



**The Town of Hilton Head Island
Regular Public Facilities Committee Meeting**

Monday, July 18, 2016

1:30 p.m.

Benjamin M. Racusin Council Chambers

AGENDA

As a Courtesy to Others Please Turn Off All Cell Phones and Pagers during the Meeting

- 1. Call to Order**
- 2. Freedom of Information Act 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.
- 3. Committee Business**
 - Approval of Minutes:
 - June 27, 2016
- 4. Unfinished Business**
- 5. New Business**
 - Coligny Redevelopment Project – Sandbox Lease Agreement
 - Coligny Redevelopment Project – Sandbox MOU
 - Dillon Road Sewer Project Easement Request
- 6. Adjournment**

Please note that a quorum of Town Council may result if four (4) or more of Town Council members attend this meeting.

TOWN OF HILTON HEAD ISLAND PUBLIC FACILITIES COMMITTEE

Date: June 27, 2016

Time: 10:00 A.M.

Members Present: David Ames, Kim Likins, Tom Lennox

Members Absent: None

Staff Present: Scott Liggett, Charles Cousins, Jeff Buckalew

Others Present: Bill Harkins, *Councilman*

Media Present: None

1. Call to Order:

The meeting was called to order at 10:00 a.m.

2. 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.

3. Committee Business:

Approval of Minutes: Mrs. Likins moved to approve the Minutes of May 23, 2016. Mr. Lennox seconded. The Minutes of May 23, 2016 were unanimously approved.

4. Unfinished Business:

None

5. New Business

• **Stormwater Utility – Intergovernmental Agreement Amendment**

Scott Liggett, Director of Public Projects & Facilities stated for many years now we have operated with an Intergovernmental Agreement with Beaufort County who actually collects the Town's Stormwater Utility Fee. Previously, Council had endorsed the completion of a rate study that would examine how we may want to structure the Stormwater Utility Fee going forward. That study has been completed but has not yet been vetted by Town Council although the County has taken action on it.

We are here today mostly for what staff believes is an administrative task to revise the current Agreement with the County to reflect the completion of that study and to be mindful of the budget that you just approved that retained the \$108.00 fee going forward. There were no changes as you might remember from our budget discussion for the upcoming fiscal year. We do expect to get into the details of the rate study and any potential expansion or changes in our fee going forward. But for Fiscal 2017, the fee stays the same. The roles and responsibilities with the County stay the same and for the most part the changes that are reflected in the Agreement before you today are mindful of and reflect the new rate study that has been completed.

Mr. Lennox asked how many Agreements like this are there. Mr. Liggett responded the County has Agreements with all of the participating municipalities so we are one of four. All of them are either being modified or accepted just like ours is or soon will be. The County is trying to have similar if not identical agreements with all of the participating municipalities.

Mrs. Likins asked when the results of the study will be available to look and talk about. Mr. Liggett said he expects we will start the discussion during the first quarter of fiscal 2017. We would like to be way out ahead of any budget discussions which for staff's perspective start in January. I am hopeful we will go through the fall and hopefully winter and try and vet the results of the study and also engage Council or the Committee in the discussion of any expansion in the extent of service or the level of service that Council may desire us to pursue as we set the fee going forward. As a reminder to all of you, the current fee of \$108.00 has remained intact and unchanged since 2010. I think the time is right to talk about other initiatives programs, expansions that Council might want to consider.

Mr. Lennox said he will want to get involved with understanding the fees and expenses. In the budget process if you take a look, the financials of the fund need some serious attention. If you look at total revenue for the last five years it is flat. Total personnel expenses more than doubled. Operating expenses quadrupled. Total project costs, however, have remained level while the fund balance has reduced by 50%. That in and of itself does not reflect the risk and liability that you have told us we have.

Mrs. Likins stated we will have to personally understand a little more about what it covers and at what point do we consider preventative maintenance vs. just fixing things as they happen. I think with everything that happened with the issue with Pine Isle the question is how far do we have to go to be intentional and forward fixing things or thinking about things. Clearly some of our citizens and their POA's who have turned stormwater over to us in their mind see us having a degree of responsibility that maybe we are not sure that we see that we have at this point.

Mr. Liggett stated he agrees 100% with both comments. Some of the things that Council has expressed interest in at least discussing – one of them being our involvement in the smaller scale subdivisions who we have taken and established responsibilities within all of the large gated communities except for Spanish Wells. The smaller neighborhood POA's that are still in orbit there was discussion late last year of the potential to create some sort of reserve within the fund. All of those things could or should be vetted when we examine the rate structure and the fee and revenue stream a to how we might want to fund the program for the next 3-5 years.

Councilman Lennox moved that the Public Facilities Committee recommend Town Council amend the Town's Stormwater Management and Utility Intergovernmental Agreement with Beaufort County. Mrs. Likins seconded. The motion passed unanimously.

6. **Adjournment**

Mrs. Likins moved to adjourn. Mr. Lennox seconded. The meeting was adjourned at 10:08 a.m.

Respectfully Submitted,

Karen D. Knox
Senior Administrative Assistant

DRAFT

Memo



To: Public Facilities Committee
Via: Stephen G. Riley, Town Manager
Scott Liggett, Dir. of PP&F / Chief Engineer
From: Jennifer B. Ray, Urban Designer
Subject: Coligny Redevelopment Project – Sandbox Lease Agreement
Date: July 12, 2016

Recommendation: Staff recommends that the Public Facilities Committee recommend that Town Council enter into a Lease Agreement with the Sandbox Children’s Museum regarding the operation of a children’s museum in the Town of Hilton Head Island.

Summary: The Town desires to include a building for use by the Sandbox Children’s Museum in the public park/open space improvements on the Town owned land in the Coligny area for the purpose of operating a children’s museum to serve residents and visitors. The Town is building a shell building as part of upcoming park construction. A lease Agreement has been drafted that outlines the ownership, operations, and maintenance of that building.

Background: In October 2014, Town Council approved the master plan for Coligny District improvements. At its annual workshop in November 2014, Town Council outlined its desire to move forward with improvements in the northwest quadrant of the Coligny District specifically including the park, destination playground, and Sandbox Children’s Museum.

A design team, led by Wood+Partners, including Thomas & Hutton Engineering and Watson Tate Savory Architects, has provided professional design services to facilitate the design of the Town’s Coligny District Improvements. The design team has worked closely with representatives from the Sandbox regarding the design of the building, the needs of the museum, and its integration into the park.

Major elements of the MOU are as follows:

- Leased premises include the structure and the associated outdoor patio space.

Sandbox also may use +/- 35 parking spaces in adjacent lot and the adjacent dumpster. The Sandbox has exclusive use of the private play area adjacent to the Building.

- The lease will automatically be renewed for successive renewal terms of five years each.
- The Sandbox will maintain and repair the leased premises.
- The Sandbox shall continuously occupy and use the premises as a children's museum.

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF A MEMORANDUM OF UNDERSTANDING AND LEASE WITH THE SANDBOX: A HILTON HEAD AREA CHILDREN’S MUSEUM, INC., RELATED TO THE DEVELOPMENT AND LEASE OF REAL PROPERTY OWNED BY THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, PURSUANT TO THE AUTHORITY OF S.C. CODE ANN. SEC. 5-7-40 (SUPP. 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 (“Town”), owns one or more parcels of real property (“Town Property”) located in the Coligny area of Hilton Head Island; and

WHEREAS, the Town desires to develop portions of the Town Property by constructing one or more structures for use by The Sandbox: A Hilton Head Area Children’s Museum, Inc. (“Sandbox”), and the Town desires to lease portions of the Town Property to the Sandbox, all for the operation of a children’s museum in the Town of Hilton Head Island in accordance with that certain Memorandum of Understanding, a copy of which is attached hereto as Exhibit “1”; and

WHEREAS, the Town Council for the Town has determined that it is in the best interests of the Town to enter into a Memorandum of Understanding and Lease with the Sandbox for operation of a children’s museum in the Town of Hilton Head Island.

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 Memorandum of Understanding.

- (a) The Mayor and/or Town Manager are hereby authorized to execute and deliver the Memorandum of Understanding in substantial conformance with the attached Exhibit “1”; 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 Memorandum of Understanding.

Section 2 - Execution, Delivery and Performance of Lease.

(a) The Mayor and/or Town Manager are hereby authorized to execute and deliver the Lease in substantial conformance with Exhibit “B” of the attached Exhibit “1”; 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 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.

(SIGNATURE PAGE FOLLOWS)

**PASSED AND APPROVED BY THE TOWN COUNCIL FOR THE TOWN OF
HILTON HEAD ISLAND, SOUTH CAROLINA, ON THIS ____ DAY OF
_____, 2016.**

David Bennett, Mayor

ATTEST:

Victoria L. Pfannenschmidt, Town Clerk

First Reading: _____

Second Reading: _____

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

Introduced by Council Member: _____

LEASE OF
REAL PROPERTY AND IMPROVEMENTS THEREON
BY AND BETWEEN
THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA,
AND
THE SANDBOX: A HILTON HEAD AREA CHILDREN'S MUSEUM, INC.

DATED THIS _____ DAY OF _____, 20_____

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

LEASE

This Lease Agreement (hereinafter, the “Lease”), is made and entered into on this ____ day of _____, 20____, between the Town of Hilton Head Island, South Carolina (hereinafter, “Lessor”), and The Sandbox: A Hilton Head Area Children’s Museum, Inc. (hereinafter, “Lessee”).

For and in consideration of the Rent to be paid by the Lessee hereunder, and the full and faithful performance of the following terms and conditions, the Lessor and the Lessee (hereinafter collectively referred to as the “Parties”), hereto mutually understand and agree as follows:

1. LEASED PREMISES:

The Lessor hereby leases to the Lessee, and the Lessee hereby leases from the Lessor, that certain building designated as A1, and associated outdoor patio space, on the attached Exhibit “A”, located on Hilton Head Island, South Carolina (hereinafter, the “Building” or “Leased Premises”).

2. LEASE TERM:

(a) Initial Term. Lessee shall have and hold the Leased Premises for a term (hereinafter, the “Initial Lease Term”) beginning on the ____ day of _____, 20____ (hereinafter, the “Commencement Date”), and ending at midnight on the ____ day of _____, 20____ (hereinafter, the “Initial Expiration Date”).

(b) Renewal Terms. This Lease will automatically be renewed for successive renewal terms of five (5) years each, unless either party sends to the other a written notice evidencing that party’s intent to terminate this Lease at least one hundred eighty (180) days prior to the end of the Lease term then in effect. The Initial Term and any Renewal Terms shall collectively be called the “Lease Term”.

(c) Lessee’s entry into, and taking possession of, the Leased Premises shall constitute as of the beginning of the Initial Lease Term. At the time of execution of this Lease or at any time thereafter, the Lessor shall be under no duty to make alterations or repairs to the Leased Premises that are not expressly set forth in this Lease.

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

(e) If the Lessee shall be in possession of the Leased Premises after the Lease Term has expired (hereinafter, the “Holdover Period”), and in the absence of any written agreement extending the Lease Term hereof, or the Lessor’s demand to the Lessee to sooner vacate the Leased Premises, the tenancy under this Lease shall become one from month to month, terminable by either party on thirty (30) days’ prior written notice. Such tenancy shall be subject to all other conditions, provisions and obligations of this Lease.

3. RENT:

The following Rent schedule is based on an annual Rent rate of One and 00/100 (\$1.00) Dollar. The Rent shall be payable in equal yearly payments, in advance, beginning on the Commencement Date, and thereafter, on the first (1st) day of every year throughout the entire Lease Term.

4. USE AND COMPLIANCE:

(a) PERMITTED USE: The Lessee shall continuously occupy and use the Leased Premises as the Sandbox Children's Museum (herein, the "Permitted Use"), to include all normal daily operations of the Sandbox Children's Museum, 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 Lessee's Permitted Use, and then only in compliance with all applicable laws related thereto).

(b) COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS: The Lessee 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.

(c) SPECIFIC PROVISIONS RELATED TO THIS LEASE: In addition to other obligations set forth in this Lease, the parties agree as follows:

(i) Lessee may utilize approximately thirty-five (+/- 35) parking spaces in the parking lot adjacent to the Building. Such use shall not be exclusive to Lessee, and the parking spaces may be reserved by Lessor or other appropriate parties during special events or similar times as lawfully requested and approved.

(ii) Lessee may utilize the dumpster adjacent to the Building. Such use shall not be exclusive to Lessee, and the dumpster may be used by Lessor during special events or similar times as needed. Further, any use by Lessor does not obligate Lessor to provide special or additional dumpster collection.

(iii) Lessee may exclusively utilize the private play area adjacent to the Building; however, emergency exits will be provided and lead from this area to the adjacent park area.

5. THE LESSEE'S DUTY TO MAINTAIN AND REPAIR:

(a) REPAIRS TO LEASED PREMISES: Lessee shall keep and maintain the Leased Premises in good order, condition, and repair (including any replacement and restoration as is required for that purpose), and every part thereof and any and all appurtenances thereto wherever located, including, without limitation: the foundation, exterior walls, and roof of the building in which the Leased Premises are located, and the structural portions of the Leased Premises; the exterior and interior portion of all doors and plate glass; all plumbing and sewage facilities with the Leased Premises, including the free flow of and to the main sewer line; fixtures; heating and air-conditioning and electrical systems premises serving the

Leased Premises exclusively; sprinkler systems; wall, floor, and ceilings applicable to the Leased Premises; and all installations made by the Lessee under the terms of this Lease and any Exhibits thereto, as herein provided. The Lessee shall not make any alteration of, or addition or improvement to, the Leased Premises without securing the Lessor's prior written consent. Any and all roof penetrations must first be approved by and coordinated through the Lessor, in order not to void any warranties on the roof coverings. The Lessee shall save the Lessor harmless on account of claims for mechanics or materialmen's liens, or any other lien, in connection with any work performed by the Lessee, and any such liens shall exist only against the Lessee's leasehold interest and shall be discharged, by bond or otherwise, within thirty (30) days of filing and service of thereof. The Lessee 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 Lessee, and the Lessee shall comply with all requirements of law, statute, ordinance, covenants, restrictions or otherwise, governing the use of the Leased Premises and all appurtenances thereto. The Lessor shall have the right, but not the obligation, to enter the Leased Premises to repair, replace, maintain or restore, at Lessee's expense, any items which the Lessee is responsible for maintaining, repairing, restoring, or replacing under this Article 6 and for which Lessee has failed to perform hereunder. The Lessee shall reimburse the Lessor within thirty (30) days from the written demand by the Lessor for any cost or expense plus an administrative fee not to exceed eighteen (18%) percent of such cost of expense.

(b) LESSOR NOT LIABLE: The Lessor shall not be liable for any loss or damage to the Lessee's personal property, equipment, fixtures, and improvements to the Leased Premises.

6. LESSOR REPRESENTATIONS:

(a) ZONING: The Lessor hereby warrants and represents that the Leased Premises are properly zoned for the Lessee's Permitted Use(s) and that the Lessee's Permitted Use(s) thereof is permitted upon the Leased Premises.

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

7. 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 Lessee shall peaceably surrender possession of the Leased Premises to the Lessor with all improvements located therein, in good repair and in the same condition in which delivered to the Lessee, ordinary wear and tear excepted, and the Lessee shall deliver to the Lessor all keys to the Leased Premises. Regardless of the foregoing, at any time prior to the expiration of the Lease Term, the Lessee may, at its cost and expense, remove in a careful manner any trade fixtures, furniture, and personal property placed within the Leased Premises by the Lessee 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 Lessor's option, be deemed to have been abandoned by the Lessee and may be destroyed or otherwise disposed of by the Lessor without notice to the Lessee, and without any obligation to account for such

items, or liability to the Lessee therefore. The provisions of this Article of the Lease shall survive the expiration or termination of this Lease.

8. LESSOR'S RIGHT OF ENTRY:

The Lessor or its employees/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 Lessor or its employees/agents may enter the Leased Premises without consent or agreement of the Lessee. Keys for this purpose must be held by the Lessor or its employees/agents. In the event that the Lessee desires to change or alter any locks to the Leased Premises, the Lessee will notify the Lessor of the Lessee's request, and the Lessor or the Lessor's employee(s)/agent(s) will have the locks changed or altered at the Lessee's expense.

9. UTILITIES:

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

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

10. SIGNS:

The Lessee shall not erect any signs or advertisements on any exterior door, wall, or window of the Leased Premises without the prior written consent of the Lessor. If the Lessor approves any such signage, all related costs for the installation and fabrication for the signage shall be the sole financial responsibility of the Lessee. The Lessee agrees to maintain such signs as approved by the Lessor in good condition and repair. Any such sign shall otherwise comply with all requirements of any law, statute, ordinance, covenants, restrictions, or otherwise, governing the use of the Leased Premises.

11. CONTROL OF THE LEASED PREMISES:

(a) THE LESSEE'S EXCLUSIVE CONTROL: The Lessee warrants and represents 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 Lessee.

(b) SURVIVAL: The warranties and representations set forth in this Article shall survive the expiration, cancellation, or termination of this Lease.

12. DAMAGE OR DESTRUCTION OF THE 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 ninety (90) days, as certified by the opinion of the Building Official of the Town of Hilton Head Island, South Carolina, then the Lessee or the Lessor 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 Lessor.

(b) **DAMAGE TO THE LEASED PREMISES:** In the event of an insured loss and subject to the termination provisions set forth herein, the Lessor 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 Lessor provide the Lessee 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 Lessor or the Lessee may terminate this Lease by written notice, in which event all insurance proceeds will be paid to the Lessor.

13. **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, 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 Lessor shall promptly provide the Lessee a copy of any and all notices from any such condemning authority, or private purchaser as mentioned above, respecting any requirements that the Lessor surrendered its right to all or any portion of the Leased Premises pursuant to this Article.

(b) **NOTICE OF ELECTION:** Any notice of election by the Lessee to terminate this Lease as provided in this Article shall be given by the Lessee to the Lessor within thirty (30) days after written notice by the Lessor to the Lessee as provided in this Article, or within thirty (30) days after receipt by Lessee of actual knowledge of any requirement that the Lessor 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, after taking of a portion of the Leased Premises, the Lessor 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:** Any payment or award from the condemning authority shall be the property of the Lessor.

14. **SUBLETTING PROHIBITED:**

Lessee 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 Lessor. Any and all documents utilized by the Lessee to evidence any subletting or assignment to which the Lessor has consented shall be subject to prior written approval by the Lessor and its counsel.

15. **DEFAULT OF LESSEE:**

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

(a) **FAILURE TO PAY RENT OR FOR ANY OTHER MONEY DUE:** If the Lessee shall fail to pay any payment of Rent, or any other sum of money due and payable under this Lease, whether to the Lessor or otherwise, when due and payable, and such failure shall continue for a period of ten (10) days from the due date thereof;

(b) **VIOLATION OF LEASE:** If the Lessee 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 Lessee 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 Lessee shall desert, vacate, or not regularly use the Leased Premises for a period of thirty (30) days or more, even though the Lessee continues to timely pay all Rent Payments when due;

(d) **DISSOLUTION:** The dissolution of the Lessee for any reason; or

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

16. **DEFAULT OF THE LESSOR:**

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

(a) If the Lessor 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 Lessor by the Lessee of such.

17. **RIGHTS OF THE PARTIES ON DEFAULT:**

(a) **ALL REMEDIES PRESERVED:** Upon Default of the other Party, the Lessor or the Lessee, 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 a suit or after the commencement of suit, including appellate proceedings, in addition to any other relief to which prevailing party may be entitled.

18. **INTERPRETATION:**

The Lessee acknowledges that the Lessee has reviewed and agreed to all the terms and provisions of this Lease and that the Lessee has had a full opportunity to consult with an attorney of the Lessee's choosing concerning the legal consequences of entering into this Lease with the Lessor. 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.

19. NO WAIVER:

The Lessor's acceptance of any payment of Rent (or other money due) following any Default by the Lessee shall not waive the Lessor's rights regarding such a Default. No waiver by the Lessor of any violation or breach of any of the terms contained in this Lease shall waive the Lessor's rights regarding any future violation of such term, or any violation of any other term contained within this Lease. The Lessor's acceptance of any partial payment of Rent shall not waive the Lessor'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 Lessor'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.

20. MECHANIC'S LIENS OR OTHER LIENS:

The Lessee shall have no power to subject the Leased Premises or the Lessor's interest in the Leased Premises to any mechanic's lien or any other lien. If any mechanic's lien or 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 Lessee 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 Lessee 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 Lessee, within thirty (30) days after written demand therefore by the Lessor, and shall also defend on behalf of the Lessor at the Lessee'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 Lessee shall save the Lessor harmless from any judgment, claim, or damage resulting therefrom.

21. ESTOPPEL CERTIFICATES:

The Lessee agrees that at any time and from time to time upon not less than ten (10) days prior written request by the Lessor, to execute, acknowledge, and deliver to the Lessor 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 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 may be relied on by any prospective purchaser or purchasers of the Lessor's interest in the Building or the Leased Premises.

22. WAIVER OF JURY TRIAL:

TO THE EXTENT PERMITTED BY LAW, THE LESSOR AND THE LESSEE EACH AGREE 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.

23. HAZARDOUS MATERIALS:

(a) **HAZARDOUS MATERIALS PROHIBITED:** The Lessee 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 Lessee's Permitted Use, and then only in compliance with any and all applicable laws) without the prior written consent of the Lessor, which consent may be withheld by the Lessor for any reason. "Hazardous Materials" shall mean any substance, material, or waste which is now or hereafter classified and/or 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) **LESSOR'S RIGHTS:** If the Lessee breaches its obligations under this Article, the Lessor may, but is not obligated to, immediately take, at the Lessee's expense, any and all actions reasonably appropriate to remedy the same, including taking any appropriate actions to clean up or remediate any contamination resulting from the Lessee's use, generation, storage, or disposal of any Hazardous Materials.

(c) **INDEMNIFICATION:** The Lessee shall indemnify the Lessor and pay the cost of any cleanup or remediation and shall defend the Lessor, and hold the Lessor 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 Lessee. This indemnity provision shall survive the termination or expiration of this Lease.

(d) **SURVIVAL:** The obligations of the Lessee as set forth in this Article shall survive the expiration, cancellation, or termination of this Lease.

24. **MISCELLANEOUS:**

(a) **BINDING EFFECT:** This Lease shall inure to the benefit of and shall be binding upon the Lessor and Lessee 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 Lessor and Lessee 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 the Lessor and the Lessee.

(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 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 Deed 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 Lessor: THE TOWN OF HILTON HEAD ISLAND
Stephen G. Riley, ICMA-CM, Town Manager
One Town Center Court
Hilton Head Island, SC 29928

With Copy to: Gregory M. Alford, Esq.
ALFORD & THORESON, LLC
Post Office Drawer 8008
Hilton Head Island, SC 29938-8008

To the Lessee: THE SANDBOX: A HILTON HEAD AREA CHILDREN'S MUSEUM, INC.

With Copy to: _____

(k) SURVIVAL: The obligations of the Lessee as 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.

(l) FURTHER ASSURANCES AND CORRECTIVE DOCUMENTS: The Lessor and Lessee 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 Lessor and Lessee

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, cancellation, or termination of this Lease.

IN WITNESS WHEREOF, The Town of Hilton Head Island, South Carolina and The Sandbox: A Hilton Head Area Children’s Museum, Inc. 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**

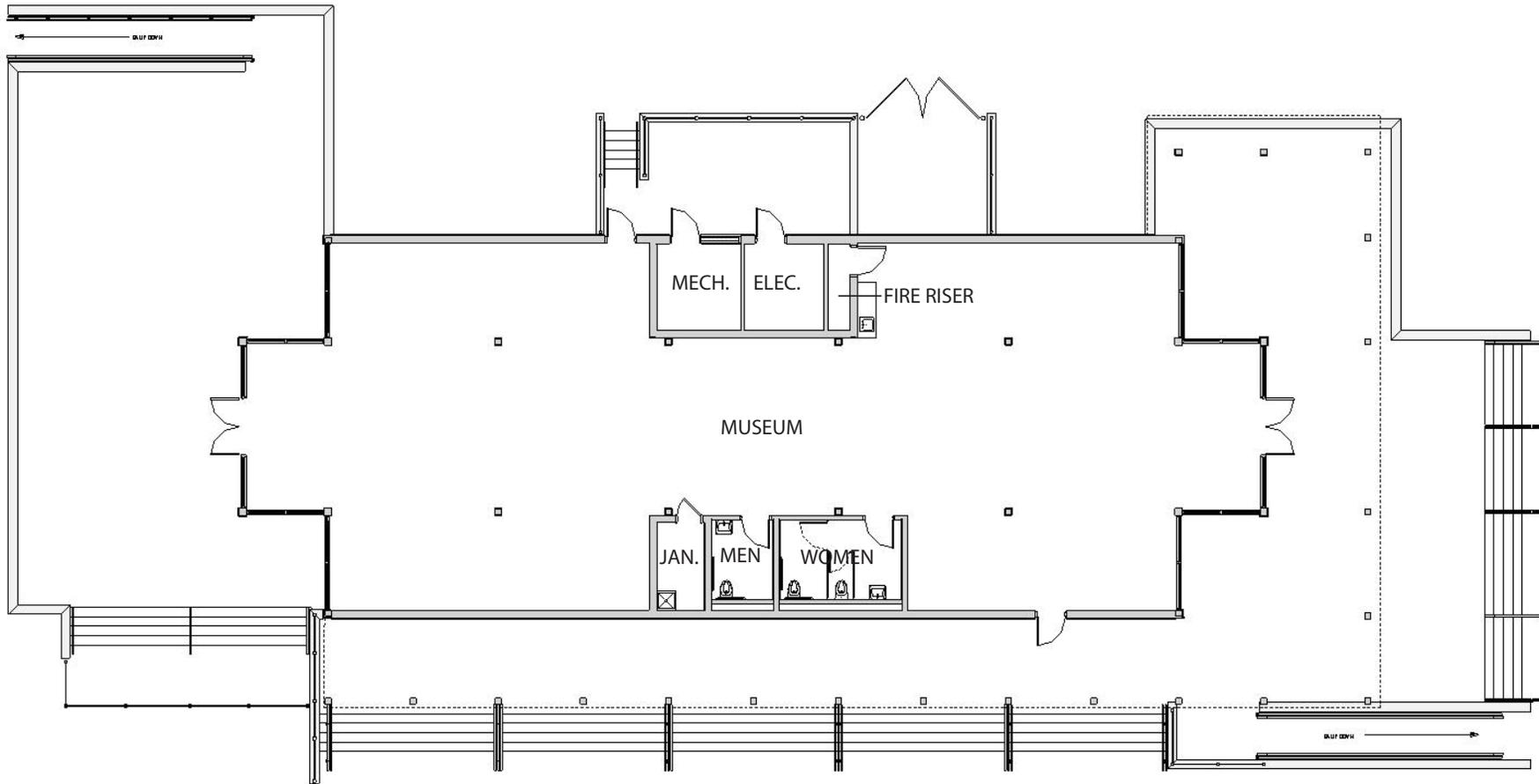
By: _____
David Bennett, Mayor

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

**THE SANDBOX: A HILTON HEAD AREA
CHILDREN’S MUSEUM, INC.**

By: _____

Its: _____



Lease Exhibit A

SANDBOX CHILDREN'S MUSEUM SHOWING BUILDOUT WITH ANTICIPATED PLUMBING FIXTURES
COLIGNY PARK
19 MAY 2016

Memo



To: Public Facilities Committee
Via: Stephen G. Riley, Town Manager
Scott Liggett, Dir. of PP&F / Chief Engineer
From: Jennifer B. Ray, Urban Designer
Subject: Coligny Redevelopment Project – Sandbox MOU
Date: July 12, 2016

Recommendation: Staff recommends that the Public Facilities Committee recommend that Town Council enter into a Memorandum of Understanding (MOU) with the Sandbox Children’s Museum regarding the operation of a children’s museum in the Town of Hilton Head Island.

Summary: The Town desires to include a building for use by the Sandbox Children’s Museum in the public park/open space improvements on the Town owned land in the Coligny area for the purpose of operating a children’s museum to serve residents and visitors. An MOU has been drafted that outlines the responsibilities of the Town as well those of the Sandbox as design moves into construction.

Background: In October 2014, Town Council approved the master plan for Coligny District improvements which included this museum. At its annual workshop in November 2014, Town Council outlined its desire to move forward with improvements in the northwest quadrant of the Coligny District specifically including the park, destination playground, and Sandbox Children’s Museum.

A design team, led by Wood+Partners, including Thomas & Hutton Engineering and Watson Tate Savory Architects, has provided professional design services to facilitate the design of the Town’s Coligny District Improvements. The design team has worked closely with representatives from the Sandbox regarding the design of the building, the needs of the museum, and its integration into the park.

Major elements of the MOU are as follows:

- The Town will be responsible for the design and permitting of a shell structure and associated outdoor patio space.
- The Town will lease the structure to the Sandbox to operate a children's museum.
- The Town will fund the cost of design, permitting, clearing, and construction of the structure as well as parking, landscaping, etc. surrounding the structure.
- The Sandbox will provide funds of no less than \$150,000 to improve the structure to occupy it as a children's museum. Construction will not begin until at least 50% of funds have been deposited in an account ready for immediate use.
- The Sandbox will enter into a lease agreement with the Town. The Sandbox will operate and maintain all facilities constructed by the Town for a children's museum.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF A MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AND THE SANDBOX CHILDREN'S MUSEUM.

WHEREAS, the Town and the Sandbox desire for the Sandbox to operate a children's museum in the Town of Hilton Head Island; and

WHEREAS, the Town Council of the Town of Hilton Head Island approved a Master Plan for the Coligny Area Redevelopment which included a building identified for use by the Sandbox; and

WHEREAS, the Town and the Sandbox desire to enter into a Memorandum of Understanding for the purpose of providing assurances to each other so that each may proceed with actions furthering the agreements and understanding as contained in the Memorandum of Understanding; 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 such a Memorandum of Understanding.

NOW, THEREFORE, BE IT, AND IT HEREBY IS, RESOLVED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, THAT the attached Memorandum of Understanding is hereby adopted.

MOVED, APPROVED, AND ADOPTED THIS ____ DAY OF _____, 2016.

David Bennett, Mayor

ATTEST:

By: _____
Victoria L. Pfannenschmidt, Town Clerk

APPROVED AS TO FORM:

Gregory M. Alford, Town Attorney

Introduced by Council Member: _____

STATE OF SOUTH CAROLINA)
) **MEMORANDUM OF**
COUNTY OF BEAUFORT) **UNDERSTANDING**

This Memorandum of Understanding (“Agreement”) is entered into by and between The Sandbox: A Hilton Head Area Children’s Museum, Inc. (“Sandbox”), and the Town of Hilton Head Island, South Carolina (“Town”), and shall be effective upon its execution by both parties hereto.

WHEREAS, the Sandbox is an interactive children’s museum serving the residents of and visitors to Hilton Head Island and the greater South Carolina lowcountry area; and

WHEREAS, the Sandbox currently operates a children’s museum within the Town, and seeks to further its cooperative efforts with and for the Town; and

WHEREAS, the Town is a municipality whose residents and visitors attend educational and related services provided by the Sandbox, and desires to build upon those efforts for the benefit of the Town, its residents and visitors; and

WHEREAS, the Town and the Sandbox desire for the Sandbox to operate a children’s museum in the Town of Hilton Head Island intending to provide, among other things, children’s empowerment through play, leap into learning, imagination hour, and other children’s education programs benefitting the parties hereto; and

WHEREAS, this Agreement is entered into by and between the Town and the Sandbox for the purpose of providing assurances to each other so that each may proceed with actions furthering the agreements and understandings as contemplated in this Agreement; and

WHEREAS, it is anticipated that an additional agreement or agreements may be necessary to further clarify and memorialize the details with respect to the future development and operation of a children’s museum in the Town of Hilton Head Island, and the parties hereto will clarify and memorialize such details as it may become necessary.

NOW THEREFORE, for and in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration, including economic and other benefits inuring to both the Town and the Sandbox as a result of this Agreement with regard

to the future development and operation of a children's museum by the Sandbox, the receipt and sufficiency of such consideration being hereby mutually acknowledged, the Town and the Sandbox hereby agree as follows:

I. RECITALS

- A. The above WHEREAS clauses are hereby incorporated into this Agreement as if fully set forth herein.
- B. All exhibits attached hereto and/or referred to in this Agreement are hereby incorporated into this Agreement as if fully set forth herein.

II. EFFORTS TO DATE

- A. A conceptual plan has been developed and is attached hereto as Exhibit "A". The Town and the Sandbox acknowledge that this plan may be refined, but shall remain at all times in substantial conformance with the attached Exhibit "A".
- B. The Town has received approval of Public Project Review in accordance with the Town's Land Management Ordinance.

III. OBLIGATIONS OF THE TOWN

- A. Subject to Article IV(A) below, the Town shall be responsible for the design and permitting of a shell structure and associated outdoor patio space for a children's museum ("Structure") approximately 4,000 square feet, all clearing of the property, construction of the Structure, parking and infrastructure improvements, and landscaping for the site.
- B. The Town shall lease to the Sandbox the Structure necessary to operate said children's museum. The Town shall execute and deliver to the Sandbox a Lease Agreement in substantial conformance with the attached Exhibit "B".
- C. The Town shall commit to providing funding towards the cost of design, permitting, clearing, and construction of the Structure, as well as any parking, landscaping, etc. required surrounding the Structure.

- D. The Town shall use its best efforts to cooperate with the Sandbox in effectuating the terms of this Agreement.

IV. OBLIGATIONS OF THE SANDBOX

- A. The Sandbox shall provide funds (“Sandbox Funds”) needed to improve the Structure and surrounding property for occupancy by a children’s museum (including payment of any Town and/or County Impact Fees), in an amount to be determined by mutual agreement of the parties hereto but in any event not less than One Hundred Fifty Thousand Dollars (\$150,000.00). The parties acknowledge and agree that the Town shall have no obligation to proceed with design, construction or permitting of the Structure, or providing funding for the same, until the Sandbox provides written documentation and adequate assurances (in the Town’s sole discretion) to the Town evidencing that (1) the Sandbox has deposited, into a separate account with a financial institution, at least fifty percent (50%) of the Sandbox Funds agreed upon by the parties, (2) the deposited funds are ready for immediate use, and (3) access to the deposited funds is restricted in such manner as to be used for no other purpose than performing improvements to the Structure and surrounding property for occupancy by a children’s museum in accordance with this Article IV(A). The parties acknowledge and agree that the Sandbox may not be able to complete all interior improvements of the Structure until sufficient funding is in hand.
- B. The Sandbox shall be responsible for final design and permitting of the improvements necessary for occupancy of the Structure and associated property by a children’s museum.
- C. The Sandbox shall cause the construction, installation, and implementation of the improvements within the Structure.
- D. The Sandbox shall execute and deliver to the Town a lease agreement in substantial conformance with the attached Exhibit “B”. Further, the Sandbox shall operate and maintain all facilities constructed by the Town

for a children's museum to a standard consistent with the mission and/or purpose of the Sandbox.

- E. The Sandbox shall use its best efforts to cooperate with the Town in effectuating the terms of this Agreement.

V. GENERAL

- A. Amendment, Changes and Modifications. Except as otherwise provided herein, this Agreement may not be amended, changed, modified or altered without the written consent of both parties hereto.
- B. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.
- C. Assignability. This Agreement may not be assigned by either party without the express written consent of both parties.
- D. Construction. The parties agree that each party and its counsel have reviewed 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.
- E. 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.
- F. 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.
- G. Further Assurances and Corrective Documents. The parties hereto 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.
- H. 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.

I. 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 shall be addressed:

to the Town at:

Stephen G. Riley, ICMA-CM
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 & Thoreson, LLC
P.O. Drawer 8008
Hilton Head Island, South Carolina 29938

and to Sandbox at:

With a copy to:

- J. Recording. The parties hereto may not record this Agreement in the Office of the Register of Deeds for Beaufort County, South Carolina.
- K. 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.
- L. Termination If either the Town or the Sandbox is unable to raise its portion of the necessary funds, or otherwise fulfill its obligations under or pursuant to this Agreement within two (2) years of the execution of this Agreement, then this Agreement shall automatically be terminated and any Lease executed between the parties pursuant to this Agreement shall be void.
- M. This Agreement reflects the intent of the parties to proceed in good faith to execute definitive written agreements and/or take further action(s) with respect to the terms and conditions contained herein. Notwithstanding anything herein to the contrary, (i) if the Town determines that it is not feasible to proceed with the improvements detailed herein or any matters in connection therewith, the Town shall have no liability under this Agreement; and (ii) if the Sandbox determines that it is not feasible to proceed with the improvements detailed herein or any matters in connection therewith, the Sandbox shall have no liability under this Agreement.

(SIGNATURE PAGES FOLLOW)

IN WITNESS WHEREOF, the Sandbox has caused this Agreement to be signed and sealed this _____ day of _____, 20_____.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

THE SANDBOX: A HILTON HEAD AREA CHILDREN’S MUSEUM, INC.

By: _____
Keri Olivetti
President, Board of Directors

Attest: _____

Print Name: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that Keri Olivetti and _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the Sandbox: A Hilton Head Area Children’s Museum, Inc.

Witness my hand and seal this _____ day of _____, 20_____.

Notary Public for South Carolina
My Commission Expires: _____

IN WITNESS WHEREOF, the Town has caused this Agreement to be signed and sealed this _____ day of _____, 20_____.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA

By: _____
David Bennett, Mayor

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that David Bennett and Stephen G. Riley personally appeared before me this day and 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 _____, 20_____.

Notary Public for South Carolina
My Commission Expires: _____

SITE KEY LEGEND:

ARCHITECTURE:

- A1 MUSEUM BUILDING
- A2 CONCERT PAVILION
- A3 RESTROOM / DROP-OFF BUILDING
- A4 OVERLOOK PAVILION

SITE WORK / PAVEMENT:

- S1 4" CONCRETE WALKWAY (cyster shell finish)
- S2 5" CONCRETE WALKWAY (cyster shell finish)
- S3 4" TURBOWORN CONCRETE WALKWAY (cyster shell finish)
- S4 4" COLOR CONCRETE WALK (rock salt finish)
- S5 4" STAMPED CONCRETE WALK (board form finish)
- S6 SPECIALTY PAVING (SHELL/LAR) Decorative Permeable Pavers over base
- S7 SPECIALTY PAVING (PEDESTRIAN) Decorative paver over sub base
- S8 SAND PLAYGROUND SURFACE (12" depth)
- S9 FIBERED IN PLACE RUBBER PLAYGROUND SURFACE (SAND COLOR)
- S10 ASPHALT MULTI-USE PATH

SITE FEATURES:

- S11 GRAND EVENT LAWN
- S12 GRAND LAWN ARBOR
- S13 PLAYGROUND GATEWAY ARBOR
- S14 CIRCULAR ARBOR
- S15 PICNIC ARBOR AND SEAT WALL
- S16 WATER FEATURE
- S17 PILE WALL
- S18 ROPE AND PILE FENCE
- S19 4" PLAYGROUND ENCLOSURE FENCE OR BARRIER FENCE
- S20 DISCOVERY TRAIL GATEWAY
- S21 BULKHEAD
- S22 CABLE RAIL SYSTEM
- S23 SHADE SAIL FEATURE @ MUSEUM
- S24 BOARDWALK
- S25 BRIDGE
- S26 PARK ID SIGN
- S27 SWING TRILLES
- S28 PLAYGROUND PLAZA SEATWALL
- S29 CURVED TRUNGE AND GROOVE WOOD WALL

RECREATION FEATURES:

- R1 ICONIC SHIP STRUCTURE
- R2 2.5-YEAR STRUCTURE
- R3 SWINGS
- R4 MULTI-USER SWING PLATFORM
- R5 WHIMSY RIDERS (DOLPHINS & SEA HORSE)
- R6 FOSSIL DIGS (SHELLS, SHARK TEETH, CLAMS)
- R7 CLIMBING TURTLE
- R8 MEESAW
- R9 WHIMSICAL SCULPTURE ON LOG
- R10 TURTLE ON LOGS
- R11 WHIMSICAL BIRD SCULPTURE
- R12 FITNESS STATION
- R13 DRINKING FOUNTAIN
- R14 PLAYGROUND KIOSK WITH MAP
- R15 LOG STEPPER
- R16 LOG BALANCE BEAM



**COLIGNY PARK
OVERALL SCHEMATIC PARK PLAN**

PREPARED FOR:
TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA
DATE: 09-9-15

PLANNING AND LANDSCAPE ARCHITECTURE BY:



PO Box 2396 • Hilton Head Island, SC 29925
TEL: 843.881.8811 • FAX: 843.881.7398 • www.woodpartners.com

MOU Exhibit A

MOU Exhibit B

LEASE OF
REAL PROPERTY AND IMPROVEMENTS THEREON
BY AND BETWEEN
THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA,
AND
THE SANDBOX: A HILTON HEAD AREA CHILDREN'S MUSEUM, INC.

DATED THIS _____ DAY OF _____, 20_____

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

LEASE

This Lease Agreement (hereinafter, the "Lease"), is made and entered into on this ____ day of _____, 20____, between the Town of Hilton Head Island, South Carolina (hereinafter, "Lessor"), and The Sandbox: A Hilton Head Area Children's Museum, Inc. (hereinafter, "Lessee").

For and in consideration of the Rent to be paid by the Lessee hereunder, and the full and faithful performance of the following terms and conditions, the Lessor and the Lessee (hereinafter collectively referred to as the "Parties"), hereto mutually understand and agree as follows:

1. LEASED PREMISES:

The Lessor hereby leases to the Lessee, and the Lessee hereby leases from the Lessor, that certain building designated as A1, and associated outdoor patio space, on the attached Exhibit "A", located on Hilton Head Island, South Carolina (hereinafter, the "Building" or "Leased Premises").

2. LEASE TERM:

(a) Initial Term. Lessee shall have and hold the Leased Premises for a term (hereinafter, the "Initial Lease Term") beginning on the ____ day of _____, 20____ (hereinafter, the "Commencement Date"), and ending at midnight on the ____ day of _____, 20____ (hereinafter, the "Initial Expiration Date").

(b) Renewal Terms. This Lease will automatically be renewed for successive renewal terms of five (5) years each, unless either party sends to the other a written notice evidencing that party's intent to terminate this Lease at least one hundred eighty (180) days prior to the end of the Lease term then in effect. The Initial Term and any Renewal Terms shall collectively be called the "Lease Term".

(c) Lessee's entry into, and taking possession of, the Leased Premises shall constitute as of the beginning of the Initial Lease Term. At the time of execution of this Lease or at any time thereafter, the Lessor shall be under no duty to make alterations or repairs to the Leased Premises that are not expressly set forth in this Lease.

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

(e) If the Lessee shall be in possession of the Leased Premises after the Lease Term has expired (hereinafter, the "Holdover Period"), and in the absence of any written agreement extending the Lease Term hereof, or the Lessor's demand to the Lessee to sooner vacate the Leased Premises, the tenancy under this Lease shall become one from month to month, terminable by either party on thirty (30) days' prior written notice. Such tenancy shall be subject to all other conditions, provisions and obligations of this Lease.

3. RENT:

The following Rent schedule is based on an annual Rent rate of One and 00/100 (\$1.00) Dollar. The Rent shall be payable in equal yearly payments, in advance, beginning on the Commencement Date, and thereafter, on the first (1st) day of every year throughout the entire Lease Term.

4. USE AND COMPLIANCE:

(a) PERMITTED USE: The Lessee shall continuously occupy and use the Leased Premises as the Sandbox Children's Museum (herein, the "Permitted Use"), to include all normal daily operations of the Sandbox Children's Museum, 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 Lessee's Permitted Use, and then only in compliance with all applicable laws related thereto).

(b) COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS: The Lessee 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.

(c) SPECIFIC PROVISIONS RELATED TO THIS LEASE: In addition to other obligations set forth in this Lease, the parties agree as follows:

(i) Lessee may utilize approximately thirty-five (+/- 35) parking spaces in the parking lot adjacent to the Building. Such use shall not be exclusive to Lessee, and the parking spaces may be reserved by Lessor or other appropriate parties during special events or similar times as lawfully requested and approved.

(ii) Lessee may utilize the dumpster adjacent to the Building. Such use shall not be exclusive to Lessee, and the dumpster may be used by Lessor during special events or similar times as needed. Further, any use by Lessor does not obligate Lessor to provide special or additional dumpster collection.

(iii) Lessee may exclusively utilize the private play area adjacent to the Building; however, emergency exits will be provided and lead from this area to the adjacent park area.

5. THE LESSEE'S DUTY TO MAINTAIN AND REPAIR:

(a) REPAIRS TO LEASED PREMISES: Lessee shall keep and maintain the Leased Premises in good order, condition, and repair (including any replacement and restoration as is required for that purpose), and every part thereof and any and all appurtenances thereto wherever located, including, without limitation: the foundation, exterior walls, and roof of the building in which the Leased Premises are located, and the structural portions of the Leased Premises; the exterior and interior portion of all doors and plate glass; all plumbing and sewage facilities with the Leased Premises, including the free flow of and to the main sewer line; fixtures; heating and air-conditioning and electrical systems premises serving the

Leased Premises exclusively; sprinkler systems; wall, floor, and ceilings applicable to the Leased Premises; and all installations made by the Lessee under the terms of this Lease and any Exhibits thereto, as herein provided. The Lessee shall not make any alteration of, or addition or improvement to, the Leased Premises without securing the Lessor's prior written consent. Any and all roof penetrations must first be approved by and coordinated through the Lessor, in order not to void any warranties on the roof coverings. The Lessee shall save the Lessor harmless on account of claims for mechanics or materialmen's liens, or any other lien, in connection with any work performed by the Lessee, and any such liens shall exist only against the Lessee's leasehold interest and shall be discharged, by bond or otherwise, within thirty (30) days of filing and service of thereof. The Lessee 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 Lessee, and the Lessee shall comply with all requirements of law, statute, ordinance, covenants, restrictions or otherwise, governing the use of the Leased Premises and all appurtenances thereto. The Lessor shall have the right, but not the obligation, to enter the Leased Premises to repair, replace, maintain or restore, at Lessee's expense, any items which the Lessee is responsible for maintaining, repairing, restoring, or replacing under this Article 6 and for which Lessee has failed to perform hereunder. The Lessee shall reimburse the Lessor within thirty (30) days from the written demand by the Lessor for any cost or expense plus an administrative fee not to exceed eighteen (18%) percent of such cost of expense.

(b) LESSOR NOT LIABLE: The Lessor shall not be liable for any loss or damage to the Lessee's personal property, equipment, fixtures, and improvements to the Leased Premises.

6. LESSOR REPRESENTATIONS:

(a) ZONING: The Lessor hereby warrants and represents that the Leased Premises are properly zoned for the Lessee's Permitted Use(s) and that the Lessee's Permitted Use(s) thereof is permitted upon the Leased Premises.

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

7. 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 Lessee shall peaceably surrender possession of the Leased Premises to the Lessor with all improvements located therein, in good repair and in the same condition in which delivered to the Lessee, ordinary wear and tear excepted, and the Lessee shall deliver to the Lessor all keys to the Leased Premises. Regardless of the foregoing, at any time prior to the expiration of the Lease Term, the Lessee may, at its cost and expense, remove in a careful manner any trade fixtures, furniture, and personal property placed within the Leased Premises by the Lessee 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 Lessor's option, be deemed to have been abandoned by the Lessee and may be destroyed or otherwise disposed of by the Lessor without notice to the Lessee, and without any obligation to account for such

items, or liability to the Lessee therefore. The provisions of this Article of the Lease shall survive the expiration or termination of this Lease.

8. LESSOR'S RIGHT OF ENTRY:

The Lessor or its employees/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 Lessor or its employees/agents may enter the Leased Premises without consent or agreement of the Lessee. Keys for this purpose must be held by the Lessor or its employees/agents. In the event that the Lessee desires to change or alter any locks to the Leased Premises, the Lessee will notify the Lessor of the Lessee's request, and the Lessor or the Lessor's employee(s)/agent(s) will have the locks changed or altered at the Lessee's expense.

9. UTILITIES:

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

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

10. SIGNS:

The Lessee shall not erect any signs or advertisements on any exterior door, wall, or window of the Leased Premises without the prior written consent of the Lessor. If the Lessor approves any such signage, all related costs for the installation and fabrication for the signage shall be the sole financial responsibility of the Lessee. The Lessee agrees to maintain such signs as approved by the Lessor in good condition and repair. Any such sign shall otherwise comply with all requirements of any law, statute, ordinance, covenants, restrictions, or otherwise, governing the use of the Leased Premises.

11. CONTROL OF THE LEASED PREMISES:

(a) THE LESSEE'S EXCLUSIVE CONTROL: The Lessee warrants and represents 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 Lessee.

(b) SURVIVAL: The warranties and representations set forth in this Article shall survive the expiration, cancellation, or termination of this Lease.

12. DAMAGE OR DESTRUCTION OF THE 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 ninety (90) days, as certified by the opinion of the Building Official of the Town of Hilton Head Island, South Carolina, then the Lessee or the Lessor 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 Lessor.

(b) **DAMAGE TO THE LEASED PREMISES:** In the event of an insured loss and subject to the termination provisions set forth herein, the Lessor 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 Lessor provide the Lessee 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 Lessor or the Lessee may terminate this Lease by written notice, in which event all insurance proceeds will be paid to the Lessor.

13. **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, 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 Lessor shall promptly provide the Lessee a copy of any and all notices from any such condemning authority, or private purchaser as mentioned above, respecting any requirements that the Lessor surrendered its right to all or any portion of the Leased Premises pursuant to this Article.

(b) **NOTICE OF ELECTION:** Any notice of election by the Lessee to terminate this Lease as provided in this Article shall be given by the Lessee to the Lessor within thirty (30) days after written notice by the Lessor to the Lessee as provided in this Article, or within thirty (30) days after receipt by Lessee of actual knowledge of any requirement that the Lessor 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, after taking of a portion of the Leased Premises, the Lessor 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:** Any payment or award from the condemning authority shall be the property of the Lessor.

14. **SUBLETTING PROHIBITED:**

Lessee 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 Lessor. Any and all documents utilized by the Lessee to evidence any subletting or assignment to which the Lessor has consented shall be subject to prior written approval by the Lessor and its counsel.

15. **DEFAULT OF LESSEE:**

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

(a) **FAILURE TO PAY RENT OR FOR ANY OTHER MONEY DUE:** If the Lessee shall fail to pay any payment of Rent, or any other sum of money due and payable under this Lease, whether to the Lessor or otherwise, when due and payable, and such failure shall continue for a period of ten (10) days from the due date thereof;

(b) **VIOLATION OF LEASE:** If the Lessee 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 Lessee 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 Lessee shall desert, vacate, or not regularly use the Leased Premises for a period of thirty (30) days or more, even though the Lessee continues to timely pay all Rent Payments when due;

(d) **DISSOLUTION:** The dissolution of the Lessee for any reason; or

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

16. **DEFAULT OF THE LESSOR:**

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

(a) If the Lessor 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 Lessor by the Lessee of such.

17. **RIGHTS OF THE PARTIES ON DEFAULT:**

(a) **ALL REMEDIES PRESERVED:** Upon Default of the other Party, the Lessor or the Lessee, 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 a suit or after the commencement of suit, including appellate proceedings, in addition to any other relief to which prevailing party may be entitled.

18. **INTERPRETATION:**

The Lessee acknowledges that the Lessee has reviewed and agreed to all the terms and provisions of this Lease and that the Lessee has had a full opportunity to consult with an attorney of the Lessee's choosing concerning the legal consequences of entering into this Lease with the Lessor. 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.

19. NO WAIVER:

The Lessor's acceptance of any payment of Rent (or other money due) following any Default by the Lessee shall not waive the Lessor's rights regarding such a Default. No waiver by the Lessor of any violation or breach of any of the terms contained in this Lease shall waive the Lessor's rights regarding any future violation of such term, or any violation of any other term contained within this Lease. The Lessor's acceptance of any partial payment of Rent shall not waive the Lessor'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 Lessor'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.

20. MECHANIC'S LIENS OR OTHER LIENS:

The Lessee shall have no power to subject the Leased Premises or the Lessor's interest in the Leased Premises to any mechanic's lien or any other lien. If any mechanic's lien or 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 Lessee 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 Lessee 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 Lessee, within thirty (30) days after written demand therefore by the Lessor, and shall also defend on behalf of the Lessor at the Lessee'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 Lessee shall save the Lessor harmless from any judgment, claim, or damage resulting therefrom.

21. ESTOPPEL CERTIFICATES:

The Lessee agrees that at any time and from time to time upon not less than ten (10) days prior written request by the Lessor, to execute, acknowledge, and deliver to the Lessor 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 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 may be relied on by any prospective purchaser or purchasers of the Lessor's interest in the Building or the Leased Premises.

22. WAIVER OF JURY TRIAL:

TO THE EXTENT PERMITTED BY LAW, THE LESSOR AND THE LESSEE EACH AGREE 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.

23. HAZARDOUS MATERIALS:

(a) **HAZARDOUS MATERIALS PROHIBITED:** The Lessee 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 Lessee's Permitted Use, and then only in compliance with any and all applicable laws) without the prior written consent of the Lessor, which consent may be withheld by the Lessor for any reason. "Hazardous Materials" shall mean any substance, material, or waste which is now or hereafter classified and/or 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) **LESSOR'S RIGHTS:** If the Lessee breaches its obligations under this Article, the Lessor may, but is not obligated to, immediately take, at the Lessee's expense, any and all actions reasonably appropriate to remedy the same, including taking any appropriate actions to clean up or remediate any contamination resulting from the Lessee's use, generation, storage, or disposal of any Hazardous Materials.

(c) **INDEMNIFICATION:** The Lessee shall indemnify the Lessor and pay the cost of any cleanup or remediation and shall defend the Lessor, and hold the Lessor 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 Lessee. This indemnity provision shall survive the termination or expiration of this Lease.

(d) **SURVIVAL:** The obligations of the Lessee as set forth in this Article shall survive the expiration, cancellation, or termination of this Lease.

24. **MISCELLANEOUS:**

(a) **BINDING EFFECT:** This Lease shall inure to the benefit of and shall be binding upon the Lessor and Lessee 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 Lessor and Lessee 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 the Lessor and the Lessee.

(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 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 Deed 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 Lessor: THE TOWN OF HILTON HEAD ISLAND
Stephen G. Riley, ICMA-CM, Town Manager
One Town Center Court
Hilton Head Island, SC 29928

With Copy to: Gregory M. Alford, Esq.
ALFORD & THORESON, LLC
Post Office Drawer 8008
Hilton Head Island, SC 29938-8008

To the Lessee: THE SANDBOX: A HILTON HEAD AREA CHILDREN'S MUSEUM, INC.

With Copy to: _____

(k) SURVIVAL: The obligations of the Lessee as 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.

(l) FURTHER ASSURANCES AND CORRECTIVE DOCUMENTS: The Lessor and Lessee 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 Lessor and Lessee

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, cancellation, or termination of this Lease.

IN WITNESS WHEREOF, The Town of Hilton Head Island, South Carolina and The Sandbox: A Hilton Head Area Children’s Museum, Inc. 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: _____
David Bennett, Mayor

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

**THE SANDBOX: A HILTON HEAD AREA
CHILDREN’S MUSEUM, INC.**

By: _____

Its: _____



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO:	Public Facilities
VIA:	Charles Cousins, <i>Community Development Director</i>
FROM:	Shawn Colin, AICP, <i>Deputy Director of Community Development</i>
DATE	July 8, 2016
SUBJECT:	Dillon Road Sewer Project Easement Request

Recommendation:

Public Facilities Committee make a recommendation to Town Council to authorize the conveyance of permanent easement rights to Hilton Head Island Public Service District (HHPSD) for a linear easement across Town property associated with the Dillon Road Sewer Project as shown on Attachments "A" and "B".

Summary:

The Dillon Road Sewer Project will expand the availability of sewer service in an unserved area. There is the need to cross a Town-owned property along Dillon Road to connect this new infrastructure to an existing sewer pump station off of Summit Drive. HHPSD has requested that the Town grant the conveyance of permanent easement rights for access to the property and for the installation and maintenance of sewer infrastructure.

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 2015, Town Council adopted updated sewer policies in a joint effort with HHPSD to increase the availability of sewer service in unserved areas. This project was identified as one of multiple projects in a 5 year plan to accomplish this goal.

Attachments "A" and "B" depict the Town-owned property and the proposed easement location. The proposed easement would allow HHPSD to install and maintain sewer infrastructure within the easement area, as well as access the property.

Attachments include:

- A- Location Map
- B- Sewer Easement Plat

Attachment A

CARDINAL ROAD
HUNTER ROAD

SUMMIT DRIVE

Fire and Rescue Headquarters

Sewer Easement on Town Property

DILLON ROAD

OUTPOST LANE



TOWN OF HILTON HEAD ISLAND
ONE TOWN CENTER COURT
HILTON HEAD ISLAND, S.C. 29928
PHONE (843) 341-4600
Date Created: Friday, July 08, 2016
Project: Dillon Road Easement Location Map.mxd

Town of Hilton Head Island
Attachment A: Conceptual Sewer Easement Location

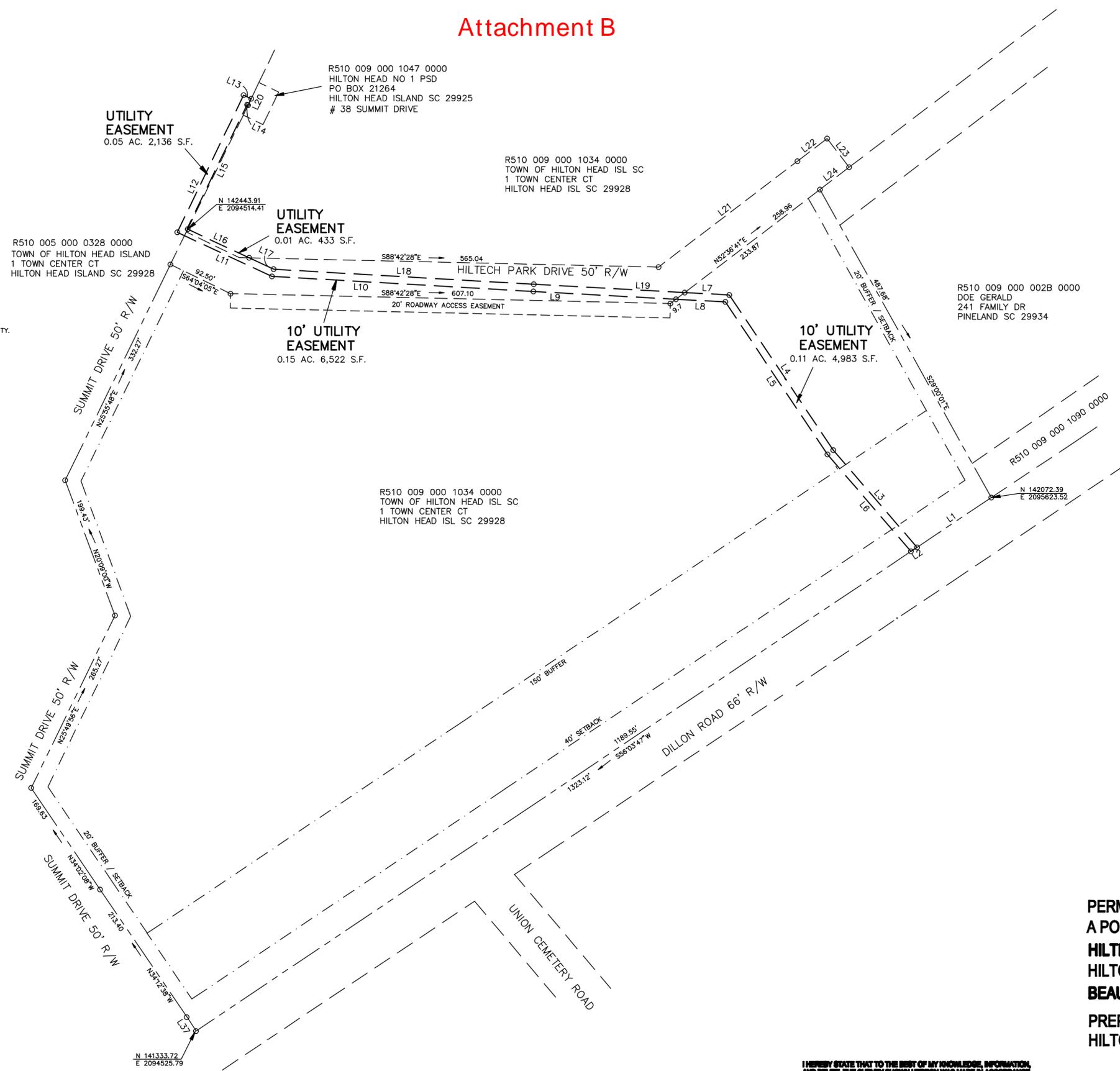
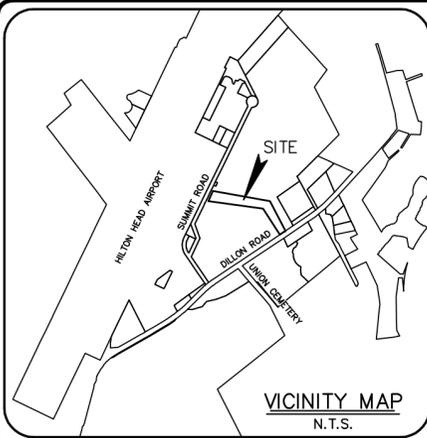


1 inch = 393 feet



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

Attachment B



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) HORIZONTAL DATUM IS S.C. STATE PLANE NAD 83.

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.

LINE	LENGTH	BEARING
L1	123.50	S 56°03'47" W
L2	10.07	S 56°03'47" W
L3	177.46	N 40°38'48" W
L4	258.37	N 33°43'40" W
L5	253.98	N 33°43'40" W
L6	176.89	N 40°38'48" W
L7	61.59	N 86°52'48" W
L8	68.29	N 86°52'48" W
L9	196.95	S 86°40'20" E
L10	361.63	S 86°40'20" E
L11	144.09	S 64°59'33" E
L12	210.92	S 25°45'15" W
L13	11.56	N 64°43'47" W
L14	1.59	N 64°43'47" W
L15	190.88	S 25°45'15" W
L16	94.83	N 64°59'33" W
L17	37.21	S 64°59'33" E
L18	359.69	S 86°40'20" E
L19	208.64	S 86°52'48" E
L20	10.00	N 25°34'20" E
L21	241.29	N 52°36'41" E
L22	51.69	N 52°37'04" E
L23	49.95	S 37°26'19" E
L24	51.74	S 52°33'41" W
L37	23.12	S 33°33'52" E

- REFERENCE PLATS**
- 1) A RECOMBINATION SURVEY OF 66.14 ACRES, DILLON ROAD, HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA. DRAWN: 11/11/02. RECORDED IN BOOK 92, PAGE 18, DATED 03/10/03. ROD. BEAUFORT COUNTY, SC. BY: DONALD R. COOK, JR S.C.R.L.S. # 19010
 - 2) A SUBDIVISION PLAT OF 10.48 ACRES, OLD FISH HALL PLANTATION, HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA. DRAWN: 9/29/83, LAST REVISED: 8/10/84. RECORDED IN BOOK 32, PAGE 119, DATED 8/24/84. ROD. BEAUFORT COUNTY, SC. BY: JERRY L. RICHARDSON S.C.R.L.S. # 4784
 - 3) A BOUNDARY SURVEY OF 2.992 ACRES, PHASE 1-B, DILLON ROAD, HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA. DRAWN: 5/19/94. RECORDED IN BOOK 51, PAGE 78, DATED 12/02/94. ROD. BEAUFORT COUNTY, SC. BY: TERRY G. HATCHELL S.C.R.L.S. # 11059

ADDRESS: 12 GATEWAY CIRCLE
TOTAL EASEMENT AREA: 0.32 AC. 14,074 S.F.
DISTRICT: 510, MAPS: 5 & 9, PARCELS: 328 & 1034
 THIS PROPERTY LIES IN F.E.M.A. ZONE A7 & C
 BASE FLOOD ELEVATION = 14.0' & N/A
 COMMUNITY NO. 450250, PANEL 0009D, 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 MANUAL STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "C" SURVEY AS SPECIFIED THEREIN. THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.



**PERMANENT UTILITY EASEMENT OVER:
 A PORTION OF PARCEL 1034,
 HILTECH PARK DRIVE & SUMMIT DRIVE,
 HILTON HEAD ISLAND,
 BEAUFORT COUNTY, SOUTH CAROLINA**
 PREPARED FOR:
 HILTON HEAD PUBLIC SERVICE DISTRICT

DATE: 5/31/16 SCALE: 1" = 100'



SIL 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.: 15268/2 DWG No.: 4-1880
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