



**Town of Hilton Head Island  
Planning Commission Meeting  
Wednesday, July 15, 2015  
3:00p.m. Benjamin M. Racusin Council Chambers  
AGENDA**

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

1. **Call to Order**
2. **Pledge of Allegiance to the Flag**
3. **Roll Call**
4. **Freedom of Information Act Compliance**  
Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.
5. **Swearing In Ceremony for Reappointed Planning Commissioners (July 1, 2015 – June 30, 2018)** Mr. Bryan Hughes, Mr. Barry Taylor and Mr. Todd Theodore *Performed by: Brian Hulbert, Staff Attorney*
6. **Approval of Agenda**
7. **Approval of Minutes** Regular Planning Commission Meeting – May 20, 2015
8. **Appearance by Citizens on Items Unrelated to Today's Agenda**
9. **Unfinished Business**  
None
10. **New Business**
  - a) **Proposed Addendum #1 to the Amended and Restated Development Agreement dated November 19, 2014**  
A request from Shelter Cove Towne Centre, LLC and Shelter Cove II, LLC for the Town of Hilton Head to enter into an Addendum to the Amended and Restated Development Agreement dated November 19, 2014. The modifications proposed in the Addendum include, without limitation, providing for a redesigned Concept Plan which shifts the number and location of Multifamily Residential Units from a maximum of 210 as previously approved to a proposed 120-150 units on Multifamily Site #1 and from no units currently approved to 80-120 proposed multifamily units on Multifamily Site #2, the aggregate total would not exceed 240 total units. Modifications also include a proposed land swap to allow for future park expansion and redistribution of the apartment units.  
*Presented by: Heather Colin*

**b) Public Hearing**

**ZA-001190-2015:**

A request (A Zoning Map Amendment – PUD District application type), from Victor J. Mills on behalf of Shelter Cove Towne Centre, LLC and Shelter Cove II, LLC proposing to amend the Official Zoning Map by amending the PD-1 Zoning District, specifically the Palmetto Dunes Resort Master Plan, to allow for 240 multi-family residential units. All other permitted uses and associated densities will remain unchanged. This request is specifically related to proposed amendments to the Development Agreement associated with the property that potentially will relocate the multi-family units from the west portion of the ‘Mall Tract’ to the east portion and will be further distributed between the ‘Mall Tract’ and the adjacent eastern property not to exceed a total of 240 units. The property is approximately 26 acres on Shelter Cove Lane and Broad Creek and is currently identified on Beaufort County District R520, Tax Map 12C, parcel 2 which also includes the ‘Exchange Parcel-New Multi-Family Parcel’ now identified as parcel 7. *Presented by: Heather Colin*

**11. Commission Business**

Appointment of a Nominating Committee for the election of Officers for the term July 1, 2015 to June 30, 2016.

**12. Chairman’s Report**

**13. Committee Report**

**14. Staff Reports**

**15. Adjournment**

*Please note that a quorum of Town Council may result if four or more of their members attend this meeting.*

# TOWN OF HILTON HEAD ISLAND

## Planning Commission Meeting

Wednesday, May 20, 2015

DRAFT

3:00p.m. – Benjamin M. Racusin Council Chambers

Commissioners Present: Chairman Alex Brown, Vice Chairman Peter Kristian, Judd Carstens, Bryan Hughes, Jim Gant, Barry Taylor and Todd Theodore

Commissioners Absent: Caroline McVitty and Lavon Stevens

Town Council Present: Mayor Pro Tem Bill Harkins

Town Staff Present: Jayme Lopko, Senior Planner & Planning Commission Coordinator  
Teri Lewis, LMO Official  
Darrin Shoemaker, Traffic and Transportation Engineer  
Charles Cousins, Director of Community Development  
Brian Hulbert, Staff Attorney  
Jeff Buckalew, Town Engineer  
Kathleen Carlin, Secretary

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1. **Call to Order**
2. **Pledge of Allegiance to the Flag**
3. **Roll Call**
4. **Freedom of Information Act Compliance**  
Public notification of this meeting has been published and posted in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.
5. **Approval of Agenda**  
The Planning Commission **approved** the agenda as submitted by general consent.
6. **Approval of Minutes**  
The Planning Commission **approved** the minutes of the April 22, 2015 meeting as submitted by general consent.
7. **Appearance by Citizens on Items Unrelated to Today's Agenda**  
None
8. **Unfinished Business**  
None

**9. New Business**

None

**10. Commission Business**

None

**11. Chairman's Report**

None

**12. Committee Reports**

a) Commissioner Gant presented a status update on the Circle to Circle Committee. Commissioner Gant reviewed an overhead chart and discussed the committee's efforts to develop a master plan for the Coligny Circle to Sea Pines Circle area. The committee is holding five Community Forums in the month of May to receive public input on traffic issues. The Community Forums have been well received by the public. Commissioner Gant presented statements regarding the committee's next steps.

**13. Staff Reports**

a) Mr. Darrin Shoemaker presented the annual Traffic Counting Program on behalf of staff. Today's presentation is in response to the Planning Commission's request for information regarding the Town's annual traffic count collection practices.

The Town collects turning movement counts at all of its signalized intersections on a typical Tuesday, Wednesday, or Thursday during the first two full weeks of June. Four hours of data are collected for each location from 7 to 9a.m. and again at 4 to 6p.m. in 15-minute increments. These increments are employed to identify the morning and afternoon peak volume hours. Separate bicycle and pedestrian crossing counts are conducted for each street approach independent of the direction of the crossing. The morning and afternoon peak hour turning movement counts may be conducted on any of the available counting days with demands unduly influenced by adverse weather, road construction, or vehicle collisions.

24-hour machine counts that measure the amount of traffic traveling on the Town's major arterials at ten strategic locations are conducted and organized by hour and by direction. Six of the locations are on William Hilton Parkway, two are on the Sol Blatt, Jr., Cross Island Parkway, and one each is on Palmetto Bay Road and Pope Avenue. A minimum of three days of data comprising at least one Tuesday, Wednesday, and Thursday unduly influenced by any of the factors outlined above are counted.

A turning movement count that includes U-turn maneuvers and ignores bicycle and pedestrian crossing movements is conducted for Sea Pines Circle for the hours of 7-9a.m., 11a.m. to 1p.m., and 4 – 6p.m. in calendar years that are multiples of five. Hence, this count will be conducted at Sea Pines Circle in 2015.

With increasing frequency in recent years, the Town has included 7-9a.m. and 4-6p.m. turning movement counts at selected unsignalized intersections in our traffic count data collection project on an as desired basis and as allowed by the available

project budget. The number of unsignalized intersections being included in the 2015 project far exceeds the number included in any previous project. Coligny Circle is also be counted within the 2015 project, and pedestrian and bicycle crossing data, again independent of the crossing direction, will be collected. Mr. Shoemaker presented an overhead review of the Scope of Work that is used to procure a contractor for the 2015 annual traffic count.

Mr. Shoemaker stated that the annual traffic counting project is developed to meet the requirements for preparing the annual Traffic Monitoring and Evaluation report as outlined in LMO Section 16-2-103(J) 10 of the LMO. As outlined in this section of the LMO, the collected data must be certified as true and correct by the Monitoring & Evaluation report and also becomes the background data set for all traffic impact analysis plan studies submitted to the Town as required by new development or redevelopment under the requirements of the LMO.

Mr. Charles Cousins presented follow-up statements regarding the Annual Traffic Counting Program. Mr. Cousins discussed why the Town conducts the annual traffic counts. Mr. Cousins discussed the history of traffic concerns on the island back in the early 1990s. Traffic on the island was terrible during this period of time.

In an effort to address traffic concerns at that point in time by the Planning Commission and Town Council, a Comprehensive Plan was developed. In preparing a thoroughfare plan, the Planning Commission appointed a group of leading citizens on the island to figure out how to address traffic long term. The committee studied traffic patterns and worked to figure out what would be acceptable traffic patterns and conditions. The committee worked with a traffic engineer from Wilbur Smith, an international firm. The Planning Commission decided that we needed to have a goal in layman's terms that could be easily understood by the public.

Mr. Cousins discussed the reasons for the one minute delay as it relates to peak traffic periods. Mr. Cousins also discussed the 45-days in the year when traffic on the island exceeds the one-minute delay. The 55 second goal at the island's signalized intersections is an average for the entire intersection.

Chairman Brown presented statements regarding the standard that was set by the Planning Commission some 15 years ago. That standard does not seem to meet the growth, current population, and different needs of Hilton Head Island today. This is something that will need to be studied and carefully considered as we move forward.

- b) Mrs. Jayme Lopko reported that staff has no agenda items for the regular Planning Commission meeting on June 3, 2015. Mrs. Lopko stated that the Comp Plan Committee will meet on Wed., June 3, 2015. Chairman Brown approved the cancellation of the regular Planning Commission meeting on June 3, 2015.

**14. Adjournment**

The meeting was adjourned at 4:30p.m.

Submitted By:

Approved By:

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Kathleen Carlin  
Secretary

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Alex Brown  
Chairman

DRAFT



# TOWN OF HILTON HEAD ISLAND

## *Community Development Department*

**TO:** Planning Commission  
**VIA:** Teri Lewis, AICP, *LMO Official*  
**FROM:** Heather L. Colin, AICP, *Development Review Administrator*  
**DATE:** July 8, 2015  
**SUBJECT:** Proposed Addendum #1 to the Amended and Restated Development Agreement dated November 19, 2014 for the Mall at Shelter Cove (Shelter Cove Towne Centre)

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**Recommendation:** Staff recommends that the Planning Commission forward a recommendation to Town Council on proposed modifications in the Development Agreement (Addendum #1) that pertain to a shift and reallocation of the Residential Units associated with the Zoning Map Amendment Request (ZA-001190-2015) to the Palmetto Dunes Resort Master Plan.

**Summary:** Shelter Cove Towne Centre (SCTC), and Shelter Cove II, LLC are proposing an addendum to the Development Agreement that was adopted as amended on November 19, 2014. The modifications that are associated with land development regulations include a decrease in the overall height for Multifamily Site #1 from 75' to 67' and a shift in the location of the multifamily units to Town owned property located further along Shelter Cove Lane as reflected in the rezoning application, ZA-001190-2015.

The illustrative proposed concept plan is attached for your information, the proposed Addendum #1 and the Exchange Agreement. The modifications to the Development Agreement contemplate a land swap between the Town and SCTC. SCTC will swap approximately 4.45 acres to the South of Shelter Cove Community Park for approximately 4.6 acres of Town owned property to the North of the Veteran's Memorial (Multifamily Site #2).

Town Council will hold the first Public Hearing on the Addendum, August 4, 2015 at 5:30pm. The second Public Hearing will be held by Town Council on September 15, 2015 at 5:30pm.

**Background:** June 9, 2015, Town Council heard a request to file a rezoning application involving Town owned property. Mayor Bennett explained that he had approached Mark Senn of Blanchard and Calhoun (SCTC) with the idea of swapping town owned land with land owned by SCTC (land adjacent to the Newport Community). At this meeting Town Council approved by a vote of 7-0 for SCTC to apply for the rezoning and proceed with the revised plans.

Additional points in the Proposed Addendum that should be considered include:

- 1) The proposal adds additional land and revises the area that will be subject to the regulations in the Amended Development Agreement dated November 19, 2014, proposed Addendum #1 and any subsequent addendums or revisions.
- 2) The proposal includes the Veteran's Memorial in the land that is subject to the Development Agreement as a means to comply with LMO requirements such as setbacks, buffers and open space as well as property to the northeast of Multifamily Site

- #2. Staff is concerned that this may result in unexpected encumbrances placed on this Town Park and may grant SCTC approval authority for future modifications to this park.
- 3) The property is subject to the regulations in the LMO that was in affect at the time of the initial Agreement, and not the recently adopted LMO, October 16, 2012.
  - 4) The proposed Concept Plan shows a Proposed Community Park Expansion. Plans for the property which is proposed to be Town owned will be required to go through the proper procedures for plans and construction. If this proposal moves forward, it will include a PPR (Public Project Review), and review by other Town Commissions, Boards, and Subcommittees, such as the Parks and Recreation Commission.
  - 5) A revised Traffic Study that reflects the shift in the location of the dwelling units will be submitted to Town Council prior to the First Public Hearing on this matter (August 4) and preferably prior to the Planning Commission's recommendation.
  - 6) The multifamily buildings on both Site #1 and #2 will not exceed 4 stores and 67' in height. The current provision is no more than 75', which is the regulation for the PD-1 districts as stated in the LMO.
  - 7) There are proposed provisions concerning the design and implementation of a Stormwater Master Plan which may allow them to be exempt from various stormwater requirements in the LMO. The concept plan shows the lagoon that is identified to be used for stormwater on the Town owned portion of property.
  - 8) Pathway connections will be constructed by the Developer and the Town will be granted easements. The pathways will be designed to be used for emergency access vehicles in the same manner as the previous Agreement required.
  - 9) Multifamily Site #2 will be subject to all adjacent use buffers as outlined in the previous LMO; however, the standards for open space and pervious area will not have to be satisfied on a site specific basis, rather the development as a whole which includes the entire Shelter Cove Towne Centre and Shelter Cove Community Park will comply with the standards.
  - 10) There are no additional modifications from the LMO requested. The development is required to comply with the terms of the Agreement, the LMO in effect October 16, 2012, which includes but is not limited to natural resources and tree removal, wetland impacts, parking, and buffers and setbacks.
  - 11) The proposed Exchange Agreement outlines specific requirements associated with the land swap. The proposal includes a requirement that deed restrictions are recorded with the properties requiring that the property that will transfer to the Town be used as a park or green space and for no other purposes.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

**ADDENDUM #1 (“Addendum”) TO THAT CERTAIN AMENDED AND RESTATED DEVELOPMENT AGREEMENT DATED NOVEMBER 19, 2014, AND APPROVED BY THE TOWN OF HILTON HEAD ISLAND PURSUANT TO ORDINANCE NO. \_\_\_\_\_, ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, A COPY OF WHICH IS ATTACHED HERETO AND MARKED EXHIBIT “C”**

1. This Addendum (“Addendum”) was approved by the Town of Hilton Head Island, South Carolina (the “Town”) pursuant to Ordinance \_\_\_\_\_, dated the \_\_\_\_\_ day of \_\_\_\_\_, 2015, in accordance with the Town of Hilton Head Land Management Ordinance dated October 7, 2014, and in accordance with the South Carolina Local Government Development Agreement Act (the “Act”) and pursuant to Section 16-1-108(E)(3) of the LMO.

2. This Addendum and the provisions contained herein shall incorporate into the Shelter Cove Mall Redevelopment the parcel identified as “N/F Town of Hilton Head Island Parcel, 26.29 Ac.” as shown on the plat entitled “Boundary Reconfiguration of 4.97 Acre New Multi-Family Parcel and 26.29 Town of Hilton Head Parcel, Totaling 31.26 Acres, a Portion of Shelter Cove Lane, Shelter Cove Community Park” prepared by Surveying Consultants, dated June 1, 2015, a copy of which is attached hereto and marked Exhibit “A” (the “Town Parcel”), provided, however, nothing herein shall be deemed to require the Town to expend any funds on or make any improvements to any parks within the Shelter Cove Mall Redevelopment.

3. On the 16<sup>th</sup> day of October, 2012, the Town enacted Ordinance 2012-25 (Proposed Ordinance 2012-23) entitled:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT WITH SHELTER COVE TOWNE CENTRE, LLC FOR THE REDEVELOPMENT OF THE MALL AT SHELTER COVE PURSUANT TO THE AUTHORITY OF S.C. CODE ANN. SEC. 5-7-40 (SUPP. 2011), AND SEC. 2-7-20, CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, (1983); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

4. Pursuant to the Ordinance set forth in Paragraph 3 above, on the 16<sup>th</sup> day of October, 2012, Shelter Cove Towne Centre, LLC and the Town did enter into a Development Agreement for the redevelopment of the Mall at Shelter Cove.

5. On the 16<sup>th</sup> day of October, 2012, the Town did enact Ordinance 2012-26 (Proposed Ordinance 2012-24) entitled:

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE SALE OF REAL PROPERTY OWNED BY THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, IN EXCHANGE FOR LAND OWNED BY SHELTER COVE TOWNE CENTRE, LLC IN CONJUNCTION WITH THE MALL AT SHELTER COVE DEVELOPMENT AGREEMENT AND PURSUANT TO THE AUTHORITY OF S.C. CODE ANN. §5-7-40 (SUPP. 2011), AND §2-7-20, *CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA*, (1983, As Amended); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

6. On the 19<sup>th</sup> day of November, 2014, the Town enacted Ordinance 2014-30 (Proposed Ordinance 2014-25) entitled:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR SHELTER COVE MALL WITH SHELTER COVE TOWNE CENTRE, LLC AND SHELTER COVE II, LLC FOR THE REDEVELOPMENT OF THE PROPERTY KNOWN GENERALLY AS THE MALL AT SHELTER COVE, PURSUANT TO THE AUTHORITY OF S.C. CODE ANN. §5-7-40 (SUPP. 2011), AND §2-7-20, *CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA*, (1983); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

7. On November 25, 2014, the Town entered into an Amended and Restated Development Agreement for Shelter Cove Mall with Shelter Cove Towne Centre, LLC, a South Carolina limited liability company, and Shelter Cove II, LLC, a South Carolina limited liability company.

8. On the 4<sup>th</sup> day of May, 2014, Shelter Cove Towne Centre, LLC and Shelter Cove II, LLC (hereinafter collectively referred to as “the Developer”), as Applicant, submitted to the Town the following:

ZONING MAP AMENDMENT OF SHELTER COVE TOWNE CENTRE, LLC, AND SHELTER COVE II, LLC, FOR AMENDMENT OF THE TOWN OF HILTON HEAD ZONING MAP PROVIDING FOR THE REDUCTION OF THE ALLOWABLE MULTI-FAMILY RESIDENTIAL DWELLING UNITS

ON THAT CERTAIN 42.45 ACRE PORTION OF THE PARCEL IDENTIFIED AS PARCEL 26 ON BEAUFORT COUNTY TAX MAP 12B (THE "MALL TRACT") AND THE INCREASE IN THE NUMBER OF MULTI-FAMILY RESIDENTIAL DWELLING UNITS ON PROPERTY OWNED BY THE TOWN ("TOWN PARCEL") OF HILTON HEAD ISLAND BEING A 9.3 ACRE PORTION OF THE PARCEL IDENTIFIED AS PARCEL 12 ON BEAUFORT COUNTY TAX MAP 12C ADJACENT TO THE MALL TRACT (EXCEPT FOR THE AMENDMENT TO THE ZONING MAP APPLIED FOR HEREIN, THE USES AND DENSITIES PROVIDED FOR IN ZMA #120006 REMAIN UNCHANGED AND CONTINUE IN FULL FORCE AND EFFECT).

9. On the 19<sup>th</sup> day of November, 2014, the Town enacted Ordinance 2014-29 (Proposed 2014-24) entitled:

AN ORDINANCE TO AMEND TITLE 16, "THE LAND MANAGEMENT ORDINANCE" OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, BY AMENDING SECTION 16-4-102, THE OFFICIAL ZONING MAP AND THE PALMETTO DUNES RESORT MASTER PLAN WITH RESPECT TO THE CERTAIN PARCELS IDENTIFIED AS PARCEL 12 ON BEAUFORT COUNTY TAX MAP #12B, AND A 9.3 ACRE PORTION OF PARCEL 12 ON BEAUFORT COUNTY TAX MAP #12C, WITHIN THE PALMETTO DUNES RESORT MASTER PLAN UNDER THE PD-1 PLANNED DEVELOPMENT MIXED USE DISTRICT, TO DECREASE THE NUMBER OF MULTIFAMILY DWELLING UNITS ON PARCEL 26, TAX MAP #12B TO 50; INCREASE THE NUMBER OF MULTIFAMILY DWELLING UNITS ON PARCEL 12, TAX MAP #12C TO 210; THE AGGREGATE TOTAL OF DWELLING UNITS FOR BOTH PROPERTIES WOULD NOT EXCEED 240 UNITS; AND NO OTHER CHANGES TO THE MASTER PLAN LAND USE DESIGNATIONS AND ASSOCIATED DENSITIES FOR THE PROPERTIES; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

10. On the 16th day of June, 2015, pursuant to the Ordinance of the Town set forth in Paragraph 5 above, and in accordance with Article IV, Section C of the Amended and Restated Development Agreement for Shelter Cove Mall, the Town conveyed to Shelter Cove II, LLC, a 4.97 acre parcel identified as the "New Multi-Family Parcel" more clearly shown on Exhibit "A", and in exchange therefore Shelter Cove Towne Centre, LLC, did convey to the Town that certain 4.97 acre parcel described as "New Town of Hilton Head Island Community Park Parcel" and simultaneously committed to convey to the Town that certain 0.17 acre parcel located within the Revised Multi-Family Parcel to the northwest thereof as shown on Exhibit "A".

11. On the \_\_\_\_\_ day of June, 2015, Shelter Cove Towne Centre, LLC and Shelter Cove II, LLC, as Applicant, filed with the Town a Zoning Map Amendment Application for amendment to the Town Zoning Map entitled as follows:

THE ZONING MAP AMENDMENT APPLICATION OF SHELTER COVE TOWNE CENTRE, LLC AND SHELTER COVE II, LLC FOR AMENDMENT OF THE TOWN OF HILTON HEAD ZONING MAP PROVIDING FOR THE INCREASE IN THE NUMBER OF MULTI-FAMILY RESIDENTIAL DWELLING UNITS ON PROPERTY OWNED BY THE TOWN (“TOWN PARCEL”) OF HILTON HEAD ISLAND ON THE PARCEL IDENTIFIED AS PARCEL 12 ON BEAUFORT COUNTY TAX MAP 12C (P/O TAX PARCEL I.D. NO. R520-012-00C-0002-0000) ADJACENT TO THE REVISED SHELTER COVE MALL PARCEL (as hereinafter identified) (EXCEPT FOR THE AMENDMENT TO THE ZONING MAP APPLIED FOR HEREIN, THE USES AND DENSITIES PROVIDED FOR IN ZMA #000659-2014 REMAIN UNCHANGED AND CONTINUE IN FULL FORCE AND EFFECT).

The Zoning Map Amendment Application applied for amendment to the Palmetto Dunes Resort Master Plan and its associated text to modify the allowable number of multi-family residential units allowed on the Multi-Family Site #1 to between 120 to 150 RDUs, and Multi-Family Site #2 to between 80-120 RDUs, provided, however, that the total number of multi-family residential dwelling units on Multi-Family Site #1 and Multi-Family Site #2 shall never exceed 240 multi-family residential dwelling units.

12. In order to accomplish the objectives contained within the Zoning Map Amendment Application as set forth above, the Developer and the Town propose to exchange the parcel as shown on the Concept Plan (“Concept Plan”) entitled “Shelter Cove Towne Centre Apartments, Alternate Concept Plan Study 2”, dated April 21, 2015, prepared by Wood & Partners, Inc., said Concept Plan being attached hereto and marked Exhibit “B”, identified thereon as “Proposed Community Park Expansion” (the “Proposed Community Park Expansion”) owned by the Developer for Multi-Family Site #2 owned by the Town as shown on the Concept Plan pursuant to the terms and conditions of that certain Exchange Agreement to be entered into between the parties and attached hereto as Exhibit “D”. Prior to the Town’s conveyance of the Multi-Family Site #2 to Developer, the Town shall place restrictions on the Multi-Family Site #2 parcel prohibiting: (a) converting apartments to condominiums; (b) rentals of apartments for less than twelve (12) months per lease; and (c) sub-letting of apartments by tenants. Notwithstanding anything contained herein or in the Exchange Agreement, in the event

the closing under the Exchange Agreement has not occurred within ninety (90) days of the date of this Addendum, Developer may elect to terminate this Addendum and the Exchange Agreement and the parties will cooperate to rezone any property as may be necessary to revert back to the original zoning classifications.

13. As a result of the location of the multi-family units on Multi-Family Site #2, Developer has conducted a traffic study to determine the impact of the additional traffic utilizing Shelter Cove Lane from Multi-Family Site #2 as it enters into U.S. Hwy. 278. This traffic study shall be agreed by the Town to be in lieu of the traffic study provided for under LMO Section 16-3-1301, *et seq.* If the updated traffic study of Developer indicates the possibility of certain existing deficiencies at the entrances of Shelter Cove Lane into U.S. Hwy. 278, the correction of such deficiencies may be paid for by the Town at its discretion.

14. The Town and the Developer agree that the multi-family buildings located on Multi-Family Site #1 and Multi-Family Site #2 as shown on Exhibit "B" shall not exceed four stories and sixty-seven (67') feet in height.

15. Unless stated to the contrary herein, the provisions contained with the Amended and Restated Development Agreement shall apply to all provisions contained herein. The development of improvements on Multi-Family Site #2 will include the design and implementation of a Stormwater Master Plan, the elements of which must be fully compliant with the LMO and/or otherwise approved by the Town. The Master Plan will propose modifications to the existing stormwater infrastructure to meet the stormwater standards in the Town Land Management Ordinance. The Town agrees to use best efforts to assist in approving the Master Plan and granting any licenses or easements necessary to permit Developer to construct and utilize necessary improvements and utilize the existing lagoon owned by the Town east of Multi-Family Site #2.

Notwithstanding US Army Corps of Engineers (USACE) and OCRM determinations, the pond to the east of Multi-Family Site #2 shall be treated as stormwater management facilities and shall not be considered tidal or freshwater wetlands for the purposes of application of the Town of Hilton Head Island LMO. The pond remains subject to all requirements of USACE and OCRM.

Since modifications will be made to the pond to the east of Multi-Family Site #2 that will significantly improve stormwater management for water quality improvement by providing for

first-flush retention with 48-hour drawdown, no prior or additional filtration on site will be required. Best efforts will be made to incorporate prior or additional on-site treatment where practical.

16. Developer shall be responsible for the construction of a pathway connecting the east side of the Community Park to the west side of Veterans Memorial Park and a pathway from the east side of Veterans Memorial Park to the existing lagoon on the east side of Multi-Family Site #2, and to provide public access easements over all such pathways to provide for the use and enjoyment of same by the general public and for fire protection. Upon the creation of such easements, the Town shall be responsible for the maintenance of such pathways and agrees that use of, access to, and travel upon the pathways shall be under the exclusive control of the Town, and the Town shall at all times comply with all applicable laws, rules, codes, and regulations concerning the use and maintenance of the pathways as described herein.

17. Town and Developer will agree to cooperate with each other in obtaining any permits or approvals necessary for the construction of improvements contemplated by this Addendum and to sign any necessary permits or approvals relative to property belonging to the other party relative to same.

18. Upon approval by the Town of this Addendum to the Amended and Restated Development Agreement, all rights, terms, conditions, limitations, restrictions, and LMO references contained within the Amended and Restated Development Agreement for Shelter Cove Mall, and which are not contrary to the provisions of this Addendum, shall remain in full force and effect and be applicable to all property and provisions set forth herein. For the purposes of clarification, the Town Parcel and Multi-Family Site #2 are to be considered a part of the Shelter Cove Mall Tract for the purposes of setbacks, buffers, pervious areas, and open space. Further, any exhibits contained within or referenced by the Amended and Restated Development Agreement for Shelter Cove Mall are hereby amended, revised and/or modified to the extent necessary to reflect the provisions of this Addendum.

(SIGNATURE PAGES FOLLOW)

**IN WITNESS WHEREOF**, the Town has caused this Addendum to the Amended and Restated Development Agreement to be signed and sealed this \_\_\_\_ day of \_\_\_\_\_, 2015, pursuant to Ordinance No. \_\_\_\_\_, duly adopted by the Town Council of the Town on \_\_\_\_\_, 2015.

**SIGNED, SEALED AND  
DELIVERED IN THE PRESENCE  
OF:**

\_\_\_\_\_

\_\_\_\_\_

**Town of Hilton Head Island, South  
Carolina**

By: \_\_\_\_\_

Attest: \_\_\_\_\_



**IN WITNESS WHEREOF**, Shelter Cove Towne Centre, LLC, has caused this Addendum to the Amended and Restated Development Agreement to be signed and sealed this \_\_ day of \_\_\_\_\_, 2015.

**SIGNED, SEALED AND  
DELIVERED IN THE PRESENCE  
OF:**

**Shelter Cove Towne Centre, LLC,  
a South Carolina limited liability  
company**

By: MPR Consultants, Inc., a Georgia corporation, as its Manager

\_\_\_\_\_  
  
\_\_\_\_\_

By:\_\_\_\_\_

**STATE OF** )  
 )  
**COUNTY OF** )

**ACKNOWLEDGEMENT**

I, the undersigned Notary Public, do hereby certify that \_\_\_\_\_ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires:\_\_\_\_\_

**IN WITNESS WHEREOF**, Shelter Cove II, LLC, has caused this Addendum to the Amended and Restated Development Agreement to be signed and sealed this \_\_\_\_ day of \_\_\_\_\_, 2015.

**SIGNED, SEALED AND  
DELIVERED IN THE PRESENCE  
OF:**

**Shelter Cove II, LLC,  
a South Carolina limited liability  
company**

By: MPR Consultants, Inc., a Georgia  
corporation, as its Manager

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

**STATE OF** )  
 )  
**COUNTY OF** )

**ACKNOWLEDGEMENT**

I, the undersigned Notary Public, do hereby certify that \_\_\_\_\_  
personally appeared before me this day and acknowledged the due execution of the foregoing  
instrument.

Witness my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

EXHIBIT "A"

SURVEY

EXHIBIT "B"  
CONCEPT PLAN

EXHIBIT "C"  
TOWN ORDINANCE

EXHIBIT "D"

EXCHANGE AGREEMENT

F:\Home\CLIENT FILES ACTIVE\Shelter Cove 8727.001\Land Swap - 2015\Amended ZMA\Addendum to Amended and Restated Development Agreement - 7 8 15 - clean revised - WWJ.docx

EXCHANGE AGREEMENT OF:

+/- 4.45 Acres and +/- 4.4 Acres

By and Between

Shelter Cove II, LLC

and

The Town of Hilton Head Island, South Carolina

Dated \_\_\_\_\_



shall not consist of impractical or unusable land remnants/slivers or other areas which provide little benefit to the Seller and/or Purchaser.

2. *Developer Property:* The Developer Property referred to in this Agreement is defined and described as follows:

(a) The Developer Real Property referred to in this Agreement is defined and described as follows:

ALL that certain piece, parcel or tract of land situate, lying and being in the Town of Hilton Head Island, Beaufort County, South Carolina, consisting of 4.45 acres, more or less, and shown and described as "Proposed Community Park Expansion" on the Concept Plan attached hereto as Exhibit "A" less and except that certain 0.17 acre portion to be conveyed to the Town as set forth in the Agreement between Developer and the Town dated June 5, 2015.

A Portion of Beaufort County TMS#: R520-012-00B-0082-0000

(hereinafter, the "Developer Real Property")

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

- (i) Any and all contract rights, declarant rights, access rights or easements, utility easements, covenant rights burdening other property in favor of the Developer Real Property, easements, rights with respect to lands or marshlands lying below the S. C. D. H. E. C. - O. C. R. M. Critical Line, development plan approvals, zoning rights or approvals, development permits, utility allocations, State, Federal or Local governmental permits and approvals, S. C. D. H. E. C. - O. C. R. M. Permits; United States Army Corps of Engineers Permits, if any; and,
- (ii) Any and all rights, funds, rights to funds, including deductibles, associated with or related to any pending or previous environmental cleanup affecting the Developer Real Property, if any.

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

(c) *Definition of the “Developer Property”*: Both the Developer Real Property and the Developer Intangible Personal Property are hereinafter referred to collectively as the “Developer Property”.

3. *Town Property*: The Town Property referred to in this Agreement is defined and described as follows:

(a) The Town Real Property referred to in this Agreement is defined and described as follows:

ALL that certain piece, parcel or tract of land situate, lying and being in the Town of Hilton Head Island, Beaufort County, South Carolina, consisting of 4.4 acres, more or less, and shown and described as "Multi-Family Site #2" on the Concept Plan attached hereto as Exhibit “A”.

A Portion of Beaufort County TMS#: R520-012-00C-0002-0000

(hereinafter, the “Town Real Property”)

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

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

- (ii) Any and all rights, funds, rights to funds, including deductibles, associated with or related to any pending or previous environmental cleanup affecting the Town Real Property, if any.
- (iii) Any and all other rights, contracts, easements, contract rights or governmental or other approvals, regardless of description, which affect, touch or concern the Town Real Property in any way, shape or form, regardless of description, if any.

(c) *Definition of the "Town Property"*: Both the Town Real Property and the Town Intangible Personal Property are hereinafter referred to collectively as the "Town Property".

4. *Current Survey*: See Article 1 above.

4.01 *Delivery of Documents by Seller*:

(a) Within fifteen (15) days of the Effective Date as defined herein, Seller shall deliver or cause to be delivered to Purchaser copies of the following documents:

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

(b) *Return of Documents*: If this Agreement is terminated for any reason other than Default of Seller, Purchaser shall, within five (5) days following such termination, deliver to Seller all documents and materials relating to the Developer Property previously delivered to Purchaser by Seller. The return of such documents shall not affect the right of either party to

seek legal or equitable remedies as provided under elsewhere in this Agreement.

4.02 *Delivery of Documents by Purchaser:*

(a) Within fifteen (15) days of the Effective Date as defined herein and upon demand by Seller, Purchaser shall deliver or cause to be delivered to Seller copies of the following documents:

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

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

5. *Escrow Deposit:* Upon execution of this Agreement, no escrow deposit or similar payment shall be made by Purchaser or Seller with Escrow Agent hereinafter described.

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

encumbrances.

(a) *Title Evidence:* Within thirty (30) days after the Effective Date as defined herein, Purchaser may obtain a current ALTA Owner's Title Insurance Commitment (the "Commitment") underwritten on, and issued by, a Title Insurance Company of the Purchaser's choosing (hereinafter, the "Title Company"), by which Commitment the Title Company shall agree to insure fee simple marketable title to the Developer Real Property in the name of the Purchaser in an amount equal to the then-current market value of the Developer Real Property. Seller and Purchaser understand and agree that as of the date of the Title Commitment and the Closing Date, fee simple marketable title to the Developer Property shall be vested in the Seller, and the Commitment shall show and evidence:

- (i) That fee simple, marketable title to the Developer Real Property is vested in the Seller;
- (ii) That title to the Developer Real Property is in the condition required by this Article 6. The cost of, or premium associated with, the Commitment, and any Final Policy of Title Insurance issued thereon, shall be the responsibility of and shall be paid for by the Purchaser.

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

Purchaser has accepted title to the Developer Real Property in its then-existing condition.

(c) *Seller's Right to Cure:* Seller shall have thirty (30) days from receipt of Purchaser's written notice of any Title Defects to Cure (hereinafter defined), or to cause to be Cured, the Title Defects. Seller agrees to use its best efforts and due diligence in Curing, or in causing to be Cured, the Title Defects. If said thirty (30) day period given Seller to Cure the Title Defects shall extend beyond the Closing Date, and Seller does not Cure, or cause to be Cured, the Title Defects before the Closing Date, then closing shall be held within ten (10) days after Seller delivers written notice to Purchaser that the Title Defects have been Cured. "Cured" as used herein means that a title insurance company authorized to do business in South Carolina and a member of the American Land Title Association will issue a Title Insurance Policy insuring title to the Developer Real Property at standard rates and with only the standard exceptions.

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

- (i) Closing this transaction in accordance with the terms and conditions hereof, and accepting title to the Developer Real Property in its then-existing condition by deed, taking exception to such unCured Title Defects, with such additional terms and conditions as are agreed to by the Parties; or,
- (ii) Terminating this Agreement, whereupon Purchaser and Seller shall thereafter be released from any and all further obligations or liabilities to one another arising under or out of this Agreement.

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

- (i) The Purchaser shall notify the Seller of any Title Defects arising subsequent to delivery of the Title Commitment prior to closing.
- (ii) Upon notification to Seller by Purchaser of any Title Defects arising subsequent to delivery of the Title Commitment, the “Cure” provisions of this Article 6 shall become effective.

7. *Seller’s Title:* Subject to Article 7(f) below, Purchaser shall provide Seller with good and marketable title to the Town Property by Deed of General Warranty, free and clear of any and all monetary liens and encumbrances.

(a) *Title Evidence:* Within thirty (30) days after the Effective Date as defined herein, Seller may obtain a current ALTA Owner’s Title Insurance Commitment (the “Commitment”) underwritten on, and issued by, a Title Insurance Company of the Seller’s choosing (hereinafter, the “Title Company”), by which Commitment the Title Company shall agree to insure fee simple marketable title to the Town Real Property in the name of the Seller in an amount equal to the then-current market value of the Town Real Property. Purchaser and Seller understand and agree that as of the date of the Title Commitment and the Closing Date, fee simple marketable title to the Town Property shall be vested in the Purchaser, and the Commitment shall show and evidence:

- (i) That fee simple, marketable title to the Town Real Property is vested in the Purchaser;
- (ii) That title to the Town Real Property is in the condition required by this Article 7. The cost of, or premium associated with, the Commitment, and any Final Policy of Title Insurance issued thereon, shall be the responsibility of and shall be paid for by the Seller.

(b) *Objections to Title:* If Seller’s title examination or the Commitment shall reveal that Purchaser’s title to the Town Real Property is subject to any easements, covenants, clouds on or to the title, encroachments, boundary discrepancies, liens, encumbrances, or any other matter affecting title, or Seller’s proposed use of the Town Real Property, then Seller

shall notify Purchaser, in writing, of such title defects and Seller's objection to the same within five (5) days after the delivery of the Commitment. Upon such notification, the same shall be treated as defect(s) in title ("Title Defects"). Unless Seller delivers said written objections within the said five (5) day period following the delivery of the Commitment, it shall be conclusively deemed that Seller has accepted title to the Town Real Property in its then-existing condition.

(c) *Purchaser's Right to Cure:* Purchaser shall have thirty (30) days from receipt of Seller's written notice of any Title Defects to Cure (hereinafter defined), or to cause to be Cured, the Title Defects. Purchaser agrees to use its best efforts and due diligence in Curing, or in causing to be Cured, the Title Defects. If said thirty (30) day period given Purchaser to Cure the Title Defects shall extend beyond the Closing Date, and Purchaser does not Cure, or cause to be Cured, the Title Defects before the Closing Date, then closing shall be held within ten (10) days after Purchaser delivers written notice to Seller that the Title Defects have been Cured. "Cured" as used herein means that a title insurance company authorized to do business in South Carolina and a member of the American Land Title Association will issue a Title Insurance Policy insuring title to the Town Real Property at standard rates and with only the standard exceptions.

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

- (i) Closing this transaction in accordance with the terms and conditions hereof, and accepting title to the Town Real Property in its then-existing condition by deed, taking exception to such unCured Title Defects, with such additional terms and conditions as are agreed to by the Parties; or,
- (ii) Terminating this Agreement, whereupon Purchaser and Seller shall thereafter

be released from any and all further obligations or liabilities to one another arising under or out of this Agreement.

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

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

(ii) Upon notification to Purchaser by Seller of any Title Defects arising subsequent to delivery of the Title Commitment, the "Cure" provisions of this Article 7 shall become effective.

(f) Prior to the Town's conveyance of the Town Property to Developer, the Town shall place restrictions on the Town Property prohibiting: (a) converting apartments to condominiums; (b) rentals of apartments for less than twelve (12) months per lease; and (c) sub-letting of apartments by tenants. Said restrictions shall be in substantial conformance with the attached Exhibit "D-2".

8. *Closing:* This transaction shall be "Closed" at 10 o'clock A.M. on the Closing Date (hereinafter defined) at the Office of Purchaser's Attorney, or at such other place as Purchaser and Seller shall mutually agree in writing. At Closing, title to the Developer Property shall be conveyed from Seller to Purchaser by delivery of the Deed and other documents required herein from Seller to Purchaser. Also at Closing, title to the Town Property shall be conveyed from Purchaser to Seller by delivery of the Deed and other documents required herein from Purchaser to Seller. Subject to fulfillment of all of the Seller's and Purchaser's obligations and any conditions hereunder, the Closing, unless otherwise modified or extended by mutual agreement of the Seller and Purchaser in writing, shall occur on or before sixty (60) days following the later of: (a) the Effective Date of this

Agreement, or (b) completion of a survey(s) showing the exact dimensions of the Developer Property and the Town Property as further described in Section 11 of the Addendum to which this Agreement is attached (the “Closing Date”).

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

(a) A Good and sufficient General Warranty Deed (the “Deed”) so as to convey to Purchaser Fee Simple, Marketable Title to the Developer Real Property, as provided herein above. The Deed shall be in recordable form, with documentary stamps (if any) affixed, executed by the Seller and duly acknowledged before a Notary Public. The Deed will provide that the Developer Real Property shall be restricted for use as a park or greenspace and for no other purpose.

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

(c) A mechanic’s lien affidavit, duly executed by Seller and acknowledged before a notary public, attesting to the absence, unless otherwise provided for in this Agreement, or unless created by acts of the Purchaser, of any claims of lien or potential lienors and further attesting that there have been no improvements to the Developer Real Property for ninety (90) days immediately preceding the Closing Date for which the cost thereof remains unpaid.

(d) Seller’s/Owner’s Affidavit and Indemnity (GAP Affidavit).

(e) A South Carolina residency affidavit certifying the address, Residence and Federal Identification Number of Seller to establish the withholding requirements of S. C. Code Ann. § 12-8-580 and SC Revenue Advisory Bulletin #02-6.

(f) Full and complete releases, in recordable form, of any mortgages, liens, claims or other encumbrances to the title of the Developer Real Property, except as may be otherwise provided in this Agreement.

(g) An Absolute Assignment by Seller to Purchaser of any and all of Seller’s rights, privileges, permits, easements, licenses and approvals, if any, which may exist regarding or incidental to the Developer Property in any way, or the present or future development of the Developer Property, including but not limited to those set forth herein above.

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

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

(a) A Good and sufficient General Warranty Deed (the "Deed") so as to convey to Purchaser Fee Simple, Marketable Title to the Town Real Property, as provided herein above. The Deed shall be in recordable form, with documentary stamps (if any) affixed, executed by the Purchaser and duly acknowledged before a Notary Public.

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

(c) A mechanic's lien affidavit, duly executed by Seller and acknowledged before a notary public, attesting to the absence, unless otherwise provided for in this Agreement, or unless created by acts of the Seller, of any claims of lien or potential lienors and further attesting that there have been no improvements to the Town Real Property for ninety (90) days immediately preceding the Closing Date for which the cost thereof remains unpaid.

(d) Owner's Affidavit and Indemnity (GAP Affidavit).

(e) A South Carolina residency affidavit certifying the address, Residence and Federal Identification Number of Purchaser to establish the withholding requirements of S. C. Code Ann. § 12-8-580 and SC Revenue Advisory Bulletin #02-6.

(f) Full and complete releases, in recordable form, of any mortgages, liens, claims or other encumbrances to the title of the Town Real Property, except as may be otherwise provided in this Agreement.

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

9. *Default by Purchaser:* Except as may be otherwise expressly provided or limited herein with respect to any specific act or omission, if the Purchaser shall default in any of its obligations, covenants, or agreements contained within this Agreement or any of the Exhibits hereto, and shall remain in default after ten (10) day's written notice specifying the default and demanding that the default be cured, then the Seller shall be entitled to either (a) terminate this Agreement by written notice to Purchaser, or (b) pursue any remedy at law or in equity against the Purchaser. The provisions of this Article 9 shall be binding upon the successors and assigns of the Purchaser, and

shall survive the Closing of the transaction contemplated herein.

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

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

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

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

(c) Approval of the terms of this Agreement, and the Addendum to which this Agreement is attached, by the Town Council for The Town of Hilton Head Island, South Carolina.

(d) In the event any of the above stated conditions is not satisfied or waived in writing by Purchaser prior to Closing, this Agreement shall terminate on the Option of the Purchaser and neither Party shall have any further obligation or rights with respect to the other.

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

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

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

(c) In the event any of the above stated conditions is not satisfied or waived in writing by Purchaser prior to Closing, this Agreement shall terminate on the Option of the Seller and neither Party shall have any further obligation or rights with respect to the other.

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

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

(b) Other than work or material contracted for by Purchaser, as of the Closing, no work will have been performed or will be in process at the Developer Property, and no materials will have been delivered to the Developer Property that might provide the basis for the filing of a Mechanic's, Materialman's or other lien against the Developer Property or any portion thereof. The requirements set forth in this Article 13 shall be deemed satisfied by Seller's

delivery at Closing of an executed copy of the Seller's/Owner's Affidavit and Indemnity (GAP Affidavit).

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

(d) To the best of Seller's knowledge, there is no litigation now pending or threatened against the Seller which would materially affect the execution, delivery or enforceability of this Agreement, or the Seller's performance or other obligations hereunder.

14. *Representations and Warranties of Purchaser:* To induce Seller to enter into this Agreement and to sell the Developer Property in exchange for the Town Property, Purchaser represents and warrants (which representations and warranties shall survive the Closing) to Seller as follows:

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

(b) Other than work or material contracted for by Seller, as of the Closing, no work will have been performed or will be in process at the Town Property, and no materials will have been delivered to the Town Property that might provide the basis for the filing of a Mechanic's, Materialman's or other lien against the Town Property or any portion thereof.

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

(d) To the best of Purchaser's knowledge, there is no litigation now pending or threatened against the Purchaser which would materially affect the execution, delivery or enforceability of this Agreement, or the Purchaser's performance or other obligations hereunder.

15. *Brokers:* Seller and Purchaser warrant and represent that no broker, finder, or other person is entitled to a commission, finder's fee or other compensation in connection with this

Agreement, and Seller shall indemnify and hold harmless the Purchaser from any and all claims, liabilities, losses, damages, costs and expenses arising from the claim of any broker, finder or other person for such compensation, arising by, under or through Seller. The obligations under this Article 15 shall survive the Closing.

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

17. *Possession:* Possession of the Developer Property shall be delivered to the Purchaser at Closing; provided, however, that Purchaser provides an executed Deed to Seller of the Town Property in accordance with the terms of this Agreement at Closing. Possession of the Town Property shall be delivered to the Seller at Closing; provided, however, that Seller provides an executed Deed to Purchaser of the Developer Property in accordance with the terms of this Agreement at Closing.

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

a. Real Property Taxes and Assessments, if any, shall be made on the basis of the current year's tax with due exemptions, if allowed for the said year, with Seller being responsible for such taxes with respect to the Developer Property and Purchaser being responsible for such taxes with respect to the Town Property. If Closing occurs on a date when the current year's taxes are not fixed, taxes will be apportioned based upon the prior year's taxes plus ten (10%) per cent. Any tax apportionment based upon an estimate shall be recalculated when the property taxes are finally fixed, and the Seller or Purchaser, as the case may be, shall make payment to the other based upon such recalculation. The provisions of this Article 19(a) shall survive the Closing and delivery of the Deed.

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

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

- (b) Recording of the Town Property Deed and any Town of Hilton Head Island, South Carolina Transfer Fee in connection therewith;
- (c) As to the Town Property, the cost of any title insurance premium chargeable for the Commitment and any policy of Title Insurance issued therefrom; and,
- (d) With regard to the Town Property, any other purchaser Closing Costs which are customary in Beaufort County, South Carolina; and,
- (e) With regard to the Developer Property, any other seller Closing Costs which are customary in Beaufort County, South Carolina.

20. *Purchaser's Closing Costs:* Purchaser shall be responsible to pay the cost of:

- (a) Any documentary stamp expense or taxes which may be payable to the State of South Carolina and/or the County of Beaufort, and any other fees or charges payable by reason of the execution, delivery and recording of the Town Property deed;
- (b) Recording of the Developer Property Deed and any Town of Hilton Head Island, South Carolina Transfer Fee in connection therewith;
- (c) As to the Developer Property, the Cost of any title insurance premium chargeable for the Commitment and any policy of Title Insurance issued therefrom;
- (d) With regard to the Developer Property, any other purchaser Closing Costs which are customary in Beaufort County, South Carolina; and,
- (e) With regard to the Town Property, any other seller Closing Costs which are customary in Beaufort County, South Carolina.

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

22. OMITTED.

23. *Damage or Risk of Loss for Developer Property:* The risk of loss or complete or partial destruction of the Developer Property shall rest with the Seller up to the time that the Closing occurs. If the Developer Property is damaged, but repairable prior to Closing, Seller has the option of repairing and proceeding. If the Developer Property is damaged, but un-repairable prior to Closing, this Agreement shall be terminated and neither party shall have any further rights or obligations with respect to the other.

24. *Damage or Risk of Loss for Town Property:* The risk of loss or complete or partial destruction of the Town Property shall rest with the Purchaser up to the time that the Closing occurs. If the Town Property is damaged, but repairable prior to Closing, Purchaser has the option of repairing and proceeding. If the Town Property is damaged, but un-repairable prior to Closing, this Agreement shall be terminated and neither party shall have any further rights or obligations with respect to the other.

25. *Condemnation of Developer Property:* If, between the date of this Agreement and the Closing, a taking or condemnation of the Developer Property is threatened, or commenced, Purchaser may elect, in writing, within five (5) days after receipt of notice from Seller of such taking or condemnation, accompanied by information regarding the amount and payment of the condemnation proceeds, to terminate this Agreement or to purchase the Developer Property without regard to such condemnation. If Purchaser fails to notify Seller of Purchaser's election, Purchaser will be deemed to have elected to proceed with the purchase of the Developer Property without regard to such taking or condemnation. If Purchaser elects to terminate this Agreement, Purchaser shall notify Seller of such election in writing; this Agreement shall be of no further force and effect; and Seller shall be entitled to receive any condemnation awards payable as a result of such taking or condemnation. If Purchaser elects to purchase the Developer Property despite such taking or

condemnation, Seller shall assign its rights to and Purchaser shall be entitled to receive any condemnation awards payable as a result of such taking or condemnation.

26. *Condemnation of Town Property:* If, between the date of this Agreement and the Closing, a taking or condemnation of the Town Property is threatened, or commenced, Seller may elect, in writing, within five (5) days after receipt of notice from Purchaser of such taking or condemnation, accompanied by information regarding the amount and payment of the condemnation proceeds, to terminate this Agreement or to purchase the Town Property without regard to such condemnation. If Seller fails to notify Purchaser of Seller's election, Seller will be deemed to have elected to proceed with the purchase of the Town Property without regard to such taking or condemnation. If Seller elects to terminate this Agreement, Seller shall notify Purchaser of such election in writing; this Agreement shall be of no further force and effect; and Purchaser shall be entitled to receive any condemnation awards payable as a result of such taking or condemnation. If Seller elects to purchase the Town Property despite such taking or condemnation, Purchaser shall assign its rights to and Seller shall be entitled to receive any condemnation awards payable as a result of such taking or condemnation.

27. *Escrow Agent:* The "Escrow Agent" shall be Gregory M. Alford, Esq., Alford & Thoreson, LLC, 18 Executive Park Road, Building 1, Hilton Head Island, South Carolina 29928. If any dispute should arise as to whether Escrow Agent is obligated to deliver any documents which it holds, Escrow Agent shall not be required to make delivery thereof, but, in such event shall hold the same until receipt, by Escrow Agent, of written authorization from Seller and Purchaser directing the disposition of the same. In the absence of such written authorization, Escrow Agent may hold any documents in connection with this transaction in its possession until a final determination of the rights of the Parties by a Court of competent jurisdiction. If such written authorization is not given

or proceedings for such determination are not begun and diligently continued, Escrow Agent may institute an appropriate proceeding for leave to place the Escrow Deposit, or any other funds or documents in connection with this transaction in its possession with the Clerk of Court for Beaufort County, South Carolina, pending such determination. Escrow Agent shall not be charged with notice of any fact or circumstance unless and until written notice of the same is received by Escrow Agent. Upon making the delivery of the funds or documents which Escrow Agent may hold in accordance with the provisions of this Article 27, Escrow Agent shall have no further obligation or liability to Purchaser and Seller, and Purchaser and Seller agree to indemnify and hold Escrow Agent harmless from any such liability. The Escrow Agent shall serve as Closing Agent for all Parties at settlement. Deposit with the Escrow Agent of the instruments of conveyance and such other documents as are required of either Party under the terms of this Agreement, and/or the Title Company, and/or the Escrow Agent shall be deemed to be a good and sufficient tender of performance in accordance with the terms hereof.

28. *Conduct Prior to Closing:* From and after the date hereof, Seller shall not, without the prior written approval of the Purchaser, make any alterations or additions to the Developer Property except as required for maintenance or by law, sell, transfer, encumber, lease or rent all or any part of the Developer Property or change the status of title to the Developer Property; or cancel, assign or amend any license or permit or other right held by the Seller with respect to the Developer Property or any part thereof prior to Closing. From and after the date hereof, Purchaser shall not, without the prior written approval of the Seller, make any alterations or additions to the Town Property except as required for maintenance or by law, sell, transfer, encumber, lease or rent all or any part of the Town Property or change the status of title to the Town Property; or cancel, assign or amend any license or permit or other right held by the Purchaser with respect to the Town Property or any part thereof prior to Closing.

29. *Miscellaneous:*

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

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

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

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

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

same instrument.

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

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

29.08. OMITTED.

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

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

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

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

With Copy to: Gregory M. Alford, Esq.  
Alford & Thoreson, LLC  
Post Office Drawer 8008

Hilton Head Island, SC 29938-8008

To Seller: Mark Senn  
President, Blanchard & Calhoun Commercial Corporation  
2743 Perimeter Parkway  
Building 200, Suite 370  
Augusta, Georgia 30909

With a copy to: William W. Jones, Jr., Esquire  
Jones, Simpson & Newton  
P.O. Box 1938  
Bluffton, South Carolina 29910

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

29.13. *Conflict(s) with Addendum:* This Agreement is attached as Exhibit “D” to that certain “Addendum #1 to that certain Amended and Restated Development Agreement dated November 19, 2014”. In the event of any conflict(s) between this Agreement and the Addendum, the provisions of the Addendum shall control.

*(SIGNATURE PAGE FOLLOWS)*

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

**WITNESSES:**

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

\_\_\_\_\_ **By:** \_\_\_\_\_  
**David Bennett, Mayor**

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

**Shelter Cove II, LLC,  
a South Carolina limited liability  
company**

By: MPR Consultants, Inc., a Georgia  
corporation, as its Manager

\_\_\_\_\_ **By:** \_\_\_\_\_

\_\_\_\_\_

EXHIBIT D-1

CONCEPT PLAN

EXHIBIT D-2

DECLARATION OF COVENANTS, RESTRICTIONS, AND LIMITATIONS



**SHELTER COVE TOWNE CENTRE APARTMENTS**  
 ALTERNATE CONCEPT PLAN - STUDY TWO  
 HILTON HEAD ISLAND, SOUTH CAROLINA  
 JULY 1, 2015



BLANCHARD  
& CALHOUN  
Landscape Architects  
& Planners



WOOD PARTNERS INC. WPI  
 Landscape Architects  
& Planners  
 713 Box 275481 Hilton Head Island, SC 29925  
 843.661.8618 Fax 843.661.7188 www.woodpartners.com



## TOWN OF HILTON HEAD ISLAND COMMUNITY DEVELOPMENT DEPARTMENT

One Town Center Court

Hilton Head Island, SC 29928

843-341-4757

### STAFF REPORT ZONING MAP AMENDMENT

Application #:	Name of Project or Development:	Public Hearing Date:
<b>ZA-001190-2015</b>	Shelter Cove Towne Centre Apartments (Mall at Shelter Cove)	July 15, 2015

Parcel Data or Location:		Applicant/Agent
District R520, Parcel 7, Tax Map 12C ( <i>portion of</i> ) Multifamily Site #1  4.97 Acres	District R520, Parcel 2, Tax Map 12C ( <i>portion of</i> ) Multifamily Site #2  Approximately 4.4 Acres	
<u>Existing and Proposed Zoning District</u> PD-1; Palmetto Dunes Resort Master Plan (no change)	<u>Existing and Proposed Zoning District</u> PD-1; Palmetto Dunes Resort Master Plan (no change)	Victor J. Mills on behalf of Shelter Cove Towne Centre, LLC and Shelter Cove II, LLC
<u>Existing Master Plan Land Use Designations</u> Multifamily Residential and Community Park	<u>Existing Master Plan Land Use Designation</u> Community Park	
<u>Proposed Master Plan Land Use Designations</u> Multifamily Residential and Community Park	<u>Proposed Master Plan Land Use Designations</u> Community Park and Multifamily Residential	
<u>Applicable Overlay District</u> Corridor Overlay	<u>Applicable Overlay District</u> Corridor Overlay	
<u>Existing Density</u> Maximum of 210 dwelling units; (not to exceed 240 for the entire development site)	<u>Existing Density</u> 0 dwelling units	
<u>Proposed Density</u> <b>A range of Multifamily dwelling units from 120-150(provided that there will be no more than</b>	<u>Proposed Density</u> <b>A range of Multifamily dwelling units from 80-120 (provided that there will be no</b>	

<b>240 total Multifamily units on both properties in this request)</b>	<b>more than 240 total Multifamily units on both properties in this request)</b>	
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**Application Summary:**

Victor J. Mills on behalf of Shelter Cove Towne Centre, LLC and Shelter Cove II, LLC has submitted a request to amend the Palmetto Dunes Resort Master Plan to reallocate the multifamily density and allow for flexibility in assigning density in the following manner:

- change the number of multifamily dwelling units (apartments) on the Multifamily Site #1 of the development (120 to 150);
- increase the number of multifamily dwelling units (apartments) on the Multifamily Site #2 from 0 permitted units to a range of (80 to 120)
- the aggregate total of dwelling units for both properties would not exceed 240 units; and
- no other changes to the Master Plan land use designations and associated densities for the properties.

**Planning Commission Action:**

Staff recommends that the Planning Commission review the application and staff report, hold a public hearing on the application, and make a recommendation for action on the application to Town Council for their review and decision.

**Other Related Commission or Committee Recommendations and Background:**

- On **December 21, 2010** Town Council approved by resolution, ‘Shelter Cove Mall Redevelopment: Conceptual Plan Direction and Town’s Role’ as a High Priority Target for Action.
- On **December 20, 2011** Town Council approved by resolution, ‘Shelter Cove Area Redevelopment: Determine Town’s Role, and Approve a Plan’ as a Top Priority Target for Action.
- On **October 16, 2012** Town Council approved a Development Agreement between Shelter Cove Towne Centre, LLC and the Town of Hilton Head Island for the redevelopment of the Mall at Shelter Cove, now known as Shelter Cove Towne Centre that includes commercial uses, multifamily residential (apartments), and a relocated waterfront Community Park.
- On **July 29, 2014** Town Council held a workshop to discuss the proposed changes associated with the project in a public setting. No action was taken; the massing of the buildings and associated parking were discussed and indicated as areas of concern.
- On **November 19, 2014** Town Council approved a rezoning request to increase the overall multifamily dwelling units from 210-240 and to allow for flexibility in the location of the units.
- On **November 19, 2014** Town Council approved an Amended and Restated Development Agreement between Shelter Cove Towne Centre, LLC and the Town of Hilton Head Island for the redevelopment of the Mall at Shelter Cove, now known as

Shelter Cove Towne Centre that included changes related to the subsequent rezoning and included potential future parking improvements.

**Background:**

On October 16, 2012, Town Council approved both a Development Agreement as well as an amendment to the Palmetto Dunes Resort Master Plan. The Development Agreement included specific information related to the redevelopment project, including a conceptual site plan. The Master Plan land use designations for the properties were:

Property One:

- **295,000** square feet of Commercial uses excluding uses restricted by LMO 16-4-209, but permitting liquor stores and gas sales, Community Park, and **76 Multifamily dwelling units.**

Property Two:

- Community Park and **134 Multifamily dwelling units** (on a portion of the Town owned parcel, a portion of the current Shelter Cove Community Park).

On November 19, 2014, Town Council approved both a Development Agreement as well as an amendment to the Palmetto Dunes Resort Master Plan. The Development Agreement includes specific information related to the redevelopment project, including a conceptual site plan. The current Master Plan land use designations for the properties are:

Property One:

- **295,000** square feet of Commercial uses excluding uses restricted by LMO 16-4-209 (LMO 13-3-105.K.3), but permitting liquor stores and gas sales, Community Park, and **up to 50 Multifamily dwelling units.**

Property Two:

- Community Park and **up to 210 Multifamily dwelling units; provided the aggregate total doesn't exceed 240 units** (previous Shelter Cove Community Park).

Since the commencement of the commercial portion of the project and the opening of the new relocated Waterfront Community Park, the discussions began to consider shifting the location of the apartments from adjacent to the Newport Community to further along Shelter Cove Lane.

The proposed changes will require modifications to the Development Agreement. In order to facilitate the relocation, Town Council will have to approve the land swap. Town Council will hold two public hearings on the requested modifications in the Development Agreement that are associated with this request, which will be held at the same time as 1<sup>st</sup> and 2<sup>nd</sup> Readings for this Zoning Map Amendment.

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

As stated in the Application, "The purpose of the requested rezoning is to lessen the footprint of the New Multi-Family Parcel and to decrease the mass associated with the Multi-Family structure to be constructed thereon, and also to allow for the increase in size of the Community Park Parcel by adding thereto, at the discretion of the Town, the proposed

Community Park Expansion or Greenspace, all as shown on the Concept Plan. If the rezoning request is granted, the synergy created by separating the multi-family activities from the Community Park will result in a more well-organized configuration that provides for a more identifiable separation of the type of activities conducted on the Community Park Parcel used for leisure and recreation by the public and the residential multi-family units which will be used by residents of the community. This separation will provide: (i) the opportunity and convenience to the residents of the multi-family units to be able to work and spend their leisure time within a comfortable walking distance from their residences, (ii) to provide greater Community Park space for the public, and (iii) to provide further separation and privacy to the individuals residing at Newport.”

### **Summary of Facts and Conclusions of Law:**

#### **Findings of Facts:**

- LMO 16-2-102.E.1 requires that, when an application is subject to a hearing, the LMO Official shall ensure that the hearing on the application is scheduled for a regularly scheduled meeting of the body conducting the hearing or a meeting specially called for that purpose by such body. The LMO Official scheduled the public hearing on the application for the July 15, 2015 Planning Commission meeting, which is a regularly scheduled meeting of the commission.
- LMO 16-2-102.E.2 requires the LMO Official to publish a notice of the public hearing in a newspaper of general circulation in the Town no less than 15 calendar days before the hearing date. Notice of the July 15, 2015 public hearing was published in the Island Packet on June 28, 2015.
- LMO 16-2-102.E.2 requires the applicant to mail a notice of the public hearing by first-class mail to the owner(s) of the land subject to the application and owners of record of properties within 350 feet of the subject land, no less than 15 calendar days before the July 15, 2015 hearing date. The applicant mailed notices of the public hearing by first-class mail to the owner(s) of the land subject to the application and owners of record of properties within 350 feet of the subject land on June 25, 2015.
- LMO Appendix D.1.A requires the applicant to submit a copy of correspondence illustrating that the applicant has solicited written comments from the appropriate property owners’ association regarding the requested amendment. Such correspondence shall encourage the association to direct any comments in writing to the LMO Official and the applicant within 14 calendar days of receipt of the notification. The applicant mailed these notices on June 25, 2015.
- LMO 16-2-102.E.2 requires the LMO Official to post conspicuous notice of the public hearing on or adjacent to the land subject to the application no less than 15 days before the hearing date, with at least one such notice being visible from each public thoroughfare that abuts the subject land. The LMO Official posted on June 29, 2015 conspicuous notice of the public hearing on the land subject to the application, with two notices being visible from the public thoroughfare that abuts the subject land.

#### **Conclusions of Law:**

- The Official scheduled the public hearing on the application for the July 15, 2015 Planning Commission meeting, in compliance with LMO 16-2-102.E.1.
- Notice of the public hearing was published 17 calendar days before the meeting date, in compliance with LMO 16-2-102.E.2.
- The applicant mailed notices of the public hearing to the owner(s) of the land subject

- to the application and owners of record of properties within 350 feet of the subject land 20 calendar days before the hearing date, in compliance with LMO 16-2-102.E.2
- The applicant mailed a notice regarding the requested amendment to the Palmetto Dunes Resort Property Owners' Association, Newport POA, and Shelter Cove Harbor Community 20 calendar days before the hearing date, in compliance with LMO Appendix D.1.A.
  - The LMO Official posted conspicuous notice of the public hearing on the land subject to the application 17 calendar days before the hearing date, in compliance with LMO 16-2-102.E.2.

***As set forth in Section 16-2-103.C.3, Zoning Map Amendment Review Criteria, the Commission shall consider and make findings on the following matters regarding the proposed amendment.***

**Summary of Facts and Conclusions of Law:**

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

**Findings of Facts:**  
The adopted Comprehensive Plan addresses this project in the following areas:

**Housing Element**

**Implications for the Comprehensive Plan 5.1 – Housing Units and Tenure**  
Although, an increase in the total number of housing units contributes to the economic tax base for the Town, it is important that both the quantity as well as quality of the housing stock is maintained to sustain current and future population and overall property values. As the amount of available land declines for new development, it will be very important to maintain a high quality housing stock on residential properties. In addition, the availability of various housing types is important for the housing market viability to accommodate the diverse needs of the Island’s population.

**Community Facilities Element**

**Implications for the Comprehensive 6.4 – Town Acquired Property**  
As the number of Town-owned properties continues to increase careful consideration of future utility is important to long range planning efforts.

**Goal 6.1 – Build-out**  
A. The goal is to provide innovative and visionary initiatives that mitigate challenges of growth and redevelopment while making available higher levels of service for community facilities in a fiscally responsible manner.

**Goal 6.4 – Town Acquired Property**  
B. The goal is to assess the utility and character of Town acquired property.

## **Land Use Element**

### **Implications for the Comprehensive 8.2 – Town Acquired Property**

Building permit data is indicative of several factors, one being the state of the economy as well as current building needs and growth in both residential and commercial types. The data indicates that there is currently a downward trend in the number of building permits issued by the Town. Redevelopment of our existing built environment and infill development should be a focus for the future development of our community, while the Town has entered a more mature level of development.

### **Goal 8.11 – Six Land Use Goals in Town Plan**

4. Promote quality infill development and use redevelopment opportunities to promote more pedestrian friendly retail environments.

### **Goal 8.1 – Existing Land Use**

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

### **Goal 8.3 – Planned Unit Developments (PUD's)**

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

### **Goal 8.4 – Existing Zoning Allocation**

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

### **Goal 8.5 – Land Use Per Capita**

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

### **Goal 8.10 – Zoning Changes**

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

### **Goal 8.6 – Build-out**

A. The goal is to monitor land use consumption and conversion rates to maintain a proper balance of public infrastructure, private development, and land conservation.

B. The goal is to consider develop regulations and requirements to maintain the Island character and meet the needs of the community as it approaches build out.

### **Goal 8.10 - Zoning Changes**

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

### **Implementation Strategy 8.3 - Planned Unit Developments (PUDs)**

A. Consider flexibility within the PUDs to address appropriate commercial or service land uses in areas with a high residential concentration.

### **Implementation Strategy 8.10 – Zoning Changes**

B. Consider focusing higher intensity land uses in areas with available sewer

connections.

### **Transportation Element**

#### **Implications for the Comprehensive 9.3 – Traffic Planning on the Island**

Future development and zoning classifications have an impact on the potential build-out of properties on the Island. Increasing the density of properties in certain areas of the Town may not be appropriate due to the inability of the current transportation network to handle the resulting additional traffic volumes. It may be more appropriate to provide density in areas that have the available roadway capacity and to reduce densities or development potential in areas that do not have the appropriate roadway capacity.

### **Natural Resources Element**

#### **Goal 3.3 Protect Quality of Life through Environmental Preservation**

- B. The goal is to maintain human health through natural resource preservation.
- D. The goal is to preserve open space (including improvement and enhancement of existing).
- E. The goal is to encourage greenways between present and future town properties.
- F. The goal is to encourage the preservation and/or enhancement of wildlife habitat on all town properties.
- H. The goal is to enhance, create and maintain vegetated riparian wetland buffers with viewing corridors and windows.

#### **Goal 3.5 Promote Sustainable Development**

- D. The goal is to create positive environmental effects on the surrounding neighborhood through Town open space land acquisition program.
- E. The goal is to preserve wetlands (isolated freshwater are of high priority), trees, rare or critical animal habitats, rare or critical

#### **Implementation Strategy 3.1 Protect Water Quality and Quantity**

- B. Maintain and/or improve watershed condition by reducing impervious surfaces through land acquisition.
- J. Implement the recommendations of the Broad Creek Management Plan.

#### **Implementation Strategy 3.3 Protect Quality of Life through Environmental Preservation**

#### **Broad Creek Management Plan - Chapter 2: Land Use**

#### **Goal 2: Land uses should be managed to protect the natural beauty of the shoreline of Broad Creek.**

As development continues, the visual appearance of the creek will change, but with the appropriate application of existing regulations, Broad Creek will remain a place of natural beauty.

**Implementation Strategy 3: Identify parcels along Broad Creek for potential purchase by the Town.**

These should include properties which are subject to high density development and properties which have valuable qualities for their visual beauty and/or wildlife habitat.

**Implementation Strategy 4: Examine any future rezonings to determine their impact on Broad Creek.**

Low impact land uses and creative site design should be strongly encouraged to preserve the creek's water quality and wildlife.

**Implementation Strategy 5: Work with the Architectural Review Boards of the PUDS and the individual landowners along the creek to help them understand the importance of buffers and building design considerations that impact the visual quality of Broad Creek.**

**Broad Creek Management Plan - Chapter 3: Water Quality**

**Goal 2: Acquire vacant parcels in the Broad Creek watershed and manage them as open space for stormwater filtration**

**Implementation Strategy: Protection of Critical Habitat #6: Research vacant parcels for possible acquisition for open space.**

These efforts should focus on the Broad Creek corridor, but all vacant, undeveloped properties within the watershed as well as the remainder of the Town have wildlife habitat value. Any properties purchased for open space should be managed for wildlife habitat. Priority should be given to parcels which can be part of a wildlife corridor system as discussed in the next section. The Natural Resources Element of the Comprehensive Plan supports this recommendation.

**Implementation Strategy: Creation of Wildlife Corridors #1: Manage Town owned land along Broad Creek to provide wildlife corridors.**

These properties are perhaps the most important first step and must be managed so that they provide linkages between parcels. The use of native vegetation to provide cover, and limiting fencing and other barriers on Town property is critical for wildlife movement. Current Town projects are being designed with this consideration.

**Implementation Strategy: Creation of Wildlife Corridors #2: Encourage creek front property owners to manage their property in such a way as to provide a continuous wildlife corridor.**

The land along Broad Creek is a natural wildlife corridor, and is vital to the continued health of our wildlife populations. While the Town must set an example, most of the creek front property is privately owned. The Town should encourage these property owners to manage their property to provide wildlife access. This will involve educating property owners about the importance of wildlife corridors, and providing them with information on how to make best use of their property. Limiting fences and docks are

important aspects of providing connectivity. The development of a backyard wildlife program would be an excellent way to encourage participation. Articles in neighborhood newsletters are another good way to reach homeowners.

### **Broad Creek Management Plan - Chapter 5: Recreation and Boating Management**

#### **Implementation Strategy: Access to Broad Creek #3: The Town should consider developing its own land in such a manner as to provide public enjoyment of the creek.**

This could be in the form of trails along the creek, picnic areas and benches along certain parts of the creek, boardwalks out to the creek and deep-water access points for boat launching. The Town could also consider working with non-profit rowing and kayak clubs in a public/private partnership to facilitate construction of a facility for the launching and storage of kayaks and rowing vessels.

#### **Conclusions of Law:**

- Several elements of the Comprehensive Plan address the proposed application, however, there is no language that prohibits this rezoning from being approved.

### **Summary of Facts and Conclusions of Law:**

*Criteria 2: Whether and the extent to which the proposed zoning would allow a range of uses that are compatible with the uses allowed on other property in the immediate vicinity (LMO 16-2-103.C.3.a.ii):*

#### **Findings of Facts:**

- The proposed zoning is to maintain the base zoning district as PD-1, but to amend the permitted uses to include multifamily residential in addition to the current use of community park on Multifamily Site #2 and to decrease the number of approved units on Multifamily Site #1.
- The uses that are allowed within the immediate vicinity of the property include community park, commercial uses, community services and multifamily residential uses.
- The subject property and properties in the vicinity are also within the COR District, Corridor Overlay District.
- Properties to the east and northeast are within the LC, Light Commercial Zoning District.

#### **Conclusions of Law:**

The proposed zoning would allow for a range of uses that are compatible with the uses allowed on other property in the immediate vicinity because:

- The approved uses for the properties to the northwest include multifamily residential and community park, to the south the approved uses are commercial uses (Shelter Cove Towne Centre) and to the east community service (SHARE Center and Sheriff's substation) and commercial uses (Shelter Cove Plaza).
- Multifamily residential is already a permitted use in the vicinity and this request extends that use further north along Shelter Cove Lane.

**Summary of Facts and Conclusions of Law:**

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

**Findings of Facts:**

- The land that Multifamily Site #1 occupies is already approved for a greater number of multifamily units, up to 210 units.
- The land that Multifamily Site #1 occupies is 4.97 acres.
- The land that Multifamily Site #2 occupies is approximately 4.4 acres.
- A detailed site analysis and design plans for Multifamily Site #2 have not been conducted or submitted to the Town at this time.

**Conclusion of Law:**

- Multifamily Site #1 will have less units on the land than previously approved.
- A thorough site analysis has not been conducted for Multifamily Site #2, therefore it is not known if the land is appropriate for the development as it currently exists. Additional improvements or modifications to the site will be required. Site conditions such as wetlands, tree coverage, and grading as related to stormwater engineering will be reviewed in accordance with future development plan approval requests.
- Therefore, the full extent of the appropriateness for the land for multifamily dwelling units is not known at this time.

**Summary of Facts and Conclusions of Law:**

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

**Findings of Facts:**

- The multifamily density on Multifamily Site #1 will decrease from a maximum of 210 to 130-150 units and Multifamily Site #2 will increase to 80-110 units, the aggregate total will not exceed 240 units.

**Conclusions of Law:**

- The aggregate total of units remains the same as previously approved for the entire development, the rezoning shifts the overall location and therefore still meets the community needs allowing for a variety of housing options and locations.

**Summary of Facts and Conclusions of Law:**

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

**Findings of Facts:**

- There are no approved future plans for this portion of property.
- The zoning program for this parcel is identified as PD-1, Planned Development Mixed Use.
- Chaplin Linear Park plans propose a connection to other adjacent parks and areas in the vicinity.
- The Palmetto Dunes Resort Master Plan designates Multifamily Site #2 as Community Park, not Multifamily Residential.

**Conclusion of Law:**

- The approval of this request would keep the property within the PD-1 Planned Development Mixed Use District.
- The proposed zoning would still allow for the completion of the linear park plans as currently envisioned.
- The proposed zoning would amend the Master Plan to allow Multifamily Residential as a permitted use on this portion of the property.

**Summary of Facts and Conclusions of Law:**

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

**Findings of Facts:**

- The application proposes to maintain the Property’s existing zoning district while adding the use of Multifamily Residential to Multifamily Site #2 and shift units from Multifamily Site #1.
- The parcels to the west and east are also located in the PD-1 Zoning District. The adjacent properties to the east and northeast are zoned, LC, Light Commercial Zoning District.

**Conclusions of Law:**

- The proposed zoning will remain in the PD-1 zoning district, therefore, not creating an isolated zoning district.
- The proposed uses within the PD-1 zoning district are uses that would also be permitted within the LC zoning district.

**Summary of Facts and Conclusion of Law**

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

**Findings of Fact:**

- The subject property is proposed to be rezoned to allow for multifamily residential units, shifting the number of units to different portions of the property.
- The overall number of units that will be permitted will not be exceed 240.

**Conclusions of Law:**

- The relocation of the units may result in a reasonably viable economic use. The aggregate total of units remains unchanged, just shifted in location.

**Summary of Facts and Conclusions of Law**

*Criteria 8: Whether and the extent to which the proposed zoning would result in development that can be served by available, adequate and suitable public facilities (e.g. streets, potable water, sewerage, stormwater management) (LMO 16-2-103.C.3.a.viii):*

**Findings of Fact:**

- The property is within the Broad Creek Public Service District which currently serves the development and the properties in the vicinity.
- Stormwater facilities are in place for the existing development on site.
- The properties front Shelter Cove Lane and are accessible via William Hilton Parkway.
- A revised Traffic Study will be submitted prior to the Town Council meeting to address any impacts from the shift in the location of the dwelling units.

**Conclusions of Law:**

- Staff concludes that this property has available sewer and water facilities suitable and adequate for the proposed uses as set forth in LMO Chapter 3, Article XV.
- The adequacies of the storm water facilities and all other infrastructure will be reviewed as part of the DPR (Development Plan Review) and will be installed to comply with the LMO Chapter 5, Article VI.

**Summary of Facts and Conclusion of Law**

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

**Findings of Fact:**

- The application proposes to maintain the existing zoning district while relocating and shifting the location of multifamily dwelling units.
- The previous Town owned location of Shelter Cove Community Park (Multifamily Site #1) is now currently owned by SCTC, in exchange for the new Waterfront Community Park.
- A majority of the commercial space within Shelter Cove Towne Centre has been redeveloped and is currently operating.

**Conclusions of Law:**

- The conditions in the affected area have changed significantly in the past couple of years with redevelopment of the previous enclosed Mall to a multi-use activity center that encompasses a variety of uses from commercial, residential and community types of uses.

- The location of the Waterfront Community Park has shifted and changed area. The park is located along Broad Creek with an increased amount of linear community park space with connecting pathways.

**Planning Commission Action**

Staff recommends that the Planning Commission review the application and staff report, hold a public hearing on the application, and make a recommendation for action on the application to Town Council for their review and decision.

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

**PREPARED BY:**

HLC

7/7/15

DATE

Heather L. Colin, AICP  
*Development Review Administrator*

**REVIEWED BY:**

TBL

7/8/15

DATE

Teri B. Lewis, AICP  
*LMO Official*

**REVIEWED BY:**

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

DATE

**ATTACHMENTS:**

- A) Location Map
- B) Adjacent Zoning Districts
- C) Proposed Concept Plan
- D) Applicant's Narrative and Attachments



Mall Tract

Exchange Parcel-New Multi-Family Tract

Subject Property

SHELTER COVE LANE

WILLIAM HILTON PARKWAY

OFF SHORE DRIVE

STARBOARD TACK

SEA LANE

TOWN OF HILTON HEAD ISLAND  
ONE TOWN CENTER COURT  
HILTON HEAD ISLAND, S.C. 29928  
PHONE (843) 341-6000

Town of Hilton Head Island  
Attachment A  
ZA-001190-2015 - Location Map



0 200 400 Feet

This information has been compiled from a variety of unverified general sources at various times and as such is intended to be used only as a guide. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion. Map created May 15, 2014.



**Zoning District**

- LC, Light Commercial
- PD-1, Planned Development Mixed Use

TOWN OF HILTON HEAD ISLAND  
 ONE TOWN CENTER COURT  
 HILTON HEAD ISLAND, S.C. 29928  
 PHONE (843) 341-6000

Town of Hilton Head Island  
 Attachment B  
 ZA-001190-2015 - Adjacent Zoning Districts

600 300 0 600 Feet



This information has been compiled from a variety of unverified general sources at various times and as such is intended to be used only as a guide. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion.  
 Map created May 15, 2014

# Attachment C



Scale 1"=100'  
0 50 100 200 300 400

Document is preliminary and subject to change

## SHELTER COVE TOWNE CENTRE APARTMENTS ALTERNATE CONCEPT PLAN - STUDY TWO HILTON HEAD ISLAND, SOUTH CAROLINA JULY 1, 2015



BLANCHARD  
& CALHOUN  
ARCHITECTS, L.L.C.

Wood Partners Inc. **WPI**  
Landscape Architects  
Land Planners

PO Box 23849 Hilton Head Island, SC 29929  
843.881.6618 Fax 843.881.7026 www.woodpartners.com

STATE OF SOUTH CAROLINA )  
 )  
 )  
COUNTY OF BEAUFORT ) BEFORE THE PLANNING COMMISSION  
 OF  
 THE TOWN OF HILTON HEAD ISLAND,  
 SOUTH CAROLINA

**ATTACHMENT 1**

**TO  
THE ZONING MAP AMENDMENT APPLICATION**

**OF  
SHELTER COVE TOWNE CENTRE, LLC  
AND  
SHELTER COVE II, LLC**

**FOR  
AMENDMENT OF THE TOWN OF HILTON HEAD ZONING MAP PROVIDING FOR  
THE INCREASE IN THE NUMBER OF MULTI-FAMILY RESIDENTIAL DWELLING  
UNITS ON PROPERTY OWNED BY THE TOWN (“TOWN PARCEL”) OF HILTON  
HEAD ISLAND ON  
THE PARCEL  
IDENTIFIED AS PARCEL 12 ON BEAUFORT COUNTY  
TAX MAP 12C (P/O TAX PARCEL I.D. NO. R520-012-00C-0002-0000) ADJACENT TO  
THE REVISED SHELTER COVE MALL PARCEL (as hereinafter identified)  
(EXCEPT FOR THE AMENDMENT TO THE ZONING MAP APPLIED FOR HEREIN,  
THE USES AND DENSITIES PROVIDED FOR IN ZMA #000659-2014 REMAIN  
UNCHANGED AND CONTINUE IN FULL FORCE AND EFFECT)**

This Attachment 1 is attached to and is made a part of the Zoning Map Amendment Application (this “Application”) of Shelter Cove Towne Centre, LLC, and Shelter Cove II, LLC (the “Applicant”), and is submitted by the Applicant to the Planning Commission of the Town of Hilton Head Island (the “Town”) to address the zoning map amendment criteria set forth in Section 16-2-103.C.3 of the Land Management Ordinance of the Town of Hilton Head Island (the “LMO”). This Application seeks approval of an amendment to the Official Zoning Map of the Town pursuant to LMO Section 16-1-107 by amending the Palmetto Dunes Resort Master Plan and its associated text to increase the allowable number of multi-family residential units allowed on the Town Parcel (“Town Parcel”) specifically identified as that portion of the Town

Parcel shown as the New Multi-Family Parcel (“New Multi-Family Parcel”), now owned by Shelter Cove II, LLC, and more clearly shown on that certain Plat thereof entitled “Boundary Reconfiguration of 4.97 Acre New Multi-Family Parcel and 26.29 Town of Hilton Head Parcel, Totaling 31.26 Acres, a Portion of Shelter Cove Lane, Shelter Cove Community Park” prepared by Surveying Consultants, dated June 1, 2015, attached hereto as Exhibit “B”, and that portion of the Town Parcel identified as Multi-Family Site #2 (“Multi-Family Site #2”), identified and shown on the Concept Plan (“Concept Plan”) entitled “Shelter Cove Towne Centre Apartments, Alternate Concept Plan – Study 2” dated April 21, 2015, prepared by Wood & Partners, Inc., said Concept Plan being attached hereto and marked Exhibit “A”. It is understood and agreed that the Concept Plan is by its term conceptual and that the exact location and size of the Multi-Family Site #2 will be defined at a later date. (The New Multi-Family Parcel is also identified as Multi-Family Site #1 on the Concept Plan.).

This Zoning Map Amendment Application respectfully requests an increase in the allowable number of multi-family residential dwelling units (“RDUs”) (subject to allocation as approved by the Town) on the New Multi-Family Parcel from 120 to 150 RDUs, and Multi-Family Site #2 from 80-120 RDUs , provided, however, that the total number of multi-family residential dwelling units on the New Multi-Family Parcel, Multi-Family Site #2, and the Revised Multi-Family Parcel as shown on Exhibit “B”, shall never exceed 240 multi-family residential dwelling units.

## **I. NARRATIVE – BACKGROUND**

On the 19<sup>th</sup> day of November, 2014, the Town Council of Hilton Head approved Ordinance No. 2014-29, which limited the allowed number of residential dwelling units (“RDUs”) on the Revised Multi-Family Parcel (as shown on Exhibit “B”) to 50 RDUs and increased the allowable number of RDUs on the New Multi-Family Parcel(as shown on Exhibit

“B”) to 210 RDUs provided, however, that the maximum number of RDUs on the Revised Multi-Family Parcel (as shown on Exhibit “B”) and New Multi-Family Parcel (as shown on Exhibit “B”) would never exceed 240 RDUs.

**A. THE REQUESTED REZONING**

The Applicant is requesting that the PD Master Plan and the accompanying text be amended to increase the maximum number of multi-family residential dwelling units on the parcel identified as New Multi-Family Parcel owned by Shelter Cove II, LLC as shown on Exhibit “B” from 120 to 150 RDUs, and Multi-Family Site #2 as shown on Exhibit “A” from 80 to 120 RDUs, provided, however, that the total number of multi-family residential dwelling units on the New Multi-Family Parcel, Multi-Family Site #2, and the Revised Multi-Family Parcel as shown on Exhibit “B” shall never exceed 240 multi-family residential dwelling units.

**B. THE PURPOSE FOR REQUESTED REZONING**

The purpose of the requested rezoning is to lessen the footprint of the New Multi-Family Parcel and to decrease the mass associated with the Multi-Family structure to be constructed thereon, and also to allow for the increase in size of the Community Park Parcel by adding thereto, at the discretion of the Town, the proposed Community Park Expansion or Greenspace, all as shown on the Concept Plan. If the rezoning request is granted, the synergy created by separating the multi-family activities from the Community Park will result in a more well-organized configuration that provides for a more identifiable separation of the type of activities conducted on the Community Park Parcel used for leisure and recreation by the public and the residential multi-family units which will be used by residents of the community. This separation will provide: (i) the opportunity and convenience to the residents of the multi-family units to be able to work and spend their leisure time within a comfortable walking distance from their

residences, (ii) to provide greater Community Park space for the public, and (iii) to provide further separation and privacy to the individuals residing at Newport.

## **II. NARRATIVE – THE DEVELOPMENT AGREEMENT**

This application shall precede the filing by Applicant of a revision (“Revision”) to the Amendment to the First Amended and Restated Development Agreement which said First Amended and Restated Development Agreement dated November 25, 2014 amended and restated that certain Development Agreement between the Town of Hilton Head Island, South Carolina, and Shelter Cove Towne Centre, LLC, dated October 16, 2012, pursuant to the provisions of the South Carolina Local Government Development Agreement Act (Section 16-3-10, *et seq.* of the South Carolina Code of Laws (1976), as amended (the “Act”). The Revision to the First Amended and Restated Development Agreement is between the Town of Hilton Head Island, South Carolina (“Town”), and Shelter Cove Towne Centre, LLC, and Shelter Cove II, LLC (collectively, the “Developer”), and is revised to reflect the changes, if enacted by the Town, pursuant to this Application, to add certain provisions increasing the number of RDUs allowable on the Town Parcel as hereinabove described as New Multi-Family Parcel as shown on Exhibit “B”, and Multi-Family Site #2 on Exhibit “A”. Under the Act, the Revision process for the Revision to the First Amended and Restated Development Agreement is substantially the same as the process for the review and approval of this Application, although there are certain requirements and standards applicable to each.

## **III. CURRENT AND PROPOSED PERMITTED USE AND DENSITY**

The purpose of this Application is solely to amend the Town of Hilton Head Zoning Map to provide for an increase in the number of multi-family residential dwelling units allowed on the Town Parcel as identified as New Multi-Family Parcel on Exhibit “B” from 120 to 150 RDUS and Multi-Family Site #2 as identified on Exhibit “A” from 80 to 120 RDUS provided, however,

that the total number of multi-family residential dwelling units on New Multi-Family Parcel and Multi-Family Site #2, and the Revised Multi-Family Parcel as shown on Exhibit “B” shall never exceed 240 multi-family residential dwelling units. Except for the requested changes of the allowed density on the aforementioned parcels, all other terms, uses and densities pursuant to ZMA #000659-2014 remain unchanged and unaffected. As noted above, on the 5<sup>th</sup> day of June, 2015, the New Multi-Family Parcel shown on Exhibit “B” was conveyed by the Town to Shelter Cove II, LLC.

#### **IV. NARRATIVE – REZONING CRITERIA**

LMO Section 16-2-103.C.3 sets forth the criteria which the Planning Commission is to address in making a recommendation to the Town Council on this rezoning request, as follows:

##### **A. CONSISTENCY (OR LACK THEREOF) WITH THE COMPREHENSIVE PLAN.**

The **HOUSING VISION** of the Comprehensive Plan for the Town is to promote and facilitate entrepreneurial housing initiatives that will result in the development of diverse housing types for all income levels on Hilton Head Island, and to support affordable housing initiatives in the region to supplement housing on the Island<sup>1</sup>. It is an accepted fact that the recent economic downturn in the economy has resulted in fewer families being able to afford to finance and maintain single-family individual houses and the number of Island residents that have been forced to vacate their homes and seek other more economical living facilities off Island has risen greatly. Unfortunately, since the date of the adoption of the current Comprehensive Plan available, reasonably priced multi-family residential dwelling units have virtually been eliminated through the conversion of multi-family residential apartment complexes into condominiums, creating a greater demand for apartment living for both permanent and

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<sup>1</sup> See Comprehensive Plan at Page 50.

temporary residents. The Applicant's experience in the housing market in the southeast has indicated an increasing need for available apartments to rent in locations that allow inhabitants to more easily get to their work place and to shop and recreate in a wholesome and centrally located environment. The shortage of available residential apartment units to rent on Hilton Head Island has been exacerbated by the limited amount of land available for construction of new multi-family residential dwelling units along with the added difficulty of obtaining financing to purchase condominiums by middle to lower-income families since the beginning of the economic crisis in 2007. This trend in the reduction of available apartments is illustrated in Table 5.1 of Chapter 5 of the Comprehensive Plan that states that "...in 1999 there were 601 fewer multi-family residential dwelling units than there were single-family units. In 2000, there were 4,506 fewer multi-family residential dwelling units than single-family units, and in 2007 there were 3,660 fewer multi-family residential dwelling units than single-family units...". Applicant's recent research, with the assistance of the Town, indicates that the number of apartments on the Island today that have not been converted to a condominium is a mere 302. Additionally, Applicant engaged Coastal Marketing Services to determine the amount of apartments available for rent on Hilton Head Island, and in January of 2012. The report at that time indicated a total of 475 rental units with 211 of the 475 being HUD subsidized. This report has been updated on the 29th day of April, 2014, and indicates that "there have been virtually no changes in rental inventory since January 2012" (see report of Coastal Marketing Services attached hereto and marked Exhibit "C"). Accordingly, the multi-family residential dwelling unit component as revised is expected by the Applicant to be in high demand and to satisfy an increasing need, through this entrepreneurial housing initiative, to develop more diverse housing types on Hilton Head Island and help to partially rebalance the substantial difference between single-family residential and multi-family residential dwelling units, which are far more

affordable, and provide greater opportunities for the diverse income and age levels of current and future residents to the Island. Section 5.1 of Chapter 5 of the Comprehensive Plan provides a “goal” to encourage development of multi-family residential dwelling units to meet market demands and new trends<sup>2</sup>. This “goal” is more important today than it was at the time that the Comprehensive Plan<sup>3</sup> was adopted.

In order to help fulfill the “goals” of the Comprehensive Plan for the benefit of the current and future citizens of the Town, the Town Council of Hilton Head enacted Ordinance 2012-27 on the 16<sup>th</sup> day of October, 2012, which provided for a Declaration of Covenants, Restrictions and Limitations on the New Multi-Family Parcel as shown on Exhibit “B” by providing that “(i) in the event any apartments are erected, constructed or otherwise built on or within the New Multi-Family Parcel, said apartments shall not be converted into condominiums in any manner; (ii) in the event any apartments are erected, constructed or otherwise built on or within the Property, the owners of any apartments shall not execute or enter into any lease(s) with a term for less than twelve (12) months per lease. In the event that such lease is executed or entered into, said lease shall be considered void and of no legal effect; (iii) in the event any apartments are erected, constructed or otherwise built on or within the Property, the tenant(s) of any apartment(s) shall not lease or sub-let the apartment(s) to any third parties”. Similar restrictions would be imposed on the RDUs in Multi-Family Site #2.

The **ECONOMIC DEVELOPMENT VISION** of the Comprehensive Plan looks to define, foster and enhance the economic environment that that sustains Hilton Head Island’s unique way of life<sup>4</sup>. Section 7.5 of the Comprehensive Plan recognizes potential risks to the Island’s economic future and recognizes that with the early, rapid growth of the base economic

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<sup>2</sup> See Comprehensive Plan at Page 50.

<sup>3</sup> See Comprehensive Plan at Pages 50 and 60.

<sup>4</sup> See the Comprehensive Plan, at Page 89.

engines of residential and visitor investment slowing as the Island approaches maturity, efforts should be focused on initiatives for enriching the economic potential while preserving the essential character and natural assets that have been responsible for the Island's success<sup>5</sup>. With the deterioration of the Mall, the economic benefit to the Town has decreased with the benefit going to the recently revitalized discount centers in the Bluffton area. In order for the Town to help recapture the dollars that are being lost, flexibility in allowing the Applicant to use private funds to increase the amount of multi-family residential housing to restore the Town's most prominent shopping mall will attract and retain visitors, shoppers and apartment residents and re-energize and encourage local shopping and the economic benefits to the Town associated therewith. As a Town center, the residential multi-family residential apartments offer the surrounding area a place for working, shopping and socializing and become a regional generator of economic activity. The increase of multi-family residential apartments allows denser urban ranges to transform the enclaves into a transient-ready Town center, and at the same time help to partially rebalance the substantial difference between single-family residential and multi-family residential dwelling units and additionally helps to satisfy Section 5.1 of Chapter 5 of the Comprehensive Plan which contains a "goal" to encourage development of multi-family residential dwelling units to meet market demands and new trends. Further, potential strategies and implications of the Comprehensive Plan identify the need to incentivize the development of flexibility of streamlining in regulation of density caps, setbacks (and other controls), that enable a qualitative, principal based, asset revitalization that enhance the Island's positive legacies<sup>6</sup>.

The Applicant feels that the requested rezoning will encourage and facilitate the redevelopment of the Revised Shelter Cove Mall Parcel, Town Parcel (including Multi-Family

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<sup>5</sup> See Comprehensive Plan, at Page 92.

<sup>6</sup> See Comprehensive Plan, at Page 93.

Site #2), and New Multi-Family Parcel, and encourage additional residential occupancy and use of the entire Shelter Cove area, benefitting the entire Town of Hilton Head. The proposed amendment to the Town Zoning Map will also provide additional employment opportunities for Hilton Head Island residents; increase ad valorem tax revenue; substantially increase State sales taxes; and dramatically increase hospitality taxes to promote tourism, nourish beaches, support beach parks, build pathways, support various cultural organizations and pathway rehabilitation<sup>7</sup>.

The **TRANSPORTATION VISION** of the Comprehensive Plan is for The Town to provide a safe, efficient, environmentally sound, esthetically sensitive and fiscally responsible transportation system which is integrated into the regional network to enhance the quality of life for those living in, employed in, and visiting Hilton Head Island.<sup>8</sup>

**B. COMPATABILITY WITH THE PRESENT ZONING AND CONFORMING USES OF NEARBY PROPERTY AND WITH THE CHARACTER OF THE NEIGHBORHOOD.**

All of the nearby or surrounding properties in the vicinity of the Mall Tract and Town Parcel are located within the PD-1 Planned Development Mixed Use District encompassed by the PD Master Plan, including the Town's Shelter Cove Memorial Park, the Newport multi-family residential dwelling unit residential development, and the Plaza at Shelter Cove Shopping Center. Accordingly, the Applicant feels that the additional multi-family residential dwelling units, respectfully applied for herein, is a consistent and appropriate use with the surrounding properties. Recognizing that historical intended uses are not pertinent to this Application, it is interesting to note that as far back as 1984 and 1986, a significant portion of the Shelter Cove Mall Tract was designated for multi-family residential dwelling units.

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<sup>7</sup> See Comprehensive Plan at Page 91.

<sup>8</sup> See Comprehensive Plan at Page 116.

**C. SUITABILITY OF THE PROPERTY AFFECTED BY THE AMENDMENT FOR USES PERMITTED BY THE DISTRICT THAT WOULD BE MADE APPLICABLE BY THE PROPOSED AMENDMENT.**

The change to the PD Master Plan requested by this Application, respectfully requesting an increase in the number of multi-family residential apartments allowable, will not result in any change in the currently permitted uses applicable to the Revised Multi-Family Parcel, but rather add to the already permitted uses (ZMA #120006) that are typically associated with PUDs. As noted in Paragraph B above, the adjacent Newport multi-family residential dwelling unit development would indicate that the addition of multi-family residential dwelling units on the New Multi-Family Parcel and Multi-Family Site #2 would be a suitable use and compatible with the surrounding property. Considering the mixed-use nature of the PD-1 Zoning Districts under the LMO, the additional multi-family residential dwelling units respectfully requested on the Town Parcel herein is consistent with most other PUDs on Hilton Head Island, including Sea Pines, the oldest PUD on the Island, and Palmetto Dunes, which is in the same PD District.

**D. SUITABILITY OF THE PROPERTY AFFECTED BY THE AMENDMENT FOR USES PERMITTED BY THE DISTRICT APPLICABLE TO THE PROPERTY AT THE TIME OF A PROPOSED AMENDMENT.**

Again, the change to the PD Master Plan requested by this Application will, add additional single-family multi-use apartments that will invigorate the area for the benefit that will accrue to its owners, the residents of Hilton Head Island, and the Town.

**E. MARKETABILITY OF THE PROPERTY AFFECTED BY THE AMENDMENT FOR USES PERMITTED BY THE DISTRICT APPLICABLE TO THE PROPERTY AT THE TIME OF THE PROPOSED AMENDMENT.**

The Mall Tract as presently under development pursuant to ZMA #120006 has, based on already experienced market demand, been deemed a success. The vast experience of Applicant suggests that the additional multi-family residential dwelling units requested hereunder will undoubtedly increase the revenues and thereby increase the value of the entire Mall as an asset,

not only for the Applicant but also for the Town. Increased residential success and value translate directly to increased marketability.

**F. AVAILABILITY OF WATER AND STORM WATER FACILITIES GENERALLY SUITABLE FOR THE PROPOSED USE.**

The sewer, water and stormwater facilities serving the Town Parcel were designated and implemented as part of the overall sewer, water and stormwater system serving the PD Master Plan area. The fact that the Mall Tract is currently in operation, even though under development, is clear evidence of the availability of the facilities necessary to accommodate the commercial activities on the additional multi-family residential units associated herewith. The stormwater drainage system which currently drains into detention ponds, and ultimately Broad Creek, will be greatly enhanced through the utilization and introduction of pervious parking areas near Broad Creek, enhanced stormwater detention infrastructure.

**V. NARRATIVE – CONCLUSION**

The Applicant feels the foregoing narrative demonstrates that this Application is in conformance with the LMO as amended by and through the Revision to the Amended and Restated Development Agreement, the Town’s Comprehensive Plan, and meets the criteria set forth in LMO Section 16-2-103.C.3. Accordingly, the Applicant respectfully requests that the Planning Commission (a) consider the Application and the testimony and supporting documentation which will be entered into the record; (b) find:

1. That this Application and the supporting documentation established that the requested Master Plan Amendment is consistent with the Town’s Comprehensive Plan; and

2. That this Application and the supporting documentation establish that the Applicant has demonstrated adjustment to the PD Master Plan which will result in a community-wide benefit; and

3. That this Application and the supporting documentation establish that the current and proposed density of the Town Parcel, the Multi-Family Parcel, and Multi-Family Site #2 as shown on Exhibits “A” and “B”, are consistent with the conforming uses of nearby properties and with the character of the neighborhood around the surrounding area; and

4. That this Application and the supporting documentation establish that the Town Parcel is suitable for the current and proposed densities permitted by the Zoning District that would be applicable to the Town Parcel by the requested Zoning Map Amendment; and

5. That this Application and the supporting documentation is suitable for the current and proposed density permitted by the zoning district that is currently applicable; and

6. That this Application and the supporting documentation establish that the marketability of the referenced parcels applicable to this Application will be increased by the approval of the requested master plan amendment; and

7. That this Application and the supporting documentation establish that there will be no substantial change in the need for sewer, water and stormwater facilities; and

8. Except for the Amendment to the Zoning Map applied for herein, the uses and densities provided for in ZMA #120006 remain unchanged and continue in full force and effect.

9. Respectively recommend to the Town Council that they approve this Application.

**SPECIFIC REVIEW AND RESPONSES TO LMO SECTION 16-2-103.C.3 as follows:**

I. The requested Zoning Map Change requested herein is in accordance with the Comprehensive Plan.

II. The requested additional RDUs being requested on the New Multi-Family Parcel and Multi-Family Site #2 will be compatible with the uses allowed on other property in the immediate vicinity.

III. The additional units allowed on the New Multi-Family Parcel and Multi-Family Site #2 are appropriate for the land, particularly considering the possible relocation of any RDUs.

IV. The additional RDUs address a demonstrated community need for providing additional apartment dwelling in a central area as hereinabove provided for.

V. A review of the Comprehensive Plan for the Town of Hilton Head Island clearly indicates that additional apartments and multiple housing types are consistent with the overall zoning program as expressed in future plans for the Town.

VI. The additional RDUs would avoid creating an inappropriately isolated zoning district unrelated to adjacent and surrounding zoning districts.

VII. The additional RDUs on the parcels identified herein would put the subject property to a reasonably viable economic use as provided for above.

VIII. The additional RDUs being requested would result in development that can be served by available adequate and suitable public facilities, i.e. the streets, potable water, sewage, storm water management, etc.

IX. The renovation resulting from this Application provides an opportunity for younger to middle-age citizens to live near their work place as a result of the change conditions and locations of the RDUs.

Respectfully submitted on behalf of the Applicant this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

---

William W. Jones  
Jones Simpson & Newton, P.A.  
PO Box 1938  
Bluffton, SC 29910  
(843) 706-6111



Except for the Amendment to the Zoning Map applied for herein, the uses and densities provided for in ZMA #000659-2014 remain unchanged and continue in full force and effect.

Respectfully submitted on behalf of the Applicant this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

---

William W. Jones  
Jones Simpson & Newton, P.A.  
PO Box 1938  
Bluffton, SC 29910  
(843) 706-6111

EXHIBIT "A"  
CONCEPT PLAN

EXHIBIT "B"  
SURVEY

EXHIBIT "C"

LETTER FROM COASTAL MARKETING SERVICES

F:\Home\CLIENT FILES ACTIVE\Shelter Cove 8727.001\Land Swap - 2015\Amended ZMA\Amended Zoning Map Application - clean revised - 6 29 15.docx



EXHIBIT "B"  
SURVEY





EXHIBIT "C"

LETTER FROM COASTAL MARKETING SERVICES

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Final.docx

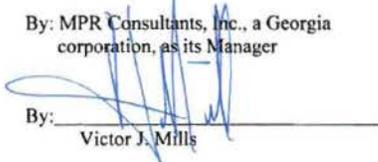
STATE OF SOUTH CAROLINA )  
 ) AFFIDAVIT OF OWNERSHIP  
COUNTY OF BEAUFORT )

The undersigned, under oath, does hereby depose and state that it is the fee simple, absolute owner of the real property more fully described on Exhibit A attached hereto pursuant to that certain Deed dated December 17, 2013, from Shelter Cove Towne Centre, LLC, a South Carolina limited liability company, to Shelter Cove II, LLC, as recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 3299 at Page 3329; and further that representatives of the Town of Hilton Head Island have permission to enter the property and the undersigned agrees to hold harmless any such representative, except for acts of negligence or damage.

Further Deponent sayeth not.

SHELTER COVE II, LLC  
a South Carolina limited liability company

By: MPR Consultants, Inc., a Georgia  
corporation, as its Manager

By:   
Victor J. Mills

Its: President

SWORN to before me this 11 day of  
June, 2015.

  
Notary Public for Georgia  
My Commission Expires: 3/27/16



**Exhibit A**  
**Legal Description**

ALL those certain pieces, parcels or tracts of land, situate, lying and being in the Town of Hilton Head Island, Beaufort County, South Carolina, shown and designated as **Revised Multi-Family Parcel, 4.62 Acres** and **Town of Hilton Head Island Community Park Parcel, 4.97 Acres** on a plat entitled "SUBDIVISION PLAT OF SHELTER COVE MALI. AREA, A SECTION OF SHELTER COVE, HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA", prepared by Terry G. Hatchell, SCRLS No. 11059 of Surveying Consultants, Inc. dated December 11, 2013 and recorded on December 20, 2013 in the ROD Office for Beaufort County, South Carolina in Plat Book 00138 at Page 0002 (the "Plat"). Said parcels of land having such location, buttings, boundings, courses and distances as by reference to said Plat will more fully appear.