

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

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)**DRAINAGE SYSTEM
MAINTENANCE AGREEMENT**

This Drainage System Maintenance Agreement is made this 12th day of Noember, 2024, 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 30th of the fiscal year in which the notice is delivered (for example, if notice is given February 1, 2020, the Agreement would terminate on June 30, 2021). The parties shall thereafter execute and deliver such documents as may be necessary to cancel the Access, Drainage and Maintenance Easement delivered pursuant to this Agreement.

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

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

The Association represents and warrants:

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

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

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

15. **Town Representation and Warranties:**

The Town represents and warrants to the Association:

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

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

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

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

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

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

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

To the Association: Ribaut Island Property Owners
 Association, Inc.
 PO Box 23094
 Hilton Head Island, SC 29925

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

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

In Witness Whereof, The Town of Hilton Head Island, South Carolina; and Ribaut Island Property Owners Association, Inc., by and through their duly authorized officers, have executed and delivered this Agreement as of this 12th day of November, 2024.

SIGNATURES BEGIN ON NEXT PAGE

WITNESSES:

Ribaut Island Property Owners Association, Inc.

Marc Perry

By: D. Carbone

Its: PRESIDENT

Tyler Tyler

Attest: _____

Its: _____

THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

Alan Perry

By: Alan Perry
Alan Perry, Mayor

Victoria Flores

Attest: Marc Orlando
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

1. Defined Terms: As used herein, the following terms shall mean:

- Page 1 of 9

- (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 12th day of November , 2024.

WITNESSES:

Ribaut Island Property Owners Association, Inc.

Mark Fung

By: DG Clare

Tracy A. Fung

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 Dan Clare
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 20 Day of August, 2024.

Tracy A. Fung
Notary Public for South Carolina

My Commission Expires: 2-13-29

WITNESSES:
SOUTH CAROLINA

THE TOWN OF HILTON HEAD ISLAND,

Alan Perry By: *Alan Perry*
Alan Perry, Mayor

Marc Orlando Attest: *Marc Orlando*
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 19th Day of November, 2022

Kimberly Gammon
Notary Public for South Carolina
My Commission Expires August 12, 2026

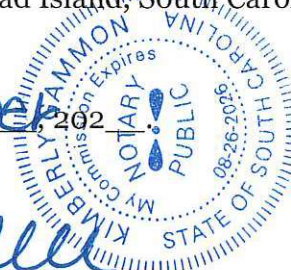




Exhibit A - Ribaut Island Drainage Easement Agreement Limits

Drafted on February 15, 2024

The information on this map has been compiled from a variety of sources and is provided as a general guide only. It is not intended to be used as a basis for any legal action or as a substitute for a professional survey. The Town of Ribaut is not responsible for any errors or omissions in this map. The Town of Ribaut is not responsible for any damages or losses arising from the use of this 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 or lagoons that receive public runoff.

Exhibit B

Drafted on February 15, 2024

Ribaut Island - Development Boundary



0 50 100 200 300 400 Feet

The information on this map has been compiled from a variety of sources and is provided as a general guide only. The Town of Ribaut does not warrant the accuracy or completeness of the data shown. The Town of Ribaut is not responsible for any losses arising from the use of the map.