

## MEMORANDUM

Date: June 11, 2013

**TO:** Town Commission

**FROM:** Dave Bullock, Town Manager

**SUBJECT:** Consideration of Easement Agreement Regarding Seawall Construction and Maintenance on Town's Right-of-Way Adjacent to 6600 Bayou Hammock Road

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Michael and Michelle Morris are new owners of a property on Bayou Hammock Road that is adjacent to the Town right-of-way for Jackson Way. The property has included a residence for many years along with a seawall and dock. Part of the seawall has extended across the Jackson Way right of way fronting on the bay for many years as well. The new owners have obtained a permit to replace the seawall which was in a deteriorated condition.

This easement agreement grants the owners' permission to construct the replacement seawall and places responsibility for maintaining, repairing and replacing the seawall that extends onto the Town's right-of-way at the owners' sole cost. The owners are granted a non-exclusive easement for ingress and egress and installation, construction, use, maintenance, repair and replacement of the seawall. In order to secure the obligations of the owners the owners have also been required to place in escrow \$10,000 with the Town Attorney until such time as this agreement becomes effective.

Attachment 1 shows the general location of the property. Attachment 2 shows the seawall in more detail.

This item is placed on the June 17, 2013 Special Meeting for Commission consideration and formal action.

# Attachment 1



# Attachment 2



Prepared by and  
when recorded return to:  
Timothy M. Hughes, Esq.

# SHUMAKER

Shumaker, Loop & Kendrick, LLP

101 East Kennedy Boulevard, Suite 2800  
Tampa, Florida 33602  
Phone: (813) 229-7600

-----[SPACE ABOVE THIS LINE FOR RECORDING DATA]-----

## GRANT OF EASEMENT

**THIS GRANT OF EASEMENT** (the “**Agreement**”) is made this \_\_\_ day of June, 2013 by and between the **TOWN OF LONGBOAT KEY, FLORIDA** (the “**Grantor**”), having an address of 501 Bay Isles Road, Longboat Key, Florida 34228 and **MICHAEL L. MORRIS AND MICHELLE G. MORRIS, husband and wife** (collectively, “**Grantee**”), having an address of 1300 North State Parkway, #1201, Chicago, Illinois 60610.

## RECITALS

A. Grantee is the fee owner of that certain real property located in Manatee County, Florida and legally described on Exhibit “A”, attached hereto and incorporated herein by this reference (the “**Grantee’s Property**”).

B. Grantor is the fee owner of that certain strip of land located in Manatee County, Florida which is twenty (20) feet in width and legally described and depicted on Exhibit “B”, attached hereto and incorporated herein by this reference (the “**Grantor’s Property**”).

C. Grantee has obtained a building permit (*Permit No. 29854*) from the Grantor (the “**Permit**”) to construct a seawall on a portion of the Grantee’s Property.

D. The seawall being constructed by Grantee pursuant to the Permit (the “**Seawall**”) also contemplates that a portion of such seawall will be constructed on a portion of the Grantor’s Property, and the Grantor has agreed for the Permit to include such construction on the condition that Grantee assume the sole obligation to construct, maintain, repair and replace the Seawall, at Grantee’s sole cost and expense.

E. Grantee agrees to acknowledge that they will be responsible for constructing, maintaining, repairing and replacing the entire Seawall, at their sole cost and expense, and that the Grantor will have no responsibility for maintaining , repairing or replacing the Seawall. In order to assure that the Grantee’s Property is benefited with access to the Grantor’ Property for purpose of constructing, maintaining, repairing and replacing the portion of the Seawall located

on the Grantor's Property, Grantor and Grantee desire to establish a non-exclusive, perpetual easement for the benefit of the Grantee's Property over, under, across, and through the Grantor's Property, all upon the terms and conditions more specifically set forth in this Agreement.

NOW, THEREFORE, in consideration of the benefits to be derived by the easements set forth herein, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby covenant and agree as follows:

1. Recitals. The foregoing recitals are acknowledged to be true and correct and are hereby incorporated into this Agreement.

2. Easement. Grantor does hereby grant, dedicate, convey, and assign to Grantee, for the use and benefit of the Grantee's Property or any portion thereof, a non-exclusive, perpetual easement upon, over, under, through, and across the Grantor's Property for (i) ingress and egress, and (ii) the installation, construction, use, maintenance, repair and replacement of the Seawall. Grantee hereby acknowledges and agrees that it shall be responsible, at their sole cost and expense, to construct, repair, maintain and replace the Seawall and any other improvements installed by Grantee on the Grantor's Property. The easement rights granted pursuant to this Paragraph 2 shall be utilized in accordance with the rules and regulations of, and pursuant to all permits issued by, any applicable governmental agencies, including the Permit.

3. Indemnification. The owner of the Grantee's Property, or any portion thereof, shall, at all times, indemnify, save, defend, and keep the owner of the Grantor's Property free and harmless from any and all damage or liability occasioned by any act or omission of the owner of the Grantee's Property, or any portion thereof, or of any contractor or agent of the owner of the Grantee's Property, or any portion thereof, arising out of or in connection with such owner's or any of their contractor's or agent's exercise of the easement rights granted herein; excepting, however, that the owner of the Grantor's Property shall not be indemnified against loss or liability resulting from its own negligence or the negligence of its contractors, employees, agents, invitees or other third parties.

4. Covenants Running With the Land. All rights, privileges, benefits, and burdens created herein are covenants and agreements running with the title to the Grantor's Property and the Grantee's Property, as an appurtenance thereto, and shall be binding upon and inuring to the benefit of the owners of the Grantee's Property, or any portion thereof, and the Grantor's Property, and each of their respective successors in title.

5. Attorneys' Fees. Each party to this instrument agrees to bear its own attorneys' fees and costs in connection with all actions to be undertaken in compliance with, and enforcement of, this Agreement. Notwithstanding anything to the contrary contained in the foregoing, in the event of any dispute hereunder or of any action to interpret or enforce this Agreement, any provision hereof or any matter arising herefrom, the prevailing party shall be entitled to recover its reasonable costs, fees, and expenses, including, but not limited to, witness fees, expert fees, consultant fees, attorney (in-house and outside counsel), paralegal, and legal assistant fees, costs, and expenses and other professional fees, costs, and expenses, whether suit

be brought or not, and whether in settlement, in any declaratory action, in any bankruptcy case or proceeding, at trial or on appeal, or at any rehearing.

6. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinance, rules, and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason or to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather this Agreement shall be enforced to the greatest extent permitted by law.

7. Governing Law. This Agreement shall be construed under the laws of the State of Florida.

8. Modification. This Agreement may be modified, supplemented, or terminated only if done by a written instrument signed by the owner of the Grantor's Property and the owner of the Grantee's Property. Any modification, supplement, or termination instrument shall take effect only upon recordation of the same in the Public Records of Manatee County, Florida.

9. Cumulative Remedies.

(a) In the event of a breach of any of the covenants, obligations, promises, or requirement set forth in this Agreement, either party shall be entitled to pursue and enforce all remedies or rights specified in this Agreement or that also may otherwise be available to them at law or in equity, including, but not limited to, specific performance resulting from said breach.

(b) The failure to enforce any of the terms of this Agreement, however long continued, shall in no event be deemed a waiver of the right to enforce the same thereafter as to the same breach or violation, or as to any breach or violation occurring prior to or subsequent thereto.

(c) The pursuit of any one remedy shall not operate as an election of remedies prohibiting the pursuit of other remedies. No right, privilege, or remedy established herein is intended to be exclusive of any other right, privilege, or remedy available at law or in equity.

10. Construction. Each party hereto hereby acknowledges that all parties hereto participated equally in the drafting of this Agreement and that, accordingly, no court construing this Agreement shall construe it more stringently against one party than the other.

11. Execution and Counterparts. To facilitate execution, the parties hereto agree that this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signature of, or on behalf of, each party, or that the signatures of all persons required to bind any party, appear on each counterpart; it shall be sufficient that the signature of, or on behalf of, each party, or that the signatures of the persons required to bind any party, appear on one or more of such counterparts. All counterparts shall collectively constitute a single agreement.

[Signatures on the following pages]

ATTEST:

“GRANTOR”

**TOWN OF LONGBOAT KEY**

\_\_\_\_\_  
By: Trish Granger, Town Clerk

(Seal)

By: \_\_\_\_\_  
James L. Brown, Mayor

Approval as to Content and Form:

\_\_\_\_\_  
Maggie D. Mooney-Portale, Town Attorney

SIGNATURES WITNESSED BY:

*Sharon M Alvarez*  
[Witness Signature Above]

Sharon M Alvarez  
[Print Witness Name Above]

*Erica Silva*  
[Witness Signature Above]

Erica Silva  
[Print Witness Name Above]

"GRANTEE"

*Michael L. Morris*  
[Signature Above]

MICHAEL L. MORRIS, individually

SIGNATURES WITNESSED BY:

*Sharon M Alvarez*  
[Witness Signature Above]

Sharon M Alvarez  
[Print Witness Name Above]

*Erica Silva*  
[Witness Signature Above]

Erica Silva  
[Print Witness Name Above]

*Michelle G. Morris*  
[Signature Above]

MICHELLE G. MORRIS, individually

STATE OF IL  
COUNTY OF Cook

THE FOREGOING INSTRUMENT was acknowledged before me this 3<sup>rd</sup> day of June, 2013, by **MICHAEL L. MORRIS**, an individual. He either [CHECK ONE]        is personally known to me or ✓ has produced State of Ill. Driver License as identification.



(NOTARIAL SEAL)

*Therese R. Browne*  
[Signature Above]

NOTARY PUBLIC [Signature Above]

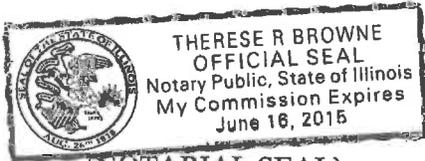
State of IL

Print Name: Therese R. Browne

My Commission Expires: 6/16/2015

STATE OF IL  
COUNTY OF Cook

THE FOREGOING INSTRUMENT was acknowledged before me this 3<sup>RD</sup> day of June, 2013,  
by **MICHELLE G. MORRIS**, an individual. She either [CHECK ONE] \_\_\_\_\_ is personally  
known to me or  has produced State Police License as identification.



(NOTARIAL SEAL)

Therese R. Browne  
NOTARY PUBLIC [Signature Above]  
State of IL  
Print Name: Therese R. Browne  
My Commission Expires: 6/16/2015

**EXHIBIT "A"**

(LEGAL DESCRIPTION OF THE GRANTEE'S PROPERTY)

**Parcel 1:**

Begin at original Government Meander corner for Sections 15 and 22, Township 35 South, Range 16 East, Manatee County, Florida; thence Easterly along the North line of said Section 22, 1536.21 feet for a point of beginning; thence Southerly and perpendicular to said Section line, 115.75 feet to a point on the Northeasterly line of a 50 foot private road; thence with an angle of 54 degrees 10' to left, run Southeasterly along said road, 217.65 feet; thence with an angle of 90 degrees 00' to left, run Northeasterly, 236.2 feet, more or less, to waters of Sarasota Bay; thence Northwesterly along the waters of said Bay, 68.3 feet, more or less, to a point on the North line of said Section 22, Township 35 South, Range 16 East; thence Westerly along said Section line, 269.4 feet, more or less, to the point of beginning.

[The Property Appraiser's Parcel Identification Number for the above described real property ("Parcel 1") is 7832100007.]

**Parcel 2:**

Lot 10, Block 6, LONGBEACH ON LONGBOAT KEY, according to the plat thereof as recorded in Plat Book 6, Page 66, of the Public Records of Manatee County, Florida;

LESS the Northerly 15 feet thereof;

TOGETHER WITH the part of vacated Bayside Drive lying East of and adjacent to the above described parcel per Resolution recorded in Deed Book 356, Page 195, of said records.

[The Property Appraiser's Parcel Identification Number for the above described real property ("Parcel 2") is 7780000001.]

EXHIBIT B, PAGE 1

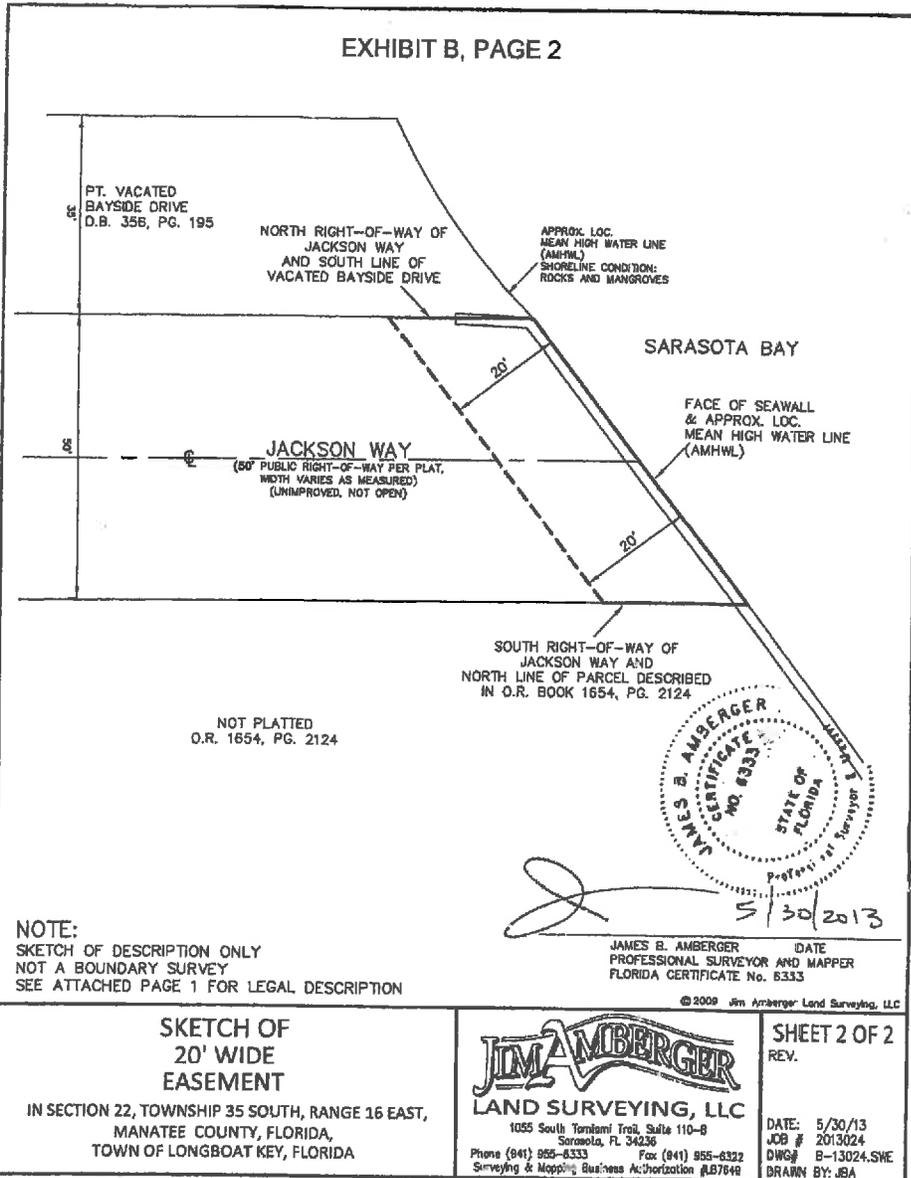
LEGAL DESCRIPTION  
EASEMENT

SITUATED IN SECTION 22, TOWNSHIP 35 SOUTH, RANGE 16 EAST, MANATEE COUNTY, FLORIDA AND BEING AN EASEMENT 20 FEET IN WIDTH OVER A PORTION OF JACKSON WAY, AN UNIMPROVED PUBLIC RIGHT-OF WAY.

SAID EASEMENT BEING BOUNDED ON THE SOUTH BY THE SOUTH LINE OF SAID JACKSON WAY, THE SAME LINE BEING THE NORTH LINE OF A PARCEL OF LAND DESCRIBED IN OFFICIAL RECORDS BOOK 1654, PAGE 2124 OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA; BOUNDED ON THE EAST BY THE FACE OF A CONCRETE SEAWALL ALONG THE APPROXIMATE MEAN HIGH WATER LINE OF SARASOTA BAY; BOUNDED ON THE NORTH BY THE NORTH LINE OF AFORESAID JACKSON WAY, THE SAME LINE BEING THE SOUTH LINE OF VACATED BAYSIDE DRIVE, AS DESCRIBED IN DEED BOOK 356, PAGE 195 OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA AND BOUNDED ON THE WEST BY A LINE 20 FEET WESTERLY OF THE FACE OF THE AFORESAID CONCRETE SEAWALL, SAID 20 FOOT DISTANCE BEING MEASURED ON A PERPENDICULAR TO SAID SEAWALL FACE.

2013024  
B-13024.SWE

EXHIBIT B, PAGE 2



NOTE:  
SKETCH OF DESCRIPTION ONLY  
NOT A BOUNDARY SURVEY  
SEE ATTACHED PAGE 1 FOR LEGAL DESCRIPTION

SKETCH OF  
20' WIDE  
EASEMENT

IN SECTION 22, TOWNSHIP 35 SOUTH, RANGE 16 EAST,  
MANATEE COUNTY, FLORIDA,  
TOWN OF LONGBOAT KEY, FLORIDA



1055 South Tamiami Trail, Suite 110-B  
Sarasota, FL 34236  
Phone (941) 955-8333 Fax (941) 955-8322  
Surveying & Mapping Business Authorization #B7642

SHEET 2 OF 2  
REV.

DATE: 5/30/13  
JOB # 2013024  
DWG# B-13024.SWE  
DRAWN BY: JBA



**End of Agenda Item**