



## **Town of Hilton Head Island**

### **Town Council Meeting**

**Tuesday, November 12, 2024, 3:00 PM  
1 Town Center Court, Hilton Head Island, SC  
Benjamin M. Racusin Council Chambers**

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

**There will be a reception honoring outgoing Town Council members following today's meeting.**

- 1. Call to Order**
- 2. Pledge to the Flag**
- 3. Invocation – Reverend Doctor Charles Kessler, North Island Baptist Church**
- 4. Adoption of the Agenda**
- 5. Approval of the Minutes**
  - a. Regular Meeting Minutes of October 15, 2024
  - b. Workshop Minutes of October 22, 2024
  - c. Workshop Minutes of October 30, 2024
- 6. Executive Session**
  - a. Discussion and Negotiations Incident to Proposed Contractual Arrangements and Discussions for the Proposed Sale or Property [Pursuant to the South Carolina Freedom of Information Act Section 30-4-70 (a)(1)] related to:
    1. Easement Requests by the South Island Public Service District
      - a. Pope Avenue
      - b. William Hilton Parkway
      - c. Wexford Drive

- b. Discussion of Personnel Matters Relating to Town Manager Performance Evaluation [Pursuant to South Carolina Freedom of Information Act 30-4-70 (a)(1)]

## **7. Action from Executive Session**

## **8. Reports from Members of Town Council**

- a. General Reports from Town Council
- b. Report of the Lowcountry Area Transportation Study – Glenn Stanford
- c. Report of the Lowcountry Council of Governments – Tammy Becker
- d. Report of the Beaufort County Airports Board – David Ames
- e. Report of the Southern Lowcountry Regional Board – Glenn Stanford
- f. Report of the Island Recreation Association Board – Alex Brown
- g. Report of the Community Services and Public Safety Committee – Tammy Becker
- h. Report of the Public Planning Committee – David Ames
- i. Report of the Finance and Administrative Committee – Alex Brown

## **9. New Business**

- a. Consideration of a Resolution Authorizing the Execution of Standardized Stormwater Agreements for Broad Creek Landing, Ribaut Island, Paddocks on Jarvis Creek, and Victoria Square - Jeff Netzing, Director of Engineering and Projects

## **10. Public Comment - Non Agenda Items**

## **11. Presentations and Recognitions**

- a. Proclamation Acknowledging the Annual Thanksgiving Community Dinner
- b. Commendation Acknowledging Service of Mayor Pro Tem David Ames
- c. Commendation Acknowledging Service of Council Member Glenn Stanford

## **12. 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 TOWN COUNCIL MEETING Tuesday, October 15, 2024, 3:00 PM Minutes

## Call to Order

Mayor Perry called the meeting to order at 3:00 p.m.

Council Members present: Alan Perry, Mayor, David Ames, Ward 3, Mayor Pro-Tempore; Alex Brown, Ward 1; Patsy Brison, Ward 2; Tammy Becker, Ward 4; Steve Alfred, Ward 5; Glenn Stanford, Ward 6

Also present: Marc Orlando, Town Manager; Curtis Coltrane, Town Attorney; Kimberly Gammon, Town Clerk

## Invocation – Father Allan MacDonald, Holy Family Catholic Church

Father MacDonald delivered the invocation.

## Adoption of the Agenda

**Mr. Ames moved to approve. Mr. Alfred seconded. Motion carried 7-0.**

## Approval of the Minutes

Workshop Minutes of September 16, 2024

Regular Meeting Minutes of September 17, 2024

Workshop Minutes of September 24, 2024

Regular Meeting Minutes of October 1, 2024

**Mr. Ames moved to approve the minutes listed above. Ms. Becker seconded. Motion carried 7-0.**

## Report of the Town Manager

Mr. Orlando reported on the following:

### Hurricane Helene

After assessing the damage caused by Hurricane Helene, it was decided to open a tree and landscape debris site to assist residents and businesses with clean up.

1. In less than 24 hours Town Staff organized, communicated, and made operational a drop off site at Coastal Discovery Museum.
2. The site was open for 5 days and collected 4,560 cubic yards of debris or 57 truck loads. (Need to update before TC - still hauling debris off site).

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### Hargray Internet Outage

1. On September 23 Hargray experienced an internet connectivity outage that impacted large parts of the Southeast.
2. The Town's recent investment in internet redundancy resulted in our failed internet connection switching over to our secondary connection within approximately 10 seconds.
3. Without this network redundancy our operations and ability to communicate would have been adversely impacted as it was for thousands of other government entities, school systems, and businesses.
4. Thank you for Town Council's support in making available resources that allow us to make our Town more resilient.

### Fire Rescue:

- SCTF-4 (Hilton Head/Bluffton Urban Search and Rescue Team) is currently deployed to Greenville County, SC. Our crew are actively working to provide search and rescue, damage assessment, and humanitarian aid to the region.
- Emergency Manager Tom Dunn is deployed to Anderson County through a State Resource Request. Tom is acting as the Operations Section Chief in the Anderson County EOC to give their team a couple of days' relief.

### Office of Cultural Affairs:

The Crescendo Celebration of Art and Culture is coming up.

- 8<sup>th</sup> annual Crescendo – runs through 11/23 – sponsored by the Office of Cultural Affairs in partnership with the Arts Council of Hilton Head Island
- Annual celebration of Hilton Head Island's unique history, cultural and arts offerings.
- Over 100 performances, concerts, programs, tours, and hands on activities.
- 30 different organizations are participating in this year's celebration.
- Kickoff Celebration is 10/15 at Shelter Cove Community Park – 5:30 – 7:30 – with Junior Jazz All Stars, Zach Stevens, and Grammy Award winner Charlton Singleton performing.

### IT:

We have been migrating staff to First Net, it is part of ATT and the first responder network they have created. Our redundancy for our cellular service is having four different ways to be able to have internet use, Hargray, Spectrum, StarLink and a cellular modem. With smartphones they can use wifi for calling if you are unable to use a cell tower to call out. We also have four satellite phones for emergency use.

### Community Development:

Wendy Posey has joined the team as our Permits and Applications Manager. Wendy's experience in project management, customer service and leading professional teams will help strengthen the team as we work to continually improve our permitting process. We are already in the process of overhauling our reporting with her at the helm.

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The Building Inspections Department has welcomed two new provisional inspectors to our team. We are glad to have David Staigar and Kathryn Hickey, who both bring extensive background in construction to build on as they work to become licensed inspectors and reinforce our highly experienced inspection team. David brings a career of construction project management and experience as a licensed contractor, and Kathryn brings a background of real estate and project management, as well as a family of builders from which she has gained rich knowledge and experience in construction. We are glad to add Kathryn and David to our diverse team of inspectors that work to ensure the safety of the residents and visitors of our island.

#### Town Government Day

October 9 was Town Government Day for the Hilton Head Island-Bluffton Chamber of Commerce Leadership Program and class participants gained valuable insights into how the Town functions and the services it provides to the community. The Town presented on Town operations, planning initiatives, floodplain management, capital improvement project management, stormwater utility management and emergency operations planning & management.

Town presentations were made by Mayor Perry, Marc Orlando, Chief Blankenship, Tom Dunn, Shari Mendrick, Scott Harris, Missy Luick and Cary Adams.

Additionally, the Town Government Day was organized by Town staff members: Russell Rogers and Cinda Seamon.

#### General Reports from Town Council

Ms. Brison reviewed some upcoming events for the Crescendo, noting the Jazz Arts Allstars will be performing this evening and her husband Scott Camp would be joining them on piano. She encouraged all to attend. She noted events for Cancer Awareness Month and encouraged all to support cancer awareness and organizations trying to fight cancer. She added that the Association for Mental Illness is also having a walk on October 26<sup>th</sup> encouraging all to participate.

#### Report of the Lowcountry Area Transportation Study – Glenn Stanford

Mr. Stanford reported the group met on October 4<sup>th</sup> and discussed the announcement regarding the 278 Corridor Project that the National Highway Administration has accepted the plan and they are looking forward to receiving the Finding of No Significant Impact this month so the project can move forward.

#### Report of the Lowcountry Council of Governments – Tammy Becker

No report.

#### Report of the Beaufort County Airports Board – David Ames

No report.

#### Report of the Southern Lowcountry Regional Board – Glenn Stanford

Mayor Perry reported the Board received an update from the Beaufort Jasper Housing

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Trust regarding moving forward with allocations of funds. He reported they are trying to schedule a presentation for Town Council from the Beaufort Jasper Housing Trust. He added that they received reports from the Child Care Subcommittee along with the Litter Subcommittee. He stated they are in the early stages of formation and are trying to build their directives to move forward.

#### Report of the Island Recreation Association Board – Alex Brown

Mr. Brown reported the Board hosted a successful forum on October 30 at the Island Recreation Center. He stated the association was very pleased to hear the views of the candidates for the future of parks and recreation. The Association, in conjunction with the Kiwanis Club of Hilton Head a Chili Cook-Off which was a great success.

#### Report of the Community Services and Public Safety Committee – Tammy Becker

No report.

#### Report of the Public Planning Committee – David Ames

No report.

#### Report of the Finance and Administrative Committee – Alex Brown

The Finance & Administrative Committee met on September 24<sup>th</sup>. There were two items of business on the agenda.

- The first item was consideration of a resolution authorizing the execution of standardized stormwater agreements for Broad Creek Landing, Paddocks on Jarvis Creek, Ribaut Island, and Victoria Square. The decision was made to move the resolution to the full Town Council for consideration by way of unanimous vote from the Committee.
- The second item was the monthly financial report and presentation as of August 31<sup>st</sup>. The report included fiscal year 2025 consolidated preliminary year to date results, a fund balance analysis, budget amendment overview and proposed Capital Improvements Program carry forwards.

#### Unfinished Business

Consideration of an Ordinance to Amend the Town of Hilton Head Island Budget for the Fiscal Year Ending June 30, 2025; to Provide for the Budgeted Appropriations of the Prior Year Budget Roll Forward and Certain Other Appropriations and Commitments and the Expenditures of Certain Funds; to Allocate the Sources of Revenue for the Said Funds; and to Provide for Severability and an Effective Date - Second and Final Reading - Adriana Burnett, Finance Director

Ms. Burnett explained this was the second reading of the ordinance and there have been no changes since the first reading on October 1.

There were no public comment requests for this item.

**Mr. Ames moved to approve. Ms. Becker seconded. Motion carried 7-0.**

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Consideration of a Resolution Adopting a Beach Parking Fee Schedule - Shawn Leininger, Assistant Town Manager-

Mayor Perry asked Council to not rescind the motion adopting the resolution that was made on September 17, 2024 but discuss having a clear understanding of parking issues within the business district of Pope Avenue and Coligny area.

Ms. Brison addressed her issues of concern within the resolution. She noted the second Whereas that states the recommendations from the Town Community Services and Public Safety Committee reflected are alternative options for the Town Council to consider and are stated as such below. She stated that does not exist in this resolution. Secondly, the next Whereas which states after determining which option the Council wishes to adopt, this resolution will be amended to reflect these selections prior to its execution. She stated she felt that is not appropriate. She stated they should either go back to the first Whereas which states Town Council has the authority to establish parking fees within paid parking areas pursuant to Section 12-6-112 which did not exist when this resolution was signed. In addition, under Section 1, Subsection A, refers to something called the Pope Avenue Business Corridor she stated no such definition exists. Subsection B says during all seasons for youth recreational sports and no such definition exists. Ms. Brison stated she asks these questions about this resolution was adopted which was made by motion and the code which was adopted says that it is to be adopted by resolution. She asked that the questions be answered before proceeding.

Mayor Perry asked Mr. Coltrane to address the questions.

Mr. Coltrane stated the resolution becomes effective by its terms on the 1<sup>st</sup> day of January 2025. The Code section that is referenced in the first recital also becomes effective on January 1, 2025, so at the time that each of these documents become effective, both will exist at the same time in the same place so he did not see it as an issue.

Mr. Coltrane added that in the recitals don't have any real impact on what is in the body of the resolution itself with respect to the resolution itself. He agreed there is not a stated definition itself regarding the Pope Avenue business Corridor but as he understood the conversation, there appeared to be a general agreement that they were talking about Pope Avenue east of Cordillo Parking meaning the section where there is, at this moment, one parking lot owned by the Town that is Pope Avenue east of Cordillo and that is the one that would be affected by this text. Parking at Chaplin Beach Park is the text of the proposed amendment of Mr. Brown and there was no effort to define that. He noted Island Recreation Center runs sporting events and it is an issue that can be arranged through communication with the Island Recreation Center as to when the youth sports are on. He added that it is hard to disagree that defining sometimes is better than not defining but he felt the process is in place to where the Town will know when those are taking place..

Mr. Coltrane stated it is a resolution. There was a resolution on the table when Mr.

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Brown moved to amend it and what is before you is the resolution that was made as amended. He added that the Town does not require a resolution to be in writing.

Ms. Brison stated there was a resolution set before them which was not amended by a motion. Instead, there was a motion and the code amendment that was adopted requires it to be a resolution. She stated she was not asking to revoke the intent of this but the resolution needs to be cleaned up because it is going to be part of the Town records. Mayor Perry stated her comments were duly noted.

There were no public comment requests regarding this item.

**Mr. Ames moved that Council request the Mayor and Town Manager form an ad hoc working group with the responsibility of studying the Coligny/Pope Avenue area parking environment. The committee will be comprised of representatives from the Town including the Ward 3 representative and business owners of the area. The committee will be an even number of no less than 4 and no greater than 6 members, equally divided between the Town and business owners. It will be the committee's responsibility to identify relevant data opportunities to include capacity, distribution of cost, enforcement, potential capital improvements, among other needs it may raise. The committee will present the final report on or before September 30, 2025. Mr. Alfred seconded.**

**Ms. Brison moved to amend the motion to include residents who are not Town Council members and not business owners. Mr. Ames seconded. Motion failed 2-5 (Perry, Ames, Brown, Alfred, Stanford against).**

**Mr. Ames moved to amend the original motion to add having the ad hoc group set up by November 30, 2024. Mr. Stanford seconded. Motion carried 6-1.**

**Mr. Ames original motion, as amended carried 6-1 (Brison opposed).**

#### New Business

Consideration of a Resolution to adopt the 2024 Repetitive Loss Area Analysis as required for the Federal Emergency Management Agency's Community Rating System - Missy Luick, Director of Planning

Ms. Luick stated Town has actively participated in the Community Rating System (CRS) program since October 1, 1991. The Town is currently a Class 5 Community, which gives its residents in the Special Flood Hazard Area (SFHA) a 25% discount on their flood insurance premiums. Currently, the Town has 23,697 NFIP Flood Insurance policies enforced with a savings of \$3,079,690.

Although the regional 2020 Natural Hazard Mitigation Plan was approved by FEMA, it did not meet the CRS requirement for communities with greater than 50 repetitive loss properties. The RLAA was developed to satisfy a prerequisite for CRS communities with greater than 50 repetitive loss properties to maintain the 25% CRS discount on FEMA Flood Insurance Premiums.

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The purpose of the RLAA is to assess the potential causes of flooding in areas that have historically flooded and properties with repeated flood losses. The RLAA document is an analysis of site-specific details, such as structure's finish floor height, exterior a/c units, grades, plus nearby storm water inlets, catch basins and drainage waterway features. The results of the assessment are used to develop recommendations for appropriate mitigation strategies to reduce or eliminate future flood losses. There is no mandate for property owners to mitigate flood risk; however the RLAA provides a guide and resources available to property owners to make improvements and protect their property.

The RLAA is a critical element of the Community Rating System (CRS), which is used to establish National Flood Insurance Program (NFIP) premium rates for Town Residents.

The RLAA document is made up of two sections:

- 1) **Repetitive Loss Area Analysis** which includes mapping of 25 repetitive loss areas within the Town with 982 properties included within the RLAA which results in the Town being designated as a Category C community;
- 2) **The RLAA Planning Process** which includes outreach to all properties in the repetitive loss area, contact with agencies and organizations, site visits to each building within the repetitive loss area, review of alternatives and documentation of findings and mitigation.

The RLAA is intended to serve as a guide and provide resources available to property owners interested in protecting their property against future flood losses. The RLAA will be evaluated on an annual basis, and more thoroughly reexamined prior to a Community Rating System verification visit. The annual evaluation will entail a thorough reanalysis and survey of conditions in each Repetitive Loss Area, an analysis of the progress on recommended actions, and to what extent mitigation or building mitigation activities have occurred.

On September 12, 2024, the Public Planning Committee voted unanimously (4-0) to recommend Town Council consider adoption of the RLAA.

**Mr. Ames moved to approve. Ms. Brison seconded.**

Ms. Brison stated this is one of the most useful reports she's seen. She noted the examples and ways to mitigate are very helpful. She joined Mr. Ames in suggesting that residents take a look at it and asked that the Town place it on our website to alert residents to this information. She noted that while it's not mandatory there are suggestions to take into consideration. She also pointed out that Town staff can actually come out and look at the sites and provide some assistance which is very helpful to residents.

There were no public comment requests regarding this item

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**Motion carried 7-0.**

Consideration of a Resolution Adopting Environmentally Friendly Landscaping and Grounds Maintenance Practices/Integrated Pest Management Policy - Shawn Leininger, Assistant Town Manager

Mr. Leininger conducted the following presentation:

Environmental Sustainability is identified as a focus area in the Town Council approved 2023-2025 Strategic Action Plan and includes the Assessment and Implementation of an Environmentally Friendly Landscape and Grounds Maintenance Best Practices Program as an additional strategy.

The development of an Integrated Pest Management (IPM) policy is a best practice for management of grounds and facilities. In general terms, an IPM policy is a decisionmaking strategy that combines biological, cultural, physical, and chemical tools aimed on the long-term prevention of pests (plants and animals) or their damage. Following this strategy, pest control materials are selected and applied in a manner that minimizes risks to human health and nontarget organisms, is beneficial, and helps protect the environment.

In developing an IPM policy, Town Staff assessed current Town practices along with other environmentally conscious landscaping practices relating to pest and weed control management practices and products. Additionally, Town Staff met with certified professionals; other municipalities; local, state and national leaders in this field; representatives of the Non-Toxic Neighborhoods organization; as well as Town landscaping contractors to review these strategies and best practices.

Through this research and evaluation, three policy goals were established to guide the development of an IPM policy. These included the following:

1. Reduce / eliminate pesticide use.
2. Provide notice to the public when pesticides are used in public spaces.
3. Ensure the Town is responsible for making pest management decisions.

IPM POLICY OVERVIEW:

The proposed IPM Policy (Attachment 2), as reviewed and forwarded to Town Council by unanimous vote (4-0) of the Community Services & Public Safety Committee (CSPSC), establishes an organic first, least toxic approach to pest management on Town owned and managed properties. This means the use of preventative measures (i.e., selection of appropriate plant materials, physical removal of the pest, etc.) are prioritized before pesticide controls are implemented. When pesticide controls are necessary, organic pesticides are prioritized before considering synthetics. Pesticides that are registered with the United States Environmental Protection Agency (EPA) will be used in a least toxic approach. This results in EPA Level III (caution) pesticides, the lowest EPA toxicity level, being utilized first before considering more toxic pesticides as identified by the EPA.

Following the stated policy goals and organic first, least toxic approach, the IPM Policy

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further establishes the following:

1. Makes clear that existing service contracts that are not compliant with the IPM Policy will either be amended or terminated, and a new contract will be issued within twelve (12) months following adoption of the IPM Policy.
2. Prioritizes pest prevention beginning at the design stage and continues with the use of non-pesticide controls first.
3. Establishes that the Town is the approval authority of all pest control measures and institutes a written approval process.
4. Prohibits the use of any pesticide containing a substance known to be a human carcinogen as listed on the United States Department of Health and Human Services, Public Health Service, Report on Carcinogens Section.
5. Prohibits the use of Glyphosate products (Roundup, Ranger Pro, etc.). 6. Prohibits the use of EPA Level I (danger) pesticides unless it is deemed necessary to protect public health and prevent economic loss when other methods do not adequately control the pest.
7. Requires pesticide applications to be appropriate for the target pest and must be applied by those persons possessing a valid South Carolina commercial applicator license; or supervised by a person possessing such license.
8. When pesticide controls are necessary, identifies which pesticides, following the defined organic first, least toxic approach, can be applied on Town properties (park, field, playground, dog park, right-of-way, facilities/ buildings, and other Town property).
9. Requires notice be posted forty-eight (48) hours prior to pesticide application and the notice remain in place for at least twenty-four (24) hours after the application, unless the product label requires a longer re-entry period.
10. Requires all pesticide application records be provided to the Town by the contractor.
11. Requires the Town to develop and implement public education and outreach programs about the Town's IPM Policy, including collaborating with community organizations.
12. Requires the IPM Policy to be reviewed and evaluated periodically by Town Staff to assess its effectiveness, to identify opportunities for improvement, and make changes as necessary.

#### COMMUNITY SERVICES & PUBLIC SAFETY COMMITTEE (CSPSC) REVIEW:

The CSPSC has met numerous times over the past year to review and provide comment on the IPM Policy. These meetings included the following:

1. November 13, 2023;
2. January 8, 2024;
3. February 12, 2024;
4. April 8, 2024; and

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5. September 16, 2024.

At the most recent meeting held on September 16, 2024, the CSPSC reviewed the IPM Policy. At that meeting, representatives of the Non-Toxic Neighborhoods organization provided additional revisions for consideration by the Committee (Attachment 3). In the motion forwarding the resolution and proposed IPM Policy to Town Council, the Committee requested Town Staff evaluate and report on those revisions to Town Council.

Below is a summary of the proposed revisions along with the corresponding evaluation from Town Staff:

#### Non-Toxic Neighborhoods Request

Requested to remove "least toxic" from the policy and remove how toxicity is defined.  
Proposed modifications:

#### Town of Hilton Head Response

1. Added the phrase "organic first" to better reflect the approach and retained the term "least toxic" as an appropriate descriptor of the IPM Policy.
2. No change to determining how toxicity is defined.

The proposed IPM Policy requires the practice of preventative measures and non-pesticide controls such as cultural, mechanical, and biological before the use of pesticides are needed. When pesticides are deemed necessary by Town Staff, the policy requires the use of organic pesticides first following a "least toxic approach. Synthetic pesticides may be applied if all other control measures are ineffective.

For clarification, the EPA identifies how toxic a chemical is based on toxicology studies on oral, inhalation, and dermal exposure of the formulation of the product. The EPA then uses the study with the highest toxicity to identify the Signal Word and that Signal Word is printed on the label of the product. The Town's policy follows a "least toxic" approach and therefore needs to define how toxicity is identified.

#### Non-Toxic Neighborhoods Request

Requested that chemicals are identified as pesticides.

#### Town of Hilton Head Response

Proposed modification:

1. Where appropriate, the term "chemicals" has been changed to pesticides.

#### Non-Toxic Neighborhoods Request

Requested a licensed pest control advisor and Town Staff determine when use of synthetic pesticides is necessary to protect public health or prevent economic loss.

#### Town of Hilton Head Response

Proposed modification:

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1. None.

As stated in the policy, Town Staff shall be the decision maker of pest management decisions and will determine when use of synthetic pesticides is necessary to protect public health or prevent economic loss.

#### Non-Toxic Neighborhoods Request

Requested to remove any language that would suggest that organic pesticides may not be effective.

#### Town of Hilton Head Response

Proposed modification:

1. Removed language that suggests organic pesticides may not be effective as it was not the intent, and the language was determined to be unnecessary.

#### Non-Toxic Neighborhoods Request

Requested to have beaches, parks, athletic fields, dog parks, and playgrounds to be treated with same methodology - an organic pesticide only approach unless necessary to protect public health or prevent economic loss.

#### Town of Hilton Head Response

Proposed modification:

1. When pesticides are necessary, implement an organic pesticide only approach on beaches, playgrounds, and dog parks unless organic pesticides are unable to protect public health or prevent economic loss.

2. No change for parks, athletic fields, rights-of-way, facilities and buildings, and other town properties.

Requiring a threshold to use synthetic pesticides at the protection of public health or prevention of economic loss may impact the aesthetic desired by the Town and the playability of athletic fields. Organic pesticides will be utilized first to control pests. If the organic pesticides are not effective and the impact of the pest does not rise to the level of public health or economic loss issue, the Town needs additional resources to satisfactorily address the issue.

Based on Town Staff review of the Non-Toxic Neighborhoods organization proposed revisions as directed by the Committee, a revised IPM Policy incorporating the changes noted above has been prepared utilizing track changes. Should Town Council approve of these additional changes, this revised IPM Policy needs to replace the IPM Policy forwarded by the CSPSC that is incorporated with the Resolution.

Adoption of an IPM Policy by Town Council will implement a Strategic Plan item and for the first time establish a decision-making strategy for the management of pests on Town owned and managed properties that minimizes risks to human health, beneficial and nontarget organisms, and the environment and fulfills the policy goals established in creating an IPM policy. This policy will be periodically reviewed, assessed for

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effectiveness in meeting these goals, and updated as necessary. Immediate next steps include:

1. Reviewing and making all applicable service contracts compliant with the adopted IPM Policy on or before October 16, 2025;
2. Developing IPM Programs for Town owned and managed properties;
3. Establishing procedures for providing Town authorization, maintaining records, and for placement of notifications of pesticide applications; and
4. In one-year, completing a Town Staff review of the IPM Policy to assess its effectiveness, to identify opportunities for improvement.

Mayor Perry asked if anyone signed up for public comment regarding this item. Those that signed up for public comment and their comments are listed below:

Pamela Martin Ovens addressed Council encouraging them to vote for the IPM with the corrections made in green by Kim Conti and herself. She thanked the members of the Community Services and Public Safety Committee for their dedicated work.

Kim Konte addressed Council encouraging them to approve the revisions suggested for the IPM. She expressed her concern regarding many parks receiving toxic applications daily.

Jen Bialocki addressed Council urging them to adopt the policy with the suggested revisions.

**Ms. Brison moved to adopt Attachment 4, which staff has revised with the amendments not included in the Non-Toxic Neighborhood revisions. She clarified that it would include any other Non-Toxic revisions that are not made in the staff recommendation to be included. (noted in green on Attachment 3). Ms. Brison clarified her motion includes all of the staff changes and the ones submitted by Non-Toxic Neighborhoods. Mr. Ames seconded.**

**Following detailed discussion regarding the suggested revisions, the motion failed 1-6 (Perry, Brown, Ames, Becker, Alfred and Stanford against).**

**Mr. Ames moved that Town Council adopt the Environmentally Landscaping Ground Maintenance Practice Integrated Pest Management Policy with the addition of parks and athletic fields in the same category as beaches, parks, playgrounds and dog parks. Ms. Brison seconded. Motion carried 7-0.**

#### Public Comment

Amber Kuehn addressed Council expressing her appreciation for their support throughout the years. She thanked Mr. Ames for his mentoring and for providing her with an education regarding municipal government.

Terry Hall addressed Council regarding the flooding of his home at 17 Bay Pines Drive. He stated he would like to move back into his home and encouraged Council to consider and openly suggest all potential options to resolve or work through the process

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of obtaining the grant to return to their home.

Tom Reitz addressed Council in support of Mr. Hall and encouraged Council to work with the County to help mitigate what the Hall's are going through.

#### Executive Session

Discussion of Negotiations Incident to Proposed Contractual Arrangements and Discussions for the Proposed Sale or Purchase of Property (Pursuant to the South Carolina Freedom of Information Act Section 30-4-70 (a)(1)) related to:

1. Jonesville Road Area
2. Bay Pines Road Area FEMA Grant Agreement
3. Audubon Pond Road Area FEMA Grant Agreement
4. Easement Requests by the South Island Public Service District
  - a. Pope Avenue
  - b. William Hilton Parkway
  - c. Wexford Drive

Discussion of Appointment to Boards, Commissions, and Committees [Pursuant to the South Carolina Freedom of Information Act Section 30-4-70(a)(1)] related to:

4. Citizen's Oversight Committee of 2024 Sales and Use Tax Projects

**At 5:24 p.m. Mr. Ames moved to enter into Executive Session for the purposes stated by the Town Manager listed above. Ms. Brison seconded. Motion carried 7-0.**

**At 5:30 p.m. Mr. Ames moved to end Executive Session and return to the regular meeting. Ms. Becker seconded. Motion carried 7-0.**

#### Action from Executive Session

No Action taken.

#### Adjournment

The meeting was adjourned at 5:40 p.m.

**Approved:**

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Kimberly Gammon, Town Clerk

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Alan R. Perry, Mayor

**The recording of this Meeting can be found on the Town's website at [www.hiltonheadislandsc.gov](http://www.hiltonheadislandsc.gov)**

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# Town of Hilton Head Island TOWN COUNCIL MEETING Tuesday, October 15, 2024, 3:00 PM Minutes

## Call to Order

Mayor Perry called the meeting to order at 1:00 p.m.

Council Members present: Alan Perry, Mayor, David Ames, Ward 3, Mayor Pro-Tempore; Alex Brown, Ward 1; Patsy Brison, Ward 2 (arrived at 1:02 p.m.); Tammy Becker, Ward 4; Steve Alfred, Ward 5; Glenn Stanford, Ward 6

Also present: Marc Orlando, Town Manager; Curtis Coltrane, Town Attorney; Kimberly Gammon, Town Clerk

Representatives from MKSK, Toole Design and Kimley Horn

## Adoption of the Agenda

**Mr. Ames moved to approve. Mr. Stanford seconded. Motion carried 6-0 (Brison was not yet in attendance).**

## Adaptive Signal System Update - Shawn Colin, Assistant Town Manager

Mr. Colin conducted a detailed presentation updating Council regarding the project. He provided an update overview of the following:

### Project Goals and Objectives:

- Improved the reliability of travel along the project corridors at all times of day
- Maintained a consistent level of service along the project corridors during peak hour operations
- Staff can manage and monitor the traffic signal system remotely in real time
- The system enhanced vehicle detection, communication, and alarm notification
- The project formed a foundation to develop an overall Advanced Traffic Management System (ATMS)

### Before and After Results

- SCDOT Study states mainline travel times have been reduced by 3%.
- Eastbound AM peak
- 36 second travel time reduction (Squire Pope Road to Beach City Road 2.7 miles / Free flow travel time at 45mph is 216 seconds)
- 15 second travel time reduction (Mathews Drive to Queens Way 4.3 miles / Free flow travel time at 45mph is 344 seconds)
- Westbound PM peak
- 45 second travel time reduction (Queens Way to Mathews Drive 4.3 miles / Free

flow travel time at 45mph is 344 seconds)

- 8 second travel time reduction (Beach City Road to Squire Pope Road 2.7miles/  
Free flow travel time at 45mph is 216 seconds)

#### Improvements to System Functionality

- Overall system functionality has improved dramatically over the last month.
  - Staff has seen a reduction in the number of citizen concerns over the last two months. (Phone calls, emails, MyHHI (SeeClickFix) requests down)10 SeeClickFix requests in July
  - 13 SeeClickFix requests in August
  - 3 SeeClickFix requests in September
- In August, Town staff worked with adaptive system manufacturer and the contractor to improve operational and equipment resiliency, including the following:
  - Installed more reliable grounding to radar equipment
  - Improved signal operations through modifying traffic signal controller settings
  - Improved radar detection reliability by upgrading the radar firmware
  - Improved radar detection by modifying some radar locations
  - The system performed well with recent storm events

#### Proactive Continuous Improvements

- Staff has been proactively implementing strategies to increase signal performance.
- Focusing on reducing the probability of short green times
- Examining individual intersections and changing actual inputs to the controller from theoretical inputs to actual “real life” inputs
- Modifying signal system timing to assist with traffic flow for community special events
- Addressing unique vehicle characteristics like school buses

#### Fiber Optics Communication

- Provides more reliable consistent communication with less disruptions
- Fiber lines offer redundancy over radio and cellular communication
- Fiber lines offer a consistent signal
- Fiber lines would reduce maintenance currently required by our radio communication system in terms of line-of-sight tree trimming
- IT department has evaluated the fiber costs to service the signals system
- Estimated Cost to rent dedicated fiber line space from Sparklight (Hargray) is \$30,000 per year and would take approximately 6 months to implement
- Town staff is advancing this effort to connect to fiber 11

#### Windmill Harbor Signal

- Letter sent to Beaufort County on June 24, 2024, requesting the signal be transferred to Town ownership for inclusion in the Town’s traffic signal inventory and ATSM network
- The letter also requested that Beaufort County fund the capital improvements

necessary to upgrade the signal to be compatible with the ATSM network.  
(Estimated costs +/- \$70,000)

Mr. Colin concluded with detailed information on how citizens can contact the Town with traffic signal concerns.

Council members held discussion, asked questions and made comments regarding: inquiry into number of signals and confirmation there are 25 and will be 26 if Windmill Harbor is added; confirmation it will be more interactive when fiber optic is completed; a statement of support for the project and the need for Windmill Harbor to be included; inquiry and suggestion that Moss Creek signal be integrated into the plan; inquiry as to whether additional support staff should be added; a suggestion to look at other ways to measure effectiveness; concern over challenges with fiber optic system and inquiry as to what is the back-up plan; confirmation there is a back-up plan; suggestion to monitor community events and adjust the system for such and create a standard operating procedure; inquiry as to how the Town will keep up with upgrades; inquiry into the need for battery back-ups; confirmation the system is always being assessed by staff as well as citizens; a comment that the environmental impact will be improved as cars movement is improved; suggestion of cross training staff for connectivity; the need to know the number of people traveling in cars as they enter; measurements are needed for effectiveness of the system; and the need to look at redundancy from a system and staff standpoint.

#### Major Thoroughfares Corridor Plan - Shawn Colin, Assistant Town Manager

#### William Hilton Parkway - Beach City Road to Dillon Road – Implementation

Mr. Colin conducted a detailed presented regarding the Northridge Area Improvements Project Update with the following:

##### Overview

##### Town Council Strategic Action Plan Priority

- William Hilton Parkway Segment 3 from Beach City Road to Dillon Road has historically been the area where the highest frequency of accidents involving bicyclists/pedestrians with motor vehicles.
- Speed limit, inconsistent intersection pavement markings, crossing angles, signage, and lighting along with lack of median plantings to restrict uncontrolled crossings were evaluated to identify opportunities for improvements.

##### Existing Conditions

- Posted Speed Limit – 45mph
- 3 signalized intersections with differing treatments for striping and crosswalk alignment
- 2 unsignalized intersections with differing treatments
- No pathway lighting
- Inconsistent pathway signage

He conducted a detailed review of the existing conditions which included an

uncontrolled crossing in Northridge Area and an open median with no restriction to uncontrolled crossings.

Scope, Funding and Timeline Scope:

- Reduce posted speed limit to 40mph
- Restripe and realign crosswalks and intersection pavement markings
- Install RRFBs at 2 locations to improve safety and awareness of bike/ped crossings
- Provide consistent signage throughout corridor for roadway and pathway
- Install bollard lighting along pathways and at uplighting of landscaping and corners of intersections
- Repair and deficiencies in roadway and pathways
- Install plantings in existing medians to deter crossings at uncontrolled locations
- Enhance landscaping along pathway edges
- Install ADA compliant treatments throughout corridor
- Improve Pathway Kiosks at Beach City Road, Mathews Drive and Dillon Road
- Improve Special Event Sign located on westbound William Hilton Parkway near Beach City Road

Funding:

- The Town Council authorized the Town to execute an Intergovernmental Agreement with Beaufort County to fund up to \$600,000 toward safety improvements for this project
- The approved Town CIP program includes additional funding for pathway maintenance and improvements, roadway maintenance and improvements, landscape and lighting, as well as island-wide pavement markings that will contribute to the execution at an approximate cost of \$700,000

Timeline:

Permitting: May 2024-October 2024; Construction: September 2024-January 2025; Closeout: February 2025

Council members held discussion, asked questions and made comments regarding: inquiry into the timing of the 40mph speed limit change; the need for all forms of communication with residents regarding speed limit change; concern over the uplighting; importance of communication with the community and have warning signs ahead of the signals in English and Spanish; a suggestion of going out into the community and distributing fliers; a suggestion to communicate with bike shops and ambassadors regarding the changes; request for an update on the request to add Dillon Road; inquiry as to improvements to all intersections; clarification that county funds go to both projects; the need to use social media as we get closer to implementation; a suggestion to ask the Sheriff's office to provide a detailed report after implementation; a suggestion to check out alternative traffic calming features; the need to be cognizant of too much signage; a suggestion to explore the idea of creating place, name and character of the area; and concern over medians that have no landscaping and when they will be addressed.

## Major Thoroughfares Corridor Plan Presentation

The items below were addressed through a presentation by Brian Kinzelman of MKSK, Jonathan Guy of Kimberly Horn and Addie Webb of Toole Design.

It was explained the following were the objectives and guiding principles:

- Improve safety for all modes of travel
- Reduce conflict points for all modes of travel
- Increase mobility for all modes of travel
- Establish a contiguous corridor aesthetic

There was a review of existing conditions and an assessment of needed improvements regarding each of the areas which can be found in detail on the presentation on our website:

[https://hiltonheadislandsc.gov/corridor/presentations/MajorThoroughfaresCorridorPlan\\_10-22-2024.pdf](https://hiltonheadislandsc.gov/corridor/presentations/MajorThoroughfaresCorridorPlan_10-22-2024.pdf)

## William Hilton Parkway - Folly Field Road to Shelter Cove Lane

What was heard:

- Inconsistent signalized intersection treatments
- Minimal separation between northern sidewalk and roadway
- Lack of landscaped medians
- Numerous driveways and conflict-prone left turn movements
- Bike and pedestrian crossing conflict points
- Safety must be a priority in the Chaplin historic neighborhood

The presentation continued with a review of existing conditions, and suggestions for general improvements, pedestrian improvements, vehicular improvements.

Council members held discussion, asked questions and made comments regarding: the large number of curb cuts and turns through the area; discussion regarding shifting 278 to some town-owned property and creating a frontage road or shared drive for property owners to access 278; a confirmation that town-owned land will assist in reconfiguring the roadway and pathways; a concern for stakeholders reaction to curb cuts being eliminated and a need for options; a need to revisit signalization for turns in that area; a comment that by using town-owned land a parkway feel will be implemented; the need to standardize signage; clarification regarding the shift in the roadway to assist in relocating access to and from 278; concern over an additional traffic signal in the area of Burkes Beach Road; the need to address the pavement between Folly Field Road and Shelter Cove with landscaping; the need to improve safety and traffic at Burkes Beach Road; support for the elimination of the slip lane at Mathews Drive; the need for clear direction for pedestrian and bicycle crossings in the area; inquiry regarding the right turn lane from 278 on to Folly Field Road and the need to allow pedestrians and bicyclist to cross safely; a suggestion to eliminate right turn on red in that area; a need to increase pathway sizes throughout the corridor; a consensus that Council is willing to review suggestions as long as stakeholders are considered throughout the process; clarification of the width needed to shift the roadway; and inquiry as to whether a

request for reduction in the speed limit will be considered.

Due to a prior commitment, Ms. Brison had to leave the meeting at 3:05 p.m.

### Sea Pines Circle

What was heard:

- Backups occur at AM, PM, and Mid-day peak hours
- Area experiences high crash volumes
- Asymmetric alignment of approaches causes congestion on Greenwood Drive
- Significant traffic backups exiting Sea Pines
- Vehicles move through the circle at higher speeds
- Many conflict points in approaches to Sea Pines Circle
- Lack of clear signage to indicate circle navigation
- Pedestrian/bicycle safety and interconnectivity needs improvement
- Not enough capacity in the circle

The presentation continued with a review of the approach to analysis, background on crash patterns and type, background on SCDOT historical count data, background on peak hour counts, background on feeder road peak hour counts, background on 2024 peak hour counts, existing queue observations, and existing circle findings and observations, suggestions for short term Sea Pines Circle vehicular improvements, long term Sea Pines Circle vehicular improvements; operational analysis alternatives, other options to be considered, and long term pedestrian improvements.

Council members held discussion, asked questions and made comments regarding: the need to look at short term options that will drive the long term ones; concern over the dual lane suggestion within the circle; a suggestion to utilize the adaptive signal system to assist; inquiry and confirmation regarding the ability of Fire/Rescue vehicle moving over the speed tables without hesitation; and inquiry regarding shifting the circle by 25 feet to assist and the need to look at that option.

It was the consensus of Council to hold off on the discussion of the suggested long-term solutions with keeping the short-term ones in the forefront. It was decided many of the short term recommendations will be advanced and feedback will be brought back to Council. It was agreed they would discuss all long-term solutions at another time.

### Palmetto Bay Road

What was heard:

- Current design leads to high speed roadway similar to Cross Island Parkway
- Minimal pedestrian buffer make pathways uncomfortable
- Lack of landscaped medians
- Numerous driveways and unsignalized intersections create conflict points
- Limited bike and pedestrian crossings

The presentation continued with a review of existing conditions, pathways and crossings, intersection safety, drive access and connectivity, roadway layout, and an option for consideration,

Council members held discussion, asked questions and made comments regarding: the need to provide safer access to areas; the need to enhance it as the entrance to the South end of the Island and Sea Pines Circle; the need to address speed; the need for landscaping in the median, discussion of a on-street bike lane in the area; the need to address no left turns and access points and a suggestion to plan the roadway as they are planning the district.

#### Pope Ave/Coligny Circle

What was heard:

- Inconsistent signalized intersection treatment
- Sea Pines Circle to Cordillo Parkway section is efficient
- Cordillo Parkway to Coligny Circle should prioritize non-motorized travel
- High volume of bike and pedestrian crossings introduces significant conflict points
- Congestion at Lagoon Road intersection

The presentation continued with a review of existing conditions, an assessment of pathways and crossings, drive access and connectivity, roadway layout, and options for consideration

Council members held discussion, asked questions and made comments regarding: the need for an on-street bike lane; the need to address and pursue multimodal forms of transportation and the need to implement; a concern of traffic increase going west from Coligny to Sea Pines Circle; consideration of an opportunity to consider using some of the median to increase the roadway; confirmation there is room for adjustment on Pope Avenue due to width; a suggestion the bike lane be incorporated within the pathway and separating bikes from walkers on the pathway; concern that the casual biker will utilize the on-road bike lane and a concern for safety issues; the need to consider a request for a 25mph speed limit; a suggestion that the on street bike lane should be more than 7 feet wide; the need to consider the on street bike lane for e-bikes; the need to consider the commercial businesses in the area when making changes; a suggestion to concentrate on improvements to crosswalks and pedestrian access; the need to keep the small town feel; a suggestion for an all stop at the Lagoon Road intersection to allow pedestrian movement all at the same time; and a suggestion for lighting in the area.

#### North and South Forest Beach Drive

What was heard:

- Unsignalized pedestrian crossings
- Wide crossing distance on South Forest Beach Drive
- Lack of beach-side pathway
- High volume bike and pedestrian crossings
- Bike and pedestrian conflict points

The presentation continued with a review of existing conditions, assessment of pathways and crossings, roadway layout, and options for consideration.

Council members held discussion, asked questions and made comments regarding: an

observation the north Forest Beach is a pure beach environment; an expression of concern for safety; clarification of the on-street bike lanes; the need to discuss the drainage issues at the back gate of Sea Pines; clarification of the proposed bike paths on the beach side of the road; concern for tree removal if the bike paths are widened; the need to create a beautiful roadway in the area making it more of a parkway; the need to maintain the aesthetic, ambiance and character of who we are; support for the cross system at North Forest Beach; support for lighting in the area; and a suggestion of some type of median landscaping on the roads.

Mayor Perry asked if anyone signed up for public comment. Those that signed up for public comment and their comments are listed below:

Frank Babel addressed Council thanking Town Council and Staff for all the work done for the local bike businesses and riders. He made comments regarding safety on North Forest and South Forest Beach, Coligny, Pope Avenue.

Due to a prior commitment, Mr. Brown had to leave the meeting at 5:28 p.m.

Deborah Urato addressed Council inquired if there would be resident input before decisions are made. She added that the bike path needs to be extended to go past Ibis Street. She pointed out the following issues: the light at Lagoon Road needs checked for safety; bike stop signs are confusing; the HAWK signal at South Forest Beach Drive needs audio to assist in knowing when to cross and stop; inquiry as to the longest wait time to enter Sea Pines Circle; a request to increase the speed limit beyond Cordillo to Sea Pines Circle from 35mph to 36 mph for the purpose of eliminating golf carts; and a comment that Pope Avenue is going to become parking central if Wil Wings and the Aunt Chiladas sites are turned into parking lots.

Karl Braden signed up to speak but was not present when called on.

Leslie Ford addressed Council regarding Cedar Woods regarding assistance with drainage and with a path forward in obtaining a drainage agreement with the Town.

#### Adjournment

The meeting was adjourned at 5:36 p.m.

#### **Approved:**

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Kimberly Gammon, Town Clerk

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Alan R. Perry, Mayor

**The recording of this Meeting can be found on the Town's website at [www.hiltonheadislandsc.gov](http://www.hiltonheadislandsc.gov)**



# Town of Hilton Head Island

## TOWN COUNCIL WORKSHOP MEETING

### Wednesday, October 30, 2024, 9:00 AM

### Minutes

#### Call to Order

Mayor Perry called the workshop to order at 9:00 a.m.

Council Members present: Alan Perry, Mayor, David Ames, Ward 3, Mayor Pro-Tempore; Alex Brown, Ward 1; Patsy Brison, Ward 2; Tammy Becker, Ward 4; Steve Alfred, Ward 5; Glenn Stanford, Ward 6

Also present: Marc Orlando, Town Manager; Curtis Coltrane, Town Attorney; Kimberly Gammon, Town Clerk

Chris Creed, Representative from Foth | Olsen

#### Adoption of the Agenda

Mr. Ames moved to approve. Mr. Alfred seconded. Motion carried (7-0).

#### Beach Renourishment Update - Shawn Colin, Assistant Town Manager

Shawn Colin conducted a presentation regarding the project with the following information

#### PROJECT OVERVIEW::

- Hilton Head Island's Beach has been renourished several times, beginning in the 1990's. Major renourishment projects were completed in 1990, 1997, 2006, and 2016
- The proposed project will include:
- Placement of approximately 2.2 million cubic yards of sand, and Installation of six rip-rap breakwaters on the Port Royal Sound shoreline at Pine Island
- The sand will be sourced from up to four offshore borrow areas located roughly 8 miles offshore
- The project is being implemented per the Town's Beach Management Plan with scheduled renourishment every 8 to 10 years
- The estimated project cost is \$42 million
- Disruptions at individual properties generally last one week or less as the moving operation progresses
- Once the operation is up and running, the project will advance along the beach at a rate of 200 to 300 feet/day

- The project schedule was developed to avoid significant impacts to nesting turtles and migratory shore birds, including piping plovers and red knots
- Construction windows are set by US Fish and Wildlife Service

## PROJECT BACKGROUND

Mr. Colin provided the project/activity history from 1990 through 2017.

## PROJET STATUS AND SCHEDULE

US Fish & Wildlife Service (USFWS) Biological Opinion (BO)

- Issued on August 8, 2024
- Included in State Permit Terms and Conditions

Permit is currently being reviewed by the State and USACE

### Project Schedule

- Preconstruction
- Anticipated permit issue date: Dec 31, 2024
- Bid Phase: Jan – Mar 2025
- Contract Awards: April 1, 2025

### Construction (3 Phases)

- Phase 1 (Renourishment): June 2025 to Oct 2025
  - Sand placement on the Island's north end
- Phase 2 (Renourishment): Sept 2025 to May 2026
  - Sand placement on south beach and central island
- Phase 3 (Breakwater Structures): To Be Determined
  - Rock breakwater structures at Pine Island

## PROJECT SCOPE

### Permit 1

- South Beach: place 750,000 cubic yards of sand
- Central Atlantic: place 700,000 cubic yards of sand
- The Heel/Port Royal: place 500,000 cubic yards of sand
- Fish Haul: place 50,000 cubic yards of sand

### Permit 2

- Pine Island: place 200,000 cubic yards of sand and install six rock breakwaters to mitigate against sand accretion

Adriana Burnett and John McGowan conducted a presentation regarding the information below:

## PROJECT FUNDING

- Estimated Project Cost - \$42.0 million
- FY 2025 (CIP) Budget Preservation Fee) - \$16.5 million
- FY 2026 Funding - \$25.5 million (Source of Funding to be determined)

## FUNDING OPTIONS

- Beach Preservation Fund Balance, reducing fund balance to \$13 million +/-
- Issue Debt for ± \$42.5 million; paid for with future Beach Preservation Fees
- Beach Preservation Fund Balance + Debt Issuance.

Ms. Burnett reviewed the remaining balances on the 2017 Beach Preservation Fee Bonds – which were originally \$30.1 million.

| Fiscal Year | Payment Date | Principal     | Interest     | Total         | Call Status            |
|-------------|--------------|---------------|--------------|---------------|------------------------|
| 2025        | 02/01/2025   |               | \$ 274,375   | \$ 274,375    |                        |
| 2026        | 08/01/2025   | \$ 3,480,000  | \$ 274,375   | \$ 3,754,375  | Non-Callable           |
| 2026        | 02/01/2026   |               | \$ 187,375   | \$ 187,375    |                        |
| 2027        | 08/01/2026   | \$ 3,655,000  | \$ 187,375   | \$ 3,842,375  | Callable on 08/01/2025 |
| 2027        | 02/01/2027   |               | \$ 96,000    | \$ 96,000     |                        |
| 2028        | 08/01/2027   | \$ 3,840,000  | \$ 96,000    | \$ 3,936,000  | Callable on 08/01/2025 |
|             |              | \$ 10,975,000 | \$ 1,115,500 | \$ 12,090,500 |                        |

## PROJECTS FY2025 & FY2026 Cash Flows

|                                                                                | <u>Scenario 1</u>          | <u>Scenario 2</u>          | <u>Scenario 3</u>          |
|--------------------------------------------------------------------------------|----------------------------|----------------------------|----------------------------|
|                                                                                | <u>All Cash</u>            | <u>Cash/Debt Mix</u>       | <u>All Debt</u>            |
| <b><u>FY2025</u></b>                                                           |                            |                            |                            |
| <u>Approximate Cash Balance as of June 30, 2024</u>                            | <u>\$39,000,000</u>        | <u>\$39,000,000</u>        | <u>\$39,000,000</u>        |
| <u>Expected Revenues FY25</u>                                                  | <u>\$13,800,000</u>        | <u>\$13,800,000</u>        | <u>\$13,800,000</u>        |
| <u>Budgeted Non-Beach Renourishment CIP &amp; Operating Expense FY25</u>       | <u>\$ (6,483,000)</u>      | <u>\$ (6,483,000)</u>      | <u>\$ (6,483,000)</u>      |
| <u>Budgeted Beach Renourishment CIP FY25</u>                                   | <u>\$ (16,500,000)</u>     | <u>\$ (16,500,000)</u>     | <u>\$ (16,500,000)</u>     |
| <u>Remaining FY25 Series 2017 Debt Service Payment (payable 2/1/25)</u>        | <u>\$ (274,375)</u>        | <u>\$ (274,375)</u>        | <u>\$ (274,375)</u>        |
| <u>Proceeds from potential May 2025 Bond Issue to pay for Capital Projects</u> | <u>\$ -</u>                | <u>\$ 26,000,000</u>       | <u>\$42,500,000</u>        |
| <b><u>Projected Balance as of June 30, 2025</u></b>                            | <b><u>\$29,542,625</u></b> | <b><u>\$55,542,625</u></b> | <b><u>\$72,042,625</u></b> |
| <b><u>FY2026</u></b>                                                           |                            |                            |                            |
| <u>Expected Revenues FY26</u>                                                  | <u>\$13,800,000</u>        | <u>\$13,800,000</u>        | <u>\$13,800,000</u>        |

|                                                                            |                     |                     |                     |
|----------------------------------------------------------------------------|---------------------|---------------------|---------------------|
| FEMA Anticipated Past Storms Reimbursements (80% of Expected)              | \$7,000,000         | \$7,000,000         | \$7,000,000         |
| Budgeted Non-Beach Renourishment CIP & Operating Expense FY25              | \$(6,483,000)       | \$(6,483,000)       | \$(6,483,000)       |
| Remaining FY26 Series 2017 Debt Service Payments (payable 8/1/25 & 2/1/26) | \$(3,941,750)       | \$(3,941,750)       | \$(3,941,750)       |
| Budgeted Beach Renourishment CIP FY26                                      | \$ (26,000,000)     | \$ (26,000,000)     | \$(26,000,000)      |
| <b>Projected Balance as of June 30, 2026</b>                               | <b>\$13,917,875</b> | <b>\$39,917,875</b> | <b>\$56,417.875</b> |

New Bond Debt Service

### Communications Plan

#### Plan Goals

- Create widespread awareness and engagement related to the project
- Share timely information about the projects prior to and throughout each phase

#### Target audiences include

- Island residents and visitors
- The Chamber of Commerce and business owners
- HOAs and property management firms
- Partner groups (Shore Beach Services, Island Rec, and others)
- School Groups
- Environmental Groups
- Media

#### Outreach will be managed by the Communications Team

- Social Media, Web postings, News releases
- Interactive, real-time mapping during implementation

Council members held discussion, asked questions and made comments regarding: an expression of concern over a decline of revenues during renourishment and was that factored in to the project; comment that the all debt option gives a chance to build funds; the need for cash on hand to deal with the unexpected; clarification the operation will be 24 hours per day at each site; an expression of appreciation for communications to the public; inquiry into photos regarding rip-rap structures to enable the community to understand what they look like; concerns for the communities in the area of widening the channel at the bend and the need to point out the location to the public; inquiry into other debt possibilities that are being reviewed; the need for more detail on the interest rate on current debt compared to forecasted interest rate on combined debt; the importance to note these are revenue bonds for specific revenue as opposed to general obligation bonds; inquiry into the process in South Carolina for

the issuance of revenue bonds; the need for information regarding debt service and what would be the debt service for all current financing versus adding cash debt mix or all debt mix and then doing refunding and combining the debt service versus not combining and then comparing the numbers; inquiry as to notification of the project to all beach front property owners and businesses; confirmation that the Chamber and Property Owners Associations have been notified; confirmation notices will be sent via USPS as soon as the permit has been issued; a request for additional information on groins by Pine Island from an environmental and design standpoint; emphasis on the importance of communication; the need for additional information regarding the widening of the channel; the need for pros and cons of the 1<sup>st</sup> and 2<sup>nd</sup> options; concern that Tower Beach is eroded at this time and an inquiry as to the time frame for addressing; confirmation an assessment was done and an emergency permit for Tower Beach could not be permitted any faster than this project so it will be done within the project time frame; confirmation that the tides and sand movement are tracked with an annual monitoring program; the need to be aware of the interest rate when borrowing funds; confirmation the sand will be placed before the rip-rap structures will be placed to assist in access to the area; inquiry as to the Finance Department recommendations and the need for further analysis; inquiry into safety measure be taken for the rip-rap structures; inquiry into the debt rating affect; the need to protect the Town financially for ratings and future borrowing; inquiry as to whether the Beach Renourishment Fund requires a minimum amount in reserve; a request to see a rendition of the rip-rap and how it modifies the area; acknowledgement that sand is acquired through in-state waters which keeps costs down; confirmation that sand sources are monitored annually and we are fortunate the sand in those areas builds back up; inquiry as to why such a large increase in cost and confirmation it is due to limited competition, a demand from the Federal side and in increase in cost for mobilization; and confirmation future beach renourishments will be projected on an 8-10 year basis.

Chris Creed provided answers to questions from Council regarding the beach renourishment and the availability of sources. The Town is fortunate in that the sand sources were in close proximity, so it keeps the cost down. The Town is fortunate that the sand has filled in at the sources and the site can be used again. The sources are monitored to determine the effects as we keep using them. He added that the sources are located in State waters which keeps the cost down.

Mayor Perry stated he recently joined the Board of Directors for South Carolina Beach Advocates which consists of Mayors and Town Administrators from the South Carolina beach communities. They will be meeting in November and January in person to discuss ways to work with the State for funding opportunities and to create an understanding of the value of beaches for the economic impact of the State. He stated it will be a push for the State to create funding for beach renourishment.

#### Resilience Plan Status Update - Shawn Colin, Assistant Town Manager

Shawn Colin provided a presentation and below is an overview:

#### BACKGROUND

- Priority initiative in the Town of Hilton Head Island 2023-25 Strategic Action Plan to identify Strengths, Weaknesses, Opportunities & Threats (SWOT) of Hilton Head Island Resiliency and Establish an Island Resiliency Plan
- Town Council approved a Resolution June 6, 2023, supporting the proposed approach and scope of services outline to complete the SWOT assessment
- Staff procured Dewberry, an expert consultant firm in the field of resiliency planning, to conduct this assessment

#### SCOPE OF WORK APPROVED BY TOWN COUNCIL

Collect and compile information and conduct an analysis of the strengths, weaknesses, opportunities, and threats (SWOT) that the Town possesses and faces with respect to changing conditions

- Compilation and assessment of existing relative data and programs • Sea Level Rise forecast analysis and selection of design forecast
- Public outreach and solicitation of stakeholder input
- Public policy and regulation assessment and identify those for change • Recommendations related to floodplain management and future development
- Storm Drainage System assessment (tidal backflow prevention at tidal culverts and outfalls, pump stations, hydraulic capacity, design standards)
- Beach Renourishment program (including sustainability analysis)
- Flood Inundation Mapping
- SWOT (Strengths, Weaknesses, Opportunities and Threats) analysis

#### Resilience Planning Project Overview

- Step 1: Understand the threats and hazards posed to assets
- Step 2: Identify vulnerable assets and public policy and evaluate potential impacts
  - Climate Change Projections
  - Sea-Level Rise and Flooding Risk
  - Storm Surge and Hurricanes
  - Environmental Degradation and Erosion • Infrastructure Vulnerabilities (Transportation, Utilities)
  - Social and Economic Vulnerabilities (Public Health, Housing, Businesses)
  - Public policy assessment
- Step 3: SWOT findings , including GIS mapping and geodatabase to drive decision-making on future actions for planning, policy, and engineering programs presented to Town Council
- Step 4: Additional Community Engagement to present SWOT findings and receive input
- Step 5: Town Council Prioritizes actions for Resilience Planning
- Step 6: Identify and evaluate mitigation, adaptation, and recovery actions for built, social and natural systems
- Step 7: Draft Plan for Town Council consideration for built, social and natural systems

## RESILIENCE PLAN CONTENTS

1. Executive Summary
  - a. Overview of the Resilience Plan
  - b. Key Goals and Objectives
  - c. Summary of Challenges and Opportunities
  - d. Action Plan Highlights
2. Introduction
  - a. Purpose of the Plan
  - b. Background on Hilton Head Island's Resilience Efforts
  - c. Stakeholder Involvement
  - d. Guiding Principles and Vision
3. Risk and Vulnerability Assessment
  - a. Climate Change Projections
  - b. Sea-Level Rise and Flooding Risk
  - c. Storm Surge and Hurricanes
  - d. Environmental Degradation and Erosion
  - e. Infrastructure Vulnerabilities (Transportation, Utilities)
  - f. Social and Economic Vulnerabilities (Public Health, Housing, Businesses)
4. Resilience Goals and Priorities
  - a. Environmental Protection and Sustainability
  - b. Infrastructure Strengthening and Adaptation
  - c. Public Safety and Emergency Preparedness
  - d. Community Well-being and Social Resilience
  - e. Economic Resilience
5. Climate and Environmental Strategies
  - a. Flood Mitigation Measures
  - b. Shoreline Protection and Beach Renourishment
  - c. Wetland Restoration and Conservation
  - d. Water Resource Management
  - e. Tree Canopy and Greenspace Protection
  - f. Integrated Pest Management (IPM) Policy
6. Infrastructure and Community Planning
  - a. Transportation Resilience (Roadways, Public Transport)
  - b. Utility Resilience (Stormwater, Water/Sewer, Energy, Solid Waste and Recycling)
  - c. Growth Management and Zoning
  - d. Public Facilities and Critical Infrastructure Adaptation
  - e. Future-Proofing New Development
7. Public Safety and Emergency Preparedness
  - a. Hurricane Preparedness and Response
  - b. Evacuation Routes and Sheltering Plans
  - c. Community Warning Systems and Communications Strategy

- d. Lifeguard and Public Safety Programs on Beaches
  - e. Medical and Health Services for Disaster Scenarios
- 8. Community and Economic Resilience
  - a. Housing Resilience
  - b. Small Business and Tourism Support Strategies
  - c. Workforce Retention Programs
  - d. Social Services Support
- 9. Governance and Partnerships
  - a. Coordination with County, State, and Federal Agencies
  - b. Public-Private Partnerships
  - c. Community Engagement and Public Education Programs
  - d. Intergovernmental Collaboration and Policy Alignment
- 10. Infrastructure and Community Planning
  - a. Transportation Resilience (Roadways, Public Transport)
  - b. Utility Resilience (Stormwater, Water/Sewer, Energy, Solid Waste and Recycling)
  - c. Growth Management and Zoning
  - d. Public Facilities and Critical Infrastructure Adaptation
  - e. Future-Proofing New Development
- 11. Public Safety and Emergency Preparedness
  - a. Hurricane Preparedness and Response
  - b. Evacuation Routes and Sheltering Plans
  - c. Community Warning Systems and Communications Strategy
  - d. Lifeguard and Public Safety Programs on Beaches
  - e. Medical and Health Services for Disaster Scenarios
- 12. Community and Economic Resilience
  - a. Housing Resilience
  - b. Small Business and Tourism Support Strategies
  - c. Workforce Retention Programs
  - d. Social Services Support

Council members held discussion, asked questions and made comments regarding: concern with the timeline and being able to meet the deadlines; inquiry into how the table of contents compares to State and County resiliency plans; the need to ensure the water supply is addressed and protected; inquiry as to how vulnerable communities are being addressed; an observation the resilience definition needs to include business and economics and communicate with all concerned; clarification the need for short-term remedies for obvious projects needed; inquiry regarding tide monitoring activities; inquiry into rise in sea level in the past 40 years; a suggestion to include effects of new development due to upcoming LMO re-write; the need to include impervious surfaces in the study; confirmation the Town coordinates with a weather service out of Charleston for forecasting; the need to coordinate efforts with the Planned Unit Developments and their resiliency plans; the need to include infrastructure of wifi and data; a suggestion to coordinate with the Public Service

Districts; a request to address the need for all residents to have sewer connections; and an inquiry as to what is needed to expedite the project.

Mr. Orlando stated his goal was to leave the workshop with staff having full confidence in the direction they are headed. He stated the State of South Carolina office of Resilience is responsible for developing and implementing a strategic statewide resilience and risk reduction plan. He stated the State plan addresses flooding. After conducting the SWOT analysis, the Town needs to align programs including Public Service Districts, hospitals, and housing. He explained the table of contents references what they are hearing about resilience plans throughout the country.

#### Stormwater Utility Update - Jeff Netzinger, Engineering and Projects Director

Shawn Colin provided a presentation regarding the update with the following information:

The current level of staffing (7 full time employees), the allocation of staff resources and how they are distributed.

Staff time allocation distributed over 12 significant activity categories consisting of: Utility Management; LMO Plan Review; NPDES Permit Compliance; Regulatory Inspections; Service Request Data Management; Infrastructure Asset Management; Inventory & Modeling Program; Water Quality Programs; Capital Improvement Program; Pump Station Maintenance Program; Routine Maintenance Programs and Corrective Maintenance Program.

Jeff Netzinger continued with the presentation with the information below:

#### STORMWATER UTILITY REVENUE

- The Utility was established in 2001 per an IGA with Beaufort County.
- A stormwater fee is included on annual property tax bills. o Fees are calculated based on three components:
  - Administrative Fee (flat rate per account)
  - Impervious Area (based on total measured in square feet)
  - Gross Area (measured in acres)
- Fees are based on a 4,906 ft<sup>2</sup> Single-family Unit (SFU).
- Town Council elected to increased the base SFU fee rate from \$108.70 to \$150.00 for a Single-family unit in 2017.
- Beaufort County collects the fees and transfers all funds to the Town, less an administrative fee.
- The FY 2025 administrative fee is \$3.90 per account based on 35,865 accounts, totaling \$139,873.
- Total Stormwater Fee revenue was \$5,275,035 in FY 2024

Mr. Netzinger continued with a detailed review of the expenses (FY2025 Budget Allocation; Corrective Maintenance Program; Stormwater System Maintenance – Disparities in Extent of Service; Corrective Maintenance Program – Drainage Agreements; and the Corrective Maintenance Program Ranking and Project Prioritization.

## SERVICE REQUEST EVALUATION

- All requests received are evaluated by staff if the request is determined to qualify for Town Service
- Staff uses a customized evaluation tool (developed in 2018) to complete a Risk Assessment and to apply Assessment Modifiers for each request.
- The Risk Assessment evaluates a variety of deficiency components:
- Inundation and Flooding Considerations as it relates to:  
Roadway/Pathway Inundation and Flooding Impacts  
Structure Inundation and Flooding Impacts  
Amenities Inundation and Flooding Impacts
- Integrity and Safety Considerations as it relates to:  
Roadway/Pathway Integrity and Safety Impacts  
Structure Integrity and Safety Impacts  
Amenities Integrity and Safety Impacts
- Drainage System Integrity Considerations as it relates to:  
Conveyance Reduction Impacts  
Drainage System Integrity Impacts  
Drainage System Maintenance Impacts
- Assessment Modifiers are applied in several categories, including:  
Ownership (applies a 2-point increase if Town-owned)  
Multiple Unique requests (high level of public concern)  
Town Leadership Directive
- Evaluation Scores are based on a 20-point scale

Mr. Netzinger reviewed the annual SWU and CIP Budget Development for FY2025.

## CAPITAL IMPROVEMENT PROGRAM

Will be developed based on a 5-year program plan

## CORRECTIVE MAINTENANCE PROGRAM

- As of September 26, there were 136 open, qualifying corrective maintenance projects
- The list of qualifying projects is updated dynamically throughout the year as new requests come in and others are completed
- Tropical Storm Debby generated 72 new service requests, 30 of which are still being evaluated by staff (as of 10/25)
- The FY 2025 Corrective Maintenance Program budget includes twenty-one (21) projects (5 public and 16 PUD/POA)
- Four (4) high-priority projects were added during the first quarter of FY 2025 (3 public and 1 PUD/POA)
- Total project budgets are summarized below:
- FY25 Budgeted Projects (≥10) 25 \$1,912,000
- Non-budgeted Projects (<10) 111 \$1,593,000

## ANNUAL SWU & BUDGET DEVELOPMENT

- The Corrective Maintenance Program budget is determined based on several factors, including:
  - Available funding
  - Staff capacity to implement projects
  - Contractor capacity to complete projects
  - The number of open qualifying requests is increasing
  - The increase is related to:
    - Aging systems experiencing increasing rates of failure (metal pipe and perforated pipe are examples) MORE REQUESTS
    - Increasing extent of service as the Town adds new drainage agreement partners \* MORE REQUESTS
  - Staff capacity to implement projects remains flat
  - Contractor capacity is limited on Hilton Head Island; many entities compete to utilize the same pool of contractors with the necessary expertise, skilled workers, and equipment

#### STORMWATER UTILITY –PROGRAM CHALLENGES/OPPORTUNITY

- Extent of Service
  - Will continue to increase as new Drainage Agreement Partners are added
  - Will increase as new drainage easements are acquired
- Level of Service
  - Will increasing as routine maintenance programs expand to provide improved and more consistent service
  - Will increase to allow for proactive condition assessment of existing infrastructure
- Project Delivery Limitations for CIP and Corrective Maintenance Programs
  - Staff Capacity
  - Funding Capacity
  - Contractor Availability
- Emergent Needs
  - Aging infrastructure continues to experience failure at higher rates requiring repair, rehabilitation, or replacement
  - Resilience improvements will be necessary, informed by the Resilience Study followed by an Island-wide Stormwater Master Plan
- Opportunity for Consideration
  - Utilize fund balance in FY26 to accommodate Drainage Agreement Partner reimbursement requests to address lower priority projects

Council members held discussion, asked questions and made comments regarding: inquiry into capability to accelerate CIP investments regarding staffing, contractors and capabilities; inquiry as to the goal for the Town to have the greatest amount of capability to solve drainage problems; acknowledgment this ties in with the resiliency program; concern over the reimbursement program for Property Owner Associations; the need to

move in the direction of solving problems in an accelerated manor; inquiry into whether we're doing enough and spending enough for the program; the need for data and information to make policy changes; the need for a long-term plan; the need to review fees and adjust to meet needs; inquiry as to dollars collected from the stormwater utility fees and if they come back to Hilton Head Island and where the funds are directed; concern for areas not participating even though residents pay the fee; a suggestion this becomes a priority with the new Council; concern for the Bay Pines area and a suggestion to inquire about Beaufort County providing funds for us to assist; the need to give serious consideration to increase funding for the program; the need for information to go out to residents regarding the program and how it works; the need to address this subject at the Strategic Planning Workshop; a challenge for staff to examine funding without raising rates for property owners; a need to look at expanding staff; and the need to rank critical areas that are not part of the drainage agreements and compose a list, along with cost analysis and sources of funding.

#### Public Comment

Melinda Tunner addressed Council stating there is enough money to pay for beach renourishment and all other beach related expenses and explained how she came to that conclusion. She recommended that Council look at it in further years until the bond is paid off. She questioned what problem they are trying to solve by adding more debt on top of the debt incurred for beach renourishment. Ms. Tunner inquired as to the rate of the 2017 bond and if the money invested is making more than the rate there is no reason to pay it off early. She stated the need for additional information before the decision is made.

#### Adjournment

The workshop adjourned at 11:58 a.m.

#### **Approved:**

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Kimberly Gammon, Town Clerk

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Alan R. Perry, Mayor

**The recording of this Meeting can be found on the  
Town's website at [www.hiltonheadislandsc.gov](http://www.hiltonheadislandsc.gov)**



# TOWN OF HILTON HEAD ISLAND

## TOWN COUNCIL

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**TO:** Town Council Members  
**FROM:** Jeff Netzinger, Director of Engineering and Projects  
**VIA:** Shawn Colin, Assistant Town Manager – Engineering & CIP  
Curtis Coltrane, Town Attorney  
**CC:** Marc Orlando, Town Manager  
Adriana Burnett, Finance Director  
**DATE:** November 12, 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

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### **RECOMMENDATION:**

The Finance and Administrative Committee (the “Committee”) is recommending that the Town Council consider the adoption 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**).

At its September 24, 2024, meeting, the Committee voted 4-0 recommending that this resolution be brought before Town Council for consideration.

### **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: \_\_\_\_\_**



|                                |   |                              |
|--------------------------------|---|------------------------------|
| <b>STATE OF SOUTH CAROLINA</b> | ) |                              |
|                                | ) | <b>DRAINAGE SYSTEM</b>       |
| <b>COUNTY OF BEAUFORT</b>      | ) | <b>MAINTENANCE AGREEMENT</b> |

This Drainage System Maintenance Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, by and between Broad Creek Landing Horizontal Property Regime, 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, Broad Creek Landing is a subdivision of land lying and being within the Town of Hilton Head Island, Beaufort County, South Carolina (hereinafter the “Development”); and,

WHEREAS, Broad Creek Landing Horizontal Property Regime, Inc., is the owner of improved and unimproved real property and easements within Broad Creek Landing; and,

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

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

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

WHEREAS, 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 30<sup>th</sup> of the fiscal year in which the notice is delivered (for example, if notice is given February 1, 2020, the Agreement would terminate on June 30, 2021). The parties shall thereafter execute and deliver such

documents as may be necessary to cancel the Access, Drainage and Maintenance Easement delivered pursuant to this Agreement.

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

14. **Representation and Warranties of the 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**

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**S.C. CODE § 30-5-30 (SUPP. 2010)**

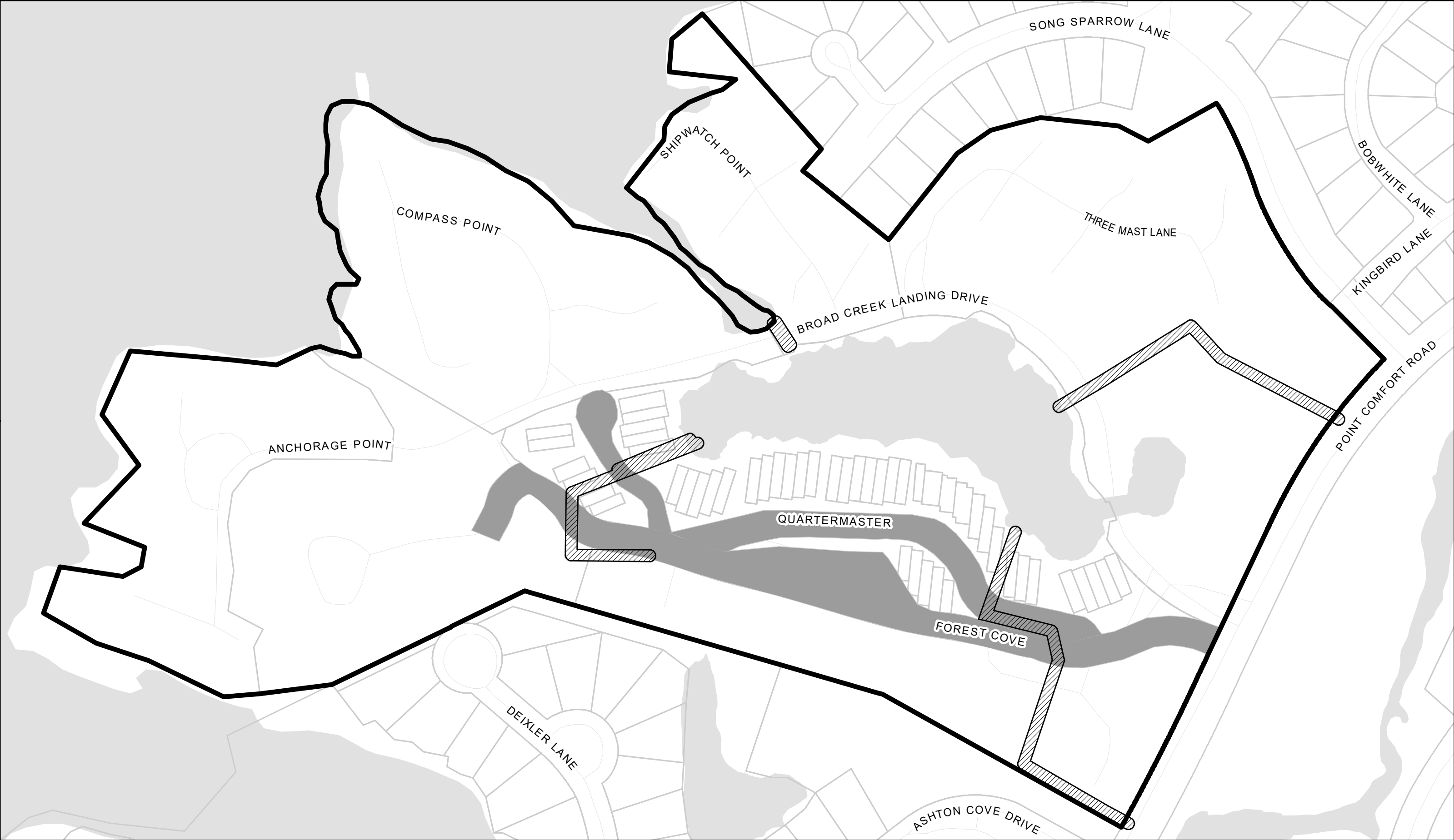
I, the undersigned Notary Public do hereby certify that Alan Perry and Marc Orlando personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of The Town of Hilton Head Island, South Carolina.

Sworn to and Subscribed before me

on this \_\_\_\_\_ Day of \_\_\_\_\_, 202\_\_.

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

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

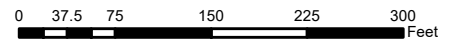


 Drainage Easement Area  Access Limits  Broad Creek Landing Agreement Area

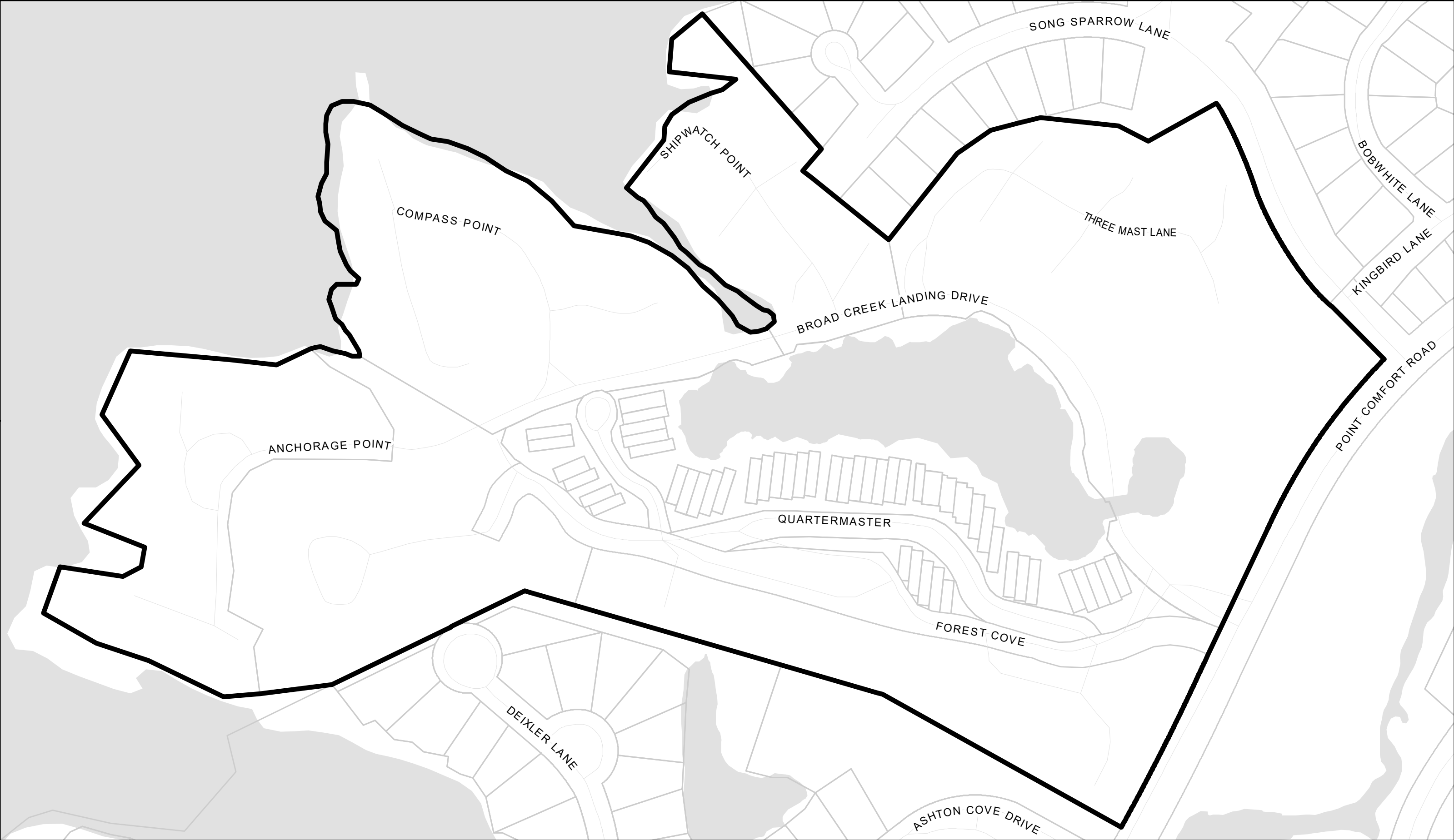
Note: Drainage easement widths are 20 feet around pipes that convey public runoff and 15 feet from the edge of bank of lagoons that receive public runoff.

Exhibit A  
Broad Creek Landing  
Drainage Easement Agreement Limits

Drafted on March 13, 2024



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.



 Broad Creek Landing Agreement Area

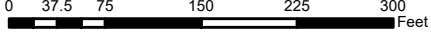
Note: Drainage easement widths are 20 feet around pipes that convey public runoff and 15 feet from the edge of bank of lagoons that receive public runoff.

# Exhibit B

## Broad Creek Landing - Development Boundary

Drafted on March 13, 2024

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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 30<sup>th</sup> of the fiscal year in which the notice is delivered (for example, if notice is given February 1, 2020, the Agreement would terminate on June 30, 2021). The parties shall thereafter execute and deliver such documents as may be necessary to cancel the Access, Drainage and Maintenance Easement delivered pursuant to this Agreement.

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

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

The Association represents and warrants:

- a. That any and all necessary approvals and/or resolutions have been obtained, that it has the full authority to execute, deliver and perform this Agreement and to execute and deliver the Access, Drainage and

Maintenance Easement to be delivered pursuant to this Agreement, and that the individual(s) executing such documents have full power and authority to bind the Association to the same.

- b. That it is not now a party to any litigation affecting the property burdened by the easements herein which could impair the obligations of the Association under this Agreement or the Access, Drainage and Maintenance Easement, and the Association knows of no litigation or threatened litigation affecting their ability to grant said easements.
- c. That as to any pipes or other portions of the Drainage System as shown on Exhibit "A" hereto which are located in whole or in part on private residential lots, the Association has full authority under the Covenants to convey or assign to the Town the rights contemplated in this Agreement and the Access, Drainage and Maintenance Easement.

15. **Town Representation and Warranties:**

The Town represents and warrants to the Association:

- a. As is shown by the Resolution of the TOWN that is attached hereto as Exhibit "D", the Town represents that it has the power and authority to enter into this Agreement and complete its obligations hereunder; and,
- b. That it is not now a party to any litigation which could impair the obligations of the Town under this Agreement, and the Town knows

of no litigation or threatened litigation affecting its ability to perform hereunder.

16. **Taxes:** The Association shall ensure payment, prior to delinquency, all taxes on Association properties within the Development burdened by the easements granted under this Agreement.
17. **Default:** The Town and the Association agree that in the event of a default or breach of any provision or term of this Agreement, the non-defaulting party or parties shall give written notice to the defaulting party or parties of the default or breach. In the event that the defaulting party or parties fail to cure the default or breach within thirty (30) days of the date of the written notice specifying the default or breach, unless a non-monetary default or breach cannot reasonably be cured within said thirty (30) day time period, then said period shall be reasonably extended, up to one hundred and twenty (120) days, then the non-defaulting party or parties shall be entitled to pursue any remedy at law or in equity against the defaulting party or parties, including but not limited to an action for damages, injunction or specific performance of this Agreement.
18. **Attorney's Fees:** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default or misrepresentation in connection with any of the provisions or terms of this Agreement, the prevailing party or parties shall be entitled to seek recovery of its or their reasonable attorney's fees and any costs incurred as a result of any such action or proceeding, whether incurred before the commencement of suit or after

the commencement of suit, and including appellate proceedings, in addition to any other relief to which the prevailing party or parties is or are entitled.

19. **General Provisions:**

- a. *Binding Effect:* This Agreement shall inure to the benefit of and be binding upon the Association and the Town, and their respective successors and assigns.
- b. *Amendment, Changes and Modifications:* Except as is otherwise provided herein, this Agreement may not be modified, amended, changed, or altered without the written consent of the TOWN and the Association.
- c. *Severability:* In the event that any term or provision of this Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other term or provision hereof.
- d. *Execution in Counterparts:* This Agreement may be simultaneously executed in several counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument.
- e. *Applicable Law:* This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.
- f. *Captions:* The captions or headings used herein are for convenience only and in no way define, limit, expand or describe the scope or intent of any term or provision of this Agreement.

- g. *Plural/Singular*: Where appropriate, the use of the singular herein shall be deemed to include the plural, and the use of the plural herein shall be deemed to include the use of the singular.
- h. *No Third-Party Beneficiaries*: The Town and the Association affirmatively represent that this Agreement is made solely for the benefit of the Parties hereto and their respective successors and assigns and not for the benefit of any third party who is not a signature party hereto. It is the express intent of the Town and the Association that no other party shall have any enforceable rights hereunder, or any right to the enforcement hereof, or to any claim for damages as a result of any alleged breach hereof.
- i. *Notices*: All notices, applications, requests, certificates, or other communications required hereunder shall be sufficiently given and shall be deemed given on the date when such is delivered in person, or deposited in the United States Mail, by regular first-class mail, postage prepaid, at the following addresses, or at such other address as may be designated, in writing, by the Parties:

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

To the Association: 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

Carl 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)**

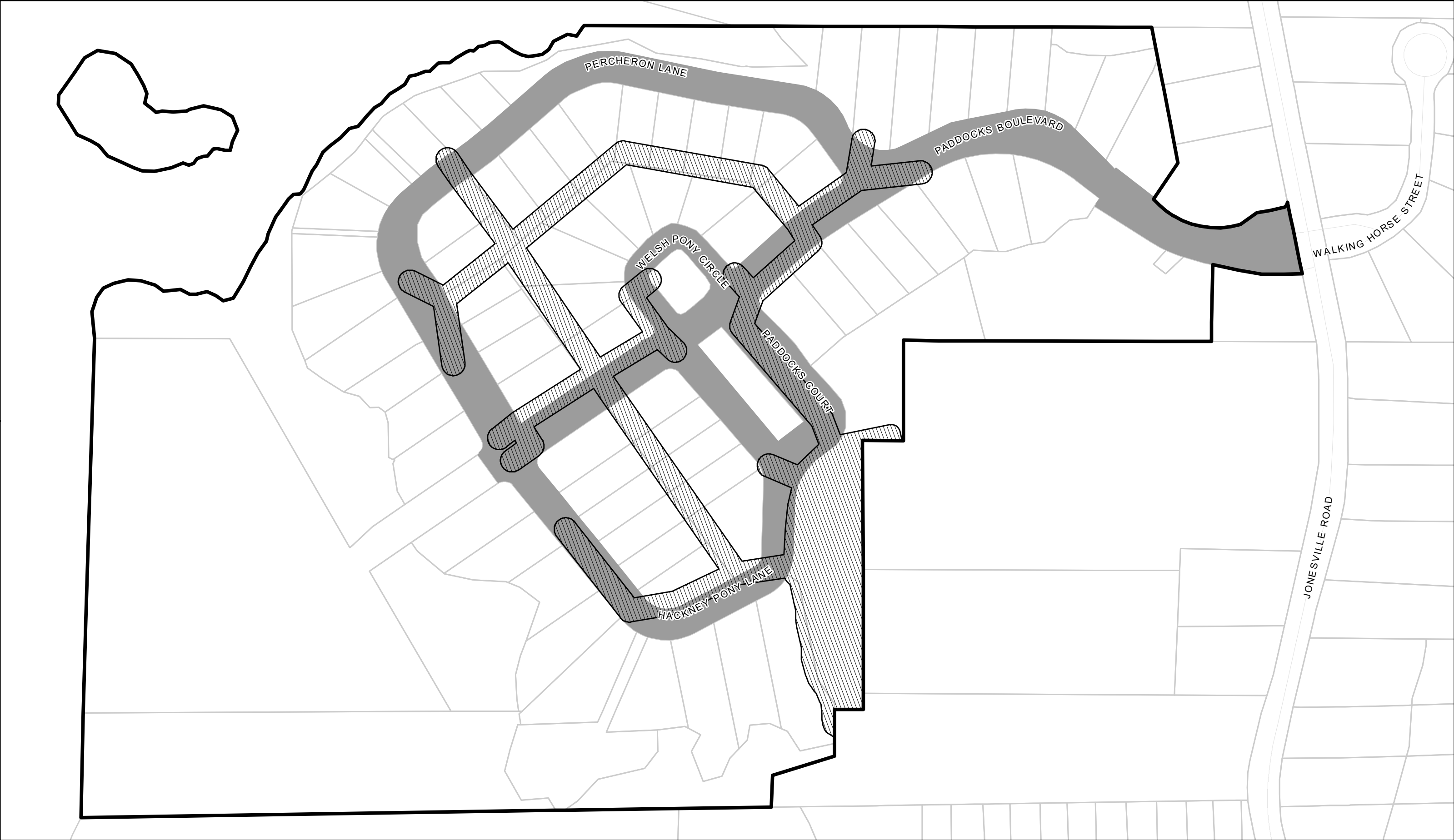
I, the undersigned Notary Public do hereby certify that Alan Perry and Marc Orlando personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of The Town of Hilton Head Island, South Carolina.

Sworn to and Subscribed before me

on this \_\_\_\_\_ Day of \_\_\_\_\_, 202\_\_.

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

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

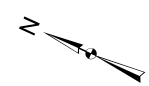
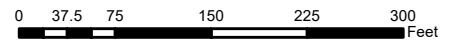


 Drainage Easement Area  Right-of-Way Area  Paddocks Limits

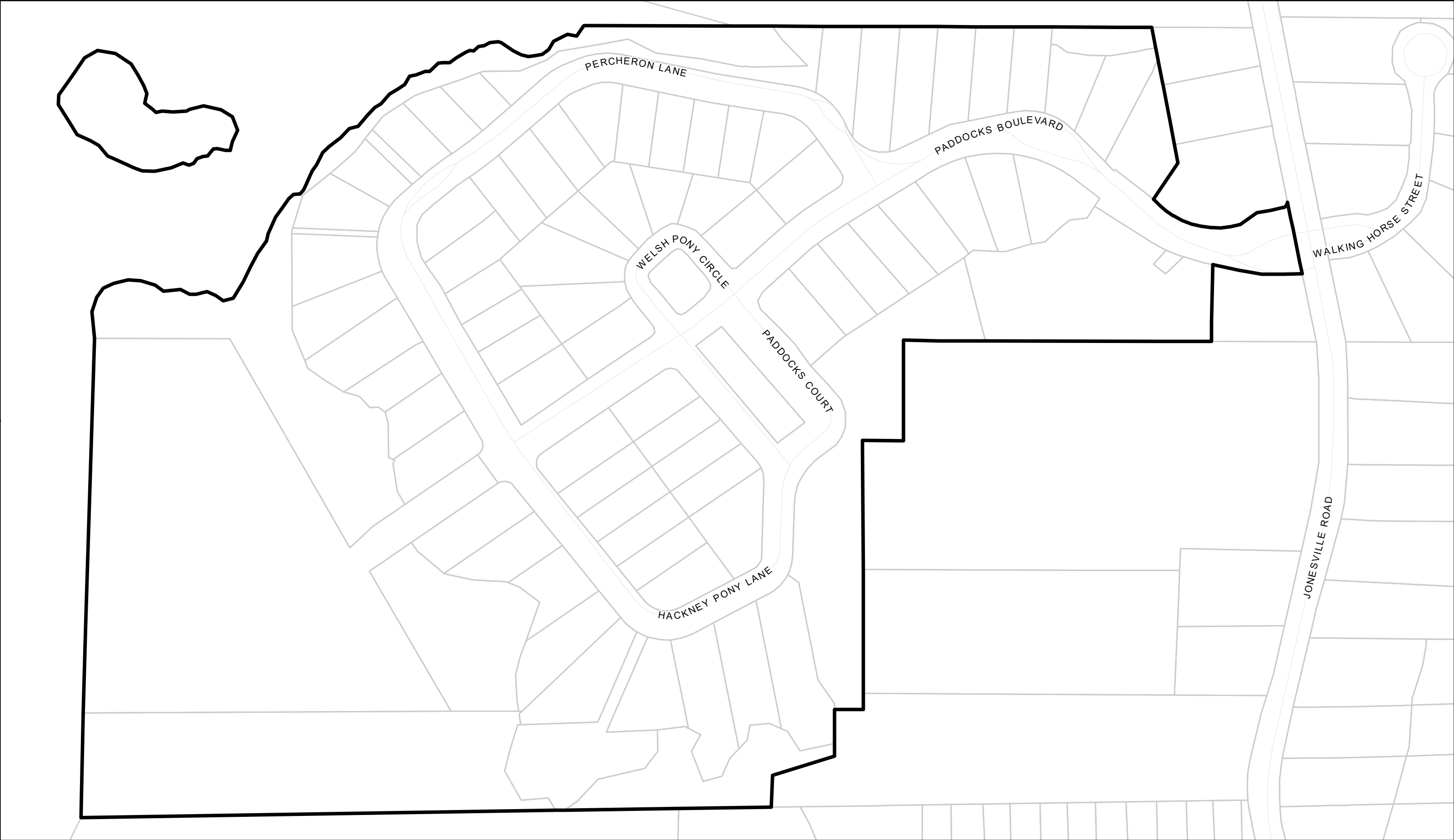
Note: Drainage easement widths are 20 feet around pipes that convey public runoff and 15 feet from the edge of bank of lagoons that receive public runoff.

# 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.



 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.

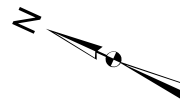


Exhibit B

The Paddocks - Development Boundary

Drafted on February 15, 2024

037.575150225300

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.

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|                                |   |                              |
|--------------------------------|---|------------------------------|
| <b>STATE OF SOUTH CAROLINA</b> | ) |                              |
|                                | ) | <b>DRAINAGE SYSTEM</b>       |
| <b>COUNTY OF BEAUFORT</b>      | ) | <b>MAINTENANCE AGREEMENT</b> |

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

WHEREAS, Ribaut Island Property Owners Association, Inc., is the owner of improved and unimproved real property and easements within Ribaut Island; 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, 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 (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.
- m. *Storm Water Utility Service Fees*: The fees collected by Beaufort County, South Carolina, under the authority of Beaufort County Ordinance 99-101, *et seq.*, as amended, and which are remitted by

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

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

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

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

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

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

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

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

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

will address identified Qualifying Drainage System Deficiencies as follows:

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

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

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

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

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

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

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

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

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

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

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

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

9. **Maintenance of Drainage System by the Association:** Nothing herein shall prohibit the Association from performing any Project in advance of the time that any such Project is scheduled as a part of the Town's Storm Water Utility Project Prioritization and Annual Budget Process, if the Association determines that it is in its interest to do so. Other than in the case of an Emergency (addressed in Article 10, below), or a Casualty (addressed in Article 8, above), the Association shall be entitled to reimbursement, in an amount up to the amount budgeted by the Town for the Project but not exceeding the actual cost to the Association, from Storm Water Utility Service Fees, in the fiscal year that such Project is scheduled to be done as a part of Town's Storm Water Utility Project Prioritization and Annual Budget Process, as follows;
- a. The Association shall submit its plans, quantities, and specifications for any Project to the Town.
  - b. The Town shall grant its written approval to the Association to complete the Project unless it determines that:
    - i. The plan and work proposed by the Association will not correct the existing Qualifying Drainage System Deficiency; or,
    - ii. The scope of the proposed work exceeds what is necessary to correct the existing Qualifying Drainage System Deficiency,
  - c. Upon receipt of the Town's written approval, the Association shall bid the work in accordance with the Town's Procurement Code, § 11-

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

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

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

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

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

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

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

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

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

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

The Association represents and warrants:

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

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

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

15. **Town Representation and Warranties:**

The Town represents and warrants to the Association:

- a. As is shown by the Resolution of the TOWN that is attached hereto as Exhibit “D”, the Town represents that it has the power and authority to enter into this Agreement and complete its obligations hereunder; and,
- b. That it is not now a party to any litigation which could impair the obligations of the Town under this Agreement, and the Town knows of no litigation or threatened litigation affecting its ability to perform hereunder.

16. **Taxes:** The Association shall ensure payment, prior to delinquency, all taxes on Association properties within the Development burdened by the easements granted under this Agreement.

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

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

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

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

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

To the Association: 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: \_\_\_\_\_

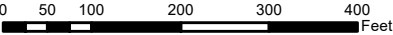


 Drainage Easement Area  Right-of-Way Area  Ribaut Island Limits

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.

|                                |   |                              |
|--------------------------------|---|------------------------------|
| <b>STATE OF SOUTH CAROLINA</b> | ) |                              |
|                                | ) | <b>DRAINAGE SYSTEM</b>       |
| <b>COUNTY OF BEAUFORT</b>      | ) | <b>MAINTENANCE AGREEMENT</b> |

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 30<sup>th</sup> of the fiscal year in which the notice is delivered (for example, if notice is given February 1, 2020, the Agreement would terminate on June 30, 2021). The parties shall thereafter execute and deliver such documents as may be necessary to cancel the Access, Drainage and Maintenance Easement delivered pursuant to this Agreement.

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

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

The Association represents and warrants:

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

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

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

15. **Town Representation and Warranties:**

The Town represents and warrants to the Association:

- a. As is shown by the Resolution of the TOWN that is attached hereto as Exhibit “D”, the Town represents that it has the power and authority to enter into this Agreement and complete its obligations hereunder; and,
- b. That it is not now a party to any litigation which could impair the obligations of the Town under this Agreement, and the Town knows of no litigation or threatened litigation affecting its ability to perform hereunder.

16. **Taxes:** The Association shall ensure payment, prior to delinquency, all taxes on Association properties within the Development burdened by the easements granted under this Agreement.

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

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

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

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

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

To the Association: 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 12<sup>th</sup> 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**

)

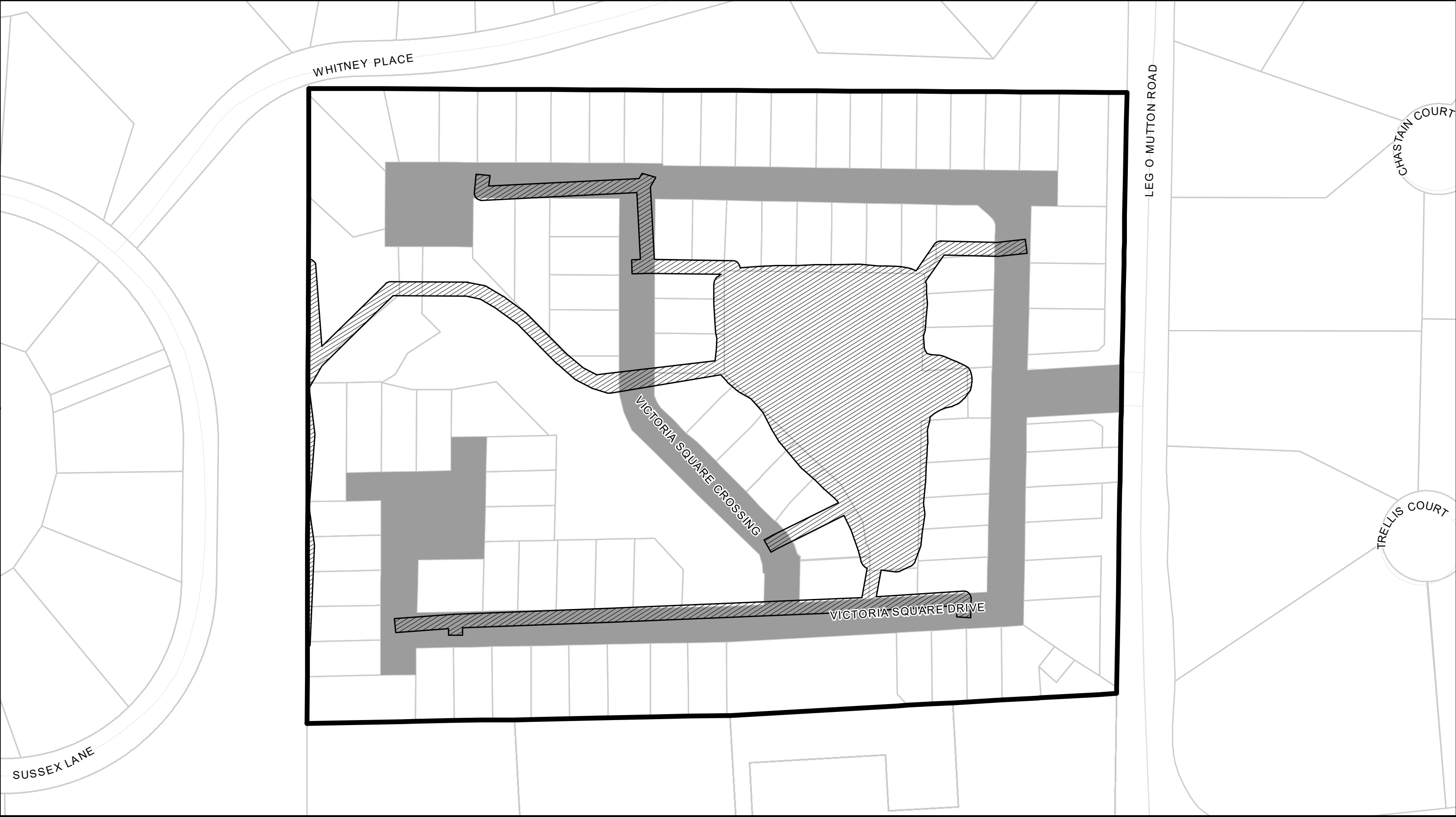
**S.C. CODE § 30-5-30 (SUPP. 2010)**

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: \_\_\_\_\_





 Victoria Square Boundary

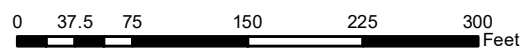
Note: Drainage easement widths are 20 feet around pipes that convey public runoff and 15 feet from the edge of bank of lagoons that receive public runoff.

# 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.

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# *The Town of Hilton Head Island*



## *Proclamation*

**WHEREAS**, the Annual Thanksgiving Community Dinner held on Hilton Head Island, South Carolina is celebrating its 25<sup>th</sup> anniversary; and

**WHEREAS**, the Annual Community Thanksgiving Dinner celebrates and offers a free community family-style dinner, with over 400 volunteers serving more than 1600 guests; and

**WHEREAS**, the Dinner provides comfort and a sense of belonging on Thanksgiving Day. In the true spirit of the holidays, donations collected and distributed to Deep Well, Bluffton Self Help, and Second Helpings provide resources to those who need them most; and

**WHEREAS**, this wonderful day could not happen if it weren't for the founding partners and hosts, giving their love to this project – St. Andrew By-the-Sea, United Methodist Church, and Hudson's Seafood House on the Docks.

**NOW. THEREFORE**, I, Alan R. Perry, Mayor of the Town of Hilton Head Island, South Carolina, do hereby proclaim November 28, 2024, as a day of appreciation for the founders, sponsors, volunteers and participants at the **Annual Thanksgiving Community Dinner**.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and caused this seal of the Town of Hilton Head Island to be affixed on this 12<sup>th</sup> day of November in the year of our Lord, two-thousand and twenty-four.



Alan R. Perry, Mayor

Attest:

Kimberly Gammon, Town Clerk