



Town of Hilton Head Island  
**COMMUNITY SERVICES AND PUBLIC  
SAFETY COMMITTEE MEETING**  
**Monday, April 25, 2022, 10:00 AM**  
**AGENDA**

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The Community Services & Public Safety Committee meeting will be held in-person at Town Hall in the Benjamin M. Racusin Council Chambers. The meeting can be viewed on the [Town's Public Meetings Facebook Page](#), the [Beaufort County Channel](#) and Spectrum Channel 1304.

1. **Call to Order**
2. **FOIA Compliance** Public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act and the requirements of the Town of Hilton Head Island.
3. **Roll Call**
4. **Approval of the Agenda**
5. **Approval of the Minutes**
  - a. Regular Meeting – March 28, 2022
6. **Appearance by Citizens** Citizens who wish to address the Committee may do so by contacting the Town Clerk at 843.341.4701, no later than 4:30 p.m., Friday, April 25, 2022. Citizens may also submit comments on agenda items via the eComment portal at [Community Services & Public Safety Committee Meeting Information](#)
7. **New Business**
  - a. Consideration of a Proposed Ordinance Authorizing the Execution and Delivery of Easements for Underground Water and Wastewater Utilities Encumbering Real Property Owned by the Town of Hilton Head Island, South Carolina in the Shelter Cove Area
  - b. Consideration of a Resolution Authorizing the Town Manager to Enter into a Memorandum of Understanding with Pope Ave. Hilton Head 2021, LLC, for the Installation and Maintenance of a Bicycle and Pedestrian Pathways on Pope Avenue

**8. Executive Session**

- a. Discussion of Personnel Matters Related to the Appointments and Reappointments to the Town of Hilton Head Island Boards, Commissions, and Committees [pursuant to SC Freedom of Information Act Sec. 30-4-70(a)(1)]

**9. Possible Actions by the Committee Concerning Matters Discussed in Executive Session**

**10. Adjournment**

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



# Town of Hilton Head Island COMMUNITY SERVICES & PUBLIC SAFETY COMMITTEE Monday, March 28, 2022, 10:00 a.m. MINUTES

**Present from Committee:** Bill Harkins, *Chairman*; David Ames, Tom Lennox, *Committee Members*

**Absent from Committee:** Tamara Becker, *Committee Member*

**Present from Town Staff:** Marc Orlando, *Town Manager*; Josh Gruber, *Deputy Town Manager*; Angie Stone, *Assistant Town Manager*; Shawn Colin, *Interim-Director of Community Development*; John Tuttle, *Technology & Innovation Director*; Carolyn Grant, *Communications Director*; Brad Tadlock, *Fire Chief*; Joheida Fister, *Deputy Fire Chief*; Chris Blankenship, *Deputy Fire Chief*; Christopher Osterman, *Senior Fire Inspector*; Krista Wiedmeyer, *Town Clerk*

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## 1. Call to Order

Mr. Harkins called the meeting to order at 10:00 a.m.

## 2. FOIA Compliance

Ms. Wiedmeyer confirmed compliance with the SC Freedom of Information Act.

## 3. Roll Call

Ms. Wiedmeyer called the roll, confirming the attendance of the members present. Mrs. Becker was absent.

## 4. Approval of the Minutes

- a. Regular Meeting – February 28, 2022

## 5. Appearance by Citizens

Ms. Wiedmeyer affirmed that there were no citizens signed up to address the committee.

## 6. New Business

- a. Beaufort County Sheriff's Office Quarterly Crime Statistics Update - Major Angela Viens

Major Viens of the Beaufort County Sheriff's Office delivered her report on the fourth quarter crime statistics. She answered various questions posed to her by the Committee.

- b. Hilton Head Island Fire Rescue 2021 Annual Report - Chief Chris Blankenship

Chief Tadlock opened the report before turning it over to Deputy Chief Blankenship who delivered a detailed report. Upon the conclusion of his report, he answered various question from the Committee.

- c. Consideration of a Resolution from the Planning Commission Recommending Hilton Head Island Town Council and Beaufort County Council Work Together in the Development of a New Long-Term Agreement that will Secure the Landfill and Recycling Needs of Hilton Head Island and Beaufort County

Mr. Colin gave a brief presentation on this item, noting that an initiative to do an analysis on solid waste and recycling is part of the Strategic Plan adopted by Town Council. He said the Greater Island Council has taken the initiative and drafted a resolution in May 2021 to the Planning Commission who supported and recommended that it be brought forward to Town Council. Mr. Colin pointed out that Beaufort County currently manages the Public Solid Waste and Recycling program on Hilton Head Island as well as a solid waste drop-off located on Summit Drive. Upon the completion of his presentation, he asked Peter Kristian and Marc Baker, both representing the Greater Island Council to address the Committee about the resolution and proposed program.

Mr. Kristian and Mr. Baker reviewed the proposed program, explaining that they had been speaking with members of the Beaufort County Council about developing a sustainability campus somewhere south of the Broad, most likely off the Island. They noted that having a sustainability campus would assist greatly and be more economically feasible.

Members from the Committee asked various questions before Mr. Ames moved to approve forwarding the Resolution to Town Council for consideration. Mr. Lennox seconded. The motion carried 3-0.

- d. HUD/CDBG Entitlement Program - 2022 Annual Action Plan Request for Project Approval

Ms. Benson delivered a brief presentation and report of the 2022 Annual Action Plan request and project approval. She noted that staff was recommending the Committee forward a recommendation to Town Council to select Taylor Family Park as the 2022 Community Development Block Grant project for inclusion in the Town's 2022 Annual Action Plan. Ms. Benson said that approval of the park as the 2022 CDBG project would allow for the 2022 allocation along with approximately \$32,000.00 from the 2019 funding allocation to be used for the project. She reviewed the public input process and feedback received. Upon the end of her presentation she answered questions from the Committee.

Mr. Lennox moved to approve forwarding the Resolution to Town Council for consideration. Mr. Ames seconded. Motion carried 3-0.

- e. Consideration of a Lease of Jointly-Owned Land by Beaufort County and the Town of Hilton Head Island with the Historic Mitchelville Freedom Park

Ms. Lopko delivered a presentation to the Committee showing where these parcels are in conjunction with Mitchelville Freedom Park. Mr. Ward also spoke to the Committee and answered various questions.

Mr. Ames moved to approve forwarding a recommendation to Town Council to approve the lease. Mr. Lennox seconded. Motion carried 3-0.

## 7. Adjournment

With no further business, the meeting adjourned at 10:37 a.m.

**Approved:**

Drafted and Submitted by:  
Krista M. Wiedmeyer, Town Clerk

**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

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### *Staff Report Memo*

**TO:** Town Council  
**VIA:** Marc Orlando, Town Manager  
Curtis Coltrane, Town Attorney  
**FROM:** Jeff Buckalew, Town Engineer  
**COPY:** Josh Gruber, Deputy Town Manager  
Shawn Colin, Assistant Town Manager, Community Development  
Arnold Ellison, General Manager Broad Creek PSD  
**DATE:** April 11, 2022  
**SUBJECT:** Consideration of an ordinance granting perpetual utility easements to the Broad Creek Public Service District (PSD) for the access and maintenance of a water main across Town land (Parcel R520 012 00C 0002 0000 near 59 Shelter Cove Lane)

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#### **Recommendation:**

Execute two permanent utility easements granting perpetual access and maintenance rights to the Broad Creek PSD for the water mains across Town land (Parcel R520 012 00C 0002 0000 within Shelter Cove Community Park and Veteran's Memorial Park near 59 Shelter Cove Lane).

#### **Summary and Background:**

When the Town made the agreement with the developer of the Shelter Cove Mall to exchange land for what is now the Shelter Cove Community Park, one of the terms in the agreement obliged the Town to grant easements to Broad Creek Public Service District for future underground water lines. Both the developer and Broad Creek Public Service District are now ready for this conveyance of easements to occur. The easements are 20-foot wide and encompass a buried water main and are depicted in Exhibits A and B of the attached Ordinance. The total amount of Town land to be encumbered by these easements is 0.596 acres. Staff has no objections to granting of the easements as shown.

**AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND**

**ORDINANCE NO. 2022-\_\_**

**PROPOSED ORDINANCE NO. 2022-\_\_**

**AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA TO AUTHORIZE THE EXECUTION AND DELIVERY OF EASEMENTS FOR UNDERGROUND WATER AND WASTEWATER UTILITIES ENCUMBERING REAL PROPERTY OWNED BY THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA IN THE SHELTER COVE AREA AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

WHEREAS, on or about October 16, 2012, The Town of Hilton Head Island, South Carolina and Shelter Cove Towne Centre, LLC, executed a "Development Agreement" governing the exchange of real property and the development of other property in the area of the Shelter Cove Mall and Broad Creek;

WHEREAS, among other things, the October 16, 2012, Development Agreement requires that The Town of Hilton Head Island, South Carolina, use its best efforts to assist Broad Creek Public Service District in obtaining easements for underground water and waste water infrastructure;

WHEREAS, The Town of Hilton Head Island, South Carolina, owns property described as:

All that certain piece, parcel or tract of land located within the Town of Hilton Head Island, Beaufort County, South Carolina consisting of a total of approximately 4.45 acres, more or less, and all improvements thereon, if any, shown and designated as "Remainder of Revised Multi-Family Parcel" on that certain Plat entitled "Boundary Reconfiguration of 4.45 Acre New Multi-Family Parcel # 2 & 26.29 Acre Revised Town of Hilton Head Island parcel, totaling 30.74 acres, Shelter Cove Lane, a Portion of Shelter Cove Community Park, Hilton Head Island, Beaufort County, South Carolina," sheet 2 of 2, prepared by Surveying Consultants, dated March 16, 2016 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 143 at Page 122 (herein, the "Town Property").

WHEREAS, Broad Creek Public Service District now seeks easements encumbering

the Town Property for the installation, maintenance and use of underground water and wastewater infrastructure; and,

WHEREAS, the Town Council for The Town of Hilton Head Island, South Carolina, has determined that it is in the best interests of The Town of Hilton Head Island, South Carolina, to grant the requested easements, and,

WHEREAS, § 2-7-20, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983), states that an ordinance is required in order to convey interests in real property owned by The Town of Hilton Head Island, South Carolina.

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

**Section 1, Authorization to Grant Easement.**

(a) The Mayor and Town Manager are authorized to execute and deliver the two easements allowing Broad Creek Public Service District to install, maintain and use underground water and wastewater infrastructure over part of the Town Property as described in the written easements. The easements shall be in a form and substance as the documents attached to this Ordinance as Exhibit "A" and Exhibit "B."

(b) The Mayor and Town Manager are authorized to take any further actions they deem necessary or advisable to complete the execution and delivery of the easements authorized in Article 1(a) above.

**Section 2 Severability.** If any section, phrase, sentence or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision,

and such holding shall not affect the validity of the remaining portions thereof.

**Section 3. Effective Date.** This Ordinance shall be effective upon adoption by the Town Council of the Town of Hilton Head Island, South Carolina.

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

\_\_\_\_\_  
John D. McCann, Mayor

**ATTEST:**

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

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

APPROVED AS TO FORM:

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

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

EXHIBIT A TO ORDINANCE 2022-\_\_\_\_



and recorded on \_\_\_\_, 2020 in Plat Book \_\_\_\_ at Page \_\_\_\_, Beaufort County Records ("Plat"). These easements shall burden and be binding upon the easement property described herein and shall be appurtenant to and run with the land and shall be applicable to and for the use and benefit of the SCII and the District for the purposes set forth herein.

The easements intended to be conveyed herein are a portion of the property conveyed to the within Town by deed from Shelter Cove II, LLC and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 3477 at Page 2573 on April 22, 2016.

2. Terms and Conditions.

- (a) The parties confirm that the water line and related infrastructure have been constructed and installed by SCII. Town accepts no responsibility for such construction and/or installations.
- (b) The water line installed within the easement area is intended for use not only to service the apartment units and other facilities, but also to provide fire protection services, and as such, it will be necessary for District, as well as the Town Fire Department to have access to, and use of, said water line.
- (c) This Easement is one of three Easements related to the subject water around the Parcel. The other two easements are from the landowners, Shelter Cove Company as it relates to Easement A and Easement H and SCII as it pertains to Easement C, Easement D and Easement F.
- (d) Any use of the easement area by Town, or its successors-in-title, shall be subject to the express condition that such use not interfere with the use of the easement area by the District in the operation of its water system.
- (e) This Easement Agreement may only be modified, extinguished or terminated in a document expressly executed by all parties and recorded in the Land Records for Beaufort County.
- (f) This Easement Agreement is binding upon, and shall benefit, the parties hereto and their successors and assigns. This Easement Agreement shall run with the land.
- (g) This Easement Agreement is subject to all applicable restrictions, covenants, easements, etc. applicable to the subject Property and of record in the Land Records for Beaufort County, South Carolina.
- (h) The Easements B, E and G are more fully described by detailed courses and distances, metes and bounds on the above-referenced Plat. In the event of any discrepancy between the description herein and the Plat, the Plat shall be controlling.

**TOGETHER** with all and singular, the rights, members, hereditaments and appurtenances to the above property belonging to or in anyway incident or appertaining to the above-described property.



IN WITNESS WHEREOF, SCII has caused these presents to be executed in its name and its corporate seal affixed hereto in \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_, 2020.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

\_\_\_\_\_

Witness #1

\_\_\_\_\_

Witness #2/Notary

SCII: SHELTER COVE II, LLC

By: MPR Consultants, Inc. a Georgia corporation

Title: Managing Member

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

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

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

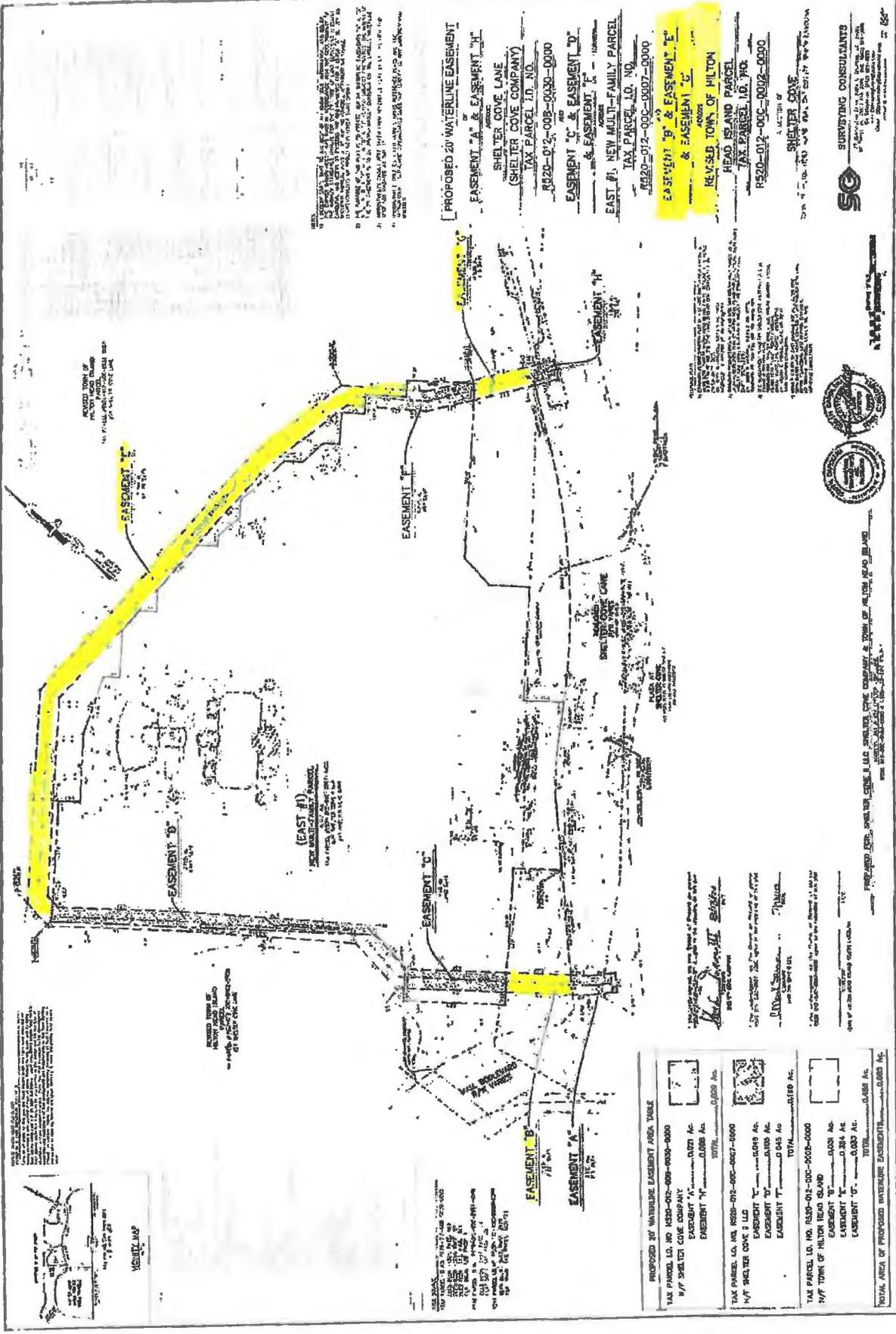
ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that \_\_\_\_\_ of MPR Consultants, Inc., Managing Member of SCII, personally appeared before me this day on behalf of the corporation and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public for  
My Commission Expires: \_\_\_\_\_ (SEAL)





VIEW MAP

ALL RIGHTS RESERVED BY THE ENGINEER. THIS PLAN IS THE PROPERTY OF THE ENGINEER AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE ENGINEER.

PROPOSED 20" WATERLINE EASEMENT

- EASEMENT "A" & EASEMENT "H" SHELTER COVE LANE (SHELTER COVE COMPANY) TAX PARCEL I.D. NO. R320-012-008-0030-0000
- EASEMENT "C" & EASEMENT "D" EAST #1, NEW MULTI-FAMILY PARCEL TAX PARCEL I.D. NO. R520-012-000-0007-0000
- EASEMENT "B" & EASEMENT "E" REVISED TOWN OF HILTON HEAD ISLAND PARCEL TAX PARCEL I.D. NO. R520-012-000-0002-0000

A SECTION OF SHELTER COVE

50 SURVIVING CONSULTANTS  
 1000 W. 10TH AVENUE, SUITE 100  
 DENVER, CO 80202  
 TEL: 303.733.1000  
 FAX: 303.733.1001  
 WWW.SURVIVINGCONSULTANTS.COM

PROPOSED 20" WATERLINE EASEMENT  
 THIS PLAN IS THE PROPERTY OF THE ENGINEER AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE ENGINEER.



PROPOSED 20" WATERLINE EASEMENT  
 THIS PLAN IS THE PROPERTY OF THE ENGINEER AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE ENGINEER.

PROPOSED 20" WATERLINE EASEMENT AREA TABLE	
TAX PARCEL I.D. NO. R320-012-008-0030-0000	0.0000 AC.
BY/ SHELTER COVE COMPANY	
EASEMENT "A".....	0.0271 AC.
EASEMENT "H".....	0.0088 AC.
TOTAL.....	0.0359 AC.
TAX PARCEL I.D. NO. R520-012-000-0007-0000	
BY/ SHELTER COVE'S LLC	
EASEMENT "C".....	0.0019 AC.
EASEMENT "D".....	0.0019 AC.
EASEMENT "E".....	0.0019 AC.
TOTAL.....	0.0057 AC.
TAX PARCEL I.D. NO. R520-012-000-0002-0000	
BY/ TOWN OF HILTON HEAD ISLAND	
EASEMENT "B".....	0.0000 AC.
EASEMENT "E".....	0.0000 AC.
EASEMENT "G".....	0.0000 AC.
TOTAL.....	0.0000 AC.
TOTAL AREA OF PROPOSED WATERLINE EASEMENTS.....	
0.0416 AC.	

**EXHIBIT B TO ORDINANCE 2022-\_\_\_\_**

# EXHIBIT B

This instrument prepared by:  
**BURR & FORMAN MENAIR**  
(CSG:sp)  
Post Office Drawer 3  
Hilton Head Island SC 29938-0003

STATE OF SOUTH CAROLINA        )  
  )  
COUNTY OF BEAUFORT            )                   **GRANT OF UTILITY EASEMENT**  
  )                   **(EAST #2)**

**THIS GRANT OF UTILITY EASEMENT (EAST #2) ("Agreement") is made by and between THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA ("Town"), SHELTER COVE II, LLC, c/o Southeastern Real Estate Group, 2743 Perimeter Parkway Building 100, Augusta, GA 30909 ("SCII") and BROAD CREEK PUBLIC SERVICE DISTRICT, a special purpose District duly chartered and existing under the laws of the State of South Carolina, Post Office Box 5878, Hilton Head Island, South Carolina 29938 ("District").**

**WHEREAS, SCII is the owner of certain real property within the Broad Creek Public Service District known as Parcel East #2, having 4.45± acres with an address of 65 Shelter Cove Lane, a Beaufort County TMS#R520-012-00C-0007-0000 (the "Parcel") and improved with a 104 unit apartment building together with ancillary improvements include parking garage and recreational facilities, known as East #2, upon which SCII has constructed water and sewer infrastructure and facilities, including a main water line around the Parcel to be used both for potable water and for fire protection services; and**

**WHEREAS, the Town is the owner of certain real property located in Shelter Cove and identified at the address of 59 Shelter Cove Lane, TMS#R520-012-00C-0002-0000, a portion of which property is contiguous to the aforementioned Parcel owned by SCII and such Town property having been used for the installation of the water line described herein; and**

**WHEREAS, the District owns and operates a water supply and sewage collection, disposal and treatment system pursuant to the authority granted in its Enabling Legislation; and**

**WHEREAS, SCII will convey ownership of the water main and related infrastructure to the District, but also requires an easement from the Town for the portions of the water main locations crossing the Town property, and the District likewise requires access to the aforementioned water line in the same area for the purposes set forth herein.**

**NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that TOWN for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) to it in hand paid and before the sealing of these presents, by SCII and by the DISTRICT, in the State aforesaid, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained and released and by these presents docs grant, bargain and release unto SCII and the District, their respective successors and assigns forever, the following:**

1. **Easement. A non-exclusive perpetual easement for access, ingress and egress in, to, over, and across a portion of the Town's parcel at 59 Shelter Cove Lane, TMS#R520-012-00C-0002-0000 in Shelter Cove, Hilton Head Island, Beaufort County, South Carolina and which is shown and depicted as Easements B (0.116 acres) and D (0.022 acres) on the Plat prepared by Surveying Consultants, Inc. entitled "Proposed 20' Waterline Easement", dated November 26, 2019 and**

recorded on \_\_\_\_, 2020 in Plat Book \_\_\_ at Page \_\_\_\_, Beaufort County Records ("Plat"). These easements shall burden and be binding upon the easement property described herein and shall be appurtenant to and run with the land and shall be applicable to and for the use and benefit of the SCII and the District for the purposes set forth herein.

The easements intended to be conveyed herein are a portion of the property conveyed to the within Town by deed from Shelter Cove II, LLC and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 3477 at Page 2573 on April 22, 2016.

2. Terms and Conditions.

- (a) The parties confirm that the water line and related infrastructure have been constructed and installed by SCII. Town accepts no responsibility for such construction and/or installations.
- (b) The water line installed within the easement area is intended for use not only to service the apartment units and other facilities, but also to provide fire protection services, and as such, it will be necessary for District, as well as the Town Fire Department to have access to, and use of, said water line.
- (c) This Easement is one of three Easements related to the subject water around the Parcel. The other two easements are from the landowners, Shelter Cove Company as it relates to Easement A and on E and SCII as it pertains to Easement C.
- (d) Any use of the easement area by Town, or its successors-in-title, shall be subject to the express condition that such use not interfere with the use of the easement area by the District in the operation of its water system.
- (e) This Easement Agreement may only be modified, extinguished or terminated in a document expressly executed by all parties and recorded in the Land Records for Beaufort County.
- (f) This Easement Agreement is binding upon, and shall benefit, the parties hereto and their successors and assigns. This Easement Agreement shall run with the land.
- (g) This Easement Agreement is subject to all applicable restrictions, covenants, easements, etc. applicable to the subject Property and of record in the Land Records for Beaufort County, South Carolina.
- (h) The Easements B and D are more fully described by detailed courses and distances, metes and bounds on the above-referenced Plat. In the event of any discrepancy between the description herein and the Plat, the Plat shall be controlling.

**TOGETHER** with all and singular, the rights, members, hereditaments and appurtenances to the above property belonging to or in anyway incident or appertaining to the above-described property.





IN WITNESS WHEREOF, DISTRICT, acknowledges its acceptance of the easement described herein in accordance with the terms and conditions set forth above, this \_\_\_\_ of \_\_\_\_\_, 2020.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

DISTRICT:  
BROAD CREEK PUBLIC SERVICE DISTRICT

\_\_\_\_\_  
Witness #1

By: \_\_\_\_\_  
Name: Mike Allen  
Title: General Manager

\_\_\_\_\_  
Witness #2/Notary

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that \_\_\_\_\_, as \_\_\_\_\_ of the District, BROAD CREEK PUBLIC SERVICE DISTRICT, personally appeared before me this day on behalf of the public service district and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_ (SEAL)





## TOWN OF HILTON HEAD ISLAND

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### *Staff Report Memo*

**TO:** Town Council  
**VIA:** Marc Orlando, Town Manager  
Curtis Coltrane, Town Attorney  
**FROM:** Jeff Buckalew, Town Engineer  
**COPY:** Josh Gruber, Deputy Town Manager  
Shawn Colin, Assistant Town Manager, Community Development  
**DATE:** March 22, 2022  
**SUBJECT:** Consideration of Memorandum of Understanding for the private construction and maintenance of a proposed pathway connection to the new Starbucks at 16 Pope Avenue within the SCDOT right of way

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#### **Recommendation:**

Execute a Memorandum of Understanding (MOU) (attached as Exhibit A) that facilitates the conditional permitting of the Starbucks redevelopment at 16 Pope Avenue and obligates the property owner of 16 Pope Avenue to install and maintain the proposed pathway connection within the South Carolina Department of Transportation (SCDOT) right of way.

#### **Summary and Background:**

Starbucks applied for a Town development review permit to redevelop the property at 16 Pope Avenue, to build a standalone Starbucks coffee shop with a drive-thru window. The plans include a proposed pathway connecting to the existing pathway within SCDOT right of way for safe pedestrian and bicycle ingress and egress from the public pathway. The SCDOT would not permit this private entity to connect its proposed pathway to the existing pathway the Town previously installed in the SCDOT right of way, and instead required the local government to assume maintenance responsibilities before a permit would be issued. To provide for this pathway connection, the Town will apply for the SCDOT encroachment permit and then have the MOU executed with the owner of 16 Pope Avenue. This MOU provides for the Town accepting maintenance responsibilities from the SCDOT and then conveying those responsibilities in perpetuity to the property owner at 16 Pope Avenue. The pathway connection within the SCDOT right of way will be concrete, eight foot wide, and 14 foot in length and shall be built to SCDOT standards, AS SHOWN ON Exhibit B of the MOU.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, TO AUTHORIZE THE TOWN MANAGER TO APPLY FOR AND OBTAIN A RIGHT OF WAY ENCROACHMENT PERMIT FROM THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION FOR A PROPOSED SEGMENT OF PATHWAY WITHIN SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY CONNECTING TO THE PROPERTY AT 16 POPE AVENUE FOR PEDESTRIAN INGRESS AND EGRESS, AND EXECUTE AN AGREEMENT WITH THE OWNER OF 16 POPE AVENUE TO INSTALL AND PERPETUALLY MAINTAIN THE SEGMENT OF PROPOSED PATHWAY

WHEREAS, POPE AVE HILTON HEAD 2021, LLC (“Owner”), as owner of the real property located at 16 Pope Avenue, Beaufort County tax parcel identification number R552-015-000-0150-0000, as more fully described on Exhibit A attached hereto and made a part hereof (the "Premises"), desires to operate a Starbucks store thereon; and

WHEREAS, Owner desires to install a new segment of pathway connecting to the existing pathway within the South Carolina Department of Transportation (“SCDOT”) Pope Avenue right of way, to allow for direct ingress and egress onto and from the Premises, an excerpt of the site plan demonstrating these planned improvements described on Exhibit B is attached hereto and made a part hereof; and

WHEREAS, SCDOT has required that the Town obtain the right of way encroachment permit in order to install the requested pathway; and

WHEREAS, while the Town is amenable to obtaining said SCDOT encroachment permit for the pathway connection being installed by Owner in the above-described location, the Town expressly requires via a Memorandum of Understanding (MOU) as described in Exhibit C, that Owner will be solely and exclusively responsible for all costs associated with the installation and maintenance of said pathway and that Owner will solely and exclusively be responsible for any and all corresponding liability related thereto

or arising therefrom; and

WHEREAS, at a meeting held on April 25, 2022, the Community Services and Public Safety Committee met and voted to forward the recommendations for action to Town Council that are set out in this Resolution.

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

1. The Town Manager is directed to apply for an SCDOT encroachment permit to install a new segment of pathway at 16 Pope Avenue connecting to the existing pathway within the South Carolina Department of Transportation (“SCDOT”) Pope Avenue right of way, and have executed and recorded the Memorandum of Understanding with the owner of 16 Pope Avenue to install and perpetually maintain this segment of proposed pathway as described in Exhibit C.

MOVED, APPROVED, AND ADOPTED ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2022.

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

**ATTEST:**

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

APPROVED AS TO FORM

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

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

# EXHIBIT A

## DRAFT

Prepared by and after recording return to:

Town of Hilton Head Island  
1 Town Center Court  
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA	)	PATHWAY INSTALLATION
	)	AND MAINTENANCE
	)	MEMORANDUM OF UNDERSTANDING
TOWN OF HILTON HEAD ISLAND	)	(16 POPE AVENUE)

**THIS PATHWAY INSTALLATION AND MAINTENANCE MEMORANDUM OF UNDERSTANDING** (the “Agreement”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2022, by and between the TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, a body politic and corporate and political subdivision of the State of South Carolina (the “Town”), and POPE AVE HILTON HEAD 2021, LLC, a limited liability company in good standing and duly authorized to do business in South Carolina (“Owner”), concerning the installation, care, and maintenance of certain pathway improvements contemplated in that certain application to the South Carolina Department of Transportation (“SCDOT”) for the installation and maintenance of a pathway connection at 16 Pope Avenue in front of the newly constructed Starbucks located on Hilton Head Island, South Carolina, as more particularly described below.

### RECITALS

**WHEREAS**, POPE AVE HILTON HEAD 2021, LLC, as owner of the real property located at 16 Pope Avenue (Beaufort County tax parcel identification number R552-015-000-0150-0000), as more fully described on **Exhibit A** attached hereto and made a part hereof (the "Premises"), desires to operate a Starbucks store, known as Owner, thereon; and

**WHEREAS**, Owner desires to install a new segment of pathway connecting to the existing pathway within the SCDOT Pope Avenue right of way, to allow for direct ingress and egress onto and from the Premises, an excerpt of the site plan demonstrating these planned improvements described on **Exhibit B** is attached hereto and made a part hereof; and

**WHEREAS**, SCDOT has required that the Town obtain an encroachment permit in order to install the requested pathway; and

**WHEREAS**, while the Town is amenable to a pathway connection being installed by Owner in the above-described location, the Town expressly conditions its encroachment permit application to the SCDOT on the premise that Owner will be solely and exclusively responsible for all costs associated with the installation and maintenance of said pathway and that Owner will solely and exclusively be responsible for any and all corresponding liability related thereto or arising therefrom; and

**WHEREAS**, the Parties are entering this Agreement in order to facilitate the installation of said pathway; however, the execution of this Agreement shall not be deemed, construed, or

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interpreted in any way as an acceptance by the Town of any obligation, right, or liability with regards to this matter; and

**WHEREAS**, the Town and Owner desire to enter into this Agreement regarding the matters set forth herein.

**NOW, THEREFORE**, in consideration of the mutual benefits, promises and obligations set forth herein, the sufficiency of which are hereby acknowledged and accepted by each, the Town and Starbuck's hereby agree as follows:

The above recitals are incorporated into this Agreement in their entirety and made a part hereto of this Agreement.

1. **Town Obligations.** Town shall acknowledge to SCDOT that it shall accept for the means of the encroachment permit requirements, the maintenance responsibilities of the new segment of connecting pathway within the SCDOT right of way, located directly in front of the Premises at 16 Pope Avenue, and then convey those maintenance responsibilities in perpetuity to Owner. Town shall coordinate with Owner and the SCDOT at the time the necessary permit is secured and provide documentation to Owner for the authorization of the installation of the pathway. For so long as this Agreement is in effect, including any renewals or amendments thereof, Owner and its successors and assigns, and their respective employees, agents and contractors, shall have a non-revocable license over and across the pathway to conduct and perform the installation and maintenance of the pathway pursuant to the requirements of the SCDOT permit, including but not limited to all of SCDOT policies and procedures for performance of work in public right of ways. Furthermore, Town shall cause this Agreement to be filed with the Beaufort County Register of Deeds and be responsible for all associated filing fees. Additionally, Town shall take any and all additional steps and actions necessary to enable Owner to perform its obligations hereunder in compliance with any laws, regulations, and other requirements. In the event Owner (or its successors or assigns) is, at any time, prohibited by applicable law, rule or regulation from performing any of its obligations hereunder, it shall be excused from such performance until such time as the prohibition has been resolved to allow Starbuck's to continue its performance hereunder.
2. **Owner Obligations.** Owner shall apply to SCDOT for an encroachment permit and be the permittee for the installation and ultimate maintenance of new segment of connecting pathway within the SCDOT right of way, located directly in front of the Premises at 16 Pope Avenue. Owner acknowledges and agrees that, at no cost to the Town, Owner shall provide for the installation of the pathway as approved by SCDOT and contemplated in the encroachment permit, and the maintenance of the pathway with such obligation running with the land and becoming the affirmative obligation of any future successor or assigns. Owner shall carry appropriate amounts of insurance for any claims that may arise from the installation or maintenance of the pathway. This Agreement shall be enforceable against Owner and any successor-in-interest of Owner and shall survive the purchase, merger, or other succession of Owner. Owner is obligated to disclose the terms of this Agreement to any potential purchaser, assignee or successor of Owner.

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3. **Maintenance Standards.** Maintenance standards shall be those standards established by the SCDOT pursuant to SCDOT Guidelines as may be changed, modified or amended from time to time. Owner is hereby authorized to continuously enter the encroachment permit area, subject to the SCDOT encroachment permit conditions for the purpose of performing such maintenance.
4. **Mutual Cooperation & Notice.** Notwithstanding anything contained herein, the Town and Owner each agree to cooperatively pursue their obligations set forth herein in good faith. All notices to be provided hereunder shall be provided in writing and delivered by U.S. Mail or by email to the following:

If to Town, To:           Hilton Head Island Town Manager  
                                  1 Town Center Court  
                                  Hilton Head Island, South Carolina  
                                  Phone: 843-341-4705

With Copy to:           Hilton Head Island Town Attorney  
                                  1 Town Center Court  
                                  Hilton Head Island, South Carolina  
                                  843-785-5551

If to Owner, To:       \_\_\_\_\_

                                  \_\_\_\_\_

                                  \_\_\_\_\_

                                  \_\_\_\_\_

With Copy to:       \_\_\_\_\_

                                  \_\_\_\_\_

                                  \_\_\_\_\_

                                  \_\_\_\_\_

5. **Modifications.** This Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change modify or discharge it in whole or in part unless such executory agreement is in writing and is signed by both parties hereto.
6. **Entire Agreement.** This Agreement contains the entire agreement between the parties pertaining to the subject matter contained herein and fully supersedes all prior written or oral agreements and understanding between the parties pertaining to such subject matter.

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7. **Default.** In the event of a default by either party, the non-defaulting party may seek any available remedy in equity or at law as a result of such failure to perform, including but not limited to any action for specific performance of obligations recited in this Agreement.
8. **Cost of Enforcement/Attorney Fees.** In the event of a default, failure to perform or other breach of this Agreement, the defaulting party shall reimburse the non-defaulting party or parties for all costs and expenses reasonably incurred by the non-defaulting party in connection with the enforcement of this Agreement, including reasonable attorney's fees for pursuing court action.
9. **Indemnification.** Owner agrees to hold harmless, defend and indemnify Town and SCDOT as required pursuant to the SCDOT encroachment permit, for any liability, claims, or damages made against the Town and/or SCDOT, as applicable, arising from Starbucks' performance of the installation or maintenance of the pathway contemplated herein, during the term of this Agreement including any renewals or amendments thereof. In the event Starbucks' contracts with a third party for the installation and/or maintenance of the landscaped median, such contract shall include a hold harmless and indemnification for the Town and SCDOT.
10. **Independent Agreement.** This Agreement, in no way, shall expand, broaden, limit, negate, change, alter or amend any prior understandings or agreements between Owner and the Town, except as expressly provided herein.
11. **Counterparts.** This Agreement may be executed in multiple counterparts, and all such executed counterparts shall constitute the same agreement. The parties agree that this Agreement may be communicated by use of a fax or other electronic means, such as electronic mail and the internet, and that the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents.
12. **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.
13. **Disclaimer of Relationship.** Nothing contained in this Agreement, nor any act of the Town and/or Starbucks' shall be deemed or construed by any of the parties or by any third person, to create any joint venture or partnership between the parties.
14. **Applicable Law.** This Agreement is enforceable in the State of South Carolina and shall in all respects be governed by, and constructed in accordance with, the substantive Federal laws of the United States and the laws of the State of South Carolina. Any claims for default, non-performance or other breach shall be filed in Beaufort Town, South Carolina.

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15. **Captions.** The section headings appearing in this Agreement are for convenience of reference only and are not intended to any extent for the purpose, to limit or define the test of any section or any subsection hereof.
16. **Construction.** The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.
17. **Further Assurances.** Each party hereto shall execute and cause to be delivered to each other such instruments and other documents, and shall take such other actions, as such other party may reasonably request to carry out any of the terms of this Agreement.
18. **Successors and Assigns.** All provisions of this Agreement shall run with the land and bind and inure to the benefit of each party and each party's respective heirs, executors, legal representatives, successors, successors in title and assigns. The words "Starbuck's" and "Town" shall include their heirs, executors, administrators, successors, and assigns, as the case may be.

[Signatures on Following Pages]

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**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed, by their hands and seals, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

WITNESSES:

As to Town:

\_\_\_\_\_  
Witness (non-notary)

\_\_\_\_\_  
Print Name: Marc Orlando

\_\_\_\_\_  
Witness (notary)

Its: Town Manager

State of South Carolina )

)

Acknowledgment

Town of Hilton Head Island )

I, \_\_\_\_\_, do hereby certify that Marc Orlando, in his capacity as Hilton Head Island Town Manager, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public of South Carolina

My commission expires:

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WITNESSES:

As to Starbuck's:

\_\_\_\_\_  
Witness 1 (non-notary)

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

Print Name:

\_\_\_\_\_  
Witness 2 (notary)

Its:

STATE OF SOUTH CAROLINA )

)

ACKNOWLEDGMENT

TOWN OF HILTON HEAD ISLAND )

I \_\_\_\_\_, a Notary Public for the state and Town aforesaid, do hereby certify that \_\_\_\_\_, acting in his capacity as \_\_\_\_\_ of \_\_\_\_\_ (the "Company"), personally appeared before me this day and acknowledged before me the due execution of the foregoing instrument as the act and deed of the Company for the purposes stated in the instrument and he is personally known to me.

Witness my hand and official seal

this \_\_\_ day of \_\_\_\_\_, 2022

\_\_\_\_\_

Printed Name: \_\_\_\_\_

Notary Public for \_\_\_\_\_

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

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## EXHIBIT A

### LEGAL DESCRIPTION OF PREMISES

ALL that certain piece, parcel or tract of land, with all improvements thereon, situated and being in Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, and being more particularly shown and described on a plat of a 0.826 acre portion of Sea Pines Plantation, Area "E", Hilton Head Island, Beaufort County, South Carolina, prepared by Nathan Conarty Bowers, R.L.S., dated January 17, 1973, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 20 at Page 207. Said tract of land herein described commences at a concrete monument at its easternmost corner where it joins the intersection of Pope Avenue and a fifty (50') foot right-of-way, which lies in a northwesterly direction 1,790 feet from the northwestern corner of Pope Avenue and Cordillo Parkway, and runs from said concrete monument at the point of beginning South  $54^{\circ}20'$  West, a distance of 300.00 feet to a concrete monument; thence North  $35^{\circ}40'$  West, a distance of 120.00 feet to a concrete monument; thence North  $54^{\circ}20'$  East, a distance of 300.00 feet, to a concrete monument; thence South  $35^{\circ}40'$  East, a distance of 120.00 feet to the concrete monument at the point of beginning, all of which will more fully appear by reference to the hereinabove referred plat of record.

AND ALSO, all of Grantor's right, title or interest in that certain non-exclusive commercial easement as set forth in the Amended Easement Confirmation Agreement recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 3922 at Page 801.

This conveyance is made by Grantor and accepted by Grantee subject to all applicable Covenants, Restrictions and Easements of record in the Office of the Register of Deeds for Beaufort County, South Carolina; including but not limited to those certain Restrictive Covenants for Commercial Lands of Sea Pines Plantation Company, dated December 9, 1971, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 183 at Page 1652.

This being the same property conveyed to the within Grantor by Deed of Pope Avenue Partners, a SC General Partnership, dated July 1, 2003, recorded in the Office of the Register of Deed for Beaufort County, South Carolina in Book 1813 at Page 1341, on August 6, 2003; and by Quit Claim Deed from The Harvey Family Partnership recorded in Book 1813 at Page 1348, and by Quit Claim Deed from the Shepard Family Partnership recorded in Book 1813 at Page 1351, and by Quit Claim Deed from Gloria S. Taggart, Leroy E. Harvey, Jr., The Estate of Leroy E. Harvey, III, Ronald E. Harvey, Yvonne H. Beach, Randall G. Harvey, Cynthia H. Sosa, Glenn Eric Shepard and Michael R. Shepard recorded in Book 1896 at Page 1455.

This Deed was prepared in the Law Office of Jones, Simpson & Newton, PA, Post Office Box 1938, Bluffton, SC 29910.

TMP: R552 015 000 0150 0000

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EXHIBIT B

SITE PLAN EXCERPT SHOWING PROPOSED PATHWAY IMPROVEMENTS

