

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

**AMENDMENT TO GATE PASS AGREEMENT**

**(Final 7-5-18)**

**THIS AMENDMENT TO GATE PASS AGREEMENT** (the “**Amendment**”) is made and entered into this 6<sup>th</sup> day July, 2018, between **Community Services Associates, Inc.**, a South Carolina nonprofit corporation (“**CSA**”), **Sea Pines Resort, LLC**, a Virginia limited liability company (the “**Resort**”) and the **Sea Pines Center Associates, LLC**, a South Carolina limited liability company (the “**Center**”) (CSA, the Resort and the Center are collectively referred to herein as the “**Parties**”).

**WITNESSETH:**

**WHEREAS**, pursuant to that certain Assignment of Rights, dated November 17, 1987, and recorded in the Beaufort County Register of Deeds (“**ROD**”) at Book 490 at Page 712 (“**November 1987 Assignment**”), that certain Easement for Access, dated November 17, 1987, recorded in Book 490 at Page 760 (“**Easement for Access**”), and the November 1987 Gate Policy attached as Exhibit C to said November 1987 Assignment (“**1987 Gate Policy**”), Sea Pines Plantation Company, Inc., a South Carolina corporation, obtained specific and extensive rights of access at no cost or fee into Sea Pines Plantation for its successors, assigns, agents, employees, contractors, subcontractors, invitees, or any other authorized personnel; and

**WHEREAS**, the Declaration of Covenants and Agreement of 1988 for the Transfer of Properties, Reserved Rights and Obligations of Hilton Head Liquidation Corp. to Community Services Associates, Inc., dated December 8, 1988, and recorded at the ROD in Book 519 at Page 1161 (the “**1988 Declaration**”) provides that the 1987 Sea Pines Gate Policy, which was attached to the 1988 Declaration as Exhibit “D”, shall be enforced by CSA; and

**WHEREAS**, the 1988 Declaration also provides that the 1987 Gate Policy shall not be amended without the consent of Sea Pines Plantation Company, Inc., which was assigned certain rights from Sea Pines Plantation Company under the November 1987 Assignment and Easement for Access; and

**WHEREAS**, the Resort is the successor to the November 1987 Assignment, the Easement for Access, and the 1987 Gate Policy, as amended, and the approval rights held by Sea Pines Plantation Company, Inc., and therefore the Resort's consent is required for any amendment to the 1987 Gate Policy, as amended; and

**WHEREAS**, the November 1987 Assignment, the Easement for Access and the 1987 Gate Policy, among other rights, provided free and unfettered access to the Resort and to those individuals, groups and companies as listed on Exhibit A hereto; and

**WHEREAS**, pursuant to that certain Agreement for Assignment and Assignment of Partnership Interest in Sea Pines Center, a South Carolina Limited Partnership, dated August 7, 1987 recorded in DB 11 P 2161 (the "**August 1987 Assignment**") from John F. Curry as court appointed Chapter 11 Trustee for Sea Pines Company and Hilton Head Company, Inc., Sea Pines Plantation Company and The Hilton Head Company, Inc., provides that any increases in gate access fees into Sea Pines Plantation above \$3.00 for a daily pass, \$10.00 for a weekly pass or \$20.00 for a monthly pass requires the consent of the Sea Pines Center, L.P., and its successors and assigns; and

**WHEREAS**, the Center is the successor to Sea Pines Center, L.P.; and

**WHEREAS**, the Parties, and others, entered into that certain "Memorandum", dated February 2, 1999, agreeing to an increase of the Sea Pines daily access gate fee (the "**Gate Fee**") under the existing Gate Policy from \$3.00 to \$5.00 (the "**1999 Agreement**"); and

**WHEREAS**, the Parties, and others, thereafter amended the 1999 Agreement by the execution of that certain "Agreement on the Increase of the Gate Fee from \$3.00 to \$5.00", dated March 14, 2001 ("**2001 Agreement**"); and

**WHEREAS**, the Parties, and others, thereafter amended the 2001 Agreement by the execution of that certain "Memorandum of Agreement to the Existing Agreement on the Increase of the Gate Fee from \$3.00 to \$5.00," dated October 28, 2003 (the "**2003 Agreement**"); and

**WHEREAS**, the Parties, and others, thereafter amended the 2003 Agreement by the execution of that certain “Memorandum of Agreement Amending the Existing Agreement on the increase of the Gate Fee from \$3.00 to \$5.00,” dated November 20, 2007 (the “**2007 Agreement**”); and

**WHEREAS**, the Parties and others, thereafter executed a new Sea Pines Gate Entry Policy, dated October 23, 2015 (the “**2015 Gate Policy**”) which provided that it supersedes the 1987 Gate Policy and the prior agreements (1999 Agreement, 2001 Agreement, 2003 Agreement, and 2007 Agreement) referenced above; and

**WHEREAS**, the Parties, and others, thereafter executed a new Sea Pines Gate Entry Policy, dated November 21, 2017 (the “**2017 Gate Policy**”) which provided that it supersedes the 2015 Gate Policy and the prior agreements (1999 Agreement, 2001 Agreement, 2003 Agreement, and 2007 Agreement) referenced above; and

**WHEREAS**, Appendix A to the 2017 Gate Policy describes the “Fee schedule for CSA Gate Entry Passes”, which includes a fee of \$6.00 for a daily visitor gate fee (herein a “**Daily Visitor Gate Fee**”); and

**WHEREAS**, in accordance with the 2017 Gate Policy, CSA currently contributes to the CSA Trolley Marketing Fund \$65,000.00 annually (the “**Base Contribution**”) and \$.20 per each Daily Visitor Gate Fee Pass and Daily Commercial Gate Fee Pass sold (the “**Supplemental Contribution**”); and

**WHEREAS**, the Parties now desire to amend the 2017 Gate Policy to provide for future increases in the Daily Visitor Gate Fee.

**NOW THEREFORE**, for and in consideration of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties, for themselves, their successors in title and assigns, do hereby agree as follows:

1. **Recitals**. The Parties agree that the aforesaid recitals are true and correct and are incorporated herein by this reference. That said recitals are important and relevant provisions of this Amendment.

2. **Daily Visitor Gate Fee Increases.**

a. **Daily Visitor Gate Fee Pricing for 2018.**

The Daily Visitor Gate Fee shall increase from its current \$6.00 to \$8.00 effective August 1, 2018. CSA shall make a \$75,000.00 contribution (the “**Additional Contribution**”) to the CSA Gate Entry Committee Marketing Fund (the “**Fund**”).

b. **Daily Visitor Gate Fee Pricing for 2019.**

The Daily Visitor Gate Fee shall remain \$8.00 in year 2019. CSA shall continue to make the Additional Contribution of \$75,000.00 to the Fund.

c. **Daily Visitor Gate Fee Pricing for 2020.**

i. In the event the number of \$8.00 Daily Visitor Gate Fee Passes sold from January 1, 2019 to December 31, 2019 decreases by 3% or more from the number of \$8.00 Daily Visitor Gate Fee Passes sold from August 1, 2018 to July 31, 2019, the Daily Visitor Gate Fee shall remain at \$8.00 for 2020. In such event, CSA shall make the Additional Contribution of \$75,000.00 to the Fund.

ii. Alternatively, if the number of \$8.00 Daily Visitor Gate Fee Passes sold from January 1, 2019 to December 31, 2019 either increases or decreases by less than 3% from the number of \$8.00 Daily Visitor Gate Fee Passes sold from August 1, 2018 to July 31, 2019, the Daily Visitor Gate Fee shall increase to \$9.00, effective August 1, 2020. In such event, the Additional Contribution to the Fund shall be increased to \$150,000.00.

d. **Daily Visitor Gate Fee Pricing for 2021 – After 2020 Price Increase to \$9.00.**

i. In the event the number of \$9.00 Daily Visitor Gate Fee Passes sold from January 1, 2020 to December 31, 2020 decreases by 3% or more from the number of \$9.00 Daily Visitor Gate Fee Passes sold from January 1, 2019 to

December 31, 2019 the Daily Visitor Gate Fee shall remain \$9.00 for 2021.

In such event, the Additional Contribution to the Fund shall remain at \$150,000.00.

- ii. Alternatively, if the number of \$9.00 Daily Visitor Gate Fee Passes sold from January 1, 2020 to December 31, 2020 either increases or decreases by less than 3% from the number of \$9.00 Daily Visitor Gate Fee Passes sold from January 1, 2019 to December 31, 2019, the Daily Visitor Gate Fee shall increase to \$10.00 effective June 1, 2021. In such event, the Additional Contribution to the Fund shall be increased to \$225,000.00.

e. **Daily Visitor Gate Fee Pricing for 2021 - After 2019 and 2020 Pricing Remains at \$8.00.**

- i. In the event the number of \$8.00 Daily Visitor Gate Fee Passes sold from January 1, 2020 to December 31, 2020 decreases by more than 3% from the number of \$8.00 Daily Visitor Gate Fee Passes sold from January 1, 2019 to December 31, 2019, the Daily Visitor Gate Fee shall be \$8.00 for 2021. In such event, the Additional Contribution to the Fund shall be \$75,000.00.
- ii. If the number of \$8.00 Daily Visitor Gate Fee Passes sold from January 1, 2020 to December 31, 2020 either increases or decreases by less than 3% from the number of \$8.00 Daily Visitor Gate Fee Passes sold from January 1, 2019 to December 31, 2019, the Daily Visitor Gate Fee shall increase to \$9.00 effective June 1, 2021. In such event, the Additional Contribution to the Fund shall be \$150,000.00.

f. **Daily Visitor Gate Fee Pricing 2022.**

The Daily Visitor Gate Fee for 2022 and beyond shall be set by the CSA Board of Directors and approved by the Resort and the Center. Until the Parties agree to new rates and contributions, all rates and contributions shall remain at the 2021 level.

3. **Marketing Fund Program.** CSA shall continue to maintain the CSA Trolley Marketing Fund, to now be designated as the “Fund”. In addition to the Additional Contribution described in Section 2 of this Amendment, beginning in 2018, CSA shall make the Base Contribution and the Supplemental Contribution to the Fund.

The purpose of the Fund is to promote marketing of commercial businesses operating within the Sea Pines community, provide event funding, pay potential merchant rebates, and provide for an infrastructure reserve fund for trolley related projects and for other uses with any and all uses of such funds approved by a marketing fund committee created in accordance with Section 4 of this Amendment.

4. **Marketing Fund Committee.** The Marketing Fund Committee (the “**Committee**”), will be comprised of three (3) Members: one Member representing the Resort, one Member representing the Center and one Member selected by the remaining commercial property owners identified and selected in accordance with **EXHIBIT “B”** hereto. The Committee will determine the joint marketing projects to be funded by the Base Contribution and any balance remaining from the Incremental Funding described below at year end. The Committee will provide CSA with an annual planned budget for Base Contribution it plans to spend jointly no later than November 1 of the preceding calendar year in anticipation of Fund contributions.

5. **Incremental Funding.** Notwithstanding anything herein to the contrary, each Committee Member shall have exclusive control of 1/3 of the total of the Additional Contribution and the Supplemental Contribution (the “**Incremental Funding**”) each year in each Committee Member’s sole discretion. Any remaining funds from the Incremental Funding at the end of each calendar year will be retained in the Fund for joint projects as determined by the Committee under Section 4 above. The Fund proceeds shall be rolled over into the following year if not used in any calendar year.

An example of estimated Incremental Funding available at current volume levels (392,168 Daily Visitor Gate Fee Passes for calendar year 2017) is shown at **EXHIBIT “C”** attached hereto.

Notwithstanding anything to the contrary in this Amendment, the available Incremental Funding shall not be less than the designated “**Floor Amounts**” detailed in **EXHIBIT “C”**.

6. **Trolley System.** CSA shall continue operating the trolley on a schedule equal to or greater than the operating schedule in effect as of the date of this Amendment. In the event the annual trolley operating schedule is reduced from its level of operation as of the date of this Amendment without the written approval of the Center and the Resort, the Daily Visitor Gate Fee shall automatically revert to \$6.00 without any further action by the Center or the Resort.

7. **Dredge Permit Contribution.** CSA shall continue to make a contribution of \$0.20 per Daily Visitor Gate Fee Pass sold to be retained by CSA and distributed upon written request of the South Island Dredging Association (“**SIDA**”) to pay permitting and other “soft” costs associated with dredging in Sea Pines, excluding the costs of the actual dredging work itself.

8. **Commercial Guest Passes.** All commercial businesses operating within Sea Pines shall be allowed to request a maximum of 250 Daily Visitor Gate Fee Passes during each calendar year, without charge to the entity or individual receiving such pass.

9. **Center Approval Right Challenge.** In the event CSA files a lawsuit against the Center challenging the Center’s a right to approve increases to the Daily Visitor Gate Fee, any and all increases in the Daily Visitor Gate Fee contemplated by this Amendment shall be immediately void and the Daily Visitor Gate Fee shall revert to \$6.00. Thereafter all contributions by CSA to the Fund shall revert to the amounts contributed as of the date of this Amendment.

10. **Indemnification.** CSA agrees to indemnify and hold the Center and its respective officers, directors, members, managers, agents, employees, and other representatives, successors and assigns, harmless from and against all claims, causes of action, liability or losses arising from this Amendment. This provision includes reimbursement of attorney fees and costs.

11. **Payment Due Date for Contributions.** All annual contributions required to be made by CSA hereunder shall be paid in equal monthly installments not later than the first day of each month during the term hereof unless otherwise agreed in writing by the Parties.

12. **No Waiver**. The Parties, jointly and severally, agree, acknowledge and reaffirm the exclusive right of CSA, the Resort and the Center to jointly approve any Gate Fee Pass increase. Nothing herein set forth, including, but not limited to any distribution of funds or right to determine use of such funds as provided herein shall be interpreted in any manner whatsoever directly or indirectly to extend Gate Fee approval rights to additional entities other than CSA, the Resort and the Center.

13. **Attorney Fees/Interest**. In any litigation to enforce the terms and provisions of this Amendment, the prevailing party is entitled to recover reasonable attorney fees and costs.

14. **Miscellaneous**. Except as specifically modified herein, the Amendment is ratified and confirmed and shall remain in full force and effect as existing on the date of this Amendment. In the event of a conflict between the Amendment, any previous Amendments or agreements, or this Amendment, this Amendment shall control. This Amendment shall bind and inure to the benefit of the Parties and their successors and assigns. If any provision of this Amendment or its application to any party or circumstances are determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Amendment or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law. This Amendment may be executed in any number of counterparts, all of which shall constitute one and the same instrument. This Amendment shall be construed and enforced in accordance with the laws of the State of South Carolina. The Parties acknowledge and agree that each was actively involved with the negotiation and drafting of this Amendment. Further, each Party's legal counsel reviewed, or had the opportunity to review the Amendment prior to its execution. The parties agree any Court, arbitrator or mediator which may hereinafter interpret this Amendment will not construe the Amendment against any particular party which may have originated, typed or prepared one or more terms, conditions or provisions of this Amendment.

This Amendment is the entire agreement between the Parties with respect to the subject matter hereof and no alteration, modification or interpretation hereof shall be binding unless in writing and signed by the Parties hereto. This Amendment shall be enforceable by and against any successor owner of the real property of the Center and the Resort.

**[Signatures on following page]**

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed in their name on the date first above written.

**SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:**

Danara Archer  
Jeon E. McElroy

**Community Services Associates, Inc.**  
a South Carolina nonprofit corporation

Bret Martin

By: Bret Martin  
Its: President

Its: Manager

**SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:**

J. Heiman  
Marion Logan

**Sea Pines Resort, LLC**  
a Virginia limited liability company

Steward P. Bindwell

By: Steward P. Bindwell  
Its: President

Its: Manager

**SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:**

\_\_\_\_\_  
\_\_\_\_\_

**Sea Pines Center Associates, LLC**  
a South Carolina limited liability company

\_\_\_\_\_  
By:  
Its:

Its: Manager

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed in their name on the date first above written.

**SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:**

**Community Services Associates, Inc.**  
a South Carolina nonprofit corporation

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
By:  
Its:

**SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:**

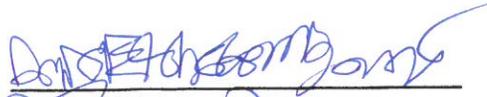
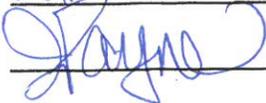
**Sea Pines Resort, LLC**  
a Virginia limited liability company

\_\_\_\_\_  
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\_\_\_\_\_  
By:  
Its:

**SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:**

**Sea Pines Center Associates, LLC**  
a South Carolina limited liability company

  
\_\_\_\_\_  
  
\_\_\_\_\_

  
\_\_\_\_\_  
By: Edward M. Payne  
Its: manager

## EXHIBIT "A"

### RIGHTS OF RESORT GUESTS AND RELATED PARTIES

Attached as an exhibit to the November 1987 Assignment, and the Easement for Access, is the 1987 Gate Policy. Pursuant to said three (3) documents, **the following individuals associated with the Resort are allowed unrestricted, free access**. Nothing in this Amendment, or any prior amendment or agreement, has or will limit or restrict these rights originally granted to the Resort (Specific reference to the paragraphs in the 1987 Gate Policy are in parentheses.)

- a) Employees of Sea Pines (4.01.1.6)
- b) Sea Pines officers, directors (4.01.1.6)
- c) Sea Pines consultants (4.01.1.6)
- d) Sea Pines Real Estate Company sales agents (4.01.1.6)
- e) Contractors of Sea Pines (full-time) (4.01.1.6)
- f) A limited number of public officials designated by Sea Pines (4.01.1.6)
- g) Sea Pines Real Estate Company clients – day passes (4.01.1.7; 4.01.1.6(c))
- h) Construction workers doing work for the company (4.03.1)
- i) Ticket holders, authorized guests, participants, sponsors, volunteers and equipment and service suppliers for major and annual sports events (i.e. MCI golf, Family Circle, Seniors Golf) and to a limited number of sports events sponsored by the Company (4.06)
- j) Contractors working on a temporary basis (4.01.1.6) \*
- k) Sea Pines lodging guests (4.01.1.6(a)) \*
- l) Business clients of Company (4.01.1.6(b)) \*
- m) VIPs and social guests at Company-sponsored events (4.01.1.6(d))\*

\* Temporary passes

In addition to those persons specifically described above, the following groups of individuals are specifically allowed entry at no charge under the provisions of said 1987 Gate Policy:

- n) Sea Pines Resort guests;
- o) Sea Pines golf, tennis, real estates and eco-tour customers;
- p) Sea Pines Food & Beverage Operations personnel;
- q) Sea Pines Golf Course maintenance personnel;

- r) Sea Pines Academy of Golf and Junior Master program participants and personnel;
- s) Sea Pines Tennis Academy program participants and personnel;
- t) All contractors providing services to Sea Pines or its customers on a daily or continuous basis, including but not limited to, housekeeping, janitorial, food and beverage, golf clinics, tennis clinics, landscaping, maintenance, golf cart maintenance, etc.;
- u) All individuals providing services of any kind to Sea Pines, including, but not limited to architects, engineers, attorneys, construction managers, building contractors, villa maintenance subcontractors, etc.;
- v) All residents of TidePointe;
- w) Any and all Sea Pines real estate development partners;
- x) Any and all commercial deliveries to any Sea Pines operation, including, but not limited to, golf course facility, tennis facility, beach club, musical event, special event or any other similar operation or event. **As the companies and individuals who provide services to Sea Pines continually change, no specific listing is required.**

## **EXHIBIT "B"**

The commercial property owners in Sea Pines designated to select a Marketing Fund Committee member under § 4, are as follows:

1. Bailey's, LTD - 147-D Lighthouse Road
2. CQ's Restaurant – 140 Lighthouse Road
3. Fashion Court – 147-E Lighthouse Road
4. Harbour Town General Store - 147-C Lighthouse Road
5. Harbour Town Surf Shop - 147-A Lighthouse Road
6. Harbour Town Surf Shop - 147-B Lighthouse Road
7. Kidz for Life Toys – 147-G Lighthouse Road
8. South Beach Racquet Club – South Sea Pines Drive
9. South Beach Village – South Sea Pines Drive

A representative selected by these owners by a majority (ie., >50%) will serve as a Member of the Marketing Fund Committee.

The expenditure from Incremental Funding by the above listed commercial property owners requires approval by a majority vote of said commercial property owners and the approval of CSA, the Resort and the Center, said approval not to be unreasonably withheld.

**EXHIBIT “C”**

**EXAMPLES OF ESTIMATED INCREMENTAL FUNDS AVAILABLE FOR CONTRIBUTION**

Daily Visitor Gate Fee Pass	Additional Contribution	\$.20 per pass Supplemental Contribution (Est.)	Total	Incremental Funds Avail. Per Member	
At \$8.00	\$ 75,000	\$78,433.60	\$153,433	\$ 51,144	*
At \$9.00	\$150,000	\$78,433.60	\$228,433	\$ 76,144	*
At \$10.00	\$225,000	\$78,433.60	\$303,433	\$101,144	*

\* subject to the provisions of subparagraphs 2c(ii), 2d(ii) and 2e(ii), the Incremental Funding at \$8.00 shall not be less than \$50,000.00 at \$8.00, \$75,000.00 at \$9.00 and \$100,000.00 at \$10.00 (the “**Floor Amounts**”)