

Town of Hilton Head Island

Land Acquisition Manual

Adopted: March 5, 2002

Amended: October 18, 2005



**Town of Hilton Head Island
Land Acquisition Process
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***For purposes of this land acquisition manual, “Town Manager” shall mean the Town Manager or his designee and “Town Attorney” shall mean the Town Attorney or his designee. (Footnote added February 1, 2005)**

Town of Hilton Head Island Land Acquisition Process

- I. Identification of Properties for Potential Acquisition**
 - A. Individuals (landowners or interested citizens) and Realtors holding listings are encouraged to bring properties to the attention of the Town Manager.
 - B. Council Members contacted by individuals or Realtors should direct those contacts to the Town Manager.
 - C. Council Members may recommend individual parcels to the Town Manager for his consideration.
 - D. No parcel may be brought to the attention of, or considered by, the Town Council without first having been reviewed by the Town Manager.
 - E. Individual Staff members, through their Department Heads, may also recommend parcels to the Town Manager for his consideration.
 - F. The Town Manager shall not be limited to considering parcels brought to his attention by others.
 - G. The Town Manager shall consider all properties brought to his attention and shall present Town Council with a recommendation on whether or not to pursue a particular parcel.

II. Criteria to be Considered When Developing Recommendations to Council

- A. In reviewing parcels and developing recommendations to Council, the Town Manager shall first consider the Town's adopted criteria:
 - 1. Reduction of future development levels
 - 2. Open Space preservation
 - 3. Public access and/or view to the water
 - 4. Furthers the Town's Comprehensive Plan and other planning documents
 - 5. Place restrictive covenants on property and resell where appropriate
- B. Relative to Item A(4) above, the Town Manager shall consider whether parcels further the goals of the Town's various proposed or adopted planning documents:
 - 1. Comprehensive Plan
 - 2. Parks and Recreation Plan
 - 3. Transportation Plan
 - 4. Fire and Rescue Master Plan
 - 5. Broad Creek Water Quality Plan
 - 6. Redevelopment Plans
 - 7. Flood Hazard Plan
 - 8. Other Plans that have been developed for the Town
- C. The Town Manager shall also consider the following:
 - 1. Parcels zoned for high-density development
 - 2. Capital Improvement Program needs
 - 3. Contractual or permitting obligations with other governmental agencies
 - 4. Council's long range goals
 - 5. Environmentally sensitive lands
 - 6. Hazardous conditions, debris cleanup, and security needs
 - 7. Existing features, drainage ditches, miscellaneous infrastructure
 - 8. Mitigation areas

III. Preparation of Recommendations to Town Council; Use of Land Acquisition Workshops

- A. At least annually,* and more often as necessary, the Town Manager shall schedule a Land Acquisition Workshop to review with Council the status of the Land Acquisition Program and to comprehensively review parcels that may be available for acquisition and to consider the recommendations of the Town Manager regarding such parcels.
- B. In preparing his recommendations, the Town Manager shall solicit and consider input from the following Town Departments and Divisions:
 - 1. Planning
 - 2. Engineering
 - 3. Building and Fire Codes
 - 4. Facilities Management
 - 5. Legal
 - 6. Fire and Rescue
 - 7. Other departments or divisions as needed or deemed appropriate
 - 8. The Town Attorney
- C. In preparation for such a workshop, the Town Manager shall prepare a confidential report to Council summarizing the parcels that have been brought to his attention and his recommendations based on the criteria outlined in Section II.
- D. Following the Land Acquisition Workshop, the Town Manager shall prepare a confidential summary for Council of the discussions that took place in the workshop.
- E. The Town Manager is obligated to bring before Council in a timely fashion all requests to purchase property submitted by individual property owners or Realtors holding listings. While it is preferable for Council to review and prioritize parcels in a comprehensive manner, as is accomplished through the Land Acquisition Workshop process, particular circumstances (including but not limited to price, timing, or new or recent events or information) may warrant consideration by Council of individual parcels during Executive Session at a regular or special meeting of Council.

IV. Role of the Town Council

- A. Council Members shall direct all inquiries about land offerings for sale, or considered for acquisition, to the Town Manager.
- B. Council Members shall not participate in the negotiations for any parcel considered for acquisition by the Town. All discussions and negotiations shall be conducted by the Town Manager, or his designee, and the Town Attorney-when so directed by the Town Manager.
- C. All discussions related to individual parcels conducted in Executive Session shall remain confidential until such time as a contract has been executed and the closing has taken place.
- D. Every six months, Council shall conduct public workshops to review with the community recent (closed) acquisitions, review the funding available (if any) for additional acquisitions, to receive public input, and for any other purposes identified by Council.

V. Funding Sources

- A. Real Estate Transfer Fee (See attached Exhibit “B,” Chapter 5 of Title 4 of the Town Code)-primary source
 - 1. Purpose:
 - a. To acquire land while it is still available to be held in perpetuity as wildlife preserves or believed to be needed by the public in the future for active and passive recreation uses and scenic easements.
 - b. To acquire already developed land or development rights in order to convert its use to a public use, to restore the property to open space, or to redefine the property in accordance with the comprehensive plan and dispose of it.
 - 2. Expiration date of RETF is December 21, 2024.
 - 3. Fee is (.0025) percent of the purchase price upon the transfer of any real property interest of any real property situated within the Town.
- B. Beach Preservation Fee (see attached Exhibit “C,” Chapter 9 of Title 4 of the Town Code)
 - 1. Purpose
 - a. To pay, in whole or part, for the current and future preservation, maintenance, nourishment, renourishment, and improvement of the beaches of Hilton Head Island, and also those public facilities related to the use, preservation, maintenance, nourishment, renourishment and improvement of the beaches.
 - 2. Fee is equal to (2.00) percent on the gross proceeds derived from the rental for any rooms (excluding meeting rooms), campground spaces, recreational vehicle spaces, lodgings or sleeping accommodations furnished to transients by any hotel, inn, condominium, motel, bed and breakfast, residence.
- C. General Revenues: Funds provided by general taxes or other non-program specific sources.
- D. Grants: Contributions of cash or other assets from governmental agencies, non-profit organizations, or others provided for land acquisition.
- E. Donations: Gifts of cash or other assets from the private sector for land acquisition.
- F. Capital Improvement Project Revenues: Includes General Revenues, Hospitality Tax, Beach Preservation Fees, Bonds, or other specific revenues.
- G. Bond Issue: Town’s obligation to repay a specific principal at a determined interest amount over a longer period of time than a note. The Town may use General Obligation Bonds, Revenue Bonds, or a combination of the two.
- H. Certificates of Participation: Lease Purchase subject to an annual budget appropriation for debt service and maturing over a period of time.

VI. Acquisition/Negotiation Guidelines for Town Manager

- A. The Town Manager or his designee shall not pursue any property without the knowledge and concurrence of Town Council. No further authorization is required for property on Council's priority list, but the Town Manager shall discuss any other property with Council before continuing contact with the landowner or their designated representative.
- B. The Town Manager shall obtain at least one appraisal. The Manager shall use a variety of appraisers, and is authorized to contract with out-of-town appraisers. In the event the Manager believes an appraisal is not warranted for a particular parcel, he shall present a justification to Council before continuing negotiations.
- C. The Town Manager or his Designee shall negotiate with property owners or their designated representative directly, and shall negotiate all aspects of the transaction to conclusion.
- D. With respect to any particular tract for which negotiations have been completed, the Manager shall present a complete proposal to Council as described more fully in Section VII (E)(1).
- E. The Town Manager, upon Town Council's approval, may contract with an independent contractor for negotiation and land acquisition of property. Any such contract shall be made an appendix to the land acquisition manual (see attached Appendix "A," October 4, 2006 Agreement with The Trust for Public Land, Inc.-this is an example contract)*

VII. Acquisition Procedure

A. Contact with Property Owner

1. Town Manager shall not pursue any property without the confidential knowledge and concurrence of Town Council.
2. If the owner or real estate agent brought the parcel to the Town's consideration, the Town informs them of its interest and an appraisal is then ordered. If the Town is not interested, the property owner or agent is informed.
3. If Council or staff identified the parcel, an appraisal is ordered before contact is made; unless otherwise agreed to by Council.

B. Appraisal Guidelines

1. One appraisal shall be ordered on property the Town seeks to purchase. (Exception: If the Town Manager believes an appraisal is not warranted, he shall present justification to Council before concluding negotiations)
2. A variety of appraisers shall be used.
3. Out-of-town appraisers may be used.
4. Ability to produce appraisal in a timely, cost efficient, and competent manner is important in the selection of an appraiser.
5. Appraisers may not contact property owner unless expressly authorized.

C. Negotiation and Verbal Offer

1. The Town Manager reviews appraisal for accuracy, fair market value, and what properties were used for comparison.
2. The Town Manager or his designee contacts the property owner or his representative directly and negotiates all aspects of the transaction to conclusion.
3. The Town Manager shall provide status reports on the progress of negotiations to Town Council during Town Council Executive Session discussions.
4. Based on negotiation and from the information provided in the appraisal report or other indicators of value, an offer is made to the property owner.
5. The proposed price is not necessarily bound to the appraisal, as there may be circumstances where the characteristics of the property are such that the market value as determined by the appraisal may not be an accurate indication of the value to the public.

D. Proposed Sales and Purchase Agreement

1. If property owner accepts the Town's verbal offer, then a proposed sales and purchase agreement is drafted by the Town Attorney and forwarded to the property owner's attorney for review with the seller.
2. The Town Attorney reviews any requested amendments by the seller's attorney and forwards them to the Town Manager for review.
3. Once a proposed sales and purchase agreement is agreed to by both the Town and the seller and all negotiations have been completed, then the Town Manager presents a complete proposal to Town Council.

- E. Town Manager's Complete Proposal to Purchase Real Property/Town Council Approval
1. During Town Council's Executive Session, the Town Manager presents a complete proposal with a recommendation that contains:
 - a. Description of parcel, location, size, title history, attributes, zoning, existing uses, and any other pertinent information;
 - b. A description of how the tract meets the acquisition goals of the Town Council, and other important conclusions;
 - c. The proposed use of the property, if any;
 - d. A justification for the proposed price to be paid;
 - e. Proposed source of funding;
 - f. A summary of any material points in the proposed contract, including but not limited to information on the retention or existence of easements, unusual obligations undertaken by either party or use restrictions;
 - g. A summary of the findings contained in the appraisal;
 - h. The proposed sales and purchase agreement and resolution authorizing the purchase of the property. (Resolution is prepared by the Town Attorney); and
 - i. Proposed press release and attached map announcing acquisition. (Press Release is drafted by the Legal Department and map is produced by the GIS Division).
 2. Town Council's Authorization to Purchase Real Property
 - a. If Town Council accepts the Town Manager's proposal, then Town Council votes in open session whether to purchase the property.
 - b. If Town Council votes to purchase the property, then a resolution is executed by the Mayor and a press release to announce the acquisition is forwarded to all media contacts and posted at Town Hall.
 3. The report prepared by the Town Manager in E(1) above shall be made a part of the public record once the closing has been completed.

VIII. Town Attorney's Role in Acquisition of Real Property

A. Appraisals

1. Upon the direction of the Town Manager, the Town Attorney orders an appraisal for property that the Town seeks to purchase.
2. Town Attorney adheres to appraisal guidelines in the selection of appraiser.
3. Town Attorney prepares a letter, which provides a description of the property, tax identification number, property owner, and a due date for the appraisal, to the selected appraiser.
4. Town Attorney forwards completed appraisal to the Town Manager to begin acquisition procedure.

B. Negotiation

1. Upon the direction of the Town Manager, the Town Attorney is involved in the negotiation process either directly (via correspondence or telephone contact) with property owner or his representative.
2. Once the property owner accepts the Town's verbal offer or written offer, then the Town Attorney drafts a proposed sales and purchase agreement.

C. Proposed Sales and Purchase Agreement

1. The Town Attorney drafts a proposed sales and a purchase agreement (see attached Exhibit "E").
2. Town Attorney forwards draft proposed sales and purchase agreement to seller's attorney for review.
3. The Town Attorney reviews any requested amendments by the seller's attorney and then forwards them to the Town Manager for review and discussion.
4. Once agreement is agreed to by both parties and the seller has executed the agreement, the Town Attorney then prepares a resolution authorizing Town Council to purchase said property.

D. Approval and Execution of Sales and Purchase Agreement

1. Town Attorney forwards resolution and proposed sales and purchase agreement to the Town Manager for incorporation with the Town Manager's complete proposal and recommendation to Town Council.
2. If Town Council votes to purchase the property, the Town Attorney proceeds with gathering the needed signatures for the execution of the sales and purchase agreement and the resolution.
3. Town Attorney forwards an executed copy of the resolution, sales and purchase agreement, and escrow deposit (if required) to the seller's attorney.
4. Town Attorney begins preparation for the real estate closing date as set in the sales and purchase agreement.

E. Real Estate Closing

1. Town Attorney orders the following items in preparation for the real estate closing:
 - a. Title Search
 - b. Environmental Assessment Report
 - c. Boundary Survey of Property

2. Town Attorney reviews title search, environmental assessment report and survey for any potential problems prior to the real estate closing.
3. Town Attorney ensures that all provisions in the sales and purchase agreement are complied with prior to closing on property (including any chain of title problems, environmental hazards or debris, encroachments, etc.).
4. Town Attorney prepares the following documents for the real estate closing:
 - a. Deed (Warranty and sometimes Limited Warranty or Quit-Claim)
 - b. Absolute Assignment
 - c. HUD-1 Settlement Statement
 - d. Corporate Resolution (if applicable)
 - e. Seller's Affidavits
 - f. Title Insurance Disclosure Form
 - g. Title Insurance Commitment
 - h. GAP Affidavit (if applicable)
 - i. Any other needed document (use restrictions, etc.)
5. Town Attorney requests from the Finance Department the amount needed for the property closing (including closing costs).
6. On the settlement date, the Town Manager executes all documents on the Town's behalf and the seller's attorney coordinates execution of documents by the seller.
7. Town Attorney forwards the Deed(s), Absolute Assignments, and other documents with recording fees to the Register of Deeds Office in Beaufort for recording.
8. Once documents are back from recording, a title update is completed and a final title insurance policy is issued.
9. Town Attorney forwards a copy of applicable closing documents to the seller's attorney.
10. Town Attorney prepares and forwards a book of all closing documents to the Legal Department for retention and updating of property database and Town property map.

IX. Easement and Right-of-Way Procedures

- A. Granting of an Easement or Access Right for Approved and Funded Capital Improvement Projects*
 - 1. To facilitate the construction and operation of capital improvement projects, the Town may need to grant an easement or access right for the installation and maintenance of utilities.
 - 2. The Town Manager is authorized to execute and deliver any reasonably necessary easements or access rights for the installation and maintenance of utilities incidental to the construction and operation of any capital improvement project that is approved and funded as part of the adopted Municipal Budget including projects adopted in prior budget ordinances. The Town Manager shall advise Town Council in advance of entering into any such easement or access right.
- B. Granting of an Easement for Non-Related Capital Improvement Projects
 - 1. The Town often receives requests from other political subdivisions, public service districts, utility companies, etc. for an easement on Town property for running power lines, telephone lines, sewer lines, cable lines, etc.
 - 2. Upon receipt of such request, the Town Manager reviews the request with appropriate staff and then forwards the request with a recommendation to Town Council. Town Council considers the request during Executive Session. If Town Council desires to grant an easement to the requestor, then the Town Attorney prepares an ordinance with an easement agreement attached as an exhibit. The ordinance is given two readings.
 - 3. Upon approval of the ordinance, the Town Attorney forwards an executed copy of the ordinance and easement agreement to the requestor's attorney for recording.
- C. Acquisition of Easements/Right-of-Ways
 - 1. To facilitate the building of bike pathways, drainage improvements, or other capital improvement projects, the Town may need to acquire easements or right-of-ways.
 - 2. The Town Manager is authorized to pursue acquisition of easements or right-of-ways for any capital improvement project contained in the adopted capital improvement program and for which funds for right-of-way acquisition have been budgeted.
 - 3. Easement/Right-of-Way Procedure
 - a. Town Attorney orders title search for properties that easements are needed upon.

- b. Town Attorney reviews title search for identification of true property owner, mortgages, liens, etc.
- c. Town Attorney orders a survey of properties needed for bike pathway or other capital improvement project.
- d. Town Attorney drafts easement agreement (and plat), prepares a cover letter and forwards to property owner with an explanation as to why the Town is in need of an easement on said property. Town Attorney also drafts a mortgage partial release (if applicable) and forwards to mortgagee.
- e. If property owner forwards requested easement agreement back with appropriate signatures, witnesses, and notary seals, then documents (easement agreement, mortgage release) are forwarded to the Register of Deeds Office with appropriate fees for recording.
- f. Once recorded documents are back from the Register of Deeds Office, a copy of recorded easement agreement is sent to grantor and a copy of recorded release to mortgagee. Once all easements are acquired for capital improvement project, then Town Attorney forwards all original documents to the Legal Department for retention.
- g. If the grantor refuses the Town's original request for an easement, then Town Attorney orders an appraisal on said property in order to offer the property owner "just compensation" for the portion of property needed for a right-of-way. If the property needed for an easement is relatively small in area, the Town Attorney, with the authorization of the Town Manager, may negotiate, make an offer, or respond to proposal without getting an appraisal.
- h. Town Attorney drafts deed and cover letter and forwards to property owner with an offer for just compensation of the needed right-of-way. Town Attorney also drafts a mortgage partial release (if applicable) and forwards to mortgagee.
- i. If property owner accepts the Town's offer, then Town Attorney provides the grantor with the settlement amount once grantor executes deed. Documents (easement agreement, mortgage release) are forwarded to the Register of Deeds Office with appropriate fees for recording.
- j. Once recorded documents are back from the Register of Deeds Office, a copy of recorded deed is sent to grantor and a copy of recorded release to mortgagee. Once all easements are acquired for capital improvement project, then Town Attorney forwards all original documents to the Legal Department for retention.

- k. If property owner refuses Town's offer for "just compensation," then upon Town Council's authorization, the Town Attorney may proceed with condemnation proceedings pursuant to the South Carolina Eminent Domain Procedures Act (28-2-10 et seq. of the South Carolina Code of Laws).

X. Sale of Property/Exchange of Property

A. Sale of Property

1. Pursuant to Town Council's Land Acquisition Criteria, the Town may purchase and place restrictive covenants on property or portions of property and resell where appropriate, to facilitate acquisition of other parcels and further the remaining criteria.
2. Town Council must authorize any sale of property by the adoption of an ordinance. The ordinance is given two readings.
 - a. Requests from individuals to buy or lease Town-owned property shall come through the Town Manager and are first discussed in Executive Session.
 - b. If there is a willingness to consider a proposal, the proposal is routed through the Town Council Public Facilities Committee and then to the full Town Council.
 - c. The Town Manager or his designee negotiates terms and conditions of sale or lease.
 - d. Town Council can initiate a sale, but only upon recommendation of the Town Manager.
 - e. Any proceeds go to the account where the revenue came from to buy the tract of land.
3. Town Attorney handles most aspects of the sale-finding a buyer (advertising or via realtor contact), conditions of sale (covenants and restrictions, proposed price, etc.), preparation of proposed sales and purchase agreement, deed, and ordinance.
4. Town Attorney and Town Manager ensure that all conditions of sale are followed prior to the final execution of deed.
5. Town Attorney compiles and forwards all recorded documents to the Legal Department for permanent retention and updating of property database and Town property map.

B. Exchange of Property

1. The Town may desire to exchange property with another entity to further its Land Acquisition criteria, provide a location for public services, or to meet the needs of the growth of the Town.
2. Town Council must authorize the exchange of property by the adoption of an ordinance. The ordinance is given two readings.
3. Town Attorney handles most aspects of the exchange-conditions of exchange, preparation of property exchange agreement, deed, and ordinance.
4. Town Attorney and Town Manager ensure that all conditions of the exchange (including marketable title) are followed prior to the final execution of the deeds.
5. Town Attorney compiles and forwards all recorded documents to the Legal Department for permanent retention and updating of property database and Town property map.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND ESTABLISHING CRITERIA TO GUIDE TOWN COUNCIL IN THE OPERATION OF THE TOWN'S LAND ACQUISITION PROGRAM

WHEREAS, on April 21, 1998, the Town Council of the Town of Hilton Head Island previously adopted a Resolution adopting criteria to assist Town Council in identifying and prioritizing properties to be considered for acquisition; and

WHEREAS, Town Council believes it is necessary to establish more broad-based criteria, in part to reflect the policy guidance in the Town's newly-adopted Comprehensive Plan; and

WHEREAS, Town Council now desires to establish criteria to serve as a guide in the operation of the Town's land acquisition program; and

NOW, THEREFORE, BE IT, AND IT HEREBY IS, RESOLVED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, THAT the Town Council hereby establishes criteria to guide Town Council in the operation of its land acquisition program:

- A. Address traffic congestion concerns by reducing development potential in strategic locations;
- B. Preserve open space, and thus the aesthetic quality of our community along our major roads;
- C. Acquire land which provides public access, and/or views to the water;
- D. Acquire land which furthers one of the above criteria while also furthering the Town's Comprehensive Plan; and
- E. Place restrictive covenants on property or portions of property and resell where appropriate, to facilitate acquisition of other parcels that further the above objectives.

MOVED, APPROVED, AND ADOPTED ON THIS SIXTEENTH DAY OF MARCH 1999.

Thomas D. Peeples
Thomas D. Peeples, Mayor

ATTEST:

Sandi T. Santaniello
Sandi T. Santaniello, CMC, Town Clerk

**A RESOLUTION OF THE TOWN OF HILTON HEAD ISLAND ADOPTING
CRITERIA TO ASSIST TOWN COUNCIL IN IDENTIFYING AND
PRIORITIZING PROPERTIES TO BE CONSIDERED FOR ACQUISITION AS
PART OF THE TOWN'S LAND ACQUISITION PROGRAM**

WHEREAS, the Town Council for the Town of Hilton Head Island is engaged in a Land Acquisition Program intended to further a variety of Town objectives, including growth management, traffic reduction, protection of open space and wildlife habitat, among others; and

WHEREAS, the Town Council for the Town of Hilton Head Island wishes to establish criteria for identifying and prioritizing parcels to be considered for acquisition.

NOW, THEREFORE, BE IT RESOLVED, by the Town Council for the Town of Hilton Head Island that the following criteria shall be used in identifying and prioritizing parcels to be considered by Council for possible acquisition.

- A. Addressing traffic congestion concerns by reducing development potential in strategic locations
- B. Preserving open space, and thus the aesthetic quality of our community, along our major roadways
- C. Acquiring land which provides public access, or views, to the water
- D. Giving consideration to parcels which further one of the above criteria while also furthering one of the Town's CIP projects
- E. Selling property, or portions of property, where appropriate in order to facilitate acquisition of other parcels which further the above objectives

MOVED, APPROVED, AND ADOPTED THIS 21ST DAY OF APRIL, 1998

Thomas D. Peoples
Thomas D. Peoples, Mayor

Attest:

Sandi Santaniello
Sandi Santaniello, CMC, Town Clerk

Chapter 5 REAL ESTATE TRANSFER FEE

Sec. 4-5-10. Definitions.

The following definitions shall apply:

Open space: A land use, public or private, which is not devoted to residential, commercial, industrial, or institutional uses (or mixtures of these uses) but is left to permanent wilderness or prescribed active noncommercial recreational use.

Purchaser: The transferee, grantee, or recipient of any land, tenement, or other realty.

Purchase price: The consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale.

Recreation: Human activity, either passive or active, of noncommercial nature.

Scenic easements: A parcel of land upon which certain described rights, affecting aesthetic visual sight lines, have been restricted or reserved from development in order to preserve the public enjoyment, as well as the value of contiguous properties.

(Ord. No. 90-26, § 1, 10-1-90; Ord. No. 91-1, § 1, 1-21-91; Ord. No. 95-21, § 1, 9-27-95)

Sec. 4-5-20. Real estate transfer fee.

For a period of twenty-four (24) years, ending on December 31, 2024, a real estate transfer fee shall be paid by the purchaser, or any other person by his direction, pursuant to the recording in Beaufort County of any deed, instrument or writing whereby any land, tenement, or other realty located within the corporate limits of the Town of Hilton Head Island is sold, granted, assigned, conveyed to, vested in, or otherwise transferred when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds one hundred dollars (\$100.00).

(Ord. No. 90-26, § 1, 10-1-90; Ord. No. 91-1, § 1, 1-21-91; Ord. No. 95-21, § 2, 9-27-95; Ord. No. 00-09, § 1, 3-7-00)

Sec. 4-5-30. Intent.

Conservation efforts and the maintenance of environmental quality are integral parts of balanced growth. Success in directing future growth and protecting our unique environment will be measured by generations to come in the vital resource areas set aside for conservation use and the quality of the experience realized. It is intended that the majority of land set aside under this chapter shall be kept in perpetuity as close as possible in its natural state and it shall not be overly invaded with permanent structures.

(Ord. No. 90-26, § 1, 10-1-90; Ord. No. 91-1, § 1, 1-21-91)

Sec. 4-5-40. Purpose.

- (a) To acquire fee and less than fee interest in land while it is still available to be held in perpetuity as wildlife preserves or believed to be needed by the public in the future for active and passive recreation uses and scenic easements, to include the following types of land: ocean, harbor and pond frontage in the form of beaches, dunes and adjoining backlands; barrier beaches; fresh and saltwater marshes and adjoining uplands; land for bicycle paths; land protecting existing and future; public water supply, well fields, highway buffering and aquifer recharge areas; and land for wildlife preserves; and land for future public recreational facilities.
- (b) To acquire already developed land or development rights in order to convert its use to a public use, to restore the property to open space, or to redefine that property in accordance with the town's current comprehensive plan and dispose of it as soon as possible.

(Ord. No. 90-26, § 1, 10-1-90; Ord. No. 91-1, § 1, 1-21-91)

Sec. 4-5-50. Fee established.

There is hereby imposed a fee equal to one quarter of one (.0025) percent of the purchase price upon the transfer of any real property interest in any real property situated in the Town of Hilton Head Island.

(Ord. No. 90-26, § 1, 10-1-90; Ord. No. 91-1, § 1, 1-21-91)

Sec. 4-5-60. Reserved.

Editor's note--Ordinance No. 95-21, § 3, adopted September 27, 1995, deleted section 4-5-60 in its entirety. Formerly, such section pertained to commission established and derived from Ord. No. 90-26, § 1, 10-1-90; Ord. No. 91-1, § 1, 1-21-91; Ord. No. 93-34, § 2, 12-6-93; Ord. No. 94-26, § 1, 10-4-94.

Sec. 4-5-70. Reserved.

Editor's note--Ordinance No. 95-21, § 4, adopted September 27, 1995, deleted section 4-5-60 in its entirety. Formerly, such section pertained to authority of commission and derived from Ord. No. 90-26, § 1, 10-1-90; Ord. No. 91-1, § 1, 1-21-91; Ord. No. 94-35, § 1, 4-18-94.

Sec. 4-5-80. Exemptions.

The requirements of this chapter shall not apply:

- (1) When the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, is

one hundred dollars (\$100.00) or less; or

- (2) When the conveyance is effected pursuant to a court order; or
- (3) When the grantee of such land is the United States of America or the State of South Carolina or any of their political subdivisions or departments for a public purpose.
- (4) To transfers which, without additional consideration, confirm, correct, modify or supplement a transfer previously made.
- (5) To transfers made as gifts without consideration. In any proceeding to determine the amount of any fee due hereunder, it shall be presumed that any transfer for consideration of less than fair market value of the real property interests transferred was made as a gift without consideration to the extent of the difference between the fair market value of the real property interests transferred, if the purchaser shall have been at the time of transfer the spouse, the lineal descendant, or the lineal ancestor of the seller, by blood or adoption, and otherwise it shall be presumed that consideration was paid in an amount equal to the fair market value of the real property interests transferred, at the time of transfer.
- (6) To transfers to the trustees of a trust in exchange for a beneficial interest received by the seller in such trust; distributions by the trustees of the trust to the beneficiaries of such trust.
- (7) To transfers by operation of law without actual consideration, including but not limited to transfers occurring by virtue of the death or bankruptcy of the owner of a real property interest.
- (8) To transfers to any charitable organization or any religious organization provided that the real property interests so transferred will be held by the charitable or religious organization solely for its public charitable or religious purposes. Charitable organizations are defined in Section 33-55-20, South Carolina Code of Laws, 1976, (as amended).
- (9) To transfers to a mortgagee in foreclosure of the mortgage held by such mortgagee, and transfers of the property subject to a mortgage to the mortgagee from foreclosing said mortgage.
- (10) To transfers from escrow agents, trustees, or sellers to purchasers who have held the right to occupy the property prior to the enactment of this chapter and for which the recording of the deed has been held in abeyance pending the final payment of purchase money debt.

(Ord. No. 90-26, § 1, 10-1-90; Ord. No. 91-1, § 1, 1-21-91)

Sec. 4-5-90. Payment of fee.

The fee shall be the liability of the purchaser of such real property interest, and any agreement between the purchaser and the seller or any other person with reference to the allocation of the responsibility for bearing said fee shall not affect such liability of the purchaser. The fee shall be paid at the time the deed, instrument, or writing is recorded to the Beaufort County Office of Register of Mesne Conveyances, which shall collect and disburse such monies pursuant to written agreement with the town.

(Ord. No. 90-26, § 1, 10-1-90; Ord. No. 91-1, § 1, 1-21-91)

Sec. 4-5-100. Deed recording requirements.

Any deed transferred for property located within the town limits must contain the district map and parcel number for each property conveyed. The fee shall be accompanied by a copy of the deed or other instrument evidencing such transfer, if any, and an affidavit signed under oath or under the penalty of perjury by the purchaser or his legal representative, attesting to the true and complete purchase price and the basis, if any, upon which the transfer is claimed to be exempt in whole or in part from the fee imposed hereby. The affidavit shall also contain the name of payor of the fee and current mailing address.

(Ord. No. 90-26, § 1, 10-1-90; Ord. No. 91-1, § 1, 1-21-91)

Sec. 4-5-110. Separate account.

An interest-bearing, restricted account to be known as the Town of Hilton Head Island Land Bank Fund is hereby established and all revenues received from the transfer fee shall be placed in this account which shall be controlled by the town manager. The revenue from this account shall be expended only as stated in sections 4-5-40 and 4-5-60. Deposits into this account shall also include (a) funds appropriated to be deposited by town council; (b) voluntary contributions of money and other liquid assets to the fund; and (c) proceeds from disposal of real property or interests. The town manager shall prudently invest available assets of the fund, and all income thereon shall accrue to the fund. The town manager shall keep a full and accurate account of its actions, including a record as to when, from, or to whom, and on what account money has been paid or received relative to this chapter.

(Ord. No. 90-26, § 1, 10-1-90; Ord. No. 91-1, § 1, 1-21-91; Ord. No. 94-35, § 2, 4-18-94; Ord. No. 95-21, § 5, 9-27-95)

Sec. 4-5-120. Appeal.

In cases of interpretation of this chapter, particularly regarding fee exemptions, the Register of Mesne Conveyances shall refer the question to the town manager or his designee who will make the final decision.

- (1) Any person aggrieved by a decision regarding this chapter or a denial of an exemption by the town manager or his designee may appeal the decision to town council by written request, stating the reasons therefore, filed with the town clerk within ten (10) days after the payment of the fee.
- (2) An appeal hearing shall be held by town council within thirty (30) days after the receipt of a request for appeal at a regular or special meeting of which the applicant has been given written notice. At the hearing, all parties shall have the right to be represented by counsel, to present testimony and evidence, and to cross-examine witnesses. The proceedings shall be recorded and transcribed at the expense of the party so requesting. The rules of evidence and procedure prescribed by town council shall govern the hearing. Town council shall, by majority vote of members present, render a written decision based on findings of fact and conclusions of law which shall be served upon all parties or their representatives; and the decision shall be final unless appealed to the Court of Common Pleas within ten (10) days after service.

(Ord. No. 91-1, § 1, 1-21-91)

Chapter 9 BEACH PRESERVATION FEE*

*Cross reference(s)--Beaches, waterways and recreational areas, Ch. 8; beach zoning districts, Ch. 16.

Sec. 4-9-10. Authority.

This chapter is enacted pursuant to the authority of Title 5, Code of the State of South Carolina (1976), including, without limitation, section 5-7-10 of the Code of Laws of South Carolina (Supp. 1992), and section 5-7-30 of the Code of Laws of South Carolina (Supp. 1992), which provide, in relevant part, that municipalities may adopt all ordinances which appear necessary and proper for the security, general welfare and convenience of the municipality and for the preservation of the general health, peace and order in the municipality and further that municipalities may establish uniform service charges.

(Ord. No. 93-32, § 1, 11-15-93)

Sec. 4-9-20. Declaration of purpose and intent.

This chapter is enacted to preserve the general health, safety and welfare of the general public within the Town of Hilton Head Island, South Carolina by creating a uniform fee to be collected for the purpose of creating an additional fund to pay, in whole or in part, for the current and future preservation, maintenance, nourishment, renourishment, and improvement of the beaches of Hilton Head Island, and also those public facilities related to the use, preservation, maintenance, nourishment, renourishment and improvement of the beaches of Hilton Head Island, South Carolina.

(Ord. No. 93-32, § 1, 11-15-93)

Sec. 4-9-30. Beach preservation fee.

A uniform fee equal to two (2.00) percent is hereby imposed on the gross proceeds derived from the rental for any rooms (excluding meeting rooms), campground spaces, recreational vehicle spaces, lodgings or sleeping accommodations furnished to transients by any hotel, inn, condominium, motel, "bed and breakfast", residence or any other place in which rooms, lodgings or sleeping accommodations are furnished to transients for a consideration within the Town of Hilton Head Island, South Carolina. The gross proceeds derived from the lease or rental of sleeping accommodations supplied to the same person or persons for a period of ninety (90) continuous days are not considered proceeds from transients.

(Ord. No. 93-32, § 1, 11-15-93; Ord. No. 94-12, § 1, 5-2-94)

Sec. 4-9-40. Payment of beach preservation fee.

Payment of the fee established herein shall be the liability of the consumer of the services described in section 4-9-30, supra. The fee shall be paid at the time of delivery of the services to which the fee applies, and shall be collected by the provider of the services.

(Ord. No. 93-32, § 1, 11-15-93)

Sec. 4-9-50. Collection of beach preservation fee.

- (a) The fee collected by the provider of the service as required by section 4-9-40 shall be remitted to the Town of Hilton Head Island, South Carolina, as follows:
- (1) Payment of the beach preservation fees collected in the first quarter of the calendar year shall be due on April 20th of each calendar year;
 - (2) Payment of the beach preservation fees collected in the second quarter of the calendar year shall be due on July 20th of each calendar year;
 - (3) Payment of the beach preservation fees collected in the third quarter of the calendar year shall be due on October 20th of each calendar year;
 - (4) Payment of the beach preservation fees collected in the fourth quarter of the calendar year shall be due on January 20th of each calendar year.
- (b) The town shall promulgate a form of return which shall be utilized by the remitter to calculate the amount of fees collected and due hereunder for each period. Said form shall contain a sworn declaration as to the correctness thereof by the remitter, and shall accompany each payment made to the Town of Hilton Head Island, South Carolina, pursuant hereto.

(Ord. No. 93-32, § 1, 11-15-93; Ord. No. 94-16, § 1, 6-7-94)

Sec. 4-9-60. Beach preservation account.

- (a) An interest bearing, restricted account to be known as the Town of Hilton Head Island Beach Preservation Account is hereby established and all revenues received from the "beach preservation fee" shall be deposited into this account. The "Town of Hilton Head Island Beach Preservation Account" shall be controlled by the town manager for the Town of Hilton Head Island, South Carolina. The principal and any accrued interest from this account shall be expended only as permitted in section 4-9-70, below.
- (b) Deposits into this account may also include appropriations from the general fund by the town council and voluntary contributions of money and other liquid assets to the "Town of Hilton Head Island Beach Preservation Account" from any source. Once funds are deposited, appropriated or donated into the "Town of Hilton Head Island Beach

Preservation Account", the funds become dedicated funds and may only be used for the purposes set forth in section 4-9-70, below.

(Ord. No. 93-32, § 1, 11-15-93)

Sec. 4-9-70. Permitted uses of funds.

- (a) The town council is hereby authorized to utilize the funds collected from the imposition of the beach preservation fee and any other funds deposited into the "Town of Hilton Head Island Beach Preservation Account" for the primary purposes of:
- (1) Nourishment, renourishment (resanding) and maintenance of the beaches within the territorial limits of the Town of Hilton Head Island, South Carolina;
 - (2) Dune restoration, including the planting of grass, sea oats or other vegetation useful in preserving the dune system within the territorial limits of the Town of Hilton Head Island, South Carolina;
 - (3) Maintenance of public beach access within the territorial limits of the Town of Hilton Head Island, South Carolina;
 - (4) Capital improvements to the beaches and beach related facilities, such as public parking areas for beach access; dune walkovers and rest room facilities, with or without changing rooms, at public beach parks within the territorial limits of the Town of Hilton Head Island, South Carolina; and
 - (5) Beach related services, including, but not limited to, the cost of police protection on the beaches, litter removal, beach monitoring services and other such services provided directly to or for the citizens, visitors and guests using the beaches within the territorial limits of the Town of Hilton Head Island, South Carolina.
- (b) Authorization to utilize any funds from the "Town of Hilton Head Island Beach Preservation Account", as provided in section 4-9-60(a) shall be by the annual budget ordinance duly adopted by the Town Council of the Town of Hilton Head Island, South Carolina.

(Ord. No. 93-32, § 1, 11-15-93; Ord. No. 94-01, § 1, 1-10-94; Ord. No. 96-19, § 1, 6-18-96)

Sec. 4-9-80. Reserved.

Editor's note--Section 4-9-80, pertaining to referendum required for increase, derived from Ord. No. 93-32, § 1, adopted November 15, 1993 and deleted by Ord. No. 94-01, § 1, adopted January 10, 1994.

Sec. 4-9-90. Inspections and audits.

For the purpose of enforcing the provisions of this chapter, the code enforcement officer or other authorized agent of the Town of Hilton Head Island, South Carolina, is empowered to enter upon the premises of any person subject to this chapter and to make inspections, examine and audit books and records, and it shall be unlawful for any person to fail or refuse to make available the necessary books and records during normal business hours upon twenty-four (24) hours' written notice. In the event that an audit reveals that false information has been filed by the remitter, the costs of the audit shall be added to the correct amount of fees determined to be due, in addition to the penalties provided in section 4-9-100, infra. The code enforcement officer may make systematic inspections of all businesses within the town to ensure compliance with this chapter. Records of inspections shall not be deemed public records.

(Ord. No. 93-32, § 1, 11-15-93)

Sec. 4-9-100. Violations and penalty.

- (a) It shall be a violation of this chapter to:
- (1) Fail to collect the "beach preservation fee" in connection with the rental of any accommodations to transients as set forth in section 4-9-30, supra;
 - (2) Fail to remit to the Town of Hilton Head Island, South Carolina, any "beach preservation fees" collected pursuant to this chapter by the 20th of each month following the end of the quarter thereof, as set forth in section 4-9-50(a), supra;
 - (3) Knowingly provide false information return to be submitted to the Town of Hilton Head Island, South Carolina pursuant to section 4-9-50(b), supra;
 - (4) Fail to provide books and records to the code enforcement officer for the purpose of an audit upon twenty four (24) hours' written notice, as provided in section 4-9-90, supra;
- (b) Upon conviction for a violation hereof, the violator shall be guilty of a misdemeanor and subject to the penalties provided in section 1-5-10.
- (c) In the event beach preservation fees are not remitted to the Town of Hilton Head Island, as set forth in section 4-9-100(a)(2), supra, the violator shall pay a penalty of five (5) percent of the unpaid amount of the beach preservation fee for each month or portion thereof past due until said beach preservation fee is paid in full.

(Ord. No. 93-32, § 1, 11-15-93; Ord. No. 94-06, § 1, 2-21-94; Ord. No. 96-12, § 1, 4-2-96)

**A RESOLUTION OF THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND
AMENDING THE LAND ACQUISITION PROCEDURES MANUAL RELATING TO THE
GRANTING OF AN EASEMENT OR ACCESS RIGHT FOR INSTALLATION AND
MAINTENANCE OF UTILITIES INCIDENTAL TO CONSTRUCTION AND OPERATION OF
ANY APPROVED AND FUNDED CAPITAL IMPROVEMENT PROJECT.**

WHEREAS, on March 5, 2002, the Town Council for the Town of Hilton Head Island adopted a comprehensive Land Acquisition Manual containing more detailed guidance on the conduct of all aspects of the Town's Land Acquisition Program, to include processes for dealing with proposals to purchase land, easement and right-of-way procedures, and the sale or exchange of Town-owned land; and

WHEREAS, on February 1, 2005, the Town Council for the Town of Hilton Head Island amended the Land Acquisition Manual to reflect the contract entered into with The Trust for Public Land, Inc. for assistance with the development of the Town's Land Acquisition Program; and

WHEREAS, on September 20, 2005, the Town Council for the Town of Hilton Head Island adopted Ordinance Number 2005-23, authorizing the Town Manager to execute and deliver any reasonably necessary easement or access right for the installation and maintenance of utilities incidental to the construction and operation of any capital improvement project that is approved and funded as part of the adopted Budget for the Town of Hilton Head Island including projects adopted in prior budget ordinances; and

WHEREAS, the Town Council for the Town of Hilton Head Island has determined that it is necessary to amend the Land Acquisition Manual to reflect the changes associated with the granting of easements or access rights for approved and funded capital improvement projects, with such changes shown in the attached Exhibit "A".

NOW, THEREFORE, BE IT, AND IT HEREBY IS, RESOLVED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA THAT the Land Acquisition Manual is hereby amended as shown in Exhibit "A."

MOVED, APPROVED, AND ADOPTED ON THIS 18th DAY OF October 2005.


Thomas D. Peeples, Mayor

ATTEST:

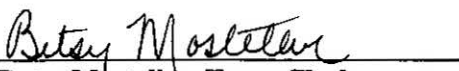

Betsy Mosteller, Town Clerk

Exhibit "A"

IX. Easement and Right-of-Way Procedures

- A. Granting of an Easement or Access Right for Approved and Funded Capital Improvement Projects*
 - 1. To facilitate the construction and operation of capital improvement projects, the Town may need to grant an easement or access right for the installation and maintenance of utilities.
 - 2. The Town Manager is authorized to execute and deliver any reasonably necessary easements or access rights for the installation and maintenance of utilities incidental to the construction and operation of any capital improvement project that is approved and funded as part of the adopted Municipal Budget including projects adopted in prior budget ordinances. The Town Manager shall advise Town Council in advance of entering into any such easement or access right.
- B. Granting of an Easement for Non-Related Capital Improvement Projects
 - 1. The Town often receives requests from other political subdivisions, public service districts, utility companies, etc. for an easement on Town property for running power lines, telephone lines, sewer lines, cable lines, etc.
 - 2. Upon receipt of such request, the Town Manager reviews the request with appropriate staff and then forwards the request with a recommendation to Town Council. Town Council considers the request during Executive Session. If Town Council desires to grant an easement to the requestor, then the Town Attorney prepares an ordinance with an easement agreement attached as an exhibit. The ordinance is given two readings.
 - 3. Upon approval of the ordinance, the Town Attorney forwards an executed copy of the ordinance and easement agreement to the requestor's attorney for recording.
- C. Acquisition of Easements/Right-of-Ways
 - 1. To facilitate the building of bike pathways, drainage improvements, or other capital improvement projects, the Town may need to acquire easements or right-of-ways.
 - 2. The Town Manager is authorized to pursue acquisition of easements or right-of-ways for any capital improvement project contained in the adopted capital improvement program and for which funds for right-of-way acquisition have been budgeted.
 - 3. Easement/Right-of-Way Procedure
 - a. Town Attorney orders title search for properties that easements are needed upon.

- b. Town Attorney reviews title search for identification of true property owner, mortgages, liens, etc.
- c. Town Attorney orders a survey of properties needed for bike pathway or other capital improvement project.
- d. Town Attorney drafts easement agreement (and plat), prepares a cover letter and forwards to property owner with an explanation as to why the Town is in need of an easement on said property. Town Attorney also drafts a mortgage partial release (if applicable) and forwards to mortgagee.
- e. If property owner forwards requested easement agreement back with appropriate signatures, witnesses, and notary seals, then documents (easement agreement, mortgage release) are forwarded to the Register of Deeds Office with appropriate fees for recording.
- f. Once recorded documents are back from the Register of Deeds Office, a copy of recorded easement agreement is sent to grantor and a copy of recorded release to mortgagee. Once all easements are acquired for capital improvement project, then Town Attorney forwards all original documents to the Legal Department for retention.
- g. If the grantor refuses the Town's original request for an easement, then Town Attorney orders an appraisal on said property in order to offer the property owner "just compensation" for the portion of property needed for a right-of-way. If the property needed for an easement is relatively small in area, the Town Attorney, with the authorization of the Town Manager, may negotiate, make an offer, or respond to proposal without getting an appraisal.
- h. Town Attorney drafts deed and cover letter and forwards to property owner with an offer for just compensation of the needed right-of-way. Town Attorney also drafts a mortgage partial release (if applicable) and forwards to mortgagee.
- i. If property owner accepts the Town's offer, then Town Attorney provides the grantor with the settlement amount once grantor executes deed. Documents (easement agreement, mortgage release) are forwarded to the Register of Deeds Office with appropriate fees for recording.
- j. Once recorded documents are back from the Register of Deeds Office, a copy of recorded deed is sent to grantor and a copy of recorded release to mortgagee. Once all easements are acquired for capital improvement project, then Town Attorney forwards all original documents to the Legal Department for retention.

- k. If property owner refuses Town's offer for "just compensation," then upon Town Council's authorization, the Town Attorney may proceed with condemnation proceedings pursuant to the South Carolina Eminent Domain Procedures Act (28-2-10 et seq. of the South Carolina Code of Laws).

**A RESOLUTION OF THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND
AMENDING AND ADOPTING THE LAND ACQUISITION PROCEDURES MANUAL AND
RESCINDING ALL PREVIOUS RESOLUTIONS RELATING TO LAND ACQUISITION
PROCEDURES.**

WHEREAS, the Town Council for the Town of Hilton Head Island is engaged in a Land Acquisition Program intended to further a variety of Town objectives, including growth management, traffic reduction, protection of open space and wildlife habitat, among others; and

WHEREAS, on April 21, 1998, the Town Council for the Town of Hilton Head Island adopted a resolution adopting procedures to be utilized by the Town Manager when negotiating land acquisition contracts for consideration by Town Council; and

WHEREAS, on May 1, 2001, the Town Council for the Town of Hilton Head Island amended and readopted a resolution refining the procedures to be followed in negotiating and acquiring land; and

WHEREAS, on March 5, 2002, the Town Council for the Town of Hilton Head Island adopted, by voice vote, a much more comprehensive Land Acquisition Manual containing more detailed guidance on the conduct of all aspects of the Town's Land Acquisition Program, to include processes for dealing with proposals to sell or trade Town-owned land; and


WHEREAS, the Town Council for the Town of Hilton Head Island recently contracted with a non-profit organization, the Trust for Public Land (TPL), to assist with a portion of the land acquisition program: specifically negotiations of parcels for acquisition; and

WHEREAS, the Town Council for the Town of Hilton Head Island has determined that it is necessary to amend the Land Acquisition Manual to reflect the contract with TPL, with such changes shown in the attached Exhibit "A"; and

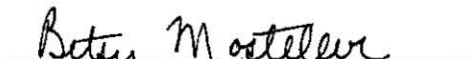
WHEREAS, the Town Council for the Town of Hilton Head Island wishes to repeal any prior resolutions which may be, in part, in conflict with the provisions of the Land Acquisition Manual, as amended.

NOW, THEREFORE, BE IT, AND IT HEREBY IS, RESOLVED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA THAT the Land Acquisition Manual is hereby amended and adopted as shown in Exhibit "A" and, further, that the previously adopted resolutions of April 21, 1998 and May 1, 2001 are hereby repealed.

MOVED, APPROVED, AND ADOPTED ON THIS 1st DAY OF FEBRUARY 2005.


Thomas D. Peebles, Mayor

ATTEST:


Betsy Mosteller, Town Clerk

**Town of Hilton Head Island
Land Acquisition Process
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***For purposes of this land acquisition manual, "Town Manager" shall mean the Town Manager or his designee and "Town Attorney" shall mean the Town Attorney or his designee. (Footnote added February 1, 2005)**

III. Preparation of Recommendations to Town Council; Use of Land Acquisition Workshops

- A. At least annually,* and more often as necessary, the Town Manager shall schedule a Land Acquisition Workshop to review with Council the status of the Land Acquisition Program and to comprehensively review parcels that may be available for acquisition and to consider the recommendations of the Town Manager regarding such parcels.
- B. In preparing his recommendations, the Town Manager shall solicit and consider input from the following Town Departments and Divisions:
 - 1. Planning
 - 2. Engineering
 - 3. Building and Fire Codes
 - 4. Facilities Management
 - 5. Legal
 - 6. Fire and Rescue
 - 7. Other departments or divisions as needed or deemed appropriate
 - 8. The Town Attorney
- C. In preparation for such a workshop, the Town Manager shall prepare a confidential report to Council summarizing the parcels that have been brought to his attention and his recommendations based on the criteria outlined in Section II.
- D. Following the Land Acquisition Workshop, the Town Manager shall prepare a confidential summary for Council of the discussions that took place in the workshop.
- E. The Town Manager is obligated to bring before Council in a timely fashion all requests to purchase property submitted by individual property owners or Realtors holding listings. While it is preferable for Council to review and prioritize parcels in a comprehensive manner, as is accomplished through the Land Acquisition Workshop process, particular circumstances (including but not limited to price, timing, or new or recent events or information) may warrant consideration by Council of individual parcels during Executive Session at a regular or special meeting of Council.

VI. Acquisition/Negotiation Guidelines for Town Manager

- A. The Town Manager or his designee shall not pursue any property without the knowledge and concurrence of Town Council. No further authorization is required for property on Council's priority list, but the Town Manager shall discuss any other property with Council before continuing contact with the landowner or their designated representative.
- B. The Town Manager shall obtain at least one appraisal. The Manager shall use a variety of appraisers, and is authorized to contract with out-of-town appraisers. In the event the Manager believes an appraisal is not warranted for a particular parcel, he shall present a justification to Council before continuing negotiations.
- C. The Town Manager or his Designee shall negotiate with property owners or their designated representative directly, and shall negotiate all aspects of the transaction to conclusion.
- D. With respect to any particular tract for which negotiations have been completed, the Manager shall present a complete proposal to Council as described more fully in Section VII (E)(1).
- E. The Town Manager, upon Town Council's approval, may contract with an independent contractor for negotiation and land acquisition of property. Any such contract shall be made an appendix to the land acquisition manual (see attached Appendix "A," November 16, 2004 Agreement with The Trust for Public Land, Inc.)*

CONTRACT FOR PURCHASE AND SALE OF:

By and Between

The Town of Hilton Head Island, South Carolina,

and

Dated as of: _____, 2001

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

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

W I T N E S S E T H

1. *Sale and Purchase:* For and in consideration of the Purchase Price hereinafter described and agreed 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 herein, the Seller agrees to sell and the Purchaser agrees to purchase from Seller that certain real property and personal property located on Hilton Head Island, Beaufort County, South Carolina, and which is described in Articles 1.02 and 1.03.

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

All that certain piece, parcel or tract of land, generally known _____ together with any and all tenements, hereditaments, appurtenances, riparian rights, rights to any accreted lands, and any and all rights in and to, or connected with, the said premises, regardless of description. Said conveyance shall specifically include all lands up to the mean high water mark. Seller further agrees to transfer all of its right, title and interest in and to any land lying in the bed of any stream, creek, marsh, street, road, avenue, alleys, driveways, easement and rights of way within the above described premises.

1.03 *Intangible Personal Property:* In connection with the Real Property, Seller has (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 other rights, contracts, easements, contract rights or governmental or other approvals, regardless of description, which affect, touch or concern the property in any way, shape or form, regardless of description.

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

2. *Current Survey*: Within _____ () days after the date of the execution hereof (hereinafter defined), Seller shall provide, at its cost and expense, an up to date survey of the Property, certified in accordance with ALTA standards to Purchaser and Title Company (hereinafter defined), prepared by a South Carolina Licensed and Registered Land Surveyor (hereinafter, the "Survey"). The survey shall show the location of any South Carolina Coastal Council Critical Lines, and further shall show the location and extent of any utility easements, road rights of way, or any other easement or matter affecting the Property.

2.01 *Delivery of Documents*: Within ten (10) days of the execution and delivery of this Agreement, Seller shall deliver or cause to be delivered to Purchaser copies of the following documents:

- a. Any existing title insurance policies insuring title to the Real Property.
- b. Copies of any documents evidencing utility allocations or capacity or other contracts benefitting 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.

2.02 *Return of Documents:* If this Agreement is terminated for any reason other than Default of Seller, Buyer shall, within five (5) days following such termination, deliver to Seller all documents and materials relating to the Property previously delivered to Buyer by Seller. The return of such documents shall not affect the right of either party to seek legal or equitable remedies as provided under Articles ___ and ___ below.

3. *Purchase Price:* The Purchase Price for the Property is _____ Dollars (hereinafter, the "Purchase Price").

3.01 *Apportionment of Purchase Price:* The Purchase Price shall be comprised as follows:

1.	Cash from Purchaser	\$
2.	Cash From Purchaser at Closing	_____
	TOTAL	\$ _____

3.02 *Escrow Deposit:* As is shown above, the Purchaser shall deliver the sum of _____ and no/100 (\$ _____) Dollars into escrow with the Escrow Agent (a term hereinafter Defined) within five (5) days after the Effective Date (hereinafter defined) hereof. The Escrow Agent shall deliver written notification of receipt of the Escrow Deposit to Seller and Purchaser.

3.03 *Payment of Purchase Price:* At Closing (hereinafter defined) 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 he wishes for the purchase price to be paid, together with written bank wire instructions, if applicable, no later than three business days prior to the Closing Date.

4. *Title:* Seller shall provide Purchaser with good and marketable title to the Property by Deed of General Warranty, free and clear of any and all monetary liens and encumbrances.

4.02 *Title Evidence:* Within thirty (30) days after the Effective Date hereof, Purchaser shall 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 hereof, 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 ____.

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.

4.03 *Objections to Title:* If Purchaser's title examination or the Commitment shall reveal that Seller's title to the Property is subject to any easements, clouds on or to the title, encroachments, boundary discrepancies, liens, encumbrances, or any other matter affecting title, 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 Property in its then existing condition.

4.04 *Seller's Right to Cure:* Seller shall have forty five (45) 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 his best efforts and due diligence in Curing, or in causing to be Cured, the Title Defects. If said forty five (45) 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 fifteen (15) days after Seller delivers written notice to Purchaser that the Title Defects have been Cured. "Cured" as used herein means that the Title Defect(s) has or have been Cured in fact and of record. A Title Defect shall be deemed to have been Cured if Purchaser's Title Company is willing to delete any exception relating to the Title Defect from the Commitment and the Final Title Policy.

4.05 *Seller's Failure to Cure:* If Seller cannot Cure, or cause to be Cured, the Title Defects within the said forty five (45) day period, or within such longer period to which the 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 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.

4.06 *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 provisions of Article 4.03, 4.04 and 4.05, *supra.*, 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 _____ (the "Closing Date").

5.01 *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 General Warranty Deed (the "Deed") so as to convey to Purchaser Fee Simple, Marketable Title to the Property, as provided in Article ____ above. The Deed shall be in recordable form, with documentary stamps (if any) affixed,

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 property for ninety five (95) days immediately preceding the Closing Date for which the Cost thereof remains unpaid.

d. An ALTA Statement and title "gap" affidavit and indemnity agreement, in the form attached hereto as Exhibit "___", duly executed by Seller and duly acknowledged before a Notary Public attesting to the absence of any matters pending which could cause a lien or encumbrance on the Property between the date of the Commitment and the date of recording of the Deed.

e. 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. 2001), and South Carolina Revenue Ruling Number 90-3.

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

g. An Absolute Assignment by Seller to Purchaser of any and all of Seller's rights, privileges, permits, easements, licenses and approvals which may exist regarding or incidental to the Property in any way, or the present or future development of the Property, in a form and substance described on Exhibit "___" hereto and incorporated herein by reference.

h. Certified true copies of corporate resolutions of the Seller, authorizing the execution and delivery of this Agreement, the Deed and other documents required to be delivered by Seller hereunder, and the completion of the transaction authorized herein.

i. 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.

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

a. The Purchase Price.

b. Certified Copy of the Resolution of The Town Council approving this agreement and authorizing the completion of the transaction contemplated hereby.

c. Certified Copies of the Minutes of the Town Council meetings wherein this Agreement was approved.

5.03 *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 ___ 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 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 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 ___ shall be binding upon the heirs, 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. Approval of the terms of this Agreement by affirmative vote of the Town Council for The Town of Hilton Head Island, South Carolina.

d. 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. *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 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 or individuals 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 in any other way affect title to the 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 execution, delivery or enforceability of this Agreement, or the Seller's performance of its obligations hereunder.

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

10. *Brokers:* Seller shall be solely responsible for the payment of any real estate broker's commission due to _____ as a result of the execution and delivery of this Agreement, or the Closing of the transaction contemplated herein. Except for this commission, Seller and Purchaser warrant and represent that no other broker, finder, or other person is entitled to a commission, finder's fee or other compensation in connection with this Agreement, and each party shall indemnify and hold harmless the other party from any and all claims, liabilities, losses, damages, costs and expenses arising from the claim of any other broker, finder or other person for such compensation, arising by, under or through such party. The obligations under this Article ___ shall survive the Closing.

11. *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.

12. *Miscellaneous:*

12.01 *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, if any are permitted hereunder.

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

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

12.04 *Execution in Counterparts:* This Agreement may be simultaneously executed in several

counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

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

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

12.07 *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.

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

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

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

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

With Copy to: Curtis L. Coltrane, Esq.
COLTRANE, ALFORD & WILKINS
Post Office Drawer 8008
Hilton Head Island, SC 29938-8008

To Seller:

With Copy to:

12.11 *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 as may be reasonably determined to be necessary, either before or after the Closing. The obligations of this Article ___ shall survive the Closing.

13. *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.

14. *Prorations:* Payment of the following are 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 ___ shall survive the Closing and delivery of the Deed.

15. *Seller's Closing Costs:* Seller shall be responsible to pay for the Cost of:

- a) Any documentary stamp expense or taxes which may be payable to the State of South Carolina and/or the County of Beaufort, and any other fees or charges payable by reason of the execution, delivery and recording of the Deed;
- b) The Survey as required in Article 2, *supra*;
- c) Any other Seller's Closing Costs which are customary in Beaufort County, South Carolina.

15.01 *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 (if any);
- b) The Cost of any title insurance premium chargeable for the Commitment and any policy of Title Insurance issued therefrom; and,
- c) Any other Purchaser Closing Costs which are customary in Beaufort County, South Carolina.

16. *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.

17. *Right of Inspection:* This Agreement is subject to Purchaser's right to enter upon the Property to inspect the physical conditions of the Property. Said right of inspection shall include the right of Purchaser, at Purchaser's sole expense, to conduct soil borings, and other tests as may be required for an Environmental Level 1 Study (hereinafter, the "Environmental 1 Study"). If such inspection, or the Environmental Level 1 Study discloses conditions which are unsatisfactory to the Purchaser (which determination shall be made in the Purchaser's sole discretion) Purchaser may terminate this Agreement by delivering a written notice to Seller of Purchaser's election to terminate (hereinafter, the "Termination Notice"). The physical inspection and Environmental Level 1 Study shall be completed within Thirty (30) Days of the Effective Date hereof. The Purchaser shall deliver its notice (if any) that it has exercised its option to terminate this Agreement under this Article ___ within Thirty Five (35) days of the Effective Date hereof. Any such notice shall specify the reasons for such determination and include a copy of the Environmental Level 1 Study or any other study or inspection report.

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

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

(a) The Purchaser shall notify the Seller of the existence of any unsatisfactory

conditions on or about the Property arising subsequent to delivery of the initial Environmental Level 1 Study and notice of Purchaser's election to terminate prior to Closing.

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

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

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, 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 his 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.

20. *Escrow Agent:* The "Escrow Agent" shall be Curtis L. Coltrane, 18 Pope Avenue Executive Park Road, Building 1, Post Office Drawer 8008, Hilton Head Island, SC, 29938-8008. If any dispute should arise as to whether Escrow Agent is obligated to deliver the Escrow Deposit, or any funds or documents which it holds, Escrow Agent shall not be required to make delivery thereof, but, in such event shall hold the same until receipt, by Escrow Agent, of written authorization from Seller and Purchaser directing the disposition of the same. In the absence of such written authorization, Escrow Agent may hold the Escrow Deposit, or any other funds or documents in connection with this

transaction in its possession until a final determination of the rights of the Parties by a Court of competent jurisdiction. If such written authorization is not given or proceedings for such determination are not begun and diligently continued, Escrow Agent may institute an appropriate proceeding for leave to place the Escrow Deposit, or any other funds or documents in connection with this transaction in its possession with the Clerk of Court for Beaufort County, South Carolina, pending such determination. Escrow Agent shall not be charged with notice of any fact or circumstance unless and until written notice of the same is received by Escrow Agent. Upon making the delivery of the funds or documents which Escrow Agent may hold in accordance with the provisions of this Article ____, 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. *Conduct Prior to Closing:* From and after the date hereof, Seller shall not, without the prior written approval of the Purchaser, make any alterations or additions to the property except as required for maintenance or by law, sell, transfer, encumber, lease or rent all or any part of the property or change the status of title to the Property; or cancel, assign or amend any license or permit or other right held by the Seller with respect to the Property or any part thereof prior to Closing.

22. *Matters Subsequent to Closing:* The Seller acknowledges that it has obligations under this Agreement that are to be fulfilled subsequent to Closing. The 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.

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

WITNESSES:

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

By: _____
Thomas D. Peeples, Mayor

Attest: _____
Stephen G. Riley, Town Manager

WITNESSES:

SELLER

**EXHIBIT "B" - FORM OF GAP AFFIDAVIT
PERSONAL UNDERTAKING (GAP)**

WHEREAS, First American Title Insurance Company, hereinafter referred to as "the Company", is about to issue its title insurance policy or policies or commitments therefore, all hereinafter referred to as the "Title Insurance Policy", No. _____ in respect to the land therein described; and,

WHEREAS, the Company has raised as Exception to Title the following:

Defects, liens, encumbrances, adverse claims or other matters, if any created, first appearing in the public records or attaching subsequent to _____, 2001, at 7:45 A. M. (the "Exceptions to Title").

WHEREAS, the Company has been requested to issue the Title Insurance Policy, and may hereafter in the ordinary course of its business issue title insurance policies or commitments therefore in the forms now or then commonly used by the Company in respect to the land or to some part or parts thereof, or interest therein, all of the foregoing being hereafter referred to as "Future Policies", either free and clear of all mention of the Exceptions to Title or insuring against loss or damage by reason thereof;

NOW THEREFORE, in consideration of the issuance of the Title Insurance Policy and payment of \$1.00 to the undersigned by the Company, the sufficiency and receipt of which is hereby acknowledged, the undersigned, jointly and severally, for themselves, heirs, personal representatives and assigns do hereby covenant and agree with the Company:

1. To forever fully protect, defend, and save the Company harmless from and against all the Exceptions to Title or any rights growing out thereof, all loss, costs, damages, attorney's fees, and expenses of every kind and nature which the company may suffer, in consequence of the Title Insurance Policy on account of the Exceptions to Title or any rights growing out thereof, or on account of the assertion or enforcement or attempted assertion or enforcement thereof;
2. To provide for the defense, at their own expense, on behalf of and for the protection of the Company and any parties now or hereafter insured against loss or damage under the Title Insurance Policy (but without prejudice to the right of the Company to defend if it so elects) in all litigation based on any Exceptions to the Title which may be asserted or tempted to be asserted, in respect to the land or any part thereof, or interest therein;
3. To pay, discharge, satisfy or remove all the Exceptions to Title on or before 10 days from the date of notice of the existence of any Exceptions to Title; and
4. That each and every provision herein shall extend and be in force concerning the Future Policies.

The foregoing notwithstanding, it is hereby covenanted and agreed, and expressly made a part of this Agreement, that the liability of the undersigned hereunder shall cease and determine as such time as the Company shall have completed all of its various title searches concerning the insured property through the date of the recording of the documents required in the Commitment required for the issuance of the above policy; provided, however, that:

1) No Exceptions to Title or rights growing out thereof are disclosed by the said various title searches and examination thereof;

2) There is then pending no suit, action, or proceedings, either direct or collateral, to assert, establish, or enforce the said Exceptions to Title or rights growing out thereof;

3) That no judgment, order or decree rendered in any such proceeding remains unsatisfied; and

4) That the undersigned is not in default in the performance of any of the terms, covenants, and conditions hereof.

IN WITNESS WHEREOF, the undersigned have executed this agreement this ____ day of _____, 2002.

Sworn to Before Me this ____
Day of _____, 2002.

Notary Public for South Carolina
My Commission Expires: _____

EXHIBIT “__” - FORM OF ABSOLUTE ASSIGNMENT

STATE OF SOUTH CAROLINA)
) ABSOLUTE ASSIGNMENT
COUNTY OF BEAUFORT)

This assignment is made this __ day of _____, 2002, by and between _____ (hereinafter “Assignor”), and The Town of Hilton Head Island, South Carolina (hereinafter, “Assignee”).

WHEREAS, pursuant to that certain contract by and between Assignor and Assignee dated June _____, 2002, Assignor did agree to assign all of Assignor’s right, title and interest in and to any and all existing contracts, easements, property rights, contract rights, approvals, permits, privileges and any other rights, however named or described, connected with the property described on Exhibit “A” hereto;

NOW, THEREFORE, for and in consideration of the sum of Ten and no/100 (\$10.00) Dollars, paid in hand to Assignor by Assignee at and before the execution and delivery of these presents, the receipt and sufficiency of which is acknowledged, the Assignor Covenants and Agrees as follows:

1. The recitals are incorporated herein, as if repeated verbatim.
2. The Assignor hereby absolutely and irrevocably grants, bargains, sells, sets over, conveys and assigns absolutely to the Town of Hilton Head Island, South Carolina, any and all of Assignor’s right, title and interest in and to any and all existing contracts, drainage rights, utility allocations, contract rights, approvals, easements, riparian rights, rights to accreted lands, covenants, declarant rights, permits, development permits, development plan approvals, density allocations, governmental recognitions of rights or privileges, governmental permits, authorizations, work product or any other rights of any description whatsoever which in any way relate to, or which touch or concern the real property

described in Exhibit "A" hereto. It is the express intent of this assignment that any rights of any nature which touch or concern the Property described on Exhibit "A" hereto are assigned hereby, and that the Assignor shall retain no rights of any description with respect to the Property.

3. Assignor hereby warrants that as of the date of the execution hereof, Assignor has fully and unconditionally transferred all of his right, title and interest in and to any existing contracts, contract rights, easements, utility allocations, drainage rights, easements, riparian rights, rights to accreted lands, approvals, covenants, declarant rights, permits, development permits, developments plan approvals, density allocations, governmental recognitions of rights or privileges, governmental permits, authorizations, work product or any other rights of any description whatsoever which in any way relate to, or which touch or concern the real property described in Exhibit "A" hereto, to The Town of Hilton Head Island, South Carolina, and that Assignor has not previously transferred any of the said rights to any third party and that Assignor has not entered into any agreement which would encumber the rights herein assigned.

4. This Assignment is absolute, unconditional and irrevocable and shall be binding upon and inure to the respective successors and assigns of the parties hereto.

In Witness, whereof, the parties hereto have set their hands and seals on this _____ Day of _____, 2002.

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

UNIFORM ACKNOWLEDGMENT
S. C. CODE ANN. § 30-5-30 (SUPP. 2001)

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

Sworn to and Subscribed before me
on this _____ Day of _____, 2002.

Notary Public for South Carolina
My Commission Expires: _____

EXHIBIT "A" TO ABSOLUTE ASSIGNMENT

(Here, insert Legal Description of the Real Property)

157-205

**TOWN OF HILTON HEAD ISLAND
LAND ACQUISITION PROGRAM
INDEPENDENT CONTRACTOR AGREEMENT**

AGREEMENT, made this 4th day of October, 2005, by and between The Town of Hilton Head Island, a political subdivision of the State of South Carolina (the "Town"), and The Trust for Public Land, a nonprofit corporation, incorporated under the laws of the State of California, authorized to transact business in the State of South Carolina as The Trust for Public Land (Inc.) and exempt from Federal taxation under Section 501(c)(3) of the Internal Revenue Code (hereinafter referred to as the "Contractor" or "TPL")

WHEREAS, the Town has a program to protect the Town's open space, critical lands and natural resources (the "Town's Program"); and

WHEREAS, the Town requested a proposal from Contractor to provide the Town services provided herein; and

WHEREAS, the Contractor submitted its proposal to the Town detailing its expertise in the area of buying and protecting land; and

WHEREAS, the Contractor's mission is to conserve land for people to improve the quality of life in our communities and to protect our natural and historic resources for future generations; and

WHEREAS, Contractor is providing similar services to Beaufort County under a similar form of agreement as contained herein, and

WHEREAS, on November 16, 2004, the Town Council selected the Contractor to provide the services enumerated herein; and

WHEREAS, the Town desires to retain the Contractor and the Contractor desires to accept the obligation to perform services described herein upon the terms and conditions set forth below.

NOW, THEREFORE, in consideration of mutual covenants and agreements provided herein, and for other good and valuable consideration, the Town and the Contractor agree as follows:

**ARTICLE 1
INDEPENDENT CONTRACTOR**

This is an agreement to engage the Contractor as an independent contractor. It is expressly understood and agreed by the Contractor and the Town that while the Contractor is engaged in carrying out and complying with any of the terms and conditions of this Agreement,

the Contractor is an independent contractor and not an employee or agent of the Town. The Contractor expressly covenants and agrees that during the term of this Agreement neither the Contractor, nor anyone acting on behalf of the Contractor, shall hold itself out as an employee, servant or agent of the Town.

The Contractor is responsible for complying with all payment and reporting obligations that relate to the taxes imposed on the payments provided under the terms of this Agreement. The Contractor acknowledges that the Town will not withhold employment taxes or make FICA or FUTA contributions. The Contractor voluntarily waives any rights it or anyone working on its behalf may have to any work related benefit, including health benefits, that a person may otherwise be entitled to were he or she employed by the Town. The Contractor acknowledges that the Town is not providing any vacation time, sick pay, or other welfare or retirement benefits normally associated with an employee-employer relationship and that the Town excludes the Contractor and its employees from participation in all health and welfare benefit plans including vacation, sick leave, severance, life, accident, health and disability insurance, deferred compensation, retirement and grievance rights or privileges.

The Town acknowledges and agrees that the Contractor is not providing legal or brokerage services to the Town under this Agreement. The Town will rely on its own attorneys or third-party legal counsel engaged by the Town to advise it in connection with its acquisitions of land and interests in land under the terms of this Agreement.

ARTICLE 2 DEFINITIONS

2.01 General.

For purposes of this Agreement, the following words and phrases will have the following meanings stated herein unless otherwise specifically provided:

- A. "Acquire Real Property" means acquisition of an interest in real property including a fee simple title, conservation easements, and development rights
- B. "Contractor's Board" means its Executive Committee or Project Review Committee each of which is authorized by the Contractor's Board of Directors to review and approve all contracts
- C. "Contractor's Cost" means the purchase price plus due diligence hard costs and interest on Contractor's funds advanced for acquisitions.
- D. "Council" means the Town of Hilton Head Island Town Council.
- E. "Town Manager" means the Town Manager or designee, who shall be the

Contractor's point of contact relating to any obligation or decision to be made under this Agreement.

F. "Priority List" means the list of prioritized properties approved by the Council from time to time for land acquisitions.

ARTICLE 3 CONTRACTOR'S LAND ACQUISITION RESPONSIBILITIES

3.01 This is a non-exclusive Agreement with Contractor to engage Contractor to utilize its legal (the Contractor's attorneys will provide legal review and advice to Contractor's employees working under this Agreement in connection with real estate transactions. Legal counsel will not be provided to the Town or to land owners by the Contractor's attorneys. Information but not legal advice on legal issues relating to tax or estate planning in specific land transactions will be provided to landowners by the Contractor or its tax advisors), real estate, public relations, government relations, negotiating and environmental preservation expertise, skills and experience to assist the Town Manager and Council in selecting and acquiring real property and interests therein;

3.02 The Town's land acquisition program will be implemented as follows: During the term of this Agreement, the Contractor will commence land acquisition negotiations for properties within the areas identified as priorities by the Council and Town Manager and for other properties that meet the criteria of the Town's Program. The Contractor does not represent that all of the priority properties can or will be acquired; the success of the program is in part dependent on the Town and other sources of funding for acquisition and the willingness of land owners to sell their land.

3.03 **Acquisition and Conveyance** Land protection will be accomplished by (1) acquisition by the Contractor and conveyance to the Town (Method 1) or (2) on occasion, the Contractor may negotiate and enter into a contract with a landowner and then, with the Town's approval, assign the contract to the Town to close with the landowner (Method 2).

Method 1, above, means the Contractor negotiates the purchase directly with the landowner and takes title to the property and subsequently conveys the property to the Town at Contractor's cost. Alternatively, Method 1 may also include the direction by Contractor to the landowner to deed the property interest directly to the Town (this variation may be used in the acquisition of conservation easements or restrictive easements or development rights). Method 1 requires approval and vote at a public meeting by the Council. Acquisition or a directed deed by the Contractor shall require approval by Contractor's Board.

Method 2 is desirable by the Town in order to retain the flexibility in the Town's selection of property with unique characteristics which may not fall directly within the Contractor's land conservation mission. Method 2 means the Contractor negotiates the purchase directly with the landowner, enters into an option agreement (in a form approved by the Contractor and the Town) with the landowner, and assigns the option agreement to the Town whereupon the Town closes the transaction and takes title to the property. Method 2 requires (1) approval and vote at a public meeting by the Council; (2) Contract between the landowner and Contractor; (3) Approval by the Contractor's Board of the assignment; (4) Purchase by the Town.

Should there be any need, as part of any acquisition by the Town, for the Town to grant any property interest (ie. a lease of the acquired property or a grant of a conservation or restrictive easement on the acquired property, the Town will adopt an ordinance for such disposition of property interest which will require public readings at Town Council meetings; all pursuant to S.C. Code Ann. Section 5-7260 and Hilton Head Island Town Code 2-7-20.

During the course of negotiation and closing of the option agreement, Contractor personnel will direct the process to achieve a successful conclusion. The Contractor and the Town shall then draft any purchase agreements or other documents conveying interests in real property to the Town. In coordination with the Town Manager, the Contractor's staff will review all basic due diligence issues (ie. appraisal, title matters revealed by the title report or title commitment obtained by Contractor, survey matters disclosed by a current survey obtained by Contractor, and environmental issues revealed by Phase I environmental site assessment (and any Phase II environmental site assessment that may be completed if recommended by the Phase I report) to ensure complete disclosure to the Town. Such information will also be provided to the Town Attorney for information and review. Contractor's legal staff will be available prior to any closing to discuss issues of contract or due diligence with the Town Manager and Town Attorney to ensure compliance with Town legal requirements. Any property acquired by the Contractor without prior approval by the Council shall be acquired by the Contractor at its own risk.

3.04 Additional Contractor Obligations

- A. The Contractor will provide staff and advice to the Town Manager to assist in reviewing and assessing real property for preservation and developing a program to proactively pursue the preservation of real property in the Town of Hilton Head Island. During the term of this Agreement, the Contractor and its staff will be available to discuss real

estate acquisition projects with the Town even if such projects are not projects that the Contractor is involved with; and

- B. The Contractor will provide real property owners, and the Town with information about forms of contractual agreements for the purchase of real property and interests therein. The Contractor will provide property owners and the Town with information and referrals to legal counsel on matters related to conservation easements, tax issues and estate planning which would be beneficial to the property owner. The Contractor has tax and estate planning consultants who are available to provide information to landowners in the context of specific transactions. The Contractor will not give legal, tax or estate planning advice to landowners. The Town will not be liable for any advice given by the Contractor or its consultants; and
- C. The Contractor will coordinate with federal, state, and local entities and other non-profit organizations and conservation organizations when feasible to leverage and secure funding to protect and manage real property; and
- D. The Contractor will communicate to the Town through the Town Manager or his or her designee; and
- E. The Contractor will attend the meetings of the Council only when issues specific to the obligations under this Agreement are being discussed and when specifically requested by the Town Manager; and
- F. The Contractor will use good faith efforts to ensure that all contractual agreements, appraisals and property reviews for all properties considered under this Agreement are in compliance with state, federal and local laws

3.05 **Progress Reports; Meetings; Records and Audit.**

A. Progress Reports. The Contractor will provide the Town with a monthly project tracking report. Monthly reports will be provided to the Town by the 10th day of each month and will include a review of program progress, status of projects under consideration, status of negotiations, and a listing of monthly cumulative acquisition expenditures. These reports will be provided monthly throughout the term of this Agreement. Copies of the monthly status report will be made available and delivered to the Town Manager. The parties will work to develop an agreed upon reporting format for this purpose. The Contractor will, as part of its monthly reporting requirements hereunder, advise the Town of the status and possible terms of negotiations but the terms of such negotiations will remain confidential until after the contract with the landowner is signed. The Contractor is not an agent of the Town but is an independent contractor

undertaking to complete an acquisition program; and

B. **Records and Audits.** If federal funds are used for any work under this Agreement, the Controller General of the United States, or any of his duly authorized representatives, shall have access to any books, documents, papers, and records of the Contractor which are directly pertinent to work performed under this Agreement, for purposes of making audit, examination, excerpts and transcriptions. Regardless of whether federal funds are used, for all work performed under this Agreement the Contractor agrees to make such materials that are directly pertinent to the work performed under this Agreement available at its Charleston, South Carolina office at all reasonable times during the term of this Agreement, and for three (3) years from the date of final payment under this Agreement, for audit or inspection by the Town, or any of its duly authorized representatives. The Town agrees that it shall not have access to any other books and records of the Contractor.

3.06 **Confidentiality; Conflicts.** The Contractor will maintain the confidentiality of all appraisals, offers and other negotiation matters undertaken herein. This confidentiality provision shall apply to each member of the Contractor's staff who works on Town projects. No member of the Contractor's staff or member of its Board will negotiate, approve, or otherwise participate on behalf of the Town in the purchase, sale or exchange of real property owned or to be acquired by the Town if the Contractor's staff members or member of its Board has any financial interest in the land to be acquired. If requested by the Town, an Affidavit certifying compliance with the confidentiality provisions that are contained in this paragraph and disclaimer of interest in property shall be provided by the Contractor.

3.07 **Alternate Funding Sources.** Consistent with the Contractor's stated mission, in the event the Town makes application for matching local, state and/or federal funding for the purchase or management of real property, Contractor will provide technical assistance to assist the Town in securing said matching funds for the purchase or management of the property. The Town acknowledges and agrees that in the event alternative funding is secured for purposes of effecting an acquisition, said acquisition may be subject to specific statutory requirements and guidelines, and all documentation and procedures necessary to effect the acquisition and subsequent transfer of the property may be subject to the review and approval of the participating funding agency. In such an event, the Contractor's staff will prepare the requisite documentation and submit same for approval to the funding agency and the Town, and assist and coordinate with the Town for purposes of satisfying the requirements of the funding agency. In the event that alternative funding is secured which further leverages Town dollars, some funding agencies may require title to be conveyed to such other participating agencies. In such instances, the Contractor will disclose to the Town the structure of the transaction as part of the formal approval process. Contractor may, from time to time and as appropriate,

solicit gifts from landowners to assist in the planning and development of property it acquires for conservation. Such solicitation shall not be considered a reduction in the price offered the landowner. Contractor shall be entitled to retain a portion of the gift to support Contractor's land conservation work. The amount retained by Contractor will allow Contractor to undertake work beyond the scope of this Contract and shall be specified in the contract with the landowner and in Contractor's contract with the Town. Generally, the amount to be retained by Contractor will be 10% -20% of the total gift, with the balance to be used by the Town for development of the property. The amount of the gift retained by Contractor shall be approved by the Town as part of its contract to purchase the land from Contractor.

3.08 **Communications.** The Contractor will make available, as necessary, a member of its staff to work closely with the Town Manager for purposes of promoting the Town's program and highlighting the Town's acquisition initiatives.

3.09 **Stewardship.** At the request of the Town, the Contractor will provide general informational assistance to Town on stewardship and management issues, including advice regarding the establishment of land and natural resource management goals, management of funding opportunities and the management of plans and programs.

3.10 **Offices.** The Contractor is not required to maintain a local office in the Town of Hilton Head Island but is required to provide adequate staffing to implement this Agreement. Staff shall be maintained for as long as this Agreement remains in full force and effect.

ARTICLE 4 TOWN RESPONSIBILITIES

4.01 **Designation of Areas and Sites.** Negotiations by the Contractor under this Agreement shall be limited solely to those parcels of real property which meet the criteria of the Town's Program. The Contractor will work with the Town Manager on protection of specific tracts of land. The Contractor's staff will present each acquisition for final review by the Town Manager and then for approval and vote at a public meeting by the Council consistent with Section 3.03 above.

4.02 **Review of Contractor's Progress Reports and Records.** The Town Manager or designee will review the monthly acquisition tracking report, and monthly progress reports.

4.03 **Appraisals.** The Town and the Contractor shall establish appraisal assumptions and instructions for appraisers of each site to be acquired. The Contractor shall then solicit proposals from certified appraisers. The Contractor shall select the appraisers and

direct them to conduct appraisals on the real properties the Contractor is negotiating for acquisition, using applicable Town guidelines. The Contractor shall have all appraisals addressed to both the Contractor and the Town. The Contractor shall review the appraisals to ensure the assumptions have been met and the instructions have been followed. Where matching funds have been obtained for the acquisition of a site, the Contractor shall coordinate the appraisal process with the participating agency to ensure the applicable procedures and requirements are met and followed and that the participating agency has approved the process and the appraisal. Copies of appraisals will be provided to the Town for review along with the other due diligence items once the Contractor has the properties under contract.

4.04 **Property Information.** The Town will provide the Contractor, without charge, copies of all Town property records, maps, GIS data, necessary or desirable to complete the transactions.

4.05 **Closing Process.** In purchases and conveyances, the Contractor, at its own expense, shall be responsible for preparing or having prepared any and all documents necessary to close on the acquisition from the landowner of the properties. The Town shall be responsible for the expenses related to preparing or having prepared any and all documents necessary to closing on the acquisition from the Contractor of the properties subject to this Agreement.

4.06 **Confidentiality; No Conflict.** The Town will maintain the confidentiality of all appraisals, offers, and other negotiation matters to the extent required or permitted by applicable law. This confidentiality provision shall apply to each member of the Town's staff who works on program acquisitions. No member of the Town's staff or member of the Council will negotiate, approve, or otherwise participate on behalf of the Town in purchase, sale or exchange of real property owned or to be acquired by the Town, if the Town staff member or member of the Council has any financial interest in the land to be acquired or that is owned by the Town. If requested by the Town or the Contractor, an affidavit certifying compliance with the confidentiality provisions that are contained in this paragraph and disclaimer of interest in property shall be provided by the individuals involved.

ARTICLE 5
COMPENSATION TO THE TRUST FOR PUBLIC LAND

5.01 **Contract Fee.** In consideration of the Contractor's services to be rendered pursuant to this Agreement, Town shall pay Contractor a fixed price contract fee (the "Contract Fee") of \$7,900.00 per month for the Term of this Agreement (as defined below). This Contract Fee is to compensate Contractor for its staff time and related costs (travel, overhead, benefits, etc.) necessary to perform the services specified herein.

Payments shall be remitted to : The Trust for Public Land
306 North Monroe Street
Tallahassee, FL 32301
Attn: Regional Finance Manager

5.02 **Reimbursement.** Any out of pocket costs and expenses incurred by the Contractor associated with real estate closings will be reimbursed by the Town in a timely manner upon presentation of a receipt, paid invoice or other appropriate document evidencing the cost or expense. Such out of pocket expenses will consist of the following: costs of appraisals, outside counsel fees (if required to provide tax or estate planning advice or information to landowners or if needed to evict tenants or squatters from the property; subject to prior approval of the Town), escrow fees, disbursement fees, surveys, phase I environmental site assessments (and additional testing or remediation, if such testing and remediation is approved in advance by the Town), transfer tax or documentary stamps, reasonable interest on the purchase price paid by the Contractor for the period of time the Contractor holds the property; any real property taxes or maintenance costs for the property for the period of time the Contractor holds the property; fire and casualty insurance premiums paid by the Contractor for any structures on the property for the period of time the Contractor holds the property.

The Contractor agrees that it shall use and rely on the Town attorney for all title inspections and examinations and the preparation of all title insurance binders and policies with respect to the title for all property which it acquires and is to ultimately be vested in the name of the Town. Amounts incurred for these title services shall be billed directly to the Town by the Town attorney and shall be at no cost to the Contractor. For properties that are being purchased with the intent that title be jointly vested in the Town and another governmental entity (i.e. Beaufort County or the State of South Carolina), the parties shall have the right to mutually agree on the most cost effective and mutually beneficial manner in which to obtain title services.

5.03 **Claims for Services.** No claim for services rendered by the Contractor not specifically provided for in this Agreement, or otherwise approved in advance by the Council, will be honored by the Town.

5.04 **Alternative Funding Mechanism.** Contractor would like the opportunity to discuss with Town Council the possible conversion from an Independent Contractor model to TPL's traditional business model of obtaining mission support directly from landowner donations. If TPL can solicit donations from landowners sufficient to cover the costs of its work as described herein as well as the closing costs of the transaction, TPL could provide these services at no cost to the Town.

ARTICLE 6 TERM

Unless otherwise terminated, this Agreement shall remain in full force and effect for a period of twelve (12) months beginning October 1, 2005 through September 30, 2006. Nothing shall preclude the Town and the Contractor from extending the term of this Agreement for such period of time as the Town may deem necessary or appropriate for purposes of completing the implementation of the Town's Program, on terms and conditions agreed to by the Contractor. The parties agree that, after 9 months into the term of this Agreement, they will negotiate in good faith for the continuation of the Contractor's services on terms and conditions that are acceptable to both parties.

ARTICLE 7 TERMINATION

Either party to this Agreement shall have the right to terminate this Agreement upon thirty (30) days written notice to the other party. Upon termination, the Town shall pay the Contractor for all services completed up to and prior to the effective date of termination and agrees to accept an assignment of all contracts for acquisition approved by the Town prior to termination, releasing the Contractor from all obligations thereunder accruing after the date of assignment. However, this Agreement may be cancelled at any time upon the agreement in writing by both parties.

ARTICLE 8 INSURANCE AND INDEMNIFICATION

8.01 **Insurance Requirement.** The Contractor shall, throughout the performance of its services pursuant to this Agreement, maintain:

A. Occurrence based comprehensive general liability insurance (including broad form contractual coverage) and automobile liability insurance, with a combined minimum limit of \$1,000,000.00 per occurrence, protecting it and the Town from claims and \$500,000.00 for bodily injury (including death) and property damage

which may arise from or in connection with the performance of the Contractor's services herein or from or out of any act or omission of the Contractor, its officers, directors, agents and employees; and,

B. Worker's compensation insurance as required by applicable law (or employer liability insurance with respect to any employee not covered by worker's compensation) (with minimum limits of one hundred thousand dollars (\$100,000.00) per occurrence); and,

C. All such insurance required in paragraph 8.01 shall be in companies and on forms acceptable to the Town and shall provide that the coverage thereunder may not be reduced or canceled unless thirty (30) days' prior notice thereof is furnished to the Town. Certificates of insurance (and copies of policies, if required by the Town) shall be furnished to the Town.

8.02 **Indemnification.** The Town, to the extent permitted by Law and the South Carolina Tort Claims Act, and the Contractor agree to defend, indemnify and hold each other harmless from and against any and all claims for bodily injury, sickness, disease, death or personal injury or damage to property or loss of use resulting therefrom, arising out of this Agreement unless such claims are the results of the other party's sole negligence.

ARTICLE 9 MISCELLANEOUS PROVISIONS

9.01 **Rights of Town.** Unless the Contractor has commenced negotiations with a landowner, nothing in this Agreement is intended in any way to restrict the Town's right, on its own behalf, to enter into negotiations and agreements concerning the acquisition of interests in any tracts of real property, including, without limitations, tracts within the Town, or the Town's ability to cooperate with any other persons or entity in the acquisition of such interests. The Town agrees not to interfere with the negotiations by the Contractor with any landowner.

9.02 **Assignment.** This Agreement is for the personal services of Contractor and may not be assigned by the Contractor unless otherwise approved by the Town in writing.

9.03 **Authorized Representatives.** The parties agree that in order to facilitate the orderly and efficient implementation of the project and the work contemplated by this Agreement, each party shall appoint an authorized representative (or representatives) for such party. The Town's representative shall have the authority to transmit instructions, receive information, and interpret and define the Town's policies and decisions pertinent to the work covered in this Agreement. The parties understand and agree that only the

Council has the authority to approve changes or modifications to this Agreement on behalf of Town. The Contractor's representatives shall be authorized to act on behalf of Contractor. The Contractor's representative shall be authorized to act on behalf of the Contractor regarding matters involving the conduct of its performance under this Agreement. The initial representative shall be the Town Manager. The initial representative of the Contractor shall be Russ Marane, Coastal Programs Project Manager.

Each party shall have the right to change its authorized representatives from time to time, throughout the term hereof, by giving written notice to the other party hereto in accordance with the notice provisions of this Agreement.

9.04 Procedure to Provide Notice.

A. Notices required or permitted to be given hereunder shall be in writing, may be delivered personally or by mail, telefax, cable or courier service and shall be deemed given when received by the addressee.

Notice shall be addressed as follows:

If to the Town:
Mr. Stephen Riley, Town Manager
The Town of Hilton Head Island
One Town Center Court
Hilton Head Island, South Carolina 29928

Phone (843) 341-4700
FAX (843) 842-8511

With copy to:
Town Attorney
Gregory M. Alford
Alford and Wilkins, P.C.
P.O. Box 8008
Hilton Head Island, S.C. 29938
Phone: 843 842-5500
Fax:
Email: gregg@alfordandwilkins.com

If to the Contractor:
The Trust for Public Land
21 Burns Lane Suite 200
Charleston, SC 29401
Attn: Slade Gleaton
Telephone: (843) 853-5880
Fax: (843) 853-3112

With copies to:

The Trust for Public Land
4267 NW Federal Highway
Suite 120
Jensen Beach, FL 34957
Attn: Donna H. Smith, Regional Counsel
Telephone: (772) 335-3520
Fax: (772) 335-1438
Email: donna.smith@tpl.org

The Trust for Public Land
Attn: Russ Marane
10 Pinckney Colony Road, Suite 317
Bluffton, South Carolina 29909
Telephone: (843) 815-8581
Email: russ.marane@tpl.org

Or to such other address as either party may direct by notice given to the other as hereinafter provided.

B. Notwithstanding the foregoing, any notice sent to the last designated address of the party to whom a notice may be or is required to be delivered hereunder shall not be deemed ineffective if actual delivery cannot be made due to change of address of the party to whom the notice is directed or failure of such party to accept delivery of the notice.

9.05 **Governing Law.** The Agreement shall be governed by, and construed in accordance with, all applicable laws of the State of South Carolina.

9.06 **Unenforceability.** If this Agreement contains any provision construed to be unenforceable or unlawful by a court of competent jurisdiction, the same shall be deemed modified to conform to the applicable law, or if this would cause an illogical or unreasonable result, such provision shall be stricken from this

Agreement without affecting the binding force and effect of this Agreement or any of its other provisions.

9.07 **Entire Agreement.** Respecting the subject matter hereof, this Agreement contains the entire agreement of the parties and their representatives and agents, and incorporates all prior understandings, whether oral or written. No change, modification or amendment, nor any representation, promise or condition, nor any waiver, to this Agreement shall be binding unless in writing and signed by a duly authorized officer of the party to be charged.

9.08 **No Waiver.** Any failure by either party to this Agreement to require strict compliance with any provision of this Agreement shall not be construed as a waiver of such provision, and such non-waiving party may subsequently require subsequently require strict compliance at any time, notwithstanding any prior failure to do so.

9.09 **Equal Opportunity Employment.** Contractor agrees that it will not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, age or national origin, and will take affirmative steps to ensure that employees are treated during employment without regard to race, color, religion, sex, age, or national origin.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed this day and year first above written.

TOWN OF HILTON HEAD ISLAND

By: *Thomas D. Peoples*

Its: *Mayor*

Witness: *Linda Smith*

STATE OF SOUTH CAROLINA)

TOWN OF HILTON HEAD ISLAND)

ACKNOWLEDGMENT

I, Eileen R. Bucklew, do hereby certify that THOMAS D. PEEPLES, personally appeared before me this day and acknowledged that due execution of the foregoing instrument.

Witness my hand and official seal this 6th day of OCTOBER, 2005.

Eileen R. Bucklew

NOTARY PUBLIC for the State of South Carolina
My commission expires ~~My Commission Expires~~
May 8, 2011

THE TRUST FOR PUBLIC LAND,
a California public benefit corporation,
doing business in South Carolina as
The Trust for Public Land (Inc.)

Witness: Barbara B. Barrett By: [Signature]
Its: Trust Manager

STATE OF South Carolina)
TOWN OF Wilton Head)

ACKNOWLEDGMENT

I, Karen D Knox, do hereby certify that Russ Marane, duly authorized Project Manager of The Trust for Public Land, a California public benefit corporation, personally appeared before me this day and acknowledged that due execution of the foregoing instrument on behalf of said corporation.

Witness my hand and official seal this 7 day of Oct., 2005.

[Signature]

NOTARY PUBLIC for the State of 12/20/11
My commission expires: South Carolina