

Prepared By and Without Benefit of Title Examination:
 FINGER, MELNICK, BROOKS & LABRUCE, P.A.
 Post Office Box 24005
 Hilton Head Island, South Carolina 29925
 (843) 681-7000
 Attn: E. Richardson LaBruce

STATE OF SOUTH CAROLINA)	DRAINAGE EASEMENT AGREEMENT
)	TMS# R610-039-000-1530-0000
COUNTY OF BEAUFORT)	

THIS DRAINAGE EASEMENT AGREEMENT is made and entered into on this ____ day of _____, 2021, (the “*Effective Date*”) by and between ABIGAIL JEAN LLC, a South Carolina limited liability company (the “*Grantor*”) and THE TOWN OF BLUFFTON, a South Carolina municipal corporation of 20 Bridge Street, Bluffton, South Carolina 29910 (the “*Town*” or the “*Grantee*”).

WITNESSETH

WHEREAS, the Grantor affirms, acknowledges and represents that Grantor is the record owner of a parcel of real property located in the Town of Bluffton, South Carolina, commonly known as **5766 Guilford Place**, (the “*Property*”) which real property is more specifically described as:

ALL that certain piece, parcel or lot of land situate, lying and being in Bluffton Township, Beaufort County, South Carolina, shown and described as “LOT 6” of Stock Farm Development Subdivision, as shown and described on that certain plat entitled, “*A Subdivision Plat of 21.46 Acres, Stock Farm Development Subdivision,*” prepared by Ward Edwards, Inc., David Lee Jachens, S.C.R.L.S. No. 26600, dated April 30, 2008, and recorded July 21, 2008, in Plat Book 125 at Page 176 in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more complete description of the metes, bounds, courses and distances of said parcels, reference to said plat of record is craved.

THIS being the same property conveyed to Grantor by deed of Isabella Marie, LLC, dated March 3, 2021 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, on March 11, 2021, in Record Book 3982 at Page 2875.

Tax Map No. R610-039-000-1530-0000

WHEREAS, the Town is a municipal corporation vested with the power of eminent domain that sought to acquire a portion of the Property for a public purpose, the completion of Phase II of the May River Streetscape, which will provide street frontage improvements, including curb, gutter, sidewalk, landscaping and lighting, to May River Road, a public thoroughfare to which the Property abuts (herein, the “*Project*”); and,

WHEREAS, the Property abuts one of the public thoroughfares to be improved by the Project; and,

WHEREAS, in order to proceed with the Project, the Town will need to acquire from the Grantor a permanent easement interest in, over, under, and upon a 0.02 acre portion of the Property as more specifically described and identified as that “DRAINAGE EASEMENT” for “PARCEL 35” on EXHIBIT “A” hereto (the “*Easement Area*”); and,

WHEREAS, the Grantor desires to show its support for the Project by conveying and selling the easement to the Grantee, as more fully set forth herein; and,

WHEREAS, the Parties desire to execute this Agreement to clarify and/or set forth the scope of the easement granted to the Grantee.

AGREEMENT

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, subject to the terms and conditions set forth herein, Grantor, for **NINE THOUSAND, THREE HUNDRED THIRTY-THREE AND 50/100 (\$9,333.50) DOLLARS** and no other consideration, the receipt and sufficiency of which are hereby acknowledged, hereby declares, grants, bargains, sells, aligns, conveys, imposes and confirms unto the Grantee, its successors, successors-in-title and assigns, and Grantee’s contractors, tenants, invitees, customers, agents, and employees such non-exclusive, perpetual, commercial, and transmissible easements and rights-of-way, over, under, across, through, and upon the Easement Area, for the benefit of the Grantee, individually and collectively, for the following public purposes and as more fully set forth herein, *to wit*:

1. **Incorporation of Recitals.** The above recitals are hereby incorporated herein as if restated fully and are hereby made an integral part hereof so that their contents are a substantive part of this Agreement.

2. **Just Compensation.** Grantor desires and agrees to sell and convey the Easement to Grantee for charitable or public uses and purposes and for consideration of **NINE THOUSAND, THREE HUNDRED THIRTY-THREE AND 50/100 (\$9,333.50) DOLLARS**. Further, Grantor acknowledges that Grantor has been fully informed of Grantor’s right to receive just compensation for the Easement, pursuant to the United States Constitution, the South Carolina Constitution and the South Carolina Eminent Domain Act (S.C. Code Ann. § 28-2-370). Grantor does acknowledge and agrees that Grantor willingly and voluntarily acknowledges that the consideration reflected herein was the result of fair negotiations between the parties and reflects just compensation for the easements granted to the Town herein.

3. **Permanent Drainage Easement.** Subject to all matters of record applicable to the Property, Grantor hereby grants and conveys to the Grantee, its contractors, agents and employees, a non-exclusive, perpetual, irrevocable easement to construct, operate and maintain certain drainage improvements, including but not limited the right, privilege and authority, from time to time, to enter upon, construct, extend, inspect, operate, replace, relocate, repair, and perpetually maintain upon, over, along, across, through, and under the Easement Area, various drains, embankments, ditches, culverts, pipes and any other improvements used or useful in the collection, conveyance, testing and drainage of surface and storm water runoff (herein, the “*Drainage Improvements*”), together with the right of ingress, egress, and access to and from and across and upon lands of Grantor as may be necessary or convenient for the purposes connected therewith. Together with the right, from time to time, to install any Drainage Improvements in the Easement Area, with the right from time to time, to trim, cut or remove trees, underbrush and other obstructions that are over, under, or through the Easement Area and impact the Drainage Improvements; provided however, any damage to the Property (other than that caused by trimming, cutting or removing) caused by the Grantee in maintaining or repairing said Drainage Improvements shall be borne by Grantee. The Grantor further grants to the Grantee, a perpetual, non-exclusive easement for the purpose of draining surface and storm water runoff through the Easement Area, and the Drainage Improvements built pursuant to this

grant of easement. The Grantee and its contractors, agents and employees (collectively and together with Grantee, the “*Grantee Parties*”) shall operate upon and within the Easement Area in a safe and workmanlike manner, in accordance with generally accepted construction practices in the State of South Carolina, in accordance with all applicable federal, State and local laws and regulations, and in compliance with all requisite permits. Additionally, in no event shall any of the Grantee Parties materially interfere with vehicular and/or pedestrian access to and from the Property and the public thoroughfare abutting thereto and/or the business operations being conducted on the Property or otherwise utilize any Property outside of the Easement Area except as otherwise permitted hereunder or as reasonably necessary to achieve the purposes of this easement.

4. **Town Council Approval.** Notwithstanding anything in this Easement Agreement to the contrary, pursuant to Section 5-7-260 of the South Carolina Code of Laws, 1976, as amended, and Sections 2-13 and 2-19 of the Code of Ordinances for the Town of Bluffton, South Carolina, the Grantor acknowledges and agrees that the Town, as a South Carolina municipal corporation, may only acquire interests in real property through the adoption of a written resolution of the Bluffton Town Council at a duly held public meeting of Town Council.

5. **Modifications.** The terms of this Agreement may not be changed, modified, waived, discharged or terminated orally, but only by an instrument in writing, signed by each party.

6. **Construction of Agreement.** Each party acknowledges that it has participated in the negotiation and drafting of this Agreement. No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party hereto or thereto by any court by reason of such party having or being deemed to have structured, dictated, or drafted any provision in the Agreement.

7. **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 “Grantor” and “Grantee” shall include their heirs, executors, administrators, successors, and assigns, as the case may be.

8. **Merger Provision.** This Agreement contains the entire agreement between the parties with respect to the issues set forth herein. All other discussions, proposals, agreements or offers are merged into this Agreement.

9. **Continuation of Other Easements.** Nothing within this Agreement shall be deemed to nor shall operate to extinguish any other easements held or possessed by the Grantee, either individually or collectively, on the Property.

10. **Acknowledgment.** The Town acknowledges and agrees that no new boundary or property lines are created by the Easement and therefore the setbacks and buffers, if any, required by applicable municipal zoning and development ordinances, including the Town’s Unified Development Ordinance shall continue to extend through the Easement Area to the boundary line of the Property and adjacent right-of-ways. Further, that the grant of this easement and the Drainage Improvements in the Easement Area shall not serve to reduce any density available or existing on the Property prior to the date of this Agreement.

11. **Settlement and Release.** It is the express intent of Grantor, individually and collectively and on behalf of its successors, agents and assigns, to fully, completely and forever release the Town from any and all claims for damages related to the Town’s acquisition of the easements within the Easement Area and any and all claims related to takings, trespass, intrusion, or any other cause of action related thereto or to the Project.

TO HAVE AND TO HOLD, subject to the conditions and limitations set forth above, all and singular, the rights, privileges and easements aforesaid unto the Grantee, its successors and assigns, forever.

GRANTOR HEREBY COVENANTS with the Grantee that Grantor is lawfully seized and possessed of the Property or, in the alternative, holds non-exclusive easement rights for the purposes of access, utilities and the like thereto, and that Grantor has good lawful right to convey the easement conveyed herein, or any part thereof, and that Grantor will forever warrant and forever defend the title thereto against the lawful claims of Grantor's successors, heirs and assigns.

[Remainder of Page Intentionally Omitted. Signature Page(s) and Exhibit(s) to Follow.]

WITNESS Grantor's Hand and Seal this ____ day of _____, 2021.

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**

GRANTOR(S):
ABIGAIL JEAN LLC, a South Carolina limited liability
company

(Signature of First Witness)

(L.S.)

BY: _____
ITS: _____

(Signature of Second Witness or Notary Public)

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I HEREBY CERTIFY that on this ____ day of _____, 2021, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared _____, as _____ for ABIGAIL JEAN LLC, a South Carolina limited liability company, known or satisfactorily proven to be the person whose name is subscribed to the within instrument, who, on behalf of the company, acknowledged the execution thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

(Signature of Notary Public) (SEAL)

Notary Printed Name: _____
Notary Public for South Carolina
My Commission Expires: _____

WITNESS Grantee's Hand and Seal this ____ day of _____, 2021.

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**

GRANTEE:
TOWN OF BLUFFTON, a South Carolina municipal
corporation

(Signature of First Witness)

(L.S.)
Name: SCOTT MARSHALL, ICMA-CM
Title: INTERIM TOWN MANAGER

(Signature of Second Witness or Notary Public)

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I HEREBY CERTIFY that on this ____ day of _____, 2021, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared SCOTT MARSHALL as INTERIM TOWN MANAGER for the TOWN OF BLUFFTON, a South Carolina municipal corporation, known or satisfactorily proven to me to be the person whose name is subscribed to the within instrument, who, on behalf of the corporation, acknowledged the execution thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

(Signature of Notary Public) (SEAL)

Notary Printed Name: _____
Notary Public for South Carolina
My Commission Expires: _____

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EXHIBIT "A"
EASEMENT AREA DEPICTION

AFFIDAVIT OF TRUE CONSIDERATION AND CLAIM FOR EXEMPTION FROM:

STATE RECORDING FEE - S.C. CODE OF LAWS SECTION 12-24-40;
APPLICABLE COUNTY & MUNICIPAL TRANSFER FEE ORDINANCES

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PERSONALLY appeared before the undersigned, who is duly sworn, deposes and says that the following is a true and correct statement concerning the CONSIDERATION for the conveyance set forth below, and concerning any EXEMPTION claimed under the laws of the State of South Carolina, County of Beaufort.

GRANTOR: ABIGAIL JEAN LLC

GRANTEE: THE TOWN OF BLUFFTON

GRANTEE MAILING ADDRESS: 20 BRIDGE STREET, BLUFFTON, SC 29910

DATE OF CONVEYANCE: _____

TRUE CONSIDERATION: \$9,333.50

TAX DISTRICT/MAP/PARCEL NO: R610-039-000-1530-0000

STATE RECORDING FEE EXEMPTION: This transfer is exempt from the statutory Recording Fee required by the State of South Carolina in accordance with Section 12-24-40(2) transferring realty subject to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts.

TRANSFER FEE EXEMPTION (if applicable): This transfer is exempt – transferring realty to state government agency.

Signed: _____
Print Name: E. Richardson LaBruce
Capacity: FINGER, MELNICK, BROOKS & LABRUCE, P.A.
 Attorney for Town

Sworn to and subscribed before me on
this _____ day of _____, _____.

Notary Public of South Carolina
My commission expires:

ROD OFFICE USE ONLY

State Stamps Collected: \$ _____ Recording Date: _____
Transfer Fee Collected: \$ _____ Book: ___ Page: _____