



The Town of Hilton Head Island Regular Town Council Meeting

Tuesday, December 18, 2012

4:00 P.M.

AGENDA

As a Courtesy to Others Please Turn Off All Mobile Devices 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**
- 6) **Approval of Minutes**
 - a. Town Council Meeting – November 20, 2012
 - b. Town Council Meeting – December 4, 2012
- 7) **Report of the Town Manager**
 - a. FY2012 CAFR and Audit Presentation – Gary Cooke, Elliott Davis, LLC
 - b. Town Manager’s Items of Interest
- 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 – John McCann, Chairman
 - e. Report of the Public Facilities Committee – Kim Likins, Chairman
 - f. Report of the Public Safety Committee – Marc Grant, 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 2012-31

Second Reading of Proposed Ordinance 2012-31 authorizing the execution and delivery of an easement encumbering Town owned real estate, pursuant to the authority of S.C. Code Ann. § 5-7-40 (Supp. 2011), and § 2-7-20, Code of the Town Of Hilton Head Island, South Carolina, (1983); and providing for severability and an effective date.

b. Second Reading of Proposed Ordinance 2012-36

Second Reading of Proposed Ordinance 2012-36 to amend Title 16 of the Municipal Code of the Town of Hilton Head Island, South Carolina, the Land Management Ordinance, Chapter 4, Article XII. this amendment, commonly referred to as the *LMO Amendment to Allow Community Service Uses in the OL Zoning District*, as noticed in the Island Packet on September 9, 2012, includes a revision to Chapter 4, Article XII, Section IV, Use Table; and providing for severability and an effective date.

c. Second Reading of Proposed Ordinance 2012-39

Second Reading of Proposed Ordinance 2012-39 to amend the budget for the Town of Hilton Head Island, South Carolina, for the Fiscal Year ending June 30, 2013; to provide for the budgeted appropriations of prior year encumbrances and for the expenditures of certain funds; and to allocate the sources of revenue for the said funds.

d. Second Reading of Proposed Ordinance 2012-40

Second Reading of Proposed Ordinance 2012-40 to amend the budget for the Town of Hilton Head Island, South Carolina, for the Fiscal Year ending June 30, 2013; to provide for the budgeted appropriations of prior year budget roll-forwards and the expenditures of certain funds; and to allocate the sources of revenue for the said funds.

11) New Business

a. Consideration of a Resolution establishing principles, goals, policy agenda and management agenda

Consideration of a Resolution of the Town Council of the Town of Hilton Head Island, South Carolina, establishing the Town of Hilton Head Island Destination 2028 Guiding Principles, the Five Year (2018) Goals, 2013 Policy Agenda/Targets for Action, and 2013 Management Agenda.

b. Consideration of a Resolution authorizing Town of Hilton Head Island/Long Cove Master Drainage Agreement

Consideration of a Resolution of the Town Council of the Town of Hilton Head Island, South Carolina, authorizing the execution and delivery of an agreement related to drainage infrastructure in the Planned Unit Development known as Long Cove Club.

c. Consideration of a Resolution authorizing Town of Hilton Head Island/Shipyard Master Drainage Agreement

Consideration of a Resolution of the Town Council of the Town of Hilton Head Island, South Carolina, authorizing the execution of that certain drainage agreement and access, drainage and maintenance easement with Shipyard Property Owners Association, Inc. across property located in Shipyard Plantation.

d. Consideration of a Resolution authorizing the Commencement of Condemnation Proceedings for the purpose of acquiring easements for the Long Cove Pathway Project

e. Consideration that the Town Council for the Town of Hilton Head Island authorize the Mayor to execute renewal of a contract of employment with Gregory M. Alford as Town Attorney

12) Executive Session

- a. Land Acquisition
- b. Legal Matters pertaining to Potential Condemnation Proceedings
- c. Contractual Matters pertaining to Drainage Infrastructure Agreements
- d. Town Attorney Contract Renewal

13) Adjournment

THE TOWN OF HILTON HEAD ISLAND
REGULAR TOWN COUNCIL MEETING

Date: Tuesday, November 20, 2012

Time: 4:30 P.M.

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

Absent from Town Council: Ken Heitzke, *Mayor Pro Tem*

Present from Town Staff: Steve Riley, *Town Manager*; Greg DeLoach, *Assistant Town Manager*; Lavarn Lucas, *Fire Chief*; Scott Liggett, *Director of Public Projects and Facilities/Chief Engineer*; Susan Simmons, *Director of Finance*; Tom Fultz, *Director of Administrative Services*; Rene Phillips, *Website/Court Systems Administrator*; Nancy Gasen, *Director of Human Resources*; Brian Hulbert, *Staff Attorney*; Jill Foster, *Deputy Director of Community Development*; Jeff Buckalew, *Town Engineer*; Darrin Shoemaker, *Traffic & Transportation Engineer*; Tom Dunn, *Emergency Management Coordinator*; Julian Walls, *Facilities Manager*; Teri Lewis, *LMO Official*; Jayme Lopko, *Senior Planner*; Anne Cyran, *Senior Planner*; Marc Torin, *Special Projects Inspector*; Bob Klein, *Building Official*; Lynn Buchman, *Administrative Assistant*

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

a. Hilton Head Area Association of Realtors

Mr. John Robinson, President of the Association, was present to accept the commendation.

6) Approval of Minutes

a. Town Council Special Meeting – October 31, 2012

Mr. Williams moved to approve. Mr. Harkins seconded the motion. The minutes of the October 31, 2012 Town Council Special meeting were approved by a vote of 6-0.

b. Town Council Meeting – November 7, 2012

Mr. Williams moved to approve. Mrs. Likins seconded the motion. The minutes of the November 7, 2012 Town Council meeting were approved by a vote of 5-0-1. Mr. Edwards abstained as he was not present at the November 7, 2012 meeting.

7) Report of the Town Manager

a. Town Managers Items of Interest

Mr. Riley reported on some items of interest. He updated Town Council on the Flyover Project stating the County is still reviewing funding and costs savings. They are looking at all projects that were part of the sales tax revenue to ensure all invoices have been submitted and paid. Mr. Riley said he has a meeting scheduled with Mr. Kubic in the near future and it will be one of the items of discussion.

b. Powerline Burial Project Update – Marc Torin

Mr. Torin updated Town Council and conducted a power point presentation concerning the progress with the project.

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 the Committee met earlier in the day and Representative Andy Patrick was present and commented on agenda items of interest for the upcoming year. He stated the Committee reviewed the MASC Legislative priorities for the upcoming year and a proposed resolution of support will be brought to Town Council at the December 4 meeting.

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

Mr. Edwards reported the Committee has interviewed candidates and will discuss their recommendations during Executive Session.

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

No report.

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

No report.

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

No report.

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

No report.

h. Report of the Economic Development Committee – Bill Harkins, Town Council Liaison

Mr. Harkins stated consideration of implementing the Committee recommendations is on the agenda for today's meeting.

9) Appearance by Citizens

None.

10) Unfinished Business

a. Second Reading of Proposed Ordinance 2012-37

Second Reading of Proposed Ordinance 2012-37 to amend Chapter 1 (Business and Professional Licensing) of Title 10 (Business and Professional Licensing; Franchising and Regulations) of the Municipal Code of the Town of Hilton Head Island, South Carolina by amending Section 10-1-190 Classification Rates, Schedules; and provide for severability and an effective date.

Mr. Williams moved to approve. Mr. Harkins seconded the motion. The motion was approved by a vote of 5-0-1 with Mr. Edwards abstaining as he was not present at the previous meeting when the item was introduced and discussion took place.

11) New Business

a. Consideration of a Resolution – Honey Horn Master Plan

Consideration of a Resolution of the Town Council of the Town of Hilton Head Island, South Carolina, approving updates to the Honey Horn Master Plan on behalf of the Coastal Discovery Museum, and authorizing the execution and delivery of an amendment to the agreement between the Town of Hilton Head Island, South Carolina, and the Coastal Discovery Museum, and the lease of Honey Horn by and between the Town of Hilton Head Island, South Carolina, and the Coastal Discovery Museum, dated January 29, 2002.

Mr. Williams moved to approve. Mrs. Likins seconded. The motion was approved by a vote of 6-0.

b. Consideration of a Recommendation - PUD Storm Water Agreements

Consideration of a Recommendation that the Town Council of the Town of Hilton Head Island approve a policy for the acquisition of certain storm drainage easements that qualify for public service, are privately owned, and lie within the limits of a Planned Unit Development (PUD) or Property Owner's Association (PUD / POA) that shares a storm drainage maintenance and access agreement with the Town.

Mr. Williams moved to approve. Mrs. Likins seconded. Mr. Edwards expressed concerns about taking on the responsibility and having available funds. Mr. Riley said staff is confident the fee is sufficient at this time and continue to review the current costs and fees as additional areas are added. He added that at this time a fee increase is not requested but cannot guarantee there will never be one. The motion was approved by a vote of 6-0.

c. Consideration of a Resolution – Economic Development Advisory Committee

Consideration of a Resolution of the Town Council of the Town of Hilton Head Island to accept the report and associated concepts and recommendations, in principle, submitted by the Mayor's Citizens Committee on Economic Development.

Mr. Harkins moved to approve. Mr. Williams seconded. Mr. Williams asked if there

would be more details to the plan in the future. Mayor Laughlin stated he felt this would just set up the framework and details will be filled in during the process. Mr. Harkins requested this be an item of discussion during the retreat. He noted this is a major new direction that will bode well for the community.

Mr. Jim Collett spoke in favor of the resolution. He stated the Telecommunications Task Force has been working with the Economic Development Committee and that it is time for the Town to take a leadership roll concerning Economic Development.

Jocelyn Steigar stated the Association of Realtors supported the plan.

The motion was approved by a vote of 6-0.

d. First Reading of Proposed Ordinance 2012-38

First Reading of Proposed Ordinance 2012-38 to amend the budget for the Town of Hilton Head Island, South Carolina, for the fiscal year ending June 30, 2012; to provide for the expenditures of certain funds; and to allocate the sources of revenue for the said funds.

Mr. Williams moved to approve. Mr. Harkins seconded. Mr. Riley pointed out a typographical error on page 3 of the Proposed Ordinance. He informed Council the total for expenditures should read \$9,167,285 which is the same figure for total revenues. He said all other numbers were correct. He distributed the corrected copies. He stated he needed an amendment to make the change in the numbers. The maker and seconder of the motion were in agreement to the amendment. The amended motion was approved by a vote of 6-0.

e. Consideration of a Recommendation – Public Information Enhancements, Greg DeLoach, Rene Phillips

Consideration of a Recommendation that Town Council provide the Town Manager general direction to implement Public Information Enhancements.

Greg DeLoach explained the goal was to provide Council with a list of existing/current public information program and also to present technology and social media enhancements as options to Council as they go forward. He explained there would be a cost to any enhancements and there was time to include the costs in the budget planning process. Mr. DeLoach reviewed and highlighted items within the existing program noting the entire list was included in Attachment 1 in their documents.

Rene Phillips reviewed in detail via power point the Town website as it exists at this time noting it is constantly evolving with additional information. She summarized technology that is available and how other communities are utilizing various applications. Council members discussed the website and their views as to what enhancements are needed.

After lengthy discussion, Mr. DeLoach stated staff would make recommendations to the Town Manager concerning applications and cost projections for inclusion in the upcoming budget. He added that staff would begin to implement applications that have a minimal requirement of cost and staff time.

12) Executive Session

Mr. Riley stated he needed an executive session for legal matters including the possible settlement of ongoing litigation and personnel matters related to appointments to Boards and Commissions including the possible appointment to the Beaufort-Jasper Water and Sewer Authority. At 6:03 p.m. Mr. Harkins moved to go into Executive Session for the reasons given by the Assistant Town Manager. Mrs. Likins seconded. The motion was approved by a vote of 6-0.

Mayor Laughlin called the meeting back to order at 6:23 p.m. and asked if there was any business to take up as a result of executive session.

Mr. Edwards moved that Town Council nominate Jack Burke to the Beaufort Jasper Water and Sewer Authority Board to fill the unexpired term of Dr. Charlie White. He further moved that Council's recommendation be forwarded to the Beaufort County Legislative Delegation for its consideration. Mr. Harkins seconded. The motion was approved by a vote of 6-0.

13) Adjournment

Mr. Williams moved to adjourn. Mr. Harkins seconded. The motion was approved by a vote of 6-0. The meeting was adjourned at 6:24 p.m.

Victoria L. Pfannenschmidt
Executive Assistant

Approved:

Drew A. Laughlin, Mayor

DRAFT

THE TOWN OF HILTON HEAD ISLAND
REGULAR TOWN COUNCIL MEETING

Date: Tuesday, December 4, 2012

Time: 4:00 P.M.

Present from Town Council: Drew A. Laughlin, *Mayor*; George Williams, Lee Edwards, Bill Harkins, Kim Likins, Lee Edwards, Marc Grant, John McCann, *Council Members*

Absent from Town Council: Ken Heitzke, *Mayor Pro Tem*

Present from Town Staff: Steve Riley, *Town Manager*; Greg DeLoach, *Assistant Town Manager*; Lavarn Lucas, *Fire Chief*; Scott Liggett, *Director of Public Projects and Facilities/Chief Engineer*; Susan Simmons, *Director of Finance*; Tom Fultz, *Director of Administrative Services*; Rene Phillips, *Website/Court Systems Administrator*; Brian Hulbert, *Staff Attorney*; Jill Foster, *Deputy Director of Community Development*; Julian Walls, *Facilities Manager*; Teri Lewis, *LMO Official*; Anne Cyran, *Senior Planner*; Heather Colin, *Development Review Administrator*; Shawn Colin, *Comprehensive Planning Manager*; Jonathan Garcia, *Code Enforcement Officer*; Vicki Pfannenschmidt, *Executive Assistant*

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) Swearing in of Ward 1 Council Member – The Honorable Carmen Tevis Mullen

Marc A. Grant

Swearing in of Ward 3 Council Member – The Honorable Carmen Tevis Mullen

Wm. Lee Edwards

Swearing in of Ward 6 Council Member – The Honorable Carmen Tevis Mullen

John J. McCann

Judge Carmen Tevis Mullen administered the Oaths of Office.

6) Election of Mayor Pro Tempore

Mr. Williams nominated Mr. Harkins as Mayor Pro Tempore. Mrs. Likins seconded. The motion was approved unanimously by a vote of 7-0.

7) **Town Council Committee Assignments – Mayor Laughlin**

Mayor Laughlin noted that the Mayor Pro Tem does not chair a Committee. He added that committee agendas are set by the Mayor and if there are items any Chair would like assigned to a Committee they should contact him to discuss. He announced the following Committee assignments:

Intergovernmental Relations Committee

George Williams – Chairman
Lee Edwards
Marc Grant
Alternate: Drew Laughlin

Personnel Committee

Lee Edwards, Chairman
Kim Likins
George Williams
Alternate: Bill Harkins

Planning & Development Standards Committee

John McCann, Chairman
Bill Harkins
George Williams
Alternate: Kim Likins

Public Facilities Committee

Kim Likins – Chairman
John McCann
Marc Grant
Alternate: George Williams

Public Safety Committee

Marc Grant – Chairman
Bill Harkins
John McCann
Alternate: Lee Edwards

LMO Rewrite Liaison

Kim Likins

Low Country Council of Governments Representatives

George Williams
Marc Grant

8) **Proclamations and Commendations**

a. Arbor Day

Marcy Benson was present to accept the proclamation.

9) Approval of Minutes

None

10) Report of the Town Manager

a. Town Manager's Items of Interest

Mr. Riley reported on some Items of Interest.

11) Reports from Members of Council

a. General Reports from Council

Mayor Laughlin stated that Town Council recently held the annual workshop with the main purpose of setting the policy and management agenda for the upcoming year, as well as long term goals. He said he was very pleased with the results of the workshop.

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

Mr. Williams stated the meeting scheduled for December 18, 2012 will be cancelled.

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

No report.

d. Report of the Planning & Development Standards Committee

No report.

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

No report.

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

No report.

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

Mrs. Likins stated the Committee is in the process of scheduling a meeting to receive an update from the consultant.

12) Appearance by Citizens

None.

13) Unfinished Business

a. Second Reading of Proposed Ordinance 2012-38

Second Reading of Proposed Ordinance 2012-38 to amend the budget for the Town of Hilton Head Island, South Carolina, for the fiscal year ending June 30, 2012; to provide for the expenditures of certain funds; and to allocate the sources of revenue for the said funds.

Mr. Harkins moved to approve. Mrs. Likins seconded. The motion was approved unanimously by a vote of 7-0.

14) New Business

a. First Reading of Proposed Ordinance 2012-31

First Reading of Proposed Ordinance 2012-31 authorizing the execution and delivery of an easement encumbering Town owned real estate, pursuant to the authority of S.C. Code Ann. § 5-7-40 (Supp. 2011), and § 2-7-20, Code of the Town Of Hilton Head Island, South Carolina, (1983); and providing for severability and an effective date.

Mr. Harkins moved to approve. Mrs. Likins seconded. The motion was approved unanimously by a vote of 7-0.

b. First Reading of Proposed Ordinance 2012-36

First Reading of Proposed Ordinance 2012-36 to amend Title 16 of the Municipal Code of the Town of Hilton Head Island, South Carolina, the Land Management Ordinance, Chapter 4, Article XII. this amendment, commonly referred to as the *LMO Amendment to Allow Community Service Uses in the OL Zoning District*, as noticed in the Island Packet on September 9, 2012, includes a revision to Chapter 4, Article XII, Section IV, Use Table; and providing for severability and an effective date.

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

c. First Reading of Proposed Ordinance 2012-39

First Reading of Proposed Ordinance 2012-39 to amend the budget for the Town of Hilton Head Island, South Carolina, for the Fiscal Year ending June 30, 2013; to provide for the budgeted appropriations of prior year encumbrances and for the expenditures of certain funds; and to allocate the sources of revenue for the said funds.

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

d. First Reading of Proposed Ordinance 2012-40

First Reading of Proposed Ordinance 2012-40 to amend the budget for the Town of Hilton Head Island, South Carolina, for the Fiscal Year ending June 30, 2013; to provide for the budgeted appropriations of prior year budget roll-forwards and the expenditures of certain funds; and to allocate the sources of revenue for the said funds.

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

Mr. Williams asked if the purpose of this amendment was for work that had not gotten completed during the fiscal year. Mrs. Simmons concurred. She explained that the project managers identified certain projects scheduled that did not get underway in the past fiscal year but will be completed this year. She added that the Port Royal fill project came in under budget and clarified that the Yacht Cove Community Park budgeted amount did not roll over and would have to be re-budgeted if Council wanted to pursue the project.

e. First Reading of Proposed Ordinance 2012-41

First Reading of Proposed Ordinance 2012-41 authorizing the execution of that certain encroachment easement agreement with Springwood Owners' Association, Inc. encumbering real property owned by the Town of Hilton Head Island, South Carolina, pursuant to the authority of S.C. Code Ann. sec. 5-7-40 (Supp. 2011), 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. Harkins moved to approve. Mr. Williams seconded. After discussion concerning the easements, Mr. Riley suggested the item be withdrawn from the agenda while staff researched past actions concerning the property. The maker and seconder of the motion agreed. The item was withdrawn from the agenda.

f. Consideration of a Resolution – MASC Legislative Priorities

Consideration of a Resolution of the Town Council of the Town of Hilton Head Island, South Carolina, expressing its support for the Municipal Association of South Carolina's 2013 Legislative Priorities.

Mr. Williams moved to approve. Mrs. Likins seconded. Mr. Williams explained the Intergovernmental Committee reviewed the Legislative Agenda and felt the MASC was not forceful enough concerning certain items on the agenda and recommended the letter be sent along with the resolution. Mayor Laughlin explained that during the Workshop the Legislative Agenda was reviewed and discussed and while none had objections to the Agenda, they felt strongly regarding Act 388 and the resulting financial consequences for the Town and State. He explained Council felt the need to express that MASC needs to direct time and resources towards issues concerning Act 388. Mrs. Likins noted the Hilton Head Area Association of Realtors concurred. The motion was approved unanimously by a vote of 7-0.

15) Adjournment

Mr. Williams moved to adjourn. Mr. Harkins seconded. The motion was approved by a vote of 7-0. The meeting was adjourned at 4:32 p.m.

Victoria L. Pfannenschmidt
Executive Assistant

Approved:

Drew A. Laughlin, Mayor



Items of Interest

December 18, 2012

1. Noteworthy Events

a) Some of the upcoming meetings at Town Hall:

- Planning Commission – December 19, 2012, 3:00 p.m.
- Town Hall Offices Closed – December 24-25, 2012
- Town Hall Offices Closed – December 31- January 1, 2013
- Planning Commission – January 2, 2013, 9:00 a.m.
- Public Projects & Facilities Committee – Wednesday, January 2, 2013, 2:00 p.m.
- Town Council – Wednesday, January 2, 2013 – 4:00 p.m.
- Town Council Special Meeting – January 3, 2013 – 4:00 p.m.

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



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Stephen G. Riley, CM, *Town Manager*
VIA: Jill Foster, AICP, *Deputy Director of Community Development*
CC: Charles Cousins, AICP, *Director of Community Development*
FROM: Teri Lewis, AICP, *LMO Official*
DATE: December 6, 2012
SUBJECT: Proposed Easement for Palmetto Hall Directional Sign on Town-Owned Property

Town Council made no changes to proposed Ordinance No. 2012-31 as a result of the first reading on December 4, 2012.

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO.: 2012-____

PROPOSED ORDINANCE NO. 2012-31

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION AND DELIVERY OF AN EASEMENT ENCUMBERING TOWN OWNED REAL ESTATE, PURSUANT TO THE AUTHORITY OF S.C. CODE ANN. § 5-7-40 (SUPP. 2011), AND § 2-7-20, CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, (1983); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Town of Hilton Head Island, South Carolina, owns a parcel of real property which is located at the intersection of U. S. Highway and Beach City Road, Hilton Head Island, South Carolina; and

WHEREAS, Palmetto Hall is a residential community lying approximately one half mile from the intersection of U. S. 278 and Beach City Road; and,

WHEREAS, the Palmetto Hall Property Owner's Association, Inc., has requested an easement allowing the Palmetto Hall Property Owner's Association, Inc., to erect and maintain a directional sign on the Town's property; 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 and its citizens to approve the granting of the easement to the Palmetto Hall Property Owner's Association, Inc.

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

Section 1 Execution of Easement.

(a) The Mayor and Town Manager are hereby authorized to execute and deliver the "Sign Easement" between The Town of Hilton Head Island, South Carolina and the Palmetto Hall Property Owner's Association, Inc., which is attached hereto as Exhibit

“A”; and,

(b) The Town Manager is hereby authorized to take such other and further actions as may be necessary to complete the fulfillment of the Town's obligations under the “Sign Easement”.

Section 2 Severability. If any section, 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 affect the validity of the remaining portions thereof.

Section 3 Effective Date. This Ordinance shall be effective upon adoption thereof 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 _____, 2012.

**THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA**

By: _____
Drew A. Laughlin, Mayor

ATTEST:

By: _____
Victoria L. Pfannenschmidt, Acting Town Clerk

First Reading: _____

Second Reading: _____

APPROVED AS TO FORM:

Gregory M. Alford, Town Attorney

Introduced by Council Member: _____



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Stephen G. Riley, CM, *Town Manager*
VIA: Teri Lewis, AICP, *LMO Official*
CC: Charles Cousins, AICP, *Director of Community Development*
FROM: Anne Cyran, AICP, *Senior Planner*
DATE: December 6, 2012
SUBJECT: Proposed Ordinance No. 2012-36
Amend LMO to Allow Community Service in the OL Zoning District

Town Council made no changes to proposed Ordinance No. 2012-36 as a result of the first reading on December 5, 2012.

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO.:

PROPOSED ORDINANCE NO.: 2012-36

AN ORDINANCE TO AMEND TITLE 16 OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, THE LAND MANAGEMENT ORDINANCE, CHAPTER 4, ARTICLE XII. THIS AMENDMENT, COMMONLY REFERRED TO AS THE *LMO AMENDMENT TO ALLOW COMMUNITY SERVICE USES IN THE OL ZONING DISTRICT*, AS NOTICED IN THE ISLAND PACKET ON SEPTEMBER 9, 2012, INCLUDES A REVISION TO CHAPTER 4, ARTICLE XII, SECTION IV, USE TABLE; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, on July 21, 1998, the Town Council did amend Title 16 of the Municipal Code of the Town of Hilton Head Island by enacting a revised Land Management Ordinance (LMO); and

WHEREAS, the proposed amendments are supported by Town Council's Policy Agenda for 2011 which lists Amending the LMO to Foster Greater Flexibility, Simplicity and Revitalization as a Top Priority; and

WHEREAS, the Land Management Ordinance Committee held a public meeting on September 24, 2012 to discuss the proposed amendments and voted 4-0-0 to forward the proposed amendment to the Planning Commission; and

WHEREAS, the Planning Commission held a public hearing on October 17, 2012 and voted 7-0-0 to recommend that Town Council approve the proposed amendment; and

WHEREAS, the Planning and Development Standards Committee met on October 24, 2012 and voted 2-0-0 to recommend that Town Council approve the proposed amendment; and

WHEREAS, Town Council now finds that, upon further review, it is in the public interest to approve the attached revision to Chapter 4 of the Land Management Ordinance.

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

Section 1. Amendment. That the Land Management Ordinance of the Town of Hilton Head Island, South Carolina, be, and the same hereby is, amended to read as indicated on the attached pages.

NOTE: New text is indicated by a double underline and deleted text is indicated by a ~~strike through~~.

Section 2. 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 3. Effective Date. This 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 _____ 2012.

Drew A. Laughlin, Mayor

ATTEST:

Victoria L. Pfannenschmidt, Acting Town Clerk

Public Hearing: October 17, 2012
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, ICMA-CM, Town Manager

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

DATE: November 21, 2012

RE: **Second Reading of Proposed Ordinance No. 2012-39**

No changes were made to Proposed Ordinance No. 2012-39 during the first reading.

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO.

PROPOSED ORDINANCE NO. 2012-39

AN ORDINANCE TO AMEND THE BUDGET FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, FOR THE FISCAL YEAR ENDING JUNE 30, 2013; TO PROVIDE FOR THE BUDGETED APPROPRIATIONS OF PRIOR YEAR ENCUMBRANCES AND FOR THE EXPENDITURES OF CERTAIN FUNDS; AND TO ALLOCATE THE SOURCES OF REVENUE FOR THE SAID FUNDS.

WHEREAS, Section 5-7-260 of the Code of Laws of South Carolina requires that a municipal council act by ordinance to adopt a budget and levy taxes, pursuant to public notice; and

WHEREAS, the Town Council did adopt the budget on June 19, 2012, and

WHEREAS, pursuant to the budget amendment policy as stated in the Town’s annual budget document, the Town Council is desirous of amending the budget so as to provide for the budgeted appropriations of prior year encumbrances and certain other commitments from the Fund Balance and other revenue sources.

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

Section 1 Amendment. The adopted 2013 fiscal year budget is amended to make the following changes as additions to the funds from prior years and to the projected revenue and expenditure accounts as follows:

General Fund

<u>Account Description</u>		<u>Amount</u>
Revenues:		
Funds From Prior Years		\$ 215,392
Total Revenues		<u>\$ 215,392</u>
Expenditures:		
Town Wide - Operating	10000920	
Professional Services	53320	\$ 14,000
IT Services - Operating	11061520	
Computer Software < \$50,000	54400	\$ 3,000
IT Services - Capital	11061540	
Computer Software > \$50,000	55121	\$ 25,486
PP&F/ Engineering - Operating	11536520	
Closed Loop Traffic Signal Maint.	53180	\$ 4,027
Consulting Services Traffic Control	53360	\$ 6,750
DRZ - Operating	11585020	
Consulting Services	55350	\$ 138,036

ORDINANCE NO.

PROPOSED ORDINANCE NO. 2012-39

General Fund (Cont.)

<u>Account Description</u>		<u>Amount</u>
Expenditures (Continued):		
F&R Logistics & Maint. - Capital	12023540	
Specilized Equipment	55120	\$ 9,339
F&R Communications - Operating	12024020	
Radio Repair & Maint.	54970	\$ 2,000
F&R Communications - Capital	12024040	
Radio Equipment	55140	\$ 1,000
F&R Support Services - Operating	12029520	
Uniforms & Protective Gear	54230	\$ 11,754
Total Expenditures		<u>\$ 215,392</u>

Capital Projects Fund

<u>Account Description</u>	<u>Source of Funds</u>	<u>Amount</u>
Revenues:		
2012 GO Bond		\$ 28,555
Beach Fees		\$ 229,178
Hospitality Tax		\$ 639,565
Property Taxes		\$ 74,042
Sunday Liq. Permit Fees		\$ 15,779
TIF Property Tax		\$ 707,587
Traffic Impact Fees		\$ 36,287
Total Revenues		<u>\$ 1,730,993</u>

Expenditures:

Pathways

Pathway Rehabilitation	HTAX Fees	\$ 125,000
"	Property Taxes	\$ 44,616
Palmetto Bay	TIF Property Taxes	\$ 40,988
Dunnagan's Alley	TIF Property Taxes	\$ 97,388
US 278 (Gardner to Mathews)	Traffic Impact Fees	\$ 34,702
US 278 (Wexford Circle to Fresh Market Shoppes)	HTAX Fees	\$ 7,220
"	Traffic Impact Fees	\$ 1,585
Leg O'Mutton	HTAX Fees	\$ 183
Pembroke Drive	HTAX Fees	\$ 184
Gardner Drive	HTAX Fees	\$ 184
US 278 @ New Orleans to Shipyard & Town Hall	Property Taxes	\$ 20,766
"	TIF Property Taxes	\$ 168,000

Capital Projects Fund (Cont.)

<u>Account Description</u>	<u>Source of Funds</u>	<u>Amount</u>
Expenditures (Continued):		
Road Improvements		
Directional/Neighborhood Signage	HTAX Fees	\$ 24,807
Mathews Dr./Chaplin Area Connectivity	TIF Property Taxes	\$ 35,651
Marshland Roundabout	TIF Property Taxes	\$ 64,762
Pedestrian Crosswalks	TIF Property Taxes	\$ 87,732
"	Property Taxes	\$ 168
Traffic Signal Mast Arms	HTAX Fees	\$ 4,235
Roadway Safety Improvements	Property Taxes	\$ 672
Intersection Improvements	TIF Property Taxes	\$ 56,776
Private (Dirt) Rd. Acquisition	Property Taxes	\$ 7,820
Park Development		
Parks Upgrades	Sunday Liq. Permit F	\$ 15,779
Rowing & Sailing Center	TIF Property Taxes	\$ 1,427
Island Recreation-Aquatics	HTAX Fees	\$ 14,600
Existing Facilities/Infrastructure		
Fire Station 6 Replacement	HTAX Fees	\$ 241,845
Apparatus & Vehicle Replacement	HTAX Fees	\$ 218,570
New Facilities/Infrastructure		
F&R Computer System	HTAX Fees	\$ 2,737
BCSO with Tenant Upfit	2012 GO Bond	\$ 28,555
Coligny/Pope Avenue Area Initiative	TIF Property Taxes	\$ 14,791
Dunnagan's Area Initiative	TIF Property Taxes	\$ 140,072
Beach Maintenance		
Beach Management	Beach Fees	\$ 60,593
Shoreline Management Plan	Beach Fees	\$ 62,085
Port Royal Fill Project	Beach Fees	\$ 106,500
Total Expenditures		\$ 1,730,993

Stormwater Fund

<u>Account Description</u>	<u>Source of Funds</u>	<u>Amount</u>
Revenues:		
Stormwater Utility Fees		\$ 272,094
Total Revenues		<u>\$ 272,094</u>
Expenditures:		
Operating		
Water Quality Monitoring	SWU Fees	\$ 15,195
Infrastructure Upgrades & Improvements		
Hilton Head Plantation Pond Control	SWU Fees	\$ 52,231
Wiler's Creek Stabilization	SWU Fees	\$ 16,728
Miller's Pond	SWU Fees	\$ 11,205
Port Royal Plantation Culvert Upgrade	SWU Fees	\$ 15,780
Wexford Generator Permanent Mount	SWU Fees	\$ 16,235
Gumtree Road South Outfall	SWU Fees	\$ 9,299
Broad Creek Shelter Cove BMP Retrofit	SWU Fees	\$ 11,949
Arrow Road	SWU Fees	\$ 65,980
Fish Haul Culverts	SWU Fees	\$ 7,890
Drainage Maintenance and Repairs		
<i>Shipyard</i>		
Cottages Sinkhole & Shipmaster Sinkhold	SWU Fees	\$ 4,309
<i>Non-PUD</i>		
Myrtle Lane & Hickory Lane	SWU Fees	\$ 12,652
Executive Park Outfall	SWU Fees	\$ 11,970
Marshland Road	SWU Fees	\$ 6,336
Pump Stations		
Pump Station Maintenance	SWU Fees	\$ 14,335
Total Expenditures		<u>\$ 272,094</u>

ORDINANCE NO.

PROPOSED ORDINANCE NO. 2012-39

The effect of this amendment will be to increase the General Fund to \$33,405,768, Capital Projects Fund to \$14,597,493, and Enterprise Fund to \$8,234,120.

Section 2 Severability. If any section, 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 affect the validity of the remaining portions thereof.

Section 3 Effective Date. This Ordinance shall be effective upon its enactment by the Town Council of the Town of Hilton Head Island on this _____ day of _____, 2012.

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS ___ DAY OF _____, 2012.

Drew A. Laughlin, Mayor

ATTEST:

Victoria L. Pfannenschmidt
Acting 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, ICMA-CM, Town Manager

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

DATE: November 21, 2012

RE: **Second Reading of Proposed Ordinance No. 2012-40**

No changes were made to Proposed Ordinance No. 2012-40 during the first reading.

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO.

PROPOSED ORDINANCE NO. 2012-40

AN ORDINANCE TO AMEND THE BUDGET FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, FOR THE FISCAL YEAR ENDING JUNE 30, 2013; TO PROVIDE FOR THE BUDGETED APPROPRIATIONS OF PRIOR YEAR BUDGET ROLL-FORWARDS AND THE EXPENDITURES OF CERTAIN FUNDS; AND TO ALLOCATE THE SOURCES OF REVENUE FOR THE SAID FUNDS.

WHEREAS, Section 5-7-260 of the Code of Laws of South Carolina requires that a municipal council act by ordinance to adopt a budget and levy taxes, pursuant to public notice; and

WHEREAS, the Town Council did adopt the budget on June 19, 2012, and

WHEREAS, pursuant to the budget amendment policy as stated in the Town's annual budget document, the Town Council is desirous of amending the budget so as to provide for the budgeted appropriations of prior year budget **roll-forwards** and certain other commitments from the Fund Balance and other revenue sources.

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

Section 1 Amendment. The adopted 2013 fiscal year budget is amended to make the following changes as additions to the funds from prior years and to the projected revenue and expenditure accounts as follows:

ORDINANCE NO.

PROPOSED ORDINANCE NO. 2012-40

General Fund

<u>Account Description</u>		<u>Amount</u>
Revenues:		
Funds From Prior Years		\$ 300,489
Total Revenues		\$ 300,489
Expenditures:		
Townwide Operating	10000920	
Professional Services	53320	\$ 20,000
Insurance	53750	11,456
General Contingency	54990	45,727
Townwide Grants	10000950	
Event Management & Hosp. Training	56052	15,000
Finance-Revenue & Collections Operating	1105250	
Professional Services	53320	96,146
IT Services Operating	10161520	
Maintenance Contracts/Fees	53700	34,690
Computer Software < \$5,000	54400	5,772
IT Services Capital	10161540	
Computer Software = or >\$50,000	55121	8,165
Human Resources Operating	11061720	
Consulting Services	53350	2,250
PP&F-Engineering - Operating	11585020	
Roadways/Pathways Maint.	53150	10,000
Community Development-DRZ Operating	11585020	
Consulting Services	53350	42,912
Public Safety - Police Services Contract	11585020	
Operational Supplies	54250	8,371
Total Expenditures		\$ 300,489

ORDINANCE NO.

PROPOSED ORDINANCE NO. 2012-40

Capital Projects Fund

<u>Account Description</u>	<u>Source of Funds</u>	<u>Amount</u>
Revenues:		
2012 GO Bond		1,432,050
Beach Fees		652,124
Hospitality Tax		1,128,891
Property Taxes		564,167
Sunday Liq. Permit Fees		222,367
TIF Property Taxes		2,559,985
Traffic Impact Fees		139,654
Total Revenues		6,699,238
Expenditures:		
Pathways		
Palmetto Bay Road	TIF Property Taxes	24,684
Dunnagan's Alley	TIF Property Taxes	25,000
US 278 (Gardener to Mathews)	Traffic Impact Fees	32,239
Leg O'Mutton	HTAX Fees	15,887
"	Traffic Impact Fees	27,000
Pembroke Drive	HTAX Fees	16,865
"	Traffic Impact Fees	27,000
Gardner Drive	HTAX Fees	13,865
"	Traffic Impact Fees	25,000
US 278 (Wesford Circle to Fresh Market Shoppes)	Traffic Impact Fees	18,415
US 278 @ New Orleans to Shipyard to Town Hall	Property Taxes	13,160
"	TIF Property Taxes	14,000
Honey Horn Access Improvements	HTAX Fees	45,182
"	Property Taxes	49,817
Road Improvements		
Pedestrian Crosswalks	HTAX Fees	172,038
"	Property Taxes	36,891
"	TIF Property Taxes	3,437
Traffic Signal Mast Arms	HTAX Fees	245,362
Intersection Improvements	HTAX Fees	90,000
"	TIF Property Taxes	8,519
F&R Emergency Access Points	HTAX Fees	63,565
Roadway Safety Improvements	Property Taxes	115,864
Mathews Dr./Chaplin Area Connectivity	TIF Property Taxes	417,766
Private (Dirt) Rd. Acquisition	Property Taxes	62,577
Leamington/Fresh Market/US 278	HTAX Fees	30,729
"	Property Taxes	189,000
"	Traffic Impact Fees	10,000

ORDINANCE NO.

PROPOSED ORDINANCE NO. 2012-40

<u>Account Description</u>	<u>Source of Funds</u>	<u>Amount</u>
Expenditures (Continued):		
Park Development		
Parks Upgrades	Sunday Liquor Perm	217,367
Rowing and Sailing Center	Property Taxes	4,270
"	TIF Property Taxes	124,208
Chaplin Tennis Courts	Sunday Liquor Perm	5,000
"	TIF Property Taxes	67,230
Share Center Tenant Upfit	2012 GO Bond	100,000
Existing Facilities/Infrastructure		
Clean up, Maintenance of Properties & Demo	Property Taxes	4,667
Apparatus and Vehicle Replacement	HTAX Fees	30,000
"	Property Taxes	4,966
Fire Station # 6 Repair	HTAX Fees	54,430
Rehab & Renov Fixed Capital Assets	Property Taxes	82,955
Fire Station # 2 Repair	HTAX Fees	48,454
Town Hall Renovations	HTAX Fees	192,750
New Facilities/Infrastructure		
F&R Computer System	HTAX Fees	109,764
Coligny/Pope Avenue Area Initiative	TIF Property Taxes	873,218
Dunnagan's Area Initiative	TIF Property Taxes	553,272
Sewer Service Projects	2012 GO Bond	1,200,000
"	Beach Fees	31,000
"	TIF Property Taxes	448,651
BCSO with Tenant Upfit	2012 GO Bond	132,050
Beach Maintenance		
Beach Management/Monitoring	Beach Fees	553,875
Beach Parks	Beach Fees	67,249
Total Expenditures		<u><u>6,699,238</u></u>

ORDINANCE NO.

PROPOSED ORDINANCE NO. 2012-40

Stormwater Fund

<u>Account Description</u>	<u>Source of Funds</u>	<u>Amount</u>
Revenues:		
Stormwater Utility Fees		\$ 689,879
Total Revenues		\$ 689,879
Expenditures:		
Operating		
Water Quality Monitoring	SWU Fees	\$ 3,791
Infrastructure Upgrades & Improvements		
Fish Haul Culverts	SWU Fees	\$ 42,110
Hilton Head Plantation Pond Control	SWU Fees	\$ 16,159
Drainage Maintenance and Repairs		
<i>Shipyards</i>		
Cottages Sinkhole & Shipmaster sinkholes	SWU Fees	\$ 20,691
<i>Port Royal Plantation PUD</i>		
Scarborough channel widening/stabilization	SWU Fees	\$ 16,941
Pump Stations		
Sea Pines Pump Work	SWU Fees	\$ 8,643
Emergency Contingency	SWU Fees	\$ 75,000
Inventory and Modeling		
Port Royal Plantation	SWU Fees	\$ 161,544
Hilton Head Plantation	SWU Fees	\$ 200,000
Gumtree Road	SWU Fees	\$ 30,000
Indigo Run Plantation	SWU Fees	\$ 15,000
Unaffiliated Watersheds	SWU Fees	\$ 100,000
Total Expenditures		\$ 689,879

ORDINANCE NO.

PROPOSED ORDINANCE NO. 2012-40

The effect of this amendment will be to increase the General Fund to \$33,706,257, Capital Projects Fund to \$21,296,731, and Enterprise Fund to \$8,923,999. The Debt Service Fund remains unchanged at \$15,928,015.

Section 2 Severability. If any section, 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 affect the validity of the remaining portions thereof.

Section 3 Effective Date. This Ordinance shall be effective upon its enactment by the Town Council of the Town of Hilton Head Island on this _____ day of _____, 2012.

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS ____ DAY OF _____, 2012.

Drew A. Laughlin, Mayor

ATTEST:

Victoria L. Pfannenschmidt
Acting 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, ICMA-CM, Town Manager

RE: Proposed Resolution Establishing the Town of Hilton Head Island Destination 2028 Guiding Principles, Five Year (2018) Goals, 2013 Policy Agenda/Targets for Action and 2013 Management Agenda

DATE: December 6, 2012

Recommendation: That Council adopt all priorities established at its recent strategic planning workshop.

Summary: The attached, proposed Resolution formally adopts our Destination 2028 Guiding Principles, the Five Year (2018) Goals, 2013 Policy Agenda/Targets for Action and 2013 Management Agenda as formulated at Town Council's recent annual strategic planning workshop.

Background: On November 29, 2012 through December 1, 2012, Town Council convened for its annual strategic planning workshop with Lyle Sumek, Facilitator. As a result, Town Council established the attached Targets for Action for 2013.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, ESTABLISHING THE TOWN OF HILTON HEAD ISLAND DESTINATION 2028 GUIDING PRINCIPLES, THE FIVE YEAR (2018) GOALS, 2013 POLICY AGENDA/TARGETS FOR ACTION, AND 2013 MANAGEMENT AGENDA.

WHEREAS, the Town Council of the Town of Hilton Head Island met in a workshop session on November 29, 2012 through December 1, 2012 for the purpose of developing concepts for teamwork and focused action, and to establish goals and objectives for their term of office; and

WHEREAS, the Town Council for the Town of Hilton Head Island has identified its Destination 2028 Guiding Principles, Five Year (2018) Goals, 2013 Policy Agenda/Targets for Action and 2013 Management Agenda (Exhibit "A") for achieving these goals; and

WHEREAS, the Town Council believes that the adoption of the Destination 2028 Guiding Principles, Five Year (2018) Goals, 2013 Policy Agenda/Targets for Action and 2013 Management Agenda will provide a framework for action and will provide guidance in executing its desires for itself, for staff, and for citizens of the Town of Hilton Head Island.

NOW, THEREFORE, BE IT, AND IT HEREBY IS, RESOLVED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, THAT the attached Destination 2028 Guiding Principles, Five Year (2018) Goals, 2013 Policy Agenda/Targets for Action and 2013 Management Agenda, are hereby adopted.

MOVED, APPROVED, AND ADOPTED THIS ____ DAY OF _____, DECEMBER, 2012.

Drew A. Laughlin, Mayor

ATTEST:

By: _____
Victoria L. Pfannenschmidt, Acting Town Clerk

APPROVED AS TO FORM:

Gregory M. Alford, Town Attorney

Introduced by Council Member: _____

Exhibit “A”
TOWN COUNCIL WORKSHOP
2013 RESULTS

TOWN OF HILTON HEAD ISLAND:
DESTINATION 2028 GUIDING PRINCIPLES

- Living in Harmony with Nature, Protecting the Natural Beauty, and Creating a Unique Sense of Place
- Sustaining Community Prosperity Through a Diversified, Strong Local Economy Based Upon Resort, Retirement, and Non-Hospitality Businesses
- Providing Meaningful Experiences that Cherish our History, the Arts, Cultural Diversity, and Enrich the Lives of our Residents and Guests
- Striving for Excellence in Everything We Plan, Build, Do, and Maintain
- Providing a Serene, Safe, and Healthy Living Environment for Residents, Guests and Visitors
- Working Together and Volunteering for the Greater Good of the Hilton Head Island Community

TOWN OF HILTON HEAD ISLAND 2018:
OUR GOALS

- Positive Climate for Business Investment
- Town Government: Financially Sound, Excellent Services
- Enrich Lives of Residents and Guests
- Upgraded Public Infrastructure and Facilities
- Preeminence for Environmental Stewardship

POLICY AGENDA 2013
TARGETS FOR ACTION

TOP PRIORITY

- Economic Development Organization: Creation and Operation
- Coligny Area Development Projects: Direction and Funding
- Arts Collaboration: Framework and Strategy for Fostering Collaboration among Arts Organizations
- Arts Center of Coastal Carolina: Short-Term Financial Direction
- Chaplin Linear Park and Boardwalk: Development and Permitting

POLICY AGENDA 2013
TARGETS FOR ACTION CONT.

HIGH PRIORITY

- Education Strategy: Identification of Needs and Direction
- Recreation Center Expansion: Direction on Future Phases
- Mainland Transportation Agreement: Dirt Road Policy Direction, Flyover Funding, and Future Town Acceptance of Private Roads Direction and Funding
- Solid Waste Contract: Direction

MODERATE PRIORITY

- Commercial Recycling: Evaluation and Direction
- Land Acquisition Program: Policy Direction, Acquisitions, and Funding

MANAGEMENT AGENDA 2013

TOP PRIORITY

- Airport Issues: Resolution
- Reassessment and Tax Rate Limitations: Direction and Public Information
- Shelter Cove Area Public Projects: Construction
- Tax Increment Financing District: Study Extension

HIGH PRIORITY

- Employee Compensation and Benefits: Review and Direction
- Posting of Quarterly Financial Reports Online: Purpose, Method, and Funding
- Beach Renourishment (2015): Scoping, Designing and Permitting
- Old Welcome Center Building: Direction



MEMORANDUM

TO: Steve Riley, Town Manager

VIA: Scott Liggett, Director of Public Projects and Facilities/Chief Engineer

FROM: Jeff Buckalew, Town Engineer

DATE: November 19, 2012

SUBJECT: Proposed Storm Water Agreement with Long Cove Club Owners Association

Recommendation:

Staff recommends that the Town enter into an agreement with the Long Cove Club Owners Association, Inc. ("LCCOA") to undertake the maintenance and improvement of the storm and surface water drainage system within Long Cove Club and acquire non-exclusive easement rights for access, maintenance, and drainage over the Long Cove Club drainage system.

Summary:

The LCCOA has agreed to grant the Town maintenance rights over their drainage system. The Town will use storm water utility fee revenues to provide maintenance and improvements on this system in accordance with the agreement. The Town's responsibilities shall begin on July 1, 2013. This 640 acre planned unit development will be a significant addition to the Town's storm water responsibilities. At the time the current \$108.70 fee was calculated, the financial impact of this PUD was estimated and included in the rate. Staff is satisfied that the demands created by the additional responsibilities can be met within the confines of the revenue stream generated by the current \$108.70/SFU fee. A rate increase is not recommended at this time. However, given the continued expansion in the extent of service and while maintaining current staffing levels, the level of service provided within any one geo-political area with respect to storm water management will likely be diminished.

Background:

Shortly after the creation of the Storm Water Utility in 2001, the Town offered to accept the maintenance responsibility of the storm water systems located within the planned unit

developments. Thus far, agreements have been executed with Shipyard, Port Royal, Hilton Head Plantation, Indigo Run, Leamington, Palmetto Dunes, Sea Pines, Wexford and staff is currently in negotiations with Palmetto Hall. Long Cove Club approached the Town earlier this year requesting the Town accept maintenance of their drainage system. The agreements define the roles and responsibilities of each party and the exhibit delineates the physical limits of the Town's responsibilities.

The current annual storm water fee is \$108.70 per single family unit (SFU). Past maintenance of the PUD storm water systems the Town is currently responsible for has cost approximately \$85 per acre per year. Given the number of single family units paying the fee within the Town limits and this estimated rate of expenditure, the Long Cove service area is projected to account for \$1.66 of the current \$108.70 fee. Staff shall closely monitor maintenance costs and our service capabilities to determine whether a fee increase or staffing adjustments are warranted for fiscal year 2014.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT RELATED TO DRAINAGE INFRASTRUCTURE IN THE PLANNED UNIT DEVELOPMENT KNOWN AS LONG COVE CLUB.

WHEREAS, the Town of Hilton Head Island has previously approved an agenda for the creation of agreements incorporating the storm water infrastructure within major Planned Unit Developments into a Town managed maintenance effort that is funded by Storm Water Service Fees; and

WHEREAS, an Agreement for the incorporation of the storm water infrastructure within Long Cove Club into the Town's storm water maintenance effort ("Drainage Agreement") has now been completed and approved by the Long Cove Club Homeowners Association, Inc.; 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 citizens and visitors of the Town of Hilton Head Island to enter into the Drainage Agreement contemplated herein.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA:

1. The Mayor and/or Town Manager are hereby authorized to execute and deliver that certain Drainage Agreement and all exhibits thereto, in a form substantially similar to that attached hereto as Exhibit "A"; and
2. The Mayor and/or Town Manager are hereby authorized to take such other and further action as may be necessary, including the execution of any necessary Easement Agreements, to complete the actions authorized hereby.

**PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF HILTON
HEAD ISLAND THIS ___ DAY OF DECEMBER 2012.**

Drew Laughlin, Mayor

ATTEST:

Vicki Pfannenschmidt, Acting Town Clerk

Approved as to form: _____
Gregory M. Alford, Town Attorney

Introduced by Council Member: _____

EXHIBIT "A"

STATE OF SOUTH CAROLINA)
) **DRAINAGE AGREEMENT**
COUNTY OF BEAUFORT)

This Drainage Agreement is made this _____ day of _____, 2012, by and between Long Cove Club Owners Association Inc. having an address of 399 Long Cove Drive, Hilton Head Island, SC 29928; and the Town of Hilton Head Island, South Carolina, having an address of One Town Center Court, Hilton Head Island, South Carolina, 29928.

WITNESSETH

WHEREAS, Long Cove Club is a planned unit development lying and being within the Town of Hilton Head Island, Beaufort County, South Carolina; and,

WHEREAS, Long Cove Club Owners Association Inc. is the owner of improved and unimproved real property and easements within Long Cove Club, in the Town of Hilton Head Island, South Carolina; and,

WHEREAS, Beaufort County, South Carolina, has adopted Ordinance 99-101, *et seq.*, as amended, creating a Storm Water Utility with the power to impose Storm Water Service Fees on all residents of Beaufort County, South Carolina, and which also provides that Storm Water Service Fees collected from within the municipal limits of the Town of Hilton Head Island, South Carolina, are returned to the Town of Hilton Head Island, South Carolina, less administrative fees, to be used for the purposes set forth in Ordinance 99-101, *et seq.*; and,

WHEREAS, the imposition and collection of Storm Water Service Fees results in a fund available to the Town of Hilton Head Island, South Carolina, for the construction and maintenance of existing and planned infrastructure which collects and disposes of surface and storm water within the municipal limits of the Town of Hilton Head Island, South Carolina; and,

WHEREAS, Long Cove Club Owners Association Inc. desires for the Town of Hilton Head Island, South Carolina, to utilize Storm Water Service Fees to undertake the maintenance and improvement of the storm and surface water drainage system within Long Cove Club, consisting of, without limitation, drainage lagoons, canals, underground pipes, culverts, manholes, weirs, valves, gates, related equipment and related infrastructure, to facilitate the flow of storm water drainage through Long Cove Club and from areas within Long Cove Club; and,

WHEREAS, Long Cove Club Owners Association, Inc. has agreed to grant access, drainage and maintenance easements to the Town of Hilton Head Island, South Carolina, in order to facilitate the maintenance and improvement of the storm and surface water drainage system within certain areas of Long Cove Club.

NOW, THEREFORE, know all men by these presents, Long Cove Club Homeowners Association, Inc. and the Town of Hilton Head Island, South Carolina, for and in consideration of the sum of One and No/100 (\$1.00) Dollar, each paid to the other at and before the execution and delivery of this Agreement,

the receipt and sufficiency whereof is acknowledged, the Parties hereto agree as follows:

1. **Defined Terms:** As used herein, the following terms shall mean:

(a) *Agreement:* This “Drainage System Maintenance Agreement”.

(b) *Association:* Long Cove Club Owners Association Inc. with the address first above written, a South Carolina not-for-profit corporation.

(c) *Casualty:* The destruction of all or any part of the Drainage System through a natural or other disaster.

(d) *Covenants:* The Second Amended and Restated Declaration of Covenants and Restrictions for Long Cove Club Subdivision and Provisions for the Long Cove Club Owners’ Association, Inc. recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on February 14, 2012 in Official Record Book 3119 at Page 3245

(e) *Drainage System:* The existing system of ditches, drains, lagoons, pipes, culverts, structures, facilities and any related storm water improvements, lying within the limits of the easement areas as depicted on the map attached hereto as Exhibit “A” which facilitate the collection, storage and conveyance of storm and

surface water runoff through and from within Long Cove Club. For purposes of this Agreement, the Drainage System shall not include any bridges, docks, retaining walls, road or pathway asphalt, or structural bulkheads.

(f) *Drainage System Deficiency:* A Drainage System Deficiency is anything which prevents, impairs or impedes the adequate flow or drainage of storm and surface water through the Drainage System, areas needing improvements to facilitate the adequate flow of storm and surface water through the Drainage System, soil erosion, or any structural inadequacies. Drainage System Deficiencies do not include the appearance or appeal of the lagoons, banks of lagoons, landscaping, drains, canals, or other visible components of the Drainage System, including, but not limited to, structures, bridges, bulkheads, pipes, culverts, valves and gates. Drainage System Deficiencies do not include the introduction of pollution or pollutants into the Drainage System from any source.

(g) *Emergency:* A blockage, structural or mechanical failure, collapse or other sudden catastrophic event affecting any part of the Drainage System which prevents the flow of storm and surface water through all or any part of the Drainage System, or which

otherwise results in an imminent peril to life or property within Long Cove Club.

(h) *Long Cove Club*: A planned unit development lying and being on Hilton Head Island, Beaufort County, South Carolina, which is shown and described on the map attached as Exhibit “B” hereto.

(i) *Storm Water Service Fees*: The fees collected by Beaufort County, South Carolina, under the authority of Beaufort County Ordinance 99-101, *et seq.*, as amended, and which are remitted by Beaufort County, South Carolina, to the Town of Hilton Head Island, South Carolina; or any similar fee, however denominated, imposed and collected by any subsequent or successor Storm Water Utility operated by The Town of Hilton Head Island, South Carolina, under the authority of Ordinance Number 2002-43.

(j) *Storm Water Project Prioritization and Annual Budget Process*: The Town shall at all times maintain a current, prioritized list of all known Drainage System Deficiencies within the Town limits that qualify for service using Storm Water Fees. Prior to each fiscal year, the Town shall establish an annual Storm Water budget which defines all revenues and expenditures associated with the

Storm Water Fees. This budget shall include those known projects intended to be completed within that fiscal year.

(k) *Town:* The Town of Hilton Head Island, South Carolina.

2. **Grant of Easements:** Simultaneous with the execution and delivery of this Agreement, the Association shall grant an “Access, Drainage and Maintenance Easement” to the Town to allow the Town to access, maintain, improve and utilize the Drainage System within Long Cove Club, with said easement being in the form attached hereto as Exhibit “C”

3. **Upkeep and Maintenance of Drainage System:** Upon the execution and delivery of this Agreement and the Access, Drainage and Maintenance Easement, the Town shall be responsible for any improvement, repair or maintenance necessary to correct any Drainage System Deficiency under the terms and conditions of this Agreement.

4. **Procedure for Town’s Maintenance of Drainage System:** The Parties acknowledge that the Town intends to provide for the maintenance of the Drainage System and the correction of identified Drainage System Deficiencies, other than those caused by an Emergency or Casualty, through the development of its Storm Water Project Prioritization and Annual Budget Process. Other than in the case of an Emergency or Casualty, as described in Articles 7 and 8 below,

the Parties agree to the following procedure for the Town's improvement, repair and maintenance of the Drainage System:

(a) *Identifying Drainage System Deficiencies:* The Association shall identify any Drainage System Deficiencies.

(b) *Schedule for Submission:* The Association shall submit its or their written description of all known or perceived Drainage System Deficiencies to the Town Storm Water Administrator, describing the nature, location and cause, if known, of each Drainage System Deficiency, as well as potential solutions and preliminary cost estimates. Drainage System Deficiencies that are reported to the Town, or which are discovered by the Town but not identified by the Association, by the end of any calendar year will be considered in the development of the Storm Water Project Prioritization and Annual Budget Process for the following fiscal year. The Town shall submit to the Association by the end of any calendar year, a written description of any Drainage System Deficiencies identified by the Town through maintenance activity or inspections during that year.

(c) *Completion of Maintenance:* The Town shall develop a Storm Water Project Prioritization and Annual Budget Process that will address the identified Drainage System Deficiencies as follows:

(i) The Town shall determine the scope and extent of the improvement, repair or maintenance that is necessary to correct any Drainage System Deficiencies, and the means, methods and materials needed to accomplish the same.

(ii) Determine the priority of the correction of the Drainage System Deficiencies and schedule the improvement, repair or maintenance to correct the Drainage System Deficiencies for a specific year within the Storm Water Project Prioritization and Annual Budget Process. The determination of the priority, scheduling and funding of the correction of Drainage System Deficiencies shall be made by the Town, taking into account the following:

(A) The availability and amount of revenue from bonds or Storm Water Service Fees in any given fiscal year;

(B) All other projects, or requested improvements, repair and maintenance that are to be funded with Storm Water Service Fees.

(iii) Complete the work necessary to correct the Drainage System Deficiencies in the fiscal year as determined by the Town as a part of the Storm Water Project Prioritization and Annual

Budget Process, unless emergency projects alter the prioritization such that funds are insufficient to correct all drainage system deficiencies as intended within the same fiscal year.

(d) Other than in the case of an Emergency, the Town and the Association shall mutually agree in writing as to the scheduling of any work to be performed hereunder in Long Cove Club in advance of the commencement of the work.

(e) The Association shall be solely responsible for the notification of its owners and guests regarding any Town maintenance or emergency work that may disrupt normal activities.

(f) The Town cannot guarantee that the amount of available Storm Water Service Fees, the number of projects to be funded with Storm Water Service Fees in any given fiscal year, and events such as weather related emergencies and drainage system failures in other parts of Hilton Head Island will not cause delays in the correction of Drainage System Deficiencies within Long Cove Club and elsewhere. The parties acknowledge that the Town's determinations with respect to the priority, funding and timing of the correction of any Drainage System Deficiency shall be final.

5. **Further Obligations of Long Cove Club Owners Association, Inc.:**

The Association agrees that during the term or any renewal term of this Agreement, it shall take no action which obstructs or impedes the flow of storm and surface water through the Drainage System; provided, however, that to the extent the Association has a continuing obligation under the Covenants to repair and maintain various improvements located within the Common Properties and/or Recreational Areas (as such terms are defined in the Covenants and which Common Properties and/or Recreational Areas may include lagoons and lagoon banks, roads, pathways, utilities, etc.), and this Agreement is not intended to in any way restrict or limit the Association from taking reasonable actions to perform said obligations.

6. **Payments as Current Expense of Town:** Any payments to be made by the Town hereunder shall be made from Stormwater Service Fees as budgeted for by the Town in any given fiscal year. The Town and the Association intend that the payment obligations of the Town 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 concerning indebtedness of the Town, nor shall anything contained herein constitute a pledge of general tax revenues, funds, money or credit of the Town.

7. **Emergency:** The Parties agree that in the event of an Emergency, the following procedure shall apply:

(a) *Responsibilities of the Association:* The Association shall take such steps as may be necessary to secure any area affected by the Emergency. The Association shall notify the Town as soon as is practical after discovery of the Emergency.

(b) *Town Responsibilities:* Upon receipt of such notification from the Association, the Town shall determine the scope and extent of the work that is necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same. The Town shall correct or repair the damage caused by the Emergency as soon as is practical, taking into account the threat presented by the Emergency, the cause of the Emergency or the existence of any general emergency affecting the Town and availability of funding. The Town may seek reimbursement for any costs incurred by the Town as a result of any Emergency from Storm Water Service Fees.

8. **Casualty:** The Parties agree that in the event of a Casualty, the following procedure shall apply:

(a) *Agreement Not Terminated:* This Agreement shall remain in full force and effect.

(b) *Design of Drainage System:* The Town shall produce engineering and design plans at its expense for any necessary reconstruction of the Drainage System.

(c) *Approval of Plans:* The engineering and design plans must be approved by the Association, prior to any reconstruction of the Drainage System. In the event such reconstruction requires work outside of the Easement limits as depicted in Exhibit "A," the parties agree to modify the Access, Drainage and Maintenance Easement by a written agreement to be recorded in the Office of Register of Deeds for Beaufort County, South Carolina increasing the Easement areas as reasonably necessary to accommodate such reconstruction and the Association agrees to grant any temporary license allowing the Town temporary access to those Common Areas of Long Cove Club reasonably necessary to accommodate such reconstruction.

(d) *Reconstruction of Drainage System:* Following the approval of the engineering and design plans and specifications by the Association and the completion of an Access, Drainage and Maintenance Easement Amendment and any temporary license agreement as set forth above in subsection (c), the Town shall complete the reconstruction of the Drainage System as soon as is

practical, taking into account the threat presented by the cause of the Casualty, the existence of any general emergency affecting the Town and availability of funding. The Town may seek reimbursement for any costs incurred by the Town as a result of any Casualty from Storm Water Service Fees, bond, or other government aid and assistance programs.

9. Maintenance of Drainage System by Long Cove Club Owners

Association Inc.: Nothing herein shall prohibit the Association from performing any improvement, repair or maintenance necessary to correct or repair any Drainage System Deficiency in advance of the time that any such work is scheduled as a part of the Town's Storm Water Project Prioritization and Annual Budget Process, in the event that the Association, determines that it is in its interest to do so. Other than in the case of an Emergency (which is addressed in Article 10, below), the Association shall be entitled to reimbursement for any such work from Stormwater Service Fees, in the fiscal year that such work is scheduled to be done as a part of Town's Storm Water Project Prioritization and Annual Budget Process, for the cost of any such work upon compliance with the following;

- (a) The Association shall submit its plans, quantities, and specifications for any improvement, repair or maintenance necessary to correct or repair any Drainage System Deficiency.

- (b) Unless the Town determines that:
- (i) The proposed improvement, repair or maintenance does not correct an existing Drainage System Deficiency; or,
 - (ii) The scope of the proposed improvement, repair or maintenance exceeds what is necessary to correct an existing Drainage System Deficiency, the Town, through authorized staff, shall grant its written approval.
- (c) The Association shall bid the work in accordance with the Town's Procurement Code, § 11-1-111, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983), as the same may be amended from time to time, only upon receipt of the Town's written approval.
- (d) Any changes in the agreed scope of work resulting in additional work or cost to the Town must be approved in writing by the Town prior to commencement of any additional work.
- (e) The Association shall notify the Town within forty-eight (48) hours of the commencement of work and at any key junctures of the work whereas the Town may need to inspect the work.
- (f) Upon completion of the work as approved by the Town, The Association shall submit its request for payment to the Town, which shall detail the work done and the payments made, and be

accompanied by any required test reports, construction data / measurements or as-built surveys, and its written certification that the work was completed in accordance with the approved plans and specifications.

(g) The Town shall thereafter budget funds for the payment of the reimbursement to The Association from Storm Water Service Fees in the fiscal year that the work is scheduled for completion in the Town's Storm Water Project Prioritization and Annual Budget Process.

10. **Emergency Work by the Association:** In the event that the Town is unable to repair or correct the damage caused by an Emergency in a time frame that is acceptable to the Association, the following shall apply:

(a) The Association shall consult with the Town to determine a cost efficient scope and extent of the work that is necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same.

(b) The Association shall complete the work that is necessary to repair or correct the damage caused by the Emergency.

(c) Upon completion of the work, The Association shall submit its or their request for payment to the Town, which shall detail the work performed and the cost for the same, and be accompanied by

any required test reports, construction data / measurements or as-built surveys, with a written certification that the work was necessary to repair or correct the damage caused by an Emergency.

(d) Within three (3) fiscal years following the completion of the work by the Association necessary to repair or correct the damage caused by the Emergency, the Town shall budget funds for the payment of the reimbursement to the Association and shall pay the same in accordance with the approved budget.

11. **No Guarantees Regarding Flooding:** The Association acknowledges that the Town's performance of its obligations under this Agreement does not guarantee or insure that property within Long Cove Club will be free of events of flooding or erosion, and that the Town does not represent or warrant to the Association that the performance of the Town's obligations under this Agreement will operate to prevent events of flooding or erosion within Long Cove Club.

12. **Waiver of Stormwater Service Fee Credit:** Upon the execution and delivery of this Agreement, and for and during the term or any extensions hereof, the Association acknowledges it shall not be entitled to receive and hereby waives any Stormwater Service Fee Credit from Beaufort County or the Town with respect to any real property located within the limits of the PUD, as

indicated on the map attached hereto as Exhibit "B", for and during the term of this Agreement or any renewal of this Agreement.

13. **Term:** This Agreement shall remain in place for a period of Five (5) year(s), and shall renew automatically for successive one (1) year terms thereafter, unless either Party notifies the other, in writing, of its intention to terminate this Agreement. Any such notice shall be delivered more than one hundred and twenty (120) days prior to the end of the Town fiscal year (June 30) at the end of the then-current term in which such Party wishes to terminate. Upon delivery of such notice, this Agreement shall terminate on July 1 of the calendar year in which the notice is delivered. The parties shall thereafter execute and deliver such documents as may be necessary to cancel the Access, Drainage and Maintenance and Construction Easements delivered pursuant to this Agreement.

14. **Representation and Warranties of Long Cove Club Owners Association Inc.**

The Association represents and warrants:

- (a) As is shown by the Resolutions of the Board of Directors of the Association attached hereto as Exhibit "D", the Association represents that it has full authority to execute, deliver and perform this Agreement and to execute and deliver the Access, Drainage and Maintenance and

Construction Easement to be delivered pursuant to this Agreement.

(b) That it is not now a party to any litigation affecting the property burdened by the easements herein which could impair the obligations of the Association under this Agreement or the easements, and the Association knows of no litigation or threatened litigation affecting their ability to grant the easements.

(c) That as to any pipes or other portions of the Drainage System as shown on Exhibit A hereto which are located in whole or in part on private residential lots (ie. not within golf course, common area or open space parcels), the Association has full authority the Covenants to convey and/or assign the rights contemplated in this Agreement and the Access, Drainage and Maintenance Easement.

15. **Town Representation and Warranties:** The Town represents and warrants to the Association:

(a) As is shown by the Resolution of the Town that is attached hereto as Exhibit "E", the Town represents that it has the power and authority to enter into this Agreement and complete its obligations hereunder; and,

(b) That it is not now a party to any litigation which could impair the obligations of the Town under this Agreement, and the Town knows of no litigation or threatened litigation affecting its ability to perform hereunder.

16. **Taxes:** The Association shall pay, prior to delinquency, all taxes on Association properties within Long Cove Club burdened by the easements granted under this Agreement. Should the Association fail to pay said taxes prior to delinquency, then the Town may pay said taxes and the Association shall reimburse the Town for such tax payment within fifteen (15) days of the Town's notification to the Association of its tax payment along with a copy of the Town's tax payment receipt.

17. **Default:** The Town and the Association agree that in the event of a default or breach of any provision or term of this Agreement, the non-defaulting party or parties shall give written notice to the defaulting party or parties of the default or breach. In the event that the defaulting party or parties fail to cure the default or breach within thirty (30) days of the date of the written notice specifying the default or breach, then the non-defaulting party or parties shall be entitled to pursue any remedy at law or in equity against the defaulting party or parties, including but not limited to an action for damages, injunction or specific performance of this Agreement.

18. **Attorney's Fees:** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default or misrepresentation in connection with any of the provisions or terms of this Agreement, the prevailing party or parties shall be entitled to recover its or their reasonable attorney's fees and any costs incurred as a result of any such action or proceeding, whether incurred before the commencement of suit or after the commencement of suit, and including appellate proceedings, in addition to any other relief to which the prevailing party or parties is or are entitled.

19. **General Provisions:**

(a) *Binding Effect:* This Agreement shall inure to the benefit of and be binding upon the Association and the Town, and their respective successors and assigns.

(b) *Amendment, Changes and Modifications:* Except as is otherwise provided herein, this Agreement may not be effectively modified, amended, changed or altered without the written consent of the Town and the Association.

(c) *Severability:* In the event that any term or provision of this Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other term or provision hereof.

(d) *Execution in Counterparts:* This Agreement may be simultaneously executed in several counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument.

(e) *Applicable Law:* This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

(f) *Captions:* The captions or headings used herein are for convenience only and in no way define, limit, expand or describe the scope or intent of any term or provision of this Agreement.

(g) *Plural/Singular:* Where appropriate, the use of the singular herein shall be deemed to include the plural, and the use of the plural herein shall be deemed to include the use of the singular.

(h) *No Third Party Beneficiaries:* The Town and the Association affirmatively represent that this Agreement is made solely for the benefit of the Parties hereto and their respective successors and assigns and not for the benefit of any third party who is not a signature party hereto. It is the express intent of the Town and the Association that no other party shall have any enforceable rights hereunder, or any right to the enforcement

hereof, or to any claim for damages as a result of any alleged breach hereof.

(i) *Notices:* All notices, applications, requests, certificates or other communications required hereunder shall be sufficiently given and shall be deemed given on the date when such is delivered in person, or deposited in the United States Mail, by regular first class mail, postage prepaid, at the following addresses, or at such other address as may be designated, in writing, by the Parties:

To the Town: The Town of Hilton Head Island,
South Carolina
Stephen G. Riley, Town Manager
One Town Center Court
Hilton Head Island, SC 29928

To the Association: Long Cove Club Owners
Association, Inc.
Attn: General Manager
399 Long Cove Drive
Hilton Head Island, SC 29928

With Copy to: Terry A. Finger, Esq.
Finger & Fraser, P.A.
P.O. Box 24005
Hilton Head Island, SC 29925

(j) *No Waiver:* No failure of any Party hereto to exercise any power or right given to such Party hereunder, or to insist on strict

compliance by any other Party of its obligations hereunder, and no custom or practice of the Parties at variance with the terms and provisions hereof shall constitute a waiver of any Party's right to thereafter demand strict compliance with the terms of this Agreement.

(k) *Further Assurances and Corrective Documents:* The Town and the Association agree to do, execute, acknowledge, deliver or cause to be done all such further acts as may be reasonably determined to be necessary to carry out this Agreement and give effect to the terms and provisions hereof. The Town and the Association agree that each shall, upon request, execute and deliver such other or further or corrective documents as may be reasonably determined to be necessary to carry out this Agreement and each of the terms and provisions hereof.

IN WITNESS WHEREOF, The Town of Hilton Head Island, South Carolina; and Long Cove Club Owners Association Inc. by and through their duly authorized officers, have executed and delivered this Agreement as of this ____ day of _____, 2012.

SIGNATURES BEGIN ON NEXT PAGE

WITNESSES:

LONG COVE CLUB OWNERS
ASSOCIATION, INC.

By: _____

Its: _____

Attest: _____

Its: _____

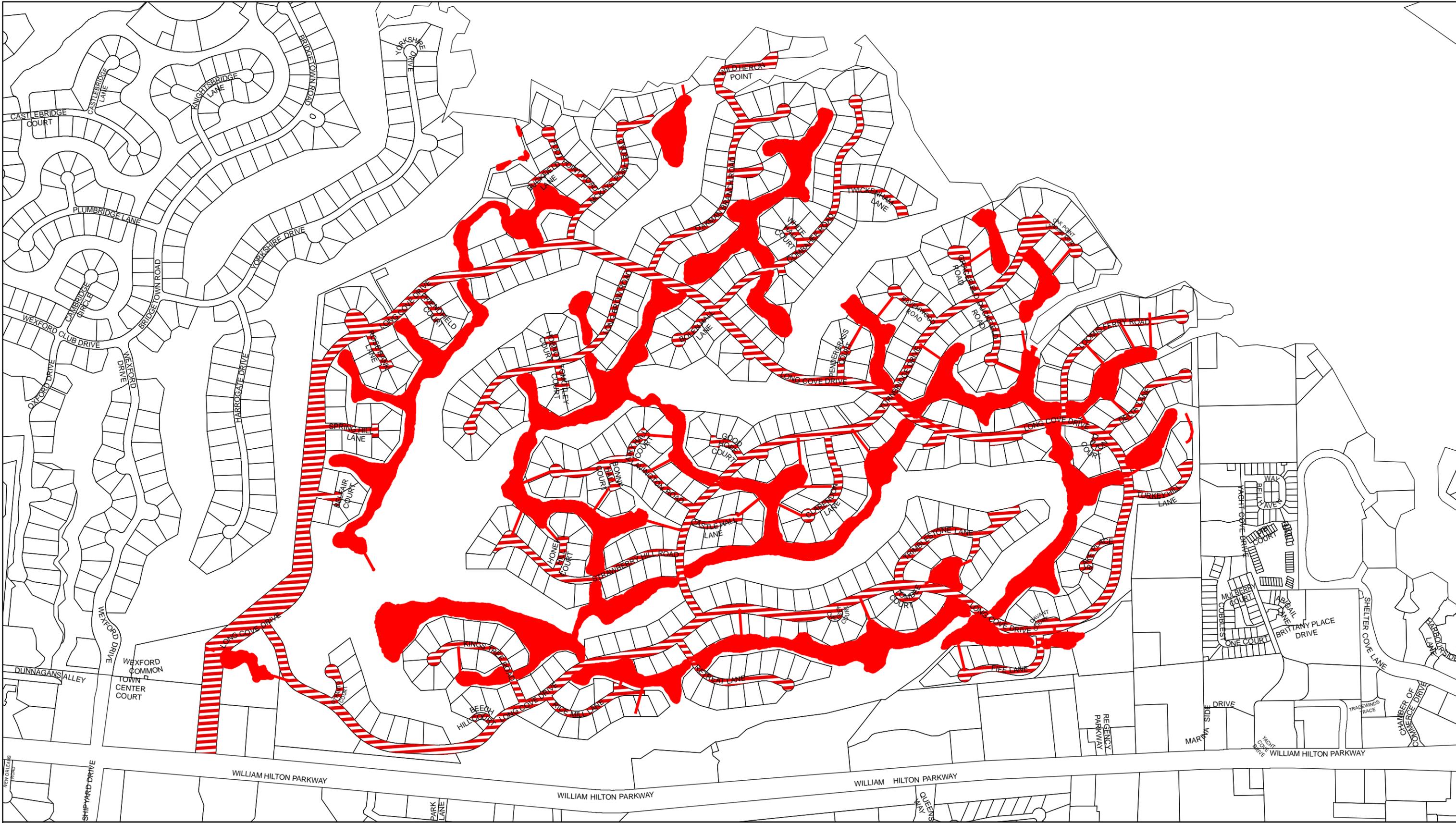
THE TOWN OF HILTON HEAD
ISLAND, SOUTH CAROLINA

By: _____

Drew A. Laughlin, Mayor

Attest: _____

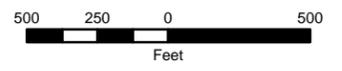
Stephen G. Riley, Manager



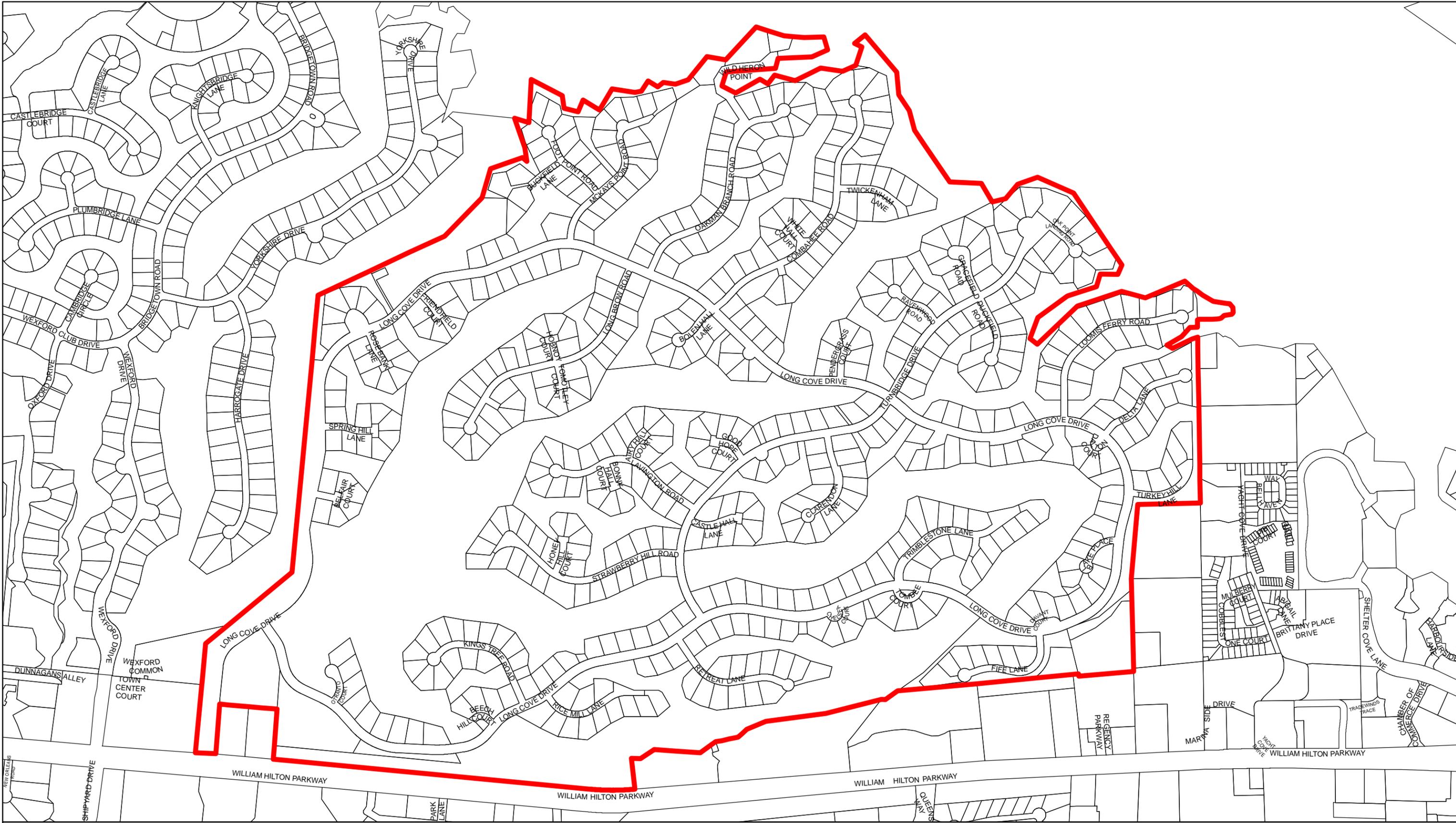
Pipes & Lagoons Easement
 Right of Way
 Parcels

Note: Drainage easement widths are 20 feet from the center of pipes depicted on this exhibit and 15 feet from the top of bank of lagoons depicted on this exhibit.

Long Cove Club Drainage Easement Exhibit A

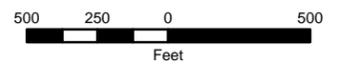
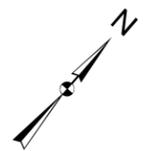


The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion or for any losses arising from the use of the map.



Long Cove Club Drainage Easement Exhibit B

- Long Cove Boundary
- Parcels



The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion or for any losses arising from the use of the map.

Exhibit "C"

STATE OF SOUTH CAROLINA)	ACCESS, DRAINAGE AND
)	MAINTENANCE EASEMENT
COUNTY OF BEAUFORT)	

Know all men by these presents, that Long Cove Club Owners Association Inc. (Attn. General Manager), 399 Long Cove Drive, Hilton Head Island, SC, 29928 and The Town of Hilton Head Island, South Carolina, One Town Center Court, Hilton Head Island, SC, 29928, for and in consideration of the sum of One and No/100 (\$1.00) Dollar, each paid to the other at and before the execution and delivery of this Access, Drainage and Maintenance Easement, the receipt and sufficiency whereof is acknowledged, agree as follows:

1. Defined Terms: As used herein, the following terms shall mean:
 - (a) *Association*: Long Cove Club Owners Association Inc.
 - (b) *Covenants*: The Second Amended and Restated Declaration of Covenants and Restrictions for Long Cove Club Subdivision and Provisions for the Long Cove Club Owners' Association, Inc. recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on February 14, 2012 in Record Book 3119 at Page 3245.
 - (c) *Drainage System*: The existing system of ditches, drains, lagoons, pipes, culverts, structures, facilities and any related storm water improvements, lying within the limits of the Drainage Easement Areas as shown on the attached Exhibit "A" which facilitate the collection, storage

and conveyance of storm and surface water runoff through and from within Long Cove Club. For purposes of this Agreement, the Drainage System shall not include any bridges, docks, retaining walls, road or pathway asphalt, or structural bulkheads.

(d) *Emergency*: A blockage, mechanical failure, collapse or other sudden catastrophic event affecting any part of the Drainage System which prevents the flow of storm and surface water through all or any part of the Drainage System, or which otherwise results in an imminent peril to life or property within Long Cove Club.

(e) *Setback*: An area measured inward from the property line, right-of-way line or a specified line defining the limits within which no structure not otherwise authorized shall be located, per Sec 16-10-201 Town of Hilton Head Island Land Management Ordinance, rev 01/15/08 Ordinance 2008-1 as may be amended.

(f) *Long Cove Club*: A planned unit development lying and being on Hilton Head Island, Beaufort County, South Carolina, which is shown and described within the area detailed on the map attached as Exhibit "B" hereto.

(g) *Permanent Structure*: Any structure, including, but not limited to, the following: buildings (including sheds), walls, and other masonry structures, tennis courts, and swimming pools.

(h) *Town*: The Town of Hilton Head Island, South Carolina.

2. *Grant of Easements:* The Association, do hereby grant, transfer, sell and convey to the Town, and its agents, assigns, employees and contractors, for the benefit of and use by their vehicles, machinery and equipment, and create and establish for the benefit of the Town, the following easements:

(a) A non-exclusive Access Easement on, over and across any roads and streets within Long Cove Club, and on, over and across any property owned by The Association, encumbered by all or any part of the Drainage System. This Access Easement includes a non-exclusive and partial assignment of any and all easement rights for access held by the Association, under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within Long Cove Club and upon which any part of the Drainage System lies or passes on, across, under or through.

(b) A non-exclusive Maintenance Easement on, under, over, through and across any property of The Association, encumbered by all or any part of the Drainage System. This Maintenance Easement includes a non-exclusive and partial assignment of any and all easement rights for maintenance, construction, or otherwise, held by The Association, under the Covenants or any other recorded declaration of covenants and restrictions or recorded easements over property that The Association does not own within Long Cove Club and upon which any part of the Drainage System lies or passes on, across, under or through. This

Maintenance Easement shall include all facilities or structures directly related to the collection, storage and conveyance of storm and surface water now or hereafter existing within Long Cove Club, and sufficient property beside or over any part of the Drainage System as shown on Exhibit "A" to allow for excavation and any other work necessary to improve, repair or maintain the Drainage System.

(c) A non-exclusive Drainage Easement for the conveyance of any storm and surface water originating from within or without the boundaries of Long Cove Club through the Drainage System, at such rates and in such amounts as may occur from time to time.

(d) This Drainage Easement includes a non-exclusive and partial assignment of any and all easement rights for drainage held by The Association, under the Covenants or any other recorded declaration of covenants and restrictions or recorded easements over property that the Association does not own within Long Cove Club and upon which any part of the Drainage System lies or passes on, across, under or through; provided however, that the Town shall provide timely written notification to the Association of any potentially disruptive improvements and/or modifications to the systems conveying storm and surface water originating without the boundaries of Long Cove Club and through the Long Cove Club Drainage System.

3. This Access, Drainage and Maintenance Easement is granted and accepted

subject to the following:

(a) The Town agrees that the use of the easements granted herein shall be restricted to the hours of 7:00 o'clock, A. M., to 5:00 o'clock, P. M., Monday through Friday excluding public holidays, except in the event of an Emergency.

(b) Other than in the case of an Emergency, the Town and The Association shall determine the scheduling of any work to be performed hereunder, on its or their property, in advance of the commencement of the work.

(c) This Access, Drainage and Maintenance Easement is conveyed subject to all other easements, licenses, and conveyances of record, including any limitations and reservations of rights under the Covenants, and is subject to the rights herein reserved by The Association, or any of them, their successors and assigns, to utilize their property at any time, in any manner, and for any purpose, provided, however, that such use by the Association shall not be inconsistent with nor prevent the full utilization by the Town of the rights and privileges granted herein.

(d) The Town agrees to plan, lay out, and execute or build improvements, repairs and maintenance of the Drainage System, and further agrees that the Town's exercise of the rights granted in this Access, Drainage and Maintenance Easement shall be under the exclusive control of the Town and that the Town shall at all times comply with all applicable

laws, rules, codes, and regulations.

(e) The Association shall not erect any Permanent Structure on, under, over, through and across any property of The Association, encumbered by all or any part of the Drainage System without the Town's prior written approval, which approval shall not be unreasonably withheld. The Association shall not impede, obstruct, or allow to be obstructed, the natural flow of storm and surface water runoff through the Drainage System, or from any part of the Drainage Areas through the Drainage System; provided, however, that the Association have a continuing obligation under the Covenants to repair and maintain various improvements located within the Common Properties (lagoons and lagoon banks, roads, pathways, utilities, etc.), and this Agreement is not intended to in any way restrict or limit Association from taking reasonable actions to perform said obligations.

(f) The rights conveyed under this Access, Drainage and Maintenance Easement are limited to the parties and purposes stated herein. This Access, Drainage and Maintenance Easement conveys no rights of access or otherwise to the general public.

4. The Association acknowledges that the Town shall have no obligation to perform or pay for any work to repair, improve or maintain the appearance or appeal of the lagoons, banks of lagoons, landscaping, drains, canals, or other visible components of the Drainage System, including, but not limited to, structures, bridges, bulkheads, pipes,

culverts, valves and gates.

5. The Town agrees to cause all work contemplated hereunder to be performed in a workmanlike fashion with minimal interference to the Grantors, their successors, assigns, invitees, guests, licensees, and agents. The Town further agrees to cause the work contemplated hereunder to be completed in an expeditious and timely fashion, and that all materials, debris, and construction materials shall be promptly removed. The Town shall restore any other part of the property of The Association which may be damaged as a result of the Town's exercise of the rights granted hereunder to its pre-existing state.

6. The Town hereby warrants to the Association that the granting of this Access, Drainage and Maintenance Easement will not affect any Setback lines with respect to any property currently owned by The Association.

7. That as to any pipes or other portions of the Drainage System as shown on Exhibit A hereto which are located in whole or in part on private residential lots (ie. not within golf course, common area or open space parcels), the Association has full authority under the Covenants to convey and/or assign the rights contemplated herein.

To have and to hold, all and singular, the rights, privileges, and easements aforesaid unto the Town of Hilton Head Island, South Carolina, its successors and assigns, forever.

In Witness whereof, the parties hereto have caused the within Access, Drainage and Maintenance Easement to be executed by their duly authorized officers as of this _____ day of _____, 2012.

WITNESSES:

LONG COVE CLUB OWNERS ASSOCIATION
INC.

By: _____

Its: _____

Attest: _____

Its: _____

STATE OF SOUTH CAROLINA

)

UNIFORM ACKNOWLEDGMENT

)

COUNTY OF BEAUFORT

)

S.C. CODE § 30-5-30 (SUPP. 2011)

I, the undersigned Notary Public do hereby certify that
_____ and _____ personally appeared
before me on this day and duly acknowledged the execution of the foregoing instrument
on behalf of Long Cove Club Owners Association Inc.

Sworn to and Subscribed before me
on this _____ Day of _____, 2012.

Notary Public for South Carolina
My Commission Expires: _____

WITNESSES:

THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

By: _____
Drew A. Laughlin, Mayor

Attest: _____
Stephen G. Riley, Manager

STATE OF SOUTH CAROLINA

)

UNIFORM ACKNOWLEDGMENT

)

COUNTY OF BEAUFORT

)

S.C. CODE § 30-5-30 (SUPP. 2011)

I, the undersigned Notary Public do hereby certify that Drew A. Laughlin and Stephen G. Riley personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of The Town of Hilton Head Island, South Carolina.

Sworn to and Subscribed before me
on this _____ Day of _____, 2012.

Notary Public for South Carolina
My Commission Expires: _____



MEMORANDUM

TO: Steve Riley

VIA: Scott Liggett, Director of Public Projects and Facilities/Chief Engineer

FROM: Jeff Buckalew, Town Engineer

DATE: November 16, 2012

SUBJECT: Revised Storm Water Agreement with Shipyard

Recommendation:

Staff recommends that the Town enter into revised storm water maintenance and access agreements with Shipyard Property Owners Association, Inc. ("SPOA").

Summary:

These revised agreements reflect the current standards being used on the acquisition of other PUD systems and contain a more accurate exhibit delineating the areas of our responsibilities. The Town will continue to use storm water utility fee revenues to provide maintenance and improvements on those systems in accordance with the agreement. As the Shipyard systems have been accounted for in current inventories and budgets, staff does not recommend a rate increase to the storm water utility fee.

Background:

After the creation of the Storm Water Utility, the Town offered to accept the maintenance responsibility of the storm water systems located within planned unit developments. In early 2007, SPOA was the first major PUD to enter into a comprehensive storm water agreement with the Town. Since then, the current PUD drainage agreements have been improved and refined to more clearly define each party's roles and responsibilities. The Town approached SPOA earlier this year requesting that revised agreements consistent with the other PUD be executed to supersede the original. SPOA concurred and agrees to execute the attached agreements.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF THAT CERTAIN DRAINAGE AGREEMENT AND ACCESS, DRAINAGE AND MAINTENANCE EASEMENT WITH SHIPYARD PROPERTY OWNERS ASSOCIATION, INC. ACROSS PROPERTY LOCATED IN SHIPYARD PLANTATION.

WHEREAS, Shipyard Property Owners Association, Inc. (“SPOA”) owns improved and unimproved real property and easements, and holds certain rights under covenants and restrictions affecting certain real property, located within Shipyard Plantation; and

WHEREAS, Beaufort County, South Carolina adopted Ordinance 99-101 et seq., as amended, creating a Storm Water Utility with the power to impose Storm Water Service Fees on all residents of Beaufort County, South Carolina and which also provides that fees collected from within the municipal limits of the Town of Hilton Head Island, South Carolina (“Town”) are returned to the Town to be used for the purposes set forth in the Ordinance including the construction and maintenance of planned and existing infrastructure which collects and disposes of surface and storm water within the municipal limits of the Town; and

WHEREAS, SPOA desires for the Town to utilize Storm Water Service Fees to undertake the maintenance and improvement of the storm and surface water drainage system within Shipyard Plantation to facilitate the flow of storm water drainage through and from areas within Shipyard Plantation; and

WHEREAS, to undertake these improvements, it is necessary for the Town to obtain from SPOA a Drainage Agreement and an Access, Drainage and Maintenance Easement, copies of which are attached hereto as Exhibits “A”; 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 citizens and visitors of the Town of Hilton Head Island to undertake the improvements stated above; and

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA:

1. The Mayor and/or Town Manager are hereby authorized to execute and deliver a Drainage Agreement and an Access, Drainage and Maintenance Easement in a form substantially similar to that which is attached hereto as Exhibits "A"; and
2. The Mayor and/or Town Manager are hereby authorized to take such other and further action as may be necessary to complete the actions authorized hereby.

PASSED AND APPROVED BY THE TOWN COUNSEL THIS ___ DAY OF November, 2012.

Drew Laughlin, Mayor

ATTEST:

Cori Brock, Town Clerk

Approved as to form:

Gregory M. Alford, Town Attorney

Introduced by Council Member: _____

EXHIBIT "A"

STATE OF SOUTH CAROLINA)
) **DRAINAGE AGREEMENT**
COUNTY OF BEAUFORT)

This Drainage Agreement is made this _____ day of _____, 2012, by and between Shipyard Property Owners Association, Inc. having an address of 10 Shipyard Drive, Hilton Head Island, SC 29928; and the Town of Hilton Head Island, South Carolina, having an address of One Town Center Court, Hilton Head Island, South Carolina, 29928.

WITNESSETH

WHEREAS, Shipyard Plantation is a planned unit development lying and being within the Town of Hilton Head Island, Beaufort County, South Carolina; and,

WHEREAS, Shipyard Property Owners Association, Inc. is the owner of improved and unimproved real property and easements within Shipyard Plantation, in the Town of Hilton Head Island, South Carolina; and,

WHEREAS, Beaufort County, South Carolina, has adopted Ordinance 99-101, *et seq.*, as amended, creating a Storm Water Utility with the power to impose Storm Water Service Fees on all residents of Beaufort County, South Carolina, and which also provides that Storm Water Service Fees collected from within the municipal limits of the Town of Hilton Head Island, South Carolina, are returned to the Town of Hilton Head Island, South Carolina, less administrative fees, to be used for the purposes set forth in Ordinance 99-101, *et seq.*; and,

WHEREAS, the imposition and collection of Storm Water Service Fees results in a fund available to the Town of Hilton Head Island, South Carolina, for the construction and maintenance of existing and planned infrastructure which collects and disposes of surface and storm water within the municipal limits of the Town of Hilton Head Island, South Carolina; and,

WHEREAS, Shipyard Property Owners Association, Inc. acknowledges that the Town of Hilton Head Island, South Carolina, intends to utilize Storm Water Service Fees to undertake the maintenance and improvement of the storm and surface water drainage system within Shipyard Plantation, consisting of, without limitation, drainage lagoons, canals, underground pipes, culverts, manholes, weirs, valves, gates and related equipment, including an existing pump station and related infrastructure, to facilitate the flow of storm water drainage through Shipyard Plantation and from areas within Shipyard Plantation; and,

WHEREAS, Shipyard Plantation Homeowners Association, Inc. has agreed to grant access, drainage and maintenance easements to the Town of Hilton Head Island, South Carolina, in order to facilitate the maintenance and improvement of the storm and surface water drainage system within certain areas of Shipyard Plantation.

NOW, THEREFORE, know all men by these presents, Shipyard Plantation Homeowners Association, Inc. and the Town of Hilton Head Island, South Carolina, for and in consideration of the sum of One and No/100 (\$1.00) Dollar,

each paid to the other at and before the execution and delivery of this Agreement, the receipt and sufficiency whereof is acknowledged, the Parties hereto agree as follows:

1. **Defined Terms:** As used herein, the following terms shall mean:

(a) *Agreement:* This “Drainage System Maintenance Agreement”.

(b) *Association:* Shipyard Property Owners Association, Inc. with the address first above written, a South Carolina not-for-profit corporation.

(c) *Casualty:* The destruction of all or any part of the Drainage System through a natural or other disaster.

(d) *Covenants:* The Amended Declaration of Covenants, Conditions, and Restrictions for Shipyard Plantation recorded in the Beaufort County Register of Deeds Office on May 7, 2002 in Official Record Book 1577 at Page 1723.

(e) *Drainage System:* The existing system of ditches, drains, lagoons, pipes, culverts, structures, facilities and any related storm water improvements, including an existing pump station and related infrastructure, lying within the limits of the easement areas as depicted on the map attached hereto as Exhibit “A” which facilitate the collection, storage and conveyance of storm and

surface water runoff through and from within Shipyard Plantation. For purposes of this Agreement, the Drainage System shall not include any bridges, docks, retaining walls, road or pathway asphalt, or structural bulkheads.

(f) *Drainage System Deficiency:* A Drainage System Deficiency is anything which prevents, impairs or impedes the adequate flow or drainage of storm and surface water through the Drainage System, areas needing improvements to facilitate the adequate flow of storm and surface water through the Drainage System, soil erosion, or any structural inadequacies. Drainage System Deficiencies do not include the appearance or appeal of the lagoons, banks of lagoons, landscaping, drains, canals, or other visible components of the Drainage System, including, but not limited to, structures, bridges, bulkheads, pipes, culverts, valves and gates. Drainage System Deficiencies do not include the introduction of pollution or pollutants into the Drainage System from any source. Notwithstanding the preceding, the Town shall maintain its pump station in Shipyard Plantation in good repair and insure that its appearance is maintained neatly so as not to detract from the ambiance of the surrounding natural areas of Shipyard Plantation.

(g) *Emergency*: A blockage, structural or mechanical failure, collapse or other sudden catastrophic event affecting any part of the Drainage System which prevents the flow of storm and surface water through all or any part of the Drainage System, or which otherwise results in an imminent peril to life or property within Shipyard Plantation.

(h) *Shipyard Plantation*: A planned unit development lying and being on Hilton Head Island, Beaufort County, South Carolina, which is shown and described on the map attached as Exhibit “B” hereto.

(i) *Storm Water Service Fees*: The fees collected by Beaufort County, South Carolina, under the authority of Beaufort County Ordinance 99-101, *et seq.*, as amended, and which are remitted by Beaufort County, South Carolina, to the Town of Hilton Head Island, South Carolina; or any similar fee, however denominated, imposed and collected by any subsequent or successor Storm Water Utility operated by The Town of Hilton Head Island, South Carolina, under the authority of Ordinance Number 2002-43.

(j) *Storm Water Project Prioritization and Annual Budget Process*: The Town shall at all times maintain a current, prioritized list of all known Drainage System Deficiencies within the Town

limits that qualify for service using Storm Water Fees. Prior to each fiscal year, the Town shall establish an annual Storm Water budget which defines all revenues and expenditures associated with the Storm Water Fees. This budget shall include those known projects intended to be completed within that fiscal year.

(k) *Town:* The Town of Hilton Head Island, South Carolina.

2. **Grant of Easements:** Simultaneous with the execution and delivery of this Agreement, the Association shall grant an “Access, Drainage and Maintenance Easement” to the Town to allow the Town to access, maintain, improve and utilize the Drainage System within Shipyard Plantation, with said easement being in the form attached hereto as Exhibit “C”

3. **Upkeep and Maintenance of Drainage System:** Upon the execution and delivery of this Agreement and the Access, Drainage and Maintenance Easement, the Town shall be responsible for any improvement, repair or maintenance necessary to correct any Drainage System Deficiency under the terms and conditions of this Agreement.

4. **Procedure for Town’s Maintenance of Drainage System:** The Parties acknowledge that the Town intends to provide for the maintenance of the Drainage System and the correction of identified Drainage System Deficiencies, other than those caused by an Emergency or Casualty, through the development

of its Storm Water Project Prioritization and Annual Budget Process. Other than in the case of an Emergency or Casualty, as described in Articles 7 and 8 below, the Parties agree to the following procedure for the Town's improvement, repair and maintenance of the Drainage System:

(a) *Identifying Drainage System Deficiencies:* The Association shall in good faith identify any Drainage System Deficiencies; however, the Association's failure to discover Drainage System Deficiencies shall not provide a basis for a conclusion that there are no Drainage System Deficiencies, and the Association's failure to discover Drainage System Deficiencies shall not be considered a guaranty or representation of the absence of Drainage System Deficiencies.

(b) *Schedule for Submission:* The Association shall submit its or their written description of all known or perceived Drainage System Deficiencies to the Town Storm Water Administrator, describing the nature, location and cause, if known, of each Drainage System Deficiency, as well as potential solutions and preliminary cost estimates. Drainage System Deficiencies that are reported to the Town, or which are discovered by the Town but not identified by the Association, by the end of any calendar year will be considered in the development of the Storm Water Project

Prioritization and Annual Budget Process for the following fiscal year. The Town shall submit to the Association by the end of any calendar year, a written description of any Drainage System Deficiencies identified by the Town through maintenance activity or inspections during that year.

(c) *Completion of Maintenance:* The Town shall develop a Storm Water Project Prioritization and Annual Budget Process that will address the identified Drainage System Deficiencies as follows:

(i) The Town shall determine the scope and extent of the improvement, repair or maintenance that is necessary to correct any Drainage System Deficiencies, and the means, methods and materials needed to accomplish the same.

(ii) Determine the priority of the correction of the Drainage System Deficiencies and schedule the improvement, repair or maintenance to correct the Drainage System Deficiencies for a specific year within the Storm Water Project Prioritization and Annual Budget Process. The determination of the priority, scheduling and funding of the correction of Drainage System Deficiencies shall be made by the Town, taking into account the following:

(A) The availability and amount of revenue from bonds or Storm Water Service Fees in any given fiscal year;

(B) All other projects, or requested improvements, repair and maintenance that are to be funded with Storm Water Service Fees.

(iii) Complete the work necessary to correct the Drainage System Deficiencies in the fiscal year as determined by the Town as a part of the Storm Water Project Prioritization and Annual Budget Process, unless emergency projects alter the prioritization such that funds are insufficient to correct all drainage system deficiencies as intended within the same fiscal year.

(d) Other than in the case of an Emergency, the Town and the Association shall mutually agree in writing as to the scheduling of any work to be performed hereunder in Shipyard Plantation in advance of the commencement of the work.

(e) The Association shall be solely responsible for the notification of its owners and guests regarding any Town maintenance or emergency work that may disrupt normal activities.

(f) The Town cannot guarantee that the amount of available Storm Water Service Fees, the number of projects to be funded with Storm Water Service Fees in any given fiscal year, and events such as weather related emergencies and drainage system failures in other parts of Hilton Head Island will not cause delays in the correction of Drainage System Deficiencies within Shipyard Plantation and elsewhere. The parties acknowledge that the Town's determinations with respect to the priority, funding and timing of the correction of any Drainage System Deficiency shall be final.

5. Further Obligations of Shipyard Property Owners Association, Inc.:

The Association agrees that during the term or any renewal term of this Agreement, it shall take no action which obstructs or impedes the flow of storm and surface water through the Drainage System; provided, however, that to the extent the Association has a continuing obligation under the Covenants to repair and maintain various improvements located within the Common Properties and/or Recreational Areas (as such terms are defined in the Covenants and which Common Properties and/or Recreational Areas may include lagoons and lagoon banks, roads, pathways, utilities, etc.), and this Agreement is not intended to in any way restrict or limit the Association from taking reasonable actions to

perform said obligations. The parties agree that the Association has an obligation under the Covenants to maintain the Shipyard Plantation common properties attractively, and such maintenance obligation includes taking reasonable steps to maintain the water elevation of lagoons and ponds at their natural and customary levels.

6. **Payments as Current Expense of Town:** Any payments to be made by the Town hereunder shall be made from Stormwater Service Fees as budgeted for by the Town in any given fiscal year. The Town and the Association intend that the payment obligations of the Town 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 concerning indebtedness of the Town, nor shall anything contained herein constitute a pledge of general tax revenues, funds, money or credit of the Town.

7. **Emergency:** The Parties agree that in the event of an Emergency, the following procedure shall apply:

(a) *Responsibilities of the Association:* The Association shall take such steps as may be necessary to secure any area affected by the Emergency. The Association shall notify the Town as soon as is practical after discovery of the Emergency.

(b) *Town Responsibilities:* Upon receipt of such notification from the Association, the Town shall determine the scope and

extent of the work that is necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same. The Town shall correct or repair the damage caused by the Emergency as soon as is practical, taking into account the threat presented by the Emergency, the cause of the Emergency or the existence of any general emergency affecting the Town and availability of funding. The Town may seek reimbursement for any costs incurred by the Town as a result of any Emergency from Storm Water Service Fees.

8. **Casualty:** The Parties agree that in the event of a Casualty, the following procedure shall apply:

(a) *Agreement Not Terminated:* This Agreement shall remain in full force and effect.

(b) *Design of Drainage System:* The Town shall produce engineering and design plans at its expense for any necessary reconstruction of the Drainage System.

(c) *Approval of Plans:* The engineering and design plans must be approved by the Association, prior to any reconstruction of the Drainage System. Engineering plans that modify static water levels within the Drainage System are subject to prior approval by the Association. In the event such reconstruction requires work outside

of the Easement limits as depicted in Exhibit "A," the parties agree to modify the Access, Drainage and Maintenance Easement by a written agreement to be recorded in the Office of Register of Deeds for Beaufort County, South Carolina increasing the Easement areas as reasonably necessary to accommodate such reconstruction and the Association agrees to grant any temporary license allowing the Town temporary access to those Common Areas of Shipyard Plantation reasonably necessary to accommodate such reconstruction.

(d) *Reconstruction of Drainage System:* Following the approval of the engineering and design plans and specifications by the Association and the completion of an Access, Drainage and Maintenance Easement Amendment and any temporary license agreement as set forth above in subsection (c), the Town shall complete the reconstruction of the Drainage System as soon as is practical, taking into account the threat presented by the cause of the Casualty, the existence of any general emergency affecting the Town and availability of funding. The Town may seek reimbursement for any costs incurred by the Town as a result of any Casualty from Storm Water Service Fees, bond, or other government aid and assistance programs.

9. Maintenance of Drainage System by Shipyard Property Owners

Association, Inc.: Nothing herein shall prohibit the Association from performing any improvement, repair or maintenance necessary to correct or repair any Drainage System Deficiency in advance of the time that any such work is scheduled as a part of the Town's Storm Water Project Prioritization and Annual Budget Process, in the event that the Association, determines that it is in its interest to do so. Other than in the case of an Emergency (which is addressed in Article 10, below), the Association shall be entitled to reimbursement for any such work from Stormwater Service Fees, in the fiscal year that such work is scheduled to be done as a part of Town's Storm Water Project Prioritization and Annual Budget Process, for the cost of any such work upon compliance with the following;

- (a) The Association shall submit its plans, quantities, and specifications for any improvement, repair or maintenance necessary to correct or repair any Drainage System Deficiency.
- (b) Unless the Town determines that:
 - (i) The proposed improvement, repair or maintenance does not correct an existing Drainage System Deficiency; or,
 - (ii) The scope of the proposed improvement, repair or maintenance exceeds what is necessary to correct an existing

Drainage System Deficiency, the Town, through authorized staff, shall grant its written approval.

(c) The Association shall bid the work in accordance with the Town's Procurement Code, § 11-1-111, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983), as the same may be amended from time to time, only upon receipt of the Town's written approval.

(d) Any changes in the agreed scope of work resulting in additional work or cost to the Town must be approved in writing by the Town prior to commencement of any additional work.

(e) The Association shall notify the Town within forty-eight (48) hours of the commencement of work and at any key junctures of the work whereas the Town may need to inspect the work.

(f) Upon completion of the work as approved by the Town, The Association shall submit its request for payment to the Town, which shall detail the work done and the payments made, and be accompanied by any required test reports, construction data / measurements or as-built surveys, and its written certification that the work was completed in accordance with the approved plans and specifications.

(g) The Town shall thereafter budget funds for the payment of the reimbursement to The Association from Storm Water Service Fees in the fiscal year that the work is scheduled for completion in the Town's Storm Water Project Prioritization and Annual Budget Process.

10. **Emergency Work by the Association:** In the event that the Town is unable to repair or correct the damage caused by an Emergency in a time frame that is acceptable to the Association, the following shall apply:

(a) The Association shall consult with the Town to determine a cost efficient scope and extent of the work that is necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same. The Town must provide prior written authorization of this work, in scope and fee, for the Association to be reimbursed by the Town after the work is completed. Any work performed by the Association without the prior written approval of the Town shall not be reimbursed by the Town.

(b) The Association shall complete the work that is necessary to repair or correct the damage caused by the Emergency.

(c) Upon completion of the work, The Association shall submit its or their request for payment to the Town, which shall detail the

work performed and the cost for the same, and be accompanied by any required test reports, construction data / measurements or as-built surveys, with a written certification that the work was necessary to repair or correct the damage caused by an Emergency.

(d) Within three (3) fiscal years following the completion of the work by the Association necessary to repair or correct the damage caused by the Emergency, the Town shall budget funds for the payment of the reimbursement to the Association and shall pay the same in accordance with the approved budget.

11. **No Guarantees Regarding Flooding:** The Association acknowledges that the Town's performance of its obligations under this Agreement does not guarantee or insure that property within Shipyard Plantation will be free of events of flooding or erosion, and that the Town does not represent or warrant to the Association that the performance of the Town's obligations under this Agreement will operate to prevent events of flooding or erosion within Shipyard Plantation. Notwithstanding the preceding, the Town acknowledges its obligation to maintain and operate the Town owned pump station in accordance with good engineering practices and maintain the exterior appearance in a neat and attractive manner.

12. **Waiver of Stormwater Service Fee Credit:** Upon the execution and delivery of this Agreement, and for and during the term or any extensions

hereof, the Association acknowledges it shall not be entitled to receive and hereby waives any Stormwater Service Fee Credit from Beaufort County or the Town with respect to any real property located within the limits of the PUD, as indicated on the map attached hereto as Exhibit "B", for and during the term of this Agreement or any renewal of this Agreement. Upon termination of this Agreement, the Association shall be entitled to receive Storm Water Fee Credits from Beaufort County or the Town.

13. **Term:** This Agreement shall remain in place for a period of Five (5) year(s), and shall renew automatically for successive five (5) year terms thereafter, unless either Party notifies the other, in writing, of its intention to terminate this Agreement. Any such notice shall be delivered more than one hundred and twenty (120) days prior to the end of the Town fiscal year (June 30) at the end of the then-current term in which such Party wishes to terminate. Upon delivery of such notice, this Agreement shall terminate on July 1 of the calendar year in which the notice is delivered. The parties shall thereafter execute and deliver such documents as may be necessary to cancel the Access, Drainage and Maintenance and Construction Easements delivered pursuant to this Agreement. Notwithstanding the preceding, the Town shall not terminate this Agreement as long as Beaufort County remits Storm Water Service Fees to the Town. The termination of this Agreement shall not terminate the Town's

obligation to maintain its pump station to serve storm water flow through Shipyard Plantation.

14. Representation and Warranties of Shipyard Property Owners Association, Inc.

The Association represents and warrants:

(a) That any and all necessary approvals and/or resolutions have been obtained, that it has the full authority to execute, deliver and perform this Agreement and to execute and deliver the Access, Drainage and Maintenance and Construction Easements to be delivered pursuant to this Agreement, and that the individual(s) executing such documents have full power and authority to bind the Association to the same.

(b) That it is not now a party to any litigation affecting the property burdened by the easements herein which could impair the obligations of the Association under this Agreement or the easements, and the Association knows of no litigation or threatened litigation affecting their ability to grant the easements.

(c) That as to any pipes or other portions of the Drainage System as shown on Exhibit A hereto which are located in whole or in part on private residential lots (ie. not within golf course, common area or open space parcels), the Association has full

authority the Covenants to convey and/or assign the rights contemplated in this Agreement and the Access, Drainage and Maintenance Easement.

15. **Town Representation and Warranties:** The Town represents and warrants to the Association:

(a) As is shown by the Resolution of the Town that is attached hereto as Exhibit "D", the Town represents that it has the power and authority to enter into this Agreement and complete its obligations hereunder; and,

(b) That it is not now a party to any litigation which could impair the obligations of the Town under this Agreement, and the Town knows of no litigation or threatened litigation affecting its ability to perform hereunder.

16. **Taxes:** The Association shall pay, prior to delinquency, all taxes on Association properties within Shipyard Plantation burdened by the easements granted under this Agreement. Should the Association fail to pay said taxes prior to delinquency, then the Town may pay said taxes and the Association shall reimburse the Town for such tax payment within fifteen (15) days of the Town's notification to the Association of its tax payment along with a copy of the Town's tax payment receipt.

17. **Default:** The Town and the Association agree that in the event of a default or breach of any provision or term of this Agreement, the non-defaulting party or parties shall give written notice to the defaulting party or parties of the default or breach. In the event that the defaulting party or parties fail to cure the default or breach within thirty (30) days of the date of the written notice specifying the default or breach, then the non-defaulting party or parties shall be entitled to pursue any remedy at law or in equity against the defaulting party or parties, including but not limited to an action for damages, injunction or specific performance of this Agreement.

18. **Attorney's Fees:** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default or misrepresentation in connection with any of the provisions or terms of this Agreement, the prevailing party or parties shall be entitled to recover its or their reasonable attorney's fees and any costs incurred as a result of any such action or proceeding, whether incurred before the commencement of suit or after the commencement of suit, and including appellate proceedings, in addition to any other relief to which the prevailing party or parties is or are entitled.

19. **General Provisions:**

(a) *Binding Effect:* This Agreement shall inure to the benefit of and be binding upon the Association and the Town, and their respective successors and assigns.

(b) *Amendment, Changes and Modifications:* Except as is otherwise provided herein, this Agreement may not be effectively modified, amended, changed or altered without the written consent of the Town and the Association.

(c) *Severability:* In the event that any term or provision of this Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other term or provision hereof.

(d) *Execution in Counterparts:* This Agreement may be simultaneously executed in several counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument.

(e) *Applicable Law:* This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

(f) *Captions:* The captions or headings used herein are for convenience only and in no way define, limit, expand or describe the scope or intent of any term or provision of this Agreement.

(g) *Plural/Singular:* Where appropriate, the use of the singular herein shall be deemed to include the plural, and the use of the plural herein shall be deemed to include the use of the singular.

(h) *No Third Party Beneficiaries:* The Town and the Association affirmatively represent that this Agreement is made solely for the benefit of the Parties hereto and their respective successors and assigns and not for the benefit of any third party who is not a signature party hereto. It is the express intent of the Town and the Association that no other party shall have any enforceable rights hereunder, or any right to the enforcement hereof, or to any claim for damages as a result of any alleged breach hereof.

(i) *Notices:* All notices, applications, requests, certificates or other communications required hereunder shall be sufficiently given and shall be deemed given on the date when such is delivered in person, or deposited in the United States Mail, by regular first class mail, postage prepaid, at the following addresses, or at such other address as may be designated, in writing, by the Parties:

To the Town: The Town of Hilton Head Island,
 South Carolina
 Stephen G. Riley, Town Manager

One Town Center Court
Hilton Head Island, SC 29928

To the Association: Shipyard Property Owners
Association, Inc.
Attn: Sally Warren
10 Shipyard Drive
Hilton Head Island, SC 29928

With Copy to: Robert M. Deeb, Jr.
McNair Law Firm, PA
Post Office Drawer 3
Hilton Head Island, SC 29938

(j) *No Waiver:* No failure of any Party hereto to exercise any power or right given to such Party hereunder, or to insist on strict compliance by any other Party of its obligations hereunder, and no custom or practice of the Parties at variance with the terms and provisions hereof shall constitute a waiver of any Party's right to thereafter demand strict compliance with the terms of this Agreement.

(k) *Further Assurances and Corrective Documents:* The Town and the Association agree to do, execute, acknowledge, deliver or cause to be done all such further acts as may be reasonably determined to be necessary to carry out this Agreement and give effect to the terms and provisions hereof. The Town and the Association agree that each shall, upon request, execute and deliver such other or further or corrective documents as may be reasonably

determined to be necessary to carry out this Agreement and each of the terms and provisions hereof.

20. Prior Agreement: The Town and the Association entered into that certain Grant of Drainage Easements and Lagoon Maintenance Agreement dated January 2, 2007, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Official Record Book 2511 at Page 2046 regarding drainage infrastructure and easements located within Shipyard Plantation (the “2007 Agreement”). This Agreement shall supersede all aspects of the 2007 Agreement and any amendments thereto, and the same shall be deemed terminated, null and void upon the date of the complete execution and acceptance of this Agreement.

21. Pump Station: The Town owns, operates and maintains a pump station which assists the conveyance of drainage of storm water through Shipyard Plantation. As set forth in Article 1(e) above, the pump station and related infrastructure constitute part of the Drainage System, and shall be maintained as per Article 3 above.

(a)The Town shall not be responsible for maintenance of any landscaping at the pump station site.

IN WITNESS WHEREOF, The Town of Hilton Head Island, South Carolina; and Shipyard Property Owners Association, Inc. by and through their duly authorized officers, have executed and delivered this Agreement as of this ____ day of _____, 2012.

SIGNATURES BEGIN ON NEXT PAGE

WITNESSES:

SHIPYARD PROPERTY OWNERS
ASSOCIATION, INC.

By: _____

Its: _____

Attest: _____

Its: _____

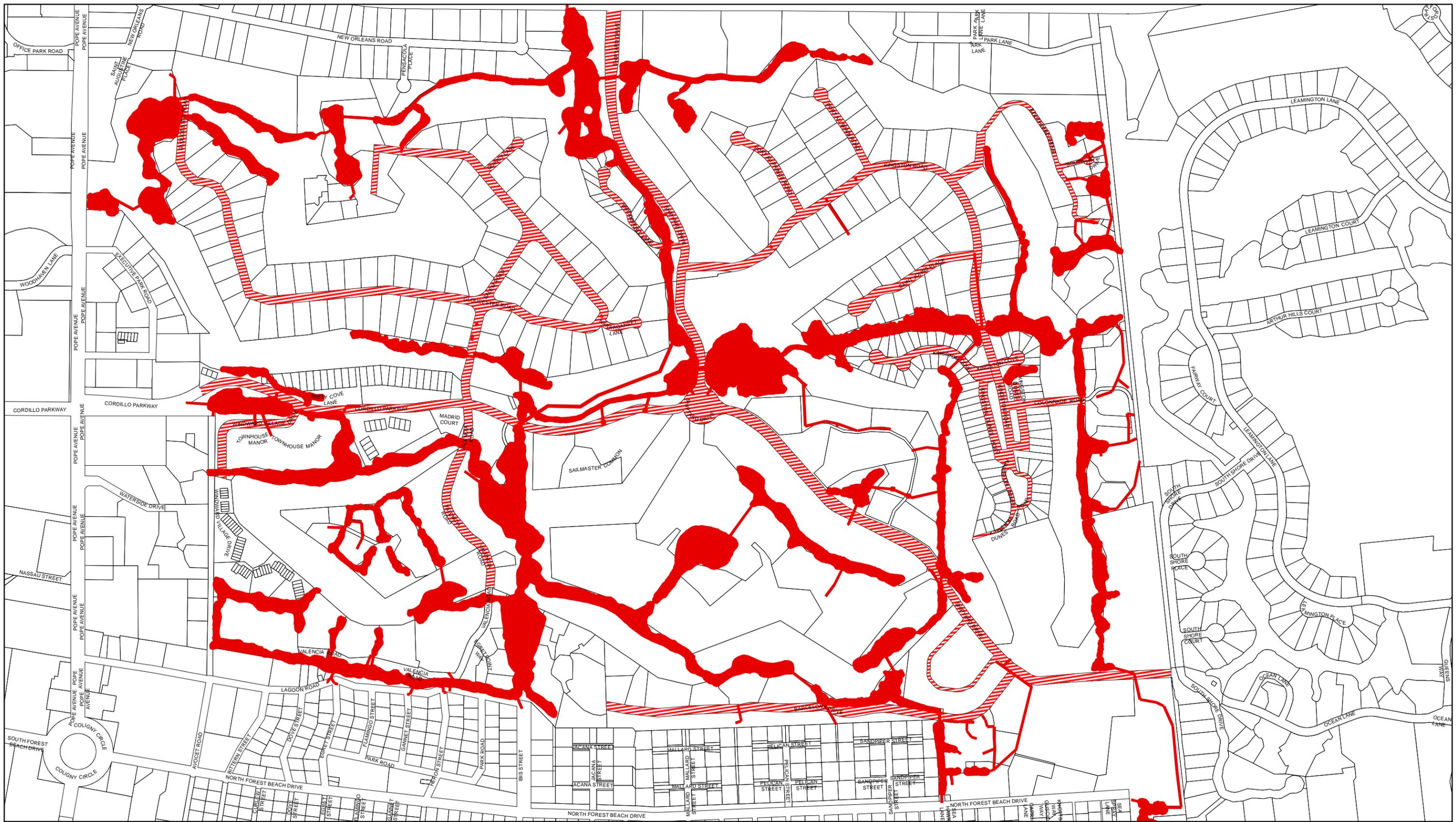
THE TOWN OF HILTON HEAD
ISLAND, SOUTH CAROLINA

By: _____

Drew A. Laughlin, Mayor

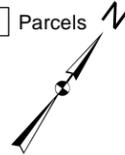
Attest: _____

Stephen G. Riley, Manager



 Road ROW Esmt
  Lagoons & Pipes Easement
  Parcels

Note: Drainage easement widths are 20 feet around the center of pipes depicted on the exhibit and 15 feet from the top of bank of lagoons depicted on the exhibit. The Access and Pump Station easement boundaries are referenced from Beaufort County plat book 86, page 184.

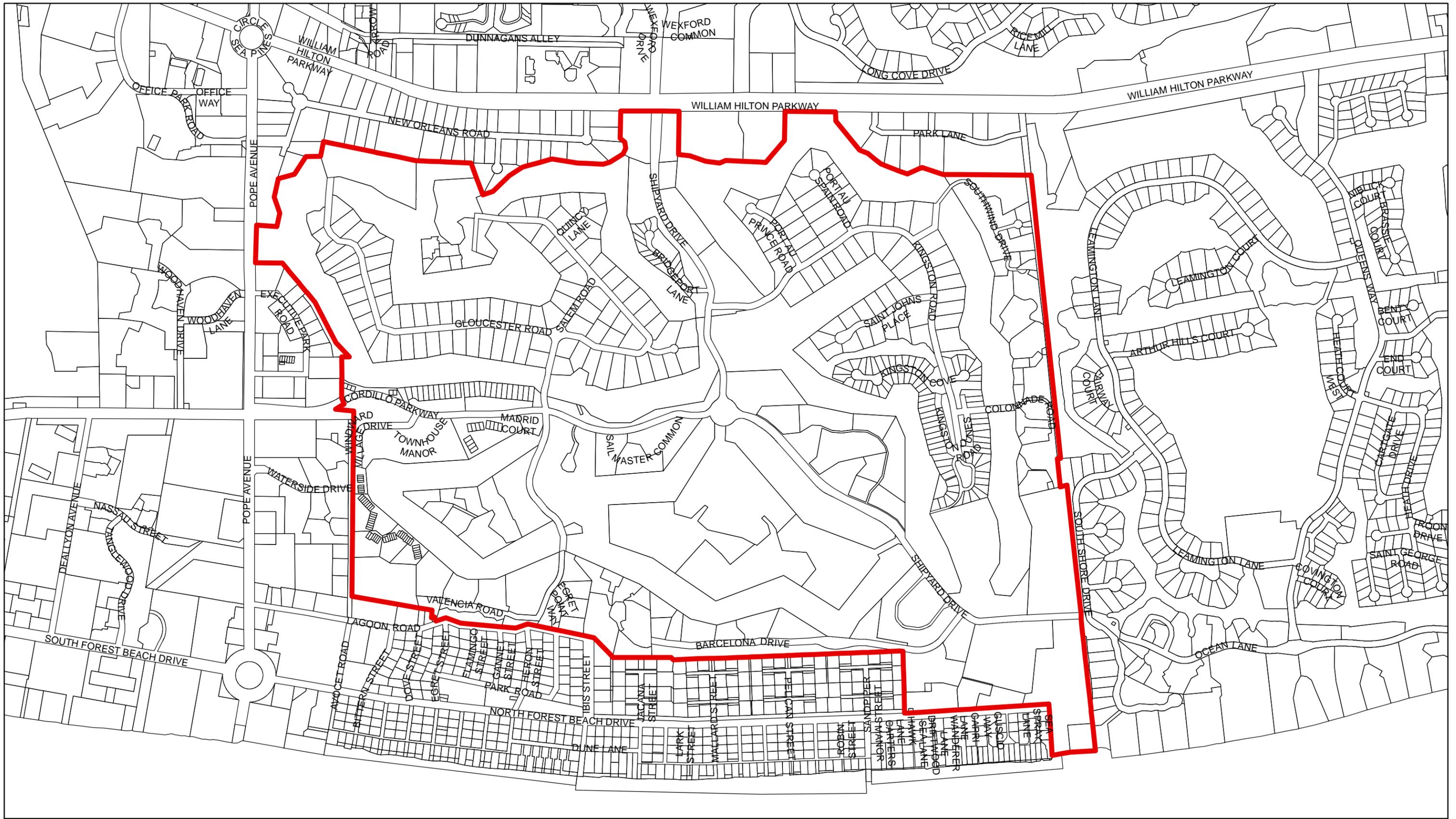


Shipyard

Access, Drainage and Maintenance Exhibit



The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion or for any losses arising from the use of the map.



Shipyard_Boundary
 Parcels



EXHIBIT B: Shipyard Boundaries



The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion or for any losses arising from the use of the map.

EXHIBIT "C"

STATE OF SOUTH CAROLINA)	ACCESS, DRAINAGE AND
)	MAINTENANCE EASEMENT
COUNTY OF BEAUFORT)	

Know all men by these presents, that Shipyard Property Owners Association, Inc. (Attn. General Manager), 10 Shipyard Drive, Hilton Head Island, SC, 29928 and The Town of Hilton Head Island, South Carolina, One Town Center Court, Hilton Head Island, SC, 29928, for and in consideration of the sum of One and No/100 (\$1.00) Dollar, each paid to the other at and before the execution and delivery of this Access, Drainage and Maintenance Easement, the receipt and sufficiency whereof is acknowledged, agree as follows:

1. **Defined Terms:** As used herein, the following terms shall mean:
 - (a) *Association:* Shipyard Property Owners Association, Inc.
 - (b) *Covenants:* The Amended Declaration of Covenants, Conditions, and Restrictions for Shipyard Plantation recorded in the Beaufort County Register of Deeds Office on May 7, 2002 in Record Book 1577 at Page 1723.
 - (c) *Drainage System:* The existing system of ditches, drains, lagoons, pipes, culverts, structures, facilities and any related storm water improvements, including an existing pump station constructed by the Town on property owned by the Association and related improvements, lying within the limits of the Drainage Easement Areas as shown on the attached Exhibit "A" which facilitate the collection, storage and

conveyance of storm and surface water runoff through and from within Shipyard Plantation. For purposes of this Agreement, the Drainage System shall not include any bridges, docks, retaining walls, road or pathway asphalt, or structural bulkheads.

(d) *Emergency*: A blockage, mechanical failure, collapse or other sudden catastrophic event affecting any part of the Drainage System which prevents the flow of storm and surface water through all or any part of the Drainage System, or which otherwise results in an imminent peril to life or property within Shipyard Plantation.

(e) *Setback*: An area measured inward from the property line, right-of-way line or a specified line defining the limits within which no structure not otherwise authorized shall be located, per Sec 16-10-201 Town of Hilton Head Island Land Management Ordinance, rev 01/15/08 Ordinance 2008-1 as may be amended.

(f) *Shipyard Plantation*: A planned unit development lying and being on Hilton Head Island, Beaufort County, South Carolina, which is shown and described within the area detailed on the map attached as Exhibit "B" hereto.

(g) *Permanent Structure*: Any structure, including, but not limited to, the following: buildings (including sheds), walls, and other masonry structures, tennis courts, and swimming pools.

(h) *Town*: The Town of Hilton Head Island, South Carolina.

2. *Grant of Easements:* The Association, do hereby grant, transfer, sell and convey to the Town, and its agents, assigns, employees and contractors, and their vehicles, machinery and equipment, and create and establish for the benefit of the Town, the following easements:

(a) A non-exclusive Access Easement on, over and across any roads and streets within Shipyard Plantation, and on, over and across any property owned by The Association, encumbered by all or any part of the Drainage System. This Access Easement includes a non-exclusive and partial assignment of any and all easement rights for access held by the Association, under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within Shipyard Plantation and upon which any part of the Drainage System lies or passes on, across, under or through.

(b) A non-exclusive Maintenance Easement on, under, over, through and across any property of The Association, encumbered by all or any part of the Drainage System. This Maintenance Easement includes a non-exclusive and partial assignment of any and all easement rights for maintenance, construction, or otherwise, held by The Association, under the Covenants or any other recorded declaration of covenants and restrictions or recorded easements over property that The Association does not own within Shipyard Plantation and upon which any part of the Drainage System lies or passes on, across, under or through. This

Maintenance Easement shall include all facilities or structures directly related to the collection, storage and conveyance of storm and surface water now or hereafter existing within Shipyard Plantation, and sufficient property beside or over any part of the Drainage System as shown on Exhibit "A" reasonably necessary to allow for excavation and any other work necessary to improve, repair or maintain the Drainage System.

(c) A non-exclusive Drainage Easement for the conveyance of any storm and surface water originating from within or without the boundaries of Shipyard Plantation through the Drainage System, at such rates and in such amounts as may occur from time to time.

(d) This Drainage Easement includes a non-exclusive and partial assignment of any and all easement rights for drainage held by The Association, under the Covenants or any other recorded declaration of covenants and restrictions or recorded easements over property that the Association does not own within Shipyard Plantation and upon which any part of the Drainage System lies or passes on, across, under or through; provided however, that the Town shall provide timely written notification to the Association of any potentially disruptive improvements and/or modifications to the systems conveying storm and surface water originating without the boundaries of Shipyard Plantation and through the Shipyard Plantation Drainage System.

3. This Access, Drainage and Maintenance Easement is granted and accepted

subject to the following:

(a) The Town agrees that the use of the easements granted herein shall be restricted to the hours of 7:00 o'clock, A. M., to 5:00 o'clock, P. M., Monday through Friday excluding public holidays, except in the event of an Emergency.

(b) Other than in the case of an Emergency, the Town and The Association shall determine the scheduling of any work to be performed hereunder, on its or their property, in advance of the commencement of the work.

(c) This Access, Drainage and Maintenance Easement is conveyed subject to all other easements, licenses, and conveyances of record and is subject to the rights herein reserved by The Association, or any of them, their successors and assigns, to utilize their property at any time, in any manner, and for any purpose, provided, however, that such use by the Association shall not be inconsistent with nor prevent the full utilization by the Town of the rights and privileges granted herein.

(d) The Town agrees to plan, lay out, and execute or build improvements, repairs and maintenance of the Drainage System, and further agrees that the Town's exercise of the rights granted in this Access, Drainage and Maintenance Easement shall be under the exclusive control of the Town and that the Town shall at all times comply with all applicable laws, rules, codes, and regulations. Notwithstanding the preceding, the

Town and the Association shall mutually determine the scheduling of any work to be performed hereunder in advance of the commencement of such work other than in cases of Emergency.

(e) The Association shall not erect any Permanent Structure on, under, over, through and across any property of The Association, encumbered by all or any part of the Drainage System without the Town's prior written approval, which approval shall not be unreasonably withheld. The Association shall not impede, obstruct, or allow to be obstructed, the natural flow of storm and surface water runoff through the Drainage System, or from any part of the Drainage Areas through the Drainage System; provided, however, that the Association have a continuing obligation under the Covenants to repair and maintain various improvements located within the Common Properties (lagoons and lagoon banks, roads, pathways, utilities, etc.), and this Agreement is not intended to in any way restrict or limit Association from taking reasonable actions to perform said obligations. Notwithstanding the preceding, the Association may maintain and repair any Permanent Structure located on or across any part of the Drainage System currently in existence as of the date of this Access, Drainage, and Maintenance Easement.

(f) The rights conveyed under this Access, Drainage and Maintenance Easement are limited to the parties and purposes stated herein. This Access, Drainage and Maintenance Easement conveys no rights of access

or otherwise to the general public.

4. The Association acknowledges that the Town shall have no obligation to perform or pay for any work to improve or maintain the appearance or appeal of the lagoons, banks of lagoons, landscaping, drains, canals, or other visible components of the Drainage System, including, but not limited to, structures, bridges, bulkheads, pipes, culverts, valves and gates. Notwithstanding the preceding, the Town shall have the obligation to repair and maintain the Pump Station, including the appearance of the same.

5. The Town agrees to cause all work contemplated hereunder to be performed in a workmanlike fashion with minimal interference to the Grantors, their successors, assigns, invitees, guests, licensees, and agents. The Town further agrees to cause the work contemplated hereunder to be completed in an expeditious and timely fashion, and that all materials, debris, and construction materials shall be promptly removed. The Town shall restore any other part of the property of The Association which may be damaged as a result of the Town's exercise of the rights granted hereunder to its pre-existing state. Such restoration obligations shall include the obligation to restore landscaping, improvements, or Permanent Structures damaged as a result of the town's exercise of the rights granted hereunder to the preexisting condition of such landscaping, improvements, or Permanent Structure, to the extent such restoration is feasible.

6. The Town hereby warrants to the Association that the granting of this Access, Drainage and Maintenance Easement will not affect any Setback lines with respect to

any property currently owned by The Association.

7. As to any pipes or other portions of the Drainage System as shown on Exhibit A hereto which are located in whole or in part on private residential lots (i.e. not within golf course, common area or open space parcels), the Association has full authority under the Covenants to convey and/or assign the rights contemplated herein.

8. The Town and the Association entered into that certain Grant of Drainage Easements and Lagoon Maintenance Agreement dated January 2, 2007, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Official Record Book 2511 at Page 2046 regarding drainage infrastructure and easements located within Shipyard Plantation (the "2007 Agreement"). This Easement Agreement shall supersede all aspects of the 2007 Agreement and any amendments thereto, and the same shall be deemed terminated, null and void upon the date of the complete execution and acceptance of this Easement Agreement.

9. Nothing in this Agreement limits the Association's rights under the South Carolina Tort Claims Act, South Carolina Code Section 15-78-10 et. seq.

To have and to hold, all and singular, the rights, privileges, and easements aforesaid unto the Town of Hilton Head Island, South Carolina, its successors and assigns, forever.

In Witness whereof, the parties hereto have caused the within Access, Drainage and Maintenance Easement to be executed by their duly authorized officers as of this _____ day of _____, 2012.

WITNESSES:

SHIPYARD PROPERTY OWNERS
ASSOCIATION, INC.

By: _____

Its: _____

Attest: _____

Its: _____

STATE OF SOUTH CAROLINA

)

UNIFORM ACKNOWLEDGMENT

COUNTY OF BEAUFORT

)

S.C. CODE § 30-5-30 (SUPP. 2011)

I, the undersigned Notary Public do hereby certify that
_____ and _____ personally appeared
before me on this day and duly acknowledged the execution of the foregoing instrument
on behalf of Shipyard Property Owners Association, Inc.

Sworn to and Subscribed before me
on this _____ Day of _____, 2012.

Notary Public for South Carolina
My Commission Expires: _____

WITNESSES:

THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

By: _____
Drew A. Laughlin, Mayor

Attest: _____
Stephen G. Riley, Manager

STATE OF SOUTH CAROLINA

)

UNIFORM ACKNOWLEDGMENT

)

COUNTY OF BEAUFORT

)

S.C. CODE § 30-5-30 (SUPP. 2011)

I, the undersigned Notary Public do hereby certify that Drew A. Laughlin and Stephen G. Riley personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of The Town of Hilton Head Island, South Carolina.

Sworn to and Subscribed before me
on this _____ Day of _____, 2012.

Notary Public for South Carolina
My Commission Expires: _____