

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

ORDINANCE NO. 2015 - 1334

AN ORDINANCE

TO APPROVE A RIGHT OF WAY AGREEMENT BETWEEN LANCASTER COUNTY AND THE LANCASTER COUNTY WATER AND SEWER DISTRICT, PROVIDING AN EASEMENT TO THE LANCASTER COUNTY WATER AND SEWER DISTRICT TO BE LOCATED ALONG OLD BAILES ROAD; AND TO AUTHORIZE COUNTY OFFICIALS TO TAKE SUCH ACTIONS AS NECESSARY TO EFFECTUATE THE PURPOSES OF THIS ORDINANCE

Be it ordained by the Council of Lancaster County, South Carolina:

Section 1. Findings and determinations.

Council finds and determines that:

- (1) Lancaster County (the "County") owns the land adjacent to Old Bailes Road identified further as Tax Map No. 0007-00-027.00;
- (2) Lancaster County Water and Sewer District (the "District") is the provider of water and sewer service to portions of Indian Land and the District proposes to upgrade the sewer service in the area to serve Keer; and
- (3) it is the purpose of this ordinance to approve a right of way agreement providing an easement to so that the District may upgrade sewer service to serve Keer.

Section 2. Approval of right-of-ways agreement.

(A) Council authorizes and approves the Right of Way Agreement granting an easement to the District as described in Section 1. The form of the Right of Way Agreement is attached to this ordinance as Exhibit A and all terms, provisions and conditions of the Right of Way Agreement are incorporated herein by reference as if the Right of Way Agreement were set out in this ordinance in its entirety. The County Administrator is authorized to execute and deliver the Right of Way Agreement on behalf of the County. By adoption of this ordinance, Council approves the Right of Way Agreement and all of its terms, provisions and conditions. The Right of Way Agreement is to be in substantially the form as attached to this ordinance and hereby approved, or with such minor changes therein as shall be approved by the officials of the County executing the Right of Way Agreement, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the Right of Way Agreement attached to this ordinance.

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OF COURT
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CLERK OF COURT
LANCASTER, S.C.

(B) Council approves the granting of an easement as described and provided for in the Right of Way Agreement.

Section 3. Authority to act.

The Council Chair, Secretary and Clerk, the County Administrator and County Attorney each are authorized to take such actions and to execute such documents as may be necessary to effectuate the purposes of this ordinance.

Section 4. Severability.

If any section, subsection or clause of this ordinance is held to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected.

Section 5. Conflicting provisions.

To the extent this ordinance contains provisions that conflict with provisions contained elsewhere in the Lancaster County Code or other County ordinances, resolutions or orders, the provisions contained in this ordinance supersede all other provisions and this ordinance is controlling.

Section 6. Effective date.

This ordinance is effective upon third reading.


SIGNATURES FOLLOW ON NEXT PAGE.

AND IT IS SO ORDAINED, this 23rd day of February, 2015.

LANCASTER COUNTY, SOUTH CAROLINA



Bob Bundy, Chair, County Council



Steve Harper, Secretary, County Council

ATTEST:



Debbie Hardin, Clerk to Council

First Reading: January 26, 2015
Second Reading: February 9, 2015
Public Hearing: February 23, 2015
Third Reading: February 23, 2015

Approved as to form:



John Weaver, County Attorney

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Exhibit A to Ordinance No. 2015 - 1334

**Form of Right-of-Way Agreement
Lancaster County and Lancaster County Water and Sewer District
Old Bailes Road Easement**

See attached.

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STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "Easement") is made and entered into this 23rd day of February, 2015, by and among **Lancaster County Water and Sewer District**, a special purpose district created under the laws of the state of South Carolina, with an address of 1400 Pageland Hwy, Lancaster, South Carolina, 29720 ("Grantee"), and Lancaster County, with an address of 101 North Main Street, Lancaster, South Carolina, 29721 ("Grantor").

RECITALS:

A. Grantor is the owner of certain real property located on Old Bailes Road in Lancaster County, South Carolina, more particularly described in that certain deed recorded in Deed Book 411, Page 163 (the "Servient Estate").

B. Grantee is a special purpose district which intends to construct a sewer force main that transverses a portion of the Servient Estate and connects to other infrastructure of Grantee.

C. Grantor has agreed to grant and convey to Grantee, for the benefit of the Grantee, certain easement rights as set forth below in the Easement.

NOW, THEREFORE, for and in consideration of the provision of water and sewer service, the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby covenant and agree as follows:

1. **Grant of Easement.** Grantor hereby grants, bargains, sells and conveys to Grantee, its successors and assigns forever, a perpetual, non-exclusive appurtenant easement over, through, under and across the Easement Area (defined below) for the purpose of laying, constructing, installing, inspecting, operating, using, maintaining, repairing, removing, enlarging, and/or reconstructing the sewer force main and related facilities, including, without limitation, pipes, fixtures, equipment, meters, pumps, connections and other personal property (collectively, "Facilities") for the conveyance and transfer of sewer, as may be reasonably necessary, appropriate or desirable for Grantee's use of the sewer force main, TOGETHER WITH (i) a perpetual, non-exclusive appurtenant easement and right for access, ingress, and egress over and across the Easement Area for Grantee's exercise of the easement rights herein conveyed; (ii) a perpetual, non-exclusive appurtenant easement and right to clear and keep the Easement Area free of trees, structures, buildings, fixtures, wells, septic tanks, underground storage tanks, garbage, or any type of personal property which may interfere in any way with or endanger the sewer force main, the Facilities or Grantee's rights under this Easement provided, however, Grantor may pave over the Easement Area in connection with the construction of a parking lot (if such paving does not interfere with the rights given to Grantee hereunder).

The "Easement Area" is that certain strip of land twenty feet (20') in width, being ten feet (10') on both sides of the centerline of the sewer force main, as shown on **Exhibit A**.

2. Covenants and Certifications of Grantor. Grantor hereby covenants to Grantee that (i) to Grantor's knowledge, it is lawfully seized and presently possessed of both the Servient Estate and the Easement Area, (ii) it has a good and lawful right to convey the rights granted to Grantee under this Easement, (iii) both the Servient Estate and the Easement Area are free from encumbrances except for encumbrances and restrictions of record and such other matters as are set forth in this Easement Agreement, (iv) Grantor does hereby bind the Grantor and the Grantor's successors and assigns to warrant and forever defend all and singular the Servient Estate and the Easement Area unto Grantee, and Grantee's successors and assigns, against Grantor and Grantor's successors lawfully claiming, or to claim the same, or any part thereof, but against no others, and (v) Grantor has not done or suffered anything whereby the Servient Estate and the Easement Area have been encumbered by Grantor, except as disclosed in this Easement Agreement.

3. Reservation by Grantor. Subject to the rights of Grantee hereunder, Grantor reserves the right to use the Easement Area for any purposes not inconsistent with or detrimental to Grantee's rights under this Easement; provided, however, no buildings or similar structures may be constructed on or within the Easement Area.

4. Covenants and Duties of Grantee. Grantee agrees to: 1) restore all areas within the Easement Area that are disturbed as a result of construction or maintenance activities to a manageable condition, including grading such areas to a smooth surface free of ruts, with uniform slope to prevent ponding, but such restoration shall not be required to result in adequate compaction for paving or require repair and / or replacement of areas that may be paved after installation of sewer force main and other related facilities; and 2) comply with all applicable federal, state and other governmental laws and regulations regarding wetlands, hazardous materials, endangered species, navigable streams, and potential burial and other archaeological sites (collectively, the "Applicable Laws") in the installation and maintenance of the sewer force main.

5. Miscellaneous.

(a) Binding Effect. The rights granted herein shall be non-exclusive and shall run with title to the Servient Estate, and shall be binding upon and inure to the benefit of and be enforceable by the heirs, legal representatives, successors and assigns of Grantor and Grantee.

(b) Remedies; Attorneys' Fees. If Grantor or Grantee breaches any of its obligations under this Agreement, the non-breaching parties will have available to them all remedies available at law or equity, including the right to recover reasonable costs and expenses of suit, including, without limitation, reasonable attorneys' fees.

(c) Severability. The invalidity of any one of the covenants, agreements, conditions or provisions of this Agreement or any portion thereof shall not affect the remaining portions thereof and this Agreement shall be construed as if such covenant, agreement, condition or provision had not been inserted herein.

(d) Entire Agreement. This Easement constitutes the entire agreement and understanding between Grantor and Grantee relating to the subject matter hereof and may not be amended, waived or discharged, except by instrument in writing executed by the party against which enforcement of such amendment, waiver or discharge is sought.

(e) Authority. Each party hereto represents and warrants to the other parties that the execution of this Easement and any other documents required or necessary to be executed pursuant to the provisions hereof are valid, binding obligations and are enforceable in accordance with their terms.

IN WITNESS WHEREOF, Grantor and Grantee have caused this Easement to be executed and delivered by their respective undersigned officer(s) and/or representative(s), they being duly authorized, effective as of the date first above written.

Signed, sealed and delivered
in the presence of:

GRANTOR:

Lancaster County, South Carolina

Virginia C. Burger
Witness #1

By: Steve Willis

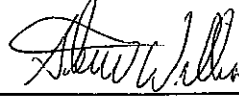
Dwain C. Hardin
Witness #2

Its: County Administrator

State of South Carolina
County of Lancaster

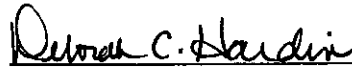
ACKNOWLEDGEMENT

On this 23rd day of February, 2015, before me personally appeared Steve Willis, who provided satisfactory evidence of his/her identification to be the person whose name is subscribed to this instrument and s/he acknowledged that s/he executed the foregoing instrument by his/her signature here.



Grantor's Signature

Sworn to (or affirmed) and subscribed before me this the 23rd day of February, 2015.



Official Signature of Notary

(Official Seal)

Deborah C. Hardin, Notary Public
Notary's printed or typed name

Lancaster County, South Carolina
My commission expires: 3-26-2020

Signed, sealed and delivered
in the presence of:

GRANTEE:

**LANCASTER COUNTY WATER AND
SEWER DISTRICT**

Witness #1

By: _____
Stephen White, Manager

Witness #2

State of South Carolina
County of _____

ACKNOWLEDGEMENT

On this ____ day of _____, 20____, before me personally appeared _____, who provided satisfactory evidence of his/her identification to be the person whose name is subscribed to this instrument and s/he acknowledged that s/he executed the foregoing instrument by his/her signature here.

Grantee's Signature

Sworn to (or affirmed) and subscribed before me this the ____ day of _____, 20_____.

(Official Seal)

Official Signature of Notary

_____, Notary Public
Notary's printed or typed name

_____ County, South Carolina
My commission expires: _____

EXHIBIT A

Legal description of a 7,549.28 square feet easement for an 18" sanitary sewer force main, for Lancaster County Water & Sewer District, as depicted on a plat of survey by J.C. Crumpler dated February 9, 2015 entitled 18" Force Main Easement for Lancaster County Water & Sewer District (Tax ID 0007-00-027.00).

Beginning at a point that is located South 17 degrees 34 minutes 33 seconds West for a distance of 144.54 feet to an #4 rebar. Thence running South 35 degrees 11 minutes 18 seconds East for a distance of 441.10 feet to a point in the centerline of a creek that is the boundary line between Lancaster County and Southpoint Management Group (Tract 2 & 3) as recorded in plat book 2002 page 379 Thence running with said creek South 44 degrees 47 minutes 43 seconds West for a distance of 9.92 feet to a point. Thence running South 53 degrees 00 minutes 29 seconds West for a distance of 7.09 feet to a point. Thence running with the property line North 35 degrees 10 minutes 45 seconds West for a distance of 112.63 feet to a old #4 rebar that is located 35.53 feet North of the centerline of Old Bailes Road. Thence running North 35 degrees 11 minutes 18 seconds West for a distance of 443.15 to a point. Thence running North 54 degrees 48 minutes 42 seconds East for a distance of 17.43 feet to a point that is also the Point Of Beginning.

