

WHEREAS, The Town Council of the Town of Hilton Head Island, South Carolina has determined that it is in the best interests of the Town of Hilton Head Island, South Carolina, to authorize the execution and delivery of the “Drainage Easement Agreement,” and to authorize the Mayor and Town Manager to execute and deliver the “Drainage Easement Agreement” on behalf of The Town of Hilton Head Island, South Carolina.

**NOW THEREFORE, BE IT RESOLVED AND IT HEREBY IS RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA:**

1. The Mayor and Town Manager are hereby authorized to execute the “Drainage Easement Agreement” between The Town of Hilton Head Island, South Carolina, and the 3901 Main Street Property Owners Association, a copy of which is attached hereto as Exhibit “A.”
2. The Mayor and Town Manager are hereby authorized to take all other and further actions as may be necessary to complete the execution and delivery of the “Drainage Easement Agreement.”

**MOVED, APPROVED AND ADOPTED BY THE TOWN COUNCIL THIS  
\_\_\_\_\_ DAY OF JUNE, 2021.**

\_\_\_\_\_  
John J. McCann, Mayor

ATTEST:

\_\_\_\_\_  
Krista M. Wiedmeyer, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Curtis L. Coltrane, Town Attorney

Introduced by Council Member: \_\_\_\_\_

EXHIBIT A TO RESOLUTION REGARDING  
3901 MAIN STREET POA DRAINAGE EASEMENT

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**STATE OF SOUTH CAROLINA            )**  
**)** **DRAINAGE EASEMENT AGREEMENT**  
**COUNTY OF BEAUFORT                    )**

This Easement Agreement (the “Agreement”) is made this \_\_\_\_\_ day of June, 2021, by and between 3901 Main Street Property Owners Association (hereinafter referred to as the “Grantor”), and the Town of Hilton Head Island, South Carolina, having an address of One Town Center Court, Hilton Head Island, South Carolina 29928 (hereinafter referred to as the “Town”).

**W I T N E S S E T H**

WHEREAS, the Town desires to maintain drainage improvements in the vicinity of Main Street for the benefit and use of the general public; and,

WHEREAS, the aforementioned drainage improvements traverse on, across and through certain Property as defined in the Master Deed for 3901 Main Street Horizontal Property Regime dated May 8, 1991 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on May 10, 1991 in Book 575 at Page 184 (the “Master Deed”); and,

WHEREAS, Grantor has agreed to convey to the Town a permanent easement for the maintenance and use of the aforementioned drainage improvements, subject to the terms and conditions set forth herein;

NOW, THEREFORE, know all men by these presents, Grantor, pursuant to the authority granted in Sections 15.3 and 21.14 of the Master Deed, for and in consideration of the sum of One and 00/100 Dollar (\$1.00) and no other valuable consideration, the receipt and sufficiency whereof

is acknowledged, has bargained, granted, and sold and by these presents does hereby bargain, grant, and sell to the Town of Hilton Head Island, South Carolina, its successors and assigns, a perpetual, non-exclusive easement on, under, over and across that portion of the Grantor's property, which is described as follows:

All that certain piece, parcel or lot of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, consisting of 4,275 sq. ft., 0.10 acres, more or less, shown and designated as "Drainage Easement 4,275 sq. ft., 0.10 acres" on a plat entitled "Plat Showing a Proposed Drainage Easement" dated November 2, 2005, prepared by Robert D. Trogdon, IV, S.C.R.L.S. #14819, which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 115 at Page 86, the "Easement Property".

The easement granted herein is for the purpose of maintaining drains, embankments, ditches, culverts, pipes any other improvements used or useful in the collection, conveyance and drainage of surface and storm water runoff (hereinafter collectively referred to as the "Drainage Improvements"). The Grantor further grants to the Town of Hilton Head Island, South Carolina a perpetual, non-exclusive easement for the purpose of draining surface and storm water runoff through the Drainage Improvements pursuant to this Agreement. The Grantor further grants to the Town an easement for access, ingress and egress over the Property as defined in the Master Deed for reasonable access to and from the Easement Property in connection with the performance of maintenance work in accordance with the terms of this Agreement.

This Agreement is granted and accepted subject to the following terms:

1. This easement is conveyed subject to the Master Deed and all other easements, licenses, and conveyances of record and is subject to the rights herein reserved by the Grantor, its successors and assigns, to utilize the Easement Property at any time, in any manner, and for any purpose, provided, however, that such use by the Grantor shall not be inconsistent with nor prevent

the full utilization by the Town of Hilton Head Island, South Carolina, of the rights and privileges granted herein.

2. Except for existing improvements or existing or future impervious or pervious parking areas, landscaping, curbing or paving, Grantor shall erect no permanent structure of any kind over or across the Easement Property, including but not limited to buildings, sheds, walls and other masonry structures such as tennis courts and swimming pools. Grantor shall not impede, obstruct, or allow to be obstructed, the natural flow of storm water runoff through the Easement Property. Future impervious or pervious parking areas, landscaping, curbing or paving shall be those improvements shown on the 3901 Main Street HPR Parking Improvements Pre-Application PAPP-001083-2018 as modified to address Town Plan Corrections Reports with the Town responsible for making repairs to the Town owned and maintained Drainage Improvements the facilitate the parking improvements.

3. The Town of Hilton Head Island, South Carolina agrees to maintain the Drainage Improvements upon the Easement Property, and further agrees that with the exception of parking and parking access improvements in the Easement Property the use of, access to, and travel upon said Drainage Improvements and the Easement Property shall be under the exclusive control of the Town, and that the Town shall at all times comply with all applicable laws, rules, codes, and regulations. The Grantor shall control the use of, access to, and travel upon parking and parking access improvements in the Easement Property.

4. All Drainage Improvements work contemplated herein shall be performed by the Town in a workmanlike fashion, with such interference to Grantor, its successors and assigns, Grantor's, members, guests, invitees, licensees, and agents only as is necessary to accomplish work authorized by this Agreement.



5. The Town promptly shall remove all debris, waste, construction materials and equipment from the Easement Area upon completion work permitted by this Agreement.

6. The Town shall repair damage to the Easement Property or the Property as defined in the Master Deed caused by the Town in completing any work permitted by this Agreement, including, without limitation:

a. Any asphalt or pervious paving disturbed shall be patched and/or repaired;

b. Any and all trenches and/or holes excavated shall be filled in and compacted to their original height as they existed prior to the work. In the event that the fill and compaction sink, the Town will be responsible for re-filling the trenches and/or holes back to the original height; and

c. The Town shall provide grass seeding and replace shrubbery in any and all trenches and/or holes in order to attempt to restore the Easement Area or adjacent property to the condition that existed prior to the work.

7. RESERVED.

8. The Town of Hilton Head Island, South Carolina hereby warrants to the Grantor that the granting of the easement will not affect "set back" lines under the Town's jurisdiction of any property subject to the Master Deed.

9. Grantor represents and warrants that it has full authority to execute, deliver and perform this Agreement.

To have and to hold, all and singular, the rights, privileges, and easements aforesaid unto the Town of Hilton Head Island, South Carolina, its successors and assigns, forever.

In witness whereof, the parties hereto have caused the within Drainage Easement Agreement to be executed by their duly authorized officers.

(SIGNATURE PAGES FOLLOW)

WITNESSES:

GRANTOR:

**3901 Main Street Property Owners Association**

2) \_\_\_\_\_  
*Signature of Witness #1*

1) \_\_\_\_\_  
Signature

3) \_\_\_\_\_  
*Signature of Notary Public*

1) \_\_\_\_\_  
Print Name

1) \_\_\_\_\_  
Title

STATE OF SOUTH CAROLINA )

)

**UNIFORM ACKNOWLEDGMENT**

COUNTY OF BEAUFORT )

)

**S. C. CODE ANN. § 30-5-30 (SUPP. 2011)**

I, the undersigned Notary Public do hereby certify that \_\_\_\_\_,  
the \_\_\_\_\_ of **3901 Main Street Property Owners Association**, a  
South Carolina non-profit corporation, personally appeared before me on this day and duly  
acknowledged the execution of the foregoing instrument on behalf of the non-profit corporation.

Sworn to and Subscribed before me

on this \_\_\_\_\_ day of June, 2021.

4) \_\_\_\_\_  
Signature of Notary Public for South Carolina  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**\*\* Instructions for Execution:**

*All signatures should be in blue ink.*

*ALL blanks must be filled in.*

*Grantor signs at line(s) 1)*

*Witness #1 signs at line 2)*

*Notary Public signs at line 3)*

*Notary Public signs at line 4) and affixes notary seal*

WITNESSES:

THE TOWN OF HILTON HEAD ISLAND,  
SOUTH CAROLINA

\_\_\_\_\_

By: \_\_\_\_\_  
John J. McCann, Mayor

\_\_\_\_\_

By: \_\_\_\_\_  
Marc A. Orlando, Town Manager

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

**UNIFORM ACKNOWLEDGMENT**  
**S. C. CODE ANN. § 30-5-30 (SUPP. 2011)**

I, the undersigned Notary Public do hereby certify that John J. McCann, Mayor and Marc A. Orlando, Town Manager of The Town of Hilton Head Island, South Carolina, personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of The Town of Hilton Head Island, South Carolina.

Sworn to and Subscribed before me

on this \_\_\_\_\_ day of June, 2021.

\_\_\_\_\_  
Notary Public for South Carolina  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

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STATE OF SOUTH CAROLINA        )  
  ) **DRAINAGE EASEMENT AGREEMENT**  
COUNTY OF BEAUFORT            )

This Easement Agreement (the “Agreement”) is made this \_\_\_\_\_ day of June, 2021, by and between 3901 Main Street Property Owners Association (hereinafter referred to as the “Grantor”), and the Town of Hilton Head Island, South Carolina, having an address of One Town Center Court, Hilton Head Island, South Carolina 29928 (hereinafter referred to as the “Town”).

**W I T N E S S E T H**

WHEREAS, the Town desires to maintain drainage improvements in the vicinity of Main Street for the benefit and use of the general public; and,

WHEREAS, the aforementioned drainage improvements traverse on, across and through certain Property as defined in the Master Deed for 3901 Main Street Horizontal Property Regime dated May 8, 1991 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on May 10, 1991 in Book 575 at Page 184 (the “Master Deed”); and,

WHEREAS, Grantor has agreed to convey to the Town a permanent easement for the maintenance and use of the aforementioned drainage improvements, subject to the terms and conditions set forth herein;

NOW, THEREFORE, know all men by these presents, Grantor, pursuant to the authority granted in Sections 15.3 and 21.14 of the Master Deed, for and in consideration of the sum of One and 00/100 Dollar (\$1.00) and no other valuable consideration, the receipt and sufficiency whereof

is acknowledged, has bargained, granted, and sold and by these presents does hereby bargain, grant, and sell to the Town of Hilton Head Island, South Carolina, its successors and assigns, a perpetual, non-exclusive easement on, under, over and across that portion of the Grantor's property, which is described as follows:

All that certain piece, parcel or lot of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, consisting of 4,275 sq. ft., 0.10 acres, more or less, shown and designated as "Drainage Easement 4,275 sq. ft., 0.10 acres" on a plat entitled "Plat Showing a Proposed Drainage Easement" dated November 2, 2005, prepared by Robert D. Trogdon, IV, S.C.R.L.S. #14819, which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 115 at Page 86, the "Easement Property".

The easement granted herein is for the purpose of maintaining drains, embankments, ditches, culverts, pipes any other improvements used or useful in the collection, conveyance and drainage of surface and storm water runoff (hereinafter collectively referred to as the "Drainage Improvements"). The Grantor further grants to the Town of Hilton Head Island, South Carolina a perpetual, non-exclusive easement for the purpose of draining surface and storm water runoff through the Drainage Improvements pursuant to this Agreement. The Grantor further grants to the Town an easement for access, ingress and egress over the Property as defined in the Master Deed for reasonable access to and from the Easement Property in connection with the performance of maintenance work in accordance with the terms of this Agreement.

This Agreement is granted and accepted subject to the following terms:

1. This easement is conveyed subject to the Master Deed and all other easements, licenses, and conveyances of record and is subject to the rights herein reserved by the Grantor, its successors and assigns, to utilize the Easement Property at any time, in any manner, and for any purpose, provided, however, that such use by the Grantor shall not be inconsistent with nor prevent

the full utilization by the Town of Hilton Head Island, South Carolina, of the rights and privileges granted herein.

2. Except for existing improvements or existing or future impervious or pervious parking areas, landscaping, curbing or paving, Grantor shall erect no permanent structure of any kind over or across the Easement Property, including but not limited to buildings, sheds, walls and other masonry structures such as tennis courts and swimming pools. Grantor shall not impede, obstruct, or allow to be obstructed, the natural flow of storm water runoff through the Easement Property. Future impervious or pervious parking areas, landscaping, curbing or paving shall be those improvements shown on the 3901 Main Street HPR Parking Improvements Pre-Application PAPP-001083-2018 as modified to address Town Plan Corrections Reports with the Town responsible for making repairs to the Town owned and maintained Drainage Improvements the facilitate the parking improvements.

3. The Town of Hilton Head Island, South Carolina agrees to maintain the Drainage Improvements upon the Easement Property, and further agrees that with the exception of parking and parking access improvements in the Easement Property the use of, access to, and travel upon said Drainage Improvements and the Easement Property shall be under the exclusive control of the Town, and that the Town shall at all times comply with all applicable laws, rules, codes, and regulations. The Grantor shall control the use of, access to, and travel upon parking and parking access improvements in the Easement Property.

4. All Drainage Improvements work contemplated herein shall be performed by the Town in a workmanlike fashion, with such interference to Grantor, its successors and assigns, Grantor's, members, guests, invitees, licensees, and agents only as is necessary to accomplish work authorized by this Agreement.

5. The Town promptly shall remove all debris, waste, construction materials and equipment from the Easement Area upon completion work permitted by this Agreement.

6. The Town shall repair damage to the Easement Property or the Property as defined in the Master Deed caused by the Town in completing any work permitted by this Agreement, including, without limitation:

a. Any asphalt or pervious paving disturbed shall be patched and/or repaired;

b. Any and all trenches and/or holes excavated shall be filled in and compacted to their original height as they existed prior to the work. In the event that the fill and compaction sink, the Town will be responsible for re-filling the trenches and/or holes back to the original height; and

c. The Town shall provide grass seeding and replace shrubbery in any and all trenches and/or holes in order to attempt to restore the Easement Area or adjacent property to the condition that existed prior to the work.

7. RESERVED.

8. The Town of Hilton Head Island, South Carolina hereby warrants to the Grantor that the granting of the easement will not affect “set back” lines under the Town’s jurisdiction of any property subject to the Master Deed.

9. Grantor represents and warrants that it has full authority to execute, deliver and perform this Agreement.

To have and to hold, all and singular, the rights, privileges, and easements aforesaid unto the Town of Hilton Head Island, South Carolina, its successors and assigns, forever.

In witness whereof, the parties hereto have caused the within Drainage Easement Agreement to be executed by their duly authorized officers.

(SIGNATURE PAGES FOLLOW)

WITNESSES:

GRANTOR:

**3901 Main Street Property Owners Association**

2) \_\_\_\_\_  
*Signature of Witness #1*

1) \_\_\_\_\_  
Signature

3) \_\_\_\_\_  
*Signature of Notary Public*

1) \_\_\_\_\_  
Print Name

1) \_\_\_\_\_  
Title

STATE OF SOUTH CAROLINA )

)

**UNIFORM ACKNOWLEDGMENT**

COUNTY OF BEAUFORT )

)

**S. C. CODE ANN. § 30-5-30 (SUPP. 2011)**

I, the undersigned Notary Public do hereby certify that \_\_\_\_\_,  
the \_\_\_\_\_ of **3901 Main Street Property Owners Association**, a  
South Carolina non-profit corporation, personally appeared before me on this day and duly  
acknowledged the execution of the foregoing instrument on behalf of the non-profit corporation.

Sworn to and Subscribed before me

on this \_\_\_\_\_ day of June, 2021.

4) \_\_\_\_\_  
Signature of Notary Public for South Carolina  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**\*\* Instructions for Execution:**

*All signatures should be in blue ink.  
ALL blanks must be filled in.  
Grantor signs at line(s) 1)  
Witness #1 signs at line 2)  
Notary Public signs at line 3)  
Notary Public signs at line 4) and affixes notary seal*



WITNESSES:

THE TOWN OF HILTON HEAD ISLAND,  
SOUTH CAROLINA

\_\_\_\_\_

By: \_\_\_\_\_  
John J. McCann, Mayor

\_\_\_\_\_

By: \_\_\_\_\_  
Marc A. Orlando, Town Manager

STATE OF SOUTH CAROLINA )

)

UNIFORM ACKNOWLEDGMENT

COUNTY OF BEAUFORT )

)

S. C. CODE ANN. § 30-5-30 (SUPP. 2011)

I, the undersigned Notary Public do hereby certify that John J. McCann, Mayor and Marc A. Orlando, Town Manager of The Town of Hilton Head Island, South Carolina, personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of The Town of Hilton Head Island, South Carolina.

Sworn to and Subscribed before me

on this \_\_\_\_\_ day of June, 2021.

\_\_\_\_\_  
Notary Public for South Carolina

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**NOTES:**

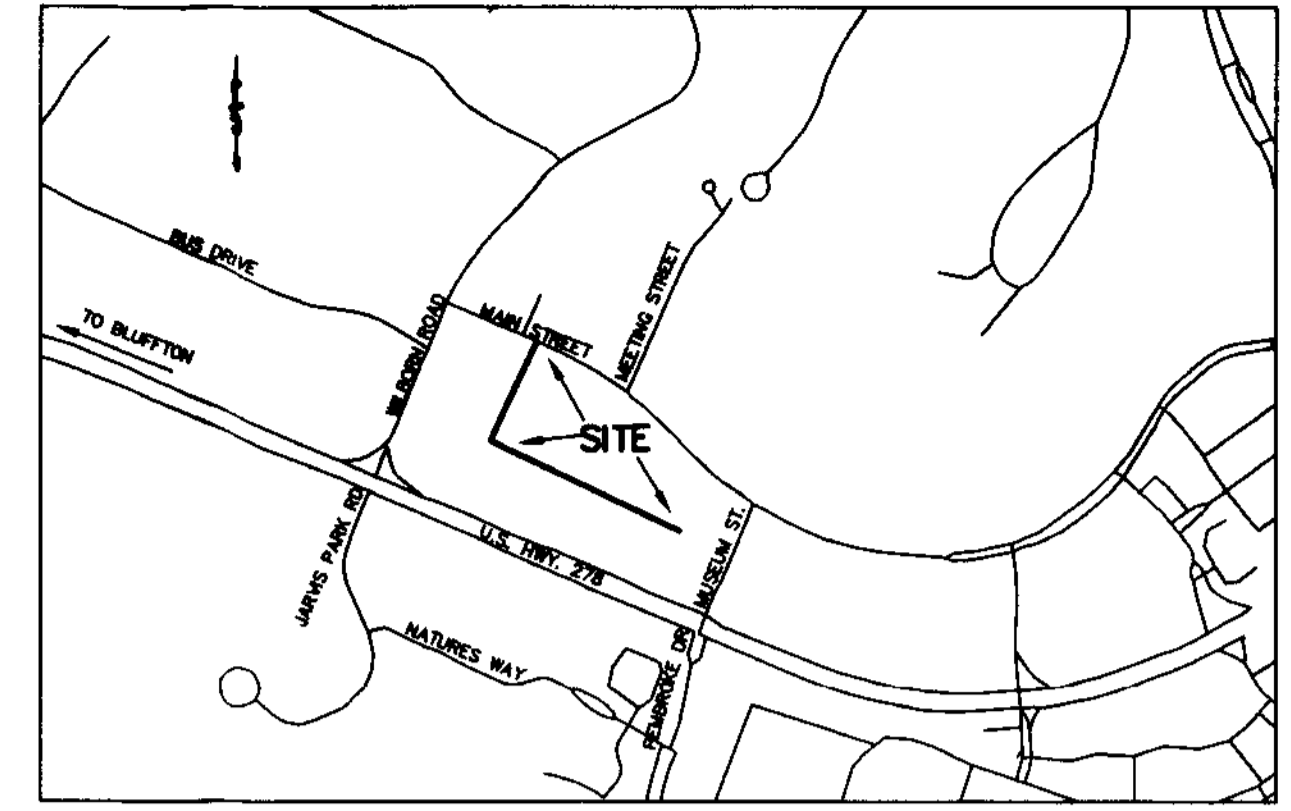
- 1.) AREA DETERMINED BY COORDINATE METHOD.
- 2.) THIS SITE MAY CONTAIN FRESHWATER WETLANDS, NOT DETERMINED BY THIS PLAT.

**REFERENCES:**

- 1.) PLAT BY JERRY L. RICHARDSON, RLS  
DATED: JULY 23, 1986  
REVISED JANUARY 28, 1987  
RECORDED IN PLAT BOOK 34 PAGE 118  
BEAUFORT COUNTY R.M.C.

THIS PROPERTY IS LOCATED IN A SPECIAL FLOOD HAZARD AREA ZONE A-7 ELEVATION 14.0 AS SHOWN ON FEMA PANEL NUMBER 450250 0008 D, 9/29/06

SOME OR ALL AREAS IN THIS PLAT ARE FLOOD HAZARD AREAS AND HAVE BEEN IDENTIFIED AS HAVING AT LEAST A ONE PERCENT CHANCE OF BEING FLOODED IN ANY GIVEN YEAR BY RISING TIDAL WATERS ASSOCIATED WITH POSSIBLE HURRICANES. LOCAL REGULATIONS REQUIRE THAT CERTAIN FLOOD HAZARD PROTECTIVE MEASURES BE INCORPORATED IN THE DESIGN AND CONSTRUCTION OF STRUCTURES IN THESE DESIGNATED AREAS. REFERENCE SHALL BE MADE TO THE DEVELOPMENT COVENANTS AND RESTRICTIONS OF THIS DEVELOPMENT AND REQUIREMENTS OF THE TOWN BUILDING OFFICIAL. IN ADDITION, FEDERAL LAW REQUIRES MANDATORY PURCHASE OF FLOOD INSURANCE AS A PREREQUISITE TO FEDERALLY INSURED MORTGAGE FINANCING IN THESE DESIGNATED FLOOD HAZARD AREAS.

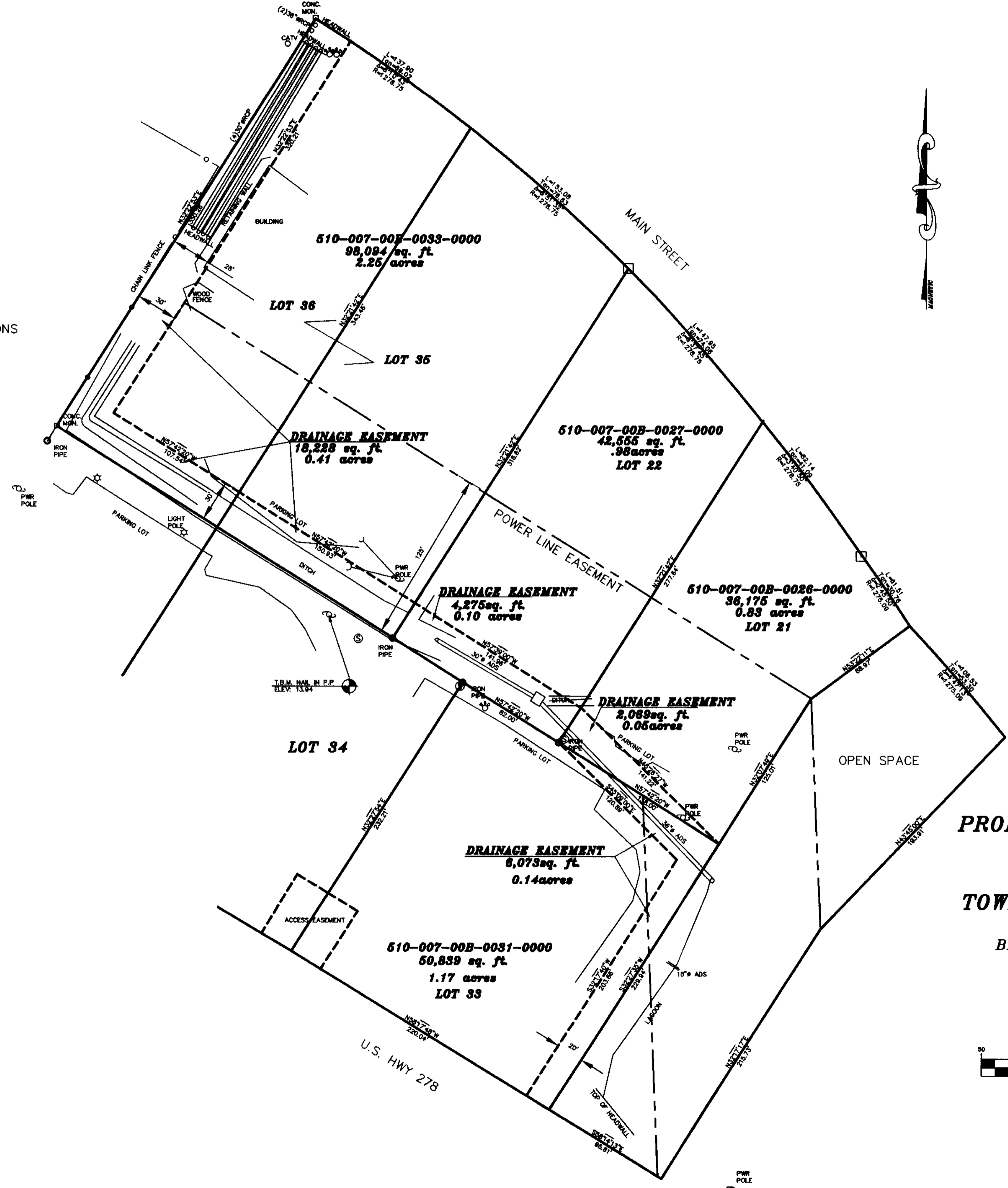


LOCATION MAP (N.T.S.)

BEAUFORT COUNTY SC - ROD  
BK 00115 PG 0088  
FILE NUM 2008000526  
07/31/2006 04:31:58 PM  
RECD BY B BING RCPT# 434460  
RECORDING FEES 10.00

**LEGEND**

- EXISTING WATER METER
- EXISTING POWER POLE
- EXISTING TELEPHONE PEDESTAL
- EXISTING CONCRETE
- EXISTING POWER POLE WITH GUY
- EXISTING TREE
- EXISTING MAIL/PAPER BOX
- EXISTING FIRE HYDRANT
- EXISTING WATER VALVE
- EXISTING STREET/TRAFFIC SIGN

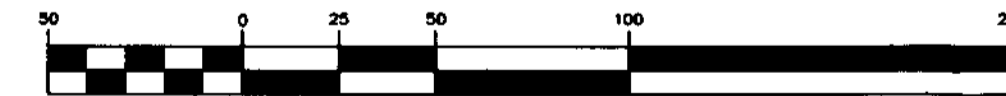


**PLAT SHOWING  
A  
PROPOSED DRAINAGE EASEMENT**

**PREPARED FOR  
TOWN OF HILTON HEAD ISLAND**

HILTON HEAD ISLAND  
BEAUFORT COUNTY, SOUTH CAROLINA  
DATE: 11/08/05

GRAPHIC SCALE



( IN FEET )  
1 inch = 50 ft.

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS C SURVEY AS SPECIFIED THEREIN.

*Robert D. Trogon*

ROBERT D. TROGDON IV, R.L.S. S.C. NO. 14819

This plat does not constitute development pursuant to the Town of Hilton Head Island, SC Land Management Ordinance Section:	
<input type="checkbox"/> 16-1-106A	<input type="checkbox"/> 16-1-106D
<input type="checkbox"/> 16-1-106B	<input type="checkbox"/> 16-1-106E
<input type="checkbox"/> 16-1-106C	
Certified by: <i>M. J. [Signature]</i>	
Title: <i>Main Street Drainage Easement</i> Date: <i>7/26/06</i>	
<p><b>Disclaimer:</b> The Town of Hilton Head Island makes an express declaration of policy that the public regulation of land is entirely separate from and independent of private restrictions. This approval in no way implies that the proposed development is in accordance with any restrictive covenants, private easements or deed restrictions.</p>	

MAINST_WEST.dwg
DATE: 11/02/05
DESIGNED: RDT
DRAWN: CAM
CHECKED:
SCALE: 1" = 50'

SHEET
<b>1</b>
OF 1

THE COUNTY COUNCIL OF  
BEAUFORT COUNTY  
BEAUFORT COUNTY, SOUTH CAROLINA  
MAIN STREET DRAINAGE EASEMENT

BEAUFORT COUNTY  
ENGINEERING DEPARTMENT  
P.O. DRAWER 1228  
BEAUFORT, SOUTH CAROLINA 29901  
(843) 470-2625

RELEASED TO DESIGN REVIEW TEAM	BY	DATE

\\hwyoutland\projects\3\MAINST\_WEST.dwg, 07/13/2006 05:54:52 AM

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF THAT CERTAIN DRAINAGE AGREEMENTS AND ACCESS, DRAINAGE AND MAINTENANCE EASEMENTS WITH SPANISH WELLS PROPERTY OWNERS ASSOCIATION, INC. AND SPANISH WELLS CLUB ACROSS PROPERTY LOCATED IN SPANISH WELLS PLANTATION.**

WHEREAS, Spanish Wells Property Owners Association, Inc. (“Spanish Wells”) owns improved and unimproved real property and easements within Spanish Wells Plantation; and

WHEREAS, Beaufort County, South Carolina adopted Ordinance 99-101 et seq., as amended, creating a Storm Water Utility with the power to impose Storm Water Service Fees on all residents of Beaufort County, South Carolina and which also provides that fees collected from within the municipal limits of the Town of Hilton Head Island, South Carolina (“Town”) are returned to the Town to be used for the purposes set forth in the Ordinance including the construction and maintenance of planned and existing infrastructure which collects and disposes of surface and storm water within the municipal limits of the Town; and

WHEREAS, Spanish Wells desires for the Town to utilize Storm Water Service Fees to undertake the maintenance and improvement of the storm and surface water drainage system within Spanish Wells Plantation to facilitate the flow of storm water drainage through and from areas within Spanish Wells Plantation; and

WHEREAS, to undertake these improvements, it is necessary for the Town to obtain from Spanish Wells Property Owners Association, Inc. and Spanish Wells Club, Drainage Agreements and Access, Drainage and Maintenance Easements, copies of which are attached hereto as Exhibit “A”; and

WHEREAS, the Town Council for the Town of Hilton Head Island, South Carolina has determined that it is in the best interests of the citizens and visitors of the Town of Hilton Head Island to undertake the improvements stated above; and

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA:**

1. The Mayor and/or Town Manager are hereby authorized to execute and deliver a Drainage Agreements and Access, Drainage and Maintenance Easements in a form substantially similar to that attached hereto as Exhibit "A"; and
2. The Mayor and/or Town Manager are hereby authorized to take such other and further action as may be necessary to complete the actions authorized hereby.

**PASSED AND APPROVED BY THE TOWN COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021.**

\_\_\_\_\_  
**John J. McCann, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Krista Wiedmeyer, Town Clerk**

**Approved as to form:**

\_\_\_\_\_  
**Curtis Coltrane, Town Attorney**

**Introduced by Council Member: \_\_\_\_\_**

**STATE OF SOUTH CAROLINA        )**       **ACCESS, DRAINAGE AND**  
**)**       **MAINTENANCE EASEMENT**  
**COUNTY OF BEAUFORT                )**

Know all men by these presents, that Spanish Wells Club, having an address of 1 Brams Point Road, Hilton Head Island, SC 29926, and the Town of Hilton Head Island, South Carolina, One Town Center Court, Hilton Head Island, SC, 29928, for and in consideration of the sum of One and No/100 (\$1.00) Dollar, each paid to the other at and before the execution and delivery of this Access, Drainage and Maintenance Easement, the receipt and sufficiency whereof is acknowledged, agree as follows:

1. Defined Terms: As used herein, the following terms shall mean:
  - (a) *Development*: Spanish Wells Plantation, a planned unit development or subdivision lying and being on Hilton Head Island, Beaufort County, South Carolina, which is shown and described on the map attached as Exhibit “B” hereto.
  - (b) *Drainage System*: The existing system of lagoons, ditches, canals, pipes, culverts, catch basins, drains, manholes, junction boxes, weirs, valves, gates, pumps, structures, related equipment and related infrastructure, in the Development lying within the Easement Areas shown on the map attached hereto as Exhibit “A,” which facilitates the collection, storage and conveyance of storm and surface water

runoff for public benefit through, within, and from the Development. For purposes of this Agreement, the Drainage System shall not include any bridges, docks, retaining walls, road or pathway asphalt, road or building gutters, underdrains, sub-drains, structural bulkheads, beaches, tidal banks, estuaries, or salt marshes, or driveway pipes, unless the Town, in its sole discretion deems any particular driveway pipe as critical to the function of the Drainage System.

- (c) *Emergency*: A blockage, structural or mechanical failure, collapse or other sudden catastrophic event affecting any part of the Drainage System which prevents or substantially inhibits the flow of storm and surface water through all or any part of the Drainage System, or which otherwise results in an imminent peril to life or property.
- (d) *Permanent Structure*: Any immovable structure, including, but not limited to, buildings, sheds, pavilions, walls, masonry structures, tennis courts, and swimming pools, including swimming pool decks.
- (e) *Town*: The Town of Hilton Head Island, South Carolina.

2. *Grant of Easements*: Spanish Wells Club does hereby grant, transfer, sell and convey to the Town, and its agents, assigns, employees and contractors, and their vehicles, machinery and equipment, and create and establish for the benefit of the Town, the following easements:

- (a) A non-exclusive Access Easement on, over and across any roads and streets within the Development, and on, over and across any property

owned by Spanish Wells Club encumbered by all or any part of the Drainage System.

(b) A non-exclusive Maintenance Easement on, under, over, through and across any property of the Development, encumbered by all or any part of the Drainage System. This Maintenance Easement shall include all facilities or structures directly related to the collection, storage and conveyance of storm and surface water now or hereafter existing within the Development, and sufficient property beside or over any part of the Drainage System as shown on Exhibit "A" to allow for excavation and any other work necessary to improve, repair or maintain the Drainage System.

(c) A non-exclusive Drainage Easement for the conveyance of any storm and surface water originating from within or without the boundaries of the Development through the Drainage System, at such rates and in such amounts as may occur from time to time.

(d) This Drainage Easement includes a non-exclusive and partial assignment of any and all easement rights for drainage held by Spanish Wells Club; provided however, that the Town shall provide timely written notification to Spanish Wells Club of any potentially disruptive improvements and/or modifications to the systems conveying storm and surface water originating without the boundaries of the Development and through the Development Drainage System.

3. This Access, Drainage and Maintenance Easement is granted and accepted subject to the following:

(a) The Town agrees that the use of the easements granted herein shall be restricted to the hours of 7:00 o'clock, A.M., to 5:00 o'clock, P.M., Monday through Friday excluding public holidays, except in the event of an Emergency.

(b) Other than in the case of an Emergency, the Town and Spanish Wells Club shall determine the scheduling of any work to be performed hereunder, on its or their property, in advance of the commencement of the work.

(c) This Access, Drainage and Maintenance Easement is conveyed subject to all other easements, licenses, and conveyances of record and is subject to the rights herein reserved by Spanish Wells Club, their successors and assigns, to utilize their property at any time, in any manner, and for any purpose, provided, however, that such use by Spanish Wells Club shall not be inconsistent with nor prevent the full utilization by the Town of the rights and privileges granted herein.

(d) The Town agrees to plan, lay out, and execute or build improvements, repairs and maintenance of the Drainage System, and further agrees that the Town's exercise of the rights granted in this Access, Drainage and Maintenance Easement shall be under the exclusive control of the Town and that the Town shall at all times comply with all applicable laws, rules, codes, and regulations.

(e) Spanish Wells Club shall not erect any Permanent Structure on, under, over, through and across any property of the Development



encumbered by all or any part of the Drainage System without the Town's prior written approval, which approval shall not be unreasonably withheld. Spanish Wells Club shall not impede, obstruct, or allow to be obstructed, the natural flow of storm and surface water runoff through the Drainage System.

(f) The rights conveyed under this Access, Drainage and Maintenance Easement are limited to the parties and purposes stated herein. This Access, Drainage and Maintenance Easement conveys no rights of access or otherwise to the general public.

4. Spanish Wells Club acknowledges that the Town shall have no obligation to perform or pay for any work to repair, improve or maintain the appearance or appeal of the lagoons, banks of lagoons, landscaping, drains, canals, or other visible components of the Drainage System, including, but not limited to, structures, bridges, bulkheads, pipes, culverts, valves and gates.

5. The Town agrees to cause all work contemplated hereunder to be performed in a workmanlike fashion with minimal interference to the Grantor, its successors, assigns, invitees, guests, licensees, and agents. The Town further agrees to cause the work contemplated hereunder to be completed in an expeditious and timely fashion, and that all materials, debris, and construction materials shall be promptly removed. The Town shall restore any other part of the property of Spanish Wells Club which may be damaged as a result of the Town's exercise of the rights granted hereunder to its pre-existing state.

6. The Town hereby warrants to Spanish Wells Club that the granting of this Access, Drainage and Maintenance Easement will not affect any "set back" lines with respect to

any property currently owned by Spanish Wells Club.

To have and to hold, all and singular, the rights, privileges, and easements aforesaid unto the Town of Hilton Head Island, South Carolina, its successors and assigns, forever.

In Witness whereof, the parties hereto have caused the within Access, Drainage and Maintenance Easement to be executed by their duly authorized officers as of this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

WITNESSES:

Spanish Wells Club

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Attest: \_\_\_\_\_

**STATE OF SOUTH CAROLINA**

)

**UNIFORM ACKNOWLEDGMENT**

)

**COUNTY OF BEAUFORT**

)

**S.C. CODE § 30-5-30 (SUPP. 2010)**

I, the undersigned Notary Public do hereby certify that \_\_\_\_\_ personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of Spanish Wells Club.

Sworn to and Subscribed before me

on this \_\_\_\_\_ Day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_

WITNESSES:

THE TOWN OF HILTON HEAD ISLAND,  
SOUTH CAROLINA

\_\_\_\_\_

By: \_\_\_\_\_  
John J. McCann, Mayor

\_\_\_\_\_

Attest: \_\_\_\_\_  
Marc Orlando, Town Manager

**STATE OF SOUTH CAROLINA**

)

**UNIFORM ACKNOWLEDGMENT**

)

**COUNTY OF BEAUFORT**

)

**S.C. CODE § 30-5-30 (SUPP. 2010)**

I, the undersigned Notary Public do hereby certify that John J. McCann and Marc Orlando personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of The Town of Hilton Head Island, South Carolina.

Sworn to and Subscribed before me  
on this \_\_\_\_\_ Day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_

**STATE OF SOUTH CAROLINA        )**     **ACCESS, DRAINAGE AND**  
**)**     **MAINTENANCE EASEMENT**  
**COUNTY OF BEAUFORT            )**

Know all men by these presents, that Spanish Wells Property Owners Association, Inc. and the Town of Hilton Head Island, South Carolina, One Town Center Court, Hilton Head Island, SC, 29928, for and in consideration of the sum of One and No/100 (\$1.00) Dollar, each paid to the other at and before the execution and delivery of this Access, Drainage and Maintenance Easement, the receipt and sufficiency whereof is acknowledged, agree as follows:

1. **Defined Terms:** As used herein, the following terms shall mean:
  - (a) *Association:* Spanish Wells Property Owners Association, Inc., a South Carolina not-for-profit corporation with the full authority under the Covenants to enter into this Agreement.
  - (b) *Covenants:* Any one or more of Covenants, Conditions, and Restrictions for Spanish Wells Property Owners Association, Inc. recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.
  - (c) *Development:* Spanish Wells Plantation, a planned unit development or subdivision lying and being on Hilton Head Island, Beaufort County, South Carolina, which is shown and described on the map attached as Exhibit “B” hereto.

- (d) *Drainage System:* The existing system of lagoons, ditches, canals, pipes, culverts, catch basins, drains, manholes, junction boxes, weirs, valves, gates, pumps, structures, related equipment and related infrastructure, in the Development lying within the Easement Areas shown on the map attached hereto as Exhibit "A," which facilitates the collection, storage and conveyance of storm and surface water runoff for public benefit through, within, and from the Development. For purposes of this Agreement, the Drainage System shall not include any bridges, docks, retaining walls, road or pathway asphalt, road or building gutters, underdrains, sub-drains, structural bulkheads, beaches, tidal banks, estuaries, or salt marshes, or driveway pipes, unless the Town, in its sole discretion deems any particular driveway pipe as critical to the function of the Drainage System.
- (e) *Emergency:* A blockage, structural or mechanical failure, collapse or other sudden catastrophic event affecting any part of the Drainage System which prevents or substantially inhibits the flow of storm and surface water through all or any part of the Drainage System, or which otherwise results in an imminent peril to life or property.
- (f) *Permanent Structure:* Any immovable structure, including, but not limited to, buildings, sheds, pavilions, walls, masonry structures, tennis courts, and swimming pools, including swimming pool decks.
- (g) *Town:* The Town of Hilton Head Island, South Carolina.

2. *Grant of Easements:* The Association does hereby grant, transfer, sell and convey to the Town, and its agents, assigns, employees and contractors, and their vehicles, machinery and equipment, and create and establish for the benefit of the Town, the following easements:

(a) A non-exclusive Access Easement on, over and across any roads and streets within the Development, and on, over and across any property owned by the Association encumbered by all or any part of the Drainage System. This Access Easement includes a non-exclusive and partial assignment of any and all easement rights for access held by the Association, under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through.

(b) A non-exclusive Maintenance Easement on, under, over, through and across any property of the Development, encumbered by all or any part of the Drainage System. This Maintenance Easement includes a non-exclusive and partial assignment of any and all easement rights for maintenance, construction, or otherwise, held by the Association under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through. This Maintenance Easement shall include all facilities or structures directly related to the collection, storage

and conveyance of storm and surface water now or hereafter existing within the Development, and sufficient property beside or over any part of the Drainage System as shown on Exhibit "A" to allow for excavation and any other work necessary to improve, repair or maintain the Drainage System.

(c) A non-exclusive Drainage Easement for the conveyance of any storm and surface water originating from within or without the boundaries of the Development through the Drainage System, at such rates and in such amounts as may occur from time to time.

(d) This Drainage Easement includes a non-exclusive and partial assignment of any and all easement rights for drainage held by the Association under the Covenants or any other recorded declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through; provided however, that the Town shall provide timely written notification to the Association of any potentially disruptive improvements and/or modifications to the systems conveying storm and surface water originating without the boundaries of the Development and through the Development Drainage System.

3. This Access, Drainage and Maintenance Easement is granted and accepted subject to the following:

(a) The Town agrees that the use of the easements granted herein shall be restricted to the hours of 7:00 o'clock, A.M., to 5:00 o'clock, P.M.,



Monday through Friday excluding public holidays, except in the event of an Emergency.

(b) Other than in the case of an Emergency, the Town and the Association shall determine the scheduling of any work to be performed hereunder, on its or their property, in advance of the commencement of the work.

(c) This Access, Drainage and Maintenance Easement is conveyed subject to all other easements, licenses, and conveyances of record and is subject to the rights herein reserved by the Association, their successors and assigns, to utilize their property at any time, in any manner, and for any purpose, provided, however, that such use by the Association shall not be inconsistent with nor prevent the full utilization by the Town of the rights and privileges granted herein.

(d) The Town agrees to plan, lay out, and execute or build improvements, repairs and maintenance of the Drainage System, and further agrees that the Town's exercise of the rights granted in this Access, Drainage and Maintenance Easement shall be under the exclusive control of the Town and that the Town shall at all times comply with all applicable laws, rules, codes, and regulations.

(e) The Association shall not erect any Permanent Structure on, under, over, through and across any property of the Development encumbered by all or any part of the Drainage System without the Town's prior written approval, which approval shall not be unreasonably withheld. The

Association shall not impede, obstruct, or allow to be obstructed, the natural flow of storm and surface water runoff through the Drainage System; provided, however, that to the extent the Association shall have a continuing obligation under the Covenants to repair and maintain various improvements located within the Common Properties (lagoons and lagoon banks, roads, pathways, utilities, etc.), and this Agreement is not intended to in any way restrict or limit the Association from taking reasonable actions to perform said obligations.

(f) The rights conveyed under this Access, Drainage and Maintenance Easement are limited to the parties and purposes stated herein. This Access, Drainage and Maintenance Easement conveys no rights of access or otherwise to the general public.

4. The Association acknowledges that the Town shall have no obligation to perform or pay for any work to repair, improve or maintain the appearance or appeal of the lagoons, banks of lagoons, landscaping, drains, canals, or other visible components of the Drainage System, including, but not limited to, structures, bridges, bulkheads, pipes, culverts, valves and gates.

5. The Town agrees to cause all work contemplated hereunder to be performed in a workmanlike fashion with minimal interference to the Grantor, its successors, assigns, invitees, guests, licensees, and agents. The Town further agrees to cause the work contemplated hereunder to be completed in an expeditious and timely fashion, and that all materials, debris, and construction materials shall be promptly removed. The Town shall restore any other part of the property of the Association which may be damaged as a

result of the Town's exercise of the rights granted hereunder to its pre-existing state.

6. The Town hereby warrants to the Association that the granting of this Access, Drainage and Maintenance Easement will not affect any "set back" lines with respect to any property currently owned by the Association.

To have and to hold, all and singular, the rights, privileges, and easements aforesaid unto the Town of Hilton Head Island, South Carolina, its successors and assigns, forever.

In Witness whereof, the parties hereto have caused the within Access, Drainage and Maintenance Easement to be executed by their duly authorized officers as of this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

WITNESSES:

Spanish Wells Property Owners Association, Inc.

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Attest: \_\_\_\_\_

**STATE OF SOUTH CAROLINA**

)

**UNIFORM ACKNOWLEDGMENT**

)

**COUNTY OF BEAUFORT**

)

**S.C. CODE § 30-5-30 (SUPP. 2010)**

I, the undersigned Notary Public do hereby certify that \_\_\_\_\_  
personally appeared before me on this day and duly acknowledged the execution of the  
foregoing instrument on behalf of Spanish Wells Property Owners Association, Inc.

Sworn to and Subscribed before me

on this \_\_\_\_\_ Day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_

WITNESSES:

THE TOWN OF HILTON HEAD ISLAND,  
SOUTH CAROLINA

\_\_\_\_\_

By: \_\_\_\_\_  
John J. McCann, Mayor

\_\_\_\_\_

Attest: \_\_\_\_\_  
Marc Orlando, Town Manager

**STATE OF SOUTH CAROLINA**

)

**UNIFORM ACKNOWLEDGMENT**

)

**COUNTY OF BEAUFORT**

)

**S.C. CODE § 30-5-30 (SUPP. 2010)**

I, the undersigned Notary Public do hereby certify that John J. McCann and Marc Orlando personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of The Town of Hilton Head Island, South Carolina.

Sworn to and Subscribed before me  
on this \_\_\_\_\_ Day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_

**STATE OF SOUTH CAROLINA        )**  
**)**  
**COUNTY OF BEAUFORT                )**       **DRAINAGE SYSTEM**  
**)**       **MAINTENANCE AGREEMENT**

This Drainage System Maintenance Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between Spanish Wells Club, having an address of 1 Brams Point Road, Hilton Head Island, SC 29926, and the Town of Hilton Head Island, South Carolina, a body politic, having an address of One Town Center Court, Hilton Head Island, South Carolina, 29928.

**WITNESSETH**

WHEREAS, Spanish Wells Plantation is a subdivision of land lying and being within the Town of Hilton Head Island, Beaufort County, South Carolina (hereinafter the “Development”); and,

WHEREAS, Spanish Wells Club is the owner of improved and unimproved real property within Spanish Wells Plantation; and,

WHEREAS, Beaufort County, South Carolina, has adopted Ordinance 99-101, *et seq.*, as amended, creating a Storm Water Utility with the power to impose Storm Water Utility Service Fees on all residents of Beaufort County, South Carolina, and which also provides that Storm Water Utility Service Fees collected from property owners within the Town of Hilton Head Island, South Carolina, are returned to it, less administrative fees, to be used for the purposes set forth in Ordinance 99-101, *et seq.*, as amended; and,

WHEREAS, the imposition and collection of Storm Water Utility Service Fees results in a fund available for the construction and maintenance of existing and planned

infrastructure for the collection and conveyance of storm water runoff within the Town of Hilton Head Island, South Carolina, and,

WHEREAS, Spanish Wells Club desires for the Town of Hilton Head Island, South Carolina, to utilize Storm Water Utility Service Fees to undertake maintenance and improvement of the storm water drainage system in Spanish Wells Plantation, to facilitate the conveyance of storm water runoff within and through the Development; and,

WHEREAS, the Spanish Wells Club has agreed to grant access, drainage and maintenance easements to the Town, in order to facilitate the maintenance and improvement of the qualifying storm water drainage system in Spanish Wells Plantation.

Now, therefore, know all men by these presents, that Spanish Wells Club and the Town of Head Island, South Carolina, for and in consideration of the sum of One and no/100 (\$1.00) Dollars, each paid to the other at and before the execution and delivery of this Agreement, the receipt and sufficiency whereof is acknowledged, agree as follows:

1. **Defined Terms:** As used in this Agreement, the following terms as related to this agreement shall mean:
  - a. *Agreement:* This “Drainage System Maintenance Agreement”.
  - b. *Association:* Spanish Wells Property Owners Association, Inc., a South Carolina not-for-profit.
  - c. *Casualty:* The destruction of all or any part of the Drainage System through a natural disaster.
  - d. *Club:* Spanish Wells Club, a business enterprise operating a golf club on property owned by the business within Spanish Wells

Plantation with the full authority to execute and deliver the Access, Drainage and Maintenance Easement attached hereto as Exhibit “C”.

- e. *Development:* Spanish Wells Plantation, a planned unit development or subdivision lying and being on Hilton Head Island, Beaufort County, South Carolina, which is shown and described on the map attached as Exhibit “B” hereto.
- f. *Drainage System:* The existing system of lagoons, ditches, canals, pipes, culverts, catch basins, drains, manholes, junction boxes, weirs, valves, gates, pumps, structures, related equipment and related infrastructure, in the Development lying within the Easement Areas shown on the map attached hereto as Exhibit “A,” which facilitates the collection, storage and conveyance of storm and surface water runoff for public benefit through, within, and from the Development. For purposes of this Agreement, the Drainage System shall not include any bridges, docks, retaining walls, road or pathway asphalt, road or building gutters, underdrains, sub-drains, structural bulkheads, beaches, tidal banks, estuaries, or salt marshes, or driveway pipes, unless the Town, in its sole discretion deems any particular driveway pipe as critical to the function of the Drainage System.
- g. *Emergency:* A blockage, structural or mechanical failure, collapse or other sudden catastrophic event affecting any part of the Drainage System which prevents or substantially inhibits the flow of storm and



surface water through all or any part of the Drainage System, or which otherwise results in an imminent peril to life or property.

- h. *Permanent Structure*: Any immovable structure, including, but not limited to, buildings, sheds, pavilions, walls, masonry structures, tennis courts, and swimming pools, including swimming pool decks.
- i. *Pollutant*: Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; non-hazardous liquid and solid wastes and yard wastes; sediment; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; concrete and cement; and noxious or offensive matter of any kind.
- j. *Post-construction Structural Best Management Practice Facility*: A Post-construction Structural Best Management Practice Facility (BMPF) is a facility designed and built to provide treatment of storm water either through storage, filtration or infiltration (i.e. detention basins, retention basins, rain gardens, bioretention cells, sand filters, vegetated filter strips, water quality swales and infiltration trenches)

as set forth in the latest editions of the Beaufort County Manual for Storm Water Best Management and Design Practices, the South Carolina DHEC Storm Water Management BMP Handbook, and the Georgia Coastal Stormwater Supplement, which include descriptions standards, and design guidelines for these facilities.

- k. *Project*: Work, including repairs and improvements performed or approved by the Town to correct a specific Qualifying Storm Drainage System Deficiency.
- l. *Qualifying Drainage System Deficiency*: Anything that, in the determination of the Town, prevents, impairs or impedes the adequate conveyance or drainage of storm water runoff through the Drainage System or the structural failure of a Drainage System component. Qualifying Drainage System Deficiencies include, but are not limited to, the following:
  - i. Lagoon bank erosion that has an appreciable adverse impact on conveyance of storm water runoff through the Drainage System or threatens the integrity of adjacent Drainage System infrastructure or Permanent Structures;
  - ii. Presence of sediment and debris located in the Drainage System that has an appreciable adverse impact on the conveyance of storm water runoff through the Drainage System or the functioning of the Drainage System;

- iii. Structural deficiencies associated with pipes and culverts, including, but not limited to, joint failures, deterioration, root intrusion, or collapse that has an appreciable adverse impact on conveyance of storm water runoff through the Drainage System or threatens the integrity of adjacent Drainage System infrastructure or Permanent Structures;
- iv. Structural deficiencies associated with inlets, manholes, junction boxes, control structures and headwalls including, but not limited to, connection failure, deterioration, mechanical failure, or collapse that has an appreciable adverse impact on conveyance of storm water runoff through the Drainage System, or that threatens the integrity of adjacent infrastructure or Permanent Structures. Examples of typical deficiencies include damaged grates, grout failures at pipe connections, deterioration or failure of flap gates and sluice gates, or failure of structure walls;
- v. Sinkholes caused by Drainage System pipe or Drainage System structure Deficiencies, but not those caused by the actions of any third party, including utility providers;
- vi. Drainage System conveyance or performance deficiencies due to inadequate design capacity. Examples of typical conveyance or performance deficiencies include undersized pipes and insufficient weir capacities.

Qualifying Drainage System Deficiencies do not include the following:

- i. The aesthetic appearance or appeal of any part of the Drainage System, including but not limited to lagoons, banks of lagoons, channel banks, landscaping, drains, catch basins, canals, structures, bridges, bulkheads, pipes, culverts, valves gates, debris that does not have an appreciable adverse impact on the conveyance of storm and surface water through the Drainage System, or other visible components of the Drainage System;
- ii. The introduction of pollution or pollutants into the Drainage System from any source;
- iii. Lagoon bank erosion that does not have an appreciable adverse impact on conveyance of storm water runoff through the Drainage System or threaten the integrity of adjacent Drainage System infrastructure or Permanent Structures;
- iv. Tidal erosion or tidal flooding that does not have an appreciable adverse impact on conveyance of storm water runoff through the Drainage System or threaten the integrity of Drainage System infrastructure;
- v. Establishment of access to the Drainage System by the Club, including, but not limited to, grading, clearing of vegetation,

- removal of trees, or removal of other obstructions or Permanent Structures in order to provide physical access to the Drainage System;
- vi. Drainage System damage or deficiencies caused by the actions of others, including utilities and property owners (including, but not limited to, bores or cuts into pipes or structures);
  - vii. Minor or nuisance flooding that does not adversely affect transportation infrastructure, Permanent Structures, hardscape amenities, or conveyance of storm water runoff through the Drainage System, including golf course flooding, isolated lawn and yard ponding, or standing water in roadway shoulders and unimproved lots or land;
  - viii. Drainage System Deficiencies determined by the Town to be caused or exacerbated by intentional acts causing tidal backflow and saltwater intrusion into the Drainage System through failure to operate control structures per the design intent or the failure by the Club to monitor and maintain proper functioning of backflow prevention devices including flaps, gates, sluice gates, check valves, or similar devices;
  - ix. Damage to, or failure of, Drainage System components situated underneath or within five (5) feet of any Permanent Structure that is not a part of the Drainage System, where the Town determines that difficult access and/or liabilities

exist, or within the zone of influence for the foundation of a  
Permanent Structure;

- x. The construction of a new drainage system or an addition to an existing Drainage System, or the modification of an existing Drainage System to accommodate drainage requirements for new development within the Development.
  - xi. Drainage System deficiencies determined by the Town to be caused by or originating from unauthorized or non-permitted modifications to the Drainage System by any party other than the Town.
- m. *Storm Water Utility Service Fees:* The fees collected by Beaufort County, South Carolina, under the authority of Beaufort County Ordinance 99-101, *et seq.*, as amended, and which are remitted by Beaufort County, South Carolina, to the Town; or any similar fee, however denominated, imposed and collected by any subsequent or successor Storm Water Utility operated by The Town, under the authority of Town Ordinance Number 2002-43.
- n. *Storm Water Utility Project Prioritization and Annual Budget Process:* The annual process by which the Town of Hilton Head Island, South Carolina, shall establish and maintain a prioritized list of all known Qualifying Drainage System Deficiencies within the Town limits determined to be eligible for service using Storm Water

Utility Service Fees. Prior to the beginning of each fiscal year, the Town shall establish an annual Storm Water Utility budget which defines all revenues and expenditures associated with the Storm Water Utility Service Fees. This budget shall include those known Projects to correct Qualifying Drainage System Deficiencies intended to be completed within that fiscal year.

- o. *Town:* The Town of Hilton Head Island, South Carolina.
2. **Grant of Easements:** Contemporaneously with the execution and delivery of this Agreement, the Club and the Town have entered into an “Access, Drainage and Maintenance Easement” which grants the Town rights to access, operate, utilize, maintain, and improve the Drainage System within the Development, with said easement being in the form attached hereto as Exhibit “C”.
3. **Maintenance, Inspection and Operation of Drainage System:** Upon the execution and delivery of this Agreement and the Access, Drainage and Maintenance Easement:
  - (a)** the Town shall be responsible for the maintenance, repairs and improvements necessary to correct any Qualifying Drainage System Deficiency under the terms and conditions of this Agreement. This Agreement does not preclude the Club from repairing, maintaining, or improving any component of its Drainage System at its expense.
  - (b)** The Club shall be responsible for the following within the Development:
    - (i)** Normal and emergency operation of Drainage System control structures, including gates, weirs and pumps, and for lowering water

levels in compliance with pre-storm preparation protocols established by the Town.

- (ii) Maintenance and replacement of weir boards, maintenance of control structure access ways, decking and railings, and maintaining control structure accessibility for inspection and operation by controlling and/or removing vegetation as necessary.
- (iii) Performing maintenance of work shelves along ditches and canals to provide reasonable and adequate access for inspection, maintenance and repair.
- (iv) Monitoring the condition of flap gates, sluice gates, check valves, and similar devices intended to prevent the intrusion of tidal backflow and brackish water into the Drainage System to ensure that they are in proper working order and functioning as intended.
- (v) Making repairs to roadway pavement, pathway pavement, curb and gutter and related ancillary infrastructure or property damage attributed to a past or existing Qualifying Drainage System Deficiency if the deficiency has been corrected by the Town via trenchless technology methods (i.e. pipe lining). This does not obligate the Club to repair or replace such infrastructure if the repair is made using open cut excavations where removal of surface infrastructure is necessary to complete the repair, in which case, the repair of the ancillary infrastructure shall be considered to be a part of the Town's work to correct the deficiency.



- (vi) Performing annual inspections of Post-construction Structural Best Management Practice Facilities in order to comply with Stormwater Management Plan obligations, including submittal of inspection documentation to the Town in accordance with § 16-5-109 (H)(2), *Municipal Code to the Town of Hilton Head Island* (1983).
- (vii) Regulating the actions of utility providers and property owners, or their assigns, to prevent and mitigate any damage they may cause to the Drainage System.

4. **Procedure for Town's Maintenance of Drainage System:** The Parties acknowledge that the Town intends to provide for the maintenance and improvement of the Drainage System and the repair of identified Qualifying Drainage System Deficiencies, other than those caused by an Emergency or Casualty, through the development of its Storm Water Utility Project Prioritization and Annual Budget Process. Other than in the case of an Emergency or Casualty, as described in Articles 7, 8 and 10 below, or work completed directly by the Club under Article 9, the Parties agree:

- a. *Identifying Qualifying Drainage System Deficiencies:* The Club shall be responsible for identifying any Qualifying Drainage System Deficiencies.
- b. *Schedule for Submission:* The Club shall submit a written description of each known Qualifying Drainage System Deficiency to the Town using the service request form provided by the Town, describing the nature, location and cause (if known) of each

Qualifying Drainage System Deficiency. The Club may identify a potential solution is for the deficiency. In such case, the Club shall include a description of the solution and a preliminary estimate of anticipated costs for the proposed solution. Qualifying Drainage System Deficiencies that are reported to the Town, or which are discovered by the Town, by the end of any calendar year will be considered in the development of the Storm Water Utility Project Prioritization and Annual Budget Process for the following fiscal year.

- c. *Completion of Maintenance:* The Town shall annually develop a Storm Water Utility Project Prioritization and an Annual Budget that will address identified Qualifying Drainage System Deficiencies as follows:
  - i. The Town shall determine the scope and extent of the maintenance, repair or improvement that is necessary to correct any Qualifying Drainage System Deficiencies, and the means, methods and materials needed to accomplish the same.
  - ii. The Town shall determine the priority and number of the Projects and schedule the Projects to correct to correct the Qualifying Drainage System Deficiencies for each fiscal year. The determination of the scheduling and funding for the

correction of the Qualifying Drainage System Deficiencies shall be made by the Town, taking into account the following:

1. The availability and amount of the Storm Water Utility Service Fees fund balance, revenue from bonds paid by Storm Water Utility Service Fees, and Storm Water Utility Service Fees in any given fiscal year;
  2. Prioritization of all other Projects, or qualifying requested improvements, repair and maintenance that are to be funded with Storm Water Utility Service Fees; and
  3. The annual cost required to operate the Storm Water Utility, its programs and initiatives, and debt service.
- iii. The Town will complete the Projects as determined by the Town as a part of the Storm Water Utility Project Prioritization and Annual Budget Process, unless Emergencies or Casualties occur that alter the prioritization and funding such that funds are insufficient to correct all Qualifying Drainage System Deficiencies as intended within the same fiscal year.
- d. *Scheduling of Projects*: Other than in the case of an Emergency or Casualty, the Town and the Club shall mutually agree in writing as to

the scheduling of any Project to be performed under this Agreement in the Development in advance of the commencement of the Project.

- e. *Access Needed to Complete Project:* The Club shall be responsible for providing clear and adequate physical access to each Project site at no cost to the Town. If clear, adequate physical access to the Project site cannot be provided sufficient to complete the Project without the likelihood of damage to property, assets and amenities by contractors and equipment, the repair and replacement of any property, assets and amenities damaged as a result of the Project shall be the responsibility of the Club, at no additional cost to the Town. Such property, assets and amenities shall include, but are not limited to, landscaping, flowerbeds, ornamental shrubs and trees, lawns, irrigation systems, boardwalks, cart paths, driveways, and sidewalks. The determination of whether the access is clear and adequate, and whether there is a likelihood of damage shall be made in the sole discretion of the Town, prior to the commencement of the Project. The Club has the right to withdraw the service request if the magnitude of potential damage is not acceptable to the Club. If the service request is withdrawn, completing the Project shall be the responsibility of the Club.
- f. *No Guarantees Regarding Schedule:* The Town cannot guarantee that the amount of available Storm Water Utility Service Fees, the number of Projects to be funded with Storm Water Utility Service

Fees in any given fiscal year, and whether Emergencies and Casualties and weather related general emergencies will not cause delays in the correction of Qualifying Drainage System Deficiencies within the Development and elsewhere. The parties acknowledge that the Town's determinations with respect to the priority, funding and timing of any Project shall be made at the Town's discretion and shall be final.

5. **Further Obligations of the Club:** The Club agrees that during the term, or any renewal term, of this Agreement, it shall take no action which damages the Drainage System, allows damage to the Drainage System, or creates a Drainage System Deficiency, including, but not limited to allowing salt water intrusion or pollutants to enter the Drainage System and allowing utility providers, property owners, or their assigns to impair the function of the Drainage System.
6. **Payments as Current Expense of Town:** Any payments to be made by the Town hereunder shall be made from Storm Water Utility Service Fees as budgeted for by the Town in any given fiscal year. The Town and the Club intend that the payment obligations of the Town shall constitute a current expense of the Town and shall not in any way be construed to be a debt of the Town in contravention of any applicable constitutional or statutory limitations concerning indebtedness of the Town, nor shall anything contained herein constitute a pledge of general tax revenues, funds, money or credit of the Town.
7. **Emergency:** The Parties agree that in the event of an Emergency, the following procedure shall apply:

- a. *Agreement Not Terminated:* This Agreement shall remain in full force and effect.
  - b. *Responsibilities of the Club:* The Club shall take such steps as may be reasonably necessary to secure any area affected by the Emergency. The Club shall notify the Town as soon as is practical after discovery of the Emergency. The Club may complete any repairs to the Drainage System needed to address the Emergency, as provided for in Article 10, below.
  - c. *Responsibilities of the Town:* Upon receipt of notification of an Emergency from the Club, the Town shall determine the scope and extent of the work that is necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same. The Town shall correct or repair the damage caused by the Emergency as soon as practical, taking into account the threat presented by the Emergency, the existence of any other Emergency or Casualty, the cause of the Emergency and/or the existence of any general emergency affecting the Town and availability of funding. The Town may seek reimbursement from third parties for any costs incurred by the Town as a result of any Emergency found to have been caused by the negligence of said third parties.
8. **Casualty:** The Parties agree that in the event of a Casualty, the following procedure shall apply:

- a. *Agreement Not Terminated:* This Agreement shall remain in full force and effect.
- b. *Design of Drainage System:* The Town shall produce engineering and design plans at its expense for the reconstruction of all or any part of the Drainage System affected by the Casualty.
- c. *Approval of Plans:* The engineering and design plans must be approved by the Club prior to any reconstruction of the Drainage System. If the Club does not approve the engineering and design plans prepared by the Town, the Club may reconstruct the Drainage System at its own expense and shall not seek reimbursement for the cost thereof from the Town.
- d. *Right of Entry and Access:* If the engineering and design plans approved by the Club require work outside of easement limits described in the Access, Drainage and Maintenance Easement, the Club shall provide temporary easements for access and construction over any property it owns or controls.
- e. *Amendment of Access, Drainage and Maintenance Easement:* In the event that the engineering and design plans approved by the Club include permanent improvements or create access or other needs that are in areas not included in the Access, Drainage and Maintenance Easement, the Club agrees that it will execute and deliver an amendment to the Access, Drainage and Maintenance

Easement to subject any such areas in the Access, Drainage and Maintenance Easement.

- f. *Reconstruction of Drainage System:* Following the approval of the engineering and design plans and specifications by the Club, the Club's delivery of any needed temporary easements for access and construction, the Town shall complete the reconstruction of the Drainage System, or any part of it, as soon as is practical, taking into account the threat presented by the cause of the Casualty, the existence of any general emergency affecting the Town, the existence of other Emergencies and Casualties and availability of funding. Other than the expenses identified in subsection (b) of this Article 8, the Town may seek reimbursement for any costs incurred by the Town as a result of any Casualty from Storm Water Utility Service Fees, bond, any government aid and assistance programs, or the Club, if the Club is responsible for all or any part of the Casualty.
9. **Maintenance of Drainage System by the Club:** Nothing herein shall prohibit the Club from performing any Project in advance of the time that any such Project is scheduled as a part of the Town's Storm Water Utility Project Prioritization and Annual Budget Process, if the Club determines that it is in its interest to do so. Other than in the case of an Emergency (addressed in Article 10, below), or a Casualty (addressed in Article 8, above), the Club shall be entitled to reimbursement, in an amount up to the amount budgeted by the Town for the Project but not exceeding the actual cost to the Club, from Storm Water Utility



Service Fees, in the fiscal year that such Project is scheduled to be done as a part of Town's Storm Water Utility Project Prioritization and Annual Budget Process, as follows;

- a. The Club shall submit its plans, quantities, and specifications for any Project to the Town.
- b. The Town shall grant its written approval to the Club to complete the Project unless it determines that:
  - i. The plan and work proposed by the Club will not correct the existing Qualifying Drainage System Deficiency; or,
  - ii. The scope of the proposed work exceeds what is necessary to correct the existing Qualifying Drainage System Deficiency,
- c. Upon receipt of the Town's written approval, the Club shall bid the work in accordance with the Town's Procurement Code, § 11-1-111, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983), as the same may be amended from time to time.
- d. Any changes in the approved scope of work for the Project resulting in additional work or cost to the Town must be approved in writing by the Town prior to commencement of any additional work.
- e. The Club shall notify the Town at least seventy-two (72) hours prior to the commencement of work on the Project and at any key junctures of the work where the Town may need to inspect the work.

- f. Upon completion of the Project, the Town shall inspect the Project and provide the Club written approval or rejection of the Project.
- g. If the Project is approved by the Town, the Club shall submit to the Town its request for reimbursement, which shall include full documentation of the bid and procurement of the work to complete the Project, the contract for the work to complete the Project, the construction plans, details and as-built surveys or drawings, measurements, dated inspection reports, photographs of the work in progress, documentation of the payments made by the Club, any required test reports and the Club's written certification that the Project was completed in accordance with the approved plans and specifications.
- h. The Town shall thereafter budget funds for reimbursement to the Club from Storm Water Utility Service Fees in the fiscal year that the Project would have otherwise been scheduled in the Town's Storm Water Utility Project Prioritization and Annual Budget Process. The schedule for reimbursement shall depend upon the Project ranking when compared to all other Projects as determined in the Town's Storm Water Utility Project Prioritization and Annual Budget Process and may be moved forward into a future budget year as a result. The Club acknowledges that the Town has no obligation to reimburse the Club for any Project in the fiscal year following the Club's completion of the Project, or in any other particular fiscal year.

10. **Emergency Work by the Club:** If for any reason, the Town is unable to repair or correct the damage caused by an Emergency in a time frame that is acceptable to the Club, the following shall apply:
- a. The Club shall consult with the Town to determine a cost-efficient scope and extent of work necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same. The TOWN must approve in writing, the scope and plans for the work and procurement of construction services, prior to the commencement of work. The Club is not required to bid the work but if the Club chooses to bid the work, the Club shall bid the work in accordance with the Town's Procurement Code, § 11-1-111, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983), as the same may be amended from time to time.
  - b. The Club shall complete the work that is necessary to repair or correct the damage caused by the Emergency.
  - c. The Club shall, whenever possible, notify the Town at least seventy-two (72) hours prior to the commencement of work and at any key junctures of the work whereas the Town may need to inspect the work.
  - d. Upon completion of the work that has been authorized and approved by the Town, the Club shall submit to the Town a request for reimbursement, which shall include full documentation of the bid

and procurement documents for the work, the contract for the work, construction plans, details and as-built surveys or drawings, measurements, dated inspection reports, photographs of the work done and documentation of the payments made, any required test reports and the Club's written certification that the work was completed in accordance with the approved plans and specifications and state the date the work was completed.

- e. The Town shall approve the Club's request for reimbursement unless it determines that the requested reimbursement includes work other than the work authorized and approved by the Town.
  - f. Within three (3) fiscal years following the Town's approval of the Club's request for reimbursement, the Town shall reimburse the Club in the amount approved.
  - g. Requests for reimbursement by the Club be submitted to the Town within three years following the completion of the work by the Club. The failure to submit the request for reimbursement to the Town within three years following completion of the Work shall bar any reimbursement for the work.
11. **No Guarantees Regarding Flooding:** The Club acknowledges that the Town's performance of its obligations under this Agreement does not guarantee or insure that property within the Development will be free of events of flooding or erosion, and that the Town does not represent or warrant to the Club that the performance

of the Town's obligations under this Agreement will operate to prevent events of flooding or erosion within the Development.

12. **Waiver of Storm Water Service Fee Credit:** Upon the execution and delivery of this Agreement, and for and during the term or any extensions hereof, the Club acknowledges it shall not be entitled to receive and hereby waives any Storm Water Service Fee Credit from Beaufort County or the Town with respect to any real property located within the limits of the Development, for and during the term of this Agreement or any renewal of this Agreement.
13. **Term:** This Agreement shall remain in place for ten years from the date of execution and shall renew automatically for successive two (2) year terms beginning July 1 each year thereafter, unless either Party notifies the other, in writing, of its intention to terminate this Agreement. Any such notice shall be delivered not less than two hundred and seventy (270) days prior to the end of the Town fiscal year (June 30) at the end of the then-current term in which such Party wishes to terminate the Agreement. Upon delivery of such notice, this Agreement shall terminate at midnight on June 30<sup>th</sup> of the fiscal year in which the notice is delivered (for example, if notice is given February 1, 2020, the Agreement would terminate on June 30, 2021). The parties shall thereafter execute and deliver such documents as may be necessary to cancel the Access, Drainage and Maintenance Easement delivered pursuant to this Agreement.
  - a. **Superseding Legislation:** In the event that the South Carolina General Assembly enacts legislation prohibiting the ability of local governments to

impose and collect Storm Water Service Fees, then this Agreement shall terminate.

14. **Representation and Warranties of the Club:**

The Club represents and warrants:

- a. That any and all necessary approvals and/or resolutions have been obtained, that it has the full authority to execute, deliver and perform this Agreement and to execute and deliver the Access, Drainage and Maintenance Easement to be delivered pursuant to this Agreement, and that the individual(s) executing such documents have full power and authority to bind the Club to the same.
- b. That it is not now a party to any litigation affecting the property burdened by the easements herein which could impair the obligations of the Club under this Agreement or the Access, Drainage and Maintenance Easement, and the Club knows of no litigation or threatened litigation affecting their ability to grant said easements.
- c. That as to any pipes or other portions of the Drainage System as shown on Exhibit "A" hereto which are located in whole or in part on private residential lots, the Club has full authority under the Covenants to convey or assign to the Town the rights contemplated in this Agreement and the Access, Drainage and Maintenance Easement.

15. **Town Representation and Warranties:**

The Town represents and warrants to the Club:

- a. As is shown by the Resolution of the TOWN that is attached hereto as Exhibit “D”, the Town represents that it has the power and authority to enter into this Agreement and complete its obligations hereunder; and,
  - b. That it is not now a party to any litigation which could impair the obligations of the Town under this Agreement, and the Town knows of no litigation or threatened litigation affecting its ability to perform hereunder.
16. **Taxes:** The Club shall ensure payment, prior to delinquency, all taxes on Club properties within the Development burdened by the easements granted under this Agreement.
17. **Default:** The Town and the Club agree that in the event of a default or breach of any provision or term of this Agreement, the non-defaulting party or parties shall give written notice to the defaulting party or parties of the default or breach. In the event that the defaulting party or parties fail to cure the default or breach within thirty (30) days of the date of the written notice specifying the default or breach, unless a non-monetary default or breach cannot reasonably be cured within said thirty (30) day time period, then said period shall be reasonably extended, up to one hundred and twenty (120) days, then the non-defaulting party or parties shall be entitled to pursue any remedy at law or in equity against the defaulting party or parties, including but not limited to an action for damages, injunction or specific performance of this Agreement.

18. **Attorney's Fees:** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default or misrepresentation in connection with any of the provisions or terms of this Agreement, the prevailing party or parties shall be entitled to seek recovery of its or their reasonable attorney's fees and any costs incurred as a result of any such action or proceeding, whether incurred before the commencement of suit or after the commencement of suit, and including appellate proceedings, in addition to any other relief to which the prevailing party or parties is or are entitled.
19. **General Provisions:**
- a. *Binding Effect:* This Agreement shall inure to the benefit of and be binding upon the Club and the Town, and their respective successors and assigns.
  - b. *Amendment, Changes and Modifications:* Except as is otherwise provided herein, this Agreement may not be modified, amended, changed or altered without the written consent of the Town and the Club.
  - c. *Severability:* In the event that any term or provision of this Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other term or provision hereof.
  - d. *Execution in Counterparts:* This Agreement may be simultaneously executed in several counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument.



- e. *Applicable Law:* This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.
- f. *Captions:* The captions or headings used herein are for convenience only and in no way define, limit, expand or describe the scope or intent of any term or provision of this Agreement.
- g. *Plural/Singular:* Where appropriate, the use of the singular herein shall be deemed to include the plural, and the use of the plural herein shall be deemed to include the use of the singular.
- h. *No Third Party Beneficiaries:* The Town and the Club affirmatively represent that this Agreement is made solely for the benefit of the Parties hereto and their respective successors and assigns and not for the benefit of any third party who is not a signature party hereto. It is the express intent of the Town and the Club that no other party shall have any enforceable rights hereunder, or any right to the enforcement hereof, or to any claim for damages as a result of any alleged breach hereof.
- i. *Notices:* All notices, applications, requests, certificates or other communications required hereunder shall be sufficiently given and shall be deemed given on the date when such is delivered in person, or deposited in the United States Mail, by regular first class mail, postage prepaid, at the following addresses, or at such other address as may be designated, in writing, by the Parties:

To the Town:           The Town of Hilton Head Island  
                              Attn: Marc Orlando, Town Manager  
                              One Town Center Court  
                              Hilton Head Island, SC 29928

To the Club:            Spanish Wells Club  
                              Attn: Kathy Joyce, Board President  
                              1 Brams Point Road  
                              Hilton Head Island, South Carolina, 29926

- j. *No Waiver*: No failure of any Party hereto to exercise any power or right given to such Party hereunder, or to insist on strict compliance by any other Party of its obligations hereunder, and no custom or practice of the Parties at variance with the terms and provisions hereof shall constitute a waiver of any Party's right to thereafter demand strict compliance with the terms of this Agreement.
- k. *Further Assurances and Corrective Documents*: The Town and the Club agree to do, execute, acknowledge, deliver or cause to be done all such further acts as may be reasonably determined to be necessary to carry out this Agreement and give effect to the terms and provisions hereof. The Town and the Club agree that each shall, upon request, execute and deliver such other or further or corrective documents as may be reasonably determined to be necessary to carry out this Agreement and each of the terms and provisions hereof.

In Witness Whereof, The Town of Hilton Head Island, South Carolina and Spanish Wells Club, by and through their duly authorized officers, have executed and delivered this Agreement as of this \_\_\_\_ day of \_\_\_\_\_, 2021.

**SIGNATURES BEGIN ON NEXT PAGE**

WITNESSES:

Spanish Wells Club

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_

Attest: \_\_\_\_\_

Its: \_\_\_\_\_

WITNESSES:

THE TOWN OF HILTON HEAD ISLAND,  
SOUTH CAROLINA

\_\_\_\_\_

By: \_\_\_\_\_  
John McCann, Mayor

\_\_\_\_\_

Attest: \_\_\_\_\_  
Marc Orlando, Town Manager

## **List of Exhibits**

- Exhibit A Map depicting the limits of the Access, Drainage and Maintenance Easement areas and Drainage Systems covered by this Agreement
- Exhibit B Map depicting the Development covered by this Agreement
- Exhibit C Access, Drainage and Maintenance Easements
- Exhibit D Town Resolution authorizing this Agreement

**STATE OF SOUTH CAROLINA        )**  
**)**  
**COUNTY OF BEAUFORT            )**        **DRAINAGE SYSTEM**  
**)**        **MAINTENANCE AGREEMENT**

This Drainage System Maintenance Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between Spanish Wells Property Owners Association, Inc., a South Carolina nonprofit organization having an address of PO Box 6597, Hilton Head Island, SC 29938, and the Town of Hilton Head Island, South Carolina, a body politic, having an address of One Town Center Court, Hilton Head Island, South Carolina, 29928.

**WITNESSETH**

WHEREAS, Spanish Wells Plantation is a subdivision of land lying and being within the Town of Hilton Head Island, Beaufort County, South Carolina (hereinafter the “Development”); and,

WHEREAS, Spanish Wells Property Owners Association, Inc. is the owner of improved and unimproved real property and easements within Spanish Wells Plantation; and,

WHEREAS, Beaufort County, South Carolina, has adopted Ordinance 99-101, *et seq.*, as amended, creating a Storm Water Utility with the power to impose Storm Water Utility Service Fees on all residents of Beaufort County, South Carolina, and which also provides that Storm Water Utility Service Fees collected from property owners within the Town of Hilton Head Island, South Carolina, are returned to it, less administrative fees, to be used for the purposes set forth in Ordinance 99-101, *et seq.*, as amended; and,

WHEREAS, the imposition and collection of Storm Water Utility Service Fees results in a fund available for the construction and maintenance of existing and planned

infrastructure for the collection and conveyance of storm water runoff within the Town of Hilton Head Island, South Carolina, and,

WHEREAS, Spanish Wells Property Owners Association, Inc., desires for the Town of Hilton Head Island, South Carolina, to utilize Storm Water Utility Service Fees to undertake maintenance and improvement of the storm water drainage system in Spanish Wells Plantation, to facilitate the conveyance of storm water runoff within and through the Development; and,

WHEREAS, the Spanish Wells Property Owners Association, Inc. has agreed to grant access, drainage and maintenance easements to the Town, in order to facilitate the maintenance and improvement of the qualifying storm water drainage system in Spanish Wells Plantation.

Now, therefore, know all men by these presents, that Spanish Wells Property Owners Association, Inc. and the Town of Head Island, South Carolina, for and in consideration of the sum of One and no/100 (\$1.00) Dollars, each paid to the other at and before the execution and delivery of this Agreement, the receipt and sufficiency whereof is acknowledged, agree as follows:

1. **Defined Terms:** As used in this Agreement, the following terms as related to this agreement shall mean:
  - a. *Agreement:* This “Drainage System Maintenance Agreement”.
  - b. *Association:* Spanish Wells Property Owners Association, Inc., a South Carolina not-for-profit corporation with the full authority under the Covenants to enter into this Agreement and to complete all of the Association’s obligations under it, and to execute and

deliver the Access, Drainage and Maintenance Easement attached hereto as Exhibit “C.”

- c. *Casualty*: The destruction of all or any part of the Drainage System through a natural disaster.
- d. *Covenants*: Any one or more of Covenants, Conditions, and Restrictions for Spanish Wells Property Owners Association, Inc. recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.
- e. *Development*: Spanish Wells Plantation, a planned unit development or subdivision lying and being on Hilton Head Island, Beaufort County, South Carolina, which is shown and described on the map attached as Exhibit “B” hereto.
- f. *Drainage System*: The existing system of lagoons, ditches, canals, pipes, culverts, catch basins, drains, manholes, junction boxes, weirs, valves, gates, pumps, structures, related equipment and related infrastructure, in the Development lying within the Easement Areas shown on the map attached hereto as Exhibit “A,” which facilitates the collection, storage and conveyance of storm and surface water runoff for public benefit through, within, and from the Development. For purposes of this Agreement, the Drainage System shall not include any bridges, docks, retaining walls, road or pathway asphalt, road or building gutters, underdrains, sub-drains, structural bulkheads, beaches, tidal banks, estuaries, or salt marshes, or

driveway pipes, unless the Town, in its sole discretion deems any particular driveway pipe as critical to the function of the Drainage System.

- g. *Emergency*: A blockage, structural or mechanical failure, collapse or other sudden catastrophic event affecting any part of the Drainage System which prevents or substantially inhibits the flow of storm and surface water through all or any part of the Drainage System, or which otherwise results in an imminent peril to life or property.
- h. *Permanent Structure*: Any immovable structure, including, but not limited to, buildings, sheds, pavilions, walls, masonry structures, tennis courts, and swimming pools, including swimming pool decks.
- i. *Pollutant*: Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; non-hazardous liquid and solid wastes and yard wastes; sediment; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; concrete and cement; and noxious or offensive matter of any kind.



- j. *Post-construction Structural Best Management Practice Facility:* A Post-construction Structural Best Management Practice Facility (BMPPF) is a facility designed and built to provide treatment of storm water either through storage, filtration or infiltration (i.e. detention basins, retention basins, rain gardens, bioretention cells, sand filters, vegetated filter strips, water quality swales and infiltration trenches) as set forth in the latest editions of the Beaufort County Manual for Storm Water Best Management and Design Practices, the South Carolina DHEC Storm Water Management BMP Handbook, and the Georgia Coastal Stormwater Supplement, which include descriptions standards, and design guidelines for these facilities.
- k. *Project:* Work, including repairs and improvements performed or approved by the Town to correct a specific Qualifying Storm Drainage System Deficiency.
- l. *Qualifying Drainage System Deficiency:* Anything that, in the determination of the Town, prevents, impairs or impedes the adequate conveyance or drainage of storm water runoff through the Drainage System or the structural failure of a Drainage System component. Qualifying Drainage System Deficiencies include, but are not limited to, the following:
  - i. Lagoon bank erosion that has an appreciable adverse impact on conveyance of storm water runoff through the Drainage

System or threatens the integrity of adjacent Drainage System infrastructure or Permanent Structures;

- ii. Presence of sediment and debris located in the Drainage System that has an appreciable adverse impact on the conveyance of storm water runoff through the Drainage System or the functioning of the Drainage System;
- iii. Structural deficiencies associated with pipes and culverts, including, but not limited to, joint failures, deterioration, root intrusion, or collapse that has an appreciable adverse impact on conveyance of storm water runoff through the Drainage System or threatens the integrity of adjacent Drainage System infrastructure or Permanent Structures;
- iv. Structural deficiencies associated with inlets, manholes, junction boxes, control structures and headwalls including, but not limited to, connection failure, deterioration, mechanical failure, or collapse that has an appreciable adverse impact on conveyance of storm water runoff through the Drainage System, or that threatens the integrity of adjacent infrastructure or Permanent Structures. Examples of typical deficiencies include damaged grates, grout failures at pipe connections, deterioration or failure of flap gates and sluice gates, or failure of structure walls;

- v. Sinkholes caused by Drainage System pipe or Drainage System structure Deficiencies, but not those caused by the actions of any third party, including utility providers;
- vi. Drainage System conveyance or performance deficiencies due to inadequate design capacity. Examples of typical conveyance or performance deficiencies include undersized pipes and insufficient weir capacities.

Qualifying Drainage System Deficiencies do not include the following:

- i. The aesthetic appearance or appeal of any part of the Drainage System, including but not limited to lagoons, banks of lagoons, channel banks, landscaping, drains, catch basins, canals, structures, bridges, bulkheads, pipes, culverts, valves gates, debris that does not have an appreciable adverse impact on the conveyance of storm and surface water through the Drainage System, or other visible components of the Drainage System;
- ii. The introduction of pollution or pollutants into the Drainage System from any source;
- iii. Lagoon bank erosion that does not have an appreciable adverse impact on conveyance of storm water runoff through the Drainage System or threaten the integrity of

- adjacent Drainage System infrastructure or Permanent Structures;
- iv. Tidal erosion or tidal flooding that does not have an appreciable adverse impact on conveyance of storm water runoff through the Drainage System or threaten the integrity of Drainage System infrastructure;
  - v. Establishment of access to the Drainage System by the Association, including, but not limited to, grading, clearing of vegetation, removal of trees, or removal of other obstructions or Permanent Structures in order to provide physical access to the Drainage System;
  - vi. Drainage System damage or deficiencies caused by the actions of others, including utilities and property owners (including, but not limited to, bores or cuts into pipes or structures);
  - vii. Minor or nuisance flooding that does not adversely affect transportation infrastructure, Permanent Structures, hardscape amenities, or conveyance of storm water runoff through the Drainage System, including golf course flooding, isolated lawn and yard ponding, or standing water in roadway shoulders and unimproved lots or land;
  - viii. Drainage System Deficiencies determined by the Town to be caused or exacerbated by intentional acts causing tidal backflow and saltwater intrusion into the Drainage System

through failure to operate control structures per the design intent or the failure by the Association to monitor and maintain proper functioning of backflow prevention devices including flaps, gates, sluice gates, check valves, or similar devices;

- ix. Damage to, or failure of, Drainage System components situated underneath or within five (5) feet of any Permanent Structure that is not a part of the Drainage System, where the Town determines that difficult access and/or liabilities exist, or within the zone of influence for the foundation of a Permanent Structure;
  - x. The construction of a new drainage system or an addition to an existing Drainage System, or the modification of an existing Drainage System to accommodate drainage requirements for new development within the Development.
  - xi. Drainage System deficiencies determined by the Town to be caused by or originating from unauthorized or non-permitted modifications to the Drainage System by any party other than the Town.
- m. *Storm Water Utility Service Fees*: The fees collected by Beaufort County, South Carolina, under the authority of Beaufort County Ordinance 99-101, *et seq.*, as amended, and which are remitted by

Beaufort County, South Carolina, to the Town; or any similar fee, however denominated, imposed and collected by any subsequent or successor Storm Water Utility operated by The Town, under the authority of Town Ordinance Number 2002-43.

- n. *Storm Water Utility Project Prioritization and Annual Budget Process:* The annual process by which the Town of Hilton Head Island, South Carolina, shall establish and maintain a prioritized list of all known Qualifying Drainage System Deficiencies within the Town limits determined to be eligible for service using Storm Water Utility Service Fees. Prior to the beginning of each fiscal year, the Town shall establish an annual Storm Water Utility budget which defines all revenues and expenditures associated with the Storm Water Utility Service Fees. This budget shall include those known Projects to correct Qualifying Drainage System Deficiencies intended to be completed within that fiscal year.
  - o. *Town:* The Town of Hilton Head Island, South Carolina.
2. **Grant of Easements:** Contemporaneously with the execution and delivery of this Agreement, the Association and the Town have entered into an “Access, Drainage and Maintenance Easement” which grants the Town rights to access, operate, utilize, maintain, and improve the Drainage System within the Development, with said easement being in the form attached hereto as Exhibit “C”.

3. **Maintenance, Inspection and Operation of Drainage System:** Upon the execution and delivery of this Agreement and the Access, Drainage and Maintenance Easement:

(a) the Town shall be responsible for the maintenance, repairs and improvements necessary to correct any Qualifying Drainage System Deficiency under the terms and conditions of this Agreement. This Agreement does not preclude the Association from repairing, maintaining, or improving any component of its Drainage System at its expense.

(b) The Association shall be responsible for the following within the Development:

(i) Normal and emergency operation of Drainage System control structures, including gates, weirs and pumps, and for lowering water levels in compliance with pre-storm preparation protocols established by the Town.

(ii) Maintenance and replacement of weir boards, maintenance of control structure access ways, decking and railings, and maintaining control structure accessibility for inspection and operation by controlling and/or removing vegetation as necessary.

(iii) Performing maintenance of work shelves along ditches and canals to provide reasonable and adequate access for inspection, maintenance and repair.

(iv) Monitoring the condition of flap gates, sluice gates, check valves, and similar devices intended to prevent the intrusion of tidal backflow

and brackish water into the Drainage System to ensure that they are in proper working order and functioning as intended.

- (v) Making repairs to roadway pavement, pathway pavement, curb and gutter and related ancillary infrastructure or property damage attributed to a past or existing Qualifying Drainage System Deficiency if the deficiency has been corrected by the Town via trenchless technology methods (i.e. pipe lining). This does not obligate the Association to repair or replace such infrastructure if the repair is made using open cut excavations where removal of surface infrastructure is necessary to complete the repair, in which case, the repair of the ancillary infrastructure shall be considered to be a part of the Town's work to correct the deficiency.
- (vi) Performing annual inspections of Post-construction Structural Best Management Practice Facilities in order to comply with Stormwater Management Plan obligations, including submittal of inspection documentation to the Town in accordance with § 16-5-109 (H)(2), *Municipal Code to the Town of Hilton Head Island (1983)*.
- (vii) Regulating the actions of utility providers and property owners, or their assigns, to prevent and mitigate any damage they may cause to the Drainage System.

4. **Procedure for Town's Maintenance of Drainage System:** The Parties acknowledge that the Town intends to provide for the maintenance and improvement of the Drainage System and the repair of identified Qualifying



Drainage System Deficiencies, other than those caused by an Emergency or Casualty, through the development of its Storm Water Utility Project Prioritization and Annual Budget Process. Other than in the case of an Emergency or Casualty, as described in Articles 7, 8 and 10 below, or work completed directly by the Association under Article 9, the Parties agree:

- a. *Identifying Qualifying Drainage System Deficiencies:* The Association shall be responsible for identifying any Qualifying Drainage System Deficiencies.
- b. *Schedule for Submission:* The Association shall submit a written description of each known Qualifying Drainage System Deficiency to the Town using the service request form provided by the Town, describing the nature, location and cause (if known) of each Qualifying Drainage System Deficiency. The Association may identify a potential solution is for the deficiency. In such case, the Association shall include a description of the solution and a preliminary estimate of anticipated costs for the proposed solution. Qualifying Drainage System Deficiencies that are reported to the Town, or which are discovered by the Town, by the end of any calendar year will be considered in the development of the Storm Water Utility Project Prioritization and Annual Budget Process for the following fiscal year.
- c. *Completion of Maintenance:* The Town shall annually develop a Storm Water Utility Project Prioritization and an Annual Budget that

will address identified Qualifying Drainage System Deficiencies as follows:

- i. The Town shall determine the scope and extent of the maintenance, repair or improvement that is necessary to correct any Qualifying Drainage System Deficiencies, and the means, methods and materials needed to accomplish the same.
- ii. The Town shall determine the priority and number of the Projects and schedule the Projects to correct to correct the Qualifying Drainage System Deficiencies for each fiscal year. The determination of the scheduling and funding for the correction of the Qualifying Drainage System Deficiencies shall be made by the Town, taking into account the following:
  1. The availability and amount of the Storm Water Utility Service Fees fund balance, revenue from bonds paid by Storm Water Utility Service Fees, and Storm Water Utility Service Fees in any given fiscal year;
  2. Prioritization of all other Projects, or qualifying requested improvements, repair and maintenance that are to be funded with Storm Water Utility Service Fees; and

3. The annual cost required to operate the Storm Water Utility, its programs and initiatives, and debt service.
  - iii. The Town will complete the Projects as determined by the Town as a part of the Storm Water Utility Project Prioritization and Annual Budget Process, unless Emergencies or Casualties occur that alter the prioritization and funding such that funds are insufficient to correct all Qualifying Drainage System Deficiencies as intended within the same fiscal year.
  - d. *Scheduling of Projects*: Other than in the case of an Emergency or Casualty, the Town and the Association shall mutually agree in writing as to the scheduling of any Project to be performed under this Agreement in the Development in advance of the commencement of the Project.
  - e. *Resident Notification*: The Association shall be solely responsible for the notification of its owners and guests that may be affected by any Project, or by work to address any Emergency or Casualty.
  - f. *Legal Access to Private Property*: The Association shall be responsible for obtaining all access rights, including access rights over and across property in the Development that is not owned by the Association, as may be deemed necessary by the Town to complete any Project.

- g. *Access Needed to Complete Project:* The Association shall be responsible for providing clear and adequate physical access to each Project site at no cost to the Town. If clear, adequate physical access to the Project site cannot be provided sufficient to complete the Project without the likelihood of damage to property, assets and amenities by contractors and equipment, the repair and replacement of any property, assets and amenities damaged as a result of the Project shall be the responsibility of the Association, at no additional cost to the Town. Such property, assets and amenities shall include, but are not limited to, landscaping, flowerbeds, ornamental shrubs and trees, lawns, irrigation systems, boardwalks, cart paths, driveways, and sidewalks. The determination of whether the access is clear and adequate, and whether there is a likelihood of damage shall be made in the sole discretion of the Town, prior to the commencement of the Project. The Association has the right to withdraw the service request if the magnitude of potential damage is not acceptable to the Association. If the service request is withdrawn, completing the Project shall be the responsibility of the Association.
- h. *No Guarantees Regarding Schedule:* The Town cannot guarantee that the amount of available Storm Water Utility Service Fees, the number of Projects to be funded with Storm Water Utility Service Fees in any given fiscal year, and whether Emergencies and

Casualties and weather related general emergencies will not cause delays in the correction of Qualifying Drainage System Deficiencies within the Development and elsewhere. The parties acknowledge that the Town's determinations with respect to the priority, funding and timing of any Project shall be made at the Town's discretion and shall be final.

5. **Further Obligations of the Association:** The Association agrees that during the term, or any renewal term, of this Agreement, it shall take no action which damages the Drainage System, allows damage to the Drainage System, or creates a Drainage System Deficiency, including, but not limited to allowing salt water intrusion or pollutants to enter the Drainage System and allowing utility providers, property owners, or their assigns to impair the function of the Drainage System. To the extent the Association has a continuing obligation under the Covenants to repair and maintain various improvements located within the Development including lagoons and lagoon banks, ditch maintenance shelves, roads, pathways, utilities, this Agreement is not intended to in any way restrict or limit the Association's completion of its obligations.
6. **Payments as Current Expense of Town:** Any payments to be made by the Town hereunder shall be made from Storm Water Utility Service Fees as budgeted for by the Town in any given fiscal year. The Town and the Association intend that the payment obligations of the Town shall constitute a current expense of the Town and shall not in any way be construed to be a debt of the Town in contravention of any applicable constitutional or statutory limitations concerning indebtedness of

the Town, nor shall anything contained herein constitute a pledge of general tax revenues, funds, money or credit of the Town.

7. **Emergency:** The Parties agree that in the event of an Emergency, the following procedure shall apply:

- a. *Agreement Not Terminated:* This Agreement shall remain in full force and effect.
- b. *Responsibilities of the Association:* The Association shall take such steps as may be reasonably necessary to secure any area affected by the Emergency. The Association shall notify the Town as soon as is practical after discovery of the Emergency. The Association may complete any repairs to the Drainage System needed to address the Emergency, as provided for in Article 10, below.
- c. *Responsibilities of the Town:* Upon receipt of notification of an Emergency from the Association, the Town shall determine the scope and extent of the work that is necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same. The Town shall correct or repair the damage caused by the Emergency as soon as practical, taking into account the threat presented by the Emergency, the existence of any other Emergency or Casualty, the cause of the Emergency and/or the existence of any general emergency affecting the Town and availability of funding. The Town may seek reimbursement from third parties for any costs incurred by the Town

as a result of any Emergency found to have been caused by the negligence of said third parties.

8. **Casualty:** The Parties agree that in the event of a Casualty, the following procedure shall apply:

- a. *Agreement Not Terminated:* This Agreement shall remain in full force and effect.
- b. *Design of Drainage System:* The Town shall produce engineering and design plans at its expense for the reconstruction of all or any part of the Drainage System affected by the Casualty.
- c. *Approval of Plans:* The engineering and design plans must be approved by the Association prior to any reconstruction of the Drainage System. If the Association does not approve the engineering and design plans prepared by the Town, the Association may reconstruct the Drainage System at its own expense and shall not seek reimbursement for the cost thereof from the Town.
- d. *Right of Entry and Access:* If the engineering and design plans approved by the Association require work outside of easement limits described in the Access, Drainage and Maintenance Easement, the Association shall provide temporary easements for access and construction over any property it owns or controls, and shall deliver a valid temporary construction easement for access and construction from the owners of property that the Association does not own.

- e. *Amendment of Access, Drainage and Maintenance Easement:* In the event that the engineering and design plans approved by the Association include permanent improvements or create access or other needs that are in areas not included in the Access, Drainage and Maintenance Easement, the Association agrees that it will execute and deliver an amendment to the Access, Drainage and Maintenance Easement to subject any such areas in the Access, Drainage and Maintenance Easement.
- f. *Reconstruction of Drainage System:* Following the approval of the engineering and design plans and specifications by the Association, the Association's delivery of any needed temporary easements for access and construction, the Town shall complete the reconstruction of the Drainage System, or any part of it, as soon as is practical, taking into account the threat presented by the cause of the Casualty, the existence of any general emergency affecting the Town, the existence of other Emergencies and Casualties and availability of funding. Other than the expenses identified in subsection (b) of this Article 8, the Town may seek reimbursement for any costs incurred by the Town as a result of any Casualty from Storm Water Utility Service Fees, bond, any government aid and assistance programs, or the Association, if the Association is responsible for all or any part of the Casualty.



9. **Maintenance of Drainage System by the Association:** Nothing herein shall prohibit the Association from performing any Project in advance of the time that any such Project is scheduled as a part of the Town's Storm Water Utility Project Prioritization and Annual Budget Process, if the Association determines that it is in its interest to do so. Other than in the case of an Emergency (addressed in Article 10, below), or a Casualty (addressed in Article 8, above), the Association shall be entitled to reimbursement, in an amount up to the amount budgeted by the Town for the Project but not exceeding the actual cost to the Association, from Storm Water Utility Service Fees, in the fiscal year that such Project is scheduled to be done as a part of Town's Storm Water Utility Project Prioritization and Annual Budget Process, as follows;

- a. The Association shall submit its plans, quantities, and specifications for any Project to the Town.
- b. The Town shall grant its written approval to the Association to complete the Project unless it determines that:
  - i. The plan and work proposed by the Association will not correct the existing Qualifying Drainage System Deficiency; or,
  - ii. The scope of the proposed work exceeds what is necessary to correct the existing Qualifying Drainage System Deficiency,
- c. Upon receipt of the Town's written approval, the Association shall bid the work in accordance with the Town's Procurement Code, § 11-

1-111, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983), as the same may be amended from time to time.

- d. Any changes in the approved scope of work for the Project resulting in additional work or cost to the Town must be approved in writing by the Town prior to commencement of any additional work.
- e. The Association shall notify the Town at least seventy-two (72) hours prior to the commencement of work on the Project and at any key junctures of the work where the Town may need to inspect the work.
- f. Upon completion of the Project, the Town shall inspect the Project and provide the Association written approval or rejection of the Project.
- g. If the Project is approved by the Town, the Association shall submit to the Town its request for reimbursement, which shall include full documentation of the bid and procurement of the work to complete the Project, the contract for the work to complete the Project, the construction plans, details and as-built surveys or drawings, measurements, dated inspection reports, photographs of the work in progress, documentation of the payments made by the Association, any required test reports and the Association's written certification that the Project was completed in accordance with the approved plans and specifications.
- h. The Town shall thereafter budget funds for reimbursement to the Association from Storm Water Utility Service Fees in the fiscal year

that the Project would have otherwise been scheduled in the Town's Storm Water Utility Project Prioritization and Annual Budget Process. The schedule for reimbursement shall depend upon the Project ranking when compared to all other Projects as determined in the Town's Storm Water Utility Project Prioritization and Annual Budget Process and may be moved forward into a future budget year as a result. The Association acknowledges that the Town has no obligation to reimburse the Association for any Project in the fiscal year following the Association's completion of the Project, or in any other particular fiscal year.

10. **Emergency Work by the Association:** If for any reason, the Town is unable to repair or correct the damage caused by an Emergency in a time frame that is acceptable to the Association, the following shall apply:
  - a. The Association shall consult with the Town to determine a cost-efficient scope and extent of work necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same. The TOWN must approve in writing, the scope and plans for the work and procurement of construction services, prior to the commencement of work. The Association is not required to bid the work but if the Association chooses to bid the work, the Association shall bid the work in accordance with the Town's Procurement Code, § 11-1-111, *Municipal*

*Code of The Town of Hilton Head Island, South Carolina (1983)*, as the same may be amended from time to time.

- b. The Association shall complete the work that is necessary to repair or correct the damage caused by the Emergency.
- c. The Association shall, whenever possible, notify the Town at least seventy-two (72) hours prior to the commencement of work and at any key junctures of the work whereas the Town may need to inspect the work.
- d. Upon completion of the work that has been authorized and approved by the Town, the Association shall submit to the Town a request for reimbursement, which shall include full documentation of the bid and procurement documents for the work, the contract for the work, construction plans, details and as-built surveys or drawings, measurements, dated inspection reports, photographs of the work done and documentation of the payments made, any required test reports and the Association's written certification that the work was completed in accordance with the approved plans and specifications and state the date the work was completed.
- e. The Town shall approve the Association's request for reimbursement unless it determines that the requested reimbursement includes work other than the work authorized and approved by the Town.

- f. Within three (3) fiscal years following the Town's approval of the Association's request for reimbursement, the Town shall reimburse the Association in the amount approved.
  - g. Requests for reimbursement by the Association be submitted to the Town within three years following the completion of the work by the Association. The failure to submit the request for reimbursement to the Town within three years following completion of the Work shall bar any reimbursement for the work.
11. **No Guarantees Regarding Flooding:** The Association acknowledges that the Town's performance of its obligations under this Agreement does not guarantee or insure that property within the Development will be free of events of flooding or erosion, and that the Town does not represent or warrant to the Association that the performance of the Town's obligations under this Agreement will operate to prevent events of flooding or erosion within the Development.
12. **Waiver of Storm Water Service Fee Credit:** Upon the execution and delivery of this Agreement, and for and during the term or any extensions hereof, the Association acknowledges it shall not be entitled to receive and hereby waives any Storm Water Service Fee Credit from Beaufort County or the Town with respect to any real property located within the limits of the Development, for and during the term of this Agreement or any renewal of this Agreement.
13. **Term:** This Agreement shall remain in place for ten years from the date of execution and shall renew automatically for successive two (2) year terms beginning July 1 each year thereafter, unless either Party notifies the other, in

writing, of its intention to terminate this Agreement. Any such notice shall be delivered not less than two hundred and seventy (270) days prior to the end of the Town fiscal year (June 30) at the end of the then-current term in which such Party wishes to terminate the Agreement. Upon delivery of such notice, this Agreement shall terminate at midnight on June 30<sup>th</sup> of the fiscal year in which the notice is delivered (for example, if notice is given February 1, 2020, the Agreement would terminate on June 30, 2021). The parties shall thereafter execute and deliver such documents as may be necessary to cancel the Access, Drainage and Maintenance Easement delivered pursuant to this Agreement.

- a. **Superseding Legislation:** In the event that the South Carolina General Assembly enacts legislation prohibiting the ability of local governments to impose and collect Storm Water Service Fees, then this Agreement shall terminate.

14. **Representation and Warranties of the Association:**

The Association represents and warrants:

- a. That any and all necessary approvals and/or resolutions have been obtained, that it has the full authority to execute, deliver and perform this Agreement and to execute and deliver the Access, Drainage and Maintenance Easement to be delivered pursuant to this Agreement, and that the individual(s) executing such documents have full power and authority to bind the Association to the same.
- b. That it is not now a party to any litigation affecting the property burdened by the easements herein which could impair the

obligations of the Association under this Agreement or the Access, Drainage and Maintenance Easement, and the Association knows of no litigation or threatened litigation affecting their ability to grant said easements.

- c. That as to any pipes or other portions of the Drainage System as shown on Exhibit "A" hereto which are located in whole or in part on private residential lots, the Association has full authority under the Covenants to convey or assign to the Town the rights contemplated in this Agreement and the Access, Drainage and Maintenance Easement.

15. **Town Representation and Warranties:**

The Town represents and warrants to the Association:

- a. As is shown by the Resolution of the TOWN that is attached hereto as Exhibit "D", the Town represents that it has the power and authority to enter into this Agreement and complete its obligations hereunder; and,
  - b. That it is not now a party to any litigation which could impair the obligations of the Town under this Agreement, and the Town knows of no litigation or threatened litigation affecting its ability to perform hereunder.
16. **Taxes:** The Association shall ensure payment, prior to delinquency, all taxes on Association properties within the Development burdened by the easements granted under this Agreement.

17. **Default:** The Town and the Association agree that in the event of a default or breach of any provision or term of this Agreement, the non-defaulting party or parties shall give written notice to the defaulting party or parties of the default or breach. In the event that the defaulting party or parties fail to cure the default or breach within thirty (30) days of the date of the written notice specifying the default or breach, unless a non-monetary default or breach cannot reasonably be cured within said thirty (30) day time period, then said period shall be reasonably extended, up to one hundred and twenty (120) days, then the non-defaulting party or parties shall be entitled to pursue any remedy at law or in equity against the defaulting party or parties, including but not limited to an action for damages, injunction or specific performance of this Agreement.
18. **Attorney's Fees:** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default or misrepresentation in connection with any of the provisions or terms of this Agreement, the prevailing party or parties shall be entitled to seek recovery of its or their reasonable attorney's fees and any costs incurred as a result of any such action or proceeding, whether incurred before the commencement of suit or after the commencement of suit, and including appellate proceedings, in addition to any other relief to which the prevailing party or parties is or are entitled.
19. **General Provisions:**
  - a. *Binding Effect:* This Agreement shall inure to the benefit of and be binding upon the Association and the Town, and their respective successors and assigns.



- b. *Amendment, Changes and Modifications:* Except as is otherwise provided herein, this Agreement may not be modified, amended, changed or altered without the written consent of the TOWN and the Association.
- c. *Severability:* In the event that any term or provision of this Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other term or provision hereof.
- d. *Execution in Counterparts:* This Agreement may be simultaneously executed in several counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument.
- e. *Applicable Law:* This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.
- f. *Captions:* The captions or headings used herein are for convenience only and in no way define, limit, expand or describe the scope or intent of any term or provision of this Agreement.
- g. *Plural/Singular:* Where appropriate, the use of the singular herein shall be deemed to include the plural, and the use of the plural herein shall be deemed to include the use of the singular.
- h. *No Third Party Beneficiaries:* The Town and the Association affirmatively represent that this Agreement is made solely for the benefit of the Parties hereto and their respective successors and assigns and not for the benefit of any third party who is not a

signature party hereto. It is the express intent of the Town and the Association that no other party shall have any enforceable rights hereunder, or any right to the enforcement hereof, or to any claim for damages as a result of any alleged breach hereof.

- i. *Notices:* All notices, applications, requests, certificates or other communications required hereunder shall be sufficiently given and shall be deemed given on the date when such is delivered in person, or deposited in the United States Mail, by regular first class mail, postage prepaid, at the following addresses, or at such other address as may be designated, in writing, by the Parties:

To the Town:           The Town of Hilton Head Island  
                              Attn: Marc Orlando, Town Manager  
                              One Town Center Court  
                              Hilton Head Island, SC 29928

To the Association: Spanish Wells Property Owners Association, Inc  
                              Attn: John Cardamone  
                              PO Box 6597  
                              Hilton Head Island, SC 29938

- j. *No Waiver:* No failure of any Party hereto to exercise any power or right given to such Party hereunder, or to insist on strict compliance by any other Party of its obligations hereunder, and no custom or practice of the Parties at variance with the terms and provisions hereof shall constitute a waiver of any Party's right to thereafter demand strict compliance with the terms of this Agreement.

k. *Further Assurances and Corrective Documents:* The Town and the Association agree to do, execute, acknowledge, deliver or cause to be done all such further acts as may be reasonably determined to be necessary to carry out this Agreement and give effect to the terms and provisions hereof. The Town and the Association agree that each shall, upon request, execute and deliver such other or further or corrective documents as may be reasonably determined to be necessary to carry out this Agreement and each of the terms and provisions hereof.

In Witness Whereof, The Town of Hilton Head Island, South Carolina and Spanish Wells Property Owners Association, Inc., by and through their duly authorized officers, have executed and delivered this Agreement as of this \_\_\_\_ day of \_\_\_\_\_, 2021.

**SIGNATURES BEGIN ON NEXT PAGE**

WITNESSES:

\_\_\_\_\_

\_\_\_\_\_

Spanish Wells Property Owners Association,  
Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Attest: \_\_\_\_\_

Its: \_\_\_\_\_

WITNESSES:

\_\_\_\_\_

\_\_\_\_\_

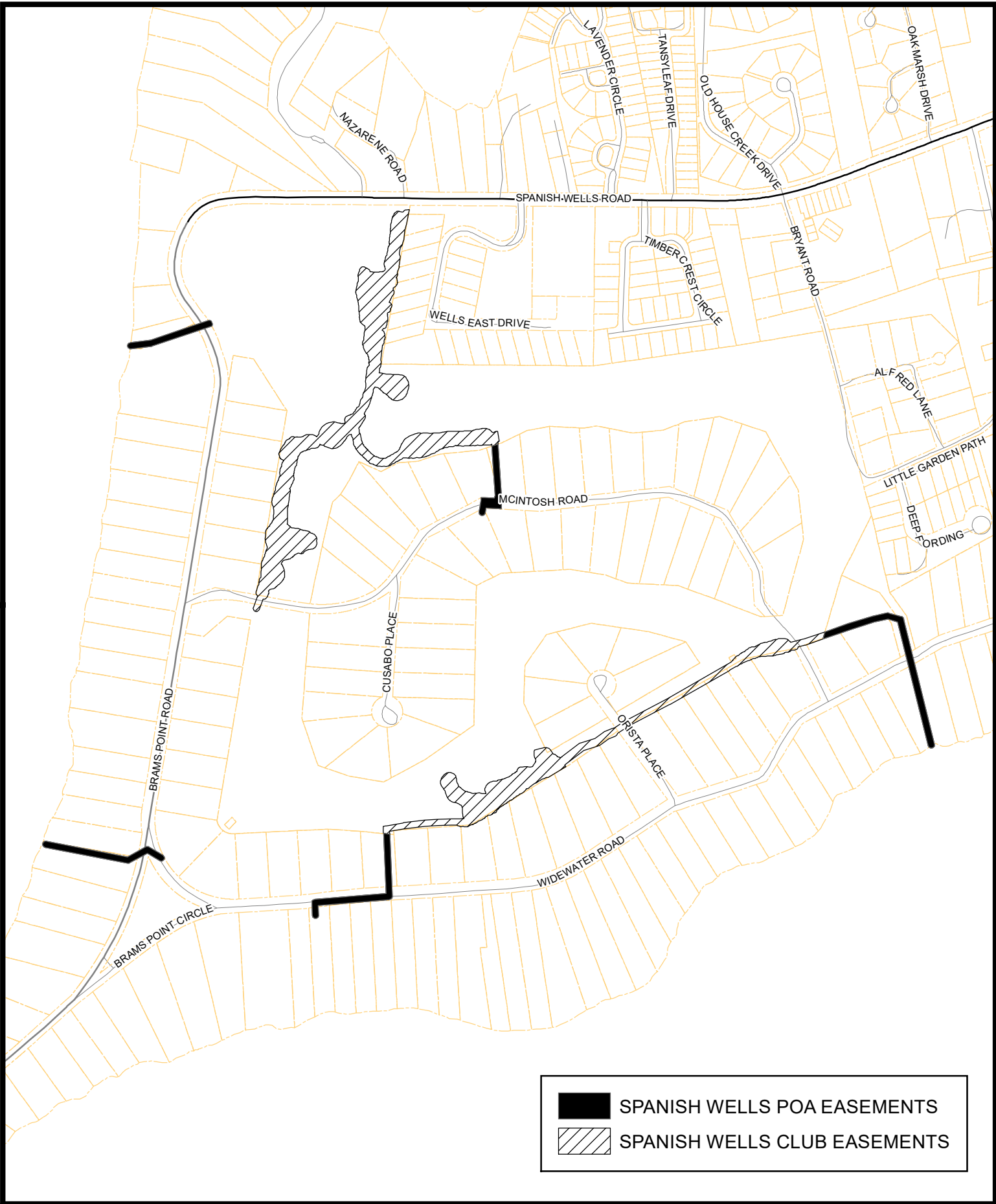
THE TOWN OF HILTON HEAD ISLAND,  
SOUTH CAROLINA



By: \_\_\_\_\_  
John McCann, Mayor

Attest: \_\_\_\_\_  
Marc Orlando, Town Manager

## **List of Exhibits**

- Exhibit A Map depicting the limits of the Access, Drainage and Maintenance Easement areas and Drainage Systems covered by this Agreement
- Exhibit B Map depicting the Development covered by this Agreement
- Exhibit C Access, Drainage and Maintenance Easements
- Exhibit D Town Resolution authorizing this Agreement



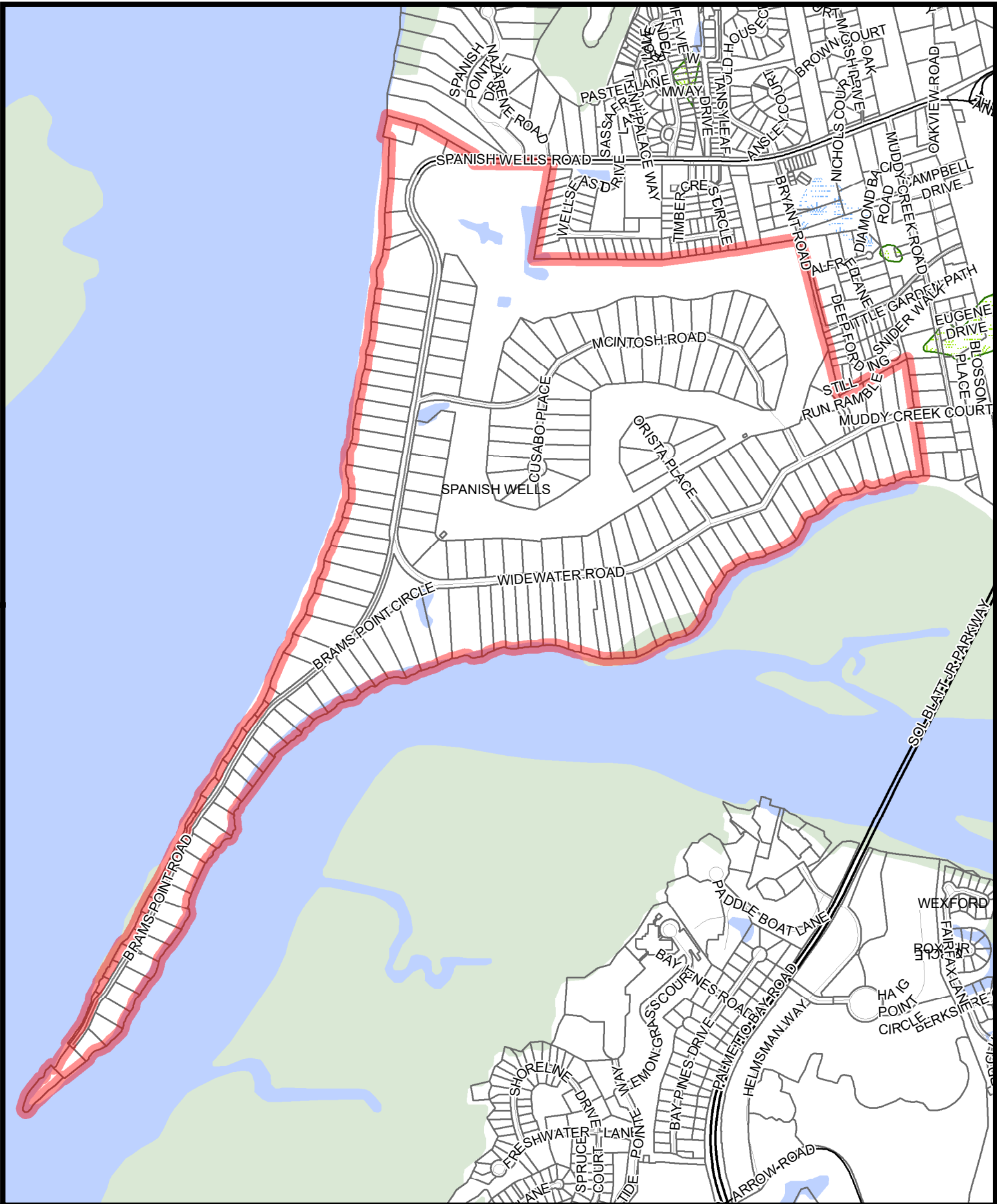
	SPANISH WELLS POA EASEMENTS
	SPANISH WELLS CLUB EASEMENTS

**EXHIBIT A**  
**SPANISH WELLS PLANTATION**  
**DRAINAGE EASEMENT LIMITS**  
 April 2021

1 inch = 600 feet



The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion or for any losses arising from the use of the map.



**EXHIBIT B**  
**SPANISH WELLS PLANATATION**  
**PLANNED UNIT DEVELOPMENT**

April 2021

1 inch = 1,000 feet



TOWN OF HILTON HEAD ISLAND  
 ONE TOWN CENTER COURT  
 HILTON HEAD ISLAND, S.C. 29928  
 PHONE (843) 341-4600

The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion or for any losses arising from the use of the map.

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF THAT CERTAIN DRAINAGE AGREEMENT AND ACCESS, DRAINAGE AND MAINTENANCE EASEMENT WITH SEAGRASS LANDING HOMEOWNERS ASSOCIATION, INC. ACROSS PROPERTY LOCATED IN SEAGRASS LANDING.**

WHEREAS, Seagrass Landing Homeowners Association, Inc. (“Seagrass Landing”) owns improved and unimproved real property and easements within Seagrass Landing; and

WHEREAS, Beaufort County, South Carolina adopted Ordinance 99-101 et seq., as amended, creating a Storm Water Utility with the power to impose Storm Water Service Fees on all residents of Beaufort County, South Carolina and which also provides that fees collected from within the municipal limits of the Town of Hilton Head Island, South Carolina (“Town”) are returned to the Town to be used for the purposes set forth in the Ordinance including the construction and maintenance of planned and existing infrastructure which collects and disposes of surface and storm water within the municipal limits of the Town; and

WHEREAS, Seagrass Landing desires for the Town to utilize Storm Water Service Fees to undertake the maintenance and improvement of the storm and surface water drainage system within Seagrass Landing to facilitate the flow of storm water drainage through and from areas within Seagrass Landing; and

WHEREAS, to undertake these improvements, it is necessary for the Town to obtain from Seagrass Landing a Drainage Agreement and an Access, Drainage and Maintenance Easement, copies of which are attached hereto Exhibit “A”; and

WHEREAS, the Town Council for the Town of Hilton Head Island, South Carolina has determined that it is in the best interests of the citizens and visitors of the Town of Hilton Head Island to undertake the improvements stated above; and



**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA:**

1. The Mayor and/or Town Manager are hereby authorized to execute and deliver a Drainage Agreement and an Access, Drainage and Maintenance Easement in a form substantially similar to that attached hereto as Exhibit "A"; and
2. The Mayor and/or Town Manager are hereby authorized to take such other and further action as may be necessary to complete the actions authorized hereby.

**PASSED AND APPROVED BY THE TOWN COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021.**

\_\_\_\_\_  
**John J. McCann, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Krista Wiedmeyer, Town Clerk**

**Approved as to form:**

\_\_\_\_\_  
**Curtis Coltrane, Town Attorney**

**Introduced by Council Member: \_\_\_\_\_**

**STATE OF SOUTH CAROLINA        )**     **ACCESS, DRAINAGE AND**  
   **)**     **MAINTENANCE EASEMENT**  
**COUNTY OF BEAUFORT                )**

Know all men by these presents, that Seagrass Landing Homeowners Association, Inc. and the Town of Hilton Head Island, South Carolina, One Town Center Court, Hilton Head Island, SC, 29928, for and in consideration of the sum of One and No/100 (\$1.00) Dollar, each paid to the other at and before the execution and delivery of this Access, Drainage and Maintenance Easement, the receipt and sufficiency whereof is acknowledged, agree as follows:

1. Defined Terms: As used herein, the following terms shall mean:
  - (a) *Association:* Seagrass Landing Homeowners Association, Inc., a South Carolina not-for-profit corporation with the full authority under the Covenants to enter into this Agreement.
  - (b) *Covenants:* Any one or more of Covenants, Conditions, and Restrictions for Seagrass Landing Homeowners Association, Inc. recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.
  - (c) *Development:* Seagrass Landing, a planned unit development or subdivision lying and being on Hilton Head Island, Beaufort County, South Carolina, which is shown and described on the map attached as Exhibit “B” hereto.
  - (d) *Drainage System:* The existing system of lagoons, ditches, canals,

pipes, culverts, catch basins, drains, manholes, junction boxes, weirs, valves, gates, pumps, structures, related equipment and related infrastructure, in the Development lying within the Easement Areas shown on the map attached hereto as Exhibit "A," which facilitates the collection, storage and conveyance of storm and surface water runoff for public benefit through, within, and from the Development. For purposes of this Agreement, the Drainage System shall not include any bridges, docks, retaining walls, road or pathway asphalt, road or building gutters, underdrains, sub-drains, structural bulkheads, beaches, tidal banks, estuaries, or salt marshes, or driveway pipes, unless the Town, in its sole discretion deems any particular driveway pipe as critical to the function of the Drainage System.

- (e) *Emergency*: A blockage, structural or mechanical failure, collapse or other sudden catastrophic event affecting any part of the Drainage System which prevents or substantially inhibits the flow of storm and surface water through all or any part of the Drainage System, or which otherwise results in an imminent peril to life or property.
  - (f) *Permanent Structure*: Any immovable structure, including, but not limited to, buildings, sheds, pavilions, walls, masonry structures, tennis courts, and swimming pools, including swimming pool decks.
  - (g) *Town*: The Town of Hilton Head Island, South Carolina.
2. *Grant of Easements*: The Association does hereby grant, transfer, sell and convey

to the Town, and its agents, assigns, employees and contractors, and their vehicles, machinery and equipment, and create and establish for the benefit of the Town, the following easements:

(a) A non-exclusive Access Easement on, over and across any roads and streets within the Development, and on, over and across any property owned by the Association encumbered by all or any part of the Drainage System. This Access Easement includes a non-exclusive and partial assignment of any and all easement rights for access held by the Association, under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through.

(b) A non-exclusive Maintenance Easement on, under, over, through and across any property of the Development, encumbered by all or any part of the Drainage System. This Maintenance Easement includes a non-exclusive and partial assignment of any and all easement rights for maintenance, construction, or otherwise, held by the Association under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through. This Maintenance Easement shall include all facilities or structures directly related to the collection, storage and conveyance of storm and surface water now or hereafter existing within

the Development, and sufficient property beside or over any part of the Drainage System as shown on Exhibit "A" to allow for excavation and any other work necessary to improve, repair or maintain the Drainage System.

(c) A non-exclusive Drainage Easement for the conveyance of any storm and surface water originating from within or without the boundaries of the Development through the Drainage System, at such rates and in such amounts as may occur from time to time.

(d) This Drainage Easement includes a non-exclusive and partial assignment of any and all easement rights for drainage held by the Association under the Covenants or any other recorded declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through; provided however, that the Town shall provide timely written notification to the Association of any potentially disruptive improvements and/or modifications to the systems conveying storm and surface water originating without the boundaries of the Development and through the Development Drainage System.

3. This Access, Drainage and Maintenance Easement is granted and accepted subject to the following:

(a) The Town agrees that the use of the easements granted herein shall be restricted to the hours of 7:00 o'clock, A.M., to 5:00 o'clock, P.M., Monday through Friday excluding public holidays, except in the event of an

Emergency.

(b) Other than in the case of an Emergency, the Town and the Association shall determine the scheduling of any work to be performed hereunder, on its or their property, in advance of the commencement of the work.

(c) This Access, Drainage and Maintenance Easement is conveyed subject to all other easements, licenses, and conveyances of record and is subject to the rights herein reserved by the Association, their successors and assigns, to utilize their property at any time, in any manner, and for any purpose, provided, however, that such use by the Association shall not be inconsistent with nor prevent the full utilization by the Town of the rights and privileges granted herein.

(d) The Town agrees to plan, lay out, and execute or build improvements, repairs and maintenance of the Drainage System, and further agrees that the Town's exercise of the rights granted in this Access, Drainage and Maintenance Easement shall be under the exclusive control of the Town and that the Town shall at all times comply with all applicable laws, rules, codes, and regulations.

(e) The Association shall not erect any Permanent Structure on, under, over, through and across any property of the Development encumbered by all or any part of the Drainage System without the Town's prior written approval, which approval shall not be unreasonably withheld. The Association shall not impede, obstruct, or allow to be obstructed, the

natural flow of storm and surface water runoff through the Drainage System; provided, however, that the Association shall have a continuing obligation under the Covenants to repair and maintain various improvements located within the Common Properties (lagoons and lagoon banks, roads, pathways, utilities, etc.), and this Agreement is not intended to in any way restrict or limit the Association from taking reasonable actions to perform said obligations.

(f) The rights conveyed under this Access, Drainage and Maintenance Easement are limited to the parties and purposes stated herein. This Access, Drainage and Maintenance Easement conveys no rights of access or otherwise to the general public.

4. The Association acknowledges that the Town shall have no obligation to perform or pay for any work to repair, improve or maintain the appearance or appeal of the lagoons, banks of lagoons, landscaping, drains, canals, or other visible components of the Drainage System, including, but not limited to, structures, bridges, bulkheads, pipes, culverts, valves and gates.

5. The Town agrees to cause all work contemplated hereunder to be performed in a workmanlike fashion with minimal interference to the Grantor, its successors, assigns, invitees, guests, licensees, and agents. The Town further agrees to cause the work contemplated hereunder to be completed in an expeditious and timely fashion, and that all materials, debris, and construction materials shall be promptly removed. The Town shall restore any other part of the property of the Association which may be damaged as a result of the Town's exercise of the rights granted hereunder to its pre-existing state.

6. The Town hereby warrants to the Association that the granting of this Access, Drainage and Maintenance Easement will not affect any “set back” lines with respect to any property currently owned by the Association.

To have and to hold, all and singular, the rights, privileges, and easements aforesaid unto the Town of Hilton Head Island, South Carolina, its successors and assigns, forever.

In Witness whereof, the parties hereto have caused the within Access, Drainage and Maintenance Easement to be executed by their duly authorized officers as of this \_\_\_\_\_ day of \_\_\_\_\_, 2021.



WITNESSES:

Seagrass Landing Homeowners Association, Inc.

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Attest: \_\_\_\_\_

**STATE OF SOUTH CAROLINA**

)

**UNIFORM ACKNOWLEDGMENT**

)

**COUNTY OF BEAUFORT**

)

**S.C. CODE § 30-5-30 (SUPP. 2010)**

I, the undersigned Notary Public do hereby certify that \_\_\_\_\_  
personally appeared before me on this day and duly acknowledged the execution of the  
foregoing instrument on behalf of Seagrass Landing Homeowners Association, Inc..

Sworn to and Subscribed before me

on this \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_

WITNESSES:  
SOUTH CAROLINA

THE TOWN OF HILTON HEAD ISLAND,

\_\_\_\_\_

By: \_\_\_\_\_  
John J. McCann, Mayor

\_\_\_\_\_

Attest: \_\_\_\_\_  
Marc Orlando, Town Manager

**STATE OF SOUTH CAROLINA**

)

**UNIFORM ACKNOWLEDGMENT**

)

**COUNTY OF BEAUFORT**

)

**S.C. CODE § 30-5-30 (SUPP. 2010)**

I, the undersigned Notary Public do hereby certify that John J. McCann and Joshua A. Gruber personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of The Town of Hilton Head Island, South Carolina.

Sworn to and Subscribed before me  
on this \_\_\_\_\_ Day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_

**STATE OF SOUTH CAROLINA        )**  
**)**  
**COUNTY OF BEAUFORT             )**        **DRAINAGE SYSTEM**  
**)**        **MAINTENANCE AGREEMENT**

This Drainage System Maintenance Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between Seagrass Landing Homeowners Association, Inc., a South Carolina nonprofit organization, and the Town of Hilton Head Island, South Carolina, a body politic, having an address of One Town Center Court, Hilton Head Island, South Carolina, 29928.

**WITNESSETH**

WHEREAS, Seagrass Landing is a subdivision of land lying and being within the Town of Hilton Head Island, Beaufort County, South Carolina (hereinafter the “Development”); and,

WHEREAS, Seagrass Landing Homeowners Association, Inc., is the owner of improved and unimproved real property and easements within Seagrass Landing; and,

WHEREAS, Beaufort County, South Carolina, has adopted Ordinance 99-101, *et seq.*, as amended, creating a Storm Water Utility with the power to impose Storm Water Utility Service Fees on all residents of Beaufort County, South Carolina, and which also provides that Storm Water Utility Service Fees collected from property owners within the Town of Hilton Head Island, South Carolina, are returned to it, less administrative fees, to be used for the purposes set forth in Ordinance 99-101, *et seq.*, as amended; and,

WHEREAS, the imposition and collection of Storm Water Utility Service Fees results in a fund available for the construction and maintenance of existing and planned

infrastructure for the collection and conveyance of storm water runoff within the Town of Hilton Head Island, South Carolina, and,

WHEREAS, Seagrass Landing Homeowners Association, Inc., desires for the Town of Hilton Head Island, South Carolina, to utilize Storm Water Utility Service Fees to undertake maintenance and improvement of the storm water drainage system in Seagrass Landing, to facilitate the conveyance of storm water runoff within and through the Development; and,

WHEREAS, the Seagrass Landing Homeowners Association, Inc., has agreed to grant access, drainage and maintenance easements to the Town, in order to facilitate the maintenance and improvement of the qualifying storm water drainage system in Seagrass Landing.

Now, therefore, know all men by these presents, that Seagrass Landing Homeowners Association, Inc., and the Town of Head Island, South Carolina, for and in consideration of the sum of One and no/100 (\$1.00) Dollar, each paid to the other at and before the execution and delivery of this Agreement, the receipt and sufficiency whereof is acknowledged, agree as follows:

1. **Defined Terms:** As used in this Agreement, the following terms as related to this agreement shall mean:
  - a. *Agreement:* This “Drainage System Maintenance Agreement”.
  - b. *Association:* Seagrass Landing Homeowners Association, Inc., a South Carolina not-for-profit corporation with the full authority under the Covenants to enter into this Agreement and to complete all of the Association’s obligations under it, and to execute and

deliver the Access, Drainage and Maintenance Easement attached hereto as Exhibit “C.”

- c. *Casualty*: The destruction of all or any part of the Drainage System through a natural disaster.
- d. *Covenants*: Any one or more of Covenants, Conditions, and Restrictions for Seagrass Landing Homeowners Association, Inc. recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.
- e. *Development*: Seagrass Landing, a planned unit development or subdivision lying and being on Hilton Head Island, Beaufort County, South Carolina, which is shown and described on the map attached as Exhibit “B” hereto.
- f. *Drainage System*: The existing system of lagoons, ditches, canals, pipes, culverts, catch basins, drains, manholes, junction boxes, weirs, valves, gates, pumps, structures, related equipment and related infrastructure, in the Development lying within the Easement Areas shown on the map attached hereto as Exhibit “A,” which facilitates the collection, storage and conveyance of storm and surface water runoff for public benefit through, within, and from the Development. For purposes of this Agreement, the Drainage System shall not include any bridges, docks, retaining walls, road or pathway asphalt, road or building gutters, underdrains, sub-drains, structural bulkheads, beaches, tidal banks, estuaries, or salt marshes, or

driveway pipes, unless the Town, in its sole discretion deems any particular driveway pipe as critical to the function of the Drainage System.

- g. *Emergency*: A blockage, structural or mechanical failure, collapse or other sudden catastrophic event affecting any part of the Drainage System which prevents or substantially inhibits the flow of storm and surface water through all or any part of the Drainage System, or which otherwise results in an imminent peril to life or property.
- h. *Permanent Structure*: Any immovable structure, including, but not limited to, buildings, sheds, pavilions, walls, masonry structures, tennis courts, and swimming pools, including swimming pool decks.
- i. *Pollutant*: Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; non-hazardous liquid and solid wastes and yard wastes; sediment; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; concrete and cement; and noxious or offensive matter of any kind.

- j. *Post-construction Structural Best Management Practice Facility:* A Post-construction Structural Best Management Practice Facility (BMPPF) is a facility designed and built to provide treatment of storm water either through storage, filtration or infiltration (i.e. detention basins, retention basins, rain gardens, bioretention cells, sand filters, vegetated filter strips, water quality swales and infiltration trenches) as set forth in the latest editions of the Beaufort County Manual for Storm Water Best Management and Design Practices, the South Carolina DHEC Storm Water Management BMP Handbook, and the Georgia Coastal Stormwater Supplement, which include descriptions standards, and design guidelines for these facilities.
- k. *Project:* Work, including repairs and improvements performed or approved by the Town to correct a specific Qualifying Storm Drainage System Deficiency.
- l. *Qualifying Drainage System Deficiency:* Anything that, in the determination of the Town, prevents, impairs or impedes the adequate conveyance or drainage of storm water runoff through the Drainage System or the structural failure of a Drainage System component. Qualifying Drainage System Deficiencies include, but are not limited to, the following:
  - i. Lagoon bank erosion that has an appreciable adverse impact on conveyance of storm water runoff through the Drainage

System or threatens the integrity of adjacent Drainage System infrastructure or Permanent Structures;

- ii. Presence of sediment and debris located in the Drainage System that has an appreciable adverse impact on the conveyance of storm water runoff through the Drainage System or the functioning of the Drainage System;
- iii. Structural deficiencies associated with pipes and culverts, including, but not limited to, joint failures, deterioration, root intrusion, or collapse that has an appreciable adverse impact on conveyance of storm water runoff through the Drainage System or threatens the integrity of adjacent Drainage System infrastructure or Permanent Structures;
- iv. Structural deficiencies associated with inlets, manholes, junction boxes, control structures and headwalls including, but not limited to, connection failure, deterioration, mechanical failure, or collapse that has an appreciable adverse impact on conveyance of storm water runoff through the Drainage System, or that threatens the integrity of adjacent infrastructure or Permanent Structures. Examples of typical deficiencies include damaged grates, grout failures at pipe connections, deterioration or failure of flap gates and sluice gates, or failure of structure walls;



- v. Sinkholes caused by Drainage System pipe or Drainage System structure Deficiencies, but not those caused by the actions of any third party, including utility providers;
- vi. Drainage System conveyance or performance deficiencies due to inadequate design capacity. Examples of typical conveyance or performance deficiencies include undersized pipes and insufficient weir capacities.

Qualifying Drainage System Deficiencies do not include the following:

- i. The aesthetic appearance or appeal of any part of the Drainage System, including but not limited to lagoons, banks of lagoons, channel banks, landscaping, drains, catch basins, canals, structures, bridges, bulkheads, pipes, culverts, valves gates, debris that does not have an appreciable adverse impact on the conveyance of storm and surface water through the Drainage System, or other visible components of the Drainage System;
- ii. The introduction of pollution or pollutants into the Drainage System from any source;
- iii. Lagoon bank erosion that does not have an appreciable adverse impact on conveyance of storm water runoff through the Drainage System or threaten the integrity of

- adjacent Drainage System infrastructure or Permanent Structures;
- iv. Tidal erosion or tidal flooding that does not have an appreciable adverse impact on conveyance of storm water runoff through the Drainage System or threaten the integrity of Drainage System infrastructure;
  - v. Establishment of access to the Drainage System by the Association, including, but not limited to, grading, clearing of vegetation, removal of trees, or removal of other obstructions or Permanent Structures in order to provide physical access to the Drainage System;
  - vi. Drainage System damage or deficiencies caused by the actions of others, including utilities and property owners (including, but not limited to, bores or cuts into pipes or structures);
  - vii. Minor or nuisance flooding that does not adversely affect transportation infrastructure, Permanent Structures, hardscape amenities, or conveyance of storm water runoff through the Drainage System, including golf course flooding, isolated lawn and yard ponding, or standing water in roadway shoulders and unimproved lots or land;
  - viii. Drainage System Deficiencies determined by the Town to be caused or exacerbated by intentional acts causing tidal backflow and saltwater intrusion into the Drainage System

through failure to operate control structures per the design intent or the failure by the Association to monitor and maintain proper functioning of backflow prevention devices including flaps, gates, sluice gates, check valves, or similar devices;

- ix. Damage to, or failure of, Drainage System components situated underneath or within five (5) feet of any Permanent Structure that is not a part of the Drainage System, where the Town determines that difficult access and/or liabilities exist, or within the zone of influence for the foundation of a Permanent Structure;
  - x. The construction of a new drainage system or an addition to an existing Drainage System, or the modification of an existing Drainage System to accommodate drainage requirements for new development within the Development.
  - xi. Drainage System deficiencies determined by the Town to be caused by or originating from unauthorized or non-permitted modifications to the Drainage System by any party other than the Town.
- m. *Storm Water Utility Service Fees*: The fees collected by Beaufort County, South Carolina, under the authority of Beaufort County Ordinance 99-101, *et seq.*, as amended, and which are remitted by

Beaufort County, South Carolina, to the Town; or any similar fee, however denominated, imposed and collected by any subsequent or successor Storm Water Utility operated by The Town, under the authority of Town Ordinance Number 2002-43.

- n. *Storm Water Utility Project Prioritization and Annual Budget Process:* The annual process by which the Town of Hilton Head Island, South Carolina, shall establish and maintain a prioritized list of all known Qualifying Drainage System Deficiencies within the Town limits determined to be eligible for service using Storm Water Utility Service Fees. Prior to the beginning of each fiscal year, the Town shall establish an annual Storm Water Utility budget which defines all revenues and expenditures associated with the Storm Water Utility Service Fees. This budget shall include those known Projects to correct Qualifying Drainage System Deficiencies intended to be completed within that fiscal year.
  - o. *Town:* The Town of Hilton Head Island, South Carolina.
2. **Grant of Easements:** Contemporaneously with the execution and delivery of this Agreement, the Association and the Town have entered into an “Access, Drainage and Maintenance Easement” which grants the Town rights to access, operate, utilize, maintain, and improve the Drainage System within the Development, with said easement being in the form attached hereto as Exhibit “C”.

3. **Maintenance, Inspection and Operation of Drainage System:** Upon the execution and delivery of this Agreement and the Access, Drainage and Maintenance Easement:

- (a) the Town shall be responsible for the maintenance, repairs and improvements necessary to correct any Qualifying Drainage System Deficiency under the terms and conditions of this Agreement. This Agreement does not preclude the Association from repairing, maintaining, or improving any component of its Drainage System at its expense.
- (b) The Association shall be responsible for the following within the Development:
  - (i) Normal and emergency operation of Drainage System control structures, including gates, weirs and pumps, and for lowering water levels in compliance with pre-storm preparation protocols established by the Town.
  - (ii) Maintenance and replacement of weir boards, maintenance of control structure access ways, decking and railings, and maintaining control structure accessibility for inspection and operation by controlling and/or removing vegetation as necessary.
  - (iii) Performing maintenance of work shelves along ditches and canals to provide reasonable and adequate access for inspection, maintenance and repair.
  - (iv) Monitoring the condition of flap gates, sluice gates, check valves, and similar devices intended to prevent the intrusion of tidal backflow

and brackish water into the Drainage System to ensure that they are in proper working order and functioning as intended.

- (v) Making repairs to roadway pavement, pathway pavement, curb and gutter and related ancillary infrastructure or property damage attributed to a past or existing Qualifying Drainage System Deficiency if the deficiency has been corrected by the Town via trenchless technology methods (i.e. pipe lining). This does not obligate the Association to repair or replace such infrastructure if the repair is made using open cut excavations where removal of surface infrastructure is necessary to complete the repair, in which case, the repair of the ancillary infrastructure shall be considered to be a part of the Town's work to correct the deficiency.
- (vi) Performing annual inspections of Post-construction Structural Best Management Practice Facilities in order to comply with Stormwater Management Plan obligations, including submittal of inspection documentation to the Town in accordance with § 16-5-109 (H)(2), *Municipal Code to the Town of Hilton Head Island (1983)*.
- (vii) Regulating the actions of utility providers and property owners, or their assigns, to prevent and mitigate any damage they may cause to the Drainage System.

4. **Procedure for Town's Maintenance of Drainage System:** The Parties acknowledge that the Town intends to provide for the maintenance and improvement of the Drainage System and the repair of identified Qualifying

Drainage System Deficiencies, other than those caused by an Emergency or Casualty, through the development of its Storm Water Utility Project Prioritization and Annual Budget Process. Other than in the case of an Emergency or Casualty, as described in Articles 7, 8 and 10 below, or work completed directly by the Association under Article 9, the Parties agree:

- a. *Identifying Qualifying Drainage System Deficiencies:* The Association shall be responsible for identifying any Qualifying Drainage System Deficiencies.
- b. *Schedule for Submission:* The Association shall submit a written description of each known Qualifying Drainage System Deficiency to the Town using the service request form provided by the Town, describing the nature, location and cause (if known) of each Qualifying Drainage System Deficiency. The Association may identify a potential solution is for the deficiency. In such case, the Association shall include a description of the solution and a preliminary estimate of anticipated costs for the proposed solution. Qualifying Drainage System Deficiencies that are reported to the Town, or which are discovered by the Town, by the end of any calendar year will be considered in the development of the Storm Water Utility Project Prioritization and Annual Budget Process for the following fiscal year.
- c. *Completion of Maintenance:* The Town shall annually develop a Storm Water Utility Project Prioritization and an Annual Budget that

will address identified Qualifying Drainage System Deficiencies as follows:

- i. The Town shall determine the scope and extent of the maintenance, repair or improvement that is necessary to correct any Qualifying Drainage System Deficiencies, and the means, methods and materials needed to accomplish the same.
- ii. The Town shall determine the priority and number of the Projects and schedule the Projects to correct to correct the Qualifying Drainage System Deficiencies for each fiscal year. The determination of the scheduling and funding for the correction of the Qualifying Drainage System Deficiencies shall be made by the Town, taking into account the following:
  1. The availability and amount of the Storm Water Utility Service Fees fund balance, revenue from bonds paid by Storm Water Utility Service Fees, and Storm Water Utility Service Fees in any given fiscal year;
  2. Prioritization of all other Projects, or qualifying requested improvements, repair and maintenance that are to be funded with Storm Water Utility Service Fees; and



3. The annual cost required to operate the Storm Water Utility, its programs and initiatives, and debt service.
  - iii. The Town will complete the Projects as determined by the Town as a part of the Storm Water Utility Project Prioritization and Annual Budget Process, unless Emergencies or Casualties occur that alter the prioritization and funding such that funds are insufficient to correct all Qualifying Drainage System Deficiencies as intended within the same fiscal year.
  - d. *Scheduling of Projects:* Other than in the case of an Emergency or Casualty, the Town and the Association shall mutually agree in writing as to the scheduling of any Project to be performed under this Agreement in the Development in advance of the commencement of the Project.
  - e. *Resident Notification:* The Association shall be solely responsible for the notification of its owners and guests that may be affected by any Project, or by work to address any Emergency or Casualty.
  - f. *Legal Access to Private Property:* The Association shall be responsible for obtaining all access rights, including access rights over and across property in the Development that is not owned by the Association, as may be deemed necessary by the Town to complete any Project.

- g. *Access Needed to Complete Project:* The Association shall be responsible for providing clear and adequate physical access to each Project site at no cost to the Town. If clear, adequate physical access to the Project site cannot be provided sufficient to complete the Project without the likelihood of damage to property, assets and amenities by contractors and equipment, the repair and replacement of any property, assets and amenities damaged as a result of the Project shall be the responsibility of the Association, at no additional cost to the Town. Such property, assets and amenities shall include, but are not limited to, landscaping, flowerbeds, ornamental shrubs and trees, lawns, irrigation systems, boardwalks, cart paths, driveways, and sidewalks. The determination of whether the access is clear and adequate, and whether there is a likelihood of damage shall be made in the sole discretion of the Town, prior to the commencement of the Project. The Association has the right to withdraw the service request if the magnitude of potential damage is not acceptable to the Association. If the service request is withdrawn, completing the Project shall be the responsibility of the Association.
- h. *No Guarantees Regarding Schedule:* The Town cannot guarantee that the amount of available Storm Water Utility Service Fees, the number of Projects to be funded with Storm Water Utility Service Fees in any given fiscal year, and whether Emergencies and

Casualties and weather related general emergencies will not cause delays in the correction of Qualifying Drainage System Deficiencies within the Development and elsewhere. The parties acknowledge that the Town's determinations with respect to the priority, funding and timing of any Project shall be made at the Town's discretion and shall be final.

5. **Further Obligations of the Association:** The Association agrees that during the term, or any renewal term, of this Agreement, it shall take no action which damages the Drainage System, allows damage to the Drainage System, or creates a Drainage System Deficiency, including, but not limited to allowing salt water intrusion or pollutants to enter the Drainage System and allowing utility providers, property owners, or their assigns to impair the function of the Drainage System. To the extent the Association has a continuing obligation under the Covenants to repair and maintain various improvements located within the Development including lagoons and lagoon banks, ditch maintenance shelves, roads, pathways, utilities, this Agreement is not intended to in any way restrict or limit the Association's completion of its obligations.
6. **Payments as Current Expense of Town:** Any payments to be made by the Town hereunder shall be made from Storm Water Utility Service Fees as budgeted for by the Town in any given fiscal year. The Town and the Association intend that the payment obligations of the Town shall constitute a current expense of the Town and shall not in any way be construed to be a debt of the Town in contravention of any applicable constitutional or statutory limitations concerning indebtedness of

the Town, nor shall anything contained herein constitute a pledge of general tax revenues, funds, money or credit of the Town.

7. **Emergency:** The Parties agree that in the event of an Emergency, the following procedure shall apply:

- a. *Agreement Not Terminated:* This Agreement shall remain in full force and effect.
- b. *Responsibilities of the Association:* The Association shall take such steps as may be reasonably necessary to secure any area affected by the Emergency. The Association shall notify the Town as soon as is practical after discovery of the Emergency. The Association may complete any repairs to the Drainage System needed to address the Emergency, as provided for in Article 10, below.
- c. *Responsibilities of the Town:* Upon receipt of notification of an Emergency from the Association, the Town shall determine the scope and extent of the work that is necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same. The Town shall correct or repair the damage caused by the Emergency as soon as practical, taking into account the threat presented by the Emergency, the existence of any other Emergency or Casualty, the cause of the Emergency and/or the existence of any general emergency affecting the Town and availability of funding. The Town may seek reimbursement from third parties for any costs incurred by the Town

as a result of any Emergency found to have been caused by the negligence of said third parties.

8. **Casualty:** The Parties agree that in the event of a Casualty, the following procedure shall apply:

- a. *Agreement Not Terminated:* This Agreement shall remain in full force and effect.
- b. *Design of Drainage System:* The Town shall produce engineering and design plans at its expense for the reconstruction of all or any part of the Drainage System affected by the Casualty.
- c. *Approval of Plans:* The engineering and design plans must be approved by the Association prior to any reconstruction of the Drainage System. If the Association does not approve the engineering and design plans prepared by the Town, the Association may reconstruct the Drainage System at its own expense and shall not seek reimbursement for the cost thereof from the Town.
- d. *Right of Entry and Access:* If the engineering and design plans approved by the Association require work outside of easement limits described in the Access, Drainage and Maintenance Easement, the Association shall provide temporary easements for access and construction over any property it owns or controls, and shall deliver a valid temporary construction easement for access and construction from the owners of property that the Association does not own.

- e. *Amendment of Access, Drainage and Maintenance Easement:* In the event that the engineering and design plans approved by the Association include permanent improvements or create access or other needs that are in areas not included in the Access, Drainage and Maintenance Easement, the Association agrees that it will execute and deliver an amendment to the Access, Drainage and Maintenance Easement to subject any such areas in the Access, Drainage and Maintenance Easement.
- f. *Reconstruction of Drainage System:* Following the approval of the engineering and design plans and specifications by the Association, the Association's delivery of any needed temporary easements for access and construction, the Town shall complete the reconstruction of the Drainage System, or any part of it, as soon as is practical, taking into account the threat presented by the cause of the Casualty, the existence of any general emergency affecting the Town, the existence of other Emergencies and Casualties and availability of funding. Other than the expenses identified in subsection (b) of this Article 8, the Town may seek reimbursement for any costs incurred by the Town as a result of any Casualty from Storm Water Utility Service Fees, bond, any government aid and assistance programs, or the Association, if the Association is responsible for all or any part of the Casualty.

9. **Maintenance of Drainage System by the Association:** Nothing herein shall prohibit the Association from performing any Project in advance of the time that any such Project is scheduled as a part of the Town's Storm Water Utility Project Prioritization and Annual Budget Process, if the Association determines that it is in its interest to do so. Other than in the case of an Emergency (addressed in Article 10, below), or a Casualty (addressed in Article 8, above), the Association shall be entitled to reimbursement, in an amount up to the amount budgeted by the Town for the Project but not exceeding the actual cost to the Association, from Storm Water Utility Service Fees, in the fiscal year that such Project is scheduled to be done as a part of Town's Storm Water Utility Project Prioritization and Annual Budget Process, as follows;

- a. The Association shall submit its plans, quantities, and specifications for any Project to the Town.
- b. The Town shall grant its written approval to the Association to complete the Project unless it determines that:
  - i. The plan and work proposed by the Association will not correct the existing Qualifying Drainage System Deficiency; or,
  - ii. The scope of the proposed work exceeds what is necessary to correct the existing Qualifying Drainage System Deficiency,
- c. Upon receipt of the Town's written approval, the Association shall bid the work in accordance with the Town's Procurement Code, § 11-

1-111, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983), as the same may be amended from time to time.

- d. Any changes in the approved scope of work for the Project resulting in additional work or cost to the Town must be approved in writing by the Town prior to commencement of any additional work.
- e. The Association shall notify the Town at least seventy-two (72) hours prior to the commencement of work on the Project and at any key junctures of the work where the Town may need to inspect the work.
- f. Upon completion of the Project, the Town shall inspect the Project and provide the Association written approval or rejection of the Project.
- g. If the Project is approved by the Town, the Association shall submit to the Town its request for reimbursement, which shall include full documentation of the bid and procurement of the work to complete the Project, the contract for the work to complete the Project, the construction plans, details and as-built surveys or drawings, measurements, dated inspection reports, photographs of the work in progress, documentation of the payments made by the Association, any required test reports and the Association's written certification that the Project was completed in accordance with the approved plans and specifications.
- h. The Town shall thereafter budget funds for reimbursement to the Association from Storm Water Utility Service Fees in the fiscal year



that the Project would have otherwise been scheduled in the Town's Storm Water Utility Project Prioritization and Annual Budget Process. The schedule for reimbursement shall depend upon the Project ranking when compared to all other Projects as determined in the Town's Storm Water Utility Project Prioritization and Annual Budget Process and may be moved forward into a future budget year as a result. The Association acknowledges that the Town has no obligation to reimburse the Association for any Project in the fiscal year following the Association's completion of the Project, or in any other particular fiscal year.

10. **Emergency Work by the Association:** If for any reason, the Town is unable to repair or correct the damage caused by an Emergency in a time frame that is acceptable to the Association, the following shall apply:
  - a. The Association shall consult with the Town to determine a cost-efficient scope and extent of work necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same. The TOWN must approve in writing, the scope and plans for the work and procurement of construction services, prior to the commencement of work. The Association is not required to bid the work but if the Association chooses to bid the work, the Association shall bid the work in accordance with the Town's Procurement Code, § 11-1-111, *Municipal*

*Code of The Town of Hilton Head Island, South Carolina (1983)*, as the same may be amended from time to time.

- b. The Association shall complete the work that is necessary to repair or correct the damage caused by the Emergency.
- c. The Association shall, whenever possible, notify the Town at least seventy-two (72) hours prior to the commencement of work and at any key junctures of the work whereas the Town may need to inspect the work.
- d. Upon completion of the work that has been authorized and approved by the Town, the Association shall submit to the Town a request for reimbursement, which shall include full documentation of the bid and procurement documents for the work, the contract for the work, construction plans, details and as-built surveys or drawings, measurements, dated inspection reports, photographs of the work done and documentation of the payments made, any required test reports and the Association's written certification that the work was completed in accordance with the approved plans and specifications and state the date the work was completed.
- e. The Town shall approve the Association's request for reimbursement unless it determines that the requested reimbursement includes work other than the work authorized and approved by the Town.

- f. Within three (3) fiscal years following the Town's approval of the Association's request for reimbursement, the Town shall reimburse the Association in the amount approved.
  - g. Requests for reimbursement by the Association be submitted to the Town within three years following the completion of the work by the Association. The failure to submit the request for reimbursement to the Town within three years following completion of the Work shall bar any reimbursement for the work.
11. **No Guarantees Regarding Flooding:** The Association acknowledges that the Town's performance of its obligations under this Agreement does not guarantee or insure that property within the Development will be free of events of flooding or erosion, and that the Town does not represent or warrant to the Association that the performance of the Town's obligations under this Agreement will operate to prevent events of flooding or erosion within the Development.
12. **Waiver of Storm Water Service Fee Credit:** Upon the execution and delivery of this Agreement, and for and during the term or any extensions hereof, the Association acknowledges it shall not be entitled to receive and hereby waives any Storm Water Service Fee Credit from Beaufort County or the Town with respect to any real property located within the limits of the Development, for and during the term of this Agreement or any renewal of this Agreement.
13. **Term:** This Agreement shall remain in place for ten years from the date of execution and shall renew automatically for successive two (2) year terms beginning July 1 each year thereafter, unless either Party notifies the other, in

writing, of its intention to terminate this Agreement. Any such notice shall be delivered not less than two hundred and seventy (270) days prior to the end of the Town fiscal year (June 30) at the end of the then-current term in which such Party wishes to terminate the Agreement. Upon delivery of such notice, this Agreement shall terminate at midnight on June 30<sup>th</sup> of the fiscal year in which the notice is delivered (for example, if notice is given February 1, 2020, the Agreement would terminate on June 30, 2021). The parties shall thereafter execute and deliver such documents as may be necessary to cancel the Access, Drainage and Maintenance Easement delivered pursuant to this Agreement.

- a. **Superseding Legislation:** In the event that the South Carolina General Assembly enacts legislation prohibiting the ability of local governments to impose and collect Storm Water Service Fees then this Agreement shall terminate.

14. **Representation and Warranties of the Association:**

The Association represents and warrants:

- a. That any and all necessary approvals and/or resolutions have been obtained, that it has the full authority to execute, deliver and perform this Agreement and to execute and deliver the Access, Drainage and Maintenance Easement to be delivered pursuant to this Agreement, and that the individual(s) executing such documents have full power and authority to bind the Association to the same.
- b. That it is not now a party to any litigation affecting the property burdened by the easements herein which could impair the

obligations of the Association under this Agreement or the Access, Drainage and Maintenance Easement, and the Association knows of no litigation or threatened litigation affecting their ability to grant said easements.

- c. That as to any pipes or other portions of the Drainage System as shown on Exhibit "A" hereto which are located in whole or in part on private residential lots, the Association has full authority under the Covenants to convey or assign to the Town the rights contemplated in this Agreement and the Access, Drainage and Maintenance Easement.

15. **Town Representation and Warranties:**

The Town represents and warrants to the Association:

- a. As is shown by the Resolution of the TOWN that is attached hereto as Exhibit "D", the Town represents that it has the power and authority to enter into this Agreement and complete its obligations hereunder; and,
  - b. That it is not now a party to any litigation which could impair the obligations of the Town under this Agreement, and the Town knows of no litigation or threatened litigation affecting its ability to perform hereunder.
16. **Taxes:** The Association shall ensure payment, prior to delinquency, all taxes on Association properties within the Development burdened by the easements granted under this Agreement.

17. **Default:** The Town and the Association agree that in the event of a default or breach of any provision or term of this Agreement, the non-defaulting party or parties shall give written notice to the defaulting party or parties of the default or breach. In the event that the defaulting party or parties fail to cure the default or breach within thirty (30) days of the date of the written notice specifying the default or breach, unless a non-monetary default or breach cannot reasonably be cured within said thirty (30) day time period, then said period shall be reasonably extended, up to one hundred and twenty (120) days, then the non-defaulting party or parties shall be entitled to pursue any remedy at law or in equity against the defaulting party or parties, including but not limited to an action for damages, injunction or specific performance of this Agreement.
18. **Attorney's Fees:** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default or misrepresentation in connection with any of the provisions or terms of this Agreement, the prevailing party or parties shall be entitled to seek recovery of its or their reasonable attorney's fees and any costs incurred as a result of any such action or proceeding, whether incurred before the commencement of suit or after the commencement of suit, and including appellate proceedings, in addition to any other relief to which the prevailing party or parties is or are entitled.
19. **General Provisions:**
  - a. *Binding Effect:* This Agreement shall inure to the benefit of and be binding upon the Association and the Town, and their respective successors and assigns.

- b. *Amendment, Changes and Modifications:* Except as is otherwise provided herein, this Agreement may not be modified, amended, changed or altered without the written consent of the TOWN and the Association.
- c. *Severability:* In the event that any term or provision of this Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other term or provision hereof.
- d. *Execution in Counterparts:* This Agreement may be simultaneously executed in several counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument.
- e. *Applicable Law:* This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.
- f. *Captions:* The captions or headings used herein are for convenience only and in no way define, limit, expand or describe the scope or intent of any term or provision of this Agreement.
- g. *Plural/Singular:* Where appropriate, the use of the singular herein shall be deemed to include the plural, and the use of the plural herein shall be deemed to include the use of the singular.
- h. *No Third Party Beneficiaries:* The Town and the Association affirmatively represent that this Agreement is made solely for the benefit of the Parties hereto and their respective successors and assigns and not for the benefit of any third party who is not a

signature party hereto. It is the express intent of the Town and the Association that no other party shall have any enforceable rights hereunder, or any right to the enforcement hereof, or to any claim for damages as a result of any alleged breach hereof.

- i. *Notices:* All notices, applications, requests, certificates or other communications required hereunder shall be sufficiently given and shall be deemed given on the date when such is delivered in person, or deposited in the United States Mail, by regular first class mail, postage prepaid, at the following addresses, or at such other address as may be designated, in writing, by the Parties:

To the Town:           The Town of Hilton Head Island, SC  
                              Attn: Marc Orlando, Town Manager  
                              One Town Center Court  
                              Hilton Head Island, SC 29928

To the Association: Seagrass Landing Homeowners  
                              Association, Inc.  
                              Attn: Stephen Hall  
                              C/O: GW Services, Inc.  
                              19 Shelter Cove Lane, #306 (PO Box 6476)  
                              Hilton Head Island, SC 29938

- j. *No Waiver:* No failure of any Party hereto to exercise any power or right given to such Party hereunder, or to insist on strict compliance by any other Party of its obligations hereunder, and no custom or practice of the Parties at variance with the terms and provisions hereof shall constitute a waiver of any Party's right to thereafter demand strict compliance with the terms of this Agreement.



k. *Further Assurances and Corrective Documents:* The TOWN and the Association agree to do, execute, acknowledge, deliver or cause to be done all such further acts as may be reasonably determined to be necessary to carry out this Agreement and give effect to the terms and provisions hereof. The Town and the Association agree that each shall, upon request, execute and deliver such other or further or corrective documents as may be reasonably determined to be necessary to carry out this Agreement and each of the terms and provisions hereof.

In Witness Whereof, The Town of Hilton Head Island, South Carolina; and Seagrass Landing Homeowners Association, Inc., by and through their duly authorized officers, have executed and delivered this Agreement as of this \_\_\_\_ day of \_\_\_\_\_, 2021.

**SIGNATURES BEGIN ON NEXT PAGE**

WITNESSES:

Seagrass Landing Homeowners Association,  
Inc.

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_

Attest: \_\_\_\_\_

Its: \_\_\_\_\_

THE TOWN OF HILTON HEAD ISLAND,  
SOUTH CAROLINA

\_\_\_\_\_

By: \_\_\_\_\_

John McCann, Mayor

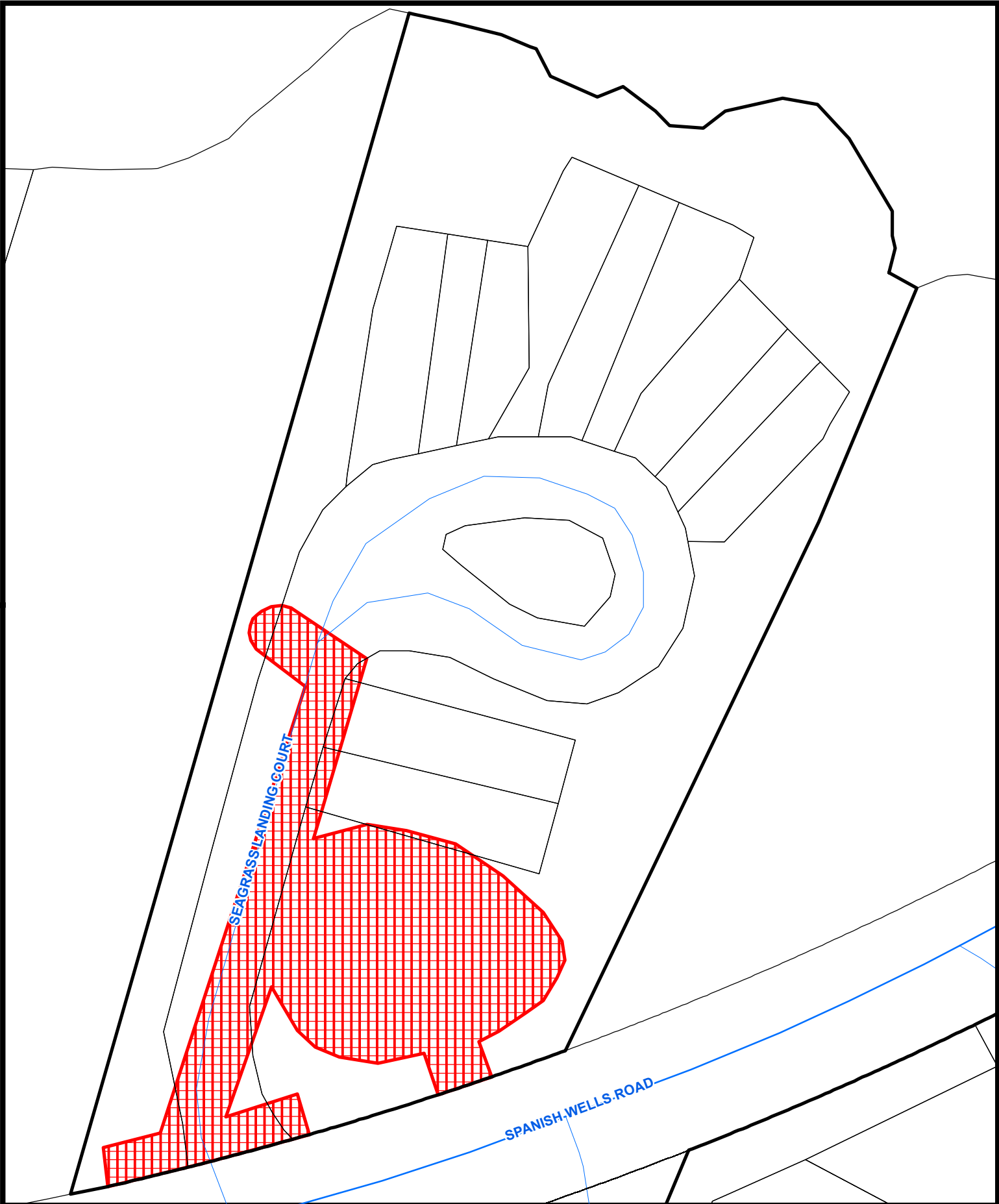
\_\_\_\_\_

Attest: \_\_\_\_\_

Marc Orlando, Town Manager

## **List of Exhibits**

- Exhibit A Map depicting the limits of the Access, Drainage and Maintenance Easement areas and Drainage Systems covered by this Agreement
- Exhibit B Map depicting the Development covered by this Agreement
- Exhibit C Access, Drainage and Maintenance Easement
- Exhibit D Town Resolution authorizing this Agreement



TOWN OF HILTON HEAD ISLAND  
 ONE TOWN CENTER COURT  
 HILTON HEAD ISLAND, S.C. 29928  
 PHONE (843) 341-4600

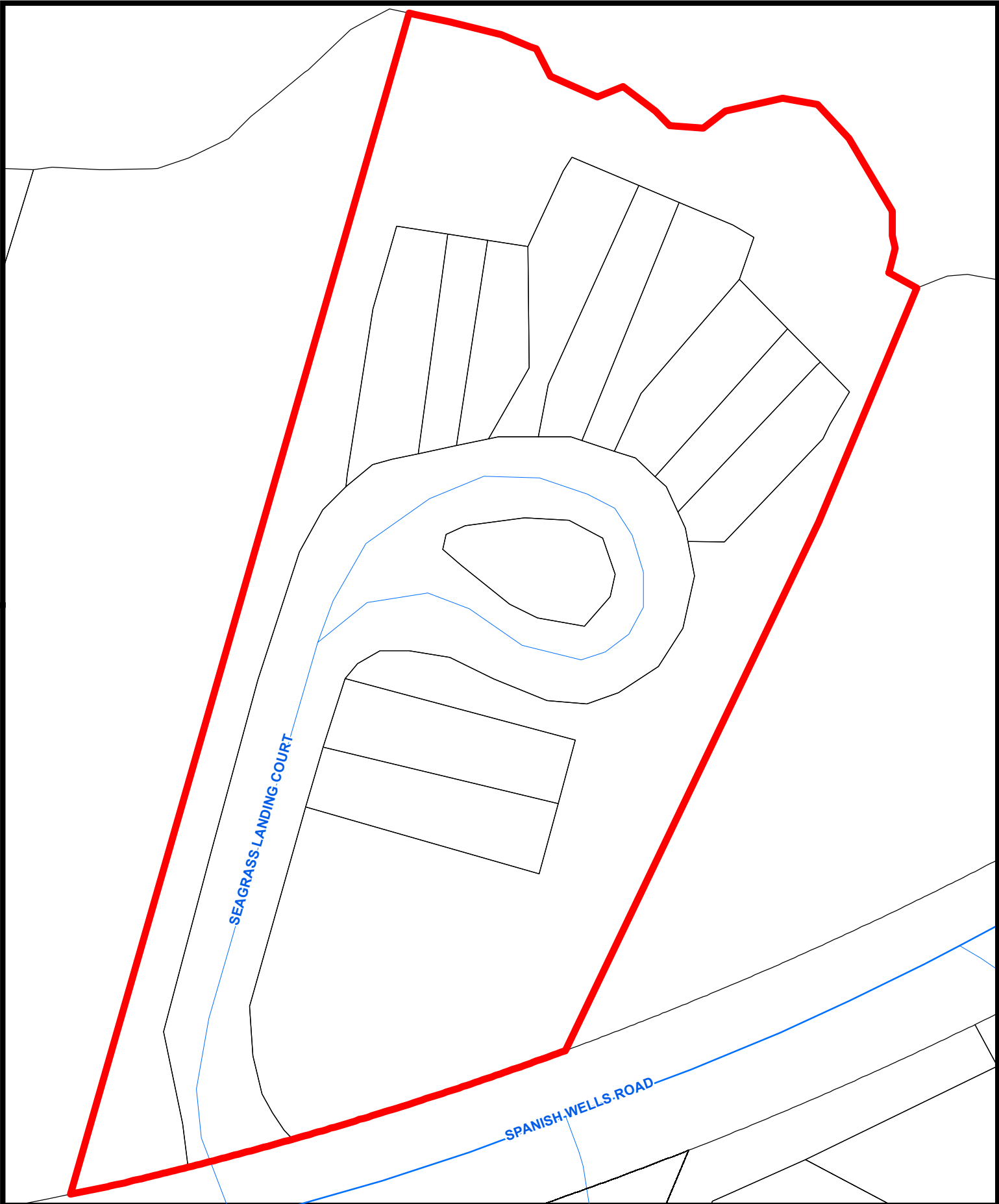
Date Created: 04/21/21  
 Project: map.mxd

**EXHIBIT A**  
**SEAGRASS LANDING**  
**DRAINAGE EASEMENT LIMITS**  
**APRIL 2021**

1 inch = 60 feet



The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion or for any losses arising from the use of the map.



TOWN OF HILTON HEAD ISLAND  
 ONE TOWN CENTER COURT  
 HILTON HEAD ISLAND, S.C. 29928  
 PHONE (843) 341-4600

Date Created: \_\_\_\_\_  
 Prepared by: map.mpl

**EXHIBIT B**  
**SEAGRASS LANDING**  
**SUBDIVISION**  
**APRIL 2021**

1 inch = 60 feet



The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion or for any losses arising from the use of the map.

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF THAT CERTAIN DRAINAGE AGREEMENT AND ACCESS, DRAINAGE AND MAINTENANCE EASEMENT WITH YACHT COVE PROPERTY OWNERS' ASSOCIATION, INC. ACROSS PROPERTY LOCATED IN YACHT COVE.**

WHEREAS, Yacht Cove Property Owners' Association, Inc. ("Yacht Cove") owns improved and unimproved real property and easements within Yacht Cove; and

WHEREAS, Beaufort County, South Carolina adopted Ordinance 99-101 et seq., as amended, creating a Storm Water Utility with the power to impose Storm Water Service Fees on all residents of Beaufort County, South Carolina and which also provides that fees collected from within the municipal limits of the Town of Hilton Head Island, South Carolina ("Town") are returned to the Town to be used for the purposes set forth in the Ordinance including the construction and maintenance of planned and existing infrastructure which collects and disposes of surface and storm water within the municipal limits of the Town; and

WHEREAS, Yacht Cove desires for the Town to utilize Storm Water Service Fees to undertake the maintenance and improvement of the storm and surface water drainage system within Yacht Cove to facilitate the flow of storm water drainage through and from areas within Yacht Cove; and

WHEREAS, to undertake these improvements, it is necessary for the Town to obtain from Yacht Cove a Drainage Agreement and an Access, Drainage and Maintenance Easement, copies of which are attached hereto Exhibit "A"; and

WHEREAS, the Town Council for the Town of Hilton Head Island, South Carolina has determined that it is in the best interests of the citizens and visitors of the Town of Hilton Head Island to undertake the improvements stated above; and

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA:**

1. The Mayor and/or Town Manager are hereby authorized to execute and deliver a Drainage Agreement and an Access, Drainage and Maintenance Easement in a form substantially similar to that attached hereto as Exhibit "A"; and
2. The Mayor and/or Town Manager are hereby authorized to take such other and further action as may be necessary to complete the actions authorized hereby.

**PASSED AND APPROVED BY THE TOWN COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021.**

\_\_\_\_\_  
**John J. McCann, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Krista Wiedmeyer, Town Clerk**

**Approved as to form:**

\_\_\_\_\_  
**Curtis Coltrane, Town Attorney**

**Introduced by Council Member: \_\_\_\_\_**





infrastructure for the collection and conveyance of storm water runoff within the Town of Hilton Head Island, South Carolina, and,

WHEREAS, Yacht Cove Property Owners' Association, Inc., desires for the Town of Hilton Head Island, South Carolina, to utilize Storm Water Utility Service Fees to undertake maintenance and improvement of the storm water drainage system in Yacht Cove, to facilitate the conveyance of storm water runoff within and through the Development; and,

WHEREAS, the Yacht Cove Property Owners' Association, Inc., has agreed to grant access, drainage and maintenance easements to the Town, in order to facilitate the maintenance and improvement of the qualifying storm water drainage system in Yacht Cove.

Now, therefore, know all men by these presents, that Yacht Cove Property Owners' Association, Inc., and the Town of Head Island, South Carolina, for and in consideration of the sum of One and no/100 (\$1.00) Dollar, each paid to the other at and before the execution and delivery of this Agreement, the receipt and sufficiency whereof is acknowledged, agree as follows:

1. **Defined Terms:** As used in this Agreement, the following terms as related to this agreement shall mean:
  - a. *Agreement:* This "Drainage System Maintenance Agreement".
  - b. *Association:* Yacht Cove Property Owners' Association, Inc., a South Carolina not-for-profit corporation with the full authority under the Covenants to enter into this Agreement and to complete all of the Association's obligations under it, and to execute and deliver the

Access, Drainage and Maintenance Easement attached hereto as Exhibit “C.”

- c. *Casualty*: The destruction of all or any part of the Drainage System through a natural disaster.
- d. *Covenants*: Any one or more of Covenants, Conditions, and Restrictions for Yacht Cove Property Owners’ Association, Inc. recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.
- e. *Development*: Yacht Cove, a planned unit development or subdivision lying and being on Hilton Head Island, Beaufort County, South Carolina, which is shown and described on the map attached as Exhibit “B” hereto.
- f. *Drainage System*: The existing system of lagoons, ditches, canals, pipes, culverts, catch basins, drains, manholes, junction boxes, weirs, valves, gates, pumps, structures, related equipment and related infrastructure, in the Development lying within the Easement Areas shown on the map attached hereto as Exhibit “A,” which facilitates the collection, storage and conveyance of storm and surface water runoff for public benefit through, within, and from the Development. For purposes of this Agreement, the Drainage System shall not include any bridges, docks, retaining walls, road or pathway asphalt, road or building gutters, underdrains, sub-drains, structural bulkheads, beaches, tidal banks, estuaries, or salt marshes, or

driveway pipes, unless the Town, in its sole discretion deems any particular driveway pipe as critical to the function of the Drainage System.

- g. *Emergency*: A blockage, structural or mechanical failure, collapse or other sudden catastrophic event affecting any part of the Drainage System which prevents or substantially inhibits the flow of storm and surface water through all or any part of the Drainage System, or which otherwise results in an imminent peril to life or property.
- h. *Permanent Structure*: Any immovable structure, including, but not limited to, buildings, sheds, pavilions, walls, masonry structures, tennis courts, and swimming pools, including swimming pool decks.
- i. *Pollutant*: Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; non-hazardous liquid and solid wastes and yard wastes; sediment; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; concrete and cement; and noxious or offensive matter of any kind.

- j. *Post-construction Structural Best Management Practice Facility:* A Post-construction Structural Best Management Practice Facility (BMPPF) is a facility designed and built to provide treatment of storm water either through storage, filtration or infiltration (i.e. detention basins, retention basins, rain gardens, bioretention cells, sand filters, vegetated filter strips, water quality swales and infiltration trenches) as set forth in the latest editions of the Beaufort County Manual for Storm Water Best Management and Design Practices, the South Carolina DHEC Storm Water Management BMP Handbook, and the Georgia Coastal Stormwater Supplement, which include descriptions standards, and design guidelines for these facilities.
- k. *Project:* Work, including repairs and improvements performed or approved by the Town to correct a specific Qualifying Storm Drainage System Deficiency.
- l. *Qualifying Drainage System Deficiency:* Anything that, in the determination of the Town, prevents, impairs or impedes the adequate conveyance or drainage of storm water runoff through the Drainage System or the structural failure of a Drainage System component. Qualifying Drainage System Deficiencies include, but are not limited to, the following:
  - i. Lagoon bank erosion that has an appreciable adverse impact on conveyance of storm water runoff through the Drainage

System or threatens the integrity of adjacent Drainage System infrastructure or Permanent Structures;

- ii. Presence of sediment and debris located in the Drainage System that has an appreciable adverse impact on the conveyance of storm water runoff through the Drainage System or the functioning of the Drainage System;
- iii. Structural deficiencies associated with pipes and culverts, including, but not limited to, joint failures, deterioration, root intrusion, or collapse that has an appreciable adverse impact on conveyance of storm water runoff through the Drainage System or threatens the integrity of adjacent Drainage System infrastructure or Permanent Structures;
- iv. Structural deficiencies associated with inlets, manholes, junction boxes, control structures and headwalls including, but not limited to, connection failure, deterioration, mechanical failure, or collapse that has an appreciable adverse impact on conveyance of storm water runoff through the Drainage System, or that threatens the integrity of adjacent infrastructure or Permanent Structures. Examples of typical deficiencies include damaged grates, grout failures at pipe connections, deterioration or failure of flap gates and sluice gates, or failure of structure walls;

- v. Sinkholes caused by Drainage System pipe or Drainage System structure Deficiencies, but not those caused by the actions of any third party, including utility providers;
- vi. Drainage System conveyance or performance deficiencies due to inadequate design capacity. Examples of typical conveyance or performance deficiencies include undersized pipes and insufficient weir capacities.

Qualifying Drainage System Deficiencies do not include the following:

- i. The aesthetic appearance or appeal of any part of the Drainage System, including but not limited to lagoons, banks of lagoons, channel banks, landscaping, drains, catch basins, canals, structures, bridges, bulkheads, pipes, culverts, valves gates, debris that does not have an appreciable adverse impact on the conveyance of storm and surface water through the Drainage System, or other visible components of the Drainage System;
- ii. The introduction of pollution or pollutants into the Drainage System from any source;
- iii. Lagoon bank erosion that does not have an appreciable adverse impact on conveyance of storm water runoff through the Drainage System or threaten the integrity of

- adjacent Drainage System infrastructure or Permanent Structures;
- iv. Tidal erosion or tidal flooding that does not have an appreciable adverse impact on conveyance of storm water runoff through the Drainage System or threaten the integrity of Drainage System infrastructure;
  - v. Establishment of access to the Drainage System by the Association, including, but not limited to, grading, clearing of vegetation, removal of trees, or removal of other obstructions or Permanent Structures in order to provide physical access to the Drainage System;
  - vi. Drainage System damage or deficiencies caused by the actions of others, including utilities and property owners (including, but not limited to, bores or cuts into pipes or structures);
  - vii. Minor or nuisance flooding that does not adversely affect transportation infrastructure, Permanent Structures, hardscape amenities, or conveyance of storm water runoff through the Drainage System, including golf course flooding, isolated lawn and yard ponding, or standing water in roadway shoulders and unimproved lots or land;
  - viii. Drainage System Deficiencies determined by the Town to be caused or exacerbated by intentional acts causing tidal backflow and saltwater intrusion into the Drainage System

through failure to operate control structures per the design intent or the failure by the Association to monitor and maintain proper functioning of backflow prevention devices including flaps, gates, sluice gates, check valves, or similar devices;

- ix. Damage to, or failure of, Drainage System components situated underneath or within five (5) feet of any Permanent Structure that is not a part of the Drainage System, where the Town determines that difficult access and/or liabilities exist, or within the zone of influence for the foundation of a Permanent Structure;
  - x. The construction of a new drainage system or an addition to an existing Drainage System, or the modification of an existing Drainage System to accommodate drainage requirements for new development within the Development.
  - xi. Drainage System deficiencies determined by the Town to be caused by or originating from unauthorized or non-permitted modifications to the Drainage System by any party other than the Town.
- m. *Storm Water Utility Service Fees*: The fees collected by Beaufort County, South Carolina, under the authority of Beaufort County Ordinance 99-101, *et seq.*, as amended, and which are remitted by



Beaufort County, South Carolina, to the Town; or any similar fee, however denominated, imposed and collected by any subsequent or successor Storm Water Utility operated by The Town, under the authority of Town Ordinance Number 2002-43.

- n. *Storm Water Utility Project Prioritization and Annual Budget Process:* The annual process by which the Town of Hilton Head Island, South Carolina, shall establish and maintain a prioritized list of all known Qualifying Drainage System Deficiencies within the Town limits determined to be eligible for service using Storm Water Utility Service Fees. Prior to the beginning of each fiscal year, the Town shall establish an annual Storm Water Utility budget which defines all revenues and expenditures associated with the Storm Water Utility Service Fees. This budget shall include those known Projects to correct Qualifying Drainage System Deficiencies intended to be completed within that fiscal year.
  - o. *Town:* The Town of Hilton Head Island, South Carolina.
2. **Grant of Easements:** Contemporaneously with the execution and delivery of this Agreement, the Association and the Town have entered into an “Access, Drainage and Maintenance Easement” which grants the Town rights to access, operate, utilize, maintain, and improve the Drainage System within the Development, with said easement being in the form attached hereto as Exhibit “C”.

3. **Maintenance, Inspection and Operation of Drainage System:** Upon the execution and delivery of this Agreement and the Access, Drainage and Maintenance Easement:

- (a) the Town shall be responsible for the maintenance, repairs and improvements necessary to correct any Qualifying Drainage System Deficiency under the terms and conditions of this Agreement. This Agreement does not preclude the Association from repairing, maintaining, or improving any component of its Drainage System at its expense.
- (b) The Association shall be responsible for the following within the Development:
  - (i) Normal and emergency operation of Drainage System control structures, including gates, weirs and pumps, and for lowering water levels in compliance with pre-storm preparation protocols established by the Town.
  - (ii) Maintenance and replacement of weir boards, maintenance of control structure access ways, decking and railings, and maintaining control structure accessibility for inspection and operation by controlling and/or removing vegetation as necessary.
  - (iii) Performing maintenance of work shelves along ditches and canals to provide reasonable and adequate access for inspection, maintenance and repair.
  - (iv) Monitoring the condition of flap gates, sluice gates, check valves, and similar devices intended to prevent the intrusion of tidal backflow

and brackish water into the Drainage System to ensure that they are in proper working order and functioning as intended.

- (v) Making repairs to roadway pavement, pathway pavement, curb and gutter and related ancillary infrastructure or property damage attributed to a past or existing Qualifying Drainage System Deficiency if the deficiency has been corrected by the Town via trenchless technology methods (i.e. pipe lining). This does not obligate the Association to repair or replace such infrastructure if the repair is made using open cut excavations where removal of surface infrastructure is necessary to complete the repair, in which case, the repair of the ancillary infrastructure shall be considered to be a part of the Town's work to correct the deficiency.
- (vi) Performing annual inspections of Post-construction Structural Best Management Practice Facilities in order to comply with Stormwater Management Plan obligations, including submittal of inspection documentation to the Town in accordance with § 16-5-109 (H)(2), *Municipal Code to the Town of Hilton Head Island (1983)*.
- (vii) Regulating the actions of utility providers and property owners, or their assigns, to prevent and mitigate any damage they may cause to the Drainage System.

4. **Procedure for Town's Maintenance of Drainage System:** The Parties acknowledge that the Town intends to provide for the maintenance and improvement of the Drainage System and the repair of identified Qualifying

Drainage System Deficiencies, other than those caused by an Emergency or Casualty, through the development of its Storm Water Utility Project Prioritization and Annual Budget Process. Other than in the case of an Emergency or Casualty, as described in Articles 7, 8 and 10 below, or work completed directly by the Association under Article 9, the Parties agree:

- a. *Identifying Qualifying Drainage System Deficiencies:* The Association shall be responsible for identifying any Qualifying Drainage System Deficiencies.
- b. *Schedule for Submission:* The Association shall submit a written description of each known Qualifying Drainage System Deficiency to the Town using the service request form provided by the Town, describing the nature, location and cause (if known) of each Qualifying Drainage System Deficiency. The Association may identify a potential solution is for the deficiency. In such case, the Association shall include a description of the solution and a preliminary estimate of anticipated costs for the proposed solution. Qualifying Drainage System Deficiencies that are reported to the Town, or which are discovered by the Town, by the end of any calendar year will be considered in the development of the Storm Water Utility Project Prioritization and Annual Budget Process for the following fiscal year.
- c. *Completion of Maintenance:* The Town shall annually develop a Storm Water Utility Project Prioritization and an Annual Budget that

will address identified Qualifying Drainage System Deficiencies as follows:

- i. The Town shall determine the scope and extent of the maintenance, repair or improvement that is necessary to correct any Qualifying Drainage System Deficiencies, and the means, methods and materials needed to accomplish the same.
- ii. The Town shall determine the priority and number of the Projects and schedule the Projects to correct to correct the Qualifying Drainage System Deficiencies for each fiscal year. The determination of the scheduling and funding for the correction of the Qualifying Drainage System Deficiencies shall be made by the Town, taking into account the following:
  1. The availability and amount of the Storm Water Utility Service Fees fund balance, revenue from bonds paid by Storm Water Utility Service Fees, and Storm Water Utility Service Fees in any given fiscal year;
  2. Prioritization of all other Projects, or qualifying requested improvements, repair and maintenance that are to be funded with Storm Water Utility Service Fees; and

3. The annual cost required to operate the Storm Water Utility, its programs and initiatives, and debt service.
  - iii. The Town will complete the Projects as determined by the Town as a part of the Storm Water Utility Project Prioritization and Annual Budget Process, unless Emergencies or Casualties occur that alter the prioritization and funding such that funds are insufficient to correct all Qualifying Drainage System Deficiencies as intended within the same fiscal year.
  - d. *Scheduling of Projects:* Other than in the case of an Emergency or Casualty, the Town and the Association shall mutually agree in writing as to the scheduling of any Project to be performed under this Agreement in the Development in advance of the commencement of the Project.
  - e. *Resident Notification:* The Association shall be solely responsible for the notification of its owners and guests that may be affected by any Project, or by work to address any Emergency or Casualty.
  - f. *Legal Access to Private Property:* The Association shall be responsible for obtaining all access rights, including access rights over and across property in the Development that is not owned by the Association, as may be deemed necessary by the Town to complete any Project.

- g. *Access Needed to Complete Project:* The Association shall be responsible for providing clear and adequate physical access to each Project site at no cost to the Town. If clear, adequate physical access to the Project site cannot be provided sufficient to complete the Project without the likelihood of damage to property, assets and amenities by contractors and equipment, the repair and replacement of any property, assets and amenities damaged as a result of the Project shall be the responsibility of the Association, at no additional cost to the Town. Such property, assets and amenities shall include, but are not limited to, landscaping, flowerbeds, ornamental shrubs and trees, lawns, irrigation systems, boardwalks, cart paths, driveways, and sidewalks. The determination of whether the access is clear and adequate, and whether there is a likelihood of damage shall be made in the sole discretion of the Town, prior to the commencement of the Project. The Association has the right to withdraw the service request if the magnitude of potential damage is not acceptable to the Association. If the service request is withdrawn, completing the Project shall be the responsibility of the Association.
- h. *No Guarantees Regarding Schedule:* The Town cannot guarantee that the amount of available Storm Water Utility Service Fees, the number of Projects to be funded with Storm Water Utility Service Fees in any given fiscal year, and whether Emergencies and

Casualties and weather related general emergencies will not cause delays in the correction of Qualifying Drainage System Deficiencies within the Development and elsewhere. The parties acknowledge that the Town's determinations with respect to the priority, funding and timing of any Project shall be made at the Town's discretion and shall be final.

5. **Further Obligations of the Association:** The Association agrees that during the term, or any renewal term, of this Agreement, it shall take no action which damages the Drainage System, allows damage to the Drainage System, or creates a Drainage System Deficiency, including, but not limited to allowing salt water intrusion or pollutants to enter the Drainage System and allowing utility providers, property owners, or their assigns to impair the function of the Drainage System. To the extent the Association has a continuing obligation under the Covenants to repair and maintain various improvements located within the Development including lagoons and lagoon banks, ditch maintenance shelves, roads, pathways, utilities, this Agreement is not intended to in any way restrict or limit the Association's completion of its obligations.
6. **Payments as Current Expense of Town:** Any payments to be made by the Town hereunder shall be made from Storm Water Utility Service Fees as budgeted for by the Town in any given fiscal year. The Town and the Association intend that the payment obligations of the Town shall constitute a current expense of the Town and shall not in any way be construed to be a debt of the Town in contravention of any applicable constitutional or statutory limitations concerning indebtedness of



the Town, nor shall anything contained herein constitute a pledge of general tax revenues, funds, money or credit of the Town.

7. **Emergency:** The Parties agree that in the event of an Emergency, the following procedure shall apply:

- a. *Agreement Not Terminated:* This Agreement shall remain in full force and effect.
- b. *Responsibilities of the Association:* The Association shall take such steps as may be reasonably necessary to secure any area affected by the Emergency. The Association shall notify the Town as soon as is practical after discovery of the Emergency. The Association may complete any repairs to the Drainage System needed to address the Emergency, as provided for in Article 10, below.
- c. *Responsibilities of the Town:* Upon receipt of notification of an Emergency from the Association, the Town shall determine the scope and extent of the work that is necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same. The Town shall correct or repair the damage caused by the Emergency as soon as practical, taking into account the threat presented by the Emergency, the existence of any other Emergency or Casualty, the cause of the Emergency and/or the existence of any general emergency affecting the Town and availability of funding. The Town may seek reimbursement from third parties for any costs incurred by the Town

as a result of any Emergency found to have been caused by the negligence of said third parties.

8. **Casualty:** The Parties agree that in the event of a Casualty, the following procedure shall apply:

- a. *Agreement Not Terminated:* This Agreement shall remain in full force and effect.
- b. *Design of Drainage System:* The Town shall produce engineering and design plans at its expense for the reconstruction of all or any part of the Drainage System affected by the Casualty.
- c. *Approval of Plans:* The engineering and design plans must be approved by the Association prior to any reconstruction of the Drainage System. If the Association does not approve the engineering and design plans prepared by the Town, the Association may reconstruct the Drainage System at its own expense and shall not seek reimbursement for the cost thereof from the Town.
- d. *Right of Entry and Access:* If the engineering and design plans approved by the Association require work outside of easement limits described in the Access, Drainage and Maintenance Easement, the Association shall provide temporary easements for access and construction over any property it owns or controls, and shall deliver a valid temporary construction easement for access and construction from the owners of property that the Association does not own.

- e. *Amendment of Access, Drainage and Maintenance Easement:* In the event that the engineering and design plans approved by the Association include permanent improvements or create access or other needs that are in areas not included in the Access, Drainage and Maintenance Easement, the Association agrees that it will execute and deliver an amendment to the Access, Drainage and Maintenance Easement to subject any such areas in the Access, Drainage and Maintenance Easement.
- f. *Reconstruction of Drainage System:* Following the approval of the engineering and design plans and specifications by the Association, the Association's delivery of any needed temporary easements for access and construction, the Town shall complete the reconstruction of the Drainage System, or any part of it, as soon as is practical, taking into account the threat presented by the cause of the Casualty, the existence of any general emergency affecting the Town, the existence of other Emergencies and Casualties and availability of funding. Other than the expenses identified in subsection (b) of this Article 8, the Town may seek reimbursement for any costs incurred by the Town as a result of any Casualty from Storm Water Utility Service Fees, bond, any government aid and assistance programs, or the Association, if the Association is responsible for all or any part of the Casualty.

9. **Maintenance of Drainage System by the Association:** Nothing herein shall prohibit the Association from performing any Project in advance of the time that any such Project is scheduled as a part of the Town's Storm Water Utility Project Prioritization and Annual Budget Process, if the Association determines that it is in its interest to do so. Other than in the case of an Emergency (addressed in Article 10, below), or a Casualty (addressed in Article 8, above), the Association shall be entitled to reimbursement, in an amount up to the amount budgeted by the Town for the Project but not exceeding the actual cost to the Association, from Storm Water Utility Service Fees, in the fiscal year that such Project is scheduled to be done as a part of Town's Storm Water Utility Project Prioritization and Annual Budget Process, as follows;

- a. The Association shall submit its plans, quantities, and specifications for any Project to the Town.
- b. The Town shall grant its written approval to the Association to complete the Project unless it determines that:
  - i. The plan and work proposed by the Association will not correct the existing Qualifying Drainage System Deficiency; or,
  - ii. The scope of the proposed work exceeds what is necessary to correct the existing Qualifying Drainage System Deficiency,
- c. Upon receipt of the Town's written approval, the Association shall bid the work in accordance with the Town's Procurement Code, § 11-

1-111, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983), as the same may be amended from time to time.

- d. Any changes in the approved scope of work for the Project resulting in additional work or cost to the Town must be approved in writing by the Town prior to commencement of any additional work.
- e. The Association shall notify the Town at least seventy-two (72) hours prior to the commencement of work on the Project and at any key junctures of the work where the Town may need to inspect the work.
- f. Upon completion of the Project, the Town shall inspect the Project and provide the Association written approval or rejection of the Project.
- g. If the Project is approved by the Town, the Association shall submit to the Town its request for reimbursement, which shall include full documentation of the bid and procurement of the work to complete the Project, the contract for the work to complete the Project, the construction plans, details and as-built surveys or drawings, measurements, dated inspection reports, photographs of the work in progress, documentation of the payments made by the Association, any required test reports and the Association's written certification that the Project was completed in accordance with the approved plans and specifications.
- h. The Town shall thereafter budget funds for reimbursement to the Association from Storm Water Utility Service Fees in the fiscal year

that the Project would have otherwise been scheduled in the Town's Storm Water Utility Project Prioritization and Annual Budget Process. The schedule for reimbursement shall depend upon the Project ranking when compared to all other Projects as determined in the Town's Storm Water Utility Project Prioritization and Annual Budget Process and may be moved forward into a future budget year as a result. The Association acknowledges that the Town has no obligation to reimburse the Association for any Project in the fiscal year following the Association's completion of the Project, or in any other particular fiscal year.

10. **Emergency Work by the Association:** If for any reason, the Town is unable to repair or correct the damage caused by an Emergency in a time frame that is acceptable to the Association, the following shall apply:
  - a. The Association shall consult with the Town to determine a cost-efficient scope and extent of work necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same. The TOWN must approve in writing, the scope and plans for the work and procurement of construction services, prior to the commencement of work. The Association is not required to bid the work but if the Association chooses to bid the work, the Association shall bid the work in accordance with the Town's Procurement Code, § 11-1-111, *Municipal*

*Code of The Town of Hilton Head Island, South Carolina (1983)*, as the same may be amended from time to time.

- b. The Association shall complete the work that is necessary to repair or correct the damage caused by the Emergency.
- c. The Association shall, whenever possible, notify the Town at least seventy-two (72) hours prior to the commencement of work and at any key junctures of the work whereas the Town may need to inspect the work.
- d. Upon completion of the work that has been authorized and approved by the Town, the Association shall submit to the Town a request for reimbursement, which shall include full documentation of the bid and procurement documents for the work, the contract for the work, construction plans, details and as-built surveys or drawings, measurements, dated inspection reports, photographs of the work done and documentation of the payments made, any required test reports and the Association's written certification that the work was completed in accordance with the approved plans and specifications and state the date the work was completed.
- e. The Town shall approve the Association's request for reimbursement unless it determines that the requested reimbursement includes work other than the work authorized and approved by the Town.

- f. Within three (3) fiscal years following the Town's approval of the Association's request for reimbursement, the Town shall reimburse the Association in the amount approved.
  - g. Requests for reimbursement by the Association be submitted to the Town within three years following the completion of the work by the Association. The failure to submit the request for reimbursement to the Town within three years following completion of the Work shall bar any reimbursement for the work.
11. **No Guarantees Regarding Flooding:** The Association acknowledges that the Town's performance of its obligations under this Agreement does not guarantee or insure that property within the Development will be free of events of flooding or erosion, and that the Town does not represent or warrant to the Association that the performance of the Town's obligations under this Agreement will operate to prevent events of flooding or erosion within the Development.
12. **Waiver of Storm Water Service Fee Credit:** Upon the execution and delivery of this Agreement, and for and during the term or any extensions hereof, the Association acknowledges it shall not be entitled to receive and hereby waives any Storm Water Service Fee Credit from Beaufort County or the Town with respect to any real property located within the limits of the Development, for and during the term of this Agreement or any renewal of this Agreement.
13. **Term:** This Agreement shall remain in place for ten years from the date of execution and shall renew automatically for successive two (2) year terms beginning July 1 each year thereafter, unless either Party notifies the other, in



writing, of its intention to terminate this Agreement. Any such notice shall be delivered not less than two hundred and seventy (270) days prior to the end of the Town fiscal year (June 30) at the end of the then-current term in which such Party wishes to terminate the Agreement. Upon delivery of such notice, this Agreement shall terminate at midnight on June 30<sup>th</sup> of the fiscal year in which the notice is delivered (for example, if notice is given February 1, 2020, the Agreement would terminate on June 30, 2021). The parties shall thereafter execute and deliver such documents as may be necessary to cancel the Access, Drainage and Maintenance Easement delivered pursuant to this Agreement.

- a. **Superseding Legislation:** In the event that the South Carolina General Assembly enacts legislation prohibiting the ability of local governments to impose and collect Storm Water Service Fees, then this Agreement shall terminate.

14. **Representation and Warranties of the Association:**

The Association represents and warrants:

- a. That any and all necessary approvals and/or resolutions have been obtained, that it has the full authority to execute, deliver and perform this Agreement and to execute and deliver the Access, Drainage and Maintenance Easement to be delivered pursuant to this Agreement, and that the individual(s) executing such documents have full power and authority to bind the Association to the same.
- b. That it is not now a party to any litigation affecting the property burdened by the easements herein which could impair the

obligations of the Association under this Agreement or the Access, Drainage and Maintenance Easement, and the Association knows of no litigation or threatened litigation affecting their ability to grant said easements.

- c. That as to any pipes or other portions of the Drainage System as shown on Exhibit "A" hereto which are located in whole or in part on private residential lots, the Association has full authority under the Covenants to convey or assign to the Town the rights contemplated in this Agreement and the Access, Drainage and Maintenance Easement.

15. **Town Representation and Warranties:**

The Town represents and warrants to the Association:

- a. As is shown by the Resolution of the TOWN that is attached hereto as Exhibit "D", the Town represents that it has the power and authority to enter into this Agreement and complete its obligations hereunder; and,
  - b. That it is not now a party to any litigation which could impair the obligations of the Town under this Agreement, and the Town knows of no litigation or threatened litigation affecting its ability to perform hereunder.
16. **Taxes:** The Association shall ensure payment, prior to delinquency, all taxes on Association properties within the Development burdened by the easements granted under this Agreement.

17. **Default:** The Town and the Association agree that in the event of a default or breach of any provision or term of this Agreement, the non-defaulting party or parties shall give written notice to the defaulting party or parties of the default or breach. In the event that the defaulting party or parties fail to cure the default or breach within thirty (30) days of the date of the written notice specifying the default or breach, unless a non-monetary default or breach cannot reasonably be cured within said thirty (30) day time period, then said period shall be reasonably extended, up to one hundred and twenty (120) days, then the non-defaulting party or parties shall be entitled to pursue any remedy at law or in equity against the defaulting party or parties, including but not limited to an action for damages, injunction or specific performance of this Agreement.
18. **Attorney's Fees:** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default or misrepresentation in connection with any of the provisions or terms of this Agreement, the prevailing party or parties shall be entitled to seek recovery of its or their reasonable attorney's fees and any costs incurred as a result of any such action or proceeding, whether incurred before the commencement of suit or after the commencement of suit, and including appellate proceedings, in addition to any other relief to which the prevailing party or parties is or are entitled.
19. **General Provisions:**
- a. *Binding Effect:* This Agreement shall inure to the benefit of and be binding upon the Association and the Town, and their respective successors and assigns.

- b. *Amendment, Changes and Modifications:* Except as is otherwise provided herein, this Agreement may not be modified, amended, changed or altered without the written consent of the TOWN and the Association.
- c. *Severability:* In the event that any term or provision of this Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other term or provision hereof.
- d. *Execution in Counterparts:* This Agreement may be simultaneously executed in several counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument.
- e. *Applicable Law:* This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.
- f. *Captions:* The captions or headings used herein are for convenience only and in no way define, limit, expand or describe the scope or intent of any term or provision of this Agreement.
- g. *Plural/Singular:* Where appropriate, the use of the singular herein shall be deemed to include the plural, and the use of the plural herein shall be deemed to include the use of the singular.
- h. *No Third Party Beneficiaries:* The Town and the Association affirmatively represent that this Agreement is made solely for the benefit of the Parties hereto and their respective successors and assigns and not for the benefit of any third party who is not a

signature party hereto. It is the express intent of the Town and the Association that no other party shall have any enforceable rights hereunder, or any right to the enforcement hereof, or to any claim for damages as a result of any alleged breach hereof.

- i. *Notices:* All notices, applications, requests, certificates or other communications required hereunder shall be sufficiently given and shall be deemed given on the date when such is delivered in person, or deposited in the United States Mail, by regular first class mail, postage prepaid, at the following addresses, or at such other address as may be designated, in writing, by the Parties:

To the Town:           The Town of Hilton Head Island, SC  
                              Attn: Marc Orlando, Town Manager  
                              One Town Center Court  
                              Hilton Head Island, SC 29928

To the Association: Yacht Cove Property Owners'  
                              Association, Inc.  
                              Attn: Linda McAndrews, POA President  
                              Post Office Box 4773  
                              Hilton Head Island, SC 29938

- j. *No Waiver:* No failure of any Party hereto to exercise any power or right given to such Party hereunder, or to insist on strict compliance by any other Party of its obligations hereunder, and no custom or practice of the Parties at variance with the terms and provisions hereof shall constitute a waiver of any Party's right to thereafter demand strict compliance with the terms of this Agreement.

k. *Further Assurances and Corrective Documents:* The TOWN and the Association agree to do, execute, acknowledge, deliver or cause to be done all such further acts as may be reasonably determined to be necessary to carry out this Agreement and give effect to the terms and provisions hereof. The Town and the Association agree that each shall, upon request, execute and deliver such other or further or corrective documents as may be reasonably determined to be necessary to carry out this Agreement and each of the terms and provisions hereof.

In Witness Whereof, The Town of Hilton Head Island, South Carolina; and Yacht Cove Property Owners' Association, Inc., by and through their duly authorized officers, have executed and delivered this Agreement as of this \_\_\_\_ day of \_\_\_\_\_, 2021.

**SIGNATURES BEGIN ON NEXT PAGE**

WITNESSES:

Yacht Cove Property Owners' Association, Inc.

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_

Attest: \_\_\_\_\_

Its: \_\_\_\_\_

THE TOWN OF HILTON HEAD ISLAND,  
SOUTH CAROLINA

\_\_\_\_\_

By: \_\_\_\_\_

John McCann, Mayor

\_\_\_\_\_

Attest: \_\_\_\_\_

Marc Orlando, Town Manager

## **List of Exhibits**

- Exhibit A Map depicting the limits of the Access, Drainage and Maintenance Easement areas and Drainage Systems covered by this Agreement
- Exhibit B Map depicting the Development covered by this Agreement
- Exhibit C Access, Drainage and Maintenance Easement
- Exhibit D Town Resolution authorizing this Agreement



**STATE OF SOUTH CAROLINA        )**     **ACCESS, DRAINAGE AND**  
   **)**     **MAINTENANCE EASEMENT**  
**COUNTY OF BEAUFORT                )**

Know all men by these presents, that Yacht Cove Property Owners’ Association, Inc. and the Town of Hilton Head Island, South Carolina, One Town Center Court, Hilton Head Island, SC, 29928, for and in consideration of the sum of One and No/100 (\$1.00) Dollar, each paid to the other at and before the execution and delivery of this Access, Drainage and Maintenance Easement, the receipt and sufficiency whereof is acknowledged, agree as follows:

1.     **Defined Terms:** As used herein, the following terms shall mean:
  - (a)    *Association:* Yacht Cove Property Owners’ Association, Inc., a South Carolina not-for-profit corporation with the full authority under the Covenants to enter into this Agreement.
  - (b)    *Covenants:* Any one or more of Covenants, Conditions, and Restrictions for Yacht Cove Property Owners’ Association, Inc. recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.
  - (c)    *Development:* Yacht Cove, a planned unit development or subdivision lying and being on Hilton Head Island, Beaufort County, South Carolina, which is shown and described on the map attached as Exhibit “B” hereto.

- (d) *Drainage System:* The existing system of lagoons, ditches, canals, pipes, culverts, catch basins, drains, manholes, junction boxes, weirs, valves, gates, pumps, structures, related equipment and related infrastructure, in the Development lying within the Easement Areas shown on the map attached hereto as Exhibit "A," which facilitates the collection, storage and conveyance of storm and surface water runoff for public benefit through, within, and from the Development. For purposes of this Agreement, the Drainage System shall not include any bridges, docks, retaining walls, road or pathway asphalt, road or building gutters, underdrains, sub-drains, structural bulkheads, beaches, tidal banks, estuaries, or salt marshes, or driveway pipes, unless the Town, in its sole discretion deems any particular driveway pipe as critical to the function of the Drainage System.
- (e) *Emergency:* A blockage, structural or mechanical failure, collapse or other sudden catastrophic event affecting any part of the Drainage System which prevents or substantially inhibits the flow of storm and surface water through all or any part of the Drainage System, or which otherwise results in an imminent peril to life or property.
- (f) *Permanent Structure:* Any immovable structure, including, but not limited to, buildings, sheds, pavilions, walls, masonry structures, tennis courts, and swimming pools, including swimming pool decks.
- (g) *Town:* The Town of Hilton Head Island, South Carolina.

2. *Grant of Easements:* The Association does hereby grant, transfer, sell and convey to the Town, and its agents, assigns, employees and contractors, and their vehicles, machinery and equipment, and create and establish for the benefit of the Town, the following easements:

(a) A non-exclusive Access Easement on, over and across any roads and streets within the Development, and on, over and across any property owned by the Association encumbered by all or any part of the Drainage System. This Access Easement includes a non-exclusive and partial assignment of any and all easement rights for access held by the Association, under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through.

(b) A non-exclusive Maintenance Easement on, under, over, through and across any property of the Development, encumbered by all or any part of the Drainage System. This Maintenance Easement includes a non-exclusive and partial assignment of any and all easement rights for maintenance, construction, or otherwise, held by the Association under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through. This Maintenance Easement shall include all facilities or structures directly related to the collection, storage

and conveyance of storm and surface water now or hereafter existing within the Development, and sufficient property beside or over any part of the Drainage System as shown on Exhibit "A" to allow for excavation and any other work necessary to improve, repair or maintain the Drainage System.

(c) A non-exclusive Drainage Easement for the conveyance of any storm and surface water originating from within or without the boundaries of the Development through the Drainage System, at such rates and in such amounts as may occur from time to time.

(d) This Drainage Easement includes a non-exclusive and partial assignment of any and all easement rights for drainage held by the Association under the Covenants or any other recorded declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through; provided however, that the Town shall provide timely written notification to the Association of any potentially disruptive improvements and/or modifications to the systems conveying storm and surface water originating without the boundaries of the Development and through the Development Drainage System.

3. This Access, Drainage and Maintenance Easement is granted and accepted subject to the following:

(a) The Town agrees that the use of the easements granted herein shall be restricted to the hours of 7:00 o'clock, A.M., to 5:00 o'clock, P.M.,

Monday through Friday excluding public holidays, except in the event of an Emergency.

(b) Other than in the case of an Emergency, the Town and the Association shall determine the scheduling of any work to be performed hereunder, on its or their property, in advance of the commencement of the work.

(c) This Access, Drainage and Maintenance Easement is conveyed subject to all other easements, licenses, and conveyances of record and is subject to the rights herein reserved by the Association, their successors and assigns, to utilize their property at any time, in any manner, and for any purpose, provided, however, that such use by the Association shall not be inconsistent with nor prevent the full utilization by the Town of the rights and privileges granted herein.

(d) The Town agrees to plan, lay out, and execute or build improvements, repairs and maintenance of the Drainage System, and further agrees that the Town's exercise of the rights granted in this Access, Drainage and Maintenance Easement shall be under the exclusive control of the Town and that the Town shall at all times comply with all applicable laws, rules, codes, and regulations.

(e) The Association shall not erect any Permanent Structure on, under, over, through and across any property of the Development encumbered by all or any part of the Drainage System without the Town's prior written approval, which approval shall not be unreasonably withheld. The

Association shall not impede, obstruct, or allow to be obstructed, the natural flow of storm and surface water runoff through the Drainage System; provided, however, that the Association shall have a continuing obligation under the Covenants to repair and maintain various improvements located within the Common Properties (lagoons and lagoon banks, roads, pathways, utilities, etc.), and this Agreement is not intended to in any way restrict or limit the Association from taking reasonable actions to perform said obligations.

(f) The rights conveyed under this Access, Drainage and Maintenance Easement are limited to the parties and purposes stated herein. This Access, Drainage and Maintenance Easement conveys no rights of access or otherwise to the general public.

4. The Association acknowledges that the Town shall have no obligation to perform or pay for any work to repair, improve or maintain the appearance or appeal of the lagoons, banks of lagoons, landscaping, drains, canals, or other visible components of the Drainage System, including, but not limited to, structures, bridges, bulkheads, pipes, culverts, valves and gates.

5. The Town agrees to cause all work contemplated hereunder to be performed in a workmanlike fashion with minimal interference to the Grantor, its successors, assigns, invitees, guests, licensees, and agents. The Town further agrees to cause the work contemplated hereunder to be completed in an expeditious and timely fashion, and that all materials, debris, and construction materials shall be promptly removed. The Town shall restore any other part of the property of the Association which may be damaged as a

result of the Town's exercise of the rights granted hereunder to its pre-existing state.

6. The Town hereby warrants to the Association that the granting of this Access, Drainage and Maintenance Easement will not affect any "set back" lines with respect to any property currently owned by the Association.

To have and to hold, all and singular, the rights, privileges, and easements aforesaid unto the Town of Hilton Head Island, South Carolina, its successors and assigns, forever.

In Witness whereof, the parties hereto have caused the within Access, Drainage and Maintenance Easement to be executed by their duly authorized officers as of this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

WITNESSES:

Yacht Cove Property Owners' Association, Inc.

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Attest: \_\_\_\_\_

**STATE OF SOUTH CAROLINA**

)

**UNIFORM ACKNOWLEDGMENT**

)

**COUNTY OF BEAUFORT**

)

**S.C. CODE § 30-5-30 (SUPP. 2010)**

I, the undersigned Notary Public do hereby certify that \_\_\_\_\_  
personally appeared before me on this day and duly acknowledged the execution of the  
foregoing instrument on behalf of Yacht Cove Property Owners' Association, Inc.

Sworn to and Subscribed before me

on this \_\_\_\_\_ Day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_



WITNESSES:  
SOUTH CAROLINA

THE TOWN OF HILTON HEAD ISLAND,

\_\_\_\_\_

By: \_\_\_\_\_  
John J. McCann, Mayor

\_\_\_\_\_

Attest: \_\_\_\_\_  
Marc Orlando, Town Manager

**STATE OF SOUTH CAROLINA**  
**COUNTY OF BEAUFORT**

)  
)  
)



**UNIFORM ACKNOWLEDGMENT**  
**S.C. CODE § 30-5-30 (SUPP. 2010)**

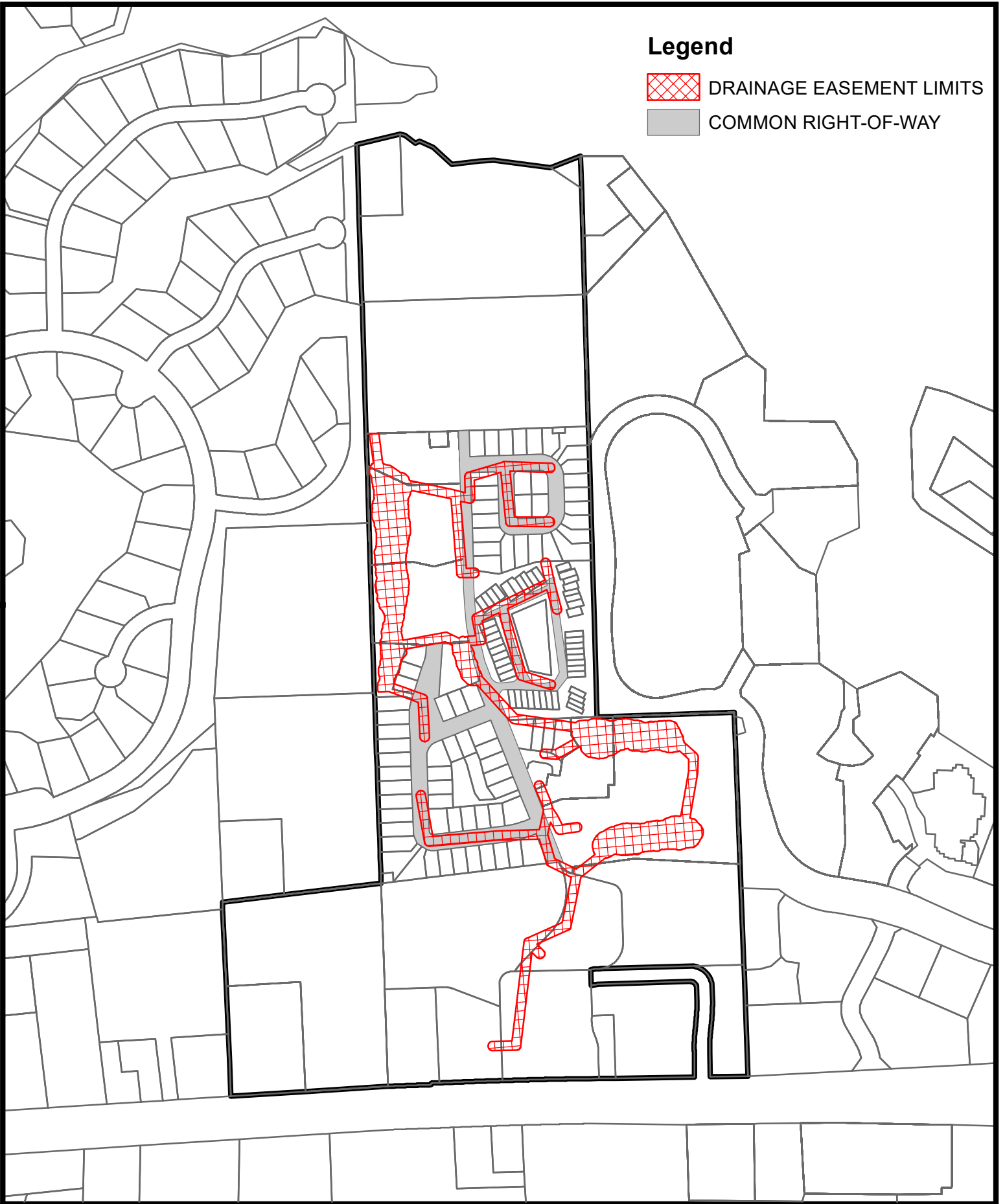
I, the undersigned Notary Public do hereby certify that John J. McCann and Marc Orlando personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of The Town of Hilton Head Island, South Carolina.

Sworn to and Subscribed before me  
on this \_\_\_\_\_ Day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

**Legend**

-  DRAINAGE EASEMENT LIMITS
-  COMMON RIGHT-OF-WAY



**EXHIBIT A**  
**YACHT COVE POA**  
**DRAINAGE EASEMENT LIMITS**

1 inch = 400 feet



TOWN OF HILTON HEAD ISLAND  
ONE TOWN CENTER COURT  
HILTON HEAD ISLAND, S.C. 29928  
PHONE (843) 341-4600

The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion or for any losses arising from the use of the map.



**EXHIBIT B**  
**YACHT COVE POA**  
**DEVELOPMENT**

1 inch = 400 feet



TOWN OF HILTON HEAD ISLAND  
 ONE TOWN CENTER COURT  
 HILTON HEAD ISLAND, S.C. 29928  
 PHONE (843) 341-4600

The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion or for any losses arising from the use of the map.

Date Created:  
 Project: map.mxd

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF THAT CERTAIN DRAINAGE AGREEMENT AND ACCESS, DRAINAGE AND MAINTENANCE EASEMENT WITH THE ASSOCIATION OF LAND OWNERS OF WELLS EAST ACROSS PROPERTY LOCATED IN WELLS EAST.**

WHEREAS, The Association of Land Owners of Wells East (“Wells East”) owns improved and unimproved real property and easements within Wells East; and

WHEREAS, Beaufort County, South Carolina adopted Ordinance 99-101 et seq., as amended, creating a Storm Water Utility with the power to impose Storm Water Service Fees on all residents of Beaufort County, South Carolina and which also provides that fees collected from within the municipal limits of the Town of Hilton Head Island, South Carolina (“Town”) are returned to the Town to be used for the purposes set forth in the Ordinance including the construction and maintenance of planned and existing infrastructure which collects and disposes of surface and storm water within the municipal limits of the Town; and

WHEREAS, Wells East desires for the Town to utilize Storm Water Service Fees to undertake the maintenance and improvement of the storm and surface water drainage system within Wells East to facilitate the flow of storm water drainage through and from areas within Wells East; and

WHEREAS, to undertake these improvements, it is necessary for the Town to obtain from Wells East a Drainage Agreement and an Access, Drainage and Maintenance Easement, copies of which are attached hereto Exhibit “A”; and

WHEREAS, the Town Council for the Town of Hilton Head Island, South Carolina has determined that it is in the best interests of the citizens and visitors of the Town of Hilton Head Island to undertake the improvements stated above; and

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA:**

1. The Mayor and/or Town Manager are hereby authorized to execute and deliver a Drainage Agreement and an Access, Drainage and Maintenance Easement in a form substantially similar to that attached hereto as Exhibit "A"; and
2. The Mayor and/or Town Manager are hereby authorized to take such other and further action as may be necessary to complete the actions authorized hereby.

**PASSED AND APPROVED BY THE TOWN COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021.**

\_\_\_\_\_  
**John J. McCann, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Krista Wiedmeyer, Town Clerk**

**Approved as to form:**

\_\_\_\_\_  
**Curtis Coltrane, Town Attorney**

**Introduced by Council Member: \_\_\_\_\_**

**STATE OF SOUTH CAROLINA     )**     **ACCESS, DRAINAGE AND**  
   **)**     **MAINTENANCE EASEMENT**  
**COUNTY OF BEAUFORT            )**

Know all men by these presents, that the Association of Land Owners of Wells East and the Town of Hilton Head Island, South Carolina, One Town Center Court, Hilton Head Island, SC, 29928, for and in consideration of the sum of One and No/100 (\$1.00) Dollar, each paid to the other at and before the execution and delivery of this Access, Drainage and Maintenance Easement, the receipt and sufficiency whereof is acknowledged, agree as follows:

1.     **Defined Terms:** As used herein, the following terms shall mean:
  - (a)    *Association:* The Association of Land Owners of Wells East, a South Carolina not-for-profit corporation with the full authority under the Covenants to enter into this Agreement.
  - (b)    *Covenants:* Any one or more of Covenants, Conditions, and Restrictions for the Association of Land Owners of Wells East recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.
  - (c)    *Development:* Wells East, a planned unit development or subdivision lying and being on Hilton Head Island, Beaufort County, South Carolina, which is shown and described on the map attached as Exhibit “B” hereto.

- (d) *Drainage System:* The existing system of lagoons, ditches, canals, pipes, culverts, catch basins, drains, manholes, junction boxes, weirs, valves, gates, pumps, structures, related equipment and related infrastructure, in the Development lying within the Easement Areas shown on the map attached hereto as Exhibit "A," which facilitates the collection, storage and conveyance of storm and surface water runoff for public benefit through, within, and from the Development. For purposes of this Agreement, the Drainage System shall not include any bridges, docks, retaining walls, road or pathway asphalt, road or building gutters, underdrains, sub-drains, structural bulkheads, beaches, tidal banks, estuaries, or salt marshes, or driveway pipes, unless the Town, in its sole discretion deems any particular driveway pipe as critical to the function of the Drainage System.
- (e) *Emergency:* A blockage, structural or mechanical failure, collapse or other sudden catastrophic event affecting any part of the Drainage System which prevents or substantially inhibits the flow of storm and surface water through all or any part of the Drainage System, or which otherwise results in an imminent peril to life or property.
- (f) *Permanent Structure:* Any immovable structure, including, but not limited to, buildings, sheds, pavilions, walls, masonry structures, tennis courts, and swimming pools, including swimming pool decks.
- (g) *Town:* The Town of Hilton Head Island, South Carolina.

2. *Grant of Easements:* The Association does hereby grant, transfer, sell and convey to the Town, and its agents, assigns, employees and contractors, and their vehicles, machinery and equipment, and create and establish for the benefit of the Town, the following easements:

(a) A non-exclusive Access Easement on, over and across any roads and streets within the Development, and on, over and across any property owned by the Association encumbered by all or any part of the Drainage System. This Access Easement includes a non-exclusive and partial assignment of any and all easement rights for access held by the Association, under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through.

(b) A non-exclusive Maintenance Easement on, under, over, through and across any property of the Development, encumbered by all or any part of the Drainage System. This Maintenance Easement includes a non-exclusive and partial assignment of any and all easement rights for maintenance, construction, or otherwise, held by the Association under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through. This Maintenance Easement shall include all facilities or structures directly related to the collection, storage



and conveyance of storm and surface water now or hereafter existing within the Development, and sufficient property beside or over any part of the Drainage System as shown on Exhibit "A" to allow for excavation and any other work necessary to improve, repair or maintain the Drainage System.

(c) A non-exclusive Drainage Easement for the conveyance of any storm and surface water originating from within or without the boundaries of the Development through the Drainage System, at such rates and in such amounts as may occur from time to time.

(d) This Drainage Easement includes a non-exclusive and partial assignment of any and all easement rights for drainage held by the Association under the Covenants or any other recorded declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through; provided however, that the Town shall provide timely written notification to the Association of any potentially disruptive improvements and/or modifications to the systems conveying storm and surface water originating without the boundaries of the Development and through the Development Drainage System.

3. This Access, Drainage and Maintenance Easement is granted and accepted subject to the following:

(a) The Town agrees that the use of the easements granted herein shall be restricted to the hours of 7:00 o'clock, A.M., to 5:00 o'clock, P.M.,

Monday through Friday excluding public holidays, except in the event of an Emergency.

(b) Other than in the case of an Emergency, the Town and the Association shall determine the scheduling of any work to be performed hereunder, on its or their property, in advance of the commencement of the work.

(c) This Access, Drainage and Maintenance Easement is conveyed subject to all other easements, licenses, and conveyances of record and is subject to the rights herein reserved by the Association, their successors and assigns, to utilize their property at any time, in any manner, and for any purpose, provided, however, that such use by the Association shall not be inconsistent with nor prevent the full utilization by the Town of the rights and privileges granted herein.

(d) The Town agrees to plan, lay out, and execute or build improvements, repairs and maintenance of the Drainage System, and further agrees that the Town's exercise of the rights granted in this Access, Drainage and Maintenance Easement shall be under the exclusive control of the Town and that the Town shall at all times comply with all applicable laws, rules, codes, and regulations.

(e) The Association shall not erect any Permanent Structure on, under, over, through and across any property of the Development encumbered by all or any part of the Drainage System without the Town's prior written approval, which approval shall not be unreasonably withheld. The

Association shall not impede, obstruct, or allow to be obstructed, the natural flow of storm and surface water runoff through the Drainage System; provided, however, that the Association shall have a continuing obligation under the Covenants to repair and maintain various improvements located within the Common Properties (lagoons and lagoon banks, roads, pathways, utilities, etc.), and this Agreement is not intended to in any way restrict or limit the Association from taking reasonable actions to perform said obligations.

(f) The rights conveyed under this Access, Drainage and Maintenance Easement are limited to the parties and purposes stated herein. This Access, Drainage and Maintenance Easement conveys no rights of access or otherwise to the general public.

4. The Association acknowledges that the Town shall have no obligation to perform or pay for any work to repair, improve or maintain the appearance or appeal of the lagoons, banks of lagoons, landscaping, drains, canals, or other visible components of the Drainage System, including, but not limited to, structures, bridges, bulkheads, pipes, culverts, valves and gates.

5. The Town agrees to cause all work contemplated hereunder to be performed in a workmanlike fashion with minimal interference to the Grantor, its successors, assigns, invitees, guests, licensees, and agents. The Town further agrees to cause the work contemplated hereunder to be completed in an expeditious and timely fashion, and that all materials, debris, and construction materials shall be promptly removed. The Town shall restore any other part of the property of the Association which may be damaged as a

result of the Town's exercise of the rights granted hereunder to its pre-existing state.

6. The Town hereby warrants to the Association that the granting of this Access, Drainage and Maintenance Easement will not affect any "set back" lines with respect to any property currently owned by the Association.

To have and to hold, all and singular, the rights, privileges, and easements aforesaid unto the Town of Hilton Head Island, South Carolina, its successors and assigns, forever.

In Witness whereof, the parties hereto have caused the within Access, Drainage and Maintenance Easement to be executed by their duly authorized officers as of this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

WITNESSES:

The Association of Land Owners of Wells East

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Attest: \_\_\_\_\_

**STATE OF SOUTH CAROLINA**

)

**UNIFORM ACKNOWLEDGMENT**

)

**COUNTY OF BEAUFORT**

)

**S.C. CODE § 30-5-30 (SUPP. 2010)**

I, the undersigned Notary Public do hereby certify that \_\_\_\_\_  
personally appeared before me on this day and duly acknowledged the execution of the  
foregoing instrument on behalf of the Association of Land Owners of Wells East.

Sworn to and Subscribed before me

on this \_\_\_\_\_ Day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_

WITNESSES:  
SOUTH CAROLINA

THE TOWN OF HILTON HEAD ISLAND,

\_\_\_\_\_

By: \_\_\_\_\_  
John J. McCann, Mayor

\_\_\_\_\_

Attest: \_\_\_\_\_  
Joshua A. Gruber,  
Interim Town Manager

**STATE OF SOUTH CAROLINA**

)

**UNIFORM ACKNOWLEDGMENT**

)

**COUNTY OF BEAUFORT**

)

**S.C. CODE § 30-5-30 (SUPP. 2010)**

I, the undersigned Notary Public do hereby certify that John J. McCann and Joshua A. Gruber personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of The Town of Hilton Head Island, South Carolina.

Sworn to and Subscribed before me  
on this \_\_\_\_\_ Day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_

**STATE OF SOUTH CAROLINA        )**  
  **)**  
**COUNTY OF BEAUFORT             )**        **DRAINAGE SYSTEM**  
  **)**        **MAINTENANCE AGREEMENT**

This Drainage System Maintenance Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between the Association of Land Owners of Wells East, a South Carolina nonprofit organization, and the Town of Hilton Head Island, South Carolina, a body politic, having an address of One Town Center Court, Hilton Head Island, South Carolina, 29928.

**WITNESSETH**

WHEREAS, Wells East is a subdivision of land lying and being within the Town of Hilton Head Island, Beaufort County, South Carolina (hereinafter the “Development”); and,

WHEREAS, the Association of Land Owners of Wells East, is the owner of improved and unimproved real property and easements within Wells East; and,

WHEREAS, Beaufort County, South Carolina, has adopted Ordinance 99-101, *et seq.*, as amended, creating a Storm Water Utility with the power to impose Storm Water Utility Service Fees on all residents of Beaufort County, South Carolina, and which also provides that Storm Water Utility Service Fees collected from property owners within the Town of Hilton Head Island, South Carolina, are returned to it, less administrative fees, to be used for the purposes set forth in Ordinance 99-101, *et seq.*, as amended; and,

WHEREAS, the imposition and collection of Storm Water Utility Service Fees results in a fund available for the construction and maintenance of existing and planned

infrastructure for the collection and conveyance of storm water runoff within the Town of Hilton Head Island, South Carolina, and,

WHEREAS, the Association of Land Owners of Wells East, desires for the Town of Hilton Head Island, South Carolina, to utilize Storm Water Utility Service Fees to undertake maintenance and improvement of the storm water drainage system in Wells East, to facilitate the conveyance of storm water runoff within and through the Development; and,

WHEREAS, the Association of Land Owners of Wells East, has agreed to grant access, drainage and maintenance easements to the Town, in order to facilitate the maintenance and improvement of the qualifying storm water drainage system in Wells East.

Now, therefore, know all men by these presents, that the Association of Land Owners of Wells East, and the Town of Head Island, South Carolina, for and in consideration of the sum of One and no/100 (\$1.00) Dollar, each paid to the other at and before the execution and delivery of this Agreement, the receipt and sufficiency whereof is acknowledged, agree as follows:

1. **Defined Terms:** As used in this Agreement, the following terms as related to this agreement shall mean:
  - a. *Agreement:* This “Drainage System Maintenance Agreement”.
  - b. *Association:* The Association of Land Owners of Wells East, a South Carolina not-for-profit corporation with the full authority under the Covenants to enter into this Agreement and to complete all of the Association’s obligations under it, and to execute and deliver the



Access, Drainage and Maintenance Easement attached hereto as Exhibit "C."

- c. *Casualty*: The destruction of all or any part of the Drainage System through a natural disaster.
- d. *Covenants*: Any one or more of Covenants, Conditions, and Restrictions for the Association of Land Owners of Wells East recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.
- e. *Development*: Wells East, a planned unit development or subdivision lying and being on Hilton Head Island, Beaufort County, South Carolina, which is shown and described on the map attached as Exhibit "B" hereto.
- f. *Drainage System*: The existing system of lagoons, ditches, canals, pipes, culverts, catch basins, drains, manholes, junction boxes, weirs, valves, gates, pumps, structures, related equipment and related infrastructure, in the Development lying within the Easement Areas shown on the map attached hereto as Exhibit "A," which facilitates the collection, storage and conveyance of storm and surface water runoff for public benefit through, within, and from the Development. For purposes of this Agreement, the Drainage System shall not include any bridges, docks, retaining walls, road or pathway asphalt, road or building gutters, underdrains, sub-drains, structural bulkheads, beaches, tidal banks, estuaries, or salt marshes, or

driveway pipes, unless the Town, in its sole discretion deems any particular driveway pipe as critical to the function of the Drainage System.

- g. *Emergency*: A blockage, structural or mechanical failure, collapse or other sudden catastrophic event affecting any part of the Drainage System which prevents or substantially inhibits the flow of storm and surface water through all or any part of the Drainage System, or which otherwise results in an imminent peril to life or property.
- h. *Permanent Structure*: Any immovable structure, including, but not limited to, buildings, sheds, pavilions, walls, masonry structures, tennis courts, and swimming pools, including swimming pool decks.
- i. *Pollutant*: Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; non-hazardous liquid and solid wastes and yard wastes; sediment; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; concrete and cement; and noxious or offensive matter of any kind.

- j. *Post-construction Structural Best Management Practice Facility:* A Post-construction Structural Best Management Practice Facility (BMPPF) is a facility designed and built to provide treatment of storm water either through storage, filtration or infiltration (i.e. detention basins, retention basins, rain gardens, bioretention cells, sand filters, vegetated filter strips, water quality swales and infiltration trenches) as set forth in the latest editions of the Beaufort County Manual for Storm Water Best Management and Design Practices, the South Carolina DHEC Storm Water Management BMP Handbook, and the Georgia Coastal Stormwater Supplement, which include descriptions standards, and design guidelines for these facilities.
- k. *Project:* Work, including repairs and improvements performed or approved by the Town to correct a specific Qualifying Storm Drainage System Deficiency.
- l. *Qualifying Drainage System Deficiency:* Anything that, in the determination of the Town, prevents, impairs or impedes the adequate conveyance or drainage of storm water runoff through the Drainage System or the structural failure of a Drainage System component. Qualifying Drainage System Deficiencies include, but are not limited to, the following:
  - i. Lagoon bank erosion that has an appreciable adverse impact on conveyance of storm water runoff through the Drainage

System or threatens the integrity of adjacent Drainage System infrastructure or Permanent Structures;

- ii. Presence of sediment and debris located in the Drainage System that has an appreciable adverse impact on the conveyance of storm water runoff through the Drainage System or the functioning of the Drainage System;
- iii. Structural deficiencies associated with pipes and culverts, including, but not limited to, joint failures, deterioration, root intrusion, or collapse that has an appreciable adverse impact on conveyance of storm water runoff through the Drainage System or threatens the integrity of adjacent Drainage System infrastructure or Permanent Structures;
- iv. Structural deficiencies associated with inlets, manholes, junction boxes, control structures and headwalls including, but not limited to, connection failure, deterioration, mechanical failure, or collapse that has an appreciable adverse impact on conveyance of storm water runoff through the Drainage System, or that threatens the integrity of adjacent infrastructure or Permanent Structures. Examples of typical deficiencies include damaged grates, grout failures at pipe connections, deterioration or failure of flap gates and sluice gates, or failure of structure walls;

- v. Sinkholes caused by Drainage System pipe or Drainage System structure Deficiencies, but not those caused by the actions of any third party, including utility providers;
- vi. Drainage System conveyance or performance deficiencies due to inadequate design capacity. Examples of typical conveyance or performance deficiencies include undersized pipes and insufficient weir capacities.

Qualifying Drainage System Deficiencies do not include the following:

- i. The aesthetic appearance or appeal of any part of the Drainage System, including but not limited to lagoons, banks of lagoons, channel banks, landscaping, drains, catch basins, canals, structures, bridges, bulkheads, pipes, culverts, valves gates, debris that does not have an appreciable adverse impact on the conveyance of storm and surface water through the Drainage System, or other visible components of the Drainage System;
- ii. The introduction of pollution or pollutants into the Drainage System from any source;
- iii. Lagoon bank erosion that does not have an appreciable adverse impact on conveyance of storm water runoff through the Drainage System or threaten the integrity of

- adjacent Drainage System infrastructure or Permanent Structures;
- iv. Tidal erosion or tidal flooding that does not have an appreciable adverse impact on conveyance of storm water runoff through the Drainage System or threaten the integrity of Drainage System infrastructure;
  - v. Establishment of access to the Drainage System by the Association, including, but not limited to, grading, clearing of vegetation, removal of trees, or removal of other obstructions or Permanent Structures in order to provide physical access to the Drainage System;
  - vi. Drainage System damage or deficiencies caused by the actions of others, including utilities and property owners (including, but not limited to, bores or cuts into pipes or structures);
  - vii. Minor or nuisance flooding that does not adversely affect transportation infrastructure, Permanent Structures, hardscape amenities, or conveyance of storm water runoff through the Drainage System, including golf course flooding, isolated lawn and yard ponding, or standing water in roadway shoulders and unimproved lots or land;
  - viii. Drainage System Deficiencies determined by the Town to be caused or exacerbated by intentional acts causing tidal backflow and saltwater intrusion into the Drainage System

through failure to operate control structures per the design intent or the failure by the Association to monitor and maintain proper functioning of backflow prevention devices including flaps, gates, sluice gates, check valves, or similar devices;

- ix. Damage to, or failure of, Drainage System components situated underneath or within five (5) feet of any Permanent Structure that is not a part of the Drainage System, where the Town determines that difficult access and/or liabilities exist, or within the zone of influence for the foundation of a Permanent Structure;
  - x. The construction of a new drainage system or an addition to an existing Drainage System, or the modification of an existing Drainage System to accommodate drainage requirements for new development within the Development.
  - xi. Drainage System deficiencies determined by the Town to be caused by or originating from unauthorized or non-permitted modifications to the Drainage System by any party other than the Town.
- m. *Storm Water Utility Service Fees*: The fees collected by Beaufort County, South Carolina, under the authority of Beaufort County Ordinance 99-101, *et seq.*, as amended, and which are remitted by

Beaufort County, South Carolina, to the Town; or any similar fee, however denominated, imposed and collected by any subsequent or successor Storm Water Utility operated by The Town, under the authority of Town Ordinance Number 2002-43.

- n. *Storm Water Utility Project Prioritization and Annual Budget Process:* The annual process by which the Town of Hilton Head Island, South Carolina, shall establish and maintain a prioritized list of all known Qualifying Drainage System Deficiencies within the Town limits determined to be eligible for service using Storm Water Utility Service Fees. Prior to the beginning of each fiscal year, the Town shall establish an annual Storm Water Utility budget which defines all revenues and expenditures associated with the Storm Water Utility Service Fees. This budget shall include those known Projects to correct Qualifying Drainage System Deficiencies intended to be completed within that fiscal year.
  - o. *Town:* The Town of Hilton Head Island, South Carolina.
2. **Grant of Easements:** Contemporaneously with the execution and delivery of this Agreement, the Association and the Town have entered into an “Access, Drainage and Maintenance Easement” which grants the Town rights to access, operate, utilize, maintain, and improve the Drainage System within the Development, with said easement being in the form attached hereto as Exhibit “C”.



3. **Maintenance, Inspection and Operation of Drainage System:** Upon the execution and delivery of this Agreement and the Access, Drainage and Maintenance Easement:

- (a) the Town shall be responsible for the maintenance, repairs and improvements necessary to correct any Qualifying Drainage System Deficiency under the terms and conditions of this Agreement. This Agreement does not preclude the Association from repairing, maintaining, or improving any component of its Drainage System at its expense.
- (b) The Association shall be responsible for the following within the Development:
  - (i) Normal and emergency operation of Drainage System control structures, including gates, weirs and pumps, and for lowering water levels in compliance with pre-storm preparation protocols established by the Town.
  - (ii) Maintenance and replacement of weir boards, maintenance of control structure access ways, decking and railings, and maintaining control structure accessibility for inspection and operation by controlling and/or removing vegetation as necessary.
  - (iii) Performing maintenance of work shelves along ditches and canals to provide reasonable and adequate access for inspection, maintenance and repair.
  - (iv) Monitoring the condition of flap gates, sluice gates, check valves, and similar devices intended to prevent the intrusion of tidal backflow

and brackish water into the Drainage System to ensure that they are in proper working order and functioning as intended.

- (v) Making repairs to roadway pavement, pathway pavement, curb and gutter and related ancillary infrastructure or property damage attributed to a past or existing Qualifying Drainage System Deficiency if the deficiency has been corrected by the Town via trenchless technology methods (i.e. pipe lining). This does not obligate the Association to repair or replace such infrastructure if the repair is made using open cut excavations where removal of surface infrastructure is necessary to complete the repair, in which case, the repair of the ancillary infrastructure shall be considered to be a part of the Town's work to correct the deficiency.
- (vi) Performing annual inspections of Post-construction Structural Best Management Practice Facilities in order to comply with Stormwater Management Plan obligations, including submittal of inspection documentation to the Town in accordance with § 16-5-109 (H)(2), *Municipal Code to the Town of Hilton Head Island (1983)*.
- (vii) Regulating the actions of utility providers and property owners, or their assigns, to prevent and mitigate any damage they may cause to the Drainage System.

4. **Procedure for Town's Maintenance of Drainage System:** The Parties acknowledge that the Town intends to provide for the maintenance and improvement of the Drainage System and the repair of identified Qualifying

Drainage System Deficiencies, other than those caused by an Emergency or Casualty, through the development of its Storm Water Utility Project Prioritization and Annual Budget Process. Other than in the case of an Emergency or Casualty, as described in Articles 7, 8 and 10 below, or work completed directly by the Association under Article 9, the Parties agree:

- a. *Identifying Qualifying Drainage System Deficiencies:* The Association shall be responsible for identifying any Qualifying Drainage System Deficiencies.
- b. *Schedule for Submission:* The Association shall submit a written description of each known Qualifying Drainage System Deficiency to the Town using the service request form provided by the Town, describing the nature, location and cause (if known) of each Qualifying Drainage System Deficiency. The Association may identify a potential solution is for the deficiency. In such case, the Association shall include a description of the solution and a preliminary estimate of anticipated costs for the proposed solution. Qualifying Drainage System Deficiencies that are reported to the Town, or which are discovered by the Town, by the end of any calendar year will be considered in the development of the Storm Water Utility Project Prioritization and Annual Budget Process for the following fiscal year.
- c. *Completion of Maintenance:* The Town shall annually develop a Storm Water Utility Project Prioritization and an Annual Budget that

will address identified Qualifying Drainage System Deficiencies as follows:

- i. The Town shall determine the scope and extent of the maintenance, repair or improvement that is necessary to correct any Qualifying Drainage System Deficiencies, and the means, methods and materials needed to accomplish the same.
- ii. The Town shall determine the priority and number of the Projects and schedule the Projects to correct to correct the Qualifying Drainage System Deficiencies for each fiscal year. The determination of the scheduling and funding for the correction of the Qualifying Drainage System Deficiencies shall be made by the Town, taking into account the following:
  1. The availability and amount of the Storm Water Utility Service Fees fund balance, revenue from bonds paid by Storm Water Utility Service Fees, and Storm Water Utility Service Fees in any given fiscal year;
  2. Prioritization of all other Projects, or qualifying requested improvements, repair and maintenance that are to be funded with Storm Water Utility Service Fees; and

3. The annual cost required to operate the Storm Water Utility, its programs and initiatives, and debt service.
  - iii. The Town will complete the Projects as determined by the Town as a part of the Storm Water Utility Project Prioritization and Annual Budget Process, unless Emergencies or Casualties occur that alter the prioritization and funding such that funds are insufficient to correct all Qualifying Drainage System Deficiencies as intended within the same fiscal year.
  - d. *Scheduling of Projects*: Other than in the case of an Emergency or Casualty, the Town and the Association shall mutually agree in writing as to the scheduling of any Project to be performed under this Agreement in the Development in advance of the commencement of the Project.
  - e. *Resident Notification*: The Association shall be solely responsible for the notification of its owners and guests that may be affected by any Project, or by work to address any Emergency or Casualty.
  - f. *Legal Access to Private Property*: The Association shall be responsible for obtaining all access rights, including access rights over and across property in the Development that is not owned by the Association, as may be deemed necessary by the Town to complete any Project.

- g. *Access Needed to Complete Project:* The Association shall be responsible for providing clear and adequate physical access to each Project site at no cost to the Town. If clear, adequate physical access to the Project site cannot be provided sufficient to complete the Project without the likelihood of damage to property, assets and amenities by contractors and equipment, the repair and replacement of any property, assets and amenities damaged as a result of the Project shall be the responsibility of the Association, at no additional cost to the Town. Such property, assets and amenities shall include, but are not limited to, landscaping, flowerbeds, ornamental shrubs and trees, lawns, irrigation systems, boardwalks, cart paths, driveways, and sidewalks. The determination of whether the access is clear and adequate, and whether there is a likelihood of damage shall be made in the sole discretion of the Town, prior to the commencement of the Project. The Association has the right to withdraw the service request if the magnitude of potential damage is not acceptable to the Association. If the service request is withdrawn, completing the Project shall be the responsibility of the Association.
- h. *No Guarantees Regarding Schedule:* The Town cannot guarantee that the amount of available Storm Water Utility Service Fees, the number of Projects to be funded with Storm Water Utility Service Fees in any given fiscal year, and whether Emergencies and

Casualties and weather related general emergencies will not cause delays in the correction of Qualifying Drainage System Deficiencies within the Development and elsewhere. The parties acknowledge that the Town's determinations with respect to the priority, funding and timing of any Project shall be made at the Town's discretion and shall be final.

5. **Further Obligations of the Association:** The Association agrees that during the term, or any renewal term, of this Agreement, it shall take no action which damages the Drainage System, allows damage to the Drainage System, or creates a Drainage System Deficiency, including, but not limited to allowing salt water intrusion or pollutants to enter the Drainage System and allowing utility providers, property owners, or their assigns to impair the function of the Drainage System. To the extent the Association has a continuing obligation under the Covenants to repair and maintain various improvements located within the Development including lagoons and lagoon banks, ditch maintenance shelves, roads, pathways, utilities, this Agreement is not intended to in any way restrict or limit the Association's completion of its obligations.
6. **Payments as Current Expense of Town:** Any payments to be made by the Town hereunder shall be made from Storm Water Utility Service Fees as budgeted for by the Town in any given fiscal year. The Town and the Association intend that the payment obligations of the Town shall constitute a current expense of the Town and shall not in any way be construed to be a debt of the Town in contravention of any applicable constitutional or statutory limitations concerning indebtedness of

the Town, nor shall anything contained herein constitute a pledge of general tax revenues, funds, money or credit of the Town.

7. **Emergency:** The Parties agree that in the event of an Emergency, the following procedure shall apply:

- a. *Agreement Not Terminated:* This Agreement shall remain in full force and effect.
- b. *Responsibilities of the Association:* The Association shall take such steps as may be reasonably necessary to secure any area affected by the Emergency. The Association shall notify the Town as soon as is practical after discovery of the Emergency. The Association may complete any repairs to the Drainage System needed to address the Emergency, as provided for in Article 10, below.
- c. *Responsibilities of the Town:* Upon receipt of notification of an Emergency from the Association, the Town shall determine the scope and extent of the work that is necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same. The Town shall correct or repair the damage caused by the Emergency as soon as practical, taking into account the threat presented by the Emergency, the existence of any other Emergency or Casualty, the cause of the Emergency and/or the existence of any general emergency affecting the Town and availability of funding. The Town may seek reimbursement from third parties for any costs incurred by the Town



as a result of any Emergency found to have been caused by the negligence of said third parties.

8. **Casualty:** The Parties agree that in the event of a Casualty, the following procedure shall apply:

- a. *Agreement Not Terminated:* This Agreement shall remain in full force and effect.
- b. *Design of Drainage System:* The Town shall produce engineering and design plans at its expense for the reconstruction of all or any part of the Drainage System affected by the Casualty.
- c. *Approval of Plans:* The engineering and design plans must be approved by the Association prior to any reconstruction of the Drainage System. If the Association does not approve the engineering and design plans prepared by the Town, the Association may reconstruct the Drainage System at its own expense and shall not seek reimbursement for the cost thereof from the Town.
- d. *Right of Entry and Access:* If the engineering and design plans approved by the Association require work outside of easement limits described in the Access, Drainage and Maintenance Easement, the Association shall provide temporary easements for access and construction over any property it owns or controls, and shall deliver a valid temporary construction easement for access and construction from the owners of property that the Association does not own.

- e. *Amendment of Access, Drainage and Maintenance Easement:* In the event that the engineering and design plans approved by the Association include permanent improvements or create access or other needs that are in areas not included in the Access, Drainage and Maintenance Easement, the Association agrees that it will execute and deliver an amendment to the Access, Drainage and Maintenance Easement to subject any such areas in the Access, Drainage and Maintenance Easement.
- f. *Reconstruction of Drainage System:* Following the approval of the engineering and design plans and specifications by the Association, the Association's delivery of any needed temporary easements for access and construction, the Town shall complete the reconstruction of the Drainage System, or any part of it, as soon as is practical, taking into account the threat presented by the cause of the Casualty, the existence of any general emergency affecting the Town, the existence of other Emergencies and Casualties and availability of funding. Other than the expenses identified in subsection (b) of this Article 8, the Town may seek reimbursement for any costs incurred by the Town as a result of any Casualty from Storm Water Utility Service Fees, bond, any government aid and assistance programs, or the Association, if the Association is responsible for all or any part of the Casualty.

9. **Maintenance of Drainage System by the Association:** Nothing herein shall prohibit the Association from performing any Project in advance of the time that any such Project is scheduled as a part of the Town's Storm Water Utility Project Prioritization and Annual Budget Process, if the Association determines that it is in its interest to do so. Other than in the case of an Emergency (addressed in Article 10, below), or a Casualty (addressed in Article 8, above), the Association shall be entitled to reimbursement, in an amount up to the amount budgeted by the Town for the Project but not exceeding the actual cost to the Association, from Storm Water Utility Service Fees, in the fiscal year that such Project is scheduled to be done as a part of Town's Storm Water Utility Project Prioritization and Annual Budget Process, as follows;

- a. The Association shall submit its plans, quantities, and specifications for any Project to the Town.
- b. The Town shall grant its written approval to the Association to complete the Project unless it determines that:
  - i. The plan and work proposed by the Association will not correct the existing Qualifying Drainage System Deficiency; or,
  - ii. The scope of the proposed work exceeds what is necessary to correct the existing Qualifying Drainage System Deficiency,
- c. Upon receipt of the Town's written approval, the Association shall bid the work in accordance with the Town's Procurement Code, § 11-

1-111, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983), as the same may be amended from time to time.

- d. Any changes in the approved scope of work for the Project resulting in additional work or cost to the Town must be approved in writing by the Town prior to commencement of any additional work.
- e. The Association shall notify the Town at least seventy-two (72) hours prior to the commencement of work on the Project and at any key junctures of the work where the Town may need to inspect the work.
- f. Upon completion of the Project, the Town shall inspect the Project and provide the Association written approval or rejection of the Project.
- g. If the Project is approved by the Town, the Association shall submit to the Town its request for reimbursement, which shall include full documentation of the bid and procurement of the work to complete the Project, the contract for the work to complete the Project, the construction plans, details and as-built surveys or drawings, measurements, dated inspection reports, photographs of the work in progress, documentation of the payments made by the Association, any required test reports and the Association's written certification that the Project was completed in accordance with the approved plans and specifications.
- h. The Town shall thereafter budget funds for reimbursement to the Association from Storm Water Utility Service Fees in the fiscal year

that the Project would have otherwise been scheduled in the Town's Storm Water Utility Project Prioritization and Annual Budget Process. The schedule for reimbursement shall depend upon the Project ranking when compared to all other Projects as determined in the Town's Storm Water Utility Project Prioritization and Annual Budget Process and may be moved forward into a future budget year as a result. The Association acknowledges that the Town has no obligation to reimburse the Association for any Project in the fiscal year following the Association's completion of the Project, or in any other particular fiscal year.

10. **Emergency Work by the Association:** If for any reason, the Town is unable to repair or correct the damage caused by an Emergency in a time frame that is acceptable to the Association, the following shall apply:
  - a. The Association shall consult with the Town to determine a cost-efficient scope and extent of work necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same. The TOWN must approve in writing, the scope and plans for the work and procurement of construction services, prior to the commencement of work. The Association is not required to bid the work but if the Association chooses to bid the work, the Association shall bid the work in accordance with the Town's Procurement Code, § 11-1-111, *Municipal*

*Code of The Town of Hilton Head Island, South Carolina (1983)*, as the same may be amended from time to time.

- b. The Association shall complete the work that is necessary to repair or correct the damage caused by the Emergency.
- c. The Association shall, whenever possible, notify the Town at least seventy-two (72) hours prior to the commencement of work and at any key junctures of the work whereas the Town may need to inspect the work.
- d. Upon completion of the work that has been authorized and approved by the Town, the Association shall submit to the Town a request for reimbursement, which shall include full documentation of the bid and procurement documents for the work, the contract for the work, construction plans, details and as-built surveys or drawings, measurements, dated inspection reports, photographs of the work done and documentation of the payments made, any required test reports and the Association's written certification that the work was completed in accordance with the approved plans and specifications and state the date the work was completed.
- e. The Town shall approve the Association's request for reimbursement unless it determines that the requested reimbursement includes work other than the work authorized and approved by the Town.

- f. Within three (3) fiscal years following the Town's approval of the Association's request for reimbursement, the Town shall reimburse the Association in the amount approved.
  - g. Requests for reimbursement by the Association be submitted to the Town within three years following the completion of the work by the Association. The failure to submit the request for reimbursement to the Town within three years following completion of the Work shall bar any reimbursement for the work.
11. **No Guarantees Regarding Flooding:** The Association acknowledges that the Town's performance of its obligations under this Agreement does not guarantee or insure that property within the Development will be free of events of flooding or erosion, and that the Town does not represent or warrant to the Association that the performance of the Town's obligations under this Agreement will operate to prevent events of flooding or erosion within the Development.
12. **Waiver of Storm Water Service Fee Credit:** Upon the execution and delivery of this Agreement, and for and during the term or any extensions hereof, the Association acknowledges it shall not be entitled to receive and hereby waives any Storm Water Service Fee Credit from Beaufort County or the Town with respect to any real property located within the limits of the Development, for and during the term of this Agreement or any renewal of this Agreement.
13. **Term:** This Agreement shall remain in place for ten years from the date of execution and shall renew automatically for successive two (2) year terms beginning July 1 each year thereafter, unless either Party notifies the other, in

writing, of its intention to terminate this Agreement. Any such notice shall be delivered not less than two hundred and seventy (270) days prior to the end of the Town fiscal year (June 30) at the end of the then-current term in which such Party wishes to terminate the Agreement. Upon delivery of such notice, this Agreement shall terminate at midnight on June 30<sup>th</sup> of the fiscal year in which the notice is delivered (for example, if notice is given February 1, 2020, the Agreement would terminate on June 30, 2021). The parties shall thereafter execute and deliver such documents as may be necessary to cancel the Access, Drainage and Maintenance Easement delivered pursuant to this Agreement.

- a. **Superseding Legislation:** In the event that the South Carolina General Assembly enacts legislation prohibiting the ability of local governments to impose and collect Storm Water Service Fees then this Agreement shall terminate.

14. **Representation and Warranties of the Association:**

The Association represents and warrants:

- a. That any and all necessary approvals and/or resolutions have been obtained, that it has the full authority to execute, deliver and perform this Agreement and to execute and deliver the Access, Drainage and Maintenance Easement to be delivered pursuant to this Agreement, and that the individual(s) executing such documents have full power and authority to bind the Association to the same.
- b. That it is not now a party to any litigation affecting the property burdened by the easements herein which could impair the



obligations of the Association under this Agreement or the Access, Drainage and Maintenance Easement, and the Association knows of no litigation or threatened litigation affecting their ability to grant said easements.

- c. That as to any pipes or other portions of the Drainage System as shown on Exhibit “A” hereto which are located in whole or in part on private residential lots, the Association has full authority under the Covenants to convey or assign to the Town the rights contemplated in this Agreement and the Access, Drainage and Maintenance Easement.

15. **Town Representation and Warranties:**

The Town represents and warrants to the Association:

- a. As is shown by the Resolution of the TOWN that is attached hereto as Exhibit “D”, the Town represents that it has the power and authority to enter into this Agreement and complete its obligations hereunder; and,
  - b. That it is not now a party to any litigation which could impair the obligations of the Town under this Agreement, and the Town knows of no litigation or threatened litigation affecting its ability to perform hereunder.
16. **Taxes:** The Association shall ensure payment, prior to delinquency, all taxes on Association properties within the Development burdened by the easements granted under this Agreement.

17. **Default:** The Town and the Association agree that in the event of a default or breach of any provision or term of this Agreement, the non-defaulting party or parties shall give written notice to the defaulting party or parties of the default or breach. In the event that the defaulting party or parties fail to cure the default or breach within thirty (30) days of the date of the written notice specifying the default or breach, unless a non-monetary default or breach cannot reasonably be cured within said thirty (30) day time period, then said period shall be reasonably extended, up to one hundred and twenty (120) days, then the non-defaulting party or parties shall be entitled to pursue any remedy at law or in equity against the defaulting party or parties, including but not limited to an action for damages, injunction or specific performance of this Agreement.
18. **Attorney's Fees:** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default or misrepresentation in connection with any of the provisions or terms of this Agreement, the prevailing party or parties shall be entitled to seek recovery of its or their reasonable attorney's fees and any costs incurred as a result of any such action or proceeding, whether incurred before the commencement of suit or after the commencement of suit, and including appellate proceedings, in addition to any other relief to which the prevailing party or parties is or are entitled.
19. **General Provisions:**
  - a. *Binding Effect:* This Agreement shall inure to the benefit of and be binding upon the Association and the Town, and their respective successors and assigns.

- b. *Amendment, Changes and Modifications:* Except as is otherwise provided herein, this Agreement may not be modified, amended, changed or altered without the written consent of the TOWN and the Association.
- c. *Severability:* In the event that any term or provision of this Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other term or provision hereof.
- d. *Execution in Counterparts:* This Agreement may be simultaneously executed in several counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument.
- e. *Applicable Law:* This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.
- f. *Captions:* The captions or headings used herein are for convenience only and in no way define, limit, expand or describe the scope or intent of any term or provision of this Agreement.
- g. *Plural/Singular:* Where appropriate, the use of the singular herein shall be deemed to include the plural, and the use of the plural herein shall be deemed to include the use of the singular.
- h. *No Third Party Beneficiaries:* The Town and the Association affirmatively represent that this Agreement is made solely for the benefit of the Parties hereto and their respective successors and assigns and not for the benefit of any third party who is not a

signature party hereto. It is the express intent of the Town and the Association that no other party shall have any enforceable rights hereunder, or any right to the enforcement hereof, or to any claim for damages as a result of any alleged breach hereof.

- i. *Notices:* All notices, applications, requests, certificates or other communications required hereunder shall be sufficiently given and shall be deemed given on the date when such is delivered in person, or deposited in the United States Mail, by regular first class mail, postage prepaid, at the following addresses, or at such other address as may be designated, in writing, by the Parties:

To the Town:           The Town of Hilton Head Island, SC  
                              Attn: Joshua A. Gruber, Interim Town Manager  
                              One Town Center Court  
                              Hilton Head Island, SC 29928

To the Association: Association of Land Owners of Wells East  
                              Attn: Terre Kelly, President  
                              C/O: 2 Wells East Drive  
                              Hilton Head Island, SC 29926

- j. *No Waiver:* No failure of any Party hereto to exercise any power or right given to such Party hereunder, or to insist on strict compliance by any other Party of its obligations hereunder, and no custom or practice of the Parties at variance with the terms and provisions hereof shall constitute a waiver of any Party's right to thereafter demand strict compliance with the terms of this Agreement.

k. *Further Assurances and Corrective Documents:* The TOWN and the Association agree to do, execute, acknowledge, deliver or cause to be done all such further acts as may be reasonably determined to be necessary to carry out this Agreement and give effect to the terms and provisions hereof. The Town and the Association agree that each shall, upon request, execute and deliver such other or further or corrective documents as may be reasonably determined to be necessary to carry out this Agreement and each of the terms and provisions hereof.

In Witness Whereof, The Town of Hilton Head Island, South Carolina; and the Association of Land Owners of Wells East, by and through their duly authorized officers, have executed and delivered this Agreement as of this \_\_\_\_ day of \_\_\_\_\_, 2021.

**SIGNATURES BEGIN ON NEXT PAGE**

WITNESSES:

Association of Land Owners of Wells East

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_

Attest: \_\_\_\_\_

Its: \_\_\_\_\_

THE TOWN OF HILTON HEAD ISLAND,  
SOUTH CAROLINA

\_\_\_\_\_

By: \_\_\_\_\_

John McCann, Mayor

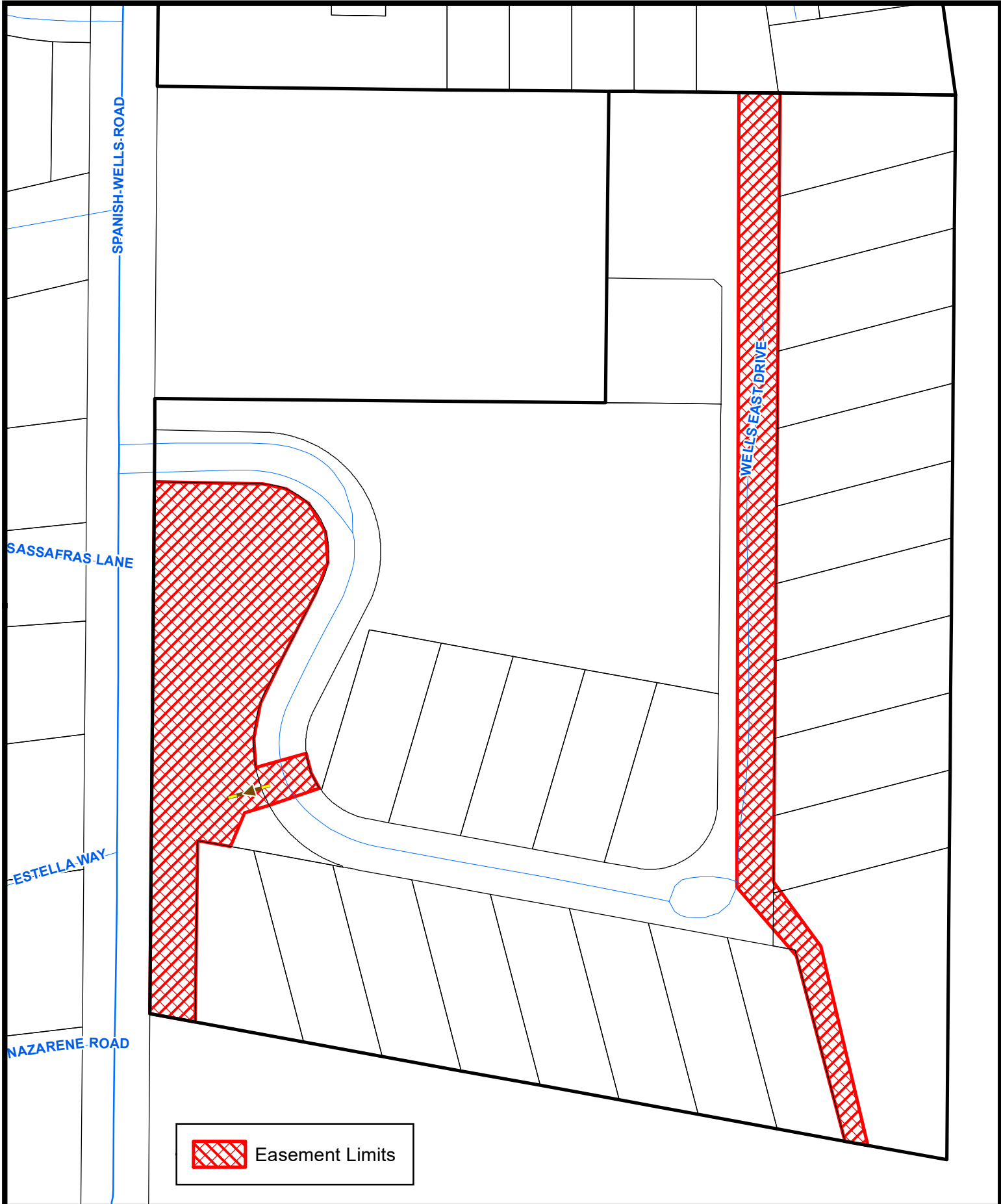
\_\_\_\_\_

Attest: \_\_\_\_\_

Joshua A. Gruber,  
Interim Town Manager

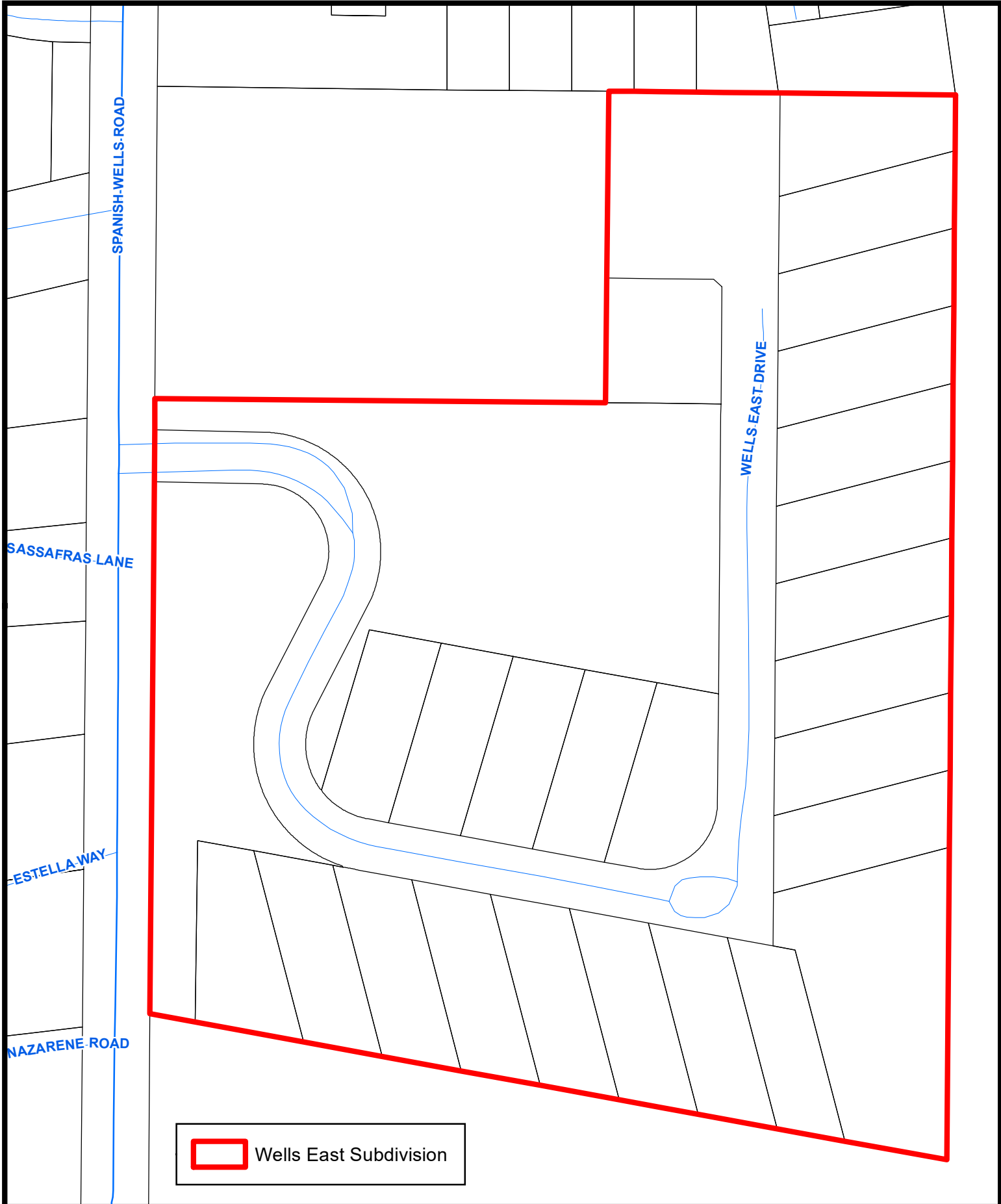
## **List of Exhibits**


- Exhibit A Map depicting the limits of the Access, Drainage and Maintenance Easement areas and Drainage Systems covered by this Agreement
- Exhibit B Map depicting the Development covered by this Agreement
- Exhibit C Access, Drainage and Maintenance Easement
- Exhibit D Town Resolution authorizing this Agreement



## EXHIBIT A WELLS EAST DRAINAGE EASEMENT LIMITS






 Wells East Subdivision



TOWN OF HILTON HEAD ISLAND  
 ONE TOWN CENTER COURT  
 HILTON HEAD ISLAND, S.C. 29928  
 PHONE (843) 341-4600

# EXHIBIT B WELLS EAST SUBDIVISION

1 inch = 120 feet 

The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion or for any losses arising from the use of the map.

Date Created:  
 Project: map.mxd

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF THAT CERTAIN DRAINAGE AGREEMENT AND ACCESS, DRAINAGE AND MAINTENANCE EASEMENT WITH JARVIS CREEK CLUB PROPERTY OWNERS' ASSOCIATION, INC. ACROSS PROPERTY LOCATED IN JARVIS CREEK CLUB.**

WHEREAS, Jarvis Creek Club Property Owners' Association, Inc. ("Jarvis Creek Club") owns improved and unimproved real property and easements within Jarvis Creek Club; and

WHEREAS, Beaufort County, South Carolina adopted Ordinance 99-101 et seq., as amended, creating a Storm Water Utility with the power to impose Storm Water Service Fees on all residents of Beaufort County, South Carolina and which also provides that fees collected from within the municipal limits of the Town of Hilton Head Island, South Carolina ("Town") are returned to the Town to be used for the purposes set forth in the Ordinance including the construction and maintenance of planned and existing infrastructure which collects and disposes of surface and storm water within the municipal limits of the Town; and

WHEREAS, Jarvis Creek Club desires for the Town to utilize Storm Water Service Fees to undertake the maintenance and improvement of the storm and surface water drainage system within Jarvis Creek Club to facilitate the flow of storm water drainage through and from areas within Jarvis Creek Club; and

WHEREAS, to undertake these improvements, it is necessary for the Town to obtain from Jarvis Creek Club a Drainage Agreement and an Access, Drainage and Maintenance Easement, copies of which are attached hereto as Exhibit "A"; and

WHEREAS, the Town Council for the Town of Hilton Head Island, South Carolina has determined that it is in the best interests of the citizens and visitors of the Town of Hilton Head Island to undertake the improvements stated above; and

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE  
TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA:**

1. The Mayor and/or Town Manager are hereby authorized to execute and deliver a Drainage Agreement and an Access, Drainage and Maintenance Easement in a form substantially similar to that attached hereto as Exhibit "A"; and
2. The Mayor and/or Town Manager are hereby authorized to take such other and further action as may be necessary to complete the actions authorized hereby.

**PASSED AND APPROVED BY THE TOWN COUNSEL THIS \_\_\_ DAY OF  
\_\_\_\_\_, 2021.**

\_\_\_\_\_  
**John J. McCann, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Krista Wiedmeyer, Town Clerk**

**Approved as to form:**

\_\_\_\_\_  
**Curtis Coltrane, Town Attorney**

**Introduced by Council Member:\_\_\_\_\_**

**STATE OF SOUTH CAROLINA        )**  
**)**  
**COUNTY OF BEAUFORT                )**       **ACCESS, DRAINAGE AND**  
**)**       **MAINTENANCE EASEMENT**

Know all men by these presents, that Jarvis Creek Club Property Owners Association, Inc. and the Town of Hilton Head Island, South Carolina, One Town Center Court, Hilton Head Island, SC, 29928, for and in consideration of the sum of One and No/100 (\$1.00) Dollar, each paid to the other at and before the execution and delivery of this Access, Drainage and Maintenance Easement, the receipt and sufficiency whereof is acknowledged, agree as follows:

1.     **Defined Terms:** As used herein, the following terms shall mean:
  - (a)    *Association:* Jarvis Creek Club Property Owners Association, Inc., a South Carolina not-for-profit corporation with the full authority under the Covenants to enter into this Agreement.
  - (b)    *Covenants:* Any one or more of Covenants, Conditions, and Restrictions for Jarvis Creek Club Property Owners Association, Inc. recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.
  - (c)    *Development:* Jarvis Creek Club, a planned unit development or subdivision lying and being on Hilton Head Island, Beaufort County, South Carolina, which is shown and described on the map attached as Exhibit “B” hereto.
  - (d)    *Drainage System:* The existing system of lagoons, ditches, canals, pipes, culverts, catch basins, drains, manholes, junction boxes, weirs,

valves, gates, pumps, structures, related equipment and related infrastructure, in the Development lying within the Easement Areas shown on the map attached hereto as Exhibit "A," which facilitates the collection, storage and conveyance of storm and surface water runoff for public benefit through, within, and from the Development. For purposes of this Agreement, the Drainage System shall not include any bridges, docks, retaining walls, road or pathway asphalt, road or building gutters, underdrains, sub-drains, structural bulkheads, beaches, tidal banks, estuaries, or salt marshes, or driveway pipes, unless the Town, in its sole discretion deems any particular driveway pipe as critical to the function of the Drainage System.

- (e) *Emergency*: A blockage, structural or mechanical failure, collapse or other sudden catastrophic event affecting any part of the Drainage System which prevents or substantially inhibits the flow of storm and surface water through all or any part of the Drainage System, or which otherwise results in an imminent peril to life or property.
- (f) *Permanent Structure*: Any immovable structure, including, but not limited to, buildings, sheds, pavilions, walls, masonry structures, tennis courts, and swimming pools, including swimming pool decks.
- (g) *Town*: The Town of Hilton Head Island, South Carolina.

2. *Grant of Easements*: The Association does hereby grant, transfer, sell and convey to the Town, and its agents, assigns, employees and contractors, and their vehicles, machinery and equipment, and create and establish for the benefit of the Town, the

following easements:

(a) A non-exclusive Access Easement on, over and across any roads and streets within the Development, and on, over and across any property owned by the Association encumbered by all or any part of the Drainage System. This Access Easement includes a non-exclusive and partial assignment of any and all easement rights for access held by the Association, under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through.

(b) A non-exclusive Maintenance Easement on, under, over, through and across any property of the Development, encumbered by all or any part of the Drainage System. This Maintenance Easement includes a non-exclusive and partial assignment of any and all easement rights for maintenance, construction, or otherwise, held by the Association under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through. This Maintenance Easement shall include all facilities or structures directly related to the collection, storage and conveyance of storm and surface water now or hereafter existing within the Development, and sufficient property beside or over any part of the Drainage System as shown on Exhibit "A" to allow for excavation and any other work necessary to improve, repair or maintain the Drainage System.

(c) A non-exclusive Drainage Easement for the conveyance of any storm and surface water originating from within or without the boundaries of the Development through the Drainage System, at such rates and in such amounts as may occur from time to time.

(d) This Drainage Easement includes a non-exclusive and partial assignment of any and all easement rights for drainage held by the Association under the Covenants or any other recorded declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through; provided however, that the Town shall provide timely written notification to the Association of any potentially disruptive improvements and/or modifications to the systems conveying storm and surface water originating without the boundaries of the Development and through the Development Drainage System.

3. This Access, Drainage and Maintenance Easement is granted and accepted subject to the following:

(a) The Town agrees that the use of the easements granted herein shall be restricted to the hours of 7:00 o'clock, A.M., to 5:00 o'clock, P.M., Monday through Friday excluding public holidays, except in the event of an Emergency.

(b) Other than in the case of an Emergency, the Town and the Association shall determine the scheduling of any work to be performed hereunder, on its or their property, in advance of the commencement of the

work.

(c) This Access, Drainage and Maintenance Easement is conveyed subject to all other easements, licenses, and conveyances of record and is subject to the rights herein reserved by the Association, their successors and assigns, to utilize their property at any time, in any manner, and for any purpose, provided, however, that such use by the Association shall not be inconsistent with nor prevent the full utilization by the Town of the rights and privileges granted herein.

(d) The Town agrees to plan, lay out, and execute or build improvements, repairs and maintenance of the Drainage System, and further agrees that the Town's exercise of the rights granted in this Access, Drainage and Maintenance Easement shall be under the exclusive control of the Town and that the Town shall at all times comply with all applicable laws, rules, codes, and regulations.

(e) The Association shall not erect any Permanent Structure on, under, over, through and across any property of the Development encumbered by all or any part of the Drainage System without the Town's prior written approval, which approval shall not be unreasonably withheld. The Association shall not impede, obstruct, or allow to be obstructed, the natural flow of storm and surface water runoff through the Drainage System; provided, however, that the Association shall have a continuing obligation under the Covenants to repair and maintain various improvements located within the Common Properties (lagoons and lagoon banks, roads, pathways, utilities, etc.), and this Agreement is not intended



to in any way restrict or limit the Association from taking reasonable actions to perform said obligations.

(f) The rights conveyed under this Access, Drainage and Maintenance Easement are limited to the parties and purposes stated herein. This Access, Drainage and Maintenance Easement conveys no rights of access or otherwise to the general public.

4. The Association acknowledges that the Town shall have no obligation to perform or pay for any work to repair, improve or maintain the appearance or appeal of the lagoons, banks of lagoons, landscaping, drains, canals, or other visible components of the Drainage System, including, but not limited to, structures, bridges, bulkheads, pipes, culverts, valves and gates.

5. The Town agrees to cause all work contemplated hereunder to be performed in a workmanlike fashion with minimal interference to the Grantor, its successors, assigns, invitees, guests, licensees, and agents. The Town further agrees to cause the work contemplated hereunder to be completed in an expeditious and timely fashion, and that all materials, debris, and construction materials shall be promptly removed. The Town shall restore any other part of the property of the Association which may be damaged as a result of the Town's exercise of the rights granted hereunder to its pre-existing state.

6. The Town hereby warrants to the Association that the granting of this Access, Drainage and Maintenance Easement will not affect any "set back" lines with respect to any property currently owned by the Association.

To have and to hold, all and singular, the rights, privileges, and easements aforesaid unto the Town of Hilton Head Island, South Carolina, its successors and assigns, forever.

In Witness whereof, the parties hereto have caused the within Access, Drainage and Maintenance Easement to be executed by their duly authorized officers as of this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

WITNESSES:

Jarvis Creek Club Property Owners Association,  
Inc.

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Attest: \_\_\_\_\_

**STATE OF SOUTH CAROLINA**

)

**UNIFORM ACKNOWLEDGMENT**

)

**COUNTY OF BEAUFORT**

)

**S.C. CODE § 30-5-30 (SUPP. 2010)**

I, the undersigned Notary Public do hereby certify that \_\_\_\_\_  
personally appeared before me on this day and duly acknowledged the execution of the  
foregoing instrument on behalf of Jarvis Creek Club Property Owners Association, Inc..

Sworn to and Subscribed before me

on this \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_

WITNESSES:  
SOUTH CAROLINA

THE TOWN OF HILTON HEAD ISLAND,

\_\_\_\_\_

By: \_\_\_\_\_  
John J. McCann, Mayor

\_\_\_\_\_

Attest: \_\_\_\_\_  
Joshua A. Gruber,  
Interim Town Manager

**STATE OF SOUTH CAROLINA**

)

**UNIFORM ACKNOWLEDGMENT**

)

**COUNTY OF BEAUFORT**

)

**S.C. CODE § 30-5-30 (SUPP. 2010)**

I, the undersigned Notary Public do hereby certify that John J. McCann and Joshua A. Gruber personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of The Town of Hilton Head Island, South Carolina.

Sworn to and Subscribed before me  
on this \_\_\_\_\_ Day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_

**STATE OF SOUTH CAROLINA        )**  
**)**  
**COUNTY OF BEAUFORT            )**        **DRAINAGE SYSTEM**  
**)**        **MAINTENANCE AGREEMENT**

This Drainage System Maintenance Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between Jarvis Creek Club Property Owners’ Association, Inc., a South Carolina nonprofit organization, and the Town of Hilton Head Island, South Carolina, a body politic, having an address of One Town Center Court, Hilton Head Island, South Carolina, 29928.

WITNESSETH

WHEREAS, Jarvis Creek Club is a subdivision of land lying and being within the Town of Hilton Head Island, Beaufort County, South Carolina (hereinafter the “Development”); and,

WHEREAS, Jarvis Creek Club Property Owners’ Association, Inc., is the owner of improved and unimproved real property and easements within Jarvis Creek Club; and,

WHEREAS, Beaufort County, South Carolina, has adopted Ordinance 99-101, *et seq.*, as amended, creating a Storm Water Utility with the power to impose Storm Water Utility Service Fees on all residents of Beaufort County, South Carolina, and which also provides that Storm Water Utility Service Fees collected from property owners within the Town of Hilton Head Island, South Carolina, are returned to it, less administrative fees, to be used for the purposes set forth in Ordinance 99-101, *et seq.*, as amended; and,

WHEREAS, the imposition and collection of Storm Water Utility Service Fees results in a fund available for the construction and maintenance of existing and planned

infrastructure for the collection and conveyance of storm water runoff within the Town of Hilton Head Island, South Carolina, and,

WHEREAS, Jarvis Creek Club Property Owners' Association, Inc., desires for the Town of Hilton Head Island, South Carolina, to utilize Storm Water Utility Service Fees to undertake maintenance and improvement of the storm water drainage system in Jarvis Creek Club, to facilitate the conveyance of storm water runoff within and through the Development; and,

WHEREAS, the Jarvis Creek Club Property Owners' Association, Inc., has agreed to grant access, drainage and maintenance easements to the Town, in order to facilitate the maintenance and improvement of the qualifying storm water drainage system in Jarvis Creek Club.

Now, therefore, know all men by these presents, that Jarvis Creek Club Property Owners' Association, Inc., and the Town of Head Island, South Carolina, for and in consideration of the sum of One and no/100 (\$1.00) Dollar, each paid to the other at and before the execution and delivery of this Agreement, the receipt and sufficiency whereof is acknowledged, agree as follows:

1. **Defined Terms:** As used in this Agreement, the following terms as related to this agreement shall mean:
  - a. *Agreement:* This "Drainage System Maintenance Agreement".
  - b. *Association:* Jarvis Creek Club Property Owners' Association, Inc., a South Carolina not-for-profit corporation with the full authority under the Covenants to enter into this Agreement and to complete all of the Association's obligations under it, and to execute and

deliver the Access, Drainage and Maintenance Easement attached hereto as Exhibit "C."

- c. *Casualty*: The destruction of all or any part of the Drainage System through a natural disaster.
- d. *Covenants*: Any one or more of Covenants, Conditions, and Restrictions for Jarvis Creek Club Property Owners' Association, Inc. recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.
- e. *Development*: Jarvis Creek Club, a planned unit development or subdivision lying and being on Hilton Head Island, Beaufort County, South Carolina, which is shown and described on the map attached as Exhibit "B" hereto.
- f. *Drainage System*: The existing system of lagoons, ditches, canals, pipes, culverts, catch basins, drains, manholes, junction boxes, weirs, valves, gates, pumps, structures, related equipment and related infrastructure, in the Development lying within the Easement Areas shown on the map attached hereto as Exhibit "A," which facilitates the collection, storage and conveyance of storm and surface water runoff for public benefit through, within, and from the Development. For purposes of this Agreement, the Drainage System shall not include any bridges, docks, retaining walls, road or pathway asphalt, road or building gutters, underdrains, sub-drains, structural bulkheads, beaches, tidal banks, estuaries, or salt marshes, or

driveway pipes, unless the Town, in its sole discretion deems any particular driveway pipe as critical to the function of the Drainage System.

- g. *Emergency*: A blockage, structural or mechanical failure, collapse or other sudden catastrophic event affecting any part of the Drainage System which prevents or substantially inhibits the flow of storm and surface water through all or any part of the Drainage System, or which otherwise results in an imminent peril to life or property.
- h. *Permanent Structure*: Any immovable structure, including, but not limited to, buildings, sheds, pavilions, walls, masonry structures, tennis courts, and swimming pools, including swimming pool decks.
- i. *Pollutant*: Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; non-hazardous liquid and solid wastes and yard wastes; sediment; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; concrete and cement; and noxious or offensive matter of any kind.



- j. *Post-construction Structural Best Management Practice Facility:* A Post-construction Structural Best Management Practice Facility (BMPPF) is a facility designed and built to provide treatment of storm water either through storage, filtration or infiltration (i.e. detention basins, retention basins, rain gardens, bioretention cells, sand filters, vegetated filter strips, water quality swales and infiltration trenches) as set forth in the latest editions of the Beaufort County Manual for Storm Water Best Management and Design Practices, the South Carolina DHEC Storm Water Management BMP Handbook, and the Georgia Coastal Stormwater Supplement, which include descriptions standards, and design guidelines for these facilities.
- k. *Project:* Work, including repairs and improvements performed or approved by the Town to correct a specific Qualifying Storm Drainage System Deficiency.
- l. *Qualifying Drainage System Deficiency:* Anything that, in the determination of the Town, prevents, impairs or impedes the adequate conveyance or drainage of storm water runoff through the Drainage System or the structural failure of a Drainage System component. Qualifying Drainage System Deficiencies include, but are not limited to, the following:
  - i. Lagoon bank erosion that has an appreciable adverse impact on conveyance of storm water runoff through the Drainage

System or threatens the integrity of adjacent Drainage System infrastructure or Permanent Structures;

- ii. Presence of sediment and debris located in the Drainage System that has an appreciable adverse impact on the conveyance of storm water runoff through the Drainage System or the functioning of the Drainage System;
- iii. Structural deficiencies associated with pipes and culverts, including, but not limited to, joint failures, deterioration, root intrusion, or collapse that has an appreciable adverse impact on conveyance of storm water runoff through the Drainage System or threatens the integrity of adjacent Drainage System infrastructure or Permanent Structures;
- iv. Structural deficiencies associated with inlets, manholes, junction boxes, control structures and headwalls including, but not limited to, connection failure, deterioration, mechanical failure, or collapse that has an appreciable adverse impact on conveyance of storm water runoff through the Drainage System, or that threatens the integrity of adjacent infrastructure or Permanent Structures. Examples of typical deficiencies include damaged grates, grout failures at pipe connections, deterioration or failure of flap gates and sluice gates, or failure of structure walls;

- v. Sinkholes caused by Drainage System pipe or Drainage System structure Deficiencies, but not those caused by the actions of any third party, including utility providers;
- vi. Drainage System conveyance or performance deficiencies due to inadequate design capacity. Examples of typical conveyance or performance deficiencies include undersized pipes and insufficient weir capacities.

Qualifying Drainage System Deficiencies do not include the following:

- i. The aesthetic appearance or appeal of any part of the Drainage System, including but not limited to lagoons, banks of lagoons, channel banks, landscaping, drains, catch basins, canals, structures, bridges, bulkheads, pipes, culverts, valves gates, debris that does not have an appreciable adverse impact on the conveyance of storm and surface water through the Drainage System, or other visible components of the Drainage System;
- ii. The introduction of pollution or pollutants into the Drainage System from any source;
- iii. Lagoon bank erosion that does not have an appreciable adverse impact on conveyance of storm water runoff through the Drainage System or threaten the integrity of

adjacent Drainage System infrastructure or Permanent Structures;

- iv. Tidal erosion or tidal flooding that does not have an appreciable adverse impact on conveyance of storm water runoff through the Drainage System or threaten the integrity of Drainage System infrastructure;
- v. Establishment of access to the Drainage System by the Association, including, but not limited to, grading, clearing of vegetation, removal of trees, or removal of other obstructions or Permanent Structures in order to provide physical access to the Drainage System;
- vi. Drainage System damage or deficiencies caused by the actions of others, including utilities and property owners (including, but not limited to, bores or cuts into pipes or structures);
- vii. Minor or nuisance flooding that does not adversely affect transportation infrastructure, Permanent Structures, hardscape amenities, or conveyance of storm water runoff through the Drainage System, including golf course flooding, isolated lawn and yard ponding, or standing water in roadway shoulders and unimproved lots or land;
- viii. Drainage System Deficiencies determined by the Town to be caused or exacerbated by intentional acts causing tidal backflow and saltwater intrusion into the Drainage System

through failure to operate control structures per the design intent or the failure by the Association to monitor and maintain proper functioning of backflow prevention devices including flaps, gates, sluice gates, check valves, or similar devices;

ix. Damage to, or failure of, Drainage System components situated underneath or within five (5) feet of any Permanent Structure that is not a part of the Drainage System, where the Town determines that difficult access and/or liabilities exist, or within the zone of influence for the foundation of a Permanent Structure;

x. The construction of a new drainage system or an addition to an existing Drainage System, or the modification of an existing Drainage System to accommodate drainage requirements for new development within the Development.

xi. Drainage System deficiencies determined by the Town to be caused by or originating from unauthorized or non-permitted modifications to the Drainage System by any party other than the Town.

m. *Storm Water Utility Service Fees*: The fees collected by Beaufort County, South Carolina, under the authority of Beaufort County Ordinance 99-101, *et seq.*, as amended, and which are remitted by

Beaufort County, South Carolina, to the Town; or any similar fee, however denominated, imposed and collected by any subsequent or successor Storm Water Utility operated by The Town, under the authority of Town Ordinance Number 2002-43.

- n. *Storm Water Utility Project Prioritization and Annual Budget Process:* The annual process by which the Town of Hilton Head Island, South Carolina, shall establish and maintain a prioritized list of all known Qualifying Drainage System Deficiencies within the Town limits determined to be eligible for service using Storm Water Utility Service Fees. Prior to the beginning of each fiscal year, the Town shall establish an annual Storm Water Utility budget which defines all revenues and expenditures associated with the Storm Water Utility Service Fees. This budget shall include those known Projects to correct Qualifying Drainage System Deficiencies intended to be completed within that fiscal year.
  - o. *Town:* The Town of Hilton Head Island, South Carolina.
- 2. **Grant of Easements:** Contemporaneously with the execution and delivery of this Agreement, the Association and the Town have entered into an “Access, Drainage and Maintenance Easement” which grants the Town rights to access, operate, utilize, maintain, and improve the Drainage System within the Development, with said easement being in the form attached hereto as Exhibit “C”.

3. **Maintenance, Inspection and Operation of Drainage System:** Upon the execution and delivery of this Agreement and the Access, Drainage and Maintenance Easement:

**(a)** The Town shall be responsible for the maintenance, repairs and improvements necessary to correct any Qualifying Drainage System Deficiency under the terms and conditions of this Agreement. This Agreement does not preclude the Association from repairing, maintaining, or improving any component of its Drainage System at its expense.

**(b)** The Association shall be responsible for the following within the Development:

(i) Normal and emergency operation of Drainage System control structures, including gates, weirs and pumps, and for lowering water levels in compliance with pre-storm preparation protocols established by the Town.

(ii) Maintenance and replacement of weir boards, maintenance of control structure access ways, decking and railings, and maintaining control structure accessibility for inspection and operation by controlling and/or removing vegetation as necessary.

(iii) Performing maintenance of work shelves along ditches and canals to provide reasonable and adequate access for inspection, maintenance and repair.

(iv) Monitoring the condition of flap gates, sluice gates, check valves, and similar devices intended to prevent the intrusion of tidal backflow

and brackish water into the Drainage System to ensure that they are in proper working order and functioning as intended.

- (v) Making repairs to roadway pavement, pathway pavement, curb and gutter and related ancillary infrastructure or property damage attributed to a past or existing Qualifying Drainage System Deficiency if the deficiency has been corrected by the Town via trenchless technology methods (i.e. pipe lining). This does not obligate the Association to repair or replace such infrastructure if the repair is made using open cut excavations where removal of surface infrastructure is necessary to complete the repair, in which case, the repair of the ancillary infrastructure shall be considered to be a part of the Town's work to correct the deficiency.
- (vi) Performing annual inspections of Post-construction Structural Best Management Practice Facilities in order to comply with Stormwater Management Plan obligations, including submittal of inspection documentation to the Town in accordance with § 16-5-109 (H)(2), *Municipal Code to the Town of Hilton Head Island* (1983).
- (vii) Regulating the actions of utility providers and property owners, or their assigns, to prevent and mitigate any damage they may cause to the Drainage System.

4. **Procedure for Town's Maintenance of Drainage System:** The Parties acknowledge that the Town intends to provide for the maintenance and improvement of the Drainage System and the repair of identified Qualifying



Drainage System Deficiencies, other than those caused by an Emergency or Casualty, through the development of its Storm Water Utility Project Prioritization and Annual Budget Process. Other than in the case of an Emergency or Casualty, as described in Articles 7, 8 and 10 below, or work completed directly by the Association under Article 9, the Parties agree:

- a. *Identifying Qualifying Drainage System Deficiencies:* The Association shall be responsible for identifying any Qualifying Drainage System Deficiencies.
- b. *Schedule for Submission:* The Association shall submit a written description of each known Qualifying Drainage System Deficiency to the Town using the service request form provided by the Town, describing the nature, location and cause (if known) of each Qualifying Drainage System Deficiency. The Association may identify a potential solution is for the deficiency. In such case, the Association shall include a description of the solution and a preliminary estimate of anticipated costs for the proposed solution. Qualifying Drainage System Deficiencies that are reported to the Town, or which are discovered by the Town, by the end of any calendar year will be considered in the development of the Storm Water Utility Project Prioritization and Annual Budget Process for the following fiscal year.
- c. *Completion of Maintenance:* The Town shall annually develop a Storm Water Utility Project Prioritization and an Annual Budget that

will address identified Qualifying Drainage System Deficiencies as follows:

- i. The Town shall determine the scope and extent of the maintenance, repair or improvement that is necessary to correct any Qualifying Drainage System Deficiencies, and the means, methods and materials needed to accomplish the same.
- ii. The Town shall determine the priority and number of the Projects and schedule the Projects to correct to correct the Qualifying Drainage System Deficiencies for each fiscal year. The determination of the scheduling and funding for the correction of the Qualifying Drainage System Deficiencies shall be made by the Town, taking into account the following:
  1. The availability and amount of the Storm Water Utility Service Fees fund balance, revenue from bonds paid by Storm Water Utility Service Fees, and Storm Water Utility Service Fees in any given fiscal year;
  2. Prioritization of all other Projects, or qualifying requested improvements, repair and maintenance that are to be funded with Storm Water Utility Service Fees; and

3. The annual cost required to operate the Storm Water Utility, its programs and initiatives, and debt service.
  - iii. The Town will complete the Projects as determined by the Town as a part of the Storm Water Utility Project Prioritization and Annual Budget Process, unless Emergencies or Casualties occur that alter the prioritization and funding such that funds are insufficient to correct all Qualifying Drainage System Deficiencies as intended within the same fiscal year.
- d. *Scheduling of Projects*: Other than in the case of an Emergency or Casualty, the Town and the Association shall mutually agree in writing as to the scheduling of any Project to be performed under this Agreement in the Development in advance of the commencement of the Project.
- e. *Resident Notification*: The Association shall be solely responsible for the notification of its owners and guests that may be affected by any Project, or by work to address any Emergency or Casualty.
- f. *Legal Access to Private Property*: The Association shall be responsible for obtaining all access rights, including access rights over and across property in the Development that is not owned by the Association, as may be deemed necessary by the Town to complete any Project.

g. *Access Needed to Complete Project:* The Association shall be responsible for providing clear and adequate physical access to each Project site at no cost to the Town. If clear, adequate physical access to the Project site cannot be provided sufficient to complete the Project without the likelihood of damage to property, assets and amenities by contractors and equipment, the repair and replacement of any property, assets and amenities damaged as a result of the Project shall be the responsibility of the Association, at no additional cost to the Town. Such property, assets and amenities shall include, but are not limited to, landscaping, flowerbeds, ornamental shrubs and trees, lawns, irrigation systems, boardwalks, cart paths, driveways, and sidewalks. The determination of whether the access is clear and adequate, and whether there is a likelihood of damage shall be made in the sole discretion of the Town, prior to the commencement of the Project. The Association has the right to withdraw the service request if the magnitude of potential damage is not acceptable to the Association. If the service request is withdrawn, completing the Project shall be the responsibility of the Association.

h. *No Guarantees Regarding Schedule:* The Town cannot guarantee that the amount of available Storm Water Utility Service Fees, the number of Projects to be funded with Storm Water Utility Service Fees in any given fiscal year, and whether Emergencies and

Casualties and weather related general emergencies will not cause delays in the correction of Qualifying Drainage System Deficiencies within the Development and elsewhere. The parties acknowledge that the Town's determinations with respect to the priority, funding and timing of any Project shall be made at the Town's discretion and shall be final.

5. **Further Obligations of the Association:** The Association agrees that during the term, or any renewal term, of this Agreement, it shall take no action which damages the Drainage System, allows damage to the Drainage System, or creates a Drainage System Deficiency, including, but not limited to allowing salt water intrusion or pollutants to enter the Drainage System and allowing utility providers, property owners, or their assigns to impair the function of the Drainage System. To the extent the Association has a continuing obligation under the Covenants to repair and maintain various improvements located within the Development including lagoons and lagoon banks, ditch maintenance shelves, roads, pathways, utilities, this Agreement is not intended to in any way restrict or limit the Association's completion of its obligations.
6. **Payments as Current Expense of Town:** Any payments to be made by the Town hereunder shall be made from Storm Water Utility Service Fees as budgeted for by the Town in any given fiscal year. The Town and the Association intend that the payment obligations of the Town shall constitute a current expense of the Town and shall not in any way be construed to be a debt of the Town in contravention of any applicable constitutional or statutory limitations concerning indebtedness of

the Town, nor shall anything contained herein constitute a pledge of general tax revenues, funds, money or credit of the Town.

7. **Emergency:** The Parties agree that in the event of an Emergency, the following procedure shall apply:

- a. *Agreement Not Terminated:* This Agreement shall remain in full force and effect.
- b. *Responsibilities of the Association:* The Association shall take such steps as may be reasonably necessary to secure any area affected by the Emergency. The Association shall notify the Town as soon as is practical after discovery of the Emergency. The Association may complete any repairs to the Drainage System needed to address the Emergency, as provided for in Article 10, below.
- c. *Responsibilities of the Town:* Upon receipt of notification of an Emergency from the Association, the Town shall determine the scope and extent of the work that is necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same. The Town shall correct or repair the damage caused by the Emergency as soon as practical, taking into account the threat presented by the Emergency, the existence of any other Emergency or Casualty, the cause of the Emergency and/or the existence of any general emergency affecting the Town and availability of funding. The Town may seek reimbursement from third parties for any costs incurred by the Town

as a result of any Emergency found to have been caused by the negligence of said third parties.

8. **Casualty:** The Parties agree that in the event of a Casualty, the following procedure shall apply:

- a. *Agreement Not Terminated:* This Agreement shall remain in full force and effect.
- b. *Design of Drainage System:* The Town shall produce engineering and design plans at its expense for the reconstruction of all or any part of the Drainage System affected by the Casualty.
- c. *Approval of Plans:* The engineering and design plans must be approved by the Association prior to any reconstruction of the Drainage System. If the Association does not approve the engineering and design plans prepared by the Town, the Association may reconstruct the Drainage System at its own expense and shall not seek reimbursement for the cost thereof from the Town.
- d. *Right of Entry and Access:* If the engineering and design plans approved by the Association require work outside of easement limits described in the Access, Drainage and Maintenance Easement, the Association shall provide temporary easements for access and construction over any property it owns or controls, and shall deliver a valid temporary construction easement for access and construction from the owners of property that the Association does not own.

- e. *Amendment of Access, Drainage and Maintenance Easement:* In the event that the engineering and design plans approved by the Association include permanent improvements or create access or other needs that are in areas not included in the Access, Drainage and Maintenance Easement, the Association agrees that it will execute and deliver an amendment to the Access, Drainage and Maintenance Easement to subject any such areas in the Access, Drainage and Maintenance Easement.
- f. *Reconstruction of Drainage System:* Following the approval of the engineering and design plans and specifications by the Association, the Association's delivery of any needed temporary easements for access and construction, the Town shall complete the reconstruction of the Drainage System, or any part of it, as soon as is practical, taking into account the threat presented by the cause of the Casualty, the existence of any general emergency affecting the Town, the existence of other Emergencies and Casualties and availability of funding. Other than the expenses identified in subsection (b) of this Article 8, the Town may seek reimbursement for any costs incurred by the Town as a result of any Casualty from Storm Water Utility Service Fees, bond, any government aid and assistance programs, or the Association, if the Association is responsible for all or any part of the Casualty.



9. **Maintenance of Drainage System by the Association:** Nothing herein shall prohibit the Association from performing any Project in advance of the time that any such Project is scheduled as a part of the Town's Storm Water Utility Project Prioritization and Annual Budget Process, if the Association determines that it is in its interest to do so. Other than in the case of an Emergency (addressed in Article 10, below), or a Casualty (addressed in Article 8, above), the Association shall be entitled to reimbursement, in an amount up to the amount budgeted by the Town for the Project but not exceeding the actual cost to the Association, from Storm Water Utility Service Fees, in the fiscal year that such Project is scheduled to be done as a part of Town's Storm Water Utility Project Prioritization and Annual Budget Process, as follows;

- a. The Association shall submit its plans, quantities, and specifications for any Project to the Town.
- b. The Town shall grant its written approval to the Association to complete the Project unless it determines that:
  - i. The plan and work proposed by the Association will not correct the existing Qualifying Drainage System Deficiency; or,
  - ii. The scope of the proposed work exceeds what is necessary to correct the existing Qualifying Drainage System Deficiency,
- c. Upon receipt of the Town's written approval, the Association shall bid the work in accordance with the Town's Procurement Code, § 11-

1-111, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983), as the same may be amended from time to time.

- d. Any changes in the approved scope of work for the Project resulting in additional work or cost to the Town must be approved in writing by the Town prior to commencement of any additional work.
- e. The Association shall notify the Town at least seventy-two (72) hours prior to the commencement of work on the Project and at any key junctures of the work where the Town may need to inspect the work.
- f. Upon completion of the Project, the Town shall inspect the Project and provide the Association written approval or rejection of the Project.
- g. If the Project is approved by the Town, the Association shall submit to the Town its request for reimbursement, which shall include full documentation of the bid and procurement of the work to complete the Project, the contract for the work to complete the Project, the construction plans, details and as-built surveys or drawings, measurements, dated inspection reports, photographs of the work in progress, documentation of the payments made by the Association, any required test reports and the Association's written certification that the Project was completed in accordance with the approved plans and specifications.
- h. The Town shall thereafter budget funds for reimbursement to the Association from Storm Water Utility Service Fees in the fiscal year

that the Project would have otherwise been scheduled in the Town's Storm Water Utility Project Prioritization and Annual Budget Process. The schedule for reimbursement shall depend upon the Project ranking when compared to all other Projects as determined in the Town's Storm Water Utility Project Prioritization and Annual Budget Process and may be moved forward into a future budget year as a result. The Association acknowledges that the Town has no obligation to reimburse the Association for any Project in the fiscal year following the Association's completion of the Project, or in any other particular fiscal year.

10. **Emergency Work by the Association:** If for any reason, the Town is unable to repair or correct the damage caused by an Emergency in a time frame that is acceptable to the Association, the following shall apply:
  - a. The Association shall consult with the Town to determine a cost-efficient scope and extent of work necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same. The TOWN must approve in writing, the scope and plans for the work and procurement of construction services, prior to the commencement of work. The Association is not required to bid the work but if the Association chooses to bid the work, the Association shall bid the work in accordance with the Town's Procurement Code, § 11-1-111, *Municipal*

*Code of The Town of Hilton Head Island, South Carolina (1983)*, as the same may be amended from time to time.

- b. The Association shall complete the work that is necessary to repair or correct the damage caused by the Emergency.
- c. The Association shall, whenever possible, notify the Town at least seventy-two (72) hours prior to the commencement of work and at any key junctures of the work whereas the Town may need to inspect the work.
- d. Upon completion of the work that has been authorized and approved by the Town, the Association shall submit to the Town a request for reimbursement, which shall include full documentation of the bid and procurement documents for the work, the contract for the work, construction plans, details and as-built surveys or drawings, measurements, dated inspection reports, photographs of the work done and documentation of the payments made, any required test reports and the Association's written certification that the work was completed in accordance with the approved plans and specifications and state the date the work was completed.
- e. The Town shall approve the Association's request for reimbursement unless it determines that the requested reimbursement includes work other than the work authorized and approved by the Town.

- f. Within three (3) fiscal years following the Town's approval of the Association's request for reimbursement, the Town shall reimburse the Association in the amount approved.
  - g. Requests for reimbursement by the Association be submitted to the Town within three years following the completion of the work by the Association. The failure to submit the request for reimbursement to the Town within three years following completion of the Work shall bar any reimbursement for the work.
11. **No Guarantees Regarding Flooding:** The Association acknowledges that the Town's performance of its obligations under this Agreement does not guarantee or insure that property within the Development will be free of events of flooding or erosion, and that the Town does not represent or warrant to the Association that the performance of the Town's obligations under this Agreement will operate to prevent events of flooding or erosion within the Development.
12. **Waiver of Storm Water Service Fee Credit:** Upon the execution and delivery of this Agreement, and for and during the term or any extensions hereof, the Association acknowledges it shall not be entitled to receive and hereby waives any Storm Water Service Fee Credit from Beaufort County or the Town with respect to any real property located within the limits of the Development, for and during the term of this Agreement or any renewal of this Agreement.
13. **Term:** This Agreement shall remain in place for ten years from the date of execution and shall renew automatically for successive two (2) year terms beginning July 1 each year thereafter, unless either Party notifies the other, in

writing, of its intention to terminate this Agreement. Any such notice shall be delivered not less than two hundred and seventy (270) days prior to the end of the Town fiscal year (June 30) at the end of the then-current term in which such Party wishes to terminate the Agreement. Upon delivery of such notice, this Agreement shall terminate at midnight on June 30<sup>th</sup> of the fiscal year in which the notice is delivered (for example, if notice is given February 1, 2020, the Agreement would terminate on June 30, 2021). The parties shall thereafter execute and deliver such documents as may be necessary to cancel the Access, Drainage and Maintenance Easement delivered pursuant to this Agreement.

- a. **Superseding Legislation:** In the event that the South Carolina General Assembly enacts legislation prohibiting the ability of local governments to impose and collect Storm Water Service Fees then this Agreement shall terminate.

14. **Representation and Warranties of the Association:**

The Association represents and warrants:

- a. That any and all necessary approvals and/or resolutions have been obtained, that it has the full authority to execute, deliver and perform this Agreement and to execute and deliver the Access, Drainage and Maintenance Easement to be delivered pursuant to this Agreement, and that the individual(s) executing such documents have full power and authority to bind the Association to the same.
- b. That it is not now a party to any litigation affecting the property burdened by the easements herein which could impair the

obligations of the Association under this Agreement or the Access, Drainage and Maintenance Easement, and the Association knows of no litigation or threatened litigation affecting their ability to grant said easements.

- c. That as to any pipes or other portions of the Drainage System as shown on Exhibit "A" hereto which are located in whole or in part on private residential lots, the Association has full authority under the Covenants to convey or assign to the Town the rights contemplated in this Agreement and the Access, Drainage and Maintenance Easement.

15. **Town Representation and Warranties:**

The Town represents and warrants to the Association:

- a. As is shown by the Resolution of the TOWN that is attached hereto as Exhibit "D", the Town represents that it has the power and authority to enter into this Agreement and complete its obligations hereunder; and,
  - b. That it is not now a party to any litigation which could impair the obligations of the Town under this Agreement, and the Town knows of no litigation or threatened litigation affecting its ability to perform hereunder.
16. **Taxes:** The Association shall ensure payment, prior to delinquency, all taxes on Association properties within the Development burdened by the easements granted under this Agreement.

17. **Default:** The Town and the Association agree that in the event of a default or breach of any provision or term of this Agreement, the non-defaulting party or parties shall give written notice to the defaulting party or parties of the default or breach. In the event that the defaulting party or parties fail to cure the default or breach within thirty (30) days of the date of the written notice specifying the default or breach, unless a non-monetary default or breach cannot reasonably be cured within said thirty (30) day time period, then said period shall be reasonably extended, up to one hundred and twenty (120) days, then the non-defaulting party or parties shall be entitled to pursue any remedy at law or in equity against the defaulting party or parties, including but not limited to an action for damages, injunction or specific performance of this Agreement.
18. **Attorney's Fees:** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default or misrepresentation in connection with any of the provisions or terms of this Agreement, the prevailing party or parties shall be entitled to seek recovery of its or their reasonable attorney's fees and any costs incurred as a result of any such action or proceeding, whether incurred before the commencement of suit or after the commencement of suit, and including appellate proceedings, in addition to any other relief to which the prevailing party or parties is or are entitled.
19. **General Provisions:**
- a. *Binding Effect:* This Agreement shall inure to the benefit of and be binding upon the Association and the Town, and their respective successors and assigns.



- b. *Amendment, Changes and Modifications:* Except as is otherwise provided herein, this Agreement may not be modified, amended, changed or altered without the written consent of the TOWN and the Association.
- c. *Severability:* In the event that any term or provision of this Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other term or provision hereof.
- d. *Execution in Counterparts:* This Agreement may be simultaneously executed in several counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument.
- e. *Applicable Law:* This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.
- f. *Captions:* The captions or headings used herein are for convenience only and in no way define, limit, expand or describe the scope or intent of any term or provision of this Agreement.
- g. *Plural/Singular:* Where appropriate, the use of the singular herein shall be deemed to include the plural, and the use of the plural herein shall be deemed to include the use of the singular.
- h. *No Third Party Beneficiaries:* The Town and the Association affirmatively represent that this Agreement is made solely for the benefit of the Parties hereto and their respective successors and assigns and not for the benefit of any third party who is not a

signature party hereto. It is the express intent of the Town and the Association that no other party shall have any enforceable rights hereunder, or any right to the enforcement hereof, or to any claim for damages as a result of any alleged breach hereof.

- i. *Notices:* All notices, applications, requests, certificates or other communications required hereunder shall be sufficiently given and shall be deemed given on the date when such is delivered in person, or deposited in the United States Mail, by regular first class mail, postage prepaid, at the following addresses, or at such other address as may be designated, in writing, by the Parties:

To the Town:           The Town of Hilton Head Island, SC  
                              Attn: Joshua A. Gruber, Interim Town Manager  
                              One Town Center Court  
                              Hilton Head Island, SC 29928

To the Association: Jarvis Creek Club Property Owners'  
                              Association, Inc.  
                              Attn: Peter Kristian  
                              C/O: IMC Resort Services  
                              2 Corpus Christie Place, Suite 302  
                              Hilton Head Island, SC 29928-1703

- j. *No Waiver:* No failure of any Party hereto to exercise any power or right given to such Party hereunder, or to insist on strict compliance by any other Party of its obligations hereunder, and no custom or practice of the Parties at variance with the terms and provisions hereof shall constitute a waiver of any Party's right to thereafter demand strict compliance with the terms of this Agreement.

k. *Further Assurances and Corrective Documents:* The TOWN and the Association agree to do, execute, acknowledge, deliver or cause to be done all such further acts as may be reasonably determined to be necessary to carry out this Agreement and give effect to the terms and provisions hereof. The Town and the Association agree that each shall, upon request, execute and deliver such other or further or corrective documents as may be reasonably determined to be necessary to carry out this Agreement and each of the terms and provisions hereof.

In Witness Whereof, The Town of Hilton Head Island, South Carolina; and Jarvis Creek Club Property Owners' Association, Inc., by and through their duly authorized officers, have executed and delivered this Agreement as of this \_\_\_\_ day of \_\_\_\_\_, 2021.

**SIGNATURES BEGIN ON NEXT PAGE**

WITNESSES:

Jarvis Creek Club Property Owners'  
Association, Inc.

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_

Attest: \_\_\_\_\_

Its: \_\_\_\_\_

THE TOWN OF HILTON HEAD ISLAND,  
SOUTH CAROLINA

\_\_\_\_\_

By: \_\_\_\_\_

John McCann, Mayor

\_\_\_\_\_

Attest: \_\_\_\_\_

Joshua A. Gruber,  
Interim Town Manager

## **List of Exhibits**

- Exhibit A Map depicting the limits of the Access, Drainage and Maintenance Easement areas and Drainage Systems covered by this Agreement
- Exhibit B Map depicting the Development covered by this Agreement
- Exhibit C Access, Drainage and Maintenance Easement
- Exhibit D Town Resolution authorizing this Agreement



**EXHIBIT A  
JARVIS CREEK CLUB  
DRAINAGE EASEMENT LIMITS**

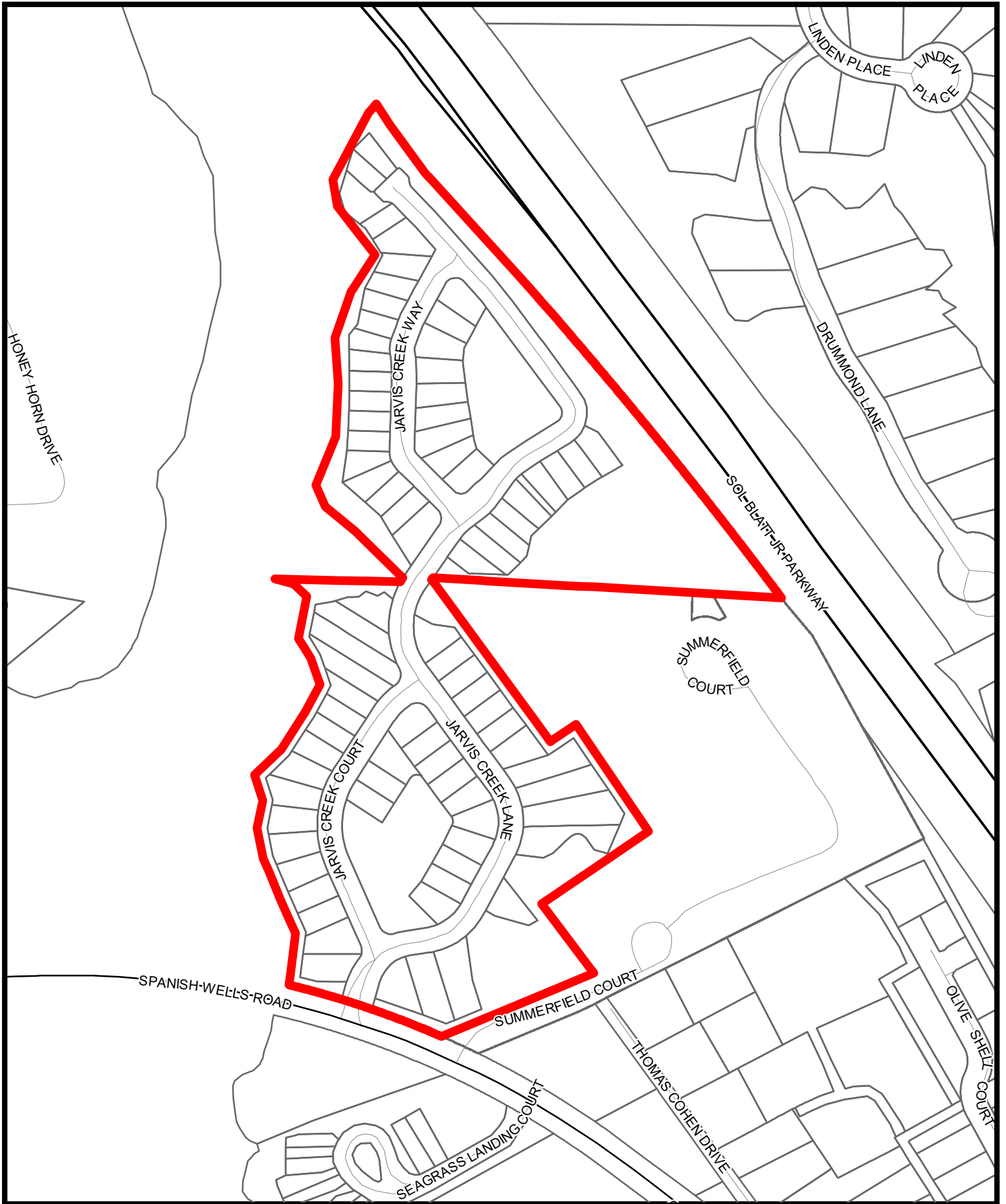
1 inch = 200 feet




TOWN OF HILTON HEAD ISLAND  
ONE TOWN CENTER COURT  
HILTON HEAD ISLAND, S.C. 29928  
PHONE (843) 341-4600

The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion or for any losses arising from the use of the map.

Date Created: 11/11/11  
Project: map.m11



**EXHIBIT B  
JARVIS CREEK CLUB  
PLANNED UNIT DEVELOPMENT**

1 inch = 250 feet 

The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion or for any losses arising from the use of the map.

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF THAT CERTAIN DRAINAGE AGREEMENT AND ACCESS, DRAINAGE AND MAINTENANCE EASEMENT WITH BERMUDA POINTE PROPERTY OWNERS' ASSOCIATION, INC. ACROSS PROPERTY LOCATED IN BERMUDA POINTE.**

WHEREAS, Bermuda Pointe Property Owners' Association, Inc. ("Bermuda Pointe") owns improved and unimproved real property and easements within Bermuda Pointe; and

WHEREAS, Beaufort County, South Carolina adopted Ordinance 99-101 et seq., as amended, creating a Storm Water Utility with the power to impose Storm Water Service Fees on all residents of Beaufort County, South Carolina and which also provides that fees collected from within the municipal limits of the Town of Hilton Head Island, South Carolina ("Town") are returned to the Town to be used for the purposes set forth in the Ordinance including the construction and maintenance of planned and existing infrastructure which collects and disposes of surface and storm water within the municipal limits of the Town; and

WHEREAS, Bermuda Pointe desires for the Town to utilize Storm Water Service Fees to undertake the maintenance and improvement of the storm and surface water drainage system within Bermuda Pointe to facilitate the flow of storm water drainage through and from areas within Bermuda Pointe; and

WHEREAS, to undertake these improvements, it is necessary for the Town to obtain from Bermuda Pointe a Drainage Agreement and an Access, Drainage and Maintenance Easement, copies of which are attached hereto Exhibit "A"; and

WHEREAS, the Town Council for the Town of Hilton Head Island, South Carolina has determined that it is in the best interests of the citizens and visitors of the Town of Hilton Head Island to undertake the improvements stated above; and



**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA:**

1. The Mayor and/or Town Manager are hereby authorized to execute and deliver a Drainage Agreement and an Access, Drainage and Maintenance Easement in a form substantially similar to that attached hereto as Exhibit "A"; and
2. The Mayor and/or Town Manager are hereby authorized to take such other and further action as may be necessary to complete the actions authorized hereby.

**PASSED AND APPROVED BY THE TOWN COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021.**

\_\_\_\_\_  
**John J. McCann, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Krista Wiedmeyer, Town Clerk**

**Approved as to form:**

\_\_\_\_\_  
**Curtis Coltrane, Town Attorney**

**Introduced by Council Member: \_\_\_\_\_**

**STATE OF SOUTH CAROLINA     )**     **ACCESS, DRAINAGE AND**  
**)**     **MAINTENANCE EASEMENT**  
**COUNTY OF BEAUFORT            )**

Know all men by these presents, that Bermuda Pointe Property Owners’ Association, Inc. and the Town of Hilton Head Island, South Carolina, One Town Center Court, Hilton Head Island, SC, 29928, for and in consideration of the sum of One and No/100 (\$1.00) Dollar, each paid to the other at and before the execution and delivery of this Access, Drainage and Maintenance Easement, the receipt and sufficiency whereof is acknowledged, agree as follows:

1. Defined Terms: As used herein, the following terms shall mean:
  - (a) *Association:* Bermuda Pointe Property Owners’ Association, Inc., a South Carolina not-for-profit corporation with the full authority under the Covenants to enter into this Agreement.
  - (b) *Covenants:* Any one or more of Covenants, Conditions, and Restrictions for Bermuda Pointe Property Owners’ Association, Inc. recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.
  - (c) *Development:* Bermuda Pointe, a planned unit development or subdivision lying and being on Hilton Head Island, Beaufort County, South Carolina, which is shown and described on the map attached as Exhibit “B” hereto.

- (d) *Drainage System:* The existing system of lagoons, ditches, canals, pipes, culverts, catch basins, drains, manholes, junction boxes, weirs, valves, gates, pumps, structures, related equipment and related infrastructure, in the Development lying within the Easement Areas shown on the map attached hereto as Exhibit “A,” which facilitates the collection, storage and conveyance of storm and surface water runoff for public benefit through, within, and from the Development. For purposes of this Agreement, the Drainage System shall not include any bridges, docks, retaining walls, road or pathway asphalt, road or building gutters, underdrains, sub-drains, structural bulkheads, beaches, tidal banks, estuaries, or salt marshes, or driveway pipes, unless the Town, in its sole discretion deems any particular driveway pipe as critical to the function of the Drainage System.
- (e) *Emergency:* A blockage, structural or mechanical failure, collapse or other sudden catastrophic event affecting any part of the Drainage System which prevents or substantially inhibits the flow of storm and surface water through all or any part of the Drainage System, or which otherwise results in an imminent peril to life or property.
- (f) *Permanent Structure:* Any immovable structure, including, but not limited to, buildings, sheds, pavilions, walls, masonry structures, tennis courts, and swimming pools, including swimming pool decks.
- (g) *Town:* The Town of Hilton Head Island, South Carolina.

2. *Grant of Easements:* The Association does hereby grant, transfer, sell and convey to the Town, and its agents, assigns, employees and contractors, and their vehicles, machinery and equipment, and create and establish for the benefit of the Town, the following easements:

(a) A non-exclusive Access Easement on, over and across any roads and streets within the Development, and on, over and across any property owned by the Association encumbered by all or any part of the Drainage System. This Access Easement includes a non-exclusive and partial assignment of any and all easement rights for access held by the Association, under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through.

(b) A non-exclusive Maintenance Easement on, under, over, through and across any property of the Development, encumbered by all or any part of the Drainage System. This Maintenance Easement includes a non-exclusive and partial assignment of any and all easement rights for maintenance, construction, or otherwise, held by the Association under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through. This Maintenance Easement shall include all facilities or structures directly related to the collection, storage

and conveyance of storm and surface water now or hereafter existing within the Development, and sufficient property beside or over any part of the Drainage System as shown on Exhibit "A" to allow for excavation and any other work necessary to improve, repair or maintain the Drainage System.

(c) A non-exclusive Drainage Easement for the conveyance of any storm and surface water originating from within or without the boundaries of the Development through the Drainage System, at such rates and in such amounts as may occur from time to time.

(d) This Drainage Easement includes a non-exclusive and partial assignment of any and all easement rights for drainage held by the Association under the Covenants or any other recorded declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through; provided however, that the Town shall provide timely written notification to the Association of any potentially disruptive improvements and/or modifications to the systems conveying storm and surface water originating without the boundaries of the Development and through the Development Drainage System.

3. This Access, Drainage and Maintenance Easement is granted and accepted subject to the following:

(a) The Town agrees that the use of the easements granted herein shall be restricted to the hours of 7:00 o'clock, A.M., to 5:00 o'clock, P.M.,

Monday through Friday excluding public holidays, except in the event of an Emergency.

(b) Other than in the case of an Emergency, the Town and the Association shall determine the scheduling of any work to be performed hereunder, on its or their property, in advance of the commencement of the work.

(c) This Access, Drainage and Maintenance Easement is conveyed subject to all other easements, licenses, and conveyances of record and is subject to the rights herein reserved by the Association, their successors and assigns, to utilize their property at any time, in any manner, and for any purpose, provided, however, that such use by the Association shall not be inconsistent with nor prevent the full utilization by the Town of the rights and privileges granted herein.

(d) The Town agrees to plan, lay out, and execute or build improvements, repairs and maintenance of the Drainage System, and further agrees that the Town's exercise of the rights granted in this Access, Drainage and Maintenance Easement shall be under the exclusive control of the Town and that the Town shall at all times comply with all applicable laws, rules, codes, and regulations.

(e) The Association shall not erect any Permanent Structure on, under, over, through and across any property of the Development encumbered by all or any part of the Drainage System without the Town's prior written approval, which approval shall not be unreasonably withheld. The

Association shall not impede, obstruct, or allow to be obstructed, the natural flow of storm and surface water runoff through the Drainage System; provided, however, that the Association shall have a continuing obligation under the Covenants to repair and maintain various improvements located within the Common Properties (lagoons and lagoon banks, roads, pathways, utilities, etc.), and this Agreement is not intended to in any way restrict or limit the Association from taking reasonable actions to perform said obligations.

(f) The rights conveyed under this Access, Drainage and Maintenance Easement are limited to the parties and purposes stated herein. This Access, Drainage and Maintenance Easement conveys no rights of access or otherwise to the general public.

4. The Association acknowledges that the Town shall have no obligation to perform or pay for any work to repair, improve or maintain the appearance or appeal of the lagoons, banks of lagoons, landscaping, drains, canals, or other visible components of the Drainage System, including, but not limited to, structures, bridges, bulkheads, pipes, culverts, valves and gates.

5. The Town agrees to cause all work contemplated hereunder to be performed in a workmanlike fashion with minimal interference to the Grantor, its successors, assigns, invitees, guests, licensees, and agents. The Town further agrees to cause the work contemplated hereunder to be completed in an expeditious and timely fashion, and that all materials, debris, and construction materials shall be promptly removed. The Town shall restore any other part of the property of the Association which may be damaged as a

result of the Town's exercise of the rights granted hereunder to its pre-existing state.

6. The Town hereby warrants to the Association that the granting of this Access, Drainage and Maintenance Easement will not affect any "set back" lines with respect to any property currently owned by the Association.

To have and to hold, all and singular, the rights, privileges, and easements aforesaid unto the Town of Hilton Head Island, South Carolina, its successors and assigns, forever.

In Witness whereof, the parties hereto have caused the within Access, Drainage and Maintenance Easement to be executed by their duly authorized officers as of this \_\_\_\_\_ day of \_\_\_\_\_, 2021.



WITNESSES:

Bermuda Pointe Property Owners' Association,  
Inc.

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Attest: \_\_\_\_\_

**STATE OF SOUTH CAROLINA**

)

**UNIFORM ACKNOWLEDGMENT**

)

**COUNTY OF BEAUFORT**

)

**S.C. CODE § 30-5-30 (SUPP. 2010)**

I, the undersigned Notary Public do hereby certify that \_\_\_\_\_  
personally appeared before me on this day and duly acknowledged the execution of the  
foregoing instrument on behalf of Bermuda Pointe Property Owners' Association, Inc..

Sworn to and Subscribed before me

on this \_\_\_\_\_ Day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_

WITNESSES:  
SOUTH CAROLINA

THE TOWN OF HILTON HEAD ISLAND,

\_\_\_\_\_

By: \_\_\_\_\_  
John J. McCann, Mayor

\_\_\_\_\_

Attest: \_\_\_\_\_  
Marc Orlando, Town Manager

**STATE OF SOUTH CAROLINA**

)

**UNIFORM ACKNOWLEDGMENT**

)

**COUNTY OF BEAUFORT**

)

**S.C. CODE § 30-5-30 (SUPP. 2010)**

I, the undersigned Notary Public do hereby certify that John J. McCann and Marc Orlando personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of The Town of Hilton Head Island, South Carolina.

Sworn to and Subscribed before me  
on this \_\_\_\_\_ Day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_



infrastructure for the collection and conveyance of storm water runoff within the Town of Hilton Head Island, South Carolina, and,

WHEREAS, Bermuda Pointe Property Owners' Association, Inc., desires for the Town of Hilton Head Island, South Carolina, to utilize Storm Water Utility Service Fees to undertake maintenance and improvement of the storm water drainage system in Bermuda Pointe, to facilitate the conveyance of storm water runoff within and through the Development; and,

WHEREAS, the Bermuda Pointe Property Owners' Association, Inc., has agreed to grant access, drainage and maintenance easements to the Town, in order to facilitate the maintenance and improvement of the qualifying storm water drainage system in Bermuda Pointe.

Now, therefore, know all men by these presents, that Bermuda Pointe Property Owners' Association, Inc., and the Town of Head Island, South Carolina, for and in consideration of the sum of One and no/100 (\$1.00) Dollar, each paid to the other at and before the execution and delivery of this Agreement, the receipt and sufficiency whereof is acknowledged, agree as follows:

1. **Defined Terms:** As used in this Agreement, the following terms as related to this agreement shall mean:
  - a. *Agreement:* This "Drainage System Maintenance Agreement".
  - b. *Association:* Bermuda Pointe Property Owners' Association, Inc., a South Carolina not-for-profit corporation with the full authority under the Covenants to enter into this Agreement and to complete all of the Association's obligations under it, and to execute and

deliver the Access, Drainage and Maintenance Easement attached hereto as Exhibit “C.”

- c. *Casualty*: The destruction of all or any part of the Drainage System through a natural disaster.
- d. *Covenants*: Any one or more of Covenants, Conditions, and Restrictions for Bermuda Pointe Property Owners’ Association, Inc. recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.
- e. *Development*: Bermuda Pointe, a planned unit development or subdivision lying and being on Hilton Head Island, Beaufort County, South Carolina, which is shown and described on the map attached as Exhibit “B” hereto.
- f. *Drainage System*: The existing system of lagoons, ditches, canals, pipes, culverts, catch basins, drains, manholes, junction boxes, weirs, valves, gates, pumps, structures, related equipment and related infrastructure, in the Development lying within the Easement Areas shown on the map attached hereto as Exhibit “A,” which facilitates the collection, storage and conveyance of storm and surface water runoff for public benefit through, within, and from the Development. For purposes of this Agreement, the Drainage System shall not include any bridges, docks, retaining walls, road or pathway asphalt, road or building gutters, underdrains, sub-drains, structural bulkheads, beaches, tidal banks, estuaries, or salt marshes, or

driveway pipes, unless the Town, in its sole discretion deems any particular driveway pipe as critical to the function of the Drainage System.

- g. *Emergency*: A blockage, structural or mechanical failure, collapse or other sudden catastrophic event affecting any part of the Drainage System which prevents or substantially inhibits the flow of storm and surface water through all or any part of the Drainage System, or which otherwise results in an imminent peril to life or property.
- h. *Permanent Structure*: Any immovable structure, including, but not limited to, buildings, sheds, pavilions, walls, masonry structures, tennis courts, and swimming pools, including swimming pool decks.
- i. *Pollutant*: Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; non-hazardous liquid and solid wastes and yard wastes; sediment; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; concrete and cement; and noxious or offensive matter of any kind.

- j. *Post-construction Structural Best Management Practice Facility:* A Post-construction Structural Best Management Practice Facility (BMPPF) is a facility designed and built to provide treatment of storm water either through storage, filtration or infiltration (i.e. detention basins, retention basins, rain gardens, bioretention cells, sand filters, vegetated filter strips, water quality swales and infiltration trenches) as set forth in the latest editions of the Beaufort County Manual for Storm Water Best Management and Design Practices, the South Carolina DHEC Storm Water Management BMP Handbook, and the Georgia Coastal Stormwater Supplement, which include descriptions standards, and design guidelines for these facilities.
- k. *Project:* Work, including repairs and improvements performed or approved by the Town to correct a specific Qualifying Storm Drainage System Deficiency.
- l. *Qualifying Drainage System Deficiency:* Anything that, in the determination of the Town, prevents, impairs or impedes the adequate conveyance or drainage of storm water runoff through the Drainage System or the structural failure of a Drainage System component. Qualifying Drainage System Deficiencies include, but are not limited to, the following:
  - i. Lagoon bank erosion that has an appreciable adverse impact on conveyance of storm water runoff through the Drainage

System or threatens the integrity of adjacent Drainage System infrastructure or Permanent Structures;

- ii. Presence of sediment and debris located in the Drainage System that has an appreciable adverse impact on the conveyance of storm water runoff through the Drainage System or the functioning of the Drainage System;
- iii. Structural deficiencies associated with pipes and culverts, including, but not limited to, joint failures, deterioration, root intrusion, or collapse that has an appreciable adverse impact on conveyance of storm water runoff through the Drainage System or threatens the integrity of adjacent Drainage System infrastructure or Permanent Structures;
- iv. Structural deficiencies associated with inlets, manholes, junction boxes, control structures and headwalls including, but not limited to, connection failure, deterioration, mechanical failure, or collapse that has an appreciable adverse impact on conveyance of storm water runoff through the Drainage System, or that threatens the integrity of adjacent infrastructure or Permanent Structures. Examples of typical deficiencies include damaged grates, grout failures at pipe connections, deterioration or failure of flap gates and sluice gates, or failure of structure walls;



- v. Sinkholes caused by Drainage System pipe or Drainage System structure Deficiencies, but not those caused by the actions of any third party, including utility providers;
- vi. Drainage System conveyance or performance deficiencies due to inadequate design capacity. Examples of typical conveyance or performance deficiencies include undersized pipes and insufficient weir capacities.

Qualifying Drainage System Deficiencies do not include the following:

- i. The aesthetic appearance or appeal of any part of the Drainage System, including but not limited to lagoons, banks of lagoons, channel banks, landscaping, drains, catch basins, canals, structures, bridges, bulkheads, pipes, culverts, valves gates, debris that does not have an appreciable adverse impact on the conveyance of storm and surface water through the Drainage System, or other visible components of the Drainage System;
- ii. The introduction of pollution or pollutants into the Drainage System from any source;
- iii. Lagoon bank erosion that does not have an appreciable adverse impact on conveyance of storm water runoff through the Drainage System or threaten the integrity of

- adjacent Drainage System infrastructure or Permanent Structures;
- iv. Tidal erosion or tidal flooding that does not have an appreciable adverse impact on conveyance of storm water runoff through the Drainage System or threaten the integrity of Drainage System infrastructure;
  - v. Establishment of access to the Drainage System by the Association, including, but not limited to, grading, clearing of vegetation, removal of trees, or removal of other obstructions or Permanent Structures in order to provide physical access to the Drainage System;
  - vi. Drainage System damage or deficiencies caused by the actions of others, including utilities and property owners (including, but not limited to, bores or cuts into pipes or structures);
  - vii. Minor or nuisance flooding that does not adversely affect transportation infrastructure, Permanent Structures, hardscape amenities, or conveyance of storm water runoff through the Drainage System, including golf course flooding, isolated lawn and yard ponding, or standing water in roadway shoulders and unimproved lots or land;
  - viii. Drainage System Deficiencies determined by the Town to be caused or exacerbated by intentional acts causing tidal backflow and saltwater intrusion into the Drainage System

through failure to operate control structures per the design intent or the failure by the Association to monitor and maintain proper functioning of backflow prevention devices including flaps, gates, sluice gates, check valves, or similar devices;

- ix. Damage to, or failure of, Drainage System components situated underneath or within five (5) feet of any Permanent Structure that is not a part of the Drainage System, where the Town determines that difficult access and/or liabilities exist, or within the zone of influence for the foundation of a Permanent Structure;
  - x. The construction of a new drainage system or an addition to an existing Drainage System, or the modification of an existing Drainage System to accommodate drainage requirements for new development within the Development.
  - xi. Drainage System deficiencies determined by the Town to be caused by or originating from unauthorized or non-permitted modifications to the Drainage System by any party other than the Town.
- m. *Storm Water Utility Service Fees*: The fees collected by Beaufort County, South Carolina, under the authority of Beaufort County Ordinance 99-101, *et seq.*, as amended, and which are remitted by

Beaufort County, South Carolina, to the Town; or any similar fee, however denominated, imposed and collected by any subsequent or successor Storm Water Utility operated by The Town, under the authority of Town Ordinance Number 2002-43.

- n. *Storm Water Utility Project Prioritization and Annual Budget Process:* The annual process by which the Town of Hilton Head Island, South Carolina, shall establish and maintain a prioritized list of all known Qualifying Drainage System Deficiencies within the Town limits determined to be eligible for service using Storm Water Utility Service Fees. Prior to the beginning of each fiscal year, the Town shall establish an annual Storm Water Utility budget which defines all revenues and expenditures associated with the Storm Water Utility Service Fees. This budget shall include those known Projects to correct Qualifying Drainage System Deficiencies intended to be completed within that fiscal year.
  - o. *Town:* The Town of Hilton Head Island, South Carolina.
- 2. **Grant of Easements:** Contemporaneously with the execution and delivery of this Agreement, the Association and the Town have entered into an “Access, Drainage and Maintenance Easement” which grants the Town rights to access, operate, utilize, maintain, and improve the Drainage System within the Development, with said easement being in the form attached hereto as Exhibit “C”.

3. **Maintenance, Inspection and Operation of Drainage System:** Upon the execution and delivery of this Agreement and the Access, Drainage and Maintenance Easement:

- (a) the Town shall be responsible for the maintenance, repairs and improvements necessary to correct any Qualifying Drainage System Deficiency under the terms and conditions of this Agreement. This Agreement does not preclude the Association from repairing, maintaining, or improving any component of its Drainage System at its expense.
- (b) The Association shall be responsible for the following within the Development:
  - (i) Normal and emergency operation of Drainage System control structures, including gates, weirs and pumps, and for lowering water levels in compliance with pre-storm preparation protocols established by the Town.
  - (ii) Maintenance and replacement of weir boards, maintenance of control structure access ways, decking and railings, and maintaining control structure accessibility for inspection and operation by controlling and/or removing vegetation as necessary.
  - (iii) Performing maintenance of work shelves along ditches and canals to provide reasonable and adequate access for inspection, maintenance and repair.
  - (iv) Monitoring the condition of flap gates, sluice gates, check valves, and similar devices intended to prevent the intrusion of tidal backflow

and brackish water into the Drainage System to ensure that they are in proper working order and functioning as intended.

- (v) Making repairs to roadway pavement, pathway pavement, curb and gutter and related ancillary infrastructure or property damage attributed to a past or existing Qualifying Drainage System Deficiency if the deficiency has been corrected by the Town via trenchless technology methods (i.e. pipe lining). This does not obligate the Association to repair or replace such infrastructure if the repair is made using open cut excavations where removal of surface infrastructure is necessary to complete the repair, in which case, the repair of the ancillary infrastructure shall be considered to be a part of the Town's work to correct the deficiency.
- (vi) Performing annual inspections of Post-construction Structural Best Management Practice Facilities in order to comply with Stormwater Management Plan obligations, including submittal of inspection documentation to the Town in accordance with § 16-5-109 (H)(2), *Municipal Code to the Town of Hilton Head Island (1983)*.
- (vii) Regulating the actions of utility providers and property owners, or their assigns, to prevent and mitigate any damage they may cause to the Drainage System.

4. **Procedure for Town's Maintenance of Drainage System:** The Parties acknowledge that the Town intends to provide for the maintenance and improvement of the Drainage System and the repair of identified Qualifying

Drainage System Deficiencies, other than those caused by an Emergency or Casualty, through the development of its Storm Water Utility Project Prioritization and Annual Budget Process. Other than in the case of an Emergency or Casualty, as described in Articles 7, 8 and 10 below, or work completed directly by the Association under Article 9, the Parties agree:

- a. *Identifying Qualifying Drainage System Deficiencies:* The Association shall be responsible for identifying any Qualifying Drainage System Deficiencies.
- b. *Schedule for Submission:* The Association shall submit a written description of each known Qualifying Drainage System Deficiency to the Town using the service request form provided by the Town, describing the nature, location and cause (if known) of each Qualifying Drainage System Deficiency. The Association may identify a potential solution is for the deficiency. In such case, the Association shall include a description of the solution and a preliminary estimate of anticipated costs for the proposed solution. Qualifying Drainage System Deficiencies that are reported to the Town, or which are discovered by the Town, by the end of any calendar year will be considered in the development of the Storm Water Utility Project Prioritization and Annual Budget Process for the following fiscal year.
- c. *Completion of Maintenance:* The Town shall annually develop a Storm Water Utility Project Prioritization and an Annual Budget that

will address identified Qualifying Drainage System Deficiencies as follows:

- i. The Town shall determine the scope and extent of the maintenance, repair or improvement that is necessary to correct any Qualifying Drainage System Deficiencies, and the means, methods and materials needed to accomplish the same.
- ii. The Town shall determine the priority and number of the Projects and schedule the Projects to correct to correct the Qualifying Drainage System Deficiencies for each fiscal year. The determination of the scheduling and funding for the correction of the Qualifying Drainage System Deficiencies shall be made by the Town, taking into account the following:
  1. The availability and amount of the Storm Water Utility Service Fees fund balance, revenue from bonds paid by Storm Water Utility Service Fees, and Storm Water Utility Service Fees in any given fiscal year;
  2. Prioritization of all other Projects, or qualifying requested improvements, repair and maintenance that are to be funded with Storm Water Utility Service Fees; and



3. The annual cost required to operate the Storm Water Utility, its programs and initiatives, and debt service.
  - iii. The Town will complete the Projects as determined by the Town as a part of the Storm Water Utility Project Prioritization and Annual Budget Process, unless Emergencies or Casualties occur that alter the prioritization and funding such that funds are insufficient to correct all Qualifying Drainage System Deficiencies as intended within the same fiscal year.
  - d. *Scheduling of Projects*: Other than in the case of an Emergency or Casualty, the Town and the Association shall mutually agree in writing as to the scheduling of any Project to be performed under this Agreement in the Development in advance of the commencement of the Project.
  - e. *Resident Notification*: The Association shall be solely responsible for the notification of its owners and guests that may be affected by any Project, or by work to address any Emergency or Casualty.
  - f. *Legal Access to Private Property*: The Association shall be responsible for obtaining all access rights, including access rights over and across property in the Development that is not owned by the Association, as may be deemed necessary by the Town to complete any Project.

- g. *Access Needed to Complete Project:* The Association shall be responsible for providing clear and adequate physical access to each Project site at no cost to the Town. If clear, adequate physical access to the Project site cannot be provided sufficient to complete the Project without the likelihood of damage to property, assets and amenities by contractors and equipment, the repair and replacement of any property, assets and amenities damaged as a result of the Project shall be the responsibility of the Association, at no additional cost to the Town. Such property, assets and amenities shall include, but are not limited to, landscaping, flowerbeds, ornamental shrubs and trees, lawns, irrigation systems, boardwalks, cart paths, driveways, and sidewalks. The determination of whether the access is clear and adequate, and whether there is a likelihood of damage shall be made in the sole discretion of the Town, prior to the commencement of the Project. The Association has the right to withdraw the service request if the magnitude of potential damage is not acceptable to the Association. If the service request is withdrawn, completing the Project shall be the responsibility of the Association.
- h. *No Guarantees Regarding Schedule:* The Town cannot guarantee that the amount of available Storm Water Utility Service Fees, the number of Projects to be funded with Storm Water Utility Service Fees in any given fiscal year, and whether Emergencies and

Casualties and weather related general emergencies will not cause delays in the correction of Qualifying Drainage System Deficiencies within the Development and elsewhere. The parties acknowledge that the Town's determinations with respect to the priority, funding and timing of any Project shall be made at the Town's discretion and shall be final.

5. **Further Obligations of the Association:** The Association agrees that during the term, or any renewal term, of this Agreement, it shall take no action which damages the Drainage System, allows damage to the Drainage System, or creates a Drainage System Deficiency, including, but not limited to allowing salt water intrusion or pollutants to enter the Drainage System and allowing utility providers, property owners, or their assigns to impair the function of the Drainage System. To the extent the Association has a continuing obligation under the Covenants to repair and maintain various improvements located within the Development including lagoons and lagoon banks, ditch maintenance shelves, roads, pathways, utilities, this Agreement is not intended to in any way restrict or limit the Association's completion of its obligations.
6. **Payments as Current Expense of Town:** Any payments to be made by the Town hereunder shall be made from Storm Water Utility Service Fees as budgeted for by the Town in any given fiscal year. The Town and the Association intend that the payment obligations of the Town shall constitute a current expense of the Town and shall not in any way be construed to be a debt of the Town in contravention of any applicable constitutional or statutory limitations concerning indebtedness of

the Town, nor shall anything contained herein constitute a pledge of general tax revenues, funds, money or credit of the Town.

7. **Emergency:** The Parties agree that in the event of an Emergency, the following procedure shall apply:

- a. *Agreement Not Terminated:* This Agreement shall remain in full force and effect.
- b. *Responsibilities of the Association:* The Association shall take such steps as may be reasonably necessary to secure any area affected by the Emergency. The Association shall notify the Town as soon as is practical after discovery of the Emergency. The Association may complete any repairs to the Drainage System needed to address the Emergency, as provided for in Article 10, below.
- c. *Responsibilities of the Town:* Upon receipt of notification of an Emergency from the Association, the Town shall determine the scope and extent of the work that is necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same. The Town shall correct or repair the damage caused by the Emergency as soon as practical, taking into account the threat presented by the Emergency, the existence of any other Emergency or Casualty, the cause of the Emergency and/or the existence of any general emergency affecting the Town and availability of funding. The Town may seek reimbursement from third parties for any costs incurred by the Town

as a result of any Emergency found to have been caused by the negligence of said third parties.

8. **Casualty:** The Parties agree that in the event of a Casualty, the following procedure shall apply:

- a. *Agreement Not Terminated:* This Agreement shall remain in full force and effect.
- b. *Design of Drainage System:* The Town shall produce engineering and design plans at its expense for the reconstruction of all or any part of the Drainage System affected by the Casualty.
- c. *Approval of Plans:* The engineering and design plans must be approved by the Association prior to any reconstruction of the Drainage System. If the Association does not approve the engineering and design plans prepared by the Town, the Association may reconstruct the Drainage System at its own expense and shall not seek reimbursement for the cost thereof from the Town.
- d. *Right of Entry and Access:* If the engineering and design plans approved by the Association require work outside of easement limits described in the Access, Drainage and Maintenance Easement, the Association shall provide temporary easements for access and construction over any property it owns or controls, and shall deliver a valid temporary construction easement for access and construction from the owners of property that the Association does not own.

- e. *Amendment of Access, Drainage and Maintenance Easement:* In the event that the engineering and design plans approved by the Association include permanent improvements or create access or other needs that are in areas not included in the Access, Drainage and Maintenance Easement, the Association agrees that it will execute and deliver an amendment to the Access, Drainage and Maintenance Easement to subject any such areas in the Access, Drainage and Maintenance Easement.
- f. *Reconstruction of Drainage System:* Following the approval of the engineering and design plans and specifications by the Association, the Association's delivery of any needed temporary easements for access and construction, the Town shall complete the reconstruction of the Drainage System, or any part of it, as soon as is practical, taking into account the threat presented by the cause of the Casualty, the existence of any general emergency affecting the Town, the existence of other Emergencies and Casualties and availability of funding. Other than the expenses identified in subsection (b) of this Article 8, the Town may seek reimbursement for any costs incurred by the Town as a result of any Casualty from Storm Water Utility Service Fees, bond, any government aid and assistance programs, or the Association, if the Association is responsible for all or any part of the Casualty.

9. **Maintenance of Drainage System by the Association:** Nothing herein shall prohibit the Association from performing any Project in advance of the time that any such Project is scheduled as a part of the Town's Storm Water Utility Project Prioritization and Annual Budget Process, if the Association determines that it is in its interest to do so. Other than in the case of an Emergency (addressed in Article 10, below), or a Casualty (addressed in Article 8, above), the Association shall be entitled to reimbursement, in an amount up to the amount budgeted by the Town for the Project but not exceeding the actual cost to the Association, from Storm Water Utility Service Fees, in the fiscal year that such Project is scheduled to be done as a part of Town's Storm Water Utility Project Prioritization and Annual Budget Process, as follows;

- a. The Association shall submit its plans, quantities, and specifications for any Project to the Town.
- b. The Town shall grant its written approval to the Association to complete the Project unless it determines that:
  - i. The plan and work proposed by the Association will not correct the existing Qualifying Drainage System Deficiency; or,
  - ii. The scope of the proposed work exceeds what is necessary to correct the existing Qualifying Drainage System Deficiency,
- c. Upon receipt of the Town's written approval, the Association shall bid the work in accordance with the Town's Procurement Code, § 11-

1-111, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983), as the same may be amended from time to time.

- d. Any changes in the approved scope of work for the Project resulting in additional work or cost to the Town must be approved in writing by the Town prior to commencement of any additional work.
- e. The Association shall notify the Town at least seventy-two (72) hours prior to the commencement of work on the Project and at any key junctures of the work where the Town may need to inspect the work.
- f. Upon completion of the Project, the Town shall inspect the Project and provide the Association written approval or rejection of the Project.
- g. If the Project is approved by the Town, the Association shall submit to the Town its request for reimbursement, which shall include full documentation of the bid and procurement of the work to complete the Project, the contract for the work to complete the Project, the construction plans, details and as-built surveys or drawings, measurements, dated inspection reports, photographs of the work in progress, documentation of the payments made by the Association, any required test reports and the Association's written certification that the Project was completed in accordance with the approved plans and specifications.
- h. The Town shall thereafter budget funds for reimbursement to the Association from Storm Water Utility Service Fees in the fiscal year



that the Project would have otherwise been scheduled in the Town's Storm Water Utility Project Prioritization and Annual Budget Process. The schedule for reimbursement shall depend upon the Project ranking when compared to all other Projects as determined in the Town's Storm Water Utility Project Prioritization and Annual Budget Process and may be moved forward into a future budget year as a result. The Association acknowledges that the Town has no obligation to reimburse the Association for any Project in the fiscal year following the Association's completion of the Project, or in any other particular fiscal year.

10. **Emergency Work by the Association:** If for any reason, the Town is unable to repair or correct the damage caused by an Emergency in a time frame that is acceptable to the Association, the following shall apply:
  - a. The Association shall consult with the Town to determine a cost-efficient scope and extent of work necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same. The TOWN must approve in writing, the scope and plans for the work and procurement of construction services, prior to the commencement of work. The Association is not required to bid the work but if the Association chooses to bid the work, the Association shall bid the work in accordance with the Town's Procurement Code, § 11-1-111, *Municipal*

*Code of The Town of Hilton Head Island, South Carolina (1983)*, as the same may be amended from time to time.

- b. The Association shall complete the work that is necessary to repair or correct the damage caused by the Emergency.
- c. The Association shall, whenever possible, notify the Town at least seventy-two (72) hours prior to the commencement of work and at any key junctures of the work whereas the Town may need to inspect the work.
- d. Upon completion of the work that has been authorized and approved by the Town, the Association shall submit to the Town a request for reimbursement, which shall include full documentation of the bid and procurement documents for the work, the contract for the work, construction plans, details and as-built surveys or drawings, measurements, dated inspection reports, photographs of the work done and documentation of the payments made, any required test reports and the Association's written certification that the work was completed in accordance with the approved plans and specifications and state the date the work was completed.
- e. The Town shall approve the Association's request for reimbursement unless it determines that the requested reimbursement includes work other than the work authorized and approved by the Town.

- f. Within three (3) fiscal years following the Town's approval of the Association's request for reimbursement, the Town shall reimburse the Association in the amount approved.
  - g. Requests for reimbursement by the Association be submitted to the Town within three years following the completion of the work by the Association. The failure to submit the request for reimbursement to the Town within three years following completion of the Work shall bar any reimbursement for the work.
11. **No Guarantees Regarding Flooding:** The Association acknowledges that the Town's performance of its obligations under this Agreement does not guarantee or insure that property within the Development will be free of events of flooding or erosion, and that the Town does not represent or warrant to the Association that the performance of the Town's obligations under this Agreement will operate to prevent events of flooding or erosion within the Development.
12. **Waiver of Storm Water Service Fee Credit:** Upon the execution and delivery of this Agreement, and for and during the term or any extensions hereof, the Association acknowledges it shall not be entitled to receive and hereby waives any Storm Water Service Fee Credit from Beaufort County or the Town with respect to any real property located within the limits of the Development, for and during the term of this Agreement or any renewal of this Agreement.
13. **Term:** This Agreement shall remain in place for ten years from the date of execution and shall renew automatically for successive two (2) year terms beginning July 1 each year thereafter, unless either Party notifies the other, in

writing, of its intention to terminate this Agreement. Any such notice shall be delivered not less than two hundred and seventy (270) days prior to the end of the Town fiscal year (June 30) at the end of the then-current term in which such Party wishes to terminate the Agreement. Upon delivery of such notice, this Agreement shall terminate at midnight on June 30<sup>th</sup> of the fiscal year in which the notice is delivered (for example, if notice is given February 1, 2020, the Agreement would terminate on June 30, 2021). The parties shall thereafter execute and deliver such documents as may be necessary to cancel the Access, Drainage and Maintenance Easement delivered pursuant to this Agreement.

- a. **Superseding Legislation:** In the event that the South Carolina General Assembly enacts legislation prohibiting the ability of local governments to impose and collect Storm Water Service Fees, then this Agreement shall terminate.

14. **Representation and Warranties of the Association:**

The Association represents and warrants:

- a. That any and all necessary approvals and/or resolutions have been obtained, that it has the full authority to execute, deliver and perform this Agreement and to execute and deliver the Access, Drainage and Maintenance Easement to be delivered pursuant to this Agreement, and that the individual(s) executing such documents have full power and authority to bind the Association to the same.
- b. That it is not now a party to any litigation affecting the property burdened by the easements herein which could impair the

obligations of the Association under this Agreement or the Access, Drainage and Maintenance Easement, and the Association knows of no litigation or threatened litigation affecting their ability to grant said easements.

- c. That as to any pipes or other portions of the Drainage System as shown on Exhibit "A" hereto which are located in whole or in part on private residential lots, the Association has full authority under the Covenants to convey or assign to the Town the rights contemplated in this Agreement and the Access, Drainage and Maintenance Easement.

15. **Town Representation and Warranties:**

The Town represents and warrants to the Association:

- a. As is shown by the Resolution of the TOWN that is attached hereto as Exhibit "D", the Town represents that it has the power and authority to enter into this Agreement and complete its obligations hereunder; and,
  - b. That it is not now a party to any litigation which could impair the obligations of the Town under this Agreement, and the Town knows of no litigation or threatened litigation affecting its ability to perform hereunder.
16. **Taxes:** The Association shall ensure payment, prior to delinquency, all taxes on Association properties within the Development burdened by the easements granted under this Agreement.

17. **Default:** The Town and the Association agree that in the event of a default or breach of any provision or term of this Agreement, the non-defaulting party or parties shall give written notice to the defaulting party or parties of the default or breach. In the event that the defaulting party or parties fail to cure the default or breach within thirty (30) days of the date of the written notice specifying the default or breach, unless a non-monetary default or breach cannot reasonably be cured within said thirty (30) day time period, then said period shall be reasonably extended, up to one hundred and twenty (120) days, then the non-defaulting party or parties shall be entitled to pursue any remedy at law or in equity against the defaulting party or parties, including but not limited to an action for damages, injunction or specific performance of this Agreement.
18. **Attorney's Fees:** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default or misrepresentation in connection with any of the provisions or terms of this Agreement, the prevailing party or parties shall be entitled to seek recovery of its or their reasonable attorney's fees and any costs incurred as a result of any such action or proceeding, whether incurred before the commencement of suit or after the commencement of suit, and including appellate proceedings, in addition to any other relief to which the prevailing party or parties is or are entitled.
19. **General Provisions:**
- a. *Binding Effect:* This Agreement shall inure to the benefit of and be binding upon the Association and the Town, and their respective successors and assigns.

- b. *Amendment, Changes and Modifications:* Except as is otherwise provided herein, this Agreement may not be modified, amended, changed or altered without the written consent of the TOWN and the Association.
- c. *Severability:* In the event that any term or provision of this Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other term or provision hereof.
- d. *Execution in Counterparts:* This Agreement may be simultaneously executed in several counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument.
- e. *Applicable Law:* This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.
- f. *Captions:* The captions or headings used herein are for convenience only and in no way define, limit, expand or describe the scope or intent of any term or provision of this Agreement.
- g. *Plural/Singular:* Where appropriate, the use of the singular herein shall be deemed to include the plural, and the use of the plural herein shall be deemed to include the use of the singular.
- h. *No Third Party Beneficiaries:* The Town and the Association affirmatively represent that this Agreement is made solely for the benefit of the Parties hereto and their respective successors and assigns and not for the benefit of any third party who is not a

signature party hereto. It is the express intent of the Town and the Association that no other party shall have any enforceable rights hereunder, or any right to the enforcement hereof, or to any claim for damages as a result of any alleged breach hereof.

- i. *Notices:* All notices, applications, requests, certificates or other communications required hereunder shall be sufficiently given and shall be deemed given on the date when such is delivered in person, or deposited in the United States Mail, by regular first class mail, postage prepaid, at the following addresses, or at such other address as may be designated, in writing, by the Parties:

To the Town:           The Town of Hilton Head Island, SC  
                              Attn: Marc Orlando, Town Manager  
                              One Town Center Court  
                              Hilton Head Island, SC 29928

To the Association: Bermuda Pointe Property Owners'  
                              Association, Inc.  
                              Attn: Donald Hooks  
                              C/O: Atlantic Estates Management  
                              Post Office Box 7431  
                              Hilton Head Island, SC 29938

- j. *No Waiver:* No failure of any Party hereto to exercise any power or right given to such Party hereunder, or to insist on strict compliance by any other Party of its obligations hereunder, and no custom or practice of the Parties at variance with the terms and provisions hereof shall constitute a waiver of any Party's right to thereafter demand strict compliance with the terms of this Agreement.



k. *Further Assurances and Corrective Documents:* The TOWN and the Association agree to do, execute, acknowledge, deliver or cause to be done all such further acts as may be reasonably determined to be necessary to carry out this Agreement and give effect to the terms and provisions hereof. The Town and the Association agree that each shall, upon request, execute and deliver such other or further or corrective documents as may be reasonably determined to be necessary to carry out this Agreement and each of the terms and provisions hereof.

In Witness Whereof, The Town of Hilton Head Island, South Carolina; and Bermuda Pointe Property Owners' Association, Inc., by and through their duly authorized officers, have executed and delivered this Agreement as of this \_\_\_\_ day of \_\_\_\_\_, 2021.

**SIGNATURES BEGIN ON NEXT PAGE**

WITNESSES:

Bermuda Pointe Property Owners' Association,  
Inc.

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_

Attest: \_\_\_\_\_

Its: \_\_\_\_\_

THE TOWN OF HILTON HEAD ISLAND,  
SOUTH CAROLINA

\_\_\_\_\_

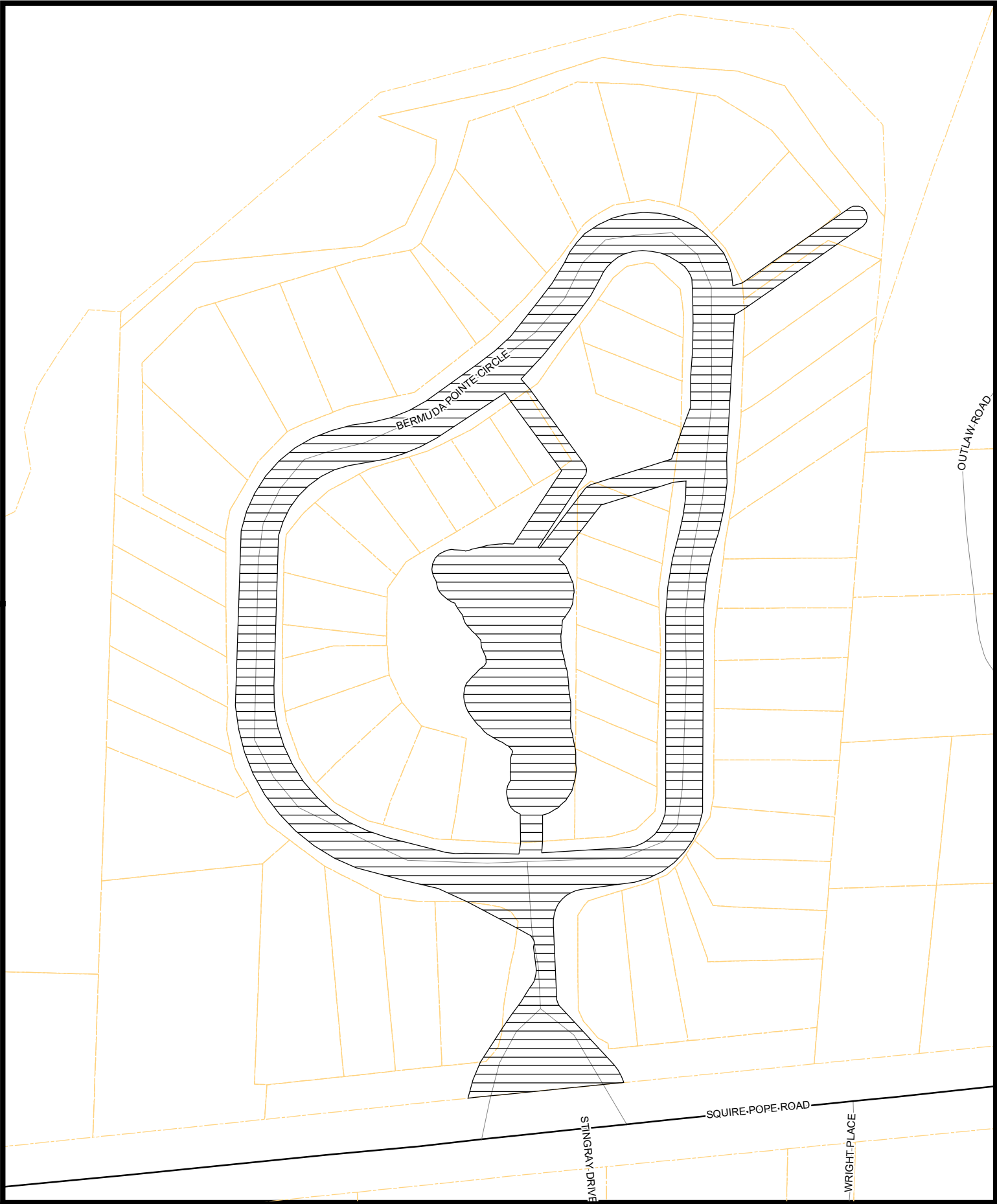
By: \_\_\_\_\_  
John McCann, Mayor

\_\_\_\_\_

Attest: \_\_\_\_\_  
Marc Orlando, Town Manager

## **List of Exhibits**

- Exhibit A Map depicting the limits of the Access, Drainage and Maintenance Easement areas and Drainage Systems covered by this Agreement
- Exhibit B Map depicting the Development covered by this Agreement
- Exhibit C Access, Drainage and Maintenance Easement
- Exhibit D Town Resolution authorizing this Agreement



TOWN OF HILTON HEAD ISLAND  
 ONE TOWN CENTER COURT  
 HILTON HEAD ISLAND, S.C. 29928  
 PHONE (843) 341-4600

Date Created: \_\_\_\_\_  
 Prepared by: map.maf

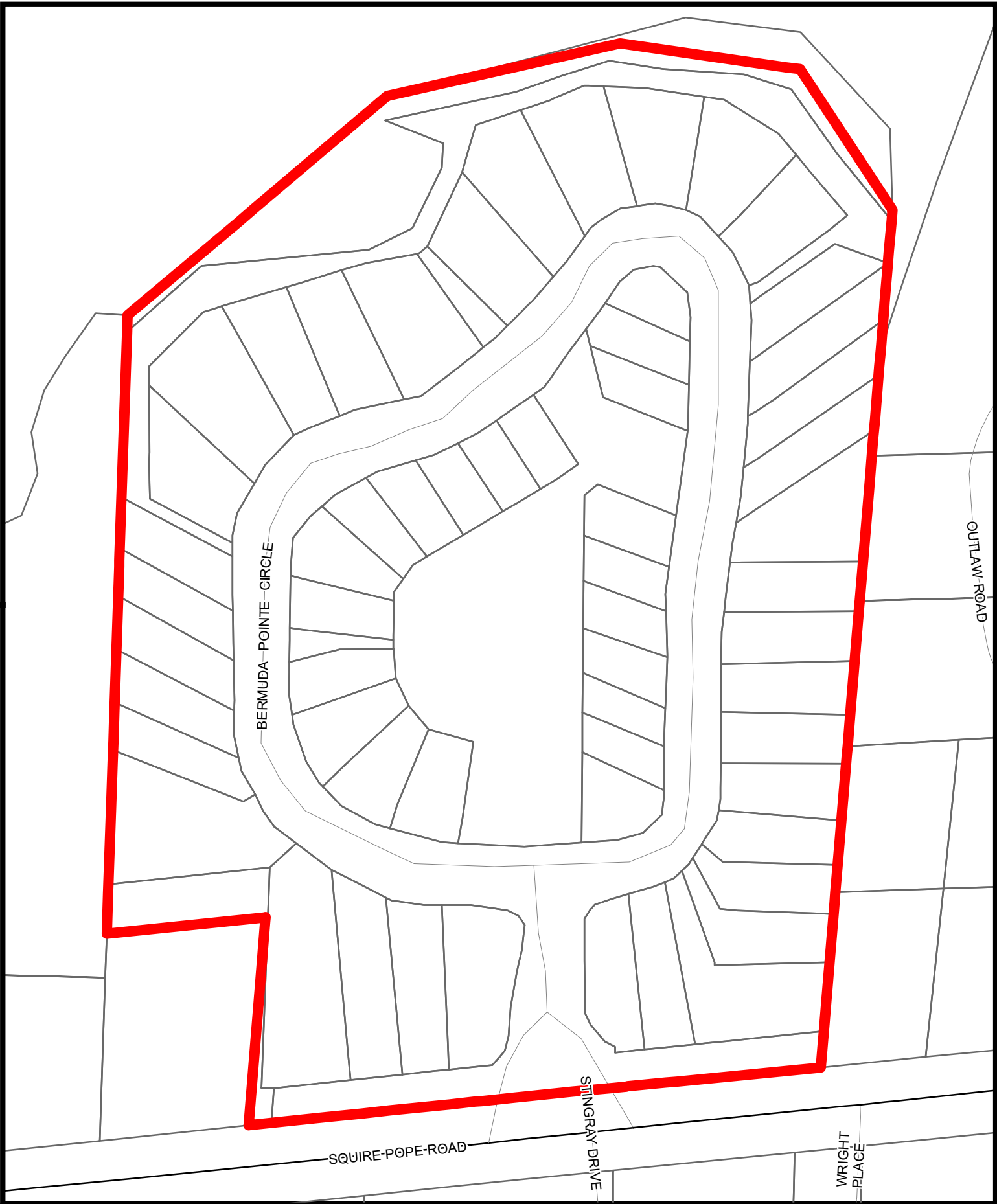
## EXHIBIT A

### BERMUDA POINTE DRAINAGE EASEMENT LIMITS

1 inch = 100 feet



The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion or for any losses arising from the use of the map.



BERMUDA POINTE CIRCLE

SQUIRE-POPE ROAD

ST. INGRAY DRIVE

WRIGHT PLACE

OUTLAW ROAD

**EXHIBIT B  
 BERMUDA POINTE  
 PLANNED UNIT DEVELOPMENT**

1 inch = 100 feet



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