The Town of Hilton Head Island
Regular Town Council Meeting

Tuesday, August 7, 2012

4:00 P.M.

AGENDA

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

1) Call to Order

2) Pledge to the Flag

3) Invocation

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

5) Proclamations and Commendations

a. Dan Driessen

6) Approval of Minutes

a. Town Council Meeting– July 3, 2012

7) Report of the Town Manager

a. Semi-Annual Report of the Board of Zoning Appeals – Peter Kristian, Vice-Chairman

b. Town Managers Items of Interest

c. June, 2012 Quarterly Report

8) Reports from Members of Council

a. General Reports from Council

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

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

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

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

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

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

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

9) Appearance by Citizens

10) Unfinished Business

a. Second Reading of Proposed Ordinance 2012-20

Second Reading of Proposed Ordinance 2012-20 ratifying the execution of a lease with Seaside Family Chiropractic, LLC for 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. 2006), and Sec. 2-7-20, *Code of the Town of Hilton Head Island, South Carolina*, (1983); and providing for severability and an effective date.

11) New Business

a. First Reading of Proposed Ordinance 2012-21

First Reading of Proposed Ordinance 2012-21 authorizing the execution and delivery of a lease of real property owned by the Town of Hilton Head Island, South Carolina, with the Beaufort County Sheriff's Office and Beaufort County, South Carolina, 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. First Reading of Proposed Ordinance 2012-22

First Reading of Proposed Ordinance 2012-22 authorizing the execution of that certain utility easement agreement with Hilton Head No. 1 Public Service District for an easement over town owned property in conjunction with the Mathews Drive LPS/Broad Creek Headwaters Sewer Project 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.

c. First Reading of Proposed Ordinance 2012-25

First Reading of Proposed Ordinance 2012-25 authorizing the execution and delivery of a contact to sell town owned real estate known as a portion of the Crossings Park tract to the South Island Public Service District, and to grant a temporary construction easement over town owned real estate known as the Crossings Park Tract and to authorize the execution of an agreement related to a Pollution Free Zone encumbering town owned real estate known as the Crossings Park Tract, 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.

d. First Reading of Proposed Ordinance 2012-26

First Reading of Proposed Ordinance 2012-26 authorizing the granting of an easement to Hilton Head Public Service District encumbering real property owned by the Town of Hilton Head Island, South Carolina, known as "Spanish Wells 1", being 2.4 acres on Spanish Wells Road, pursuant to the authority of S. C. Code Ann. § 5-7-40 (supp. 2010), and § 2-7-20, *Code of the Town of Hilton Head Island, South Carolina*, (1983, As Amended); and providing for severability and an effective date.

e. First Reading of Proposed Ordinance 2012-27

First Reading of Proposed Ordinance 2012-27 authorizing the execution of a lease with American Towers, LLC, for property owned by the Town of Hilton Head Island, South Carolina, known as the "Jenkins Island" Tract, and authorizing the execution of two easements in favor of American Towers, LLC, encumbering town owned land, known as the "Jenkins Island" Tract, pursuant to the authority of S.C. Code Ann. Sec. 5-7-40 (Supp. 2012), and Sec. 2-7-20, *Code of the Town of Hilton Head Island, South Carolina*, (1983); and providing for severability and an effective date.

f. Consideration of a Resolution – Metropolitan Planning Organization

Consideration of a Resolution of the Town Council of the Town of Hilton Head Island to adopt geographical boundaries for a Beaufort County and Jasper County Metropolitan Planning Area and to create a Metropolitan Planning Organization.

g. Consideration of a Resolution – American Towers, LLC/Fire Station 7 Site

Consideration of a Resolution of the Town Council of the Town of Hilton Head Island, South Carolina, authorizing the execution and delivery of a second amendment to the October 25, 2011, Communications Tower Ground Lease between the Town of Hilton Head Island, South Carolina, and American Towers, LLC, for a tower site at the Town's Fire Station 7 Property on Marshland Road.

h. Consideration of a Resolution regarding an Agreement with HHPSD

Consideration of a Resolution of the Town Council of the Town of Hilton Head Island, South Carolina, authorizing the execution and delivery of a contract between the Town of Hilton Head Island, South Carolina, and the Hilton Head No. 1 Public Service District relating to the sewage expansion projects known as the “Mathews Drive LPS/Broad Creek Headwaters”, the “William Hilton Parkway LPS/Chaplin Linear Park”, the “Squire Pope Sewer Extension/Ford’s Shell Ring” and sewage connection project known as the “Fish Haul Sewer Connection” project.

i. Consideration of a Recommendation regarding Prior Year Accommodation Tax Grant Extensions

Consideration of a Recommendation that the Town Council of the Town of Hilton Head Island extend the 2011 Accommodations Tax Grants for the Hilton Head Island St. Patrick’s Day Parade and the Shelter Cove Harbour Company 4th of July Fireworks through December 31, 2012; and (2) Town Council delegate to Town Manager the authority to approve prior year grant extensions in the future.

j. First Reading of Proposed Ordinance 2012-23

First Reading of Proposed Ordinance 2012-23 of the Town Council of the Town of Hilton Head Island, South Carolina, authorizing the execution of a development agreement with Shelter Cove Towne Centre, LLC for the redevelopment of the Mall at Shelter Cove 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.

k. First Reading of Proposed Ordinance 2012-24

First Reading of Proposed Ordinance 2012-24 authorizing the sale of real property owned by the Town of Hilton Head Island, South Carolina, in exchange for land owned by Shelter Cove Towne Centre, LLC in conjunction with the Mall at Shelter Cove Development Agreement and 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, As Amended); and providing for severability and an effective date.

l. First Reading of Proposed Ordinance 2012-28

First Reading of Proposed Ordinance 2012-28 authorizing the establishing of covenants and restrictions on real property in conjunction with the Mall at Shelter Cove Development Agreement and 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, As Amended); and providing for severability and an effective date.

m. First Reading of Proposed Ordinance 2012-29

First Reading of Proposed Ordinance 2012-29 authorizing the extinguishment of covenants and restrictions on real property in conjunction with the Mall at Shelter Cove Development Agreement and 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, As Amended); and providing for severability and an effective date.

n. First Reading of Proposed Ordinance 2012-19

First Reading of Proposed Ordinance 2012-19 to amend Title 16, "The Land Management Ordinance," of the *Municipal Code of the Town of Hilton Head Island, South Carolina*, by amending Section 16-4-102, the Official Zoning Map and the Palmetto Dunes Resort Master Plan with respect to the certain parcels identified as Parcel 26, on Beaufort County Tax Map #12B, and a 9.3 acre portion of Parcel 12 on Beaufort County Tax Map #12C, within the Palmetto Dunes Resort Master Plan under the PD-1 Planned Development Mixed Use District, to amend the uses and associated density for Parcel 26, Tax Map #12B to 295,000 square feet of commercial uses, excluding uses listed in LMO 16-4-209, but permitting liquor store and gas sales, community park and 76 multi-family dwelling units; and the portion of Parcel 12, Tax Map #12C to 134 multi-family dwelling units and community park.; and providing for severability and an effective date.

12) 5:00 P.M. - PUBLIC HEARING – PROPOSED DEVELOPMENT AGREEMENT BETWEEN THE TOWN OF HILTON HEAD ISLAND AND SHELTER COVE TOWNE CENTRE, LLC (RE: TRACT KNOWN AS THE MALL AT SHELTER COVE)

13) Executive Session

a. Land Acquisition

b. Legal Matters

1) Development Agreement with Shelter Cove Towne Centre, LLC

c. Boards and Commissions

1) Accommodations Tax Advisory Committee Member Re-designation

14) Adjournment

COMMENDATION

A Commendation of the Town of Hilton Head Island
Honoring
Dan Driessen

Whereas, *Dan Driessen was born in Hilton Head Island and began his baseball career playing with "the old guys" in the Beach City Road area; and*

Whereas*, Dan Driessen's enormous talent was recognized, and at age 18 he became a versatile member of the Cincinnati Reds as an undrafted free agent; and*

Whereas*, in his Major League rookie season of 1973, he hit a .301 average, earning him a third place finish in the National League Rookie of the Year voting, as well as the nickname "The Cobra" for the quick, lethal way his bat struck the ball; and*

Whereas*, Dan Driessen was Cincinnati's starting third baseman in 1974, and was moved to first base in 1977, beginning one of the longest tenures at first base in Reds history, leading all National League first basemen in fielding percentage three times, and sharing the Reds all-time single season record for fielding percentage at that position from 1973 to 1984, and becoming the National League's first ever designated hitter in the World Series; and*

Whereas*, only eight players in history have appeared in more games than he has as a Cincinnati Red, he helped form the nucleus of "The Big Red Machine," which dominated baseball during the 1970's, averaging over 100 victories a season and capturing back-to-back World Championships in 1975 and 1976, two World Series wins, five National League West titles, and four National League pennants; and*

Whereas*, the Cincinnati Reds have honored our own Dan Driessen through his recent induction into the Reds Hall of Fame in June, 2012, the Town Council, on behalf of Island residents, also wishes to express its appreciation, its pride, and its gratitude.*

NOW*,* ***THEREFORE****,* ***I, Drew A. Laughlin, as Mayor of the Town of Hilton Head Island, South Carolina****, on behalf of the Town Council, hereby commend its native son, Dan Driessen, on behalf of the Town of Hilton Head Island not only for his accomplishments on the sports field, but for the pride, joy, and love of the game he brought to citizens and youth of Hilton Head Island.*

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

Drew A. Laughlin, Mayor

THE TOWN OF HILTON HEAD ISLAND

REGULAR TOWN COUNCIL MEETING

Date: Tuesday, July 3, 2012 **Time:** 4:00 P.M.

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

Absent from Town Council: Bill Harkins, *Council Member*

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

Present from Media: Tom Barton

DRAFT

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

6) Approval of Minutes

a. Town Council Special Meeting Budget Workshop– June 12, 2012

Mr. Heitzke moved to approve. Mr. Williams seconded. The minutes of the June 12, 2012 Town Council Special Meeting Budget Workshop were approved by a vote of 6-0.

b. Town Council Meeting – June 19, 2012

Mr. Heitzke moved to approve. Mrs. Likins seconded. The minutes of the June 19, 2012 Town Council meeting were approved by a vote of 5-0-1. Mr. Williams abstained as he was not present at the June 19, 2012 meeting.

7) Report of the Town Manager

a. Semi-Annual Report of the Design Review Board – Todd Theodore, Chairman

Chairman Theodore presented an activity report for the first six months of 2012.

b. Economic Analysis/Financial Feasibility Report – Coligny District – Shawn Colin

Shawn Colin introduced Mr. David Brandes of Genesis Consulting Group to review the report. Mr. Brandes explained the phases of the study and reviewed concept master plans with various options. After questions from Town Council concerning the scenarios, Mr. Brandes explained they can be remodeled to include or omit certain items. He also explained that if Town Council chooses to go forward, further definition of the plan will take place resulting in more exact numbers. Mr. Riley stated this was an overview of the study and decisions will be made at a later date.

c. Town Managers Items of Interest

Mr. Riley reported on some items of interest.

d. June, 2012 Policy Agenda, Management Targets and CIP Updates

Mr. Riley stated he would be happy to answer any questions concerning the updates.

e. FY 2012 Financial Statements through May 31, 2012

Mr. Riley referred to the financial statements included in the packet stating Susan Simmons was available to answer questions.

8) Reports from Members of Council

a. General Reports from Council

No report.

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

No report.

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

No report.

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

No report.

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

Mrs. Likins reported the Committee had met earlier in the day and Mr. Randy Dolyniuk presented an overview of the Mitchelville Project. She added the Committee was bringing forward a recommendation for the SHARE Center to relocate to the newly obtained Beaufort County Sheriff's Office building at today's meeting.

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 continues to work through reviewing the recommendations provided by the Consultants.

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

9) Appearance by Citizens

Mr. Joe Bradley, Mr. Don Schwarz, and Mr. Bob Gentzler spoke concerning the Hilton Head Island Airport.

DRAFT

10) Unfinished Business

a. Second Reading of Proposed Ordinance 2012-08

Second Reading of Proposed Ordinance 2012-08 to amend Title 16, the Land Management Ordinance, of the *Municipal Code of the Town Of Hilton Head Island, South Carolina*, by amending Section 16-4-102, the Official Zoning Map, specifically amending Tax Map 12, Parcels 19 and 347A and Tax Map 15 Parcel 2 to Planned Development Mixed Use District with specific use and density standards under the Palmetto Dunes Resort Master Plan (PD-1); and providing for severability and an effective date.

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

b. Second Reading of Proposed Ordinance 2012-17

Second Reading of Proposed Ordinance 2012-17 to amend Title 16 of the *Municipal Code of the Town of Hilton Head Island, South Carolina*, the Land Management Ordinance, Chapter 3, Article XVII and Chapter 4, Article XIII. these amendments, commonly referred to as the *LMO Telecommunications Amendments,* as noticed in the Island Packet on April 8, 2012, include changes that provide for an addition to Chapter 3, Article XVII, Planned Unit Development (PUD) review and revisions to Chapter 4, Article XIII, Specific Use Standards; and providing for severability and an effective date.

Mr. Heitzke moved to approve. Mr. Williams seconded. Mr. Jim Collett spoke in support of the amendments. The motion was approved by a vote of 6-0.

DRAFT

c. Second Reading of Proposed Ordinance 2012-18

Second Reading of Proposed Ordinance 2012-18 to amend Title 16, "The Land Management Ordinance," of the *Municipal Code of the Town of Hilton Head Island, South Carolina*, by amending Section 16-4-102, the Official Zoning Map with respect to those certain parcels identified as Parcels 154, 11I and 162 on Beaufort County Tax Map 8, from IL (Light Industrial) to the CC (Commercial Center) Zoning District; and providing for severability and an effective date.

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

d. Second Reading of Proposed Ordinance 2012-16

Second Reading of Proposed Ordinance 2012-16 to provide for the adoption of updates to the Population, Housing, And Community Facilities elements of “The Town of Hilton Head Island Comprehensive Plan”; and to provide for severability and an effective date.

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

11) New Business

a. Consideration of a Recommendation – SHARE Center

Consideration of a Recommendation that the Town Council of the Town of Hilton Head Island, South Carolina approve partial use of the building located at 58 Shelter Cove Lane (otherwise known as the Lifespan Building) for the SHARE Center.

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

b. First Reading of Proposed Ordinance 2012-20

First Reading of Proposed Ordinance 2012-20 ratifying the execution of a lease with Seaside Family Chiropractic, LLC for 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. 2006), and Sec. 2-7-20, *Code Of The Town Of Hilton Head Island, South Carolina*, (1983); and providing for severability and an effective date.

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

12) Executive Session

Mr. Riley stated he needed an executive session for contractual matters related to land acquisition, including a request to acquire Town-owned land and legal matters pertaining to a contract.

At 5:15 p.m. Mr. Heitzke moved to go into Executive Session for the reasons stated by the Town Manager. Mrs. Likins seconded. The motion was approved by a vote of 6-0.

Mayor Laughlin called the meeting back to order at 5:33 p.m.

DRAFT

11) c. Consideration of a Resolution – Land Purchase in Stoney Area

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 to purchase a tract of land in the Stoney area of Hilton Head Island.

Mr. Ferguson moved that the Mayor and Town Manager be authorized to execute and deliver the contract for the purchase of approximately 1.69 acres on U. S. Highway 278 on Hilton Head Island from Atlantic Community Bank, and that the Mayor and the Town Manager be authorized to take such other and further actions as may e necessary to close the transaction described in the contract. Mrs. Likins seconded. The motion was approved by a vote of 6-0.

13) Adjournment

Mr. Williams moved to adjourn. Mr. Heitzke seconded. The meeting was adjourned at 5:34 p.m.

_____

Victoria L. Pfannenschmidt
Executive Assistant

Approved:

_____

Drew A. Laughlin, Mayor

Items of Interest
August 7, 2012

1. Town News

The Town of Hilton Head Island was recently certified as a Bicycle Friendly Community by the League of American Bicyclists. Since then, Town staff and area cycling groups have enhanced their efforts to promote bicycle safety within the Town in the form of initiatives such as field safety reviews, public relations campaigns, new pathway and related construction, and signing, signal and marking improvements. A Bicycling Advisory Committee consisting of various public officials and private citizens has been meeting regularly at the Chamber of Commerce to support these initiatives. Staff is pleased to report that only seven (7) collisions between a motor vehicle and a bicycle were reported within the Town during the first six months of 2012, whereas the annual average number of total reported collisions during the previous five calendar years was over 23 per year. This is particularly encouraging considering the greater number of pathways constructed by the Town and the apparent ever-increasing number of cyclists on the island. While the six month period covering the first half of 2012 is not sufficient to draw broad conclusions regarding long-term improvements in conditions, staff finds the reduction *both* encouraging and rewarding, and will continue its effort to improve safety for cyclists.

(Contact: Darrin Shoemaker, Traffic and Transportation Engineer – 341-4774)

Captain Chad McRorie was recently awarded the Jack Cavagnaro Public Service Award by the Knights of Columbus Assembly 2280. The award honors Captain McRorie for his service to others. The award specifically noted his many years of service with Hilton Head Island Fire & Rescue, his past heroic actions, and his work with the Hilton Head Firefighters Association which is a 501.c.3 nonprofit organization dedicated to helping those in need.

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

Richard Spruce, Plans Review Administrator, successfully achieved his Commercial Plans Examiner status with the State Licensing, Labor and Regulations, LLR. Richard is now certified in all aspects of both residential and commercial plan review; which will allow him to perform both residential and commercial plan reviews for code compliance.

(Contact: Bob Klein, Building Official, 341-4664)

There will be a Municipal General Election on Tuesday, November 6, 2012, for the purpose of electing Town Council members for Wards 1, 3, and 6. Filing for candidacy is open from Tuesday, July 31, 2012 and will close at 12:00 noon on Wednesday, August 15, 2012. Citizens who would like to be a candidate may file at Town Hall, One Town Center Court, during regular business hours (8:00 a.m. - 4:30 p.m.). The filing fee is $35.00 for Town Council. This is a nonpartisan election and no party affiliation shall be placed on the ballot. All filing questions can be directed to the Town Clerk at 843-341-4604.All election questions can be directed to Beaufort County Election Office at 843-255-6900.

Please Note: There is no Town Council meeting scheduled for Tuesday, August 21, 2012. The next regular Town Council meeting is scheduled for Tuesday, September 4, 2012.

2. Noteworthy Events

a) Some of the upcoming meetings at Town Hall:

- Economic Development Committee – August 8, 2012, 1:00 p.m.
- Design Review Board – August 14, 2012, 1:15 p.m.
- Planning Commission – August 15, 2012, 3:00 p.m.
- Planning & Development Standards Committee – August 22, 2012, 4:00 p.m.
- Board of Zoning Appeals – August 27, 2012, 2:30 p.m.
- On-Line Accommodations Tax Grant Applications Available – August 27, 8:00 a.m.
- Design Review Board – August 28, 2012, 1:15 p.m.
- Construction board of Adjustments and Appeals – August 28, 2012, 5:30 p.m.
- Town of Hilton Head Administrative Offices Closed – September 3, 2012
- Public Projects and Facilities Committee – September 4, 2012, 2:00 p.m.
- Town Council – September 4, 2012, 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

2012 Hilton Head Island Events

Tuesdays thru August 14, 2012	Summer Jams Island Recreation Association	Shelter Cove Community Park

JULY 2012 QUARTERLY REPORT

TOPIC:	**Metropolitan Planning Organization Formation**
CONTACT:	Jill Foster, Deputy Director of Community Development
STATUS:	Ongoing.
ISSUE:	Because the population has increased in Hilton Head Island and Bluffton to be over 50,000, we are required by Federal law to form a Metropolitan Planning Organization (MPO) charged with creating a long range transportation plan and a traffic improvement plan. The MPO would be eligible for certain Federal money for transportation improvements.
BACKGROUND:	Steve Riley and staff have met with other state, county and municipal representatives to determine the study area and MPO policy board make-up. Regional consensus for a recommendation should be determined shortly.
OUTLOOK:	A resolution will be presented to Town Council in August for approval of the MPO and study area. A map of the area and policy board make-up recommendation must be sent to the state for approval by end of August. Deadline to receive approval from the state for the MPO is March 2013.
TOPIC:	**Vacant Property Inventory**
CONTACT:	Shawn Colin, Comprehensive Planning Manager
STATUS:	Ongoing
ISSUE:	Quantifying the current condition of vacant commercial space on the Island
BACKGROUND:	The state of commercial property on the Island has been debated over the past few years. Developing a database of vacant commercial space will provide real numbers that can be used to determine the real state of the Island regarding vacancies and help outline the right mix of office, retail and other commercial spaces to meet future needs. In an effort to provide support for prospective businesses and assist the Economic Development Citizens Committee in its work this effort has been initiated.
OUTLOOK:	The initial inventory is complete. Filtering and mapping functions are in the works to allow quick access to information and reporting. Relationships/partnerships with commercial realtors are being established to allow for efficient updating of the database.

MEMORANDUM

TO: Town Council

FROM: Stephen G. Riley, ICMA-CM, Town Manager

RE: Proposed Ordinance Number 2012-20/Execution of a Lease with Seaside Family Chiropractic, LLC

DATE: August 7, 2012

CC: Brian E. Hulbert, Esq., Staff Attorney

There were no changes to Proposed Ordinance 2012-20 during first reading on July 3, 2012.

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO. PROPOSED ORDINANCE NO. 2012-20

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, RATIFYING THE EXECUTION OF A LEASE WITH SEASIDE FAMILY CHIROPRACTIC, LLC FOR 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. 2006), AND SEC. 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 58 Shelter Cove Lane, Hilton Head Island, South Carolina; and

WHEREAS, Seaside Family Chiropractic, LLC, leased a portion of the property located at 58 Shelter Cove Lane prior to the Town's acquisition of the property, and Seaside Family Chiropractic desires to continue to use and occupy a portion of the Town Property located at 58 Shelter Cove Lane (Suite H), Hilton Head Island, South Carolina; and

WHEREAS, the Town Council for the Town of Hilton Head Island, South Carolina has determined that it is in the best interests of the Town to enter into a Lease Agreement with Seaside Family Chiropractic, LLC for its continued use and occupation of Town Property located at 58 Shelter Cove Lane (Suite H), Hilton Head Island, South Carolina.

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

Section 1 Execution of Lease.

(a) The Mayor and Town Manager's execution and delivery of the "Lease" which is attached hereto as Exhibit "A" is hereby ratified by the Town Council; and

(b) The Mayor and Town Manager are hereby authorized to take such other and further actions as may be necessary to complete the fulfillment of the Town's obligations under the Lease.

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.

By:_____
Drew A. Laughlin, Mayor

ATTEST:

By:_____
Cori Brock, Town Clerk

First Reading: _____
Second Reading: _____

APPROVED AS TO FORM:

_____
Gregory M. Alford, Town Attorney

Introduced by Council Member:_____

MEMORANDUM

TO: Town Council

FROM: Stephen G. Riley, ICMA-CM, Town Manager

RE: Proposed Ordinance Number 2012-21/Execution of a Lease with Beaufort County, South Carolina and the Beaufort County Sheriff's Office

DATE: August 7, 2012

Recommendation: Staff requests that Town Council approve Proposed Ordinance Number 2012-21, authorizing the execution and delivery of a proposed Lease by and between the Town, Beaufort County, South Carolina, and the Beaufort County Sheriff's Office.

Summary: This Ordinance would authorize the Mayor and the Town Manager to execute and deliver a proposed Lease by and between the Town, Beaufort County, South Carolina, and the Beaufort County Sheriff's Office for Town owned real property located at 58 Shelter Cove Lane (Suites B, C, D, E, F, H, I, J and K), Hilton Head Island, South Carolina. The proposed Lease is for a term commencing in September of 2012, and ending on January 17, 2015.

Background: On May 18, 2012, the Town purchased 3.61 acres and a 23,500 square feet building located at 58 Shelter Cove Lane, Hilton Head Island, South Carolina. Among other things, the purchase was to provide the Beaufort County Sheriff's Office with space for a headquarters on Hilton Head Island. The Proposed Lease is for 17,085 Square Feet within the 58 Shelter Cove Lane building. The Term of the proposed Lease ends on January 17, 2015, which is the same date that the existing contract with the Beaufort County Sheriff's Office for services on Hilton Head Island ends. The monthly rental rate is the same amount that the Beaufort County Sheriff's Office paid for its former space on Lagoon Road. This amount was one half of the rent for the Lagoon Road space, and the Town paid the other half. The amount to be paid by the Beaufort County Sheriff's Office is as follows:

Year	Total Square Feet	Monthly	Yearly
September 1, 2012 to August 31, 2013	17,085	$5,444.65	$65,335.80
September 1, 2013 to August 31, 2014	17,085	$5,444.65	$65,335.80
September 1, 2014 to January 17, 2015	17,085	$5,444.65	$65,335.80

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO.: 2012-___ PROPOSED ORDINANCE NO. 2012-21

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE OF REAL PROPERTY OWNED BY THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, WITH THE BEAUFORT COUNTY SHERIFF'S OFFICE AND BEAUFORT COUNTY, SOUTH CAROLINA, 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 58 Shelter Cove Lane, Hilton Head Island, South Carolina; and

WHEREAS, The Town of Hilton Head Island, South Carolina, purchased the property located at 58 Shelter Cove Lane, in part, to provide a location for the Hilton Head Island Office of the Beaufort County Sheriff's Office; and

WHEREAS, the Town Council for the Town of Hilton Head Island, South Carolina has determined that it is in the best interests of the Town to enter into a Lease Agreement with the Beaufort County Sheriff's Office and Beaufort County, South Carolina, Hilton Head Island, South Carolina.

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 Lease.

(a) The Mayor and Town Manager are hereby authorized to execute and deliver the "Lease" which is attached hereto as Exhibit "A"; and

(b) The Mayor and Town Manager are hereby authorized to take such other and further actions as may be necessary to complete the fulfillment of the Town's obligations under the Lease which is authorized hereby.

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 SEPTEMBER, 2012.

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA

By:_____
Drew A. Laughlin, Mayor

ATTEST:

By:_____
Victoria L. Pfannenschmidt, Acting Town Clerk

First Reading: August 7, 2012

Second Reading: _____

APPROVED AS TO FORM:

_____
Gregory M. Alford, Town Attorney

Introduced by Council Member:_____

LEASE OF SUITES B, C, D, E, F, G, I, J and K OF

58 SHELTER COVE LANE

BY AND BETWEEN

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA,

AND

BEAUFORT COUNTY, SOUTH CAROLINA AND THE
BEAUFORT COUNTY SHERIFF'S OFFICE

DATED THIS ___ DAY OF SEPTEMBER, 2012.

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STATE OF SOUTH CAROLINA)
) LEASE
COUNTY OF BEAUFORT)

This Lease Agreement (herein, the "Lease"), is made and entered into on this ____ day of September, 2012, between the Town of Hilton Head Island, South Carolina (herein, the "Town"), Beaufort County, South Carolina, (herein, the "County"), and the Beaufort County Sheriff's Office (herein, the "BCSO").

For and in consideration of the Rent to be paid by the County and BCSO hereunder, and the full and faithful performance of the following terms and conditions, the Town, the County and BCSO (herein, the "Parties"), hereto mutually understand and agree as follows:

1. LEASED PREMISES:

(a) The Town hereby leases to the County and BCSO, and the County and BCSO hereby lease from the Town, 17,011 square feet of office space plus 74 square feet (which equals BCSO's pro-rata share of the Common Area of the Building) for a total of 17,085 square feet and all other improvements contained within the building located at 58 Shelter Cove Lane, Suites B, C, D, E, F, G, I, J and K, Hilton Head Island, South Carolina (herein, the "Building"), the floor plan of which is shown on the attached Exhibit "A" (herein, "the Leased Premises"). For the purposes of this Lease, the total square feet of the Leased Premises has been determined by measuring from the outside of any exterior walls and from the middle of any interior walls. The County and BCSO shall have the non-exclusive right in common with the Town and any other tenant, to those areas in the Building, including the building entrances, lobbies, corridors, loading docks, trash removal areas, grounds, roads, driveways, sidewalks, parking areas and facilities, and other similar areas, which enable the County and BCSO to obtain the use and enjoyment of the Leased Premises for its Permitted Use (hereinafter, the "Common Areas").

(b) It is the intention of the Town to re-designate the Suite described as Suite "G" on Exhibit "A" hereto as Suite "H", and upon such re-designation, the Leased Premises shall be described as 58, Shelter Cove Lane, Suites B, C, D, E, F, H, I, J and K, Hilton Head Island, SC, 29928.

2. TERM:

(a) The County and BCSO shall have and hold the Leased Premises for a term (herein, the "Lease Term") beginning on the 1st day of September, 2012 (herein, the "Commencement Date"), and ending at midnight on January 17, 2015 (herein, the "Expiration Date").

(b) The County and BCSO's entry into, and taking possession of, the Leased Premises shall constitute BCSO acknowledgment that the Leased Premises are in a good and tenantable condition as of the beginning of the Lease Term. At the time of execution of this Lease or at any time thereafter, the Town shall be under no duty to make alterations or repairs to the Leased Premises that are not expressly set forth in this Lease.

(c) If the Town is unable to deliver possession of the Leased Premises upon the Commencement Date, then neither the Town nor its agents shall be liable for any damages caused to the County and BCSO by reason of the delay, nor shall this Lease become void or voidable; however, except as otherwise expressly provided, BCSO shall not be liable for the payment of Rent until the Town delivers possession of the Leased Premises.

(d) If the County and BCSO shall be in possession of the Leased Premises after the Expiration Date (herein, the "Holdover Period"), and in the absence of any written agreement extending the Lease Term hereof, or the Town's demand to the County and BCSO to sooner vacate the Leased Premises, the tenancy under this Lease shall become one from month to month terminable by either Party on 30 days prior written notice. Such tenancy shall be subject to all other conditions, provisions and obligations of this Lease provided, however, that:

(a) the Rent due to the Town during the first three (3) months of any Holdover Period shall be One Hundred Fifteen (115%) Percent of the Rent due to the Town from the County and BCSO during the last month of the Lease Term; and,

(b) the Rent due to the Town for the fourth (4th) month and thereafter of any Holdover Period shall be One Hundred Fifty (150%) Percent of the Rent due to the Town from the County and BCSO during the last month of the Lease Term.

3. RENT:

The following Rent schedule is based an annual Rent rate of Sixty Five Thousand Three Hundred Thirty Five and 80/100 ($65,335.80) Dollars. The Rent shall be payable in equal quarterly payments, in advance, beginning on the Commencement Date, and thereafter, on the first day of every quarter (January 1, April 1, July 1 and October 1) throughout the entire Lease Term; provided, however, that Rent payments for the month in which the Expiration Date occurs shall be prorated based upon the number of days remaining in the month, calculated on a daily rate using a Thirty (30) day month.

(a) RENT SCHEDULE:

Year	Total Square Feet	Monthly	Yearly
September 1, 2012 to August 31, 2013	17,085	$5,444.65	$65,335.80
September 1, 2013 to August 31, 2014	17,085	$5,444.65	$65,335.80
September 1, 2014 to January 17, 2015	17,085	$5,444.65	$65,335.80

4. LATE FEES:

Any payment of Rent not received on or before the Tenth (10th) day of the month in which the Rent is due to be paid will be assessed a charge of Ten (10%) percent on the entire past due amount and any payments of Rent hereunder not received on or before the Fifteenth (15th) day of the month will be assessed an additional charge of one and ½% per month, or 18% per annum on the entire past due amount until paid by the County and BCSO. Any payment of Rent not paid by the Tenth (10th) day of the month in which the payment is due constitutes a Default of the County and BCSO's obligations under the terms of this Lease. The assessment of the late fees in this article 4 is an additional remedy due to the Town, and is in addition to any other remedy for a Default that is provided in this Lease.

5. USE AND COMPLIANCE:

(a) PERMITTED USE: The County and BCSO shall continuously occupy and use the Leased Premises as the Hilton Head Island Headquarters of the Beaufort County Sheriff's Department" (herein the "Permitted Use"), to include all normal daily operations of the Beaufort County Sheriff's Department, including the installation of a short term holding cell within the confines fo the Leased Premises, unless the written consent of the Town is first obtained for any other use. The Leased Premises shall not be used for any use other than the Permitted Use, or which is disreputable, creates extraordinary fire hazards, results in an increased rate of insurance on the Building, or the contents therein, or for the storage of any Hazardous Materials as defined herein (other than those which might be used in the ordinary course of the County and BCSO's Permitted Use, and then only in compliance with all applicable laws related thereto).

(b) COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS: The County and BCSO shall comply with all applicable statutes, ordinances, rules, covenants, restrictions and regulations relating to the use, condition, access to and occupancy of the Leased Premises and shall maintain the Leased Premises free of trash, litter and debris, and in a clean and sightly condition.

6. MAINTENANCE AND REPAIR:

(a) MAINTENANCE AND REPAIR OF LEASED PREMISES: The County and BCSO shall keep and maintain the Leased Premises in good order, condition and repair; provided, however, that the obligation of the BCSO and the County to maintain, repair or replace any structural portion of the Leased Premises, the exterior and interior portion of all doors, window glass, plate glass, plumbing fixtures, water and sewage equipment, pipes and lines, mechanical, heating and air-conditioning and electrical systems, sprinkler systems, the foundation, roof, interior and exterior walls, floors and ceilings applicable to or within the Leased Premises, shall be limited to Five Hundred and no/100 ($500.00) per occurrence. Any repair or replacement, on any occurrence, costing over Five Hundred and no/100 ($500.00) Dollars shall be paid by the Town, unless the cause of the repair or replacement is any act or omission of the County or the BSCO, or any combination of them, upon which the County and BCSO shall be liable for the total cost of the repair or replacement.

(b) TOWN'S RIGHT OF ENTRY: The Town, including contractors hired by the Town, shall have the right to enter the Leased Premises upon twenty four (24) hours' notice to the BCSO for the purpose of performing repair or replacement work at the Leased Premises, except in the case of emergency. In the event of an emergency, the Town, including contractors hired by the Town, may enter the Leased Premises for the purpose of making repairs with no notice to the County or BCSO.

(c) LIMITATION ON TOWN'S OBLIGATION TO REPAIR: The Town shall have no obligation to repair, maintain or replace any installations made by the County and BCSO under the terms of this Lease, and the County and the BCSO shall be solely responsible for the maintenance, repair and replacement of the same.

(d) TOWN'S CONSENT REQUIRED FOR ALTERATIONS: The County and BCSO shall not make any alteration of, or addition or improvement to, the Leased Premises without securing the Town's prior written consent. Any and all roof, exterior wall or foundation slab penetrations must first be approved by and coordinated through the Town. The County and BCSO shall save the Town harmless on account of claims for mechanics or materialmen's liens, or any other lien, in connection with any work performed by the County and BCSO, and any such liens shall exist only against the County and BCSO's leasehold interest and shall be discharged, by bond or otherwise, within 30 days of the filing and service of thereof.

(e) ADDITIONAL COUNTY AND BSCO OBLIGATIONS: The County and BCSO shall keep and maintain the Leased Premises in accordance with all directions, rules and regulations of the proper officials of any government or other agency having jurisdiction over the Building, at the sole cost and expense of the County and BCSO, and the County and BCSO shall comply with all requirements of law, statute, ordinance,

covenants, restrictions or otherwise, governing the use of the Leased Premises and all appurtenances thereto.

(f) TOWN NOT LIABLE: The Town shall not be liable for any loss or damage to the County and BCSO's personal property, equipment, fixtures and improvements to the Leased Premises.

7. TOWN REPRESENTATIONS:

(a) ZONING: The Town hereby warrants and represents that the Leased Premises are properly zoned for the County and BCSO's proposed use as a Sheriff's Office and that the County and BCSO's proposed use thereof is permitted upon the Leased Premises.

(b) QUIET ENJOYMENT: The Town of warrants and covenants that, if BCSO shall perform all of the covenants and agreements as stipulated in this Lease to be performed on the part of the County and BCSO, the County and BCSO at all times during the Lease Term shall have the exclusive, peaceable and quiet enjoyment and possession of the Leased Premises without any manner of hindrance from anyone claiming by, through or under the Town.

8. SURRENDER OF LEASED PREMISES:

On or before the Expiration Date, or upon earlier termination of its interest in the Leased Premises as provided herein, the County and BCSO shall peaceably surrender possession of the Leased Premises to the Town with all improvements located therein, in good repair and in the same condition in which delivered to the County and BCSO, ordinary wear and tear excepted, and the County and BCSO shall deliver to the Town all keys to the Leased Premises. Regardless of the foregoing, at any time prior to the expiration of the Lease Term, the County and BCSO may, at its cost and expense, remove in a careful manner any unattached trade fixtures, furniture and personal property placed within the Leased Premises by the County and BCSO during the Lease Term, and prior to such expiration shall repair any damage caused to the Leased Premises by such removal. All items not so removed shall, at the Town's option, be deemed to have been abandoned by the County and BCSO and may be destroyed or otherwise disposed of by the Town without notice to the County and BCSO, and without any obligation to account for such items, or liability to the County and BCSO therefore. The provisions of this Article 8 of the Lease shall survive the expiration or termination of this Lease.

9. TOWN'S RIGHT OF ENTRY:

The Town or its employees and agents may enter the Leased Premises at any mutually agreeable time for the purpose of inspecting or maintaining the Leased Premises. In the event of an emergency, however, the Town or its employees and agents may enter the Leased Premises without consent or agreement of the County and BCSO; provided, however, that the Town's Right of Entry does not include the portion of the Leased Premises where the BCSO maintains and holds evidence for pending and ongoing investigations and prosecutions. Keys for this purpose must be held by the Town or its agent, and in the event that the BCSO installs keypads, the BCSO must provide the Town key code to permit access. In the event that the County and BCSO

desires to change or alter any locks to the Leased Premises, the County and BCSO will notify the Town of the County and BCSO's request, and the Town or the Town's agent will have the locks changed or altered at the County and BCSO's expense.

10. UTILITIES:

(a) UTILITY CONNECTIONS. The Town shall at all times cause or make available to the Building for the use of the County and BCSO, connections for adequate water, electric, gas, telephone and sewage.

(b) ARRANGEMENT AND PAYMENT FOR UTILITIES: The County and BCSO shall arrange for the provision of all utilities to be furnished to the Leased Premises during the term of this Lease. The County and BCSO shall pay for its own telephone, internet, janitorial, cable TV, water, sewage, garbage disposal and electricity services for the Leased Premises. The Town shall have no obligation to provide or pay for any utility service in connection with the Leased Premises.

11. SIGNS:

The County and BCSO shall not erect any signs or advertisements on any exterior door, wall or window of the leased premises, building or the "On Premises" sign located near U. S. 278 without the prior written consent of the Town. If the Town approves any such signage, all related costs for the installation and fabrication for the signage shall be the sole financial responsibility of the County and BCSO. The County and BCSO agree to maintain such signs as approved by the Town in good condition and repair. Any such sign shall comply all requirements of any law, statute, ordinance, covenants, restrictions or otherwise, governing the use of the Leased Premises.

12. CONTROL OF LEASED PREMISES:

(a) THE COUNTY AND BCSO'S EXCLUSIVE CONTROL: The County and BCSO warrant and represent that during any Term of this Lease, the daily operations, use and occupancy of the Leased Premises shall be under the sole and exclusive control of the County and BCSO.

(b) COUNTY AND BCSO DUTY TO INSURE: The County and BCSO shall insure any their equipment, furniture, fixtures, contents of any description and installations made pursuant to this Lease, at the expense of the County and BCSO.

(c) SURVIVAL: The warranty and representation set forth in this Article 12 shall survive the expiration, cancellation or termination of this Lease.

13. DAMAGE OR DESTRUCTION OF LEASED PREMISES:

(a) DESTRUCTION OF LEASED PREMISES: In the event that the Leased Premises are destroyed, or that damage to the leased premises is so extensive that restoration or repairs cannot be accomplished within 90 days, as certified by the opinion of the Building Official of the Town of Hilton Head Island, South Carolina, then the County and BCSO or the Town may terminate this Lease by giving the other written notice before any restoration or repair is commenced, and in that event, any applicable insurance proceeds shall be paid to the Town.

(b) DAMAGE TO LEASED PREMISES: In the event of an insured loss and subject to the termination provisions set forth herein, the Town shall repair or restore the Building to as good a condition as existed before such damage occurred, to the extent of any available insurance proceeds. Should the Town provide the County and BCSO with the opinion of an experienced insurance adjuster that such insurance proceeds will not be sufficient to pay for such repairs or restoration, then the Town or the County and BCSO may terminate this Lease by written notice, in which event all insurance proceeds will be paid to the Town.

(c) RENT ABATEMENT DURING REPAIR: During the period of any restoration or repairs which permits partial occupancy of the Leased Premises, the Rent shall be pro rated, based upon the percentage of the usable portion of the Leased Premises to the non-usable portion of the Leased Premises. In the event of destruction of the Leased Premises, or damage that is so extensive as to render the leased premises unfit for occupancy by the County and BCSO, the Rent shall abate until such time as the restoration or repair of the Leased Premises has proceeded to the point that the occupancy and use of the Leased Premises is permitted by the Building Official of The Town of Hilton Head Island, South Carolina.

14. EMINENT DOMAIN:

(a) TERMINATION OF LEASE: If any portion of the Leased Premises is taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, or by private purchase under threat or initiation of exercise of the right of eminent domain, this Lease shall terminate upon the election of either Party, effective on the date possession of the Leased Premises, or any portion thereof, is taken by the condemning authority or private purchaser as aforesaid. In the case of such partial condemnation and an election by the Parties hereto not to terminate this Lease, then the Rent payable hereunder shall, during the unexpired portion of the Lease, shall be pro-rated, based upon percentage of square feet of the Leased Premises so taken, of the whole of the Leased Premises stated in this Lease. The Town shall promptly provide the County and BCSO a copy of any and all notices from any such condemning authority, or private purchaser as mentioned above, respecting any requirement that the Town surrendered its right to all or any portion of the Leased Premises pursuant to this Article 14 (a).

(b) NOTICE OF ELECTION: Any notice of election by the County and BCSO to terminate this Lease as provided in this Article 14 shall be given by the County and BCSO to the Town within 30 days after written notice by the Town to the County and BCSO as provided in Article 14 (a) above, or within 30 days after receipt by BCSO of actual knowledge of any requirement that the Town surrendered its right to possession to all or any part of the Leased Premises, whichever shall first occur. In the event this lease is not terminated pursuant to this article 14, after a taking of a portion of the leased premises, the Town shall make such reasonable repairs or alterations as may be necessary to make the structure of the leased premises and architectural whole, and this lease shall thereafter be in full force and effect, as provided herein.

(c) CONDEMNATION AWARD: Any payment or award from the condemning authority shall be the property of the Town.

15. SUBLETTING PROHIBITED:

BCSO shall not sublet all or any portion of the Leased Premises, or assign or otherwise transfer any of its rights under this lease, in whole or in part, to any third party without the prior written consent of the Town. Any and all documents utilized by the County and BCSO to evidence any subletting or assignment to which the Town has consented shall be subject to prior written approval by the Town and its counsel.

16. DEFAULT OF COUNTY AND BCSO:

Occurrence of any of the following shall constitute a Default under the Terms of this Lease:

(a) FAILURE TO PAY RENT OR MONEY DUE: If the County and BCSO shall fail to pay any payment of Rent, or any other sum of money due and payable under this Lease, whether to the Town or otherwise, when due and payable, and such failure shall continues for a period of Ten (10) days from the due date thereof;

(b) VIOLATION OF LEASE: If the County and BCSO shall violate any term of this Lease, or fail to perform any term, condition, covenant, obligation or agreement to be performed or observed by the County and BCSO under this Lease, and such failure shall continue for a period of Thirty (30) days after the delivery of written notice thereof;

(c) ABANDONMENT OF LEASED PREMISES: If the County and BCSO shall desert, vacate or not regularly use the Leased Premises for a period of 30 days or more, even though the County and BCSO continue to timely pay all Rent payments when due;

(d) INSOLVENCY: Any of the following occur with respect to the County and BCSO: (i) the County and BCSO become insolvent as such term is defined in the United States bankruptcy code or under the insolvency laws of any state, district, commonwealth or territory of the United States; (ii) the appointment of a receiver or custodian of any or all of BCSO's property or assets or the institution of a foreclosure action upon any of the County and BCSO's real or personal property as pertains to the Leased Premises and such receiver or custodian or such foreclosure action is not dismissed within 60 days; (iii) the County and BCSO's filing or consenting in writing to any petition under the provisions of the United States Bankruptcy code, or the insolvency laws of any State, district, commonwealth or territory of the United States; (iv) the filing of a petition against the County and BCSO as the subject debtor under the United States bankruptcy code, or any insolvency laws of any state, district, commonwealth or territory of the United States, and which results in an order of relief in favor of the County and BCSO; (v) the County and BCSO's making or consenting, whether in writing or not, to a voluntary assignment for the benefit of creditors or a common-law composition of creditors; (vi) a court order dissolution of the County and BCSO or court ordered liquidation of substantially all of the County and BCSO's assets;

(e) FAILURE TO BUDGET FOR RENT: If BCSO shall fail to include amounts sufficient to pay Rent and any other amounts due under this Lease for any fiscal year during the Term of this Lease in its budget, or if the County shall fail to approve any budget for the BCSO that include amounts sufficient to pay Rent and any other amounts due under this Lease for any fiscal year during the Term of this Lease.

(f) DISSOLUTION: The dissolution of the County and BCSO for any reason; or,

(g) WARRANTIES AND REPRESENTATIONS: Any of the representations or warranties of BCSO as set forth in this Lease are or become untrue or incorrect in any material respect during the term of this Lease.

17. DEFAULT OF THE TOWN:

Occurrence of any of the following shall constitute a Default under the Terms of this Lease:

(a) If the Town should fail to perform or observe any of the conditions or terms of this Lease, and such failure to perform or observe shall continue for a period of Thirty (30) days after written notice to the Town by the County and BCSO of such.

18. RIGHTS OF THE PARTIES ON DEFAULT:

(a) ALL REMEDIES PRESERVED: Upon Default of the other Party, the Town or the County and BCSO, as the case may be, shall be entitled to pursue any remedy at law or in equity available to it.

(b) ATTORNEY'S FEES AND COSTS:If any legal action or other proceeding is brought for the enforcement of this Lease, or because of a dispute, breach, default or misrepresentation in connection with all or any of the provisions of this Lease, the successful or prevailing party shall be entitled to recover its reasonable attorney's fees and any costs incurred as a result of any such legal action or other proceeding, whether incurred before the institution of suit or after the commencement of suit, including appellate proceedings, in addition to any other relief to which the prevailing party may be entitled.

19. INTERPRETATION:

The County and BCSO acknowledge that the County and BCSO have reviewed and agreed to all of the terms and provisions of this Lease and that the County and BCSO have had a full opportunity to consult with an attorney of the County and BCSO's choosing concerning the legal consequences of entering into this Lease with the Town. As a result of the foregoing, it is the intent of the Parties hereto that this lease shall not be construed or interpreted against either Party in any dispute concerning any term or provision of this Lease.

20. NO WAIVER:

The Town's acceptance of any payment of Rent following any default by the County and BCSO shall not waive the Town's rights regarding such a default. No waiver by the Town of any violation or breach of any of the terms contained in this Lease shall waive the Town's rights regarding any future violation of such term, or any violation of any other term contained within this Lease. The Town's acceptance of any partial payment of Rent shall waive the Town's rights with regard to the remaining portion of the Rent regardless of any endorsement or other statement on any instrument delivered in payment of Rent, or any writing delivered to the Town in connection therewith. Accordingly, the Town's acceptance of any partial payment as required by this Lease shall not constitute an accord and satisfaction with respect to the full amount of any such payment.

21. MECHANIC'S OR OTHER LIENS:

The County and BCSO shall have no power to subject the Leased Premises or the Town's interest in the Leased Premises to any mechanic's or any other lien. If any mechanic's or any other lien or order for the payment of money shall be filed against the Leased Premises by reason of or arising out of any labor or material furnished or alleged to have been furnished or to be furnished to or on behalf of the County and BCSO at the Leased Premises, or for or by reason of any change, alteration, or addition or the cost or

expense thereof or any contract relating thereto, the County and BCSO shall cause the same to be discharged of record against the Leased Premises by bond or otherwise as allowed by law at the sole expense of the County and BCSO, within Thirty (30) days after written demand therefor by the Town, and shall also defend on behalf of the Town at the County and BCSO's sole cost and expense, any action, suit or proceeding that may be brought thereon or for the enforcement of any such lien or order, and the County and BCSO shall save the Town harmless from any judgment, claim or damage resulting therefrom.

22. ESTOPPEL CERTIFICATES:

The County and BCSO agree that at any time and from time to time upon not less than Ten (10) days prior written request by the Town, to execute, acknowledge and deliver to the Town a statement in writing certifying that this Lease is unmodified and is in full force and effect (or if there have been modifications that this Lease is in full force and effect as modified and stating the modifications), and the dates to which the Rent and other charges have been paid in advance, if any, it being intended that any such statement delivered pursuant to this Article 22 may be relied on by any prospective purchaser or purchasers of the Town's interest in the Building or the Leased Premises.

23. WAIVER OF JURY TRIAL:

TO THE EXTENT PERMITTED BY LAW, THE TOWN AND THE COUNTY AND BCSO EACH AGREED TO WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING IN CONNECTION WITH THIS LEASE, OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE ARISING OUT OF OR WITH RESPECT TO THIS LEASE OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO.

24. HAZARDOUS MATERIALS:

(a) HAZARDOUS MATERIALS PROHIBITED: The County and BCSO shall not cause or permit any hazardous materials to be brought upon, kept or used in or about the Leased Premises (other than in the ordinary course of the County and BCSO's Permitted Use, and then only in compliance with any and all applicable laws) without the prior written consent of the Town, which consent may be withheld by the Town for any reason. "Hazardous Materials" shall mean any substance, material or waste which is now or hereafter classified were considered to be hazardous, toxic, or dangerous, under any law or regulation relating to pollution or the protection or regulation of human health, natural resources or the environment, or which opposes or threatens to pose a hazard to the health or safety of any person on or about the Leased Premises, or the Building.

(b) TOWN"S RIGHTS: If the County and BCSO breaches its obligations under this Article 24, the Town may, but is not obligated to, immediately take, at the County and BCSO's expense, any and all action reasonably appropriate to remedy the same, including taking any appropriate action to clean up or remediate any contamination resulting from the County and BCSO's use, generation, storage or disposal of any Hazardous Materials.

(c) INDEMNIFICATION: The County and BCSO shall indemnify the Town and pay the cost of any cleanup or remediation and shall defend the Town, and hold the Town harmless from any claims, judgments, damages, penalties, fines or losses which arise during or after the Term of this Lease from or in connection with the presence or suspected presence of any Hazardous Materials in, on or under the Leased Premises, or within the Building, which Hazardous Materials were brought upon, kept or used in or about the Leased Premises or the Building, by the County and BCSO. This indemnity provision shall survive the termination or expiration of this Lease.

(d) SURVIVAL: The obligations of the County and BCSO set forth in this Article 24 shall survive the expiration, cancellation or termination of this Lease.

25. MISCELLANEOUS:

(a) BINDING EFFECT: This Lease shall inure to the benefit of and shall be binding upon the Town, the County and BCSO and their respective successors and assigns, if any are permitted hereunder.

(b) ENTIRE AGREEMENT/AMENDMENT AND MODIFICATIONS: This Lease supersedes all prior discussions and agreements between the Parties with respect to the Leased Premises and all other matters contained herein and constitutes the sole and entire agreement and understanding between the Town, the County and BCSO with respect to the Lease of the Leased Premises. This Lease shall not be modified or amended except by an instrument in writing signed by both the Town, the County and BCSO.

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

(d) EXECUTION IN COUNTERPARTS: This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(e) APPLICABLE LAW: This Lease shall be governed by and construed in accordance with the laws of the State of South Carolina.

(f) CAPTIONS: The captions or headings herein are for convenience only

and in no way define, limit or describe the scope or intent of any provisions or Articles of this Lease.

(g) RECORDING PROHIBITED: The parties hereto may not record this Lease in the Office of the Register of Deeds for Beaufort County, South Carolina.

(h) PLURAL/SINGULAR: Where appropriate, the use of the singular herein shall include and be deemed to be the plural, and the use of the plural herein shall be deemed to include the singular.

(i) NO THIRD PARTY BENEFICIARIES: The Parties hereto affirmatively represent that this Lease 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. No party other than the signature parties and their respective successors and assigns hereto shall have any enforceable rights hereunder, or have any right to the enforcement hereof, or any claim for damages as a result of any alleged breach hereof.

(j) NOTICES: All notices, applications, requests, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered in person, or mailed by regular first class mail, postage prepaid (in such case, delivery shall be deemed complete upon mailing), addressed as follows, or to such other place as may be designated in writing by the Parties:

To the Town: THE TOWN OF HILTON HEAD ISLAND
Stephen G. Riley, Manager
One Town Center Court
Hilton Head Island, SC 29928

With Copy to: Gregory M. Alford, Esq.
ALFORD, WILKINS & COLTRANE, L. L. C.
Post Office Drawer 8008
Hilton Head Island, SC 29938-8008

To the County: BEAUFORT COUNTY, SOUTH CAROLINA
Gary Kubic, Manager
Post Office Drawer 1228
Beaufort, SC, 29901

To BCSO: BEAUFORT COUNTY SHERIFF'S OFFICE
Hon. P. J. Tanner
Post Office Box 1758
Beaufort, SC 29901

With Copy to: COUNTY ATTORNEY
Joshua A. Gruber, Esq.
Post Office Drawer 1228
Beaufort, SC 29901

(j) SURVIVAL: The obligations of the County and BCSO set forth in this Lease shall survive the expiration, cancellation or termination of this Lease, whether or not expressly stated with respect to any specific obligation.

(k) FURTHER ASSURANCES AND CORRECTIVE DOCUMENTS: The Town and BCSO 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 Lease and give effect hereto. The Town, the County and BCSO agree that each shall, upon request, execute and deliver such other or corrective documents as may be reasonably determined to be necessary, either before or after the execution delivery of this Lease. The obligations of this Article 26(l) shall survive the expiration, cancellation or termination of this Lease.

(Signatures Appear On Following Page)

IN WITNESS WHEREOF, The Town of Hilton Head Island, South Carolina, and Beaufort County Sheriff's Office, have, or have caused their duly authorized officers and representatives to execute this Lease as of the date and year first above written.

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

_____ **By:**_____
Drew A. Laughlin, Mayor

_____ **Attest:**_____
Stephen G. Riley, ICMA-CM
Town Manager

WITNESSES: **BEAUFORT COUNTY, SOUTH CAROLINA**

_____ **By:**_____
Wm. Weston J. Newton, Chairman

_____ **Attest:**_____
Gary Kubic, Administrator

WITNESSES: **BEAUFORT COUNTY SHERIFF'S OFFICE**

_____ **By:**_____
P. J. Tanner

_____

TOWN OF HILTON HEAD ISLAND

Community Development Department

TO:	Town Council
VIA:	Steve Riley, *ICMA-CM, Town Manager*
FROM:	Shea Farrar, *Senior Planner*
CC:	Scott Liggett, *PE, Director of Public Projects and Facilities / Chief Engineer*
DATE	July 25, 2012
SUBJECT:	Mathews Drive LPS/Broad Creek Headwaters Sewer Project - Linear Easements

Recommendation:

Staff recommends that Town Council approve first reading of an Ordinance authorizing the conveyance of permanent easement rights to Hilton Head Public Service District (HHPSD) for linear easements across Town property associated with the Mathews Drive LPS/Broad Creek Headwaters Sewer Project as shown in Exhibit "A".

Summary:

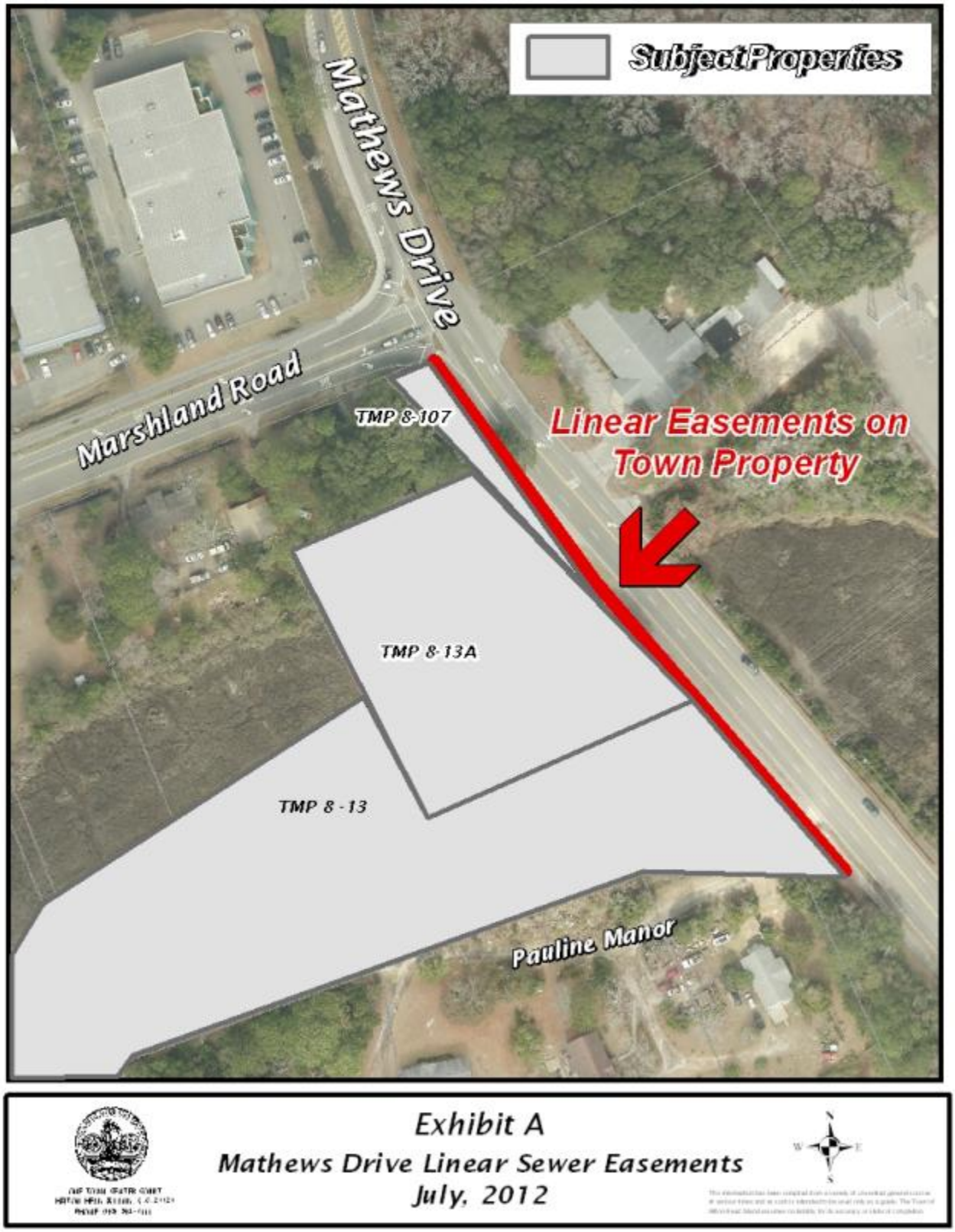
A sewer project located in the Tax Increment Financing District (TIF) along Mathews Drive near the headwaters of Broad Creek is currently funded in the Town's Capital Improvement Program (CIP). The project requires linear easements across the front of three Town properties. HHPSD has requested that the Town grant the conveyance of these permanent easement rights for the purpose of installing and maintaining sewer infrastructure.

Background:

Over the years, the Town has worked with various public service districts to help improve the availability of sewer service within the Town. In 2005 various projects were added to the Town's CIP. On January 19, 2010, Town Council approved the acceleration of funding to provide sewer to unserved areas in the Town's TIF district. The Mathews Drive LPS/Broad Creek Headwaters sewer project will make sewer available to other properties in the TIF along Mathews Drive. The Town has since completed projects in the Stoney and Chaplin TIF areas.

The project has been designed and HHPSD is currently acquiring easements. The project will result in the installation of 600 linear feet of sewer on the eastern side of Mathews as shown on Exhibit "A". Three linear easements are needed by HHPSD along the frontage of Beaufort County Tax Map Parcels 8-107, 8-13 and 8-13A.

Exhibit "A"
Mathews TIF Sewer – Town Property Linear Easements



PROPOSED ORDINANCE NUMBER 2012-22 ORDINANCE NUMBER:

AN ORDINANCE OF THE TOWN OF HILTON HEAD, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF THAT CERTAIN UTILITY EASEMENT AGREEMENT WITH HILTON HEAD NO. 1 PUBLIC SERVICE DISTRICT FOR AN EASEMENT OVER TOWN OWNED PROPERTY IN CONJUNCTION WITH THE MATHEWS DRIVE LPS/BROAD CREEK HEADWATERS SEWER PROJECT 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.

LEGISLATIVE FINDINGS

WHEREAS, The Town of Hilton Head Island, South Carolina ("Town") owns certain real property known as R511 008 000 0107 0000, R510 008 000 013a 0000 and R510 008 000 0013 0000 located in the vicinity of Mathews Drive and Marshland Road; and

WHEREAS, Hilton Head No. 1 Public Service District ("HHPSD") desires to undertake the Mathews Drive LPS/Broad Creek Headwaters Sewer Project ("Project") which involves the installation, upgrade and maintenance of sewer and/or water lines in this vicinity ("Improvements"); and

WHEREAS, the Project will be located and/or traverse on, across and through portions of properties owned by the Town; and

WHEREAS, it will be necessary to grant an Utility Easement to HHPSD to allow the construction, installation, maintenance and use of the aforementioned improvements; and

WHEREAS, the Town Council for the Town of Hilton Head Island, South Carolina has determined that it is in the best interests of the Town to grant a utility easement to HHPSD for the construction, installation, maintenance and use the Improvements, a copy of said agreement is attached hereto as Exhibit "A" ; and

WHEREAS, under the provisions 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), the conveyance or

granting of an interest in real property owned by the Town of Hilton Head Island must be effected by Ordinance.

NOW THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AS FOLLOWS:

Section 1. Execution of Easement Agreement**.**

(a) The Mayor and/or Town Manager are hereby authorized to execute and deliver the Utility Easement Agreement which is attached hereto as Exhibit "A"; and

(b) The Mayor and/or Town Manager are hereby authorized to take such other and further actions as may be necessary to complete the execution of the Agreement as authorized hereby.

Section 2. Severability.

If any section, phrase, sentence or portion of this Ordinance is, for any reason, held or deemed to be invalid or unconstitutional by any court of competent jurisdiction, then such section, phrase, sentence or portion shall be deemed a separate, distinct and independent provision and shall not affect the remaining portion thereof.

Section 3. Effective Date.

This Ordinance shall become effective upon adoption thereof by the Town Council for the Town of Hilton Head Island, South Carolina.

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

_____
Drew Laughlin, Mayor

ATTEST

_____
Vicki Pfannenschmidt, Acting Town Clerk

First Reading: _____
Second Reading:_____

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

Introduced by Council Member:_____

STATE OF SOUTH CAROLINA	**)**	
	)	**UTILITY EASEMENT AGREEMENT**
COUNTY OF BEAUFORT	**)**	

This Easement Agreement is made this _____ day of _____, 2012, by and between The Town of Hilton Head Island, South Carolina (hereinafter referred to as the "Grantor"), and Hilton Head No. 1 Public Service District, having an address of P.O. Box 21264, Hilton Head Island, South Carolina 29925, (hereinafter referred to as the "HHPSD").

WITNESSETH

WHEREAS, HHPSD has planned and desires to undertake the Mathews Drive LPS/Broad Creek Headwaters Sewer Project (the "Project") which involves the installation, upgrade and maintenance of sewer and/or water lines located in the vicinity of Mathews Drive, which Project is for the benefit and use of the general public; and,

WHEREAS, The Project will be located and/or traverse on, across and through a portion of property of the Grantor, as described below; and,

WHEREAS, the Grantor has agreed to convey to HHPSD a permanent easement for the construction, maintenance and use of the below described Improvements, subject to the terms and conditions set forth herein;

NOW, THEREFORE, know all men by these presents, Grantor, for and in consideration of the sum of Ten and No/100 ($10.00) Dollars receipt and sufficiency whereof is acknowledged, has bargained, granted, and sold and by these presents does hereby bargain, grant, and sell to Hilton

Head No. 1 Public Service District, its successors and assigns, a perpetual, non-exclusive easement on, under, over and across that portion of the Grantor's property, which is described as follows:

> ALL those certain pieces, parcels or tracts of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, shown and described as "Utility Easement 0.02 ac. 673 S.F." and "Utility Easement 0.03 ac. 1,448 S.F." on a Plat entitled "Utility Easement Plat Over: Parcels R510 008 000 013A 0000 & R511 008 000 0107 0000, Mathews Drive, Hilton Head Island, Beaufort County South Carolina" dated May 8, 2012, prepared by Mark R. Renew, Sea Island Land Survey, S.C.P.L.S. #25437, which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book _____ at Page _____,
>
> AND
>
> ALL those certain pieces, parcels or tracts of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, shown and described as "Utility Easement 0.02 ac. 753 S.F." on a Plat entitled "Utility Easement Plat Over: Parcels R510 008 000 0013 0000 & R510 008 000 015a 0000, Mathews Drive, Hilton Head Island, Beaufort County South Carolina" dated May 8, 2012, prepared by Mark R. Renew, Sea Island Land Survey, S.C.P.L.S. #25437, which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book _____ at Page _____,
>
> (hereinafter the "Easement Property")

The easement granted herein is for the right, privilege and authority, from time to time, to enter upon, construct, extend, inspect, operate, replace, relocate, repair, and perpetually maintain upon, over, along, across, through, and under any and all of said Easement Property now existing or hereinafter laid out, various service lines, manholes, hydrants, valves, meters, and other usual fixtures and appurtenances as may from time to time be or become convenient or necessary for the provision of water and sewer services (the "Improvements"), together with the right of ingress, egress and access to and from such Easement Property across and upon lands of Grantor as may be necessary or convenient for the purposes connected therewith.

The easement is granted and accepted subject to the following terms:

1. This easement is conveyed subject to all other easements, licenses, and conveyances of record and is subject to the rights herein reserved by the Grantor, its successors and assigns, to utilize the Grantor's properties at any time, in any manner, and for any purpose, provided, however, that such use by the Grantor shall not be inconsistent with nor prevent the full utilization by HHPSD, of the rights and privileges granted herein. HHPSD agrees that the use of and access to the Improvements will be under the exclusive control of HHPSD and that they will at all times comply with all applicable laws, rules, codes and regulations.

2. HHPSD agrees to cause all work contemplated hereunder to be performed in a workmanlike fashion with minimal interference to the Grantor, its successors, assigns, invitees, guests, licensees, and agents. HHPSD further agrees to cause the work contemplated hereunder to be completed in an expeditious and timely fashion, that the Improvements shall at all times be maintained in a safe condition, and that all debris and construction materials relating to work undertaken by HHPSD pursuant to the rights granted hereunder shall be promptly removed. HHPSD shall restore any other part of the Grantors' property which may be damaged as a result of HHPSD's exercise of the rights granted hereunder to its pre-existing state. Should the PSD's exercise of its easement rights hereunder include damage, by boring or other equipment or means, to any asphalt or concrete pathway owned or maintained by the Town, or any infrastructure associated therewith including but not limited to bridges, cross walks, signage and lighting, the PSD agrees to restore the same to at a minimum its pre-existing condition.

3. The easement rights granted herein may be assigned by HHPSD to another utility company providing similar services to HHPSD.

4. Grantor represents and warrants to HHPSD that Grantor is the lawful owner in fee simple of the Easement Property and that Grantor has the right to grant the easement rights specified herein.

To have and to hold, all and singular, the rights, privileges, and easements aforesaid unto the HHPSD, its successors and assigns, forever.

In Witness whereof, the parties hereto have caused the within Easement Agreement to be executed by their duly authorized officers on this _____ day of _____, 2012.

WITNESSES:

TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

2)_____
Signature of Witness #1

1)By:_____
Stephen G. Riley, Town Manager

3)_____
Signature of Notary Public

STATE OF SOUTH CAROLINA)
) UNIFORM ACKNOWLEDGMENT
COUNTY OF BEAUFORT) S. C. CODE ANN. § 30-5-30 (SUPP. 2011)

I, the undersigned Notary Public do hereby certify that 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.

4)_____
Notary Public for South Carolina
My Commission Expires:_____

WITNESSES

HILTON HEAD NO. 1
PUBLIC SERVICE DISTRICT

_____
(Signature of Witness #1)

By:_____
Richard Cyr, General Manager

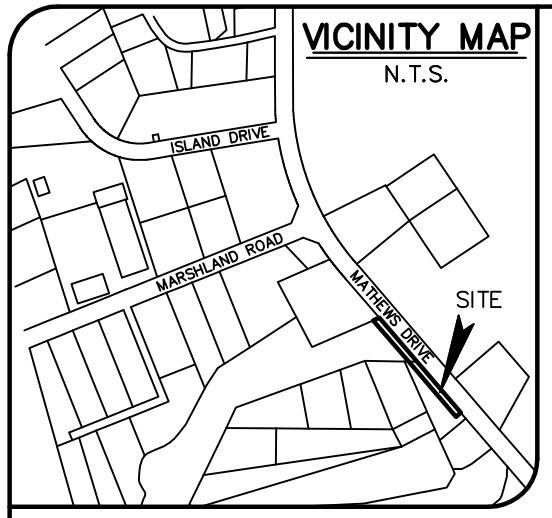
_____
(Signature of Notary Public)

STATE OF SOUTH CAROLINA)
) UNIFORM ACKNOWLEDGMENT
COUNTY OF BEAUFORT) S. C. CODE ANN. § 30-5-30 (SUPP. 2011)

I, the undersigned Notary Public do hereby certify that Richard Cyr personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of Hilton Head No. 1 Public Service District.

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

_____
Notary Public for South Carolina
My Commission Expires:_____

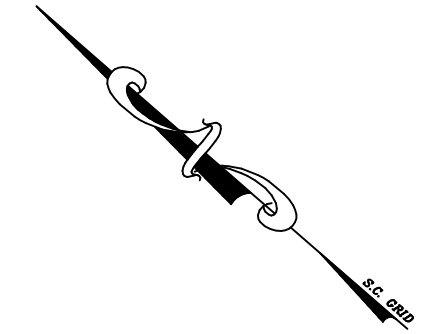


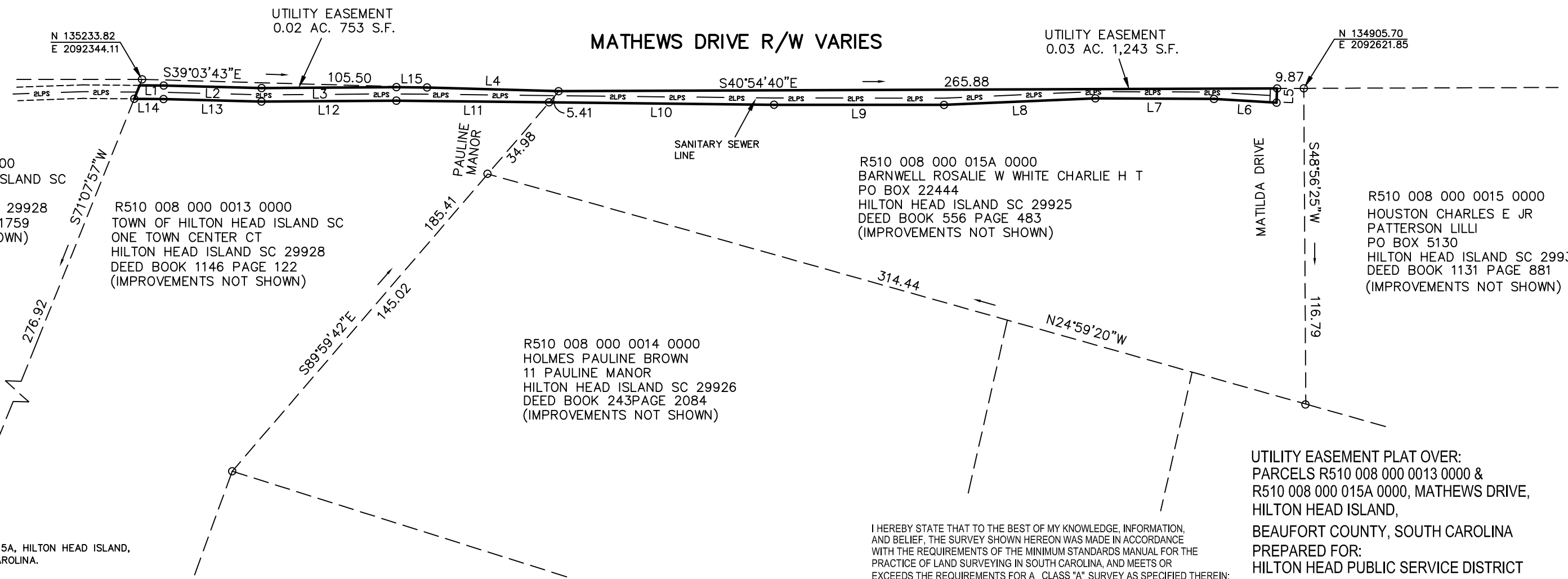
SOME OR ALL AREAS ON THIS PLAT ARE FLOOD HAZARD AREAS AND HAVE BEEN IDENTIFIED AS HAVING AT LEAST A ONE PERCENT CHANCE OF BEING FLOODED IN ANY GIVEN YEAR BY RISING TIDAL WATERS ASSOCIATED WITH POSSIBLE HURRICANES. LOCAL REGULATIONS REQUIRE THAT CERTAIN FLOOD HAZARD PROTECTIVE MEASURES BE INCORPORATED IN THE DESIGN AND CONSTRUCTION OF STRUCTURES IN THESE DESIGNATED AREAS. REFERENCE SHALL BE MADE TO THE DEVELOPMENT COVENANTS AND RESTRICTIONS OF THIS DEVELOPMENT AND REQUIREMENTS OF THE TOWN BUILDING OFFICIAL. IN ADDITION, FEDERAL LAW REQUIRES MANDATORY PURCHASE OF FLOOD INSURANCE AS A PREREQUISITE TO FEDERALLY INSURED MORTGAGE FINANCING IN THESE DESIGNATED FLOOD HAZARD AREAS.

NOTES:

1). THIS PLAT HAS BEEN PREPARED WITHOUT BENEFIT OF A COMPLETE TITLE SEARCH BY SEA ISLAND LAND SURVEY, LLC.
2). THIS PROPERTY MAY BE SUBJECT TO EASEMENTS OF RECORD AND COVENANT RESTRICTIONS AS RECORDED IN THE OFFICE OF THE ROD FOR BEAUFORT COUNTY.
3). BOUNDARY FOR PARCEL R510 008 000 0013 0000 NOT SHOWN IN FULL.

LINE TABLE		
LINE	LENGTH	BEARING
L1	8.91	S 40°14'20" E
L2	36.22	S 39°13'12" E
L3	49.88	S 41°04'56" E
L4	48.82	S 39°03'43" E
L5	5.27	S 51°36'24" W
L6	23.20	N 37°14'29" W
L7	43.89	N 40°24'37" W
L8	56.05	N 43°11'02" W
L9	62.90	N 40°38'23" W
L10	83.26	N 40°04'02" W
L11	56.49	N 40°04'02" W
L12	49.92	N 41°04'56" W
L13	36.26	N 39°13'12" W
L14	10.83	N 40°14'20" W
L15	11.34	S 40°04'02" E





REFERENCE PLAT

1) A PLAT OF R510 008 000 015A, HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA.
DRAWN: 10/09/01
RECORDED IN BOOK 83, PAGE 42, DATED 10/19/01
ROD. BEAUFORT COUNTY, SC
BY: MICHAEL R. DUNIGAN S.C.R.L.S. # 11905

EASEMENT AREA PARCEL 13 = 0.02 AC. 753 S.F.

EASEMENT AREA PARCEL 15A= 0.03 AC. 1,243 S.F.

ADDRESS: MATHEWS DRIVE

DISTRICT: 510 , MAP: 8 , PARCELS: 13 & 15A

THIS PROPERTY LIES IN F.E.M.A. ZONE A7 - 14.0'

COMMUNITY NO. 450250, PANEL: 0014D, DATED: 9/29/86

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.

SOUTH CAROLINA
SEA ISLAND LAND SURVEY
No.C02180
CERTIFICATE OF AUTHORIZATION

SOUTH CAROLINA
PROFESSIONAL LAND SURVEYOR
25437
MARK R. RENEW

NOT VALID UNLESS EMBOSSED.

UTILITY EASEMENT PLAT OVER:
PARCELS R510 008 000 0013 0000 &
R510 008 000 015A 0000, MATHEWS DRIVE,
HILTON HEAD ISLAND,
BEAUFORT COUNTY, SOUTH CAROLINA
PREPARED FOR:
HILTON HEAD PUBLIC SERVICE DISTRICT

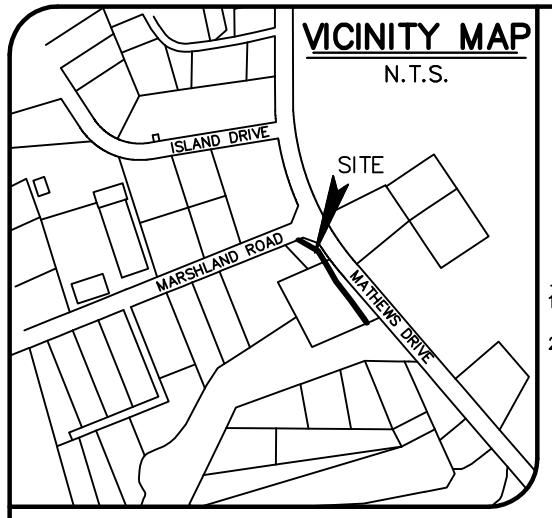
DATE : 5/08/12 SCALE : 1" = 40'

GRAPHIC SCALE
0 40 80 120

Sea Island Land Survey, LLC.
4D Mathews Court,
Hilton Head Island,
SC 29926
Tel (843) 681-3248
Fax (843) 689-3871
E-mail: sils@sprynet.com

FILE No : 11016/3 DWG No. : 3-1718

COPYRIGHT © BY SEA ISLAND LAND SURVEY, LLC. CAD: BA



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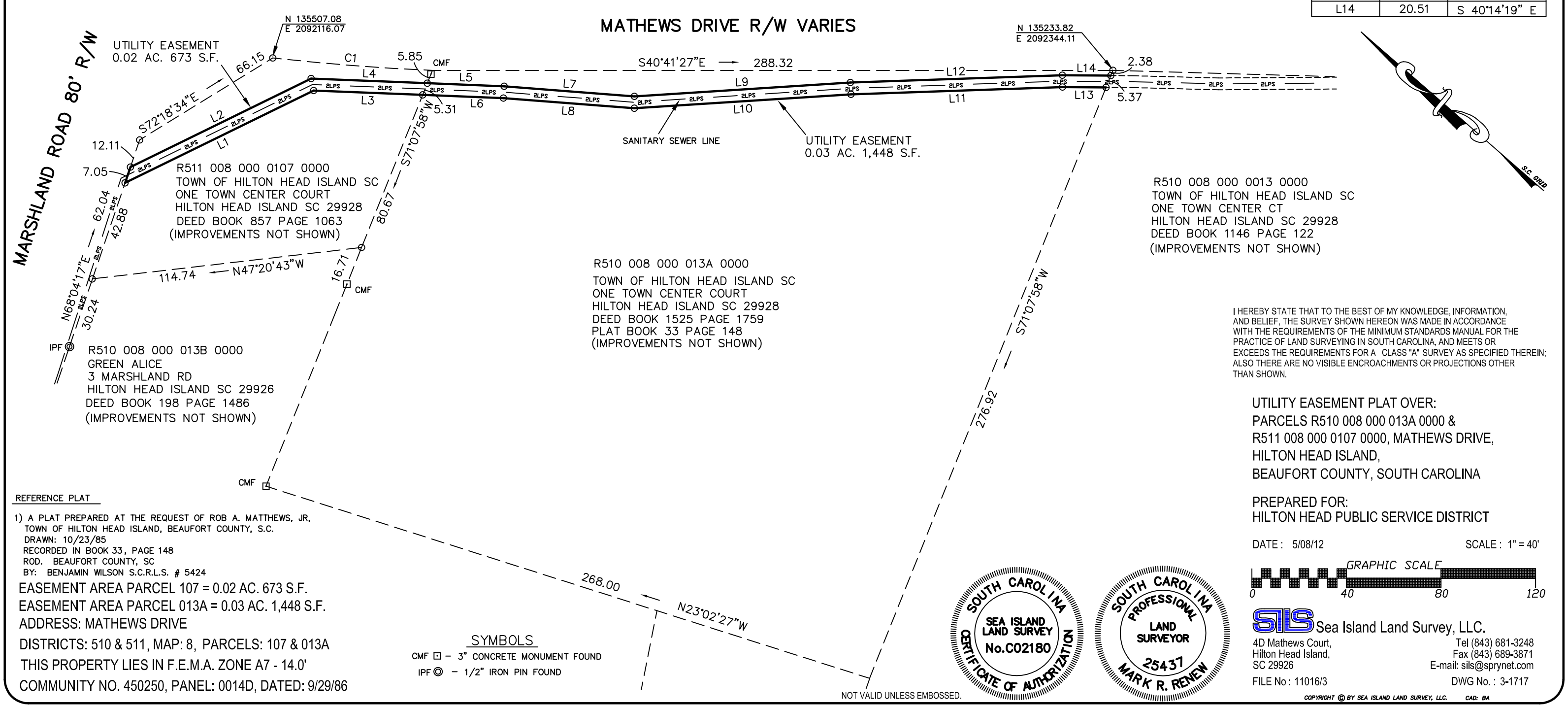
2). THIS PROPERTY MAY BE SUBJECT TO EASEMENTS OF RECORD AND COVENANT RESTRICTIONS AS RECORDED IN THE OFFICE OF THE ROD FOR BEAUFORT COUNTY.

CURVE TABLE

CURVE	LENGTH	RADIUS	CHORD	BEARING	DELTA
C1	67.77	958.19	67.76	S36°14'25"E	4°03'09"

LINE TABLE

LINE	LENGTH	BEARING
L1	88.81	N 66°46'23" W
L2	85.10	S 66°46'23" E
L3	46.17	N 38°24'28" W
L4	49.21	S 38°24'28" E
L5	32.51	S 38°24'28" E
L6	34.19	N 38°24'28" W
L7	55.27	S 36°16'29" E
L8	55.53	N 36°16'29" W
L9	91.55	S 44°21'26" E
L10	91.83	N 44°21'26" W
L11	89.53	N 42°39'23" W
L12	89.71	S 42°39'23" E
L13	18.45	N 40°14'19" W
L14	20.51	S 40°14'19" E



I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.

UTILITY EASEMENT PLAT OVER:
PARCELS R510 008 000 013A 0000 &
R511 008 000 0107 0000, MATHEWS DRIVE,
HILTON HEAD ISLAND,
BEAUFORT COUNTY, SOUTH CAROLINA

PREPARED FOR:
HILTON HEAD PUBLIC SERVICE DISTRICT

DATE : 5/08/12 SCALE : 1" = 40'

GRAPHIC SCALE
0 40 80 120

REFERENCE PLAT

1) A PLAT PREPARED AT THE REQUEST OF ROB A. MATTHEWS, JR,
TOWN OF HILTON HEAD ISLAND, BEAUFORT COUNTY, S.C.
DRAWN: 10/23/85
RECORDED IN BOOK 33, PAGE 148
ROD. BEAUFORT COUNTY, SC
BY: BENJAMIN WILSON S.C.R.L.S. # 5424

EASEMENT AREA PARCEL 107 = 0.02 AC. 673 S.F.
EASEMENT AREA PARCEL 013A = 0.03 AC. 1,448 S.F.
ADDRESS: MATHEWS DRIVE
DISTRICTS: 510 & 511, MAP: 8, PARCELS: 107 & 013A
THIS PROPERTY LIES IN F.E.M.A. ZONE A7 - 14.0'
COMMUNITY NO. 450250, PANEL: 0014D, DATED: 9/29/86

SYMBOLS
CMF ⊡ – 3" CONCRETE MONUMENT FOUND
IPF ◎ – 1/2" IRON PIN FOUND

NOT VALID UNLESS EMBOSSED.

SOUTH CAROLINA SEA ISLAND LAND SURVEY No.C02180 CERTIFICATE OF AUTHORIZATION

SOUTH CAROLINA PROFESSIONAL LAND SURVEYOR 25437 MARK R. RENEW

Sea Island Land Survey, LLC.
4D Mathews Court,
Hilton Head Island,
SC 29926
Tel (843) 681-3248
Fax (843) 689-3871
E-mail: sils@sprynet.com

FILE No : 11016/3 DWG No. : 3-1717

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MEMORANDUM

TO: Town Council

FROM: Stephen G. Riley, ICMA-CM, Town Manager

RE: Proposed Ordinance Number 2012-25/Execution of a Contract to Sell Town Owned Land, Execution of a Temporary Construction Easement and Execution of an Agreement regarding a Pollution Free Zone by and between the Town of Hilton Head Island and the South Island Public Service District

DATE: August 7, 2012

Recommendation: Staff requests that Town Council approve Proposed Ordinance Number 2012-22, authorizing the execution and delivery of a proposed Contract for the Sale Of Town Owned Land by and between the Town and the South Island Public Service District, and the execution and delivery of the Deed, a Temporary Construction Easement and an Agreement Regarding Pollution Free Zone.

Summary: This Ordinance would authorize the Mayor and the Town Manager to:

(a) Execute and deliver a proposed Contract for the Sale of 0.21 acres of Town Owned Land for Thirty Thousand and no/100 ($30,000.00) Dollars;

(b) Execute and Deliver a proposed Temporary Construction Easement encumbering Town Owned Land that is adjacent to the property to be sold; and,

(c) Execute and Deliver an Agreement Regarding Pollution Free Zone which creates certain restrictions on uses of a portion of Town Owned Land.

Background: The Town purchased the Palmetto Crossings tract in 1992. Part of the Palmetto Crossings Tract has been developed with the Crossings Park, and part remains vacant. The vacant part is bounded by Arrow Road, the Palmetto Business Park and the Palmetto Bay Apartments on Genesta Street. The South Island Public Service maintains an elevated water storage tank on a small parcel that abuts the Town's land. The South Island Public Service District wishes to acquire a small part of the Town's land, consisting of 0.21 acres, for the purpose of digging a new well, and the installing of pumping equipment. The South Island Public Service District also requests a Temporary Construction easement on the Town's land adjacent to be sold, to facilitate the work to establish the new well, and an agreement establishing a "Pollution Free Zone" in an area having a 100 foot radius centered on the new well. The dimensions and location of the property to be sold, the Temporary Construction Easement and the Pollution Free Zone are shown on the drawing that is Exhibit "A" to the proposed Contract.

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO.: 2012-___ PROPOSED ORDINANCE NO. 2012-25

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTACT TO SELL TOWN OWNED REAL ESTATE KNOWN AS A PORTION OF THE CROSSINGS PARK TRACT TO THE SOUTH ISLAND PUBLIC SERVICE DISTRICT, AND TO GRANT A TEMPORARY CONSTRUCTION EASEMENT OVER TOWN OWNED REAL ESTATE KNOWN AS THE CROSSINGS PARK TRACT AND TO AUTHORIZE THE EXECUTION OF AN AGREEMENT RELATED TO A POLLUTION FREE ZONE ENCUMBERING TOWN OWNED REAL ESTATE KNOWN AS THE CROSSINGS PARK TRACT, 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 known as the Crossings Park Tract which is located along Arrow Road, Hilton Head Island, South Carolina; and

WHEREAS, Town's property is adjacent to and abuts a parcel owned by the South Island Public Service District, upon which the South Island Public Service District maintains an elevated water storage tank; and

WHEREAS, The South Island Public Service District has requested that the Town sell 0.21 acres of its property to the South Island Public Service District for the purpose of providing space for a new well and pump facilities used in connection with the elevated water storage tank; and,

WHEREAS, the South Island Public Service District has also requested that the Town grant a temporary construction easement over the Town's property to facilitate the construction of improvements related to well and pump facilities, and an "Agreement related to a Pollution Free Zone" around the well; 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 sale of the property, the granting of the Temporary Construction Easement and the Agreement Regarding Pollution Free Zone.

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 Contract, Deed, Easement and Agreement.

(a) The Mayor and Town Manager are hereby authorized to execute and deliver the Contract between The Town of Hilton Head Island, South Carolina and the South Island Public Service District, which is attached hereto as Exhibit "A"; and

(b) The Mayor and Town Manager are hereby authorized to take such other and further actions as may be necessary to complete the fulfillment of the Town's obligations under the Contract, including the execution and delivery of the Deed and the execution and delivery of the Temporary Construction Easement and the Agreement Regarding Pollution Free Zone.

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 SEPTEMBER, 2012.

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA

By:_____
Drew A. Laughlin, Mayor

ATTEST:

By:_____
Victoria L. Pfannenschmidt
Acting Town Clerk

First Reading: August 7, 2012

Second Reading: _____

APPROVED AS TO FORM:

_____
Gregory M. Alford, Town Attorney

Introduced by Council Member:_____

EXHIBIT “A”

CONTRACT FOR PURCHASE AND SALE OF:

0.21 Acres, More or Less

By and Between

The Town of Hilton Head Island, South Carolina,

and

The South Island Public Service District

Dated as of: September ___, 2012

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STATE OF SOUTH CAROLINA)
) SALE AND PURCHASE AGREEMENT
COUNTY OF BEAUFORT)

This Agreement (hereinafter the "Agreement") is made and entered into by and between the Town of Hilton Head Island, South Carolina, (hereinafter, the "Town"), and the South Island Public Service District, Post Office Box 5148, Hilton Head Island, SC, 29938 (hereinafter, "SIPSD"), on this ____ Day of September, 2012.

ARTICLE 1 - SALE AND PURCHASE

1.01 *Sale and Purchase:* For and in consideration of the Purchase Price hereinafter described and agreed to be paid to the Town by SIPSD, and in further consideration of the full and faithful performance of each of the covenants, conditions and agreements hereinafter set forth to be performed, fulfilled and observed by the Town and SIPSD, and subject to the fulfillment of the Conditions set forth herein, the Town agrees to sell and SIPSD agrees to purchase that certain real property and personal property located on Hilton Head Island, Beaufort County, South Carolina, and which is described in Articles 1.02.

1.02 *Real Property:* The Real Property is herein referred to as the "Real Property" and is described as follows:

> All that certain piece, parcel or lot of land, containing 0.21 acres, more or less, and which is shown and described on the plat thereof attached hereto as Exhibit "A". (hereinafter, the "Real Property").

1.03 *Condition of Property:* SIPSD has inspected the premises is purchasing the property in its present condition "as is","where is" and "with all faults". SIPSD acknowledges that other than the warranty expressly set out in Articles 4.01 and 6.01(a)

below, the Town makes no representations or warranties whatsoever concerning the condition of the Real Property or its fitness for SIPSD's intended use.

ARTICLE 2 - SURVEY

2.01 *Current Survey:* Within Thirty (30) days of the Effective Date (hereinafter defined) hereof, SIPSD shall obtain, at its cost and expense, an up to date survey of the Real Property . In addition to the Real Property, the Survey shall show:

(a) The Pollution Free Zone described in Article 6.02(h),and 6.03(d) below; and,

(b) The Temporary Construction Easement area described in Article 6.02(i) and 6.03(e) below.

ARTICLE 3 - ENVIRONMENTAL INSPECTION

3.01 *Right of Inspection:* This Agreement is subject to SIPSD's right to enter upon the Real Property to inspect the physical conditions of the Property. Said right of inspection shall include the right of SIPSD, at SIPSD's sole expense, to conduct soil borings, and other tests as may be required for an Environmental Level 1 Study (herein, the "Environmental Level 1 Study"). If such inspection, or the Environmental Level 1 Study discloses conditions which are unsatisfactory to the SIPSD (which determination shall be made in SIPSD's sole discretion), then SIPSD may terminate this Agreement by delivering a written notice to the Town of SIPSD's election to terminate this Agreement (herein, the "Termination Notice"). The physical inspection and Environmental Level 1 Study shall be completed within Thirty (30) Days of the Effective Date hereof. SIPSD shall deliver its notice (if any) that it has exercised its option to terminate this Agreement under this

Article 3 within Thirty Five (35) days of the Effective Date hereof. Any such notice shall specify the reasons for such determination and include a copy of the Environmental Level 1 Study or any other study or inspection report.

3.02 *SIPSD's Right to Terminate:* Upon SIPSD's timely delivery of the Termination Notice, Escrow Agent shall promptly return the Deposit to SIPSD and this Agreement shall be of no further force or effect.

3.03 *Subsequent Matters:* The Town acknowledges that a period of days will elapse between the delivery of the Initial Environmental 1 Study as required herein and Closing. Acceptance of the Initial Environmental 1 Study by SIPSD shall not be deemed a waiver of any unsatisfactory environmental or other condition at the Real Property arising between the date of delivery of the Initial Environmental 1 Study and the date of Closing, unless such conditions have been caused by acts or omissions of SIPSD.

a. SIPSD shall notify the Town of the existence of any unsatisfactory conditions on or about the Real Property arising subsequent to delivery of the initial Environmental Level 1 Study and notice of SIPSD's election to terminate prior to Closing.

b. SIPSD shall also deliver its notice (if any) that it has exercised its option to terminate this Agreement under this Article 3 prior to Closing (hereinafter, the "Termination Notice"). Any such notice shall specify the reasons for such determination and include a copy of the Environmental Level 1 Study or any other study or inspection report. Upon SIPSD's timely delivery of the Termination Notice, Escrow Agent shall promptly return the Deposit to SIPSD and this Agreement shall be of no further force or effect.

c. SIPSD shall have no right to terminate this Agreement if such unsatisfactory conditions are the result of any act or omission of SIPSD.

ARTICLE 4 - TITLE

4.01 *Title:* The Town shall provide SIPSD with good and marketable title to the Real Property by Deed of Limited Warranty, free and clear of any and all monetary liens.

4.02 *Title Evidence:* Within Thirty (30) days after the Effective Date hereof, SIPSD shall examine the title to the Real Property.

4.03 *Objections to Title:* If SIPSD's title examination shall reveal that Town's title to the Real Property is subject to any easements, clouds on or to the title, encroachments, boundary discrepancies, liens, encumbrances, or any other matter affecting title, then SIPSD shall notify the Town, in writing, of such title defects and SIPSD's objection to the same within Thirty Five (35) days from the Effective Date hereof. Upon such notification, the same shall be treated as defect(s) in title (herein, the "Title Defects"). Unless SIPSD delivers said written objections within Thirty Five (35) days of the Effective Date hereof, it shall be conclusively deemed that SIPSD has accepted title to the Real Property in its existing condition.

4.04 *The Town's Right to Cure:* The Town shall have forty five (45) days from receipt of SIPSD's written notice of any Title Defects to Cure (hereinafter defined), or to cause to be Cured, the Title Defects. If said forty five (45) day period given the Town to Cure the Title Defects shall extend beyond the Closing Date, and the Town does not Cure, or cause to be Cured, the Title Defects before the Closing Date, then Closing shall be held within fifteen (15) days after the Town delivers written notice to SIPSD that the Title Defects have been Cured. As used herein, "Cured" means that the Title Defect(s) has or have been Cured in fact and of record. A Title Defect shall be deemed to have been Cured if SIPSD's Title Company is willing to delete any exception relating to the Title Defect from the

Commitment and the Final Title Policy.

4.05 *The Towns Failure to Cure:* If the Town cannot Cure, or cause to be Cured, the Title Defects within the said forty five (45) day period, or within such longer period to which the Town and SIPSD may agree in writing, then SIPSD shall have the option of:

a. Closing this transaction in accordance with the terms and conditions hereof, and accepting title to the Real Property in its then existing condition by deed taking exception to such uncured Title Defects, with such adjustments to the purchase price as are agreed to by the Parties; or,

b. Terminating this Agreement, whereupon SIPSD shall be refunded the entire Escrow Deposit together with any interest accrued thereon, and the Town and SIPSD shall thereafter be released from any and all further obligations or liabilities to one another arising under or out of this Agreement.

4.06 *Subsequent Matters:* The Town acknowledges that a period of days will elapse between the delivery of the Commitment as required herein and Closing. Acceptance of the initial title examination by SIPSD shall not be deemed a waiver of any Title Defect arising between the date of the initial title report and the date of Closing.

a. SIPSD shall notify the Town of any Title Defects arising subsequent to delivery of the Title Commitment prior to Closing.

b. Upon notification to the Town by SIPSD of any Title Defects arising subsequent to delivery of the Title Commitment, the provisions of Article 4.03, 4.04 and 4.05, *supra.*, shall become effective.

ARTICLE 5 - PURCHASE PRICE

5.01 *Purchase Price:* The Purchase Price for the Property is Thirty Thousand and no/100 ($30,000.00) Dollars (herein, the "Purchase Price").

5.02 *Components of Purchase Price:* The Purchase Price shall be comprised as follows:

1.	Cash from SIPSD	$ 5,000.00
2.	Cash From SIPSD at Closing	$ 25,000.00
	TOTAL	$ 30,000.00

5.03 *Escrow Deposit:* As is shown above, SIPSD shall deliver the sum of Five Thousand and no/100 ($5,000.00) Dollars into escrow with the Escrow Agent (a term hereinafter Defined) within Ten (10) days after the Effective Date (hereinafter defined) hereof. The Escrow Agent shall deliver written notification of receipt of the Escrow Deposit to the Town and SIPSD.

5.04 *Payment of Purchase Price:* At Closing (hereinafter defined) SIPSD shall pay to the Town the Purchase Price, by Certified Check made payable to the Town, or by a wire transfer of cleared funds to the account of the Town at a financial institution which is designated by the Town. The Town shall give written notice of how he wishes for the purchase price to be paid, together with written bank wire instructions, if applicable, no later than three business days prior to the Closing Date.

ARTICLE 6 - CLOSING

6.01 *Closing:* This transaction shall be "Closed" and title to the Property shall be conveyed from the Town to SIPSD by delivery of the Deed (hereinafter defined) and other documents required herein from the Town to SIPSD (herein, the "Closing") at 10:00 o'clock A. M. on the Closing Date (hereinafter defined) at the Office of the Town's Attorney, or at such other place as SIPSD and the Town shall mutually agree in writing. The Closing, unless otherwise modified or extended by mutual agreement of the Town and SIPSD in writing shall occur on or before August 31, 2012 (herein, the "Closing Date").

6.02 *The Town's Obligations at Closing:* At Closing, the Town shall deliver to

SIPSD, at the Town's expense, the following Closing Documents:

a. A good and sufficient Limited Warranty Deed (herein, the "Deed") so as to convey to SIPSD Fee Simple, Marketable Title to the Real Property, as provided in Article 4 above. The Deed shall be in recordable form, with documentary stamps (if any) affixed, executed by the Town and duly acknowledged before a Notary Public.

b. A "Certification by Entity Transferor," certifying that the Town is not a "foreign person" as that term is used and defined in Section 1445 (f)(3) of the Internal Revenue Code of 1986, as amended.

c. A mechanic's lien affidavit, duly executed by the Town and acknowledged before a notary public, attesting to the absence, unless otherwise provided for in this Agreement, or unless created by acts of SIPSD, of any claims of lien or potential lienors and further attesting that there have been no improvements to the Real Property for ninety five (95) days immediately preceding the Closing Date for which the cost thereof remains unpaid.

d. A South Carolina residency affidavit certifying the address, residence and Federal Identification Number of the Town to establish the withholding requirements of S. C. Code Ann. § 12-8-580 (Supp. 2009), and South Carolina Revenue Ruling Number 02-6.

e. Full and complete releases, in recordable form, of any mortgages, liens, leases, tenancies, claims or other encumbrances to the title of the Real Property.

f. Certified true copies of the Resolution and Ordinance of the Town, authorizing the execution and delivery of this Agreement, the Deed and other documents required to be delivered by the Town hereunder, and the completion of the transaction authorized herein.

g. Executed Closing/Settlement Statement in a form prepared by SIPSD's attorney.

h. The "Agreement Regarding Pollution Free Zone", in the form and substance as is shown in the "Agreement Regarding Pollution Free Zone" attached hereto as Exhibit "B".

i. The "Temporary Construction Easement", in the form and substance as is shown in the "Temporary Construction Easement" attached hereto as Exhibit "C".

6.03 *SIPSD's Obligations at Closing:* At Closing, SIPSD shall deliver to the Town, at SIPSD's expense, the following:

a. The Purchase Price.

b. Certified Copy of the Resolution of SIPSD approving this Agreement and authorizing the completion of the transaction contemplated hereby.

c. Executed Closing/Settlement Statement in a form prepared by SIPSD's attorney.

d. The "Agreement Regarding Pollution Free Zone", in the form and substance as is shown in the "Agreement Regarding Pollution Free Zone" attached hereto as Exhibit "B".

e. The "Temporary Construction Easement", in the form and substance as is shown in the "Temporary Construction Easement" attached hereto as Exhibit "C".

6.04 *Escrow Agent:* The Escrow Agent shall serve as Closing Agent for all Parties at settlement. Deposit with the Escrow Agent of the Purchase Price, the instruments of conveyance and such other funds and/or documents as are required of either Party under the terms of this Agreement, and/or the Title Company, and/or the Escrow Agent shall be deemed to be a good and sufficient tender of performance in accordance with the terms hereof. The "Escrow Agent" shall be John W. Wilkins, 18 Executive Park Road, Building 1, Post Office Drawer 8008, Hilton Head Island, SC, 29938-8008. If any dispute should arise as to whether Escrow Agent is obligated to deliver the Escrow Deposit, or any funds or documents which it holds, Escrow Agent shall not be required to make delivery thereof, but, in such event shall hold the same until receipt, by Escrow Agent, of written authorization from the Town and SIPSD directing the disposition of the same. In the

absence of such written authorization, Escrow Agent may hold the Escrow Deposit, or any other funds or documents in connection with this transaction in its possession until a final determination of the rights of the Parties by a Court of competent jurisdiction. If such written authorization is not given or proceedings for such determination are not begun and diligently continued, Escrow Agent may institute an appropriate proceeding for leave to place the Escrow Deposit, or any other funds or documents in connection with this transaction in its possession with the Clerk of Court for Beaufort County, South Carolina, pending such determination. Escrow Agent shall not be charged with notice of any fact or circumstance unless and until written notice of the same is received by Escrow Agent. Upon making the delivery of the funds or documents which Escrow Agent may hold in accordance with the provisions of this Article 6, Escrow Agent shall have no further obligation or liability to SIPSD and the Town, and SIPSD and the Town agree to indemnify and hold Escrow Agent harmless from any such liability.

6.05 *Pre-Closing Documents:* On or before ten (10) days prior to the Closing Date, the Town and SIPSD shall deliver to each other their proposed Closing documents required to be delivered under Article 6.02 and Article 6.03above.

6.06 *Approval of Closing Documents:* All Closing documents to be furnished by the Town and SIPSD shall be in form and substance reasonably satisfactory to the other and its counsel. The Town and SIPSD shall notify the other of any objections to the proposed Closing documents no less than 5 days prior to Closing.

6.07 *Possession:* Possession of the Property shall be delivered to SIPSD at Closing, provided, however, that the Purchase Price, minus adjustments and prorations, is paid in

full by or on behalf of SIPSD at Closing.

6.08 *Prorations:* Payment of the following are to be pro-rated between the Town and SIPSD as of the Closing Date:

a. Real Property Taxes and Assessments, if any, shall be made on the basis of the current year's tax with due exemptions, if allowed for the said year. If Closing occurs on a date when the current year's taxes are not fixed, taxes will be apportioned based upon the prior year's taxes plus ten (10%) per cent. Any tax apportionment based upon an estimate shall be recalculated when the property taxes are finally fixed, and the Town or SIPSD, as the case may be, shall make payment to the other based upon such recalculation. The provisions of this Article 6 shall survive the Closing and delivery of the Deed.

6.09 *Town's Closing Costs:* The Town shall be responsible to pay for the Cost of:

a. Any documentary stamp expense or taxes which may be payable to the State of South Carolina and/or the County of Beaufort, and any other fees or charges payable by reason of the execution, delivery and recording of the Deed;

b. Any other seller's Closing Costs which are customary in Beaufort County, South Carolina.

6.10 *SIPSD's Closing Costs:* SIPSD shall be responsible to pay the cost of :

a) Recording of the Deed and any Town of Hilton Head Island, South Carolina, Transfer Fee (if any);

b) Any other purchaser Closing Costs which are customary in Beaufort County, South Carolina.

ARTICLE 7 - DEFAULT AND REMEDIES

7.01 *Default by SIPSD:* Except as may be otherwise expressly provided or limited herein with respect to any specific act or omission, if SIPSD shall default in any of its obligations, covenants, or agreements contained within this Agreement or any of the Exhibits hereto, and shall remain in default after ten (10) day's written notice specifying

the default and demanding that the default be cured, then the Town shall be entitled to pursue any remedy at law or in equity against SIPSD, including an action for damages or for Specific Performance of this Agreement. The provisions of this Article 7 shall be binding upon the successors and assigns of SIPSD, and shall survive the Closing of the transaction contemplated herein.

7.02 *Default by the Town:* Except as may be otherwise expressly provided or limited herein with respect to any specific act or omission, if the Town shall default in any of its obligations, covenants, or agreements contained within this Agreement or any of the Exhibits hereto, and shall remain in default after ten (10) day's written notice specifying the default and demanding that the default be cured, then SIPSD shall be entitled to pursue any remedy at law or in equity against the Town, including an action for damages or for Specific Performance of this Agreement. The provisions of this Article 7 shall be binding upon the successors and assigns of the Town, and shall survive the Closing of the transaction contemplated herein.

7.03 *Attorney's Fees and Costs:* 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 all or any of the provisions of this Agreement, the successful or prevailing party shall be entitled to recover its reasonable attorney's fees and any costs incurred as a result of any such matter, whether incurred before the institution of suit or after the commencement of suit, including appellate proceedings, in addition to any other relief to which the prevailing party is entitled.

ARTICLE 8 - CONDITION PRECEDENT

8.01 *Condition to Town's Obligation to Close:* The obligation of the Town to sell the Real Property to SIPSD is subject to satisfaction, as of the Closing Date:

a. Approval of the terms of this Agreement and the conveyance of Town owned land by a Resolution and an Ordinance of the Town Council for The Town of Hilton Head Island, South Carolina.

ARTICLE 9 - BROKERS

9.01 *Brokers:* The Town and SIPSD warrant and represent that no broker, finder, or other person is entitled to a commission, finder's fee or other compensation in connection with this Agreement, and each party shall indemnify and hold harmless the other party from any and all claims, liabilities, losses, damages, costs and expenses arising from the claim of any other broker, finder or other person for such compensation, arising by, under or through such party. The obligations under this Article 9 shall survive the Closing.

ARTICLE 10 - EFFECTIVE DATE

11.01 *Effective Date:* The "Effective Date" of this Agreement shall be the date upon which the officials of The Town of Hilton Head Island, South Carolina, execute and deliver this Agreement to SIPSD.

ARTICLE 11 - MISCELLANEOUS

11.01 *Binding Effect:* This Agreement shall inure to the benefit of and shall be binding upon the Town and SIPSD and their respective successors and assigns, if any are permitted hereunder.

11.02 *Entire Agreement/Amendment, Changes and Modifications:* This Agreement supersedes all prior discussions and agreements between the parties with respect to the Property and all other matters contained herein and constitutes the sole and entire

agreement and understanding between the Town and SIPSD with respect to the transaction contemplated in this Agreement. This Agreement shall not be modified or amended except by an instrument in writing signed by both the Town and SIPSD.

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

11.04 *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 but one and the same instrument.

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

11.06 *Captions:* The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Articles of this Agreement.

11.07 *Recording:* The parties hereto may not record this Agreement in the Office of the Register of Deeds for Beaufort County, South Carolina.

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

11.09 *No Third Party Beneficiaries:* The Parties hereto 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. No party other than the signature parties and their respective successors and

assigns hereto shall have any enforceable rights hereunder, or have any right to the enforcement hereof, or any claim for damages as a result of any alleged breach hereof.

11.10 *Notices:* All notices, applications, requests, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered in person, or mailed by regular first class mail, postage prepaid (in such case, delivery shall be deemed complete upon mailing), addressed as follows, or to such other place as may be designated in writing by the parties:

To the Town:	THE TOWN OF HILTON HEAD ISLAND Stephen G. Riley, Manager One Town Center Court Hilton Head Island, SC 29928
With Copy to:	John W. Wilkins, Esq. ALFORD, WILKINS & COLTRANE, LLC Post Office Drawer 8008 Hilton Head Island, SC 29938-8008
To SIPSD:	SOUTH ISLAND PUBLIC SERVICE DISTRICT Kelley Ferda, General Manager Post Office Box 5148 Hilton Head Island, SC, 29938
With Copy to:	Cary S. Griffin, Esq. MCNAIR LAW FIRM, P. A. Post Office Drawer 3 Hilton Head Island, SC 29938

11.11 *No Waiver:* The failure of either party to exercise any right or power given such party hereunder, or to insist on strict compliance by the other party of its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

11.12 *Further Assurances and Corrective Documents:* The Town and SIPSD 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 hereto. The Town and SIPSD agree that each shall, upon request, execute and deliver such other or corrective documents as may be reasonably determined to be necessary, either before or after the Closing. The obligations of this Article 11.12 shall survive the Closing.

ARTICLE 12 - DAMAGE AND RISK OF LOSS

12.01 *Damage and Risk of Loss:* The risk of loss or complete or partial destruction of the Property shall rest with the Town up to the time that the Closing occurs. If the Real Property is damaged, but repairable prior to Closing, the Town has the option of repairing and proceeding. If the Real Property is damaged, but un-repairable prior to Closing, SIPSD shall be entitled to a return of any Escrow Deposit together with any accrued interest thereon, and this Agreement shall be terminated, and neither party shall have any further rights or obligations with respect to the other.

ARTICLE 13 - MATTERS BEFORE CLOSING

13.01 *Conduct Prior to Closing*: From and after the date hereof, the Town shall not, without the prior written approval of SIPSD, make any alterations or additions to the Real Property except as required for maintenance or by law, sell, transfer, encumber, lease or rent all or any part of the Real Property or change the status of title to the Real Property; or cancel, assign or amend any license or permit or other right held by the Town with respect to the Real Property or any part thereof prior to Closing.

IN WITNESS WHEREOF, the Town and SIPSD, have, or have caused their duly authorized officers and representatives to execute this Agreement as of the date and year

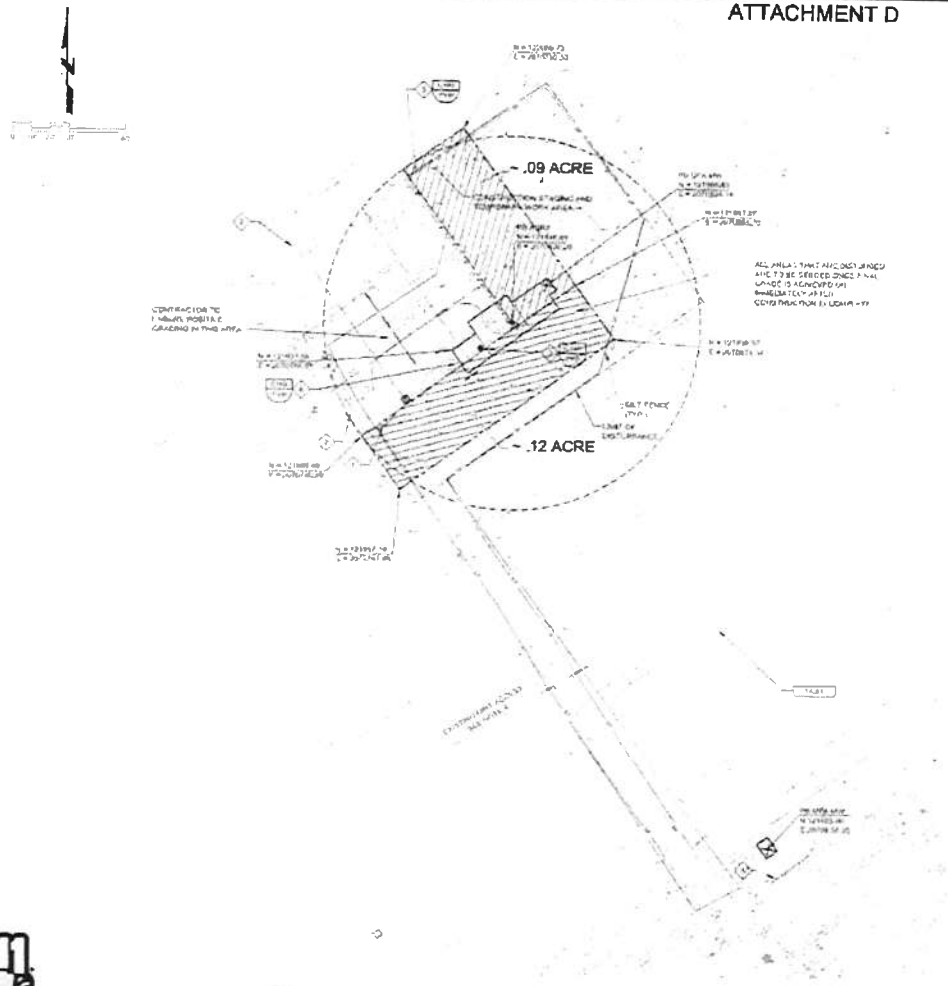
first above written.

WITNESSES:	**THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA**
_____	**By:**_____ **Drew A. Laughlin, Mayor**
_____	**Attest:**_____ **Stephen G. Riley, Town Manager**

WITNESSES:	**SOUTH ISLAND PUBLIC SERVICE DISTRICT**
_____	**By:**_____ **Kelley Ferda, General Manager**
_____	**Attest:**_____

EXHIBIT “A” - PLAT OF REAL PROPERTY

ATTACHMENT D



GENERAL NOTES:

KEY NOTES:

LEGEND:

Know what's below. Call before you dig.

A PALMETTO BAY GRADING AND PAVING PLAN

URS
4016 Salt Pointe Parkway, Suite 200
N. Charleston, South Carolina 29405

carollo

SOUTH ISLAND PUBLIC SERVICE DISTRICT
2015 WATER SUPPLY IMPROVEMENTS
ASR SITE 2 (PALMETTO BAY)
GRADING AND PAVING PLAN

C-2

PERMIT REVIEW DOCUMENTS

EXHIBIT “B” - AGREEMENT REGARDING POLLUTION FREE ZONE

EXHIBIT "B"

STATE OF SOUTH CAROLINA	)	
	)	AGREEMENT REGARDING POLLUTION
	)	FREE ZONE
COUNTY OF BEAUFORT	)	

This Agreement is made this___ day of September, 2012, by and between the South Island Public Service District, having an address of 2 Genesta Street, Hilton Head Island, SC, 29928 (hereinafter referred to as "SIPSD"), and the Town of Hilton Head Island, South Carolina, having an address of One Town Center Court, Hilton Head Island, South Carolina 29928, (hereinafter referred to as "the Town").

W I T N E S S E T H

WHEREAS, SIPSD intends to dig a new well and install equipment to operate the new well on property conveyed to SIPSD by the Town by a deed of even date and which is recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book ___ at Page ___; and,

WHEREAS, SIPSD must establish a Pollution Free Zone on all the Property within a One Hundred (100') Foot radius of the well; and,

WHEREAS, the Pollution Free Zone will extend onto Property owned by the Town; and,

WHEREAS, the Town and SIPSD agree to establish the Pollution Free Zone upon the following terms and conditions.

NOW, THEREFORE, know all men by these presents that for and in consideration of the sum of One ($1.00) Dollar, the receipt and sufficiency whereof is acknowledged, and by the full and faithful performance of the obligations set forth herein, the Town and SIPSD agree as follows:

1. The Town and SIPSD hereby establish a Pollution Free Zone on and in the real property described below:

All that certain piece, parcel or lots of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, shown on a Plat entitled "_____," dated _____, 2012, prepared by _____, and which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book _____ at Page _____; (hereinafter the "Pollution Free Zone").

The Agreement by and between SIPSD and the Town is as for this purpose:

1. To take such actions as are necessary to protect the Pollution Free Zone from pollution resulting from chemicals, waste, and other hazardous substances as the same are defined by State, Federal or Local Statute, Ordinance or Regulation.

This Agreement by and between the Town and SIPSD is subject to the following terms:

1. The Town and SIPSD agree that it will not store or use any chemicals or any Hazardous Substances as defined by any State, Federal or Local Statute, Ordinance or Regulation with the exception of those chemicals used by SIPSD for water treatment in connection with the well and existing water storage tank.

2. The Town and SIPSD agree that they will not keep or maintain livestock on the Pollution Free Zone.

3. The Town and SIPSD agree that they will not store or use any type of fertilizer on or in the Pollution Free Zone.

4. The Town and SIPSD agree that they will not store any type of motor fuel or oil on or in the Pollution Free Zone.

5. The Town and SIPSD agree that they will not store or dump any type of waste on

or in the Pollution Free Zone.

6. The Town and SIPSD agree that they will not construct any septic system on or in the Pollution Free Zone.

7. The Town and SIPSD agree that they will not construct any irrigation system on or in the Pollution Free Zone.

In Witness whereof, the parties hereto have caused the within Agreement to be executed by their duly authorized officers on this ___ day of September, 2012.

(Signatures Begin on Following Page)

WITNESSES:

SOUTH ISLAND PUBLIC SERVICE DISTRICT

_____ By:_____

_____ Its:_____

STATE OF SOUTH CAROLINA) UNIFORM ACKNOWLEDGMENT
)
COUNTY OF GREENWOOD) S. C. CODE ANN. § 30-5-30 (SUPP. 2011)

I, the undersigned Notary Public do hereby certify that _____, personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of South Island Public Service District

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

_____
Notary Public for South Carolina
My Commission Expires:_____

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

_____ By:_____

_____ Its:_____

STATE OF SOUTH CAROLINA	)	UNIFORM ACKNOWLEDGMENT
	)	
COUNTY OF BEAUFORT	)	S. C. CODE ANN. § 30-5-30 (SUPP. 2011)

I, the undersigned Notary Public do hereby certify that Stephen G. Riley, Town Manager, 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 September, 2012.

_____
Notary Public for South Carolina
My Commission Expires:_____

EXHIBIT “C” - TEMPORARY CONSTRUCTION EASEMENT

EXHIBIT "C"

STATE OF SOUTH CAROLINA)
) TEMPORARY CONSTRUCTION EASEMENT
COUNTY OF BEAUFORT)

This Temporary Construction Easement is made this ____ day of September, 2012, by and between the South Island Public Service District, having an address of 2 Genesta Street, Hilton Head Island, SC, 29928 (hereinafter referred to as "SIPSD"), and the Town of Hilton Head Island, South Carolina, having an address of One Town Center Court, Hilton Head Island, South Carolina 29928, (hereinafter referred to as the "Town").

W I T N E S S E T H

WHEREAS, SIPSD desires to dig a new well and install equipment to operate the new well on property conveyed to SIPSD by the Town by a deed of even date and which is recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book ___ at Page ___; and,

WHEREAS, SIPSD has requested a temporary construction easement over property of the Town to facilitate the digging of the well and installation of the equipment related to the well; and,

WHEREAS, the Town has agreed to grant SIPSD a Temporary Construction Easement over lands of the Town on the following terms and conditions.

NOW, THEREFORE, know all men by these presents, the Town, for and in consideration of the sum of Ten ($10.00) Dollars, the receipt and sufficiency whereof is acknowledged, has bargained, granted, and sold and by these presents does hereby

bargain, grant, and sell to SIPSD, its successors and assigns, a temporary easement on, under, over and across portions of the Town's property which is described as follows:

> All that certain piece, parcel or lots of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, shown on a Plat entitled "_____," dated _____, 2012, prepared by _____, and which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book _____ at Page _____; (hereinafter the "Easement Property").

The Easement granted to SIPSD herein is as for this purpose:

1. To enter upon the Easement Property to accomplish the work described herein, and to take such actions as are necessary to dig a well and install the equipment necessary to operate the well on property belonging to SIPSD.

This Temporary Construction Easement is granted by the Town and accepted by SIPSD subject to the following terms:

1. This Easement is conveyed subject to all other easements, licenses, and conveyances of record and is subject to the rights herein reserved by the Town, its successors and assigns, to utilize the Town's property at any time, in any manner, and for any purpose, provided, however, that such use by the Town shall not be inconsistent with nor prevent the full utilization by SIPSD of the rights and privileges granted herein.

2. SIPSD agrees to plan, lay out, build and maintain the equipment "wash-down" facility upon SIPSD's property, and the SPISD shall at all times comply with all applicable federal, state and local laws, rules, codes, and regulations in connection with its construction and operation of the well.

3. SIPSD agrees to cause all work contemplated hereunder to be performed in a workmanlike fashion with minimal interference to the Town, its successors, assigns,

invitees, guests, licensees, and agents. SIPSD further agrees to cause the work contemplated hereunder to be completed in an expeditious and timely fashion, that the improvements shall at all times be maintained in a safe condition, and that all materials, debris, and construction materials shall be promptly removed from the Easement Property upon completion of the work. The Town shall restore the Easement Property and any other part of the Town's property which may be damaged as a result of SIPSD's exercise of the rights granted hereunder to its pre-existing state.

4. This Temporary Construction Easement shall expire at such time as the work contemplated herein is completed by SIPSD. Upon the request of the Town, SIPSD shall execute and deliver any document necessary to cancel this Temporary Construction Easement of record when the work contemplated herein is complete.

In Witness whereof, the parties hereto have caused the within Temporary Construction Easement to be executed by their duly authorized officers on this ___ day of September, 2012.

(Signatures on Following Page)

WITNESSES:

SOUTH ISLAND PUBLIC SERVICE DISTRICT

_____ By:_____

_____ Its:_____

STATE OF SOUTH CAROLINA) UNIFORM ACKNOWLEDGMENT
)
COUNTY OF GREENWOOD) S. C. CODE ANN. § 30-5-30 (SUPP. 2011)

I, the undersigned Notary Public do hereby certify that _____, personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of South Island Public Service District

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

_____
Notary Public for South Carolina
My Commission Expires:_____

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

_____ By:_____

_____ Its:_____

STATE OF SOUTH CAROLINA	)	UNIFORM ACKNOWLEDGMENT
	)	
COUNTY OF BEAUFORT	)	S. C. CODE ANN. § 30-5-30 (SUPP. 2011)

I, the undersigned Notary Public do hereby certify that Stephen G. Riley, Town Manager, 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 September, 2012.

_____
Notary Public for South Carolina
My Commission Expires:_____

TOWN OF HILTON HEAD ISLAND

Community Development Department

TO:	Town Council
VIA:	Steve Riley, *ICMA-CM, Town Manager*
VIA:	Charles Cousins, Community Development Director
VIA:	Shawn Colin, AICP, *Manager of Comprehensive Planning*
FROM:	Shea Farrar, *Senior Planner*
DATE	July 26, 2012
SUBJECT:	Spanish Wells Sewer Pump Station Location

Recommendation:

Staff recommends Town Council approve first reading of an Ordinance authorizing the conveyance of permanent easement rights to Hilton Head Island Public Service District (HHPSD) for the establishment and operation of a sewer pump station and its required infrastructure on Town owned property located on Spanish Wells Road, as shown on Exhibit "A", with the following conditions:

1. The easement area is limited to a 45 X 45 square foot area.
2. Access to the site is to be relocated to share access with any future development that occurs on the property.

The Public Facilities Committee will review this at their August 7th meeting. Also, we are requesting that this item be reviewed and determined at the August 7th Town Council meeting in order to avoid a one month delay (due to only one Town Council meeting in August).

Summary:

The Spanish Wells Sewer Project, which will serve properties near the Spanish Wells Business Park, is currently under design and will require a sewer lift station. HHPSD has requested to locate this station on a Town-owned property in the project area. This station would be similar to the station constructed in the Chaplin area adjacent to Surfwatch.

Background:

Over the years, the Town has worked with various public service districts to help improve the availability of sewer service on the Island. In 2005, Town Council adopted nine sewer policies for this purpose. Sewer Policy 2 states that the Town would work with HHPSD to locate sewer lift stations and other appropriate infrastructure on Town property when feasible. The Town owns a property in the Spanish Wells Road project area that could be utilized for a sewer pump station and would serve the Town's property as well as others in the area.

The pump station is proposed for an area of the property along Spanish Wells Road as shown on Exhibit "A". A number of specimen trees and a drainage channel are located elsewhere on the property, so the proposed easement was located to avoid these site features, which helps to minimize the impact on natural resources. The impact that the easement would have on the future utility of the property was also considered. By locating the station along the edge of the property, more developable area is left on the interior of the property, creating more flexibility for future development. Access to the pump station would be from Spanish Wells Road, but the easement would be relocated to a shared access with any future development that occurs on the property.

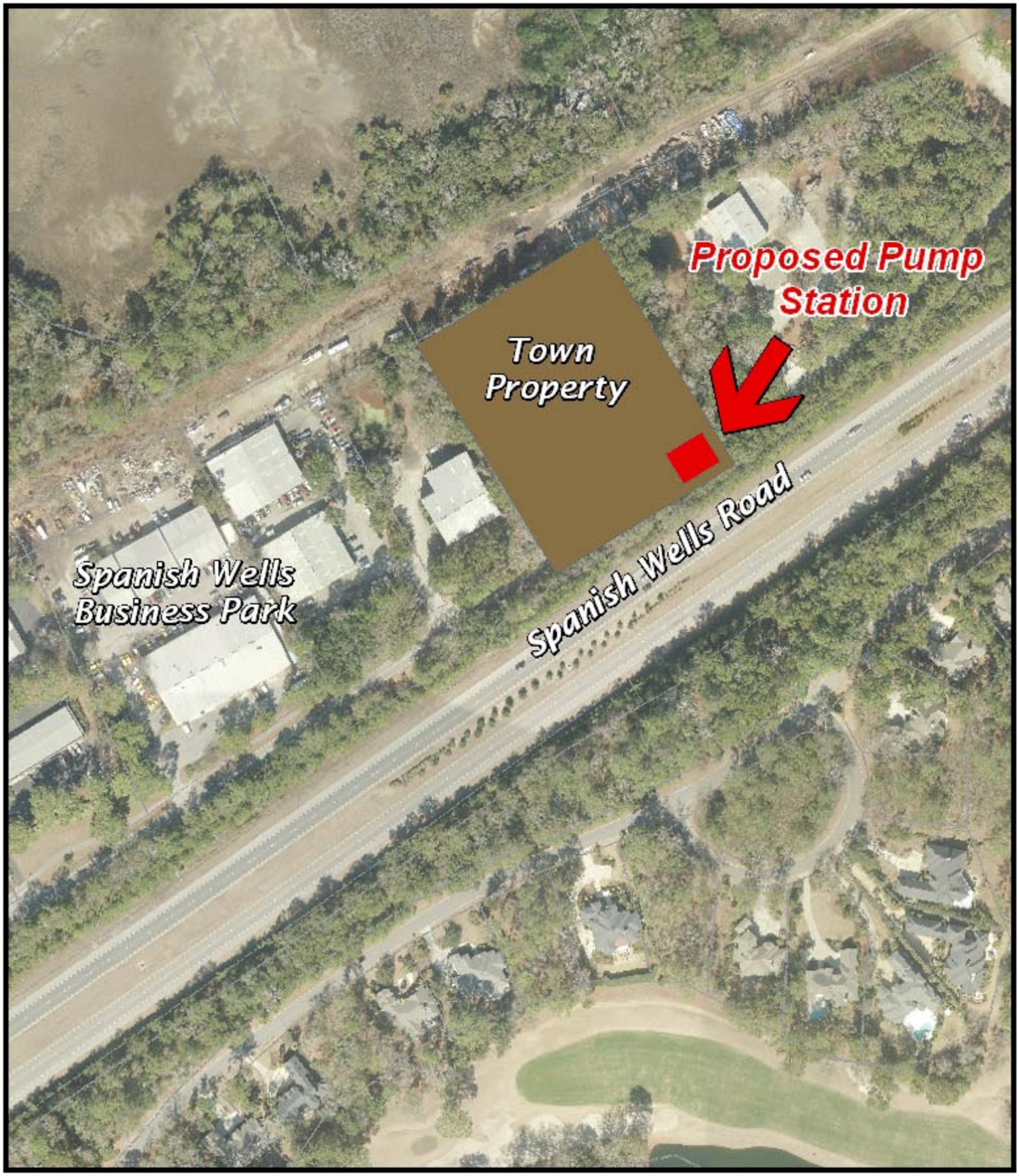


Exhibit A

Spanish Wells Pump Sation Easement Location

July, 2012

THE TOWN CENTER COURT
HILTON HEAD ISLAND, S.C. 29928
PHONE 843-681-5111

This information has been compiled from a variety of unverified general sources at various times and as such is intended to be used only as a guide. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion.

PROPOSED ORDINANCE: 2012-26 ORDINANCE: 2012-___

AN ORDINANCE OF THE TOWN OF HILTON HEAD, SOUTH CAROLINA, AUTHORIZING THE GRANTING OF AN EASEMENT ENCUMBERING REAL PROPERTY OWNED BY THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, KNOWN AS "SPANISH WELLS 1", BEING 2.4 ACRES ON SPANISH WELLS ROAD,PURSUANT TO THE AUTHORITY OF S. C. CODE ANN. § 5-7-40 (SUPP. 2010), AND § 2-7-20, *CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA*, (1983, As Amended); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

LEGISLATIVE FINDINGS

WHEREAS, The Town of Hilton Head Island, South Carolina owns real property known as "Spanish Wells 1", located off of Spanish Wells Road which is more particularly known and described as:

> All that certain piece, parcel or tract of land containing approximately 2.4 acres of land situate, lying and being on the Northern side of Road S-79 (Spanish Wells Road)near the Town of Hilton Head isn Beaufort County, South Carolina, and being shown on the South Carolina Department of Transportation Plans for US Route 278 (Cross Island Parkway) File 7.581, Sheet 26, Tract 63-A, and shown as TMS No. R510-007-000-147B-0000 and which is described as follows:
>
> Beginning at a point located on the Southeastern corner of the subject parcel on the present 33-foot right of way line of Road S-79 (Spanish Wells Road) approximately 175 feet left of approximate survey station 224+75 of US Route 278 (Cross Island Parkway); thence S 55°50'55" W for a distance of 305.20 feet along the present 33-foot right of way line of Road S-79 (Spanish Wells Road) to a point on the Western property line of the subject parcel approximately 180 feet left of approximate survey station 221+70 of US Route 278 (Cross Island Parkway); thence N 30°21'23" W for a distance of 366.91 feet, along the Western property line of the subject parcel to a point on the Northern line of the subject parcel; thence S 61°14'57" E for a distance of 285.18 feet, along the Northern property line of the subject parcel to a point on the Eastern property line of the subject parcel; thence S 34°09'05" E for a distance of 339.26 feet, along the Eastern property line of the subject parcel to the point of beginning. Being bound on the North, East and West by lands of adjacent property owners, and on the South by the present 33-foot right of way line of Road S-79 (Spanish Wells Road).

WHEREAS, The Hilton Head Public Service District has requested certain easements over, across and thrugh a portion of the above described Town-owned property for the purpose of building, operating and maintaining a sewage pumping station, which sewage pumping station will facilitate sewage service to the Town's property, for ingress and egress to and from the sewage pumping station, and for underground utility lines to serve the sewage pumping station; and,

WHEREAS, The Town Council of the Town of Hilton Head Island, South Carolina has determined that it is in the best interests of the Town of Hilton Head Island, South Carolina, to authorize the execution and delivery of the requested easement; and,

WHEREAS, under the authority of S.C. Code Ann. § 5-7-40 (Supp. 2012), and § 2-7-20, *Code of the Town of Hilton Head Island , South Carolina,* (1983, As Amended), the granting of an interest in real property owned by the Town of Hilton Head Island, South Carolina, must be authorized by the adoption of an ordinance by the Town Council for the Town of Hilton Head Island, South Carolina.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AS FOLLOWS:

Section 1. Execution, Delivery and Performance of an Easement encumbering Town Owned Property:

(a) The Mayor and Town Manager are hereby authorized to execute and deliver the Pump Station Easement which is attached hereto as Exhibit "A"; and,

(b) The Town Manager is hereby authorized to take all other and further actions as may be necessary to complete the Town's obligations under the Pump Station Easement.

Section 2. Severability:

If any section, phrase, sentence or portion of this Ordinance is, for any reason, held or deemed to be invalid or unconstitutional by any court of competent jurisdiction, then such section, phrase, sentence or portion shall be deemed a separate, distinct and independent provision and shall not affect the remaining portion thereof.

Section 3. Effective Date:

This Ordinance shall become effective upon its adoption by the Town Council for the Town of Hilton Head Island, South Carolina.

(Signatures on Following Page)

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

THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

By:_____
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:_____

EXHIBIT "A"

STATE OF SOUTH CAROLINA)
) SEWAGE PUMP STATION EASEMENT
COUNTY OF BEAUFORT)

This Pump Station Easement is made this _____ day of September, 2012, by and between The Town of Hilton Head Island, South Carolina (hereinafter referred to as "the Town"), and the Hilton Head #1 Public Service District (hereinafter referred to as "HHPSD").

W I T N E S S E T H

WHEREAS, The Town owns real property which is known and described as follows:

> All that certain piece, parcel or tract of land containing approximately 2.4 acres of land situate, lying and being on the Northern side of Road S-79 (Spanish Wells Road) near the Town of Hilton Head in Beaufort County, South Carolina, and being shown on the South Carolina Department of Transportation Plans for US Route 278 (Cross Island Parkway) File 7.581, Sheet 26, Tract 63-A, and shown as TMS No. R510-007-000-147B-0000 and which is described as follows:
>
> Beginning at a point located on the Southeastern corner of the subject parcel on the present 33-foot right of way line of Road S-79 (Spanish Wells Road) approximately 175 feet left of approximate survey station 224+75 of US Route 278 (Cross Island Parkway); thence S 55°50'55" W for a distance of 305.20 feet along the present 33-foot right of way line of Road S-79 (Spanish Wells Road) to a point on the Western property line of the subject parcel approximately 180 feet left of approximate survey station 221+70 of US Route 278 (Cross Island Parkway); thence N 30°21'23" W for a distance of 366.91 feet, along the Western property line of the subject parcel to a point on the Northern line of the subject parcel; thence S 61°14'57" E for a distance of 285.18 feet, along the Northern property line of the subject parcel to a point on the Eastern property line of the subject parcel; thence S 34°09'05" E for a distance of 339.26 feet, along the Eastern property line of the subject parcel to the point of beginning. Being bound on the North, East and West by lands of adjacent property owners, and on the South by the present 33-foot right of way line of Road S-79 (Spanish Wells Road) (hereinafter the "Town Property").

WHEREAS, The Town has agreed to grant an easement on, over, across and through a portion of the Town Property to HHPSD for the use thereof as a site for a sewage pump station, and for ingress and egress to and from the site of the sewage pump station to Spanish Wells Road, all as is set forth in this Pump Station Easement.

NOW, THEREFORE, know all men by these presents, the Town, for and in consideration of the sum of Ten ($10.00) Dollars, the receipt and sufficiency whereof is acknowledged, has bargained, granted, and sold and by these presents does hereby bargain, grant, and sell to HHPSD, its successors and assigns, the following easements:

1. A perpetual, non-exclusive Easement on, over and across that portion of the Town Property described as follows:

> All that certain piece, parcel or lot of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, shown and described as "Sewer Pump Station Easement" on a Plat entitled "Sewer Pump Station Easement and Relocatable Access and Utility Easement over Tax Parcel R510 007 000 147B 0000, Spanish Wells Road, Hilton Head Island, Beaufort County, South Carolina," dated July 27, 2012, prepared by Sea Island Land Survey, Inc., Mark R. Renew, S.C.P.L.S. 25437, and which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book _____ at Page _____ (hereinafter the "Pump Station Site").

This Pump Station Easement is granted and accepted subject to the following terms:

2. This Pump Station Easement is conveyed subject to all other easements, licenses, and conveyances of record and is subject to the rights herein reserved by the Town, its successors and assigns, to utilize the Town's Property at any time, in any manner, and for any purpose, provided, however, that such use by Town shall not be inconsistent with nor prevent the full utilization by HHPSD of the rights and privileges granted

herein.

3. This Pump Station Easement includes a re-locatable easement for ingress and egress to and from the Pump Station Site from Spanish Wells Road, on, over and across that portion of the Town Property described as follows:

> All that certain piece, parcel or lot of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, shown and described as “Relocatable Access and Utility Easement” on a Plat entitled “Sewer Pump Station Easement and Relocatable Access and Utility Easement over Tax Parcel R510 007 000 147B 0000, Spanish Wells Road, Hilton Head Island, Beaufort County, South Carolina,” dated July 27, 2012, prepared by Sea Island Land Survey, Inc., Mark R. Renew, S.C.P.L.S. 25437, and which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book _____ at Page _____ (hereinafter the "Relocatable Ingress/Egress Easement").

If the Town, or its successors and assigns, determines, in its sole discretion, to build a road, drive or access across any part of the Town Property, then HHPSD agrees that it shall abandon and discontinue use of the Relocatable Ingress/Egress Easement, and shall utilize the road, drive or access built by the Town, or its successors and assigns, as the sole ingress and egress to and from the Pump Station Site. Any such road, drive or access built by the Town, or its successors and assigns, shall be built so as to provide a paved access to the Pump Station Site. In the event that the Town, or its successors and assigns, exercises the rights retained under this Article 2, both the Town, or its successors and assigns, and the HHPSD agree to execute a recordable document abandoning and terminating the Relocatable Ingress/Egress Easement, and establishing a new ingress/egress easement to the Pump Station Site from Spanish Wells Road over the road, drive or access built by the Town, or its successors and assigns.

4. This Pump Station Easement includes a perpetual, non-exclusive easement to

and from the Pump Station Site from Spanish Wells Road, for the installation, maintenance and use of underground sewage and utility lines, under and across that portion of the Town Property described as follows:

> All that certain piece, parcel or lot of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, shown and described as "Relocatable Access and Utility Easement" on a Plat entitled "Sewer Pump Station Easement and Relocatable Access and Utility Easement over Tax Parcel R510 007 000 147B 0000, Spanish Wells Road, Hilton Head Island, Beaufort County, South Carolina," dated July 27, 2012, prepared by Sea Island Land Survey, Inc., Mark R. Renew, S.C.P.L.S. 25437, and which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book _____ at Page _____.

5. This Pump Station Easement is for the purpose of providing property for HHPSD to build, operate and maintain a sewage pump station, and for ingress and egress to and from Spanish Wells Road to the Pump Station Site, and includes the right to enclose the Pump Station Site with a fence to secure the Pump Station Site, and the rights granted hereunder are for such purposes only. Any other use of the Pump Station Site is a violation of the terms of this Pump Station Easement and is prohibited.

6. HHPSD may not place or store any hazardous material or pollutant of any description on or within the Pump Station Site, Underground Utility Easement, or Ingress/Egress Easement.

7. HHPSD shall comply with all applicable laws, codes, ordinances and regulations applicable to its use installation, operation and maintenance of a sewage pumping

station.

8. HHPSD agrees to maintain the sewage pump station, and further agrees that the use of the sewage pump station shall be under the exclusive control of HHPSD; provided, however, that the Town shall have reasonable access to the Pump Station Easement property for the purpose of making inspections upon twenty four (24) hours' written notice from the Town to HHPSD.

9. HHPSD shall, at its sole cost and expense, cause all timely cleaning, repair, maintenance, renovation or any other work necessary for the safe operation of the sewage pump station.

10. HHPSD shall cause all work contemplated or allowed hereunder to be performed in a workmanlike fashion with minimal interference to the Town, its successors and assigns, invitees, licensees, employments and agents. HHPSD shall cause all work contemplated or allowed hereunder to be completed in an expeditions and timely fashion, and that all construction materials, debris and equipment shall be promptly removed from the Pump Station Easement property upon completion of the work contemplated or allowed hereunder. HHPSD, at its sole cost and expense, shall restore to its pre-existing condition any part of the Town's property and any improvements thereon which may be disturbed or damaged as a result of HHPSD's exercise of any of the rights granted hereunder.

11. The easements granted hereunder are conveyed by the Town and accepted by HHPSD on the condition that HHPSD shall notify the Town, or its successors and assigns, at any time, of its election not to use the easements granted hereunder, or if the easements granted hereunder are not used for their stated purposes for a continuous

period of twelve (12) months. Upon such notification, the easements granted hereunder shall terminate, and HHPSD shall restore the Town's property to its pre-existing condition. Upon termination of the easements as described herein, HHPSD shall execute and deliver to the Town a recordable document terminating the easements of record.

12. HHPSD agrees, to the extent provided by the South Carolina Tort Claims Act [S.C. Code Ann. § 15-78-10, *et seq.* (Supp. 2012, as amended), and HHPSD's property and liability insurance policies, to respond to any claim against the Town, or its successors and assigns, resulting from any acts omissions or claims arising directly or indirectly from HHPSD's exercise of any of the rights granted hereunder.

13. HHPSD shall be solely responsible for any environmental clean up or remediation related to HHPSD's use of the Pump Station Site which is required by any party, entity or government agency.

In Witness whereof, the parties hereto have caused the within Pump Station Easement to be executed by their duly authorized officers on this _____ day of September, 2012.

WITNESSES: THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA

_____ By:_____
Drew A. Laughlin, Mayor

_____ Attest:_____
Stephen G. Riley, Town Manager

STATE OF SOUTH CAROLINA	)	UNIFORM ACKNOWLEDGMENT
	)	
COUNTY OF BEAUFORT	)	S. C. CODE ANN. § 30-5-30 (SUPP. 2012)

I, the undersigned Notary Public do hereby certify that Drew A. Laughlin, Mayor, and Stephen G. Riley, Town Manager, 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 September, 2012.

_____
Notary Public for South Carolina
My Commission Expires:_____

WITNESSES:

HILTON HEAD # 1 PUBLIC SERVICE DISTRICT

_____ By:_____

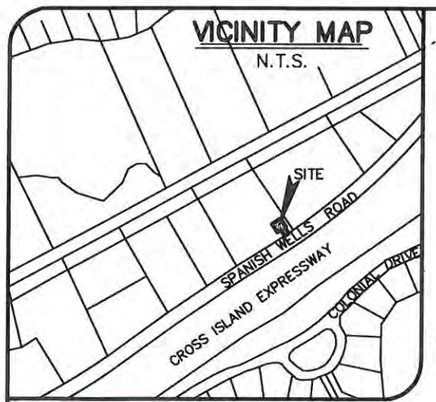
_____ Its:_____

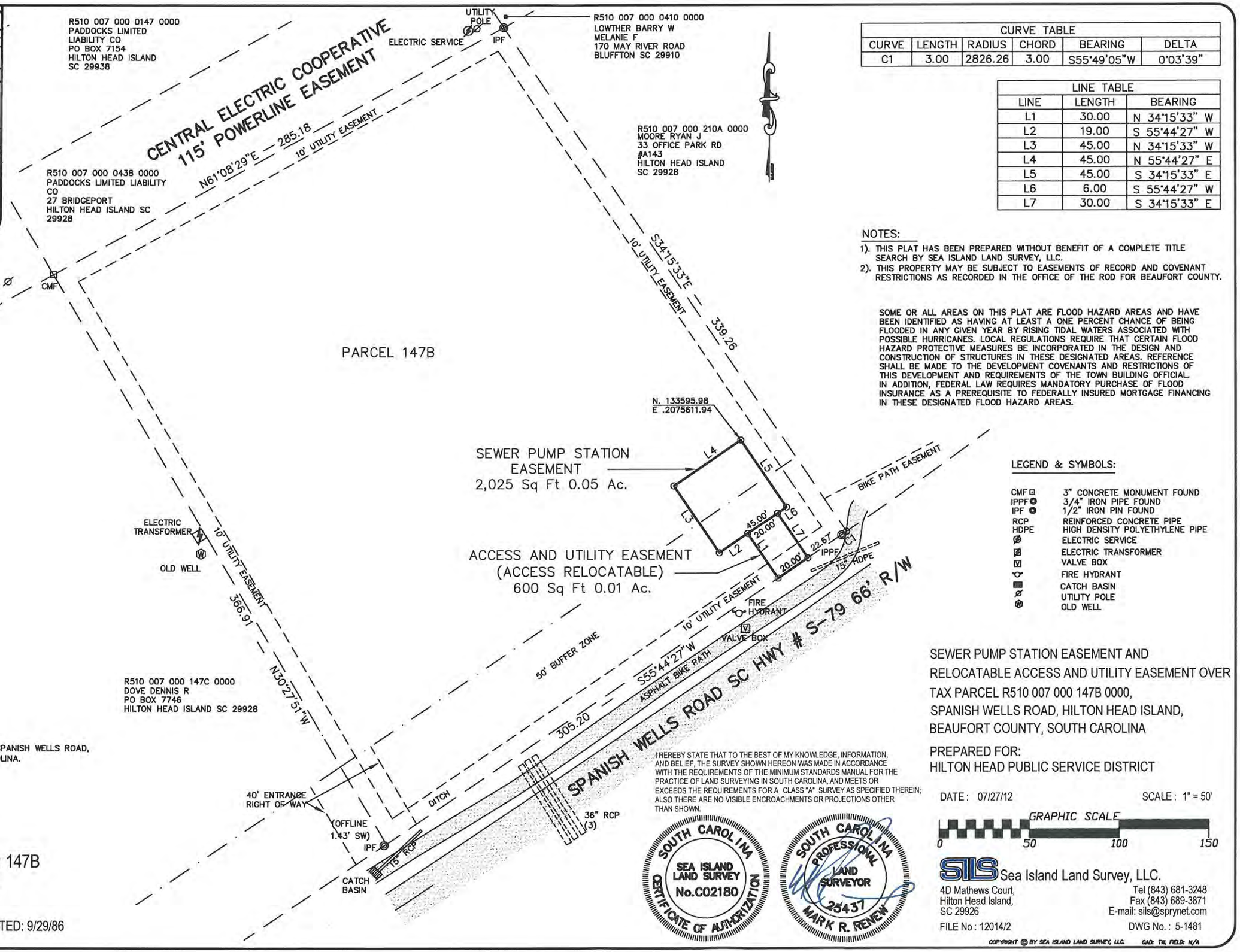
STATE OF SOUTH CAROLINA) UNIFORM ACKNOWLEDGMENT
)
COUNTY OF BEAUFORT) S. C. CODE ANN. § 30-5-30 (SUPP. 2012)

I, the undersigned Notary Public do hereby certify that the duly authorized officers of the Hilton Head #1 Public Service District, personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of the Hilton Head #1 Public Service District

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

_____
Notary Public for South Carolina
My Commission Expires:_____





CURVE TABLE					
CURVE	LENGTH	RADIUS	CHORD	BEARING	DELTA
C1	3.00	2826.26	3.00	S55°49'05"W	0°03'39"

LINE TABLE		
LINE	LENGTH	BEARING
L1	30.00	N 34°15'33" W
L2	19.00	S 55°44'27" W
L3	45.00	N 34°15'33" W
L4	45.00	N 55°44'27" E
L5	45.00	S 34°15'33" E
L6	6.00	S 55°44'27" W
L7	30.00	S 34°15'33" E

NOTES:

1). THIS PLAT HAS BEEN PREPARED WITHOUT BENEFIT OF A COMPLETE TITLE SEARCH BY SEA ISLAND LAND SURVEY, LLC.

2). THIS PROPERTY MAY BE SUBJECT TO EASEMENTS OF RECORD AND COVENANT RESTRICTIONS AS RECORDED IN THE OFFICE OF THE ROD FOR BEAUFORT COUNTY.

SOME OR ALL AREAS ON THIS PLAT ARE FLOOD HAZARD AREAS AND HAVE BEEN IDENTIFIED AS HAVING AT LEAST A ONE PERCENT CHANCE OF BEING FLOODED IN ANY GIVEN YEAR BY RISING TIDAL WATERS ASSOCIATED WITH POSSIBLE HURRICANES. LOCAL REGULATIONS REQUIRE THAT CERTAIN FLOOD HAZARD PROTECTIVE MEASURES BE INCORPORATED IN THE DESIGN AND CONSTRUCTION OF STRUCTURES IN THESE DESIGNATED AREAS. REFERENCE SHALL BE MADE TO THE DEVELOPMENT COVENANTS AND RESTRICTIONS OF THIS DEVELOPMENT AND REQUIREMENTS OF THE TOWN BUILDING OFFICIAL. IN ADDITION, FEDERAL LAW REQUIRES MANDATORY PURCHASE OF FLOOD INSURANCE AS A PREREQUISITE TO FEDERALLY INSURED MORTGAGE FINANCING IN THESE DESIGNATED FLOOD HAZARD AREAS.

LEGEND & SYMBOLS:

CMF	3" CONCRETE MONUMENT FOUND
IPPF	3/4" IRON PIPE FOUND
IPF	1/2" IRON PIN FOUND
RCP	REINFORCED CONCRETE PIPE
HDPE	HIGH DENSITY POLYETHYLENE PIPE
	ELECTRIC SERVICE
	ELECTRIC TRANSFORMER
	VALVE BOX
	FIRE HYDRANT
	CATCH BASIN
	UTILITY POLE
	OLD WELL

REFERENCE PLAT

1) AN ALTA/ACSM LAND TITLE SURVEY OF 2.40 ACRES SPANISH WELLS ROAD, HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA.
DRAWN: 5/13/93
RECORDED IN BOOK 46, PAGE 137, DATED
ROD. BEAUFORT COUNTY, SC
BY: TERRY G. HATCHELL S.C.R.L.S. # 11059

EASEMENT AREA = 0.06 AC. 2,625 S.F.
ADDRESS: SPANISH WELLS ROAD

DISTRICT: 510, MAP: 7, PARCEL: 147B

THIS PROPERTY LIES IN F.E.M.A. ZONE A7
BASE FLOOD ELEVATION = 14.0'
COMMUNITY NO. 450250, PANEL 0008D, DATED: 9/29/86

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.

SOUTH CAROLINA SEA ISLAND LAND SURVEY No.C02180 CERTIFICATE OF AUTHORIZATION

SOUTH CAROLINA PROFESSIONAL LAND SURVEYOR 25437 MARK R. RENEW

SEWER PUMP STATION EASEMENT AND
RELOCATABLE ACCESS AND UTILITY EASEMENT OVER
TAX PARCEL R510 007 000 147B 0000,
SPANISH WELLS ROAD, HILTON HEAD ISLAND,
BEAUFORT COUNTY, SOUTH CAROLINA

PREPARED FOR:
HILTON HEAD PUBLIC SERVICE DISTRICT

DATE: 07/27/12 SCALE: 1" = 50'

GRAPHIC SCALE
0 50 100 150

SILS Sea Island Land Survey, LLC.
4D Mathews Court,
Hilton Head Island,
SC 29926
Tel (843) 681-3248
Fax (843) 689-3871
E-mail: sils@sprynet.com

FILE No : 12014/2 DWG No. : 5-1481

COPYRIGHT © BY SEA ISLAND LAND SURVEY, LLC. CAD: TR, FIELD: N/A

MEMORANDUM

TO: Town Council

FROM: Stephen G. Riley, ICMA-CM, Town Manager

RE: Proposed Ordinance Authorizing Execution and Delivery of a Long Term Ground Lease of Town Owned Property on Jenkins Island to American Towers, LLC, for a site for a Communications Tower, and Execution and Delivery of Easements for Access and Utilities Related to the Tower Facility

DATE: August 7, 2012

Recommendation: Staff requests that Town Council approve the Proposed Ordinance 2012-27 on first reading. The Ordinance, if adopted, will authorize the Execution and Delivery of a long term lease for a portion of the Town's Property located on Jenkins Island, for use as a communications tower site, and easement for access to the site and utilities to serve the site. The location of the proposed tower site is shown on the attached plat.

Summary: Final adoption of this Ordinance would authorize the Mayor and the Town Manager to:

(a) Execute and deliver a proposed Communications Tower Ground Lease between The Town of Hilton Head Island, South Carolina, and American Towers, LLC, as well as an Underground Utility Easement and an Ingress/Egress Easement, and will authorize the Town Manager to take the actions necessary to complete the Town's obligations under the documents.

Background: The Town has determined that it is in the best interests of the Town to take steps to improve wireless communications on Hilton Head Island. Previously, the Town entered into a long term lease of a portion of the Station 7 property with American Towers, LLC, under which American Towers, LLC, has now erected a communications tower.

The proposed lease has a beginning date of October 1, 2012, and has an initial five year term. The lease can be renewed for up to five additional five year terms, and has an outside termination date of September 30, 2042.

American Towers, LLC, will pay Base Rent to the Town for use of the Town'[s property, and will also pay a Co-Location Fee for up to three antenna sites on the Tower. No Co-Location fees are paid for American Towers, LLC's, "anchor tenant", and no Co-Location fee is paid for the space that is reserved for the Town's use under the terms and

conditions of the proposed Lease. The Base Rent and the Co-Location Fees will increase in a stated amount during each renewal terms of the proposed Lease.

The amounts of Rent and Co-Location Fees are as follows:

	Initial Term	First Renewal	Second Renewal	Third Renewal	Fourth Renewal	Fifth Renewal
Base Rent	$12,000	$13,800	$15,870	$18,250	$20,987	$24,135
Co-Location Fee	$400	$460	$529	$608	$699	$803

ORDINANCE NO. 2012-____ PROPOSED ORDINANCE NO. 2012-27

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF A LEASE WITH AMERICAN TOWERS, LLC, FOR PROPERTY OWNED BY THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, KNOWN AS THE "JENKINS ISLAND" TRACT, AND AUTHORIZING THE EXECUTION OF TWO EASEMENTS IN FAVOR OF AMERICAN TOWERS, LLC, ENCUMBERING TOWN OWNED LAND, KNOWN AS THE "JENKINS ISLAND" TRACT, PURSUANT TO THE AUTHORITY OF S.C. CODE ANN. SEC. 5-7-40 (SUPP. 2012), AND SEC. 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 known as the "Jenkins Island" Tract, on Jenkins Island which consists of 55.40 acres, more or less, lying on U. S. Highway 278, which is known and described as follows:

> All that certain piece, parcel or lot of land, lying and being in The Town of Hilton Head Island, Beaufort County, State of South Carolina, which is identified on Beaufort County Tax Maps as parcel number R510 006 000 0099 0000, also shown and described as "Town of Hilton Head Island, R501 006 000 0001 55.40 AC., 2413019 S. F." on the plat entitled "Easement Plat of: Reverse Osmosis Site, Gateway Drive, Jenkins Island, Beaufort County, South Carolina" that is recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Plat Book 123 at Page 115.

WHEREAS, American Towers, LLC, desires to construct and operate a telecommunications tower on this Town-owned 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 to enter into a Lease Agreement with American Towers, LLC for its operation of a telecommunications tower on the Town's property, and also to execute and deliver easements providing American Towers, LLC, with rights for parking and access, and with rights to install underground

utilities at the Town's Jenkins Island Tract property.

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

Section 1 - Execution, Delivery and Performance of Lease.

(a) The Mayor and Town Manager are hereby authorized to execute and deliver the "Communication Tower Ground Lease" 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 performance of the Town's obligations under the terms and conditions of the Lease.

Section 2 - Execution, Delivery and Performance of Easements.

(a) The Mayor and Town Manager are hereby authorized to execute and deliver the ingress/egress easement and the underground utility easement which are attached hereto as Exhibits "B" and "C"; and,

(b) The Town Manager is hereby authorized to take such other and further actions as may be necessary to complete the performance of the Town's obligations under the terms and conditions of the Easements.

Section 3 - 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 4 - Effective Date.

This Ordinance shall be effective upon adoption thereof by the Town Council for the Town of Hilton Head Island, South Carolina.

PASSED AND APPROVED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, ON THIS ____ DAY OF SEPTEMBER, 2012.

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA

_____
Drew A. Laughlin, Mayor

_____
Victoria L. Pfannenschmidt
Acting Town Clerk

First Reading: August 7, 2012
Second Reading:_____

Approved as to form:

By_____
Gregory M. Alford, Town Attorney

Introduced by Council Member: _____

EXHIBIT “A”

COMMUNICATION TOWER GROUND LEASE

By and Between

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA

and

AMERICAN TOWERS, LLC

DATED AS OF: OCTOBER 1, 2012

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STATE OF SOUTH CAROLINA)
) COMMUNICATION TOWER GROUND LEASE
COUNTY OF BEAUFORT)

This Communication Tower Ground Lease is made by and between The Town of Hilton Head Island, South Carolina, One Town Center Court, Hilton Head Island, South Carolina, 29928, and American Towers, LLC , a Delaware limited liability company, with a mailing address of 10 Presidential Way, Woburn, MA, 01801, is dated as of October 1, 2012.

R E C I T AL S

WHEREAS, The Town of Hilton Head Island, South Carolina, owns a parcel real property located in the Town Limits of the Town Hilton Head Island, South Carolina, consisting of 55.40 acres, more or less, and which is known as a portion of the "Jenkins Island Tract"; and,

WHEREAS, American Towers, LLC, develops, erects, and maintains communications towers for the purpose of leasing space on the towers for telephone, wireless and other communications providers to install antennae; and,

WHEREAS, American Towers, LLC, has requested a ground lease of space on the Jenkins Island Tract for the purpose of erecting, operating and maintaining a communications tower; and,

WHEREAS, The Town Council for The Town of Hilton Head Island, South Carolina, has determined that a communications tower on the Jenkins Island Tract will promote improved telephone, wireless and other communication services on Hilton Head Island, which is beneficial to and in the best interests of the citizens, residents and

visitors on Hilton Head Island; and,

WHEREAS, The Town Council of The Town of Hilton Head Island, South Carolina, is authorized to enter into leases of Town owned land under the authority of S. C. Code Ann. § 5-7-40 (Supp. 2010), and § 2-3-30 and § 2-7-20, *Code of The Town of Hilton Head Island, South Carolina* (1983, as amended).

NOW, THEREFORE, for and in consideration of the sum of One Dollar, and the full and faithful performance of the obligations, conditions and covenants contained in this Communication Tower Ground Lease (hereinafter, the "Lease"), the receipt and sufficiency of which are acknowledged by the Parties hereto, The Town of Hilton Head Island, South Carolina (hereinafter, the "Town"), and American Towers, LLC (hereinafter, "American Tower"), agree as follows:

ARTICLE 1

1.01 *Jenkins Island Tract Property:* The Town is the owner of a tract of real property located within the town limits of The Town of Hilton Head Island, South Carolina, and which consists of 55.40 acres, more or less, lying on U. S. Highway 278, which is known and described as follows:

> All that certain piece, parcel or lot of land, lying and being in The Town of Hilton Head Island, Beaufort County, State of South Carolina, which is identified on Beaufort County Tax Maps as parcel number R510 006 000 0099 0000, also shown and described as "Town of Hilton Head Island, R501 006 000 0001 55.40 AC., 2413019 S. F." on the plat entitled "Easement Plat of: Reverse Osmosis Site, Gateway Drive, Jenkins Island, Beaufort County, South Carolina" that is recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Plat Book 123 at Page 115,

(hereinafter, the "Jenkins Island Tract").

1.02 *The Leased Property*: The real property leased by American Tower pursuant

to this Lease is a portion of the Jenkins Island tract, and which is known and described as follows:

> All that certain parcel of land, shown and described as "Proposed Lease Area", and containing 4,900 square feet (0.1122 acres), having dimensions, metes and bounds as shown on the survey prepared by Point to Point Land Surveyors, Ronald McCann, S. C. R. L. S., a copy of which is attached hereto as Exhibit "A".(hereinafter, the "Leased Property").

1.03 *Subdivision of Leased Property:* American Tower shall obtain a subdivision approval from the Town so as to cause the Leased Property to be subdivided from the balance of the Jenkins Island Tract. American Tower shall take such steps as are necessary to notify Beaufort County, South Carolina, of the subdivision of the parcel and to secure a separate tax parcel number from Beaufort County, South Carolina, for the Leased Property.

1.04 *Access Easement:* The Town shall grant to American Tower an easement for vehicular access to and from the Leased Property over the existing roadways located on the Jenkins Island Tract, as the same may exist from time to time. The easement shall be a fixed-term easement, having a duration equal to the Initial Term and any Renewal Term of this Lease. The Easement will be in a form and substance as appears in Exhibit "B" hereto.

1.05 *Underground Utility Line Easement:* The Town shall grant to American Tower an easement extending from the Leased Property to the right of way of U. S. Highway 278 for the purpose of installing underground electrical and communications lines necessary for the operation of the Monopole Tower and the equipment utilized in connection with it. The Town and American Tower will work together to identify a location for the underground utilities and will work with any utility providers to

determine an acceptable location for the underground utilities and the Underground Utility Line Easement. The easement shall be an easement for a fixed term, having a duration equal to the Initial Term and any Renewal Term of this Lease. The Easement will be in a form and substance as appears in Exhibit "C" hereto.

1.06 *Representations and Warranties of the Town:* To the knowledge of the Town:

(a) The Town has the full right, power and authority to execute this Lease;

(b) There are no pending or threatened administrative actions, including bankruptcy or insolvency proceedings under state or federal law, suits, claims or causes of action against the Town or which may otherwise affect the Leased Property;

(c) The Town has not, in violation of any statute or regulation, disposed of or spilled any contaminants, oils, PCBs, hazardous substances or wastes as defined by federal, state or local environmental laws, regulations or administrative orders or other materials the removal of which is required or the maintenance of which is prohibited by any federal, state or local government authority having jurisdiction over the Leased Property, on under or about the Leased Property.

1.07 *American Tower Accepts the Property "As Is"*: American Tower represents and warrants that it has examined the Leased Property, title to the Leased Property, and any existing use restrictions on the Leased Property, and except as for those representations and warranties expressly set forth herein, American Tower accepts the Leased Property "as is", and without recourse to or against the Town as to the title thereto, availability of

water, sewer, electricity or telecommunication services, the nature, condition or usability thereof, or the uses to which Leased Property may be put. In no event shall the Town have any liability to American Tower for any defect in the Leased Property, or the title to the Leased Property, or conditions existing in, on, under, over or about the Leased Property or any limitation on the uses which may be made of the Leased Property, except to the extent that any such condition breaches an express representation or warranty made by the Town herein. American Tower accepts this limitation on the Town's liability and acknowledges that this limitation of the Town's liability is a material term of this Lease without which the Town would not have entered into this Lease.

1.08 *Limited Obligation of Town*: The Town shall not be required to furnish and has no obligation to furnish to American Tower any facilities or services of any kind, including, but not limited to, water, sewage disposal, sewage capacity, solid waste collection and disposal, recycling collection, electricity, light and power.

1.09 *Utilities and Other Services*: American Tower shall at its sole cost and expense arrange for the provision of any utilities needed by it or other services to the Leased Property. Any fees for reservation or use of utilities, or any other arrangements that must be made with the provider of any utility or any other service, shall be the sole responsibility of American Tower.

1.10 *Memorandum of Lease:* Simultaneously with the execution and delivery of this Lease, the Parties will execute and deliver a Memorandum of Lease which American Tower may record in the public records for Beaufort County, South Carolina.

ARTICLE 2

2.01 *Use Restrictions:* American Tower shall use the Leased Property for the following purposes, and no other:

(a) *Erection and Use of "Monopole" Tower:* American Tower may erect, maintain and operate a communications facility, including but not limited to, the construction or installation and maintenance of one "monopole" telecommunications tower on the Leased Property (hereinafter the "Monopole Tower"), provided that American Tower secures the Town's written approval for the plans for and design of the communications facility prior to commencing any installation or construction of any such communications facility, and thereafter erects the Monopole Tower, structural tower base, communications equipment, one or more buildings or equipment cabinets, radio transmitting and receiving antennas, one diesel generator, personal property and related improvements and facilities on the Leased Property, to facilitate the use of the Leased Property for the transmission and receipt of communication signals including, but not limited to, voice, data and internet transmissions and for any other uses which are incidental to the transmission and receipt of communication signals. American Tower may also utilize the Leased Property for the short term parking of service or other vehicles as the same may be needed to facilitate the construction, maintenance or operation of the Improvements authorized on the Leased Property in this Article 2.01 (hereinafter, the "Intended Use").

(b) *Height Restriction:* The Monopole Tower to be erected on the

Leased Property shall have a maximum height of One Hundred Forty Nine and One Half (149.5') Feet above the grade elevation of the Leased Property, consisting of a tower structure with a maximum height of One Hundred Forty Eight (148') feet above the grade elevation of the Leased Property, and a lightning rod with a maximum height of One and One Half (1.5) feet affixed to the top of the tower.

(c) *Structures to House Equipment:* American Tower may erect structures to house electrical and communications equipment related to the operation of the communications equipment to be installed on the Monopole Tower, provided that American Tower secures the Town's written approval for the plans for and design of the structure or structures prior to commencing any installation or construction of any such structure, and provided that American Tower thereafter erects the structure or structures in conformity with the Town's written approval.

(d) *Fence:* American Tower may enclose the Leased Property with a fence, provided that American Tower secures the Town's written approval for the plans for and design of the fence prior to commencing any installation or construction of any such fence, and provided that American Tower thereafter erects the fence in conformity with the Town's written approval.

(e) *Improvements to Leased Property:* The Monopole Tower, any structures built to house electrical or communications equipment related to the communications facilities on the Monopole Tower, or any other

structure, and the fence permitted under this Article 2.01 are collectively referred to herein as the "Improvements".

(f) *Removal of Improvements:* The Improvements erected or installed on the Leased Property by American Tower shall be the personal property of American Tower and shall be removed from the Leased Property at the termination of this Lease, as is provided in Article 3.03 below.

2.02 *Permits*: It shall be the sole responsibility of American Tower to procure and pay for any required municipal, state or federal or other governmental permits and authorizations of the various municipal departments and governmental subdivisions having jurisdiction over the Leased Property with respect to American Tower' installation of the Improvements permitted under Article 2.01 above. The Town will provide "owner's authorizations" indicating the Town's consent to any permit being sought by American Tower where such "owner's consent" is required under any applicable permitting regulations. The delivery of such "owner's consent" by the Town shall not be deemed a waiver of any applicable development standard or zoning or other requirement.

2.03 *Mechanic's or Other Liens Prohibited*: American Tower shall not suffer or permit any mechanic's lien or any other lien to be placed against the Leased Property arising out of any construction of Improvements permitted under Article 2.01, or the use or occupancy of the Leased Property by American Tower. In the event any such lien is filed, American Tower shall promptly cause the same to be discharged and removed of record, and shall further indemnify and hold the Town harmless from any costs or

expenses, damages, suits or attorney's fees arising from the filing or enforcement of any mechanic's lien or any other lien affecting the Leased Property.

2.04 *Other Established Uses on Property:* American Tower acknowledges that the Leased Property is, as of the date of the commencement of this Lease, public property. Further, other uses are established on the Jenkins Island Tract, primarily being overhead power transmission lines and a Reverse Osmosis facility and monitoring wells operated by Hilton Head Public Service District. American Tower acknowledges and accepts that the existing uses on the Jenkins Island Tract will continue at all times during any term of this Lease, and under no circumstance shall any act or occurrence resulting from the normal daily operations of any existing use on the Jenkins Island Tract be a breach of any term of this Lease or give rise to any claim or cause of action under the terms of this Lease. . Under no circumstances shall ingress and egress to any existing use on the Jenkins Island Tract be blocked or impeded in any manner by American Tower.

(a) *Certain Restrictions Permitted:* The foregoing language of Article 2.04 notwithstanding, American Tower is permitted to restrict the public's access to the Leased Property during the Initial Term or any Renewal; Term of this Lease, and may enclose the Leased Property with a fence, as is provided in Article 2.01(d) above.

(b) *Radio Frequency Interference:* The Town will not use, nor will the Town permit its tenants, licensees, invitees or agents, to use any portion of the Jenkins Island Tract in any way which creates Radio Frequency Interference with the Monopole Tower, or the communications

equipment installed in connection with the Monopole Tower; provided, however, that any existing electric transmission lines, radio or other signal generating equipment being used as of the date of this Lease by the Town, its tenants, licensees, grantees, invitees or agents on or about the Jenkins Island Tract is exempt from this requirement. Radio frequency interference in violation of this Article 2.04(b) will be deemed to be a material breach of this Lease by the Town, and the Town will have the responsibility to terminate such Radio Frequency Interference immediately upon written notice thereof from American Tower. Notwithstanding anything to the contrary in this Lease, if the Radio Frequency Interference does not cease or is not rectified as soon as is possible, but in no event longer than 24 hours after delivery of American Tower's written notice to the Town, the Town acknowledges that continuing Radio Frequency Interference will cause irreparable injury to American Tower, an American Tower will have the right, in addition to any other rights it may have at law or in equity or under this Lease, to bring an action to enjoin the Radio Frequency Interference.

2.05 *Construction of Monopole Tower and Other Improvements:* American Tower shall be solely responsible for the construction of the Monopole Tower and the other Improvements described in Article 2.01 above. In connection with the construction of the Monopole Tower and other Improvements, American Tower shall:

(a) *Notification to Town:* American Tower shall notify the Town in writing no less that seven (7) days prior to the commencement of any

activity related to the construction of the Monopole Tower and other Improvements on the Leased Property.

(b) *Schedule of Work:* The notification required under Article 2.05(a) shall include a schedule of the work to be performed.

(c) *Minimal Interference to Existing Uses:* American Tower acknowledges that the Leased Property is, as of the date of the commencement of this Lease, a portion of the Jenkins Island Tract and that other uses exist on the Jenkins Island Tract, primarily being overhead power transmission lines and a Reverse Osmosis facility and monitoring wells operated by Hilton Head Public Service District. American Tower acknowledges and accepts that the existing uses shall continue during the Initial Term or any Renewal Terms of this Lease, and under no circumstance shall any act or occurrence resulting from the normal daily operations of the existing uses on the Jenkins Island Tract be a breach of any term of this Lease or give rise to any claim that the Town or any other party has interfered with the construction of the Monopole Tower or any other cause of action under the terms of this Lease. During the construction of the Monopole Tower, American Tower shall take such steps to ensure that its activities do not unreasonably interfere with the normal daily operations of the existing uses on the Jenkins Island Tract. Under no circumstances shall ingress and egress to any existing use on the Jenkins Island Tract be blocked or impeded in any manner by American Tower.

2.06 *Application of Laws and Other Matters:* This Lease is made by the Town and accepted by American Tower subject to all existing ordinances, regulations, statutes, zoning ordinances and any restrictive covenants affecting the Leased Property which are now in force or which may be enacted in the future.

2.07 *Lease Subordinate to Interests of Hilton Head Public Service District and Central Electric Power Cooperative:* American Tower acknowledges that the Central Electric Power Cooperative, Palmetto Electric Cooperative, and the Hilton Head Public Service District hold permanent easements over portions of the Jenkins Island Tract that are shown and described on Plats recorded in the Office of The Register of Deeds for Beaufort County, South Carolina. American Tower shall exercise its rights under this Lease so as to not impair or impede the rights of Central Electric Power Cooperative, Palmetto Electric Cooperative, Hilton Head Public Service District, and any of their assigns, and American Tower shall not cause any damage to any property of Central Electric Power Cooperative, Palmetto Electric Cooperative or Hilton Head Public Service District or any of their assigns.

2.08 *No Other Interest In Real Property Created*: Other than the leasehold interest and the ancillary easements as are expressly set forth herein, American Tower shall have no other interest in the Leased Property, nor any interest in any other part of the Jenkins Island Tract.

2.09 *Maintenance of Property And Compliance With Laws*: During the Initial Term and any Renewal Term of this Lease, American Tower shall, at its sole cost and expense, provide for the maintenance or upkeep of the Leased Property and the Improvements, and shall at all times comply with any and all applicable fire, building,

health and sanitation codes as the same may from time to time be in effect.

2.10 *Rules, Regulations and Restrictions*: American Tower shall at all times during the Initial Term and any Renewal Term of this Lease, comply with the following:

(a) *Maintenance of Leased Property and Improvements:* In keeping with the uses permitted on the Leased Property, American Tower shall maintain the Leased Property and the Improvements on the Leased Property, in a sanitary condition, free of debris and trash, it being understood that no use shall be made or permitted of the Leased Property or any part thereof, nor any acts done, which will violate any statute, ordinance or regulation, or violate or make inoperative or otherwise impair any insurance policy at any time held by or in any way for the benefit of the Town pursuant to any provision of this Lease;

(b) *Storage of Hazardous Substances Prohibited:* Other than fuel in the tank of the diesel generator on the site, American Tower shall not, in violation of any applicable law or regulation, or the express provisions of this Lease, sell, or suffer or permit to be stored, kept, used or sold in, upon or about the Leased Property, or in any structure or building located on the Leased Property, any gasoline, distillate, any substance defined as a "Hazardous Substance" under any Federal, State or Local law, ordinance or regulation, or any other substance or material of an explosive, inflammable or radiological nature which may contaminate or endanger any part of

the Leased Property, the Improvements, or any person on or about the Leased Property, or present any unusual fire, explosion or other damaging or dangerous hazard; and, American Tower shall, at its sole cost and expense, cause the removal and clean up of any hazardous substance allowed to contaminate the Leased Property by American Tower;

(c) *Compliance with Laws:* American Tower shall comply with all governmental rules, regulations, ordinances, statutes and laws now or hereafter in effect pertaining to the Leased Property or American Tower's use thereof;

(d) *Waste Dumping or Disposal Prohibited:* American Tower shall refrain from dumping, disposal, reduction, incineration or other burning of any trash, hazardous material or substance, papers, refuse or garbage of any kind in, on, or about the Leased Property, in violation of any applicable statue, regulation or ordinance, or this Lease;

(e) *Waste Storage Prohibited:* American Tower shall refrain from storing any trash, garbage or hazardous material or substance on the Leased Property or in the Improvements, and American Tower shall not create or permit the creation of any health or fire hazard, in violation of any applicable statute, regulation or ordinance;

(f) *Waste and Nuisances:* American Tower shall refrain from committing or suffering to commit any waste upon, or making any

unlawful, improper or offensive use of, the Leased Property or the Improvements, or creating any public or private nuisance or act or thing in or upon the Leased Property the Improvements; provided, however, that the use of the Leased Property as a telecommunications facility as described in this Lease shall not be considered to be a violation of this provision;

(g) *Compliance with Restrictive Covenants:* American Tower shall maintain the Leased Property and the Improvements so as to achieve compliance with and remain in compliance with any restrictive covenants encumbering the Leased Property and all local ordinances promulgated by the Town of Hilton Head Island, South Carolina, or any other applicable law, rule, regulation or agreement concerning the Leased Property and the Improvements.

2.11 *Additional Rules*: In addition to the foregoing, American Tower shall at all times during the Initial Term or any Renewal Term hereof comply with all other reasonable rules and regulations which the Town may at any time or from time to time establish concerning the use of the Leased Property; provided however, that any such rule or regulation so made shall not be inconsistent with any part of this Lease, and shall not unreasonably interfere with American Tower's use and enjoyment of the Leased Property.

2.12 *American Tower Shall Obtain Town Business License:* During the Initial Term or any Renewal Term of this Lease, American Tower shall obtain a Town business license, and shall keep its business license current and valid.

ARTICLE 3

3.01 *Initial Term:* The Initial Term of this Lease shall be for a period of five (5) years, commencing on the 1st day of October, 2012, and ending on the 3oth day of September, 2017 (herein, the "Initial Term"), Unless terminated sooner by the Town under the provisions hereof.

(a) American Tower shall have a period of eighteen (18) months from the commencement date of this Lease to complete the construction of the Monopole Tower and other Improvements described in Article 2.01 above.

(b) In the event that American Tower does not complete the construction of the Monopole Tower and other Improvements described in Article 2.01 above within eighteen months from the commencement date of this Lease, then this Lease shall automatically terminate.

3.02 *Renewal Terms:* This Lease will automatically be renewed for up to five (5) successive five (5) year Renewal Terms, provided that American Tower is not in default of any of its obligations hereunder (herein, the "Renewal Term", or "Renewal Terms"). Unless American Tower gives notice of its intention not to renew this Lease within One Hundred Eighty (180) Days of the last day of the Initial Term or within One Hundred Eighty days of the last day of any Renewal Term, this Lease shall automatically renew for the subsequent five (5) year Renewal Term. Unless terminated sooner by American Tower or by the Town under the provisions hereof, this Lease and all Terms hereof will terminate on the 30th Day of September, 2042.

3.03 *Restoration of Leased Property:* At such time as this Lease is terminated, irrespective of the reason for the termination, American Tower shall, within thirty (30)

days of the termination, remove all of its personal property from the Leased Property and the associated easements to a depth of three feet below grade, and shall restore the Leased Property to its pre-existing condition, which is vacant, level, grassed, undeveloped property.

ARTICLE 4

4.01 *Base Rent:* American Tower shall pay Base Rent to the Town during the Initial Term or any renewal Term of this Lease as follows:

(a) *Base Rent:* For each year of the Initial Term of this Lease, and any Renewal Term of this Lease, American Tower shall pay the Town Base Rent in the amounts set forth in Articles 4.01(a)(i)(ii)(iii)(iv)(v) and (vi) below. The Base Rent shall be paid to the Town annually, in advance, no later than January 15 of each year of the Initial Term of this Lease, or any Renewal Term of this Lease. The Base Rent shall be paid pro rata for any partial year, including the year that this Lease commences.

(i) *Initial Term Base Rent:* During the Initial Term of this Lease, American Tower shall pay the Town Base Rent in the amount of Twelve Thousand and no/100 ($12,000.00) Dollars per year beginning on August 1, 2012, and continuing through December 31, 2016.

(ii) *First Renewal Term:* For each year of the First Renewal Term of this Lease, American Tower shall pay the Town Base Rent in the amount of Thirteen Thousand Eight Hundred and no/100 ($13,800.00) Dollars per year; provided, however, that American

Tower shall pay the increased Base Rent of Thirteen Thousand Eight Hundred and no/100 ($13,800.00) Dollars per year beginning on January 1, 2017.

(iii) *Second Renewal Term:* For each year of the Second Renewal Term of this Lease, American Tower shall pay the Town Base Rent in the amount of Fifteen Thousand Eight Hundred Seventy and no/100 ($15,870.00) Dollars per year; provided, however, that American Tower shall pay the increased Base Rent of Fifteen Thousand Eight Hundred Seventy and 00/100 ($15,870.00) Dollars per year beginning on January 1, 2022.

(iv) *Third Renewal Term:* For each year of the Third Renewal Term of this Lease, American Tower shall pay the Town Base Rent in the amount of Eighteen Thousand Two Hundred Fifty and no/100 ($18,250.00) Dollars per year; provided, however, that American Tower shall pay the increased Base Rent of Eighteen Thousand Two Hundred Fifty and no/100 ($18,250.00) Dollars per year beginning on January 1, 2027.

(v) *Fourth Renewal Term:* For each year of the Fourth Renewal Term of this Lease, American Tower shall pay the Town Base Rent in the amount of Twenty Thousand Nine Hundred Eighty Seven and no/100 ($20,987.00) Dollars per year; provided, however, that American Tower shall pay the increased Base Rent of Twenty Thousand Nine Hundred Eighty Seven and no/100

($20,987.00) Dollars per year beginning on January 1, 2032.

(vi) *Fifth Renewal Term:* For each year of the Fifth Renewal Term of this Lease, American Tower shall pay the Town Base Rent in the amount of Twenty Four Thousand One Hundred Thirty Five and no/100 ($24,135.00) Dollars per year; provided, however, that American Tower shall pay the increased Base Rent of Twenty Four Thousand One Hundred Thirty Five and no/100 ($24,135.00) Dollars per year beginning on January 1, 2037.

4.02 *Co-Location Fee:* For each year of the Initial Term of this Lease, and any Renewal Term of this Lease American Tower shall pay the Town a Co-Location Fee for each sub-lease, license or other co-location agreement entered into between American Tower and any third-party for space on the Monopole Tower and any other part of the Leased Property, excluding one "Anchor Tenant" and the Town (herein, "Additional Co-locator").

(a) *Co-Location Fee:* American Tower shall pay the Town a Co-Location Fee in the amounts set forth in Articles 4.02(a)(i)(ii)(iii)(iv)(v) and (vi) below. American Tower shall pay the Co-Location Fee yearly, in arrears, no later than January 15 of the following year. The initial payment of the Co-Location Fee shall be due with the first annual rent installment payable after the commencement date (as defined therein) of each sub-lease, license or other co-location agreement with an Additional Co-locator. In the event a sub-lease, license or other co-location agreement with any Additional Co-locator expires or terminates, American Tower's

obligation to pay the Co-location fee for such sub-lease, license or other co-location agreement shall terminate on the date of such termination or expiration. American Tower shall notify the Town in writing of such termination or expiration within fifteen (15) days of the date of such termination or expiration. Notwithstanding anything contained herein, no Co-Location fee shall be due for any sub-lease, license or other co-Location agreement for any sub-lease or transfer to any subsidiary, parent or affiliate of American Tower, if such sub-lease or transfer does not result in additional equipment on the Monopole Tower.

(i) *Initial Term Co-Location Fee:* For each year of the Initial Term of this Lease, American Tower shall pay the Town a Co-Location Fee of Four Hundred and no/100 ($400.00) Dollars per month for each Additional Co-Locator beginning on March 26, 2012, and continuing through December 31, 2016.

(ii) *First Renewal Term Co-Location Fee:* For each year of the First Renewal Term of this Lease, American Tower shall pay the Town a Co-Location Fee in the amount of Four Hundred Sixty and no/100 ($460.00) Dollars per month for each Additional Co-Locator; provided, however, that American Tower shall pay the increased Co-Location Fee of Four Hundred Sixty and no/100 ($460.00) Dollars per month for each Additional Co-Locator beginning on January 1, 2017.

(iii) *Second Renewal Term Co-Location Fee:* For each year of

the Second Renewal Term of this Lease, American Tower shall pay the Town a Co-Location Fee in the amount of Five Hundred Twenty Nine and no/100 ($529.00) Dollars per month for each Additional Co-Locator; provided, however, that American Tower shall pay the increased Co-Location Fee of Five Hundred Twenty Nine and no/100 ($529.00) Dollars per month for each Additional Co-Locator beginning on January 1, 2022.

(iv) *Third Renewal Term Co-Location Fee:* For each year of the Third Renewal Term of this Lease, American Tower shall pay the Town a Co-Location Fee in the amount of Six Hundred Eight and no/100 ($608.00) Dollars per month for each Additional Co-Locator; provided, however, that American Tower shall pay the increased Co-Location Fee of Six Hundred Eight and no/100 ($608.00) Dollars per month for each Additional Co-Locator beginning on January 1, 2027.

(v) *Fourth Renewal Term Co-Location Fee:* For each year of the Fourth Renewal Term of this Lease, American Tower shall pay the Town a Co-Location Fee in the amount of Six Hundred Ninety Nine and no/100 ($699.00) Dollars per month for each Additional Co-Locator provided, however, that American Tower shall pay the increased Co-Location Fee of Six Hundred Ninety Nine and no/100 ($699.00) Dollars per month for each Additional Co-Locator beginning on January 1, 2032.

(vi) *Fifth Renewal Term Co-Location Fee:* For each year of the Fifth Renewal Term of this Lease, American Tower shall pay the Town a Co-Location Fee in the amount of Eight Hundred Three and no/100 ($803.00) Dollars per month for each Additional Co-Locator; provided, however, that American Tower shall pay the increased Co-Location Fee of Eight Hundred Three and no/100 ($803.00) Dollars per month for each Additional Co-Locator beginning on January 1, 2037.

4.03 *Taxes and Other Expenses:* American Tower shall fully and promptly pay any and all taxes, fees, charges and costs and expenses of any nature related to the Leased Property, the Improvements, and American Tower's use and occupancy thereof. In the event that American Tower fails to pay any tax or other expense as required by this Article 4, the Town may, but without obligation to do so, at any time from time to time without notice, pay such tax or other expense, in which event American Tower shall repay the Town all sums so paid by the Town, together with interest thereon as provided in Article 10 hereof, and any incidental costs or expenses incurred by the Town in connection therewith, within ten (10) days following the Town's written demand to American Tower for such payment.

ARTICLE 5

5.01 *Quiet Enjoyment*: The Town hereby covenants that American Tower shall have, during the Initial Term and any Renewal Term of this Lease, peaceable and quiet possession of the Leased Property, and shall have, hold and enjoy the Leased Property without suit, trouble or hindrance from the Town, except as expressly required or

permitted by this Lease. The Town shall not interfere with the quiet use and enjoyment of the Leased Property by American Tower during the Initial Term or any Renewal Term of this Lease, so long as the Initial Lease Term or Renewal Lease Terms shall be in effect and all obligations of American Tower hereunder have been fulfilled.

ARTICLE 6

6.01 *Required Property Insurance*: During the Initial Term and any Renewal Term hereof, American Tower shall keep the Improvements insured against loss or damage by fire, wind, flood (to the extent of any available federal flood insurance program) and all other perils as are typically insured against by commercial establishments operating in Beaufort County, South Carolina, to the extent of the value thereof. In the event of a casualty to any of the Improvements so insured, American Tower shall utilize the payments made under the policy to repair or replace the Improvements.

6.02 *Required Liability Insurance*: During the Initial Term and any Renewal Term of this Lease, American Tower shall maintain in full force a comprehensive general public liability insurance with minimum bodily injury, death and property damage limits, per occurrence, of THREE MILLION ($3,000,000.00) DOLLARS insuring against any and all liability of American Tower or any tenant of American Tower with respect to their occupancy and use of the Leased Property and all of the Improvements , or arising out of the maintenance, use or occupancy thereof by American Tower or any tenant of American Tower. In addition to all other coverages, and if available, such insurance policy or policies shall specifically insure the performance by American Tower of the hold harmless and indemnity provisions set forth in Article 6.05 of this Lease.

6.03 *Policy Form*: All policies of insurance provided for herein shall be issued by

insurance companies with a general policyholders' rating not less than A, and a financial rating of AAA as rated in the most current available "Best's Insurance Reports", and qualified to do business in the State of South Carolina. The Town shall be named as an additional insured in any such policy. Such policies shall be for the mutual and joint benefit and protection of American Tower and the Town, and executed copies of such policies of insurance or certificates thereof shall be delivered to the Town within ten (10) business days after delivery of possession of the Leased Property to American Tower and thereafter within ten (10) business days of the issuance of any such policy, or within ten (10) business days of any request by the Town. All public liability and property damage policies shall contain a provision that the Town, although named as an insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to it, its servants, agents and employees or its property by reason of the negligence of American Tower. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by American Tower in like manner and to like extent. All public liability, property damage and other casualty shall be written as primary policies, not contributing with and not in excess of coverage which the Town may carry.

6.04 *Failure of American Tower to Obtain Insurance*: In the event that American Tower fails to procure and/or maintain any insurance required by this Article 6, or fails to carry insurance required by law or governmental regulations, the Town may, but without obligation to do so, at any time from time to time without notice, procure such insurance and pay the premiums therefor, in which event American Tower shall repay the Town all sums so paid by the Town, together with interest thereon as provided in

Article 10 hereof, and any incidental costs or expenses incurred by the Town in connection therewith, within ten (10) days following the Town's written demand to American Tower for such payment.

6.05 *Indemnification and Hold Harmless*: American Tower shall indemnify and hold the Town harmless from any claims for loss, damage or liability, including attorney's fees and costs incurred by the Town in responding to or defending any claim, arising out of or on account of any injury, death or damage to any person, or to the Leased Property of any person, arising from or in any manner relating to the use of the Leased Property by American Tower, or arising from any act or omission of American Tower with respect to the exercise of any of American Tower's rights hereunder.

ARTICLE 7

7.01 *Sublease of Leased Property*: The Town acknowledges that American Tower will lease space for antennae on the Monopole Tower to be erected on the Leased Property, and that American Tower will sub-let portions of the Leased Property, for the installation of electrical and communications equipment and the structures to house the same.

(a) *American Tower's Tenants Bound by This Lease:* Any lease of space on the Monopole Tower or any sub-lease of any other portion of the Leased Property shall contain terms requiring any tenant to be bound by the Terms of this Lease, excepting the provisions of Article 4 hereof concerning the payment of rent from American Tower to the Town, and requiring the tenant to comply with all requirements hereof.

(b) *American Tower to Remain Bound by This Lease:* American

Tower shall remain fully, directly and primarily bound by the terms and conditions of this Lease regardless of any lease of space on the Monopole Tower or any sub lease of any part of the Leased Property.

7.02 *Reservation of Space on Monopole Tower for Town Use:* During the Initial Term and any Renewal Term of this Lease, American Tower shall provide the Town with space for one antenna on the Monopole Tower and sufficient space for housing any ground based equipment related to the antenna for use by the Town for fire and rescue or other emergency or municipal communications needs, as the same may be determined by the Town. The space to be provided to the Town on the Monopole Tower shall be a minimum of 130 feet above the grade level of the Leased Property. American Tower shall provide the space at no charge to the Town; provided, however, that the space and the terms of use of the space shall be governed by a separate license agreement executed by the Town and American Tower, in a form and substance similar to that set forth on the attached Exhibit "D". American Tower authorized contractors hired by the Town shall have access to the Leased Property, the Monopole Tower and any structures built to house electrical or communications equipment related to the communications facilities on the Monopole Tower, for purpose of installing, using and maintaining its antennae and associated electrical and communications equipment, in the same manner as any other party to whom American Tower enters into a sublease under the authority of Article 7.01 above.

7.03 Reservation of Space In Ground Level Equipment Structure: During the Initial Term and any Renewal Term of this Lease, American Tower shall provide the Town with one standard full height server rack space, with a functional electrical

connection, in the Ground Level structure built by American Tower to house equipment to serve the communications equipment to be installed on the Monopole Tower, such equipment to be described with more particularity in a separate license agreement executed by the Town and American Tower, which shall be in a form and substance similar to that set forth on the attached Exhibit "D"; provided, however, that in the event of any conflict between the terms of this Lease and the license agreement, the terms of this Lease shall control.

7.04 *Town Access to Leased Property:* Subject to the terms of a separate license agreement executed by the Town and American Tower, which shall be in a form and substance similar to that set forth on the attached Exhibit "D", the Town shall have access to the Leased Property, the Monopole Tower and any structures built to house electrical or communications equipment related to the communications facilities on the Monopole Tower, for purpose of installing, using and maintaining its antennae and associated electrical and communications equipment, in the same manner as any other party to whom American Tower enters into a sublease under the authority of Article 7.01 above.

7.05 *Other Encumbrances Prohibited*: American Tower shall not grant any easements, licenses or rights-of-way or enter into any agreement which would in any way affect or encumber the title to the Leased Property; provided, however, that subleases or licenses made by American Tower under the authority of Article 7.01 above, are permitted.

ARTICLE 8

8.01 *Notices*: All notices, certificates or other communications required hereunder shall be deemed Delivered when delivered in person, or mailed by regular

first class mail, postage prepaid, addressed as follows, or to such other addresses as may be designated, in writing, by the Parties:

To the Town:	TOWN OF HILTON HEAD ISLAND Town Manager One Town Center Court Hilton Head Island, SC 29928
To American Tower:	American Towers, LLC 10 Presidential Way Woburn, MA 01801

ARTICLE 9

9.01 *Events of Default Defined*: The following shall be Events of Default under this Lease:

(1) As To American Tower:

(a) *Failure to Observe Requirements:* The failure of American Tower or any tenant of American Tower to observe or perform any covenant, requirement, term, condition, obligation or agreement contained in this Lease, required to be observed or performed on its part, as follows:

(i) *Failure to Pay Rent or Other Money Due:* The failure to pay Rent or any other money due under the terms of this Lease for a period of thirty (30) days after delivery of written notice from the Town specifying such failure and demand that it be remedied.

(ii) *Failure to Observe any Other Requirement:* The failure to observe or perform any other covenant, requirement, term, condition, obligation or agreement contained in this Lease,

for a period of sixty (60) days after delivery of written notice from the Town specifying such failure and demand that it be remedied.

(b) *Abandonment of Leased Property:* The abandonment of the Leased Property by American Tower or the discontinuance of operations at the Leased Property by American Tower for a period of thirty (30) days.

(2) As to the Town:

(a) *Failure to Observe Requirements:* The failure of the Town to observe or perform any covenant, requirement, term, condition, obligation or agreement contained in this Lease, required to be observed or performed on its part, for a period of sixty (60) days after delivery of written notice from the Town specifying such failure and demand that it be remedied.

9.02 *Remedies on Default*:

(a) *As to the Town:* Whenever any Event of Default described in Article 9.01(1)(a) or (b) of this Lease, shall have occurred and continues for a periods described in Article 9.01(1)(a)(i) and (ii), above, after Delivery of written Notice of Default from the Town Council to American Tower, or shall have occurred and continues for a periods described in Article 9.01(b), above, the Town shall have the right to terminate this Lease and shall give notice to American Tower to vacate the Leased Property. The Town may thereafter evict American Tower from the Leased Property and take possession thereof and also exercise all the rights and remedies provided herein.

(b) *As to American Tower:* Whenever any Event of Default described in Article 9.01(2) of this Lease, shall have occurred and continues for a periods described in Article 9.01(2)(a) above, after Delivery of written Notice of Default from American Tower to the Town, American Tower may terminate this Lease by delivery of written notice thereof to the Town, and upon delivery of such written notice, American Tower shall have no further obligation or liability under this Lease.

9.03 *No Remedy Exclusive*: No remedy conferred upon or reserved to the Town herein is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right and power and such right and power may be exercised from time to time and as often as may be deemed expedient in the sole discretion of the Town.

9.04 *Waivers*: In the event that any agreement contained herein should be breached by either Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other , further or subsequent breach hereunder.

9.05 *Discontinuance of Proceedings*: In case either Party hereto shall have proceeded to enforce any right under this Lease, and such proceedings shall have been discontinued or abandoned for any reason, then and in every such case the Town and American Tower shall be restored respectively to their several positions and rights hereunder and all rights, obligations, remedies and powers of the Town and American

Tower shall continue as though no such proceeding had been taken.

9.06 *Agreement to Pay Attorney's Fees and Expenses*: In the event that either Party hereto shall default under any of the provisions hereof, and the non-defaulting Party shall employ attorneys, or incur other expenses for the enforcement of the performance or observance of any obligation or agreement on the part of the defaulting Party hereto contained, the defaulting Party agrees that it shall pay, on demand, the fees of such attorneys and such other expenses so incurred by the non-defaulting party in the enforcement of its rights hereunder.

9.07 *Force Majeure:* Upon thirty (30) days' written notice from American Tower to the Town that, because of changes in the laws or regulations governing the use of the Monopole Tower and the associated equipment, American Tower is unable to obtain, maintain, renew or reinstate any agreement, easement, permit, certificate, license, variance, zoning approval or any other approval which may be required from any federal, state or local authority necessary to the construction, maintenance and operation of the Monopole Tower or the Intended Use.

ARTICLE 10

10.01 *Interest on Past Due Obligations:* Whenever under any provision of this Lease American Tower shall be obligated to make any payment or expenditure to the Town, or to do any act or thing, or to incur any liability whatsoever, and American Tower fails, refuses or neglects to perform as herein required, the Town shall be entitled but shall not be obligated to make any such payment or expenditure, or do any such act or thing, or to incur any such liability, all on behalf and at the cost and for the account of American Tower, and in such event the amount thereof with interest thereon as

hereinafter provided shall be deemed due upon demand for payment thereof by the Town. Any amount due from American Tower to the Town under this Lease which is not paid when due shall bear interest at the lower of the rate of eighteen (18%) percent per annum or the highest rate then allowed under any applicable usury laws of the State of South Carolina from the date due until paid, unless otherwise specifically provided herein, but the payment of such interest shall not excuse or cure any default by American Tower under this Lease.

ARTICLE 11

11.01 *Binding Effect*: This Lease shall inure to the benefit of and shall be binding upon American Tower and the Town.

11.02 *Amendment, Changes and Modifications*: Except as otherwise provided herein, this Lease may not be effectively amended, changed, modified or altered without written consent of both Parties hereto.

11.03 *Severability*: In the event that any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

11.04 *Execution in Counterparts*: This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

11.05 *Applicable Law:* This Lease shall be governed by and construed in accordance with the laws of the State of South Carolina.

11.06 *Captions*: The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

11.07 *Recording*: The Parties hereto may record this lease, or a short form Memorandum thereof, in the Office of the Register of Deeds for Beaufort County, South Carolina.

11.08 *No Agency*: The Parties hereto intend only to provide for a lease of real property as provided herein, and affirmatively state that no master/servant, principal/agent or employer/employee relationship is created by this Lease. Nothing herein created any

relationship between the Town and American Tower other than that which is expressly stated herein. No employee, volunteer or agent of American Tower shall be considered an employee or agent of the Town for any purpose whatsoever and none shall have any status, right or benefit of employment with Town.

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

11.10 *No Third Party Beneficiaries:* The Town and American Tower affirmatively represent that this Lease is made solely for the benefit of the Parties hereto and not for the benefit of any third party who is not a signature party hereto. No party other than the signature parties hereto shall have any enforceable rights hereunder, or have any right to the enforcement hereof, or any claim for damages as a result of any alleged breach hereof.

ARTICLE 12

12.01 *Sale of Jenkins Island Tract:* The Town may sell the Jenkins Island Tract or a portion of the Jenkins Island Tract to a third party, provided: (i) the sale is made subject to the terms of this Lease; and, (ii) if the sale does not include the assignment of the Town's full interest in this Lease, without requiring compensation from American Tower or any user of the Monopole Tower to be paid to such purchaser, the purchaser must agree to perform any obligation of the Town under this Lease that the Town would no longer have the legal right or ability to perform following the sale.

12.02 *Assignment:*

(a) *By the Town:* The Town may assign this Lease in its entirety to any

third party in conjunction with any sale of the Jenkins Island Tract in accordance with Article 12.01 of this Lease. The Town will not otherwise assign less than the Town's full interest in this Lease, without the prior written consent of American Tower.

(b) *By American Tower:* American Tower may assign this Lease to any affiliate of American Tower without prior notice to or consent of the Town.

In Witness whereof, the Parties hereto, by and through their duly authorized officers, have set their hands and seals as of this 1st Day of October, 2012.

WITNESSES:

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA

_____

By:_____
Drew A. Laughlin, Mayor

_____

Attest:_____
Stephen G. Riley, Town Manager

WITNESSES:

AMERICAN TOWERS, LLC

_____

By:_____

_____

Attest:_____

STATE OF SOUTH CAROLINA)
) UNIFORM ACKNOWLEDGMENT
COUNTY OF BEAUFORT) S.C. CODE ANN. § 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 Communication Tower Ground Lease on behalf of The Town of Hilton Head Island, South Carolina.

Sworn to Before Me on this ___
Day of September, 2012.

_____
Notary Public for South Carolina
My Commission Expires:_____

STATE OF MASSACHUSETTTS)
) UNIFORM ACKNOWLEDGMENT
COUNTY OF MIDDLESEX) S.C. CODE ANN. § 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 Communication Tower Ground Lease on behalf of American Towers, LLC.

Sworn to Before Me on this ___
Day of September, 2012.

_____
Notary Public for Massachusetts
My Commission Expires:_____

EXHIBIT "B"

STATE OF SOUTH CAROLINA	)	
	)	**UNDERGROUND**
COUNTY OF BEAUFORT	)	**UTILITY EASEMENT**

Know All Men By These Presents, that The Town of Hilton Head Island, South Carolina (hereinafter, the "Town"), for and in consideration of the Sum of One Dollar, the receipt and sufficiency of which is acknowledged, and in further consideration of the full and faithful performance of covenants and conditions expressed herein, does hereby grant, bargain and sell, and by these Presents does hereby grant, bargain and sell to American Towers, LLC, (hereinafter, the "American Tower"), a non-exclusive easement for a fixed term, across, under and through real property owned by the Town, for the following purpose:

1. Installing and maintaining underground electric lines and communication lines.

The Easements are described as follows:

All those certain pieces or parcels of land, located on Jenkins Island, Beaufort County, South Carolina, which are more particularly shown and described as "_____" and "_____" on that certain plat of survey entitled "_____", prepared by_____, and being dated _____, and being recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book __ at Page ___.

The grant of this Easement is subject to the following terms and conditions:

1. The Town hereby reserves the right to use or convey the property which is subject to this Easement in any manner whosoever which does not interfere with American Tower's use and enjoyment of the Easement.

2. That Town hereby reserves the right to change the location of the Easement and the lines installed under the authority of the Easement, from time to time, but solely at the expense of the Town. In the event that the Town chooses to exercise its right to

change the location of the Easement and the lines installed under the authority of the Easement, the Town shall give American Tower ninety (90) days advance written notice prior to beginning any work to change the location of the Easement and the lines installed under the authority of the Easement.

3. The Town agrees that landscaping shall not be planted within the boundaries of the Easement.

4. American Tower shall not cut any pavement in the exercise of its rights to install any underground electrical or communications lines, and to the extent that any such lines cross through or under any property covered by pavement, American Tower shall utilize a "jack and bore" method to install the lines.

5. American Tower shall restore any property disturbed or damaged by the exercise of American Tower's rights hereunder to it pre-existing state, which is either vacant, level property, or a level, paved roadway, as the case may be.

6. This Easement is for a fixed term, and shall remain valid and enforceable for such period as the "Communications Tower Ground Lease" dated October 1, 2012, by and between the Town and American Tower shall remain in force. Unless sooner terminated under its terms, the "Communications Tower Ground Lease" shall expire on September 30, 2042; provided, however, that upon termination of the "Communications Tower Ground Lease", for any reason, this Easement shall expire, and American Tower agrees to execute and deliver to the Town a recordable document acknowledging termination of this Easement.

7. This easement is conveyed subject to all other easements, licenses and conveyances of record.

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

In Witness whereof, the parties hereto have caused the within Easement to be executed by their duly authorized officers on this ____ day of September, 2012.

WITNESSES: **AMERICAN TOWERS, LLC**

_____ By:_____

_____ Its:_____

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA

_____ By:_____
Drew A. Laughlin, Mayor

_____ Its:_____
Stephen G. Riley, Town Manager

STATE OF MASSACHUSETTS) UNIFORM ACKNOWLEDGMENT
)
COUNTY OF MIDDLESEX) S.C. CODE ANN. §30-5-30 (Supp. 2011)

I, the undersigned Notary Public do hereby certify that _____ personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of American Tower, LLC.

Sworn to and Subscribed before me
on this ____ day of September, 2012.

_____
Notary Public for Massachusetts
My Commission Expires:_____

STATE OF SOUTH CAROLINA) UNIFORM ACKNOWLEDGMENT
)
COUNTY OF BEAUFORT) S.C. CODE ANNO. §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 September, 2012.

_____
Notary Public for South Carolina
My Commission Expires: _____

EXHIBIT "C"

STATE OF SOUTH CAROLINA	)	
	)	**INGRESS AND EGRESS**
COUNTY OF BEAUFORT	)	**EASEMENT**

Know All Men By These Presents, that The Town of Hilton Head Island, South Carolina (hereinafter, the "Town"), for and in consideration of the Sum of One Dollar, the receipt and sufficiency of which is acknowledged, and in further consideration of the full and faithful performance of covenants and conditions expressed herein, does hereby grant, bargain and sell, and by these Presents does hereby grant, bargain and sell to American Towers, LLC (hereinafter, the "American Tower"), a non-exclusive easement for a fixed term, across the below described real property (hereinafter, the "Easement"), for the purpose of:

> Vehicular and pedestrian access to and from the Leased Property, being a 4900 square foot area shown and described as "_____" on the plat thereof which is recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Plat Book __ at Page ___, over Gateway Drive and any other paved and unpaved roadways located on real property described below and known as the Jenkins Island Tract, as the same may exist from time to time, for access to and from a communications facility as the same is described in the "Communications Tower Ground Lease" dated _____, 2012, by and between the Town and American Tower.

This Easement is on, over and across the Gateway Drive and any other paved and unpaved roadways as the same may exist from time to time on, over and across the real property owned by the Town of Hilton Head Island, South Carolina, known as the Jenkins Island Tract, and which is generally known and described as follows:

> All that certain piece, parcel or lot of land, lying and being in The Town of Hilton Head Island, Beaufort County, State of South Carolina, which is identified on Beaufort County Tax Maps as parcel number R510 006 000 0099 0000, also shown and described as "Town of Hilton Head Island, R501 006 000 0001 55.40 AC., 2413019 S. F." on the plat entitled "Easement Plat of: Reverse Osmosis Site, Gateway Drive, Jenkins Island, Beaufort County, South Carolina" that is recorded in the Office of The

Register of Deeds for Beaufort County, South Carolina, in Plat Book 123 at Page 115 (herein, the "Jenkins Island Tract").

The grant of this Easement is subject to the following terms and conditions:

1. The Town hereby reserves the right to use or convey the property which is subject to this Easement in any manner whosoever which does not interfere with American Tower's use and enjoyment of the Easement.

2. That Town hereby reserves the right to change the location of the Easement, but solely at the expense of the Town. In the event that the Town chooses to exercise its right to change the location of the Easement, the Town shall give American Tower ninety (90) days advance written notice prior to beginning any work to change the location of the Easement.

3. American Tower shall restore any property disturbed or damaged by the exercise of American Tower's rights hereunder to it pre-existing state.

4. The Town may alter the configuration of or relocate Gateway Drive and the other paved and unpaved roadways on the Jenkins Island Tract from time to time as the Town deem advisable in its discretion, and no such alteration or relocation by the Town shall be a breach of American Tower's rights under this easement.

5. This Easement is for a fixed term, and shall remain valid and enforceable for such period as the "Communications Tower Ground Lease" dated October 1, 2012, by and between the Town and American Tower shall remain in force. Unless sooner terminated under its terms, the "Communications Tower Ground Lease" shall expire on September 30, 2042; provided, however, that upon termination of the "Communications Tower Ground Lease", for any reason, this Easement shall expire, and American Tower agrees

to execute and deliver to the Town a recordable document acknowledging termination of this Easement.

6. This easement is conveyed subject to all other easements, licenses and conveyances of record.

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

In Witness whereof, the parties hereto have caused the within Easement to be executed by their duly authorized officers on this ____ day of September, 2012.

WITNESSES: **AMERICAN TOWERS, LLC**

_____ By:_____

_____ Its:_____

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA

_____ By:_____
Drew A. Laughlin, Mayor

_____ Its:_____
Stephen G. Riley, Town Manager

STATE OF MASSACHUSETTS) UNIFORM ACKNOWLEDGMENT
)
COUNTY OF MIDDLESEX) S.C. CODE ANN. §30-5-30 (Supp. 2011)

I, the undersigned Notary Public do hereby certify that _____ personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of American Towers, LLC.

Sworn to and Subscribed before me
on this ____ day of September, 2012.

_____
Notary Public for Massachusetts
My Commission Expires: _____

STATE OF SOUTH CAROLINA) UNIFORM ACKNOWLEDGMENT
)
COUNTY OF BEAUFORT) S.C. CODE ANNO. §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 September, 2012.

_____
Notary Public for South Carolina
My Commission Expires: _____

PRELIMINARY

GENERAL NOTES

THIS EASEMENT SURVEY WAS PREPARED FOR THE EXCLUSIVE USE OF AT&T AND EXCLUSIVELY FOR THE TRANSFERRAL OF THE LEASEHOLD AND THE RIGHTS OF EASEMENT SHOWN HEREON AND SHALL NOT BE USED AS AN EXHIBIT OR EVIDENCE IN THE FEE SIMPLE TRANSFERRAL OF THE SUBJECT PROPERTY NOR ANY PORTION OR PORTIONS THEREOF. NO BOUNDARY SURVEY WAS PERFORMED.

THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF A TITLE REPORT WHICH MAY REVEAL ADDITIONAL CONVEYANCES, EASEMENTS, OR RIGHTS-OF-WAY NOT SHOWN HEREON.

EQUIPMENT USED FOR ANGULAR & LINEAR MEASUREMENTS: LEICA TCRA 1103 ROBOTIC

THE FIELD DATA UPON WHICH THIS EASEMENT SURVEY IS BASED HAS A CLOSURE PRECISION OF ONE FOOT IN 20,000+ FEET AND AN ANGULAR ERROR OF 5.0" PER ANGLE POINT AND WAS ADJUSTED USING LEAST SQUARES.

THE PLAT HAS BEEN CALCULATED FOR CLOSURE AND IS FOUND TO BE ACCURATE TO WITHIN ONE FOOT IN 100,000+ FEET.

THE 2' CONTOURS AND SPOT ELEVATIONS SHOWN ON THIS EASEMENT SURVEY ARE ADJUSTED TO NAVD 88 DATUM AND HAVE A VERTICAL ACCURACY OF ± 1'. CONTOURS AND SPOT ELEVATIONS OUTSIDE THE IMMEDIATE SITE AREA ARE APPROXIMATE.

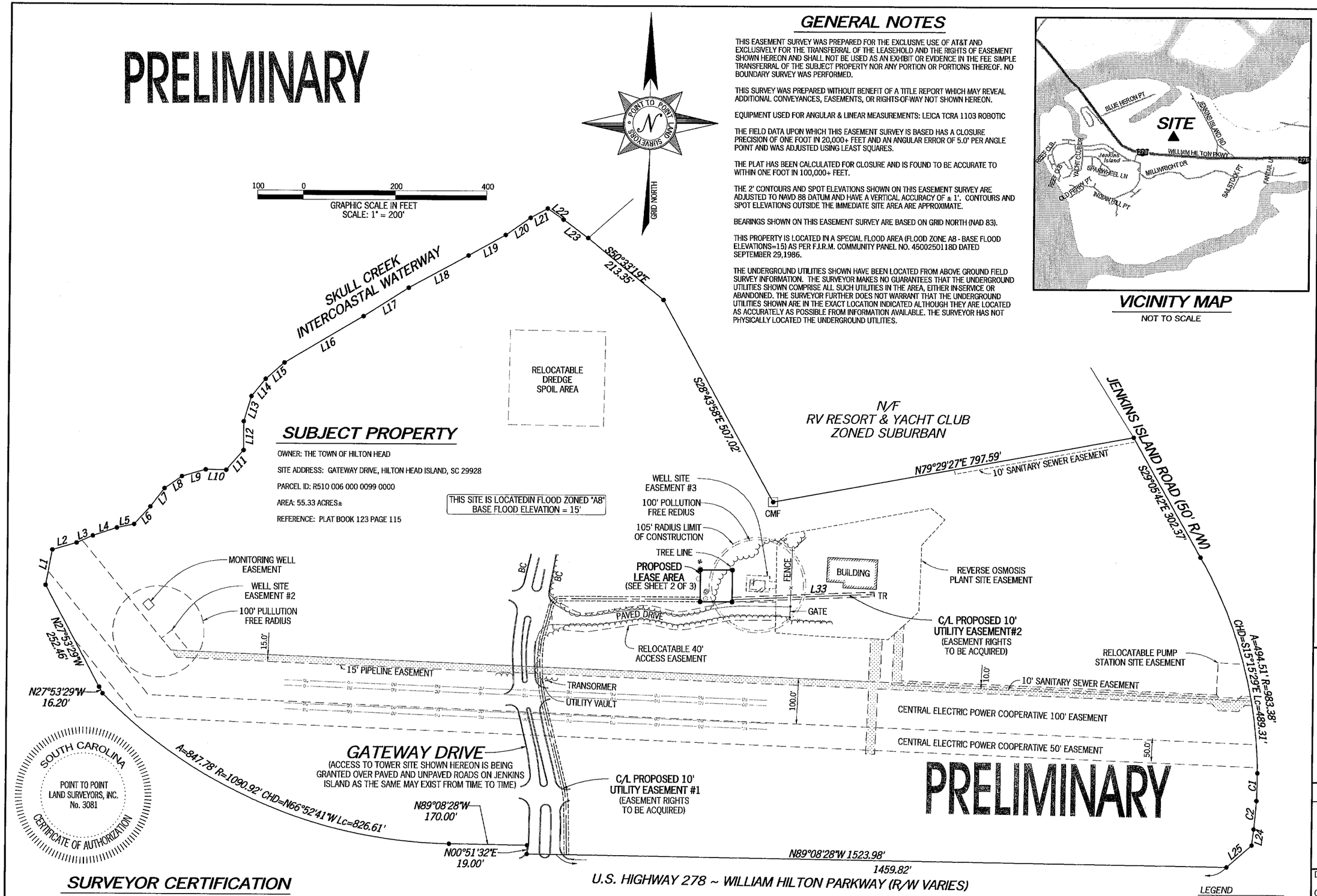
BEARINGS SHOWN ON THIS EASEMENT SURVEY ARE BASED ON GRID NORTH (NAD 83).

THIS PROPERTY IS LOCATED IN A SPECIAL FLOOD AREA (FLOOD ZONE A8 - BASE FLOOD ELEVATIONS=15) AS PER F.I.R.M. COMMUNITY PANEL NO. 4500250118D DATED SEPTEMBER 29,1986.

THE UNDERGROUND UTILITIES SHOWN HAVE BEEN LOCATED FROM ABOVE GROUND FIELD SURVEY INFORMATION. THE SURVEYOR MAKES NO GUARANTEES THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA, EITHER IN-SERVICE OR ABANDONED. THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED ALTHOUGH THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM INFORMATION AVAILABLE. THE SURVEYOR HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITIES.

VICINITY MAP

NOT TO SCALE



SUBJECT PROPERTY

OWNER: THE TOWN OF HILTON HEAD

SITE ADDRESS: GATEWAY DRIVE, HILTON HEAD ISLAND, SC 29928

PARCEL ID: R510 006 000 0099 0000

AREA: 55.33 ACRES±

REFERENCE: PLAT BOOK 123 PAGE 115

THIS SITE IS LOCATEDIN FLOOD ZONED "A8"
BASE FLOOD ELEVATION = 15'

SURVEYOR CERTIFICATION

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "B" SURVEY SPECIFIED THEREIN.

THIS SURVEY IS NOT FOR RECORDATION PURPOSES.

LEGEND

POB	POINT OF BEGINNING
POC	POINT OF COMMENCEMENT
CMF	CONCRETE MONUMENT FOUND
EP	EDGE OF PAVEMENT
BC	BACK OF CURB
OU	OVERHEAD UTILITY
TR	TRANSFORMER
N/F	NOW OR FORMERLY

SOUTH CAROLINA REGISTERED LAND SURVEYOR ROLAND McCANN

NO.	DATE	REVISION
1	12/07/2011	REVISE LEASE - CLC
2	01/18/2012	ADD TREE LOCATIONS
3	04/25/2012	REV. ACCESS WIDTH
4	06/13/2012	ADDED UTIL. ESMT.

EASEMENT SURVEY PREPARED BY:

POINT TO POINT LAND SURVEYORS
810 Jackson Street
Locust Grove, Georgia 30248
(p) 678.565.4440 (f) 678.565.4497
(w) pointtopointsurvey.com

EASEMENT SURVEY PREPARED FOR:

at&t

"HHI_BIC_35"

SITE NO.
410-441
HILTON HEAD ISLAND
BEAUFORT COUNTY
SOUTH CAROLINA

DRAWN BY: NRW
CHECKED BY: MW
APPROVED: C. INER
DATE: 14 NOVEMBER, 2011
P2P JOB #: 2011.716

SHEET: 1 OF 3

K:\2011\2011.716\2011.716.dwg

MEMORANDUM

TO: Town Council

VIA: Stephen G. Riley, ICMA-CM, Town Manager

FROM: Jill Foster, Deputy Director of Community Development

RE: Proposed Metropolitan Planning Area Boundaries and creation of a Metropolitan Planning Organization

CC: Charles Cousins, Scott Liggett, Darrin Shoemaker

DATE: July 20, 2012

Recommendation: That the Council adopt Metropolitan Planning Area (MPA) boundaries; create a Metropolitan Planning Organization (MPO) and policy board; and designate the Lowcountry Council of Governments (LCOG) as the lead agency to coordinate the MPO.

- *MPA Boundaries:* See attached Map.
- *Lead Agency*: It is recommended that the Lowcountry Council of Governments take the lead in operating the MPO. This agency currently oversees transportation planning on a regional basis and also receives federal funding for the rural part of the region. Staffing for this organization would be headed by LCOG, with assistance from various other governmental staff, as per a written agreement.
- *MPO Policy Board:* See attached Resolution. 23 USC 134 requires the following membership:
    - *Local elected officials.*
    - *Officials of public agencies that operate major modes of transportation in the metropolitan area.*
    - *Appropriate state officials.* .

Summary: A Metropolitan Planning Organization is a transportation policy-making organization made up of representatives from local government and transportation authorities. MPOs were created in order to ensure that existing and future expenditures for transportation projects and programs were based on a comprehensive, cooperative, and continuing (3-C) planning process. The role of the MPO includes: establishing a local forum for transportation decision making; evaluating transportation alternatives; developing and updating a long-range transportation plan; developing a Transportation Improvement Program (TIP); and getting the public involved. Each MPO long range plan and TIP is encompassed into the State's plans and programs. Funds from the Federal Highway Administration are distributed to the State and then to MPOs for these transportation projects.

MPA Boundary Justification:

- Boundaries are outlined on the attached map and include the required Urbanized Area (UZA) of Hilton Head Island, Bluffton, and portions of southern Beaufort County.
- The area also includes those areas expected to urbanize within the next 20 years which coincide with the geography of regional economic development and growth forecasting areas (Hardeeville, portions of Jasper County, Beaufort, Port Royal, and portions of northern Beaufort County).
- Cooperative transportation planning would be provided comprehensively and regionally instead of by political jurisdictions.
- These boundaries allow for inclusion of entire US 278 corridor to I-95 within the planning boundary of the MPO as well as the proposed port area in Jasper County.
- Significant portions of land along US 278 corridor have been permitted for residential & commercial growth in Hardeeville which would allow joint & cooperative planning of the US 278 corridor.
- These boundaries facilitate existing cooperative planning currently underway between Hardeeville and Beaufort County on Bluffton Parkway Phases 6 & 7.
- These boundaries support interest in continuous planning of the US 278 corridor that serves as primary access route for southern Beaufort County.
- SC 170 corridor is a potential high growth area and can be better served with comprehensive planning from both sides of Broad River.
- These boundaries limit duplicate staff efforts for planning in separate areas.

Funding:

There are various monies available for start-up funds, operating funds, and project funds, based on the population of the Urbanized Area:

- 'Start-up' money is available from the state for operating costs. We would apply for this start-up money through the SCDOT Secretary this summer.
- Annual operating money is available from the Federal Government (called PL funds). We would receive these on a federal fiscal year cycle. Conversations with the two smallest existing MPOs indicate they get $135,000-155,000 per year in PL funds for operating expenses, and our MPO would be required to have a 20% match to these funds. We will be notified of our funding amount before March 2013.
- Other federal monies are given to MPOs for the actual transportation projects. We anticipate an estimated $2.4 million might be given to our MPO, based on data from the other two small MPOs in the state. We will be notified of our funding amount before March 2013. Only enhancement-type funds require a 20% local match.
- An agreement between the participating jurisdictions would determine the percentage of matching funds from each governmental jurisdiction for operating and capital costs.

Schedule:

*By August 30, 2012***:**

- Boundaries for the MPA must be submitted to the Governor (via SCDOT) for approval. Boundaries shall be determined by agreement between the MPO and the Governor.
- Apply for start up money from state through State Planning and Research (SPR), National Highway System (NHS), Surface Transportation Program (STP) and Minimum Guarantee (MG) funds.

By October 2012: State will revise intra-state formulas for PL fund allocations to MPOs.

By March 2013:

- Coordinate any FTA funding issues.
- Update Functional Highway Classifications.
- Develop a signed jurisdictional agreement. The MPO, State, and the public transportation operator shall cooperatively determine their mutual responsibilities. To the extent possible, a single agreement between all parties should be developed. The written agreement shall include responsibilities of all parties, specific provisions for cooperatively developing and sharing information related to the development of financial plans that support the metropolitan transportation plan and the TIP and development of the annual listing of obligated projects.
- New MPO must be designated by Governor.
- Following MPA boundary approval by the MPO and the Governor, the boundary descriptions shall be provided for informational purposes to the FHWA and the FTA.

October 2013: Start receiving annual PL funding from federal government for operating costs.

By March 2014:

- Develop simplified statement of work or a Unified Planning Work Program (UPWP), which is a document that explains the disposition of transportation planning funds in the MPO area. The document must contain a description of the planning work and resulting products, who will perform the work, time frames for completing the work, the cost of the work, and the source(s) of funds.

By March 2016:

- Develop and adopt Long Range Transportation Plan (LRTP): 20-30 year implementation plan that guides the region's vision over at least the next twenty years and must contain projects that are "cost feasible," meaning projects that can be built with funds that are reasonably expected to be obligated over the plan's timeframe.
- Draft and adopt a Transportation Improvement Program (TIP), a 4-5 year fiscally constrained prioritized project list and required for project to be eligible for funding under title 23 U.S.C. and title 49 U.S.C. Chapter 53.
- Develop and adopt public participation program.
- Develop Title VI Complaint Process.
- SCDOT must approve these plans for inclusion into their state plans and STIP. Plans are to be accepted by the state before funding can commence.

October 2016: Start receiving capital improvement guideshare funding on annual basis from federal government.

Background:

With the 2010 census results, the Bureau of the Census designated the Town of Hilton Head Island, the Town of Bluffton, and portions of southern Beaufort County to be in an 'Urbanized Area' (UZA) because their combined population (68,998) is now over 50,000.

Creation of the boundaries and organization are governed by CFR 450.310 and 450.312:

- *"To carry out the metropolitan transportation planning process …, a metropolitan planning organization shall be designated for each urbanized area with a population of more than 50,000 individuals (as determined by the Bureau of the Census)."*
- "*MPO designation shall be made by agreement between the governor and units of general purpose local government that together represent at least 75% of the affected population (including the largest incorporated city, based on population, as named by the Bureau of the Census)."*
- "*The boundaries of a metropolitan planning area shall be determined by agreement between the MPO and the Governor. At a minimum, the MPA boundaries shall encompass the entire existing urbanized area plus the contiguous area expected to become urbanized within a 20-year forecast period for the metropolitan transportation plan."*
- *"MPA boundaries may be established to coincide with the geography of regional economic development and growth forecasting areas."*

The State has given a deadline of March 2013 for the formation of our MPO. There are currently 10 MPOs in the State of South Carolina, ranging in population from 73,107-549,777. This new MPO would be the smallest at 68,998.

The municipalities of Beaufort, Port Royal, Hardeeville, Bluffton, Hilton Head Island and both Jasper and Beaufort County are in the process of approving a similar resolution prior to the August 30, 2012 state deadline.

Enclosures:

- Map showing UZA boundaries, expanded area, & MPA boundaries
- Resolution

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND TO ADOPT GEOGRAPHICAL BOUNDARIES FOR A BEAUFORT COUNTY AND JASPER COUNTY METROPOLITAN PLANNING AREA AND TO CREATE A METROPOLITAN PLANNING ORGANIZATION

WHEREAS, in March 2012, the Bureau of the Census defined a new Urbanized Area, based on the 2010 Census, when the combined population of the Town of Hilton Head Island, the Town of Bluffton, and parts of unincorporated Beaufort County reached over 50,000; and

WHEREAS, 23 CFR Section 450.310(a) requires that a Metropolitan Planning Organization (MPO) be designated for each Urbanized Area with a population of more than 50,000 individuals as determined by the Bureau of the Census; and

WHEREAS, the purpose of the MPO is to carry out a continuing, cooperative, and comprehensive multimodal transportation planning process, including the development of a metropolitan transportation plan and a transportation improvement program that encourages and promotes the safe and efficient development, management, and operation of surface transportation systems to serve the mobility needs of people and freight (including accessible pedestrian walkways and bicycle transportation facilities) and foster economic growth and development, while minimizing transportation-related fuel consumption and air pollution; and

WHEREAS, the MPO is a policy board of the organization created and designated to carry out the metropolitan transportation planning process and act as the forum for cooperative decision making by the principal elected officials of the units of general purpose local government; and

WHEREAS, this Policy Board shall be governed by its own bylaws and shall consist of the following voting members:

Town of Hilton Head Island Mayor or designee	(1)
Town of Bluffton Mayor or designee	(1)
Town of Port Royal Mayor or designee	(1)
City of Beaufort Mayor or designee	(1)
City of Hardeeville Mayor or designee	(1)
Beaufort County Council Chairman or designee	(1)
Jasper County Council Chairman or designee	(1)
Beaufort County Legislative Delegation Representative	(1)
Jasper County Legislative Delegation Representative	(1)
SC Transportation Commissioners within MPA	(3)

and the following ex-officio, non-voting members:

LRTA Executive Director or designee	(1)
SCDOT staff	(1)

WHEREAS, funds are provided by the Federal government through the State to accomplish required activities of the MPO; and

WHEREAS, the MPO designation shall be made by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the affected population; and

WHEREAS, the Metropolitan Planning Area (MPA) boundaries in which the metropolitan transportation planning process is carried out by the MPO shall encompass the entire existing Urbanized Area plus the contiguous area expected to become urbanized within a 20 year forecast period for the metropolitan transportation plan. This area will include all or some portion of the above-referenced governmental entities; and

WHEREAS, the MPA boundaries may be established to coincide with the geography of regional economic development and growth forecasting areas; and

WHEREAS, Lowcountry Council of Governments (LCOG) has traditionally coordinated transportation planning and federal transportation fund distribution in a multi-county area; and

WHEREAS, LCOG should retain the role of coordinating transportation planning and federal fund distribution to the designated multi-county area by becoming the fiscal agent and lead agency for coordination of the MPO, with assistance from the participating governments and public transit organization.

NOW, THEREFORE BE IT, AND IT HEREBY IS RESOLVED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, THAT Council approves and agrees as follows:

1. The MPA boundaries as designated on the Attachment, subject to final "smoothing" of the area perimeter; and
2. The creation of the MPO, with Policy Board as constituted above; and
3. To be a member of and participate in the activities of the MPO; and
4. To contribute a portion of the local matching funds required to establish and operate the MPO, equal to its per capita share of the MPA's current population; and
5. The designation of Lowcountry Council of Governments as fiscal agent and entity leading and coordinating the MPO; and
6. The name of the MPO shall be the Lowcountry Area Transportation Study.

MOVED, APPROVED, AND ADOPTED ON THIS 7th DAY OF August, 2012.

_____
Drew A. Laughlin, Mayor

ATTEST:

_____
Victoria L. Pfannenschmidt, Acting Town Clerk

APPROVED AS TO FORM:

_____
Gregory M. Alford, Town Attorney

Introduced by Council Member: _____

MPO, TAZ and Urban Cluster data generously provided by Beaufort County GIS Department.

LEGEND

- TAZ Boundaries 2010
- MPO Boundary Including Hardeeville
- Hardeeville, SC Urban Cluster: 4,437
- Sun City Hilton Head, SC Urban Cluster: 12,555
- Beaufort / Port Royal / Lady's Island, SC Urban Cluster: 48,807
- Hilton Head / Bluffton, SC Urbanized Area: 69,998
- TAZ in MPO Boundary
- City of Beaufort
- Town of Port Royal
- Town of Bluffton
- City of Hardeeville (incorporated into Beaufort County)
- Town of Hilton Head Island
- Beaufort
- Colleton
- City of Hardeeville Limits
- Chatham
- Jasper
- Effingham
- Water
- Roads
- Interstate
- Future Bluffton Parkway

0 2.5 5 7.5 10

Scale in Miles

MEMORANDUM

TO: Town Council

FROM: Stephen G. Riley, ICMA-CM, Town Manager

RE: Proposed Resolution/Second Amendment to October 25, 2011, Communications Tower Ground Lease between the Town of Hilton Head Island, South Carolina, and American Towers, LLC

DATE: August 7, 2012

Recommendation: Staff requests that Town Council approve the proposed Second Amendment to October 25, 2011, Communications Tower Ground Lease between the Town of Hilton Head Island, South Carolina, and American Towers, LLC at the Town's Fire Station 7 Property on Marshland Road.

.

Summary: This Resolution would authorize the Mayor and the Town Manager to:

(a) Execute and deliver a proposed Second Amendment to October 25, 2011, Communications Tower Ground Lease between the Town of Hilton Head Island, South Carolina, and American Towers, LLC

Background: On October 25, 2011, the Town entered into a "Communications Tower Ground Lease" with American Towers, LLC. Under the terms of that Lease, a monopole communications tower has now been built at the Fire Station 7 site. American Towers, LLC, has requested a modification to the terms of the lease relating the payment of the Rent. Under the terms of the Lease, the Rent and the Co-Location Fees escalate each time the Lease renews, which can occur in 2017, 2022, 2027, 2032 and 2037. Because of a glitch in the software utilized by American Towers, LLC, it has requested that the Lease be modified so that the escalated rent will begin on January 1 of any year that the lease renews, instead of the actual anniversary date, which is in March. The proposed Amendment is beneficial to the Town, because under this proposed Amendment, the Town will receive three additional months of escalated Rent and Co-Location Fees each time the Lease is renewed.

RESOLUTION NUMBER: 2012-_____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION AND DELIVERY OF A SECOND AMENDMENT TO THE OCTOBER 25, 2011, COMMUNICATIONS TOWER GROUND LEASE BETWEEN THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AND AMERICAN TOWERS, LLC, FOR A TOWER SITE AT THE TOWN'S FIRE STATION 7 PROPERTY ON MARSHLAND ROAD.

WHEREAS, heretofore, on October 25, 2011, the Town of Hilton Head Island, South Carolina, and American Towers, LLC, entered into a Communication Tower Ground Lease for a site that is part of the Town's Fire Station 7 Property on Marshland Road; and,

WHEREAS, the October 25, 2011, Communication Tower Ground Lease was amended on March 22, 2012; and,

WHEREAS, American Towers, LLC, has requested a Second Amendment to the October 25, 2011, Communication Tower Ground Lease, to amend the change dates for the payment of increased Base Rent and Co-location Fees due under the terms and conditions of the October 25, 2011, Communication Tower Ground Lease; and,

WHEREAS, The Town Council of The Town of Hilton Head Island, South Carolina, is authorized to enter into leases of Town owned land under the authority of S. C. Code Ann. § 5-7-40 (Supp. 2011), and § 2-3-30 and § 2-7-20, *Code of The Town of Hilton Head Island, South Carolina* (1983).

WHEREAS, The Town Council of the Town of Hilton Head Island, South Carolina has determined that it is in the best interests of the Town of Hilton Head Island, South Carolina, to authorize the execution and delivery of the proposed Second Amendment to the October 25, 2011, Communications Tower Ground Lease.

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

1. The Mayor and Town Manager are hereby authorized to negotiate and to execute the "Second Amendment to Communication Tower Ground Lease" by and between The Town of Hilton Head Island, South Carolina, and American Towers, LLC, a copy of which is attached hereto as Exhibit "A".

2. The Mayor and Town Manager are hereby authorized to take such other and further action as may be necessary to complete the obligations of The Town of Hilton Head Island, South Carolina, as described in the "Second Amendment to Communication Tower Ground Lease" to be executed by them, which is authorized hereby.

PASSED AND APPROVED BY THE TOWN COUNCIL THIS ____ DAY OF AUGUST, 2012.

_____
Drew A. Laughlin, Mayor

ATTEST:

_____
Victoria L. Pfannenschmidt
Acting Town Clerk

APPROVED AS TO FORM:

_____
Gregory M. Alford, Town Attorney

Introduced by Council Member: _____

EXHIBIT “A”

SECOND AMENDMENT TO
COMMUNICATION TOWER GROUND LEASE

By and Between

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA

and

AMERICAN TOWERS LLC

DATED: MAY ___, 2012

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STATE OF SOUTH CAROLINA	)	SECOND AMENDMENT TO
	)	COMMUNICATION TOWER GROUND LEASE
COUNTY OF BEAUFORT	)	

This Second Amendment to Communication Tower Ground Lease is made by and between The Town of Hilton Head Island, South Carolina, One Town Center Court, Hilton Head Island, South Carolina, 29928 (hereinafter, the "Town"), and American Towers LLC, a Delaware limited liability Company, with a mailing address of 10 Presidential Way, Woburn, MA, 01801 (hereinafter, "American Tower"), on this ____ Day of May, 2012.

R E C I T AL S

WHEREAS, heretofore, on October 25, 2011, the Town and American Tower, entered into a Communication Tower Ground Lease (hereinafter, the "Lease"); and,

WHEREAS, the Lease was previously amended by an "Amendment to Communication Tower Ground Lease" dated March 22, 2012; and,

WHEREAS, American Tower has requested a Second Amendment to the October 25, 2011, Communication Tower Ground Lease, to amend the dates upon which the Rent rates will change under the terms of the of the Lease; and,

WHEREAS, The Town Council for The Town of Hilton Head Island, South Carolina, has determined that the proposed second Amendment to the Lease is in the best interests of the citizens, residents and visitors on Hilton Head Island; and,

WHEREAS, The Town Council of The Town of Hilton Head Island, South Carolina, is authorized to enter into leases of Town owned land under the authority of S. C. Code Ann. § 5-7-40 (Supp. 2010), and § 2-3-30 and § 2-7-20, *Code of The Town of*

Hilton Head Island, South Carolina (1983, as amended).

NOW, THEREFORE, for and in consideration of the sum of One Dollar, and the full and faithful performance of the obligations, conditions and covenants contained in the Lease, as Amended hereby, the receipt and sufficiency of which are acknowledged by the Parties hereto, the Town and American Tower agree as follows:

I. *Amendment to Lease:* Article 4.01 and Article 4.02 of the Lease are deleted in their entirety, and are replaced with the following Amendments to Article 4.01 and 4.02:

4.01 *Base Rent:* American Tower shall pay Base Rent to the Town during the Initial Term or any renewal Term of this Lease as follows:

(a) *Base Rent:* For each year of the Initial Term of this Lease, and any Renewal Term of this Lease, American Tower shall pay the Town Base Rent in the amounts set forth in Articles 4.01(a)(i)(ii)(iii)(iv)(v) and (vi) below. The Base Rent shall be paid to the Town annually, in advance, no later than January 15 of each year of the Initial Term of this Lease, or any Renewal Term of this Lease. The Base Rent shall be paid pro rata for any partial year, including the year that this Lease commences.

(i) *Initial Term Base Rent:* During the Initial Term of this Lease, American Tower shall pay the Town Base Rent in the amount of Twelve Thousand and no/100 ($12,000.00) Dollars per year beginning on March 26, 2012, and continuing through December 31, 2016.

(ii) *First Renewal Term:* For each year of the First Renewal Term of this Lease, American Tower shall pay the Town Base Rent in the amount of Thirteen Thousand Eight Hundred and no/100 ($13,800.00) Dollars per year; provided, however, that American Tower shall pay the increased Base Rent of Thirteen Thousand Eight Hundred and no/100 ($13,800.00) Dollars per year beginning on January 1, 2017.

(iii) *Second Renewal Term:* For each year of the Second Renewal Term of this Lease, American Tower shall pay the Town Base Rent in the amount of Fifteen Thousand Eight Hundred Seventy and no/100 ($15,870.00) Dollars per year; provided, however, that American Tower shall pay the increased Base Rent of Fifteen Thousand Eight Hundred Seventy and 00/100 ($15,870.00) Dollars per year beginning on January 1, 2022.

(iv) *Third Renewal Term:* For each year of the Third Renewal Term of this Lease, American Tower shall pay the Town Base Rent in the amount of Eighteen Thousand Two Hundred Fifty and no/100 ($18,250.00) Dollars per year; provided, however, that American Tower shall pay the increased Base Rent of Eighteen Thousand Two Hundred Fifty and no/100 ($18,250.00) Dollars per year beginning on January 1, 2027.

(v) *Fourth Renewal Term:* For each year of the Fourth

Renewal Term of this Lease, American Tower shall pay the Town Base Rent in the amount of Twenty Thousand Nine Hundred Eighty Seven and no/100 ($20,987.00) Dollars per year; provided, however, that American Tower shall pay the increased Base Rent of Twenty Thousand Nine Hundred Eighty Seven and no/100 ($20,987.00) Dollars per year beginning on January 1, 2032.

(vi) *Fifth Renewal Term:* For each year of the Fifth Renewal Term of this Lease, American Tower shall pay the Town Base Rent in the amount of Twenty Four Thousand One Hundred Thirty Five and no/100 ($24,135.00) Dollars per year; provided, however, that American Tower shall pay the increased Base Rent of Twenty Four Thousand One Hundred Thirty Five and no/100 ($24,135.00) Dollars per year beginning on January 1, 2037.

4.02 *Co-Location Fee:* For each year of the Initial Term of this Lease, and any Renewal Term of this Lease American Tower shall pay the Town a Co-Location Fee for each sub-lease, license or other co-location agreement entered into between American Tower and any third-party for space on the Monopole Tower and any other part of the Leased Property, excluding one "Anchor Tenant" and the Town (herein, "Additional Co-locator").

(a) *Co-Location Fee:* American Tower shall pay the Town a Co-Location Fee in the amounts set forth in Articles 4.02(a)(i)(ii)(iii)(iv)(v) and (vi) below. American Tower shall pay the Co-Location Fee yearly, in

arrears, no later than January 15 of the following year. The initial payment of the Co-Location Fee shall be due with the first annual rent installment payable after the commencement date (as defined therein) of each sub-lease, license or other co-location agreement with an Additional Co-locator. In the event a sub-lease, license or other co-location agreement with any Additional Co-locator expires or terminates, American Tower' obligation to pay the Co-location fee for such sub-lease, license or other co-location agreement shall terminate on the date of such termination or expiration. American Tower shall notify the Town in writing of such termination or expiration within fifteen (15) days of the date of such termination or expiration. Notwithstanding anything contained herein, no Co-Location fee shall be due for any sub-lease, license or other co-Location agreement for any sub-lease or transfer to any subsidiary, parent or affiliate of American Tower, if such sub-lease or transfer does not result in additional equipment on the Monopole Tower.

(i) *Initial Term Co-Location Fee:* For each year of the Initial Term of this Lease, American Tower shall pay the Town a Co-Location Fee of Four Hundred and no/100 ($400.00) Dollars per month for each Additional Co-Locator beginning on March 26, 2012, and continuing through December 31, 2016.

(ii) *First Renewal Term Co-Location Fee:* For each year of the First Renewal Term of this Lease, American Tower shall pay the

Town a Co-Location Fee in the amount of Four Hundred Sixty and no/100 ($460.00) Dollars per month for each Additional Co-Locator; provided, however, that American Tower shall pay the increased Co-Location Fee of Four Hundred Sixty and no/100 ($460.00) Dollars per month for each Additional Co-Locator beginning on January 1, 2017.

(iii) *Second Renewal Term Co-Location Fee:* For each year of the Second Renewal Term of this Lease, American Tower shall pay the Town a Co-Location Fee in the amount of Five Hundred Twenty Nine and no/100 ($529.00) Dollars per month for each Additional Co-Locator; provided, however, that American Tower shall pay the increased Co-Location Fee of Five Hundred Twenty Nine and no/100 ($529.00) Dollars per month for each Additional Co-Locator beginning on January 1, 2022.

(iv) *Third Renewal Term Co-Location Fee:* For each year of the Third Renewal Term of this Lease, American Tower shall pay the Town a Co-Location Fee in the amount of Six Hundred Eight and no/100 ($608.00) Dollars per month for each Additional Co-Locator; provided, however, that American Tower shall pay the increased Co-Location Fee of Six Hundred Eight and no/100 ($608.00) Dollars per month for each Additional Co-Locator beginning on January 1, 2027.

(v) *Fourth Renewal Term Co-Location Fee:* For each year of the Fourth Renewal Term of this Lease, American Tower shall pay the Town a Co-Location Fee in the amount of Six Hundred Ninety Nine and no/100 ($699.00) Dollars per month for each Additional Co-Locator provided, however, that American Tower shall pay the increased Co-Location Fee of Six Hundred Ninety Nine and no/100 ($699.00) Dollars per month for each Additional Co-Locator beginning on January 1, 2032.

(vi) *Fifth Renewal Term Co-Location Fee:* For each year of the Fifth Renewal Term of this Lease, American Tower shall pay the Town a Co-Location Fee in the amount of Eight Hundred Three and no/100 ($803.00) Dollars per month for each Additional Co-Locator; provided, however, that American Tower shall pay the increased Co-Location Fee of Eight Hundred Three and no/100 ($803.00) Dollars per month for each Additional Co-Locator beginning on January 1, 2037.

II. *No Other Changes:* Unless expressly amended by this Second Amendment to October 25, 2011, Communication Tower Ground Lease, all other terms and conditions of the October 25, 2011, Communication Tower Ground Lease, as Amended by the March 22, 2012, Amendment to the October 25, 2011, Communication Tower Ground Lease, remain unchanged and in full force.

In Witness whereof, the Parties hereto, by and through their duly authorized

officers, have set their hands and seals as of this ____ Day of May, 2012.

WITNESSES:	**THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA**
_____	By:_____ Drew A. Laughlin, Mayor
_____	Attest:_____ Stephen G. Riley, Town Manager
WITNESSES:	**AMERICAN TOWERS LLC**
_____	By:_____
_____	Attest:_____

STATE OF SOUTH CAROLINA)
) UNIFORM ACKNOWLEDGMENT
COUNTY OF BEAUFORT) S.C. CODE ANN. § 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 Second Amendment to Communication Tower Ground Lease on behalf of The Town of Hilton Head Island, South Carolina.

Sworn to Before Me on this ___
Day of May, 2012.

_____
Notary Public for South Carolina
My Commission Expires:_____

STATE OF MASSACHUSETTS)
) UNIFORM ACKNOWLEDGMENT
COUNTY OF MIDDLESEX) S.C. CODE ANN. § 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 Second Amendment to Communication Tower Ground Lease on behalf of American Towers LLC.

Sworn to Before Me on this ___
Day of May, 2012.

_____
Notary Public for Massachusetts
My Commission Expires:_____

TOWN OF HILTON HEAD ISLAND

Community Development Department

TO:	Town Council
VIA:	Steve Riley, *ICMA-CM, Town Manager*
VIA:	Charles Cousins, Community Development Director
FROM:	Shea Farrar, *Senior Planner*
CC:	Scott Liggett, *PE, Director of Public Projects and Facilities / Chief Engineer*
DATE	July 26, 2012
SUBJECT:	Proposed Agreement with Hilton Head Public Service District

Recommendation:

Staff requests that Town Council approve the proposed Agreement between the Town and the Hilton Head Public Service District (HHPSD) related to the reimbursement of the HHPSD for the cost of the design and construction of sewerage projects on Hilton Head Island known as the "Mathews Drive LPS/Broad Creek Headwaters" project, the "William Hilton Parkway LPS/Chaplin Linear Park" project, the "Squire Pope Sewer Extension/Ford's Shell Ring" project and the "Fish Haul Sewer Connection".

Summary:

This Resolution would authorize the Mayor and the Town Manager to:

(a) Execute and deliver a proposed Agreement between The Town of Hilton Head Island, South Carolina, and HHPSD, and

(b) Authorize the Town Manager to take such actions as are necessary to complete the Town's obligations under the Agreement.

Background:

Previously, the Town has entered into an Agreement with the HHPSD whereby the Town reimbursed the HHPSD for its costs in the design and construction of a sewerage project in the Stoney area. This proposed Agreement is, other than the description of the projects, identical to the previous Agreement.

The funds for the reimbursement to the HHPSD come from the Beach Preservation Fees for the connection of Fish Haul Park to sewer and the Tax Increment Financing Funds for the other three projects. The cost for the four projects is as follows:

(a)	*Mathews Drive LPS/Broad Creek Headwaters:*	$ 24,900.00
(b)	*Williams Hilton Parkway LPS/Chaplin Linear Park:*	$ 116,500.00
(c)	*Squire Pope Sewer Extension/Ford's Shell Ring:*	$ 307,855.00
(d)	*Fish Haul Park Sewer Connection*:	$ 31,000.00

When the projects are completed, the HHPSD will accept the projects for permanent ownership, operation and maintenance.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTRACT BETWEEN THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AND THE HILTON HEAD No. 1 PUBLIC SERVICE DISTRICT RELATING TO THE SEWAGE EXPANSION PROJECTS KNOWN AS THE "MATHEWS DRIVE LPS/BROAD CREEK HEADWATERS", THE "WILLIAM HILTON PARKWAY LPS/CHAPLIN LINEAR PARK", THE "SQUIRE POPE SEWER EXTENSION/FORD'S SHELL RING" AND SEWAGE CONNECTION PROJECT KNOWN AS THE "FISH HAUL SEWER CONNECTION" PROJECT.

WHEREAS, the Town of Hilton Head Island, South Carolina, has adopted a ordinance providing for the payment of the cost of certain public facilities utilizing Tax Increment Financing; and,

WHEREAS, providing sewerage infrastructure in the Chaplin, Marshland Road and Stoney areas of Hilton Head Island is the type of public project intended to paid for with funds generated by and within the Tax Increment Financing District; and,

WHEREAS, on November 15, 1993, the Town Council adopted Ordinance Number 93-32 establishing the "Beach Preservation Fee"; and

WHEREAS, providing sewerage infrastructure at the Town's Fish Haul Park is the type of public project intended to paid for with funds generated by the Beach Preservation Fee; and,

WHEREAS, the Town of Hilton Head Island, South Carolina, and the Hilton Head No. 1 Public Service District have reached an Agreement regarding the design and construction of sewerage infrastructure in the Chaplin, Marshland Road and Stoney areas of Hilton Head Island and the Town's Fish Haul Park, and for the payment for the cost of the design and construction of the sewerage infrastructure; and,

WHEREAS, the Town Council for the Town of Hilton Head Island, South Carolina, has determined that it is in the best interests of the Town to enter into an agreement with and the Hilton Head No. 1 Public Service District regarding the design and construction of the sewerage infrastructure and the payment for it.

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

1. The Mayor and Town Manager are hereby authorized to execute and deliver an Agreement with the Hilton Head No. 1 Public Service District regarding the design and construction of sewerage infrastructure in the Chaplin, Marshland Road and Stoney areas of Hilton Head Island, and the Town's Fish Haul Park, and the payment for the cost of the same, in accordance the proposed Agreement attached hereto as Exhibit "A".

2. The Town Manager is hereby authorized to take such other and further action as may be necessary to complete the Town's obligations described in the Agreement to be executed by them, which is authorized hereby.

(Signatures on Following Page)

PASSED AND APPROVED BY THE TOWN COUNCIL THIS ____ DAY OF AUGUST, 2012.

_____
Drew A. Laughlin, Mayor

ATTEST:

_____
Vicki L. Pfannenschmidt
Acting Town Clerk

APPROVED AS TO FORM:

_____
Gregory M. Alford, Town Attorney

Introduced by Council Member: _____

AN AGREEMENT

BY AND BETWEEN

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA

AND

THE HILTON HEAD NO. 1 PUBLIC SERVICE DISTRICT

DATED: AUGUST ____, 2012

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STATE OF SOUTH CAROLINA	)	
	)	AGREEMENT
COUNTY OF BEAUFORT	)	

This Agreement is made on this _____ day of August, 2012, by and between Hilton Head No. 1 Public Service District, and the Town of Hilton Head Island, South Carolina.

WITNESSETH

WHEREAS, the Hilton Head No. 1 Public Service District provides certain public services within the municipal limits of the Town of Hilton Head Island, South Carolina, including installation and maintenance of sewerage infrastructure; and

WHEREAS, Hilton Head No. 1 Public Service District desires to install and maintain sewerage infrastructure for projects known as the "Mathews Drive LPS/Broad Creek Headwaters", "William Hilton Parkway LPS/Chaplin Linear Park", "Squire Pope Sewer Extension/Ford's Shell Ring" and the "Fish Haul Sewer Connection" on Hilton Head Island; and,

WHEREAS, the Town of Hilton Head Island, South Carolina, and the Hilton Head No. 1 Public Service District, in their efforts to improve sewerage conditions in different areas within the Town of Hilton Head Island, have identified the areas encompassed by the "Mathews Drive LPS/Broad Creek Headwaters", "William Hilton Parkway LPS/Chaplin Linear Park", "Squire Pope Sewer Extension/Ford's Shell Ring" and the "Fish Haul Sewer Connection" projects as being in need of sewerage infrastructure; and,

WHEREAS, the Town of Hilton Head Island, South Carolina, has determined that the area encompassed by "Mathews Drive LPS/Broad Creek Headwaters", "William Hilton Parkway LPS/Chaplin Linear Park", "Squire Pope Sewer Extension/Ford's Shell Ring" and the "Fish Haul Sewer Connection" projects are within the Town's Tax Increment Financing

District, and that funds generated though the establishment of the Tax Increment Financing District are an appropriate source of funds to pay for these sewerage infrastructure improvements; and,

WHEREAS, the Town of Hilton Head Island, South Carolina, has determined that it is in the best interests of the citizens of Hilton Head Island, South Carolina, to facilitate the installation of the sewerage infrastructure, upon the terms and conditions as set forth herein.

NOW, THEREFORE, for and in consideration of the sum of One Dollar ($1.00) each to the other in hand paid at and before the execution and delivery of these presents, the receipt and sufficiency whereof is acknowledged by the parties hereto, the Town of Hilton Head Island, South Carolina, and the Hilton Head No. 1 Public Service District, agree as follows:

ARTICLE 1 - DEFINITIONS

1.01 *Agreement:* This Agreement by and between the Town of Hilton Head Island, South Carolina and the Hilton Head No. 1 Public Service District.

1.02 *Contractor:* Any Contractor hired by HHPSD to complete all or any part of the Project, and any sub-contractor hired by any Contractor.

1.03 *HHPSD:* Hilton Head No. 1 Public Service District

1.04 *Plans and Specifications:* The construction plans and specifications for the installation of the sewerage infrastructure for the "Mathews Drive LPS/Broad Creek Headwaters", "William Hilton Parkway LPS/Chaplin Linear Park", "Squire Pope Sewer Extension/Ford's Shell Ring" and the "Fish Haul Sewer Connection", were prepared by Low Country Engineering Associates, LLC, and are described as follows:

1. *Mathews Drive LPS/Broad Creek Headwaters:* The Mathews Drive LPS/Broad Creek Headwaters and William Hilton Parkway LPS/Chaplin Linear Park Plans and Specifications are dated April, 2011, and are marked approved by Anne Cyran on November 10, 2011. A copy of the Plans and Specifications for the "Mathews Drive LPS/Broad Creek Headwaters and William Hilton Parkway LPS/Chaplin Linear Park," project are attached hereto as Exhibit "A".

2. *William Hilton Parkway LPS/Chaplin Linear Park:* The William Hilton Parkway LPS/Chaplin Linear Park Plans and Specifications are dated April, 2011, and are marked approved by Anne Cyran on November 10, 2011. A copy of the Plans and Specifications for the "Mathews Drive LPS and William Hilton Parkway LPS," project are attached hereto as Exhibit "A".

3. *Squire Pope Sewer Extension/Ford's Shell Ring:* The Squire Pope Sewer Extension/Ford's Shell Ring Plans and Specifications are dated October, 2011, and are marked approved by Anne Cyran on November 4, 2011. A copy of the Plans and Specifications for the "Stoney Sewer Extension," project are attached hereto as Exhibit "B".

4. *Fish Haul Sewer Connection:* The Fish Haul Sewer Connection Plans and Specifications are dated April, 2012. A copy of the Plans and Specifications for the "Fish Haul Sewer Extension," project are attached hereto as Exhibit "C".

1.05 *Projects:* The "Mathews Drive LPS/Broad Creek Headwaters","William Hilton Parkway LPS/Chaplin Linear Park", "Squire Pope Sewer Extension/Ford's Shell Ring" and

"Fish Haul Sewer Connection" Projects, which are described in Plans and Specifications.

1.06 *Town:* Town of Hilton Head Island, South Carolina.

ARTICLE 2- CONSTRUCTION OF THE PROJECTS

2.01 *Responsibility of the Parties:* The Town and the HHPSD agree that each shall have the responsibilities as are set forth below.

2.02 *Preparation of Plans and Specifications:* HHPSD shall be responsible for the preparation of the Plans and Specifications for the Projects.

2.03 *Acquisition of Easements:* HHSPD shall be responsible for acquiring any and all necessary easements from any property owner whose land is touched or otherwise affected by the Projects, and HHPSD shall be responsible for the preparation and recording of easements and easement plats.

2.04 *Permits:* HHPSD shall be responsible for obtaining all necessary permits from any Federal, State or local authority having jurisdiction over all or any part of the Projects. HHPSD shall coordinate a pre-construction conference with all necessary parties.

2.05 *Bid Requirements:* HHPSD shall be responsible for obtaining bids in accordance with appropriately competitive procurement procedures and all applicable law.

2.06 *Construction of Projects:* HHPSD shall be responsible for the contracting and management of the Projects. The contracting for, and actual construction of, the Projects shall be in accordance with the Plans and Specifications for the Projects as set forth in Articles 1.04 and 1.05 above.

2.07 *Contractors to Have Town Business License:* HHPSD shall require all Contractors working on the Projects to have a valid Town of Hilton Head Island Business License.

2.08 *Town Updates:* HHPSD shall provide written updates to the Town of the

progress of the Projects on a weekly basis, or more often when requested in writing by the Town.

2.09 *Reimbursement to HHPSD by Town:* The Town shall reimburse HHPSD for the costs of design and construction associated with the Projects in the following amounts:

(a) *Mathews Drive LPS/Broad Creek Headwaters:* The Town shall reimburse HHPSD up to a maximum of Twenty Four Thousand Nine Hundred and no/100 ($24,900.00) Dollars for all design, materials and labor for construction of the Mathews Drive LPS/Broad Creek Headwaters Project.

(b) *William Hilton Parkway LPS/Chaplin Linear Park*: The Town shall reimburse HHPSD up to a maximum of One Hundred Sixteen Thousand Five Hundred and 00/100 ($116,500.00) Dollars for all design, materials and labor for construction the William Hilton Parkway LPS/Chaplin Linear Park Project.

(c) *Squire Pope Sewer Extension/Ford's Shell Ring:* The Town shall reimburse HHPSD up to a maximum of Three Hundred Seven Thousand Eight Hundred Fifty Five and 00/100 ($307,855.00) Dollars for design, materials and labor for construction of the Stoney Sewer Extension/Ford's Shell Ring Project.

(d) *Fish Haul Park Connection:* The Town shall reimburse HHPSD up to a maximum of Thirty One Thousand and 80/100 ($31,000.00) Dollars for materials and labor for construction the Fish Haul Connection Project.

2.10 *Payment of Costs:* The Town shall reimburse HHPSD for the costs of the design of the Project and labor and materials used in the completion of the Projects when the Projects are complete and have been accepted for ownership, maintenance and operation by HHPSD.

2.11 *Billing Statements:* At such time as each of the Projects is complete and has been accepted for permanent ownership, maintenance and operation by HHPSD, HHPSD shall submit its billing statement for each Project to the Town for an amount up to the maximum for each Project as stated in Articles 2.09 (a), (b), (c) and (d) above.

2.12 *Certifications To Be Provided:* HHPSD shall submit the following certifications to the Town along with its billing statement as described in Article 2.11 above:

(a) *Engineer's Certification:* HHPSD must provide a written certification from the engineer responsible for overseeing and inspecting each of the Projects that the work being billed for is only the work that is shown and described in the Plans and Specifications for the particular Project being billed for, and that the particular Project, and each component thereof, has been completed in conformity with the requirements of the Plans and Specifications.

(b) *HHSPD Certification:* HHPSD must provide its written certification that HHPSD has accepted the Project for which the bill is submitted for permanent ownership, maintenance and operation, and the amounts billed for reimbursement by the Town represents HHPSD's actual costs for the design, materials, labor and construction of the Project.

ARTICLE 3 - PAYMENT FOR THE PROJECTS

3.01 *Town's Responsibility:* The Town shall be responsible for the payment of the actual costs incurred by HHPSD for the design, materials, and labor to build each Project up to the following amounts as follows:

(a)	*Mathews Drive LPS/Broad Creek Headwaters:*	$ 24,900.00
(b)	*Williams Hilton Parkway LPS/Chaplin Linear Park:*	$116,500.00
(c)	*Squire Pope Sewer Extension/Ford's Shell Ring:*	$307,855.00
(d)	*Fish Haul Park Sewer Connection*:	$ 31,000.00

3.02 *Town's Obligation Limited:* The Town's obligation to reimburse HHPSD with respect to the Project is limited to the amounts set forth in Articles 2.09 and 3.01 above.

3.03 *Payments as Current Expense of Town:* The payment due hereunder for the Project constitutes an obligation of the Town payable from annually appropriated revenues of the Town. It is the intent of the parties to this Agreement that the obligation of the Town to pay any money hereunder 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 the general tax revenues, funds, money or credit of the Town.

ARTICLE 4 - INSURANCE

4.01 *Insurance Required*: HHPSD shall not commence the construction of the Project until it has obtained and provided proof thereof to the Town of the following:

(a) *Liability Insurance:* HHPSD has, and shall maintain, liability insurance through the South Carolina Insurance Reserve Fund, or other authorized carrier, in keeping with the requirements of the State of South Carolina under the South Carolina Tort Claims Act S. C. Code Ann. § 15-78-10, *et seq*. (Supp. 2011), or as the same may be thereafter amended.

(b) *Worker's Compensation Insurance:* HHPSD shall maintain in force, during the life of this Agreement, any applicable statutory Worker's Compensation and Employer's Liability Insurance for all of its employees who be engaged in the work related to the Project or performance of any of the obligations of HHPSD described in this Agreement. HHPSD shall similarly require any of its Contractors to maintain in force any applicable statutory Worker's Compensation and Employer's Liability Insurance for all of their employees to be engaged in any of the work related to the Project or performance of any of HHPSD's obligations described in this Agreement.

(c) *Insurance Requirements for Subcontractors:* Any contracts entered into between HHPSD and any Contractors, or by and between any Contractors for this Project shall require that each Contractor carry a comprehensive general public liability and property damage insurance with

a combined bodily injury, death and property damage limits, per occurrence, of ONE MILLION ($1,000,000.00) DOLLARS, insuring against any and all liability arising out of all or any part of the work described in this Agreement.

4.02 *Town's Insurance:* The Town has, and shall maintain, liability insurance through the South Carolina Insurance Reserve Fund, or other authorized carrier, in keeping with the requirements of the State of South Carolina under the South Carolina Tort Claims Act S. C. Code Ann. § 15-78-10, *et seq.* (Supp. 2011), or as the same may be thereafter amended.

ARTICLE 5 - TERM

5.01 *Term:* The Town and HHPSD agree that this Agreement shall be binding between the parties hereto until the Projects are completed.

ARTICLE 6 - DEFAULT

6.01 *Default:* The Town and HHPSD agree that in the event of a default or breach of any provision or term of this Agreement, the non-defaulting party shall give written notice to the defaulting party of the default or breach. In the event that the defaulting party fails to cure the default or breach within ten (10) days after receipt of the written notice specifying the default or breach, then the non-defaulting party shall be entitled to pursue any remedy at law or in equity against the defaulting party, including, but not limited to, an action for damages or for specific performance of this Agreement; provided, however, that in no event shall any party to this Agreement be liable for any consequential, special or punitive damages.

6.02 *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 of this Agreement, the

successful or prevailing party shall be entitled to recover its reasonable attorney's fees and any costs incurred as a result of any such dispute, whether incurred before the institution of suit or after the commencement of suit, including appellate proceedings, in addition to any other relief to which the prevailing party is entitled.

ARTICLE 7 - AUTHORITY OF PARTIES

7.01 *Authority of Town:* The Town warrants that its actions in entering into this Agreement are lawful and authorized by all applicable state law and Town ordinances. As is shown by the certified true copy of the Resolution of the Town Council of The Town of Hilton Head Island, South Carolina, attached hereto as Exhibit "D", the execution and delivery of this Agreement and performance of the requirements hereof, has been authorized by the Town.

7.02 *Authority of HHPSD:* HHPSD warrants that its actions in entering into this Agreement are authorized by the applicable covenants and by-laws governing HHPSD, and that it has taken all actions required under any applicable covenants and by-laws as are necessary to authorize the execution and delivery of this Agreement. As is shown by the certified true copy of the Resolution of HHPSD, attached hereto as Exhibit "E", the execution and delivery of this Agreement, and performance of the requirements hereof, has been authorized by HHPSD.

ARTICLE 8 - OWNERSHIP AND MAINTENANCE OF SEWAGE INFRASTRUCTURE

8.01 *HHPSD to Own and Maintain:* Upon completion of the Project, HHPSD shall own and be responsible for the maintenance and upkeep of the infrastructure described in the Plans and Specifications, along with any expense or costs associated therewith.

ARTICLE 9 - GENERAL PROVISIONS

9.01 *Binding Effect:* This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns, if any are permitted hereunder.

9.02 *Amendment, Changes and Modifications:* Except as otherwise provided herein, this Agreement may not be effectively amended, changed, modified or altered without the written consent of the parties.

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

9.04 *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 but one and the same instrument.

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

9.06 *Captions:* The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

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

9.08 *No Third Party Beneficiaries:* The Town and HHPSD hereto 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. No party other than the signature parties and their respective successors and assigns hereto shall have any enforceable rights hereunder, or have any right to the enforcement hereof, or any claim for damages as a result of any alleged breach hereof.

9.09 *Notices:* All notices, applications, requests, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered in person, or mailed by regular first class mail, postage prepaid (in such case, delivery shall be deemed complete upon mailing), addressed as follows, or to such other place as may be designated in writing by the parties:

To the Town:	THE TOWN OF HILTON HEAD ISLAND Stephen G. Riley, Town Manager One Town Center Court Hilton Head Island, SC 29928
With copy to:	ALFORD, WILKINS & COLTRANE, L. L. C. Gregory M. Alford, Town Attorney Post Office Drawer 8008 Hilton Head Island, SC 29938
To the HHPSD:	HILTON HEAD NO. 1 PUBLIC SERVICE DISTRICT c/o Richard Cyr, General Manager 21 Oak Park Plaza Hilton Head Island, SC 29926
With copy to:	ALFORD, WILKINS & COLTRANE, L. L. C. John W. Wilkins, HHPSD Attorney Post Office Drawer 8008 Hilton Head Island, SC 29938

9.10 *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 to its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of any party's right to thereafter demand strict compliance with the

terms of this Agreement.

9.11 *Further Assurances and Corrective Documents:* The Town and HHPSD 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 provisions hereof. The parties agree that each shall, upon request, execute and deliver such other or corrective documents as may be reasonably determined to be necessary to carry out this Agreement and each of the provisions hereof.

IN WITNESS WHEREOF, The Town of Hilton Head Island, South Carolina and Hilton Head No. 1 Public Service District, by and through their duly authorized officers, have set their hands and seals on this ____ day of August, 2012.

(Signatures Are On Following Page)

WITNESSES:

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA

_____

By: _____
Drew A. Laughlin, Mayor

_____

Attest: _____
Stephen G. Riley, Town Manager

WITNESSES:

HILTON HEAD NO. 1 PUBLIC SERVICE DISTRICT

By: _____
RICHARD C. GIR, GENERAL MANAGER

Attest: Connie Whitehead

EXHIBIT "A"

CONSTRUCTION PLANS AND SPECIFICATIONS FOR THE MATHEWS DRIVE LPS/BROAD CREEK HEADWATERS AND WILLIAM HILTON PARKWAY LPS/CHAPLIN LINEAR PARK PROJECTS

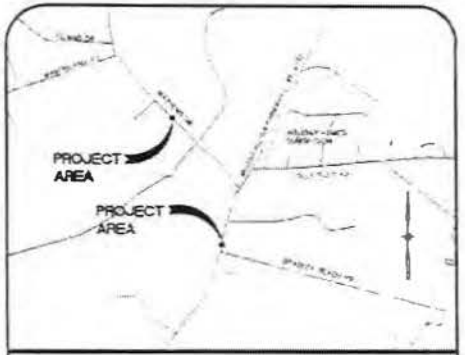
HiltonHeadPSD

MATHEWS DRIVE LPS AND WILLIAM HILTON PARKWAY LPS

BEAUFORT COUNTY, SOUTH CAROLINA

ABBREVIATIONS

SECTION/DETAIL LEGEND



VICINITY MAP

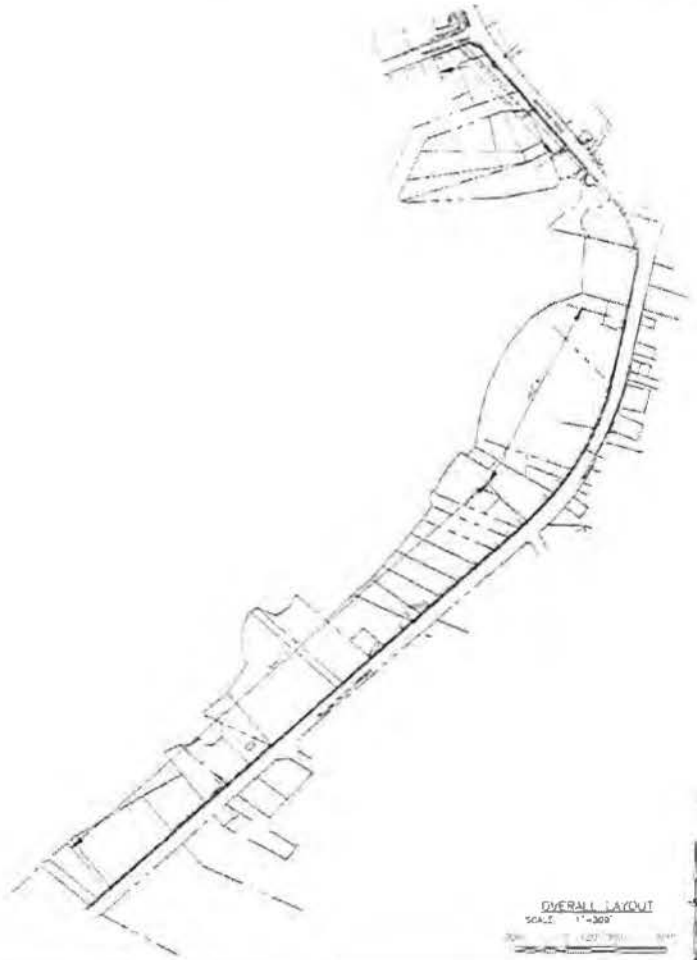
INDEX OF SHEETS

1 VICINITY MAP, INDEX, LEGENDS AND ABBREVIATIONS
2 OVERALL LAYOUT AND SHEET INDEX
3 WILLIAM HILTON PARKWAY PLAN
4 WILLIAM HILTON PARKWAY PLAN
5 MATHEWS DRIVE PLAN
6 SEWER DETAILS
7 EROSION CONTROL DETAIL

LOWCOUNTRY
ENGINEERING CONSULTANTS, LLC

APPROVED
By Anne Cyran at 2:08 pm, Nov 10, 2011

NOTES



OVERALL LAYOUT
SCALE: 1"=300'

APPROVED
By Anne Cyran at 2:08 pm, Nov 10, 2011

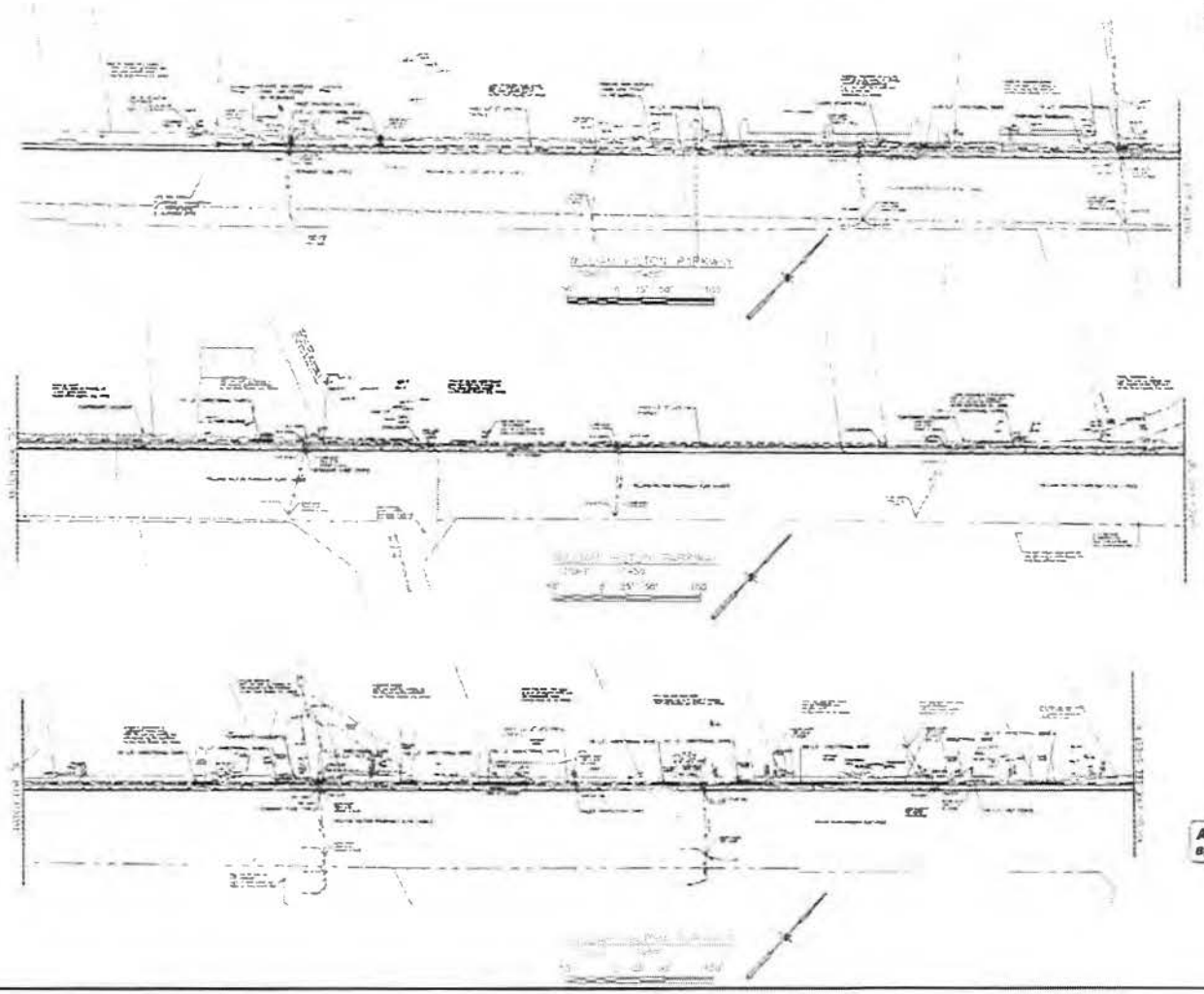
FOR PERMITTING

LOWCOUNTRY

OVERALL LAYOUT AND SHEET INDEX

HILTON HEAD PUBLIC SERVICE DISTRICT
MATHEWS DRIVE LPS AND
WILLIAM HILTON PARKWAY LPS
BEAUFORT COUNTY, SOUTH CAROLINA

2



APPROVED
By Aaron Cyrus at 2:09 pm, Nov 16, 2011

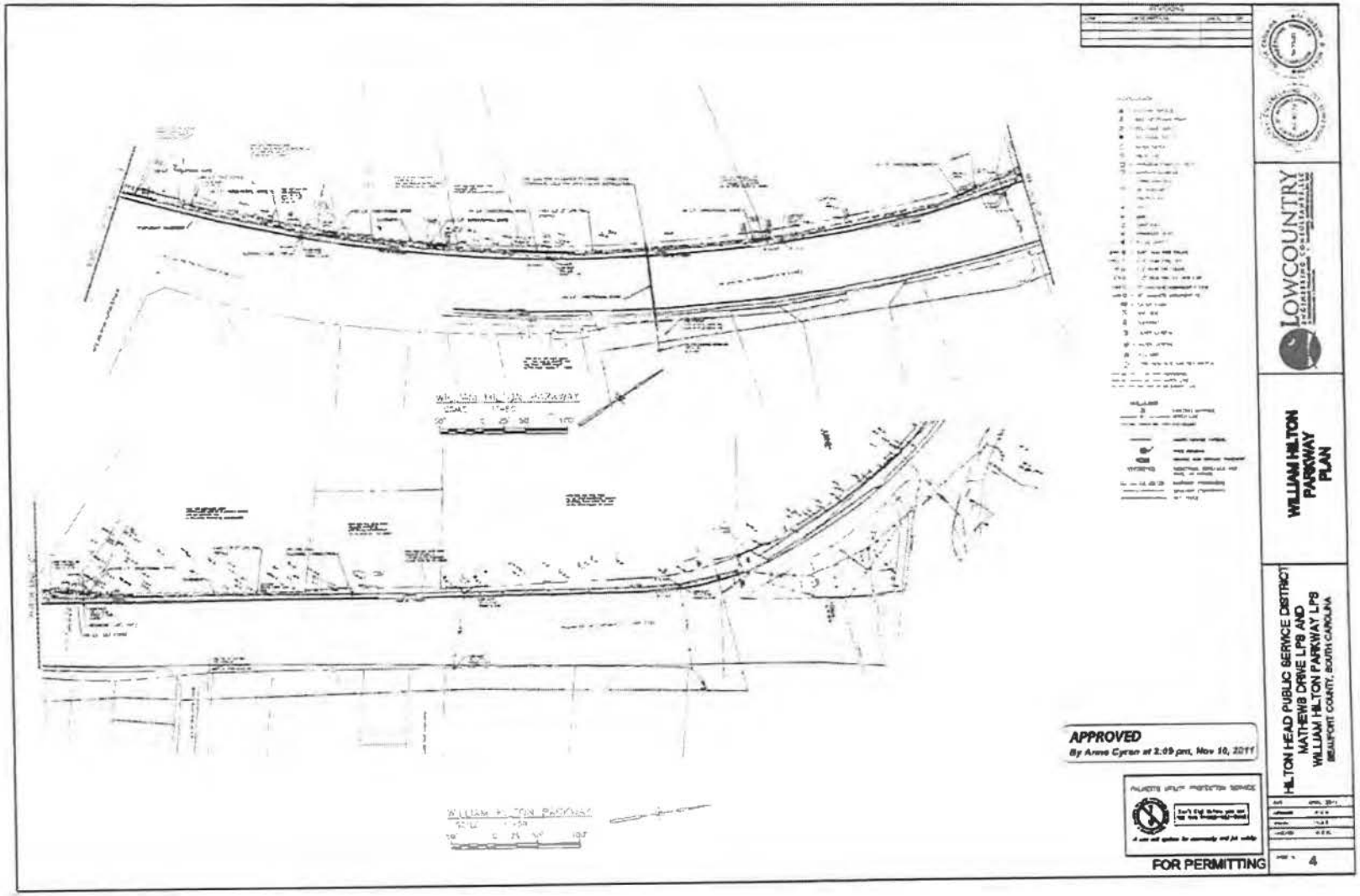
FOR PERMITTING

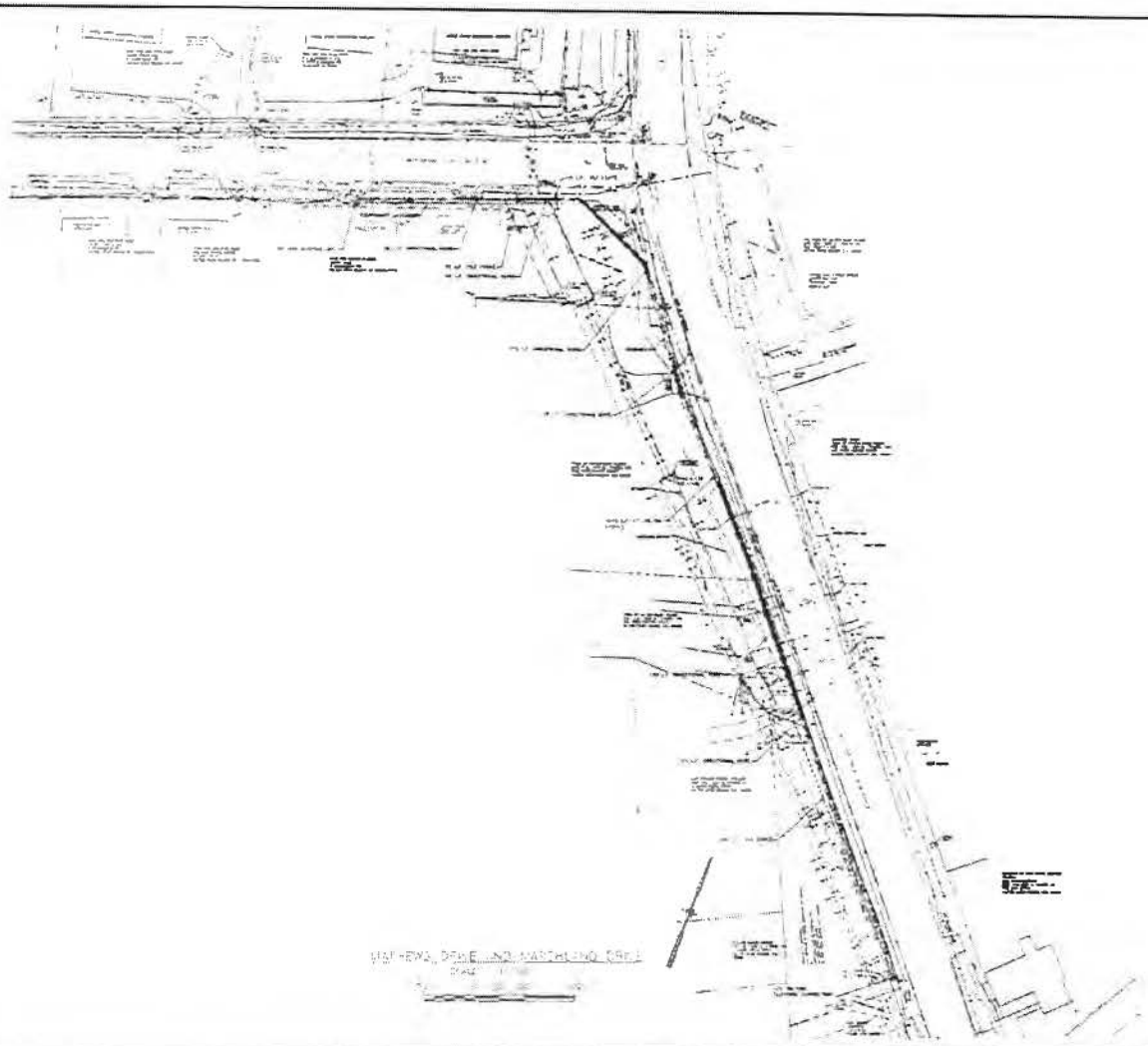
LOWCOUNTRY
ENGINEERING CONSULTANTS, LLC

WILLIAM HILTON PARKWAY PLAN

HILTON HEAD PUBLIC SERVICE DISTRICT
MATHEWS DRIVE LP & AND
WILLIAM HILTON PARKWAY LP &
BEAUFORT COUNTY, SOUTH CAROLINA

3


WILLIAM HILTON PARKWAY
WILLIAM HILTON PARKWAY
APPROVED
By Anne Cyran at 2:09 pm, Nov 10, 2011
FOR PERMITTING
LOWCOUNTRY
WILLIAM HILTON PARKWAY PLAN
HILTON HEAD PUBLIC SERVICE DISTRICT
MATHEWS DRIVE LPS AND
WILLIAM HILTON PARKWAY LPS
BEAUFORT COUNTY, SOUTH CAROLINA
4



APPROVED
By Anna Cyrus at 2:09 pm, Nov 10, 2011

FOR PERMITTING

LOWCOUNTRY

SQUIRE POPE ROAD
PLAN AND PROFILE

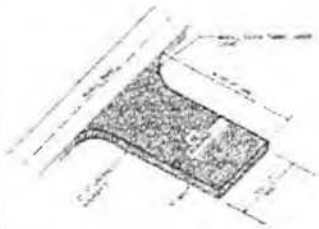
HILTON HEAD PUBLIC SERVICE DISTRICT
MATHEWS DRIVE LPB AND
WILLIAM HILTON PARKWAY LPB
BEAUFORT COUNTY, SOUTH CAROLINA

5

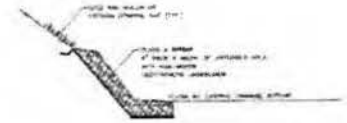
SEEDBED PREPARATION

STANDARD NOTES

EROSION CONTROL SEQUENCE OF CONSTRUCTION



TEMPORARY GRAVEL CONSTRUCTION ENTRANCE

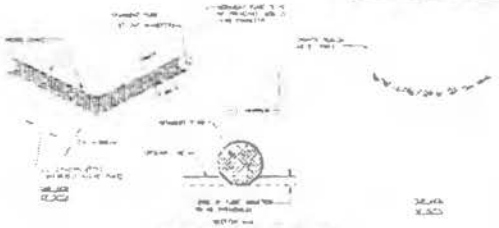


RIP RAP SLOPE PROTECTION

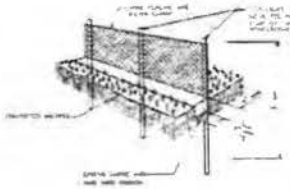
GRASS (SEEDED) SWALE

EROSION CONTROL MAT SWALE

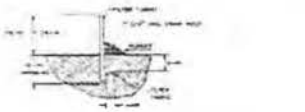
APPROVED
By Anne Cyrus at 2:10 pm, Nov 10, 2011



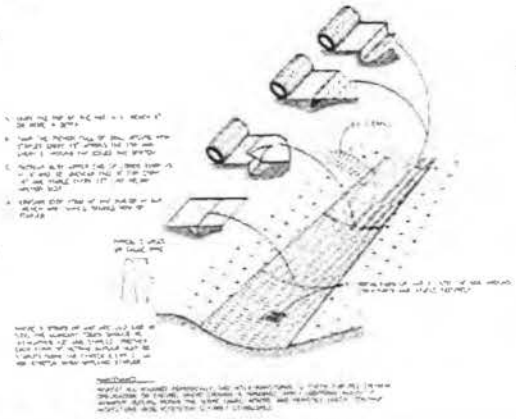
SEDIMENT TUBE IN DITCH



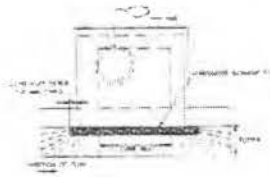
SILT FENCE DETAIL



CRITICAL ROOT ZONE
SILT FENCE INSTALLATION



DETAILS FOR STABILIZING SWALES



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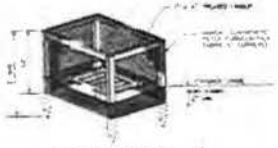


TEMPORARY INLET PROTECTION DETAIL

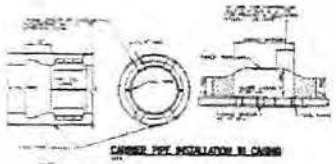
FOR PERMITTING

LOWCOUNTRY ENGINEERING CONSULTANTS

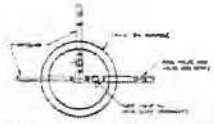
EROSION CONTROL DETAILS

HILTON HEAD PUBLIC SERVICE DISTRICT
MATHEWS DRIVE LPS AND
WILLIAM HILTON PARKWAY LPS
BEAUFORT COUNTY, SOUTH CAROLINA

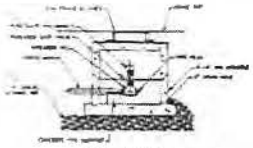
7



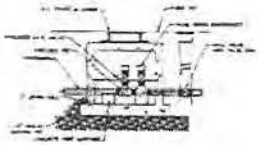
CARRIER PIPE INSTALLATION IN CASING



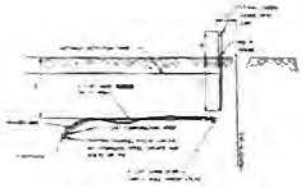
FORCEMAIN JUNCTION CLEANOUT/ FLUSHING CONNECTION PLAN VIEW



FORCEMAIN END FLUSHING CONNECTION



FORCEMAIN JUNCTION CLEANOUT/ FLUSHING CONNECTION



1 1/4" GRINDER PUMP LATERAL DETAIL

JOINT MIN DISTANCE

APPROVED
By Anne Cyran at 2:09 pm, Nov 10, 2011

FOR PERMITTING

LOWCOUNTRY

SEWER DETAILS

HILTON HEAD PUBLIC SERVICE DISTRICT
MATHEWS DRIVE LPS AND
WILLIAM HILTON PARKWAY LPS
BEAUFORT COUNTY, SOUTH CAROLINA

EXHIBIT "B"

CONSTRUCTION PLANS AND SPECIFICATIONS FOR THE SQUIRE POPE SEWER EXTENSION/FORD'S SHELL RING PROJECT

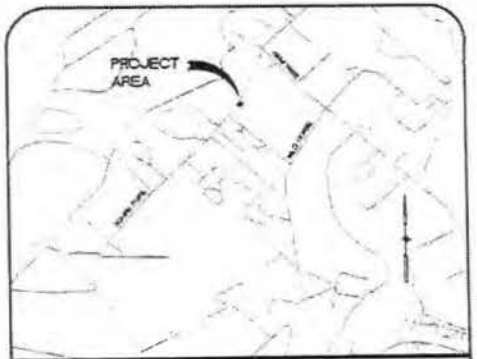
HiltonHeadPSD

SQUIRE POPE ROAD SEWER EXTENSION

BEAUFORT COUNTY, SOUTH CAROLINA

ABBREVIATIONS

SECTION/DETAIL LEGEND



VICINITY MAP

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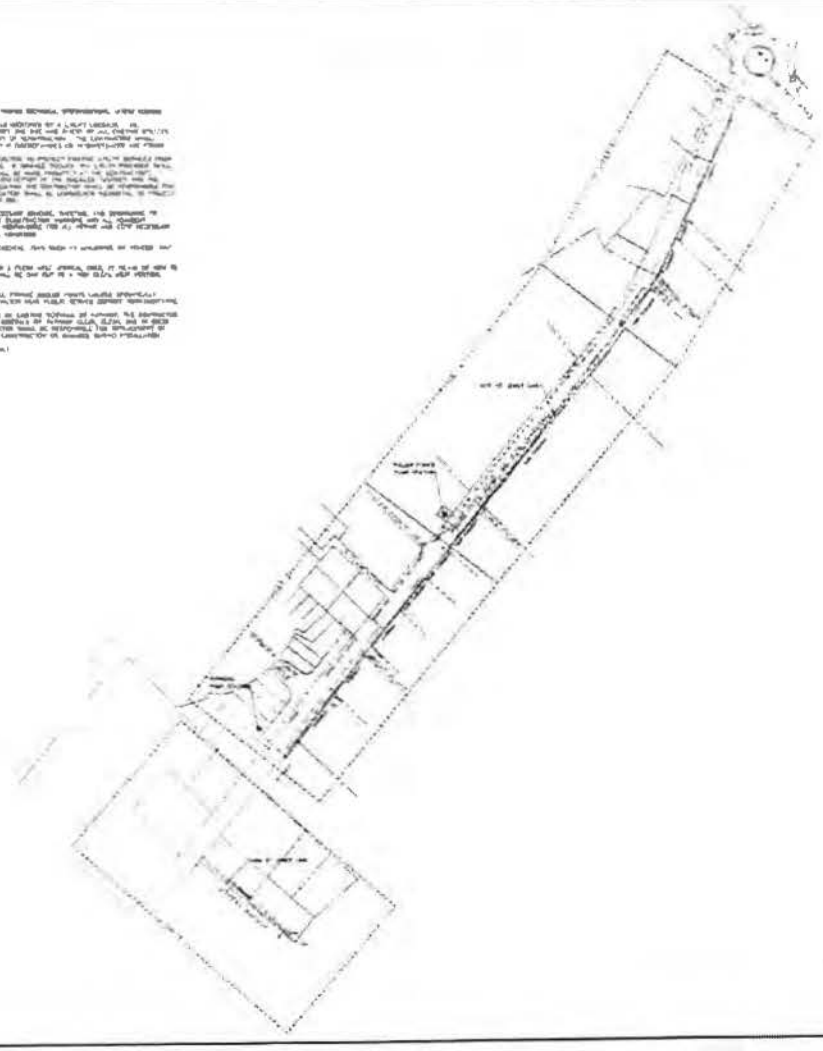
3 SQUIRE POPE PLAN AND PROFILE
4 SQUIRE POPE PLAN AND PROFILE
5 SQUIRE POPE PLAN AND PROFILE
6 MURRAY ROAD PLAN AND PROFILE
7 SEWER DETAILS
8 PAVEMENT AND PATHWAY DETAILS
9 EROSION CONTROL DETAIL
TC-1 TRAFFIC CONTROL

LOWCOUNTRY ENGINEERING CONSULTANTS, LLC

APPROVED
By Anne Cyran at 9:58 am, Nov 04, 2011

PERMITTING



OVERALL LAYOUT
SCALE: 1"=1,000'

APPROVED
By Anne Cyran at 9:58 am, Nov 04, 2014

PALMETTO UTILITY PROTECTION SERVICE

FOR PERMITTING

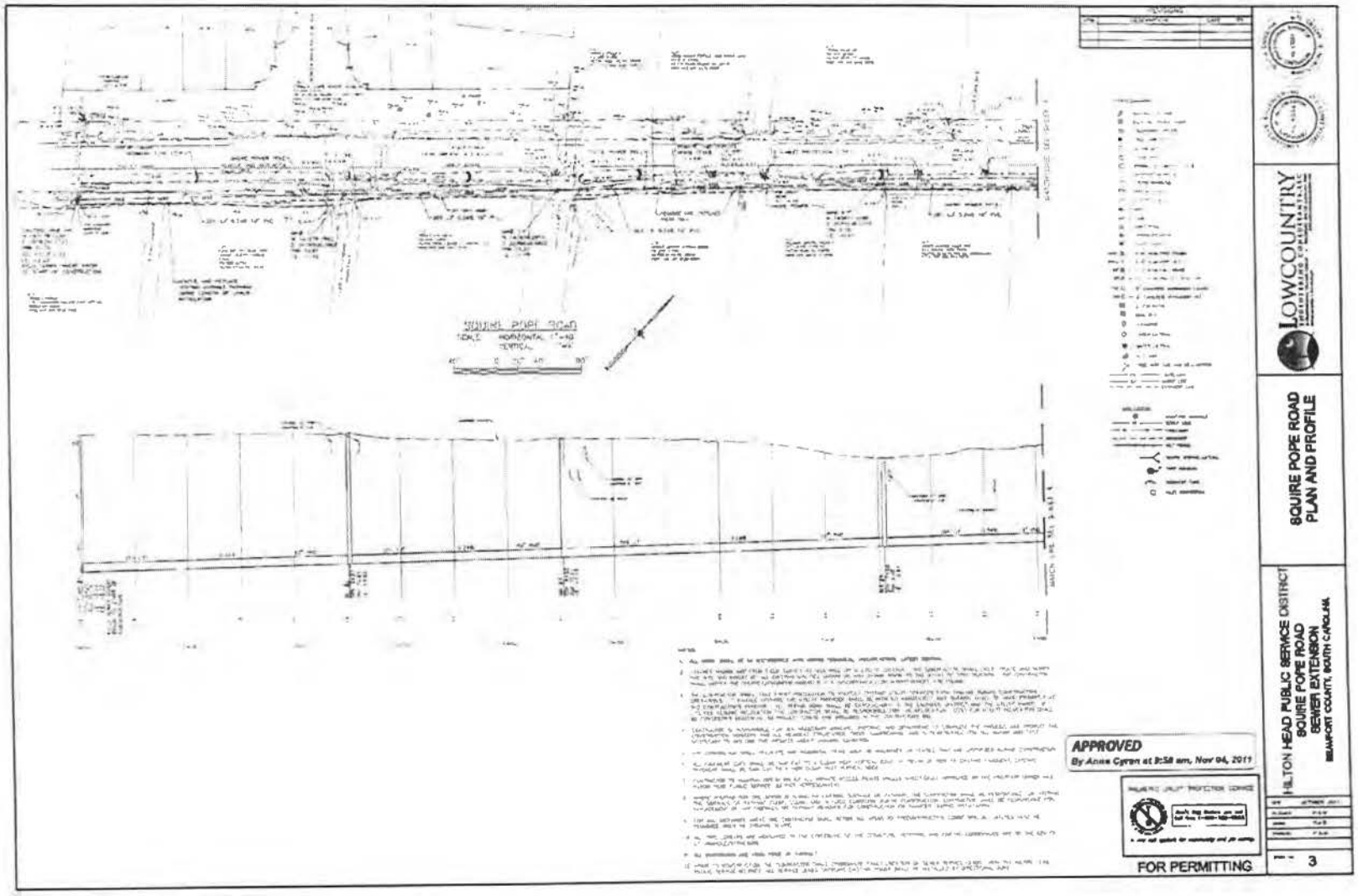
LOWCOUNTRY
ENGINEERING CONSULTANTS, LLC

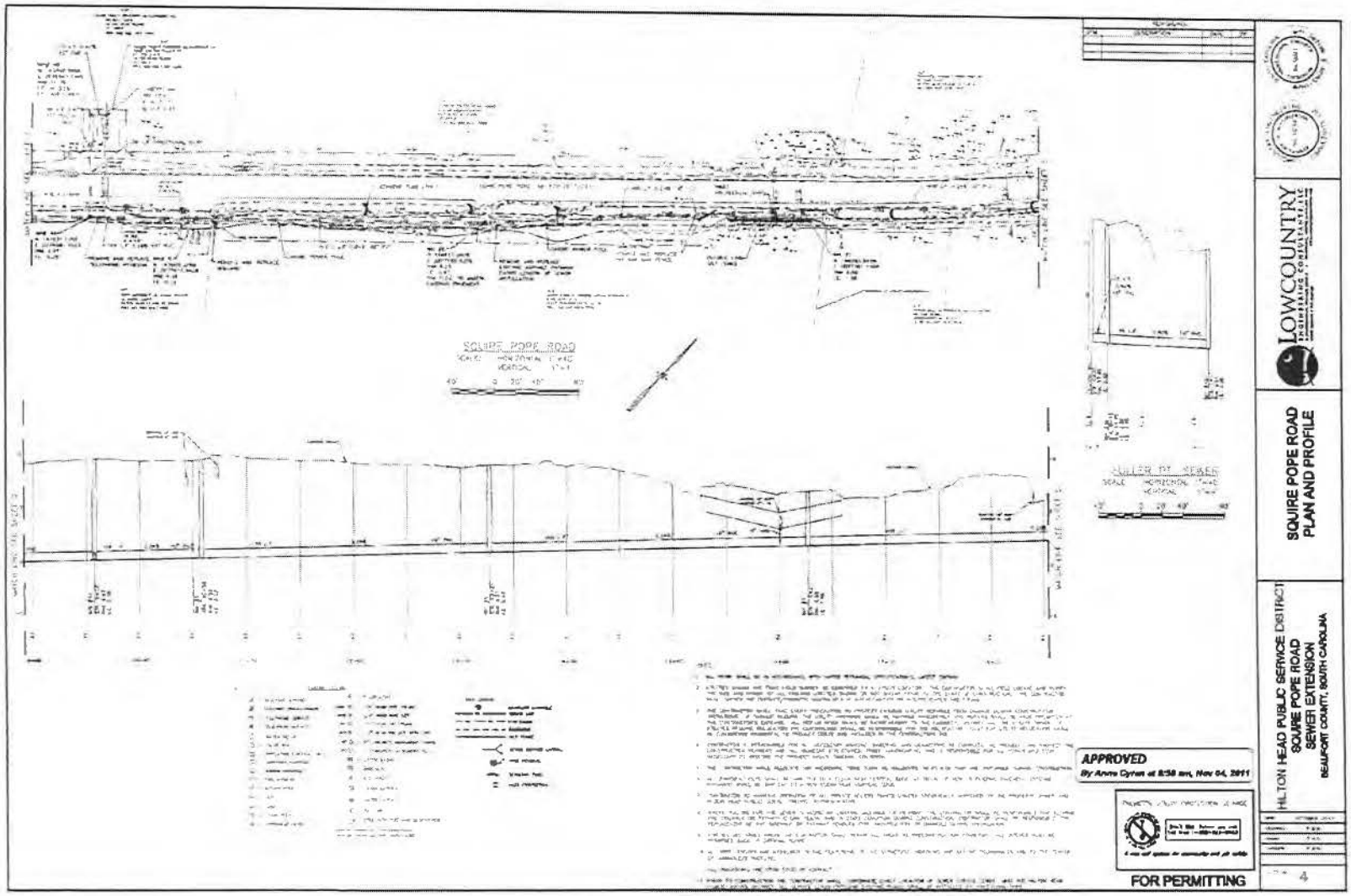
OVERALL LAYOUT AND SHEET INDEX

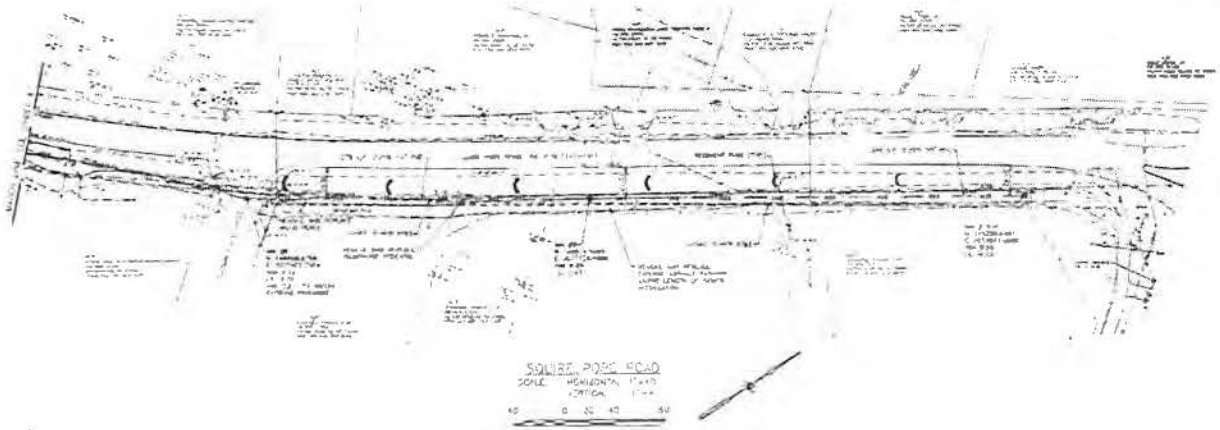
HILTON HEAD PUBLIC SERVICE DISTRICT
BOURNE POPE ROAD
SEWER EXTENSION
BEAUFORT COUNTY, SOUTH CAROLINA

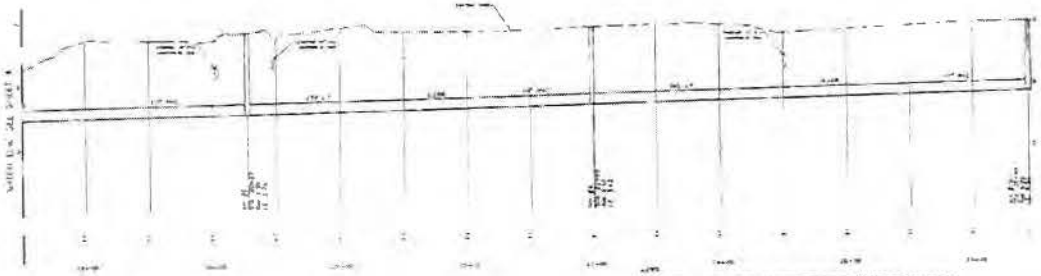
DATE	OCTOBER 2014
DESIGNED	[illegible]
DRAWN	[illegible]
CHECKED	[illegible]

SHEET 2


SQUIRE POPE ROAD
HORIZONTAL
VERTICAL
APPROVED
By Anne Cyran at 9:58 am, Nov 04, 2011
FOR PERMITTING
LOWCOUNTRY
SQUIRE POPE ROAD
PLAN AND PROFILE
HILTON HEAD PUBLIC SERVICE DISTRICT
SQUIRE POPE ROAD
SEWER EXTENSION
BEAUFORT COUNTY, SOUTH CAROLINA
3


SQUIRE POPE ROAD
APPROVED
By Anne Cyran at 8:58 am, Nov 04, 2011
FOR PERMITTING
LOWCOUNTRY
SQUIRE POPE ROAD
PLAN AND PROFILE
HILTON HEAD PUBLIC SERVICE DISTRICT
SQUIRE POPE ROAD
SEWER EXTENSION
BEAUFORT COUNTY, SOUTH CAROLINA
4





APPROVED
By Anne Cyren at 9:58 am, Nov 04, 2011

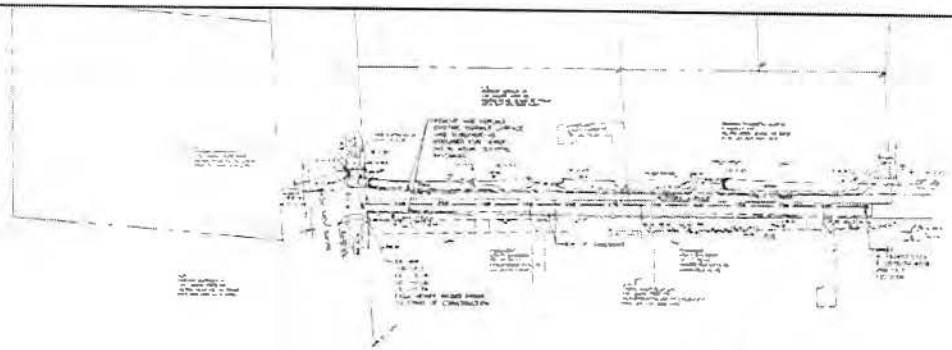
FOR PERMITTING

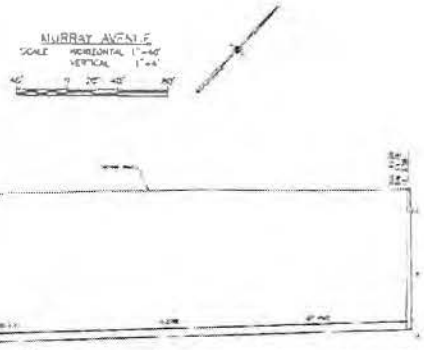
LOWCOUNTRY ENGINEERING CONSULTANTS, LLC

SQUIRE POPE ROAD
PLAN AND PROFILE

HILTON HEAD PUBLIC SERVICE DISTRICT
SQUIRE POPE ROAD
SEWER EXTENSION
BEAUFORT COUNTY, SOUTH CAROLINA

5





NOTES

APPROVED
By Anna Cyran at 8:39 am, Nov 04, 2011

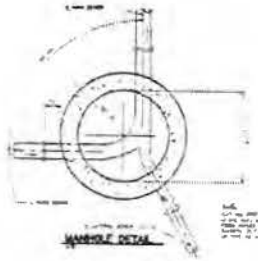
FOR PERMITTING

LOWCOUNTRY
ENGINEERING, CONSULTANTS, LLC

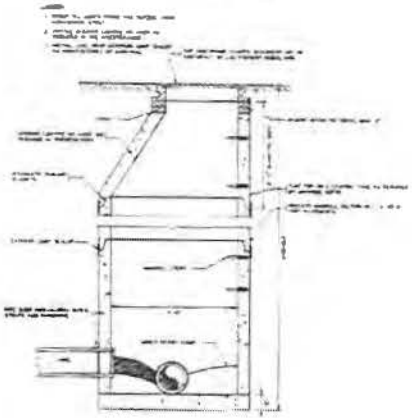
MURRAY AVENUE
PLAN AND PROFILE

HILTON HEAD PUBLIC SERVICE DISTRICT
BOURNE POPE ROAD
SEWER EXTENSION
BEAUFORT COUNTY, SOUTH CAROLINA

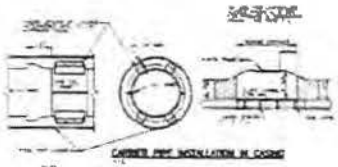
6



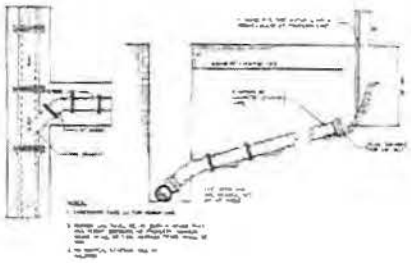
MANHOLE DETAIL



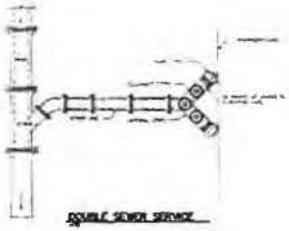
MANHOLE SECTION



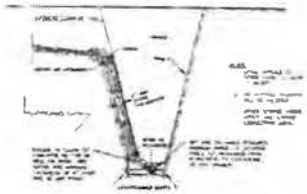
CARRIER PIPE INSTALLATION IN CASING



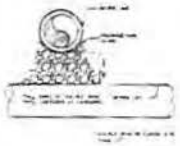
SEWER SERVICE CONNECTION DETAIL



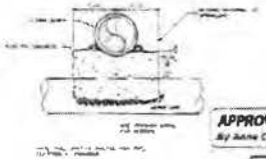
DOUBLE SEWER SERVICE



DEEP SEWER SERVICE DETAIL



SEWER CROSSING BELOW WATER LINE DETAIL



STORM SEWER CROSSING DETAIL

APPROVED

By Jaime Cyran at 9:59 am, Nov 04, 2011

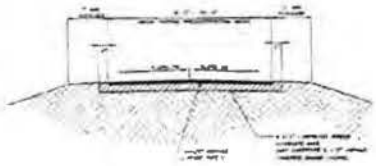
FOR PERMITTING

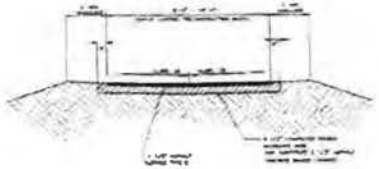
LOWCOUNTRY ENGINEERING & CONSULTANTS

SEWER DETAILS

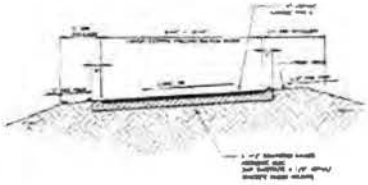
HILTON HEAD PUBLIC SERVICE DISTRICT
SQUIRE POPE ROAD
SEWER EXTENSION
BEAUFORT COUNTY, SOUTH CAROLINA

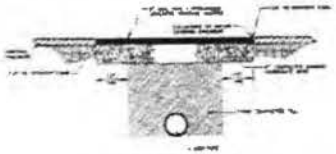
7



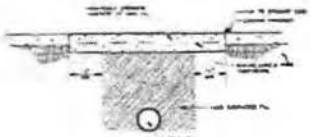


TYPICAL PATHWAY SECTIONS





PAVEMENT PATCH DETAIL
ASPHALT DRIVEWAY CROSSINGS



CONCRETE PAVEMENT REPLACEMENT
AT DRIVEWAY CROSSINGS

APPROVED
By Anne Cyran at 9:59 am, Nov 04, 2011

FOR PERMITTING

LOWCOUNTRY

PAVEMENT AND PATHWAY DETAILS

HILTON HEAD PUBLIC SERVICE DISTRICT
BOURNE POPE ROAD
SEWER EXTENSION
BEAUFORT COUNTY, SOUTH CAROLINA

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SEEDBED PREPARATION

STANDARD NOTES

EROSION CONTROL SEQUENCE OF CONSTRUCTION

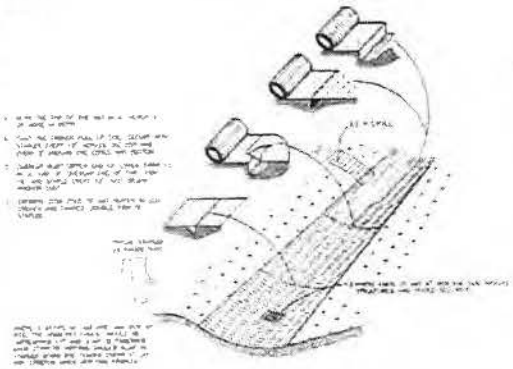
TEMPORARY GRAVEL CONSTRUCTION ENTRANCE

RIP RAP SLOPE PROTECTION

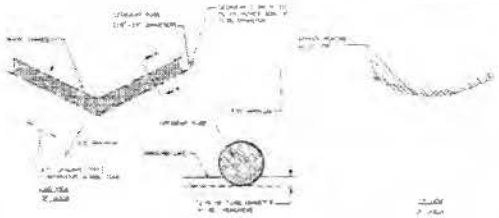
GRASS (SEEDED) SWALE

EROSION CONTROL MAT SWALE

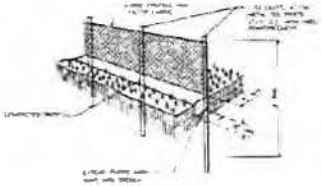
APPROVED
By Anne Cyran at 9:58 am, Nov 04, 2011



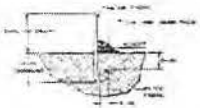
DETAILS FOR STABILIZING SWALES



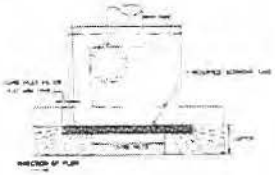
SEDIMENT TUBE IN DITCH



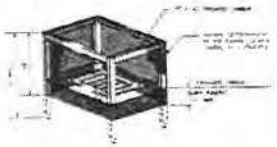
SILT FENCE DETAIL



CRITICAL ROOT ZONE
SILT FENCE INSTALLATION



TEMPORARY CURB INLET PROTECTION DETAIL



TEMPORARY INLET PROTECTION DETAIL

FOR PERMITTING

LOWCOUNTRY
ENGINEERING & CONSULTANTS, INC.

EROSION CONTROL DETAILS

HILTON HEAD PUBLIC SERVICE DISTRICT
SQUIRE POPE ROAD
SEWER EXTENSION
BEAUFORT COUNTY, SOUTH CAROLINA

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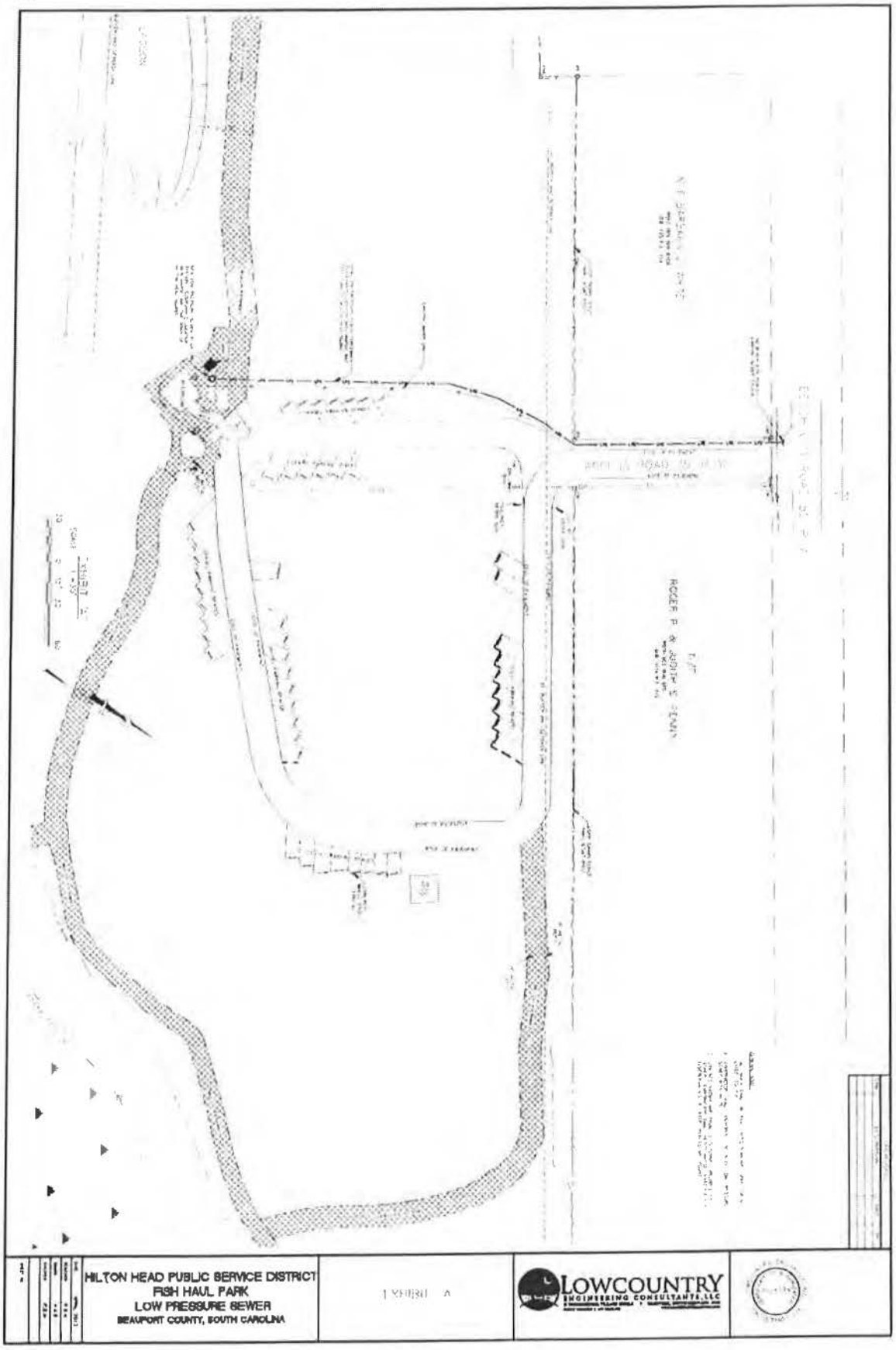
HILTON HEAD PUBLIC SERVICE DISTRICT
SQUIRE POPE ROAD
SEWER EXTENSION
BEAUFORT COUNTY, SOUTH CAROLINA
TRAFFIC CONTROL
LOWCOUNTRY
TC-1
APPROVED
FOR PERMITTING
MATCH LINE 'A'
MATCH LINE 'A'
TRAFFIC CONTROL

EXHIBIT "C"

CONSTRUCTION PLANS AND SPECIFICATIONS FOR THE FISH HAUL SEWER CONNECTION PROJECT

5/2/2012 9:51:25 AM



Specifications:

Inches (mm)

BASIN ..... Engineered Polypropylene Copolymer, 2-piece construction, factory assembled with preformed corrosion resistant rebar installed. Includes POD for pump support and orientation

RISER..... HDPE 18" Dia. (457mm) corrugated drainpipe, day-of-installation adjustment sets basin depth [limit 9ft. 6inches (2.9m) to bottom of basin]

DISCHARGE OUTLET..... 1-1/4" NPT Flexible, stainless steel. Connects to a basin mounted bronze tank receiver.

INLET..... 3 positions, 4" (Sch 40/80 or SDR35) Flexible Inlet Flange (For Field Installation)

COVER ..... Rock-Shaped Polyethylene Cover, Interlocking with Riser Adapter, vented or unvented. Keyed lock included. Load rating of 150 lb per sq ft.

ALARM BOX..... Model1500 Alarm Panel, NEMA 4X Non-metallic Enclosure with Keyed Lock, Alarm Light, Alarm Horn w/Push Button, Pump and Alarm Circuit Breakers

DIRECT BURIAL CABLE .... 12/5 Type TC, STOOW Round U.L. Listed. 30ft (9m) length standard

MOVEABLE DISCHARGE FITTING w/ CHECK VALVE: (Removed with Pump)

Housing..... Powder Coated Cast Iron
Diaphragm..... Fiber Reinforced Neoprene
Flapper ..... Fiber Reinforced Nitrile
Size..... 1-1/4" Full Port
Valve Seat..... Bronze

BALL VALVE: ..... Toggle actuated via polypropylene harness from top side, removable without basin entry

Material..... Bronze, with Stainless Steel ball & stem, and Teflon seats
Size..... 1-1/4" Full Port

LIFTING HARNESS..... 1/8" x 3/4" Polypropylene (POD). 1/2" Dia. Polypropylene (PUMP) Breaking strength 3750 lbs.

HARDWARE ..... 300 Series Stainless Steel

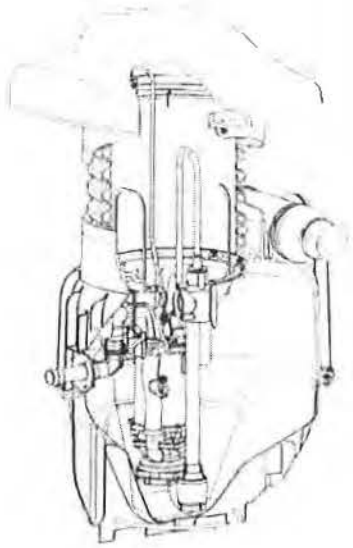
LEVEL CONTROL..... ESPS™ – Environmentally sealed pressure switch with CPVC housing, Nitrile diaphragm, Custom molded quick connect for sealing and strain relief.

ANTI-SIPHON ..... Integral to cast iron motor housing.

Flapper..... Fiber Reinforced Nitrile
Seat..... Valox with stainless steel rivet

PUMP ..... OGP2022CE (Std), 240 Volt, 1 Phase

OPTIONS ..... Direct Burial Cable lengths, Rock Cover Vented or Flood Plain, Depth, OGVF2022CE Pump, Model 1550 Alarm Panel w/Generator Receptacle



EcoTRAN™ System

For use with OGP and OGV pumps, 1¼" NPT

Vented 52"-74" Depth
Vented 76"-114" Depth
Flood Plain 52"-74" Depth
Flood Plain 76"-114" Depth

This product may be covered by one or more of the following patents and other patent(s) pending: US Patent 7,357,341 & US Patent 7,578,657

LR16567
NSF 46

CERTIFIED TO NSF / ANSI 46

BARNES

ECOTRAN SYSTEM

LISTED BASIN ASSEMBLY E151564 2N87
UL1951

EcoTRAN™ System

Simplex

www.cranepumps.com

Short Set EcoTRAN Package - Vented Cover								
Direct Burial Cable Length	OGP Pump				OGV Pump			
	Standard Alarm Box		Alarm with Generator Receptacle		Standard Alarm		Alarm with Generator Receptacle	
	Part No.	SC	Part No.	SC	Part No.	SC	Part No.	SC
30 Ft.	122848	NS	122854	CF	122851	NS	122857	CF
50 Ft.	122849	NS	122855	CF	122852	NS	122858	CF
100 Ft.	122850	NS	122856	CF	122853	NS	122859	CF

Long Set EcoTRAN Package - Vented Cover								
Direct Burial Cable	OGP Pump				OGV Pump			
	Standard Alarm Box		Alarm with Generator Receptacle		Standard Alarm		Alarm with Generator Receptacle	
	Part No.	SC	Part No.	SC	Part No.	SC	Part No.	SC
30 Ft.	124146	NS	124152	CF	124149	NS	124155	CF
50 Ft.	124147	NS	124153	CF	124150	NS	124156	CF
100 Ft.	124148	NS	124154	CF	124151	NS	124157	CF

Short Set EcoTRAN Package - Non-Vented Cover								
Direct Burial Cable	OGP Pump				OGV Pump			
	Standard Alarm Box		Alarm with Generator Receptacle		Standard Alarm		Alarm with Generator Receptacle	
	Part No.	SC	Part No.	SC	Part No.	SC	Part No.	SC
30 Ft.	122860	CF	122866	CF	122863	CF	122869	CF
50 Ft.	122861	CF	122867	CF	122864	CF	122870	CF
100 Ft.	122862	CF	122868	CF	122865	CF	122871	CF

Long Set EcoTRAN Package - Non-Vented Cover								
Direct Burial Cable	OGP Pump				OGV Pump			
	Standard Alarm Box		Alarm with Generator Receptacle		Standard Alarm		Alarm with Generator Receptacle	
	Part No.	SC	Part No.	SC	Part No.	SC	Part No.	SC
30 Ft.	124158	CF	124164	CF	124161	CF	124167	CF
50 Ft.	124159	CF	124165	CF	124162	CF	124168	CF
100 Ft.	124160	CF	124166	CF	124163	CF	124169	CF

CRANE
A Crane Co. Company
PUMPS & SYSTEMS
USA: (937) 778-8947 • Canada: (905) 457-6223 • International: (937) 615-3598

1. Depth
52"-74" (1.3m-1.8m) Vented
76"-114" (1.9m-2.9m) Vented
52"-74" (1.3m-1.8m) Flood Plain
76"-114" (1.9m-2.9m) Flood Plain

2. Pump Type (240V / 1 Phase)
2 HP OGP2022CE (STD.)
2 HP OGVF2022CE

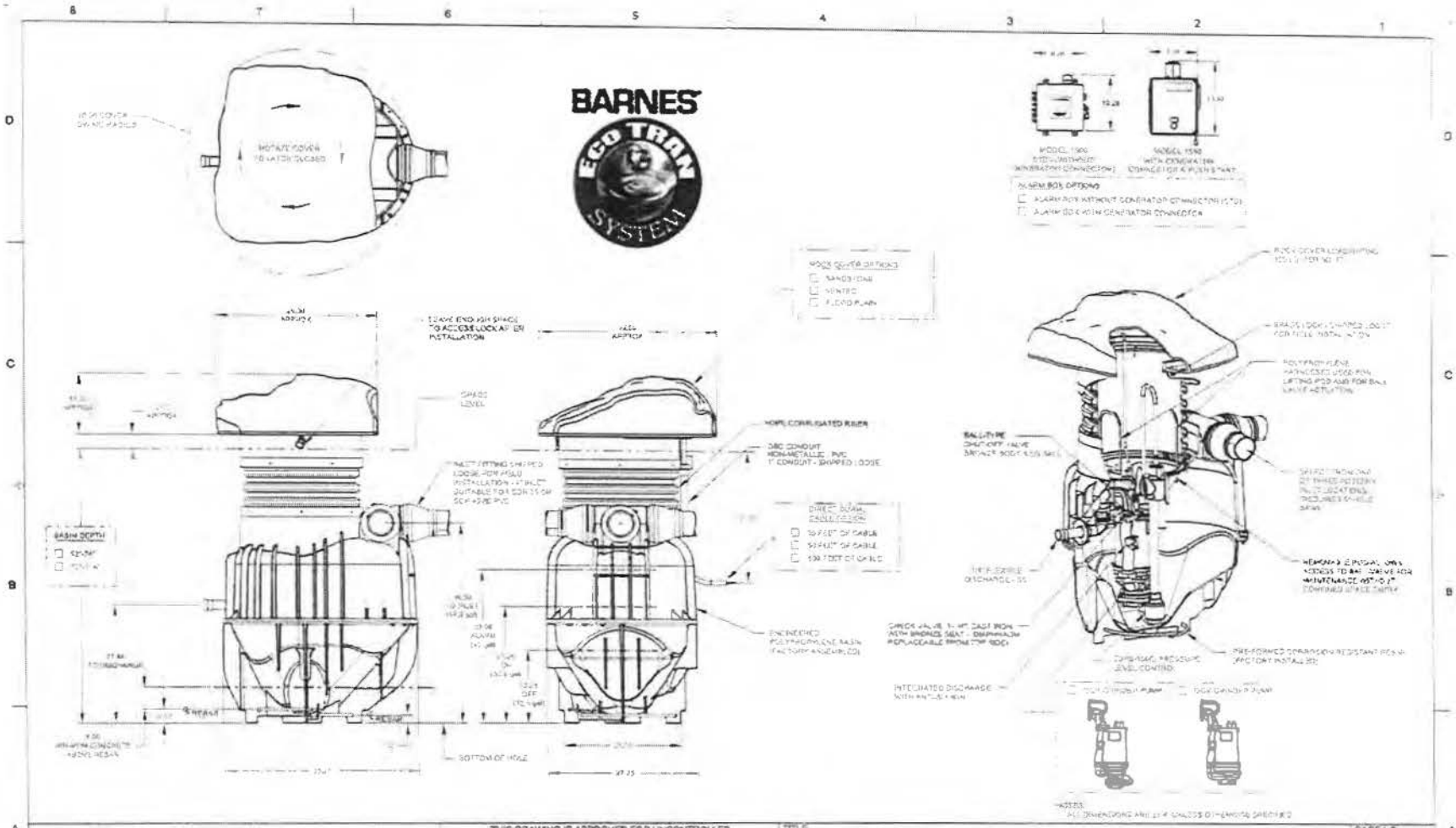
3. Direct Burial Cable Length
30 Feet (STD.)
50 Feet
100 Feet

4. Rock Cover Options (Select One)
Sandstone
Flood Plain, Sandstone

5. Alarm Box Options
Model 1500 w/Alarm Light, Horn, Silence Button & Circuit Breaker
Model 1550, Includes 1500 features, Plus Generator Receptacle and Automatic Transfer Switch

NOTES!

1. Unit shipped boxed complete including Basin Package, Pump, Level Control and Alarm Box (Riser shipped separately).
2. Riser depth can be shortened in the field during installation.
3. All moving parts and seals serviceable from ground level without entry into the basin.



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WWW.BARNES-PS.COM | SHEET 1 OF 1

TITLE

SIMPLEX, ECO TRAN SYSTEM, OGP,OGV

CAGE NO 96046

DWG NO CD119621 | REV E | CRANE PUMPS & SYSTEMS

EXHIBIT "D"

RESOLUTION OF TOWN OF
HILTON HEAD ISLAND, SOUTH CAROLINA

A RESOLUTION

AUTHORIZING THE HILTON HEAD NO. 1 PUBLIC SERVICE DISTRICT, SOUTH CAROLINA, TO ENTER INTO AN AGREEMENT WITH THE TOWN OF HILTON HEAD, SOUTH CAROLINA, TO PROVIDE CERTAIN SEWERAGE INFRASTRUCTURE

BE IT RESOLVED by the Hilton Head No. 1 Public Service District Commission (the "Commission"), the governing body of the Hilton Head No. 1 Public Service District, a special purpose district of the State of South Carolina (the "District"), as follows:

WHEREAS, the District provides certain public services within the municipal limits of the Town of Hilton Head Island, South Carolina (the "Town"), including the installation and maintenance of sewerage infrastructure;

WHEREAS, the District and the Town have identified the following areas requiring sewer service and infrastructure within the following areas known as the Ford Shell Park, Linear (Chaplin) Park and Fish Haul Park (the "Projects");

WHEREAS, the Town has determined that the Project is within the Town's tax increment financing district (the "TIF District") and that funds generated by the TIF District are an appropriate and desirable source to pay for the Project; and

WHEREAS, the District and the Town have determined that it is in the best interests of the citizens of the Town and the District to enter into an agreement (the "Agreement"), in substantially similar form to that attached hereto as Exhibit A, to provide for the construction of the Project by the District with funds generated by the TIF District and made available to the District by the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE HILTON HEAD NO. 1 PUBLIC SERVICE DISTRICT COMMISSION, THE GOVERNING BODY OF THE DISTRICT, IN A MEETING DULY ASSEMBLED:

Section 1. It is hereby declared that the facts set forth in the preambles to this Resolution are in all respects true and correct.

Section 2. That the District Manager, the Chairman of the Commission, or the acting District Manager are hereby authorized to sign and execute on behalf of the District and otherwise take all actions necessary to consummate the Agreement, in a form substantially similar to that attached hereto as Exhibit A, and provide for its implementation.

DONE IN MEETING DULY ASSEMBLED this 28st day of February, 2012.

HILTON HEAD NO. 1 PUBLIC SERVICE DISTRICT

(SEAL)

W. Robert Maurer

Chairman
Hilton Head No. 1 Public Service District Commission

Attest:

John Weisler

Secretary
Hilton Head No. 1 Public Service District Commission

EXHIBIT "E"

RESOLUTION OF HILTON HEAD
NO.1 PUBLIC SERVICE DISTRICT

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

CERTIFIED COPY OF RESOLUTION

I, the undersigned Secretary of the Hilton Head No. 1 Public Service District Commission (the "Commission"), the governing body of the Hilton Head No. 1 Public Service District (the "District"), do hereby certify that I am the duly qualified and acting Secretary of the Commission. As such official I further certify that the foregoing is a true and correct copy of a resolution adopted by the Commission on February 28, 2012, which was adopted by an affirmative vote of a majority of the Commission present and voting at a meeting convened and held in accordance with the enabling legislation of the District at which a quorum of the Commission were present and acted throughout; that said resolution has not been modified, amended, or repealed; and that said resolution is in full force and effect on and as of the date hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the District this 28 day of February, 2012.

(SEAL)

HILTON HEAD NO. 1 PUBLIC SERVICE DISTRICT COMMISSION

Secretary

MEMORANDUM

TO: Town Council

FROM: Stephen G. Riley, ICMA-CM, Town Manager

VIA: Susan Simmons, Director of Finance

DATE: July 23, 2012

RE: **Prior Year Accommodations Tax Grant Extensions**

Recommendation:
Staff recommends that (1) Town Council extend the 2011 Accommodations Tax Grants for the Hilton Head Island St. Patrick's Day Parade and the Shelter Cove Harbour Company 4th of July Fireworks through December 31, 2012; and (2) Town Council delegate to Town Manager the authority to approve prior year grant extensions in the future.

Summary:
Council awarded an $8,000 grant for calendar year 2011 for both the Hilton Head Island St. Patrick's Day Parade and the Shelter Cove Harbour Company 4th of July Fireworks. Both organizations have qualified expenditures from 2011, however, failed to submit reimbursement requests on time.

Background:
State Accommodations Tax law allows grants to remain open for two calendar years; however, it is a general Town policy that qualified expenditures are reimbursed for one calendar year only, unless special permission is granted by Town Council. Staff recommends that, in the future, Town Council allow the Town Manager to have the authority to approve grant extensions without being required to bring the issue to the attention of Town Council.

TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Stephen G. Riley, C.M., *Town Manager*
VIA: Teri Lewis, AICP, *LMO Official*
FROM: Heather Colin, AICP, *Development Review Administrator*
CC: Charles Cousins, AICP, *Director of Community Development*
DATE: July 31, 2012, 2012
SUBJECT: Proposed Development Agreement for the Mall at Shelter Cove

---

Recommendation:
Staff recommends that Town Council approve the attached Development Agreement which will facilitate the redevelopment of the Mall and create a new and improved community park.

Summary:
The draft development agreement and attached exhibits include information related to the proposed conceptual plan for the Mall at Shelter Cove, the proposed multi-family apartments, and a new community park that results from a land swap with the Town and Shelter Cove Town Center, LLC.

Background:
When the mall was sold to the present owners, the developers, Blanchard & Calhoun began a dialogue with Town staff on their conceptual plans. Several different plans were drafted and discussed with the intention of drafting the best plan for the developer and the community. During this dialogue the idea of a possible land swap with the Town was discussed in order to provide a better public space, which highlighted the natural and environmental assets of Broad Creek and better integrate the commercial development and the public space. In order to achieve the plan as discussed, a Development Agreement is the most appropriate mechanism to facilitate the redevelopment.

The development agreement includes a conceptual master plan that states the land use designations and density assignments of 295,000 square feet of commercial uses, 210 apartments, and a community park with the costs to build shared by the Town and developer at fifty percent each. The land swap involves the Town providing a 4.90 acre portion of the existing Shelter Cove Community Park to the Mall development in exchange for a 5.11 acre portion with more frontage on Broad Creek and provide for a more accessible space. The agreement also includes details concerning proposed road relocation and other transportation improvements including on-street parking. Land Management Ordinance (LMO) related design regulations and modifications are also addressed as part of the agreement.

PROPOSED ORDINANCE NUMBER: 2012-23 ORDINANCE NUMBER:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT WITH SHELTER COVE TOWNE CENTRE, LLC FOR THE REDEVELOPMENT OF THE MALL AT SHELTER COVE 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.

WHEREAS, Shelter Cove Towne Centre, LLC ("SCTC") is the owner of those certain parcels of land containing 42.45 acres, more or less, (prior to the Land Swap hereinafter described) located within the Town of Hilton Head Island ("Mall Tract"), which is the site of a commercial shopping center mall commonly known as The Mall at Shelter Cove ("Shopping Center"); and

WHEREAS, SCTC proposes to engage in redevelopment of the Mall Tract in order to reconfigure the footprint to open up and highlight Broad Creek, reduce the square footage of commercial density, create a Community Park to be conveyed to the Town, and allow future development on certain outparcels; and

WHEREAS, the State of South Carolina has enacted the South Carolina Local Government Development Agreement Act, Section 6-31-10, *et seq.* of the South Carolina Code of Laws (1976), as amended (the "Act"); and

WHEREAS, the Act authorizes local governments, including the city council of a municipality, to enter into development agreements with developers to accomplish the goals as set forth in the Act; and

WHEREAS, the Development Agreement between SCTC and the Town, a copy of which is attached hereto as Exhibit "A", would, pursuant to and under the terms of the

Act, provide assurances to SCTC that it may proceed with its proposed development, and memorialize certain agreements between the Town and SCTC with respect to the Mall Tract and its development; and

WHEREAS, the Town Council for the Town of Hilton Head Island, South Carolina, has determined that it is in the best interests of the Town to execute the Development Agreement, or one substantially similar in form and substance to that, a copy of which is attached hereto as Exhibit "A".

NOW THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AS FOLLOWS:

Section 1. Execution of Development Agreement

(a) The Mayor and Town Manager are hereby authorized to execute and deliver the Development Agreement which is attached hereto as Exhibit "A"; and

(b) The Mayor and Town Manager are hereby authorized to take such other and further actions as may be necessary to complete the execution of the Agreement as authorized hereby.

Section 2. Severability.

If any section, phrase, sentence or portion of this Ordinance is, for any reason, held or deemed to be invalid or unconstitutional by any court of competent jurisdiction, then such section, phrase, sentence or portion shall be deemed a separate, distinct and independent provision and shall not affect the remaining portion thereof.

Section 3. Effective Date.

This Ordinance shall become effective upon adoption thereof by the Town Council for the Town of Hilton Head Island, South Carolina.

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

By:_____
Drew Laughlin, Mayor

ATTEST

_____
Vicki Pfannenschmidt, Acting Town Clerk

First Reading: _____
Second Reading:_____

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

Introduced by Council Member:_____

July 31, 2012 – 4:20 p.m.

STATE OF SOUTH CAROLINA)
) DEVELOPMENT AGREEMENT
COUNTY OF BEAUFORT) FOR SHELTER COVE MALL

This Development Agreement is entered into by and between Shelter Cove Towne Centre, LLC ("SCTC"), a South Carolina limited liability company, and the Town of Hilton Head Island, South Carolina ("Town"), and shall be effective on the Effective Date, as defined herein.

WHEREAS, the State of South Carolina has enacted the South Carolina Local Government Development Agreement Act, Section 6-31-10, *et seq.* of the South Carolina Code of Laws (1976), as amended; and

WHEREAS, the Act authorizes local governments, including the city or town council of a municipality, to enter into development agreements with developers to accomplish the goals as set forth in the Act, consistent with that city or town's Comprehensive Plan; and

WHEREAS, SCTC is the owner of those certain parcels of land containing approximately 42.45 acres (prior to the Land Swap as hereinafter described), more or less, located within the Town of Hilton Head Island, more fully described in the ALTA/ACSM Land Title Survey of Shelter Cove Mall, a Section of Shelter Cove, prepared by Surveying Consultants dated the 27th day of July, 2011, hereinafter referred to as the ALTA Survey and hereafter identified as Exhibit "A" which is the current site and configuration of a commercial shopping center commonly known as The Mall at Shelter Cove (hereinafter "Mall Tract"); and

WHEREAS, SCTC proposes to redevelop the Mall Tract shown on the ALTA Survey in accordance with the Zoning Map Amendment Application submitted to the Town on April 20, 2012, with a reconfigured footprint as shown on the Concept Plan attached as Exhibit "B" (hereinafter "Concept Plan") which will:

1. Open up and highlight the expanse of Broad Creek;

2. Reduce the square footage of commercial density from the currently zoned 314,000 square feet to 295,000 square feet which will include:

3. Up to 10 kiosks (not to exceed a total of 1,500 square feet);

4. Adding a component of 210 multi-family dwelling units and related recreation and club facilities; and

5. Adding gas sales which will include not more than 200 square feet of incidental merchandise and cigarettes in accordance with LMO Section 16-4-209(E)(6);

6. Liquor store in accordance with LMO Section 16-4-209(E)(8); and

7. A Community Park.

8. Provide the Town with an approximately 5.11 acre community park ("Community Park") bordering on Broad Creek connecting with and becoming an integral part of the Town's proposed Chaplin Park Linear Trail, which will provide a location and venue for various purposes, including but not limited to walking, entertainment and educational activities, picnicking, and non-organized sports activities; and

9. Allow development on Outparcels I and C, all as more fully shown on the Concept Plan; and

WHEREAS, this Agreement is entered into by and between SCTC and the Town pursuant to, and in accordance with, the terms of the Act for the purpose of providing assurances to SCTC that it may proceed with its proposed development, and for the further purpose of memorializing certain agreements between the Town and SCTC with respect to the Mall Tract and its redevelopment.

NOW THEREFORE, for and in consideration of the mutual promises and covenants set forth herein, and of other good and valuable consideration, including economic and other benefits inuring to both the Town and SCTC as a result of this Agreement with regard to the future development and modification of Shelter Cove Mall by SCTC, the receipt and sufficiency of such consideration being hereby mutually acknowledged, and intending to be legally bound, the Town and SCTC hereby agree as follows:

I. RECITALS.

This Agreement is predicated upon the following:

A. The Code of Laws of South Carolina (the "SC Code") Section 6-31-10 through 6-31-160 as it exists on the Effective Date of this Agreement (the

"Act") enabling municipalities to enter into binding development agreements with entities intending to develop real property under certain conditions set forth in the agreement.

B. Resolution Number 2012-13 adopted by the Town on the 1st day of May, 2012, authorizing SCTC to apply for a rezoning of Town-owned land for the Exchange Parcel. A copy of the Resolution is attached hereto as Exhibit "C".

C. Public hearings regarding the consideration of this Agreement conducted by the Town on the __ day of _____, 2012, and the _____ day of _____, 2012, after publishing and announcing notice in accordance with the Act.

D. Ordinance Number_____ adopted by the Town on the _____day of _____, 2012, (a) determining that this Agreement is consistent with the Town's Comprehensive Plan and the Act; and (b) approving this Agreement.

E. Ordinance Number _____ adopted by the Town on the ____ day of _____, 2012, approving and allowing for the Town to execute a deed transferring ownership of the Exchange Parcel as further defined herein to SCTC in return for the acceptance of the Community Park as further defined herein.

F. Ordinance Number _____ adopted by the Town on the __ day of ____, 2012, approving the re-zoning of the Mall Tract, pursuant to ZMA 120006.

II. INCORPORATION.

The above recitals are hereby incorporated into this Agreement, together with the findings of the South Carolina General Assembly as set forth in Section 6-31-10(B) of the Act, and the definitions as set forth in Section 6-31-20 of the Act.

III. DEFINITIONS.

Capitalized terms used in this Agreement shall have the following definitions:

A. Act: The South Carolina Local Government Development Agreement Act, Section 6-31-10, *et seq.* of the South Carolina Code of Laws (1976) as amended.

B. Administrator: The person designated as the "LMO Administrator" or "LMO Official" under the applicable provisions of the LMO.

C. Agreement: This Development Agreement.

D. ALTA Survey: That certain ALTA/ACSM Land Title survey of Shelter Cove Mall, a section of Shelter Cove, prepared by Surveying Consultants, dated the 27th day of July, 2011 and identified as Exhibit "A" attached hereto.

E. Certificate of Compliance: A Certificate of Compliance issued by the Administrator pursuant to Chapter 3, Article VII of the LMO.

F. Commercial: Those Commercial uses as more fully described in LMO Sections 16-4-209 and 16-4-217.

G. Community Park: That certain approximately 5.11 (including the .14 acre gore resulting from the reconfiguration of Shelter Cove Lane) acre parcel of land fronting on Broad Creek originally being part of the Mall Tract being exchanged to the Town as shown on the Concept Plan.

H. Comprehensive Plan: The Comprehensive Plan for the Town of Hilton Head Island dated May 4, 2010, as amended, including other adopted supplements, referred to in LMO Chapter 1, Article II.

I. Concept Plan: That certain Conceptual Master Plan of Shelter Cove Mall Redevelopment dated May 18, 2012, prepared by Wood & Partners, LLC, and any other exhibits attached hereto and marked Exhibit "B".

J. Developer: Shelter Cove Towne Center, LLC, a South Carolina limited liability company referred to herein from time to time as SCTC, its successors or assigns.

K. Easement: An interest in land of another that entitles the holder to a specified limited use.

L. Effective Date: The later of (i) the date of final approval and enactment of an ordinance approving the Rezoning Application by the Town Council of the Town, and (ii) the date of final approval and enactment of an ordinance approving this Agreement by the Town Council of the Town.

M. Exchange Parcel: An approximately 4.9 acre parcel owned by the Town fronting Broad Creek and lying to the northeast of the Mall Tract to be exchanged to the Developer for the Community Park as more fully shown on that certain plat entitled "Boundary Reconfiguration of 4.90 Acres, New Multi-Family Parcel, Shelter Cove Lane, A Portion of Shelter Cove Community Park", prepared by Surveying Consultants dated the 12th day of June, 2012, and attached hereto as Exhibit "G".

N. Gross Floor Area: The area within the inside perimeter of the exterior walls with no deduction for corridors, stairs, closets, thickness of walls, columns or other features, exclusive of areas open and unobstructed to the sky and the public restrooms and 1,000 square foot storage area serving the Community Park, to be provided by SCTC.

O. Impact Fees: Fees paid, either to the Town ("Town Impact Fees") or to Beaufort County, South Carolina ("County Impact Fees") by SCTC in connection with new development and intended to be proportional to the impact that the new development will have on the types of facilities for which the fees are charged. The Town Impact Fees are more fully described in LMO Chapter 5, Article XVIII. Except as otherwise provided for in the LMO, Impact Fees are in addition to any other requirements, taxes, fees, or assessments imposed by the Town or County on new development or on the issuance of building permits or certificates of occupancy,

or which are imposed on and due against property within the jurisdiction of the Town or County.

P. Land Development Regulations: Ordinance Number_____, attached hereto as Exhibit "D", of the Town of Hilton Head Island, including but not limited to (a) this Development Agreement, (b) the Conceptual Master Plan of Shelter Cove Mall Redevelopment dated May 18, 2012, prepared by Wood & Partners, LLC, (c) the Shelter Cove Mall Redevelopment Conceptual Land Use Plan dated May 18, 2012, prepared by Wood & Partners, LLC, (d) the Zoning Map Amendment, (e) Modifications to the Town of Hilton Head Island Land Management Ordinance (applicable only to the Shelter Cove Mall Tract), (f) the Town of Hilton Head Island LMO, as currently in effect, (g) proposed Ordinance No. 2012-19 relative to the Zoning Map Amendment entitled "An Ordinance to Amend Title 16 of the Municipal Code of the Town of Hilton Head Island, South Carolina, by Amending Section 16-4-102, The Official Zoning Map and The Palmetto Dunes Resort Master Plan With Respect to the Certain Parcels Identified as Parcel 26, on Beaufort County Tax Map #12B, and a 9.3 Acre Portion of Parcel 12 on Beaufort County Tax Map #12C, within the Palmetto Dunes Resort Master Plan Under the PD-1 Planned Development Mixed Use District, to Amend the Uses and Associated Density for Parcel 26, Tax Map #12B to 295,000 Square Feet of Commercial Uses, Excluding Uses Listed in LMO 16-4-209, But Permitting Liquor Store and Gas Sales, Community Park and 76 Multi-Family Dwelling Units; and the Portion of Parcel 12, Tax Map #12C to 134 Multi-Family Dwelling Units and Community Park; and Providing for Severability and an Effective Date", and (except as otherwise provided herein) (h) any other Ordinances and/or Regulations enacted by the Town specifically and exclusively pertaining to the regulation of any aspect of the redevelopment of

the Mall Tract as approved by the Administrator or other LMO Official under the applicable provisions of the LMO, and (i) Declaration of Covenants, Conditions and Restrictions Running With Certain Land of Greenwood Development Corporation in Beaufort County, South Carolina, and Provisions For Membership in the Shelter Cove Harbour Company, Inc., a South Carolina Non-Profit Corporation, recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Book 342 at Page 1726, as amended.

Q. LMO: The Land Management Ordinance of the Town, Title 16 of the Municipal Code of the Town, as amended and attached hereto as Exhibit "D".

R. Mall Facility/Facilities: The Mall at Shelter Cove.

S. Mall Tract: Those certain parcels of land originally containing approximately 41.85 acres, as shown on Exhibit "F", located within the Town of Hilton Head Island, which includes the Exchange Parcel containing 4.90 acres, the revised Multi-Family Parcel containing 4.62 acres as shown on Exhibit "F.

T. Owner: SCTC, its successors or assigns.

U. Palmetto Dunes Resort Master Plan (including Shelter Cove): That certain Master Plan for Palmetto Dunes Resort dated February 10, 1984, last revised on April 22, 1986, and stamped as approved by the Town on May 7, 1986, and the accompanying text, as amended.

V. Parking Agreement: That certain Parking License Agreement dated November 8, 2001 by and between the Town and PVI Shelter Cove Limited Partnership, its successors and assigns.

W. Park Improvement Plan: That certain Plan to be entered into between the Town and SCTC within sixty (60) days following the Effective Date of this Agreement and the Zoning Map Amendment (which time period can be extended as deemed necessary by both

the Town and SCTC) which will identify the elements and improvements to be placed on the Community Park.

X. Park Management Plan. That certain Plan to be entered into between the Town and SCTC within six (6) months following the Effective Date of this Agreement and the Zoning Map Amendment (which time period can be extended as deemed necessary by both the Town and SCTC) which shall provide, among other things, a process to avoid use conflicts of the Community Park between SCTC and the Town as hereinafter described.

Y. Project. The redevelopment that will occur within and upon the Mall at Shelter Cove Tract, including the Exchange Parcel, as exemplified in the Concept Plan.

Z. Rezoning Application: That certain Zoning Map Amendment Application filed with the Town by SCTC on April 20, 2012 to amend the Master Plan.

AA. Shelter Cove Towne Centre, LLC: A South Carolina limited liability company, which owns the Mall at Shelter Cove.

BB. Shopping Center: That certain shopping center commonly known as The Mall at Shelter Cove, located on the Mall Tract.

CC. Third-Party Developer: A developer developing portions of the Project that are not the Developer.

DD. Town: The Town of Hilton Head Island, South Carolina.

EE. Zoning Map Amendment. The proposed Amendment to the current zoning designation of the Mall Tract, also referred to herein as "ZMA" or "ZMA120006".

IV. DEVELOPMENT RIGHTS.

A. Density and Permitted Uses. Subject to approval by the Town of ZMA120006, the Town agrees that permitted commercial density for the Mall Tract shall be measured in terms of Gross Floor Area of Mall Facilities totaling 295,000 square feet, of which no more than 1,500 square feet can be used for up to ten (10) kiosks; 210 multi-family residential units; an approximately 5.11 acre Community Park (to be owned by the

Town pursuant to a land swap as hereinafter described); and additional uses on the Property of gas sales, which may include not more than 200 square feet of incidental merchandise; liquor sales; and the right to develop Outparcels I and C.

B. Land Subject to Agreement. The real property which is the subject of this Agreement is described as:

(i) a legal description of the real property is set forth in Exhibit "E" and "E-1".

The real property will ultimately consist of approximately 41.85 acres (including the Community Park) after adjustment to Exhibit "F" for realignment of Shelter Cove Lane and addition of the Exchange Parcel pursuant to Section III(S) above.

C. Land Swap. The Town and SCTC recognize that a Community Park is desirable, needed and appropriate to be owned by and serve the Town. The location provides ample parking and desirable vistas on the edge of Broad Creek connecting with and becoming an integral link to the Town's proposed Chaplin Park Linear Trail providing a location for walking, entertainment, educational activities, picnicking, and non-organized sports activities and playground areas, resulting from the relocation of Shelter Cove Lane. The creation of a Town-owned Community Park in this location is also consistent with the terms and conditions of the Broad Creek Management Plan. The Community Park is shown on the Concept Plan and more fully shown and described on that certain plat thereof entitled "Boundary Reconfiguration of Shelter Cove Mall Area, a Section of Shelter Cove" dated July 5, 2012, prepared by Surveying Consultants, and identified on said Plat as "New Parcel To Be Conveyed By Shelter Cove Towne Centre, LLC, to Town of Hilton Head Island For Use As A Community Park" and that certain .14 acre parcel identified as "Area A-4, Old 60-foot Right-of-Way of Shelter Cove Lane", a copy of which is attached hereto and marked as Exhibit "F".

As hereinabove more fully described, in addition to the conveyance of the Community Park to the Town, it is contemplated that the Town will also obtain, to be added to and included within the Community Park site, an approximately .14 acre parcel lying and being within the multi-family parcel being rezoned by the Town of Hilton Head Island at the intersection of Mall Boulevard and Shelter Cove Lane, consisting of a portion of the roadbed of Shelter Cove Lane in its original configuration as more fully

shown on Exhibit "F" attached hereto. In exchange, the Town has agreed to convey to SCTC, to become a part of the Mall Tract, a 4.90 acre tract ("Exchange Parcel") lying on Broad Creek and adjacent to the northeastern boundary line of the existing Mall Tract as shown on the Concept Plan and as more fully shown and described on that certain plat thereof entitled "Boundary Reconfiguration, 4.90 Acres, New Multi-Family Parcel, Shelter Cove Lane, A Portion of Shelter Cove Community Park", prepared by Surveying Consultants, dated the 12th day of June, 2012, said parcel identified on this plat as "New Multi-Family Parcel To Be Conveyed to Shelter Cove Towne Centre, LLC, 4.90 acres", a copy of which is attached hereto and marked Exhibit "G". The Exchange Parcel shall be used to construct up to 134 multi-family dwelling units and related recreation and club facilities as shown on the Concept Plan and in accordance with Ordinance Number _____ _____.

Within sixty (60) days of the Effective Date, the parties will enter into a Park Improvement Plan, which shall contain all elements of the Park. Subsequently, the parties will exchange the ownership of the Exchange Parcel and the Community Park in accordance with the Park Improvement Plan and/or upon completion of the construction of the elements of the Park defined in the Park Improvement Plan landward of the OCRM Critical Line, and the issuance of a Certificate of Compliance for the Community Park for all of the elements of the Park landward of the OCRM Critical Line, to the satisfaction of the Town, through the execution, delivery, and recording of the deeds attached hereto as Exhibit "H".

D. Applicable Land Use Regulations.

(i) Applicable Laws and Land Development Regulations. Except as otherwise provided by this Agreement or by Section 6-31-10, *et seq.*, the laws applicable to the development of the real property subject to this Agreement are contained by reference in Ordinance No. ____of the Town of Hilton Head Island, including but not limited to (a) this Development Agreement, (b) the Conceptual Master Plan of Shelter Cove Mall Redevelopment dated May 18, 2012, prepared by Wood & Partners, LLC, (c) the Shelter Cove Mall Redevelopment Conceptual Land Use Plan dated May 18, 2012, prepared by Wood & Partners, LLC, (d) the Zoning Map Amendment, (e) Modifications to the Town of Hilton Head Island

Land Management Ordinance (applicable only to the Shelter Cove Mall Tract), (f) the Town of Hilton Head Island LMO, as currently in effect, (g) proposed Ordinance No. 2012-19 relative to the Zoning Map Amendment entitled "An Ordinance to Amend Title 16 of the Municipal Code of the Town of Hilton Head Island, South Carolina, by Amending Section 16-4-102, The Official Zoning Map and The Palmetto Dunes Resort Master Plan With Respect to the Certain Parcels Identified as Parcel 26, on Beaufort County Tax Map #12B, and a 9.3 Acre Portion of Parcel 12 on Beaufort County Tax Map #12C, within the Palmetto Dunes Resort Master Plan Under the PD-1 Planned Development Mixed Use District, to Amend the Uses and Associated Density for Parcel 26, Tax Map #12B to 295,000 Square Feet of Commercial Uses, Excluding Uses Listed in LMO 16-4-209, But Permitting Liquor Store and Gas Sales, Community Park and 76 Multi-Family Dwelling Units; and the Portion of Parcel 12, Tax Map #12C to 134 Multi-Family Dwelling Units and Community Park; and Providing for Severability and an Effective Date", (h) any other Ordinances and/or Regulations enacted by the Town specifically and exclusively pertaining to the regulation of any aspect of the redevelopment of the Mall Tract as approved by the Administrator or other LMO Official under the applicable provisions of the LMO, provided however, the Town may apply later enacted laws to the real property relating to the development applications, submittals and reviews, so long as such laws apply Town-wide, and (i) Declaration of Covenants, Conditions and Restrictions Running With Certain Land of Greenwood Development Corporation in Beaufort County, South Carolina, and Provisions For Membership in the Company, a South Carolina Non-Profit Corporation, recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Book 342 at Page 1726, as amended. The Town shall not apply subsequently adopted laws to the Mall Tract or the Project unless the Town has held a public hearing and has determined:

a. the proposed, subsequent laws are not in conflict with Ordinance No. _____or the Land Development Regulations governing the Agreement and do not prevent the Development set forth in this Agreement;

b. the proposed, subsequent laws are essential to the public health, safety, or welfare and the proposed, subsequent laws expressly state that they apply to a development that is subject to a development agreement;

c. the proposed, subsequent laws are specifically anticipated and provided for in this Agreement;

d. the Town demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement, which changes, if not addressed by the Town, would pose a serious threat to the public health, safety or welfare; or

e. this Agreement is based on substantially and materially inaccurate information supplied by SCTC. Nothing herein shall preclude SCTC from agreeing, on a case by case basis, to abide by such new laws, regulations, or ordinances subsequently passed by the Town which it, in its sole discretion, deems appropriate; and in such case the laws, regulations, or ordinances, so agreed by SCTC shall become part of the Land Development Regulations.

(ii) Vesting Rights. Subject to the provisions of sub-paragraph D(i) above, all rights, entitlements and prerogatives accorded to SCTC by this Agreement shall immediately constitute vested rights for the redevelopment of the Mall Tract, including the Exchange Parcel.

Paragraph IV (D) of this Agreement does not abrogate any rights either preserved by S.C. Code Section 6-31-40 or that may have been vested pursuant to common law and otherwise in the absence of a development agreement.

(iii) Building Codes and Laws Other Than Land Use Regulations. SCTC, notwithstanding any provision which may be construed to the contrary in this Agreement, must comply with any current or subsequently adopted building, housing, electrical, mechanical, and plumbing, gas or other standard codes adopted by the Town or other governmental entity, as authorized by Chapter 9 of Title 6 of the South Carolina Code. This Agreement shall not be construed to supersede or contravene the requirements of any building, housing, electrical, mechanical, plumbing, gas or other standard codes subsequently adopted by the Town or other governmental entity, as authorized by Chapter 9 of Title 6 of the South Carolina Code. The provisions of this Agreement are not intended, nor should they be construed in any way, to alter or amend in any way the rights, duties and privileges of the Town to exercise governmental powers and pass laws

not applicable to redevelopment of the Mall Tract including, but not limited to, police power measures of general application, the power of eminent domain and the power to levy and collect taxes; provided, however that laws applicable to the Development of the real property shall be subject to Section IV(D).

(iv) Local Development Permits and Other Permits Needed. The parties anticipate that the following local Development Permits and other regulatory permits will be needed to complete the development of the Project:

(a). Zoning Map Amendment, plat approvals (preliminary, conditional or final), roads, drainage construction plan approvals, building permits, certificates of occupancy, water and/or sewer development contracts, and utility construction and operating permits, as well as approval by various entities under the LMO, including but not limited to the Development Plan Review process and the Design Review Board.

(b). The failure of this Agreement to address a particular permit, condition, term or restriction does not relieve SCTC of the necessity of complying with the law governing permit requirement, conditions, terms or restrictions.

V. INFRASTRUCTURE COSTS.

The Town and SCTC recognize that the preponderance of the direct costs associated with the implementation of this Development Agreement will be borne by SCTC, and certain specific other necessary services and improvements will be provided by separate governmental or quasi-governmental entities, and not by the Town, except as hereinafter set forth. For clarification, the parties make specific notes of the following:

A. Facilities and Services. Although the nature of this project prevents SCTC from providing exact completion dates, the general phases and approximate timing of construction and development are set forth in Exhibit "I" attached hereto and incorporated herein by reference. SCTC certifies that the services and facilities will be in place at the time provided herein, and as to road, sewer, and water infrastructure, at the time commercial facilities or multi-family dwelling units are offered for occupancy to the public. It is understood that SCTC will be required to comply with all requirements of the LMO and Town Municipal Code to obtain a Certificate of Compliance ("COC")

and/or Certificate of Occupancy ("CO") and that any occupancy of the units prior to receipt of said COC or CO shall be deemed a violation of the LMO, Municipal Code, and this Agreement. Subject to compliance with applicable laws and all provisions of this Agreement, the Town hereby authorizes SCTC, on its own or through its affiliated companies, to install the facilities. Notwithstanding any provision herein to the contrary, SCTC hereby assures the Town that adequate facilities shall be available concurrent with the phase of development.

B. Shelter Cove Lane Relocation. Shelter Cove Lane, as presently depicted on Exhibit "A", is an existing private road owned and maintained by Shelter Cove Harbour Company, Inc., a private, non-profit property owners association of which SCTC is a member. In order to provide for the Community Park, as hereinabove described, and with the consent of the Shelter Cove Harbour Company, Inc., SCTC intends to relocate Shelter Cove Lane in conformity with the Concept Plan at its sole cost and expense and to be responsible for all costs associated with the creation, installation and design of the on-street parking, including all landscaping, all as shown in the Concept Plan for that portion of Shelter Cove Lane between the entrance to the Newport Community and the currently existing Veterans' Memorial All on-street parking shall remain public and shall be constructed with pervious material, such as pervious pavers, pervious concrete, or other material approved by the Administrator and Shelter Cove Harbour Company, Inc. Parcel B-4 as shown on Exhibit "F" shall be conveyed by the Town to the Shelter Cove Harbour Company, Inc., or its designee for on-street parking.

The Town, at its option, may choose to build additional on-street parking along Shelter Cove Lane northeast of its intersection with Mall Boulevard as indicated on the Concept Plan, but is under no obligation to do so. The roadbed of the original Shelter Cove Lane that is shown on Exhibit "F" in its current configuration shall be abandoned by the Shelter Cove Harbour Company, Inc., its current owner, and quit-claimed to SCTC, in exchange for a quit-claim deed for the right-of-way of the reconfigured Shelter Cove Lane as shown on the Concept Plan and Exhibit "F". At the discretion of the Town, upon the exchange of right-of-way as set forth above, Shelter Cove Harbour Company, Inc. shall enter into a Maintenance Agreement for the right-of-way of Shelter Cove Lane (from the southwestern terminus of Shelter Cove Lane with Hwy. 278 to the

northern terminus of Shelter Cove Lane with Hwy. 278), with the Town and the Town shall assume all maintenance responsibility for the same with the consent of Shelter Cove Harbour Company, Inc..

C. Development of Outparcels I and C. SCTC recognizes and acknowledges that previous amendments to the Palmetto Dunes Resort Master Plan of Parcels I and C, as shown on the Concept Plan, prohibited any development on the property. The Concept Plan contemplates the utilization by SCTC for development on these parcels and mutually agrees that an Order of Settlement pursuant to Civil Action No.: 91-CP-07-1071 dated the 30th day of March, 1992, placed conditions on the development of these parcels and subsequently a Declaration of Covenants and Restrictions provided limited development on the aforementioned parcels ("Restrictions"). The Restrictions provided that the Declarant, Owner and Town of Hilton Head Island, South Carolina, would have the right to enforce each and all of the Restrictions, Conditions and Covenants imposed by the Declaration by any proceeding in law or in equity. Further, the restrictions provided, among other things, that the Restrictions would inure to the benefit of and be enforceable by the Declarant, Owner and Town of Hilton Head Island, South Carolina, for a period of twenty (20) years and for automatic terms of twenty (20) years thereafter. Accordingly, the Town has found and SCTC agrees that it is in the best interest of the parties to extinguish the Restrictions and allow the development contemplated herein and each party agrees to execute appropriate restriction extinguishments on Outparcels I and C. In addition to the above, subject to the approval of the Town and the extinguishment of any restrictions prohibiting such, SCTC shall be permitted to locate signage in accordance with the applicable sign ordinances of the LMO on Outparcel II as shown on Exhibit "J".

D. Community Park Improvements and Maintenance. It has been agreed between the Town and SCTC that the Community Park will create a benefit to both parties hereto and accordingly SCTC and the Town have agreed to evenly divide the costs to construct the Community Park subject to obtaining the necessary permits from the various state and local agencies. Subject to Section IV(C) above, and the provisions of the Park Improvement Plan, SCTC shall administer the design, permitting and construction of the Community Park in conjunction with the Town, in accordance with

the agreement to evenly divide the costs with the Town. The Town shall be responsible for securing the necessary permits to allow for the construction of any proposed pier, bulkhead, or boardwalk exemplified on the Concept Plan and for the Town Trail as exemplified on the Concept Plan identified as a Public Waterfront Promenade that will become a part of the proposed Chaplin Park Linear Trail System meandering throughout the edge of the Exchange Parcel and the Community Park immediately adjacent to Broad Creek. In accordance with Section IV(C) above, the Town and SCTC agree to enter into the Park Improvement Plan sixty (60) days following the Effective Date hereof outlining the improvements to be made to the Community Park, not to exceed $4.5 Million in cost, and the parties agree to evenly divide the total expense associated therewith. In the event that the cost to improve the Park exceeds the $4.5 Million maximum, the Town will be responsible for payment of any excess amount. In the event that the cost to improve the Park does not reach the $4.5 Million maximum, the parties will evenly share the cost savings and any difference realized by SCTC may be utilized for other improvements to be made on the Mall Tract. At the discretion of the Town, any difference realized by the Town may be utilized for the relocation of the Santee Cooper power line easement exemplified on the Conceptual Master Plan identified as "Relocated Power Easement". The Park Management Plan shall also establish a system which will allow both parties hereto to utilize the Community Park for special events to avoid any conflicts of use and shall provide that upon completion of the improvements to the Community Park, the Town shall assume responsibility for its maintenance, including all of the amenities or facilities placed thereon. The Town shall own and maintain the Community Park but shall have the right to convey the Community Park to any other political subdivision of South Carolina or private, not-for-profit entity mutually agreed upon by SCTC subject to the Park Improvement Plan.

E. Relocation of Santee Cooper Power Line Easement. SCTC and the Town have mutually agreed that the current location of the 100-foot power line easement owned by Santee Cooper Cooperative within the Community Park as currently shown on Exhibit "A" will impair the ability for the enjoyment and use of the Community Park by the general public. Accordingly, SCTC shall use best efforts to relocate the power line easement within an easement not to exceed a 100-foot wide right-of-way designated as

"Relocated Power Easement" on the Concept Master Plan and the Town and SCTC have agreed that the only impact to Specimen Trees as defined in LMO Section 16-6-408 shall be that considered necessary by a utility company pursuant to LMO Section 16-3-402(3). The relocation of the Santee Cooper power line easement shall be at the sole cost and expense of SCTC. The relocation of the power line easement as set forth above shall be consistent with those certain recommendations from Santee Cooper Cooperative entitled "Shelter Cove Project Recommendations", a copy of which is attached hereto and marked Exhibit "K".

F. Road and Transportation Improvements. In the event the Traffic Study or other unforeseen circumstances resulting from road and transportation improvements impact specimen trees as defined in LMO Section 16-6-408, the impact of such improvements shall be exempt from the specimen trees requirements as provided for in the LMO.

G. Additional Infrastructure. SCTC has agreed to accommodate the needs of the Town's visitors to the Community Park and to those utilizing the Mall Facilities to construct publicly accessible restrooms on the Mall Tract in a location convenient to the commercial center and Community Park. Additionally, SCTC shall provide covered storage space of approximately 1,000 square feet for storage of Community Park equipment as part of the Mall Tract in a location adjacent to Shelter Cove Lane as shown on the Concept Plan. SCTC shall also be responsible for the construction of all of the pathways shown on the Concept Plan that are not located within the Community Park and the remaining Town-owned portion of the Shelter Cove Community Park (not included within the Exchange Parcel), to provide public access easements over all such pathways to provide for the use and enjoyment of same by the general public. The Town and SCTC agree to evenly split all County Impact Fees such that SCTC will receive credit to be applied to the Community Park or the parties will agree on a mechanism to act as a credit for SCTC. The storage for Community Park equipment and the public restrooms shall not be a deduction of the commercial density of 295,000 square feet. SCTC may enter into a Maintenance Agreement with the Town for the pathways used for public purposes located within the Mall Tract, and the Town shall assume all maintenance responsibility for same at its discretion.

H. Public Roads. William Hilton Parkway is an existing public road adjacent to the Mall Tract, which is under the jurisdiction of the South Carolina Department of Transportation. The Town will not be responsible for construction or maintenance of William Hilton Parkway or any other public roads adjacent to or within the Mall Tract; provided, however, the Town agrees to cooperate and support a new corridor entranceway into the Mall Tract from William Hilton Parkway to the Community Park with a "right-in, right-out" turn into William Hilton Parkway for the purposes of providing additional access to the Community Park and the Mall Tract and allowing a public corridor of view through the Mall Tract to Broad Creek furthering the objective of opening up the Mall Tract to allow additional vistas to Broad Creek and the surrounding marshes as exemplified on the Concept Master Plan. The additional ingress and egress into the Mall Tract shall be built in accordance with all S.C. Department of Transportation standards, including acceleration and deceleration lanes. The Town and SCTC agree that there will not be a median cut across from the new corridor entranceway into the Mall Tract.

I. Potable Water. Potable water currently is, and will continue to be, supplied to the Mall Tract by the Broad Creek Public Service District pursuant to its availability letter attached hereto and marked Exhibit "L". SCTC will construct or cause to be constructed all necessary potable water service infrastructure within the Mall Tract which is required as part of the future development and modification of the commercial area and multi-family dwelling units, which will be maintained by Broad Creek Public Service District. The Town will not be responsible for any construction or maintenance of potable water service infrastructure serving, or the treatment of potable water supplied to the Mall Tract. The Town agrees to use best efforts to assist in obtaining easements across properties not owned by SCTC and relocating easements as necessary in order to facilitate timely connection to the Broad Creek Public Service District service lines and facilities.

J. Sanitary Sewer Collection. Sanitary sewer treatment and disposal currently is, and will continue to be, provided to the Mall Facilities and the multi-family dwelling units by Broad Creek Public Service District pursuant to its availability letter attached hereto and marked Exhibit "L". SCTC will construct or cause to be constructed

all necessary sanitary sewer collection infrastructure within the Mall Tract which is required as part of the redevelopment and modification of the Mall Tract, which will be maintained by Broad Creek Public Service District. The Town will not be responsible for any construction or maintenance of sanitary sewer service disposal infrastructure serving, or the treatment of sanitary sewer generated by, the Mall Tract. The Town agrees to use best efforts to assist in obtaining easements across properties not owned by SCTC and relocating easements as necessary in order to facilitate timely connection to the Broad Creek Public Service District service line and facilities.

K. Drainage System and Stormwater Master Plan. The redevelopment of Shelter Cove Mall and associated surrounding properties will include the design and implementation of a new Stormwater Master Plan, the elements of which must be fully compliant with the LMO and/or otherwise approved by the Town. The Master Plan will propose modifications to the existing stormwater infrastructure to meet the stormwater standards in the Town of Hilton Head Island's Land Management Ordinance. The Town agrees to use best efforts to assist in approving and implementing the Master Plan.

Notwithstanding US Army Corps of Engineers (USACE) and OCRM determinations, the three (3) existing stormwater management ponds within the Shelter Cove Mall area shall be treated as stormwater management facilities and shall not be considered tidal or freshwater wetlands for the purposes of application of the Town of Hilton Head Island LMO. The ponds remain subject to all requirements of USACE and OCRM.

Since modifications will be made to the three (3) existing stormwater management ponds within the Shelter Cove Mall area that will significantly improve stormwater management for water quality improvement by providing for first-flush retention with 48-hour drawdown, no prior or additional filtration on site will be required. Best efforts will be made to incorporate prior or additional on-site treatment where practical.

L. Solid Waste. All solid waste collection services within the Mall Tract currently are, and will continue to be, supplied under private contract by SCTC. The Town will not be responsible for solid waste collection services within the Mall Tract, with the exception of the Community Park.

M. Other Utility Services. All other utility services, including telephone and electric, currently are, and will continue to be, supplied directly to the Mall Tract by the applicable utility companies pursuant to the availability letters attached hereto and marked Exhibits "L-1", "L-2" and "L-3". SCTC will construct or cause to be constructed all other necessary utility service infrastructure which is required as part of the future development and modification of the Mall Tract. The Town will not be responsible for any construction or maintenance of such utility services infrastructure serving, or the providing of any utility services to, the Mall Tract.

N. Impact Fees.

i) Town Impact Fees. Town Impact fees shall be applicable to the multi-family dwelling units in accordance with Chapter 5, Article XVIII of the LMO including any and all available offsets and all other provisions contained therein. Due to the public/private nature of the Project, specifically including the Community Park, all Town Impact Fees received by the Town as a result of the redevelopment of the Mall Tract may be applied by the Town to the public roadway modification, including the multi-purpose pathway adjacent to William Hilton Parkway as shown on the Concept Plan, and further including any public improvements required at the entrances off William Hilton Parkway onto the through road currently identified as Mall Boulevard on the Concept Plan but recognizing that such street name must be approved by the Planning Commission of the Town.

ii) County Impact Fees. The Town and SCTC agree to evenly split all County Park Impact Fees, such that SCTC will receive credit to be applied to the Community Park or the parties will agree on a mechanism to act as a credit for SCTC.

O. Establishment of Special Districts. The Town agrees that it will reasonably cooperate with SCTC to attempt to identify alternative funding mechanisms to assist in the timely implementation of the above-referenced infrastructure, services, and Community Park Improvements described herein. SCTC shall be responsible for the initial cost of the public infrastructure but will work with the Town, at the Town's

discretion, for the establishment of a district which may allow all or a portion of cost reimbursement to SCTC of the public infrastructure developed by SCTC.

P. Open Space and Pervious Area Requirements. All parks and other public facilities conveyed to the Town or retained by SCTC shall be deemed Open Space in accordance with the terms of the LMO. It is mutually agreed between the Town and SCTC that the Community Park and the remaining portions of the Shelter Cove Community Park being rezoned by the Town not included within the boundaries of the Exchange Parcel shall be counted in calculating any open space and pervious area requirements that may be required in the redevelopment of the Mall Tract.

VI. SPECIFIC CONDITIONS OF FURTHER REDEVELOPMENT OF THE MALL TRACT.

In further consideration for the commitments made to SCTC by the Town under this Agreement, SCTC agrees to the following specific conditions regarding further development and modification of the Mall Tract. The conditions which follow are in addition to the commitments made elsewhere herein by SCTC, and under this Agreement:

A. Community Park Site. Both the Town and SCTC recognize that a Community Park is desirable, needed and appropriate to serve the Town of Hilton Head Island community in a location that provides ample parking, desirable vistas on the edge of Broad Creek connecting with and becoming an integral open space link to the Town's proposed Chaplin Park Linear Trail in order to provide a location for walking, cultural, entertainment and educational activities, picnicking, non-organized sports activities, and playground areas. The Community Park may be used by SCTC for any of the permitted uses described in the Park Improvement Plan provided such activities do not interfere with any of the Town's designated uses and prearranged times. SCTC shall convey to the Town the 5.11 acre Community Park in exchange for an approximately 4.90 acre parcel within Shelter Cove Community Park owned by the Town, generally to the east of the Community Park, all as more clearly shown on Exhibits "F" and "G" attached hereto. The Town shall own (in accordance with the Park Improvement Plan) and maintain the Community Park but shall have the right to convey the site to another political subdivision of South Carolina or private not-for-profit entity mutually agreed

upon by SCTC and the Town (the "Park Organization"), subject to mutually agreed upon covenants and restrictions. The Town or the Park Organization agrees to maintain the Community Park upon conveyance to a level mutually agreed upon by SCTC and the Town. Subject to IV(C) above, conveyance of the Community Park shall occur upon the completion of the Community Park improvements. It is mutually agreed between the Town and SCTC that the Community Park shall be counted in calculating any open space requirement of the LMO within the Mall Tract.

B. Shelter Cove Lane. As exemplified on the Concept Plan, SCTC proposes to reconfigure Shelter Cove Lane in order to allow the creation of a new waterfront Community Park paralleling Broad Creek. The public functions that will occur on the Community Park anticipate large numbers of individuals and cars utilizing all of the Mall's parking facilities and therefore the Town and SCTC agree that on-street parking will be provided for and that the right-of-way of the reconfigured Shelter Cove Lane, denoted as "Area B-1" on Exhibit "F" shall have an 80-foot right-of-way to allow for such on-street parking and the anticipated pedestrian crosswalks at the most appropriate locations. The Town agrees, to the extent necessary, to obtain title to the existing roadbed of the original Shelter Cove Lane shown on Exhibit "F", whether through its powers of eminent domain or otherwise, and that portion of the original Shelter Cove Lane roadbed that is southwest of the 4.82 acre multi-family to the Veterans' Memorial as shown on Exhibit "F" and on the Concept Master Plan.

C. Buffers and Setbacks within the Mall Tract. SCTC agrees to maintain at all times an adjacent use buffer in accordance with LMO Section 16-5-904 (as amended) adjacent to the Newport Community, the Veterans' Memorial, The Plaza at Shelter Cove Shopping Center, and William Hilton Parkway as shown on the Concept Plan. The buffer along the Veterans' Memorial shall be measured from the northeastern most line that designates the area rezoned by the Town of Hilton Head pursuant to Ordinance No. _ _____. In accordance with LMO Section 16-5-904, and as a result of the redevelopment scheme approved by the Town in the Zoning Map Amendment and in this Development Agreement, the standards for pervious area and open space within the Mall Tract shall be fully satisfied within the Mall Tract as a whole, including the Community Park, but do not have to be satisfied on a site-specific basis.

SCTC agrees to have an average 50-foot or greater setback between the Broad Creek marsh critical line and proposed multi-family buildings. The overall design and landscaping of the public pathway between the multi-family dwelling units and Broad Creek shall be sufficiently designed and landscaped to provide users with a sense of separation from the multi-family dwelling units with an emphasis on trail-wide open space wide enough to accommodate emergency vehicles where necessary.

D. Traffic Study. SCTC has conducted a traffic study to determine the Level of Service at the lighted entranceway into the Mall Tract to determine the impact resulting from the modifications to the Mall Tract resulting from the Zoning Map Amendment. This traffic study shall be agreed by the Town to be in lieu of the traffic study provided for under LMO Section 16-3-1301, *et seq*. The traffic study of SCTC indicates the possibility of certain existing deficiencies at the entrances of Mall Boulevard and Shelter Cove Lane. The correction of such deficiencies may be paid for by the Town at its discretion.

E. Outside Dining. As a result of the redevelopment of the Mall Tract and the emphasis placed on its reconfiguration toward Broad Creek, the parties agree that outside dining shall be permitted upon notification by SCTC to the Town and provided such outside dining does not interfere with ingress and egress to other commercial retail shops and establishments and does not block or encroach into any road right-of-way impacting pedestrian circulation on the Mall Tract.

F. Park Edge. In order to provide the users of the Community Park the benefit of its location on the edge of Broad Creek, the Town and SCTC agree to cooperate to allow selective clearing of the buffer adjacent to Broad Creek and to use best efforts through the use of additional fill and plant material, and the location of irrigation facilities to prevent stormwater drainage from the Community Park draining into Broad Creek to the degree feasible. Additionally, SCTC and the Town shall utilize pervious surfaces wherever possible in walkways and pathways within wetland buffers.

G. Pathway Easements. SCTC agrees that all pathway easements shall include the right of the Town to utilize same for emergency vehicle entry, particularly behind the Exchange Parcel and other multi-family parcels, to ensure that emergency vehicles, including fire trucks, have access to all areas of the Mall Tract.

H. Acceptance of Facilities. The facilities described in this section will be accepted by the Town upon tender by SCTC, provided the facilities are built in accordance with the specifications approved by the Town, and provided further that the facilities are in good condition and not subject to any monetary lien.

I. Lighting. Prior to applying for a Certificate of Compliance for the redevelopment of the Mall Tract as contemplated by this Agreement, SCTC will adhere to all applicable provisions of the LMO.

J. Pedestrian Crossings. Prior to applying for a Certificate of Compliance for the development and modification of the Mall Tract as contemplated by this Agreement, and upon approval by Shelter Cove Harbour Company, Inc., SCTC will provide painted pedestrian crossings, pavers, or stamped crosswalks approved by the LMO Administrator on the relocated Shelter Cove Lane between the parking areas contemplated by this Agreement across Shelter Cove Lane for use by patrons of the Mall and visitors to the Community Park.

K. Existing Parking Agreement. Prior to applying for a Certificate of Compliance for the development and modification of the Mall Tract as contemplated by this Agreement, the Parking Agreement will be revised by the Town and SCTC to accurately reflect the shared parking on the Mall Tract.

L. Parking Data. In connection with an application to the Town for development plan review approval for the redevelopment of the Mall Tract pursuant to Ordinance No._____ of the Town of Hilton Head Island, SCTC will provide developer submitted parking data to comply with LMO Section 16-5-1209.

M. Local Vendor Preference. SCTC shall make good faith, commercially reasonable efforts to utilize the services of local vendors for all work connected with this Agreement, including but not limited to the design, permitting, construction and landscaping as may be necessary to implement the re-development authorized by this Agreement on the Mall Tract.

N. Covenants and Restrictions. As evidenced in the Declarations of Covenants, Conditions and Restrictions as set forth in Exhibit “M” to this Agreement, the Community Park, the Exchange Parcel, and Parcel “C” as referenced on Exhibit “J” and any transfers of property within the re-developed Mall Tract categorized as multi-family

dwellings shall be subject to various covenants and restrictions, notably prohibitions on (1) converting apartments to condominiums, (2) rentals of apartments for less than twelve (12) months per lease, and (3) sub-letting of apartments by tenants.

O. Donation of Right(s) of Way. SCTC agrees to donate any and all property owned by SCTC to the Town which may be needed in connection with the correction of any deficiencies related to required improvements or reconstruction to the existing intersections providing access to the Mall Tract.

VII. COMPLIANCE REVIEWS.

As long as SCTC owns any of the Mall Tract, SCTC, its successors or assigns, shall meet with the Town, or its designee, at least once per year during the Term to review development completed by SCTC in the prior year and the development anticipated to be commenced or completed by Developer in the ensuing year. SCTC or its designee shall provide such information as may reasonably be requested, to include but not be limited to, the occupancy of the commercial areas of the Mall and the multi-family dwelling units and any development rights transferred in the prior year and anticipated to be transferred in the ensuing year, if any. SCTC or its designee shall be required to compile this information for the entire Mall Tract within a reasonable time after written request by the Town.

VIII. TERMINATION AND ASSIGNMENT.

The Town shall have the right to unilaterally terminate this Agreement should development and modification of the Mall Tract, as contemplated by this Agreement, not be substantially complete within five (5) years of the Effective Date; *provided, however*, if any litigation or appeal is instituted by one or more third parties against the Town or SCTC, or both, regarding this Agreement, the Rezoning Application, or the development or modification of the Mall Tract, the Town and SCTC shall take such actions are permitted under 6-31-60(A)(2) of the Act to extend the termination date of this Agreement during the pendency of such litigation or appeal. This Agreement may be assigned by SCTC to a good faith purchaser of the Mall Tract.

IX. DEFAULT AND ENFORCEMENT.

The failure of the Owner, Developer or the Town to comply with the terms of this Agreement shall constitute a Default. In the event such Default is not cured within sixty

(60) days after written notice from the non-defaulting party to the defaulting party (as such time period may be extended with regard to non-monetary breaches or a reasonable period of time based on the circumstances, provided such defaulting party commences to cure such Default within such sixty (60) day period and is proceeding diligently and expeditiously to complete such cure), the non-defaulting party shall be entitled to pursue all remedies available at law or equity, including but not limited to specific performance; provided however no termination of this Agreement may be declared by the Town absent its according the Developer the notice, hearing and opportunity to cure in accordance with the Act; and provided any such termination shall be limited to the portion of the Project in default, and provided further that nothing herein shall be deemed or construed to preclude the Town or its designee from issuing stop work orders or voiding permits issued for Development when such Development contravenes the provisions of the Land Development Regulations or this Agreement. A Default of the Owner shall not constitute a Default by Third-Party Developers, and default by Third-Party Developers shall not constitute a default by the Owner. The parties acknowledge that individual residents and owners of completed buildings within the Property shall not be obligated for the obligations of the Owner or developer set forth in this Agreement.

X. NOTICES.

Any notice, demand, request, consent, approval or communication which a signatory party is required to or may give to another signatory party hereunder shall be in writing and shall be delivered or addressed to the other at the address below set forth or to such other address as such party may from time to time direct by written notice given in the manner herein prescribed, and such notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or by facsimile, or if by mail, on the fifth (5th) business day after deposit thereof in the United States Mail, postage pre-paid, registered or certified, addressed as hereinafter provided. All notices, demands, requests, consents, approvals, or communications to the Town shall be addressed to the Town at:

Stephen G. Riley
Town Manager, Town of Hilton Head Island
One Town Center Court
Hilton Head Island, South Carolina 29928

With a copy to:
Gregory M. Alford, Esquire
Alford Wilkins & Coltrane, LLC
P.O. Drawer 8008
Hilton Head Island, South Carolina 29938

and to the Owner at:

Mark Senn
President, Blanchard & Calhoun Commercial Corporation
2743 Perimeter Parkway
Building 200, Suite 370
Augusta, Georgia 30909

With a copy to:
William W. Jones, Jr., Esquire
Jones, Simpson & Newton
P.O. Box 1938
Bluffton, South Carolina 29910

XI. ENTIRE AGREEMENT, AMENDMENT, MODIFICATION, GOVERNING LAW, PARTIES IN INTEREST.

This Agreement constitutes the entire agreement between the parties regarding the matters set forth herein. No amendment or modification to this Agreement shall be effective unless reduced to writing, executed by both parties and approved by the Town Council of the Town. This Agreement shall be interpreted pursuant to the laws of the State of South Carolina generally, and more specifically, pursuant to the Act. If any provision of this Agreement shall be held by a court of competent jurisdiction after a final appeal to be illegal, unenforceable, or contrary to pubic policy, then such provision shall be stricken and the remaining provisions of this Agreement shall continue in full force and effect. Nothing contained in this Agreement, express or implied, is intended or shall be construed to confer upon or give any person (other than the parties hereto, their successors and permitted assigns) any rights or remedies under or by reason of this Agreement, or any term, provision, condition, undertaking, warranty, representation, indemnity, covenant, or agreement contained herein.

The Town will approve changes in the location of roads, buildings, recreational amenities, and other elements which may vary at the time of permit application when

more specific designs are available, provided the maximum densities and Land Development Regulations are followed.

XII. GENERAL

A. Subsequent Laws. In the event state or federal laws or regulations are enacted after the execution of this Agreement or decisions are issued by a court of competent jurisdiction which prevent or preclude compliance with the Act or one or more provisions of this Agreement ("New Laws"), the provisions of this Agreement shall be modified or suspended as may be necessary to comply with such New Laws. Immediately after enactment of any such New Law, or court decision, a party designated by SCTC and other Third-Party Developer(s) (if any) and the Town shall meet and confer in good faith in order to agree upon such modification or suspension based on the effect such New Law would have on the purposes and intent of this Agreement. During the time that these parties are conferring on such modification or suspension or challenging the New Laws, the Town may take reasonable action to comply with such New Laws. Should these parties be unable to agree to a modification or suspension, either may petition a court of competent jurisdiction for an appropriate modification or suspension of this Agreement. In addition, SCTC, Third-Party Developers and the Town each shall have the right to challenge the New Law preventing compliance with the terms of this Agreement. In the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

B. Estoppel Certificate. The Town, SCTC or any Third-Party Developer may, at any time, and from time to time, deliver written notice to the other applicable party requesting such party to certify in writing:

(i) that this Agreement is in full force and effect,

(ii) that this Agreement has not been amended or modified, or if so amended, identifying the amendments,

(iii) whether, to the knowledge of such party, the requesting party is in default or claimed default in the performance of its obligations under this Agreement, and, if so, describing the nature and amount, if any, of any such default or claimed default, and

(iv) whether, to the knowledge of such party, any event has occurred or failed to occur which, with the passage of time or the giving of notice, or both, would constitute a default and, if so, specifying each such event.

C. No Partnership or Joint Venture. Nothing in this Agreement shall be deemed to create a partnership or joint venture between the Town, SCTC or any Third-Party Developer or to render such party liable in any manner for the debts or obligations of another party.

D Force Majeure. No Party shall be liable for any failure to perform its obligations under this Agreement where such failure is as a result of Acts of God or nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), orders of any kind of the government of the United States or the State of South Carolina or the courts thereof, war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or industrial disturbances, and no other Party will have a right to terminate this Agreement under Section IX (Default) in such circumstances. Any Party asserting Force Majeure as an excuse for non-performance in whole or in part of its obligations under this Agreement shall have the burden of proving that reasonable steps were taken (under the circumstances) to minimize delay or damages caused by foreseeable events, that all non-excusable obligations were substantially fulfilled, and that the other Party was timely notified of the likelihood or actual occurrence which would justify such an assertion, so that other prudent precautions could be contemplated and implemented.

E. Exhibits. All exhibits attached hereto and/or referred to in this Agreement are incorporated herein as though set forth in full.

F. Construction. The parties agree that each party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits hereto.

G. Governing Law. This Agreement shall be governed by the laws of the State of South Carolina.

H. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute but one and the same instrument**.**

I. Agreement to Cooperate. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending such action; provided, however, each party shall retain the right to pursue its own independent legal defense.

J. Eminent Domain. Nothing contained in this Agreement shall limit, impair or restrict the Town's right and power of eminent domain under the laws of the State of South Carolina.

K. No Third Party Beneficiaries. The provisions of this Agreement may be enforced only by the Town, SCTC and Third-Party Developers. No other persons shall have any rights hereunder.

L. Transfers of Interest. Owner shall notify the Town, in writing, each time that it transfers any Development Rights hereunder to any other owner or developer. Such information shall include the legal name of the acquiring owner or developer, the current address and the name of a contact person at that entity, the location and number of acres of property transferred, a description of the Development Rights transferred and the allocation of any rights or responsibilities arising under this Agreement transferred to the acquiring owner or developer. The notification shall also include an updated Development Summary Schedule reflecting the transferred rights. The entity acquiring Development Rights hereunder shall file with the Town an acknowledgment of this Agreement as well as a commitment to be bound by them, all in a form reasonably satisfactory to the Town of Hilton Head Island.

M. Agreements to Run with the Land. This Agreement shall be recorded against the Real Property. The Agreements contained herein shall be deemed to run with the land for the Term hereof and any extensions of same. The burdens of this Agreement are binding upon, and benefits of the Agreement shall inure to, all successors in interest to the Parties to this Agreement.

N. No Waiver. Failure of a party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future time said right or any other right as it may have hereunder. Unless this Agreement is amended by vote of the Town Council taken with the same formality approving this Agreement, no officer, official or agent of the Town has the power to amend, modify or alter this Agreement or waive any of its conditions as to bind the Town by making any promise or representation contained herein.

O. Attorney's Fees. Should any Party hereto employ an attorney for the purpose of enforcing this Agreement, or any judgment based on this Agreement, for any reason or in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeal or rehearings, the prevailing Party shall be entitled to receive from the other party thereto reimbursement for all reasonable attorney's fees and all costs and expenses. Should any judgment or final order be issued in that proceeding, said reimbursement shall be specified therein.

XIII. STATEMENT OF REQUIRED PROVISIONS.

The Act requires that a development agreement must include certain mandatory provisions, pursuant to Section 6-31-60(A). Although certain of these items are addressed elsewhere in this Agreement, the following listing of the required provisions is set forth for convenient reference. The numbering below corresponds to the numbering utilized under Section 6-31-60(A) for the required items:

A. Legal Description of the Property and the Legal and Equitable Owners. The legal description of the property is set forth in Exhibit "E" and "E-1" attached hereto. The present legal owner of the Mall Tract is Shelter Cove Towne Centre, LLC, a South Carolina limited liability company. Shelter Cove Towne Centre, LLC, is also the developer of the Mall Tract under this Agreement upon the Effective Date. The total acreage for the Mall Tract shall be 41.85 after the reconfiguration of Shelter Cove Lane, the addition of the 4.90 acre Exchange Parcel, and the revised multi-family parcel of 4.62 acres as defined in Section III(S) above.

B. Duration of Agreement. The duration of this Agreement is five (5) years, unless extended or terminated by the parties, as may be permitted by the Act; *provided, however*, that the Town and Shelter Cove Towne Centre, LLC, acknowledge and agree

that the initial term of the Agreement may be renewed for two additional five (5) year periods absent a default under the terms of the Agreement pursuant to Section IX hereof.

C. Permitted Uses, Population, Densities, Building Heights, and Intensities. A complete listing and description of permitted uses, population, densities, building intensities and heights, as well as other development related standards, are contained in Land Development Regulations, as supplemented by this Agreement and the uses on the Mall Tract are those allowed by the PD Master Plan, as amended by the approval of the Rezoning Application, this Agreement and the LMO.

D. Utility Services. The utility services available to the property are described generally above regarding water service, sewer service, cable and other telecommunications service, gas service, electrical service, telephone service, and solid waste disposal. The mandatory procedures of the Land Development Regulations will ensure availability of roads and utilities to serve the residents and tenants on a timely basis.

E. Required Public Facilities. All requirements relating to land transfers for public facilities are set forth herein. The Land Development Regulations described above and incorporated herein contain numerous provisions for the protection of environmentally sensitive areas. All relevant State and Federal laws will be complied with, in addition to the important provisions set forth in this Agreement. The environmentally sensitive areas located on the Mall Tract adjacent to the marshes of Broad Creek will be protected in accordance with the terms of the Land Development Regulations set forth herein.

F. Land Development Permits. The development standards for the Project shall be as set forth in the Land Development Regulations. Specific permits must be obtained prior to commencing development, consistent with the standards set forth in the Land Development Regulations. Building permits must be obtained under applicable law for any vertical construction, and appropriate permits must be obtained from the State of South Carolina (OCRM) and Army Corps of Engineers, among other required entities, when applicable, prior to any impact on jurisdictional wetlands. It is specifically understood that failure of this Agreement to address a particular permit, condition, term, or restriction does not relieve the Developer, its successors and assigns, of the necessity

of complying with the law governing the permitting requirements, conditions, terms, or restrictions, unless otherwise provided hereunder. This Agreement is contingent upon the Developer obtaining approval from the Town of the Rezoning Application.

G. Comprehensive Plan and Development Agreement. The Town has determined that the development and modification of the Mall Tract contemplated by this Agreement is consistent with the Town's Comprehensive Plan, as recently amended, and with the Land Development Regulations.

H. Terms for Public Health, Safety, and Welfare. The legal process which resulted in the approval of the Rezoning Application for the Mall Tract included considerable input to assure the Town that the redevelopment and modification of the Shelter Cove Mall contemplated by this Agreement adequately addresses applicable issues of public health, safety, and welfare. The terms and conditions of the approval of the Rezoning Application serve that purpose, together with other terms and conditions contained in this Agreement.

I. Historic Structures. No specific terms relating to historic structures are pertinent to this Agreement. No historic structures exist on the Mall Tract.

[Signature pages follow]

F:\Home\CLIENT FILES ACTIVE\Shelter Cove 8727.001\Development Agreement\Development Agreement - WWJ redline revised -7 31 12.doc

IN WITNESS WHEREOF, the Town has caused this Agreement to be signed and sealed this _____ day of _____, 2012, pursuant to Ordinance No. _____, duly adopted by the Town Council of the Town on _____, 2012.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

Town of Hilton Head Island, South Carolina

_____

By:_____

_____

Attest:_____

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGEMENT
COUNTY OF BEAUFORT)

I, the undersigned Notary Pubic, do hereby certify that _____ and _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this _____ day of _____, 2012.

_____
Notary Public for South Carolina
My Commission Expires:_____

IN WITNESS WHEREOF, Shelter Cove Towne Centre, LLC, has caused this Agreement to be signed and sealed this ____ day of _____, 2012.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:	**Shelter Cove Towne Centre, LLC, a South Carolina limited liability company**
_____	By:_____
_____	

STATE OF)
) **ACKNOWLEDGEMENT**
COUNTY OF)

I, the undersigned Notary Pubic, do hereby certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this _____ day of _____, 2012.

_____
Notary Public for South Carolina
My Commission Expires:_____

MEMORANDUM

TO: **Town Council**
CC: **Gregory M. Alford, Charles Cousins**

FROM: **Stephen G. Riley, ICMA-CM, Town Manager**

DATE: **8/1/2012**

SUBJECT: **Mall at Shelter Cove- Land Swap**

Recommendation: Recommend approval of the exchange of real property with Shelter Cove Towne Centre, LLC.

Summary: The Development Agreement with Shelter Cove Towne Centre, LLC (the Mall Redevelopment Agreement) contemplates the exchange of real property wherein the property conveyed to SCTC will be developed into multi-family dwelling units and the property conveyed to the Town will be developed into a Community Park.

Background: In consideration of SCTC conveying property to the Town and the development of a Community Park as part of the redevelopment of the Mall at Shelter Cove, the Town has agreed to convey a portion of its property to SCTC to be developed and utilized as multi-family dwelling units upon certain conditions and restrictions. These restrictions will be approved via separate Ordinance.

PROPOSED ORDINANCE: 2012-24 ORDINANCE: 2012-____

AN ORDINANCE OF THE TOWN OF HILTON HEAD, SOUTH CAROLINA, AUTHORIZING THE SALE OF REAL PROPERTY OWNED BY THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, IN EXCHANGE FOR LAND OWNED BY SHELTER COVE TOWNE CENTRE, LLC IN CONJUNCTION WITH THE MALL AT SHELTER COVE DEVELOPMENT AGREEMENT AND 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, As Amended); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

LEGISLATIVE FINDINGS

WHEREAS, The Town of Hilton Head Island, South Carolina ("Town") owns real property which is more particularly known and described as:

> That certain 4.90 acre tract lying on Broad Creek and adjacent to the northeastern boundary line of the existing Mall Tract as shown on the Concept Plan and as more fully shown and described on that certain plat thereof entitled "Boundary Reconfiguration, 4.90 Acres, New Multi-Family Parcel, Shelter Cove Lane, A Portion of Shelter Cove Community Park", prepared by Surveying Consultants, dated the 12th day of June, 2012, said parcel identified on this plat as "New Multi-Family Parcel To Be Conveyed to Shelter Cove Towne Centre, LLC, 4.90 acres
> (hereinafter referred to as "Exchange Parcel")

WHEREAS, Shelter Cove Towne Centre, LLC, ("SCTC") owns real property which is more particularly known and described as:

> That certain "New Parcel To Be Conveyed By Shelter Cove Towne Centre, LLC, to Town of Hilton Head Island For Use As A Community Park" on the "Boundary Reconfiguration of Shelter Cove Mall Area, a Section of Shelter Cove "dated July 5, 2012, prepared by Surveying Consultants,
> (hereafter referred to as "Community Park Parcel")

WHEREAS, the Town has negotiated and approved a Development Agreement (Ord. 2012-__) with SCTC which contemplates the exchange of the above referenced properties between the Town and SCTC, for the development of a Community Park on Broad Creek.

WHEREAS, it is contemplated that within thirty (30) days of completion of the construction and issuance of a Certificate of Compliance of the Community Park, as outlined in the Development Agreement and the Park Improvement Plan referenced therein, the Town and SCTC will exchange ownership of the Exchange Parcel and the Community Park Parcel through the execution, delivery and recording of the attached deeds or ones substantially similar, which are attached hereto as Exhibit "A".

WHEREAS, the Exchange Parcel and the Community Park Parcel will be encumbered with certain Covenants and Restrictions, or ones substantially similar, prior to the exchange, copies of which are attached hereto as Exhibit "B". The placement of Covenants and Restrictions on the Exchange Parcel will be effected by separate Ordinance No. 2012-___.

WHEREAS, the Town Council of the Town of Hilton Head Island, South Carolina has determined that it is in the best interests of the Town of Hilton Head Island, South Carolina, to authorize the execution, delivery and acceptance of the attached deeds, or ones substantially similar to Exhibit "A", the authorization of execution of Covenants and Restrictions, or ones substantially similar to Exhibit "B", and to authorize the completion of the transaction described herein.

WHEREAS, under 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, As Amended),

the conveyance of real property owned by the Town of Hilton Head Island must be authorized by the adoption of an ordinance by the Town Council for the Town of Hilton Head Island, South Carolina.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AS FOLLOWS:

Section 1. Execution of Deed of Town Owned Real Property to Shelter Cove Towne Centre, LLC subject to Covenants and Restrictions, acceptance of Deed of Real Property from Shelter Cove Towne Centre, LLC subject to Covenants and Restricitons and Completion of the Transaction Described in the above referenced Development Agreement:

(a) The Mayor and Town Manager are hereby authorized to execute and deliver the deed for the sale of Town owned property and to accept the conveyance of real property owned by Shelter Cove Towne Centre, LLC, in substantially similar forms as attached hereto as Exhibit "A"; and,

(b) The Mayor and Town Manager are hereby authorized to place upon the Exchange Parcel and to accept the Community Park Parcel subject to Covenants and Restrictions in substantially similar forms as attached hereto as Exhibit "B"; and,

(c) The Mayor and Town Manager are hereby authorized to take all other and further actions as may be necessary to complete the transaction described herein.

Section 2. Severability:

If any section, phrase, sentence or portion of this Ordinance is, for any reason, held or deemed to be invalid or unconstitutional by any court of competent jurisdiction, then such section, phrase, sentence or portion shall be deemed a separate, distinct and independent provision and shall not affect the remaining portion thereof.

Section 3. Effective Date:

This Ordinance shall become effective upon its adoption by the Town Council for the Town of Hilton Head Island, South Carolina.

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

THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

By:_____
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:_____

EXHIBIT "A"

STATE OF SOUTH CAROLINA	**)**	
	)	**GENERAL WARRANTY DEED**
COUNTY OF BEAUFORT	**)**	

KNOW ALL MEN BY THESE PRESENTS, that **THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA** ("Grantor"), in the State aforesaid and in consideration of the sum of **TEN AND NO/100 ($10.00) DOLLARS** and no other valuable consideration to it in hand paid at and before the sealing of these presents by **SHELTER COVE TOWNE CENTER, LLC** ("Grantee"), having an address of 2743 Perimeter Parkway Blvd 100 Ste 370, Augusta GA 30909**,** in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantees, in fee simple, its Successors and Assigns, the following property to wit:

> ALL that certain piece, parcel or lot of land being shown and described as "New Multi-Family Parcel 4.90 Ac." on the plat entitled Boundary Reconfiguration of 4.90 Acres New Multi-Family Parcel, Shelter Cove Lane, A Portion of Shelter Cove Community Park, Hilton Head Island, Beaufort County, South Carolina" dated June 12, 2012 prepared by Terry G. Hatchell, RLS#11059 and recorded in Plat Book ____ at Page ____ in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more detailed description as to courses, metes and bounds, reference is made to said plat of record.
>
> This being a portion of the same property conveyed to the within Grantor by deed of Hancock Development Company, Inc., dated _____, 1999, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 1190 at Page 1309.
>
> Beaufort County Tax Map Reference: A Portion of R520 012 00C 0002 0000
>
> This Deed was prepared in the law office of Alford, Wilkins & Coltrane, LLC, Post Office Drawer 8008, Hilton Head Island, South Carolina, 29938-8008, by John W. Wilkins, Esq.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantee, in fee simple, its Successors and Assigns, forever.

AND the said Grantor does hereby bind Grantor and Grantor's successors, assigns, executors and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Grantee, the Grantee's successors and assigns, against Grantor and Grantor's successors and assigns and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS Grantor's hand this _____ day of _____, 2012.

SIGNED SEALED AND DELIVERED
IN THE PRESENCE OF

TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

2)_____
Signature of 1st Witness

By:_____
Stephen G. Riley, CP, Town Manager

3)_____
Signature of 2nd Witness (the Notary Public)

STATE OF SOUTH CAROLINA)
) UNIFORM ACKNOWLEDGMENT
COUNTY OF BEAUFORT)

I, the undersigned Notary Public do hereby certify that Stephen G. Riley appeared before me this day and, in the presence of the two witnesses above named, acknowledged the due execution of the foregoing instrument on behalf of The Town of Hilton Head Island, South Carolina.

Witness my hand and seal this _____ day of _____, 2012.

4)_____(SEAL)
Signature of Notary Public for _____
My Commission expires:_____

EXHIBIT "A"

STATE OF SOUTH CAROLINA	**)**	
	)	**GENERAL WARRANTY DEED**
COUNTY OF BEAUFORT	**)**	

KNOW ALL MEN BY THESE PRESENTS, that **SHELTER COVE TOWNE CENTRE, LLC**("Grantor"), in the State aforesaid and in consideration of the sum of **TEN AND NO/100 ($10.00) DOLLARS** and no other valuable consideration to it in hand paid at and before the sealing of these presents by **TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA** ("Grantee"), having an address of 1 Town Center Court, Hilton Head Island, SC 29928**,** in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee, in fee simple, its Successors and Assigns, the following property to wit:

> ALL that certain piece, parcel or lot of land being shown and described as "New Parcel to be Conveyed 4.97 Ac." on the plat entitled Boundary Reconfiguration of Shelter Cove Mall Area, A Section of Shelter Cove, Hilton Head Island, Beaufort County, South Carolina" dated June 12, 2012 prepared by Terry G. Hatchell, RLS#11059 and recorded in Plat Book ____ at Page ____ in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more detailed description as to courses, metes and bounds, reference is made to said plat of record.
>
> This being a portion of the same property conveyed to the within Grantor by PVI Shelter Cove Limited Partnership, dated August 10, 2011, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 3076 at Page 2860.
>
> Beaufort County Tax Map Reference: a Portion of R520 012 00B 0026 0000
>
> AND
>
> ALL that certain piece, parcel or lot of land being shown and described as "Old 60' R/W of Shelter Cove Lane Area A-4 0.14 Ac." on the plat entitled Boundary Reconfiguration of Shelter Cove Mall Area, A Section of Shelter Cove, Hilton Head Island, Beaufort County, South Carolina" dated June 12, 2012 prepared by Terry G. Hatchell, RLS#11059 and recorded in Plat Book ____ at Page ____ in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more detailed description as to courses, metes and bounds, reference is made to said plat of record.

This being a portion of the same property conveyed to the within Grantor by Shelter Cove Harbour Company, recorded on _____, 2012, in the Office of the Register of Deeds for Beaufort County, South Carolina in Book _____ at Page _____.

Beaufort County Tax Map Reference: a Portion of R520 012 00B 0030 0000

This Deed was prepared in the law office of Alford, Wilkins & Coltrane, LLC, Post Office Drawer 8008, Hilton Head Island, South Carolina, 29938-8008, by John W. Wilkins, Esq.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantee, in fee simple, its Successors and Assigns, forever.

AND the said Grantor does hereby bind Grantor and Grantor's successors, assigns, executors and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Grantee, the Grantee's successors and assigns, against Grantor and Grantor's successors and assigns and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS Grantor's hand this _____ day of _____, 2012.

(THIS SPACE INTENTIONALLY LEFT BLANK)

SIGNED SEALED AND DELIVERED IN THE PRESENCE OF

SHELTER COVE TOWNE CENTRE, LLC

2)_____
Signature of 1st Witness

By:_____

3)_____
Signature of 2nd Witness (the Notary Public)

Its:_____

STATE OF SOUTH CAROLINA)
) UNIFORM ACKNOWLEDGMENT
COUNTY OF BEAUFORT)

I, the undersigned Notary Public do hereby certify that _____ appeared before me this day and, in the presence of the two witnesses above named, acknowledged the due execution of the foregoing instrument on behalf of Shelter Cove Towne Centre, LLC.

Witness my hand and seal this _____ day of _____, 2012.

4)_____(SEAL)
Signature of Notary Public for _____
My Commission expires:_____

EXHIBIT "B"

STATE OF SOUTH CAROLINA	)	
	)	DECLARATION OF COVENANTS,
COUNTY OF BEAUFORT	)	RESTRICTIONS, AND LIMITATIONS

THIS DECLARATION is made this ____ day of _____, 2012, by the Town of Hilton Head Island, South Carolina, a municipal corporation (hereinafter referred to as "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain lands (hereinafter referred to as the "Property") described in Article I of this Declaration, located on Hilton Head Island, Beaufort County, South Carolina; and

WHEREAS, Declarant finds that private controls over the use of the land are an effective means of establishing, preserving, maintaining and, in some instances, enhancing, the economic or intangible values pertaining to the use and enjoyment of the Property and, to this end, Declarant desires to establish on the Property certain private land use controls, conditions, restrictions, equitable servitudes, encumbrances, affirmative obligations, burdens, benefits, reservations, easements, assessments, charges and liens (hereinafter referred to as the "Declaration" or these "Covenants").

NOW THEREFORE, Declarant hereby declares that the Property hereof is and shall be held, transferred, sold, devised, assigned, conveyed, given, purchased, leased, occupied, possessed, mortgaged, encumbered and used subject to these Covenants. These Covenants, the benefits of these Covenants, and the affirmative and negative burdens of these Covenants, whether pertaining to items, benefits and obligations presently existing or to be created or executed in the future, do and shall, in equity and at law, touch and concern, benefit and burden, and run with the land and any estates in the Land herein referred to as the Property, and these Covenants are intended to be Covenants and servitudes burdening and benefiting all persons now or hereafter deriving a real property estate in the Property whether by assignment, succession or inheritance or other method of conveyance.

PART ONE
PROPERTY COVERED BY COVENANTS

ARTICLE I:

Property Description

Section 1.1: The Property: The real property ("the Property") which is and shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to these Covenants, is described as follows:

> ALL that certain piece, parcel or lot of land being shown and described as "New Multi-Family Parcel 4.90 Ac." on the plat entitled Boundary Reconfiguration of 4.90 Acres New Multi-Family Parcel, Shelter Cove Lane, A Portion of Shelter Cove Community Park, Hilton Head Island, Beaufort County, South Carolina" dated June 12, 2012 prepared by Terry G. Hatchell, RLS#11059 and recorded in Plat Book ____ at Page ____ in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more detailed description as to courses, metes and bounds, reference is made to said plat of record.
>
> This being a portion of the same property conveyed to the within Grantor by deed of Hancock Development Company, Inc., dated April 29, 1999 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 1190 at Page 1309.
>
> Beaufort County Tax Map Reference: A Portion of R520 012 00C 0002 0000

PART TWO
LAND USE RESTRICTIONS

ARTICLE II:
General Land Use Restrictions and Obligations

Section 2.1: Restrictions on Converting Apartments to Condominiums. In the event any apartments are erected, constructed, or otherwise built on or within the Property, said apartments shall not be converted into condominiums in any manner.

Section 2.2: Restrictions on Rentals of Apartments for Less than Twelve Months per Lease. In the event any apartments are erected, constructed, or otherwise built on or within the Property, the owner(s) of any apartment(s) shall not execute or enter into any lease(s) with a term for less than twelve (12) months per lease. In the event that such a lease is executed or entered into, said lease shall be considered void and of no legal effect.

Section 2.3: Restrictions on Sub-Letting of Apartments by Tenants. In the event any apartments are erected, constructed, or otherwise built on or within the Property, the tenant(s) of any apartment(s) shall not lease or sub-let the apartment(s) to any third parties.

PART THREE
GENERAL

Article III:
General Provisions

Section 3.1: Duration of Covenants. All covenants, restrictions and affirmative obligations set forth herein shall run with the land and shall be binding on all parties and persons claiming under them.

Section 3.2: Remedies in the Event of Violation or Breach. In the event of a violation or breach of any of the restrictions contained herein by grantee, its agents, successors or assigns, Declarant shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event, and Declarant shall have the right to recover all costs and expenses of suit in such action, including reasonable attorneys' fees and costs whether or not incurred in conjunction with appellate proceedings.

Section 3.3: Severability and Rule Against Perpetuities. The invalidation by any court of any restrictions of these Covenants shall in no way affect any of the other restrictions, but they shall remain in full force and effect. If any provisions of this Declaration would violate the rule against perpetuities or any other limitation on the duration of the provisions contained herein and imposed by law, then such provision shall be deemed to remain in effect only for the maximum period permitted by law or until twenty-one (21) years after the death of the last survivor of the now living descendants of former President George W. Bush and the original Owner of the Property.

Section 3.4: Interpretation. In all cases, the provisions of this Declaration shall be given that reasonable interpretation or construction which will best effect consummation of the general plan of land use restrictions and affirmative obligations of the Property, which will carry out the intent of the Declarant as expressed in the recitals of these Covenants.

Contrary to the restrictive common law rule of construction, these Covenants shall by this Covenant be interpreted broadly to touch and concern the Property with recognition of modern economic, land use planning and real estate finance and development principles, theories and practices. It is the Declarant's intent, and all Owners who take subject to the Covenants, do covenant and agree, and are thereby estopped to deny, that any reserved right or function of the Declarant, and any other covenant condition, restriction or obligation within these Covenants is intended to promote the use and enjoyment of the Property, is intended to foster the creation, preservation or enhancement of economic or intangible values associated with the Property, and does touch and concern, benefit and burden and run with the Property.

The provisions of these Covenants shall be given full force and effect notwithstanding the existence of any zoning ordinance which allows a less restricted use of the Property.

Section 3.5: Enforcement by the Declarant. In addition to the foregoing, the Declarant shall have the right, but shall not be obligated, to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event. Violators shall be obligated to reimburse the Declarant in full for its direct and indirect costs, including but not limited to legal fees incurred by the Defendant in maintaining compliance with these Covenants in the event the Declarant prevails in such proceedings.

Section 3.6: Gender, Tense, and Number. When necessary for proper construction, the masculine form of any word used in this Declaration shall include the feminine or neuter gender, and the singular, the plural and vice versa, and words used in the present tense shall include the future tense.

Section 3.7: No Waiver. Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provisions of this Declaration.

Section 3.8: Captions. The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.

(THIS SPACE INTENTIONALLY LEFT BLANK)

TOWN OF HILTON HEAD
ISLAND, SOUTH CAROLINA

2)_____ By:_____
Signature of 1st Witness Stephen G. Riley, Town Manager

3)_____
Signature of 2nd Witness (the Notary Public)

STATE OF SOUTH CAROLINA)
) UNIFORM ACKNOWLEDGMENT
COUNTY OF BEAUFORT)

I, the undersigned Notary Public do hereby certify that Stephen G. Riley appeared before me this day and, in the presence of the two witnesses above named, acknowledged the due execution of the foregoing instrument on behalf of The Town of Hilton Head Island, South Carolina.

Witness my hand and seal this _____ day of _____, 2012.

4)_____(SEAL)
Signature of Notary Public for South Carolina
My Commission expires:_____

EXHIBIT "B"

STATE OF SOUTH CAROLINA	)	
	)	DECLARATION OF COVENANTS,
COUNTY OF BEAUFORT	)	RESTRICTIONS, AND LIMITATIONS

THIS DECLARATION, is made this ____ day of _____, 2012, by Shelter Cove Towne Centre, LLC, a South Carolina limited liability company (hereinafter referred to as "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain lands (hereinafter referred to as the "Property") described in Article I of this Declaration, located on Hilton Head Island, Beaufort County, South Carolina; and

WHEREAS, Declarant finds that private controls over the use of the land are an effective means of establishing, preserving, maintaining and, in some instances, enhancing, the economic or intangible values pertaining to the use and enjoyment of the Property and, to this end, Declarant desires to establish on the Property certain private land use controls, conditions, restrictions, equitable servitudes, encumbrances, affirmative obligations, burdens, benefits, reservations, easements, assessments, charges and liens (hereinafter referred to as the "Declaration" or these "Covenants").

NOW THEREFORE, Declarant hereby declares that the Property hereof is and shall be held, transferred, sold, devised, assigned, conveyed, given, purchased, leased, occupied, possessed, mortgaged, encumbered and used subject to these Covenants. These Covenants, the benefits of these Covenants, and the affirmative and negative burdens of these Covenants, whether pertaining to items, benefits and obligations presently existing or to be created or executed in the future, do and shall, in equity and at law, touch and concern, benefit and burden, and run with the land and any estates in the Land herein referred to as the Property, and these Covenants are intended to be Covenants and servitudes burdening and benefiting all persons now or hereafter deriving a real property estate in the Property whether by assignment, succession or inheritance or other method of conveyance.

PART ONE
PROPERTY COVERED BY COVENANTS

ARTICLE I:

Property Description

Section 1.1: The Property: The real property ("the Property") which is and shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to these Covenants, is described as follows:

ALL that certain piece, parcel or lot of land being shown and described as "New Parcel to be Conveyed 4.97 Ac." on the plat entitled Boundary Reconfiguration of Shelter Cove Mall Area, A Section of Shelter Cove, Hilton Head Island, Beaufort County, South Carolina" dated June 12, 2012 prepared by Terry G. Hatchell, RLS#11059 and recorded in Plat Book ____ at Page ____ in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more detailed description as to courses, metes and bounds, reference is made to said plat of record.

This being a portion of the same property conveyed to the within Grantor by PVI Shelter Cove Limited Partnership, dated August 10, 2011, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 3076 at Page 2860.

Beaufort County Tax Map Reference: a Portion of R520 012 00B 0026 0000

-AND-

ALL that certain piece, parcel or lot of land being shown and described as "Old 60' R/W of Shelter Cove Lane Area A-4 0.14 Ac." on the plat entitled Boundary Reconfiguration of Shelter Cove Mall Area, A Section of Shelter Cove, Hilton Head Island, Beaufort County, South Carolina" dated June 12, 2012 prepared by Terry G. Hatchell, RLS#11059 and recorded in Plat Book ____ at Page ____ in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more detailed description as to courses, metes and bounds, reference is made to said plat of record.

This being a portion of the same property conveyed to the within Grantor by Shelter Cove Harbour Company, recorded on _____, 2012, in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book _____ at Page _____.

Beaufort County Tax Map Reference: a Portion of R520 012 00B 0030 0000

-AND-

All that certain piece, parcel or lot of land, lying and being on Hilton Head Island, Beaufort County, South Carolina, being shown and described as

"Parcel C" on that certain plat entitled "A Plat of Shelter Cove Mall, Phase II, Shelter Cove, 26 Shelter Cove Lane, As Built Survey, a Section of Palmetto Dunes Resort" prepared by Jerry L. Richardson, SCRLS 4784, Dated April 14, 1988, and revised on July 20, 1988, and which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 35 at Page 228.

Derivation Clause and Tax Map Reference Missing!

PART TWO
LAND USE RESTRICTIONS

ARTICLE II:
General Land Use Restrictions and Obligations

Section 2.1: Restrictions on Converting Apartments to Condominiums. In the event any apartments are erected, constructed, or otherwise built on or within the Property, said apartments shall not be converted into condominiums in any manner.

Section 2.2: Restrictions on Rentals of Apartments for Less than Twelve Months per Lease. In the event any apartments are erected, constructed, or otherwise built on or within the Property, the owner(s) of any apartment(s) shall not execute or enter into any lease(s) with a term for less than twelve (12) months per lease. In the event that such a lease is executed or entered into, said lease shall be considered void and of no legal effect.

Section 2.3: Restrictions on Sub-Letting of Apartments by Tenants. In the event any apartments are erected, constructed, or otherwise built on or within the Property, the tenant(s) of any apartment(s) shall not lease or sub-let the apartment(s) to any third parties.

PART THREE
GENERAL

Article III:
General Provisions

Section 3.1: Duration of Covenants. All covenants, restrictions and affirmative obligations set forth herein shall run with the land and shall be binding on all parties and persons claiming under them.

Section 3.2: Remedies in the Event of Violation or Breach. In the event of a violation or breach of any of the restrictions contained herein by grantee, its agents, successors or assigns, Declarant shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any

event, and Declarant shall have the right to recover all costs and expenses of suit in such action, including reasonable attorneys' fees and costs whether or not incurred in conjunction with appellate proceedings.

Section 3.3: Severability and Rule Against Perpetuities. The invalidation by any court of any restrictions of these Covenants shall in no way affect any of the other restrictions, but they shall remain in full force and effect. If any provisions of this Declaration would violate the rule against perpetuities or any other limitation on the duration of the provisions contained herein and imposed by law, then such provision shall be deemed to remain in effect only for the maximum period permitted by law or until twenty-one (21) years after the death of the last survivor of the now living descendants of former President George W. Bush and the original Owner of the Property.

Section 3.4: Interpretation. In all cases, the provisions of this Declaration shall be given that reasonable interpretation or construction which will best effect consummation of the general plan of land use restrictions and affirmative obligations of the Property, which will carry out the intent of the Declarant as expressed in the recitals of these Covenants.

Contrary to the restrictive common law rule of construction, these Covenants shall by this Covenant be interpreted broadly to touch and concern the Property with recognition of modern economic, land use planning and real estate finance and development principles, theories and practices. It is the Declarant's intent, and all Owners who take subject to the Covenants, do covenant and agree, and are thereby estopped to deny, that any reserved right or function of the Declarant, and any other covenant condition, restriction or obligation within these Covenants is intended to promote the use and enjoyment of the Property, is intended to foster the creation, preservation or enhancement of economic or intangible values associated with the Property, and does touch and concern, benefit and burden and run with the Property.

The provisions of these Covenants shall be given full force and effect notwithstanding the existence of any zoning ordinance which allows a less restricted use of the Property.

Section 3.5: Enforcement by the Declarant. In addition to the foregoing, the Declarant shall have the right, but shall not be obligated, to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event. Violators shall be obligated to reimburse the Declarant in full for its direct and indirect costs, including but not limited to legal fees incurred by the Defendant in maintaining compliance with these Covenants in the event the Declarant prevails in such proceedings.

Section 3.6: Gender, Tense, and Number. When necessary for proper construction, the masculine form of any word used in this Declaration shall include the feminine or neuter gender, and the singular, the plural and vice versa, and words used in the present tense shall include the future tense.

Section 3.7: No Waiver. Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provisions of this Declaration.

Section 3.8: Captions. The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.

SHELTER COVE TOWNE
CENTRE, LLC, a South Carolina
limited liability company

2)_____
Signature of 1st Witness

By:_____

3)_____
Signature of 2nd Witness (the Notary Public)

Its:_____

STATE OF SOUTH CAROLINA)
) UNIFORM ACKNOWLEDGMENT
COUNTY OF BEAUFORT)

I, the undersigned Notary Public do hereby certify that _____ appeared before me this day and, in the presence of the two witnesses above named, acknowledged the due execution of the foregoing instrument on behalf of Shelter Cove Towne Centre, LLC.

Witness my hand and seal this _____ day of _____, 2012.

4)_____(SEAL)
Signature of Notary Public for _____
My Commission expires:_____

MEMORANDUM

TO: **Town Council**
CC: **Gregory M. Alford, Charles Cousins**

FROM: **Stephen G. Riley, ICMA-CM, Town Manager**

DATE: **8/1/2012**

SUBJECT: **Mall at Shelter Cove- Establishment of Covenants and Restrictions on Town owned Property**

Recommendation: Recommend approval of the establishment, execution and recording of Covenants and Restrictions on Town owned property.

Summary: The Development Agreement with Shelter Cove Towne Centre, LLC (the Mall Redevelopment Agreement) contemplates the exchange of real property wherein the property conveyed to SCTC will be developed into multi-family dwelling units and that the multi-family units must remain apartments.

Background: In consideration of SCTC conveying property to the Town and the development of a Community Park as part of the redevelopment of the Mall at Shelter Cove, the Town has agreed to convey a portion of its property to SCTC to be developed and utilized as multi-family dwelling units upon certain conditions and restrictions. Specifically, the parties have agreed that these multi-family units are to remain apartments and cannot be converted into condominiums, that if rented, they will not be rented for terms less than twelve (12) months and that tenants may not sub-let the units. In order to place these restrictions upon the property, a Declaration of Covenants and Restrictions must be executed and recorded prior to the Town's conveyance of the property.

PROPOSED ORDINANCE: 2012-28 ORDINANCE: 2012-____

AN ORDINANCE OF THE TOWN OF HILTON HEAD, SOUTH CAROLINA, AUTHORIZING THE ESTABLISHING OF COVENANTS AND RESTRICTIONS ON REAL PROPERTY IN CONJUNCTION WITH THE MALL AT SHELTER COVE DEVELOPMENT AGREEMENT AND 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, As Amended); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

LEGISLATIVE FINDINGS

WHEREAS, The Town of Hilton Head Island, South Carolina ("Town") owns real property which is more particularly known and described as:

> That certain 4.90 acre tract lying on Broad Creek and adjacent to the northeastern boundary line of the existing Mall Tract as shown on the Concept Plan and as more fully shown and described on that certain plat thereof entitled "Boundary Reconfiguration, 4.90 Acres, New Multi-Family Parcel, Shelter Cove Lane, A Portion of Shelter Cove Community Park", prepared by Surveying Consultants, dated the 12th day of June, 2012, said parcel identified on this plat as "New Multi-Family Parcel To Be Conveyed to Shelter Cove Towne Centre, LLC, 4.90 acres
> (hereinafter referred to as the "Exchange Parcel")

WHEREAS, pursuant to Ordinance No. 2012-___ and The Mall At Shelter Cove Development Agreement, it is contemplated that the Town will convey the Exchange Parcel to Shelter Cove Towne Centre, LLC ("SCTC") in conjunction with the redevelopment of the Mall at Shelter Cove; and

WHEREAS, SCTC will develop multi-family dwelling units on the Exchange Parcel subject to certain restrictions as agreed upon between SCTC and the Town; and

WHEREAS, the Town Council of the Town of Hilton Head Island, South Carolina has determined that it is in the best interests of the Town of Hilton Head Island, South Carolina, to record and establish a Declaration of Covenants and Restrictions in a

substantially similar form as attached hereto as Exhibit "A"; and

WHEREAS, under 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, as amended), the disposition of an interest in real property must be authorized by the adoption of an ordinance by the Town Council for the Town of Hilton Head Island, South Carolina.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AS FOLLOWS:

Section 1. Establishment of Covenants and Restrictions:

(a) The Mayor and Town Manager are hereby authorized to execute and deliver a Declaration of Covenants and Restrictions, or a document substantially similar in form and substance to that, which is attached hereto as Exhibit "A"; and,

(b) The Mayor and Town Manager are hereby authorized to take all other and further actions as may be necessary to complete the transaction described herein.

Section 2. Severability:

If any section, phrase, sentence or portion of this Ordinance is, for any reason, held or deemed to be invalid or unconstitutional by any court of competent jurisdiction, then such section, phrase, sentence or portion shall be deemed a separate, distinct and independent provision and shall not affect the remaining portion thereof.

Section 3. Effective Date:

This Ordinance shall become effective upon its adoption by the Town Council for the Town of Hilton Head Island, South Carolina.

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

THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

By:_____
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:_____

EXHIBIT "A"

STATE OF SOUTH CAROLINA	)	
	)	DECLARATION OF COVENANTS,
COUNTY OF BEAUFORT	)	RESTRICTIONS, AND LIMITATIONS

THIS DECLARATION is made this ____ day of _____, 2012, by the Town of Hilton Head Island, South Carolina, a municipal corporation (hereinafter referred to as "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain lands (hereinafter referred to as the "Property") described in Article I of this Declaration, located on Hilton Head Island, Beaufort County, South Carolina; and

WHEREAS, Declarant finds that private controls over the use of the land are an effective means of establishing, preserving, maintaining and, in some instances, enhancing, the economic or intangible values pertaining to the use and enjoyment of the Property and, to this end, Declarant desires to establish on the Property certain private land use controls, conditions, restrictions, equitable servitudes, encumbrances, affirmative obligations, burdens, benefits, reservations, easements, assessments, charges and liens (hereinafter referred to as the "Declaration" or these "Covenants").

NOW THEREFORE, Declarant hereby declares that the Property hereof is and shall be held, transferred, sold, devised, assigned, conveyed, given, purchased, leased, occupied, possessed, mortgaged, encumbered and used subject to these Covenants. These Covenants, the benefits of these Covenants, and the affirmative and negative burdens of these Covenants, whether pertaining to items, benefits and obligations presently existing or to be created or executed in the future, do and shall, in equity and at law, touch and concern, benefit and burden, and run with the land and any estates in the Land herein referred to as the Property, and these Covenants are intended to be Covenants and servitudes burdening and benefiting all persons now or hereafter deriving a real property estate in the Property whether by assignment, succession or inheritance or other method of conveyance.

PART ONE
PROPERTY COVERED BY COVENANTS

ARTICLE I:

Property Description

Section 1.1: The Property: The real property ("the Property") which is and shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to these Covenants, is described as follows:

> ALL that certain piece, parcel or lot of land being shown and described as "New Multi-Family Parcel 4.90 Ac." on the plat entitled Boundary Reconfiguration of 4.90 Acres New Multi-Family Parcel, Shelter Cove Lane, A Portion of Shelter Cove Community Park, Hilton Head Island, Beaufort County, South Carolina" dated June 12, 2012 prepared by Terry G. Hatchell, RLS#11059 and recorded in Plat Book ____ at Page ____ in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more detailed description as to courses, metes and bounds, reference is made to said plat of record.
>
> This being a portion of the same property conveyed to the within Grantor by deed of Hancock Development Company, Inc., dated April 29, 1999 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 1190 at Page 1309.
>
> Beaufort County Tax Map Reference: A Portion of R520 012 00C 0002 0000

PART TWO
LAND USE RESTRICTIONS

ARTICLE II:
General Land Use Restrictions and Obligations

Section 2.1: Restrictions on Converting Apartments to Condominiums. In the event any apartments are erected, constructed, or otherwise built on or within the Property, said apartments shall not be converted into condominiums in any manner.

Section 2.2: Restrictions on Rentals of Apartments for Less than Twelve Months per Lease. In the event any apartments are erected, constructed, or otherwise built on or within the Property, the owner(s) of any apartment(s) shall not execute or enter into any lease(s) with a term for less than twelve (12) months per lease. In the event that such a lease is executed or entered into, said lease shall be considered void and of no legal effect.

Section 2.3: Restrictions on Sub-Letting of Apartments by Tenants. In the event any apartments are erected, constructed, or otherwise built on or within the Property, the tenant(s) of any apartment(s) shall not lease or sub-let the apartment(s) to any third parties.

PART THREE
GENERAL

Article III:
General Provisions

Section 3.1: Duration of Covenants. All covenants, restrictions and affirmative obligations set forth herein shall run with the land and shall be binding on all parties and persons claiming under them.

Section 3.2: Remedies in the Event of Violation or Breach. In the event of a violation or breach of any of the restrictions contained herein by grantee, its agents, successors or assigns, Declarant shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event, and Declarant shall have the right to recover all costs and expenses of suit in such action, including reasonable attorneys' fees and costs whether or not incurred in conjunction with appellate proceedings.

Section 3.3: Severability and Rule Against Perpetuities. The invalidation by any court of any restrictions of these Covenants shall in no way affect any of the other restrictions, but they shall remain in full force and effect. If any provisions of this Declaration would violate the rule against perpetuities or any other limitation on the duration of the provisions contained herein and imposed by law, then such provision shall be deemed to remain in effect only for the maximum period permitted by law or until twenty-one (21) years after the death of the last survivor of the now living descendants of former President George W. Bush and the original Owner of the Property.

Section 3.4: Interpretation. In all cases, the provisions of this Declaration shall be given that reasonable interpretation or construction which will best effect consummation of the general plan of land use restrictions and affirmative obligations of the Property, which will carry out the intent of the Declarant as expressed in the recitals of these Covenants.

Contrary to the restrictive common law rule of construction, these Covenants shall by this Covenant be interpreted broadly to touch and concern the Property with recognition of modern economic, land use planning and real estate finance and development principles, theories and practices. It is the Declarant's intent, and all Owners who take subject to the Covenants, do covenant and agree, and are thereby estopped to deny, that any reserved right or function of the Declarant, and any other covenant condition, restriction or obligation within these Covenants is intended to promote the use and enjoyment of the Property, is intended to foster the creation, preservation or enhancement of economic or intangible values associated with the Property, and does touch and concern, benefit and burden and run with the Property.

The provisions of these Covenants shall be given full force and effect notwithstanding the existence of any zoning ordinance which allows a less restricted use of the Property.

Section 3.5: Enforcement by the Declarant. In addition to the foregoing, the Declarant shall have the right, but shall not be obligated, to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event. Violators shall be obligated to reimburse the Declarant in full for its direct and indirect costs, including but not limited to legal fees incurred by the Defendant in maintaining compliance with these Covenants in the event the Declarant prevails in such proceedings.

Section 3.6: Gender, Tense, and Number. When necessary for proper construction, the masculine form of any word used in this Declaration shall include the feminine or neuter gender, and the singular, the plural and vice versa, and words used in the present tense shall include the future tense.

Section 3.7: No Waiver. Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provisions of this Declaration.

Section 3.8: Captions. The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.

(THIS SPACE INTENTIONALLY LEFT BLANK)

TOWN OF HILTON HEAD
ISLAND, SOUTH CAROLINA

2)_____ By:_____
Signature of 1st Witness Stephen G. Riley, Town Manager

3)_____
Signature of 2nd Witness (the Notary Public)

STATE OF SOUTH CAROLINA)
) UNIFORM ACKNOWLEDGMENT
COUNTY OF BEAUFORT)

I, the undersigned Notary Public do hereby certify that Stephen G. Riley appeared before me this day and, in the presence of the two witnesses above named, acknowledged the due execution of the foregoing instrument on behalf of The Town of Hilton Head Island, South Carolina.

Witness my hand and seal this _____ day of _____, 2012.

4)_____(SEAL)
Signature of Notary Public for South Carolina
My Commission expires:_____

MEMORANDUM

TO: **Town Council**
CC: **Gregory M. Alford, Charles Cousins**

FROM: **Stephen G. Riley, ICMA-CM, Town Manager**

DATE: **8/1/2012**

SUBJECT: **Mall at Shelter Cove- Extinguishment of Covenants and Restrictions on Out Parcel I and Parcel C**

Recommendation: Recommend approval of the extinguishment of Covenants and Restrictions on Out Parcel I and Parcel C

Summary: The Development Agreement with Shelter Cove Towne Centre, LLC (the Mall Redevelopment Agreement) contemplates the development of certain parcels referred to as Out Parcel I and Parcel C. The consent of the Town of Hilton Head Island is needed to extinguish the existing covenants and restrictions to allow development of the parcels.

Background: The prior owners of these parcels (HHO 177 Company, Limited Partnership and Pacific Mutual Realty Finance, Inc.) placed development restrictions on the parcels and recorded Declarations of Covenants and Restrictions which run with and bind the parcels. The Covenants and Restrictions provide that they are "enforceable by the Declarant, Owner and the Town of Hilton Head Island, South Carolina" for a period of twenty (20) years with automatic twenty (20) year renewals. SCTC is the current owner and successor in interest to the parcels and covenants.

PROPOSED ORDINANCE: 2012-29 ORDINANCE: 2012-____

AN ORDINANCE OF THE TOWN OF HILTON HEAD, SOUTH CAROLINA, AUTHORIZING THE EXTINGUISHMENT OF COVENANTS AND RESTRICTIONS ON REAL PROPERTY IN CONJUNCTION WITH THE MALL AT SHELTER COVE DEVELOPMENT AGREEMENT AND 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, As Amended); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

LEGISLATIVE FINDINGS

WHEREAS, Shelter Cove Towne Centre, LLC, ("SCTC") owns real property which is more particularly known and described as:

> Those certain pieces, parcels or tracts of land shown as "Out Parcel I" and "Parcel C" on the ALTA/ACSM Land Title Survey for Shelter Cove Project dated August 18, 2003 ", prepared by Smith Surveyors, Inc. Land Surveying, attached hereto as Exhibit "A", (hereinafter collectively referred to as "Out Parcels")

WHEREAS, the prior owners of the Out Parcels, HHO 177 Company, Limited Partnership and Pacific Mutual Realty Finance, Inc., placed development restrictions on the Out Parcels pursuant to a Declaration of Covenants and Restrictions recorded May 7, 1992 in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 598 at Page 431 and First Amendment to Declarations of Covenants and Restrictions recorded September 23, 1999 in Record Book 1215 at Page 2316 (hereinafter collectively referred to as "CAR"); and

WHEREAS, the CAR run with and bind the Out Parcels and are "enforceable by the Declarant, Owner and the Town of Hilton Head Island, South Carolina" for a period of twenty (20) years with automatic twenty (20) year renewals; and

WHEREAS, SCTC is the successor in interest to the CAR, and as Declarant and

Owener, and with the consent of the Town of Hilton Head Island, South Carolina, desires to extinguish the CAR as to the Out Parcels.

WHEREAS, pursuant to Ordinance No. 2012-___, The Mall At Shelter Cove Development Agreement, it is contemplated that the Out Parcels be developed by SCTC; and

WHEREAS, the Town Council of the Town of Hilton Head Island, South Carolina has determined that it is in the best interests of the Town of Hilton Head Island, South Carolina, to authorize the extinguishment of the CAR as to the Out Parcels, and to authorize the completion of the transaction described herein.

WHEREAS, under 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, as amended), the disposition of an interest in real property must be authorized by the adoption of an ordinance by the Town Council for the Town of Hilton Head Island, South Carolina.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AS FOLLOWS:

Section 1. Approval of the Extinguishment of Covenants and Restrictions:

(a) The Mayor and Town Manager are hereby authorized to execute and deliver any documents necessary to effectively extinguish any development restrictions on Out Parcels, which are shown on the attached Exhibit "A"; and,

(b) The Mayor and Town Manager are hereby authorized to take all other and further actions as may be necessary to complete the transaction described herein.

Section 2. Severability:

If any section, phrase, sentence or portion of this Ordinance is, for any reason, held or deemed to be invalid or unconstitutional by any court of competent jurisdiction, then such section, phrase, sentence or portion shall be deemed a separate, distinct and independent provision and shall not affect the remaining portion thereof.

Section 3. Effective Date:

This Ordinance shall become effective upon its adoption by the Town Council for the Town of Hilton Head Island, South Carolina.

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

THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

By:_____
Drew A. Laughlin, Mayor

ATTEST:_____
Victoria L. Pfannenschmidt, Acting Town Clerk

First Reading:_____

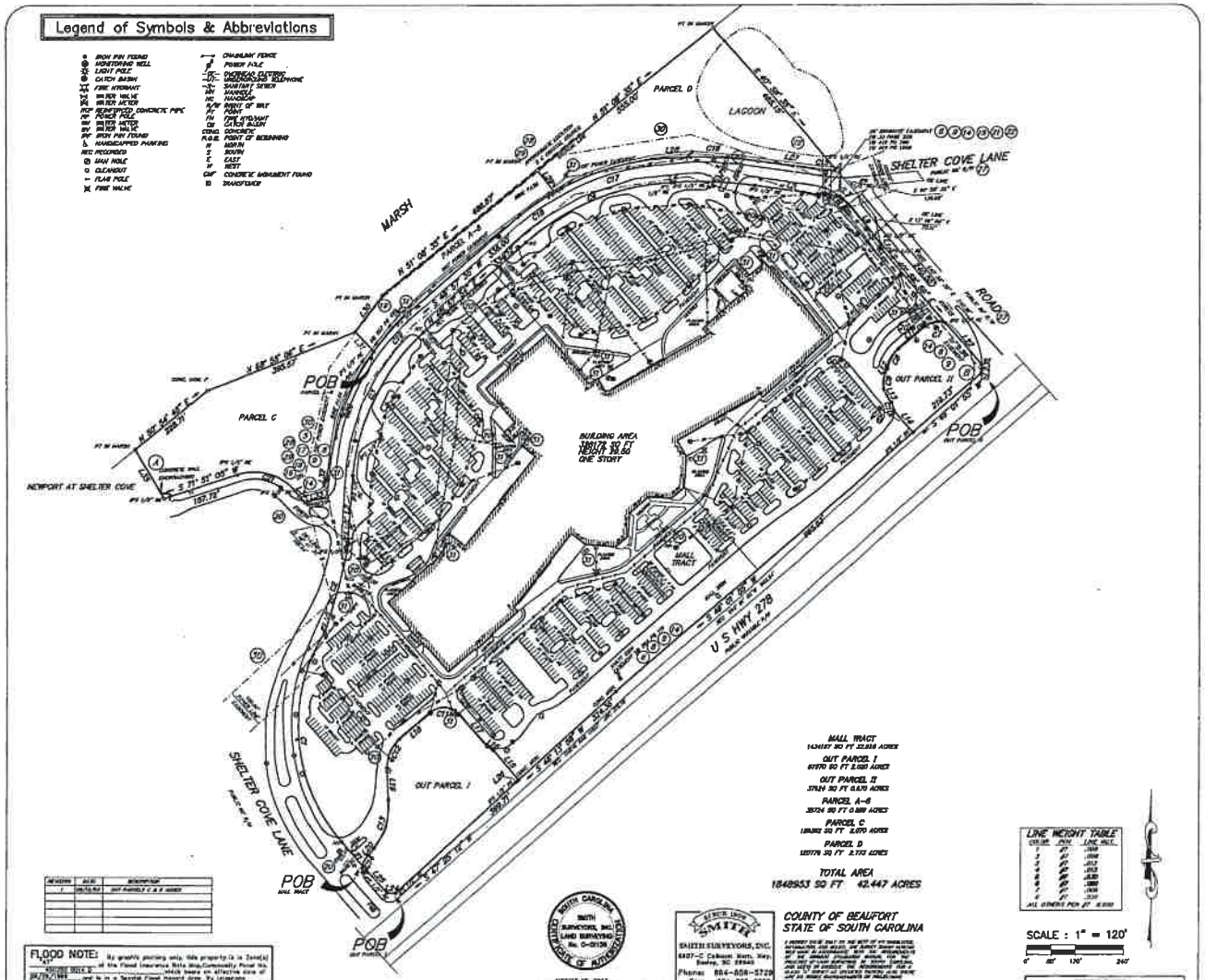
Second Reading:_____

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

Introduced by Council Member:_____

Legend of Symbols & Abbreviations

IRON PIN FOUND	CHAINLINK FENCE
MONITORING WELL	POWER POLE
LIGHT POLE	OVERHEAD CATENARY
CATCH BASIN	UNDERGROUND TELEPHONE
FIRE HYDRANT	SANITARY SEWER
WATER VALVE	MANHOLE
WATER METER	HC HANDICAP
REINFORCED CONCRETE PIPE	P/M POINT OF MILT
POWER POLE	POLE
WATER METER	FH FIRE HYDRANT
WATER VALVE	CH CHIP & BLOCK
IRON PIN FOUND	CONC. CONCRETE
HANDICAPPED PARKING	P.O.B. POINT OF BEGINNING
REC RECORDED	N NORTH
UNK HOLE	S SOUTH
CLEANOUT	E EAST
FLAG POLE	W WEST
FIRE VALVE	CMF CONCRETE MONUMENT FOUND
	TS TRANSFORMER



MALL TRACT
1434197 SQ FT 32.916 ACRES

OUT PARCEL I
67570 SQ FT 1.550 ACRES

OUT PARCEL II
37634 SQ FT 0.870 ACRES

PARCEL A-6
39724 SQ FT 0.912 ACRES

PARCEL C
119392 SQ FT 2.670 ACRES

PARCEL D
120176 SQ FT 2.772 ACRES

TOTAL AREA
1848953 SQ FT 42.447 ACRES

COUNTY OF BEAUFORT
STATE OF SOUTH CAROLINA

REVISION	DATE	DESCRIPTION
1	08/15/03	SHIFT PARCEL C & D ADDED

FLOOD NOTE: By graphic plotting only, this property is in Zone(s) "X" of the Flood Insurance Rate Map/Community Panel No. 450026 0015 D, dated 09/29/1989 ...which bears an effective date of 09/29/1989 and is in a Special Flood Hazard Area. By telephone call dated 08/08/2003 ...in the National Flood Insurance Program (NFIP-CSA-14.20) we have learned this community does currently participate in the program. No field surveying was performed to determine this zone and an elevation certificate may be needed to verify this determination or may be a variance from the Federal Emergency Management Agency.

SMITH SURVEYORS, INC.
6307-C Calhoun Sam. Hwy.
Bluffton, SC 29910
Phone: 864-858-3729
Fax: 864-855-8032
smithsurveyors@bellsouth.net

Date AUGUST 18, 2003
JOB # 03-0468

ROBERT DALE KING — FILE 14133

LINE WEIGHT TABLE		
COLOR	PEN	LINE WGT.
1	#1	.0050
2	#2	.0100
3	#3	.0150
4	#4	.0200
5	#5	.0250
6	#6	.0300
7	#7	.0350
8	#8	.0400
9	#9	.0450
10	#10	.0500
11	#11	.0550
ALL OTHERS PEN #7		0.030

SCALE : 1" = 120'

0' 60' 120' 240'

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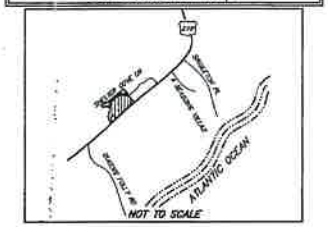
Site Location Map



ALTA/ACSM Land Title Survey

Shelter Cove Project
The Mall at Shelter Cove
B&C Project No. 200303468, 1
36 Shelter Cove Lane, Hilton Head Island, SC

Surveyor's Certification

To: [illegible]

The undersigned certifies that to the best of his professional knowledge, information and belief, this map or plat and the Survey on which it is based were made on the date shown below of the premises specifically described in Commitment No. 03-1316 dated August 14, 2003 and was made (1) in accordance with "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," jointly established and adopted by ALTA, ACSM and NSPS in 1999 (2) in accordance with the "POSITS/NSPS and Survey Requirements for Shelter Cove Survey dated 8/26/2003 and includes Items 2, 3, 4, 6, 7a, 7b1, 7c, 8, 9, 10 of Table A optionally defined therein, and (3) Pursuant to the Accuracy Standards as adopted by ALTA, NSPS, and ACSM and in effect on the date of this certification, undersigned further certifies that the survey measurements were made in accordance with the "Minimum Angle, Distance, and Closure Requirements for Survey Measurements Within Control Land Boundaries for ALTA/ACSM Land Title Surveys."

ROBERT DALE KING
Registration No. 19111
In the State of South Carolina
Date of Survey August 18, 2003
Date of Last Revision: September 15, 2003
Helwig Project No. 200303468-001

Survey Performed By:
Smith Surveyors, Inc.
6307-C Calhoun Memorial Highway
Bluffton, SC 29910
Phone: 864-858-3729
Fax: 864-855-8032
Email: smithsurveyors@bellsouth.net

Sheet 1 of 2

Bock & Clark's National Surveyors Network
National Coordinators of ALTA/ACSM Land Title Surveys
537 North Cleveland-Massillon Road Akron, Ohio 44333
Phone: (800) SURVEYS, Fax: (330) 666-3608 www.1800surveys.com
BOCK & CLARK 1-800-SURVEYS

EXHIBIT A

TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Stephen G. Riley, C.M., *Town Manager*
VIA: Teri Lewis, AICP, *LMO Official*
FROM: Heather Colin, AICP, *Development Review Administrator*
CC: Charles Cousins, AICP, *Director of Community Development*
DATE: June 19, 2012
SUBJECT: Proposed Ordinance No. 2012-19
ZMA120006 – Shelter Cove Mall Redevelopment

Recommendation:
The Planning Commission met on June 8, 2012 to review the attached application for Zoning Map Amendment (ZMA120006) and after a public hearing voted 8-0-0 to recommend that Town Council approve the proposed application for rezoning.

Staff recommended that the application be forwarded Town Council with a recommendation for approval.

Summary:
Don Barnett on behalf of Shelter Cove Towne Center has submitted a request to amend the Palmetto Dunes Master Plan to facilitate the development of a mixed use commercial development that includes general commercial uses, a grocery store with an associated fuel center, multi-family residential dwelling units (apartments), community park space, commercial kiosks and a liquor store to be included as part of the overall Shelter Cove Mall redevelopment.

Specifically the applicant seeks to amend the master plan by decreasing the total commercial density from 314,000 square feet to 295,000 square feet of general commercial uses, of which no more than 1,500 square feet can be used for up to 10 kiosks; and to add 210 multi-family dwelling units (134 units on parcel 12 and 76 units on parcel 26); and to add the uses of Community Park, Liquor Store and Gas Sales.

Background:
When the mall was sold to the present owners, the developers, Blanchard & Calhoun began a dialogue with Town staff on their conceptual plans. Several different plans were drafted and discussed with the intention of drafting the best plan for the developer and the community. During this dialogue the idea of a possible land swap with the Town was discussed in order to provide a better public space, which highlighted the natural and environmental assets of Broad Creek and better integrate the commercial development and the public space. In order to accomplish this, the portion of the current Shelter Cove Community Park between the Veteran's Memorial and the Mall is requested to be assigned 134 multi-family dwelling units. This portion of the property is part of a larger piece that is zoned PD-1 with the designation of Community Park.

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO. 2012- **PROPOSED ORDINANCE NO. 2012-19**

AN ORDINANCE TO AMEND TITLE 16, "THE LAND MANAGEMENT ORDINANCE," OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, BY AMENDING SECTION 16-4-102, THE OFFICIAL ZONING MAP AND THE PALMETTO DUNES RESORT MASTER PLAN WITH RESPECT TO THE CERTAIN PARCELS IDENTIFIED AS PARCEL 26, ON BEAUFORT COUNTY TAX MAP #12B, AND A 9.3 ACRE PORTION OF PARCEL 12 ON BEAUFORT COUNTY TAX MAP #12C, WITHIN THE PALMETTO DUNES RESORT MASTER PLAN UNDER THE PD-1 PLANNED DEVELOPMENT MIXED USE DISTRICT, TO AMEND THE USES AND ASSOCIATED DENSITY FOR PARCEL 26, TAX MAP #12B TO 295,000 SQUARE FEET OF COMMERCIAL USES, EXCLUDING USES LISTED IN LMO 16-4-209, BUT PERMITTING LIQUOR STORE AND GAS SALES, COMMUNITY PARK AND 76 MULTI-FAMILY DWELLING UNITS; AND THE PORTION OF PARCEL 12, TAX MAP #12C TO 134 MULTI-FAMILY DWELLING UNITS AND COMMUNITY PARK.; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, on May 7, 1986, the Town of Hilton Head Island granted Preliminary Plan Approval to an update of the Palmetto Dunes Resort Master Plan; and

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, section 16-4-209 of the LMO incorporates the Palmetto Dunes Resort Master Plan and associated text as a Town-approved master plan under the PD-1 Planned Development Mixed Use District; and

WHEREAS, on December 21, 2010, Town Council approved a resolution to list 'Shelter Cove Mall Redevelopment: Conceptual Plan Direction and Town's Role', as a High Priority Target for Action; and

WHEREAS, on December 20,2011, Town Council approved a resolution to list 'Shelter Cove Area Redevelopment: Determine Town's Role, and Approve a Plan as a Top Priority Target for Action; and

WHEREAS, on April 20, 2012, Shelter Cove Towne Centre, LLC filed an application to amend the Town's official zoning map and the Palmetto Dunes Master Plan and associated text with respect to that certain 42.45 acre parcel located at 24 Shelter Cove Lane, identified as Parcel 26 on Beaufort County tax map 12B and the 9.3 acre portion of the adjacent Parcel 12 on Beaufort County tax map 12C; and

WHEREAS, the Planning Commission held a public hearing on said zoning map amendment application on June 8, 2012, at which time a presentation was made by staff and an opportunity was given for the public to comment on the rezoning request; and

WHEREAS, the Planning Commission, after consideration of the staff report, public comments, and criteria set forth in Section 16-3-1505 of the LMO, voted 8-0 to recommend to Town Council that the rezoning request be approved; and

WHEREAS, after due consideration of said zoning map amendment application and the recommendation of the Planning Commission, the Town Council, upon further review, finds it is in the public interest to approve the proposed application.

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

Section 1. Amendment. That the Official Zoning Map of the Town of Hilton Head Island, as referred to in Section 16-4-102 of the LMO, and the Palmetto Dunes Resort Master Plan and associated text, referred to in Section 16-4-209 of the LMO, be hereby amended to modify the use designations and associated density of that certain 42.45 acre parcel identified as Parcel 26 on Beaufort County Tax Map 12B, to 295,000 square feet of commercial uses, excluding uses listed in LMO 16-4-209, but permitting liquor store and gas sales, 76 multi-family dwelling units, and community park; and that certain 9.3 acre portion of the parcel identified as Parcel 12 on Beaufort County Tax Map 12C to 134 multi-family dwelling units and community park. The attached Vicinity Map shows the location of the subject properties.

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 adoption by the Town Council of the Town of Hilton Head Island, South Carolina.

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

_____
Drew A. Laughlin, Mayor

ATTEST:

_____
Town Clerk

Public Hearing: June 8, 2012
First Reading: August 7, 2012
Second Reading:

Approved as to form:

_____
Gregory M. Alford, Town Attorney

Introduced by Council Member: _____

	TOWN OF HILTON HEAD ISLAND **COMMUNITY DEVELOPMENT DEPARTMENT**

One Town Center Court	Hilton Head Island, SC 29928	843-341-4757

STAFF REPORT
ZONING MAP AMENDMENT

Case #:	Name of Project or Development:	Public Hearing Date:
ZMA#120006	The Mall at Shelter Cove	June 8, 2012

Parcel Data or Location:		Applicant/Agent
Parcel 26; Tax Map 12B **42.25 acres**	**Parcel 12; Tax Map 12C** ***(portion of)*** **Approximately 9.3 acres**	
Existing Zoning PD-1; Palmetto Dunes Resort Master Plan Mall at Shelter Cove Existing Density 314,000 square feet, of which 46,000 square feet is limited to cinema complex use Proposed Zoning PD-1; Palmetto Dunes Resort Master Plan with land use designations of Multi Family Residential, Community Park and Commercial, excluding uses restricted by LMO 16-4-209, but permitting Liquor Stores and Gas Sales Proposed Density 295,000 square feet of commercial density and 76 Multi-family dwelling units Applicable Overlay District Corridor Overlay	Existing Zoning PD-1; Palmetto Dunes Resort Master Plan Community Park Existing Density 6,000 square feet per net acre of nonresidential density Proposed Zoning District PD-1; Palmetto Dunes Resort Master Plan with a land use designation of Multi Family Residential and Community Park. Proposed Density 134 Multi-family dwelling units Applicable Overlay District Corridor Overlay	Applicant/Owner Don Barnett Shelter Cove Towne Centre, LLC (Kroger) Agent Mark Senn Blanchard & Calhoun

Application Summary:

Don Barnett on behalf of Shelter Cove Towne Center has submitted a request to amend the Palmetto Dunes Master Plan to facilitate the development of a mixed use commercial development that includes general commercial uses, a grocery store with an associated fuel center, multi-family residential dwelling units (apartments), community park space, commercial kiosks and a liquor store to be included as part of the overall Shelter Cove Mall redevelopment.

Specifically the applicant seeks to amend the master plan by decreasing the total commercial density from 314,000 square feet (of which 46,000 square feet shall be limited to cinema complex and 268,000 square feet for 'Mall at Shelter Cove' and Community Service uses) to **295,000 square feet of general commercial uses, of which no more than 1,500 square feet can be used for up to 10 kiosks; and to add 210 multi-family dwelling units (134 units on parcel 12 and 76 units on parcel 26); and to add the uses of Community Park, Liquor Store and Gas Sales.**

Staff Recommendation:

Staff recommends that the Planning Commission find this application to be consistent with the Town's Comprehensive Plan and serves to carry out the purposes of the LMO, based on those Findings of Facts and Conclusions of Law as determined by the LMO Official and enclosed herein; making the recommendation to Town Council of ***APPROVAL*** of the request.

Other Commission or Committee Recommendations:

- As a result of the discussions at the Town Council workshop on December 9-11, 2010, 'Shelter Cove Mall Redevelopment: Conceptual Plan Direction and Town's Role', was approved by resolution of Town Council on **December 21, 2010** as a High Priority Target for Action.
- Town Council discussed it again at their annual 2011 workshop, December 1-3, which resulted in it being approved through a resolution on **December 20,2011** as a Top Priority Target for Action as part of the 'Shelter Cove Area Redevelopment: Determine Town's Role, and Approve a Plan.
- On **November 16, 2011** Mark Senn from Blanchard & Calhoun made a presentation on the conceptual redevelopment plans for the Mall to the Planning Commission who stated their support for the direction of the project.
- On **May 31, 2012**, Town Council held an informational meeting.

Background:

The master plan for Palmetto Dunes Resort was initially approved by Beaufort County in 1975 and was subsequently approved by the Town when Hilton Head Island incorporated in 1983. This plan did not assign site specific densities; but rather, the amount of commercial square footage and/or acreage that could be developed within the entire master plan was limited to 750,000 square feet or 110 acres.

1n 1986, the plan was amended to assign the density to specific parcels and the Mall site was assigned **235,000** square feet and the Mall out-parcels were assigned **16,000** square feet; the common space in the mall (hallways, etc) was determined by the Planning Commission to not count toward the assigned density. A total of **251,000** square feet for the total area.

In 1992, an Order of Settlement related to a court case transferred 12,300 square feet from Outparcels I and II, and Parcel C to the larger Mall parcel (**247,300** total square feet) and restricted Outparcel II and Parcel C to no vertical construction. Outparcel II, retained **3,700** square feet of commercial density. Still retaining a total of **251,000** square feet of commercial density for the entire site.

In 1998, a rezoning was approved that transferred **23,000** square feet of density from elsewhere in the PUD and required that all of the parcels (Outparcels I, II, and Parcel C) be combined to one. This resulted in a total of **274,000** square feet of commercial density (**247,300** sq ft + **3,700** sq ft + **23,000** sq ft)

On July 7, 2009, Town Council approved the request to amend the master plan for the Mall (adding **40,000** sq ft) property for a total of **314,000** square feet of commercial uses, of which **46,000** square feet was to be designated particularly for cinema complex use and to allow community service uses in addition to commercial uses except as limited in LMO 16-4-209. This is the current zoning and master plan designation for the property.

When the mall was sold to the present owners, the developers, Blanchard & Calhoun began a dialogue with Town staff on their conceptual plans. Several different plans were drafted and discussed with the intention of drafting the best plan for the developer and the community. During this dialogue the idea of a possible land swap with the Town was discussed in order to provide a better public space, which highlighted the natural and environmental assets of Broad Creek and better integrated the commercial development and the public space. In order to accomplish this, the portion of the current Shelter Cove Community Park between the Veteran's Memorial and the Mall is requested to be assigned 134 multi-family dwelling units. This portion of the property is part of a larger piece that is zoned PD-1 with the designation of Community Park.

In January 2004, through an administrative rezoning, the existing Shelter Cove Community Park was approved as Community Park with 6,000 square feet per net acre to be consistent with the PR district regulations as specified in LMO 16-4-1601 from the previous designation of 257 dwelling units. A portion of this property as shown in the attachments is proposed to be amended to include a designation of 134 multi-family dwelling units (apartments).

Applicant's Grounds for ZMA, Summary of Facts and Conclusions of Law:

The applicant's narrative and application materials describe the planned developments and this particular property as being appropriate for a mix of uses. This application proposes just that, a mix of commercial uses, park and multi-family residential. They state that the original plans for the district and the Mall Parcel, designate the back portion of the property for 180 multi-family units.

The applicant states that this development will revitalize the mall by opening up views to the marsh, provide the community with apartments which are currently in a limited supply on the island, that would have views to the marsh and take advantage of the mixed use concept of close proximity to commercial and public open space. The mall will be redeveloped to an open air series of retail shops, offices, and multi-family dwelling units. The addition of a public park will create a significant, flexible, functional and usable open space which will provide a sense of place for the community.

Summary of Facts and Conclusions of Law:

Findings of Facts.

- Notice of the Application was published in the Island Packet on May 6, 2012 as set forth in LMO 16-3-110 and 16-3-111.
- Notice of the Application was posted and mailed as set forth in LMO 16-3-110 and 16-3-111.
- A letter was mailed soliciting comments from the property owners' association as set forth in LMO 16-3-1502.
- A public hearing will be held on June 8, 2012 as set forth in LMO 16-3-1504A.
- The Commission has authority to render their decision reached here in LMO 16-3-1504.

Conclusions of Law:

The application, notice requirements, and public hearing comply with the legal requirements as set forth in LMO 16-3-110, 16-3-111 and 16-3-1504.

As set forth in <u>Section 16-3-1505, Zoning Map Amendment Review Criteria</u>, the Commission shall consider and make findings on the following matters regarding the proposed amendment.

Summary of Facts and Conclusions of Law:

Criteria 1: Consistency (or lack thereof) with the Comprehensive Plan (LMO 16-3-1505A):

Findings of Facts.

The adopted Comprehensive Plan addresses this project in the following areas:

<u>Natural Resources Element</u>

Implications for the Comprehensive Plan 3.3 – Positive Impacts of Environmental Preservation on quality of life.

The preservation of natural resources includes thoughtful planning techniques and sustainable land-use practices. The Town needs to maintain healthy beaches and creeks, invest in well-planned green space and protect mature tree canopies in order to enhance and support mental and physical health, economic vitality and a high quality of life.

Goal 3.1 – Water Quality and Quantity

B. The goal is to preserve all blueways (which includes salt marsh, freshwater wetlands, open canals, ditches and open water systems).

Housing Element

Implications for the Comprehensive Plan 5.1 – Housing Units and Tenure

Although, an increase in the total number of housing units contributes to the economic tax base for the Town, it is important that both the quantity as well as quality of the housing stock is maintained to sustain current and future population and overall property values. As the amount of available land declines for new development, it will be very important to maintain a high quality housing stock on residential properties. In addition, the availability of various housing types is important for the housing market viability to accommodate the diverse needs of the Island's population.

Community Facilities Element

Implications for the Comprehensive 6.3 – Transportation Network

While the Island currently has an extensive pathway network, opportunities to improve pathway connections between destinations that provide additional recreational opportunities and promote alternative means of transportation on the Island should be considered.

Implications for the Comprehensive 6.4 – Town Acquired Property

As the number of Town-owned properties continues to increase careful consideration of future utility is important to long range planning efforts.

Goal 6.1 – Build-out

A. The goal is to provide innovative and visionary initiatives that mitigate challenges of growth and redevelopment while making available higher levels of service for community facilities in a fiscally responsible manner.

Goal 6.3 – Transportation Network

A. The goal is to provide a transportation network that includes opportunities for roadway, pathway, water-based and air-based transportation to and on the Island.
D. The goal is to have a pathway network that provides for recreational opportunities as well as an alternative means of transportation to and on the Island.

Goal 6.4 – Town Acquired Property

B. The goal is to assess the utility and character of Town acquired property.

Implementation Strategy 6.3 – Transportation Network

C. Continue to expand the Island's pathway network.

Economic Development Element

Potential Strategies with Implications for the Comprehensive Plan

Identify and prioritize areas in need of re-development including any obsolete, or run down, commercial buildings. Incentivize the development of flexibility of streamlining in regulation of density caps, setbacks (and other controls) that enable a qualitative, principle based, asset revitalization that enhance the Island's positive legacies.

Land Use Element

Implications for the Comprehensive 8.2 – Town Acquired Property

Building permit data is indicative of several factors, one being the state of the economy as well as current building needs and growth in both residential and commercial types. The data indicates that there is currently a downward trend in the number of building permits issued by the Town. Redevelopment of our existing built environment and infill development should be a focus for the future development of our community, while the Town has entered a more mature level of development.

Goal 8.11 – Land Use Goals and Implementation Strategies

4. Promote quality infill development and use redevelopment opportunities to promote more pedestrian friendly retail environments.

Goal 8.1 – Existing Land Use

A. The goal is to have an appropriate mix of land uses to meet the needs of existing and future populations.

Goal 8.3 – Planned Unit Developments (PUD's)

B. The goal is to have an appropriate mix of land uses to accommodate permanent and seasonal populations and existing market demands is important to sustain the Town's high quality of life and should be considered when amending PUD Master Plans.

Goal 8.4 – Existing Zoning Allocation

A. An appropriate mix of land uses to accommodate permanent and seasonal populations and existing market demands is important to sustain the Town's high quality of life and should be considered when amending the Town's Official Zoning Map.

Goal 8.5 – Land Use Per Capita

A. The goal is to have an appropriate mix and availability of land uses to meet the needs of existing and future populations.

Goal 8.9 – Age of Structures

B. The goal is to encourage redevelopment of properties with aging structures or that no longer meet current market demands.

Goal 8.10 – Zoning Changes

A. The goal is to provide appropriate modifications to the 1oning designations to meet market demands while maintaining the character of the Island.

Goal 8.6 – Build-out

A. The goal is to monitor land use consumption and conversion rates to maintain a proper balance of public infrastructure, private development, and land conservation.
B. The goal is to consider develop regulations and requirements to maintain the Island character and meet the needs of the community as it approaches build out.

Goal 8.10 - Zoning Changes

A. The goal is to provide appropriate modifications to the Zoning designations to meet

market demands while maintaining the character of the Island.

Implementation Strategy 8.3 - Planned Unit Developments (PUDs)

A. Consider flexibility within the PUDs to address appropriate commercial or service land uses in areas with a high residential concentration.

Implementation Strategy 8.9 - Age of Structures

B. Develop flexible regulations and incentives to encourage redevelopment of aging structures and districts.

Implementation Strategy 8.10 – Zoning Changes

B. Consider focusing higher intensity land uses in areas with available sewer connections.

<u>Transportation Element</u>

Implications for the Comprehensive 9.3 – Traffic Planning on the Island

Future development and zoning classifications have an impact on the potential build-out of properties on the Island. Increasing the density of properties in certain areas of the Town may not be appropriate due to the inability of the current transportation network to handle the resulting additional traffic volumes. It may be more appropriate to provide density in areas that have the available roadway capacity and to reduce densities or development potential in areas that do not have the appropriate roadway capacity...

Implications for the Comprehensive 9.4 – Pathway Network

While the Island currently has an extensive pathway network, opportunities to improve pathway connections between destinations that provide additional recreational opportunities and promote alternative means of transportation on the Island should be considered.

Implications for the Comprehensive 9.4 – Pathway Network

There may be potential benefits of linking private community pathways to destinations such as shopping and entertainment centers immediately adjacent to the PUDs via pathway connections or secondary access points. This could have the potential to reduce the number of automobile trips on Island roadways, reduce the parking area required to accommodate customers and integrate the PUDs and non PUD areas.

Goal 9.4 - Multi-Use Pathways

A. The goal is to expand the pathway network to provide pedestrians, bicyclists, and other users of non-motorized transit with a safe and efficient infrastructure to connect residential and tourist areas to schools, parks, commercial areas, and potential off-Island connections.

Implementation Strategy 9.4 - Multi-Use Pathways

A. Expand the Island's Multi-Use Pathway System to connect all appropriate land uses such as parks, schools, open spaces, and beach access facilities on the Island along with residential and commercial destinations:

ii. Identify areas for sidewalk or multi-use pathway locations which have significant commercial, recreational, resort, entertainment or other intense public use but do not have adequate pedestrian or bicycle access.

Recreation Element

Implications for the Comprehensive 10.5 – Inventory of Existing Facilities

All organizations and groups, including the Town, School District and private communities and developers should work together when developing park and recreation plans.

Goal 10.1 - Recreation Needs

A. Continue to expand the public recreation system by providing adequate facilities to meet the needs of a broad spectrum of the Island population (including visitors) while maintaining sensitivity to the specific needs of the Island.

Goal 10.4 - Pathways

A. Continue improving and expanding the existing network of multi-use pathways throughout the Island enabling residents and visitors to access recreational areas, shopping centers, schools and businesses by non-motorized forms of transportation.

Goal 10.2 Protection of Unique Features

A. Acquire conservation and park lands as a means to preserve natural and cultural resources for educational, interpretive, and passive recreation uses.

Implementation Strategy 10.1 – Recreation Needs

D. Include within the park system a combination of all park types and strive to achieve the park guidelines as stated in this element by providing the number of future parks needed based on population projections.

Implementation Strategy 10.2 – Protection of Unique Features

B. Acquire properties located in areas of need for both passive and active uses, and for access points to waterways.

Conclusions:

Staff concludes that this application is consistent with the Comprehensive Plan, as described in the Natural Resources, Housing, Economic Development, Land Use, Transportation and Recreation Elements as set forth in LMO Section 16-3-1505A below.

- This rezoning will approve the land uses needed to relocate a portion of the Town's Shelter Cove Park, , which will result in longer frontage along Broad Creek and a reduction in the amount of impervious surface adjacent to the waterway, which will help improve water quality through the filtration of pollutants before they enter Broad Creek.

- The proposed rezoning promotes the redevelopment of an existing site in an area where the infrastructure is adequate and reduces the potential for additional impacts on infrastructure in other areas of the Island.

- The approval of this rezoning will help to remove underperforming commercial space from the Island's market and help facilitate the redevelopment of the Mall into a pedestrian friendly mixed-use environment, which better meets market demands and encourages alternate forms of transportation.

- This rezoning contributes to a more diverse supply of high quality housing options on the Island by allowing the development of residential uses, which will result in the addition of long term rental units to the market that are currently very limited in number, but growing in demand.

- The approval of this rezoning will facilitate the expansion of the Island's pathway system as part of the relocation of Shelter Cove Park , which will better link other neighboring residential and commercial areas to the development and provide additional recreation opportunities for Island residents and visitors.

- This rezoning takes into the consideration the special utility of Town-owned property by using a portion of the existing Shelter Cove Park property in a public/private partnership for the redevelopment of the Mall into a new mixed use development with an improved public waterfront park more centrally located and integrated into the development. This will result in increased frontage along Broad Creek in the park and improved public access to the Island's largest tidal creek, making available higher levels of service for public open space in a fiscally responsible manner.

- This rezoning will enable a qualitative, principle based, asset revitalization that enhances the Island's positive legacies by allowing the redevelopment of one of the Island's largest failing commercial centers and the Island's only indoor mall in a way that is designed to take better advantage of the natural beauty and views of Broad Creek and provide a more pedestrian oriented mixed use environment that will improve the character of the Island.

- The proposed rezoning provides the flexibility that is needed in the regulation of land use within the PD-1 District to allow for the designation of an appropriate mix of land uses in the appropriate locations to meet the needs of the population and improve the quality of life on the Island.

- The proposed rezoning will help promote redevelopment of the Mall, an aging structure that no longer meet current market demands.

Summary of Facts and Conclusions of Law:

Criteria 2: Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood (LMO16-3-1505B):

Findings of Facts.

- The present zoning of adjacent properties is PD-1, Palmetto Dunes Master Plan with a mix of land use designations including commercial, community park, office/commercial, and multi-family residential.
- According to LMO 16-4-209 'The purpose of this Planned Development Mixed Use District is to recognize the existence within the Town of certain unique mixed use Planned Unit Developments (PUDs) which are greater than 250 acres in size. Generally, these PUDs have served to establish the special character of Hilton Head Island as a quality resort and residential community and it is the intent in

establishing this District to allow the continuation of well-planned development within these areas.'

- The subject property and properties in the vicinity are within the COR District, Corridor Overlay District.
- According to LMO 16-4-501 'The purpose of establishing this overlay district is to protect the aesthetic and visual character of lands on Hilton Head Island adjacent to the major roads, the waterfront, and the marsh front, as defined herein. … In particular, the purpose of the Corridor Overlay District is to encourage and better articulate positive visual experiences along the Island's major roads, the waterfront, and the marsh front; to provide for the continued safe and efficient utilization of these roads; and to provide for the continued preservation and conservation of the waterfront and marsh front. This will be accomplished through evaluation of proposed developments within this district by a Design Review Board…'

Conclusions of Law:

- Staff concludes that the present zoning and conforming uses of nearby property are compatible with the character of the neighborhood as set forth in LMO 16-3-1505B because they are a mix of uses as stated in the purpose statement of the PD-1 zoning district.
- The DRB reviews all development in the vicinity of the property according to the Design Guidelines for Hilton Head Island to ensure the compatibility of the developments with the character of the neighborhood.

Summary of Facts and Conclusions of Law:

Criteria 3: Suitability of the property affected by the amendment for uses permitted by the district that would be made applicable by the proposed amendment (LMO 16-3-1505C):

Findings of Facts.

- The PD-1 zoning district allows for a mix of uses as designated specifically on the associated Master Plans.
- The proposed uses that would be designated on the master plan for the larger parcel include a gas station, kiosks, and a liquor store as well as general commercial uses. Apartments would also be a permitted use on the property. Community Park would also be a permitted use on both parcels.
- There are existing public park spaces in close proximity, the Shelter Cove Community Park and the Veteran's Memorial Park.
- The existing portion of the Town owned property would be designated for 134 multi-family dwelling units and community park.

Conclusions of Law:

- The proposed commercial uses are the same type of commercial uses that are characteristic of the area. The property is also suitable for apartments and residential uses due to the proximity to other residential uses in the area and immediately adjacent to the property.
- The property is suitable for park space because it is a good compliment to the other uses to provide the mix of uses that is desired and is a complimentary use Broad Creek.

Summary of Facts and Conclusions of Law:

Criteria 4: Suitability of the property affected by the amendment for uses permitted by the district applicable to the property at the time of the proposed amendment (LMO 16-3-1505D):

Findings of Facts.

- The existing uses for this property are very specific and limited to various factors that were established as conditions of previous rezonings and restrictive covenants that were entered into between the Town and property owner. The only uses permitted on the parcels are commercial and community park.
- The two properties (Mall parcel and the portion of the Town owned parcel) in total size are greater than 50 acres in size and s are bound by Broad Creek to the rear, William Hilton Parkway to the front, and residential, commercial and public park space.

Conclusion of Law:

- A mix of all neighboring uses is appropriate for the site and is compatible with the surrounding uses, since this development will encompass a mix of commercial, residential and public open space.

Summary of Facts and Conclusions of Law:

Criteria 5: Marketability of the property affected by the amendment for uses permitted by the district applicable to the property at the time of the proposed amendment (LMO 16-3-1505E):

Findings of Facts.

- No uses that are currently allowed on the property are proposed to be removed.
- A combination of statements made at other public meetings and other marketing and development research, supports that closed air malls are no longer the trend and people generally prefer an open air shopping and more life center experience.
- Many tenants have left Shelter Cove Mall to other open air commercial space, demonstrating the change in trends from enclosed malls to open air plazas and centers.

Conclusion of Law:

- The approval of this request would increase the marketability of the property with the additional uses as well as the associated density assigned to each. The redevelopment of property will also affect the marketability, in what is expected to be a positive direction.

Summary of Facts and Conclusions of Law:

Criteria 6: Availability of sewer, water and stormwater facilities generally suitable and adequate for the proposed use (LMO 16-3-1505F):

Findings of Facts.

- The property is within the Broad Creek Public Service District which currently serves the development.
- Storm water facilities are in place for the existing Mall as well as the Park.

Conclusions of Law:

- Staff concludes that this property has available sewer and water facilities suitable and adequate for the proposed uses as set forth in LMO Chapter 3, Article III.
- The adequacies of the storm water facilities and all other infrastructure will be reviewed as part of the DPR (Development Plan Review) and will be installed to comply with the LMO, Chapter 5, Article VI.

Summary of Facts and Conclusions of Law:

Other documents or actions address this project:

Findings of Facts.

- To determine compatibility with the Southern Regional Plan Implementation Committee, comments were solicited to other Planning Directors and Town/County Administrators as well as the County School District as to the regional impacts of this proposed application. No negative responses or letters of concern were received.
- The Policy Agenda for 2011, Targets for Action as adopted by Town Council list 'Shelter Cove Mall Redevelopment: Conceptual Plan Direction and Town's Role'.
- The Policy Agenda for 2012, Targets for Action as adopted by Town Council list 'Shelter Cove Area Redevelopment: Determine Town's Role and Develop and Approve a Plan'.

Conclusions:

- Staff concludes that the project will not have a negative impact on the region based on the input from other jurisdictions in Southern Beaufort County.
- This is the first step in approving a redevelopment plan for the Mall site based on Town Council's goals resulting from their annual workshop.

LMO Official Determination

Determination: Staff determines that this application is compatible with the Comprehensive Plan and serves to carry out the purposes of the LMO as based on the following Findings of Fact and Conclusions of Law.

Staff recommends that the Planning Commission **recommend approval** to Town Council of this application, which includes amending the Official Zoning Map by amending the Palmetto Dunes Resort Master Plan for the Mall parcel, indicated as 'Portion 1' to "Commercial, excluding uses restricted by LMO 16-4-209, but permitting Liquor Stores and Gas Sales", "Multifamily" and "Community Park" with an allocated 295,000 square feet of commercial density (with no more than 1,500 square feet used for 10 kiosks) and 76 multi-family residential units.

Town staff further recommends that 'Portion 2', the existing Town owned portion, be amended to Multifamily and Community Park with an allocated 134 residential units.

Note: If the proposed amendment is approved by Town Council, such action shall be by <u>ordinance</u> to amend the Official Zoning Map. If it is denied by Town Council, such action shall be by <u>resolution</u>.

<u>PREPARED BY</u>:

HLC	May 23, 2012
Heather L. Colin, AICP *Development Review Administrator*	DATE

<u>REVIEWED BY</u>:

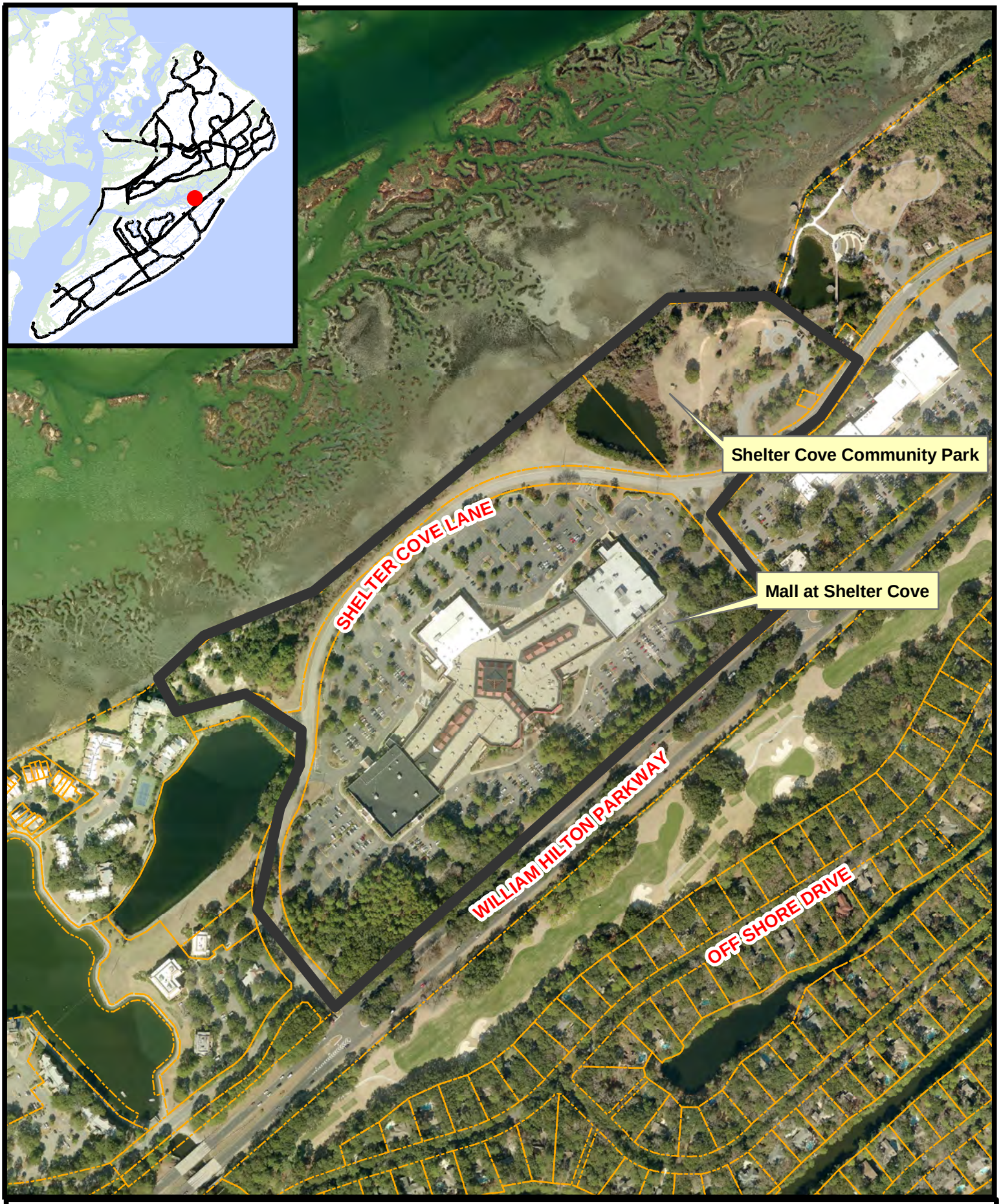
TBL	May 29, 2012
Teri B. Lewis, AICP *LMO Official*	DATE

<u>REVIEWED BY</u>:

JL	May 29, 2012
Jayme Lopko, AICP *Senior Planner & Planning Commission Board Coordinator*	DATE

<u>ATTACHMENTS</u>:

A) Vicinity Map
B) Applicant's Narrative and Attachments



TOWN OF HILTON HEAD ISLAND
ONE TOWN CENTER COURT
HILTON HEAD ISLAND, S.C. 29928
PHONE (843) 341-6000

Town of Hilton Head Island

ZMA120006 - Vicinity Map

450 225 0 450 Feet

This information has been compiled from a variety of unverified general sources at various times and as such is intended to be used only as a guide. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion.