



Town of Hilton Head Island
TOWN COUNCIL MEETING
Tuesday, September 21, 2021, 3:00 p.m.
AGENDA

The Town Council meeting will be conducted virtually and can be viewed on the [Town of Hilton Head Island Public Meetings Facebook Page](#), the [Town of Hilton Head Island](#) website, [Beaufort County Channel](#) and Spectrum Channel 1304.

- 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. Roll Call**
- 4. Pledge to the Flag**
- 5. Invocation – Reverend Dr. Robin Dease – St. Andrew By-the-Sea United Methodist Church**
- 6. Approval of the Minutes**
 - a. Town Council Workshop – August 16, 2021
 - b. Town Council Regular Meeting – August 17, 2021
 - c. Town Council Special Meeting – August 19, 2021
 - d. Town Council Workshop – August 23, 2021
- 7. Report of the Town Manager**
 - a. Items of Interest
 - i. Update on the Procedure for the 2020 Town Redistricting – Josh Gruber, Deputy Town Manager
 - b. MASC Presentation of the 2021 Municipal Achievement Award for the Rehabilitation of Storm Water Pump Stations
 - c. Board of Zoning Appeals Bi-Annual Update – Patsy Brison, Chair
- 8. Reports from the Members of Town Council**
 - a. General Reports from Town Council
 - b. Report of the Lowcountry Area Transportation Study – Councilman Stanford
 - c. Report of the Lowcountry Council of Governments – Councilwoman Becker
 - d. Report of the South Carolina Floodwater Commission – Councilman Brown
 - e. Report of the Southern Lowcountry Regional Board – Councilman Lennox
 - f. Report of the Beaufort County Airports Board – Councilman Ames
 - g. Report of the Community Services & Public Safety Committee – Councilman Harkins
 - h. Report of the Public Planning Committee – Councilman Ames
 - i. Report of the Finance & Administrative Committee – Councilman Lennox

9. Commendation – Arts Center of Coastal Carolina 25th Anniversary

10. Appearance by Citizens

Citizens who wish to address the Mayor and Town Council during Appearance by Citizens or on specific agenda items must contact the Town Clerk at 843.341.4701 no later than 2:00 p.m. the day of the meeting. Citizens should be prepared to provide (i) full spelling of first and last name, (ii) phone number and email address, and (iii) topic or item you will be addressing.

Citizens may also submit written comments via the [Town's Open Town Hall Portal](#). The portal will also close at 2:00 p.m. the day of the meeting. Comments submitted through the portal will be shared with Town Council and made part of the official record.

11. Unfinished Business

a. Second Reading of Proposed Ordinance 2021-20 – Business License Model Ordinance

Second Reading of Proposed Ordinance 2021-20 to repeal and replace certain portions of the Municipal Code of the Town of Hilton Head Island, South Carolina, to include Sections 10-1-10 through Section 10-1-210 and replace with revised Code Sections 10-1-10 through 10-1-250; and providing for severability and an effective date.

12. New Business

a. First Reading of Proposed Ordinance 2021-22 – Fiscal Year 2022 Budget Amendments

First Reading of Proposed Ordinance 2021-22 to amend the Budget for the Town of Hilton Head Island, South Carolina, for the Fiscal Year ending June 30, 2022; to provide for the budgeted appropriations of prior year Budget Roll Forwards and certain other appropriations and commitments and the expenditures of certain funds; to allocate the sources of revenue for the said funds; and providing for severability and an effective date.

b. Consideration of a Resolution – 2020 Consolidated Annual Performance Evaluation Report

Consideration of a Resolution of the Town Council of the Town of Hilton Head Island, South Carolina to approve the Community Development Block Grant (CDBG) 2020 Consolidated Annual Performance Evaluation Report (CAPER)

c. Consideration of a Resolution – Drainage Easement Agreement with the 3901 Main Street Property Owners Association

Consideration of 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.

d. Consideration of Resolutions – Standard Drainage Agreements and Access, Drainage and Maintenance Easements

Consideration of resolutions authorizing the Town to execute 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.

e. Consideration of a Resolution – Office of Cultural Affairs & Arts Council Strategic Plan

Consideration of a Resolution of the Town Council of the Town of Hilton Head Island, South Carolina for the adoption of a Strategic Plan to address priorities for the Office of Cultural Affairs and Arts Council

f. 5:00 p.m. Public Hearing and First Reading of Proposed Ordinance 2021-17 – 2020 Lowcountry Hazard Mitigation Plan

First Reading of the Proposed Ordinance 2021-17 to adopt the “2020 Lowcountry Hazard Mitigation Plan” as an appendix of “Our Plan, the Town of Hilton Head Island 2020-2040 Comprehensive Plan”; and providing for severability and an effective date.

13. Executive Session

- a.** Discussion of negotiations incident to proposed sale or purchase of property in the: (i) Beach City Road area, (ii) William Hilton Parkway and Stoney area, (iii) William Hilton Parkway and Squire Pope area, (iv) William Hilton Parkway and Old Wild Horse area, and (v) William Hilton Parkway in the Mid-Island area. [pursuant to SC Freedom of Information Act § 30-4-70(a)(2)]
- b.** Receipt of legal advice concerning pending, threatened, or potential claim related to user fees on tax bills [pursuant to SC Freedom of Information Act § 30-4-70(a)(2)]

14. Possible actions by Town Council concerning matters discussed in Executive Session

15. Adjournment



Town of Hilton Head Island TOWN COUNCIL WORKSHOP Monday, August 16, 2021 at 1:00 p.m. MEETING MINUTES

Present from Town Council: John J. McCann, *Mayor*; Bill Harkins, *Mayor Pro-Tempore*; David Ames, Tamara Becker, Alex Brown, Tom Lennox, Glenn Stanford, *Town Council Members*

Present from Town Staff: Marc Orlando, *Town Manager*; Josh Gruber, *Deputy Town Manager*; Angie Stone, *Assistant Town Manager*; Jennifer Ray, *Capital Projects Manager*; Taylor Ladd, *Project Planner*; Krista Wiedmeyer, *Town Clerk*

1. Call to Order

Mayor McCann called the meeting to order at 1:00 p.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. Roll Call

By way of roll call, the attendance of the Town Council was affirmed.

4. Pledge to the Flag

5. Mid-Island Initiative Area Project Overview Presentation

Mayor McCann invited Jennifer Ray, Capital Projects Manager, to the podium to open the discussion concerning the Mid-Island Initiative project. Ms. Ray opened the discussion with a reminder that this project was one of Town Council's priorities. She noted that the project includes both preparation of a redevelopment strategy for the middle of the Island, as well as plans for a new community park. Ms. Ray said that she and her team are taking a different approach with this project, in that they are coming before Town Council to seek their input on the project since ultimately Town Council will need to approve the final plan. Ms. Ray reported that the Town had hired MKSK for this project, and invited Brian Kinzelman, Principal with MKSK, Inc. to make his presentation.

Mr. Kinzelman opened his presentation by reviewing the MKSK Team, and reiterating that this workshop is to seek input from Town Council. He said essentially this is two separate projects, but both running simultaneously. Mr. Kinzelman walked through the proposed scope of work and the schedule for the project. He reviewed the planning and design process, starting with the redevelopment strategy and the park design.

Mr. Kinzelman expressed the importance of community engagement and reviewed the schedule for such events. He discussed the surrounding neighborhoods and area near the project. Mr. Kinzelman then reviewed the different park programs whether active or passive or both. He discussed the need for storm debris staging and what impacts they could have. Prior to opening it up for questions, he reviewed what the next steps would be.

Each member of Town Council expressed their gratitude for the presentation and proposed plan for the project. Most of the members of Town Council stated that the park needed to remain a passive park. Mr. Stanford stated that one of the motivating factors for developing this park is to stimulate development of the surrounding commercial properties and to protect the surrounding residential properties. He requested some information about some success stories from other communities in similar situation. Mr. Brown stated he would like to see a little bit more information on the areas that have been identifies as part of the opportunity zone. Mr. Ames said that he has a sense of excitement similar to when he was working to develop Hilton Head. He went on to say when developing this project it is important to listen to the stakeholders and weigh the pros and cons.

With no further comments from the members of Council, Mayor McCann opened the discussion to the public in attendance. Irene Levine, Heather Rath, Terry Heron, Jack Daly, Pauline Leland, and Joan Hazel address the Mayor and Town Council about the Mid-Island Initiative and the project plans.

6. Adjournment

By unanimous vote, the meeting adjourned at 2:04 p.m.

Approved: September 21, 2021

John J. McCann, Mayor

Krista M. Wiedmeyer, Town Clerk



**Town of Hilton Head Island
TOWN COUNCIL WORKSHOP
Tuesday, August 17, 2021 at 4:00 p.m.
MEETING MINUTES**

Present from Town Council: John J. McCann, *Mayor*; Bill Harkins, *Mayor Pro-Tempore*; Tamara Becker, Alex Brown, Tom Lennox, Glenn Stanford, *Town Council Members*

Absent from Town Council: David Ames, *Town Council Member*

Present from Town Staff: Marc Orlando, *Town Manager*; Josh Gruber, *Deputy Town Manager*; Shawn Colin, *Advisor to the Town Manager*; Angie Stone, *Assistant Town Manager*; John Troyer, *Finance Director*; April Akins, *Revenue Services Manager*; Chris Yates, *Interim Director of Community Development*; Cindaia Ervin, *Finance Administrative Assistant*; Krista Wiedmeyer, *Town Clerk*

1. Call to Order

Mayor McCann called the meeting to order at 4:00 p.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. Roll Call

Roll was taken by the Town Clerk, and attendance was confirmed. Mr. Ames was absent, but excused.

4. Pledge to the Flag

5. Invocation – Reverend General Hay

Reverend General Hay delivered the invocation

6. Approval of the Minutes

a. Town Council Regular Meeting – July 20, 2021

Mr. Harkins moved to approve the minutes as written. Mr. Stanford seconded. The motion carried by a vote of 6-0

Mayor McCann moved to modify the agenda, moving agenda item 10(a) Consideration of Enacting a Local State of Emergency in the Town of Hilton Head Island, to the top of the agenda. Mr. Harkins seconded. The motion carried by a vote of 6-0.

10 New Business

a. Consideration of Enacting a Local State of Emergency in the Town of Hilton Head Island

Mayor McCann stated that on Monday, September 16, 2021 at 9:00 a.m., he signed the Declaration of a Local State of Emergency. He said the item on today's agenda is for the Town Council to ratify said State of Emergency. The Mayor went on to say that the State of Emergency allows him certain powers that without it he could not do. For example, authorizing the Town Manager to take any necessary steps to protect Town staff and citizens coming to Town Hall and to hold public meeting virtually. He noted that at the prior day's meeting, the State of Emergency allowed for one of the Town Council members to participate remotely since he was ill. Mayor McCann stated that at no time was there going to be a discussion or consideration of enacting an ordinance which would require face coverings throughout the municipal limits. He stated this several times before inviting Jeremy Clark, CEO of Hilton Head Regional Health, to the podium to address Town Council about the status of the Hospital.

Mr. Clark stated that the medical staff and 1200 colleagues since the beginning of the pandemic have received great leadership from the Town and Chamber, who helped create a safer environment for residents, workers and visitors. He reported on the number of patients currently admitted to the hospital for treatment of COVID-19. He said the numbers have significantly increased over the past three weeks and continue to climb. Mr. Clark said the majority of the patients being treated have not been completely vaccinated and are under the age of 65. He expressed the importance of the vaccine and asked the Town to continue to support and stress this message throughout the community. Mr. Clark discussed the numerous locations where someone can receive the vaccine and reiterated its importance. He also talked about receiving the booster and the importance for those who are immunocompromised to get this shot. Upon the conclusion of his report to Town Council, Mr. Clark answered several questions posed to him from Council. Including vaccination rates, the locations throughout the community where citizens can be tested, and others.

7. Report of the Town Manager

Mr. Orlando thanked Mr. Clark again for his report and update. He stated for clarity purposes, as a result of the declared State of Emergency, he had instituted the requirement of wearing a face covering at Town Administrative Buildings. He said these buildings include Town Hall, Fire Rescue Headquarters and Facilities Management. Mr. Orlando said that he has a duty to protect his staff and help them protect themselves during the pandemic. He said along with the face covering requirement, there will be a pivot to virtual meetings. Mr. Orlando concluded and invited Angie Stone, Assistant Town Manager, to provide an update on the community response the Town is currently taking.

Ms. Stone said that like most others, the Town was caught off guard by the recent surge in cases due to the Delta Variant. She said in correspondence with the Town's Emergency Manager, there is a continued effort to monitor the data. Ms. Stone reported that the Town has reached out to DHEC to see about a combined effort for testing and vaccine clinics.

An unidentified citizen approached the podium to address the Mayor and Town Council about his concern that a mandate for face coverings was being discussed and passed at the meeting. Mayor McCann asked the citizen to take his seat, that there was not going to be a discussion or consideration of enacting a face covering ordinance.

Mayor McCann requested a motion for Town Council's endorsement and final ratification of the Local State of Emergency. Mr. Harkins made said motion, with Mr. Stanford seconding. With no further discussion, the motion carried by a vote of 6-0.

Due to the disruption of the meeting, at 4:25 p.m., Mayor McCann called for a recess of the meeting.

Returning to the dais at 4:40 p.m., Mayor McCann called the meeting back to order. Letting the audience know that he would be taking public comment, but there would be no further discussion about enacting a face covering ordinance and asked citizens to refrain from the continued discussion.

Joe Ryan: addressed the Mayor and Town Council to request that they not consider enacting a face covering mandate. He said that he nor anyone else would comply with such a mandate because it is a threat against their civil liberties. He also said the he was opposed to meetings returning to virtual.

Melissa Toro: addressed the Mayor and Town Council to not take away her Constitutional Rights by enacting a mask mandate. She said she moved from New York to South Carolina to be free.

Iris Shedlock: addressed the Mayor and Town Council reporting that the Corona Virus was actually computer generated and that variants do not exist. She also reported that she was not happy about the Town pushing the use of the vaccine.

Marty Baumgarner: addressed the Mayor and Town Council, stating that the reason everyone is fussing about the mask mandate today is because the Town unilaterally declared a State of Emergency without proper consideration with the citizens.

Lynn Greeley: addressed the Mayor and Town Council asking them to review the facts and requested that this no longer be called the pandemic of the unvaccinated. She reported statistics from the Israeli Health Administration, stating that over half of those infected with COVID-19 are in fact vaccinated. She went on to say that the civil liberties of the citizens where being taken away.

Brenda Dean: addressed the Mayor and Town Council on behalf of her kids. She stated that she has not seen the science that requires kids to wear a mask on a hot bus. She asked for what Council's reasoning is for requiring children to wear masks on a bus is. She said that they went the wrong way going after the children in the schools.

Keith Osborn: addressed the Mayor and Town Council to say he is not in favor of the vaccine or a mask mandate. He said there are other alternative therapeutics that work to combat the virus better.

Angie Hutchins: addressed the Mayor and Town Council reporting that she moved to the area last year from North Carolina so that she could have a fee place to live, breathe and function. She stated that she feels there is a lot of anger because she and other residents are being censored from speaking the truth.

Charles Kellen: addressed the Mayor and Town Council about the face coverings being ineffective, further stating that face masks should not be mandated and citizens should be allowed to make their own personal choice.

Deborah Stevenson: addressed the Mayor and Town Council stating that she had read several peer reviews which state that face coverings are ineffective for preventing the spread of this virus. She continued by stating that the vaccine is experimental and does not keep people from getting sick.

Joshua Martinez: addressed the Mayor and Town Council stating that he is a new resident of South Carolina, having moved from Pennsylvania. He said the reason he moved to South Carolina was to live in a free state. He also said he has been speaking to members of the local delegation about the validity of the vaccine and masks and about how neither work.

Kathy Bielinski: addressed the Mayor and Town Council about her work she used to do in the pharmaceutical industry running and managing clinical trials like the ones for the COVID-19 vaccine. She said that in her experience, she has never seen a clinical trial have less information than those of the vaccines. She said that the information that is provided is not enough data to show the validity of the vaccine.

Jim Stevenson: addressed the Mayor and Town Council in his capacity of a rocket scientist, noting that he had worked in the nuclear weapons industry. He stated that he feels the vaccine is bologna and all a big lie. He said people should be allowed to make their own choice to be vaccinated.

Ellie Short (note, unable to clearly hear name of citizen): addressed the Mayor and Town Council asking why the Town was pushing or forcing a vaccine that doesn't work on citizens.

Christos (note, unable to clearly hear name of citizen): addressed the Mayor and Town Council to state that the technology for the vaccine is experimental and that there isn't a doctor that can deny this information. He said that there is no long-term study to show that the vaccine is anything but experimental and the Town should not be providing information on it.

Citizen – name inaudible: addressed the Mayor and Town Council stating that given the narrative being pushed, the Town should take some element of liability.

Steven Schwartz: addressed the Mayor and Town Council stating that he had called the Governor's office earlier and was assured by a representative of the Governor that he issued an Executive Order forbidding local governments from issuing mass mandates.

Arlene (note, citizen did not state last name): addressed the Mayor and Town Council stating that she had recently moved back to the area and that this was not the area she moved away from. She said as a dental hygienist in a pediatric dentist's office, they found that the masks were terrifying to children. She said when asking a teacher to wear a mask, you are just scaring the students.

Kelly Hughes: addressed the Mayor and Town Council about the difficulties masks cause for those who are hearing impaired or born with a hearing disability. She said as a

lip reader, not being able to see peoples lips causes a lot of trouble for her as she can no longer communicate effectively.

Chris Ruffner: addressed the Mayor and Town Council stating that every time the Town invokes an emergency order, everyone thinks they are going to die and that it makes no sense to continue to take such measures.

Cherry Norris: addressed the Mayor and Town Council stating that she felt like what was happening was part of a playbook. She discussed many other matters currently taking place throughout the world, noting that communities are divided. She stated that she supports and validates everything that was previously said.

Mayor McCann closed the public comment portion by reiterating that a mask ordinance was not being discussed, only the State of Emergency. He called for a motion to reaffirm the ratification of the State of Emergency. Mr. Harkins moved to reaffirm, with Mr. Stanford seconding. The motion carried by a vote of 5-0-1, Mrs. Becker abstaining.

Several citizens within the audience spoke from their seats, not allowing for the meeting to be brought back to order.

8. Adjournment

The Mayor called for a motion to table the remainder of the meeting for another day and adjourn the meeting. By unanimous consent the meeting was adjourned at 5:47 p.m.

Approved: September 21, 2021

Krista M. Wiedmeyer, Town Clerk

John J. McCann, Mayor



Town of Hilton Head Island
TOWN COUNCIL WORKSHOP
Thursday, August 19, 2021 at 11:00 a.m.
MEETING MINUTES

Present from Town Council: John J. McCann, *Mayor*; Bill Harkins, *Mayor Pro-Tempore*; David Ames, Tamara Becker, Alex Brown, Tom Lennox, Glenn Stanford, *Town Council Members*

Present from Town Staff: Marc Orlando, *Town Manager*; Josh Gruber, *Deputy Town Manager*; Shawn Colin, *Advisor to the Town Manager*; Angie Stone, *Assistant Town Manager*; John Troyer, *Finance Director*; April Akins, *Revenue Services Manager*; Chris Yates, *Interim Director of Community Development*; Teri Lewis, *Deputy Director of Community Development*; Krista Wiedmeyer, *Town Clerk*

1. Call to Order

Mayor McCann called the meeting to order at 11:00 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. Roll Call

Roll was taken by the Town Clerk, and attendance was confirmed.

4. Pledge to the Flag

Mayor McCann asked for a motion to move all of the New Business items up to the top of the agenda just in case Mr. Lennox had to leave prior to the end of the New Business discussions. Mr. Harkins moved to approve the move. Mr. Stanford seconded. The motion carried by a vote of 7-0.

5. New Business

a. First Reading of Proposed Ordinance 2021-20 – Business License Model Ordinance

First Reading of Proposed Ordinance 2021-20 to repeal and replace certain portions of the Municipal Code of the Town of Hilton Head Island, South Carolina, to include Sections 10-1-10 through Section 10-1-210 and replace with revised Code Sections 10-1-10 through 10-1-250; and providing for severability and an effective date.

Mr. Harkins moved to approve. Mr. Stanford seconded. Ms. Akins presented an overview of the changes and updates to the ordinance. She answered questions posed to her about the changes. With no further discussion, the motion to approved carried by a vote of 7-0.

b. Consideration of the Affiliated Agency Town Funding Standardization Process

Mr. Harkins moved to approve. Mr. Stanford seconded. Mr. Troyer reviewed the recommendation, providing a high level overview of the proposed program and the noted that this matter had been previously discussed in the Finance and Administrative Committee. With no discussion from the members of Town Council, the motion carried by a vote of 7-0.

c. Consideration of the American Rescue Plan Funding Appropriations

Mr. Harkins moved to approve. Mr. Stanford seconded. Mr. Orlando reviewed the funding and the recommendation and what the funds could be used for. He discussed the timing for utilizing the funds and explained how the Town would be teaming up with the Community Foundation to administer a grant awards program to local groups and organizations that had been directly impacted by COVID-19. Mr. Orlando answered various questions from the Mayor and members of Town Council. With no further discussion, the motion carried by a vote of 7-0.

d. Consideration of the Proposed Calendar Year 2022 Town Council Meeting Schedule

Mr. Harkins moved to approve. Mr. Stanford seconded. With no discussion, the motion carried by a vote of 7-0.

6. Report of the Town Manager

a. Items of Interest

i. Building Safety Program – Chris Yates, Interim Director of Community Development

Mr. Yates reviewed the Building Safety Program. He said the Town enforces the latest versions of the International Building Code and the International Residential Building Code as adopted and/or modified by the South Carolina Building Codes Council. He said the receipt of a Certificate of Occupancy allows a property owner to safely occupy a building. Mr. Yates said, in light of the tragic events that occurred in Surfside, Florida, the Town is proactively contacting the owners of all commercial property located on the Island with recommendations of action.

b. Quarterly Update of the Gullah Geechee Land & Cultural Preservation Project Workplan – Teri Lewis, Deputy Director of Community Development

Ms. Lewis reviewed some of the highlights of the Gullah Geechee Land & Cultural Preservation Project Workplan. This included the current status of the Gullah Market, the genealogical research the Heritage Library has been doing for the Genealogy Clinics, and other key items. She also answered questions posed to her from Council.

7. Reports from the Members of Town Council

a. General Reports from Town Council

Mayor McCann discussed what took place at the August 17, 2021 Town Council meeting, noting that the citizens who were in attendance were well organized. He said that a better job has to be done to respond to these types of situations and be better prepared. Mr. Orlando responded to the Mayor, reporting that he has directed staff to begin working on the security for the building and especially in Council Chambers. Each member of Council also addressed the situation from the prior meeting, expressing similar concerns as the Mayor had.

b. Report of the Lowcountry Area Transportation Study – Councilman Stanford

Mr. Stanford reported that at a recent meeting, the group discussed the 278 project and the project manager reported on the preferred alternative. He said that the project manager acknowledged that there had been many questions raised about the no left turns, and stated that revisions to the preferred alternative are likely to occur.

c. Report of the Lowcountry Council of Governments – Councilwoman Becker

Mrs. Becker said that she did not have a report for the Council of Governments, but reported on the Island Rec. Strategic Planning meeting she attended. She said they discussed the organizational and operating challenges they were going through. Mrs. Becker stated it was a good meeting.

d. Report of the Southern Lowcountry Regional Board – Councilman Lennox

Mr. Lennox reported that the board received a report from the County Administrator about the Regional Housing Trust Fund. He said a final draft should be available in the coming month.

e. Report of the Community Services & Public Safety Committee – Councilman Harkins

Mr. Harkins reported on the items discussed at the July 26, 2021 meeting. He said he would expect to see those items, on the next Town Council agenda. Mr. Harkins said those items are the Office of Cultural Affairs Strategic Plan and various easements and drainage agreements. He said that they also discussed an ordinance that would limit the use of beach tents. Mr. Harkins said that the Committee sent it back to staff for further review and refinement.

f. Report of the Finance & Administrative Committee – Councilman Lennox

Mr. Lennox reported that the Committee recently met where they discussed the Affiliated Agency Town Funding Standardization Process and the American Rescue Plan Funding Appropriations.

8. Appearance by Citizens

Skip Hoagland: addressed the Mayor and Town Council on matters related to the use of Town funds.

Matt Sweeny: addressed the Mayor and Town Council on matters related to the American Rescue Plan funds.

XoDan Lee: addressed the Mayor and Town Council on matters related to the American Rescue Plan funds.

9. Adjournment

By unanimous vote, the meeting adjourned at 12:54 p.m.

Approved: September 21, 2021

Krista M. Wiedmeyer, Town Clerk

John J. McCann, Mayor

DRAFT



Town of Hilton Head Island TOWN COUNCIL WORKSHOP Monday, August 23, 2021 at 11:00 a.m. MEETING MINUTES

Present from Town Council: John J. McCann, *Mayor*; Bill Harkins, *Mayor Pro-Tempore*; David Ames, Tamara Becker, Alex Brown, Tom Lennox, Glenn Stanford, *Town Council Members*

Present from Town Staff: Marc Orlando, *Town Manager*; Josh Gruber, *Deputy Town Manager*; Jennifer Ray, *Capital Projects Manager*; Taylor Ladd, *Project Planner*; Krista Wiedmeyer, *Town Clerk*

1. Call to Order

Mayor McCann called the meeting to order at 11:00 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. Roll Call

Roll was taken by the Town Clerk, and attendance was confirmed.

4. Approval of the Agenda

Mr. Harkins moved to approve. Mr. Stanford seconded. Motion carried by a vote of 7-0.

5. Pledge to the Flag

6. Chaplin Community Park & Crossings Park Redevelopment Project Overview Presentation

Ms. Ladd opened the discussion by giving a brief overview of the scope of work for the project. She introduced the consultant, Wood and Partners who gave two presentations, one on each park project.

Kyle Theodor of Wood and Partners, reviewed the project overview for each of the two park projects. She discussed the proposed scope of work, reviewed the planning and design process. Ms. Theodor indicated that the goal of the workshop was to validate the programs Town Council would like to see at each park. She discussed the number of focus groups her team would be part of to gather input from various stakeholder groups. Upon concluding both presentations, Ms. Theodor answered questions from the Mayor and Town Council. Each member of Town Council appreciated the information and provided input as to what they would like to see at each park. Some of the programming ranged from basketball courts to tennis courts and some pickleball courts too. They discussed the pathways and some irrigation for some water features. Many of the Council members said that they would like to hear some feedback from the Rec. Center on what programs they would like to see.

7. Adjournment

By unanimous vote, the meeting adjourned at 1:06 p.m.

Approved: September 21, 2021

Krista M. Wiedmeyer, Town Clerk

John J. McCann, Mayor

DRAFT



TOWN OF HILTON HEAD ISLAND

Executive Department

TO: Town Council
FROM: Marc Orlando, ICMA-CM – Town Manager
DATE: 09/07/2021
SUBJECT: Centennial Redistricting Process Update
CC: Joshua Gruber, Deputy Town Manager

Background:

The Town is constitutionally obligated to undertake a redrawing of its Town Council wards in response to the issuance of new decennial census data. In support of this mandatory process, the Town has contacted the South Carolina Revenue and Fiscal Affairs Office (“RFA”) to assist in this process. It is important to note that Office of Research and Statistics for the State Budget and Control Board is the predecessor agency to the RFA and was called upon by the Town to assist in its last redistricting efforts in 2011.

Status Update:

On June 16, 2021, the Town contacted the RFA to formally request their assistance in its redistricting efforts. The RFA acknowledged the submission and committed to providing the requested support. Additionally, the RFA provided two documents for public education purposes. Those documents consisted of an RFA Redistricting Process with Local Governments fact sheet and a Q&A document on the subject of Redistricting in South Carolina. Both of those documents have been included in this Memorandum as attachments.

On August 2, 2021, the Town received additional document from the RFA. Based upon information that they had gathered at the National Conference of State Legislatures, the RFA was recommending that each local governmental that wanted to utilize the RFA’s redistricting services should work with them to schedule a public meeting with members of Town Council. The purpose of this meeting would be to help explain the redistricting process and to help Town Council identify existing communities of interest that would need to be protected as RFA prepared the initial redrawing maps. A copy of that letter has been included as an attachment as well and staff are working to schedule the requested meeting accordingly.

On August 12, 2021, the United States Census Bureau issued the 2020 Census data for state and local governments. While this information does not show the specific population changes within each of the Town Council wards, it does show that within the municipal boundaries of the Town, its population increased by 562 people from a 2010 figure of 37,099 to a 2020 figure of 37,661. For reference purposes, each of the 2010 Town Council wards had a target goal of 6,183 individuals in each district with a low of 6,059 in Ward 4 and a high of 6,293 in Ward 2. If the increase of 562 individuals is at least somewhat spread out amongst some of the existing wards, it may likely mean that there might only need to be minor adjustments made to the existing Ward boundaries in order to successfully meet the constitutionally mandated criteria.

Conclusion:

Staff is actively preparing for the decennial redistricting project and has engaged the services of the South Carolina Revenue and Fiscal Affairs Office to assist in accomplishing this task. We are working on scheduling an initial public meeting on this matter as requested by RFA and will provide further updates on scheduling as they become known.

REDISTRICTING IN SOUTH CAROLINA

Q: WHAT IS REDISTRICTING AND HOW DOES IT DIFFER FROM REAPPORTIONMENT?

Redistricting is the process of redrawing the lines of districts from which public officials are elected. It typically takes place after each census to accommodate population changes over the previous decade. Redistricting affects all jurisdictions that have single-member elections, whether for members of Congress, state legislatures, county councils, city councils, school boards, etc. and seeks to equalize population among districts.

Reapportionment is the reallocation of congressional seats in the U.S. House of Representatives based on total state population. Like with redistricting, it is performed after the release of the state population totals based on the latest decennial census, which was the 2020 Census.

Q: WHY SHOULD I CARE ABOUT REDISTRICTING?

Simply put: It's about your vote having the same impact as others.

One of the greatest rights the people of South Carolina have is to elect their own representatives to conduct the business of their government. Redistricting is the process to maximize that right. By engaging in the redistricting process, communities may have a better opportunity to express their interests in establishing districts for the next ten years.

Q: WHEN SHOULD REDISTRICTING BE COMPLETED?

S.C. Code of Laws §4-9-90 requires counties to redistrict within a reasonable time prior to the next general election following the federal decennial census. There is no corresponding statute for other political subdivisions but similar constitutional principles apply.

Ordinarily, redistricting is to be accomplished before the start of the next election's filing period. If the redistricting simply cannot be accomplished before the start of the next election's filing period, the federal courts have generally allowed those elections to go forward using the prior maps - provided that the government has a "reasonably conceived plan" for timely completion of the new maps. The delay of the release of the 2020 census may impact the ability to accomplish this before November 2022.

Q: HOW IS REDISTRICTING COMPLETED?

Generally, redistricting is an action just like a bill or ordinance and follows the same legislative process. Council must adopt the criteria that describes the key factors to be considered in the plan and discuss the plan at two or more meetings.

Q: WHO IS RESPONSIBLE FOR REDRAWING THE LINES OF THE VARIOUS ELECTORAL DISTRICTS?

The responsibility varies for electoral districts at the federal, state and local levels. The following lists examples of common electoral districts and the entities responsible for redrawing the boundaries:

- U.S. Congress – Districts are drawn by the S.C. General Assembly.
- S.C. House of Representatives and Senate – Each legislative body draws its own districts.
- County Council – Districts are drawn by the County Council.
- City Council – Districts are drawn by the City Council.
- School Districts – Districts are drawn by the S.C. General Assembly.

Q: WHY DO WE REDRAW THE LINES?

The U.S. Constitution, the S.C. Constitution and state law, among other authorities, require South Carolina to redraw electoral lines. Redistricting also is the fair and equitable thing to do to ensure people have effective representation in the various levels of government as populations change and communities grow and shrink. Ideally, redistricting enhances participation and representation in our democracy.

Q: WHAT CRITERIA ARE USED TO REDRAW ELECTION DISTRICT LINES?

The criteria used for redistricting include:

- Districts must be of equal population, or as nearly as practical, to comply with the Equal Protection Clause of the 14th Amendment and the principle of “one person, one vote.”
- Districts must comply with the federal Voting Rights Act to ensure that minorities have an equal opportunity to elect representatives of their choice.
- Districts must be drawn contiguously, so that all parts of the district are connected to each other.
- Districts must minimize the division of voting precincts, cities, counties, neighborhoods, and communities of interest to the extent possible.
- Districts should be geographically compact so that nearby areas of population are not bypassed for a more distant population.
- Districts must comply with other applicable court decisions and federal and state laws.

Q: WHAT ARE “COMMUNITIES OF INTEREST”?

A community of interest is not a set standard for defining districts but is considered as part of the traditional redistricting principles. A community of interest could be a neighborhood, community, or group of people that has common policy concerns, as well as social and economic interests, and would benefit from being maintained in a single district. Another way of understanding a community of interest is that it is simply a way

for a community to tell its own story about what residents share in common, and what makes it unique when compared to surrounding communities. Many times, multiple communities may exist in an area or cross traditional boundaries like schools and voting precincts. Keeping communities of interest together is an important principle in redistricting and participating in a public hearing helps to ensure that communities are not left out of the political process.

Q: WHAT IS THE ROLE OF THE S.C. REVENUE AND FISCAL AFFAIRS OFFICE (RFA) IN REDISTRICTING?

RFA provides state and local governments with services performed in accordance with redistricting laws and principles. However, RFA does not provide legal advice or representation.

Q: HOW CAN I GET INVOLVED?

As part of the legislative process, public hearings are a key part of the process and redistricting is no exception. Public hearings are often held to allow for a more informal but detailed explanation of the proposed changes. Attending and participating in these events or contacting your representatives about redistricting are key ways to be informed and involved.

In the S.C. General Assembly, redistricting bills go through the legislative process, which typically allows for public testimony. County and city councils are required to have public hearings before final approval of redistricting measures.

Q: WHERE CAN I FIND MORE INFORMATION ON REDISTRICTING?

For more information on redistricting in South Carolina, please visit our website: rfa.sc.gov.

RFA REDISTRICTING PROCESS WITH LOCAL GOVERNMENTS

1. PROJECT INITIATION

- Local Government requests either consultation or redistricting services from RFA
- RFA sends confirmation letter
- Council may adopt a resolution engaging RFA

2. PRIOR TO RELEASE OF THE 2020 CENSUS DATA AND BEFORE PROJECT IS STARTED, LOCAL GOVERNMENT WILL PROVIDE RFA WITH:

- A primary contact
- Any foreseen issues that may affect project timeline (filing deadline, next election)
- Names and addresses of incumbents
- Verification of current districts (municipalities verify municipal boundaries as well)
- Council will verify RFA has the GIS data accurately reflecting current districts

3. RFA WILL COORDINATE A TENTATIVE PROJECT TIMELINE

4. AT THE FIRST PUBLIC MEETING

- RFA will provide a briefing for the council and public on redistricting
 - Traditional Redistricting Principles
 - Constitutional and Statutory Requirements
- RFA will provide a report to include:
 - A proposed set of criteria
 - An analysis (Benchmark Plan) of existing districts with 2020 Census data
 - A preliminary draft plan
- RFA will solicit feedback from council and public
- Council has the option to adopt proposed plan or delay and recommend changes for adoption at next meeting

5. AFTER THE FIRST PUBLIC MEETING

- Local Government primary contact will notify RFA in writing of any changes to the draft plan or proposed criteria based on input from council

6. AT THE SECOND OR SUBSEQUENT MEETING(S)

- RFA will prepare a final report incorporating feedback received from council
- Final plan presented for council to adopt (RFA may or may not need to attend)

7. AFTER ADOPTION

- Council will provide a letter notifying RFA of adoption of the plan
- Council will notify local voter registration office and other affected entities



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Town Council
FROM: Patsy Brison, *Chair of the Board of Zoning Appeals*
DATE: August 26, 2021
SUBJECT: Board of Zoning Appeals Semi-Annual Report: January – June 2021

In the first half of 2021, the Board of Zoning Appeals held six meetings virtually: 5 regular meetings and 1 special meeting. During this time, the Board heard 8 Variance requests, 1 Appeal request and 0 Special Exception requests.

Variations

VAR-001875-2020 – Request from Eric Schnider for a variance from LMO Section 16-5-102, Setback Standards, and 16-5-103, Buffer Standards to allow an existing patio to remain in the adjacent use setback and buffer. The property address is 119 Sandcastle Court with a parcel number of R511 009 000 1152 0000. This variance was denied by a vote of 6-0-0.

VAR-001870-2020 – Request from George F. Zitlaw, Jr. for a variance from LMO Section 16-5-102, Setback Standards, and 16-5-103, Buffer Standards to allow an existing patio to remain in the adjacent use setback and buffer. The property address is 123 Sandcastle Court with a parcel number of R511 009 000 1154 0000. This variance was denied by a vote of 6-0-0.

VAR-001894-2020 – Request from Brian Ritchey for a variance from LMO Section 16-5-102, Setback Standards, 16-5-103, Buffer Standards and 16-5-113 Fence and Wall standards, to allow an existing patio to remain and proposed fence to be added in the adjacent use setback and buffer. The property address is 25 Sandcastle Court with a parcel number of R511 009 000 1115 0000. This variance was denied by a vote of 6-0-0.

VAR-001983-2020 – Request from Jennifer Miotto for a variance from LMO Section 16-5-102, Setback Standards and 16-5-103, Buffer Standards to allow an existing patio to remain in the adjacent use setback and buffer. The property address is 27 Sandcastle Court with a parcel number of R511 009 000 1116 0000. This variance was denied by a vote of 6-0-0.

VAR-000271-2021 – Request from Leslie B. Green for a variance from LMO Section 16-6-102.D, Wetland Buffer Standards to allow a proposed vehicular driveway to be located within the 20 foot wetland buffer. The property is described as Lot 6B Wiley Road with a parcel number of R510 005 000 016E 0000. This variance was approved by a vote of 5-0-0.

VAR-002385-2020 – Request from Dennis Antoccia for a variance from LMO Sections 16-5-102, Setback Standards and 16-5-103, Buffer Standards to allow a shed, paver pathway, and paver patio to remain in the adjacent use setback and buffer. The property address is 12 Circlewood Drive with a parcel number of R510 005 000 0341 0000. This variance was denied by a vote of 7-0-0.

VAR-000818-2021 – Request from Edward K. Pritchard, III for a variance from LMO Sections 16-5-102, Setback Standards and 16-5-103, Buffer Standards for an existing non-permitted food truck and associated screening fence to remain in the required adjacent use setback and buffer. The property address is 15 Marshland Road with a parcel number of R510 008 000 013H 0000. This variance was approved by a vote of 4-3-0.

VAR-001218-2021 – Request from Jeffrey Loch, of Seagrass Construction, LLC, on behalf of Steven A. Weston for a variance from LMO Sections 16-5-102, Setback Standards, 16-5-103, Buffer Standards and 16-6-104.F, Specimen and Significant Tree Preservation to allow a proposed development of 3 homes and associated driveway to exceed allowable specimen tree impacts and be located within the adjacent use setback and buffer. The property address is 202 Mitchelville Road with a parcel number of R510 005 000 001B 0000. This variance was continued until the July meeting, but was then withdrawn by the applicant prior to the July meeting.

Appeals

APL-002548-2020 – Request for Appeal from Daniel Ben-Yisrael, on behalf of The Parker Companies LLC. The appellant is appealing staff’s determination dated December 3, 2020, regarding potential signage for the proposed Parker’s Kitchen at 430 William Hilton Parkway, Parcel E, of the Sea Turtle Marketplace. Staff’s determination was upheld by the BZA with a vote of 7-0-0.

Special Exceptions

There were no Special Exception hearings.

Other Matters

Waivers – The BZA receives a report at each regular meeting which shows the number and types of waivers granted by staff pursuant to provisions in the LMO. During the July 29, 2020 meeting, the BZA reviewed a staff report of waivers approved since 2017. After review of the report, the BZA unanimously adopted a motion to forward the summary to the Planning Commission and appropriate persons to review and determine whether amendments to the LMO might be appropriate. The Public Planning Committee heard the matter at their July 21, 2021 meeting and requested Staff provide them with a detailed summary of waivers granted to date.

LMO Language – As a follow up to BZA motions on January 27, 2020, to authorize the BZA Chair to send letters to the Town Council and Planning Commission to request consideration of amendments to the LMO to allow outdoor bicycle storage in the Light Industrial (LC) District and to address Nano Breweries and Microbreweries, the staff reported on July 29, 2020, that the letters had been sent and that the amendments would be added to the next set of proposed LMO amendments.

Rules of Procedure – The Board is in the process of updating its Rules of Procedure.



MEMORANDUM

TO: Town Council
FROM: John M. Troyer, Director of Finance
VIA: Marc Orlando, ICMA-CM, Town Manager
CC: April Akins, Revenue Services Manager
DATE: August 23, 2021
RE: **Second Reading Ordinance No. 2021-20 – Business License Model Ordinance**

Recommendation:

Staff recommends Council approve on second reading of Proposed Ordinance No. 2021-20. ***There are no changes from first reading.*** The state has mandated local jurisdictions adopt the model ordinance for business licenses. The purpose of the model ordinance is to streamline and simplify the reporting for businesses, while maintaining a revenue neutral position for the local jurisdictions.

Summary:

The South Carolina General Assembly passed Act 176 in September 2020. Act 176 is the Business License Standardization Act. The Act mandates local jurisdictions adopt the model ordinance so that businesses operating in multiple jurisdictions can more easily and efficiently satisfy the reporting requirements related to the administration of their business licenses. The law requires every local government with a business license tax to administer in the same way starting January 1, 2022. The law prevents municipalities from receiving a windfall in the first year of implementation as a result of the required changes. Standardization also ensures stability of the tax as a municipal revenue source for the future.

The law requires standardization of:

- due date
- definition of gross income
- application
- industry classification codes (NAICS)
- the appeals process
- minimum base rate (\$2,000)

among other requirements.

The law also allows businesses to make renewal payments through an on-line portal hosted by the State Revenue and Fiscal Affairs Office.

In requiring using the standardized classification system, the law requires the Town rebalance the business license rates to ensure revenue neutrality. The initial reclassification reduced Town revenues by \$339,892. Some businesses amounts were up, and some were down. Staff recommends an across the board increase in all business license rates of 7.2% to offset the revenue loss and maintain revenue neutrality. The standard class schedule will be required to be updated and rebalanced every two years from here on out.

The model ordinance was created by the Municipal Association of South Carolina (MASC) to assist with complying with the new law. MASC strongly suggests to repeal and replace the existing business license ordinance.

The process has included:

- Monitoring the legislative process
- Working closely with MASC and studying their recommendations
- Studying the new classification system
- Analyzing all businesses to assign a class under the new system
- Analyzing the revenue implications from changes to the classifications for existing businesses
- Presenting an update to the Finance and Administrative Committee on June 15th
- A public meeting at Town Hall on July 13th
- Information Sharing through the Town's various communication channels including the website, Facebook and other channels
- A scheduled information sharing on August 3rd
- Communication with and through the Chamber and its members

If Town Council chooses to adopt the model ordinance, a number of administrative steps would be required to implement the ordinance prior to the effective date of January 1, 2022. These steps include: Updating software for the new requirements, notifying taxpayers of the changes, updating the 8,000+ business license accounts for renewals, mailing the renewals and other administrative steps in anticipation of the effective date of January 1, 2022 for the SC Business License Standardization Act.

The staff recommends Town Council:

- Adopt the model ordinance on first reading on August 17, 2021
- Adopt the model ordinance on second reading on September 21, 2021
- Make the effective date of September 21, 2021 – for new businesses
- Allow for the administrative preparations for over 8,000 business license renewals before the due date of January 1, 2022 for existing businesses.

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO. _____

PROPOSED ORDINANCE NO. 2021-20

AN ORDINANCE TO REPEAL AND REPLACE CERTAIN PORTIONS OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, TO INCLUDE SECTIONS 10-1-10 THROUGH SECTION 10-1-210 AND REPLACE WITH REVISED CODE SECTIONS 10-1-10 THROUGH 10-1-250 AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, in September of 2020, the General Assembly passed Act 176 mandating that all municipalities use standard methods of administering their business license codes; and

WHEREAS, Act 176 streamlines the business license process, creating a uniform process for taxing jurisdictions across the state; and

WHEREAS, the standardization process is not optional; it is now required by law; and

WHEREAS, as a result of Act 176, the Town Council desires to repeal and replace the current Town of Hilton Head Island Business License Ordinance with the model business license ordinance, crafted by the Municipal Association of South Carolina.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AND IT IS HEREBY ORDERED AND ORDAINED BY AND UNDER THE AUTHORITY OF THE SAID TOWN COUNCIL THAT CODE SECTIONS 10-1-10 THROUGH SECTION 10-1-210 IS HEREBY REPEALED IN THE ENTIRETY AND REPLACED WITH THE FOLLOWING CODE SECTIONS IDENTIFIED AS 10-1-10 THROUGH 10-1-250, AS FOLLOWS:

Section 10-1-10. License Required. Every person engaged or intending to engage in any business, calling, occupation, profession, or activity engaged in with the object of gain, benefit, or advantage, in whole or in part within the limits of the Town of Hilton Head Island, South Carolina, is required to pay an annual license tax for the privilege of doing business and obtain a business license as herein provided. In addition to the above- described activities constituting doing business in the town, a person shall be deemed in business if that person owns and rents one (1) or more residential units (or partial interest therein) within the town. This applies to both short-term rentals and long-term rentals. A person shall also be deemed in business if that person owns and rents one (1) or more commercial property units (or partial interest therein) within the town.

Section 10-1-20. Definitions. The following words, terms, and phrases, when used in this ordinance, shall have the meaning ascribed herein. Defined terms are not capitalized when used in this ordinance unless the context otherwise requires.

“Business” means any business, calling, occupation, profession, or activity engaged in with the object of gain, benefit, or advantage, either directly or indirectly.

“*Charitable Organization*” means an organization that is determined by the Internal Revenue Service to be exempt from Federal income taxes under 26 U.S.C. Section 501(c)(3), (4), (6), (7), (8), (10) or (19).

“*Charitable Purpose*” means a benevolent, philanthropic, patriotic, or eleemosynary purpose that does not result in personal gain to a sponsor, organizer, officer, director, trustee, or person with ultimate control of the organization.

“*Classification*” means that division of businesses by NAICS codes subject to the same license rate as determined by a calculated index of ability to pay based on national averages, benefits, equalization of tax burden, relationships of services, or other basis deemed appropriate by the Council.

“*Council*” means the Town Council of the Town of Hilton Head Island, South Carolina.

“*Domicile*” means a principal place from which the trade or business of a licensee is conducted, directed, or managed. For purposes of this ordinance, a licensee may be deemed to have more than one domicile.

“*Gross Income*” means the gross receipts or gross revenue of a business, received or accrued, for one calendar or fiscal year collected or to be collected from business done within the Municipality. If the licensee has a domicile within the Municipality, business done within the Municipality shall include all gross receipts or revenue received or accrued by such licensee. If the licensee does not have a domicile within the Municipality, business done within the Municipality shall include only gross receipts or revenue received or accrued within the Municipality. In all cases, if the licensee pays a business license tax to another county or municipality, then the licensee’s gross income for the purpose of computing the tax within the Municipality must be reduced by the amount of revenues or receipts taxed in the other county or municipality and fully reported to the Municipality. Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds that are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in gross income. The gross receipts or gross revenues for business license purposes may be verified by inspection of returns and reports filed with the Internal Revenue Service, the South Carolina Department of Revenue, the South Carolina Department of Insurance, or other government agencies. In calculating gross income for certain businesses, the following rules shall apply:

- A. Gross income for agents shall be calculated on gross commissions received or retained, unless otherwise specified. If commissions are divided with other brokers or agents, then only the amount retained by the broker or agent is considered gross income.
- B. Except as specifically required by S.C. Code § 38-7-20, gross income for insurance companies shall be calculated on gross premiums written.
- C. Gross income for manufacturers of goods or materials with a location in the Municipality shall be calculated on the lesser of (i) gross revenues or receipts received or accrued from business done at the location, (ii) the amount of income allocated and apportioned to that location by the business for purposes of the business’s state income tax return, or (iii) the amount of expenses attributable to the location as a cost center of the business. Licensees reporting gross income under this provision shall have the burden to establish the amount and method of calculation by satisfactory records and proof. Manufacturers include those

taxpayers reporting a manufacturing principal business activity code on their federal income tax returns.

- D. Gross income for residential and commercial properties shall be calculated on the gross rental income or gross proceeds received from tenants to pay for the space, utilities and services provided under the rental agreement. All mandatory fees associated with the rental of the residential or commercial property should be included as gross income when calculating a business license tax.

“*License Official*” means a person designated to administer this ordinance. Notwithstanding the designation of a primary license official, the Municipality may designate one or more alternate license officials to administer particular types of business licenses, including without limitation for business licenses issued to businesses subject to business license taxes under Article 20, Chapter 9, Title 58, and Chapters 7 and 45, Title 38, of the South Carolina Code.

“*Licensee*” means the business, the person applying for the license on behalf of the business, an agent or legal representative of the business, a person who receives any part of the net profit of the business, or a person who owns or exercises control of the business.

“*Municipality*” means the Town of Hilton Head Island, South Carolina.

“*NAICS*” means the North American Industry Classification System for the United States published under the auspices of the Federal Office of Management and Budget.

“*Person*” means any individual, firm, partnership, limited liability partnership, limited liability company, cooperative non-profit membership, corporation, joint venture, association, estate, trust, business trust, receiver, syndicate, holding company, or other group or combination acting as a unit, in the singular or plural, and the agent or employee having charge or control of a business in the absence of the principal.

Section 10-1-30. Purpose and Duration. The business license required by this ordinance is for the purpose of providing such regulation as may be required for the business subject thereto and for the purpose of raising revenue for the general fund through a privilege tax. The license year ending on April 30, 2022, shall commence on January 1, 2021 and shall run for a 16-month period. Thereafter, the license periods shall be established as follows. Except as set forth below for business licenses issued to contractors with respect to specific construction projects, each yearly license shall be issued for the twelve-month period of May 1 to April 30. A business license issued for a construction contract may, at the request of the licensee, be stated to expire at the completion of the construction project; *provided*, any such business license may require that the licensee file, by each April 30 during the continuation of the construction project, a statement of compliance, including but not limited to a revised estimate of the value of the contract. If any revised estimate of the final value of such project exceeds the amount for which the business license was issued, the licensee shall be required to pay a license fee at the then-prevailing rate on the excess amount. The provisions of this ordinance and the rates herein shall remain in effect from year to year as amended by the Council.

Section 10-1-40. Business License Tax, Refund.

- A. The required business license tax shall be paid for each business subject hereto according to the applicable rate classification on or before the due date of the 30th day of April in each year, except for those businesses in Rate Class 8 for which a different due date is

specified. Late payments shall be subject to penalties as set forth in Section 12 hereof, except that admitted insurance companies may pay before June 1 without penalty.

- B. A separate license shall be required for each place of business and for each classification or business conducted at one place. If gross income cannot be separated for classifications at one location, the business license tax shall be computed on the combined gross income for the classification requiring the highest rate. The business license tax must be computed based on the licensee's gross income for the calendar year preceding the due date, for the licensee's twelve-month fiscal year preceding the due date, or on a twelve-month projected income based on the monthly average for a business in operation for less than one year. The business license tax for a new business must be computed on the estimated probable gross income for the balance of the license year. A business license related to construction contract projects may be issued on a per-project basis, at the option of the taxpayer. No refund shall be made for a business that is discontinued.
- C. A licensee that submits a payment greater than the amount owed may request a refund. To be considered, a refund request must be submitted in writing to the Municipality before the June 1 immediately following the April 30 on which the payment was due and must be supported by adequate documentation supporting the refund request. The Municipality shall approve or deny the refund request, and if approved shall issue the refund to the business, within thirty days after receipt of the request.

Section 10-1-50. Registration Required.

- A. The owner, agent, or legal representative of every business subject to this ordinance, whether listed in the classification index or not, shall register the business and make application for a business license on or before the due date of each year; *provided*, a new business shall be required to have a business license prior to operation within the Municipality, and an annexed business shall be required to have a business license within thirty (30) days of the annexation. A license for a bar (NAICS 722410) must be issued in the name of the individual who has been issued the corresponding state alcohol, beer, or wine permit or license and will have actual control and management of the business.
- B. Application shall be on the then-current standard business license application as established and provided by the Director of the South Carolina Revenue and Fiscal Affairs Office and shall be accompanied by all information about the applicant, the licensee, and the business deemed appropriate to carry out the purpose of this ordinance by the license official. Applicants may be required to submit copies of portions of state and federal income tax returns reflecting gross receipts and gross revenue figures.
- C. The applicant shall certify under oath that the information given in the application is true, that the gross income is accurately reported (or estimated for a new business) without any unauthorized deductions, and that all assessments, personal property taxes on business property, and other monies due and payable to the Municipality have been paid. The applicant is also subject to compliance with the zoning ordinance, building code, electrical code, mechanical code, plumbing code, roofing code and other regulatory codes as adopted by the town council. With regard to registration of insurance companies and brokers for non-admitted insurance companies, the Municipal Association of South Carolina is designated as the exclusive agent of the town and is empowered to utilize all procedures and actions authorized by ordinance or state law.

- D. In addition to the Municipality's existing online payment system, the Municipality shall allow application, reporting, calculation, and payment of business license taxes through the business license tax portal hosted and managed by the South Carolina Revenue and Fiscal Affairs Office, subject to the availability and capability thereof. Any limitations in portal availability or capability do not relieve the applicant or Licensee from existing business license or business license tax obligations.
- E. Every business, which either 1) acts as an agent, broker or representative for any other person, or 2) has contractual arrangements with person, who are acting as independent contractors for it, shall supply the following information. The information required shall include the name, property address, telephone number, and estimated payments or premiums due to that person. Such information shall be supplied upon the request of the license inspector and shall be a condition to the obtainment of the license required under this chapter.
- F. Any person or entity that designs or installs irrigation systems ("landscape contractor") must be licensed to do so by the town. Prior to issuance or renewal of the license required herein, each landscape contractor or designated employee of said landscape contractor shall pass a certification test given by the town. Said license and certification must be shown at the annual renewal of the town business license. See section 13-3-310 of the Town Code for additional information regarding this requirement.
- G. Peddlers, solicitors, canvassers, door-to-door sales, direct retail sales of merchandise, vendors, participants at markets with regular activities require a business license. Regular activities are defined as more than two sale periods of more than three days per year.
- H. Promoters or Coordinators of art and craft shows, markets or other specialty venues require a business license.

Section 10-1-60. Deductions, Exemptions, and Charitable Organizations.

- A. No deductions from gross income shall be made except income earned outside of the Municipality on which a license tax is paid by the business to some other municipality or county and fully reported to the Municipality, taxes collected for a governmental entity, or income which cannot be included for computation of the tax pursuant to state or federal law. Properly apportioned income from business in interstate commerce shall be included in the calculation of gross income and is not exempted. The applicant shall have the burden to establish the right to exempt income by satisfactory records and proof.
- B. No person shall be exempt from the requirements of the ordinance by reason of the lack of an established place of business within the Municipality, unless exempted by state or federal law. The license official shall determine the appropriate classification for each business in accordance with the latest issue of NAICS. No person shall be exempt from this ordinance by reason of the payment of any other tax, unless exempted by state law, and no person shall be relieved of liability for payment of any other tax or fee by reason of application of this ordinance.
- C. Wholesalers are exempt from business license taxes unless they maintain warehouses or distribution establishments within the Municipality. A wholesale transaction involves a sale to an individual who will resell the goods and includes delivery of the goods to the reseller. It does not include a sale of goods to a user or consumer.

- D. A charitable organization shall be exempt from the business license tax on its gross income unless it is deemed a business subject to a business license tax on all or part of its gross income as provided in this section. A charitable organization, or any affiliate of a charitable organization, that reports income from for-profit activities or unrelated business income for federal income tax purposes to the Internal Revenue Service shall be deemed a business subject to a business license tax on the part of its gross income from such for-profit activities or unrelated business income.
- E. A charitable organization shall be deemed a business subject to a business license tax on its total gross income if (1) any net proceeds of operation, after necessary expenses of operation, inure to the benefit of any individual or any entity that is not itself a charitable organization as defined in this ordinance, or (2) any net proceeds of operation, after necessary expenses of operation, are used for a purpose other than a charitable purpose as defined in this ordinance. Excess benefits or compensation in any form beyond fair market value to a sponsor, organizer, officer, director, trustee, or person with ultimate control of the organization shall not be deemed a necessary expense of operation.

Section 10-1-70. False Application Unlawful. It shall be unlawful for any person subject to the provisions of this ordinance to make a false application for a business license or to give or file, or direct the giving or filing of, any false information with respect to the license or tax required by this ordinance.

Section 10-1-80. Display and Transfer.

- A. All persons shall display the license issued to them on the original form provided by the license official in a conspicuous place in the business establishment at the address shown on the license. A transient or non-resident shall carry the license upon his person or in a vehicle used in the business readily available for inspection by any authorized agent of the Municipality.
- B. A change of address must be reported to the license official within ten (10) days after removal of the business to a new location and the license will be valid at the new address upon written notification by the license official and compliance with zoning and building codes. Failure to obtain the approval of the license official for a change of address shall invalidate the license and subject the licensee to prosecution for doing business without a license. A business license shall not be transferable, and a transfer of controlling interest shall be considered a termination of the old business and the establishment of a new business requiring a new business license, based on old business income.

Section 10-1-90. Administration of Ordinance. The license official shall administer the provisions of this ordinance, collect business license taxes, issue licenses, make or initiate investigations and audits to ensure compliance, initiate denial or suspension and revocation procedures, report violations to the municipal attorney, assist in prosecution of violators, produce forms, undertake reasonable procedures relating to the administration of this ordinance, and perform such other duties as may be duly assigned. With regard to the administration of this chapter as it pertains to license fees from insurance companies and brokers for non-admitted insurance companies, the Municipal Association of South Carolina is designated as the exclusive agent of the town and is empowered to utilize all procedures and actions authorized by ordinance or state law.

Section 10-1-100. Inspection and Audits.

- A. For the purpose of enforcing the provisions of this ordinance, the license official or other authorized agent of the Municipality is empowered to enter upon the premises of any person subject to this ordinance to make inspections and to examine and audit books and records. It shall be unlawful for any such person to fail or refuse to make available the necessary books and records. In the event an audit or inspection reveals that the licensee has filed false information, the costs of the audit shall be added to the correct business license tax and late penalties in addition to other penalties provided herein. Each day of failure to pay the proper amount of business license tax shall constitute a separate offense.
- B. The license official shall have the authority to make inspections and conduct audits of businesses to ensure compliance with the ordinance. Financial information obtained by inspections and audits shall not be deemed public records, and the license official shall not release the amount of business license taxes paid or the reported gross income of any person by name without written permission of the licensee, except as authorized by this ordinance, state or federal law, or proper judicial order. Statistics compiled by classifications are public records. With regard to inspections and audits of insurance companies and brokers for non-admitted insurance companies, the Municipal Association of South Carolina is designated as the exclusive agent of the town and is empowered to utilize all procedures and actions authorized by ordinance or state law.

Section 10-1-110. Assessments, Payment under Protest, Appeal.

- A. Assessments, payments under protest, and appeals of assessment shall be allowed and conducted by the Municipality pursuant to the provisions of S.C. Code § 6-1-410, as amended. In preparing an assessment, the license official may examine such records of the business or any other available records as may be appropriate and conduct such investigations and statistical surveys as the license official may deem appropriate to assess a business license tax and penalties as provided herein. With regard to assessments of insurance companies and brokers for non-admitted insurance companies, the Municipal Association of South Carolina is designated as the exclusive agent of the town and is empowered to utilize all procedures and action authorized by ordinance or state law.
- B. The license official shall establish a uniform local procedure consistent with S.C. Code § 6-1-410 for hearing an application for adjustment of assessment and issuing a notice of final assessment; provided that for particular types of business licenses, including without limitation for business licenses issued to businesses subject to business license taxes under Article 20, Chapter 9, Title 58, and Chapters 7 and 45, Title 38, of the South Carolina Code, the Municipality, by separate ordinance, may establish a different procedure and may delegate one or more rights, duties, and functions hereunder to the Municipal Association of South Carolina.

S.C. Code §6-1-410. (A) If a taxpayer fails or refuses to pay a business license tax by May first or, for business license taxes collected pursuant to Article 20, Chapter 9, Title 58 and Chapters 7 and 46, Title 38, the date on which the business license tax is due, the taxing jurisdiction business license official may serve notice of assessment of the business license tax due on the taxpayer by mail or personal service. Within thirty days after the date of postmark or personal service, a taxpayer may request, in writing with reasons stated, an adjustment of the assessment. An informal conference between the taxing jurisdiction business license official and the taxpayer must be held within

fifteen days of the receipt of the request, at which time the taxpayer may present any information or documents in support of the requested adjustment. Within five days after the conference, the taxing jurisdiction business license official shall issue a notice of final assessment and serve the taxpayer by mail or personal service with the notice and provide a form for any further appeal of the assessment by the taxpayer.

(B) Within thirty days after the date of postmark or personal service, the taxpayer may appeal the notice of final assessment by filing the completed appeal form with the taxing jurisdiction business license official, by mail or personal service, and by paying to the taxing jurisdiction in protest at least eighty percent of the business license tax based on the final assessment. The appeal must be heard and determined by the taxing jurisdiction council or its designated appeals officer or appeals board. The taxing jurisdiction council or its designee shall provide the taxpayer with written notice of the hearing and with any rules of evidence or procedure prescribed by the taxing jurisdiction council or its designee. The hearing must be held within thirty days after receipt of the appeal form unless continued to another date by agreement of the parties. A hearing by the taxing jurisdiction council, its designee, or the appeals board must be held at a regular or special meeting of the taxing jurisdiction council or appeals board. At the appeals hearing, the taxpayer and the taxing jurisdiction have the right to be represented by counsel, to present testimony and evidence, and to cross-examine witnesses. The hearing must be recorded and must be transcribed at the expense of the party so requesting. The taxing jurisdiction council, its designee, or the appeals board shall decide the assessment by majority vote. The taxing jurisdiction council, its designee, the appeals board, or the designated appeals officer shall issue a written decision explaining the basis for the decision with findings of fact and conclusions and shall inform the taxpayer of the right to request a contested case hearing before the Administrative Law Court. The written decision must be filed with the taxing jurisdiction business license official and served on the taxpayer by mail or personal service. The decision is the final decision of the taxing jurisdiction on the assessment.

(C) Within thirty days after the date of postmark or personal service of the taxing jurisdiction's written decision on the assessment, a taxpayer may appeal the decision to the Administrative Law Court in accordance with the rules of the Administrative Law Court.

(D) For the purposes of this section, 'business license official' means the officer, employee, or agent designated by the taxing jurisdiction as having primary responsibility for business licensing within the taxing jurisdiction.

Section 10-1-120. Delinquent License Taxes, Partial Payment.

- A. For non-payment of all or any part of the correct business license tax, the license official shall impose and collect a late penalty of five (5%) percent of the unpaid tax for each month or portion thereof after the due date until paid. If any business license tax remains unpaid for sixty (60) days after its due date, the license official shall report it to the municipal attorney for appropriate legal action.

With regard to the collection of delinquent business license fees from insurance companies and brokers for non-admitted insurance companies, the Municipal Association of South Carolina is designated as the exclusive agent of the Town and is empowered to utilize all procedures and actions authorized by ordinance or state law.

Upon identification of a delinquent account the town manager or his/her designee has the authority to establish payment plans, revenue procedures, and reduce or waive penalties based on the revenue procedures as adopted with this ordinance.

- B. Partial payment may be accepted by the license official to toll imposition of penalties on the portion paid; *provided*, however, no business license shall be issued or renewed until the full amount of the tax due, with penalties, has been paid.

Section 10-1-130. Notices. The license official may, but shall not be required to, mail written notices that business license taxes are due. If notices are not mailed, there shall be published a notice of the due date in a newspaper of general circulation within the Municipality three (3) times prior to the due date in each year. Failure to receive notice shall not constitute a defense to prosecution for failure to pay the tax due or grounds for waiver of penalties.

Current ordinance: With regard to the collection of delinquent business license fees from insurance companies and brokers for non-admitted insurance companies, the Municipal Association of South Carolina is designated as the exclusive agent of the Town and is empowered to utilize all procedures and actions authorized by ordinance or state law.

Section 10-1-140. Denial of License. The license official may deny a license to an applicant when the license official determines:

- A. The application is incomplete or contains a misrepresentation, false or misleading statement, or evasion or suppression of a material fact;
- B. The activity for which a license is sought is unlawful or constitutes a public nuisance *per se* or *per accidens*;
- C. The applicant, licensee, prior licensee, or the person in control of the business has been convicted within the previous ten years of an offense under a law or ordinance regulating business, a crime involving dishonest conduct or moral turpitude related to a business or a subject of a business, or an unlawful sale of merchandise or prohibited goods;
- D. The applicant, licensee, prior licensee, or the person in control of the business has engaged in an unlawful activity or nuisance related to the business or to a similar business in the Municipality or in another jurisdiction;
- E. The applicant, licensee, prior licensee, or the person in control of the business is delinquent in the payment to the Municipality of any tax or fee;
- F. A licensee has actual knowledge or notice, or based on the circumstances reasonably should have knowledge or notice, that any person or employee of the licensee has committed a crime of moral turpitude on the business premises, or has permitted any person or employee of the licensee to engage in the unlawful sale of merchandise or prohibited goods on the business premises and has not taken remedial measures necessary to correct such activity; or
- G. The license for the business or for a similar business of the licensee in the Municipality or another jurisdiction has been denied, suspended, or revoked in the previous license year.

A decision of the license official shall be subject to appeal as herein provided. Denial shall be written with reasons stated.

Section 10-1-150. Suspension or Revocation of License. When the license official determines:

- A. A license has been mistakenly or improperly issued or issued contrary to law;
- B. A licensee has breached any condition upon which the license was issued or has failed to comply with the provisions of this ordinance;
- C. A licensee has obtained a license through a fraud, misrepresentation, a false or misleading statement, or evasion or suppression of a material fact in the license application;
- D. A licensee has been convicted within the previous ten years of an offense under a law or ordinance regulating business, a crime involving dishonest conduct or moral turpitude related to a business or a subject of a business, or an unlawful sale of merchandise or prohibited goods;
- E. A licensee has engaged in an unlawful activity or nuisance related to the business; or
- F. A licensee is delinquent in the payment to the Municipality of any tax or fee,

the license official may give written notice to the licensee or the person in control of the business within the Municipality by personal service or mail that the license is suspended pending a single hearing before Council or its designee for the purpose of determining whether the suspension should be upheld and the license should be revoked.

The written notice of suspension and proposed revocation shall state the time and place at which the hearing is to be held, and shall contain a brief statement of the reasons for the suspension and proposed revocation and a copy of the applicable provisions of this ordinance.

Section 10-1-160. Appeals to Council or its Designee.

- A. Except with respect to appeals of assessments under Section 11 hereof, which are governed by S.C. Code § 6-1-410, any person aggrieved by a determination, denial, or suspension and proposed revocation of a business license by the license official may appeal the decision to the Council or its designee by written request stating the reasons for appeal, filed with the license official within ten (10) days after service by mail or personal service of the notice of determination, denial, or suspension and proposed revocation.
- B. A hearing on an appeal from a license denial or other determination of the license official and a hearing on a suspension and proposed revocation shall be held by the Council or its designee within ten (10) business days after receipt of a request for appeal or service of a notice of suspension and proposed revocation. The hearing shall be held upon written notice at a regular or special meeting of the Council, or, if by designee of the Council, at a hearing to be scheduled by the designee. The hearing may be continued to another date by agreement of all parties. At the hearing, all parties shall have the right to be represented by counsel, to present testimony and evidence, and to cross-examine witnesses. The proceedings shall be recorded and transcribed at the expense of the party so requesting. The rules of evidence and procedure prescribed by Council or its designee shall govern the hearing. Following the hearing, the Council by majority vote of its members present, or the designee of Council if the hearing is held by the designee, shall render a written decision based on findings of fact and conclusions on application of the standards herein. The written decision shall be served, by personal service or by mail, upon all parties or their representatives and shall constitute the final decision of the Municipality.

- C. Timely appeal of a decision of Council or its designee does not effectuate a stay of that decision. The decision of the Council or its designee shall be binding and enforceable unless overturned by an applicable appellate court after a due and timely appeal.
- D. For business licenses issued to businesses subject to business license taxes under Article 20, Chapter 9, Title 58, and Chapters 7 and 45, Title 38, of the South Carolina Code, the Municipality may establish a different procedure by ordinance.

Section 10-1-170. Consent, franchise, or license required for use of streets.

- A. It shall be unlawful for any person to construct, install, maintain, or operate in, on, above, or under any street or public place under control of the Municipality any line, pipe, cable, pole, structure, or facility for utilities, communications, cablevision, or other purposes without a consent agreement or franchise agreement issued by the Council by ordinance that prescribes the term, fees, and conditions for use.
- B. The annual fee for use of streets or public places authorized by a consent agreement or franchise agreement shall be set by the ordinance approving the agreement and shall be consistent with limits set by state law. Existing franchise agreements shall continue in effect until expiration dates in the agreements. Franchise and consent fees shall not be in lieu of or be credited against business license taxes unless specifically provided by the franchise or consent agreement.
- C. Electrical and gas companies operate under a consent or franchise.

Section 10-1-180. Confidentiality. Except in accordance with proper judicial order or as otherwise provided by law, no official or employee of the Municipality may divulge or make known in any manner the amount of income or any financial particulars set forth or disclosed in any report or return required under this ordinance. Nothing in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns. Any license data may be shared with other public officials or employees in the performance of their duties, whether or not those duties relate to enforcement of this ordinance.

Section 10-1-190. Violations. Any person violating any provision of this ordinance shall be deemed guilty of an offense and shall be subject to a fine of up to \$500.00 or imprisonment for not more than thirty (30) days or both, upon conviction. Each day of violation shall be considered a separate offense. Punishment for violation shall not relieve the offender of liability for delinquent taxes, penalties, and costs provided for in this ordinance.

Section 10-1-200. Severability and effective date. A determination that any portion of this ordinance is invalid or unenforceable shall not affect the remaining portions. To the extent of any conflict between the provisions of this ordinance and the provisions of the South Carolina Business License Tax Standardization Act, as codified at S.C. Code §§ 6-1-400 *et seq.*, the standardization act shall control. The effective date of this ordinance shall be September 21, 2021 AT 12:01 a.m.

Section 10-1-210. Local Industry License. Any person who desires to exclusively engage in the business of offering for public sale at designated locations, as determined by the town manager, farm and garden products or flowers grown on the property of such person, or flower arrangements, arts or crafts produced in the home of such person, or seafood caught by such person, shall secure from the town an annual business license, but shall be exempt from the payment of a business license tax.

Section 10-1-220. Telecommunication Companies.

- A. Notwithstanding any other provisions of the Business License Ordinance, the business license tax for "retail telecommunications services," as defined in S.C. Code § 58-9-2200, shall be at the maximum rate authorized by S.C. Code § 58-9-2220, as it now provides or as provided by its amendment. The business license tax year shall begin on January 1 of each year. The rate for the 2005 business license tax year shall be the maximum rate allowed by State law as in effect on February 1, 2005. Declining rates shall not apply.
- B. In conformity with S.C. Code § 58-9-2220, the business license tax for "retail telecommunications services" shall apply to the gross income derived from the sale of retail telecommunications services for the preceding calendar or fiscal year which either originate or terminate in the municipality and which are charged to a service address within the municipality regardless of where these amounts are billed or paid and on which a business license tax has not been paid to another municipality. The measurement of the amounts derived from the retail sale of mobile telecommunications services shall include only revenues from the fixed monthly recurring charge of customers whose service address is within the boundaries of the municipality. For a business in operation for less than one (1) year, the amount of business license tax shall be computed on a 12-month projected income.
- C. For the year 2005, the business license tax for "retail telecommunications services" shall be due on February 1, 2005, and payable by February 28, 2005, without penalty. For years after 2005, the business license tax for "retail telecommunications services" shall be due on January 1 of each year and payable by January 31 of that year, without penalty.
- D. The delinquent penalty shall be five (5) percent of the tax due for each month, or portion thereof, after the due date until paid.
- E. Nothing in this section shall be interpreted to interfere with continuing obligations of any franchise agreement or contractual agreement in the event that the franchise or contractual agreement should expire after December 31, 2003.
- F. Exemptions in the business license ordinance for income from business in interstate commerce are hereby repealed. Properly apportioned gross income from interstate commerce shall be included in the gross income for every business subject to a business license tax.
- G. All fees collected under such a franchise or contractual agreement expiring after December 31, 2003, shall be in lieu of fees or taxes which might otherwise be authorized by this section.
- H. As authorized by S.C. Code § 5-7-300, the agreement with the Municipal Association of South Carolina for collection of current and delinquent license taxes from telecommunications companies pursuant to S.C. Code § 58-9-2200 shall continue in effect. Notwithstanding the provisions of the agreement, for the year 2005, the Municipal Association of South Carolina is authorized to collect current and delinquent license taxes, in conformity with the due date and delinquent date for 2005 as set out in this ordinance and is further authorized, for the year 2005, to disburse business license taxes collected, less the service charge agreed to, to this municipality on or before April 1, 2005 and thereafter as remaining collections permit.

Section 10-1-230. Insurance Companies/Brokers Premium Tax.

- A. Except as to fire insurance, “gross premiums” means gross premiums written for policies for property or a risk located within the municipality. In addition, “gross premiums” shall include premiums written for policies that are sold, solicited, negotiated, taken, transmitted, received, delivered, applied for, produced or serviced by (1) the insurance company’s office located in the municipality, (2) the insurance company’s employee conducting business within the municipality, or (3) the office of the insurance company’s licensed or appointed producer (agent) conducting business within the municipality, regardless of where the property or risk is located, provided no tax has been paid to another municipality in which the property or risk is located based on the same premium.
- B. Solicitation for insurance, receiving or transmitting an application or policy, examination of risk, collection or transmitting of a premium, adjusting a claim, delivering a benefit, or doing any act in connection with a policy or claim shall constitute conducting business within the municipality, regardless of whether or not an office is maintained in the municipality.
- C. As to fire insurance, “gross premiums” means gross premiums (1) collected in the municipality, and/or (2) realized from risks located within the limits of the municipality.
- D. Gross premiums shall include all business conducted in the prior calendar year. Declining rates shall not apply.
- E. Gross premiums shall include new and renewal business without deductions for any dividend, credit, return premiums or deposit.
- F. Notwithstanding any other provision of this ordinance, license taxes for insurance companies shall be payable on or before May 31 in each year without penalty. The penalty for delinquent payments shall be five (5) percent of the tax due per month, or portion thereof, after the due date until paid.
- G. Any exemptions in the business license ordinance for income from business in interstate commerce are hereby repealed. Gross income from the interstate commerce shall be included in the gross income for every business subject to a business license tax.
- H. Pursuant to S.C. Code 1996, § 38-45-10 and 38-45-60, the Municipal Association of South Carolina is designated the municipal agent for purposes of administration of the municipal broker’s premium tax and business license taxes from insurance companies. The agreement with the association for administration and collection of current and delinquent license taxes from the insurance companies as authorized by S.C. Code 1996, § 5-7-300 and administration of the municipal broker’s premium tax is approved, and the town manager is authorized to execute it.

Section 10-1-240. Special Event Permit License and Special Event Vendor Permits.

- A. Event sponsors: A special event permit license will be issued by the town to the event sponsor or promoter once a special event permit application has been approved by the town and shall be valid solely for the time period and the specific location stated thereon. This special license must be applied for and obtained before commencement of the event for which it is to be used.
- B. Event vendors: A special event vendor permit will be issued by the town to a vendor that does not require a town business license in accordance with this ordinance. It shall be valid solely for the time period and the specific location stated thereon. This special license must

be applied for by the event sponsor on behalf of the vendor and obtained before the commencement of the event for which it is used.

- C. It is the responsibility of the special event sponsor or promoter to ensure that all participating vendors have either a town business license or a special event vendor permit for the specified event in accordance with this ordinance.
- D. Each participating vendor must be the creator of the art or craft which is to be sold. This includes any person who desires to engage in the business of offering for public sale flower arrangements or any hand-crafted item produced in the home. Goods purchased for sale or resale cannot be vended on special license.
- E. Merchants and vendors now operating under valid town business licenses shall be allowed to operate on those licenses, incorporating such gross sales in the annual gross sales to be reported on the succeeding year's business license renewal application.

Section 10-1-250. Classification and Rates.

- A. The business license tax for each class of businesses subject to this ordinance shall be computed in accordance with the current business license rate schedule, designated as Appendix A to this ordinance, which may be amended from time to time by the Council.
- B. The current business license class schedule is attached hereto as Appendix B. Hereafter, no later than December 31 of each odd year, the Municipality shall adopt, by ordinance, the latest standardized business license class schedule as recommended by the Municipal Association of South Carolina and adopted by the Director of the South Carolina Revenue and Fiscal Affairs Office. Upon adoption by the Municipality, the revised business license class schedule shall then be appended to this ordinance as a replacement Appendix B.
- C. The classifications included in each rate class are listed with NAICS codes, by sector, sub-sector, group, or industry. The business license class schedule (Appendix B) is a tool for classification and not a limitation on businesses subject to a business license tax. The classification in the most recent version of the business license class schedule adopted by the Council that most specifically identifies the subject business shall be applied to the business. The license official shall have the authority to make the determination of the classification most specifically applicable to a subject business.
- D. A copy of the class schedule and rate schedule shall be filed in the office of the municipal clerk.

**PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE
TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, ON THIS ____ DAY OF
_____, 2021.**

John J. McCann, Mayor

ATTEST:

By: _____
Krista M. Wiedmeyer, Town Clerk

First Reading: _____
Second Reading: _____

APPROVED AS TO FORM:

Curtis Coltrane, Town Attorney

Introduced by Council Member: _____

BUSINESS LICENSE RATE SCHEDULE

Appendix A

<u>RATE CLASS</u>	<u>INCOME: \$0 - \$2,000</u>	<u>INCOME OVER \$2,000</u>
<u>FRACTION THEREOF</u>	<u>BASE RATE</u>	<u>RATE PER \$1,000 OR</u>
1	\$46.30	\$.75
2	\$54.00	\$1.00
3	\$61.60	\$1.10
4	\$69.40	\$1.30
5	\$77.10	\$1.40
6	\$84.80	\$1.50
7	\$92.50	\$1.70
8.1	\$61.60	\$1.10
8.2	Set by state statute-Railroad Companies	
8.3	MASC Telecommunications	
8.4	MASC Insurance	
8.51	\$12.50 + \$12.50 per machine	
8.52	\$12.50 + \$180.00 per machine	
8.6	\$61.60 plus \$5.00 -OR- \$12.50 per table	\$1.10
9.10	\$187.50	\$3.24
9.30	\$54.00	\$1.00
9.40	\$54.00	\$1.00
9.70	\$107.90	\$1.70

NON-RESIDENT RATES

Unless otherwise specifically provided, all taxes and rates shall be doubled for nonresidents and itinerants having no fixed principal place of business within the Municipality.

CLASS 8 RATES

Each NAICS number designates a separate subclassification. The businesses in this section are treated as separate and individual subclasses due to provisions of state law, regulatory requirements, service burdens, tax equalization considerations, and other factors that are deemed sufficient to require individually determined rates. In accordance with state law, the Municipality

also may provide for reasonable subclassifications for rates, described by an NAICS sector, subsector, or industry, that are based on particularized considerations as needed for economic stimulus or for the enhanced or disproportionate demands on municipal services or infrastructure.

Non-resident rates do not apply except where indicated.

8.1 NAICS 230000 – Contractors, Construction, All Types [Non-resident rates apply].

Resident rates, for contractors having a permanent place of business within the Municipality:

Minimum on first \$2,000	\$61.60 PLUS
Per \$1,000, or fraction, over \$2,000	\$1.10

Non-resident rates apply to contractors that do not have a permanent place of business within the Municipality. A trailer at the construction site or structure in which the contractor temporarily resides is not a permanent place of business under this ordinance.

No contractor shall be issued a business license until all state and municipal qualification examination and trade license requirements have been met. Each contractor shall post a sign in plain view on each job identifying the contractor with the job.

Sub-contractors shall be licensed on the same basis as general or prime contractors for the same job. No deductions shall be made by a general or prime contractor for value of work performed by a sub-contractor.

No contractor shall be issued a business license until all performance and indemnity bonds required by the Building Code have been filed and approved. Zoning permits must be obtained when required by the Zoning Ordinance.

Each prime contractor shall file with the License Official, or it’s designee, a list of sub-contractors furnishing labor or materials for each project.

For licenses issued on a per-job basis, the total tax for the full amount of the contract shall be paid prior to commencement of work and shall entitle the contractor to complete the job without regard to the normal license expiration date. An amended report shall be filed for each new job and the appropriate additional license fee per \$1,000 of the contract amount shall be paid prior to commencement of new work. Only one base tax shall be paid in a license year. Licensees holding a per-job license shall file, by each April 30 during the continuation of the construction project, a statement of compliance, including but not limited to a revised estimate of the value of the contract. If any revised estimate of the final value of such project exceeds the amount for which the business license was issued, the licensee shall be required to pay a license fee at the then-prevailing rate on the excess amount.

8.2 NAICS 482 – Railroad Companies (See S.C. Code § 12-23-210).

8.3 NAICS 517311, 517312 – Telephone Companies.

With respect to “retail telecommunications services” as defined in S. C. Code § 58-9-2200, the Municipality participates in a collections program administered by the Municipal Association of South Carolina. The Municipality has approved participation in the collections program with the

rates, terms, conditions, dates, penalties, appeals process, and other details of the business license applicable to retail telecommunications services as set forth in this ordinance.

8.4 NAICS 5241, NAICS 5242 – Insurance Companies/Brokers Premium Tax:

Independent agents, brokers, their employees are subject to a business license tax based on their natural class. With respect to insurers subject to license fees and taxes as defined in S.C. Code 1996, §§38-45-10 and 38-45-60, the Municipality participates in a collections program administered by the Municipal Association of South Carolina. The Municipality has approved participation in the collections program with the rates, terms, conditions, dates, penalties, appeals process, and other details of the business license applicable to insurers and brokers are set forth in this ordinance.

8.51 NAICS 713120 – Amusement Machines, coin operated (except gambling). Music machines, juke boxes, kiddie rides, video games, pin tables with levers, and other amusement machines with or without free play feature licensed by SC Department of Revenue pursuant to S.C. Code §12-21-2720(A)(1) and (A)(2) [**Type I and Type II**]._For operation of all machines (not on gross income), pursuant to S.C. Code §12-21-2746:

Per Machine	\$12.50 PLUS
Business license	\$12.50

Distributors that sell or lease machines and are not licensed by the state as an operator pursuant to §12-21-2728 are not subject to Subclass 8.51.

8.52 NAICS 713290 – Amusement Machines, coin operated, non-payout. Amusement machines of the non-payout type or in-line pin game licensed by SC Department of Revenue pursuant to S.C. Code §12-21-2720(A)(3) [**Type III**].

For operation of all machines (not on gross income), pursuant to S.C. Code §12-21-2720(B):

Per Machine	\$180.00 PLUS
Business license	\$12.50

Distributors that sell or lease machines and are not licensed by the state as an operator pursuant to §12-21-2728 are not subject to Subclass 8.52.

8.6 NAICS 713990 – Billiard or Pool Rooms, all types. (A) Pursuant to SC Code § 12-21-2746, license tax of \$5.00 per table measuring less than 3½ feet wide and 7 feet long, and \$12.50 per table longer than that; PLUS, (B) with respect to gross income from the entire business in addition to the tax authorized by state law for each table:

Minimum on first \$2,000	\$61.60 PLUS
Per \$1,000, or fraction, over \$2,000	\$1.10

CLASS 9 RATES

9.10 NAICS 561599- All Other Travel Arrangement and Reservation Services.

Establishments primarily engaged in providing travel arrangements and reservation services (except travel agencies, tour operators, and convention and visitors bureaus).

Minimum on first \$2,000\$ 187.50 PLUS
Per \$1,000, or fraction, over \$2,000\$3.24

9.30 NAICS 441100- Automobile Dealers [Non-resident rates apply]. Establishments primarily engaged in retailing new and used automobiles and light trucks, such as sport utility vehicles, and passenger and cargo vans.

Minimum on first \$2,000\$54.00 PLUS
Per \$1,000, or fraction, over \$2,000\$1.00

9.30 NAICS 4412000- Other Motor Vehicle Dealers [Non-resident rates apply]. Establishments primarily engaged in retailing new and used vehicles (except automobiles, light trucks, such as sport utility vehicles, and passenger and cargo vans).

Minimum on first \$2,000\$54.00 PLUS
Per \$1,000, or fraction, over \$2,000\$1.00

9.40 NAICS 454390- Other Direct Selling Establishments (Peddlers). Establishments primarily engaged in retailing merchandise (except food for immediate consumption and fuel) via direct sale to the customer by means, such as in-house sales (i.e., party plan merchandising), truck or wagon sales, and portable stalls (i.e., street vendors).

Minimum on first \$2,000\$ 54.00 PLUS
Per \$1,000, or fraction, over \$2,000\$1.00

9.70 NAICS 722410- Drinking Places (Alcoholic Beverages). Establishments known as bars, taverns, nightclubs, or drinking places primarily engaged in preparing and serving alcoholic beverages for immediate consumption. These establishments may also provide limited food services.

Minimum on first \$2,000\$107.90 PLUS
Per \$1,000, or fraction, over \$2,000\$1.70

**Business License Class Schedule by NAICS Code
Appendix B**

This appendix will be updated every odd year based on the latest available IRS statistics.

<u>NAICS SECTOR/SUBSECTOR</u>	<u>INDUSTRY SECTOR</u>	
<u>CLASS</u>		
1100	Agriculture, Forestry, Fishing and Hunting	2
1150	Support Activities for Agriculture, Animals and Forestry	2
2100	Mining, Quarrying, and Oil and Gas Extraction	4
2300	Construction	8.10
3100-3300	Manufacturing	2
4200	Wholesale Trade	1
4400-4500	Retail Trade	1
4411	Automobile Dealers	9.30
4412	Other Motor Vehicle Dealers	9.30
454390	Other Direct Selling Establishments (Peddlers)	9.40
4800-4900	Transportation and Warehousing	2
482	Rail Transportation	8.2
5100	Information	4
517311/517312	MASC Telephone Companies	8.30
5200	Finance and Insurance	7
5241/5242	MASC Insurance Companies	8.40
5300	Real Estate and Rental Leasing	7
5400	Professional, Scientific and Technical Services	5
5500	Management Companies	7
5600	Administrative and Support Services	4
6100	Educational Services	4
6200	Health Care and Social Assistance	4
7100	Arts, Entertainment and Recreation	3
713120	Amusement Machines, Coin Operated	8.51
713290	Amusement Machines, Non-Payout	8.52

713990	Billiard or Pool Rooms	8.60
7210	Accommodations	3
7220	Food Services and Drinking Places	1
722410	Drinking Places	9.70



MEMORANDUM

TO: Town Council

FROM: John Troyer, CPA, Director of Finance

VIA: Marc Orlando, ICMA-CM, Town Manager

DATE: August 26, 2021

RE: **First Reading of Proposed Ordinance No. 2021-22**

Recommendation:

Staff recommends Town Council approve the first reading of Proposed Ordinance No. 2021-22 which amends Fiscal Year 2022 budgets for amounts rolled forward from Fiscal Year 2021 for the General and Capital Project Funds, as well as allocates American Rescue Plan Funds.

Summary:

This budget ordinance amends these funds by rolling forward budgeted funds from the prior year that were not spent by the end of the fiscal year. A roll-forward item is a budget for a program, technology or project that for various reasons was not started or completed at June 30, 2021. Roll-forward items were kept to a minimum and are explained in detail in the memos attached to this Proposed Ordinance. The Proposed Ordinance also appropriates funds for the American Rescue Plan as proposed to the Finance and Administrative Committee on August 17, 2021, and to Town Council on August 19, 2021. A detailed memo for the American Rescue Plan Funding appropriations is also attached.

Background:

In the General Fund, Staff requests \$219,956 to be rolled to Fiscal Year 2022 to complete the Town Hall Roof Replacement, Fire Station 3 Garage Door Replacements, Fire Stations 3 and 7 Flooring Repairs, and the Microwave Tower Generator Replacement. These projects were planned for FY21, but were delayed due to several factors such as difficulties in finding available materials, increased scope of project, construction scheduling, and lack of interested bidders. Any other General Fund budget remaining unused as of June 30, 2021 and not specified in this proposed ordinance will not roll forward to Fiscal Year 2022 and will revert to the fund balance.

In the Capital Project Fund, staff requests \$2,966,059 to be rolled to Fiscal Year 2022 to complete projects that were planned for FY21 but not completed by year end. These projects include Shelter Cove Pathway and Parking Enhancements, the demolition of the Kingfisher Restaurant in Shelter Cove Harbour, Stoney area Land Planning, and Park Upgrades such as the Barker Field Ext. Picnic Shelter, Jarvis Park Pour & Play Surface, and the Islanders Beach Park Overlook. Also included

is funding for renovations at the Beaufort County Sheriff's Office on Shelter Cove Lane. Any remaining Fiscal Year 2021 Capital Project Fund budget not included in this Proposed Ordinance will lapse and revert to the fund balance.

Based on guidance that has been issued for the uses of the American Rescue Plan funds, Staff recommends \$2.6 million in expenditures for Fiscal Year 2022 that will 1.) address negative economic impacts caused by the public health emergency and allow funding for pandemic impact grants; 2.) replace lost public sector revenue and target funds for home repair / removal of unsafe and uninhabited structures, Town Hall security and technology improvements, and development / infrastructure for the Patterson Tract; and 3.) invest in water, sewer, and broadband infrastructure with lateral sanitary sewer connection grants, and funds for public infrastructure.

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO.

PROPOSED ORDINANCE NO. 2021-22

AN ORDINANCE TO AMEND ORDINANCE 2021-14, THE BUDGET FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, FOR THE FISCAL YEAR ENDING JUNE 30, 2022; TO PROVIDE FOR THE BUDGETED APPROPRIATIONS OF PRIOR YEAR BUDGET ROLL-FORWARDS AND CERTAIN OTHER APPROPRIATIONS AND COMMITMENTS AND THE EXPENDITURES OF CERTAIN FUNDS; TO ALLOCATE THE SOURCES OF REVENUE FOR THE SAID FUNDS; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Section 5-7-260 of the Code of Laws of South Carolina requires that a municipal council act by ordinance to adopt a budget and levy taxes, pursuant to public notice; and

WHEREAS, the Town Council did adopt the budget on June 1, 2021; and

WHEREAS, pursuant to the budget amendment policy as stated in the Town's annual budget document, the Town Council is desirous of amending the budget so as to provide for the budgeted appropriations of prior year budget roll-forwards and certain other appropriations and commitments from the Fund Balance and other revenue sources.

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

Section 1 Amendment. The adopted 2022 fiscal year budget is amended to make the following changes as additions to the funds from prior years and to the projected revenue and expenditure accounts as detailed in Attachment A.

Section 2 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 3 Effective Date. This Ordinance shall be effective upon its enactment by the Town Council of the Town of Hilton Head Island.

ORDINANCE NO.

PROPOSED ORDINANCE NO. 2021-22

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

John McCann, Mayor

ATTEST:

Krista Wiedmeyer
Town Clerk

First Reading: _____
Second Reading: _____

APPROVED AS TO FORM:

Curtis Coltrane, Town Attorney

Introduced by Council Member:

ATTACHMENT A

Budget Adjustment: American Rescue Plan Funds

<u>Account Description</u>	<u>Amount</u>
Revenues:	
American Rescue Plan Funds	2,600,000
Total American Rescue Plan Revenue Budget Adjustment	2,600,000
American Rescue Plan Expenditures:	
<u>Address negative economic impacts caused by the public health emergency</u>	
Community Foundation of the Lowcountry-Pandemic Impact Grants	500,000
<u>Replace lost public sector revenue</u>	
Home Repair-Structural Safety/Removal of Unsafe and Uninhabited Structures	200,000
Town Hall Security and Technology Improvements	1,000,000
Patterson Tract Development/Infrastructure	500,000
	1,700,000
<u>Invest in water, sewer, and broadband infrastructure</u>	
Lateral Sanitary Sewer Connection Grants	100,000
Public Infrastructure	300,000
	400,000
Total American Rescue Plan Expenditure Budget Adjustment	2,600,000

Budget Adjustment: General Fund

<u>Account Description</u>	<u>Amount</u>
General Fund Revenues:	
Funds from Prior Years	219,956
Total General Fund Revenue Budget Adjustment	219,956
General Fund Expenditures:	
Infrastructure Services - Facilities Management Operating	
Town Hall Roof Replacement	96,470
Fire Station 3 Garage Door Replacements	55,800
Fire Station 3 and 7 Flooring Repair	40,700
Microwave Tower Generator Replacement	26,986
	219,956
Total General Fund Expenditure Budget Adjustment	219,956

ATTACHMENT A, CONTINUED

Budget Adjustment: Capital Project Fund

<u>Account Description</u>	<u>Amount</u>
Capital Project Fund Revenues:	
Prior Year HTAX Bonds	647,389
Prior Year Property Taxes	312,758
Prior Year GO Bond Proceeds	82,845
Prior Year TIF Taxes	1,585,447
Prior Year Real Estate Transfer Fees	155,180
Prior Year Sunday Liquor Permit Fees	<u>182,440</u>
Total Capital Project Fund Revenue Budget Adjustment	<u><u>2,966,059</u></u>
Capital Project Fund Expenditures:	
<u>Shelter Cove Pathway and Parking Enhancements</u>	
Prior Year Property Taxes	162,758
Prior Year GO Bond Proceeds	82,845
Prior Year HTAX Bonds	506,409
Prior Year TIF Taxes	<u>1,585,447</u>
	2,337,459
<u>Demolition of Kingfisher Restaurant</u>	
Prior Year Real Estate Transfer Fees	155,180
<u>General Park Upgrades</u>	
Prior Year Sunday Liquor Permit Fees	182,440
Prior Year HTAX Bonds	<u>72,560</u>
	255,000
<u>Stoney Land Planning</u>	
Prior Year HTAX Bonds	68,420
<u>BCSO Renovations</u>	
Prior Year Property Taxes	150,000
Total Capital Project Fund Expenditure Budget Adjustment	<u><u>2,966,059</u></u>



TOWN OF HILTON HEAD ISLAND

TO: Marc Orlando, Town Manager
FROM: Jeff Buckalew, Interim Director of Infrastructure Services
COPY: Shawn Colin, Senior Advisor to the Town Manager
John Troyer, Finance Director
Jennifer Ray, Interim Director of Community Development
DATE: May 25, 2021
SUBJECT: FY21/FY22 Budget Reconciliation –
Facilities Management Operating Budget (non-CIP) Projects

Summary: This information is provided to supplement the May 25 memo from Shawn Colin on the FY 21/22 CIP budget reconciliation. The projects listed below, are non-CIP projects within the Facilities Management operating budget that have or will have funds encumbered, but will not be completed in FY 21. It is recommended the committed funds for these projects be allowed to “roll” in the budget to FY22.

- Town Hall Roof Replacement – An IFB was issued March 25 with bids due April 22. A contract was awarded on May 13 with a notice to proceed issued and material ordered. Scheduled start date is June 5 with 90 days to complete. Expected completion date is Sept. 5. Cost is \$96,470.
- Fire Station 3 Garage Door Replacements – An IFB was issued on April 5 with bids due May 4. A contract was awarded on May 10 with a notice to proceed issued and materials ordered May 14. Materials delivery is expected on August 10 and the expected completion date is Aug. 24 (timeline dependent materials delivery). Cost is \$55,800
- Fire Station 3 and 7 Flooring – An IFB was issued on April 5 with no bids received. A second IFB was issued with bid due date May 25. A contract award is pending – currently routed for approval. There is a 2-5 week lead time on materials. Estimated completion date (contingent on pending contract approval) is July 8. Cost is \$40,700.
- Microwave Tower Generator Replacement – An IFB was issued April 12 with bids due May 5. A contract awarded on May 26 and generator ordered May 27. Delivery time is expected from manufacturer on Sept. 2 and expected completion date is Sept. 16. Cost is \$26,985.25.

Several factors contributed to the delays in implementing these projects, including availability of materials, increased scope of project, construction schedule, and lack of interested bidders. These projects are moving forward with contracts awarded in FY21, and will be completed in the first quarter of FY22.



TOWN OF HILTON HEAD ISLAND

TO: Marc Orlando, Town Manager
FROM: Shawn Colin, Senior Advisor to the Town Manager
COPY: John Troyer, Finance Director
Jennifer Ray, Interim Director of Community Development
Jeff Buckalew, Interim Director of Infrastructure Services
DATE: May 25, 2021
SUBJECT: CIP/FY22 Budget Reconciliation

Summary: As part of the FY22 Budget development staff engaged in a rigorous process to understand the current status of the Capital Improvements Program (CIP). This included identification of all CIP projects that were part of the FY21 Budget approval, as well as additional projects that were still living in the CIP. Some projects and funding had been rolled forward for many years.

As part of the process to rethink the CIP each project was evaluated and a recommendation was made regarding whether a project would be: completed by the end of the Fiscal Year, committed by the end of the Fiscal Year, whether the project and funding should be rolled forward to FY22 or if a reallocation of funds should be made to a different project or returned back to the funding source. This effort provided significant benefits in understanding the comprehensive program, including management of projects and capacity of funding sources and will provide a more efficient and meaningful way to manage the CIP and project development in future years.

As the CIP was integrated into the Budget staff erred in classifying for the Town Manager projects expected to need a carry forward projects that were part of the FY21 Budget. These projects were expected to be partially or fully committed by the end of FY21. Staff has reviewed the CIP, as well as projects that were previously included in an operational portion of the General Fund, to develop the following list of similarly situated projects to best represent the full Budget picture for FY22.

CIP

Shelter Cove Pathway and Parking Enhancements

This project was approved by Town Council and supplemental funds were included in a February 2021 budget amendment which allowed staff to move forward with final design and permitting. The project, estimated at \$2.4 Million is currently out to bid. While the project is expected to be committed in FY21, the lion share of expenses are expected in FY22. Staff should have represented a carry forward of funding to FY22 to complete the implementation.

Demolition of Kingfisher Restaurant

The Town acquired three properties in the fall of 2020 with the expectation that existing structures would be demolished. Following a budget amendment, approved by Town Council in February 2021 authorizing these expenditures, the Town solicited bids and awarded a contract for demolition services. The contractor began demolition of the former Mathews Marine dealer located at 166 William Hilton Parkway the week of May 10th and will follow with the former Fairfield Square, located at 160 William Hilton Parkway in the next few weeks. Demolition of the third property, the former Kingfisher Restaurant will

FY22 Budget – CIP Clarification

May 20, 2021

Page 2

not take place until FY22, therefore a roll forward of \$155,179.41 should have been included in the representation of the FY22 Budget.

General Park Upgrades

The general park upgrades category within the CIP had identified Barker Field Ext. Picnic Shelter, Jarvis Park Pour & Play Surface, and Islanders Beach Park Overlook as being implemented in FY21. These projects will not be completed and will not likely be committed in FY21. To implement these projects that were planned for FY21 but were unable to be contracted or completed by year-end should have been included as a carry forward of \$255,000 to complete the FY 2022 Budget picture.

Stoney Land Planning

Services for Land Planning in the Stoney community and in support of the Gateway Corridor project were contracted in April 2021. While \$88,660.00 has been committed to the project to date a portion of this amount will be unspent by the end of FY21. In addition, the remaining balance of currently budgeted funds should have been carried forward in support of this effort into FY22.

In addition to the CIP projects listed above, a few projects located in the General Fund are similarly situated including: Station 7 Fuel Tank, Town Hall Roof Replacement, Fire Station Flooring, Microwave Tower, and Town Hall Duct Replacement. Several factors contributed to delays in implementing these projects including availability of materials, increased scope of project, construction scheduling, and lack of interested bidders.

Options to Reconcile

Option 1: Budget Amendment in FY22 as a “Budget to Actual” adjustment. These projects did not advance as expected or hoped and so the carry forward is larger than planned in the budget process. Project scope and total dollar amounts do not change. The total of these CIP projects are approximately \$2,500,000, with the Shelter Cove project primarily contributing to this number. A budget amendment could be initiated at a schedule that suits the Town Manager and Town Council.

Option 2: Allow committed funds, either under contract or with a valid purchase order to “roll” the budget to the FY22. Additional communication would be provided to Town Council for full disclosure. This is not a departure from past practice.

Option 3: Do nothing. Unexecuted projects would be evaluated and reprogrammed for future CIP and Budget consideration. The projects proposed under the General Park Upgrades could likely be implemented using FY22 budgeted funds.



TOWN OF HILTON HEAD ISLAND

Executive Department

TO: Town Council
FROM: Marc Orlando, ICMA-CM – Town Manager
DATE: 08/10/2021
SUBJECT: American Rescue Plan Funding Appropriations
CC: John Troyer, Finance Director

Background:

Congressional House Resolution 1319, better known as the American Rescue Plan, was signed into law on March 11, 2021. This piece of legislation provides funding to local governments in order to assist in responding to the COVID-19 public health emergency. Based on guidance that has been provided from the United States Department of the Treasury, the Town is anticipated to receive a cumulative total of \$5,227,178.00 in Coronavirus State and Local Fiscal Recovery Funds. The Town has recently received the first round of funding under this appropriation of approximately \$2.6 million and expects to receive the remaining 50% of its allocation sometime around May of 2022.

The United States Department of Treasury has also issued some preliminary guidance on how these funds may be potentially utilized. A “Fact Sheet” issued by the United States Department of the Treasury on May 10, 2021 is attached to this Memorandum.

The stated goals that have been outlined under this program are to address concerns within the following areas:

- Support urgent COVID-19 response efforts to continue to decrease spread of the virus and bring the pandemic under control;
- Replace lost public sector revenue to strengthen support for vital public services and help retain jobs;
- Support immediate economic stabilization for households and businesses; and,
- Address systemic public health and economic challenges that have contributed to the unequal impact of the pandemic on certain populations

Additional guidance has also been recently published that helps to further understand how the funds received under this program may be authorized in order to address the concerns highlighted above. The following are a list of categories that have been initially identified as being eligible uses:

- **Support public health expenditures**, by funding COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff;
- **Address negative economic impacts caused by the public health emergency**, including economic harms to workers, households, small businesses, impacted industries, and the public sector;

- **Replace lost public sector revenue**, using this funding to provide government services to the extent of the reduction in revenues experienced due to the pandemic;
- **Provide premium pay for essential workers**, offering additional support to those who have borne and will bear the greatest health risks because of their service in critical infrastructure sectors; and,
- **Invest in water, sewer, and broadband infrastructure**, making necessary investments to improve access to clean drinking water, support vital wastewater and stormwater infrastructure, and to expand access to broadband internet.

Treasury's guidance in expending these funds has also stated that there are certain expenditures that will not be eligible with these funds. Those include using the funding to directly offset or to reduce/cut taxes or to make a deposit to a pension fund.

It is important to note that timing requirements have been incorporated into this legislation as well. A recipient of funding under this program must obligate 100% of the funding that it has received by December 31, 2024 and must have 100% of these funds expended by December 31, 2026. The covered period for any activity to be deemed eligible must have taken place or will take place between March 3, 2021 and December 31, 2024.

Staff Recommendations:

Based upon the guidance that has been issued thus far by the United States Department of the Treasury, conversations with the South Carolina Municipal Association, the International City/County Managers Association, the Government Finance Officers Association, and a review of potential/planned expenditures from other similar South Carolina jurisdictions, staff would submit the following expenditure recommendations for Town Council consideration:

I. Address negative economic impacts caused by the public health emergency,

- \$1,000,000 – Community Foundation of the Lowcountry Pandemic Impact Grants
 - \$500,000 in FY22 and \$500,000 in FY23

II. Replace lost public sector revenue and target funds to the following:

- \$400,000 – Home Repair-Structural Safety/Removal of Unsafe and Uninhabited Structures Program
 - \$200,000 in FY22 and \$200,000 in FY23
- \$1,000,000 – Town Hall Security and Technology Improvements
 - \$1,000,000 in FY22 and \$0.00 in FY23
- \$1,000,000 – Patterson Tract Development/Infrastructure
 - \$500,000 in FY22 and \$500,000 in FY23

III. Invest in water, sewer, and broadband infrastructure

- \$200,000 – Lateral Sanitary Sewer Connection Grants
 - \$100,000 in FY22 and \$100,000 in FY23
- \$1,627,178 – Public Infrastructure
 - \$300,000 in FY22 and \$1,327,178 in FY23

Total = \$5,227,178

A brief overview of how the funding within each of these areas is as follows:

- Community Foundation of the Lowcountry Pandemic Impact Grants

One of the primary focuses of the American Rescue Plan is to provide funding that directly responds to needs created by the COVID-19 pandemic particularly within communities and populations that have been hardest hit by the national health crisis. The Town would provide this funding to the Community Foundation of the Lowcountry thereby allowing them to administer a grant award program to local groups and organizations that were directly impacted. These funds could be utilized to support housing assistance, childcare and education, rent and utility assistance, and food insecurities among other pandemic related impacts.

- Home Repair-Structural Safety/Removal of Unsafe and Uninhabited Structures Program

For households located on Hilton Head Island whose income qualifications would be at 60% or less of the Area Median Income (AMI), this program would allow them to apply for grant funding to used towards leaking roofs, unstable or unsafe floors, failing septic tanks, inaccessible private roads, removing broken or unwanted items from a resident's property, removing unsafe and unoccupied structures from a resident's property, ensuring local emergency services have an official address to a resident's property, and providing assisting in obtaining proper paperwork for heirs' property.

- Town Hall Security and Technology Improvements

Funding under this item would be utilized to secure the Town Council chambers through the use of electronic locks, magnetometers, security cameras and other safety/security related infrastructure. Other areas of Town Hall to include public entrances and common hallways would also be improved utilizing this same technology in order to provide a uniform system of security throughout the entire facility. Additionally, new technology within the Town Council chambers would be installed and existing technology upgraded in order to enhance live streaming capabilities of Town Council meetings and meetings of other public bodies.

- Patterson Tract Development/Infrastructure

The Town owns a 3.27 acre tract of land located at 23 Marshland Road. Funding under this item would be utilized to install public recreational amenities consistent with a neighborhood park and infrastructure necessary to support a neighborhood park. Additionally, the Town may consider a public-private partnership to develop workforce housing on portion of this property. Funding under item could therefore also be used to support the road, water, sewer and/or utility infrastructure necessary to facilitate the creation of such workforce housing development on this property.

- Public Infrastructure

Funding under this section would be utilized to accomplish various capital improvement projects that are not otherwise funded within the Town's adopted Capital Improvement Plan or could otherwise be used to supplement already identified funding to facilitate project enhancement. Additionally, funding under this section could be utilized to satisfy the Town's potential participation in regional workforce housing initiatives should the Town Council ultimately decide to participate in such a program.

- Lateral Sanitary Sewer Connection Grants

The funding under this section would facilitate the creation of a grant program whereby those property owners living on the Island who have not yet connected to existing sanitary sewer systems due to financial limitations or otherwise would be eligible to receive funding that would facilitate such connection. Existing programs such as Project Safe could also be further supported financially in their efforts to connect all Hilton Head Island residents to an existing sewer system. Funding under this program could also be used to potentially pay for some or all of the costs that might not otherwise be covered under the existing Project Safe grant funding. Examples of these services could include plumbing connection services, inspections costs and new connection fees that may represent a financial barrier to establishing a new sewer connection.



TOWN OF HILTON HEAD ISLAND

Executive Department

TO: Marc Orlando, ICMA-CM, *Town Manager*
VIA: Shawn Colin, *Senior Advisor to the Town Manager*
FROM: Marcy Benson, *Senior Grants Administrator*
DATE: August 30, 2021
SUBJECT: HUD/CDBG Entitlement Program 2020 CAPER

Recommendation:

Staff requests approval by resolution of the attached program year 2020 Community Development Block Grant (CDBG) Consolidated Annual Performance Evaluation Report (CAPER) as required by the U.S. Department of Housing and Urban Development (HUD) for participation in the CDBG Entitlement Program.

Summary:

The 2020 CAPER outlines how CDBG funds were spent, and the progress made towards the goals outlined in the Five Year Consolidated Plan and the Annual Action Plan. The 2020 CAPER is a HUD requirement for participation in the CDBG Entitlement Program. The CAPER is submitted to HUD annually within 90 days after the close of the program year. The due date is September 28, 2021.

Background:

In 2015 the Town of Hilton Head Island began participating in the HUD CDBG Entitlement Program. The HUD-required 2020 Five Year Consolidated Plan and One Year Action Plan was approved by HUD in July 2020. To meet HUD requirements a CAPER must be prepared each year of program participation and public input must be solicited for the CAPER. The CAPER describes activities implemented and accomplishments related to the goals and objectives identified in the 2020 – 2024 Five Year Consolidated Plan and the 2020 Annual Action Plan.

The CAPER was released to the public on August 12, 2021, for a 15-day public comment period and a public meeting to solicit public input was held on August 19, 2021. At the close of the 15-day public comment on August 27, 2021, one public comment opposed to the CAPER was received. The comment pertained to affordable housing availability. A summary of comments received is included in the CAPER.

Approval of the CAPER at the September 21, 2021, Town Council meeting will allow the report to be submitted by the September 28, 2021, HUD deadline.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA TO APPROVE THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) 2020 CONSOLIDATED ANNUAL PERFORMANCE EVALUATION REPORT (CAPER)

WHEREAS, in July 2020 the Town of Hilton Head Island Community Development Block Grant (CDBG) Five Year Consolidated Plan and One Year Annual Action Plan for program year 2020 detailing goals and objectives to be implemented to address community needs in low and moderate income areas within the Town’s jurisdiction was approved by the United States Department of Housing and Urban Development (HUD); and

WHEREAS, as an entitlement community, the Town must prepare and submit a CAPER to HUD within 90 days after the close of the program year; and

WHEREAS, the CAPER is an annual report of activities implemented and accomplishments of goals and objectives identified in the 2020 Annual Action Plan; and

WHEREAS, the Town has adhered to the public participation requirements set forth in the Citizen Participation Plan in the development of the 2020 CAPER by conducting a public meeting and 15 day comment period to solicit citizen input and review for the 2020 CAPER; and

WHEREAS, the Town Manager is authorized to submit the 2020 CAPER to HUD for review and acceptance;

NOW, THEREFORE BE IT, AND IT HEREBY IS RESOLVED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, THAT The 2020 CAPER as submitted in the attachment to this resolution be approved and submitted to HUD.

MOVED, APPROVED, AND ADOPTED ON THIS 21ST DAY OF SEPTEMBER, 2021.

John J. McCann, Mayor

ATTEST:

Krista M. Wiedmeyer, Town Clerk

APPROVED AS TO FORM:

Curtis Coltrane, Town Attorney

Introduced by Council Member: _____

Town of Hilton Head Island
2020
Consolidated Annual Performance
Evaluation Report (CAPER)

For the
U.S. Department of Housing and Urban Development
Community Development Block Grant Program



~FINAL~

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CR-05 - Goals and Outcomes

Progress the jurisdiction has made in carrying out its strategic plan and its action plan.

91.520(a)

At the end of each program year, the Town of Hilton Head Island is required to prepare a Consolidated Annual Performance Evaluation Report (CAPER). This report must be submitted to HUD within 90 days after the close of the program year and includes information on the programmatic accomplishments under the CDBG program. This CAPER is for the first year of the 2020 – 2024 Five Year Consolidated Plan. The Town of Hilton Head Island CDBG allocation for 2020 was \$238,313 and the CDBG-CV Round One and Round Three allocations totaled \$532,088. There was \$529,965.78 in unexpended funds from previous program years. This equals \$1,300,366.70 in total CDBG funds available in 2020.

Administrative and Planning Activities:

The 2020 – 2024 Five Year Consolidated Plan and 2020 Annual Action Plan was submitted to HUD in May 2020. In July 2020 the Town of Hilton Head Island was notified the 2020 – 2024 Five Year Consolidated Plan and 2020 Annual Action Plan was approved and a grant agreement for 2020 was executed. Administrative activities conducted from July 2020 through June 2021 included program administrative services by the Community Foundation of the Lowcountry and general program administration by the Town of Hilton Head Island. A total of \$12,000 in program year 2020 CDBG funds and a total of \$26,604 in CDBG-CV funds have been expended for administrative services by the Community Foundation of the Lowcountry. A total of \$300 from 2019 CDBG program year funds and a total of \$400 from 2020 CDBG program year funds have been expended for general program administration by the Town of Hilton Head Island.

Non-Housing Community Development Activities:

The Boys & Girls Club of Hilton Head Island pavilion project was funded with \$200,000 of 2018 CDBG program year dollars. The construction of this project began in September 2020. A total of \$105,861.46 has been expended for project construction. The Rowing and Sailing Center at Squire Pope Community Park playground and parking expansion project was funded with 2019 CDBG program year dollars. This project was completed in August 2020 and a total of \$151,926.08 has been expended for project construction. Approximately 95% of 2020 CDBG program year funds and CDBG-CV funds allocated to the Town of Hilton Head Island were designated for public services. Twenty-seven grants were awarded to 15 subrecipient public services organizations for COVID-19 response and recovery efforts. A total of \$225,349 in 2020 CDBG program year funds have been expended for public services and a total of \$505,484 in CDBG-CV funds have been expended for public services.

Comparison of the proposed versus actual outcomes for each outcome measure submitted with the consolidated plan and explain, if applicable, why progress was not made toward meeting goals and objectives. 91.520(g)

Goal	Category	Source / Amount	Indicator	Unit of Measure	Expected – Strategic Plan	Actual – Strategic Plan	Percent Complete	Expected – Program Year	Actual – Program Year	Percent Complete
COVID-19 Response and Recovery	Non-Housing Community Development	CDBG:\$238,313 CDBG-CV: \$532,088	Public service activities other than Low/Moderate Income Housing Benefit	Persons Assisted	37,099	15,486	41.74%	37,099	15,486	41.74%
Facilities, Housing, Public Svcs, Econ Dev. Yr. 2	Affordable Housing Non-Housing Community Development	CDBG:\$238,313	Public Facility or Infrastructure Activities other than Low/Moderate Income Housing Benefit	Persons Assisted	13,692	0	0.00%	0	0	0%
Facilities, Housing, Public Svcs, Econ Dev. Yr. 3	Affordable Housing Non-Housing Community Development	CDBG:\$238,313	Public Facility or Infrastructure Activities other than Low/Moderate Income Housing Benefit	Persons Assisted	13,692	0	0.00%	0	0	0%

Facilities, Housing, Public Svcs, Econ Dev. Yr. 4	Affordable Housing Non-Housing Community Development	CDBG:\$238,313	Public Facility or Infrastructure Activities other than Low/Moderate Income Housing Benefit	Persons Assisted	13,692	0	0.00%	0	0	0%
Facilities, Housing, Public Svcs, Econ Dev. Yr. 5	Affordable Housing Non-Housing Community Development	CDBG:\$238,313	Public Facility or Infrastructure Activities other than Low/Moderate Income Housing Benefit	Persons Assisted	13,692	0	0.00%	0	0	0%

Table 1 - Accomplishments – Program Year & Strategic Plan to Date

Assess how the jurisdiction’s use of funds, particularly CDBG, addresses the priorities and specific objectives identified in the plan, giving special attention to the highest priority activities identified.

The Town of Hilton Head Island has used CDBG and CDBG-CV funds to address priority needs identified in the 2020 – 2024 Five Year Consolidated Plan and 2020 Annual Action Plan. Funds were used for the needs listed at a high priority level, which include public services and administrative and planning. During program year 2020 CDBG funds expended for public services activities equaled \$225,349 and CDBG-CV funds expended for public services equaled \$505,484. During program year 2020 CDBG funds expended for administrative and planning for 2019 activities equaled \$300, for 2020 activities equaled \$12,400 and for CDBG-CV activities equaled \$26,604.

The Boys & Girls Club of Hilton Head Island pavilion project, identified in the 2018 Annual Action Plan and 2015 – 2019 Five Year Consolidated Plan, was funded with \$200,000 of 2018 CDBG program year dollars. A total of \$105,861.46 has been expended for this project. The Rowing and Sailing Center at Squire Pope Community Park playground and parking expansion project, identified in the 2019 Annual Action Plan and 2015 – 2019 Five Year Consolidated Plan, was funded with 2019 CDBG program year dollars. A total of \$151,926.08 has been expended for this project construction.

Because the 2018 Boys & Girls Club of Hilton Head Island pavilion project and the 2019 Rowing and Sailing Center at Squire Pope Community Park playground and parking expansion projects were listed in the 2015 – 2019 Five Year Consolidated Plan and related Annual Action Plans, they are not reflected in the table above which is drawn from the current 2020 – 2024 Five Year Consolidated Plan.

CR-10 - Racial and Ethnic composition of families assisted

Describe the families assisted (including the racial and ethnic status of families assisted).

91.520(a)

	CDBG
White	3,694
Black or African American	2,601
Asian	16
American Indian or American Native	2
Native Hawaiian or Other Pacific Islander	0
Total	6,313
Hispanic	866
Not Hispanic	5,381

Table 2 – Table of assistance to racial and ethnic populations by source of funds

Narrative

The table above indicates demographic information for households or individuals who received public services provided by 2020 CDBG funds and CDBG-CV funds. Subrecipients submitted this data through final reports which were reviewed by Town staff and logged for reporting purposes. The data above is pre-populated through the HUD Integrated Disbursement & Information System (IDIS) and the “Total” line does not include information for the “Other Multi Racial” category. Based on information submitted by subrecipients receiving funding, this category equals 9,173 households or individuals and brings the “Total” line to 15,486. Using this additional category the Hispanic total increases to 9,980 and the Not Hispanic total increases to 5,506.

CR-15 - Resources and Investments 91.520(a)

Identify the resources made available

Source of Funds	Source	Resources Made Available	Amount Expended During Program Year
CDBG	public - federal	\$768,278.78	\$495,836.54
Other	public - federal	\$532,088.00	\$532,088.00

Table 3 - Resources Made Available

Identify the geographic distribution and location of investments

Target Area	Planned Percentage of Allocation	Actual Percentage of Allocation	Narrative Description
Census Tract 105	0	0	No CDBG funded projects were planed in Census Tract 105 for the 2020 program year.
Census Tract 108	0	0	No CDBG funded projects were planed in Census Tract 108 for the 2020 program year.
Census Tract 110	0	0	No CDBG funded projects were planed in Census Tract 110 for the 2020 program year.
Census Tract 111	0	0	No CDBG funded projects were planed in Census Tract 111 for the 2020 program year.
Census Tract 113	0	0	No CDBG funded projects were planed in Census Tract 113 for the 2020 program year.
Town-Wide	100	100	Funds for program administration costs and public services which meet HUD requirements.

Table 4 – Identify the geographic distribution and location of investments

Narrative

Resources available to the Town of Hilton Head Island during the 2020 program year included CDBG funds allocated to the Town from HUD for the 2017, 2018, 2019, and 2020 program years and CARES Act CDBG-CV funds.

The Boys & Girls Club of Hilton Head Island pavilion project, identified in the 2018 Annual Action Plan and 2015 – 2019 Five Year Consolidated Plan, was funded with \$200,000 of 2017 and 2018 CDBG program year dollars. A total of \$105,861.46 has been expended for this project construction. The Rowing and Sailing Center at Squire Pope Community Park playground and parking expansion project, identified in the 2019 Annual Action Plan and 2015 – 2019 Five Year Consolidated Plan, was funded with 2019 CDBG program year dollars. A total of \$151,926.08 has been expended for this project construction.

Program year 2020 CDBG funds expended for public services activities equaled \$225,349 and

CDBG-CV funds expended for public services equaled \$505,484. These expenditures included 27 grants awarded to 15 subrecipient public services organizations for COVID-19 response and recovery efforts. During program year 2020 CDBG funds expended for administrative and planning for 2019 activities equaled \$300, for 2020 activities equaled \$12,400 and for CDBG-CV activities equaled \$26,604.

Leveraging

Explain how federal funds leveraged additional resources (private, state and local funds), including a description of how matching requirements were satisfied, as well as how any publicly owned land or property located within the jurisdiction that were used to address the needs identified in the plan.

While the CDBG program does not require leveraging, if project costs exceed the allocated CDBG funds other Town of Hilton Head Island resources may be used in combination to leverage project costs over the CDBG allocation amount.

CR-20 - Affordable Housing 91.520(b)

Evaluation of the jurisdiction's progress in providing affordable housing, including the number and types of families served, the number of extremely low-income, low-income, moderate-income, and middle-income persons served.

	One-Year Goal	Actual
Number of Homeless households to be provided affordable housing units	0	0
Number of Non-Homeless households to be provided affordable housing units	10	9
Number of Special-Needs households to be provided affordable housing units	0	0
Total	10	9

Table 5 – Number of Households

	One-Year Goal	Actual
Number of households supported through Rental Assistance	10	9
Number of households supported through The Production of New Units	0	0
Number of households supported through Rehab of Existing Units	0	0
Number of households supported through Acquisition of Existing Units	0	0
Total	10	9

Table 6 – Number of Households Supported

Discuss the difference between goals and outcomes and problems encountered in meeting these goals.

In the first year (2020) of reporting on the 2020 – 2024 Five Year Consolidated Plan there was one goal to provide rental assistance to 10 households. This rental assistance is provided through the Beaufort Housing Authority, and not directly by the Town of Hilton Head Island. The Beaufort Housing Authority provided 9 households with rental assistance. For production of new units, rehab of existing units and acquisition of existing units there was no goal set in the 2020 – 2024 Five Year Consolidated Plan. These are not activities the Town of Hilton Head Island typically undertakes. The difficulty in setting affordable housing goals pertains to the high cost and limited availability of buildable property on a coastal barrier island with finite boundaries.

Discuss how these outcomes will impact future annual action plans.

In addition to participation in the Lowcountry Affordable Housing Coalition, monitoring relevant public policies for changes which may constitute barriers to affordable housing may be conducted. In 2017 the Town Council Public Planning Committee began studying various aspects of affordable housing on Hilton Head Island. During 2017 the committee met with local developers, business owners, employers, and service organizations for discussions on providing affordable housing to the local workforce. In 2018 strategies were developed to further address fostering affordable housing within the Town of Hilton Head Island. In 2019 the Town’s housing consultant presented a workforce housing strategic plan. Town staff prepared an approach to implement the recommendations included in the strategic plan and the Town Council Public Planning Committee made a recommendation to Town Council to adopt the strategic plan. In 2020 Town staff developed workforce housing amendments for the Town of Hilton Head Island Land Management Ordinance (LMO). The amendments created a policy which uses incentives to promote conversion of commercial space into workforce housing units. These amendments moved through the approval process and the commercial conversion LMO amendment was adopted by Town Council on November 17, 2020. In December 2020 a consultant was hired through a partnership with area counties and municipalities and research for developing a housing trust fund was underway. On February 16, 2021 a second set of LMO amendments related to work force housing were adopted by Town Council allowing bonus density for work force housing units under certain conditions.

Include the number of extremely low-income, low-income, and moderate-income persons served by each activity where information on income by family size is required to determine the eligibility of the activity.

Number of Households Served	CDBG Actual	HOME Actual
Extremely Low-income	0	0
Low-income	50	0
Moderate-income	15,436	0
Total	15,486	0

Table 7 – Number of Households Served

Narrative Information

The table above represents demographic information for households receiving public services provided by 2020 CDBG funds. The Town of Hilton Head Island funded local public service organizations aiding predominantly low and moderate income clientele for COVID-19 response and recovery efforts. During the application process organizations had to verify their clientele was 51% or more low and moderate income based on HUD published income levels.

CR-25 - Homeless and Other Special Needs 91.220(d, e); 91.320(d, e); 91.520(c)
Evaluate the jurisdiction's progress in meeting its specific objectives for reducing and ending homelessness through:

Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs

The most current point in time count data available is from the January 22, 2020 count. The number of homeless counted in Beaufort County was 12 persons. Of the 12 persons interviewed in January 2020, there was one (1) living unsheltered and 11 living in shelters. Of the 12 persons none were veterans and one (1) was chronically homeless. It is important to note, since the Town of Hilton Head Island does not have any homeless shelters the figures reflected in the point in time count data pertain to homeless persons counted in Beaufort County, South Carolina, and are not specific to the Town of Hilton Head Island.

Results of the 2019 point in time count indicated 28 persons experiencing homelessness interviewed in Beaufort County. The 2020 point in time count results showed a decrease of 16 persons, for a total of 12 persons experiencing homelessness in Beaufort County. Although state-wide point in time count data shows an increase in number of persons counted in 2020 compared to 2019 the reverse was indicated for Beaufort County. The lower count number for Beaufort County may be due to the area of the Lowcountry Continuum of Care being geographically smaller than the other three South Carolina continuums of care that participate in the annual point in time count process.

Addressing the emergency shelter and transitional housing needs of homeless persons

Currently there are no emergency shelter and transitional housing shelters operating in the Town of Hilton Head Island. At this time there is no future plan to own or operate emergency shelters or transitional housing in the Town of Hilton Head Island.

Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families and those who are: likely to become homeless after being discharged from publicly funded institutions and systems of care (such as health care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); and, receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs

The Town of Hilton Head Island anticipates continued participation in the Lowcountry Affordable Housing Coalition, which is under the auspices of Together for Beaufort County and the Beaufort County Human Services Alliance. This coalition consists of governmental entities, non-profit and private organizations striving to make housing more affordable in the Beaufort County area. The coalition has a focus on assisting residents of Beaufort County and serves as a forum for member organizations to share ideas, coordinate projects and foster interagency

cooperation. With support from the Beaufort County Human Services Alliance resources are pooled and community needs are addressed in the areas of economy, education, poverty, and health/environmental issues.

Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again

There are no homeless shelters located within the jurisdiction of the Town of Hilton Head Island and no homeless population count data available from the Lowcountry Continuum of Care, the regional continuum of care servicing the Town. There is a non-profit organization, Family Promise of Beaufort, located in neighboring Bluffton, South Carolina, which is a coalition of Beaufort County churches assisting homeless families through a 60-90 day program. The program provides evening accommodations for program participants at host churches and daytime transportation to school for children and educational programs for parents.

CR-30 - Public Housing 91.220(h); 91.320(j)

Actions taken to address the needs of public housing

The Town of Hilton Head Island does not own or operate any public housing developments or units. The Beaufort Housing Authority is the agency providing public housing to approximately 2,429 residents in Beaufort County, South Carolina and there are 293 public housing units located throughout the county. In the Town of Hilton Head Island the Beaufort Housing Authority operates 80 public housing units at the Sandalwood Terrace Apartments.

Actions taken to encourage public housing residents to become more involved in management and participate in homeownership

The Beaufort Housing Authority provides resident councils at every public housing development they operate. There is also a Resident Advisory Board that is comprised of resident leaders from each development and Housing Choice Voucher (Section 8) representatives. The Housing Authority works with resident services at each of the public housing developments and through this collaboration promote programs and activities for residents. Some of the programs offered include: the Family Self-Sufficiency Program which is a five year homeownership education program, Sandalwood Terrace Resident Council, free budgeting classes, and community garden clubs. Due to social distancing protocols related to the COVID-19 pandemic during 2020 the Beaufort Housing Authority conducted virtual resident council meetings. In addition to resident council meetings being conducted virtually other programming services such as parenting classes and poster contests for resident children have taken place via virtual connections.

Actions taken to provide assistance to troubled PHAs

Not Applicable.

CR-35 - Other Actions 91.220(j)-(k); 91.320(i)-(j)

Actions taken to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing such as land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment. 91.220 (j); 91.320 (i)

Actions taken to address obstacles to meeting underserved needs. 91.220(k); 91.320(j)

To reduce the number of obstacles in meeting the needs of the underserved populations Town staff may assist with facilitating collaborations with area service organizations which spearhead community-wide solutions to local needs.

Actions taken to reduce lead-based paint hazards. 91.220(k); 91.320(j)

Data for lead-based paint hazards in the Town of Hilton Head Island is unavailable. At this time actions to address lead-based paint hazards have not been identified.

Actions taken to reduce the number of poverty-level families. 91.220(k); 91.320(j)

The Beaufort Housing Authority operates a Family Self Sufficiency Program which promotes independence for its residents. Participants in the program work toward setting and obtaining future life and career goals by accomplishing activities and objectives. The Beaufort Housing Authority also operates a homeownership program, which assists residents in their programs pay a mortgage rather than a rental payment. Recently one resident successfully completed this program and purchased a home in Beaufort County using this assistance.

The Town of Hilton Head Island anticipates continued participation in the Lowcountry Affordable Housing Coalition. This coalition consists of governmental entities, non-profit and private organizations striving to make housing more affordable in the Beaufort County area. The coalition has a focus on assisting residents of Beaufort County and serves as a forum for member organizations to share ideas, coordinate projects and foster interagency cooperation. With support from the Beaufort County Human Services Alliance resources are pooled and community needs are addressed in the areas of economy, education, poverty, and health/environmental issues.

Actions taken to develop institutional structure. 91.220(k); 91.320(j)

The Town of Hilton Head Island will continue to coordinate efforts and partnerships with state and local government entities such as Beaufort County, the Lowcountry Council of Governments, and various State of South Carolina offices to carry out the priority needs listed in the Annual Action Plan.

Actions taken to enhance coordination between public and private housing and social service agencies. 91.220(k); 91.320(j)

The Town of Hilton Head Island continues to participate in the Lowcountry Affordable Housing Coalition, which is under the auspices of Together for Beaufort and the Beaufort County Human Services Alliance. This coalition consists of governmental entities, non-profit and private organizations striving to make housing more affordable in the Beaufort County area. The coalition has a focus on assisting residents of Beaufort County and serves as a forum for member organizations to share ideas, coordinate projects, and foster interagency cooperation. With support from the Beaufort County Human Services Alliance resources are pooled and community needs are addressed in the areas of economy, education, poverty, and health/environmental issues.

During the 2020 program year the Town of Hilton Head Island executed a memorandum of agreement which created a partnership with the Community Foundation of the Lowcountry to receive and distribute, through a grant application process, both 2020 CDBG and CDBG-CV funds to local non-profit organizations serving predominantly low and moderate income residents of the Town of Hilton Head Island as part of the COVID-19 response and recovery.

Identify actions taken to overcome the effects of any impediments identified in the jurisdictions analysis of impediments to fair housing choice. 91.520(a)

The Analysis of Impediments to Fair Housing Choice (AI) acknowledged nine impediments to fair housing choice: housing affordability, high cost of housing, inventory, transportation, small urban area, shelter and homelessness limited facilities, financial illiteracy, discrimination, and other.

Actions to overcome the effects of impediments identified in the AI include:

- In coordination with the Community Foundation of the Lowcountry and Hilton Head Public Service District, the Town of Hilton Head Island has committed to \$10 million of sewer improvements which will connect lower income areas which rely on septic systems to treat wastewater.
- The Town of Hilton Head Island has used CDBG entitlement funds to pave dirt roads located in low and moderate income areas.
- The Town of Hilton Head Island donated town-owned property for a 10 home Habitat for Humanity development.
- The Town of Hilton Head Island participates as a member of the Lowcountry Affordable Housing Coalition.
- In 2017 the Public Planning Committee of the Town Council of the Town of Hilton Head Island and Town staff began to study the issue of availability of workforce and affordable housing.
- In 2017 the Town of Hilton Head Island was a participant in the Beaufort County

Housing Needs Assessment process.

- In 2017 affordable housing stakeholder meetings were held with local builders, developers, employers and service organizations to solicit input on community affordable housing needs.
- In 2017 the Town Council of the Town of Hilton Head Island adopted nine recommendations related to workforce and affordable housing.
- In 2018 Town staff developed a scope of work for research, analysis and options for a Town of Hilton Head Island affordable housing strategy.
- In 2018 the Town of Hilton Head Island engaged Lisa Sturtevant & Associates and Clemson University to develop workforce housing strategic plan.
- In April 2019 the workforce housing strategic plan was completed. It identifies workforce housing needs on Hilton Head Island, defines workforce housing, makes strategy recommendations, and includes implementation steps and a workforce housing toolbox.
- In 2019 and 2020 in response to the workforce housing strategic plan Town staff and the Town's Public Planning Committee developed a workforce housing policy and proposed amendments to the Town's Land Management Ordinance which allows for workforce housing opportunities. The proposed amendments to the Land Management Ordinance outline incentives to promote development of workforce housing units.
- In 2020 the amendments moved through the approval process and the commercial conversion Land Management Ordinance (LMO) amendment was adopted by Town Council on November 17, 2020.
- In December 2020 a consultant was hired through a partnership with area counties and municipalities and research for developing a housing trust fund was underway.
- On February 16, 2021 a second set of LMO amendments related to work force housing were adopted by Town Council allowing bonus density for work force housing units under certain conditions.

CR-40 - Monitoring 91.220 and 91.230

Describe the standards and procedures used to monitor activities carried out in furtherance of the plan and used to ensure long-term compliance with requirements of the programs involved, including minority business outreach and the comprehensive planning requirements

The Town of Hilton Head Island Executive Department staff is responsible for monitoring all CDBG funded activities to ensure compliance with program regulations. Each program and/or project funded with CDBG monies is reviewed to ensure it meets national CDBG objectives and complies with CDBG eligibility. Each CDBG funded activity shall enter into a contractual obligation with the Town to ensure contracted services and scope of work activities are carried out as agreed-to, and to ensure compliance with federal regulations.

The Town of Hilton Head Island utilizes a number of methods for project implementation, including but not limited to contracting with non-profit organizations for program services. The Town implements and monitors its own projects such as infrastructure or public facilities improvements. Each project is analyzed for eligibility, performance, community impact and measurable outcomes benefiting the Town of Hilton Head Island.

The Town of Hilton Head Island monitoring of subrecipients is an ongoing process with communication and evaluation. The process includes telephone and written communication, analysis of reports, and when necessary in-person or virtual meetings no less than once per program year. Objectives of program monitoring include management systems and overall capacity of subrecipient to implement an effective program, verification of subrecipient compliance with federal regulations and the elimination of inefficient, ineffective and/or improper use of federal funds.

The following criteria is followed when conducting monitoring:

- * Notification letter and explanation of purpose of monitoring via in-person or virtual meeting
- * Review materials providing detailed information, program/project descriptions, and status
- * Review pertinent subrecipient files, including but not limited to applications, agreements, reports, payment requests, and copies of audits
- * Interview members of subrecipient staff to discuss performance via in-person or virtual meeting
- * Visit project sites, if applicable
- * Conduct close-out meeting in-person or virtually to present preliminary conclusions

The focus of program monitoring will be on key indicators such as completion of project designs or plans and specification, contracts and obligations of funds and expenditure of funds. Where activities have experienced delays, assessment of the reason for the delay will be made, the extent to which the reasons for the delay are beyond the control of the subrecipient or the extent to which the original schedule was unrealistic, if the cause is unique to the program/project, and what corrective action, if any the subrecipient is undertaking.

Accurate records of any monitoring site visit, or desk review, which may include but not be limited to a monitoring checklist, or summary report will be kept on file with the Town of Hilton Head Island.

Citizen Participation Plan 91.105(d); 91.115(d)

Describe the efforts to provide citizens with reasonable notice and an opportunity to comment on performance reports.

A public notice advertising the public meeting and 15 day public comment period for the 2020 CAPER was published in the newspaper with local circulation (The Island Packet) and posted at the Town of Hilton Head Island bullet board and website on Thursday, August 5, 2021. In addition the public meeting notice was sent via email “blast” to individuals who submitted email addresses requesting notification of public notices. The 15 day public comment period began on Thursday, August 12, 2021 and ended Friday, August 27, 2021. A public meeting was held on Thursday, August 19, 2021 at 5pm outside the Benjamin M. Racusin Council Chambers at the Town of Hilton Head Island Town Hall located at 1 Town Center Court, Hilton Head Island, South Carolina. No citizens attended the August 19, 2021 public meeting and there were no comments received at the public meeting. One comment opposed to the CAPER was received during the 15 day public comment period. Following the public comment period the draft 2020 CAPER was presented at the Town of Hilton Head Island Town Council meeting on September 21, 2021 for review and comment. A comment summary is attached to this CAPER.

CR-45 - CDBG 91.520(c)

Specify the nature of, and reasons for, any changes in the jurisdiction’s program objectives and indications of how the jurisdiction would change its programs as a result of its experiences.

The year reported in this CAPER (2020) was the first year of the Town of Hilton Head Island 2020 – 2024 Five Year Consolidated Plan and the objectives in the plan to allocate CDBG funding for public services and program administration costs did not change.

Does this Jurisdiction have any open Brownfields Economic Development Initiative (BEDI) grants?

No.

[BEDI grantees] Describe accomplishments and program outcomes during the last year.

ATTACHMENTS



Office of Community Planning and Development
 U.S. Department of Housing and Urban Development
 Integrated Disbursement and Information System
 PR26 - CDBG Financial Summary Report
 Program Year 2020
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PART I: SUMMARY OF CDBG RESOURCES

01 UNEXPENDED CDBG FUNDS AT END OF PREVIOUS PROGRAM YEAR	529,965.78
02 ENTITLEMENT GRANT	238,313.00
03 SURPLUS URBAN RENEWAL	0.00
04 SECTION 108 GUARANTEED LOAN FUNDS	0.00
05 CURRENT YEAR PROGRAM INCOME	0.00
05a CURRENT YEAR SECTION 108 PROGRAM INCOME (FOR SI TYPE)	0.00
06 FUNDS RETURNED TO THE LINE-OF-CREDIT	0.00
06a FUNDS RETURNED TO THE LOCAL CDBG ACCOUNT	0.00
07 ADJUSTMENT TO COMPUTE TOTAL AVAILABLE	0.00
08 TOTAL AVAILABLE (SUM, LINES 01-07)	768,278.78

PART II: SUMMARY OF CDBG EXPENDITURES

09 DISBURSEMENTS OTHER THAN SECTION 108 REPAYMENTS AND PLANNING/ADMINISTRATION	483,136.54
10 ADJUSTMENT TO COMPUTE TOTAL AMOUNT SUBJECT TO LOW/MOD BENEFIT	0.00
11 AMOUNT SUBJECT TO LOW/MOD BENEFIT (LINE 09 + LINE 10)	483,136.54
12 DISBURSED IN IDIS FOR PLANNING/ADMINISTRATION	12,700.00
13 DISBURSED IN IDIS FOR SECTION 108 REPAYMENTS	0.00
14 ADJUSTMENT TO COMPUTE TOTAL EXPENDITURES	0.00
15 TOTAL EXPENDITURES (SUM, LINES 11-14)	495,836.54
16 UNEXPENDED BALANCE (LINE 08 - LINE 15)	272,442.24

PART III: LOW/MOD BENEFIT THIS REPORTING PERIOD

17 EXPENDED FOR LOW/MOD HOUSING IN SPECIAL AREAS	0.00
18 EXPENDED FOR LOW/MOD MULTI-UNIT HOUSING	0.00
19 DISBURSED FOR OTHER LOW/MOD ACTIVITIES	483,136.54
20 ADJUSTMENT TO COMPUTE TOTAL LOW/MOD CREDIT	0.00
21 TOTAL LOW/MOD CREDIT (SUM, LINES 17-20)	483,136.54
22 PERCENT LOW/MOD CREDIT (LINE 21/LINE 11)	100.00%

LOW/MOD BENEFIT FOR MULTI-YEAR CERTIFICATIONS

23 PROGRAM YEARS(PY) COVERED IN CERTIFICATION	PY: 2020 PY: PY:
24 CUMULATIVE NET EXPENDITURES SUBJECT TO LOW/MOD BENEFIT CALCULATION	0.00
25 CUMULATIVE EXPENDITURES BENEFITING LOW/MOD PERSONS	0.00
26 PERCENT BENEFIT TO LOW/MOD PERSONS (LINE 25/LINE 24)	0.00%

PART IV: PUBLIC SERVICE (PS) CAP CALCULATIONS

27 DISBURSED IN IDIS FOR PUBLIC SERVICES	225,349.00
28 PS UNLIQUIDATED OBLIGATIONS AT END OF CURRENT PROGRAM YEAR	0.00
29 PS UNLIQUIDATED OBLIGATIONS AT END OF PREVIOUS PROGRAM YEAR	0.00
30 ADJUSTMENT TO COMPUTE TOTAL PS OBLIGATIONS	0.00
31 TOTAL PS OBLIGATIONS (LINE 27 + LINE 28 - LINE 29 + LINE 30)	225,349.00
32 ENTITLEMENT GRANT	238,313.00
33 PRIOR YEAR PROGRAM INCOME	0.00
34 ADJUSTMENT TO COMPUTE TOTAL SUBJECT TO PS CAP	0.00
35 TOTAL SUBJECT TO PS CAP (SUM, LINES 32-34)	238,313.00
36 PERCENT FUNDS OBLIGATED FOR PS ACTIVITIES (LINE 31/LINE 35)	94.56%



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PART V: PLANNING AND ADMINISTRATION (PA) CAP	
37 DISBURSED IN IDIS FOR PLANNING/ADMINISTRATION	12,700.00
38 PA UNLIQUIDATED OBLIGATIONS AT END OF CURRENT PROGRAM YEAR	0.00
39 PA UNLIQUIDATED OBLIGATIONS AT END OF PREVIOUS PROGRAM YEAR	0.00
40 ADJUSTMENT TO COMPUTE TOTAL PA OBLIGATIONS	0.00
41 TOTAL PA OBLIGATIONS (LINE 37 + LINE 38 - LINE 39 +LINE 40)	12,700.00
42 ENTITLEMENT GRANT	238,313.00
43 CURRENT YEAR PROGRAM INCOME	0.00
44 ADJUSTMENT TO COMPUTE TOTAL SUBJECT TO PA CAP	0.00
45 TOTAL SUBJECT TO PA CAP (SUM, LINES 42-44)	238,313.00
46 PERCENT FUNDS OBLIGATED FOR PA ACTIVITIES (LINE 41/LINE 45)	5.33%



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LINE 17 DETAIL: ACTIVITIES TO CONSIDER IN DETERMINING THE AMOUNT TO ENTER ON LINE 17
 Report returned no data.

LINE 18 DETAIL: ACTIVITIES TO CONSIDER IN DETERMINING THE AMOUNT TO ENTER ON LINE 18
 Report returned no data.

LINE 19 DETAIL: ACTIVITIES INCLUDED IN THE COMPUTATION OF LINE 19

Plan Year	IDIS Project	IDIS Activity	Voucher Number	Activity Name	Matrix Code	National Objective	Drawn Amount
2018	3	57	6429887	Boys & Girls Club of Hilton Head Island Picnic Shelter Construction	03D	LMC	\$32,127.30
2018	3	57	6470101	Boys & Girls Club of Hilton Head Island Picnic Shelter Construction	03D	LMC	\$73,734.16
					03D	Matrix Code	\$105,861.46
2019	2	42	6408401	Rowing & Sailing Center at Squire Pope Community Park Playground Equipment & Installation	03F	LMA	\$78,688.65
					03F	Matrix Code	\$78,688.65
2019	2	38	6398324	Rowing & Sailing Center at Squire Pope Community Park Parking Expansion	03G	LMA	\$73,237.43
					03G	Matrix Code	\$73,237.43
2020	1	56	6429379	The Literacy Center Distance Learning & Workforce Certification Program	05H	LMC	\$25,000.00
					05H	Matrix Code	\$25,000.00
2020	1	51	6419330	Neighborhood Outreach Connection New Oaks Learning Center	05L	LMC	\$25,000.00
2020	1	52	6429379	Hilton Head Island Recreation Association Smart Start Virtual Learning Program	05L	LMC	\$3,000.00
2020	1	58	6437348	Boys & Girls Club Distance Learning Assistance Program and COVID PPE and cleaning	05L	LMC	\$50,000.00
2020	1	67	6465511	Boys & Girls Club PPE and cleaning costs related to Covid-19 response and recovery efforts	05L	LMC	\$4,036.00
					05L	Matrix Code	\$82,036.00
2020	1	50	6419330	Volunteers in Medicine Hilton Head Island Personal Protective Equipment and Cleanliness Standards	05M	LMC	\$21,000.00
					05M	Matrix Code	\$21,000.00
2020	1	53	6429379	MHA Hilton Head Citizen Scholarships to Promote Support Group & Recovery Activities	05O	LMC	\$25,000.00
					05O	Matrix Code	\$25,000.00
2020	1	49	6419330	The Hilton Head Island Deep Well Project Emergency Housing Expenses Program	05Q	LMC	\$8,787.00
2020	1	55	6429379	NIBCAA COVID-19 Help Project	05Q	LMC	\$25,000.00
2020	1	61	6437348	Neighborhood Outreach Connection Basic Needs Assistance	05Q	LMC	\$25,026.00
					05Q	Matrix Code	\$58,813.00
2020	1	54	6429379	Sandalwood Community Food Pantry Produce, Fish and Dairy Purchase	05W	LMC	\$13,500.00
					05W	Matrix Code	\$13,500.00
Total							\$483,136.54

LINE 27 DETAIL: ACTIVITIES INCLUDED IN THE COMPUTATION OF LINE 27



PART I: SUMMARY OF CDBG-CV RESOURCES

01 CDBG-CV GRANT	532,088.00
02 FUNDS RETURNED TO THE LINE-OF-CREDIT	0.00
03 FUNDS RETURNED TO THE LOCAL CDBG ACCOUNT	0.00
04 TOTAL AVAILABLE (SUM, LINES 01-03)	532,088.00

PART II: SUMMARY OF CDBG-CV EXPENDITURES

05 DISBURSEMENTS OTHER THAN SECTION 108 REPAYMENTS AND PLANNING/ADMINISTRATION	505,484.00
06 DISBURSED IN IDIS FOR PLANNING/ADMINISTRATION	26,604.00
07 DISBURSED IN IDIS FOR SECTION 108 REPAYMENTS	0.00
08 TOTAL EXPENDITURES (SUM, LINES 05 - 07)	532,088.00
09 UNEXPENDED BALANCE (LINE 04 - LINE8)	0.00

PART III: LOWMOD BENEFIT FOR THE CDBG-CV GRANT

10 EXPENDED FOR LOW/MOD HOUSING IN SPECIAL AREAS	0.00
11 EXPENDED FOR LOW/MOD MULTI-UNIT HOUSING	0.00
12 DISBURSED FOR OTHER LOW/MOD ACTIVITIES	505,484.00
13 TOTAL LOW/MOD CREDIT (SUM, LINES 10 - 12)	505,484.00
14 AMOUNT SUBJECT TO LOW/MOD BENEFIT (LINE 05)	505,484.00
15 PERCENT LOW/MOD CREDIT (LINE 13/LINE 14)	100.00%

PART IV: PUBLIC SERVICE (PS) CALCULATIONS

16 DISBURSED IN IDIS FOR PUBLIC SERVICES	505,484.00
17 CDBG-CV GRANT	532,088.00
18 PERCENT OF FUNDS DISBURSED FOR PS ACTIVITIES (LINE 16/LINE 17)	95.00%

PART V: PLANNING AND ADMINISTRATION (PA) CAP

19 DISBURSED IN IDIS FOR PLANNING/ADMINISTRATION	26,604.00
20 CDBG-CV GRANT	532,088.00
21 PERCENT OF FUNDS DISBURSED FOR PA ACTIVITIES (LINE 19/LINE 20)	5.00%



Office of Community Planning and Development
 U.S. Department of Housing and Urban Development
 Integrated Disbursement and Information System
 PR26 - CDBG-CV Financial Summary Report
 HILTON HEAD ISLAND , SC

DATE: 07-06-21
 TIME: 15:45
 PAGE: 2

LINE 10 DETAIL: ACTIVITIES TO CONSIDER IN DETERMINING THE AMOUNT TO ENTER ON LINE 10

Report returned no data.

LINE 11 DETAIL: ACTIVITIES TO CONSIDER IN DETERMINING THE AMOUNT TO ENTER ON LINE 11

Report returned no data.

LINE 12 DETAIL: ACTIVITIES INCLUDED IN THE COMPUTATION OF LINE 12

Plan Year	IDIS Project	IDIS Activity	Voucher Number	Activity Name	Matrix Code	National Objective	Drawn Amount
2020	1	43	6419330	Boys & Girls Club of Hilton Head Island Distance Learning Assistance Program	05L	LMC	\$25,000.00
		44	6419330	Hilton Head Regional Habitat for Humanity Mortgage & Rental Assistance Program	05Q	LMC	\$25,000.00
		45	6419330	Sandalwood Community Food Pantry - Meat Purchase for Underserved Population	05W	LMC	\$5,000.00
			6437348	Sandalwood Community Food Pantry - Meat Purchase for Underserved Population	05W	LMC	\$6,000.00
		46	6419330	Second Helpings COVID-19 Emergency Food Initiative	05W	LMC	\$12,000.00
		47	6419330	Society of St. Vincent de Paul Emergency Financial Assistance	05Q	LMC	\$25,000.00
		48	6419330	The Children's Center COVID-19 Remediation	05M	LMC	\$25,000.00
		49	6419330	The Hilton Head Island Deep Well Project Emergency Housing Expenses Program	05Q	LMC	\$16,213.00
			6437348	The Hilton Head Island Deep Well Project Emergency Housing Expenses Program	05Q	LMC	\$75,000.00
			6465511	The Hilton Head Island Deep Well Project Emergency Housing Expenses Program	05Q	LMC	\$16,000.00
		61	6437348	Neighborhood Outreach Connection Basic Needs Assistance	05Q	LMC	\$29,474.00
		62	6437348	Lowcountry Legal Volunteers Justice For All - Now More Than Ever Program	05C	LMC	\$51,000.00
		63	6441435	The Children's Center COVID-19 Remediation #2	05L	LMC	\$43,612.00
		64	6441435	Project Isolate Safe	05M	LMC	\$55,000.00
		65	6441435	Foundation for Educational Excellence Catching up in COVID Times with Tutors	05D	LMC	\$26,000.00
		66	6441435	Foundation for Educational Excellence Manipulatives and Materials Overcoming COVID	05D	LMC	\$35,000.00
		67	6465511	Boys & Girls Club PPE and cleaning costs related to Covid-19 response and recovery efforts	05L	LMC	\$703.00
		68	6465511	Sandalwood Community Food Pantry Food and Supplies Purchase	05W	LMC	\$16,000.00
		69	6465511	The Children's Center Covid Hardship Support	05L	LMC	\$18,482.00
Total							\$505,484.00

LINE 16 DETAIL: ACTIVITIES INCLUDED IN THE COMPUTATION OF LINE 16

Plan Year	IDIS Project	IDIS Activity	Voucher Number	Activity Name	Matrix Code	National Objective	Drawn Amount
2020	1	43	6419330	Boys & Girls Club of Hilton Head Island Distance Learning Assistance Program	05L	LMC	\$25,000.00
		44	6419330	Hilton Head Regional Habitat for Humanity Mortgage & Rental Assistance Program	05Q	LMC	\$25,000.00
		45	6419330	Sandalwood Community Food Pantry - Meat Purchase for Underserved Population	05W	LMC	\$5,000.00
			6437348	Sandalwood Community Food Pantry - Meat Purchase for Underserved Population	05W	LMC	\$6,000.00
		46	6419330	Second Helpings COVID-19 Emergency Food Initiative	05W	LMC	\$12,000.00
		47	6419330	Society of St. Vincent de Paul Emergency Financial Assistance	05Q	LMC	\$25,000.00
		48	6419330	The Children's Center COVID-19 Remediation	05M	LMC	\$25,000.00
		49	6419330	The Hilton Head Island Deep Well Project Emergency Housing Expenses Program	05Q	LMC	\$16,213.00
			6437348	The Hilton Head Island Deep Well Project Emergency Housing Expenses Program	05Q	LMC	\$75,000.00
			6465511	The Hilton Head Island Deep Well Project Emergency Housing Expenses Program	05Q	LMC	\$16,000.00
		61	6437348	Neighborhood Outreach Connection Basic Needs Assistance	05Q	LMC	\$29,474.00



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 PAGE: 3

Plan Year	IDIS Project	IDIS Activity	Voucher Number	Activity Name	Matrix Code	National Objective	Drawn Amount
2020	1	62	6437348	Lowcountry Legal Volunteers Justice For All - Now More Than Ever Program	05C	LMC	\$51,000.00
		63	6441435	The Children's Center COVID-19 Remediation #2	05L	LMC	\$43,612.00
		64	6441435	Project Isolate Safe	05M	LMC	\$55,000.00
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		69	6465511	The Children's Center Covid Hardship Support	05L	LMC	\$18,482.00
Total							\$505,484.00

LINE 19 DETAIL: ACTIVITIES INCLUDED IN THE COMPUTATION OF LINE 19

Plan Year	IDIS Project	IDIS Activity	Voucher Number	Activity Name	Matrix Code	National Objective	Drawn Amount
2020	2	40	6478628	Community Foundation of the Lowcountry CDBG 2020 Program Year Administration Services	21A		\$7,302.00
			6512286	Community Foundation of the Lowcountry CDBG 2020 Program Year Administration Services	21A		\$19,302.00
Total							\$26,604.00



Section 3 Summary Report

Economic Opportunities for Low- and Very Low-Income Persons

U.S. Department of Housing and Urban Development

Office of Fair Housing and Equal Opportunity

OMB Approval No. 2529-0043
(exp. 11/30/2018)

Disbursement Agency
HILTON HEAD, TOWN OF
1 TOWN CENTER COURT, HILTON HEAD ISLAND, SC 29928
57-0752325

Reporting Entity
HILTON HEAD, TOWN OF
1 TOWN CENTER COURT, HILTON HEAD ISLAND, SC 29928

Dollar Amount	\$495,836.54
Contact Person	Marcy Benson
Date Report Submitted	07/14/2021

Reporting Period		Program Area Code	Program Area Name
From	To		
7/1/20	6/30/21	CDB1	Community Devel Block Grants

Part I: Employment and Training

Job Category	Number of New Hires	Number of New Hires that Are Sec. 3 Residents	Aggregate Number of Staff Hours Worked	Total Staff Hours for Section 3 Employees	Number of Section 3 Trainees
The expenditure of these funds did not result in any new hires.					

Total New Hires	0
Section 3 New Hires	0
Percent Section 3 New Hires	N/A
Total Section 3 Trainees	0
The minimum numerical goal for Section 3 new hires is 30%.	

Part II: Contracts Awarded

Construction Contracts	
Total dollar amount of construction contracts awarded	\$176,560.67
Total dollar amount of contracts awarded to Section 3 businesses	\$0.00
Percentage of the total dollar amount that was awarded to Section 3 businesses	0%
Total number of Section 3 businesses receiving construction contracts	0
The minimum numerical goal for Section 3 construction opportunities is 10%.	

Non-Construction Contracts	
Total dollar amount of all non-construction contracts awarded	\$38,604.00
Total dollar amount of non-construction contracts awarded to Section 3 businesses	\$0.00
Percentage of the total dollar amount that was awarded to Section 3 businesses	0%
Total number of Section 3 businesses receiving non-construction contracts	0
The minimum numerical goal for Section 3 non-construction opportunities is 3%.	

Part III: Summary

Indicate the efforts made to direct the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs, to the greatest extent feasible, toward low- and very low-income persons, particularly those who are recipients of government assistance for housing.

No	Attempted to recruit low-income residents through: local advertising media, signs prominently displayed at the project site, contacts with community organizations and public or private agencies operating within the metropolitan area (or nonmetropolitan county) in which the Section 3 covered program or project is located, or similar methods.
No	Participated in a HUD program or other program which promotes the training or employment of Section 3 residents.
No	Participated in a HUD program or other program which promotes the award of contracts to business concerns which meet the definition of Section 3 business concerns.
No	Coordinated with Youthbuild Programs administered in the metropolitan area in which the Section 3 covered project is located.
No	Other; describe below.

One construction contract and one non-construction contract were awarded during the July 2020 - June 2021 reporting period. All procurement procedures were followed in the invitation to bid solicitation for the construction contract listed in this report. Six contractors submitted bids for this construction contract and the lowest responsible bid was selected per procurement procedures. In an effort to reach as many bidders as possible advertisements were published in the South Carolina Opportunities weekly publication and on the Town of Hilton Head Island website. The non-construction contract was under \$100,000. No new persons needed to be hired to complete the covered contracts.

In hospital bed, patient's view on vaccine changes

BY STACEY PLAISANCE
Associated Press

BATON ROUGE, LA.

Cedric Daniels and Joshua Bradstreet Contreras didn't think they really needed the coronavirus vaccine. After all, the uncle and nephew are both young — 37 and 22, respectively — and Contreras was “as healthy as a horse,” Daniels said.

But just days after Daniels went to visit Contreras in New Orleans — a long-awaited reunion that came after not seeing each other for months because of the pandemic — the nephew was rushed away in an ambulance. He couldn't breathe, even when sitting completely still. He is now in a hospital in a New Orleans suburb, on a ventilator and in a medically induced coma.

At about the same time, Daniels started feeling weak, had blurred vision and was so short of breath he could barely make it

from his couch in the living room to the bathroom. He tested positive for the virus, then went to a hospital in Baton Rouge already overwhelmed with COVID-19 patients, where he stayed for a week on oxygen as he recovered from pneumonia.

Contreras and Daniels are among a flood of patients filling up overloaded hospitals across the U.S. amid a surge of COVID-19 cases driven by the virus's highly contagious delta variant. Health officials say the most serious cases have been among the unvaccinated.

“It is frustrating, because it's preventable, but more than that, it's really sad,” said James Ford, a critical care doctor in the ICU at Our Lady of the Lake Medical Center in Baton Rouge, where Daniels was treated.

To help with the influx, the hospital brought in a disaster medical assistance team of nearly three dozen health care workers

on Monday. That same day, hospital leaders at a news conference where Gov. John Bel Edwards announced a reinstated statewide mask mandate described grim conditions across Louisiana: facilities filled with COVID-19 patients, including children, and hospital hallways lined with stretchers because there aren't enough beds.

“A lot of them are debilitated and need around-the-clock care,” said Ford, who has been working on his days off to help ease his hospital's burden. “It's very labor intensive.”

Some of those patients, like Daniels, now wish they had taken the shot.

“They're talking about putting tubes down your throat possibly if your oxygen doesn't go up within the next hour, and that is frightening,” he told The Associated Press on Monday as he lay in a bed with an oxygen tube in his nose. He was released shortly afterward

but still must use oxygen at home.

“I am now a huge advocate for doctor's orders,” Daniels added. “They think we ought to get vaccinated, I think we ought to get vaccinated.”

Daniels, who lives in Gonzales, La., about 57 miles northwest of New Orleans, said he and Contreras were the only unvaccinated members of their households. Daniels' wife and live-in mother-in-law, both of whom were inoculated months ago, have both tested negative twice since he tested positive.

Contreras' mother, Tarsha Bradstreet, had also been vaccinated, as had her 19-year-old son who lives in the same house in New Orleans. Bradstreet said she tried to persuade Contreras to get the shot, but said she had only so much pull over him.

“Josh hardly goes anywhere since COVID hit, so he didn't think he needed the vaccine,” Bradstreet said.

One of the places to which Contreras did go, however, was his summer job at Cafe Reconcile.



TED JACKSON AP

COVID-19 patient Cedric Daniels, 37, of Gonzales, La., pleads for people to get vaccinated while he recuperates at Our Lady of the Lake Regional Medical Center in Baton Rouge on Monday. “They're talking about putting tubes down your throat possibly if your oxygen doesn't go up within the next hour, and that is frightening,” he said. He was released shortly afterward but still must use oxygen at home.

About the time he started getting ill, he got a call from the restaurant telling him that a co-worker had tested positive for the virus and he needed to get tested himself.

“He had a headache and some nausea, so at first we thought it was dehydration,” Bradstreet said. “A week later, he couldn't smell. He

couldn't breathe. I noticed his breath was quick and rapid, and he could barely stand up or do anything. I had to call an ambulance.”

A while later, the hospital called and said, “Your son is on a ventilator,” and I almost died,” Bradstreet said. “I couldn't believe it. I didn't realize how serious it was. I didn't know. He almost died.”



DREW MARTIN dmartin@islandpacket.com

Beaufort County School District will not mandate mask-wearing, following a budget proviso by the South Carolina legislature that says any school or district that requires masks for students or staff will lose state funding.

FROM PAGE 1A

SCHOOL

risen 182% from the previous week; as of Saturday, COVID hospitalizations in the county were up 362% from the seven days prior.

“It's not last year's virus,” said Wisner. “It's dangerous for children. It's a thousand times more potent and dangerous than the last one.”

Charlene Johnson, a mother of two district students, said her daughter is “terrified” to attend

in-person classes.

The rising ninth-grader at Whale Branch Early College High School has asthma, which puts her at higher risk for COVID complications; Johnson's other child, a rising fifth-grader at Beaufort Elementary, is too young to be vaccinated. Both students stayed in virtual classes through the end of last school year and had “no problems” learning, Johnson said.

“I think they should continue to provide the online option, the virtual learning,” she said. “Not all parents are willing to put their households through this scare.”

Johnson said she talked to school board members about her predicament and was told to consider another virtual learning platform.

“I work from home, so I was always willing to assist my kids with home-schooling,” she said. “However, due to the work I do I'm unable to do it all on my own without frustrating them and causing them to fall behind. So it was really nice to have the help from the school.”

The district is keeping many of last year's COVID precautions in place, including contact tracing, maintaining three feet of social distance and providing Plexiglass barriers for students upon request.

But according to Wisner, it's not enough.

“Thus far, they're giving them water guns to fight a wildfire,” she said of the safety measures. “That's all they're giving them.”

Rachel Jones:
843-631-6039,
@notracheljones

Expect up to 21 named tropical storms, NOAA says

BY ALEX HARRIS
Miami Herald

MIAMI

Just a few weeks shy of the peak of hurricane season, NOAA released an updated prediction for the number of storms to expect this year — and it's a bit higher.

The latest prediction calls for 15 to 21 named storms, an uptick from the May update that called for 13 to 20 named storms. NOAA's prediction for the number of hurricanes (seven to 10) and major hurricanes (three to five) didn't change.

The record-breaking 2020 season saw 30 named storms, 14 of which were hurricanes and seven of which were major hurricanes.

Matthew Rosencrans, the hurricane season outlook lead at NOAA's Climate Prediction Center, told reporters on Wednesday that the prediction accounts for the season's five named storms so far, including Elsa, which became the earliest fifth-named storm on record.

The Atlantic's peaceful month was shattered this week. The National Hurricane Center is now tracking three separate disturbances, all with a low chance of strengthening anytime soon.

“We're already ahead of schedule,” Rosencrans said. “The quiet period time just brought us a



AP

On July 6, Tropical Storm Elsa crosses the Gulf of Mexico off the coast of Florida. On Wednesday, the National Oceanic and Atmospheric Administration updated its outlook for the 2021 Atlantic season.

little closer to normal.”

If 21 named storms do form, it would use up every name on the list. Rosencrans said there's about a 15% chance that we see more storms than that and meteorologists would be forced to switch to the backup list of storm names, a new development after last year's chaotic foray into the Greek alphabet.

One factor that could nudge the storm count toward the higher end of the range is the formation of a La Niña, an atmospheric phenomenon that leads to reduced wind shear in the Atlantic and better conditions for storms to form. NOAA recently issued a “La Niña watch” and said there's a 45% chance the phenomenon could form from August to October, the peak of the season.

“If a La Niña does develop later in the season

... that did play a role in keeping our storm numbers one or two higher,” Rosencrans said.

Wind shear, which eats away at a storm's organization, has also been lower this year, and the west African monsoon season has been more active than usual. Both of these factors could hint toward a more active season, especially over the backdrop of the warm phase of the Atlantic Multi-Decadal Oscillation, a weather phenomenon ongoing since 1995 that has favored more storm activity.

However, Rosencrans said, a cooler ocean could keep the 2021 season from reaching its predicted peaks. Sea surface temperatures have been about average so far this season, as opposed to the above-average temperatures recorded last year.

FROM PAGE 1A

FAUCI

nated,” as the vast majority of people hospitalized with COVID-19 have not taken the shots.

But recent data shows that vaccinated people who still get infected with the delta variant also have high viral loads and can spread it to others, even when they aren't showing symptoms or are experiencing mild disease. “We're now dealing with, really, a different virus,” he said.

Fauci is hopeful that full approval of Pfizer and Moderna's two-dose vaccines by the Food and Drug Administration, expected in a matter of weeks, will lead to a “bump” in vaccination rates.

Vaccines take time to work — the two-dose shots are spaced out, and a person is not considered fully vaccinated until two weeks after their second dose — and so the impact would not be immediate to blunt the current surge, Fauci said.

“Even if we vaccinated everyone today, we're not going to see an effect until the middle to end of September,” he said.

RISKS TO THE VACCINATED

Fauci said that data shows people infected with the delta variant have viral levels “about 1,000 times higher in quantity” than were recorded in people who were infected with the alpha variant, also known as the U.K. variant, which earlier this year became predominant in the United States.

Studies have emerged in recent weeks indicating that vaccinated individuals are at risk of “long COVID” — a series of conditions associated with infection such as fatigue, shortness of breath and loss of smell that can last for weeks or months — even if they are largely protected from severe illness and death, Fauci said.

“We already know that people who get breakthrough infections and don't go on to get advanced disease requiring hospitalization, they too are susceptible to long COVID,” Fauci said. “You're not exempt from long COVID if you get a breakthrough infection.”

Despite the extraordinary contagiousness of the delta variant, it can still get worse, Fauci said.

He fears the virus is being given “ample” opportunity to morph even

further into a deadlier strain that could diminish the effectiveness of vaccines. Continued spread provides the virus more opportunities to mutate, he said.

“If we don't crush the outbreak to the point of getting the overwhelming proportion of the population vaccinated, then what will happen is the virus will continue to smolder through the fall into the winter, giving it ample chance to get a variant which, quite frankly, we're very lucky that the vaccines that we have now do very well against the variants — particularly against severe illness,” Fauci said. “We're very fortunate that that's the case. There could be a variant that's lingering out there that can push aside delta.”

“If another one comes along that has an equally high capability of transmitting but also is much more severe, then we could really be in trouble,” he said. “People who are not getting vaccinated mistakenly think it's only about them. But it isn't. It's about everybody else, also.”

Michael Wilner:
202-383-6083, @mawilner

NOTICE OF 15 DAY PUBLIC COMMENT PERIOD CONSOLIDATED ANNUAL PERFORMANCE EVALUATION REPORT (CAPER)

Notice is hereby given that the Town of Hilton Head Island prepared a draft of its 2020 Consolidated Annual Performance Evaluation Report (CAPER) required by the U.S. Department of Housing and Urban Development (HUD) to assess progress carrying out its one year action plan for the HUD funded Community Development Block Grant (CDBG) Entitlement Program. The 2020 CAPER will be available for review and comment for 15 days beginning **Thursday, August 12, 2021**. A public meeting to obtain comments on the 2020 CAPER will be held on **Thursday, August 19, 2021 at 5:00pm** at the Hilton Head Island Town Hall, Benjamin M. Racusin Council Chambers, 1 Town Center Court, Hilton Head Island, South Carolina. Copies of the draft CAPER will be available for review at the meeting and Monday — Friday 8:00am — 4:30pm at the Town of Hilton Head Island Town Hall, or may be accessed via the Town of Hilton Head Island website at: <https://hiltonheadislandsc.gov/> beginning at 8:00am Thursday, August 12, 2021. Written comments on the 2020 CAPER are encouraged and may be submitted via the website link, or email to marcyb@hiltonheadislandsc.gov or by mail to Marcy Benson, Senior Grants Administrator, Town of Hilton Head Island Executive Department, 1 Town Center Court, Hilton Head Island, SC 29928. Comments will be accepted until **Friday, August 27, 2021**.

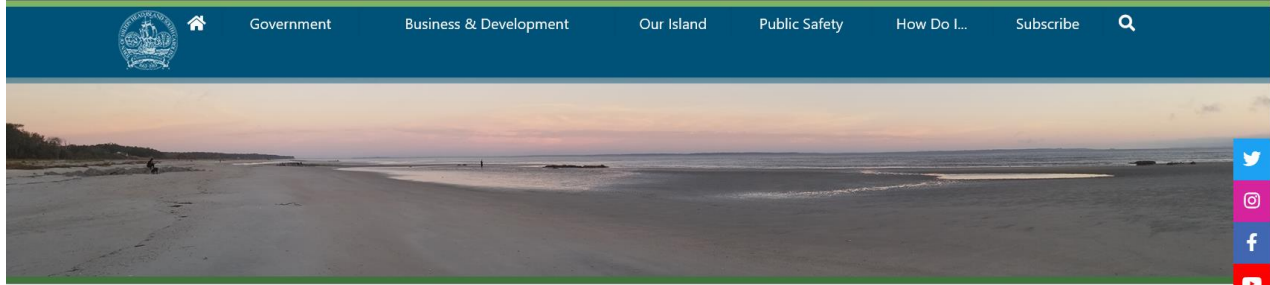
The Town of Hilton Head Island does not discriminate on the basis of age, color, religion, sex, national origin, familial status or disability in the admission or access to, or treatment or employment in its federally assisted programs or activities. Marcy Benson, Senior Grants Administrator has been designated to coordinate compliance with the nondiscrimination requirements contained in the U.S. Department of Housing and Urban Development's regulations. She may be reached at the email address listed above or by phone at (843) 341-4689.

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Town of Hilton Head Island Website – News and Announcements Page
August 5, 2021
2020 CAPER Public Comment Period and Public Meeting Notice



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News and Announcements



Moody's Affirms Hilton Head Island's Aaa Rating
August 5, 2021



Notice of 15 Day Public Comment Period
Consolidated Annual Performance Evaluation Report (Caper)
August 5, 2021



Public Invited to Open House Meetings About William Hilton Parkway Bridge and Corridor Improvements
August 2, 2021



Contact Info








Carolyn Grant
Communications Director
1 Town Center Court
Hilton Head Island, SC 29928
843-341-4618
CarolynG@hiltonheadislandsc.gov

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Town of Hilton Head Island
August 5, 2021
2020 CAPER Public Comment Period and Public Meeting Notice Page

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Public Notice

Notice of 15 Day Public Comment Period

Consolidated Annual Performance Evaluation Report (Caper)

August 5, 2021





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Contact
Marcy Benson, Senior Grants Administrator
 843-341-4689
 marcyb@hiltonheadislandsc.gov










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Site Map
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Social Media Public Use Policy
Employee Portal
Contact Webmaster

Hilton Head Island

1 Town Center Court
Hilton Head Island, SC 29926
843-341-4600
8 am - 4:30 pm Monday - Friday

Stay Connected

Benson Marcy

From: Phillips Rene
Sent: Thursday, August 05, 2021 9:37 AM
To: Benson Marcy
Subject: FW: Courtesy Copy: Consolidated Annual Performance Evaluation Report Public Comment Period



René Phillips, CGDSP

WEBSITE DEVELOPER

Office: (843) 341-4792

Website: hiltonheadislandsc.gov

Address: Town of Hilton Head Island
1 Town Center Court,
Hilton Head Island, SC 29928

From: Town of Hilton Head Island <updates@secure.hiltonheadislandsc.gov>

Sent: Thursday, August 5, 2021 9:36 AM

To: McEwen, Jenn <jennm@hiltonheadislandsc.gov>; Spinella Kelly <kellys@hiltonheadislandsc.gov>; Phillips Rene <reneh@hiltonheadislandsc.gov>; Grant Carolyn <carolyng@hiltonheadislandsc.gov>

Subject: Courtesy Copy: Consolidated Annual Performance Evaluation Report Public Comment Period

THIS MESSAGE ORIGINATED OUTSIDE YOUR ORGANIZATION

This is a courtesy copy of an email bulletin sent by Rene Phillips.

This bulletin was sent to the following groups of people:

Subscribers of General Announcements or Legal Notices (7021 recipients)



Notice of 15 Day Public Comment Period

Consolidated Annual Performance Evaluation Report (CAPER)

August 5, 2021

Notice is hereby given that the Town of Hilton Head Island prepared a draft of its 2020 Consolidated Annual Performance Evaluation Report (CAPER) required by the U.S. Department of Housing and Urban Development (HUD) to assess progress carrying out its one year action plan for the HUD funded Community Development Block Grant (CDBG) Entitlement Program.

The 2020 CAPER will be available for review and comment for 15 days beginning **Thursday, August 12, 2021.**

- A public meeting to obtain comments on the 2020 CAPER will be held on **Thursday, August 19, 2021 at 5 pm** at the Hilton Head Island Town Hall, Benjamin M. Racusin Council Chambers, 1 Town Center Court, Hilton Head Island, South Carolina.
- Copies of the draft CAPER will be available for review at the meeting and Monday - Friday 8 am - 4:30 pm at the Town of Hilton Head Island Town Hall, or may be accessed via the Town of Hilton Head Island website at <https://hiltonheadislandsc.gov/> beginning at 8 am Thursday, August 12, 2021.
- Written comments on the 2020 CAPER are encouraged and may be submitted via the website link, or email to marcyb@hiltonheadislandsc.gov or by mail to Marcy Benson, Senior Grants Administrator, Town of Hilton Head Island Executive Department, 1 Town Center Court, Hilton Head Island, SC 29928.
- Comments will be accepted until **Friday, August 27, 2021.**

The Town of Hilton Head Island does not discriminate on the basis of age, color, religion, sex, national origin, familial status or disability in the admission or access to, or treatment or employment in its federally assisted programs or activities. Marcy

Benson, Senior Grants Administrator has been designated to coordinate compliance with the nondiscrimination requirements contained in the U.S. Department of Housing and Urban Development's regulations. She may be reached at the email address listed above or by phone at 843-341-4689.

View the public notice at

<https://hiltonheadislandsc.gov/news/news.cfm?NewsID=1756>

For additional information, contact our Senior Grants Administrator **Marcy Benson at 843-341-4689** or MarcyB@hiltonheadislandsc.gov



www.hiltonheadislandsc.gov

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Benson Marcy

From: Phillips Rene
Sent: Thursday, August 12, 2021 10:48 AM
To: Benson Marcy
Subject: FW: Courtesy Copy: Consolidated Annual Performance Evaluation Report Public Comment Period



René Phillips, CGDSP

WEBSITE DEVELOPER

Office: (843) 341-4792

Website: hiltonheadislandsc.gov

Address: Town of Hilton Head Island
1 Town Center Court,
Hilton Head Island, SC 29928

From: Town of Hilton Head Island <updates@secure.hiltonheadislandsc.gov>

Sent: Thursday, August 12, 2021 10:39 AM

To: Spinella Kelly <kellys@hiltonheadislandsc.gov>; McEwen, Jenn <jennm@hiltonheadislandsc.gov>; Grant Carolyn <carolyng@hiltonheadislandsc.gov>; Phillips Rene <renep@hiltonheadislandsc.gov>

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[View the Draft 2020 Consolidated Annual Performance Evaluation Report \(CAPER\)](#)

[Submit a Comment Online](#)

View the public notice at

<https://hiltonheadislandsc.gov/news/news.cfm?NewsID=1756>

.....

For additional information, contact our Senior Grants Administrator
Marcy Benson at 843-341-4689 or MarcyB@hiltonheadislandsc.gov



www.hiltonheadislandsc.gov

STAY CONNECTED:



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TOWN OF HILTON HEAD ISLAND

2020 Consolidated Annual Performance Evaluation Report (CAPER)

**COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
ENTITLEMENT PROGRAM**

August 19, 2020 5:00PM

AGENDA

- Welcome and Sign-in
- CDBG Entitlement Program & CAPER Overview
- Resources Available and Geographic Distribution
- Public Discussion
- Next Steps in CAPER Process



Town of Hilton Head Island

2020 Consolidated Annual Performance Evaluation Report (CAPER)

2020 Activities and Accomplishments
August 19, 2021 Public Meeting

Community Development Block Grant Entitlement Program (CDBG)

- Federal grant program administered by HUD
- Provides annual grants on a formula basis based on population data
- Funds are to be used to benefit low and moderate income persons



2020 Consolidated Annual Performance Evaluation Report (CAPER)

- Requirement of the CDBG Entitlement Program
- Reports progress identified in the 2020 Annual Action Plan
- Due annually



Proposed vs. Actual Outcomes

Goal	Category	Source / Amount	Indicator	Unit of Measure	Expected – Strategic Plan	Actual – Strategic Plan	Percent Complete	Expected – Program Year	Actual – Program Year	Percent Complete
2020 – 2024 Five Year Consolidated Plan										
COVID-19 Response and Recovery	Non-Housing Community Development	CDBG:\$238,313 CDBG-CV: \$532,088	Public service activities other than Low/Moderate Income Housing Benefit	Persons Assisted	37,099	15,486	41.74%	37,099	15,486	41.74%
2015 – 2019 Five Year Consolidated Plan										
Public Facilities & Improvements4: Boys & Girls Club of Hilton Head Island	Non-Housing Community Development	CDBG: \$200,000	Public Facility or Infrastructure Activities other than Low/Moderate Income Housing Benefit	Persons Assisted	492	0	65%	492	0	65%
Public Facilities & Improvements 5: Rowing & Sailing Center at Squire Pope Community Park	Non-Housing Community Development	CDBG: \$236,013	Public Facility or Infrastructure Activities other than Low/Moderate Income Housing Benefit	Persons Assisted	3,622	3,622	100%	3,622	3,622	100%



Resources Available

Source of Funds	Source	Resources Made Available	Amount Expended During Program Year
2018 CDBG	HUD	\$320,592	\$129,301
2019 CDBG	HUD	\$236,013	\$152,226
2020 CDBG	HUD	\$238,313	\$238,313
2020 CDBG-CV	HUD	\$532,088	\$532,088

Geographic Distribution

Target Area	Planned Percentage of Allocation	Actual Percentage of Allocation	Narrative Description
Census Tract 105	98	98	Funds for 2 infrastructure improvements in Census Tract 105, which meets LMI requirements.
Town-Wide	100	100	Funds for public services for response and recovery efforts due to COVID-19 and program administrative costs.



Next Steps

- August 27th - Public comment period ends
- September 21st - CAPER to Town Council
- September 28th - CAPER submitted to HUD





Thank you!

Marcy Benson
Senior Grants Administrator
marcyb@hiltonheadislandsc.gov

PLEASE SIGN IN:

NAME	MAILING ADDRESS	EMAIL ADDRESS

No Meeting Attendees

Public Meeting Minutes
Public Meeting to Solicit Comments and Discuss
Community Development Block Grant (CDBG) Entitlement Program
2020 Consolidated Annual Performance Evaluation Report (CAPER)

Thursday, August 19, 2021 5:00pm
Outside Benjamin M. Racusin, Council Chambers of the Town Hall
1 Town Center Court, Town of Hilton Head Island

Present: See attached sign-in sheet.

Marcy Benson, Senior Town Grants Administrator was present outside the Benjamin M. Racusin, Council Chambers of the Town of Hilton Head Island Town Hall at the noticed 5pm meeting start time. Due to COVID-19 safety protocols, the meeting was moved from inside the building to the outside entrance area of the Benjamin M. Racusin, Council Chambers of the Town Hall. A PowerPoint presentation was prepared and ready for presentation describing the Town of Hilton Head Island Community Development Block Grant (CDBG) 2020 Consolidated Annual Performance Evaluation Report (CAPER). Copies of the 2020 CAPER were available for distribution at the meeting and via the Town of Hilton Head Island website. No members of the public attended this public meeting.

Public Comment Summary
For the Town of Hilton Head Island
2020 Consolidated Annual Performance Evaluation Report
(CAPER)

Public Comments Received During 15 Day Comment Period (August 12 – August 27, 2021):

- **One comment received, see attached.**
-

Public Comments Received at the Public Meeting on August 19, 2021

- **No comments received.**



2020 Consolidated Annual Performance Evaluation Report (CAPER)

August 30, 2021, 10:13 AM

Contents

i.	Introduction	2
ii.	Summary of comments	3
iii.	Survey questions	4
iv.	Individual comments	5

2020 Consolidated Annual Performance Evaluation Report (CAPER)

Public Comment for the draft 2020 Consolidated Annual Performance Evaluation Report (CAPER) to assess progress carrying out the Town's one year action plan for the HUD funded Community Development Block Grant (CDBG) Entitlement Program.

Introduction

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2020 Consolidated Annual Performance Evaluation Report (CAPER)

Public Comment for the draft 2020 Consolidated Annual Performance Evaluation Report (CAPER) to assess progress carrying out the Town's one year action plan for the HUD funded Community Development Block Grant (CDBG) Entitlement Program.

Summary Of Comments

As of August 30, 2021, 10:13 AM, this forum had:	Topic Start
Attendees: 7	August 12, 2021, 8:15 AM
Comments: 1	
Minutes of Public Comment: 3	

QUESTION 1

Do you support the Draft 2020 Consolidated Annual Performance Evaluation Report (CAPER)?

		%	Count
Oppose		100.0%	1

QUESTION 2

Do you have comments regarding the 2020 Consolidated Annual Performance Evaluation Report (CAPER)?

Answered	1
Skipped	0

2020 Consolidated Annual Performance Evaluation Report (CAPER)

Public Comment for the draft 2020 Consolidated Annual Performance Evaluation Report (CAPER) to assess progress carrying out the Town's one year action plan for the HUD funded Community Development Block Grant (CDBG) Entitlement Program.

Survey Questions

QUESTION 1

Do you support the Draft 2020 Consolidated Annual Performance Evaluation Report (CAPER)?

- Support
- Oppose
- Undecided

QUESTION 2

Do you have comments regarding the 2020 Consolidated Annual Performance Evaluation Report (CAPER)?

2020 Consolidated Annual Performance Evaluation Report (CAPER)

Public Comment for the draft 2020 Consolidated Annual Performance Evaluation Report (CAPER) to assess progress carrying out the Town's one year action plan for the HUD funded Community Development Block Grant (CDBG) Entitlement Program.

Individual Comments

Name not shown

inside Town Limits

August 12, 2021, 3:26 PM

Question 1

- Oppose

Question 2

How can it be that there is only one low income apartment complex (Sandlewood Terrace Apartments), on HHI! I know, I know, this is handled by Beaufort county housing operators. There is listed only 1 out of all of the apartment complexes located in Beaufort County on HHI! How can that be? Kicking this affording housing need on HHI, down the road (those in the service & restaurant areas), will make HHI a less likely place to visit and live in future years. Sure blame BC, but when will HHI government folks (who I will not vote for in the future) take the bull by the horns and implement and fund our own affordable housing!



TOWN OF HILTON HEAD ISLAND

Infrastructure Services Department

TO: Marc Orlando, Town Manager
VIA: Josh Gruber, Deputy Town Manager
Jeff Buckalew, Interim Director Infrastructure Services
FROM: Jeff Netzing, Storm Water Manager
DATE: September 15, 2021
SUBJECT: Request for Permanent Storm Drainage Easement at 3901 Main Street

Recommendation:

Staff recommends the Town execute a permanent storm drainage easement for the property at 3901 Main Street.

Summary:

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.

The Community Services and Public Safety Committee endorsed this staff recommendation in a unanimous 4-0 vote on July 27, 2021.

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

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:

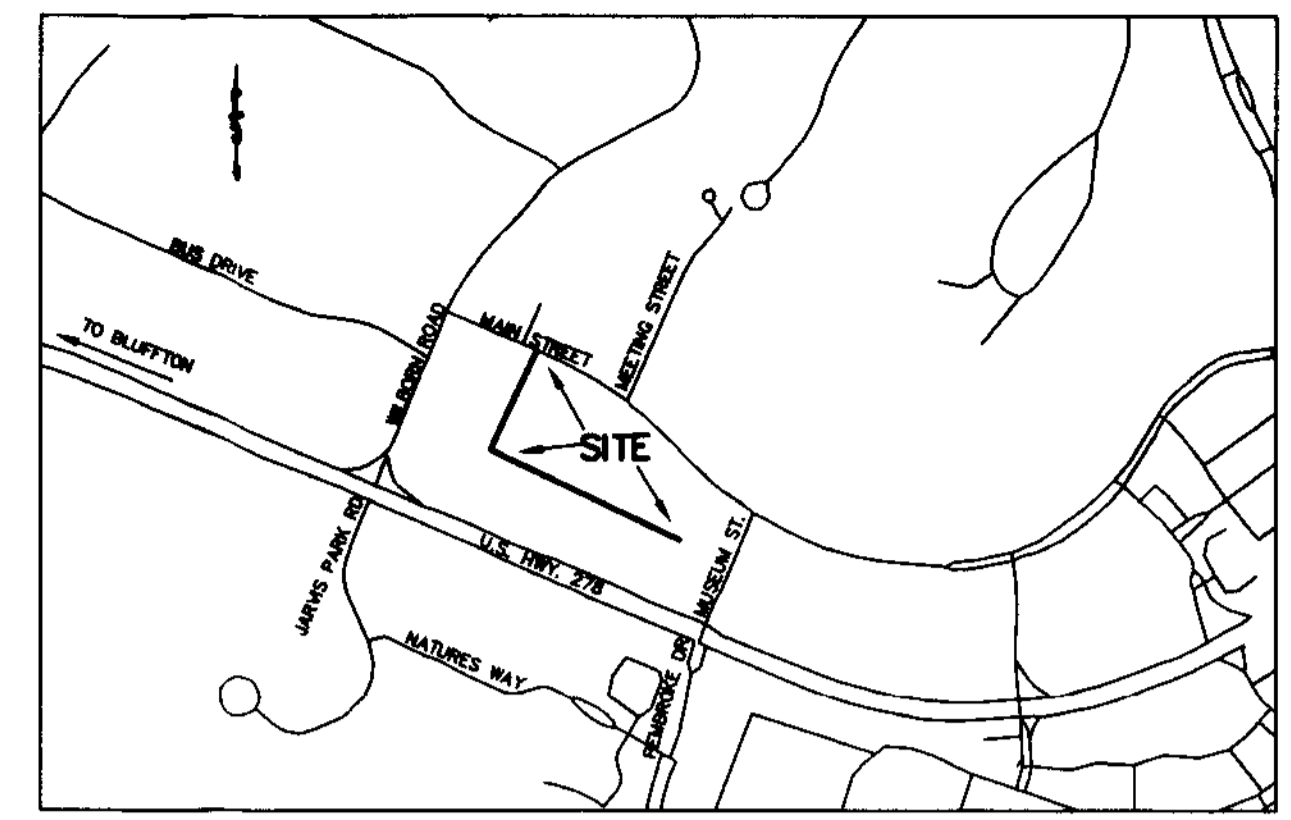
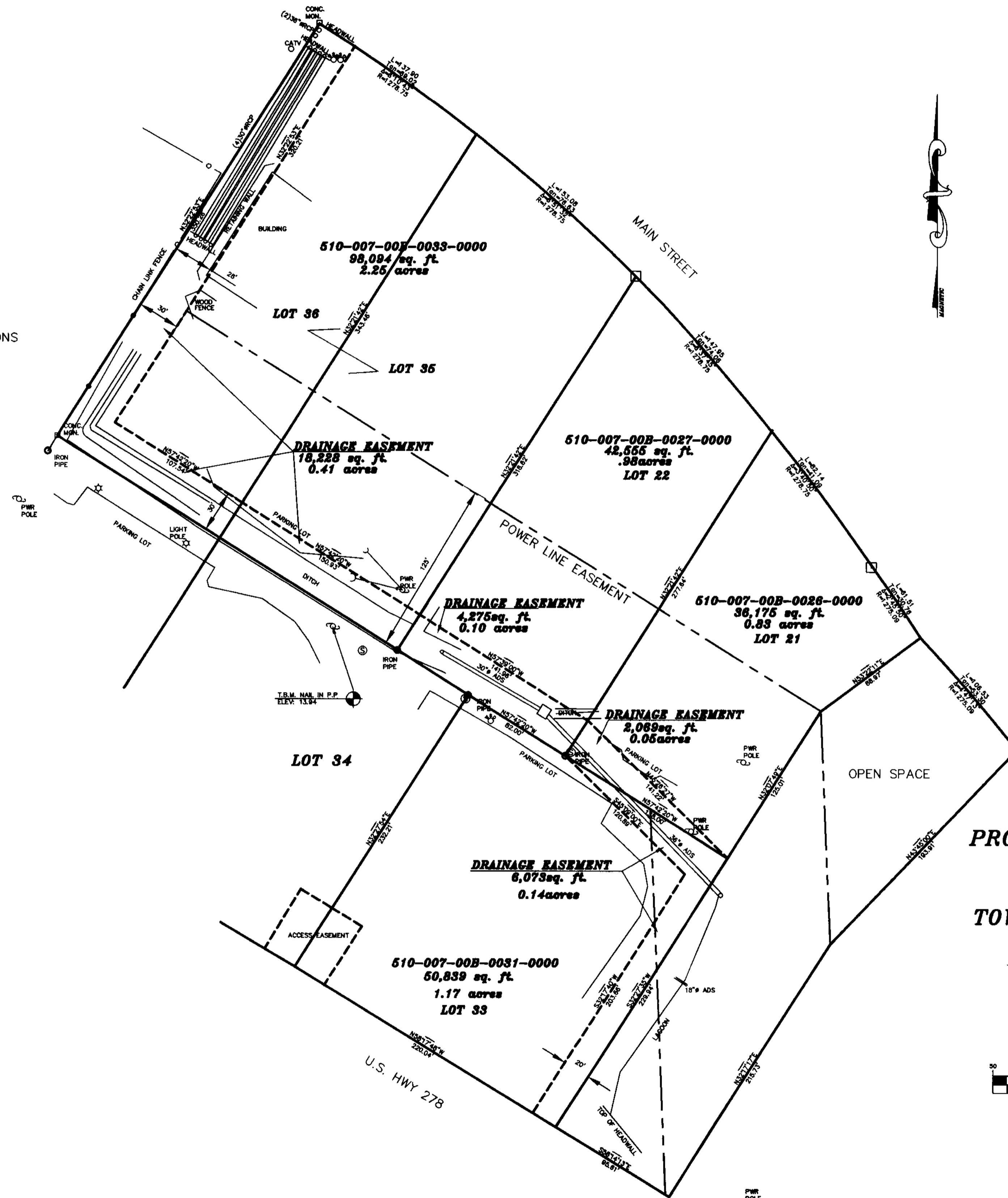
- 1.) AREA DETERMINED BY COORDINATE METHOD.
- 2.) THIS SITE MAY CONTAIN FRESHWATER WETLANDS, NOT DETERMINED BY THIS PLAT.

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.)

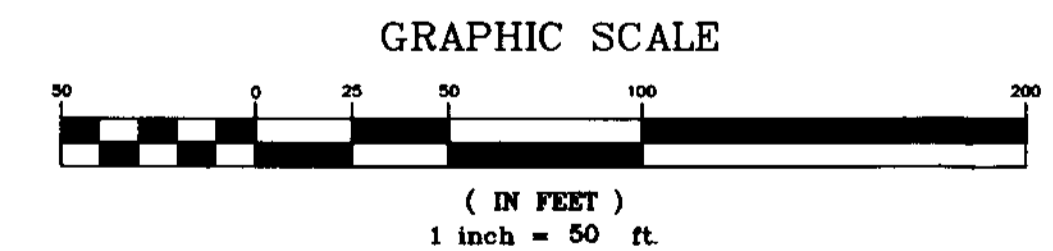
BEAUFORT COUNTY SC - ROD
BK 00115 PG 0088
FILE NUM 2008006526
07/31/2006 04:31:58 PM
RECD BY B BING RCP/TW 434460
RECORDING FEES 10.00

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**



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 checked="" type="checkbox"/> 16-1-106B	<input type="checkbox"/> 16-1-106E
<input type="checkbox"/> 16-1-106C	

Certified by: *[Signature]*
Title: *Mgr. Eng.* Date: *7/26/06*

Disclaimer:
The Town of Hilton Head Island makes no 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 conformance with any restrictive covenants, private easements or deed restrictions.

<p>BEAUFORT COUNTY ENGINEERING DEPARTMENT P.O. DRAWER 1228 BEAUFORT, SOUTH CAROLINA 29901 (843) 470 - 2625</p>	<p>THE COUNTY COUNCIL OF BEAUFORT COUNTY BEAUFORT COUNTY, SOUTH CAROLINA MAIN STREET DRAINAGE EASEMENT</p>
<p>MAINST_WEST.dwg DATE: 11/02/05 DESIGNED: RDT DRAWN: CAM CHECKED: SCALE: 1" = 50'</p>	
<p>SHEET 1 OF 1</p>	



TOWN OF HILTON HEAD ISLAND

Infrastructure Services Department

TO: Marc Orlando, Town Manager
VIA: Josh Gruber, Deputy Town Manager
Jeff Buckalew, Interim Director Infrastructure Services
FROM: Jeff Netzinger, Storm Water Manager
DATE: September 15, 2021
SUBJECT: Requests for Drainage Agreements and Easements with Six Property Owner's Associations

Recommendation:

Staff recommends the Town execute standard drainage agreements and access, drainage and maintenance easements with the following six requesting property owner 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 Community Services and Public Safety Committee endorsed this staff recommendation in a unanimous 4-0 vote on July 27, 2021.

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.

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

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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: _____

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 30th 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 30th 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

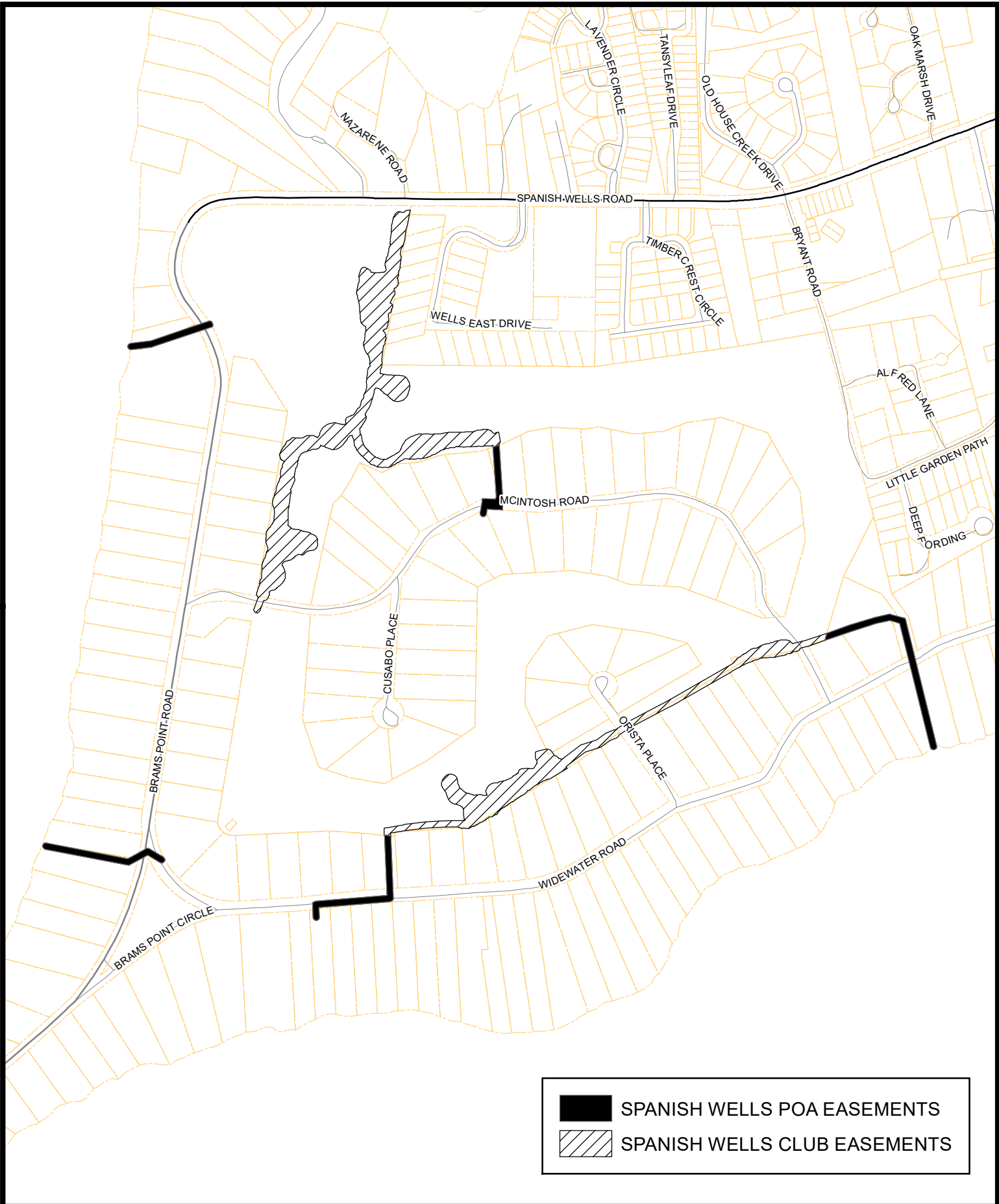


EXHIBIT A
SPANISH WELLS PLANTATION
DRAINAGE EASEMENT LIMITS

April 2021

1 inch = 600 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.

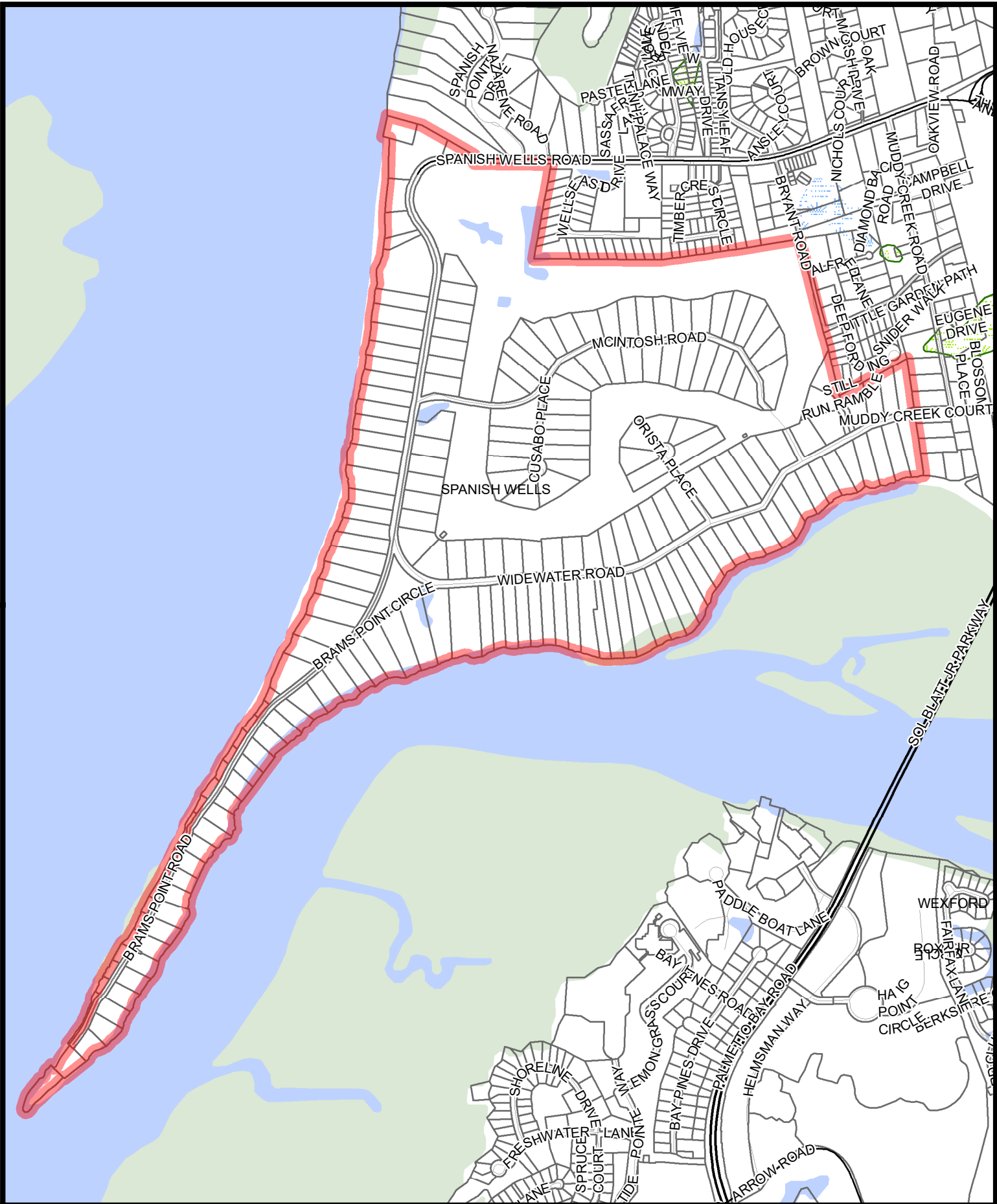


EXHIBIT B
SPANISH WELLS PLANATATION
PLANNED UNIT DEVELOPMENT

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

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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: _____

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 30th 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: _____

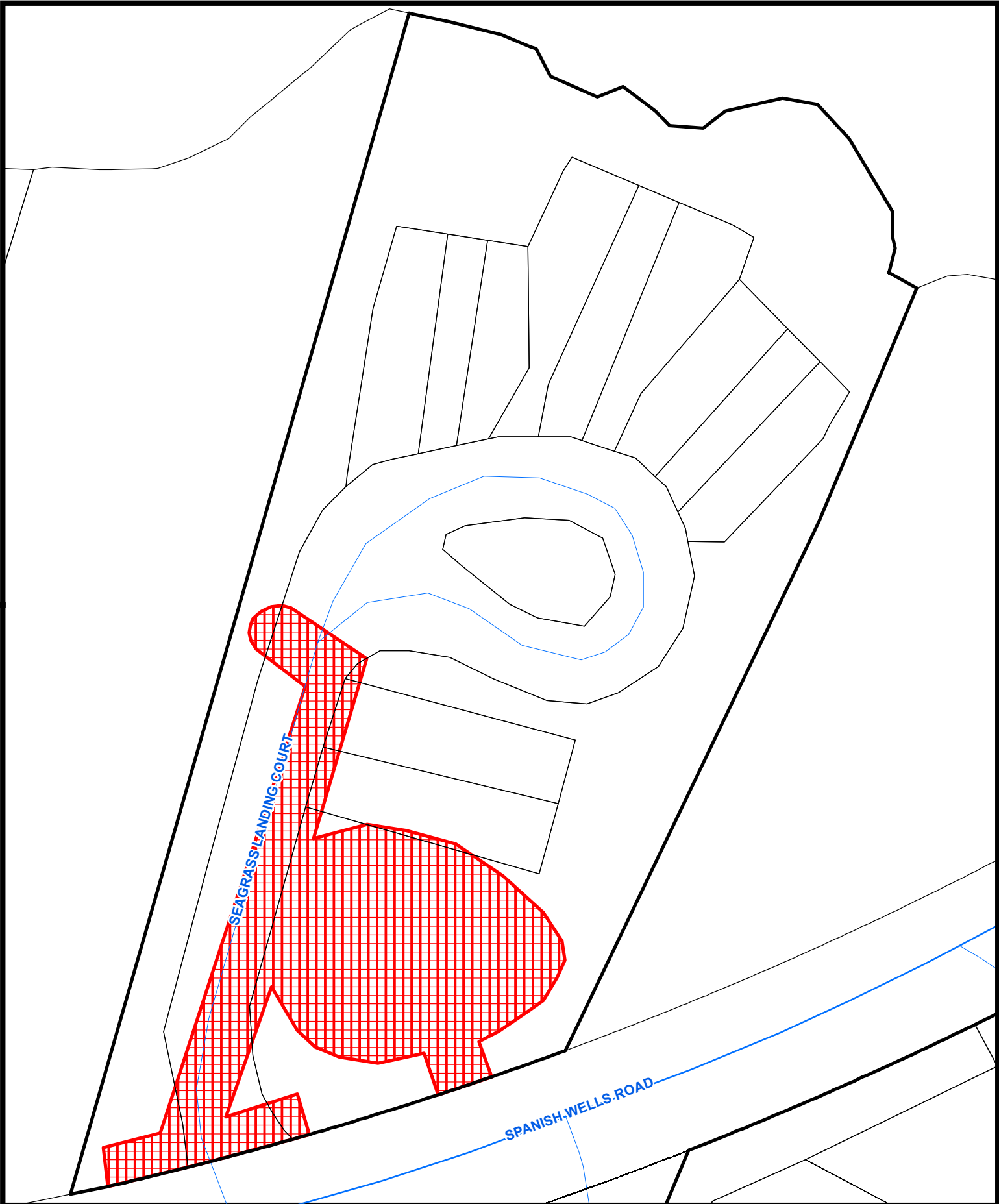
John McCann, Mayor

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

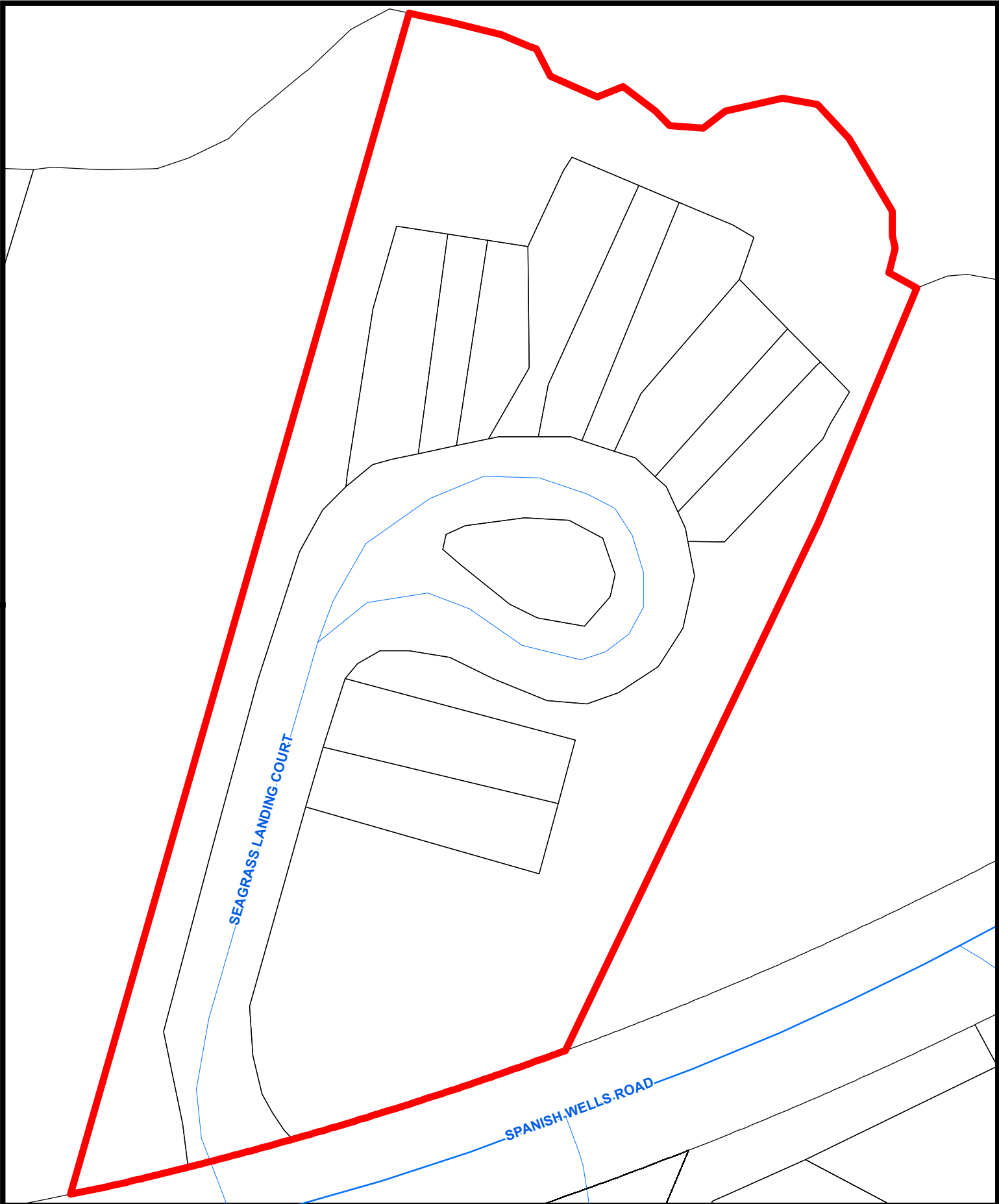
Date Created: 04/21/21
 Project: map.mxd

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: 4/14/21
 Project: map-1141

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: _____

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

WHEREAS, Yacht Cove Property Owners’ Association, Inc., is the owner of improved and unimproved real property and easements within Yacht Cove; 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, 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 30th 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

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)
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
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

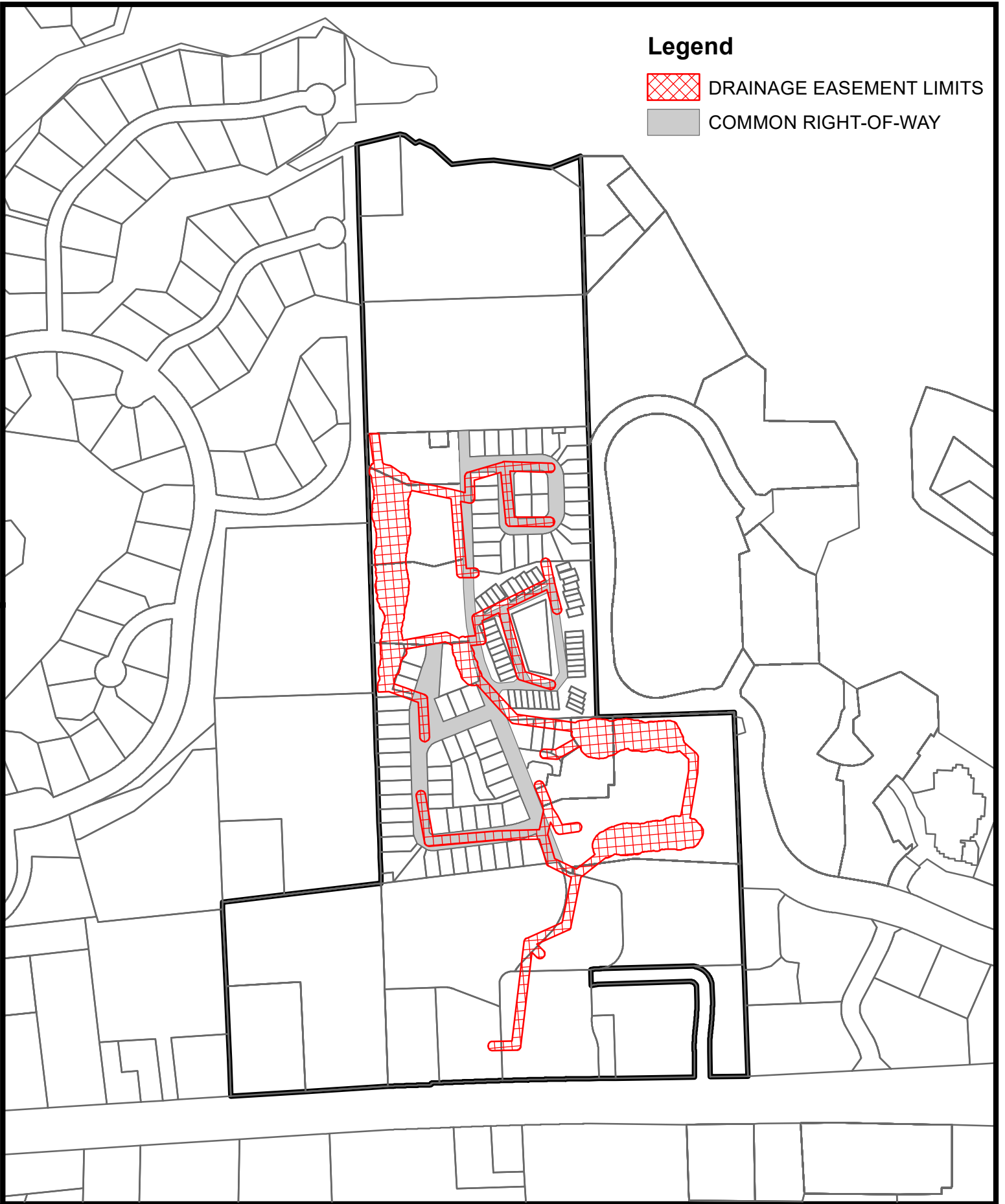


EXHIBIT A
YACHT COVE POA
DRAINAGE EASEMENT LIMITS

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
Date Created: 11/11/11
Project: map.mxd

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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 30th 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

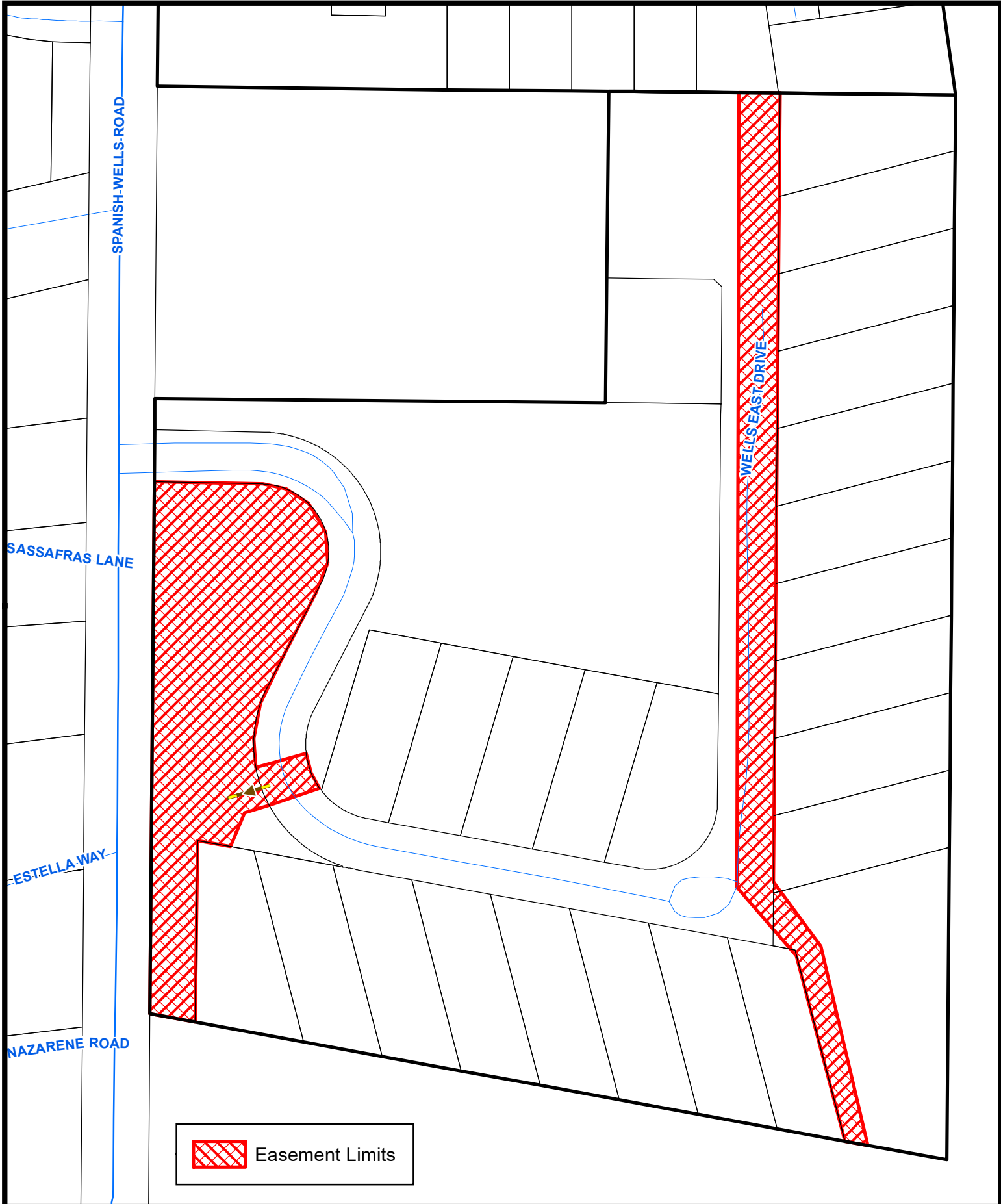
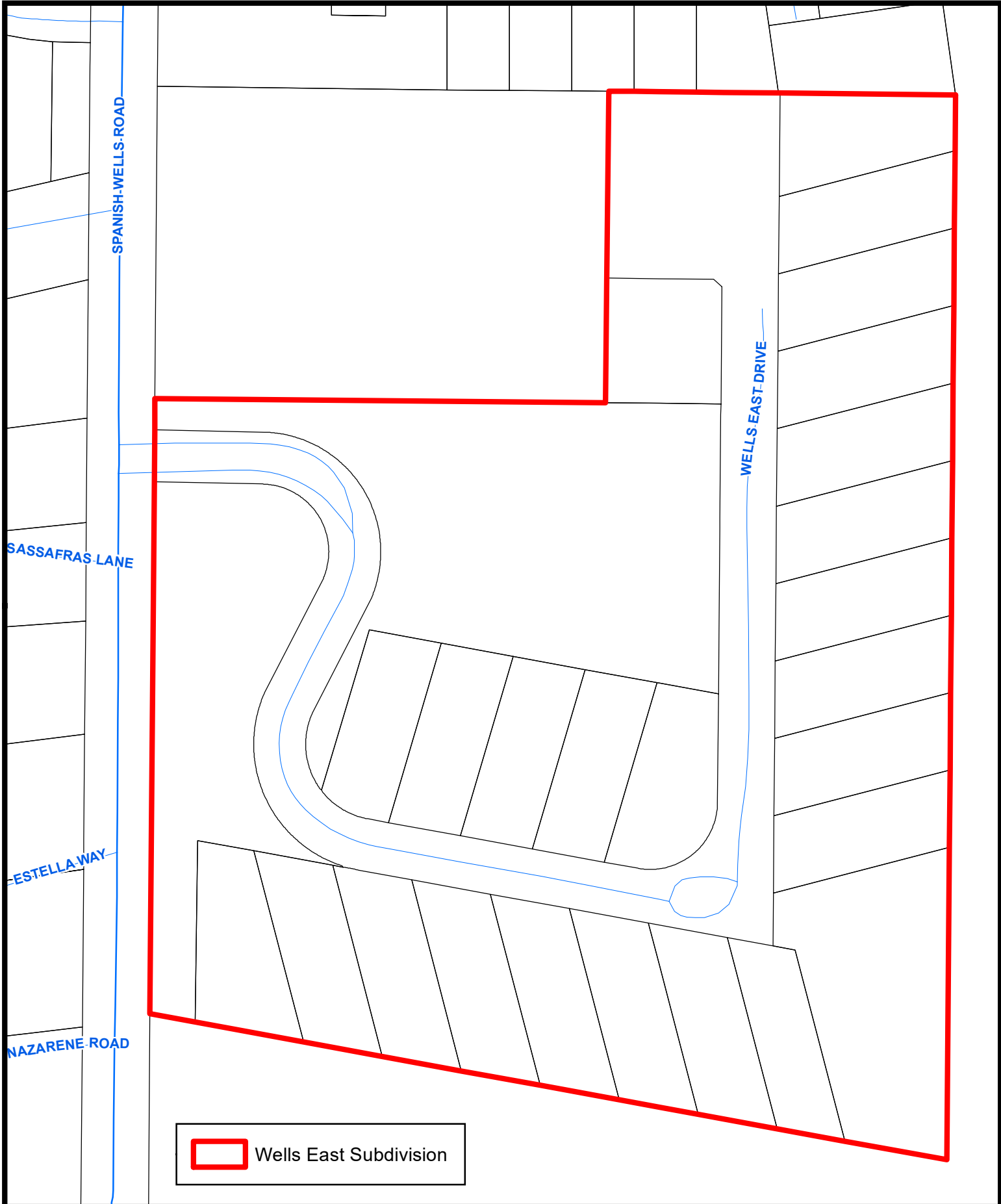



EXHIBIT A WELLS EAST DRAINAGE EASEMENT LIMITS



 Wells East Subdivision

**EXHIBIT B
 WELLS EAST
 SUBDIVISION**

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 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 30th 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**

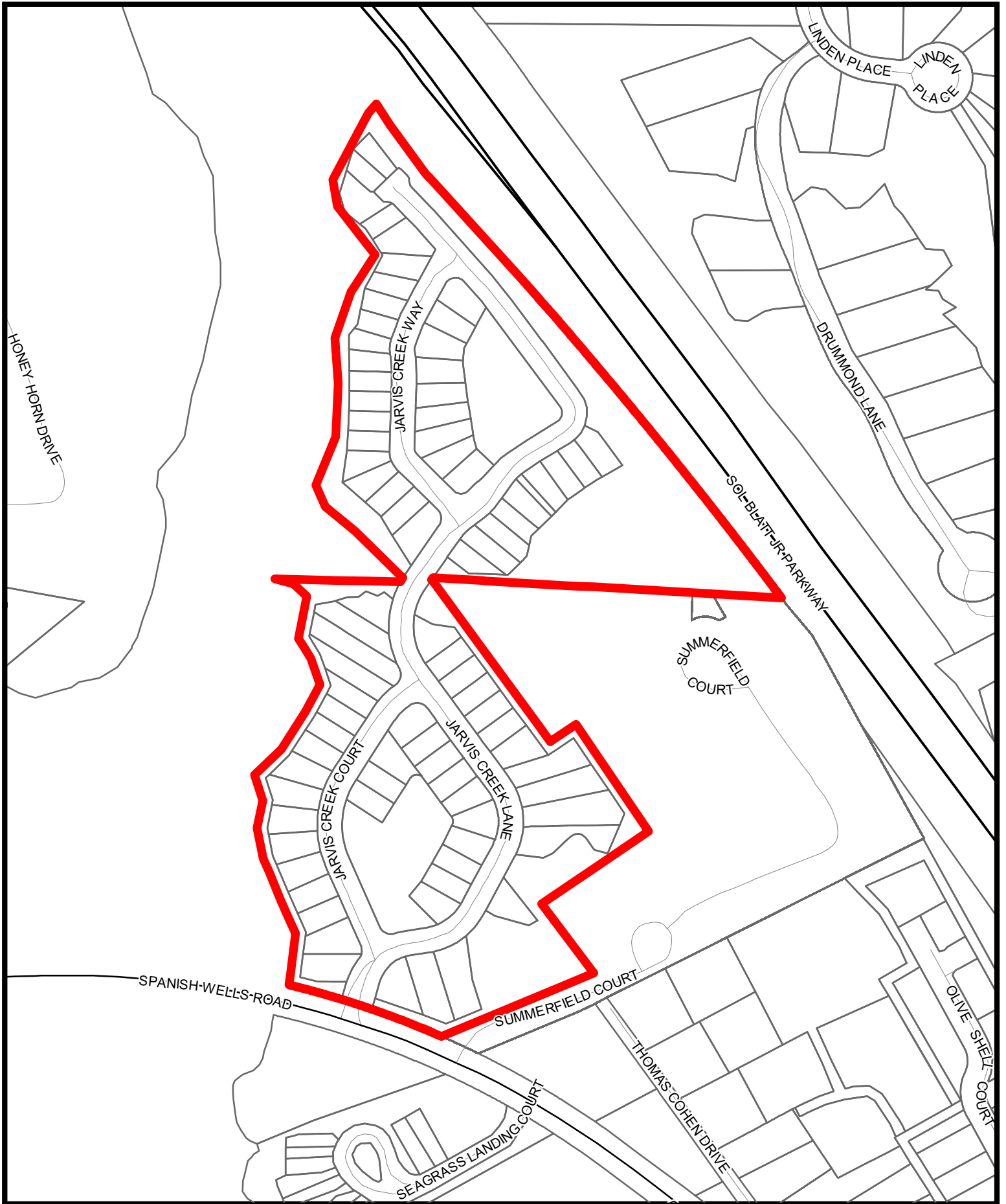
1 inch = 200 feet




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: _____

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

WHEREAS, Bermuda Pointe Property Owners’ Association, Inc., is the owner of improved and unimproved real property and easements within Bermuda Pointe; 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, 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 30th 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: _____

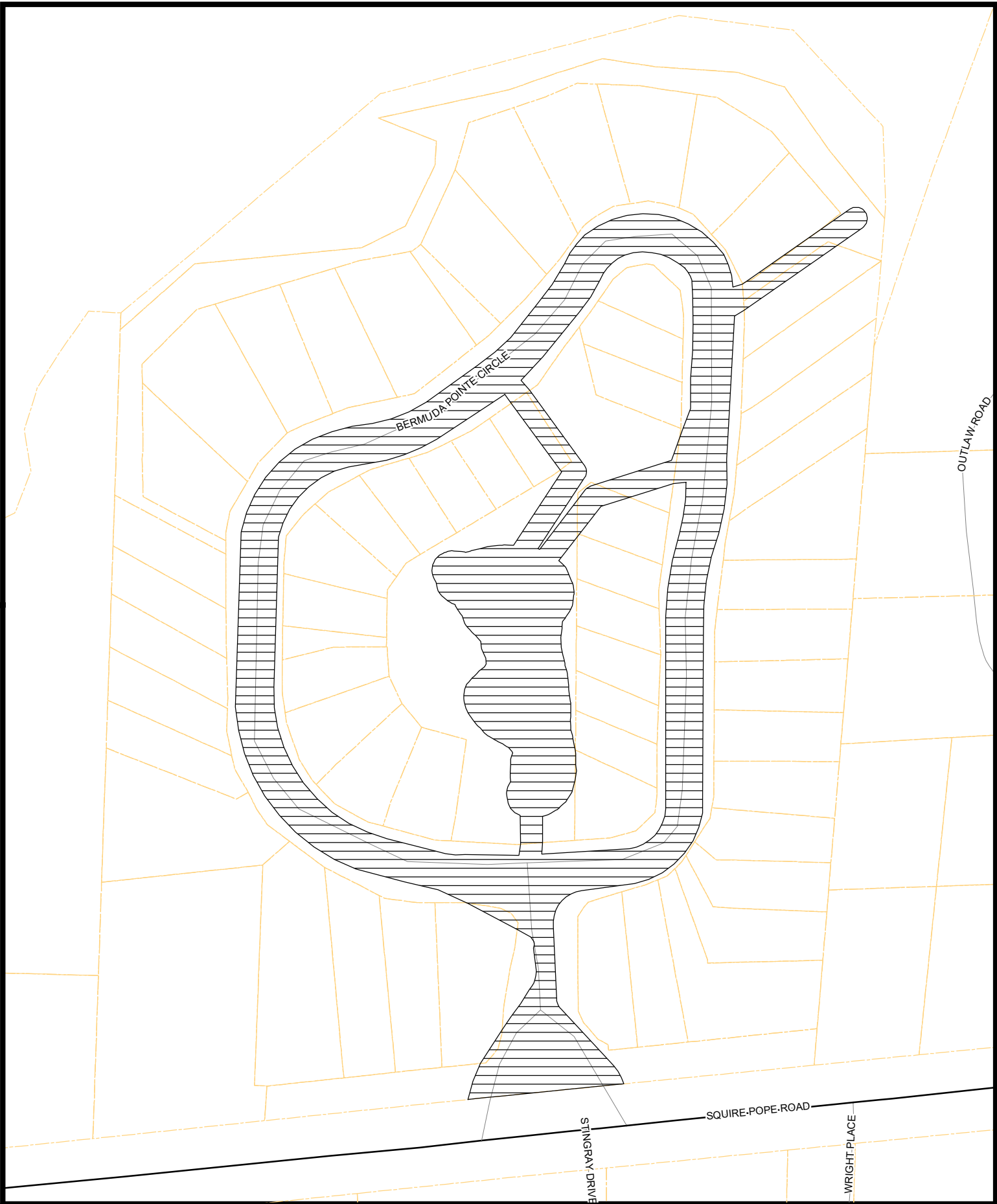
THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

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.

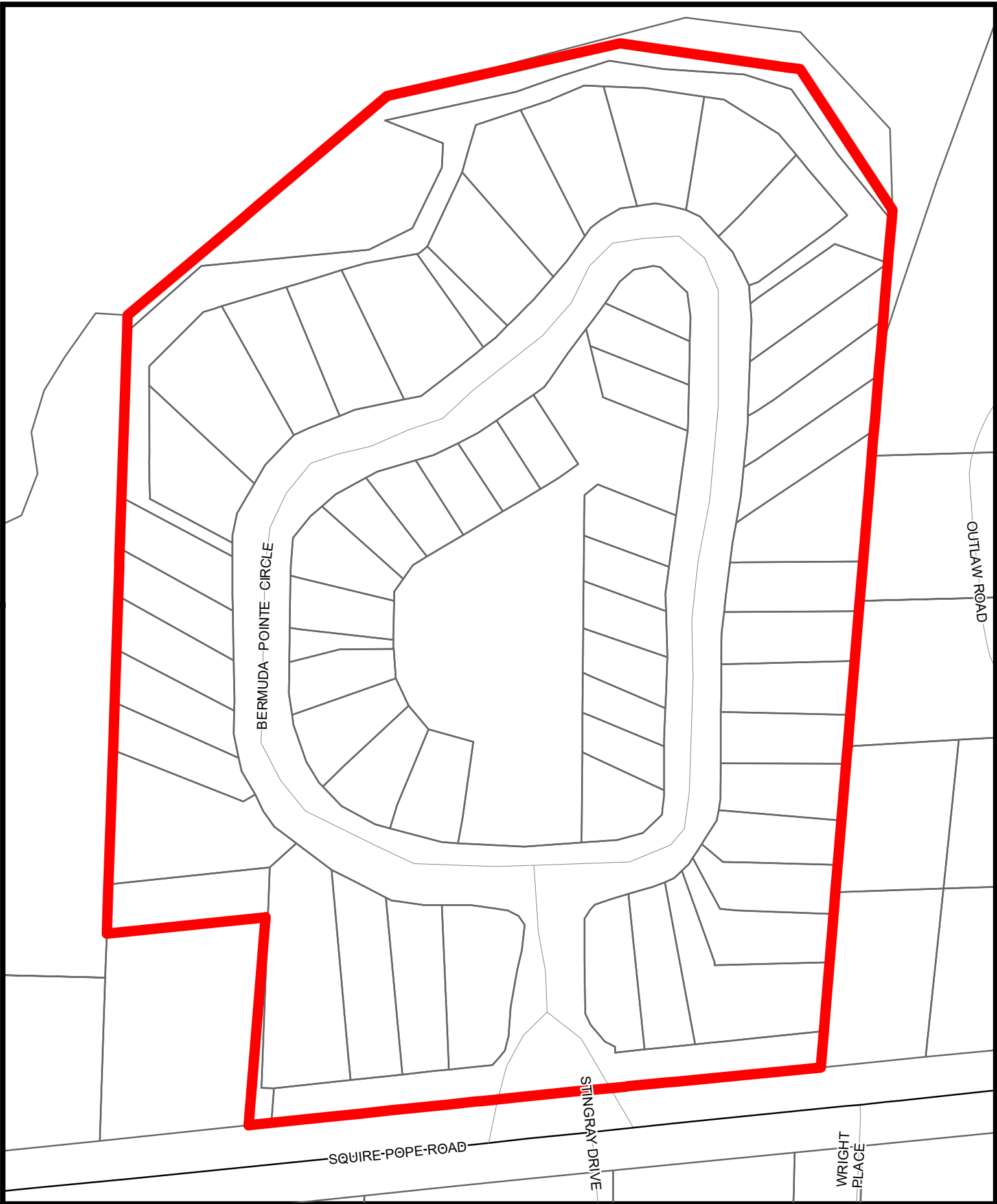


EXHIBIT B
BERMUDA POINTE
PLANNED UNIT DEVELOPMENT

1 inch = 100 feet



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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

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.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA FOR THE ADOPTION OF A STRATEGIC PLAN TO ADDRESS PRIORITIES FOR THE OFFICE OF CULTURAL AFFAIRS AND ARTS COUNCIL

WHEREAS, an Office of Cultural Affairs Strategic Plan was adopted in 2018 by the Culture & Arts Advisory Committee; and

WHEREAS, a community driven strategic planning process was implemented in 2021 to provide the Office of Cultural Affairs and the volunteer led Arts Council of Hilton Head with strategic priorities over the next three-years; and

WHEREAS, a strategic plan will provide the Office of Cultural Affairs with management tool to focus resources and time towards goals and objectives that provide continuous improvement and growth for the arts and culture sector; and

WHEREAS, the Office of Cultural Affairs Strategic Plan identified five strategic areas, which include:

1. Goals in Marketing & Communication as it relates to the arts and culture sector and cultural tourism;
2. Education goals for the community and for the arts and culture sector;
3. Equity, diversity and inclusion goals for the arts and culture sector;
4. Public arts goals; and
5. National Arts & Humanities Month/Crescendo goals.

WHEREAS, the goals and measurements listed in the Strategic Plan were developed from community volunteers that serve on the Arts Council of Hilton Head, in partnership with the Town's Director of Cultural Affairs, to enhance the level of service to the community, help grow the local arts and culture sector by addressing the plan initiative through efficient and effective processes; and,

NOW, THEREFORE BE IT, AND IT HEREBY IS RESOLVED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, THAT the *Office of Cultural Affairs Strategic Plan* is hereby approved in order to support and promote a continuous improvement model for the Office of Cultural Affairs.

MOVED, APPROVED, AND ADOPTED ON THIS 20th DAY OF JULY, 2021.

John J, McCann, Mayor

ATTEST:

Krista M. Wiedmeyer, Town Clerk

APPROVED AS TO FORM:

Curtis L. Coltrane, Town Attorney

Introduced by Council Member: _____



**Office of
Cultural Affairs
Strategic Plan
FY22 - FY24**





**OFFICE OF
CULTURAL AFFAIRS**
Hilton Head Island

**FY22-24 Strategic Plan
Town of Hilton Head Island,
Office of Cultural Affairs & Arts Council of Hilton Head**

Adopted by Arts Council of Hilton Head, February 22, 2021
Jane Joseph, Chairman

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Special Thanks

The Arts Council of Hilton Head, Louise Cohen, Jane Joseph, Miho Kinnas, Michael Marks, Linda Piekut, Jeffrey Reeves, Bill Schmitt, Daniel Shapiro, Jennifer Winzeler



Prepared by the Town of Hilton Head Island
Office of Cultural Affairs
1 Town Center Court
Hilton Head Island, South Carolina
www.culturehhi.org

OCA Mission, Vision & Values

Mission

Our mission 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.

We use a broad definition of arts & culture. The definition includes the fine arts but also such creative expressions as traditional, ethnic, and folk art, music, the history and heritage of the island, landmarks, parks, and natural resources and sites.

The goal is for our definition of arts and culture to encompass our community's customs, beliefs and traditions.

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.

What will be different because of us?

- Hilton Head Island will be a destination of choice for artists as well as culture lovers.
- Arts & culture organizations will be strengthened because of professional development opportunities provided by the OCA,
- Resources will grow for the arts & culture 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.

We Value

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



Economic Impact of the Arts

The arts & culture provide inspiration and joy to residents, beautify public spaces, and strengthen the social fabric of our communities. Nonprofit arts and cultural organizations are also businesses. They employ people locally, purchase goods and services from other local businesses, and attract tourists.

During fiscal year 2018, spending by both Hilton Head Island's nonprofit arts and cultural organizations and their audiences totaled \$39.1 million according to a local study by Americans for the Arts.

Direct Economic Activity	Arts & Cultural Organizations	Arts & Cultural Audiences	Total Industry Expenditures
Total Industry Expenditures	\$15,828,417	\$23,253,318	\$39,081,735

Hilton Head Island

Hilton Head Island is the second largest barrier island on the east coast of the United States and home to almost 40,000 residents. Located in the Lowcountry, at the southern boundary of South Carolina, the Island has a beautiful natural environment and rich cultural history stretching back from Native American habitation and through the Revolutionary and Civil Wars.

The Island is approximately 12 miles long and 5.5 miles wide, with 34.5 square miles of area above the mean high tide water line. Thirteen miles of pristine beach fronts the Atlantic Ocean and Port Royal Sound. Vehicular access to the Island is via U.S. Highway 278.

Document Organization

The content in the Cultural Affairs Strategic Plan includes a community vision specific to our existing arts and culture assets. It includes goals and implementation strategies to provide guidance for the volunteer members of the Arts Council of Hilton Head in partnership with the paid Town staff working on cultural affairs.

The goals are aligned with the Town's **Our Plan** comprehensive plan's **Relentless Pursuit of Excellence** core value. According to the community, the Island is a unique and beautiful place that is worth protecting. It is evident the Town and the community seek and expect *Excellence*. The emphasis for this core value is community-focused and in celebration of the Island history, cultural and socio-economic diversity, and natural resources. The goal is centered on *Our Ideals of Excellence* and how to sustain excellence for our place, our people, and our planning and process.

The presentation of goals, strategies, and tactics in each core value chapter in *Section 3.0* and in *Sections 4.0* and *5.0* supports the purpose of **Our Plan** as a policy guiding document. The goals define aspirations for the community into the future. Strategies and tactics for each goal provide more specific action items or plans for accomplishing the goals.

Goal: an aspiration; a desired outcome

Strategy: a plan of action

Tactic: a tool or action item

Many hours of volunteer and community dedication went into the formulation of these important and foundational components of **Our Plan** as well as the specific components of the Cultural Affairs Strategic Plan.





Our Plan Ideals of Excellence

To be a community that...

1. Is welcoming, inclusive, values diversity, safe, and people-focused.
2. Is recognized as an excellent place to live, work, and visit.
3. Preserves, values, and recognizes its history.
4. Attracts businesses and residents who identify with and appreciate the Hilton Head Island community's *Ideals of Excellence* and core values.
5. Is recognized as a best-in-class destination where visitors are welcomed and the economic impact of tourism is valued.
6. Protects the natural environment as a unique quality of our identity.
7. Prioritizes the greater good.
8. Attracts and maintains a diverse and multi-dimensional residential population, providing a competitive live-work option.
9. Recognizes the benefit and value of arts, culture, recreation, healthy living, and education for the community.
10. Fosters a collaborative, transparent, and inclusive environment when resolving concerns or planning for the future.
11. Considers sustainability as foundational to the Island's development and redevelopment of environmental and economic projects and policies.
12. Fosters a spirit of inspiration and leads by example.
13. Uses innovation and learning to continually develop and apply best practices and standards for processes and projects.
14. Continually adapts the Core Values and Comprehensive Plan to meet the needs of the present and the future.

Marketing & Communications Goals

Promoting our Arts & Culture Assets

Destination tourism and retirement are two of the biggest drivers for the Island economy. Cultural tourism not only benefits our local economy but bridges gaps between vastly different communities and improves quality of life. This can include many activities such as attending events and festivals, visiting museums and tasting the local food and drinks. A deepened relationship with the Hilton Head Island-Bluffton Chamber of Commerce, local and regional partners, and media outlets will lead to Hilton Head Island being recognized as an arts destination.

1. DEEPENING THE EXPERIENCE

Expanded the augmented reality offerings and digital experiences implemented at sites along the cultural trail.

2. DIGITAL MARKETING

Grow website visitors and social media followers through unique content development, digital ad buys, bi-monthly e-newsletter and online event promotions. Looking for a 10% increase in social media followers and e-news subscribers annually.

3. GULLAH CULTURAL PRESERVATION & PROMOTION

Work with Foresight Communication, the Town's Historic Neighborhoods Preservation Administrator, and community partners to establish cultural districts and branding initiative that can begin on HHI and be replicated throughout the Gullah Geechee Corridor.

4. HERITAGE TOURISM

Work with the Hilton Head Island-Bluffton Chamber of Commerce and Hilton Head History to build a heritage tourism campaign prior to the 250th anniversary of the American Revolution.

5. MEDIA PROMOTIONS & PUBLIC RELATIONS

Promote local arts and culture events and public art offerings and expansion for local, regional and national media coverage to define Hilton Head Island as an arts destination.



Education Goals

Growing Education Opportunities for the Community & Artists

Involvement in the arts is associated with gains in math, reading, cognitive ability, and verbal skill. Arts learning can also improve motivation, concentration, confidence, and teamwork along with the creative and critical thinking skills that are so highly valued in today's economy.

Additionally, the Office of Cultural Affairs works to provide resources for organizations' staff and board members, artists and educators wishing to further their skills and knowledge to support the local arts sector by bringing interesting, challenging and thought provoking workshops, networking and training to Hilton Head's cultural ecology.

1. PUBLIC SCHOOL ARTIST-IN-RESIDENCY PROGRAMS

Partner with the Arts Center of Coastal Carolina & the Island School Council for the Arts to expand current in-school artist-in-residency programs. This includes researching funding options regionally and nationally to expand these offerings.

2. COMMUNITY MURAL PAINTING

Commission artists to paint murals at Hilton Head Island Elementary and Hilton Head Island High School. COVID cases pending, ideally these would be paint-by-number styles with student body participation. Hilton Head Island Middle School & Hilton Head School for Creative Arts had murals created for their campus in 2020.

3. TITLE ONE ART EQUITY

Work with community partners to draft a plan to subsidize the \$25 student fee for arts participation at the high school level.

4. PROFESSIONAL DEVELOPMENT

Offer professional development training seminar to arts & culture organization staff and board members. One training would be offered annually based on 2019 community-wide survey results.

5. ISLAND CULTURE PROJECT

Research establishing an Island wide, grade level cultural experience for every student on the Island to experience the same cultural field trip for each grade. This includes costs, organizational participation, school hurdles and funding options.

Inclusive Goals

Fostering an Inclusive Multi-dimensional Community

Fully grasping the Vision of **Our Plan** entails addressing socio-economic trends of present day Hilton Head Island that could be more sustainable and equitable. It encourages the Island's progression into the future with a multi-dimensional, equitable, and diverse society.

In alignment with the OCA's racial equity principals adopted in 2018, we work to eliminate institutional racism in our programs, policies and practices and provide the requested training and support resources in this arena to our cultural organizations.

1. EDUCATION

The OCA will offer an annual Equity, Diversity & Inclusion training to arts & culture organizations' staff and board members at the request of the community. Facilitators will be chosen based on topics and feedback provided by cultural community members in formal surveying and from previous community-wide training sessions. Training professionals and facilitators will be vetted by the Director of Cultural Affairs, who completed the 2021 certificate program in EDI in the Workplace from the University of Southern Florida, and the Assistant Town Manager who is Riley Fellow from the 2019 Diversity Leaders Institute at Furman University.

2. HISTORIC SITES & CULTURAL PRESERVATION

Support cultural preservation initiatives within the Gullah community and support further telling of the Gullah history through a mural installation at the Gullah Museum and the organization of cultural districts.

3. COMMUNITY DEVELOPMENT

Work with leaders in the Latinx community to develop a database of Latinx artists of all genres.

4. RESOURCES

Work with cultural organization leaders to develop an organizational EDI self-assessment workbook and guide including EDI policy templates.

5. ACCESS

Develop a Seats for Citizens program to facilitate getting empty seats to performances filled with students, community volunteers and low-income residents.





Public Art Goals

Using Art to Build a Connected and Collaborative Community

Public art is a distinguishing part of our public history and our evolving culture. Public art humanizes the built environment and invigorates public spaces. It is now a well-accepted principle of urban design that public art contributes to a community's identity, fosters community pride and a sense of belonging, enhances the quality of life for its residents and visitors, and creates a heightened sense of connectivity.

Public art encompasses many forms: permanent sculptures, temporary installations, murals in public spaces, and interactive art experiences. Our permanent public art collection, temporary public art, and creative placemaking programs tell all of our residents and visitors that we are a place that cares about who we are, what we do, and where we come from.

1. DEVELOPMENT

Create a small, permanent pathway exhibit similar to a mini High Line to further connect art with recreation, connect the community, and deepen experiences for residents and guests.

2. CREATIVE PLACEMAKING INITIATIVES

Grow the annual HHI Lantern Parade participation by 10% annually. Identify new financial sponsors for the event and non-profit community outreach partners.

3. COLLABORATION

Encourage and facilitate residents and visitors to collaborate around common values and celebrate the realization of shared objectives through the co-curation Community Creates application process.

4. QUALITY OF LIFE

Improve the Island aesthetic and engagement opportunity for residents by managing the annual temporary sculpture exhibit and additional permanent art collection commissions. Incorporate public art with new capital improvement projects. Research and recommend funding options for a Percent for Art program.

Annual Crescendo Celebration Goals

Expanding the Crescendo Festival to be Recognized as a Regional Attraction

The Crescendo Celebration is organized in honor of October's National Arts and Humanities month, and highlights and showcases the vast array of arts, culture and history organizations, individual artists, performers, and authors residing and working on Hilton Head Island.

The month-long celebration features more than 100 unique arts and cultural programs, concerts, theatrical productions, museum and gallery exhibits, lectures, poetry readings, dance performances, historical tours, hands-on arts experiences, and educational offerings. Crescendo's programmatic and promotional aspects align with the regional value of **Our Plan** by presenting artists from across the Southeast, partnering with South Arts, the regional arts agency, and the SC Arts Commission, the state arts agency, to identify funding sources, and by marketing the events to drive-time markets to offer exposure and opportunity for our local artists and arts organizations.

1. MARKETING & PROMOTIONS

Grow Crescendo attendance through local and tourism marketing initiatives and expanding partnership opportunities with the Hilton Head Island-Bluffton Chamber of Commerce and VCB.

2. PROGRAMMING

Create one new signature event annually for the festival in addition to the opening celebration and Lantern Parade.

3. CULTURAL TOURISM

Grow Crescendo brand recognition through strategic media buys and promotions in 50+ mile markets.

4. PLANNING

Draft long-term strategy for the future of Crescendo (next 3 years).





TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Marc Orlando, ICMA~CM, *Town Manager*
VIA: Jennifer Ray, ASLA, *Capital Program Manager*
VIA: Teri Lewis, AICP, *Deputy Director of Community Development*
FROM: Shari Mendrick, P.G., CFM, *Floodplain Administrator*
CC: Chris Yates, CBO, CFM, CGP, *Building Official*
DATE: July 14, 2021
SUBJECT: 2020 Lowcountry Natural Hazard Mitigation Plan

Recommendation: The Public Planning Committee met on June 2, 2021 and approved a recommendation to Town Council for adoption of the 2020 Lowcountry Natural Hazard Mitigation Plan as an appendix to Our Plan.

The Planning Commission met on May 19, 2021 and voted unanimously to approve a resolution recommending adoption of the 2020 Lowcountry Natural Hazard Mitigation Plan as an appendix to Our Plan.

Summary: The adoption of the 2020 Plan will fulfill the continuing requirements that qualify the Town of Hilton Head Island for FEMA pre-disaster mitigation grants, post-disaster reconstruction assistance and continued participation in the Community Rating System (CRS).

The 2020 Lowcountry Natural Hazard Mitigation Plan is consistent with Our Plan Excellence Strategy 2.6, Environment Goal 6, Regional Strategy 1.1, Infrastructure Goal 3, and Infrastructure Strategies 5.6, 5.7, and 5.8.

Background: The Lowcountry Council of Governments, on behalf of Beaufort, Colleton, Hampton and Jasper Counties and municipalities within each county, prepared the 2020 Lowcountry Natural Hazard Mitigation Plan. This Plan assesses the communities' vulnerabilities to natural hazards; and includes long-term strategies to address these hazards and to prevent future damage and loss of life.

This Plan was created through participation from counties, municipal officials, and residents, and represents the community's consensus. The 2020 update has been approved by the South Carolina Emergency Management Division (SCEMD) and the Federal Emergency Management Agency (FEMA). The 2020 Lowcountry Natural Hazard Mitigation Plan will replace the Beaufort County Hazard Mitigation Plan previously adopted as an appendix to the Town of Hilton Head Island Comprehensive Plan.

Attachments:

- A) Proposed Ordinance 2021-2017
- B) 2020 Lowcountry Natural Hazard Mitigation Plan

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND TO ADOPT THE “2020 LOWCOUNTRY NATURAL HAZARD MITIGATION PLAN” AS AN APPENDIX TO “OUR PLAN”; AND TO PROVIDE FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Beaufort County Hazard Mitigation Plan was adopted in 2011 as an Appendix to the Town of Hilton Head Island Comprehensive Plan; and

WHEREAS, the Beaufort County Hazard Mitigation Plan 2015 Update was adopted in 2016 as an Appendix to the Town of Hilton Head Island Comprehensive Plan; and

WHEREAS, on October 20, 2020, the Town Council of the Town of Hilton Head Island, South Carolina adopted Our Plan, the 2020-2040 Town of Hilton Head Island Comprehensive Plan; and

WHEREAS, the Beaufort County Hazard Mitigation Plan is required to be re-evaluated by the Disaster Mitigation Act of 2000 every five years to assess the communities’ vulnerabilities to natural hazards, prepare a long-term strategy to address these hazards, prevent future damage and loss of life; and

WHEREAS, the Town of Hilton Head Island has been an “official participant” in the planning process of the natural hazard mitigation plan, hereby known as the 2020 Lowcountry Natural Hazard Mitigation Plan prepared by the Lowcountry Council of Governments in accordance with the Disaster Mitigation Act of 2000; and

WHEREAS, the 2020 Lowcountry Natural Hazard Mitigation Plan identifies mitigation goals and actions to reduce or eliminate long-term risk to people and property in the Town of Hilton Head Island from the impacts of future hazards and disasters; and

WHEREAS, the adoption of the 2020 Lowcountry Natural Hazard Mitigation Plan will fulfill the requirements for continued participation in the Community Rating System as well as qualify the Town of Hilton Head Island for FEMA pre-disaster grants and post-disaster reconstruction assistance.

WHEREAS, the Planning Commission reviewed the 2020 Lowcountry Natural Hazard Mitigation Plan at their May 19, 2021 meeting and recommended the Plan be sent to the Public Planning Committee of the Town Council for their consideration; and

WHEREAS, on June 2, 2021 the Public Planning Committee recommended Town Council adopt the 2020 Lowcountry Natural Hazard Mitigation Plan; and

WHEREAS, Town Council now desires to adopt the 2020 Lowcountry Natural Hazard Mitigation Plan an appendix to Our Plan as recommended by the Public Planning Committee.

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

Section 1. Adoption. That the 2020 Lowcountry Natural Hazard Mitigation Plan is hereby adopted as an appendix to Our Plan.

Section 2. 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 3. 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: _____

2020 Lowcountry Natural Hazard Mitigation Plan
Attachment B

The 2020 Lowcountry Natural Hazard Mitigation Plan is available to view on the Lowcountry Council of Governments website:

[https://cms.revize.com/revize/lowcountrysc/2020%20Lowcountry%20Natural%20Hazard%20Mitigation%20Plan%20\(Revision%20per%20FEMA\).pdf](https://cms.revize.com/revize/lowcountrysc/2020%20Lowcountry%20Natural%20Hazard%20Mitigation%20Plan%20(Revision%20per%20FEMA).pdf).

The 2020 Lowcountry Natural Hazard Mitigation Plan is also available to view at Town Hall.