



Town of Hilton Head Island

Finance and Administrative Committee Meeting

Tuesday, September 24, 2024, 10:00 AM
1 Town Center Court, Hilton Head Island, SC
Benjamin M. Racusin Council Chambers

The meeting can be viewed on the [Town's YouTube Channel](#), the [Beaufort County Channel](#), and Spectrum Channel 1304.

- 1. Call to Order**
- 2. Adoption of the Agenda**
- 3. Approval of the Minutes**
 - a. Regular Meeting Minutes of August 27, 2024
- 4. New Business**
 - a. Consideration of a Resolution Authorizing the Execution of Standardized Stormwater Agreements for Broad Creek Landing, Paddocks on Jarvis Creek, Ribaut Island, and Victoria Square - Jeff Netzing, Stormwater Program Manager
 - b. Monthly Financial Report and Presentation - Adriana Burnett, Finance Director
- 5. Public Comment - Non Agenda Items**
- 6. Adjournment**

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.

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990 ("ADA"), the Town of Hilton Head Island will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities. Auditory accommodations are available. Any person requiring further accommodation should contact the Town of Hilton Head Island ADA Coordinator as soon as possible but no later than 48 hours before the scheduled event.

Municipal Association of South Carolina (MASC) Civility Pledge:
“I pledge to build a stronger and more prosperous community by advocating for civil engagement, respecting others and their viewpoints, and finding solutions for the betterment of my city or town.”



Town of Hilton Head Island FINANCE AND ADMINISTRATIVE COMMITTEE REGULAR MEETING Tuesday, August 27, 2024 – 10:00 AM Minutes

Call to Order

Chair Becker called the meeting to order at 10:00 a.m.

Committee Members Present: Alex Brown, Chair; Ward 1; David Ames, Ward 3; Steve Alfred Ward 5; and Glenn Stanford, Ward 6

Adoption of the Agenda

Mr. Ames moved to adopt the agenda. Mr. Stanford seconded. Motion carried 4-0.

Approval of the Minutes

Regular Meeting Minutes of July 9, 2024

Mr. Ames moved to approve. Mr. Alford seconded. Motion carried 4-0.

New Business

Monthly Financial Report and Presentation – Adriana Burnett, Finance Director

Mrs. Burnett, Finance Director presented the new monthly financial report, highlighting significant achievements and key financial metrics for 2024. A notable success was the Town's upgraded credit rating to AAA, attributed to strong leadership and management. Preliminary 2024 revenue numbers showed a 24% increase, with actual revenues reaching \$93.8 million, up from the projected \$75.8 million. Major revenue contributors included a \$10 million increase from investment income and higher-than-expected business licenses and property taxes.

Mrs. Burnett emphasized that these are preliminary figures, as the fiscal year is still being closed. Expenses were controlled effectively, with actual expenditures coming in 29% below the forecasted \$143 million. The discussion also addressed the management of multi-year CIP projects, where \$27 million of the approved \$55 million was spent, with remaining funds to be carried forward. A new finance team is being created to better track and report the progress of these projects, ensuring transparency and accurate financial oversight.

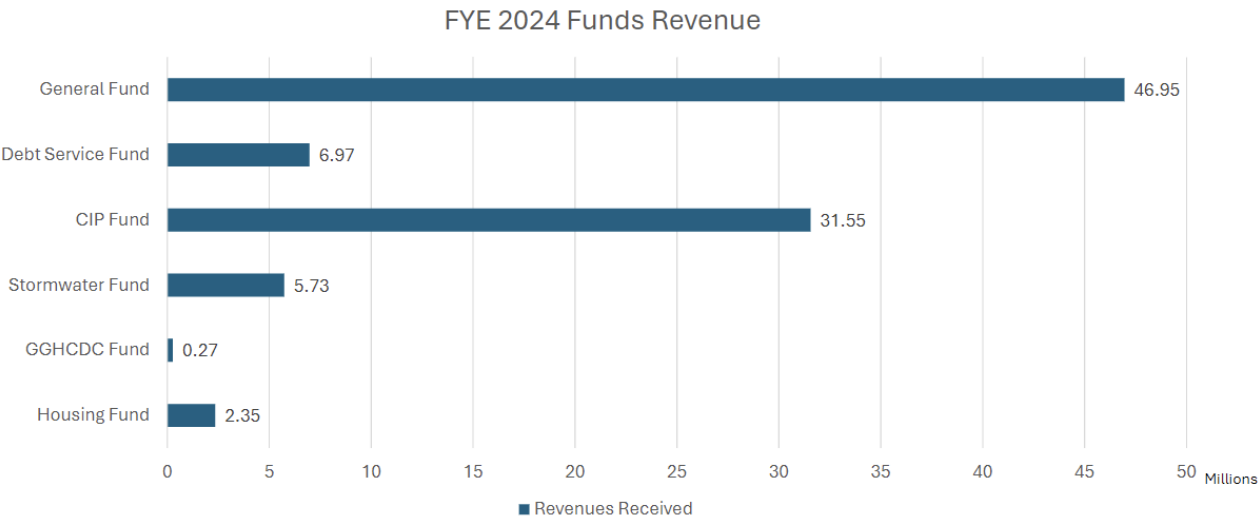
Questions from the council focused on revenue forecasting, the impact of fluctuating interest rates, and the importance of clear communication regarding multi-year project expenditures.



FUNDS REVENUE

Consolidated Funds Revenue Only

FYE 2024	%	FYE 2023	%	FYE 2022
\$93,819,867	24%	\$75,608,414	20%	\$63,255,379



REVENUE HIGHLIGHTS

Preliminary Revenue Decreases

ATAX – State	Budgeted: \$13,828,654	Received: \$12,790,329	Difference: (\$1,038,325)
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Preliminary Revenue Increases

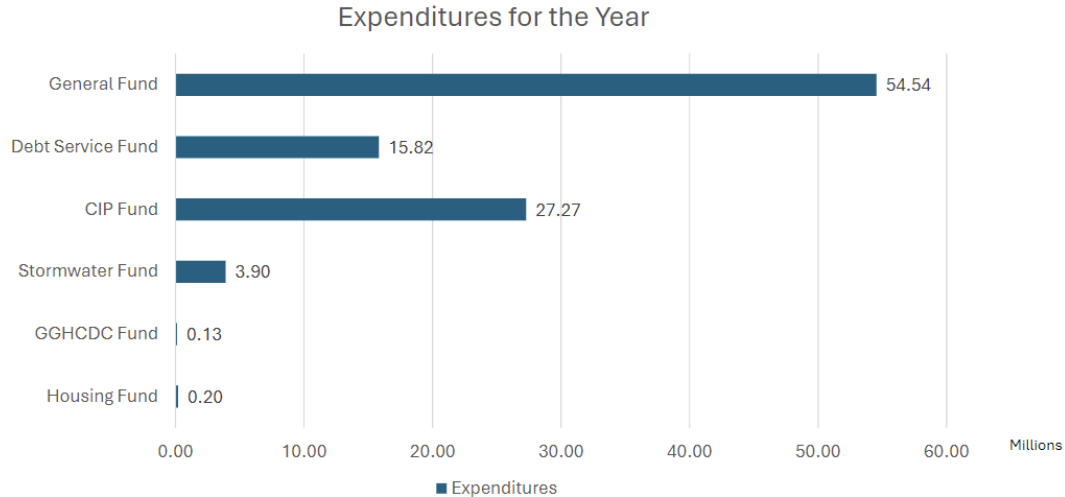
Investment Income	Budgeted: \$719,315	Received: \$10,699,425	Difference: \$9,980,110
Business Licenses	Budgeted: \$12,421,015	Received: \$14,749,382	Difference: \$2,328,368
Property Taxes	Budgeted: \$22,412,300	Received: \$24,582,416	Difference: \$2,170,116



FUNDS EXPENDITURES

Consolidated Funds Expenditures Only

FYE 2024	%	FYE 2023	%	FYE 2022
\$101,864,459	12%	\$91,244,080	26%	\$72,396,627



CONSOLIDATED PRELIMINARY FINANCIALS**

Year End Consolidated Financials Comparison

FYE 2024**	%	FYE 2023	%	FYE 2022
\$229,756,256	6%	\$211,421,584	11%	\$189,619,956

	BEGINNING BALANCE - 7/1/23	FYE 2024 REVENUES	FYE 2024 EXPENDITURES	FYE 2024 ENDING BALANCE	FYE 2023	FYE 2022
GENERAL FUND	\$ 33,502,808	\$ 46,953,890	\$ 54,541,460	\$ 25,915,238	\$ 33,502,808	\$ 29,062,865
DEBT SERVICE FUND	\$ 12,159,356	\$ 6,965,171	\$ 15,822,721	\$ 3,301,806	\$ 12,159,356	\$ 11,239,657
CIP FUND	\$ 3,402,646	\$ 31,549,021	\$ 27,270,807	\$ 7,680,860	\$ 3,402,646	\$ 8,796,482
STORMWATER UTILITY FUND	\$ 13,178,610	\$ 5,726,307	\$ 3,898,806	\$ 15,006,111	\$ 13,178,610	\$ 10,540,740
GGHNCDC FUND	\$ 5,415,560	\$ 275,478	\$ 129,142	\$ 5,561,896	\$ 5,415,560	\$ -
HOUSING FUND	\$ -	\$ 2,350,000	\$ 201,523	\$ 2,148,477	\$ -	\$ -
Sub-Total Funds Balance	\$ 67,658,980	\$ 93,819,867	\$ 101,864,459	\$ 59,614,388	\$ 67,658,980	\$ 59,639,744
Other Financing Sources	\$ 143,762,604	\$ 63,095,400	\$ 10,211,642	\$ 196,646,362	\$ 143,762,604	\$ 129,980,212
Transfers in/out		\$ 27,937,570	\$ 54,442,064	\$ (26,504,494)		
CONSOLIDATED PRELIMINARY FINANCIALS	\$ 211,421,584	\$ 184,852,837	\$ 166,518,165	\$ 229,756,256	\$ 211,421,584	\$ 189,619,956



EXPENDITURE HIGHLIGHTS

Preliminary Expenditure Decreases

Operating (non-personnel)	Budgeted: \$17,912,923	Spent: \$14,642,065	Difference: (\$3,270,858)
Personnel & Benefits	Budgeted: \$36,525,601	Spent: \$35,860,967	Difference: (\$664,634)
CIP Projects	Budgeted: \$55,211,171	Spent: \$27,270,807	Difference: (\$27,940,364)

Preliminary Expenditure Increases

**None to Report - Preliminary

In addition, the following points were made:

1. Public Understanding and Budget Variance: Emphasis was placed on the importance of public understanding of the town's financial situation. There was a concern about the potential misinterpretation of budget increases, stressing the need to clearly communicate how fund balances support ongoing projects. The \$74 million approved for the budget does not imply that all will be spent in one year, as projects from previous years are still in progress.
2. Clarity on Financial Reporting: The discussion highlighted the need for clearer financial reporting, particularly in showing variances and explaining how much of the Capital Improvement Plan (CIP) budget is allocated for the current fiscal year versus future years. Transparency in financial presentations is essential for the public's understanding.
3. Operating Budget and Savings: The town budgeted \$17.9 million for operating expenses but only spent \$14.6 million, resulting in a \$3.3 million savings. Additionally, there was a \$664,000 difference in personnel and benefits expenses, largely due to unfilled positions.
4. CIP Budget Breakdown: A detailed breakdown of CIP spending by program was provided, showing the unspent funds and progress by project. There was a discussion about the need for better communication to the public regarding the timelines for these projects.
5. Budget Amendments: The importance of reflecting budget amendments in financial reports was discussed, along with the need to communicate the reasons behind these amendments to the public to avoid any suspicion of poor planning.
6. Disaster Fund and Financial Reserves: Concerns were raised about the adequacy of the disaster fund in light of inflation since the last major disaster, Hurricane Matthew. A request was made for a report comparing current disaster fund levels with past expenses, adjusted for inflation.

7. Audit Timeline and Financial Processes: The goal is to have audited financials by October, which is more aggressive than the previous December timeline. Improvements in internal processes are needed to achieve this and are happening as she has implemented new policy and procedures for her department.
8. Controls Against Inappropriate Actions: The final point addressed the need for strong controls against inappropriate actions, such as theft or loss, particularly in purchasing and use of funds. Mrs. Burnett indicated that there are policies in place that protect the Town from such actions happening.

Chair Brown asked for public comment.

Melinda Tunner Addressed the Committee and congratulated the Town on receiving its recent AAA credit rating. She commended them for their forward-thinking approach to decision-making and cash flow management.

At the conclusion of public comment, Chairman Brown and the Committee thanked Mrs. Burnett for her time and the presentation made.

Public Comment – Non-Agenda Items

There were no public comments made.

Adjournment

The meeting was adjourned at 10:48 a.m.

Approved:

The recording of this Meeting can be found on the Town's website at www.hiltonheadislandsc.gov.



TOWN OF HILTON HEAD ISLAND

Finance & Administrative Committee

TO: Finance & Administrative Committee
FROM: Jeff Netzinger, Stormwater Manager
VIA: Shawn Colin, Assistant Town Manager
Curtis Coltrane, Town Attorney
CC: Marc Orlando, Town Manager
Josh Gruber, Deputy Town Manager
Adriana Burnett, Finance Director
DATE: September 24, 2024
SUBJECT: Consideration of a Resolution Authorizing the Execution of
Standardized Stormwater Agreements for:
i. Broad Creek Landing
ii. Paddocks on Jarvis Creek
iii. Ribaut Island
iv. Victoria Square

RECOMMENDATION:

Staff recommends the consideration of a Resolution (***Attachment 1***) authorizing the execution of standardized drainage agreements and access, drainage, and maintenance easements with the following four (4) requesting property owners' and homeowners' associations:

- Broad Creek Landing Horizontal Property Regime, Inc.
- Paddocks on Jarvis Creek Property Owners' Association, Inc
- Ribaut Island Property Owners Association, Inc
- Victoria Square Property Owners' Association, Inc.

BACKGROUND:

After the creation of the Storm Water Utility in 2001, the Town offered to accept maintenance responsibility for storm water systems located within private Planned Unit Developments (PUDs). Between 2007 and 2012, the Town executed and delivered drainage agreements with eleven (11) PUDs including Shipyard, Wexford, Long Cove Club, Sea Pines, Palmetto Dunes, Leamington, Shelter Cove, Port Royal Plantation, Indigo Run, Hilton Head Plantation, and Palmetto Hall.

On September 21, 2021, Town Council authorized executing drainage agreements with six (6) additional communities, including Bermuda Pointe, Jarvis Creek Club, Seagrass Landing, Spanish Wells, Wells East, and Yacht Cove.

On November 4, 2020, Town Council approved standardized terms and conditions for current and future drainage agreements. All eleven (11) original agreements were recently updated, using the standard terms and conditions, as authorized by Town Council on July 19, 2022.

On June 6, 2023, Town Council authorized executing drainage agreements with five (5) additional communities, including Ashton Cove, Beach City Place, Carolina Isles, Chinaberry Ridge, and Peregrine Pointe.

Staff maintains an exhibit depicting the location and boundaries of current and prospective drainage agreement partners (**Attachment 2**).

SUMMARY:

The Town currently has similar drainage agreements and easements with twenty-two (22) PUDs, property owners' associations, and homeowners' associations. These potential new partners have requested service via drainage agreements with the Town. All four (4) 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 standardized terms and conditions approved by Town Council on November 4, 2020. Drainage Agreements and Access, Drainage and Maintenance Easements were prepared by the Town and signed by authorized owners' association board members for each of the four (4) entities (**Attachment 3**).

ATTACHMENTS:

1. Draft Town Resolution (revised 10/24/24)
2. Prospective Agreement Partners Exhibit
3. Drainage Agreements and Access, Drainage and Maintenance Easements signed by authorized owners' association board members for each of four (4) entities currently requesting agreements.

RESOLUTION 2024-_____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION AND DELIVERY OF DRAINAGE AGREEMENTS AND ACCESS, DRAINAGE, AND MAINTENANCE EASEMENTS WITH BROAD CREEK LANDING HORIZONTAL PROPERTY REGIME, INC.; PADDOCKS ON JARVIS CREEK PROPERTY OWNERS' ASSOCIATION, INC.; RIBAUT ISLAND PROPERTY OWNERS ASSOCIATION, INC.; AND VICTORIA SQUARE PROPERTY OWNERS' ASSOCIATION, INC.

WHEREAS, The Town of Hilton Head Island, South Carolina, has negotiated Drainage Agreements and Access, Drainage, and Maintenance Easements related to the management of storm and surface drainage with property owners' and homeowners' associations on Hilton Head Island, known as Broad Creek Landing Horizontal Property Regime, Inc.; Paddocks on Jarvis Creek Property Owners' Association, inc.; Ribaut Island Property Owners Association, Inc.; and Victoria Square Property Owners' Association, Inc.; 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, 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 Agreements and Easements.

**NOW, THEREFORE, BE IT RESOLVED AND IT HEAREBY 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 and deliver Drainage Agreements and Access, Drainage, and Maintenance Easements between The Town of Hilton Head Island, South Carolina, and Broad Creek Landing Horizontal Property Regime, Inc.; Paddocks on Jarvis Creek Property Owners' Association, inc.; Ribaut Island Property Owners Association, Inc.; and Victoria Square Property Owners' Association, Inc., copies of which are attached hereto as Exhibits "A-D."
2. The Town Manager is hereby authorized to take all other and further actions as may be necessary to comply with the obligations of The Town of Hilton Head Island, South Carolina, in the Agreements.

**MOVED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL THIS _____ DAY
OF _____, 2024.**

Alan R. Perry, Mayor

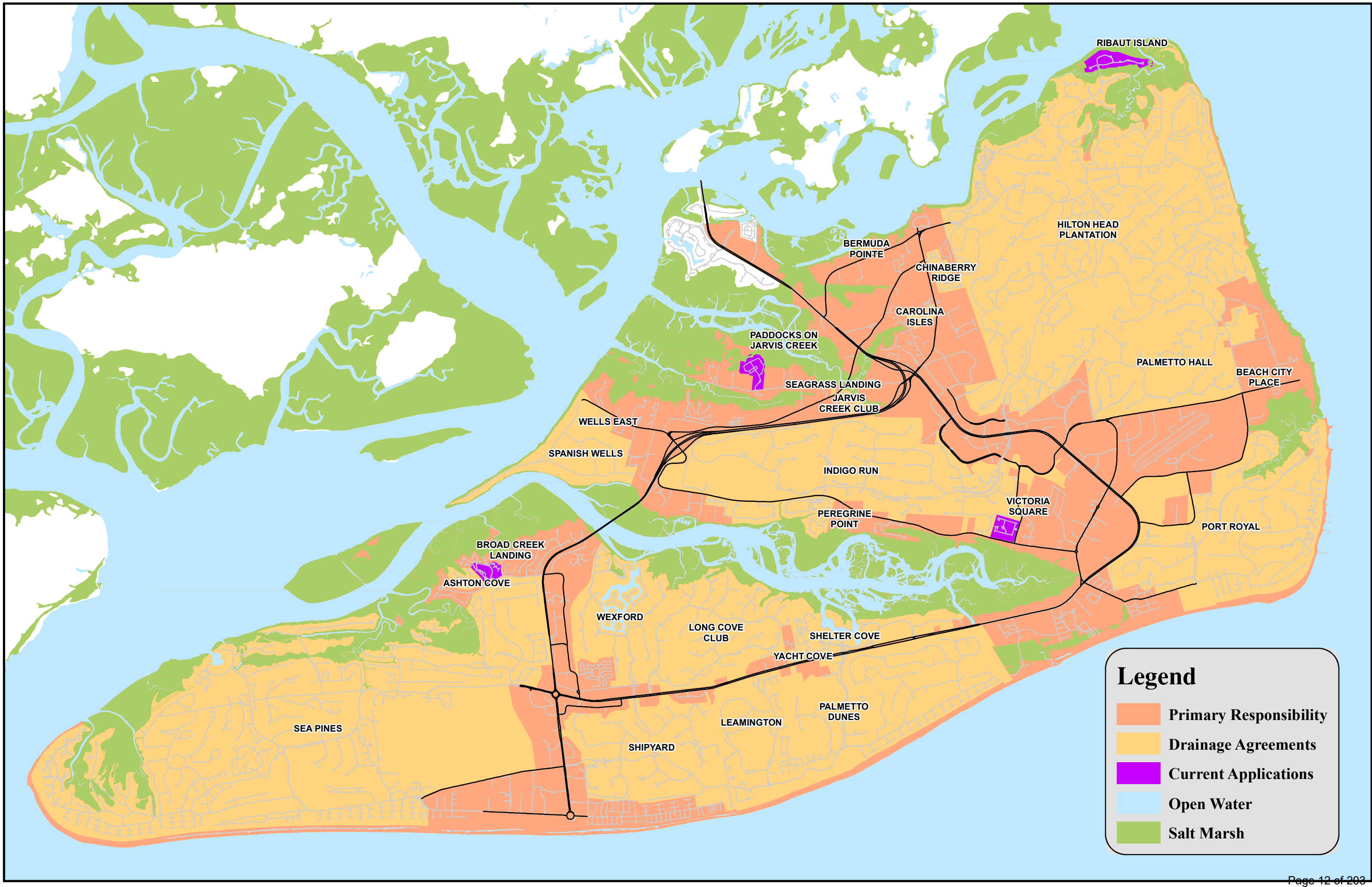
ATTEST:

_____, Town Clerk

APPROVED AS TO FORM:

Curtis L. Coltrane, Town Attorney

Introduced by Council Member: _____



Legend

- Primary Responsibility
- Drainage Agreements
- Current Applications
- Open Water
- Salt Marsh

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

WHEREAS, Broad Creek Landing Horizontal Property Regime, 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 Broad Creek Landing, to facilitate the conveyance of storm water runoff within and through the Development; and,

WHEREAS, the Broad Creek Landing Horizontal Property Regime, 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 Broad Creek Landing.

Now, therefore, know all men by these presents, that Broad Creek Landing Horizontal Property Regime, 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. *Casualty:* The destruction of all or any part of the Drainage System through a natural disaster.
 - c. *Covenants:* Any one or more of Covenants, Conditions, and Restrictions for Broad Creek Landing Horizontal Property Regime,

Inc. recorded in the Office of the Register of Deeds for Beaufort County. South Carolina.

- d. *Development:* Broad Creek 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.
- e. *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.
- f. *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.

- g. *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.
- h. *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.
- i. *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.

- j. *Project:* Work, including repairs and improvements performed or approved by the Town to correct a specific Qualifying Storm Drainage System Deficiency.
- k. *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 Regime, 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 Regime 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.
- l. *Regime:* Broad Creek Landing Horizontal Property Regime, 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 Regime's obligations under it, and to execute and deliver the Access, Drainage and Maintenance Easement attached hereto as Exhibit "C."
- 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 Regime 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 Regime from repairing, maintaining, or improving any component of its Drainage System at its expense.
- (b)** The Regime 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 Regime 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 Regime under Article 9, the Parties agree:

- a. *Identifying Qualifying Drainage System Deficiencies:* The Regime shall be responsible for identifying any Qualifying Drainage System Deficiencies.
- b. *Schedule for Submission:* The Regime 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 Regime may identify a potential solution for the deficiency. In such case, the Regime 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 Regime 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 Regime 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 Regime shall be responsible for obtaining all access rights, including access rights over and across property in the Development that is not owned by the Regime, as may be deemed necessary by the Town to complete any Project.
- g. *Access Needed to Complete Project*: The Regime 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 Regime, 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 at the sole discretion of the Town, prior to the commencement of the Project. The Regime has the right to withdraw the service request if the magnitude of potential damage is not acceptable to the Regime. If the service request is withdrawn, completing the Project shall be the responsibility of the Regime.

- 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 Regime:** The Regime 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 Regime 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 Regime'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 Regime 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 Regime:* The Regime shall take such steps as may be reasonably necessary to secure any area affected by the Emergency. The Regime shall notify the Town as soon as is practical after discovery of the Emergency. The Regime 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 Regime, 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 Regime prior to any reconstruction of the Drainage System. If the Regime does not approve the engineering and design plans prepared by the Town, the Regime 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 Regime require work outside of easement limits described in the Access, Drainage and Maintenance Easement, the Regime 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 Regime does not own.
- e. *Amendment of Access, Drainage and Maintenance Easement:* In the event that the engineering and design plans approved by the Regime, Include permanent improvements, or create access or other needs that are in areas not included in the Access, Drainage and Maintenance Easement, the Regime 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 Regime, the Regime'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 Regime, if the Regime is responsible for all or any part of the Casualty.
9. **Maintenance of Drainage System by the Regime:** Nothing herein shall prohibit the Regime 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 Regime 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 Regime 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 Regime, 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 Regime shall submit its plans, quantities, and specifications for any Project to the Town.
- b. The Town shall grant its written approval to the Regime to complete the Project unless it determines that:
 - i. The plan and work proposed by the Regime 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 Regime 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 Regime 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 Regime written approval or rejection of the Project.
- g. If the Project is approved by the Town, the Regime 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 Regime, any required test reports and the Regime'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 Regime 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 Regime acknowledges that the Town has no obligation to reimburse the Regime for any Project in the fiscal year following the Regime's completion of the Project, or in any other particular fiscal year.

10. **Emergency Work by the Regime:** 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 Regime, the following shall apply:

- a. The Regime 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 Regime is not required to bid the work but if the Regime chooses to bid the work, the Regime 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 Regime shall complete the work that is necessary to repair or correct the damage caused by the Emergency.
- c. The Regime 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 Regime 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 Regime'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 Regime'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 Regime's request for reimbursement, the Town shall reimburse the Regime in the amount approved.
- g. Requests for reimbursement by the Regime be submitted to the Town within three years following the completion of the work by the Regime. 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 Regime 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 Regime 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 Regime 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 Regime:**

The Regime 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 Regime 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 Regime under this Agreement or the Access, Drainage and Maintenance Easement, and the Regime 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 Regime 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 Regime:

- 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 Regime shall ensure payment, prior to delinquency, all taxes on Regime properties within the Development burdened by the easements granted under this Agreement.

17. **Default:** The Town and the Regime 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 Regime 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 Regime.
- 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 Regime 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 Regime 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 Regime: Broad Creek Landing Horizontal Property
 Regime, Inc.
 Attn: Carolyn Neely
 C/O: Association Services
 1040 William Hilton Parkway, Suite 200
 Hilton Head Island, SC 29928

- 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 Regime 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 Regime 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 Broad Creek Landing Horizontal Property Regime, Inc., by and through their duly authorized officers, have executed and delivered this Agreement as of this ____ day of _____, 202__.

SIGNATURES BEGIN ON NEXT PAGE

WITNESSES:

Broad Creek Landing Horizontal Property
Regime, Inc.

emily durrant

By: Chris Paul

Its: Board President

Dwight Brown

Attest: Habyn Elanagon

Its: SC Notary Public

THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

By: _____
Alan Perry, 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 Broad Creek Landing Horizontal Property Regime, 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) **Covenants:** Any one or more of Covenants, Conditions, and Restrictions for Broad Creek Landing Horizontal Property Regime, Inc. recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.
 - (b) **Development:** Broad Creek 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.
 - (c) **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.

- (d) *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.
- (e) *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.
- (f) *Regime:* Broad Creek Landing Horizontal Property Regime, Inc., a South Carolina not-for-profit corporation with the full authority under the Covenants to enter into this Agreement.
- (g) *Town:* The Town of Hilton Head Island, South Carolina.

2. *Grant of Easements:* The Regime 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 Regime 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 Regime, under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise, over property that the Regime 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 Regime under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise, over property that the Regime 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 Regime under the Covenants or any other recorded declaration of covenants and restrictions, recorded easements or otherwise, over property that the Regime 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 Regime 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 Regime 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 Regime, 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 Regime 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, make repairs, and otherwise maintain 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 Regime 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 Regime 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 Regime 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 Regime 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 Regime 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 Regime 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 Regime 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 Regime.

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 _____, 202__.

WITNESSES:

Broad Creek Landing Horizontal Property
Regime, Inc.

emily durrant

By: Chris Paul

Dan G...

Attest: Halynn Flanagan

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 Chris Paul
personally appeared before me on this day and duly acknowledged the execution of the
foregoing instrument on behalf of Broad Creek Landing Horizontal Property Regime,
Inc..

Sworn to and Subscribed before me

on this 26th Day of April, 2024.

Halynn Flanagan
Notary Public for South Carolina

My Commission Expires: 05/30/2027

Halynn Flanagan
NOTARY PUBLIC
State of South Carolina
My Commission Expires 5/30/2027

WITNESSES:
SOUTH CAROLINA

THE TOWN OF HILTON HEAD ISLAND,

By: _____
Alan Perry, Mayor

Attest: _____
Marc Orlando, Town Manager

STATE OF SOUTH CAROLINA

)

UNIFORM ACKNOWLEDGMENT

)

COUNTY OF BEAUFORT

)

S.C. CODE § 30-5-30 (SUPP. 2010)

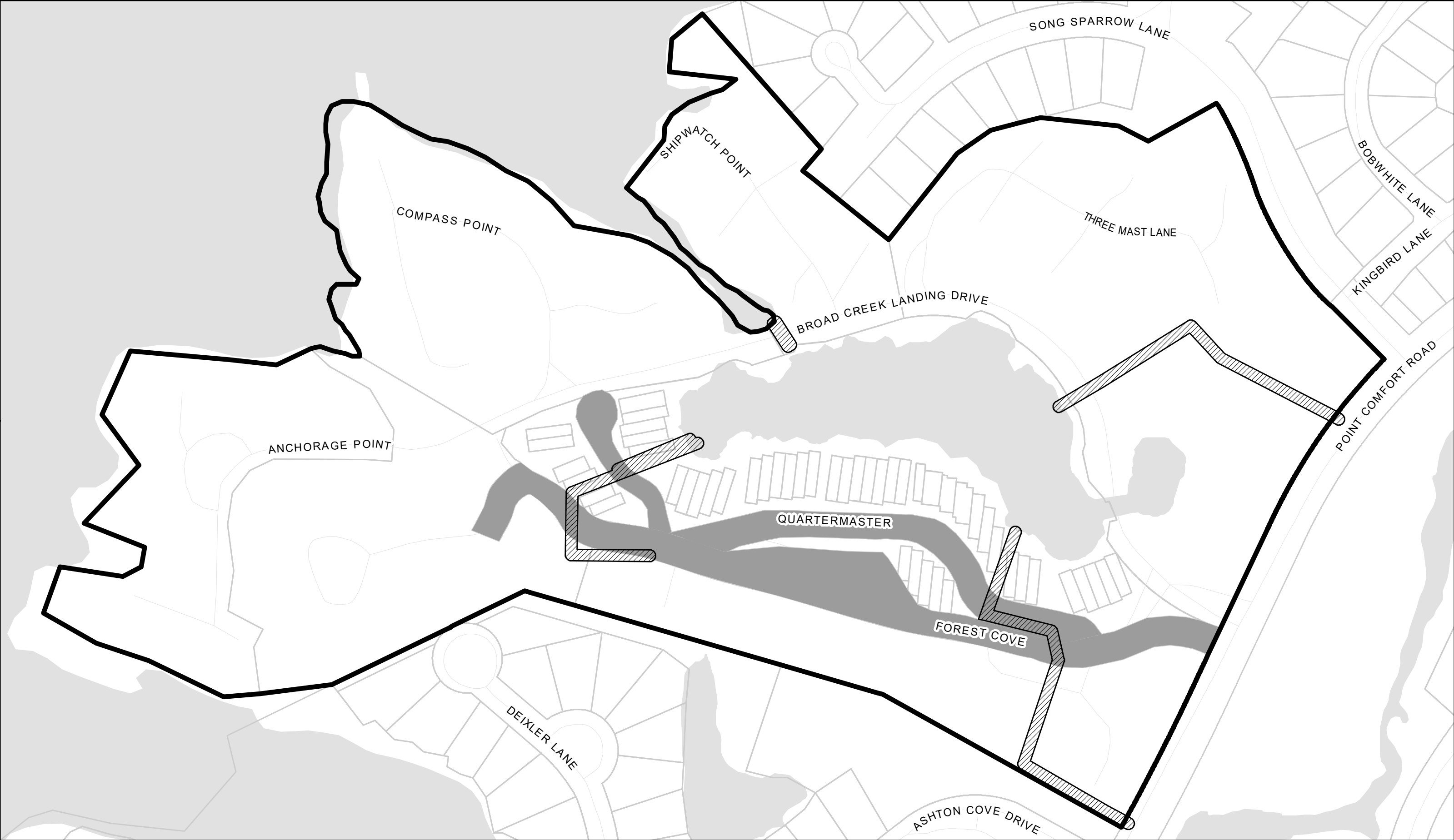
I, the undersigned Notary Public do hereby certify that Alan Perry and Marc Orlando personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of The Town of Hilton Head Island, South Carolina.

Sworn to and Subscribed before me

on this _____ Day of _____, 202__.

Notary Public for South Carolina

My Commission Expires: _____



 Drainage Easement Area  Access Limits  Broad Creek Landing Agreement Area

Note: Drainage easement widths are 20 feet around pipes that convey public runoff and 15 feet from the edge of bank of lagoons that receive public runoff.

Exhibit A
Broad Creek Landing
Drainage Easement Agreement Limits

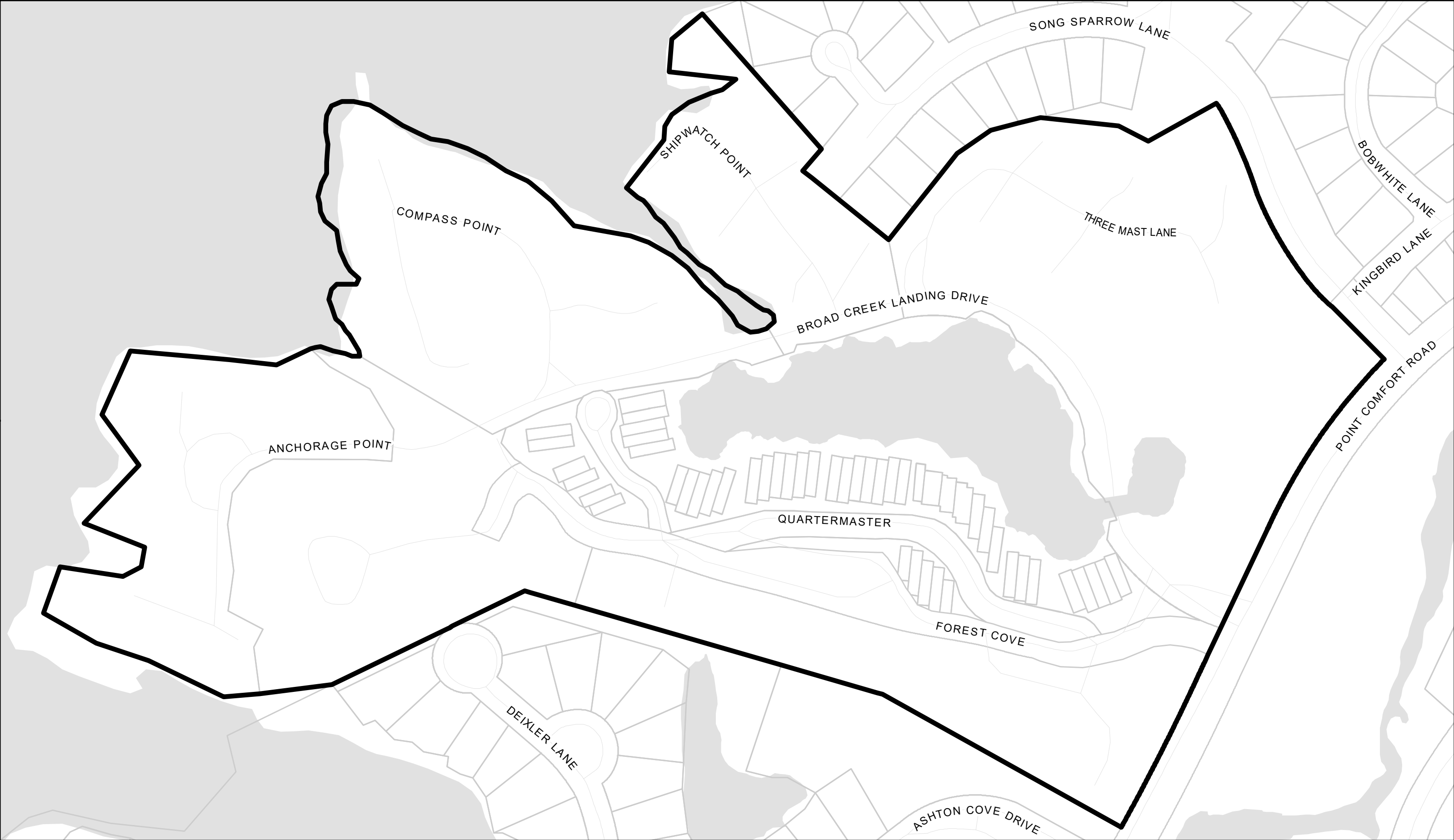
Drafted on March 13, 2024



0 37.5 75 150 225 300 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.

Page 55 of 203



WITNESSETH

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, Paddocks on Jarvis Creek 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 Paddocks on Jarvis Creek, to facilitate the conveyance of storm water runoff within and through the Development; and,

WHEREAS, the Paddocks on Jarvis Creek 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 Paddocks on Jarvis Creek.

Now, therefore, know all men by these presents, that Paddocks on Jarvis Creek 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:* Paddocks on Jarvis Creek 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 Paddocks on Jarvis Creek Property Owners’ Association, Inc. recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.
- e. *Development:* Paddocks on Jarvis Creek, 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. The Drainage System does not include the underground pipe that begins at the southern shore of the water body known as “Lake Russell” and extends to the waters of Old House Creek, or the outfall structure at the end of the underground drainage pipe at Old House Creek. The Association does not own the underground pipe or outfall structure, and the Association acknowledges that the Town has no responsibility or obligation to maintain the underground pipe under the terms of this Agreement.

- 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 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.

xii. Maintenance, repair or replacement of underground pipe that begins at the southern shore of the water body known as “Lake Russell” and extends to the waters of Old House Creek, or the outfall structure at the end of the underground drainage pipe at Old House Creek.

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: Paddocks on Jarvis Creek Property Owners
 Association, Inc.
 c/o GW Services, Inc.
 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 Paddocks on Jarvis Creek Property Owners' Association, Inc., by and through their duly authorized officers, have executed and delivered this Agreement as of this ____ day of _____, 202__.

SIGNATURES BEGIN ON NEXT PAGE

WITNESSES:

Paddocks on Jarvis Creek Property Owners'
Association, Inc.

Margaret Kastus

By: Risa Whelan

Its: POA President

Carla Hey

Attest: _____

Its: _____

THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

By: _____
Alan Perry, 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 Paddocks on Jarvis Creek 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:* Paddocks on Jarvis Creek 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 Paddocks on Jarvis Creek Property Owners' Association, Inc. recorded in the Office of the Register of Deeds for Beaufort County. South Carolina.
- (c) *Development:* Paddocks on Jarvis Creek, 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. The Drainage System does not include the underground pipe that begins at the southern shore of the water body known as “Lake Russell” and extends to the waters of Old House Creek, or the outfall structure at the end of the underground drainage pipe at Old House Creek. The Association does not own the underground pipe or outfall structure, and the Association acknowledges that the Town has no responsibility or obligation to maintain the underground pipe under the terms of this Easement.
- (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, make repairs, and otherwise maintain 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, or include the underground pipe that begins at the southern

shore of the water body known as “Lake Russell” and extends to the waters of Old House Creek, or the outfall structure at the end of the underground drainage pipe at Old House Creek.

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 _____, 202__.

WITNESSES:

Paddocks on Jarvis Creek Property Owners' Association, Inc.

Margaret Kesters

By: Risa McMillan

Carla Hey

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 Risa McMillan personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of Paddocks on Jarvis Creek Property Owners' Association, Inc..

Sworn to and Subscribed before me

on this 27 Day of March, 2024.



Veronica Hood

Notary Public for South Carolina

My Commission Expires: 9/22/31

WITNESSES:
SOUTH CAROLINA

THE TOWN OF HILTON HEAD ISLAND,

By: _____
Alan Perry, Mayor

Attest: _____
Marc Orlando, Town Manager

STATE OF SOUTH CAROLINA

)

UNIFORM ACKNOWLEDGMENT

)

COUNTY OF BEAUFORT

)

S.C. CODE § 30-5-30 (SUPP. 2010)

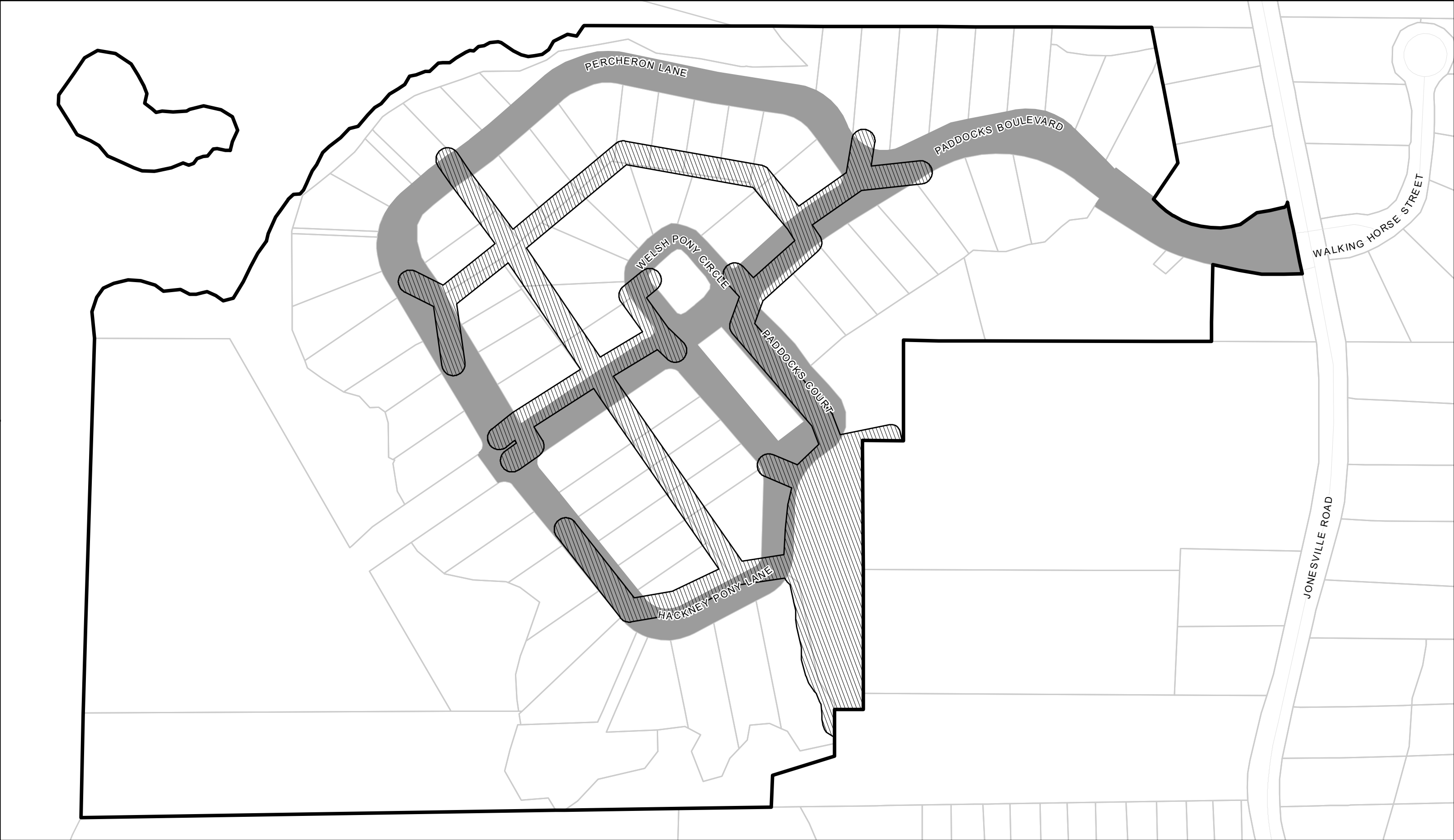
I, the undersigned Notary Public do hereby certify that Alan Perry and Marc Orlando personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of The Town of Hilton Head Island, South Carolina.

Sworn to and Subscribed before me

on this _____ Day of _____, 202__.

Notary Public for South Carolina

My Commission Expires: _____

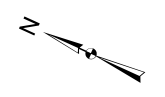
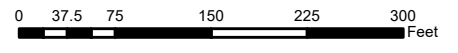


 Drainage Easement Area  Right-of-Way Area  Paddocks Limits

Note: Drainage easement widths are 20 feet around pipes that convey public runoff and 15 feet from the edge of bank of lagoons that receive public runoff.

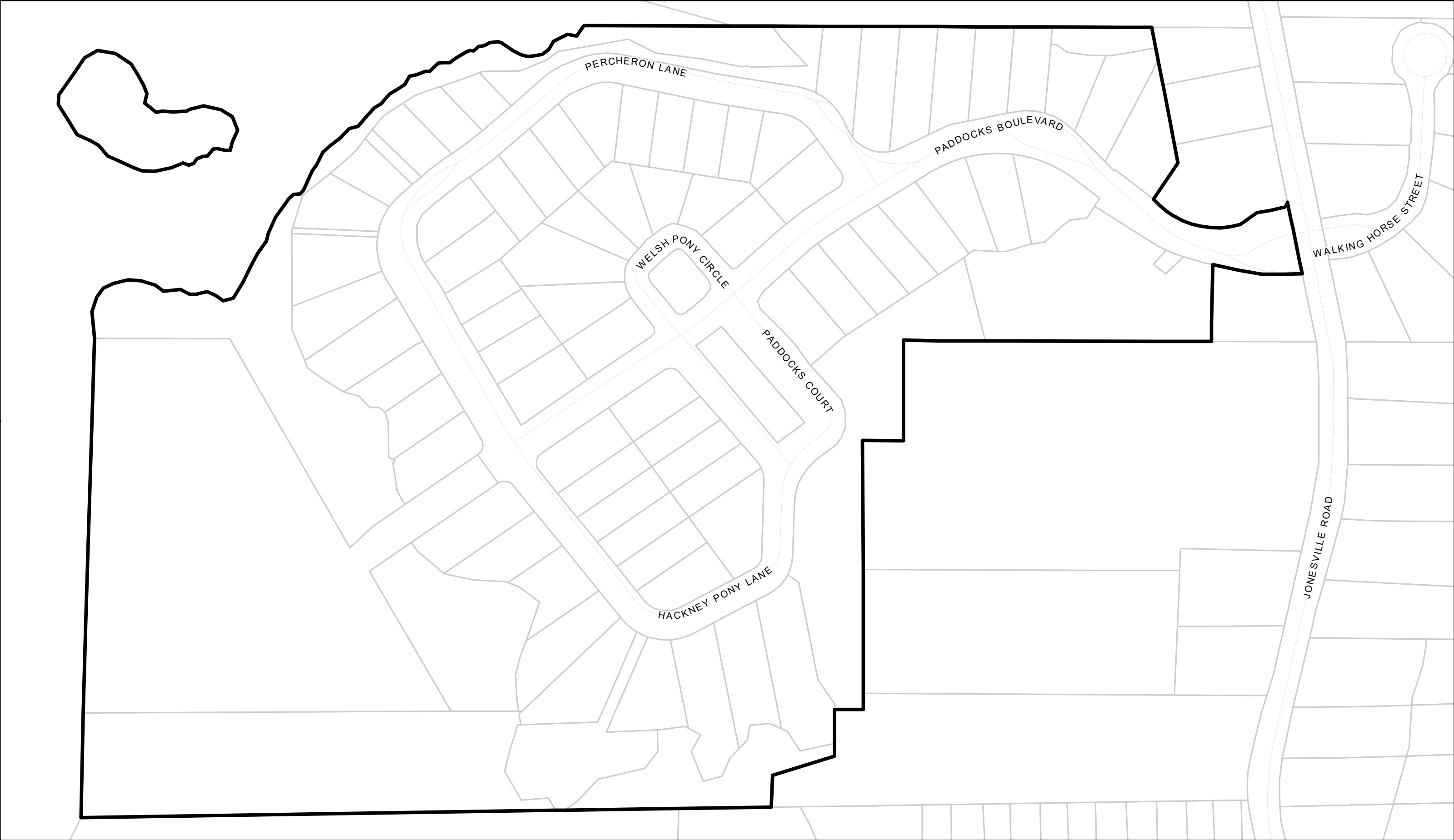
Exhibit A - The Paddocks Drainage Easement Agreement Limits

Drafted on February 15, 2024



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.

Page 99 of 203



 Paddocks Limits

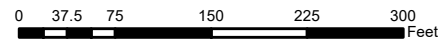
Note: Drainage easement widths are 20 feet around pipes that convey public runoff and 15 feet from the edge of bank of lagoons that receive public runoff.



Exhibit B

The Paddocks - Development Boundary

Drafted on February 15, 2024



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.

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

WHEREAS, Ribaut Island 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 Ribaut Island, to facilitate the conveyance of storm water runoff within and through the Development; and,

WHEREAS, the Ribaut Island 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 Ribaut Island.

Now, therefore, know all men by these presents, that Ribaut Island 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:* Ribaut Island 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 Ribaut Island Property Owners Association, Inc. recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.
- e. *Development:* Ribaut Island, 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: Ribaut Island Property Owners
 Association, Inc.
 PO Box 23094
 Hilton Head Island, SC 29925

- 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 Ribaut Island Property Owners Association, Inc., by and through their duly authorized officers, have executed and delivered this Agreement as of this ____ day of _____, 202__.

SIGNATURES BEGIN ON NEXT PAGE

WITNESSES:

Ribaut Island Property Owners Association, Inc.

By: _____

Its: _____

Attest: _____

Its: _____

THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

By: _____
Alan Perry, 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 Ribaut Island 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:* Ribaut Island 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 Ribaut Island Property Owners Association, Inc. recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.
- (c) *Development:* Ribaut Island, 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, make repairs, and otherwise maintain 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 _____, 202__.

WITNESSES:

Ribaut Island 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 Ribaut Island Property Owners Association, Inc..

Sworn to and Subscribed before me

on this _____ Day of _____, 202__.

Notary Public for South Carolina

My Commission Expires: _____

WITNESSES:
SOUTH CAROLINA

THE TOWN OF HILTON HEAD ISLAND,

By: _____
Alan Perry, 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 Alan Perry 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 _____, 202__.

Notary Public for South Carolina

My Commission Expires: _____

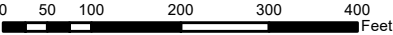


 Drainage Easement Area
  Right-of-Way Area
  Ribaut Island Limits

Note: Drainage easement widths are 20 feet around pipes that convey public runoff and 15 feet from the edge of bank of lagoons that receive public runoff.

Exhibit A - Ribaut Island Drainage Easement Agreement Limits

Drafted on February 15, 2024



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.



 Ribaut Island Limits

Note: Drainage easement widths are 20 feet around pipes that convey public runoff and 15 feet from the edge of bank of lagoons that receive public runoff.

Exhibit B

Ribaut Island - Development Boundary

Drafted on February 15, 2024



0 50 100 200 300 400 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.

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

This Drainage System Maintenance Agreement is made this _____ day of _____, 202____, by and between Victoria Square 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, Victoria Square is a subdivision of land lying and being within the Town of Hilton Head Island, Beaufort County, South Carolina (hereinafter the “Development”); and,

WHEREAS, Victoria Square Property Owners’ Association, Inc., is the owner of improved and unimproved real property and easements within Victoria Square; 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, Victoria Square 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 Victoria Square, to facilitate the conveyance of storm water runoff within and through the Development; and,

WHEREAS, the Victoria Square 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 Victoria Square.

Now, therefore, know all men by these presents, that Victoria Square 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:* Victoria Square 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 Victoria Square Property Owners' Association, Inc. recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.
- e. *Development*: Victoria Square, 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: Victoria Square Property Owners'
Association, Inc.
Attn: Gina Leeds
Board President
32 Victoria Square 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 Victoria Square Property Owners' Association, Inc., by and through their duly authorized officers, have executed and delivered this Agreement as of this ____ day of _____, 202__.

SIGNATURES BEGIN ON NEXT PAGE

WITNESSES:

Frank Hayward Wallace

Stem Peres

Victoria Square Property Owners' Association,
Inc.

By: Jim Leeds

Its: _____

Attest: _____

Its: _____

THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

By: _____
Alan R. Perry, 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 Victoria Square 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:* Victoria Square 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 Victoria Square Property Owners' Association, Inc. recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.
 - (c) *Development:* Victoria Square, 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, make repairs, and otherwise maintain 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 _____, 202__.

WITNESSES:

Victoria Square Property Owners' Association,
Inc.

Paul Hayward Wallace

By: Gina Leeds

Sherry Parent

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 Gina Leeds
personally appeared before me on this day and duly acknowledged the execution of the
foregoing instrument on behalf of Victoria Square Property Owners' Association, Inc..

Sworn to and Subscribed before me

on this 12th Day of September, 2023.

Sherry Parent
Notary Public for South Carolina

My Commission Expires: 8/25/2025

Sherry Parent
NOTARY PUBLIC
State of South Carolina
My Commission Expires 8/25/2025

WITNESSES:
SOUTH CAROLINA

THE TOWN OF HILTON HEAD ISLAND,

By: _____
Alan R. Perry, Mayor

Attest: _____
Marc Orlando, Town Manager

STATE OF SOUTH CAROLINA

)

UNIFORM ACKNOWLEDGMENT

)

COUNTY OF BEAUFORT

)

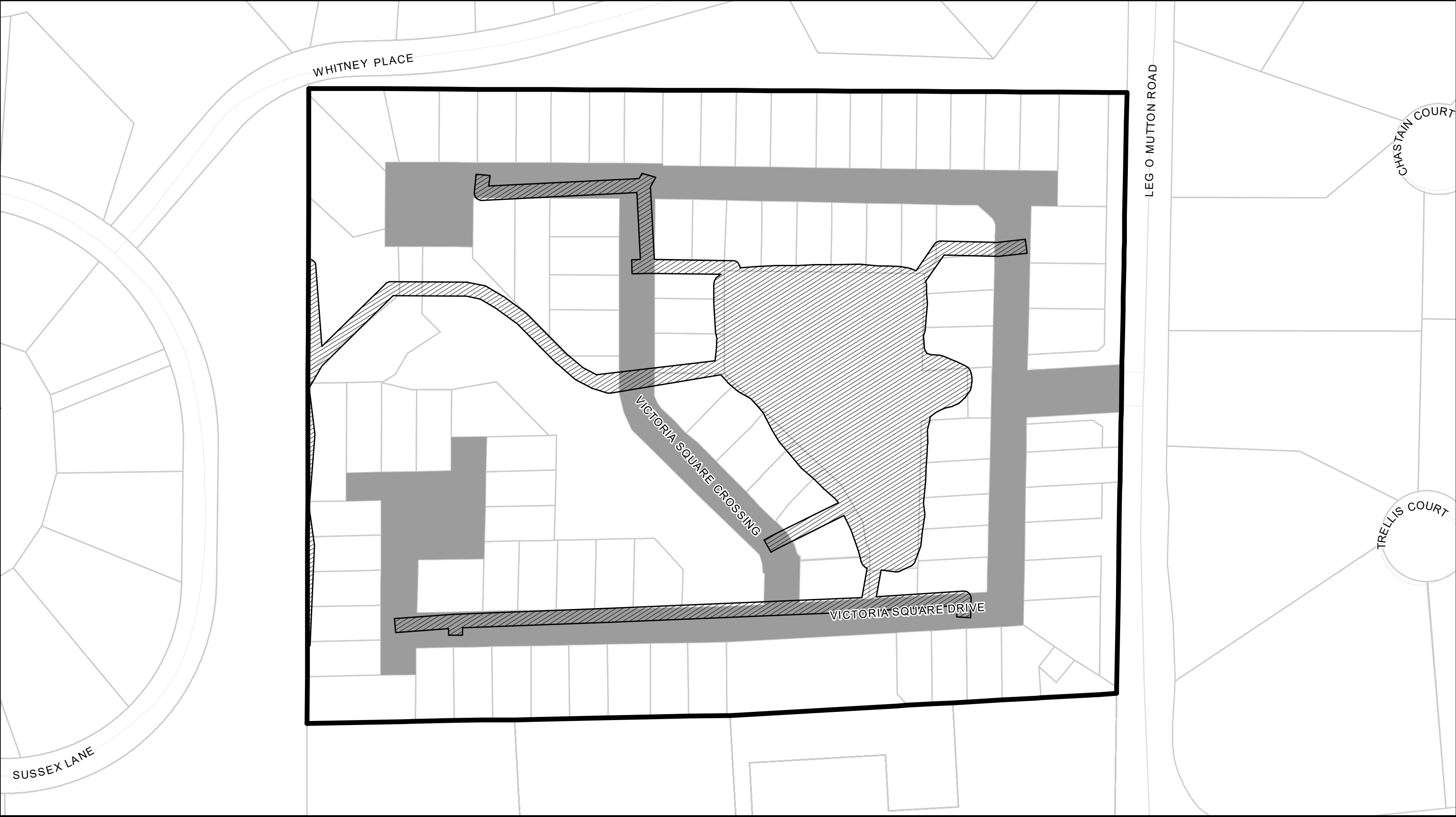
S.C. CODE § 30-5-30 (SUPP. 2010)

I, the undersigned Notary Public do hereby certify that _____
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 _____, 202__.

Notary Public for South Carolina

My Commission Expires: _____



 Drainage Easement Area  Right-of-Way Area  Victoria Square Limits

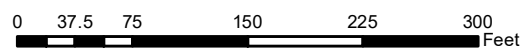
Note: Drainage easement widths are 20 feet around pipes that convey public runoff and 15 feet from the edge of bank of lagoons that receive public runoff.

Exhibit A

Victoria Square

Drainage Easement Agreement Limits

Drafted on July 14, 2023



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.

Page 187 of 203



 Victoria Square Boundary

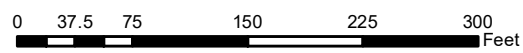
Note: Drainage easement widths are 20 feet around pipes that convey public runoff and 15 feet from the edge of bank of lagoons that receive public runoff.

Exhibit B

Victoria Square

Development Boundary

Drafted on June 27, 2023



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.

Page 188 of 203



TOWN OF HILTON HEAD ISLAND

FINANCIAL UPDATE

September 24, 2024





Emergency Fund Preparedness

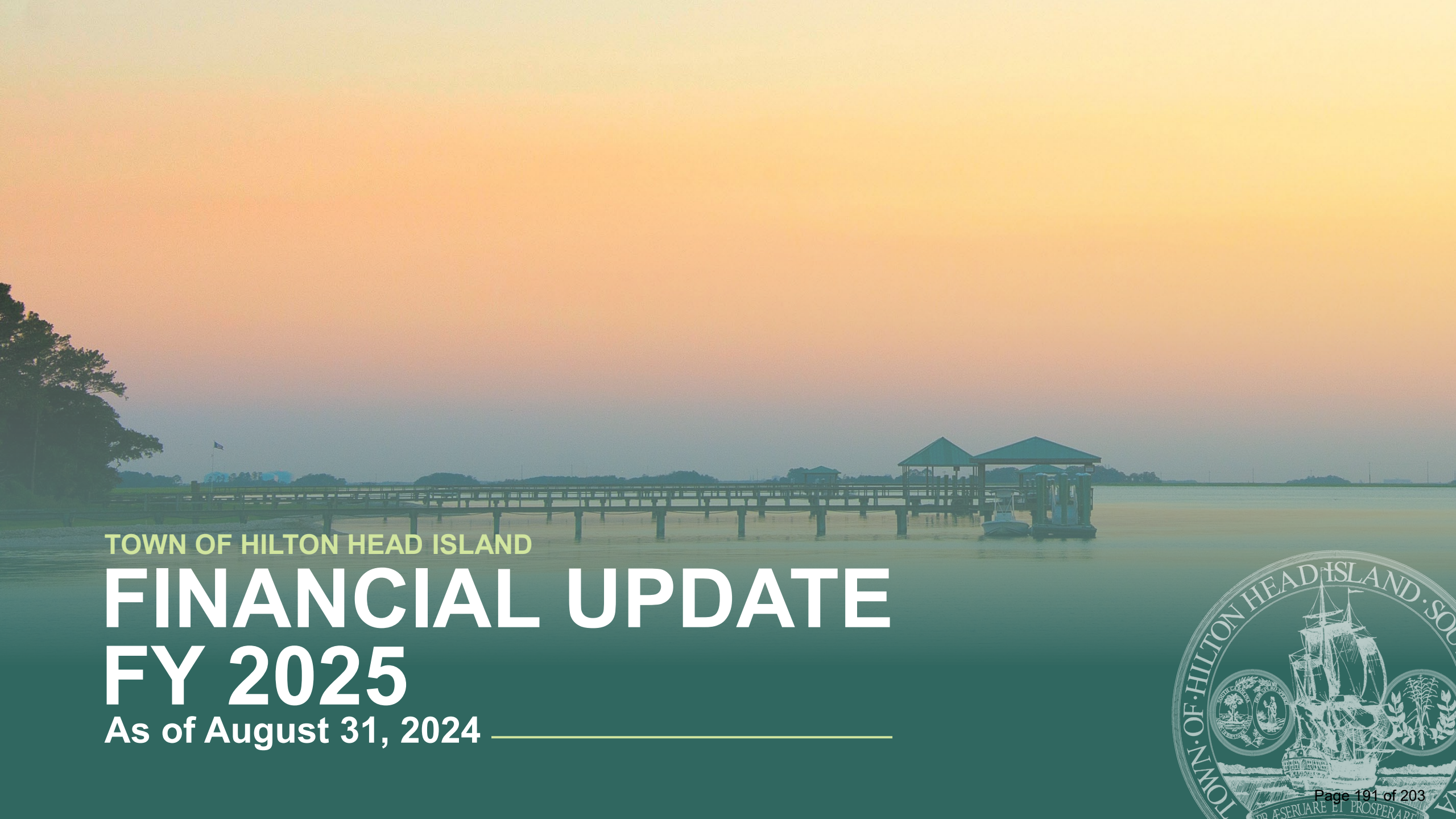
Funds Available June 30, 2024 \$35,969,980
(Natural Disaster Fund)

**Bond Issuance Capacity Reserved for
Emergencies** \$20,000,000
(Town Council Imposed 80% Cap)

Sub-Total Natural Disaster Funds **\$59,162,371**

Reserve for Disaster - June 30, 2024 \$23,192,391
(General Fund)

Total Funds Available for a Natural Disaster: **\$79,162,371**



TOWN OF HILTON HEAD ISLAND

FINANCIAL UPDATE FY 2025

As of August 31, 2024





FY 2025 Consolidated Preliminary Financial with YTD Results (Jul-Aug)

	YEAR BEGINNING BALANCE	YTD REVENUES	YTD EXPENDITURES	YTD ENDING BALANCE 8/31/24	FY23	FY22
GENERAL FUND	25,871,533	3,824,471	8,312,021	21,383,983	33,502,808	29,062,865
DEBT SERVICE FUND	3,303,946	130,905	4,367,613	(932,762)	12,159,356	11,239,657
CIP FUND	7,675,347	120,636	6,117,778	1,678,204	3,402,646	8,796,482
STORMWATER UTILITY FUND	14,669,464	111,741	396,756	14,384,449	13,178,610	10,540,740
GGHNCDC FUND	5,561,896	53,814	27,455	5,588,255	5,415,560	-
HOUSING FUND	2,148,477	-	15,759	2,132,718	-	-
				-		
SUBTOTAL	59,230,663	4,241,567	19,237,383	44,234,847	67,658,980	59,639,744
OTHER FINANCING SOURCES	197,506,179	3,652,906	-	201,159,085	143,762,604	129,980,212
TRANSFERS IN/OUT	(27,035,620)	25,007,103	25,436,015	(27,464,532)	-	
				-		
TOTAL	229,701,222	32,901,575	44,673,398	217,929,400	211,421,584	189,619,956



FY 2025 Budget Analysis

	FY25 BUDGET APPROVED	YTD NET ACTIVITY	REMAINING BALANCE
GENERAL FUND	60,924,381	4,487,550	56,436,831
DEBT SERVICE FUND	16,700,000	4,236,708	12,463,292
CIP FUND	74,381,459	5,997,143	68,384,316
STORMWATER UTILITY FUND	7,525,525	285,015	7,240,510
GGHNCDC FUND	3,405,501	(26,359)	3,431,860
HOUSING FUND	4,000,000	15,759	3,984,241
			-
CONSOLIDATED BUDGET	166,936,866	14,995,816	151,941,050

Notes:

General Fund:

- Top uses of funds included \$4.7M in personnel expenses and \$3.4M in operating expenses.
- Top sources of funds included \$398K in Local ATAX 1% and \$366K in interest.

Debt Service Fund:

- Top uses of funds included \$4.4M in principal and interest bond payments.
- Top sources of funds included \$131K in interest.

CAPITAL IMPROVEMENTS PROGRAM





Budget Amendment Overview

Capital Improvements Program Carry Forwards **Proposed**

Projects	FYE 2024 Unspent Budget	FY 2025 Approved Budget	FY 2025 Proposed Budget Amendment	FY 2025 Proposed Revised Budget	Proposed Budget Amendment Notes
Beach Program Total	2,438,136	21,599,000	-	21,599,000	Lawton & Wexford Pump Stations Fire Rescue Fleet Replacement
Pathway Program Total	3,889,765	5,500,000	-	5,500,000	
Roadway Program Total	3,944,633	10,317,218	-	10,317,218	
Park Program Total	7,148,571	19,815,273	-	19,815,273	
Facility & Equipment Program Total	2,510,725	8,402,291	-	8,402,291	
Stormwater Program Total	751,573	1,200,000	993,310	2,193,310	
Fleet Program Total	7,258,345	7,297,677	4,453,030	11,750,707	
Subtotal FY 2025 Capital Program	27,941,749	74,131,459	5,446,340	79,577,799	
Land Acquisition Program Total	343,101	250,000	2,975,000	3,225,000	4 Office Park Way (PNC Building)
Total FY 2025 Capital Program	\$ 28,284,850	\$ 74,381,459	\$ 8,421,340	\$ 82,802,799	



Capital Improvements Program Fund

YTD Activity

Summary	FY 2025 Approved Budget	YTD Expenditures	YTD Encumbrances	FY 2025 Remaining Budget
Beach Program	\$ 21,599,000	\$ 15,423	\$ 263,017	\$ 21,320,560
Pathway Program	5,500,000	27,442	198,808	\$ 5,273,750
Roadway Program	10,317,218	163,202	645,394	\$ 9,508,622
Park Program	19,815,273	146,235	1,070,106	\$ 18,598,932
Facility & Equipment Program	8,402,291	120,414	499,814	\$ 7,782,063
Stormwater Program	1,200,000	-	409,024	\$ 790,976
Fleet Program	7,297,677	2,665,372	4,382,307	\$ 249,998
Land Acquisition & Administration	250,000	2,979,692	18,111	\$ (2,747,803)
Total	\$ 74,381,459	\$ 6,117,780	\$ 7,486,581	\$ 60,777,098



Islanders Beach Park

Construction in Progress Status:

**Design Phase Completed

Expected Date to Begin Construction 11/04/24

Expected Date to End Construction 5/30/25

FY25 Financials:

Budget Approved:	\$3,750,000
July & August Expenses:	\$225
Encumbered Expenses:	\$97,825
Remaining CIP Funds:	<u>\$3,651,950</u>

CONCEPTUAL SITE PLAN



APRIL 2023
DESIGNED BY: JAMES JONES & ASSOCIATES
JAMES JONES & ASSOCIATES, 111 PINEAPPLE BLVD., SUITE 200, HILTON HEAD, SC 29928 / PH: (843) 787-7411 / WWW.JJACONLINE.COM

ISLANDERS BEACH PARK
TOWN OF HILTON HEAD ISLAND
92 FOLLY FIELD ROAD
HILTON HEAD ISLAND, SOUTH CAROLINA

JAMES JONES & ASSOCIATES
111 PINEAPPLE BLVD., SUITE 200
HILTON HEAD, SC 29928
PH: (843) 787-7411
WWW.JJACONLINE.COM



Taylor Family Park

Construction in Progress Status

**Design Phase to be Completed: 2/28/25

**Permitting to be Completed: 10/24/25

Expected Date to Begin Construction: 11/25

Expected Date to End Construction: 9/26

FY25 Financials

Budget Approved:	\$2,911,416
July & August Expenses:	\$0.00
Encumbered Expenses:	\$8,754
Remaining CIP Funds:	\$2,902,662





Patterson Family Park

Construction in Progress Status

- **Design to be Completed: 3/28/25
- **Permitting to be Completed: 11/24/25
- Expected Date to Begin Construction: 12/25
- Expected Date to End Construction: 10/26

FY25 Financials:

Budget Approved:	\$2,740,583
July & August Expenses:	\$0.00
Encumbered Expenses:	\$9,010
Remaining CIP Funds:	\$2,731,573



Beach City Road to Dillon Road

William Hilton Parkway Segment 3 - Northridge Area Improvements

Construction in Progress Status

Construction Started: September 11, 2024

Substantial Completion: December 2024

FY25 Financials:

Budget Approved:	\$500,000
July & August Expenses:	\$20,524
Encumbered Expenses:	\$211,582
Remaining CIP Funds:	<u>\$267,894</u>



Lawton Pump Station in Sea Pines

(New Pump)

Stormwater Construction Status

**Station constructed in 1989 to protect property and roads in the 2000-acre Lawton Basin.

****Complete station overhaul project started in 2021:**

- New control building
- New generator
- New electronic controls
- 3 new pumps (last pump installed 9/4/24) – Project Completion.

Financial Overview:

FY20 – FY24 Approved Budget:	\$2,940,903
FY20 – FY24 Expenses:	\$1,743,220
FY25 Encumbered Expenses:	\$198,710
FY25 Proposed Budget Amendment	
Carry Forward:	\$327,316



Pump 3 - Ready to Install



Pump Station Chambers



Lawton Control Building



2025 Beach Renourishment

Financial Overview

**The project will be implemented in three phases:

- Phase 1: June 2025 to Oct 2025
- Phase 2: Sept 2025 to May 2026
- Phase 3: schedule TBD

**The estimated project cost is \$42 million.

FY25 Budget Approved:	\$16,500,000
July & August Expenses:	\$0.00
Encumbered Expenses:	\$143,992
Remaining CIP Funds:	<u>\$16,356,058</u>

Next Steps:

- Obtain bids and pricing.
- Identify sources of funding for the whole project.
- Assess impact, educate, review feedback and obtain approvals for sources of funding.



QUESTIONS?

Adriana Burnett, Finance Director
adrianab@hiltonheadislandsc.gov

