



The Town of Hilton Head Island Regular Town Council Meeting

Tuesday, September 6, 2011

4:00 P.M.

AGENDA

As a Courtesy to Others Please Turn Off All Cell Phones and Pages During
the Town Council Meeting

- 1) **Call to Order**
- 2) **Pledge to the Flag**
- 3) **Invocation**
- 4) **FOIA Compliance** – Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.
- 5) **Proclamations and Commendations**
 - a. Captain William Hilton Weekend
- 6) **Approval of Minutes**
 - a. Town Council Meeting – August 2, 2011
- 7) **Report of the Town Manager**
 - a. Semi-Annual Report of the Parks and Recreation Commission, Marc Stuckart, Chairman
 - b. Town Manager's Items of Interest
 - c. Port Royal Beach Renourishment Project
 - d. Waste Hauling and Recycling Franchise Agreement-Quarterly Report
 - e. Town of Hilton Head Island Credit Rating – Susan Simmons
- 8) **Reports from Members of Council**
 - a. General Reports from Council
 - b. Report of the Intergovernmental Relations Committee – George Williams, Chairman
 - c. Report of the Personnel Committee – Lee Edwards, Chairman
 - d. Report of the Planning & Development Standards Committee – Bill Ferguson, Chairman
 - e. Report of the Public Facilities Committee – Kim Likins, Chairman
 - f. Report of the Public Safety Committee – Bill Harkins, Chairman
 - g. Report of the LMO Rewrite Committee – Kim Likins, Ex-Officio Member

9) Appearance by Citizens

10) Unfinished Business

a. Second Reading of Proposed Ordinance 2011-17

Second Reading of Proposed Ordinance 2011-17 authorizing and providing for the issuance of Special Obligation Bonds (Hospitality Fee Pledge) of the Town of Hilton Head Island, South Carolina; prescribing the form of bonds; providing for the payment of the bonds from the sources provided herein; creating certain funds and providing for payments into such funds; amending Chapter 13 of Title 4 (Finance and Taxation) of *The Municipal Code of the Town Of Hilton Head Island, South Carolina*, by amending Section 4-13-80, Permitted Uses of Funds, and Section 4-13-110, Sunset; making other covenants and agreements in connection with the foregoing; and providing for severability and an effective date.

b. Second Reading of Proposed Ordinance 2011-18

Second Reading of Proposed Ordinance 2011-18 providing for the issuance and sale of Town of Hilton Head Island, South Carolina, Special Obligation Bonds (Hospitality Fee Pledge), in one or more series, in the principal amount of not exceeding \$26,250,000; delegating the authority to the Town Manager to determine certain matters with respect to the bonds; prescribing the form and details of such bonds; other matters relating thereto; and providing for severability and an effective date.

c. Second Reading of Proposed Ordinance 2011-19

Second Reading of Proposed Ordinance 2011-19 authorizing and providing for the issuance of Special Obligation Bonds (Beach Preservation Fee Pledge) of the Town of Hilton Head Island, South Carolina; prescribing the form of bonds; providing for the payment of the bonds from the sources provided herein; creating certain funds and providing for payments into such funds; making other covenants and agreements in connection with the foregoing; and providing for severability and an effective date.

d. Second Reading of Proposed Ordinance 2011-20

Second Reading of Proposed Ordinance 2011-20 providing for the issuance and sale of Town of Hilton Head Island, South Carolina, Special Obligation Bonds (Beach Preservation Fee Pledge), in one or more series, in the principal amount of not exceeding \$11,000,000; delegating the authority to the Town Manager to determine certain matters with respect to the bonds; prescribing the form and details of such bonds; other matters relating thereto; and providing for severability and an effective date.

e. Second Reading of Proposed Ordinance 2011-21

Second Reading of Proposed Ordinance 2011-21 authorizing the conveyance of various portions of right of way located along on U.S. Highway 278 near the intersection of Squire Pope Road to the South Carolina Department of Transportation, pursuant to the authority of S.C. Code Ann. Sec. 5-7-40 (Supp. 2010), and Sec. 2-7-20, *Code of the Town of Hilton Head Island, South Carolina*, (1983); and providing for severability and an effective date.

11) New Business

a. Consideration of a Recommendation concerning Community Vision of Hilton Head

Consideration of a Recommendation to provide financial support for further study by the Community Vision of Hilton Head (CVHH).

b. Consideration of a Recommendation concerning Palmetto Electric

Consideration of a Recommendation to grant a permanent storm drainage easement to Palmetto Electric Cooperative, Inc. to allow for the construction and maintenance of a storm water discharge pipe on Town owned property (PIN R510 008 000 0200 0000, also known as the Ashmore Tract).

12) Executive Session

a. Land Acquisition

13) Adjournment

Proclamation

BY
THE TOWN OF HILTON HEAD ISLAND
FOR
CAPTAIN WILLIAM HILTON WEEKEND

WHEREAS, in 1663, Captain William Hilton sailed from Barbados on the ship, Adventure, to explore lands granted by King Charles II to the eight Lord Proprietors; and

WHEREAS, Hilton Head Island and the Town of Hilton Head Island take their names from the headland or mariners' landmark first seen, explored, and named by Captain William Hilton after claiming the land on Monday, September 28, 1663, leading to the first English permanent settlement in South Carolina; and

WHEREAS, in 1963, the Hilton Head Island Historical Society (succeeded by The Heritage Library Foundation) erected an official State of South Carolina Department of Archives and History historical marker, entitled "HILTON HEAD," at the headland located at the northeastern corner of Hilton Head Island in Port Royal Plantation; and

WHEREAS, the Town Council of the Town of Head Island desires to honor, remember, and recognize Captain William Hilton for his historical service and achievement as discoverer and explorer of Hilton Head Island.

NOW, THEREFORE, I, Drew A. Laughlin, Mayor of the Town of Hilton Head Island, hereby proclaim that the last weekend of September annually shall be known on Hilton Head Island as

Captain William Hilton Weekend

and encourage all citizens, organizations, businesses, and schools in the Town of Hilton Head Island to observe and celebrate "CAPTAIN WILLIAM HILTON WEEKEND."

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused this seal of the Town of Hilton Head Island to be affixed this **sixth day of September**, in the year of our Lord, two thousand and eleven.

Drew A. Laughlin, Mayor

Attest:

Cori Brock, Town Clerk

THE TOWN OF HILTON HEAD ISLAND

REGULAR TOWN COUNCIL MEETING

Date: Tuesday, August 2, 2011

Time: 4:00 P.M.

Present from Town Council: Drew A. Laughlin, *Mayor*; Ken Heitzke, *Mayor-Pro Tem*; Bill Ferguson; George Williams, Bill Harkins, Kim Likins, Lee Edwards, *Council Members*.

Present from Town Staff: Steve Riley, *Town Manager*; Greg DeLoach, *Assistant Town Manager*; Brian Hulbert, *Staff Attorney*; Lavarn Lucas, *Fire Chief*; Nancy Gasen, *Director of Human Resources*; Susan Simmons, *Director of Finance*; Charles Cousins, *Director of Community Development*; Jeff Buckalew, *Town Engineer*; Jennifer Lyle, *Assistant Town Engineer*; Shawn Colin, *Comprehensive Planning Manager*; Darrin Shoemaker, *Traffic & Transportation Engineer*; Tom Fultz, *Director of Administrative Services*; Marcy Benson, *Senior Grants Administrator*; Rene Phillips, *Website/Court Systems Administrator*; Rich Hamilton, *GIS Administrator*; Cinda Seamon, *Public Education Officer*; Julian Walls, *Facilities Manager*; Paul Rasch, *Emergency Management Coordinator*; Lynn Buchman, *Administrative Assistant*

Also Present: Captain Toby McSwain, *BCSO*; Frannie Heizer, Esquire, *McNair Law Firm, P.A.*

Present from Media: Tom Barton, *Island Packet*

1) CALL TO ORDER

Mayor Laughlin called the meeting to order at 4:00 p.m.

2) PLEDGE TO THE FLAG

3) INVOCATION

4) FOIA COMPLIANCE – Public notification of this meeting has been published, posted and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.

5) Proclamations and Commendations

Mayor Laughlin recognized the passing of Judge Matthew Perry, who he described as a fine gentleman who will be missed.

Mayor Laughlin presented Commendations to Rashawn Young and Wallace Gamble for their medals awarded and representation of South Carolina and Team USA at the Special Olympics World Summer Games Athens 2011.

6) Approval of Minutes

a. Town Council Meeting – July 5, 2011

Mr. Heitzke moved to approve. Mr. Williams seconded. The minutes from the July 5, 2011 Town Council meeting were approved by a vote of 7-0.

7) Report of the Town Manager

a. Presentation by League of American Bicyclists

Mr. Andy Clark, President, and Elizabeth Kiker, Vice-President, of the League of American Bicyclists presented a sign and certificate denoting the Silver designation awarded to the Town of Hilton Head Island as a Bicycle Friendly Community. Mayor Laughlin accepted the award and acknowledged the team effort among the Town Staff, Chamber, and citizens.

b. Semi-Annual Report of the Design Review Board by Tom Parker, Past Chairman

Mr. Parker provided Town Council with an update on the Design Review Board activities for the first half of 2011, which reflected a slight increase in work being done on the Island. He reported that the Board was very appreciative of all the assistance provided by the Town Staff.

c. Semi-Annual Report of the Board of Zoning Appeals by Mr. Roger DeCaigny, Chairman

Mr. DeCaigny provided Town Council with an update on the Board of Zoning Appeals activities for the first half of 2011.

d. Town Managers Items of Interest

Mr. Riley reported no particular Items of Interest. He pointed out upcoming meetings of Boards and Committees, and events in the Town of Hilton Head as outlined on the Items of Interest and Hilton Head Island Events included in the Agenda Packet.

e. July, 2011 Monthly Update

Mr. Riley referred to the Policy Agenda update for July included in the Agenda packet.

8) Reports from Members of Council

a. General Reports from Council

None.

b. Report of the Intergovernmental Relations Committee – George Williams, Chairman

Mr. Williams reported there was a meeting on July 11, 2011, with Bobby Bowers from the State on redistricting, and Item 11.c. in tonight's Agenda package is a result of that meeting.

c. Report of the Personnel Committee – Lee Edwards, Chairman

Mr. Edwards reported that all new members of the Committee have been sworn in, and there was nothing to report until next spring.

d. Report of the Planning & Development Standards Committee –Bill Ferguson, Chairman

No report.

e. Report of the Public Facilities Committee – Kim Likins, Chairman

Ms. Likins reported there was a meeting earlier in the day with a presentation from Community Vision of Hilton Head. A motion was made that Town Council and Town Administration explore the possibility of providing support and funding to help their planning in the future.

f. Report of the Public Safety Committee – Bill Harkins, Chairman

Mr. Harkins reported there was a meeting August 1, and Captain Toby McSwain provided an update on crime statistics for the last quarter, indicating a noticeable decline in all key areas. He further reported that the Committee supported the development of a towing policy for the Town, and a background statement and recommendation to Town Council will be forthcoming. The Committee also discussed with Captain McSwain the possibility of providing area businesses with safety education programs for young part-time workers.

g. Report of the LMO Rewrite Committee – Kim Likins, Ex-Officio Member

Ms. Likins reported that the Committee continues to meet weekly, with the hopes of reducing the meetings soon. The Committee is continuing to refine the issues, but they are encouraging individuals who may be affected to come forward and express their particular issues and concerns. Ms. Likins reported that two developers had already met with the Committee, and others were planned in the near future.

9) Appearance by Citizens

Mr. Clint Van Aswegan presented an update on Spring Break Tennis and congratulated Council on its decision to expand the number of tennis courts at Chaplin. He noted the tough competition for the public tennis courts, and wanted Council to be aware that Spring Break Tennis brings 170 teams and 300 matches to the Island each spring, which are in jeopardy because of exclusive contracts being negotiated. Mr. Van Aswegan reported that he has been in contact with Staff Attorney, Brian Hulbert, concerning the Memorandum of Understanding which will enable his group to rent courts for the month of March. He further reported the expansion into Spring Break Golf, which will bring 10 to 25 teams to Hilton Head Island using Palmetto Hall and Palmetto Dunes golf courses.

10) Unfinished Business

a. Second Reading of Proposed Ordinance No. 2011-13

Second Reading of Proposed Ordinance No. 2011-13 to amend Chapters 10 and 13 of Title 4 (Finance and Taxation), of the *Municipal Code of the Town of Hilton Head Island, South Carolina*, by amending Section 4-10-70, Permitted Uses of Local Accommodations Tax Funds; amending Section 4-10-100, Management And Use of Local Accommodations Tax; amending Section 4-13-80, Permitted Uses of Funds; and providing for severability and an effective date.

Mr. Heitzke moved to approve. Mr. Williams seconded. The motion was approved by a vote of 7-0.

b. Second Reading of Proposed Ordinance 2011-14

Second Reading of Proposed Ordinance No. 2011-14 authorizing the transfer of real property being a portion of right of way known as the Arrow Road/Dunnagan's Alley Roundabout to South Carolina Department of Transportation, pursuant to the authority of S.C. Code Ann. Sec. 5-7-40 (supp. 2010), and Sec. 2-7-20, *Code of The Town of Hilton Head Island, South Carolina*, (1983); and providing for severability and an effective date.

Mr. Heitzke moved to approve. Mr. Williams seconded. The motion was approved by a vote of 7-0.

**c. Second Reading of Proposed Ordinance 2011-15
Proposed Land Swap with Henry Driessen**

Second Reading of Proposed Ordinance 2011-15 authorizing the sale of real property owned by the Town of Hilton Head Island, South Carolina, pursuant to the authority of S. C. Code Ann. § 5-7-40 (Supp. 2010), and § 2-7-20, *Code of the Town of Hilton Head Island, South Carolina*, (1983, as amended); and providing for severability and an effective date.

Mr. Heitzke moved to approve. Mr. Harkins seconded.

Mr. Williams suggested and Mr. Riley agreed that future terminology setting forth such a transaction might be better reflected as an exchange.

The motion was approved by a vote of 7-0.

**d. Second Reading of Proposed Ordinance 2011-16
Proposed Conveyance of Land to Habitat for Humanity, Inc.**

Second Reading of Proposed Ordinance 2011-16 authorizing the sale of real property owned by the Town of Hilton Head Island, South Carolina, pursuant to the authority of S. C. Code Ann. § 5-7-40 (Supp. 2010), and § 2-7-20, *Code of the Town of Hilton Head Island, South Carolina*, (1983, as amended); and providing for severability and an effective date.

Mr. Heitzke moved to approve. Mr. Ferguson seconded. Mr. Bob Johnson, a resident of Old Woodlands Plantation, which is adjacent to this property, inquired about the affect to his property, if any. Mr. Riley referred him to Charles Cousins for the requested information.

The motion was approved by a vote of 7-0.

11) New Business

a. Consideration of a Recommendation regarding a Right of Way Conveyance

Consideration of a Recommendation that the Town Council of the Town of Hilton Head Island, South Carolina, approve a right of way transfer transaction between the Town and the South Carolina Department of Transportation (SCDOT) regarding the right of way acquired to facilitate the construction and maintenance of the improvements to the intersection of US 278 (William Hilton Parkway) with Squire Pope Road.

Mr. Heitzke moved to approve. Mr. Williams seconded. The motion was approved by a vote of 7-0.

b. Consideration of a Recommendation regarding Debris Removal Agreements

Consideration of a Recommendation that the Town Council of the Town of Hilton Head Island, South Carolina, endorse the execution of memorandums of agreement with Beaufort County and the South Carolina Department of Transportation (SCDOT) for disaster related debris removal from their respective road rights of way on Hilton Head Island.

Mr. Heitzke moved to approve. Mr. Williams seconded.

Mr. Riley noted that he was informed by Jeff Buckalew, Town Engineer, today that the DOT has changed its policy and will now cover the 25% not reimbursed by FEMA on DOT roads that are not in the federal aid system – making this an even better deal than was originally submitted. A small change in the Agreement will be required, and he asked for Council’s endorsement and approval to execute the Agreements with these changes. Mr. Riley noted the specific roads covered by the Agreement.

The motion was approved by a vote of 7-0.

c. Consideration of a Resolution regarding Criteria for Redistricting

Consideration of a Resolution that the Town Council of the Town of Hilton Head Island, South Carolina adopt criteria to develop plans for *Redistricting 2010* to ensure maximum public participation.

Mr. Heitzke moved to approve. Mr. Williams seconded, and inquired when the public hearing and presentation of the plans would be made. Mr. Riley responded that no date had been set, and the issue would be discussed with the Mayor as to whether this would be done at Committee level or Council level. He expressed the hope that this would be done no later than mid-September. The motion was approved by a vote of 7-0.

d. First Reading of Proposed Ordinance 2011-17

First Reading of Proposed Ordinance 2011-17 authorizing and providing for the issuance of Special Obligation Bonds (Hospitality Fee Pledge) of the Town of Hilton Head Island, South Carolina; prescribing the form of bonds; providing for the payment of the bonds from the sources provided herein; creating certain funds and providing for payments into such funds; amending Chapter 13 of Title 4 (Finance and Taxation) of *The Municipal Code of the Town Of Hilton Head Island, South Carolina*, by amending Section 4-13-80, Permitted Uses of Funds, and Section 4-13-110, Sunset; making other covenants and agreements in connection with the foregoing; and providing for severability and an effective date.

Mr. Heitzke moved to approve. Mr. Williams seconded and asked for clarification, which Mr. Riley and Frannie Heizer, bond counsel, with McNair Law Firm, P.A. provided.

The motion was approved by a vote of 7-0.

e. First Reading of Proposed Ordinance 2011-18

First Reading of Proposed Ordinance 2011-18 providing for the issuance and sale of Town of Hilton Head Island, South Carolina, Special Obligation Bonds (Hospitality Fee Pledge), in one or more series, in the principal amount of not exceeding \$26,250,000; delegating the authority to the Town Manager to determine certain matters with respect to the bonds; prescribing the form and details of such bonds; other matters relating thereto; and providing for severability and an effective date.

Mr. Heitzke moved to approve. Mr. Ferguson seconded.

Mr. Riley and Susan Simmons, Finance Director, provided explanations for the need of the Ordinance, and Frannie Heizer, bond counsel, related the timing issues involved. A lengthy discussion ensued among Council Members, Ms. Simmons, and Ms. Heizer. It was determined that Town Council needed additional information before Second Reading, with such information to be compiled and provided to Council by bond counsel, financial advisor, and the Town Finance Department.

The motion was approved by a vote of 7-0.

f. First Reading of Proposed Ordinance 2011-19

First Reading of Proposed Ordinance 2011-19 authorizing and providing for the issuance of Special Obligation Bonds (Beach Preservation Fee Pledge) of the Town of Hilton Head Island, South Carolina; prescribing the form of bonds; providing for the payment of the bonds from the sources provided herein; creating certain funds and providing for payments into such funds; making other covenants and agreements in connection with the foregoing; and providing for severability and an effective date.

Mr. Heitzke moved to approve. Mr. Ferguson seconded. Clarification was requested by Mr. Edwards, and provided by Ms. Heizer, bond counsel.

The motion was approved by a vote of 7-0.

g. First Reading of Proposed Ordinance 2011-20

First Reading of Proposed Ordinance 2011-20 providing for the issuance and sale of Town of Hilton Head Island, South Carolina, Special Obligation Bonds (Beach Preservation Fee Pledge), in one or more series, in the principal amount of not exceeding \$11,000,000; delegating the authority to the Town Manager to determine certain matters with respect to the bonds; prescribing the form and details of such bonds; other matters relating thereto; and providing for severability and an effective date.

Mr. Heitzke moved to approve. Mr. Ferguson seconded. Mr. Williams asked for clarification on the amount, and Mr. Riley confirmed this was same issue discussed several months ago.

Andrew Zarnecki, General Manager of Westin Hilton Head Island Resort & Spa, indicated his support of the beach renourishment project but expressed his concern about the timing and the heavy equipment that would pass across the front of the Resort. He asked for the possibility of a delay until December 30 to avoid hurricane season, as well as that time period being non-destructive to his business.

The motion was approved by a vote of 7-0.

h. Consideration of a Recommendation on the Port Royal Sound Shoreline Restoration/Stabilization Project - Acceptance of Bids, Proposals/Award Contracts.

Mr. Riley explained the need for Town Council action in order to award these contracts, as it exceeded his authority to do so. He pointed out that the low bid was based on the ability of Great Lakes to move from one job to this one, with little flexibility for a delay, but he will ask if this is possible. He also noted that the groin work was a separate contract, with the low bidder being the same contractor who has done every rock-work project done by the Town of Hilton Head Island. Combined, the two contracts are \$2 million less than projected last fall, and he requested a motion for acceptance of the bids.

Mr. Heitzke moved to approve. Mr. Ferguson seconded.

A discussion was held among Council Members and Mr. Riley as to alternate methods to get pipes to the beach other than in front of the Westin and about the need for a business license.

Mayor Laughlin noted that all means would be explored to mitigate any adverse effects to the hotel and other property owners in the area.

Mr. Zarkecki acknowledged the fact the Island and homeowners of Port Royal will benefit long-term by widening the beach, and expressed his support, but questioned the timing and disruption it would cause and whether additional access points might be available.

Council Members discussed with Mr. Riley the possibility of requesting a delay, which he agreed to do, but he indicated there was no guarantee such request would be granted.

The motion was approved by vote of 7-0.

12) Executive Session

Mr. Riley stated he needed an executive session for contractual matters pertaining to land acquisition, including requests to place cell towers on town-owned land; contractual matters pertaining to conveyance of right-of-way to the SCDOT; legal matters pertaining to a proposed settlement of ongoing litigation with OCRM; legal matters pertaining to a proposed settlement with RH Realty; and personnel matters pertaining to appointments to Boards and Commissions.

At 5:10 p.m., Mr. Heitzke moved to go into Executive Session for the reasons stated by the Town Manager. Mr. Williams seconded. The motion was approved by a vote of 7-0.

Mayor Laughlin called the meeting back to order at 6:07 p.m. and asked if there was any business to take up as a result of executive session.

Mr. Ferguson moved that the Town Council for the Town of Hilton Head Island adopt an Ordinance authorizing the conveyance of various portions of rights of way located along U.S. Highway 278 near the Intersection of Squire Pope Road to the South Carolina Department of Transportation. Mr. Heitzke seconded. The motion was approved by a vote of 7-0.

13) Adjournment

Mr. Heitzke moved to adjourn. Mr. Williams seconded. The motion was approved by a vote of 7-0. The meeting was adjourned at 6:08 p.m.

Lynn W. Buchman
Administrative Assistant

Approved:

Drew A. Laughlin, Mayor

DRAFT



Items of Interest

September 6, 2011

1. Town News

The Town's contractor, JS Construction Services, Inc. of Bluffton, has begun work on the installation of fire rescue emergency access gates off Union Cemetery Road into Port Royal Plantation and off Beach City Road through the Ft. Howell access into Palmetto Hall Plantation. The project began on August 10, 2011 and will be complete within 45 days.

(Contact: Jayme Lopko, Senior Planner, 341-4695)

Bonnie Evans, Senior HR Administrator has completed a 3-year process to recertify as a Professional in Human Resources (PHR). This certification signifies that Bonnie possesses a high level of education, experience and demonstrated knowledge in the human resource management field.

Angie Stone, Senior HR Administrator has completed a 3-year process to recertify as a "Certified Benefits Professional" and a "Certified Compensation Professional." The recertification process validates Angie's knowledge of benefits, compensation and total rewards through ongoing education, training and professional development.

(Contact: Nancy Gasen, Director of Human Resources, 341-4621)

Cathy Jones-Gooding the Communications Manager for Hilton Head Island's E-911 Communications Center has been selected by the International Association of Fire Chiefs to serve for 3 years on the IAFC Communications Committee. The Communications Committee focuses on wireless radio communications issues that impact the U.S. fire & emergency services and public safety. They also analyze current issues and inform and guide the IAFC board of directors as necessary; analyze federal legislative proposals from Congress and work with the President's administration on communications issues, especially the offices in the Department of Homeland Security and the Federal Communications Commission; and analyze and work with private sector organizations that develop proposals of interest to public safety communications.

(Contact: Lavarn Lucas, Fire Chief, 682-5153)

Battalion Chief Training Officer Benny Waller has been selected to serve on the National Fire Protection Association's (NFPA) Technical Committee on Technical Rescue. The Technical Rescue Committee works to establish the national minimum standards governing proper procedures for conducting technical rescue operations. Technical rescue operations include structural collapse, vehicle/machinery, confined space, water, wilderness, and trench rescue operations. These national minimum standards apply to all agencies conducting such rescue operations in the US and many international agencies to include fire departments, law enforcement, EMS, utility, public works, and rescue organizations.

(Contact: Lavarn Lucas, Fire Chief, 682-5153)

Fire & Rescue has been informed by the US Dept. of Health and Human Services, Office of the Secretary, Assistant Secretary for Preparedness and Response, National Disaster Medical System that Senior Firefighter – Paramedic Erik Baaske and Paramedic Justin Cunningham have been accepted as a Health Technician (Paramedic) on the SC Disaster Medical Assistance Team (DMAT). DMAT deploys to a disaster site with sufficient supplies and equipment to sustain the team while providing medical care at a fixed or temporary medical care site. In a mass casualty incident, DMAT responsibilities include triaging of patients, providing austere medical care, and preparing patients for evacuation. In other types of situations, DMAT provides primary health care and/or may serve to augment overloaded local health care staffs. DMATs may be activated to support patient reception and disposition of patients to hospitals. DMAT is a part of the Federal response system to large scale disaster. The SC DMAT has responded to Hurricane Katrina (2005), Hurricane Rita (2008) and the massive earthquake in Haiti (January 2010).

(Contact: Lavarn Lucas, Fire Chief, 682-5153)

Electronic filing for 2012 Accommodations Tax Grants is now available on our website www.hiltonheadislandsc.gov through 4:00 p.m., September 30, 2011. The Accommodation Tax Advisory Committee is holding a workshop for applicants on Thursday, September 8 from 9:00 to 11:00 in Council Chambers. All applicants are encouraged to attend.

(Contact: Debra Cyrilla, Accounting Specialist, 341-4627)

2. Noteworthy Events

a) Some of the upcoming meetings at Town Hall:

- Planning Commission – September 7, 9:00 a.m.
- LMO Rewrite Committee – September 8, 1:00 p.m.
- Parks and Recreation Commission – September 8, 3:30 p.m.
- Public Safety Committee – September 12, 10:00 a.m.
- Design Review Board – September 13, 1:15 p.m.
- LMO Rewrite Committee – September 15, 1:00 p.m.
- Constitution Day Celebration – September 20, 3:15 p.m. (Takes place before Town Council Meeting)
- Town Council – September 20, 4:30 p.m. (late starting because of Constitution Day Celebration preceding the Town Council meeting)

(Meetings subject to change and/or cancellation. Please visit the Town of Hilton Head Island website at www.hiltonheadislandsc.gov for meeting agendas)

2011 Hilton Head Island Events

Fridays, thru Dec. 9, 2011 8:30am-1:00pm	Farmers Market	Honey Horn
Thursday, September 15 thru Sunday, September 18, 2011	PTR Wheelchair Tennis Championships	Chaplin Community Park
Tuesday, September 20, 2011 6:30pm-9:00pm	The International Ecotourism Society Conference	Honey Horn



MEMORANDUM

TO: Town Council

FROM: Scott Liggett, Director of Public Projects & Facilities / Chief Engineer

VIA: Stephen G. Riley, CM and Town Manager

DATE: August 26, 2011

RE: Port Royal Beach Renourishment Project – request for clarifying information

In response to the line of questioning and discussion which occurred at Town Council's August 2, 2011 meeting regarding the above referenced project, I provide the following information:

This past spring, Council authorized a work window beginning as soon as the permits allowed – Oct 1. You may recall that this was in response to the desires and demands of the property owners along the project shoreline. Thus, our bid documents were structured accordingly. The beach fill contractor, Great Lakes Dredge and Dock, (GLDD) is required to complete a portion of the fill project such that the groin contractor, The Industrial Company, (TIC) can begin no later than January 1, 2012. GLDD is also required to achieve final completion of the entire project by February 15, 2012. Changing the start work date would necessitate that we give both contractors an opportunity to review and potentially revise their bids. I would estimate the stand-by costs of Great Lakes to be approximately \$100,000/day. A forced 23 day delay to the scheduled October 9 start date would amount to \$2,300,000.

Working in November is still the "hurricane season." Of far greater concern than the impact of a hurricane is the increasing likelihood of disruption caused by a nor'easter as we work deeper into winter. Examination of wind and wave hindcasts suggests that the sooner we can finish, even if it means working during "hurricane season", the better we can manage the true risks.

I am unfamiliar with a vacant lot internal to Port Royal which could serve as a viable access point for Great Lakes. Regardless, it would be highly disadvantageous to the Town to force both contractors to access the beach from the single known location where we have secured an easement (Port Royal's Beach House). The potential for delay and interference claims would be high. Except for the first acceptance section, work on the beach fill and the groin will be occurring simultaneously. There are inherent constraints (risks to production) which both contractors have assessed. Key among them for TIC is the impact of the tide. Of critical importance to them is to have on hand a sufficient supply of stone to keep them busy for the work window each day presents. The stockpile area near the beach house is limited; the access corridor is small. We will be conducting seismic monitoring as a result of the proximate location of the pool and building to our access corridor in order to protect stakeholder interests. The stone will be coming in daily from Augusta. Authorizing another contractor to use this same area for mobilization/demobilization and daily access creates a threat to production and complications of potential damage claims for both contractors which is not reflected in the current prices.

GLDD's workplan will be discussed in detail as we move forward. However, it's my estimation that roughly 3500 LF of shore pipe will be required to build the project. Assuming 30 foot lengths and 6 pieces per truck delivered to Islanders, we are looking at approximately 20 truck loads total to be delivered. If GLDD uses 50 foot lengths, the truck traffic is greatly diminished. Similarly, I would expect the off road pipe wagon to haul 6 sticks of pipe from the off load point down the beach to the work area. So, I see a couple dozen trips in and a couple dozen trips out for the pipe. Other than a restriction that the pipe hauling must occur during daylight hours for safety purposes, GLDD is generally free to use the access and the beach in a manner necessary to support their approved work plan. No stockpiling of pipe is allowed in front of the Westin. I expect the pipe to be stockpiled or laid out entirely within the project footprint. I expect the truck traffic and hauling activities associated with the mobilization/demobilization to occur over the course of a few days. Prolonging this activity is not in GLDD's interests. I've attached a picture of the pipe wagon used in 2006 for reference. I don't expect the heavy equipment (bulldozers) to have a need for daily trips across the frontage of the Westin. I would expect them to stay within the project area once they are on site. I would expect daily small vehicle traffic to occur with some regularity, pick-up trucks, survey support, crew changes, heavy equipment maintenance, etc.

As details are firmed up during the pre-construction phase of the project, I will be prepared to provide follow-up reports.





MEMORANDUM

TO: Town Council

FROM: Scott Liggett, Director of Public Projects & Facilities / Chief Engineer

VIA: Stephen G. Riley, CM and Town Manager

DATE: August 22, 2011

RE: Waste Hauling and Recycling Franchise Agreement –
Quarterly report through June 30, 2011

June 30, 2011 marked the conclusion of the first quarter of performance for our Waste Hauling and Recycling Franchise Agreement with Republic Services. The agreement requires remittance of the appropriate franchise fee (5% of gross proceeds collected within the performance period) within 30 days of the conclusion of the period. Additionally, the rebate from our chosen recycling vendor is also due at this same time. The rebate amounts to \$18.00 / ton of recyclable material processed through Sunoco Services Savannah, GA facility. Staff has reconciled the receivables in a manner consistent with the franchise agreement. Completed tasks include:

- Reconciled tonnage reported between Republic and Sonoco
- Reconciled amounts due by each entity for the 1st quarter

In total, the first quarter franchise fee revenues were \$22,358.64; \$16,121.28 from Republic and \$6,237.36 from Sunoco. The FY 2012 approved budget estimated a net annual revenue stream of \$100,000 (\$25,000/quarter).

Participation and performance statistics are as follows:

- 6,999 accounts initiated through Republic Waste Services
- 346.52 tons of recyclable material has been collected and processed
- 1,148 tons of garbage has been collected

Prior to the Town's residential waste and recycling franchise agreement, our records indicate that haulers collectively reported an average 31 tons of residential recycling collected per month. Compared to the first quarter average of 115.51 tons per month, it appears that an increase in the tonnage of recyclable materials collected of 273% has occurred.

The initiative will continue to evolve as we forge ahead into the second quarter and more accounts are initiated as residents' current existing contracts with other haulers expire and more accounts are initiated under the franchise agreement.



MEMORANDUM

TO: Town Council
FROM: Stephen G. Riley, CM, Town Manager
VIA: Susan M. Simmons, CPA, Director of Finance
DATE: August 25, 2011
RE: Town of Hilton Head Island Credit Rating

As I know you are aware, the current economic times and unbalanced federal budgets have caused significant scrutiny of the federal government's bond ratings resulting in downgrades, negative outlooks, and credit watches. This is of particular interest to us because it creates the impression that the decline in the federal rating will "trickle-down" to the state and local levels. This is not the case. In fact, Standard & Poor has announced that "cities and states may keep their AAA bond ratings despite the recent downgrade of the US federal government". This statement validates the difference between federal debt and the municipal bond market. The basic difference being that the federal government issues debt to finance everyday operations while municipalities issue debt to finance infrastructure projects. I have attached a statement issued by the National League of Cities on August 9, 2011 that highlights the distinctions. **The Town issues debt for capital purposes but not for operations.**

Leading up to the bond raters' decisions on the federal government, the Town received several updates from Moody's on the potential impact on the Town and its bond ratings. On July 28, 2011, Moody's placed 177 U.S. public finance issuers on review for possible downgrades. The Town was one of 400 Aaa-rated public finance credits that were **not** placed on this review for a downgrade. The announcement from Moody's explains that issuers will be individually evaluated and ratings decisions will be based upon reliance on federal revenues, sensitivity to economic cycles, and available resources to offset risks. **The Town has strong reserves and very limited dependence on federal government resources. The Town has retained its Aaa rating from Moody's.**

The Town's credit rating remains exemplary. All three bond rating firms recently affirmed the Town's financial solidity by issuing the following ratings on the overall General Obligation (GO) Bonds and specifically on the 2011A GO Refunding Bonds:

Moody's	Aaa
Fitch Ratings	AA+
Standard & Poor	AA+

A copy of the July 21, 2011 Media Release summarizing the rating firms' positive rating outlook is attached which cites several favorable factors including our strong fiscal policies and ample fund balance reserves.

The policies and actions taken by the Town have been favorably viewed by the bond rating companies. Our strong financial position and reserves have helped us weather the economic storm and position us well for the nation's financial recovery.

News from the National League of Cities

www.nlc.org
www.nlctv.org
www.facebook.com/nationalleagueofcities

www.citiesspeak.org
www.twitter.com/leagueofcities

For Immediate Release

August 9, 2011

Contact

Gregory Minchak	Amanda Straub
202-626-3003	202-626-3015
Minchak@nlc.org	Straub@nlc.org

National League of Cities Responds to S&P Statement on State and Local Government Ratings

Washington, DC – The National League of Cities issued the following statement in response to Standard & Poor's statement on municipal credit ratings:

Standard & Poor's announcement that cities and states may keep their AAA bond ratings despite the recent downgrade of the US federal government demonstrates the difference between U.S. federal debt and the municipal bond market.

Unlike the federal government, municipal debt is typically not used to finance day-to-day operations. Local and state governments use municipal bonds to finance infrastructure projects. Nearly all local and state borrowing is longer-term (20 or 30 years) and debt service payments are predictable (usually the same amount each year). Additionally, local and state debt levels are low, about 16 percent of GDP, and usually representing a relatively small portion of local and state budgets, about 5 percent on average.

Standard & Poor's announcement that it was downgrading some municipal bonds - those primarily related to conduit bonds (typically issued, for example, for housing agencies, hospitals, and school construction) – while unfortunate, was not a surprise given the recent decision to downgrade the federal government's credit rating. But, the overwhelming majority of municipal debt issued by general-purpose local and state governments remains highly rated and secure, as confirmed by S&P's and Moody's recent announcements.

Municipal bonds are an important tool for regional economic development and major infrastructure projects. Potential downgrades could add higher costs for infrastructure projects, further constraining local and state budgets. Local and state governments comprise three quarters of U.S. infrastructure spending and debt financing has been the primary mechanism for funding the nation's system of public works – nearly four million miles of roadways, 500,000 bridges, 1,000 mass transit systems, 16,000 airports, 25,000 miles of intercoastal waterways, 70,000 dams, 900,000 miles of pipe in water systems, and 15,000 waste water treatment plants.

Despite the statements and the downgrades, residents should still be assured that cities will continue to provide the critical services residents demand. The fundamentals of cities haven't changed. Cities still operate under debt cap limits and must go through exhausting processes prior to any borrowing to ensure their ability to repay.

Virtually all state and local governments have balanced budget requirements. Many state and local governments also have provisions that require steps to be taken to address problems before defaults can occur, or prioritize debt payments over spending for other government services.

Concern about the municipal market is now being driven by lack of confidence in the economy and the rating agencies' assessments that federal policy responses have been inadequate -- not local leaders failing to pay their debts or balance their budgets.

To be sure, local and state governments continue to confront declining or slow growth in revenues as a result of the Great Recession and 2011-2012 will present many general purpose governments with difficult choices. But, the overwhelming majority of local and state governments are continuing to balance their budgets and meet their debt obligations.

The National League of Cities is the nation's oldest and largest organization devoted to strengthening and promoting cities as centers of opportunity, leadership and governance. NLC is a resource and advocate for 19,000 cities, towns and villages, representing more than 218 million Americans.

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Town of Hilton Head Island

One Town Center Court
Hilton Head Island, SC 29928

MEDIA RELEASE

For Immediate Release

Date: July 21, 2011

Contact: Stephen G. Riley, Town Manager

Re: Town of Hilton Head Bond Ratings Affirmed;
Bonds Refunded to Create Significant Savings

Bond Ratings Affirmed:

All three national bond rating firms recently affirmed the Town's bond ratings and rating outlook.

Moody's	Aaa/Stable
Fitch Ratings	AA+/Stable
Standard & Poor's	AA+/Stable

The ratings affirmation applies overall to the Town's General Obligation Bonds. The rating also applies specifically to the upcoming General Obligation (GO) Refunding Bonds, Series 2011A.

In the ratings releases, the rating firms made the following statements:

Moody's cited as factors in its rating the Town's strong financial position, supported by comprehensive fiscal policies, ample fund balance levels, long-term operating stability and a low direct debt burden. The rating also considers the Town's importance as a tourism center, the sizable tax base, and the high wealth levels of the population.

According to Standard & Poor's, its rating is based on the well-established, tourism-centered local economy with low unemployment; an affluent year-round population; a large and diverse tax base which has shown minimal recessionary decreases in home valuations, new construction and existing home sales; the

Cc: Stephen G. Riley, Town Manager

strong financial position and a low other postemployment benefits liability.

“This is very good news” stated Steve Riley, Town Manager. “We are very pleased with the Town’s affirmations from the bond rating firms.” In addition to the Town’s ongoing large reserves, diversified revenues, and strong financial and budgetary policies, Riley cited the Town’s recent improvement in tourism-based revenues and its efforts to create savings in planned expenditures during the economic downturn as contributing factors to the strong bond ratings.

Bonds Refunded to Create Significant Savings:

The Series 2011A bonds have a par value of \$12,385,000 and a true interest cost (TIC) rate of 3.19%. They will refund the callable 2004A GO Bonds which were issued for land acquisition.

On July 20, 2011, the Town received ten bids on this offering which is an indication of the market’s strong interest in the Town of Hilton Head Island’s municipal bonds. This refunding issue represents a present value savings of 5.16% and will save the Town \$579,040. The Town expects to close on the refunding on August 3, 2011.

“The Town monitors its outstanding debt on a frequent basis to identify potential savings in debt service costs” stated Mayor Drew Laughlin. “Realizing these savings is important to the Capital Improvement Program as the Town seeks to reinvigorate the local economy and encourage redevelopment.”

Cc: Stephen G. Riley, Town Manager



MEMORANDUM

TO: Town Council

FROM: Stephen G. Riley, CM, Town Manager

VIA: Susan M. Simmons, CPA, Director of Finance

DATE: August 19, 2011

RE: **Second Reading of Proposed Ordinance No. 2011-17
General Bond Ordinance – Hospitality Fee Pledge**

Note:

There are no changes since the first reading.

Recommendation:

Town Council approves second reading of Proposed Ordinance No. 2011-17 which establishes a new manner for issuing debt for which the repayment will be from a pledge of hospitality fees.

Summary:

As you will recall from the last meeting, there are a total of four proposed ordinances – two ordinances each for hospitality and beach preservation. The first for each is the **General Bond Ordinance** which establishes enabling legislation for revenue bonds but does not authorize a specific bond issue. ***This agenda item addresses the General Bond Ordinance for Hospitality Fees.***

The second proposed ordinance for each type is the First Supplemental Ordinance which authorizes a specific debt issue. At the first reading, Council requested additional information regarding the details of hospitality financing. The information will be presented with the **next** agenda item (Proposed Ordinance 2011-18) which is the First Supplemental Ordinance for the Hospitality Fees. For that agenda item, staff requests the approval to issue new debt.

GENERAL BOND ORDINANCE

AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF SPECIAL OBLIGATION BONDS (HOSPITALITY FEE PLEDGE) OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA; PRESCRIBING THE FORM OF BONDS; PROVIDING FOR THE PAYMENT OF THE BONDS FROM THE SOURCES PROVIDED HEREIN; CREATING CERTAIN FUNDS AND PROVIDING FOR PAYMENTS INTO SUCH FUNDS; AMENDING CHAPTER 13 OF TITLE 4 (FINANCE AND TAXATION) OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, BY AMENDING SECTION 4-13-80, PERMITTED USES OF FUNDS, AND SECTION 4-13-110, SUNSET; MAKING OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE FOREGOING; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Town Council (the "Council") of the Town of Hilton Head Island, South Carolina (the "Town") enacted Ordinance No. 2000-05 on February 8, 2000, as amended by Ordinance No. 2003-23 enacted on August 19, 2003, imposing the Hospitality Fees (the "Hospitality Fees," as more particularly defined herein) within the geographic boundaries of the Town; and

WHEREAS, Hilton Head Island Public Facilities Corporation, an instrumentality of the Town (the "Corporation"), issued \$10,775,000 original principal amount of the Hilton Head Island Public Facilities Corporation, Certificates of Participation Evidencing Undivided Proportionate Interests in Base Fee Payments Under an Installment Sale Agreement (Hospitality Fee Pledge), Series 2004C, which are presently outstanding in the principal amount of \$8,625,000 (the "2004 Certificates"), evidencing proportionate undivided interests in the Base Fee Payments (as defined in the Installment Sale Agreement dated as of June 1, 2004 (the "2004 Installment Sale Agreement") between the Town and the Corporation) paid by the Town under the 2004 Installment Sale Agreement; and

WHEREAS, pursuant to the 2004 Installment Sale Agreement, the Town has pledged the Hospitality Fees to secure its obligation to pay Base Fee Payments and Additional Fee Payments (as defined in the 2004 Installment Sale Agreement) thereunder; and

WHEREAS, the Town is permitted to issue Other Obligations (as defined in the 2004 Installment Sale Agreement) secured by a pledge of the Hospitality Fees, which pledge may be junior and subordinate to the pledge of the Hospitality Fees securing its obligation to pay Base Fee Payments and Additional Fee Payments under the 2004 Installment Sale Agreement; and

WHEREAS, the Town is presently contemplating the undertaking of new tourism-related projects permitted to be financed under the Hospitality Fee Act (as defined herein) and

the Hospitality Fee Ordinance (the “Projects” as are particularly defined herein) and the refinancing of the 2004 Certificates; and

WHEREAS, the Council has been advised that in order to finance the Projects and/or refinance the 2004 Certificates, the Council must enact appropriate ordinances authorizing the issuance of special obligation bonds.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AND IT IS ORDERED AND ORDAINED BY SAID AUTHORITY OF COUNCIL:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. Unless the context shall clearly indicate some other meaning, the terms defined in this Section shall, for all purposes of this Ordinance and of any ordinance, resolution, certificate, opinion, instrument or other document herein or therein mentioned, have the meanings herein specified. The definitions shall be equally applicable to both the singular and plural forms of any of the terms herein defined and vice versa. The term:

“2004 Certificates” shall mean the \$10,775,000 original principal amount Hilton Head Island Public Facilities Corporation, Certificates of Participation Evidencing Undivided Proportionate Interests in Base Fee Payments Under an Installment Sale Agreement (Hospitality Fee Pledge), Series 2004, dated June 1, 2004, and outstanding as of the date hereof in the principal amount of \$8,625,000.

“2004 Installment Sale Agreement” shall mean the Installment Sale Agreement, dated as of June 1, 2004, between the Town and the Corporation, relating to the 2004 Certificates.

“2004 Trust Agreement” shall mean the Trust Agreement, dated as of June 1, 2004 between the Corporation and Wells Fargo Bank, N.A., as Trustee, relating to the 2004 Certificates.

“Accountant” shall mean an independent certified public accountant or a firm of independent certified public accountants selected by the Town.

“Bond” or “Bonds” shall mean any Bond, some of the Bonds or all of the Bonds issued under and pursuant to Article III hereof, excluding bonds or other indebtedness issued under Section 3.5 hereof.

“Bond Act” shall mean Title 6, Chapters 17 and 21, Code of Laws of South Carolina, 1976, and all other statutory authorizations, now or hereinafter enacted, authorizing and enabling the Town to provide for the issuance of the Bonds.

“Bond Counsel” shall mean any attorney or firm of attorneys of nationally recognized standing in matters pertaining to the federal tax exemption of interest on obligations issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States.

“Bondholders” or the term “Holders” or any similar term shall mean the registered owner or owners of any Outstanding Bond or Bonds.

“Bond Redemption Account” shall mean the account by that name created within each respective Debt Service Fund.

“Books of Registry” shall mean the registration books maintained by the Registrar, as bond registrar, in accordance with Section 4.3 hereof.

“Business Day” shall mean, except as otherwise provided with respect to a Series of Bonds in a Supplemental Ordinance, any day other than a Saturday, a Sunday or a day which shall be in the State or the state in which the corporate trust office of the Trustee is located a legal holiday or a day on which banking institutions are authorized by law or executive order to close or a day on which the payment system of the Federal Reserve is not operational.

“Construction Fund” shall mean any fund established with and maintained by the Custodian selected by the Town, and derived from certain of the proceeds of the sale of the Bonds and intended to defray the costs of all or a portion of any Project and to pay all Costs of Acquisition and Construction in connection therewith, as established in a Supplemental Ordinance authorizing the issuance of any Series of Bonds.

“Costs of Acquisition and Construction” shall mean, to the extent permitted by the Hospitality Fee Act, Project costs, including the Costs of Issuance and capitalized interest on Bonds. Costs of Acquisition and Construction shall include the reimbursement of funds previously advanced by the Town with respect to the Projects, funding of a Debt Service Reserve Fund, and the payment of amounts due on bond anticipation notes, the proceeds of which were used for Costs of Acquisition and Construction.

“Costs of Issuance” shall mean all items of expense, directly or indirectly payable or reimbursable by or to the Town or the Council and related to the authorization, sale and issuance of Bonds including, but not limited to, printing costs, costs of preparation and reproduction of documents, filing and recording fees, initial fees and charges of any Trustee, Custodian, Registrar or Paying Agent, legal fees and charges, auditing and accounting fees and charges, fees and disbursements of consultants and professionals, costs of credit ratings, fees and charges for preparation, execution, transportation and safekeeping of Bonds, costs and expenses of any refunding, premiums for insurance relating to the issuance of Bonds, financing charges, accrued interest with respect to the initial investment of proceeds of Bonds and any other costs, charges or fees in connection with the original issuance of Bonds.

“Council” shall mean the Town Council of the Town of Hilton Head Island, South Carolina.

“Custodian” shall mean any bank, depository or trust company duly qualified and doing business within the State selected by the Town as a depository of moneys or securities held in the Construction Fund.

“Debt Service” shall mean, with respect to each Series of Bonds and with respect to any particular Fiscal Year, the aggregate of the amounts to be paid or set aside (or estimated to be required to be paid or set aside) in the applicable Debt Service Fund in such Fiscal Year for the payment of the principal of, redemption premium, if any, and interest (to the extent not payable from the proceeds of Bonds or investment earnings thereon) on such Series of Bonds; provided that the interest on Variable Rate Indebtedness then Outstanding shall be calculated at the actual average rate of interest on the Variable Rate Indebtedness during the twelve (12) months immediately preceding the date of calculation (or such lesser period during which the Variable Rate Indebtedness has been Outstanding); provided further, that for purposes of any prospective calculation, interest on Variable Rate Indebtedness shall be calculated at the lesser of (a) the 25-Bond Revenue Index published by *The Bond Buyer* (or if no longer published, any reasonably equivalent nationally recognized index published for the periods in question selected by the Town) no more than one month prior to the date of calculation or (b) the maximum interest rate allowable on such Variable Rate Indebtedness.

“Debt Service Fund” shall mean each of the respective funds of that name established pursuant to Section 6.6 of this Ordinance and so designated pursuant to a Supplemental Ordinance to provide for the payment of the principal of and interest on the respective Series of Bonds issued pursuant to this Ordinance and such Supplemental Ordinance as the same respectively become due and payable.

“Debt Service Reserve Fund” shall mean the respective funds, if any, of that name established pursuant to Section 6.7 of this Ordinance and so designated pursuant to a Supplemental Ordinance.

“Default” or “Event of Default” shall mean any of those Events of Default specified in and defined by Article X hereof.

“First Supplemental Ordinance” shall mean the Supplemental Ordinance enacted by the Council on the date hereof, authorizing the issuance of the Series 2011 Bonds.

“Fiscal Year” shall mean the fiscal year for the Town as determined by the Council, initially being the period from July 1 in any year to and including June 30 in the following year.

“Government Obligations” shall mean, except as otherwise provided in a Supplemental Ordinance, and to the extent such obligations constitute Permitted Investments, (1) cash; (2) United States Treasury Obligations – State and Local Government Series; (3) United States Treasury bills, notes, bonds or zero coupon treasury bonds all as traded on the open market; (4) direct obligations of the U.S. Treasury which have been stripped by the Treasury itself, including CATS, TIGRS and similar securities; (5) obligations of any agencies or instrumentalities which are backed by the full

faith and credit of the United States of America; (6) bonds or debentures issued by any Federal Home Loan Bank or consolidated bonds or debentures issued by the Federal Home Loan Bank Board; (7) obligations of the Federal National Mortgage Association; (8) (i) General obligations of the State of South Carolina or any of its political units; or (ii) revenue obligations of the State of South Carolina or its political units, if at the time of investment, the obligor has a long-term, unenhanced, unsecured debt rating in one of the top two ratings categories, without regard to a refinement or gradation of rating category by numerical modifier or otherwise, issued by at least two nationally recognized credit rating organizations; or (9) any legally permissible combination of any of the foregoing. Government Obligations must be redeemable only at the option of the holder thereof.

“Hospitality Fee Act” means Title 6, Chapter 1, Article 7, of the S.C. Code.

“Hospitality Fee Fund” shall mean the Town of Hilton Head Island “Hospitality Tax Account” created and established by the Hospitality Fee Ordinance.

“Hospitality Fee Ordinance” means Ordinance No. 2000-05 enacted on February 8, 2000, as amended by Ordinance No. 2003-23 enacted on August 19, 2003, by ordinances enacted prior to the enactment date hereof and by this Ordinance (as the same may be codified in Title Four, Chapter 13, of the Municipal Code of the Town), as the same may from time to time hereafter be further amended.

“Hospitality Fees” means the Hospitality Fees imposed by the Town pursuant to the Hospitality Fee Act and the Hospitality Fee Ordinance.

“Interest Account” shall mean the account by that name created within each respective Debt Service Fund.

“Interest Payment Date” shall mean the respective interest payment dates for a Series of Bonds as determined by a Supplemental Ordinance.

“Junior Bonds” shall mean either (a) bonds or bond anticipation notes secured by a pledge of Hospitality Fees junior and subordinate in all respects to the pledge securing the Bonds or (b) any other form of indebtedness secured by a pledge of Hospitality Fees after provision has been made for all payments required to be made with respect to the Bonds, which bonds or indebtedness may be authorized by an ordinance of Council which is not supplemental to this Ordinance.

“Maximum Debt Service” shall mean the highest aggregate principal and interest requirements (to the extent not paid from the proceeds of Bonds or investment earnings thereon) on the Bonds then Outstanding during any then current or future Fiscal Year. In the case of determining the Maximum Debt Service for purposes of Section 3.3 of this Ordinance, interest on Variable Rate Indebtedness shall be calculated at the lesser of (a) the 25-Bond Revenue Index published by *The Bond Buyer* (or if no longer published, any reasonably equivalent nationally recognized index published for the periods in question selected by the Town) no more than one month prior to the date of calculation or (b) the maximum interest rate allowable on such Variable Rate Indebtedness.

“Ordinance” shall mean this ordinance as from time to time amended or supplemented by one or more Supplemental Ordinances.

“Outstanding” when used with respect to any Bond shall have the construction given to such word in Article XII hereof; *i.e.*, a Bond shall not be Outstanding if such Bond is not, or would not be, at the time, deemed to be Outstanding by reason of the operation and effect of said Article XII.

“Paying Agent” shall mean for each Series of Bonds the respective paying agent or paying agents appointed pursuant to the proceedings authorizing such Bonds.

“Permitted Investments” shall mean, except as limited with respect to the funds and accounts relating to a Series of Bonds by a Supplemental Ordinance, (a) any one or more of the investments now or hereafter permitted by Section 6-5-10, Code of Laws of South Carolina 1976, as amended and in effect from time to time, or any authorization relating to the investment of Town funds hereunder; and (b) the South Carolina Pooled Investment Fund or similar State administered pool investment fund.

“Principal Account” shall mean the account by that name created within each respective Debt Service Fund.

“Principal Payment Date” shall mean the respective principal payment dates for a Series of Bonds as determined by a Supplemental Ordinance.

“Project” shall mean any project authorized or permitted to be acquired, constructed or financed with Hospitality Fees, as described in the Hospitality Fee Ordinance and the Hospitality Fee Act, including but not limited to the following:

- (1) tourism related buildings including, but not limited to, civic centers, coliseums, and aquariums;
- (2) tourism-related cultural, recreational, or historic facilities;
- (3) beach access and renourishment;
- (4) highways, roads, streets, and bridges providing access to tourist destinations;
- (5) advertisements and promotions related to tourism development; or
- (6) water and sewer infrastructure to serve tourism-related demand.

“Record Date” shall mean with respect to any Series of Bonds the fifteenth (15th) day (whether or not a Business Day) of the calendar month immediately preceding an Interest Payment Date or such other day as may be provided in the Supplemental Ordinance authorizing the issuance of such Series of Bonds.

“Registrar” shall mean for each Series of Bonds the registrar appointed pursuant to the proceedings authorizing such Bonds.

“Reserve Fund Requirement” shall mean, as of the date of calculation, the debt service reserve fund requirement, if any, established pursuant to a Supplemental Ordinance authorizing the issuance of a Series of Bonds.

“S.C. Code” shall mean the Code of Laws of South Carolina 1976, as amended.

“Serial Bonds” shall mean Bonds which are not Term Bonds.

“Series” or “Series of Bonds” or “Bonds of Series” shall mean all Bonds designated as being of the same series issued and delivered on original issuance in a simultaneous transaction, and any Bonds thereafter delivered in lieu thereof or in substitution therefor pursuant to this Ordinance.

“Series 2011 Bonds” shall mean the not exceeding \$26,250,000 Town of Hilton Head Island, South Carolina Special Obligation Bonds (Hospitality Fee Pledge), in one or more series, authorized to be issued pursuant to this Ordinance and the First Supplemental Ordinance.

“State” shall mean the State of South Carolina.

“Supplemental Ordinance” shall mean any ordinance by the Town providing for the issuance of Bonds and any ordinance enacted by Council pursuant to and in compliance with the provisions of Article IX hereof amending or supplementing the provisions of this Ordinance.

“Term Bonds” shall mean any Bond designated by the Supplemental Ordinance providing for its issuance as being subject to retirement or redemption from moneys credited to the applicable Bond Redemption Account as sinking fund installments.

“Town” shall mean the Town of Hilton Head Island, South Carolina.

“Town Representative” shall mean the person or custodian/persons at the time designated to act on behalf of the Town for the purpose of performing any act under this Ordinance or any Supplemental Ordinance by a written certificate furnished to the Trustee or Custodian containing the specimen signature of such person or persons and signed on behalf of the Town by the Mayor or Town Manager.

“Trustee” shall mean Wells Fargo Bank, N.A., and any successor Trustee appointed in accordance with Section 8.2 hereof.

“Variable Rate Indebtedness” shall mean indebtedness in the form of Bonds, the interest rate on which is not established at a fixed or constant rate at the time such indebtedness is incurred.

[End of Article I]

ARTICLE II

FINDINGS AND DETERMINATIONS

Section 2.1. Findings and Determinations. The Council hereby finds and determines:

(a) The Town is an incorporated municipality located in Beaufort County, South Carolina, and as such has all powers granted to municipalities by the Constitution and general laws of the State.

(b) Section 5-7-30 of the S.C. Code provides, in part, that municipalities may enact ordinances, not inconsistent with the Constitution and general law of the State, respecting any subject which appears necessary and proper for the security, general welfare, and convenience of the municipality and for the preservation of the general health, peace, order and good government in the municipality, and further, under the case of Williams v. Town of Hilton Head, 429 S.E.2d 802 (1993) a municipality may enact regulations (ordinances) without the requirement for further specific statutory authorization so long as such regulations are not inconsistent with the Constitution and general law of the State.

(c) Pursuant to the authorization granted by the General Assembly to municipalities in the Hospitality Fee Act, the Council imposed the Hospitality Fees. While the General Assembly utilized the words "local hospitality tax" in the Hospitality Fee Act as a means by which to designate the charge authorized to be imposed on the sales of prepared meals and beverages, it was the intent of the Council to impose such charges as fees pursuant to the provisions of the Hospitality Fee Ordinance.

(d) It is a well established principle of South Carolina law that the use of a particular word is not determinative of its characterization. Jackson v. Breeland, 88 S.E. 128, 103 S.C. 184 (1915). As set forth in Brown v. County of Horry, 417 S.E.2d 565, 308 S.C. 180 (1992), the factors that are of paramount importance to the analysis of whether a charge constitutes a "tax" or a "fee" are the following: (i) the purpose behind its imposition; (ii) the intended portion of the community that will be charged; and (iii) the dedication of the sums so collected to the purpose for which it is charged. The Council finds that its actions in imposing the Hospitality Fees and segregating the collections received from such fees in order that such sums be utilized according to the Hospitality Fee Act meet the test enunciated in Brown such that the charges imposed pursuant to the provisions of the Hospitality Fee Ordinance constitute fees.

(e) A dynamic tourism industry fosters and enhances the economic growth and well being of a community and its residents. Tourism has been and continues to be a growing industry for the Town. The Town is initiating efforts to promote tourism to the Town and to the Town's facilities and attractions. Moreover, as the Town's tourism industry grows and expands, the Town must make provision to increase municipal services and facilities in order to accommodate the needs of tourists and to attract additional tourism. Tourists enjoy and utilize the special benefits which the Town provides. The Council has been advised and recognizes that Hospitality Fees must be used exclusively for Projects or otherwise for purposes permitted by the Hospitality Fee Ordinance and the Hospitality Fee Act.

(f) Article X, Section 14 of the Constitution of the State of South Carolina, 1895, as amended, provides that municipalities may incur indebtedness payable solely from a revenue-producing project which source does not involve revenues from any tax or license.

(g) Section 6-1-760(B) of the S.C. Code provides that a municipality is authorized to issue bonds, pursuant to Section 14(10), Article X of the Constitution of the State, utilizing the procedures of the Bond Act, for the purposes enumerated in Section 6-1-530 (which are identical to those set forth in Section 6-1-730) of the S.C. Code, to pledge as security for such bonds and to retire such bonds with the proceeds of local hospitality fees imposed under the Hospitality Fee Act, and the pledge of such other nontax revenues as may be available for those purposes for capital projects used to attract and support tourists.

(h) The Town has heretofore pledged the Hospitality Fees to the payment of Base Fee Payments and Additional Fee Payments under and as defined in the 2004 Installment Sale Agreement in connection with the issuance of the 2004 Certificates.

(i) Pursuant to the authority of the Bond Act and the Hospitality Fee Act, the Town intends to finance certain Projects and/or refinance the 2004 Certificates with a portion of the proceeds from the Bonds.

(j) The 2004 Installment Sale Agreement provides that, upon compliance with certain conditions set forth therein, the Town may issue "Other Obligations" secured by a pledge of the Hospitality Fees junior and subordinate to the pledge thereof securing payment of amounts due under the 2004 Installment Sale Agreement. "Other Obligations" are defined in the 2004 Installment Sale Agreement as any obligation of the Town constituting indebtedness under generally accepted accounting principles, and any other payment obligation with established or fixed annual or periodic payments, for the payment of which Hospitality Fees have been or are to be pledged. Bonds issued pursuant to this Ordinance and Supplemental Ordinances hereto shall qualify as "Other Obligations" as defined in the 2004 Installment Sale Agreement (for so long as the 2004 Certificates are outstanding under the 2004 Trust Agreement) provided such Bonds comply with the conditions with respect to "Other Obligations" set forth in the 2004 Installment Sale Agreement.

[End of Article II]

ARTICLE III

AUTHORIZATION AND ISSUANCE OF BONDS

Section 3.1. Authorization of Bonds. There is hereby authorized to be issued Bonds of the Town to be known as “Town of Hilton Head Island, South Carolina, Special Obligation Bonds (Hospitality Fee Pledge)” or such other designations as may be provided in the Supplemental Ordinance authorizing such Bonds, which Bonds may be issued pursuant to this Ordinance and in accordance with the terms, conditions and limitations set forth herein; in Series; and in such amounts and from time to time as the Town may deem to be necessary or advisable for any corporate purpose of the Town and Project for which Bonds may be issued under this Ordinance, the Bond Act and the Hospitality Fee Act.

Section 3.2. General Provisions For Issuance of Bonds. (a) The Bonds shall be issued in Series by means of Supplemental Ordinances enacted by the Council in accordance with the provisions of this Article and Article IX hereof. Each Supplemental Ordinance shall designate the Bonds provided thereby with an appropriate Series designation and with such further particular designations, if any, as the Town deems appropriate. Each Supplemental Ordinance shall, unless or except as is otherwise set forth herein, also specify: (i) the authorized principal amount of such Series of Bonds; (ii) the purpose or purposes for which the Bonds of such Series are being issued, which shall be one or more of the purposes set forth in Sections 3.3 or 3.4 hereof; (iii) if the Bonds of the Series are being issued for a purpose specified in Section 3.3 hereof, the Project for which such Bonds are being issued; (iv) an estimate of the Costs of Acquisition and Construction for any Project, if any, to be financed by such Series of Bonds, and, in the event of the acquisition by purchase or condemnation of any facilities already constructed, a determination of what repairs, replacements, additions and betterments will be necessary in order that such facilities may be effective for their purpose and an estimate of the costs required therefor; (v) the date or dates of the Bonds of the Series; (vi) the maturity date or dates of the Bonds of the Series and the sinking fund installment amounts and due dates for the Term Bonds of the Series, if any; (vii) the interest rate or rates of the Bonds of such Series, or the manner of determining such rate or rates, the initial Interest Payment Date therefor, and the subsequent Interest Payment Dates; (viii) the denominations of (if other than as provided in this Ordinance), and manner of numbering and lettering, the Bonds of such Series; (ix) the redemption premium or premiums, if any, or the redemption price or prices to be paid upon the redemption of the Bonds of such Series, the period or periods, if any, during which such premiums or prices shall be payable, and the terms and conditions, if any, of such redemption; (x) the place or places of payment of the Bonds of the Series and interest thereon, and the Paying Agent and Registrar therefor and any Custodian of the funds and accounts created with respect thereto; (xi) the provisions for the sale or other disposition of the Bonds of the Series and the use, application and investment, if any, of the proceeds of such sale or other disposition, which use, application and investment shall not be inconsistent or in conflict with the provisions hereof; (xii) whether such Series of Bonds will be subject to a Reserve Fund Requirement and the manner of satisfaction of such Reserve Fund Requirement; (xiii) any other provisions which may be required to be inserted therein by other provisions of this Ordinance; and (xiv) any other necessary or desirable provisions not inconsistent or in conflict with the provisions of this Ordinance.

(b) Bonds of a Series may be executed and delivered to the Registrar by the Town and authenticated and delivered by the Registrar to the Town or, upon its order, upon compliance with Section 3.3 or 3.4 hereof.

Bonds issued upon compliance with this Section and Section 3.3 or Section 3.4 hereof shall be issued on a parity with the pledge of and lien upon the Hospitality Fees *inter sese*, but not with respect to the particular Debt Service Fund or Debt Service Reserve Fund (if any) created for the benefit of the Holders of the Bonds of a Series, in all respects *inter sese*, notwithstanding, that they may be in different form, and bear different dates, interest rates, number, date of issuance or date of execution or are payable at different times. In all such instances, the pledge of Hospitality Fees made hereunder, and the covenants and remedies hereby granted, shall be applicable and available to the Holders of such Bonds. Additionally, the pledge of Hospitality Fees for payment of Bonds issued hereunder shall be junior and subordinate in all respects to the pledge thereof for payment of Base Fee Payments and Additional Fee Payments, if any, due under the 2004 Installment Sale Agreement while the 2004 Certificates are outstanding.

Section 3.3. Conditions for the Issuance of Bonds under this Ordinance Other than Refunding Bonds or Junior Bonds. Any time and from time to time, one or more Series of Bonds (exclusive of refunding Bonds) may be issued for such purposes as may be permitted by the Bond Act and Hospitality Fee Act upon compliance with the provisions of Section 3.2 hereof and this Section in such principal amounts as may be determined by Council for the purpose of paying all or part of the Costs of Acquisition and Construction of one or more Projects authorized to be financed under the Bond Act and the Hospitality Fee Act with Bonds and upon compliance with the following conditions:

A. There shall be executed a certificate of the Town Manager of the Town stating (i) either (a) that no Default exists in the payment of Fee Payments (as defined in the 2004 Installment Sale Agreement) or the principal of, premium, if any, or interest on any Bonds or Junior Bonds and all mandatory sinking fund redemptions, if any, required to have been made shall have been made, or (b) that the application of the proceeds of sale of the Series of Bonds to be issued as required by the Supplemental Ordinance authorizing their issuance will cure any such Default or permit such redemptions; and (ii) either (a) that to the best of his or her knowledge, the Town is not in Default in the performance of any other of its covenants and agreements contained in this Ordinance, or (b) setting forth the circumstances of each such Default known to him or her.

B. If a certificate filed pursuant to part (A) of this Section should disclose a Default or Defaults hereunder, there shall be filed with the Town and the Trustee an opinion of Bond Counsel that, in the case of any Default disclosed in a certificate filed pursuant to part (A) of this Section, each such Default does not deprive the Bondholders of the security afforded by this Ordinance in any material aspect.

C. For the issuance of Bonds to finance the Costs of Acquisition and Construction, or a portion thereof, of any Project (other than the Series 2011 Bonds issued pursuant to this Ordinance and the First Supplemental Ordinance), there shall be delivered a report, which need not be based upon the latest available audit of the Town, from the Town Manager, to the effect that the amount of the Hospitality Fees collected by the Town during the Fiscal Year prior to the Fiscal Year in which

the Bonds are proposed to be issued is not less than 120% of the sum of the Maximum Annual Payments (as defined in the 2004 Installment Sale Agreement) relating to the 2004 Certificates and the Maximum Debt Service on Bonds then Outstanding and the Bonds then proposed to be issued.

D. Such Bonds shall be issued to secure funds to defray the Costs of Acquisition and Construction of a Project, or to refund Junior Bonds, or any other notes, bonds, or other obligations issued to finance or to aid in financing the acquisition, construction, improvement, enlargement or repair of Projects.

E. The Supplemental Ordinance may provide for a deposit into the Debt Service Reserve Fund established with respect to such Series of Bonds, if any, of cash or securities or an insurance policy, surety bond or letter of credit, as provided in Section 6.7 hereof (inclusive of any proceeds of such Series of Bonds to be deposited in the applicable Debt Service Reserve Fund) having an aggregate value not less than the Reserve Fund Requirement, if any, with respect to such Series of Bonds.

Section 3.4. Refunding Bonds. Without complying with the provisions of Section 3.3 hereof except as otherwise provided herein, for the issuance of refunding Bonds (other than the Series 2011 Bonds issued under this Ordinance and the First Supplemental Ordinance), the Town by means of a Supplemental Ordinance enacted in compliance with the procedures of the Bond Act, the Hospitality Fee Act, and any other statutory provisions authorizing the issuance of refunding bonds, including advance refunding bonds, may issue hereunder refunding Bonds as follows:

A. Bonds may be issued for the purpose of refunding (including by purchase) at any time within one year prior to maturity or prior to any sinking fund installment due date, the Bonds maturing on such date (or an amount of such bonds subject to redemption from such sinking fund installments not in excess of the amount of such Bonds required to be redeemed on such due date) for the payment of which sufficient Hospitality Fees are not available. Any Bonds issued for such purpose shall mature (or sinking fund installments therefor shall commence) not earlier than the latest stated maturity of the Bonds not then refunded to be Outstanding after such refunding; or

B. Bonds may be issued at any time for the purpose of refunding (including by purchase) other Bonds, Junior Bonds, or some or all of the 2004 Certificates, including amounts to pay principal, redemption premium and interest to the date of redemption (or purchase) of the refunded Bonds or the refunded 2004 Certificates provided that (i) the aggregate Debt Service on all Bonds and the debt service requirements of the 2004 Certificates to be Outstanding after the issuance of the proposed Series of refunding Bonds shall not be greater than would have been prior to such issuance; or (ii) the requirements of parts (A), (B), (C) and (E) of Section 3.3 hereof are met with respect to the refunding Series.

Section 3.5. Junior Bonds. The Town may at any time issue Junior Bonds in such amount as it may from time to time determine, payable from Hospitality Fees, provided that such Junior Bonds are issued to secure funds to defray the costs of acquisition and construction of Projects or some part thereof, or to refund Bonds, Junior Bonds, 2004 Certificates, or any notes, bonds, or other obligations issued to finance or to aid in financing the costs of acquisition and construction of Projects, and provided further that the pledge of and lien on Hospitality Fees securing Junior Bonds

shall at all times be subordinate and inferior to the pledge of and lien on Hospitality Fees securing the Bonds.

[End of Article III]

ARTICLE IV

THE BONDS

Section 4.1. Execution. Unless or except as is otherwise set forth in the Supplemental Ordinance providing for the issuance of a Series of Bonds, the Bonds shall be executed on behalf of the Town by the Mayor of the Town by his or her manual or facsimile signature and the corporate seal of the Town, or a facsimile thereof shall be impressed or reproduced thereon and attested by the Town Clerk by his or her manual or facsimile signature.

In case any officer whose signature or facsimile signature shall appear on the Bonds shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, as if he had remained in office until delivery.

Section 4.2. Authentication. Unless or except as is otherwise set forth in the Supplemental Ordinance providing for the issuance of a Series of Bonds, upon compliance with the provisions of Section 3.3 or 3.4 hereof and upon the order of the Town, the Trustee shall authenticate Bonds authorized to be issued hereunder. Only such Bonds as shall have endorsed thereon a certificate of authentication duly executed manually by the Trustee shall be entitled to any right or benefit under this Ordinance. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Trustee, and such executed certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered. The Trustee's certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized officer of the Trustee, but it shall not be necessary that the same person sign the certificate of authentication on all of the Bonds issued hereunder or on all of the Bonds of a particular Series.

Section 4.3. Registration and Transfer of Bonds; Persons Treated as Holders. Unless and except as is otherwise set forth in the Supplemental Ordinance providing for the issuance of a Series of Bonds, each Bond shall be fully registered and transferable only upon the Books of Registry of the Town, which shall be kept for that purpose at the office of the Registrar by the Holder thereof or by his attorney, duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Holder or his or her duly authorized attorney with such signature guaranteed by a participant in the Securities Transfer Agents in Medallion Program ("STAMP") or similar program. Upon the transfer of any Bond, the Town shall issue, subject to the provisions of Section 4.6 hereof, in the name of the transferee, a new Bond or Bonds of the same series and of the same aggregate principal amount, interest rate and maturity as the unpaid principal amount of the surrendered Bond.

Any Bondholder requesting any transfer shall pay any tax or other governmental charge required to be paid with respect thereto. As to any Bond, the person in whose name the same shall be registered shall be deemed and regarded as the Holder and absolute owner thereof for all purposes, and payment of or on account of the principal, redemption premium, if any, and interest on any Bond shall be made only to or upon the order of the Bondholder thereof, or his duly authorized attorney, and neither the Town nor the Registrar shall be affected by any notice to the contrary, but such registration may be changed as herein provided. All such payments shall be valid

and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

Section 4.4. Form of Bonds; Denominations; Medium of Payment. Unless or except as is otherwise provided in the Supplemental Ordinance authorizing their issuance, the Bonds of each Series: (a) shall be in fully registered form without coupons, provided such Bonds may be issued in book-entry form; (b) shall be issued in denominations of \$5,000, or any integral multiple thereof, provided that, upon partial redemption of a Bond requiring surrender thereof and the issuance of a new Bond, such new Bond may be in the denomination of the unredeemed balance; and (c) shall be payable with respect to principal, interest, and premium, if any, in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

Section 4.5. Numbers, Date, and Payment Provisions. The Bonds shall be numbered and designated in such manner as the Town, with the concurrence of the Trustee, shall determine. Each Bond of a Series shall bear interest from the Interest Payment Date immediately preceding the date of its authentication, unless authentication shall be upon an Interest Payment Date, in which case it shall bear interest from its authentication, or unless authentication shall precede the first Interest Payment Date for such Bond, in which case it shall bear interest as otherwise provided in the Supplemental Ordinance authorizing its issuance, provided, however, that if the date of authentication of any Bond of any Series is after a Record Date and before the corresponding Interest Payment Date therefore, such Bond shall bear interest from such succeeding Interest Payment Date; notwithstanding the foregoing, if at the time of authentication of any Bond any interest on such Bond is in default, such Bond shall bear interest from the date to which interest on such Bond has been paid or if no interest has been paid, such Bond shall bear interest from the date of delivery thereof or from its dated date, or as otherwise provided in the Supplemental Ordinance authorizing the issuance of such Bonds.

Section 4.6. Exchange of Bonds. Unless or except as is otherwise provided in the Supplemental Ordinance authorizing their issuance Bonds, upon surrender thereof at the office of the Registrar with a written instrument of transfer satisfactory to the Registrar, duly executed by the Bondholder or his duly authorized attorney with such signature guaranteed by a participant in STAMP or similar program, may, at the option of the Bondholder thereof, and upon payment by such Bondholder of any charges which the Registrar may make as provided in Section 4.7, be exchanged for a principal amount of Bonds of the same Series and maturity of any other authorized denomination equal to the unpaid principal amount of surrendered Bonds.

Section 4.7. Regulations with Respect to Exchanges and Transfer. In all cases in which the privilege of exchanging or transferring Bonds is exercised, the Town shall execute and the Trustee shall authenticate and deliver Bonds in accordance with the provisions of this Ordinance or such Supplemental Ordinance authorizing the issuance thereof. All Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Trustee. There shall be no charge to the Bondholder for such exchange or transfer of Bonds except that the Trustee may make a charge sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or transfer. Neither the Town nor the Registrar shall be required (a) to exchange or transfer Bonds (i) from the Record Date to the succeeding Interest Payment Date or (ii) for a

period of fifteen (15) days following any selection of Bonds to be redeemed or thereafter until after the first publication or mailing of any notice of redemption, or (b) to transfer any Bonds called for redemption.

Section 4.8. Mutilated, Lost, Stolen or Destroyed Bonds. In case any Bond shall at any time become mutilated in whole or in part, or be lost, stolen or destroyed, or be so defaced as to impair the value thereof to the Holder, the Town shall execute and the Trustee shall authenticate and deliver at the principal office of the Trustee, or send by registered mail to the Holder thereof at his request, risk and expense a new Bond of the same series, interest rate and maturity and of like tenor and effect in exchange or substitution for and upon the surrender for cancellation of such defaced, mutilated or partly destroyed Bond, or in lieu of or in substitution for such lost, stolen or destroyed Bond. In any such event, the applicant for the issuance of a substitute Bond shall furnish the Town and the Registrar (a) evidence or proof satisfactory to the Town and the Registrar of the loss, destruction, mutilation, defacement or theft of the original Bond, and (b) of the ownership thereof, and (c) such security and indemnity as may be required by the laws of the State or such greater amount as may be required by the Town and the Registrar. Any duplicate Bond issued under the provisions of this Section in exchange and substitution for any defaced, mutilated or partly destroyed Bond or in substitution for any allegedly lost, stolen or wholly destroyed Bond shall be entitled to the identical benefits under this Ordinance or any Supplemental Ordinance as was the original Bond in lieu of which such duplicate Bond is issued, and shall be entitled to equal and proportionate benefits with all the other Bonds of the same series issued hereunder. Neither the Town nor the Registrar nor any Paying Agent shall be required to treat both the original Bond and any duplicate Bond as being Outstanding for the purpose of determining the principal amount of Bonds which may be issued hereunder or for the purpose of determining any percentage of Bonds Outstanding hereunder, but both the original and duplicate Bond shall be treated as one and the same. In the event any such mutilated, lost, stolen or destroyed Bond shall have matured, instead of issuing a duplicate Bond the Town may pay the same.

All expenses necessary for the providing of any duplicate Bond shall be borne by the applicant therefor.

[End of Article IV]

ARTICLE V

REDEMPTION OF BONDS

Section 5.1. Redemption of Bonds. The Bonds of a Series may be subject to redemption prior to their stated maturities upon such terms and conditions and at such dates and redemption price or prices or premium or premiums as shall be set forth in the Supplemental Ordinance providing for the issuance of such Bonds, and upon the further terms and conditions as are hereinafter set forth.

Section 5.2. Selection of Bonds for Redemption. In the event of the redemption at any time of only part of the Bonds of a Series, the Bonds to be redeemed shall be redeemed in such order as is set forth in the Supplemental Ordinance providing for the issuance of such Bonds. Unless otherwise provided by Supplemental Ordinance, if less than all of the Bonds of like maturity of any Series shall be called for prior redemption, the particular Bonds or portions of Bonds to be redeemed shall be selected by lot by the Trustee; provided, however, that the portion of any Bond of a denomination of more than \$5,000 to be redeemed shall be in the principal amount of \$5,000 or an integral multiple thereof, and that, in selecting portions of such Bonds for redemption, the Registrar shall treat each such Bond as representing that number of Bonds of \$5,000 denomination which is obtained by dividing the principal amount of such Bond by \$5,000.

Section 5.3. Notice of Redemption. Unless or except as otherwise provided in the Supplemental Ordinance authorizing their issuance, the provisions of this Section 5.3 apply to each Series of Bonds.

In the event any of the Bonds or portions thereof are called for redemption, the Trustee shall give notice, in the name of the Town, of redemption of Bonds by first-class mail, postage prepaid, to the Holder thereof as shown on the Books of Registry not less than 30 days and not more than 60 days prior to the date fixed for the redemption thereof. Such notice of redemption shall state: (a) the title of such Bonds to be redeemed, CUSIP numbers, if any, date of issue, the series designation (if any) thereof, the redemption date, the place or places of redemption and the redemption price or redemption premium, if any, payable upon such redemption; (b) if less than all such Bonds of a particular Series are to be redeemed, the distinctive number of such Bonds to be redeemed; (c) that the interest on such Bonds designated for redemption in such notice shall cease to accrue from and after such redemption date; and (d) that on such date there will become due and payable on each such Bond the principal amount thereof to be redeemed at the then applicable redemption price or redemption premium, if any, and the interest accrued on such principal amount to the redemption date. Any notice mailed as provided in this Section shall be conclusively presumed to have been duly given, when mailed, whether or not the Holder thereof receives the notice. The notice shall further state that if money for the redemption of all the Bonds being redeemed at that time is held by the Trustee on the redemption date, interest shall cease to accrue on such Bonds on and after the redemption date. The notice may further state that the redemption of the Bonds being called for redemption is conditioned upon the Trustee receiving on or before the redemption date of sufficient money for the redemption thereof.

Section 5.4. Partial Redemption of Bond. In the event that only part of the principal sum of a Bond shall be called for redemption or prepaid, payment of the amount to be redeemed or prepaid shall be made only upon surrender of such Bond to the Registrar. Upon surrender of such Bond, the Town shall execute and the Trustee shall authenticate and deliver to the Holder thereof, at the principal office of the Trustee, or send to such Holder by registered mail at his request, risk and expense, a new fully executed Bond or Bonds, of authorized principal sums equal in aggregate principal amount to, and of the same Series, maturity and interest rate as, the unredeemed portion of the Bond surrendered.

Section 5.5. Effect of Redemption. If a Bond is subject by its terms to redemption prior to its stated maturity and has been duly called for redemption and notice of the redemption thereof has been duly given as hereinbefore provided and if moneys for the payment of such Bond at the then applicable redemption price or together with the then applicable redemption premium, if any, and the interest to accrue to the redemption date on such Bond are held for the purpose of such payment by the Trustee for the series of Bonds of which such Bond is one, then such Bond so called for redemption shall, on the redemption date designated in such notice, become due and payable. Interest on the Bond so called for redemption shall cease to accrue.

Section 5.6. Cancellation. All Bonds which have been redeemed shall be canceled and either maintained or destroyed by the Registrar and shall not be reissued. A counterpart of the certificate of destruction evidencing such destruction shall be furnished by the Registrar to the Town upon the written request of the Town.

[End of Article V]

ARTICLE VI

ESTABLISHMENT OF FUNDS; SECURITY FOR AND PAYMENT OF THE BONDS; INVESTMENT OF MONEYS

Section 6.1. Listing of Funds and Accounts. In addition to the Hospitality Fee Fund (created and established pursuant to the Hospitality Fee Ordinance), the following are the funds created and established by this Ordinance:

- (i) Debt Service Fund for each Series of Bonds to be held by the Trustee, including an Interest Account, Principal Account and Bond Redemption Account.
- (ii) Debt Service Reserve Fund for each Series of Bonds, if any, to be held by the Trustee.
- (iii) Construction Fund, if applicable, for each Series of Bonds to be held by the Town or a bank or financial institution (a "Custodian") designated by the Town.
- (iv) One or more accounts may, by written direction of the Town or by the terms of a Supplemental Ordinance, be established within any of the above funds.

It is intended by this Ordinance that the funds and accounts referred to in this Article (other than the Construction Fund) shall remain in existence for so long a time as any sum remains due and payable by way of principal of and interest on the Bonds, and that deposits and withdrawals therefrom be made in the manner herein prescribed and in the order of priority hereinafter set forth in Section 6.2 hereof.

Section 6.2. Disposition of Hospitality Fees. The Hospitality Fees shall be applied in the amounts, if any, and for the purposes as provided or permitted by this Ordinance, and in the following order of priority:

First, there shall be transferred to the Trustee (as defined in the 2004 Trust Agreement) the amounts, if any, when and as required by the 2004 Installment Sale Agreement;

Second, there shall be transferred into the respective Debt Service Funds, the amounts required by this Ordinance or any Supplemental Ordinance;

Third, there shall be transferred into the respective Debt Service Reserve Funds, the amounts (including any payments required under the terms of any surety bond, insurance policy or letter of credit applicable thereto) required by this Ordinance or any Supplemental Ordinance;

Fourth, provision shall be made for payment of interest on amounts advanced by the provider of any surety bond, line of credit, insurance policy or letter of credit as contemplated in Section 6.7 hereof;

Fifth, provisions shall be made for the payment of any Junior Bonds; and

Sixth, the remaining Hospitality Fees shall be disposed of as provided in Section 6.9 hereof.

Section 6.3. Security for and Payment of the Bonds. Each Series of Bonds, together with the interest thereon, shall be payable solely from and secured equally and ratably by a pledge of the Hospitality Fees which shall be and hereby are irrevocably pledged to the payment of the principal of, redemption premium, if any, and interest on any Series of Bonds authorized by the Supplemental Ordinances; provided, however, that (1) for so long as the 2004 Certificates are outstanding, such pledge of Hospitality Fees shall be junior and subordinate in all respects to the pledge thereof securing the Town's obligations to pay Base Fee Payments and Additional Fee Payments under the 2004 Installment Sale Agreement; (2) funds held by the Trustee in the respective Debt Service Funds and Debt Service Reserve Funds are hereby pledged for the benefit of the respective Bondholders as security for the Bonds of the Series to which such funds relate; and (3) this provision shall not preclude the issuance of Junior Bonds if such Junior Bonds be issued in conformity with the provisions of Section 3.5 hereof, but the pledge herein made shall preclude the issuance of bonds payable from or secured by a pledge of or lien on Hospitality Fees superior to that herein made to secure the Bonds.

The Bonds do not constitute an indebtedness of the Town within any State constitutional provision (other than Article X, Section 14, Paragraph 10 of the South Carolina Constitution authorizing obligations payable solely from special sources not involving revenues from any tax or license) or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Town or a charge against its general credit or taxing power. The full faith, credit and taxing powers of the Town are not pledged to the payment of the principal of and interest on the Bonds.

The covenants and agreements herein set forth to be performed by the Town shall be for the equal and proportionate benefit, security and protection of all Holders of the Bonds without preference, priority or distinction as to payment or security or otherwise (except as to maturity) of any of the Bonds for any reason or cause whatsoever, except as expressly provided herein or in the Bonds. Except as aforesaid, all Bonds shall rank *pari passu* and shall be secured equally and ratably hereunder without discrimination or preference whatsoever.

Section 6.4. Accounting Methods. The designation of the Hospitality Fee Fund referenced in and by this Ordinance shall not be construed to require the establishment of any completely independent, self-balancing funds as such term is commonly defined and used in governmental accounting, but rather is intended solely to constitute an earmarking of the Hospitality Fees for certain purposes and to establish certain priorities for application of such Hospitality Fees as herein provided.

The cash required to be accounted for in the Hospitality Fee Fund referenced herein may be deposited in a single bank account, into which Hospitality Fees shall be deposited, provided that adequate accounting records are maintained to reflect and control the restricted allocation of the cash in and deposited therein for the various purposes of such funds as provided herein.

Section 6.5. Hospitality Fee Fund. Pursuant to the Hospitality Fee Ordinance, there has been established and is hereby referenced a Hospitality Fee Fund to be maintained by a bank or other financial institution designated, from time to time, by the Town and into which shall be deposited all Hospitality Fees. Moneys in the Hospitality Fee Fund shall be used only in the manner specified in this Article VI and the Hospitality Fee Ordinance and in the order of priority set forth in Section 6.2 hereof. Moneys held in the Hospitality Fee Fund may be invested, from time to time, in Permitted Investments; provided, however, that such Hospitality Fees in the Hospitality Fee Fund shall be transferred to the Trustee (as defined in the 2004 Installment Sale Agreement) and the Trustee, when and as required and in the amounts, if any, required to be made by this Article VI, each Supplemental Ordinance and the Hospitality Fee Ordinance.

Section 6.6. Debt Service Funds. There shall be established and maintained special funds of the Town to be designated the Debt Service Fund for each Series of Bonds then Outstanding which shall be kept on deposit with the Trustee, and withdrawals therefrom shall be made for the purposes provided in this Ordinance. Each Debt Service Fund shall bear a separate series designation as may be necessary to distinguish such Debt Service Fund.

The respective Debt Service Funds are intended to provide for the payment of the principal of, redemption premium, if any, and interest on each Series of Bonds as the same respectively fall due. Payments into such Funds shall be made in the manner prescribed by this Ordinance and all moneys in the respective Debt Service Funds shall be used solely to pay the principal of, redemption premium, if any, and interest on the respective Series of Bonds, and for no other purpose, and withdrawals therefrom shall be made only to effect payment of the principal of, redemption premium, if any, and interest on the respective Series of Bonds. Earnings on investments in the Debt Service Fund, including the accounts therein, shall be added to and become a part of such respective Funds and the accounts therein.

The Town shall transfer or cause to be transferred to the Trustee from the Hospitality Fee Fund for deposit into the respective Debt Service Funds and ratably with respect to separate Series of Bonds for credit to the Interest Account, the Principal Account or the Bond Redemption Account, as the case may be, sufficient moneys so as to comply with the following provisions for the payment of the Bonds then Outstanding.

(a) *Interest Account.* There shall be established and maintained for the purpose of paying the interest on each Series of Bonds as the same becomes due and payable an Interest Account in the respective Debt Service Funds. Not later than five (5) Business Days prior to each Interest Payment Date, the Trustee shall transfer or allocate for credit to the Interest Account an amount received from the Town derived from Hospitality Fees equal to the installment of interest then falling due on the respective Series of Bonds then Outstanding. To the extent moneys derived from other sources have been transferred or allocated for credit to the Interest Account on or before five (5) Business Days prior to each Interest Payment Date, the amount of Hospitality Fees to be transferred or allocated for credit to such Interest Account shall be reduced or eliminated by the amount of such moneys transferred or allocated for credit to the Interest Account.

(b) *Principal Account.* There shall be established and maintained for the purpose of paying the principal of each Series of Bonds as they mature a Principal Account in the respective Debt Service Funds. Not later than five (5) Business Days prior to each Principal Payment Date, the Trustee shall transfer or allocate to the credit of the Principal Account an amount received from the Town derived from Hospitality Fees equal to the installment of principal on the respective Series of Bonds then falling due. To the extent moneys derived from other sources have been transferred or allocated for credit to the Principal Account on or before five (5) Business Days prior to each Principal Payment Date, the amount of Hospitality Fees to be transferred or allocated for credit to such Principal Account shall be reduced or eliminated by the amount of such moneys transferred or allocated for credit to the Principal Account.

(c) *Bond Redemption Account.* There shall be established and maintained, in order to meet the specified sinking fund installment requirements of Term Bonds and to otherwise retire Term Bonds prior to maturity, a Bond Redemption Account in the respective Debt Service Fund. Not later than five (5) Business Days prior to the date a sinking fund installment of Term Bonds of each Series falls due, the Trustee shall allocate to the credit of the Bond Redemption Account amounts received from the Town derived from Hospitality Fees equal to the sinking fund installment of principal then falling due on the respective Series of Term Bonds then Outstanding. To the extent moneys derived from other sources have been transferred or allocated for credit to the Bond Redemption Account on or before five (5) Business Days prior to the date a sinking fund installment of Term Bonds of a Series falls due, the amount of Hospitality Fees to be transferred or allocated for credit to such Bond Redemption Account shall be reduced or eliminated by the amount of such moneys transferred or allocated for credit to the Bond Redemption Account. The Trustee shall apply the moneys credited to the Bond Redemption Account as sinking fund installments to the retirement of the Term Bonds of each respective Series by redemption in accordance with the Supplemental Ordinance providing for the issuance of such Series of Bonds, without further authorization or direction, on each date upon which a sinking fund installment is due with respect to the Term Bonds of such Series. The Trustee shall keep and retain accurate records of application of each deposit of funds under this paragraph (c). The Trustee shall give notice of all such redemptions in the name and on the behalf of the Town in accordance with the provisions of Article V hereof. In making any of the deposits to the Bond Redemption Account required by this paragraph (c), consideration shall be given to and allowance made for any other credits otherwise made to such Bond Redemption Account.

(d) If, on the dates when the payments required by paragraphs (a), (b) and (c) of this Section are to be made, the payments actually made pursuant to said paragraphs (a), (b) and (c), are less than the sum required to effect the payment of the succeeding installment of principal or interest, or both, as the case may be, moneys in the applicable Debt Service Reserve Fund, if any, equal to such deficiency shall be added to the payment to be made pursuant to said paragraphs (a), (b) and (c). In the event of such transfer, the Trustee shall promptly give telephonic notice of such transfer to the Town and, within ten days after making the transfer, provide written notice to the Town of the amount and date of such transfer.

Moneys in the respective Debt Service Funds shall be used and applied solely to the payment of the interest on and the retirement of the principal of and redemption premium, if any, on the respective Series of Bonds and shall be used and applied in accordance with the provisions of

this Section 6.6 and this Ordinance and the Supplemental Ordinance providing for the issuance of such Series of Bonds. The moneys paid into the respective Debt Service Fund shall be held by the Trustee in trust solely for the purpose of paying the interest on and the retirement of the principal of and redemption premium, if any, on the respective Series of Bonds. Withdrawals from such Funds shall be made by the Trustee in order to transfer such moneys to the Paying Agent for the respective Series of Bonds. Such withdrawals shall be made so that the necessary moneys shall be available to the Paying Agent not later than one (1) Business Day prior to the day on which principal or interest or both, and redemption premium, if any, as the case may be, are payable on the Bonds.

Section 6.7. Debt Service Reserve Fund. (a) A Supplemental Ordinance may provide for the establishment of a Debt Service Reserve Fund for any Series of Bonds. Each Debt Service Reserve Fund shall bear a separate Series designation as may be necessary to distinguish such Debt Service Reserve Fund and shall, subject to certain provisions of this Ordinance, be maintained in an amount equal to the applicable Reserve Fund Requirement, as determined pursuant to a Supplemental Ordinance, and in the manner determined pursuant to such Supplemental Ordinance, so long as the applicable Series of Bonds shall be Outstanding. Each such Fund is intended to insure the timely payment of the principal of and interest on the applicable Series of Bonds and to provide for the redemption of such Series of Bonds prior to their stated maturities. The respective Debt Service Reserve Funds shall be kept on deposit with the Trustee, and withdrawals therefrom shall be made for the purposes provided in this Ordinance.

(b) Moneys in each Debt Service Reserve Fund shall be used for the following purposes, and for no other:

(1) To prevent a Default in the payment of the principal of or interest on the applicable Series of Bonds, by reason of the fact that moneys in the applicable Debt Service Fund are insufficient for such purposes;

(2) To pay the principal of, interest on, and redemption premium, if any, of the applicable Series of Bonds in the event that all Outstanding Bonds of such Series be redeemed as a whole;

(3) To effect partial redemption of the applicable Series of Bonds, provided that such redemption be undertaken in accordance with the provisions of this Ordinance permitting a partial redemption of the applicable Series of Bonds and the balance remaining in the applicable Debt Service Reserve Fund following such partial redemption shall not be less than the Reserve Fund Requirement; or

(4) To effect the retirement of a Series of Bonds through purchase under the conditions herein prescribed.

(c) Unless otherwise provided in a Supplemental Ordinance, whenever the market value (determined as of the valuation dates and in accordance with the method specified in Section 6.10 hereof) of the cash and securities in the applicable Debt Service Reserve Fund shall exceed the Reserve Fund Requirement, such excess may at the written direction of the Town (i) be used to repurchase and retire the applicable Series of Bonds at prices not exceeding the call price first to

become available or then prevailing; (ii) be deposited as the Town deems advisable; or (iii) be transferred to the Hospitality Fee Fund or, at the option of the Town, to the Construction Fund during the period of construction or acquisition of a Project. Purchases of Bonds shall be effected by the Town through the Trustee, and whenever Bonds shall have been purchased pursuant to this authorization, it shall be the duty of the Registrar to cancel and destroy such Bonds and to deliver certificates evidencing such act to the Town.

(d) Unless otherwise provided in a Supplemental Ordinance, if the Trustee sends written notice to the Town stating that a deficiency exists in the applicable Debt Service Reserve Fund (whether due to a transfer therefrom pursuant to Section 6.6(d) or a valuation thereof determined as of the valuation dates and in accordance with the method specified in Section 6.10 hereof), then (1) there shall be deposited from available Hospitality Fees into the applicable Debt Service Reserve Fund over the next succeeding six (6) months, successive equal monthly installments of the amount necessary to re-establish in the applicable Debt Service Reserve Fund its respective Reserve Requirement (upon receipt of each of which installments, the Trustee shall promptly send an updated written notice to the Town as to the remaining deficiency therein) and (2) the Town agrees to pay, prior to the next Interest Payment Date, an amount equal to such shortfall; provided, however, that the Town's obligation to make such payment shall be subject to Council, by ordinance duly enacted, appropriating moneys from sources or funds lawfully available for such purpose moneys sufficient to pay the shortfall. The Town understands and agrees that the payment obligation described in this paragraph shall constitute a current expense of the Town and shall not in any way be construed to be a debt of the Town in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness of the Town, nor shall anything contained herein constitute a pledge of the general tax revenues, funds, moneys or credit of the Town. Any such budgetary appropriation, notwithstanding any provision of this Ordinance to the contrary, shall not constitute a default or Event of Default under this Ordinance.

(e) In lieu of the deposit of moneys into the Debt Service Reserve Fund established with respect to any Series of Bonds to meet the Reserve Fund Requirement with respect to that Series, the Town may cause to be credited a surety bond or an insurance policy payable to, or a letter of credit in favor of, the Trustee for the benefit of the Holders of the Bonds meeting the standard set forth in the Supplemental Ordinance authorizing that Series of Bonds, as the case may be. The amount of moneys required to be deposited to the Debt Service Reserve Fund shall be reduced by the amount of the surety bond, insurance policy, or letter of credit. The surety bond, insurance policy, or letter of credit shall be payable (upon the giving of notice as required thereunder) on any Interest Payment Date on which moneys will be required to be withdrawn from the Debt Service Reserve Fund and applied to the payment of the principal of or interest on any Bonds of that Series but only to the extent that withdrawals cannot be made by amounts then credited to the Debt Service Reserve Fund.

If the Town obtains a surety bond, insurance policy or letter of credit in substitution for moneys deposited to the applicable Debt Service Reserve Fund as may be permitted under the applicable Supplemental Ordinance, excess moneys in the respective Debt Service Reserve Funds shall be transferred, at the written direction of the Town, to the applicable Construction Fund, or if one does not exist, be deposited as the Town deems advisable.

Section 6.8. Establishment of Construction Fund. There shall be established with the Custodian a Construction Fund with respect to each Series of Bonds (other than for Bonds issued pursuant to Section 3.4 hereof, if applicable) in the Supplemental Ordinance providing for their issuance, the moneys in which shall be used to defray the costs of any Project and to pay any Costs of Acquisition and Construction with respect to the facilities so financed. On the occasion of the delivery of any Series of Bonds, the proceeds therefrom shall be paid into the Construction Fund established for such Series as set forth in a Supplemental Ordinance authorizing their issue. Withdrawals from the Construction Fund shall not be made except as provided in the Supplemental Ordinance establishing such Construction Fund.

There may be established in a Construction Fund from time to time a capitalized interest account to provide for the payment of interest on the related Series of Bonds as may be permitted hereunder. Any such account shall be created by a Supplemental Ordinance relating to the issuance of the Bonds of such Series. Any earnings from the investment of funds in the capitalized interest account not required to pay interest on the Bonds of any Series during the period for which interest on the Bonds of such Series is capitalized shall be deposited in the Construction Fund created by the Supplemental Ordinance relating to such Bonds or, if such Construction Fund has been terminated, such earnings shall be transferred to the appropriate Debt Service Fund.

Section 6.9. Distribution of Remaining Hospitality Fees. After making payments of (i) amounts due pursuant to the 2004 Installment Sale Agreement, (ii) amounts required to be deposited into the applicable Debt Service Funds, and (iii) amounts required to be deposited into the applicable Debt Service Reserve Funds, remaining Hospitality Fees shall then be used, first, for payment of interest on amounts advanced by the provider of any surety bond, line of credit, insurance policy or letter of credit as contemplated by Section 6.7 hereof; second, for the payment of Junior Bonds or to meet any other obligations of the Town which are or which shall become charges, liens or encumbrances upon the Hospitality Fees; and third, disposed of by the Town as it may determine from time to time to be for any lawful purpose under the Hospitality Fee Act and the Hospitality Fee Ordinance.

Section 6.10. Investment of Funds. Moneys held for the credit of the respective Debt Service Funds, Debt Service Reserve Funds and any other funds and accounts established by this Ordinance shall be invested, to the fullest extent practicable and reasonable, in Permitted Investments. Any investment of money held to the credit of the above-mentioned funds and accounts shall mature, be available or be redeemable at the option of the owner or holder thereof at such times and in such amounts as shall be required to provide moneys to make the payments required to be made from such funds. Written investment instructions shall be given to the Trustee and the Custodian by a Town Representative.

The Trustee shall evaluate on a semi-annual basis (initially, ten days prior to the first Interest Payment Date applicable to a Series of Bonds) Permitted Investments in the Debt Service Reserve Fund, if any, established by this Ordinance and promptly send written notice of such valuation to the Town within ten days of such valuation. Until changed pursuant to written instructions from the Town, such valuation shall be made not less than two times each calendar year. The Trustee shall provide written notice to the Town of any deficiency in the amount, if any, on deposit in the Debt Service Reserve Funds. Where the amount that exists in the Debt Service Reserve Funds is less

than the applicable Reserve Fund Requirement on the date of valuation by the Trustee, any moneys received by the Trustee and designated by the Town Representative as a payment made pursuant to Section 6.7(d) hereof shall be deposited in the applicable Debt Service Reserve Fund. Deficiencies in the amount on deposit in the Debt Service Reserve Funds resulting from a decline in market value shall be restored no later than the next succeeding valuation date.

The value of Permitted Investments shall be determined by the Trustee or the Custodian or other depository at the market value or the amortized cost thereof, whichever is lower, exclusive of accrued interest, provided, however, Permitted Investments in any Debt Service Reserve Fund shall be valued at the original cost thereof.

The Trustee may conclusively rely upon the Town's written instructions as to both the suitability and legality of the directed investments. In the absence of written investment instructions from the Town, the Trustee shall not be responsible or liable for keeping the moneys held by it hereunder fully invested in Permitted Investments. The Trustee may make any and all such investments through its own investment department or that of its affiliates or subsidiaries, and may charge its ordinary and customary fees for such trades. Broker confirmations of investments are not required to be issued by the Trustee to the Town for each month in which a monthly statement is rendered. No statement need be rendered for any fund or account if no activity occurred in such fund or account during such month. The Trustee shall not be accountable or liable for any depreciation in the value of any investments in any Funds or for any losses incurred upon the disposition thereof.

Notwithstanding anything contained herein to the contrary, the Trustee shall have no obligation to enter into any investment contract, forward delivery investment agreement, repurchase agreement contract or any similar agreements with respect to the investment of any monies held under the Ordinance unless (i) such agreement is in form and content reasonably acceptable to the Trustee in the course of ordinary business practice, (ii) any liability of the Trustee under such agreement is limited to loss occasioned by the gross negligence or willful misconduct of the Trustee, (iii) the Trustee is not liable under any circumstances for any termination or similar amount under such agreement; and (iv) the Town pays to the Trustee such fees and expenses as established by the Trustee from time to time.

Except as otherwise provided herein, all interest earnings on amounts in the Hospitality Fee Fund when realized shall be considered Hospitality Fees.

[End of Article VI]

ARTICLE VII

COVENANTS

Section 7.1. Pledge of Hospitality Fees for Payment of Bonds. The Town will not issue any obligations, the payment of which shall have any pledge of the Hospitality Fees prior or superior to the pledge thereof for the payment of the Bonds. In order to insure that the Town shall at all times required hereby have sufficient moneys available to pay Fee Payments under the 2004 Installment Sale Agreement, to deposit amounts, when and as required, into the respective Debt Service Funds and Debt Service Reserve Funds established for a Series of Bonds, to provide for payment of interest on amounts advanced pursuant to Section 6.7 and to provide for payment of Junior Bonds (all as described in Section 6.2 hereof), the Town covenants and agrees that it shall not at any time while any Bonds are outstanding reduce the amounts assessed for Hospitality Fees to a level not sufficient to permit the Town to discharge its obligations hereunder or otherwise require or permit Hospitality Fees (whether through a subsequent amendment of the Hospitality Fee Ordinance or otherwise) to be used or set aside except pursuant to or as permitted by Section 6.2 hereof.

Section 7.2 Covenant with Respect to 2004 Certificates. On and after the date of delivery of any of the Series 2011 Bonds issued pursuant to this Ordinance and the First Supplemental Ordinance, the Town covenants, agrees and confirms for the benefit of the Holders of the Bonds that it will not make any pledge of Hospitality Fees for the payment of Other Obligations (as defined in the 2004 Installment Sale Agreement) which are on a parity with the 2004 Certificates or any Additional Certificates (as defined in the 2004 Trust Agreement).

Section 7.3. To Pay Principal, Premium, and Interest on the Bonds. The Town covenants and agrees to punctually pay, or cause to be paid, out of the Hospitality Fees pledged to such payment in Article VI hereof, the principal of, redemption premium, if any, and the interest on each and every Bond issued under the provisions of this Ordinance, at the place, on the dates and in the manner provided herein.

Section 7.4. Records, Accounts and Audits. The Town covenants and agrees to keep proper books of records and accounts (separate from all other records and accounts), in which complete and correct entries shall be made of all transactions relating to the Hospitality Fees. Such records shall be kept in accordance with the standards from time to time prescribed by the Governmental Accounting Standards Board or its successor. The Town will cause to be furnished to any Holder of any of the Bonds, who makes written request therefore, copies of financial statements certified by an Accountant. The Trustee shall not be responsible for obtaining audits of the Town. Additionally, the Trustee shall have no duty to review or analyze any financial statements delivered to it hereunder and shall hold such financial statements solely as a repository for the benefit of the Bondholders; the Trustee shall not be deemed to have notice of any information contained therein or Event of Default which may be disclosed therein in any manner.

Section 7.5. Amendments of Hospitality Fee Ordinance.

(a) Section 4-13-80, "Permitted uses of funds," of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby is amended to add the following text in subsection (a)(3) thereof (added text appears in double underlined font):

- (3) The town shall set aside two (2) percent of the local hospitality taxes collected hereunder, subject to the ordinance or other legally binding obligation of the town authorizing the issuance of debt secured in whole or in part by the local hospitality tax, and shall deposit the same into an advertising account in the General Fund as identified in the Accounting and Financial Policies section of the annual budget as adopted by town council, with said funds to be utilized as provided therein.

(b) Section 4-13-80, "Permitted uses of funds," of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby is amended to add the following text as a new subsection (a)(4) thereof:

- (4) To pay principal, interest, redemption premium and any other costs associated with debt incurred for a purpose authorized herein.

(b) Section 4-13-80, "Permitted uses of funds," of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby is amended to add the following text in subsection (b) thereof (added text appears in double underlined font):

- (b) Authorization to utilize any funds from the town hospitality account as provided in section 4-13-80(a) shall be by annual budget ordinance duly adopted by the town council for the town, and as the same may be amended from time to time; provided, however, utilization of such funds to satisfy a pledge, covenant or other legally binding obligation incurred in connection with the issuance of debt to be repaid in whole or in part from the local hospitality tax shall not require approval in the annual budget ordinance.

(c) Section 4-13-110, "Sunset," of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby is amended to delete such section in its entirety.

[End of Article VII]

ARTICLE VIII

TRUSTEE; CUSTODIANS

Section 8.1. Trustee. The Council hereby designates Wells Fargo Bank, N.A. as Trustee under this Ordinance. On or prior to the delivery of the initial Series of Bonds, the Trustee shall signify its acceptance of the powers, duties and obligations conferred and imposed upon it by the Ordinance by executing and delivering to the Town a written instrument of acceptance.

The Trustee shall (a) prior to the occurrence of an Event of Default of which the Trustee has actual knowledge, and after the curing of all Events of Default which may have occurred, perform such duties and obligations as are specifically set forth in the Ordinance, and no implied covenants or obligations shall be read into the Ordinance against the Trustee, and (b) during the existence of any Event of Default of which the Trustee has actual knowledge (which has not been cured or waived) exercise the rights and powers vested in it by the Ordinance and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

No provisions of the Ordinance shall be construed to relieve the Trustee from liability for its own negligence, intentionally wrongful action or failure to act.

At all times, (1) the Trustee shall not be liable for any error of judgment made in good faith by an officer or employee of the Trustee unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; (2) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a majority (or such lesser percentage as is specifically required or permitted by this Ordinance) in the aggregate principal amount of the Bonds at the time Outstanding relating to the time, method and place of conducting a proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under the Ordinance; (3) in the administration of the trusts of this Ordinance, the Trustee may execute any of the trusts or powers hereof directly or through its agents or attorneys. The Trustee may consult with counsel and the opinion or advice of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel.

The Trustee may conclusively rely upon the authenticity of, and the truth of the statements and the correctness of the opinions expressed in, and shall be fully protected in acting upon any notice, Ordinance, request, consent order, certificate, report, opinion, note, or other paper or document furnished to it pursuant to any provision of this Ordinance, believed by it to be genuine and to have been signed and presented by the proper party.

The Trustee shall not be required to take notice or be deemed to have notice or actual knowledge of any Event of Default specified in Article X hereof other than a payment default under Sections 10.1.A or 10.1.B unless the Trustee shall receive from the Town or the registered owner of any Bond written notice stating that an Event of Default hereunder has occurred and

specifying the same, and, in the absence of such notice, the Trustee may conclusively assume that there is no such Event of Default.

The Trustee shall be entitled to payment of and reimbursement by the Town for reasonable fees for its services rendered hereunder and all advances and counsel fees, costs and expenses, reasonably and necessarily made or incurred by the Trustee in connection with such services. Additionally, the Town shall pay the Trustee for any extraordinary services or extraordinary expenses performed or incurred by the Trustee in connection with its duties under this Ordinance or any Supplemental Ordinance if notified in writing prior to the performance of those services or the incurring of those expenses so as to allow the Town to appropriate sufficient funds for their payment.

The Trustee shall not, in any event, be required to take, defend, or appear in any legal action or proceeding hereunder or to exercise any of the trusts or powers hereof unless it shall first be adequately indemnified to its satisfaction against the costs, expenses, and liabilities which may be incurred thereby. Every provision of the Ordinance relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions hereof.

The Trustee shall not be accountable for the use or application by the Town of any of the Bonds or the proceeds thereof or for the use or application of any money paid over by the Trustee in accordance with the provisions of this Ordinance or any Supplemental Ordinance. The permissive right of the Trustee to do things enumerated in this Ordinance or any Supplemental Ordinance shall not be construed as a duty and the Trustee shall not be answerable for other than its negligence or willful default. The Trustee shall have no responsibility with respect to any information, statement or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to any Bonds and shall have no responsibility for compliance with any state or federal securities laws in connection with any Bonds.

None of the provisions of this Ordinance or any Supplemental Ordinance shall require the Trustee to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it.

The Trustee shall not be responsible or liable for any failure or delay in the performance of its obligation under this Ordinance or any Supplemental Ordinance arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; hurricanes or other storms; wars; terrorism; similar military disturbances; sabotage; epidemic; riots; interruptions; loss or malfunctions of utilities, computer (hardware or software) or communications services; accidents; labor disputes; acts of civil or military authority or governmental action; it being understood that the Trustee shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

The Trustee is not required to make any inquiry or investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, approval, bond, debenture or other paper or document but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit and, if the Trustee determines to make such further inquiry or investigation, it is entitled to examine the books, records and premises of the Issuer and the Borrower, in person or by agent or attorney.

In the event the Trustee receives inconsistent or conflicting requests and indemnity from two or more groups of holders of Bonds, each representing less than a majority in aggregate principal amount of the Bonds Outstanding, pursuant to the provisions of this Ordinance, the Trustee, in its sole discretion, may determine what action, if any, shall be taken.

The Trustee shall not be (i) required to hold any policies of insurance, (ii) responsible for the filing of any documents, security agreements or financing statements regarding the creation or perfection of any interest in the Hospitality Fees or other security for the Bonds; and (iii) responsible for any information contained in any financing statements.

The Trustee's immunities and protections from liability in connection with the performance of its duties under this Ordinance shall extend to the Trustee's officers, directors, agents, attorneys and employees. Such immunities and protections, together with the Trustee's right to compensation, shall survive the Trustee's resignation or removal, the defeasance or discharge of this Ordinance and final payment of the Bonds.

The Trustee makes no representations as to the value, condition or sufficiency of any assets pledged or assigned as security for the Bonds, the right, title or interest of the Town therein, the security provided thereby or by the Ordinance or the tax-exempt status of the Bonds.

The Trustee may rely and is protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, approval, bond, debenture or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

Any request, direction, order or demand of the Town under this the Ordinance shall be sufficiently evidenced by a certificate of the Town Representative (unless other evidence thereof is specifically prescribed).

Whenever in the administration of the Ordinance the Trustee deems it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence thereof is specifically prescribed) may, in the absence of bad faith on its part, rely upon a certificate of the Town Representative.

The Trustee may in all cases pay such reasonable compensation as it deems proper to all agents, attorneys and receivers reasonably employed or retained by it, and the Trustee shall not be responsible for any misconduct or negligence of any agent, attorney or receiver appointed with due care by it.

The Trustee, in its commercial banking or in any other capacity, may in good faith buy, sell, own, hold and deal in any of the Bonds and may join in any action which any Bondholder may be entitled to take with like effect as if it were not Trustee. The Trustee, in its commercial banking or in any other capacity, may also engage in or be interested in any financial or other transaction with the Town and may act as depository, trustee or agent for any committee of Bondholders secured hereby or other obligations of the Issuer as freely as if it were not Trustee. The provisions of this Section shall extend to affiliates of the Trustee.

Whether or not expressly so provided, every provision of the Ordinance relating to the conduct or affecting the liability of or affording protection to the Trustee is subject to the provisions of this Article.

Section 8.2. Resignation of Trustee. The Trustee may resign at any time by giving 30 days written notice to the Town and by giving notice to the registered owners of the Bonds by publication of such resignation. No resignation will become effective until a successor Trustee has been appointed and accepts such appointment as provided below. Upon receiving notice of resignation, the Town shall promptly appoint such successor Trustee by an instrument in writing. In the event a successor Trustee has not been appointed within 60 days of the date notice of resignation is given, the Trustee, at the Town's expense, may apply to any court of competent jurisdiction for the appointment of a successor Trustee to act until such time as a successor is appointed as provided in this Section.

Unless otherwise ordered by a court or regulatory body having competent jurisdiction, or unless required by law, any successor Trustee shall, if there is such an institution willing, qualified and able to accept the trust upon reasonable or customary terms, be a bank, bank holding company or trust company or wholly-owned subsidiary of a bank holding company or trust company in good standing, qualified to act hereunder, and having a capital and earned surplus of not less than \$75,000,000.

Any successor Trustee appointed as provided in this section, shall execute, acknowledge and deliver to the Town and its predecessor Trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts, duties and obligations of its predecessor of the trust hereunder. Upon the request of any such successor Trustee, the Town shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and duties. Upon acceptance of appointment by a successor Trustee, the Town shall notify the registered owner of each Bond then Outstanding by first-class mail, postage prepaid.

The predecessor Trustee shall execute any and all documents reasonably necessary or appropriate to convey all interest it may have to the successor Trustee. The predecessor Trustee shall promptly transfer all funds to the successor Trustee and deliver all records relating to the trust or copies thereof and communicate all material information it may have obtained concerning the trust to the successor Trustee.

Any corporation or association into which the Trustee may be merged or with which it may be consolidated, or any corporation or association resulting from any merger, or any corporation or association succeeding to the business or substantially all of the business of the Trustee, shall be the successor of the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto.

Each, every and all funds and accounts held by the Trustee shall be impressed with a trust for the benefit of the registered owners of the Bonds, under the provisions of this Ordinance and of the Bond Act.

Section 8.3. Removal of Trustee. Upon 30 days written notice, the Town, at its sole discretion, provided that an Event of Default shall not have occurred and be continuing, may remove the Trustee. The removal of the Trustee under this Section 8.3 shall not be effective until a successor Trustee has been appointed and has accepted the duties of Trustee.

The Holders of a majority in aggregate principal amount of the Bonds at the time outstanding may, upon 30 days written notice to the Trustee and the Town, remove the Trustee and appoint a successor Trustee by instrument or instruments in writing signed by such Holders of the Bonds.

Section 8.4. Custodians. The Construction Fund shall at the option of the Town be held by a bank, a trust company, a national banking association or a national association as Custodian under this Ordinance or a Supplemental Ordinance.

Section 8.5. Duties and Obligations of Trustee and Custodians. The recitals of fact made in the Ordinance and in the Bonds shall be taken as statements of the Town, and neither the Trustee nor Custodian shall be deemed to have made any representation as to the correctness of the same. Nor shall the Trustee or any Custodian be deemed to have made any representation whatsoever as to the validity or sufficiency of the Ordinance or of the Bonds issued hereunder. Nor shall the Trustee or any Custodian be under any responsibility or duty with respect to the issuance of the Bonds or the application of the proceeds thereof, except to the extent provided for herein, or in a Supplemental Ordinance. Nor shall the Trustee or any Custodian be under any obligation or duty to perform any act which would involve it in expense or liability or to institute or defend any suit in response to the Ordinance, or to the Bonds issued hereunder, or to advance any of its own moneys, unless properly indemnified to its satisfaction. Nor shall the Trustee or any Custodian be liable in connection with the performance of its duties hereunder, except for its own negligence or default.

Section 8.6. Trustee and Custodians Protected in Relying upon Ordinances, etc. The Trustee and all Custodians shall at all times be protected in acting upon any notice, Ordinance, request, consent, order, certificate, statement, opinion, bond, or other paper or document believed to be genuine and to have been signed by the proper party or parties.

ARTICLE IX

AMENDMENTS OR SUPPLEMENTS TO THIS ORDINANCE

Section 9.1. Amendments or Supplements to Ordinance. The Town shall not amend this Ordinance except in accordance with the provisions of this Article.

A. The Town may, from time to time and without the consent of any Holder of the Bonds enact an ordinance amendatory hereof or supplemental hereto for the purpose of (a) providing for the issuance of Bonds pursuant to the provisions of Article III hereof, or (b) (i) making any amendments or modifications hereto which may be required to permit this Ordinance to be qualified under the Trust Indenture Act of 1939, as amended; (ii) making any modification or amendment to this Ordinance not inconsistent herewith required for the correction of language or to cure any ambiguity or defective provisions, omission, mistake or manifest error herein contained; (iii) making any amendments or supplements hereto to grant to or confer upon the Holders additional rights, remedies, power and authority, or to grant to or confer upon any Holders, committee or trustee for the Holders any additional rights, power or authority; or (iv) to add to the security of the Holders of the Bonds.

B. From time to time the Holders of 66-2/3% in principal amount of the Bonds then Outstanding, by an instrument or instruments in writing signed by such Holders and filed with the Town and the Trustee, shall have power to assent to and authorize any modification or amendment to the provisions of this Ordinance that may be proposed by the Town or of the rights and obligations of the Town and of the Holders of Bonds issued hereunder. Any action herein authorized to be taken with the assent and authority given as aforesaid of the Holders of at least 66-2/3% in principal amount of the Bonds at the time Outstanding shall be effective and binding upon all of the Holders of Bonds Outstanding and upon the Town as fully as though such action were specifically and expressly authorized by the terms of this Ordinance; provided always, that without the consent of the Holder of each Bond affected thereby, no such modification shall be made which will (a) extend the time of payment of principal of or the interest on any Bond, or reduce the principal amount thereof or the rate of interest thereon or the premium payable upon the redemption thereof, or (b) give to any Bond or Bonds any preference over any other Bond or Bonds, or (c) authorize the creation of any pledge prior to or, except as provided herein for the issuance of Series of Bonds, on a parity with the pledge afforded by this Ordinance, or (d) reduce the percentage in principal amount of the Bonds required to assent to or authorize any such modification to this Ordinance. For the purpose of computations required by this paragraph, Bonds directly or indirectly owned or controlled by the Town shall be disregarded.

Any modification or amendment or supplement to the provisions of this Ordinance or of any Supplemental Ordinance supplemental hereto shall be set forth in an ordinance to be enacted by the Town.

The Trustee is hereby authorized to accept the delivery of a certified copy of any amendatory or supplemental ordinance referred to and permitted or authorized by this Section 9.1 and to make all further agreements and stipulations which may be therein contained, and the Trustee, in accepting such ordinance and taking such action, shall receive and be fully

protected in relying on an opinion of counsel (which may be an opinion of counsel to the Town) that such amendatory or supplemental ordinance is authorized or permitted by the provisions of this Ordinance. No such amendatory or supplemental ordinance shall change or modify any of the rights or obligations of the Trustee without its written assent thereto.

[End of Article IX]

ARTICLE X

EVENTS OF DEFAULT

Section 10.1. Events of Default. With respect to the Bonds, the following shall constitute “Events of Default”:

A. An Event of Default (as defined in the 2004 Installment Sale Agreement) under Section 7.1(a) of the 2004 Installment Sale Agreement has occurred and is continuing.

B. If payment of the principal of any Bond, whether at maturity or by proceedings for redemption, or upon mandatory sinking fund redemption, or by declaration as provided in Section 11.1 hereof, or otherwise, is not made by the Town after the same has become due and payable; or

C. If payment of any installment of interest on any Bond is not made by the Town as the same becomes due and payable; or

D. If the Town shall fail in the due and punctual performance of any of the covenants, conditions, agreements and provisions contained in the Bonds or in this Ordinance or in any Supplemental Ordinance on the part of the Town to be performed, and such failure continues for 90 days after written notice specifying such failure and requiring the same to be remedied has been given to the Town by the Trustee, or the Holders of not less than 20% in principal amount of the Bonds then Outstanding or any trustee or committee therefor; or

E. If any proceedings are instituted, with the consent or acquiescence of the Town, for the purpose of effecting a composition between the Town and its creditors and if the claim of such creditors is in any circumstance payable from any of the Hospitality Fees or any other moneys pledged and charged in this Ordinance or any Supplemental Ordinance for the payment of the Bonds, or any such proceedings are instituted for the purpose of adjusting the claims of such creditors, pursuant to any federal or State statute now or hereafter enacted; or

F. If the Town is for any reason rendered incapable of fulfilling its obligations hereunder in any material respect.

Subject to the provisions, limitations and conditions of Sections 11.1 and 11.2 hereof, insofar as the remedies provided in said provisions are concerned, nothing in Section 11.3 hereof or in this Article, and particularly nothing in subparagraph C of this Section 10.1, shall prohibit or limit, or be construed as prohibiting or limiting any Holder of a Bond from enforcing the duties of the Town, or any of the officers thereof, under any provisions of this Ordinance (including, without limiting the generality of the foregoing, the duties imposed by or referred to in Section 11.3 hereof) by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction, even though the failure of the Town or any of the officers thereof to perform any such duty may not then constitute an “Event of Default” as defined in this Article.

[End of Article X]

ARTICLE XI

REMEDIES UPON EVENT OF DEFAULT

Section 11.1 Declaration of Principal and Interest as Due. Upon the occurrence of an Event of Default, and at any time thereafter while such Event of Default continues, then and in each and every case the Trustee in its own name and as trustee of an express trust, on behalf and for the benefit and protection of the Holders of all Outstanding Bonds, may proceed, and upon the written request of the Holders of not less than 25% in principal amount of the Bonds then Outstanding, shall proceed to declare the principal of all Bonds then Outstanding, together with all accrued and unpaid interest thereon, if not already due, to be due and payable immediately, and upon any such declaration the same shall become and be due and payable immediately. This provision is also subject, however, to the condition that, if at any time after the principal of the Bonds, together with the accrued and unpaid interest thereon and other moneys secured hereby, have been so declared due and payable and before any further action has been taken (other than the making of the above declaration), the principal amount of all Bonds which have matured either according to the maturity date or dates otherwise specified therein (except as a result of such declaration) and all arrears of interest upon all Bonds, except interest accrued but not yet due on said Bonds, have been paid or caused to be paid, and all other Events of Default, if any, which have occurred have been remedied, cured or secured, then and in each and every such case the Holders of 25% in principal amount of the Bonds then Outstanding, by notice in writing delivered to the Trustee and the Town, may waive such Default and its consequences and rescind and annul such declaration. No such waiver or rescission or annulment shall extend to or affect any subsequent default or impair or exhaust any right or power related to such subsequent Default.

Section 11.2. Suits at Law or in Equity and Mandamus. In case any one or more of the Events of Default shall happen and be continuing, then and in every such case, but subject to the provisions, limitations and conditions of Section 11.1 hereof so far as the remedies provided in said provisions are concerned, the Holder of any Bond at the time Outstanding, or Trustee therefor, may, for the equal benefit and protection of all Holders of the Bonds similarly situated,

(a) by mandamus or other suit, action or proceedings at law or in the equity, enforce such Bondholder's right against the Town and require and compel the Town to perform and carry out its duties and obligations under the Bond Act and this Ordinance, and to perform and carry out its covenants and agreements with the Bondholders;

(b) by action or suit in equity require the Town to account as if such Town were the trustee of an express trust;

(c) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Bondholders; or

(d) bring suit upon the Bonds.

Section 11.3. Remedies Not Exclusive; Effect of Waiver of Default; Effect of Abandonment of Proceedings or Adverse Determination.

The Holders from time to time of the Bonds shall be entitled to all the remedies and benefits of this Ordinance as are and as shall be provided by law, and, subject to the provisions of Sections 11.1 and 11.2 hereof, nothing herein shall be construed to limit the rights or remedies of any such Holders under any applicable statute that may now exist or be enacted thereafter. No remedy conferred by the Bond Act and this Article upon any Holder of any Bond is intended to be exclusive of any other remedy. Each and every such remedy shall be cumulative and shall be in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred by the Bond Act and this Article or by any other law now or hereafter existing. Every substantive right and remedy conferred upon the Holders of the Bonds may be enforced and exercised from time to time and as often as may be deemed expedient.

No waiver of any default or breach of duty or contract by any Holder of any Bond shall extend to or affect any subsequent default or breach of duty or contract, or shall impair any rights or remedies thereon. No delay or omission of any Holder of a Bond to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein.

In case any suit, action or proceeding to enforce any right or exercise any remedy shall be brought or taken and then discontinued or abandoned, or shall be determined adversely to Holders of the Bonds then and in every such case, the Town and such Holders shall be restored to their former positions and rights and remedies as if no suit, action or proceeding had been brought or taken.

When the Trustee incurs costs or expenses (including legal fees, costs and expenses) or renders services after the occurrence of an Event of Default, such costs and expenses and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law.

Section 11.4. Restrictions on Bondholder's Action.

A. No Holder of any Bond shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of any provision of this Ordinance or the execution of any trust under this Ordinance or for any remedy under this Ordinance unless such Holder shall have previously given to the Trustee written notice of the happening of an Event of Default and the Holders of at least twenty-five percent (25%) in principal amount of the Bonds then Outstanding shall have filed a written request with the Trustee and shall have offered the Trustee reasonable opportunity, either to exercise the powers granted in this Ordinance or by the laws of the State or to institute such action, suit or proceeding in its own name, and unless such Holders shall have offered to the Trustee adequate security and indemnity against the costs, fees (including reasonable attorneys' fees), expenses and liabilities to be incurred therein or thereby, and the Trustee shall have refused to comply with such request for a period of 60 days after receipt by it of such notice, request an offer of indemnity. No one or more Holders of Bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the pledge created by this

Ordinance, or to enforce any right under this Ordinance, except in the manner therein provided. All proceedings at law or in equity to enforce any provision of this Ordinance shall be instituted, had and maintained in the manner provided in this Ordinance and for the equal benefit of all Holders of the Outstanding Bonds.

B. Nothing contained in this Ordinance or in the Bonds contained shall affect or impair the obligation of the Town, which is absolute and unconditional, to pay at the respective dates of maturity and places therein expressed the principal of (and redemption premium, if any) and interest on the Bonds to the respective Holders thereof, or affect or impair the right of action, which is also absolute and unconditional, of any Holder to enforce such payment of his Bond.

Section 11.5. Application of Hospitality Fees and Other Moneys After Default. During the continuance of an Event of Default, all moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the costs and expenses of the proceedings resulting in the collection of moneys and of the fees, expenses and advances of, incurred or made by the Trustee with respect thereto, be deposited in the respective Debt Service Funds, and all amounts held by the Trustee hereunder shall be applied as follows (provided if more than one Debt Service Fund has been established, such amounts shall be paid ratably):

A. Unless the principal of all Outstanding Bonds shall have become or have been declared due and payable:

First: To the payment to the persons entitled thereto of all installments of interest then due on the Bonds in the order of maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon to the person entitled thereto, without any discrimination or preference; and

Second: To the payment to the persons entitled thereto of the unpaid principal amounts or redemption premium, if any, of any Bonds which shall have become due (other than Bonds previously called for redemption in accordance with the provisions hereof), whether at maturity or by call for redemption, in the order of their due dates, and if the amounts available shall not be sufficient to pay in full all the Bonds due on any date, then to the payment thereof ratably, according to the principal amounts or redemption premium, if any, due on such date, to the persons entitled thereto, without any discrimination or preference.

B. If the principal amounts of all Outstanding Bonds shall have become or have been declared due and payable, to the payment of the principal amounts and interest then due and unpaid upon the Bonds without preference or priority of principal over interest or of interest over principal, of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal amounts and interest, to the persons entitled thereto without any discrimination or preference.

C. If the principal amounts of all Outstanding Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article XI, then, subject to the provisions of this Section in the event that the principal amounts of all Outstanding Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of paragraph (A) of this Section.

D. Whenever moneys are to be applied by the Trustee pursuant to the provisions of this Section, such moneys shall be applied by it at such times, and from time to time, as the Trustee shall determine, having due regard for the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such moneys, it shall fix the date (which shall be a Bond payment date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the principal amounts to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the Holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement of any partial payment or for cancellation if fully paid.

Whenever all Bonds and interest thereon have been paid under the provisions of this Section and all expenses and charges of the Trustee have been paid, any balance remaining shall be paid to the person entitled to receive the same; if no other person shall be entitled thereto, then the balance shall be paid to the Town or as a court of competent jurisdiction may direct.

[End of Article XI]

ARTICLE XII

DEFEASANCE

Section 12.1. Defeasance. The obligations of the Town under this Ordinance and the liens, pledges, charges, trusts, covenants and agreements of the Town herein made or provided for, shall be fully discharged and satisfied as to any Bond; and, unless or except as otherwise provided in the Supplemental Ordinance providing for the issuance of any Series of Bonds, such Bond or Series of Bonds shall no longer be deemed to be Outstanding hereunder when:

A. Such Bond or Series of Bonds shall have been purchased by the Town and surrendered to the Town for cancellation or otherwise surrendered to the Town or the Paying Agent, and is canceled or subject to cancellation by the Town or Paying Agent, or

B. Payment of the principal of, redemption premium, if any, and interest on such Bond or Series of Bonds, either (a) shall have been made or caused to be made in accordance with the terms thereof, or (b) shall have been provided for by irrevocably depositing with the Trustee in trust and irrevocably setting aside exclusively for such payment, (i) moneys sufficient to make such payment, or (ii) Government Obligations maturing as to principal and interest in such amounts and at such times as will ensure the availability of sufficient moneys to make such payment, and all necessary and proper fees, compensation and expenses of the Trustee, Paying Agent and the Registrar together with either (i) a verification report, satisfactory to the Trustee, to the effect that such securities and/or cash, together with earnings thereon, will be sufficient to pay interest and principal (and applicable premium, if any) on the Bonds to redemption or maturity or (ii) an opinion of Counsel, satisfactory to the Trustee, to the effect that all conditions precedent to the defeasance of the Bonds have been satisfied; provided however, that no such verification report or opinion shall be required in the event of a gross defeasance (where the cash deposited alone is sufficient to pay the debt service on the Bonds) or a current refunding (where the Bonds are to be redeemed within ninety (90) days of the funding of the escrow). At such time as a Bond or Series of Bonds shall no longer be deemed to be Outstanding hereunder, as aforesaid, such Bond or Series of Bonds shall cease to draw interest from the maturity date or redemption date thereof, and, except for the purposes of any such payment from such moneys or Government Obligations, shall no longer be secured by or entitled to the benefits of this Ordinance.

Any moneys so deposited with the Trustee as provided in this Article may at the written direction of the Town also be invested and reinvested in Government Obligations, maturing in the amounts and times as hereinbefore set forth, and all income from all Government Obligations in the hands of such Trustee which is not required for the payment of the Bonds or Series of Bonds and interest thereon with respect to which such moneys shall have been so deposited, shall be treated as Hospitality Fees.

Notwithstanding any provision hereof which may be contrary to the provisions of this Article, all moneys or Government Obligations set aside and held in trust pursuant to the provisions of this Article for the payment of Bonds or Series of Bonds shall be applied to and used solely for the payment of the particular Bonds or Series of Bonds with respect to which such moneys and Government Obligations have been so set aside in trust.

Any provision hereof to the contrary notwithstanding, if moneys or Government Obligations have been deposited or set aside with the Trustee pursuant to this Article for the payment of the Bonds and such Bonds shall not have in fact been actually paid in full, no amendment to the provisions of this Article shall be made without the consent of the Bondholder of each Bond or Series of Bonds affected thereby.

If moneys or Government Obligations have been deposited with the Trustee pursuant to Section 12.1(B) for payment of less than all Bonds of a Series and maturity, the Bonds of such Series and maturity to be so paid from such deposit shall be selected by the Trustee by lot by such method as shall provide for the selection of portions (in authorized denominations) of the principal of Bonds of such Series and maturity of a denomination larger than the smallest authorized denomination. Such selection shall be made within seven days after the moneys or Government Obligations have been deposited with the Trustee. This selection process shall be in lieu of the selection process otherwise provided with respect to redemption of Bonds in Article V. After such selection is made, Bonds that are to be paid from such deposit (including Bonds issued in exchange for such Bonds pursuant to the transfer or exchange provisions of this Ordinance) shall be identified by a separate CUSIP number or other designation satisfactory to the Trustee. The Town shall provide such CUSIP number or other designation to the Trustee. The Trustee shall notify Bondholders whose Bonds (or portions thereof) have been selected for payment from the moneys or Government Obligations on deposit and shall direct such Bondholders to surrender their Bonds to the Trustee in exchange for Bonds with the appropriate designation. The selection of Bonds for payment from such deposit pursuant to this Section 12.1 shall be conclusive and binding on the Town.

[End of Article XII]

ARTICLE XIII

MISCELLANEOUS

Section 13.1. Benefits of Ordinance Limited to the Town, the Trustee and Holders of the Bonds. With the exception of rights or benefits herein expressly conferred, nothing expressed or mentioned in or to be implied from this Ordinance or the Bonds is intended or should be construed to confer upon or give to any person other than the Town, the Trustee and the Holders of the Bonds, any legal or equitable right, remedy or claim under or by reason of or in respect to this Ordinance or any covenant, condition, stipulation, promise, agreement or provision herein contained. This Ordinance and all of the covenants, conditions, stipulations, promises, agreements and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the Town, the Trustee and the Holders from time to time of the Bonds as herein and therein provided.

Section 13.2. Ordinance Binding Upon Successors or Assigns of the Town. All the terms, provisions, conditions, covenants, warranties and agreements contained in this Ordinance shall be binding upon the successors and assigns of the Town and shall inure to the benefit of the Trustee, its successors or substitutes in trust and assigns, and the Holders of the Bonds.

Section 13.3. No Personal Liability. No recourse shall be had for the enforcement of any obligation, covenant, promise or agreement of the Town contained in this Ordinance or the Bonds, against any member of the Town, any officer or employee, as such, in his or her individual capacity, past, present or future, of the Town, either directly or through the Town, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise. It is expressly agreed and understood that this Ordinance and the Bonds are solely corporate obligations, and that no personal liability whatsoever shall attach to, or be incurred by, any member, officer or employee as such past, present or future, of the Town, either directly or by reason of any of the obligations, covenants, promises, or agreements entered into between the Town and the Trustee or the Bondholder or to be implied therefrom as being supplemental hereto or thereto. All personal liability of that character against every such member, officer and employee is, by the adoption of this Ordinance and the execution of the Bonds, and as a condition of, and as a part of the consideration for, the adoption of this Ordinance and the execution of the Bonds, expressly waived and released. The immunity of members, officers and employees of the Town under the provisions contained in this Section 13.3 shall survive the termination of this Ordinance.

Section 13.4. Effect of Saturdays, Sundays and Legal Holidays. Whenever this Ordinance requires any action to be taken on a Saturday, Sunday, legal holiday or bank holiday in the State of South Carolina, such action shall be taken on the first Business Day occurring thereafter. Whenever in this Ordinance the time within which any action is required to be taken or within which any right will lapse or expire shall terminate on a Saturday, Sunday, legal holiday or bank holiday, in the State, such time shall continue to run until midnight on the succeeding Business Day.

Section 13.5. Partial Invalidity. If any one or more of the covenants or agreements or portions thereof provided in this Ordinance on the part of the Town or the Trustee or any Paying

Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant or covenants, or such agreement or agreements, or such portions thereof, shall be deemed severable from the remaining covenants and agreements and portions thereof provided in this Ordinance and the invalidity thereof shall in no way affect the validity of the other provisions of this Ordinance or of the Bonds, but the Holders of the Bonds shall retain all the rights and benefits accorded to them hereunder and under any applicable provisions of law.

If any provisions of this Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because of conflicts with any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstance, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatever.

Section 13.6. Law and Place of Enforcement of Ordinance. This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina without regard to conflict of law principles and all suits and actions arising out of this Ordinance shall be instituted in a court of competent jurisdiction in said State.

Section 13.7. Effect of Article and Section Headings and Table of Contents. The headings or titles of the several Articles and Sections hereof, and any table of contents appended hereto or to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this Ordinance.

Section 13.8. Repeal of Inconsistent Ordinances. All ordinances and resolutions of the Town, and any part of any ordinance or resolution, inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

Section 13.9. Notices. All notices, certificates, or other communications hereunder or under this Ordinance shall be sufficiently given and shall be deemed given when mailed by registered mail, postage prepaid, or given when dispatched by telegram addressed as follows:

If to the Town:

Town of Hilton Head Island, SC
Attention: Town Manager
One Town Center Court
Hilton Head Island, South Carolina 29928

If to the Trustee:

Wells Fargo Bank, N.A.
Attention: Corporate Trust Services
7000 Central Parkway, Suite 550
Atlanta, Georgia 30328

The Town and the Trustee, may, by notice given to the other parties, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 13.110. Codification. This Ordinance shall be forthwith codified in the Code of Town Ordinances in the manner required by law and the name shall be indexed under the general heading “Ordinance – Special Obligation Bonds (Hospitality Fee Pledge).”

Section 13.11. Severability. If any sections, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not attest the validity of the remaining portions thereof.

Section 13.12. Effective Date. This Ordinance shall be effective upon its adoption by the Town Council for the Town of Hilton Head Island, South Carolina; provided, however, that it shall not be necessary for the Town to establish the funds and accounts created in Article VI hereof prior to the issuance of any Bonds.

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS _____ DAY OF _____ 2011.

Drew A. Laughlin, Mayor

ATTEST:

Cori Brock, Town Clerk

First Reading: _____
Second Reading: _____

APPROVED AS TO FORM:

Gregory M. Alford, Town Attorney

Introduced by Council Member: _____



MEMORANDUM

TO: Town Council

FROM: Stephen G. Riley, CM, Town Manager

VIA: Susan M. Simmons, CPA, Director of Finance

DATE: August 19, 2011

RE: **Second Reading of Proposed Ordinance No. 2011-18
First Supplemental Ordinance – Hospitality Fee Pledge**

Note:

The only change is the deletion of the last sentence in Section 5 made at the request of the McNair Law Firm. The sentence dealt with providing notice of bond redemptions. The deletion has no substantive impact on the ordinance.

Recommendation:

Town Council approves second reading of Proposed Ordinance No. 2011-18 which authorizes the issuance of Special Obligation Bonds – Hospitality Fee Pledge in an amount not to exceed \$26,250,000.

Summary:

As you will recall from the last meeting, there are a total of four proposed ordinances – two ordinances each for hospitality and beach preservation. The first for each is the General Bond Ordinance which establishes enabling legislation for revenue bonds but does not authorize a specific bond issue.

The second proposed ordinance for each type is the First Supplemental Ordinance which authorizes a specific debt issue. ***This agenda item addresses the First Supplemental Ordinance for Hospitality Fees.*** At the first reading, Council requested additional information regarding the details of hospitality financing. The information is presented here.

Proposed Ordinance No. 2011-18 is the First Supplemental Ordinance for the Hospitality Fee Pledge. In this ordinance, staff seeks authority from Council to issue new bonds in an amount not to exceed \$15,250,000. It is also to refund the outstanding balance of the

2004C Hospitality Certificates of Participation (COPS) in an amount not to exceed \$11,000,000 to warrant a savings of approximately \$317,000 and to get all outstanding hospitality debt into the new Special Obligation Bonds.

Background:

The Town issued Series 2004C Hospitality Certificates of Participation for which the proceeds were used for construction or purchase, or both, of public safety assets. Then over the last couple of years, the Town purchased fire apparatus and constructed part or all of certain fire and rescue stations under reimbursement resolutions. These resolutions allow the Town to use available resources to upfront the costs but with the intent of issuing debt to pay for these assets over a longer term. The Town's intent is to pay for these long-lived assets over the life of the assets via debt service payments and use future hospitality fee revenue to make the debt service payments. In this manner, those who benefit from these assets will also bear the cost of these assets. Upon Council's approval of Proposed Ordinance 2011-17 and 2011-18, staff plans to issue bonds with a hospitality fee pledge.

At its last meeting, Council requested past and budgeted future hospitality fee expenditure detail. This information is as follows:

Past Expenditures:

Qualifying Reimbursable Fire & Rescue Apparatus	\$ 1,674,000
Fire and Rescue Station #5 Costs	2,695,000
Fire and Rescue Station #1 Costs	2,220,000
Fire and Rescue Station #2 Costs	75,000
Fire and Rescue Station #6 Costs	<u>124,000</u>
	6,788,000

Future Expenditures:

FY 12 Fire and Rescue Station #1	237,000
FY12 Budget Fire and Rescue Station #6	3,200,000
Proposed FY13 Budget Fire Station #2	275,000
Proposed FY14 Budget Fire Station #2	<u>2,500,000</u>
	6,212,000

Est. Cost of Issuance, Escrow, Required Reserve Fund 1,150,000

Total Par Value of Bond 14,150,000

Balance for Other Hospitality Fee Funded Projects 1,100,000

Not to Exceed Par Value \$15,250,000

Also at its last meeting, Council requested cost benefit analysis of one versus multiple bond issues. The main factors are interest expenditures on proceeds incurred prior to project expenditures versus the increased issuance costs for two bond issues. In the following options, both result in project costs of \$13,000,000; first option is for one bond issuance and the second is for two issuances.

Option One: Issue special obligation bonds with a par amount of \$14,150,000 in fiscal year 2012. This option results in an average annual debt service cost of \$877,793 and a total interest cost of \$7,794,819.

Option Two: Issue special obligation bonds with a par amount of \$10,920,000 in fiscal year 2012 and an additional bond issuance of \$3,375,000 in fiscal year 2015 for a total par amount of \$14,295,000. This option results in an average annual debt service cost of \$886,509 and a total interest cost of \$7,867,733. This option assumes that the current economic environment, i.e., interest rates, remains constant between FY12 and FY15.

Note: The Town's financial advisor will attend the Council meeting to present these options in more detail using the attached PowerPoint presentation.

Additionally, Council also asked staff to explain what would occur if it chose not to issue these bonds. If Council chose not to issue debt for the future expenditures, then those assets listed above could not be purchased or constructed without another funding source.

If Council chose not to issue debt for past expenditures, the Town will not replenish its hospitality fund balance. As previously described, the Town purchased apparatus and constructed stations under reimbursement resolutions by using hospitality cash on hand or interfund borrowing. The Town's current hospitality fund balance is minimal. As typical for many years, the FY12 CIP budget has \$1.4 million hospitality-funded projects other than those listed above. At this level of spending without the reimbursement, the Town would need to forgo these types of projects for approximately five years or find a different funding source for them.

Finally, Council requested a cash flow analysis for hospitality funds. In the attached excel document, the cash flow is presented assuming the issuance of the proposed bonds. The report includes the anticipated \$6,788,000 reimbursement of past expenditures in FY12. This influx of cash will allow the Town to continue funding CIP projects at the present rate for a few years. However, it also reports that this pattern cannot be sustained and that a new funding approach must be determined within the next few years. The need for a new approach was anticipated and staff will be presenting Council with options in the coming months.

Hospitality Fee Fund Analysis

	<u>Revenues</u>	<u>Expenditures and Transfers</u>				<u>Fund</u>
	Total	Trans to GF	Trans to CP	Trans to DS	Total	Balance
2001	1,212,384	23337	472179	0	495,516	716,868
2002	2,069,970	82139.56	1888109.9		1,970,249	816,588
2003	2,409,094	380,167	894,360	-	1,274,527	1,951,156
2004	2,234,318	89,216	548,689	744,885	1,382,790	2,802,684
2005	3,005,055	1,271,408	1,085,602	-	2,357,010	3,450,729
2006	5,211,536	2,042,028	535,958	1,288,343	3,866,329	4,795,936
2007	5,266,407	1,672,161	1,444,518	800,000	3,916,679	6,145,664
2008	5,383,329	2,004,206	665,489	720,803	3,390,498	8,138,496
2009	4,868,498	1,369,958	7,184,851	758,236	9,313,046	3,693,948
2010	4,711,430	2,464,955	3,036,648	756,508	6,258,111	2,147,268
Prelim/Unaudited						
2011	4,926,708	2,930,183	1,763,051	760,133	5,453,367	1,620,609
2012	11,754,566	3,269,550	1,411,000	1,206,100	5,886,650	7,488,525 E
2013	5,094,811	3,334,941	1,439,220	1,650,291	6,424,452	6,158,884
2014	5,210,490	3,401,640	1,468,004	1,652,724	6,522,368	4,847,006
2015	5,328,878	3,469,673	1,497,364	1,653,534	6,620,571	3,555,313
2016	5,450,039	3,539,066	1,527,312	1,647,346	6,713,724	2,291,628
2017	5,574,044	3,609,847	1,557,858	1,653,307	6,821,012	1,044,660
2018	5,700,948	3,682,044	1,589,015	1,651,207	6,922,267	(176,658)
2019	5,831,001	3,755,685	1,620,795	1,651,265	7,027,746	(1,373,403)
2020	5,965,114	3,830,799	1,653,211	1,648,346	7,132,356	(2,540,646)
2021	6,102,312	3,907,415	1,686,276	1,652,831	7,246,522	(3,684,856)
2022	6,242,665	3,985,563	1,720,001	1,654,048	7,359,612	(4,801,803)
2023	6,386,246	4,065,274	1,754,401	1,652,624	7,472,300	(5,887,857)
2024	6,533,130	4,146,580	1,789,489	1,647,370	7,583,439	(6,938,166)
2025	6,683,392	4,229,512	1,825,279	1,649,520	7,704,311	(7,959,085)
2026	6,837,110	4,314,102	1,861,785	1,648,762	7,824,648	(8,946,624)
2027	6,994,363	4,400,384	1,899,020	1,650,102	7,949,506	(9,901,767)
2028	7,155,233	4,488,392	1,937,001	1,653,361	8,078,753	(10,825,287)
2029	7,319,804	4,578,159	1,975,741	893,367	7,447,267	(10,952,750)
2030	7,488,159	4,669,723	2,015,255	898,023	7,583,001	(11,047,591)
2031	7,660,387	4,763,117	2,055,561	895,888	7,714,566	(11,101,770)
2032	7,836,576	4,858,379	2,096,672	897,115	7,852,166	(11,117,360)
2033	8,016,817	4,955,547	2,138,605	896,520	7,990,672	(11,091,215)
2034	8,201,204	5,054,658	2,181,377	893,979	8,130,014	(11,020,025)
2035	8,389,832	5,155,751	2,225,005	894,596	8,275,352	(10,905,546)
2036	8,582,798	5,258,866	2,269,505	898,270	8,426,641	(10,749,389)
	A,B	C	C	D		

A - Assumes 1% revenue growth in FY12, then 2.3% for remainder.

B - Assumes only 1% ROI on Prior Year Fund Balance.

C - Assumes 2% expenditure growth.

D - Through FY28 when the 2004 bonds mature, this is actual debt service for 2004 bond issue **plus** the estimated debt service for the \$14.1M proposed bond issuance in 2011.

Beginning in FY2029, it includes only the estimated debt service for the proposed 2011 bond.

E - This is with the \$6,788,000 reimbursement of prior expenditures from the bond proceeds.

TOWN OF HILTON HEAD ISLAND, SC



Consolidated vs. Bifurcated Plan of Finance Considerations for Hospitality Fee Revenue Bonds

September 6, 2011

Solution Type: Level Debt

Issue for All Hospitality Needs in 2011				
Issuance Date	1Dec2011			
Uses of Funds				
Project Fund	13,000,000			
Debt Service Reserve	898,270			
Issuance Costs	251,730			
	14,150,000			
Interest Rates	Current Market + 0.25%			
				Debt
	Principal	Coupon	Interest	Service
6/1/2012	215,000	0.55%	232,870	447,870
6/1/2013	430,000	0.69%	464,558	894,558
6/1/2014	435,000	0.83%	461,591	896,591
6/1/2015	440,000	1.00%	457,981	897,981
6/1/2016	440,000	1.41%	453,581	893,581
6/1/2017	450,000	1.77%	447,377	897,377
6/1/2018	455,000	2.13%	439,412	894,412
6/1/2019	465,000	2.43%	429,720	894,720
6/1/2020	475,000	2.68%	418,421	893,421
6/1/2021	490,000	2.87%	405,691	895,691
6/1/2022	505,000	3.07%	391,628	896,628
6/1/2023	520,000	3.27%	376,124	896,124
6/1/2024	535,000	3.43%	359,120	894,120
6/1/2025	555,000	3.56%	340,770	895,770
6/1/2026	575,000	3.68%	321,012	896,012
6/1/2027	595,000	3.78%	299,852	894,852
6/1/2028	620,000	3.87%	277,361	897,361
6/1/2029	640,000	3.96%	253,367	893,367
6/1/2030	670,000	4.05%	228,023	898,023
6/1/2031	695,000	4.14%	200,888	895,888
6/1/2032	725,000	4.22%	172,115	897,115
6/1/2033	755,000	4.31%	141,520	896,520
6/1/2034	785,000	4.38%	108,979	893,979
6/1/2035	820,000	4.43%	74,596	894,596
6/1/2036	860,000	4.45%	38,270	898,270
6/1/2037				
6/1/2038				
6/1/2039				
	14,150,000		7,794,819	21,944,819
Avg. Annual Debt Service				877,793
Total Interest Cost				7,794,819

Solution Type: Level Debt

Issue for 77% of Hospitality Needs in 2011				
Issuance Date	1Dec2011			
Uses of Funds				
Project Fund	10,000,000			
Debt Service Reserve	693,398			
Issuance Costs	226,602			
	10,920,000			
Interest Rates	Current Market + 0.25%			
				Debt
	Principal	Coupon	Interest	Service
6/1/2012	165,000	0.55%	179,653	344,653
6/1/2013	335,000	0.69%	358,398	693,398
6/1/2014	335,000	0.83%	356,086	691,086
6/1/2015	340,000	1.00%	353,306	693,306
6/1/2016	340,000	1.41%	349,906	689,906
6/1/2017	345,000	1.77%	345,112	690,112
6/1/2018	350,000	2.13%	339,005	689,005
6/1/2019	360,000	2.43%	331,550	691,550
6/1/2020	370,000	2.68%	322,802	692,802
6/1/2021	380,000	2.87%	312,886	692,886
6/1/2022	390,000	3.07%	301,980	691,980
6/1/2023	400,000	3.27%	290,007	690,007
6/1/2024	415,000	3.43%	276,927	691,927
6/1/2025	430,000	3.56%	262,693	692,693
6/1/2026	445,000	3.68%	247,385	692,385
6/1/2027	460,000	3.78%	231,009	691,009
6/1/2028	475,000	3.87%	213,621	688,621
6/1/2029	495,000	3.96%	195,238	690,238
6/1/2030	515,000	4.05%	175,636	690,636
6/1/2031	535,000	4.14%	154,779	689,779
6/1/2032	560,000	4.22%	132,630	692,630
6/1/2033	580,000	4.31%	108,998	688,998
6/1/2034	605,000	4.38%	84,000	689,000
6/1/2035	635,000	4.43%	57,501	692,501
6/1/2036	660,000	4.45%	29,370	689,370
6/1/2037				
6/1/2038				
6/1/2039				
	10,920,000		6,010,471	16,930,471
Combined Avg. Annual Debt Service				
				- Overlapping Years 2015-2036
				899,811
				- All Years
				886,509
Combined Total Interest Cost				7,867,733

Solution Type: Level Debt

Issue for 23% of Hospitality Needs in 2014				
Issuance Date	1Dec2014			
Uses of Funds				
Project Fund	3,000,000			
Debt Service Reserve	216,134			
Issuance Costs	158,866			
	3,375,000			
Interest Rates	Current Market + 0.25%			
				Debt
	Principal	Coupon	Interest	Service
6/1/2012				
6/1/2013				
6/1/2014				
6/1/2015	50,000	0.55%	55,511	105,511
6/1/2016	105,000	0.69%	110,748	215,748
6/1/2017	105,000	0.83%	110,023	215,023
6/1/2018	105,000	1.00%	109,152	214,152
6/1/2019	105,000	1.41%	108,102	213,102
6/1/2020	105,000	1.77%	106,621	211,621
6/1/2021	110,000	2.13%	104,763	214,763
6/1/2022	110,000	2.43%	102,420	212,420
6/1/2023	115,000	2.68%	99,747	214,747
6/1/2024	115,000	2.87%	96,665	211,665
6/1/2025	120,000	3.07%	93,364	213,364
6/1/2026	125,000	3.27%	89,680	214,680
6/1/2027	130,000	3.43%	85,593	215,593
6/1/2028	135,000	3.56%	81,134	216,134
6/1/2029	135,000	3.68%	76,328	211,328
6/1/2030	140,000	3.78%	71,360	211,360
6/1/2031	145,000	3.87%	66,068	211,068
6/1/2032	155,000	3.96%	60,456	215,456
6/1/2033	160,000	4.05%	54,318	214,318
6/1/2034	165,000	4.14%	47,838	212,838
6/1/2035	175,000	4.22%	41,007	216,007
6/1/2036	180,000	4.31%	33,622	213,622
6/1/2037	185,000	4.38%	25,864	210,864
6/1/2038	195,000	4.43%	17,761	212,761
6/1/2039	205,000	4.45%	9,123	214,123
	3,375,000		1,857,262	5,232,262
Combined Avg. Annual Debt Service				
				- Overlapping Years 2015-2036
				899,811
				- All Years
				886,509
Combined Total Interest Cost				7,867,733

Solution Type: Level Debt

Issue for All Hospitality Needs in 2011				
Issuance Date	1Dec2011			
Uses of Funds				
Project Fund	13,000,000			
Debt Service Reserve	898,270			
Issuance Costs	251,730			
	14,150,000			
Interest Rates	Current Market + 0.25%			
	Principal	Coupon	Interest	Debt Service
6/1/2012	215,000	0.55%	232,870	447,870
6/1/2013	430,000	0.69%	464,558	894,558
6/1/2014	435,000	0.83%	461,591	896,591
6/1/2015	440,000	1.00%	457,981	897,981
6/1/2016	440,000	1.41%	453,581	893,581
6/1/2017	450,000	1.77%	447,377	897,377
6/1/2018	455,000	2.13%	439,412	894,412
6/1/2019	465,000	2.43%	429,720	894,720
6/1/2020	475,000	2.68%	418,421	893,421
6/1/2021	490,000	2.87%	405,691	895,691
6/1/2022	505,000	3.07%	391,628	896,628
6/1/2023	520,000	3.27%	376,124	896,124
6/1/2024	535,000	3.43%	359,120	894,120
6/1/2025	555,000	3.56%	340,770	895,770
6/1/2026	575,000	3.68%	321,012	896,012
6/1/2027	595,000	3.78%	299,852	894,852
6/1/2028	620,000	3.87%	277,361	897,361
6/1/2029	640,000	3.96%	253,367	893,367
6/1/2030	670,000	4.05%	228,023	898,023
6/1/2031	695,000	4.14%	200,888	895,888
6/1/2032	725,000	4.22%	172,115	897,115
6/1/2033	755,000	4.31%	141,520	896,520
6/1/2034	785,000	4.38%	108,979	893,979
6/1/2035	820,000	4.43%	74,596	894,596
6/1/2036	860,000	4.45%	38,270	898,270
6/1/2037				
6/1/2038				
6/1/2039				
	14,150,000		7,794,819	21,944,819
Avg. Annual Debt Service	877,793			
Total Interest Cost	7,794,819			

Solution Type: Level Debt

Issue for 77% of Hospitality Needs in 2011				
Issuance Date	1Dec2011			
Uses of Funds				
Project Fund	10,000,000			
Debt Service Reserve	693,398			
Issuance Costs	226,602			
	10,920,000			
Interest Rates	Current Market + 0.25%			
	Principal	Coupon	Interest	Debt Service
6/1/2012	165,000	0.55%	179,653	344,653
6/1/2013	335,000	0.69%	358,398	693,398
6/1/2014	335,000	0.83%	356,086	691,086
6/1/2015	340,000	1.00%	353,306	693,306
6/1/2016	340,000	1.41%	349,906	689,906
6/1/2017	345,000	1.77%	345,112	690,112
6/1/2018	350,000	2.13%	339,005	689,005
6/1/2019	360,000	2.43%	331,550	691,550
6/1/2020	370,000	2.68%	322,802	692,802
6/1/2021	380,000	2.87%	312,886	692,886
6/1/2022	390,000	3.07%	301,980	691,980
6/1/2023	400,000	3.27%	290,007	690,007
6/1/2024	415,000	3.43%	276,927	691,927
6/1/2025	430,000	3.56%	262,693	692,693
6/1/2026	445,000	3.68%	247,385	692,385
6/1/2027	460,000	3.78%	231,009	691,009
6/1/2028	475,000	3.87%	213,621	688,621
6/1/2029	495,000	3.96%	195,238	690,238
6/1/2030	515,000	4.05%	175,636	690,636
6/1/2031	535,000	4.14%	154,779	689,779
6/1/2032	560,000	4.22%	132,630	692,630
6/1/2033	580,000	4.31%	108,998	688,998
6/1/2034	605,000	4.38%	84,000	689,000
6/1/2035	635,000	4.43%	57,501	692,501
6/1/2036	660,000	4.45%	29,370	689,370
6/1/2037				
6/1/2038				
6/1/2039				
	10,920,000		6,010,471	16,930,471
Combined Avg. Annual Debt Service	- Overlapping Years 2015-2036			
	866,899			
	- All Years			
	936,671			
Combined Total Interest Cost	9,006,778			

Solution Type: Wrapped Debt

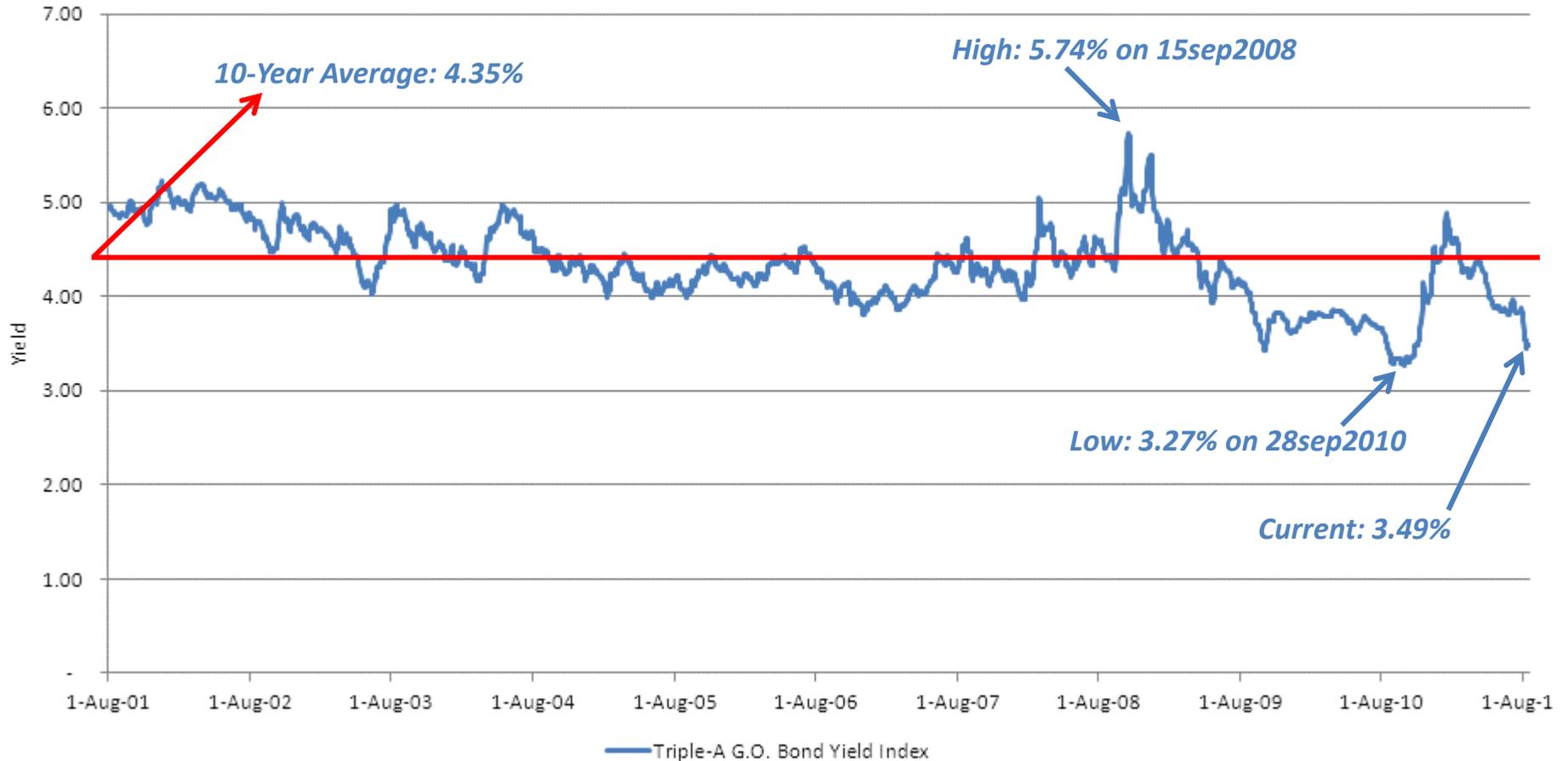
Issue for 23% of Hospitality Needs in 2014				
Issuance Date	1Dec2014			
Uses of Funds				
Project Fund	3,000,000			
Debt Service Reserve	330,934			
Issuance Costs	159,066			
	3,490,000			
Interest Rates	Current Market + 0.25%			
	Principal	Coupon	Interest	Debt Service
6/1/2012				
6/1/2013				
6/1/2014				
6/1/2015	-		69,958	69,958
6/1/2016	40,000	0.69%	139,916	179,916
6/1/2017	45,000	0.83%	139,640	184,640
6/1/2018	45,000	1.00%	139,266	184,266
6/1/2019	40,000	1.41%	138,816	178,816
6/1/2020	40,000	1.77%	138,252	178,252
6/1/2021	40,000	2.13%	137,544	177,544
6/1/2022	45,000	2.43%	136,692	181,692
6/1/2023	45,000	2.68%	135,599	180,599
6/1/2024	45,000	2.87%	134,393	179,393
6/1/2025	45,000	3.07%	133,101	178,101
6/1/2026	50,000	3.27%	131,720	181,720
6/1/2027	50,000	3.43%	130,085	180,085
6/1/2028	55,000	3.56%	128,370	183,370
6/1/2029	55,000	3.68%	126,412	181,412
6/1/2030	55,000	3.78%	124,388	179,388
6/1/2031	60,000	3.87%	122,309	182,309
6/1/2032	60,000	3.96%	119,987	179,987
6/1/2033	65,000	4.05%	117,611	182,611
6/1/2034	70,000	4.14%	114,978	184,978
6/1/2035	65,000	4.22%	112,080	177,080
6/1/2036	75,000	4.31%	109,337	184,337
6/1/2037	765,000	4.38%	106,105	871,105
6/1/2038	800,000	4.43%	72,598	872,598
6/1/2039	835,000	4.45%	37,158	872,158
	3,490,000		2,996,307	6,486,307
Combined Avg. Annual Debt Service	- Overlapping Years 2015-2036			
	866,899			
	- All Years			
	936,671			
Combined Total Interest Cost	9,006,778			

Assuming project costs stay the same, what could impact this analysis?

- 1. A rise in rates between the 2011 and 2014 issues would make the bifurcated plan of finance more expensive**
- 2. A decrease in rates between 2011 and 2014 could help to offset the inefficiencies of the bifurcated plan of finance (e.g., redundant issuance costs)**

So where are rates headed?

Triple-A G.O. Bond Yield Index



FIRST SUPPLEMENTAL ORDINANCE

PROVIDING FOR THE ISSUANCE AND SALE OF TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, SPECIAL OBLIGATION BONDS (HOSPITALITY FEE PLEDGE), IN ONE OR MORE SERIES, IN THE PRINCIPAL AMOUNT OF NOT EXCEEDING \$26,250,000; DELEGATING THE AUTHORITY TO THE TOWN MANAGER TO DETERMINE CERTAIN MATTERS WITH RESPECT TO THE BONDS; PRESCRIBING THE FORM AND DETAILS OF SUCH BONDS; OTHER MATTERS RELATING THERETO; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Town Council (the “Council”) of the Town of Hilton Head Island, South Carolina (the “Town”), enacted an Ordinance (the “General Bond Ordinance”) on the date hereof to authorize generally the issuance of Bonds (as defined in the General Bond Ordinance); and

WHEREAS, pursuant to the General Bond Ordinance, the Bonds are payable from and secured by a pledge of Hospitality Fees (as defined in the General Bond Ordinance), which pledge is junior and subordinate to the pledge of Hospitality Fees securing the Town’s obligation to pay Base Fee Payments and Additional Fee Payments (as such terms are defined in the Installment Sale Agreement) dated as of June 1, 2004 (the “2004 Installment Sale Agreement”) between the Town and Hilton Head Island Public Facilities Corporation, an instrumentality of the Town (the “Corporation”) under the 2004 Installment Sale Agreement; and

WHEREAS, the Corporation has heretofore issued \$10,775,000 original principal amount of the Hilton Head Island Public Facilities Corporation, Certificates of Participation Evidencing Undivided Proportionate Interests in Base Fee Payments Under an Installment Sale Agreement (Hospitality Fee Pledge), Series 2004C, which are presently outstanding in the principal amount of \$8,625,000 (the “2004 Certificates”); and

WHEREAS, the Town is presently contemplating the undertaking of the New Projects (as defined herein); and

WHEREAS, the Town desires to issue not exceeding \$26,250,000 principal amount of its Special Obligation Bonds (Hospitality Fee Pledge), in one or more series (the “New Bonds”) to finance, among other things, the Costs of Acquisition and Construction of the New Projects and refinance the 2004 Certificates; and

WHEREAS, the Council has been advised that in order to finance the New Projects and refinance the 2004 Certificates, the Council must enact an appropriate ordinance supplemental to the General Bond Ordinance authorizing the issuance of the New Bonds.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AND IT IS ORDERED AND ORDAINED BY SAID AUTHORITY OF COUNCIL:

Section 1. Definitions. The terms in this Section 1 and all words and terms defined in the General Bond Ordinance (such General Bond Ordinance as from time to time amended or supplemented by Supplemental Ordinances being defined in the Ordinance as the "Ordinance") (except as herein otherwise expressly provided or unless the context otherwise requires), shall for all purposes of this First Supplemental Ordinance have the respective meanings given to them in the Ordinance and in Section 1 hereof.

"2004 Certificates" shall mean the \$10,775,000 original principal amount Hilton Head Island Public Facilities Corporation, Certificates of Participation Evidencing Undivided Proportionate Interests in Base Fee Payments under an Installment Sale Agreement (Hospitality Fee Pledge), Series 2004, dated June 1, 2004, and outstanding as of the date hereof in the principal amount of \$8,625,000.

"Beneficial Owner" shall mean any purchaser who acquires beneficial ownership interest in any Initial Bond held by the Depository. In determining any Beneficial Owner the Town, the Trustee, the Registrar and the Paying Agent may rely exclusively upon written representations made and information given to the Town, the Trustee, the Registrar and the Paying Agent, as the case may be, by the Depository or its Participants with respect to any New Bond held by the Depository or its Participants in which a beneficial ownership interest is claimed.

"Bond Purchase Agreement" shall mean one or more Bond Purchase Agreements relating to the sale of the New Bonds, to be dated the date of execution and delivery thereof between the Underwriter and the Town, as amended or supplemented thereto.

"Book-Entry Form" or "Book-Entry System" shall mean with respect to the New Bonds, a form or system, as applicable, under which (a) the ownership of beneficial interests in the New Bonds may be transferred only through a book-entry and (b) physical bond certificates in fully registered form are registered only in the name of a Depository or its nominee as Holder, with the physical bond certificates "immobilized" in the custody of the Depository. The book-entry maintained by the Depository is the record that identifies the owners of participatory interests in the New Bonds, when subject to the Book-Entry System.

"Business Day" shall mean, with respect to the New Bonds issued pursuant to this First Supplemental Ordinance, any day other than a Saturday, a Sunday or a day which shall be in the State or the state in which the respective office of the Trustee, the Paying Agent and the Registrar is located a legal holiday or a day on which banking institutions are authorized by law or executive order to close.

"Certificates to be Refunded" shall mean the 2004 Certificates selected by the Town Manager pursuant to Section 11 hereof, to be refinanced with a Series of the New Bonds.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

“Continuing Disclosure Certificate” shall have the meaning given that term in Section 15 hereof.

“Depository” shall mean any securities depository that is a “clearing corporation” within the meaning of the New York Uniform Commercial Code and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, as amended, operating and maintaining, with its participants or otherwise, a Book-Entry System to record ownership of beneficial interests in the New Bonds, and to effect transfers of the New Bonds, in Book-Entry Form, and includes and means initially The Depository Trust Company (a limited-purpose trust company), New York, New York.

“Escrow Agent” shall mean Wells Fargo Bank, N.A., in its capacity as Paying Agent for the 2004 Certificates.

“Escrow Agreement” shall mean the Escrow Agreement dated the date of its execution between the Town and the Escrow Agent.

“Escrow Fund” shall mean the fund of that name created pursuant to the Escrow Agreement.

“First Supplemental Ordinance” shall mean shall mean this Ordinance enacted by the Town Council, authorizing the New Bonds.

“General Bond Ordinance” shall mean the Ordinance duly enacted by the Town Council on the date hereof, authorizing the issuance from time to time of Bonds.

“Initial Bonds” shall mean the New Bonds initially issued in Book-Entry Form as provided in Section 4 hereof.

“Interest Payment Date” shall mean any June 1 and December 1 of each year, commencing December 1, 2011, or such other date as the Town Manager may determine pursuant to Section 11 hereof.

“New Bonds” shall mean the Town of Hilton Head Island, South Carolina, Special Obligation Bonds (Hospitality Fee Pledge), issuable in one or more series, in the aggregate principal amount of not exceeding \$26,250,000 authorized to be issued hereunder.

“New Projects” shall mean, collectively, the Projects to be financed with the proceeds of the New Bonds, including any one or more of the projects described in Schedule I hereto, and such other projects as may be approved by the Town Manager and permitted by the Hospitality Fee Ordinance.

“Paying Agent” shall mean Wells Fargo Bank, N.A., as Paying Agent for the New Bonds.

“Principal Payment Date” shall have the meaning given to such term in Section 3(a).

“Registrar” shall mean Wells Fargo Bank, N.A., as Registrar for the New Bonds.

“Series Construction Fund” shall mean one or more Funds established pursuant to Section 9 hereof into which a portion of the proceeds of a Series of the New Bonds will be deposited and from which such proceeds will be disbursed to pay the Costs of Acquisition and Construction of the New Projects and Costs of Issuance, as applicable. Pursuant to Section 9, each Series Construction Fund shall be further identified or designated to relate to the specific Series of the New Bonds issued hereunder.

“Series Debt Service Fund” shall mean one or more Funds established pursuant to Section 7 hereof to provide for the payment of the principal of and interest on the Series of the New Bonds related thereto. Pursuant to Section 7, each Series Debt Service Fund shall be further identified or designated to relate to the specific Series of the New Bonds issued hereunder.

“Series Debt Service Reserve Fund” shall mean one or more Funds, if any, established pursuant to Section 8 hereof (a) to insure the timely payment of the principal and interest on the New Bonds related thereto; and (b) to provide for the redemption of the Series of the New Bonds related thereto. Pursuant to Section 8, each Series Debt Service Reserve Fund shall be further identified or designated to relate to the specific Series of the New Bonds issued hereunder.

“Series Reserve Fund Requirement” shall mean the amount, if any, established pursuant to Section 8 hereof.

“Trustee” shall mean Wells Fargo Bank, N.A., as Trustee for the bonds.

“Underwriter” shall mean Merchant Capital, L.L.C.

Section 2. Certain Findings and Determinations. The Town hereby finds and determines:

(a) The Ordinance, the Bond Act and the Hospitality Fee Act authorize the Town to issue Bonds in order to finance Projects (as defined in the General Bond Ordinance) and refinance some or all of the 2004 Certificates. This First Supplemental Ordinance supplements the Ordinance, constitutes and is a "Supplemental Ordinance" within the meaning of such quoted term as defined and used in the Ordinance, and is enacted under and pursuant to the Ordinance.

(b) The New Bonds constitute and are "Bonds" within the meaning of the quoted word as defined and used in the Ordinance.

(c) The Hospitality Fees pledged under the Ordinance are or will not be encumbered by any lien and charge thereon or pledge thereof, other than: (i) for so long as the 2004 Certificates are outstanding, the pledge thereof created under the 2004 Installment Sale Agreement for payment of amounts due with respect to the 2004 Certificates (which pledge is senior to the pledge thereof securing the Bonds); and (ii) the pledge thereof created by the General Bond Ordinance and this First Supplemental Ordinance for the payment and security of the New Bonds.

(d) There does not exist an Event of Default (as defined in the General Bond Ordinance), nor does there exist any condition which, after the passage of time or the giving of notice, or both, would constitute such Event of Default.

(e) The estimated Cost of Acquisition and Construction (as defined in the General Bond ordinance) of the New Projects is \$15,250,000. The estimated cost of refunding the Certificates to be Refunded does not exceed \$11,000,000.

(f) The Town proposes to issue the New Bonds, in one or more Series (as defined in the General Bond Ordinance), for one or more of the principal purposes: (1) financing the Cost of Acquisition and Construction of the New Projects, (2) refinancing the Certificates to be Refunded, (3) financing the Series Reserve Fund Requirement (if any) through a deposit into the Series Debt Service Reserve Fund (if any) established with respect to each Series of New Bonds, and (4) paying the costs of issuing the New Bonds.

(g) The period of usefulness of the New Projects will be in excess of thirty (30) years (in the case of the fire and rescue stations) and fifteen (15) years (in the case of the fire and rescue apparatus) from the date of the acquisition thereof.

(h) It is necessary and in the best interest of the Town to authorize the issuance of the New Bonds in the principal amount of not exceeding \$26,250,000 in accordance with the Bond Act, the Hospitality Fee Act, the Ordinance and this First Supplemental Ordinance for the purposes set forth above.

Section 3. Authorization of Series 2011 Bonds.

(a) There is hereby authorized to be issued one or more Series of Bonds designated “Town of Hilton Head Island, South Carolina, Special Obligation Bonds (Hospitality Fee Pledge), Series (year)” (the “New Bonds”), including such further words, numbers or letters as may be necessary or desirable to identify individual series thereof, the purposes thereof, or the taxable status thereof, in the aggregate principal amount of not exceeding \$26,250,000. The proceeds of the New Bonds shall be used for the purposes set forth in Section 2(f) hereof.

Unless otherwise determined by the Town Manager pursuant to Section 11 hereof, the New Bonds shall mature on December 1 in each of the years (the “Principal Payment Dates”) and in the principal amounts, and bear interest at the rates per annum (calculated on the basis of a 360-day year comprised of twelve 30-day months), as determined by the Town Manager, pursuant to Section 11 hereof.

(b) Such of the New Bonds as the Town Manager shall determine pursuant to Section 11 hereof shall be subject to mandatory redemption at a redemption price equal to the principal amount of the New Bonds to be redeemed, together with interest accrued from the date of redemption, in the years and in the amounts determined by the Town Manager, pursuant to Section 11 hereof.

At its option, to be exercised on or before the sixtieth (60th) day prior to any mandatory redemption date, the Town may (i) deliver to the Trustee for cancellation New Bonds which are

subject to mandatory redemption in any aggregate principal amount desired or (ii) receive a credit in respect of its mandatory redemption obligation for any such New Bonds which, prior to such date, have been purchased or redeemed (otherwise than through the operation of the mandatory redemption requirement) by the Town and cancelled by the Trustee and not theretofore applied as a credit against any mandatory redemption obligation. Each New Bond so delivered or previously purchased or redeemed shall be credited by the Trustee, at one hundred percent (100%) of the principal amount thereof, to the obligation of the Town on those respective mandatory redemption obligations in chronological order or such other manner as directed in writing by the Town to the Trustee, and the principal amount of the New Bonds to be redeemed by operation of the mandatory redemption requirement shall be accordingly reduced.

(c) The Trustee, without further authorization or direction from the Town, shall give notice of all mandatory redemptions within the time periods and in the manner specified in Article V of the General Bond Ordinance.

(d) The New Bonds shall originally be dated the date of delivery of the New Bonds, or such other date as the Town Manager shall determine pursuant to Section 11 hereof, and shall be issued as fully registered Bonds in the denominations of \$5,000 and integral multiples of \$5,000. The New Bonds shall be numbered and lettered in such a fashion as to maintain a proper record thereof.

(e) Principal of and redemption premium, if any, on the New Bonds shall be payable at the designated corporate trust office of the Paying Agent. Interest on the New Bonds shall be payable on each Interest Payment Date, in each case to the Holders as of the immediately preceding Record Date, such interest to be paid by the Paying Agent by check or draft mailed to each Holder at the address as it appears on the Books of Registry maintained at the designated corporate trust office of the Paying Agent, and in the case of a Holder of \$1,000,000 or more in principal amount of New Bonds, by wire transfer to an account within the continental United States upon the timely receipt of a written request of such Holder. Payment of the principal of and interest on such New Bonds may be payable to the Holder thereof without presentation and surrender of such New Bonds.

(f) The New Bonds shall be in substantially the form set forth in Exhibit A hereto, with such necessary or appropriate variations, omissions and insertions as are incidental to the series, numbers, denominations, maturities, dates, interest rate or rates, redemption provisions, the purpose of issuance and other details thereof or as are otherwise permitted or required by law or by the Ordinance, including this First Supplemental Ordinance. The New Bonds shall be executed in the name and on behalf of the Town by the manual or facsimile signatures of the Mayor and Town Clerk.

(g) A copy of the approving opinion to be rendered on the New Bonds shall be printed on the back of such New Bonds, preceding the same a certificate shall appear, which shall be signed on behalf of the Town by a facsimile signature of the Town Clerk. Such certificate shall be in the form substantially as follows:

IT IS HEREBY CERTIFIED that the following is a true and correct copy of the approving opinion of McNair Law Firm, P.A., Columbia, South Carolina, the original of which was manually executed, dated and issued as of the date of the delivery of and payment for the bonds, and a copy of which is on file with the Town.

THE TOWN OF HILTON HEAD, SOUTH CAROLINA

By: _____
Town Clerk

Section 4. Book-Entry System; Recording and Transfer of Ownership of the New Bonds. The Initial Bonds will be eligible securities for the purposes of the Book-Entry System of transfer maintained by the Depository, and transfers of beneficial ownership of the Initial Bonds shall be made only through the Depository and its participants in accordance with rules specified by the Depository. Such beneficial ownership must be of \$5,000 principal amount of Initial Bonds of the same Series and maturity or any integral multiple of \$5,000.

The Initial Bonds will be issued in fully-registered form, as a single bond representing the entire principal amount of each Series of the New Bonds or one New Bond for each of the maturities of each Series of the New Bonds, in the name of Cede & Co., as the nominee of the Depository. When any principal of, premium, if any, or interest on the Initial Bonds becomes due, the Town shall transmit or cause the Paying Agent to transmit to the Depository an amount equal to such installment of principal, premium, if any, and interest. Such payments will be made to Cede & Co. or other nominee of the Depository as long as it is owner of record on the applicable Record Date. Cede & Co. or other nominee of the Depository shall be considered to be the owner of the Initial Bonds so registered for all purposes of this First Supplemental Ordinance, including, without limitation, payments as aforesaid and receipt of notices. The Depository shall remit such payments to the Beneficial Owners of the New Bonds or their nominees in accordance with its rules and regulations.

Notices of redemption of the Initial Bonds or any portion thereof shall be sent to the Depository in accordance with the provisions of the General Bond Ordinance.

The Depository is expected to maintain records of the positions of Participants in the Initial Bonds, and the Participants and persons acting through Participants are expected to maintain records of the Beneficial Owners in the Initial Bonds. The Town, the Trustee, the Registrar and the Paying Agent make no assurances that the Depository and its Participants will act in accordance with such rules or expectations on a timely basis, and the Town, the Trustee, the Registrar and the Paying Agent shall have no responsibility for any such maintenance of records or transfer of payments by the Depository to its Participants, or by the Participants or persons acting through Participants to the Beneficial Owners.

The Town, the Trustee, the Paying Agent and the Registrar may treat the Depository (or its nominee) as the sole and exclusive owner of the New Bonds registered in its name for the purpose of payment of the principal of, interest or premium, if any, on the New Bonds, giving any notice permitted or required to be given to Bondholders under the General Bond Ordinance or this First Supplemental Ordinance, registering the transfer of the New Bonds, obtaining any consent or other action to be taken by Bondholders and for all other purposes whatsoever, and shall not be affected by any notice to the contrary. The Town, the Trustee, the Paying Agent and the Registrar shall not have any responsibility or obligation to any Participant, any person claiming a beneficial ownership interest in the New Bonds under or through the Depository or any Participant, or any other person which is not shown on the Books of Registry of the Town maintained by the Registrar as being a Bondholder, with respect to: the accuracy of any records maintained by the Depository or any Participant or the maintenance of any records; the payment by the Depository or any Participant of any amount in respect of the principal of, interest or premium, if any, on the New Bonds; the sending of any transaction statements; the delivery or timeliness of delivery by the Depository or any Participant of any notice which is permitted or required to be given to Bondholders thereunder; the selection of Bondholders to receive payments upon any partial redemption of the New Bonds; or any consent given or other actions taken by the Depository as a Bondholder.

If (a) the Depository determines not to continue to act as securities depository for the New Bonds, and gives reasonable notice to the Registrar or the Town, or (b) the Town has advised the Depository of the Town's determination that the Depository is incapable of discharging its duties, then the Town shall attempt to retain another qualified securities depository to replace the Depository. Upon receipt by the Town or the Registrar of the Initial Bonds together with an assignment duly executed by the Depository, the Town shall execute and deliver to the successor depository, the New Bonds of the same principal amount, interest rate and maturity. If the Town is unable to retain a qualified successor to the Depository, or the Town has determined that it is in its best interest not to continue the Book-Entry System of transfer or that interests of the Beneficial Owners of the New Bonds might be adversely affected if the Book-Entry System of transfer is continued (the Town undertakes no obligation to make any investigation to determine the occurrence of any events that would permit it to make any such determination), and has made provision to so notify Beneficial Owners of the New Bonds by mailing an appropriate notice to the Depository, upon receipt by the Town of the Initial Bonds together with an assignment duly executed by the Depository, the Town shall execute, authenticate and deliver to the Depository Participants the New Bonds in fully-registered form, in authorized denomination; provided, however, that the discontinuation of the Book-Entry System of registration and transfer with respect to the New Bonds or the replacement of the Depository or any successor depository shall be subject to the applicable rules and procedures of the Depository or such successor depository on file or otherwise approved by the Securities and Exchange Commission.

Section 5. Optional Redemption of New Bonds. Such of the Series 2011 Bonds as may be determined by the Town Manager pursuant to Section 11 hereof shall be subject to redemption prior to maturity, at the option of the Town, in whole or in part at any time in such order of their maturities as the Town shall determine and by lot within a maturity, at the respective redemption prices with respect to each New Bond, expressed as a percentage of principal amount of the New Bonds to be redeemed, as shall be determined by the Town Manager pursuant to Section 11 hereof, together, in each such case, with the interest accrued on such principal amount to the date fixed for

redemption.

Section 6. Payment of the New Bonds. The New Bonds, together with the interest thereon, shall be payable, in such coin or currency of the United States of America which at the time of such payment is legal tender for public and private debts, solely from the Hospitality Fees of the Town in accordance with the provisions of the Ordinance and this First Supplemental Ordinance. The New Bonds shall be secured by a pledge of Hospitality Fees junior and subordinate to the pledge of Hospitality Fees securing the payment of amounts due under the 2004 Installment Sale Agreement with respect to the 2004 Certificates and on a parity with the pledge of Hospitality Fees securing the payment of other Bonds issued in compliance with the provisions of the General Bond Ordinance.

The New Bonds do not constitute an indebtedness of the Town within any State constitutional provisions (other than Article X, Section 14, Paragraph 10 of the South Carolina Constitution authorizing obligations payable solely from special sources not involving revenues from any tax or license) or statutory limitation. The New Bonds shall not be a debt of the Town, nor a charge, lien or encumbrance, legal or equitable, upon any property of the Town or upon any income, receipts or revenues thereof, other than the aforesaid Hospitality Fees of the Town. No recourse shall be had for the payment of the New Bonds or the interest thereon against the general fund of the Town, nor shall the credit or taxing power of the Town be deemed to be pledged thereto. The full faith, credit and taxing powers of the Town are not pledged to the payment of the principal of or interest on the New Bonds.

Section 7. Establishment of Series Debt Service Fund. In accordance with Section 6.6 of the General Bond Ordinance, the Series Debt Service Fund is hereby directed to be established by the Trustee on the date of the original delivery of the New Bonds for the benefit of the Holders of the New Bonds; provided, however, that upon the issuance of one or more Series of New Bonds, separate funds or accounts may be established for the payment of debt service on such Series of New Bonds, with such additional numbers or letters to identify its relevance, but each such separate fund or account will be considered the “Series Debt Service Fund” with respect to the related Series of New Bonds.

Section 8. Establishment of the Series Reserve Fund Requirement and Series Debt Service Reserve Fund. In accordance with Section 6.7 of the General Bond Ordinance, the Town Manager may determine whether it is necessary or desirable to establish a Series Debt Service Reserve Fund for the benefit of the Holders of one or more Series of New Bonds (if any) and the amount of the applicable Series Reserve Fund Requirement, and, if so, such Series Debt Service Reserve Fund shall be established on the date of the original delivery of such Series of New Bonds and held by the Trustee, all as provided in the Ordinance; provided, however, that (1) upon the issuance of one or more Series of New Bonds, separate funds or accounts may be established (if at all) for each Series of New Bonds, with such additional numbers or letters to identify its relevance, but each such separate fund or account will be considered the “Series Debt Service Reserve Fund” with respect to the related Series of New Bonds; and (2) in the event of any full or partial defeasance of a Series of New Bonds under Article XII of the Ordinance, then the Series Reserve Fund Requirement established for such Series of New Bonds shall be recalculated based on the then

Outstanding principal amount of such Series. If the Series Debt Service Reserve Fund is established, the Series Reserve Fund Requirement initially will be satisfied by the Town by the deposit of cash into the Series Debt Service Reserve Fund for the benefit of the Holders of the New Bonds.

Section 9. Series Construction Fund. There is hereby created and established the Series Construction Fund, which fund shall be held by the Town or by a Custodian; provided, however, that upon the issuance of one or more Series of New Bonds, separate funds or accounts may be established for such Series of New Bonds, with such additional numbers or letters to identify its relevance, but each such separate fund or account will be considered the “Series Construction Fund” with respect to the related Series of New Bonds. If the Series Construction Fund is held by a Custodian, the Town Manager is authorized and directed to negotiate, execute and deliver such construction fund agreements or other agreements with such bank or other financial institution as may be necessary or desirable in connection therewith. The Series Construction Fund established for a particular Series of New Bonds shall be accounted for as a single fund, however the moneys on deposit therein may be held by one or more Custodians. The moneys on deposit in the Series Construction Fund shall be used and applied to pay Costs of Acquisition and Construction of the New Projects and all Costs of Issuance incidental to the issuance and sale of the New Bonds.

Moneys held for the credit of the Series Construction Fund shall be invested to the fullest extent practicable and reasonable, in Permitted Investments, maturing at such times and in such amounts as shall be required to provide moneys to make the payments required to be made from such Fund.

Withdrawals from the Series Construction Fund shall be made in the manner withdrawals from other funds of the Town are made.

If after the payment in full of all costs of the New Projects and Costs of Issuance or after adequate provision has been made for such payment any moneys remain in the Series Construction Fund, such excess shall be paid into the related Series Debt Service Fund and shall be used only for the payment of the principal of and interest on the related Series of New Bonds or, in the alternative, to acquire Outstanding New Bonds at a price (exclusive of accrued interest) not exceeding the face amount thereof.

Section 10. Designation of Trustee, Registrar and Paying Agent. Pursuant to the Ordinance, the Trustee is Wells Fargo Bank, N.A. The Town Council hereby designates Wells Fargo Bank, N.A. as Registrar and Paying Agent for the New Bonds. The Registrar and Paying Agent shall signify their acceptances of their respective duties upon delivery of the New Bonds.

Section 11. Sale and Issuance of New Bonds.

(a) The Town Manager is hereby authorized and empowered to undertake any one or more of the following actions: (a) determine the original issue dates of each Series of the New Bonds; (b) determine the aggregate principal amount of the New Bonds, if less than authorized by this First Supplemental Ordinance, and each Series thereof (including the portions thereof to be issued on a taxable or tax-exempt basis); (c) determine the principal amount of each maturity of

each Series of the New Bonds; (d) determine the Interest Payment Dates, including the initial Interest Payment Dates, and the Principal Payment Dates for each Series of the New Bonds; (e) determine the optional redemption dates and terms of redemption of each Series of the New Bonds; (f) determine the interest rates for each Series of the New Bonds; (g) determine the New Bonds to be subject to mandatory and optional redemption; (h) determine the redemption prices of the New Bonds subject to optional redemption; (i) determine whether the Series Debt Service Reserve Fund will be established and funded with regard to each Series of New Bonds and, if so, the amount of the applicable Series Reserve Fund Requirement; (j) determine any original issue discount or original issue premium at which each Series of the New Bonds will be sold, or whether any Underwriter's discount or other fee will be paid to the purchasers of the New Bonds; (k) determine the Certificates to be Refunded; and (l) agree to any other terms, provisions and matters necessary or advisable to effect the issuance of each Series of the New Bonds.

(b) Each Series of the New Bonds shall either be sold publicly, following a private sale to the Underwriter, or directly to one or more purchasers in a private offering or private placement transaction. In connection with a public offering, the Town hereby finds and determines that the Bond Purchase Agreement to be dated the date of its execution, submitted by the Underwriter for the purchase of all or a portion (if any) of each Series of the New Bonds is fair and reasonable and in the best interest of the Town; that, if executed, the New Bonds contemplated by the Bond Purchase Agreement shall be sold to the Underwriter upon the terms and conditions set forth in the Bond Purchase Agreement and upon the basis of the representations therein set forth, and that all conditions precedent to or concurrent with the acceptance of the Bond Purchase Agreement by the Town will be met prior to the Town's execution thereof. The Town Manager is hereby authorized and directed to approve the form of Bond Purchase Agreement, together with such amendments and modifications to the form thereof as the Town Manager shall negotiate and approve, and to execute the Bond Purchase Agreement, as so modified and amended, and deliver the same to the Underwriter, the Town Manager's execution and delivery of the Bond Purchase Agreement constituting conclusive evidence of approval of the matters therein contained. Notwithstanding the foregoing, the Town Manager is hereby authorized to take all actions, including the preparation and dissemination of requests for proposals and the preparation, publication and/or distribution of information, offering documents or private placement memoranda (which may be in the respective forms of the Bond Purchase Agreement and/or hereinafter defined Preliminary Official Statement, as applicable, together with such amendments and modifications as may be approved by the Town Manager), all relating to the Town, each Series of the New Bonds and the Hospitality Fees, to solicit interest and receive offers from financial institutions to purchase one or more Series of the New Bonds in a private offering, and to accept such offer which is in the best interest of the Town and execute such documents as may be necessary in connection therewith.

(c) The Town Manager is hereby authorized and directed to prepare a Preliminary Official Statement, relating to a public offering of each Series of the New Bonds (the "Preliminary Official Statement"), and to take such actions necessary to "deem final" the Preliminary Official Statement for purposes of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended.

(d) The Town hereby authorizes the Final Official Statement of the Town to be dated on or about the date of the execution and delivery of the Bond Purchase Agreement, relating to each

Series of the Bonds substantially in the form of the Preliminary Official Statement, with such modifications as the Town Manager approves; the Town Manager of the Town is hereby authorized and directed to execute copies of the Final Official Statement and deliver the same to the Underwriter, which execution and delivery shall be conclusive evidence of the approval of any such modifications; and the Town hereby authorizes the use of the Preliminary Official Statement and Final Official Statement and the information contained therein in connection with the public offering and sale of each Series of the New Bonds by the Underwriter.

(e) A copy of this First Supplemental Ordinance shall be filed with the minutes of the meeting at which this First Supplemental Ordinance was enacted.

(f) The Town Council hereby authorizes and directs all of the officers and employees of the Town to carry out or cause to be carried out all obligations of the Town hereunder and to perform such other actions as they shall consider necessary or advisable in connection with the issuance, sale and delivery of the New Bonds.

(g) The Council hereby authorizes the Town Manager or his designee to negotiate the terms of, and execute, in the name and on behalf of the Town, and deliver investment agreements, forward delivery agreements, repurchase agreements and other agreements in connection with the New Bonds, to prepare and solicit bids for providers of such agreements and to execute, in the name and on behalf of the Town, written confirmations of any such agreements and other documents as may be necessary in connection therewith. Further, the Town Manager or his designee is hereby authorized to take any and all actions and execute any and all documents, upon the advice of its Bond Counsel, necessary to cause the termination of any forward delivery, repurchase or other investment agreement related to the 2004 Certificates.

Section 12. Authorization to Effect Refunding; Redemption of the Certificates to be Refunded. If a Series of the New Bonds are issued for the purpose of refinancing the Certificates to be Refunded, such proceeds shall be used, together with amounts on deposit in the debt service reserve fund for the Certificates to be Refunded, for the payment of the principal of such Certificates to be Refunded as and when such Certificates to be Refunded mature and are called for redemption in accordance with the provisions of the 2004 Trust Agreement, at the redemption price thereof, together with accrued interest on such Certificates to be Refunded to the date fixed for redemption.

The Town Manager is hereby authorized and directed for and on behalf of the Town to execute such agreements and give such directions as shall be necessary to carry out the provisions of this First Supplemental Ordinance, including the execution and delivery of the Escrow Agreement. The Escrow Agreement shall be dated the date of delivery of the applicable Series of the New Bonds issued therefor.

Section 13. Disposition of Proceeds of New Bonds and Certain Other Moneys. The proceeds derived from the sale of the New Bonds, net of any original issue discount or premium (or both), any Underwriter's discount or fees payable to the purchaser thereof, shall be deposited with (or at the order of) the Town, the Trustee, the Escrow Agent or the Custodian, as applicable, and used for the following purposes:

(a) If the Town Manager determines that a Series Debt Service Reserve Fund shall be established for a Series of New Bonds and the Series Reserve Fund Requirement shall be funded with a portion of the proceeds of a Series of the New Bonds, there shall be deposited with the Trustee for deposit into such Series Debt Service Reserve Fund an amount equal to the applicable Series Reserve Fund Requirement.

(b) With respect to a Series of the New Bonds issued to refinance the Certificates to be Refunded, proceeds thereof shall be deposited with the Escrow Agent pursuant to the Escrow Agreement.

(c) With respect to a Series of the New Bonds issued to finance the Costs of Acquisition and Construction for the New Projects or Costs of Issuance for such Series of New Bonds, proceeds thereof shall be deposited with the Custodian into the Series Construction Fund established in Section 9 hereof.

The respective amounts specified in this Section 13 shall be determined by the Town upon delivery of any Series of the New Bonds.

Section 14. Federal Tax Covenant. The Town hereby covenants and agrees with the Holders of the New Bonds issued as tax-exempt obligations (the "Tax-Exempt Bonds") that it will not take any action which will, or fail to take any action which failure will, cause interest on the Tax-Exempt Bonds to become includable in the gross income of the Bondholders thereof for federal income tax purposes pursuant to the provisions of the Code and regulations promulgated thereunder in effect on the date of original issuance of the Tax-Exempt Bonds and that no use of the proceeds of the Tax-Exempt Bonds shall be made which, if such use had been reasonably expected on the date of issue of the Tax-Exempt Bonds would have caused the Tax-Exempt Bonds to be "arbitrage bonds," as defined in the Code; and to that end the Town hereby shall:

(a) comply with the applicable provisions of Section 103 and Sections 141 through 150 of the Code and any regulations promulgated thereunder so long as the Tax-Exempt Bonds are Outstanding;

(b) establish such funds, make such calculations and pay such amounts, if necessary, in the manner and at the times required in order to comply with the requirements of the Code relating to required rebate of certain amounts to the United States; and

(c) make such reports of such information at the times and places required by the Code.

Section 15. Continuing Disclosure. So long as and to the extent required pursuant to Section 11-1-85 of the Code of Laws of South Carolina 1976, as amended ("Section 11-1-85"), the Town covenants that it will file with a central repository for availability in the secondary bond market when requested:

(i) An annual independent audit, within 30 days of the Town's receipt of the audit; and

(ii) Event-specific information within 30 days of an event adversely affecting more than 5% percent of Hospitality Fees or the Town's tax base.

The only remedy for failure by the Town to comply with the covenant of this Section 15 shall be an action for specific performance of this covenant; and failure to comply shall not constitute a default or an "Event of Default" under the Ordinance or this First Supplemental Ordinance. The Trustee shall have no responsibility to monitor the Town's compliance with this covenant. The Town specifically reserves the right to amend or delete this covenant in order to reflect any change in Section 11-1-85, without the consent of the Trustee or any Holder of any New Bonds.

In addition, the Town Manager is hereby authorized and directed to approve the form of, and execute and deliver, a Continuing Disclosure Certificate of the Town, related to one or more Series of the New Bonds as required by applicable law, and the Town hereby covenants and agrees that it will comply with and carry out all of the provisions of such Continuing Disclosure Certificate. Notwithstanding any other provisions of this First Supplemental Ordinance, failure of the Town to comply with the Continuing Disclosure Certificate shall not be considered an Event of Default, and no liability for damages shall attach therefor. The sole remedy for such failure to comply shall be that any New Bondholder may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Town to comply with their obligations under this paragraph.

Section 16. Further Actions. The Mayor, the Town Manager, the Finance Director of the Town, and the Town Clerk are hereby authorized and directed to take any and all such further actions as shall be deemed necessary or desirable in order to effectuate issuance of the New Bonds and the refunding of the Certificates to be Refunded.

Section 17. Headings. The headings and titles of the several sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this First Supplemental Ordinance.

Section 18. Notices. All notices, certificates or other communications hereunder or under the Ordinance shall be sufficiently given and shall be deemed given when mailed by registered mail, postage prepaid, or given when dispatched by telegram addressed as follows:

If to the Town:

Hilton Head Island, South Carolina
Attn: Town Manager
One Town Center Court
Hilton Head Island, South Carolina 29928

If to the Paying Agent, the Registrar, the Trustee or the Escrow Agent:

Wells Fargo Bank, N.A.
Attention: Corporate Trust Services
7000 Central Parkway, Suite 550
Atlanta, Georgia 30328

The Town, the Paying Agent, the Registrar, the Trustee and the Escrow Agent may, by notice given to the other parties, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 19. Repeal of Inconsistent Ordinances and Resolutions. All ordinances and resolutions of the Town, and any part of any ordinance or resolution, inconsistent with this First Supplemental Ordinance are hereby repealed to the extent of such inconsistency.

Section 20. Severability. If any sections, phrase, sentence or portion of this First Supplemental Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not attest the validity of the remaining portions thereof.

Section 21. Effective Date. This First Supplemental Ordinance shall be effective upon its adoption by the Town Council for the Town of Hilton Head Island, South Carolina.

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS _____ DAY OF _____ 2011.

Drew A. Laughlin, Mayor

ATTEST:

Cori Brock, Town Clerk

First Reading: _____
Second Reading: _____

APPROVED AS TO FORM:

Gregory M. Alford, Town Attorney

Introduced by Council Member: _____

LIST OF NEW PROJECTS

Fire & Rescue Station 5
Fire & Rescue Station 1
Fire & Rescue Station 6
Fire & Rescue Station 2
Fire & Rescue Apparatus

FORM OF NEW BOND

[DTC Legend]

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA
[TAXABLE] SPECIAL OBLIGATION [REFUNDING] BONDS
(HOSPITALITY FEE PLEDGE), SERIES _____

No. R-____

Interest Rate

Maturity Date

Issue Date

CUSIP

Registered Holder:

Principal Amount:

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA (the “Town”) a public body corporate and politic and a political subdivision of the State of South Carolina (the “State”), created and existing by virtue of the laws of the State, acknowledges itself indebted and for value received hereby promises to pay, solely as hereinafter provided, to the Registered Owner named above or registered assigns, the Principal Amount set forth above on the Maturity Date stated above, unless this Bond be subject to redemption and shall have been redeemed prior thereto as hereinafter provided, upon presentation and surrender hereof at the corporate trust office of Wells Fargo Bank, N.A. in Atlanta, Georgia, as trustee (the “Trustee”), and to pay interest on such Principal Amount at the annual Interest Rate stated above (calculated on the basis of a 360-day year of twelve (12) 30-day months), until the obligation of the Town with respect to the payment of such Principal Amount shall be discharged. Interest on this Bond shall be payable in semiannual installments on _____ 1 and _____ 1 of each year beginning _____, 2011 (each, an “Interest Payment Date”), until maturity or earlier redemption. All payments shall be paid to the person in whose name this Bond is registered at the close of business on the fifteenth day of the calendar month (each, a “Record Date”) preceding each Interest Payment Date or Principal Payment Date (as defined in the hereinafter defined Ordinances). The payments shall be payable by check or draft mailed at the times provided herein to the person in whose name this Bond is registered at the address shown on the registration books of the Town held by Wells Fargo Bank, N.A., as registrar (the “Registrar”), or, in the case of a Registered Holder of \$1,000,000 or more in principal amount of this Bond, by wire transfer to on account within the continental United States upon the timely receipt of a written request of such Registered Holder. The payments are payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

THIS BOND HAS BEEN ISSUED UNDER THE PROVISIONS OF TITLE 6, CHAPTER 21 AND CHAPTER 1, ARTICLE 7, CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED (COLLECTIVELY, THE "ACT"); THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS OF THE TOWN WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION (EXCEPT ARTICLE X, SECTION 14(10) OF THE STATE CONSTITUTION AUTHORIZING INDEBTEDNESS PAYABLE SOLELY FROM A SOURCE OF REVENUE DERIVED OTHER THAN A TAX OR LICENSE) OR STATUTORY LIMITATION. THE TOWN IS NOT OBLIGATED TO PAY ANY OF THE BONDS OR THE INTEREST THEREON EXCEPT FROM HOSPITALITY FEES (AS DEFINED IN THE ORDINANCES). THE BONDS ARE NOT GENERAL OBLIGATIONS OF THE TOWN, THE STATE, OR ANY POLITICAL SUBDIVISION THEREOF AND NEITHER THE FULL FAITH AND CREDIT NOR THE GENERAL CREDIT NOR TAXING POWERS OF THE TOWN, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF.

This Bond shall not be valid or obligatory for any purpose until the Certificate of Authentication hereon shall have been duly executed by the Trustee.

This Bond is one of an issue of bonds of the Town in the aggregate principal amount of _____ Million Dollars (\$_____) (the "Bonds") of like tenor, except as to number, rate of interest, date of maturity and redemption provides, issued pursuant to and in accordance with the Constitution and statutes of the State, including particularly the Act, Ordinance No. _____ duly enacted by the Town Council of the Town (the "Council") on _____, 2011 (the "General Bond Ordinance"), and Ordinance No. _____ duly enacted by the Council on _____, 2011 (the "First Supplemental Ordinance") (the General Bond Ordinance and the First Supplemental Ordinance are herein collectively referred to as the "Ordinances") for the purpose of providing moneys, to (i) finance a portion of the New Projects, (ii) [refinance the Certificates to be Refunded, (iii)] satisfy the Series Reserve Fund Requirement (if any) with respect to the Bonds, and [(iii)][(iv)] pay all costs of issuing the Bonds.

Certain capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Ordinances. Certified copies of the Ordinances are on file in the office of the Trustee and in the office of the Clerk of Court for Beaufort County, South Carolina.

The Ordinances contain provisions defining terms, set forth the revenues pledged for the payment of the principal of and interest on this Bond and the Bonds of other series herewith which may hereafter be issued on a parity herewith under the Ordinances; set forth the nature, extent and manner of enforcement of the security of this Bond and of such pledge, and the rights and remedies of the Holder hereof with respect thereto; set forth the terms and conditions upon which and the extent to which the Ordinances may be altered, modified and amended; set forth the terms and conditions upon which this Bond is issued upon which other bonds may be hereinafter issued payable as to principal, premium, if any, and interest on a parity with this Bond and equally and ratably secured herewith; sets forth the rights, duties and obligations of the Town thereunder; and set forth the terms and conditions upon which the pledge made in the Ordinances for the security of this Bond and upon which the covenants, agreements and other obligations of the Town made therein may be discharged at or prior to the maturity or redemption of this Bond with provisions for the payment thereof in the manner set forth in the Ordinances. Reference is hereby made to the

Ordinances to all of the provisions of which any holder of this Bond by the acceptance hereof thereby assents. The provisions of the Act and the Ordinances shall be a contract with the holder of this Bond.

This Bond and the series of Bonds of which it is one and the interest thereon are special obligations of the Town and are secured by and payable solely from, and secured equally and ratably by a pledge of and lien upon, the Hospitality Fees imposed and collected by the Town[, which pledge is junior and subordinate to the pledge thereof securing the Town's obligations to pay amounts due under the 2004 Installment Sale Agreement].

The General Bond Ordinance authorizes the issuance of additional bonds on a parity with the Bonds of this issue which, when issued in accordance with the provisions of the General Bond Ordinance, will rank equally and be on a parity herewith.

This Bond and the interest hereon are exempt from all State, county, municipal, school district, and all other taxes or assessments imposed within the State, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate, transfer and certain franchise taxes.

This Bond is transferable, as provided in the Ordinances, only upon the registration books of the Town kept for that purpose and maintained by the Registrar, by the Holder hereof in person or by his duly authorized attorney, upon (a) surrender of this Bond and an assignment with a written instrument of transfer satisfactory to the Registrar, duly executed by the Holder hereof or his duly authorized attorney and (b) payment of the charges, if any, prescribed in the Ordinances. Thereupon a new Bond of the same aggregate principal amount, maturity and interest rate shall be issued to the transferee in exchange therefor as provided in the Ordinances. The Town, the Trustee and the Registrar may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of or on account of the principal or redemption price hereof and interest due hereon and for all other purposes.

For every exchange or transfer of this Bond, the Town or the Trustee or Registrar, as the case may be, may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer.

[Redemption Provisions]

If less than all the Bonds of any maturity are called for redemption, the Bonds of such maturity to be redeemed shall be selected at random by the Trustee. In the event any of the Bonds or portions thereof are called for redemption, the Trustee shall give notice, in the name of the Town, of redemption of Bonds by first-class mail, postage prepaid, to the Holder thereof as shown on the Books of Registry of the Town not less than thirty (30) days and not more than sixty (60) days prior to the date fixed for the redemption thereof. If this Bond be redeemable and shall have been duly called for redemption and notice of the redemption hereof mailed as aforesaid, and if on or before the date fixed for such redemption, payment thereof shall be duly

made or provided for, interest hereon shall cease or accrue from and after the redemption date hereof.

It is hereby certified and recited that all conditions, acts and things required by the Constitution and statutes of the State to exist, be performed or happen precedent to or in the issuance of this Bond, exist, have been performed and have happened, that the amount of this Bond, together with all other indebtedness of the Town, does not exceed any limit prescribed by such Constitution or statutes.

This Bond shall not be valid or obligatory for any purpose until the Certificate of Authentication hereon shall have been duly executed by the Trustee.

IN WITNESS WHEREOF, THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA has caused this Bond to be signed by the manual or facsimile signature of its Mayor, its corporate seal to be reproduced hereon and the same to be attested by the manual or facsimile signature of its Town Clerk.

THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

By: _____
Mayor

(SEAL)

ATTEST:

By: _____
Town Clerk

FORM OF CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds of the issue described in the within mentioned Ordinance.

Wells Fargo Bank, N.A., as Trustee

By: _____

Its: _____

Date: _____

IT IS HEREBY CERTIFIED that the following is a true and correct copy of the approving opinion of McNair Law Firm, P.A., Columbia, South Carolina, the original of which was manually executed, dated and issued as of the date of the delivery of and payment for the bonds, and a copy of which is on file with the Town.

THE TOWN OF HILTON HEAD, SOUTH CAROLINA

By: _____
Town Clerk

FORM OF ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

(please print or type name and address of Transferee and Social Security or other identifying
number of Transferee)

the within Bond and all rights and title thereunder, and hereby irrevocably constitutes and appoints attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Date: _____

STAMP Language

Signature Guaranteed: _____

NOTICE: Signature(s) must be guaranteed
By an institution which is a participant in the
Securities Transfer Agent Medallion Program
(STAMP) or similar program.

NOTICE: The signature to this assignment
must correspond with name as it appears
upon the face of the within bond in every
particular, without alteration or enlargement
or any change whatever.



MEMORANDUM

TO: Town Council

FROM: Stephen G. Riley, CM, Town Manager

VIA: Susan M. Simmons, CPA, Director of Finance

DATE: August 19, 2011

RE: **Second Reading of Proposed Ordinance No. 2011-19
General Bond Ordinance – Beach Preservation Fee Pledge**

Note:

There are no changes since the first reading.

Recommendation:

Town Council approves second reading of Proposed Ordinance No. 2011-19 which establishes a new manner for issuing debt for which the repayment will be from a pledge of beach preservation fees.

Summary:

As you will recall from the last meeting, there are a total of four proposed ordinances – two ordinances each for hospitality and beach preservation. The first for each is the **General Bond Ordinance** which establishes enabling legislation for revenue bonds but does not authorize a specific bond issue. ***This agenda item addresses the General Bond Ordinance for Beach Preservation Fees.***

The second proposed ordinance for each type is the First Supplemental Ordinance which authorizes a specific debt issue. At the first reading, Council requested an update on the financial sustainability of the beach renourishment program. Staff and our consultants believe that this program is still sustainable and the requested update will be presented with the **next** agenda item (Proposed Ordinance 2011-20) which is the First Supplemental Ordinance for the Beach Preservation Fees.

GENERAL BOND ORDINANCE

AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF SPECIAL OBLIGATION BONDS (BEACH PRESERVATION FEE PLEDGE) OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA; PRESCRIBING THE FORM OF BONDS; PROVIDING FOR THE PAYMENT OF THE BONDS FROM THE SOURCES PROVIDED HEREIN; CREATING CERTAIN FUNDS AND PROVIDING FOR PAYMENTS INTO SUCH FUNDS; MAKING OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE FOREGOING; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Town of Hilton Head, South Carolina (the “Town”) has undertaken and desires to continue to undertake renourishment of the beaches adjacent to certain areas within the Town, including but not limited to: South Beach (Sea Pines); South Forest Beach; Coligny; North Forest Beach; Shipyard; Palmetto Dunes; Singleton Beach; Burkes Beach; Bradley Beach; Folly Field; Port Royal; and Fish Haul; and such capital improvement projects as may be authorized by Town Council (collectively, the “Projects”, as more particularly defined herein); and

WHEREAS, the Town Council of the Town (the “Council”) enacted Ordinance No. 93-32 on November 15, 1993, as amended by Ordinance No. 94-12 enacted on May 2, 1994, and as further amended by Ordinance No. 2006-09 enacted on June 20, 2006, imposing the Beach Preservation Fees (the “Beach Preservation Fees,” as more particularly defined herein) within the geographic boundaries of the Town; and

WHEREAS, Hilton Head Island Public Facilities Corporation, an instrumentality of the Town (the “Corporation”), issued \$19,000,000 original principal amount of the Hilton Head Island Public Facilities Corporation, Certificates of Participation Evidencing Undivided Proportionate Interests in Base Fee Payments Under an Installment Sale Agreement (Beach Preservation Fee Pledge), Series 2006, which are presently outstanding in the principal amount of \$7,795,000 (the “2006 Certificates”), evidencing proportionate undivided interests in the Base Fee Payments (as defined in the Installment Sale Agreement dated as of August 1, 2006 (the “2006 Installment Sale Agreement”) between the Town and the Corporation) paid by the Town under the 2006 Installment Sale Agreement; and

WHEREAS, pursuant to the 2006 Installment Sale Agreement, the Town has pledged the Beach Preservation Fees to secure its obligation to pay Base Fee Payments and Additional Fee Payments (as defined in the 2006 Installment Sale Agreement) thereunder; and

WHEREAS, the Town is permitted to issue Other Obligations (as defined in the 2006 Installment Sale Agreement) secured by a pledge of the Beach Preservation Fees, which pledge may be junior and subordinate to the pledge of the Beach Preservation Fees securing its obligation to pay Base Fee Payments and Additional Fee Payments under the 2006 Installment Sale Agreement; and

WHEREAS, the Town is presently contemplating the undertaking of new Projects; and

WHEREAS, the Council has been advised that in order to finance the Projects, the Council must enact appropriate ordinances authorizing the issuance of special obligation bonds.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AND IT IS ORDERED AND ORDAINED BY SAID AUTHORITY OF COUNCIL:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. Unless the context shall clearly indicate some other meaning, the terms defined in this Section shall, for all purposes of this Ordinance and of any ordinance, resolution, certificate, opinion, instrument or other document herein or therein mentioned, have the meanings herein specified. The definitions shall be equally applicable to both the singular and plural forms of any of the terms herein defined and vice versa. The term:

“2006 Certificates” shall mean the \$19,000,000 original principal amount Hilton Head Island Public Facilities Corporation, Certificates of Participation Evidencing Undivided Proportionate Interests in Base Fee Payments Under an Installment Sale Agreement (Beach Preservation Fee Pledge), Series 2006, dated August 1, 2006, and outstanding as of the date hereof in the principal amount of \$7,795,000.

“2006 Installment Sale Agreement” shall mean the Installment Sale Agreement, dated as of August 1, 2006, between the Town and the Corporation, relating to the 2006 Certificates.

“2006 Trust Agreement” shall mean the Trust Agreement, dated as of August 1, 2006 between the Corporation and Wells Fargo Bank, N.A., as Trustee, relating to the 2006 Certificates.

“Accommodations Fee Act” means, collectively, Title 6, Chapter 1, Article 5, and Section 6-1-760, of the S.C. Code.

“Accountant” shall mean an independent certified public accountant or a firm of independent certified public accountants selected by the Town.

“Beach Preservation Fees” means the Beach Preservation Fees imposed by the Town pursuant to the Accommodations Fee Act and the Beach Preservation Fee Ordinance.

“Beach Preservation Fee Fund” shall mean the Town of Hilton Head Island Beach Preservation Account created and established by the Beach Preservation Fee Ordinance.

“Beach Preservation Fee Ordinance” means Ordinance No. 93-32 enacted on November 15, 1993, as amended by Ordinance No. 94-12 enacted on May 2, 1994, by Ordinance No. 2006-09 enacted on June 20, 2006 and by ordinances enacted prior to the enactment date hereof (as the same may be codified in Title Four, Chapter 10, of the Municipal Code of the Town), as the same may from time to time hereafter be further amended.

“Bond” or “Bonds” shall mean any Bond, some of the Bonds or all of the Bonds issued under and pursuant to Article III hereof, excluding bonds or other indebtedness issued under Section 3.5 hereof.

“Bond Act” shall mean Title 6, Chapter 21, Code of Laws of South Carolina, 1976, and all other statutory authorizations, now or hereinafter enacted, authorizing and enabling the Town to provide for the issuance of the Bonds.

“Bond Counsel” shall mean any attorney or firm of attorneys of nationally recognized standing in matters pertaining to the federal tax exemption of interest on obligations issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States.

“Bondholders” or the term “Holders” or any similar term shall mean the registered owner or owners of any Outstanding Bond or Bonds.

“Bond Redemption Account” shall mean the account by that name created within each respective Debt Service Fund.

“Books of Registry” shall mean the registration books maintained by the Registrar, as bond registrar, in accordance with Section 4.3 hereof.

“Business Day” shall mean, except as otherwise provided with respect to a Series of Bonds in a Supplemental Ordinance, any day other than a Saturday, a Sunday or a day which shall be in the State or the state in which the corporate trust office of the Trustee is located a legal holiday or a day on which banking institutions are authorized by law or executive order to close or a day on which the payment system of the Federal Reserve is not operational.

“Construction Fund” shall mean any fund established with and maintained by the Custodian selected by the Town, and derived from certain of the proceeds of the sale of the Bonds and intended to defray the costs of all or a portion of any Project and to pay all Costs of Acquisition and

Construction in connection therewith, as established in a Supplemental Ordinance authorizing the issuance of any Series of Bonds.

“Costs of Acquisition and Construction” shall mean, to the extent permitted by the Accommodations Fee Act, Project costs, including the Costs of Issuance and capitalized interest on Bonds. Costs of Acquisition and Construction shall include the reimbursement of funds previously advanced by the Town with respect to the Projects, funding of a Debt Service Reserve Fund, and the payment of amounts due on bond anticipation notes, the proceeds of which were used for Costs of Acquisition and Construction.

“Costs of Issuance” shall mean all items of expense, directly or indirectly payable or reimbursable by or to the Town or the Council and related to the authorization, sale and issuance of Bonds including, but not limited to, printing costs, costs of preparation and reproduction of documents, filing and recording fees, initial fees and charges of any Trustee, Custodian, Registrar or Paying Agent, legal fees and charges, auditing and accounting fees and charges, fees and disbursements of consultants and professionals, costs of credit ratings, fees and charges for preparation, execution, transportation and safekeeping of Bonds, costs and expenses of any refunding, premiums for insurance relating to the issuance of Bonds, financing charges, accrued interest with respect to the initial investment of proceeds of Bonds and any other costs, charges or fees in connection with the original issuance of Bonds.

“Council” shall mean the Town Council of the Town of Hilton Head Island, South Carolina.

“Custodian” shall mean any bank, depository or trust company duly qualified and doing business within the State selected by the Town as a depository of moneys or securities held in the Construction Fund.

“Debt Service” shall mean, with respect to each Series of Bonds and with respect to any particular Fiscal Year, the aggregate of the amounts to be paid or set aside (or estimated to be required to be paid or set aside) in the applicable Debt Service Fund in such Fiscal Year for the payment of the principal of, redemption premium, if any, and interest (to the extent not payable from the proceeds of Bonds or investment earnings thereon) on such Series of Bonds; provided that the interest on Variable Rate Indebtedness then Outstanding shall be calculated at the actual average rate of interest on the Variable Rate Indebtedness during the twelve (12) months immediately preceding the date of calculation (or such lesser period during which the Variable Rate Indebtedness has been Outstanding); provided further, that for purposes of any prospective calculation, interest on Variable Rate Indebtedness shall be calculated at the lesser of (a) the 25-Bond Revenue Index published by *The Bond Buyer* (or if no longer published, any reasonably equivalent nationally recognized index published for the periods in question selected by the Town) no more than one month prior to the date of calculation or (b) the maximum interest rate allowable on such Variable Rate Indebtedness.

“Debt Service Fund” shall mean each of the respective funds of that name established pursuant to Section 6.6 of this Ordinance and so designated pursuant to a Supplemental Ordinance

to provide for the payment of the principal of and interest on the respective Series of Bonds issued pursuant to this Ordinance and such Supplemental Ordinance as the same respectively become due and payable.

“Debt Service Reserve Fund” shall mean the respective funds, if any, of that name established pursuant to Section 6.7 of this Ordinance and so designated pursuant to a Supplemental Ordinance.

“Default” or “Event of Default” shall mean any of those Events of Default specified in and defined by Article X hereof.

“First Supplemental Ordinance” shall mean the Supplemental Ordinance enacted by the Council on the date hereof, authorizing the issuance of the Series 2011 Bonds.

“Fiscal Year” shall mean the fiscal year for the Town as determined by the Council, initially being the period from July 1 in any year to and including June 30 in the following year.

“Government Obligations” shall mean, except as otherwise provided in a Supplemental Ordinance, and to the extent such obligations constitute Permitted Investments, (1) cash; (2) United States Treasury Obligations – State and Local Government Series; (3) United States Treasury bills, notes, bonds or zero coupon treasury bonds all as traded on the open market; (4) direct obligations of the U.S. Treasury which have been stripped by the Treasury itself, including CATS, TIGRS and similar securities; (5) obligations of any agencies or instrumentalities which are backed by the full faith and credit of the United States of America; (6) bonds or debentures issued by any Federal Home Loan Bank or consolidated bonds or debentures issued by the Federal Home Loan Bank Board; (7) obligations of the Federal National Mortgage Association; (8) (i) General obligations of the State of South Carolina or any of its political units; or (ii) revenue obligations of the State of South Carolina or its political units, if at the time of investment, the obligor has a long-term, unenhanced, unsecured debt rating in one of the top two ratings categories, without regard to a refinement or gradation of rating category by numerical modifier or otherwise, issued by at least two nationally recognized credit rating organizations; or (9) any legally permissible combination of any of the foregoing. Government Obligations must be redeemable only at the option of the holder thereof.

“Interest Account” shall mean the account by that name created within each respective Debt Service Fund.

“Interest Payment Date” shall mean the respective interest payment dates for a Series of Bonds as determined by a Supplemental Ordinance.

“Junior Bonds” shall mean either (a) bonds or bond anticipation notes secured by a pledge of Beach Preservation Fees junior and subordinate in all respects to the pledge securing the Bonds or (b) any other form of indebtedness secured by a pledge of Beach Preservation Fees after provision has been made for all payments required to be made with respect to the Bonds, which

bonds or indebtedness may be authorized by an ordinance of Council which is not supplemental to this Ordinance.

“Maximum Debt Service” shall mean the highest aggregate principal and interest requirements (to the extent not paid from the proceeds of Bonds or investment earnings thereon) on the Bonds then Outstanding during any then current or future Fiscal Year. In the case of determining the Maximum Debt Service for purposes of Section 3.3 of this Ordinance, interest on Variable Rate Indebtedness shall be calculated at the lesser of (a) the 25-Bond Revenue Index published by *The Bond Buyer* (or if no longer published, any reasonably equivalent nationally recognized index published for the periods in question selected by the Town) no more than one month prior to the date of calculation or (b) the maximum interest rate allowable on such Variable Rate Indebtedness.

“Ordinance” shall mean this ordinance as from time to time amended or supplemented by one or more Supplemental Ordinances.

“Outstanding” when used with respect to any Bond shall have the construction given to such word in Article XII hereof; *i.e.*, a Bond shall not be Outstanding if such Bond is not, or would not be, at the time, deemed to be Outstanding by reason of the operation and effect of said Article XII.

“Paying Agent” shall mean for each Series of Bonds the respective paying agent or paying agents appointed pursuant to the proceedings authorizing such Bonds.

“Permitted Investments” shall mean, except as limited with respect to the funds and accounts relating to a Series of Bonds by a Supplemental Ordinance, (a) any one or more of the investments now or hereafter permitted by Section 6-5-10, Code of Laws of South Carolina 1976, as amended and in effect from time to time, or any authorization relating to the investment of Town funds hereunder; and (b) the South Carolina Pooled Investment Fund or similar State administered pool investment fund.

“Principal Account” shall mean the account by that name created within each respective Debt Service Fund.

“Principal Payment Date” shall mean the respective principal payment dates for a Series of Bonds as determined by a Supplemental Ordinance.

“Project” shall have the meaning set forth in the Recitals hereof, as the same may be permitted by the Accommodations Fee Act.

“Record Date” shall mean with respect to any Series of Bonds the fifteenth (15th) day (whether or not a Business Day) of the calendar month immediately preceding an Interest Payment Date or such other day as may be provided in the Supplemental Ordinance authorizing the issuance of such Series of Bonds.

“Registrar” shall mean for each Series of Bonds the registrar appointed pursuant to the proceedings authorizing such Bonds.

“Reserve Fund Requirement” shall mean, as of the date of calculation, the debt service reserve fund requirement, if any, established pursuant to a Supplemental Ordinance authorizing the issuance of a Series of Bonds.

“S.C. Code” shall mean the Code of Laws of South Carolina 1976, as amended.

“Serial Bonds” shall mean Bonds which are not Term Bonds.

“Series” or “Series of Bonds” or “Bonds of Series” shall mean all Bonds designated as being of the same series issued and delivered on original issuance in a simultaneous transaction, and any Bonds thereafter delivered in lieu thereof or in substitution therefor pursuant to this Ordinance.

“Series 2011 Bonds” shall mean the not exceeding \$11,000,000 Town of Hilton Head Island, South Carolina Special Obligation Bonds (Beach Preservation Fee Pledge), in one or more series, authorized to be issued pursuant to this Ordinance and the First Supplemental Ordinance.

“State” shall mean the State of South Carolina.

“Supplemental Ordinance” shall mean any ordinance by the Town providing for the issuance of Bonds and any ordinance enacted by Council pursuant to and in compliance with the provisions of Article IX hereof amending or supplementing the provisions of this Ordinance.

“Term Bonds” shall mean any Bond designated by the Supplemental Ordinance providing for its issuance as being subject to retirement or redemption from moneys credited to the applicable Bond Redemption Account as sinking fund installments.

“Town” shall mean the Town of Hilton Head Island, South Carolina.

“Town Representative” shall mean the person or custodian/persons at the time designated to act on behalf of the Town for the purpose of performing any act under this Ordinance or any Supplemental Ordinance by a written certificate furnished to the Trustee or Custodian containing the specimen signature of such person or persons and signed on behalf of the Town by the Mayor or Town Manager.

“Trustee” shall mean Wells Fargo Bank, N.A., and any successor Trustee appointed in accordance with Section 8.2 hereof.

“Variable Rate Indebtedness” shall mean indebtedness in the form of Bonds, the interest rate on which is not established at a fixed or constant rate at the time such indebtedness is incurred.

[End of Article I]

ARTICLE II

FINDINGS AND DETERMINATIONS

Section 2.1. Findings and Determinations. The Council hereby finds and determines:

(a) The Town is an incorporated municipality located in Beaufort County, South Carolina, and as such has all powers granted to municipalities by the Constitution and general laws of the State.

(b) Section 5-7-30 of the S.C. Code provides, in part, that municipalities may enact ordinances, not inconsistent with the Constitution and general law of the State, respecting any subject which appears necessary and proper for the security, general welfare, and convenience of the municipality and for the preservation of the general health, peace, order and good government in the municipality, and further, under the case of Williams v. Town of Hilton Head, 429 S.E.2d 802 (1993) a municipality may enact regulations (ordinances) without the requirement for further specific statutory authorization so long as such regulations are not inconsistent with the Constitution and general law of the State.

(c) Pursuant to the authorization granted by the General Assembly to municipalities in the Accommodations Fee Act, the Council imposed the Beach Preservation Fees. While the General Assembly utilized the words "local accommodations tax" in the Accommodations Fee Act as a means by which to designate the charge authorized to be imposed on all accommodations offered to transients, it was the intent of the Council to impose such charges as fees pursuant to the provisions of the Beach Preservation Fee Ordinance.

(d) It is a well established principle of South Carolina law that the use of a particular word is not determinative of its characterization. Jackson v. Breeland, 88 S.E. 128, 103 S.C. 184 (1915). As set forth in Brown v. County of Horry, 417 S.E.2d 565, 308 S.C. 180 (1992), the factors that are of paramount importance to the analysis of whether a charge constitutes a "tax" or a "fee" are the following: (i) the purpose behind its imposition; (ii) the intended portion of the community that will be charged; and (iii) the dedication of the sums so collected to the purpose for which it is charged. The Council finds that its actions in imposing the Beach Preservation Fees and segregating the collections received from such fees in order that such sums be utilized according to the Accommodations Fee Act meet the test enunciated in Brown such that the charges imposed pursuant to the provisions of the Beach Preservation Fee Ordinance constitute fees.

(e) A dynamic tourism industry fosters and enhances the economic growth and well being of a community and its residents. Tourism has been and continues to be a growing industry for the Town. The Town is initiating efforts to promote tourism to the Town and to the Town's facilities and attractions. Moreover, as the Town's tourism industry grows and expands, the Town must make provision to increase municipal services and facilities in order to accommodate the needs of tourists and to attract additional tourism. Tourists enjoy and utilize the special benefits which the Town provides. The Council has been advised and recognizes that Beach Preservation

Fees must be used exclusively for Projects or otherwise for purposes permitted by the Beach Preservation Fee Ordinance and the Accommodations Fee Act.

(f) Article X, Section 14 of the Constitution of the State of South Carolina, 1895, as amended, provides that municipalities may incur indebtedness payable solely from a revenue-producing project which source does not involve revenues from any tax or license.

(g) Section 6-1-760(B) of the S.C. Code provides that a municipality is authorized to issue bonds, pursuant to Section 14(10), Article X of the Constitution of the State, utilizing the procedures of the Bond Act, for the purposes enumerated in Section 6-1-530 of the S.C. Code, to pledge as security for such bonds and to retire such bonds with the proceeds of accommodations fees imposed under the Accommodations Fee Act, and the pledge of such other nontax revenues as may be available for those purposes for capital projects used to attract and support tourists.

(h) The Town has heretofore pledged the Beach Preservation Fees to the payment of Base Fee Payments and Additional Fee Payments under and as defined in the 2006 Installment Sale Agreement in connection with the issuance of the 2006 Certificates.

(i) Pursuant to the authority of the Bond Act and the Accommodations Fee Act, the Town intends to finance certain Projects with a portion of the proceeds from the Bonds.

(j) The 2006 Installment Sale Agreement provides that, upon compliance with certain conditions set forth therein, the Town may issue "Other Obligations" secured by a pledge of the Beach Preservation Fees junior and subordinate to the pledge thereof securing payment of amounts due under the 2006 Installment Sale Agreement. "Other Obligations" are defined in the 2006 Installment Sale Agreement as any obligation of the Town constituting indebtedness under generally accepted accounting principles, and any other payment obligation with established or fixed annual or periodic payments, for the payment of which Beach Preservation Fees have been or are to be pledged. Bonds issued pursuant to this Ordinance and Supplemental Ordinances hereto shall qualify as "Other Obligations" as defined in the 2006 Installment Sale Agreement provided such Bonds comply with the conditions with respect to "Other Obligations" set forth in the 2006 Installment Sale Agreement.

[End of Article II]

ARTICLE III

AUTHORIZATION AND ISSUANCE OF BONDS

Section 3.1. Authorization of Bonds. There is hereby authorized to be issued Bonds of the Town to be known as “Town of Hilton Head Island, South Carolina, Special Obligation Bonds (Beach Preservation Fee Pledge)” or such other designations as may be provided in the Supplemental Ordinance authorizing such Bonds, which Bonds may be issued pursuant to this Ordinance and in accordance with the terms, conditions and limitations set forth herein; in Series; and in such amounts and from time to time as the Town may deem to be necessary or advisable for any corporate purpose of the Town and Project for which Bonds may be issued under this Ordinance, the Bond Act and the Accommodations Fee Act.

Section 3.2. General Provisions For Issuance of Bonds. (a) The Bonds shall be issued in Series by means of Supplemental Ordinances enacted by the Council in accordance with the provisions of this Article and Article IX hereof. Each Supplemental Ordinance shall designate the Bonds provided thereby with an appropriate Series designation and with such further particular designations, if any, as the Town deems appropriate. Each Supplemental Ordinance shall, unless or except as is otherwise set forth herein, also specify: (i) the authorized principal amount of such Series of Bonds; (ii) the purpose or purposes for which the Bonds of such Series are being issued, which shall be one or more of the purposes set forth in Sections 3.3 or 3.4 hereof; (iii) if the Bonds of the Series are being issued for a purpose specified in Section 3.3 hereof, the Project for which such Bonds are being issued; (iv) an estimate of the Costs of Acquisition and Construction for any Project, if any, to be financed by such Series of Bonds, and, in the event of the acquisition by purchase or condemnation of any facilities already constructed, a determination of what repairs, replacements, additions and betterments will be necessary in order that such facilities may be effective for their purpose and an estimate of the costs required therefor; (v) the date or dates of the Bonds of the Series; (vi) the maturity date or dates of the Bonds of the Series and the sinking fund installment amounts and due dates for the Term Bonds of the Series, if any; (vii) the interest rate or rates of the Bonds of such Series, or the manner of determining such rate or rates, the initial Interest Payment Date therefor, and the subsequent Interest Payment Dates; (viii) the denominations of (if other than as provided in this Ordinance), and manner of numbering and lettering, the Bonds of such Series; (ix) the redemption premium or premiums, if any, or the redemption price or prices to be paid upon the redemption of the Bonds of such Series, the period or periods, if any, during which such premiums or prices shall be payable, and the terms and conditions, if any, of such redemption; (x) the place or places of payment of the Bonds of the Series and interest thereon, and the Paying Agent and Registrar therefor and any Custodian of the funds and accounts created with respect thereto; (xi) the provisions for the sale or other disposition of the Bonds of the Series and the use, application and investment, if any, of the proceeds of such sale or other disposition, which use, application and investment shall not be inconsistent or in conflict with the provisions hereof; (xii) whether such Series of Bonds will be subject to a Reserve Fund Requirement and the manner of satisfaction of such Reserve Fund Requirement; (xiii) any other provisions which may be required to be inserted therein by other provisions of this Ordinance; and (xiv) any other necessary or desirable provisions not inconsistent or in conflict with the provisions of this Ordinance.

(b) Bonds of a Series may be executed and delivered to the Registrar by the Town and authenticated and delivered by the Registrar to the Town or, upon its order, upon compliance with Section 3.3 or 3.4 hereof.

Bonds issued upon compliance with this Section and Section 3.3 or Section 3.4 hereof shall be issued on a parity with the pledge of and lien upon the Beach Preservation Fees *inter sese*, but not with respect to the particular Debt Service Fund or Debt Service Reserve Fund (if any) created for the benefit of the Holders of the Bonds of a Series, in all respects *inter sese*, notwithstanding, that they may be in different form, and bear different dates, interest rates, number, date of issuance or date of execution or are payable at different times. In all such instances, the pledge of Beach Preservation Fees made hereunder, and the covenants and remedies hereby granted, shall be applicable and available to the Holders of such Bonds. Additionally, the pledge of Beach Preservation Fees for payment of Bonds issued hereunder shall be junior and subordinate in all respects to the pledge thereof for payment of Base Fee Payments and Additional Fee Payments, if any, due under the 2006 Installment Sale Agreement while the 2006 Certificates are outstanding.

Section 3.3. Conditions for the Issuance of Bonds under this Ordinance Other than Refunding Bonds or Junior Bonds. Any time and from time to time, one or more Series of Bonds (exclusive of refunding Bonds) may be issued for such purposes as may be permitted by the Bond Act and Accommodations Fee Act upon compliance with the provisions of Section 3.2 hereof and this Section in such principal amounts as may be determined by Council for the purpose of paying all or part of the Costs of Acquisition and Construction of one or more Projects authorized to be financed under the Bond Act and the Accommodations Fee Act with Bonds and upon compliance with the following conditions:

A. There shall be executed a certificate of the Town Manager of the Town stating (i) either (a) that no Default exists in the payment of Fee Payments (as defined in the 2006 Installment Sale Agreement) or the principal of, premium, if any, or interest on any Bonds or Junior Bonds and all mandatory sinking fund redemptions, if any, required to have been made shall have been made, or (b) that the application of the proceeds of sale of the Series of Bonds to be issued as required by the Supplemental Ordinance authorizing their issuance will cure any such Default or permit such redemptions; and (ii) either (a) that to the best of his or her knowledge, the Town is not in Default in the performance of any other of its covenants and agreements contained in this Ordinance, or (b) setting forth the circumstances of each such Default known to him or her.

B. If a certificate filed pursuant to part (A) of this Section should disclose a Default or Defaults hereunder, there shall be filed with the Town and the Trustee an opinion of Bond Counsel that, in the case of any Default disclosed in a certificate filed pursuant to part (A) of this Section, each such Default does not deprive the Bondholders of the security afforded by this Ordinance in any material aspect.

C. For the issuance of Bonds to finance the Costs of Acquisition and Construction, or a portion thereof, of any Project (other than the Series 2011 Bonds issued pursuant to this Ordinance

and the First Supplemental Ordinance), there shall be delivered a report, which need not be based upon the latest available audit of the Town, from the Town Manager, to the effect that the amount of the Beach Preservation Fees collected by the Town during the Fiscal Year prior to the Fiscal Year in which the Bonds are proposed to be issued is not less than 120% of the sum of the Maximum Annual Payments (as defined in the 2006 Installment Sale Agreement) relating to the 2006 Certificates and the Maximum Debt Service on Bonds then Outstanding and the Bonds then proposed to be issued.

D. Such Bonds shall be issued to secure funds to defray the Costs of Acquisition and Construction of a Project, or to refund Junior Bonds, or any other notes, bonds, or other obligations issued to finance or to aid in financing the acquisition, construction, improvement, enlargement or repair of Projects.

E. The Supplemental Ordinance may provide for a deposit into the Debt Service Reserve Fund established with respect to such Series of Bonds, if any, of cash or securities or an insurance policy, surety bond or letter of credit, as provided in Section 6.7 hereof (inclusive of any proceeds of such Series of Bonds to be deposited in the applicable Debt Service Reserve Fund) having an aggregate value not less than the Reserve Fund Requirement, if any, with respect to such Series of Bonds.

Section 3.4. Refunding Bonds. Without complying with the provisions of Section 3.3 hereof except as otherwise provided herein, for the issuance of refunding Bonds, the Town by means of a Supplemental Ordinance enacted in compliance with the procedures of the Bond Act, the Accommodations Fee Act, and any other statutory provisions authorizing the issuance of refunding bonds, including advance refunding bonds, may issue hereunder refunding Bonds as follows:

A. Bonds may be issued for the purpose of refunding (including by purchase) at any time within one year prior to maturity or prior to any sinking fund installment due date, the Bonds maturing on such date (or an amount of such bonds subject to redemption from such sinking fund installments not in excess of the amount of such Bonds required to be redeemed on such due date) for the payment of which sufficient Beach Preservation Fees are not available. Any Bonds issued for such purpose shall mature (or sinking fund installments therefor shall commence) not earlier than the latest stated maturity of the Bonds not then refunded to be Outstanding after such refunding; or

B. Bonds may be issued at any time for the purpose of refunding (including by purchase) other Bonds, Junior Bonds, or some or all of the 2006 Certificates, including amounts to pay principal, redemption premium and interest to the date of redemption (or purchase) of the refunded Bonds or the refunded 2006 Certificates provided that (i) the aggregate Debt Service on all Bonds and the debt service requirements of the 2006 Certificates to be Outstanding after the issuance of the proposed Series of refunding Bonds shall not be greater than would have been prior to such issuance; or (ii) the requirements of parts (A), (B), (C) and (E) of Section 3.3 hereof are met with respect to the refunding Series.

Section 3.5. Junior Bonds. The Town may at any time issue Junior Bonds in such amount as it may from time to time determine, payable from Beach Preservation Fees, provided that such Junior Bonds are issued to secure funds to defray the costs of acquisition and construction of Projects or some part thereof, or to refund Bonds, Junior Bonds, 2006 Certificates, or any notes, bonds, or other obligations issued to finance or to aid in financing the costs of acquisition and construction of Projects, and provided further that the pledge of and lien on Beach Preservation Fees securing Junior Bonds shall at all times be subordinate and inferior to the pledge of and lien on Beach Preservation Fees securing the Bonds.

[End of Article III]

ARTICLE IV

THE BONDS

Section 4.1. Execution. Unless or except as is otherwise set forth in the Supplemental Ordinance providing for the issuance of a Series of Bonds, the Bonds shall be executed on behalf of the Town by the Mayor of the Town by his or her manual or facsimile signature and the corporate seal of the Town, or a facsimile thereof shall be impressed or reproduced thereon and attested by the Town Clerk by his or her manual or facsimile signature.

In case any officer whose signature or facsimile signature shall appear on the Bonds shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, as if he had remained in office until delivery.

Section 4.2. Authentication. Unless or except as is otherwise set forth in the Supplemental Ordinance providing for the issuance of a Series of Bonds, upon compliance with the provisions of Section 3.3 or 3.4 hereof and upon the order of the Town, the Trustee shall authenticate Bonds authorized to be issued hereunder. Only such Bonds as shall have endorsed thereon a certificate of authentication duly executed manually by the Trustee shall be entitled to any right or benefit under this Ordinance. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Trustee, and such executed certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered. The Trustee's certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized officer of the Trustee, but it shall not be necessary that the same person sign the certificate of authentication on all of the Bonds issued hereunder or on all of the Bonds of a particular Series.

Section 4.3. Registration and Transfer of Bonds; Persons Treated as Holders. Unless and except as is otherwise set forth in the Supplemental Ordinance providing for the issuance of a Series of Bonds, each Bond shall be fully registered and transferable only upon the Books of Registry of the Town, which shall be kept for that purpose at the office of the Registrar by the Holder thereof or by his attorney, duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Holder or his or her duly authorized attorney with such signature guaranteed by a participant in the Securities Transfer Agents in Medallion Program ("STAMP") or similar program. Upon the transfer of any Bond, the Town shall issue, subject to the provisions of Section 4.6 hereof, in the name of the transferee, a new Bond or Bonds of the same series and of the same aggregate principal amount, interest rate and maturity as the unpaid principal amount of the surrendered Bond.

Any Bondholder requesting any transfer shall pay any tax or other governmental charge required to be paid with respect thereto. As to any Bond, the person in whose name the same shall be registered shall be deemed and regarded as the Holder and absolute owner thereof for all purposes, and payment of or on account of the principal, redemption premium, if any, and interest on any Bond shall be made only to or upon the order of the Bondholder thereof, or his duly

authorized attorney, and neither the Town nor the Registrar shall be affected by any notice to the contrary, but such registration may be changed as herein provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

Section 4.4. Form of Bonds; Denominations; Medium of Payment. Unless or except as is otherwise provided in the Supplemental Ordinance authorizing their issuance, the Bonds of each Series: (a) shall be in fully registered form without coupons, provided such Bonds may be issued in book-entry form; (b) shall be issued in denominations of \$5,000, or any integral multiple thereof, provided that, upon partial redemption of a Bond requiring surrender thereof and the issuance of a new Bond, such new Bond may be in the denomination of the unredeemed balance; and (c) shall be payable with respect to principal, interest, and premium, if any, in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

Section 4.5. Numbers, Date, and Payment Provisions. The Bonds shall be numbered and designated in such manner as the Town, with the concurrence of the Trustee, shall determine. Each Bond of a Series shall bear interest from the Interest Payment Date immediately preceding the date of its authentication, unless authentication shall be upon an Interest Payment Date, in which case it shall bear interest from its authentication, or unless authentication shall precede the first Interest Payment Date for such Bond, in which case it shall bear interest as otherwise provided in the Supplemental Ordinance authorizing its issuance, provided, however, that if the date of authentication of any Bond of any Series is after a Record Date and before the corresponding Interest Payment Date therefor, such Bond shall bear interest from such succeeding Interest Payment Date; notwithstanding the foregoing, if at the time of authentication of any Bond any interest on such Bond is in default, such Bond shall bear interest from the date to which interest on such Bond has been paid or if no interest has been paid, such Bond shall bear interest from the date of delivery thereof or from its dated date, or as otherwise provided in the Supplemental Ordinance authorizing the issuance of such Bonds.

Section 4.6. Exchange of Bonds. Unless or except as is otherwise provided in the Supplemental Ordinance authorizing their issuance Bonds, upon surrender thereof at the office of the Registrar with a written instrument of transfer satisfactory to the Registrar, duly executed by the Bondholder or his duly authorized attorney with such signature guaranteed by a participant in STAMP or similar program, may, at the option of the Bondholder thereof, and upon payment by such Bondholder of any charges which the Registrar may make as provided in Section 4.7, be exchanged for a principal amount of Bonds of the same Series and maturity of any other authorized denomination equal to the unpaid principal amount of surrendered Bonds.

Section 4.7. Regulations with Respect to Exchanges and Transfer. In all cases in which the privilege of exchanging or transferring Bonds is exercised, the Town shall execute and the Trustee shall authenticate and deliver Bonds in accordance with the provisions of this Ordinance or such Supplemental Ordinance authorizing the issuance thereof. All Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Trustee. There shall be no charge to the

Bondholder for such exchange or transfer of Bonds except that the Trustee may make a charge sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or transfer. Neither the Town nor the Registrar shall be required (a) to exchange or transfer Bonds (i) from the Record Date to the succeeding Interest Payment Date or (ii) for a period of fifteen (15) days following any selection of Bonds to be redeemed or thereafter until after the first publication or mailing of any notice of redemption, or (b) to transfer any Bonds called for redemption.

Section 4.8. Mutilated, Lost, Stolen or Destroyed Bonds. In case any Bond shall at any time become mutilated in whole or in part, or be lost, stolen or destroyed, or be so defaced as to impair the value thereof to the Holder, the Town shall execute and the Trustee shall authenticate and deliver at the principal office of the Trustee, or send by registered mail to the Holder thereof at his request, risk and expense a new Bond of the same series, interest rate and maturity and of like tenor and effect in exchange or substitution for and upon the surrender for cancellation of such defaced, mutilated or partly destroyed Bond, or in lieu of or in substitution for such lost, stolen or destroyed Bond. In any such event, the applicant for the issuance of a substitute Bond shall furnish the Town and the Registrar (a) evidence or proof satisfactory to the Town and the Registrar of the loss, destruction, mutilation, defacement or theft of the original Bond, and (b) of the ownership thereof, and (c) such security and indemnity as may be required by the laws of the State or such greater amount as may be required by the Town and the Registrar. Any duplicate Bond issued under the provisions of this Section in exchange and substitution for any defaced, mutilated or partly destroyed Bond or in substitution for any allegedly lost, stolen or wholly destroyed Bond shall be entitled to the identical benefits under this Ordinance or any Supplemental Ordinance as was the original Bond in lieu of which such duplicate Bond is issued, and shall be entitled to equal and proportionate benefits with all the other Bonds of the same series issued hereunder. Neither the Town nor the Registrar nor any Paying Agent shall be required to treat both the original Bond and any duplicate Bond as being Outstanding for the purpose of determining the principal amount of Bonds which may be issued hereunder or for the purpose of determining any percentage of Bonds Outstanding hereunder, but both the original and duplicate Bond shall be treated as one and the same. In the event any such mutilated, lost, stolen or destroyed Bond shall have matured, instead of issuing a duplicate Bond the Town may pay the same.

All expenses necessary for the providing of any duplicate Bond shall be borne by the applicant therefor.

[End of Article IV]

ARTICLE V

REDEMPTION OF BONDS

Section 5.1. Redemption of Bonds. The Bonds of a Series may be subject to redemption prior to their stated maturities upon such terms and conditions and at such dates and redemption price or prices or premium or premiums as shall be set forth in the Supplemental Ordinance providing for the issuance of such Bonds, and upon the further terms and conditions as are hereinafter set forth.

Section 5.2. Selection of Bonds for Redemption. In the event of the redemption at any time of only part of the Bonds of a Series, the Bonds to be redeemed shall be redeemed in such order as is set forth in the Supplemental Ordinance providing for the issuance of such Bonds. Unless otherwise provided by Supplemental Ordinance, if less than all of the Bonds of like maturity of any Series shall be called for prior redemption, the particular Bonds or portions of Bonds to be redeemed shall be selected by lot by the Trustee; provided, however, that the portion of any Bond of a denomination of more than \$5,000 to be redeemed shall be in the principal amount of \$5,000 or an integral multiple thereof, and that, in selecting portions of such Bonds for redemption, the Registrar shall treat each such Bond as representing that number of Bonds of \$5,000 denomination which is obtained by dividing the principal amount of such Bond by \$5,000.

Section 5.3. Notice of Redemption. Unless or except as otherwise provided in the Supplemental Ordinance authorizing their issuance, the provisions of this Section 5.3 apply to each Series of Bonds.

In the event any of the Bonds or portions thereof are called for redemption, the Trustee shall give notice, in the name of the Town, of redemption of Bonds by first-class mail, postage prepaid, to the Holder thereof as shown on the Books of Registry not less than 30 days and not more than 60 days prior to the date fixed for the redemption thereof. Such notice of redemption shall state: (a) the title of such Bonds to be redeemed, CUSIP numbers, if any, date of issue, the series designation (if any) thereof, the redemption date, the place or places of redemption and the redemption price or redemption premium, if any, payable upon such redemption; (b) if less than all such Bonds of a particular Series are to be redeemed, the distinctive number of such Bonds to be redeemed; (c) that the interest on such Bonds designated for redemption in such notice shall cease to accrue from and after such redemption date; and (d) that on such date there will become due and payable on each such Bond the principal amount thereof to be redeemed at the then applicable redemption price or redemption premium, if any, and the interest accrued on such principal amount to the redemption date. Any notice mailed as provided in this Section shall be conclusively presumed to have been duly given, when mailed, whether or not the Holder thereof receives the notice. The notice shall further state that if money for the redemption of all the Bonds being redeemed at that time is held by the Trustee on the redemption date, interest shall cease to accrue on such Bonds on and after the redemption date. The notice may further state that the redemption of the Bonds being called for redemption is conditioned upon the Trustee receiving on or before the redemption date of sufficient money for the redemption thereof.

Section 5.4. Partial Redemption of Bond. In the event that only part of the principal sum of a Bond shall be called for redemption or prepaid, payment of the amount to be redeemed or prepaid shall be made only upon surrender of such Bond to the Registrar. Upon surrender of such Bond, the Town shall execute and the Trustee shall authenticate and deliver to the Holder thereof, at the principal office of the Trustee, or send to such Holder by registered mail at his request, risk and expense, a new fully executed Bond or Bonds, of authorized principal sums equal in aggregate principal amount to, and of the same Series, maturity and interest rate as, the unredeemed portion of the Bond surrendered.

Section 5.5. Effect of Redemption. If a Bond is subject by its terms to redemption prior to its stated maturity and has been duly called for redemption and notice of the redemption thereof has been duly given as hereinbefore provided and if moneys for the payment of such Bond at the then applicable redemption price or together with the then applicable redemption premium, if any, and the interest to accrue to the redemption date on such Bond are held for the purpose of such payment by the Trustee for the series of Bonds of which such Bond is one, then such Bond so called for redemption shall, on the redemption date designated in such notice, become due and payable. Interest on the Bond so called for redemption shall cease to accrue.

Section 5.6. Cancellation. All Bonds which have been redeemed shall be canceled and either maintained or destroyed by the Registrar and shall not be reissued. A counterpart of the certificate of destruction evidencing such destruction shall be furnished by the Registrar to the Town upon the written request of the Town.

[End of Article V]

ARTICLE VI

ESTABLISHMENT OF FUNDS; SECURITY FOR AND PAYMENT OF THE BONDS; INVESTMENT OF MONEYS

Section 6.1. Listing of Funds and Accounts. In addition to the Beach Preservation Fee Fund (created and established pursuant to the Beach Preservation Fee Ordinance), the following are the funds created and established by this Ordinance:

- (i) Debt Service Fund for each Series of Bonds to be held by the Trustee, including an Interest Account, Principal Account and Bond Redemption Account.
- (ii) Debt Service Reserve Fund for each Series of Bonds, if any, to be held by the Trustee.
- (iii) Construction Fund, if applicable, for each Series of Bonds to be held by the Town or a bank or financial institution (a "Custodian") designated by the Town.
- (iv) One or more accounts may, by written direction of the Town or by the terms of a Supplemental Ordinance, be established within any of the above funds.

It is intended by this Ordinance that the funds and accounts referred to in this Article (other than the Construction Fund) shall remain in existence for so long a time as any sum remains due and payable by way of principal of and interest on the Bonds, and that deposits and withdrawals therefrom be made in the manner herein prescribed and in the order of priority hereinafter set forth in Section 6.2 hereof.

Section 6.2. Disposition of Beach Preservation Fees. The Beach Preservation Fees shall be applied in the amounts, if any, and for the purposes as provided or permitted by this Ordinance, and in the following order of priority:

First, there shall be transferred to the Trustee (as defined in the 2006 Trust Agreement) the amounts, if any, when and as required by the 2006 Installment Sale Agreement;

Second, there shall be transferred into the respective Debt Service Funds, the amounts required by this Ordinance or any Supplemental Ordinance;

Third, there shall be transferred into the respective Debt Service Reserve Funds, the amounts (including any payments required under the terms of any surety bond, insurance policy or letter of credit applicable thereto) required by this Ordinance or any Supplemental Ordinance;

Fourth, provision shall be made for payment of interest on amounts advanced by the provider of any surety bond, line of credit, insurance policy or letter of credit as contemplated in Section 6.7 hereof;

Fifth, provisions shall be made for the payment of any Junior Bonds; and

Sixth, the remaining Beach Preservation Fees shall be disposed of as provided in Section 6.9 hereof.

Section 6.3. Security for and Payment of the Bonds. Each Series of Bonds, together with the interest thereon, shall be payable solely from and secured equally and ratably by a pledge of the Beach Preservation Fees which shall be and hereby are irrevocably pledged to the payment of the principal of, redemption premium, if any, and interest on any Series of Bonds authorized by the Supplemental Ordinances; provided, however, that (1) such pledge of Beach Preservation Fees shall be junior and subordinate in all respects to the pledge thereof securing the Town's obligations to pay Base Fee Payments and Additional Fee Payments under the 2006 Installment Sale Agreement; (2) funds held by the Trustee in the respective Debt Service Funds and Debt Service Reserve Funds are hereby pledged for the benefit of the respective Bondholders as security for the Bonds of the Series to which such funds relate; and (3) this provision shall not preclude the issuance of Junior Bonds if such Junior Bonds be issued in conformity with the provisions of Section 3.5 hereof, but the pledge herein made shall preclude the issuance of bonds payable from or secured by a pledge of or lien on Beach Preservation Fees superior to that herein made to secure the Bonds.

The Bonds do not constitute an indebtedness of the Town within any State constitutional provision (other than Article X, Section 14, Paragraph 10 of the South Carolina Constitution authorizing obligations payable solely from special sources not involving revenues from any tax or license) or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Town or a charge against its general credit or taxing power. The full faith, credit and taxing powers of the Town are not pledged to the payment of the principal of and interest on the Bonds.

The covenants and agreements herein set forth to be performed by the Town shall be for the equal and proportionate benefit, security and protection of all Holders of the Bonds without preference, priority or distinction as to payment or security or otherwise (except as to maturity) of any of the Bonds for any reason or cause whatsoever, except as expressly provided herein or in the Bonds. Except as aforesaid, all Bonds shall rank *pari passu* and shall be secured equally and ratably hereunder without discrimination or preference whatsoever.

Section 6.4. Accounting Methods. The designation of the Beach Preservation Fee Fund referenced in and by this Ordinance shall not be construed to require the establishment of any completely independent, self-balancing funds as such term is commonly defined and used in governmental accounting, but rather is intended solely to constitute an earmarking of the Beach Preservation Fees for certain purposes and to establish certain priorities for application of such Beach Preservation Fees as herein provided.

The cash required to be accounted for in the Beach Preservation Fee Fund referenced herein may be deposited in a single bank account, into which Beach Preservation Fees shall be deposited, provided that adequate accounting records are maintained to reflect and control the restricted allocation of the cash in and deposited therein for the various purposes of such funds as provided herein.

Section 6.5. Beach Preservation Fee Fund. Pursuant to the Beach Preservation Fee Ordinance, there has been established and is hereby referenced a Beach Preservation Fee Fund to be maintained by a bank or other financial institution designated, from time to time, by the Town and into which shall be deposited all Beach Preservation Fees. Moneys in the Beach Preservation Fee Fund shall be used only in the manner specified in this Article VI and the Beach Preservation Fee Ordinance and in the order of priority set forth in Section 6.2 hereof. Moneys held in the Beach Preservation Fee Fund may be invested, from time to time, in Permitted Investments; provided, however, that such Beach Preservation Fees in the Beach Preservation Fee Fund shall be transferred to the Trustee (as defined in the 2006 Installment Sale Agreement) and the Trustee, when and as required and in the amounts, if any, required to be made by this Article VI, each Supplemental Ordinance and the Beach Preservation Fee Ordinance.

Section 6.6. Debt Service Funds. There shall be established and maintained special funds of the Town to be designated the Debt Service Fund for each Series of Bonds then Outstanding which shall be kept on deposit with the Trustee, and withdrawals therefrom shall be made for the purposes provided in this Ordinance. Each Debt Service Fund shall bear a separate series designation as may be necessary to distinguish such Debt Service Fund.

The respective Debt Service Funds are intended to provide for the payment of the principal of, redemption premium, if any, and interest on each Series of Bonds as the same respectively fall due. Payments into such Funds shall be made in the manner prescribed by this Ordinance and all moneys in the respective Debt Service Funds shall be used solely to pay the principal of, redemption premium, if any, and interest on the respective Series of Bonds, and for no other purpose, and withdrawals therefrom shall be made only to effect payment of the principal of, redemption premium, if any, and interest on the respective Series of Bonds. Earnings on investments in the Debt Service Fund, including the accounts therein, shall be added to and become a part of such respective Funds and the accounts therein.

The Town shall transfer or cause to be transferred to the Trustee from the Beach Preservation Fee Fund for deposit into the respective Debt Service Funds and ratably with respect to separate Series of Bonds for credit to the Interest Account, the Principal Account or the Bond Redemption Account, as the case may be, sufficient moneys so as to comply with the following provisions for the payment of the Bonds then Outstanding.

(a) *Interest Account.* There shall be established and maintained for the purpose of paying the interest on each Series of Bonds as the same becomes due and payable an Interest Account in the respective Debt Service Funds. Not later than five (5) Business Days prior to each Interest Payment Date, the Trustee shall transfer or allocate for credit to the Interest Account an

amount received from the Town derived from Beach Preservation Fees equal to the installment of interest then falling due on the respective Series of Bonds then Outstanding. To the extent moneys derived from other sources have been transferred or allocated for credit to the Interest Account on or before five (5) Business Days prior to each Interest Payment Date, the amount of Beach Preservation Fees to be transferred or allocated for credit to such Interest Account shall be reduced or eliminated by the amount of such moneys transferred or allocated for credit to the Interest Account.

(b) *Principal Account.* There shall be established and maintained for the purpose of paying the principal of each Series of Bonds as they mature a Principal Account in the respective Debt Service Funds. Not later than five (5) Business Days prior to each Principal Payment Date, the Trustee shall transfer or allocate to the credit of the Principal Account an amount received from the Town derived from Beach Preservation Fees equal to the installment of principal on the respective Series of Bonds then falling due. To the extent moneys derived from other sources have been transferred or allocated for credit to the Principal Account on or before five (5) Business Days prior to each Principal Payment Date, the amount of Beach Preservation Fees to be transferred or allocated for credit to such Principal Account shall be reduced or eliminated by the amount of such moneys transferred or allocated for credit to the Principal Account.

(c) *Bond Redemption Account.* There shall be established and maintained, in order to meet the specified sinking fund installment requirements of Term Bonds and to otherwise retire Term Bonds prior to maturity, a Bond Redemption Account in the respective Debt Service Fund. Not later than five (5) Business Days prior to the date a sinking fund installment of Term Bonds of each Series falls due, the Trustee shall allocate to the credit of the Bond Redemption Account amounts received from the Town derived from Beach Preservation Fees equal to the sinking fund installment of principal then falling due on the respective Series of Term Bonds then Outstanding. To the extent moneys derived from other sources have been transferred or allocated for credit to the Bond Redemption Account on or before five (5) Business Days prior to the date a sinking fund installment of Term Bonds of a Series falls due, the amount of Beach Preservation Fees to be transferred or allocated for credit to such Bond Redemption Account shall be reduced or eliminated by the amount of such moneys transferred or allocated for credit to the Bond Redemption Account. The Trustee shall apply the moneys credited to the Bond Redemption Account as sinking fund installments to the retirement of the Term Bonds of each respective Series by redemption in accordance with the Supplemental Ordinance providing for the issuance of such Series of Bonds, without further authorization or direction, on each date upon which a sinking fund installment is due with respect to the Term Bonds of such Series. The Trustee shall keep and retain accurate records of application of each deposit of funds under this paragraph (c). The Trustee shall give notice of all such redemptions in the name and on the behalf of the Town in accordance with the provisions of Article V hereof. In making any of the deposits to the Bond Redemption Account required by this paragraph (c), consideration shall be given to and allowance made for any other credits otherwise made to such Bond Redemption Account.

(d) If, on the dates when the payments required by paragraphs (a), (b) and (c) of this Section are to be made, the payments actually made pursuant to said paragraphs (a), (b) and (c), are

less than the sum required to effect the payment of the succeeding installment of principal or interest, or both, as the case may be, moneys in the applicable Debt Service Reserve Fund, if any, equal to such deficiency shall be added to the payment to be made pursuant to said paragraphs (a), (b) and (c). In the event of such transfer, the Trustee shall promptly give telephonic notice of such transfer to the Town and, within ten days after making the transfer, provide written notice to the Town of the amount and date of such transfer.

Moneys in the respective Debt Service Funds shall be used and applied solely to the payment of the interest on and the retirement of the principal of and redemption premium, if any, on the respective Series of Bonds and shall be used and applied in accordance with the provisions of this Section 6.6 and this Ordinance and the Supplemental Ordinance providing for the issuance of such Series of Bonds. The moneys paid into the respective Debt Service Fund shall be held by the Trustee in trust solely for the purpose of paying the interest on and the retirement of the principal of and redemption premium, if any, on the respective Series of Bonds. Withdrawals from such Funds shall be made by the Trustee in order to transfer such moneys to the Paying Agent for the respective Series of Bonds. Such withdrawals shall be made so that the necessary moneys shall be available to the Paying Agent not later than one (1) Business Day prior to the day on which principal or interest or both, and redemption premium, if any, as the case may be, are payable on the Bonds.

Section 6.7. Debt Service Reserve Fund. (a) A Supplemental Ordinance may provide for the establishment of a Debt Service Reserve Fund for any Series of Bonds. Each Debt Service Reserve Fund shall bear a separate Series designation as may be necessary to distinguish such Debt Service Reserve Fund and shall, subject to certain provisions of this Ordinance, be maintained in an amount equal to the applicable Reserve Fund Requirement, as determined pursuant to a Supplemental Ordinance, and in the manner determined pursuant to such Supplemental Ordinance, so long as the applicable Series of Bonds shall be Outstanding. Each such Fund is intended to insure the timely payment of the principal of and interest on the applicable Series of Bonds and to provide for the redemption of such Series of Bonds prior to their stated maturities. The respective Debt Service Reserve Funds shall be kept on deposit with the Trustee, and withdrawals therefrom shall be made for the purposes provided in this Ordinance.

(b) Moneys in each Debt Service Reserve Fund shall be used for the following purposes, and for no other:

(1) To prevent a Default in the payment of the principal of or interest on the applicable Series of Bonds, by reason of the fact that moneys in the applicable Debt Service Fund are insufficient for such purposes;

(2) To pay the principal of, interest on, and redemption premium, if any, of the applicable Series of Bonds in the event that all Outstanding Bonds of such Series be redeemed as a whole;

(3) To effect partial redemption of the applicable Series of Bonds, provided that such redemption be undertaken in accordance with the provisions of this Ordinance permitting a partial

redemption of the applicable Series of Bonds and the balance remaining in the applicable Debt Service Reserve Fund following such partial redemption shall not be less than the Reserve Fund Requirement; or

(4) To effect the retirement of a Series of Bonds through purchase under the conditions herein prescribed.

(c) Unless otherwise provided in a Supplemental Ordinance, whenever the market value (determined as of the valuation dates and in accordance with the method specified in Section 6.10 hereof) of the cash and securities in the applicable Debt Service Reserve Fund shall exceed the Reserve Fund Requirement, such excess may at the written direction of the Town (i) be used to repurchase and retire the applicable Series of Bonds at prices not exceeding the call price first to become available or then prevailing; (ii) be deposited as the Town deems advisable; or (iii) be transferred to the Beach Preservation Fee Fund or, at the option of the Town, to the Construction Fund during the period of construction or acquisition of a Project. Purchases of Bonds shall be effected by the Town through the Trustee, and whenever Bonds shall have been purchased pursuant to this authorization, it shall be the duty of the Registrar to cancel and destroy such Bonds and to deliver certificates evidencing such act to the Town.

(d) Unless otherwise provided in a Supplemental Ordinance, if the Trustee sends written notice to the Town stating that a deficiency exists in the applicable Debt Service Reserve Fund (whether due to a transfer therefrom pursuant to Section 6.6(d) or a valuation thereof determined as of the valuation dates and in accordance with the method specified in Section 6.10 hereof), then (1) there shall be deposited from available Beach Preservation Fees into the applicable Debt Service Reserve Fund over the next succeeding six (6) months, successive equal monthly installments of the amount necessary to re-establish in the applicable Debt Service Reserve Fund its respective Reserve Requirement (upon receipt of each of which installments, the Trustee shall promptly send an updated written notice to the Town as to the remaining deficiency therein) and (2) the Town agrees to pay, prior to the next Interest Payment Date, an amount equal to such shortfall; provided, however, that the Town's obligation to make such payment shall be subject to Council, by ordinance duly enacted, appropriating moneys from sources or funds lawfully available for such purpose moneys sufficient to pay the shortfall. The Town understands and agrees that the payment obligation described in this paragraph shall constitute a current expense of the Town and shall not in any way be construed to be a debt of the Town in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness of the Town, nor shall anything contained herein constitute a pledge of the general tax revenues, funds, moneys or credit of the Town. Any such budgetary appropriation, notwithstanding any provision of this Ordinance to the contrary, shall not constitute a default or Event of Default under this Ordinance.

(e) In lieu of the deposit of moneys into the Debt Service Reserve Fund established with respect to any Series of Bonds to meet the Reserve Fund Requirement with respect to that Series, the Town may cause to be credited a surety bond or an insurance policy payable to, or a letter of credit in favor of, the Trustee for the benefit of the Holders of the Bonds meeting the standard set forth in the Supplemental Ordinance authorizing that Series of Bonds, as the case may be. The

amount of moneys required to be deposited to the Debt Service Reserve Fund shall be reduced by the amount of the surety bond, insurance policy, or letter of credit. The surety bond, insurance policy, or letter of credit shall be payable (upon the giving of notice as required thereunder) on any Interest Payment Date on which moneys will be required to be withdrawn from the Debt Service Reserve Fund and applied to the payment of the principal of or interest on any Bonds of that Series but only to the extent that withdrawals cannot be made by amounts then credited to the Debt Service Reserve Fund.

If the Town obtains a surety bond, insurance policy or letter of credit in substitution for moneys deposited to the applicable Debt Service Reserve Fund as may be permitted under the applicable Supplemental Ordinance, excess moneys in the respective Debt Service Reserve Funds shall be transferred, at the written direction of the Town, to the applicable Construction Fund, or if one does not exist, be deposited as the Town deems advisable.

Section 6.8. Establishment of Construction Fund. There shall be established with the Custodian a Construction Fund with respect to each Series of Bonds (other than for Bonds issued pursuant to Section 3.4 hereof, if applicable) in the Supplemental Ordinance providing for their issuance, the moneys in which shall be used to defray the costs of any Project and to pay any Costs of Acquisition and Construction with respect to the facilities so financed. On the occasion of the delivery of any Series of Bonds, the proceeds therefrom shall be paid into the Construction Fund established for such Series as set forth in a Supplemental Ordinance authorizing their issue. Withdrawals from the Construction Fund shall not be made except as provided in the Supplemental Ordinance establishing such Construction Fund.

There may be established in a Construction Fund from time to time a capitalized interest account to provide for the payment of interest on the related Series of Bonds as may be permitted hereunder. Any such account shall be created by a Supplemental Ordinance relating to the issuance of the Bonds of such Series. Any earnings from the investment of funds in the capitalized interest account not required to pay interest on the Bonds of any Series during the period for which interest on the Bonds of such Series is capitalized shall be deposited in the Construction Fund created by the Supplemental Ordinance relating to such Bonds or, if such Construction Fund has been terminated, such earnings shall be transferred to the appropriate Debt Service Fund.

Section 6.9. Distribution of Remaining Beach Preservation Fees. After making payments of (i) amounts due pursuant to the 2006 Installment Sale Agreement, (ii) amounts required to be deposited into the applicable Debt Service Funds, and (iii) amounts required to be deposited into the applicable Debt Service Reserve Funds, remaining Beach Preservation Fees shall then be used, first, for payment of interest on amounts advanced by the provider of any surety bond, line of credit, insurance policy or letter of credit as contemplated by Section 6.7 hereof; second, for the payment of Junior Bonds or to meet any other obligations of the Town which are or which shall become charges, liens or encumbrances upon the Beach Preservation Fees; and third, disposed of by the Town as it may determine from time to time to be for any lawful purpose under the Accommodations Fee Act and the Beach Preservation Fee Ordinance.

Section 6.10. Investment of Funds. Moneys held for the credit of the respective Debt Service Funds, Debt Service Reserve Funds and any other funds and accounts established by this Ordinance shall be invested, to the fullest extent practicable and reasonable, in Permitted Investments. Any investment of money held to the credit of the above-mentioned funds and accounts shall mature, be available or be redeemable at the option of the owner or holder thereof at such times and in such amounts as shall be required to provide moneys to make the payments required to be made from such funds. Written investment instructions shall be given to the Trustee and the Custodian by a Town Representative.

The Trustee shall evaluate on a semi-annual basis (initially, ten days prior to the first Interest Payment Date applicable to a Series of Bonds) Permitted Investments in the Debt Service Reserve Fund, if any, established by this Ordinance and promptly send written notice of such valuation to the Town within ten days of such valuation. Until changed pursuant to written instructions from the Town, such valuation shall be made not less than two times each calendar year. The Trustee shall provide written notice to the Town of any deficiency in the amount, if any, on deposit in the Debt Service Reserve Funds. Where the amount that exists in the Debt Service Reserve Funds is less than the applicable Reserve Fund Requirement on the date of valuation by the Trustee, any moneys received by the Trustee and designated by the Town Representative as a payment made pursuant to Section 6.7(d) hereof shall be deposited in the applicable Debt Service Reserve Fund. Deficiencies in the amount on deposit in the Debt Service Reserve Funds resulting from a decline in market value shall be restored no later than the next succeeding valuation date.

The value of Permitted Investments shall be determined by the Trustee or the Custodian or other depository at the market value or the amortized cost thereof, whichever is lower, exclusive of accrued interest, provided, however, Permitted Investments in any Debt Service Reserve Fund shall be valued at the original cost thereof.

The Trustee may conclusively rely upon the Town's written instructions as to both the suitability and legality of the directed investments. In the absence of written investment instructions from the Town, the Trustee shall not be responsible or liable for keeping the moneys held by it hereunder fully invested in Permitted Investments. The Trustee may make any and all such investments through its own investment department or that of its affiliates or subsidiaries, and may charge its ordinary and customary fees for such trades. Broker confirmations of investments are not required to be issued by the Trustee to the Town for each month in which a monthly statement is rendered. No statement need be rendered for any fund or account if no activity occurred in such fund or account during such month. The Trustee shall not be accountable or liable for any depreciation in the value of any investments in any Funds or for any losses incurred upon the disposition thereof.

Notwithstanding anything contained herein to the contrary, the Trustee shall have no obligation to enter into any investment contract, forward delivery investment agreement, repurchase agreement contract or any similar agreements with respect to the investment of any monies held under the Ordinance unless (i) such agreement is in form and content reasonably acceptable to the Trustee in the course of ordinary business practice, (ii) any liability of the

Trustee under such agreement is limited to loss occasioned by the gross negligence or willful misconduct of the Trustee, (iii) the Trustee is not liable under any circumstances for any termination or similar amount under such agreement; and (iv) the Town pays to the Trustee such fees and expenses as established by the Trustee from time to time.

Except as otherwise provided herein, all interest earnings on amounts in the Beach Preservation Fee Fund when realized shall be considered Beach Preservation Fees.

[End of Article VI]

ARTICLE VII

COVENANTS

Section 7.1. Pledge of Beach Preservation Fees for Payment of Bonds. The Town will not issue any obligations, the payment of which shall have any pledge of the Beach Preservation Fees prior or superior to the pledge thereof for the payment of the Bonds. In order to insure that the Town shall at all times required hereby have sufficient moneys available to pay Fee Payments under the 2006 Installment Sale Agreement, to deposit amounts, when and as required, into the respective Debt Service Funds and Debt Service Reserve Funds established for a Series of Bonds, to provide for payment of interest on amounts advanced pursuant to Section 6.7 and to provide for payment of Junior Bonds (all as described in Section 6.2 hereof), the Town covenants and agrees that it shall not at any time while any Bonds are outstanding reduce the amounts assessed for Beach Preservation Fees to a level not sufficient to permit the Town to discharge its obligations hereunder or otherwise require or permit Beach Preservation Fees (whether through a subsequent amendment of the Beach Preservation Fee Ordinance or otherwise) to be used or set aside except pursuant to or as permitted by Section 6.2 hereof.

Section 7.2 Covenant with Respect to 2006 Certificates. On and after the date of delivery of the Series 2011 Bonds issued pursuant to this Ordinance and the First Supplemental Ordinance, the Town covenants, agrees and confirms for the benefit of the Holders of the Bonds that it will not make any pledge of Beach Preservation Fees for the payment of Other Obligations (as defined in the 2006 Installment Sale Agreement) which are on a parity with the 2006 Certificates or any Additional Certificates (as defined in the 2006 Trust Agreement).

Section 7.3. To Pay Principal, Premium, and Interest on the Bonds. The Town covenants and agrees to punctually pay, or cause to be paid, out of the Beach Preservation Fees pledged to such payment in Article VI hereof, the principal of, redemption premium, if any, and the interest on each and every Bond issued under the provisions of this Ordinance, at the place, on the dates and in the manner provided herein.

Section 7.4. Records, Accounts and Audits. The Town covenants and agrees to keep proper books of records and accounts (separate from all other records and accounts), in which complete and correct entries shall be made of all transactions relating to the Beach Preservation Fees. Such records shall be kept in accordance with the standards from time to time prescribed by the Governmental Accounting Standards Board or its successor. The Town will cause to be furnished to any Holder of any of the Bonds, who makes written request therefor, copies of financial statements certified by an Accountant. The Trustee shall not be responsible for obtaining audits of the Town. Additionally, the Trustee shall have no duty to review or analyze any financial statements delivered to it hereunder and shall hold such financial statements solely as a repository for the benefit of the Bondholders; the Trustee shall not be deemed to have notice of any information contained therein or Event of Default which may be disclosed therein in any manner.

[End of Article VII]

ARTICLE VIII

TRUSTEE; CUSTODIANS

Section 8.1. Trustee. The Council hereby designates Wells Fargo Bank, N.A. as Trustee under this Ordinance. On or prior to the delivery of the initial Series of Bonds, the Trustee shall signify its acceptance of the powers, duties and obligations conferred and imposed upon it by the Ordinance by executing and delivering to the Town a written instrument of acceptance.

The Trustee shall (a) prior to the occurrence of an Event of Default of which the Trustee has actual knowledge, and after the curing of all Events of Default which may have occurred, perform such duties and obligations as are specifically set forth in the Ordinance, and no implied covenants or obligations shall be read into the Ordinance against the Trustee, and (b) during the existence of any Event of Default of which the Trustee has actual knowledge (which has not been cured or waived) exercise the rights and powers vested in it by the Ordinance and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

No provisions of the Ordinance shall be construed to relieve the Trustee from liability for its own negligence, intentionally wrongful action or failure to act.

At all times, (1) the Trustee shall not be liable for any error of judgment made in good faith by an officer or employee of the Trustee unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; (2) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a majority (or such lesser percentage as is specifically required or permitted by this Ordinance) in the aggregate principal amount of the Bonds at the time Outstanding relating to the time, method and place of conducting a proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under the Ordinance; (3) in the administration of the trusts of this Ordinance, the Trustee may execute any of the trusts or powers hereof directly or through its agents or attorneys. The Trustee may consult with counsel and the opinion or advice of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel.

The Trustee may conclusively rely upon the authenticity of, and the truth of the statements and the correctness of the opinions expressed in, and shall be fully protected in acting upon any notice, Ordinance, request, consent order, certificate, report, opinion, note, or other paper or document furnished to it pursuant to any provision of this Ordinance, believed by it to be genuine and to have been signed and presented by the proper party.

The Trustee shall not be required to take notice or be deemed to have notice or actual knowledge of any Event of Default specified in Article X hereof other than a payment default under Sections 10.1.A or 10.1.B unless the Trustee shall receive from the Town or the registered

owner of any Bond written notice stating that an Event of Default hereunder has occurred and specifying the same, and, in the absence of such notice, the Trustee may conclusively assume that there is no such Event of Default.

The Trustee shall be entitled to payment of and reimbursement by the Town for reasonable fees for its services rendered hereunder and all advances and counsel fees, costs and expenses, reasonably and necessarily made or incurred by the Trustee in connection with such services. Additionally, the Town shall pay the Trustee for any extraordinary services or extraordinary expenses performed or incurred by the Trustee in connection with its duties under this Ordinance or any Supplemental Ordinance if notified in writing prior to the performance of those services or the incurring of those expenses so as to allow the Town to appropriate sufficient funds for their payment.

The Trustee shall not, in any event, be required to take, defend, or appear in any legal action or proceeding hereunder or to exercise any of the trusts or powers hereof unless it shall first be adequately indemnified to its satisfaction against the costs, expenses, and liabilities which may be incurred thereby. Every provision of the Ordinance relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions hereof.

The Trustee shall not be accountable for the use or application by the Town of any of the Bonds or the proceeds thereof or for the use or application of any money paid over by the Trustee in accordance with the provisions of this Ordinance or any Supplemental Ordinance. The permissive right of the Trustee to do things enumerated in this Ordinance or any Supplemental Ordinance shall not be construed as a duty and the Trustee shall not be answerable for other than its negligence or willful default. The Trustee shall have no responsibility with respect to any information, statement or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to any Bonds and shall have no responsibility for compliance with any state or federal securities laws in connection with any Bonds.

None of the provisions of this Ordinance or any Supplemental Ordinance shall require the Trustee to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it.

The Trustee shall not be responsible or liable for any failure or delay in the performance of its obligation under this Ordinance or any Supplemental Ordinance arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; hurricanes or other storms; wars; terrorism; similar military disturbances; sabotage; epidemic; riots; interruptions; loss or malfunctions of utilities, computer (hardware or software) or communications services; accidents; labor disputes; acts of civil or military authority or governmental action; it being understood that the Trustee shall use commercially reasonable efforts which are consistent with accepted practices in the

banking industry to resume performance as soon as reasonably practicable under the circumstances.

The Trustee is not required to make any inquiry or investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, approval, bond, debenture or other paper or document but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit and, if the Trustee determines to make such further inquiry or investigation, it is entitled to examine the books, records and premises of the Issuer and the Borrower, in person or by agent or attorney.

In the event the Trustee receives inconsistent or conflicting requests and indemnity from two or more groups of holders of Bonds, each representing less than a majority in aggregate principal amount of the Bonds Outstanding, pursuant to the provisions of this Ordinance, the Trustee, in its sole discretion, may determine what action, if any, shall be taken.

The Trustee shall not be (i) required to hold any policies of insurance, (ii) responsible for the filing of any documents, security agreements or financing statements regarding the creation or perfection of any interest in the Beach Preservation Fees or other security for the Bonds; and (iii) responsible for any information contained in any financing statements.

The Trustee's immunities and protections from liability in connection with the performance of its duties under this Ordinance shall extend to the Trustee's officers, directors, agents, attorneys and employees. Such immunities and protections, together with the Trustee's right to compensation, shall survive the Trustee's resignation or removal, the defeasance or discharge of this Ordinance and final payment of the Bonds.

The Trustee makes no representations as to the value, condition or sufficiency of any assets pledged or assigned as security for the Bonds, the right, title or interest of the Town therein, the security provided thereby or by the Ordinance or the tax-exempt status of the Bonds.

The Trustee may rely and is protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, approval, bond, debenture or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

Any request, direction, order or demand of the Town under this the Ordinance shall be sufficiently evidenced by a certificate of the Town Representative (unless other evidence thereof is specifically prescribed).

Whenever in the administration of the Ordinance the Trustee deems it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence thereof is specifically prescribed) may, in the absence of bad faith on its part, rely upon a certificate of the Town Representative.

The Trustee may in all cases pay such reasonable compensation as it deems proper to all agents, attorneys and receivers reasonably employed or retained by it, and the Trustee shall not be responsible for any misconduct or negligence of any agent, attorney or receiver appointed with due care by it.

The Trustee, in its commercial banking or in any other capacity, may in good faith buy, sell, own, hold and deal in any of the Bonds and may join in any action which any Bondholder may be entitled to take with like effect as if it were not Trustee. The Trustee, in its commercial banking or in any other capacity, may also engage in or be interested in any financial or other transaction with the Town and may act as depository, trustee or agent for any committee of Bondholders secured hereby or other obligations of the Issuer as freely as if it were not Trustee. The provisions of this Section shall extend to affiliates of the Trustee.

Whether or not expressly so provided, every provision of the Ordinance relating to the conduct or affecting the liability of or affording protection to the Trustee is subject to the provisions of this Article.

Section 8.2. Resignation of Trustee. The Trustee may resign at any time by giving 30 days written notice to the Town and by giving notice to the registered owners of the Bonds by publication of such resignation. No resignation will become effective until a successor Trustee has been appointed and accepts such appointment as provided below. Upon receiving notice of resignation, the Town shall promptly appoint such successor Trustee by an instrument in writing. In the event a successor Trustee has not been appointed within 60 days of the date notice of resignation is given, the Trustee, at the Town's expense, may apply to any court of competent jurisdiction for the appointment of a successor Trustee to act until such time as a successor is appointed as provided in this Section.

Unless otherwise ordered by a court or regulatory body having competent jurisdiction, or unless required by law, any successor Trustee shall, if there is such an institution willing, qualified and able to accept the trust upon reasonable or customary terms, be a bank, bank holding company or trust company or wholly-owned subsidiary of a bank holding company or trust company in good standing, qualified to act hereunder, and having a capital and earned surplus of not less than \$75,000,000.

Any successor Trustee appointed as provided in this section, shall execute, acknowledge and deliver to the Town and its predecessor Trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts, duties and obligations of its predecessor of the trust hereunder. Upon the request of any such successor Trustee, the Town shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and duties. Upon acceptance of appointment by a successor Trustee, the Town shall notify the registered owner of each Bond then Outstanding by first-class mail, postage prepaid.

The predecessor Trustee shall execute any and all documents reasonably necessary or appropriate to convey all interest it may have to the successor Trustee. The predecessor Trustee shall promptly transfer all funds to the successor Trustee and deliver all records relating to the trust or copies thereof and communicate all material information it may have obtained concerning the trust to the successor Trustee.

Any corporation or association into which the Trustee may be merged or with which it may be consolidated, or any corporation or association resulting from any merger, or any corporation or association succeeding to the business or substantially all of the business of the Trustee, shall be the successor of the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto.

Each, every and all funds and accounts held by the Trustee shall be impressed with a trust for the benefit of the registered owners of the Bonds, under the provisions of this Ordinance and of the Bond Act.

Section 8.3. Removal of Trustee. Upon 30 days written notice, the Town, at its sole discretion, provided that an Event of Default shall not have occurred and be continuing, may remove the Trustee. The removal of the Trustee under this Section 8.3 shall not be effective until a successor Trustee has been appointed and has accepted the duties of Trustee.

The Holders of a majority in aggregate principal amount of the Bonds at the time outstanding may, upon 30 days written notice to the Trustee and the Town, remove the Trustee and appoint a successor Trustee by instrument or instruments in writing signed by such Holders of the Bonds.

Section 8.4. Custodians. The Construction Fund shall at the option of the Town be held by a bank, a trust company, a national banking association or a national association as Custodian under this Ordinance or a Supplemental Ordinance.

Section 8.5. Duties and Obligations of Trustee and Custodians. The recitals of fact made in the Ordinance and in the Bonds shall be taken as statements of the Town, and neither the Trustee nor Custodian shall be deemed to have made any representation as to the correctness of the same. Nor shall the Trustee or any Custodian be deemed to have made any representation whatsoever as to the validity or sufficiency of the Ordinance or of the Bonds issued hereunder. Nor shall the Trustee or any Custodian be under any responsibility or duty with respect to the issuance of the Bonds or the application of the proceeds thereof, except to the extent provided for herein, or in a Supplemental Ordinance. Nor shall the Trustee or any Custodian be under any obligation or duty to perform any act which would involve it in expense or liability or to institute or defend any suit in response to the Ordinance, or to the Bonds issued hereunder, or to advance any of its own moneys, unless properly indemnified to its satisfaction. Nor shall the Trustee or any Custodian be liable in connection with the performance of its duties hereunder, except for its own negligence or default.

Section 8.6. Trustee and Custodians Protected in Relying upon Ordinances, etc. The Trustee and all Custodians shall at all times be protected in acting upon any notice, ordinance, request, consent, order, certificate, statement, opinion, bond, or other paper or document believed to be genuine and to have been signed by the proper party or parties.

ARTICLE IX

AMENDMENTS OR SUPPLEMENTS TO THIS ORDINANCE

Section 9.1. Amendments or Supplements to Ordinance. The Town shall not amend this Ordinance except in accordance with the provisions of this Article.

A. The Town may, from time to time and without the consent of any Holder of the Bonds enact an ordinance amendatory hereof or supplemental hereto for the purpose of (a) providing for the issuance of Bonds pursuant to the provisions of Article III hereof, or (b) (i) making any amendments or modifications hereto which may be required to permit this Ordinance to be qualified under the Trust Indenture Act of 1939, as amended; (ii) making any modification or amendment to this Ordinance not inconsistent herewith required for the correction of language or to cure any ambiguity or defective provisions, omission, mistake or manifest error herein contained; (iii) making any amendments or supplements hereto to grant to or confer upon the Holders additional rights, remedies, power and authority, or to grant to or confer upon any Holders, committee or trustee for the Holders any additional rights, power or authority; or (iv) to add to the security of the Holders of the Bonds.

B. From time to time the Holders of 66-2/3% in principal amount of the Bonds then Outstanding, by an instrument or instruments in writing signed by such Holders and filed with the Town and the Trustee, shall have power to assent to and authorize any modification or amendment to the provisions of this Ordinance that may be proposed by the Town or of the rights and obligations of the Town and of the Holders of Bonds issued hereunder. Any action herein authorized to be taken with the assent and authority given as aforesaid of the Holders of at least 66-2/3% in principal amount of the Bonds at the time Outstanding shall be effective and binding upon all of the Holders of Bonds Outstanding and upon the Town as fully as though such action were specifically and expressly authorized by the terms of this Ordinance; provided always, that without the consent of the Holder of each Bond affected thereby, no such modification shall be made which will (a) extend the time of payment of principal of or the interest on any Bond, or reduce the principal amount thereof or the rate of interest thereon or the premium payable upon the redemption thereof, or (b) give to any Bond or Bonds any preference over any other Bond or Bonds, or (c) authorize the creation of any pledge prior to or, except as provided herein for the issuance of Series of Bonds, on a parity with the pledge afforded by this Ordinance, or (d) reduce the percentage in principal amount of the Bonds required to assent to or authorize any such modification to this Ordinance. For the purpose of computations required by this paragraph, Bonds directly or indirectly owned or controlled by the Town shall be disregarded.

Any modification or amendment or supplement to the provisions of this Ordinance or of any Supplemental Ordinance supplemental hereto shall be set forth in an ordinance to be enacted by the Town.

The Trustee is hereby authorized to accept the delivery of a certified copy of any amendatory or supplemental ordinance referred to and permitted or authorized by this

Section 9.1 and to make all further agreements and stipulations which may be therein contained, and the Trustee, in accepting such ordinance and taking such action, shall receive and be fully protected in relying on an opinion of counsel (which may be an opinion of counsel to the Town) that such amendatory or supplemental ordinance is authorized or permitted by the provisions of this Ordinance. No such amendatory or supplemental ordinance shall change or modify any of the rights or obligations of the Trustee without its written assent thereto.

[End of Article IX]

ARTICLE X

EVENTS OF DEFAULT

Section 10.1. Events of Default. With respect to the Bonds, the following shall constitute “Events of Default”:

A. An Event of Default (as defined in the 2006 Installment Sale Agreement) under Section 7.1(a) of the 2006 Installment Sale Agreement has occurred and is continuing.

B. If payment of the principal of any Bond, whether at maturity or by proceedings for redemption, or upon mandatory sinking fund redemption, or by declaration as provided in Section 11.1 hereof, or otherwise, is not made by the Town after the same has become due and payable; or

C. If payment of any installment of interest on any Bond is not made by the Town as the same becomes due and payable; or

D. If the Town shall fail in the due and punctual performance of any of the covenants, conditions, agreements and provisions contained in the Bonds or in this Ordinance or in any Supplemental Ordinance on the part of the Town to be performed, and such failure continues for 90 days after written notice specifying such failure and requiring the same to be remedied has been given to the Town by the Trustee, or the Holders of not less than 20% in principal amount of the Bonds then Outstanding or any trustee or committee therefor; or

E. If any proceedings are instituted, with the consent or acquiescence of the Town, for the purpose of effecting a composition between the Town and its creditors and if the claim of such creditors is in any circumstance payable from any of the Beach Preservation Fees or any other moneys pledged and charged in this Ordinance or any Supplemental Ordinance for the payment of the Bonds, or any such proceedings are instituted for the purpose of adjusting the claims of such creditors, pursuant to any federal or State statute now or hereafter enacted; or

F. If the Town is for any reason rendered incapable of fulfilling its obligations hereunder in any material respect.

Subject to the provisions, limitations and conditions of Sections 11.1 and 11.2 hereof, insofar as the remedies provided in said provisions are concerned, nothing in Section 11.3 hereof or in this Article, and particularly nothing in subparagraph C of this Section 10.1, shall prohibit or limit, or be construed as prohibiting or limiting any Holder of a Bond from enforcing the duties of the Town, or any of the officers thereof, under any provisions of this Ordinance (including, without limiting the generality of the foregoing, the duties imposed by or referred to in Section 11.3 hereof) by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction, even though the failure of the Town or any of the officers thereof to perform any such duty may not then constitute an “Event of Default” as defined in this Article.

[End of Article X]

ARTICLE XI

REMEDIES UPON EVENT OF DEFAULT

Section 11.1 Declaration of Principal and Interest as Due. Upon the occurrence of an Event of Default, and at any time thereafter while such Event of Default continues, then and in each and every case the Trustee in its own name and as trustee of an express trust, on behalf and for the benefit and protection of the Holders of all Outstanding Bonds, may proceed, and upon the written request of the Holders of not less than 25% in principal amount of the Bonds then Outstanding, shall proceed to declare the principal of all Bonds then Outstanding, together with all accrued and unpaid interest thereon, if not already due, to be due and payable immediately, and upon any such declaration the same shall become and be due and payable immediately. This provision is also subject, however, to the condition that, if at any time after the principal of the Bonds, together with the accrued and unpaid interest thereon and other moneys secured hereby, have been so declared due and payable and before any further action has been taken (other than the making of the above declaration), the principal amount of all Bonds which have matured either according to the maturity date or dates otherwise specified therein (except as a result of such declaration) and all arrears of interest upon all Bonds, except interest accrued but not yet due on said Bonds, have been paid or caused to be paid, and all other Events of Default, if any, which have occurred have been remedied, cured or secured, then and in each and every such case the Holders of 25% in principal amount of the Bonds then Outstanding, by notice in writing delivered to the Trustee and the Town, may waive such Default and its consequences and rescind and annul such declaration. No such waiver or rescission or annulment shall extend to or affect any subsequent default or impair or exhaust any right or power related to such subsequent Default.

Section 11.2. Suits at Law or in Equity and Mandamus. In case any one or more of the Events of Default shall happen and be continuing, then and in every such case, but subject to the provisions, limitations and conditions of Section 11.1 hereof so far as the remedies provided in said provisions are concerned, the Holder of any Bond at the time Outstanding, or Trustee therefor, may, for the equal benefit and protection of all Holders of the Bonds similarly situated,

(a) by mandamus or other suit, action or proceedings at law or in the equity, enforce such Bondholder's right against the Town and require and compel the Town to perform and carry out its duties and obligations under the Bond Act and this Ordinance, and to perform and carry out its covenants and agreements with the Bondholders;

(b) by action or suit in equity require the Town to account as if such Town were the trustee of an express trust;

(c) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Bondholders; or

(d) bring suit upon the Bonds.

Section 11.3. Remedies Not Exclusive; Effect of Waiver of Default; Effect of Abandonment of Proceedings or Adverse Determination. The Holders from time to time of the Bonds shall be entitled to all the remedies and benefits of this Ordinance as are and as shall be provided by law, and, subject to the provisions of Sections 11.1 and 11.2 hereof, nothing herein shall be construed to limit the rights or remedies of any such Holders under any applicable statute that may now exist or be enacted thereafter. No remedy conferred by the Bond Act and this Article upon any Holder of any Bond is intended to be exclusive of any other remedy. Each and every such remedy shall be cumulative and shall be in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred by the Bond Act and this Article or by any other law now or hereafter existing. Every substantive right and remedy conferred upon the Holders of the Bonds may be enforced and exercised from time to time and as often as may be deemed expedient.

No waiver of any default or breach of duty or contract by any Holder of any Bond shall extend to or affect any subsequent default or breach of duty or contract, or shall impair any rights or remedies thereon. No delay or omission of any Holder of a Bond to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein.

In case any suit, action or proceeding to enforce any right or exercise any remedy shall be brought or taken and then discontinued or abandoned, or shall be determined adversely to Holders of the Bonds then and in every such case, the Town and such Holders shall be restored to their former positions and rights and remedies as if no suit, action or proceeding had been brought or taken.

When the Trustee incurs costs or expenses (including legal fees, costs and expenses) or renders services after the occurrence of an Event of Default, such costs and expenses and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law.

Section 11.4. Restrictions on Bondholder's Action.

A. No Holder of any Bond shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of any provision of this Ordinance or the execution of any trust under this Ordinance or for any remedy under this Ordinance unless such Holder shall have previously given to the Trustee written notice of the happening of an Event of Default and the Holders of at least twenty-five percent (25%) in principal amount of the Bonds then Outstanding shall have filed a written request with the Trustee and shall have offered the Trustee reasonable opportunity, either to exercise the powers granted in this Ordinance or by the laws of the State or to institute such action, suit or proceeding in its own name, and unless such Holders shall have offered to the Trustee adequate security and indemnity against the costs, fees (including reasonable attorneys' fees), expenses and liabilities to be incurred therein or thereby, and the Trustee

shall have refused to comply with such request for a period of 60 days after receipt by it of such notice, request an offer of indemnity. No one or more Holders of Bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the pledge created by this Ordinance, or to enforce any right under this Ordinance, except in the manner therein provided. All proceedings at law or in equity to enforce any provision of this Ordinance shall be instituted, had and maintained in the manner provided in this Ordinance and for the equal benefit of all Holders of the Outstanding Bonds.

B. Nothing contained in this Ordinance or in the Bonds contained shall affect or impair the obligation of the Town, which is absolute and unconditional, to pay at the respective dates of maturity and places therein expressed the principal of (and redemption premium, if any) and interest on the Bonds to the respective Holders thereof, or affect or impair the right of action, which is also absolute and unconditional, of any Holder to enforce such payment of his Bond.

Section 11.5. Application of Beach Preservation Fees and Other Moneys After Default. During the continuance of an Event of Default, all moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the costs and expenses of the proceedings resulting in the collection of moneys and of the fees, expenses and advances of, incurred or made by the Trustee with respect thereto, be deposited in the respective Debt Service Funds, and all amounts held by the Trustee hereunder shall be applied as follows (provided if more than one Debt Service Fund has been established, such amounts shall be paid ratably):

A. Unless the principal of all Outstanding Bonds shall have become or have been declared due and payable:

First: To the payment to the persons entitled thereto of all installments of interest then due on the Bonds in the order of maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon to the person entitled thereto, without any discrimination or preference; and

Second: To the payment to the persons entitled thereto of the unpaid principal amounts or redemption premium, if any, of any Bonds which shall have become due (other than Bonds previously called for redemption in accordance with the provisions hereof), whether at maturity or by call for redemption, in the order of their due dates, and if the amounts available shall not be sufficient to pay in full all the Bonds due on any date, then to the payment thereof ratably, according to the principal amounts or redemption premium, if any, due on such date, to the persons entitled thereto, without any discrimination or preference.

B. If the principal amounts of all Outstanding Bonds shall have become or have been declared due and payable, to the payment of the principal amounts and interest then due and unpaid upon the Bonds without preference or priority of principal over interest or of interest over principal,

of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal amounts and interest, to the persons entitled thereto without any discrimination or preference.

C. If the principal amounts of all Outstanding Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article XI, then, subject to the provisions of this Section in the event that the principal amounts of all Outstanding Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of paragraph (A) of this Section.

D. Whenever moneys are to be applied by the Trustee pursuant to the provisions of this Section, such moneys shall be applied by it at such times, and from time to time, as the Trustee shall determine, having due regard for the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such moneys, it shall fix the date (which shall be a Bond payment date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the principal amounts to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the Holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement of any partial payment or for cancellation if fully paid.

Whenever all Bonds and interest thereon have been paid under the provisions of this Section and all expenses and charges of the Trustee have been paid, any balance remaining shall be paid to the person entitled to receive the same; if no other person shall be entitled thereto, then the balance shall be paid to the Town or as a court of competent jurisdiction may direct.

[End of Article XI]

ARTICLE XII

DEFEASANCE

Section 12.1. Defeasance. The obligations of the Town under this Ordinance and the liens, pledges, charges, trusts, covenants and agreements of the Town herein made or provided for, shall be fully discharged and satisfied as to any Bond; and, unless or except as otherwise provided in the Supplemental Ordinance providing for the issuance of any Series of Bonds, such Bond or Series of Bonds shall no longer be deemed to be Outstanding hereunder when:

A. Such Bond or Series of Bonds shall have been purchased by the Town and surrendered to the Town for cancellation or otherwise surrendered to the Town or the Paying Agent, and is canceled or subject to cancellation by the Town or Paying Agent, or

B. Payment of the principal of, redemption premium, if any, and interest on such Bond or Series of Bonds, either (a) shall have been made or caused to be made in accordance with the terms thereof, or (b) shall have been provided for by irrevocably depositing with the Trustee in trust and irrevocably setting aside exclusively for such payment, (i) moneys sufficient to make such payment, or (ii) Government Obligations maturing as to principal and interest in such amounts and at such times as will ensure the availability of sufficient moneys to make such payment, and all necessary and proper fees, compensation and expenses of the Trustee, Paying Agent and the Registrar together with either (i) a verification report, satisfactory to the Trustee, to the effect that such securities and/or cash, together with earnings thereon, will be sufficient to pay interest and principal (and applicable premium, if any) on the Bonds to redemption or maturity or (ii) an opinion of Counsel, satisfactory to the Trustee, to the effect that all conditions precedent to the defeasance of the Bonds have been satisfied; provided however, that no such verification report or opinion shall be required in the event of a gross defeasance (where the cash deposited alone is sufficient to pay the debt service on the Bonds) or a current refunding (where the Bonds are to be redeemed within ninety (90) days of the funding of the escrow). At such time as a Bond or Series of Bonds shall no longer be deemed to be Outstanding hereunder, as aforesaid, such Bond or Series of Bonds shall cease to draw interest from the maturity date or redemption date thereof, and, except for the purposes of any such payment from such moneys or Government Obligations, shall no longer be secured by or entitled to the benefits of this Ordinance.

Any moneys so deposited with the Trustee as provided in this Article may at the written direction of the Town also be invested and reinvested in Government Obligations, maturing in the amounts and times as hereinbefore set forth, and all income from all Government Obligations in the hands of such Trustee which is not required for the payment of the Bonds or Series of Bonds and interest thereon with respect to which such moneys shall have been so deposited, shall be treated as Beach Preservation Fees.

Notwithstanding any provision hereof which may be contrary to the provisions of this Article, all moneys or Government Obligations set aside and held in trust pursuant to the provisions of this Article for the payment of Bonds or Series of Bonds shall be applied to and used solely for

the payment of the particular Bonds or Series of Bonds with respect to which such moneys and Government Obligations have been so set aside in trust.

Any provision hereof to the contrary notwithstanding, if moneys or Government Obligations have been deposited or set aside with the Trustee pursuant to this Article for the payment of the Bonds and such Bonds shall not have in fact been actually paid in full, no amendment to the provisions of this Article shall be made without the consent of the Bondholder of each Bond or Series of Bonds affected thereby.

If moneys or Government Obligations have been deposited with the Trustee pursuant to Section 12.1(B) for payment of less than all Bonds of a Series and maturity, the Bonds of such Series and maturity to be so paid from such deposit shall be selected by the Trustee by lot by such method as shall provide for the selection of portions (in authorized denominations) of the principal of Bonds of such Series and maturity of a denomination larger than the smallest authorized denomination. Such selection shall be made within seven days after the moneys or Government Obligations have been deposited with the Trustee. This selection process shall be in lieu of the selection process otherwise provided with respect to redemption of Bonds in Article V. After such selection is made, Bonds that are to be paid from such deposit (including Bonds issued in exchange for such Bonds pursuant to the transfer or exchange provisions of this Ordinance) shall be identified by a separate CUSIP number or other designation satisfactory to the Trustee. The Town shall provide such CUSIP number or other designation to the Trustee. The Trustee shall notify Bondholders whose Bonds (or portions thereof) have been selected for payment from the moneys or Government Obligations on deposit and shall direct such Bondholders to surrender their Bonds to the Trustee in exchange for Bonds with the appropriate designation. The selection of Bonds for payment from such deposit pursuant to this Section 12.1 shall be conclusive and binding on the Town.

[End of Article XII]

ARTICLE XIII

MISCELLANEOUS

Section 13.1. Benefits of Ordinance Limited to the Town, the Trustee and Holders of the Bonds. With the exception of rights or benefits herein expressly conferred, nothing expressed or mentioned in or to be implied from this Ordinance or the Bonds is intended or should be construed to confer upon or give to any person other than the Town, the Trustee and the Holders of the Bonds, any legal or equitable right, remedy or claim under or by reason of or in respect to this Ordinance or any covenant, condition, stipulation, promise, agreement or provision herein contained. This Ordinance and all of the covenants, conditions, stipulations, promises, agreements and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the Town, the Trustee and the Holders from time to time of the Bonds as herein and therein provided.

Section 13.2. Ordinance Binding Upon Successors or Assigns of the Town. All the terms, provisions, conditions, covenants, warranties and agreements contained in this Ordinance shall be binding upon the successors and assigns of the Town and shall inure to the benefit of the Trustee, its successors or substitutes in trust and assigns, and the Holders of the Bonds.

Section 13.3. No Personal Liability. No recourse shall be had for the enforcement of any obligation, covenant, promise or agreement of the Town contained in this Ordinance or the Bonds, against any member of the Town, any officer or employee, as such, in his or her individual capacity, past, present or future, of the Town, either directly or through the Town, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise. It is expressly agreed and understood that this Ordinance and the Bonds are solely corporate obligations, and that no personal liability whatsoever shall attach to, or be incurred by, any member, officer or employee as such past, present or future, of the Town, either directly or by reason of any of the obligations, covenants, promises, or agreements entered into between the Town and the Trustee or the Bondholder or to be implied therefrom as being supplemental hereto or thereto. All personal liability of that character against every such member, officer and employee is, by the adoption of this Ordinance and the execution of the Bonds, and as a condition of, and as a part of the consideration for, the adoption of this Ordinance and the execution of the Bonds, expressly waived and released. The immunity of members, officers and employees of the Town under the provisions contained in this Section 13.3 shall survive the termination of this Ordinance.

Section 13.4. Effect of Saturdays, Sundays and Legal Holidays. Whenever this Ordinance requires any action to be taken on a Saturday, Sunday, legal holiday or bank holiday in the State of South Carolina, such action shall be taken on the first Business Day occurring thereafter. Whenever in this Ordinance the time within which any action is required to be taken or within which any right will lapse or expire shall terminate on a Saturday, Sunday, legal holiday or bank holiday, in the State, such time shall continue to run until midnight on the succeeding Business Day.

Section 13.5. Partial Invalidity. If any one or more of the covenants or agreements or portions thereof provided in this Ordinance on the part of the Town or the Trustee or any Paying Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant or covenants, or such agreement or agreements, or such portions thereof, shall be deemed severable from the remaining covenants and agreements and portions thereof provided in this Ordinance and the invalidity thereof shall in no way affect the validity of the other provisions of this Ordinance or of the Bonds, but the Holders of the Bonds shall retain all the rights and benefits accorded to them hereunder and under any applicable provisions of law.

If any provisions of this Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because of conflicts with any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstance, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatever.

Section 13.6. Law and Place of Enforcement of Ordinance. This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina without regard to conflict of law principles and all suits and actions arising out of this Ordinance shall be instituted in a court of competent jurisdiction in said State.

Section 13.7. Effect of Article and Section Headings and Table of Contents. The headings or titles of the several Articles and Sections hereof, and any table of contents appended hereto or to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this Ordinance.

Section 13.8. Repeal of Inconsistent Ordinances. All ordinances and resolutions of the Town, and any part of any ordinance or resolution, inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

Section 13.9. Notices. All notices, certificates, or other communications hereunder or under this Ordinance shall be sufficiently given and shall be deemed given when mailed by registered mail, postage prepaid, or given when dispatched by telegram addressed as follows:

If to the Town:

Town of Hilton Head Island, SC
Attention: Town Manager
One Town Center Court
Hilton Head Island, South Carolina 29928

If to the Trustee:

Wells Fargo Bank, N.A.
Attention: Corporate Trust Services
7000 Central Parkway; Suite 550
Atlanta, Georgia 30328

The Town and the Trustee, may, by notice given to the other parties, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 13.10. Codification. This Ordinance shall be forthwith codified in the Code of Town Ordinances in the manner required by law and the name shall be indexed under the general heading “Ordinance – Special Obligation Bonds (Beach Preservation Fee Pledge).”

Section 13.11. Severability. If any sections, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not attest the validity of the remaining portions thereof.

Section 13.12. Effective Date. This Ordinance shall be effective upon its adoption by the Town Council for the Town of Hilton Head Island, South Carolina; provided, however, that it shall not be necessary for the Town to establish the funds and accounts created in Article VI hereof prior to the issuance of any Bonds.

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS _____ DAY OF _____ 2011.

Drew A. Laughlin, Mayor

ATTEST:

Cori Brock, Town Clerk

First Reading: _____
Second Reading: _____

APPROVED AS TO FORM:

Gregory M. Alford, Town Attorney

Introduced by Council Member: _____



MEMORANDUM

TO: Town Council

FROM: Stephen G. Riley, CM, Town Manager

VIA: Susan M. Simmons, CPA, Director of Finance

DATE: August 19, 2011

RE: **Second Reading of Proposed Ordinance No. 2011-20**
First Supplemental Ordinance – Beach Preservation Fee Pledge

Note:

The only change is the deletion of the last sentence in Section 5 made at the request of the McNair Law Firm. The sentence dealt with providing notice of bond redemptions. The deletion has no substantive impact on the ordinance.

Recommendation:

Town Council approves second reading of Proposed Ordinance No. 2011-19 which authorizes the issuance of Special Obligation Bonds – Beach Preservation Fee Pledge in an amount not to exceed \$11,000,000.

Summary:

As you will recall from the last meeting, there are a total of four proposed ordinances – two ordinances each for hospitality and beach preservation. The first for each is the General Bond Ordinance which establishes enabling legislation for revenue bonds but does not authorize a specific bond issue.

The second proposed ordinance for each type is the First Supplemental Ordinance which authorizes a specific debt issue. *This agenda item addresses the First Supplemental Ordinance for Beach Preservation Fees.*

At the first reading, Council requested an update on the financial sustainability of the beach renourishment program. Staff and our consultants believe that this program is still sustainable and provide the information below and in the attachments hereto.

Background:

In this ordinance, staff seeks authority from Council to issue new bonds in an amount not to exceed \$11,000,000 to finance primarily the Port Royal Fill Project and will be used as follows:

1. Port Royal groin construction,
2. Port Royal renourishment,
3. Construction management, inspection, permit compliance, monitoring and similar soft costs associated with the projects, and
4. Costs of issuance, escrow, and reserve funds as applicable.

Note: The outstanding 2006 Beach Preservation Certificates of Participation are not callable; therefore, the Town cannot consider refunding this outstanding balance as contemplated under the similarly proposed hospitality ordinances. This issue will be fully repaid in August, 2014. A new bond issue for the Port Royal Fill Project will be overlapping debt with the 2006 issue until 2014.

In the fall of 2010, Public Facilities and Finance staff along with their respective consultants presented a series of information on this program. At that time, Council authorized staff to continue with the project and financing. Due to delays in permitting and to avoid disrupting the beach during the summer tourist season, construction of the project will not occur until the fall of 2011. Therefore, the financing of this project was delayed pending the need for these funds.

One document presented in the fall was a historical and projected financial position by fiscal year which presented the financial sustainability of the beach renourishment program. At Council's request, we have attached an updated version which demonstrates that the beach renourishment program remains sustainable.

Beach Preservation Fee Fund Analysis

	<u>Revenues</u>	<u>Expenditures and Transfers</u>				<u>Fund</u>
	Total	Trans to GF	Trans to CP	Trans to DS	Total	Balance
2003	3,501,705	670,000	418,541	-	1,088,541	6,890,895
2004	3,809,734	703,500	857,783	-	1,561,283	9,139,346
2005	4,158,325	738,680	1,550,128	-	2,288,808	11,008,863
2006	4,907,284	775,610	807,011	-	1,582,621	14,333,526
2007	5,172,396	855,360	1,823,113	363,142	3,041,615	16,464,307
2008	5,184,741	855,113	908,643	2,851,107	4,614,863	17,034,185
2009	4,504,496	1,355,946	1,492,156	<i>a</i> 2,676,584	5,524,686	16,013,995
2010	3,996,569	1,315,746	1,202,029	<i>a</i> 2,812,310	5,330,085	14,680,479
Update	4,153,770 <i>b</i>	1,315,746	1,541,701 <i>a,b</i>	2,812,310	5,669,757	14,497,979 <i>b</i>
2011	4,179,749	1,232,061 <i>c</i>	615,696 <i>e</i>	2,828,150	4,675,907	14,184,321
<i>Update Prelim, Unaudited</i>	4,852,570 <i>d</i>	1,120,985 <i>d</i>	509,299 <i>e</i>	2,785,750	4,416,034	14,934,515
2012	4,215,117	1,256,702	628,010	3,387,521	5,272,233	13,127,205
Update	4,467,277 <i>f</i>	969,390 <i>f</i>	476,000	2,788,550	4,233,940	15,167,852

NOTE: The fund balance column includes the \$12,000,000 beach disaster reserve account.

a To illustrate a clearer presentation of year-to-year costs, these transfers are presented based on when the expenditure incurred (vs. the CAFR reporting date) for Coligny Park. The Town changed the funding source for Coligny from Beach to TIF.

b Final FY10 revenues and transfers to CIP changed modestly with the final accruals and audit. The Fall 2010 amounts were pre-close and pre-audit.

c Staff reduced the transfers to the General Fund by \$500,000 as reported in the FY12 budget hearings.

d Revenues increased for the year in general; however, 2/3 of the online travel compancy settlement is included here. Likewise 2/3 of the related legal fees are included in the transfer to General Fund. Otherwise, the transfer would have been \$978,080.

e At Council's request staff undertook measures to control the transfers to the Capital Projects Fund during non-renourishment periods.

f The FY12 reductions in revenues and expenditures are due to one-time online travel settlement in FY11.

With costs of the Port Royal Fill project now expected to be significantly less and transfers to General Fund reduced ~\$500,000 per year, the beach renourishment program is still clearly sustainable. Over twenty years, the savings would be ~\$10 million for the transfers and approximately \$2 million for the current project. Total revenue projections have improved with an increase in the tax despite a projected decrease in interest.

The analysis for the remaining years will not be prepared as the sustainability was shown in the updates above. Revised project costs will result in new debt service projections that have not yet been determined.

2013	4,298,231	1,281,836	640,570	3,340,017	5,262,423	12,163,012
2014	4,384,429	1,307,473	653,382	3,415,746	5,376,600	11,170,841
2015	4,472,552	1,333,622	666,449	3,465,118	5,465,190	10,178,203
2016	4,562,925	1,360,295	679,778	3,596,742	5,636,815	9,104,313
2017	4,654,792	1,387,501	693,374	3,668,377	5,749,251	8,009,854
2018	4,748,814	1,415,251	707,241	3,248,504	5,370,996	7,387,672
2019	4,849,972	1,443,556	721,386	3,243,500	5,408,442	6,829,202
2020	4,954,238	1,472,427	735,814	3,237,300	5,445,541	6,337,899
2021	5,061,702	1,501,875	750,530	3,236,900	5,489,305	5,910,296
2022	5,172,387	1,531,913	765,541	3,237,000	5,534,453	5,548,229
2023	5,286,372	1,562,551	780,851	3,232,500	5,575,903	5,258,699
2024	5,403,787	1,593,802	796,468	3,228,300	5,618,571	5,043,915
2025	5,524,717	1,625,678	812,398	3,250,000	5,688,076	4,880,556
2026	5,648,992	1,658,192	828,646	3,246,700	5,733,538	4,796,010
2027	5,776,950	1,691,356	845,219	3,244,500	5,781,074	4,791,886
2028	5,908,676	1,725,183	862,123	3,243,200	5,830,506	4,870,056
2029	6,044,255	1,759,686	879,366	3,242,600	5,881,652	5,032,659
2030	6,183,779	1,794,880	896,953	3,242,500	5,934,333	5,282,105
2031	6,327,343	1,830,778	914,892	3,237,800	5,983,470	5,625,978
2032	6,475,095	1,867,393	933,190	3,233,400	6,033,983	6,067,091

g Also, the reserve fund for the 2006 bonds will be liquidated to use for debt service on the new bonds.

h h Last fall, we projected that fund balance would decrease to it lowest point in FY2027 at \$4,791,886. FEMA provides funding to governments which demonstrate on ongoing renourishment program. With this balance, the Town would be able to provide a required FEMA match of 0-25% in the event of a disaster thereby maintaining a sustainable renourishment program.

FIRST SUPPLEMENTAL ORDINANCE

PROVIDING FOR THE ISSUANCE AND SALE OF TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, SPECIAL OBLIGATION BONDS (BEACH PRESERVATION FEE PLEDGE), IN ONE OR MORE SERIES, IN THE PRINCIPAL AMOUNT OF NOT EXCEEDING \$11,000,000; DELEGATING THE AUTHORITY TO THE TOWN MANAGER TO DETERMINE CERTAIN MATTERS WITH RESPECT TO THE BONDS; PRESCRIBING THE FORM AND DETAILS OF SUCH BONDS; OTHER MATTERS RELATING THERETO; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Town Council (the “Council”) of the Town of Hilton Head Island, South Carolina (the “Town”), enacted an Ordinance (the “General Bond Ordinance”) on the date hereof to authorize generally the issuance of Bonds (as defined in the General Bond Ordinance); and

WHEREAS, pursuant to the General Bond Ordinance, the Bonds are payable from and secured by a pledge of Beach Preservation Fees (as defined in the General Bond Ordinance), which pledge is junior and subordinate to the pledge of Beach Preservation Fees securing the Town’s obligation to pay Base Fee Payments and Additional Fee Payments (as such terms are defined in the Installment Sale Agreement) dated as of August 1, 2006 (the “2006 Installment Sale Agreement”) between the Town and Hilton Head Island Public Facilities Corporation, an instrumentality of the Town (the “Corporation”) under the 2006 Installment Sale Agreement; and

WHEREAS, the Town is presently contemplating the undertaking of the New Projects (as defined herein); and

WHEREAS, the Town desires to issue not exceeding \$11,000,000 principal amount of its Special Obligation Bonds (Beach Preservation Fee Pledge), in one or more series (the “New Bonds”) to finance, among other things, the Costs of Acquisition and Construction of the New Projects; and

WHEREAS, the Council has been advised that in order to finance the New Projects, the Council must enact an appropriate ordinance supplemental to the General Bond Ordinance authorizing the issuance of the New Bonds.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AND IT IS ORDERED AND ORDAINED BY SAID AUTHORITY OF COUNCIL:

Section 1. Definitions. The terms in this Section 1 and all words and terms defined in the General Bond Ordinance (such General Bond Ordinance as from time to time amended or supplemented by Supplemental Ordinances being defined in the Ordinance as the "Ordinance") (except as herein otherwise expressly provided or unless the context otherwise requires), shall for all purposes of this First Supplemental Ordinance have the respective meanings given to them in the Ordinance and in Section 1 hereof.

“2006 Certificates” shall mean the \$19,000,000 original principal amount Hilton Head Island Public Facilities Corporation, Certificates of Participation Evidencing Undivided Proportionate Interests in Base Fee Payments under an Installment Sale Agreement (Beach Preservation Fee Pledge), Series 2006, dated August 1, 2006, and outstanding as of the date hereof in the principal amount of \$7,795,000.

“Beneficial Owner” shall mean any purchaser who acquires beneficial ownership interest in any Initial Bond held by the Depository. In determining any Beneficial Owner the Town, the Trustee, the Registrar and the Paying Agent may rely exclusively upon written representations made and information given to the Town, the Trustee, the Registrar and the Paying Agent, as the case may be, by the Depository or its Participants with respect to any New Bond held by the Depository or its Participants in which a beneficial ownership interest is claimed.

“Bond Purchase Agreement” shall mean one or more Bond Purchase Agreements relating to the sale of the New Bonds, to be dated the date of execution and delivery thereof between the Underwriter and the Town, as amended or supplemented thereto.

“Book-Entry Form” or “Book-Entry System” shall mean with respect to the New Bonds, a form or system, as applicable, under which (a) the ownership of beneficial interests in the New Bonds may be transferred only through a book-entry and (b) physical bond certificates in fully registered form are registered only in the name of a Depository or its nominee as Holder, with the physical bond certificates “immobilized” in the custody of the Depository. The book-entry maintained by the Depository is the record that identifies the owners of participatory interests in the New Bonds, when subject to the Book-Entry System.

“Business Day” shall mean, with respect to the New Bonds issued pursuant to this First Supplemental Ordinance, any day other than a Saturday, a Sunday or a day which shall be in the State or the state in which the respective office of the Trustee, the Paying Agent and the Registrar is located a legal holiday or a day on which banking institutions are authorized by law or executive order to close.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Continuing Disclosure Certificate” shall have the meaning given that term in Section 14 hereof.

“Depository” shall mean any securities depository that is a “clearing corporation” within the meaning of the New York Uniform Commercial Code and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, as amended, operating and maintaining, with its participants or otherwise, a Book-Entry System to record ownership of beneficial interests in the New Bonds, and to effect transfers of the New Bonds, in Book-Entry Form, and includes and means initially The Depository Trust Company (a limited-purpose trust company), New York, New York.

“First Supplemental Ordinance” shall mean shall mean this Ordinance enacted by the Town Council authorizing the New Bonds.

“General Bond Ordinance” shall mean an Ordinance duly enacted by the Town Council on the date hereof, authorizing the issuance from time to time of Bonds.

“Initial Bonds” shall mean the New Bonds initially issued in Book-Entry Form as provided in Section 4 hereof.

“Interest Payment Date” shall mean any February 1 and August 1 of each year, commencing February 1, 2012, or such other date as the Town Manager may determine pursuant to Section 11 hereof.

“New Bonds” shall mean the Town of Hilton Head Island, South Carolina, Special Obligation Bonds (Beach Preservation Fee Pledge), issuable in one or more series, in the aggregate principal amount of not exceeding \$11,000,000 authorized to be issued hereunder.

“New Projects” shall mean, collectively, the Projects to be financed with the proceeds of the New Bonds, including projects located at Port Royal, and such other projects as may be approved by the Town Manager and permitted by the Beach Preservation Fee Ordinance.

“Paying Agent” shall mean Wells Fargo Bank, N.A., as Paying Agent for the New Bonds.

“Principal Payment Date” shall have the meaning given to such term in Section 3(a).

“Registrar” shall mean Wells Fargo Bank, N.A., as Registrar for the New Bonds.

“Series Construction Fund” shall mean one or more Funds established pursuant to Section 9 hereof into which a portion of the proceeds of a Series of the New Bonds will be deposited and from which such proceeds will be disbursed to pay the Costs of Acquisition and Construction of the New Projects (including the Costs of Issuance). Pursuant to Section 9, each Series Construction Fund shall be further identified or designated to relate to the specific Series of the New Bonds issued hereunder.

“Series Debt Service Fund” shall mean one or more Funds established pursuant to Section 7 hereof to provide for the payment of the principal of and interest on the Series of the New Bonds related thereto. Pursuant to Section 7, each Series Debt Service Fund shall be further identified or designated to relate to the specific Series of the New Bonds issued hereunder.

“Series Debt Service Reserve Fund” shall mean one or more Funds, if any, established pursuant to Section 8 hereof (a) to insure the timely payment of the principal and interest on the New Bonds related thereto; and (b) to provide for the redemption of the Series of the New Bonds related thereto. Pursuant to Section 8, each Series Debt Service Reserve Fund shall be further identified or designated to relate to the specific Series of the New Bonds issued hereunder.

“Series Reserve Fund Requirement” shall mean the amount, if any, established pursuant to Section 8 hereof.

“Trustee” shall mean Wells Fargo Bank, N.A., as Trustee for the bonds.

“Underwriter” shall mean Merchant Capital, L.L.C.

Section 2. Certain Findings and Determinations. The Town hereby finds and determines:

(a) The Ordinance, the Bond Act and the Accommodations Fee Act authorize the Town to issue Bonds in order to finance Projects (as defined in the General Bond Ordinance). This First Supplemental Ordinance supplements the Ordinance, constitutes and is a "Supplemental Ordinance" within the meaning of such quoted term as defined and used in the Ordinance, and is enacted under and pursuant to the Ordinance.

(b) The New Bonds constitute and are "Bonds" within the meaning of the quoted word as defined and used in the Ordinance.

(c) The Beach Preservation Fees pledged under the Ordinance are or will not be encumbered by any lien and charge thereon or pledge thereof, other than: (i) the pledge thereof created under the 2006 Installment Sale Agreement for payment of amounts due with respect to the 2006 Certificates (which pledge is senior to the pledge thereof securing the Bonds); and (ii) the pledge thereof created by the General Bond Ordinance and this First Supplemental Ordinance for the payment and security of the New Bonds.

(d) There does not exist an Event of Default (as defined in the General Bond Ordinance), nor does there exist any condition which, after the passage of time or the giving of notice, or both, would constitute such Event of Default.

(e) The estimated Costs of Acquisition and Construction (as defined in the General Bond Ordinance) of the New Projects are \$11,000,000.

(f) The Town proposes to issue the New Bonds, in one or more Series (as defined in the General Bond Ordinance), for one or more of the principal purposes: (1) financing the Costs of

Acquisition and Construction of the New Projects, (2) financing the Series Reserve Fund Requirement (if any) through a deposit into the Series Debt Service Reserve Fund (if any) established with respect to each Series of New Bonds, and (3) paying the Costs of Issuance of the New Bonds.

(g) The period of usefulness of the New Projects will be in excess of seven (7) years from the date of the acquisition thereof.

(h) It is necessary and in the best interest of the Town to authorize the issuance of the New Bonds in the principal amount of not exceeding \$11,000,000 in accordance with the Bond Act, the Accommodations Fee Act, the Ordinance and this First Supplemental Ordinance for the purposes set forth above.

Section 3. Authorization of Series 2011 Bonds.

(a) There is hereby authorized to be issued one or more Series of Bonds designated "Town of Hilton Head Island, South Carolina, Special Obligation Bonds (Beach Preservation Fee Pledge), Series (year)" (the "New Bonds"), including such further words, numbers or letters as may be necessary or desirable to identify individual series thereof, the purposes thereof, or the taxable status thereof, in the aggregate principal amount of not exceeding \$11,000,000. The proceeds of the New Bonds shall be used for the purposes set forth in Section 2(f) hereof.

Unless otherwise determined by the Town Manager pursuant to Section 11 hereof, the New Bonds shall mature on August 1 in each of the years (the "Principal Payment Dates") and in the principal amounts, and bear interest at the rates per annum (calculated on the basis of a 360-day year comprised of twelve 30-day months), as determined by the Town Manager, pursuant to Section 11 hereof.

(b) Such of the New Bonds as the Town Manager shall determine pursuant to Section 11 hereof shall be subject to mandatory redemption at a redemption price equal to the principal amount of the New Bonds to be redeemed, together with interest accrued from the date of redemption, in the years and in the amounts determined by the Town Manager, pursuant to Section 11 hereof.

At its option, to be exercised on or before the sixtieth (60th) day prior to any mandatory redemption date, the Town may (i) deliver to the Trustee for cancellation New Bonds which are subject to mandatory redemption in any aggregate principal amount desired or (ii) receive a credit in respect of its mandatory redemption obligation for any such New Bonds which, prior to such date, have been purchased or redeemed (otherwise than through the operation of the mandatory redemption requirement) by the Town and cancelled by the Trustee and not theretofore applied as a credit against any mandatory redemption obligation. Each New Bond so delivered or previously purchased or redeemed shall be credited by the Trustee, at one hundred percent (100%) of the principal amount thereof, to the obligation of the Town on those respective mandatory redemption obligations in chronological order or such other manner as directed in writing by the Town to the Trustee, and the principal amount of the New Bonds to be redeemed by operation of the mandatory redemption requirement shall be accordingly reduced.

(c) The Trustee, without further authorization or direction from the Town, shall give notice of all mandatory redemptions within the time periods and in the manner specified in Article V of the General Bond Ordinance.

(d) The New Bonds shall originally be dated the date of delivery of the New Bonds, or such other date as the Town Manager shall determine pursuant to Section 11 hereof, and shall be issued as fully registered Bonds in the denominations of \$5,000 and integral multiples of \$5,000. The New Bonds shall be numbered and lettered in such a fashion as to maintain a proper record thereof.

(e) Principal of and redemption premium, if any, on the New Bonds shall be payable at the designated corporate trust office of the Paying Agent. Interest on the New Bonds shall be payable on each Interest Payment Date, in each case to the Holders as of the immediately preceding Record Date, such interest to be paid by the Paying Agent by check or draft mailed to each Holder at the address as it appears on the Books of Registry maintained at the designated corporate trust office of the Paying Agent, and in the case of a Holder of \$1,000,000 or more in principal amount of New Bonds, by wire transfer to an account within the continental United States upon the timely receipt of a written request of such Holder. Payment of the principal of and interest on such New Bonds may be payable to the Holder thereof without presentation and surrender of such New Bonds.

(f) The New Bonds shall be in substantially the form set forth in Exhibit A hereto, with such necessary or appropriate variations, omissions and insertions as are incidental to the series, numbers, denominations, maturities, dates, interest rate or rates, redemption provisions, the purpose of issuance and other details thereof or as are otherwise permitted or required by law or by the Ordinance, including this First Supplemental Ordinance. The New Bonds shall be executed in the name and on behalf of the Town by the manual or facsimile signatures of the Mayor and Town Clerk.

(g) A copy of the approving opinion to be rendered on the New Bonds shall be printed on the back of such New Bonds, preceding the same a certificate shall appear, which shall be signed on behalf of the Town by a facsimile signature of the Town Clerk. Such certificate shall be in the form substantially as follows:

IT IS HEREBY CERTIFIED that the following is a true and correct copy of the approving opinion of McNair Law Firm, P.A., Columbia, South Carolina, the original of which was manually executed, dated and issued as of the date of the delivery of and payment for the bonds, and a copy of which is on file with the Town.

THE TOWN OF HILTON HEAD, SOUTH CAROLINA

By: _____
Town Clerk

Section 4. Book-Entry System; Recording and Transfer of Ownership of the New Bonds.

The Initial Bonds will be eligible securities for the purposes of the Book-Entry System of transfer maintained by the Depository, and transfers of beneficial ownership of the Initial Bonds shall be made only through the Depository and its participants in accordance with rules specified by the Depository. Such beneficial ownership must be of \$5,000 principal amount of Initial Bonds of the same Series and maturity or any integral multiple of \$5,000.

The Initial Bonds will be issued in fully-registered form, as a single bond representing the entire principal amount of each Series of the New Bonds or one New Bond for each of the maturities of each Series of the New Bonds, in the name of Cede & Co., as the nominee of the Depository. When any principal of, premium, if any, or interest on the Initial Bonds becomes due, the Town shall transmit or cause the Paying Agent to transmit to the Depository an amount equal to such installment of principal, premium, if any, and interest. Such payments will be made to Cede & Co. or other nominee of the Depository as long as it is owner of record on the applicable Record Date. Cede & Co. or other nominee of the Depository shall be considered to be the owner of the Initial Bonds so registered for all purposes of this First Supplemental Ordinance, including, without limitation, payments as aforesaid and receipt of notices. The Depository shall remit such payments to the Beneficial Owners of the New Bonds or their nominees in accordance with its rules and regulations.

Notices of redemption of the Initial Bonds or any portion thereof shall be sent to the Depository in accordance with the provisions of the General Bond Ordinance.

The Depository is expected to maintain records of the positions of Participants in the Initial Bonds, and the Participants and persons acting through Participants are expected to maintain records of the Beneficial Owners in the Initial Bonds. The Town, the Trustee, the Registrar and the Paying Agent make no assurances that the Depository and its Participants will act in accordance with such rules or expectations on a timely basis, and the Town, the Trustee, the Registrar and the Paying Agent shall have no responsibility for any such maintenance of records or transfer of payments by the Depository to its Participants, or by the Participants or persons acting through Participants to the Beneficial Owners.

The Town, the Trustee, the Paying Agent and the Registrar may treat the Depository (or its nominee) as the sole and exclusive owner of the New Bonds registered in its name for the purpose of payment of the principal of, interest or premium, if any, on the New Bonds, giving any notice permitted or required to be given to Bondholders under the General Bond Ordinance or this First Supplemental Ordinance, registering the transfer of the New Bonds, obtaining any consent or other action to be taken by Bondholders and for all other purposes whatsoever, and shall not be affected by any notice to the contrary. The Town, the Trustee, the Paying Agent and the Registrar shall not have any responsibility or obligation to any Participant, any person claiming a beneficial ownership interest in the New Bonds under or through the Depository or any Participant, or any other person which is not shown on the Books of Registry of the Town maintained by the Registrar as being a

Bondholder, with respect to: the accuracy of any records maintained by the Depository or any Participant or the maintenance of any records; the payment by the Depository or any Participant of any amount in respect of the principal of, interest or premium, if any, on the New Bonds; the sending of any transaction statements; the delivery or timeliness of delivery by the Depository or any Participant of any notice which is permitted or required to be given to Bondholders thereunder; the selection of Bondholders to receive payments upon any partial redemption of the New Bonds; or any consent given or other actions taken by the Depository as a Bondholder.

If (a) the Depository determines not to continue to act as securities depository for the New Bonds, and gives reasonable notice to the Registrar or the Town, or (b) the Town has advised the Depository of the Town's determination that the Depository is incapable of discharging its duties, then the Town shall attempt to retain another qualified securities depository to replace the Depository. Upon receipt by the Town or the Registrar of the Initial Bonds together with an assignment duly executed by the Depository, the Town shall execute and deliver to the successor depository, the New Bonds of the same principal amount, interest rate and maturity. If the Town is unable to retain a qualified successor to the Depository, or the Town has determined that it is in its best interest not to continue the Book-Entry System of transfer or that interests of the Beneficial Owners of the New Bonds might be adversely affected if the Book-Entry System of transfer is continued (the Town undertakes no obligation to make any investigation to determine the occurrence of any events that would permit it to make any such determination), and has made provision to so notify Beneficial Owners of the New Bonds by mailing an appropriate notice to the Depository, upon receipt by the Town of the Initial Bonds together with an assignment duly executed by the Depository, the Town shall execute, authenticate and deliver to the Depository Participants the New Bonds in fully-registered form, in authorized denomination; provided, however, that the discontinuation of the Book-Entry System of registration and transfer with respect to the New Bonds or the replacement of the Depository or any successor depository shall be subject to the applicable rules and procedures of the Depository or such successor depository on file or otherwise approved by the Securities and Exchange Commission.

Section 5. Optional Redemption of New Bonds. Such of the Series 2011 Bonds as may be determined by the Town Manager pursuant to Section 11 hereof shall be subject to redemption prior to maturity, at the option of the Town, in whole or in part at any time in such order of their maturities as the Town shall determine and by lot within a maturity, at the respective redemption prices with respect to each New Bond, expressed as a percentage of principal amount of the New Bonds to be redeemed, as shall be determined by the Town Manager pursuant to Section 11 hereof, together, in each such case, with the interest accrued on such principal amount to the date fixed for redemption.

Section 6. Payment of the New Bonds. The New Bonds, together with the interest thereon, shall be payable, in such coin or currency of the United States of America which at the time of such payment is legal tender for public and private debts, solely from the Beach Preservation Fees of the Town in accordance with the provisions of the Ordinance and this First Supplemental Ordinance. The New Bonds shall be secured by a pledge of Beach Preservation Fees junior and subordinate to the pledge of Beach Preservation Fees securing the payment of amounts due under the 2006

Installment Sale Agreement with respect to the 2006 Certificates and on a parity with the pledge of Beach Preservation Fees securing the payment of other Bonds issued in compliance with the provisions of the General Bond Ordinance.

The New Bonds do not constitute an indebtedness of the Town within any State constitutional provisions (other than Article X, Section 14, Paragraph 10 of the South Carolina Constitution authorizing obligations payable solely from special sources not involving revenues from any tax or license) or statutory limitation. The New Bonds shall not be a debt of the Town, nor a charge, lien or encumbrance, legal or equitable, upon any property of the Town or upon any income, receipts or revenues thereof, other than the aforesaid Beach Preservation Fees of the Town. No recourse shall be had for the payment of the New Bonds or the interest thereon against the general fund of the Town, nor shall the credit or taxing power of the Town be deemed to be pledged thereto. The full faith, credit and taxing powers of the Town are not pledged to the payment of the principal of or interest on the New Bonds.

Section 7. Establishment of Series Debt Service Fund. In accordance with Section 6.6 of the General Bond Ordinance, the Series Debt Service Fund is hereby directed to be established by the Trustee on the date of the original delivery of the New Bonds for the benefit of the Holders of the New Bonds; provided, however, that upon the issuance of one or more Series of New Bonds, separate funds or accounts may be established for the payment of debt service on such Series of New Bonds, with such additional numbers or letters to identify its relevance, but each such separate fund or account will be considered the “Series Debt Service Fund” with respect to the related Series of New Bonds.

Section 8. Establishment of the Series Reserve Fund Requirement and Series Debt Service Reserve Fund. In accordance with Section 6.7 of the General Bond Ordinance, the Town Manager may determine whether it is necessary or desirable to establish a Series Debt Service Reserve Fund for the benefit of the Holders of one or more Series of New Bonds (if any) and the amount of the applicable Series Reserve Fund Requirement, and, if so, such Series Debt Service Reserve Fund shall be established on the date of the original delivery of such Series of New Bonds and held by the Trustee, all as provided in the Ordinance; provided, however, that (1) upon the issuance of one or more Series of New Bonds, separate funds or accounts may be established (if at all) for each Series of New Bonds, with such additional numbers or letters to identify its relevance, but each such separate fund or account will be considered the “Series Debt Service Reserve Fund” with respect to the related Series of New Bonds; and (2) in the event of any full or partial defeasance of a Series of New Bonds under Article XII of the Ordinance, then the Series Reserve Fund Requirement established for such Series of New Bonds shall be recalculated based on the then Outstanding principal amount of such Series. If the Series Debt Service Reserve Fund is established, the Series Reserve Fund Requirement initially will be satisfied by the Town by the deposit of cash into the Series Debt Service Reserve Fund for the benefit of the Holders of the New Bonds.

Section 9. Series Construction Fund. There is hereby created and established the Series Construction Fund, which fund shall be held by the Town or by a Custodian; provided, however, that upon the issuance of one or more Series of New Bonds, separate funds or accounts may be established for such Series of New Bonds, with such additional numbers or letters to identify its relevance, but each such separate fund or account will be considered the “Series Construction Fund”

with respect to the related Series of New Bonds. If the Series Construction Fund is held by a Custodian, the Town Manager is authorized and directed to negotiate, execute and deliver such construction fund agreements or other agreements with such bank or other financial institution as may be necessary or desirable in connection therewith. The Series Construction Fund established for a particular Series of New Bonds shall be accounted for as a single fund, however the moneys on deposit therein may be held by one or more Custodians. The moneys on deposit in the Series Construction Fund shall be used and applied to pay the Costs of Acquisition and Construction of the New Projects (including all Costs of Issuance related to the New Bonds).

Moneys held for the credit of the Series Construction Fund shall be invested to the fullest extent practicable and reasonable, in Permitted Investments, maturing at such times and in such amounts as shall be required to provide moneys to make the payments required to be made from such Fund.

Withdrawals from the Series Construction Fund shall be made in the manner withdrawals from other funds of the Town are made.

If after the payment in full of all costs of the New Projects and Costs of Issuance or after adequate provision has been made for such payment any moneys remain in the Series Construction Fund, such excess shall be paid into the related Series Debt Service Fund and shall be used only for the payment of the principal of and interest on the related Series of New Bonds or, in the alternative, to acquire Outstanding New Bonds at a price (exclusive of accrued interest) not exceeding the face amount thereof.

Section 10. Designation of Trustee, Registrar and Paying Agent. Pursuant to the Ordinance, the Trustee is Wells Fargo Bank, N.A. The Town Council hereby designates Wells Fargo Bank, N.A. as Registrar and Paying Agent for the New Bonds. The Registrar and Paying Agent shall signify their acceptances of their respective duties upon delivery of the New Bonds.

Section 11. Sale and Issuance of New Bonds.

(a) The Town Manager is hereby authorized and empowered to undertake any one or more of the following actions: (a) determine the original issue dates of each Series of the New Bonds; (b) determine the aggregate principal amount of the New Bonds, if less than authorized by this First Supplemental Ordinance, and each Series thereof (including the portions thereof to be issued on a taxable or tax-exempt basis); (c) determine the principal amount of each maturity of each Series of the New Bonds; (d) determine the Interest Payment Dates, including the initial Interest Payment Dates, and the Principal Payment Dates for each Series of the New Bonds; (e) determine the optional redemption dates and terms of redemption of each Series of the New Bonds; (f) determine the interest rates for each Series of the New Bonds; (g) determine the New Bonds to be subject to mandatory and optional redemption; (h) determine the redemption prices of the New Bonds subject to optional redemption; (i) determine whether the Series Debt Service Reserve Fund will be established and funded with regard to each Series of New Bonds and, if so, the amount of the applicable Series Reserve Fund Requirement; (j) determine any original issue discount or original issue premium at which each Series of the New Bonds will be sold, or whether any Underwriter's discount or other fee will be paid to the purchasers of the New Bonds; and (k) agree

to any other terms, provisions and matters necessary or advisable to effect the issuance of each Series of the New Bonds.

(b) Each Series of the New Bonds shall either be sold publicly, following a private sale to the Underwriter, or directly to one or more purchasers in a private offering or private placement transaction. In connection with a public offering, the Town hereby finds and determines that the Bond Purchase Agreement to be dated the date of its execution, submitted by the Underwriter for the purchase of all or a portion (if any) of each Series of the New Bonds is fair and reasonable and in the best interest of the Town; that, if executed, the New Bonds contemplated by the Bond Purchase Agreement shall be sold to the Underwriter upon the terms and conditions set forth in the Bond Purchase Agreement and upon the basis of the representations therein set forth, and that all conditions precedent to or concurrent with the acceptance of the Bond Purchase Agreement by the Town will be met prior to the Town's execution thereof. The Town Manager is hereby authorized and directed to approve the form of Bond Purchase Agreement, together with such amendments and modifications to the form thereof as the Town Manager shall negotiate and approve, and to execute the Bond Purchase Agreement, as so modified and amended, and deliver the same to the Underwriter, the Town Manager's execution and delivery of the Bond Purchase Agreement constituting conclusive evidence of approval of the matters therein contained. Notwithstanding the foregoing, the Town Manager is hereby authorized to take all actions, including the preparation and dissemination of requests for proposals and the preparation, publication and/or distribution of information, offering documents or private placement memoranda (which may be in the respective forms of the Bond Purchase Agreement and/or hereinafter defined Preliminary Official Statement, as applicable, together with such amendments and modifications as may be approved by the Town Manager), all relating to the Town, each Series of the New Bonds and the Beach Preservation Fees, to solicit interest and receive offers from financial institutions to purchase one or more Series of the New Bonds in a private offering, and to accept such offer which is in the best interest of the Town and execute such documents as may be necessary in connection therewith.

(c) The Town Manager is hereby authorized and directed to prepare a Preliminary Official Statement, relating to a public offering of each Series of the New Bonds (the "Preliminary Official Statement"), and to take such actions necessary to "deem final" the Preliminary Official Statement for purposes of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended.

(d) The Town hereby authorizes the Final Official Statement of the Town to be dated on or about the date of the execution and delivery of the Bond Purchase Agreement, relating to each Series of the Bonds substantially in the form of the Preliminary Official Statement, with such modifications as the Town Manager approves; the Town Manager of the Town is hereby authorized and directed to execute copies of the Final Official Statement and deliver the same to the Underwriter, which execution and delivery shall be conclusive evidence of the approval of any such modifications; and the Town hereby authorizes the use of the Preliminary Official Statement and Final official Statement and the information contained therein in connection with the public offering and sale of each Series of the New Bonds by the Underwriter.

(e) A copy of this First Supplemental Ordinance shall be filed with the minutes of the meeting at which this First Supplemental Ordinance was enacted.

(f) The Town Council hereby authorizes and directs all of the officers and employees of the Town to carry out or cause to be carried out all obligations of the Town hereunder and to perform such other actions as they shall consider necessary or advisable in connection with the issuance, sale and delivery of the New Bonds.

(g) The Council hereby authorizes the Town Manager or his designee to negotiate the terms of, and execute, in the name and on behalf of the Town, and deliver investment agreements, forward delivery agreements, repurchase agreements and other agreements in connection with the New Bonds, to prepare and solicit bids for providers of such agreements and to execute, in the name and on behalf of the Town, written confirmations of any such agreements and other documents as may be necessary in connection therewith. Further, the Town Manager or his designee is hereby authorized to take any and all actions and execute any and all documents, upon the advice of its Bond Counsel, necessary to cause the termination of any forward delivery, repurchase or other investment agreement related to the 2006 Certificates.

Section 12. Disposition of Proceeds of New Bonds and Certain Other Moneys. The proceeds derived from the sale of the New Bonds, net of any original issue discount or premium (or both), any Underwriter's discount or fees payable to the purchaser thereof, shall be deposited with (or at the order of) the Town, the Trustee, the Escrow Agent or the Custodian, as applicable, and used for the following purposes:

(a) If the Town Manager determines that a Series Debt Service Reserve Fund shall be established for a Series of New Bonds and the Series Reserve Fund Requirement shall be funded with a portion of the proceeds of a Series of the New Bonds, there shall be deposited with the Trustee for deposit into such Series Debt Service Reserve Fund an amount equal to the applicable Series Reserve Fund Requirement.

(b) The remainder of the proceeds of any Series of the New Bonds shall be deposited into the Series Construction Fund established in Section 9 hereof to pay Costs of Acquisition and Construction for the New Projects (including Costs of Issuance) for such Series of New Bonds.

The respective amounts specified in this Section 12 shall be determined by the Town upon delivery of any Series of the New Bonds.

Section 13. Federal Tax Covenant. The Town hereby covenants and agrees with the Holders of the New Bonds issued as tax-exempt obligations (the "Tax-Exempt Bonds") that it will not take any action which will, or fail to take any action which failure will, cause interest on the Tax-Exempt Bonds to become includable in the gross income of the Bondholders thereof for federal income tax purposes pursuant to the provisions of the Code and regulations promulgated thereunder in effect on the date of original issuance of the Tax-Exempt Bonds and that no use of the proceeds of the Tax-Exempt Bonds shall be made which, if such use had been reasonably expected on the date of issue of the Tax-Exempt Bonds would have caused the Tax-Exempt Bonds to be "arbitrage bonds," as defined in the Code; and to that end the Town hereby shall:

(a) comply with the applicable provisions of Section 103 and Sections 141 through 150 of the Code and any regulations promulgated thereunder so long as the Tax-Exempt Bonds are Outstanding;

(b) establish such funds, make such calculations and pay such amounts, if necessary, in the manner and at the times required in order to comply with the requirements of the Code relating to required rebate of certain amounts to the United States; and

(c) make such reports of such information at the times and places required by the Code.

Section 14. Continuing Disclosure. So long as and to the extent required pursuant to Section 11-1-85 of the Code of Laws of South Carolina 1976, as amended ("Section 11-1-85"), the Town covenants that it will file with a central repository for availability in the secondary bond market when requested:

(i) An annual independent audit, within 30 days of the Town's receipt of the audit; and

(ii) Event-specific information within 30 days of an event adversely affecting more than 5% percent of Beach Preservation Fees or the Town's tax base.

The only remedy for failure by the Town to comply with the covenant of this Section 14 shall be an action for specific performance of this covenant; and failure to comply shall not constitute a default or an "Event of Default" under the Ordinance or this First Supplemental Ordinance. The Trustee shall have no responsibility to monitor the Town's compliance with this covenant. The Town specifically reserves the right to amend or delete this covenant in order to reflect any change in Section 11-1-85, without the consent of the Trustee or any Holder of any New Bonds.

In addition, the Town Manager is hereby authorized and directed to approve the form of, and execute and deliver, a Continuing Disclosure Certificate of the Town, related to one or more Series of the New Bonds as required by applicable law, and the Town hereby covenants and agrees that it will comply with and carry out all of the provisions of such Continuing Disclosure Certificate. Notwithstanding any other provisions of this First Supplemental Ordinance, failure of the Town to comply with the Continuing Disclosure Certificate shall not be considered an Event of Default, and no liability for damages shall attach therefor. The sole remedy for such failure to comply shall be that any New Bondholder may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Town to comply with their obligations under this paragraph.

Section 15. Further Actions. The Mayor, the Town Manager, the Finance Director of the Town, and the Town Clerk are hereby authorized and directed to take any and all such further actions as shall be deemed necessary or desirable in order to effectuate issuance of the New Bonds and the refunding of the Certificates to be Refunded.

Section 16. Headings. The headings and titles of the several sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this First Supplemental Ordinance.

Section 17. Notices. All notices, certificates or other communications hereunder or under the Ordinance shall be sufficiently given and shall be deemed given when mailed by registered mail, postage prepaid, or given when dispatched by telegram addressed as follows:

If to the Town:

Hilton Head Island, South Carolina
Attn: Town Manager
One Town Center Court
Hilton Head Island, South Carolina 29928

If to the Paying Agent, the Registrar or the Trustee:

Wells Fargo Bank, N.A.
Attention: Corporate Trust Services
7000 Central Parkway; Suite 550
Atlanta, Georgia 30328

The Town, the Paying Agent, the Registrar and the Trustee may, by notice given to the other parties, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 18. Repeal of Inconsistent Ordinances and Resolutions. All ordinances and resolutions of the Town, and any part of any ordinance or resolution, inconsistent with this First Supplemental Ordinance are hereby repealed to the extent of such inconsistency.

Section 20. Severability. If any sections, phrase, sentence or portion of this First Supplemental Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not attest the validity of the remaining portions thereof.

Section 21. Effective Date. This First Supplemental Ordinance shall be effective upon its adoption by the Town Council for the Town of Hilton Head Island, South Carolina.

**PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF
HILTON HEAD ISLAND ON THIS _____ DAY OF _____ 2011.**

Drew A. Laughlin, Mayor

ATTEST:

Cori Brock, Town Clerk

First Reading: _____
Second Reading: _____

APPROVED AS TO FORM:

Gregory M. Alford, Town Attorney

Introduced by Council Member: _____

FORM OF NEW BOND

[DTC Legend]

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA
SPECIAL OBLIGATION BONDS (BEACH PRESERVATION FEE PLEDGE),
SERIES _____

No. R-____

Interest Rate Maturity Date Issue Date CUSIP

Registered Holder:

Principal Amount:

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA (the "Town") a public body corporate and politic and a political subdivision of the State of South Carolina (the "State"), created and existing by virtue of the laws of the State, acknowledges itself indebted and for value received hereby promises to pay, solely as hereinafter provided, to the Registered Owner named above or registered assigns, the Principal Amount set forth above on the Maturity Date stated above, unless this Bond be subject to redemption and shall have been redeemed prior thereto as hereinafter provided, upon presentation and surrender hereof at the corporate trust office of Wells Fargo Bank, N.A. in Atlanta, Georgia, as trustee (the "Trustee"), and to pay interest on such Principal Amount at the annual Interest Rate stated above (calculated on the basis of a 360-day year of twelve (12) 30-day months), until the obligation of the Town with respect to the payment of such Principal Amount shall be discharged. Interest on this Bond shall be payable in semiannual installments on _____ 1 and _____ 1 of each year beginning _____, 2012 (each, an "Interest Payment Date"), until maturity or earlier redemption. All payments shall be paid to the person in whose name this Bond is registered at the close of business on the fifteenth day of the calendar month (each, a "Record Date") preceding each Interest Payment Date or Principal Payment Date (as defined in the hereinafter defined Ordinances). The payments shall be payable by check or draft mailed at the times provided herein to the person in whose name this Bond is registered at the address shown on the registration books of the Town held by Wells Fargo Bank, N.A., as registrar (the "Registrar"), or, in the case of a Registered Holder of \$1,000,000 or more in principal amount of this Bond, by wire transfer to on account within the continental United States upon the timely receipt of a written request of such Registered Holder. The payments are payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

THIS BOND HAS BEEN ISSUED UNDER THE PROVISIONS OF TITLE 6, CHAPTER 21 AND CHAPTER 1, ARTICLE 5, AND SECTION 6-1-760, CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED (COLLECTIVELY, THE "ACT"); THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS OF THE TOWN WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION (EXCEPT ARTICLE X, SECTION 14(10) OF THE STATE CONSTITUTION AUTHORIZING INDEBTEDNESS PAYABLE SOLELY FROM A SOURCE OF REVENUE DERIVED OTHER THAN A TAX OR LICENSE) OR STATUTORY LIMITATION. THE TOWN IS NOT OBLIGATED TO PAY ANY OF THE BONDS OR THE INTEREST THEREON EXCEPT FROM BEACH PRESERVATION FEES (AS DEFINED IN THE ORDINANCES). THE BONDS ARE NOT GENERAL OBLIGATIONS OF THE TOWN, THE STATE, OR ANY POLITICAL SUBDIVISION THEREOF AND NEITHER THE FULL FAITH AND CREDIT NOR THE GENERAL CREDIT NOR TAXING POWERS OF THE TOWN, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF.

This Bond shall not be valid or obligatory for any purpose until the Certificate of Authentication hereon shall have been duly executed by the Trustee.

This Bond is one of an issue of bonds of the Town in the aggregate principal amount of _____ Million Dollars (\$_____) (the "Bonds") of like tenor, except as to number, rate of interest, date of maturity and redemption provides, issued pursuant to and in accordance with the Constitution and statutes of the State, including particularly the Act, Ordinance No. _____ duly enacted by the Town Council of the Town (the "Council") on _____, 2011 (the "General Bond Ordinance"), and Ordinance No. _____ duly enacted by the Council on _____, 2011 (the "First Supplemental Ordinance") (the General Bond Ordinance and the First Supplemental Ordinance are herein collectively referred to as the "Ordinances") for the purpose of providing moneys, to (i) finance a portion of the New Projects, (ii) satisfy the Series Reserve Fund Requirement (if any) with respect to the Bonds, and (iii) pay all costs of issuing the Bonds.

Certain capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Ordinances. Certified copies of the Ordinances are on file in the office of the Trustee and in the office of the Clerk of Court for Beaufort County, South Carolina.

The Ordinances contain provisions defining terms, set forth the revenues pledged for the payment of the principal of and interest on this Bond and the Bonds of other series herewith which may hereafter be issued on a parity herewith under the Ordinances; set forth the nature, extent and manner of enforcement of the security of this Bond and of such pledge, and the rights and remedies of the Holder hereof with respect thereto; set forth the terms and conditions upon which and the extent to which the Ordinances may be altered, modified and amended; set forth the terms and conditions upon which this Bond is issued upon which other bonds may be hereinafter issued payable as to principal, premium, if any, and interest on a parity with this Bond and equally and ratably secured herewith; sets forth the rights, duties and obligations of the Town thereunder; and set forth the terms and conditions upon which the pledge made in the Ordinances for the security of this Bond and upon which the covenants, agreements and other obligations of the Town made therein may be discharged at or prior to the maturity or redemption of this Bond with provisions for

the payment thereof in the manner set forth in the Ordinances. Reference is hereby made to the Ordinances to all of the provisions of which any holder of this Bond by the acceptance hereof thereby assents. The provisions of the Act and the Ordinances shall be a contract with the holder of this Bond.

This Bond and the series of Bonds of which it is one and the interest thereon are special obligations of the Town and are secured by and payable solely from, and secured equally and ratably by a pledge of and lien upon, the Beach Preservation Fees imposed and collected by the Town, which pledge is junior and subordinate to the pledge thereof securing the Town's obligations to pay amounts due under the 2006 Installment Sale Agreement.

The General Bond Ordinance authorizes the issuance of additional bonds on a parity with the Bonds of this issue which, when issued in accordance with the provisions of the General Bond Ordinance, will rank equally and be on a parity herewith.

This Bond and the interest hereon are exempt from all State, county, municipal, school district, and all other taxes or assessments imposed within the State, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate, transfer and certain franchise taxes.

This Bond is transferable, as provided in the Ordinances, only upon the registration books of the Town kept for that purpose and maintained by the Registrar, by the Holder hereof in person or by his duly authorized attorney, upon (a) surrender of this Bond and an assignment with a written instrument of transfer satisfactory to the Registrar, duly executed by the Holder hereof or his duly authorized attorney and (b) payment of the charges, if any, prescribed in the Ordinances. Thereupon a new Bond of the same aggregate principal amount, maturity and interest rate shall be issued to the transferee in exchange therefor as provided in the Ordinances. The Town, the Trustee and the Registrar may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of or on account of the principal or redemption price hereof and interest due hereon and for all other purposes.

For every exchange or transfer of this Bond, the Town or the Trustee or Registrar, as the case may be, may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer.

[Redemption Provisions]

If less than all the Bonds of any maturity are called for redemption, the Bonds of such maturity to be redeemed shall be selected at random by the Trustee. In the event any of the Bonds or portions thereof are called for redemption, the Trustee shall give notice, in the name of the Town, of redemption of Bonds by first-class mail, postage prepaid, to the Holder thereof as shown on the Books of Registry of the Town not less than thirty (30) days and not more than sixty (60) days prior to the date fixed for the redemption thereof. If this Bond be redeemable and shall have been duly called for redemption and notice of the redemption hereof mailed as aforesaid, and if on or before the date fixed for such redemption, payment thereof shall be duly

made or provided for, interest hereon shall cease or accrue from and after the redemption date hereof.

It is hereby certified and recited that all conditions, acts and things required by the Constitution and statutes of the State to exist, be performed or happen precedent to or in the issuance of this Bond, exist, have been performed and have happened, that the amount of this Bond, together with all other indebtedness of the Town, does not exceed any limit prescribed by such Constitution or statutes.

This Bond shall not be valid or obligatory for any purpose until the Certificate of Authentication hereon shall have been duly executed by the Trustee.

IN WITNESS WHEREOF, THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA has caused this Bond to be signed by the manual or facsimile signature of its Mayor, its corporate seal to be reproduced hereon and the same to be attested by the manual or facsimile signature of its Town Clerk.

THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

By: _____
Mayor

(SEAL)

ATTEST:

By: _____
Town Clerk

FORM OF CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds of the issue described in the within mentioned Ordinance.

Wells Fargo Bank, N.A., as Trustee

By: _____

Its: _____

Date: _____

IT IS HEREBY CERTIFIED that the following is a true and correct copy of the approving opinion of McNair Law Firm, P.A., Columbia, South Carolina, the original of which was manually executed, dated and issued as of the date of the delivery of and payment for the bonds, and a copy of which is on file with the Town.

THE TOWN OF HILTON HEAD, SOUTH CAROLINA

By: _____
Town Clerk

FORM OF ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

(please print or type name and address of Transferee and Social Security or other identifying
number of Transferee)

the within Bond and all rights and title thereunder, and hereby irrevocably constitutes and appoints attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Date: _____

STAMP Language

Signature Guaranteed: _____

NOTICE: Signature(s) must be guaranteed
By an institution which is a participant in the
Securities Transfer Agent Medallion Program
(STAMP) or similar program.

NOTICE: The signature to this assignment
must correspond with name as it appears
upon the face of the within bond in every
particular, without alteration or enlargement
or any change whatever.



Memorandum

TO: Town Council
FROM: Steve Riley, Town Manager
VIA: Jeff Buckalew, Town Engineer
DATE: August 16, 2011
RE: **Second Reading of Proposed Ordinance No. 2011-21**

There were no changes made to Proposed Ordinance #2011-2011 during the first reading on August 2, 2011.

AN ORDINANCE OF THE TOWN OF HILTON HEAD, SOUTH CAROLINA, AUTHORIZING THE CONVEYANCE OF VARIOUS PORTIONS OF RIGHT OF WAY LOCATED ALONG ON U.S. HIGHWAY 278 NEAR THE INTERSECTION OF SQUIRE POPE ROAD TO THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION, PURSUANT TO THE AUTHORITY OF S.C. CODE ANN. SEC. 5-7-40 (SUPP. 2010), AND SEC. 2-7-20, CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, (1983); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

LEGISLATIVE FINDINGS

WHEREAS, The Town of Hilton Head Island has acquired and owns certain road right of way near the intersection of U.S. Highway 278 and Squire Pope Road in conjunction with the U.S. Highway 278/Squire Pope Road Intersection Improvement Project; and

WHEREAS, The Town Council of Hilton Head Island, South Carolina, desires to convey the acquired road right of way along with certain additional right of way over and across Town-owned property to the South Carolina Department of Transportation; and

WHEREAS, the Town Council for the Town of Hilton Head Island, South Carolina has determined that it is in the best interests of the Town to transfer the right of way listed in the attached Quit Claim Deed attached hereto as Exhibit “A” and as shown on the drawing attached hereto as Exhibit “B” to the South Carolina Department of Transportation.

WHEREAS, under the provisions of S.C. Code Ann. Sec. 5-7-40 (SUPP. 2010) and Sec. 2-7-20, *Code of the Town of Hilton Head Island , South Carolina*, (1983), the conveyance or granting of an interest in real property owned by the Town of Hilton Head Island must be effected by Ordinance.

NOW THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AS FOLLOWS:

Section 1. Execution of Deed.

- (a) The Mayor and/or Town Manager are hereby authorized to execute and deliver a Quit Claim Deed in a form substantially similar to that attached hereto as Exhibit "A"; and
- (b) The Mayor and/or Town Manager are hereby authorized to take such other and further actions as may be necessary to complete the transaction described herein.

Section 2. Severability.

If any section, phrase, sentence or portion of this Ordinance is, for any reason, held or deemed to be invalid or unconstitutional by any court of competent jurisdiction, then such section, phrase, sentence or portion shall be deemed a separate, distinct and independent provision and shall not affect the remaining portion thereof.

Section 3. Effective Date.

This Ordinance shall become effective upon adoption thereof by the Town Council for the Town of Hilton Head Island, South Carolina.

PASSED, APPROVED AND ADOPTED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, ON THIS ___ DAY OF _____, 2011.

Drew Laughlin, Mayor

ATTEST

Cori Brock, Town Clerk
First Reading: _____
Second Reading: _____

Approved as to Form: _____
Gregory M. Alford, Town Attorney

Introduced by Council Member: _____

WITNESS Grantor's hand this _____ day of _____, 2011.

SIGNED SEALED AND DELIVERED
IN THE PRESENCE OF

THE TOWN OF HILTON HEAD
ISLAND, SOUTH CAROLINA

2) _____
Signature of 1st Witness (must be different than 2nd witness)

By: _____
Drew A. Laughlin, Mayor

3) _____
Signature of 2nd Witness (the Notary Public)

Attest: _____
Stephen G. Riley, Manager

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

UNIFORM ACKNOWLEDGMENT

I, the undersigned Notary Public do hereby certify that DREW A. LAUGHLIN and STEPHEN G. RILEY appeared before me this day and, in the presence of the two witnesses above named, acknowledged the due execution of the foregoing instrument on behalf of The Town of Hilton Head Island, South Carolina.

Witness my hand and seal this _____ day of _____, 2011.

4) _____(SEAL)
Signature of Notary Public for South Carolina
My Commission expires: _____

**** Instructions for Execution:**

- All signatures should be in blue ink.*
- ALL blanks must be filled in.*
- Grantor signs at line(s) 1)*
- Witness #1 signs at line 2)*
- Notary Public signs at line 3)*
- Notary Public signs at line 4) and affixes notary seal*

EXHIBIT "A"

ALL that certain piece, parcel, or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, shown and designated as "Area 2,155 Sq. Ft. (0.049 Acre)" on a plat titled "A R/W Plat of a Portion of Tax Parcel R511 007 000 066A, Beaufort County, South Carolina," prepared by Wilbur Smith Associates, dated June 5, 2007, and last revised March 6, 2008, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 126 at Page 23.

Beaufort County Tax Map Reference: a portion of R511 007 000 1046 0000

This being the same property conveyed to the within Grantor by Deed of Amanda Washington dated February 11, 2008 and recorded in the Office of Register of Deeds for Beaufort County, South Carolina in Record Book 2755 at Page 1301.

AND ALSO:

ALL those certain pieces, parcels or tracts of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, and being shown and described as "Parcel A Area 890 Sq. Ft. (0.020 Ac.)" and "Parcel B Area 885 Sq. Ft. (0.020 Ac.)" on that certain plat entitled "A Portion of Tax Parcel R511 007 000 0056, Beaufort County, South Carolina" dated June 5, 2007, prepared by Wilbur Smith Associates, certified by John L. Hudson, P.L.S. 6957, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 132 at Page 61.

Beaufort County Tax Map Reference: a portion of R511 007 000 1046 0000

This being the same property conveyed to the within Grantor by Deed of The Matthew and Teena Jones Family, LLC dated March 11, 2011, and recorded in the Office of Register of Deeds for Beaufort County, South Carolina in Record Book 3047 at Page 556.

AND ALSO:

ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, consisting of 9,533 Sq. Ft. (0.22 acres), more or less, and being shown and described as "Parcel B (To Be Dedicated to S.C.D.O.T.)" on a plat entitled "A R/W Plat of Tax Parcel R511 007 000 0065, Beaufort County, South Carolina" dated June 5, 2007, prepared by Wilbur Smith Associates, certified by John L. Hudson, P.L.S. # 6957, and recorded in the Office of Register of Deeds for Beaufort County, South Carolina, in Plat Book 126 at Page 145.

Beaufort County Tax Map Reference: R511 007 000 1042 0000

This being a portion of the same property conveyed to the within Grantor by Deed of Kathleen Shoemaker and Brian J. Carmines, as Trustee Under the Andrew J. Carmines Trust Dated

November 1, 1978, dated September 2, 2008, and recorded in the Office of Register of Deeds for Beaufort County, South Carolina, in Record Book 2774 at Page 2280.

AND ALSO:

ALL those certain pieces, parcels or tracts of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, and being shown and described as “Parcel A Area: 481 Sq. Ft. (0.011 Ac.)” and “Parcel B Area: 441 Sq. Ft. (0.010 Ac.)” on that certain plat entitled “A Portion of Tax Parcel R511 007 000 0053, Beaufort County, South Carolina” dated June 5, 2007, prepared by Wilbur Smith Associates, certified by John L. Hudson, P.L.S. 6957, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book _____ at Page _____.

Beaufort County Tax Map Reference: A Portion of R511 007 000 0053 0000

This being a portion of the same property conveyed to the within Grantor by Deed of Blythe Posey Ashmore as Co-Trustee under the Will of Jack P. Ashmore, Jr., et al. dated October 17, 2007, and recorded in the Office of Register of Deeds for Beaufort County, South Carolina, in Record Book 2641 at Page 1788.

AND ALSO:

ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, and being shown and described as “Area: 240 Sq. Ft. (0.006 Ac.)” on that certain plat entitled “A Portion of Tax Parcel R511 007 000 0054, Beaufort County, South Carolina” dated June 5, 2007, prepared by Wilbur Smith Associates, certified by John L. Hudson, P.L.S. 6957, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book _____ at Page _____.

Beaufort County Tax Map Reference: A Portion of R511 007 000 0054 0000

This being a portion of the same property conveyed to the within Grantor by Deed of Blythe Posey Ashmore as Co-Trustee under the Will of Jack P. Ashmore, Jr., et al. dated October 17, 2007, and recorded in the Office of Register of Deeds for Beaufort County, South Carolina, in Record Book 2641 at Page 1788.

AND ALSO:

ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, and being shown and described as ‘Area “A” – 3,521 Sq. Ft. (0.08 ac.) (To Be Dedicated to SCDOT)’ on that certain plat entitled “A Portion of Tax Parcel R511 007 000 066C, Beaufort County, South Carolina” dated June 5, 2007, last revised May 20, 2011, prepared by Wilbur Smith Associates, certified by John L. Hudson, P.L.S. 6957, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book _____ at Page _____.

Beaufort County Tax Map Reference: A Portion of R511 007 000 1046 0000

This being a portion of the same property conveyed to the within Grantor by Deed of Perry White dated February 11, 2004, and recorded in the Office of Register of Deeds for Beaufort County, South Carolina, in Record Book 1909 at Page 896.

AND ALSO:

ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, and being shown and described as "Parcel A Area: 3,639 Sq. Ft. (0.084 Ac.)" on that certain plat entitled "A Portion of Tax Parcel R511 007 000 066F, Beaufort County, South Carolina" dated June 5, 2007, prepared by Wilbur Smith Associates, certified by John L. Hudson, P.L.S. 6957, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book _____ at Page _____.

Beaufort County Tax Map Reference: A Portion of R511 007 000 066F 0000

This being a portion of the same property conveyed to the within Grantor by Deed of RG Holding, LLC dated October 31, 2001, and recorded in the Office of Register of Deeds for Beaufort County, South Carolina, in Record Book 1508 at Page 1037.

AND ALSO:

ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, and being shown and described as "Parcel A Area: 1,267 Sq. Ft. (0.029 Ac.)" on that certain plat entitled "A Portion of Tax Parcel R511 007 000 0050, Beaufort County, South Carolina" dated June 5, 2007, prepared by Wilbur Smith Associates, certified by John L. Hudson, P.L.S. 6957, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book _____ at Page _____.

Beaufort County Tax Map Reference: A Portion of R511 007 000 0050 0000

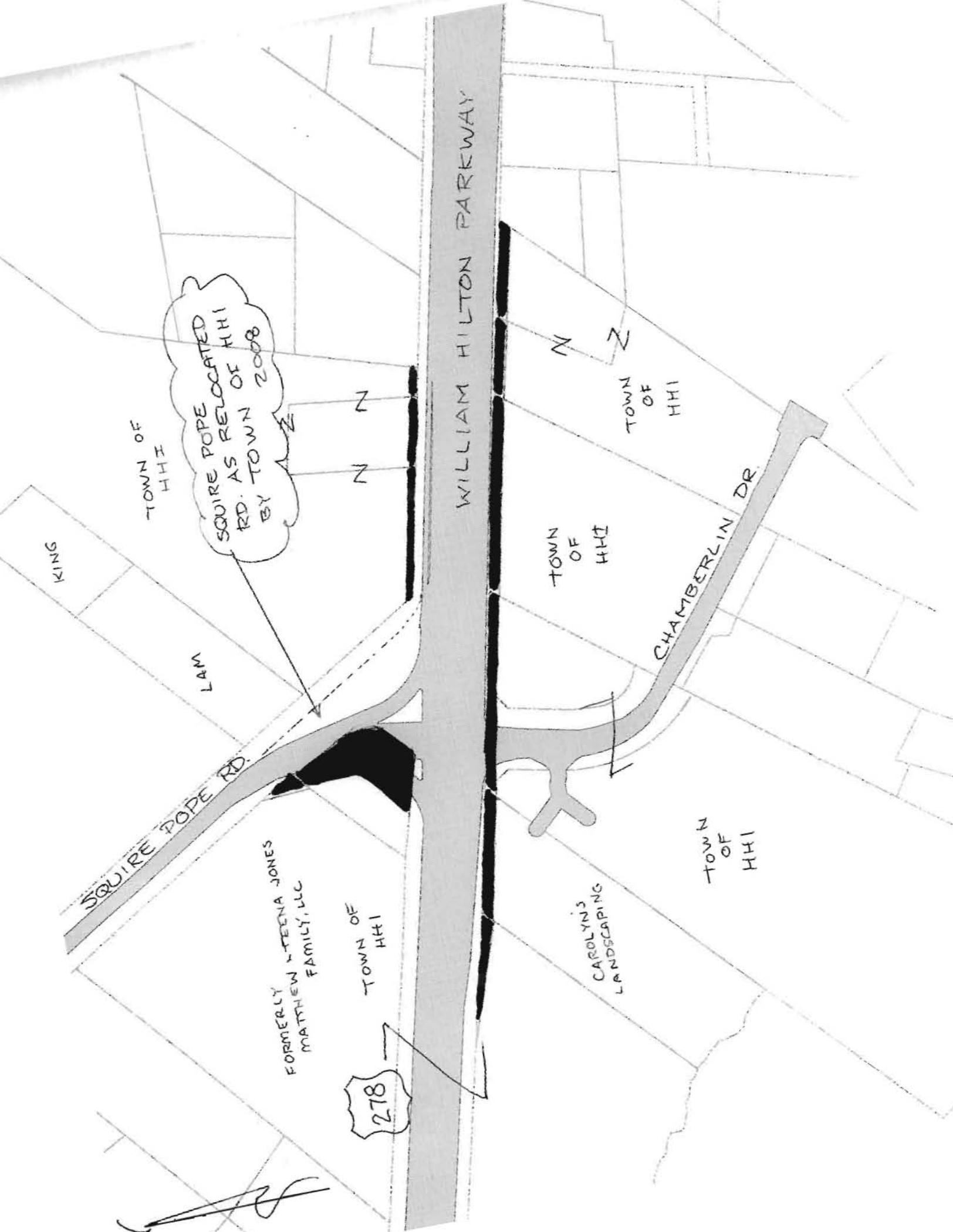
This being a portion of the same property conveyed to the within Grantor by Deed of Lowcountry Investment Club, LLC dated January 31, 2007, and recorded in the Office of Register of Deeds for Beaufort County, South Carolina, in Record Book 2516 at Page 2560.

AND ALSO:

ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, and being shown and described as "Area: 1,446 Sq. Ft. (0.032 Ac.)" on that certain plat entitled "A Portion of Tax Parcel R511 007 000 0245, Beaufort County, South Carolina" dated June 5, 2007, prepared by Wilbur Smith Associates, certified by John L. Hudson, P.L.S. 6957, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book _____ at Page _____.

Beaufort County Tax Map Reference: A Portion of R511 007 000 0245 0000

This being a portion of the same property conveyed to the within Grantor by Deed of Michael P. Casavant and Debra A. Monge dated February 18, 2004, and recorded in the Office of Register of Deeds for Beaufort County, South Carolina, in Record Book 1912 at Page 706.



WILLIAM HILTON PARKWAY

TOWN OF HHI

SQUIRE POPE RELOCATED RD. AS RELOCATED BY TOWN 2008

KING

LAM

SQUIRE POPE RD.

FORMERLY TEENA JONES MATTHEW & FAMILY, LLC

TOWN OF HHI

278

TOWN OF HHI

TOWN OF HHI

CHAMBERLIN DR.

CAROLYN'S LANDSCAPING

TOWN OF HHI

[Signature]



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Stephen G. Riley, CM
VIA: Charles Cousins, AICP, *Director of Community Development*
FROM: Jayme Lopko, AICP, *Senior Planner*
CC: Shawn Colin, AICP, *Comprehensive Planning Manager*
DATE: August 19, 2011
SUBJECT: Community Vision of Hilton Head Multi-Purpose Performing Arts Facility

Recommendation: The Public Facilities Committee recommends that Town Council discuss providing financial support for further study by the Community Vision of Hilton Head (CVHH).

Summary: The Community Vision of Hilton Head made a presentation to the Public Facilities Committee on August 2nd regarding the status of their research and planning for a new multi-purpose performing arts facility. The Public Facilities Committee recommended that they explore with Town Council and Town administration the possibility of providing financial support for further study. The Committee further commented that they are not recommending a specific level of financial support at this time, but they are going to work with colleagues to determine what the level of interest in this venture is and how to go about determining the appropriate level of Town support.

Background: CVHH met with the Public Facilities Committee in March, 2009 and asked for feedback as to the vision and were they going in the right direction. The Committee stated there was a lot more work to be accomplished as CVHH did not have the numbers and did not have a picture of the facility, but were encouraged to proceed with planning and suggested they get professional help and expertise as much as possible because of the magnitude of this project. CVHH engaged a leading expert in the arts, Arts Consulting Group (ACG) out of New York City and had a process to develop a plan. Town Council identified "Arts & Conference Center: Evaluate Citizen Committee Proposal and Town's Role" as a "High Priority" Targets for Action in the 2011 Policy Agenda.

In working with ACG, the strategy used is a four phase plan:

Phase I (completed) Study the needs and priorities of the potential Hilton Head Island audience market and the physical requirements of foreseeable user organizations.

Phase II (finalizing – August estimate) A conceptual plan for a new indoor-outdoor performing arts facility with an order-of-magnitude cost estimate, operating expense estimates, and a proposed management structure.

Phase III Conduct a Community Engagement Process (CEP) by creating a community-wide CEP Task Force, testing CVHH concepts and plans with community leaders, their constituents, and the broader community and conducting a wide-ranging e-mail survey over the Task Force's lists to measure potential acceptance and identify issues to be addressed.

Phase IV Conduct a fund-raising and funding feasibility study and prepare final report.

Community Vision of Hilton Head has gathered \$109,000 worth of contributions from September 2006 to July 2011. Of that, \$88,850 has been spent with the biggest portion of that amount going to their consultant, ACG. The remaining two phases of this project are anticipated to cost \$135,000

Community Vision would like to request the following:

- Invite them back, upon completion of Phase II of the ACG Study to submit its findings for consideration.
- Town Council consider a grant of \$75,000 to enable the continuation of this study and planning effort.



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MARAJEANE ZODTNER

Mr. Stephen G. Riley
One Town Center Court
Hilton Head Island, SC 29928

July 25, 2011

Dear Steve,

Community Vision of Hilton Head appreciates the opportunity to make a presentation to the Public Facilities Committee on August 2, 2011.

We will present an update of CVHH activity since the last presentation to the Committee on March 24, 2009 and outline the actions being taken to develop an Arts and Cultural business enterprise model for Hilton Head Island.

We will make a request for financial assistance to defray some of the costs of continuing the study and planning efforts.

Sincerely,

Walter J. Graver, President

WWW.COMMUNITYVISIONOFHILTONHEAD.ORG
P.O. BOX 5387 | HILTON HEAD ISLAND, SC 29938
PHONE 843-671-5060 | FAX 843-363-5046
EMAIL: INFO@COMMUNITYVISIONOFHILTONHEAD.ORG



MEMORANDUM

TO: Town Council

FROM: Public Facilities Committee

VIA: Stephen G. Riley, CM Town Manager

DATE: August 25, 2011

RE: Recommendation to grant a permanent storm drainage easement to Palmetto Electric Cooperative, Inc.

Recommendation: The Public Facilities Committee recommends that Town Council grant a permanent storm drainage easement to Palmetto Electric Cooperative, Inc. (PECI) to allow for the construction and maintenance of a storm water discharge pipe on Town owned property (PIN R510 008 000 0200 0000, also known as the Ashmore Tract).

Summary: At the August 2nd Public Facilities Committee meeting, the committee endorsed the Town Council's granting of the permanent storm drainage easement to PECI. The re-development of the PECI service and maintenance yard requires that a suitable storm drainage discharge pipe be installed from the proposed retention basin. Due to grades and flow patterns, this pipe must encroach onto Town owned property. The total area of the proposed easement is 667 square feet (0.015 acres). Town staff views this as a rational solution and sees no adverse impacts from the granting of the easement and installation of the pipe.

Background: The Ashmore tract is a 74 acre parcel of land that is owned by the Town and lies at the headwaters of Broad Creek. Storm water runoff from the PECI development will be treated by an on-site retention pond before being discharged through a pipe under Power Alley (SCDOT maintained right of way), and then onto Town property. Once on Town property, the treated runoff will enter into a large forested wetland area. This storm water runoff will spread out, soak into the ground, and be filtered by the vast wetland as there is no direct channelization of flow from this location to Broad Creek. The major drainage channel traversing the Ashmore tract and draining into Broad creek is over 500 feet away from this discharge point.

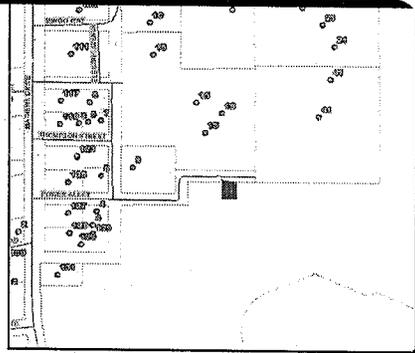
The PECI service yard and the adjacent Santee Cooper sub-station are both critical facilities for the

operation and maintenance of the islands power infrastructure. The proposed PECCI discharge will be piped under Power Alley, a road which is used for access to both facilities. This discharge must be properly engineered and maintained to ensure future access to these critical facilities.

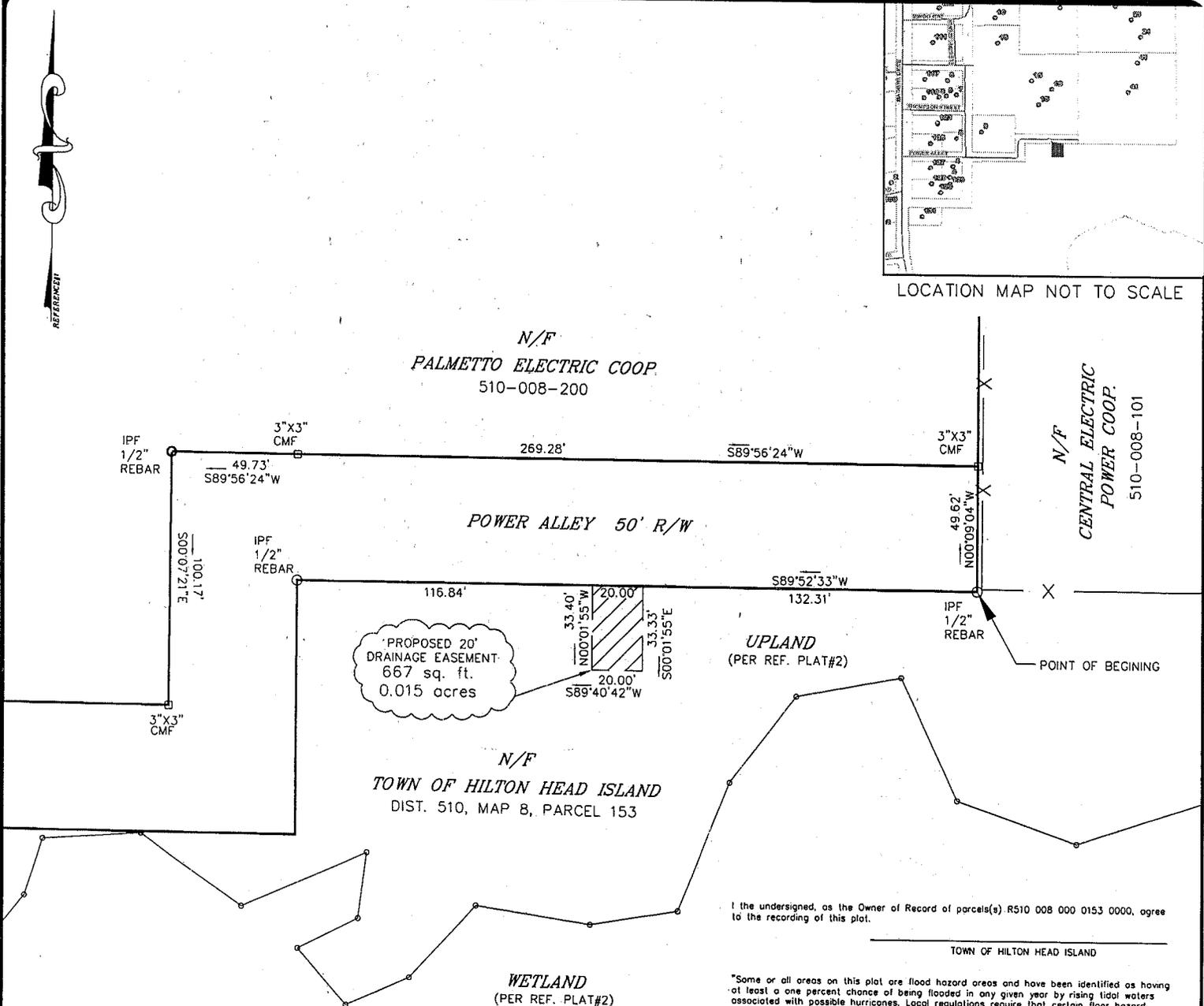
Please see the following attachment for additional background information:

Attachments:

Exhibit A – Easement Plat



LOCATION MAP NOT TO SCALE



I the undersigned, as the Owner of Record of parcels(s) R510 008 000 0153 0000, agree to the recording of this plat.

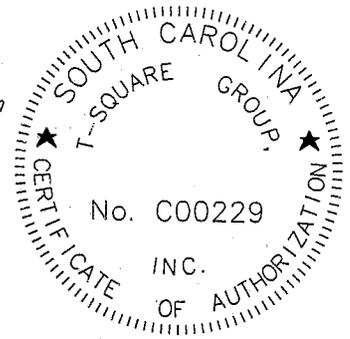
TOWN OF HILTON HEAD ISLAND

"Some or all areas on this plat are flood hazard areas and have been identified as having at least a one percent chance of being flooded in any given year by rising tidal waters associated with possible hurricanes. Local regulations require that certain flood hazard protective measures be incorporated in the design and construction of structures in these designated areas. Reference shall be made to the development covenants and restrictions of this development and requirements of the Town Building Official. In addition, federal law requires mandatory purchase of flood insurance as a prerequisite to federally insured mortgage financing in these designated flood hazard areas."

LEGEND

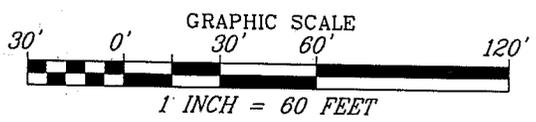
- ☐ CMS - CONCRETE MONUMENT SET
- ☐ CMF - CONCRETE MONUMENT FOUND
- IPS - IRON PIN SET
- IPF - IRON PIN FOUND

- NOTES:**
1. According To FEMA Flood Insurance Rate Map # 450250 0008D This Easement Appears To Lie In A Federal Flood Plain Zone A7, Minimum Required Elevation 14 Ft. NGVD29
 2. This Property May Be Subject To Easements, Protective Covenants And Other Facts That May Be Revealed By A Complete Title Search.
 3. All Building Setback Requirements Should Be Verified With The Proper Authorities Prior To Design And Construction.



REFERENCE PLAT(S):

- 1) A PLAT BY ME PREPARED FOR PALMETTO ELECTRIC COOP., DATED 12/19/2008, LAST REVISED 6/22/11, (JOB#92-175ATR6).
- 2) A WETLAND SURVEY OF THE ASHMORE TRACT, PREPARED FOR THE TOWN OF HILTON HEAD, BY COASTAL SURVEYING, DATED 9/23/96.



THE ABOVE PLAT PREPARED BY ME AT THE REQUEST OF
PALMETTO ELECTRIC COOP.

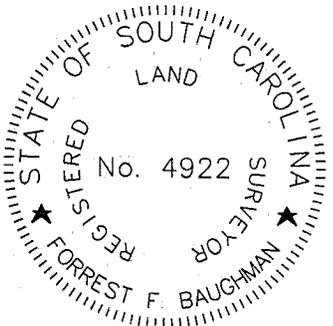
AN EASEMENT PLAT OF A PROPOSED DRAINAGE EASEMENT
LOCATED ON A PORTION OF PARCEL 153, TAX MAP 8, DISTRICT 510,
TOWN OF HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA.

DATE: JUNE 28, 2011

T-SQUARE GROUP, INC.
PROFESSIONAL LAND SURVEYORS
P.O. Drawer 330
139 Burnt Church Road
Bluffton, S.C. 29910
tsquare@chargray.com
Phone 843-757-2650 Fax 843-757-5758

I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION & BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN.
ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS AFFECTING THE PROPERTY OTHER THAN THOSE INDICATED.

FORREST F. BAUGHMAN, PLS # 4922



JOB # 92-175EX