

STATE OF NORTH CAROLINA

COUNTY OF CARTERET

AGREEMENT SETTING FORTH OBLIGATIONS
UPON CLOSING OF PORTION OF CREW DRIVE

This Agreement entered into this ____ day of _____ 2016, by and between C4 Emerald Isle, LLC (herein “C4”), having an address of 4700 Six Forks Road, Suite 150; Raleigh, NC 27609 and the Town of Emerald Isle, North Carolina, a North Carolina Municipal Corporation, 7500 Emerald Drive, Emerald Isle, NC, 28594 herein “Town”;

RECITALS:

1. The Town of Emerald Isle is the owner of fee simple title to Crew Drive, a town street, through a deed recorded in Book 328, page 98, Carteret County Registry.
2. C4 has contracted to purchase 3 parcels of land from LRH Trust Properties, LLC and 1 parcel of land from Lawrence Spell and wife Daisy H. Spell, located on the south and north sides of Crew Drive, with the parcels being described in Book 623, page 294, Book 1349, page 141, and Book 518, page 117, Carteret County Registry, the 4 tracts being identified as County Tax Parcels 538307576783000, 538311577415000, 538311575400000, and a portion of 538307596005000.
3. C4 has requested that the Town of Emerald Isle close the portion of Crew Drive located between Emerald Landing Drive and the west boundary of the Emerald Plantation Shopping Center bearing County Tax Parcel number 538307674976000.
4. C4 as part of the closing of Crew Drive at the requested location, has agreed to grant to the Town an easement for a public vehicular access and road in close proximity to the former location of Crew Drive.
5. The Town pursuant to NCGS 160A-299, has taken actions to consider the closure of a portion of Crew Drive, including posting that portion of Crew Drive which is requested to be closed, publishing notice of Intent to Close, serving adjoining property owners, holding a public hearing

on the street closure, and consideration following the public hearing, of the adoption of a resolution closing the portion of Crew Drive located between Emerald Landing Drive and the west boundary line of line of County Tax Parcel number 538307674976000, if the Board determines that the street closure is not contrary to the public interest and that no adjoining property owner will be denied reasonable means of access to its property.

6. C4 and Town now desire to agree as to the obligations of the Parties in the event a Resolution closing a portion of Crew Drive is hereafter adopted, and C4 and the Town have entered into this Agreement to set forth such obligations subject to the conditions set forth below.

NOW THEREFORE, C4 and the Town in consideration of the mutual covenants and conditions set forth herein, have agreed as follows:

1. DEDICATION BY RECORDED PLAT AND EASEMENT AGREEMENT.

In the event the Emerald Isle Town Board adopts a resolution closing that portion of Crew Drive located between Emerald Landing Drive and the west line of the Emerald Landing Shopping Center County Tax Parcel number 538307674976000, which would through the street closure of Crew Drive, cause title to the centerline of that portion of Crew Drive so closed and withdrawn to become vested in C4, then C4 shall be obligated to convey, grant and assign to the Town of Emerald Isle by written agreement acceptable to the Town a permanent road and public vehicular access easement for public use over C4's property between Emerald Landing Drive and the west line of the Emerald Plantation Shopping Center. Additionally, C4 shall cause to be prepared for recording in the Carteret County Registry, a plat prepared by a Registered Land Surveyor showing and indicating the newly acquired properties of C4 with the new public vehicular access and road drawn and located thereon, reasonably acceptable to the Town. The plat shall contain language that dedicates the road and public vehicular area to the Town and public and such dedication shall be signed by C4 as the owner of the parcels of land.

2. DESCRIPTION OF THE EASEMENT AREA. Both the plat and written Easement Agreement shall both dedicate to and convey to the Town a permanent non-exclusive access easement for vehicular and pedestrian use as a public street and road over the following area (the "Easement Area"):

Beginning at a point on the west line of the property of Emerald LLC as described in the deed recorded in Book 1390, page 103, Carteret County Registry, which point is located N 12-28-28 W 6.95 feet from a concrete monument in the west line of the aforementioned property of Emerald LLC, said point being N 12-28-28 W 150.29 feet from a point on the north line of NC Highway 58, said point on the north line of NC Highway 58 being located S 75-17-53 W 349.25 feet GRID from NCGS "LOON", having coordinates of NAD 83120111, N 337612.53 and E 2586398.21; running thence from the point of beginning the following courses and distances: S 74-20-15 W 191.36 feet, S 78-08-17 W 30.17 feet, S 74-20-15 W 136.90 feet, S 74-20-15 W 62.31 feet and S 76-33-49 W 77.96 feet to a point; thence along a curve which has a chord bearing of S 65-46-13 W a chord distance of 10.49 feet, a radius of 28.00 feet, an arc of 10.55 and a delta of 021-35-13 to a point on the east line of Emerald Landing Drive (80 foot) right of way; thence with Emerald Landing Drive

N 15-45-37 E 18.72 feet and N 15-45-37 E 15.27 feet to the north line of the easement conveyed herewith; thence with the north line of the easement the following courses and distances: N76-33-49 E 89.02 feet, N 74-20-15 E 335.26 feet, N 64-45-02 E 69.06 feet and N 74-20-15 E 19.11 feet to the west line of Emerald LLC; thence with the west line of Emerald LLC S 12-28-28 E 60.10 feet to the point of beginning, and being shown on a Murphy Land Surveying Plat entitled "Recombination Plat for C4 Emerald Isle, LLC" dated June 2016.

3. CONDITIONS REGARDING RECORDATION OF THE RESOLUTION CLOSING CREW DRIVE AND THE PLAT AND EASEMENT AGREEMENT. In the event the Board of Commissioners closes that Portion of Crew Drive and adopts a resolution to that effect, then the Resolution shall not be effective and shall not be recorded, and the Plat and Written Easement Agreement shall not be recorded, until the following conditions have been met:

A. C4 has closed on the purchase of the parcels identified above from LRH Trust Properties, LLC and Lawrence S. Spell and wife, Daisy H. Spell and deeds transferring ownership have been recorded so that C4 is the owner of record.

B. The written road easement and plat meeting the conditions of this agreement have been prepared and executed and the Town is satisfied that the same meet the Town's requirements.

C. The Town's easement rights are superior to the deed of trust or lien of any lender and there are no instruments or recorded documents that would subordinate the Town's easement rights to any third party or affect the Town or public's easement and use rights.

D. The Town has determined the costs of designing, constructing, paving and completing that portion of the new public vehicular area and street shown on the plat and described in the easement agreement, and C4 has delivered to the Town a letter of credit in an amount one and one half times the estimated costs of completion, drawn on a NC Bank and containing acceptable terms to the Town that would secure C4's obligation to construct and complete the road and public vehicular access area on or before December 31, 2018, to the Town's requirements and specifications, and upon failure of C4 to complete the street and public vehicular area on a timely basis, would authorize the Town to draw on the letter of credit and use the funds so drawn to construct and complete the public vehicular area to the requirements of the approved drawings and designs. For the avoidance of doubt, in no event may the Town draw on the letter of credit before January 1, 2019. At such time as a mutually-approved civil engineer licensed by the State of North Carolina has provided a letter to the Town that the road and public vehicular access area has been constructed to the specifications set forth in the permits issued from the Town to C4 for the construction of such improvements, then within five (5) days of the receipt of such letter the Town shall return the letter of credit to C4 and the provisions of this paragraph shall be deemed to have been satisfied.

4. SATISFACTION OF CONDITIONS AND MAINTENANCE RESPONSIBILITIES.

At such time as all the above conditions have been met, Town shall cause the Resolution Closing a portion of Crew Drive (if adopted by the Board) and the plat and written Road Easement to be recorded. Thereafter, C4 shall construct, pave and complete the public vehicular access road to the Town's specifications and as shown on approved plans no later than December 31, 2018, and C4 and its successors and assigns shall have the continuing permanent obligation to maintain, repair, repave and reconstruct the road easement to the Town's requirements and specifications as a town street. In the event the easement should become unsafe, fall into a state of disrepair, need repairs or improvements, and the Town, upon giving 30 days written notice to C4 or its successor and assigns, as to the requested or needed repairs or improvements and the failure of C4 to undertake and complete the same, shall have the right to complete the repairs or improvements, and C4 shall be obligated to reimburse Town the costs plus interest at the legal rate until paid.

5. ENFORCEMENT. The obligations, terms and conditions imposed herein are continuing obligations of the parties and may be enforced by the courts through either a judgment for monetary damages or specific performance.

6. BINDING EFFECT. This agreement shall be binding on the parties hereto and their successors in interest and assigns. Notwithstanding anything contained herein to the contrary, the obligations of C4 under this agreement shall no longer be applicable to C4 at such time as C4 transfers title to the Easement Area to a third party (but the obligations of C4 in this agreement shall continue to be applicable to the then-current owner of the Easement Area).

[signature appears on following page]

IN WITNESS WHEREOF, the Parties have executed this easement on the date above written.

C4 Emerald Isle, LLC

By _____
Manager

Town of Emerald Isle

By _____
Mayor

Attest: Town Clerk

STATE OF NORTH CAROLINA

COUNTY OF _____

I, a Notary Public for the County and State aforesaid, certify that _____ in the capacity as Manager of C4 Emerald Isle, LLC personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes expressed therein for and on behalf of the limited liability company pursuant to authority duly given.

Witness my hand and official stamp or seal, this the ____ day of _____ 20__.

Notary Public

Printed Name: _____

My Commission expires: _____

STATE OF NORTH CAROLINA

COUNTY OF _____

I, a Notary Public for the County and State aforesaid, certify that _____ in the capacity as Mayor of the Town of Emerald Isle, and _____ in the capacity as Town Clerk personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes expressed therein, and that the Town Clerk did affix the official seal for and on behalf of the Town of Emerald Isle pursuant to authority duly given.

Witness my hand and official stamp or seal, this the _____ day of _____ 20____.

My Commission expires: _____
Notary Public
Printed Name: _____

Prepared by and return to Richard L. Stanley, attorney, PO Box 150, Beaufort, NC 28516