

WHEREAS, Atlantic took exceptions to each of the nine conditions imposed by the Planning Commission and on October 19, 2018, filed a Notice of Appeal in the Charleston County Court of Common Pleas against the Town and its Planning Commission pursuant to S.C. Code Ann. § 6-29-1150(D)(1); and

WHEREAS, On January 24, 2019, at a Pre-Litigation Mediation pursuant to S.C. Code Ann. § 6-29-1155, the parties hereto entered into a Memorandum of Understanding which sets forth in general terms the resolution of the parties with respect to Atlantic's objection to the conditions imposed by the Planning Commission; and

WHEREAS, this Settlement Agreement ("Agreement") sets forth the terms and conditions on which the Town will grant and Atlantic will accept an encroachment permit.

NOW THEREFORE, in consideration of the foregoing premises and the mutual covenants and conditions contained herein, the signatories to this Agreement agree as follows:

1. Within thirty (30) days from the date of the execution hereof, and at the sole cost and expense of Atlantic, the Town shall retain the Reveer Group, or such other consultant (under the direct charge of and sealed by a registered South Carolina Professional Engineer with expertise in traffic engineering) as shall be agreed to by the parties (the "Consultant"), to prepare a traffic impact analysis ("TIA") which shall quantify both existing traffic patterns and levels on SIR, together with the anticipated amount of traffic which will enter and leave the Construction Site ("Construction Traffic") during the construction of the SLF. The TIA shall identify the number and type of vehicles for each phase of the construction process. Atlantic will reimburse the Town for its cost and expense of retaining the Consultant within thirty (30) days of the Town's submission of an invoice therefore.

Based on the TIA, the Consultant shall prepare a Temporary Traffic Control Plan ("TTCP") which shall evaluate the potential impacts of the construction of the SLF on the traffic conditions on SIR and identify the means (in addition to those set forth herein) to mitigate such impacts and prescribe such measures as it deems reasonably necessary for the safety of users of the Bicycle Path (as that term is defined herein). The study area of the TTCP shall include both the intersection of SIR and the Encroachment, and the Kiawah-Seabrook Circle. The analysis should include a level of service ("LOS") (as that term is defined in the Transportation Research Board's Highway Capacity Manual (HCM 2000), Fourth Edition) determination for all approaches and traffic movements. The TTCP shall consider daily and seasonal variations in the amount of traffic on SIR. The TTCP shall specify those measures which BB, Atlantic and the Developer shall be required to take to ensure that during the construction period: (i) traffic on SIR traveling from the Kiawah-Seabrook Circle in the direction of the Seabrook Island Property Owners Association gate is not impaired by Construction Traffic in any significant manner, (ii) Construction Traffic exiting the Construction Site through the Encroachment

does not cause the AM or PM Peak Hour delay at any approach to the Kiawah-Seabrook Circle (as identified in Table 2 of the Thomas & Hutton Traffic Impact Analysis signed on August 23, 2018) to increase by more than two (2) seconds, and (iii) traffic moving on SIR in either direction, including traffic moving around the Kiawah-Seabrook Circle, is able to do so in a safe and efficient manner. The TTCP shall also determine acceptable gap acceptance times (which shall be expressed in number of feet) such that traffic on SIR traveling in the direction of the Kiawah-Seabrook Circle will not have to slow down to accommodate Construction Traffic which is turning right out of or left into the Encroachment and which must yield to oncoming traffic. The gap acceptance time shall be based on the largest vehicle type anticipated to be used in any phase of the construction process as identified in the TIA. The TTCP shall identify those measures as the Consultant may deem necessary or appropriate which will be necessary for BB to implement to address the safety of pedestrian and bicycle users of the bicycle and pedestrian path (“Bicycle Path”).¹

- A. BB shall provide the Consultant with its best estimate of the number and type of vehicles which will be used in the construction of the SLF by construction phase and such other information and documentation as the Consultant shall deem reasonably necessary for it to complete the TIA and TTCP in a prompt and professional manner.
- B. The TTCP shall be completed, and to the extent applicable, the traffic control measures identified therein implemented prior to the use of the Easement for Construction Traffic.
- C. Atlantic, the Developer and BB shall each, as identified herein, implement and adhere to the stipulations contained in this Agreement and in the TTCP.
- D. If the Consultant concludes in the TTCP that it will be necessary to place a limit on the number of construction vehicles which may enter the Construction Site through the Encroachment on a daily basis in order to ensure that the LOS at the intersection of the Encroachment and SIR is not significantly less than the current LOS , then BB shall limit the number of vehicles entering the Construction Site on a daily basis accordingly.
- E. The Consultant shall consider whether it is necessary to include in the TTCP a requirement for one or more flag persons on SIR, in addition to those provided for elsewhere herein.
- F. The Consultant shall, at Atlantic’s cost and expense, periodically review the effectiveness of the TTCP together with any complaints or concerns the Town

¹ When used in this Agreement, unless stated to the contrary, (“Bicycle Path”) shall refer to the existing or redesigned path.

may have received from its residents regarding their interaction with Construction Traffic. Based upon such review, and after consultation with both the Town and Atlantic, BB, or the Developer as appropriate, the Consultant shall make such modifications to the TTCP as it shall in its sole and professional judgment deem appropriate. Such modifications shall be implemented as promptly as is reasonably practicable by the Developer and BB as may be required of each.

2. BB shall appoint Tim Spano as the traffic supervisor (“Traffic Supervisor”) for the SLF construction project. The Traffic Supervisor’s responsibilities shall include:
 - A. Implementing all of the stipulations imposed upon the Developer and BB as set forth in this Agreement and in the TTCP.
 - B. Serving as liaison to the Town with respect to all Construction Traffic issues, and in that regard shall be available both for regular meetings in person with the Town and with the Town by telephone on a 24 / 7 basis.
 - C. With the Town Administrator prior to the start of construction, meet with the Charleston County Sheriff’s Office, St. Johns Fire Department and Charleston County EMS to develop contingency plans acceptable to each of these agencies to ensure that during the construction of the SLF, each agency will have uninterrupted access to and exit from the Town in the event of an emergency.
 - D. No later than noon on each Friday afternoon during the construction period, providing the Town with written updates on the scheduled work, and scheduled deliveries to the SLF for the following week and any potential SIR traffic impacts thereof.
 - E. As soon as reasonably practical, advising the Town of any incident or condition which has occurred on SIR or Bicycle Path in the vicinity of the Encroachment that may impair vehicle traffic on SIR or bicycle or pedestrian traffic using the Bicycle Path.
 - F. Assisting the Town in the preparation of periodic public information statements.

Traffic Supervisor shall at all time remain fully responsible for the discharge of the requirement of subparagraphs A through F, of this paragraph 2. Mr. Spano may temporarily delegate such responsibility to other BB supervisory personnel in those instances when Mr. Spano is not physically present on the project. Prior to such delegation of responsibility, Mr. Spano shall ensure that the BB supervisory personnel to whom the responsibility has been delegated is both fully informed of the provisions herein and the TTCP and fully capable of implementing its specific requirements. Prior to use of the Encroachment for Construction Traffic, Mr. Spano shall provide the Town Administrator with the names and cell phone numbers of no more than three (3)

supervisory personnel whom BB designates as delegates of Mr. Spano for purposes of his role as Traffic Supervisor, all of whom would have the qualifications required by the Agreement who will perform the role in those instances where Mr. Spano is not on site. Mr. Spano will identify such supervisory personnel in order as his primary, secondary, and tertiary designates, and will update the names and cell phone numbers of BB's delegates from time to time as required. If BB replaces Mr. Spano (or any successor to Mr. Spano) for any reason prior to the issuance of a Certificate of Occupancy for the SLF, it shall, within five (5) business days, appoint a successor Traffic Supervisor who shall be certified as a traffic supervisor by the American Traffic Safety Services Association (“ATSSA”) or other organization recognized by the SCDOT as providers of work zone traffic control training. The name and 24/7 contact information of the successor Traffic Supervisor shall be promptly provided to the Town by BB.

3. Prior to the use of the Encroachment for Construction Traffic, BB will construct all off site road improvements on SIR leading to the SLF (“Improvement to SIR”). The Improvement to SIR shall be constructed as described in Atlantic’s revised application and Final Plans² received by the Town on August 24, 2018 and as otherwise required by applicable statutes, regulations and this Agreement. Work on the Improvement to SIR will be completed within ninety (90) days after BB has first mobilized to perform the Improvement to SIR. BB shall notify the Town as soon as reasonably practicable that it has mobilized to perform the Improvement to SIR.
 - A. All work done on the Improvement to SIR shall be performed during non-peak hours on SIR as identified in the Traffic Impact Analysis prepared by Thomas & Hutton as revised in August 23, 2018 (“Non-Peak Hours”).
 - B. All work on the Improvement to SIR shall be coordinated in advance with the Town.
 - C. At all times during the work on the Improvement to SIR, BB shall station a dedicated ATSSA certified flag person at the Improvement to SIR to control inbound traffic from Betsy Kerrison Parkway, and as required outbound SIR traffic heading toward the Kiawah Seabrook Circle. Should it become necessary during the work on the Improvement to SIR to close one lane, the appropriate number of flag persons shall be stationed so as to be in a position to effectively monitor and control oncoming traffic.

² “Final Plans” shall mean the plans prepared by Thomas & Hutton dated August 7, 2018 and reviewed and conditionally approved by the Planning Commission on 10/3/2018 (Ex 1 – General Layout and Ex 2 – Staking and Signage Plan).

- D. Following completion of the construction of the Improvement to SIR, BB will repair, at its sole cost and expense, any damage to SIR caused by the work thereon and identified by the Town.
4. In addition to any of the conditions or stipulations which may be identified in the TTCP, Atlantic, the Developer and BB shall each, as may be applicable to them, implement and adhere to the following traffic control measures with respect to Construction Traffic entering to and exiting from the Construction Site through the Encroachment:
- A. Access of Construction Traffic to the Construction Site by means of the Encroachment shall be limited to vehicles with three (3) or more axles which, for this purpose, shall include two axle vehicles towing a trailer. All two-axle vehicles must enter the Construction Site through Freshfields Village. All suppliers of materials to the Construction Site will be advised by BB in advance of any delivery and in writing of all of the requirements in this Paragraph 4.
- B. In order to appropriately and uniformly spread the arrival times of Construction Traffic using the Encroachment, vehicles authorized by Paragraph 4A to enter the Encroachment will arrive at the Encroachment at intervals no closer than ten (10) minutes apart. As the traffic patterns of the various roads leading to the Construction Site are difficult to predict, the Town agrees it is appropriate to provide arriving Construction Traffic a degree of leeway. Accordingly, infrequent (which for this purpose shall mean five percent (5%) of the Construction Traffic utilizing the Encroachment as contemplated by Paragraphs 4A and 4B in any Monday through Saturday period) deviations of no more than two (2) minutes from the prescribed ten (10) minute interval shall not be considered violations for purposes of this Paragraph. BB will at all relevant times be in telephone communication with truck dispatchers to coordinate the arrival time limitation set forth in this Paragraph 4B. Suppliers must be instructed to contact the Traffic Supervisor in advance of arrival for instructions to ensure appropriate arrival times. Should there be a delay in delivery, the oncoming supplier should be directed by the Traffic Supervisor to delay its anticipated arrival time. Violation of the arrival time limitation may cause vehicles to back-up or “stack” either entering or exiting the Encroachment. BB shall undertake reasonable efforts to avoid a “stacking” of vehicles entering or exiting the Encroachment which shall include setting aside an area (i) within the Construction Site where vehicles exiting the Encroachment and (ii) use of an area north of the Freshfield’s traffic circle where vehicles entering the Encroachment may temporarily park if BB were to secure such a location.
- C. BB shall employ appropriate traffic control procedures to implement the GAP acceptance times identified in the TTCP for Construction Traffic turning left into or right out of the Construction Site through the Encroachment. Such traffic

control procedures shall include construction of appropriate visual indications (“GAP Markers”) at the distances indicated in the TTCP, so that drivers entering or exiting the Construction Site are able to determine when it is both safe and appropriate for them to do so such that oncoming SIR traffic will not have to slow down. The GAP Markers shall be constructed so that they are clearly visible to drivers operating vehicles entering and exiting the Construction Site through the Encroachment. Exiting traffic must come to a complete stop at the intersection of SIR and the Encroachment and yield to oncoming SIR traffic. Construction Traffic may not enter SIR when SIR traffic traveling in the direction of the Kiawah-Seabrook Circle has passed the GAP Marker. All suppliers and drivers delivering materials to the Construction Site shall be periodically reminded of the location of and requirement to adhere to the GAP Markers. The specific location, design and color of the GAP Markers must be in accordance with the recommendations in the TTCP.

- D. BB’s normal work week shall be Monday through Saturday. The Town understands that in unusual and limited circumstances deliveries may be required to be made on Saturdays. Unless requested by BB and agreed to in advance and in writing by the Town (which shall only be agreed under unusual and limited circumstances), no deliveries shall be permitted to enter or exit the Construction Site through the Encroachment after 8:00 AM on Saturdays or at any time on Sundays.
- E. Other than for (i) construction of the proposed Improvement to SIR, (ii) concrete pours, (iii) Special Need work (as defined below), and (iv) any other work as may be approved by the Town in advanced in writing, no Construction Traffic shall be permitted to use the Encroachment during periods of darkness, which shall be defined for this purpose as any time from one-half hour after sunset to one half hour prior to sunrise. The term “Special Need” shall be defined as that work which is reasonably and necessarily required to address immediate fire or electrical hazards, plumbing leaks or other conditions requiring immediate attention, the delay of which would cause risk to life or health or significant damage to property. During all of the work described in (i) through (iv) of this subparagraph E, ATSSA certified flag-persons shall be appropriately stationed, and traffic control measures shall be appropriately implemented to maximize the safety of SIR vehicular traffic and pedestrians and bicyclists using the Bike Path.
- F. All concrete pours will be coordinated by the Traffic Supervisor at least twenty-four (24) hours in advance with the Town and will take place during Non-Peak Hours. As stated in subparagraph E, these concrete pours may occur during periods of darkness.

- G. Other than for Special Need work, Construction Traffic shall not be permitted to utilize the Encroachment on any Town Holiday. To the extent reasonably practical, all Special Need work shall be coordinated by the Traffic Supervisor with the Town in advance. Where any recognized Town holiday falls on either a Monday or Friday, except for Special Need work, Construction Traffic shall not be permitted to enter the Construction Site through the Encroachment on the holiday itself, and in the case of holidays falling on a Monday, on the immediately preceding Friday, and in the case of holidays falling on a Friday, the immediately following Monday.
- H. On any other day where anticipated traffic volumes on SIR are of a particular concern to the Town (e.g., the Bohicket Marina Bill Fish Tournament), the Town shall provide reasonable advance notice to BB in order that accommodations therefore may be made. Such accommodations shall be timely communicated to the Town Administrator.
- I. Other than for Special Need work, no Construction Traffic shall be permitted on SIR on any day when the Town Administrator has determined, and so notifies BB, that the surface thereof has become hazardous on account of weather conditions or when the Governor has declared a state of emergency for areas including either Kiawah Island or Seabrook Island.
- J. In addition to adherence to all of the stipulations set forth in the TTCP and this Agreement, entrance to and exit from the Construction Site through the Encroachment by vehicles required to carry Hazardous Material Administration hazardous material placards shall require 24 hours advanced notice to and coordination with the Town.
- K. Other than construction vehicles and equipment necessary for construction of the Improvement to SIR, no parking shall be allowed on SIR or the shoulder thereof.
- L. All Construction Traffic signs will conform to the requirements of the South Carolina Department of Transportation Procedures and Guidelines for Work Zone Traffic Control Design and shall conform to the recommendations in the TTCP.
- M. BB shall, on a basis no less frequently than daily, keep SIR in the immediate vicinity of the Encroachment clean of dirt and debris from the Construction Site and remove any dirt and debris from SIR which has been deposited by vehicles entering or exiting the Construction Site through the Encroachment.
- N. It is anticipated that the Professional Golf Association Championship will be played at Kiawah Island's Ocean Course in late May of 2021. It is likewise anticipated that the Kiawah Island Golf Resort will request an encroachment permit from the Town to allow for parking for the tournament. If the Town grants

such encroachment permit, the Encroachment shall not be used for Construction Traffic during the week (Monday through Sunday) the championship is being played.

5. It is the intent of the Developer to relocate and redesign that portion of the Bicycle Path which is the subject of the Grant of Non-Exclusive Easement between Atlantic and the Town dated February 28, 2008 ("Easement").
 - A. BB shall ensure that the existing Bicycle Path in the immediate vicinity of the Encroachment remains functional and operational until the redesigned and relocated Bicycle Path has been constructed and is available for use by the general public.
 - B. At all times when Construction Traffic is either present or anticipated on SIR, BB shall station two (2) flag-persons (each ATSSA certified), one (1) on either side of the Encroachment where the Encroachment crosses the Bicycle Path to ensure that pedestrian and bicycle traffic is protected. The flag persons shall be advised on a periodic basis that the Bicycle Path is frequently used by vulnerable users such as children, the elderly, handicapped individuals, and visitors and that they are to exercise caution accordingly.
 - C. BB will install a warning surface (e.g., rumble strips) on the Bicycle Path in order to alert the users thereof to the possibility of approaching traffic.
 - D. BB shall maintain the Bicycle Path in the immediate vicinity of the Encroachment free and clear of dirt, loose gravel and construction debris.
 - E. BB shall at all times maintain the Bicycle Path in the immediate vicinity of the Encroachment in good condition and repair. Any condition which may present an impediment or potential safety hazard to users of the Bicycle Path shall be immediately repaired by BB.

6. At the sole cost and expense of Atlantic, the Town will select a civil engineering firm to conduct pre and post construction analysis of SIR to determine the extent, if any, of damage to SIR from the Kiawah-Seabrook Circle to the Encroachment caused as consequence of the Construction Traffic (the "Damage"). For this purpose, the term Damage shall be interpreted in its broadest sense and shall include, but not be limited to, damage to the road's surface, subsurface and drainage facilities. The post-construction analysis, if any, shall be initiated within fifteen (15) business days after BB notifies the Town and the Developer under the construction contract that the SLF is substantially complete and shall be completed as promptly as is reasonably practicable. Copies of the analysis shall be provided to BB, Atlantic and the Developer. Atlantic will pay the cost

and expense of the civil engineering firm within thirty (30) days of being invoiced by the Town therefore.

7. Atlantic and / or the Developer will be responsible for any Damage to SIR caused as a consequence of the Construction Traffic. For this purpose, any degradation in the condition of the road identified in the pre and post construction analysis shall be presumed to have resulted as a consequence of the Construction Traffic, unless Atlantic or Developer demonstrates to the satisfaction of the [insert name of independent engineer or other qualified expert] that the cause of the Damage was not the consequence of the Construction Traffic. Atlantic will post financial security to ensure the repair of any Damage. Such financial security shall be in the form of a surety bond, letter of credit (issued by a commercial bank with a Standard & Poor's credit rating of AA or better, drawable at a bank office in Charleston, South Carolina and otherwise on terms and conditions reasonably acceptable to the Town) or cash bond. The financial security shall be in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00).

8. BB shall be responsible for any violation of the TTCP, any of the terms of this Agreement or any applicable Town ordinance committed by either it, its contractors, subcontractors, independent contractors or suppliers as the case may be. The Town shall provide Atlantic, the Developer and BB (each hereinafter sometimes referred to as a "Notified Party", or collectively the "Notified Parties") with written notice of any violation of the terms hereof by any of them of the TTCP, applicable Town ordinances, or any provision of this Agreement. The first violation of any of subparagraphs 4(A), 4(B), 4(C), 4(E), 4(F), 4(J), 4(K) or 5(D) hereof shall not result in a fine, but a warning notice only. The Town shall send BB a notice of violation for the second and all subsequent violations of each of Subparagraphs 4(A), 4(B), 4(C), 4(E), 4(F), 4(J), 4(K) or 5(D) hereof, all violations of any of the other terms hereof, the TTCP or the applicable Town ordinance(s) shall be punished by a fine of up to Five Hundred Dollars (\$500.00) in the discretion of the Town judge as provided for in Section 1-7 of the Town's ordinance. Each such violation shall be considered a separate offense and other than the Town's right to revoke the Encroachment as set forth in the following Subparagraph 8(A) below, the Town shall have no other penalty or remedy for any such violation. The written notice of violation referenced in this Paragraph 8 shall include a statement that the Notified Party may contest the violation and request a hearing (which shall be conducted following the usual and customary procedures and rules of the Town's municipal court for conducting the court's business) at the next regularly scheduled session of the Municipal Court of the Town before the judge of the Municipal Court by filing a written notices thereof with the Town Administrator copied to the Town within thirty (30) days following its receipt of the written notice of violation. In the event of a decision by the municipal judge adverse to a Notified Party, such Notified Party shall have the right to appeal from the sentence or judgment of the municipal court to the Charleston County court of common pleas. Notice of the intention to appeal, setting forth the grounds for

appeal, shall be given in writing and served on the municipal judge or the municipal court clerk within ten (10) days after the judgment is rendered, or the appeal shall be deemed waived. The procedures set forth in Chapter 10 of the Town's municipal code shall apply to any such appeal.

(A) Three (3) violations within any three-month period of the same provision of either the TTCP, this Agreement, or any Town ordinance; (B) twelve (12) violations of the TTCP or the terms hereof in any twelve (12) consecutive month period; (C) any violation of the TTCP, this Agreement or the Town ordinance which solely results in personal injury or property damage of other than that of a de minimis nature or; (D) failure to pay an uncontested fine or fine levied by the Municipal Court of the Town on a timely basis may, in the sole discretion of the Town, result in revocation of the Encroachment; provided, however, if a Notified Party has appealed any adverse decision of the judge of the Municipal Court finding that a Notified Party has violated any provision of this Agreement, the TTCP or applicable Town Ordinance, then for purposes of this Section 8(A), a violation shall be deemed not to have occurred until the Notified Party has exhausted its right of appeal with respect thereto and the decision of the judge of the Municipal Court has been upheld.

For purposes of this Agreement, Atlantic, the Developer and BB each consents to be subject to the jurisdiction of the Town and acknowledges that the provisions of this Paragraph 8 shall be incorporated into an ordinance adopted by the Town.

9. In order to provide the Town with a capability to monitor the parties' compliance with the TTCP and the terms of this Agreement, Atlantic shall reimburse the Town for its purchase of equipment to monitor traffic entering and leaving the construction site through the Encroachment. Such equipment shall be capable of recording both the number of vehicles utilizing the Encroachment and the date and arrival times thereof. Atlantic shall also reimburse the Town for its purchase of a "door bell" type camera capable of recording discernable images of the arrival and departure of Construction Traffic entering and exiting the Construction Site through the Encroachment.
10. Conditions 2-9 as set forth in the Notice of Conditional Approval dated October 5, 2018 ("Notice") shall be revised and agreed to as follows:
 - A. Condition 2 of the Notice shall be revised to read as follows: "Atlantic, the Developer and their respective successors and assigns each agree to comply with all of the provisions, terms, conditions and restrictions set forth in Atlantic's July 16, 2018 Application for Encroachment Permit and the terms of this Settlement Agreement and each agree to inform their members, agents, contractors, sub-contractors as well as any person or entity utilizing the Encroachment of Such terms, conditions and restriction and the need to comply therewith. Copies of

such terms and restrictions shall be provided by Atlantic to BB and to all other persons or entities utilizing this Encroachment.”

- B. Condition 3 of the Notice shall be revised to read as follows: “Atlantic and the Developer, their assigns and successors, warrant that they will pay any and all expenses incurred by the Town as a result of expenses incurred or damages suffered by the Town and/or its residents as a result of increased storm water runoff from the SLF. Final storm water plans for the improvement within the SIR right of way shall be subject to review and approval by the Town prior to the commencement of construction activities, such approval not to be unreasonably withheld if Atlantic’s NPDES permit is reviewed and approved by SCDHEC.”
- C. Condition 4 of the Notice shall be revised to read as follows: “Atlantic, the Developer and their successors or assigns, assumes full responsibility for any accidents to persons or damage to property, including the street or road, that are caused or alleged to be caused by the construction, maintenance, use, moving, or removing of the Encroachment contemplated herein, and each agrees to indemnify and defend (with attorneys reasonably acceptable to the Town) the Town for any liability incurred or injury or damage sustained by it, together with reasonable attorneys’ fees.”
- D. Condition 5 of the Notice shall be revised to read as follows: “The Grant of Non-Exclusive Easement dated February 28, 2008 wherein Atlantic granted the Town, a “Bike and Pedestrian Easement” is hereby amended by deleting therefrom paragraph 3 in its entirety, and renumbering the following paragraphs accordingly. All other terms and conditions of such grant of easement are hereby ratified and confirmed. Nothing in this condition or the request therefore, shall be construed as a waiver of any of the immunities granted to the Town under the South Carolina Tort Claims Act. Prior to the construction of the relocated Bicycle Path, Atlantic shall grant and the Town shall accept a grant of non-exclusive easement for the relocated Bicycle Path on the same terms and conditions as the previously granted easement as modified herein.”
- E. Condition 6 of the Notice shall be revised to read as follows: “Promptly following the execution hereof, the parties will meet with John Tarkaney to get his recommendation regarding the Developer’s mitigation of the trees required to be removed to construct the entrance to the SLF. Prior to the commencement of any work on the Improvement to SIR, the Town and the Developer shall agree upon and execute a mitigation plan for the trees that shall be removed to construct the new entrance. All new trees provided for in the mitigation plan shall be planted before Atlantic or BRP Kiawah, LLC receive a certificate of occupancy from the Town of Kiawah.” Any cost or expense associated with Mr. Tarkaney’s services shall be borne by Atlantic.

- F. Condition 7 of the Notice shall be revised to read as follows: “Applicant and the Developer, their members, successors and assigns, warrant that during the construction phase they will keep the surface for the portions of the Bicycle Path in the vicinity of the Encroachment in good condition and repair. Once the SLF is operational, the Developer, its successors and assigns shall be responsible for the maintenance and repair of the Bicycle Path at the intersection of the Encroachment and the Bicycle Path.”
- G. Condition 8 of the Notice is revised to read as follows: “The Developer and Atlantic shall select and locate permanent vehicular and bicycle traffic signage associated with the SIR entrance to the SLF at the sole expense of Atlantic and the Developer. The design and color of such signage shall, to the extent not inconsistent with applicable law, rule or regulation, comply with the sign ordinances of the Town. The size and color of all permanent signs posted on SIR and in the immediate vicinity of the Bicycle Path shall be consistent with other signs currently posted by the Town in these areas.” The location, materials and design of all temporary and permanent signs posted on SIR and the Bicycle Path shall conform to the recommendations in the TTCP. BB will install such temporary traffic control signs on SIR and the Bicycle Path as may be required by the South Carolina Procedures and Guidelines for Work Zone Traffic Control Design and as recommended in the TTCP. The size and color of all permanent signs posted on SIR and the Bicycle Path shall be consistent with other signs posted by the Town in these areas.
- H. Condition 9 of the Notice is deleted in its entirety, and in lieu thereof, Atlantic and the Developer, for themselves, their respective members, successors and assigns each confirm the applicability of condition 2 of the Atlantic application dated July 16, 2018.³
11. This Agreement shall be construed as if each party played an equal role in its drafting and no preference or rule of construction shall be held against any party as the drafting party of the Agreement. All parties shall be responsible for their own costs and attorneys’ fees in settlement of case number: 2018-CP-10-05041.
12. This Agreement was brought before Town Council for the Town of Seabrook Island on _____ for approval pursuant to S.C. Code Ann. § 6-29-1155. By vote of _____, Town Council approved this Settlement Agreement and authorized the Mayor to execute it.
13. In accordance with S.C. Code Ann. § 6-29-1155(G), this Agreement will be reviewed and approved by a Circuit Court Judge for the Ninth Judicial Circuit, and found to have a

³ A copy of this condition is attached and incorporated by reference as Exhibit A.

rational basis in accordance with the standards of S.C. Code Ann. § 6-29-310, et seq before it shall be binding on the signatories.

- 14. The Applicant, Atlantic Partners II LLC, the general contractor, Balfour Beatty Construction, LLC (“BB”) and the Developer, BRP Kiawah, LLC, as well as the Town, enter into this Agreement freely and voluntarily. In that each of the above-referenced parties has obligations and responsibilities under this Agreement, each shall be a signatory to and bound by its terms and conditions that specifically apply to them as well as the order of Circuit Court. Each will enter into a consent motion seeking the issuance of an order approving this Agreement and their respective obligations hereunder.
- 15. The rights and obligations of the parties as set forth in Paragraph 8, and any right or obligation of the parties set forth in this Agreement which either by its express terms or nature and context is intended to survive termination or expiration of this Agreement and construction of the proposed SLF, will survive any such termination or expiration and construction.
- 16. All required notices shall be provided in writing sent via US Mail and email as follow:

Town of Seabrook Island:

Town Administrator Joseph Cronin (jcronin@townofseabrookisland.org)

Mailing Address:

2001 Seabrook Island Road
Seabrook Island, SC 29455

With a courtesy copy via US Mail and email

Stephen L. Brown (sbrown@ycrlaw.com)
Attorney for the Town of Seabrook Island

Mailing Address:

25 Calhoun Street, Suite 400
Charleston, SC 29401

Atlantic Partners II LLC:

Balfour Beatty Construction, LLC:

BRP Kiawah, LLC

A copy of this Agreement shall be provided to the Town of Kiawah Island’s Administrator and Mayor upon its final approval.

WHEREFORE, the parties have agreed to the terms and conditions set forth above, have acknowledged each person executing this Settlement Agreement has full authority to do so and have set their signatures on the date(s) noted below.

WITNESS

Town of Seabrook Island
By: Ronald J. Ciancio
Its: Mayor
Date: _____

WITNESS

Balfour Beatty Construction, LLC
By: _____
Its: _____
Date: _____

WITNESS

Atlantic Partners II, LLC
By: _____
Its: _____
Date: _____

WITNESS

BRP Kiawah, LLC
By: _____

Its: _____
Date: _____