



**The Town of Hilton Head Island
Regular Town Council Meeting**

January 6, 2015

4:00 P.M.

AGENDA

**As a Courtesy to Others Please Turn Off/Silence All Mobile Devices During
the Town Council Meeting**

- 1) Call to Order**
- 2) Pledge to the Flag**
- 3) Invocation**
- 4) FOIA Compliance** – Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.
- 5) Proclamations and Commendations**
None.
- 6) Approval of Minutes**
 - a. Town Council Meeting, December 16, 2014
- 7) Report of the Town Manager**
 - a. Town Manager's Items of Interest
 - (1) Town News
 - (2) Noteworthy Events
 - b. February 3, 2015 Town Council Meeting
 - c. Semi-Annual Land Acquisition Update
- 8) Reports from Members of Council**
 - a. General Reports from Council
- 9) Appearance by Citizens**
- 10) Unfinished Business**
 - a. None
- 11) New Business**
 - a. **Consideration of a Recommendation – Beaufort County Sheriff's Office Contract**
Consideration of a Recommendation that Town Council approve a contract with Beaufort County and the Beaufort County Sheriff's Office (BCSO) for law enforcement services for the Town of Hilton Head Island.

b. First Reading of Proposed Ordinance 2014-26

First Reading of Proposed Ordinance 2014-26 of the Town of Hilton Head Island, South Carolina, authorizing the execution and delivery of a lease of real property owned by the Town of Hilton Head Island, South Carolina, with the Beaufort County Sheriff's Office and Beaufort County, South Carolina, pursuant to the authority of S.C. Code Ann. § 5-7-40 (Supp. 2011), and § 2-7-20, Code of the Town Of Hilton Head Island, South Carolina, (1983); and providing for severability and an effective date.

c. First Reading Proposed Ordinance 2015-04

First Reading of Proposed Ordinance 2015-04 to amend Title 16, the Land Management Ordinance, of the Municipal Code of the Town Of Hilton Head Island, South Carolina, by amending Section 16-1-107, the Official Zoning Map and the Hilton Head Plantation Master Plan with respect to the certain parcels identified as Parcels 89A, 121, 126, 127 and 128 on Beaufort County Tax District R510 Map 3, within the Hilton Head Plantation Master Plan under the PD-1 Zoning District, by changing the allowed use from commercial to group living, and by increasing the allowed density on Parcels 89a, 127, and 128 from 10,283 square feet to 126 dwelling units, and by increasing the allowed density on parcels 121 and 126 from zero to 26 dwelling units or a 50,000 square foot assisted living facility, and providing for severability and an effective date.

d. Consideration of a Resolution – Shelter Cove Harbour Company Drainage Agreement

Consideration of a Resolution of the town council of the Town Of Hilton Head Island, South Carolina, authorizing the execution of that certain drainage agreement and access, drainage and maintenance easement with Shelter Cove Harbour Company across property located in the Shelter Cove area on Hilton Head Island, South Carolina.

12) Adjournment

THE TOWN OF HILTON HEAD ISLAND
REGULAR TOWN COUNCIL MEETING

Date: Tuesday, December 16, 2014

Time: 4:00 P.M.

Present from Town Council: David Bennett, *Mayor*; Bill Harkins, *Mayor Pro Tem*; Marc Grant, Kim Likins, Lee Edwards, Tom Lennox, John McCann, *Council Members*

Present from Town Staff: Steve Riley, *Town Manager*; Greg DeLoach, *Assistant Town Manager*; Brad Tadlock, *Fire Chief*; Charles Cousins, *Director of Community Development*; Tom Fultz, *Director of Administrative Services*; Nancy Gasen, *Director of Human Resources*; Scott Liggett, *Director of Public Projects and Facilities/Chief Engineer*; Brian Hulbert, *Staff Attorney*; Susan Simmons, *Director of Finance*; Victoria Shanahan, *Accounting Manager*; Jeff Buckalew, *Town Engineer*; Julian Walls, *Facilities Manager*; Marcy Benson, *Senior Grants Administrator*; Shea Farrar, *Senior Planner*; Jim Alm, *Accounting Supervisor*; Melissa Cope, *Systems Analyst*; Erica Madhere, *Finance Assistant*; Vicki Pfannenschmidt, *Executive Assistant/Town Clerk*

Present from Media: Dan Burley, Island Packet

1) CALL TO ORDER

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

2) PLEDGE TO THE FLAG

3) INVOCATION

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

5) Proclamations and Commendations

None.

6) Approval of Minutes

a. Town Council Meeting, December 2, 2014

Mr. Harkins moved to approve. Mr. McCann seconded. The minutes of the Town Council meeting held December 2, 2014 were approved by a vote of 6-0. Mr. Grant was not present during the vote. He arrived at the meeting immediately thereafter.

7) Report of the Town Manager

a. Certified Connected Community Award Presentation

Mr. Jim Stritzinger, Executive Director for Connect South Carolina presented the award to Mayor Bennett.

b. FY2014 CAFR and Audit Presentation – Don Mobley, Scott & Company

Victoria Shanahan introduced Mr. Mobley for review of the Comprehensive Annual Financial Report for the fiscal year ending June 30, 2014. Mr. Mobley thanked Susan Simmons, Victoria Shanahan and the entire Finance Staff for their transparency, cooperation and timeliness during the audit. He referred to the opinion and stated the Town received an Unmodified Opinion which is the highest opinion indicating the Town financial statements were presented fairly and in compliance with generally accepted accounting principles and that there were no exceptions. He stated they also filed a Federal Report with an additional Unmodified Opinion. Mr. Riley informed Council that after they review the document, staff will be available to discuss and answer any questions they may have.

c. Town Manager's Items of Interest

Mr. Riley reported on the items of interest listed below.

- i. Town News
- ii. Noteworthy Events/Upcoming Meetings

8) Reports from Members of Council

a. General Reports from Council

Mr. Grant stated that long-time resident, Dr. Charlie White had passed away. He stated Dr. White had contributed immensely to our community and asked that a proclamation or commendation be prepared and presented to the family in appreciation of his public service.

Mayor Pro Tem Harkins reminded all of the continuation of the Town Council Workshop to be held on Thursday, December 18 at 9:00 a.m. at Hilton Head Island Fire Rescue Headquarters.

9) Appearance by Citizens

Mr. Frank Babel addressed Town Council concerning the bicycle safety hazards the Bicycling Advisory Committee identified in and around the Shelter Cove area.

10) Unfinished Business

a. None

11) New Business

a. Consideration of Recommendations of the Accommodations Tax Advisory (ATAX) Committee

Consideration of recommendations of the Accommodations Tax Advisory (ATAX) Committee for the purpose of allocating the proceeds of the Accommodations Tax Funds.

Mr. Harkins moved to accept the recommendations of the Accommodations Tax Advisory Committee. Mr. McCann seconded.

After lengthy discussion and comments from Mr. Mike Alsko, Chairman of the Accommodations Tax Advisory Committee, various representatives of each organization and public comment, Mr. Harkins moved to amend the original motion and recommend Town Council endorse the tabulated direction that was set forth this afternoon. Mr. McCann seconded.

Mr. Alsko approached the dais and expressed his agreement with the awards and stated his appreciation for Town Council's consideration of the Committee's recommendations.

Mayor Bennett thanked Mr. Alsko and the members of the Accommodations Tax Advisory Committee for their dedication and hard work.

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

The original recommendation amounts are listed in the ATAC Recommendation column and the approved amounts in the Town Council Award column in the table below. Note: \$20,000 of the Hilton Head Island-Bluffton Chamber of Commerce VCB funds are to be dedicated to marketing minority groups.

	ATAC Recommendation	Town Council Award
Art League of Hilton Head	85,000	49,500
Art League of Hilton Head - Nonrecurring	2,750	2,750
Arts Center of Coastal Carolina	384,000	383,250
David M. Carmines Memorial Foundation	6,500	4,400
Gullah Museum of Hilton Head Island	20,000	20,000
Harbour Town Merchants Assoc.	12,000	9,900
Hilton Head Choral Society	30,000	24,800
Hilton Head Choral Society - Nonrecurring	4,790	4,790
Hilton Head Concours d'Elegance	160,000	147,400
Hilton Head Dance Theater	12,000	13,200
HHI Audubon Society	45,000	45,000
HHI Land Trust - Nonrecurring	15,000	15,000
HHI Recreation Association	7,500	7,500
HHI St. Patrick's Day Parade	16,000	13,200
HHI Wine and Food, Inc.	147,500	130,000
Hilton Head Island-Bluffton Chamber of Commerce VCB	400,000	366,500
Hilton Head Symphony Orchestra	215,000	215,000
Lowcountry Golf Course Owners Association - Nonrecurring	42,510	42,510
Main Street Youth Theater	15,000	13,200
Mitchelville Preservation Project	38,000	30,800
Native Island Business & Community	110,000	104,500
Shelter Cove Harbour Company	42,000	39,900
Skull Creek July 4th Celebration	12,000	9,900
The Coastal Discovery Museum (Cultural & Eco-Tourism Programs)	223,000	194,250
The Coastal Discovery Museum (Discovery Lab)	102,613	102,613
The Coastal Discovery Museum & Heritage Library (History Day)	8,000	8,000
The Heritage Library	20,000	18,865
The Heritage Library – Nonrecurring	7,242	7,242

The Heritage Library & Coastal Discovery Museum (Speaker Series)	6,531	6,531
The Sandbox	56,300	55,000
The Sandbox - Nonrecurring	82,123	82,123
Town of Hilton Head Island	1,000,000	1,049,765
Subtotal of Current Year Requests/Recommendations/Awards	3,328,359	3,217,389
Totals	3,328,359	3,217,389
Remaining Balance for future distribution by ATAX Committee		239,150

b. Consideration that the Town Council for the Town of Hilton Head Island authorize the Mayor to extend the appointment of Gregory M. Alford as the Town Attorney

Mayor Bennett stated he has had an opportunity to sit down with Mr. Alford and go through the magnitude of work he does on behalf of the Town. He said he found it to be very comprehensive and voluminous. He suggested that rather than a two year reappointment of Mr. Alford that a shorter term be considered and at the conclusion of that time, the Town would have an RFQ process and invite others to submit their qualifications. Mr. McCann recommended a minimum of a one year contract. All members of Council concurred. Mr. Harkins suggested Council consider an evaluative process for all key consulting groups.

Mr. McCann moved to renew Mr. Alford's current contract for a one year period expiring December, 2015 and direct the Town Manager to develop a RFQ or RFP process for this position and other key consulting groups. Mr. Harkins seconded.

Mayor Bennett asked Mr. Alford if the terms were acceptable to him. Mr. Alford replied in the affirmative. The motion was unanimously approved by a vote of 7-0.

12) Adjournment

Mr. McCann moved to adjourn. Mr. Harkins seconded. The motion was approved unanimously by a vote of 7-0. The meeting was adjourned at 7:23 p.m.

Vicki L. Pfannenschmidt,
Executive Assistant/Town Clerk

Approved:

David Bennett, Mayor



Items of Interest

January 6, 2015

1. Town News

The Town of Hilton Head Island Financial Statements for the period ending October 31, 2014 including the Financial Dashboard, has been posted on the Town's website. You can view them at www.hiltonheadislandsc.gov

2. Noteworthy Events

- a) Some of the upcoming meetings at Town Hall:
- Parks and Recreation Commission – January 8, 2015, 3:30 p.m.
 - Design Review Board – January 13, 2015, 1:15 p.m.
 - Town Council – January 20, 2015, 4:00 p.m.

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

TO: Town Council

FROM: Susan M. Simmons, Director of Finance

VIA: Stephen G. Riley, Town Manager

DATE: December 22, 2014

RE: Land Acquisition Update

Available Funding – December 2014

The Town's Land Acquisition Program has the following available funds.

2010 GO Referendum Bonds	\$1,545,739
Sale of Land Account	<u>3,040,205</u>
Total	<u>\$4,585,944</u>

The Town's 2013 GO Referendum Bond issue for \$5,000,000 (part of the \$9,000,000 GO Bond issued in June, 2013) are fully expended.

The land acquisition transactions that occurred in the last six months and the status of pending items are attached.

**Semi-Annual Update
Announced/Acquired Properties since June 2014**

Name	Acreage	Location	Cost	Source of Funding	Use
Time Warner Cable Office Building (Map No. 97)	1.04 acres (2 commercial lots and a 5,800 square foot office building)	Office Park Road/adjacent to the three other buildings and land the Town acquired in the Carolina Office Park development	\$680,000.00	Tax Increment Financing	Demolish the buildings/clear the land and utilize for a University of South Carolina facility in the Office Park Road area

SOLD PROPERTIES

❖ Sold 1.09 acres-Old Fire Station #6 site in Palmetto Dunes to Palmetto Dunes POA.

LEGALLY CLOSED PROPERTIES/CLOSING DATES

Name	Acreage	Cost	Source of Funding	Use	Closing Date
Kiawah Office Building (Map No. 97)/Office Park Road	18,500 square feet office building	\$1,200,000.00	Tax Increment Financing	Demolish the building/clear the land and utilize for a University of South Carolina facility in the Office Park Road area	7/1/2014
Carolina Office Park/Glover Real Estate (Map No. 97)/Office Park Road	5.54 acres and two office buildings	\$1,675,000.00	Tax Increment Financing	Demolish the building/clear the land and utilize for a University of South Carolina facility in the Office Park Road area	10/24/2014

MEMORANDUM

TO: Town Council

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

Via: Gregory D. DeLoach, Esq., Assistant Town Manager
Brian E. Hulbert, Staff Attorney

DATE: December 3, 2014

RE: Agreement for Law Enforcement Services

Recommendation;

Staff recommends that Town Council approve the attached contract with Beaufort County and the Beaufort County Sheriff's Office (BCSO) for law enforcement services for the Town of Hilton Head Island.

Summary;

This contract will renew our agreement with the County and the BCSO for an additional 3 year term, commencing January 18, 2015 and ending January 31, 2018. The Town currently contracts with BCSO for the provision of Police Services. The current contract is set to expire January 17, 2015. All terms would remain the same as with the current contract, as amended.

Background;

The Town's current contract with Beaufort County and BCSO is set to expire on January 17, 2015. The proposed contract does not contain a provision for the traffic enforcement team as our current contract was amended in June 2014 to remove the requirement for BCSO to provide a four member traffic enforcement team and allowed the Sheriff to utilize those four positions in any manner he deems appropriate on Hilton Head Island. The proposed contract for 2015-2018 would continue to allow the Sheriff to utilize those four positions in any manner he deems appropriate on Hilton Head Island. Staff recommends approval of the contract.

AGREEMENT FOR POLICE SERVICES

THIS AGREEMENT FOR POLICE SERVICES, dated the _____ day of January, 2015, is made by and between the Town of Hilton Head Island (Town) and Beaufort County (County) and the Beaufort County Sheriff's Office (BCSO).

WITNESSETH:

WHEREAS, the Town has heretofore maintained a level of professional police protection for the benefit of the citizenry thereof through a law enforcement services contract with Beaufort County and the Sheriff's Office, and

WHEREAS, the Town is desirous of maintaining a high level of competent professional police service in conjunction and harmony with its fiscal policies of sound, economical management; and

WHEREAS, BCSO has agreed to render to the Town a high level of professional police service, and the Town is desirous of contracting for such service upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

- 1.1 **DEFINED TERMS.** The following terms when used in this Agreement, including its preamble and recitals, shall, except where the context otherwise requires, have the following meanings (such meanings to be equally applicable to the singular and plural forms thereof):
 - 1.1.1 **AGREEMENT.** "Agreement" shall mean this Agreement for Police Services between the Town, County and the BCSO.
 - 1.1.2 **ANCILLARY SERVICES.** "Ancillary Services" shall mean those other services listed on the attached Schedule "2" under heading "Ancillary Services" that BCSO shall provide within the Town Boundaries during the Term.
 - 1.1.3 **APPLICABLE LAWS.** "Applicable Laws" shall mean, with respect to any Person, all provisions of constitutions, statutes, rules, ordinances, regulations, charters, and orders of governmental bodies or regulatory agencies applicable to such Person, and all orders or decrees of all courts and arbitrators in proceedings or actions to which the Person in question is a party or by which it or any of its property may be bound.

- 1.1.4 **BASIC LAW ENFORCEMENT SERVICES.** “Basic Law Enforcement Services” shall mean the basic contract of law enforcement services to be provided by BCSO pursuant to this Agreement as more particularly described on the attached Schedule “1”.
- 1.1.5 **BCSO.** “BCSO” shall mean the duly elected and qualified Sheriff of Beaufort County, South Carolina and the staff of the Sheriff’s Office in its entirety.
- 1.1.6 **BCSO’S ADDRESS.** “BCSO’s address” shall mean Beaufort County Sheriff’s Office, 2001 Duke Street, Beaufort, South Carolina 29902.
- 1.1.7 **BEAUFORT COUNTY.** “County” shall mean Beaufort County, South Carolina, a municipal corporation organized and existing under the laws of the State of South Carolina and consisting of the geographical location with borders as prescribed by statute and including the municipalities of Beaufort, Port Royal, Bluffton and the Town of Hilton Head Island, South Carolina.
- 1.1.8 **COMMAND OFFICER.** “Command Officer” shall mean the Sheriff or his designee who will be deemed to be the officer responsible for the actions of the BCSO employees who provide the Services to the Town of Hilton Head Island.
- 1.1.9 **CONSIDERATION.** “Consideration” shall mean the quarterly payment and other amounts payable by the Town hereunder in consideration of the Services performed by BCSO.
- 1.1.10 **COUNTY’S ADDRESS.** “County’s Address” shall mean Beaufort County, 100 Ribaut Road, Beaufort, South Carolina 29902
- 1.1.11 **DEPUTY SHERIFF.** “Deputy Sheriff” shall mean any person certified by the South Carolina Criminal Justice Academy as a law enforcement officer and commissioned by the Sheriff of Beaufort County to enforce the law in Beaufort County.
- 1.1.12 **EFFECTIVE DATE.** “Effective Date” shall mean January 18, 2015.
- 1.1.13 **EQUIPMENT.** “Equipment” shall mean all equipment owned by the Town.
- 1.1.14 **MARINE/BEACH PATROL.** “Marine/Beach Patrol” shall mean the deployment of officers to repress and prevent criminal activities, investigate offenses, apprehend offenders, and furnish day to day law enforcement services to the waterways and beaches within the Town Boundaries as defined in Exhibit “A.” The BCSO shall provide and maintain a Marine/Beach Patrol Team consisting of at least two (2) designated uniformed deputy sheriffs. The Marine/Beach patrol shall patrol as deemed necessary to provide specialized enforcement on the beaches and waterways within the Town Boundaries.

- 1.1.15 **PATROL UNIT.** “Patrol Unit” shall mean one uniformed officer and all standard police support equipment.
- 1.1.16 **SHERIFF’S OFFICE ENFORCEMENT DIVISION/ SOUTHERN ENFORCEMENT BRANCH.** Shall mean all deputy sheriffs assigned to enforcement duties within the Town Boundaries.
- 1.1.17 **SHERIFF’S OFFICE JURISDICTION.** “Sheriff’s Office Jurisdiction” shall mean all land and waterways lying within the boundaries established by statute and known as the Town as specified in Municipal Code *Section 2-1-20 Corporate Boundaries* and in Exhibit “A.”
- 1.1.18 **SHERIFF’S PATROL.** “Sheriff’s Patrol” shall mean the deployment of deputy sheriffs to repress and prevent criminal activities, investigate offenses, apprehend offenders and furnish day to day law enforcement services within the Town Boundaries.
- 1.1.19 **SHERIFF’S SUBSTATION.** “Sheriff’s Substation” shall mean that facility referred to as the “Hilton Head Office” on Hilton Head Island, SC.
- 1.1.20 **TERM.** “Term” shall mean three (3) years commencing on the Effective Date and expiring on the Termination Date and any extensions thereto.
- 1.1.21 **TERMINATION DATE.** “Termination Date” shall mean January 31, 2018.
- 1.1.22 **TOWN.** “Town” shall mean the Town of Hilton Head Island, South Carolina, a municipal corporation organized and existing under the laws of the State of South Carolina and located within the boundaries of Beaufort County, South Carolina.
- 1.1.23 **TOWN ADDRESS.** “Town Address” shall mean 1 Town Center Court, Hilton Head Island, South Carolina 29928.
- 1.1.24 **TOWN BOUNDARIES.** “Town Boundaries” shall mean the area within the municipal corporate boundaries of the Town as specified in Municipal Code *Section 2-1-20 Corporate Boundaries* and in Exhibit “A.”
- 1.1.25 **TOWN MANAGER.** “Town Manager” shall mean the duly appointed Town Manager of the Town, who, on the effective date of this Agreement is Stephen G. Riley. In the absence of the Town Manager, the Assistant Town Manager or person acting in the capacity of the Town Manager shall have the same authority as that of the Town Manager.
- 1.1.26 **TRAFFIC UNIT.** “Traffic Unit” shall mean one uniformed deputy sheriff and all standard police support equipment assigned to a special team and shift to accomplish traffic patrol, auto accident investigation and traffic control.

- 1.1.27 **UNIFORMED OFFICER.** “Uniformed Officer” shall mean a uniformed deputy sheriff employed by BCSO.

ARTICLE II GENERAL AGREEMENT TERMS

- 2.1 **INTERPRETATION.** Each definition in this Agreement shall, unless otherwise specified, include such agreement as modified, amended, restated or supplemented from time to time, and except where the context otherwise requires, reference to a party to this Agreement includes that party and its permitted successors and assigns. The captions or headings in this Agreement are for convenience only and in no way limit the scope or intent of any provision of this Agreement.
- 2.2 **ACCOUNTING TERMS.** All references in this Agreement to generally accepted accounting principles shall be to such principles as in effect from time to time in the United States of America. All accounting terms used herein without definition shall be used as defined under such generally accepted accounting principles.
- 2.3 **CROSS REFERENCES.** Unless otherwise specified, references in this Agreement to any Article or Section are references to such Article or Section of this Agreement, and unless otherwise specified, references in any Article, Section or definition to any clause are references to such clause of such Article, Section or definition. The words “hereof”, “hereby”, “hereto”, “herein”, “hereunder” and the like refer to this Agreement in its entirety.
- 2.4 **CONTRACTOR RELATIONSHIP.** Town hereby retains County and the BCSO as an independent contractor to provide the Services within the Town Boundaries subject to the terms and conditions contained herein. In addition, County and the BCSO shall also provide the Ancillary Services for the benefit of the Town, subject to availability, when County and the BCSO deems same necessary or desirable. This is inclusive of Basic and Ancillary Services listed under Schedule “1” and “2”.
- 2.5 **NO PARTNERSHIP.** The relationship between the Town, County and the BCSO shall be solely as set forth herein. No party shall be deemed the employee, agent, partner or joint venture of the other, nor have, or represent to have, any authority or capacity to make or alter any agreement on behalf of the other, to legally bind the other, to credit or receive money due on behalf of the other or to do any other thing on behalf of the other, except as specifically set forth herein. Neither the Town nor County and the BCSO will have or attempt to exercise any control or direction over the methods used by the other to perform its work, duties and obligations under this Agreement except as specifically set forth herein. The respective employees, agents and representatives of each of the Town, County and the BCSO shall remain their own employees, agents or representatives, and

shall not be entitled to employment benefits of any kind from the other, except as specifically set forth herein. The Town, County and the BCSO shall assume full responsibility for their own compliance with any and all Applicable Laws.

ARTICLE III TERM & TRANSITION PERIOD

- 3.1 **TERM.** This Agreement shall commence on the Effective Date and shall continue thereafter for the Term, unless otherwise extended or terminated as set forth herein. The Town shall have the option to extend the Term upon the same terms and conditions contained herein.
- 3.2 **TERMINATION OF CONTRACT.** Should the Town determine that it desires to provide police services through its own police force, the Town shall notify Beaufort County and the BCSO, within 10 days of formal Town Council Action.
- 3.3 **TRANSITION PERIOD.** A transition period of not more than eighteen months (18) shall commence upon the County's receipt of formal notification of termination of this Agreement, for any reason by the Town. The County and the BCSO shall be bound by the same terms and conditions set forth herein during the transition period, unless the Town hires a number of BCSO deputy sheriffs that would significantly impact the ability of the BCSO to meet the terms of this Agreement.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF TOWN

- 4.1 **REPRESENTATIONS AND WARRANTIES OF TOWN.** The Town represents, warrants and covenants to County and the BCSO as of the date hereof and throughout the Term of this Agreement that:
- 4.1.1 **EXISTENCE.** The Town is and will remain duly organized, validly existing and in good standing under the laws of the State of South Carolina, has and will retain the requisite power and authority to conduct its business, to enter into this Agreement and to perform the terms hereof and by proper action on behalf of the Town has duly authorized, executed and delivered this Agreement and any and all instruments in connection herewith.
- 4.1.2 **BREACH.** Neither the execution and delivery of this Agreement, the consummation of the transaction contemplated hereby nor the fulfillment of or compliance with the terms and provisions hereof (a) conflicts with, or result in a material default under or breach of or grounds for termination of, any material agreement or any license, permit or other governmental authorization to which Town is a party or by which Town is bound, (b) result in the violation by the Town of any provision of any Applicable Law applicable to Town or to which Town may be subject, (c) violate or conflict with any charter or other document

governing the actions of Town, or (d) require Town to obtain or make any consent, authorization, approval, registration or filing under Applicable Law or order of any court or governmental agency, board, bureau, body, department, authority or any other person which has not already been obtained. The Town is not in default with respect to any order, judgement, ordinance, award or decree of any governmental agency or instrumentality affecting this Agreement or the transactions contemplated hereby.

4.2 **REPRESENTATIONS AND WARRANTIES OF COUNTY AND THE BCSO.** County and the BCSO represents, warrants and covenants as of the date hereof and throughout the term of this Agreement that:

4.2.1 **DULY ELECTED.** P.J. Tanner is the duly elected Sheriff of Beaufort County, South Carolina, has and will retain the requisite power and authority pursuant to the power so vested in him under Applicable Law to conduct its business, to enter into this Agreement and to perform the terms hereof and by proper action has duly authorized, executed and delivered this Agreement and any and all instruments in connection herewith;

4.2.2 **ENFORCEABLE.** This Agreement has been duly executed and delivered to County and the BCSO and constitutes the valid and legally binding obligation of County and the BCSO enforceable in accordance with its terms.

4.2.3 **BREACH.** Neither the execution and delivery of this Agreement, the consummation of the transaction contemplated hereby nor the fulfillment of or compliance with the terms and provisions hereof (a) conflicts with, or result in a material agreement or any license, permit or other governmental authorization to which County and the BCSO is a party or by which County and the BCSO is bound, (b) result in the violation by the County and the BCSO of any provision of any Applicable Law applicable to the County and the BCSO or to which County and the BCSO may be subject, (c) violate or conflict with any charter or other document governing the actions of County and the BCSO, or (d) require County and the BCSO to obtain or make any consent, authorization, approval, registration or filing under Applicable Law or order of any court or governmental agency, board, bureau, body, department, authority or any other person which has not already been obtained. County and the BCSO is not in default with respect to any order, judgement, ordinance, award or decree of any governmental agency or instrumentality affecting this Agreement or the transactions contemplated hereby.

ARTICLE V STAFFING AND LEVELS OF SERVICE

5.1 **STAFFING.** Commencing on the Effective Date, BCSO shall schedule, provide and employ the personnel necessary to provide the services within the Town Boundaries in accordance with the articles of this Agreement and outlined in the Description of Services and Ancillary Services attached hereto as Schedule "1"

and “2”. BCSO shall have the sole responsibility and control over setting Policy, Procedures and Standards and, provided BCSO complies with the Basic Service requirements set forth in Article V of this Agreement, all other matters related to performing the Services and Ancillary deployment within the Town Boundaries of BCSO deputy sheriffs.

- 5.2 **SOUTHERN ENFORCEMENT BRANCH ASSIGNMENT CHANGES.** The BCSO shall maintain duty assignments in accordance with existing command and control structure of the Sheriff’s Office, as well as established policies and procedures.
- 5.3 **DISTRICT COVERAGE.** Two (2) geographical divisions are currently established as Patrol Areas on Hilton Head Island known as 5A and 5B. These two areas shall be maintained in accordance with established procedures of the BCSO.
- 5.4 **NO EMPLOYMENT RESPONSIBILITY.** All BCSO employees shall not be considered employees of the Town for purposes of pension benefits, insurance benefits, compensation and/or any status or right. Accordingly, the Town shall not be called upon to assume any liability for or direct payment of any salaries, wages, or other compensation, contributions to pension funds, insurance premiums, workmen’s compensation, vacation or compensatory time, sick leave benefits or any other amenities of employment to any BCSO employee whatsoever arising out of BCSO’s employment of such Deputy Sheriffs and such Deputy Sheriff’s performance of the services.
- 5.5 **ASSIGNMENT OF POLICE POWERS.** As sworn, certified, commissioned deputy sheriffs, each deputy sheriff assigned to duties within the Town Boundaries shall be vested with the authority by the Town to enforce such municipal ordinances as may be necessary in the performance of their duties under the Terms of this Agreement.

ARTICLE VI

SOUTHERN ENFORCEMENT BRANCH COMMAND

- 6.1 **COMMAND OFFICER.** At all times during the Term, BCSO shall employ a Command Officer to exercise authority over the Southern Enforcement Branch of the Enforcement Division. The Command Officer shall meet and confer with the Town Manager or his designee as needed, for the purpose of maintaining the viability and vitality of this Agreement.
- 6.2 **LOCATION OF COMMAND OFFICER.** The Command Officer of the Southern Enforcement Branch shall maintain his or her principal office at the Sheriff’s Substation located on Hilton Head Island, South Carolina.

ARTICLE VII DISPATCHING SERVICES

- 7.1 **RADIO PROCEDURES.** All radio traffic generated by BCSO personnel shall take place on “channels” and “talk groups” as prescribed in existing BCSO standardized Policies and Procedures.
- 7.2 **EMERGENCY RESPONSE GRID SYSTEM.** The Grid system established by the Beaufort County Communications Center shall be utilized for all reporting and call tracking conducted by the BCSO.
- 7.3 **DISPATCHING SERVICES.** All calls for Sheriff’s emergency services placed to Hilton Head Island Communications Center will be transferred to Beaufort County Communications Center using a “One Button” transfer system. All calls for service for Hilton Head Island for other than Sheriff’s services placed to Beaufort County Communications Center will be transferred to Hilton Head Island Communications Center using a “One Button” transfer system. The Beaufort County Communications Center will serve as a back-up for the Hilton Head Island Communications Center 24 hours a day and seven days a week. The Hilton Head Island Communications Center will serve as a back-up for the Beaufort County Communications Center 24 hours a day and seven days a week. To insure that each Communications Center has the resources necessary to perform the back-up function for the other center, the following types of information will be shared between the centers: (1) geographic and address data relative to the territory being backed-up; (2) operational procedures which have been mutually agreed to by the management of each center relative to providing the back-up function; and (3) sharing of planning information so that each center may properly equip itself to perform the back-up function.

ARTICLE VIII MUNICIPAL COURT

- 8.1 **DEPUTY APPEARANCE AT COURT.** All deputy sheriffs appearing in Municipal Court shall adhere to Uniform Standards as set forth in the BCSO Policies and Procedures Manual. All deputy sheriffs shall make every reasonable effort to notify the Court in the event of their delay, absence or request for continuance of a pending case.
- 8.2 **OFFENSES TO BE HEARD IN MUNICIPAL COURT.** All municipal level, traffic, and boating related offenses occurring within the Town Boundaries of Hilton Head Island shall be scheduled before the Municipal Court by Deputy Sheriffs assigned to the Southern Enforcement Branch; except where there is a conflict of interest, in which case, the matter shall be assigned to the Magistrate’s Court.

ARTICLE IX CONSIDERATION

- 9.1 **CONSIDERATION.** In consideration of the services provided hereunder, the Town agrees to pay BCSO the Consideration in equal quarterly installments commencing at the end of the first full quarter after the Effective Date of this agreement. Should the term commence or end on other than the first or last day respectively of a calendar quarter, the quarterly installment due for said quarter shall be prorated accordingly. BCSO shall provide the Town with written documentation to support any percentage rate increase or other change impacting the Consideration amount. The increase shall be calculated on the total consideration paid in the prior year. BCSO and Town agree and understand that BCSO shall make every reasonable effort to limit the annual increase in the Consideration, and shall consider an increase only when other alternatives are insufficient to meet the needs of the Town and BCSO under the terms and conditions of this agreement.
- 9.2 **SERVICE CREDITS.** The above stated Consideration for services to be provided is agreed to based on BCSO providing the services at the levels stated within this agreement. The Town shall be entitled to a credit for each level of service not attained for that quarter and shall be deducted from the Consideration payment. Any level not attained or maintained for a period of three (3) consecutive months shall constitute a breach of this agreement. Said credit shall be calculated using the actual cost of providing that annual level of service divided by 12, times the percent of service not provided then times the number of months the service was not provided.
- 9.3 **ANNUAL REVIEW.** On an annual basis, the Town and BCSO will review current service levels and proposed service level alterations. The proposed Consideration shall be determined after the completion of the Annual Review that will occur simultaneous to the Annual Proposed Budget Process.
- 9.4 **SERVICES RENDERED STATEMENT.** The BCSO shall provide to the Town, on a quarterly basis, a bill for services budgeted for annually. A monthly report (Exhibit "C") for each month in the quarter shall be provided to support the billing detailing the percentage of time spent by each position identified in the contract for services rendered. Positions are billed based on the entry level salary for each classification.

ARTICLE X REPORTS

- 10.1 BCSO shall deliver reports as outlined in Exhibit "B" according to schedule contained therein.

ARTICLE XI GRANTS AND FUNDS

- 11.1 **GRANT FUNDS AND MISCELLANEOUS REVENUES.** The BCSO shall seek grant funding as deemed appropriate under direction from the Sheriff. The BCSO shall retain all funds and equipment gained through grant awards as established in existing BCSO policies.

ARTICLE XII INSURANCE

- 12.1 **BCSO OBLIGATIONS.** BCSO shall maintain general liability and tort insurance policies in the amounts as established by state statute and county policy. BCSO shall maintain these insurance policies throughout the Term. BCSO shall provide the Town with copies of the insurance policies required hereunder and all renewals thereof. The Costs of these insurance policies shall be the sole obligation of the County and the BCSO.

ARTICLE XIII DEFAULT

- 13.1 **DEFAULTS.** The occurrence of any one or more of the following shall constitute a “Default” by the party causing same (the “Defaulting Party”).
- 13.2 **PAYMENT.** Failure of the Defaulting Party to pay any amount required hereunder, whether for Consideration, insurance or any other obligations, within thirty (30) days after such is due hereunder; or
- 13.3 **PERFORMANCE OF SERVICES.** Failure of BCSO to perform the Services as required herein at any time during the Term; or
- 13.4 **OTHER PERFORMANCE.** Failure of the Defaulting Party to perform any other covenant, condition, agreement or provision contained herein (other than the Services) or to cure any misrepresentation or breach of any representation or warranty herein thirty (30) days after receipt by the Defaulting Party of written notice of such failure, misrepresentation or breach; or
- 13.5 **DEFAULT.** Failure of the Defaulting Party to perform any covenant, condition, agreement or provision contained in any other agreement or to cure any misrepresentation or breach of any representation or warranty in any other agreement between the parties hereto within any applicable grace period provided in such agreement.
- 13.6 **REMEDIES.** Upon the occurrence and continuance of a Default by the Defaulting Party, the party not in Default (the “Non-Defaulting Party”) may, at its option and without any obligation to do so and in addition to any other remedies

otherwise set forth in this Agreement, elect any one or more of the following remedies:

- 13.6.1 Terminate and cancel this Agreement; or
- 13.6.2 Withhold payment or performance under this Agreement until such time as such Default is cured; or
- 13.6.3 Seek injunctive relief to enjoin any act of the Defaulting Party in violation hereof; or
- 13.6.4 Seek specific performance of any covenant or obligation of the Defaulting party hereunder; or
- 13.6.5 Pursue any other remedy now or hereafter available under the laws or judicial decisions of the State of South Carolina
- 13.7 **SEPARABILITY.** Each and every covenant and agreement herein shall be separate and independent from any other and the breach of any covenant or agreement shall in no way or manner discharge or relieve the performance of any other covenant or agreement. Each and all of the rights and remedies given to the Non-Defaulting Party by this Agreement or by law or equity are cumulative and the exercise of any such right or remedy by the Non-Defaulting party shall not impair the Non-Defaulting Party's right to exercise any other right or remedy available to the Non-Defaulting Party under this Agreement or by law or equity.
- 13.8 **WAIVER.** No delay in exercising or omission of the right to exercise any right or power by any party hereto shall impair any such right or power, or shall be construed as a waiver of any breach or default or as acquiescence thereto. One or more waivers of any covenant, term or condition of this Agreement by either party shall not be construed by the other party as a waiver of a continuing or subsequent breach of the same covenant, provision or condition. The consent or approval by either party to or of any act of the other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act. Payment or receipt of a lesser amount than that due hereunder shall not be deemed to be other than on account of the earliest amount due hereunder.
- 13.9 **FORCE MAJEURE.** If the performance of any covenant, agreement, obligation or undertaking (exclusive of payment or monetary obligations of either party hereunder) required hereunder is delayed, hindered or prevented by reason of strikes, lock-outs, labor troubles, wars, civil commotion's, Acts of God, governmental restrictions or regulations or interference's, fires or other casualty, the performance of such covenant, agreement, obligation or undertaking shall be excused and extended and shall not be a Default for the period of such delay, hindrance or prevention.

- 13.10 **ATTORNEY'S FEES.** In the event of any controversy arising under or relating to the interpretation or implementation of this Agreement or any breach thereof, the prevailing party shall be entitled to seek payment for all costs and attorney's fees (both trial and appellate) incurred in connection therewith.
- 13.11 **COUNTY AND BCSO ACKNOWLEDGMENT.** County and the BCSO do hereby acknowledge that the Town is entering into this Agreement in reliance upon County's and the BCSO's obligations herein imposed for the Term. Accordingly, County and the BCSO agree that it shall have the right to terminate this Agreement only as permitted in this Section.

ARTICLE XIV INDEMNIFICATION

- 14.1 The County and the BCSO shall assume liability for, defend against, and secure the Town from all costs or damages for injury to persons or property caused by the negligence or intentional misconduct of the Sheriff's personnel in providing or failing to provide general law enforcement services, as outlined in this Agreement, to the Town provided the liability is not the result of Town policy.

ARTICLE XV MISCELLANEOUS

- 15.1 **NOTICE.** All notices and other communications under this Agreement shall be in writing and shall be deemed to have been given three (3) business days after deposit in the mail, designated as certified mail, return receipt requested, postage-prepaid, or one (1) business day after being entrusted to a reputable commercial overnight delivery service, or when sent by telex or telecopy on a business day addressed to the party to which such notice is directed at its address determined in accordance with this Section with customary confirmation of receipt of such telex or telecopy received. All notices and other communications under this Agreement shall be given to the parties hereto at the following addresses: If to Town, to it at Town's address; if to BCSO, at BCSO's address and to the County at its address. Any party hereto may change the address to which notices shall be directed under this Section by giving ten (10) days written notice of such change to the other parties.
- 15.2 **NON-ASSIGNABILITY.** Neither party shall assign any of its obligations or benefits imposed hereby or contained herein, except upon the other party's prior written approval.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures hereto the date first written hereinabove.

BEAUFORT COUNTY

WITNESS

By: _____
Gary Kubic, Beaufort County
Administrator

**BEAUFORT COUNTY SHERIFF'S
OFFICE**

WITNESS

By: _____
P. J. Tanner, Beaufort County
Sheriff

TOWN OF HILTON HEAD ISLAND

WITNESS

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

AGREEMENT FOR POLICE SERVICES

EXHIBIT “A”

Municipal boundaries:

The municipal corporate boundaries of the Town of Hilton Head Island, SC are specified in Municipal Code Section 2-1-20. Corporate boundaries

Statutory Provisions:

Section 5-7-140. Extension of police jurisdiction and authority of municipalities bordering on high tide line or high water mark of navigable body of water.

- (A) The corporate limits of any municipality bordering on the high-tide line of the Atlantic Ocean are extended to include all that area lying between the high-tide line and one mile seaward of the high-tide line. These areas are subject to all the ordinances and regulations that may be applicable to the areas lying within the corporate limits of the municipality, and the municipal ordinances where the misdemeanor occurred in the area defined in this section.
- (B) The corporate limits of any municipality bordering on the high-water mark of a navigable body of water, other than the Atlantic Ocean, are extended to include all that area lying between the high-water mark and the low-water mark. These areas are subject to all of the ordinances and regulations that may be applicable to the areas lying within the corporate limits of the municipality, and the municipal courts have jurisdiction to punish individuals violating the provisions of the municipal ordinances where the misdemeanor occurred in the areas defined in this section.

Section 5-7-150 Coastal municipalities’ criminal jurisdiction over piers and other structures and waters of the ocean.

Every coastal municipality has criminal jurisdiction over piers and other structures and the waters of the ocean, a sound, or an inlet within one mile of those portions of the strand within the corporate limits. The corporate limits of the municipality are extended in a straight line from the strand into the ocean, inlet, or sound from the point where the corporate limits of the municipality reach the high-water mark of the strand. If an extension overlaps with the criminal jurisdiction of another political subdivision, the jurisdiction of each political subdivision extends to the equidistant point from the high-water mark of each strand.

AGREEMENT FOR POLICE SERVICES

Exhibit “B”

Reports

Crime Statistics (Due Annually)

SLED “Crime in South Carolina” annual report

FBI “National Trends” annual report

Victims/Witness Advocacy Program (Due Annually)

Number of victims served

Police Patrol (Due Annually)

Calls for Police Patrol Services

Calls for Service per Patrol Unit

Average Response Time in Minutes from Dispatch to Scene (Citizen Generated)

Dispatched Calls

Criminal Investigation (Due Annually)

Number of Cases Assigned per Investigator

Number of Cases Cleared per Investigator

Quarterly Report

Crimes Against Persons

Crimes Against Property

Vehicle Collisions

Offense Clearances

Drug Violations

Tickets Written for Municipal Court

Additional Offenses

UCR Reports

AGREEMENT FOR POLICE SERVICES

EXHIBIT “C”

AREA ASSIGNMENT FORM

AGREEMENT FOR POLICE SERVICES

SCHEDULE “1”

BASIC LAW ENFORCEMENT SERVICES

1. **SHERIFFS PATROL.** The BCSO shall provide a minimum of four (4) staffed patrol units on duty 24 hours a day, seven days a week to provide basic sheriffs patrol within the Town Boundaries.
2. **PATROL UNIT SUPERVISOR.** In addition to the minimum staffing requirements above, staffing shall consist of not less than one (1) “Patrol Unit Supervisor” on duty at all times, responsible for basic law enforcement patrol activities within the Town boundaries 24 hours per day, seven days a week.
3. **MARINE/BEACH PATROL.** The BCSO shall provide and maintain a Marine/Beach Patrol Team consisting of at least two (2) designated uniformed deputy sheriffs. The Marine/Beach patrol shall patrol as deemed necessary to provide specialized enforcement on the beaches and waterways within the Town Boundaries.
4. **EVIDENCE TECHNICIAN.** The BCSO shall provide one deputy sheriff whom is tasked primarily with the collection, cataloging, custody and preservation of evidence collected at crime scenes within the Town Boundaries.
5. **CRIMINAL INVESTIGATORS.** The BCSO shall provide three (3) deputy sheriffs assigned to investigate major criminal incidents occurring within the Town Boundaries.
6. **DRUG INVESTIGATORS.** The BCSO shall provide two (2) deputy sheriffs assigned to enforce narcotics laws within the Town Boundaries.
7. **CLERK.** The BCSO shall provide three (3) clerks assigned to the Sheriff’s Substation on Hilton Head Island for the purpose of performing administrative duties such as correspondence and record keeping.
8. **VICTIM’S ADVOCATE.** The BCSO shall provide one deputy sheriff who is assigned as the Victim’s Advocate to work with victims of crimes occurring within the Town Boundaries in compliance with state statutes.
9. **COMMAND OFFICER.** At all times during the Term, BCSO shall employ a Command Officer to exercise authority over the Southern Enforcement Branch of the Enforcement Division. The Command Officer shall meet and confer with the Town Manager or his designee as needed, for the purpose of maintaining the viability and vitality of this Agreement.

AGREEMENT FOR POLICE SERVICES

SCHEDULE “2”

DESCRIPTION OF ANCILLARY SERVICES

As indicated under definition 1.1.2 *Ancillary Services* any and all auxiliary and support services to include:

- Lab services
- K-9 support
- Special Response Team (SWAT)
- Crisis Negotiations
- Animal Control
- Airport Security
- School Resource Officer
- Civil Service
- Warrant Service
- Records Management
- Command
- Bomb Team
- ICE Enforcement
- DNA Lab
- Sex Offender Registry
- AFIS System

And other support services as currently provided to the Town of Hilton Head Island.

MEMORANDUM

TO: Town Council

FROM: Stephen G. Riley, ICMA-CM, Town Manager
Via: Greg D. DeLoach, Esquire, Assistant Town Manager
Brian E. Hulbert, Staff Attorney

RE: Proposed Ordinance Number 2014-26/Execution of a Lease with Beaufort County, South Carolina and the Beaufort County Sheriff's Office

DATE: December 3, 2014

Recommendation:

Staff requests that Town Council approve Proposed Ordinance Number 2014-26, authorizing the execution and delivery of a proposed Lease by and between the Town, Beaufort County, South Carolina, and the Beaufort County Sheriff's Office.

Summary:

This Ordinance would authorize the Mayor and the Town Manager to execute and deliver a proposed Lease by and between the Town, Beaufort County, South Carolina, and the Beaufort County Sheriff's Office for Town owned real property located at 70 Shelter Cove Lane (Suites B, C, D, E, F, H, I, J and K), Hilton Head Island, South Carolina. The proposed Lease is for a term commencing January 18, 2015, and ending on January 31, 2018.

Background:

On May 18, 2012, the Town purchased 3.61 acres and a 23,500 square feet building located at 58 Shelter Cove Lane, Hilton Head Island, South Carolina. The address has since been changed to 70 Shelter Cove Lane. Among other things, the purchase was to provide the Beaufort County Sheriff's Office with space for a headquarters on Hilton Head Island. The Lease is for 17,085 Square Feet within the 58 Shelter Cove Lane building. The term of the current lease was from September 1, 2012 to January 17, 2015. The Term of the new Lease would be for a period of three years and would run from January 18, 2015 to January 31, 2018. These dates would also coincide with the contract with the Beaufort County Sheriff's Office for police services on Hilton Head Island.

The monthly rental rate would be Five Thousand, Four Hundred Forty Four dollars and sixty five cents (\$5,444.65), which is Sixty Five Thousand, Three Hundred Thirty Five dollars and eighty cents (\$65,335.80) per year. This is the same amount that the Beaufort County Sheriff's Office currently pays for this space. It is also the same amount that they paid in rent for their former space on Lagoon Road.

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO.: 2014-26

PROPOSED ORDINANCE NO. 2014-

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE OF REAL PROPERTY OWNED BY THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, WITH THE BEAUFORT COUNTY SHERIFF'S OFFICE AND BEAUFORT COUNTY, SOUTH CAROLINA, PURSUANT TO THE AUTHORITY OF S.C. CODE ANN. § 5-7-40 (SUPP. 2011), AND § 2-7-20, CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, (1983); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Town of Hilton Head Island, South Carolina, owns a parcel of real property which is located at 70 Shelter Cove Lane, Hilton Head Island, South Carolina; and

WHEREAS, The Town of Hilton Head Island, South Carolina, purchased the property located at 70 Shelter Cove Lane, in part, to provide a location for the Hilton Head Island Office of the Beaufort County Sheriff's Office; and

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

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

Section 1 Execution of Lease.

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

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

Section 2 Severability. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3 Effective Date. This Ordinance shall be effective upon adoption thereof by the Town Council for the Town of Hilton Head Island, South Carolina.

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS _____ DAY OF _____, 2015.

David Bennett, Mayor

ATTEST:

Victoria L. Pfannenschmidt, Town Clerk

First Reading: _____, 2014

Second Reading: _____

APPROVED AS TO FORM:

Gregory M. Alford, Town Attorney

Introduced by Council Member: _____

LEASE OF SUITES B, C, D, E, F, H, I, J and K OF
70 SHELTER COVE LANE

BY AND BETWEEN

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA,

AND

BEAUFORT COUNTY, SOUTH CAROLINA

AND

THE BEAUFORT COUNTY SHERIFF'S OFFICE

DATED THIS ____ DAY OF JANUARY, 2015.

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) LEASE

This Lease Agreement (herein, the "Lease"), is made and entered into on this ____ day of January, 2015, between the Town of Hilton Head Island, South Carolina (herein, the "Town"), Beaufort County, South Carolina, (herein, the "County"), and the Beaufort County Sheriff's Office (herein, the "BCSO").

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

1. LEASED PREMISES:

(a) The Town hereby leases to the County and BCSO, and the County and BCSO hereby lease from the Town, 17,011 square feet of office space plus 74 square feet (which equals BCSO's pro-rata share of the Common Area of the Building) for a total of 17,085 square feet and all other improvements contained within the building located at 70 Shelter Cove Lane, Suites B, C, D, E, F, H, I, J and K, Hilton Head Island, South Carolina (herein, the "Building"), the floor plan of which is shown on the attached Exhibit "A" (herein, "the Leased Premises"). For the purposes of this Lease, the total square feet of the Leased Premises has been determined by measuring from the outside of any exterior walls and from the middle of any interior walls.

(b) The County and BCSO shall have the non-exclusive right in common with the Town and any other tenant, to those areas in the Building, including the building entrances, lobbies, corridors, loading docks, trash removal areas, grounds, roads, driveways, sidewalks, parking areas and facilities, and other similar areas, which enable the County and BCSO to obtain the use and enjoyment of the Leased Premises for its Permitted Use (hereinafter, the "Common Areas").

2. TERM:

(a) The County and BCSO shall have and hold the Leased Premises for a term (herein, the "Lease Term") beginning on the 18th day of January, 2015 (herein, the "Commencement Date"), and ending at midnight on January 31, 2018 (herein, the "Expiration Date").

(b) The County and BCSO's entry into, and taking possession of, the Leased Premises shall constitute BCSO acknowledgment that the Leased Premises are in a good

and tenantable condition as of the beginning of the Lease Term. At the time of execution of this Lease or at any time thereafter, the Town shall be under no duty to make alterations or repairs to the Leased Premises that are not expressly set forth in this Lease.

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

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

- (1) the Rent due to the Town during the first three (3) months of any Holdover Period shall be One Hundred Fifteen (115%) Percent of the Rent due to the Town from the County and BCSO during the last month of the Lease Term; and,
- (2) the Rent due to the Town for the fourth (4th) month and thereafter of any Holdover Period shall be One Hundred Fifty (150%) Percent of the Rent due to the Town from the County and BCSO during the last month of the Lease Term.

3. RENT:

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

4. LATE FEES:

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

5. USE AND COMPLIANCE:

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

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

6. MAINTENANCE AND REPAIR:

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

BSCO, or any combination of them, upon which the County and BCSO shall be liable for the total cost of the repair or replacement.

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

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

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

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

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

7. TOWN REPRESENTATIONS:

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

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

8. SURRENDER OF LEASED PREMISES:

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

9. TOWN'S RIGHT OF ENTRY:

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

10. UTILITIES:

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

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

11. SIGNS:

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

12. CONTROL OF LEASED PREMISES:

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

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

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

13. DAMAGE OR DESTRUCTION OF LEASED PREMISES:

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

notice before any restoration or repair is commenced, and in that event, any applicable insurance proceeds shall be paid to the Town.

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

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

14. **EMINENT DOMAIN:**

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

(b) **NOTICE OF ELECTION:** Any notice of election by the County and BCSO to terminate this Lease as provided in this Article 14 shall be given by the County and BCSO to the Town within 30 days after written notice by the Town to the County and BCSO as provided in Article 14 (a) above, or within 30 days after receipt by BCSO of actual knowledge of any requirement that the Town surrendered its right to possession

to all or any part of the Leased Premises, whichever shall first occur. In the event this lease is not terminated pursuant to this article 14, after a taking of a portion of the leased premises, the Town shall make such reasonable repairs or alterations as may be necessary to make the structure of the leased premises and architectural whole, and this lease shall thereafter be in full force and effect, as provided herein.

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

15. SUBLETTING PROHIBITED:

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

16. DEFAULT OF COUNTY AND BCSO:

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

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

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

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

(d) INSOLVENCY: Any of the following occur with respect to the County and BCSO: (i) the County and BCSO become insolvent as such term is defined in the United States bankruptcy code or under the insolvency laws of any state, district, commonwealth or territory of the United States; (ii) the appointment of a receiver or custodian of any or all of BCSO's property or assets or the institution of a foreclosure action upon any of the County and BCSO's real or personal property as pertains to the Leased Premises and such receiver or custodian or such foreclosure action is not

dismissed within 60 days; (iii) the County and BCSO's filing or consenting in writing to any petition under the provisions of the United States Bankruptcy code, or the insolvency laws of any State, district, commonwealth or territory of the United States; (iv) the filing of a petition against the County and BCSO as the subject debtor under the United States bankruptcy code, or any insolvency laws of any state, district, commonwealth or territory of the United States, and which results in an order of relief in favor of the County and BCSO; (v) the County and BCSO's making or consenting, whether in writing or not, to a voluntary assignment for the benefit of creditors or a common-law composition of creditors; (vi) a court order dissolution of the County and BCSO or court ordered liquidation of substantially all of the County and BCSO's assets;

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

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

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

17. **DEFAULT OF THE TOWN:**

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

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

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

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

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

incurred before the institution of suit or after the commencement of suit, including appellate proceedings, in addition to any other relief to which the prevailing party may be entitled.

19. INTERPRETATION:

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

20. NO WAIVER:

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

21. MECHANIC'S OR OTHER LIENS:

The County and BCSO shall have no power to subject the Leased Premises or the Town's interest in the Leased Premises to any mechanic's or any other lien. If any mechanic's or any other lien or order for the payment of money shall be filed against the Leased Premises by reason of or arising out of any labor or material furnished or alleged to have been furnished or to be furnished to or on behalf of the County and BCSO at the Leased Premises, or for or by reason of any change, alteration, or addition or the cost or expense thereof or any contract relating thereto, the County and BCSO shall cause the same to be discharged of record against the Leased Premises by bond or otherwise as allowed by law at the sole expense of the County and BCSO, within Thirty (30) days after written demand therefor by the Town, and shall also defend on behalf of the Town at the County and BCSO's sole cost and expense, any action, suit or proceeding that may be brought thereon or for the enforcement of any such lien or order, and the County and

BCSO shall save the Town harmless from any judgment, claim or damage resulting therefrom.

22. ESTOPPEL CERTIFICATES:

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

23. WAIVER OF JURY TRIAL:

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

24. HAZARDOUS MATERIALS:

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

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

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

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

25. MISCELLANEOUS:

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

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

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

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

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

(f) **CAPTIONS:** The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Articles of this Lease.

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

(h) **PLURAL/SINGULAR:** Where appropriate, the use of the singular

herein shall include and be deemed to be the plural, and the use of the plural herein shall be deemed to include the singular.

(i) **NO THIRD PARTY BENEFICIARIES:** The Parties hereto affirmatively represent that this Lease is made solely for the benefit of the Parties hereto and their respective successors and assigns and not for the benefit of any third party who is not a signature party hereto. No party other than the signature parties and their respective successors and assigns hereto shall have any enforceable rights hereunder, or have any right to the enforcement hereof, or any claim for damages as a result of any alleged breach hereof.

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

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

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

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

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

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

(j) **SURVIVAL:** The obligations of the County and BCSO set forth in this Lease shall survive the expiration, cancellation or termination of this Lease, whether or

not expressly stated with respect to any specific obligation.

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

(Signatures Appear On Following Page)

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

WITNESSES:

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

By:_____
David Bennett, Mayor

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

WITNESSES:

BEAUFORT COUNTY, SOUTH CAROLINA

By:_____
D. Paul Sommerville, Chairman

Attest:_____
Gary Kubic, Administrator

WITNESSES:

BEAUFORT COUNTY SHERIFF'S OFFICE

By:_____
P. J. Tanner



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Stephen G. Riley, ICMA~CM, *Town Manager*
VIA: Teri B. Lewis, *AICP, LMO Official*
FROM: Anne Cyran, *AICP, Senior Planner*
CC: Charles Cousins, *AICP, Community Development Director*
DATE: December 17, 2014
SUBJECT: ZA-1685-2014 – Bayshore at Hilton Head

Recommendation: The Planning Commission met on November 19, 2014 to review the attached application for Zoning Map Amendment (ZA-1685-2014) and voted 6-0-0 to recommend to Town Council that the rezoning request be approved, finding that the application is consistent with the Comprehensive Plan and serves to carry out the purposes of the Land Management Ordinance. Chairman Bennett recused himself because he will review the application when it comes before Town Council. Commissioner Theodore recused himself due to a conflict of interest.

Staff recommends that Town Council approve the attached application, finding that the application is consistent with the Comprehensive Plan and serves to carry out the purposes of the Land Management Ordinance.

Summary: A request from Walter J. Nester, III, on behalf of Bayshore Retirement Partners, LLC, to amend the Official Zoning Map by amending the PD-1 (Planned Development Mixed-Use) Zoning District, specifically the Hilton Head Plantation Master Plan, to change the allowed use and to change the density associated with the subject properties. The properties are identified on Beaufort County District R510 Tax Map 3 as parcels 89A, 127, 128 and 129 (Phase I) and parcels 121 and 126 (Phase II). The properties are addressed as 421, 424, 425, and 427 Squire Pope Road and are collectively known as Salty Fare.

The application will change the allowed use from commercial to group living. The application will increase the density from 10,283 square feet of commercial use to 126 dwelling units on the Phase I parcels and 26 dwelling units or a 50,000 square foot assisted living facility on the Phase II parcels.

Background: Salty Fare was developed to serve as a primary embarkation and debarkation point for the Daufuskie Island Resort & Spa; that use ended in 2009 when the resort declared bankruptcy. The applicant states the current approved use is not economically viable because the facility is no longer relied upon for access to Daufuskie Island. Efforts by the property owner to expand the use of the property for other water-related activities have been uniformly opposed by area residents as incompatible with adjacent residential developments.

The applicant, Bayshore Retirement Partners, LLC, is proposing the rezoning to facilitate the redevelopment of the Salty Fare property into a continuing care retirement community with a mix of assisted and independent living and memory care services.

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO. 2014-

PROPOSED ORDINANCE NO. 2015-04

AN ORDINANCE TO AMEND TITLE 16, THE LAND MANAGEMENT ORDINANCE, OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, BY AMENDING SECTION 16-1-107, THE OFFICIAL ZONING MAP AND THE HILTON HEAD PLANTATION MASTER PLAN WITH RESPECT TO THE CERTAIN PARCELS IDENTIFIED AS PARCELS 89A, 121, 126, 127 AND 128 ON BEAUFORT COUNTY TAX DISTRICT R510 MAP 3, WITHIN THE HILTON HEAD PLANTATION MASTER PLAN UNDER THE PD-1 ZONING DISTRICT, BY CHANGING THE ALLOWED USE FROM COMMERCIAL TO GROUP LIVING, AND BY INCREASING THE ALLOWED DENSITY ON PARCELS 89A, 127, AND 128 FROM 10,283 SQUARE FEET TO 126 DWELLING UNITS, AND BY INCREASING THE ALLOWED DENSITY ON PARCELS 121 AND 126 FROM ZERO TO 26 DWELLING UNITS OR A 50,000 SQUARE FOOT ASSISTED LIVING FACILITY, AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, on October 7, 2014, the Town Council did amend Title 16 of the Municipal Code of the Town of Hilton Head Island by enacting a new Land Management Ordinance (the "LMO"); and

WHEREAS, the Town Council now finds that, upon further review of application ZA-1685-2014, it is in the public interest that the subject 10.6 acre parcels be rezoned to change the allowed use from commercial to group living, and to increase the density on parcels 89A, 127, and 128 from 10,283 square feet to 126 dwelling units, and to increase the density on parcels 121 and 126 from zero to 26 dwelling units or a 50,000 square foot assisted living facility; and

WHEREAS, this zoning change would be compatible with surrounding land uses and neighborhood character, would not be detrimental to the public health, safety and welfare, and, further, would be in conformance with the Comprehensive Plan; and

WHEREAS, the Planning Commission is authorized by Town Council to hold a public hearing on said zoning map amendment application, and the Planning Commission held a public hearing on November 19, 2014, at which time a presentation was made by staff and an opportunity was given for the public to comment on the rezoning request; and

WHEREAS, the Planning Commission, after consideration of the staff report, public comments, and the criteria set forth in Section 16-2-103.C of the LMO, voted to recommend to Town Council that the rezoning request be approved, finding that the application is consistent with the Comprehensive Plan and serves to carry out the purposes of the Land Management Ordinance; and

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

Section 1. Amendment. That the Official Zoning Map of the Town of Hilton Head Island, as referenced in Section 16-1-107 of the Land Management Ordinance, be hereby amended to modify the 10.6 acres identified as parcels 89A, 121, 126, 127, and 128 on Beaufort County District R510 Tax Map 3 be rezoned to change the allowed use from commercial to group living, and to increase the density on parcels 89A, 127, and 128 from 10,283 square feet to 126 dwelling units, and to increase the density on parcels 121 and 126 from zero to 26 dwelling units or a 50,000 square foot assisted living facility.

Section 2. Severability. If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. Effective Date. This Ordinance shall be effective upon its adoption by the Town Council of the Town of Hilton Head Island, South Carolina.

**PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF
HILTON HEAD ISLAND ON THIS _____ DAY OF _____ 2015.**

THE TOWN OF HILTON HEAD
ISLAND, SOUTH CAROLINA

David Bennett, Mayor

ATTEST:

Victoria L. Pfannenschmidt, Town Clerk

Public Hearing: November 19, 2014

First Reading:

Second Reading:

Approved as to form:

Gregory M. Alford, Town Attorney

Introduced by Council Member: _____



TOWN OF HILTON HEAD ISLAND COMMUNITY DEVELOPMENT DEPARTMENT

One Town Center Court

Hilton Head Island, SC 29928

843-341-4757

STAFF REPORT ZONING MAP AMENDMENT

Case #	Name of Project or Development	Public Hearing Date
ZA-1685-2014	Bayshore at Hilton Head (currently Salty Fare)	November 19, 2014

Parcel Data		
Phase I	Phase II	
Parcels west of Squire Pope Rd	Parcels east of Squire Pope Rd	Applicant & Agent
Parcels: R510 003 000 089A 0000 R510 003 000 0127 0000 R510 003 000 0128 0000	Parcels: R510 003 000 0121 0000 R510 003 000 0126 0000	
Total: 4.59 acres	Total: 5.98 acres	
<u>Existing Zoning District</u> PD-1 Planned Development Mixed-Use District, Hilton Head Plantation Master Plan	<u>Existing Zoning District</u> PD-1 Planned Development Mixed-Use District, Hilton Head Plantation Master Plan	<u>Applicant</u> Bayshore Retirement Partners, LLC <u>Agent</u> Walter J. Nester III McNair Law Firm, P.A. P.O. Drawer 3 Hilton Head Island SC 29938
<u>Proposed Zoning District</u> PD-1 Planned Development Mixed-Use District, Hilton Head Plantation Master Plan	<u>Proposed Zoning District</u> PD-1 Planned Development Mixed-Use District, Hilton Head Plantation Master Plan	
<u>Existing Permitted Uses</u> PD-1 Planned Development Mixed-Use District, Hilton Head Plantation Master Plan with land use designations of Commercial, excluding uses restricted by LMO 16-3-105.K.3.	<u>Existing Permitted Uses</u> PD-1 Planned Development Mixed-Use District, Hilton Head Plantation Master Plan with land use designations of Commercial, excluding uses restricted by LMO 16-3-105.K.3.	
<u>Proposed Use</u> Group Living	<u>Proposed Use</u> Group Living	
<u>Existing Density</u> 10,283 square feet	<u>Existing Density</u> None	
<u>Proposed Density</u> 126 dwelling units	<u>Proposed Density</u> 26 dwelling units <u>or</u> A 50,000 square foot assisted living facility	

Application Summary

Walter J. Nester III on behalf of Bayshore Retirement Partners, LLC has submitted a request to amend the Hilton Head Plantation Master Plan to facilitate the redevelopment of the Salty Fare property into a continuing care retirement community with a mix of assisted and independent living and memory care services. The proposed development is divided into Phase I (the parcels west of Squire Pope Road) and Phase II (the parcels east of Squire Pope Road).

Specifically the applicant seeks to amend the master plan by changing the permitted use on all of the subject parcels from Commercial to Group Living. LMO 16-10-103.A.2 defines Group Living as the residential occupancy of a group of living units by persons who do not constitute a single-family and may receive some level of personal care. Accessory uses common to group living uses include recreational facilities, administrative offices, and food preparation and dining facilities.

LMO 16-10-103.A.2 also states that although continuing care retirement communities may include single-family and multifamily dwellings and health care uses, they are categorized as a group living use because of their focus on the present or future provision of personal care to senior citizens and their integration of various uses as a single cohesive development.

The applicant also seeks to amend the master plan by increasing the density on the Phase I parcels from 10,283 square feet of commercial uses to 126 dwelling units and by increasing the density on the Phase II parcels from no density to 26 dwelling units or a 50,000 square foot assisted living facility.

Any future development on the property will be reviewed for compliance with all applicable development standards when the applications are submitted.

Staff Recommendation

Staff recommends that the Planning Commission find this application to be consistent with the Town's Comprehensive Plan and serves to carry out the purposes of the LMO, based on those Findings of Facts and Conclusions of Law as determined by the LMO Official and enclosed herein; making the recommendation to Town Council of **APPROVAL** of the request.

Background

The Hilton Head Plantation Master Plan was initially approved by Beaufort County in 1974 and was subsequently approved by the Town in 1984 after the Town incorporated. In the original master plan, the Salty Fare parcels were part of two larger parcels – Parcel 11 and Parcel 12 – which were undeveloped areas designated for Future Development. Subsequent administrative approvals and zoning map amendments and provisions in the LMO reduced the original density to the current density of 10,283 square feet of commercial use on the Phase I parcels and no density on the Phase II parcels.

Salty Fare was developed to serve as the primary embarkation and debarkation point for the Daufuskie Island Resort & Spa; that use ended in 2009 when the resort declared bankruptcy. Salty Fare currently serves as an embarkation and debarkation point for Daufuskie Island ferries and private chartered tours. The Phase I parcels are developed with a 10,283 square foot building, a dock, and parking areas. The Phase II parcels are developed with additional parking areas.

Applicant's Grounds for ZMA, Summary of Facts and Conclusions of Law

The applicant's narrative and application materials state the proposed Zoning Map Amendment would approve residential density that is generally consistent with the adjacent Waterfront Mixed-Use (WMU) Zoning District, which allows up to 16 dwelling units per acre. The Hilton Head Boathouse (the property directly to the south of the Phase I parcels) and the parcels continuing south along Skull Creek are located in the WMU Zoning District.

The applicant states the current approved use is not economically viable because the facility is no longer relied upon for access to the Daufuskie Island Resort & Spa. Other embarkation facilities provide shorter trips to Daufuskie Island and more convenient access to the mainland. Efforts by the property owner to expand the use of the property for other water-related activities have been uniformly opposed by area residents as incompatible with adjacent residential developments. The applicant states that the rezoning will facilitate the complete redevelopment of the Salty Fare property to create an economically viable use for the property that is compatible with adjacent properties.

Summary of Facts and Conclusions of Law

Findings of Fact:

1. LMO 16-2-102.E.1 requires that, when an application is subject to a hearing, the LMO Official shall ensure that the hearing on the application is scheduled for a regularly scheduled meeting of the body conducting the hearing or a meeting specially called for that purpose by such body.
2. The LMO Official scheduled the public hearing on the application for the November 19, 2014 Planning Commission meeting, which is a regularly scheduled meeting of the commission.
3. LMO 16-2-102.E.2 requires the LMO Official to publish a notice of the public hearing in a newspaper of general circulation in the Town no less than 15 calendar days before the hearing date.
4. Notice of the November 19, 2014 public hearing was published in the Island Packet on October 12, 2014.
5. LMO 16-2-102.E.2 requires the applicant to mail a notice of the public hearing by first-class mail to the owner(s) of the land subject to the application and owners of record of properties within 350 feet of the subject land, no less than 15 calendar days before the November 19, 2014 hearing date.
6. The applicant mailed notices of the public hearing by first-class mail to the owner(s) of the land subject to the application and owners of record of properties within 350 feet of the subject land on October 16, 2014.
7. LMO Appendix D.1.A requires the applicant to submit a copy of correspondence illustrating that the applicant has solicited written comments from the appropriate property owners' association regarding the requested amendment. Such correspondence shall encourage the association to direct any comments in writing to the LMO Official and the applicant within 14 calendar days of receipt of the notification.
8. The applicant submitted on October 31, 2014 a copy of the correspondence sent to the Hilton Head Plantation Property Owners' Association regarding the requested amendment. The correspondence encourages the association to direct any comments in writing to the LMO Official and the applicant within 14 calendar days of receipt of the notification.
9. LMO 16-2-102.E.2 requires the LMO Official to post conspicuous notice of the public hearing on or adjacent to the land subject to the application no less than 15 days before the hearing date, with at least one such notice being visible from each public thoroughfare that abuts the subject land.

10. The LMO Official posted on October 16, 2014 conspicuous notice of the public hearing on the land subject to the application, with two notices being visible from the public thoroughfare that abuts the subject land.

Conclusions of Law:

1. The Official scheduled the public hearing on the application for the November 19, 2014 Planning Commission meeting, in compliance with LMO 16-2-102.E.1.
2. Notice of the public hearing was published 38 calendar days before the meeting date, in compliance with LMO 16-2-102.E.2.
3. The applicant mailed notices of the public hearing to the owner(s) of the land subject to the application and owners of record of properties within 350 feet of the subject land 34 calendar days before the hearing date, in compliance with LMO 16-2-102.E.2
4. The applicant submitted on October 31, 2014 a copy of the correspondence sent to the Hilton Head Plantation Property Owners' Association regarding the requested amendment. The correspondence requested written comments from the property owners' association regarding the amendment. The correspondence requested that the property owners' association direct any comments in writing to the LMO Official and to the applicant within 14 calendar days of the receipt of the notification, in compliance with LMO Appendix D.1.A.
5. The LMO Official posted conspicuous notice of the public hearing on the land subject to the application 34 calendar days before the hearing date, in compliance with LMO 16-2-102.E.2.

As set forth in Section 16-2-103.C.2.e, Zoning Map Amendment (Rezoning) Advisory Body Review and Recommendation, the Commission shall consider and make findings on the following matters regarding the proposed amendment.

Summary of Facts and Conclusions of Law

Criteria 1: Whether and the extent to which the proposed zoning is in accordance with the Comprehensive Plan (LMO 16-2-103.C.3.a.i):

The Comprehensive Plan addresses this application in the following areas:

Population Element:

An Implication for Age Distribution

Provisions that allow for aging in place should be considered, especially as the population percentage of people over the age of 65 in the Town continues to grow. These include additional medical and health care services, transportation, and mobility and access to appropriate services.

Housing Element:

An Implication for Housing Unit and Tenure

Although, an increase in the total number of housing units contributes to the economic tax base for the Town, it is important that both the quantity as well as quality of the housing stock is maintained to sustain current and future population and overall property values. As the amount of available land declines for new development, it will be very important to maintain a high quality housing stock on residential properties. In addition, the availability of various housing types is important for the housing market viability to accommodate the diverse needs of the Island's population.

An Implication for Housing Opportunities

It is important that the Town of Hilton Head Island assists in the ability for the population to age

in place. As the average age of the population gets older, the needs of the community change. It is important that housing options accommodate these changes. It is also important that the family and friends that support aging family members are able to reside in close proximity. The location of assisted living facilities is also important. Special complimentary land uses and associated infrastructure are needed. When one ages in place, it is important that one is living in close proximity to basic services, for instance banks, grocery stores and medical services and that provisions for emergency evacuation are considered.

Goal 5.1 – Housing Units and Tenure

- F. The goal is to monitor availability of housing types and occupancy rates to meet housing demands.

Goal 5.1 – Housing Opportunities

- C. The goal is to encourage housing options that provide opportunities for residents to age in place.
- D. The goal is to monitor changing demographics and trends in housing development to provide housing options that meet market demands.

Land Use Element:

An Implication for Zoning Changes

Future land use decisions and requests for zoning changes will be determined using the background information contained in this plan as well as the future land use map, currently represented by the Town's Official Zoning Map.

Goal 8.1 – Existing Land Use

- A. The goal is to have an appropriate mix of land uses to meet the needs of existing and future populations.

Goal 8.3 –Planned Unit Developments (PUDs)

- B. The goal to have an appropriate mix of land uses to accommodate permanent and seasonal populations and existing market demands is important to sustain the Town's high quality of life and should be considered when amending PUD Master Plans.

Goal 8.4 – Existing Zoning Allocation

- A. An appropriate mix of land uses to accommodate permanent and seasonal populations and existing market demands is important to sustain the Town's high quality of life and should be considered when amending the Town's Official Zoning Map.

Goal 8.5 – Land Use Per Capita

- A. The goal is to have an appropriate mix and availability of land uses to meet the needs of the existing and future populations.

Goal 8.10 – Zoning Changes

- A. The goal is to provide appropriate modifications to the zoning designations to meet market demands while maintaining the character of the Island.

Conclusions of Law:

1. Staff concludes that this application is consistent with the Comprehensive Plan, as described in the Population, Housing, and Land Use Elements.
2. In accordance with the Population and Housing Elements, the proposed rezoning would

<p>provide housing options for the Town's aging population to age in place with medical and other services on site and located nearby.</p> <ol style="list-style-type: none"> 3. In accordance with the Housing Element, the proposed rezoning would provide housing options to meet the market demand due to the increase in the age of the Town's population. 4. In accordance with the Land Use Element, the proposed rezoning would provide an appropriate mix of land uses to meet the needs of the population and improve the quality of life on the Island. 5. In accordance with the Land Use Element, the proposed rezoning will help to improve the marketability of the properties and meet current market demands by permitting an additional use that will complement other uses in this vicinity.
--

Summary of Facts and Conclusions of Law
<p><i>Criteria 2: Whether and the extent to which the proposed zoning would allow a range of uses that are compatible with the uses allowed on other property in the immediate vicinity (LMO 16-2-103.C.3.a.ii):</i></p> <p>Findings of Fact:</p> <ol style="list-style-type: none"> 1. The application proposes to maintain the subject parcels' existing zoning district while changing the allowed use from Commercial to Group Living. 2. LMO 16-10-103.A.2 defines Group Living as the residential occupancy of a group of living units by persons who do not constitute a single-family and may receive some level of personal care. Accessory uses common to group living uses include recreational facilities, administrative offices, and food preparation and dining facilities. 3. The Cypress is a continuing care retirement community in Hilton Head Plantation with single and multifamily housing and dining and recreation facilities. It is classified as a Group Living use. 4. The Bay Club, single-family residences and part of The Cypress, is northeast of the Phase I parcels. The Bay Club is located in the PD-1 Planned Development Mixed-Use District as part of Hilton Head Plantation. 5. The Golf Cottages, single-family residences and part of The Cypress, are southeast of the Phase II parcels. The Golf Cottages are located in the PD-1 Planned Development Mixed-Use District as part of Hilton Head Plantation. 6. Fire Station #4 is located to the southeast of the Phase II parcels. The parcel is located in the Parks and Recreation (PR) Zoning District which allows a mix of public, civic, institutional, and educational uses; open air sales; agriculture uses; and boat ramps, docking facilities and marinas. The fire station provides firefighting and emergency health services. 7. Hilton Head Boathouse, a marina and boat sales and service center, and Skull Creek Boathouse, a restaurant, are located to the southwest of the Phase I parcels. The parcel is located in the Waterfront Mixed-Use (WMU) Zoning District, which allows a mix of residential uses; public, civic, institutional, and educational uses; resort accommodations; commercial recreation uses; office uses; commercial services; vehicle sales and service; industrial uses; and other uses. <p>Conclusions of Law:</p> <ol style="list-style-type: none"> 1. The Bay Club and Golf Cottage residences to the east of the property are compatible with the proposed group living use because they are part of a continuing care retirement community. 2. The fire station to the southeast of the property is particularly compatible with the proposed group living use because it provides emergency health services which are essential for a continuing care retirement community. 3. The adjacent parcel located in the WMU Zoning District is compatible with the proposed Group Living use because the WMU Zoning District allows a mix of uses, including residential uses.

Summary of Facts and Conclusions of Law

Criteria 3: Whether and the extent to which the proposed zoning is appropriate for the land (LMO 16-2-103.C.3.a.iii):

Findings of Fact:

1. The application proposes to maintain the subject parcels' existing zoning district while changing the allowed use from Commercial to Group Living.
2. Section 5.2 of the Housing Element of the Comprehensive Plan states, "It is also important that the family and friends that support aging family members are able to reside in close proximity. The location of assisted living facilities is also important. Special complimentary land uses and associated infrastructure are needed. When one ages in place, it is important that one is living in close proximity to basic services, for instance banks, grocery stores and medical services..."
3. The property is in proximity of several single and multifamily housing developments inside and outside of nearby Hilton Head Plantation.
4. The property is located adjacent to a fire station that offers emergency health services.
5. The property is located less than four miles from the Hilton Head Hospital.
6. The property is adjacent to three restaurants.
7. The property is located less than three miles from the Main Street and Pembroke Drive areas, which offer a variety of commercial services, including grocery stores and banks.

Conclusions of Law:

1. The zoning is appropriate for the land because the application does not propose to change the zoning district.
2. The proposed use is appropriate for the site for the following reasons:
 - The property is located near several neighborhoods so friends and family members have a variety of housing options in close proximity.
 - The property is located near essential health care service providers and facilities.
 - The property is located near a variety of commercial services.

Summary of Facts and Conclusions of Law

Criteria 4: Whether and the extent to which the proposed zoning addresses a demonstrated community need (LMO 16-2-103.C.3.a.iv):

Findings of Fact:

1. The application proposes to maintain the subject parcels' existing zoning district while changing the allowed use from Commercial to Group Living.
2. Based on the 1980 – 2010 United States Census, the age distribution of Hilton Head Island's population is increasing trending to residents age 65 and older.
3. Section 4.3, Age Distribution, in the Population Element of the Comprehensive Plan states, "Provisions that allow for aging in place should be considered, especially as the population percentage of people over the age of 65 in the Town continues to grow."
4. The Group Living use category allows a variety of health and personal care services in a continuum of care.
5. Section 5.2, Housing Opportunities, in the Housing Element of the Comprehensive Plan states, "There is a growing trend of retirees becoming renters."
6. The Group Living use category allows residents to rent or own their residences.

Conclusions of Law:

1. As the number of residents age 65 and older increases in the town, the need for continuing care retirement communities will increase.
2. The proposed use would allow a continuing care retirement community that assists residents who want to age in place, which is a demonstrated community need.
3. The proposed use would allow a continuing care retirement community that offers residences for rent, which is in greater demand among retirees.

Summary of Facts and Conclusion of Law

Criteria 5: Whether and the extent to which the proposed zoning is consistent with the overall zoning program as expressed in future plans for the Town (LMO 16-2-103.C.3.a.v):

Findings of Fact:

1. The application proposes to maintain the subject parcels' existing zoning district while changing the allowed use from Commercial to Group Living.
2. The Town's overall zoning program allows flexibility in the PD-1 Planned Development Mixed-Use Zoning District by allowing permitted land uses to change to address changing needs in the community.
3. The applicant is proposing to develop Bayshore at Hilton Head, a continuing care retirement community, to address the needs of residents age 65 and older.

Conclusion of Law:

1. This application is consistent with the overall zoning program because it will change the approved use of the subject parcels to accommodate future plans for a continuing care retirement community.

Summary of Facts and Conclusion of Law

Criteria 6: Whether and the extent to which the proposed zoning would avoid creating an inappropriately isolated zoning district unrelated to adjacent and surrounding zoning districts (LMO 16-2-103.C.3.a.vi):

Findings of Fact:

1. The subject property will remain in the PD-1 Planned Development Mixed-Use District.
2. The parcels to the east of the property are also located in the PD-1 Planned Development Mixed-Use District.
3. The proposed group living use will be consistent with the existing continuing care community on the properties to the east of the property.

Conclusion of Law:

1. The proposed zoning will not create an inappropriately isolated zoning district unrelated to adjacent and surrounding zoning districts because the zoning district will not change and the use assigned to the subject property is consistent with the uses on adjacent properties in the same zoning district.

Summary of Facts and Conclusion of Law

Criteria 7: Whether and the extent to which the proposed zoning would allow the subject property to be put to a reasonably viable economic use (LMO 16-2-103.C.3.a.vii):

Findings of Fact:

1. The application proposes to maintain the subject parcels' existing zoning district while

<p>changing the allowed use from Commercial to Group Living.</p> <ol style="list-style-type: none"> The current approved use is not economically viable because the facility is no longer relied upon for access to the Daufuskie Island Resort & Spa. Other embarkation facilities provide shorter trips to Daufuskie Island and more convenient access to the mainland. Efforts by the property owner to expand the use of the property for other water-related activities have been uniformly opposed by area residents as incompatible with adjacent residential developments. The current approved density for the site limits redevelopment to approximately 1,000 square feet per acre, which is significantly lower than commercial density allowed in other zoning districts. The existence of several continuing care retirement communities and facilities on the island supports that such group living uses are in demand. Based on the 1980 – 2010 United States Census, the age distribution of Hilton Head Island’s population is increasing trending to residents age 65 and older. The Population Element of the Comprehensive Plan states that “Provisions that allow for aging in place should be considered, especially as the population percentage of people over the age of 65 in the Town continues to grow.” <p>Conclusions of Law:</p> <ol style="list-style-type: none"> The current use in the existing zoning district would not allow the subject parcels to be redeveloped into an economically viable use. The proposed use in the existing zoning district would allow the subject parcels to be redeveloped as a continuing care retirement community, which is a service required by the community’s growing senior population.
--

Summary of Facts and Conclusions of Law
<p><i>Criteria 8: Whether and the extent to which the proposed zoning would result in development that can be served by available, adequate and suitable public facilities (e.g. streets, potable water, sewerage, stormwater management) (LMO 16-2-103.C.3.a.viii):</i></p> <p>Findings of Fact:</p> <ol style="list-style-type: none"> The application proposes to maintain the subject parcels’ existing zoning district while changing the allowed use from Commercial to Group Living. The property has direct access to a minor arterial street, Squire Pope Road. The Town Traffic and Transportation Engineer has determined that Squire Pope Road has more than enough capacity to accommodate the number of average daily trips the proposed use and density would generate. The property is already developed with potable water, sewer and stormwater management facilities. <p>Conclusions of Law:</p> <ol style="list-style-type: none"> The property is located on a street with the capacity to absorb the additional trips the use would generate. If the site is redeveloped, the adequacy of the stormwater facilities and all other infrastructure will be reviewed for compliance with the LMO prior to the approval of the Development Plan Review (DPR).

Summary of Facts and Conclusion of Law

Criteria 9: Whether and the extent to which the proposed zoning is appropriate due to any changed or changing conditions in the affected area (LMO 16-2-103.C.3.a.ix):

Finding of Fact:

1. The application proposes to maintain the subject parcels' existing zoning district while changing the allowed use from Commercial to Group Living.
2. In the past decade there have been several major infrastructure improvements in the vicinity, including the construction of a roundabout at the intersection of Gum Tree and Squire Pope Roads; improvements to the intersection of William Hilton Parkway and Squire Pope Road; the extension of sewer lines along Squire Pope Road; and the construction of a pathway along Squire Pope Road.

Conclusion of Law:

1. The development of roads, utilities and amenities in the area surrounding the subject parcels supports the change in use and increased density proposed in the application.

LMO Official Determination

Determination: Staff determines that this application is compatible with the Comprehensive Plan and serves to carry out the purposes of the LMO as based on the enclosed Findings of Fact and Conclusions of Law.

Staff recommends that the Planning Commission **recommend approval** to Town Council of this application, which includes amending the Official Zoning Map by amending the Hilton Head Plantation Master Plan to change the permitted use of the Salty Fare parcels from commercial to group living and by increasing the permitted density of the Salty Fare parcels to 126 dwelling units on the Phase I parcels and 26 dwelling units or a 50,000 square foot assisted living facility on the Phase II parcels.

Note: If the proposed amendment is approved by Town Council, such action shall be by ordinance to amend the Official Zoning Map. If it is denied by Town Council, such action shall be by resolution.

PREPARED BY:

AC

Anne Cyran, AICP
Senior Planner

November 7, 2014

DATE

REVIEWED BY:

TBL

Teri B. Lewis, AICP
LMO Official

November 10, 2014

DATE

REVIEWED BY:

JL

Jayne Lopko, AICP
*Senior Planner & Planning Commission Board
Coordinator*

November 10, 2014

DATE

ATTACHMENTS:

- A) Vicinity Map
- B) Applicant's Narrative and Attachments
- C) Zoning Map



Subject Parcels
Phase I
Parcels 89A, 127,
128 & 129

Hilton Head
Boathouse

Bay Club

Fire Station #4

The Cypress

Subject Parcels
Phase II
Parcels 121 & 126



Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928
(843) 341-4600

Town of Hilton Head Island

ZA-1685-2014 Bayshore at Hilton Head (currently Salty Fare)
Attachment A: Vicinity Map



240 120 0 240 Feet

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

ZA-1685-2014 Bayshore at Hilton Head (currently Salty Fare) Staff Report Attachment B: Applicant's Narrative

STATE OF SOUTH CAROLINA)	BEFORE THE PLANNING COMMISSION
)	OF THE
COUNTY OF BEAUFORT)	TOWN OF HILTON HEAD ISLAND, SC
)	IN RE: ZMA _____

**NARRATIVE SUPPLEMENT
TO
THE ZONING MAP AMENDMENT APPLICATION
OF
BAYSHORE RETIREMENT PARTNERS, LLC
REGARDING
421 SQUIRE POPE ROAD, HILTON HEAD ISLAND, SC**

This Narrative Supplement is submitted with and is to be incorporated in and comprise a part of the Application for Zoning Map Amendment (the “**Application**”) of Bayshore Retirement Partners, LLC (the “**Applicant**”). This Narrative is submitted to the Planning Commission and the Town Council of the Town of Hilton Head Island, South Carolina (the “**Town**”) to describe the reasons for the Application and how the Application meets the criteria of Section 16-2-103.C.3 of the Town’s Land Management Ordinance (the “**LMO**”) as required by Section 16-2-103.C. of the LMO.

I. INTRODUCTION.

A. PROPERTY DESCRIPTION.

The owner of the property which is the subject of this Application is Stewart Kittredge Collins and/or Susan Charles Collins, Trustees of The Collins Family Trust Dated May 26, 1989 (the “**Owner**”). The property that is the subject of this Application is that certain 10.57+/- acre parcel of real property, more or less, with improvements located thereon, which real property is designated in the Beaufort County property tax records as: TMS District 510, Map 3, Parcels 89A, 00001, 00002, 00004, 00005, 121, 126, 127, and 128 and which real property is known and described as Units A, B-C, D and E, Salty Fare Horizontal Property Regime, Parcel 11-A, 11-C, 11-D, 11-E, 11-F, 12 and 12A, a section of Hilton Head Plantation (collectively the “**Property**”). The Applicant submits this Application requesting the approval of an amendment to the Town’s official zoning map described in Section 16-2-103.C of the LMO, in order to change the allowed use and density

ZA-1685-2014 Bayshore at Hilton Head (currently Salty Fare)
Staff Report Attachment B: Applicant's Narrative

authorized under the base zoning district applicable to the Property (commercial use in PD-1 zoning district¹) to allow residential Group Living² use and density.

B. BACKGROUND.

The Owner acquired the Property pursuant to a deed dated April 24, 2007 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina (the “**ROD**”) in Book 2564 at Pages 993 - 996.³ The Property was formerly used as the primary embarkation and debarkation point for the Daufuskie Island Resort & Spa located on Daufuskie Island, South Carolina (the “**Resort**”). The facilities and improvements existing on the Property were designed for that use and include commercial storage facilities, commercial offices, docking facilities and expansive parking areas, all generally known and referred to as “**Salty Fare**”. The Resort ceased its operations and filed for bankruptcy in 2009. Thereafter, the agreements regarding use of the Property by the Resort and its guests were terminated by the Bankruptcy Court.⁴

The Property is accessed via a 66' wide right of way known as “**Seabrook Drive**”. Seabrook Drive is owned and maintained by Hilton Head Plantation Property Owners Association, Inc. (the “**Association**”) but open and accessible to the public. Seabrook Drive bisects the Property and connects directly to the northern end of Squire Pope Road.⁵ The Owner's use of and access across Seabrook Drive is made pursuant to a Non-Exclusive Access Easement recorded in the ROD in Book 1616 at Page 1524 (see also Book 697 at Page 884).⁶

The portion of the Property west of Seabrook Drive consists of approximately 4.59 acres, and was formerly known as a portion of “Parcel 11” (herein alternatively sometimes referred to as “**Parcel 11**”). The portion of the property to the east of Seabrook Drive consists of two (2) parcels: Parcel 12 and Parcel 12A, which combined, consist of approximately 5.98 acres (herein alternatively collectively sometimes referred to as “**Parcel 12**”). Parcel 12 is improved with parking facilities

¹ See September 22, 2014 Zoning Letter from the Town, attached hereto as Exhibit “A”.

² See Section 16-10-103.A.2. of the LMO.

³ See copy of deed, attached hereto as Exhibit “B”.

⁴ See copy of Order Authorizing Rejection of Boat Transportation Agreement as an Executory Contract, attached hereto as Exhibit “C”.

⁵ See aerial photo of the Property, attached hereto as Exhibit “D”.

⁶ See copy of Non-Exclusive Access Easement, attached hereto as Exhibit “E”.

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and was historically used by residents of Daufuskie Island, and guests and employees of the Resort. Parcel 11 is bounded by the Cypress Community and Hilton Head Plantation to the North, by Schilling's Boathouse to the south, Seabrook Drive to the east and by Skull Creek to the west. Parcel 12 is bounded by the Cypress Community and Hilton Head Plantation to the north and east, by Squiresgate Road and Hilton Head Fire station #4 to the south, and by Seabrook Drive to the west.⁷

The Property was made subject to a master deed creating a horizontal property regime, (commonly referred to as a "condominium") known as the Salty Fare Horizontal Property Regime (the "**Salty Fare HPR**") which master deed is dated January 21, 1994 and was recorded in the ROD in Book 697 at Page 750. The recording of the master deed created the parcels described in Part I.A above (i.e. Units A, B-C, D and E, Salty Fare HPR, Parcel 11-A, 11-C, 11-D, 11-E, 11-F) (Parcels 12 and 12A are referred in the master deed as additional parking areas and are a part of the condominium).⁸ All of the units comprising the Salty Fare HPR are owned by the Owner. Upon the Town's approval of the ZMA that is contemplated herein and the Applicant's acquisition of the Property, the Applicant shall terminate the Salty Fare HPR.

The base zoning district for the Property is PD-1, a part of the Hilton Head Plantation Master Plan, which was approved by the Town in 1984. Both Parcel 11 and Parcel 12 have a paved access entrance providing direct access via Seabrook Drive to Squire Pope Road, a minor arterial street.⁹

Section 16-3-105.O of the LMO describes the PD-1 zoning district, the stated purpose of which is to recognize the existence within the Town of certain unique planned unit developments ("**PUDs**") of greater than 250 acres in size. The intent of the PD-1 zoning district is to allow the "continuation of well planned development within the [PUDs]".¹⁰ After the Town's incorporation in 1983, it adopted a comprehensive plan and the LMO, both of which have been amended from time to time since adoption. The PUDs in existence when the Town was incorporated—including Hilton Head Plantation, the development of which commenced in the early 1970's—were classified in the LMO

⁷ See Aerial Photo of Property, attached hereto as Exhibit "D".

⁸ See Horizontal Property Regime Plat, attached hereto as Exhibit "F".

⁹ See Section 16-3-105.B. of the LMO - "Street Hierarchy".

¹⁰ See Section 16-3-105.O of the LMO.

by various nomenclature.¹¹ When the LMO was first adopted, the Town adopted the existing and Beaufort County approved PUD master plans and associated texts, if any, in order to establish general permitted uses and maximum area densities in the PD-1 zoning districts. Those PUD master plans, as amended from time to time, establish the permitted use and allowable density on tracts or parcels within the various PD-1 zoning districts¹² including the Property. The approved uses of the Property and its associated density are limited¹³ and are related to a need that no longer exists.¹⁴

II. PROPOSAL AND REQUEST.

A. PROPOSED REDEVELOPMENT PROJECT.

The Applicant proposes to redevelop the Property into a high quality, aesthetically-pleasing senior living community (the “**Community**”). The project proposes a use category to accommodate a mix of assisted and independent living and memory care (the “**Project**”). Phase I of the Project is depicted on the proposed conceptual site plan for the Project.¹⁵ Phase I proposes construction on Parcel 11 of a five (5) story building with a 75' maximum height of approximately 150,000 square feet (“**Building A**”).¹⁶ Approximately 30% of Building A is proposed to be utilized for permissible accessory uses, resident amenities and services, which are planned to include dining services capable of serving three meals a day for the entire population of the Community; health services; rehabilitation; housekeeping; a café; libraries; fitness facilities; a pool; activity rooms; a full service spa and salon; indoor entertainment venues such as theaters and game rooms; and, a private lounge complete with a full bar for residents of the Community. The balance of Building A is proposed to be resident living quarters, administrative offices, storage, and circulation. Resident living quarters proposed shall be fully functioning with a private bathroom and small kitchen to provide residents with the option of preparing meals in their living quarters or eating in the Community

¹¹ Today, known as “PD-1 District” and described in the LMO as “Planned Development Mixed Use Districts”.

¹² See generally Section 16-3-105.0.3 of the LMO.

¹³ See September 22, 2014 Zoning Letter from the Town, attached hereto as Exhibit “A”.

¹⁴ See copy of Order Authorizing Rejection of Boat Transportation Agreement as an Executory Contract, attached hereto as Exhibit “C”.

¹⁵ See June 27, 2014 West Parcel Conceptual Site Plan prepared by CGHJ Architects, Inc., attached hereto as Exhibit “G”.

¹⁶ See August 21, 2014 Architectural Concept Site Plan prepared by CGHJ Architects, Inc., attached hereto as Exhibit “H”.

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dining facilities. Building A is proposed to include 108 single-occupant (one bed) living quarters and 18 double-occupant (two bed) living quarters, for a total of 126 living quarters.

The equivalent bed count for Building A is 108 one (1) bed units and 36 two (2) bed units, for a total of 144 bedrooms. The Group Living parking requirement proposed is one (1) parking space per three (3) rooms.¹⁷ Based on the 126 living quarters proposed, the parking requirement would be 48 parking spaces (0.33 spaces for 144 rooms). The Project contemplates 104 parking spaces on Parcel 11 and an additional 46 spaces on Parcel 12A, which would be for employee parking.¹⁸ Based on the Applicant's extensive experience, less than 30% of residents in assisted living retain their vehicles, as most residents are unable to drive safely. As in other facilities operated by the Applicant, this facility shall provide free, high quality transportation for the Community's residents.

The exterior amenities proposed in Phase I include, but are not necessarily limited to, a swimming pool, outdoor kitchen, walking path, waterfront gazebo, utilization of the existing dock, and a community water vessel for private cruises. The Project does not propose public access or use of the dock or any use by commercial vessels.

Phase II of the Project proposes a second building or a set of small buildings to provide up to 26 additional independent living quarters or a memory care assisted living facility of up to 50,000 square feet. The building configuration and site plan for Phase II has not yet been finalized, but may consist of a single story building or attached or detached villas for independent living quarters, or a one-story or two-story memory care assisted living facility of up to 50,000 square feet. The density required for Phase II would be 26 independent Group Living quarters or up to 50,000 square feet for a memory care assisted living facility. Phase II of the Project also proposes to consist of Group Living use and permissible accessory uses.

For both phases of the Project, residents shall not have any ownership interest in the Property nor any portion thereof. The Applicant proposes, as a condition of the Zoning Map Amendment, that

¹⁷ See generally Chapter 16-3 of the LMO - "Zoning Districts" for minimum number of off-street parking spaces for Group Living use classification.

¹⁸ Parcel 12 is currently improved with paved parking areas. The Applicant proposes to use the existing parking on Parcel 12 for Phase I. New parking, which shall meet the requirements of the LMO, is proposed to be constructed when Parcel 12 is redeveloped as Phase II of the Project.

restrictive land use covenants be recorded, which shall prohibit conversion of the Property, or any portion thereof, to a condominium or other form of individual residential ownership without the prior written approval by the Town.

B. PROPOSED DENSITY AND USE.

The current density of the Property is 10,283 square feet of commercial space. The permitted use for the Property is an embarkation and debarkation facility.¹⁹ The Applicant proposes a Zoning Map Amendment for the Property approving residential density that is generally consistent with the Waterfront Mixed Use (WMU) District. The property immediately adjacent to the south of Parcel 11 and continuing to the south along Skull Creek is zoned WMU District.²⁰ The WMU District provides for up to 16 dwelling units per net acre.²¹ Since no residential density has previously been assigned to the Property and the Project proposes a mix of independent and assisted Group Living use, both residential and non-residential density is required. The Property consists of 10.57 acres. For the purpose of residential density, using the adjacent comparable WMU density equates to 169 residential density units for the Project (16 units per acre x 10.57 acres = 169 units). However, although the living quarters proposed by definition equate to a single residential dwelling unit²², they are not proposed to be used or occupied in the traditional sense of a residence, and are appropriately categorized as Group Living.²³ Moreover, the Group Living use does not prohibit the installation of cooking and eating facilities in the Group Living quarters.²⁴ The Applicant believes that when considering density for the Project, an additional and helpful comparison is the equivalent number of beds to be used in the Project. The 2010 U.S. Census Bureau's report for the Town provides that the average household size is 2.23 persons.²⁵ Using that figure, the Project proposes density of up to 31.4 beds per acre (144 beds in Phase I + 60 beds in Phase II = 204 residents ÷ 2.23 beds per household for an equivalent residential density of 91 dwelling units). This density compared to the adjacent WMU density of 16 dwelling units per acre on the Property's

¹⁹ See September 22, 2014 Zoning Letter from the Town of Hilton Head Island, attached hereto as Exhibit "A".

²⁰ See Section 16-3-105.F of the LMO – "Official Zoning Map".

²¹ See Section 16-3-105.F of the LMO.

²² See Section 16-10-105 of the LMO – "General Definitions - Dwelling Unit".

²³ See Section 16-10-103A.2 of the LMO – "Group Living".

²⁴ See Section 16-10-103A.2 of the LMO – "Group Living".

²⁵ See the U.S. Census Bureau, 2010 Census Summary File for Hilton Head Island, South Carolina, attached hereto as Exhibit "I".

10.57 acres = 169 residential units. The residential density requested for the Project, particularly considering how the living quarters are occupied, is well below the WMU density amount.

III. REZONING CRITERIA.

A. In Accordance with the Comprehensive Plan.

1. Natural Resources Vision. *The Natural Resources vision of the Comprehensive Plan instructs the Town to protect Hilton Head Island's diverse natural resources, which are pivotal to the economic well-being of the community and the high quality of life on Hilton Head Island.*²⁶

The Applicant is seeking to amend the Hilton Head Plantation Master Plan (the "HHP Master Plan") in order to change the permissible use for the Property by adding "Group Living" (as that term is defined in the LMO) and corresponding density necessary to make such change in use successful. Once the rezoning is approved, the Applicant proposes the complete redevelopment of the Property as described in the Application. The existing development on the Property is non-conforming in a number of areas related to the *Natural Resources Vision of the Comprehensive Plan*, including stormwater treatment, landscaping areas and trees. The proposed redevelopment contemplates removal of the existing buildings, pavement, and other structures on the Property, with the exception of the dock, pier deck, and existing wood deck.²⁷ The redevelopment of the Property proposed by the Applicant also contemplates a number of improvements, which improvements are consistent with the goals and implementation strategies described in the *Natural Resources Vision of the Comprehensive Plan*. These improvements include an approximate 20% reduction in the amount of impervious surface area on Parcel 11. While the building footprint would be larger, the landscaped areas (open space) shall be increased, and the impervious parking area shall be reduced by the replacement of the existing asphalt with pervious pavers.²⁸

²⁶ See July 3, 2012 Comprehensive Plan, Page 20.

²⁷ June 27, 2014 West Parcel Conceptual Site Plan prepared by CGHJ Architects, Inc., attached hereto as Exhibit "G".

²⁸ See Impervious Surface Calculation Chart, attached hereto as Exhibit "J".

In addition, the Applicant's proposed redevelopment replaces and enlarges the existing underground stormwater detention facility thereby eliminating the need for open stormwater lagoons that breed insects, rodents and other pests, and also slowing the amount of stormwater discharged from the Property into the watershed.²⁹

Furthermore, the Applicant's proposed redevelopment contemplates the installation of a significant number of trees and other landscape materials, including a new upgraded irrigation system, which reduces the heat effect of the site and also furthers the goals described in the *Natural Resources Vision of the Comprehensive Plan*.

Moreover, the existing and historic use of the Property as an embarkation and debarkation point created significant traffic on U.S. Highway 278, the bridges to Hilton Head Island, and Squire Pope Road. Salty Fare was used by virtually all of the Resort guests, employees, and contractors, and the residents of most, if not all, of the residential communities on Daufuskie Island, with the exception of travel to the Haig Point PUD.³⁰ The change in use proposed by the Applicant eliminates the use of the Property as an embarkation and debarkation point for the Resort and Daufuskie Island generally; and, accordingly, results in a significant reduction in the volume of motor vehicle traffic entering and impacting Hilton Head Island and the Property for the sole purpose of accessing the neighboring Daufuskie Island to the south.³¹

The Project contemplates a complete redevelopment of the Property, in order to create an economically viable use of an existing site that has already been developed and improved. The Project shall improve treatment of stormwater as well as increase the amount of landscaped areas and trees, and the proposed change

²⁹ See Section 3.1 of the Water Quality and Quantity Comprehensive Plan of the July 3, 2012 Comprehensive Plan.

³⁰ Haig Point maintains its own fleet of ferries, and operates its own embarkation point for its residents and guests on Haig Point Circle, near Point Comfort on Hilton Head.

³¹ Daufuskie Island is accessible only by boat. It is understood that the Resort and its guests and employees now access Daufuskie Island via embarkation points in greater Beaufort County and Savannah, Georgia.

in use is therefore consistent with the *Natural Resources Vision of the Comprehensive Plan*.

2. **Population Vision.** *The Population Vision of the Comprehensive Plan seeks to maintain a diverse population in the Town of Hilton Head Island, which is given the opportunity to be well-educated, financially secure and enjoy a high quality of life.*³²

The change in use proposed by the Applicant is consistent with the *Population Vision of the Comprehensive Plan* as it provides additional residential Group Living facilities and services to support the existing and future population of the Town as it ages.³³

As more particularly detailed and described in Part 4 of the *Population Vision of the Comprehensive Plan*, the data compiled by the Town supports the general perception that although the Town's population includes all age groups, the Town has a higher than average percentage of older adults and retirees, and its population has grown progressively older from 1975 to 2010.³⁴

Furthermore, the facility proposed by the Applicant directly supports the *Population Vision of the Comprehensive Plan's* stated concern and recommendation that "[p]rovisions that allow for aging in place should be considered, especially as the population percentage of people over the age of 65 in the Town continues to grow. These include additional medical and health care services, transportation, and mobility and access to appropriate services."³⁵

The proposed change in use requires additional density, but is supportive of the *Population Vision of the Comprehensive Plan*, as it provides opportunities for enhanced quality of life and facilities that allow enable the Town's residents the

³² See July 3, 2012 Comprehensive Plan, Page 34.

³³ See July 3, 2012 Comprehensive Plan, Page 40.

³⁴ See Section 4.3: "Age Distribution", Pages 39 & 40 of the July 3, 2012 Comprehensive Plan.

³⁵ See Section 4.3: "Implications for the Comprehensive Plan", Page 40 of the July 3, 2012 Comprehensive Plan.

opportunity to remain on Hilton Head Island and age in place. The proposed change in use is therefore consistent with the *Population Vision of the Comprehensive Plan*.

3. **Housing Vision.** *The Housing Vision of the Comprehensive Plan seeks to promote and facilitate entrepreneurial housing initiatives that will result in the development of diverse housing types for all income levels on Hilton Head Island and to support affordable housing initiatives to supplement housing on Hilton Head Island.*³⁶

The Applicant's proposed use of the Property implicates the *Housing Vision of the Comprehensive Plan*. Part 5 of the *Housing Vision of the Comprehensive Plan* states that the "ultimate goal of planning for housing activities and programs on the Island is to increase housing opportunities that meet the needs of existing and future populations as well as attract new investment to the community".³⁷ The Applicant's proposed use provides additional housing opportunities for the Town and its residents, and specifically supports the recommendation that "the Town [] assists in the ability for the population to age in place. As the average age of the population gets older, the needs of the community change. It is important that housing options accommodate these changes. It is also important that the family and friends that support aging family members are able to reside in close proximity."³⁸

Further, the Applicant's proposed use supports the economic development element to the goals and instructions for implementing a strategy to support the *Housing Vision of the Comprehensive Plan*.

As indicated above, the Applicant proposes that when fully developed, the facilities proposed shall provide approximately 100 full-time equivalent (FTE)

³⁶ See July 3, 2012 Comprehensive Plan, Page 50.

³⁷ See Part 5: "Housing", "Introduction", Page 50 of the July 3, 2012 Comprehensive Plan.

³⁸ See Section 5.2: "Implications for the Comprehensive Plan", Page 56 of the July 3, 2012 Comprehensive Plan.

employment opportunities, many of which utilize workers from the local labor market. These FTE employment opportunities range from skilled nursing, management and sales to housekeeping, maintenance and food services.

The use proposed by the Applicant supports the continuation and increase of employment opportunities for skilled and unskilled workers, and provides the availability of additional housing opportunities for Hilton Head Island's residents. The proposed change in use is therefore consistent with the *Housing Vision of the Comprehensive Plan*.

4. **Community Facilities Vision.** *The Community Facilities Vision of the Comprehensive Plan encourages the Town to provide facilities for the residents and visitors of Hilton Head Island, which are maintained at the highest levels of service and efficiency consistent with facilities of a world class community.*³⁹

The Comprehensive Plan defines "Community Facilities" as "major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreation, and health systems and facilities".⁴⁰ The approval of this Application supports the Town's Community Facilities and the vision related thereto in the Comprehensive Plan. The infrastructure for the use proposed in the Application, including roadways, sanitary sewer, solid waste, potable water, electricity, telephone and cable, is already in place, and shall continue to serve the Property. As indicated above, the drainage systems shall be redeveloped and improved as part of the Project. The Applicant's proposed change in use supports and is consistent with the *Community Facilities Vision of the Comprehensive Plan*, and, as already indicated above, it significantly reduces the volume of motor vehicle traffic entering and impacting Hilton Head Island, thereby reducing the burden on the transportation network and

³⁹ See July 3, 2012 Comprehensive Plan, Page 60.

⁴⁰ See Part 6, "Introduction", Page 60 of the July 3, 2012 Comprehensive Plan.

road infrastructure. Furthermore, it provides additional opportunities for health care and opportunities for assisted living.⁴¹

5. **Economic Development Vision.** *The Economic Development Vision of the Comprehensive Plan seeks to define, foster and enhance the economic environment that sustains Hilton Head Island's unique way of life.*⁴²

The Applicant's proposed change in use provides for the development of first class residential senior living facilities, which propose significant economic benefits to the Town. The current approved use is not economically viable as the facility is no longer used or relied upon for access and transportation to Daufuskie Island. Moreover, efforts by the Owner to expand the use of the Property for water-related activities have been uniformly opposed by area residents and have not been approved by the Town.⁴³ The Applicant's proposed change in use provides the Town's aging residents with expanded housing opportunities and health care services, maintains the Property as a successful business enterprise with employment opportunities for skilled and unskilled workers, contributes to a stable tax base, has little impact on the Town's Community Facilities, and is therefore consistent with the *Economic Development Vision of the Comprehensive Plan*.

6. **Land Use Vision.** *The Land Use Vision of the Comprehensive Plan seeks to ensure a high quality of life by planning for population growth, public and private development and redevelopment, and the proper distribution, location and intensity of land uses with adequate levels of services, while maintaining and protecting the natural resources, residential neighborhoods and the overall character of the Town.*⁴⁴

⁴¹ See Section 6.8, "Implications for the Comprehensive Plan, Page 81 of the July 3, 2012 Comprehensive Plan.

⁴² See July 3, 2012 Comprehensive Plan, Page 89.

⁴³ See ZMA 130004, denied by Town Council in September 2013.

⁴⁴ See July 3, 2012 Comprehensive Plan, Page 102.

Rather than manage growth, the *Land Use Vision of the Comprehensive Plan* provides that “. . . future policies should focus more on redevelopment strategies and should consider creative alternatives to traditional zoning classifications and regulations.”.⁴⁵ The Applicant’s proposed change in use is a creative way to transform the Property, which is no longer used for those purposes for which it was designed and constructed, and is therefore likely considered not economically viable, to a use that would be viable through private redevelopment of the Property. The Applicant’s proposed use for the Property is supported by the existing infrastructure on the Property and within the Town. The Property, while subject to a base zoning of PD-1, is not “behind the gates” of a PUD and is accessible by the public.

Furthermore, the Property consists of 10.57 acres, generally fronting Skull Creek. It has direct access to a minor arterial street and is surrounded by property with much denser development. The approximate 10,283 square feet of commercial density on the Property is very low and severely underutilizes the Property. The proposed redevelopment represents quality planning and appropriate density and use, and proposes the redevelopment of existing development. The Applicant’s proposed change in use proposes a significant redevelopment of the Property, but shall not adversely impact or burden the natural environment and infrastructure, and is therefore consistent with the *Land Use Vision of the Comprehensive Plan*.⁴⁶

7. **Transportation Vision.** *The Transportation Vision of the Comprehensive Plan seeks to provide a safe, efficient, environmentally sound, aesthetically sensitive, and fiscally responsible transportation system which is integrated into the regional network to enhance quality of life for those living in, employed in, and visiting Hilton Head Island.*⁴⁷

⁴⁵ See July 3, 2012 Comprehensive Plan, Page 102.

⁴⁶ See Goals and Implementation Strategies, Section 8.11, Page 111.

⁴⁷ See July 3, 2012 Comprehensive Plan, Page 117.

The Applicant's proposed use is consistent with and supports the *Transportation Vision of the Comprehensive Plan*. The existing use as an embarkation and debarkation facility to Daufuskie Island contributes to the higher volume of motor vehicle traffic on the roadway and transportation infrastructure of the Town and U.S. Highway 278, including the bridges to Hilton Head Island. Under the use proposed, traffic to the Property would be primarily employees. In other facilities operated by the Applicant only approximately 30% of the residents maintain a motor vehicle. Buses and similar transportation are provided by the Applicant to residents, and the proposed Project shall have the same. The Applicant is seeking to increase density; however, the proposed change in use shall actually serve to reduce the volume of motor vehicle traffic to and from the Property, as available in its current use and configuration. Furthermore, the Property is accessed via a minor arterial street and is supported by the existing roadway and transportation infrastructure. The change in use proposed by the Applicant has a significant positive impact on the Town's transportation system through reduction of traffic, and is therefore consistent with the *Transportation Vision of the Comprehensive Plan*.

8. **Recreation Vision.** *The Recreation Vision of the Comprehensive Plan seeks to enrich the quality of life for residents and visitors by providing diverse recreational facilities and programs which respond to changing needs of the population.*⁴⁸

The *Recreation Vision of the Comprehensive Plan* seeks to foster use and development of recreational facilities and programs, through both the Town's efforts and also through public and private recreational organizations. Such organizations promote leisure programs and activities as well as promote the rich cultural and natural resources of the Town. The Applicant's proposed change in use does not burden the *Recreation Vision of the Comprehensive Plan*. Although the proposed change in use seeks additional density and requires redevelopment, given the age and mobility of the residents, they, in large part, will use the

⁴⁸ See July 3, 2012 Comprehensive Plan, Page 142.

recreational amenities proposed for the Project and not Town facilities. The proposed change in use does, however, provide an economically viable use for the Property as well as additional employment opportunities for skilled and unskilled workers. Moreover, the proposed change in use provides needed additional housing opportunities and health care services for the Town's residents, and is therefore consistent with the *Recreation Vision of the Comprehensive Plan*.

B. LMO REVIEW CRITERIA.

1. The proposed rezoning would allow a range of uses that are compatible with the uses allowed for other property in the immediate vicinity.

The current use of the Property is an economically unviable embarkation and debarkation facility. As described above, the Property is in the PD-1 District. Immediately adjacent to the north and east of the Property is Hilton Head Plantation and the Cypress Community. Immediately adjacent to the south of the Property is the Schilling Boathouse and other commercial and residential uses, including the Bluewater interval occupancy development, all zoned either PD-1 or WMU District.⁴⁹ Immediately adjacent to the west of the Property, is the intercoastal waterway (Skull Creek). The Project's buildings and improvements appear, and, in many respects act, as a mixed use multifamily development similar to the Cypress Community and the type of development contemplated in the WMU District, and are appropriate for a PD-1 District, which is designed to include a mix of residential and non-residential uses. Therefore, the Applicant believes the rezoning of the Property, as proposed in the Application, is compatible with the uses on other property in the immediate vicinity.

2. The proposed rezoning is appropriate for the land.

The Applicant believes that the Property is uniquely suitable for the use proposed in the Application. The proposed redevelopment of the Property does not require the creation of additional off-site infrastructure or improvements. The Property has direct access to Squire Pope Road, a minor arterial street with excellent

⁴⁹ See Section 16-1-107 of the LMO - "Official Zoning Map".

connections to U.S. Highway 278 and beyond. The Property is connected to all necessary and available utilities and stormwater drainage facilities. The proposed use creates virtually no discharge or other impacts on adjacent properties. In fact, the natural surroundings and ease of access not only enhance the Property's desirability for the use proposed in the Application but are also the same qualities that made the adjacent property to the north a desirable location for similar uses that are successfully operating there today (i.e. the Cypress Community). Therefore, the proposed rezoning is appropriate for the Property.

3. The proposed rezoning addresses a demonstrated community need.

The *Population Vision of the Comprehensive Plan* specifically recommends that "[p]rovisions that allow for aging in place should be considered, especially as the population percentage of people over the age of 65 in the Town continues to grow".⁵⁰ Additionally, the proposed rezoning allows for the development of a housing option that supports and provides options for the Town's population, as it ages, which also supports the recommendations in the *Housing Vision of the Comprehensive Plan* to do so.⁵¹

The Applicant submits that the recommendations and goals stated in the Comprehensive Plan indicate a demonstrated community need, which shall be addressed by the proposed redevelopment of the Property once the rezoning is approved.

4. The proposed rezoning is consistent with the overall zoning program, as expressed in future plans for the Town.

Section 16-1-103 of the LMO states that the purpose and intent of the LMO is to "guide development and use of property in accordance with the Town's Comprehensive Plan and existing and future needs of the Town in order to protect, promote and improve public health, safety, morals, convenience, order,

⁵⁰ See Section 4.3: "Implications for the Comprehensive Plan", Page 40 of the July 3, 2012 Comprehensive Plan.

⁵¹ See Part 5: "Housing", "Introduction", Page 50 of the July 3, 2012 Comprehensive Plan.

appearance, prosperity and general welfare of the landowners and residents of the Town".⁵²

The Applicant submits that this description is an excellent statement of the Town's overall zoning program, and is one that is supported by the rezoning proposed as specifically described in the Application. The redevelopment of an aging, underutilized and redundant facility into a modern, high quality, senior living facility as proposed by the Applicant is consistent with the Town's overall zoning program.

5. **The proposed rezoning would avoid the creation of an inappropriately isolated zoning district unrelated to adjacent and surrounding zoning districts.**

The rezoning proposed in the Application maintains the PD-1 base zoning district for the Property, and adds a new use and corresponding appropriate density that complement the Cypress Community and Hilton Head Plantation adjacent to the north and east. Moreover, the look and feel of the improvements proposed to be constructed on Parcel 11 also complement the property to the south, which is zoned WMU District. Accordingly, an inappropriately isolated zoning district would not be created by the proposed rezoning. Rather, the rezoning a use that is complementary and compatible to the immediately adjacent and surrounding zoning districts.

6. **The proposed rezoning would allow the subject Property to be put to a reasonably viable economic use.**

The current limited use authorized under the PD-1 base zoning district makes the Property economically unviable; therefore, the Property's marketability is poor for the currently permitted use. Limitations on specific commercial parcels within the PD-1 base zoning district may create limitations on marketability of such commercial parcels as time passes and as the Town develops and matures. That is the case with the Property.

⁵² See Section 16-1-103 of the LMO.

The Property's only approved use that exists at the time of the Application is as a "commercial embarkation facility". As indicated above the efforts to expand the allowed use of the Property to include a different use are evidence that the current use may not be economically viable. While the Property was improved for use as an embarkation facility, it is adjacent to residential and assisted living facilities to the north, therefore, a complementary use of the Property is preferable. This location struggles to compete with those embarkation facilities that are located closer to Daufuskie Island or that are more accessible from the mainland. Enhancing the Property's marine operations, docking, boating—either recreational or commercial—or some similar use may be complementary to the uses of the WMU District to the south, but would directly conflict with the residential uses to the north. This evidence all leads to the reasonable conclusion that the Property is not suited for the use currently permitted by the zoning district applicable to the Property.

The Property is currently under contract of sale between the Owner and the Applicant. The Applicant has successfully developed and currently owns and operates similar facilities in the southeastern United States. The approval of the Application shall improve the marketability of the Property, as it shall result in the sale thereof to an owner with a viable business and use of the Property. In addition, the Applicant believes that the approval of the Application shall not have an adverse effect on the marketability of other properties in the vicinity.

7. **The proposed rezoning would result in development that can be served by available, adequate and suitable public facilities (e.g. streets, potable water, sewer and stormwater management).**

The Property is currently served by sewer, water and stormwater facilities. As indicated above, the stormwater facilities shall be redeveloped together with the redevelopment of the Property. The Property is located within the Hilton Head PSD #1 service area, and it has the capacity to service the Property. The Property is also directly accessed via Squire Pope Road, a minor arterial street, and the proposed redevelopment requires no additional Town facilities.

IV. CONCLUSION.

The Applicant believes that there is strong demand in the Hilton Head Island market for a high quality senior housing community that provides a true residential look and feel coupled with best-in-class amenities, programs, and services. All of the living quarters proposed are designed to feel like high-end apartments, which distinguishes the Project from many other senior living communities whose rooms typically appear more institutional. The Applicant's objective is to provide residents with the services that they desire and need, while offering the opportunity to remain in their same living quarters as they require additional assistance with daily living activities. In addition, the Applicant's rental model provides residents the opportunity to receive best-in-class services and living conditions without the requirement of advance payment, therefore offering the opportunity for residents to otherwise enjoy the benefits of their personal savings. Most importantly, the Applicant believes that the Project addresses an increasing need for quality independent and assisted living for the Town's aging population.

The Applicant believes the foregoing narrative demonstrates that the Application is in conformance with the Town's Comprehensive Plan, and meets the review standards set forth in Section 16-2-103.C.3.a. of the LMO. Accordingly, the Applicant respectfully requests that the Planning Commission:

1. Review the Application and the supporting testimony and documentation which shall be entered into the record; and
2. Find the following:
 - a. That the Application and the supporting testimony and documentation establish that the requested zoning map amendment is in accordance with the Town's Comprehensive Plan; and
 - b. That the Application and the supporting testimony and documentation establish that the requested zoning map amendment allows an additional use that is compatible with the uses allowed for other property in the immediate vicinity; and

- c. That the Application and the supporting testimony and documentation establish that the requested zoning map amendment is appropriate for the land; and
- d. That the Application and the supporting testimony and documentation establish that the requested zoning map amendment addresses a demonstrated community need; and
- e. That the Application and the supporting testimony and documentation establish that the requested zoning map amendment is consistent with the overall zoning program as expressed in future plans for the Town; and
- f. That the Application and the supporting testimony and documentation establish that the requested zoning map amendment avoids the creation of an inappropriately isolated zoning district unrelated to adjacent and surrounding zoning districts; and
- g. That the Application and the supporting testimony and documentation establish that the requested zoning map amendment allows the Property to be put to a reasonably viable economic use; and
- h. That the Application and the supporting testimony and documentation establish that the requested zoning map amendment results in development that may be served by available, adequate and suitable public facilities (e.g. streets, potable water, sewer and stormwater management); and
- i. That the Application and the supporting testimony and documentation establish that the requested zoning map amendment is appropriate due to any changed or changing conditions in the affected area; and

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Staff Report Attachment B: Applicant's Narrative

- j. That the Planning Commission Recommend the Town Council's approval of the Application and the rezoning of the Property to add "Group Living" as an additional approved use and authorization of the density requested herein.

Respectfully submitted on behalf of the Applicant this 26th day of September, 2014.

McNAIR LAW FIRM, P.A.

A handwritten signature in black ink, appearing to read "Walter J. Nester, III", with a stylized flourish at the end.

Walter J. Nester, III

WJN:amb
Attachments

EXHIBIT "A" TO NARRATIVE SUPPLEMENT

September 22, 2014 Zoning Letter from Town of Hilton Head Island

TOWN OF HILTON HEAD ISLAND

One Town Center Court, Hilton Head Island, SC 29928
(843) 341-4600 <http://www.hiltonheadislandsc.gov>

September 26, 2014

Walter J. Nester
McNair Law Firm, P.A.
Post Office Drawer 3
Hilton Head Island SC 29938
Sent via email to wnester@mcnair.net

Re: Zoning Verification for Salty Fare parcels

Dear Walt:

This letter is a response to your request on September 18, 2014 for a zoning verification of the Salty Fare parcels which include:

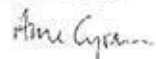
- R510 003 000 0126 000 (424 Squire Pope Road, landward of Squire Pope Road)
- R510 003 000 0121 000 (Not addressed, landward of Squire Pope Road)
- R510 003 000 089A 0000 (421 Squire Pope Road, Skull Creek side of Squire Pope Road)
- R510 003 000 0127 0000 (Not addressed, Skull Creek side of Squire Pope Road)
- R510 003 000 0128 0000 (Not addressed, Skull Creek side of Squire Pope Road)

These parcels are located in the PD-1 (Planned Unit Development Mixed Use) Zoning District for Hilton Head Plantation. The Hilton Head Plantation Master Plan states that commercial uses are allowed on these parcels. Per the Town of Hilton Head Island Land Management Ordinance (LMO), the uses allowed on these parcels are all Commercial Uses measured in square feet listed in LMO Sec. 16-4-1204, Use Table, except for those uses listed in LMO Sec. 16-4-209.E.

The density currently assigned to these parcels is 10,283 square feet of commercial use.

Please contact me at 843-341-4697 or at annec@hiltonheadislandsc.gov if you have any questions about this letter.

Sincerely,



Anne Cyran, AICP
Senior Planner

cc: File

EXHIBIT "B" TO NARRATIVE SUPPLEMENT

Deed

4
70 PP.
Makin

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SC - ROD

*This deed was prepared in the law offices of
McNAIR LAW FIRM, PA
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928
(843) 785-2171*

ADD DMP Record 6/8/2007 01:22:47 PM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R510	003	000	089A	0001	00

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

BK 02564 PGS 0993-0998
FILE NUM 2007034718
05/04/2007 12:15:08 PM
REC'D BY P BAXLEY RCPT# 488859
RECORDING FEES 10.00
County Tax 5,600.00
State Tax 13,000.00
Transfer Tax 12,600.00

ADD DMP Record 6/8/2007 01:23:15 PM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R510	003	000	089A	0002	00

TITLE TO REAL ESTATE
(Limited Warranty)

KNOW ALL MEN BY THESE PRESENTS that DAUFUSKIE ISLAND PROPERTIES LLC, a Delaware limited liability company, hereinafter referred to as "Grantor", in the State aforesaid, for and in consideration of the sum of FIVE MILLION and 00/100 (\$5,000,000.00) and no further consideration to it in hand paid by

Stewart Kittredge Collins and/or Susan Charles Collins,
Trustees of The Collins Family Trust Dated May 26, 1989
3374 Jackson Street
San Francisco, CA 94118

RECORDED
2007 Jun -08 01:25 PM
Sharon D. Bunn
BEAUFORT COUNTY AUDITOR

hereinafter referred to as "Grantees," the receipt of which is hereby acknowledged, has granted, bargained, sold and released and by these presents does grant, bargain, sell and release, unto the said Grantees, their successors and assigns forever, the following described property:

All those certain regime improvements submitted under the SALTY FARE HORIZONTAL PROPERTY REGIME, in Hilton Head Plantation, Hilton Head Island, Beaufort County, South Carolina, which improvements include the single two story building containing individual condominium units being known as UNITS A, B-C, D, AND E, SALTY FARE HORIZONTAL PROPERTY REGIME, together with those common building areas, parking, driveways, concrete walkways, and dock facilities, all as more fully described by reference to the Master Deed of Melrose Group Limited Partnership establishing said Horizontal Property Regime, dated January 21, 1994, and recorded in the Beaufort County Records in Deed Book 697 at Page 750.

Also, all the rights, privileges, common elements and limited common elements appertaining to the above-described condominium units as set forth in the Master Deed and By-Laws of the Salty Fare Horizontal Property Regime. Such common elements and limited common elements include, but are not limited to those identified as:

R:510:003:000:089A:001, 002, 004, 005 and R:510:003:000:0126:0000; 0127:000 and 0128:000

ADD DMP Record 6/8/2007 01:23:50 PM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R510	003	000	089A	0004	00

ADD DMP Record 6/8/2007 01:24:28 PM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R510	003	000	089A	0005	50

Book 02564 / Page 002

ZA-1685-2014 Bayshore at Hilton Head (currently Salty Fare)
Staff Report Attachment B: Applicant's Narrative

- (a) Parcel 11-A, 2.884 acres, portions of Parcel 11-D, 0.472 acre, Parcel 11-F, 0.537 acres, as shown on that certain plat of survey entitled "A Plat of Salty Fare Horizontal Property Regime, a Section of Hilton Head Plantation," prepared by Thomas & Hutton Engineering Co., Boyce L. Young, SC RLS #11079, dated June 28, 1983, and recorded in the Beaufort County Records in Plat Book 49 at Page 64;
- (b) Additional Parking Area, Parcel 12, containing 5.558 acres, more or less, as shown on plat prepared by Terry G. Hatchell, SC RLS #11059, dated May 20, 1993, as last revised on November 22, 1993, and recorded in the Beaufort County Records in Plat Book 49 at Page 63; and
- (c) Dock facilities situated within Parcel 11-F and extending across the marshes of Skull Creek to the navigable waters of Skull Creek as shown on that certain plat of survey entitled "A Plat of Salty Fare Horizontal Property Regime, a Section of Hilton Head Plantation," prepared by Thomas & Hutton Engineering Co., Boyce L. Young, SC RLS #11079, dated June 28, 1983, and recorded in the Beaufort County Records in Plat Book 49 at Page 64.

AND ALSO, All those certain pieces, parcels or tracts of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 0.701 acres, more or less, which are shown and depicted as "PARCEL 11-C, 0.221 AC." and "PARCEL 11-E, 0.480 AC." on that certain plat of survey entitled "A PLAT OF SALTY FARE HORIZONTAL PROPERTY REGIME, A SECTION OF HILTON HEAD PLANTATION", prepared by Thomas & Hutton Engineering Co., Boyce L. Young, SC RLS #11079, dated June 28, 1993, and recorded in the Beaufort County Records in Plat Book 49 at Page 64.

AND ALSO, All that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 0.26 acres, more or less, and being shown as Parcel 12A on a plat entitled "Parcel 12 Salty Fare, a Section of Hilton Head Plantation" prepared by Terry G. Hatchell, SC RLS #11050, dated May 20, 1993, and recorded in the Beaufort County Records in Plat Book 49 at Page 63; and also shown as Parcel 12A on a plat entitled "A Boundary Survey of Drainage Easement, a Section of Parcel 12 Hilton Head Plantation" prepared by Terry G. Hatchell, SC RLS #11050, dated December 1, 1997, and recorded in the Beaufort County Records in Plat Book 77 at Page 31. For a more detailed description as to courses, metes and bounds, reference may be made to said plats of record.

TOGETHER with a non-exclusive easement granted in Access Easement (Seabrook Drive) recorded in the Beaufort County Records in Book 697 at Page 884 and Book 1616 at Page 1524.

Said property is conveyed subject to all easements as shown on the plats of record, and to all Covenants, conditions, restrictions, reservations, easements, liens for assessments, options, powers of attorney, and limitations on title, created by the South Carolina Horizontal Property Act or set forth in the Master Deed for Salty Fare Horizontal Property Regime recorded in the Beaufort County Records in Book 697 at Page 750, and First Assignment of Grantor's Rights under the Salty Fare Master Deed recorded in Book 697 at Page 880, and Second Assignment of Grantor's Rights under the Salty Fare Master Deed recorded in Book 697 at Page 1324, and in the related By-Laws, and Assignment of Reserved Rights to Daufuskie Island Properties LLC recorded in Book 1589 at Page 1508.

The properties intended to be conveyed herein are a portion of the properties conveyed to the Grantor herein by Deed from Bloody Point Asset Corp., dated May 31, 2002, and recorded on June 4, 2002 in Book 1589 at Page 1537, and Deed from Daufuskie Club, Inc., dated May 31, 2002, and recorded on June 4, 2002 in Book 1589 at Page 1517, and Deed from Salty Fare Owners Association, Inc., dated May 31, 2002 and recorded on June 4, 2002 in Book 1589 at Page 1532, and Deed from Bloody Point Asset Corp. dated May 31, 2002 and recorded June 4, 2002 in Book 1589 at Page 1537, and Deed from Daufuskie Island Club & Resort, Inc. a/k/a Daufuskie Club, Inc., dated May 31, 2002 and recorded on June 4, 2002 in Book 1589 at Page 1548, and Deed from Hilton Head Plantation Asset Corp. dated May 31, 2002 and recorded on June 4, 2002 in Book 1589 at Page 1567, and Quit-Claim Deed from Melrose Asset Corp., dated May 31, 2002, and recorded on June 4, 2002 in Book 1589 at Page 1580, and Quit-Claim Deed from Daufuskie Club, Inc. a/k/a Daufuskie Island Club & Resort, Inc., Melrose Landing Corporation, Salty Fare Owners Association, Inc., Bloody Point Asset Corp., and Melrose Asset Corp., dated May 31, 2002, and recorded on June 4, 2002 in Book 1589 at Page 1586.

This Deed was prepared in the Law Offices of McNair Law Firm, P.A., Post Office Drawer 3, Hilton Head Island, South Carolina 29938, by Walter J. Nester, III.

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises before mentioned, unto the Grantees, their successors and assigns, subject, however, to the rights, conditions and restrictions that constitute covenants running with the land, all as set forth herein.

AND Grantor does hereby bind itself, its successors and assigns to warrant and forever defend all and singular the said premises unto Grantees, their successors and assigns, against itself and its successors and assigns lawfully claiming or to claim the same, or any part thereof, by, through or under it.

ZA-1685-2014 Bayshore at Hilton Head (currently Salty Fare)
Staff Report Attachment B: Applicant's Narrative

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed by William R. Dixon, Jr., its Member, 24 day of April in the year of our Lord two thousand and seven and in the two hundred and thirty-first year of the sovereignty and independence of the United States of America.

WITNESSES:

[Signature]
1st Witness
[Signature]
2nd Witness/Notary Public

DAUFUSKIE ISLAND PROPERTIES LLC
a Delaware limited liability company
By: [Signature]
William R. Dixon, Jr., Member

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

I, the undersigned Notary Public, do hereby certify that William R. Dixon, Jr., as a Member of Daufuskie Island Properties LLC, a Delaware limited liability company, by and on behalf of the limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 24 day of April, 2007.

[Signature]
Notary Public for South Carolina
My Commission Expires: 2015

EXHIBIT "C" TO NARRATIVE SUPPLEMENT

Order Authorizing Rejection of Boat Transportation Agreement as an Executory Contract

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:)	Case No. 09-00389-jw
)	
DAUFUSKIE ISLAND PROPERTIES,)	Chapter 11
LLC, A/K/A DAUFUSKIE ISLAND)	
RESORT & BREATHE SPA)	
)	
Debtor.)	

ORDER AUTHORIZING REJECTION OF BOAT TRANSPORTATION
AGREEMENT AS AN EXECUTORY CONTRACT

This matter comes before the Court upon the motion of Robert C. Onorato, the duly appointed Chapter 11 Trustee ("the Trustee") for the estate of Daufuskie Island Properties, LLC ("the Debtor"), for approval of the rejection of that certain Boat Transportation Agreement dated on or about June 9, 1997 and recorded in the RMC Office for Beaufort County, South Carolina (the "RMC Office") in Book 951 at Page 1091 and re-recorded on November 9, 2000 in the RMC Office in Book 1352 at Page 560 ("the Boat Transportation Agreement"), a copy of which was attached to the motion as Exhibit A.

1. The Trustee filed its *Notice of Motion and Opportunity for Hearing* ("the Notice") and its *Motion and Memorandum Pursuant to § 365(a) of the Bankruptcy Code for Approval of Rejection of the Boat Transportation Agreement* ("the Motion"), with the Court on November 3, 2010. All parties in interest were served by mail with copies of the Notice and Motion on November 3, 2010, as set forth in the certificate of service filed with the Court on November 3, 2010. Pursuant to the passive notice procedures for such matters in this District, the Notice sets forth the time for filing and serving

objections to the proposed rejection of the Boat Transportation Agreement. The Trustee states in the Motion that rejection of the Boat Transportation Agreement is necessary because the Trustee has not been performing and cannot perform the obligations under the Boat Transportation Agreement since the Debtor no longer owns Salty Fare, the Commercial Lease Agreement has been rejected, and the Trustee has insufficient funds to assume and perform the obligations under the Boat Transportation Agreement.

No objections or responses to the Notice and Motion were filed in the office of the Clerk of this Court within the time allowed. The Court finds that the Motion was properly made, and that good and proper cause exists in this case for the rejection of the Boat Transportation Agreement.

Therefore, it is

ORDERED, ADJUDGED, AND DECREED that the Trustee's rejection of the Boat Transportation Agreement is hereby approved.

AND IT IS SO ORDERED.

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Staff Report Attachment B: Applicant's Narrative

EXHIBIT A

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

BOAT TRANSPORTATION AGREEMENT

THIS BOAT TRANSPORTATION AGREEMENT (the "Agreement") is entered into this day of _____, 1997, by and between DAUFUSKIE CLUB, INC., a South Carolina corporation, its successors and assigns ("Daufuskie"), SIXTY-SIX GROUP LIMITED PARTNERSHIP, a South Carolina limited partnership ("Sixty-Six"), BLOODY POINT ASSET CORP., a South Carolina corporation ("BPAC"), BLOODY POINT REAL ESTATE COMPANY, L.L.C., a South Carolina limited liability company ("BPREC"), MELROSE ASSET CORP., a South Carolina corporation ("MAC"), DAUFUSKIE ISLAND CLUB PROPERTY OWNERS ASSOCIATION, INC., a South Carolina non-profit corporation (the "Association") and MELROSE REAL ESTATE COMPANY, INC., a South Carolina corporation (the "Company").

WITNESSETH:

WHEREAS, Daufuskie is the owner of a membership club located on Daufuskie Island, South Carolina known as the Daufuskie Island Club and Resort (the "Club"), which consists of certain recreational and accommodation facilities for utilization by individuals and entities purchasing membership interests in the Club and resort guests of the Club; and

WHEREAS, because the Club is situated on Daufuskie Island, all resort guests, members, employees, assignees, agents, contractors, subcontractors and invitees of the Club and all supplies, materials, equipment and machinery utilized in the construction, development and operation of the Club must be transported by boat and/or barge to and from Daufuskie Island; and

WHEREAS, Sixty-Six, BPAC, BPREC, MAC, the Association and the Company (collectively the "Benefited Parties") are all owners of various real property interests and other financial interests in two planned unit developments located on Daufuskie Island known as Melrose and Bloody Point; and

WHEREAS, as with Daufuskie, all the guests, employees, agents, contractors, subcontractors, invitees and members of the Association, along with all materials, supplies, equipment and machinery utilized in the development, marketing, sales and operation of the real estate interests of the Benefited Parties must be transported by boat and/or barge to and from Daufuskie Island; and

WHEREAS, Daufuskie operates two arrival/departure facilities which are utilized to drop off and pick up passengers, luggage and equipment for transportation to and from Daufuskie Island, and as dock facilities for the mooring of boats and the loading and unloading of passengers, luggage and materials for transport to and from Daufuskie Island (collectively, the "Arrival/Departure Facilities"); and

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Staff Report Attachment B: Applicant's Narrative

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WHEREAS, one (1) of the Arrival/Departure Facilities is located on Hilton Head Island, South Carolina and is known as Salty Fare; and

WHEREAS, one (1) of the Arrival/Departure Facilities is located on Daufuskie Island and is known as Microse Landing; and

WHEREAS, Daufuskie is the owner of _____ () ferry boats and _____ () small outboard runabouts (such boats and replacements thereof or additions thereto collectively referred to as the "Boats") which are utilized primarily in the transportation of the members, resort guests, agents, contractors, subcontractors, invitees and employees of Daufuskie, along with materials, supplies, equipment and machinery utilized in the operation of the Club; and

WHEREAS, the Benefited Parties desire to utilize the boat transportation service presently being performed by the Club at the Arrival/Departure Facilities (collectively, the "Services") and Daufuskie has agreed to provide the Services as further described herein.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Daufuskie and the Benefited Parties hereby agree and declare that the utilization of the Services shall be undertaken in accordance with terms and provisions set forth hereinbelow.

1. WHEREAS CLAUSE

The above whereas clauses are incorporated herein as if repeated verbatim.

2. RECEPTION AREA

Daufuskie covenants and agrees that its employees and agents will handle the check-in procedure for the Benefited Parties, their respective successors, assigns, members, guests, employees, agents, invitees, contractors, subcontractors and vendors and the issuance of boat passes to the Benefited Parties in the same manner and subject to the same rules and regulations as established and utilized for the members, guests, employees, agents, invitees, contractors, subcontractors and vendors of Daufuskie from time to time. The Benefited Parties shall be allowed and permitted to wait within the reception area located at Salty Fare for the departure or arrival of boats and shall be permitted to utilize the restroom facilities associated with the reception area in the same manner and subject to the same rules and regulations as established and utilized for the members, owners, guests, employees, agents, invitees, contractors, subcontractors and vendors of Daufuskie from time to time. Daufuskie agrees and covenants that its employees and agents operating the check-in and boat pass issuance operations within the reception area shall provide the same standard of service and level of courtesy to the Benefited Parties that are provided to the owners, guests, agents, invitees, contractors, subcontractors and vendors of Daufuskie. Daufuskie shall keep, maintain, repair and operate the reception area in a

3. ARRIVAL/DEPARTURE FACILITIES

4. BOATS

3. USAGE FEES

6. RESERVATIONS.

INDICATOR AGE 9.97

7. TERM

The term of this Agreement shall be perpetual unless terminated by written consent of all of the parties hereto.

8. WAIVER OF COVENANTS

It is agreed that the waiving of any of the terms, conditions and covenants of this Agreement by either party shall only be in writing. Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party at any time, expressed or implied, of any breach of any provision of this Agreement or a consent of any subsequent breach of the same or other provisions. If any action by either party shall require the consent or approval of the other party, the other party's consent to or approval of such action on any one occasion shall not be deemed a consent to or approval of any other action on the same or any subsequent occasion.

9. DEFAULT

Should Daufuskie fail to comply with any of the covenants, agreements, terms and conditions contained in this Agreement and such failure shall continue for a period of thirty (30) days after written notice thereof from any of the Benefited Parties, Daufuskie shall be deemed to be in default hereunder. Upon such default by Daufuskie, any of the Benefited Parties shall be entitled to sue for specific performance, damages or both. Should any Benefited Party fail to comply with any of the covenants, agreements, terms or conditions contained in this Agreement and such failure shall continue for a period of thirty (30) days after written notice thereof from Daufuskie, such Benefited Party shall have been deemed to have defaulted under this Agreement. Upon such default, Daufuskie may sue for specific performance, damages or both.

10. NOTICE

Any and all notices or other communications provided for in this Agreement shall be in writing, shall be signed by the party giving the same, and shall be delivered personally, or mailed, by certified mail, return receipt requested, postage prepaid, addressed to the party to whom such communication is directed as hereinbelow provided. Notice shall be deemed to be given and received hereunder on the date of delivery if personally delivered and on the date of mailing if mailed as aforesaid.

Any party may change his or its address at any time by giving the other party notice thereof. Such notice shall be addressed as follows:

Daufuskie Club, Inc.
P. O. Box 819012
Dallas, TX 75381-9012
Attn: President

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with copy to:
Randolph D. Addison, Esquire
Addison Law Firm
14901 Quorum Drive
Suite 650
Dallas, TX 75240

Benefited Parties:
c/o The Melrose Company, Inc.
P. O. Box 21307
Hilton Head Island, SC 29925-1307
Attn: James H. Nicksa

with copy to:
Hughes Law Firm, P.C.
P. O. Box 23526
Hilton Head Island, SC 29925-3526

11. TIME OF ESSENCE.

The parties agree that time is of the essence in the performance of this Agreement.

12. ADDITIONAL DOCUMENTS.

The parties agree to execute any other documents reasonably requested by any party necessary to implement and give effect to the transactions contemplated under this Agreement.

13. CAPTIONS.

Paragraph captions in this Agreement are for convenience only and are not to be construed as a part of this Agreement or in any way limiting or amplifying the provisions hereof.

14. BINDING EFFECT.

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.

15. INTERPRETATION.

The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against any party, and should a court be called upon to interpret any provision or provisions hereof, it shall be recognized that all parties hereto equally participated in the preparation of this Agreement, and no weight shall be

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given to, nor shall any construction or interpretation be influenced by, any presumption of preparation.

16. SOUTH CAROLINA LAW.

This Agreement shall be governed, enforced and construed in accordance with South Carolina law including the right of specific performance of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Boat Transportation Agreement on the day and year first above written.

IN THE PRESENCE OF:

DAUFUSKIE CLUB, INC.,
a South Carolina corporation

By: _____
Its: _____

IN THE PRESENCE OF:

SIXTY-SIX GROUP LIMITED
PARTNERSHIP, a South Carolina limited
partnership

By: The Melrose Company, Inc., a
South Carolina corporation, its
general partner

By: _____
Its: _____

IN THE PRESENCE OF:

BLOODY POINT ASSET CORP.,
a South Carolina corporation

By: _____
Its: _____

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IN THE PRESENCE OF:

IN THE PRESENCE OF:

IN THE PRESENCE OF:

IN THE PRESENCE OF:

BLOODY POINT REAL ESTATE
COMPANY, L.L.C., a South Carolina
limited liability company

By: _____
Its: _____

MELROSE ASSET CORP.,
a South Carolina corporation

By: _____
Its: _____

DAUFUSKIE ISLAND CLUB PROPERTY
OWNERS ASSOCIATION, INC., a South
Carolina non-profit corporation

By: _____
Its: _____

MELROSE REAL ESTATE COMPANY,
INC., a South Carolina corporation

By: _____
Its: _____

ZA-1685-2014 Bayshore at Hilton Head (currently Salty Fare)
Staff Report Attachment B: Applicant's Narrative

Re-recorded 11/9/00

WHEREAS, a duplicate original of this Access Easement Agreement was recorded, on June 16, 1997, in Book 951 at Page 1091 without Exhibit "B" attached thereto; and WHEREAS, the parties hereto agree to record this Access Easement Agreement with Exhibit "B" attached to complete and correct the records.

55227 560
STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) ACCESS EASEMENT AGREEMENT
(Salty Fare)

THIS ACCESS EASEMENT AGREEMENT (the "Agreement") is entered into this 9th day of June, 1997, by and between SALTY FARE PROPERTY OWNERS ASSOCIATION, INC., a South Carolina non-profit corporation (the "Grantor") and SIXTY-SIX GROUP LIMITED PARTNERSHIP, a South Carolina limited partnership ("Sixty-Six"), BLOODY POINT ASSET CORP., a South Carolina corporation ("BPAC"), BLOODY POINT REAL ESTATE COMPANY, L.L.C., a South Carolina limited liability company ("BPREC"), MELROSE ASSET CORP., a South Carolina corporation ("MAC"), DAUFUSKIE ISLAND CLUB PROPERTY OWNERS ASSOCIATION, INC., a South Carolina non-profit corporation (the "Association") and MELROSE REAL ESTATE COMPANY, INC., a South Carolina corporation (the "Company") (Sixty-Six, BPAC, BPREC, MAC, the Association and the Company are hereinafter collectively referred to as the "Grantees").

WITNESSETH:

WHEREAS, contemporaneous with the execution of this Agreement, the Grantees entered into that certain Boat Transportation Agreement (the "Transportation Agreement") with Daufuskie Club, Inc., a South Carolina corporation ("Daufuskie"), a copy of which is attached hereto as Exhibit "A";

WHEREAS, as referred to in the Transportation Agreement, Daufuskie operates an arrival/departure facility located on real property known as Salty Fare, as more fully described on Exhibit "B" attached hereto (the "Easement Property");

WHEREAS, as of the date hereof, the Grantees own various real property interests and financial interests in two planned unit developments located on Daufuskie Island known as Melrose and Bloody Point (the "Benefited Property");

WHEREAS, Grantor has agreed to grant to the Grantees an easement over the Easement Property to allow for the full utilization and enjoyment of the Transportation Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor hereby grants to the Grantees a nonexclusive permanent appurtenant easement in gross for the benefit of the Benefited Property in, on, over, under, through and across the Easement Property to allow for the reasonable utilization of the Transportation Agreement by the Grantees, their respective successors, assigns, members, guests, employees, agents, invitees, contractors, subcontractors and vendors. The easement granted is intended to allow the Grantees to perform all acts and fully realize all benefits of the Transportation Agreement in, on, over, under, through and across the Easement Property, subject to the limitations contained in the Transportation Agreement.

13-2/5-00

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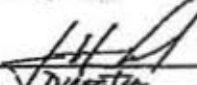

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day
and year first above written.


IN THE PRESENCE OF:


Ed H.

GRANTOR:
SALTY FARE PROPERTY OWNERS
ASSOCIATION, INC., a South Carolina
non-profit corporation

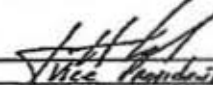
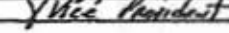
By: 
Its: 

IN THE PRESENCE OF:


Ed H.

GRANTEES:
SIXTY-SIX GROUP LIMITED
PARTNERSHIP, a South Carolina limited
partnership

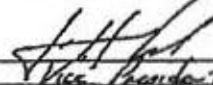
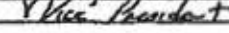
By: The Melrose Company, Inc., a
South Carolina corporation, its
general partner

By: 
Its: 

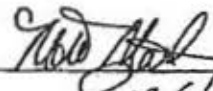
IN THE PRESENCE OF:


Ed H.

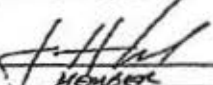
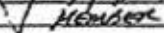
BLOODY POINT ASSET CORP.,
a South Carolina corporation

By: 
Its: 

IN THE PRESENCE OF:


Ed H.

BLOODY POINT REAL ESTATE
COMPANY, L.L.C., a South Carolina
limited liability company

By: 
Its: 

ZA-1685-2014 Bayshore at Hilton Head (currently Salty Fare)
Staff Report Attachment B: Applicant's Narrative

562

IN THE PRESENCE OF:

Ed H
Ed H

IN THE PRESENCE OF:

Ed H
Ed H

IN THE PRESENCE OF:

Ed H
Ed H

MELROSE ASSET CORP.,
a South Carolina corporation

By: *J. H. L.*
Its: *President*

DAUFUSKIE ISLAND CLUB PROPERTY
OWNERS ASSOCIATION, INC., a South
Carolina non-profit corporation

By: *J. H. L.*
Its: *Director*

MELROSE REAL ESTATE COMPANY,
INC., a South Carolina corporation

By: *J. H. L.*
Its: *President*

ZA-1685-2014 Bayshore at Hilton Head (currently Salty Fare)
Staff Report Attachment B: Applicant's Narrative

563

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

ACKNOWLEDGEMENT

I, Edward M. Hight, a Notary Public for the State of South Carolina, do hereby certify that James H. Nicksa of Salty Fare Property Owners Association, Inc., a South Carolina non-profit corporation, personally appeared before me this day and, in the presence of the two witnesses above named, acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 9th day of June, 1997.

Ed H
Notary Public for South Carolina
My Commission Expires: 12/14/2006

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

ACKNOWLEDGEMENT

I, Edward M. Hight, a Notary Public for the State of South Carolina, do hereby certify that James H. Nicksa of The Melrose Company, Inc., a South Carolina corporation, general partner of Sody-Sex Group Limited Partnership, a South Carolina limited partnership, personally appeared before me this day and, in the presence of the two witnesses above named, acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 9th day of June, 1997.

Ed H
Notary Public for South Carolina
My Commission Expires: 12/14/2006

EXHIBIT "D" TO NARRATIVE SUPPLEMENT

Aerial Photo of Property

ZA-1685-2014 Bayshore at Hilton Head (currently Salty Fare)
Staff Report Attachment B: Applicant's Narrative



© 2014 Google
© SPOT IMAGE

Google earth

feet

1000

EXHIBIT “E” TO NARRATIVE SUPPLEMENT

Non-Exclusive Access Easement

4/10/6
Q. m. a. y.
7/6/6

ZA-1685-2014 Bayshore at Hilton Head (currently Salty Fare)
Staff Report Attachment B: Applicant's Narrative

NON-EXCLUSIVE ACCESS EASEMENT

This Easement shall be governed by the following:

2. **Termination.** The term of this Easement shall be perpetual.

4. Maintenance Agreement. Grantor and Grantee have entered into a certain Roadway Maintenance Sharing Agreement of even date (the "Maintenance Agreement") concerning the sharing of the maintenance costs of the Easement Area.

ZA-1685-2014 Bayshore at Hilton Head (currently Salty Fare)
Staff Report Attachment B: Applicant's Narrative

5. Entire Agreement. Except as set forth in the Maintenance Agreement, this instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force and effect, excepting a subsequent modification in writing, signed by the party to be charged.

6. Intent. It being the intent of the parties hereto that Benefited Parties have ingress and egress over such Easement Area without being required to pay any fee or charge for ingress and egress over, across or through such roadway or security gates.

7. Terms. The terms "Grantor" and "Grantee" as used herein shall be deemed to be plural, when required to be so, and shall include the successors and assigns of the parties hereto. The term ☐Easement☐ as used herein shall be deemed to be plural, when required to be so.

8. Governing Law. This Easement has been executed and delivered in the State of South Carolina and shall be construed in accordance with the laws of the state in which the Easement Area is located. Any action brought to enforce or interpret this Easement shall be brought in the court of appropriate jurisdiction in the county in which the Easement Area is located.

9. Captions. Captions, titles to sections, and paragraph headings used herein are for convenience or reference and shall not be deemed to limit or alter any provision hereof.

10. Attorneys' Fees. In the event of any controversy, claim, or dispute relating to this instrument or the breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorneys' fees, and costs.

11. Binding Effect. This Easement shall bind and inure to the benefit of the respective parties, their legal representatives, successors and assigns.


IN WITNESS WHEREOF, this instrument is executed this 29th day of July, 2002.

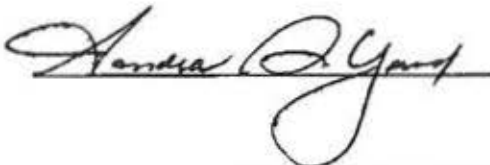
WITNESSES:

Grantor:

HILTON HEAD PLANTATION
PROPERTY OWNERS ASSOCIATION,
a South Carolina non-profit corporation



By: 
Name: Terence J. Conway
Title: President



ZA-1685-2014 Bayshore at Hilton Head (currently Salty Fare)
Staff Report Attachment B: Applicant's Narrative

WITNESSES:

Grantee:

DAUFUSKIE ISLAND PROPERTIES LLC,
a Delaware limited liability company

Petera Pasch
Spencer W. Bechman

By: [Signature]
Name: CARY S. GRIFFIN
Title: Authorized Signatory

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that TERRY CONWAY, President of Hilton Head Plantation Property Owners Association, a South Carolina non-profit corporation, personally appeared before me this day and, in the presence of the two witnesses above named, acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 29th day of July, 2002.

[Signature]
Notary Public for South Carolina
My Commission Expires: August 10, 2007

STATE OF South Carolina)
COUNTY OF Beaufort)

ACKNOWLEDGMENT

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that Cary S. Griffin, Authorized Signatory of Daufuskie Island Properties LLC, a Delaware limited liability company, personally appeared before me this day and, in the presence of the two witnesses above named, acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 6th day of August, 2002.

[Signature]
Notary Public for South Carolina
My Commission Expires: 6/5/11

ZA-1685-2014 Bayshore at Hilton Head (currently Salty Fare) Staff Report Attachment B: Applicant's Narrative

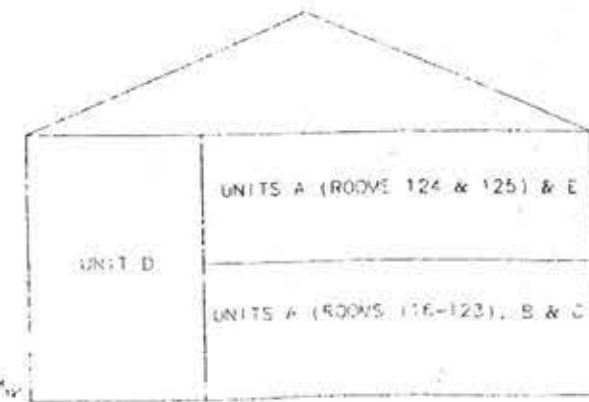
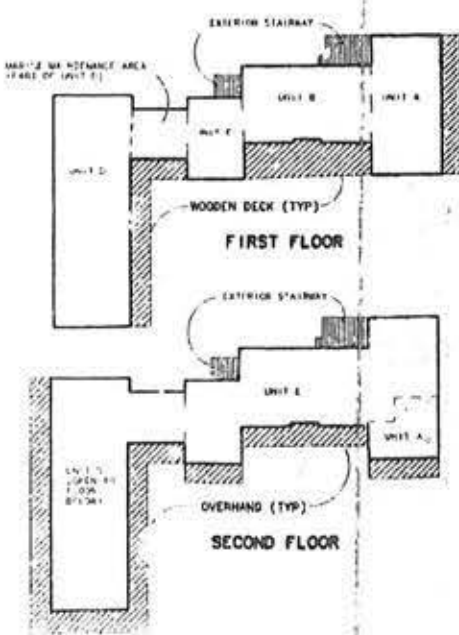
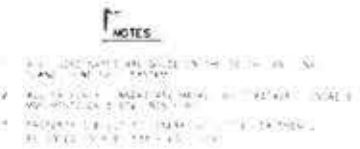
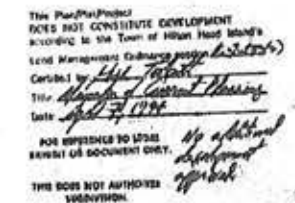
EXHIBIT A**EASEMENT AREA**

ALL that certain piece, parcel or tract of land situate, lying and being in the Town of Hilton Head Island, Beaufort County, State of South Carolina, measuring approximately 66' in width and being more fully shown as a portion of Seabrook Drive outside the Gate House depicted on the plat of survey entitled "A PAPER PLAT OF A PORTION OF SEABROOK DRIVE AND A PORTION OF SKULL CREEK DRIVE, A SECTION OF HILTON HEAD PLANTATION," dated July 24, 1990, which was prepared by Surveying Consultants, Inc., Terry G. Hatchell, SCPLS No. 11059, and which is recorded in the Office of the Register of Deeds for Beaufort County in Plat Book 42 at Page 200. Said parcel of land is more particularly described as follows:

Commencing at the Point of Beginning, being the intersection of Lines 54 and 55 shown on the above-referenced plat, and running thence on Line 54 N 43°33'50" E for a distance of 77.11' to a point; thence on Curve 37 running for a distance of 302.02', which curve has a radius of 645.46', a tangent of 153.82', a chord of 299.27', a chord bearing of S 56°58'06" W, and a delta angle of 26°48'33" to a point; thence on Line 53 N 70°22'23" E for a distance of 310.62'; thence turning and running perpendicular to said right-of-way along Line 58 S 24°06'04" E for a distance of 66.20' to a point on the opposite side of the road right-of-way; thence turning and running along Line 4 S 70°22'23" W for a distance of 315.78' to a point; thence along Curve C4 for a distance of 271.13', which curve has a radius of 579.46', a tangent of 138.10', a chord of 268.67', a chord bearing of S 56°58'06" W, and a delta angle of 26°48'33"; thence on Line 3 running S 43°33'50" W for a distance of 81.00' to a point; thence turning and running on Line 55 N 43°03'49" W for a distance of 66.11' to a point, being the Point of Beginning.

EXHIBIT "F" TO NARRATIVE SUPPLEMENT

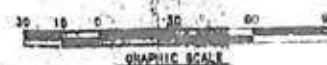
Horizontal Property Regime Plat



VERTICAL BOUNDARIES OF UNITS
IN SALTY FARE HORIZONTAL PROPERTY REGIME



1. EXISTING REGIME:
- | | |
|--------------|------------------|
| PARCEL 11-A1 | 7.884 AC. |
| PARCEL 11-B | 6.473 AC. |
| PARCEL 11-C | 5.537 AC. |
| | <u>3.813 AC.</u> |
2. ADDITIONAL PROPERTY:
- | | |
|-------------|------------------|
| PARCEL 11-D | 0.321 AC. |
| PARCEL 11-E | 0.410 AC. |
| | <u>0.731 AC.</u> |
3. EXISTING REGIME IMPROVEMENTS:
- | | |
|---|-------------|
| BUILDING FOOTPRINT | 1,874 S.F. |
| PARKING AND DRIVEWAY | 87,047 S.F. |
| BUCK FACILITIES & ATTACHED WOODS & BUSH COVERED & UNCOVERED | 14,818 S.F. |
| WOODEN PORCH (1ST FLOOR) | 1,781 S.F. |



AN AS-BUILT
(RECORDS DRAWING)
SURVEY OF

**SALTY
FARE**

**NON-COMMERCIAL
PROPERTY RECORD**

A SECTION OF
HILTON HEAD PLANTATION

HILTON HEAD ISLAND
BEAUFORT COUNTY
SOUTH CAROLINA

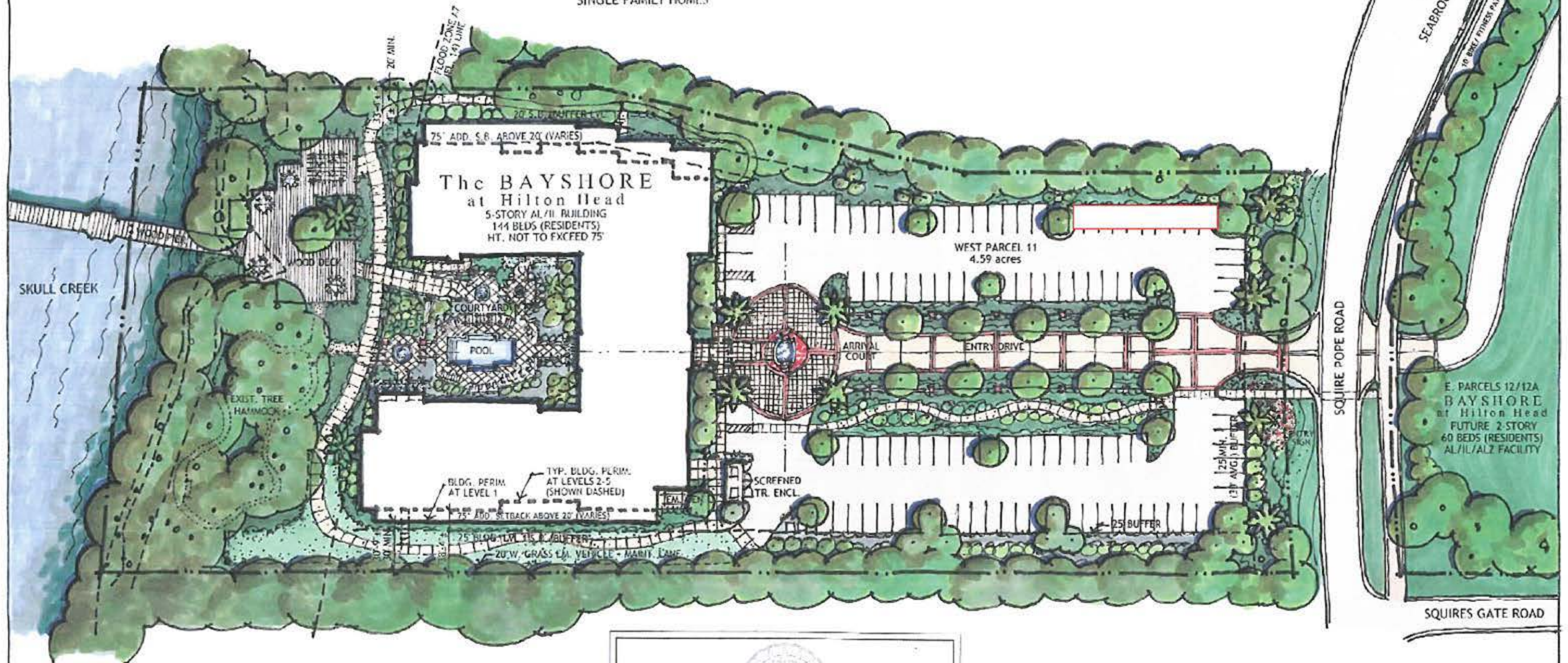
TOTAL ACRES

RECORDED IN BOOK 49 PAGE 1
DATE 5-23-53
SCALE 1" = 20'
FILE 5-23-53
DATE 5-23-53
DRAWN BY A. P. O.
PARTY CHIEF A. P. O.
THIS SHEET CONTAINS 1078 WORDS

EXHIBIT "G" TO NARRATIVE SUPPLEMENT

June 27, 2014 West Parcel Conceptual Site Plan prepared by CGHJ Architects, Inc.

CYPRESS AT HILTON HEAD ISLAND
SINGLE FAMILY HOMES



SKULL CREEK
BOATHOUSE PARCEL

The BAYSHORE
at Hilton Head

Bayshore Retirement Living - Hilton Head, South Carolina
CGHJ Architects Inc. 27 June 2014

WEST PARCEL
CONCEPTUAL SITE PLAN



EXHIBIT "H" TO NARRATIVE SUPPLEMENT

August 21, 2014 Architectural Concept Site Plan prepared by CGHJ Architects, Inc.

CYPRESS OF HILTON HEAD ISLAND ASSOCIATION
TMS R510 003 00A 0075 0000

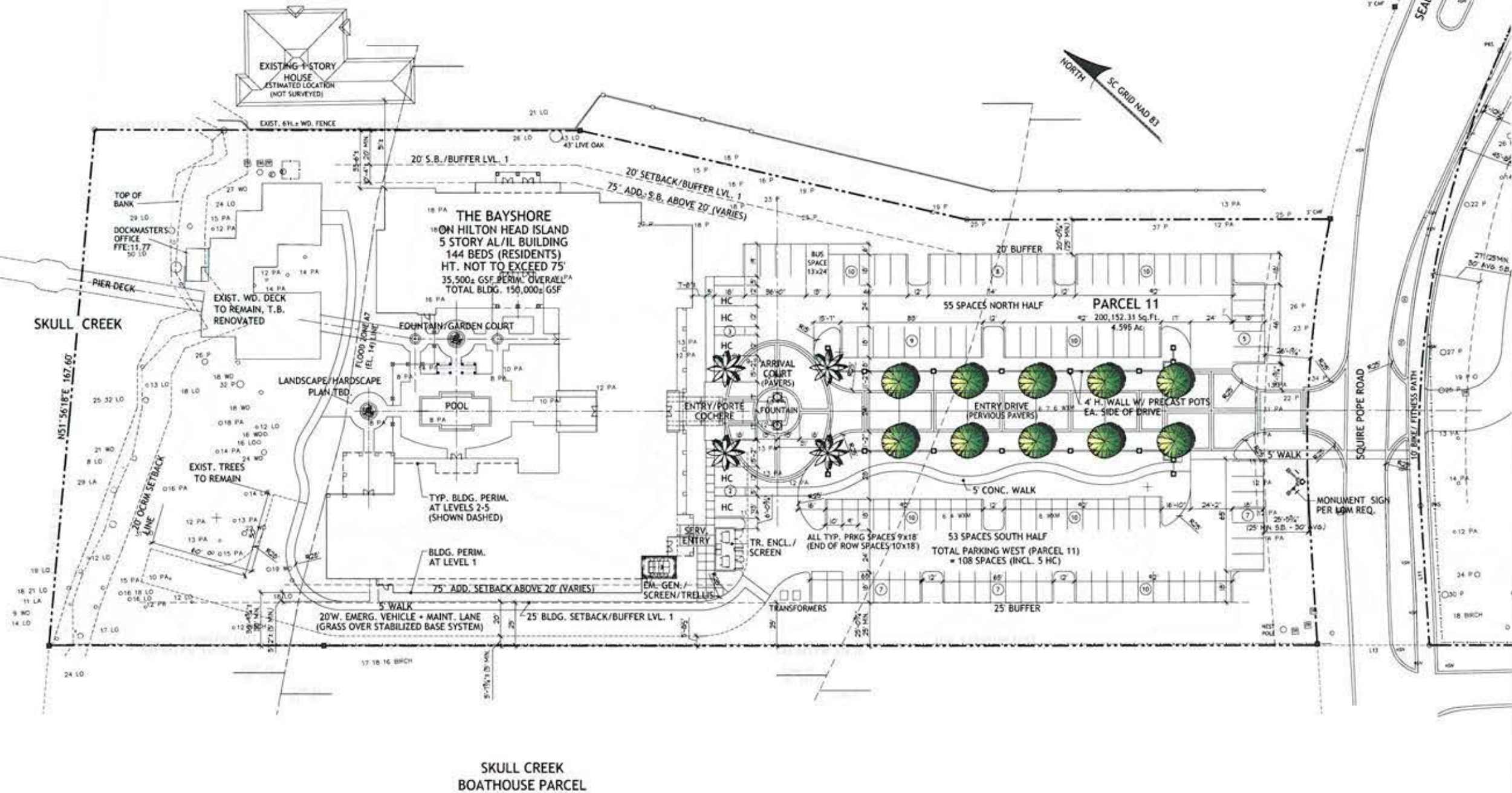


EXHIBIT "I" TO NARRATIVE SUPPLEMENT

U.S. Census Bureau, 2010 Census Summary File for Hilton Head Island, South Carolina

QT-P11 | Households and Families: 2010

2010 Census Summary File 1

NOTE: For information on confidentiality protection, nonsampling error, and definitions, see <http://www.census.gov/prod/cen2010/doc/sf1.pdf>.

Geography: Hilton Head Island town, South Carolina

Subject	Number	Percent
HOUSEHOLD TYPE		
Total households	16,535	100.0
Family households [1]	10,700	64.7
Male householder	7,995	48.4
Female householder	2,705	16.4
Nonfamily households [2]	5,835	35.3
Male householder	2,430	14.7
Living alone	1,724	10.4
Female householder	3,405	20.6
Living alone	2,957	17.9
HOUSEHOLD SIZE		
Total households	16,535	100.0
1-person household	4,681	28.3
2-person household	7,723	46.7
3-person household	1,749	10.6
4-person household	1,290	7.8
5-person household	600	3.6
6-person household	290	1.8
7-or-more-person household	202	1.2
Average household size	2.23	(X)
Average family size	2.66	(X)
FAMILY TYPE AND PRESENCE OF RELATED AND OWN CHILDREN		
Families [3]	10,700	100.0
With related children under 18 years	3,263	30.5
With own children under 18 years	3,039	28.4
Under 6 years only	700	6.5
Under 6 and 6 to 17 years	615	5.7
6 to 17 years only	1,724	16.1
Husband-wife families	9,048	100.0
With related children under 18 years	2,238	24.7
With own children under 18 years	2,134	23.6
Under 6 years only	497	5.5
Under 6 and 6 to 17 years	480	5.3
6 to 17 years only	1,157	12.8
Female householder, no husband present families	1,120	100.0
With related children under 18 years	734	65.5
With own children under 18 years	654	58.4
Under 6 years only	141	12.6
Under 6 and 6 to 17 years	96	8.6
6 to 17 years only	417	37.2

X Not applicable.

[1] A household that has at least one member of the household related to the householder by birth, marriage, or adoption is a "Family household." Same-sex couple households are included in the family households category if there is at least one additional person related to the householder by birth or adoption. Same-sex couple households with no relatives of the householder present are tabulated in nonfamily households. Responses of "same-sex spouse" were edited during processing to "unmarried partner."

[2] "Nonfamily households" consist of people living alone and households which do not have any members related to the householder.

[3] "Families" consist of a householder and one or more other people related to the householder by birth, marriage, or adoption. They do not include same-sex married couples even if the marriage was performed in a state issuing marriage certificates for same-sex couples. Same-sex couples are included in the families category if there is at least one additional person related to the householder by birth or adoption. Responses of "same-sex spouse" were edited during processing to "unmarried partner." Same-sex couple households with no relatives of the householder present are tabulated in nonfamily households.

Source: U.S. Census Bureau, 2010 Census.

Summary File 1, Tables P17, P18, P28, P29, P37, P38, and P39.

EXHIBIT "J" TO NARRATIVE SUPPLEMENT

Impervious Surface Calculation Chart

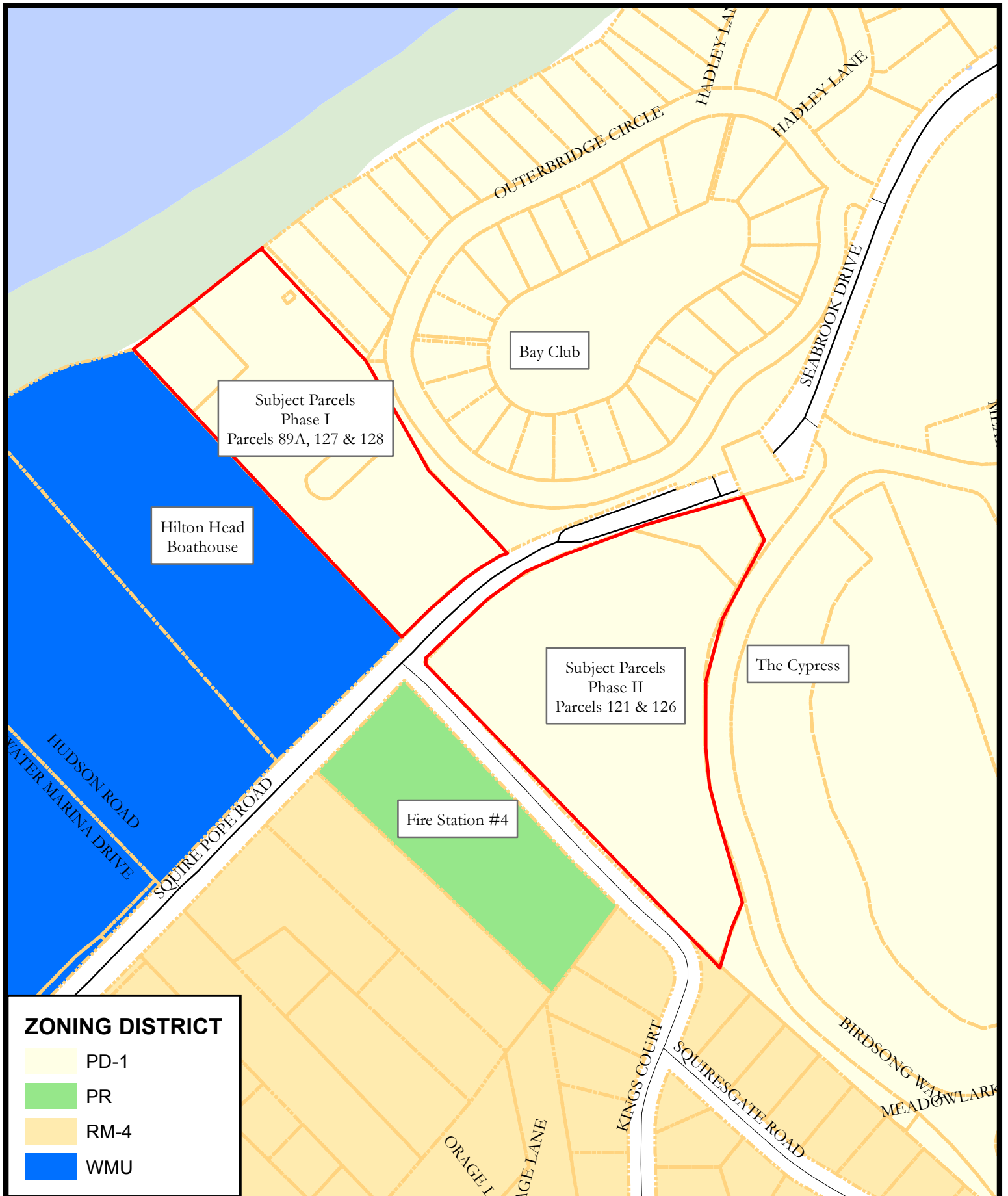
ZA-1685-2014 Bayshore at Hilton Head (currently Salty Fare)
Staff Report Attachment B: Applicant's Narrative

Site Summary Calculations

Salty Fare Property (western parcel)

Reference Site Plan prepared by: CGHJ Architects (08-21-2014)

	<i>Existing Site</i>		<i>Proposed Site</i>		<i><u>required for PD1</u></i>
	<i><u>sq.ft.</u></i>	<i><u>(%)</u></i>	<i><u>sq.ft.</u></i>	<i><u>(%)</u></i>	
Parcel Area	200,152	100%	200,152	100%	
Critical Area	10,924	5%	10,924	5%	
Site Area	189,229	95%	189,229	95%	
Impervious Area					
Asphalt Paving	77,588	41%	28,502	15%	
Building Roofs	11,144	6%	30,985	16%	
Wood Decks	6,065	3%	5,084	3%	
Concrete Paving	16,578	9%	9,770	5%	
Total Impervious	111,375	59%	74,341	39%	40% (max)
					75,691.44
Pervious Area					
Landscape	88,777	47%	94,231	50%	
Grass Fire Lane			7,003	3%	
Pervious Pavers		0%	13,653	7%	
Total Pervious	88,777	47%	114,887	61%	60% (min)
					189,229
Open Space Area			101,234	53%	50% (min)



Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928
(843) 341-4600

Town of Hilton Head Island ZA-1685-2014 Bayshore at Hilton Head (currently Salty Fare) Attachment C: Zoning Map

240 120 0 240 Feet



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



TOWN OF HILTON HEAD ISLAND

Public Projects and Facilities Management Department

TO: Stephen G. Riley, ICMA-CM, Town Manager
VIA: Scott Liggett, Director of Public Projects & Facilities
FROM: Jeff Buckalew, Town Engineer
CC: Mitch Thoreson, Town Attorney's Office
Bryan McIlwee, Asst. Town Engineer / Storm Water Manager
DATE: December 17, 2014
SUBJECT: Proposed Storm Water Agreement with Shelter Cove Harbor Company

Recommendation:

Staff recommends that the Town enter into an agreement with Shelter Cove Harbor Company ("SCHC") to undertake the maintenance responsibilities of the storm water drainage system within SCHC and acquire non-exclusive easement rights for access, maintenance, and drainage over the SCHC drainage system.

Summary:

SCHC has agreed to grant the Town maintenance rights over their drainage system. The Town will use storm water utility fee revenues to provide maintenance and improvements on this system in accordance with the agreement. The Town's responsibilities shall begin on July 1, 2015. This development will be a significant addition to the Town's storm water responsibilities. Staff does not recommend a rate increase at this time to fund this additional responsibility; however, this shall be given serious consideration during FY-16 and future budget analyses.

Background:

After the creation of the Storm Water Utility in 2001, the Town offered to accept the maintenance responsibility of the storm water systems located within the planned unit developments. To date, agreements have been executed with most of the major planned unit developments, including Palmetto Dunes. SCHC approached the Town requesting the Town accept maintenance of their drainage system. The agreement defines the roles and responsibilities of each party and the exhibit delineates the physical limits of the Town's responsibilities.

The current annual storm water fee is \$108.70 per single family unit (SFU). Staff shall closely monitor the maintenance costs and our service capabilities to determine whether a fee increase or staffing adjustments are warranted for fiscal year 2016.

Attachments:

- SCHC Drainage Agreement
- SCHC Access, Drainage and Maintenance Agreement
- SCHC Drainage Easement Exhibit (area of responsibility)

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF THAT CERTAIN DRAINAGE AGREEMENT AND ACCESS, DRAINAGE AND MAINTENANCE EASEMENT WITH SHELTER COVE HARBOUR COMPANY ACROSS PROPERTY LOCATED IN THE SHELTER COVE AREA ON HILTON HEAD ISLAND, SOUTH CAROLINA.

WHEREAS, Shelter Cove Harbour Company (“SCHC”) owns improved and unimproved real property and easements within the Shelter Cove development area on Hilton Head Island; and

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

WHEREAS, SCHC desires for the Town to utilize Storm Water Service Fees to undertake the maintenance and improvement of the storm and surface water drainage system within and through property located in Shelter Cove to facilitate the flow of storm water drainage through and from those areas as shown in the Drainage Agreement and Access, Drainage and Maintenance Easement referred to herein; and

WHEREAS, to undertake these improvements, it is necessary for the Town to obtain from SCHC a Drainage Agreement and an Access, Drainage and Maintenance Easement, copies of which are attached hereto as Exhibits “A”; and

WHEREAS, the Town Council for the Town of Hilton Head Island, South Carolina has determined that it is in the best interests of the citizens and visitors of the Town of Hilton Head Island to undertake the improvements stated above.

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

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

PASSED AND APPROVED BY THE TOWN COUNCIL THIS ____ DAY OF _____, 2015.

David Bennett, Mayor

ATTEST:

Victoria L. Pfannenschmidt, Town Clerk

Approved as to form:

Gregory M. Alford, Town Attorney

Introduced by Council Member:_____

EXHIBIT “A”

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

DRAINAGE AGREEMENT

This Drainage Agreement is made this ____ day of _____, 20__, by and between Shelter Cove Harbour Company, having an address of P.O. Box 6004, Hilton Head Island, SC 29938 (the "Company"), and the Town of Hilton Head Island, South Carolina, having an address of One Town Center Court, Hilton Head Island, South Carolina, 29928 (the "Town").

WITNESSETH

WHEREAS, Palmetto Dunes Resort is a planned unit development lying and being within the Town; and,

WHEREAS, the Company is the owner of improved and unimproved real property and easements within a portion of Palmetto Dunes Resort known as Shelter Cove in the Town; and,

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

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

WHEREAS, the Company, Inc. desires for the Town to utilize Storm Water Service Fees to undertake the maintenance and improvement of the storm and surface water drainage system within Shelter Cove, consisting of, without limitation, drainage lagoons, canals, underground pipes, culverts, manholes, weirs, valves, gates, and related infrastructure, to facilitate the flow of storm water drainage through Shelter Cove and from areas within Shelter Cove; and,

WHEREAS, the Company has agreed to grant access, drainage and maintenance easements to the Town in order to facilitate the maintenance and improvement of the storm and surface water drainage system within Shelter Cove.

NOW, THEREFORE, know all men by these presents, the Company and the Town, for and in consideration of the aforesaid premises, and the sum of One and No/100 Dollar (\$1.00), each paid to the other at and before the execution and delivery of this Agreement, and other good and valuable consideration, the receipt and sufficiency whereof is acknowledged, hereto agree as follows:

1. DEFINED TERMS: As used herein, the following terms shall mean:

- (a) Agreement. This “Drainage Agreement”.
- (b) Casualty. The destruction of all or any part of the Drainage System through a natural or other disaster.
- (c) Company. Shelter Cove Harbour Company, a South Carolina not for profit corporation.
- (d) Covenants. The “Declaration of Covenants and Restrictions Running with Certain Lands of Greenwood Development Corporation in Beaufort County, South Carolina and Provisions for Membership in the Shelter Cove Harbour Company, a South Carolina Non-Profit Corporation” dated February 22, 1986 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina (the “ROD”) in Book 342 at Page 1726, as amended from time to time.
- (e) Drainage System. The existing system of ditches, drains, lagoons, canals, underground pipes, culverts, structures, facilities, weirs, manholes, valves, gates, related equipment, and related infrastructure, and any and all related storm water improvements lying in Shelter Cove which qualify as part of a “communal storm drainage system” defined in the Town’s policy entitled “Process for Amending PUD/POA Storm Water Agreements to Include the Acquisition of Additional Systems”, attached hereto as Exhibit “A”, and by this reference made a part hereof, which facilitates the collection, storage and conveyance of storm water and surface water runoff through and from within Shelter Cove. For purposes of this Agreement, the Drainage System shall not include any bridges, docks, retaining walls (except those walls that consist of the natural or manmade soil bank of any portion of the Drainage System), road or pathway asphalt (unless damaged or removed in the process of maintaining or repairing the Drainage System), or structural bulkheads.

- (f) Drainage System Deficiency. A Drainage System Deficiency is anything which prevents, impairs or impedes the adequate flow or drainage of storm and surface water through the Drainage System, any areas which require improvements to facilitate the adequate flow of storm water and surface water through the Drainage System, any soil erosion, or any structural inadequacies. Drainage System Deficiencies do not include the appearance or appeal of the lagoons, banks of lagoons, landscaping, drains, canals, or other visible components of the Drainage System, including, but not limited to, structures, bridges, bulkheads, pipes, culverts, valves and gates. Drainage System Deficiencies do not include the introduction of pollution or pollutants into the Drainage System from any source.
- (g) Emergency. A blockage, structural or mechanical failure, collapse or other sudden catastrophic event affecting any part of the Drainage System which prevents or materially impedes the flow of storm water and surface water through all or any part of the Drainage System, or which otherwise results in an imminent peril to life or property within Shelter Cove .
- (h) Shelter Cove. A portion of the Palmetto Dunes Resort planned unit development lying and being on Hilton Head Island, Beaufort County, South Carolina, which is subject to the Covenants and is shown and more particularly described in that certain plat of survey prepared by Hussey, Gay & Bell Engineers, Savannah, Georgia, entitled “Survey of Marina Tract, Zone 3, Palmetto Dunes, Hilton Head Island, South Carolina” and recorded in the ROD in Plat Book 30 at Page 65, and by this reference is made a part hereof.
- (i) Storm Water Service Fees. The fees collected by Beaufort County, South Carolina, under the authority of and as defined in Beaufort County Ordinance 99-101, *et seq.*, as amended, and which are remitted by Beaufort County, South Carolina, to the Town; or any similar fee, however denominated, imposed and collected by any subsequent or successor Storm Water Utility operated by the Town under the authority of Ordinance Number 2002-43.
- (j) Storm Water Project Prioritization and Annual Budget Process. The Town shall at all times maintain a current, prioritized list of all known Drainage System Deficiencies within the Town limits that

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

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

2. **GRANT OF EASEMENTS:** Simultaneous with the execution and delivery of this Agreement, the Company shall grant an “Access, Drainage and Maintenance Easement” (the “Easement”) to the Town to allow the Town to access, maintain, improve and utilize the Drainage System within Shelter Cove, with said Easement being in the form attached hereto as **Exhibit “B”**, and made a part hereof.
3. **UPKEEP AND MAINTENANCE OF DRAINAGE SYSTEM:** Upon the execution and delivery of this Agreement and the Easement, the Town shall be responsible for any improvement, repair or maintenance necessary to correct any Drainage System Deficiency under the terms and conditions of this Agreement and the Easement
4. **PROCEDURE FOR TOWN’S MAINTENANCE OF DRAINAGE SYSTEM:** The parties acknowledge that the Town intends to provide, through its Storm Water Project Prioritization and Annual Budget Process, for the maintenance of the Drainage System and the correction of identified Drainage System Deficiencies, other than those Drainage System Deficiencies caused by an Emergency or Casualty. Other than in the case of an Emergency or Casualty, as described in Sections 7 and 8 below, the parties agree to the following procedure for the Town’s improvement, repair and maintenance of the Drainage System:
 - (a) Identifying Drainage System Deficiencies. The Company shall identify any Drainage System Deficiencies.
 - (b) Schedule for Submission. The Company shall submit its written description of all known or perceived Drainage System Deficiencies to the Assistant Town Engineer / Storm Water Manager, describing the nature, location and cause, if known, of each Drainage System Deficiency. To the extent available, the Company shall also provides potential solutions and preliminary cost estimates for each such Drainage System Deficiency. Drainage System Deficiencies that are reported to the Town, or

which are discovered by the Town by the end of any calendar year shall be considered in the development of the Storm Water Project Prioritization and Annual Budget Process for the following fiscal year. By the end of the calendar year, the Town shall submit to the Company a written description of any Drainage System Deficiencies identified by the Town through maintenance activity or inspections during that year.

- (c) Completion of Maintenance. The Town shall develop a Storm Water Project Prioritization and Annual Budget Process that will address the identified Drainage System Deficiencies as follows:
 - (i) The Town shall determine the scope and extent of the improvement, repair or maintenance that is necessary to correct any Drainage System Deficiencies, and the means, methods and materials needed to accomplish the same;
 - (ii) The Company or the Town shall establish the priority of the correction of the Drainage System Deficiencies and shall schedule the improvement, repair or maintenance to correct the Drainage System Deficiencies for a specific year within the Storm Water Project Prioritization and Annual Budget Process. The determination of the priority, scheduling and funding of the correction of Drainage System Deficiencies shall be made by the Town, taking into account the following:
 - (1) The availability and amount of revenue from bonds or Storm Water Service Fees in any given fiscal year; and
 - (2) All other projects, or requested improvements, repair and maintenance that are to be funded with Storm Water Service Fees.
 - (iii) The Town shall complete the work necessary to correct the Drainage System Deficiencies in the fiscal year as determined by the Town as a part of the Storm Water Project Prioritization and Annual Budget Process, unless emergency projects or repairs alter the prioritization such that funds are insufficient to correct all Drainage System Deficiencies as intended within the same fiscal year.

- (d) Other than in the case of an Emergency, the Town and the Company shall mutually agree in writing as to the scheduling of any work to be performed hereunder in advance of the commencement of such work.
- (e) The Company shall be solely responsible for the notification of Shelter Cove property owners or guests regarding any Town maintenance or emergency work that may disrupt their normal activities.
- (f) The Town cannot guarantee that the amount of available Storm Water Service Fees, the number of projects to be funded with Storm Water Service Fees in any given fiscal year, and events such as weather related emergencies and drainage system failures in other parts of Hilton Head Island will not cause delays in the correction of Drainage System Deficiencies within Shelter Cove and elsewhere. The parties acknowledge that the Town's determinations with respect to the priority, scheduling and funding of the correction of any Drainage System Deficiency shall be final.

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

6. PAYMENTS AS CURRENT EXPENSE OF TOWN: Any payments to be made by the Town hereunder shall be made from Storm Water Service Fees budgeted for by the Town in any given fiscal year. The Town and the Company intend the payment obligation of the Town to constitute a current expense of the Town and such payment obligation shall not in any way be construed to be a debt of the Town in contravention of any applicable constitutional or statutory limitations concerning indebtedness of the Town, nor shall anything contained herein constitute a pledge of general tax revenues, funds, money or credit of the Town.

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

- (a) Responsibilities of the Company. The Company shall take such steps as may be reasonably necessary to secure any area affected by the Emergency. The Company shall notify the Town as soon as is practical after discovery of the Emergency.
- (b) Town Responsibilities. Upon receipt of notification of an Emergency from the Company, the Town shall determine the scope and extent of the work that is necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same. The Town shall correct or repair the damage caused by the Emergency as soon as is practical, taking into account the threat presented by the Emergency, the cause of the Emergency or the existence of any general emergency affecting the Town and the availability of funds for repairs of such damages. The Town may seek reimbursement for any costs incurred by the Town as a result of any Emergency from Storm Water Service Fees.

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

- (a) Agreement Not Terminated. This Agreement shall remain in full force and effect.
- (b) Design of Drainage System. The Town shall produce engineering and design plans at its expense for any necessary reconstruction of the Drainage System.
- (c) Approval of Plans. The engineering and design plans must be approved in writing by the Company, prior to any reconstruction of the Drainage System. Reconstruction may require work outside of the Easement limits, and, in such event, the parties agree to modify the Easement and/or any amendments or modifications thereof by a written agreement to be recorded in the ROD, increasing the Easement areas as reasonably necessary to accommodate such reconstruction, and the Company agrees to grant any temporary license allowing the Town temporary access to those Common Properties of Shelter Cove as reasonably necessary to accommodate such reconstruction;

- (d) Reconstruction of Drainage System. Following the approval of the engineering and design plans and specifications by the Company, the completion of an amendment to the Easement, and any temporary license agreement as set forth in Section 8(c) above, the Town shall complete the reconstruction of the Drainage System as soon as is practical, taking into account the threat presented by the cause of the Casualty, the existence of any general emergency affecting the Town and availability of funding. The Town may seek reimbursement for any costs incurred by the Town as a result of any Casualty from Storm Water Service Fees, bond, or other government aid and assistance programs.

9. MAINTENANCE OF DRAINAGE SYSTEM BY THE COMPANY:

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

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

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

- (c) The Company shall bid the work in accordance with the Town's Procurement Code, § 11-1-111, *Municipal Code of The Town of*

Hilton Head Island, South Carolina (1983), as the same may be amended from time to time, only upon receipt of the Town's written approval.

- (d) Any changes in the agreed scope of work resulting in additional work or cost to the Town shall be approved in writing by the Town prior to commencement of any additional work.
- (e) The Company shall notify the Town within forty-eight (48) hours of the commencement of work and at any key junctures of the work where the Town may need to inspect the work.
- (f) Upon completion of the work, as approved by the Town, the Company shall submit to the Town its request for reimbursement, which shall detail the work performed and the payments made, and shall include any required test reports, construction data/measurements or as-built surveys, and the Company's written certification that the work was completed in accordance with the approved plans and specifications.
- (g) The Town shall thereafter budget funds for the payment of the reimbursement to the Company from Storm Water Service Fees in the fiscal year that the work is scheduled for completion in the Town's Storm Water Project Prioritization and Annual Budget Process.

10. EMERGENCY WORK BY THE COMPANY: In the event that the Town is unable to repair or correct the damage caused by an Emergency in a timeframe that is acceptable to the Company, the following shall apply:

- (a) The Company shall consult with the Town to determine a cost-efficient scope and extent of the work that is necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same.
- (b) The Company, or its agents or contractors, shall complete the work that is necessary to repair or correct the damage caused by the Emergency.
- (c) Upon completion of the work, the Company shall submit its request to the Town for reimbursement, which shall detail the work performed and the cost for the same, and shall include any required test reports, construction data/measurements or as-built surveys,

and the Company's written certification that the work was necessary to repair or correct the damage caused by an Emergency.

- (d) Within one (1) fiscal year following the completion of the work by the Company necessary to repair or correct the damage caused by the Emergency, the Town shall budget funds for the payment of the reimbursement to the Company, and shall pay the same in accordance with the approved budget.

11. NO GUARANTEES REGARDING FLOODING: The Company acknowledges that the Town's performance of its obligations under this Agreement does not guarantee or insure that property within Shelter Cove will be free of events of flooding or erosion, and that the Town does not represent or warrant to the Company that the performance of the Town's obligations under this Agreement will operate to prevent events of flooding or erosion within Shelter Cove.

12. WAIVER OF STORMWATER SERVICE FEE CREDIT: Upon the execution and delivery of this Agreement, and for and during the term or any extensions hereof, the Company acknowledges that it shall not be entitled to receive and hereby waives any credit for Storm Water Service Fees from Beaufort County or the Town with respect to any real property located within the limits of Shelter Cove for and during the Term or any renewal thereof of this Agreement.

13. TERM: This Agreement shall remain in place for a period of five (5) years (the "Term"), and shall renew automatically for successive one (1) year periods thereafter, (each such one (1) year period being a Renewal Term), unless any party notifies the others, in writing, of its intention to terminate this Agreement. Any such notice shall be delivered more than one hundred and twenty (120) days prior to the end of any Town fiscal year, which is June 30. Upon delivery of such notice, this Agreement shall terminate on July 1 of the calendar year in which the notice is delivered. The parties shall thereafter execute and deliver such documents as may be necessary to cancel the Easement-delivered pursuant to this Agreement.

14. REPRESENTATION AND WARRANTIES OF THE COMPANY:
The Company represents and warrants that:

- (a) As shown by the Resolutions of the Board of Directors of the Company attached hereto as **Exhibit "C"**, the Company represents

that it has full authority to execute, deliver and perform this Agreement and to execute and deliver the Easement to be delivered pursuant to this Agreement.

- (b) It is not now a party to any litigation affecting the property burdened by the Easement herein which could impair its obligations under this Agreement or the Easement, and it knows of no litigation or threatened litigation affecting its ability to grant the Easement.
- (c) In regard to any pipes or other portions of the Drainage System, which are located in whole or in part on private lots (i.e. not within common area or open space parcels), the Company shall have full authority under the Covenants to convey and/or assign the rights contemplated herein

15. REPRESENTATION AND WARRANTIES OF THE TOWN: The Town represents and warrants that:

- (a) As shown by the Resolution of the Town that is attached hereto as **Exhibit "D"**, the Town represents that it has the power and authority to enter into this Agreement and complete its obligations hereunder; and,
- (b) It is not now a party to any litigation which could impair the obligations of the Town under this Agreement, and the Town knows of no litigation or threatened litigation affecting its ability to perform hereunder.

16. TAXES: The Company shall pay, prior to delinquency, all taxes on the real property within Shelter Cove burdened by the Easements granted under this Agreement. Should the Company fail to pay said taxes prior to delinquency, the Town may pay said taxes and the Company shall reimburse the Town for such tax payment within thirty (30) days after the Town's notification to the Company of its tax payment and a copy of the Town's tax payment receipt is mailed.

17. DEFAULT: The Town and the Company agree that in the event of a default or breach of any provision or term of this Agreement, the non-defaulting party or parties shall give written notice to the defaulting party or parties of the default or breach. In the event that the defaulting party or parties fails to cure the default or breach within thirty (30) days of the date

of the written notice specifying the default or breach, then the non-defaulting party or parties shall be entitled to pursue any remedy at law or in equity against the defaulting party or parties, including but not limited to an action for damages, injunction or specific performance of this Agreement.

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

19. GENERAL PROVISIONS:

- (a) Binding Effect. This Agreement shall inure to the benefit of and be binding upon the Company and the Town, and their respective successors and assigns.
- (b) Amendment, Changes and Modifications. Except as is otherwise provided herein, this Agreement may not be effectively modified, amended, changed or altered without the written consent of the Town and the Company.
- (c) Severability. In the event that any term or provision of this Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other term or provision hereof.
- (d) Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument.
- (e) Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

- (f) Captions. The captions or headings used herein are for convenience only and in no way define, limit, expand or describe the scope or intent of any term or provision of this Agreement.
- (g) Plural/Singular. Where appropriate, the use of the singular herein shall be deemed to include the plural, and the use of the plural herein shall be deemed to include the use of the singular.
- (h) No Third Party Beneficiaries. The Town and the Company affirmatively represent that this Agreement is made solely for the benefit of the parties hereto and their respective successors and assigns, and is not for the benefit of any third party who is not a signature party hereto. It is the express intent of the Town and the Company that no other party shall have any enforceable rights hereunder, or any right to the enforcement hereof, or to any claim for damages as a result of any alleged breach hereof.
- (i) Notices. All notices, applications, requests, certificates or other communications required hereunder shall be sufficiently given and shall be deemed given on the date when such is delivered in person, or deposited in the United States Mail, by regular first class mail, postage prepaid, at the following addresses, or at such other address as may be designated, in writing, by the parties:

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

To the Company: Shelter Cove Harbour Company
c/o Board President
P.O. Box 6004
Hilton Head Island, SC 29938

With Copy to: McNair Law Firm, P.A.
c/o Walter J. Nester, III
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

- (j) No Waiver. No failure of any party hereto to exercise any power or right given to such party hereunder, or to insist on strict compliance by any other party of its obligations hereunder, and no custom or practice of the parties at variance with the terms and provisions hereof shall constitute a waiver of any party's right to thereafter demand strict compliance with the terms of this Agreement.
- (k) Further Assurances and Corrective Documents. The Town and the Company agree to perform, execute, acknowledge, deliver or cause to be done all such further acts as may be reasonably determined to be necessary to carry out this Agreement and give effect to the terms and provisions hereof. The Town and the Company agree that each shall, upon request, execute and deliver such other or further or corrective documents as may be reasonably determined to be necessary to carry out this Agreement and each of the terms and provisions hereof.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, The Town and the Company by and through their duly authorized officers, have executed and delivered this Agreement as of this ____ day of _____, 20____.

WITNESSES:

**SHELTER COVE HARBOUR
COMPANY**

By: Charles E. Davis, III
Its: Board President

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

By: David Bennett
Its: Mayor

Attest:

By: Stephen G. Riley, ICMA-CM
Its: Manager

EXHIBIT “A”

**Process for Amending PUD/POA Storm Water Agreements to Include the Acquisition of
Additional Systems**

(Town of Hilton Head Island 2013)

TOWN OF HILTON HEAD ISLAND

PROCESS FOR AMENDING PUD/POA STORM WATER AGREEMENTS TO INCLUDE THE ACQUISITION OF ADDITIONAL SYSTEMS

[2013]

The following shall be the a process whereby a Sub-POA or individual property owner located within a Master PUD / POA, in which the PUD / POA is party to an existing agreement with the Town for maintenance of their storm drainage system, may dedicate its storm drainage systems to that Master PUD / POA for inclusion in the Town's storm drainage maintenance responsibilities.

Whereas the Town has previously entered into a drainage agreement and easement agreement (collectively, the "Agreements") with a Planned Unit Development (PUD) or Property Owner's Association (POA), and an individual property owner or a smaller POA or regime (Sub-POA) operating within the limits and covenants of the major PUD or POA desires for inclusion of its storm drainage system in the Town's storm drainage maintenance responsibilities per the terms of the Agreements, they shall abide by the following process:

- The individual property owner or Sub-POA shall enter into an easement agreement with the PUD / POA dedicating access and maintenance rights over its communal storm drainage systems to the PUD / POA and cause for such agreement to be recorded with the Office of the Register of Deeds for Beaufort County. The Town will provide a standard agreement template to the PUD / POA for this purpose.
- For the purposes of these agreements and qualification for storm water services by the Town, communal storm drainage systems shall be defined as those which convey storm water runoff: from a public road right of way, from a platted private road right of way within the PUD, from two or more parcels and through a multi-family development, or from an existing pond located on a parcel developed as residential multi-family. For the purposes of this policy, a pond shall be defined as a body of standing water with a permanent pool of greater than 500 square feet, which accepts and conveys runoff from surrounding parcels. Storm drainage systems which only convey runoff from the parcels on which they lie are not eligible for service by the Town, except for those systems including the aforementioned ponds and that discharge from such ponds, which are located on a parcel developed as multi-family residential. The PUD / POA, individual property owner or Sub-POA may request that the Town verify the qualification of communal systems prior to the easement being recorded. The Town Engineer shall make the final determination of drainage patterns and qualification. PUD systems which convey no runoff from road rights of way or residential zoned

parcels and receive only runoff from commercial zoned parcels are not eligible for storm water service by the Town.

- The widths of the easements shall comply with minimum requirements of the Land Management Ordinance (LMO), Section 16-5-606. However, exceptions for existing conditions may be made at the sole discretion of the Town. Access to and connectivity of the systems must be provided.
- Once the individual property or Sub-POA easements are executed, the POA / PUD shall submit to the Town a written request to dedicate the newly acquired easements to the Town along with copies of the signed easements.
- The Town shall review the offer of dedication and accept those easements over communal systems which comply with the LMO easement standards.
- If accepted by the Town, the new easements shall be recorded by the individual property owner, Sub-POA, or PUD / POA, and the Town shall subsequently revise the easement exhibit which delineates the limits of the Town's maintenance responsibilities for the PUD / POA and cause for the Agreements to be amended and recorded with the Office of the Register of Deeds for Beaufort County as necessary.
- The Town is willing to accept offers of dedication at any time; however the master PUD/POA easement exhibit to the Agreements shall only be revised and recorded once per calendar year for all new systems accepted by December 31, and the actual services will not begin until July 1 of the following calendar year, as the Town must develop a budget for each fiscal year.
- If available, the Town requests the following documents be provided with the offer of dedication:
 - A list of known or perceived storm drainage deficiencies
 - Storm drainage plans or maps
 - Recorded Plats and/or Exhibits regarding access and drainage
 - Relevant Covenants regarding of access and drainage
 - Survey data or sealed construction drawings of any original development plans or infrastructure improvements.

EXHIBIT “B”

Access, Drainage and Maintenance Easement

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

**ACCESS, DRAINAGE AND
MAINTENANCE EASEMENT**

Know all men by these presents, that Shelter Cove Harbour Company, a South Carolina not for profit corporation, having an address of P.O. Box 6004, Hilton Head Island, South Carolina 29938 (the "Company"), and the Town of Hilton Head Island, South Carolina, having an address of One Town Center Court, Hilton Head Island, South Carolina, 29928 (the "Town"), for and in consideration of the sum of One and No/100 Dollar (\$1.00), each paid to the other at and before the execution and delivery of this Access, Drainage and Maintenance Easement (the "Easement"), the terms and conditions of the Drainage Agreement (as hereinafter defined), and other good and valuable consideration, the receipt and sufficiency whereof is acknowledged, agree as follows:

1. DEFINED TERMS: As used herein, the following terms shall mean:

- (a) Company. Shelter Cove Harbour Company.
- (b) Covenants. The "Declaration of Covenants and Restrictions Running with Certain Lands of Greenwood Development Corporation in Beaufort County, South Carolina and Provisions for Membership in the Shelter Cove Harbour Company, a South Carolina Non-Profit Corporation" dated February 22, 1986 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina (the "ROD") in Book 342 at Page 1726, as amended.
- (c) Drainage Agreement. That certain agreement by and between the Town and the Company of even date herewith, which requires the grant of this Easement for the purposes described therein.
- (d) Drainage System. The existing system of ditches, drains, lagoons, canals, underground pipes, culverts, structures, facilities, weirs, manholes, valves, gates, related equipment, and related infrastructure, and any and all related storm water improvements lying in Shelter Cove which qualify as part of a "communal storm drainage system" defined in the Town's policy entitled "Process for Amending PUD/POA Storm Water Agreements to Include the Acquisition of Additional Systems", attached hereto as **Exhibit "A"**, and by this reference made a part hereof, which facilitates the collection, storage and conveyance of storm water and surface water runoff through and from within Shelter Cove. For purposes of this Agreement, the Drainage System shall not include any bridges, docks, retaining walls, (except those walls that consist of the natural or manmade soil bank of any portion of the Drainage System), road or pathway asphalt (unless damaged or removed in the process of maintaining or repairing the Drainage System), or structural bulkheads.

- (e) Emergency. A blockage, structural or mechanical failure, collapse or other sudden catastrophic event affecting any part of the Drainage System which prevents the flow of storm water and surface water through all or any part of the Drainage System, or which otherwise results in an imminent peril to life or property within Shelter Cove.
- (f) Permanent Structure: Any vertical structure other than storm water drainage or roadway infrastructure, including, but not limited to, the following: buildings (including sheds), walls, and other masonry structures, tennis courts, and swimming pools.
- (g) Shelter Cove. A portion of the Palmetto Dunes Resort planned unit development lying and being on Hilton Head Island, Beaufort County, South Carolina, which is subject to the Covenants and is shown and more particularly described in that certain plat of survey prepared by Hussey, Gay & Bell Engineers, Savannah, Georgia, entitled "Survey of Marina Tract, Zone 3, Palmetto Dunes, Hilton Head Island, South Carolina" and recorded in the ROD in Plat Book 30 at Page 65, and by this reference is made a part hereof.
- (h) Town. The Town of Hilton Head Island, South Carolina.

2. GRANT OF EASEMENTS: The Company does hereby grant, transfer, sell and convey to the Town and its agents, assigns, employees and contractors, and the Town's vehicles, machinery and equipment, and creates and establishes for the benefit of the Town, the following easements:

- (a) A non-exclusive access easement on, over and across any roads and streets within Shelter Cove, owned by the Company, and on, over and across any property owned by the Company, which is encumbered by or contains all or any part of the Drainage System (the "Access Easement"). This Access Easement shall include a non-exclusive and partial assignment of any and all easement rights for access held by the Company under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise, over property that the Company does not own within Shelter Cove and upon which any part of the Drainage System lies upon or passes upon, across, under or through.
- (b) A non-exclusive maintenance easement on, under, over, through and across any property owned by the Company, which is encumbered by or contains all or any part of the Drainage System. This Maintenance Easement shall include a non-exclusive and partial assignment of any and all easement rights for maintenance, construction, or otherwise, which is granted to the Company under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise over property that the Company does not own within Shelter Cove and upon which any part of the Drainage System lies upon or passes upon, across, under or through, if any. This Maintenance Easement shall include both the

Drainage System, including all facilities or structures directly related to the collection, storage and conveyance of storm water and surface water now or hereafter existing within Shelter Cove, and sufficient property beside or over any part of the Drainage System to allow for excavation and any other work reasonably necessary to improve, repair or maintain the Drainage System, so long as such excavation and other work shall not impact any Permanent Structure without the prior written consent of the Company.

- (c) A non-exclusive Drainage Easement for the conveyance of any storm water and surface water originating from within or from outside the boundaries of Shelter Cove through the Drainage System, at such rates and in such amounts as may occur from time to time (the "Drainage Easement").
- (d) This Drainage Easement includes a non-exclusive and partial assignment of any and all easement rights for drainage held by the Company under the Covenants or any other recorded declaration of covenants and restrictions, recorded easements or otherwise, over property that the Company does not own within Shelter Cove and upon which any part of the Drainage System lies upon or passes upon, across, under or through; provided however, that the Town shall provide prior written notification to the Company of any potentially disruptive improvements and/or modifications to the systems conveying storm water and surface water originating from outside the boundaries of Shelter Cove and through the Drainage System.

3. THIS EASEMENT IS GRANTED AND ACCEPTED SUBJECT TO THE FOLLOWING:

- (a) The Town agrees that the use of the easements granted herein shall be restricted to the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday, excluding public holidays, except in the event of an Emergency.
- (b) Other than in the case of an Emergency, the Town and the Company shall determine the scheduling of any work to be performed hereunder, on its or their property, in advance of the commencement of the work.
- (c) This Easement is conveyed subject to all other easements, licenses, and conveyances of record and is subject to the rights herein reserved by the Company and its successors and assigns, to utilize its property at any time, in any manner, and for any purpose, provided, however, that such use by the Company shall not be inconsistent with or prevent the full utilization by the Town of the rights and privileges granted herein, except as otherwise herein provided.
- (d) The Town agrees to plan, lay out, and execute or build improvements, repairs and maintenance of the Drainage System, and further agrees that its exercise of the rights granted in this Easement shall be under its exclusive control and that it

shall, at all times, comply with all applicable laws, rules, codes, and regulations including the Covenants.

- (e) The Company shall not erect any Permanent Structure on, under, over, through or across any property of the Company, which is encumbered by all or any part of the Drainage System without the Town's prior written approval, which approval shall not be unreasonably withheld. The Company shall not impede, obstruct, or allow to be obstructed, the natural flow of storm water and surface water runoff through the Drainage System, or from any part of the Drainage System; provided, however, that the Company may have a continuing obligation under the Covenants to repair and maintain various improvements located within the Common Properties (lagoons and lagoon banks, recreational areas, roads, pathways, utilities, etc.), and this Agreement shall not be intended to in any way restrict or limit the Company from taking reasonable actions to perform said obligations.
 - (f) The rights conveyed under this Easement shall be limited to the parties and purposes stated herein. This Easement shall convey no rights of access or otherwise to the general public.
- 4. The Company acknowledges that the Town shall have no obligation to perform or pay for any work to repair, improve or maintain the appearance or appeal of the lagoons, banks of lagoons, landscaping, drains, canals, or other visible components of the Drainage System, including, but not limited to, structures, bridges, bulkheads, pipes, culverts, valves and gates.
 - 5. The Town agrees to cause all work contemplated hereunder to be performed in a workmanlike fashion with minimal interference to the Company, its successors, assigns, invitees, guests, licensees, and agents. The Town further agrees to cause the work contemplated hereunder to be completed in an expeditious and timely fashion, and that all materials, debris, and construction materials shall be promptly removed. The Town shall restore any other part of the property of the Company, which may be damaged as a result of the Town's exercise of the rights granted hereunder to its pre-existing state.
 - 6. The Town hereby warrants to the Company that the granting of this Easement shall not affect any "set back" lines with respect to any property currently owned by the Company.
 - 7. In regard to any pipes or other portions of the Drainage System, which are located in whole or in part on private lots (i.e. not within common area or open space parcels), the Company shall have full authority under the Covenants to convey and/or assign the rights contemplated herein.
 - 8. In the event of a termination of the Drainage Agreement this Easement, and the rights granted herein, shall terminate, and the parties agree to thereafter promptly execute,

deliver and cause to be recorded such document as may be necessary to terminate and cancel this Easement in the public records.

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

[SIGNATURES ON FOLLOWING PAGES]

By: David Bennett
Its: Mayor

By: Stephen G. Riley, ICMA-CM
Its: Manager

STATE OF SOUTH CAROLINA) UNIFORM ACKNOWLEDGMENT
)
COUNTY OF BEAUFORT) S.C. CODE § 30-5-30 (SUPP. 2010)

Sworn to and Subscribed before me
on this _____ day of _____, 20____.

Notary Public for South Carolina
My Commission Expires:_____

EXHIBIT “A”

**Process for Amending PUD/POA Storm Water Agreements to Include the Acquisition of
Additional Systems**

(Town of Hilton Head Island 2013)

TOWN OF HILTON HEAD ISLAND

PROCESS FOR AMENDING PUD/POA STORM WATER AGREEMENTS TO INCLUDE THE ACQUISITION OF ADDITIONAL SYSTEMS

[2013]

The following shall be the a process whereby a Sub-POA or individual property owner located within a Master PUD / POA, in which the PUD / POA is party to an existing agreement with the Town for maintenance of their storm drainage system, may dedicate its storm drainage systems to that Master PUD / POA for inclusion in the Town's storm drainage maintenance responsibilities.

Whereas the Town has previously entered into a drainage agreement and easement agreement (collectively, the "Agreements") with a Planned Unit Development (PUD) or Property Owner's Association (POA), and an individual property owner or a smaller POA or regime (Sub-POA) operating within the limits and covenants of the major PUD or POA desires for inclusion of its storm drainage system in the Town's storm drainage maintenance responsibilities per the terms of the Agreements, they shall abide by the following process:

- The individual property owner or Sub-POA shall enter into an easement agreement with the PUD / POA dedicating access and maintenance rights over its communal storm drainage systems to the PUD / POA and cause for such agreement to be recorded with the Office of the Register of Deeds for Beaufort County. The Town will provide a standard agreement template to the PUD / POA for this purpose.
- For the purposes of these agreements and qualification for storm water services by the Town, communal storm drainage systems shall be defined as those which convey storm water runoff: from a public road right of way, from a platted private road right of way within the PUD, from two or more parcels and through a multi-family development, or from an existing pond located on a parcel developed as residential multi-family. For the purposes of this policy, a pond shall be defined as a body of standing water with a permanent pool of greater than 500 square feet, which accepts and conveys runoff from surrounding parcels. Storm drainage systems which only convey runoff from the parcels on which they lie are not eligible for service by the Town, except for those systems including the aforementioned ponds and that discharge from such ponds, which are located on a parcel developed as multi-family residential. The PUD / POA, individual property owner or Sub-POA may request that the Town verify the qualification of communal systems prior to the easement being recorded. The Town Engineer shall make the final determination of drainage patterns and qualification. PUD systems which convey no runoff from road rights of way or residential zoned

parcels and receive only runoff from commercial zoned parcels are not eligible for storm water service by the Town.

- The widths of the easements shall comply with minimum requirements of the Land Management Ordinance (LMO), Section 16-5-606. However, exceptions for existing conditions may be made at the sole discretion of the Town. Access to and connectivity of the systems must be provided.
- Once the individual property or Sub-POA easements are executed, the POA / PUD shall submit to the Town a written request to dedicate the newly acquired easements to the Town along with copies of the signed easements.
- The Town shall review the offer of dedication and accept those easements over communal systems which comply with the LMO easement standards.
- If accepted by the Town, the new easements shall be recorded by the individual property owner, Sub-POA, or PUD / POA, and the Town shall subsequently revise the easement exhibit which delineates the limits of the Town's maintenance responsibilities for the PUD / POA and cause for the Agreements to be amended and recorded with the Office of the Register of Deeds for Beaufort County as necessary.
- The Town is willing to accept offers of dedication at any time; however the master PUD/POA easement exhibit to the Agreements shall only be revised and recorded once per calendar year for all new systems accepted by December 31, and the actual services will not begin until July 1 of the following calendar year, as the Town must develop a budget for each fiscal year.
- If available, the Town requests the following documents be provided with the offer of dedication:
 - A list of known or perceived storm drainage deficiencies
 - Storm drainage plans or maps
 - Recorded Plats and/or Exhibits regarding access and drainage
 - Relevant Covenants regarding of access and drainage
 - Survey data or sealed construction drawings of any original development plans or infrastructure improvements.

EXHIBIT “C”

Resolution of the Board of Directors of the Company

**RESOLUTIONS OF THE
BOARD OF DIRECTORS OF
SHELTER COVE HARBOUR COMPANY
a South Carolina not for profit corporation**

The Board of Directors of Shelter Cove Harbour Company (the "Company") hereby adopts the following resolutions effective July 24, 2014:

RESOLVED, that that the Company is empowered and authorized to enter into that certain Drainage Agreement (the "Agreement") and Access, Drainage and Maintenance Easement (the "Easement") by and between the Company and the Town of Hilton Head Island, South Carolina (the "Town"); and

FURTHER RESOLVED, that Charles E. Davis, III, the President of the Board of Directors of the Company, is hereby authorized and directed to execute in the name of and on behalf of the Company, without the joinder or consent of any other person, to execute the above-referenced Agreement and Easement.

The above Company resolutions were adopted on the date set forth above by the undersigned, the Secretary of the Board of Directors of the Company.

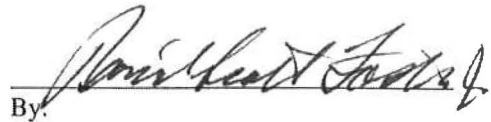

By: _____
Its: Secretary

EXHIBIT “D”

Resolution of the Town

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF THAT CERTAIN DRAINAGE AGREEMENT AND ACCESS, DRAINAGE AND MAINTENANCE EASEMENT WITH SHELTER COVE HARBOUR COMPANY ACROSS PROPERTY LOCATED IN THE SHELTER COVE AREA ON HILTON HEAD ISLAND, SOUTH CAROLINA.

WHEREAS, Shelter Cove Harbour Company (“SCHC”) owns improved and unimproved real property and easements within the Shelter Cove development area on Hilton Head Island; and

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

WHEREAS, SCHC desires for the Town to utilize Storm Water Service Fees to undertake the maintenance and improvement of the storm and surface water drainage system within and through property located in Shelter Cove to facilitate the flow of storm water drainage through and from those areas as shown in the Drainage Agreement and Access, Drainage and Maintenance Easement referred to herein; and

WHEREAS, to undertake these improvements, it is necessary for the Town to obtain from SCHC a Drainage Agreement and an Access, Drainage and Maintenance Easement, copies of which are attached hereto as Exhibits “A”; and

WHEREAS, the Town Council for the Town of Hilton Head Island, South Carolina has determined that it is in the best interests of the citizens and visitors of the Town of Hilton Head Island to undertake the improvements stated above.

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

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

PASSED AND APPROVED BY THE TOWN COUNCIL THIS ____ DAY OF _____, 2015.

David Bennett, Mayor

ATTEST:

Victoria L. Pfannenschmidt, Town Clerk

Approved as to form:

Gregory M. Alford, Town Attorney

Introduced by Council Member:_____