

Tax Parcel No.: 335-8.14-47.00

Prepared by and Return to:
Tarabicos Grosso, LLP
100 W. Commons Blvd, Suite 415
New Castle, Delaware 19720

UTILITY EASEMENT AND MAINTENANCE AGREEMENT

This UTILITY EASEMENT AND MAINTENANCE AGREEMENT (this “Agreement”) made this ___ day of October, 2020, by and between **ANTHANEY-COLQUHON, LLC**, a Delaware limited liability company (“Grantor”), and **BOARD OF PUBLIC WORKS OF THE CITY OF LEWES**, a chartered utilities board (“BPW”) (Grantor and BPW are hereinafter referred to jointly as the “Parties”).

BACKGROUND

WHEREAS, Grantor is the fee owner of that certain lot, piece, or parcel of land with improvements thereon, situate in Lewes & Rehoboth Hundred, Sussex County and State of Delaware, being identified on the tax maps of Sussex County as Tax Parcel Number 335-8.14-47.00 (the “Anthaney-Colquhon Parcel”), as a portion of said parcel is shown on a survey entitled “Permanent Utility Easement Across the Lands of Anthaney-Colquhon LLC,” prepared by Charles M. O'Donnell, III, P.E., of George, Miles & Buhr, LLC, dated May 2020, and attached hereto as *Exhibit A* and incorporated herein by reference (the “Easement Plan”); and

WHEREAS, in connection with the construction of certain utility improvements by BPW, Grantor and BPW desire to enter into this Agreement to grant the easements defined below and to provide for the maintenance of the applicable area in a manner defined below.

AGREEMENT

NOW, THEREFORE, in consideration of the sum of Ten and NO/100 Dollars (\$10.00) and the mutual covenants, promises, stipulations and agreements contained herein, the sufficiency of which is acknowledged by the Parties, the Parties hereby agree as follows:

1. Easement. Grantor hereby grants unto BPW, its successors and assigns, a perpetual utility and access easement and right of way, in, to, upon, under, over and through the area marked on the Easement Plan as “Permanent Utility Easement,” said easement being more particularly described in *Exhibit B* (the “Easement Area”), at any time that it may see fit for the

purpose of constructing, maintaining, improving, installing, operating, inspecting, repairing, replacing, modifying, enlarging, renewing, or removing water and sanitary sewer utilities, including, but not limited to, a manhole and piping, located on the southerly right-of-way line of Savannah Road and on the described lands of the Grantor. The BPW and its contractors, agents, servants, licensees and invitees, appropriate utility providers and operators, and governmental agencies or authorities (collectively, "Permittees"), shall have, at all times, a non-exclusive and perpetual easement, right, and privilege of passage and use in, to, upon, over, and through the Easement Area.

2. No Obstructions. Grantor shall not erect, cause, or permit to be caused, the erection or growth of, or permit or suffer to remain upon the Easement Area, any growth, building, structure, or other object or improvement extending or encroaching into, upon or over such area, in such manner as to impede the use by BPW and its Permittees of the Easement Area under this Agreement. In the event that Grantor defaults in the performance of any of the obligations required to be observed or performed pursuant to the terms of this Agreement, BPW shall have the right, but not the obligation, upon the expiration of thirty (30) days' written notice to Grantor to cure such default for the account of and at the expense of Grantor, provided that Grantor has not, prior to the expiration of such 30-day notice period, cured the default or commenced to cure the default and is diligently continuing such efforts to cure the same. Notwithstanding the provisions of the preceding sentence, in the event of emergency conditions constituting a default hereunder, which will include without limitation, a default of such a nature that impairs BPW's access to the Easement Area, BPW acting in good faith shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, BPW shall have the right to enter upon the Anthaney-Colquhon Parcel (but not any buildings contained on or within the Anthaney-Colquhon Parcel) to perform any necessary work or furnish any necessary materials or services to cure the default as BPW shall deem reasonably necessary or appropriate.

3. Maintenance of Easement Area. All costs and expenses necessary for the maintenance and repair of the utility facilities (collectively, "Maintenance") shall be undertaken by BPW; provided, however, that regular lawn mowing and landscaping of the Easement Area shall be the responsibility of the Grantor. All Maintenance shall be undertaken, performed and

completed using quality materials and in a good and workmanlike manner by qualified, reputable and properly licensed and bonded contractors and subcontractors.

4. Governing Law; Severability; Amendments. This Agreement shall be governed by and construed in accordance with Delaware law. If any term or provision or any portion thereof, of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law. No amendment to this Agreement shall be valid unless such amendment is in writing and executed by the Parties.

5. Covenants Running With the Land; Enforcement. The covenants, easements, and restrictions created herein shall be deemed to be covenants and easements running with the Grantor's land, and shall be binding upon, their respective heirs, executors, administrators, legal representatives, tenants, licensees, invitees, successors, and assigns. The BPW's rights under this Agreement are personal and not appurtenant to other property besides that which is depicted on the Easement Plan but shall be binding upon BPW's successors and/or assigns. The Parties shall have the right to enforce this Agreement by bringing an appropriate action(s) in law and/or equity including, but not limited to, the right to obtain specific performance of the terms of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and sealed the day and year above first written.

WITNESS:

_____ (SEAL)
GRANTOR:
Anthaney-Colquhon, LLC

STATE OF DELAWARE)
) SS.
COUNTY OF SUSSEX)

BE IT REMEMBERED, that on this _____ day of October, 2020, personally came before me, the Subscriber, a Notary Public for the State and county aforesaid, _____, of Anthaney-Colquhon, LLC, a Delaware limited liability agreement, party to this Agreement, known to me personally to be such, and acknowledged this to be their act and deed.

GIVEN under my Hand Seal of Office, the day and year aforesaid.

Notary Public
Name: _____
My Commission Expires: _____

WITNESS:

BOARD OF PUBLIC WORKS OF THE
CITY OF LEWES

By: _____ (SEAL)
D. Preston Lee, P.E., President

STATE OF DELAWARE

)

) SS.

COUNTY OF SUSSEX

)

BE IT REMEMBERED, that on this _____ day of October, 2020, personally came before me, the Subscriber, a Notary Public for the State and county aforesaid, D. Preston Lee, P.E., President of the Board of Public Works of the City of Lewes, a Delaware municipal corporation and a political subdivision of the State of Delaware, party to this Agreement, known to me personally to be such, and acknowledged this to be his act and deed and the act and deed of the said municipal corporation.

GIVEN under my Hand Seal of Office, the day and year aforesaid.

Notary Public

Name: _____

My Commission Expires: _____

EXHIBIT B

ALL that easement on, over, under, across, along or through lands of Grantor, near the corner of Savannah Road and North Atlantic Drive adjacent to the City of Lewes, Sussex County, Delaware, tax parcel number 335-8.14-47.00, as follows:

BEGINNING at a point at the corner of the southerly right-of-way line of Savannah Road and the easterly property line of Anthaney-Colquhon, LLC, the westerly property line of Henlopen Gardens Homeowners Association, Inc and the westerly property line of the City of Lewes (N. Atlantic Drive right-of-way), the following courses and distances:

1. Along said westerly property line of Henlopen Gardens Homeowners Association, Inc. South 50 degrees 33 minutes 50 seconds East, 8.00 feet to a point,
2. Thence turning and leaving said property line South 39 degrees 26 minutes 10 seconds West, 12.50 feet to a point,
3. Thence turning and running North 50 degrees 33 minutes 50 seconds West, 8.00 feet to a point on the southerly right-of-way line of Savannah Road,
4. Thence turning and running along the said right-of-way line North 39 degrees 26 minutes 10 seconds East, 12.50 feet to the point of beginning.

Containing an area of 100 square feet. Being the same land shown on a drawing prepared by George, Miles & Buhr, LLC entitled "Permanent Utility Easement on the lands of Anthaney-Colquhon LLC" dated May 2020.