



**The Town of Hilton Head Island
Regular Public Facilities Committee Meeting**

**Monday, January 23, 2017
10:00 a.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. 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.
- 3. Committee Business**
 - Approval of Minutes:
 - September 26, 2016
- 4. Unfinished Business**
- 5. New Business**
 - Fish Haul Creek Park Lease to Mitchelville Preservation Project
- 6. Adjournment**

Please note that a quorum of Town Council may result if four (4) or more of Town Council members attend this meeting.

TOWN OF HILTON HEAD ISLAND PUBLIC FACILITIES COMMITTEE

Date: September 26, 2016 Time: 10:00 A.M.

Members Present: David Ames, Kim Likins, Tom Lennox

Members Absent: None

Staff Present: Scott Liggett, Charles Cousins, Chris Darnell

Others Present: John P. Carroll, Ryan Stefonick, *Leadership Hilton Head*, Tom Cruz, *Hilton Head Island Motor Coach Resort*, Frank Soule, *Island Recreation Association*, Ralph Wagner, *Shore Beach Services*

Media Present: None

1. Call to Order:

The meeting was called to order at 10:00 a.m.

2. FOIA Compliance:

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

3. Committee Business:

Approval of Minutes: Mrs. Likins moved to approve the Minutes of August 22, 2016. Chairman Ames seconded. The Minutes of August 22, 2016 were unanimously approved.

4. Unfinished Business:

None

5. New Business

• Leadership HHI Request to Build an Adaptive Kayak Ramp

Chairman Ames mentioned they have an interesting proposal – Leadership Hilton Head’s proposal to build an adaptive kayak ramp at Skull Creek at the Sailing and Rowing Center that the Town built a few years ago. The Leadership Hilton Head class this year would like to build a kayak ramp there as its class project. This has come up with very little information before this Committee but in deference to Leadership Hilton Head we wanted to entertain this possibility.

John Carroll and Ryan Stefonick from Leadership Hilton Head approached the podium. Mr. Carroll thanked the Committee for the opportunity to come before them today. Mr. Carroll mentioned they met with Heather Rath and Julian Walls last week and learned late last week that there was an opportunity to speak today.

Mr. Carroll stated that each Leadership Class at the local Chamber selects its challenge with leaving a legacy in the local area. We expect that we may need to raise as much as \$30,000 and we are prepared to do that. We have already have pledges of at least \$5,000.

We wanted to ask for Town Council's support and encouragement for two reasons: 1) we want to make sure that Town Council feels comfortable with Julian Walls' department maintaining the easy kayak launch should we be granted permission to construct the launch and 2) in addition to any Town permitting and licensing that Town staff may require of us to obtain there is also another permit that is required by the State. DHEC has permitted the existing rowing dock that is currently there. We suspect that we may need to apply to amend that permit since this would be a construction that is adjacent to and connected to that dock. The signatory for that Application would be the Town Manager. We wanted to make sure that the Town Manager felt comfortable with signing off with that and, therefore, we wanted to come before the Town and make sure that Town Council did support our project.

Ryan Stefonick stated the EZ Launch System is a safe and easy way to launch and dock kayaks and canoes. It is great for people with disabilities, children or seniors. Users will feel confident transferring into their watercraft independently and securely, and launching with stability and ease.

EZ Launch Features

- Guide rails for easy access in and out of the water.
- Launch rollers for easy movement of the watercraft.
- Floating platform that adjusts to changing water levels.
- Constructed of all marine grade components.

EZ Launch for Universal Access

The EZ Launch Accessible Transfer System for kayaks and canoes provides individuals with disabilities accessibility that exceeds the minimum requirements of the Americans with Disabilities Act (ADA.) The easy to use transfer bench and transfer slide boards allows users to simply sit, slide over and drop down into a kayak or canoe then use the side rails to pull off or back on.

Features for Universal Access

- Transfer bench with two heights for easy transfer from wheelchairs.
- Transfer slide boards with two heights for differing watercraft sizes
- Tailing system for slide board stabilization and transfer support for easy movement.

Mr. Lennox stated he thought this was a great project for the Leadership Class and would need to talk about what the maintenance would be required ongoing and liability on such a project.

Mrs. Likins asked if they had any idea what the annual maintenance would be. Mr. Carroll indicated they had met with Julian Walls since I believe it would be his department that would be responsible for maintaining it and he indicated to us that he felt very comfortable maintaining the facility if it were to be constructed. We did have one member of our class recently met with staff at Moss Creek who have a similar structure. They indicated to him that maintenance was very low.

Chairman Ames stated he didn't think that maintenance would be an issue but the capital cost of replacing it at the time it was no longer usable. Chairman Ames also stated the

Town has been down this path before where an organization was going to raise a certain amount of money and then it didn't raise it but there were commitments made and it snowballed. How long do you think it would take for you to raise the \$30,000 in pledges and then be able to actual capitalize on it. Mr. Carroll said they were off to a great start with the \$5,000 mentioned. Once we get your blessing and the support of the Leadership Program, we can hit the ground running. We can start tapping into some of these clubs who are really going to benefit the most from it. Mr. Stefonick mentioned it is a requirement for the Leadership class to have everything fully installed and have a public launch day event in April, 2017. We would try and determine the construction turnaround time for this project and I don't think anyone in the class feels comfortable starting construction until we can pay for the whole thing with a contingency.

Chairman Ames said you bring up a very important part of this that I think is the achilles heel in that is how long is it going to take for the DHEC Amendment and all the other things that need to fall into place. What happens if you commit yourself to this project and then it is not done by April and you graduate? Mr. Stefonick said they have not pitched the idea to the Chamber Board yet and that is part of the reason they are here to say they are already discussing the idea with the Town. We understand that any class project for any year whether it be an information kiosk or kayak launch has a risk of failure. We want to embrace that challenge and we do not intend to begin construction until the whole thing is paid for and we just want the blessing to move forward with that. Having said that we do have an addition to the project that if the construction of the EZ Kayak Launch fails our Plan B is to erect an informational kiosk that talks about the history of Skull Creek and that would be in addition to the kayak launch so that kayakers know the history of where they will be paddling. If everything totally fails we can always fall back on the kiosk.

Chairman Ames mention he is a kayaker and having ready access to the water would be a fantastic addition to the Island kayakers. I also think that this project is leveraging the Town's already significant commitment to that particular area. I think it is augmenting something that has already been started. I do suspect that there are conflicts perhaps with sailors or rowers that need to be worked out in order for this to actually be a functioning project.

Chairman Ames asked if there was anyone from the public who would like to speak. David Erdman, part of the Hilton Head Island Crew that they 100% support handicap kayak access. Our fears we are picking on the wrong place. At low tide, there is no way you could take a wheel chair down there. While we support the project we have serious concerns.

John Rumsey, Hilton Head Sailing agrees the kayakers should get to kayak but has an issue with the necessity of a large expensive dock.

Frank Soule said the Island Recreation Association was charged to bring everyone there, not only rowers and sailors but other groups and organizations. He also said please remember the kayak was value engineered out of the project when it was built. It was originally planned for down there so whatever we come up with we are not reinventing the wheel, we are putting something back into the project that was originally there. We want

to expand more into kayaking. I have a hard time sending anyone down there for a kayaking class until we can get them into the water safely.

Mrs. Likins asked Scott Liggett if he could address the fact that originally this was designed to have kayaking and are we really just going back to something that was part of this plan and should be doable. Mr. Liggett said he could not address that. We simply have not had the time with the speed with which this subject has advanced hasn't afforded an opportunity for a staff recommendation. Personally, I do not recall a kayak launch was part of the Council approved Master Plan but would like the opportunity and if given the chance we can fully vet and develop a staff recommendation.

Mrs. Likins said it is certainly a worthy project and something we should look at would support having these guys work with staff and just take a look at the feasibility and if it is something we can work out I think we should do it.

Chairman Ames told Mr. Carroll and Mr. Stefonick this has been an education for us and I think to some degree an education for you. There are a number of pieces to this puzzle for it to fit together. Your timeline in my opinion is very very tight. You have rowers and crew members who want to be able to be assured your ideas will not awkwardly impinge on their use of the facility. There are ideas in terms of what will make a usable kayak launch and not require \$30,000. Town staff needs to be brought into this and I would suggest that you make contact with Scott Liggett as soon as possible and also the Recreation Center has a part to play in your program to make this a successful project. Given all of those different components, I think you have a challenge to make it work by April. If it is the will of Town Council to move forward there are a number of parts to this that you will need to push pretty hard initially.

Chairman Ames said from a personal standpoint he is very much in favor of this. I think that unless staff can work through the details of pushing this forward we don't really have a Motion to put in front of Town Council. It is our suggestion that you work with staff to see if you can get the items that need to be dealt with and the timeline that will make this project doable by your April deadline. At the point you have a project that you feel you can implement then I think that would be the appropriate time for Town Council to make a Motion.

- **Relocation of Dumpsters for Beach Waste**

Chris Darnell, Landscape Associate, stated staff recommends the Public Facilities Committee forward the proposed plan to relocate to 139 Arrow Road, dumpsters for beach use to Town Council with a recommendation of approval.

As construction of the Coligny Park begins, existing dumpsters used to collect beach refuse must be relocated from that area. Staff is requesting direction to relocate these dumpsters from the "Boneyard" in the Coligny area to the "Howell Tract" adjacent to Espy Lumber at 139 Arrow Road.

Shore Beach Services, as part of their franchise with the Town, picks-up refuse off the 13 miles of beach on Hilton Head Island and hauls that refuse to collection sites. Currently all refuse south of the Folly is hauled to Coligny to a site behind the public beach parking lot.

In August of 2012, Town Council approved moving forward with design, permitting, and construction of the Coligny District improvements. This area includes the current location of dumpsters used by Shore Beach Services. These dumpsters must be relocated early next year before work begins in that area.

Twelve different sites across the island were evaluated as potential locations for these dumpsters. The Howell sight was originally selected. It is next to Espy Lumber. The refuse coming off is material picked up out of the trash cans on the beach and the larger dumpsters is used for larger bulky items. All dumpsters are currently and would be at the new sight emptied daily except on holidays and extended weekends. The Howell sight is a 1/78 acre site which is next to Espy. The Motor Coach Resort access is opposite Espy and they are behind the Howell sight.

The new facility must accommodate the relocation of six eight yard dumpsters and two thirty yard open dumpsters. Other required site improvements include an all-weather heavy vehicle surface pavement, perimeter security and gate. The Town owned parcel at 139 Arrow Road was selected because it offers:

1. No land acquisition cost.
2. Existing site improvements that can accommodate or easily and inexpensively be improved to accommodate the proposed use.
 - a. Existing perimeter security / screen.
 - b. Existing gate.
 - c. Graded site ready to accept all-weather pavement
3. Reasonable hauling route between vehicular beach access and Shore Beach Services offices located in the immediate vicinity on Arrow Road.
4. Current zoning allowing use.
5. A large parcel with enough space to isolate use from residential area with a distance of +/-260' between dumpsters and closest residential lot.
6. Ease of large truck access to the site.
7. Environmental sustainability with little to no existing native vegetation.

Mr. Darnell said they met with the Motor Coach Resort and they had a couple of concerns regarding noise and maintenance of the dumpsters. We can address that in a couple of ways. We can limit the large trucks servicing the dumpsters till after 9:00 a.m. in the morning. We also will provide a water spigot so that Beach Services can maintain the dumpsters, reducing smell and insects, etc. We can address their concerns.

Mrs. Likins asked if the Motor Coach resort seemed ok with that. Mr. Darnell said there was a representative here and would let him speak.

Tom Cruz representing Hilton Head Island Motor Coach Resort stated they had a meeting and reviewed it. Clearly we have some concern because it is next to the Motor Coach resort and we expressed our concerns. Noise would be one of them and the hours of operation can

help mitigate the noise. The potential for odor is possible so Chris has suggested there could be ways to try and reduce that would require some ongoing procedure. We feel comfortable that could be addressed. Lastly it could become an attraction for some wildlife like rats, etc. We would like to make certain that is reviewed and kept as best as can be under control. We feel like they have approached this in respect to as much protection from our property as possible. We want to be good neighbors and cooperate so we are available to work through those details.

Mr. Lennox said that given the quality of maintenance and limitations on noise during certain hours of the morning and evening it is appropriate.

Chairman Ames said staff has done a very good job and thanked Chris Darnell for his efforts.

Mrs. Likins moved the Public Facilities Committee move forward to Town Council the proposal to relocate the dumpster sights from the beach to 139 Arrow Road. Mr. Lennox seconded. The motion unanimously passed.

- **Approval of Proposed 2017 Meeting Dates**

Mrs. Likins moved to approve the proposed 2017 meeting dates. Mr. Lennox seconded. The motion was unanimously approved.

Chairman Ames mentioned he would like an overview and update on what the Town is doing in terms of storm water drainage.

6. **Adjournment**

Mrs. Likins moved to adjourn. Mr. Lennox seconded. The meeting was adjourned at 11:03 a.m.

Respectfully Submitted,

Karen D. Knox
Senior Administrative Assistant



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Public Facilities Committee
VIA: Charles Cousins, AICP, *Director of Community Development*
VIA: Shawn Colin, AICP, *Deputy Director of Community Development*
FROM: Jayme Lopko, AICP, *Senior Planner*
DATE January 13, 2017
SUBJECT: Fish Haul Creek Park Lease to Mitchelville Preservation Project

Recommendation: Staff recommends the Public Facilities Committee forward a recommendation to Town Council to approve the lease of Fish Haul Creek Park to the Mitchelville Preservation Project, Inc., (MPP).

Summary: On June 14, 2010, the Mitchelville Preservation Project submitted a letter to the Town of Hilton Head Island outlining their intention to move forward a proposal requesting that the Town Council consider a long-term leasing arrangement between the Town and MPP. Under the arrangement Fish Haul Creek Park would be converted into a cultural and historical museum, preserving the site as a heritage and education destination for residents and visitors.

Background: The MPP appeared before the Town Council on September 7, 2010 where the Town Council voted to support leasing Fish Haul Creek Park to MPP contingent upon finalizing a master plan and showing the financial ability to implement via construction and long term management of the facility.

More recent discussion on this partnership would allow small projects to move forward in advance of completion of the master plan and business plan. The draft lease provides for eight (8) years to receive approval of the Master Plan and Business Plan.

Mitchelville offers an opportunity to work with a diverse community of Hilton Head Island heritage groups to develop an imaginative and exciting place to visit and be informed and inspired about the story of African American's contribution to the Country's heritage of freedom. The vision of the MPP encompasses preserving the historic site, a portion of which is now a beautiful park; commemorating freedmen's heritage by including an appropriate memorial for the site; reconstructing (on the bases of evidence) two or three of Mitchelville's significant structures and creating state-of-the-art technological and media platforms for exhibiting and interpreting the history and story of its freedom pioneers.

Key components of the lease are as follows:

- The Property will remain open as a public park during times of normal daily operations.

01/13/2017

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- Special events are permitted.
- The Lease requires approval of a Master Plan and Business Plan within a set time.
- The initial term is 45 years with a renewal option.

Attachments:

Attachment A: Ordinance

Attachment B: Lease

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF A LEASE WITH THE MITCHELVILLE PRESERVATION PROJECT, INC., RELATED TO THE LEASE OF REAL PROPERTY OWNED BY THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, PURSUANT TO THE AUTHORITY OF S.C. CODE ANN. SEC. 5-7-40 (SUPP. 2012), AND SEC. 2-7-20, CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, (1983); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Town of Hilton Head Island, South Carolina (“Town”), owns one or more parcels of real property known generally as “Fish Haul Creek Park” (“Property”); and

WHEREAS, the Town desires lease the Property to The Mitchelville Preservation Project, Inc., (“Mitchelville”), for the operation of a cultural and historical museum in the Town of Hilton Head Island in accordance with that certain Lease attached hereto as Exhibit “A”; and

WHEREAS, on January 23, 2017, the Public Facilities Committee met and _____
_____; and

WHEREAS, the Town Council for the Town has determined that it is in the best interests of the Town to enter into a Lease with Mitchelville for the operation of a cultural and historical museum in the Town of Hilton Head Island in substantial conformance with the attached Exhibit “A”.

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

Section 1 - Execution, Delivery and Performance of Lease.

(a) The Mayor and/or Town Manager are hereby authorized to execute and deliver the Lease in substantial conformance with the attached Exhibit “A”; and

(b) The Town Manager is hereby authorized to take such other and further actions as may be

necessary to complete the performance of the Town's obligations under the terms and conditions of the Lease.

Section 2 - Severability.

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

Section 3 - Effective Date.

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

(SIGNATURE PAGE FOLLOWS)

**PASSED AND APPROVED BY THE TOWN COUNCIL FOR THE TOWN OF
HILTON HEAD ISLAND, SOUTH CAROLINA, ON THIS ____ DAY OF
_____, 2017.**

David Bennett, Mayor

ATTEST:

Victoria L. Pfannenschmidt, Town Clerk

First Reading: _____

Second Reading: _____

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

Introduced by Council Member: _____

A LONG TERM LEASE

BY AND BETWEEN

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

AND

MITCHELVILLE PRESERVATION PROJECT, INC.

DATED THIS _____ DAY OF _____, 2017

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ARTICLE 1

1.1. **The Property:** The improved real property leased by Mitchelville pursuant hereto is known and described as follows:

PARCEL 1

All that certain piece, parcel or lot of land lying above the mean high water line of Port Royal Sound and the marshes of Fish Haul Creek, containing 16.481 acres, more or less, and which is more particularly shown and described on the Plat thereof entitled "16.481 AC. PARCEL, FISH HAUL PLANTATION FISH HAUL CREEK AND PORT ROYAL SOUND HILTON HEAD ISLAND BEAUFORT COUNTY SOUTH CAROLINA", prepared by Millard A. Dunham, P. L. S., and which is recorded in the Office of the Register Of Deeds for Beaufort County, South Carolina, in Plat Book 63 at Page 93.

PARCEL 2

ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 3.008 acres, more or less, shown and described as "3.00 ACRES" on that certain plat entitled "A Plat of the Property of Dr. J. H. Brewton" prepared by Richardson & Associates, Jerry L. Richardson, S.C.R.L.S. 4784, dated September 5, 1973, and which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 22 at Page 100.

PARCEL 3

ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 8.458 acres, more or less, shown and described as "PARCEL 'B'" on that certain plat entitled "Plat --Parcels A, B & C", prepared by Freiesleben-Yerkes, Inc., E. H. Freiesleben, S.C.R.L.S. 4624, dated July 20, 1979, as revised, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 29 at Page 117.

AND ALSO, ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 0.119 acres more or less, shown and described as "35' ACCESS EASEMENT" on the Plat recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 29 at Page 117.

SAVE AND EXCEPT, ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 0.100 acre, more or less, being a portion of that property shown and described as "PROPOSE EASEMENT TRADE" on

the Plat recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 29 at Page 117.

PARCEL 4

ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 5.00 acres, more or less, shown and described as "PARCEL 'C'" on that certain plat entitled "Plat --Parcels A, B & C" prepared by Freiesleben-Yerkes, Inc., E. H. Freiesleben, S.C.R.L.S. 4624, dated July 20, 1979, as revised, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 29 at Page 117.

Parcels 1, 2, 3, and 4 described above are known generally as "Fish Haul Creek Park", Beaufort County PIN R510-005-000-0208-0000, and are collectively referred to herein as the "Property".

1.2. **Mitchelville Accepts the Property "As Is":** Mitchelville represents and warrants that it has performed, or has had the opportunity to perform, an examination of (1) the Property, (2) title to the Property, and (3) the existing use restrictions on the Property, and accepts the Property "as is", and without recourse to or against the Town as to the title thereto, availability of water, sewer, electricity, or telecommunication services, the nature, condition, or usability thereof, or the uses to which Property may be put. In no event shall the Town have any liability to Mitchelville for any defect in the Property, or the title to the Property, or conditions existing in, on, under, over, or about the Property or any limitation on the uses that may be made of the Property. Mitchelville accepts this limitation on the Town's liability and acknowledges that this limitation of the Town's liability is a material term of this Lease without which the Town would not have entered into this Lease.

1.3. **The Property to Continue as a Public Park:** Mitchelville acknowledges that the Property is, as of the date of the commencement of this Lease, a public park. Mitchelville acknowledges and accepts that the Property shall at all times of normal daily operations during the term of this Lease remain open as a public park, with the public's right to enter the Property for parking and use of the amenities of the public park and access to the marshes of Fish Haul Creek and Port Royal Sound being preserved.

(a) **Certain Restrictions Permitted:** The foregoing language of Article 1.03 notwithstanding, Mitchelville shall be permitted to restrict the public's access to any portion of the Property during times when and

where construction activity or any other similar hazardous work is being undertaken by Mitchelville.

- (b) **Special Events Permitted:** The foregoing language of Article 1.03 shall not be interpreted to prevent Mitchelville from holding special events from time to time at the Property for which a charge or admission fee must be paid by any person attending the event. During any such special event, access to the Property may be restricted by Mitchelville to those persons paying the applicable charge or admission fee.

1.4. **Application of Laws and Other Matters:** This Lease is made by the Town and accepted by Mitchelville subject to all existing ordinances, regulations, and statutes, including zoning regulations and restrictive covenants affecting the Property that are now in force and which may be enacted in the future.

1.5. **No Other Interest in Real Property Created:** Other than the leasehold interest established by this Lease, Mitchelville shall have no interest in the Property.

1.6. **Rent:** Mitchelville shall pay to the Town Rent in the sum of One Dollar per year for the term of this Lease. Rent shall be due on January 1 of each year during any term of this Lease.

ARTICLE 2

2.1. **Effective Date:** The “Effective Date” of this Lease shall be the date upon which the duly authorized officials of the Town execute and deliver this Lease to Mitchelville.

ARTICLE 3

3.1. **Limited Obligation of the Town:** The Town shall not be required to furnish, and has no obligation to furnish, to Mitchelville any facilities or services of any kind, including, but not limited to, water, sewage disposal, sewage capacity, solid waste collection and disposal, recycling collection, electricity, light, power, or telecommunication services.

3.2. **Utilities and Other Services:** Mitchelville shall at its sole cost and expense arrange for the provision of utilities and other services to the Property, including, but not limited to, water, sewage disposal, sewage capacity, solid waste collection and disposal, recycling collection, electricity, light, power, and telecommunication services.

Any fees for reservation of water or sewage or electrical capacity, or any other arrangements that must be made with the provider of any utility or any other service shall be the sole responsibility of Mitchelville.

3.3. Mitchelville is Responsible for the Payment of all Expenses:

Mitchelville shall be solely responsible for the payment of any and all costs, expenses, and charges for any utility or other service, including water, sewage disposal, sewage capacity, solid waste collection and disposal, recycling collection, electricity, light, power, and telecommunication services that are used, rendered, or supplied to or upon the Property or in connection with Mitchelville's use of the Property, and *ad valorem* real property taxes (including but not limited to stormwater utility (SWU) fees), if any.

3.4. Indemnification and Hold Harmless: Mitchelville shall indemnify and hold the Town harmless from any claims for loss, damage, or liability, including reasonable attorney's fees and costs incurred by the Town in responding to or defending any claim, arising out of or on account of any injury, death, or damage to any person, or to the property of any person, resulting from the use of the Property by Mitchelville and Mitchelville's operation thereon, or arising from any act or omission of Mitchelville with respect to the exercise of Mitchelville's rights hereunder; provided, however, in no event will Mitchelville indemnify or hold harmless the Town for acts or omissions of the Town or its employees or agents.

ARTICLE 4

4.1. Construction of Improvements or Facilities on the Property Prior to Approval of Master Plan and Business Plan by Town Council:

- (a) Prior to approval by the Town Council of the Town (the "Town Council") of the Master Plan (as defined in Article 4.2) and the Business Plan (as defined in Article 4.3), and before undertaking construction of any improvements or facilities on the Property, Mitchelville shall submit to the Town Council for review and approval the plans and specifications of the proposed improvements or facilities, as well as information describing how Mitchelville will fund such construction and related operations. The Town Council may approve or disapprove all or any part of the proposed improvements or facilities as the Town Council, in its sole discretion, may deem advisable.

- (b) Any proposed improvements or facilities on the Property must be substantially in furtherance of the operation of a cultural and historical museum on the Property.
- (c) Any proposed improvements or facilities on the Property shall, in addition to approval by the Town Council, be subject to all applicable provisions of the Land Management Ordinance of the Town (the “LMO”), any applicable restrictive covenants, and any other applicable State, Federal or local statutes, ordinances, or regulations. Approval of any proposed improvements or facilities on the Property by the Town Council, in and of itself, shall not constitute an authorization to commence any work at the Property for which any other approval or permit of any nature is required.
- (d) The provisions of this Article 4.1 shall be inapplicable after the Master Plan is approved by Town Council as described below in Article 4.2.

4.2. The Master Plan: Prior to undertaking construction of (1) any improvements or facilities on the Property costing in excess of Four Hundred Thousand Dollars (\$400,000.00), or (2) any permanent structure on the Property which is enclosed (containing heating, ventilation, and air conditioning) and intended for public occupancy, Mitchelville shall prepare a Master Plan providing the details of the development, use, and operation of the Property as a cultural and historical museum and the development of the amenities on the Property substantially in furtherance of the operation of a cultural and historical museum (the “Master Plan”), and shall submit the Master Plan to the Town Council for review and approval. The Town Council may approve or disapprove all or any part of the Master Plan, as the Town Council, in its sole discretion, may deem advisable. Town Council approval of the Master Plan is a pre-condition to Mitchelville undertaking construction of (1) any improvements or facilities on the Property costing in excess of Four Hundred Thousand Dollars (\$400,000.00), or (2) any permanent structure on the Property which is enclosed (containing heating, ventilation, and air conditioning) and intended for public occupancy. Mitchelville shall submit its Master Plan as required herein and obtain the approval of the Town Council of the Master Plan within eight (8) years after the Effective Date of this Lease.

- (a) **Amendments to the Master Plan:** Any proposed Material Amendments to the Master Plan shall be submitted to the Town Council for review and approval, which the Town Council may, in its reasonable discretion, approve or disapprove all of any part of. As used

in this Article 4.02(a), a “Material Amendment to the Master Plan” shall mean any departure from the proposed uses and densities shown on the Master Plan as previously approved by the Town Council. Any amendments to the Master Plan that are not Material Amendments shall be subject to review and approval of the Town Manager of the Town or his or her designee, which approval shall not be unreasonably withheld. The Town Manager may, but is not obligated to, submit any amendments to the Master Plan that are not Material Amendments to the Town Council for review and approval. Matters related to site planning shall be handled through the Development Review process as established in the LMO and shall not be considered Material Amendments to the Master Plan. All amendments to the Master Plan (whether Material Amendments or not) shall be subject to all applicable provisions of the LMO, any applicable restrictive covenants, and any other applicable State, Federal or local statutes, ordinances or regulations.

- (b) **Other Approvals Required:** The Master Plan and any Material Amendments to the Master Plan shall, in addition to approval by the Town Council, be subject to all applicable provisions of the Land Management Ordinance of the Town, any applicable State, Federal or local statutes, ordinances or regulations. Approval of the Master Plan by Town Council, in and of itself, shall not constitute any authorization to commence any work at the Property for which any other approval or permit of any nature is required.

4.3. **The Business Plan:** Prior to undertaking construction of (1) any improvements or facilities on the Property costing in excess of Four Hundred Thousand Dollars (\$400,000.00), or (2) any permanent structure on the Property which is enclosed (containing heating, ventilation, and air conditioning) and intended for public occupancy, Mitchelville shall develop a long-range Business Plan for the operation of a cultural and historical museum and for the funding of the capital improvements and other amenities to be built at the Property (the “Business Plan”), and shall submit the same to Town Council for its review and approval. The Town Council may approve or disapprove all or any part of the Business Plan, as the Town Council, in its sole discretion, may deem advisable. Town Council approval of the Business Plan is a pre-condition to Mitchelville undertaking construction of (1) any improvements or facilities on the Property costing in excess of Four Hundred Thousand Dollars (\$400,000.00), or

(2) any permanent structure on the Property which is enclosed (containing heating, ventilation, and air conditioning) and intended for public occupancy. Mitchelville shall submit its Business Plan as required herein and obtain the approval of the Town Council of the Business Plan within eight (8) years after the Effective Date of this Lease.

4.4. **Permitted Use:** Mitchelville may use the Property for the following purposes (hereinafter, each a “Permitted Use”): establishing, building, and operating a cultural and historical museum and ancillary and related uses, and any manner consistent with the Master Plan approved by the Town Council.

4.5. **General Management:** Mitchelville shall have, and hereby agrees to undertake and assume, full and complete control and discretion in the management and operation of the Property during the term of this Lease. Without limiting the generality of the foregoing, Mitchelville shall have the following rights and duties with respect to the use, management, and operation of the Property:

- (a) **Determination of Policies:** To determine and carry out policies relating to primary and ancillary activities and services offered by Mitchelville, including those in accordance with the Permitted Use and those allowed as accessory uses under the applicable zoning for the Property.
- (b) **Financing:** To have, in its sole discretion, the right to obtain financing utilizing as collateral any fixtures or personal property that Mitchelville has or may acquire;
- (c) **Improvement of Property:** To erect, establish, maintain, modify, build, construct, or remove trails, paths, private use antennae, walkways, roadways, fences, docks, boardwalks, observation centers, decks, parking areas, drainage structures, and other such things in furtherance of the use and operation of the Property by Mitchelville;
- (d) **Compliance with Permitted Use:** In general, to act in accordance with the Permitted Use.

4.6. **Financial Statements:** Mitchelville shall cause a financial statement to be prepared each year at the conclusion of Mitchelville’s fiscal year by an entity independent of, and unconnected to, Mitchelville. Mitchelville’s fiscal year ends on December 31 of each calendar year. Mitchelville shall deliver a copy of its financial

statement to the Town within thirty (30) days of the completion of the financial statement each calendar year.

- (a) **Accounts Review:** Upon request of the Town, Mitchelville shall make its financial books and records available to the Town for Review. The Town shall give Mitchelville written notice of its intention to review Mitchelville's financial books and records. Mitchelville shall make its financial books and records available for review by the Town within twenty (20) days of the Town's written notice.

4.7. **Other Improvements to the Property Permitted:** Subject to the restrictions imposed by existing restrictive covenants, ordinances, and State or Federal statutes, including zoning regulations affecting the property, that are now in force or which may be enacted in the future, Mitchelville shall have the right to make such improvements as are approved by the Town Council or included in the Master Plan approved by the Town Council, at the sole cost and expense of Mitchelville.

4.8. **Building Permits:** Prior to submitting an application for any building permit in an amount greater than Fifty Thousand and no/100 (\$50,000.00) Dollars for construction on the Property, Mitchelville shall provide the Town Manager with an executed Irrevocable Bank Letter of Credit in favor of the Town, in an amount equal to the cost of construction as shown in the application for the building permit, or other document deemed satisfactory by the Town Manager, confirming that funds in such amount are available and reserved for the purpose of such construction, which Irrevocable Bank Letter of Credit or other documents shall permit the Town to utilize such funds in such amount, less funds expended for the purpose of construction described in the application for building permit and for which Mitchelville has produced executed lien waivers from the contractors, sub-contractors, and material-men involved, to complete the construction described in the application for the building permit and to pay any claims made by contractors, laborers, or materialmen, but only in the event of any failure by Mitchelville to complete the structure described in the application for the building permit or to pay contractors, laborers, or material men.

- (a) **Contract Splitting Prohibited:** Mitchelville may not split or incrementalize construction contracts or building permit applications in order to keep projects below the Fifty Thousand and no/100 (\$50,000.00) Dollar threshold set forth above.

- (b) **Increases in Cost of Project:** If the cost of any project undertaken by Mitchelville is increased by more than ten (10%) percent of the original contract price as shown on the original application for the building permit through changes, overruns, or otherwise, Mitchelville shall increase the amount of the Irrevocable Bank Letter of Credit or other document so as to be in an amount sufficient to cover the increased cost.

4.9. **Permits:** It shall be the sole responsibility of Mitchelville to procure and pay for any required municipal, state, federal, or other governmental permits and authorizations of the various municipal departments and governmental subdivisions having jurisdiction over the Property with respect to Mitchelville's occupation and use of the Property. The Town will provide "owner's authorizations" indicating the Town's consent to any permit being sought by Mitchelville where such "owner's consent" is required under any applicable permitting regulations. The delivery of such "owner's consent" by the Town shall not be deemed a waiver of any applicable development standard or zoning or other requirements.

4.10. **Mechanic's or Other Liens Prohibited:** Mitchelville shall not suffer or permit any mechanic's lien or other lien to be placed against the Property arising out of any construction upon or use of the Property by Mitchelville. If any such lien is filed, Mitchelville shall promptly cause the same to be released of record or bonded off, and shall further indemnify and hold the Town harmless from any costs or expenses, damages, suits, or reasonable attorney's fees arising from the filing or enforcement of any mechanic's lien or any other lien affecting the Property.

4.11. **Maintenance of the Property and Compliance with Laws:** During the term of this Lease, Mitchelville shall, at its sole cost and expense, provide for the maintenance and upkeep of the Property, and shall at all times comply with any and all applicable fire, building, health, and sanitation codes as the same may from time to time be in effect.

4.12. **Rules, Regulations, and Restrictions:** Mitchelville shall at all times during the term of this Lease:

- (a) **Maintenance of the Property and Improvements:** In keeping with the Permitted Use on the Property, maintain the Property and any structures and buildings on the Property, in a clean, neat, safe, sanitary, and orderly condition, it being understood that no use shall

be made or permitted of the Property or any part thereof, nor any acts done, which will violate any statutes, ordinance, or regulation, or violate or make inoperative or otherwise impair any insurance policy at any time held by or in any way for the benefit of the Town pursuant to any provision of this Lease;

- (b) **Storage of Hazardous Substances Prohibited:** Other than materials and equipment used, or to be used, in the improvements, maintenance, and use of the Property, the improvements, and the personal property thereon, Mitchelville shall not sell, or suffer or permit to be stored, kept, used, or sold in, upon, or about the Property, or in any structure or building located on the Property, any gasoline, distillate, any substances defined as a “Hazardous Substance” under any Federal, State or local law, ordinance, or regulation, or any other substance or material of an explosive, inflammable, or radiological nature which may contaminate or endanger any part of the Property, any structure or building on the Property, or any person on or about the Property, or present any unusual fire, explosion, or other damaging or dangerous hazard; and, Mitchelville shall, at its sole cost and expense, cause the removal and cleanup of any hazardous substances allowed to contaminate the Property by Mitchelville;
- (c) **Compliance with Laws:** Comply with all governmental rules, regulations, ordinances, statutes, and laws now or hereafter in effect pertaining to the Property or Mitchelville’s use thereof;
- (d) **Waste Dumping or Disposal Prohibited:** Refrain from dumping, disposal, reduction, incineration or other burning of any trash, hazardous material or substance, papers, refuse, or garbage or any kind in, on, or about the Property, in violation of any applicable statute, regulation, or ordinance;
- (e) **Waste Storage Prohibited:** Refrain from storing any trash, garbage, or hazardous material or substance on the Property or in any structure or building located on the Property, nor create or permit the creation of any health or fire hazard, in violation of any applicable statute, regulation, or ordinance;

- (f) **Waste and Nuisances:** Refrain from committing or suffering to commit any waste upon, or making any unlawful, improper or offensive use of, the Property or any structure or building on the Property, or creating any public or private nuisance or act or thing upon the Property or in any structure or building on the Property;
- (g) **Compliance with Restrictive Covenants and Local Ordinances:** Maintain the Property so as to comply with and remain in compliance with any restrictive covenants encumbering the Property and all local ordinances promulgated by the Town, or any other applicable law, rule, regulation, or agreement concerning the Property.

4.13. **Additional Rules:** In addition to the foregoing, Mitchelville shall at all times during the term hereof comply with all other reasonable rules and regulations which the Town may at any time or from time to time establish concerning the use of the Property; provided however, that any such rule or regulation so made shall not be inconsistent with any part of this Lease, and shall not unreasonably interfere with Mitchelville's use and enjoyment of the Property.

4.14. **Town's Waiver of Interest in Personal Property:** The Town waives any right, title, or interest in any and all equipment, displays, furniture, fixtures, moveable non-permanent items and structures, and personal property owned by, loaned to, or leased to Mitchelville; and, said property shall, at all times, remain the property of Mitchelville, such entity that has loaned the property to Mitchelville, or such entity that has leased the property the Mitchelville. The Town further waives any right that it may have to retain or distrain any of the property owned by, leased to, or leased by Mitchelville.

ARTICLE 5

5.1. **Initial Term of This Lease:** Subject to Articles 5.2, 5.4, and 10.1 below, the term of this lease shall be for a period of Forty Five (45) years, with such term commencing on _____ 2017, and ending on _____, 2062 (the "Initial Lease Term"), provided that all terms and conditions of this Lease shall have been complied with by Mitchelville, or unless sooner terminated pursuant to the terms hereof.

5.2. **Renewal of Terms of Lease:** Unless this Lease is sooner terminated pursuant to the terms hereof, at the end of the Initial Lease Term, this Lease shall automatically

renew for successive periods of Twenty Five (25) years (hereinafter, each a “Renewal Lease Term”), provided that all terms and conditions of this Lease shall have been complied with by the Parties hereto, unless either Party hereto shall give the other a Notice of Termination as set forth in Article 5.3 below.

5.3. Termination of this Lease: The initial term of this lease shall expire on _____, 2062 (hereinafter, the “Initial Termination Date”). The first Renewal Lease Term shall expire Twenty Five (25) years from the date of the Initial Termination Date, and subsequent Renewal Lease Terms shall expire each following twenty-five (25) year period. If either Party hereto gives the other Party written notice of its intention not to renew this Lease not less than twelve (12) months prior to the Initial Termination Date or the end of any Renewal Lease Term, then this Lease shall expire on the Initial Termination Date or at the end of the applicable Renewal Lease Term, as the case may be.

5.4. Ordinance and Rezoning Required: This Lease is contingent upon the following:

- (a) **Adoption of Ordinance:** The adoption of an Ordinance by the Town authorizing the execution and delivery of the Lease.
- (b) **Rezoning of the Property:** The completion of the rezoning of the Property so as to permit the use of the Property as a cultural and historical museum.

5.5. Termination on Failure of Conditions: If the conditions stated in Articles 5.4(a) and (b) not occur before December 21, 2017, then this Lease shall automatically terminate, and neither Party hereto shall have any further rights or obligations hereunder.

5.6. Termination on Failure of Approval of Master Plan or Business Plan: Notwithstanding any provision in this Lease to the contrary, this Lease shall automatically terminate in the event that either the Master Plan (described above in Article 4.2) or Business Plan (described above in Article 4.3) is not approved by Town Council for the Town within eight (8) years after the Effective Date of this Lease. Upon such termination, Mitchelville shall restore, within sixty (60) days after such termination, any part of the Property which has been altered by Mitchelville and which (1) has not been maintained in a reasonably safe, neat, clean, and ordinary manner, or (2) is in a state of disrepair or in an unkempt state, or (3) consists of trash, rubbish,

debris, or related items, to its state which existed immediately prior to the Effective Date of this Lease. Town Council, in its sole discretion, may choose to extend, modify, waive or extinguish this 8-year deadline by adoption of an Ordinance prior to the 8-year deadline.

ARTICLE 6

6.1. **Quiet Enjoyment:** The Town hereby covenants that Mitchelville shall, during the Lease terms, enjoy peaceable and quiet possession of the Property, and shall have, hold, and enjoy the Property without suit, trouble, or hindrance from the Town, except as expressly required or permitted by this Lease. The Town shall not interfere with the quiet use and enjoyment of the Property by Mitchelville during the Lease Term, so long as the Initial Lease Term or any Renewal Lease Term shall be in effect and all obligations of Mitchelville hereunder, have been fulfilled.

ARTICLE 7

7.1. **Required Property Insurance:** During the Initial Lease Term and any Renewal Lease Term, Mitchelville shall keep buildings and structures located on the Property insured against loss or damage by fire, wind, flood (to the extent of any available federal flood insurance program), and all other perils as are typically insured against by commercial establishments operating in Beaufort County, South Carolina, to the extent of the value thereof. Mitchelville shall not be required to maintain such insurance on structures such as docks, benches, and picnic sheds. The Town shall be named as an additional insured on this policy or these policies.

7.2. **Required Liability Insurance:** During the Initial Lease Term and any Renewal Lease Term, Mitchelville shall maintain in full force and effect comprehensive general public liability insurance with minimum bodily injury, death, and property damage, per occurrence, of FIVE MILLION (\$5,000,000.00) DOLLARS insuring against any and all liability of Mitchelville with respect to its occupants and use of the Property and all of the improvements, structures, and buildings on the Property, or arising out of the maintenance, use, or occupancy thereof by Mitchelville. In addition to all other coverages, and if available, such insurance policy or policies shall specifically insure the performance by Mitchelville of the hold harmless and indemnity provisions set forth in Article 3.4 of this Lease.

7.3. **Policy Form:** All policies of insurance provided for herein shall be issued by insurance companies with a general policyholders' rating not less than A, and a financial

rating of AAA as rated in the most current available “Best’s Insurance Reports”, and qualified to do business in the State of South Carolina, and shall be issued in the names of the Town, Mitchelville, and such other persons or firms as the Town reasonably specifies from time to time. Such policies shall be for the mutual and joint benefit and protection of the Town, Mitchelville, and others hereinabove mentioned, and executed copies of such policies of insurance or certifications thereof shall be delivered to the Town within ten (10) days after delivery of possession of the Property to Mitchelville and thereafter within thirty (30) days prior to the expiration of the term of each such policy. All public liability and property damage policies shall contain a provision that the Town, although name as an insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to it, its servants, agents, and employees by reason of the negligence of Mitchelville. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Mitchelville in like manner and to like extent. All policies of insurance delivered to the Town must contain a provision that the company writing said policy will give the Town twenty (20) days’ notice in writing in advance of any cancellation or lapse or the effective date of any reduction in the amounts of insurance. All public liability, property damage and other casualty shall be written as primary policies, not contributing with and not in excess of coverage that the Town may carry.

7.4. **Failure of Mitchelville to Obtain Insurance:** If Mitchelville fails to procure or maintain any insurance required by this Article 7, or fails to carry insurance required by law or governmental regulations, then the Town may, but without obligation to do so, at any time and from time to time without notice, procure such insurance and pay the premiums therefor, in which event Mitchelville shall repay the Town all sums so paid by the Town, together with interest thereon as provided in Article 11 hereof, and any incidental costs or expenses incurred by the Town in connection therewith, within ten (10) days following the Town’s written demand to Mitchelville for such payment.

ARTICLE 8

8.1. **Assignment Prohibited:** This Lease shall not be assigned by Mitchelville.

8.2. **Sublease of the Property:** Mitchelville shall not sublet any part of the Property, without the prior written approval of the Town Manager acknowledging that the sublease complies with the Permitted Use, which approval by the Town Manager shall not be unreasonably withheld. For the purpose of this Lease, a sublease of the Property is any lease by Mitchelville of any part of the Property to a third party for a period that exceeds six (6) months. Any sublease must be in keeping with the Permitted

Use. Nothing herein prohibits Mitchelville from contracting with subcontractors, licensees, vendors, or others in furtherance of the Permitted Use.

8.3. Other Encumbrances Prohibited: Mitchelville shall not grant any easements, licenses, or rights-of-way encumbering, or enter into any agreement which would in any way affect or encumber, the title to the Property; provided, however, that the Town, as the Property owner, agrees to grant to Mitchelville or others, as the case may be, any easements, licenses, or rights-of-way that are necessary for Mitchelville to use the Property in accordance with, and in furtherance of, the Permitted Use, such as any easements, licenses, or rights-of-way for utility lines, on terms that are reasonably acceptable to the Town. If any request of Mitchelville contemplated in this Article 8 requires the adoption of an ordinance or other legislation, the failure of the Town to adopt any such ordinance or legislation shall not be deemed a breach of this Lease.

ARTICLE 9

9.1. Notices: All notices, certificates, or other communications required hereunder shall be deemed delivered when delivered in person, or mailed by regular first class mail, postage prepaid, addressed as follows, or to such other addresses as may be designated, in writing, by the Parties:

To the Town: TOWN OF HILTON HEAD ISLAND
Town Manager
One Town Center Court
Hilton Head Island, SC 29928

With copy to: Gregory M. Alford, Esq.
Alford & Thoreson, LLC
18 Executive Park Road, Building 1
PO Drawer 8008
Hilton Head Island, SC 29938-8008

To Mitchelville: Mitchelville Preservation Project, Inc.
Ms. Shirley Peterson

Hilton Head Island, SC 29928

With copy to: Chester C. Williams, Esq.
Law Office of Chester C. Williams, LLC
17 Executive Park Road, Suite 2
PO Box 6028
Hilton Head Island, SC 29938-6028

ARTICLE 10

10.1. **Events of Default Defined:** The following shall be Events of Default under this Lease:

- (a) **Failure to Observe Requirements:** The failure of Mitchelville or the Town to observe or perform any covenant, condition, obligation or agreement contained in this Lease, required to be observed or performed, for a period of one hundred twenty (120) days after delivery of written notice specifying such failure and demand that it be remedied.
- (b) **Dissolution of Mitchelville:** The dissolution, termination, or liquidation of Mitchelville, or the voluntary or involuntary commencement of any proceeding under any State or Federal law relating to bankruptcy, insolvency, assignment for the benefit of creditors, reorganization, readjustment of debtor any other form of creditor action or debtor relief, either by Mitchelville or against Mitchelville, or any change in the tax-exempt, not-for-profit status of Mitchelville.
- (c) **Abandonment of the Property:** The abandonment of the Property by Mitchelville, or the discontinuance of operations at the Property by Mitchelville.
- (d) **Use Inconsistent with this Lease or the Permitted Use:** Any use of all or any part of the Property or the structures and improvements thereon, other than in compliance with the Permitted Use, the Master Plan, or this Lease without the approval of the Town Council.
- (e) **Failure to Pay Amounts Due:** The failure to pay any sum due to the Town by Mitchelville under any provision of this Lease.
- (f) **Failure to Submit the Master Plan:** The failure of Mitchelville to submit the Master Plan to the Town Council for review and approval within eight (8) years of the Effective Date hereof, as required in Article 4.2 of this Lease.

(g) **Failure to Submit the Business Plan:** The failure of Mitchelville to submit the Business Plan to the Town for review and approval within eight (8) years of the Effective Date hereof as required in Article 4.3 of this Lease.

10.2. **Remedies on Default:** Whenever any Event of Default described in Article 10.1 of this Lease shall have happened and continue for a period of one hundred twenty (120) days after delivery of written Notice of Default, the non-defaulting Party shall have the right to terminate this Lease. If the Town is the non-defaulting party, it may give notice to Mitchelville to vacate the Property, and may thereafter evict Mitchelville from the Property, take possession thereof, and exercise all the rights and remedies provided herein. At any time within sixty (60) days after such Notice of Default and demand, either Party may initiate a mandatory, non-binding mediation proceeding, which shall be completed within one hundred twenty (120) days of the date of the Notice of Default. In no event shall enforcement by the Town of its rights under this Article 10 cause Mitchelville to be relieved of any of its obligations set forth in this Lease.

10.3. **No Remedy Exclusive:** No remedy conferred upon or reserved to the Parties is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy hereunder now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right and power and such right and power may be exercised from time to time and as often as may be deemed expedient in the sole discretion of the Parties.

10.4. **Waivers:** If any agreement contained herein is breached by either Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

10.5. **Agreement to Pay Attorney's Fees and Expenses:** If either Party hereto defaults under any of the provisions hereof, and the non-defaulting Party employs attorneys, or incurs other expenses for the enforcement of the performance or observance of any obligation or agreement on the part of the defaulting Party, the defaulting Party agrees that it shall pay, on demand, the reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting Party in the enforcement of its rights hereunder.

10.6. **Discontinuance of Proceedings:** In case either Party hereto has proceeded to enforce any right under this Lease, and such proceedings shall have been discontinued or abandoned for any reason, then and in every such case the Town and

Mitchelville shall be restored respectively to their several positions and rights hereunder, and all rights, obligations, remedies, and powers of the Town and Mitchelville shall continue as though no such proceeding had been taken.

ARTICLE 11

11.1. **Interest on Past Due Obligations:** Whenever under any provisions of this Lease Mitchelville shall be obligated to make any payment or expenditure to the Town, or to do any act or thing, or to incur any liability whatsoever, and Mitchelville fails, refuses, or neglects to perform as herein required, the Town shall be entitled, but shall not be obligated, to make any such payment or expenditure, or do any such act or thing, or to incur any such liability, all on behalf and at the cost and for the account of Mitchelville, and in such event the amount thereof with interest thereon as hereinafter provided shall be deemed due upon demand for payment thereof by the Town. Any amount due from Mitchelville to the Town under this Lease which is not paid when due shall bear interest at the Applicable Federal Rate as established by the Internal Revenue Service from the date due until paid, unless otherwise specifically provided herein, but the payment of such interest shall not excuse or cure any default by Mitchelville under this Lease.

ARTICLE 12

12.1. **Binding Effect:** This Lease shall inure to the benefit of and shall be binding upon Mitchelville and the Town.

12.2. **Amendment, Changes, and Modifications:** Except as otherwise provided herein, this Lease may not be amended, changed, modified, or altered without written consent of both Parties hereto.

12.3. **Severability:** If any provision of this Lease is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

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

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

12.6. **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 Lease.

12.7. **Recording:** Either Party may record a short form memorandum of this Lease in the Office of the Register of Deeds for Beaufort County, South Carolina.

12.8. **No Agency:** The Parties hereto intend only to provide for a Lease of real property as provided herein, and affirmatively state that no master/servant, principal/agent, or employer/employee relationship is created by this Lease. Nothing herein creates any relationship between the Town and Mitchelville other than that which is expressly stated herein. No employee, volunteer, or agent of Mitchelville shall be considered an employee or agent of the Town for any purpose whatsoever and none shall have any status, right or benefit of employment with Town.

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

12.10. **No Third Party Beneficiaries:** The Parties hereto affirmatively represent that this Lease is made solely for the benefit of the Parties hereto and not for the benefit of any third party who is not a signature Party hereto. No person or entity other than the Town and Mitchelville 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.

In Witness whereof, the Parties hereto, by and through their duly authorized officers, have set their hands and seals as of this _____ Day of _____, 2017.

WITNESSES:

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

By: _____ (L.S.)
David Bennett, Mayor

Attest: _____ (L.S.)
Stephen G. Riley, ICMA-CM
Town Manager

WITNESSES:

**MITCHELVILLE PRESERVATION
PROJECT, INC.**

By: _____ (L.S.)
Shirley Peterson, President

Attest: _____ (L.S.)
_____, Secretary