



The Town of Hilton Head Island Regular Town Council Meeting

Tuesday, August 2, 2011

4:00 P.M.

AGENDA

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

- 1) **Call to Order**
- 2) **Pledge to the Flag**
- 3) **Invocation**
- 4) **FOIA Compliance** – Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.
- 5) **Proclamations and Commendations**
 - a. Rashawn Young
 - b. Wallace Gamble
- 6) **Approval of Minutes**
 - a. Town Council Meeting – July 5, 2011
- 7) **Report of the Town Manager**
 - a. Bicycle Friendly Community Award
Andy Clarke, President, League of American Bicyclists
Elizabeth Kiker, Vice President, League of American Bicyclists
 - b. Semi-Annual Report of the Design Review Board, Mr. Tom Parker, Past Chairman
 - c. Semi-Annual Report of the Board of Zoning Appeals, Mr. Roger DeCaigny, Chairman
 - d. Town Manager's Items of Interest
 - e. July, 2011 Monthly Update
- 8) **Reports from Members of Council**
 - a. General Reports from Council
 - b. Report of the Intergovernmental Relations Committee – George Williams, Chairman
 - c. Report of the Personnel Committee – Lee Edwards, Chairman
 - d. Report of the Planning & Development Standards Committee – Bill Ferguson, Chairman
 - e. Report of the Public Facilities Committee – Kim Likins, Chairman
 - f. Report of the Public Safety Committee – Bill Harkins, Chairman
 - g. Report of the LMO Rewrite Committee – Kim Likins, Ex-Officio Member

9) Appearance by Citizens

10) Unfinished Business

a. Second Reading of Proposed Ordinance No. 2011-13

Second Reading of Proposed Ordinance No. 2011-13 to amend Chapters 10 and 13 of Title 4 (Finance and Taxation), of the *Municipal Code of the Town of Hilton Head Island, South Carolina*, by amending Section 4-10-70, Permitted Uses of Local Accommodations Tax Funds; amending Section 4-10-100, Management And Use of Local Accommodations Tax; amending Section 4-13-80, Permitted Uses of Funds; and providing for severability and an effective date.

b. Second Reading of Proposed Ordinance 2011-14

Second Reading of Proposed Ordinance No. 2011-14 authorizing the transfer of real property being a portion of right of way known as the Arrow Road/Dunnagan's Alley Roundabout to South Carolina Department of Transportation, pursuant to the authority of S.C. Code Ann. Sec. 5-7-40 (supp. 2010), and Sec. 2-7-20, *Code of The Town of Hilton Head Island, South Carolina*, (1983); and providing for severability and an effective date.

c. Second Reading of Proposed Ordinance 2011-15

Proposed Land Swap with Henry Driessen

Second Reading of Proposed Ordinance 2011-15 authorizing the sale of real property owned by the Town of Hilton Head Island, South Carolina, pursuant to the authority of S. C. Code Ann. § 5-7-40 (Supp. 2010), and § 2-7-20, *Code of the Town of Hilton Head Island, South Carolina*, (1983, as amended); and providing for severability and an effective date.

d. Second Reading of Proposed Ordinance 2011-16

Proposed Conveyance of Land to Habitat for Humanity, Inc.

Second Reading of Proposed Ordinance 2011-16 authorizing the sale of real property owned by the Town of Hilton Head Island, South Carolina, pursuant to the authority of S. C. Code Ann. § 5-7-40 (Supp. 2010), and § 2-7-20, *Code of the Town of Hilton Head Island, South Carolina*, (1983, as amended); and providing for severability and an effective date.

11) New Business

a. Consideration of a Recommendation regarding a Right of Way Conveyance

Consideration of a Recommendation that the Town Council of the Town of Hilton Head Island, South Carolina, approve a right of way transfer transaction between the Town and the South Carolina Department of Transportation (SCDOT) regarding the right of way acquired to facilitate the construction and maintenance of the improvements to the intersection of US 278 (William Hilton Parkway) with Squire Pope Road.

b. Consideration of a Recommendation regarding Debris Removal Agreements

Consideration of a Recommendation that the Town Council of the Town of Hilton Head Island, South Carolina, endorse the execution of memorandums of agreement with Beaufort County and the South Carolina Department of Transportation (SCDOT) for disaster related debris removal from their respective road rights of way on Hilton Head Island.

c. Consideration of a Resolution regarding Criteria for Redistricting

Consideration of a Resolution that the Town Council of the Town of Hilton Head Island, South Carolina adopt criteria to develop plans for *Redistricting 2010* to ensure maximum public participation.

d. First Reading of Proposed Ordinance 2011-17

First Reading of Proposed Ordinance 2011-17 authorizing and providing for the issuance of Special Obligation Bonds (Hospitality Fee Pledge) of the Town of Hilton Head Island, South Carolina; prescribing the form of bonds; providing for the payment of the bonds from the sources provided herein; creating certain funds and providing for payments into such funds; amending Chapter 13 of Title 4 (Finance and Taxation) of *The Municipal Code of the Town Of Hilton Head Island, South Carolina*, by amending Section 4-13-80, Permitted Uses of Funds, and Section 4-13-110, Sunset; making other covenants and agreements in connection with the foregoing; and providing for severability and an effective date.

e. First Reading of Proposed Ordinance 2011-18

First Reading of Proposed Ordinance 2011-18 providing for the issuance and sale of Town of Hilton Head Island, South Carolina, Special Obligation Bonds (Hospitality Fee Pledge), in one or more series, in the principal amount of not exceeding \$26,250,000; delegating the authority to the Town Manager to determine certain matters with respect to the bonds; prescribing the form and details of such bonds; other matters relating thereto; and providing for severability and an effective date.

f. First Reading of Proposed Ordinance 2011-19

First Reading of Proposed Ordinance 2011-19 authorizing and providing for the issuance of Special Obligation Bonds (Beach Preservation Fee Pledge) of the Town of Hilton Head Island, South Carolina; prescribing the form of bonds; providing for the payment of the bonds from the sources provided herein; creating certain funds and providing for payments into such funds; making other covenants and agreements in connection with the foregoing; and providing for severability and an effective date.

g. First Reading of Proposed Ordinance 2011-20

First Reading of Proposed Ordinance 2011-20 providing for the issuance and sale of Town of Hilton Head Island, South Carolina, Special Obligation Bonds (Beach Preservation Fee Pledge), in one or more series, in the principal amount of not exceeding \$11,000,000; delegating the authority to the Town Manager to determine certain matters with respect to the bonds; prescribing the form and details of such bonds; other matters relating thereto; and providing for severability and an effective date.

h. Consideration of a Recommendation on the Port Royal Sound Shoreline Restoration/Stabilization Project - Acceptance of Bids, Proposals/Award Contracts.

12) Executive Session

a. Land Acquisition

13) Adjournment

COMMENDATION

*A Commendation of the Town of Hilton Head Island
Honoring*

Rashawn Young

WHEREAS, the Town of Hilton Head Island desires to recognize and thank Rashawn Young for his representation of South Carolina and Team USA in the Special Olympics World Summer Games Athens 2011 held from June 25, 2011 through July 4, 2011, in Athens, Greece; and

WHEREAS, Rashawn Young is a June 2011 graduate of Hilton Head Island High School and for nearly ten years has received equestrian coaching at Heroes on Horseback; and

WHEREAS, Rashawn Young was one of only eleven athletes competing with Team USA in the Equestrian Events of the Special Olympics World Summer Games Athens 2011; and

WHEREAS, Rashawn Young won both a Bronze Medal in English Equitation and a Gold Medal in the two-person Team Relay along with his teammate, Wallace Gamble; and

WHEREAS, Rashawn Young has proven that he is a champion and a role model for athletes everywhere.

NOW, THEREFORE, I Drew Laughlin, Mayor of the Town of Hilton Head Island, South Carolina, on behalf of the Town Council, do hereby commend Rashawn Young for his hard work and dedication resulting in the medals awarded to him as a member of Team USA in the Special Olympics World Summer Games Athens 2011.

IN TESTIMONY WHEREOF, I hereunto set my hand and caused this seal of the Town of Hilton Head Island to be affixed this Second Day of August, in the year of our Lord, two thousand and eleven.



Drew Laughlin, Mayor

COMMENDATION

*A Commendation of the Town of Hilton Head Island
Honoring*

Wallace Gamble

WHEREAS, the Town of Hilton Head Island desires to recognize and thank Wallace Gamble for his representation of South Carolina and Team USA in the Special Olympics World Summer Games Athens 2011 held from June 25, 2011 through July 4, 2011, in Athens, Greece; and

WHEREAS, Wallace Gamble is a rising senior at Bluffton High School and for nearly ten years has received equestrian coaching at Heroes on Horseback; and

WHEREAS, Wallace Gamble was one of only eleven athletes competing with Team USA in the Equestrian Events of the Special Olympics World Summer Games Athens 2011; and

WHEREAS, Wallace Gamble won both a Bronze Medal in English Equitation and a Gold Medal in the two-person Team Relay, along with his teammate, Rashawn Young; and

WHEREAS, Wallace Gamble has proven that he is a champion and a role model for athletes everywhere.

NOW, THEREFORE, I Drew Laughlin, Mayor of the Town of Hilton Head Island, South Carolina, on behalf of the Town Council, do hereby commend Wallace Gamble for his hard work and dedication resulting in the medals awarded to him as a member of Team USA in the Special Olympics World Summer Games Athens 2011.

IN TESTIMONY WHEREOF, I hereunto set my hand and caused this seal of the Town of Hilton Head Island to be affixed this Second Day of August, in the year of our Lord, two thousand and eleven.



Drew Laughlin, Mayor

THE TOWN OF HILTON HEAD ISLAND

REGULAR TOWN COUNCIL MEETING

Date: Tuesday, July 5, 2011

Time: 4:00 P.M.

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

Present from Town Staff: Steve Riley, *Town Manager*; Greg DeLoach, *Assistant Town Manager*; Scott Liggett, *Director of Public Projects and Facilities*; Lavarn Lucas, *Fire Chief*; Nancy Gasen, *Director of Human Resources*; Susan Simmons, *Director of Finance*; Jill Foster, *Deputy Director of Community Development*; Jeff Buckalew, *Town Engineer*; Brad Tadlock, *Deputy Fire Chief – Operations*; Ed Boring, *Deputy Fire Chief – Support Systems*; Joheida Fister, *Fire Marshall*; Teri Lewis, *LMO Official*; Cinda Seamon, *Public Education Officer*; Anne Cyran, *Senior Planner*; Julian Walls, *Facilities Manager*; Alice Derian, *Contracts and Services Administrator*; Paul Rasch, *Emergency Management Coordinator*; Mark Torin, *Special Projects Inspector*; Numerous Staff Members from Fire and Rescue; Vicki Pfannenschmidt, *Executive Assistant*

Present from Media: None

1) CALL TO ORDER

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

2) PLEDGE TO THE FLAG

3) INVOCATION

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

Mayor Laughlin announced there was a request to postpone the Special Meeting/Land Acquisition Workshop which was scheduled to immediately follow the regular Town Council meeting. He asked if there was anyone present in the audience present for the Special Meeting/Land Acquisition Workshop. There was no response. Mayor Laughlin stated the meeting would be postponed and rescheduled at a later date.

5) Proclamations and Commendations

Mayor Laughlin presented a Commendation to Josh Barrett for heroic actions.

6) Approval of Minutes

a. Town Council Budget Workshop – June 9, 2011

Mr. Heitzke moved to approve. Mr. Williams seconded. The minutes from the June 9, 2011 Town Council Budget Workshop were approved by a vote of 7-0

b. Town Council Special Meeting – June 14, 2011

Mr. Heitzke moved to approve. Mr. Williams seconded. The minutes from the June 14, 2011 Town Council Special meeting were approved by a vote of 6-0-1. Mrs. Likins abstained because she was not present at the meeting.

c. Town Council Special Meeting – June 16, 2011

Mr. Heitzke moved to approve. Mr. Williams seconded. The minutes from the June 16, 2011 Special Town Council meeting were approved by a vote of 6-0-1. Mrs. Likins abstained because she was not present at the meeting.

d. Regular Town Council Meeting – June 21, 2011

Mr. Williams moved to approve. Mr. Harkins seconded. The minutes from the June 21, 2011 Town Council meeting were approved by a vote of 6-0-1. Mr. Heitzke abstained because he was not present for the entire meeting.

7) Report of the Town Manager

a. Presentation by Island Beautification Association

Mr. Steve Tenant presented a certificate of appreciation to the Town of Hilton Head Island for the Town's efforts in maintaining the landscaping on the Island. He acknowledged the excellent working relationship between the Association and the Facilities Management Department. Alice Derian accepted the certificate on behalf of the Town.

b. Town Managers Items of Interest

Mr. Riley reported on some Items of Interest.

c. Update – Palmetto Electric Power Line Burial Project – Mark Torin

Mark Torin updated Town Council on the Project by reviewing past efforts and accomplishments, along with future plans for power line burial.

d. July, 2011 Quarterly Report

Mr. Riley noted that the quarterly report was included with the agenda package for Town Council's review.

e. May, 2011 Financial Statements – Susan Simmons

Mr. Riley noted the Financial Statements for May were included in the packet and asked if there were any questions. Mr. Williams suggested the additional funds spent on advertising for The Heritage should be included in the report. He also asked for a brief report explaining how the Hospitality Tax is distributed.

8) Reports from Members of Council

a. General Reports from Council

Mr. Harkins shared his concerns over the parking situation at Islanders Park and requested that the situation be reviewed.

Mr. Ferguson noted his concerns with the traffic and speeding on Highway 278. He suggested lowering the speed limit during the tourist season.

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

Mr. Williams reported there will be a Special Meeting held on Monday, July 11, 2011 at 9:00 a.m. and the topic would be redistricting options.

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

None.

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

None.

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

Mrs. Likins said the Committee met at 2:00 p.m. today and there were two recommendations to Town Council that would be heard at this meeting. She said one was the right of way transfer at Arrow Road and Dunnagan's Alley and the other item was the proposed land swap with Henry Driessen, Jr.

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

None.

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

Mrs. Likins reported the Committee will continue to meet weekly. She stated there are many members from the public attending the meetings which is very appreciated by all Committee members.

9) Appearance by Citizens

None.

10) Unfinished Business

a. Second Reading of Proposed Ordinance No. 2011-11

Second Reading of Proposed Ordinance No. 2011-11 to amend Title 16 of the Municipal Code of the Town of Hilton Head Island, South Carolina, the Land Management Ordinance, Chapter 4, to revise Section 16-4-1204 and to add Section 16-4-13xx. This amendment commonly referred to as the *WMU Outdoor Recreation Amendment* as noticed in the Island Packet on March 27, 2011, includes changes that provide for an amendment to LMO Section 16-4-1204, use table and the addition of a new Section, 16-4-13xx, Outdoor Recreation; and providing for severability and an effective date.

Mr. Heitzke moved to approve. Mrs. Likins seconded. Mr. Frank Segandorf spoke in opposition to the proposed ordinance. The motion was approved by a vote of 7-0.

11) New Business

a. Consideration of a Recommendation regarding a Right-of-Way Conveyance

Consideration of a Recommendation that the Town Council of the Town of Hilton Head Island, South Carolina, approve a right-of-way transfer transaction at Arrow Road / Dunnagan's Alley between the Town of Hilton Head Island and the South Carolina Department of Transportation (SCDOT).

Mr. Williams moved to approve. Mr. Heitzke seconded. The motion was approved by a vote of 7-0.

b. Consideration of a Recommendation for a Land Swap

Consideration of a Recommendation that the Town Council of the Town of Hilton Head Island, South Carolina, approve a land swap with Henry Driessen, involving property in the Patterson Estate, off Marshland Road.

Mr. Heitzke moved to approve. Mr. Ferguson seconded. The motion was approved by a vote of 7-0.

c. First Reading of Proposed Ordinance No. 2011-13

First Reading of Proposed Ordinance No. 2011-13 to amend Chapters 10 and 13 of Title 4 (Finance and Taxation), of the Municipal Code of the Town Of Hilton Head Island, South Carolina, by amending Section 4-10-70, Permitted Uses of Local Accommodations Tax Funds; amending Section 4-10-100, Management And Use of Local Accommodations Tax; amending Section 4-13-80, Permitted Uses of Funds; and providing for severability and an effective date.

Mr. Heitzke moved to approve. Mr. Williams seconded. Steve Riley provided a brief overview. The motion was approved by a vote of 7-0.

12) Executive Session

Mr. Riley stated he needed an executive session for contractual matters pertaining to land acquisition; including a land swap with Mr. Henry Driessen, and conveyance of land to Habitat for Humanity; contractual matters pertaining to a transfer of right-of-way to the SCDOT; contractual matters pertaining to a cell tower lease on the Fire Station 7 site; contractual matters pertaining to an exchange of properties and interest involving the Town, Greenwood Development and the Palmetto Dunes POA; and personnel matters pertaining to the annual review of the Town Manager.

At 4:40 p.m., Mr. Heitzke moved to go into Executive Session for the reasons stated by the Town Manager. Mr. Ferguson seconded. The motion was approved by a vote of 7-0.

Mayor Laughlin called the meeting back to order at 6:40 p.m. and asked if there was any business to take up as a result of executive session.

Mr. Heitzke moved that Town Council amend the Town Manager's Contract of Employment to provide for mileage reimbursement for business travel greater than 50 miles one way and that the Town Manager's Contract be amended to clarify language pertaining to the contract term and the provision of automatic one year extensions, to be effective with the Contract term starting July 1, 2011. Mr. Williams seconded. The motion was approved by a vote of 7-0.

Mr. Ferguson moved that the Mayor and Town Manager be authorized to execute a contract for the exchange of Town owned real property for real property owned by Henry C. Driessen, Jr., and that the Mayor and Town Manager be authorized to take such other and further actions as may be necessary to complete the transaction described in the contract. Mr. Williams seconded. The motion was approved by a vote of 7-0.

Mr. Ferguson moved that the Town Council for the Town of Hilton Head Island give approval on First Reading to an ordinance authorizing the Town to exchange real property owned by the Town for real property owned by Henry C. Driessen, Jr., and that the Mayor and Town Manager be authorized to take such other and further actions as may be necessary to complete the conveyance of the property. Mr. Williams seconded. The motion was approved by a vote of 7-0.

Mr. Ferguson moved that the Mayor and Town Manager be authorized to execute a contract for the conveyance of town owned real property to Hilton Head Regional Habitat for Humanity, and that the Mayor and Town Manager be authorized to take such other and further actions as may be necessary to complete the transaction described in the contract, provided that Habitat for Humanity agrees to revise the contract to provide:

- 1) The Town will retain easements for drainage and utilities over Lots 8(eight) through 11(eleven), and 16 (sixteen).
- 2) Habitat agrees that title to the real property will revert to the town:
 1. If Habitat contracts to sell the property to a developer other than Habitat.
 2. The development is not completed within the following time frames:
 - a) The Phase 1(one) road and utility installation must be completed in 5 (five) years.
 - b) The Phase 1(one) development of homes on Lots 5(five) and 6(six) must be complete in 10(ten) years.
 - c) The Phase 2(two) road and utility installation must be complete in 15(fifteen) years.
 - d) The Phase 2(two) development of homes on Lots 12 though 15 must be complete in 20(twenty) years.

Mr. Heitzke seconded. The motion was approved by a vote of 7-0.

Mr. Ferguson moved that the Town Council for the Town of Hilton Head Island give approval on First Reading to an ordinance authorizing the Town to convey real property owned by the Town to Hilton Head Regional Habitat for Humanity, and that the Mayor and Town Manager be authorized to take such other and further actions as may be necessary to complete the conveyance of the property. Mr. Heitzke seconded. The motion was approved by a vote of 7-0.

Mr. Edwards moved that the Town Council for the Town of Hilton Head Island adopt an ordinance authorizing the transfer of real property being a portion of right of way known as the Arrow Road/Dunnagan's Alley Roundabout to the South Carolina Department of Transportation via execution and delivery of a Quit Claim Deed. Mr. Williams seconded. The motion was approved by a vote of 7-0.

13) Adjournment

Mr. Heitzke moved to adjourn. Mr. Williams seconded. The meeting was adjourned at 6:40 p.m.

Vicki Pfannenschmidt, Secretary

Approved:

Drew A. Laughlin, Mayor



Items of Interest

August 2, 2011

1. Noteworthy Events

a) Some of the upcoming meetings at Town Hall:

- LMO Rewrite Committee – August 4, 1:00 p.m.
- Design Review Board – August 9, 1:15 p.m.
- LMO Rewrite Committee – August 11, 1:00 p.m.
- Parks and Recreation Commission – August 11, 3:30 p.m.
- Planning Commission – August 17, 3:00 p.m.
- LMO Rewrite Committee – August 18, 1:00 p.m.
- Board of Zoning Appeals – August 22, 2:30 p.m.
- Design Review Board – August 23, 1:15 p.m.
- Construction Board of Adjustments and Appeals – August 23, 5:30 p.m.
- Planning and Development Standards Committee – August 24, 4:00 p.m.
- LMO Rewrite Committee – August 25, 1:00 p.m.
- On-Line Accommodations Tax Grant Applications Available – August 29, 8:00 a.m.
- Public Projects and Facilities Committee – September 6, 2:00 p.m.
- Town Council – September 6, 4:00 p.m.

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

2011 Hilton Head Island Events

Fridays, thru Dec. 9, 2011 8:30am-1:00pm	Farmers Market	Honey Horn
Mondays thru Fridays thru Sept. 2, 2011 6:30pm-7:30pm 8:00pm-9:00pm	Shannon Tanner	Shelter Cove Harbour Stage
Tuesdays thru August 9, 2011 5:00pm- 10:00pm	HarbourFest 2011	Shelter Cove Harbour
Tuesdays thru August 9, 2011 7:00pm-10:00pm	Summer Jams	Shelter Cover Community Park
Thursday, August 4, 2011 4:00pm-7:00pm	Water Fun Day	Shelter Cove Community Park
Saturday, August 6, 2011 7:00am-11:00am	Beach Bum Triathlon #2	Coligny Beach
Friday, September 2 thru Sunday, September 4 9:00am-3:00pm	Hilton Head Island Celebrity Golf Tournament	2 nd -Robert Trent Jones Course, Palmetto Dunes 3 rd -Dye Course Colleton River Plantation 4 th -Harbour Town Golf Links

2011 Policy Agenda

July, 2011

Top Priority

Target	Chief Contact	Comments
<ul style="list-style-type: none"> ▪ Heritage Golf Tournament: Seek to Secure Its Long-Term Future 	Steve Riley Greg DeLoach	Title sponsor secured. Town to purchase advertising. Starting to work on details.
<ul style="list-style-type: none"> ▪ Technology Infrastructure: Evaluation and Direction of Town's Role 	Shea Farrar	Currently, a lease is under negotiation with American Tower to build a tower on the Station 7 Property. Staff continues to meet with the telecommunications citizens group.
<ul style="list-style-type: none"> ▪ LMO: Amend to Foster Greater Flexibility, Simplicity, and Revitalization 	Teri Lewis	LMO Rewrite Committee continues to meet on a weekly basis to identify issues and develop game plan to address the issues.
<ul style="list-style-type: none"> ▪ Coligny Area Redevelopment: Conceptual Plan, Direction, and Town's Role 	Mike Roan	Continue discussions with involved property owners.
<ul style="list-style-type: none"> ▪ Redevelopment Authority/Community Development Corporation: Evaluation and Direction 	Shawn Colin	Recommended strategy for Economic Development and Redevelopment; anticipated for the P&DS Committee's August meeting.

High Priority

Target	Chief Contact	Comments
<ul style="list-style-type: none"> ▪ Economic Development Corporation: Evaluation 	Shawn Colin	Recommended strategy for Economic Development and Redevelopment; anticipated for the P&DS Committee's August meeting.
<ul style="list-style-type: none"> ▪ Mitchelville Development: Evaluate Business and Master Plan and Town's Role 	Jayme Lopko	<p>Right of Entry drafted to allow Mitchelville Preservation Project (MPP) to enter the property for wetland, tree, and topographical surveying. Right of Entry sent to MPP for their approval.</p> <p>Town gave consent for MPP to apply to have the Fish Haul Park property included in the Nation Park Service, National Underground Railroad Network to Freedom Program.</p>
<ul style="list-style-type: none"> ▪ Shelter Cove Mall Redevelopment: Conceptual Plan, Direction, and Town's Role 	Mike Roan	Staff continues to work with the owners of the Mall on potential redevelopment plans.

Moderate Priority		
Target	Chief Contact	Comments
<ul style="list-style-type: none"> Shoreline Change Blue Ribbon Committee: Closely Monitor 	Scott Liggett	Staff continues to monitor the Committees work. Formal updates are available via this link: http://www.scdhec.gov/environment/ocrm/blue_ribbon.htm .
<ul style="list-style-type: none"> Community Based Education Program on Environmental Stewardship 	Sally Krebs	Working with website administrator to create an environmental stewardship page; hope to complete by 1 September. Have sent text and graphics to printer for interpretive signs for Jarvis Creek
<ul style="list-style-type: none"> Fire Station #6 Direction 	Charles Cousins	Attorneys for town, Greenwood Development and PDPOA are finalizing the agreement
<ul style="list-style-type: none"> Law Enforcement Center: Seek to Acquire with County 	Steve Riley Greg DeLoach	Continuing.
2011 Management Targets July, 2011		
Top Priority		
Target	Chief Contact	Comments
<ul style="list-style-type: none"> Airport Issues: Follow up on Tree Issues and Masterplan Implementation 	Charles Cousins	Appeal of Town's permit to remove trees still working through process
<ul style="list-style-type: none"> EcoTourism Conference: Work with Chamber 	Steve Riley	Town and Chamber staff continue to assist Conference promoters.
<ul style="list-style-type: none"> Habitat Housing Project: Evaluate Specific Proposal 	Charles Cousins	Town council approved land swap to consolidate land for Habitat to move forward. Staff now working with LCOG on potential grant for infrastructure.
<ul style="list-style-type: none"> Legislative Program 	Greg DeLoach	The first year of a two year session ended. The General Assembly spent most of the session on budgetary issues, redistricting, and the Point of Sale Bill.
<ul style="list-style-type: none"> Stormwater Utility Agreements 	Cary Gaffney	Town Council approved the new storm water utility agreement with the County on 6-7-11. Agreement sent to County for their approval and will be heard by their Natural Resources Committee on 7-26-11; if approved it will go to County Council on 8-8-11. Current agreement expires on 9-1-11. PUD drainage maintenance agreements are being negotiated with Palmetto Dunes, Leamington, Wexford, and Sea Pines. If approved by 12-31-11, Town would take over their storm drainage systems 7-1-12.

High Priority		
Target	Chief Contact	Comments
<ul style="list-style-type: none"> ▪ Business License Code: Evaluation and Direction 	Susan Simmons	Funding was included in the FY12 budget after being deleted in FY11. Revenue and Collections Division had a kickoff meeting with staff to announce this project and the Division supervisors will begin developing a scope of work to perform a SIC to NAICS conversion study. The project will include a complete review of the Town Code Titles 4 and 10 covering Business Licenses and Finance and Taxation.
<ul style="list-style-type: none"> ▪ Bicycle Friendly Community: Seek Designation 	Marcy Benson	Silver Level designation announced in May 2011. League of American Bicyclists Executive Director, Andy Clarke, to present award at August 2, 2011 Town Council meeting.
<ul style="list-style-type: none"> ▪ Residential Recycling Development 	Alice Derian	Total accounts initiated as of June 30, 2011 is 6,999 114.45 tons of recycling have been collected for the month of June The 30 second ad on the recycling program, along with the two 60 second vignettes on recyclable materials will continue on
<ul style="list-style-type: none"> ▪ Town Council Redistricting: Direction 	Steve Riley	Two scenarios developed with input of State Data Center. July 11 th meeting held with Bobby Bowers. Committee recommended that Town Council adopt criteria for redistricting and hold at least one more public meeting.

**CIP Monthly Report
July, 2011**

Project	Chief Contact	Comments
<ol style="list-style-type: none"> 1. Fire Station #1 Replacement 2. Miller's Pond Drainage Project 3. Port Royal Terminal Groin 4. Port Royal Beach Renourishment 5. Dunnagan's Alley / Arrow Road Roundabout 6. Dunnagan's Alley Pathway to Target Road 7. Stoney Area Sewer projects 8. F&R Emergency Access Gates Palmetto Hall and Port Royal Plantation 9. Traffic Signal Mast-arms 10. US 278 Partial median Closure – Festival Centre and Central Avenue 11. Hospital Center Blvd and Main Street 	Scott Liggett	<ol style="list-style-type: none"> 1. Work underway, target completion date – October 2011 2. Project under contract, pending USACE permit 3. Proposals received, completing due diligence. 4. Proposals received, completing due diligence. 5. Under contract – proposed construction start date no later than September 1, 2011. 6. Design is complete, permits being acquired, will be constructed in conjunction with the adjoining roundabout 7. Construction ongoing, to be completed in September 2011 8. Construction to begin by August and be completed in September. 9. Construction to begin on Dillon Road and Coggins Point Road mast-arms this month, target completion date – October 2011 10. Awaiting SCDOT permit, bid for construction this fall 11. Bid with US 278 median closure project this fall



Memorandum

TO: Town Council
FROM: Steve Riley, Town Manager
VIA: Susan Simmons, Director of Finance
DATE: July 6, 2011
RE: **Second Reading of Proposed Ordinance No. 2011-13**

There were no changes made to Proposed Ordinance #2011-13 during the first reading on July 5, 2011.

AN ORDINANCE TO AMEND CHAPTERS 10 AND 13 OF TITLE 4 (FINANCE AND TAXATION), OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, BY AMENDING SECTION 4-10-70, PERMITTED USES OF LOCAL ACCOMMODATIONS TAX FUNDS; AMENDING SECTION 4-10-100, MANAGEMENT AND USE OF LOCAL ACCOMODATIONS TAX; AMENDING SECTION 4-13-80, PERMITTED USES OF FUNDS; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, on July 2, 1997, the Town Council amended the Code of the Town of Hilton Head Island, South Carolina, (1983), by adding a new chapter 10 of article 4, entitled “Local Accommodations Tax”; and

WHEREAS, on February 8, 2000, the Town Council amended the Code of the Town of Hilton Head Island, South Carolina, (1983), by adding a new chapter 13 of article 4, entitled “Local Hospitality Tax”; and

WHEREAS, Town Council desires to amend Section 4-10-70, (Permitted uses of local accommodations tax funds), in order to consistently provide for an advertising account in the General Fund in accordance with guidelines established in the Town Budget’s accounting and financial policies; and

WHEREAS, Town Council desires to amend Section 4-10-100 (a), (Management and use of local accommodations tax), in order to abolish the Festival and Island Ambassador Program fund and replace it with an Event Management and Hospitality Training Program fund.

WHEREAS, Town Council desires to repeal Section 4-10-100 (b), (Reserve fund).

WHEREAS, Town Council desires to amend Sections 4-13-80, (Permitted uses of funds), in order to consistently provide for an advertising account in the General Fund in accordance with guidelines established in the Town Budget’s accounting and financial policies; and

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

Section 1. Amendment. That the Code of the Town of Hilton Head Island, South Carolina, be, and the same hereby is, amended to read as indicated on the attached pages.

NOTE: New text is indicated by a double underline and deleted text is indicated by a ~~strike through~~.

Section 2. Severability. If any sections, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion

shall be deemed a separate, distinct and independent provision, and such holding shall not attest the validity of the remaining portions thereof.

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

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS _____ DAY OF _____ 2011.

Drew A Laughlin, Mayor

ATTEST:

Cori Brock, Town Clerk

First Reading: _____

Second Reading: _____

APPROVED AS TO FORM:

Gregory M. Alford, Town Attorney

Introduced by Council Member: _____

LOCAL ACCOMODATIONS TAX

Sec. 4-10-70. - Permitted uses of local accommodations tax funds.

- (a) The Town Council is hereby authorized to utilize the funds collected from the imposition and collection of the local accommodations tax and any other funds deposited into "The Town of Hilton Head Island, South Carolina, Local Accommodations Tax Account." The revenue generated by the local accommodations tax must be used exclusively for the following purposes:
- (1) Tourism-related buildings, including, but not limited to, civic centers, coliseums, and aquariums;
 - (2) Tourism-related cultural, recreational, or historic facilities;
 - (3) Beach access and renourishment;
 - (4) Highways, roads, streets, and bridges providing access to tourist destinations;
 - (5) Advertisements and promotions related to tourism development;
 - (6) Water and sewer infrastructure to serve tourism-related demand; and,
 - (7) The operation and maintenance of those items provided in (a)(1) through (a)(6) above, including police, fire protection, emergency medical services, and emergency-preparedness operations directly attendant to those facilities;
 - (8) For those purposes set forth in section 4-10-100.

(b) The Town shall set aside five (5) percent of the local accommodations tax collected hereunder, and shall deposit the same into an advertising account in the General Fund as identified in the Accounting and Financial Policies section of the annual budget as adopted by town council, with said funds to be utilized as provided therein.

~~(b)~~ (c) Authorization to utilize any funds from the "the town, Local Accommodations Tax Account," shall be by the annual budget ordinance duly adopted by the town council for the town.

Sec. 4-10-100.- Management and use of local accommodations tax.

- (a) ~~Event Management and Hospitality Training Festival and Island Ambassador Program fund. The town shall set aside five (5) percent of this local accommodations tax for special events production and volunteerism and hospitality training. the promotion of festivals created after January 21, 1998, and promotion and sponsorship of the Island Ambassador Program and similar programs. The Town shall select one~~ (1) organization to manage and direct such fund expenditures. To be eligible for selection the organization must be local, organized as a nonprofit (501c), and be mission driven to promote tourism development. ~~whose membership consists of representatives from the lodging, restaurant, golf, tennis and related hospitality industry.~~ The organization must employ a full-time executive director and provide an annual audited financial report in accordance with generally accepted accounting

principles. The organization must not otherwise be designated as the official tourism agency by the town or any other governmental agency. The organization is required to submit an annual budget to the town's ~~accommodations tax advisory committee~~ prior to April 1 of each calendar year for inclusion in the town's proposed annual budget. ~~The accommodations tax advisory committee shall review and make recommendations to the town council by May 15 of each calendar year. The town council shall consider the budget and award the organization a reimbursable grant on a June 30 fiscal year basis. Funds shall be distributed to the designated organization on a quarterly basis no later than thirty (30) days after the end of the quarter.~~

~~(b) Reserve fund. The town shall set aside, in a separate account, five (5) percent of the one (1) percent local accommodations tax, as a reserve fund for disaster management communications-oriented programs. Fund expenditures shall be used to provide for post-disaster advertising, a communications link to emergency agencies, and media programs to provide public notice. Funds may be distributed upon authorization by the town manager.~~

(Ord. No. 98-05, § 1, 1-21-98; Ord. No. 00-06, § 1, 2-8-00; Ord. No. 2008-16, § 1, 6-17-08)

LOCAL HOSPITALITY TAX

Sec. 4-13-80. - Permitted uses of funds.

(a) The town council is hereby authorized to utilize the funds collected from the imposition of the local hospitality tax and any other funds deposited into the town hospitality tax account for the following purposes, and no other:

- (1) To pay, in whole or in part for the current and future construction, enhancement, preservation and maintenance of:
 - a. Tourism-related buildings, including, but not limited to, civic centers, coliseums, and aquariums;
 - b. Tourism-related cultural, recreational, or historic facilities;
 - c. Beach access and renourishment;
 - d. Highways, roads, streets, and bridges providing access to tourist destinations;
 - e. Advertisements and promotions related to tourism development; and,
 - f. Water and sewer infrastructure to serve tourism-related demand.

(3) The town shall set aside two (2) percent of the local hospitality taxes collected hereunder, and shall deposit the same into ~~the disaster "reserve fund" heretofore established under the provisions of section 4-10-100(b);~~ an advertising account in the General Fund as identified in the Accounting and Financial Policies section of the annual budget as adopted by town council, with said funds to be utilized as provided therein.



MEMORANDUM

TO: Town Council

FROM: Public Facilities Committee

VIA: Stephen G. Riley, CM Town Manager

DATE: July 8, 2011

RE: 2nd Reading - Arrow Road / Dunnagan's Alley Right-of-Way Conveyance

Recommendation: The Public Facilities Committee recommends that Town Council approves the right-of-way transfer transaction between the Town and the South Carolina Department of Transportation (SCDOT) regarding the right of way acquired to facilitate the construction and maintenance of the Arrow Road / Dunnagan's Alley roundabout improvements.

Summary: At the July 5th Public Facilities Committee meeting, the committee endorsed the Town Council approval of the right-of-way transfer transaction between the Town and the South Carolina Department of Transportation (SCDOT). Later that same day, Town Council unanimously approved the first reading of the right of way transfer transaction.

The SCDOT requires that the right of way necessary to construct and maintain the proposed roadway improvement be transferred to them as part of their encroachment permit process. The Town would be conveying land acquired for the purpose of establishing right-of-way for the realigned intersection as depicted on the attached exhibit. The total area of right of way to be conveyed to the SCDOT is 0.191 acres.

Background: The Arrow Road / Dunnagan's Alley roundabout is part of the Town's capital improvements program. Three of the four intersecting rights of way involved in the project are owned by SCDOT. The Town has acquired land as necessary to provide a permanent right of way for construction and maintenance of the proposed roadway improvements. Throughout the permitting process with the SCDOT, it has been our mutual intent that the State roadway system not be severed and the transaction contemplated herein, ensures that to be the case.

SCDOT requires that right-of-way acquisition must be finalized and formally conveyed to the SCDOT before they will grant an encroachment permit allowing construction to begin. Deeding the right-of-way to SCDOT requires Town Council approval via an Ordinance with recommendation from the Public Facilities Committee

AN ORDINANCE OF THE TOWN OF HILTON HEAD, SOUTH CAROLINA, AUTHORIZING THE TRANSFER OF REAL PROPERTY BEING A PORTION OF RIGHT OF WAY KNOWN AS THE ARROW ROAD/DUNNAGANS ALLEY ROUNDABOUT TO SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION, PURSUANT TO THE AUTHORITY OF S.C. CODE ANN. SEC. 5-7-40 (SUPP. 2010), AND SEC. 2-7-20, CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, (1983); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

LEGISLATIVE FINDINGS

WHEREAS, The Town of Hilton Head Island owns certain parcels of real property which will be utilized as right of way for the Arrow Road/Dunnagans Alley roundabout; and

WHEREAS, the Town Council for the Town of Hilton Head Island, South Carolina has determined that it is in the best interests of the Town to transfer the above-reference right of way which is described as follows:

ALL those certain pieces, parcels, or tracts of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, shown and designated as “**Parcel 3**, 1,426 S.F. (0.033 AC), ” “**Parcel 4-A**, 979 S.F. (0.023 AC),” “**Parcel 5-A**, 1,303 S.F. (0.030 AC),” “**Parcel 6-A**, 3,734 S.F. (0.085 AC),” “**Parcel 7-A**, 343 S.F. (0.008 AC),” and “**Parcel 8**, 534 S.F. (0.012 AC)” on a plat “Right of Way Acquisition Plat for Proposed Improvements to Arrow Road & Dunnagan’s Alley Prepared for Town of Hilton Head Island, Town of Hilton Head, Beaufort County, South Carolina”, dated July 1, 2010, last revised March 10, 2011, prepared by Henry A. Shumpert, SCPLS#19886, Florence & Hutchenson, which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 132 at Page 133.

Beaufort County Tax Map Reference: R552 015 000 266A 0000; R552 015 000 0279 0000; R552 015 000 0415 0000; a portion of R552 015 000 0273 0000; a portion of R552 015 000 0275 0000.

to the South Carolina Department of Transportation via Quit Claim Deed in a substantially similar form to which is attached hereto as Exhibit “A”.

WHEREAS, under the provisions of S.C. Code Ann. Sec. 5-7-40 (SUPP. 2010) and Sec. 2-7-20, *Code of the Town of Hilton Head Island , South Carolina*, (1983), the conveyance or granting of an interest in real property owned by the Town of Hilton Head Island must be effected by Ordinance.

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

Section 1. Execution of Deed.

- (a) The Mayor and/or Town Manager are hereby authorized to execute and deliver a Quit Claim Deed in a substantially similar form to which is attached hereto as Exhibit "A";
and
- (b) The Mayor and/or Town Manager are hereby authorized to take such other and further actions as may be necessary to complete the conveyance as authorized hereby.

Section 2. Severability.

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

Section 3. Effective Date.

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

PASSED, APPROVED AND ADOPTED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, ON THIS ___ DAY OF _____, 2011.

Drew A. Laughlin, Mayor

ATTEST

Town Clerk

First Reading: _____
Second Reading: _____

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

Introduced by Council Member: _____



Memorandum

TO: Town Council
FROM: Steve Riley, Town Manager
DATE: July 12, 2011
RE: **Second Reading of Proposed Ordinance No. 2011-15**
Proposed Land Swap with Henry Driessen, Jr.

There were no changes made to Proposed Ordinance #2011-15 during the first reading on July 5, 2011.

PROPOSED ORDINANCE: 2011-15

ORDINANCE: 2011-_____

AN ORDINANCE OF THE TOWN OF HILTON HEAD, SOUTH CAROLINA, AUTHORIZING THE SALE OF REAL PROPERTY OWNED BY THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, PURSUANT TO THE AUTHORITY OF S. C. CODE ANN. § 5-7-40 (SUPP. 2010), AND § 2-7-20, CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, (1983, As Amended); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

LEGISLATIVE FINDINGS

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

All those certain pieces, parcels or lots of land, lying and being in the Town of Hilton Head Island, Beaufort County, State of South Carolina, and being shown and described as Lots 2, 17 and 17B, on the Plat thereof which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 112 at Page 105.

WHEREAS, Henry C. Driessen, Jr., owns real property located off of Marshland Road which is more particularly known and described as:

All those certain pieces, parcels or lots of land, lying and being in the Town of Hilton Head Island, Beaufort County, State of South Carolina, and being shown and described as Lots 13, 14 and 15, on the Plat thereof which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 112 at Page 105.

WHEREAS, The Town of Hilton Head Island, South Carolina, has negotiated a proposed Contract whereby The Town of Hilton Head Island, South Carolina, will exchange its property described above for the property of Henry C. Driessen, Jr., described above.

WHEREAS, The Town Council of the Town of Hilton Head Island, South Carolina

has determined that it is in the best interests of the Town of Hilton Head Island, South Carolina, to authorize the execution and delivery of the proposed Contract, and to authorize the completion of the transaction described in the proposed Contract.

WHEREAS, under the authority of S.C. Code Ann. § 5-7-40 (Supp. 2010), and § 2-7-20, *Code of the Town of Hilton Head Island , South Carolina*, (1983, As Amended), the conveyance of real property owned by the Town of Hilton Head Island must be authorized by the adoption of an ordinance by the Town Council for the Town of Hilton Head Island, South Carolina.

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

Section 1. Execution of Contract for the Sale of Town Owned Property and Completion of the Transaction Described in the Contract:

- (a) The Mayor and Town Manager are hereby authorized to execute and deliver the Contract for the sale of Town owned property, which is attached hereto as Exhibit "A"; and,
- (b) The Mayor and Town Manager are hereby authorized to take all other and further actions as may be necessary to complete the transaction described in Contract for the sale of Town owned property.

Section 2. Severability:

If any section, phrase, sentence or portion of this Ordinance is, for any reason, held or deemed to be invalid or unconstitutional by any court of competent jurisdiction, then such section, phrase, sentence or portion shall be deemed a separate, distinct and

independent provision and shall not affect the remaining portion thereof.

Section 3. Effective Date:

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

PASSED, APPROVED AND ADOPTED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, ON THIS ____ DAY OF AUGUST, 2011.

THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

By: _____
Drew A. Laughlin, Mayor

ATTEST: _____
Victoria L. Phannenschmidt,
Acting Town Clerk

First Reading: _____

Second Reading: _____

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

Introduced by Council Member: _____



Memorandum

TO: Town Council
FROM: Steve Riley, Town Manager
DATE: July 12, 2011
RE: **Second Reading of Proposed Ordinance No. 2011-16**
Proposed Conveyance of property to Habitat for Humanity, Inc.

The contract with Habitat for Humanity, Inc. has been amended to reflect the additional conditions imposed by Town Council as part of their approval on first reading July 5, 2011. There are no other changes.

PROPOSED ORDINANCE: 2011-16

ORDINANCE: 2011-_____

AN ORDINANCE OF THE TOWN OF HILTON HEAD, SOUTH CAROLINA, AUTHORIZING THE SALE OF REAL PROPERTY OWNED BY THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, PURSUANT TO THE AUTHORITY OF S. C. CODE ANN. § 5-7-40 (SUPP. 2010), AND § 2-7-20, CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, (1983, As Amended); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

LEGISLATIVE FINDINGS

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

All those certain pieces, parcels or lots of land, lying and being in the Town of Hilton Head Island, Beaufort County, State of South Carolina, and being shown and described as Lots 5, 6, 8, 9, 10, 11, 12 and 16, on the Plat thereof which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 112 at Page 105.

WHEREAS, The Town of Hilton Head Island, South Carolina, has negotiated a contract with Henry C. Driessen, Jr., under which The Town of Hilton Head Island, South Carolina, will acquire the below described real property:

All those certain pieces, parcels or lots of land, lying and being in the Town of Hilton Head Island, Beaufort County, State of South Carolina, and being shown and described as Lots 13, 14 and 15, on the Plat thereof which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 112 at Page 105.

WHEREAS, The Town of Hilton Head Island, South Carolina, has negotiated a proposed Contract whereby the aforementioned property will be sold to Hilton Head Regional Habitat for Humanity, Inc., to allow that organization to pursue its mission to provide housing for those who might be unable to secure housing otherwise; and

WHEREAS, The Town Council of the Town of Hilton Head Island, South Carolina has determined that it is in the best interests of the Town of Hilton Head Island, South Carolina, to authorize the execution and delivery of the proposed Contract, and to authorize the completion of the transaction described in the proposed Contract.

WHEREAS, under the authority of S.C. Code Ann. § 5-7-40 (Supp. 2010), and § 2-7-20, *Code of the Town of Hilton Head Island, South Carolina*, (1983, As Amended), the conveyance of real property owned by the Town of Hilton Head Island must be authorized by the adoption of an ordinance by the Town Council for the Town of Hilton Head Island, South Carolina.

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

Section 1. Execution of Contract for the Sale of Town Owned Property and Completion of the Transaction Described in the Contract:

- (a) The Mayor and Town Manager are hereby authorized to execute and deliver the Contract for the sale of Town owned property, which is attached hereto as Exhibit "A"; and,
- (b) The Mayor and Town Manager are hereby authorized to take all other and further actions as may be necessary to complete the transaction described in Contract for the sale of Town owned property.

Section 2. Severability:

If any section, phrase, sentence or portion of this Ordinance is, for any reason, held or deemed to be invalid or unconstitutional by any court of competent jurisdiction,

then such section, phrase, sentence or portion shall be deemed a separate, distinct and independent provision and shall not affect the remaining portion thereof.

Section 3. Effective Date:

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

PASSED, APPROVED AND ADOPTED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, ON THIS ____ DAY OF AUGUST, 2011.

THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

By: _____
Drew A. Laughlin, Mayor

ATTEST: _____
Victoria L. Phannenschmidt,
Acting Town Clerk

First Reading: _____

Second Reading: _____

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

Introduced by Council Member: _____



MEMORANDUM

TO: Town Council

FROM: Public Facilities Committee

VIA: Stephen G. Riley, CM and Town Manager
Scott Liggett, Director of Public Projects & Facilities / Chief Engineer

DATE: July 8th, 2011

RE: US 278 (Wm. Hilton Pkwy.) at Squire Pope Road Right-of-Way Conveyance

Recommendation: The Public Facilities Committee recommends that Town Council approve the right-of-way transfer transaction between the Town and the South Carolina Department of Transportation (SCDOT) regarding the right of way acquired to facilitate the construction and maintenance of the improvements to the intersection of US 278 (Wm. Hilton Pkwy.) with Squire Pope Road, and as described in the attached documents from Alford, Wilkins and Coltrane with the exception that Parcel B as shown on both the R511-007-000-0056 and R511-007-000-0065 plats be retained by the Town for landscaping maintenance purposes (these are the areas to the immediate northwest of the intersection).

Staff requests that consideration be given to approval of the right-way-transfer as originally described, without exception, since the Committee recommendation was based in part on erroneous advice by staff, please see below.

Summary: At their July 5th, 2011 meeting, the Public Facilities Committee approved a motion to forward the above recommendation to Town Council for consideration. The Committee recommendation came following staff's erroneous advice that this area of concern as raised by the Committee, Parcel B, contained landscaping exclusively and that the realigned roadway and pathway did not encroach into this area. Staff discovered shortly after the meeting that the new roadway and pathway fully encroach into this area, and that Parcel B represents, in tandem, the minimum amount of right-of-way required for SCDOT to provide adequate maintenance to the roadway itself and associated appurtenances such as sidewalk and traffic signage. An excerpt from the 2008 construction plan detailing the location of the right-of-way proposed to be dedicated to SCDOT relative to the roadway as *currently* exists is attached to this memorandum behind the deed and highlighted plats.

The 2008 construction of improvements to the intersection of US 278, or William Hilton Parkway, with Squire Pope Road and Chamberlin Drive by the Town as approved by the SCDOT, or Department, necessitates the transfer of ownership of portions of road right-of-way from (over)

the Town to the Department. The Department owns the rights-of-way associated with William Hilton Parkway and Squire Pope Road, and the Town would be conveying rights-of-way associated with the widening and realignment of these (over) roads. The Town would retain the right-of-way associated with Chamberlin Drive. The area to be conveyed to the SCDOT is summarized in the attached dedication deed and accompanying Exhibit A, as well as on the attached plats. These areas are those obtained by the Town and added to the rights-of-way associated with William Hilton Parkway and Squire Pope Road to build the intersection improvement project completed in 2008. The total area to be dedicated from the Town to SCDOT is 0.561 acres. The Town is retaining ownership of all rights-of-way associated with Chamberlin Drive, as well as a remnant (Parcel A) of the R511-007-000-0065 parcel formerly owned by Kathleen Shoemaker in the northwest quadrant of the William Hilton Parkway/Squire Pope Road intersection that contains the "Hudson's" commercial directional sign and Town-maintained landscaping. Parcel B of R511-007-000-0065 as shown on the plat contains the relocated Squire Pope Road and adjacent pathway and is proposed to be dedicated to SCDOT.

Background: The Town constructed an improvement in the form of arterial widening and side street realignment at the intersection of William Hilton Parkway with Squire Pope Road, funded with Beaufort County sales and use tax referendum monies, in 2008. Some areas identified to be added to the existing SCDOT right-of-way associated with William Hilton Parkway and Squire Pope Road as necessary to construct the project were already owned by the Town, while others were privately held and required acquisition. The dedication to SCDOT recommended herein includes all of these areas that would appropriately be included in the rights-of-way associated with the SCDOT-maintained facilities William Hilton Parkway and Squire Pope Road.

WITNESS Grantor's hand this _____ day of _____, 2011.

SIGNED SEALED AND DELIVERED
IN THE PRESENCE OF

THE TOWN OF HILTON HEAD
ISLAND, SOUTH CAROLINA

2) _____
Signature of 1st Witness (must be different than 2nd witness)

By: _____
Drew A. Laughlin, Mayor

3) _____
Signature of 2nd Witness (the Notary Public)

Attest: _____
Stephen G. Riley, Manager

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

UNIFORM ACKNOWLEDGMENT

I, the undersigned Notary Public do hereby certify that DREW A. LAUGHLIN and STEPHEN G. RILEY appeared before me this day and, in the presence of the two witnesses above named, acknowledged the due execution of the foregoing instrument on behalf of The Town of Hilton Head Island, South Carolina.

Witness my hand and seal this _____ day of _____, 2011.

4) _____(SEAL)
Signature of Notary Public for South Carolina
My Commission expires: _____

**** Instructions for Execution:**

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

EXHIBIT "A"

ALL that certain piece, parcel, or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, shown and designated as "Area 2,155 Sq. Ft. (0.049 Acre)" on a plat titled "A R/W Plat of a Portion of Tax Parcel R511 007 000 066A, Beaufort County, South Carolina," prepared by Wilbur Smith Associates, dated June 5, 2007, and last revised March 6, 2008, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 126 at Page 23.

Beaufort County Tax Map Reference: a portion of R511 007 000 1046 0000

This being the same property conveyed to the within Grantor by Deed of Amanda Washington dated February 11, 2008 and recorded in the Office of Register of Deeds for Beaufort County, South Carolina in Record Book 2755 at Page 1301.

AND ALSO:

ALL those certain pieces, parcels or tracts of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, and being shown and described as "Parcel A Area 890 Sq. Ft. (0.020 Ac.)" and "Parcel B Area 885 Sq. Ft. (0.020 Ac.)" on that certain plat entitled "A Portion of Tax Parcel R511 007 000 0056, Beaufort County, South Carolina" dated June 5, 2007, prepared by Wilbur Smith Associates, certified by John L. Hudson, P.L.S. 6957, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 132 at Page 61.

Beaufort County Tax Map Reference: a portion of R511 007 000 1046 0000

This being the same property conveyed to the within Grantor by Deed of The Matthew and Teena Jones Family, LLC dated March 11, 2011, and recorded in the Office of Register of Deeds for Beaufort County, South Carolina in Record Book 3047 at Page 556.

AND ALSO:

ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, consisting of 9,533 Sq. Ft. (0.22 acres), more or less, and being shown and described as "Parcel B (To Be Dedicated to S.C.D.O.T.)" on a plat entitled "A R/W Plat of Tax Parcel R511 007 000 0065, Beaufort County, South Carolina" dated June 5, 2007, prepared by Wilbur Smith Associates, certified by John L. Hudson, P.L.S. # 6957, and recorded in the Office of Register of Deeds for Beaufort County, South Carolina, in Plat Book 126 at Page 145.

Beaufort County Tax Map Reference: R511 007 000 1042 0000

This being a portion of the same property conveyed to the within Grantor by Deed of Kathleen Shoemaker and Brian J. Carmines, as Trustee Under the Andrew J. Carmines Trust Dated

November 1, 1978, dated September 2, 2008, and recorded in the Office of Register of Deeds for Beaufort County, South Carolina, in Record Book 2774 at Page 2280.

AND ALSO:

ALL those certain pieces, parcels or tracts of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, and being shown and described as “Parcel A Area: 481 Sq. Ft. (0.011 Ac.)” and “Parcel B Area: 441 Sq. Ft. (0.010 Ac.)” on that certain plat entitled “A Portion of Tax Parcel R511 007 000 0053, Beaufort County, South Carolina” dated June 5, 2007, prepared by Wilbur Smith Associates, certified by John L. Hudson, P.L.S. 6957, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book _____ at Page _____.

Beaufort County Tax Map Reference: A Portion of R511 007 000 0053 0000

This being a portion of the same property conveyed to the within Grantor by Deed of Blythe Posey Ashmore as Co-Trustee under the Will of Jack P. Ashmore, Jr., et al. dated October 17, 2007, and recorded in the Office of Register of Deeds for Beaufort County, South Carolina, in Record Book 2641 at Page 1788.

AND ALSO:

ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, and being shown and described as “Area: 240 Sq. Ft. (0.006 Ac.)” on that certain plat entitled “A Portion of Tax Parcel R511 007 000 0054, Beaufort County, South Carolina” dated June 5, 2007, prepared by Wilbur Smith Associates, certified by John L. Hudson, P.L.S. 6957, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book _____ at Page _____.

Beaufort County Tax Map Reference: A Portion of R511 007 000 0054 0000

This being a portion of the same property conveyed to the within Grantor by Deed of Blythe Posey Ashmore as Co-Trustee under the Will of Jack P. Ashmore, Jr., et al. dated October 17, 2007, and recorded in the Office of Register of Deeds for Beaufort County, South Carolina, in Record Book 2641 at Page 1788.

AND ALSO:

ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, and being shown and described as ‘Area “A” – 3,521 Sq. Ft. (0.08 ac.) (To Be Dedicated to SCDOT)’ on that certain plat entitled “A Portion of Tax Parcel R511 007 000 066C, Beaufort County, South Carolina” dated June 5, 2007, last revised May 20, 2011, prepared by Wilbur Smith Associates, certified by John L. Hudson, P.L.S. 6957, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book _____ at Page _____.

Beaufort County Tax Map Reference: A Portion of R511 007 000 1046 0000

This being a portion of the same property conveyed to the within Grantor by Deed of Perry White dated February 11, 2004, and recorded in the Office of Register of Deeds for Beaufort County, South Carolina, in Record Book 1909 at Page 896.

AND ALSO:

ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, and being shown and described as "Parcel A Area: 3,639 Sq. Ft. (0.084 Ac.)" on that certain plat entitled "A Portion of Tax Parcel R511 007 000 066F, Beaufort County, South Carolina" dated June 5, 2007, prepared by Wilbur Smith Associates, certified by John L. Hudson, P.L.S. 6957, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book _____ at Page _____.

Beaufort County Tax Map Reference: A Portion of R511 007 000 066F 0000

This being a portion of the same property conveyed to the within Grantor by Deed of RG Holding, LLC dated October 31, 2001, and recorded in the Office of Register of Deeds for Beaufort County, South Carolina, in Record Book 1508 at Page 1037.

AND ALSO:

ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, and being shown and described as "Parcel A Area: 1,267 Sq. Ft. (0.029 Ac.)" on that certain plat entitled "A Portion of Tax Parcel R511 007 000 0050, Beaufort County, South Carolina" dated June 5, 2007, prepared by Wilbur Smith Associates, certified by John L. Hudson, P.L.S. 6957, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book _____ at Page _____.

Beaufort County Tax Map Reference: A Portion of R511 007 000 0050 0000

This being a portion of the same property conveyed to the within Grantor by Deed of Lowcountry Investment Club, LLC dated January 31, 2007, and recorded in the Office of Register of Deeds for Beaufort County, South Carolina, in Record Book 2516 at Page 2560.

AND ALSO:

ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, and being shown and described as "Area: 1,446 Sq. Ft. (0.032 Ac.)" on that certain plat entitled "A Portion of Tax Parcel R511 007 000 0245, Beaufort County, South Carolina" dated June 5, 2007, prepared by Wilbur Smith Associates, certified by John L. Hudson, P.L.S. 6957, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book _____ at Page _____.

Beaufort County Tax Map Reference: A Portion of R511 007 000 0245 0000

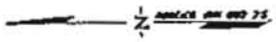
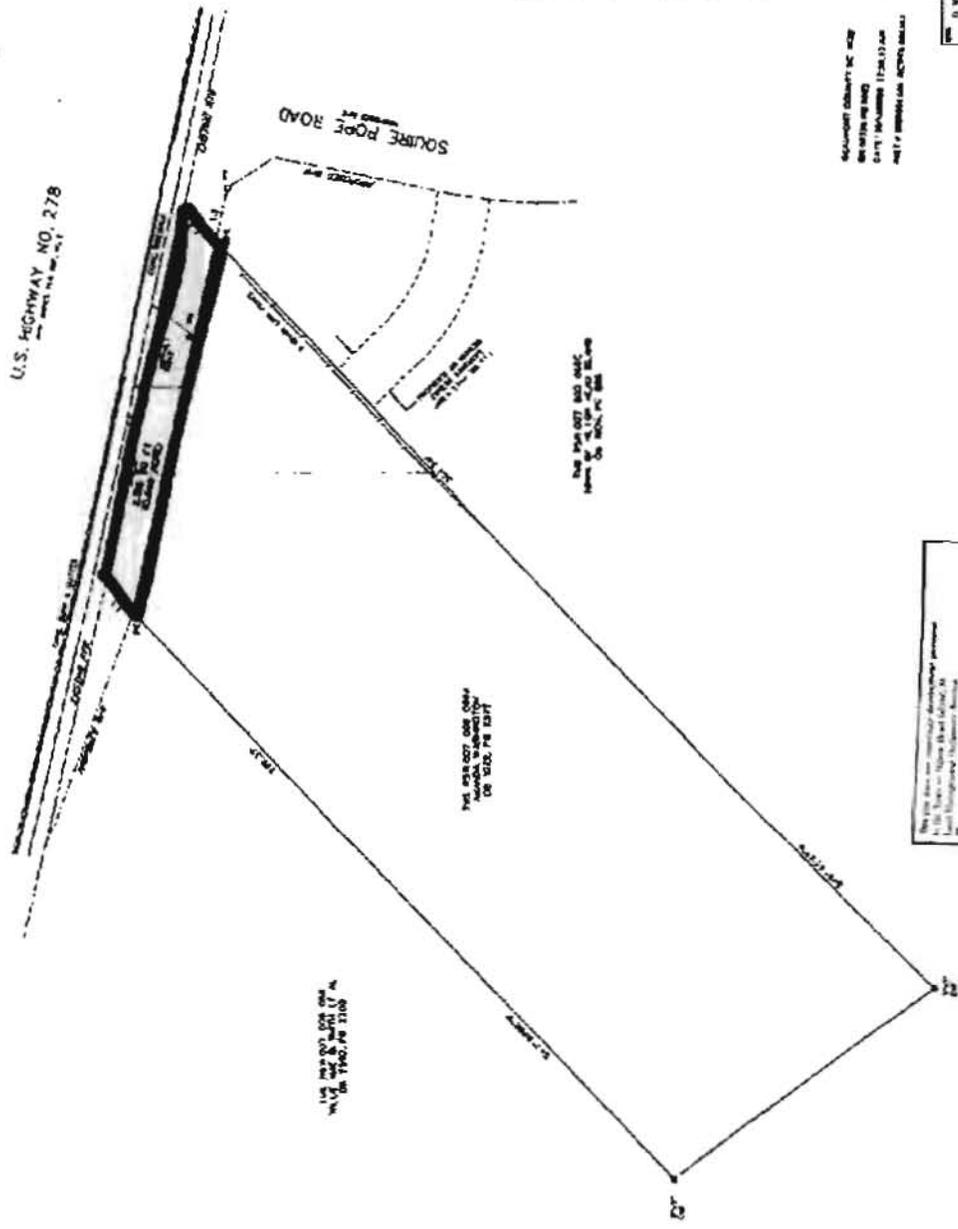
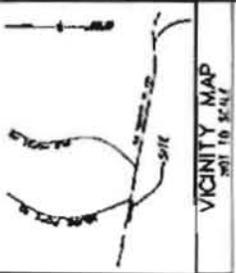
This being a portion of the same property conveyed to the within Grantor by Deed of Michael P. Casavant and Debra A. Monge dated February 18, 2004, and recorded in the Office of Register of Deeds for Beaufort County, South Carolina, in Record Book 1912 at Page 706.

DATE	NO.	DESCRIPTION	AMOUNT	BALANCE

NO.	DESCRIPTION	AMOUNT

LEGEND

- U.S. HIGHWAY NO. 278
- TOWNWAY RD.
- SQUIRE POPE ROAD
- PROPERTY LINE
- EASEMENT
- EASEMENT



REFERENCES:

1. DEED RECORDS IN BOOKS OF RECORDS, RECORDS OF THE REGISTER OF DEEDS, COUNTY OF SCARLETT, SOUTH CAROLINA, VOLUME 10, PAGE 100.
2. DEED RECORDS IN BOOKS OF RECORDS, RECORDS OF THE REGISTER OF DEEDS, COUNTY OF SCARLETT, SOUTH CAROLINA, VOLUME 10, PAGE 100.
3. DEED RECORDS IN BOOKS OF RECORDS, RECORDS OF THE REGISTER OF DEEDS, COUNTY OF SCARLETT, SOUTH CAROLINA, VOLUME 10, PAGE 100.
4. DEED RECORDS IN BOOKS OF RECORDS, RECORDS OF THE REGISTER OF DEEDS, COUNTY OF SCARLETT, SOUTH CAROLINA, VOLUME 10, PAGE 100.

SURVEYOR'S NOTES:

1. THIS SURVEY WAS MADE IN ACCORDANCE WITH THE SURVEYING ACT OF 1901 AND THE SURVEYING ACT OF 1942.
2. ALL MEASUREMENTS WERE MADE IN ACCORDANCE WITH THE SURVEYING ACT OF 1901 AND THE SURVEYING ACT OF 1942.
3. ALL ANGLES WERE MEASURED IN ACCORDANCE WITH THE SURVEYING ACT OF 1901 AND THE SURVEYING ACT OF 1942.
4. ALL DISTANCES WERE MEASURED IN ACCORDANCE WITH THE SURVEYING ACT OF 1901 AND THE SURVEYING ACT OF 1942.

SCARLETT COUNTY, SOUTH CAROLINA
REGISTERED SURVEYOR
1100 S. MAIN ST.
SCARLETT, SOUTH CAROLINA 29585
PHONE: 803-799-1100
FAX: 803-799-1101

THIS DOCUMENT IS THE PROPERTY OF THE SURVEYOR AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE SURVEYOR.

DATE: 11/10/2011
TIME: 10:00 AM
PROJECT: 1100 S. MAIN ST.
DRAWN BY: J. B. BROWN
CHECKED BY: J. B. BROWN
APPROVED BY: J. B. BROWN

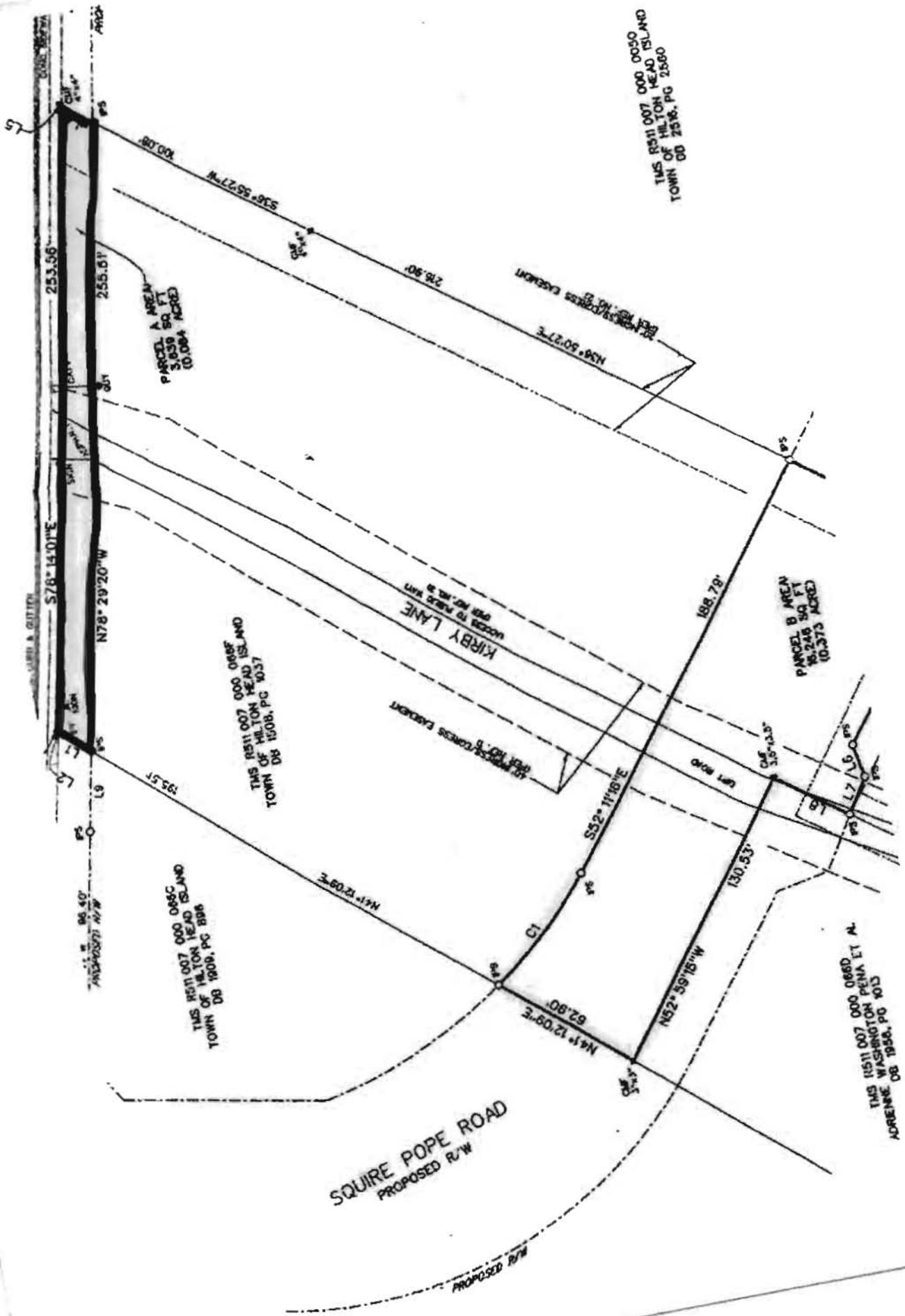
CERTIFICATION:

I, the undersigned, being a duly qualified and licensed Surveyor in the State of South Carolina, do hereby certify that the foregoing is a true and correct copy of the original survey as shown to me by the owner of the land described in the foregoing plat.

J. B. BROWN, Surveyor

NO. 1	NO. 2	NO. 3	NO. 4	NO. 5	NO. 6	NO. 7	NO. 8	NO. 9	NO. 10

FOR THE TOWN OF
THE TOWN OF
HILTON HEAD ISLAND



TMS R511 007 000 0050
TOWN OF HILTON HEAD ISLAND
TOWN DB 2518, PG 2560

PARCEL A AREA
3,639 SQ FT
(0.084 ACRES)

PARCEL B AREA
16,248 SQ FT
(0.373 ACRES)

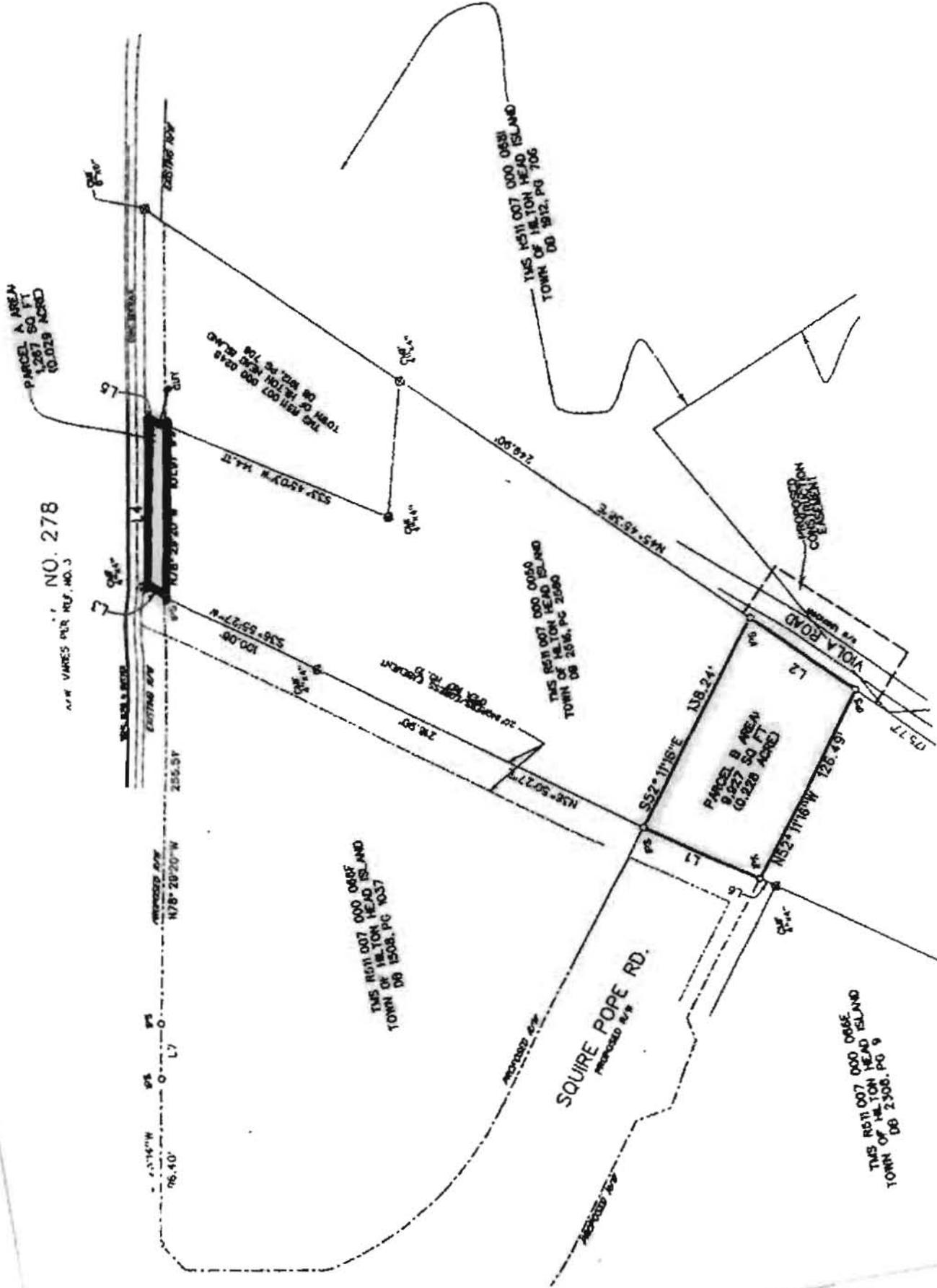
TMS R511 007 000 088F
TOWN OF HILTON HEAD ISLAND
TOWN DB 1508, PG 1057

TMS R511 007 000 088C
TOWN OF HILTON HEAD ISLAND
TOWN DB 1508, PG 898

TMS R511 007 000 088D
WASHINGTON PEÑA ET AL
ADRENNE DB 1856, PG 1015

SQUIRE POPE ROAD
PROPOSED R/W

PROPOSED R/W



NO. 278
VARIES PER PL. NO. 3

PARCEL A AREA
1,287 SQ FT
0.029 ACRES

PARCEL B AREA
9,227 SQ FT
0.228 ACRES

SQUIRE POPE RD.
PROPOSED 8 1/2'

THIS R311 007 000 0085
TOWN OF HALTON HEAD ISLAND
TOWN DB 1508, PG 1037

THIS R311 007 000 0050
TOWN OF HALTON HEAD ISLAND
TOWN DB 2696, PG 2080

THIS R311 007 000 0031
TOWN OF HALTON HEAD ISLAND
TOWN DB 1912, PG 706

THIS R311 007 000 0086
TOWN OF HALTON HEAD ISLAND
TOWN DB 2308, PG 9

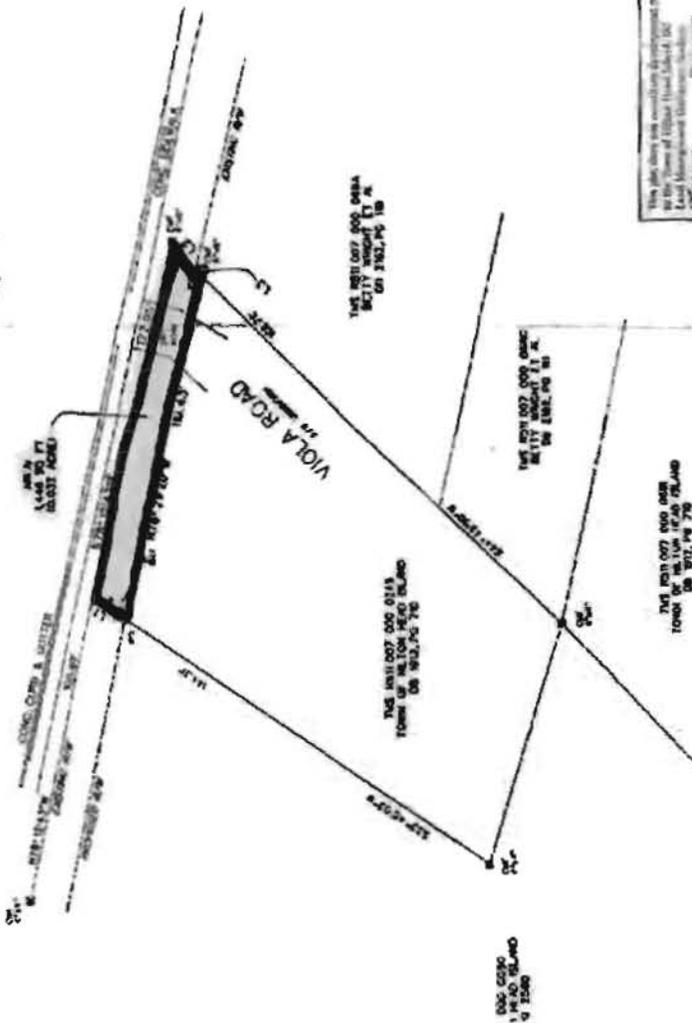
EXISTING RD
N78°20'20"W 255.51'
L7
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L100

THIS R311 007 000 0018
TOWN OF HALTON HEAD ISLAND
TOWN DB 1912, PG 706

CONSTRUCTION

VIOL A ROAD

U.S. HIGHWAY NO. 278
 100' WIDE P.W. 100' WIDE



This plan shows the conditions of the property described herein as of the date of the survey and is subject to the provisions of the Act of March 3, 1909, and the Act of March 3, 1933, and the Act of March 3, 1935, and the Act of March 3, 1937, and the Act of March 3, 1939, and the Act of March 3, 1941, and the Act of March 3, 1943, and the Act of March 3, 1945, and the Act of March 3, 1947, and the Act of March 3, 1949, and the Act of March 3, 1951, and the Act of March 3, 1953, and the Act of March 3, 1955, and the Act of March 3, 1957, and the Act of March 3, 1959, and the Act of March 3, 1961, and the Act of March 3, 1963, and the Act of March 3, 1965, and the Act of March 3, 1967, and the Act of March 3, 1969, and the Act of March 3, 1971, and the Act of March 3, 1973, and the Act of March 3, 1975, and the Act of March 3, 1977, and the Act of March 3, 1979, and the Act of March 3, 1981, and the Act of March 3, 1983, and the Act of March 3, 1985, and the Act of March 3, 1987, and the Act of March 3, 1989, and the Act of March 3, 1991, and the Act of March 3, 1993, and the Act of March 3, 1995, and the Act of March 3, 1997, and the Act of March 3, 1999, and the Act of March 3, 2001, and the Act of March 3, 2003, and the Act of March 3, 2005, and the Act of March 3, 2007, and the Act of March 3, 2009, and the Act of March 3, 2011, and the Act of March 3, 2013, and the Act of March 3, 2015, and the Act of March 3, 2017, and the Act of March 3, 2019, and the Act of March 3, 2021, and the Act of March 3, 2023.

REFERENCES:

1. SURVEY MAP OF 128 ACRES, 1901 A.D., FILED IN THE OFFICE OF THE REGISTER OF DEEDS AT THE CITY OF ST. LOUIS, MO., RECORD NO. 12,800.
2. PLAN OF A PORTION OF THE SURVEY OF 128 ACRES, 1901 A.D., FILED IN THE OFFICE OF THE REGISTER OF DEEDS AT THE CITY OF ST. LOUIS, MO., RECORD NO. 12,800.
3. SURVEY MAP AND DEEDS OF 128 ACRES, 1901 A.D., FILED IN THE OFFICE OF THE REGISTER OF DEEDS AT THE CITY OF ST. LOUIS, MO., RECORD NO. 12,800.

SURVEYOR'S NOTES:

1. THE SURVEY WAS MADE BY THE SURVEYOR IN THE PRESENCE OF THE NEIGHBORS OF THE LAND SURVEYED, AND THE SURVEY WAS MADE IN ACCORDANCE WITH THE PROVISIONS OF THE ACT OF MARCH 3, 1909, AND THE ACT OF MARCH 3, 1933, AND THE ACT OF MARCH 3, 1935, AND THE ACT OF MARCH 3, 1937, AND THE ACT OF MARCH 3, 1939, AND THE ACT OF MARCH 3, 1941, AND THE ACT OF MARCH 3, 1943, AND THE ACT OF MARCH 3, 1945, AND THE ACT OF MARCH 3, 1947, AND THE ACT OF MARCH 3, 1949, AND THE ACT OF MARCH 3, 1951, AND THE ACT OF MARCH 3, 1953, AND THE ACT OF MARCH 3, 1955, AND THE ACT OF MARCH 3, 1957, AND THE ACT OF MARCH 3, 1959, AND THE ACT OF MARCH 3, 1961, AND THE ACT OF MARCH 3, 1963, AND THE ACT OF MARCH 3, 1965, AND THE ACT OF MARCH 3, 1967, AND THE ACT OF MARCH 3, 1969, AND THE ACT OF MARCH 3, 1971, AND THE ACT OF MARCH 3, 1973, AND THE ACT OF MARCH 3, 1975, AND THE ACT OF MARCH 3, 1977, AND THE ACT OF MARCH 3, 1979, AND THE ACT OF MARCH 3, 1981, AND THE ACT OF MARCH 3, 1983, AND THE ACT OF MARCH 3, 1985, AND THE ACT OF MARCH 3, 1987, AND THE ACT OF MARCH 3, 1989, AND THE ACT OF MARCH 3, 1991, AND THE ACT OF MARCH 3, 1993, AND THE ACT OF MARCH 3, 1995, AND THE ACT OF MARCH 3, 1997, AND THE ACT OF MARCH 3, 1999, AND THE ACT OF MARCH 3, 2001, AND THE ACT OF MARCH 3, 2003, AND THE ACT OF MARCH 3, 2005, AND THE ACT OF MARCH 3, 2007, AND THE ACT OF MARCH 3, 2009, AND THE ACT OF MARCH 3, 2011, AND THE ACT OF MARCH 3, 2013, AND THE ACT OF MARCH 3, 2015, AND THE ACT OF MARCH 3, 2017, AND THE ACT OF MARCH 3, 2019, AND THE ACT OF MARCH 3, 2021, AND THE ACT OF MARCH 3, 2023.

DATE	1922
BY	J. H. HARRISON
SCALE	AS SHOWN
RECORD NO.	12,800
FILE NO.	12,800
BOOK NO.	12,800
PAGE NO.	12,800

J. H. HARRISON
 SURVEYOR
 ST. LOUIS, MO.

FED. RD. DIST.	STATE	COUNTY	FILE NO.	PROJECT NO.	ROUTE NO.	SHEET NO.
3	S.C.	BEAUFORT			S-141	6

②
TMS R511 007 000 062C
NORTH SIDE PARK, LLC

⑤
TMS R511 007 000 056
WILLIE MAE D. SMITH

NOTE:
DETAILS OF THE RAISED ISLANDS AND THE 'FREE FORM'
ASPHALT PATH ARE SHOWN ON SHEET 3A.

 PAVEMENT TO BE REMOVED

END CONSTRUCTION
STA 13+87.44 SQUIRE POPE ROAD
TIE TO EXISTING PAV'T

④
TMS R511 007 000 056
WILLIE MAE D. SMITH

NOTE:
NEW ASPHALT PATH LOCATION IS APPROXIMATE.
CONTRACTOR SHALL ADJUST LOCATION TO
AVOID TREES AS DIRECTED BY THE ENGINEER.

③
TMS R511 007 000 065
KATHLEEN SHOEMAKER

CONTINUE NEW SIDEWALK
REPLACEMENT
TIE TO EXISTING
STA 400-30

BEGIN CONSTRUCTION
STA 40+13.30 U.S. 278

BEGIN CONSTRUCTION
SQUIRE POPE ROAD
STA 10-31.82

STA 406+98.16 LT.
BEGIN NEW C&G
TIE TO EXISTING

REMOVE EXISTING CURB AND PAVEMENT
REGRADE AREA TO DRAIN

TIE EQUALITY
POT STA 10+00.00 SQUIRE POPE ROAD -
POT STA 408+16.19 U.S. 278

STA 410+28.67 LT.
END NEW ASPHALT PATH
BEGIN NEW SIDEWALK

⑧
TMS R511 007 000 0054
BLYTHE POSEY ASHMORE

U.S. 278 (WILLIAM HILTON PARKWAY)

MOVING ITEM NO. 1
(HUDSON'S SIGN)

EXISTING C&G & SIDEWALK (REMOVED)

(REMOVE)
EXISTING C&G & SIDEWALK

(REMOVE)
EXISTING C&G & SIDEWALK

MATCH LINE - STA. 412+00 SEE SHEET 8

MATCH LINE - STA. 20+00 SEE SHEET 7

BEGIN CONSTRUCTION
RELOCATED KIRBY LANE
STA 200+40.50

TIE EQUALITY
POT STA 200+00.00 KIRBY LANE -
POT STA 408+09.19 U.S. 278

REV. NO.	BY	CHKD	DATE	DESCRIPTION OF REVISION
1	JES		2-25-08	ADDED WALK-THROUGH VEBEN SIDEWALK TO "
2	ACL		3-11-08	CONSTRUCTION LIMIT CHANGED DUE TO RAISE IN GRADE TO SQUIRE POPE

DESIGNED BY	DATE
DRAWN BY	DATE
CHECKED BY	DATE



PLANS PREPARED BY

Wilbur Smith Associates
ENGINEERS
PLANNERS
ECONOMISTS

PLANS PREPARED FOR
TOWN OF HILTON HEAD
HILTON HEAD ISLAND
BEAUFORT COUNTY, SOUTH CAROLINA

INTERSECTION RELOCATION OF
SQUIRE POPE ROAD (S- 141)
AT U.S. HWY. 278 (WILLIAM HILTON PARKWAY)
SQUIRE POPE STA 10+45.21 TO STA 13+87.44
US 278 STA 404+13.30 TO STA 412+00

PROJECT NO. (CIRMT) _____
PROJECT NO. (HSA) 533796

NO. 6



MEMORANDUM

TO: Town Council

FROM: Public Facilities Committee

VIA: Stephen G. Riley, CM Town Manager

DATE: July 14, 2011

RE: Debris Removal Agreements between Town and Beaufort County and SCDOT

Recommendation: The Public Facilities Committee recommends that Town Council endorse the execution of memorandums of agreement with Beaufort County and the South Carolina Department of Transportation (SCDOT) for disaster related debris removal from their respective road rights of way on Hilton Head Island.

Summary:

The Public Facilities Committee (PFC) recently endorsed the execution of these agreements at the July 5, 2011, after the Disaster Recovery Commission (DRC) had endorsed the execution of the agreements at their annual meeting held on June 23, 2011. These agreements are important to the Town as they will provide the legal authority for the Town to better manage disaster response and recovery operations on these roads and then seek reimbursement through federal assistance programs. If the Town does not have an agreement with the road owner, then the Town could choose to perform the work with no expectations of reimbursement, or rely on the road owner to remove the debris, the timeliness and manner of which would solely be at their discretion.

Background:

FEMA's guidelines clearly identify that eligible debris removal work under the Public Assistance program must be located on the applicants improved property or right-of-way and the debris removal is the legal responsibility of the applicant. These agreements will allow the Town to meet that requirement for debris work performed in the County and State rights of way.

The agreement requires the SCDOT to pay the Town 100% of the initial push and first collection pass (up to 180 days) on Federal Aid Roadways (see Exhibit A). It further requires the Town to fund the local share (25%) for work done in their rights of way after the initial push and first collection pass and apply for reimbursement for 75% through FEMA. The County agreement is a mutual-aid agreement in which the Town may require assistance from the County, or the County may require assistance from the Town, to remove debris from the County's rights of way. This agreement should impose no additional or adverse funding impacts on the Town related to its debris operations.

Exhibit A - Public Road Ownership on Hilton Head Island

The current inventory of public roads on the island shows there are 64 State-owned roads, 71 County-owned roads, and 36 Town-owned roads.

STATE OF SOUTH CAROLINA ROADS SCDOT BEAUFORT OFFICE: 524-7255

Name	Route No.	Miles
Archer Road	610	0.15
Arrow Rd. (Pal. Bay to Helmsman)	338	0.59
Arrow Rd. (Archer to WHP)*	524/610	
Avocet Road	328	0.12
Azalea Street	540	0.11
Baygall Road	335	0.34
Beach City Rd(Mathews-The Spa)*	333	1.81
Bittern Rd. (Lagoon to NFB Dr)	771	0.13
Blue Heron Point Road	772	0.68
Blue Water Marina Drive		0.02
Bradley Beach Road	332	0.26
Camellia Street	541	0.11
Cordillo Parkway*	342	1.37
Coligny Circle		0.22
Sol Blatt Jr. Cross Is. Pkwy.	US 278	4.05
Deallyon Avenue*	405	0.40
Dillon Road*	334	1.82
Dune Lane (Ibis to Jacana)	729	0.10
Dunnagans Alley(P Bay to Arrow)	525	0.23
Executive Park Road	737	0.29
Fish Haul Road (paved)	334	0.44
Folly Field Rd (WHP to Starfish)*	148	0.97
Folly Field Rd(Starfish-Isl. Bch. Pk.)*	308	
Gardenia Street	542	0.10
Genesta Street		0.06
Ghost Crab Way	760	0.12
Gum Tree Road*	294/482	1.32
Helmsman Way	835	0.57
Ibis Street (Lagoon to NFB Dr.)	327	0.19
Jacana Street	729	0.25
Jenkins Road	298	0.38
Kings Court	724	0.23
Lagoon Road	327	0.55
Marshland Lane	245	0.08
Marshland Road*	245	4.70
Mathews Drive*	44	1.83
Mimosa Street	638	0.06
Mitchellville Road (paved)	775	0.45
Moonshell Road	757	0.27
Nautilus Road	338 Spur	0.13
North Forest Beach Drive*	244	1.38
Office Way	625	0.12
Old Wild Horse Road	294	0.30
Oleander Street	539	0.28
Paddleboat Lane		0.07

Name	Route No.	Miles
Palmetto Bay Road	US 278	2.95
Periwinkle Lane	756	0.09
Point Comfort Circle	338	0.10
Point Comfort Road	338	0.97
Pope Avenue*	80	1.02
Power Alley	801	0.19
Row Boat Road	607 Spur	0.16
Sand Dollar Rd(Seahorse to end)	758	0.20
Sea Horse Way	759	0.14
Sea Olive Road	607	0.41
Sea Pines Circle		0.19
Singleton Beach Road	200	0.47
South Forest Beach Drive*	243	1.38
Spanish Wells Road*	79	2.96
Squire Pope Road*	141	1.71
Squiresgate Road	723	0.55
Target Road	524	0.16
Union Cemetery Road	624	0.96
Wilborn Rd (WHP to School Rd)	626	0.32
Wild Horse Road	294	0.81
Wm Hilton Pkwy (XIP to SP Circle)*	US 278 Bus	2.32
Wm Hilton Pkwy (Bridge to XIP)	US 278	9.00
Woodhaven Drive	686	0.29
Woodhaven Lane	687	0.14
<i>* Federal-Aid Roadways – eligible for FWHA (Federal Highway Administration) funding</i>		
Total Miles:		66.39

BEAUFORT COUNTY ROADS
BEAUFORT COUNTY OFFICE: 815-1522

Name	Miles
ALLEN ROAD	0.17
ARROW ROAD	0.14
AUGUSTA LANE	0.11
AVOCET ROAD	0.07
BAY PINES DRIVE	0.35
BAY PINES ROAD	0.10
BEACH CITY ROAD	0.52
BEACHWOOD DRIVE	0.02
BEN WHITE DRIVE	0.19
BITTERN STREET	0.07
BLUEBELL LANE	0.40
BOW CIRCLE	0.39
BRADLEY CIRCLE	0.21
BROWN COURT	0.07
BRYANT ROAD	0.45
BURKES BEACH ROAD	0.31
CARDINAL COURT	0.06
CARDINAL ROAD	0.42

Name	Miles
CEASAR PLACE	0.14
CHISHOLM PLACE	0.19
CORPUS CHRISTI	0.06
COTTON POINT CIRCLE	0.17
CURLEW STREET	0.07
DIANAHS DRIVE	0.18
DOVE STREET	0.20
DUNE LANE	0.46
EAGIN COURT	0.08
EGRET STREET	0.22
ELIZABETH ROAD	0.16
FERGUSONS LANE	0.15
FIFTH STREET	0.05
FIRST STREET	0.10
FISH HAUL ROAD	0.80
FLAMINGO STREET	0.16
FOURTH STREET	0.06
GANNET STREET	0.17
GARDNER DRIVE	1.02
HERON STREET	0.20
HUNTER ROAD	0.68
IBIS STREET	0.05
INDIAN TRAIL	0.36
ISLAND DRIVE	0.43
JESSICA DRIVE	0.12
JONESVILLE ROAD	1.24
KATIE MILLER DRIVE	0.23
KORBER COURT	0.08
LEG O MUTTON ROAD	0.95
MARBLEHEAD ROAD	0.20
MILLER ROAD	0.22
MITCHELVILLE ROAD	0.50
MUDDY CREEK ROAD	0.46
MURRAY AVENUE	0.08
MYSTIC DRIVE	0.18
NAMON ROAD	0.19
NATURES WAY	0.03
NAZARENE ROAD	0.16
NED COURT	0.17
NEW ORLEANS ROAD	0.75
NICHOLS COURT	0.08
NORTHRIDGE DRIVE	0.29
O CONNOR ROAD	0.16
OAK MARSH DRIVE	0.30
OAKVIEW ROAD	0.56
OTTER HOLE ROAD	0.20
PALMETTO BUSINESS PARK	0.43
PALMETTO PARKWAY	0.37

Name	Miles
PARK ROAD	0.32
PEMBROKE DRIVE	1.71
PENSACOLA PLACE	0.05
REBECCA CIRCLE	0.15
SAINT AUGUSTINE PLACE	0.05
SAND DOLLAR ROAD	0.07
SECOND STREET	0.21
SHAMROCK CIRCLE	0.33
SIMMONS ROAD	0.21
SOUTHWOOD PARK DRIVE	0.29
STARFISH DRIVE	0.15
THIRD STREET	0.08
THOMAS COHEN DRIVE	0.14
WEXFORD DRIVE	0.24
WRIGHT PLACE	0.24
Total Miles:	22.39

THE TOWN OF HILTON HEAD ISLAND ROADS

Name	Miles
ADRIANNA LANE	0.04
ALEX PATTERSON ROAD	0.08
ARROW ROAD	0.76
AUTOMOBILE PLACE	0.13
BLAZING STAR LANE	0.11
BOBWHITE LANE	0.10
CASTNET DRIVE	0.52
CHAMBERLIN DRIVE	0.13
COOPERATIVE WAY	0.07
DUNNAGANS ALLEY	0.50
ELECTRIC AVENUE	0.20
EXCHANGE STREET	0.07
FIRETHORN LANE	0.29
FISH HAUL CREEK PARK COMMON	0.21
GATEWAY CIRCLE	0.20
HAIG POINT CIRCLE	0.41
HICKORY LANE	0.14
HONEY HORN DRIVE	0.48
HOSPITAL CENTER BOULEVARD	0.40
HUMANE WAY	0.10
INDIGO RUN DRIVE	0.70
JARVIS PARK ROAD	0.30
KINGBIRD LANE	0.20
LAMOTTE DRIVE	0.01

Name	Miles
LEMOYNE AVENUE	0.34
MAC DONOUGH LANE	0.05
MALLARD STREET	0.25
MINGO WAY	0.05
MYRTLE LANE	0.14
NASSAU STREET	0.16
NATURES WAY	0.22
NORTH MAIN STREET	0.41
OAK PARK DRIVE	0.14
OFFICE PARK ROAD	0.43
PELICAN STREET	0.27
SANDPIPER STREET	0.24
SUMMIT DRIVE	0.48
TANGLEWOOD DRIVE	0.30
THOMPSON STREET	0.06
TOWN CENTER COURT	0.05
WILD HORSE ROAD	0.22
Total Miles:	9.97

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

MEMORANDUM OF AGREEMENT

THIS AGREEMENT is made and entered into this ___ day of _____, 2011 by and between the Town of Hilton Head Island, South Carolina, (hereinafter referred to as the “Town”), and Beaufort County, South Carolina (hereinafter referred to as the “County”).

WHEREAS, the Town and County seek to establish an agreement to offer mutual aid and assistance for removing, collecting, reducing and disposing of storm generated from roads and rights of way within Beaufort County and the Town; and

WHEREAS, the Town and County recognize that the aftermath of a disaster event could produce a significant debris clearing, reduction, and disposal mission; and

WHEREAS, the Town recognizes the urgent need to re-establish the publicly maintained transportation network, and utility services, throughout the Town following a disaster; and

WHEREAS, the County recognizes the urgent need to re-establish the publicly maintained transportation network, and utility services throughout the County following a disaster; and

WHEREAS, the Town and County have contracted for debris removal and debris management services within their respective jurisdiction; and

WHEREAS, restoration of emergency vehicle access and utility services cannot be effectively performed without proper access to a clear transportation network; and

WHEREAS, after a disaster which causes significant storm debris, the County may require assistance from the Town or the Town may require assistance from the County to remove debris from the roads and rights of way-for which the other is responsible;

NOW, THEREFORE, the below listed agreements are established in the event of a disaster that produces a significant volume of debris.

SECTION 1. DEFINITIONS

- A. **REQUESTING PARTY** - the entity requesting aid in the event of an emergency.
- B. **ASSISTING PARTY** - the entity furnishing equipment, services and/or manpower to the Requesting Party.
- C. **AUTHORIZED REPRESENTATIVE** - an employee of entity who is authorized in writing by that government to request, offer, or provide assistance under the terms of this Agreement. The list of authorized representatives for the participating government executing this Agreement shall be attached as Exhibit A and shall be updated as needed by each participating government.
- D. **EMERGENCY** - any occurrence, or threat thereof, whether natural or caused by man, in war or in peace, which results in substantial injury or harm to the population, or substantial damage to or loss of property.
- E. **DISASTER** - any natural, technological, or civil emergency that causes damage of sufficient severity and magnitude as to result in a declaration of a state of emergency by a county, Governor, or the President of the United States.
- F. **PERIOD OF ASSISTANCE** - the period of time beginning with the departure of any personnel of the Assisting Party, from any point, for the purpose of traveling to the Requesting Party in order to provide assistance, and ending upon the return of all personnel and equipment of the Assisting Party, after providing the assistance requested, to their residence or regular place of work, whichever occurs first. The period of assistance shall not include any portion of the trip to the Requesting Party or the return trip from the Requesting Party, during which the personnel of the Assisting Part are engaged in a course of conduct not reasonably necessary for their safe arrival at, or return from, the Requesting Party.
- G. **WORK OR WORK-RELATED PERIOD** - any period of time in which either the personnel or equipment of the Assisting Party are being used by the Requesting Party to provide assistance, and for which the Requesting Party will reimburse the Assisting Party. Specifically included within such periods of time are rest breaks after which the personnel of the Assisting Party shall return to active work within a reasonable time. Specifically excluded from such periods of time are breakfast, lunch and dinner breaks.
- H. **MAJOR DISASTER** - a disaster that will likely exceed local capabilities and require a broad range of State and Federal assistance.

SECTION 2. PROCEDURES

When either Party to this agreement becomes affected by or is under imminent threat of a major disaster, it may invoke emergency-related mutual aid assistance either by:

1) declaring a state of local emergency and transmitting a copy of that declaration to the Assisting Party, or 2) by orally communicating a request for mutual aid assistance to the Assisting Party, followed as soon as practicable by written confirmation of said request. Mutual aid shall not be requested by any Party to this agreement unless resources available within the stricken area are deemed inadequate by the Requesting Party. Parties to this agreement shall coordinate requests for State or Federal assistance with their County Emergency Management Agencies. All requests for mutual aid shall be transmitted by the Authorized Representative or the Director of the County Emergency Management Agency. Requests for assistance may be communicated directly to an Assisting Party. Requests for assistance under this Agreement shall be limited to major disasters, except where the Parties to this agreement have no other mutual aid agreement for the provision of assistance related to emergencies or disasters, in which case the Parties to this agreement may request assistance related to any disaster or emergency, pursuant to the provisions of this Agreement.

A. REQUESTS DIRECTLY TO ASSISTING PARTY: The Requesting Party may directly contact the authorized representative of the Assisting Party and shall provide them with the information in paragraph B below. All communications shall be conducted directly between Requesting Party and Assisting Party.

B. REQUIRED INFORMATION: Each request for assistance shall be accompanied by the following information to the extent known:

1. A general description of the damage sustained;
2. Identification of the emergency service function for which assistance is needed (e.g., fire, law enforcement, emergency medical, transportation, communications, public works and engineering, building, inspection, planning and information assistance, mass care, resource support, health and other medical services, search and rescue, etc.), and the type of assistance needed;
3. Identification of the public infrastructure system for which assistance is needed (e.g., sanitary sewer, potable water, streets, or storm water systems) and the type of work assistance needed;
4. The amount and type of personnel, equipment, materials, and supplies needed, and a reasonable estimate of the length of time they will be needed;
5. The need for sites, structures or buildings outside the Requesting Party's jurisdictional boundaries to serve as relief centers or staging areas for incoming emergency goods and services; and

6. An estimated time and a specific place for a representative of the Requesting Party to meet the personnel and equipment of any Assisting Party.

This information may be provided on the form attached as Exhibit B, or by any other available means.

B. ASSESSMENT OF AVAILABILITY OF RESOURCES AND ABILITY TO RENDER ASSISTANCE: When contacted by a Requesting Party, the authorized representative of the Assisting Party agree to assess their situation to determine availability of personnel, equipment, and other resources. Parties to this agreement shall render assistance to the extent that personnel, equipment, and resources are available. Each Party to this agreement agrees to render assistance in accordance with the terms of this Agreement to the fullest extent possible. When the authorized representative determines that his government entity has available personnel, equipment, or other resources, the authorized representative shall so notify the Requesting Party and provide the information below.

1. A complete description of the personnel, equipment, and materials to be furnished to the Requesting Party;
2. The estimated length of time the personnel, equipment, and materials will be available;
3. The areas of experience and abilities of the personnel and the capability of the equipment to be furnished;
4. The name of the person or persons to be designated as supervisory personnel; and
5. The estimated time when the assistance provided will arrive at the location designated by the authorized representative of the Requesting Party.

D. SUPERVISION AND CONTROL: The personnel, equipment and resources of any Assisting Party shall remain under operational control of the Requesting Party for the area in which they are serving. Direct supervision and control of said personnel, equipment and resources shall remain with the designated supervisory personnel of the Assisting Party. Representatives of the Requesting Party shall provide work tasks to the supervisory personnel of the Assisting Party. The designated supervisory personnel of the Assisting Party shall have the responsibility and authority for assigning work and establishing work schedules for the personnel of the Assisting Party, based on task or mission assignments provided by the Requesting Party. The designated supervisory personnel of the Assisting Party shall: maintain daily personnel time records, material records, and a log of equipment hours; be responsible for the operation and maintenance of the equipment and other resources furnished by the Assisting Party; and shall report work progress to the Requesting Party. The Assisting Party's personnel and other resources shall remain subject to recall by the Assisting Party at any time, subject to reasonable notice to the Requesting Party. At least twenty-four hour advance notification of intent to withdraw personnel or resources shall be provided to the Requesting Party, unless such notice is not practicable, in

which case such notice as is reasonable shall be provided.

E. FOOD; HOUSING; SELF-SUFFICIENCY: Unless specifically instructed otherwise, the Requesting Party shall have the responsibility of providing food and housing for the personnel of the Assisting Party from the time of their arrival at the designated location to the time of their departure. However, Assisting Party personnel and equipment should be, to the greatest extent possible, self-sufficient for operations in areas stricken by emergencies or disasters. The Requesting Party may specify only self-sufficient personnel and resources in its request for assistance.

F. COMMUNICATIONS: Unless specifically instructed otherwise, the Requesting Party shall have the responsibility for coordinating communications between the personnel of the Assisting Party and the Requesting Party. Assisting Party personnel should be prepared to furnish communications equipment sufficient to maintain communications among their respective operating units.

G. RIGHTS AND PRIVILEGES: Whenever the employees of the Assisting Party are rendering outside aid pursuant to this Agreement, such employees shall have the powers, duties, rights, privileges, and immunities, and shall receive the compensation incidental to their employment.

H. WRITTEN ACKNOWLEDGMENT: The Assisting Party shall complete a written acknowledgment regarding the assistance to be rendered, setting forth the information transmitted in the request, and shall transmit it by the quickest practical means to the Requesting Party for approval. The form to serve as this written acknowledgment is attached as Exhibit C. The Requesting Party shall respond to the written acknowledgment by executing and returning a copy to the Assisting Party by the quickest practical means, maintaining a copy for its files.

SECTION 3. REIMBURSABLE EXPENSE

The terms and conditions governing reimbursement for any assistance provided under this Agreement shall be in accordance with the following provisions, unless otherwise agreed upon by the Requesting and Assisting Parties, and specified in the written acknowledgment executed in accordance with paragraph I., Section 2, of this Agreement. The Requesting Party shall be ultimately responsible for reimbursement of all reimbursable expenses.

A. PERSONNEL: During the period of assistance, the Assisting Party shall continue to pay its employees according to its then prevailing ordinances, rules, and regulations. The Requesting Party shall reimburse the Assisting Party for all direct and indirect payroll costs and expenses (including travel expenses) incurred during the period of assistance, including but not limited to employee pensions and benefits as provided by Generally Accepted Accounting Principles (GAAP). However, the Requesting Party shall not be responsible for reimbursing any amounts paid or due as benefits to employees of the Assisting Party under the terms of the South Carolina Workers' Compensation Act due to personal injury or death occurring while such employees are engaged in rendering aid under this Agreement. Both the Requesting Party and the Assisting Party shall be responsible for payment of such benefits only to their respective employees.

B. EQUIPMENT: The Assisting Party shall be reimbursed by the Requesting Party for the use of its equipment during the period of assistance according to either a pre-established local or State hourly rate, or according to the actual replacement, operation, and maintenance expenses incurred. For those instances in which costs are reimbursed by the Federal Emergency Management Agency (FEMA), the eligible direct costs shall be determined in accordance with 44 CFR 206.228. The Assisting Party shall pay for all repairs to its equipment as determined necessary by its on-site supervisor(s) to maintain such equipment in a safe and operational condition. At the request of the Assisting Party, fuels, miscellaneous supplies, and minor repairs may be provided by the Requesting Party, if practical. The total equipment charges to the Requesting Party shall be reduced by the total value of the fuels, supplies, and repairs furnished by the Requesting Party, and by the amount of any insurance proceeds received by the Assisting Party.

C. MATERIALS AND SUPPLIES: The Assisting Party shall be reimbursed for all materials and supplies furnished by it and used or damaged during the period of assistance, except for the costs of equipment, fuel and maintenance materials, labor and supplies, which shall be included in the equipment rate established in Section 3, B. above, unless such damage is caused by gross negligence, willful and wanton misconduct, intentional misuse, or recklessness of the Assisting Party's personnel. The Assisting Party's personnel shall use reasonable care under the circumstances in the operation and control of all materials and supplies used by them during the period of assistance. The measure of reimbursement shall be determined in accordance with 44 CFR 206.228. In the alternative, the Parties may agree that the Requesting Party will replace, with like kind and quality as determined by the Assisting Party, the materials and supplies used or damaged. If such an agreement is made, it shall be done so in writing.

C. RECORD KEEPING: The Assisting Party shall maintain records and submit invoices for reimbursement by the Requesting Party using the format used or required by FEMA publications, including 44 CFR, Part 13, and applicable Office of Management and Budget Circulars.

E. PAYMENT: Unless otherwise mutually agreed in the written acknowledgment executed in accordance with paragraph 1, Section 2, or a subsequent written addendum to the acknowledgment, the Assisting Party shall bill the Requesting Party for all reimbursable expenses, with an itemized notice, as soon as practicable after the expenses are incurred, but not later than sixty (60) days following the period of assistance, unless the deadline for identifying damage is extended in accordance with 44 CFR, Part 206. The Requesting Party shall pay the bill, or advise of any disputed items, not later than sixty (60) days following the billing date. These time frames may be modified by mutual agreement. This shall not preclude an Assisting Party or Requesting Party from assuming or donating, in whole or in part, the costs associated with any loss, damage, expense or use of personnel, equipment and resources provided to a Requesting Party.

SECTION 4. INSURANCE

Each Party to this agreement shall bear the risk of its own actions, as it does with its day-to-day operations, and determine for itself what kinds of insurance, and in what amounts, it should carry. If a Party to this agreement is insured, its file shall contain a letter from its insurance carrier authorizing it to provide and receive assistance under this Agreement, and indicating that there will be no lapse in its insurance coverage, either on employees, vehicles, or liability. If a Party to this agreement is self-insured, its file shall contain a copy of a resolution authorizing its self-insurance program. A copy of the insurance carrier's letter or the resolution of self-insurance shall be attached to the executed copy of this Agreement. Each Assisting Party shall be solely responsible for determining that its insurance is current and adequate prior to providing assistance under this Agreement. The amount of reimbursement from the Requesting Party shall be reduced by the amount of any insurance proceeds to which the Assisting Party is entitled as a result of losses experienced in rendering assistance pursuant to this Agreement.

SECTION 5. LIABILITY

To the extent permitted by law, and without waiving sovereign immunity, each Party to this Agreement shall be responsible for any and all claims, demands, suits, actions, damages, and causes of action related to or arising out of or in any way connected with its own actions, and the actions of its personnel, in providing mutual aid assistance rendered or performed pursuant to the terms and conditions of this Agreement.

SECTION 6. LENGTH OF TIME FOR EMERGENCY

The duration of such state of emergency declared by the Requesting Party is limited to seven (7) days. It may be extended, if necessary, in seven (7) day increments.

SECTION 7. TERM

This Agreement shall be in effect for one (1) year from the date hereof and is renewed automatically in successive one (1) year terms unless terminated upon sixty (60) days advance written notice by the Parties to this agreement. Notice of termination shall not relieve the withdrawing Party from obligations incurred hereunder prior to the effective date of the withdrawal.

SECTION 8. EFFECTIVE DATE OF THIS AGREEMENT

This Agreement shall be in full force and effect upon approval by both Parties and upon proper execution thereof.

SECTION 9. SEVERABILITY: EFFECT ON OTHER AGREEMENTS

Should any portion, section, or subsection of this Agreement be held to be invalid by a court of competent jurisdiction, that fact shall not affect or invalidate any other portion, section or subsection; and the remaining portions of this Agreement shall remain in full force and affect without regard to the section, portion, or subsection or power invalidated.

In the event that any parties to this Agreement have entered into other mutual aid agreements or inter-local agreements, those parties agree that said agreements are superseded by this Agreement only for emergency management assistance and activities performed in major disasters, pursuant to this Agreement. In the event that parties to this Agreement have not entered into another mutual aid agreement, and the parties wish to engage in mutual aid, then the terms and conditions of this Agreement shall apply unless otherwise agreed between those parties.

IN WITNESS WHEREOF, the Town of Hilton Head Island, South Carolina and Beaufort County, South Carolina, by and through their duly authorized officers have set their hands and seals on this ____day of ____2011.

WITNESSES:

WITNESSES:

BEAUFORT COUNTY

By: _____

Attest: _____

TOWN OF HILTON HEAD ISLAND

By: _____

Drew A. Laughlin, Mayor

Attest: _____

Stephen G. Riley, Town Manager

3. Identification of the public infrastructure system for which assistance is needed (e.g., sanitary sewer, portable water, streets, or storm water systems) and the type of work assistance needed:

4. The amount and type of personnel, equipment, materials, and supplies needed and a reasonable estimate of the length of time they will be needed:

5. The need for sites, structures or buildings outside the Requesting Party's jurisdictional boundaries to serve as relief centers or staging areas for incoming emergency goods and services:

6. An estimated time and specific place for a representative of the Requesting Party to meet the personnel and equipment of any Assisting Party.

EXHIBIT C: ACKNOWLEDGMENT

To be completed by each Assisting Party.

NAME OF ASSISTING PARTY:

AUTHORIZED REPRESENTATIVE:

CONTACT NUMBER/PROCEDURES:

1. Assistance to be provided:

Resource Type	Amount	Assignment	Est. Time of Arrival
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2. Availability of additional resources:

3. Time limitations, if any:

MEMORANDUM OF AGREEMENT

Between the
STATE OF SOUTH CAROLINA, DEPARTMENT OF TRANSPORTATION
And
THE TOWN OF HILTON HEAD

This Memorandum of Agreement (hereinafter the "Agreement"), made and entered into this _____ day of _____, 2010, by and between the STATE OF SOUTH CAROLINA, DEPARTMENT OF TRANSPORTATION (hereinafter referred to as the DEPARTMENT) and the TOWN OF HILTON HEAD, (hereinafter referred to as the TOWN),

WHEREAS, during a declared State of Emergency or State of Disaster which implements the South Carolina Emergency Operations Plan (hereinafter, referred to as the "SCEOP"), the DEPARTMENT may be called upon to perform certain functions, including the removal of "Eligible Storm Debris" from the rights-of-way of state maintained roads and bridges, that is disaster related, pursuant to the SCEOP; and

WHEREAS, it is the policy of the DEPARTMENT and of the TOWN to cooperate with each other in order to maximize the use and allocation of the monetary resources each are entrusted with, and

WHEREAS, the TOWN has requested that it be allowed the opportunity and responsibility to perform certain DEPARTMENT functions as set forth in the SCEOP in order to assure that its citizens are served and protected; and

WHEREAS, the implementation of this Agreement is based on the consideration of future severe natural disasters that could affect state maintained roads and bridges within the geographical limits of the TOWN; and

WHEREAS, the implementation of this Agreement is in the best interests of both the DEPARTMENT and the TOWN and it would be most practical, expeditious, and economical for the TOWN to participate with the DEPARTMENT to perform the services as needed as described in Exhibit "A" and Exhibit "B", attached hereto.

NOW THEREFORE, the parties agree as follows:

I. PROJECT DESCRIPTION:

- A. It is understood by the DEPARTMENT and the TOWN, in the event of any declared severe natural disaster(s) that affect state maintained roads and bridges within the TOWN as described in Exhibit "A" and Exhibit "B", attached hereto, the TOWN will be pre-positioned to conduct the "First Push", pushing and clearing all debris off of designated roadway(s) as described in Exhibit "C".

- B. These activities will be in accordance with FHWA and/or FEMA rules, regulations, and procedures. (FHWA Emergency Relief Program codified at 23 USC §125 and FEMA Public Assistance Guide, FEMA 322.

II. The DEPARTMENT:

- A. Will authorize “in writing” and direct the TOWN to perform services under the terms of this Agreement on an as needed basis.
- B. Incurs no cost for the project and that the execution of this Agreement does not guarantee that any work or services will be authorized.
- C. May reimburse the TOWN for reasonable costs in manpower and equipment associated with the designated project and will comply with all reimbursement instructions as stated in Exhibit “D”.

III. The TOWN:

- A. The TOWN understands that a “written request” listing the roadways to be cleared by the TOWN will be forwarded to the DEPARTMENT and that all “First Push”, “Emergency Debris Removal Cut and Toss and Emergency Debris Removal” activities performed on eligible federal-aid highways are subject to the terms and conditions of the Emergency Relief Program Manual.
- B. The TOWN understands and agrees that any third party agreements that it enters into for which the TOWN intends to seek reimbursement involving FHWA Emergency Relief Program funds that the agreement(s) must meet all applicable Federal regulations. The TOWN understands that any third party agreements that it has entered into that are found to be non-compliant with Federal regulations that cause the DEPARTMENT to be denied reimbursement from FHWA, the TOWN will not be eligible for reimbursement from the DEPARTMENT for the amounts denied by FHWA.
- C. Pre-disaster contracts entered into by the TOWN with third parties to perform “First Push”, “Emergency Debris Removal Cut and Toss and Emergency Debris Removal” activities for which the TOWN intends to seek reimbursement involving FHWA Emergency Relief Program funds shall:
 - 1. Be competitively and openly bid by the TOWN,
 - 2. Mandate compliance with the requirements of the National Environmental Policy Act (NEPA) of 1969,
 - 3. And include the Required Contract Provisions Federal-Aid Construction Contracts as stated in FHWA 1273. These provisions must be physically incorporated in the contract.

- D. Reimbursement to the TOWN would be for eligible costs from funds allocated to the DEPARTMENT by FHWA for said purposes. The DEPARTMENT would enter into said agreement as the administrator of the FHWA Emergency Relief Program with the funds being subject to the terms and conditions of 23 USC § 125 and the Program Administration Manual published by FHWA. Summary of Federal Funding Differences is located in Exhibit "C".
- E. Any Emergency Debris Removal activities for subsequent passes on Federal Aid Roadways after the initial "first push" and any Emergency Debris Removal activities performed on State maintained roads and bridges by the TOWN or it's agent, the TOWN will seek reimbursement directly from FEMA. Summary of Federal Funding Differences is located in Exhibit "C".
- F. Either party may unilaterally cancel this Agreement with reasonable notice in writing.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date first written above.

Signed, sealed and executed for the TOWN.

WITNESSES:

TOWN OF HILTON HEAD ISLAND, SC:

By: _____
 Drew A. Laughlin, Mayor

Attest: _____
 Stephen G. Riley, Town Manager

Federal ID#: _____

Signed, sealed and executed for the DEPARTMENT.

WITNESS:

**SOUTH CAROLINA DEPARTMENT OF
 TRANSPORTATION**

By: _____
 Deputy Secretary for Engineering

RECOMMENDED:

Title: _____

**CERTIFICATION OF THE SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION**

I hereby certify that I am the Deputy Secretary for Engineering of the Department of Transportation of the State of South Carolina and the TOWN or its legal representatives have not been required directly or indirectly as an expressed or implied condition in connection with obtaining or carrying out this Agreement to:

- (a) employ or retain, or agree to employ or retain, any firm or person or
- (b) pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind, except as herein expressly stated (if any).

In accordance with Section 635.105 of Title 23 CFR, I further certify that the work stipulated in this Agreement to be performed by TOWN can be more advantageously performed by said TOWN than by the DEPARTMENT and that said TOWN is adequately staffed and suitably equipped to undertake and satisfactorily complete such work, including the performance of proper maintenance on the highway facilities constructed under the terms of this Agreement.

I acknowledge that this certificate is to be furnished to the Federal Highway Administration, U. S. Department of Transportation, in connection with this Agreement, and is subject to applicable State and Federal Laws, both criminal and civil.

(Date)

(DEPARTMENT Signature)

CERTIFICATION OF TOWN OF HILTON HEAD

I hereby certify that I am the _____ and duly authorized representative of the TOWN, whose address is _____, and that neither I nor the above TOWN I represent has:

- (a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above TOWN) to solicit or secure this Agreement,
- (b) agreed, as an expressed or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the Agreement, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above TOWN) any fee, contribution, or consideration of any kind for, or in connection with, procuring or carrying out the contract except as herein expressly stated (if any).

I acknowledge that this certificate is to be furnished to the DEPARTMENT and the Federal Highway Administration, U.S. Department of Transportation, in connection with this Agreement, and is subject to applicable State and Federal laws, both criminal and civil.

(Date)

(TOWN Signature)

CERTIFICATION FOR CONTRACTS, LOANS AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, of modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(Date)

(DEPARTMENT Signature)

(Date)

(TOWN Signature)

DRUG-FREE WORKPLACE CERTIFICATION

In accordance with Section 44-107-30, South Carolina Code of Laws (1976), as amended, and as a condition precedent to the execution of this Agreement, the undersigned, _____ who is a representative of the TOWN certifies on behalf of the TOWN that the TOWN will provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing a drug-free awareness program to inform employees about:
 - (1) The dangers of drug abuse in the workplace;
 - (2) The grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and,
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:
 - (1) Abide by the terms of the statement; and,
 - (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
- (e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;
- (f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d) (2), with respect to any employee who is so convicted:
 - (1) Taking appropriate personnel action against such an employee, up to and including termination; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraph (a), (b), (c), (d), (e) and (f).
- (h) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, and contracts and subcontracts under grants, sub-grants, loans, and cooperative agreements), and that such sub-recipients shall certify and disclose accordingly.

(Date)

(TOWN Signature)

EXHIBIT "A"

SCOPE OF SERVICES "FIRST PUSH"

EMERGENCY DEBRIS REMOVAL – NATURAL DISASTER – CUT AND TOSS

1.0 GENERAL

This statement of work describes and defines the services which are required for the execution of Natural Disaster-related emergency debris removal (cut and toss) from Federal Aid Highway segments and State owned roadways within the Town of Hilton Head (TOWN). With approval from the DEPARTMENT, the TOWN shall provide all services described herein and any other services required to complete the project. Activities include field operations and debris management.

The DEPARTMENT, at its sole discretion, may elect to perform work with in-house or contract forces. Proper documentation, as required by Federal Highway Administration (FHWA) shall be provided for all debris removal operations to ensure funds will be allocated to the Department from FHWA for reimbursement.

2.0 SERVICES TO BE PROVIDED BY THE TOWN

Field Operations

The following listed services shall be performed by the TOWN upon approval from the DEPARTMENT:

- Provide equipment, labor, and materials necessary to perform "cut and toss" for clearing of the pavement area of the roadways as directed. "Cut and toss" is defined as cutting and/or pushing the debris off of the roadway sufficiently to allow safe vehicular traffic on all lanes. The services include, but are not limited to, cutting and removing vegetative debris and other debris to a point two feet beyond the curb and gutter section or to a point two feet beyond the edge of pavement (i.e. 6 feet beyond the paved shoulder or edge of turn lane (s) whichever is further) and vertical clearance of 16 feet as needed.
- Provide traffic control (day and/or night) using current SCDOT Standards.
- Ensure all TOWN and subcontractor personnel have and utilize personal protective safety gear in accordance with OSHA requirements and company safety policies.
- Coordinate with utility companies, as required, to ensure safe removal of debris.

3.0 SERVICES TO BE PROVIDED BY THE DEPARTMENT OR its DESIGNATED REPRESENTATIVE

Field Operations

- Identify and evaluate the scope of the post-disaster debris problem.
- Identify in cooperation with the TOWN which transportation systems the TOWN is responsible for clearing.
- Provide periodic site inspection to insure that the State Road Transportation Facilities are cleared and open.

EXHIBIT "B"

SCOPE OF SERVICES EMERGENCY DEBRIS REMOVAL – HURRICANE -- DEBRIS REMOVAL

1.0 GENERAL

This statement of work describes and defines the services which are required for the execution of debris removal from Federal Aid Highway segments and State roadways within the Town of Hilton Head (TOWN). The TOWN shall provide all services described herein and any other services that are required to complete the project. Activities include, but are not limited to, field operations, debris pickup, debris hauling and removing, debris staging and reduction, temporary debris storage site management and debris management. All debris and waste management shall be in accordance with all federal and state laws, and environmental regulation. Roads will be identified by the Department and direction given to the TOWN for Roads and limits for which the TOWN will be responsible for. The Department reserves the right to add or delete highway segments at the direction of the Engineer.

The Department, at its sole discretion, may elect to perform work with in house forces or other contract forces.

Proper documentation as required by FHWA and FEMA are required for all debris operations to ensure funds will be allocated to the Department. Any activities performed by the TOWN for subsequent passes after the initial first pass, the TOWN will seek reimbursement directly from FEMA.

2.0 SERVICES TO BE PROVIDED BY THE TOWN

Field Operations

The listed services shall be performed by the TOWN upon approval from the DEPARTMENT:

- Provide equipment, labor, and materials necessary to perform the "first pass" and all subsequent passes as directed. "First Pass" is defined as removing all debris on the affected roadways from within the rights-of-way as directed and authorized by the Department, FHWA, FEMA and their authorized representatives. The work associated with "first pass" and subsequent passes, includes but is not limited to: cutting fallen vegetative debris; picking up and loading vegetative debris; hauling materials to either a temporary debris staging and reduction site or final legal disposal site; volume reduction at the temporary debris staging and reduction site; and final hauling and disposal at an appropriate landfill or "waste to energy" facility.
- Once road priorities are established by the Department or its representative, crews shall be required to complete entire sectors and/or corridors prior to moving on to other areas. No streets should be bypassed based on quantity of debris alone. Provide labor, equipment and materials necessary to remove all stumps authorized by the Department, FHWA and FEMA. Stump removal operations shall be in accordance with FHWA and FEMA guidelines.
- Provide traffic control (day or night) using current SCDOT Standards.
- Ensure all TOWN and subcontractor personnel have and utilize personal protective safety gear in accordance with OSHA requirements and company safety policies.

- Coordinate with Utility Companies, as required, to permit safe removal of debris.
- The TOWN is required to measure and certify all trucks. All Temporary Debris Staging and Reduction Sites (TDSR's) shall be equipped with at least one tower from which monitors can safely view contents on each load and determine capacities of each load entering and exiting the TDSR.
- Damaged trees and exposed roots are to be removed to ground level.
- Remove leaning trees which are not an immediate hazard only when directed by SCDOT or their designated representative.
- Fill any holes left by removed trees.

3.0 SERVICE TO BE PROVIDED BY THE DEPARTMENT OR THEIR DESIGNATED REPRESENTATIVE

Field Operations

- Identify and evaluate the scope of the post-disaster debris problem.
- Identify in cooperation with the TOWN which transportation systems the TOWN is responsible for clearing.
- Provide periodic site inspection to insure that State Roads are cleared and open.

EXHIBIT "C"
**FEDERAL HIGHWAY ADMINISTRATION (FHWA) & FEDERAL EMERGENCY
MANAGEMENT AGENCY (FEMA) DEBRIS GUIDELINES**

	FHWA-ER	FEMA-PA
Debris Removal	<p align="center">Considered Emergency Repair</p> <p>First Push – to restore travel on Federal Aid roadways. (reimbursed at 100%)</p> <p>First Pass – first pass of debris removal collection along federal Aid roadways (reimbursed at 100% for work completed within first 180 days)</p>	<p align="center">Considered Emergency Work</p> <p>First Push – to restore travel and protect health and safety on non-Federal Aid eligible roadways. Considered Category B – Emergency Protective Measures (reimbursed at 100% within the 72 hours in some disasters)</p> <p>First Pass – first pass of debris removal collection along non-Federal Aid roadways. Considered Category A – Debris Removal (reimbursed at 75% or higher for work within the first 180 days)</p> <p>Additional Passes – subsequent debris removal collection passes required to eliminate the threat to public health and safety along ALL roadways (private roadways excluded) Considered Category A – Debris Removal (reimbursed at 75% for work completed within the first 180 days)</p>

First Push – The first push is the initial operation to clear the roadway, which includes cut and toss operations to push debris out of the traveled way. Subsequent operations to push debris from the roadway will not be eligible for FHWA-ER program reimbursement. It needs to be understood that if circumstances regarding mobility arise that do not allow immediate first push operations on the roadway, such as downed power lines, that a secondary clean-up of the *initial* debris in the ROW is still considered first push. (Ex: A 24 ft. wide roadway is completely covered by debris and one side is covered by power lines. To allow the power companies access, an 8-foot path of debris is cleared away from the power lines on Day One. On Day Three, after the power company operations are completed and the environment is clear, the rest of the *initial* debris in the ROW can be pushed into a pile and is still considered first push.)

First Pass – The first pass is the initial operation to collect and remove debris pushed aside during the first push operations and the debris may be located within the cut and fill slopes, drainage ditches, and clear zone. The first pass is meant to be accomplished as one continuous operation on the same section of roadway before relocating the clean-up operation team to the next section or site.

All debris (vegetative and non-vegetative) within the eligible clearing limits must be collected during the first pass operation. Once debris from such roadway segments or locations has been initially cleared, subsequent efforts to clear and remove debris from those same areas are not considered ER eligible expenses, regardless of the date or time in which the material was collected. FHWA recognizes that Hazardous Materials (HazMat) operations might be required as a separate operation. The FHWA Transportation Engineer will make the final determination on this issue.

Clearing Limits – The clearing limits for debris normally include the traveled way, cut and fill slopes, and any additional clearing required to ensure the full functioning of the pavement, drainage ditches, and structures. It also includes the clear zone. Clearing of the remainder of the full right-of-way is the responsibility of the agency having jurisdiction and shall not be considered as part of the first pass collection activities eligible under the Emergency Relief Program. The definition of eligible limits for various federal aid road classifications is as follows:

1. **Interstate:** eligible limits not to exceed 50 feet from the edge line, or the ROW limits, whichever is less. This includes up to 50 ft on each side of the inside median; the rest is considered to be heavy maintenance and is a state cost responsibility.
2. **US/State Roads:** eligible limits not to exceed 40 feet from the edge line, or the ROW limits, whichever is less.
3. **Other Federal Aid Roads:** eligible limits not to exceed 20 feet from the edge line, or the ROW limits, whichever is less.

Debris in drainage ditches beyond the limits presented above will be eligible for first pass removal to enable proper functioning of the drainage system.

Reimbursement Rate for First Push – Time and materials expenses only are reimbursed at the established Federal cost share.

EXHIBIT "D"

REIMBURSEMENT PROCEDURES

All invoices submitted to SCDOT for reimbursement of costs associated with an event should include the following detailed information.

Force Account Labor Record

- Time Records: Account for the time of all individuals who participated, even if they may not be eligible. In order for costs to be eligible, designate all persons that meet the overtime criteria for the particular pay period.

Persons are not entitled to overtime if they:

- ❖ do not meet eligibility requirements-not entitled to overtime;
- ❖ they did not work enough hours to reach overtime status; or
- ❖ are unpaid (volunteers).

Maintain a separate worksheet for each week and pay period.

List:

- ❖ The dates of the work week;
- ❖ name and job title of each individual who worked the event including ID number;
- ❖ overtime hours and regular hours of each individual worked on a DAILY basis;
- ❖ description of type of work, (i.e. debris removal);
- ❖ Total hours per individual per week, hourly rate, and benefit per hour.

Force account sheets should be numbered, signed and dated by a certifying individual; including the certifying individuals job title.

Materials/External Contract Record

If your organization rented, contracted, or otherwise used external contactors for work, please provide the following information.

- ❖ The name of the organization or person who provided the material or service and the kind of material, equipment, or service that was provided
- ❖ Costs and dates of service, unit price, number of units, etc.
- ❖ Verification of payment to the vendor/contractor such as a cancelled check or check register.

Entity's Equipment Use Record

If your organization used its own equipment for work, please provide the following information:

- ❖ A description of the equipment, including the size, capacity, horsepower, make, model and any other pertinent information.
- ❖ The day(s) the equipment was used on the event, as well as the number of hours per day it was used. *Note that equipment must be actually used on an event to be eligible.*
- ❖ Hourly rate or other rate structure (miles) for the equipment and the total costs of the use of the equipment.

The above information along with a valid invoice from the entity should be sent to:

SC Department of Transportation
Attention: Director of Maintenance
PO Box 191
Columbia, SC 29202



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Stephen G. Riley, CM, *Town Manager*
VIA: Charles Cousins, AICP, *Director of Community Development*
VIA: Shawn Colin AICP, *Comprehensive Planning Manager*
FROM: Marcy Benson, *Senior Grants Administrator*
DATE: July 13, 2011
RE: Redistricting Criteria

RECOMMENDATION

Staff recommends Town Council adopt criteria to develop plans for redistricting 2010 to ensure maximum public participation, as recommended by the Intergovernmental Committee on July 11, 2011 by approving the attached resolution.

SUMMARY

To ensure maximum review and public participation in implementing any redistricting plans based on the Census 2010 Town staff and Mr. Bobby Bowers, Director of the Office of Research and Statistics for the State Budget and Control Board, recommends Town Council adopt the criteria to develop plans for redistricting found in the attached resolution. This recommendation was endorsed by the Intergovernmental Committee during its July 11, 2011 special meeting and forwarded to Town Council for consideration.

BACKGROUND

At the July 11, 2011 special meeting of the Intergovernmental Committee, Mr. Bobby Bowers, Director of the Office of Research and Statistics for the State Budget and Control Board explained the redistricting process, Federal requirements and specific details for each preliminary redistricting plan.

As each decennial Census is completed jurisdictions are required to review population and demographic information and determine if adjustments are required for political districts. If adjustments are needed, there are controls in place that attempt to minimize the boundary shifts and disrupt the fewest number of districts as possible. As a result of the 2010 US Census the Town of Hilton Head Island is required to review and make recommendation to the US Department of Justice for redistricting.

At their July 11, 2011 special meeting the Intergovernmental Committee recommended Town Council adopt the criteria to develop plans for redistricting listed below:

- Adhere to court ordered requirement of one person, one vote

- Adhere to state law of population variance under 10%
- Adherence to the 1965 Voting Rights Act as amended and by controlling court decisions
- Ensure that parts of districts are contiguous
- Respect Communities of Interest
- Attempt to maintain constituent consistency
- Avoid splitting Voting Precincts
- Solicit Public Input

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA TO ADOPT CRITERIA TO DEVELOP PLANS FOR REDISTRICTING 2010 TO ENSURE MAXIMUM PUBLIC PARTICIPATION

WHEREAS, the data for Census 2010 pertaining to the Hilton Head Island has been released for review and assessment of redistricting of Town Council wards in the Town of Hilton Head Island; and

WHEREAS, to ensure maximum review and public participation in implementing any redistricting plans based on the Census 2010, the Town of Hilton Head Island Town Council deems it necessary to adopt certain criteria for the development of a redistricting plan in accordance with the 1965 Voting Rights Act as amended; and

WHEREAS, the following criteria for developing plans for redistricting 2010 will ensure maximum public participation:

1. Adhere to court ordered requirement of one person, one vote.
2. Adhere to state law of population variance under 10%.
3. Adherence to the 1965 Voting Rights Act as amended and by controlling court decisions.
4. Ensure that parts of the districts are contiguous.
5. Respect communities of interest.
6. Attempt to maintain constituent consistency.
7. Avoid splitting voting precincts.
8. Solicit public input.

NOW THEREFORE, BE IT, AND IT HEREBY IS RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, THAT THE ABOVE LISTED CRITERIA FOR REDISTRICTING 2010 TO ENSURE MAXIMUM PUBLIC PARTICIPTION IS ADOPTED.

MOVED, APPROVED AND ADOPTED THIS 2nd DAY OF AUGUST, 2011.

Drew Laughlin, Mayor

ATTEST:

Cori Brock, Town Clerk

APPROVED AS TO FORM:

Gregory M. Alford, Town Attorney

Introduced by Council Member: _____



MEMORANDUM

TO: Town Council

FROM: Stephen G. Riley, CM, Town Manager

VIA: Susan M. Simmons, CPA, Director of Finance

DATE: July 21, 2011

RE: **First Reading of Proposed Ordinance No. 2011-17
General Bond Ordinance – Hospitality Fee Pledge**

Recommendation:

Town Council approves first reading of Proposed Ordinance No. 2011-17 which establishes a new manner for issuing debt for which the repayment will be from a pledge of hospitality fees.

Summary:

The Town issued debt in 2004 pledged from hospitality revenues through its Hilton Head Island Public Facilities Corporation in the form of Certificates of Participation (COPS). Since that time, State law has changed allowing for special obligation bonds pledging a specific revenue stream eliminating the necessity for COPS. The Special Obligation Bonds form of debt is viewed more favorably by investors and the rating companies in the municipal market. Therefore, staff recommends that the Town begin to use Special Obligation Bonds when applicable. The general ordinance is a parent or master document establishing the authority to issue debt but does not authorize a specific debt issuance. The authority to issue specific amounts of bonds will be accomplished through supplemental ordinances; the first of which is Proposed Ordinance No. 2011-18.

This ordinance also amends Town Code Chapter 13 (Hospitality) of Title 4 (Finance and Taxation). Under the permitted uses section, the Town is required to properly fund debt service from the hospitality fee pledge. It also eliminates the sunset provision for this revenue stream. These amendments provide needed assurances to investors and the bond rating agencies which in turn will reduce the debt service costs to the Town.

Background:

The Town issued Series 2004C Hospitality Certificates of Participation for which the proceeds were used for construction and/or purchase of public safety assets. Then over the last couple of years, the Town purchased fire apparatus and constructed part or all of certain fire and rescue stations under a reimbursement resolution. This resolution allows the Town to use available resources to upfront the costs but with the intent of issuing debt to pay for these assets over a longer term. The Town's intent is to pay for these long-lived assets over the life of the assets via debt service payments and use future hospitality fee revenue to make the debt service payments. In this manner, those who benefit from these assets will also bear the cost of these assets. Upon Council's approval of Proposed Ordinance 2011-17 and 2011-18, staff plans to issue bonds with a hospitality fee pledge in the next few months. The ordinances will allow staff to issue new bonds and consider the refunding of the outstanding Series 2004C Hospitality Certificates of Participation should sufficient savings be available to warrant their refunding.

GENERAL BOND ORDINANCE

AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF SPECIAL OBLIGATION BONDS (HOSPITALITY FEE PLEDGE) OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA; PRESCRIBING THE FORM OF BONDS; PROVIDING FOR THE PAYMENT OF THE BONDS FROM THE SOURCES PROVIDED HEREIN; CREATING CERTAIN FUNDS AND PROVIDING FOR PAYMENTS INTO SUCH FUNDS; AMENDING CHAPTER 13 OF TITLE 4 (FINANCE AND TAXATION) OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, BY AMENDING SECTION 4-13-80, PERMITTED USES OF FUNDS, AND SECTION 4-13-110, SUNSET; MAKING OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE FOREGOING; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Town Council (the “Council”) of the Town of Hilton Head Island, South Carolina (the “Town”) enacted Ordinance No. 2000-05 on February 8, 2000, as amended by Ordinance No. 2003-23 enacted on August 19, 2003, imposing the Hospitality Fees (the “Hospitality Fees,” as more particularly defined herein) within the geographic boundaries of the Town; and

WHEREAS, Hilton Head Island Public Facilities Corporation, an instrumentality of the Town (the “Corporation”), issued \$10,775,000 original principal amount of the Hilton Head Island Public Facilities Corporation, Certificates of Participation Evidencing Undivided Proportionate Interests in Base Fee Payments Under an Installment Sale Agreement (Hospitality Fee Pledge), Series 2004C, which are presently outstanding in the principal amount of \$8,625,000 (the “2004 Certificates”), evidencing proportionate undivided interests in the Base Fee Payments (as defined in the Installment Sale Agreement dated as of June 1, 2004 (the “2004 Installment Sale Agreement”) between the Town and the Corporation) paid by the Town under the 2004 Installment Sale Agreement; and

WHEREAS, pursuant to the 2004 Installment Sale Agreement, the Town has pledged the Hospitality Fees to secure its obligation to pay Base Fee Payments and Additional Fee Payments (as defined in the 2004 Installment Sale Agreement) thereunder; and

WHEREAS, the Town is permitted to issue Other Obligations (as defined in the 2004 Installment Sale Agreement) secured by a pledge of the Hospitality Fees, which pledge may be junior and subordinate to the pledge of the Hospitality Fees securing its obligation to pay Base Fee Payments and Additional Fee Payments under the 2004 Installment Sale Agreement; and

WHEREAS, the Town is presently contemplating the undertaking of new tourism-related projects permitted to be financed under the Hospitality Fee Act (as defined herein) and

the Hospitality Fee Ordinance (the “Projects” as are particularly defined herein) and the refinancing of the 2004 Certificates; and

WHEREAS, the Council has been advised that in order to finance the Projects and/or refinance the 2004 Certificates, the Council must enact appropriate ordinances authorizing the issuance of special obligation bonds.

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

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. Unless the context shall clearly indicate some other meaning, the terms defined in this Section shall, for all purposes of this Ordinance and of any ordinance, resolution, certificate, opinion, instrument or other document herein or therein mentioned, have the meanings herein specified. The definitions shall be equally applicable to both the singular and plural forms of any of the terms herein defined and vice versa. The term:

“2004 Certificates” shall mean the \$10,775,000 original principal amount Hilton Head Island Public Facilities Corporation, Certificates of Participation Evidencing Undivided Proportionate Interests in Base Fee Payments Under an Installment Sale Agreement (Hospitality Fee Pledge), Series 2004, dated June 1, 2004, and outstanding as of the date hereof in the principal amount of \$8,625,000.

“2004 Installment Sale Agreement” shall mean the Installment Sale Agreement, dated as of June 1, 2004, between the Town and the Corporation, relating to the 2004 Certificates.

“2004 Trust Agreement” shall mean the Trust Agreement, dated as of June 1, 2004 between the Corporation and Wells Fargo Bank, N.A., as Trustee, relating to the 2004 Certificates.

“Accountant” shall mean an independent certified public accountant or a firm of independent certified public accountants selected by the Town.

“Bond” or “Bonds” shall mean any Bond, some of the Bonds or all of the Bonds issued under and pursuant to Article III hereof, excluding bonds or other indebtedness issued under Section 3.5 hereof.

“Bond Act” shall mean Title 6, Chapters 17 and 21, Code of Laws of South Carolina, 1976, and all other statutory authorizations, now or hereinafter enacted, authorizing and enabling the Town to provide for the issuance of the Bonds.

“Bond Counsel” shall mean any attorney or firm of attorneys of nationally recognized standing in matters pertaining to the federal tax exemption of interest on obligations issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States.

“Bondholders” or the term “Holders” or any similar term shall mean the registered owner or owners of any Outstanding Bond or Bonds.

“Bond Redemption Account” shall mean the account by that name created within each respective Debt Service Fund.

“Books of Registry” shall mean the registration books maintained by the Registrar, as bond registrar, in accordance with Section 4.3 hereof.

“Business Day” shall mean, except as otherwise provided with respect to a Series of Bonds in a Supplemental Ordinance, any day other than a Saturday, a Sunday or a day which shall be in the State or the state in which the corporate trust office of the Trustee is located a legal holiday or a day on which banking institutions are authorized by law or executive order to close or a day on which the payment system of the Federal Reserve is not operational.

“Construction Fund” shall mean any fund established with and maintained by the Custodian selected by the Town, and derived from certain of the proceeds of the sale of the Bonds and intended to defray the costs of all or a portion of any Project and to pay all Costs of Acquisition and Construction in connection therewith, as established in a Supplemental Ordinance authorizing the issuance of any Series of Bonds.

“Costs of Acquisition and Construction” shall mean, to the extent permitted by the Hospitality Fee Act, Project costs, including the Costs of Issuance and capitalized interest on Bonds. Costs of Acquisition and Construction shall include the reimbursement of funds previously advanced by the Town with respect to the Projects, funding of a Debt Service Reserve Fund, and the payment of amounts due on bond anticipation notes, the proceeds of which were used for Costs of Acquisition and Construction.

“Costs of Issuance” shall mean all items of expense, directly or indirectly payable or reimbursable by or to the Town or the Council and related to the authorization, sale and issuance of Bonds including, but not limited to, printing costs, costs of preparation and reproduction of documents, filing and recording fees, initial fees and charges of any Trustee, Custodian, Registrar or Paying Agent, legal fees and charges, auditing and accounting fees and charges, fees and disbursements of consultants and professionals, costs of credit ratings, fees and charges for preparation, execution, transportation and safekeeping of Bonds, costs and expenses of any refunding, premiums for insurance relating to the issuance of Bonds, financing charges, accrued interest with respect to the initial investment of proceeds of Bonds and any other costs, charges or fees in connection with the original issuance of Bonds.

“Council” shall mean the Town Council of the Town of Hilton Head Island, South Carolina.

“Custodian” shall mean any bank, depository or trust company duly qualified and doing business within the State selected by the Town as a depository of moneys or securities held in the Construction Fund.

“Debt Service” shall mean, with respect to each Series of Bonds and with respect to any particular Fiscal Year, the aggregate of the amounts to be paid or set aside (or estimated to be required to be paid or set aside) in the applicable Debt Service Fund in such Fiscal Year for the payment of the principal of, redemption premium, if any, and interest (to the extent not payable from the proceeds of Bonds or investment earnings thereon) on such Series of Bonds; provided that the interest on Variable Rate Indebtedness then Outstanding shall be calculated at the actual average rate of interest on the Variable Rate Indebtedness during the twelve (12) months immediately preceding the date of calculation (or such lesser period during which the Variable Rate Indebtedness has been Outstanding); provided further, that for purposes of any prospective calculation, interest on Variable Rate Indebtedness shall be calculated at the lesser of (a) the 25-Bond Revenue Index published by *The Bond Buyer* (or if no longer published, any reasonably equivalent nationally recognized index published for the periods in question selected by the Town) no more than one month prior to the date of calculation or (b) the maximum interest rate allowable on such Variable Rate Indebtedness.

“Debt Service Fund” shall mean each of the respective funds of that name established pursuant to Section 6.6 of this Ordinance and so designated pursuant to a Supplemental Ordinance to provide for the payment of the principal of and interest on the respective Series of Bonds issued pursuant to this Ordinance and such Supplemental Ordinance as the same respectively become due and payable.

“Debt Service Reserve Fund” shall mean the respective funds, if any, of that name established pursuant to Section 6.7 of this Ordinance and so designated pursuant to a Supplemental Ordinance.

“Default” or “Event of Default” shall mean any of those Events of Default specified in and defined by Article X hereof.

“First Supplemental Ordinance” shall mean the Supplemental Ordinance enacted by the Council on the date hereof, authorizing the issuance of the Series 2011 Bonds.

“Fiscal Year” shall mean the fiscal year for the Town as determined by the Council, initially being the period from July 1 in any year to and including June 30 in the following year.

“Government Obligations” shall mean, except as otherwise provided in a Supplemental Ordinance, and to the extent such obligations constitute Permitted Investments, (1) cash; (2) United States Treasury Obligations – State and Local Government Series; (3) United States Treasury bills, notes, bonds or zero coupon treasury bonds all as traded on the open market; (4) direct obligations of the U.S. Treasury which have been stripped by the Treasury itself, including CATS, TIGRS and similar securities; (5) obligations of any agencies or instrumentalities which are backed by the full

faith and credit of the United States of America; (6) bonds or debentures issued by any Federal Home Loan Bank or consolidated bonds or debentures issued by the Federal Home Loan Bank Board; (7) obligations of the Federal National Mortgage Association; (8) (i) General obligations of the State of South Carolina or any of its political units; or (ii) revenue obligations of the State of South Carolina or its political units, if at the time of investment, the obligor has a long-term, unenhanced, unsecured debt rating in one of the top two ratings categories, without regard to a refinement or gradation of rating category by numerical modifier or otherwise, issued by at least two nationally recognized credit rating organizations; or (9) any legally permissible combination of any of the foregoing. Government Obligations must be redeemable only at the option of the holder thereof.

“Hospitality Fee Act” means Title 6, Chapter 1, Article 7, of the S.C. Code.

“Hospitality Fee Fund” shall mean the Town of Hilton Head Island “Hospitality Tax Account” created and established by the Hospitality Fee Ordinance.

“Hospitality Fee Ordinance” means Ordinance No. 2000-05 enacted on February 8, 2000, as amended by Ordinance No. 2003-23 enacted on August 19, 2003, by ordinances enacted prior to the enactment date hereof and by this Ordinance (as the same may be codified in Title Four, Chapter 13, of the Municipal Code of the Town), as the same may from time to time hereafter be further amended.

“Hospitality Fees” means the Hospitality Fees imposed by the Town pursuant to the Hospitality Fee Act and the Hospitality Fee Ordinance.

“Interest Account” shall mean the account by that name created within each respective Debt Service Fund.

“Interest Payment Date” shall mean the respective interest payment dates for a Series of Bonds as determined by a Supplemental Ordinance.

“Junior Bonds” shall mean either (a) bonds or bond anticipation notes secured by a pledge of Hospitality Fees junior and subordinate in all respects to the pledge securing the Bonds or (b) any other form of indebtedness secured by a pledge of Hospitality Fees after provision has been made for all payments required to be made with respect to the Bonds, which bonds or indebtedness may be authorized by an ordinance of Council which is not supplemental to this Ordinance.

“Maximum Debt Service” shall mean the highest aggregate principal and interest requirements (to the extent not paid from the proceeds of Bonds or investment earnings thereon) on the Bonds then Outstanding during any then current or future Fiscal Year. In the case of determining the Maximum Debt Service for purposes of Section 3.3 of this Ordinance, interest on Variable Rate Indebtedness shall be calculated at the lesser of (a) the 25-Bond Revenue Index published by *The Bond Buyer* (or if no longer published, any reasonably equivalent nationally recognized index published for the periods in question selected by the Town) no more than one month prior to the date of calculation or (b) the maximum interest rate allowable on such Variable Rate Indebtedness.

“Ordinance” shall mean this ordinance as from time to time amended or supplemented by one or more Supplemental Ordinances.

“Outstanding” when used with respect to any Bond shall have the construction given to such word in Article XII hereof; *i.e.*, a Bond shall not be Outstanding if such Bond is not, or would not be, at the time, deemed to be Outstanding by reason of the operation and effect of said Article XII.

“Paying Agent” shall mean for each Series of Bonds the respective paying agent or paying agents appointed pursuant to the proceedings authorizing such Bonds.

“Permitted Investments” shall mean, except as limited with respect to the funds and accounts relating to a Series of Bonds by a Supplemental Ordinance, (a) any one or more of the investments now or hereafter permitted by Section 6-5-10, Code of Laws of South Carolina 1976, as amended and in effect from time to time, or any authorization relating to the investment of Town funds hereunder; and (b) the South Carolina Pooled Investment Fund or similar State administered pool investment fund.

“Principal Account” shall mean the account by that name created within each respective Debt Service Fund.

“Principal Payment Date” shall mean the respective principal payment dates for a Series of Bonds as determined by a Supplemental Ordinance.

“Project” shall mean any project authorized or permitted to be acquired, constructed or financed with Hospitality Fees, as described in the Hospitality Fee Ordinance and the Hospitality Fee Act, including but not limited to the following:

- (1) tourism related buildings including, but not limited to, civic centers, coliseums, and aquariums;
- (2) tourism-related cultural, recreational, or historic facilities;
- (3) beach access and renourishment;
- (4) highways, roads, streets, and bridges providing access to tourist destinations;
- (5) advertisements and promotions related to tourism development; or
- (6) water and sewer infrastructure to serve tourism-related demand.

“Record Date” shall mean with respect to any Series of Bonds the fifteenth (15th) day (whether or not a Business Day) of the calendar month immediately preceding an Interest Payment Date or such other day as may be provided in the Supplemental Ordinance authorizing the issuance of such Series of Bonds.

“Registrar” shall mean for each Series of Bonds the registrar appointed pursuant to the proceedings authorizing such Bonds.

“Reserve Fund Requirement” shall mean, as of the date of calculation, the debt service reserve fund requirement, if any, established pursuant to a Supplemental Ordinance authorizing the issuance of a Series of Bonds.

“S.C. Code” shall mean the Code of Laws of South Carolina 1976, as amended.

“Serial Bonds” shall mean Bonds which are not Term Bonds.

“Series” or “Series of Bonds” or “Bonds of Series” shall mean all Bonds designated as being of the same series issued and delivered on original issuance in a simultaneous transaction, and any Bonds thereafter delivered in lieu thereof or in substitution therefor pursuant to this Ordinance.

“Series 2011 Bonds” shall mean the not exceeding \$26,250,000 Town of Hilton Head Island, South Carolina Special Obligation Bonds (Hospitality Fee Pledge), in one or more series, authorized to be issued pursuant to this Ordinance and the First Supplemental Ordinance.

“State” shall mean the State of South Carolina.

“Supplemental Ordinance” shall mean any ordinance by the Town providing for the issuance of Bonds and any ordinance enacted by Council pursuant to and in compliance with the provisions of Article IX hereof amending or supplementing the provisions of this Ordinance.

“Term Bonds” shall mean any Bond designated by the Supplemental Ordinance providing for its issuance as being subject to retirement or redemption from moneys credited to the applicable Bond Redemption Account as sinking fund installments.

“Town” shall mean the Town of Hilton Head Island, South Carolina.

“Town Representative” shall mean the person or custodian/persons at the time designated to act on behalf of the Town for the purpose of performing any act under this Ordinance or any Supplemental Ordinance by a written certificate furnished to the Trustee or Custodian containing the specimen signature of such person or persons and signed on behalf of the Town by the Mayor or Town Manager.

“Trustee” shall mean Wells Fargo Bank, N.A., and any successor Trustee appointed in accordance with Section 8.2 hereof.

“Variable Rate Indebtedness” shall mean indebtedness in the form of Bonds, the interest rate on which is not established at a fixed or constant rate at the time such indebtedness is incurred.

[End of Article I]

ARTICLE II

FINDINGS AND DETERMINATIONS

Section 2.1. Findings and Determinations. The Council hereby finds and determines:

(a) The Town is an incorporated municipality located in Beaufort County, South Carolina, and as such has all powers granted to municipalities by the Constitution and general laws of the State.

(b) Section 5-7-30 of the S.C. Code provides, in part, that municipalities may enact ordinances, not inconsistent with the Constitution and general law of the State, respecting any subject which appears necessary and proper for the security, general welfare, and convenience of the municipality and for the preservation of the general health, peace, order and good government in the municipality, and further, under the case of Williams v. Town of Hilton Head, 429 S.E.2d 802 (1993) a municipality may enact regulations (ordinances) without the requirement for further specific statutory authorization so long as such regulations are not inconsistent with the Constitution and general law of the State.

(c) Pursuant to the authorization granted by the General Assembly to municipalities in the Hospitality Fee Act, the Council imposed the Hospitality Fees. While the General Assembly utilized the words "local hospitality tax" in the Hospitality Fee Act as a means by which to designate the charge authorized to be imposed on the sales of prepared meals and beverages, it was the intent of the Council to impose such charges as fees pursuant to the provisions of the Hospitality Fee Ordinance.

(d) It is a well established principle of South Carolina law that the use of a particular word is not determinative of its characterization. Jackson v. Breeland, 88 S.E. 128, 103 S.C. 184 (1915). As set forth in Brown v. County of Horry, 417 S.E.2d 565, 308 S.C. 180 (1992), the factors that are of paramount importance to the analysis of whether a charge constitutes a "tax" or a "fee" are the following: (i) the purpose behind its imposition; (ii) the intended portion of the community that will be charged; and (iii) the dedication of the sums so collected to the purpose for which it is charged. The Council finds that its actions in imposing the Hospitality Fees and segregating the collections received from such fees in order that such sums be utilized according to the Hospitality Fee Act meet the test enunciated in Brown such that the charges imposed pursuant to the provisions of the Hospitality Fee Ordinance constitute fees.

(e) A dynamic tourism industry fosters and enhances the economic growth and well being of a community and its residents. Tourism has been and continues to be a growing industry for the Town. The Town is initiating efforts to promote tourism to the Town and to the Town's facilities and attractions. Moreover, as the Town's tourism industry grows and expands, the Town must make provision to increase municipal services and facilities in order to accommodate the needs of tourists and to attract additional tourism. Tourists enjoy and utilize the special benefits which the Town provides. The Council has been advised and recognizes that Hospitality Fees must be used exclusively for Projects or otherwise for purposes permitted by the Hospitality Fee Ordinance and the Hospitality Fee Act.

(f) Article X, Section 14 of the Constitution of the State of South Carolina, 1895, as amended, provides that municipalities may incur indebtedness payable solely from a revenue-producing project which source does not involve revenues from any tax or license.

(g) Section 6-1-760(B) of the S.C. Code provides that a municipality is authorized to issue bonds, pursuant to Section 14(10), Article X of the Constitution of the State, utilizing the procedures of the Bond Act, for the purposes enumerated in Section 6-1-530 (which are identical to those set forth in Section 6-1-730) of the S.C. Code, to pledge as security for such bonds and to retire such bonds with the proceeds of local hospitality fees imposed under the Hospitality Fee Act, and the pledge of such other nontax revenues as may be available for those purposes for capital projects used to attract and support tourists.

(h) The Town has heretofore pledged the Hospitality Fees to the payment of Base Fee Payments and Additional Fee Payments under and as defined in the 2004 Installment Sale Agreement in connection with the issuance of the 2004 Certificates.

(i) Pursuant to the authority of the Bond Act and the Hospitality Fee Act, the Town intends to finance certain Projects and/or refinance the 2004 Certificates with a portion of the proceeds from the Bonds.

(j) The 2004 Installment Sale Agreement provides that, upon compliance with certain conditions set forth therein, the Town may issue "Other Obligations" secured by a pledge of the Hospitality Fees junior and subordinate to the pledge thereof securing payment of amounts due under the 2004 Installment Sale Agreement. "Other Obligations" are defined in the 2004 Installment Sale Agreement as any obligation of the Town constituting indebtedness under generally accepted accounting principles, and any other payment obligation with established or fixed annual or periodic payments, for the payment of which Hospitality Fees have been or are to be pledged. Bonds issued pursuant to this Ordinance and Supplemental Ordinances hereto shall qualify as "Other Obligations" as defined in the 2004 Installment Sale Agreement (for so long as the 2004 Certificates are outstanding under the 2004 Trust Agreement) provided such Bonds comply with the conditions with respect to "Other Obligations" set forth in the 2004 Installment Sale Agreement.

[End of Article II]

ARTICLE III

AUTHORIZATION AND ISSUANCE OF BONDS

Section 3.1. Authorization of Bonds. There is hereby authorized to be issued Bonds of the Town to be known as “Town of Hilton Head Island, South Carolina, Special Obligation Bonds (Hospitality Fee Pledge)” or such other designations as may be provided in the Supplemental Ordinance authorizing such Bonds, which Bonds may be issued pursuant to this Ordinance and in accordance with the terms, conditions and limitations set forth herein; in Series; and in such amounts and from time to time as the own may deem to be necessary or advisable for any corporate purpose of the Town and Project for which Bonds may be issued under this Ordinance, the Bond Act and the Hospitality Fee Act.

Section 3.2. General Provisions For Issuance of Bonds. (a) The Bonds shall be issued in Series by means of Supplemental Ordinances enacted by the Council in accordance with the provisions of this Article and Article IX hereof. Each Supplemental Ordinance shall designate the Bonds provided thereby with an appropriate Series designation and with such further particular designations, if any, as the Town deems appropriate. Each Supplemental Ordinance shall, unless or except as is otherwise set forth herein, also specify: (i) the authorized principal amount of such Series of Bonds; (ii) the purpose or purposes for which the Bonds of such Series are being issued, which shall be one or more of the purposes set forth in Sections 3.3 or 3.4 hereof; (iii) if the Bonds of the Series are being issued for a purpose specified in Section 3.3 hereof, the Project for which such Bonds are being issued; (iv) an estimate of the Costs of Acquisition and Construction for any Project, if any, to be financed by such Series of Bonds, and, in the event of the acquisition by purchase or condemnation of any facilities already constructed, a determination of what repairs, replacements, additions and betterments will be necessary in order that such facilities may be effective for their purpose and an estimate of the costs required therefor; (v) the date or dates of the Bonds of the Series; (vi) the maturity date or dates of the Bonds of the Series and the sinking fund installment amounts and due dates for the Term Bonds of the Series, if any; (vii) the interest rate or rates of the Bonds of such Series, or the manner of determining such rate or rates, the initial Interest Payment Date therefor, and the subsequent Interest Payment Dates; (viii) the denominations of (if other than as provided in this Ordinance), and manner of numbering and lettering, the Bonds of such Series; (ix) the redemption premium or premiums, if any, or the redemption price or prices to be paid upon the redemption of the Bonds of such Series, the period or periods, if any, during which such premiums or prices shall be payable, and the terms and conditions, if any, of such redemption; (x) the place or places of payment of the Bonds of the Series and interest thereon, and the Paying Agent and Registrar therefor and any Custodian of the funds and accounts created with respect thereto; (xi) the provisions for the sale or other disposition of the Bonds of the Series and the use, application and investment, if any, of the proceeds of such sale or other disposition, which use, application and investment shall not be inconsistent or in conflict with the provisions hereof; (xii) whether such Series of Bonds will be subject to a Reserve Fund Requirement and the manner of satisfaction of such Reserve Fund Requirement; (xiii) any other provisions which may be required to be inserted therein by other provisions of this Ordinance; and (xiv) any other necessary or desirable provisions not inconsistent or in conflict with the provisions of this Ordinance.

(b) Bonds of a Series may be executed and delivered to the Registrar by the Town and authenticated and delivered by the Registrar to the Town or, upon its order, upon compliance with Section 3.3 or 3.4 hereof.

Bonds issued upon compliance with this Section and Section 3.3 or Section 3.4 hereof shall be issued on a parity with the pledge of and lien upon the Hospitality Fees *inter sese*, but not with respect to the particular Debt Service Fund or Debt Service Reserve Fund (if any) created for the benefit of the Holders of the Bonds of a Series, in all respects *inter sese*, notwithstanding, that they may be in different form, and bear different dates, interest rates, number, date of issuance or date of execution or are payable at different times. In all such instances, the pledge of Hospitality Fees made hereunder, and the covenants and remedies hereby granted, shall be applicable and available to the Holders of such Bonds. Additionally, the pledge of Hospitality Fees for payment of Bonds issued hereunder shall be junior and subordinate in all respects to the pledge thereof for payment of Base Fee Payments and Additional Fee Payments, if any, due under the 2004 Installment Sale Agreement while the 2004 Certificates are outstanding.

Section 3.3. Conditions for the Issuance of Bonds under this Ordinance Other than Refunding Bonds or Junior Bonds. Any time and from time to time, one or more Series of Bonds (exclusive of refunding Bonds) may be issued for such purposes as may be permitted by the Bond Act and Hospitality Fee Act upon compliance with the provisions of Section 3.2 hereof and this Section in such principal amounts as may be determined by Council for the purpose of paying all or part of the Costs of Acquisition and Construction of one or more Projects authorized to be financed under the Bond Act and the Hospitality Fee Act with Bonds and upon compliance with the following conditions:

A. There shall be executed a certificate of the Town Manager of the Town stating (i) either (a) that no Default exists in the payment of Fee Payments (as defined in the 2004 Installment Sale Agreement) or the principal of, premium, if any, or interest on any Bonds or Junior Bonds and all mandatory sinking fund redemptions, if any, required to have been made shall have been made, or (b) that the application of the proceeds of sale of the Series of Bonds to be issued as required by the Supplemental Ordinance authorizing their issuance will cure any such Default or permit such redemptions; and (ii) either (a) that to the best of his or her knowledge, the Town is not in Default in the performance of any other of its covenants and agreements contained in this Ordinance, or (b) setting forth the circumstances of each such Default known to him or her.

B. If a certificate filed pursuant to part (A) of this Section should disclose a Default or Defaults hereunder, there shall be filed with the Town and the Trustee an opinion of Bond Counsel that, in the case of any Default disclosed in a certificate filed pursuant to part (A) of this Section, each such Default does not deprive the Bondholders of the security afforded by this Ordinance in any material aspect.

C. For the issuance of Bonds to finance the Costs of Acquisition and Construction, or a portion thereof, of any Project (other than the Series 2011 Bonds issued pursuant to this Ordinance and the First Supplemental Ordinance), there shall be delivered a report, which need not be based upon the latest available audit of the Town, from the Town Manager, to the effect that the amount of the Hospitality Fees collected by the Town during the Fiscal Year prior to the Fiscal Year in which

the Bonds are proposed to be issued is not less than 120% of the sum of the Maximum Annual Payments (as defined in the 2004 Installment Sale Agreement) relating to the 2004 Certificates and the Maximum Debt Service on Bonds then Outstanding and the Bonds then proposed to be issued.

D. Such Bonds shall be issued to secure funds to defray the Costs of Acquisition and Construction of a Project, or to refund Junior Bonds, or any other notes, bonds, or other obligations issued to finance or to aid in financing the acquisition, construction, improvement, enlargement or repair of Projects.

E. The Supplemental Ordinance may provide for a deposit into the Debt Service Reserve Fund established with respect to such Series of Bonds, if any, of cash or securities or an insurance policy, surety bond or letter of credit, as provided in Section 6.7 hereof (inclusive of any proceeds of such Series of Bonds to be deposited in the applicable Debt Service Reserve Fund) having an aggregate value not less than the Reserve Fund Requirement, if any, with respect to such Series of Bonds.

Section 3.4. Refunding Bonds. Without complying with the provisions of Section 3.3 hereof except as otherwise provided herein, for the issuance of refunding Bonds (other than the Series 2011 Bonds issued under this Ordinance and the First Supplemental Ordinance), the Town by means of a Supplemental Ordinance enacted in compliance with the procedures of the Bond Act, the Hospitality Fee Act, and any other statutory provisions authorizing the issuance of refunding bonds, including advance refunding bonds, may issue hereunder refunding Bonds as follows:

A. Bonds may be issued for the purpose of refunding (including by purchase) at any time within one year prior to maturity or prior to any sinking fund installment due date, the Bonds maturing on such date (or an amount of such bonds subject to redemption from such sinking fund installments not in excess of the amount of such Bonds required to be redeemed on such due date) for the payment of which sufficient Hospitality Fees are not available. Any Bonds issued for such purpose shall mature (or sinking fund installments therefor shall commence) not earlier than the latest stated maturity of the Bonds not then refunded to be Outstanding after such refunding; or

B. Bonds may be issued at any time for the purpose of refunding (including by purchase) other Bonds, Junior Bonds, or some or all of the 2004 Certificates, including amounts to pay principal, redemption premium and interest to the date of redemption (or purchase) of the refunded Bonds or the refunded 2004 Certificates provided that (i) the aggregate Debt Service on all Bonds and the debt service requirements of the 2004 Certificates to be Outstanding after the issuance of the proposed Series of refunding Bonds shall not be greater than would have been prior to such issuance; or (ii) the requirements of parts (A), (B), (C) and (E) of Section 3.3 hereof are met with respect to the refunding Series.

Section 3.5. Junior Bonds. The Town may at any time issue Junior Bonds in such amount as it may from time to time determine, payable from Hospitality Fees, provided that such Junior Bonds are issued to secure funds to defray the costs of acquisition and construction of Projects or some part thereof, or to refund Bonds, Junior Bonds, 2004 Certificates, or any notes, bonds, or other obligations issued to finance or to aid in financing the costs of acquisition and construction of Projects, and provided further that the pledge of and lien on Hospitality Fees securing Junior Bonds

shall at all times be subordinate and inferior to the pledge of and lien on Hospitality Fees securing the Bonds.

[End of Article III]

ARTICLE IV

THE BONDS

Section 4.1. Execution. Unless or except as is otherwise set forth in the Supplemental Ordinance providing for the issuance of a Series of Bonds, the Bonds shall be executed on behalf of the Town by the Mayor of the Town by his or her manual or facsimile signature and the corporate seal of the Town, or a facsimile thereof shall be impressed or reproduced thereon and attested by the Town Clerk by his or her manual or facsimile signature.

In case any officer whose signature or facsimile signature shall appear on the Bonds shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, as if he had remained in office until delivery.

Section 4.2. Authentication. Unless or except as is otherwise set forth in the Supplemental Ordinance providing for the issuance of a Series of Bonds, upon compliance with the provisions of Section 3.3 or 3.4 hereof and upon the order of the Town, the Trustee shall authenticate Bonds authorized to be issued hereunder. Only such Bonds as shall have endorsed thereon a certificate of authentication duly executed manually by the Trustee shall be entitled to any right or benefit under this Ordinance. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Trustee, and such executed certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered. The Trustee's certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized officer of the Trustee, but it shall not be necessary that the same person sign the certificate of authentication on all of the Bonds issued hereunder or on all of the Bonds of a particular Series.

Section 4.3. Registration and Transfer of Bonds; Persons Treated as Holders. Unless and except as is otherwise set forth in the Supplemental Ordinance providing for the issuance of a Series of Bonds, each Bond shall be fully registered and transferable only upon the Books of Registry of the Town, which shall be kept for that purpose at the office of the Registrar by the Holder thereof or by his attorney, duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Holder or his or her duly authorized attorney with such signature guaranteed by a participant in the Securities Transfer Agents in Medallion Program ("STAMP") or similar program. Upon the transfer of any Bond, the Town shall issue, subject to the provisions of Section 4.6 hereof, in the name of the transferee, a new Bond or Bonds of the same series and of the same aggregate principal amount, interest rate and maturity as the unpaid principal amount of the surrendered Bond.

Any Bondholder requesting any transfer shall pay any tax or other governmental charge required to be paid with respect thereto. As to any Bond, the person in whose name the same shall be registered shall be deemed and regarded as the Holder and absolute owner thereof for all purposes, and payment of or on account of the principal, redemption premium, if any, and interest on any Bond shall be made only to or upon the order of the Bondholder thereof, or his duly authorized attorney, and neither the Town nor the Registrar shall be affected by any notice to the contrary, but such registration may be changed as herein provided. All such payments shall be valid

and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

Section 4.4. Form of Bonds; Denominations; Medium of Payment. Unless or except as is otherwise provided in the Supplemental Ordinance authorizing their issuance, the Bonds of each Series: (a) shall be in fully registered form without coupons, provided such Bonds may be issued in book-entry form; (b) shall be issued in denominations of \$5,000, or any integral multiple thereof, provided that, upon partial redemption of a Bond requiring surrender thereof and the issuance of a new Bond, such new Bond may be in the denomination of the unredeemed balance; and (c) shall be payable with respect to principal, interest, and premium, if any, in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

Section 4.5. Numbers, Date, and Payment Provisions. The Bonds shall be numbered and designated in such manner as the Town, with the concurrence of the Trustee, shall determine. Each Bond of a Series shall bear interest from the Interest Payment Date immediately preceding the date of its authentication, unless authentication shall be upon an Interest Payment Date, in which case it shall bear interest from its authentication, or unless authentication shall precede the first Interest Payment Date for such Bond, in which case it shall bear interest as otherwise provided in the Supplemental Ordinance authorizing its issuance, provided, however, that if the date of authentication of any Bond of any Series is after a Record Date and before the corresponding Interest Payment Date therefore, such Bond shall bear interest from such succeeding Interest Payment Date; notwithstanding the foregoing, if at the time of authentication of any Bond any interest on such Bond is in default, such Bond shall bear interest from the date to which interest on such Bond has been paid or if no interest has been paid, such Bond shall bear interest from the date of delivery thereof or from its dated date, or as otherwise provided in the Supplemental Ordinance authorizing the issuance of such Bonds.

Section 4.6. Exchange of Bonds. Unless or except as is otherwise provided in the Supplemental Ordinance authorizing their issuance Bonds, upon surrender thereof at the office of the Registrar with a written instrument of transfer satisfactory to the Registrar, duly executed by the Bondholder or his duly authorized attorney with such signature guaranteed by a participant in STAMP or similar program, may, at the option of the Bondholder thereof, and upon payment by such Bondholder of any charges which the Registrar may make as provided in Section 4.7, be exchanged for a principal amount of Bonds of the same Series and maturity of any other authorized denomination equal to the unpaid principal amount of surrendered Bonds.

Section 4.7. Regulations with Respect to Exchanges and Transfer. In all cases in which the privilege of exchanging or transferring Bonds is exercised, the Town shall execute and the Trustee shall authenticate and deliver Bonds in accordance with the provisions of this Ordinance or such Supplemental Ordinance authorizing the issuance thereof. All Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Trustee. There shall be no charge to the Bondholder for such exchange or transfer of Bonds except that the Trustee may make a charge sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or transfer. Neither the Town nor the Registrar shall be required (a) to exchange or transfer Bonds (i) from the Record Date to the succeeding Interest Payment Date or (ii) for a

period of fifteen (15) days following any selection of Bonds to be redeemed or thereafter until after the first publication or mailing of any notice of redemption, or (b) to transfer any Bonds called for redemption.

Section 4.8. Mutilated, Lost, Stolen or Destroyed Bonds. In case any Bond shall at any time become mutilated in whole or in part, or be lost, stolen or destroyed, or be so defaced as to impair the value thereof to the Holder, the Town shall execute and the Trustee shall authenticate and deliver at the principal office of the Trustee, or send by registered mail to the Holder thereof at his request, risk and expense a new Bond of the same series, interest rate and maturity and of like tenor and effect in exchange or substitution for and upon the surrender for cancellation of such defaced, mutilated or partly destroyed Bond, or in lieu of or in substitution for such lost, stolen or destroyed Bond. In any such event, the applicant for the issuance of a substitute Bond shall furnish the Town and the Registrar (a) evidence or proof satisfactory to the Town and the Registrar of the loss, destruction, mutilation, defacement or theft of the original Bond, and (b) of the ownership thereof, and (c) such security and indemnity as may be required by the laws of the State or such greater amount as may be required by the Town and the Registrar. Any duplicate Bond issued under the provisions of this Section in exchange and substitution for any defaced, mutilated or partly destroyed Bond or in substitution for any allegedly lost, stolen or wholly destroyed Bond shall be entitled to the identical benefits under this Ordinance or any Supplemental Ordinance as was the original Bond in lieu of which such duplicate Bond is issued, and shall be entitled to equal and proportionate benefits with all the other Bonds of the same series issued hereunder. Neither the Town nor the Registrar nor any Paying Agent shall be required to treat both the original Bond and any duplicate Bond as being Outstanding for the purpose of determining the principal amount of Bonds which may be issued hereunder or for the purpose of determining any percentage of Bonds Outstanding hereunder, but both the original and duplicate Bond shall be treated as one and the same. In the event any such mutilated, lost, stolen or destroyed Bond shall have matured, instead of issuing a duplicate Bond the Town may pay the same.

All expenses necessary for the providing of any duplicate Bond shall be borne by the applicant therefor.

[End of Article IV]

ARTICLE V

REDEMPTION OF BONDS

Section 5.1. Redemption of Bonds. The Bonds of a Series may be subject to redemption prior to their stated maturities upon such terms and conditions and at such dates and redemption price or prices or premium or premiums as shall be set forth in the Supplemental Ordinance providing for the issuance of such Bonds, and upon the further terms and conditions as are hereinafter set forth.

Section 5.2. Selection of Bonds for Redemption. In the event of the redemption at any time of only part of the Bonds of a Series, the Bonds to be redeemed shall be redeemed in such order as is set forth in the Supplemental Ordinance providing for the issuance of such Bonds. Unless otherwise provided by Supplemental Ordinance, if less than all of the Bonds of like maturity of any Series shall be called for prior redemption, the particular Bonds or portions of Bonds to be redeemed shall be selected by lot by the Trustee; provided, however, that the portion of any Bond of a denomination of more than \$5,000 to be redeemed shall be in the principal amount of \$5,000 or an integral multiple thereof, and that, in selecting portions of such Bonds for redemption, the Registrar shall treat each such Bond as representing that number of Bonds of \$5,000 denomination which is obtained by dividing the principal amount of such Bond by \$5,000.

Section 5.3. Notice of Redemption. Unless or except as otherwise provided in the Supplemental Ordinance authorizing their issuance, the provisions of this Section 5.3 apply to each Series of Bonds.

In the event any of the Bonds or portions thereof are called for redemption, the Trustee shall give notice, in the name of the Town, of redemption of Bonds by first-class mail, postage prepaid, to the Holder thereof as shown on the Books of Registry not less than 30 days and not more than 60 days prior to the date fixed for the redemption thereof. Such notice of redemption shall state: (a) the title of such Bonds to be redeemed, CUSIP numbers, if any, date of issue, the series designation (if any) thereof, the redemption date, the place or places of redemption and the redemption price or redemption premium, if any, payable upon such redemption; (b) if less than all such Bonds of a particular Series are to be redeemed, the distinctive number of such Bonds to be redeemed; (c) that the interest on such Bonds designated for redemption in such notice shall cease to accrue from and after such redemption date; and (d) that on such date there will become due and payable on each such Bond the principal amount thereof to be redeemed at the then applicable redemption price or redemption premium, if any, and the interest accrued on such principal amount to the redemption date. Any notice mailed as provided in this Section shall be conclusively presumed to have been duly given, when mailed, whether or not the Holder thereof receives the notice. The notice shall further state that if money for the redemption of all the Bonds being redeemed at that time is held by the Trustee on the redemption date, interest shall cease to accrue on such Bonds on and after the redemption date. The notice may further state that the redemption of the Bonds being called for redemption is conditioned upon the Trustee receiving on or before the redemption date of sufficient money for the redemption thereof.

Section 5.4. Partial Redemption of Bond. In the event that only part of the principal sum of a Bond shall be called for redemption or prepaid, payment of the amount to be redeemed or prepaid shall be made only upon surrender of such Bond to the Registrar. Upon surrender of such Bond, the Town shall execute and the Trustee shall authenticate and deliver to the Holder thereof, at the principal office of the Trustee, or send to such Holder by registered mail at his request, risk and expense, a new fully executed Bond or Bonds, of authorized principal sums equal in aggregate principal amount to, and of the same Series, maturity and interest rate as, the unredeemed portion of the Bond surrendered.

Section 5.5. Effect of Redemption. If a Bond is subject by its terms to redemption prior to its stated maturity and has been duly called for redemption and notice of the redemption thereof has been duly given as hereinbefore provided and if moneys for the payment of such Bond at the then applicable redemption price or together with the then applicable redemption premium, if any, and the interest to accrue to the redemption date on such Bond are held for the purpose of such payment by the Trustee for the series of Bonds of which such Bond is one, then such Bond so called for redemption shall, on the redemption date designated in such notice, become due and payable. Interest on the Bond so called for redemption shall cease to accrue.

Section 5.6. Cancellation. All Bonds which have been redeemed shall be canceled and either maintained or destroyed by the Registrar and shall not be reissued. A counterpart of the certificate of destruction evidencing such destruction shall be furnished by the Registrar to the Town upon the written request of the Town.

[End of Article V]

ARTICLE VI

ESTABLISHMENT OF FUNDS; SECURITY FOR AND PAYMENT OF THE BONDS; INVESTMENT OF MONEYS

Section 6.1. Listing of Funds and Accounts. In addition to the Hospitality Fee Fund (created and established pursuant to the Hospitality Fee Ordinance), the following are the funds created and established by this Ordinance:

- (i) Debt Service Fund for each Series of Bonds to be held by the Trustee, including an Interest Account, Principal Account and Bond Redemption Account.
- (ii) Debt Service Reserve Fund for each Series of Bonds, if any, to be held by the Trustee.
- (iii) Construction Fund, if applicable, for each Series of Bonds to be held by the Town or a bank or financial institution (a "Custodian") designated by the Town.
- (iv) One or more accounts may, by written direction of the Town or by the terms of a Supplemental Ordinance, be established within any of the above funds.

It is intended by this Ordinance that the funds and accounts referred to in this Article (other than the Construction Fund) shall remain in existence for so long a time as any sum remains due and payable by way of principal of and interest on the Bonds, and that deposits and withdrawals therefrom be made in the manner herein prescribed and in the order of priority hereinafter set forth in Section 6.2 hereof.

Section 6.2. Disposition of Hospitality Fees. The Hospitality Fees shall be applied in the amounts, if any, and for the purposes as provided or permitted by this Ordinance, and in the following order of priority:

First, there shall be transferred to the Trustee (as defined in the 2004 Trust Agreement) the amounts, if any, when and as required by the 2004 Installment Sale Agreement;

Second, there shall be transferred into the respective Debt Service Funds, the amounts required by this Ordinance or any Supplemental Ordinance;

Third, there shall be transferred into the respective Debt Service Reserve Funds, the amounts (including any payments required under the terms of any surety bond, insurance policy or letter of credit applicable thereto) required by this Ordinance or any Supplemental Ordinance;

Fourth, provision shall be made for payment of interest on amounts advanced by the provider of any surety bond, line of credit, insurance policy or letter of credit as contemplated in Section 6.7 hereof;

Fifth, provisions shall be made for the payment of any Junior Bonds; and

Sixth, the remaining Hospitality Fees shall be disposed of as provided in Section 6.9 hereof.

Section 6.3. Security for and Payment of the Bonds. Each Series of Bonds, together with the interest thereon, shall be payable solely from and secured equally and ratably by a pledge of the Hospitality Fees which shall be and hereby are irrevocably pledged to the payment of the principal of, redemption premium, if any, and interest on any Series of Bonds authorized by the Supplemental Ordinances; provided, however, that (1) for so long as the 2004 Certificates are outstanding, such pledge of Hospitality Fees shall be junior and subordinate in all respects to the pledge thereof securing the Town's obligations to pay Base Fee Payments and Additional Fee Payments under the 2004 Installment Sale Agreement; (2) funds held by the Trustee in the respective Debt Service Funds and Debt Service Reserve Funds are hereby pledged for the benefit of the respective Bondholders as security for the Bonds of the Series to which such funds relate; and (3) this provision shall not preclude the issuance of Junior Bonds if such Junior Bonds be issued in conformity with the provisions of Section 3.5 hereof, but the pledge herein made shall preclude the issuance of bonds payable from or secured by a pledge of or lien on Hospitality Fees superior to that herein made to secure the Bonds.

The Bonds do not constitute an indebtedness of the Town within any State constitutional provision (other than Article X, Section 14, Paragraph 10 of the South Carolina Constitution authorizing obligations payable solely from special sources not involving revenues from any tax or license) or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Town or a charge against its general credit or taxing power. The full faith, credit and taxing powers of the Town are not pledged to the payment of the principal of and interest on the Bonds.

The covenants and agreements herein set forth to be performed by the Town shall be for the equal and proportionate benefit, security and protection of all Holders of the Bonds without preference, priority or distinction as to payment or security or otherwise (except as to maturity) of any of the Bonds for any reason or cause whatsoever, except as expressly provided herein or in the Bonds. Except as aforesaid, all Bonds shall rank *pari passu* and shall be secured equally and ratably hereunder without discrimination or preference whatsoever.

Section 6.4. Accounting Methods. The designation of the Hospitality Fee Fund referenced in and by this Ordinance shall not be construed to require the establishment of any completely independent, self-balancing funds as such term is commonly defined and used in governmental accounting, but rather is intended solely to constitute an earmarking of the Hospitality Fees for certain purposes and to establish certain priorities for application of such Hospitality Fees as herein provided.

The cash required to be accounted for in the Hospitality Fee Fund referenced herein may be deposited in a single bank account, into which Hospitality Fees shall be deposited, provided that adequate accounting records are maintained to reflect and control the restricted allocation of the cash in and deposited therein for the various purposes of such funds as provided herein.

Section 6.5. Hospitality Fee Fund. Pursuant to the Hospitality Fee Ordinance, there has been established and is hereby referenced a Hospitality Fee Fund to be maintained by a bank or other financial institution designated, from time to time, by the Town and into which shall be deposited all Hospitality Fees. Moneys in the Hospitality Fee Fund shall be used only in the manner specified in this Article VI and the Hospitality Fee Ordinance and in the order of priority set forth in Section 6.2 hereof. Moneys held in the Hospitality Fee Fund may be invested, from time to time, in Permitted Investments; provided, however, that such Hospitality Fees in the Hospitality Fee Fund shall be transferred to the Trustee (as defined in the 2004 Installment Sale Agreement) and the Trustee, when and as required and in the amounts, if any, required to be made by this Article VI, each Supplemental Ordinance and the Hospitality Fee Ordinance.

Section 6.6. Debt Service Funds. There shall be established and maintained special funds of the Town to be designated the Debt Service Fund for each Series of Bonds then Outstanding which shall be kept on deposit with the Trustee, and withdrawals therefrom shall be made for the purposes provided in this Ordinance. Each Debt Service Fund shall bear a separate series designation as may be necessary to distinguish such Debt Service Fund.

The respective Debt Service Funds are intended to provide for the payment of the principal of, redemption premium, if any, and interest on each Series of Bonds as the same respectively fall due. Payments into such Funds shall be made in the manner prescribed by this Ordinance and all moneys in the respective Debt Service Funds shall be used solely to pay the principal of, redemption premium, if any, and interest on the respective Series of Bonds, and for no other purpose, and withdrawals therefrom shall be made only to effect payment of the principal of, redemption premium, if any, and interest on the respective Series of Bonds. Earnings on investments in the Debt Service Fund, including the accounts therein, shall be added to and become a part of such respective Funds and the accounts therein.

The Town shall transfer or cause to be transferred to the Trustee from the Hospitality Fee Fund for deposit into the respective Debt Service Funds and ratably with respect to separate Series of Bonds for credit to the Interest Account, the Principal Account or the Bond Redemption Account, as the case may be, sufficient moneys so as to comply with the following provisions for the payment of the Bonds then Outstanding.

(a) *Interest Account.* There shall be established and maintained for the purpose of paying the interest on each Series of Bonds as the same becomes due and payable an Interest Account in the respective Debt Service Funds. Not later than five (5) Business Days prior to each Interest Payment Date, the Trustee shall transfer or allocate for credit to the Interest Account an amount received from the Town derived from Hospitality Fees equal to the installment of interest then falling due on the respective Series of Bonds then Outstanding. To the extent moneys derived from other sources have been transferred or allocated for credit to the Interest Account on or before five (5) Business Days prior to each Interest Payment Date, the amount of Hospitality Fees to be transferred or allocated for credit to such Interest Account shall be reduced or eliminated by the amount of such moneys transferred or allocated for credit to the Interest Account.

(b) *Principal Account.* There shall be established and maintained for the purpose of paying the principal of each Series of Bonds as they mature a Principal Account in the respective Debt Service Funds. Not later than five (5) Business Days prior to each Principal Payment Date, the Trustee shall transfer or allocate to the credit of the Principal Account an amount received from the Town derived from Hospitality Fees equal to the installment of principal on the respective Series of Bonds then falling due. To the extent moneys derived from other sources have been transferred or allocated for credit to the Principal Account on or before five (5) Business Days prior to each Principal Payment Date, the amount of Hospitality Fees to be transferred or allocated for credit to such Principal Account shall be reduced or eliminated by the amount of such moneys transferred or allocated for credit to the Principal Account.

(c) *Bond Redemption Account.* There shall be established and maintained, in order to meet the specified sinking fund installment requirements of Term Bonds and to otherwise retire Term Bonds prior to maturity, a Bond Redemption Account in the respective Debt Service Fund. Not later than five (5) Business Days prior to the date a sinking fund installment of Term Bonds of each Series falls due, the Trustee shall allocate to the credit of the Bond Redemption Account amounts received from the Town derived from Hospitality Fees equal to the sinking fund installment of principal then falling due on the respective Series of Term Bonds then Outstanding. To the extent moneys derived from other sources have been transferred or allocated for credit to the Bond Redemption Account on or before five (5) Business Days prior to the date a sinking fund installment of Term Bonds of a Series falls due, the amount of Hospitality Fees to be transferred or allocated for credit to such Bond Redemption Account shall be reduced or eliminated by the amount of such moneys transferred or allocated for credit to the Bond Redemption Account. The Trustee shall apply the moneys credited to the Bond Redemption Account as sinking fund installments to the retirement of the Term Bonds of each respective Series by redemption in accordance with the Supplemental Ordinance providing for the issuance of such Series of Bonds, without further authorization or direction, on each date upon which a sinking fund installment is due with respect to the Term Bonds of such Series. The Trustee shall keep and retain accurate records of application of each deposit of funds under this paragraph (c). The Trustee shall give notice of all such redemptions in the name and on the behalf of the Town in accordance with the provisions of Article V hereof. In making any of the deposits to the Bond Redemption Account required by this paragraph (c), consideration shall be given to and allowance made for any other credits otherwise made to such Bond Redemption Account.

(d) If, on the dates when the payments required by paragraphs (a), (b) and (c) of this Section are to be made, the payments actually made pursuant to said paragraphs (a), (b) and (c), are less than the sum required to effect the payment of the succeeding installment of principal or interest, or both, as the case may be, moneys in the applicable Debt Service Reserve Fund, if any, equal to such deficiency shall be added to the payment to be made pursuant to said paragraphs (a), (b) and (c). In the event of such transfer, the Trustee shall promptly give telephonic notice of such transfer to the Town and, within ten days after making the transfer, provide written notice to the Town of the amount and date of such transfer.

Moneys in the respective Debt Service Funds shall be used and applied solely to the payment of the interest on and the retirement of the principal of and redemption premium, if any, on the respective Series of Bonds and shall be used and applied in accordance with the provisions of

this Section 6.6 and this Ordinance and the Supplemental Ordinance providing for the issuance of such Series of Bonds. The moneys paid into the respective Debt Service Fund shall be held by the Trustee in trust solely for the purpose of paying the interest on and the retirement of the principal of and redemption premium, if any, on the respective Series of Bonds. Withdrawals from such Funds shall be made by the Trustee in order to transfer such moneys to the Paying Agent for the respective Series of Bonds. Such withdrawals shall be made so that the necessary moneys shall be available to the Paying Agent not later than one (1) Business Day prior to the day on which principal or interest or both, and redemption premium, if any, as the case may be, are payable on the Bonds.

Section 6.7. Debt Service Reserve Fund. (a) A Supplemental Ordinance may provide for the establishment of a Debt Service Reserve Fund for any Series of Bonds. Each Debt Service Reserve Fund shall bear a separate Series designation as may be necessary to distinguish such Debt Service Reserve Fund and shall, subject to certain provisions of this Ordinance, be maintained in an amount equal to the applicable Reserve Fund Requirement, as determined pursuant to a Supplemental Ordinance, and in the manner determined pursuant to such Supplemental Ordinance, so long as the applicable Series of Bonds shall be Outstanding. Each such Fund is intended to insure the timely payment of the principal of and interest on the applicable Series of Bonds and to provide for the redemption of such Series of Bonds prior to their stated maturities. The respective Debt Service Reserve Funds shall be kept on deposit with the Trustee, and withdrawals therefrom shall be made for the purposes provided in this Ordinance.

(b) Moneys in each Debt Service Reserve Fund shall be used for the following purposes, and for no other:

(1) To prevent a Default in the payment of the principal of or interest on the applicable Series of Bonds, by reason of the fact that moneys in the applicable Debt Service Fund are insufficient for such purposes;

(2) To pay the principal of, interest on, and redemption premium, if any, of the applicable Series of Bonds in the event that all Outstanding Bonds of such Series be redeemed as a whole;

(3) To effect partial redemption of the applicable Series of Bonds, provided that such redemption be undertaken in accordance with the provisions of this Ordinance permitting a partial redemption of the applicable Series of Bonds and the balance remaining in the applicable Debt Service Reserve Fund following such partial redemption shall not be less than the Reserve Fund Requirement; or

(4) To effect the retirement of a Series of Bonds through purchase under the conditions herein prescribed.

(c) Unless otherwise provided in a Supplemental Ordinance, whenever the market value (determined as of the valuation dates and in accordance with the method specified in Section 6.10 hereof) of the cash and securities in the applicable Debt Service Reserve Fund shall exceed the Reserve Fund Requirement, such excess may at the written direction of the Town (i) be used to repurchase and retire the applicable Series of Bonds at prices not exceeding the call price first to

become available or then prevailing; (ii) be deposited as the Town deems advisable; or (iii) be transferred to the Hospitality Fee Fund or, at the option of the Town, to the Construction Fund during the period of construction or acquisition of a Project. Purchases of Bonds shall be effected by the Town through the Trustee, and whenever Bonds shall have been purchased pursuant to this authorization, it shall be the duty of the Registrar to cancel and destroy such Bonds and to deliver certificates evidencing such act to the Town.

(d) Unless otherwise provided in a Supplemental Ordinance, if the Trustee sends written notice to the Town stating that a deficiency exists in the applicable Debt Service Reserve Fund (whether due to a transfer therefrom pursuant to Section 6.6(d) or a valuation thereof determined as of the valuation dates and in accordance with the method specified in Section 6.10 hereof), then (1) there shall be deposited from available Hospitality Fees into the applicable Debt Service Reserve Fund over the next succeeding six (6) months, successive equal monthly installments of the amount necessary to re-establish in the applicable Debt Service Reserve Fund its respective Reserve Requirement (upon receipt of each of which installments, the Trustee shall promptly send an updated written notice to the Town as to the remaining deficiency therein) and (2) the Town agrees to pay, prior to the next Interest Payment Date, an amount equal to such shortfall; provided, however, that the Town's obligation to make such payment shall be subject to Council, by ordinance duly enacted, appropriating moneys from sources or funds lawfully available for such purpose moneys sufficient to pay the shortfall. The Town understands and agrees that the payment obligation described in this paragraph shall constitute a current expense of the Town and shall not in any way be construed to be a debt of the Town in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness of the Town, nor shall anything contained herein constitute a pledge of the general tax revenues, funds, moneys or credit of the Town. Any such budgetary appropriation, notwithstanding any provision of this Ordinance to the contrary, shall not constitute a default or Event of Default under this Ordinance.

(e) In lieu of the deposit of moneys into the Debt Service Reserve Fund established with respect to any Series of Bonds to meet the Reserve Fund Requirement with respect to that Series, the Town may cause to be credited a surety bond or an insurance policy payable to, or a letter of credit in favor of, the Trustee for the benefit of the Holders of the Bonds meeting the standard set forth in the Supplemental Ordinance authorizing that Series of Bonds, as the case may be. The amount of moneys required to be deposited to the Debt Service Reserve Fund shall be reduced by the amount of the surety bond, insurance policy, or letter of credit. The surety bond, insurance policy, or letter of credit shall be payable (upon the giving of notice as required thereunder) on any Interest Payment Date on which moneys will be required to be withdrawn from the Debt Service Reserve Fund and applied to the payment of the principal of or interest on any Bonds of that Series but only to the extent that withdrawals cannot be made by amounts then credited to the Debt Service Reserve Fund.

If the Town obtains a surety bond, insurance policy or letter of credit in substitution for moneys deposited to the applicable Debt Service Reserve Fund as may be permitted under the applicable Supplemental Ordinance, excess moneys in the respective Debt Service Reserve Funds shall be transferred, at the written direction of the Town, to the applicable Construction Fund, or if one does not exist, be deposited as the Town deems advisable.

Section 6.8. Establishment of Construction Fund. There shall be established with the Custodian a Construction Fund with respect to each Series of Bonds (other than for Bonds issued pursuant to Section 3.4 hereof, if applicable) in the Supplemental Ordinance providing for their issuance, the moneys in which shall be used to defray the costs of any Project and to pay any Costs of Acquisition and Construction with respect to the facilities so financed. On the occasion of the delivery of any Series of Bonds, the proceeds therefrom shall be paid into the Construction Fund established for such Series as set forth in a Supplemental Ordinance authorizing their issue. Withdrawals from the Construction Fund shall not be made except as provided in the Supplemental Ordinance establishing such Construction Fund.

There may be established in a Construction Fund from time to time a capitalized interest account to provide for the payment of interest on the related Series of Bonds as may be permitted hereunder. Any such account shall be created by a Supplemental Ordinance relating to the issuance of the Bonds of such Series. Any earnings from the investment of funds in the capitalized interest account not required to pay interest on the Bonds of any Series during the period for which interest on the Bonds of such Series is capitalized shall be deposited in the Construction Fund created by the Supplemental Ordinance relating to such Bonds or, if such Construction Fund has been terminated, such earnings shall be transferred to the appropriate Debt Service Fund.

Section 6.9. Distribution of Remaining Hospitality Fees. After making payments of (i) amounts due pursuant to the 2004 Installment Sale Agreement, (ii) amounts required to be deposited into the applicable Debt Service Funds, and (iii) amounts required to be deposited into the applicable Debt Service Reserve Funds, remaining Hospitality Fees shall then be used, first, for payment of interest on amounts advanced by the provider of any surety bond, line of credit, insurance policy or letter of credit as contemplated by Section 6.7 hereof; second, for the payment of Junior Bonds or to meet any other obligations of the Town which are or which shall become charges, liens or encumbrances upon the Hospitality Fees; and third, disposed of by the Town as it may determine from time to time to be for any lawful purpose under the Hospitality Fee Act and the Hospitality Fee Ordinance.

Section 6.10. Investment of Funds. Moneys held for the credit of the respective Debt Service Funds, Debt Service Reserve Funds and any other funds and accounts established by this Ordinance shall be invested, to the fullest extent practicable and reasonable, in Permitted Investments. Any investment of money held to the credit of the above-mentioned funds and accounts shall mature, be available or be redeemable at the option of the owner or holder thereof at such times and in such amounts as shall be required to provide moneys to make the payments required to be made from such funds. Written investment instructions shall be given to the Trustee and the Custodian by a Town Representative.

The Trustee shall evaluate on a semi-annual basis (initially, ten days prior to the first Interest Payment Date applicable to a Series of Bonds) Permitted Investments in the Debt Service Reserve Fund, if any, established by this Ordinance and promptly send written notice of such valuation to the Town within ten days of such valuation. Until changed pursuant to written instructions from the Town, such valuation shall be made not less than two times each calendar year. The Trustee shall provide written notice to the Town of any deficiency in the amount, if any, on deposit in the Debt Service Reserve Funds. Where the amount that exists in the Debt Service Reserve Funds is less

than the applicable Reserve Fund Requirement on the date of valuation by the Trustee, any moneys received by the Trustee and designated by the Town Representative as a payment made pursuant to Section 6.7(d) hereof shall be deposited in the applicable Debt Service Reserve Fund. Deficiencies in the amount on deposit in the Debt Service Reserve Funds resulting from a decline in market value shall be restored no later than the next succeeding valuation date.

The value of Permitted Investments shall be determined by the Trustee or the Custodian or other depository at the market value or the amortized cost thereof, whichever is lower, exclusive of accrued interest, provided, however, Permitted Investments in any Debt Service Reserve Fund shall be valued at the original cost thereof.

The Trustee may conclusively rely upon the Town's written instructions as to both the suitability and legality of the directed investments. In the absence of written investment instructions from the Town, the Trustee shall not be responsible or liable for keeping the moneys held by it hereunder fully invested in Permitted Investments. The Trustee may make any and all such investments through its own investment department or that of its affiliates or subsidiaries, and may charge its ordinary and customary fees for such trades. Broker confirmations of investments are not required to be issued by the Trustee to the Town for each month in which a monthly statement is rendered. No statement need be rendered for any fund or account if no activity occurred in such fund or account during such month. The Trustee shall not be accountable or liable for any depreciation in the value of any investments in any Funds or for any losses incurred upon the disposition thereof.

Notwithstanding anything contained herein to the contrary, the Trustee shall have no obligation to enter into any investment contract, forward delivery investment agreement, repurchase agreement contract or any similar agreements with respect to the investment of any monies held under the Ordinance unless (i) such agreement is in form and content reasonably acceptable to the Trustee in the course of ordinary business practice, (ii) any liability of the Trustee under such agreement is limited to loss occasioned by the gross negligence or willful misconduct of the Trustee, (iii) the Trustee is not liable under any circumstances for any termination or similar amount under such agreement; and (iv) the Town pays to the Trustee such fees and expenses as established by the Trustee from time to time.

Except as otherwise provided herein, all interest earnings on amounts in the Hospitality Fee Fund when realized shall be considered Hospitality Fees.

[End of Article VI]

ARTICLE VII

COVENANTS

Section 7.1. Pledge of Hospitality Fees for Payment of Bonds. The Town will not issue any obligations, the payment of which shall have any pledge of the Hospitality Fees prior or superior to the pledge thereof for the payment of the Bonds. In order to insure that the Town shall at all times required hereby have sufficient moneys available to pay Fee Payments under the 2004 Installment Sale Agreement, to deposit amounts, when and as required, into the respective Debt Service Funds and Debt Service Reserve Funds established for a Series of Bonds, to provide for payment of interest on amounts advanced pursuant to Section 6.7 and to provide for payment of Junior Bonds (all as described in Section 6.2 hereof), the Town covenants and agrees that it shall not at any time while any Bonds are outstanding reduce the amounts assessed for Hospitality Fees to a level not sufficient to permit the Town to discharge its obligations hereunder or otherwise require or permit Hospitality Fees (whether through a subsequent amendment of the Hospitality Fee Ordinance or otherwise) to be used or set aside except pursuant to or as permitted by Section 6.2 hereof.

Section 7.2 Covenant with Respect to 2004 Certificates. On and after the date of delivery of any of the Series 2011 Bonds issued pursuant to this Ordinance and the First Supplemental Ordinance, the Town covenants, agrees and confirms for the benefit of the Holders of the Bonds that it will not make any pledge of Hospitality Fees for the payment of Other Obligations (as defined in the 2004 Installment Sale Agreement) which are on a parity with the 2004 Certificates or any Additional Certificates (as defined in the 2004 Trust Agreement).

Section 7.3. To Pay Principal, Premium, and Interest on the Bonds. The Town covenants and agrees to punctually pay, or cause to be paid, out of the Hospitality Fees pledged to such payment in Article VI hereof, the principal of, redemption premium, if any, and the interest on each and every Bond issued under the provisions of this Ordinance, at the place, on the dates and in the manner provided herein.

Section 7.4. Records, Accounts and Audits. The Town covenants and agrees to keep proper books of records and accounts (separate from all other records and accounts), in which complete and correct entries shall be made of all transactions relating to the Hospitality Fees. Such records shall be kept in accordance with the standards from time to time prescribed by the Governmental Accounting Standards Board or its successor. The Town will cause to be furnished to any Holder of any of the Bonds, who makes written request therefore, copies of financial statements certified by an Accountant. The Trustee shall not be responsible for obtaining audits of the Town. Additionally, the Trustee shall have no duty to review or analyze any financial statements delivered to it hereunder and shall hold such financial statements solely as a repository for the benefit of the Bondholders; the Trustee shall not be deemed to have notice of any information contained therein or Event of Default which may be disclosed therein in any manner.

Section 7.5. Amendments of Hospitality Fee Ordinance.

(a) Section 4-13-80, "Permitted uses of funds," of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby is amended to add the following text in subsection (a)(3) thereof (added text appears in double underlined font):

- (3) The town shall set aside two (2) percent of the local hospitality taxes collected hereunder, subject to the ordinance or other legally binding obligation of the town authorizing the issuance of debt secured in whole or in part by the local hospitality tax, and shall deposit the same into an advertising account in the General Fund as identified in the Accounting and Financial Policies section of the annual budget as adopted by town council, with said funds to be utilized as provided therein.

(b) Section 4-13-80, "Permitted uses of funds," of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby is amended to add the following text as a new subsection (a)(4) thereof:

- (4) To pay principal, interest, redemption premium and any other costs associated with debt incurred for a purpose authorized herein.

(b) Section 4-13-80, "Permitted uses of funds," of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby is amended to add the following text in subsection (b) thereof (added text appears in double underlined font):

- (b) Authorization to utilize any funds from the town hospitality account as provided in section 4-13-80(a) shall be by annual budget ordinance duly adopted by the town council for the town, and as the same may be amended from time to time; provided, however, utilization of such funds to satisfy a pledge, covenant or other legally binding obligation incurred in connection with the issuance of debt to be repaid in whole or in part from the local hospitality tax shall not require approval in the annual budget ordinance.

(c) Section 4-13-110, "Sunset," of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby is amended to delete such section in its entirety.

[End of Article VII]

ARTICLE VIII

TRUSTEE; CUSTODIANS

Section 8.1. Trustee. The Council hereby designates Wells Fargo Bank, N.A. as Trustee under this Ordinance. On or prior to the delivery of the initial Series of Bonds, the Trustee shall signify its acceptance of the powers, duties and obligations conferred and imposed upon it by the Ordinance by executing and delivering to the Town a written instrument of acceptance.

The Trustee shall (a) prior to the occurrence of an Event of Default of which the Trustee has actual knowledge, and after the curing of all Events of Default which may have occurred, perform such duties and obligations as are specifically set forth in the Ordinance, and no implied covenants or obligations shall be read into the Ordinance against the Trustee, and (b) during the existence of any Event of Default of which the Trustee has actual knowledge (which has not been cured or waived) exercise the rights and powers vested in it by the Ordinance and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

No provisions of the Ordinance shall be construed to relieve the Trustee from liability for its own negligence, intentionally wrongful action or failure to act.

At all times, (1) the Trustee shall not be liable for any error of judgment made in good faith by an officer or employee of the Trustee unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; (2) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a majority (or such lesser percentage as is specifically required or permitted by this Ordinance) in the aggregate principal amount of the Bonds at the time Outstanding relating to the time, method and place of conducting a proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under the Ordinance; (3) in the administration of the trusts of this Ordinance, the Trustee may execute any of the trusts or powers hereof directly or through its agents or attorneys. The Trustee may consult with counsel and the opinion or advice of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel.

The Trustee may conclusively rely upon the authenticity of, and the truth of the statements and the correctness of the opinions expressed in, and shall be fully protected in acting upon any notice, Ordinance, request, consent order, certificate, report, opinion, note, or other paper or document furnished to it pursuant to any provision of this Ordinance, believed by it to be genuine and to have been signed and presented by the proper party.

The Trustee shall not be required to take notice or be deemed to have notice or actual knowledge of any Event of Default specified in Article X hereof other than a payment default under Sections 10.1.A or 10.1.B unless the Trustee shall receive from the Town or the registered owner of any Bond written notice stating that an Event of Default hereunder has occurred and

specifying the same, and, in the absence of such notice, the Trustee may conclusively assume that there is no such Event of Default.

The Trustee shall be entitled to payment of and reimbursement by the Town for reasonable fees for its services rendered hereunder and all advances and counsel fees, costs and expenses, reasonably and necessarily made or incurred by the Trustee in connection with such services. Additionally, the Town shall pay the Trustee for any extraordinary services or extraordinary expenses performed or incurred by the Trustee in connection with its duties under this Ordinance or any Supplemental Ordinance if notified in writing prior to the performance of those services or the incurring of those expenses so as to allow the Town to appropriate sufficient funds for their payment.

The Trustee shall not, in any event, be required to take, defend, or appear in any legal action or proceeding hereunder or to exercise any of the trusts or powers hereof unless it shall first be adequately indemnified to its satisfaction against the costs, expenses, and liabilities which may be incurred thereby. Every provision of the Ordinance relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions hereof.

The Trustee shall not be accountable for the use or application by the Town of any of the Bonds or the proceeds thereof or for the use or application of any money paid over by the Trustee in accordance with the provisions of this Ordinance or any Supplemental Ordinance. The permissive right of the Trustee to do things enumerated in this Ordinance or any Supplemental Ordinance shall not be construed as a duty and the Trustee shall not be answerable for other than its negligence or willful default. The Trustee shall have no responsibility with respect to any information, statement or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to any Bonds and shall have no responsibility for compliance with any state or federal securities laws in connection with any Bonds.

None of the provisions of this Ordinance or any Supplemental Ordinance shall require the Trustee to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it.

The Trustee shall not be responsible or liable for any failure or delay in the performance of its obligation under this Ordinance or any Supplemental Ordinance arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; hurricanes or other storms; wars; terrorism; similar military disturbances; sabotage; epidemic; riots; interruptions; loss or malfunctions of utilities, computer (hardware or software) or communications services; accidents; labor disputes; acts of civil or military authority or governmental action; it being understood that the Trustee shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

The Trustee is not required to make any inquiry or investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, approval, bond, debenture or other paper or document but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit and, if the Trustee determines to make such further inquiry or investigation, it is entitled to examine the books, records and premises of the Issuer and the Borrower, in person or by agent or attorney.

In the event the Trustee receives inconsistent or conflicting requests and indemnity from two or more groups of holders of Bonds, each representing less than a majority in aggregate principal amount of the Bonds Outstanding, pursuant to the provisions of this Ordinance, the Trustee, in its sole discretion, may determine what action, if any, shall be taken.

The Trustee shall not be (i) required to hold any policies of insurance, (ii) responsible for the filing of any documents, security agreements or financing statements regarding the creation or perfection of any interest in the Hospitality Fees or other security for the Bonds; and (iii) responsible for any information contained in any financing statements.

The Trustee's immunities and protections from liability in connection with the performance of its duties under this Ordinance shall extend to the Trustee's officers, directors, agents, attorneys and employees. Such immunities and protections, together with the Trustee's right to compensation, shall survive the Trustee's resignation or removal, the defeasance or discharge of this Ordinance and final payment of the Bonds.

The Trustee makes no representations as to the value, condition or sufficiency of any assets pledged or assigned as security for the Bonds, the right, title or interest of the Town therein, the security provided thereby or by the Ordinance or the tax-exempt status of the Bonds.

The Trustee may rely and is protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, approval, bond, debenture or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

Any request, direction, order or demand of the Town under this the Ordinance shall be sufficiently evidenced by a certificate of the Town Representative (unless other evidence thereof is specifically prescribed).

Whenever in the administration of the Ordinance the Trustee deems it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence thereof is specifically prescribed) may, in the absence of bad faith on its part, rely upon a certificate of the Town Representative.

The Trustee may in all cases pay such reasonable compensation as it deems proper to all agents, attorneys and receivers reasonably employed or retained by it, and the Trustee shall not be responsible for any misconduct or negligence of any agent, attorney or receiver appointed with due care by it.

The Trustee, in its commercial banking or in any other capacity, may in good faith buy, sell, own, hold and deal in any of the Bonds and may join in any action which any Bondholder may be entitled to take with like effect as if it were not Trustee. The Trustee, in its commercial banking or in any other capacity, may also engage in or be interested in any financial or other transaction with the Town and may act as depository, trustee or agent for any committee of Bondholders secured hereby or other obligations of the Issuer as freely as if it were not Trustee. The provisions of this Section shall extend to affiliates of the Trustee.

Whether or not expressly so provided, every provision of the Ordinance relating to the conduct or affecting the liability of or affording protection to the Trustee is subject to the provisions of this Article.

Section 8.2. Resignation of Trustee. The Trustee may resign at any time by giving 30 days written notice to the Town and by giving notice to the registered owners of the Bonds by publication of such resignation. No resignation will become effective until a successor Trustee has been appointed and accepts such appointment as provided below. Upon receiving notice of resignation, the Town shall promptly appoint such successor Trustee by an instrument in writing. In the event a successor Trustee has not been appointed within 60 days of the date notice of resignation is given, the Trustee, at the Town's expense, may apply to any court of competent jurisdiction for the appointment of a successor Trustee to act until such time as a successor is appointed as provided in this Section.

Unless otherwise ordered by a court or regulatory body having competent jurisdiction, or unless required by law, any successor Trustee shall, if there is such an institution willing, qualified and able to accept the trust upon reasonable or customary terms, be a bank, bank holding company or trust company or wholly-owned subsidiary of a bank holding company or trust company in good standing, qualified to act hereunder, and having a capital and earned surplus of not less than \$75,000,000.

Any successor Trustee appointed as provided in this section, shall execute, acknowledge and deliver to the Town and its predecessor Trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts, duties and obligations of its predecessor of the trust hereunder. Upon the request of any such successor Trustee, the Town shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and duties. Upon acceptance of appointment by a successor Trustee, the Town shall notify the registered owner of each Bond then Outstanding by first-class mail, postage prepaid.

The predecessor Trustee shall execute any and all documents reasonably necessary or appropriate to convey all interest it may have to the successor Trustee. The predecessor Trustee shall promptly transfer all funds to the successor Trustee and deliver all records relating to the trust or copies thereof and communicate all material information it may have obtained concerning the trust to the successor Trustee.

Any corporation or association into which the Trustee may be merged or with which it may be consolidated, or any corporation or association resulting from any merger, or any corporation or association succeeding to the business or substantially all of the business of the Trustee, shall be the successor of the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto.

Each, every and all funds and accounts held by the Trustee shall be impressed with a trust for the benefit of the registered owners of the Bonds, under the provisions of this Ordinance and of the Bond Act.

Section 8.3. Removal of Trustee. Upon 30 days written notice, the Town, at its sole discretion, provided that an Event of Default shall not have occurred and be continuing, may remove the Trustee. The removal of the Trustee under this Section 8.3 shall not be effective until a successor Trustee has been appointed and has accepted the duties of Trustee.

The Holders of a majority in aggregate principal amount of the Bonds at the time outstanding may, upon 30 days written notice to the Trustee and the Town, remove the Trustee and appoint a successor Trustee by instrument or instruments in writing signed by such Holders of the Bonds.

Section 8.4. Custodians. The Construction Fund shall at the option of the Town be held by a bank, a trust company, a national banking association or a national association as Custodian under this Ordinance or a Supplemental Ordinance.

Section 8.5. Duties and Obligations of Trustee and Custodians. The recitals of fact made in the Ordinance and in the Bonds shall be taken as statements of the Town, and neither the Trustee nor Custodian shall be deemed to have made any representation as to the correctness of the same. Nor shall the Trustee or any Custodian be deemed to have made any representation whatsoever as to the validity or sufficiency of the Ordinance or of the Bonds issued hereunder. Nor shall the Trustee or any Custodian be under any responsibility or duty with respect to the issuance of the Bonds or the application of the proceeds thereof, except to the extent provided for herein, or in a Supplemental Ordinance. Nor shall the Trustee or any Custodian be under any obligation or duty to perform any act which would involve it in expense or liability or to institute or defend any suit in response to the Ordinance, or to the Bonds issued hereunder, or to advance any of its own moneys, unless properly indemnified to its satisfaction. Nor shall the Trustee or any Custodian be liable in connection with the performance of its duties hereunder, except for its own negligence or default.

Section 8.6. Trustee and Custodians Protected in Relying upon Ordinances, etc. The Trustee and all Custodians shall at all times be protected in acting upon any notice, Ordinance, request, consent, order, certificate, statement, opinion, bond, or other paper or document believed to be genuine and to have been signed by the proper party or parties.

ARTICLE IX

AMENDMENTS OR SUPPLEMENTS TO THIS ORDINANCE

Section 9.1. Amendments or Supplements to Ordinance. The Town shall not amend this Ordinance except in accordance with the provisions of this Article.

A. The Town may, from time to time and without the consent of any Holder of the Bonds enact an ordinance amendatory hereof or supplemental hereto for the purpose of (a) providing for the issuance of Bonds pursuant to the provisions of Article III hereof, or (b) (i) making any amendments or modifications hereto which may be required to permit this Ordinance to be qualified under the Trust Indenture Act of 1939, as amended; (ii) making any modification or amendment to this Ordinance not inconsistent herewith required for the correction of language or to cure any ambiguity or defective provisions, omission, mistake or manifest error herein contained; (iii) making any amendments or supplements hereto to grant to or confer upon the Holders additional rights, remedies, power and authority, or to grant to or confer upon any Holders, committee or trustee for the Holders any additional rights, power or authority; or (iv) to add to the security of the Holders of the Bonds.

B. From time to time the Holders of 66-2/3% in principal amount of the Bonds then Outstanding, by an instrument or instruments in writing signed by such Holders and filed with the Town and the Trustee, shall have power to assent to and authorize any modification or amendment to the provisions of this Ordinance that may be proposed by the Town or of the rights and obligations of the Town and of the Holders of Bonds issued hereunder. Any action herein authorized to be taken with the assent and authority given as aforesaid of the Holders of at least 66-2/3% in principal amount of the Bonds at the time Outstanding shall be effective and binding upon all of the Holders of Bonds Outstanding and upon the Town as fully as though such action were specifically and expressly authorized by the terms of this Ordinance; provided always, that without the consent of the Holder of each Bond affected thereby, no such modification shall be made which will (a) extend the time of payment of principal of or the interest on any Bond, or reduce the principal amount thereof or the rate of interest thereon or the premium payable upon the redemption thereof, or (b) give to any Bond or Bonds any preference over any other Bond or Bonds, or (c) authorize the creation of any pledge prior to or, except as provided herein for the issuance of Series of Bonds, on a parity with the pledge afforded by this Ordinance, or (d) reduce the percentage in principal amount of the Bonds required to assent to or authorize any such modification to this Ordinance. For the purpose of computations required by this paragraph, Bonds directly or indirectly owned or controlled by the Town shall be disregarded.

Any modification or amendment or supplement to the provisions of this Ordinance or of any Supplemental Ordinance supplemental hereto shall be set forth in an ordinance to be enacted by the Town.

The Trustee is hereby authorized to accept the delivery of a certified copy of any amendatory or supplemental ordinance referred to and permitted or authorized by this Section 9.1 and to make all further agreements and stipulations which may be therein contained, and the Trustee, in accepting such ordinance and taking such action, shall receive and be fully

protected in relying on an opinion of counsel (which may be an opinion of counsel to the Town) that such amendatory or supplemental ordinance is authorized or permitted by the provisions of this Ordinance. No such amendatory or supplemental ordinance shall change or modify any of the rights or obligations of the Trustee without its written assent thereto.

[End of Article IX]

ARTICLE X

EVENTS OF DEFAULT

Section 10.1. Events of Default. With respect to the Bonds, the following shall constitute “Events of Default”:

A. An Event of Default (as defined in the 2004 Installment Sale Agreement) under Section 7.1(a) of the 2004 Installment Sale Agreement has occurred and is continuing.

B. If payment of the principal of any Bond, whether at maturity or by proceedings for redemption, or upon mandatory sinking fund redemption, or by declaration as provided in Section 11.1 hereof, or otherwise, is not made by the Town after the same has become due and payable; or

C. If payment of any installment of interest on any Bond is not made by the Town as the same becomes due and payable; or

D. If the Town shall fail in the due and punctual performance of any of the covenants, conditions, agreements and provisions contained in the Bonds or in this Ordinance or in any Supplemental Ordinance on the part of the Town to be performed, and such failure continues for 90 days after written notice specifying such failure and requiring the same to be remedied has been given to the Town by the Trustee, or the Holders of not less than 20% in principal amount of the Bonds then Outstanding or any trustee or committee therefor; or

E. If any proceedings are instituted, with the consent or acquiescence of the Town, for the purpose of effecting a composition between the Town and its creditors and if the claim of such creditors is in any circumstance payable from any of the Hospitality Fees or any other moneys pledged and charged in this Ordinance or any Supplemental Ordinance for the payment of the Bonds, or any such proceedings are instituted for the purpose of adjusting the claims of such creditors, pursuant to any federal or State statute now or hereafter enacted; or

F. If the Town is for any reason rendered incapable of fulfilling its obligations hereunder in any material respect.

Subject to the provisions, limitations and conditions of Sections 11.1 and 11.2 hereof, insofar as the remedies provided in said provisions are concerned, nothing in Section 11.3 hereof or in this Article, and particularly nothing in subparagraph C of this Section 10.1, shall prohibit or limit, or be construed as prohibiting or limiting any Holder of a Bond from enforcing the duties of the Town, or any of the officers thereof, under any provisions of this Ordinance (including, without limiting the generality of the foregoing, the duties imposed by or referred to in Section 11.3 hereof) by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction, even though the failure of the Town or any of the officers thereof to perform any such duty may not then constitute an “Event of Default” as defined in this Article.

[End of Article X]

ARTICLE XI

REMEDIES UPON EVENT OF DEFAULT

Section 11.1 Declaration of Principal and Interest as Due. Upon the occurrence of an Event of Default, and at any time thereafter while such Event of Default continues, then and in each and every case the Trustee in its own name and as trustee of an express trust, on behalf and for the benefit and protection of the Holders of all Outstanding Bonds, may proceed, and upon the written request of the Holders of not less than 25% in principal amount of the Bonds then Outstanding, shall proceed to declare the principal of all Bonds then Outstanding, together with all accrued and unpaid interest thereon, if not already due, to be due and payable immediately, and upon any such declaration the same shall become and be due and payable immediately. This provision is also subject, however, to the condition that, if at any time after the principal of the Bonds, together with the accrued and unpaid interest thereon and other moneys secured hereby, have been so declared due and payable and before any further action has been taken (other than the making of the above declaration), the principal amount of all Bonds which have matured either according to the maturity date or dates otherwise specified therein (except as a result of such declaration) and all arrears of interest upon all Bonds, except interest accrued but not yet due on said Bonds, have been paid or caused to be paid, and all other Events of Default, if any, which have occurred have been remedied, cured or secured, then and in each and every such case the Holders of 25% in principal amount of the Bonds then Outstanding, by notice in writing delivered to the Trustee and the Town, may waive such Default and its consequences and rescind and annul such declaration. No such waiver or rescission or annulment shall extend to or affect any subsequent default or impair or exhaust any right or power related to such subsequent Default.

Section 11.2. Suits at Law or in Equity and Mandamus. In case any one or more of the Events of Default shall happen and be continuing, then and in every such case, but subject to the provisions, limitations and conditions of Section 11.1 hereof so far as the remedies provided in said provisions are concerned, the Holder of any Bond at the time Outstanding, or Trustee therefor, may, for the equal benefit and protection of all Holders of the Bonds similarly situated,

(a) by mandamus or other suit, action or proceedings at law or in the equity, enforce such Bondholder's right against the Town and require and compel the Town to perform and carry out its duties and obligations under the Bond Act and this Ordinance, and to perform and carry out its covenants and agreements with the Bondholders;

(b) by action or suit in equity require the Town to account as if such Town were the trustee of an express trust;

(c) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Bondholders; or

(d) bring suit upon the Bonds.

Section 11.3. Remedies Not Exclusive; Effect of Waiver of Default; Effect of Abandonment of Proceedings or Adverse Determination.

The Holders from time to time of the Bonds shall be entitled to all the remedies and benefits of this Ordinance as are and as shall be provided by law, and, subject to the provisions of Sections 11.1 and 11.2 hereof, nothing herein shall be construed to limit the rights or remedies of any such Holders under any applicable statute that may now exist or be enacted thereafter. No remedy conferred by the Bond Act and this Article upon any Holder of any Bond is intended to be exclusive of any other remedy. Each and every such remedy shall be cumulative and shall be in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred by the Bond Act and this Article or by any other law now or hereafter existing. Every substantive right and remedy conferred upon the Holders of the Bonds may be enforced and exercised from time to time and as often as may be deemed expedient.

No waiver of any default or breach of duty or contract by any Holder of any Bond shall extend to or affect any subsequent default or breach of duty or contract, or shall impair any rights or remedies thereon. No delay or omission of any Holder of a Bond to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein.

In case any suit, action or proceeding to enforce any right or exercise any remedy shall be brought or taken and then discontinued or abandoned, or shall be determined adversely to Holders of the Bonds then and in every such case, the Town and such Holders shall be restored to their former positions and rights and remedies as if no suit, action or proceeding had been brought or taken.

When the Trustee incurs costs or expenses (including legal fees, costs and expenses) or renders services after the occurrence of an Event of Default, such costs and expenses and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law.

Section 11.4. Restrictions on Bondholder's Action.

A. No Holder of any Bond shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of any provision of this Ordinance or the execution of any trust under this Ordinance or for any remedy under this Ordinance unless such Holder shall have previously given to the Trustee written notice of the happening of an Event of Default and the Holders of at least twenty-five percent (25%) in principal amount of the Bonds then Outstanding shall have filed a written request with the Trustee and shall have offered the Trustee reasonable opportunity, either to exercise the powers granted in this Ordinance or by the laws of the State or to institute such action, suit or proceeding in its own name, and unless such Holders shall have offered to the Trustee adequate security and indemnity against the costs, fees (including reasonable attorneys' fees), expenses and liabilities to be incurred therein or thereby, and the Trustee shall have refused to comply with such request for a period of 60 days after receipt by it of such notice, request an offer of indemnity. No one or more Holders of Bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the pledge created by this

Ordinance, or to enforce any right under this Ordinance, except in the manner therein provided. All proceedings at law or in equity to enforce any provision of this Ordinance shall be instituted, had and maintained in the manner provided in this Ordinance and for the equal benefit of all Holders of the Outstanding Bonds.

B. Nothing contained in this Ordinance or in the Bonds contained shall affect or impair the obligation of the Town, which is absolute and unconditional, to pay at the respective dates of maturity and places therein expressed the principal of (and redemption premium, if any) and interest on the Bonds to the respective Holders thereof, or affect or impair the right of action, which is also absolute and unconditional, of any Holder to enforce such payment of his Bond.

Section 11.5. Application of Hospitality Fees and Other Moneys After Default. During the continuance of an Event of Default, all moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the costs and expenses of the proceedings resulting in the collection of moneys and of the fees, expenses and advances of, incurred or made by the Trustee with respect thereto, be deposited in the respective Debt Service Funds, and all amounts held by the Trustee hereunder shall be applied as follows (provided if more than one Debt Service Fund has been established, such amounts shall be paid ratably):

A. Unless the principal of all Outstanding Bonds shall have become or have been declared due and payable:

First: To the payment to the persons entitled thereto of all installments of interest then due on the Bonds in the order of maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon to the person entitled thereto, without any discrimination or preference; and

Second: To the payment to the persons entitled thereto of the unpaid principal amounts or redemption premium, if any, of any Bonds which shall have become due (other than Bonds previously called for redemption in accordance with the provisions hereof), whether at maturity or by call for redemption, in the order of their due dates, and if the amounts available shall not be sufficient to pay in full all the Bonds due on any date, then to the payment thereof ratably, according to the principal amounts or redemption premium, if any, due on such date, to the persons entitled thereto, without any discrimination or preference.

B. If the principal amounts of all Outstanding Bonds shall have become or have been declared due and payable, to the payment of the principal amounts and interest then due and unpaid upon the Bonds without preference or priority of principal over interest or of interest over principal, of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal amounts and interest, to the persons entitled thereto without any discrimination or preference.

C. If the principal amounts of all Outstanding Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article XI, then, subject to the provisions of this Section in the event that the principal amounts of all Outstanding Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of paragraph (A) of this Section.

D. Whenever moneys are to be applied by the Trustee pursuant to the provisions of this Section, such moneys shall be applied by it at such times, and from time to time, as the Trustee shall determine, having due regard for the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such moneys, it shall fix the date (which shall be a Bond payment date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the principal amounts to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the Holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement of any partial payment or for cancellation if fully paid.

Whenever all Bonds and interest thereon have been paid under the provisions of this Section and all expenses and charges of the Trustee have been paid, any balance remaining shall be paid to the person entitled to receive the same; if no other person shall be entitled thereto, then the balance shall be paid to the Town or as a court of competent jurisdiction may direct.

[End of Article XI]

ARTICLE XII

DEFEASANCE

Section 12.1. Defeasance. The obligations of the Town under this Ordinance and the liens, pledges, charges, trusts, covenants and agreements of the Town herein made or provided for, shall be fully discharged and satisfied as to any Bond; and, unless or except as otherwise provided in the Supplemental Ordinance providing for the issuance of any Series of Bonds, such Bond or Series of Bonds shall no longer be deemed to be Outstanding hereunder when:

A. Such Bond or Series of Bonds shall have been purchased by the Town and surrendered to the Town for cancellation or otherwise surrendered to the Town or the Paying Agent, and is canceled or subject to cancellation by the Town or Paying Agent, or

B. Payment of the principal of, redemption premium, if any, and interest on such Bond or Series of Bonds, either (a) shall have been made or caused to be made in accordance with the terms thereof, or (b) shall have been provided for by irrevocably depositing with the Trustee in trust and irrevocably setting aside exclusively for such payment, (i) moneys sufficient to make such payment, or (ii) Government Obligations maturing as to principal and interest in such amounts and at such times as will ensure the availability of sufficient moneys to make such payment, and all necessary and proper fees, compensation and expenses of the Trustee, Paying Agent and the Registrar together with either (i) a verification report, satisfactory to the Trustee, to the effect that such securities and/or cash, together with earnings thereon, will be sufficient to pay interest and principal (and applicable premium, if any) on the Bonds to redemption or maturity or (ii) an opinion of Counsel, satisfactory to the Trustee, to the effect that all conditions precedent to the defeasance of the Bonds have been satisfied; provided however, that no such verification report or opinion shall be required in the event of a gross defeasance (where the cash deposited alone is sufficient to pay the debt service on the Bonds) or a current refunding (where the Bonds are to be redeemed within ninety (90) days of the funding of the escrow). At such time as a Bond or Series of Bonds shall no longer be deemed to be Outstanding hereunder, as aforesaid, such Bond or Series of Bonds shall cease to draw interest from the maturity date or redemption date thereof, and, except for the purposes of any such payment from such moneys or Government Obligations, shall no longer be secured by or entitled to the benefits of this Ordinance.

Any moneys so deposited with the Trustee as provided in this Article may at the written direction of the Town also be invested and reinvested in Government Obligations, maturing in the amounts and times as hereinbefore set forth, and all income from all Government Obligations in the hands of such Trustee which is not required for the payment of the Bonds or Series of Bonds and interest thereon with respect to which such moneys shall have been so deposited, shall be treated as Hospitality Fees.

Notwithstanding any provision hereof which may be contrary to the provisions of this Article, all moneys or Government Obligations set aside and held in trust pursuant to the provisions of this Article for the payment of Bonds or Series of Bonds shall be applied to and used solely for the payment of the particular Bonds or Series of Bonds with respect to which such moneys and Government Obligations have been so set aside in trust.

Any provision hereof to the contrary notwithstanding, if moneys or Government Obligations have been deposited or set aside with the Trustee pursuant to this Article for the payment of the Bonds and such Bonds shall not have in fact been actually paid in full, no amendment to the provisions of this Article shall be made without the consent of the Bondholder of each Bond or Series of Bonds affected thereby.

If moneys or Government Obligations have been deposited with the Trustee pursuant to Section 12.1(B) for payment of less than all Bonds of a Series and maturity, the Bonds of such Series and maturity to be so paid from such deposit shall be selected by the Trustee by lot by such method as shall provide for the selection of portions (in authorized denominations) of the principal of Bonds of such Series and maturity of a denomination larger than the smallest authorized denomination. Such selection shall be made within seven days after the moneys or Government Obligations have been deposited with the Trustee. This selection process shall be in lieu of the selection process otherwise provided with respect to redemption of Bonds in Article V. After such selection is made, Bonds that are to be paid from such deposit (including Bonds issued in exchange for such Bonds pursuant to the transfer or exchange provisions of this Ordinance) shall be identified by a separate CUSIP number or other designation satisfactory to the Trustee. The Town shall provide such CUSIP number or other designation to the Trustee. The Trustee shall notify Bondholders whose Bonds (or portions thereof) have been selected for payment from the moneys or Government Obligations on deposit and shall direct such Bondholders to surrender their Bonds to the Trustee in exchange for Bonds with the appropriate designation. The selection of Bonds for payment from such deposit pursuant to this Section 12.1 shall be conclusive and binding on the Town.

[End of Article XII]

ARTICLE XIII

MISCELLANEOUS

Section 13.1. Benefits of Ordinance Limited to the Town, the Trustee and Holders of the Bonds. With the exception of rights or benefits herein expressly conferred, nothing expressed or mentioned in or to be implied from this Ordinance or the Bonds is intended or should be construed to confer upon or give to any person other than the Town, the Trustee and the Holders of the Bonds, any legal or equitable right, remedy or claim under or by reason of or in respect to this Ordinance or any covenant, condition, stipulation, promise, agreement or provision herein contained. This Ordinance and all of the covenants, conditions, stipulations, promises, agreements and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the Town, the Trustee and the Holders from time to time of the Bonds as herein and therein provided.

Section 13.2. Ordinance Binding Upon Successors or Assigns of the Town. All the terms, provisions, conditions, covenants, warranties and agreements contained in this Ordinance shall be binding upon the successors and assigns of the Town and shall inure to the benefit of the Trustee, its successors or substitutes in trust and assigns, and the Holders of the Bonds.

Section 13.3. No Personal Liability. No recourse shall be had for the enforcement of any obligation, covenant, promise or agreement of the Town contained in this Ordinance or the Bonds, against any member of the Town, any officer or employee, as such, in his or her individual capacity, past, present or future, of the Town, either directly or through the Town, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise. It is expressly agreed and understood that this Ordinance and the Bonds are solely corporate obligations, and that no personal liability whatsoever shall attach to, or be incurred by, any member, officer or employee as such past, present or future, of the Town, either directly or by reason of any of the obligations, covenants, promises, or agreements entered into between the Town and the Trustee or the Bondholder or to be implied therefrom as being supplemental hereto or thereto. All personal liability of that character against every such member, officer and employee is, by the adoption of this Ordinance and the execution of the Bonds, and as a condition of, and as a part of the consideration for, the adoption of this Ordinance and the execution of the Bonds, expressly waived and released. The immunity of members, officers and employees of the Town under the provisions contained in this Section 13.3 shall survive the termination of this Ordinance.

Section 13.4. Effect of Saturdays, Sundays and Legal Holidays. Whenever this Ordinance requires any action to be taken on a Saturday, Sunday, legal holiday or bank holiday in the State of South Carolina, such action shall be taken on the first Business Day occurring thereafter. Whenever in this Ordinance the time within which any action is required to be taken or within which any right will lapse or expire shall terminate on a Saturday, Sunday, legal holiday or bank holiday, in the State, such time shall continue to run until midnight on the succeeding Business Day.

Section 13.5. Partial Invalidity. If any one or more of the covenants or agreements or portions thereof provided in this Ordinance on the part of the Town or the Trustee or any Paying

Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant or covenants, or such agreement or agreements, or such portions thereof, shall be deemed severable from the remaining covenants and agreements and portions thereof provided in this Ordinance and the invalidity thereof shall in no way affect the validity of the other provisions of this Ordinance or of the Bonds, but the Holders of the Bonds shall retain all the rights and benefits accorded to them hereunder and under any applicable provisions of law.

If any provisions of this Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because of conflicts with any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstance, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatever.

Section 13.6. Law and Place of Enforcement of Ordinance. This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina without regard to conflict of law principles and all suits and actions arising out of this Ordinance shall be instituted in a court of competent jurisdiction in said State.

Section 13.7. Effect of Article and Section Headings and Table of Contents. The headings or titles of the several Articles and Sections hereof, and any table of contents appended hereto or to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this Ordinance.

Section 13.8. Repeal of Inconsistent Ordinances. All ordinances and resolutions of the Town, and any part of any ordinance or resolution, inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

Section 13.9. Notices. All notices, certificates, or other communications hereunder or under this Ordinance shall be sufficiently given and shall be deemed given when mailed by registered mail, postage prepaid, or given when dispatched by telegram addressed as follows:

If to the Town:

Town of Hilton Head Island, SC
Attention: Town Manager
One Town Center Court
Hilton Head Island, South Carolina 29928

If to the Trustee:

Wells Fargo Bank, N.A.
Attention: Corporate Trust Services
7000 Central Parkway, Suite 550
Atlanta, Georgia 30328

The Town and the Trustee, may, by notice given to the other parties, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 13.110. Codification. This Ordinance shall be forthwith codified in the Code of Town Ordinances in the manner required by law and the name shall be indexed under the general heading “Ordinance – Special Obligation Bonds (Hospitality Fee Pledge).”

Section 13.11. Severability. If any sections, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not attest the validity of the remaining portions thereof.

Section 13.12. Effective Date. This Ordinance shall be effective upon its adoption by the Town Council for the Town of Hilton Head Island, South Carolina; provided, however, that it shall not be necessary for the Town to establish the funds and accounts created in Article VI hereof prior to the issuance of any Bonds.

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS _____ DAY OF _____ 2011.

Drew A. Laughlin, Mayor

ATTEST:

Cori Brock, Town Clerk

First Reading: _____
Second Reading: _____

APPROVED AS TO FORM:

Gregory M. Alford, Town Attorney

Introduced by Council Member: _____



MEMORANDUM

TO: Town Council

FROM: Stephen G. Riley, CM, Town Manager

VIA: Susan M. Simmons, CPA, Director of Finance

DATE: July 21, 2011

RE: **First Reading of Proposed Ordinance No. 2011-18**
First Supplemental Ordinance – Hospitality Fee Pledge

Recommendation:

Town Council approves first reading of Proposed Ordinance No. 2011-18 which authorizes the issuance of Special Obligation Bonds – Hospitality Fee Pledge in an amount not to exceed \$26,250,000.

Summary:

As explained in Proposed Ordinance No. 2011-17, staff recommends the Town begin to use Special Obligation Bonds to finance the construction and/or purchase of assets to be funded by hospitality revenues. Proposed Ordinance No. 2011-17 is the General Ordinance which establishes the master document authorizing this form of debt. Specific issues will be authorized via Supplemental Ordinances. Proposed Ordinance No. 2011-18 is the First Supplemental Ordinance for the Hospitality Fee Pledge. In this ordinance, staff seeks authority from Council to issue new bonds in an amount not to exceed \$15,250,000 and to refund the outstanding balance of the 2004C Hospitality Certificates of Participation (COPS) in an amount not to exceed \$11,000,000 if the savings warrant a refunding.

Proceeds from the new bonds would be primarily used as follows:

1. To reimburse the hospitality revenues for:
 - Fire & Rescue Apparatus (pumpers, quints, ambulances, etc.)
 - All or Part of Fire & Rescue Stations 5, 1 and 6 (Planning and Design)

2. To fund new costs for:
 - All or Part of Fire & Rescue Stations 1, 6 and 2
 - Fire & Rescue Apparatus
3. Costs of Issuance, Escrow, and Reserve Funds as Applicable

Background:

The Town issued Series 2004C Hospitality Certificates of Participation for which the proceeds were used for construction and/or purchase of public safety assets. Then over the last couple of years, the Town purchased fire apparatus and constructed part or all of certain fire and rescue stations under a reimbursement resolution. This resolution allows the Town to use available resources to upfront the costs but with the intent of issuing debt to pay for these assets over a longer term. The Town's intent is to pay for these long-lived assets over the life of the assets via debt service payments and use future hospitality fee revenue to make the debt service payments. In this manner, those who benefit from these assets will also bear the cost of these assets. Upon Council's approval of Proposed Ordinance 2011-17 and 2011-18, staff plans to issue bonds with a hospitality fee pledge in the next few months. The ordinances will allow staff to issue new bonds and consider the refunding of the outstanding Series 2004C Hospitality Certificates of Participation should sufficient savings be available to warrant their refunding.

FIRST SUPPLEMENTAL ORDINANCE

PROVIDING FOR THE ISSUANCE AND SALE OF TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, SPECIAL OBLIGATION BONDS (HOSPITALITY FEE PLEDGE), IN ONE OR MORE SERIES, IN THE PRINCIPAL AMOUNT OF NOT EXCEEDING \$26,250,000; DELEGATING THE AUTHORITY TO THE TOWN MANAGER TO DETERMINE CERTAIN MATTERS WITH RESPECT TO THE BONDS; PRESCRIBING THE FORM AND DETAILS OF SUCH BONDS; OTHER MATTERS RELATING THERETO; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Town Council (the “Council”) of the Town of Hilton Head Island, South Carolina (the “Town”), enacted an Ordinance (the “General Bond Ordinance”) on the date hereof to authorize generally the issuance of Bonds (as defined in the General Bond Ordinance); and

WHEREAS, pursuant to the General Bond Ordinance, the Bonds are payable from and secured by a pledge of Hospitality Fees (as defined in the General Bond Ordinance), which pledge is junior and subordinate to the pledge of Hospitality Fees securing the Town’s obligation to pay Base Fee Payments and Additional Fee Payments (as such terms are defined in the Installment Sale Agreement) dated as of June 1, 2004 (the “2004 Installment Sale Agreement”) between the Town and Hilton Head Island Public Facilities Corporation, an instrumentality of the Town (the “Corporation”) under the 2004 Installment Sale Agreement; and

WHEREAS, the Corporation has heretofore issued \$10,775,000 original principal amount of the Hilton Head Island Public Facilities Corporation, Certificates of Participation Evidencing Undivided Proportionate Interests in Base Fee Payments Under an Installment Sale Agreement (Hospitality Fee Pledge), Series 2004C, which are presently outstanding in the principal amount of \$8,625,000 (the “2004 Certificates”); and

WHEREAS, the Town is presently contemplating the undertaking of the New Projects (as defined herein); and

WHEREAS, the Town desires to issue not exceeding \$26,250,000 principal amount of its Special Obligation Bonds (Hospitality Fee Pledge), in one or more series (the “New Bonds”) to finance, among other things, the Costs of Acquisition and Construction of the New Projects and refinance the 2004 Certificates; and

WHEREAS, the Council has been advised that in order to finance the New Projects and refinance the 2004 Certificates, the Council must enact an appropriate ordinance supplemental to the General Bond Ordinance authorizing the issuance of the New Bonds.

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

Section 1. Definitions. The terms in this Section 1 and all words and terms defined in the General Bond Ordinance (such General Bond Ordinance as from time to time amended or supplemented by Supplemental Ordinances being defined in the Ordinance as the "Ordinance") (except as herein otherwise expressly provided or unless the context otherwise requires), shall for all purposes of this First Supplemental Ordinance have the respective meanings given to them in the Ordinance and in Section 1 hereof.

"2004 Certificates" shall mean the \$10,775,000 original principal amount Hilton Head Island Public Facilities Corporation, Certificates of Participation Evidencing Undivided Proportionate Interests in Base Fee Payments under an Installment Sale Agreement (Hospitality Fee Pledge), Series 2004, dated June 1, 2004, and outstanding as of the date hereof in the principal amount of \$8,625,000.

"Beneficial Owner" shall mean any purchaser who acquires beneficial ownership interest in any Initial Bond held by the Depository. In determining any Beneficial Owner the Town, the Trustee, the Registrar and the Paying Agent may rely exclusively upon written representations made and information given to the Town, the Trustee, the Registrar and the Paying Agent, as the case may be, by the Depository or its Participants with respect to any New Bond held by the Depository or its Participants in which a beneficial ownership interest is claimed.

"Bond Purchase Agreement" shall mean one or more Bond Purchase Agreements relating to the sale of the New Bonds, to be dated the date of execution and delivery thereof between the Underwriter and the Town, as amended or supplemented thereto.

"Book-Entry Form" or "Book-Entry System" shall mean with respect to the New Bonds, a form or system, as applicable, under which (a) the ownership of beneficial interests in the New Bonds may be transferred only through a book-entry and (b) physical bond certificates in fully registered form are registered only in the name of a Depository or its nominee as Holder, with the physical bond certificates "immobilized" in the custody of the Depository. The book-entry maintained by the Depository is the record that identifies the owners of participatory interests in the New Bonds, when subject to the Book-Entry System.

"Business Day" shall mean, with respect to the New Bonds issued pursuant to this First Supplemental Ordinance, any day other than a Saturday, a Sunday or a day which shall be in the State or the state in which the respective office of the Trustee, the Paying Agent and the Registrar is located a legal holiday or a day on which banking institutions are authorized by law or executive order to close.

"Certificates to be Refunded" shall mean the 2004 Certificates selected by the Town Manager pursuant to Section 11 hereof, to be refinanced with a Series of the New Bonds.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

“Continuing Disclosure Certificate” shall have the meaning given that term in Section 15 hereof.

“Depository” shall mean any securities depository that is a “clearing corporation” within the meaning of the New York Uniform Commercial Code and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, as amended, operating and maintaining, with its participants or otherwise, a Book-Entry System to record ownership of beneficial interests in the New Bonds, and to effect transfers of the New Bonds, in Book-Entry Form, and includes and means initially The Depository Trust Company (a limited-purpose trust company), New York, New York.

“Escrow Agent” shall mean Wells Fargo Bank, N.A., in its capacity as Paying Agent for the 2004 Certificates.

“Escrow Agreement” shall mean the Escrow Agreement dated the date of its execution between the Town and the Escrow Agent.

“Escrow Fund” shall mean the fund of that name created pursuant to the Escrow Agreement.

“First Supplemental Ordinance” shall mean shall mean this Ordinance enacted by the Town Council, authorizing the New Bonds.

“General Bond Ordinance” shall mean the Ordinance duly enacted by the Town Council on the date hereof, authorizing the issuance from time to time of Bonds.

“Initial Bonds” shall mean the New Bonds initially issued in Book-Entry Form as provided in Section 4 hereof.

“Interest Payment Date” shall mean any June 1 and December 1 of each year, commencing December 1, 2011, or such other date as the Town Manager may determine pursuant to Section 11 hereof.

“New Bonds” shall mean the Town of Hilton Head Island, South Carolina, Special Obligation Bonds (Hospitality Fee Pledge), issuable in one or more series, in the aggregate principal amount of not exceeding \$26,250,000 authorized to be issued hereunder.

“New Projects” shall mean, collectively, the Projects to be financed with the proceeds of the New Bonds, including any one or more of the projects described in Schedule I hereto, and such other projects as may be approved by the Town Manager and permitted by the Hospitality Fee Ordinance.

“Paying Agent” shall mean Wells Fargo Bank, N.A., as Paying Agent for the New Bonds.

“Principal Payment Date” shall have the meaning given to such term in Section 3(a).

“Registrar” shall mean Wells Fargo Bank, N.A., as Registrar for the New Bonds.

“Series Construction Fund” shall mean one or more Funds established pursuant to Section 9 hereof into which a portion of the proceeds of a Series of the New Bonds will be deposited and from which such proceeds will be disbursed to pay the Costs of Acquisition and Construction of the New Projects and Costs of Issuance, as applicable. Pursuant to Section 9, each Series Construction Fund shall be further identified or designated to relate to the specific Series of the New Bonds issued hereunder.

“Series Debt Service Fund” shall mean one or more Funds established pursuant to Section 7 hereof to provide for the payment of the principal of and interest on the Series of the New Bonds related thereto. Pursuant to Section 7, each Series Debt Service Fund shall be further identified or designated to relate to the specific Series of the New Bonds issued hereunder.

“Series Debt Service Reserve Fund” shall mean one or more Funds, if any, established pursuant to Section 8 hereof (a) to insure the timely payment of the principal and interest on the New Bonds related thereto; and (b) to provide for the redemption of the Series of the New Bonds related thereto. Pursuant to Section 8, each Series Debt Service Reserve Fund shall be further identified or designated to relate to the specific Series of the New Bonds issued hereunder.

“Series Reserve Fund Requirement” shall mean the amount, if any, established pursuant to Section 8 hereof.

“Trustee” shall mean Wells Fargo Bank, N.A., as Trustee for the bonds.

“Underwriter” shall mean Merchant Capital, L.L.C.

Section 2. Certain Findings and Determinations. The Town hereby finds and determines:

(a) The Ordinance, the Bond Act and the Hospitality Fee Act authorize the Town to issue Bonds in order to finance Projects (as defined in the General Bond Ordinance) and refinance some or all of the 2004 Certificates. This First Supplemental Ordinance supplements the Ordinance, constitutes and is a "Supplemental Ordinance" within the meaning of such quoted term as defined and used in the Ordinance, and is enacted under and pursuant to the Ordinance.

(b) The New Bonds constitute and are "Bonds" within the meaning of the quoted word as defined and used in the Ordinance.

(c) The Hospitality Fees pledged under the Ordinance are or will not be encumbered by any lien and charge thereon or pledge thereof, other than: (i) for so long as the 2004 Certificates are outstanding, the pledge thereof created under the 2004 Installment Sale Agreement for payment of amounts due with respect to the 2004 Certificates (which pledge is senior to the pledge thereof securing the Bonds); and (ii) the pledge thereof created by the General Bond Ordinance and this First Supplemental Ordinance for the payment and security of the New Bonds.

(d) There does not exist an Event of Default (as defined in the General Bond Ordinance), nor does there exist any condition which, after the passage of time or the giving of notice, or both, would constitute such Event of Default.

(e) The estimated Cost of Acquisition and Construction (as defined in the General Bond ordinance) of the New Projects is \$15,250,000. The estimated cost of refunding the Certificates to be Refunded does not exceed \$11,000,000.

(f) The Town proposes to issue the New Bonds, in one or more Series (as defined in the General Bond Ordinance), for one or more of the principal purposes: (1) financing the Cost of Acquisition and Construction of the New Projects, (2) refinancing the Certificates to be Refunded, (3) financing the Series Reserve Fund Requirement (if any) through a deposit into the Series Debt Service Reserve Fund (if any) established with respect to each Series of New Bonds, and (4) paying the costs of issuing the New Bonds.

(g) The period of usefulness of the New Projects will be in excess of thirty (30) years (in the case of the fire and rescue stations) and fifteen (15) years (in the case of the fire and rescue apparatus) from the date of the acquisition thereof.

(h) It is necessary and in the best interest of the Town to authorize the issuance of the New Bonds in the principal amount of not exceeding \$26,250,000 in accordance with the Bond Act, the Hospitality Fee Act, the Ordinance and this First Supplemental Ordinance for the purposes set forth above.

Section 3. Authorization of Series 2011 Bonds.

(a) There is hereby authorized to be issued one or more Series of Bonds designated “Town of Hilton Head Island, South Carolina, Special Obligation Bonds (Hospitality Fee Pledge), Series (year)” (the “New Bonds”), including such further words, numbers or letters as may be necessary or desirable to identify individual series thereof, the purposes thereof, or the taxable status thereof, in the aggregate principal amount of not exceeding \$26,250,000. The proceeds of the New Bonds shall be used for the purposes set forth in Section 2(f) hereof.

Unless otherwise determined by the Town Manager pursuant to Section 11 hereof, the New Bonds shall mature on December 1 in each of the years (the “Principal Payment Dates”) and in the principal amounts, and bear interest at the rates per annum (calculated on the basis of a 360-day year comprised of twelve 30-day months), as determined by the Town Manager, pursuant to Section 11 hereof.

(b) Such of the New Bonds as the Town Manager shall determine pursuant to Section 11 hereof shall be subject to mandatory redemption at a redemption price equal to the principal amount of the New Bonds to be redeemed, together with interest accrued from the date of redemption, in the years and in the amounts determined by the Town Manager, pursuant to Section 11 hereof.

At its option, to be exercised on or before the sixtieth (60th) day prior to any mandatory redemption date, the Town may (i) deliver to the Trustee for cancellation New Bonds which are

subject to mandatory redemption in any aggregate principal amount desired or (ii) receive a credit in respect of its mandatory redemption obligation for any such New Bonds which, prior to such date, have been purchased or redeemed (otherwise than through the operation of the mandatory redemption requirement) by the Town and cancelled by the Trustee and not theretofore applied as a credit against any mandatory redemption obligation. Each New Bond so delivered or previously purchased or redeemed shall be credited by the Trustee, at one hundred percent (100%) of the principal amount thereof, to the obligation of the Town on those respective mandatory redemption obligations in chronological order or such other manner as directed in writing by the Town to the Trustee, and the principal amount of the New Bonds to be redeemed by operation of the mandatory redemption requirement shall be accordingly reduced.

(c) The Trustee, without further authorization or direction from the Town, shall give notice of all mandatory redemptions within the time periods and in the manner specified in Article V of the General Bond Ordinance.

(d) The New Bonds shall originally be dated the date of delivery of the New Bonds, or such other date as the Town Manager shall determine pursuant to Section 11 hereof, and shall be issued as fully registered Bonds in the denominations of \$5,000 and integral multiples of \$5,000. The New Bonds shall be numbered and lettered in such a fashion as to maintain a proper record thereof.

(e) Principal of and redemption premium, if any, on the New Bonds shall be payable at the designated corporate trust office of the Paying Agent. Interest on the New Bonds shall be payable on each Interest Payment Date, in each case to the Holders as of the immediately preceding Record Date, such interest to be paid by the Paying Agent by check or draft mailed to each Holder at the address as it appears on the Books of Registry maintained at the designated corporate trust office of the Paying Agent, and in the case of a Holder of \$1,000,000 or more in principal amount of New Bonds, by wire transfer to an account within the continental United States upon the timely receipt of a written request of such Holder. Payment of the principal of and interest on such New Bonds may be payable to the Holder thereof without presentation and surrender of such New Bonds.

(f) The New Bonds shall be in substantially the form set forth in Exhibit A hereto, with such necessary or appropriate variations, omissions and insertions as are incidental to the series, numbers, denominations, maturities, dates, interest rate or rates, redemption provisions, the purpose of issuance and other details thereof or as are otherwise permitted or required by law or by the Ordinance, including this First Supplemental Ordinance. The New Bonds shall be executed in the name and on behalf of the Town by the manual or facsimile signatures of the Mayor and Town Clerk.

(g) A copy of the approving opinion to be rendered on the New Bonds shall be printed on the back of such New Bonds, preceding the same a certificate shall appear, which shall be signed on behalf of the Town by a facsimile signature of the Town Clerk. Such certificate shall be in the form substantially as follows:

IT IS HEREBY CERTIFIED that the following is a true and correct copy of the approving opinion of McNair Law Firm, P.A., Columbia, South Carolina, the original of which was manually executed, dated and issued as of the date of the delivery of and payment for the bonds, and a copy of which is on file with the Town.

THE TOWN OF HILTON HEAD, SOUTH CAROLINA

By: _____
Town Clerk

Section 4. Book-Entry System; Recording and Transfer of Ownership of the New Bonds. The Initial Bonds will be eligible securities for the purposes of the Book-Entry System of transfer maintained by the Depository, and transfers of beneficial ownership of the Initial Bonds shall be made only through the Depository and its participants in accordance with rules specified by the Depository. Such beneficial ownership must be of \$5,000 principal amount of Initial Bonds of the same Series and maturity or any integral multiple of \$5,000.

The Initial Bonds will be issued in fully-registered form, as a single bond representing the entire principal amount of each Series of the New Bonds or one New Bond for each of the maturities of each Series of the New Bonds, in the name of Cede & Co., as the nominee of the Depository. When any principal of, premium, if any, or interest on the Initial Bonds becomes due, the Town shall transmit or cause the Paying Agent to transmit to the Depository an amount equal to such installment of principal, premium, if any, and interest. Such payments will be made to Cede & Co. or other nominee of the Depository as long as it is owner of record on the applicable Record Date. Cede & Co. or other nominee of the Depository shall be considered to be the owner of the Initial Bonds so registered for all purposes of this First Supplemental Ordinance, including, without limitation, payments as aforesaid and receipt of notices. The Depository shall remit such payments to the Beneficial Owners of the New Bonds or their nominees in accordance with its rules and regulations.

Notices of redemption of the Initial Bonds or any portion thereof shall be sent to the Depository in accordance with the provisions of the General Bond Ordinance.

The Depository is expected to maintain records of the positions of Participants in the Initial Bonds, and the Participants and persons acting through Participants are expected to maintain records of the Beneficial Owners in the Initial Bonds. The Town, the Trustee, the Registrar and the Paying Agent make no assurances that the Depository and its Participants will act in accordance with such rules or expectations on a timely basis, and the Town, the Trustee, the Registrar and the Paying Agent shall have no responsibility for any such maintenance of records or transfer of payments by the Depository to its Participants, or by the Participants or persons acting through Participants to the Beneficial Owners.

The Town, the Trustee, the Paying Agent and the Registrar may treat the Depository (or its nominee) as the sole and exclusive owner of the New Bonds registered in its name for the purpose of payment of the principal of, interest or premium, if any, on the New Bonds, giving any notice permitted or required to be given to Bondholders under the General Bond Ordinance or this First Supplemental Ordinance, registering the transfer of the New Bonds, obtaining any consent or other action to be taken by Bondholders and for all other purposes whatsoever, and shall not be affected by any notice to the contrary. The Town, the Trustee, the Paying Agent and the Registrar shall not have any responsibility or obligation to any Participant, any person claiming a beneficial ownership interest in the New Bonds under or through the Depository or any Participant, or any other person which is not shown on the Books of Registry of the Town maintained by the Registrar as being a Bondholder, with respect to: the accuracy of any records maintained by the Depository or any Participant or the maintenance of any records; the payment by the Depository or any Participant of any amount in respect of the principal of, interest or premium, if any, on the New Bonds; the sending of any transaction statements; the delivery or timeliness of delivery by the Depository or any Participant of any notice which is permitted or required to be given to Bondholders thereunder; the selection of Bondholders to receive payments upon any partial redemption of the New Bonds; or any consent given or other actions taken by the Depository as a Bondholder.

If (a) the Depository determines not to continue to act as securities depository for the New Bonds, and gives reasonable notice to the Registrar or the Town, or (b) the Town has advised the Depository of the Town's determination that the Depository is incapable of discharging its duties, then the Town shall attempt to retain another qualified securities depository to replace the Depository. Upon receipt by the Town or the Registrar of the Initial Bonds together with an assignment duly executed by the Depository, the Town shall execute and deliver to the successor depository, the New Bonds of the same principal amount, interest rate and maturity. If the Town is unable to retain a qualified successor to the Depository, or the Town has determined that it is in its best interest not to continue the Book-Entry System of transfer or that interests of the Beneficial Owners of the New Bonds might be adversely affected if the Book-Entry System of transfer is continued (the Town undertakes no obligation to make any investigation to determine the occurrence of any events that would permit it to make any such determination), and has made provision to so notify Beneficial Owners of the New Bonds by mailing an appropriate notice to the Depository, upon receipt by the Town of the Initial Bonds together with an assignment duly executed by the Depository, the Town shall execute, authenticate and deliver to the Depository Participants the New Bonds in fully-registered form, in authorized denomination; provided, however, that the discontinuation of the Book-Entry System of registration and transfer with respect to the New Bonds or the replacement of the Depository or any successor depository shall be subject to the applicable rules and procedures of the Depository or such successor depository on file or otherwise approved by the Securities and Exchange Commission.

Section 5. Optional Redemption of New Bonds. Such of the Series 2011 Bonds as may be determined by the Town Manager pursuant to Section 11 hereof shall be subject to redemption prior to maturity, at the option of the Town, in whole or in part at any time in such order of their maturities as the Town shall determine and by lot within a maturity, at the respective redemption prices with respect to each New Bond, expressed as a percentage of principal amount of the New Bonds to be redeemed, as shall be determined by the Town Manager pursuant to Section 11 hereof, together, in each such case, with the interest accrued on such principal amount to the date fixed for

redemption. The Trustee shall give notice of redemption of the New Bonds by first-class mail, postage prepaid, to the Holders thereof as shown on the Books of Registry of the Town not less than five (5) Business Days prior to the date fixed for the redemption thereof.

Section 6. Payment of the New Bonds. The New Bonds, together with the interest thereon, shall be payable, in such coin or currency of the United States of America which at the time of such payment is legal tender for public and private debts, solely from the Hospitality Fees of the Town in accordance with the provisions of the Ordinance and this First Supplemental Ordinance. The New Bonds shall be secured by a pledge of Hospitality Fees junior and subordinate to the pledge of Hospitality Fees securing the payment of amounts due under the 2004 Installment Sale Agreement with respect to the 2004 Certificates and on a parity with the pledge of Hospitality Fees securing the payment of other Bonds issued in compliance with the provisions of the General Bond Ordinance.

The New Bonds do not constitute an indebtedness of the Town within any State constitutional provisions (other than Article X, Section 14, Paragraph 10 of the South Carolina Constitution authorizing obligations payable solely from special sources not involving revenues from any tax or license) or statutory limitation. The New Bonds shall not be a debt of the Town, nor a charge, lien or encumbrance, legal or equitable, upon any property of the Town or upon any income, receipts or revenues thereof, other than the aforesaid Hospitality Fees of the Town. No recourse shall be had for the payment of the New Bonds or the interest thereon against the general fund of the Town, nor shall the credit or taxing power of the Town be deemed to be pledged thereto. The full faith, credit and taxing powers of the Town are not pledged to the payment of the principal of or interest on the New Bonds.

Section 7. Establishment of Series Debt Service Fund. In accordance with Section 6.6 of the General Bond Ordinance, the Series Debt Service Fund is hereby directed to be established by the Trustee on the date of the original delivery of the New Bonds for the benefit of the Holders of the New Bonds; provided, however, that upon the issuance of one or more Series of New Bonds, separate funds or accounts may be established for the payment of debt service on such Series of New Bonds, with such additional numbers or letters to identify its relevance, but each such separate fund or account will be considered the "Series Debt Service Fund" with respect to the related Series of New Bonds.

Section 8. Establishment of the Series Reserve Fund Requirement and Series Debt Service Reserve Fund. In accordance with Section 6.7 of the General Bond Ordinance, the Town Manager may determine whether it is necessary or desirable to establish a Series Debt Service Reserve Fund for the benefit of the Holders of one or more Series of New Bonds (if any) and the amount of the applicable Series Reserve Fund Requirement, and, if so, such Series Debt Service Reserve Fund shall be established on the date of the original delivery of such Series of New Bonds and held by the Trustee, all as provided in the Ordinance; provided, however, that (1) upon the issuance of one or more Series of New Bonds, separate funds or accounts may be established (if at all) for each Series of New Bonds, with such additional numbers or letters to identify its relevance, but each such separate fund or account will be considered the "Series Debt Service Reserve Fund" with respect to the related Series of New Bonds; and (2) in the event of any full or partial defeasance of a Series of New Bonds under Article XII of the Ordinance, then the Series Reserve Fund Requirement established for such Series of New Bonds shall be recalculated based on the then

Outstanding principal amount of such Series. If the Series Debt Service Reserve Fund is established, the Series Reserve Fund Requirement initially will be satisfied by the Town by the deposit of cash into the Series Debt Service Reserve Fund for the benefit of the Holders of the New Bonds.

Section 9. Series Construction Fund. There is hereby created and established the Series Construction Fund, which fund shall be held by the Town or by a Custodian; provided, however, that upon the issuance of one or more Series of New Bonds, separate funds or accounts may be established for such Series of New Bonds, with such additional numbers or letters to identify its relevance, but each such separate fund or account will be considered the “Series Construction Fund” with respect to the related Series of New Bonds. If the Series Construction Fund is held by a Custodian, the Town Manager is authorized and directed to negotiate, execute and deliver such construction fund agreements or other agreements with such bank or other financial institution as may be necessary or desirable in connection therewith. The Series Construction Fund established for a particular Series of New Bonds shall be accounted for as a single fund, however the moneys on deposit therein may be held by one or more Custodians. The moneys on deposit in the Series Construction Fund shall be used and applied to pay Costs of Acquisition and Construction of the New Projects and all Costs of Issuance incidental to the issuance and sale of the New Bonds.

Moneys held for the credit of the Series Construction Fund shall be invested to the fullest extent practicable and reasonable, in Permitted Investments, maturing at such times and in such amounts as shall be required to provide moneys to make the payments required to be made from such Fund.

Withdrawals from the Series Construction Fund shall be made in the manner withdrawals from other funds of the Town are made.

If after the payment in full of all costs of the New Projects and Costs of Issuance or after adequate provision has been made for such payment any moneys remain in the Series Construction Fund, such excess shall be paid into the related Series Debt Service Fund and shall be used only for the payment of the principal of and interest on the related Series of New Bonds or, in the alternative, to acquire Outstanding New Bonds at a price (exclusive of accrued interest) not exceeding the face amount thereof.

Section 10. Designation of Trustee, Registrar and Paying Agent. Pursuant to the Ordinance, the Trustee is Wells Fargo Bank, N.A. The Town Council hereby designates Wells Fargo Bank, N.A. as Registrar and Paying Agent for the New Bonds. The Registrar and Paying Agent shall signify their acceptances of their respective duties upon delivery of the New Bonds.

Section 11. Sale and Issuance of New Bonds.

(a) The Town Manager is hereby authorized and empowered to undertake any one or more of the following actions: (a) determine the original issue dates of each Series of the New Bonds; (b) determine the aggregate principal amount of the New Bonds, if less than authorized by this First Supplemental Ordinance, and each Series thereof (including the portions thereof to be issued on a taxable or tax-exempt basis); (c) determine the principal amount of each maturity of

each Series of the New Bonds; (d) determine the Interest Payment Dates, including the initial Interest Payment Dates, and the Principal Payment Dates for each Series of the New Bonds; (e) determine the optional redemption dates and terms of redemption of each Series of the New Bonds; (f) determine the interest rates for each Series of the New Bonds; (g) determine the New Bonds to be subject to mandatory and optional redemption; (h) determine the redemption prices of the New Bonds subject to optional redemption; (i) determine whether the Series Debt Service Reserve Fund will be established and funded with regard to each Series of New Bonds and, if so, the amount of the applicable Series Reserve Fund Requirement; (j) determine any original issue discount or original issue premium at which each Series of the New Bonds will be sold, or whether any Underwriter's discount or other fee will be paid to the purchasers of the New Bonds; (k) determine the Certificates to be Refunded; and (l) agree to any other terms, provisions and matters necessary or advisable to effect the issuance of each Series of the New Bonds.

(b) Each Series of the New Bonds shall either be sold publicly, following a private sale to the Underwriter, or directly to one or more purchasers in a private offering or private placement transaction. In connection with a public offering, the Town hereby finds and determines that the Bond Purchase Agreement to be dated the date of its execution, submitted by the Underwriter for the purchase of all or a portion (if any) of each Series of the New Bonds is fair and reasonable and in the best interest of the Town; that, if executed, the New Bonds contemplated by the Bond Purchase Agreement shall be sold to the Underwriter upon the terms and conditions set forth in the Bond Purchase Agreement and upon the basis of the representations therein set forth, and that all conditions precedent to or concurrent with the acceptance of the Bond Purchase Agreement by the Town will be met prior to the Town's execution thereof. The Town Manager is hereby authorized and directed to approve the form of Bond Purchase Agreement, together with such amendments and modifications to the form thereof as the Town Manager shall negotiate and approve, and to execute the Bond Purchase Agreement, as so modified and amended, and deliver the same to the Underwriter, the Town Manager's execution and delivery of the Bond Purchase Agreement constituting conclusive evidence of approval of the matters therein contained. Notwithstanding the foregoing, the Town Manager is hereby authorized to take all actions, including the preparation and dissemination of requests for proposals and the preparation, publication and/or distribution of information, offering documents or private placement memoranda (which may be in the respective forms of the Bond Purchase Agreement and/or hereinafter defined Preliminary Official Statement, as applicable, together with such amendments and modifications as may be approved by the Town Manager), all relating to the Town, each Series of the New Bonds and the Hospitality Fees, to solicit interest and receive offers from financial institutions to purchase one or more Series of the New Bonds in a private offering, and to accept such offer which is in the best interest of the Town and execute such documents as may be necessary in connection therewith.

(c) The Town Manager is hereby authorized and directed to prepare a Preliminary Official Statement, relating to a public offering of each Series of the New Bonds (the "Preliminary Official Statement"), and to take such actions necessary to "deem final" the Preliminary Official Statement for purposes of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended.

(d) The Town hereby authorizes the Final Official Statement of the Town to be dated on or about the date of the execution and delivery of the Bond Purchase Agreement, relating to each

Series of the Bonds substantially in the form of the Preliminary Official Statement, with such modifications as the Town Manager approves; the Town Manager of the Town is hereby authorized and directed to execute copies of the Final Official Statement and deliver the same to the Underwriter, which execution and delivery shall be conclusive evidence of the approval of any such modifications; and the Town hereby authorizes the use of the Preliminary Official Statement and Final Official Statement and the information contained therein in connection with the public offering and sale of each Series of the New Bonds by the Underwriter.

(e) A copy of this First Supplemental Ordinance shall be filed with the minutes of the meeting at which this First Supplemental Ordinance was enacted.

(f) The Town Council hereby authorizes and directs all of the officers and employees of the Town to carry out or cause to be carried out all obligations of the Town hereunder and to perform such other actions as they shall consider necessary or advisable in connection with the issuance, sale and delivery of the New Bonds.

(g) The Council hereby authorizes the Town Manager or his designee to negotiate the terms of, and execute, in the name and on behalf of the Town, and deliver investment agreements, forward delivery agreements, repurchase agreements and other agreements in connection with the New Bonds, to prepare and solicit bids for providers of such agreements and to execute, in the name and on behalf of the Town, written confirmations of any such agreements and other documents as may be necessary in connection therewith. Further, the Town Manager or his designee is hereby authorized to take any and all actions and execute any and all documents, upon the advice of its Bond Counsel, necessary to cause the termination of any forward delivery, repurchase or other investment agreement related to the 2004 Certificates.

Section 12. Authorization to Effect Refunding; Redemption of the Certificates to be Refunded. If a Series of the New Bonds are issued for the purpose of refinancing the Certificates to be Refunded, such proceeds shall be used, together with amounts on deposit in the debt service reserve fund for the Certificates to be Refunded, for the payment of the principal of such Certificates to be Refunded as and when such Certificates to be Refunded mature and are called for redemption in accordance with the provisions of the 2004 Trust Agreement, at the redemption price thereof, together with accrued interest on such Certificates to be Refunded to the date fixed for redemption.

The Town Manager is hereby authorized and directed for and on behalf of the Town to execute such agreements and give such directions as shall be necessary to carry out the provisions of this First Supplemental Ordinance, including the execution and delivery of the Escrow Agreement. The Escrow Agreement shall be dated the date of delivery of the applicable Series of the New Bonds issued therefor.

Section 13. Disposition of Proceeds of New Bonds and Certain Other Moneys. The proceeds derived from the sale of the New Bonds, net of any original issue discount or premium (or both), any Underwriter's discount or fees payable to the purchaser thereof, shall be deposited with (or at the order of) the Town, the Trustee, the Escrow Agent or the Custodian, as applicable, and used for the following purposes:

(a) If the Town Manager determines that a Series Debt Service Reserve Fund shall be established for a Series of New Bonds and the Series Reserve Fund Requirement shall be funded with a portion of the proceeds of a Series of the New Bonds, there shall be deposited with the Trustee for deposit into such Series Debt Service Reserve Fund an amount equal to the applicable Series Reserve Fund Requirement.

(b) With respect to a Series of the New Bonds issued to refinance the Certificates to be Refunded, proceeds thereof shall be deposited with the Escrow Agent pursuant to the Escrow Agreement.

(c) With respect to a Series of the New Bonds issued to finance the Costs of Acquisition and Construction for the New Projects or Costs of Issuance for such Series of New Bonds, proceeds thereof shall be deposited with the Custodian into the Series Construction Fund established in Section 9 hereof.

The respective amounts specified in this Section 13 shall be determined by the Town upon delivery of any Series of the New Bonds.

Section 14. Federal Tax Covenant. The Town hereby covenants and agrees with the Holders of the New Bonds issued as tax-exempt obligations (the "Tax-Exempt Bonds") that it will not take any action which will, or fail to take any action which failure will, cause interest on the Tax-Exempt Bonds to become includable in the gross income of the Bondholders thereof for federal income tax purposes pursuant to the provisions of the Code and regulations promulgated thereunder in effect on the date of original issuance of the Tax-Exempt Bonds and that no use of the proceeds of the Tax-Exempt Bonds shall be made which, if such use had been reasonably expected on the date of issue of the Tax-Exempt Bonds would have caused the Tax-Exempt Bonds to be "arbitrage bonds," as defined in the Code; and to that end the Town hereby shall:

(a) comply with the applicable provisions of Section 103 and Sections 141 through 150 of the Code and any regulations promulgated thereunder so long as the Tax-Exempt Bonds are Outstanding;

(b) establish such funds, make such calculations and pay such amounts, if necessary, in the manner and at the times required in order to comply with the requirements of the Code relating to required rebate of certain amounts to the United States; and

(c) make such reports of such information at the times and places required by the Code.

Section 15. Continuing Disclosure. So long as and to the extent required pursuant to Section 11-1-85 of the Code of Laws of South Carolina 1976, as amended ("Section 11-1-85"), the Town covenants that it will file with a central repository for availability in the secondary bond market when requested:

(i) An annual independent audit, within 30 days of the Town's receipt of the audit; and

(ii) Event-specific information within 30 days of an event adversely affecting more than 5% percent of Hospitality Fees or the Town's tax base.

The only remedy for failure by the Town to comply with the covenant of this Section 15 shall be an action for specific performance of this covenant; and failure to comply shall not constitute a default or an "Event of Default" under the Ordinance or this First Supplemental Ordinance. The Trustee shall have no responsibility to monitor the Town's compliance with this covenant. The Town specifically reserves the right to amend or delete this covenant in order to reflect any change in Section 11-1-85, without the consent of the Trustee or any Holder of any New Bonds.

In addition, the Town Manager is hereby authorized and directed to approve the form of, and execute and deliver, a Continuing Disclosure Certificate of the Town, related to one or more Series of the New Bonds as required by applicable law, and the Town hereby covenants and agrees that it will comply with and carry out all of the provisions of such Continuing Disclosure Certificate. Notwithstanding any other provisions of this First Supplemental Ordinance, failure of the Town to comply with the Continuing Disclosure Certificate shall not be considered an Event of Default, and no liability for damages shall attach therefor. The sole remedy for such failure to comply shall be that any New Bondholder may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Town to comply with their obligations under this paragraph.

Section 16. Further Actions. The Mayor, the Town Manager, the Finance Director of the Town, and the Town Clerk are hereby authorized and directed to take any and all such further actions as shall be deemed necessary or desirable in order to effectuate issuance of the New Bonds and the refunding of the Certificates to be Refunded.

Section 17. Headings. The headings and titles of the several sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this First Supplemental Ordinance.

Section 18. Notices. All notices, certificates or other communications hereunder or under the Ordinance shall be sufficiently given and shall be deemed given when mailed by registered mail, postage prepaid, or given when dispatched by telegram addressed as follows:

If to the Town:

Hilton Head Island, South Carolina
Attn: Town Manager
One Town Center Court
Hilton Head Island, South Carolina 29928

If to the Paying Agent, the Registrar, the Trustee or the Escrow Agent:

Wells Fargo Bank, N.A.
Attention: Corporate Trust Services
7000 Central Parkway, Suite 550
Atlanta, Georgia 30328

The Town, the Paying Agent, the Registrar, the Trustee and the Escrow Agent may, by notice given to the other parties, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 19. Repeal of Inconsistent Ordinances and Resolutions. All ordinances and resolutions of the Town, and any part of any ordinance or resolution, inconsistent with this First Supplemental Ordinance are hereby repealed to the extent of such inconsistency.

Section 20. Severability. If any sections, phrase, sentence or portion of this First Supplemental Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not attest the validity of the remaining portions thereof.

Section 21. Effective Date. This First Supplemental Ordinance shall be effective upon its adoption by the Town Council for the Town of Hilton Head Island, South Carolina.

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS _____ DAY OF _____ 2011.

Drew A. Laughlin, Mayor

ATTEST:

Cori Brock, Town Clerk

First Reading: _____
Second Reading: _____

APPROVED AS TO FORM:

Gregory M. Alford, Town Attorney

Introduced by Council Member: _____

LIST OF NEW PROJECTS

Fire & Rescue Station 5
Fire & Rescue Station 1
Fire & Rescue Station 6
Fire & Rescue Station 2
Fire & Rescue Apparatus

FORM OF NEW BOND

[DTC Legend]

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA
[TAXABLE] SPECIAL OBLIGATION [REFUNDING] BONDS
(HOSPITALITY FEE PLEDGE), SERIES _____

No. R-____

Interest Rate

Maturity Date

Issue Date

CUSIP

Registered Holder:

Principal Amount:

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA (the “Town”) a public body corporate and politic and a political subdivision of the State of South Carolina (the “State”), created and existing by virtue of the laws of the State, acknowledges itself indebted and for value received hereby promises to pay, solely as hereinafter provided, to the Registered Owner named above or registered assigns, the Principal Amount set forth above on the Maturity Date stated above, unless this Bond be subject to redemption and shall have been redeemed prior thereto as hereinafter provided, upon presentation and surrender hereof at the corporate trust office of Wells Fargo Bank, N.A. in Atlanta, Georgia, as trustee (the “Trustee”), and to pay interest on such Principal Amount at the annual Interest Rate stated above (calculated on the basis of a 360-day year of twelve (12) 30-day months), until the obligation of the Town with respect to the payment of such Principal Amount shall be discharged. Interest on this Bond shall be payable in semiannual installments on _____ 1 and _____ 1 of each year beginning _____, 2011 (each, an “Interest Payment Date”), until maturity or earlier redemption. All payments shall be paid to the person in whose name this Bond is registered at the close of business on the fifteenth day of the calendar month (each, a “Record Date”) preceding each Interest Payment Date or Principal Payment Date (as defined in the hereinafter defined Ordinances). The payments shall be payable by check or draft mailed at the times provided herein to the person in whose name this Bond is registered at the address shown on the registration books of the Town held by Wells Fargo Bank, N.A., as registrar (the “Registrar”), or, in the case of a Registered Holder of \$1,000,000 or more in principal amount of this Bond, by wire transfer to on account within the continental United States upon the timely receipt of a written request of such Registered Holder. The payments are payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

THIS BOND HAS BEEN ISSUED UNDER THE PROVISIONS OF TITLE 6, CHAPTER 21 AND CHAPTER 1, ARTICLE 7, CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED (COLLECTIVELY, THE "ACT"); THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS OF THE TOWN WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION (EXCEPT ARTICLE X, SECTION 14(10) OF THE STATE CONSTITUTION AUTHORIZING INDEBTEDNESS PAYABLE SOLELY FROM A SOURCE OF REVENUE DERIVED OTHER THAN A TAX OR LICENSE) OR STATUTORY LIMITATION. THE TOWN IS NOT OBLIGATED TO PAY ANY OF THE BONDS OR THE INTEREST THEREON EXCEPT FROM HOSPITALITY FEES (AS DEFINED IN THE ORDINANCES). THE BONDS ARE NOT GENERAL OBLIGATIONS OF THE TOWN, THE STATE, OR ANY POLITICAL SUBDIVISION THEREOF AND NEITHER THE FULL FAITH AND CREDIT NOR THE GENERAL CREDIT NOR TAXING POWERS OF THE TOWN, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF.

This Bond shall not be valid or obligatory for any purpose until the Certificate of Authentication hereon shall have been duly executed by the Trustee.

This Bond is one of an issue of bonds of the Town in the aggregate principal amount of _____ Million Dollars (\$_____) (the "Bonds") of like tenor, except as to number, rate of interest, date of maturity and redemption provides, issued pursuant to and in accordance with the Constitution and statutes of the State, including particularly the Act, Ordinance No. _____ duly enacted by the Town Council of the Town (the "Council") on _____, 2011 (the "General Bond Ordinance"), and Ordinance No. _____ duly enacted by the Council on _____, 2011 (the "First Supplemental Ordinance") (the General Bond Ordinance and the First Supplemental Ordinance are herein collectively referred to as the "Ordinances") for the purpose of providing moneys, to (i) finance a portion of the New Projects, (ii) [refinance the Certificates to be Refunded, (iii)] satisfy the Series Reserve Fund Requirement (if any) with respect to the Bonds, and [(iii)][(iv)] pay all costs of issuing the Bonds.

Certain capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Ordinances. Certified copies of the Ordinances are on file in the office of the Trustee and in the office of the Clerk of Court for Beaufort County, South Carolina.

The Ordinances contain provisions defining terms, set forth the revenues pledged for the payment of the principal of and interest on this Bond and the Bonds of other series herewith which may hereafter be issued on a parity herewith under the Ordinances; set forth the nature, extent and manner of enforcement of the security of this Bond and of such pledge, and the rights and remedies of the Holder hereof with respect thereto; set forth the terms and conditions upon which and the extent to which the Ordinances may be altered, modified and amended; set forth the terms and conditions upon which this Bond is issued upon which other bonds may be hereinafter issued payable as to principal, premium, if any, and interest on a parity with this Bond and equally and ratably secured herewith; sets forth the rights, duties and obligations of the Town thereunder; and set forth the terms and conditions upon which the pledge made in the Ordinances for the security of this Bond and upon which the covenants, agreements and other obligations of the Town made therein may be discharged at or prior to the maturity or redemption of this Bond with provisions for the payment thereof in the manner set forth in the Ordinances. Reference is hereby made to the

Ordinances to all of the provisions of which any holder of this Bond by the acceptance hereof thereby assents. The provisions of the Act and the Ordinances shall be a contract with the holder of this Bond.

This Bond and the series of Bonds of which it is one and the interest thereon are special obligations of the Town and are secured by and payable solely from, and secured equally and ratably by a pledge of and lien upon, the Hospitality Fees imposed and collected by the Town[, which pledge is junior and subordinate to the pledge thereof securing the Town's obligations to pay amounts due under the 2004 Installment Sale Agreement].

The General Bond Ordinance authorizes the issuance of additional bonds on a parity with the Bonds of this issue which, when issued in accordance with the provisions of the General Bond Ordinance, will rank equally and be on a parity herewith.

This Bond and the interest hereon are exempt from all State, county, municipal, school district, and all other taxes or assessments imposed within the State, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate, transfer and certain franchise taxes.

This Bond is transferable, as provided in the Ordinances, only upon the registration books of the Town kept for that purpose and maintained by the Registrar, by the Holder hereof in person or by his duly authorized attorney, upon (a) surrender of this Bond and an assignment with a written instrument of transfer satisfactory to the Registrar, duly executed by the Holder hereof or his duly authorized attorney and (b) payment of the charges, if any, prescribed in the Ordinances. Thereupon a new Bond of the same aggregate principal amount, maturity and interest rate shall be issued to the transferee in exchange therefor as provided in the Ordinances. The Town, the Trustee and the Registrar may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of or on account of the principal or redemption price hereof and interest due hereon and for all other purposes.

For every exchange or transfer of this Bond, the Town or the Trustee or Registrar, as the case may be, may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer.

[Redemption Provisions]

If less than all the Bonds of any maturity are called for redemption, the Bonds of such maturity to be redeemed shall be selected at random by the Trustee. In the event any of the Bonds or portions thereof are called for redemption, the Trustee shall give notice, in the name of the Town, of redemption of Bonds by first-class mail, postage prepaid, to the Holder thereof as shown on the Books of Registry of the Town not less than thirty (30) days and not more than sixty (60) days prior to the date fixed for the redemption thereof. If this Bond be redeemable and shall have been duly called for redemption and notice of the redemption hereof mailed as aforesaid, and if on or before the date fixed for such redemption, payment thereof shall be duly

made or provided for, interest hereon shall cease or accrue from and after the redemption date hereof.

It is hereby certified and recited that all conditions, acts and things required by the Constitution and statutes of the State to exist, be performed or happen precedent to or in the issuance of this Bond, exist, have been performed and have happened, that the amount of this Bond, together with all other indebtedness of the Town, does not exceed any limit prescribed by such Constitution or statutes.

This Bond shall not be valid or obligatory for any purpose until the Certificate of Authentication hereon shall have been duly executed by the Trustee.

IN WITNESS WHEREOF, THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA has caused this Bond to be signed by the manual or facsimile signature of its Mayor, its corporate seal to be reproduced hereon and the same to be attested by the manual or facsimile signature of its Town Clerk.

THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

By: _____
Mayor

(SEAL)

ATTEST:

By: _____
Town Clerk

FORM OF CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds of the issue described in the within mentioned Ordinance.

Wells Fargo Bank, N.A., as Trustee

By: _____

Its: _____

Date: _____

IT IS HEREBY CERTIFIED that the following is a true and correct copy of the approving opinion of McNair Law Firm, P.A., Columbia, South Carolina, the original of which was manually executed, dated and issued as of the date of the delivery of and payment for the bonds, and a copy of which is on file with the Town.

THE TOWN OF HILTON HEAD, SOUTH CAROLINA

By: _____
Town Clerk

FORM OF ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

(please print or type name and address of Transferee and Social Security or other identifying
number of Transferee)

the within Bond and all rights and title thereunder, and hereby irrevocably constitutes and appoints attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Date: _____

STAMP Language

Signature Guaranteed: _____

NOTICE: Signature(s) must be guaranteed
By an institution which is a participant in the
Securities Transfer Agent Medallion Program
(STAMP) or similar program.

NOTICE: The signature to this assignment
must correspond with name as it appears
upon the face of the within bond in every
particular, without alteration or enlargement
or any change whatever.



MEMORANDUM

TO: Town Council

FROM: Stephen G. Riley, CM, Town Manager

VIA: Susan M. Simmons, CPA, Director of Finance

DATE: July 21, 2011

RE: **First Reading of Proposed Ordinance No. 2011-19**
General Bond Ordinance – Beach Preservation Fee Pledge

Recommendation:

Town Council approves first reading of Proposed Ordinance No. 2011-19 which establishes a new manner for issuing debt for which the repayment will be from a pledge of beach preservation fees.

Summary:

The Town issued debt in 2006 pledged from beach preservation fee revenues through its Hilton Head Island Public Facilities Corporation in the form of Certificates of Participation (COPS). Since that time, State law has changed allowing for special obligation bonds pledging a specific revenue stream eliminating the necessity for COPS. The Special Obligation Bonds form of debt is viewed more favorably by investors and the rating companies in the municipal market. Therefore, staff recommends that the Town begin to use Special Obligation Bonds when applicable. The general ordinance is a parent or master document establishing the authority to issue debt but does not authorize a specific debt issuance. The authority to issue specific amounts of bonds will be accomplished through supplemental ordinances; the first of which is Proposed Ordinance No. 2011-20.

Background:

The Town issued Series 2006 Beach Preservation Fee COPS for which the proceeds were used for comprehensive beach renourishment. Upon Council's approval of Proposed Ordinance 2011-19 and 2011-20, staff plans to issue special obligation bonds - beach preservation fee pledge in the next few months.

GENERAL BOND ORDINANCE

AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF SPECIAL OBLIGATION BONDS (BEACH PRESERVATION FEE PLEDGE) OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA; PRESCRIBING THE FORM OF BONDS; PROVIDING FOR THE PAYMENT OF THE BONDS FROM THE SOURCES PROVIDED HEREIN; CREATING CERTAIN FUNDS AND PROVIDING FOR PAYMENTS INTO SUCH FUNDS; MAKING OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE FOREGOING; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Town of Hilton Head, South Carolina (the “Town”) has undertaken and desires to continue to undertake renourishment of the beaches adjacent to certain areas within the Town, including but not limited to: South Beach (Sea Pines); South Forest Beach; Coligny; North Forest Beach; Shipyard; Palmetto Dunes; Singleton Beach; Burkes Beach; Bradley Beach; Folly Field; Port Royal; and Fish Haul; and such capital improvement projects as may be authorized by Town Council (collectively, the “Projects”, as more particularly defined herein); and

WHEREAS, the Town Council of the Town (the “Council”) enacted Ordinance No. 93-32 on November 15, 1993, as amended by Ordinance No. 94-12 enacted on May 2, 1994, and as further amended by Ordinance No. 2006-09 enacted on June 20, 2006, imposing the Beach Preservation Fees (the “Beach Preservation Fees,” as more particularly defined herein) within the geographic boundaries of the Town; and

WHEREAS, Hilton Head Island Public Facilities Corporation, an instrumentality of the Town (the “Corporation”), issued \$19,000,000 original principal amount of the Hilton Head Island Public Facilities Corporation, Certificates of Participation Evidencing Undivided Proportionate Interests in Base Fee Payments Under an Installment Sale Agreement (Beach Preservation Fee Pledge), Series 2006, which are presently outstanding in the principal amount of \$7,795,000 (the “2006 Certificates”), evidencing proportionate undivided interests in the Base Fee Payments (as defined in the Installment Sale Agreement dated as of August 1, 2006 (the “2006 Installment Sale Agreement”) between the Town and the Corporation) paid by the Town under the 2006 Installment Sale Agreement; and

WHEREAS, pursuant to the 2006 Installment Sale Agreement, the Town has pledged the Beach Preservation Fees to secure its obligation to pay Base Fee Payments and Additional Fee Payments (as defined in the 2006 Installment Sale Agreement) thereunder; and

WHEREAS, the Town is permitted to issue Other Obligations (as defined in the 2006 Installment Sale Agreement) secured by a pledge of the Beach Preservation Fees, which pledge may be junior and subordinate to the pledge of the Beach Preservation Fees securing its obligation to pay Base Fee Payments and Additional Fee Payments under the 2006 Installment Sale Agreement; and

WHEREAS, the Town is presently contemplating the undertaking of new Projects; and

WHEREAS, the Council has been advised that in order to finance the Projects, the Council must enact appropriate ordinances authorizing the issuance of special obligation bonds.

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

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. Unless the context shall clearly indicate some other meaning, the terms defined in this Section shall, for all purposes of this Ordinance and of any ordinance, resolution, certificate, opinion, instrument or other document herein or therein mentioned, have the meanings herein specified. The definitions shall be equally applicable to both the singular and plural forms of any of the terms herein defined and vice versa. The term:

“2006 Certificates” shall mean the \$19,000,000 original principal amount Hilton Head Island Public Facilities Corporation, Certificates of Participation Evidencing Undivided Proportionate Interests in Base Fee Payments Under an Installment Sale Agreement (Beach Preservation Fee Pledge), Series 2006, dated August 1, 2006, and outstanding as of the date hereof in the principal amount of \$7,795,000.

“2006 Installment Sale Agreement” shall mean the Installment Sale Agreement, dated as of August 1, 2006, between the Town and the Corporation, relating to the 2006 Certificates.

“2006 Trust Agreement” shall mean the Trust Agreement, dated as of August 1, 2006 between the Corporation and Wells Fargo Bank, N.A., as Trustee, relating to the 2006 Certificates.

“Accommodations Fee Act” means, collectively, Title 6, Chapter 1, Article 5, and Section 6-1-760, of the S.C. Code.

“Accountant” shall mean an independent certified public accountant or a firm of independent certified public accountants selected by the Town.

“Beach Preservation Fees” means the Beach Preservation Fees imposed by the Town pursuant to the Accommodations Fee Act and the Beach Preservation Fee Ordinance.

“Beach Preservation Fee Fund” shall mean the Town of Hilton Head Island Beach Preservation Account created and established by the Beach Preservation Fee Ordinance.

“Beach Preservation Fee Ordinance” means Ordinance No. 93-32 enacted on November 15, 1993, as amended by Ordinance No. 94-12 enacted on May 2, 1994, by Ordinance No. 2006-09 enacted on June 20, 2006 and by ordinances enacted prior to the enactment date hereof (as the same may be codified in Title Four, Chapter 10, of the Municipal Code of the Town), as the same may from time to time hereafter be further amended.

“Bond” or “Bonds” shall mean any Bond, some of the Bonds or all of the Bonds issued under and pursuant to Article III hereof, excluding bonds or other indebtedness issued under Section 3.5 hereof.

“Bond Act” shall mean Title 6, Chapter 21, Code of Laws of South Carolina, 1976, and all other statutory authorizations, now or hereinafter enacted, authorizing and enabling the Town to provide for the issuance of the Bonds.

“Bond Counsel” shall mean any attorney or firm of attorneys of nationally recognized standing in matters pertaining to the federal tax exemption of interest on obligations issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States.

“Bondholders” or the term “Holders” or any similar term shall mean the registered owner or owners of any Outstanding Bond or Bonds.

“Bond Redemption Account” shall mean the account by that name created within each respective Debt Service Fund.

“Books of Registry” shall mean the registration books maintained by the Registrar, as bond registrar, in accordance with Section 4.3 hereof.

“Business Day” shall mean, except as otherwise provided with respect to a Series of Bonds in a Supplemental Ordinance, any day other than a Saturday, a Sunday or a day which shall be in the State or the state in which the corporate trust office of the Trustee is located a legal holiday or a day on which banking institutions are authorized by law or executive order to close or a day on which the payment system of the Federal Reserve is not operational.

“Construction Fund” shall mean any fund established with and maintained by the Custodian selected by the Town, and derived from certain of the proceeds of the sale of the Bonds and intended to defray the costs of all or a portion of any Project and to pay all Costs of Acquisition and Construction in connection therewith, as established in a Supplemental Ordinance authorizing the issuance of any Series of Bonds.

“Costs of Acquisition and Construction” shall mean, to the extent permitted by the Accommodations Fee Act, Project costs, including the Costs of Issuance and capitalized interest on Bonds. Costs of Acquisition and Construction shall include the reimbursement of funds previously

advanced by the Town with respect to the Projects, funding of a Debt Service Reserve Fund, and the payment of amounts due on bond anticipation notes, the proceeds of which were used for Costs of Acquisition and Construction.

“Costs of Issuance” shall mean all items of expense, directly or indirectly payable or reimbursable by or to the Town or the Council and related to the authorization, sale and issuance of Bonds including, but not limited to, printing costs, costs of preparation and reproduction of documents, filing and recording fees, initial fees and charges of any Trustee, Custodian, Registrar or Paying Agent, legal fees and charges, auditing and accounting fees and charges, fees and disbursements of consultants and professionals, costs of credit ratings, fees and charges for preparation, execution, transportation and safekeeping of Bonds, costs and expenses of any refunding, premiums for insurance relating to the issuance of Bonds, financing charges, accrued interest with respect to the initial investment of proceeds of Bonds and any other costs, charges or fees in connection with the original issuance of Bonds.

“Council” shall mean the Town Council of the Town of Hilton Head Island, South Carolina.

“Custodian” shall mean any bank, depository or trust company duly qualified and doing business within the State selected by the Town as a depository of moneys or securities held in the Construction Fund.

“Debt Service” shall mean, with respect to each Series of Bonds and with respect to any particular Fiscal Year, the aggregate of the amounts to be paid or set aside (or estimated to be required to be paid or set aside) in the applicable Debt Service Fund in such Fiscal Year for the payment of the principal of, redemption premium, if any, and interest (to the extent not payable from the proceeds of Bonds or investment earnings thereon) on such Series of Bonds; provided that the interest on Variable Rate Indebtedness then Outstanding shall be calculated at the actual average rate of interest on the Variable Rate Indebtedness during the twelve (12) months immediately preceding the date of calculation (or such lesser period during which the Variable Rate Indebtedness has been Outstanding); provided further, that for purposes of any prospective calculation, interest on Variable Rate Indebtedness shall be calculated at the lesser of (a) the 25-Bond Revenue Index published by *The Bond Buyer* (or if no longer published, any reasonably equivalent nationally recognized index published for the periods in question selected by the Town) no more than one month prior to the date of calculation or (b) the maximum interest rate allowable on such Variable Rate Indebtedness.

“Debt Service Fund” shall mean each of the respective funds of that name established pursuant to Section 6.6 of this Ordinance and so designated pursuant to a Supplemental Ordinance to provide for the payment of the principal of and interest on the respective Series of Bonds issued pursuant to this Ordinance and such Supplemental Ordinance as the same respectively become due and payable.

“Debt Service Reserve Fund” shall mean the respective funds, if any, of that name established pursuant to Section 6.7 of this Ordinance and so designated pursuant to a Supplemental Ordinance.

“Default” or “Event of Default” shall mean any of those Events of Default specified in and defined by Article X hereof.

“First Supplemental Ordinance” shall mean the Supplemental Ordinance enacted by the Council on the date hereof, authorizing the issuance of the Series 2011 Bonds.

“Fiscal Year” shall mean the fiscal year for the Town as determined by the Council, initially being the period from July 1 in any year to and including June 30 in the following year.

“Government Obligations” shall mean, except as otherwise provided in a Supplemental Ordinance, and to the extent such obligations constitute Permitted Investments, (1) cash; (2) United States Treasury Obligations – State and Local Government Series; (3) United States Treasury bills, notes, bonds or zero coupon treasury bonds all as traded on the open market; (4) direct obligations of the U.S. Treasury which have been stripped by the Treasury itself, including CATS, TIGRS and similar securities; (5) obligations of any agencies or instrumentalities which are backed by the full faith and credit of the United States of America; (6) bonds or debentures issued by any Federal Home Loan Bank or consolidated bonds or debentures issued by the Federal Home Loan Bank Board; (7) obligations of the Federal National Mortgage Association; (8) (i) General obligations of the State of South Carolina or any of its political units; or (ii) revenue obligations of the State of South Carolina or its political units, if at the time of investment, the obligor has a long-term, unenhanced, unsecured debt rating in one of the top two ratings categories, without regard to a refinement or gradation of rating category by numerical modifier or otherwise, issued by at least two nationally recognized credit rating organizations; or (9) any legally permissible combination of any of the foregoing. Government Obligations must be redeemable only at the option of the holder thereof.

“Interest Account” shall mean the account by that name created within each respective Debt Service Fund.

“Interest Payment Date” shall mean the respective interest payment dates for a Series of Bonds as determined by a Supplemental Ordinance.

“Junior Bonds” shall mean either (a) bonds or bond anticipation notes secured by a pledge of Beach Preservation Fees junior and subordinate in all respects to the pledge securing the Bonds or (b) any other form of indebtedness secured by a pledge of Beach Preservation Fees after provision has been made for all payments required to be made with respect to the Bonds, which bonds or indebtedness may be authorized by an ordinance of Council which is not supplemental to this Ordinance.

“Maximum Debt Service” shall mean the highest aggregate principal and interest requirements (to the extent not paid from the proceeds of Bonds or investment earnings thereon) on the Bonds then Outstanding during any then current or future Fiscal Year. In the case of determining the Maximum Debt Service for purposes of Section 3.3 of this Ordinance, interest on Variable Rate Indebtedness shall be calculated at the lesser of (a) the 25-Bond Revenue Index published by *The Bond Buyer* (or if no longer published, any reasonably equivalent nationally recognized index published for the periods in question selected by the Town) no more than one

month prior to the date of calculation or (b) the maximum interest rate allowable on such Variable Rate Indebtedness.

“Ordinance” shall mean this ordinance as from time to time amended or supplemented by one or more Supplemental Ordinances.

“Outstanding” when used with respect to any Bond shall have the construction given to such word in Article XII hereof; *i.e.*, a Bond shall not be Outstanding if such Bond is not, or would not be, at the time, deemed to be Outstanding by reason of the operation and effect of said Article XII.

“Paying Agent” shall mean for each Series of Bonds the respective paying agent or paying agents appointed pursuant to the proceedings authorizing such Bonds.

“Permitted Investments” shall mean, except as limited with respect to the funds and accounts relating to a Series of Bonds by a Supplemental Ordinance, (a) any one or more of the investments now or hereafter permitted by Section 6-5-10, Code of Laws of South Carolina 1976, as amended and in effect from time to time, or any authorization relating to the investment of Town funds hereunder; and (b) the South Carolina Pooled Investment Fund or similar State administered pool investment fund.

“Principal Account” shall mean the account by that name created within each respective Debt Service Fund.

“Principal Payment Date” shall mean the respective principal payment dates for a Series of Bonds as determined by a Supplemental Ordinance.

“Project” shall have the meaning set forth in the Recitals hereof, as the same may be permitted by the Accommodations Fee Act.

“Record Date” shall mean with respect to any Series of Bonds the fifteenth (15th) day (whether or not a Business Day) of the calendar month immediately preceding an Interest Payment Date or such other day as may be provided in the Supplemental Ordinance authorizing the issuance of such Series of Bonds.

“Registrar” shall mean for each Series of Bonds the registrar appointed pursuant to the proceedings authorizing such Bonds.

“Reserve Fund Requirement” shall mean, as of the date of calculation, the debt service reserve fund requirement, if any, established pursuant to a Supplemental Ordinance authorizing the issuance of a Series of Bonds.

“S.C. Code” shall mean the Code of Laws of South Carolina 1976, as amended.

“Serial Bonds” shall mean Bonds which are not Term Bonds.

“Series” or “Series of Bonds” or “Bonds of Series” shall mean all Bonds designated as being of the same series issued and delivered on original issuance in a simultaneous transaction, and any Bonds thereafter delivered in lieu thereof or in substitution therefor pursuant to this Ordinance.

“Series 2011 Bonds” shall mean the not exceeding \$11,000,000 Town of Hilton Head Island, South Carolina Special Obligation Bonds (Beach Preservation Fee Pledge), in one or more series, authorized to be issued pursuant to this Ordinance and the First Supplemental Ordinance.

“State” shall mean the State of South Carolina.

“Supplemental Ordinance” shall mean any ordinance by the Town providing for the issuance of Bonds and any ordinance enacted by Council pursuant to and in compliance with the provisions of Article IX hereof amending or supplementing the provisions of this Ordinance.

“Term Bonds” shall mean any Bond designated by the Supplemental Ordinance providing for its issuance as being subject to retirement or redemption from moneys credited to the applicable Bond Redemption Account as sinking fund installments.

“Town” shall mean the Town of Hilton Head Island, South Carolina.

“Town Representative” shall mean the person or custodian/persons at the time designated to act on behalf of the Town for the purpose of performing any act under this Ordinance or any Supplemental Ordinance by a written certificate furnished to the Trustee or Custodian containing the specimen signature of such person or persons and signed on behalf of the Town by the Mayor or Town Manager.

“Trustee” shall mean Wells Fargo Bank, N.A., and any successor Trustee appointed in accordance with Section 8.2 hereof.

“Variable Rate Indebtedness” shall mean indebtedness in the form of Bonds, the interest rate on which is not established at a fixed or constant rate at the time such indebtedness is incurred.

[End of Article I]

ARTICLE II

FINDINGS AND DETERMINATIONS

Section 2.1. Findings and Determinations. The Council hereby finds and determines:

(a) The Town is an incorporated municipality located in Beaufort County, South Carolina, and as such has all powers granted to municipalities by the Constitution and general laws of the State.

(b) Section 5-7-30 of the S.C. Code provides, in part, that municipalities may enact ordinances, not inconsistent with the Constitution and general law of the State, respecting any subject which appears necessary and proper for the security, general welfare, and convenience of the municipality and for the preservation of the general health, peace, order and good government in the municipality, and further, under the case of Williams v. Town of Hilton Head, 429 S.E.2d 802 (1993) a municipality may enact regulations (ordinances) without the requirement for further specific statutory authorization so long as such regulations are not inconsistent with the Constitution and general law of the State.

(c) Pursuant to the authorization granted by the General Assembly to municipalities in the Accommodations Fee Act, the Council imposed the Beach Preservation Fees. While the General Assembly utilized the words "local accommodations tax" in the Accommodations Fee Act as a means by which to designate the charge authorized to be imposed on all accommodations offered to transients, it was the intent of the Council to impose such charges as fees pursuant to the provisions of the Beach Preservation Fee Ordinance.

(d) It is a well established principle of South Carolina law that the use of a particular word is not determinative of its characterization. Jackson v. Breeland, 88 S.E. 128, 103 S.C. 184 (1915). As set forth in Brown v. County of Horry, 417 S.E.2d 565, 308 S.C. 180 (1992), the factors that are of paramount importance to the analysis of whether a charge constitutes a "tax" or a "fee" are the following: (i) the purpose behind its imposition; (ii) the intended portion of the community that will be charged; and (iii) the dedication of the sums so collected to the purpose for which it is charged. The Council finds that its actions in imposing the Beach Preservation Fees and segregating the collections received from such fees in order that such sums be utilized according to the Accommodations Fee Act meet the test enunciated in Brown such that the charges imposed pursuant to the provisions of the Beach Preservation Fee Ordinance constitute fees.

(e) A dynamic tourism industry fosters and enhances the economic growth and well being of a community and its residents. Tourism has been and continues to be a growing industry for the Town. The Town is initiating efforts to promote tourism to the Town and to the Town's facilities and attractions. Moreover, as the Town's tourism industry grows and expands, the Town must make provision to increase municipal services and facilities in order to accommodate the needs of tourists and to attract additional tourism. Tourists enjoy and utilize the special benefits which the Town provides. The Council has been advised and recognizes that Beach Preservation Fees must be used exclusively for Projects or otherwise for purposes permitted by the Beach Preservation Fee Ordinance and the Accommodations Fee Act.

(f) Article X, Section 14 of the Constitution of the State of South Carolina, 1895, as amended, provides that municipalities may incur indebtedness payable solely from a revenue-producing project which source does not involve revenues from any tax or license.

(g) Section 6-1-760(B) of the S.C. Code provides that a municipality is authorized to issue bonds, pursuant to Section 14(10), Article X of the Constitution of the State, utilizing the procedures of the Bond Act, for the purposes enumerated in Section 6-1-530 of the S.C. Code, to pledge as security for such bonds and to retire such bonds with the proceeds of accommodations fees imposed under the Accommodations Fee Act, and the pledge of such other nontax revenues as may be available for those purposes for capital projects used to attract and support tourists.

(h) The Town has heretofore pledged the Beach Preservation Fees to the payment of Base Fee Payments and Additional Fee Payments under and as defined in the 2006 Installment Sale Agreement in connection with the issuance of the 2006 Certificates.

(i) Pursuant to the authority of the Bond Act and the Accommodations Fee Act, the Town intends to finance certain Projects with a portion of the proceeds from the Bonds.

(j) The 2006 Installment Sale Agreement provides that, upon compliance with certain conditions set forth therein, the Town may issue "Other Obligations" secured by a pledge of the Beach Preservation Fees junior and subordinate to the pledge thereof securing payment of amounts due under the 2006 Installment Sale Agreement. "Other Obligations" are defined in the 2006 Installment Sale Agreement as any obligation of the Town constituting indebtedness under generally accepted accounting principles, and any other payment obligation with established or fixed annual or periodic payments, for the payment of which Beach Preservation Fees have been or are to be pledged. Bonds issued pursuant to this Ordinance and Supplemental Ordinances hereto shall qualify as "Other Obligations" as defined in the 2006 Installment Sale Agreement provided such Bonds comply with the conditions with respect to "Other Obligations" set forth in the 2006 Installment Sale Agreement.

[End of Article II]

ARTICLE III

AUTHORIZATION AND ISSUANCE OF BONDS

Section 3.1. Authorization of Bonds. There is hereby authorized to be issued Bonds of the Town to be known as “Town of Hilton Head Island, South Carolina, Special Obligation Bonds (Beach Preservation Fee Pledge)” or such other designations as may be provided in the Supplemental Ordinance authorizing such Bonds, which Bonds may be issued pursuant to this Ordinance and in accordance with the terms, conditions and limitations set forth herein; in Series; and in such amounts and from time to time as the own may deem to be necessary or advisable for any corporate purpose of the Town and Project for which Bonds may be issued under this Ordinance, the Bond Act and the Accommodations Fee Act.

Section 3.2. General Provisions For Issuance of Bonds. (a) The Bonds shall be issued in Series by means of Supplemental Ordinances enacted by the Council in accordance with the provisions of this Article and Article IX hereof. Each Supplemental Ordinance shall designate the Bonds provided thereby with an appropriate Series designation and with such further particular designations, if any, as the Town deems appropriate. Each Supplemental Ordinance shall, unless or except as is otherwise set forth herein, also specify: (i) the authorized principal amount of such Series of Bonds; (ii) the purpose or purposes for which the Bonds of such Series are being issued, which shall be one or more of the purposes set forth in Sections 3.3 or 3.4 hereof; (iii) if the Bonds of the Series are being issued for a purpose specified in Section 3.3 hereof, the Project for which such Bonds are being issued; (iv) an estimate of the Costs of Acquisition and Construction for any Project, if any, to be financed by such Series of Bonds, and, in the event of the acquisition by purchase or condemnation of any facilities already constructed, a determination of what repairs, replacements, additions and betterments will be necessary in order that such facilities may be effective for their purpose and an estimate of the costs required therefor; (v) the date or dates of the Bonds of the Series; (vi) the maturity date or dates of the Bonds of the Series and the sinking fund installment amounts and due dates for the Term Bonds of the Series, if any; (vii) the interest rate or rates of the Bonds of such Series, or the manner of determining such rate or rates, the initial Interest Payment Date therefor, and the subsequent Interest Payment Dates; (viii) the denominations of (if other than as provided in this Ordinance), and manner of numbering and lettering, the Bonds of such Series; (ix) the redemption premium or premiums, if any, or the redemption price or prices to be paid upon the redemption of the Bonds of such Series, the period or periods, if any, during which such premiums or prices shall be payable, and the terms and conditions, if any, of such redemption; (x) the place or places of payment of the Bonds of the Series and interest thereon, and the Paying Agent and Registrar therefor and any Custodian of the funds and accounts created with respect thereto; (xi) the provisions for the sale or other disposition of the Bonds of the Series and the use, application and investment, if any, of the proceeds of such sale or other disposition, which use, application and investment shall not be inconsistent or in conflict with the provisions hereof; (xii) whether such Series of Bonds will be subject to a Reserve Fund Requirement and the manner of satisfaction of such Reserve Fund Requirement; (xiii) any other provisions which may be required to be inserted therein by other provisions of this Ordinance; and (xiv) any other necessary or desirable provisions not inconsistent or in conflict with the provisions of this Ordinance.

(b) Bonds of a Series may be executed and delivered to the Registrar by the Town and authenticated and delivered by the Registrar to the Town or, upon its order, upon compliance with Section 3.3 or 3.4 hereof.

Bonds issued upon compliance with this Section and Section 3.3 or Section 3.4 hereof shall be issued on a parity with the pledge of and lien upon the Beach Preservation Fees *inter sese*, but not with respect to the particular Debt Service Fund or Debt Service Reserve Fund (if any) created for the benefit of the Holders of the Bonds of a Series, in all respects *inter sese*, notwithstanding, that they may be in different form, and bear different dates, interest rates, number, date of issuance or date of execution or are payable at different times. In all such instances, the pledge of Beach Preservation Fees made hereunder, and the covenants and remedies hereby granted, shall be applicable and available to the Holders of such Bonds. Additionally, the pledge of Beach Preservation Fees for payment of Bonds issued hereunder shall be junior and subordinate in all respects to the pledge thereof for payment of Base Fee Payments and Additional Fee Payments, if any, due under the 2006 Installment Sale Agreement while the 2006 Certificates are outstanding.

Section 3.3. Conditions for the Issuance of Bonds under this Ordinance Other than Refunding Bonds or Junior Bonds. Any time and from time to time, one or more Series of Bonds (exclusive of refunding Bonds) may be issued for such purposes as may be permitted by the Bond Act and Accommodations Fee Act upon compliance with the provisions of Section 3.2 hereof and this Section in such principal amounts as may be determined by Council for the purpose of paying all or part of the Costs of Acquisition and Construction of one or more Projects authorized to be financed under the Bond Act and the Accommodations Fee Act with Bonds and upon compliance with the following conditions:

A. There shall be executed a certificate of the Town Manager of the Town stating (i) either (a) that no Default exists in the payment of Fee Payments (as defined in the 2006 Installment Sale Agreement) or the principal of, premium, if any, or interest on any Bonds or Junior Bonds and all mandatory sinking fund redemptions, if any, required to have been made shall have been made, or (b) that the application of the proceeds of sale of the Series of Bonds to be issued as required by the Supplemental Ordinance authorizing their issuance will cure any such Default or permit such redemptions; and (ii) either (a) that to the best of his or her knowledge, the Town is not in Default in the performance of any other of its covenants and agreements contained in this Ordinance, or (b) setting forth the circumstances of each such Default known to him or her.

B. If a certificate filed pursuant to part (A) of this Section should disclose a Default or Defaults hereunder, there shall be filed with the Town and the Trustee an opinion of Bond Counsel that, in the case of any Default disclosed in a certificate filed pursuant to part (A) of this Section, each such Default does not deprive the Bondholders of the security afforded by this Ordinance in any material aspect.

C. For the issuance of Bonds to finance the Costs of Acquisition and Construction, or a portion thereof, of any Project (other than the Series 2011 Bonds issued pursuant to this Ordinance and the First Supplemental Ordinance), there shall be delivered a report, which need not be based upon the latest available audit of the Town, from the Town Manager, to the effect that the amount of the Beach Preservation Fees collected by the Town during the Fiscal Year prior to the Fiscal Year in

which the Bonds are proposed to be issued is not less than 120% of the sum of the Maximum Annual Payments (as defined in the 2006 Installment Sale Agreement) relating to the 2006 Certificates and the Maximum Debt Service on Bonds then Outstanding and the Bonds then proposed to be issued.

D. Such Bonds shall be issued to secure funds to defray the Costs of Acquisition and Construction of a Project, or to refund Junior Bonds, or any other notes, bonds, or other obligations issued to finance or to aid in financing the acquisition, construction, improvement, enlargement or repair of Projects.

E. The Supplemental Ordinance may provide for a deposit into the Debt Service Reserve Fund established with respect to such Series of Bonds, if any, of cash or securities or an insurance policy, surety bond or letter of credit, as provided in Section 6.7 hereof (inclusive of any proceeds of such Series of Bonds to be deposited in the applicable Debt Service Reserve Fund) having an aggregate value not less than the Reserve Fund Requirement, if any, with respect to such Series of Bonds.

Section 3.4. Refunding Bonds. Without complying with the provisions of Section 3.3 hereof except as otherwise provided herein, for the issuance of refunding Bonds, the Town by means of a Supplemental Ordinance enacted in compliance with the procedures of the Bond Act, the Accommodations Fee Act, and any other statutory provisions authorizing the issuance of refunding bonds, including advance refunding bonds, may issue hereunder refunding Bonds as follows:

A. Bonds may be issued for the purpose of refunding (including by purchase) at any time within one year prior to maturity or prior to any sinking fund installment due date, the Bonds maturing on such date (or an amount of such bonds subject to redemption from such sinking fund installments not in excess of the amount of such Bonds required to be redeemed on such due date) for the payment of which sufficient Beach Preservation Fees are not available. Any Bonds issued for such purpose shall mature (or sinking fund installments therefor shall commence) not earlier than the latest stated maturity of the Bonds not then refunded to be Outstanding after such refunding; or

B. Bonds may be issued at any time for the purpose of refunding (including by purchase) other Bonds, Junior Bonds, or some or all of the 2006 Certificates, including amounts to pay principal, redemption premium and interest to the date of redemption (or purchase) of the refunded Bonds or the refunded 2006 Certificates provided that (i) the aggregate Debt Service on all Bonds and the debt service requirements of the 2006 Certificates to be Outstanding after the issuance of the proposed Series of refunding Bonds shall not be greater than would have been prior to such issuance; or (ii) the requirements of parts (A), (B), (C) and (E) of Section 3.3 hereof are met with respect to the refunding Series.

Section 3.5. Junior Bonds. The Town may at any time issue Junior Bonds in such amount as it may from time to time determine, payable from Beach Preservation Fees, provided that such Junior Bonds are issued to secure funds to defray the costs of acquisition and construction of Projects or some part thereof, or to refund Bonds, Junior Bonds, 2006 Certificates, or any notes,

bonds, or other obligations issued to finance or to aid in financing the costs of acquisition and construction of Projects, and provided further that the pledge of and lien on Beach Preservation Fees securing Junior Bonds shall at all times be subordinate and inferior to the pledge of and lien on Beach Preservation Fees securing the Bonds.

[End of Article III]

ARTICLE IV

THE BONDS

Section 4.1. Execution. Unless or except as is otherwise set forth in the Supplemental Ordinance providing for the issuance of a Series of Bonds, the Bonds shall be executed on behalf of the Town by the Mayor of the Town by his or her manual or facsimile signature and the corporate seal of the Town, or a facsimile thereof shall be impressed or reproduced thereon and attested by the Town Clerk by his or her manual or facsimile signature.

In case any officer whose signature or facsimile signature shall appear on the Bonds shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, as if he had remained in office until delivery.

Section 4.2. Authentication. Unless or except as is otherwise set forth in the Supplemental Ordinance providing for the issuance of a Series of Bonds, upon compliance with the provisions of Section 3.3 or 3.4 hereof and upon the order of the Town, the Trustee shall authenticate Bonds authorized to be issued hereunder. Only such Bonds as shall have endorsed thereon a certificate of authentication duly executed manually by the Trustee shall be entitled to any right or benefit under this Ordinance. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Trustee, and such executed certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered. The Trustee's certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized officer of the Trustee, but it shall not be necessary that the same person sign the certificate of authentication on all of the Bonds issued hereunder or on all of the Bonds of a particular Series.

Section 4.3. Registration and Transfer of Bonds; Persons Treated as Holders. Unless and except as is otherwise set forth in the Supplemental Ordinance providing for the issuance of a Series of Bonds, each Bond shall be fully registered and transferable only upon the Books of Registry of the Town, which shall be kept for that purpose at the office of the Registrar by the Holder thereof or by his attorney, duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Holder or his or her duly authorized attorney with such signature guaranteed by a participant in the Securities Transfer Agents in Medallion Program ("STAMP") or similar program. Upon the transfer of any Bond, the Town shall issue, subject to the provisions of Section 4.6 hereof, in the name of the transferee, a new Bond or Bonds of the same series and of the same aggregate principal amount, interest rate and maturity as the unpaid principal amount of the surrendered Bond.

Any Bondholder requesting any transfer shall pay any tax or other governmental charge required to be paid with respect thereto. As to any Bond, the person in whose name the same shall be registered shall be deemed and regarded as the Holder and absolute owner thereof for all purposes, and payment of or on account of the principal, redemption premium, if any, and interest on any Bond shall be made only to or upon the order of the Bondholder thereof, or his duly authorized attorney, and neither the Town nor the Registrar shall be affected by any notice to the contrary, but such registration may be changed as herein provided. All such payments shall be valid

and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

Section 4.4. Form of Bonds; Denominations; Medium of Payment. Unless or except as is otherwise provided in the Supplemental Ordinance authorizing their issuance, the Bonds of each Series: (a) shall be in fully registered form without coupons, provided such Bonds may be issued in book-entry form; (b) shall be issued in denominations of \$5,000, or any integral multiple thereof, provided that, upon partial redemption of a Bond requiring surrender thereof and the issuance of a new Bond, such new Bond may be in the denomination of the unredeemed balance; and (c) shall be payable with respect to principal, interest, and premium, if any, in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

Section 4.5. Numbers, Date, and Payment Provisions. The Bonds shall be numbered and designated in such manner as the Town, with the concurrence of the Trustee, shall determine. Each Bond of a Series shall bear interest from the Interest Payment Date immediately preceding the date of its authentication, unless authentication shall be upon an Interest Payment Date, in which case it shall bear interest from its authentication, or unless authentication shall precede the first Interest Payment Date for such Bond, in which case it shall bear interest as otherwise provided in the Supplemental Ordinance authorizing its issuance, provided, however, that if the date of authentication of any Bond of any Series is after a Record Date and before the corresponding Interest Payment Date therefor, such Bond shall bear interest from such succeeding Interest Payment Date; notwithstanding the foregoing, if at the time of authentication of any Bond any interest on such Bond is in default, such Bond shall bear interest from the date to which interest on such Bond has been paid or if no interest has been paid, such Bond shall bear interest from the date of delivery thereof or from its dated date, or as otherwise provided in the Supplemental Ordinance authorizing the issuance of such Bonds.

Section 4.6. Exchange of Bonds. Unless or except as is otherwise provided in the Supplemental Ordinance authorizing their issuance Bonds, upon surrender thereof at the office of the Registrar with a written instrument of transfer satisfactory to the Registrar, duly executed by the Bondholder or his duly authorized attorney with such signature guaranteed by a participant in STAMP or similar program, may, at the option of the Bondholder thereof, and upon payment by such Bondholder of any charges which the Registrar may make as provided in Section 4.7, be exchanged for a principal amount of Bonds of the same Series and maturity of any other authorized denomination equal to the unpaid principal amount of surrendered Bonds.

Section 4.7. Regulations with Respect to Exchanges and Transfer. In all cases in which the privilege of exchanging or transferring Bonds is exercised, the Town shall execute and the Trustee shall authenticate and deliver Bonds in accordance with the provisions of this Ordinance or such Supplemental Ordinance authorizing the issuance thereof. All Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Trustee. There shall be no charge to the Bondholder for such exchange or transfer of Bonds except that the Trustee may make a charge sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or transfer. Neither the Town nor the Registrar shall be required (a) to exchange or transfer Bonds (i) from the Record Date to the succeeding Interest Payment Date or (ii) for a

period of fifteen (15) days following any selection of Bonds to be redeemed or thereafter until after the first publication or mailing of any notice of redemption, or (b) to transfer any Bonds called for redemption.

Section 4.8. Mutilated, Lost, Stolen or Destroyed Bonds. In case any Bond shall at any time become mutilated in whole or in part, or be lost, stolen or destroyed, or be so defaced as to impair the value thereof to the Holder, the Town shall execute and the Trustee shall authenticate and deliver at the principal office of the Trustee, or send by registered mail to the Holder thereof at his request, risk and expense a new Bond of the same series, interest rate and maturity and of like tenor and effect in exchange or substitution for and upon the surrender for cancellation of such defaced, mutilated or partly destroyed Bond, or in lieu of or in substitution for such lost, stolen or destroyed Bond. In any such event, the applicant for the issuance of a substitute Bond shall furnish the Town and the Registrar (a) evidence or proof satisfactory to the Town and the Registrar of the loss, destruction, mutilation, defacement or theft of the original Bond, and (b) of the ownership thereof, and (c) such security and indemnity as may be required by the laws of the State or such greater amount as may be required by the Town and the Registrar. Any duplicate Bond issued under the provisions of this Section in exchange and substitution for any defaced, mutilated or partly destroyed Bond or in substitution for any allegedly lost, stolen or wholly destroyed Bond shall be entitled to the identical benefits under this Ordinance or any Supplemental Ordinance as was the original Bond in lieu of which such duplicate Bond is issued, and shall be entitled to equal and proportionate benefits with all the other Bonds of the same series issued hereunder. Neither the Town nor the Registrar nor any Paying Agent shall be required to treat both the original Bond and any duplicate Bond as being Outstanding for the purpose of determining the principal amount of Bonds which may be issued hereunder or for the purpose of determining any percentage of Bonds Outstanding hereunder, but both the original and duplicate Bond shall be treated as one and the same. In the event any such mutilated, lost, stolen or destroyed Bond shall have matured, instead of issuing a duplicate Bond the Town may pay the same.

All expenses necessary for the providing of any duplicate Bond shall be borne by the applicant therefor.

[End of Article IV]

ARTICLE V

REDEMPTION OF BONDS

Section 5.1. Redemption of Bonds. The Bonds of a Series may be subject to redemption prior to their stated maturities upon such terms and conditions and at such dates and redemption price or prices or premium or premiums as shall be set forth in the Supplemental Ordinance providing for the issuance of such Bonds, and upon the further terms and conditions as are hereinafter set forth.

Section 5.2. Selection of Bonds for Redemption. In the event of the redemption at any time of only part of the Bonds of a Series, the Bonds to be redeemed shall be redeemed in such order as is set forth in the Supplemental Ordinance providing for the issuance of such Bonds. Unless otherwise provided by Supplemental Ordinance, if less than all of the Bonds of like maturity of any Series shall be called for prior redemption, the particular Bonds or portions of Bonds to be redeemed shall be selected by lot by the Trustee; provided, however, that the portion of any Bond of a denomination of more than \$5,000 to be redeemed shall be in the principal amount of \$5,000 or an integral multiple thereof, and that, in selecting portions of such Bonds for redemption, the Registrar shall treat each such Bond as representing that number of Bonds of \$5,000 denomination which is obtained by dividing the principal amount of such Bond by \$5,000.

Section 5.3. Notice of Redemption. Unless or except as otherwise provided in the Supplemental Ordinance authorizing their issuance, the provisions of this Section 5.3 apply to each Series of Bonds.

In the event any of the Bonds or portions thereof are called for redemption, the Trustee shall give notice, in the name of the Town, of redemption of Bonds by first-class mail, postage prepaid, to the Holder thereof as shown on the Books of Registry not less than 30 days and not more than 60 days prior to the date fixed for the redemption thereof. Such notice of redemption shall state: (a) the title of such Bonds to be redeemed, CUSIP numbers, if any, date of issue, the series designation (if any) thereof, the redemption date, the place or places of redemption and the redemption price or redemption premium, if any, payable upon such redemption; (b) if less than all such Bonds of a particular Series are to be redeemed, the distinctive number of such Bonds to be redeemed; (c) that the interest on such Bonds designated for redemption in such notice shall cease to accrue from and after such redemption date; and (d) that on such date there will become due and payable on each such Bond the principal amount thereof to be redeemed at the then applicable redemption price or redemption premium, if any, and the interest accrued on such principal amount to the redemption date. Any notice mailed as provided in this Section shall be conclusively presumed to have been duly given, when mailed, whether or not the Holder thereof receives the notice. The notice shall further state that if money for the redemption of all the Bonds being redeemed at that time is held by the Trustee on the redemption date, interest shall cease to accrue on such Bonds on and after the redemption date. The notice may further state that the redemption of the Bonds being called for redemption is conditioned upon the Trustee receiving on or before the redemption date of sufficient money for the redemption thereof.

Section 5.4. Partial Redemption of Bond. In the event that only part of the principal sum of a Bond shall be called for redemption or prepaid, payment of the amount to be redeemed or prepaid shall be made only upon surrender of such Bond to the Registrar. Upon surrender of such Bond, the Town shall execute and the Trustee shall authenticate and deliver to the Holder thereof, at the principal office of the Trustee, or send to such Holder by registered mail at his request, risk and expense, a new fully executed Bond or Bonds, of authorized principal sums equal in aggregate principal amount to, and of the same Series, maturity and interest rate as, the unredeemed portion of the Bond surrendered.

Section 5.5. Effect of Redemption. If a Bond is subject by its terms to redemption prior to its stated maturity and has been duly called for redemption and notice of the redemption thereof has been duly given as hereinbefore provided and if moneys for the payment of such Bond at the then applicable redemption price or together with the then applicable redemption premium, if any, and the interest to accrue to the redemption date on such Bond are held for the purpose of such payment by the Trustee for the series of Bonds of which such Bond is one, then such Bond so called for redemption shall, on the redemption date designated in such notice, become due and payable. Interest on the Bond so called for redemption shall cease to accrue.

Section 5.6. Cancellation. All Bonds which have been redeemed shall be canceled and either maintained or destroyed by the Registrar and shall not be reissued. A counterpart of the certificate of destruction evidencing such destruction shall be furnished by the Registrar to the Town upon the written request of the Town.

[End of Article V]

ARTICLE VI

ESTABLISHMENT OF FUNDS; SECURITY FOR AND PAYMENT OF THE BONDS; INVESTMENT OF MONEYS

Section 6.1. Listing of Funds and Accounts. In addition to the Beach Preservation Fee Fund (created and established pursuant to the Beach Preservation Fee Ordinance), the following are the funds created and established by this Ordinance:

- (i) Debt Service Fund for each Series of Bonds to be held by the Trustee, including an Interest Account, Principal Account and Bond Redemption Account.
- (ii) Debt Service Reserve Fund for each Series of Bonds, if any, to be held by the Trustee.
- (iii) Construction Fund, if applicable, for each Series of Bonds to be held by the Town or a bank or financial institution (a "Custodian") designated by the Town.
- (iv) One or more accounts may, by written direction of the Town or by the terms of a Supplemental Ordinance, be established within any of the above funds.

It is intended by this Ordinance that the funds and accounts referred to in this Article (other than the Construction Fund) shall remain in existence for so long a time as any sum remains due and payable by way of principal of and interest on the Bonds, and that deposits and withdrawals therefrom be made in the manner herein prescribed and in the order of priority hereinafter set forth in Section 6.2 hereof.

Section 6.2. Disposition of Beach Preservation Fees. The Beach Preservation Fees shall be applied in the amounts, if any, and for the purposes as provided or permitted by this Ordinance, and in the following order of priority:

First, there shall be transferred to the Trustee (as defined in the 2006 Trust Agreement) the amounts, if any, when and as required by the 2006 Installment Sale Agreement;

Second, there shall be transferred into the respective Debt Service Funds, the amounts required by this Ordinance or any Supplemental Ordinance;

Third, there shall be transferred into the respective Debt Service Reserve Funds, the amounts (including any payments required under the terms of any surety bond, insurance policy or letter of credit applicable thereto) required by this Ordinance or any Supplemental Ordinance;

Fourth, provision shall be made for payment of interest on amounts advanced by the provider of any surety bond, line of credit, insurance policy or letter of credit as contemplated in Section 6.7 hereof;

Fifth, provisions shall be made for the payment of any Junior Bonds; and

Sixth, the remaining Beach Preservation Fees shall be disposed of as provided in Section 6.9 hereof.

Section 6.3. Security for and Payment of the Bonds. Each Series of Bonds, together with the interest thereon, shall be payable solely from and secured equally and ratably by a pledge of the Beach Preservation Fees which shall be and hereby are irrevocably pledged to the payment of the principal of, redemption premium, if any, and interest on any Series of Bonds authorized by the Supplemental Ordinances; provided, however, that (1) such pledge of Beach Preservation Fees shall be junior and subordinate in all respects to the pledge thereof securing the Town's obligations to pay Base Fee Payments and Additional Fee Payments under the 2006 Installment Sale Agreement; (2) funds held by the Trustee in the respective Debt Service Funds and Debt Service Reserve Funds are hereby pledged for the benefit of the respective Bondholders as security for the Bonds of the Series to which such funds relate; and (3) this provision shall not preclude the issuance of Junior Bonds if such Junior Bonds be issued in conformity with the provisions of Section 3.5 hereof, but the pledge herein made shall preclude the issuance of bonds payable from or secured by a pledge of or lien on Beach Preservation Fees superior to that herein made to secure the Bonds.

The Bonds do not constitute an indebtedness of the Town within any State constitutional provision (other than Article X, Section 14, Paragraph 10 of the South Carolina Constitution authorizing obligations payable solely from special sources not involving revenues from any tax or license) or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Town or a charge against its general credit or taxing power. The full faith, credit and taxing powers of the Town are not pledged to the payment of the principal of and interest on the Bonds.

The covenants and agreements herein set forth to be performed by the Town shall be for the equal and proportionate benefit, security and protection of all Holders of the Bonds without preference, priority or distinction as to payment or security or otherwise (except as to maturity) of any of the Bonds for any reason or cause whatsoever, except as expressly provided herein or in the Bonds. Except as aforesaid, all Bonds shall rank *pari passu* and shall be secured equally and ratably hereunder without discrimination or preference whatsoever.

Section 6.4. Accounting Methods. The designation of the Beach Preservation Fee Fund referenced in and by this Ordinance shall not be construed to require the establishment of any completely independent, self-balancing funds as such term is commonly defined and used in governmental accounting, but rather is intended solely to constitute an earmarking of the Beach Preservation Fees for certain purposes and to establish certain priorities for application of such Beach Preservation Fees as herein provided.

The cash required to be accounted for in the Beach Preservation Fee Fund referenced herein may be deposited in a single bank account, into which Beach Preservation Fees shall be deposited, provided that adequate accounting records are maintained to reflect and control the restricted allocation of the cash in and deposited therein for the various purposes of such funds as provided herein.

Section 6.5. Beach Preservation Fee Fund. Pursuant to the Beach Preservation Fee Ordinance, there has been established and is hereby referenced a Beach Preservation Fee Fund to be maintained by a bank or other financial institution designated, from time to time, by the Town and into which shall be deposited all Beach Preservation Fees. Moneys in the Beach Preservation Fee Fund shall be used only in the manner specified in this Article VI and the Beach Preservation Fee Ordinance and in the order of priority set forth in Section 6.2 hereof. Moneys held in the Beach Preservation Fee Fund may be invested, from time to time, in Permitted Investments; provided, however, that such Beach Preservation Fees in the Beach Preservation Fee Fund shall be transferred to the Trustee (as defined in the 2006 Installment Sale Agreement) and the Trustee, when and as required and in the amounts, if any, required to be made by this Article VI, each Supplemental Ordinance and the Beach Preservation Fee Ordinance.

Section 6.6. Debt Service Funds. There shall be established and maintained special funds of the Town to be designated the Debt Service Fund for each Series of Bonds then Outstanding which shall be kept on deposit with the Trustee, and withdrawals therefrom shall be made for the purposes provided in this Ordinance. Each Debt Service Fund shall bear a separate series designation as may be necessary to distinguish such Debt Service Fund.

The respective Debt Service Funds are intended to provide for the payment of the principal of, redemption premium, if any, and interest on each Series of Bonds as the same respectively fall due. Payments into such Funds shall be made in the manner prescribed by this Ordinance and all moneys in the respective Debt Service Funds shall be used solely to pay the principal of, redemption premium, if any, and interest on the respective Series of Bonds, and for no other purpose, and withdrawals therefrom shall be made only to effect payment of the principal of, redemption premium, if any, and interest on the respective Series of Bonds. Earnings on investments in the Debt Service Fund, including the accounts therein, shall be added to and become a part of such respective Funds and the accounts therein.

The Town shall transfer or cause to be transferred to the Trustee from the Beach Preservation Fee Fund for deposit into the respective Debt Service Funds and ratably with respect to separate Series of Bonds for credit to the Interest Account, the Principal Account or the Bond Redemption Account, as the case may be, sufficient moneys so as to comply with the following provisions for the payment of the Bonds then Outstanding.

(a) *Interest Account.* There shall be established and maintained for the purpose of paying the interest on each Series of Bonds as the same becomes due and payable an Interest Account in the respective Debt Service Funds. Not later than five (5) Business Days prior to each Interest Payment Date, the Trustee shall transfer or allocate for credit to the Interest Account an amount received from the Town derived from Beach Preservation Fees equal to the installment of interest then falling due on the respective Series of Bonds then Outstanding. To the extent moneys derived from other sources have been transferred or allocated for credit to the Interest Account on or before five (5) Business Days prior to each Interest Payment Date, the amount of Beach Preservation Fees to be transferred or allocated for credit to such Interest Account shall be reduced or eliminated by the amount of such moneys transferred or allocated for credit to the Interest Account.

(b) *Principal Account.* There shall be established and maintained for the purpose of paying the principal of each Series of Bonds as they mature a Principal Account in the respective Debt Service Funds. Not later than five (5) Business Days prior to each Principal Payment Date, the Trustee shall transfer or allocate to the credit of the Principal Account an amount received from the Town derived from Beach Preservation Fees equal to the installment of principal on the respective Series of Bonds then falling due. To the extent moneys derived from other sources have been transferred or allocated for credit to the Principal Account on or before five (5) Business Days prior to each Principal Payment Date, the amount of Beach Preservation Fees to be transferred or allocated for credit to such Principal Account shall be reduced or eliminated by the amount of such moneys transferred or allocated for credit to the Principal Account.

(c) *Bond Redemption Account.* There shall be established and maintained, in order to meet the specified sinking fund installment requirements of Term Bonds and to otherwise retire Term Bonds prior to maturity, a Bond Redemption Account in the respective Debt Service Fund. Not later than five (5) Business Days prior to the date a sinking fund installment of Term Bonds of each Series falls due, the Trustee shall allocate to the credit of the Bond Redemption Account amounts received from the Town derived from Beach Preservation Fees equal to the sinking fund installment of principal then falling due on the respective Series of Term Bonds then Outstanding. To the extent moneys derived from other sources have been transferred or allocated for credit to the Bond Redemption Account on or before five (5) Business Days prior to the date a sinking fund installment of Term Bonds of a Series falls due, the amount of Beach Preservation Fees to be transferred or allocated for credit to such Bond Redemption Account shall be reduced or eliminated by the amount of such moneys transferred or allocated for credit to the Bond Redemption Account. The Trustee shall apply the moneys credited to the Bond Redemption Account as sinking fund installments to the retirement of the Term Bonds of each respective Series by redemption in accordance with the Supplemental Ordinance providing for the issuance of such Series of Bonds, without further authorization or direction, on each date upon which a sinking fund installment is due with respect to the Term Bonds of such Series. The Trustee shall keep and retain accurate records of application of each deposit of funds under this paragraph (c). The Trustee shall give notice of all such redemptions in the name and on the behalf of the Town in accordance with the provisions of Article V hereof. In making any of the deposits to the Bond Redemption Account required by this paragraph (c), consideration shall be given to and allowance made for any other credits otherwise made to such Bond Redemption Account.

(d) If, on the dates when the payments required by paragraphs (a), (b) and (c) of this Section are to be made, the payments actually made pursuant to said paragraphs (a), (b) and (c), are less than the sum required to effect the payment of the succeeding installment of principal or interest, or both, as the case may be, moneys in the applicable Debt Service Reserve Fund, if any, equal to such deficiency shall be added to the payment to be made pursuant to said paragraphs (a), (b) and (c). In the event of such transfer, the Trustee shall promptly give telephonic notice of such transfer to the Town and, within ten days after making the transfer, provide written notice to the Town of the amount and date of such transfer.

Moneys in the respective Debt Service Funds shall be used and applied solely to the payment of the interest on and the retirement of the principal of and redemption premium, if any, on the respective Series of Bonds and shall be used and applied in accordance with the provisions of

this Section 6.6 and this Ordinance and the Supplemental Ordinance providing for the issuance of such Series of Bonds. The moneys paid into the respective Debt Service Fund shall be held by the Trustee in trust solely for the purpose of paying the interest on and the retirement of the principal of and redemption premium, if any, on the respective Series of Bonds. Withdrawals from such Funds shall be made by the Trustee in order to transfer such moneys to the Paying Agent for the respective Series of Bonds. Such withdrawals shall be made so that the necessary moneys shall be available to the Paying Agent not later than one (1) Business Day prior to the day on which principal or interest or both, and redemption premium, if any, as the case may be, are payable on the Bonds.

Section 6.7. Debt Service Reserve Fund. (a) A Supplemental Ordinance may provide for the establishment of a Debt Service Reserve Fund for any Series of Bonds. Each Debt Service Reserve Fund shall bear a separate Series designation as may be necessary to distinguish such Debt Service Reserve Fund and shall, subject to certain provisions of this Ordinance, be maintained in an amount equal to the applicable Reserve Fund Requirement, as determined pursuant to a Supplemental Ordinance, and in the manner determined pursuant to such Supplemental Ordinance, so long as the applicable Series of Bonds shall be Outstanding. Each such Fund is intended to insure the timely payment of the principal of and interest on the applicable Series of Bonds and to provide for the redemption of such Series of Bonds prior to their stated maturities. The respective Debt Service Reserve Funds shall be kept on deposit with the Trustee, and withdrawals therefrom shall be made for the purposes provided in this Ordinance.

(b) Moneys in each Debt Service Reserve Fund shall be used for the following purposes, and for no other:

(1) To prevent a Default in the payment of the principal of or interest on the applicable Series of Bonds, by reason of the fact that moneys in the applicable Debt Service Fund are insufficient for such purposes;

(2) To pay the principal of, interest on, and redemption premium, if any, of the applicable Series of Bonds in the event that all Outstanding Bonds of such Series be redeemed as a whole;

(3) To effect partial redemption of the applicable Series of Bonds, provided that such redemption be undertaken in accordance with the provisions of this Ordinance permitting a partial redemption of the applicable Series of Bonds and the balance remaining in the applicable Debt Service Reserve Fund following such partial redemption shall not be less than the Reserve Fund Requirement; or

(4) To effect the retirement of a Series of Bonds through purchase under the conditions herein prescribed.

(c) Unless otherwise provided in a Supplemental Ordinance, whenever the market value (determined as of the valuation dates and in accordance with the method specified in Section 6.10 hereof) of the cash and securities in the applicable Debt Service Reserve Fund shall exceed the Reserve Fund Requirement, such excess may at the written direction of the Town (i) be used to repurchase and retire the applicable Series of Bonds at prices not exceeding the call price first to

become available or then prevailing; (ii) be deposited as the Town deems advisable; or (iii) be transferred to the Beach Preservation Fee Fund or, at the option of the Town, to the Construction Fund during the period of construction or acquisition of a Project. Purchases of Bonds shall be effected by the Town through the Trustee, and whenever Bonds shall have been purchased pursuant to this authorization, it shall be the duty of the Registrar to cancel and destroy such Bonds and to deliver certificates evidencing such act to the Town.

(d) Unless otherwise provided in a Supplemental Ordinance, if the Trustee sends written notice to the Town stating that a deficiency exists in the applicable Debt Service Reserve Fund (whether due to a transfer therefrom pursuant to Section 6.6(d) or a valuation thereof determined as of the valuation dates and in accordance with the method specified in Section 6.10 hereof), then (1) there shall be deposited from available Beach Preservation Fees into the applicable Debt Service Reserve Fund over the next succeeding six (6) months, successive equal monthly installments of the amount necessary to re-establish in the applicable Debt Service Reserve Fund its respective Reserve Requirement (upon receipt of each of which installments, the Trustee shall promptly send an updated written notice to the Town as to the remaining deficiency therein) and (2) the Town agrees to pay, prior to the next Interest Payment Date, an amount equal to such shortfall; provided, however, that the Town's obligation to make such payment shall be subject to Council, by ordinance duly enacted, appropriating moneys from sources or funds lawfully available for such purpose moneys sufficient to pay the shortfall. The Town understands and agrees that the payment obligation described in this paragraph shall constitute a current expense of the Town and shall not in any way be construed to be a debt of the Town in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness of the Town, nor shall anything contained herein constitute a pledge of the general tax revenues, funds, moneys or credit of the Town. Any such budgetary appropriation, notwithstanding any provision of this Ordinance to the contrary, shall not constitute a default or Event of Default under this Ordinance.

(e) In lieu of the deposit of moneys into the Debt Service Reserve Fund established with respect to any Series of Bonds to meet the Reserve Fund Requirement with respect to that Series, the Town may cause to be credited a surety bond or an insurance policy payable to, or a letter of credit in favor of, the Trustee for the benefit of the Holders of the Bonds meeting the standard set forth in the Supplemental Ordinance authorizing that Series of Bonds, as the case may be. The amount of moneys required to be deposited to the Debt Service Reserve Fund shall be reduced by the amount of the surety bond, insurance policy, or letter of credit. The surety bond, insurance policy, or letter of credit shall be payable (upon the giving of notice as required thereunder) on any Interest Payment Date on which moneys will be required to be withdrawn from the Debt Service Reserve Fund and applied to the payment of the principal of or interest on any Bonds of that Series but only to the extent that withdrawals cannot be made by amounts then credited to the Debt Service Reserve Fund.

If the Town obtains a surety bond, insurance policy or letter of credit in substitution for moneys deposited to the applicable Debt Service Reserve Fund as may be permitted under the applicable Supplemental Ordinance, excess moneys in the respective Debt Service Reserve Funds shall be transferred, at the written direction of the Town, to the applicable Construction Fund, or if one does not exist, be deposited as the Town deems advisable.

Section 6.8. Establishment of Construction Fund. There shall be established with the Custodian a Construction Fund with respect to each Series of Bonds (other than for Bonds issued pursuant to Section 3.4 hereof, if applicable) in the Supplemental Ordinance providing for their issuance, the moneys in which shall be used to defray the costs of any Project and to pay any Costs of Acquisition and Construction with respect to the facilities so financed. On the occasion of the delivery of any Series of Bonds, the proceeds therefrom shall be paid into the Construction Fund established for such Series as set forth in a Supplemental Ordinance authorizing their issue. Withdrawals from the Construction Fund shall not be made except as provided in the Supplemental Ordinance establishing such Construction Fund.

There may be established in a Construction Fund from time to time a capitalized interest account to provide for the payment of interest on the related Series of Bonds as may be permitted hereunder. Any such account shall be created by a Supplemental Ordinance relating to the issuance of the Bonds of such Series. Any earnings from the investment of funds in the capitalized interest account not required to pay interest on the Bonds of any Series during the period for which interest on the Bonds of such Series is capitalized shall be deposited in the Construction Fund created by the Supplemental Ordinance relating to such Bonds or, if such Construction Fund has been terminated, such earnings shall be transferred to the appropriate Debt Service Fund.

Section 6.9. Distribution of Remaining Beach Preservation Fees. After making payments of (i) amounts due pursuant to the 2006 Installment Sale Agreement, (ii) amounts required to be deposited into the applicable Debt Service Funds, and (iii) amounts required to be deposited into the applicable Debt Service Reserve Funds, remaining Beach Preservation Fees shall then be used, first, for payment of interest on amounts advanced by the provider of any surety bond, line of credit, insurance policy or letter of credit as contemplated by Section 6.7 hereof; second, for the payment of Junior Bonds or to meet any other obligations of the Town which are or which shall become charges, liens or encumbrances upon the Beach Preservation Fees; and third, disposed of by the Town as it may determine from time to time to be for any lawful purpose under the Accommodations Fee Act and the Beach Preservation Fee Ordinance.

Section 6.10. Investment of Funds. Moneys held for the credit of the respective Debt Service Funds, Debt Service Reserve Funds and any other funds and accounts established by this Ordinance shall be invested, to the fullest extent practicable and reasonable, in Permitted Investments. Any investment of money held to the credit of the above-mentioned funds and accounts shall mature, be available or be redeemable at the option of the owner or holder thereof at such times and in such amounts as shall be required to provide moneys to make the payments required to be made from such funds. Written investment instructions shall be given to the Trustee and the Custodian by a Town Representative.

The Trustee shall evaluate on a semi-annual basis (initially, ten days prior to the first Interest Payment Date applicable to a Series of Bonds) Permitted Investments in the Debt Service Reserve Fund, if any, established by this Ordinance and promptly send written notice of such valuation to the Town within ten days of such valuation. Until changed pursuant to written instructions from the Town, such valuation shall be made not less than two times each calendar year. The Trustee shall provide written notice to the Town of any deficiency in the amount, if any, on deposit in the Debt Service Reserve Funds. Where the amount that exists in the Debt Service Reserve Funds is less

than the applicable Reserve Fund Requirement on the date of valuation by the Trustee, any moneys received by the Trustee and designated by the Town Representative as a payment made pursuant to Section 6.7(d) hereof shall be deposited in the applicable Debt Service Reserve Fund. Deficiencies in the amount on deposit in the Debt Service Reserve Funds resulting from a decline in market value shall be restored no later than the next succeeding valuation date.

The value of Permitted Investments shall be determined by the Trustee or the Custodian or other depository at the market value or the amortized cost thereof, whichever is lower, exclusive of accrued interest, provided, however, Permitted Investments in any Debt Service Reserve Fund shall be valued at the original cost thereof.

The Trustee may conclusively rely upon the Town's written instructions as to both the suitability and legality of the directed investments. In the absence of written investment instructions from the Town, the Trustee shall not be responsible or liable for keeping the moneys held by it hereunder fully invested in Permitted Investments. The Trustee may make any and all such investments through its own investment department or that of its affiliates or subsidiaries, and may charge its ordinary and customary fees for such trades. Broker confirmations of investments are not required to be issued by the Trustee to the Town for each month in which a monthly statement is rendered. No statement need be rendered for any fund or account if no activity occurred in such fund or account during such month. The Trustee shall not be accountable or liable for any depreciation in the value of any investments in any Funds or for any losses incurred upon the disposition thereof.

Notwithstanding anything contained herein to the contrary, the Trustee shall have no obligation to enter into any investment contract, forward delivery investment agreement, repurchase agreement contract or any similar agreements with respect to the investment of any monies held under the Ordinance unless (i) such agreement is in form and content reasonably acceptable to the Trustee in the course of ordinary business practice, (ii) any liability of the Trustee under such agreement is limited to loss occasioned by the gross negligence or willful misconduct of the Trustee, (iii) the Trustee is not liable under any circumstances for any termination or similar amount under such agreement; and (iv) the Town pays to the Trustee such fees and expenses as established by the Trustee from time to time.

Except as otherwise provided herein, all interest earnings on amounts in the Beach Preservation Fee Fund when realized shall be considered Beach Preservation Fees.

[End of Article VI]

ARTICLE VII

COVENANTS

Section 7.1. Pledge of Beach Preservation Fees for Payment of Bonds. The Town will not issue any obligations, the payment of which shall have any pledge of the Beach Preservation Fees prior or superior to the pledge thereof for the payment of the Bonds. In order to insure that the Town shall at all times required hereby have sufficient moneys available to pay Fee Payments under the 2006 Installment Sale Agreement, to deposit amounts, when and as required, into the respective Debt Service Funds and Debt Service Reserve Funds established for a Series of Bonds, to provide for payment of interest on amounts advanced pursuant to Section 6.7 and to provide for payment of Junior Bonds (all as described in Section 6.2 hereof), the Town covenants and agrees that it shall not at any time while any Bonds are outstanding reduce the amounts assessed for Beach Preservation Fees to a level not sufficient to permit the Town to discharge its obligations hereunder or otherwise require or permit Beach Preservation Fees (whether through a subsequent amendment of the Beach Preservation Fee Ordinance or otherwise) to be used or set aside except pursuant to or as permitted by Section 6.2 hereof.

Section 7.2 Covenant with Respect to 2006 Certificates. On and after the date of delivery of the Series 2011 Bonds issued pursuant to this Ordinance and the First Supplemental Ordinance, the Town covenants, agrees and confirms for the benefit of the Holders of the Bonds that it will not make any pledge of Beach Preservation Fees for the payment of Other Obligations (as defined in the 2006 Installment Sale Agreement) which are on a parity with the 2006 Certificates or any Additional Certificates (as defined in the 2006 Trust Agreement).

Section 7.3. To Pay Principal, Premium, and Interest on the Bonds. The Town covenants and agrees to punctually pay, or cause to be paid, out of the Beach Preservation Fees pledged to such payment in Article VI hereof, the principal of, redemption premium, if any, and the interest on each and every Bond issued under the provisions of this Ordinance, at the place, on the dates and in the manner provided herein.

Section 7.4. Records, Accounts and Audits. The Town covenants and agrees to keep proper books of records and accounts (separate from all other records and accounts), in which complete and correct entries shall be made of all transactions relating to the Beach Preservation Fees. Such records shall be kept in accordance with the standards from time to time prescribed by the Governmental Accounting Standards Board or its successor. The Town will cause to be furnished to any Holder of any of the Bonds, who makes written request therefor, copies of financial statements certified by an Accountant. The Trustee shall not be responsible for obtaining audits of the Town. Additionally, the Trustee shall have no duty to review or analyze any financial statements delivered to it hereunder and shall hold such financial statements solely as a repository for the benefit of the Bondholders; the Trustee shall not be deemed to have notice of any information contained therein or Event of Default which may be disclosed therein in any manner.

[End of Article VII]

ARTICLE VIII

TRUSTEE; CUSTODIANS

Section 8.1. Trustee. The Council hereby designates Wells Fargo Bank, N.A. as Trustee under this Ordinance. On or prior to the delivery of the initial Series of Bonds, the Trustee shall signify its acceptance of the powers, duties and obligations conferred and imposed upon it by the Ordinance by executing and delivering to the Town a written instrument of acceptance.

The Trustee shall (a) prior to the occurrence of an Event of Default of which the Trustee has actual knowledge, and after the curing of all Events of Default which may have occurred, perform such duties and obligations as are specifically set forth in the Ordinance, and no implied covenants or obligations shall be read into the Ordinance against the Trustee, and (b) during the existence of any Event of Default of which the Trustee has actual knowledge (which has not been cured or waived) exercise the rights and powers vested in it by the Ordinance and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

No provisions of the Ordinance shall be construed to relieve the Trustee from liability for its own negligence, intentionally wrongful action or failure to act.

At all times, (1) the Trustee shall not be liable for any error of judgment made in good faith by an officer or employee of the Trustee unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; (2) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a majority (or such lesser percentage as is specifically required or permitted by this Ordinance) in the aggregate principal amount of the Bonds at the time Outstanding relating to the time, method and place of conducting a proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under the Ordinance; (3) in the administration of the trusts of this Ordinance, the Trustee may execute any of the trusts or powers hereof directly or through its agents or attorneys. The Trustee may consult with counsel and the opinion or advice of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel.

The Trustee may conclusively rely upon the authenticity of, and the truth of the statements and the correctness of the opinions expressed in, and shall be fully protected in acting upon any notice, Ordinance, request, consent order, certificate, report, opinion, note, or other paper or document furnished to it pursuant to any provision of this Ordinance, believed by it to be genuine and to have been signed and presented by the proper party.

The Trustee shall not be required to take notice or be deemed to have notice or actual knowledge of any Event of Default specified in Article X hereof other than a payment default under Sections 10.1.A or 10.1.B unless the Trustee shall receive from the Town or the registered owner of any Bond written notice stating that an Event of Default hereunder has occurred and

specifying the same, and, in the absence of such notice, the Trustee may conclusively assume that there is no such Event of Default.

The Trustee shall be entitled to payment of and reimbursement by the Town for reasonable fees for its services rendered hereunder and all advances and counsel fees, costs and expenses, reasonably and necessarily made or incurred by the Trustee in connection with such services. Additionally, the Town shall pay the Trustee for any extraordinary services or extraordinary expenses performed or incurred by the Trustee in connection with its duties under this Ordinance or any Supplemental Ordinance if notified in writing prior to the performance of those services or the incurring of those expenses so as to allow the Town to appropriate sufficient funds for their payment.

The Trustee shall not, in any event, be required to take, defend, or appear in any legal action or proceeding hereunder or to exercise any of the trusts or powers hereof unless it shall first be adequately indemnified to its satisfaction against the costs, expenses, and liabilities which may be incurred thereby. Every provision of the Ordinance relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions hereof.

The Trustee shall not be accountable for the use or application by the Town of any of the Bonds or the proceeds thereof or for the use or application of any money paid over by the Trustee in accordance with the provisions of this Ordinance or any Supplemental Ordinance. The permissive right of the Trustee to do things enumerated in this Ordinance or any Supplemental Ordinance shall not be construed as a duty and the Trustee shall not be answerable for other than its negligence or willful default. The Trustee shall have no responsibility with respect to any information, statement or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to any Bonds and shall have no responsibility for compliance with any state or federal securities laws in connection with any Bonds.

None of the provisions of this Ordinance or any Supplemental Ordinance shall require the Trustee to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it.

The Trustee shall not be responsible or liable for any failure or delay in the performance of its obligation under this Ordinance or any Supplemental Ordinance arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; hurricanes or other storms; wars; terrorism; similar military disturbances; sabotage; epidemic; riots; interruptions; loss or malfunctions of utilities, computer (hardware or software) or communications services; accidents; labor disputes; acts of civil or military authority or governmental action; it being understood that the Trustee shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

The Trustee is not required to make any inquiry or investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, approval, bond, debenture or other paper or document but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit and, if the Trustee determines to make such further inquiry or investigation, it is entitled to examine the books, records and premises of the Issuer and the Borrower, in person or by agent or attorney.

In the event the Trustee receives inconsistent or conflicting requests and indemnity from two or more groups of holders of Bonds, each representing less than a majority in aggregate principal amount of the Bonds Outstanding, pursuant to the provisions of this Ordinance, the Trustee, in its sole discretion, may determine what action, if any, shall be taken.

The Trustee shall not be (i) required to hold any policies of insurance, (ii) responsible for the filing of any documents, security agreements or financing statements regarding the creation or perfection of any interest in the Beach Preservation Fees or other security for the Bonds; and (iii) responsible for any information contained in any financing statements.

The Trustee's immunities and protections from liability in connection with the performance of its duties under this Ordinance shall extend to the Trustee's officers, directors, agents, attorneys and employees. Such immunities and protections, together with the Trustee's right to compensation, shall survive the Trustee's resignation or removal, the defeasance or discharge of this Ordinance and final payment of the Bonds.

The Trustee makes no representations as to the value, condition or sufficiency of any assets pledged or assigned as security for the Bonds, the right, title or interest of the Town therein, the security provided thereby or by the Ordinance or the tax-exempt status of the Bonds.

The Trustee may rely and is protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, approval, bond, debenture or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

Any request, direction, order or demand of the Town under this the Ordinance shall be sufficiently evidenced by a certificate of the Town Representative (unless other evidence thereof is specifically prescribed).

Whenever in the administration of the Ordinance the Trustee deems it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence thereof is specifically prescribed) may, in the absence of bad faith on its part, rely upon a certificate of the Town Representative.

The Trustee may in all cases pay such reasonable compensation as it deems proper to all agents, attorneys and receivers reasonably employed or retained by it, and the Trustee shall not be responsible for any misconduct or negligence of any agent, attorney or receiver appointed with due care by it.

The Trustee, in its commercial banking or in any other capacity, may in good faith buy, sell, own, hold and deal in any of the Bonds and may join in any action which any Bondholder may be entitled to take with like effect as if it were not Trustee. The Trustee, in its commercial banking or in any other capacity, may also engage in or be interested in any financial or other transaction with the Town and may act as depository, trustee or agent for any committee of Bondholders secured hereby or other obligations of the Issuer as freely as if it were not Trustee. The provisions of this Section shall extend to affiliates of the Trustee.

Whether or not expressly so provided, every provision of the Ordinance relating to the conduct or affecting the liability of or affording protection to the Trustee is subject to the provisions of this Article.

Section 8.2. Resignation of Trustee. The Trustee may resign at any time by giving 30 days written notice to the Town and by giving notice to the registered owners of the Bonds by publication of such resignation. No resignation will become effective until a successor Trustee has been appointed and accepts such appointment as provided below. Upon receiving notice of resignation, the Town shall promptly appoint such successor Trustee by an instrument in writing. In the event a successor Trustee has not been appointed within 60 days of the date notice of resignation is given, the Trustee, at the Town's expense, may apply to any court of competent jurisdiction for the appointment of a successor Trustee to act until such time as a successor is appointed as provided in this Section.

Unless otherwise ordered by a court or regulatory body having competent jurisdiction, or unless required by law, any successor Trustee shall, if there is such an institution willing, qualified and able to accept the trust upon reasonable or customary terms, be a bank, bank holding company or trust company or wholly-owned subsidiary of a bank holding company or trust company in good standing, qualified to act hereunder, and having a capital and earned surplus of not less than \$75,000,000.

Any successor Trustee appointed as provided in this section, shall execute, acknowledge and deliver to the Town and its predecessor Trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts, duties and obligations of its predecessor of the trust hereunder. Upon the request of any such successor Trustee, the Town shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and duties. Upon acceptance of appointment by a successor Trustee, the Town shall notify the registered owner of each Bond then Outstanding by first-class mail, postage prepaid.

The predecessor Trustee shall execute any and all documents reasonably necessary or appropriate to convey all interest it may have to the successor Trustee. The predecessor Trustee shall promptly transfer all funds to the successor Trustee and deliver all records relating to the trust or copies thereof and communicate all material information it may have obtained concerning the trust to the successor Trustee.

Any corporation or association into which the Trustee may be merged or with which it may be consolidated, or any corporation or association resulting from any merger, or any corporation or association succeeding to the business or substantially all of the business of the Trustee, shall be the successor of the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto.

Each, every and all funds and accounts held by the Trustee shall be impressed with a trust for the benefit of the registered owners of the Bonds, under the provisions of this Ordinance and of the Bond Act.

Section 8.3. Removal of Trustee. Upon 30 days written notice, the Town, at its sole discretion, provided that an Event of Default shall not have occurred and be continuing, may remove the Trustee. The removal of the Trustee under this Section 8.3 shall not be effective until a successor Trustee has been appointed and has accepted the duties of Trustee.

The Holders of a majority in aggregate principal amount of the Bonds at the time outstanding may, upon 30 days written notice to the Trustee and the Town, remove the Trustee and appoint a successor Trustee by instrument or instruments in writing signed by such Holders of the Bonds.

Section 8.4. Custodians. The Construction Fund shall at the option of the Town be held by a bank, a trust company, a national banking association or a national association as Custodian under this Ordinance or a Supplemental Ordinance.

Section 8.5. Duties and Obligations of Trustee and Custodians. The recitals of fact made in the Ordinance and in the Bonds shall be taken as statements of the Town, and neither the Trustee nor Custodian shall be deemed to have made any representation as to the correctness of the same. Nor shall the Trustee or any Custodian be deemed to have made any representation whatsoever as to the validity or sufficiency of the Ordinance or of the Bonds issued hereunder. Nor shall the Trustee or any Custodian be under any responsibility or duty with respect to the issuance of the Bonds or the application of the proceeds thereof, except to the extent provided for herein, or in a Supplemental Ordinance. Nor shall the Trustee or any Custodian be under any obligation or duty to perform any act which would involve it in expense or liability or to institute or defend any suit in response to the Ordinance, or to the Bonds issued hereunder, or to advance any of its own moneys, unless properly indemnified to its satisfaction. Nor shall the Trustee or any Custodian be liable in connection with the performance of its duties hereunder, except for its own negligence or default.

Section 8.6. Trustee and Custodians Protected in Relying upon Ordinances, etc. The Trustee and all Custodians shall at all times be protected in acting upon any notice, ordinance, request, consent, order, certificate, statement, opinion, bond, or other paper or document believed to be genuine and to have been signed by the proper party or parties.

ARTICLE IX

AMENDMENTS OR SUPPLEMENTS TO THIS ORDINANCE

Section 9.1. Amendments or Supplements to Ordinance. The Town shall not amend this Ordinance except in accordance with the provisions of this Article.

A. The Town may, from time to time and without the consent of any Holder of the Bonds enact an ordinance amendatory hereof or supplemental hereto for the purpose of (a) providing for the issuance of Bonds pursuant to the provisions of Article III hereof, or (b) (i) making any amendments or modifications hereto which may be required to permit this Ordinance to be qualified under the Trust Indenture Act of 1939, as amended; (ii) making any modification or amendment to this Ordinance not inconsistent herewith required for the correction of language or to cure any ambiguity or defective provisions, omission, mistake or manifest error herein contained; (iii) making any amendments or supplements hereto to grant to or confer upon the Holders additional rights, remedies, power and authority, or to grant to or confer upon any Holders, committee or trustee for the Holders any additional rights, power or authority; or (iv) to add to the security of the Holders of the Bonds.

B. From time to time the Holders of 66-2/3% in principal amount of the Bonds then Outstanding, by an instrument or instruments in writing signed by such Holders and filed with the Town and the Trustee, shall have power to assent to and authorize any modification or amendment to the provisions of this Ordinance that may be proposed by the Town or of the rights and obligations of the Town and of the Holders of Bonds issued hereunder. Any action herein authorized to be taken with the assent and authority given as aforesaid of the Holders of at least 66-2/3% in principal amount of the Bonds at the time Outstanding shall be effective and binding upon all of the Holders of Bonds Outstanding and upon the Town as fully as though such action were specifically and expressly authorized by the terms of this Ordinance; provided always, that without the consent of the Holder of each Bond affected thereby, no such modification shall be made which will (a) extend the time of payment of principal of or the interest on any Bond, or reduce the principal amount thereof or the rate of interest thereon or the premium payable upon the redemption thereof, or (b) give to any Bond or Bonds any preference over any other Bond or Bonds, or (c) authorize the creation of any pledge prior to or, except as provided herein for the issuance of Series of Bonds, on a parity with the pledge afforded by this Ordinance, or (d) reduce the percentage in principal amount of the Bonds required to assent to or authorize any such modification to this Ordinance. For the purpose of computations required by this paragraph, Bonds directly or indirectly owned or controlled by the Town shall be disregarded.

Any modification or amendment or supplement to the provisions of this Ordinance or of any Supplemental Ordinance supplemental hereto shall be set forth in an ordinance to be enacted by the Town.

The Trustee is hereby authorized to accept the delivery of a certified copy of any amendatory or supplemental ordinance referred to and permitted or authorized by this Section 9.1 and to make all further agreements and stipulations which may be therein contained, and the Trustee, in accepting such ordinance and taking such action, shall receive and be fully

protected in relying on an opinion of counsel (which may be an opinion of counsel to the Town) that such amendatory or supplemental ordinance is authorized or permitted by the provisions of this Ordinance. No such amendatory or supplemental ordinance shall change or modify any of the rights or obligations of the Trustee without its written assent thereto.

[End of Article IX]

ARTICLE X

EVENTS OF DEFAULT

Section 10.1. Events of Default. With respect to the Bonds, the following shall constitute “Events of Default”:

A. An Event of Default (as defined in the 2006 Installment Sale Agreement) under Section 7.1(a) of the 2006 Installment Sale Agreement has occurred and is continuing.

B. If payment of the principal of any Bond, whether at maturity or by proceedings for redemption, or upon mandatory sinking fund redemption, or by declaration as provided in Section 11.1 hereof, or otherwise, is not made by the Town after the same has become due and payable; or

C. If payment of any installment of interest on any Bond is not made by the Town as the same becomes due and payable; or

D. If the Town shall fail in the due and punctual performance of any of the covenants, conditions, agreements and provisions contained in the Bonds or in this Ordinance or in any Supplemental Ordinance on the part of the Town to be performed, and such failure continues for 90 days after written notice specifying such failure and requiring the same to be remedied has been given to the Town by the Trustee, or the Holders of not less than 20% in principal amount of the Bonds then Outstanding or any trustee or committee therefor; or

E. If any proceedings are instituted, with the consent or acquiescence of the Town, for the purpose of effecting a composition between the Town and its creditors and if the claim of such creditors is in any circumstance payable from any of the Beach Preservation Fees or any other moneys pledged and charged in this Ordinance or any Supplemental Ordinance for the payment of the Bonds, or any such proceedings are instituted for the purpose of adjusting the claims of such creditors, pursuant to any federal or State statute now or hereafter enacted; or

F. If the Town is for any reason rendered incapable of fulfilling its obligations hereunder in any material respect.

Subject to the provisions, limitations and conditions of Sections 11.1 and 11.2 hereof, insofar as the remedies provided in said provisions are concerned, nothing in Section 11.3 hereof or in this Article, and particularly nothing in subparagraph C of this Section 10.1, shall prohibit or limit, or be construed as prohibiting or limiting any Holder of a Bond from enforcing the duties of the Town, or any of the officers thereof, under any provisions of this Ordinance (including, without limiting the generality of the foregoing, the duties imposed by or referred to in Section 11.3 hereof) by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction, even though the failure of the Town or any of the officers thereof to perform any such duty may not then constitute an “Event of Default” as defined in this Article.

[End of Article X]

ARTICLE XI

REMEDIES UPON EVENT OF DEFAULT

Section 11.1 Declaration of Principal and Interest as Due. Upon the occurrence of an Event of Default, and at any time thereafter while such Event of Default continues, then and in each and every case the Trustee in its own name and as trustee of an express trust, on behalf and for the benefit and protection of the Holders of all Outstanding Bonds, may proceed, and upon the written request of the Holders of not less than 25% in principal amount of the Bonds then Outstanding, shall proceed to declare the principal of all Bonds then Outstanding, together with all accrued and unpaid interest thereon, if not already due, to be due and payable immediately, and upon any such declaration the same shall become and be due and payable immediately. This provision is also subject, however, to the condition that, if at any time after the principal of the Bonds, together with the accrued and unpaid interest thereon and other moneys secured hereby, have been so declared due and payable and before any further action has been taken (other than the making of the above declaration), the principal amount of all Bonds which have matured either according to the maturity date or dates otherwise specified therein (except as a result of such declaration) and all arrears of interest upon all Bonds, except interest accrued but not yet due on said Bonds, have been paid or caused to be paid, and all other Events of Default, if any, which have occurred have been remedied, cured or secured, then and in each and every such case the Holders of 25% in principal amount of the Bonds then Outstanding, by notice in writing delivered to the Trustee and the Town, may waive such Default and its consequences and rescind and annul such declaration. No such waiver or rescission or annulment shall extend to or affect any subsequent default or impair or exhaust any right or power related to such subsequent Default.

Section 11.2. Suits at Law or in Equity and Mandamus. In case any one or more of the Events of Default shall happen and be continuing, then and in every such case, but subject to the provisions, limitations and conditions of Section 11.1 hereof so far as the remedies provided in said provisions are concerned, the Holder of any Bond at the time Outstanding, or Trustee therefor, may, for the equal benefit and protection of all Holders of the Bonds similarly situated,

(a) by mandamus or other suit, action or proceedings at law or in the equity, enforce such Bondholder's right against the Town and require and compel the Town to perform and carry out its duties and obligations under the Bond Act and this Ordinance, and to perform and carry out its covenants and agreements with the Bondholders;

(b) by action or suit in equity require the Town to account as if such Town were the trustee of an express trust;

(c) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Bondholders; or

(d) bring suit upon the Bonds.

Section 11.3. Remedies Not Exclusive; Effect of Waiver of Default; Effect of Abandonment of Proceedings or Adverse Determination.

The Holders from time to time of the Bonds shall be entitled to all the remedies and benefits of this Ordinance as are and as shall be provided by law, and, subject to the provisions of Sections 11.1 and 11.2 hereof, nothing herein shall be construed to limit the rights or remedies of any such Holders under any applicable statute that may now exist or be enacted thereafter. No remedy conferred by the Bond Act and this Article upon any Holder of any Bond is intended to be exclusive of any other remedy. Each and every such remedy shall be cumulative and shall be in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred by the Bond Act and this Article or by any other law now or hereafter existing. Every substantive right and remedy conferred upon the Holders of the Bonds may be enforced and exercised from time to time and as often as may be deemed expedient.

No waiver of any default or breach of duty or contract by any Holder of any Bond shall extend to or affect any subsequent default or breach of duty or contract, or shall impair any rights or remedies thereon. No delay or omission of any Holder of a Bond to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein.

In case any suit, action or proceeding to enforce any right or exercise any remedy shall be brought or taken and then discontinued or abandoned, or shall be determined adversely to Holders of the Bonds then and in every such case, the Town and such Holders shall be restored to their former positions and rights and remedies as if no suit, action or proceeding had been brought or taken.

When the Trustee incurs costs or expenses (including legal fees, costs and expenses) or renders services after the occurrence of an Event of Default, such costs and expenses and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law.

Section 11.4. Restrictions on Bondholder's Action.

A. No Holder of any Bond shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of any provision of this Ordinance or the execution of any trust under this Ordinance or for any remedy under this Ordinance unless such Holder shall have previously given to the Trustee written notice of the happening of an Event of Default and the Holders of at least twenty-five percent (25%) in principal amount of the Bonds then Outstanding shall have filed a written request with the Trustee and shall have offered the Trustee reasonable opportunity, either to exercise the powers granted in this Ordinance or by the laws of the State or to institute such action, suit or proceeding in its own name, and unless such Holders shall have offered to the Trustee adequate security and indemnity against the costs, fees (including reasonable attorneys' fees), expenses and liabilities to be incurred therein or thereby, and the Trustee shall have refused to comply with such request for a period of 60 days after receipt by it of such notice, request an offer of indemnity. No one or more Holders of Bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the pledge created by this

Ordinance, or to enforce any right under this Ordinance, except in the manner therein provided. All proceedings at law or in equity to enforce any provision of this Ordinance shall be instituted, had and maintained in the manner provided in this Ordinance and for the equal benefit of all Holders of the Outstanding Bonds.

B. Nothing contained in this Ordinance or in the Bonds contained shall affect or impair the obligation of the Town, which is absolute and unconditional, to pay at the respective dates of maturity and places therein expressed the principal of (and redemption premium, if any) and interest on the Bonds to the respective Holders thereof, or affect or impair the right of action, which is also absolute and unconditional, of any Holder to enforce such payment of his Bond.

Section 11.5. Application of Beach Preservation Fees and Other Moneys After Default. During the continuance of an Event of Default, all moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the costs and expenses of the proceedings resulting in the collection of moneys and of the fees, expenses and advances of, incurred or made by the Trustee with respect thereto, be deposited in the respective Debt Service Funds, and all amounts held by the Trustee hereunder shall be applied as follows (provided if more than one Debt Service Fund has been established, such amounts shall be paid ratably):

A. Unless the principal of all Outstanding Bonds shall have become or have been declared due and payable:

First: To the payment to the persons entitled thereto of all installments of interest then due on the Bonds in the order of maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon to the person entitled thereto, without any discrimination or preference; and

Second: To the payment to the persons entitled thereto of the unpaid principal amounts or redemption premium, if any, of any Bonds which shall have become due (other than Bonds previously called for redemption in accordance with the provisions hereof), whether at maturity or by call for redemption, in the order of their due dates, and if the amounts available shall not be sufficient to pay in full all the Bonds due on any date, then to the payment thereof ratably, according to the principal amounts or redemption premium, if any, due on such date, to the persons entitled thereto, without any discrimination or preference.

B. If the principal amounts of all Outstanding Bonds shall have become or have been declared due and payable, to the payment of the principal amounts and interest then due and unpaid upon the Bonds without preference or priority of principal over interest or of interest over principal, of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal amounts and interest, to the persons entitled thereto without any discrimination or preference.

C. If the principal amounts of all Outstanding Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article XI, then, subject to the provisions of this Section in the event that the principal amounts of all Outstanding Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of paragraph (A) of this Section.

D. Whenever moneys are to be applied by the Trustee pursuant to the provisions of this Section, such moneys shall be applied by it at such times, and from time to time, as the Trustee shall determine, having due regard for the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such moneys, it shall fix the date (which shall be a Bond payment date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the principal amounts to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the Holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement of any partial payment or for cancellation if fully paid.

Whenever all Bonds and interest thereon have been paid under the provisions of this Section and all expenses and charges of the Trustee have been paid, any balance remaining shall be paid to the person entitled to receive the same; if no other person shall be entitled thereto, then the balance shall be paid to the Town or as a court of competent jurisdiction may direct.

[End of Article XI]

ARTICLE XII

DEFEASANCE

Section 12.1. Defeasance. The obligations of the Town under this Ordinance and the liens, pledges, charges, trusts, covenants and agreements of the Town herein made or provided for, shall be fully discharged and satisfied as to any Bond; and, unless or except as otherwise provided in the Supplemental Ordinance providing for the issuance of any Series of Bonds, such Bond or Series of Bonds shall no longer be deemed to be Outstanding hereunder when:

A. Such Bond or Series of Bonds shall have been purchased by the Town and surrendered to the Town for cancellation or otherwise surrendered to the Town or the Paying Agent, and is canceled or subject to cancellation by the Town or Paying Agent, or

B. Payment of the principal of, redemption premium, if any, and interest on such Bond or Series of Bonds, either (a) shall have been made or caused to be made in accordance with the terms thereof, or (b) shall have been provided for by irrevocably depositing with the Trustee in trust and irrevocably setting aside exclusively for such payment, (i) moneys sufficient to make such payment, or (ii) Government Obligations maturing as to principal and interest in such amounts and at such times as will ensure the availability of sufficient moneys to make such payment, and all necessary and proper fees, compensation and expenses of the Trustee, Paying Agent and the Registrar together with either (i) a verification report, satisfactory to the Trustee, to the effect that such securities and/or cash, together with earnings thereon, will be sufficient to pay interest and principal (and applicable premium, if any) on the Bonds to redemption or maturity or (ii) an opinion of Counsel, satisfactory to the Trustee, to the effect that all conditions precedent to the defeasance of the Bonds have been satisfied; provided however, that no such verification report or opinion shall be required in the event of a gross defeasance (where the cash deposited alone is sufficient to pay the debt service on the Bonds) or a current refunding (where the Bonds are to be redeemed within ninety (90) days of the funding of the escrow). At such time as a Bond or Series of Bonds shall no longer be deemed to be Outstanding hereunder, as aforesaid, such Bond or Series of Bonds shall cease to draw interest from the maturity date or redemption date thereof, and, except for the purposes of any such payment from such moneys or Government Obligations, shall no longer be secured by or entitled to the benefits of this Ordinance.

Any moneys so deposited with the Trustee as provided in this Article may at the written direction of the Town also be invested and reinvested in Government Obligations, maturing in the amounts and times as hereinbefore set forth, and all income from all Government Obligations in the hands of such Trustee which is not required for the payment of the Bonds or Series of Bonds and interest thereon with respect to which such moneys shall have been so deposited, shall be treated as Beach Preservation Fees.

Notwithstanding any provision hereof which may be contrary to the provisions of this Article, all moneys or Government Obligations set aside and held in trust pursuant to the provisions of this Article for the payment of Bonds or Series of Bonds shall be applied to and used solely for the payment of the particular Bonds or Series of Bonds with respect to which such moneys and Government Obligations have been so set aside in trust.

Any provision hereof to the contrary notwithstanding, if moneys or Government Obligations have been deposited or set aside with the Trustee pursuant to this Article for the payment of the Bonds and such Bonds shall not have in fact been actually paid in full, no amendment to the provisions of this Article shall be made without the consent of the Bondholder of each Bond or Series of Bonds affected thereby.

If moneys or Government Obligations have been deposited with the Trustee pursuant to Section 12.1(B) for payment of less than all Bonds of a Series and maturity, the Bonds of such Series and maturity to be so paid from such deposit shall be selected by the Trustee by lot by such method as shall provide for the selection of portions (in authorized denominations) of the principal of Bonds of such Series and maturity of a denomination larger than the smallest authorized denomination. Such selection shall be made within seven days after the moneys or Government Obligations have been deposited with the Trustee. This selection process shall be in lieu of the selection process otherwise provided with respect to redemption of Bonds in Article V. After such selection is made, Bonds that are to be paid from such deposit (including Bonds issued in exchange for such Bonds pursuant to the transfer or exchange provisions of this Ordinance) shall be identified by a separate CUSIP number or other designation satisfactory to the Trustee. The Town shall provide such CUSIP number or other designation to the Trustee. The Trustee shall notify Bondholders whose Bonds (or portions thereof) have been selected for payment from the moneys or Government Obligations on deposit and shall direct such Bondholders to surrender their Bonds to the Trustee in exchange for Bonds with the appropriate designation. The selection of Bonds for payment from such deposit pursuant to this Section 12.1 shall be conclusive and binding on the Town.

[End of Article XII]

ARTICLE XIII

MISCELLANEOUS

Section 13.1. Benefits of Ordinance Limited to the Town, the Trustee and Holders of the Bonds. With the exception of rights or benefits herein expressly conferred, nothing expressed or mentioned in or to be implied from this Ordinance or the Bonds is intended or should be construed to confer upon or give to any person other than the Town, the Trustee and the Holders of the Bonds, any legal or equitable right, remedy or claim under or by reason of or in respect to this Ordinance or any covenant, condition, stipulation, promise, agreement or provision herein contained. This Ordinance and all of the covenants, conditions, stipulations, promises, agreements and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the Town, the Trustee and the Holders from time to time of the Bonds as herein and therein provided.

Section 13.2. Ordinance Binding Upon Successors or Assigns of the Town. All the terms, provisions, conditions, covenants, warranties and agreements contained in this Ordinance shall be binding upon the successors and assigns of the Town and shall inure to the benefit of the Trustee, its successors or substitutes in trust and assigns, and the Holders of the Bonds.

Section 13.3. No Personal Liability. No recourse shall be had for the enforcement of any obligation, covenant, promise or agreement of the Town contained in this Ordinance or the Bonds, against any member of the Town, any officer or employee, as such, in his or her individual capacity, past, present or future, of the Town, either directly or through the Town, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise. It is expressly agreed and understood that this Ordinance and the Bonds are solely corporate obligations, and that no personal liability whatsoever shall attach to, or be incurred by, any member, officer or employee as such past, present or future, of the Town, either directly or by reason of any of the obligations, covenants, promises, or agreements entered into between the Town and the Trustee or the Bondholder or to be implied therefrom as being supplemental hereto or thereto. All personal liability of that character against every such member, officer and employee is, by the adoption of this Ordinance and the execution of the Bonds, and as a condition of, and as a part of the consideration for, the adoption of this Ordinance and the execution of the Bonds, expressly waived and released. The immunity of members, officers and employees of the Town under the provisions contained in this Section 13.3 shall survive the termination of this Ordinance.

Section 13.4. Effect of Saturdays, Sundays and Legal Holidays. Whenever this Ordinance requires any action to be taken on a Saturday, Sunday, legal holiday or bank holiday in the State of South Carolina, such action shall be taken on the first Business Day occurring thereafter. Whenever in this Ordinance the time within which any action is required to be taken or within which any right will lapse or expire shall terminate on a Saturday, Sunday, legal holiday or bank holiday, in the State, such time shall continue to run until midnight on the succeeding Business Day.

Section 13.5. Partial Invalidity. If any one or more of the covenants or agreements or portions thereof provided in this Ordinance on the part of the Town or the Trustee or any Paying Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant or covenants, or such agreement or agreements, or such portions thereof, shall be deemed severable from the remaining covenants and agreements and portions thereof provided in this Ordinance and the invalidity thereof shall in no way affect the validity of the other provisions of this Ordinance or of the Bonds, but the Holders of the Bonds shall retain all the rights and benefits accorded to them hereunder and under any applicable provisions of law.

If any provisions of this Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because of conflicts with any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstance, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatever.

Section 13.6. Law and Place of Enforcement of Ordinance. This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina without regard to conflict of law principles and all suits and actions arising out of this Ordinance shall be instituted in a court of competent jurisdiction in said State.

Section 13.7. Effect of Article and Section Headings and Table of Contents. The headings or titles of the several Articles and Sections hereof, and any table of contents appended hereto or to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this Ordinance.

Section 13.8. Repeal of Inconsistent Ordinances. All ordinances and resolutions of the Town, and any part of any ordinance or resolution, inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

Section 13.9. Notices. All notices, certificates, or other communications hereunder or under this Ordinance shall be sufficiently given and shall be deemed given when mailed by registered mail, postage prepaid, or given when dispatched by telegram addressed as follows:

If to the Town:

Town of Hilton Head Island, SC
Attention: Town Manager
One Town Center Court
Hilton Head Island, South Carolina 29928

If to the Trustee:

Wells Fargo Bank, N.A.
Attention: Corporate Trust Services
7000 Central Parkway; Suite 550
Atlanta, Georgia 30328

The Town and the Trustee, may, by notice given to the other parties, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 13.10. Codification. This Ordinance shall be forthwith codified in the Code of Town Ordinances in the manner required by law and the name shall be indexed under the general heading “Ordinance – Special Obligation Bonds (Beach Preservation Fee Pledge).”

Section 13.11. Severability. If any sections, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not attest the validity of the remaining portions thereof.

Section 13.12. Effective Date. This Ordinance shall be effective upon its adoption by the Town Council for the Town of Hilton Head Island, South Carolina; provided, however, that it shall not be necessary for the Town to establish the funds and accounts created in Article VI hereof prior to the issuance of any Bonds.

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS _____ DAY OF _____ 2011.

Drew A. Laughlin, Mayor

ATTEST:

Cori Brock, Town Clerk

First Reading: _____
Second Reading: _____

APPROVED AS TO FORM:

Gregory M. Alford, Town Attorney

Introduced by Council Member: _____



MEMORANDUM

TO: Town Council

FROM: Stephen G. Riley, CM, Town Manager

VIA: Susan M. Simmons, CPA, Director of Finance

DATE: July 21, 2011

RE: **First Reading of Proposed Ordinance No. 2011-20**
First Supplemental Ordinance – Beach Preservation Fee Pledge

Recommendation:

Town Council approves first reading of Proposed Ordinance No. 2011-20 which authorizes the issuance of Special Obligation Bonds – Beach Preservation Fee Pledge in an amount not to exceed \$11,000,000.

Summary:

As explained in Proposed Ordinance No. 2011-19, staff recommends the Town begin using Special Obligation Bonds to finance beach preservation projects now and into the future. Proposed Ordinance No. 2011-19 is the General Ordinance which establishes the master document authorizing this form of debt. Specific issues will be authorized via Supplemental Ordinances. Proposed Ordinance No. 2011-20 is the First Supplemental Ordinance for the Beach Preservation Fee Pledge. In this ordinance, staff seeks authority from Council to issue new bonds in an amount not to exceed \$11,000,000 to finance primarily the Port Royal Fill Project.

Note: The 2006 Beach Preservation Certificates of Participation COPS are not callable; therefore, the Town cannot consider refunding this outstanding balance as contemplated under the similarly proposed hospitality ordinances.

Proceeds from the new bonds would be primarily used as follows:

1. Port Royal groin construction,
2. Port Royal renourishment,
3. Construction management, inspection, permit compliance, monitoring and similar soft costs associated with the projects, and
4. Costs of issuance, escrow, and reserve funds as applicable.

Background:

The Town issued Series 2006 Beach Preservation Fee Certificates of Participation for a comprehensive beach renourishment program. The Town has performed several renourishment projects and plans to maintain a sustainable beach preservation fee program. Staff presented several sessions to Town Council and its various committees in the fall of 2010 on the need for this specific project as well as the financial sustainability of the program. At that time, Council authorized staff to continue with the project and financing. Due to delays in permitting and to avoid disrupting the beach during the summer tourist season, construction of the project will not occur until the fall of 2011. Therefore, the financing of this project was delayed pending the need for these funds. Upon Council's approval of Proposed Ordinance 2011-19 and 2011-20, staff plans to issue bonds with a beach preservation fee pledge in the next few months.

Note: The next agenda item for this Town Council meeting will address awarding the dredging contract for this project. Additional information regarding costs and timing are included with that agenda item.

FIRST SUPPLEMENTAL ORDINANCE

PROVIDING FOR THE ISSUANCE AND SALE OF TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, SPECIAL OBLIGATION BONDS (BEACH PRESERVATION FEE PLEDGE), IN ONE OR MORE SERIES, IN THE PRINCIPAL AMOUNT OF NOT EXCEEDING \$11,000,000; DELEGATING THE AUTHORITY TO THE TOWN MANAGER TO DETERMINE CERTAIN MATTERS WITH RESPECT TO THE BONDS; PRESCRIBING THE FORM AND DETAILS OF SUCH BONDS; OTHER MATTERS RELATING THERETO; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Town Council (the “Council”) of the Town of Hilton Head Island, South Carolina (the “Town”), enacted an Ordinance (the “General Bond Ordinance”) on the date hereof to authorize generally the issuance of Bonds (as defined in the General Bond Ordinance); and

WHEREAS, pursuant to the General Bond Ordinance, the Bonds are payable from and secured by a pledge of Beach Preservation Fees (as defined in the General Bond Ordinance), which pledge is junior and subordinate to the pledge of Beach Preservation Fees securing the Town’s obligation to pay Base Fee Payments and Additional Fee Payments (as such terms are defined in the Installment Sale Agreement) dated as of August 1, 2006 (the “2006 Installment Sale Agreement”) between the Town and Hilton Head Island Public Facilities Corporation, an instrumentality of the Town (the “Corporation”) under the 2006 Installment Sale Agreement; and

WHEREAS, the Town is presently contemplating the undertaking of the New Projects (as defined herein); and

WHEREAS, the Town desires to issue not exceeding \$11,000,000 principal amount of its Special Obligation Bonds (Beach Preservation Fee Pledge), in one or more series (the “New Bonds”) to finance, among other things, the Costs of Acquisition and Construction of the New Projects; and

WHEREAS, the Council has been advised that in order to finance the New Projects, the Council must enact an appropriate ordinance supplemental to the General Bond Ordinance authorizing the issuance of the New Bonds.

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

Section 1. Definitions. The terms in this Section 1 and all words and terms defined in the General Bond Ordinance (such General Bond Ordinance as from time to time amended or supplemented by Supplemental Ordinances being defined in the Ordinance as the "Ordinance") (except as herein otherwise expressly provided or unless the context otherwise requires), shall for all purposes of this First Supplemental Ordinance have the respective meanings given to them in the Ordinance and in Section 1 hereof.

“2006 Certificates” shall mean the \$19,000,000 original principal amount Hilton Head Island Public Facilities Corporation, Certificates of Participation Evidencing Undivided Proportionate Interests in Base Fee Payments under an Installment Sale Agreement (Beach Preservation Fee Pledge), Series 2006, dated August 1, 2006, and outstanding as of the date hereof in the principal amount of \$7,795,000.

“Beneficial Owner” shall mean any purchaser who acquires beneficial ownership interest in any Initial Bond held by the Depository. In determining any Beneficial Owner the Town, the Trustee, the Registrar and the Paying Agent may rely exclusively upon written representations made and information given to the Town, the Trustee, the Registrar and the Paying Agent, as the case may be, by the Depository or its Participants with respect to any New Bond held by the Depository or its Participants in which a beneficial ownership interest is claimed.

“Bond Purchase Agreement” shall mean one or more Bond Purchase Agreements relating to the sale of the New Bonds, to be dated the date of execution and delivery thereof between the Underwriter and the Town, as amended or supplemented thereto.

“Book-Entry Form” or “Book-Entry System” shall mean with respect to the New Bonds, a form or system, as applicable, under which (a) the ownership of beneficial interests in the New Bonds may be transferred only through a book-entry and (b) physical bond certificates in fully registered form are registered only in the name of a Depository or its nominee as Holder, with the physical bond certificates “immobilized” in the custody of the Depository. The book-entry maintained by the Depository is the record that identifies the owners of participatory interests in the New Bonds, when subject to the Book-Entry System.

“Business Day” shall mean, with respect to the New Bonds issued pursuant to this First Supplemental Ordinance, any day other than a Saturday, a Sunday or a day which shall be in the State or the state in which the respective office of the Trustee, the Paying Agent and the Registrar is located a legal holiday or a day on which banking institutions are authorized by law or executive order to close.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Continuing Disclosure Certificate” shall have the meaning given that term in Section 14 hereof.

“Depository” shall mean any securities depository that is a “clearing corporation” within the meaning of the New York Uniform Commercial Code and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, as amended, operating and maintaining, with its participants or otherwise, a Book-Entry System to record ownership of beneficial interests in the New Bonds, and to effect transfers of the New Bonds, in Book-Entry Form, and includes and means initially The Depository Trust Company (a limited-purpose trust company), New York, New York.

“First Supplemental Ordinance” shall mean shall mean this Ordinance enacted by the Town Council authorizing the New Bonds.

“General Bond Ordinance” shall mean an Ordinance duly enacted by the Town Council on the date hereof, authorizing the issuance from time to time of Bonds.

“Initial Bonds” shall mean the New Bonds initially issued in Book-Entry Form as provided in Section 4 hereof.

“Interest Payment Date” shall mean any February 1 and August 1 of each year, commencing February 1, 2012, or such other date as the Town Manager may determine pursuant to Section 11 hereof.

“New Bonds” shall mean the Town of Hilton Head Island, South Carolina, Special Obligation Bonds (Beach Preservation Fee Pledge), issuable in one or more series, in the aggregate principal amount of not exceeding \$11,000,000 authorized to be issued hereunder.

“New Projects” shall mean, collectively, the Projects to be financed with the proceeds of the New Bonds, including projects located at Port Royal, and such other projects as may be approved by the Town Manager and permitted by the Beach Preservation Fee Ordinance.

“Paying Agent” shall mean Wells Fargo Bank, N.A., as Paying Agent for the New Bonds.

“Principal Payment Date” shall have the meaning given to such term in Section 3(a).

“Registrar” shall mean Wells Fargo Bank, N.A., as Registrar for the New Bonds.

“Series Construction Fund” shall mean one or more Funds established pursuant to Section 9 hereof into which a portion of the proceeds of a Series of the New Bonds will be deposited and from which such proceeds will be disbursed to pay the Costs of Acquisition and Construction of the New Projects (including the Costs of Issuance). Pursuant to Section 9, each Series Construction Fund shall be further identified or designated to relate to the specific Series of the New Bonds issued hereunder.

“Series Debt Service Fund” shall mean one or more Funds established pursuant to Section 7 hereof to provide for the payment of the principal of and interest on the Series of the New Bonds related thereto. Pursuant to Section 7, each Series Debt Service Fund shall be further identified or designated to relate to the specific Series of the New Bonds issued hereunder.

“Series Debt Service Reserve Fund” shall mean one or more Funds, if any, established pursuant to Section 8 hereof (a) to insure the timely payment of the principal and interest on the New Bonds related thereto; and (b) to provide for the redemption of the Series of the New Bonds related thereto. Pursuant to Section 8, each Series Debt Service Reserve Fund shall be further identified or designated to relate to the specific Series of the New Bonds issued hereunder.

“Series Reserve Fund Requirement” shall mean the amount, if any, established pursuant to Section 8 hereof.

“Trustee” shall mean Wells Fargo Bank, N.A., as Trustee for the bonds.

“Underwriter” shall mean Merchant Capital, L.L.C.

Section 2. Certain Findings and Determinations. The Town hereby finds and determines:

(a) The Ordinance, the Bond Act and the Accommodations Fee Act authorize the Town to issue Bonds in order to finance Projects (as defined in the General Bond Ordinance). This First Supplemental Ordinance supplements the Ordinance, constitutes and is a "Supplemental Ordinance" within the meaning of such quoted term as defined and used in the Ordinance, and is enacted under and pursuant to the Ordinance.

(b) The New Bonds constitute and are "Bonds" within the meaning of the quoted word as defined and used in the Ordinance.

(c) The Beach Preservation Fees pledged under the Ordinance are or will not be encumbered by any lien and charge thereon or pledge thereof, other than: (i) the pledge thereof created under the 2006 Installment Sale Agreement for payment of amounts due with respect to the 2006 Certificates (which pledge is senior to the pledge thereof securing the Bonds); and (ii) the pledge thereof created by the General Bond Ordinance and this First Supplemental Ordinance for the payment and security of the New Bonds.

(d) There does not exist an Event of Default (as defined in the General Bond Ordinance), nor does there exist any condition which, after the passage of time or the giving of notice, or both, would constitute such Event of Default.

(e) The estimated Costs of Acquisition and Construction (as defined in the General Bond Ordinance) of the New Projects are \$11,000,000.

(f) The Town proposes to issue the New Bonds, in one or more Series (as defined in the General Bond Ordinance), for one or more of the principal purposes: (1) financing the Costs of

Acquisition and Construction of the New Projects, (2) financing the Series Reserve Fund Requirement (if any) through a deposit into the Series Debt Service Reserve Fund (if any) established with respect to each Series of New Bonds, and (3) paying the Costs of Issuance of the New Bonds.

(g) The period of usefulness of the New Projects will be in excess of seven (7) years from the date of the acquisition thereof.

(h) It is necessary and in the best interest of the Town to authorize the issuance of the New Bonds in the principal amount of not exceeding \$11,000,000 in accordance with the Bond Act, the Accommodations Fee Act, the Ordinance and this First Supplemental Ordinance for the purposes set forth above.

Section 3. Authorization of Series 2011 Bonds.

(a) There is hereby authorized to be issued one or more Series of Bonds designated "Town of Hilton Head Island, South Carolina, Special Obligation Bonds (Beach Preservation Fee Pledge), Series (year)" (the "New Bonds"), including such further words, numbers or letters as may be necessary or desirable to identify individual series thereof, the purposes thereof, or the taxable status thereof, in the aggregate principal amount of not exceeding \$11,000,000. The proceeds of the New Bonds shall be used for the purposes set forth in Section 2(f) hereof.

Unless otherwise determined by the Town Manager pursuant to Section 11 hereof, the New Bonds shall mature on August 1 in each of the years (the "Principal Payment Dates") and in the principal amounts, and bear interest at the rates per annum (calculated on the basis of a 360-day year comprised of twelve 30-day months), as determined by the Town Manager, pursuant to Section 11 hereof.

(b) Such of the New Bonds as the Town Manager shall determine pursuant to Section 11 hereof shall be subject to mandatory redemption at a redemption price equal to the principal amount of the New Bonds to be redeemed, together with interest accrued from the date of redemption, in the years and in the amounts determined by the Town Manager, pursuant to Section 11 hereof.

At its option, to be exercised on or before the sixtieth (60th) day prior to any mandatory redemption date, the Town may (i) deliver to the Trustee for cancellation New Bonds which are subject to mandatory redemption in any aggregate principal amount desired or (ii) receive a credit in respect of its mandatory redemption obligation for any such New Bonds which, prior to such date, have been purchased or redeemed (otherwise than through the operation of the mandatory redemption requirement) by the Town and cancelled by the Trustee and not theretofore applied as a credit against any mandatory redemption obligation. Each New Bond so delivered or previously purchased or redeemed shall be credited by the Trustee, at one hundred percent (100%) of the principal amount thereof, to the obligation of the Town on those respective mandatory redemption obligations in chronological order or such other manner as directed in writing by the Town to the Trustee, and the principal amount of the New Bonds to be redeemed by operation of the mandatory redemption requirement shall be accordingly reduced.

(c) The Trustee, without further authorization or direction from the Town, shall give notice of all mandatory redemptions within the time periods and in the manner specified in Article V of the General Bond Ordinance.

(d) The New Bonds shall originally be dated the date of delivery of the New Bonds, or such other date as the Town Manager shall determine pursuant to Section 11 hereof, and shall be issued as fully registered Bonds in the denominations of \$5,000 and integral multiples of \$5,000. The New Bonds shall be numbered and lettered in such a fashion as to maintain a proper record thereof.

(e) Principal of and redemption premium, if any, on the New Bonds shall be payable at the designated corporate trust office of the Paying Agent. Interest on the New Bonds shall be payable on each Interest Payment Date, in each case to the Holders as of the immediately preceding Record Date, such interest to be paid by the Paying Agent by check or draft mailed to each Holder at the address as it appears on the Books of Registry maintained at the designated corporate trust office of the Paying Agent, and in the case of a Holder of \$1,000,000 or more in principal amount of New Bonds, by wire transfer to an account within the continental United States upon the timely receipt of a written request of such Holder. Payment of the principal of and interest on such New Bonds may be payable to the Holder thereof without presentation and surrender of such New Bonds.

(f) The New Bonds shall be in substantially the form set forth in Exhibit A hereto, with such necessary or appropriate variations, omissions and insertions as are incidental to the series, numbers, denominations, maturities, dates, interest rate or rates, redemption provisions, the purpose of issuance and other details thereof or as are otherwise permitted or required by law or by the Ordinance, including this First Supplemental Ordinance. The New Bonds shall be executed in the name and on behalf of the Town by the manual or facsimile signatures of the Mayor and Town Clerk.

(g) A copy of the approving opinion to be rendered on the New Bonds shall be printed on the back of such New Bonds, preceding the same a certificate shall appear, which shall be signed on behalf of the Town by a facsimile signature of the Town Clerk. Such certificate shall be in the form substantially as follows:

IT IS HEREBY CERTIFIED that the following is a true and correct copy of the approving opinion of McNair Law Firm, P.A., Columbia, South Carolina, the original of which was manually executed, dated and issued as of the date of the delivery of and payment for the bonds, and a copy of which is on file with the Town.

THE TOWN OF HILTON HEAD, SOUTH CAROLINA

By: _____
Town Clerk

Section 4. Book-Entry System; Recording and Transfer of Ownership of the New Bonds.

The Initial Bonds will be eligible securities for the purposes of the Book-Entry System of transfer maintained by the Depository, and transfers of beneficial ownership of the Initial Bonds shall be made only through the Depository and its participants in accordance with rules specified by the Depository. Such beneficial ownership must be of \$5,000 principal amount of Initial Bonds of the same Series and maturity or any integral multiple of \$5,000.

The Initial Bonds will be issued in fully-registered form, as a single bond representing the entire principal amount of each Series of the New Bonds or one New Bond for each of the maturities of each Series of the New Bonds, in the name of Cede & Co., as the nominee of the Depository. When any principal of, premium, if any, or interest on the Initial Bonds becomes due, the Town shall transmit or cause the Paying Agent to transmit to the Depository an amount equal to such installment of principal, premium, if any, and interest. Such payments will be made to Cede & Co. or other nominee of the Depository as long as it is owner of record on the applicable Record Date. Cede & Co. or other nominee of the Depository shall be considered to be the owner of the Initial Bonds so registered for all purposes of this First Supplemental Ordinance, including, without limitation, payments as aforesaid and receipt of notices. The Depository shall remit such payments to the Beneficial Owners of the New Bonds or their nominees in accordance with its rules and regulations.

Notices of redemption of the Initial Bonds or any portion thereof shall be sent to the Depository in accordance with the provisions of the General Bond Ordinance.

The Depository is expected to maintain records of the positions of Participants in the Initial Bonds, and the Participants and persons acting through Participants are expected to maintain records of the Beneficial Owners in the Initial Bonds. The Town, the Trustee, the Registrar and the Paying Agent make no assurances that the Depository and its Participants will act in accordance with such rules or expectations on a timely basis, and the Town, the Trustee, the Registrar and the Paying Agent shall have no responsibility for any such maintenance of records or transfer of payments by the Depository to its Participants, or by the Participants or persons acting through Participants to the Beneficial Owners.

The Town, the Trustee, the Paying Agent and the Registrar may treat the Depository (or its nominee) as the sole and exclusive owner of the New Bonds registered in its name for the purpose of payment of the principal of, interest or premium, if any, on the New Bonds, giving any notice permitted or required to be given to Bondholders under the General Bond Ordinance or this First Supplemental Ordinance, registering the transfer of the New Bonds, obtaining any consent or other action to be taken by Bondholders and for all other purposes whatsoever, and shall not be affected by any notice to the contrary. The Town, the Trustee, the Paying Agent and the Registrar shall not have any responsibility or obligation to any Participant, any person claiming a beneficial ownership interest in the New Bonds under or through the Depository or any Participant, or any other person which is not shown on the Books of Registry of the Town maintained by the Registrar as being a

Bondholder, with respect to: the accuracy of any records maintained by the Depository or any Participant or the maintenance of any records; the payment by the Depository or any Participant of any amount in respect of the principal of, interest or premium, if any, on the New Bonds; the sending of any transaction statements; the delivery or timeliness of delivery by the Depository or any Participant of any notice which is permitted or required to be given to Bondholders thereunder; the selection of Bondholders to receive payments upon any partial redemption of the New Bonds; or any consent given or other actions taken by the Depository as a Bondholder.

If (a) the Depository determines not to continue to act as securities depository for the New Bonds, and gives reasonable notice to the Registrar or the Town, or (b) the Town has advised the Depository of the Town's determination that the Depository is incapable of discharging its duties, then the Town shall attempt to retain another qualified securities depository to replace the Depository. Upon receipt by the Town or the Registrar of the Initial Bonds together with an assignment duly executed by the Depository, the Town shall execute and deliver to the successor depository, the New Bonds of the same principal amount, interest rate and maturity. If the Town is unable to retain a qualified successor to the Depository, or the Town has determined that it is in its best interest not to continue the Book-Entry System of transfer or that interests of the Beneficial Owners of the New Bonds might be adversely affected if the Book-Entry System of transfer is continued (the Town undertakes no obligation to make any investigation to determine the occurrence of any events that would permit it to make any such determination), and has made provision to so notify Beneficial Owners of the New Bonds by mailing an appropriate notice to the Depository, upon receipt by the Town of the Initial Bonds together with an assignment duly executed by the Depository, the Town shall execute, authenticate and deliver to the Depository Participants the New Bonds in fully-registered form, in authorized denomination; provided, however, that the discontinuation of the Book-Entry System of registration and transfer with respect to the New Bonds or the replacement of the Depository or any successor depository shall be subject to the applicable rules and procedures of the Depository or such successor depository on file or otherwise approved by the Securities and Exchange Commission.

Section 5. Optional Redemption of New Bonds. Such of the Series 2011 Bonds as may be determined by the Town Manager pursuant to Section 11 hereof shall be subject to redemption prior to maturity, at the option of the Town, in whole or in part at any time in such order of their maturities as the Town shall determine and by lot within a maturity, at the respective redemption prices with respect to each New Bond, expressed as a percentage of principal amount of the New Bonds to be redeemed, as shall be determined by the Town Manager pursuant to Section 11 hereof, together, in each such case, with the interest accrued on such principal amount to the date fixed for redemption. The Trustee shall give notice of redemption of the New Bonds by first-class mail, postage prepaid, to the Holders thereof as shown on the Books of Registry of the Town not less than five (5) Business Days prior to the date fixed for the redemption thereof.

Section 6. Payment of the New Bonds. The New Bonds, together with the interest thereon, shall be payable, in such coin or currency of the United States of America which at the time of such payment is legal tender for public and private debts, solely from the Beach Preservation Fees of the Town in accordance with the provisions of the Ordinance and this First Supplemental Ordinance. The New Bonds shall be secured by a pledge of Beach Preservation Fees junior and subordinate to the pledge of Beach Preservation Fees securing the payment of amounts due under the 2006

Installment Sale Agreement with respect to the 2006 Certificates and on a parity with the pledge of Beach Preservation Fees securing the payment of other Bonds issued in compliance with the provisions of the General Bond Ordinance.

The New Bonds do not constitute an indebtedness of the Town within any State constitutional provisions (other than Article X, Section 14, Paragraph 10 of the South Carolina Constitution authorizing obligations payable solely from special sources not involving revenues from any tax or license) or statutory limitation. The New Bonds shall not be a debt of the Town, nor a charge, lien or encumbrance, legal or equitable, upon any property of the Town or upon any income, receipts or revenues thereof, other than the aforesaid Beach Preservation Fees of the Town. No recourse shall be had for the payment of the New Bonds or the interest thereon against the general fund of the Town, nor shall the credit or taxing power of the Town be deemed to be pledged thereto. The full faith, credit and taxing powers of the Town are not pledged to the payment of the principal of or interest on the New Bonds.

Section 7. Establishment of Series Debt Service Fund. In accordance with Section 6.6 of the General Bond Ordinance, the Series Debt Service Fund is hereby directed to be established by the Trustee on the date of the original delivery of the New Bonds for the benefit of the Holders of the New Bonds; provided, however, that upon the issuance of one or more Series of New Bonds, separate funds or accounts may be established for the payment of debt service on such Series of New Bonds, with such additional numbers or letters to identify its relevance, but each such separate fund or account will be considered the “Series Debt Service Fund” with respect to the related Series of New Bonds.

Section 8. Establishment of the Series Reserve Fund Requirement and Series Debt Service Reserve Fund. In accordance with Section 6.7 of the General Bond Ordinance, the Town Manager may determine whether it is necessary or desirable to establish a Series Debt Service Reserve Fund for the benefit of the Holders of one or more Series of New Bonds (if any) and the amount of the applicable Series Reserve Fund Requirement, and, if so, such Series Debt Service Reserve Fund shall be established on the date of the original delivery of such Series of New Bonds and held by the Trustee, all as provided in the Ordinance; provided, however, that (1) upon the issuance of one or more Series of New Bonds, separate funds or accounts may be established (if at all) for each Series of New Bonds, with such additional numbers or letters to identify its relevance, but each such separate fund or account will be considered the “Series Debt Service Reserve Fund” with respect to the related Series of New Bonds; and (2) in the event of any full or partial defeasance of a Series of New Bonds under Article XII of the Ordinance, then the Series Reserve Fund Requirement established for such Series of New Bonds shall be recalculated based on the then Outstanding principal amount of such Series. If the Series Debt Service Reserve Fund is established, the Series Reserve Fund Requirement initially will be satisfied by the Town by the deposit of cash into the Series Debt Service Reserve Fund for the benefit of the Holders of the New Bonds.

Section 9. Series Construction Fund. There is hereby created and established the Series Construction Fund, which fund shall be held by the Town or by a Custodian; provided, however, that upon the issuance of one or more Series of New Bonds, separate funds or accounts may be established for such Series of New Bonds, with such additional numbers or letters to identify its relevance, but each such separate fund or account will be considered the “Series Construction Fund”

with respect to the related Series of New Bonds. If the Series Construction Fund is held by a Custodian, the Town Manager is authorized and directed to negotiate, execute and deliver such construction fund agreements or other agreements with such bank or other financial institution as may be necessary or desirable in connection therewith. The Series Construction Fund established for a particular Series of New Bonds shall be accounted for as a single fund, however the moneys on deposit therein may be held by one or more Custodians. The moneys on deposit in the Series Construction Fund shall be used and applied to pay the Costs of Acquisition and Construction of the New Projects (including all Costs of Issuance related to the New Bonds).

Moneys held for the credit of the Series Construction Fund shall be invested to the fullest extent practicable and reasonable, in Permitted Investments, maturing at such times and in such amounts as shall be required to provide moneys to make the payments required to be made from such Fund.

Withdrawals from the Series Construction Fund shall be made in the manner withdrawals from other funds of the Town are made.

If after the payment in full of all costs of the New Projects and Costs of Issuance or after adequate provision has been made for such payment any moneys remain in the Series Construction Fund, such excess shall be paid into the related Series Debt Service Fund and shall be used only for the payment of the principal of and interest on the related Series of New Bonds or, in the alternative, to acquire Outstanding New Bonds at a price (exclusive of accrued interest) not exceeding the face amount thereof.

Section 10. Designation of Trustee, Registrar and Paying Agent. Pursuant to the Ordinance, the Trustee is Wells Fargo Bank, N.A. The Town Council hereby designates Wells Fargo Bank, N.A. as Registrar and Paying Agent for the New Bonds. The Registrar and Paying Agent shall signify their acceptances of their respective duties upon delivery of the New Bonds.

Section 11. Sale and Issuance of New Bonds.

(a) The Town Manager is hereby authorized and empowered to undertake any one or more of the following actions: (a) determine the original issue dates of each Series of the New Bonds; (b) determine the aggregate principal amount of the New Bonds, if less than authorized by this First Supplemental Ordinance, and each Series thereof (including the portions thereof to be issued on a taxable or tax-exempt basis); (c) determine the principal amount of each maturity of each Series of the New Bonds; (d) determine the Interest Payment Dates, including the initial Interest Payment Dates, and the Principal Payment Dates for each Series of the New Bonds; (e) determine the optional redemption dates and terms of redemption of each Series of the New Bonds; (f) determine the interest rates for each Series of the New Bonds; (g) determine the New Bonds to be subject to mandatory and optional redemption; (h) determine the redemption prices of the New Bonds subject to optional redemption; (i) determine whether the Series Debt Service Reserve Fund will be established and funded with regard to each Series of New Bonds and, if so, the amount of the applicable Series Reserve Fund Requirement; (j) determine any original issue discount or original issue premium at which each Series of the New Bonds will be sold, or whether any Underwriter's discount or other fee will be paid to the purchasers of the New Bonds; and (k) agree

to any other terms, provisions and matters necessary or advisable to effect the issuance of each Series of the New Bonds.

(b) Each Series of the New Bonds shall either be sold publicly, following a private sale to the Underwriter, or directly to one or more purchasers in a private offering or private placement transaction. In connection with a public offering, the Town hereby finds and determines that the Bond Purchase Agreement to be dated the date of its execution, submitted by the Underwriter for the purchase of all or a portion (if any) of each Series of the New Bonds is fair and reasonable and in the best interest of the Town; that, if executed, the New Bonds contemplated by the Bond Purchase Agreement shall be sold to the Underwriter upon the terms and conditions set forth in the Bond Purchase Agreement and upon the basis of the representations therein set forth, and that all conditions precedent to or concurrent with the acceptance of the Bond Purchase Agreement by the Town will be met prior to the Town's execution thereof. The Town Manager is hereby authorized and directed to approve the form of Bond Purchase Agreement, together with such amendments and modifications to the form thereof as the Town Manager shall negotiate and approve, and to execute the Bond Purchase Agreement, as so modified and amended, and deliver the same to the Underwriter, the Town Manager's execution and delivery of the Bond Purchase Agreement constituting conclusive evidence of approval of the matters therein contained. Notwithstanding the foregoing, the Town Manager is hereby authorized to take all actions, including the preparation and dissemination of requests for proposals and the preparation, publication and/or distribution of information, offering documents or private placement memoranda (which may be in the respective forms of the Bond Purchase Agreement and/or hereinafter defined Preliminary Official Statement, as applicable, together with such amendments and modifications as may be approved by the Town Manager), all relating to the Town, each Series of the New Bonds and the Beach Preservation Fees, to solicit interest and receive offers from financial institutions to purchase one or more Series of the New Bonds in a private offering, and to accept such offer which is in the best interest of the Town and execute such documents as may be necessary in connection therewith.

(c) The Town Manager is hereby authorized and directed to prepare a Preliminary Official Statement, relating to a public offering of each Series of the New Bonds (the "Preliminary Official Statement"), and to take such actions necessary to "deem final" the Preliminary Official Statement for purposes of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended.

(d) The Town hereby authorizes the Final Official Statement of the Town to be dated on or about the date of the execution and delivery of the Bond Purchase Agreement, relating to each Series of the Bonds substantially in the form of the Preliminary Official Statement, with such modifications as the Town Manager approves; the Town Manager of the Town is hereby authorized and directed to execute copies of the Final Official Statement and deliver the same to the Underwriter, which execution and delivery shall be conclusive evidence of the approval of any such modifications; and the Town hereby authorizes the use of the Preliminary Official Statement and Final official Statement and the information contained therein in connection with the public offering and sale of each Series of the New Bonds by the Underwriter.

(e) A copy of this First Supplemental Ordinance shall be filed with the minutes of the meeting at which this First Supplemental Ordinance was enacted.

(f) The Town Council hereby authorizes and directs all of the officers and employees of the Town to carry out or cause to be carried out all obligations of the Town hereunder and to perform such other actions as they shall consider necessary or advisable in connection with the issuance, sale and delivery of the New Bonds.

(g) The Council hereby authorizes the Town Manager or his designee to negotiate the terms of, and execute, in the name and on behalf of the Town, and deliver investment agreements, forward delivery agreements, repurchase agreements and other agreements in connection with the New Bonds, to prepare and solicit bids for providers of such agreements and to execute, in the name and on behalf of the Town, written confirmations of any such agreements and other documents as may be necessary in connection therewith. Further, the Town Manager or his designee is hereby authorized to take any and all actions and execute any and all documents, upon the advice of its Bond Counsel, necessary to cause the termination of any forward delivery, repurchase or other investment agreement related to the 2006 Certificates.

Section 12. Disposition of Proceeds of New Bonds and Certain Other Moneys. The proceeds derived from the sale of the New Bonds, net of any original issue discount or premium (or both), any Underwriter's discount or fees payable to the purchaser thereof, shall be deposited with (or at the order of) the Town, the Trustee, the Escrow Agent or the Custodian, as applicable, and used for the following purposes:

(a) If the Town Manager determines that a Series Debt Service Reserve Fund shall be established for a Series of New Bonds and the Series Reserve Fund Requirement shall be funded with a portion of the proceeds of a Series of the New Bonds, there shall be deposited with the Trustee for deposit into such Series Debt Service Reserve Fund an amount equal to the applicable Series Reserve Fund Requirement.

(b) The remainder of the proceeds of any Series of the New Bonds shall be deposited into the Series Construction Fund established in Section 9 hereof to pay Costs of Acquisition and Construction for the New Projects (including Costs of Issuance) for such Series of New Bonds.

The respective amounts specified in this Section 12 shall be determined by the Town upon delivery of any Series of the New Bonds.

Section 13. Federal Tax Covenant. The Town hereby covenants and agrees with the Holders of the New Bonds issued as tax-exempt obligations (the "Tax-Exempt Bonds") that it will not take any action which will, or fail to take any action which failure will, cause interest on the Tax-Exempt Bonds to become includable in the gross income of the Bondholders thereof for federal income tax purposes pursuant to the provisions of the Code and regulations promulgated thereunder in effect on the date of original issuance of the Tax-Exempt Bonds and that no use of the proceeds of the Tax-Exempt Bonds shall be made which, if such use had been reasonably expected on the date of issue of the Tax-Exempt Bonds would have caused the Tax-Exempt Bonds to be "arbitrage bonds," as defined in the Code; and to that end the Town hereby shall:

(a) comply with the applicable provisions of Section 103 and Sections 141 through 150 of the Code and any regulations promulgated thereunder so long as the Tax-Exempt Bonds are Outstanding;

(b) establish such funds, make such calculations and pay such amounts, if necessary, in the manner and at the times required in order to comply with the requirements of the Code relating to required rebate of certain amounts to the United States; and

(c) make such reports of such information at the times and places required by the Code.

Section 14. Continuing Disclosure. So long as and to the extent required pursuant to Section 11-1-85 of the Code of Laws of South Carolina 1976, as amended ("Section 11-1-85"), the Town covenants that it will file with a central repository for availability in the secondary bond market when requested:

(i) An annual independent audit, within 30 days of the Town's receipt of the audit; and

(ii) Event-specific information within 30 days of an event adversely affecting more than 5% percent of Beach Preservation Fees or the Town's tax base.

The only remedy for failure by the Town to comply with the covenant of this Section 14 shall be an action for specific performance of this covenant; and failure to comply shall not constitute a default or an "Event of Default" under the Ordinance or this First Supplemental Ordinance. The Trustee shall have no responsibility to monitor the Town's compliance with this covenant. The Town specifically reserves the right to amend or delete this covenant in order to reflect any change in Section 11-1-85, without the consent of the Trustee or any Holder of any New Bonds.

In addition, the Town Manager is hereby authorized and directed to approve the form of, and execute and deliver, a Continuing Disclosure Certificate of the Town, related to one or more Series of the New Bonds as required by applicable law, and the Town hereby covenants and agrees that it will comply with and carry out all of the provisions of such Continuing Disclosure Certificate. Notwithstanding any other provisions of this First Supplemental Ordinance, failure of the Town to comply with the Continuing Disclosure Certificate shall not be considered an Event of Default, and no liability for damages shall attach therefor. The sole remedy for such failure to comply shall be that any New Bondholder may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Town to comply with their obligations under this paragraph.

Section 15. Further Actions. The Mayor, the Town Manager, the Finance Director of the Town, and the Town Clerk are hereby authorized and directed to take any and all such further actions as shall be deemed necessary or desirable in order to effectuate issuance of the New Bonds and the refunding of the Certificates to be Refunded.

Section 16. Headings. The headings and titles of the several sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this First Supplemental Ordinance.

Section 17. Notices. All notices, certificates or other communications hereunder or under the Ordinance shall be sufficiently given and shall be deemed given when mailed by registered mail, postage prepaid, or given when dispatched by telegram addressed as follows:

If to the Town:

Hilton Head Island, South Carolina
Attn: Town Manager
One Town Center Court
Hilton Head Island, South Carolina 29928

If to the Paying Agent, the Registrar or the Trustee:

Wells Fargo Bank, N.A.
Attention: Corporate Trust Services
7000 Central Parkway; Suite 550
Atlanta, Georgia 30328

The Town, the Paying Agent, the Registrar and the Trustee may, by notice given to the other parties, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 18. Repeal of Inconsistent Ordinances and Resolutions. All ordinances and resolutions of the Town, and any part of any ordinance or resolution, inconsistent with this First Supplemental Ordinance are hereby repealed to the extent of such inconsistency.

Section 20. Severability. If any sections, phrase, sentence or portion of this First Supplemental Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not attest the validity of the remaining portions thereof.

Section 21. Effective Date. This First Supplemental Ordinance shall be effective upon its adoption by the Town Council for the Town of Hilton Head Island, South Carolina.

**PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF
HILTON HEAD ISLAND ON THIS _____ DAY OF _____ 2011.**

Drew A. Laughlin, Mayor

ATTEST:

Cori Brock, Town Clerk

First Reading: _____

Second Reading: _____

APPROVED AS TO FORM:

Gregory M. Alford, Town Attorney

Introduced by Council Member: _____

FORM OF NEW BOND

[DTC Legend]

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA
SPECIAL OBLIGATION BONDS (BEACH PRESERVATION FEE PLEDGE),
SERIES _____

No. R-____

Interest Rate Maturity Date Issue Date CUSIP

Registered Holder:

Principal Amount:

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA (the "Town") a public body corporate and politic and a political subdivision of the State of South Carolina (the "State"), created and existing by virtue of the laws of the State, acknowledges itself indebted and for value received hereby promises to pay, solely as hereinafter provided, to the Registered Owner named above or registered assigns, the Principal Amount set forth above on the Maturity Date stated above, unless this Bond be subject to redemption and shall have been redeemed prior thereto as hereinafter provided, upon presentation and surrender hereof at the corporate trust office of Wells Fargo Bank, N.A. in Atlanta, Georgia, as trustee (the "Trustee"), and to pay interest on such Principal Amount at the annual Interest Rate stated above (calculated on the basis of a 360-day year of twelve (12) 30-day months), until the obligation of the Town with respect to the payment of such Principal Amount shall be discharged. Interest on this Bond shall be payable in semiannual installments on _____ 1 and _____ 1 of each year beginning _____, 2012 (each, an "Interest Payment Date"), until maturity or earlier redemption. All payments shall be paid to the person in whose name this Bond is registered at the close of business on the fifteenth day of the calendar month (each, a "Record Date") preceding each Interest Payment Date or Principal Payment Date (as defined in the hereinafter defined Ordinances). The payments shall be payable by check or draft mailed at the times provided herein to the person in whose name this Bond is registered at the address shown on the registration books of the Town held by Wells Fargo Bank, N.A., as registrar (the "Registrar"), or, in the case of a Registered Holder of \$1,000,000 or more in principal amount of this Bond, by wire transfer to on account within the continental United States upon the timely receipt of a written request of such Registered Holder. The payments are payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

THIS BOND HAS BEEN ISSUED UNDER THE PROVISIONS OF TITLE 6, CHAPTER 21 AND CHAPTER 1, ARTICLE 5, AND SECTION 6-1-760, CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED (COLLECTIVELY, THE "ACT"); THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS OF THE TOWN WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION (EXCEPT ARTICLE X, SECTION 14(10) OF THE STATE CONSTITUTION AUTHORIZING INDEBTEDNESS PAYABLE SOLELY FROM A SOURCE OF REVENUE DERIVED OTHER THAN A TAX OR LICENSE) OR STATUTORY LIMITATION. THE TOWN IS NOT OBLIGATED TO PAY ANY OF THE BONDS OR THE INTEREST THEREON EXCEPT FROM BEACH PRESERVATION FEES (AS DEFINED IN THE ORDINANCES). THE BONDS ARE NOT GENERAL OBLIGATIONS OF THE TOWN, THE STATE, OR ANY POLITICAL SUBDIVISION THEREOF AND NEITHER THE FULL FAITH AND CREDIT NOR THE GENERAL CREDIT NOR TAXING POWERS OF THE TOWN, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF.

This Bond shall not be valid or obligatory for any purpose until the Certificate of Authentication hereon shall have been duly executed by the Trustee.

This Bond is one of an issue of bonds of the Town in the aggregate principal amount of _____ Million Dollars (\$_____) (the "Bonds") of like tenor, except as to number, rate of interest, date of maturity and redemption provides, issued pursuant to and in accordance with the Constitution and statutes of the State, including particularly the Act, Ordinance No. _____ duly enacted by the Town Council of the Town (the "Council") on _____, 2011 (the "General Bond Ordinance"), and Ordinance No. _____ duly enacted by the Council on _____, 2011 (the "First Supplemental Ordinance") (the General Bond Ordinance and the First Supplemental Ordinance are herein collectively referred to as the "Ordinances") for the purpose of providing moneys, to (i) finance a portion of the New Projects, (ii) satisfy the Series Reserve Fund Requirement (if any) with respect to the Bonds, and (iii) pay all costs of issuing the Bonds.

Certain capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Ordinances. Certified copies of the Ordinances are on file in the office of the Trustee and in the office of the Clerk of Court for Beaufort County, South Carolina.

The Ordinances contain provisions defining terms, set forth the revenues pledged for the payment of the principal of and interest on this Bond and the Bonds of other series herewith which may hereafter be issued on a parity herewith under the Ordinances; set forth the nature, extent and manner of enforcement of the security of this Bond and of such pledge, and the rights and remedies of the Holder hereof with respect thereto; set forth the terms and conditions upon which and the extent to which the Ordinances may be altered, modified and amended; set forth the terms and conditions upon which this Bond is issued upon which other bonds may be hereinafter issued payable as to principal, premium, if any, and interest on a parity with this Bond and equally and ratably secured herewith; sets forth the rights, duties and obligations of the Town thereunder; and set forth the terms and conditions upon which the pledge made in the Ordinances for the security of this Bond and upon which the covenants, agreements and other obligations of the Town made therein may be discharged at or prior to the maturity or redemption of this Bond with provisions for

the payment thereof in the manner set forth in the Ordinances. Reference is hereby made to the Ordinances to all of the provisions of which any holder of this Bond by the acceptance hereof thereby assents. The provisions of the Act and the Ordinances shall be a contract with the holder of this Bond.

This Bond and the series of Bonds of which it is one and the interest thereon are special obligations of the Town and are secured by and payable solely from, and secured equally and ratably by a pledge of and lien upon, the Beach Preservation Fees imposed and collected by the Town, which pledge is junior and subordinate to the pledge thereof securing the Town's obligations to pay amounts due under the 2006 Installment Sale Agreement.

The General Bond Ordinance authorizes the issuance of additional bonds on a parity with the Bonds of this issue which, when issued in accordance with the provisions of the General Bond Ordinance, will rank equally and be on a parity herewith.

This Bond and the interest hereon are exempt from all State, county, municipal, school district, and all other taxes or assessments imposed within the State, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate, transfer and certain franchise taxes.

This Bond is transferable, as provided in the Ordinances, only upon the registration books of the Town kept for that purpose and maintained by the Registrar, by the Holder hereof in person or by his duly authorized attorney, upon (a) surrender of this Bond and an assignment with a written instrument of transfer satisfactory to the Registrar, duly executed by the Holder hereof or his duly authorized attorney and (b) payment of the charges, if any, prescribed in the Ordinances. Thereupon a new Bond of the same aggregate principal amount, maturity and interest rate shall be issued to the transferee in exchange therefor as provided in the Ordinances. The Town, the Trustee and the Registrar may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of or on account of the principal or redemption price hereof and interest due hereon and for all other purposes.

For every exchange or transfer of this Bond, the Town or the Trustee or Registrar, as the case may be, may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer.

[Redemption Provisions]

If less than all the Bonds of any maturity are called for redemption, the Bonds of such maturity to be redeemed shall be selected at random by the Trustee. In the event any of the Bonds or portions thereof are called for redemption, the Trustee shall give notice, in the name of the Town, of redemption of Bonds by first-class mail, postage prepaid, to the Holder thereof as shown on the Books of Registry of the Town not less than thirty (30) days and not more than sixty (60) days prior to the date fixed for the redemption thereof. If this Bond be redeemable and shall have been duly called for redemption and notice of the redemption hereof mailed as aforesaid, and if on or before the date fixed for such redemption, payment thereof shall be duly

made or provided for, interest hereon shall cease or accrue from and after the redemption date hereof.

It is hereby certified and recited that all conditions, acts and things required by the Constitution and statutes of the State to exist, be performed or happen precedent to or in the issuance of this Bond, exist, have been performed and have happened, that the amount of this Bond, together with all other indebtedness of the Town, does not exceed any limit prescribed by such Constitution or statutes.

This Bond shall not be valid or obligatory for any purpose until the Certificate of Authentication hereon shall have been duly executed by the Trustee.

IN WITNESS WHEREOF, THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA has caused this Bond to be signed by the manual or facsimile signature of its Mayor, its corporate seal to be reproduced hereon and the same to be attested by the manual or facsimile signature of its Town Clerk.

THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

By: _____
Mayor

(SEAL)

ATTEST:

By: _____
Town Clerk

FORM OF CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds of the issue described in the within mentioned Ordinance.

Wells Fargo Bank, N.A., as Trustee

By: _____

Its: _____

Date: _____

IT IS HEREBY CERTIFIED that the following is a true and correct copy of the approving opinion of McNair Law Firm, P.A., Columbia, South Carolina, the original of which was manually executed, dated and issued as of the date of the delivery of and payment for the bonds, and a copy of which is on file with the Town.

THE TOWN OF HILTON HEAD, SOUTH CAROLINA

By: _____
Town Clerk

FORM OF ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

(please print or type name and address of Transferee and Social Security or other identifying
number of Transferee)

the within Bond and all rights and title thereunder, and hereby irrevocably constitutes and appoints attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Date: _____

STAMP Language

Signature Guaranteed: _____

NOTICE: Signature(s) must be guaranteed
By an institution which is a participant in the
Securities Transfer Agent Medallion Program
(STAMP) or similar program.

NOTICE: The signature to this assignment
must correspond with name as it appears
upon the face of the within bond in every
particular, without alteration or enlargement
or any change whatever.

Memo



To: Town Council

From: Scott Liggett, PE, Dir. Public Projects & Facilities / Chief Engineer

Via: Stephen G. Riley, CM, Town Manager

Date: July 20, 2011

Recommendation: Staff recommends that Town Council accept the bid submitted by Great Lakes Dredge and Dock Company (GLDD) in response to our Port Royal Shoreline Restoration and Rehabilitation Project solicitation and authorize contract award and execution. The bid submitted by GLDD includes the following elements:

Mobilization / Demobilization	\$2,750,000
Beach Fill - 1,000,000 CY @ \$5.40/CY	\$5,400,000
Beach Tilling	\$ 12,000
Business License Allowance	\$ 25,000
Total Price	\$8,187,000

Please see recommendation from Olsen Associates attached.

Summary: In accordance with Title 11 of the Town Code, sealed competitive bids were solicited for the above referenced project. A mandatory pre-bid conference was held on June 23, 2011. Nine contractors attended, four of which submitted bids (bid tabulation attached). In accordance with State and Federal Permits, work can begin no earlier than October 1, 2011. GLDD proposes to begin mobilization to the Island on September 15, 2011 and to begin sand placement on October 9, 2011. Their proposed schedule indicates that all sand placement will be completed by December 8, 2011 and all project related activities including demobilization will be complete by December 22, 2011.

Background: The project as proposed includes the placement of 1,000,000 cubic yards (CY) of beach compatible sand along the Atlantic Oceanfront shoreline adjacent to Port Royal Plantation. The work program also includes the construction of a complementary, rubble mound, terminal groin which is being pursued via a separate request for proposals (RFP) and contract. In accordance with Town Code, the pricing information included in the responses to the RFP is not releasable at the time this memo was prepared. However, staff is confident that the total cumulative cost for all work is within the limits of approved budget and less than the cost assumptions made during our Beach Management Program sustainability investigation in 2010. Portions of the work must be highly coordinated and with Town Council concurrence it is our intent to issue simultaneous award notifications in early August such that these efforts may begin immediately.

MEMORANDUM



TO: Scott P. Liggett, P.E.

FROM: Christopher G. Creed, P.E. 

DATE: 21 July 2011

RE: Port Royal Shoreline Restoration and Stabilization Project
Recommendation for Award – Phase I

We have reviewed the bid submittals for Phase I (beach fill) of the above noted project and find that Great Lakes Dredge and Dock Company, LLC (GLDD) offered the lowest bid. Also, after detailed review of the GLDD bid submittal we find that it's complete and consistent with the requirements of the solicitation and recommend the Town award the Phase I contract to them.

Phase I will provide for the placement of 1,000,000 cy (mol) of sand along a portion of the Port Royal Plantation shoreline from an offshore borrow site located in Port Royal Sound. GLDD indicates that they will begin mobilization to the island on September 15, 2011 and begin sand placement on October 9, 2011. With this start date and the anticipated production rate of the dredge plant that will be used, it may possible that Acceptance Section 1 will be complete before the end of October. This will be almost two months ahead of the required schedule for that portion of the project. Likewise, GLDD is expecting to complete the entire project well before the required deadline. Their proposed schedule indicates that all sand placement will be complete by December 8, 2011 and all tilling, surveys, and demobilization will be complete by December 22, 2011.

Please contact us if you have any questions regarding our review of the bid submittals or this recommendation.

Thank you.

PORT ROYAL SHORELINE RESTORATION AND STABILIZATION PROJECT
PHASE I: BEACH FILL

Bid Tabulation Form

BIDDER		BASE BID 1.0 million cubic yards			
1.	Great Lakes Dredge and Dock Co. Oak Brook, IL	Item 1 – Mob./Demob.	\$ 2,750,000.00		
		Item 2 – Beach Fill	\$ 5.40/ cy	\$ 5,400,000.00	
		Item 3 – Tilling	\$ 12,000.00		
		Item 4 – Business License	\$ 25,000.00		
		TOTAL	\$ 8,187,000.00		
2.	Norfolk Dredging Company Chesapeake, VA	Item 1 – Mob./Demob.	\$ 2,240,000.00		
		Item 2 – Beach Fill	\$ 7.08 / cy	\$ 7,080,000.00	
		Item 3 – Tilling	\$ 40,000.00		
		Item 4 – Business License	\$ 25,000.00		
		TOTAL	\$ 9,385,000.00		
3.	Marinex Construction, Inc. Charleston, SC	Item 1 – Mob./Demob.	\$ 1,969,000.00		
		Item 2 – Beach Fill	\$ 7.89/ cy	\$ 7,890,000.00	
		Item 3 – Tilling	\$ 32,000.00		
		Item 4 – Business License	\$ 25,000.00		
		TOTAL	\$ 9,916,000.00		
4.	Weeks Marine, Inc. Covington, LA	Item 1 – Mob./Demob.	\$ 3,000,000.00		
		Item 2 – Beach Fill	\$ 6.85/ cy	\$ 6,850,000.00	
		Item 3 – Tilling	\$ 50,000.00		
		Item 4 – Business License	\$ 25,000.00		
		TOTAL	\$ 9,925,000.00		