



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

**Monday, February 27, 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:
 - January 23, 2017
- 4. Unfinished Business**
- 5. New Business**
 - Recommendation to Town Council regarding a Memorandum of Understanding and Lease for Fish Haul Creek Park to the 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: January 23, 2017

Time: 10:00 A.M.

Members Present: Marc Grant, David Ames, Tom Lennox

Members Absent: None

Staff Present: Charles Cousins, Jennifer Ray, Jayme Lopko, Brian Hulbert

Others Present: Kim Likins, Bill Harkins, *Council Members*, Shirley Petersen, Bob Richardson, *Mitchelville Preservation Project*, Lou Strayer, John Rumsey

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: Councilman Ames moved to approve the Minutes of September 26, 2016. Councilman Lennox seconded. The Minutes of September 26, 2016 were approved. Chairman Grant did not vote as he was not a Member of the Committee at that time.

Chairman Grant motioned to amend the Agenda for this meeting by adding "Appearance by Citizens" in front of Unfinished Business. Councilman Ames seconded. The Agenda was amended.

4. Appearance by Citizens

Lou Strayer questioned when the dock would be open at the Rowing and Sailing Center. There is minor damage to the pier going out to the dock. The dock itself was split into two pieces – both of them floating. The outer piece is just about perfect position and the inner piece rotated around its piling. That was put back in place by our own rowers the next day so it would not be swinging with the tide. Subsequently it has been more securely anchored. The response we get from Facilities Management is that we have to have a diver go down to look at the cabling system to see how badly it has been damaged and how difficult it is going to be to put back together. Reconstructing the floating dock if it does not have under water damage is very minor. Our season should open this week and we have 40 kids that want to row. We would like to push ahead and get some action.

Chairman Grant asked Charles Cousins, Director of Community Development where they were in connection with getting a diver. Mr. Cousins said he heard the same thing from Facilities. There are other facilities that Facilities Management is trying to address, e.g., tennis courts, baseball fields, pathways. We have every group out there wants their

facilities open first. I do not disagree with anything he said, but it is a matter of resources and trying to get those addressed. Councilman Ames asked Mr. Cousins if it would be possible for someone to make the phone call to a diver to put it on the schedule. Mr. Cousins said he would call Julian Walls, Facilities Manager and see if he can get an answer before the end of this meeting.

John Rumsey, Chairman of Hilton Head Island Community Sailing stated he sent an email to Julian Walls and hadn't heard back yet. I suggested we do temporary repairs which I can do or we can have done by the Rowing and Sailing Club. I think we can do temporary repairs while the Town goes through all the proper arrangements to get it back like new. We would be happy to do that at our expense if that would be possible.

Mr. Cousins said he was able to reach Julian Walls and he is working to expedite this and is working on a sole source procurement process and is preparing a letter to try and get Joe Nix who built the facility on board to evaluate it and fix it. If he needs a diver, he will put a diver in there as part of his work. Hopefully this will expedite this process. Councilman Ames stated it has been suggested by Mr. Rumsey that this work could be done by the rowers on a temporary basis. Is there a downside with that? Mr. Cousins replied that he thought there was a liability with doing that.

5. Unfinished Business

None

6. New Business

• Fish Haul Creek Park Lease to Mitchelville Preservation Project

Jayne Lopko stated they had before them a request from the Mitchelville Preservation Project to lease Fish Haul Creek Park from the Town for a cultural and historical museum. This original request came to Town Council back in 2010 at which time Council was generally supportive of it so a lease was drafted by the Town Attorney that mirrored the lease that was written for Honey Horn for the Coastal Discovery Museum. That lease required the Mitchelville Preservation Project to have a Master Plan and Business Plan brought forward when they lease the property. At that time they were not ready for the Business Plan and Master Plan portion of it so it was put on hold. Town Staff has been working with them over the past several years to utilize the property in ways that they could and also they were looking at ways to try and find sustainable funding to be able to move forward with the Master Plan and Business Plan.

A little over a year ago Steve Riley and I met with the Mitchellville Preservation Project to see what the options were to move forward with leasing the property without the Master Plan and Business Plan. We were receptive to that so we did have our Town Attorney look at revising the lease to allow them to do that without the Master Plan and Business Plan. We went back and forth with our Attorney and their Attorney to come to an agreement. The lease before you is what we came up with. The differences you will find between the Honey Horn lease and this lease is there is no Master Plan or Business Plan required at the time of the lease. There is an eight year window of time that we put in place to allow them to be on the property, do some improvements on the property up to \$400,000 which can be a garden, it can be archeological but cannot be an enclosed structure. They can put a pavilion out there like the MaryAnn Peoples Pavilion because it is not an enclosed space,

but they are capped at \$400,000 worth of improvements before they have a Master Plan and Business Plan in place. The other thing you will find that is different is unlike Honey Horn, Fish Haul Creek Park is a public park. The lease does provide a provision that it does remain a public park during the normal business hours and be open and closed as such. It does have a provision to close the park in the event of a special event that is a charge for event so they can make sure people are not getting in that have not paid for it. Those are the general differences that you will see. It is still a long term 45 year lease between the Town and Mitchelville.

Councilman Ames said there are several areas that he is interested in – 1) the term of the time that they project is being given to prepare a Master Plan of eight years. I have a personal opinion on that. I think we need a definition of what a Master Plan is and what a Business Plan is. I don't know if these are terms of art and, therefore, don't need a definition. Because of my background there are several different levels of Master Plan and I think we should be clear as to what we are expecting. 2) I think the Town is investing \$100,000 for two years to support an Executive Director. It seems reasonable to me that there is a quid pro quo there – that this Master Plan and Business Plan be completed within a two year period. I would also add that I think in order to get to those things there needs to be a Strategic Plan and also within a Business Plan maybe a Marketing Plan is included. What I am saying is that a high priority for this Executive Director and the Board of Directors of Mitchelville will be committing themselves to complete within two years those things that are required in this Lease. Lastly, I know there are conversations regarding the National Park Service. We should have a fairly clear idea what the National Park Service is going to require for us to participate and I am not sure that we should be obligating ourselves in a lease until we have some better definition of that. More important perhaps is it is a good thing that we are going to be able to have the National Parks Service involved but I don't think the National Parks Service should be in control of a major portion of the property so that the Mitchelville Preservation Project doesn't have the flexibility to develop it the way they see fit. I would be suggesting that the lease in some way anticipate a fairly restricted amount of land going to the National Parks Service. I just don't have the information as to what that means at this time so I am a little concerned about that.

Councilman Ames said the issues for him are the definitions of Master Plan/Business Plan – that the eight years be truncated to two years. I would like to understand perhaps from the Mitchelville Preservation Project whether or not this restriction of open to the public creates any problem for them as a public park. Ms. Lopko said as for the eight years, originally the lease was written with a five year term and the Mitchelville Preservation Project requested a longer term. There is some flexibility with that. We did have them revise the language and I think it is a fluid thing that we can change the number. It now says that if they don't have it within eight years that Town Council can extend that period of time should they choose without having to come back and do another lease and have to give up the property. I think that number is fluid and can possibly be changed based on the comfort of Mitchelville and Town Council. As for the definition of Master Plan and Business Plan, there is nothing in the document. We definitely can put something in there but the Master Plan is generally a use document which is a map to define certain areas to where there are uses, whether it is a garden or building or whatever they are going to functionally use it for. The Business Plan is more of a function of how they are going to pay and sustain that. There can be one part, the whole part or it can be phased. We have not

defined that. I would think it would be more apt to be a small phased plan instead of a large plan to start with. The Executive Director I will leave up to them. Regarding the National Parks Service, I know that when we started to bring this forward, Mayor Bennett did ask that we start looking at drafting an easement for all of Fish Haul Creek Park for the benefit of the National Parks Service. I know we have put that out there with our Attorney to start looking into that to see what the requirements will be. I know there is either an option to either give the National Parks Service the property or give them an easement over the property in order to get it as part of the monument.

Councilman Lennox stated the lease calls for the most recent CPA prepared financial statements to be submitted to the Town as well. I was given a copy of this and have reviewed them. There is nothing in the financial statements that would preclude them from doing anything that is called for in the lease.

Chairman Grant invited Shirley Petersen from the Mitchelville Preservation Project to speak. Ms. Petersen said she had Bob Richardson of the Lease Committee with her. Councilman Ames asked about the public park issue and whether or not you feel it impacts your capability to operate the Mitchelville project in a way that you choose to do it. Mr. Richardson mentioned he was involved in negotiating the lease with our mutual attorneys and you are right at first blush our comment of operating the park was a concern but there is language in there that allows us to control the access to the park during special events, during particular programs that we may have in the future. Ms. Petersen said there are going to be requirements for when that park is open, what kind of security we have, etc. Regarding Strategic Plan, Master Plan and Business Plan there was something in the past that was done. We are presently revisiting those plans to make sure we meet the requirements of the Town. The Business Plan, Master Plan and Strategic Plan of what will occur on the property, when it will occur and how it will be done will be forthcoming to you. If you want to make it a two year time frame that is fine. Councilman Ames stated conceptually you and the Board are ok with decreasing the amount of time to get the Master Plan and Strategic Plan done because in my opinion the Town is investing in the project to the amount of \$200,000. From my standpoint as a citizen the Island population is waiting for progress in this area. I think it is to your advantage to commit to a two year time frame and have the Executive Director and the Board committed to that time.

Councilmember Kim Likins thanked the Committee for the opportunity to ask some questions. Councilman Likins mentioned she is in full support of this and the main reason I wanted to come this morning was I did have a few comments and wanted to see if we could get these taken care of so by the time it comes to Council I feel comfortable that everything has been answered. The first thing I noticed while going through it is we are putting a significant financial liability on this organization. They will have to pay the storm water fees, insurance coverage fees and things like that that are pretty significant. They need to understand those costs and if they are able to cover them in their current financial structure is important for me to know. I was also concerned about the special events where it said if there is a special event going on that the public might be restricted and not be able to use the facility unless they are paying a charge. Is that the entire property or is it just a certain area where the event might be going on and people can still go to the beach. I think that is going to be a real issue that the public is going to be concerned about and we need to be

very clear about what areas are being restricted so that Mitchelville has that full use but the public has their use of the facility as well.

Councilmember Likins also mentioned when programing starts there will obviously be lots of children participating in all these events and in dealing with other organizations like the Sandbox and Boys and Girls Club we would want to make sure that whatever insurance policy they have covers abuse and molestation. That is a separate component that needs to be added to a policy and I think it would be important that it is part of the insurance policy.

Another concern is on page 5 when it talks about construction and related operations. When we get to the component of operations and I think this is probably going to happen even before we have construction possibly – there might be operations that will go on on the facility before buildings are there I would want to say that we need to make sure they have very good policies and procedures for those operations. For example, if you are doing a program and a child is lost – what is the policy and procedure to be able to come forward and say we have a lost child and what we are going to do about it and if someone is injured, what is the policy and procedure we are going to do to process everything. Once you start those operations there is a lot of things that can happen and you want to make sure you have planned out and are prepared and they are documented so you know what you are going to do in each one of those instances.

Regarding the upkeep on page 10, it says Mitchelville shall at its sole cost and expense provide for the maintenance and upkeep of the property. There are facilities there that are really costly to maintain and I am not sure we want to put that full burden on them. What happens in an event like a storm when there are trees down, etc? This will all be their responsibility. We need to be mindful of this and ask ourselves do we want the whole burden to reside on this organization, particularly since it is a public area.

Councilmember Likins said she agrees with the definition of the Master Plan and the only thing I would really want to see is a solid Business Plan. I think it is important even now as this organization is going to start using this property and we need to understand business wise what is the day in and day out operations. What is the finances, what is the sustainability, what is the marketing plan as they move forward?

As far as future construction, I do know that before the First Tee was given their grant it was a matching grant so they had to raise a certain amount of money before any construction went on. The Sandbox and their lease also has to fund and have set aside in a bank account a certain amount of dollars for their exhibits and everything before the lease could move forward. I would think we would also make sure here that if there is going to be future construction that Mitchelville has skin in the game as well just like the other organizations have.

Ms. Lopko said regarding the term – right now the language says Town Council at its sole discretion may choose to extend, modify, waive or extinguish the eight year deadline by the adoption of an ordinance prior to the eight year deadline. You can change that to two and extend it as needed. The park right now is open from dawn to dusk – it is not 24 hours. After the execution of the lease, it would put closing the park on them, that would put maintenance of the parking lot on them, the restrooms on them, filling the restrooms with

toilet paper and paper towels would be on them. There is no provision in the lease for the Town to keep any of those responsibilities. Chairman Ames asked was it conceivable if you are looking at for example ten acres, two acres could be Mitchelville and eight acres could be Town. Is there a way on this piece of property that is Town owned and public can Mitchelville have a portion that they are exclusively responsible for. Ms. Lopko said yes, we could have done that but it was Mitchelville's request to get the entirety of the park so that is what we went with. Just like with the storm debris, once they take the lease, there are still hangers, learners, etc. and they are on the hook for that, not us. It is possible to just get a piece of the park surveyed out and say they only get this piece. Councilman Ames said that is why a Master Plan is so important. You begin to understand the ramifications of where people are going to be moving and what area you want to cordon off for security reasons or whatever.

Chairman Grant advised that in his opinion, if Mitchelville wants this they are going to have to take full ownership of everything that goes on with the property. I think that is consistent with what we do with the other parks. I am in favor of them taking full control of everything and being responsible for everything. I think we as a Town, prior to turning it over to them that we pick up all the debris so we put them in good favor moving forward.

Councilman Ames asked Mitchelville Preservation Project after having listened to this conversation are you still comfortable with a lease for the entire property? Mr. Richardson said the answer was yes but let me caveat it a little bit. This is a lease, we are not buying the property. We are leasing the property which has several buildings which you will continue to own. We will be responsible for maintaining, but not replacing them if they are destroyed in a storm. One of the reasons why we are anxious to bring the lease forward at this point in time was if you will recall we met with the Finance Committee over a year ago prior to the submission of the tax and you supported the inclusion in that tax application of a \$200,000 pavilion for the park. We started the lease so we could put the pavilion in the park should the tax program go forward and the tax money come to fruition. None of this happened, but there are still ideas to put certain things within the park in anticipation of a full Master Plan like a pavilion. Chairman Grant asked Mr. Richardson if you will take over the restrooms and Mr. Richardson said yes and they will maintain it and keep it clean and open, etc. But if it blows down, I think we all understand what the situation would be then. If we have another hurricane with trees down we will deal with that issue when it comes up. Ms. Petersen said they want the lease to go forward and asked the Committee if they would be willing to amend the lease so that the Town cares for the parking lot and the bathroom facilities. That will be a lot of cost and we are a young organization. I do not want this to stop the lease. Chairman Grant said maybe we could take it for two years then Mitchelville would take over. Ms. Petersen said that was agreeable.

Chairman Grant asked Brian Hulbert, Staff Attorney, if that was something we could do – maintain the restrooms and parking lot for two years and then have Mitchelville take over. Mr. Hulbert advised you could basically make a lease with who has what responsibility for what as long as both parties agree. Of course, this would only be a recommendation to Town Council and they would have to agree to that. Another option that would be available for them is to apply for Accommodations Tax Dollars to cover the costs because running the facility would qualify under ATAX if the Committee recommended it and Council

approved it. That might be a more appropriate way to deal with it. Every year part of the operating costs for that facility could be an ATAX request.

Mr. Hulbert advised what this Committee needs to do is recommend to Town Council what action to take regarding the lease and then Council would determine what terms in the lease they find acceptable and would agree to. What they put out for the lease based upon staff's recommendation, this Committee's recommendation and what the other side is asking for would be the final lease. In the future you could amend the lease should there be the need to address terms or conditions that have changed. One thing that I did hear a little bit ago concerns me where it was talked about if there is a hurricane and they would worry about it in the future. You need to know right now who is responsible for what is going to happen in the future. You need to plan for future events and address them so everyone knows what they are agreeing to.

Chairman Grant asked Councilman Lennox where he thought they should take this regarding the lease. Councilman Lennox stated it is difficult for us to jump into the tail end of a document when we really don't know what discussions were pertaining to how this document was crafted. I am sure many of these things have been covered a lot by staff, Council as well as Mitchelville Board and Council. The comment was made about shortening the timeframe from eight years to two years on the Master Plan makes all the sense in the world. Having some sort of a Business Plan as quickly as humanly possible makes a lot of sense as well. I am not sure given the discussions we have had about this lease whether we are amending it or whether we are approving it subject to future amendments. In essence I favor going forward with some sort of agreement between the Town and Michelville crafted like this that defines the terms and conditions whereby we would enter into the lease.

Brian Hulbert stated if there are terms that you are not satisfied with and you would like to recommend that staff change that then you have two options - you can make that part of your recommendation going forward to Council but then you just send it back to square one. If you are sure that your best guess is what Council would want then you might direct them to make the changes and to include the copy of the lease that goes forward with those changes or modifications. You are not really amending the lease right now because there is no lease in existence. It is just a proposed lease for consideration at this point. If you want the terms to change then recommend that those changes be made or that you recommend it going forward subject to the following modifications.

Councilman Ames stated there were several suggestions – Councilman Likins said we ought to have language regarding policies and procedures, the abuse and molestation insurance is an addition. My question is should we be asking staff to incorporate those changes into the lease so we have the opportunity to forward that or do we simply approve it as amended. Councilman Grant stated he thought we should make those recommendations. Councilman Likins brought up insurance, rules and procedures should be part of the lease, National Parks Service language – I do not know where that goes – does the lease anticipate that in any way? Councilman Ames said the Town may have a desire to be a part of the National Parks Service, Mitchelville could conceivably not want to. That is why I am saying the lease may have to anticipate that flexibility. Ms. Lopko said they are encumbered by any easements we give them now, but once they have a lease

over the property they may have to be a party to the easement. Mr. Hulbert said it sounds like what I am hearing is you are recommending that the lease go forward but that a paragraph be added that the Town is in favor of having this property become part of the National Parks System in the future and that the lessee shall not take any steps to impede or impose such steps.

Ms. Lopko confirmed the amendments are they are changing the terms to two years for the Master Plan and two years for the Business Plan, adding abuse and molestation insurance, National Parks service language and clarification regarding who is responsible for storm damage. Mr. Hulbert stated any property that the Town leases out to individuals require that they become responsible for all maintenance to clean the sight and return it to as it existed before.

After further discussion, Councilman Ames moved to accept the lease as amended. Councilman Lennox seconded. The motion unanimously passed.

7. Adjournment

Mr. Ames moved to adjourn. Mr. Lennox seconded. The meeting was adjourned at 11:18 a.m.

Respectfully Submitted,

Karen D. Knox
Senior Administrative Assistant



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Public Facilities Committee
VIA: Jennifer Ray, *Special Projects and Planning Manager*
CC: Charles Cousins, *AICP, Director of Community Development*
FROM: Jayme Lopko, *AICP, Senior Planner*
DATE: February 22, 2017
SUBJECT: Fish Haul Creek Park MOU/Lease to Mitchelville Preservation Project

Recommendation: Staff recommends the Public Facilities Committee forward a recommendation that Town Council enter into a Memorandum of Understanding (MOU) and Lease with the Mitchelville Preservation Project, Inc., (MPP) for the property known as Fish Haul Creek Park.

At their February 7th meeting, Town Council requested that an MOU come forward with the Lease. Town Council sent both the Lease and MOU back to the Public Facilities Committee for review at their next meeting on February 27th.

At their January 23rd meeting, the Public Facilities Committee voted to forward the Lease of Fish Haul Creek Park to MPP to Town Council for approval with modifications. The Committee requested that the time period given for MPP to present a Master Plan and Business Plan be changed from 8 years to 2 years. The Committee also requested information about insurance options be added to the lease. Lastly the Committee requested information regarding the possibility of Fish Haul Creek Park being added to the National Park Service Reconstruction Era Monument.

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 MOU are as follows:

- The Town will continue to provide for all maintenance and capital costs.
- Mitchelville may charge user fees for the park after a fee schedule is approved by Town Council.
- Mitchelville is required to provide an annual independent audit report or audit review report to the Town.
- The initial term is just over 2 years (through the end of the Fiscal Year, June 30, 2019) with a renewal option.

Key components of the Lease are as follows:

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

Attachment C: Lease

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO. 2017- ____

PROPOSED ORDINANCE NO. 2017-03

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF A MEMORANDUM OF UNDERSTANDING AND 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 to 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 Memorandum of Understanding and Lease attached hereto as Exhibit “A”; and

WHEREAS, the Town Council for the Town has determined that it is in the best interests of the Town to enter into a Memorandum of Understanding and 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 Memorandum of Understanding.

- (a) The Mayor and/or Town Manager are hereby authorized to execute and deliver the Memorandum of Understanding 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 Memorandum of Understanding.

Section 2 - 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: _____

STATE OF SOUTH CAROLINA)
) MEMORANDUM OF UNDERSTANDING
COUNTY OF BEAUFORT)
)

This Memorandum of Understanding (the “Memorandum”) is entered into by and between the Town of Hilton Head Island (hereinafter referred to as the “Town,”) and the Mitchelville Preservation Project, Inc., a South Carolina not-for-profit corporation (hereinafter referred to as “Mitchelville”) regarding the Town assumption of responsibility for the accounting and payroll functions of the Mitchelville, and the Town’s assumption of responsibility and payment for janitorial, landscaping, general maintenance, and current capital costs at Fish Haul Creek Park.

1. **Governing Document.** It is the intent of the parties that this Memorandum shall not replace the Lease between the Town and Mitchelville regarding the use of Fish Haul Creek Park. This Memorandum shall only govern circumstances wherein the Town assumes the responsibility for janitorial, landscaping, general maintenance, and current capital costs at Fish Haul Creek Park during the term of this Memorandum. Any additional capital and operating costs will be the responsibility of Mitchelville.

2. **General.** The Town owns Fish Haul Creek Park and has entered into a Lease with Mitchelville for the creation of a historical and cultural museum at Fish Haul Creek Park. This Memorandum does not replace or terminate the Lease between the Town and Mitchelville pertaining to Fish Haul Creek Park.

3. **Maintenance.** During the term of this Memorandum, the Town shall, at its sole cost and expense:
 - a. Provide for the janitorial and landscaping services at Fish Haul Creek Park.

 - b. Provide for general maintenance of the park including driveway and parking area scraping and stocking of paper products in the restroom.

 - c. Continue the 10 year Capital Improvements planned for the park, including: roof replacement, partition replacement, light fixtures, plumbing fixtures, exterior/interior painting, structure repairs, pathway/sidewalk repairs, parking lot repairs, amenities/signage replacements, and landscape replacements.

4. **Programming.**
 - a. The Park shall be open daily unless otherwise listed, hours of operation shall be as follows: Monday through Sunday dawn to dusk.

 - b. Mitchelville may schedule programs or have facility rentals that occur outside normal operating hours.

5. Operations.

- a. Mitchelville shall submit an annual operating budget to the Town. The submission of this budget shall coincide with the Town's annual budget process. The Town Manager shall inform Mitchelville of the procedures to be followed in regard to the budgeting process.
- b. Other entities, public or private, may contribute to the annual operating budget of Mitchelville.
- c. It is understood by the Town and Mitchelville that the Town will contract for and pay all expenses related to janitorial, landscaping, general maintenance, and current capital costs at Fish Haul Creek Park.
- d. Mitchelville shall be entitled to charge User Fees for the use of the Park and its facilities to defray the cost of event set up, event cleanup, and supervision of the Park and facilities during events. Prior to charging any User Fees for the use of the Park and facilities, Mitchelville shall prepare a schedule of such fees and present the same to the Town for approval by the Town Council. Any changes to the approved schedule of fees shall be submitted to the Town Council for its approval.

6. Miscellaneous.

- a. Mitchelville shall provide the Town with current copies of all insurance policies of Mitchelville relating to their operations within thirty (30) days of signing of the Memorandum and copy the Town upon each renewal of said insurance policies.
- b. Mitchelville shall remain a not-for-profit independent entity whose policies and procedures shall be determined by its Executive Director and Board of Directors.
- c. Mitchelville shall provide the Town with an annual independent audit report or audit review report. An annual report shall be submitted no less than every third year.

7. Notices. All notices required under this Memorandum shall be deemed to have been given if in writing and

- a. delivered personally; or
- b. mailed first class, postage prepaid, to the address of record set forth below, in which case delivery shall be deemed to have occurred two calendar days after the date of postmark.

MITCHELVILLE PRESERVATION PROJECT, INC.

Executive Director
539 William Hilton Parkway, Suite 134
Hilton Head Island, SC 29928

TOWN OF HILTON HEAD ISLAND

Town Manager
One Town Center Court
Hilton Head Island, SC 29928

The address of record may be changed by written notice to the other party.

8. **Term.** The term of this Memorandum of Understanding shall be for a period of two (2) years from the date of execution, April 4, 2017. Prior to April 4, 2019, this Memorandum will be reviewed by the Town and Mitchelville. Changes may be made only with and by the mutual consent of both parties.
9. **Termination.** In addition to any other rights of termination set forth in this Memorandum, each party shall have the right to terminate this Memorandum, by written notice to the other party, if the other party is in default of any term or provision of this Memorandum, and the defaulting party fails to cure or correct such default within fourteen (14) days of notice thereof from the non-defaulting party. A party may elect to disregard a default for the period of time without waiving its right to declare a default at a subsequent time or upon reoccurrence of the default.

(SIGNATURE PAGES FOLLOW)

IN WITNESS WHEREOF, Mitchelville has caused this Agreement to be signed and sealed this _____ day of _____, 20_____.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

MITCHELVILLE PRESERVATION PROJECT, INC.

By: _____
Shirley Peterson
President, Board of Directors

Attest: _____

Print Name: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that Shirley Peterson and _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the Mitchelville Preservation Project, Inc.

Witness my hand and seal this _____ day of _____, 20_____.

Notary Public for South Carolina
My Commission Expires: _____

IN WITNESS WHEREOF, the Town has caused this Agreement to be signed and sealed this _____ day of _____, 20_____.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA

By: _____
David Bennett, Mayor

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGEMENT

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

Witness my hand and seal this _____ day of _____, 20_____.

Notary Public for South Carolina
My Commission Expires: _____

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

TABLE OF CONTENTS

1.1. The Property 2

1.2. Mitchelville Accepts the Property “As Is”3

1.3. The Property to Continue as a Public Park3

 (a) Certain Restrictions Permitted3

 (b) Special Events Permitted 4

1.4. Application of Laws and Other Matters 4

1.5. No Other Interest in Real Property Created..... 4

1.6. Rent..... 4

1.7. National Park Service Designation..... 4

2.1. Effective Date..... 4

3.1. Limited Obligation of the Town 4

3.2. Utilities and Other Services5

3.3. Mitchelville is Responsible for the Payment of all Expenses.....5

3.4. Indemnification and Hold Harmless5

4.1. Construction of Improvements or Facilities on the Property Prior to Approval of
Master Plan and Business Plan by Town Council5

4.2. The Master Plan 6

 (a) Amendments to the Master Plan7

4.3. The Business Plan7

4.4. Permitted Use 8

4.5. General Management 8

 (a) Determination of Policies 8

 (b) Financing..... 8

 (c) Improvement of Property 8

 (d) Compliance with Permitted Use 9

4.6. Financial Statements 9

- (a) Accounts Review 9
- 4.7. Other Improvements to the Property Permitted 9
- 4.8. Building Permits 9
 - (a) Contract Splitting Prohibited.....10
 - (b) Increases in Cost of Project.....10
- 4.9. Permits10
- 4.10. Mechanic’s or Other Liens Prohibited.....10
- 4.11. Maintenance of the Property and Compliance with Laws10
- 4.12. Rules, Regulations, and Restrictions10
 - (a) Maintenance of the Property and Improvements 11
 - (b) Storage of Hazardous Substances Prohibited 11
 - (c) Compliance with Laws 11
 - (d) Waste Dumping or Disposal Prohibited..... 11
 - (e) Waste Storage Prohibited 11
 - (f) Waste and Nuisances 12
 - (g) Compliance with Restrictive Covenants and Local Ordinances 12
- 4.13. Additional Rules 12
- 4.14. Town’s Waiver of Interest in Personal Property 12
- 5.1. Initial Term of This Lease..... 12
- 5.2. Renewal of Terms of Lease 13
- 5.3. Termination of this Lease 13
- 5.4. Ordinance Required..... 13
- 5.5. Termination on Failure of Conditions..... 13
- 6.1. Quiet Enjoyment..... 14
- 7.1. Required Property Insurance 14
- 7.2. Required Liability Insurance..... 14
- 7.3. Policy Form..... 14

- 7.4. Town May Obtain Insurance 15
- 7.5. Failure of Mitchelville to Obtain Insurance 15
- 7.6. Additional Insurance 15
- 8.1. Assignment Prohibited 15
- 8.2. Sublease of the Property 16
- 8.3. Other Encumbrances Prohibited..... 16
- 9.1. Notices 16
- 10.1. Events of Default Defined..... 17
 - (a) Failure to Observe Requirements 17
 - (b) Dissolution of Mitchelville..... 17
 - (c) Abandonment of the Property 17
 - (d) Use Inconsistent with this Lease or the Permitted Use 17
 - (e) Failure to Pay Amounts Due 17
 - (f) Failure to Submit the Master Plan..... 18
 - (g) Failure to Submit the Business Plan..... 18
- 10.2. Remedies on Default..... 18
- 10.3. No Remedy Exclusive 18
- 10.4. Waivers 18
- 10.5. Agreement to Pay Attorney’s Fees and Expenses 18
- 10.6. Discontinuance of Proceedings 19
- 11.1. Interest on Past Due Obligations..... 19
- 12.1. Binding Effect 19
- 12.2. Amendment, Changes, and Modifications 19
- 12.3. Severability 19
- 12.4. Execution in Counterparts..... 20
- 12.5. Applicable Law..... 20
- 12.6. Captions 20

12.7. Recording..... 20

12.8. No Agency 20

12.9. Plural/Singular 20

12.10. No Third Party Beneficiaries 20

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 1.3 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 1.3 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.

1.7. **National Park Service Designation:** The Town and Mitchelville acknowledge and agree that the Town and/or Mitchelville may seek and apply for the Property and/or Mitchelville's use thereon to become part of the National Park Service Reconstruction Era Monument (or similar designation). The Parties agree to cooperate and work in good faith to achieve this designation, including but not limited to executing any necessary easements, agreements or the like.

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 two (2) 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 4.2(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 two (2) 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 to 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 Required:** This Lease is contingent upon the adoption of an Ordinance by the Town authorizing the execution and delivery of the Lease.

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 two (2) 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 2-year deadline by adoption of an Ordinance prior to the 2-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. 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. **Town May Obtain Insurance:** In lieu of Mitchelville procuring and maintaining insurance required by this Article 7, the Town may, in its sole discretion at any time and from time to time with reasonable notice to Mitchelville, choose to procure and maintain all or any part of the insurance required by this Article 7, and pay any premiums therefor, in which event Mitchelville shall repay the Town all sums so paid by the Town within ten (10) days following the Town's written demand to Mitchelville for such payment.

7.5. **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.

7.6. **Additional Insurance:** Mitchelville may, but is not required to, obtain additional insurance beyond what is required by this Article 7, including but not limited to contents, business interruption, and abuse/molestation insurance.

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 two (2) 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 two (2) 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 is 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