

Tax Parcel Nos.: 335-8.00-255.00 & 335-8.00-256.00

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 **HENLOPEN GARDENS HOMEOWNERS’ ASSOCIATION, INC.**, a Delaware corporation (“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 parcels 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 Numbers 335-8.00-255.00 and 335-8.00-256.00 (the “Henlopen Gardens Parcels”), as a portion of said parcels is shown on a survey entitled “Permanent Utility Easement Across the Lands of Henlopen Gardens Homeowners Association, Inc.,” 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 hereby 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 areas marked on the Easement Plan as “Permanent Utility Easement (±17 sq. ft.)” and

“Permanent Utility Easement (±54 sq. ft.),” said easement being more particularly described in *Exhibit B* (the “Easement Areas”), 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, located 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 Areas.

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 Areas, 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 Areas 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 Areas, 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 Henlopen Gardens Parcels (but not any buildings contained on or within the Henlopen Gardens Parcels) 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 Areas. 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 Areas 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:

Henlopen Gardens Homeowners' Association, Inc

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 Henlopen Gardens Homeowners' Association, Inc., a Delaware corporation, 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.

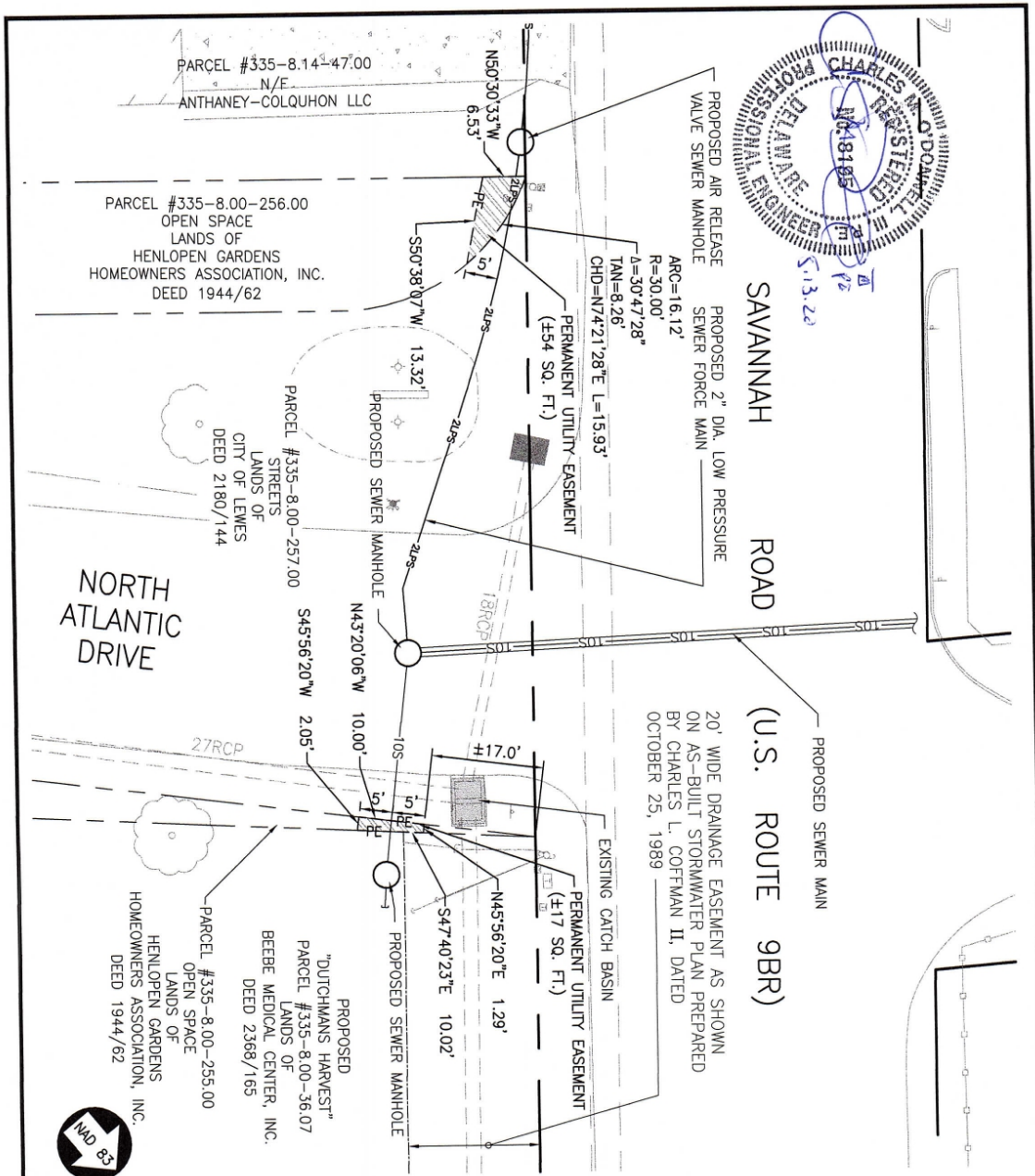
GIVEN under my Hand Seal of Office, the day and year aforesaid.

Notary Public

Name: _____

My Commission Expires: _____

EXHIBIT A



CHARLES M. O'DONNELL
REGISTERED PROFESSIONAL ENGINEER
DELAWARE
No. 18105
5.13.22

20' WIDE DRAINAGE EASEMENT AS SHOWN ON AS-BUILT STORMWATER PLAN PREPARED BY CHARLES L. COFFMAN II, DATED OCTOBER 25, 1989

<p>DRAWING NO. PP-3</p>	<p>GMB GEORGE, MILES & BUHR, LLC ARCHITECTS & ENGINEERS SALISBURY - BALTIMORE - SEAFORD www.gmbnet.com</p>	<p>PERMANENT UTILITY EASEMENTS ON THE LANDS OF HENLOPEN GARDENS HOMEOWNERS ASSOCIATION, INC. CITY OF LEWES SUSSEX COUNTY, DELAWARE</p>
<p>DATE: MAY 2020</p>	<p>SCALE: 1" = 20'</p>	
<p>JOB NO.: 180029</p>	<p>CK. BY: COD</p>	
<p>DRAWN BY: JMK</p>		

EXHIBIT B

ALL that easement situate, on, over, under, across, along or through lands of Grantor, at the corner of Savannah Road and North Atlantic Drive in the city of Lewes, Lewes & Rehoboth Hundred, Sussex County, Delaware, in Tax Map #3-35-8.00, parcel 255.00 as follows:

BEGINNING at a point approximately 17.0 feet from the corner of the southerly right of-way line of Savannah Road and the easterly property line of the City of Lewes (N. Atlantic Drive right-of-way), the following courses and distances:

1. North 45 degrees 56 minutes 20 seconds East, 1.29 feet to a point on the westerly property line of Beebe Medical Center, Inc.,
2. Thence turning and running along said property line South 47 degrees 40 minutes 23 seconds East, 10.02 feet to a point,
3. Thence leaving said property line and turning and running South 45 degrees 56 minutes 20 seconds West, 2.05 feet to a point on the easterly property line of the City of Lewes,
4. Thence turning and running along the said easterly property line North 43 degrees 20 minutes 06 seconds West, 10.00 feet to the point of beginning.

Containing an area of 17 square feet, more or less. Being the same land shown on a drawing prepared by George, Miles & Buhr, LLC entitled. "Permanent Utility Easements on the lands of Henlopen Gardens Homeowners Association, Inc." dated May 2020.

AND ALL that easement situate, on, over, under, across, along or through lands of Grantor, at the corner of Savannah Road and North Atlantic Drive in the city of Lewes, Lewes & Rehoboth Hundred, Sussex County, Delaware, in Tax Map #3-35-8.00, parcel 256.00 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, and the westerly property line of the City of Lewes (N. Atlantic Drive right-of-way), the following courses and distances:

1. With the westerly property line of the City of Lewes and a curve to the right, having a radius of 30.00 feet, an arc length of 16.12 feet, a delta angle of 30 degrees 47 minutes 28 seconds with a chord bearing of North 74 degrees 21 minutes 28 seconds East, 15.93 feet to a point,
2. Thence leaving said property line and turning and running South 50 degrees 38 minutes 07 seconds West, 13.32 feet to a point on the easterly property line of Anthaney-Colquhon LLC,
3. Thence turning and running along the said easterly property line North 50 degrees 30 minutes 33 seconds West, 6.53 feet to the point of beginning.

Containing an area of 54 square feet, more or less. Being the same land shown on a drawing prepared by George, Miles & Buhr, LLC entitled "Permanent Utility Easements on the lands of Henlopen Gardens Homeowners Association, Inc." dated May 2020.