



The Town of Hilton Head Island Public Facilities Committee Meeting

January 28, 2019

9:00 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:
 - November 26, 2018
 - Approval of Proposed 2019 Meeting Dates
4. **Unfinished Business**
5. **New Business**
 - Lease of Property Adjacent to Zion Chapel of Ease to Heritage Library.
 - Historic Mitchelville Freedom Park MOU Renewal & Lease Amendments.
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: November 26, 2018

Time: 9:00 A.M.

Members Present: Marc Grant, David Ames, Tom Lennox

Members Absent: None

Staff Present: Scott Liggett, Josh Gruber, Jennifer Lyle

Others Present: Gregory J. Creeden, *Palmetto Electric Cooperative, Inc.*

Media Present: None

1. Call to Order:

The meeting was called to order at 9:00 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: August 27, 2018 – Councilman Ames moved to approve. Councilman Lennox seconded. The minutes from the August 27, 2018 meeting were unanimously approved.

Approval of Proposed 2019 Meeting Dates: The Committee tabled this until the new Mayor makes a decision as to who will be on the Committee. We can still have the January 28, 2019 meeting, but going forward will wait to see if there are any changes.

4. Unfinished Business

None

5. New Business

- **Recommendation to grant Palmetto Electric Cooperative a Utility Easement on the Town's Ashmore Tract [PIN R510 008 000 0153 0000]**

Jennifer Lyle, Assistant Town Engineer, stated staff is recommending the Public Facilities Committee endorse a recommendation to Town Council that the Town grant Palmetto Electric Cooperative, Inc. (PECI) a permanent utility easement over and across the Town owned parcel of land known as the Ashmore Tract [PIN R510 008 000 0153 000.]

After a brief discussion, Councilman Lennox moved to approve as presented. Councilman Ames seconded. The motion passed unanimously.

6. Adjournment

Councilman Grant adjourned the meeting at 9:05 am.

Respectfully submitted,

Karen D. Knox
Senior Administrative Assistant

DRAFT

Town of Hilton Head Island, South Carolina

2019

**Public Facilities Committee
Meeting Dates**

Benjamin M. Racusin Council Chamber

**Fourth Monday of the Month
9:00 A.M.**

JANUARY 28

AUGUST 26

FEBRUARY 25

SEPTEMBER 23

MARCH 25

OCTOBER 28

APRIL 22

NOVEMBER 25

JUNE 24

DECEMBER 23

JULY 22

The May 27, 2019 Meeting is cancelled due to Memorial Day. Will be rescheduled, if needed.



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Public Facilities Committee
VIA: Shawn Colin, *AICP, Director of Community Development*
VIA: Jennifer Ray, *Planning and Special Projects Manager*
FROM: Emily Sparks, *Project Lead*
DATE: January 18, 2019
SUBJECT: Lease of property adjacent to Zion Chapel of Ease to Heritage Library

Recommendation: Staff recommends the Public Facilities Committee forward a recommendation to Town Council to approve the lease of the Town owned property adjacent to Zion Chapel of Ease to the Heritage Library Foundation (Heritage).

Summary: Heritage owns and maintains the Saint Luke's Parish Zion Chapel of Ease Cemetery at the intersection of Mathews Drive, William Hilton Parkway, and Folly Field Road. Heritage has proposed opening the Saint Luke's Parish Zion Chapel of Ease History Park (History Park) and is requesting that Town Council consider a long-term lease of the adjacent historic property owned by the Town to Heritage for construction of the History Park. Under the leasing arrangement, the property would operate as a public park.

Background: Heritage submitted a project description (Exhibit B) and a conceptual site plan (Exhibit C) to the Town of Hilton Head Island outlining the proposed scope of work. This leasing arrangement would enable Heritage to establish parking areas, a visitor pavilion with interpretive signage, a replica militia muster house, improvement of vehicular traffic ingress and egress, accessibility to Town of Hilton Head Island pathways, a wood dock/observation platform, and a viewing platform/overlook.

The addition of the History Park will promote and preserve a historic site, enhance access to and enjoyment of history, and highlight a unique cultural-heritage tourism asset while adding a centrally-located public site for educational outreach and guided reflection relative to the pre-Twentieth Century periods on the island.

Key components of the lease are as follows:

- The Property will remain open as a public park.
- The Lease is contingent upon the adoption of an Ordinance by the Town (Attachment A).
- The initial term is 45 years with a renewal option.

Attachment:

Attachment A: Ordinance (including Lease, Project Description, and Conceptual Site Plan)

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF A LEASE WITH THE HERITAGE LIBRARY FOUNDATION, 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. 2-3-30, 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 as Beaufort County R510 008 000 0017 0000 (“Property”); and

WHEREAS, the Town desires to lease the Property to Heritage Library Foundation, (“Heritage”), for the operation of a publicly-accessible history park in the Town of Hilton Head Island in accordance with that certain Lease attached hereto as Exhibit “A”; and

WHEREAS, on _____ 2019, 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 Heritage for the operation of a publicly-accessible history park 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 IT 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
_____, 2019.**

John McCann, Mayor

ATTEST:

Krista Wiedmeyer, Town Clerk

First Reading: _____

Second Reading: _____

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

Introduced by Council Member: _____

EXHIBIT A

A LONG TERM LEASE

BY AND BETWEEN

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

AND

HERITAGE LIBRARY FOUNDATION

DATED THIS _____ DAY OF _____, 2019

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

LONG TERM LEASE

This Long Term Lease, dated this ____ day of _____, 2019 (together with any amendments made in accordance herewith, hereinafter, the “Lease”), is made and entered into by and between The Town of Hilton Head Island, South Carolina (hereinafter, the “Town”), and the Heritage Library Foundation, (hereinafter, the “Heritage”).

WITNESSETH

WHEREAS, the Town is a body politic and a political subdivision of the State of South Carolina, existing as such under and by virtue of the Constitution, statutes, and laws of the State of South Carolina; and,

WHEREAS, Heritage is a nonprofit corporation, existing as such under and by virtue of the Constitution, statutes and laws of the State of South Carolina; and,

WHEREAS, under the authority of S. C. Code Ann. § 5-7-20 (Supp. 2010), and Section 2-3-30, *Code of the Town of Hilton Head Island* (1983), the Town is authorized to lease land belonging to the Town; and,

WHEREAS, on _____, 2019, the Town Council of the Town adopted Ordinance No. _____ authorizing the execution and delivery of this Lease; and

WHEREAS, on _____, 2019, the Board of Directors of Heritage, by resolution duly adopted, authorized the execution and delivery of this Lease;

NOW THEREFORE, for and in consideration of the sum of One and no/100 (\$1.00) Dollar paid by Heritage to the Town, and the full and faithful performance of the mutual promises, conditions, and covenants herein set forth, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Town and Heritage, the Parties hereto agree as follows:

ARTICLE 1

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

All that certain piece, parcel or lot of land containing 1.38 acre, more or less, and more particularly shown as “Marshes of Broad Creek, 42,409 Sq. Ft., 0.97 Ac.” on that certain plat of survey entitled “A Boundary Plat of Tax Parcel 510-8-17, 1.38 Acres, Located on Matthews Drive & U.S. Highway 278” dated July 31, 1998, and prepared by Connor and Associates, Inc. Matthew M. Crawford, South Carolina Registered Land Surveyor Number 9756, which plat has been recorded in the Registry of Deeds for Beaufort County, South Carolina in Plat Book 76 at Page 29.

The parcel described above is known as Beaufort County R510 008 000 0017 0000, and is referred to herein as the “Property”.

1.2. **Heritage Accepts the Property “As Is”:** Heritage 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 Heritage 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. Heritage 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. **Application of Laws and Other Matters:** This Lease is made by the Town and accepted by Heritage 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.

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

1.5. **Rent:** Heritage 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 Heritage.

ARTICLE 3

3.1. **Limited Obligation of the Town:** The Town shall not be required to furnish, and has no obligation to furnish, to Heritage 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:** Heritage 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 Heritage.

3.3. **Heritage is Responsible for the Payment of all Expenses:** Heritage 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 Heritage’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:** Heritage 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 Heritage and Heritage’s operation thereon, or arising from any act or omission of Heritage with respect to the exercise of Heritage’s rights hereunder; provided, however, in no event will Heritage 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:**

- (a) Any proposed improvements or facilities on the Property must be substantially in furtherance of the operation of a publicly-accessible history park on the Property as depicted in the Conceptual Site Plan (dated March 15, 2018) attached hereto as Exhibit C.
- (b) Any proposed improvements or facilities on the Property shall, in addition to approval by the Town Council or its designated agents, 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.

4.2. **Permitted Use:** Heritage may use the Property for the following purposes (hereinafter, each a “Permitted Use”): operation as a public park; and establishing parking areas, a visitor pavilion with interpretive signage, a replica militia muster house, improvement of vehicular traffic ingress and egress, accessibility to Town of Hilton Head Island pathways, a wood dock/observation platform, a viewing platform/overlook, and any manner consistent with the Project Description entitled “Saint Luke’s Parish Zion Chapel of Ease History Park Project Description” attached hereto as Exhibit B approved by the Town Council on _____, 2019.

4.3. **General Management:** Heritage 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, Heritage 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 Heritage, 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 Heritage has or may acquire;
- (c) **Improvement of Property:** To erect, establish, maintain, modify, build, construct, or remove trails, paths, walkways, roadways, fences, docks, boardwalks, observation centers, decks, parking areas, drainage structures, visitor pavilions, historic replicas, and other such things in furtherance of the use and operation of the Property by Heritage;
- (d) **Compliance with Permitted Use:** In general, to act in accordance with the Permitted Use.

4.4. **Financial Statements:** Heritage shall cause a financial statement to be prepared each year at the conclusion of Heritage's fiscal year by an entity independent of, and unconnected to, Heritage. Heritage's fiscal year ends on December 31 of each calendar year. Heritage 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, Heritage shall make its financial books and records available to the Town for Review. The Town shall give Heritage written notice of its intention to review Heritage's financial books and records. Heritage shall make its financial books and records available for review by the Town within twenty (20) days of the Town's written notice.

4.5. **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, Heritage shall have the right to make such improvements as are approved by the Town Council, at the sole cost and expense of Heritage.

4.6. **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, Heritage 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 Heritage 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 material men, but only in the event of any failure by Heritage to complete the structure described in the application for the building permit or to pay contractors, laborers, or material men.

- (a) **Contract Splitting Prohibited:** Heritage 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 Heritage 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, Heritage 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. The Town may waive this requirement at its discretion by written acknowledgement.

4.7. **Permits:** It shall be the sole responsibility of Heritage 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 Heritage'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 Heritage 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.

4.8. **Mechanic's or Other Liens Prohibited:** Heritage 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 Heritage. If any such lien is filed, Heritage 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.

4.9. **Maintenance of the Property and Compliance with Laws:** During the term of this Lease, Heritage 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.

4.10. **Rules, Regulations, and Restrictions:** Heritage 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, Heritage 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, Heritage shall, at its sole cost and expense, cause the removal and cleanup of any hazardous substances allowed to contaminate the Property by Heritage;

- (c) **Compliance with Laws:** Comply with all governmental rules, regulations, ordinances, statutes, and laws now or hereafter in effect pertaining to the Property or Heritage'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.
- (h) **Sustainability:** Develop strategies that are consistent with the Town's published and defined goals on sustainability. In so doing, consideration shall be given to balancing environmental, economic and social impacts.

4.11. **Additional Rules:** In addition to the foregoing, Heritage 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 Heritage's use and enjoyment of the Property.

4.12. **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 Heritage; and, said property shall, at all times, remain the property of Heritage, such entity that has loaned the property to Heritage, or such entity that has leased the property the Heritage. 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 Heritage.

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 _____ 2019, and ending on _____, 2064 (the "Initial Lease Term"), provided that all terms and conditions of this Lease shall have been complied with by Heritage, 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 _____, 2064 (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 4 and 5.4 do not occur before December 31, 2024, then this Lease shall automatically

terminate, and neither Party hereto shall have any further rights or obligations hereunder.

ARTICLE 6

6.1. **Quiet Enjoyment:** The Town hereby covenants that Heritage 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 Heritage during the Lease Term, so long as the Initial Lease Term or any Renewal Lease Term shall be in effect and all obligations of Heritage hereunder, have been fulfilled.

ARTICLE 7

7.1. **Required Property Insurance:** During the Initial Lease Term and any Renewal Lease Term, Heritage 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. Heritage 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, Heritage 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 Heritage 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 Heritage. In addition to all other coverages, and if available, such insurance policy or policies shall specifically insure the performance by Heritage 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, Heritage, 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, Heritage, 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 Heritage 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 named 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 Heritage. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Heritage 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 Heritage to Obtain Insurance:** If Heritage 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 Heritage 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 Heritage for such payment.

ARTICLE 8

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

8.2. **Sublease of the Property:** Heritage 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 Heritage 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 Heritage from contracting with subcontractors, licensees, vendors, or others in furtherance of the Permitted Use.

8.3. **Other Encumbrances Prohibited:** Heritage 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 Heritage or others, as the case may be, any easements, licenses, or rights-of-way that are necessary for Heritage 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 Heritage 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 Law Firm, LLC
18 Executive Park Road, Building 1
PO Drawer 8008
Hilton Head Island, SC 29938-8008

To Heritage: Heritage Library Foundation
Lou Benfante, President
2 Corpus Christi
The Professional Building, Suite 100
Hilton Head Island, SC 29928

With copy to: Benjamin T. Shelton
Finger, Melnick & Brooks, P.A.
35 Hospital Center Commons
Suite 200
Hilton Head Island, SC 29926

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 Heritage 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 Heritage:** The dissolution, termination, or liquidation of Heritage, 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 Heritage or against Heritage, or any change in the tax-exempt, not-for-profit status of Heritage.
- (c) **Abandonment of the Property:** The abandonment of the Property by Heritage, or the discontinuance of operations at the Property by Heritage.
- (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 Conceptual Site Plan (dated March 15, 2018), 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 Heritage under any provision 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 Heritage to vacate the Property, and may thereafter evict Heritage 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 Heritage 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 Heritage shall be restored respectively to their several positions and rights hereunder, and all rights, obligations, remedies, and powers of the Town and Heritage 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 Heritage 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 Heritage 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 Heritage, 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 Heritage 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 Heritage under this Lease.

ARTICLE 12

12.1. **Binding Effect:** This Lease shall inure to the benefit of and shall be binding upon Heritage 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 Heritage other than that which is expressly stated herein. No employee, volunteer, or agent of Heritage 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 Heritage 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.

(SIGNATURE PAGE FOLLOWS)

In Witness whereof, the Parties hereto, by and through their duly authorized officers, have set their hands and seals as of this _____ Day of _____, 2019.

WITNESSES:

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA

By: _____ (L.S.)
John McCann, Mayor

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

WITNESSES:

HERITAGE LIBRARY FOUNDATION

By: _____ (L.S.)
Lou Benfante, President

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

EXHIBIT B

HERITAGE LIBRARY

Saint Luke's Parish Zion Chapel of Ease History Park Project Description

Foreword

This plan, and the estimates associated with it, will confine itself to existing Zion Chapel of Ease land owned by the Heritage Library at the present time. The potential exists, given the cooperation and support of the Town of Hilton Head Island (TOHHI), for an expansion of the park and its facilities to adjacent historic property owned by the town. Any suggestions made in this proposal concerning boundaries or facilities beyond those on Heritage Library-owned land should be recognized as outside the scope of work anticipated or described in the first two phases of this proposal.

Rationale

The real connection between the site of the proposed St Luke's Parish Zion Chapel of Ease History Park (SLP ZCOEHP) and the modern St Luke's Church is both historical and contemporary. The Zion Chapel of Ease (ZCOE) of Hilton Head was the first satellite chapel built in St Luke's Parish after St Luke's Anglican Church was erected in Okatie in 1776.

Originally proposed around 1780 by Hilton Head planters Captain John Stoney and Isaac Fripp, the construction of the ZCOE began in 1786 following the end of the Revolutionary War and was completed in 1788. The formal consecration of the Chapel and its cemetery occurred in 1833 and occasioned the ordering of a silver communion service from a well-known London silversmith (Barnard Brothers) by the parishoners. The communion service was received the following year, including two chalices with the inscription, "Zion Chapel, Hilton Head, 1834." Church services were conducted there continuously until the Union invaded Hilton Head Island in November, 1861, at which time the chapel fell into disuse until the departure of the occupying Federal forces in September 1868. When the Reverend John Jenkins Stoney returned to Hilton Head Island to resume services at the chapel after the departure of the Union forces, he found the structure and its contents had disappeared, including the silver communion service.

Sometime prior to 1963, a man who purchased two silver goblets from a Philadelphia antique shop as a wedding present for his daughter, discovered they contained the "Zion Chapel, Hilton Head, 1834" inscription as he was cleaning and polishing them. On a 1963 trip south, the man detoured into Beaufort for the purpose of returning the chalices to the St Luke's Parish office there. The following year, in time for its inaugural communion services on Christmas Eve 1964, the chalices were returned to the new St Luke's Church on Pope Avenue in Hilton Head and have been used continuously in its communion services there from that time until the present day.

The proposed name of the Saint Luke's Parish Zion Chapel of Ease History Park is intended to both symbolically re-establish the historical connection and to conceptually re-open the potential for a contemporary utilization of the site for special ceremonial observances by St Luke's Church.

Ancillary Benefits

The SLP ZCOEHP will accrue to the direct benefit of the TOHHI as an enhancement of the value of its historic sites. It will feature, in addition to the Baynard Mausoleum which is the oldest standing structure on Hilton Head Island, the Island's only publicly-accessible site with visible vestiges linking it to the Revolutionary War period. The only other known historic site with ties to the Revolution is the Stoney-Baynard Ruins which lies within the confines of Sea Pines Plantation. As our country nears the 250th anniversary celebration of the 1776 American Revolution (2026-2033), historic sites relating to the Revolutionary War period will assume a significantly more influential and prominent position as drivers of cultural-heritage tourism.

Additionally, the site is the location of the only communal cemetery for whites on the Island prior to the opening of Six Oaks Cemetery in Sea Pines. Stories of Hilton Head planters and ZCOE parishoners, notably the Baynard, Kirk and Stoney families, members of whose remains are or were interred in the cemetery, can be tied constructively to the story of slavery and the African-American experience of the Plantation Era, as well as to indigo and cotton cultivation on Hilton Head. This interpretive connection will also contribute to the site's increasing relevance as a precursor to the Reconstruction period which will be promoted via development of the National Monument to Reconstruction in Beaufort County. It is also likely that the increasing focus on the Mitchelville site will contribute to the attractiveness of the SLP ZCOEHP site as part of the overall story of Hilton Head Island history prior to the 20th Century.

Therefore, the proposed SLP ZCOEHP will better enable the town to capitalize in a significant way on the upsurge in cultural-heritage tourism due to its adding the Revolutionary War period to the public portfolio of TOHHI historic sites, and it will also provide the town with a unique and centrally-located public site for educational outreach and guided reflection relative to the pre-Twentieth Century periods in our history.

Project Description

The creation of the SLP ZCOEHP will include the restoration of existing facilities (Baynard Mausoleum, Mausoleum fencing and perimeter walkway, Kirk plot fencing, and grave markers), the installation of new facilities (Perimeter fencing, video security, lighting, water supply, restrooms and kiosks with interpretive signage), and the re-creation of some previously existing facilities (exterior and interior doors on the Mausoleum, a replica Chapel of Ease on or near its original site, and chapel interior fixtures)

Explicitly outside the above-described scope, and dependent on TOHHI cooperation and support and on the utilization of adjacent town-owned land(s), the following may be able to be additions to and enhancements of the SLP ZCOEHP plans:

- a) Additional parking areas

- b) Main visitor pavilion with interpretive signage
- c) Replica Militia Muster House in corner parcel
- d) Improvement of vehicular traffic ingress and egress and accessibility to TOHHI pathways
- e) Wooden dock/observation platform with Broad Creek Headwaters overlook and interpretive signage

Project Sequencing

It is anticipated that the project will be completed and funded in phases. While the following phases and work elements are presented in sequential fashion, certain work can be completed along parallel timelines provided the funding has been secured. Phase I will focus on the Baynard Mausoleum restoration and related elements, work for which funding has already been secured and for which estimates have been gathered. Phase II will include elements which are focused on Heritage Library-owned land site restoration and protection, work for which estimates have not yet been gathered and for which funding must yet be secured. This phase of work will be heavily dependent on grants. Phases III and IV will contain elements deemed highly advantageous, but not absolutely necessary, for the operation of the site and for which estimates and funding must be secured. Certain of the Phase III elements may also be approached as part of any expansion planning and dependent to one degree or another on TOHHI cooperation.

Already Completed

- Engineering Study
- Electrical Service
- Learning Center (benches, platform)

Phase I

- 1) Mausoleum restoration - *UNDERWAY*
 - a. Roof and structural restoration
 - b. Mausoleum perimeter fencing restoration
 - c. Perimeter walkway excavation and restoration
- 2) Grave marker restoration (may include excavation of horizontal markers covered by dirt)
- 3) Mausoleum doors replacement
- 4) Mausoleum exterior sandstone treatment to retard further degradation (if possible)

Phase II

- 5) Additional archaeology studies
- 6) Cemetery grounds Perimeter fencing
- 7) Kirk plot fencing restoration
- 8) Water supply and Sewer connection
- 9) Landscaping and Pathway installation
- 10) Security (video, motion-activated, infra-red)
- 11) Gate access-monitoring mechanism
- 12) Replica Chapel
- 13) Benches, altar and internal fixtures
- 14) Vestibule Wall replacement and Crypt Cover (clear glass or plexiglass)

- 15) Interpretive signage (6 locations)
 - 16) Covered Kiosk construction
 - 17) Lighting
 - 18) Restrooms
-

Phase III (Dependent on TOHHI Cooperation and Support)

- 19) Drive-through ingress (from Mathews Dr) and egress roadway and bicycle lane
- 20) Pavilion shelter-Welcome kiosk with interpretive signage (Plantation period and Plantation life information)
- 21) Increased Parking Area(s)
- 22) Replica Militia Muster House with interpretive sign

Phase IV (Dependent on TOHHI Cooperation and Support)

- 23) Boardwalk, Dock and Overlook/Observation Platform with interpretive signage (Broad Creek history and Plantations)

EXHIBIT C

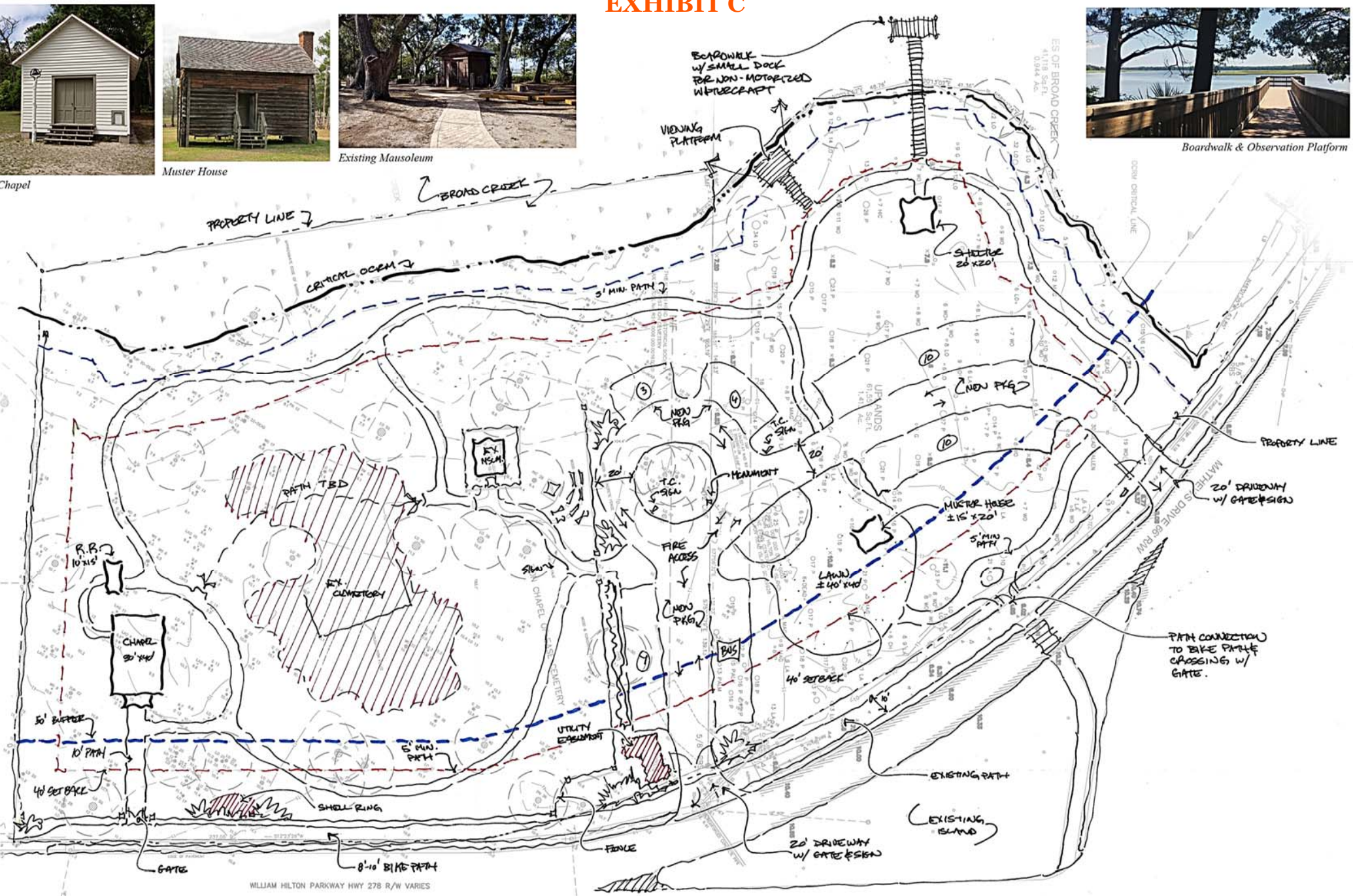


Chapel

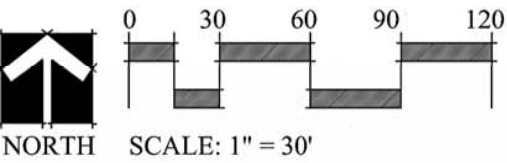
Muster House

Existing Mausoleum

Boardwalk & Observation Platform



WILLIAM HILTON PARKWAY HWY 278 R/W VARIES



CONCEPTUAL SITE PLAN
FOR
THE ZION CHAPEL OF EASE
PREPARED FOR
HERITAGE LIBRARY FOUNDATION
HILTON HEAD ISLAND, SC
MARCH 15, 2018



Wood+Partners Inc. WPI
Landscape Architects
Land Planners

PO Box 23949 ■ Hilton Head Island, SC 29925
843.681.6618 ■ Fax 843.681.7086 ■ www.woodandpartners.com



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Public Facilities Committee
VIA: Shawn Colin, *AICP, Director of Community Development*
VIA: Jennifer Ray, *ASLA, Planning & Special Projects Manager*
FROM: Jayme Lopko, *AICP, Senior Planner*
DATE: January 18, 2019
SUBJECT: Historic Mitchelville Freedom Park MOU Renewal & Lease Amendments

Recommendation: Staff recommends the Public Facilities Committee forward a recommendation to Town Council to renew the Memorandum of Understanding (MOU) related to Historic Mitchelville Freedom Park for an additional two (2) years and approve amendments to the lease of Historic Mitchelville Freedom Park to the Mitchelville Preservation Project, Inc., (MPP).

Summary: The approved MOU related to the former Fish Haul Creek Park or Historic Mitchelville Freedom Park is expiring and requires review by the Town and Mitchelville prior to the expiration in April 2019. Approval of the updated MOU will reflect the approved park name change and will extend the term of the MOU, which is set to expire, for an additional 2 years. Approval of the updated lease will correctly reflect the approved park name change, will provide Mitchelville with more flexibility regarding events, and will extend the deadline for approval of their Business Plan to coincide with approval of the Master Plan, both of which are currently underway. To address these issues, an updated MOU and amended lease have been prepared to bring the information up-to-date.

Background: On April 18, 2017, Town Council voted to approve a 2-year MOU detailing capital improvement and maintenance responsibilities and a lease of Fish Haul Creek Park to MPP. The current lease has a requirement for MPP to submit their Business Plan by April 18, 2019 and the current MOU will expire on April 4, 2019.

Beaufort County has allocated \$250,000 and hired WLA as a consultant to draft a Master Plan and Business Plan for the MPP. The timeframe for completion of this project is Fall/Winter of 2019 and therefore will not meet the April 18, 2019 deadline for approval of the Business Plan.

On December 5, 2017, Town Council approved changing the name of the park from Fish Haul Creek Park to Historic Mitchelville Freedom Park. Both the MOU and lease have been updated to reflect this name change.

The specific updates to the MOU and amendments to the lease are described below. The revised MOU and lease are attached with newly added language illustrated with double underline and deleted language illustrated with ~~striketrough~~.

Proposed updates to the MOU are as follows:

- The name of the park has changed from “Fish Haul Creek Park” to “Historic Mitchelville Freedom Park”.
- The term has been renewed for another 2 year period, expiring March 19, 2021.

Proposed amendments to the lease are as follows:

- The name of the park has changed from “Fish Haul Creek Park” to “Historic Mitchelville Freedom Park”.
- “Special events” have been changed to “events” to remove minimum size requirements associate with special events per the Municipal Code. Closure of the park for an event must be approved by the Town Manager or his designee.
- The time required for approval of the Business Plan has been changed from 2 years to 4 years, consistent with the time required for approval of the Master Plan.

Attachment:

Attachment A: Ordinance (including Exhibit A - Memorandum of Understanding and Exhibit B - Lease)

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF AN UPDATED MEMORANDUM OF UNDERSTANDING AND AMENDED 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 “Historic Mitchelville Freedom Park” (“Property”); and

WHEREAS, on April 18, 2017 the Town adopted an ordinance, which entered into a Memorandum of Understanding and Lease with 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 Exhibits “A” and “B”; and

WHEREAS, the Town has determined that it is in the best interests of the Town to provide for the preservation of Historic Mitchelville Freedom Park, and for the utilization of the Park as a cultural and historical museum; and

WHEREAS, on January 28, 2019, the Public Facilities Committee met and _____; and

WHEREAS, the Town Council of the Town is authorized to enter into leases of Town-owned land under the authority of S.C. Code Ann. Section 5-7-40 (Supp. 2010) and Section 2-3-30 and Section 2-7-20, *Code of The Town of Hilton Head Island*, South Carolina (1983, as amended); and

WHEREAS, the Town Council for the Town has determined that it is in the best interests of the Town to authorize the execution and delivery of an updated Memorandum of Understanding and amended Lease for Historic Mitchelville Freedom Park, which is described and attached hereto as Exhibits “A” and “B”.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA; AND IT 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 amended 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 amended 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
_____, 2019.**

John McCann, Mayor

ATTEST:

Krista Wiedmeyer, Town Clerk

First Reading: _____

Second Reading: _____

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

Introduced by Council Member: _____

Exhibit A

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’s assumption of responsibility and payment for janitorial, landscaping, general maintenance, and current capital costs at Historic Mitchelville Freedom Park ~~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 Historic Mitchelville Freedom Park ~~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 Historic Mitchelville Freedom Park ~~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 Historic Mitchelville Freedom Park ~~Fish Haul Creek Park~~ and has entered into a Lease with Mitchelville for the creation of a historical and cultural museum at Historic Mitchelville Freedom Park ~~Fish Haul Creek Park~~. This Memorandum does not replace or terminate the Lease between the Town and Mitchelville pertaining to Historic Mitchelville Freedom Park ~~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 Historic Mitchelville Freedom Park ~~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.

Exhibit A

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. Other entities, public or private, may contribute to the annual operating budget of Mitchelville.
- b. 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 Historic Mitchelville Freedom Park ~~Fish-Haul Creek Park~~. Any new capital projects would be at the sole cost and expense of Mitchelville.
- c. 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. Financial Statements:
 - i. 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.

Exhibit A

- ii. 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.
 - iii. Mitchelville shall provide the Town with an annual independent audit report or review report prepared by a Certified Public Accountant (CPA) acceptable to the Town. An annual report shall be submitted no less than every third year.
 - iv. 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.
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, March 19, 2019 ~~April 4, 2017~~. Prior to March 19, 2021 ~~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.

Exhibit A

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)

Exhibit A

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: _____

Exhibit B

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~~9~~

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

LONG TERM LEASE

This Long Term Lease, dated this ____ day of _____, 2019~~7~~
(together with any amendments made in accordance herewith, hereinafter, the “Lease”),
is amended ~~made~~ and entered into by and between The Town of Hilton Head Island,
South Carolina (hereinafter, the “Town”), and the Mitchelville Preservation Project, Inc.,
(hereinafter, the “Mitchelville”).

WITNESSETH

WHEREAS, the Town is a body politic and a political subdivision of the State of
South Carolina, existing as such under and by virtue of the Constitution, statutes, and
laws of the State of South Carolina; and,

WHEREAS, Mitchelville is a nonprofit corporation, existing as such under and by
virtue of the Constitution, statutes and laws of the State of South Carolina; and,

WHEREAS, under the authority of S. C. Code Ann. § 5-7-20 (Supp. 2010), and
Section 2-3-30, *Code of the Town of Hilton Head Island* (1983), the Town is authorized
to lease land belonging to the Town; and,

WHEREAS, on September 7, 2010, the Town authorized the negotiation of a long
term lease of Town owned land known as Historic Mitchelville Freedom Park ~~Fish Haul
Creek Park~~ to Mitchelville; and

WHEREAS, on April 18, 2017, the Town Council of the Town adopted Ordinance
No. 2017-04 authorizing the execution and delivery of this Lease; and

WHEREAS, on January 12, 2017, the Board of Directors of Mitchelville, by
resolution duly adopted, authorized the execution and delivery of this Lease;

WHEREAS, on _____, the Town Council of the Town adopted
Ordinance No. _____ authorizing the execution and delivery of this amended
Lease; and

NOW THEREFORE, for and in consideration of the sum of One and no/100
(\$1.00) Dollar paid by Mitchelville to the Town, and the full and faithful performance of
the mutual promises, conditions, and covenants herein set forth, and other good and

Exhibit B

valuable consideration, the receipt and sufficiency of which is acknowledged by the Town and Mitchelville, the Parties hereto agree as follows:

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.

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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, previously referred to as Fish Haul Creek Park, are known generally as "Historic Mitchelville Freedom Park ~~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.

Exhibit B

- (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, a~~ Access to the Property may be restricted by Mitchelville to those persons paying the applicable charge or admission fee with approval by the Town Manager or his designee.

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.

Exhibit B

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:**

Exhibit B

- (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-

Exhibit B

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 four (4) 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

Exhibit B

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 four (4) ~~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,

Exhibit B

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:**

- (a) 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.
- (b) 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.
- (c) Mitchelville shall provide the Town with an annual independent audit report or review report prepared by a Certified Public Accountant (CA) acceptable to the Town. An annual report shall be submitted no less than every third year.
- (a) 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.

Exhibit B

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.

Exhibit B

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

Exhibit B

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.
- (h) **Sustainability:** Develop strategies that are consistent with the Town's published and defined goals on sustainability. In so doing, consideration shall be given to balancing environmental, economic and social impacts.

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;

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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 April 18, 2017, and ending on April 18, 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 April 18, 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.

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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 condition stated in Article 5.4 does 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) is not approved by Town Council for the Town within four (4) years after the Effective Date of this Lease or Business Plan (described above in Article 4.3) is not approved by Town Council for the Town within four (4) ~~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 ~~24~~-year deadline by adoption of an Ordinance prior to the ~~24~~-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

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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

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and maintain all or any part of the insurance required by this Article 7, and pay any premiums therefor, in which even 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 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

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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
P.O. Box 21758
Hilton Head Island, SC 29925

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.

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- (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 four (4) ~~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 four (4) ~~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,

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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

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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

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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.

(SIGNATURE PAGES FOLLOW)

Exhibit B

In Witness whereof, the Parties hereto, by and through their duly authorized officers, have set their hands and seals as of this _____ Day of _____, 20179.

WITNESSES:

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA

By: _____ (L.S.)
John McCann ~~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