



**The Town of Hilton Head Island
Regular Town Council Meeting
January 20, 2015**

4:00 P.M. – BENJAMIN M. RACUSIN COUNCIL CHAMBERS

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, January 6, 2015
- 7) Report of the Town Manager**
 - a. Semi Annual Update of the Design Review Board – Scott Sodemann, Chairman
 - b. Town Manager's Items of Interest
 - (1) Town News
 - (2) Noteworthy Events
- 8) Reports from Members of Council**
 - a. General Reports from Council
- 9) Appearance by Citizens**
- 10) Unfinished Business**
 - a. **Revised First Reading of Proposed Ordinance 2014-26**
Revised 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.

b. Second Reading Proposed Ordinance 2015-04

Second 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.

11) New Business

a. First Reading of Proposed Ordinance 2015-01

First Reading of Proposed Ordinance 2015-01 of The Town Council of the Town of Hilton Head Island, South Carolina, authorizing the execution of a lease with the Drydock Enterprises, Ltd. d/b/a The Drydock, pursuant to the authority of S.C. Code Ann. § 5-7-40 (Supp. 2011), and § 2-7-20, *Code of the Town of Hilton Head Island, South Carolina*, (1983); and providing for severability and an effective date.

b. First Reading of Proposed Ordinance 2015-02

First Reading of Proposed Ordinance 2015-02 of the Town Of Hilton Head Island, South Carolina, authorizing the execution of a sale and purchase agreement and the execution of a deed for the sale of approximately 2.4 acres of real property along Spanish Wells Road to the Paddocks Limited Liability Company, 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 of Proposed Ordinance 2015-05

First Reading of Proposed Ordinance 2015-05 of the Town of Hilton Head Island, South Carolina, to amend Title 2 General Government and Administration of the Municipal Code of the Town of Hilton Head Island, South Carolina by amending Chapter 5 (Meetings of Council and Rules of Procedure) Section 2-5-60, Committees of Council; and providing for severability and an effective date.

12) Adjournment

THE TOWN OF HILTON HEAD ISLAND
REGULAR TOWN COUNCIL MEETING

Date: Tuesday, January 6, 2015

Time: 4:00 P.M.

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

Absent from Town Council: Lee Edwards, Kim Likins, *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*; 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*; Jeff Buckalew, *Town Engineer*; Julian Walls, *Facilities Manager*; Anne Cyran, *Senior Planner*; Heather Colin, *Development Review Administrator*; 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 16, 2014

Mr. Harkins moved to approve. Mr. McCann seconded. The minutes of the December 16, 2014 Town Council Regular Meeting were unanimously approved by a vote of 5-0.

7) Report of the Town Manager

a. Town Manager's Items of Interest

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

- (1) Town News
- (2) Noteworthy Events

b. February 3, 2015 Town Council Meeting

Mr. Riley explained that the MASC Hometown Legislative Action Day conflicts with the meeting and after discussion it was the consensus of Council to reschedule the February 3 Town Council meeting.

c. Semi-Annual Land Acquisition Update

Mr. Riley reviewed the information stating he was available for any questions and distributed a list of properties that were purchased with the \$17,000,000 Bond.

Mr. McCann noted he has received calls and emails concerning the usage of Town owned land. He stated he would like Council to further review and discuss the subject in detail at a future workshop/meeting.

8) Reports from Members of Council

a. General Reports from Council

Mr. Harkins stated Don Kirkman, Executive Director of the EDC held a session with members of the community that have significant investment in the medical market. The group reviewed needs for the Community and discussed future directives.

Mr. Grant asked that Mr. Kirkman be invited to give reports at future Town Council Meetings. Mayor Bennett asked Mr. Riley to work on scheduling.

Mayor Bennett stated his he would like Council to create a Circle to Circle Committee/ Task Force under purveyance of the Planning Commission. After discussion, it was decided that the Mayor and Planning Commission Chairmen would meet with Steve and have discussions for moving forward.

Mayor Bennett stated he has been working on Committee assignments and requested Mr. Riley to draft whatever resolutions or proposed changes to ordinances that would be necessary for the following. He said he would like to establish a Finance and Administrative Committee and would like to roll the function of the Personnel Committee into a Community Services Committee, generally seeing that the committee responsibilities would include former responsibilities of Personnel Committee and add arts and culture oversight and development, as well as affordable housing. He stated he would like to rename the Planning & Development Standards Committee to Public Planning Committee and will talk off line with Mr. Riley as necessary to better document that.

9) Appearance by Citizens

Mr. Charlie Lovely addressed Council with his concerns on the Marshland Road/Mathews Drive roundabout project. Mayor Bennett asked him to put his comments to paper and arrange to meet with the Town Engineer and the project manager. Mr. Grant stated he has spoken with many residents in that area and they are happy the roundabout is finally being constructed as it will alleviate traffic problems.

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.

Mr. Harkins moved to approve. Mr. McCann seconded. Mr. Lennox expressed concern there was no defined amount in the contract. Mr. Riley explained the BCSO budget is fiscal year and the contract is on a calendar year. After lengthy discussion, the motion was unanimously approved by a vote of 5-0.

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.

Mr. Harkins moved to approve. Mr. McCann seconded. Mr. Harkins expressed an interest in obtaining cost calculations on the property. Mr. Riley reviewed the purchase price, rent income and square footage costs. Mayor Bennett expressed concern with leasing a piece of property in a prime location at such a low price. He suggested Town Council build in a provision that allows the Town to relocate the BCSO to another space if the Town finds another tenant at higher rent. Sheriff Tanner explained that the Town pays about one fourth of what it would cost to have a Town police force noting it would cost between 12 to 15 million dollars to create a police force. Mayor Bennett stated he was not speaking of the value of services but the value of the real estate. Mr. Hulbert explained the Town did not put an early termination clause in the agreement because they did not anticipate there would be an early termination. Mr. McCann moved to amend the motion to accept the lease as written with the modification of adding a relocation clause. Mr. Harkins seconded. The amended motion was unanimously approved by a vote of 5-0.

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.

Mr. Harkins moved to approve. Mr. McCann seconded. Mr. Harkins spoke in support of the rezoning. Terry Conway, President of the Hilton Head Plantation POA spoke in support of the rezoning and Roy Plekenpohl, a resident of the Cypress, read a statement of support. Walter Nestor, attorney for the applicant noted the applicants were present and available to answer questions. Mr. Greg Iglehart of Bayshore Retirement Living expressed his appreciation and explained the specifics regarding the project. The motion was unanimously approved by a vote of 5-0.

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.

Mr. Harkins moved to approve. Mr. McCann seconded. The motion was unanimously approved by a vote of 5-0.

12) Adjournment

Mr. Harkins moved to adjourn. Mr. McCann seconded. The motion was unanimously approved by a vote of 5-0. The meeting was adjourned at 5:32 p.m.

Vicki L. Pfannenschmidt,
Executive Assistant/Town Clerk

Approved:

David Bennett, Mayor



Items of Interest

January 20, 2015

1. Town News

Brian Hulbert, Staff Attorney, was recently elected President of the Municipal Attorneys Association of South Carolina.

(Contact: Brian Hulbert, Staff Attorney (843) 341-4633 or brianh@hiltonheadidlandsc.gov)

2. Noteworthy Events

- a) Some of the upcoming meetings at Town Hall:
- Design Review Board – January 27, 2015, 1:15 p.m.
 - Town Council Meeting scheduled for February 3, 2015 at 4:00 p.m. has been rescheduled to take place Tuesday, February 10, 2015
 - Planning Commission – February 4, 2015, 9:00 a.m.
 - Town Council – February 10, 2015, 4:00 p.m.

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

2015 Hilton Head Island Events

January 24, 2014 11:00 a.m. - 4:00 p.m.	Hilton Head Snow Day	Shelter Cove Community Park
February 7, 2015 12:00 p.m. – 3:00 p.m.	Taste of Gullah	Arts Center of Coastal Carolina (Parking Lot)

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

DATE: January 8, 2014

At the First Reading on January 6, 2015, Town Council directed that a paragraph be added to the lease which would allow the Town, County, or BCSO to be able to terminate the lease early. As a result, language has been added to paragraph 2 of the lease which will now allow any party to terminate the lease early with ninety (90) days written notice to the other parties. No other changes were made to the lease or Proposed Ordinance #2014-26.

This additional language was provided to the BCSO and to the County Administrator for review and comment. Both the County Administrator and Sheriff Tanner have approved of the revised language being added to the lease.

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: _____, 2015

Revised First Reading: _____, 2015

Second Reading: _____

APPROVED AS TO FORM:

Gregory M. Alford, Town Attorney

Introduced by Council Member: _____

EXHIBIT “A”

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.

TABLE OF CONTENTS

LEASED PREMISES	Page 1
TERM.....	Page 1
RENT	Page 2
RENT SCHEDULE	Page 2
USE AND COMPLIANCE	Page 3
PERMITTED USE	Page 3
COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS.....	Page 3
MAINTENANCE AND REPAIR.....	Page 3
MAINTENANCE AND REPAIR OF LEASED PREMISES.....	Page 3
TOWN'S RIGHT OF ENTRY.....	Page 4
LIMITATION ON TOWN'S OBLIGATION TO REPAIR:.....	Page 4
TOWN'S CONSENT REQUIRED FOR ALTERATIONS	Page 4
ADDITIONAL COUNTY AND BSCO OBLIGATIONS.....	Page 4
TOWN NOT LIABLE.....	Page 4
TOWN REPRESENTATIONS:	Page 5
ZONING	Page 5
QUIET ENJOYMENT	Page 5
SURRENDER OF LEASED PREMISES	Page 5
TOWN'S RIGHT OF ENTRY.....	Page 5
UTILITIES.....	Page 6
UTILITY CONNECTIONS	Page 6
ARRANGEMENT AND PAYMENT FOR UTILITIES	Page 6
SIGNS	Page 6
CONTROL OF LEASED PREMISES.....	Page 6
THE COUNTY AND BCSO'S EXCLUSIVE CONTROL	Page 6
COUNTY AND BCSO DUTY TO INSURE	Page 6
SURVIVAL.....	Page 6
DAMAGE OR DESTRUCTION OF LEASED PREMISES	Page 6
DESTRUCTION OF LEASED PREMISES:.....	Page 6
DAMAGE TO LEASED PREMISES	Page 7
RENT ABATEMENT DURING REPAIR	Page 7

EMINENT DOMAIN	Page 7
TERMINATION OF LEASE.....	Page 7
NOTICE OF ELECTION	Page 7
CONDEMNATION AWARD	Page 8
SUBLETTING PROHIBITED	Page 8
DEFAULT OF COUNTY AND BCSO	Page 8
FAILURE TO PAY RENT OR MONEY DUE	Page 8
VIOLATION OF LEASE.....	Page 8
ABANDONMENT OF LEASED PREMISES.....	Page 8
INSOLVENCY	Page 8
FAILURE TO BUDGET FOR RENT	Page 9
DISSOLUTION.....	Page 9
WARRANTIES AND REPRESENTATIONS.....	Page 9
DEFAULT OF THE TOWN	Page 9
RIGHTS OF THE PARTIES ON DEFAULT.....	Page 9
ALL REMEDIES PRESERVED:.....	Page 9
ATTORNEY'S FEES AND COSTS.....	Page 9
INTERPRETATION	Page 10
NO WAIVER.....	Page 10
MECHANIC'S OR OTHER LIENS.....	Page 10
ESTOPPEL CERTIFICATES	Page 11
WAIVER OF JURY TRIAL.....	Page 11
HAZARDOUS MATERIALS:.....	Page 11
HAZARDOUS MATERIALS PROHIBITED	Page 11
TOWN'S RIGHTS	Page 11
INDEMNIFICATION	Page 12
MISCELLANEOUS.....	Page 12
BINDING EFFECT.....	Page 12
ENTIRE AGREEMENT/AMENDMENT AND MODIFICATIONS.....	Page 12
SEVERABILITY.....	Page 12
EXECUTION IN COUNTERPARTS	Page 12
APPLICABLE LAW	Page 12
CAPTIONS.....	Page 12

RECORDING PROHIBITED:	Page 12
PLURAL/SINGULAR.....	Page 12
NO THIRD PARTY BENEFICIARIES	Page 13
NOTICES	Page 13
SURVIVAL.....	Page 13
FURTHER ASSURANCES AND CORRECTIVE DOCUMENTS.....	Page 14

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.

(e) Either the Town, County, or BCSO, upon ninety (90) days advance written notice to the other parties, may terminate this Lease. Provided however, such early termination shall be exercisable only after a suitable alternative facility has been identified and secured by the parties so as to ensure the continuous and uninterrupted ability of the BCSO to provide law enforcement services. Additionally, provided that BCSO and the County are not in arrears in payment of the Annual Rent or otherwise in default hereunder, this Lease shall terminate at the expiration of the 90th day after notice and, except as specifically set forth herein, the parties shall have no further liabilities hereunder.

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 BCSO, 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 and Thoreson, 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: January 7, 2014
SUBJECT: Proposed Ordinance No. 2015-04 – Second Reading
Amending the Land Management Ordinance of the Town of Hilton Head Island's
Official Zoning Map and the Hilton Head Plantation Master Plan

Town Council made no changes to Proposed Ordinance No. 2015-04 as a result of the first reading of the ordinance on January 6, 2015.

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO. 2015-

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

TO: Stephen G. Riley, ICMA – CM, Town Manager

FROM: Charles F. Cousins, AICP, Community Development Director

DATE: January 8, 2015

SUBJECT: Lease with Drydock Enterprises, LTD.

Recommendation: Staff recommends Town Council execute a lease through September 30, 2015 with Drydock Enterprises, LTD for the space it currently occupies in the Sapelo Building.

Summary: In October 2014 the Town acquired a 5.1 acre tract of land occupied by two office buildings; the Carolina and the Sapelo buildings. These buildings had numerous tenants with month to month leases. The intent of this land purchase was to demolish the buildings to make room for a new University of South Carolina at Beaufort hospitality facility. One of the tenants, the Drydock Restaurant has requested that they be allowed to remain in their site through September 2015. The proposed new lease would carry forward the major parameters of their existing lease but give them some assurance they can stay in place through the tourist season of 2015.

Background: The Town has been discussing for quite a while the possibility of locating facilities associated with the University of South Carolina at Beaufort's hospitality program within the Town. In December 2013 the Town identified several parcels of land on Office Park Road to serve as the site for this facility. Since that time the Town has either acquired or has under contract all the parcels necessary for this project. All of these newly acquired parcels have buildings on them that will have to be demolished to create the USCB facility. The Kiawah, Carolina and Sapelo buildings located on these parcels have numerous tenants that have month to month leases. These buildings have a lot of age on them which results in ongoing maintenance issues. To minimize the Town's maintenance costs, demolition of these buildings needs to occur as soon as possible while still giving tenants time to relocate. Therefore, the tenants were informed that they would have to vacate their units by April 2015. This would allow the Town sufficient time to deal with any tenants that fail to meet this deadline and to begin the initial steps for demolition in late 2015.

One of the tenants in the Sapelo building is the Drydock Restaurant. They approached the Town about the possibility of remaining in their unit through the 2015 tourist season. Staff believes that this would not cause problems with the proposed demolition schedule as long as there are proper assurances in place to make sure they vacate no later than September 30, 2015. In asking for a lease through September 2015, they agreed to sanctions and penalties that provide assurances they will vacate their space in a timely manner. Similar sanctions and penalties do not exist in the current leases for tenants in these buildings. The terms of their new lease are essentially the same as those of their current month to month lease with the lease rate remaining at \$3,377 per month.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF A LEASE WITH THE DRYDOCK ENTERPRISES, LTD. D/B/A THE DRYDOCK, 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.

LEGISLATIVE FINDINGS

WHEREAS, on October 27, 2014, the Town of Hilton Head Island, South Carolina (the “Town”) took ownership of certain real property generally known as the Sapelo Building, located on Hilton Head Island, South Carolina and located within/upon property known as Beaufort County Tax Map # R552-015-000-0154-0000; and

WHEREAS, prior to October 27, 2014, The Drydock Enterprises, Ltd. d/b/a The Drydock (“The Drydock”) entered into that certain Commercial Space Lease with Glover Real Estate, LLC, dated August 11, 2009, for leasing a portion of the Sapelo Building from the then-current owner of the Building; and

WHEREAS, the Town and The Drydock desire to terminate the existing lease between The Drydock and Glover Real Estate, LLC, and execute a new lease between the Town and The Drydock; and

WHEREAS, the Town Council for the Town has determined that the proposed Lease attached hereto as Exhibit “A” is in the best interests of the citizens, residents and visitors on Hilton Head Island; and

WHEREAS, under the provisions 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), the conveyance or granting of an interest in real property owned by the Town of Hilton Head Island must be authorized by Ordinance.

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

Section 1. Execution of Lease.

- (a) The Mayor and/or Town Manager are hereby authorized to execute and deliver the Lease in a substantially similar form to that attached hereto as Exhibit "A" for the lease of Town-owned real property to The Drydock Enterprises, Ltd. d/b/a The Drydock; and
- (b) The Mayor and/or Town Manager are hereby authorized to take such other and further actions as may be necessary to complete the transactions contemplated in the Amendment as authorized hereby.

Section 2. Severability.

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

Section 3. Effective Date.

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

(SIGNATURE PAGE FOLLOWS)

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

David Bennett, Mayor

ATTEST:

Victoria L. Pfannenschmidt, Town Clerk

First Reading: _____

Second Reading:_____

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

Introduced by Council Member:_____

EXHIBIT “A”

LEASE OF SUITES 101 AND 105 OF THE SAPELO BUILDING

BY AND BETWEEN

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA,

AND

THE DRYDOCK ENTERPRISES, LTD. D/B/A THE DRYDOCK

DATED THIS _____ DAY OF _____, 20____

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LEASE

This Lease (hereinafter, "Lease"), is made and entered into on this ____ day of _____, 20____, between the Town of Hilton Head Island, South Carolina (hereinafter, "Lessor"), and The Drydock Enterprises, Ltd. d/b/a The Drydock (hereinafter, "Lessee").

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

1. LEASED PREMISES: The Lessor hereby leases to the Lessee, and the Lessee hereby leases from the Lessor, the following property, which Lessee accepts in its current AS-IS condition:

Suite 101 and Suite 105 of the Carolina Building located at 21 Office Park Road, Hilton Head Island, Beaufort County, South Carolina.

(hereinafter referred to as the “Leased Premises”)

2. TERM:

(a) Lessee shall have and hold the Leased Premises for a term (hereinafter, the “Lease Term”) beginning on the 1st day of November, 2014 (hereinafter, the “Commencement Date”), and ending at midnight on the 30th day of September, 2015 (hereinafter, the “Expiration Date”).

(b) Lessee's entry into, and taking possession of, the Leased Premises shall constitute as of the beginning of the Lease Term.

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

(d) There shall be no renewal term(s) of this Lease, and the Lease shall be deemed automatically terminated on the Expiration Date, with no further action required of Lessor or Lessee to terminate this Lease.

3. RENT:

(a) **BASE RENT:** Rent shall be paid in the amount of Three Thousand Three Hundred Seventy-Seven and 00/100 Dollars (\$3,377.00) per month. The Rent shall be payable in equal monthly payments beginning on the Commencement Date, and thereafter on the first (1st) day of every month throughout the entire Lease Term.

(b) SECURITY DEPOSIT: Lessee has deposited with Lessor the sum of Three Thousand and 00/100 Dollars (\$3,000.00) as security for the full and faithful performance of every provision of this Lease to be performed by Lessee. If Lessee defaults with respect to any provision of this Lease, including but not limited to the provisions relating to payment of rent, Lessor may use, apply or retain the Security Deposit against all or any other sum in default, or for the payment of any other amount which Lessor may spend or become obligated to spend by reason of Lessee's default. If any portion of the Security Deposit is so used or applied, Lessee shall, within five (5) days after written demand, deposit cash with Lessor in an amount sufficient to restore the Security Deposit to its original amount. Lessor shall not be required to keep the Security Deposit separate from its general funds and Lessee shall not be entitled to interest on such deposit. If Lessee shall fully and faithfully perform each provision of this Lease to be performed by Lessee, the Security Deposit or any balance thereof shall be returned to Lessee at the expiration of the Lease term and upon Lessee's vacating the premises.

4. USE AND COMPLIANCE:

(a) PERMITTED USE: The Lessee shall continuously occupy and use the Leased Premises for restaurant and related and ancillary uses, unless the written consent of the Lessor 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 Leased Premises, or the contents therein, or for the storage of any Hazardous Materials as defined herein (other than those which might be used in the ordinary course of the Lessee's Permitted Use, and then only in compliance with all applicable laws related thereto).

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

(c) It is agreed between the parties that there shall be no live entertainment on or within the leased premises prior to 6:00 p.m. each day, and no later than 11:00 p.m. each day.

(d) Lessee agrees to faithfully observe and strictly comply with rules and regulations as stated in the attached Exhibit "A", and which are incorporated herein.

5. LESSOR'S DUTY TO REPAIR:

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

(b) Lessee shall not make any alteration of, or addition or improvement to, the Leased Premises without securing the Lessor's prior written consent. Any and all roof penetrations must first be

approved by and coordinated through the Lessor, in order not to void any warranties on any roof coverings. Lessee shall save the Lessor harmless on account of claims for mechanics or materialmen's liens, or any other lien, in connection with any work performed by the Lessee, and any such liens shall exist only against the Lessee's leasehold interest and shall be discharged, by bond or otherwise, within thirty (30) days of filing and service of thereof. Lessee shall keep and maintain the Leased Premises in accordance with all directions, rules, and regulations of the proper officials of any government or other agency having jurisdiction over the Leased Premises, and Lessee shall comply with all requirements of law, statute, ordinance, covenants, restrictions or otherwise, governing the use of the Leased Premises and all appurtenances thereto.

(c) Notwithstanding provisions set forth elsewhere in this Lease, the provisions set forth in Article IV of the lease attached hereto as Exhibit "B" shall be applicable and are incorporated herein.

6. LESSOR REPRESENTATIONS:

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

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

7. SURRENDER OF LEASED PREMISES:

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

(b) In the event Lessee does not surrender possession of the Leased Premises on or before the Expiration Date in accordance with Article 7(a) above, Lessor may immediately proceed to have Lessee removed (through all legal means) from the Leased Premises, without providing advance notice of any kind to Lessee. Further, in such event, Lessee shall pay to Lessor, for each day held over beyond the Expiration Date of this Lease, Five Hundred and 00/100 Dollars (\$500.00) as liquidated damages. The

Lessor and Lessee acknowledge and agree this Article 7(b) shall not be deemed in any manner to be a penalty clause and Lessor is relying on this Article 7(b) in the execution of this Lease.

8. MORTGAGE/SUBORDINATION/ASSIGNMENT:

(a) The Lessor shall have the right to assign or convey its interest in the Leased Premises and/or the Building at any time and Lessor thereafter shall have no further liability or obligations under this Lease. The Lessor shall have the right to mortgage the Leased Premises or any portion of the property upon which the Leased Premises is/are situated and any such mortgage shall have priority over and this Lease shall be subordinate to such mortgage, except and provided that the rights of the Lessee shall not be cut off or affected in any manner by foreclosure of any mortgage so long as the Lessee is not in default as to any obligation as to which the Lessee has received written notice. Lessee agrees to execute any attornment or subordination agreements reasonably requested by the owner of such a mortgage evidencing the priority of the mortgage. Lessee hereby appoints the Lessor as its attorney-in-fact to execute any attornment or subordination agreement on its behalf. The appointment as attorney-in-fact is coupled with an interest, and may not be revoked by the Lessee during the term of this Lease and any extension thereof. Lessee acknowledges that Lessor may assign its interest in this Lease to a mortgagee lender as additional security.

(b) Except as set forth herein, Lessee shall not assign, transfer, mortgage or otherwise encumber this Lease or all or substantially all or any of Lessee's rights hereunder or interest herein without obtaining the prior written consent of Lessor, which may be withheld or conditioned for any reason in Lessor's sole discretion.

9. LESSOR'S RIGHT OF ENTRY: Lessor or its employees/agents may enter the Leased Premises at any mutually agreeable time for the purpose of inspecting or maintaining the Leased Premises. In the event of an emergency, however, the Lessor or its employees/agents may enter the Leased Premises without consent or agreement of the Lessee. Any keys for this purpose must be held by the Lessor or its employees/agents. In the event that the Lessee desires to change or alter any locks to or within the Leased Premises, the Lessee will notify the Lessor of the Lessee's request, and the Lessor or the Lessor's employee(s)/agent(s) will have the locks changed or altered at the Lessee's expense.

10. UTILITIES: Lessor shall at all times cause or make available to the Leased Premises for the use of the Lessee, connections for adequate water, electric, gas, telephone, and sewage to the building. Notwithstanding provisions set forth elsewhere in this Lease, the provisions set forth in Article VII of the lease attached hereto as Exhibit "B" shall be applicable and are incorporated herein

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

12. INSURANCE OBLIGATIONS:

(a) Lessee shall, at its expense, procure and keep in force at all times during the Lease Term, insurance written by an insurer satisfactory to Lessor, insuring the lessor and Lessee against all loss, cost, liability and expense on account of injury to or death of a person or persons, or damage to or destruction of property of third parties, arising from Lessee's use or occupancy of the Leased Premises, in an amount not less than One Hundred Thousand Dollars (\$100,000.00) for injury to or death of any one person, and Three Hundred Thousand Dollars (\$300,000.00) for injury to or death of more than one person in any one accident, and not less than One Hundred Thousand Dollars (\$100,000.00) for damage to property of third parties. All policies of insurance required of Lessee shall be: (i) written as primary policy coverage and not contributing with or in excess of any coverage with Lessor may carry; and (ii) issued by reputable and independent insurance companies with a current rating in Best's Insurance Guide or any successor thereto (or, if there is none, an organization having a national reputation), as having a general policy holder rating of "A" and a financial rating of at least "13" and which are licensed to do business in the state where the Leased Premises are located. Such policies shall contain a provision that Lessor, although named as an insured, shall nevertheless be entitled to recover thereunder for any loss occasioned to it, its servants, agents and employees by reason of the negligence of Lessee, and that Lessor shall not be responsible for the performance of any of Lessee's duties or obligations under the policy or for the premiums therefore. Renewal or additional policies shall be procured and maintained by Lessee in like manner and to like extent.

(b) The policies reflecting the insurance coverage required pursuant to the above Paragraph shall provide that they may not be canceled without thirty (30) days prior notice to Lessor and Lessee. Lessee shall promptly deliver to Lessor, prior to the Commencement Date, either copies of the insurance policies or certificates evidencing the existence of such insurance and thereafter within thirty (30) days prior to the expiration of the term of each such policy.

(c) During the Lease Term, Lessor shall carry fire and extended coverage insurance on the Leased Premises (not including Lessee's fixtures, equipment and personal property) in an amount not less than the full replacement cost thereof.

13. INDEMNITY:

(a) Lessee shall defend, indemnify and hold Lessor and Lessor's representatives, agents, members, employees, successors and assigns harmless from and against all claims, demands, liabilities, causes of action, suits, judgments, losses, penalties, damages and expenses (including attorneys' fees and costs) (collectively a "Loss") arising from (i) Lessee's use of the Leased Premises or (ii) Lessee's failure to perform its obligations under this Lease, except where such Loss occurred as a result, in whole or in part, directly or indirectly, from the default or negligence of Lessor, its agents, employees, successors or assigns in which case each party will be responsible for its pro rata portion of the Loss. If any proceeding is filed for which indemnity is required hereunder, Lessee agrees, upon request therefore, to defend Lessor in such proceeding at Lessee's sole cost utilizing counsel satisfactory to Lessor.

(b) This indemnity shall survive the expiration, cancellation or termination of this Lease.

14. CONTROL OF THE LEASED PREMISES:

(a) LESSEE'S EXCLUSIVE CONTROL: Lessee warrants and represents that during any Term of this Lease, the daily operations, use, and occupancy of the Leased Premises shall be under the sole and exclusive control of Lessee.

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

15. DAMAGE OR DESTRUCTION OF THE LEASED PREMISES:

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

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

16. CONSTRUCTION OF IMPROVEMENTS BY LESSEE: Lessee shall not construct any leasehold improvements nor make any leasehold alterations upon the Leased Premises without the prior written consent of Lessor. Except as herein provided, no improvements hereafter located on the Leased Premises or any additions or improvements made during the term of this Lease, may be removed or materially altered.

17. EMINENT DOMAIN:

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

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

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

18. **SUBLETTING PROHIBITED:** Lessee shall not sublet all or any portion of the Leased Premises, or assign or otherwise transfer any of its rights under this Lease, in whole or in part, to any third party without the prior written consent of the Lessor. Any and all documents utilized by the Lessee to evidence any subletting or assignment to which the Lessor has consented shall be subject to prior written approval by the Lessor and its counsel.

19. **DEFAULT OF LESSEE:** Occurrence of any of the following shall constitute a Default under the terms of this Lease:

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

(b) **VIOLATION OF LEASE:** If the Lessee shall violate any term of this Lease, or fail to perform any term, condition, covenant, obligation, or agreement to be performed or observed by the Lessee under this Lease, including but not limited to failing to use the Leased Premises in accordance with the Permitted Use as set forth hereinabove, and such failure shall continue for a period of thirty (30) days after the delivery of written notice thereof;

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

(d) Any of the following occurs with respect to Lessee: (i) Lessee becomes insolvent as such term is defined in Title II of the United States Code (the "Bankruptcy Code") or under the insolvency laws of any state, district, commonwealth or territory of the United States (the "Insolvency Laws"); (ii) the appointment of a receiver or custodian of any or all of Lessee's property or assets or the institution of a foreclosure action upon any of Lessee's real or personal property as pertains to the Leased Premises and such receiver or custodian or such foreclosure action is not dismissed within ninety (90) days; (iii) Lessee's filing or consenting in writing to a petition under the provisions of the Bankruptcy Code or the Insolvency Laws or in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceeding; (iv) the filing of a petition against Lessee as the subject debtor under the

Bankruptcy Code or Insolvency Laws, which is not consented to by such subject debtor and which either is not dismissed within ninety (90) days of filing or results in the issuance of an order for relief against the debtor; (v) Lessee's making or consenting in writing to a voluntary assignment for the benefit of creditors or a common law composition of creditors; or (vi) a court ordered dissolution of Lessee or court ordered liquidation of substantially all of Lessee's assets;

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

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

20. RIGHTS OF LESSOR ON DEFAULT; REMEDIES CUMULATIVE:

(a) If Lessee should fail to perform or observe any of the conditions or provisions of this Lease for thirty (30) days after written notice by Lessor of such breach, fail to timely pay any payment of Rent or any other sum of money payable under this Lease within ten (10) days of the due date thereof or any other event of default by Lessee occurs under the provisions of this Lease, Lessor may, at Lessor's option, in addition to any remedies available to Lessor at law or in equity, take any one or more of the following actions: (i) re-enter and repossess the Leased Premises in accordance with all applicable law; (ii) sue for any unpaid rent and any other damages sustained, including reasonable attorney fees or collection fees; or (iii) terminate this Lease. Upon any default by Lessee, Lessor shall have any or all of the above remedies and all other remedies at law or in equity, payable together with reasonable attorney fees, costs of collection fee equal to fifty percent (50%) of the delinquent balance may be added to the amount due and court costs, all of which amounts owing by Lessee shall be paid upon demand. Leasing commissions or fees to release the Leased Premises will also be the Lessee's expense. The taking of any or all of the foregoing actions, including termination, shall not in any way terminate Lessee's liability under this lease for the payment of Rent.

(b) All the rights and remedies given to Lessor in this Lease are reserved and conferred upon Lessor as distinct, separate, and cumulative remedies, and no one of them, whether exercised by Lessor or not, shall be deemed to be in exclusion of any of the others.

(c) If any legal action or other proceeding is brought by Lessor 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, and Lessor prevails, then Lessor shall be entitled to recover its reasonable attorney's fees and any costs incurred as a result of any such legal action or other proceeding, whether incurred before the institution of a suit or after the commencement of suit, including appellate proceedings, in addition to any other relief to which Lessor may be entitled.

21. DEFAULT OF LESSOR: Occurrence of any of the following shall constitute a Default under the terms of this Lease:

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

22. **INTERPRETATION:** The Lessee acknowledges that the Lessee has reviewed and agreed to all the terms and provisions of this Lease and that the Lessee has had a full opportunity to consult with an attorney of the Lessee's choosing concerning the legal consequences of entering into this Lease with the Lessor. As a result of the foregoing, it is the intent of the Parties hereto that this Lease shall not be construed or interpreted against either Party in any dispute concerning any term or provision of this Lease.

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

24. **MECHANIC'S LIENS OR OTHER LIENS:** The Lessee shall have no power to subject the Leased Premises or the Lessor's interest in the Leased Premises to any mechanic's lien or any other lien. If any mechanic's lien or other lien or order for the payment of money shall be filed against the Leased Premises by reason of, or arising out of, any labor or material furnished or alleged to have been furnished or to be furnished to or on behalf of the Lessee at the Leased Premises, or for or by reason of any change, alteration, or addition or the cost or expense thereof or any contract relating thereto, the Lessee shall cause the same to be discharged of record against the Leased Premises by bond or otherwise as allowed by law at the sole expense of the Lessee, within thirty (30) days after written demand therefore by the Lessor, and shall also defend on behalf of the Lessor at the Lessee's sole cost and expense, any action, suit, or proceeding that may be brought thereon or for the enforcement of any such lien or order, and the Lessee shall save the Lessor harmless from any judgment, claim, or damage resulting therefrom.

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

26. **WAIVER OF JURY TRIAL:** TO THE EXTENT PERMITTED BY LAW, THE LESSOR AND THE LESSEE EACH AGREE TO WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING IN CONNECTION WITH THIS LEASE, OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE ARISING OUT OF OR WITH RESPECT TO THIS LEASE OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO.

27. HAZARDOUS MATERIALS:

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

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

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

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

28. MISCELLANEOUS:

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

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

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

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

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

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

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

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

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

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

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

To the Lessee: The Drydock Enterprises, Ltd. d/b/a The Drydock
ATTN: Rob Arbogast
49 Otter Road
Hilton Head Island, SC 29928

(k) **SURVIVAL:** The obligations of the Lessee as set forth in this Lease shall survive the expiration, cancellation, or termination of this Lease, whether or not expressly stated with respect to any specific obligation.

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

29. PRIOR LEASES TERMINATED: Any and all prior leases which Lessee may have entered into with respect to the Leased Premises are hereby terminated, and are considered null and void and of no further force or effect, including but not limited to the Lease between Lessee and Glover Real Estate, LLC, dated August 11, 2009 and attached hereto as Exhibit "B".

IN WITNESS WHEREOF, The Town of Hilton Head Island, South Carolina and The Drydock Enterprises, Ltd. d/b/a The Drydock have, or have caused their duly authorized officers and representatives to, execute this Lease as of the date and year first above written.

WITNESSES:

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

By: _____
David Bennett, Mayor

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

**THE DRYDOCK ENTERPRISES, LTD. D/B/A
THE DRYDOCK**

By: _____

Its: _____

EXHIBIT “A”

RULES AND REGULATIONS

SCHEDULE "B"

Attached to and made part of Lease, dated 8-10-09 between Glover Real Estate, LLC, and Drydock Enterprises Ltd., dba The Drydock.

Tenant agrees for itself, its employees, agents, clients, customers, invitees and guests, to comply fully with the following rules and regulations and with such reasonable modification thereof and additions thereto as Landlord may make for the building:

- a) Any sign, lettering, picture, notice or advertisement installed within the Premises which is visible from the public corridors within the Building shall be installed in such manner and be of such character and style as Landlord shall approve in writing. No sign, lettering, picture, notice or advertisement shall be placed on any outside window or in a position to be visible from outside the Building.
- b) Tenant shall not use the name of the Building for any purpose other than that of the business address of Tenant, and shall not use any picture or likeness of the Building in any circulars, notices, advertisements or correspondence.
- c) Tenant shall not obstruct sidewalks, entrances, passages, courts, corridors, vestibules, halls, elevators and stairways in or about the Building, nor shall Tenant place objects against glass partitions, doors or windows which would be unsightly from the Building's corridors, or from the exterior of the Building.
- d) No animals or pets or bicycles or other vehicles shall be brought or permitted to be in the Building or the Premises.
- e) Tenant shall not make excessive noises, cause disturbances or vibrations, or use or operate any musical electrical or electronic devices or other devices that emit loud sounds or air waves which may disturb or annoy other tenants or occupants of the building.
- f) Tenant shall not make any room-to-room canvass to solicit business from other tenants of the building and shall cooperate to prevent same.
- g) Tenants shall not create any odors that may be offensive to other tenants or occupants of the Building.
- h) Tenant shall not waste electricity, water or air-conditioning, and shall cooperate fully with Landlord to assure the most effective operation of the Building's heating and air-conditioning. Tenant shall not adjust any controls other than room thermostats installed for Tenant's use. Tenant shall not tie, wedge or otherwise fasten open any water faucet or outlet. Tenant shall keep all corridor doors closed.
- i) No additional locks or similar devices shall be attached to any door and no locks shall be changed except by Landlord. Upon termination of this Lease of Tenant's possession of the Premises, Tenant shall surrender all keys for door locks and other locks in or about the Premises and shall make known to Landlord the combination of all locks, safes, cabinets and vaults which are not removed by Tenant.
- j) Tenant assumes full responsibility for protecting the Premises from theft, robbery, and pilferage. Except during Tenant's normal business hours, Tenant shall keep all doors to the premises locked and other means of entry to the Premises closed and secured.
- k) Tenant shall not install or operate any machinery or mechanical devices of a nature not directly related to Tenant's ordinary use of the Premises.
- l) Tenant shall not employ any person to perform any cleaning, repairing, janitorial, decorating, painting or other services or work in or about the Premises, except with the approval of Landlord, which approval shall not be unreasonably withheld.
- m) Tenant shall ascertain from Landlord the maximum amount of electrical current which can safely be used in the Premises, taking into account the capacity of the electric wiring in the Building and the Premises and the needs of other tenants, and shall not use more than such safe capacity. Landlord's consent to the installation of electric equipment shall not relieve Tenant from the obligation not to use more electricity than such safe capacity.
- n) Tenant shall not overload any floor and shall not install any heavy objects, safes, business machines, files or other equipment without having received Landlord's prior written consent as to size, maximum weight, routing and location thereof. Safes, furniture, equipment, machines and other large or bulky articles shall be brought through the Building and into and out of the Premises at such times and in such a manner as the Landlord shall direct (including the designation of elevator) and at Tenant's sole risk and responsibility. Prior to Tenant's removal of any such articles from the Building, Tenant shall obtain written authorization therefor at the Office of the Building and shall present such writing to a designated employee.
- o) Tenant shall not in any manner deface or damage the Building.
- p) Tenant shall not bring into the Building or Premises inflammables such as gasoline, kerosene, naphtha and bezine, or explosives or any other articles of an intrinsically dangerous nature.
- q) Movement in or out of the Building of furniture or office equipment, or dispatch or receipt by Lessee of any merchandise or materials other than hand-delivered packages, which requires the use of elevators or stairways or movement through the building entrances or lobby, shall be restricted to the hours designated by Landlord and in a manner agreed upon between Tenant and Landlord by pre-arrangement before performance. Tenant assumes all risk of damage to any and all articles so moves, as well as injury to any person or property in such movement, and hereby agrees to indemnify Landlord against any loss resulting therefrom.
- r) Landlord shall not be responsible for any lost or stolen property, equipment, money or jewelry from the Leased premises or the public areas of the building regardless of whether such loss occurs when the Leased premises are locked or not.
- s) The premises shall not be used for housing, lodging, sleeping or for any immoral or illegal purpose.
- t) Tenant will refer all contractors/installation technicians rendering any service for Tenant for supervision and approval before performance of any contractual services. Tenant will not permit any mechanic's liens to be placed against the premises and that any contract Tenant enters into for work to be performed on the premises will contain a waiver of mechanic's lien.

Tenant shall be responsible for the observance of all of the foregoing rules and regulations by Tenant's employees, agents, clients, customers, invitees and guests. Landlord shall not be responsible for any violation of the foregoing rules and regulations by other tenants of the Building and shall have no obligation to enforce the same against other tenants.

Approved by Tenant:

Name

Date

EXHIBIT “B”

PRIOR LEASE

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

COMMERCIAL SPACE LEASE
Carolina Office Park 21 Office Park Rd. Hilton Head SC
Carolina Building & Sapelo Building
Lease for: Suite # 101 and 105 Sapelo Building

THIS LEASE, made as of August 11 2009, by and between Glover Real Estate, LLC, P.O. Box 3823, Bluffton, SC, 29910, owners of Carolina Office Park, 21 Office Park Road, Hilton Head Island, South Carolina, 29928, having a mailing address of Post Office Box 3823, Bluffton, South Carolina, 29910 (hereinafter referred to as the "Landlord") and Drydock Enterprises Ltd., dba The Drydock of 21 Carolina Office Park Rd., Suite 101 and 105 Sapelo Bldg. (hereinafter referred to as the "Tenant").

WHEREAS, Landlord is the owner of Carolina Office Park, and desires to Lease to Tenant and tenant desires to Lease from Landlord restaurant office space:

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter specified, the parties agree as follows:

ARTICLE I
GRANT AND TERM

1.01 The Landlord hereby Leases to the Tenant and the Tenant hereby takes and rents from the Landlord: Lease space consisting of approximately 2,142 square feet, designated as space #101 and 105 Sapelo Building, a portion of Carolina Office Park, 21 Office Park Road, Hilton Head Island, South Carolina 29928 (hereinafter referred to as the "Leased Premises"). It is expressly acknowledged and agreed by the Tenant that Tenant has inspected the Leased Premises and has agreed and desires to Lease the space as shown, and that it is not relying on the stated square footage above, which may be approximate.

1.02 The commencement date of this Lease is August 11, 2009. Tenant has the right to extend the lease term for an additional five (5) years by giving written notice to Landlord prior to the expiration of the lease term. Landlord has the right to terminate this lease during the extended term, upon acceptance of an offer to sell the property to the Town of Hilton Head and will provide the tenant a ninety (90) day notice.

1.03 The termination date of this Lease is :August 31, 2014. The second additional term is contingent on the Town of Hilton Head not purchasing the buildings.

1.04 Tenant shall be permitted to perform tenant improvements that are set forth on Exhibit _____. If no Exhibit _____ is attached, no tenant improvements are allowed without the prior consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Landlord does not warrant the functionality or operability of the in place restaurant improvements at time of occupancy.

ARTICLE II
RENT

2.01 (a) The Tenant shall pay the Landlord rent for the initial term of the Lease on a monthly basis at a rate of \$3,000.00 per month; beginning August 11 2009.

(b) Rent thereafter will increase as follows (if left blank, increase will be 3% per year):

From _____, 2010 to _____, 2011	Rent will be <u>\$3,090.00</u> per month
From _____, 2011 to _____, 2012	Rent will be <u>\$3,183.00</u> per month
From _____, 2012 to _____, 2013	Rent will be <u>\$3,278.00</u> per month
From _____, 2013 to _____, 2014	Rent will be <u>\$3,377.00</u> per month

2.02 Tenant shall be responsible during the Lease term and any renewals thereof for the payment of utility charges and other services that are billed directly in the Tenant's name. Reasonable usage of electricity and water are included in the rental rate.

2.03 Said rent shall be paid to the Landlord on the first (1st) day of every month at the address indicated above, without notice or demand abatement, deduction, counterclaim or setoff. The rent, (hereinafter referred to as "Rents," "rent," "rental," or "rent"), shall be paid in equal monthly installments in advance on the first day of each calendar month during the term

of this Lease. **Rent not paid by 5 p.m. on the tenth (10th) day of the month will be subject to a ten percent (10%) late payment penalty, assessed per month for each late payment.**

2.04 In the event of default by Tenant under this Lease, Landlord shall have the right, in its sole discretion, to pay or perform any of the requirements and duties of the Tenant hereunder, in which event Tenant shall immediately reimburse Landlord for any such sums actually expended by Landlord.

2.05 Tenant, concurrently (or previously) with the execution of this Lease, has deposited with Landlord the sum of **\$3,000.00** Security deposit (the "Security Deposit") as security for the full and faithful performance of every provision of this Lease to be performed by Tenant. If Tenant defaults with respect to any provision of the Lease, including but not limited to the provisions relating to the payment of rent, Landlord may use, apply or retain the Security Deposit against all or any other sum in default, or for the payment of any other amount which Landlord may spend or become obligated to spend by reason of Tenant's default. If any portion of the Security Deposit is so used or applied, Tenant shall within five (5) days after written demand, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount. Landlord shall not be required to keep the Security Deposit separate from its general funds and Tenant shall not be entitled to interest on such deposit. If Tenant shall fully and faithfully perform each provision of this Lease to be performed by it, the Security Deposit or any balance thereof shall be returned to Tenant (or at Landlord's option, to the last assignee of Tenant's interest hereunder) at the expiration of the Lease term and upon Tenant's vacating the premises.

ARTICLE III USE AND OCCUPATION

3.01 During the term of this Lease, or any renewal thereof, the Leased Premises shall be used and occupied as **restaurant and bar space only**. The Tenant shall not use the Leased Premises for any other purpose or in violation of any law, municipal ordinance or regulation. **No live entertainment prior to 6pm and no later than 11pm.**

3.02 If Landlord is unable to give possession of the Leased Premises on the date of commencement of the term because of the holding-over or retention of possession of any tenant, undertenant or occupant, Landlord shall not be subject to any liability for failure to give possession. The Lease shall not be impaired, but the rent shall be abated, provided the Tenant is not responsible for the inability to obtain possession, until the Leased Premises is ready for Tenant's occupation.

3.03 The Landlord has not conveyed to the Tenant any right in or to the outer side of the outside walls of the building of which the Leased property forms a part, or to any windows, doors, or interior walls. The Tenant shall not display or erect any lettering, sign, advertisement, awning or other projection in or on the Leased Premises, or in or on the building of which it forms a part, without the prior written consent of the Landlord.

3.04 Tenant agrees to use the name of Carolina Office Park to refer to the Leased Premises in all advertising or business relating to Tenant's operations in the Leased Premises.

3.05 Tenant and its employees who work within the Leased Premises shall have the right to park a reasonable number of cars in the Carolina Office Park parking lot. A Tenant shall not be allowed to otherwise use said parking lot without the express written consent of Landlord. Tenant will be responsible to keep parking lot clean of all debris associated with their business.

3.06 Tenant agrees to faithfully observe and strictly comply with rules and regulations as stated in "**Schedule B**" attached. Landlord may also adopt further regulations from time to time concerning the preservation of the Leased Premises, building and adjoining property. The Rules and Regulations are made a part of this Lease.

ARTICLE IV MAINTENANCE

4.01 It is mutually agreed between the parties that the Tenant is to keep the interior of the Leased Premises in repair at its own cost and expense; including, but not limited to, such items as housekeeping, window cleaning, replacement of light bulbs, ballasts, etc. and any necessary repainting. Tenant is responsible to maintain and keep in good repair all plumbing fixtures within the Leased Premises. Tenant hereby agrees to maintain the interior of the Leased Premises in a reasonable manner and return the same to the Landlord at the expiration of this Lease in a like condition, normal wear and tear excepted.

4.02 In the event of failure in or damage to the physical plant, the Landlord shall use due diligence to relieve the situation in as short a time as reasonably possible.

4.03 The Tenant, in maintaining the Leased Premises, shall keep and maintain it in a clean, sanitary and safe condition in accordance with the laws of the State of South Carolina, in accordance with all directions, rules, and regulations of the Health

Officer, Fire Marshall, Building Inspector, or other official person of governmental agencies having jurisdiction over the property.

ARTICLE V
ALTERATIONS

5.01 Except as provided for in Section 1.04 of this Lease, the Tenant shall not have the right to make alterations or improvements to the Leased Premises, including the remodeling of the building, without obtaining prior written approval of the Landlord, **which approval shall not be unreasonably withheld, conditioned or delayed.**

5.02 All alterations, decorations, additions and improvements made by the Tenant, whose removal would substantially and materially (i.e. repair cost exceeds \$100.00 overall) damage the Leased Premises, shall become the property of the Landlord.

5.03 Permanently constructed improvements in place at time of occupancy are and will remain the property of the Landlord. Changes can be made only with the Landlord's consent.

5.04 All window coverings of any type shall be subject to the reasonable approval of Landlord, it being the intent that the backing of said coverings be consistent throughout the entire building. Such window coverings are and will remain the property of the tenant.

ARTICLE VI
INDEMNITY AND INSURANCE

6.01 The Tenant shall indemnify the Landlord and save it harmless from and against any and all claims, common actions, damages, liabilities, and expenses except as caused in whole or in part by accident or negligence of the Landlord, in connection with loss of life, personal injury and/or damage to the property arising from or out of any occurrence in or at the Leased Premises, or from the occupancy or use by the Tenant of the Leased Premises or any part thereof, or occasioned wholly or in part by any act or omission of the Tenant, or agents of the Tenant. The Tenant shall also pay all costs, expenses and reasonable attorney fees that may be incurred or paid by the Landlord in enforcing the covenants and agreements of this Lease.

6.02 During the term of this Lease, the Tenant shall keep its personal property in the Leased Premises insured, at its sole cost and expenses, against claims, fire and other risks in a broad form coverage and for personal injury under a policy of general public liability insurance with a limit of at **least one million dollars (\$1,000,000.00) Dollars**. Such policy shall name the Landlord as an additional insured. Within thirty (30) days after a request by the Landlord, the Tenant shall deliver to the Landlord proof that such insurance has been purchased and is in full force and effect. Both the Landlord and any mortgages holding a security interest in the real property shall have the reasonable right to specify insurance company or carriers, which shall carry the policies. Failure to pay premiums or deliver certificates as stated shall permit Landlord, at its option, to procure such insurance and pay the required premiums, which payment shall be due immediately to the Landlord, or to terminate the Lease.

6.03 The Landlord and all mortgagees shall be additional named insured on all policies.

ARTICLE VII
UTILITIES AND TAXES

7.01 The Landlord shall not be liable or responsible for any interruption of any utility or other service, including but not limited to the heating and air conditioning system, or interruption in connection with the making of repairs, on the building or on the Leased Premises.

7.02 Tenant shall pay all personal property taxes and assessments on its property in the Leased Premises, as well as all utility services in its name.

7.03 Landlord has the right to shut off the heating and air-conditioning service in the Leased Premises from 11 p.m. to 5 a.m. each day, in an effort to conserve energy.

ARTICLE VIII
ASSIGNING AND SUBLETTING

a) The Tenant does not have the right to assign or sublet this Lease in whole or in part without the express written consent of the Landlord, which consent **shall not be unreasonably withheld, conditioned or delayed.**

ARTICLE IX
DESTRUCTION OF THE LEASED PREMISES

9.01 Should the Leased Premises be so damaged by fire or other cause that rebuilding or repairs cannot be completed within sixty (60) days from the date of the fire or other cause of damage, then either the Landlord or Tenant may terminate this Lease, in which event rent shall be abated from the date of such damage or destruction. However, if the damage or destruction is such that rebuilding or repairs can be completed within sixty (60) days, then Landlord covenants and agrees to make such repairs with reasonable promptness and dispatch, and to allow Tenant an abatement in the rent for such time as the building is unusable or proportionately for such portion of the Leased Premises as shall be unusable and the Tenant covenants and agrees that the terms of this Lease shall not be otherwise affected. Landlord shall not be liable for any damages, compensation and claims, inconvenience, loss of business or annoyance arising from any repair or restoration of any portion of the Leased Premises.

ARTICLE X EMINENT DOMAIN

10.01 If the whole of the Leased Premises shall be taken by public authority under the power of Eminent Domain, or sold under threat of such proceedings to condemn, then this Lease shall cease from the time when possession is taken by such public authority and the rent shall be paid up to that date. The Landlord shall make proportionate refund of such rent as may have been paid in advance. If any part of the Leased Premises shall be so taken as to render the remainder thereof unusable for the purposes for which the Leased Premises were Leased, then the Landlord and the Tenant shall each have the right to terminate this Lease on thirty (30) days notice to be given the other within ninety (90) days after the date of such taking.

10.02 All compensation awarded or paid upon such a total or partial taking of the Leased Premises as shall be attributable to the Leased Premises owned by the Landlord shall belong to and be the property of the Landlord without any participation by the Tenant; provided, however, that nothing contained herein shall be construed to preclude the Tenant from prosecuting any claim directly against the condemning authority in such condemnation proceeding for loss or damage to, or cost of removal of, or the value of stock, trade fixtures, furniture, belonging to the Tenant.

ARTICLE XI DEFAULT OF TENANT

11.01 In addition to all rights under law and equity available to Landlord, Landlord shall have the immediate right to declare this Lease terminated and shall have the immediate right of re-entry and may remove all persons and property from the Leased Premises and such property may be removed and stored in a public warehouse or elsewhere at a cost, and for the account of the Tenant, without evidence of notice or resort to legal process and without being deemed guilty of trespass or becoming liable for any loss or damages which may be occasioned thereby.

11.02 Upon a declaration of default, as set forth above, the Landlord shall have the right to accelerate the rental payments due hereunder, so that all unpaid rents shall become immediately due and payable.

11.03 The rights set forth above are collective in nature and are not mutually exclusive of any other remedy contained herein or at law or in equity.

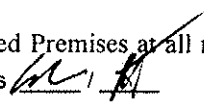
11.04 Landlord shall be entitled to collect from the Tenant reasonable attorney fees and costs in any litigation enforcing the terms and provisions of this Lease. Landlord shall be entitled to collect reasonable attorney fees and costs from Tenant in connection with any litigation in which the Landlord is named a party as a result of some action or inaction of the Tenant. In the event of a default by the Landlord, the Tenant shall have all remedies available under law or equity,

11.05 Prior to default occurring under the terms of this Lease, the non-defaulting party must give a written notice of the right to cure the default to the defaulting party. Said notice must provide the nature of the default, the action necessary to cure the default, and ten (10) days to cure same. If the default, other than monetary default, is of a nature that cannot be cured within ten (10) days, a reasonable period of time shall be allowed to cure said default if the defaulting party, with all due diligence, proceeds to cure same.

11.06 The failure on the part of the Landlord to re-enter or repossess the Leased Premises, or to exercise any of its rights hereunder upon any default, shall not be deemed a waiver of any subsequent default or defaults. All of Landlord's rights shall be cumulative and shall not preclude Landlord from exercising any other rights which he may have under law.

ARTICLE XII ACCESS BY LANDLORD

12.01 The Landlord or Landlord's agent shall have the right to enter the Leased Premises at all reasonable times to



examine the same and show them to prospective purchasers or tenants so long as such entry by Landlord shall not unreasonably interfere with Tenant's business. In addition, the Landlord or Landlord's agent shall have the right to enter the Leased Premises upon the Tenant's failure to comply with its covenants.

ARTICLE XIII QUIET ENJOYMENT

13.01 The Tenant shall peaceably and quietly hold and enjoy the Leased Premises for the Term herein stated without hindrance or interruption by the Landlord or any other person or persons lawfully or equitably claiming by, through or under the Landlord, subject, nevertheless, to the terms and conditions of this Lease.

ARTICLE XIV SURRENDER UPON TERMINATION

14.01 Upon vacating the Premises, Tenant shall leave all portions thereof, the maintenance for which Tenant is responsible pursuant to this Lease, in good order and repair, ordinary wear and tear and reasonable use and damage by the elements excepted, and shall remove all of Tenant's property so that the Landlord can repossess the Leased Premises not later than noon on the day upon which the Lease or any extensions thereof ends, whether upon notice or by holdover or otherwise. The Landlord shall have the same rights to enforce this covenant by an ejection action or eviction action and for damages or otherwise as for the breach or any other condition or covenant of this Lease. The Tenant may at any time prior to or upon the termination of this Lease, or any renewal or extension thereof, remove from the Leased Premises all materials, equipment and property of every other sort or nature installed by the Tenant thereon, provided that such property is removed without substantial or material injury (i.e. cost to repair does not exceed \$100.00 overall) to the Leased Premises.

14.02 In the event Tenant continues to occupy the Leased Premises after the last day of the Lease term, or after the last day of any extension of said term, with Landlord's acquiescence and without any express agreement of the parties, Tenant shall be a Tenant at will at a monthly rate equal to one hundred and fifty percent (150%) of the current annual rent and there shall be no renewal of this Lease by operation of law. In the event that Landlord does not extend the lease as contemplated in Paragraph 1.02 above, and Tenant is permitted to remain on a month to month basis with Landlord's approval, the Holdover rent shall not apply.

ARTICLE XV SUBORDINATION

15.01 This Lease shall be subject and subordinate at all times to any existing or future Mortgage issued by the Landlord, secured by the premises. Although no instrument or act on the part of the Tenant shall be necessary to effectuate such subordination, the Tenant will, nevertheless, execute and deliver such further instruments requested by the Mortgagee or Landlord. The Landlord and Tenant agree that the Landlord may cause this Lease or a copy thereof, to be recorded in the Office of the Clerk of Court for Beaufort County, South Carolina.

ARTICLE XVI MISCELLANEOUS PROVISIONS

16.01 This Lease shall be governed by, construed, and enforced in accordance with the laws of the State of South Carolina.

16.02 The covenants, terms, conditions, provisions, and understandings in this Lease or in any renewal thereof, shall extend to and be binding upon the successors and assigns, heirs and executors, of the respective parties hereto, as if they were in every case named and expressed and shall be construed as covenants running with the land; and wherever reference is made to either of the parties hereto, it shall be held to include and apply to all the successors and assigns of such parties, as if each and every case so expressed.

16.03 The parties agree to execute and deliver any instruments in writing necessary to carry out any agreement, terms, conditions, or assurance in this Lease whenever occasion shall arise and request for such instrument shall be made, including a "short form Lease" for recording purposes to evidence the understandings of the parties.

16.04 This agreement contains the entire agreement and understanding between the parties. There are no oral understandings, terms or conditions, and neither party has relied upon any representation, express or implied, not contained in this Lease or the simultaneous writings heretofore referred to. All prior understandings, terms, or conditions are deemed to be merged in this Lease. No subsequent alteration, amendment or conditions to this Lease shall be binding upon the Landlord or the Tenant unless reduced to writing and signed by each party.

16.05 If any provision of this Lease shall be declared invalid or unenforceable, the remainder of the Lease shall continue in full force and effect.

16.06 Time is of the essence under the terms of this Lease.

16.07 The Landlord shall not be liable for injury or damage to person or property occurring within the Leased Premises, unless caused by or resulting from the negligence of the Landlord or any of the Landlord's agents, servants, or employees in the operation or maintenance of the Leased Premises or the building containing the Leased Premises.

16.08 No failure of Landlord to exercise any power given by Landlord hereunder or to insist upon absolute and strict compliance by Tenant with Tenant's obligations hereunder shall constitute a waiver of Landlord's right to demand exact compliance with the terms hereof.

16.09 The Landlord shall have the right without notice to Tenant to sell or assign his interest in this Lease.

16.10 In the event that the Town, or any other governmental body or authority requires any inspections, fees, or modifications to the Leased Premises, or any utilities servicing same as a result of the business operations of the Tenant, the Tenant agrees to pay for any such modification, fee, or inspection. An example of such item would be the requirement to install a back-flow preventer.

16.11 Lease is contingent upon that all past due rent is paid at closing and if it is not paid, this lease will be null and void.

16.12 Any notice hereunder shall be deemed to have been given by depositing in the first-class mail, return receipt requested, to the following:

Glover Real Estate, LLC
c/o Robert Glover
Post Office Box 3823
Bluffton, SC 29910

and to

Russell P. Patterson Attorney for:
Carolina Office Park, LLC/Glover Real Estate
P.O. Drawer 8047
Hilton Head, SC 29938

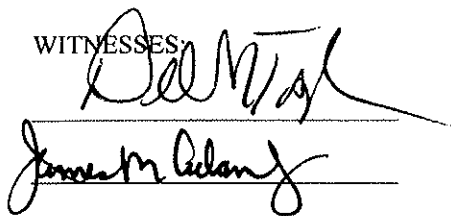
To Tenant:
The Drydock Enterprises Ltd
Attn: Rob Arbogast
93 Point Comfort Road
Hilton Head SC 29928

John W. Wilkins, Esq.
Alford & Wilkins, P.C.
Post Office Drawer 8008
Hilton Head Island, SC 29938-8008

16.13 **WAIVER OF JURY TRIAL** – The parties to this Lease Agreement hereby expressly waive any right to request a jury trial in connection with any dispute or matter under this Lease Agreement.

IN WITNESS WHEREOF, the parties have executed this Lease Agreement the date and year first written above.

WITNESSES:


James M. Delaney

LANDLORD:

Glover Real Estate, LLC

By 
Its Member

TENANT:

By 
Its President

Its President

SCHEDULE "B"

Attached to and made part of Lease, dated 8-10-09 between Glover Real Estate, LLC, and Drydock Enterprises Ltd., dba The Drydock.

Tenant agrees for itself, its employees, agents, clients, customers, invitees and guests, to comply fully with the following rules and regulations and with such reasonable modification thereof and additions thereto as Landlord may make for the building:

- a) Any sign, lettering, picture, notice or advertisement installed within the Premises which is visible from the public corridors within the Building shall be installed in such manner and be of such character and style as Landlord shall approve in writing. No sign, lettering, picture, notice or advertisement shall be placed on any outside window or in a position to be visible from outside the Building.
- b) Tenant shall not use the name of the Building for any purpose other than that of the business address of Tenant, and shall not use any picture or likeness of the Building in any circulars, notices, advertisements or correspondence.
- c) Tenant shall not obstruct sidewalks, entrances, passages, courts, corridors, vestibules, halls, elevators and stairways in or about the Building, nor shall Tenant place objects against glass partitions, doors or windows which would be unsightly from the Building's corridors, or from the exterior of the Building.
- d) No animals or pets or bicycles or other vehicles shall be brought or permitted to be in the Building or the Premises.
- e) Tenant shall not make excessive noises, cause disturbances or vibrations, or use or operate any musical electrical or electronic devices or other devices that emit loud sounds or air waves which may disturb or annoy other tenants or occupants of the building.
- f) Tenant shall not make any room-to-room canvass to solicit business from other tenants of the building and shall cooperate to prevent same.
- g) Tenants shall not create any odors that may be offensive to other tenants or occupants of the Building.
- h) Tenant shall not waste electricity, water or air-conditioning, and shall cooperate fully with Landlord to assure the most effective operation of the Building's heating and air-conditioning. Tenant shall not adjust any controls other than room thermostats installed for Tenant's use. Tenant shall not tie, wedge or otherwise fasten open any water faucet or outlet. Tenant shall keep all corridor doors closed.
- i) No additional locks or similar devices shall be attached to any door and no locks shall be changed except by Landlord. Upon termination of this Lease of Tenant's possession of the Premises, Tenant shall surrender all keys for door locks and other locks in or about the Premises and shall make known to Landlord the combination of all locks, safes, cabinets and vaults which are not removed by Tenant.
- j) Tenant assumes full responsibility for protecting the Premises from theft, robbery, and pilferage. Except during Tenant's normal business hours, Tenant shall keep all doors to the premises locked and other means of entry to the Premises closed and secured.
- k) Tenant shall not install or operate any machinery or mechanical devices of a nature not directly related to Tenant's ordinary use of the Premises.
- l) Tenant shall not employ any person to perform any cleaning, repairing, janitorial, decorating, painting or other services or work in or about the Premises, except with the approval of Landlord, which approval shall not be unreasonably withheld.
- m) Tenant shall ascertain from Landlord the maximum amount of electrical current which can safely be used in the Premises, taking into account the capacity of the electric wiring in the Building and the Premises and the needs of other tenants, and shall not use more than such safe capacity. Landlord's consent to the installation of electric equipment shall not relieve Tenant from the obligation not to use more electricity than such safe capacity.
- n) Tenant shall not overload any floor and shall not install any heavy objects, safes, business machines, files or other equipment without having received Landlord's prior written consent as to size, maximum weight, routing and location thereof. Safes, furniture, equipment, machines and other large or bulky articles shall be brought through the Building and into and out of the Premises at such times and in such a manner as the Landlord shall direct (including the designation of elevator) and at Tenant's sole risk and responsibility. Prior to Tenant's removal of any such articles from the Building, Tenant shall obtain written authorization therefor at the Office of the Building and shall present such writing to a designated employee.
- o) Tenant shall not in any manner deface or damage the Building.
- p) Tenant shall not bring into the Building or Premises inflammables such as gasoline, kerosene, naphtha and bezine, or explosives or any other articles of an intrinsically dangerous nature.
- q) Movement in or out of the Building of furniture or office equipment, or dispatch or receipt by Lessee of any merchandise or materials other than hand-delivered packages, which requires the use of elevators or stairways or movement through the building entrances or lobby, shall be restricted to the hours designated by Landlord and in a manner agreed upon between Tenant and Landlord by pre-arrangement before performance. Tenant assumes all risk of damage to any and all articles so moves, as well as injury to any person or property in such movement, and hereby agrees to indemnify Landlord against any loss resulting therefrom.
- r) Landlord shall not be responsible for any lost or stolen property, equipment, money or jewelry from the Leased premises or the public areas of the building regardless of whether such loss occurs when the Leased premises are locked or not.
- s) The premises shall not be used for housing, lodging, sleeping or for any immoral or illegal purpose.
- t) Tenant will refer all contractors/installation technicians rendering any service for Tenant for supervision and approval before performance of any contractual services. Tenant will not permit any mechanic's liens to be placed against the premises and that any contract Tenant enters into for work to be performed on the premises will contain a waiver of mechanic's lien.

Tenant shall be responsible for the observance of all of the foregoing rules and regulations by Tenant's employees, agents, clients, customers, invitees and guests. Landlord shall not be responsible for any violation of the foregoing rules and regulations by other tenants of the Building and shall have no obligation to enforce the same against other tenants.

Approved by Tenant: [Signature]

Name

8-10-09

Date

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT

PERSONAL GUARANTEE

In order to induce the Landlord to enter into the attached Lease dated this date, with Drydock Enterprises Ltd. Db a The Drydock as Tenant, the undersigned, Rob Arbogast (hereinafter collectively referred to as "GUARANTOR") hereby jointly and severally unconditionally guarantee the payment of all rents in the Lease on the part of the Tenant to be paid and the prompt performance by Tenant of all other terms and conditions of the Lease. Guarantor hereby agrees that it waives notice of any and all defaults under the Lease and waives all notices to which Guarantor might otherwise be entitled by law. Guarantor consents to any extension of time, extension of Lease term, and any and all modifications and amendments to the Lease which might hereafter be entered into between Landlord and Tenant, or their successors and assigns, without notice to Guarantor and without in any manner affecting the liability of Guarantor as Guarantor. This course of dealings between Landlord, its successors and assigns, and Tenant, its successors and assigns, and this Guarantor shall remain binding upon Guarantor if Tenant shall sublet all or part of the Leased Premises or shall assign the Lease. Guarantor further agrees that its liability under this Guarantee shall not be affected by the modification, re-lease or discharge of Tenant in any creditors' action, receivership, bankruptcy, or other proceedings, or by reason of the operation of any present or future provision of the National Bankruptcy Act or other statute or the decision of any court, or any disability or other defense of the Tenant.

This Guarantee shall inure to the benefit of the Landlord named in the Lease, its successors and assigns. This Guarantee is attached to and made a part of the Lease, and Guarantor acknowledges that it has received a copy thereof.

WAIVER OF JURY TRIAL - The Guarantor and Landlord agree to waive any right to request a jury trial in any action to enforce this Guarantee or the Lease.

IN WITNESS WHEREOF, the undersigned have/has caused this Guarantee to be executed this 11 day of August, 2009.

Signed in the Presence of:

[Signature]

Tenant:

[Signature]

By:

Robert D. Arbogast
Print or Type Name

Representing: THE DRYDOCK ENTERPRISES LTD.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT

Social Security Number of Guarantor

148 - 46 - 8584

Sworn to before me this 16th
day of August, 2010.

Guarantor's Date of Birth

05/08/53

[Signature]
Notary Public for South Carolina

My Commission Expires: 12/12/2011



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Stephen G. Riley, ICMA – CM, Town Manager

FROM: Charles F. Cousins, AICP, Community Development Director

DATE: January 8, 2015

SUBJECT: Sale of 2.4 Acres of Town land on Spanish Wells Road to the Paddocks Limited Liability Company

Recommendation: Staff recommends Town Council authorize the Mayor and Town Manager to execute a contract for the sale of 2.4 acres of Town land to the Paddocks Limited Liability Company.

Summary: In 2012 the Town was approached about the possibility of selling a 2.4 acre parcel of Town land fronting Spanish Wells Road to enhance the potential development of a residential subdivision. (See attached aerial photograph.) The Town parcel would be combined with an adjacent approximately 30 acre tract along Old House Creek owned by the developer to create his subdivision. During discussion of this item in executive session, there appeared to be a consensus for staff to bring forward an ordinance and contract to be considered at a public meeting by Town Council. The proposed ordinance and contract are attached. The developer has been working with staff to receive approval for his proposed single family home subdivision. Staff is ready to approve this subdivision if the sale of the property is completed.

Background: In 2003 the Town acquired this 2.4 acre parcel from the SCDOT using storm water utility funds for \$168,000. The property includes a ditch that serves to drain a portion of the Cross Island Parkway. The Town's reason for this purchase was to protect this drainage way. For years there had been a dispute between the SCDOT and the adjoining property owned by Paddocks Limited Liability Company over the SCDOT's right to convey storm water across his property from this ditch. When approached by this property owner about the possibility to buy the Town's 2.4 acres, the Town saw a way to both protect the existing ditch and establish a clear means to convey storm water from the Cross Island across his adjoining property.

The proposed contract encumbers the parcel the Town would sell with an easement to permanently protect the existing ditch. Additionally, a drainage easement will be provided to the Town by the buyer across his adjacent property to convey storm water from this ditch across his property to the marshes of Old House Creek. These easements are depicted on the attached plat. Also the plat shows a PSD #1 lift station in the lower right portion of the 2.4 acre tract. The Town previously provided the PSD with an easement for this lift station.

In developing a proposed sales price for this property, the original purchase price of \$168,000 was considered along with the limitations placed on the property by both the easements for the existing ditch and for the PSD lift station. Additionally, consideration was given to the fact that the proposed buyer is providing the Town an easement across his property. Based on these factors, there appeared to be a consensus among the Town Council that a sales price of \$150,000 is appropriate.



Legend



Spanish Wells Road Parcel

Town Owned Property



TOWN OF HILTON HEAD ISLAND
ONE TOWN CENTER COURT
HILTON HEAD ISLAND, S.C. 29928
PHONE (843) 341-4600

January 8, 2015

Town of Hilton Head Island

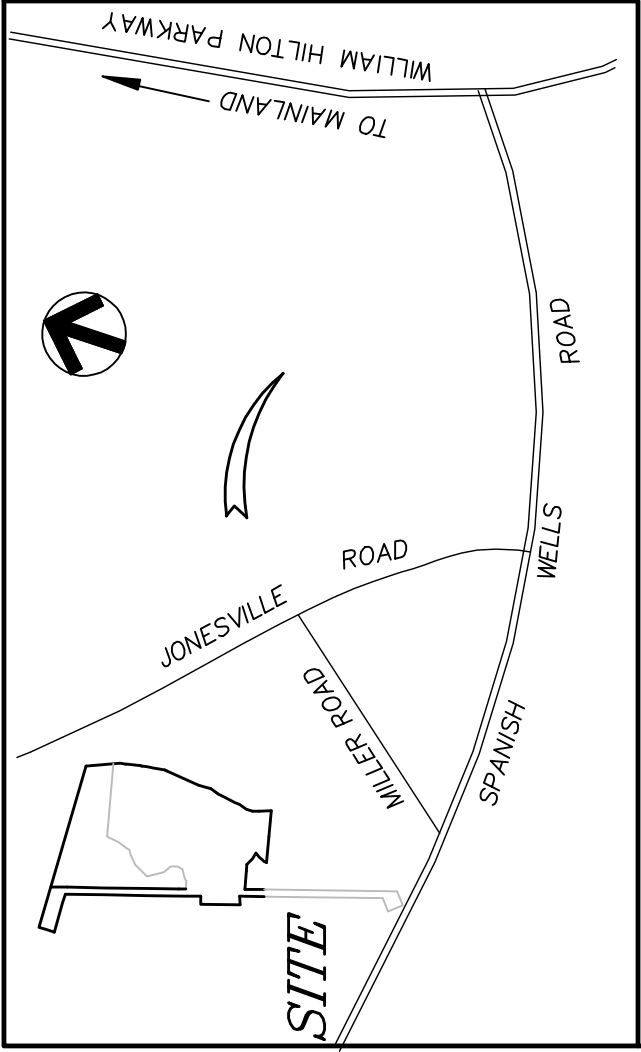
Spanish Wells Road Parcel

0 50 100 200 300 400 feet

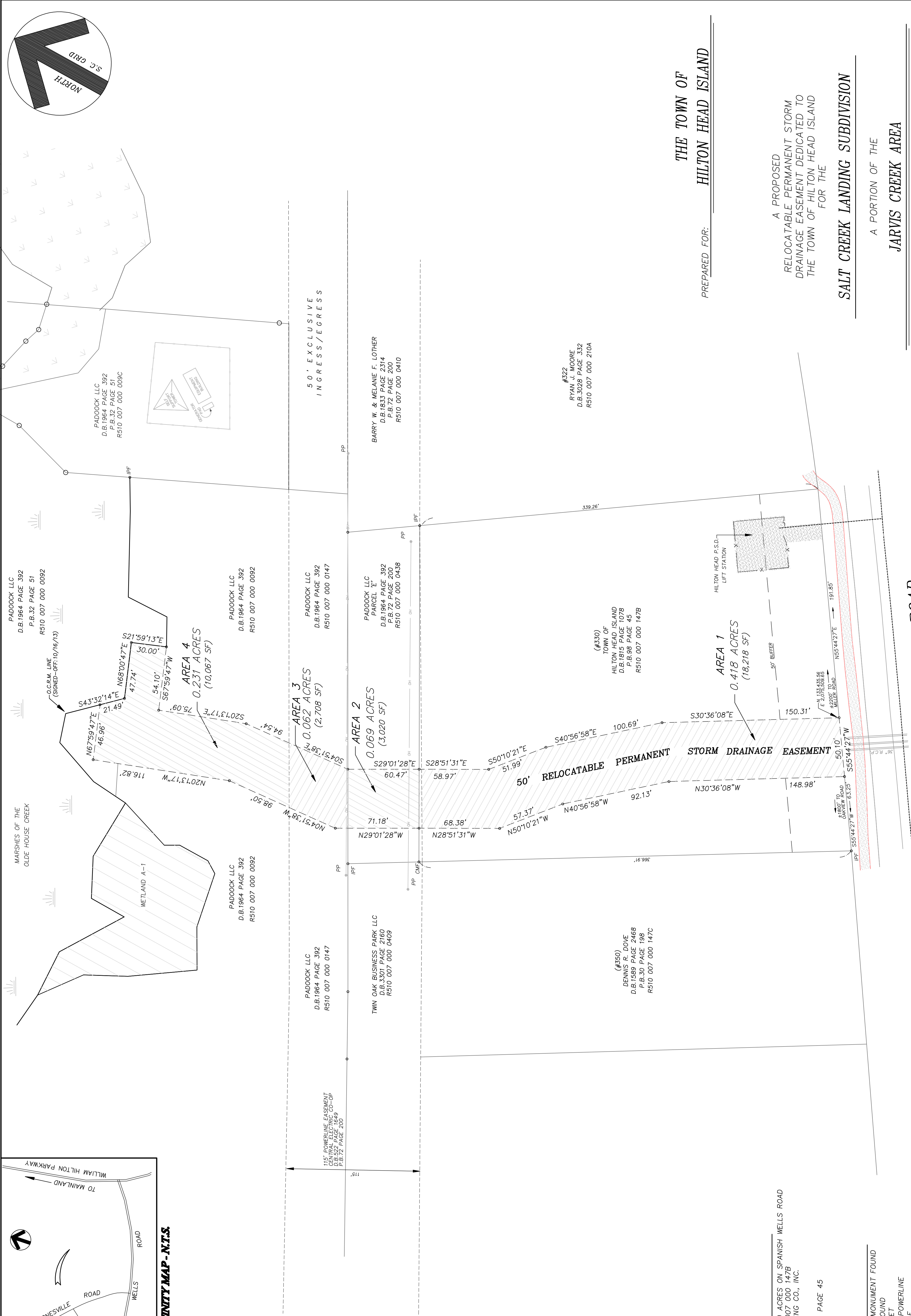
1 inch = 300 feet



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.



VICINITY MAP - N.T.S.



SPANISH WELLS ROAD
66' R/W

AREA 1	0.418 Ac.
AREA 2	0.069 Ac.
AREA 3	0.062 Ac.
AREA 4	0.231 Ac.
TOTAL	0.780 Ac.

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

MICHAEL R. DUNIGAN
S.C.R.L.S. No. 11,905

REFERENCE PLAT:
A BOUNDARY OF 2.40 ACRES ON SPANISH WELLS ROAD
A SECTION OF R510 007 000 147B
BY: COASTAL SURVEYING CO., INC.
DATED: 02/19/04
FILE: 36,995B
RECORDED AT: P.B.98 PAGE 45

LEGEND

- CMF CONCRETE MONUMENT FOUND
- IPF IRON PIN FOUND
- IPS IRON PIN SET
- OH- OVERHEAD POWERLINE
- PP POWER POLE

- NOTES :
- THIS PARCEL OF LAND LIES IN ZONE "A-7", B.F.E.= 14.0' PER F.I.R.M. PANEL 0007-D, COMMUNITY NO. 450250. REVISED: 9/29/86.
 - THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY THE SURVEYOR. NO INVESTIGATIONS FOR EASEMENTS, ENCUMBRANCES, OR OTHER FACTS HAVE BEEN MADE THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
 - ALL BUILDING SETBACK REQUIREMENTS SHOULD BE VERIFIED WITH THE PROPER AUTHORITIES PRIOR TO DESIGN AND CONSTRUCTION.
 - CERTIFICATIONS ARE NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS.
 - COORDINATES ARE BASED ON THE 1983 HORIZONTAL DATUM.

THE TOWN OF
HILTON HEAD ISLAND

A PROPOSED
RELOCATABLE PERMANENT STORM
DRAINAGE EASEMENT DEDICATED TO
THE TOWN OF HILTON HEAD ISLAND
FOR THE

SALT CREEK LANDING SUBDIVISION

A PORTION OF THE
JARVIS CREEK AREA

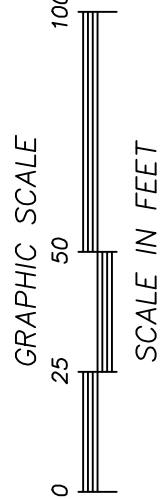
HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA

SCALE: 1" = 50'
DATE: 06/30/14
JOB No.: 52,454E

SURVEYED BY: CSC
DRAWN BY: MRD
CHECKED BY: TWW



COASTAL
SURVEYING CO., INC.
49 RIVERWALK BLVD.
BUILDING B
RINGLAND, SC 29936
(843) 645-4448



SCALE IN FEET

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF A SALE AND PURCHASE AGREEMENT AND THE EXECUTION OF A DEED FOR THE SALE OF APPROXIMATELY 2.4 ACRES OF REAL PROPERTY ALONG SPANISH WELLS ROAD TO THE PADDOCKS LIMITED LIABILITY COMPANY, 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.

LEGISLATIVE FINDINGS

WHEREAS, the Town of Hilton Head Island (hereinafter “Town”) owns approximately 2.4 acres of real property known as R510-007-000-147B-0000 (hereinafter referred to as the “Property”), which is located on Hilton Head Island, Beaufort County, South Carolina; and,

WHEREAS, the Town has agreed to sell the Property to The Paddocks Limited Liability Company in accordance with the terms and conditions set forth in that certain Sale and Purchase Agreement, a copy of which is attached hereto as Exhibit “A” (the “Contract”); and,

WHEREAS, under the provisions 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), the conveyance or granting of an interest in real property owned by the Town of Hilton Head Island must be authorized by Ordinance.

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

Section 1. Execution of Agreement.

- (a) The Mayor and/or Town Manager are hereby authorized to execute and deliver the Contract in a substantially similar form to that attached hereto as Exhibit "A" for the conveyance of Town-owned real property to The Paddocks Limited Liability Company; and

- (b) The Mayor and/or Town Manager are hereby authorized to take such other and further actions as may be necessary to complete the transactions contemplated in the Contract as authorized hereby, including the execution and delivery of the Deed and all other documents called for in the Contract.

Section 2. Severability.

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

Section 3. Effective Date.

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

(SIGNATURE PAGE FOLLOWS)

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

David Bennett, Mayor

ATTEST:

Victoria L. Pfannenschmidt, Town Clerk

First Reading: _____

Second Reading: _____

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

Introduced by Council Member: _____

CONTRACT FOR PURCHASE AND SALE OF:

+/- 2.4 Acres on Spanish Wells Road
on Hilton Head Island, South Carolina:

By and Between

The Town of Hilton Head Island, South Carolina,

and

The Paddocks Limited Liability Company

Dated as of: _____

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

)
)
)

SALE AND PURCHASE AGREEMENT

This Agreement (hereinafter the "Agreement") is made and entered into by and between the Town of Hilton Head Island, South Carolina (hereinafter, the "Seller"), and The Paddocks Limited Liability Company (hereinafter, the "Purchaser") on this ____ day of _____, 20_____.

WITNESSETH:

1. *Sale and Purchase:* For and in consideration of the Purchase Price set forth in Article 3 of this Agreement to be paid to the Seller by the Purchaser, and in further consideration of the full and faithful performance of the covenants, conditions and agreements hereinafter set forth to be performed, fulfilled and observed by the Seller and the Purchaser, and subject to the fulfillment of the Conditions set forth in Articles 8 and 9 of this Agreement, the Seller agrees to sell and the Purchaser agrees to purchase from Seller that certain real property located on Hilton Head Island, Beaufort County, South Carolina, and which is described in Article 1 of this Agreement.

1.1 *Real Property:* The Real Property is hereinafter referred to as the "Real Property" or the "Property" and is described as follows:

All that certain piece, parcel or tract of land containing approximately 2.4 acres of land situate lying and being on the Northern side of Road S-79 (Spanish Wells Road) near the Town of Hilton Head in Beaufort County, State of South Carolina, and being shown and described as that certain 2.400 acre parcel on a Plat recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 46 at Page 137.

Beaufort County TMS#: R510-007-000-147B-0000

This being the same property conveyed to Seller by deed of South Carolina Department of Transportation, dated July 16, 2003, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, on August 8, 2003 in Book 1815 at Page 1078.

1.2 *Intangible Personal Property:* In connection with the Real Property, Seller may have (i) obtained certain governmental permits and approvals and (ii) obtained certain contractual rights and other intangible assets, which are hereinafter referred to as the "Intangible Personal Property" and which are described as follows:

(a) Any and all contract rights, declarant rights, access rights or easements, utility easements, covenant rights burdening other property in favor of the Real Property, easements, rights with respect to lands or marshlands lying below the S. C. D. H. E. C. - O. C. R. M. Critical Line, development plan approvals, zoning rights or approvals, development permits, utility allocations, State, Federal or Local governmental permits and approvals, S. C. D. H. E. C. - O. C. R. M. Permits; United States Army Corps of Engineers Permits; and,

(b) Any and all rights, funds, rights to funds, including deductibles, associated with or related to any pending or previous environmental cleanup affecting the Real Property; and,

(c) Any and all other rights, contracts, easements, contract rights or governmental or other approvals, regardless of description, which affect, touch or concern the Real Property in any way, shape or form, regardless of description.

1.3 *Definition of the "Property":* Both the Real Property and the Intangible Personal Property are hereinafter referred to collectively as the "Property".

2. *Current Survey:* Purchaser may have prepared, at its own cost and expense, an updated current boundary and as-built survey or ALTA survey of the Property, prepared for and certified to the Purchaser.

2.1 *Delivery of Documents:* Seller shall, within fifteen (15) days of the Effective Date of this Agreement and upon reasonable demand by Purchaser, tender to Purchaser copies of the following documents in Seller's possession:

- (a) Any existing title insurance policies in the possession of Seller or Seller's attorney insuring title to the Real Property.
- (b) Copies of any documents evidencing utility allocations or capacity or other contracts benefiting the Real Property.
- (c) Any and all documents relating to any rights or obligations which run to or from the Real Property.
- (d) Copies of all engineering studies, wetland delineations, environmental studies, surveys and the like of the Real Property which are in Seller's possession. Such studies may be given with appropriate disclaimers.
- (e) Copies of any reports, studies or documentation of any type pertaining to any ongoing or previous environmental cleanup affecting the Real Property.

3. *Purchase Price:* The Purchase Price for the Property is One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00) (hereinafter, the "Purchase Price"), which shall be paid in cash or its equivalent at the closing of the transactions contemplated in this Agreement (the "Closing").

3.1 *Payment of Purchase Price:* Upon execution of this Agreement, Purchaser shall deposit with Escrow Agent the amount of Ten Thousand and 00/100 Dollars (\$10,000.00) (the "Escrow Deposit"), which shall be held in escrow pending compliance with this Agreement by the Seller and Purchaser. At Closing, Purchaser shall pay to Seller the balance of the Purchase Price by certified check made payable to Seller, or by a wire transfer of cleared funds to the account of Seller at a financial institution which is designated by Seller. Seller shall give written notice of how it wishes for the purchase price to be paid, together with written bank wire instructions, if applicable, no later than three (3) business days prior to the Closing Date.

4. *Title:* Seller shall provide Purchaser with good and marketable title to the Property by Deed of Limited Warranty, free and clear of any and all monetary liens and encumbrances, a copy of which is attached hereto as Exhibit "A".

4.1. *Title Evidence:* Purchaser may obtain a current ALTA Owner's Title Insurance Commitment (the "Commitment") underwritten on, and issued by, a Title Insurance Company of the Purchaser's choosing (hereinafter, the "Title Company"), by which Commitment the Title Company shall agree to insure fee simple marketable title to the Real Property in the name of the Purchaser in an amount equal to the Purchase Price. Seller and Purchaser understand and agree that as of the date of the Title Commitment and the Closing Date, fee simple marketable title to the Property shall be vested in the Seller, and the Commitment shall show and evidence:

- (a) That fee simple, marketable title to the Real Property is vested in the Seller;
- (b) That title to the Real Property is in the condition required by this Article 4. The cost of, or premium associated with, the Commitment, and any Final Policy of Title Insurance issued thereon, shall be the responsibility of and shall be paid for by the Purchaser.

4.2. *Objections to Title:* If Purchaser's title examination or the Commitment shall reveal that Seller's title to the Real Property is subject to any easements, covenants, clouds on or to the title, encroachments, boundary discrepancies, liens, encumbrances, or any other matter affecting title, or Purchaser's proposed use of the Real Property, then Purchaser shall notify Seller, in writing, of such title defects and Purchaser's objection to the same within five (5) days after the delivery of the Commitment. Upon such notification, the same shall be treated as defect(s) in title ("Title Defects"). Unless Purchaser delivers said written objections within the said five (5) day period following the delivery of the Commitment, it shall be conclusively deemed that Purchaser has accepted title to the Real Property in its then-existing condition.

4.3. *Seller's Right to Cure:* Seller shall have thirty (30) days from receipt of Purchaser's written notice of any Title Defects to Cure (hereinafter defined), or to cause to be Cured, the Title Defects. Seller agrees to use its best efforts and due diligence in Curing, or in

causing to be Cured, the Title Defects. If said thirty (30) day period given Seller to Cure the Title Defects shall extend beyond the Closing Date, and Seller does not Cure, or cause to be Cured, the Title Defects before the Closing Date, then closing shall be held within ten (10) days after Seller delivers written notice to Purchaser that the Title Defects have been Cured. "Cured" as used herein means that a title insurance company authorized to do business in South Carolina and a member of the American Land Title Association will issue a Title Insurance Policy insuring title to the Real Property at standard rates and with only the standard exceptions.

4.4. *Seller's Failure to Cure:* If Seller cannot Cure, or cause to be Cured, the Title Defects within the said thirty (30) day period, or within such longer period to which the Seller and Purchaser may agree in writing, then the Purchaser shall have the option of:

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

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

4.5. *Subsequent Matters:* The Seller acknowledges that a period of days will elapse between the delivery of the Commitment as required herein and Closing. Acceptance of the Commitment by the Purchaser shall not be deemed a waiver of any Title Defect arising between the date of delivery of the Commitment and the date of Closing.

(a) The Purchaser shall notify the Seller of any Title Defects arising subsequent to delivery of the Title Commitment prior to closing.

(b) Upon notification to Seller by Purchaser of any Title Defects arising subsequent to delivery of the Title Commitment, the "Cure" provisions of Article 4.3 and 4.4 shall become effective.

5. *Closing:* This transaction shall be “Closed” and title to the Property shall be conveyed from Seller to Purchaser by delivery of the Deed (hereinafter defined) and other documents required herein from Seller to Purchaser (hereinafter the “Closing”) at 10:00 o’clock A. M. on the Closing Date (hereinafter defined) at the Office of Purchaser’s Attorney, or at such other place as Purchaser and Seller shall mutually agree in writing. Subject to fulfillment of all of the Seller’s obligations and any conditions hereunder, the Closing, unless otherwise modified or extended by mutual agreement of the Seller and Purchaser in writing, shall occur on or before sixty (60) days after the Effective Date as defined in Article 12 herein below (the “Closing Date”).

5.1. *Seller’s Obligations at Closing:* At Closing, the Seller shall deliver to Purchaser, at Seller’s expense, the following Closing Documents:

(a) A good and sufficient Limited Warranty Deed (the “Deed”) so as to convey to Purchaser Fee Simple, Marketable Title to the Real Property, as provided in Article 4 above. The Deed shall be in recordable form, executed by the Seller and duly acknowledged before a Notary Public.

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

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

(d) A South Carolina residency affidavit certifying the address, Residence and Federal Identification Number of Seller to establish the withholding requirements of S. C. Code Ann. § 12-9-310 (Supp. 2011), and South Carolina Revenue Ruling Number 90-3.

(e) Full and complete releases, in recordable form, of any mortgages, liens, claims or other encumbrances to the title of the Real Property, except as may be otherwise provided in Article 4 above.

(f) Such other documents as Purchaser, Purchaser's Attorney or Purchaser's Title Insurance Company may reasonably require or deem as necessary to convey the Property to the Purchaser in accordance with the terms and provisions of this Agreement.

(g) Certified copy of the Ordinance of the Town Council authorizing the sale of the Property and execution of this Agreement and the above-referenced Closing Documents.

(h) Certified copy of the Minutes of the Town Council meetings wherein the Ordinance referenced herein above was approved.

(i) Termination Agreement, executed by the Seller, which is substantially in conformance with the attached Exhibit "B".

5.2. *Purchaser's Obligations at Closing:* At Closing, the Purchaser shall deliver to Seller, at Purchaser's expense, the following:

(a) The balance of the Purchase Price.

(b) Such other documents as Seller or Seller's attorney may reasonably require or deem necessary to convey the Property to the Purchaser in accordance with the terms and provisions of this Agreement.

5.3. *Escrow Agent:* The Escrow Agent shall serve as Closing Agent for all Parties at settlement. Deposit with the Escrow Agent of the Purchase Price, the instruments of conveyance and such other funds and/or documents as are required of either Party under the terms of this Agreement, and/or the Title Company, and/or the Escrow Agent shall be deemed to be a good and sufficient tender of performance in accordance with the terms hereof.

6. *Default by Purchaser:* Except as may be otherwise expressly provided or limited herein with respect to any specific act or omission, if the Purchaser shall default in any of its obligations, covenants, or agreements contained within this Agreement or any of the Exhibits hereto, and shall remain in default after ten (10) day's written notice specifying the default and demanding that the default be cured, then the Seller shall be entitled to pursue any remedy at law or in equity against the Purchaser, including an action for damages or for Specific Performance

of this Agreement. The provisions of this Article 6 shall be binding upon the successors and assigns of the Purchaser, and shall survive the Closing of the transaction contemplated herein.

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

8. *Conditions to Purchaser's Obligation to Close:* The obligation of the Purchaser to purchase the Property from the Seller is subject to satisfaction, as of the Closing Date, of the following conditions (any of which may be waived, in writing, in whole or in part by Purchaser at or prior to Closing):

(a) All of the representations and warranties of the Seller set forth herein shall be true on and as of the Closing in all respects, as though such representations and warranties were made at and as of the Closing; and all covenants, agreements and documents required of the Seller in this Agreement shall have been performed, complied with or delivered (as the case may be) in accordance with this Agreement.

(b) The Property shall not be in material violation of any governmental laws, ordinances, rules or regulations, and there shall be no action, suit or proceeding pending or filed against or affecting the Property or any portion thereof, or relating to or affecting or arising out of the ownership or development of the Property or any portion thereof, in any state or federal court or by any federal, state, county or municipal department, commission, board bureau, or agency or other governmental instrumentality.

(c) Closing on the Property between Purchaser and K. Hovnanian Homes, its successors or assigns.

In the event any of the above stated conditions is not satisfied or waived in writing by Purchaser

prior to Closing, this Agreement shall terminate on the Option of the Purchaser, any Escrow Deposit and any accrued interest thereon shall be returned to Purchaser, and neither Party shall have any further obligation or rights with respect to the other.

9. *Conditions to Seller's Obligation to Close:* The obligation of the Seller to sell the Property to the Purchaser is subject to the Town Council for the Town of Hilton Head Island, South Carolina adopting an Ordinance authorizing the sale of the Property and the execution of this Agreement and the Closing Documents referenced herein.

10. *Representations and Warranties of Seller:* To induce Purchaser to enter into this Agreement and to purchase the Property, Seller represents and warrants (which representations and warranties shall survive the Closing) to Purchaser as follows:

(a) As of the date of this Agreement and as of the date of Closing, Seller will have all requisite legal power and authority to execute and deliver the Deed and other documents to be delivered pursuant to this Agreement. The individual(s) executing this Agreement on behalf of Seller has, and as of the date of Closing will have, express authority and full power on behalf of Seller to enter into and deliver this Agreement and the Deed and other documentation required hereunder.

(b) Other than work or material contracted for by Purchaser, as of the Closing, no work will have been performed or will be in process at the Property, and no materials will have been delivered to the Property that might provide the basis for the filing of a Mechanic's, Materialman's or other lien against the Property or any portion thereof. The requirements set forth in this Article shall be deemed satisfied if the Title Company, based upon Seller's mechanic's lien affidavit, is willing to give Purchaser affirmative mechanic's lien coverage.

(c) There has been no deferral of taxes with respect to this Property.

(d) Other than is expressly provided for herein, Seller shall not grant any easements, or enter into any covenants or agreements concerning the Property or title to the Real Property, or in any other way affect the Property or title to the Real Property without the written consent of Purchaser.

(e) There are no rights or claims of parties in possession not shown by the Public Records for Beaufort County, South Carolina; and there is no litigation now pending or threatened against the Seller which would materially affect the Property, title to the Real

Property, the execution, delivery or enforceability of this Agreement, or the Seller's performance or other obligations hereunder.

(f) No options, leases or other contracts are still outstanding which give any other party a right to purchase the Real Property.

11. *Brokers:* Seller and Purchaser warrant and represent that no broker, finder, or other person is entitled to a commission, finder's fee or other compensation in connection with this Agreement, and Seller shall indemnify and hold harmless the other party from any and all claims, liabilities, losses, damages, costs and expenses arising from the claim of any other broker, finder or other person for such compensation, arising by, under or through such party. The obligations under this Article 11 shall survive the Closing.

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

13. *Miscellaneous:*

13.1. *Assignability:* This Agreement may not be assigned by either the Purchaser or the Seller without the express written consent of both parties.

13.2 *Binding Effect:* This Agreement shall inure to the benefit of and shall be binding upon the Seller and Purchaser and their respective successors and assigns.

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

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

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

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

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

13.8. *Recording:* The parties hereto may not record this Agreement, or a short form Memorandum thereof, in the Office of the Register of Deeds for Beaufort County, South Carolina.

13.9. *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.

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

13.11. *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 Purchaser: The Paddocks Limited Liability Company
 P.O. Box 2210
 Bluffton, SC 29910

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

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

13.12. *Further Assurances and Corrective Documents:* The Seller and Purchaser agree to do, execute, acknowledge, deliver or cause to be done all such further acts as may be reasonably determined to be necessary to carry out this Agreement and give effect hereto. The Seller and Purchaser agree that each shall, upon request, execute and deliver such other or corrective documents, or any such document as may be requested by any governmental or regulatory agencies, including but not limited to any such documents relating to any pending or previous environmental cleanup affecting the Real Property, as may be reasonably determined to be necessary, either before or after the Closing. The obligations of this Article 13.12 shall survive the Closing.

14. *Possession:* Possession of the Property shall be delivered to the Purchaser at Closing, provided, however, that the Purchase Price, minus adjustments and prorations, is paid in full by or on behalf of Purchaser at Closing.

15. *Prorations:* Payment of the following is to be pro-rated between the Seller and the Purchaser as of the Closing Date:

(a) Real Property Taxes and Assessments, if any, shall be made on the basis of the current year's tax with due exemptions, if allowed for the said year. If Closing occurs on a date when the current year's taxes are not fixed, taxes will be apportioned based upon the prior year's taxes plus ten (10%) per cent. Any tax apportionment based upon an estimate shall be recalculated when the property taxes are finally fixed, and the Seller or Purchaser, as the case may be, shall make payment to the other based upon such recalculation. The provisions of this Article 15 shall survive the Closing and delivery of the Deed.

16. *Closing Costs:*

16.1. *Seller's Closing Costs:* Seller shall be responsible to pay for the Cost of any Seller's Closing Costs which are customary in Beaufort County, South Carolina.

16.2. *Purchasers Closing Costs:* Purchaser shall be responsible to pay the cost of:

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

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

(c) The Cost of any title insurance premium chargeable for the Commitment and any policy of Title Insurance issued therefrom; and,

(d) Any other Purchaser Closing Costs which are customary in Beaufort County, South Carolina.

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

18. *Damage or Risk of Loss:* The risk of loss or complete or partial destruction of the

Property shall rest with the Seller up to the time that the Closing occurs. If the Property is damaged, but repairable prior to Closing, Seller has the option of repairing and proceeding. If the Property is damaged, but un-repairable prior to Closing, the Purchaser shall be entitled to a return of any Escrow Deposit together with any accrued interest thereon, and this Agreement shall be terminated, and neither party shall have any further rights or obligations with respect to the other.

19. *Condemnation:* If, between the date of this Agreement and the Closing, a taking or condemnation of the Property is threatened or commenced by any party or entity other than Purchaser, Purchaser may elect, in writing, within five (5) days after receipt of notice from Seller of such taking or condemnation, accompanied by information regarding the amount and payment of the condemnation proceeds, to terminate this Agreement or to purchase the Property without regard to such condemnation. If Purchaser fails to notify Seller of Purchaser's election, Purchaser will be deemed to have elected to proceed with the purchase of the Property without regard to such taking or condemnation. In the event Purchaser elects to purchase, Seller shall have no obligation to repair or replace any of the Property destroyed, nor shall the purchase price be adjusted. If Purchaser elects to terminate this Agreement, Purchaser shall notify Seller of such election in writing; this Agreement shall be of no further force and effect; Escrow Agent shall immediately return the Deposit to Purchaser; and Seller shall be entitled to receive any condemnation awards payable as a result of such taking or condemnation. If Purchaser elects to purchase the Property despite such taking or condemnation Seller shall assign its rights to and Purchaser shall be entitled to receive any condemnation awards payable as a result of such taking or condemnation. However, in the event Seller determines that the amount of condemnation awards payable as a result of such taking or condemnation exceeds the Purchase Price, Seller

may elect at any time and in their sole discretion to terminate this Agreement and retain and receive all rights to such condemnation awards, and Purchaser shall be entitled to the return of all deposits paid, and neither party shall have any further rights or obligation against the other. Nothing in this Article shall apply to any taking or condemnation instigated by Purchaser.

20. *Escrow Agent:* The "Escrow Agent" shall be Gregory M. Alford, Alford & Thoreson, LLC, 18 Executive Park Road, Building 1, Hilton Head Island, South Carolina 29928, P.O. Drawer 8008, Hilton Head Island, South Carolina 29938. If any dispute should arise as to whether Escrow Agent is obligated to deliver any Escrow Deposit, or any funds or documents which it holds, Escrow Agent shall not be required to make delivery thereof, but, in such event shall hold the same until receipt, by Escrow Agent, of written authorization from Seller and Purchaser directing the disposition of the same. In the absence of such written authorization, Escrow Agent may hold any Escrow Deposit, or any other funds or documents in connection with this transaction in its possession until a final determination of the rights of the Parties by a Court of competent jurisdiction. If such written authorization is not given or proceedings for such determination are not begun and diligently continued, Escrow Agent may institute an appropriate proceeding for leave to place any Escrow Deposit, or any other funds or documents in connection with this transaction in its possession with the Clerk of Court for Beaufort County, South Carolina, pending such determination. Escrow Agent shall not be charged with notice of any fact or circumstance unless and until written notice of the same is received by Escrow Agent. Upon making the delivery of the funds or documents which Escrow Agent may hold in accordance with the provisions of this Article 20, Escrow Agent shall have no further obligation or liability to Purchaser and Seller, and Purchaser and Seller agree to indemnify and hold Escrow Agent harmless from any such liability.

21. *Matters Subsequent to Closing:* Seller acknowledges that it has obligations under this Agreement to be fulfilled subsequent to Closing. Seller acknowledges that all such obligations survive the Closing whether or not a specific statement to that effect is set forth in connection with each such obligation.

22. *Drainage Easement(s):* No later than thirty (30) days after Closing, Purchaser shall execute and deliver to Seller a fifty foot (50') wide permanent storm drainage easement straddling the existing stream drainage channel from Spanish Wells Road to the OCRM critical line, in substantial conformance with the attached Exhibit "C". In the event one or more portions of property which the easement encumbers is/are developed, and portions of this easement are encumbered by structural facilities (such as but not limited to storm water retention basins) required by Seller or any other regulatory authority (through the Land Management Ordinance of the Town of Hilton Head Island, OCRM storm water permits, or otherwise), those facilities shall be placed in a permanent storm water retention easement which clearly indicates the maintenance responsibilities of the Purchaser or any subsequent developer of such property or property owners' association controlling such property. Any such retention easement may supersede the Seller's drainage easement at any time contingent on Seller and OCRM approvals.

23. Upon conveyance of the Property to Purchaser pursuant to this Agreement, Purchaser shall assume all rights and obligations contained in that certain Sewage Pump Station Easement, dated September 10, 2012 and recorded September 21, 2012 in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 3176 at Page 886.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the Seller and the Purchaser caused their duly authorized officers and representatives to execute this Agreement as of the date and year first above written.

WITNESSES:

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

By: _____
David Bennett, Mayor

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

WITNESSES:

**THE PADDOCKS LIMITED LIABILITY
COMPANY**

By: _____

Its: _____

EXHIBIT "A"

DEED

LIMITED WARRANTY DEED

All that certain piece, parcel or tract of land containing approximately 2.4 acres of land situate lying and being on the Northern side of Road S-79 (Spanish Wells Road) near the Town of Hilton Head in Beaufort County, State of South Carolina, and being shown and described as that certain 2.400 acre parcel on a Plat recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 46 at Page 137.

SUBJECT, however, to all applicable covenants, restrictions, easements and limitations of record with the Beaufort County Register of Deeds.

1

This Deed was prepared in the law offices of Alford & Thoreson, LLC, Post Office Drawer 8008, Hilton Head Island, South Carolina, 29938-8008, by Mitchell J. Thoreson, Esq.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantee, its successors and assigns forever.

AND the said Grantor does hereby bind Grantor and Grantor's successors, assigns, executors and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Grantee, the Grantee's successors and assigns, against Grantor and Grantor's successors and assigns and all persons claiming through or under the Grantor, but not otherwise.

(SIGNATURES ON FOLLOWING PAGE)

WITNESS Grantor's Hand and Seal, this _____ day of _____, 20____.

SIGNED SEALED AND DELIVERED

TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

Signature of 1st Witness

By: David Bennett, Mayor

Signature of 2nd Witness (the Notary Public)

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I, the undersigned Notary Public do hereby certify that Drew A. Laughlin and Stephen G. Riley 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 _____ day of _____, 20____.

_____(SEAL)
Signature of Notary Public for State of South Carolina
My Commission expires: _____
(affix seal)

EXHIBIT "B"

TERMINATION AGREEMENT

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

TERMINATION AGREEMENT

This Termination Agreement is made and entered into this _____ day of _____, 20____ by and among Twin Oaks Business Park, LLC ("Twin Oaks"), Dennis R. Dove ("Dove") and the Town of Hilton Head Island, South Carolina (the "Town")

WITNESSETH:

WHEREAS, The Hilton Head Company Inc. made and executed that certain Protective Covenants and Restrictions recorded in the ROD Office for Beaufort County, South Carolina in Book 330 at Page 795 (the "Restrictions") covering that certain 5.793 acres located on Spanish Wells Road, Hilton Head Island, South Carolina as described on Exhibit "A" attached hereto and made a part hereof (the "Property"); and

WHEREAS, Twin Oaks acquired Parcel "A" of 3.393 acres of the Property by deed dated January 20, 2014 and recorded in the ROD Office for Beaufort County, South Carolina in Book 3301 at Page 2156;

WHEREAS, Dove acquired Parcel "B" of 3.393 acres of the Property by deed dated May 31, 2002 and recorded in the ROD Office for Beaufort County South Carolina in Book 1589 at Page 2468; and

WHEREAS, the Town acquired the remaining portion of the Property such that the present owners of the Property are Twin Oaks, Dove, and the Town; and

WHEREAS, the parties herein agree to terminate the Restrictions.

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto do agree as follows:

1. That the above "WHEREAS" clauses are hereby incorporated as if restated herein and the parties acknowledge and agree that such clauses are a material and integral part of this Agreement.
2. That the parties agree that the Restrictions are hereby terminated and are of no further force and effect.

WITNESS our hands and seals the date first above written.

Witness:

TWIN OAKS BUSINESS PARK, LLC

By: _____

STATE OF SOUTH CAROLINA)

)

ACKNOWLEDGMENT

COUNTY OF BEAUFORT)

under S.C. Code § 30-5-30(C)

I, the undersigned notary public, do hereby certify that the within named Twin Oaks, by its proper officer, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness to before me this _____ day of _____, 20_____.

Notary Public for South Carolina

My Commission Expires:_____

TOWN OF HILTON HEAD ISLAND SOUTH
CAROLINA

By: _____
David Bennett, Mayor

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) ACKNOWLEDGMENT
) under S.C. Code § 30-5-30(C)

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

Witness to before me this _____ day of _____, 20_____.

Notary Public for South Carolina
My Commission Expires: _____

Dennis R. Dove

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) ACKNOWLEDGMENT
) under S.C. Code § 30-5-30(C)

I, the undersigned notary public, do hereby certify that the within named Dove, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness to before me this _____ day of _____, 20_____.

Notary Public for South Carolina
My Commission Expires:_____

EXHIBIT "C"

DRAINAGE EASEMENT AGREEMENT

STATE OF SOUTH CAROLINA

)

)

COUNTY OF BEAUFORT

)

DRAINAGE EASEMENT AGREEMENT

This Drainage Easement Agreement (“Agreement”) is made this ____ day of _____, 20____, by and between THE PADDOCKS LIMITED LIABILITY COMPANY, having an address of P.O. Box 2210, Bluffton, South Carolina 29910 (hereinafter referred to as the “Grantor”), and the TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, having an address of One Town Center Court, Hilton Head Island, South Carolina 29928, (hereinafter referred to as the “Town”).

W I T N E S S E T H

WHEREAS, the Town has planned and desires to undertake drainage work which involves drainage improvements, ongoing maintenance, and related work within parcels located along or near Spanish Wells Road, Hilton Head Island, South Carolina, as further described in this Agreement, which work is for the benefit and use of the general public (the “Work”); and,

WHEREAS, the Work will be located on and will traverse on, across and through portions of property which the Grantor owns; and,

WHEREAS, Grantor has agreed to convey to the Town a permanent easement for the construction, maintenance and use of the aforementioned drainage improvements, subject to the terms and conditions set forth herein;

NOW, THEREFORE, know all men by these presents, Grantor, for and in consideration of the sum of Ten and No/100 (\$10.00) Dollars and no other valuable consideration, the receipt and sufficiency whereof is acknowledged, has bargained, granted, and sold and by these presents does hereby bargain, grant, and sell to the Town of Hilton Head Island, South Carolina, its successors and assigns, a perpetual, non-exclusive easement on, under, over and across that portion of the Grantor's property, which is described as follows:

All that certain piece, parcel or lot of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, shown and designated as "50' RELOCATABLE PERMANENT STORM DRAINAGE EASEMENT", consisting of "AREA 1", "AREA 2", "AREA 3", and "AREA 4" on that certain Plat entitled "A PROPOSED RELOCATABLE PERMANENT STORM DRAINAGE EASEMENT DEDICATED TO THE TOWN OF HILTON HEAD ISLAND FOR THE SALT CREEK LANDING SUBDIVISION A PORTION OF THE JARVIS CREEK AREA HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA", which Plat is dated June 30, 2014, certified to by Coastal Surveying Co., Inc., Michael R. Dunigan S.C.R.L.S. No. 11905, and which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book _____ at Page _____.

A portion of TMP#: R510-007-000-147B-0000
R510-007-000-043B-0000
R510-007-000-0147-0000
R510-007-000-0092-0000

(hereinafter referred to as the "Easement Property").

The easement granted herein is for the purpose of planning, laying out, building and maintaining drains, embankments, ditches, culverts, pipes any other improvements used or useful in the collection, conveyance and drainage of surface and storm water runoff (hereinafter collectively referred to as the "Drainage Improvements"). The Grantor further grants to the Town a perpetual, non-exclusive easement for the purpose of draining surface and storm water runoff through the Easement Property, and the Drainage Improvements built pursuant to this grant of easement.

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

1. This easement is conveyed subject to all other easements, licenses, and conveyances of record and is subject to the rights herein reserved by the Grantor, its successors and assigns, to utilize the Easement Property at any time, in any manner, and for any purpose, provided, however, that such use by the Grantor shall not be inconsistent with nor prevent the full utilization by the Town of the rights and privileges granted herein.
2. Grantor shall erect no permanent structure of any kind over or across the Easement Property, including but not limited to buildings, sheds, walls and other masonry structures such as tennis courts and swimming pools. Grantor shall not impede, obstruct, or allow to be obstructed, the natural flow of storm water runoff through the Easement Property.
3. The Town agrees to plan, lay out, build and maintain the Drainage Improvements upon the Easement Property, and further agrees that the use of, access to, and travel upon said Drainage Improvements and the Easement Property shall be under the exclusive control of the Town and that the Town shall at all times comply with all applicable laws, rules, codes, and regulations.
4. From the date of the commencement of the construction of the Drainage Improvements described herein, the Town shall, at its sole cost and expense, cause all timely clearing of natural debris, repair, renovation, and all other improvements in general to the Drainage Improvements and the Easement Property as shall be or shall become necessary and/or prudent in the discretion of the Town.
5. The Town agrees to cause all work contemplated hereunder to be performed in a workmanlike fashion with minimal interference to the Grantor, its successors, assigns, invitees, guests, licensees, and agents. The Town further agrees to cause the work contemplated hereunder to

be completed in an expeditious and timely fashion, that the Drainage Improvements shall at all times be maintained in a safe condition, and that all debris and construction materials relating to work undertaken by the Town pursuant to the rights granted hereunder shall be promptly removed. The Town shall restore any other part of the Grantor's property 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 Grantor that the granting of the within easement will not affect "set back" lines under the Town's jurisdiction of any property currently owned by the Grantor.

7. Grantor represents and warrants that it has full authority to execute, deliver and perform this Agreement.

8. 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.

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

(SIGNATURE PAGES FOLLOW)

In witness whereof, the parties hereto have caused the within Drainage Easement Agreement to be executed by their duly authorized officers.

WITNESSES:

THE PADDOCKS LIMITED LIABILITY
COMPANY

2) _____
Signature of Witness #1

By:1) _____

Its:1) _____

3) _____
Signature of Notary Public

STATE OF _____)

_____)

COUNTY OF _____)

UNIFORM ACKNOWLEDGMENT
S. C. CODE ANN. § 30-5-30 (SUPP. 2011)

I, the undersigned Notary Public do hereby certify _____
personally appeared before me on this day and duly acknowledged the execution of the foregoing
instrument on behalf of The Paddocks Limited Liability Company.

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

4) _____
Signature of Notary Public for _____
My Commission Expires: _____

**** Instructions for Execution:**

All signatures should be in blue ink.
ALL blanks must be filled in.
Grantor signs at line(s) 1)
Witness #1 signs at line 2)
Notary Public signs at line 3)
Notary Public signs at line 4) and affixes notary seal

WITNESSES:

THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

(Signature of Witness #1)

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

(Signature of Notary Public)

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

)

)

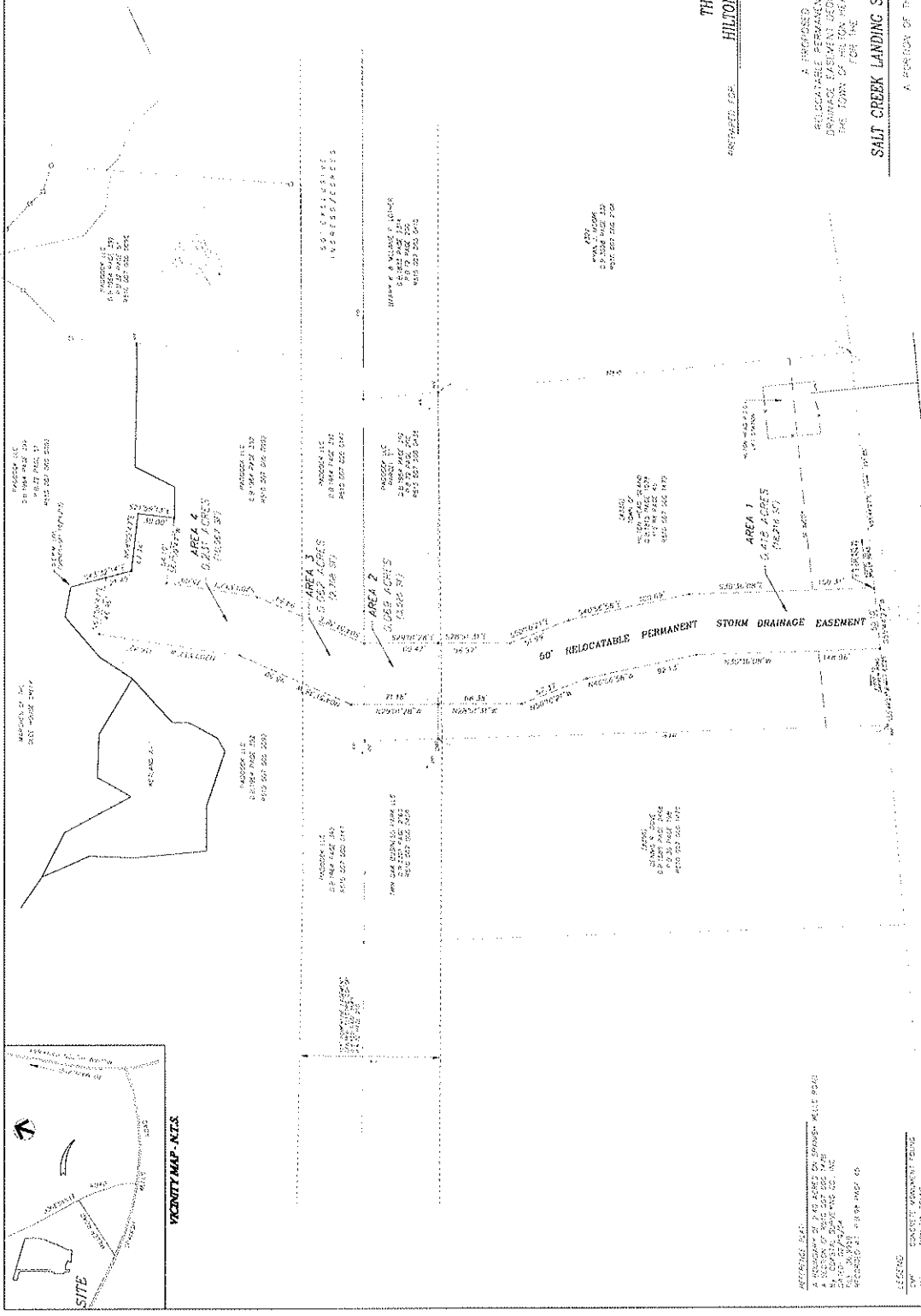
)

UNIFORM ACKNOWLEDGMENT
S. C. CODE ANN. § 30-5-30 (SUPP. 2011)

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

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

Notary Public for South Carolina
My Commission Expires: _____



THE TOWN OF
HILTON HEAD ISLAND

A PROPOSED
RELOCATABLE PERMANENT STORM
DRAINAGE EASEMENT DEDICATED TO
THE TOWN OF HILTON HEAD ISLAND
FOR THE

SALT CREEK LANDING SUBDIVISION

A PORTION OF THE
JARVIS CREEK AREA

HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA

SCALE: 1" = 50'
DATE: 06/10/14
JOB NO: 52,454



COASTAL SURVEY CO., INC.
10000 N. HIGHWAY 17, SUITE 100
WILMINGTON, NC 28403
(910) 544-1400

SPANISH WELLS ROAD
66' R/W

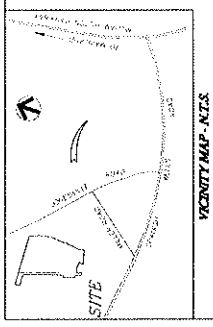
AREA	AC.
AREA 1	0.418
AREA 2	0.089
AREA 3	0.062
AREA 4	0.231
TOTAL	0.760

NOTES:
1. THE TOWN OF HILTON HEAD ISLAND HAS THE RIGHT OF WAY FOR THE
RELOCATABLE PERMANENT STORM DRAINAGE EASEMENT.
2. THE TOWN OF HILTON HEAD ISLAND HAS THE RIGHT OF WAY FOR THE
RELOCATABLE PERMANENT STORM DRAINAGE EASEMENT.
3. THE TOWN OF HILTON HEAD ISLAND HAS THE RIGHT OF WAY FOR THE
RELOCATABLE PERMANENT STORM DRAINAGE EASEMENT.

DATE: 06/10/14
JOB NO: 52,454
SCALE: 1" = 50'

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LOCATION MAP - N.T.S.

MEMORANDUM

TO: Town Council

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

RE: Proposed Ordinance Number 2015-05 Committees of Council

DATE: January 14, 2015

Recommendation: Staff recommends that Town Council consider first reading of Proposed Ordinance Number 2015-05, amending Section 2-5-60 (Committees of Council) of the Town Code.

Summary: This Ordinance amends Section 2-5-60 of the Town Code. These changes will amend in part the five standing Town Council committees and establish the authority of the Mayor to appoint Town resident citizens to such committees as he shall deem necessary and appropriate for the efficient operation of the Town Council.

Background: Currently, Town Code Section 2-5-60 establishes five (5) standing committees composed of three (3) council members and an alternate, appointed by the Mayor. Proposed Ordinance 2015-05 makes changes to the standing committees and authorizes the Mayor to appoint Town resident citizens to standing committees.

Section 2-5-60 (b) has been changed to clarify the distinction between standing and non-standing committees of Town Council.

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO.

PROPOSED ORDINANCE NO. 2015-05

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, TO AMEND TITLE 2 GENERAL GOVERNMENT AND ADMINISTRATION OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA BY AMENDING CHAPTER 5 (MEETINGS OF COUNCIL AND RULES OF PROCEDURE) SECTION 2-5-60, COMMITTEES OF COUNCIL; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Hilton Head Island, South Carolina previously adopted Ordinance 2008-03, amending Section 2-5-60 for the purpose of codifying Town Council Standing Committees (Intergovernmental Relations Committee, Personnel Committee, Planning and Development Standards Committee, Public Facilities Committee, and Public Safety Committee) and establishing authority of the Mayor to appoint council members to such committees as he shall seem necessary and appropriate for the efficient operation of the Town Council; and

WHEREAS, the purpose of the Town Council Standing Committee system is to facilitate a more efficient Town Council system within the Town Council/Manager form of government and to allow for in-depth analysis of issues, proposed ordinances, and other Town-related matters; and

WHEREAS, the Town Council now desires to amend Section 2-5-60 by establishing a new Town Council Standing Committee (Finance and Administrative Committee), incorporating the existing Personnel Committee into a newly-formed Town Council Standing Committee (Community Services Committee), renaming the existing Planning and Development Standards Committee to the Public Planning Committee and establishing the authority for the Mayor to appoint town resident citizens to serve as Town Council Standing Committee members in order to provide for an efficient operation of the Town Council that will benefit both the Town and its citizens.

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

NOTE: **Underlined and bold-faced** typed portions indicate additions to the Municipal Code. ~~Stricken~~ portions indicate deletions to the Municipal Code.

Section 1. Sec. 2-5-60. - Committees of Council.

- (a) The Town Council shall have standing committees to assist in the efficient operation of the Town Council, namely the **Finance and Administrative Committee**, Intergovernmental Relations Committee, ~~Personnel~~ **Community Services** Committee, ~~Planning and Development Standards~~ **Public Planning** Committee, Public Facilities Committee, and Public Safety Committee. Each committee shall be composed of three (3) Town Council members and an alternate, who shall also be a member of council. The Mayor shall appoint the members and the alternate and shall designate a chairman. **To assist such council committees, the Mayor may appoint town resident citizens to serve as committee members; provided, however, if any council member objects to such committee appointment, a majority of council shall make the appointment.**
- (b) The Town Council may appoint, by resolution, such other committees **i.e. non-standing committees**, composed exclusively of council members as it shall deem necessary and appropriate for the efficient operation of the Town Council. To assist such council committees, the Mayor may appoint town resident citizens to serve as committee members; provided, however, if any council member objects to any such committee appointment, a majority of council shall make the appointment. The term of the committee membership of any town resident citizen shall be as prescribed by resolution, but in no event shall the term of any committee extend beyond the term of the then sitting council.
- (c) The Town Council may, by resolution, adopt rules and procedures to guide the operation of standing committees. The Town Council may, at the time of the creation of any other committees of council, as part of the resolution creating the committee, or separately, adopt rules and procedures to guide the conduct of such committees.

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.**

By:_____

David Bennett, Mayor

ATTEST:

By:_____

Victoria L. Pfannenschmidt, Town Clerk

First Reading: _____

Second Reading: _____

APPROVED AS TO FORM:

Gregory M. Alford, Town Attorney

Introduced by Council Member:_____