



**County Council of  
Beaufort County  
County Council Meeting**

**Chairman**

Joseph F. Passiment, JR.

**Vice Chairman**

D. Paul Sommerville

**Council Members**

Michael E. Covert

Gerald Dawson

Brian E. Flewelling

York Glover, SR.

Chris Hervochon

Alice G. Howard

Mark Lawson

Lawrence P. McElynn

Stu Rodman

**County Administrator**

Ashley M. Jacobs

**Clerk to Council**

Sarah W. Brock

**Administration Building**

Robert Smalls Complex

100 Ribaut Road

**Contact**

Post Office Drawer 1228

Beaufort, South Carolina 29901-1228

(843) 255-2180

[www.beaufortcountysc.gov](http://www.beaufortcountysc.gov)

# County Council Agenda

Monday, April 27, 2020 at 6:00 PM

[This meeting is being held virtually in accordance with Beaufort County Resolution 2020-05]

THIS MEETING WILL CLOSED TO THE PUBLIC. CITIZEN COMMENTS AND PUBLIC HEARING COMMENTS WILL BE ACCEPTED IN WRITING VIA EMAIL TO THE CLERK TO COUNCIL AT SBROCK@BCGOV.NET OR PO DRAWER 1228, BEAUFORT SC 29901. CITIZENS MAY ALSO COMMENT DURING THE MEETING THROUGH FACEBOOK LIVE

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE AND INVOCATION – Vice-Chair Sommerville
3. APPROVAL OF AGENDA
4. APPROVAL OF MINUTES – March 9<sup>th</sup> and 16<sup>th</sup>
5. CHAIRMAN'S MINUTE

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## CITIZEN COMMENTS

6. CITIZEN COMMENT (Every member of the public who is recognized to speak shall limit comments to three minutes - Citizens may email sbrock@bcgov.net, or comment on our Facebook Live stream to participate in Citizen Comment)

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## COMMITTEE REPORTS

7. LIAISON AND COMMITTEE REPORTS

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## TIME SENSITIVE ITEMS

8. First Reading of an Ordinance authorizing the County Administrator to enter into lease agreements with the current tenants occupying property acquired due to the expansion project at the Hilton Head Island Airport
9. Consideration of Volaire Aviation Consulting Agreement for Service Development (ASD) consulting as well as Marketing consulting

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## CONSENT AGENDA

10. Consent Agenda (page 3)

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## ACTION ITEMS

11. First Reading of a Stormwater Ordinance that would include the exemption of private roadways that are not shown as a separate parcel of land but are used by more than one property owner to access their property and update the ordinance to provide clarification and reflect organizational changes.

- [12.](#) Consideration of a Resolution authorizing the County Administrator to execute the necessary documents for the purchase of certain development rights on approx. 227 acres of real property known as tax map serial numbers TMS# R300 035 000 0138 0000, R300 035 000 0139 0000, R300 035 000 0140 0000, R300 035 000 0141 0000, R300 035 000 0142 0000, R300 035 000 0143 0000, R300 035 000 0144 0000, R300 035 000 0145 0000, R300 035 000 0146 0000, R300 035 000 0147 0000, R300 036 000 0001 0000 (excluding marsh), R300 036 000 0066 0000, R300 036 000 0067 0000, R300 036 000 0068 0000, R300 036 000 0069 0000, R300 036 000 0070 0000, R300 036 000 0071 0000, R300 036 000 0072 0000, R300 036 000 0075 0000, R300 036 000 0076 0000 and R300 036 000 0077 0000 and also known as Longwood Drive.
  - [13.](#) Public Hearing and Second Reading of an Ordinance regarding a Local Option Sale Tax Referendum Ordinance
  - [14.](#) Public Hearing and Third Reading of an Ordinance authorizing the County Administrator to Execute the Necessary Documents for the purchase of approximately 12 Acres of Real Property known as the Port Royal Island Battlefield.
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### **BOARDS AND COMMISSIONS**

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15. Discussion of appointment to the Beaufort Housing Authority
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### **CITIZEN COMMENTS**

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16. CITIZEN COMMENT - (Every member of the public who is recognized to speak shall limit comments to three minutes - Citizens may email sbrock@bcgov.net, or comment on our Facebook Live stream to participate in Citizen Comment)
17. ADJOURNMENT

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**CONSENT AGENDA**

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- [1.](#) Third and Final Reading of an Ordinance amending Beaufort County Ordinance Number 1975-2, EMS Service Fees
  - [2.](#) Third and Final Reading of an Ordinance authorizing the conveyance of real property associated with boundary of 50' Right of Way known as Fiddler Drive located on Lady's Island
  - [3.](#) Third and Final Reading of an Ordinance authorizing the County Administrator to execute a Facility Use Agreement encumbering property owned by Beaufort County known as Fort Fremont Preserve
  - [4.](#) Third and Final Reading of an Ordinance authorizing the County Administrator to execute the Widgeon Point Preserve 2020 Joint Ownership and Operating Agreement with the Beaufort County Open Land Trust
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**END OF CONSENT AGENDA**

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## BEAUFORT COUNTY COUNCIL

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### Agenda Item Summary

Item Title:

APPROVAL OF MINUTES

Council Committee:

Meeting Date:

APRIL 27, 2020

Committee Presenter (Name and Title):

Issues for Consideration:

Approval of the March 9th and March 16th Council Meeting Minutes.

Points to Consider:

Funding & Liability Factors:

None.

Council Options:

Approve, Modify or Reject

Recommendation:

Approve



**County Council of  
Beaufort County**  
**County Council Meeting**

**Chairman**

Stu Rodman

**Vice Chairman**

D. Paul Sommerville

**Council Members**

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Gerald Dawson  
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# County Council Minutes

**Monday, March 09, 2020 at 6:00 PM**

Large Meeting Room, Hilton Head Island Branch Library  
11 Beach City Road, Hilton Head Island

**PRESENT**

Chairman Stu Rodman  
Vice Chairman D. Paul Sommerville  
Council Member Michael Covert  
Council Member York Glover  
Council Member Chris Hervochon  
Council Member Joseph F. Passiment  
Council Member Alice Howard  
Council Member Gerald Dawson  
Council Member Brian Flewelling  
Council Member Mark Lawson  
Council Member Lawrence McElynn

**CALL TO ORDER**

Chairman Rodman Called the meeting to order at 6:00PM

**PLEDGE OF ALLEGIANCE AND INVOCATION**

Chairman Rodman led Council in the Pledge of Allegiance followed by an invocation.

**FOIA COMPLIANCE**

Sarah W. Brock, Clerk to Council, confirmed that public notification of the meeting was published, posted, and distributed in compliance with the South Carolina Freedom of Information Act.

**APPROVAL OF AGENDA**

The Chairman stated he believed council had come to a point where they needed to hold elections again and that he would address that topic at the end of the meeting then asked for a motion to approve the agenda.

**Motion:** It was moved by Council Member Flewelling, seconded by Council Member Howard to approve the agenda. The Vote - Voting Yea: Council Member Passiment, Council Member Sommerville, Council Member Covert, Council Member Glover, Council Member Hervochon, Council Member Rodman, Council Member Howard, Council Member McElynn, Council Member Flewelling, and Council Member Dawson. The Motion Passed 10:0

**APPROVAL OF MINUTES**

**Motion:** It was moved by Council Member Passiment, seconded by Council Member Flewelling to approve the Minutes. The Vote - Voting Yea: Council Member Passiment, Council Member Sommerville, Council Member Covert,

Council Member Glover, Council Member Hervochon, Council Member Rodman, Council Member Howard, Council Member McElynn, Council Member Flewelling, and Council Member Dawson. Council Member Lawson was not in attendance at this time. The Motion Passed 10:0

### **CITIZEN COMMENTS**

Frank Gibson, Beaufort County Resident, stated he supports the HTAX for funding the purchase of the Battlefield in Port Royal.

Sandy Thompson, Beaufort County Resident, spoke in support of the Loud Vehicle Noise Ordinance.

Mike Thompson, Beaufort County Resident, spoke in support of the Loud Vehicle Noise Ordinance and begged Council to take action. He also stated how disruptive it is in their home at all hours of the day and night.

### **LIAISON AND COMMITTEE REPORTS**

Council discussed the upcoming Budget Work Session scheduled for March 26th and decided to move it to 9:00am on Monday, March 30th.

### **CONSENT AGENDA**

1. **Approval of two (2) Olsen Tract Lease Agreements for Grazing Fields and Dwelling Unit**
2. **Approval of the Recommendations Report from the Communications and Transparency Committee**
3. **Approval of a Resolution supporting certifications and assurances to the SCDOT on behalf of the DSN Department**
4. **First Reading of an Ordinance amending the Beaufort County Code of Ordinances, Section 74-64, Adoption of Building Codes**
5. **Reappointment of Wayne Corley, Bruce Doneff, Kenneth Joy, & Stephen Kock to Board of Assessment Appeals**
6. **First Reading of an Ordinance to appropriate grand awards to local entities from the County's Local (3%) Accommodations Tax and Local Hospitality Tax Collections for the year ending June 30, 2019 in the amount of \$4,000,000**
7. **First Reading of an Ordinance regarding a Text Amendment to The Community Development Code (CDC): Article 1, Section 1.3.50 Applicability And Jurisdiction – Exemptions To Address County Public Service Uses**
8. **Adoption of the 2019 Annual Report for Rural and Critical Land Preservation Program**
9. **Louanne Howard, District 1 to the KBCBB as a substitute for District 4**
10. **Reappointment of Lawrence Bryan, District 5 to the Solid Waste and Recycling Board**
11. **First Reading of an Ordinance conveying real property (right of way) from Beaufort County to SCDOT - For the Boundary Street Renovation Project**

Chairman Rodman asked Council if there were any items they would like to lift off the Consent Agenda. Council Member Flewelling asked to remove items 6 and 7 from the Consent Agenda.

**6 - First Reading of an Ordinance to appropriate grand awards to local entities from the County's Local (3%) Accommodations Tax and Local Hospitality Tax Collections for the year ending June 30, 2019 in the amount of \$4,000,000**

**Motion to amend: It was moved by Council Member Flewelling, seconded by Council Member Dawson, to amend the ATAX recommendations listed for the Black Chamber of Commerce's Advertising Expenses to make all 4 line items equal to \$25,000 each.**

**Discussion:** Discussion ensued regarding the ATAX and HTAX Award process and as well as the application process and documents required for consideration. It was then decided to send this item back to the Finance Committee where the Amount recommended for the Black Chamber of Commerce's Advertising Expenses can be discussed.

Council Member Flewelling and Council Member Dawson withdrew their motion.

### **7 - First Reading of an Ordinance regarding a Text Amendment to The Community Development Code (CDC): Article 1, Section 1.3.50 Applicability And Jurisdiction – Exemptions To Address County Public Service Uses**

**Discussion:** Council Member Flewelling asked Eric Greenway, Director of Community Development, to address whether the County would be exempt from these zoning requirements. Mr. Greenway stated they were not going to exempt the County from any development standards or regulations but this would allow Council to hold a public hearing on the establishment of certain uses and certain zoning districts on a permanent basis.

Council Member Flewelling stated his concern is if it is in the Comprehensive plan it is not under any circumstances Spot Zoned and asked Mr. Greenway to clarify that with the legal department.

Council Member Hervochon asked Mr. Greenway how this ordinance would impact preservation districts. Mr. Greenway stated this would allow Council to look at the use of that particular property and then hold a public hearing to permanently establish use on that property.

Council Member Lawson stated he was for the ordinance and would like to see the requirements pertaining to Council vote stay a simple majority.

Council Member Hervochon asked Mr. Greenway to state what he views may be the unintentional consequences of this ordinance and Mr. Greenway stated he has thought about that question and he cannot come up with anything because again, Council will get to make the decision after a public hearing to take public input just as you would a rezoning request it just will take less time because you won't have to give that issue three readings and would not have to go through planning commission.

Council Member Howard stated the County can't always go by the comp plan for everything, ideally yes, but there are times when there may be a need for an emergency spot on county land.

Council Member Flewelling said yes but this permanently changes zoning.

Mr. Greenway stated this would not permanently change the zoning but rather permanently establish a use.

**Motion:** It was moved by Council Member Sommerville, seconded by Council Member Howard to approve first reading of an ordinance regarding a Text Amendment to The Community Development Code (CDC): Article 1, Section 1.3.50 Applicability And Jurisdiction – Exemptions To Address County Public Service Uses. The Vote - Voting Yea: Council Member Glover, Council Member Howard, Council Member Passiment, Council Member Sommerville, Council Member McElynn, Council Member Lawson and Council Member Dawson. Voting Nay: Council Member Hervochon, Council Member Flewelling, Council Member Covert, Council Member Rodman. The motion passed 7-4.

**Consent Agenda Main Motion:** It was moved by Council Member Passiment, seconded by Council Member Flewelling to approve the Consent Agenda with the understanding that the ATAX/HTAX item will go back to Finance for further discussion and minus item 7. The Vote - Voting Yea: Council Member Passiment, Council Member Sommerville, Council Member Covert, Council Member Glover, Council Member Hervochon, Council Member Rodman, Council Member Howard, Council Member Lawson, Council Member Dawson, Council Member Flewelling and Council Member McElynn. Motion passed 11:0.

## **ACTION ITEMS**

### **Public Hearing and Third Reading of an Ordinance authorizing the conveyance of real property known as Automobile Place to the Town of Hilton Head Island**

**Discussion:** Council Member Flewelling stated the Town of Hilton Head asked Council to convey this property to them so that they can redesign an intersection. He requested the deed included an amendment regarding a reverter clause so that the Town of HHI would have to re-convey the property back to Beaufort County if they ever decided to sell.

Chairman Rodman opened the floor for Public Hearing.

No one came forward and public hearing was closed.

**Motion:** It was moved by Council Member Flewelling, seconded by Council Member Passiment to approve Third Reading of an Ordinance authorizing the conveyance of real property known as Automobile Place to the Town of Hilton Head Island. The Vote - Voting Yea: Council Member Passiment, Council Member Sommerville, Council Member Covert, Council Member Glover, Council Member Hervochon, Council Member Rodman, Council Member Howard, Council Member McElynn, Council Member Flewelling, Council Member Lawson and Council Member Dawson. The Motion Passed 11:0

### **Public Hearing and Third Reading of an Ordinance Regarding a Text Amendment to LICP and LIEHB Districts to limit residential density to developments not located on public sewer.**

**Discussion:** Council Member Howard stated this was recommended and approved by the Lady's Island Plan Implementation Committee as well as approved by the Natural Resources Committee.

Chairman Rodman opened the floor for Public Hearing.

Juliana Smith, South Carolina Coastal Conservation League, stated this was one of those responsible growth recommendations that help to responsibly manage growth on Lady's Island and benefits would be homeowners.

Public hearing was closed.

**Motion:** It was moved by Council Member Passiment, seconded by Council Member Flewelling to approve Third Reading of an Ordinance Regarding a Text Amendment to LICP and LIEHB Districts to limit residential density to developments not located on public sewer.

Council Member Lawson stated he planned to vote against this because of the unintentional consequences this ordinance could have as it will limit folks who have owned property for decades from being able to cut pieces off and give it to their children.

Council Member Glover asked if this ordinance would impact the cultural overlay district. Mr. Greenway stated he did not feel this would impact it in a negative way but in fact it would help regulate high density development.

Council Member Sommerville stated that the family compound would protect the folks Council Member Lawson is concerned about.

The Vote - Voting Yea: Council Member Passiment, Council Member Sommerville, Council Member Covert, Council Member Glover, Council Member Hervochon, Council Member Rodman, Council Member Howard, Council Member Dawson, Council Member Flewelling and Council Member McElynn. Voting Nay: Member Lawson. Motion passed 10:1.



**Public Hearing and Third Reading of an Ordinance regarding Text amendment to T4 Hamlet Center District (T4HC) to allow Recreation Facility: Commercial Indoor (Article 3, Section 3.2.100)**

**Discussion:** Council Member Howard stated this amendment would allow for commercial indoor in this district such as an indoor playground.

Council Member Flewelling stated he feels this exactly fits the T4 Hamlet Center concept and what needs to go in there.

**Motion:** It was moved by Council Member Passiment, seconded by Council Member Flewelling to approve Public Hearing and Third Reading of an Ordinance regarding Text amendment to T4 Hamlet Center District (T4HC) to allow Recreation Facility: Commercial Indoor (Article 3, Section 3.2.100). The Vote - Voting Yea: Council Member Passiment, Council Member Sommerville, Council Member Covert, Council Member Glover, Council Member Hervocho, Council Member Rodman, Council Member Howard, Council Member Lawson, Council Member Dawson, Council Member Flewelling and Council Member McElynn. Motion passed 11:0.

**First Reading of an Ordinance declaring loud and unnecessary vehicular noise a Public Nuisance and providing that violations are a Misdemeanor**

**Motion:** It was moved by Council Member Passiment, seconded by Council Member McElynn to approve First Reading of an Ordinance declaring loud and unnecessary vehicular noise a Public Nuisance and providing that violations are a Misdemeanor.

Council Member Glover stated that there are areas of Beaufort County that are still rural which this issue impacts.

Council Member Flewelling thanked the Thompsons for bringing this issue to Councils attention and hopes they see their government is at work.

Council Member Dawson stated he was going to support this ordinance but as he advised council previously, there is an additional step needed to address gun noise for firing ranges etc. and asked council to not just stop here but to include gun noises.

The Vote - Voting Yea: Council Member Passiment, Council Member Sommerville, Council Member Glover, Council Member Hervocho, Council Member Rodman, Council Member Howard, Council Member Lawson, Council Member Dawson, Council Member Flewelling and Council Member McElynn. Voting Nay: Council Member Covert. Motion passed 10:1.

**TIME SENSITIVE ITEMS ORIGINATING FROM EXECUTIVE COMMITTEE**

Council Member Flewelling inquired as to if Council was going to take these items individually or as a group and Chairman Rodman stated as a group.

**Approval of Securitas Security Services at Hilton Head Island Airport**

**Discussion:** Jon Rembold, Airports Director, stated the scope of services Securitas will provide includes keeping vehicular traffic out of the terminal flowing, provide an extra set of eyes and ears around the terminal, and notify sheriff deputies if need be.

Council Member McElynn stated he knows a little bit about Securitas and this is a quality security company.

## **Gate Reassignment Project - United Airlines**

**Discussion:** Jon Rembold, Airports Director, stated this does not require any dollars to be expended by the airport and emphasized they are strictly acting a broker regarding this issue.

### **Approval of a Resolution authorizing the County Administrator to negotiate and execute the documents necessary for the purchase of properties for the expansion project at the Hilton Head Island Airport**

**Discussion:** Jon Rembold, Airports Director, stated this is a resolution that gives the County Administrator sign for and negotiate for the purchase of properties for the expansion project at the Hilton Head Island Airport

**Motion:** It was moved by Council Member Flewelling, seconded by Council Member Passiment to approve items 13, 14 and 15 on the agenda. The Vote - Voting Yea: Council Member Passiment, Council Member Sommerville, Council Member Covert, Council Member Glover, Council Member Hervochon, Council Member Rodman, Council Member Howard, Council Member Lawson, Council Member Dawson, Council Member Flewelling and Council Member McElynn. Motion passed 11:0.

## **Beaufort Memorial Hospital Board of Trustees Appointments and Reappointments**

**Discussion:** Chairman Rodman stated Eugene Richardson LaBruce had been nominated to fulfill the expired term of David Tedder on the Beaufort Memorial Hospital Board of Trustees and David House is up for Reappointment.

**Motion:** It was moved by Council Member Sommerville, seconded by Council Member Howard to approve Eugene Richardson LaBruce and David House to the Beaufort Memorial Hospital Board of Trustees. The Vote - Voting Yea: Council Member Passiment, Council Member Sommerville, Council Member Covert, Council Member Glover, Council Member Rodman, Council Member Howard, Council Member Lawson, Council Member Dawson, Council Member Flewelling and Council Member McElynn. Council Member Hervochon was not in the room. Motion passed 10:0.

## **CITIZEN COMMENT**

William Smith, Secretary for the Beaufort County School Board, requested a meeting between Beaufort County School Board and County Council to discuss how they can better serve the citizens. He also stated that on St Helena, the ditches are filled with water and he hopes County Council addresses this and gives the citizens what they pay for.

## **CHAIRMAN'S MINUTE**

Chairman Rodman stated he felt it was time to have a re-election for Chairman as there was a split Council and there has been since Council voted last January. Chairman Rodman stated people have been critical of him and he believes he has the right to confront his accusers and recommended Council Member McElynn contact each council member individually to identify if there are any member that feel he has done something that is unprofessional or has done something that is detrimental to the County in any way. He also stated he wanted to ask Council Member Howard to contact the Administrator to schedule a meeting to sit and have the same conversation to see if he has done anything wrong.

Council Member Covert stated he had a question of privilege.

**Motion:** It was moved by Council Member Covert, seconded by Council Member Hervochon to amend the Rules of Procedure by adding the words "or until a successor is elected" to the first sentence of the first paragraph of Chapter 1, Section A and adding as the last paragraph of section A "notwithstanding the provisions above or below the Chairman or Vice-Chairman may be removed by a majority vote of those Councilmembers present and voting at any Regular or Special meeting of Council. Upon the Removal of the Chairman or Vice-Chairman the successor will be elected immediately to fill the unexpired term which will require 6 vote. He then asked for a roll call vote.

Chairman Rodman stated this was out of order as the agenda was not amended and the Chairman then referred to the Roberts Rules of Order and the formal process for removing the Chair and stated what Councilman Covert is recommending is not in line with Roberts Rules and Ruled Councilman Covert out of order.

Chairman Rodman then attempted to adjourn the meeting.

Council Member Covert stated he appeals the comments of the Chair.

Council Member Flewelling stated he is of the opinion that matters regarding internal governance are not required to be put on the agenda ahead of time and disagrees with the Chair's ruling.

Council Member Covert stated this was not an agenda item but it was a question of privilege.

Council Member Flewelling stated Council should have a vote whether to sustain the decision of the Chair and it would take a simple majority to sustain the decision of the Chair.

Chairman Rodman called for a vote regarding sustaining the decision of the Chair not to allow Council Member Covert's motion.

The Vote - Voting Yea: Council Member Rodman, Council Member Sommerville, Council Member McElynn, Council Member Lawson. Voting Nay: Council Member Hervochon, Council Member Glover, Council Member Howard, Council Member Passiment, Council Member Flewelling, Council Member Covert, Council Member Dawson. The decision of the Chair fails 4:7.

Council Member McElynn asked if there was any evidence to be presented.

Council Member Covert stated it was not a criminal trial.

Council Member Lawson stated he does not agree with the language "simple majority" because if someone does not show up to a meeting you could change the Chairman minus council members.

Council Member McElynn stated he feels this is public humiliation for selfish purposes.

Council Member Dawson stated the argument is Council is trying to change the leadership of Council without cause and he does not feel that is the case. The Administrator made it known the problem she has with the Chairman as well as Council Member Glover and Council Member McElynn did not follow through on those and report his findings.

**Motion:** It was moved by Council Member Hervochon, seconded by Council Member Flewelling to extend past the 8 o'clock hour. The Vote - Voting Yea: Council Member Passiment, Council Member Sommerville, Council Member Covert, Council Member Glover, Council Member Rodman, Council Member Howard, Council Member Hervochon, Council Member Lawson, Council Member Dawson, Council Member Flewelling and Council Member McElynn. Motion passed 11:0.

Council Member Hervochon stated he feels there needs to be immediate certainty for the public, for council and for administration. There is plenty of evidence Council needs to make a move.

Conversation ensued regarding Roberts Rules of Order.

Council Member Passiment stated this conversation is troublesome and then encouraged the Chairman to resign and then Council can have a motion to elect a new Chairman. Council should not go through making changes they could regret.

Chairman Rodman stated it was his intention to submit a resignation contingent upon electing a replacement and having to opportunity to confront his accusers.

Council Member Flewelling stated the Chairman canceled a called meeting of council unilaterally and arbitrarily and no one was consulted regarding that decision and is a violation of a resolution of this Council.

Council Member Hervochon expressed his frustration regarding the Jenkins Island project and items being conducted in secret and Chairman Rodman knew of his frustration and he asked that the Chairman resign.

Council Member McElynn stated he feels the Chairman should resign; the seat should be given to Council Member Sommerville and then hold an election as soon as possible.

Council Member Howard stated Council Member Coverts motion is extreme and feels council should move forward with what Council Member Passiment stated.

Council Member Covert said he would withdraw his motion if the Chairman moved forward with Council Member Passiment's suggestion.

Further discussion ensued regarding Chairman Rodman's behavior between Chairman Rodman and Council Member Hervochon and then between Chairman Rodman and Council Member Flewelling.

*(to view the discussion further go to [https://beaufort.granicus.com/player/clip/4681?view\\_id=15](https://beaufort.granicus.com/player/clip/4681?view_id=15) 2:26:17)*

Council Member Covert stated the temperature at the Administration building is horrific and stated he has heard how the Chairman spoke to the Administrator and how he spoke to Councils Clerk and this County is in such a bad spot so for the sake of the County resign and move forward.

Chairman Rodman called for a 5-minute recess.

Meeting was called back to order.

The Chairman Rodman resigned and passed the gavel to Vice-Chair Sommerville.

Council Member Flewelling stated the rules of order state the vice-chair shall rise and fill the unexpired term of the chair, so he suggested either modify the rules or have the Vice-Chair resign as well.

County Attorney Kurt Taylor stated the Rules state in the event the Chairman should be unable to serve the Vice-Chairman shall serve as Chairman in his stead.

Chairman stated he is resigning and Vice-Chair Sommerville is temporarily serving as chair until a new Chair can be elected.

Chairman Sommerville called for an election to elect a new chair and asked for nominations.

**Motion:** It was moved by Council Member McElynn, seconded by Council Member Howard to nominate Joseph Passiment as Chair. The Vote - Voting Yea: Council Member Passiment, Council Member Sommerville, Council Member Covert, Council Member Glover, Council Member Rodman, Council Member Howard, Council Member Lawson, Council Member Dawson, Council Member Flewelling Council Member Hervochon and Council Member McElynn. Motion passed 11:0.

Council Member Covert and Council Member Hervochoch withdrew their earlier motion.

Chairman Passiment called for adjournment.

**Motion:** It was moved by Council Member McElynn, seconded by Council Member Sommerville to adjourn the meeting. The Vote - Voting Yea: Council Member Passiment, Council Member Sommerville, Council Member Covert, Council Member Glover, Council Member Rodman, Council Member Howard, Council Member Lawson, Council Member Dawson, Council Member Flewelling Council Member Hervochoch and Council Member McElynn. Motion passed 11:0.

The meeting adjourned at 8:52pm



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# County Council Minutes

**Monday, March 16, 2020 at 12:45 PM**

Council Chambers, Administration Building Beaufort County

Government Robert Smalls Complex 100 Ribaut Road, Beaufort

**PRESENT**

Chairman Joseph F. Passiment

Vice Chairman D. Paul Sommerville

Council Member Michael Covert

Council Member York Glover

Council Member Chris Hervochon

Council Member Stu Rodman

Council Member Alice Howard

Council Member Gerald Dawson

Council Member Brian Flewelling

Council Member Mark Lawson

**CALL TO ORDER**

Chairman Passiment Called the meeting to Order at 12:45PM

**PLEDGE OF ALLEGIANCE AND INVOCATION**

Chairman Passiment led the pledge of allegiance and gave the invocation.

**FOIA COMPLIANCE**

Chairman Passiment stated this special called meeting of council is not in compliance with FOIA requirements and asked for a motion to approve holding this special meeting of council.

**Motion to Hold Special Meeting of County Council:** It was moved by Councilman Covert, seconded by Councilman Dawson to waive Council's usual rules and procedures to hold this special called meeting of council. The Vote - YEAS: Council Member Hervochon, Council Member Glover, Council Member Howard, Council Member Passiment, Council Member Sommerville, Council Member Flewelling, Council Member Covert, Council Member Lawson and Council Member Dawson. The motion passed 9-0.

**APPROVAL OF AGENDA**

**Motion:** It was moved by Councilwoman Howard, seconded by Councilman Flewelling to approve the agenda. The Vote - YEAS: Council Member Hervochon, Council Member Glover, Council Member Howard, Council Member Passiment, Council Member Sommerville, Council Member Flewelling, Council Member Covert, Council Member Lawson and Council Member Dawson. The motion passed 9-0.

## **ACTION ITEMS**

**Beaufort County Council declaration of public health emergency in response to the public safety threat of the novel coronavirus (“covid-19”), effective March 15, 2020**

**Motion:** It was moved by Councilman Flewelling, seconded by Councilman Covert to approve Emergency Ordinance 2020-01.

**Discussion:** Councilman Flewelling stated he understands there is some information the County Administrator wants to share regarding this item.

Administrator Jacobs stated what is ordinance is doing is establishing the county is in a state of emergency so that she has authorization to utilize all resources necessary to keep the public safe and access to funding. She also stated that in pandemic situation, which is different from a hurricane in that the lead agency is SCDHEC, so she is following their guidelines.

The Vote - YEAS: Council Member Hervochon, Council Member Glover, Council Member Howard, Council Member Passiment, Council Member Sommerville, Council Member Flewelling, Council Member Rodman, Council Member Covert, Council Member Lawson and Council Member Dawson. The motion passed 10-0.

## **ADJOURNMENT**

The Meeting Adjourned at 1:00PM



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## BEAUFORT COUNTY COUNCIL

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### Agenda Item Summary

#### Item Title:

Ordinance for Airport Tenant Leases

#### Council Committee:

Executive Committee Meeting

#### Meeting Date:

April 27, 2020

#### Committee Presenter (Name and Title):

Jon Rembold Airports Director

#### Issues for Consideration:

An ordinance authorizing the county administrator to enter into lease agreements with the current tenants occupying property acquired due to the expansion project at the Hilton Head Island Airport.

#### Points to Consider:

Our plan is to offer a very fair lease rate (we anticipate it will be below market rate) until such time as FAA funding becomes available (we are then obligated to charge not less than market rate) or until December 31, 2020.

#### Funding & Liability Factors:

TBD

#### Council Options:

Approve, Modify or Reject

#### Recommendation:

Approve



**ORDINANCE 2020/ \_\_\_\_\_**

**AN ORDINANCE AUTHORIZING THE COUNTY ADMINISTRATOR TO ENTER INTO LEASE AGREEMENTS WITH THE CURRENT TENANTS OCCUPYING PROPERTY ACQUIRED DUE TO THE EXPANSION PROJECT AT THE HILTON HEAD ISLAND AIRPORT**

**WHEREAS**, the Hilton Head Island Airport (“Airport”) is in the process of expanding the terminal in order to provide better service to both residents and tourists (“Expansion Project”); and

**WHEREAS**, on April 8, 2019, the Beaufort County Council approved Talbert, Bright & Ellington, Inc.’s work authorization as consultants (“Consultants”) for the Expansion Project; and

**WHEREAS**, the Consultants determined the Expansion Project requires Beaufort County to acquire five (5) properties located on Hunter Road, Hilton Head Island, SC 29926 (collectively referred to as the “Properties”) and described in more detail in “Exhibit A”, attached hereto and incorporated herein by reference; and

**WHEREAS**, in the acquisition of the Properties it has been determined that there are ten (10) tenants currently in the Properties (“Tenants”) and described in more detail in “Exhibit B”, attached hereto and incorporated herein by reference; and

**WHEREAS**, following the acquisition of the Properties, the County desires to terminate any current leases, and enter into leases with the Tenants that reflect a lease expiration date as required by the Expansion Project and shall include a reasonable lease rate based on square footage of the leased space, and as further described in more detail in “Exhibit C”, attached hereto and incorporated herein by reference; and

**WHEREAS**, County Council finds that it is in the best interest of the citizens and residents of Beaufort County for the County Administrator to enter into leases with the tenants of the Properties purchased for the Expansion Project of the Hilton Head Island Airport.

**NOW, THEREFORE, BE IT RESOLVED** that Beaufort County Council, duly assembled, does hereby authorize the County Administrator to enter into lease agreements with the current tenants occupying property acquired due to the Expansion Project at the Hilton Head Island Airport.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2020.

COUNTY COUNCIL OF BEAUFORT COUNTY

BY: \_\_\_\_\_

Joseph Passiment, Chairman

ATTEST:

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Sarah W. Brock, Clerk to Council

## **EXHIBIT A**

### *Properties to be Leased*

1. 26 Hunter Road, Hilton Head Island, SC 29926
2. 28 Hunter Road, Hilton Head Island, SC 29926
3. 30 Hunter Road, Hilton Head Island, SC 29926
4. 32 Hunter Road, Hilton Head Island, SC 29926
5. 36 Hunter Road, Hilton Head Island, SC 29926

## **EXHIBIT B**

### *Hunter Road Tenant List*

#### **26 Hunter Road**

Hilton Head Flooring  
Stoneworks

#### **28 Hunter Road**

Stoneworks

#### **30 Hunter Road**

Window Fashions of Hilton Head  
Carolina Contractors, Inc.  
H& H Auto Body

#### **32 Hunter Road**

Dyess Air Owner/Occupant  
Hilton Head Arts Center  
Coastline Construction

#### **36 Hunter Road**

Avis Car Rental

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

**COMMERCIAL PROPERTY  
LEASE AGREEMENT**

**THIS COMMERCIAL PROPERTY LEASE AGREEMENT** (“Lease”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between **Beaufort County**, a political subdivision of the State of South Carolina, hereinafter referred to as “Landlord” and \_\_\_\_\_ hereinafter referred to as “Tenant”, collectively referred to as the “Parties”.

**NOW, THEREFORE**, Landlord, for and in consideration of the rents paid and to be paid, and the covenants, conditions, and stipulations to be kept and performed by Tenant, has granted, bargained, and conveyed for a month-to-month tenancy and by these presents does grant, bargain and convey unto Tenant, for the premises described herein below.

**I. DESCRIPTION OF LEASED PREMISES.** The premises to be conveyed is located at \_\_\_\_\_ Hunter Road, Hilton Head Island, SC 29926, hereinafter referred to as “Premises”.

**II. RENTAL PAYMENT**

2.1 *Payment of Rent.* Tenant shall pay to Landlord the monthly rental payments as described in this Section (“Rent”) during the Lease Term. If occupancy begins and/or ends on any day other than the first day of a month, rent shall be prorated for the month of commencement and/or month of termination and monthly rent collected in advance thereafter.

The term Rent shall be used in this Lease to describe the monthly rental amount owed during any term of tenancy, and is to include both the Initial Rent and Amended Rent when applicable according to the terms set forth in this Section.

2.1.1 *Initial Rent.* The initial monthly rental payment shall be in the amount of \_\_\_\_\_ (\$\_\_\_\_.00) dollars (“Initial Rent”). The Initial Rent shall be effective as of the Commencement Date and shall remain in effect through the Lease Term or any Renewal Term, or until the Amended Rent is applied.

2.1.2 *Amended Rent.* The amended monthly rental payment shall be in the amount of \_\_\_\_\_ (\$\_\_\_\_.00) dollars (“Amended Rent”). The Amended Rent shall be effective at a time determined appropriate by the Landlord and in accordance with the Federal Aviation Administration requirements. Following the Landlord’s determination to implement the Amended Rent, the Amended Rent shall be the monthly rental payment amount paid by the Tenant through the Lease Term or any Renewal Term.

2.1.2.1 *Notice of Amended Rent.* Landlord shall provide Tenant a thirty (30) day written notice prior to the Amended Rent being made effective.

2.2 *Payment of Rent.* The first rental payment shall be made on or before the Commencement Date. Tenant shall pay all rents due and owing, without deduction or set off, to Landlord at the address set forth in Section 10. All rental payments shall be made in the form of check or wire transfer.

2.3 *Late Payment of Rent.* Any rents not paid within five (5) days of the due date shall be deemed late and shall obligate Tenant to pay a late charge of ten percent (10%) of the sum then due.

2.4 *Security Deposit.* The Tenant has deposited with the Landlord the sum of \_\_\_\_\_ (\$\_\_\_\_\_) Dollars as a security for the full performance by the Tenant of all the terms of this Lease required to be performed by the Tenant (“Security Deposit”). Such sum shall be returned to Tenant after the expiration or termination of this Lease, provided the Tenant has fully carried out all of its terms.

In the case of any default as set forth in this Lease, the Security Deposit shall be used to reimburse the Landlord for any expenses. Any overages after the aforementioned expenses have been reimbursed shall be released to the Tenant.

### III. TERM, ASSIGNMENT AND SUBLETTING

3.1 *Term.* The lease term shall be for a term of months commencing on \_\_\_\_\_, 2020 (“Commencement Date”) and terminating on December 31, 2020 (“Termination Date”), hereinafter the Lease Term.

3.2 *Renewal.* This Lease may be renewed on a month-to-month basis if agreed upon in writing by the Parties; any one renewal term will be for a period not to exceed thirty (30) days (“Renewal Term”).

3.3 *Acceptance and Condition of the Premises.* The Parties mutually agree that Tenant shall take possession of the Premises on the Commencement Date. Tenant stipulates that he or she has examined the demised premises, including the grounds and all buildings and improvements, and that they are, at the time of this Lease, in good order, repair, and in a safe, clean and tenantable condition. Tenant certifies that all conditions required of the Landlord shall be fulfilled and that there are no defenses to the enforcement of the Lease by the Landlord.

Tenant is fully familiar with the physical condition of the Premises. Landlord has made no representation in connection with the Premises and shall not be liable for any latent defects therein; provided, however, that if such latent defects render the Premises uninhabitable for the purposes of this Lease, Tenant may at its option, and upon written notice (following Section 9) to Landlord, terminate this Lease.

3.4 *Holding Over.* In no event shall there be any renewal of this Lease by operation of law, unless mutually agreed upon by the Parties, and if Tenant remains in possession of the Premises after the termination of this Lease and without a renewal or a new lease, Tenant shall be deemed to occupy the Premises as a tenant at will at a base rental rate equal to one hundred fifty percent (150%) percent of the existing rental rate together with percentage rent as provided under this Lease, and otherwise subject to all the covenants and provisions of this Lease insofar as the same are applicable to a month-to-month tenancy.

3.5 *Assignment and Subletting.* The Tenant shall not, without the Landlord’s prior written consent: (i) mortgage, pledge, encumber, or otherwise transfer (whether voluntarily, by operation of law, or otherwise) this lease or any interest hereunder; (ii) allow any lien to attach to Tenant’s interest in the Premises or this Lease; (iii) permit the use or occupancy of the Premises or any part thereof by anyone for a purpose other than as set forth herein; (iv) assign or convey this Lease or any interest herein; or (v) sublet the Premises or any part thereof; and any attempt to consummate any of the foregoing without Landlord’s consent shall be void. Any assignment or subletting of this Lease must be approved in writing by Landlord, which approval shall not be unreasonably withheld. Assignment of the Lease will not relieve the Tenant or the Guarantors of their respective obligations under this Lease and Guaranty Agreement unless otherwise agreed by Landlord in writing.

IV. **TERMINATION.** This Lease shall end on the Termination Date stated in Section 3.1 of this Lease. This Lease may be terminated by Landlord prior to the Termination Date upon providing a thirty (30) day notice from Landlord to Tenant and/or upon the occurrence of any default event as set forth in Section 9. **Tenant shall have no penalty for terminating this Lease prior to the Termination Date or prior to the end of any Renewal Term.**

4.1 *Surrender of Property.* At the termination of this Lease, Tenant agrees to quit and deliver the Premises peaceably and quietly to Landlord, or its attorney, or other duly authorized agent, at the expiration or other termination of this Lease. The Tenant shall surrender the Premises in as good state and condition as delivered to Tenant at the commencement of this Lease, reasonable use and wear thereof expected.

### V. UTILITIES and MAINTENANCE.

- 5.1 *Utilities.* Tenant shall be responsible for paying one hundred percent (100%) of all utility expenses associated with the Leased Premises during the Initial Term and any Renewal Term. Tenant warrants and agrees to establish accounts in its name with the providing/billing entity or authority and pay for all water, gas, power, electric current, garbage collection and removal, sewer charges, and all other utilities and utility charges and fees charged to the Premises during the term of this Lease and all extensions hereof.
- 5.2 *Maintenance.* Tenant, at its sole cost and expense, shall handle or contract for the maintenance of the parking areas, landscaping, grounds and planting care for the Premises, and shall generally maintain the Premises in a neat and orderly condition.

**VI. USE AND REPAIRS OF PREMISES**

- 6.1 *Use of Premises.* Tenant shall use the Premises for the sole purpose of \_\_\_\_\_. Any change in the use of the Premises may only be undertaken with the written consent of the Landlord. Tenant shall not use the Premises for any illegal purpose, nor violate any statute, regulation, rule or order of any governmental body in its use thereof, nor create or allow to exist any nuisances, nor do any act in or about the Premises or bring anything upon the Premises which will increase the premium for insurance on the Premises.
- 6.2 *Repairs of Premises.* Tenant shall at its own expense keep the Premises in good repair. Tenant shall not perform any additional work upon the Premises without prior written consent of the Landlord. The Premises shall be maintained in a clean and orderly manner. In the event of any damage of the Premises which is the direct result of Tenant, Tenant shall, immediately upon receiving demand from Landlord, pay to Landlord an amount sufficient to cover the repairs. The Landlord shall provide an itemized accounting of all amounts so sought for compensation.

- VII. COMPLIANCE WITH LAWS.** Tenant shall comply, at its own expense, with all statutes, regulations, rules, ordinances and orders of any governmental body, department, or agency thereof, which apply to or result from Tenant's use of the Premises.

**VIII. INSURANCE LIABILITY AND INDEMNIFICATION**

- 8.1 *Insurance Liability.* Tenant hereby covenants and agrees to obtain and carry Commercial General Liability insurance during the tenancy in its entirety, whereby Tenant shall name the Landlord as an additional insured party and shall provide Landlord with a Certificate of Insurance. Tenant agrees to carry and will cause Tenant's subcontractors to carry workman's compensation and general liability insurance, personal and property damage insurance naming the Landlord as an additional insured party thereunder and shall provide Landlord with a Certificate of Insurance evidencing the same prior to commencement of the utilization of the Premises. All contracts and subcontracts shall expressly provide that Tenant or subcontractor shall hold Landlord harmless from and against any and all liability which may arise out of the work to be performed thereunder. If any mechanic's or other lien is filed against the Demised Premises for work claimed to have been for or materials furnished thereto, such lien shall be discharged by Tenant within Ten (10) days thereafter, at Tenant's expense by full payment thereof by filing a bond required by law. Tenant's failure to do so shall constitute a material default hereunder.
- 8.2 *Indemnity.* Tenant shall indemnify and shall hold the Landlord harmless from and defend the Landlord against any and all claims, demands, liability, costs, losses or expenses (including attorney's fees and costs) for any injury or death to any person or damage to any property whatsoever arising out of any act or omission of the Tenant or his agents, employees, contractors, invitees, licensees, tenants or assignees unless said claims, demands, liability, costs, losses in expenses (including attorney's fees and costs) result from Landlord's negligence or failure to perform any of Landlord's obligations hereunder. In case any action or proceeding is brought against the Landlord by reason of any such claims or liability, the Tenant agrees to cause such action or proceeding to be defended at its sole expense; provided, however, if the claim, demand or suit is a result of the active negligence of the Landlord and not a condition of the Premises for which Tenant has assumed responsibility then Tenant shall have no duty to defend the Landlord. The provisions of

this Lease with respect to any claims or liabilities occurring or caused prior to any termination of this Lease shall survive such termination.

## **IX. DEFAULT**

9.1 *Default by Tenant.* The occurrence of any of the following shall constitute an event of default:

- (a) The rent of any other sum of money payable under this Lease, whether to Landlord or otherwise, is not paid within ten (10) days of the due date thereof.
- (b) Tenant's interest in the Lease of the Premises shall be subjected to any attachment, levy, or sale pursuant to any order or decree entered against Tenant in any legal proceeding and such order or decree shall not be vacated within thirty (30) days of entry thereof; unless with respect to any attachment, levy or sale, which cannot be vacated within thirty (30) days, Tenant in good faith shall have commenced and thereafter shall continue to diligently pursue the vacation of such order or decree by lawful means.
- (c) Tenant breaches or fails to comply with any term, provision, condition, or covenant of this Lease, other than the payment of rent, or with any of the rules and regulations now or hereafter established from time to time by the Landlord to govern the operation of the building and such breach or failure to comply is not cured within ten (10) days after written notice of such breach or failure to comply is given to Tenant.

9.2 *Remedies of Landlord.* Upon the occurrence of an event of default by Tenant other than a failure of Tenant to timely pay a sum that is due and payable, Landlord shall notify Tenant in writing of the event of default, and Tenant shall, within twenty (20) days of receipt of such written notice cure such event of default. Where the Tenant fails to cure such event of default within twenty (20) days of receipt of the above-referenced written notice, Landlord shall have the option to do and perform any one or more of the following in addition to, and not in limitation of, any other remedy or right permitted by law or in equity or by this Lease. In electing to do any one or more of the following courses of conduct, the Landlord must reasonably undertake its best efforts to properly mitigate any damages caused or sustained by Landlord due to the occurrence of an event of default by the Tenant. The options and courses of conduct which may be undertaken by the Landlord in an event of default by the Tenant are as follows:

- (a) Landlord, with or without terminating this Lease, may immediately or at any time thereafter re-enter the Premises and correct or repair any condition which shall constitute a failure on Tenant's part to keep, observe, perform, satisfy, or abide by any term, condition, covenant, agreement or obligation of this Lease or of the rules and regulations adopted by the Landlord or of any notice given Tenant by Landlord pursuant to the terms of this Lease, and Tenant shall fully reimburse and compensate Landlord on demand for all reasonable expenses.
- (b) Landlord, with or without terminating this Lease may immediately or at any time thereafter demand in writing that Tenant immediately vacate the Premises whereupon Tenant shall immediately vacate the Premises and, immediately remove therefrom all personal property belonging to Tenant, whereupon Landlord shall have the right to immediately re-enter and take possession of the Premises. Any such demand, re-entry and taking of possession of the Premises by Landlord shall not of itself constitute an acceptance by Landlord of a surrender of this Lease or of the Premises by Tenant and shall not of itself constitute a termination of this Lease by Landlord. In the event the Landlord re-enters and takes possession of the Premises as provided above and the Tenant has failed upon request by Landlord to immediately remove from the Premises all property belonging to or placed upon the Premises by the Tenant, the Landlord shall have the right to have such property of the Tenant removed from the Premises and reasonably be placed within a secure storage facility for a period of time not to exceed thirty (30) days, and all costs of handling, moving and storing such property of the Tenant shall be paid by the Tenant. Notwithstanding any of the foregoing, Landlord shall be required to comply with applicable South Carolina law regarding reentry and possession of the Premises.





120 Beach City Road  
Hilton Head Island, SC 29926  
Phone: 843-255-2952  
jrembold@bcgov.net

If to Tenant, To:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

- 10.2 *Quiet Enjoyment.* Landlord hereby covenants, warrants and agrees that so long as Tenant is performing all of the covenants and agreements herein stipulated to be performed on the Tenant's part, Tenant shall at all times during the lease term have the peaceable quiet and enjoyment and possession of the Premises without any manner of hindrance from Landlord or any person or persons lawfully claiming the Premises, or any part thereof.
- 10.3 *Parking.* Each Tenant and their guests, invitees and employees of Tenant shall have a non-exclusive access to all parking spaces contained within the common area.
- 10.4 *Entire Agreement.* This Lease constitutes as the sole and entire agreement of Landlord and Tenant and no prior or contemporaneous oral or written representations or agreements between the Parties affecting the Premises shall have any legal effect.
- 10.5 *Subordination and Attornment.* This Lease and all rights of Tenant hereunder are and shall be subject and subordinate to the lien of any mortgage, or other instrument in the nature thereof which may now or hereafter affect Landlord's fee title to the Premises and to any other instrument encumbering the fee title of the Premises and to any modifications, renewals, consolidations, extensions, or replacements thereof. In confirmation of such subordination, Tenant shall, upon demand, at any time or times, execute, acknowledge and deliver to Landlord or the holder of any such mortgage, or other instrument, without expense, any and all instruments that may be requested by Landlord to evidence the subordination of this Lease and all rights hereunder to the lien of any such mortgage, or other instrument, and each such renewal, modification, consolidation, replacement, and extension thereof. If the holder of any mortgage, or other instrument encumbering the fee title of the Premises shall hereafter succeed to the rights of Landlord, whether through conveyance or judicial sale, Tenant shall attorn to and recognize such successor as Tenant's landlord under this Lease and shall promptly execute and deliver any instrument that may be necessary to evidence such attornment. Upon such attornment, this Lease shall continue in full force and effect as a direct lease between such successor Landlord and Tenant, subject to all of the terms, covenants, and conditions of this Lease.
- 10.6 *Severability.* If any clause or provision of this Lease is determined by a court of competent jurisdiction to be invalid or unenforceable, the remaining parts of this Lease shall not be affected thereby, unless such invalidity is essential to the rights of both Parties in which event either Landlord or Tenant shall have the right to terminate this Lease upon written notice to the other party.
- 10.7 *Captions.* The captions used in this Lease are for convenience only and do not in any way limit or amplify the terms and provisions hereof.
- 10.8 *Successors and Assigns.* The provisions of this Lease shall inure to the benefit of and be binding upon Landlord and Tenant, and their respective successors, heirs, legal representatives, and assigns.
- 10.9 *Applicable Law.* The laws of the State of South Carolina shall govern the interpretation, validity, performance and enforcement of this Lease; and, of any personal guarantees given in connection with this Lease.

10.10 *Authority.* Each individual and entity executing this Agreement hereby represents and warrants that he, she or it has the capacity set forth on the signature pages hereof with full power and authority to bind the party on whose behalf he, she or it is executing this Agreement to the terms hereof.

10.11 *Time is of the Essence.* Time is of the essence of this Lease.

**IN WITNESS WHEREOF**, and in acknowledgement that the Parties hereto have read and understood each and every provision hereof, the Parties have caused this Lease to be executed on the date first written above.

**LANDLORD:**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Ashley M. Jacobs  
*Beaufort County Administrator*

\_\_\_\_\_  
Witness

**TENANT:**

\_\_\_\_\_  
Witness

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

\_\_\_\_\_  
Witness



COUNTY COUNCIL OF BEAUFORT COUNTY  
**PURCHASING DEPARTMENT**  
106 Industrial Village Road  
Post Office Drawer 1228  
Beaufort, South Carolina 29901-1228

TO: Councilman Joseph Passiment, Chairman, Beaufort County Executive Committee  
FROM: Dave Thomas, CPPO, Purchasing Director  
SUBJ: **Approval of Ordinance for Airport Tenant Leases**  
DATE: April 27, 2020

**BACKGROUND:**

As part of the terminal and aircraft parking ramp expansion projects, the airport is acquiring properties along Hunter Road. Since the physical project work will not begin until 2021, the airport, in an effort to be as accommodating as possible, is extending an offer to current tenants to remain in those buildings until the end of 2020. The mechanism for that is the subject ordinance. The intent is to offer leases at a rate that creates no additional burden on the tenants the airport requests County Council's support of our efforts to this end.

**FOR ACTION:**

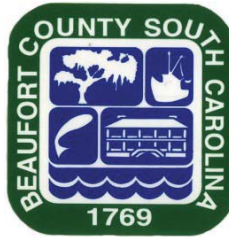
Executive Committee meeting occurring April 27, 2020.

**RECOMMENDATION:**

Beaufort County Purchasing Department recommendation to Executive Committee for approval of subject ordinance.

cc: Ashley Jacobs, County Administrator  
Chris Inglese, Deputy County Administrator  
Alicia Holland, Asst. County Administrator, Finance  
Jon Rembold, C.M., Airports Director

**Encl:** Recommendation Memo – BCAB Chairman Ackerman  
Ordinance for Airport Tenant Leases



TO: Councilman Joseph Passiment, Chairman, Beaufort County Executive Committee

FROM: Howard Ackerman, Chairman, Beaufort County Airports Board

SUBJ: **Approval of Ordinance for Airport Tenant Leases**

DATE: April 27, 2020

**BACKGROUND:**

On April 16, 2020, the Beaufort County Airports Board reviewed the following item:

- Ordinance for Airport Tenant Leases

The board finds the above request acceptable and in line with the provisions of our Contract for Professional Services. The BCAB forwards the attached documents for Executive Committee to review and approve.

**FOR ACTION:**

Executive Committee meeting occurring April 27, 2020.

**RECOMMENDATION:**

Beaufort County Airports Board recommendation to Executive Committee for approval of subject ordinance.

**Encl:** Ordinance for Airport Tenant Leases



TO: Mr. Howard Ackerman, BCAB Chairman

FROM: Jon Rembold, Airports Director

SUBJ: Approval of Ordinance for Airport Tenant Leases

DATE: April 27, 2020

**BACKGROUND:**

As part of the terminal and aircraft parking ramp expansion projects, the airport is acquiring properties along Hunter Road. Since the physical project work will not begin until 2021, the airport, in an effort to be as accommodating as possible, is extending an offer to current tenants to remain in those buildings until the end of 2020. The mechanism for that is the subject ordinance. The intent is to offer leases at a rate that creates no additional burden on the tenants the airport requests County Council's support of our efforts to this end.

**RECOMMENDATION:**

**Beaufort County Airports Board recommendation to Executive Committee for approval of subject ordinance.**

Encl: Ordinance for Airport Tenant Leases



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## BEAUFORT COUNTY COUNCIL

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### Agenda Item Summary

#### Item Title:

Volaire Aviation Consulting Agreement

#### Council Committee:

Executive Committee Meeting

#### Meeting Date:

April 27, 2020

#### Committee Presenter (Name and Title):

Jon Rembold Airports Director

#### Issues for Consideration:

Annual contract renewal with Volaire - combined agreement for both services provided by consultant

#### Points to Consider:

Volaire was selected via RFQ 011518

#### Funding & Liability Factors:

Hilton Head Island Airport Operating Revenue

#### Council Options:

Approve, Modify or Reject

#### Recommendation:

Approve



COUNTY COUNCIL OF BEAUFORT COUNTY

PURCHASING DEPARTMENT

106 Industrial Village Road, Bldg. 2, Post Office Drawer 1228  
Beaufort, South Carolina 29901-1228

David L Thomas, Purchasing Director

dthomas@bcgov.net 843.255.2353

**TO:** Councilman Joseph Passiment, Chairman, Executive Committee

**FROM:** David L Thomas, CPPO, Purchasing Director

**SUBJ:** New Contract as a Result of Solicitation  
Approval of Volaire Aviation Consulting Agreement

**DATE:** 04/27/2020

**BACKGROUND:**

Pursuant to RFQ 011518, Volaire Aviation Consulting provides both Air Service Development (ASD) consulting as well as Marketing Consulting to the Hilton Head Island Airport. The different services were previously provided via separate contracts. This is an effort to combine both of those services into a single contract.

**VENDOR INFORMATION:**

Volaire Aviation Consulting - Retainer ASD and Marketing

**COST:**

\$53,400

**FUNDING:**



Hilton Head Island Airport Operating Revenues.

Funding approved:  By:  Date:

**FOR ACTION:** Executive Committee meeting occurring April 27, 2020.

**RECOMMENDATION:**

Beaufort County Executive Committee approval of subject contract for one year with four additional one year renewals.

Attachment:  

cc: Ashley Jacobs, County Administrator

Approved:  Date:

Check to override approval:  Overridden by:  Override Date:

Alicia Holland, Assistant County Administrator, Finance

Approved:  Date:

Approved:  Date:

Check to override approval:  Overridden by:  Override Date:  ready for admin:

Approved:  Date:

Check to override approval:  Overridden by:  Override Date:  ready for admin:

**After Initial Submission, Use the Save and Close Buttons**



COUNTY COUNCIL OF BEAUFORT COUNTY  
**PURCHASING DEPARTMENT**

106 Industrial Village Road  
Post Office Drawer 1228  
Beaufort, South Carolina 29901-1228

TO: Councilman Joseph Passiment, Chairman, Beaufort County Executive Committee  
FROM: Dave Thomas, CPPO, Purchasing Director  
SUBJ: **Approval of Volaire Aviation Consulting Agreement**  
DATE: April 27, 2020

**BACKGROUND:**

Pursuant to RFQ 011518, Volaire Aviation Consulting provides both Air Service Development (ASD) consulting as well as Marketing Consulting to the Hilton Head Island Airport. The different services were previously provided via separate contracts. This is an effort to combine both of those services into a single contract.

**VENDOR BID INFORMATION:**

Voltaire Aviation Consulting – Retainer ASD and Marketing

**ONE YEAR TERM COST:**

\$53,400.00

**FUNDING:**

Hilton Head Island Airport Operating Revenues.

**FOR ACTION:**

Executive Committee meeting occurring April 27, 2020.

**RECOMMENDATION:**

**Beaufort County Executive Committee approval of subject contract for one year with four additional one year renewals.**

cc: Ashley Jacobs, County Administrator  
Chris Inglese, Deputy County Administrator  
Alicia Holland, Asst. County Administrator, Finance  
Jon Rembold, C.M., Airports Director

**Encl:** Recommendation Memo – BCAB Chairman Ackerman  
Voltaire Combined Agreement



TO: Mr. Howard Ackerman, BCAB Chairman  
FROM: Jon Rembold, Airports Director  
SUBJ: Approval of Volaire Aviation Consulting Agreement  
DATE: April 27, 2020

**BACKGROUND:**

Pursuant to RFQ 011518, Volaire Aviation Consulting provides both Air Service Development (ASD) consulting as well as Marketing consulting to the Hilton Head Island Airport. The different services were previously provided via separate contracts. This is an effort to combine both of those services into a single contract.

**VENDOR INFORMATION:**

Volaire Aviation Consulting – Retainer ASD and Marketing

**ONE YEAR TERM COST:**

\$53,400.00

**RECOMMENDATION: Beaufort County Executive Committee approval of subject contract for one year with four additional one year renewals.**

Encl: Volaire Combined Agreement



TO: Councilman Joseph Passiment, Chairman, Beaufort County Executive Committee

FROM: Howard Ackerman, Chairman, Beaufort County Airports Board

SUBJ: **Approval of Volaire Aviation Consulting Agreement**

DATE: April 27, 2020

**BACKGROUND:**

On March 19, 2020, the Beaufort County Airports Board reviewed the following item:

- Volaire Aviation Consulting – Combined agreement

The board finds the above request acceptable and in line with the provisions of our Contract for Professional Services. The BCAB forwards the attached documents for Executive Committee to review and approve.

**VENDOR BID INFORMATION:**

Volaire Aviation Consulting – Retainer ASD and Marketing

**ONE YEAR TERM COST:**

\$53,400.00

**FUNDING:**

Hilton Head Island Airport Operating Revenues.

**FOR ACTION:**

Executive Committee meeting occurring April 27, 2020.

**RECOMMENDATION:**

**Beaufort County Executive Committee approval of subject contract for one year with four additional one year renewals.**

**Encl:** Volaire Aviation Consulting Agreement

**CONSULTING SERVICES AGREEMENT**

This Consultancy Agreement (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between Volaire Aviation, Inc. (the "Consultant") and Beaufort County/Hilton Head Island Airport (the "Airport" and/or "HHH") (hereinafter referred to individually as a "Party" and collectively as "the Parties").

**1. Section One: Engagement and Services -**

(a) **Engagement.** The Airport hereby engages the Consultant to provide and perform the services set forth in this section of the agreement (the "Services"), and the Consultant hereby accepts the engagement. This agreement includes both an Air Service Development retainer component as well as a Marketing retainer component. Section (c) below defines the scope of work for Air Service Development services. Section (d) below defines the scope of work for Marketing services.

(b) **Term.** This agreement will be for a 12-month period from the date of the first stated above. Either party can terminate the contract on 90-day notice. The contract can be extended in one year increments for up to four years prior to contract end upon mutual consent.

(c) **Air Service Development Retainer Scope of Work.** Consultant will complete the following projects in exchange for a monthly retainer.

**1) Community visits (one per year)**

Consultant will prepare state of the industry information, market detail, and other pertinent information for community meetings at Airport's request. The presentation will be in a power point format.

**2) Conference call with Airline(s) (as needed)**

Consultant will, at Airport's request, set up and facilitate conference call with an airline, including market briefing materials, if needed.

**3) Schedule Analysis (as needed)**

Consultant will review an existing or proposed airline schedule plan for quality of timing and frequency and quality of connectivity if the schedule relates to a hub airport.

**4) Pricing Analysis (up to two per contract period)**

Consultant will, at Airport's request, review published pricing in the Hilton Head market (ten city pairs per study) and compare it to pricing at nearby airports for competitive fitness. Any follow-up with a specific airline related to requesting changes in airline pricing strategy will be on a separate basis, with professional fees determined by scope of the specific carrier situation.

**5) Data**

Consultant will provide Airport with relevant air service related data on a quarterly basis. Data will consist of DOT T100 segment data for all air services at the airport and quarterly DOT DB1B ticket lift data for domestic and international traffic, in total and by airline.

(d) **Marketing Retainer Scope of Work** Consultant will work with Airport on marketing projects as listed below. Additional hourly support will be available as described below, on a limited basis upon Airport request and Consultant availability, at the time of the request.

**1.) Media Placement and Plan Implementation**

Consultant will assist the airport in the placement and implementation of approved marketing and advertising program(s). Through this program, the Consultant will work on the airport's behalf to obtain advertising proposals from various media outlets and vendors to identify the best program options and placement as well as coordinate the implementation. The scope of work will include up to fifteen (15) hours of support per month for the duration of this agreement and will include the following:

**a. Airport media placement and budget allocation**

Consultant shall work with Airport to develop a media placement and advertising budget to support air service marketing initiatives. Consultant will develop media placement allocations based upon the budget allocated by the airport. The process will include industry best practices surrounding the recommended media placement elements.

The process may include coordination calls with Airlines and/or airport partners pertaining to media platform recommendations, general recommendation ideas, and/or creative approval.

**b. Geo-targeted marketing strategy**

Consultant will develop a strategy for the deployment of both traditional and online advertising. Consultant will also develop the overarching creative strategy for advertising based on services that are chosen to promote.

**c. Coordination of creative content**

Consultant will work with the Airport and its partners, on the creative content, as requested, for the advertising placed as part of the campaign. Coordination with the Airport's airline partners and regional partners may also be included to obtain airline or area branded content and/or approvals. Content will include specific messaging to drive consumers to use Airport, or to drive consumers to specific services of the airline, offered at Airport. Consultant will ensure content meets requirements of the airline, Federal standards, and also best practices. *Project assumes that Airline will assist with creative development and Consultant will simply coordinate and provide creative guidance/oversight. Should the Consultant need to design creative elements, the creative work, as approved by the airport, will fall under the hourly rates within this agreement.*

**d. Placement and monitoring of advertising**

Consultant will negotiate for the placement of advertising, implement the specific placement as outlined in the strategy document and approved by Airport, and oversee the ongoing performance of advertising during the length of this agreement. *Coordination or review sessions that fall outside of the 15 hours per month, retainer hours, will be invoiced at the hourly rates within this agreement, if approved and requested by the Airport.*

**e. General airport marketing and support**

Consultant will assist the airport in general airport marketing as they fit under the retainer hours within this agreement. This can also include the training or education of airport staff to assist in these endeavors.

**f. Marketing community visit**

One per year is included, with travel expenses to be paid by the Airport\*. Additional visits will be invoiced at \$1,500 per visit (plus travel expenses).

**g. Graphic Design\***

Consultant can conduct graphic design work for the airport, upon request, but should that time fall outside of the allotted fifteen (15) hours per month, this time is to be invoiced at the hourly rate for Consultant time of \$150 per hour.

**2. Consultancy Fees and Expenses**

- (a) **Fee Schedule.** Consultant will perform any or all of the scope of work options only at the expressed, written direction of the Airport. Fees for each program are as follows:

**1. Air Service Development Retainer: \$2,500/month**

The Airport will pay the consultant a monthly retainer fee of \$2,500 for Air Service Development work, payable in monthly instalments.

**2. Media Placement and Marketing Program Implementation Retainer \$1,950/month**

Fifteen (15) hours per month or a total of 180 hours (during initial 12-month period) of marketing assistance and media placement support. Program includes the option to renew at the same identified rate for an additional twelve (12) month period, with mutual consent between the parties. The Airport will pay the consultant a monthly retainer fee of \$1,950 for the included marketing related work, payable in monthly instalments. If the Airport requests work that exceeds the allotted 15-hours per month, subject to consultant availability and mutual airport/consultant agreement via email, work can be commenced at a rate of \$150/hour for requests and support exceeding the monthly retainer plan identified above.

*\*Subject to Consultant availability at time of request*

*\*\*Graphic/creative images purchased on behalf of the airport are subject to a 10% administrative*

*\*\*\*Community visits by Air Service Consultant will be billed at a rate of \$2,500 per day and will be subject to Consultant availability. Community visits by the Marketing Consultant are included as one (1) per year in the retainer agreement. Additional visits will be billed at \$1500 per day and subject to Consultant availability.*

- (b) **Expenses.** Consultant shall be entitled to reimbursement for expenses reasonably incurred in the performance of the Services, upon submission and approval of written statements in accordance with the then regular procedures of the Airport. Reasonable expenses include, but are not limited to, travel (airfare, hotel, rental car, and meals), printing of materials, electronic device usage fee (in lieu of printing materials), contest platform fees, and shipping of materials. Consultant will also be entitled to reimbursement for any document printing fees or iPad usage fees for presentation of the business case document. iPad usage fee will be \$50 per meeting where an electronic device is used (electronic device usage fee). Consultant will invoice all expenses at cost plus a 10% administrative fee. Expenses are in addition to the monthly retainer fee.
- (c) **Payment.** The Consultant shall submit to the Airport invoices detailing the Services performed, expenses, and the amount due. All such invoices shall be due and payable within thirty (30) calendar days after receipt thereof by the Airport. A late fee of \$100 per week will be attached to invoices not paid within the 30-calendar day window.
- (d) **Optional Professional Services Outside of the Retainer.** The Consultant, if directed, will complete a comprehensive Hilton Head Island catchment area air travel demand leakage study for \$12,500 per study. Adhoc services outside the scope of this agreement will be performed for an agreed upon professional services fee or for \$250 per hour for a Partner at Volaire Aviation and for \$150 per hour for a Marketing Consultant at Volaire Aviation.



IN WITNESS WHEREOF, the Parties have duly executed this Agreement by their authorized representatives as of the date first written above.

Signed for and on behalf  
of Beaufort County, Hilton  
Head Island Airport

Signed for and on behalf of  
Volaire Aviation, Inc.

\_\_\_\_\_  
Date \_\_\_\_\_

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

By: Ashley M. Jacobs  
Title: Beaufort County Administrator

By: R. Jeffrey Hayes  
Title: Managing Partner





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## BEAUFORT COUNTY COUNCIL

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### Agenda Item Summary

#### Item Title:

Amendment to the Stormwater Ordinance

#### Council Committee:

County Council

#### Meeting Date:

April 27, 2020

#### Committee Presenter (Name and Title):

Neil Desai, Public Works Director

#### Issues for Consideration:

Currently the ordinance includes an exemption for improved private roadways that are shown as a separate parcel of land on the most current Beaufort County tax maps and are used by more than one property owner to access their property. Amendment to the ordinance is needed to include an exemption for improved private roadways that are not shown as a separate parcel of land on the most current Beaufort County tax maps but are used by more than one property owner to access their property. This will allow fair and equitable assessment of stormwater fees. Other proposed revisions are to reflect organizational changes and provide clarification in regards to Beaufort County Stormwater Utility's jurisdiction.

#### Points to Consider:

Consistent application of stormwater fees for roadways used by more than one property owner to access their property. Presented to Stormwater Management Utility Board on February 12, 2020 and the Board recommends the proposed changes to the ordinance. This amendment was approved by the Executive Committee on April 13, 2020.

#### Funding & Liability Factors:

Allows stormwater rate structure to be more defensible and consistently applied.

#### Council Options:

Approve the amendment as proposed or leave the ordinance as written.

#### Recommendation:

To approve the proposed amendment of the Stormwater Ordinance to include the exemption of private roadways that are not shown as a separate parcel of land but are used by more than one property owner to access their property and update the ordinance to provide clarification and reflect organizational changes.

**ORDINANCE 2020 /**

**AN ORDINANCE TO AMEND THE STORMWATER MANAGEMENT UTILITY ORDINANCE 2018/6 AS ADOPTED MARCH 12, 2018 TO PROVIDE FOR ADDITIONAL EXEMPTIONS RELATED TO PRIVATE ROADWAYS, REFLECT ORGANIZATIONAL CHANGES AND PROVIDE CLARIFICATION IN REGARDS TO BEAUFORT COUNTY STORMWATER UTILITY'S JURISDICTION.**

**WHEREAS**, Act 283 of 1975, The Home Rule Act, vested Beaufort County Council with the independent authority to control all acts and powers of local governmental authority that are not expressly prohibited by South Carolina law; and

**WHEREAS**, Chapter 99, Article II, "Stormwater Management Utility" was adopted on August 27, 2001 and was modified by Ordinance on August 22, 2005, September 28, 2015, September 26, 2016, October 24, 2016, and March 12, 2018; and

**WHEREAS**, Stormwater Management Utility was established for the purpose of managing, acquiring, constructing, protecting, operating, maintaining, enhancing, controlling, and regulating the use of stormwater drainage systems in the county; and

**WHEREAS**, to meet the increasing demands on the Stormwater Management Utility in the areas of mandated municipal Separate Stormsewer Systems (MS4) permitting, capital project needs, and cost of service of operations and maintenance, as well as an evolving understanding of the impacts of the urban environment on water quality, the Stormwater Management Utility finds it necessary to amend the structure in which fees are determined and adjust the fees charged to the citizens of Beaufort County to meet said demands in a fair and equitable manner; and

**WHEREAS**, currently the ordinance includes an exemption for improved public road rights-of-way that have been conveyed to and accepted for maintenance by the state department of transportation and are available for use in common for vehicular transportation by the general public, and

**WHEREAS**, currently the ordinance includes an exemption for improved public road rights-of-way that have been conveyed to and accepted for maintenance by Beaufort County and are available for use in common for vehicular transportation by the general public, and

**WHEREAS**, currently the ordinance includes an exemption for improved private roadways that are shown as a separate parcel of land on the most current Beaufort County tax maps and are used by more than one property owner to access their property, and

**WHEREAS**, further amendments are needed to make adjustments to the rate structure to address the differences in fee determination and billing for private roadways; and

**WHEREAS**, the Stormwater Management Utility Board has determined that it would be fair and equitable to include an exemption for improved private roadways that are not shown as a

separate parcel of land on the most current Beaufort County tax maps but are used by more than one property owner to access their property, and

**WHEREAS**, Beaufort County Council believes it is appropriate to amend Chapter 99 of the Beaufort County Code and to provide for additional terms to said Article; and

**WHEREAS**, text that is underscored shall be added text and text ~~lined through~~ shall be deleted text.

**NOW, THEREFORE, BE IT ORDAINED BY BEAUFORT COUNTY COUNCIL**, that Chapter 99 of the Beaufort County Code is hereby amended and replaced with the following:

## Chapter 99 - STORMWATER MANAGEMENT

### ARTICLE I. - IN GENERAL

Secs. 99-1—99-100. - Reserved.

### ARTICLE II. - STORMWATER MANAGEMENT UTILITY

Sec. 99-102. - Establishment of a stormwater management utility and a utility enterprise fund.

There is hereby established within ~~the environmental engineering division of~~ Beaufort County a stormwater management utility for the purpose of conducting the county's stormwater management program. The county administrator shall establish and maintain a stormwater management utility enterprise fund in the county budget and accounting system, which shall be and remain separate from other funds. All revenues of the utility shall be placed into the stormwater management utility enterprise fund and all expenses of the utility shall be paid from the fund, except that other revenues, receipts, and resources not accounted for in the stormwater management utility enterprise fund may be applied to stormwater management programs, services, systems, and facilities as deemed appropriate by the Beaufort County Council. The county administrator may designate within the stormwater management utility enterprise fund such sub-units as necessary for the purpose of accounting for the geographical generation of revenues and allocation of expenditures pursuant to interlocal governmental agreements with the cities and towns of Beaufort County.

Sec. 99-109. - Exemptions and credits applicable to stormwater service fees.

Except as provided in this section, no public or private property shall be exempt from stormwater utility service fees. No exemption, credit, offset, or other reduction in stormwater service fees shall be granted based on the age, tax, or economic status, race, or religion of the customer, or other condition unrelated to the stormwater management utility's cost of providing stormwater programs, services, systems, and facilities. A stormwater management utility service fee credit manual shall be prepared by the stormwater manager specifying the design and

performance standards of on-site stormwater services, systems, facilities, and activities that qualify for application of a service fee credit, and how such credits shall be calculated.

(b) Exemptions. The following exemptions from the stormwater service fees shall be allowed:

- (1) Improved public road rights-of-way that have been conveyed to and accepted for maintenance by the state department of transportation and are available for use in common for vehicular transportation by the general public.
- (2) Improved public road rights-of-way that have been conveyed to and accepted for maintenance by Beaufort County and are available for use in common for vehicular transportation by the general public.
- (3) Improved private roadways that are shown as a separate parcel of land on the most current Beaufort County tax maps and are used by more than one property owner to access their property.
- (4) Improved private roadways that are not shown as a separate parcel of land on the most current Beaufort County tax maps but are used by more than one property owner to access their property.
- ~~(4)~~ (5) Railroad tracks shall be exempt from stormwater service fees. However, railroad stations, maintenance buildings, or other developed land used for railroad purposes shall not be exempt from stormwater service fees.
- ~~(5)~~ (6) Condominium boat slips shall be exempt from stormwater service fees.
- ~~(6)~~ (7) Properties determined by the assessor having 100 percent of the gross area of the property submerged, salt water marsh, or freshwater wetland will not receive an administrative charge, if applicable in the utility rate structure, after the applicable credit defined in paragraph (a) above has been applied to the account.

Sec. 99-203. - Definitions.

The following definitions shall apply in articles III, IV, V, and VI this chapter. Any term not herein defined shall be given the definition, if any, as is found elsewhere in the Code of Articles of Beaufort County, including the community development code (CDC) ordinance.

*Administrators.* ~~The director of environmental engineering and land management~~ Beaufort County, the stormwater manager and other individuals designated by the county administrator, from time to time, to administer interpret and enforce this article.

Sec. 99-206. - County stormwater management administration.

Stormwater management will be administered by ~~the environmental engineering and land management division~~ Beaufort County and the stormwater department to administer and implement the regulations of this article as set forth in the CDC and BMP manual.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: \_\_\_\_\_  
Joseph Passiment, Chairman

APPROVED AS TO FORM:

\_\_\_\_\_  
Ashley M. Jacobs  
Beaufort County Administrator

ATTEST:

\_\_\_\_\_  
Sarah Brock, Clerk to Council

First Reading:  
Second Reading:  
Public Hearing:  
Third and Final Reading:

# Acquisition of Longwood PDR For Approval Recommendation



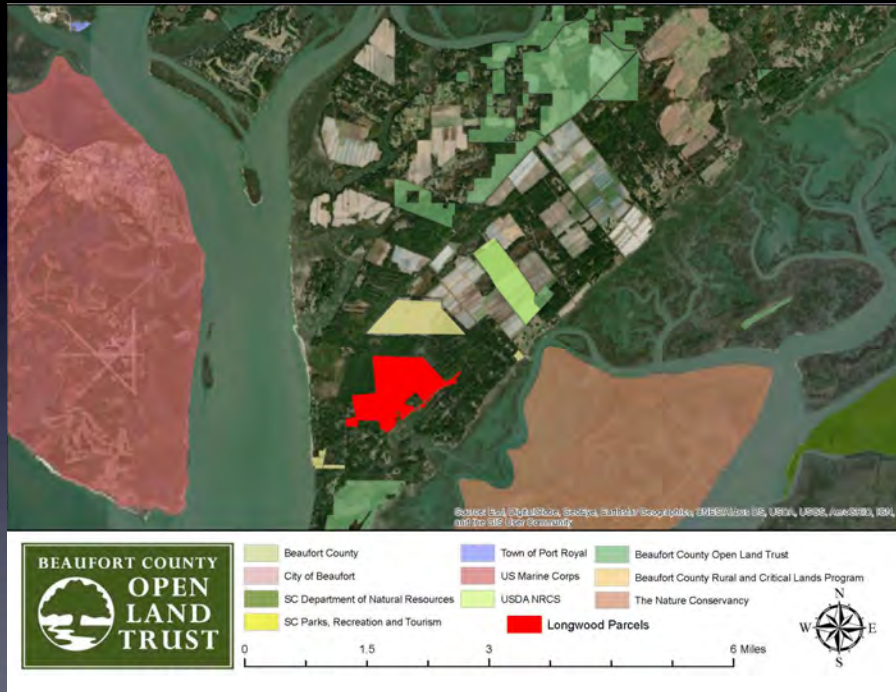
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- 227 acres, T2 Rural Zoning
- 42 acres marsh
- Road frontage Lands End Road, Seaside Road

2

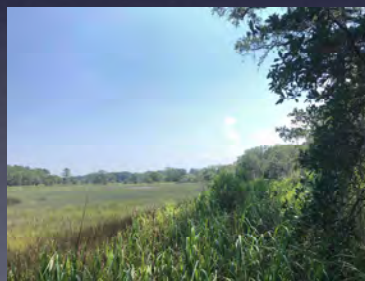
## Longwood Proximity to Protected Properties



3

### Rural Lands Criteria – Score 5.8

- Virtually all upland acreage is USDA-designated prime soils
- Proximity to protected properties
- Adjacent to other large acreage tracts with strong potential for conservation transactions
- Strong funding leverage through bargain sale transaction
- Water quality protection – Ranked as highest priority on Port Royal Sound Mapping Initiative for Water Quality Priority and Flooding Priority (areas for future marsh migration)



4

## Conservation Easement Terms Negotiated

Subdivision	No more than 3 different owners
Impervious Surface	24,000 s.f. maximum
Building Areas	3, each no larger than 5 acres
Residential Structures	6
Docks	Interior only, not on Tombee Creek
Road and Creek Buffers	100 feet structure setback



5

## Future Cost Considerations for County

Reduction in property tax revenue

< \$ 525/year >

No other future costs, BCOLT does monitoring



6



## Transaction Outline – Longwood PDR

Appraised Value of Development Rights	\$720,000
Negotiated purchase price	<b>\$360,000</b>
Negotiated price per acre:	<b>\$1,600/acre</b>

*Property will continue to be owned by the property owner subject to the terms of the conservation easement*

## Today's Natural Resources Committee Decision – Longwood

Recommend project to County Council  
for purchase of development rights?



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## BEAUFORT COUNTY COUNCIL

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### Agenda Item Summary

#### Item Title:

Purchase of Development Rights Proposal through Rural & Critical Land Program - Longwood PDR

#### Council Committee:

County Council - Executive Committee

#### Meeting Date:

April 27, 2020

#### Committee Presenter (Name and Title):

Barbara G. Holmes, Beaufort County Contractor; Eric Greenway, Community Development Department Director

#### Issues for Consideration:

The acquisition of development rights on 227 forested upland acres between Lands End Road and Seaside Road on St. Helena Island for \$360,000 in Rural and Critical Program land acquisition funds. Project Summary Sheet and Purchase & Sale contract (including Grant of Conservation Easement) attached. Rural & Critical Land Preservation Board unanimously recommended approval on February 13, 2020, Council's Executive Committee recommended approval on April 13, 2020.

#### Points to Consider:

Development rights being purchased at 50% of fair market value. The 21 parcels under consideration comprise a significant assemblage of undeveloped land on the southern end of St. Helena Island and also protects 42 acres of intertidal salt marsh. The Beaufort County Open Land Trust will hold a conservation easement on Longwood to protect the natural resources of the property in perpetuity.

#### Funding & Liability Factors:

Land acquisition cost from Rural & Critical Program funds = \$360,000. County has expended \$10,650 in identifiable due diligence expenses, additional attorney costs expected for closing including title search and closing costs. Property tax collection reduction to County estimated at \$525/year. No long-term operations/maintenance cost for Beaufort County as the Open Land Trust is responsible for annual monitoring of the conservation easement.

#### Council Options:

Approve the proposal and recommend purchase to Council, modify proposal, or reject proposal.

#### Recommendation:

Staff recommends the Committee approve the purchase proposal.



**LONGWOOD**

**PROPOSAL FOR: Purchase of Development Rights/Conservation Easement**

**PROPERTY ID:** 21 Contiguous Parcels, St. Helena Island – see Exhibit A  
**SELLER:** Dukes Real Estate Company  
**ACREAGE:** 227 acres upland and 42 acres marsh (record title to marsh)  
**TOTAL PRICE:** \$360,000  
**RCLPP FUNDS:** \$360,000  
**APPRAISED VALUE:** \$720,000 (appraised value of development rights)  
**ZONING:** T2 Rural with St. Helena Cultural Protection Overlay  
**COUNCIL DISTRICT:** 3, Councilman York Glover

**LOCATION:** 1792 Seaside Road, St. Helena Island  
 On the south end of St. Helena Island, bordered by Lands End Road on the west and spanning to Seaside Road on the east.

**Permanent Protection:** Conservation easement to be granted to BCOLT

**Project Background:**

- Previously under consideration (2011) as a USDA FRPP project, but ineligible by USDA criteria due to high percentage of forest cover and wetlands, project went inactive

**Property Characteristics:**

- Undeveloped property characterized by mixed upland forest, evergreen upland forest and non-forested wetlands
- Property contains both saltwater and freshwater wetlands including 42 acres intertidal marsh
- Two unimproved private roads traverse the property
- Tidally influenced salt marsh serves as the headwaters of Tombee Creek, a major tributary of Station Creek draining into Port Royal Sound
- The parcels are zoned T2 Rural, allowing 1-unit/3 acres by right; current parcel configuration would accommodate the construction of 66 residential dwelling units.
- Public views of scenic forested road frontage and on Lands End Road and Seaside Road, expansive views of intertidal salt marsh from Seaside Road.



**Purchase and Cost Structure:**

Appraised Value of Development Rights: \$720,000  
 Negotiated Purchase Price: \$360,000

**Bargain Sale Transaction (Part Sale, Part Gift) by Seller**

The seller of the development rights on the Longwood property has agreed to sell the rights for 50% of fair market value, leveraging County purchase funds 1:1.

**Cost Considerations:**

Due Diligence Costs expended by County \$ 10,650  
 (Phase I ESA, survey, appraisal)

Closing Costs to be paid (Title search, closing attorney) Est. not available

Future Cost Considerations:  
 Economic impact of purchase on tax base of the County  
*Reduction* in property tax revenue, estimated \$ 525/year  
 Property tax to be collected = ~\$643/year

No operations/maintenance or monitoring expenses for County

**Conservation Easement Terms:**

<b>Subdivision:</b>	All property parcels shall be held by a maximum of three (3) different owners.
<b>Impervious Surface Limitation:</b>	24,000 square feet of impervious surface in aggregate (1/4 of 1%)
<b>Designated Building Areas</b>	Three (3) permitted, each no larger than five acres
<b>Residential Structures:</b>	Six (6) structures for permanent/long-term residency
<b>Docks:</b>	Interior docks permitted, none on Tombee/Station Creek.
<b>Boat Ramps:</b>	None.
<b>Road Buffers:</b>	100' structure setback (not including fences and gates).
<b>Creek Buffers:</b>	100' structure setback.
<b>Industrial Uses:</b>	Prohibited.



<b>Commercial Uses:</b>	Prohibited without prior Approval. Exclusions: Agricultural Activities, Forest Management Practices and the leasing of hunting, trapping and fishing rights.
<b>Forestry and Agricultural Uses:</b>	Permitted.
<b>Rural Recreational Uses:</b>	Hunting, fishing, shooting, tennis and equine sports permitted.
<b>Ponds:</b>	Three (3) acres of upland ponds permitted.

**Rural Lands Criteria:**

- Virtually all of the upland acreage is comprised of USDA-designated prime soils (if it were to be drained and irrigated)
- Proximity to protected properties: RCLPP-protected Sanders Tract (159 acres), Scott Hill Farm (92 acres), Penn Center Tree Farm (195 acres), Lands End Plantation Holding Corp (231 acres), Orange Grove Plantation (785 acres), Christian Trask (74 acres), and the State of South Carolina’s St. Phillips Island (4,682 acres)
- Adjacent to other large acreage tracts with strong potential for conservation transactions
- Sufficient size for stand-alone rural use
- Strong funding leverage through bargain sale transaction
- Water quality protection – significant forested freshwater wetlands provide water quality/groundwater recharge ecosystem services benefits
- Uplands and intertidal marsh on Longwood ranked as highest priority on Port Royal Sound Mapping Initiative for Water Quality Priority and Flooding Priority (areas for future marsh migration)
- The 44 acres of intertidal marsh slows shoreline erosion and absorbs excess nutrients before draining into Tombee Creek and Station Creek before draining into Port Royal Sound, one of the most productive estuaries on the East Coast. This marsh provides vital food and habitat for clams, crabs and juvenile fish, as well as offering shelter and nesting sites for several species of migratory waterfowl.
- Wildlife habitat - Forested areas offer an abundance of food sources for a variety of mammals, vertebrate and invertebrate species. The forest structure provides travel corridors between the more densely developed southern end of St. Helena Island and the active agricultural properties located further north.

**Project Analysis:**

Longwood Plantation offers an opportunity to protect one of the last remaining relatively large tracts of natural habitat on St. Helena Island. The parcel is strategically located in close proximity to other protected properties and is adjacent to other potential conservation properties. Taken in concert, these properties would solidify a sizeable conservation complex on southern St. Helena Island.

Acquisition of this conservation easement would ensure that adequate land remains available for wildlife habitation and migration. The easement would substantially reduce residential construction and improvements on the property. The protected area would extend across the entire parcel with allowed building envelopes minimized, and woodland/wetland habitat maximized. The natural landscape will be preserved to the greatest extent possible as both an aesthetic and ecological contribution to the island and region. The project presents a substantial opportunity to preserve the rural nature of the island while simultaneously minimizing impacts of residential development on adjacent waterways.



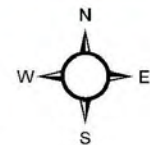
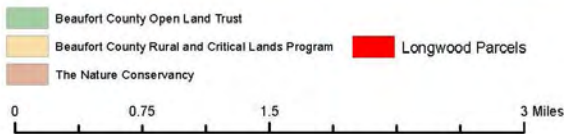
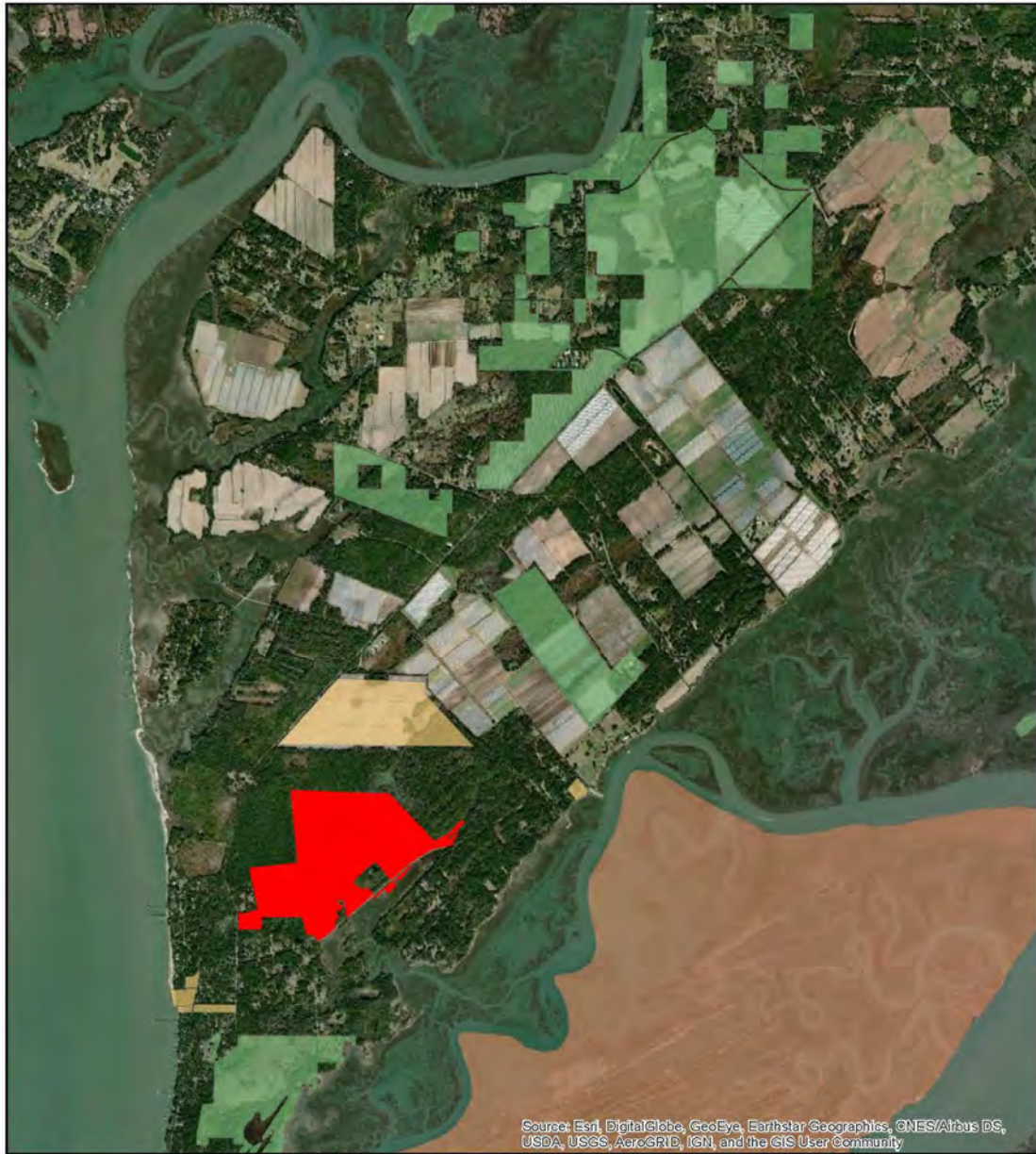


**Exhibit A – Parcel Numbers and Acreages**

<u>Parcel #</u>	<u>Upland Acres</u>	<u>Prp Taxes</u>		
R300 035 000 0138 0000	8.13	32.47		
R300 035 000 0139 0000	5.91	25.15		
R300 035 000 0140 0000	24.95	96.25		
R300 035 000 0141 0000	21.42	88.41		
R300 035 000 0142 0000	7.3	26.22		
R300 035 000 0143 0000	9.61	31.02		
R300 035 000 0144 0000	6.51	30.97		
R300 035 000 0145 0000	5.84	22.37		
R300 035 000 0146 0000	12.49	56.39		
R300 035 000 0147 0000	12.9	55.1		
R300 036 000 0001 0000*	6.99	246.03	*plus marsh acreage	<b>41.69</b>
R300 036 000 0066 0000	15.91	68.96		
R300 036 000 0067 0000	12.36	56.3		
R300 036 000 0068 0000	11.21	48.93		
R300 036 000 0069 0000	6.55	31.37		
R300 036 000 0070 0000	12.36	49.09		
R300 036 000 0071 0000	5.41	26.43		
R300 036 000 0072 0000	5.08	18.48		
R300 036 000 0075 0000	5.98	25.3		
R300 036 000 0076 0000	6.93	29.8		
R300 036 000 0077 0000	<u>23.65</u>	<u>102.98</u>		
	<b>227.49</b>	1,168.02		
Total Upland and Marsh Acreage				<b>269.18</b>

Beaufort County  
Rural & Critical  
**LAND  
PRESERVATION  
PROGRAM**

Nearby Protected Properties



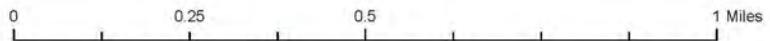


Beaufort County  
Rural & Critical  
**LAND  
PRESERVATION  
PROGRAM**

True Color Aerial

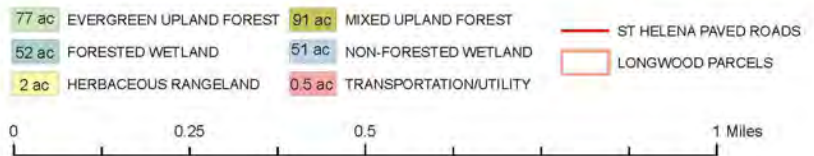


- ST HELENA PAVED ROADS
- LONGWOOD PARCELS



CONFIDENTIAL

Land Cover



CONFIDENTIAL

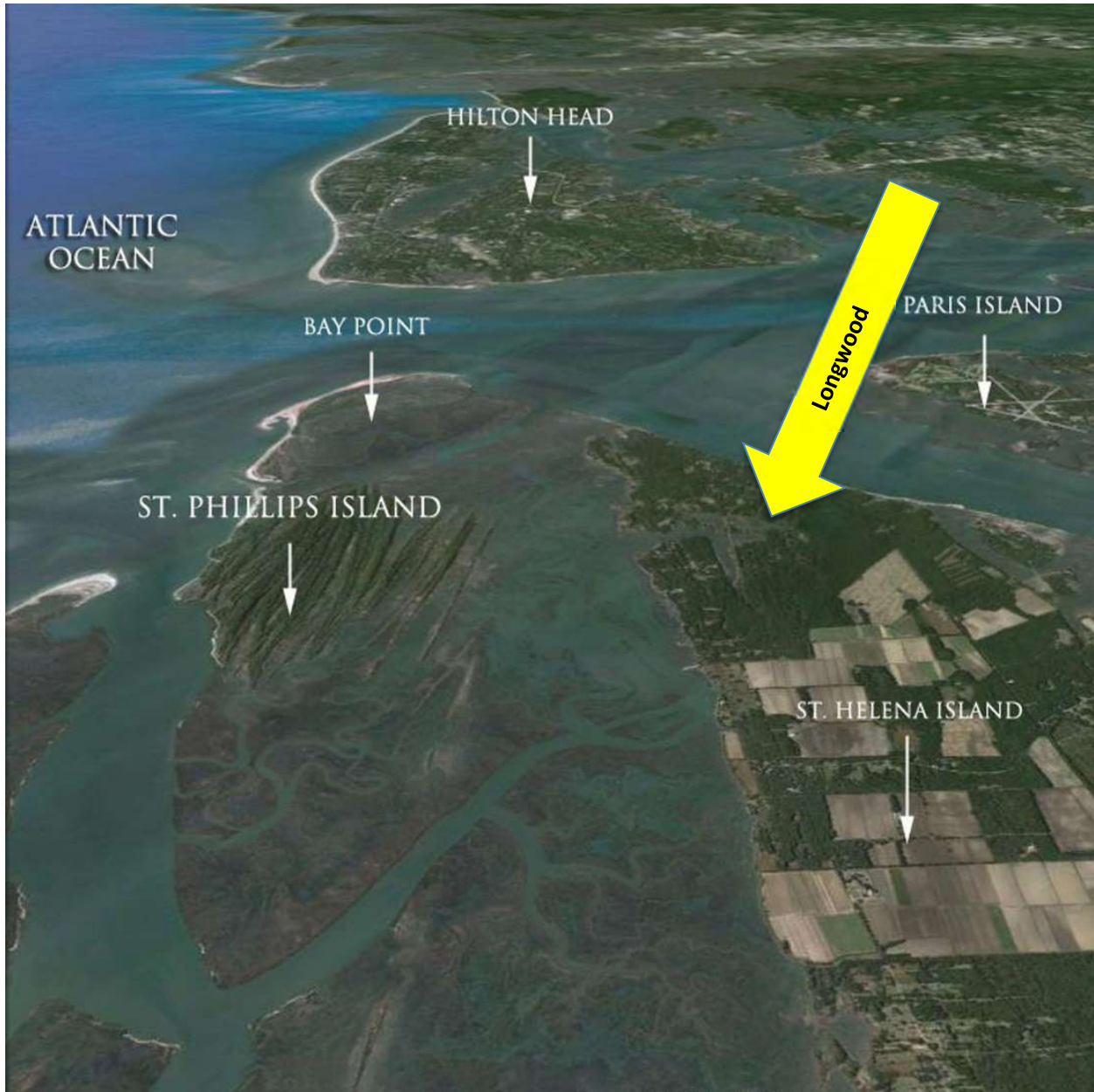
Soils Map



CONFIDENTIAL



Locational Aerial



Photos



Mixed Forested Upland



Intertidal Marsh



COUNTY COUNCIL OF BEAUFORT COUNTY  
**PURCHASING DEPARTMENT**  
106 Industrial Village Road  
Post Office Drawer 1228  
Beaufort, South Carolina 29901-1228

TO: Councilman Joseph Passiment, Chairman, County Council

FROM: Dave Thomas, CPPPO, Purchasing Director

**SUBJ: Recommendation of Purchase of Development Rights of Project Longwood PDR through the Beaufort County Rural and Critical Land Preservation Program**

DATE: April 27, 2020

**BACKGROUND:** On February 13, 2020, the Beaufort County Rural and Critical Land Preservation Board unanimously voted to approve the purchase of development rights of Project Longwood PDR and send it to the Natural Resources Committee meeting on April 6, 2020 for approval. The April 6, 2020 Natural Resources Committee was cancelled and the project was moved to the April 13, 2020 Executive Committee meeting. On April 13, 2020 the Executive Committee voted to unanimously to approve the purchase of Longwood PDR and send it to the April 27, 2020 County Council meeting for approval. The property is 227 forested upland acres with 42 acres of marsh located between Land's End Road and Seaside Road on St. Helena. The property is owned by Dukes Real Estate Company. The 21 parcels under consideration comprise a significant assemblage of undeveloped land on the southern end of St. Helena Island and also protects 42 acres of intertidal salt marsh. The Beaufort County Open Land Trust will hold a conservation easement on the property and the development rights are being purchased at 50% of fair market value.

**FUNDING:** Funding for the project will be \$360,000 from the Beaufort County Rural and Critical Land Preservation Program (Account #4500-0011).

**FOR ACTION:** County Council (Executive Session) on Monday, April 27, 2020 at 6:00 p.m.

**RECOMMENDATION:** The Community Development Department recommends that the County Council approve of the purchase of development rights of Project Longwood PDR in the amount of \$360,000 from the Beaufort County Rural and Critical Land Preservation Program (Account #4500-0011).

CC: Ashley Jacobs, County Administrator  
Alicia Holland, Asst. Co. Administrator, Finance  
Phil Foot, Asst. Co. Administrator, Public Safety  
Eric Greenway, Community Development Department Director  
Amanda Flake, CDD Natural Resources Planner



**RESOLUTION 2020/\_\_\_\_\_**

**A RESOLUTION AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE NECESSARY DOCUMENTS FOR THE PURCHASE OF CERTAIN DEVELOPMENT RIGHTS ON APPROXIMATELY 227 ACRES OF REAL PROPERTY KNOWN AS TAX MAP SERIAL NUMBERS TMS# NUMBERS R300 035 000 0138 0000, R300 035 000 0139 0000, R300 035 000 0140 0000, R300 035 000 0141 0000, R300 035 000 0142 0000, R300 035 000 0143 0000, R300 035 000 0144 0000, R300 035 000 0145 0000, R300 035 000 0146 0000, R300 035 000 0147 0000, R300 036 000 0001 0000 (excluding marsh), R300 036 000 0066 0000, R300 036 000 0067 0000, R300 036 000 0068 0000, R300 036 000 0069 0000, R300 036 000 0070 0000, R300 036 000 0071 0000, R300 036 000 0072 0000, R300 036 000 0075 0000, R300 036 000 0076 0000 and R300 036 000 0077 0000 AND ALSO KNOWN AS LONGWOOD.**

**WHEREAS**, Seller wishes to sell and buyer wishes to buy certain development rights on real property identified as TMS# NUMBERS R300 035 000 0138 0000, R300 035 000 0139 0000, R300 035 000 0140 0000, R300 035 000 0141 0000, R300 035 000 0142 0000, R300 035 000 0143 0000, R300 035 000 0144 0000, R300 035 000 0145 0000, R300 035 000 0146 0000, R300 035 000 0147 0000, R300 036 000 0001 0000 (excluding marsh), R300 036 000 0066 0000, R300 036 000 0067 0000, R300 036 000 0068 0000, R300 036 000 0069 0000, R300 036 000 0070 0000, R300 036 000 0071 0000, R300 036 000 0072 0000, R300 036 000 0075 0000, R300 036 000 0076 0000 and R300 036 000 0077 0000 also known as Longwood, approximately 227 upland acres located in Northern Beaufort County on St. Helena Island; and

**WHEREAS**, the purchase of development rights through a conservation easement on Longwood has been demonstrated to meet the Rural Lands Criteria of the Rural and Critical Lands program; and

**WHEREAS**, the proposal to purchase the development rights on Longwood is for a purchase price of \$360,000.00 which is below the appraised value of \$720,000.00; and

**WHEREAS**, the proposed purchase of the development rights on Longwood was presented to the Rural and Critical Land Preservation Board (RCLPB) at the February 13, 2020 meeting and the RCLPB unanimously recommended approval of the purchase; and

**WHEREAS**, the proposed purchase of certain development rights on Longwood was presented to the Executive Committee at its April 13, 2020 meeting at which time the Committee **unanimously** recommended approval to County Council using Rural and Critical Lands program land acquisition funds; and

**WHEREAS**, the project proposal and essential terms for the purchase of certain development rights on Longwood through a purchased conservation easement are included in the attached Project Summary Sheet, Purchase Agreement and Grant of Conservation Easement and

provides for a purchase of the development rights on approximately 227 acres at a price 50% below fair market value; and

**WHEREAS**, County Council finds that it is in the best interest of the citizens and residents of Beaufort County for the County Administrator to execute the necessary documents for the purchase of development rights on Longwood.

**NOW, THEREFORE, BE IT RESOLVED** that Beaufort County Council, duly assembled, does hereby authorize the County Administrator to execute any and all documents necessary and consistent with the attached terms of agreement for the purchase of **TMS# NUMBERS R300 035 000 0138 0000, R300 035 000 0139 0000, R300 035 000 0140 0000, R300 035 000 0141 0000, R300 035 000 0142 0000, R300 035 000 0143 0000, R300 035 000 0144 0000, R300 035 000 0145 0000, R300 035 000 0146 0000, R300 035 000 0147 0000, R300 036 000 0001 0000 (excluding marsh), R300 036 000 0066 0000, R300 036 000 0067 0000, R300 036 000 0068 0000, R300 036 000 0069 0000, R300 036 000 0070 0000, R300 036 000 0071 0000, R300 036 000 0072 0000, R300 036 000 0075 0000, R300 036 000 0076 0000 and R300 036 000 0077 0000** also known as Longwood on St. Helena Island in Beaufort County, South Carolina.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2020.

COUNTY COUNCIL OF BEAUFORT COUNTY

BY: \_\_\_\_\_  
Joseph Passiment, Chairman

ATTEST:

\_\_\_\_\_  
Sarah W. Brock, Clerk to Council



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## BEAUFORT COUNTY COUNCIL

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### Agenda Item Summary

#### Item Title:

Local Option Sale Tax Referendum Ordinance

#### Council Committee:

#### Meeting Date:

April 13, 2020

#### Committee Presenter (Name and Title):

Kurt Taylor/Chris Inglese

#### Issues for Consideration:

This ordinance would call for a referendum to be held this November 3, 2020. The question asks whether the voters approve a one percent sales and use tax to be imposed on all appropriate sales in Beaufort County and its municipalities. The collection of the tax would begin May 2020. The proceeds of the tax would be distributed seventy-one percent to the Property Tax Credit Fund and twenty-nine percent to the County/Municipal Revenue Fund. The State Treasurer shall distribute the revenues monthly.

#### Points to Consider:

Tax relief and county/municipal revenue support are the hallmarks of this tax.

#### Funding & Liability Factors:

This is a revenue-generating measure.

#### Council Options:

Approve, modify, or reject

#### Recommendation:

Staff recommends Council approve the request.

**ORDINANCE 2020/ \_\_\_\_\_**

**AN ORDINANCE TO LEVY AND IMPOSE A ONE PERCENT LOCAL OPTION SALES AND USE TAX WITHIN BEAUFORT COUNTY, SOUTH CAROLINA, PURSUANT TO SECTION 4-10-10 ET SEQ., OF THE SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED; TO DEFINE THE SPECIFIC PURPOSE OF THE TAX; TO IMPOSE CONDITIONS AND RESTRICTIONS UPON THE USE OF THE PROCEEDS OF THE TAX; TO PROVIDE FOR A COUNTY-WIDE REFERENDUM FOR THE IMPOSITION OF THE TAX; TO PROVIDE FOR THE CONDUCT OF SUCH REFERENDUM; TO PROVIDE FOR THE ADMINISTRATION OF THE TAX; AND OTHER MATTERS RELATING THERETO.**

**WHEREAS**, the South Carolina General Assembly enacted Title 4, Chapter 10, Section 10, Code of Laws of South Carolina, 1976, as amended (the “Code”), which empowers the Beaufort County Council (the “Council”) to levy and impose a one percent (1%) sales and use tax on the gross proceeds of sales within Beaufort County (the “County”) for the purpose of allowing a credit against a taxpayer’s county and municipal ad valorem tax liability and for funding county and municipal operations;

**WHEREAS**, the Council is dedicated to the reduction of property taxes and is committed, not only to minimizing the cost of public services, but also to seeking alternative revenue sources that can be used to replace property taxes, and it is of the opinion and belief that all County property owners, and homeowners in particular, can benefit from implementation of a location option sales tax; and

**WHEREAS**, the County, acting by and through its Council, desires to reduce the property tax burden annually imposed upon the citizens of the County by calling for a referendum to adopt a one percent (1%) local option sales tax authorized pursuant to Section 4-10-20 of the Code, and further authorizes and directs the County Administrator to make arrangements as necessary to schedule such referendum for November 3, 2020:

**NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY BEAUFORT COUNTY COUNCIL**, in a meeting duly assembled that:

**Section 1. Imposition of a One Percent Local Option Sales Tax**

- 1.1.** A referendum on the question of imposing a one percent (1%) local option sales and use tax (the “Tax”), authorized pursuant to Section 4-10-20 of the Code, in Beaufort County, South Carolina shall be held on November 3, 2020 (the “Referendum”). The State election laws shall apply to the Referendum mutatis mutandis.
- 1.2.** The Tax shall be imposed only if approved by a majority of the qualified electors voting in favor of imposing such Tax in a duly noticed and conducted Referendum held on November 3, 2020.
- 1.3.** The Tax, if approved, shall be imposed beginning on May 1, 2021, provided that the County notifies the South Carolina Department of Revenue and the South Carolina Treasurer of the results of the Referendum no later than December 31, 2020, by delivering a certified copy of a resolution adopted by the Council as required by Section 2.6 hereof.

Pursuant to Subsection 4-10-90(B) of the Code, after deducting the amount of refunds made and the costs to the South Carolina Department of Revenue for administering the Tax (not to exceed one-half of one percent of the fund or seven hundred fifty thousand dollars, whichever is greater), the South Carolina Treasurer shall deposit the revenue collected from the Tax into a Local Sales and Use Tax Fund for Beaufort County which shall consist of two separate funds: the Property Tax Credit Fund and the County/Municipal Revenue Fund.

- 1.4. The Tax imposed by this Ordinance is in addition to all other local sales and use taxes and applies to the gross proceeds of sales in the applicable jurisdiction which are subject to the tax imposed by Chapter 36 of Title 12 of the Code, and the enforcement provisions of Chapter 54 of Title 12 of the Code. The gross proceeds of the sale of items subject to a maximum tax in S.C. Code §12-36-2110 and Article 17 of Chapter 36 of Title 12 of the Code are exempt from the Tax imposed by this Ordinance.
- 1.5. The Tax imposed by this Ordinance also applies to tangible personal property subject to the use tax in Section 12-36-1310 of the Code. Taxpayers required to remit taxes under Section 12-36-1310 of the Code, shall identify the county, municipality or both, in which the tangible personal property purchased at retail is stored, used, or consumed in this State.
- 1.6. Utilities are required to report sales in the County in which consumption of the tangible personal property occurs.
- 1.7. A taxpayer subject to the tax imposed by S.C. Code §12-36-920, who owns or manages rental units in more than one county shall report separately in his sales tax return the total gross proceeds from business done in each county.
- 1.8. The gross proceeds of sales of tangible personal property delivered after the imposition date of the Tax levied by this Ordinance in the County, either pursuant to the terms of a construction contract executed before the imposition date, or a written bid submitted before the imposition date, culminating in a construction contract entered into before or after the imposition date, are exempt from the Tax provided in this section if a verified copy of the contract is filed with the Department of Revenue within six (6) months after the imposition of the Tax.
- 1.9. Notwithstanding the imposition date of the Tax imposed by this Ordinance, with respect to services that are billed regularly on a monthly basis, the Tax is imposed beginning on the first day of the billing period beginning on or after the imposition date.
- 1.10. The Tax imposed pursuant to this Ordinance shall be collected and administered by the South Carolina Department of Revenue and deposited with the State Treasurer where it shall be credited to an account established by the County, which is separate and distinct from the General Fund of the State of South Carolina. After deducting the amount of any refunds made and costs to the Department of Revenue for administering the Tax, the State Treasurer shall then distribute the revenues in accordance with Section 4-10-40 through 4-10-90 of the Code, for the purposes aforesaid. The State Treasurer may correct misallocation by adjusting subsequent distributions, but these adjustments must be made in the same fiscal year as the misallocation.
- 1.11. The Department of Revenue shall furnish data to the State Treasurer and to the Beaufort County Treasurer for the purpose of calculating distributions and estimating revenues. The

information, which must be supplied upon request includes, but is not limited to, gross receipts, net taxable sales, and tax liability by taxpayers. Information about a specific taxpayer is considered confidential and is governed by the provisions of Section 12-54-240 of the Code. Any person violating the provisions of this section shall be subject to penalties provided in Section 12-54-240 of the Code.

## **Section 2. Order to Hold Referendum and Duties of Election Commission**

- 2.1. After receipt of a copy of this Ordinance, the Beaufort County Board of Voter Registration and Elections (the "Elections Board") shall conduct a Referendum on the question of imposing the Tax in the County. A Referendum for this purpose must be held at the time of the general election conducted on November 3, 2020.
- 2.2. A Notice of Referendum, substantially similar in form to **Appendix A** attached hereto and incorporated by reference herein shall be published in compliance with the provisions of Section 7-13-35 of the Code, as amended, not less than sixty (60) days prior to the Referendum and again not later than two (2) weeks after such first notice is published.
- 2.3. An additional notice, substantially similar in form to **Appendix C** attached hereto must be published in a newspaper of general circulation in the County two (2) weeks before the date fixed for the Referendum.
- 2.4. Pursuant to Section 7-13-355 of the Code, the Referendum question shall be submitted to the Elections Board to be placed on the ballot no later than 12:00 noon on August 15, 2020 or, if such date falls on Saturday or Sunday, not later than 12:00 noon on the following business day.
- 2.5. All qualified electors desiring to vote in favor of imposing the Tax shall vote "yes" and all qualified electors opposed to levying the Tax shall vote "no". If a majority of the votes cast are in favor of imposing the Tax, then the Tax is imposed as provided herein; otherwise, the Tax is not imposed. The Elections Board shall conduct the Referendum, publish the results of the Referendum, and provide the results to the Council pursuant to South Carolina election laws.
- 2.6. Upon receipt of the results of the Referendum, Council shall, by resolution, declare the results thereof and provide a copy of the resolution to the South Carolina Department of Revenue and the South Carolina Treasurer in accordance with Section 1.3 hereof.

## **Section 3. Voter Registration and Elections Board**

- 3.1. A certified copy of this Ordinance shall be filed with the Elections Board, accompanied by written notice from the Chairman of Council establishing the date for the Referendum as November 3, 2020. The Elections Board is hereby requested as follows:
  - a. To join in the action of the County in providing for the Notice of Referendum in substantially the form attached hereto as **Appendix A**;
  - b. To prepare the ballots to be used in the Referendum, including instructions to the voter, in substantially the form attached hereto as **Appendix B**;
  - c. To arrange for polling places for each precinct;

- d. To appoint Managers of Election;
- e. To provide a sufficient number of ballots or voting machines, as the case may be, for the Referendum;
- f. To conduct the Referendum, receive the returns thereof, canvass such returns, declare the results thereof, and certify such results to the Council; and
- g. To take all other steps and prepare such other means as shall be necessary or required by law in order to properly conduct the Referendum.

#### **Section 4. Voting, Polling Places and Hours of Election**

- 4.1. The voting precincts in the County shall be those designated pursuant to Section 7-7-1 of the Code, as amended. The polling places for each voting precincts shall be designated by the "Elections Board"). The Elections Board is authorized to change any of the locations of polling places for the Referendum as deemed necessary or advisable. Appropriate changes are to be made to the Notice of Referendum.
- 4.2. The polls shall be opened at 7:00 a.m. and closed at 7:00 p.m. on the date fixed for the Referendum and shall be held open during said hours without intermission or adjournment.
- 4.3. The Referendum shall be conducted using either voting machines or paper ballots as provided by State law in all of Beaufort County. Upon approval by the Elections Board, the form of ballots to be used in the Referendum and the instructions to voters appearing thereon shall be in substantially the form set forth in **Appendix B**.
- 4.4. Every person offering to vote must be at least eighteen (18) years of age on the date of the Referendum, must reside in the County and must be duly registered on the books of registration for Beaufort County as an elector in the precinct in which he or she resides and offers to vote on or before the date on which said books of registration are closed for the Referendum, and must present his or her current and valid form of identification as required by South Carolina law in effect at the date of the Referendum. Any registered elector who meets the requirements set forth in the preceding sentence and who has moved his or her place of residence within the County after the date on which said books of registration are closed for the Referendum, but before the date of the Referendum, shall be entitled to vote in his or her previous precinct of residence in the Referendum.

#### **Section 5. Severability**

- 5.1. If any part of this Ordinance is held by a court of competent jurisdiction to be unconstitutional, illegal, or invalid for any reason, it shall be construed to have been the legislative intent of the Council to pass this Ordinance without such unconstitutional, illegal or invalid provision, and the remainder of this Ordinance shall be deemed and held to be constitutional, lawful and valid as if such portion had not been included. If this Ordinance or any provision thereof is held by a court of competent jurisdiction to be inapplicable to any person, group of persons, property, kind of property, circumstances or set of circumstances, such holding shall not affect the applicability thereof to any other persons, property or circumstances.
- 5.2. All ordinances, orders, resolutions, and actions of Council inconsistent herewith are, to the extent of such inconsistency only, hereby repealed, revoked, and rescinded. All other parts and provisions of the Beaufort County Code of Ordinances not amended hereby, either explicitly or by implication, remain in full force and effect.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: \_\_\_\_\_  
Joseph Passiment, Chairman

ATTEST:

\_\_\_\_\_  
Sarah Brock, Clerk to Council

First Reading:  
Second Reading:  
Public Hearing:  
Third and Final Reading:

APPENDIX A

NOTICE OF REFERENDUM  
FOR THE IMPOSITION OF A LOCAL OPTION SALES AND USE TAX  
IN BEAUFORT COUNTY, SOUTH CAROLINA  
November 3, 2020

NOTICE IS HEREBY GIVEN that pursuant to Ordinance No. 2020/\_\_\_\_\_, enacted by Beaufort County Council on \_\_\_\_\_, 2020, and the requirements as codified in Section 4-10-10 et seq., Code of Laws of South Carolina, 1976, as amended, a referendum will be held in Beaufort County on Tuesday, November 3, 2020 (the "Referendum"), for the purpose of submitting to the qualified electors of Beaufort County the following question:

**Must a one percent sales and use tax be levied in Beaufort County for the purpose of allowing a credit against a taxpayer's county and municipal ad valorem tax liability and for the purpose of funding county and municipal operations in the Beaufort County area?**

CONDITIONS AND RESTRICTIONS ON THE USE OF TAX REVENUE



**COLLECTED FROM THE LOCAL OPTION SALES AND USE TAX:**

If approved, the total revenue collected shall be applied as a credit against the payment of any costs charged by the South Carolina Department of Revenue in connection with the collection and administration of such tax, then for the purpose of funding county and municipal operations, and against a taxpayer's county and municipal ad valorem tax liability.

**INSTRUCTIONS TO VOTER:**

If you are in favor of the question, select "Yes, in favor of the question"; if you are opposed to the question, select "No, opposed to the question."

**Explanation:**

The purpose of the Referendum is to allow the qualified electors of Beaufort County to determine whether or not a one percent (1%) sales and use tax should be levied in Beaufort County for the purpose of allowing a credit against the taxpayer's county and municipal ad valorem tax liability (property taxes) and for the purpose of funding county and municipal operations in the Beaufort County area.

If this sales and use tax is approved, State law provides that seventy-one percent (71%) of the revenue received by a county and municipality may be used to provide a credit against the property tax liability of taxpayers in the county and municipality and that twenty-nine percent (29%) may be used specifically for the purpose of funding county and municipal operations in the Beaufort County area.

**Voting, Polling Places and Hours of Election:**

The polls shall be opened from 7:00 a.m. until 7:00 p.m. at the polling places listed below and shall be open during these hours without intermission or adjournment. Appropriate voting machines will be provided at the polling places for the casting of ballots on the aforesaid question.

Every person offering to vote (a) must be at least eighteen (18) years of age on the date of the referendum; (b) must reside in Beaufort County; (c) must be duly registered on the books of registration for Beaufort County as an elector in the precinct in which he or she resides and offers to vote on or before the date on which the books of registration are closed for the referendum; and (d) must present his or her current and valid form of identification as required by South Carolina law in effect as of the date of the referendum.

Any person eligible to register who has been discharged or separated from his service in the Armed Forces of the United States prior to October 4, 2020, and returned home too late to register at the time when registration is required is entitled to register for the purpose of voting in the Referendum up to 5:00 p.m. on the day of the Referendum. This application for registration must be made to the Board of Voter Registration and Elections of Beaufort County, and if qualified, the person must be issued a registration notification stating the precinct in which he or she is entitled to vote and a certification of the managers of the precinct that he or she is entitled to vote and should be placed on the registration rolls of the precinct. Persons who become of age during the thirty (30) day period preceding the Referendum shall be entitled to register before the closing of the books if otherwise qualified.

The last day on which persons may register in-person in order to be eligible to vote in the Referendum will be 5:00 p.m. October 2, 2020. Persons may register to vote in the Referendum online, by fax, or email by 11:59 p.m. October 4, 2020. Applications for registration to vote sent by mail must be mailed postmarked no later than October 5, 2020, to the Board of Voter Registration and Elections of Beaufort County, 15 John Galt Road, Beaufort, South Carolina 29906.. The process of examining the return-

addressed envelopes containing absentee ballots will begin at 9:00 a.m. on the date of the Referendum in the office of the Board of Voter Registration and Elections of Beaufort County at 15 John Galt Road, Beaufort, South Carolina 29906.

Voters who are blind, who are otherwise physically handicapped, or who are unable to read or write are entitled to assistance in casing their ballot. This assistance may be given by anyone the voter chooses except his or her employer, an agent of his or her employer, or an officer or agent of his or her union. The Managers of Election must be notified if assistance is needed. Voters who are unable to enter their polling place due to physical handicap or age may vote in the vehicle in which they drove or were driven to the polls. When notified, the manager will help voters effectuate this curbside voting provision. Registered voters may be eligible to vote by absentee ballot. Persons wishing more information concerning absentee balloting should contact the Board of Voter Registration and Elections of Beaufort County at 843-255-6900.

The Board of Voter Registration and Elections of Beaufort County shall hold a hearing on ballots challenged in the Referendum on November 6, 2020, at 10:00 a.m. in the office of the Board of Voter Registration and Elections of Beaufort County at 15 John Galt Road, Beaufort, South Carolina 29906.

The following precincts and polling places will be open from 7:00 a.m. until 7:00 p.m.:

[List Precincts, Polling Places, and Street Address of Polling Places here]

Beaufort County Council, South Carolina  
Board of Voter Registration and Elections of Beaufort County, South Carolina

## APPENDIX B

### FORM OF BALLOT OFFICIAL BALLOT – REFERENDUM

LOCAL QUESTION NUMBER \_\_\_\_\_  
AUTHORIZATION TO IMPOSE A ONE PERCENT LOCAL OPTION SALES TAX TO REDUCE  
PROPERTY TAX ON PERSONS IN BEAUFORT COUNTY

**Must a one percent sales and use tax be levied in Beaufort County for the purpose of allowing a credit against a taxpayer's county and municipal ad valorem tax liability and for the purpose of funding county and municipal operations in the Beaufort County area?**

CONDITIONS AND RESTRICTIONS ON THE USE OF TAX REVENUE COLLECTED FROM THE LOCAL OPTION SALES AND USE TAX:

If this sales and use tax is approved, State law provides that seventy-one percent (71%) of the revenue received by a county and municipality may be used to provide a credit against the property tax liability of taxpayers in the county and municipality and that twenty-nine percent (29%) may be used specifically for the purpose of funding county and municipal operations in the Beaufort County area.

INSTRUCTIONS TO VOTER:

If you are in favor of the question, select "Yes, in favor of the question"; if you are opposed to the question, select "No, opposed to the question."

Yes, in favor of the question    [ ]

No, opposed to the question    [ ]





**Council**

Joe DeVito  
Mayor

Jerry Ashmore  
Mayor Pro Tempore

Mary Beth Heyward  
Darryl Owens  
Kevin Phillips

Van Willis  
Town Manager

T. Alan Beach  
Chief of Police

Jeffrey S. Coppinger  
Operations

Linda Bridges  
Planning

**RESOLUTION NO. 3-2020**

**A RESOLUTION IN SUPPORT OF A LOCAL OPTION SALES AND USE TAX REFERENDUM**

**WHEREAS**, the local option sales and use tax levied pursuant to S.C. Code Sections 4-10-10 et seq. has proven to be an effective measure to control and lower the property tax burden on the citizens of those counties which have previously approved such measures; and

**WHEREAS**, balanced revenues from varied sources strengthen a local government’s fiscal structure, and;

**WHEREAS**, collecting a sales and use tax will provide funds from persons who generate needs for local government services but who do not contribute significant revenues;

**WHEREAS**, County Council intends to use the revenue from the local option sales and use tax for the purpose of allowing a credit against a taxpayer’s county ad valorem tax liability and for the purpose of funding county and municipal operations in Beaufort County; and

**WHEREAS**, the last referendum on the question of adopting the local option sales and use tax was held more than twelve (12) months ago.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of Port Royal, duly assembled, supports the referendum pursuant to Section 4-10-30 of the Code of Laws of South Carolina, (1976), as amended, to be held November 3, 2020, and urges all Town registered voters to vote in favor of the referendum.

Adopted this 1 day of April, 2020.

TOWN COUNCIL OF PORT ROYAL

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

Mayor

ATTEST:

Brooke R. Lyuda  
Clerk to Council

RESOLUTION

TO SUPPORT LOCAL OPTION SALES TAX

**WHEREAS**, South Carolina Act 391 of 1990 established the Local Option Sales Tax as a permissible source of revenue for counties and municipalities throughout the state; and

**WHEREAS**, the additional revenue generated from the implementation of a Local Option Sales Tax would benefit property owners in the Town of Bluffton and would also provide additional revenue to the Town of Bluffton General Fund; and

**WHEREAS**, in order to implement a Local Option Sales Tax, it must first be approved by the electorate through a countywide referendum in a General Election; and


**WHEREAS**, the authority to place such a referendum on a General Election ballot is vested with the County Council of Beaufort County; and

**WHEREAS**, the next opportunity for placement of a Local Option Sales Tax Referendum on a General Election ballot is in conjunction with the November 3, 2020 General Election.

**NOW, THEREFORE, BE IT RESOLVED** that the Town Council of the Town of Bluffton, South Carolina formally requests of the County Council of Beaufort County, South Carolina that a Local Option Sales Tax Referendum be placed on the ballot for voters' consideration in the November 3, 2020 General Election

THIS RESOLUTION SHALL BE EFFECTIVE IMMEDIATELY UPON ADOPTION.

SIGNED, SEALED AND DELIVERED AS OF THIS 12<sup>th</sup> DAY OF November, 2019.

  
\_\_\_\_\_  
Lisa Sulka, Mayor  
Town of Bluffton, South Carolina

ATTEST:

  
\_\_\_\_\_  
Kimberly Chapman, Town Clerk  
Town of Bluffton, South Carolina

**RESOLUTION NO. 2020-4-2B**

**A RESOLUTION OF THE CITY OF HARDEEVILLE, SOUTH CAROLINA, CITY COUNCIL IN SUPPORT OF A LOCAL OPTION SALES AND USE TAX REFERENDUM IN BEAUFORT COUNTY**

**WHEREAS**, the local option sales and use tax levied pursuant to S.C. Code Sections 4-10-10 et seq. has proven to be an effective measure to control and lower the property tax burden on the citizens of those counties which have previously approved such measures; and

**WHEREAS**, balanced revenues from varied sources strengthen a local government's fiscal structure, and;

**WHEREAS**, collecting a sales and use tax will provide funds from persons who generate needs for local government services but who do not contribute significant revenues;

**WHEREAS**, Beaufort County Council intends to use the revenue from the local option sales and use tax for the purpose of allowing a credit against a taxpayer's county ad valorem tax liability and for the purpose of funding county and municipal operations in Beaufort County; and

**WHEREAS**, the last referendum on the question of adopting the local option sales and use tax was held more than twelve (12) months ago.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of Hardeeville, duly assembled, supports the referendum pursuant to Section 4-10-30 of the Code of Laws of South Carolina, (1976), as amended, to be held November 3, 2020, and urges all eligible registered voters in the Beaufort County portion of the City of Hardeeville to vote in favor of the referendum.

Adopted this 2<sup>nd</sup> day of April, 2020.

**HARDEEVILLE CITY COUNCIL**

By: *Harry Williams*

Mayor

ATTEST:

*Lou Pomanis*

Clerk to Council

**RESOLUTION NO. 20-04**

**A RESOLUTION IN SUPPORT OF A LOCAL OPTION SALES AND USE TAX  
REFERENDUM**

**WHEREAS**, the local option sales and use tax levied pursuant to S.C. Code Sections 4-10-10 et seq. has proven to be an effective measure to control and lower the property tax burden on the citizens of those counties which have previously approved such measures; and

**WHEREAS**, balanced revenues from varied sources strengthen a local government's fiscal structure, and;

**WHEREAS**, collecting a sales and use tax will provide funds from persons who generate needs for local government services but who do not contribute significant revenues;

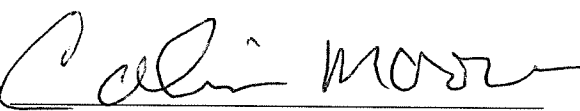
**WHEREAS**, Beaufort County Council intends to use the revenue from the local option sales and use tax for the purpose of allowing a credit against a taxpayer's county ad valorem tax liability and for the purpose of funding county and municipal operations in Beaufort County; and

**WHEREAS**, the last referendum on the question of adopting the local option sales and use tax was held more than twelve (12) months ago.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of Yemassee, duly assembled, supports the referendum pursuant to Section 4-10-30 of the Code of Laws of South Carolina, (1976), as amended, to be held November 3, 2020, and urges all Town registered voters to vote in favor of the referendum.

Adopted this 14<sup>th</sup> day of April, 2020.

TOWN COUNCIL OF YEMASSEE

By   
Colin J. Moore, Mayor

ATTEST:

  
Matthew E. Garnes, Town Clerk





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## BEAUFORT COUNTY COUNCIL

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### Agenda Item Summary

#### Item Title:

Land Acquisition Proposal through Rural and Critical Land Program - Project 2020A

#### Council Committee:

County Council - Executive Session

#### Meeting Date:

March 23, 2020

#### Committee Presenter (Name and Title):

Barbara G. Holmes, Beaufort County Contractor; Eric Greenway, CDD Director

#### Issues for Consideration:

The fee simple acquisition of +/- 12 acres on US Highway 21 (3020, 3026, and 3030 Trask Parkway) for \$544,537 in Rural and Critical Program land acquisition funds, acceptance of 1.7 acres of donated property, sale of restrictive easement and grant of conservation easement of purchased and donated property. Project summary sheet, Restrictive Easement, conservation easement and purchase contracts are attached. Rural and Critical Land Preservation Board unanimously recommended approval on January 9, 2020. Natural Resources Committee recommended approval 5 to 1 on March 2, 2020 with some discussion, that was not part of the motion, regarding potentially using H-Tax funding towards some of the expense for the purchase.

The properties are currently under contract for purchase by the Battleground Preservation Trust, which will be assigned to the County if purchase is approved.

#### Points to Consider:

Property being purchased below fair market value. The three parcels under consideration comprise a significant portion of the battlefield of the 1779 Revolutionary War Battle of Port Royal Island. One tract includes an existing 22,000 s.f. commercial building. SC Conservation Bank, and DoD/Marine Corps Air Station Beaufort are cost-share partners. Marine Corps Air Station Beaufort purchasing a Restrictive Easement on the property with limitations on public access and use of the commercial building. The SC Battleground Preservation Trust will hold a conservation easement to protect historic resources. County would be sole owner of purchased and donated property. Property could be established as a site on the South Carolina Liberty Trail.

#### Funding & Liability Factors:

Land acquisition cost from Rural & Critical Program funds = \$544,537. Other cost-share funds are MCAS Beaufort \$897,500, and SC Conservation Bank \$352,963. County has expended \$18,235 in identifiable due diligence expenses, further costs expected for closing including survey of donated parcel and closing costs. Post-closing costs for County listed in Project Summary Sheet. The existing building is a liability consideration.

#### Council Options:

Approve the proposal and recommend purchase to Council, modify proposal, or reject proposal

#### Recommendation:

Staff recommends the Committee approve the request.

**ORDINANCE 2020/ \_\_\_\_\_**

**AN ORDINANCE AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE NECESSARY DOCUMENTS FOR THE PURCHASE OF APPROXIMATELY 12 ACRES OF REAL PROPERTY KNOWN AS TAX MAP SERIAL NUMBERS R100 020 000 0165 0000, R100 020 000 047C 0000, AND R100 020 000 0047 0000 AND ALSO KNOWN AS THE PORT ROYAL ISLAND BATTLEFIELD; TO SELL A RESTRICTIVE EASEMENT TO THE UNITED STATES OF AMERICA ON TAX MAP SERIAL NUMBERS R100 020 000 0165 0000, R100 020 000 047C 0000, AND R100 020 000 0047 0000; TO ACCEPT THE DONATION OF A PORTION OF R100 020 000 0244 0000; AND TO GRANT A CONSERVATION EASEMENT TO THE SOUTH CAROLINA BATTLEGROUND PRESERVATION TRUST ON TAX MAP SERIAL NUMBERS R100 020 000 0165 0000, R100 020 000 047C 0000, AND R100 020 000 0047 0000 AND A PORTION OF R100 020 000 0244 0000.**

**WHEREAS**, Beaufort County (“Buyer”) established the Rural and Critical Land Preservation Program in 1999 with purposes which include providing for the purchase of fee simple interests in lands which are deemed critical for the protection of natural resources, historic and cultural significance, regional or local recreation potential, viewscapes and lands suitable for public use; and

**WHEREAS**, in 2016, experts conclusively determined the specific location in northern Beaufort County of the Revolutionary War’s 1779 Battle of Port Royal Island and a National Historic Marker has been placed near the battlefield; and

**WHEREAS**, sellers wishes to sell and buyer wishes to buy the real property identified as **R100 020 000 0165 0000, R100 020 000 047C 0000 and R100 020 000 0047 0000** also known as the Port Royal Island Battlefield, approximately 12 acres located in northern Beaufort County, on U.S. Highway 21 (“Property”); and

**WHEREAS**, the purchase of the Port Royal Island Battlefield has been demonstrated to meet the Critical Lands Criteria of the Rural and Critical Lands program; and

**WHEREAS**, the Port Royal Island Battlefield abuts Marine Corps Air Station Beaufort, property owned by the United States of America; and

**WHEREAS**, Buyer and the United States of America have entered into an agreement pursuant to 10 U.S.C. Section 2684a to acquire property interests that would be otherwise incompatible with the mission of Marine Corps Air Station Beaufort and otherwise meets the mutual objectives of the buyer and the United States of America; and

**WHEREAS**, the United States of America desires to purchase a Restrictive Easement on the portion of the Port Royal Island Battlefield to be owned by the Buyer; and

**WHEREAS**, the South Carolina Battleground Preservation Trust (“Preservation Trust”) is a §501(c)(3) organization corporation established in 1991 dedicated to the preservation of South Carolina’s historic battlegrounds and military sites and desires to protect the historic integrity of the Port Royal Island Battlefield as the holder of a conservation easement; and

**WHEREAS**, the Preservation Trust desires to purchase, through funds provided by a South Carolina Conservation Bank grant, a Conservation Easement on the portion of the Port Royal Island Battlefield to be owned by the Buyer; and

**WHEREAS**, the proposal to purchase the Port Royal Island Battlefield is for a fee simple purchase of \$1,820,000.00 plus reasonable closing costs; and

**WHEREAS**, funding for the purchase of Property comprised of \$544,537.00 from the Rural and Critical Land Preservation Program, \$352,963.00 from a South Carolina Conservation Bank grant and \$922,500.00 from the sale of a Restrictive Easement to the United States of America; and

**WHEREAS**, the seller of **R100 020 000 0165 0000** and **R100 020 000 047C 0000** has offered to donate to the buyer approximately 1.7 acres of land of **R100 020 000 0244 0000** that also includes a portion of the battlefield; and

**WHEREAS**, the American Battlefield Trust, the National Park Service, the South Carolina Battleground Preservation Trust and the South Carolina American Revolution Sestercentennial Commission are collaborating to commemorate South Carolina's involvement in the Revolutionary War with the establishment of the *Liberty Trail*, a heritage tourism and preservation initiative and the Port Royal Island Battlefield can be a part of the *Liberty Trail*; and

**WHEREAS**, the proposed purchase of the Port Royal Island Battlefield was presented to the Rural and Critical Land Preservation Board (RCLPB) at its January 9, 2020 meeting and the RCLPB unanimously recommended approval of the purchase; and

**WHEREAS**, the proposed purchase of the Property was presented to the Natural Resources Committee on March 2, 2020 and the Committee voted by a vote of 5-1 to recommend approval to Beaufort County Council of the purchase of the Port Royal Island Battlefield using Rural and Critical Lands program funds; and

**WHEREAS**, the project proposal and essential terms for the purchase and perpetual protection of the Port Royal Island Battlefield are included in the attached Project Summary Sheet (Exhibit "A") describing the fee simple purchase of approximately 12 acres of real property at a price less than the appraised value, the acceptance of a donation of approximately 1.7 acres of real property, the sale of a Restrictive Easement to the United States of America and the grant of Conservation Easement to the South Carolina Battleground Preservation Trust; and

**WHEREAS**, Beaufort County Council has determined that it is in the best interest of its citizens and residents of Beaufort County to authorize the execution and delivery of the Assignment of Real Estate Purchase and Sale Agreement for TMS# **R100 020 000 0165 0000** (Exhibit "B"), the Assignment of Real Estate Purchase and Sale Agreement for TMS# **R100 020 000 047C 0000** (Exhibit "C"), the Assignment of Real Estate Purchase and Sale Agreement for TMS# **R100 020 000 0047 0000** (Exhibit "D"), the Restrictive Easement (Exhibit "E"), and the Conservation Easement (Exhibit "F") which are attached hereto and incorporated herein by reference.

**NOW, THEREFORE, BE IT ORDAINED** by Beaufort County Council that the County Administrator is hereby authorized to:

1. execute the Assignment of Real Estate Purchase and Sale Agreements as shown in Exhibit B, Exhibit C, and Exhibit D attached hereto; and
2. execute the necessary documents for the purchase of approximately 12 acres of real property known as tax map serial numbers R100 020 000 0165 0000, R100 020 000 047C 0000 and R100 020 000 0047 0000 and also known as the Port Royal Island Battlefield; and
3. sell a Restrictive Easement to United States of America and execute the Restrictive Easement as shown in Exhibit E attached hereto; and
4. sell a Conservation Easement to South Carolina Battleground Preservation Trust and execute the Conservation Easement as shown in Exhibit F attached hereto F; and
5. accept the donation of a portion of real property known as R100 020 000 0244 0000.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2020.

COUNTY COUNCIL OF BEAUFORT COUNTY

BY: \_\_\_\_\_  
Joseph Passiment, Chairman

ATTEST:

\_\_\_\_\_  
Sarah W. Brock, Clerk to Council

Chronology

- Natural Resources Committee discussion and recommendation occurred on March 2, 2020 / Vote 5:1



COUNTY COUNCIL OF BEAUFORT COUNTY  
**PURCHASING DEPARTMENT**

106 Industrial Village Road  
Post Office Drawer 1228  
Beaufort, South Carolina 29901-1228

TO: Council Chairman Joseph Passiment, County Council

FROM: Dave Thomas, CPPPO, Purchasing Director

**SUBJ: Recommendation of Purchase of Fee Simple Interest of Project 2020A Port Royal Island Battlefield through the Beaufort County Rural and Critical Land Preservation Program**

DATE: March 23, 2020

**BACKGROUND:** On January 9, 2020, the Beaufort County Rural and Critical Land Preservation Board unanimously voted in Executive Session to approve the fee simple acquisition purchase of Project 2020A Port Royal Island Battlefield and send it to the Natural Resources Committee meeting on March 3, 2020 for approval. The property is 13.86 acres located at 3020, 3026, and 3030 Trask Parkway in Beaufort and is owned by Smooth Seas, LLC (Harris Pillow) and Michael Kling. This property is the specific location of the Revolutionary's War's 1779 Battle of Port Royal Island. The three parcels under consideration comprise a significant area of the battlefield and one parcel includes a 22,000 square foot building. This project has been presented several times to the Beaufort County Rural and Critical Land Preservation Board, however, was not approved under previous proposals. The current proposal has MCAS Beaufort (Department of Defense) funding 50% of the project, South Carolina Conservation Bank funding 20% of the project, and the Beaufort County Rural and Critical Land Preservation Program funding 30% of the project. One of the owners, Smooth Seas, LLC, will donate 1.7 acres of contiguous property for inclusion in the project. MCAS Beaufort will hold a restrictive easement on the property that will allow up to 20 visitors a day for historic, educational, and interpretive activities and may be a part of the Liberty Trail. The South Carolina Battleground Preservation Trust will put a conservation easement on the property to protect its historic resource. Beaufort County will be the sole owner of the purchased and donated property.

**FUNDING:** Funding for the project will be \$544,537 from the Beaufort County Rural and Critical Land Preservation Program (Account #4500-0011), \$922,500 from MCAS Beaufort (Department of Defense), and \$352,963 from the South Carolina Conservation Bank.

**FOR ACTION:** Natural Resources Committee meeting (Executive Session) on Monday, March 2, 2020 at 3:30 p.m. for recommendation to County Council on Monday, March 23, 2020 at 6:00 p.m.

**RECOMMENDATION:** The Community Development Department recommends that the Natural Resources Committee recommend to County Council approval of the purchase of fee simple interest of Project 2020A Port Royal Island Battlefield in the amount of \$544,537 from the Beaufort County Rural and Critical Land Preservation Program (Account #4500-0011). The total cost of the project with partners will be \$1,820,000.

CC: Ashley Jacobs, County Administrator  
Alicia Holland, Asst. Co. Administrator, Finance  
Phil Foot, Asst. Co. Administrator, Public Safety  
Eric Greenway, Community Development Department Director  
Amanda Flake, CDD Natural Resources Planner

# Exhibit A



**2020A Port Royal Island Battlefield (3  
tracts) Beaufort County, SC  
Proposal: Fee Acquisition**

**THREE PROPERTIES:**

Seller	DMP#	Acres
Smooth Seas, LLC (Harris Pillow)	R100 020 000 0165 0000	2.36
Smooth Seas, LLC (Harris Pillow)	R100 020 000 047C 0000	6.07
Michael Kling	R100 020 000 0047 0000	<u>3.73</u>

<b>Acreage to be Purchased:</b>	<b>12.16</b>
<b>Acreage to be Donated (estimated):</b>	<b><u>1.70</u></b>
<b>Total Acreage to be Owned by County</b>	<b>13.86</b>

<b>TOTAL PRICE:</b>	<b>\$1,820,000</b>
<b>RCLPP FUNDS:</b>	<b>\$ 544,537 (30% of purchase cost)</b>
<b>PARTNER FUNDS:</b>	<b>\$1,275,463 See Purchase and Cost Structure</b>
<b>SELLER CONTRIBUTIONS:</b>	<b>See Purchase and Cost Structure</b>
<b>ZONING:</b>	<b>S1 Light Industrial MCAS AICUZ Noise Zones 80-85db and 75-80db</b>
<b>COUNCIL DISTRICT:</b>	<b>1 (Councilman Gerald Dawson)</b>

**LOCATION:** 3020, 3026 and 3030 Trask Parkway, Beaufort, SC  
North of the City of Beaufort, west and adjacent to U.S. Highway 21, south of Parker Drive, directly across U.S. Highway 21 from Marine Corps Air Station Beaufort (MCAS Beaufort)

**Project Background:**

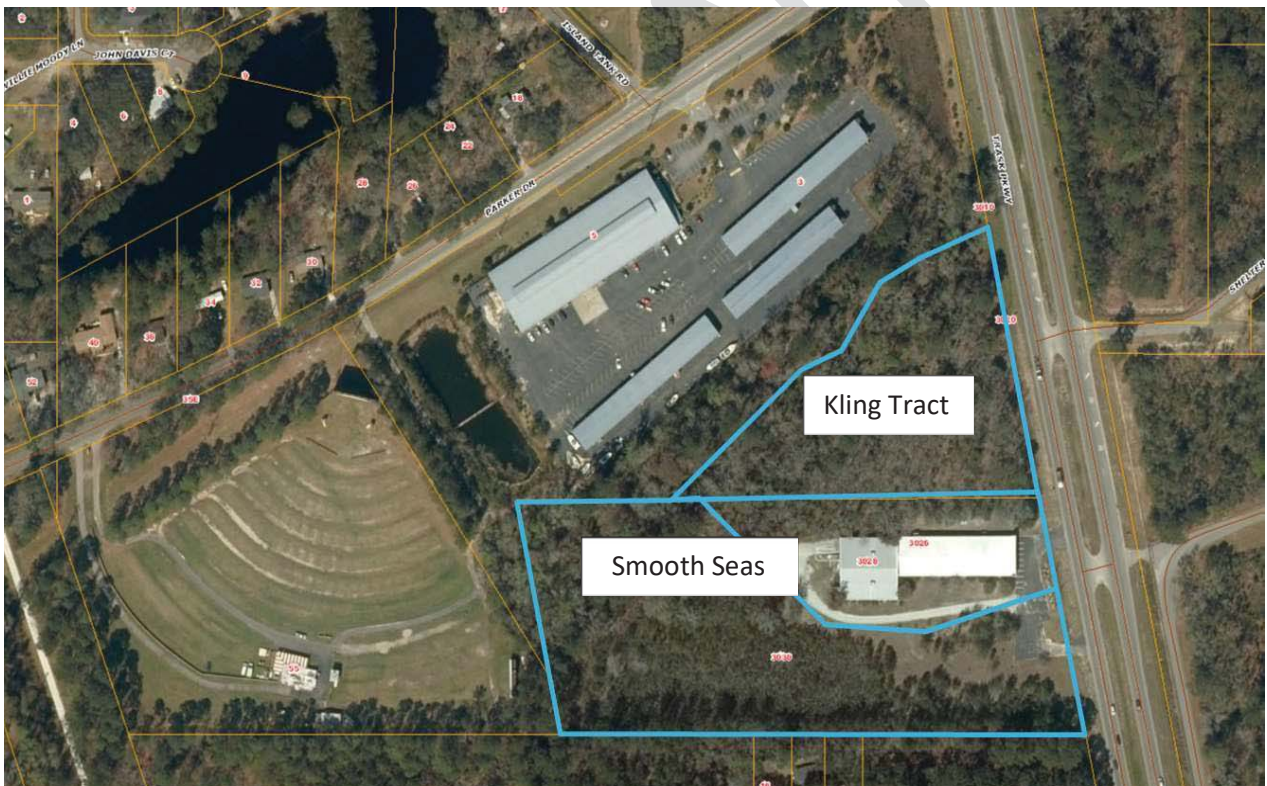
- The specific location of the Revolutionary War's 1779 Battle of Port Royal Island was conclusively determined in the spring 2016. The three parcels under consideration comprise a significant area of the battlefield. A National Historic Marker is located near the property just off U.S. Highway 21 north of the subject tracts.

A Narrative of the Battle of Port Royal Island can be found after the Project Analysis.

- This project has been presented several times through the Rural and Critical Program, however, was not approved under previous proposals.

**Property Characteristics:**

- The 2.36-acre Smooth Seas tract includes a 22,000 s.f. industrial building ca. 1973 with a paved parking lot in the front of the building and an unpaved driveway extending from the parking lot to the back of the building.
- The 6.07-acre Smooth Seas tract is an unimproved vacant parcel of mixed forest and wetlands. A portion of the paved parking extends onto this tract. One billboard with a permanent easement is located at the southeast corner of the tract facing southbound U.S. Highway 21 traffic.
- The Kling tract is an unimproved vacant parcel with mixed upland forest and wetlands. One billboard is sited on this parcel facing southbound U.S. Highway 21 traffic.
- The properties have 1,680 feet of road frontage on U.S. Highway 21 with over 20,000 cars passing daily







**Purchase and Cost Structure:**

Appraised Values and Negotiated Price					
<u>DMP#</u>	<u>Acres</u>	<u>Owner</u>	<u>Appraised Values</u>	<u>Appraisal Totals</u>	<u>Negotiated Price</u>
R100 020 000 0165 0000 Land	2.36	Smooth Seas	\$220,000		
R100 020 000 0165 0000 Bldg		Smooth Seas	\$930,000		
R100 020 000 047C 0000	6.07	Smooth Seas	\$460,000		
				\$1,610,000	\$1,575,000
R100 020 000 0047 0000	3.73	Kling		\$280,000	\$245,000
				<b>\$1,890,000</b>	<b>\$1,820,000</b>

Port Royal Island Battlefield Purchase Budget			
<b>Costs:</b>			
Purchase of Smooth Seas Tracts (negotiated)		\$ 1,575,000	
Purchase of Kling Tract (negotiated)		\$ 245,000	
<b>Total Purchase Funds Needed:</b>			<b>\$ 1,820,000</b>
<b>Funding Sources/Partners:</b>			
Department of Defense	\$ 922,500		51%
South Carolina Conservation Bank (previously awarded)	\$ 352,963		19%
Beaufort County Rural & Critical Land Program	\$ 544,537		30%
<b>Total Funds Requested:</b>			<b>\$ 1,820,000</b>

**Cost-Share Partner Contributions:**

**1. Department of Defense MCAS Beaufort Restrictive Easement**

Restrictive Easement allows for up to 20 visitors/day for historic, educational and interpretive activities with no notice to MCAS. The site could be included on the Liberty Trail. Approval required for events that include more than 20 people/day.

**2. South Carolina Conservation Bank**

In 2017 the South Carolina Battleground Preservation Trust (SCBPT) was awarded a \$352,963 grant from the SCCB. The proposed project went inactive and those funds were ultimately released to other projects. The SCBPT is re-applying for funds in January 2020. Grant awards are expected to be finalized by the Board by the end of February 2020. Approved funds must be expended by June 30, 2020.

**3. South Carolina Battleground Preservation Trust**

The SCBPT is applying for the SCCB funds on behalf of the project and will be a continued partner with Beaufort County on the Liberty Trail project. The SCBPT will hold a conservation easement on the property with the purpose of protecting its historic and cultural resources.

**4. Seller Contributions**

The seller of the Smooth Seas properties has offered to convey approximately 1.7 acres of contiguous property to County for inclusion into project, bringing the total battlefield acreage to almost 14 acres. The value of this donated acreage has not been appraised.



Both owners of the properties are willing to sell the property below fair market value in the interest of permanent protection of the battlefield.



**Cost Considerations:**

Due Diligence and Closing

Beaufort County has expended identifiable due diligence funds of \$17,485 on the Port Royal Island Battlefield project which included a new survey of the three properties, a Phase I Environmental Site Assessment, an asbestos survey, a wetlands delineation and a USPAP-standard FMV appraisal. Other costs must be expended by Beaufort County to finalize the closings, including a survey of the donated parcel and the attorney fees for title work and closing the project.

Future Cost Considerations

Economic impact of purchases on tax base of the County:

Foregone property tax revenue	\$ 25,924
Operations & Maintenance	
Annual mowing maintenance	\$ 15,000
Other items	Est. not available
If the building were to be demolished (not required by easement):	
Asbestos removal, estimated	\$ 5,015
Demolition of building, parking areas	\$100,000
Billboard removal / Re-use	Est. not available

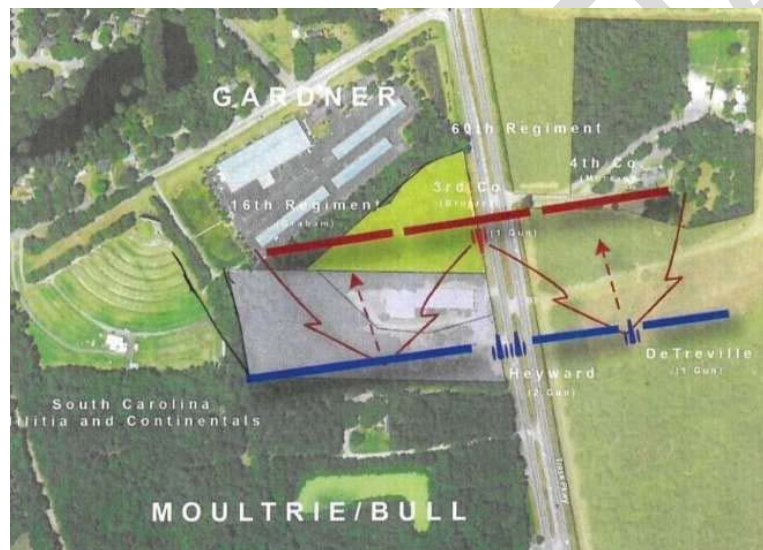
**The South Carolina Battleground Preservation Trust plans to be an ongoing partner with Beaufort County in the fundraising and ongoing efforts needed to optimally protect, interpret and promote this battleground property.**

**Critical Lands Criteria:**

- Complementary with County Comprehensive Plan recommendation 6-1 and implementation strategy to continue to pursue the acquisition of significant archeological and historical sites via the Rural & Critical Land Preservation Program
- Proximity to protected areas: Located 1,000 feet from RCLPP-purchased AMGRAY (~21 acres).
- Public access, historic and educational benefits
- Leverage of other funding – strong cost-share funding partners
- Public views of scenic forested frontage from U.S. Highway 21
- Water quality/groundwater recharge ecosystem services benefits

**Project Analysis:**

This project represents an opportunity for Beaufort County to purchase three properties comprising the unprotected and only publicly accessible portion of the Revolutionary War's 1779 Battle of Port Royal Island, a land area of great historic significance for the United States. The project offers the possibility of public ownership and permanent protection and interpretation of this unique and decisive victory of the Patriots over the British Loyalists in America's War for Independence.



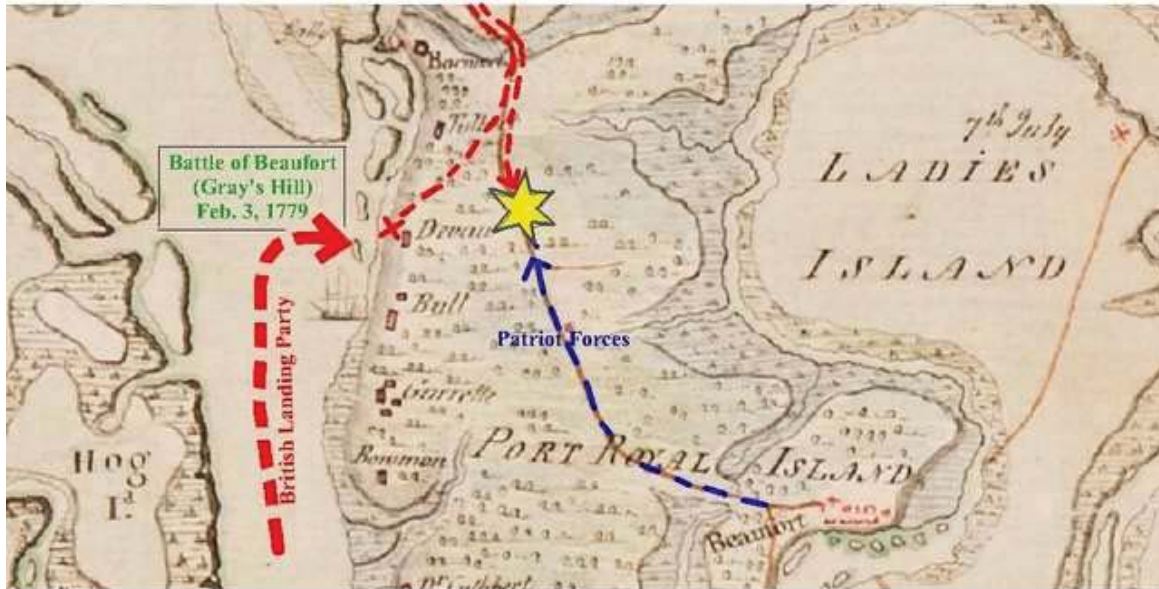
Diverse and important goals can be accomplished by this project. Beaufort County's partners have been asked to contribute 85% of the purchase funds to protect the Port Royal Island Battlefield. Marine Corps Air Station Beaufort has the goal of protecting today's military from incompatible future development adjacent to the installation. To those who work to protect and commemorate South Carolina's history and heritage, this project will highlight Beaufort County's involvement in the Revolutionary War through the **Liberty Trail**, a heritage tourism and preservation initiative to promote the Palmetto State's leading role in the founding of the United States. The **Liberty Trail** is a collaboration of The American Battlefield Trust, the National Park Service, the SCBPT and the South Carolina American Revolution Sestercentennial Commission and is expected to be functional in late 2020. The Trail will be an interactive history



experience that will be 400 miles long and feature 70 sites, including 16 park sites and 14 roadside vehicle pulloffs.

Previous versions of this project have not been approved due to a number of reasons, including a high price per acre, limitations on public access and future expected costs. The cost per acre is high because the property is situated on the main roadway into northern Beaufort County and is zoned to allow for commercial uses. However, the property is being purchased below fair market value, and the number of cost-share partners brings the RCLP's share down to just 15%. The South Carolina Battleground Preservation Trust is willing to continue working with Beaufort County on the interpretation and education of the site, to fundraise to create an appropriate roadside battleground site and to bring additional partners to the project. The Department of Defense, the SC Battleground Preservation Trust and Beaufort County have come together and reached an agreement they will support to protect this important site.

CONFIDENTIAL



## Narrative of the Battle of Port Royal Island

By Doug Bostick

Executive Director, South Carolina Battlefield Preservation Trust

November 2016

In January 1779, British Major William Gardner was ordered to make a naval landing and march infantry companies to occupy Port Royal Island. They landed at Hilton Head and skirmished with Patriot militia. Gardner's troops burned the plantation belonging to Captain Thomas Heyward Jr., one of South Carolina's Signers of the Declaration of Independence. They continued to burn abandoned plantations as they encountered them on their march to Port Royal Island.

Learning of the British advance, Patriot General Benjamin Lincoln dispatched Brigadier General William Moultrie to meet this British threat. Moultrie's troops included the SC 3rd Regiment (Rangers), the SC 4th Regiment of Artillery led by Captain John Francis DeTreville, the SC 5th Regiment (Riflemen), and the 1st Brigade of SC Militia led by Brigadier General Stephen Bull.

Moultrie arrived at Port Royal a day ahead of the British. The British troops deployed ashore at first light on February 3. After marching two miles, they skirmished with a small party of Patriot

militia. As they continued their advance on Port Royal, word of their location reached Moultrie.

Moultrie attempted to deploy his men in a wooded swamp near the highway, but the British beat him to that location. The Patriot troops then lined up across the road and in an open field, just two hundred yards from the British troops. Moultrie deployed two six-pound guns commanded by Thomas Heyward Jr. in the middle of the road and one 2-pound gun in the woods on the right commanded by DeTreville.

Major Gardner rode to the American lines with a handkerchief tied to his sword demanding that the Patriots surrender. Moultrie sent Captain Francis Kinlock forward to refuse, and noting that Gardner was outnumbered, that he should consider surrendering.

The British fired their howitzer on Heyward's artillery, killing a Patriot officer. Heyward returned fire and, on his second shot, disabled the Gardner's only cannon, killed two British lieutenants, and hit Gardner's horse.

After taking casualties, Moultrie ordered his men to move to the woods on either side. Both armies tried to flank each other without success. During the forty-five minute battle, a British major and two captains were wounded. As both sides were about to run out of ammunition, Moultrie and Gardner disengaged.

Moultrie sent Captain John Barnwell and his Beaufort militia to pursue the retreating British. Gardner reached the boat landing where forty Loyalist marines had set a defensive position. Forty of the British troops were either killed or wounded and another twenty-six taken prisoner. The Patriot casualties were only eight killed and twenty-two wounded. As the British retreated from the hotly contested battle, they were forced to leave their dead and wounded on the field. Local citizens removed the bodies of the two British officers killed in action and buried them at St. Helena Episcopal Church.



**The battle is significant for a number of reasons:**

1. If the British were successful in capturing Port Royal, they would have controlled the largest natural deep-water harbor south of New York.
2. Both Thomas Heyward Jr. and Edward Rutledge fought in the battle. It is exceedingly rare that two signers of the Declaration of Independence were involved in a battle as combatants.
3. This battle is one of the earliest documented use of black troops in the Revolutionary War. With the 4<sup>th</sup> Regiment of Artillery was Jim Capers, a South Carolina slave who became a true American hero.

Capers was born on September 23, 1742 in Christ Church Parish, South Carolina. In 1775, he was a slave at a plantation near Bull's Bay owned by Mr. Capers. On June 15 of that year, Capers enlisted as a drum major in the 4<sup>th</sup> Regiment of the South Carolina Militia, commanded by Francis Marion.

In the Revolutionary War, a regimental drummer was used, not just for music, but to transmit orders using the drum. Specific drumbeats transmitted orders and coordinated troop movements. A drummer goes into battle without a weapon and subjects himself to great peril. Jim Capers was an American hero by joining the cause of independence, even when he himself was a slave.

Capers fought in the Siege of Savannah, the Siege of Charles Town, and the battles of St. Helena, Port Royal Island, Georgetown, Camden, Biggin Church, and Eutaw Springs. It was at the Battle of Eutaw Springs that he received four wounds: two on his face and one on his head by a sword, and one in his side by a musket ball. His last battle was at Yorktown, Virginia, where he was present for the surrender of Cornwallis.

Capers was discharged on October 1, 1782, having served for seven years, five and one-half months, and he was discharged as a free man of color. After the war, Capers moved to Alabama, seeking new opportunities "in the west." He died in Pike County, Alabama on April 1, 1853, at the age of 110. On February 1, 2015, Jim Capers was recognized and honored with marker at his grave, placed by the Alabama Society of the Sons of the American Revolution.



# Exhibit B





# Exhibit A

## AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY (the "Agreement") is made effective as of the 21 day of January, 2020 (being the last and latest date affixed hereto next to the signature lines of the Seller and Purchaser, the "Effective Date"), by and between: SMOOTH SEAS, LLC, with a mailing address of 5 Parker Drive, Beaufort, South Carolina 29906 (the "Seller"); and SOUTH CAROLINA BATTLEGROUND PRESERVATION TRUST, Inc., a South Carolina non-profit organization, with a mailing address of P.O. Box 80668, Charleston, SC 29416-0668 (the "Purchaser").

### RECITALS:

A. Seller is the fee simple record title owner of a certain parcel of land located in Beaufort County, South Carolina, including a total of approximately 2.36 acres, more or less, located at or near 3026 Trask Parkway (Highway 21), Beaufort, South Carolina 29906, identified as tax parcel #R100-020-000-0165-0000 among the land records of Beaufort County, together with all the improvements and buildings constructed thereon (if any), timber, and all rights, privileges, and easements appurtenant thereto or used in connection therewith, including all of Seller's right, title, and interest in and to any streets, alleys, easements, rights-of-way, public ways, or other rights appurtenant, adjacent, or connected thereto or used in connection therewith (collectively herein referred to as the "Property").

B. Seller desires to sell and convey all of its right, title and interest in and to the Property, and Purchaser desires to buy and acquire the above-described Property AS-IS, WHERE-IS, subject only to the contingencies, terms and conditions herein contained in this Agreement, and as a consequence, Seller and Purchaser are executing and ratifying the Agreement to specify and set forth the terms and conditions under which the Seller will sell and convey, and the Purchaser will buy and acquire the aforesaid Property.

NOW THEREFORE, WITNESSETH: In consideration of the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller hereby agrees to sell to Purchaser, and Purchaser agrees to buy from the Seller in fee simple title, the Property, under the following terms and conditions:

1. Sale of Property. Subject to the terms and conditions of this Agreement, Seller will sell and convey to Purchaser, and Purchaser will buy and acquire from Seller all of Seller's right, title and interest in and to the Property.

2. Purchase Price; Terms of Payment; Deposit. On the date of settlement and closing (the "Closing Date") of the purchase and sale of the Property (the "Closing"), Purchaser shall purchase and buy the Property from the Seller for the purchase price (the "Purchase Price") of \$1,119,075.00. At Closing, the Purchaser shall pay the Seller the Purchase Price in cash, or by cashier's or certified check, or by wire transfer of funds delivered to the settlement/closing agent for the Purchaser, and which Purchase Price (net of the Seller's costs and expenses of Closing) is to be disbursed by the settlement/closing agent of the Purchaser to Seller on the same day

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recording of the deed conveying title to the Property is accomplished, which recording is to be accomplished within three (3) business days after the Closing Date.

Within fifteen (15) business days of the mutual and full execution and delivery of this Agreement, Purchaser shall deliver in escrow to an "Escrow Agent" an earnest money deposit in the amount of TEN DOLLARS (\$10.00) (the "Deposit"), which Deposit shall be paid by Purchaser in the form of cash or cashier's or certified check, or by wire transfer of funds. The Deposit shall be deposited and held by Escrow Agent. The Deposit is refundable to Purchaser in the event of default hereunder by Seller. If this Agreement is not closed, then the Escrow Agent shall disburse the Deposit as applicable in the manner provided for elsewhere herein, and the parties agree to promptly notify the Escrow Agent in writing upon any termination of this Agreement and which party is entitled to the Deposit.

Unless prior to the Closing Date hereunder the Purchaser or Seller becomes entitled to the Deposit as provided in this Agreement, the Escrow Agent shall, concurrent with Closing, pay over and transfer the Deposit to the settlement agent (if a different party from Escrow Agent) for application and credit of Purchaser towards the payment of Purchase Price.

The Settlement Agent shall be:

Thomas A. Bendle, Jr.,

Howell, Gibson & Hughes, P.A.

Post Office Box 40, Beaufort, SC 29901

25 Rue Du Bois, Beaufort, SC 29907.


3. Contingencies.

3.1 Environmental Site Assessment. This Agreement is contingent upon the completion of a Phase I Environmental Site Assessment (the "ESA") of the Property to be paid for by Purchaser; and upon there being no items or information contained in said Phase I of the Property that the Purchaser, in its sole and absolute discretion, finds unsatisfactory.

3.2 Survey. This Agreement is contingent upon the completion of an ALTA or appropriate boundary survey depicting the Property and all easements, encumbrances and river frontage, to be paid for by Purchaser; and upon there being no items or information contained in said survey of the Property that the Purchaser, in its sole and absolute discretion, finds unsatisfactory.

4. Title. It shall be a condition precedent to Purchaser's obligation to proceed to Closing that, on the Closing Date, title to the Property shall be good of record and in fact, marketable, free of any liens and encumbrances except the Permitted Encumbrances (as defined below), and otherwise insurable at regular rates by a reputable title insurance company. Purchaser has ordered a commitment from a title company (the "Title Company") to issue an owner's policy of title insurance insuring the Property (the "Title Commitment"), and promptly upon receipt, shall provide the Seller with a true and complete copy of the Title Commitment. At that time Purchaser shall notify Seller in writing as to which (if any) of the matters disclosed in the Title Commitment are unacceptable to the Purchaser, except that the Purchaser shall not be

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obligated to notify the Seller of Purchaser's objections to any financial liens or encumbrances created by Seller that may be released upon payment of a specified or computable sum of money (the "Financial Liens") affecting the Property, as Seller is obligated to cure such Financial Liens before the Closing Date (and if not so cured, Purchaser hereby directs the Escrow Agent to cure such Financial Liens out of the proceeds to be paid to Seller at Closing, and deduct such amounts from the Purchase Price paid to Seller). Within seven (7) days after receipt of the Title Commitment and Purchaser's letter of objections, the Seller shall notify the Purchaser in writing as to which (if any) of the title matters objected to by the Purchaser the Seller is willing to correct. If Seller does not notify Purchaser as set forth above, it shall be deemed that Seller has refused to correct any such matter(s) to which Purchaser has objected. Purchaser shall then have the balance of the Feasibility Study Period to either elect to waive those title defects that the Seller has not agreed to remedy and cure, or to terminate this Agreement if Purchaser remains unsatisfied with the condition of title to the Property. In the event of termination of this Agreement by Purchaser, neither party shall have any further rights or obligations under this Agreement, except for those obligations which survive termination hereunder, and Escrow Agent shall return the Deposit to Purchaser. "Permitted Encumbrances" as used herein shall mean (i) those title matters that appear on Schedule B-2 of the Title Commitment (other than Financial Liens and the so-called "pre-printed exceptions") and to which Purchaser makes no objection and (ii) those title matters to which Purchaser makes objection, and Seller refuses to correct, and in spite of such refusal Purchaser nevertheless elects to proceed hereunder after expiration of the Feasibility Study Period.

5. Disclaimer. Except for the express representations made herein by Seller to Purchaser with regard to the Property, Purchaser acknowledges and agrees that Seller has not made, does not make, and specifically negates and disclaims any other representations, warranties, promises, covenants, agreements, or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present, or future, of, as, to, concerning, or with respect to (a) the value, nature, quality, or condition of the Property, (b) the income to be derived from the Property, (c) the suitability of the Property for any and all activities and uses which Purchaser may conduct thereon, (d) the compliance of or by the Property or its operation with any laws, rules, ordinances, or regulations of any applicable governmental authority or body, (e) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property, (f) the manner, quality, state of repair, or lack of repair of the Property, or (g) any other matter with respect to the Property. Seller is not liable or bound in any manner by any verbal or written statements, representations, or information pertaining to the Property, or the operation thereof, furnished by any real estate broker, agent, servant, or other person. Purchaser further acknowledges and agrees that to the maximum extent permitted by law, the sale of the Property as provided for herein is made on an "AS IS" "WHERE IS" condition and basis with all faults. The provisions of this section/paragraph shall survive Closing.

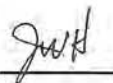
6. Representations of Seller. Seller represents the following:

6.1 Due Authorization, Ownership, and Authority. Seller is the legal owner of the Property, and does have the legal right, power and authority to enter into this Agreement and to perform its obligations hereunder, including conveying the Property. Seller has not granted any

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options or rights of first refusal or rights of first offer to other third parties to purchase or otherwise acquire an interest in the Property.

6.2 Encroachments. To the best knowledge of Seller there are no encroachments on to the Property from adjoining property, and the Property does not encroach on adjoining property, easements, or streets.

6.3 FIRPTA. Seller hereby represents and warrants to Purchaser that Seller is not a "foreign person or company" within the meaning of Section 1445 of the Internal Revenue Code of 1986, and Seller further agrees, if requested at closing, to furnish Purchaser an affidavit to this effect.

6.4 Litigation. To the best of Seller's knowledge, Seller has received no notice of liens or other special assessments being levied and made against the Property by any governmental authority; there are no actions, suits, or proceedings before any judicial or quasi-judicial body, or by or before any governmental authority, pending or threatened, against or affecting Seller or the Property; and to the best knowledge of Seller there is no basis for any such action. Seller shall comply with all notices, orders, or requirements of any governmental authority asserting jurisdiction over the Property that are noted or issued prior to the Closing Date.

6.5 Bankruptcy. Seller is not the subject of any bankruptcy, reorganization, or receivership proceedings filed or petitioned for under United States Bankruptcy laws.

6.6 Compliance with Laws. Seller has no actual knowledge or notice of and, to the best of Seller's knowledge, no fact or condition currently exists or previously existed on the Property which may give rise to any violation of state, local, or federal law and regulations (zoning, occupancy, fire, environmental) governing the Property.

6.7 Leases. The Property is not subject to any lease or other agreement granting another party possession or occupancy of the Property.

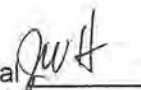
6.8 Environmental. To the Seller's best knowledge, without any independent study or assessment having been made or conducted, the Property is free of all contamination by hazardous waste and materials and toxic substances as those terms are defined under federal and state environmental regulations and laws governing the Property, except as otherwise previously disclosed to Purchaser or identified in the Phase I Environmental Site Assessment acquired by Purchaser. Seller has received no notice and has not been cited for violating such environmental regulations.

All of the above representations and warranties of the Seller set forth in this Agreement shall be true upon the execution of this Agreement and shall be deemed to be repeated by Seller on the Closing Date without the necessity of a separate certificate with respect thereto, and shall survive the delivery of the Deed and other closing instruments and documents for a period of six (6) months.

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7. Covenants and Understandings of the Parties.

7.1 Seller's Actions. From and after the Effective Date of this Agreement, Seller shall refrain from making any other change to the Property without the express written permission of Purchaser having been first obtained; refrain from committing any waste to the Property; and shall observe all laws, ordinances, regulations, and restrictions affecting the Property and the use thereof.

7.2 No Further Encumbrance. From and after the Effective Date of this Agreement, without in each instance first obtaining the prior written consent of Purchaser, the Seller shall not (i) encumber and/or pledge the Property or any portion thereof, or otherwise grant a further lease, lien or security interest to another in the Property or any portion thereof, or (ii) permit to exist any recorded mechanic's, materialmen's, laborer's, judgment or other adversarial lien upon all or any portion of the Property unless such lien is as the result of work performed by or on behalf of the Purchaser.

7.3 Payment of Charges. Seller shall, prior to the Closing Date, (i) pay as and when due and owing all real estate taxes and other public charges assessed against the Property, subject to adjustment at Closing as provided herein; (ii) pay all of its bills for labor, materials, or services for work performed on or with respect to the Property; (iii) pay and keep current without delinquency all existing loan obligations of Seller presently collaterally secured against the Property; (iv) in no way or manner adversely change the state or condition of title to the Property; and (v) not breach or violate the terms of any covenants, restrictions, easements or agreements affecting the Property.

7.4 All of the representations set forth in Section 7 herein are true and correct as if made by Seller as of the Closing Date, unless permitted to be otherwise qualified and/or waived by Purchaser in their sole discretion.

8. Closing. The purchase and sale of the Property shall be consummated as follows:

8.1 Closing Date. Closing on the purchase and sale of the Property shall occur on or before June 30, 2020.

8.2 Location of Closing. The Closing shall be consummated on the Closing Date at the office of Thomas A. Bendle, Jr., 25 Rue Du Bois, Beaufort, South Carolina 29907.

8.3 Conditions to Closing. It is an express precondition to Purchaser's obligation to close hereunder that all of the following are true and correct (or waived in writing by Purchaser) on and as of the Closing Date:

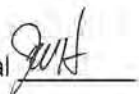
8.3(1) Title to the Property shall be in the condition required by Section 5 herein.

8.3(2) Approval of the acquisition of this Property in all respects by the Board of Directors of the Purchaser.

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8.3(3) Approval and receipt of Federal, State, and County grant funding equal to the Purchase Price.

8.3(4) Satisfactory environmental site assessment report.

In the event of a failure of a condition which the Purchaser refuses to waive, Purchaser may in its sole and absolute discretion, extend the date of Closing up to 30 days from the last date provided in Section 9.1, in order to permit time to satisfy the contingency, or, in the event said contingency(ies) cannot be satisfied in a timeframe agreeable to both parties, terminate this Agreement and receive the prompt return of the Deposit from the Seller or Escrow Agent, or waive such condition and proceed to Closing.

8.4 Seller's Instruments and Items. At Closing, Seller shall (i) deliver or cause to be delivered to Purchaser (a) a customary and recordable General Warranty Deed conveying to the Purchaser fee simple title to the Property (title being in the condition required in Section 5 of this Agreement), and (b) the following other documents: (1) a Non-Foreign Affidavit, and (2) an Owner's Title Affidavit, and (ii) execute such documents or instruments as shall be reasonably required by the Purchaser, and the title company and settlement agent of Purchaser, to consummate the sale of the Property and insure title to the Property in the condition required by the terms hereof.


8.5 Purchaser's Instruments. At Closing the Purchaser shall pay to the Seller the Purchase Price for the Property, and execute such documents or instruments as shall be reasonably required by the title/settlement agent of the Purchaser to consummate the sale of the Property.

8.6 Tender of Settlement. Delivery of all required items and documents by either party to the settlement agent/title company conducting settlement and closing hereunder shall constitute performance of such party's delivery obligations hereunder.

8.7 Costs and Expenses of Closing. At Closing, Purchaser shall pay the Purchaser's attorney's fees, the cost of title examination, title insurance premiums (to the extent any such insurance is purchased), all of the applicable state and county transfer and deed recordation taxes imposed on the Deed (other than the Grantor's tax), and any and all other costs and expenses customarily paid by the Purchaser at Closing. At Closing, Seller shall pay all costs pertaining to the pay-off and release of any existing financial liens or encumbrances, which are required to be released by Seller pursuant to the terms of this Agreement, the Grantor's recording tax assessed by the Clerk of the Circuit Court in recording the Deed, the cost of the preparation of the Deed and any delinquent or current owing real estate taxes that may be then due and owing against the Property and Seller's attorney's fees (if Seller retains an attorney in this matter).

8.8 Adjustments. The payment of all real estate taxes then assessed and owing against the Property by Beaufort County, South Carolina, and any public and/or private utilities

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not otherwise paid for and owing from Seller on the Property, and other revenues and/or expenses affecting the Property, shall all be adjusted and pro rated as of and on the Closing Date as between Seller and Purchaser, and the payment of the real estate taxes and other municipal charges and assessments assumed thereafter by the Purchaser.

8.9 Possession. Possession of the Property shall be delivered by Seller to Purchaser at Closing without any leases or parties in possession or occupancy.

9. Notices. All notices, demands, requests and other communications permitted or required pursuant to the provisions of the Agreement shall be in writing and shall be deemed to have been properly given or served for all purposes on that day when actually presented personally by hand delivery, or the day after deposit with a nationally recognized overnight express delivery/courier service, charges prepaid, or three (3) business days after deposit in the U.S. mail, first class, postage prepaid, properly addressed to the respective addresses as follows:

Seller:  
Smooth Seas, LLC  
Mr. John Harris  
5 Parker Drive  
Beaufort, SC 29906

Purchaser:  
South Carolina Battleground Trust  
P.O. Box 80668  
Charleston, SC 29416-0668  
Attention: Doug Bostick, Executive Director / CEO

10. Default and Remedies.

10.1 By Purchaser. If Purchaser shall fail to discharge any of its obligations hereunder and shall fail to cure same within fifteen (15) days after receiving written notice of default from Seller (except that no notice shall be required in connection with a failure to timely close the acquisition contemplated herein), then this Agreement is terminated. Thereafter neither Purchaser nor Seller shall have any liability or obligations one to the other under this Agreement.

10.2 By Seller. If Seller shall default in its obligations hereunder, or shall breach a representation made herein, or shall fail to perform any covenant provided herein, and such default, breach, or failure is not cured within fifteen (15) days after written notice of same from Purchaser (except that no such notice shall be required in connection with a failure to timely close the transaction contemplated herein) then Purchaser, upon providing written notice to Seller, shall at Purchaser's option and election be entitled to either (a) terminate this Agreement and declare it null and void; or (b) waive such default or breach and proceed to Closing, without any reduction in the Purchase Price and without any further claim against Seller therefor; or (c) exercise its right to obtain specific performance of such term, provision, covenant, or agreement, and of Seller's obligation to convey the Property pursuant to this Agreement.

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10.3 Both Parties. Anything in this Agreement to the contrary notwithstanding, at any time prior to the Closing Date the Seller (in the event of the occurrence or happening, from time to time, of any one of the following to the Purchaser), or the Purchaser (in the event of the occurrence or happening, from time to time, of any one of the following to the Seller), may, at their sole option and discretion, deem this Agreement to be in breach and elect to terminate this Agreement, and in addition thereto, should the breach be by the Seller, the Purchaser shall be entitled to receive back the Deposit, and should the breach be by the Purchaser, the Seller shall be entitled to receive the Deposit:

(i) If by the order of a court having or claiming jurisdiction, a trustee, receiver or liquidator of the Seller or Purchaser shall be appointed and such order shall not be discharged or dismissed within sixty (60) days after such appointment; or

(ii) If the Seller or Purchaser shall file a petition in bankruptcy or for an arrangement or for reorganization pursuant to the Bankruptcy Reform Act of 1978, as amended, or any similar law, federal or state, or if, by decree of a court having or claiming jurisdiction, the Seller or Purchaser shall be adjudicated a bankrupt, or be declared insolvent, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a custodian, trustee, receiver or liquidator of all or any part of its property, or shall file an answer admitting the material allegations of any petition filed against it in any bankruptcy, reorganization or insolvency proceeding; or

(iii) If any of the creditors of the Seller or of the Purchaser, or any other person shall file a petition in bankruptcy against the Seller or Purchaser pursuant to the Bankruptcy Reform Act of 1978, as amended, or any similar law, federal or state, and if such petition shall not be discharged or dismissed within sixty (60) days after the date on which such petition was filed.

10.4 Prevailing Parties. In any action to enforce the provisions of this Agreement, the prevailing party shall be entitled to the award of its reasonable attorney's fees and costs.

11. Entire Agreement. All prior negotiations between the parties hereto concerning the Property shall be considered integrated into this Agreement, and there are no agreements between the parties not specifically set forth herein. Any amendment to the terms of this Agreement must be in writing signed by the party to be charged therewith. Any letter agreements that have passed between the Seller and Purchaser prior to this Agreement are deemed superseded by this Agreement.

12. Time. Time shall be considered of the essence in the performance of the requirements of this Agreement.

13. Assignment. Purchaser shall have the right to assign this Agreement. In the event of such an assignment by Purchaser of its right hereunder, the Purchaser shall promptly deliver an executed copy of the instrument of assignment to the Seller.

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14. Applicable Law. This Agreement shall be construed in accordance with the laws of the State of South Carolina without regard to its conflicts of laws provisions.

15. No Merger. Unless specifically precluded or limited herein, the rights, obligations, covenants, and agreements of the parties created by this Agreement shall survive the Closing Date and the execution of the Deed to the Property, and shall not be merged therein.

16. Captions/Headings. The captions and headings in this Agreement are for the convenience of reference only of the parties, shall not be considered a material part hereof, and do not in any manner define, describe, or limit the scope or intent of this Agreement or any of the provisions or terms hereof.

17. Binding Effect. The covenants, conditions and agreements herein contained shall inure to the benefit of and bind the heirs, executors, legal representatives, successors and/or assigns of the parties hereto.


18. Counterparts. This Agreement may be executed by the various parties hereto in counterparts, and when all counterpart documents are executed, the counterparts shall constitute a single binding instrument.


19. Relationship of the Parties. Notwithstanding any other provision of this Agreement, or any agreements, contracts or obligations that may derive herefrom, nothing herein shall be construed to make the parties hereto partners or joint venturers, or to render either party liable for any of the debts or obligations of the other party, it being the intention of this Agreement merely to create the relationship of seller and purchaser with regard to the Property to be conveyed hereby.

20. Amendments; Waivers. No change or modification to this Agreement shall be valid unless the same is in writing and signed by Purchaser and Seller. No purported or alleged waiver of any of the provisions of this Agreement shall be binding or effective unless in writing and signed by the party against whom it is sought to be enforced.

21. Risk of Loss. All risk of loss to the Property shall remain with Seller prior to the Closing Date.

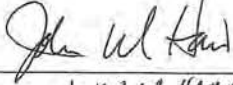
22. Expiration. This Agreement shall expire unless executed by the Seller on or before January 25, 2020.

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IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have caused this Agreement of Purchase and Sale to be executed effective the date first above written.

SELLER:  
SMOOTH SEAS, LLC



(SEAL)

Name: JOHN W. HANNIS

Title: PRESIDENT

Date: JANUARY 20, 2020

PURCHASER:  
SOUTH CAROLINA BATTLEGROUND PRESERVATION TRUST



(SEAL)

Name: Douglas W. Bostick


Title: Executive Director / CEO

Date: January 20, 2020

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# Exhibit C



STATE OF SOUTH CAROLINA    )  
  )  
COUNTY OF BEAUFORT         )     ACKNOWLEDGMENT

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

Witness my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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



## Exhibit A

### AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY (the "Agreement") is made effective as of the 11 day of January, 2020 (being the last and latest date affixed hereto next to the signature lines of the Seller and Purchaser, the "Effective Date"), by and between: HARRIS PILLOW SUPPLY, INC., with a mailing address of 5 Parker Drive, Beaufort, South Carolina 29906 (the "Seller"); and SOUTH CAROLINA BATTLEGROUND PRESERVATION TRUST, Inc., a South Carolina non-profit organization, with a mailing address of P.O. Box 80668, Charleston, SC 29416-0668 (the "Purchaser").

#### RECITALS:

A. Seller is the fee simple record title owner of a certain parcel of land located in Beaufort County, South Carolina, including a total of approximately 6.08 acres, more or less, located at or near 3030 Trask Parkway (Highway 21), Beaufort, South Carolina 29906, identified as tax parcel #R100-020-000-047C-0000 among the land records of Beaufort County, together with all the improvements and buildings constructed thereon (if any), timber, and all rights, privileges, and easements appurtenant thereto or used in connection therewith, including all of Seller's right, title, and interest in and to any streets, alleys, easements, rights-of-way, public ways, or other rights appurtenant, adjacent, or connected thereto or used in connection therewith (collectively herein referred to as the "Property").


B. Seller desires to sell and convey all of its right, title and interest in and to the Property, and Purchaser desires to buy and acquire the above-described Property AS-IS WHERE-IS, subject only to the contingencies, terms and conditions herein contained in this Agreement, and as a consequence, Seller and Purchaser are executing and ratifying the Agreement to specify and set forth the terms and conditions under which the Seller will sell and convey, and the Purchaser will buy and acquire the aforesaid Property.

NOW THEREFORE, WITNESSETH: In consideration of the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller hereby agrees to sell to Purchaser, and Purchaser agrees to buy from the Seller in fee simple title, the Property, under the following terms and conditions:

1. Sale of Property. Subject to the terms and conditions of this Agreement, Seller will sell and convey to Purchaser, and Purchaser will buy and acquire from Seller all of Seller's right, title and interest in and to the Property.

2. Purchase Price; Terms of Payment; Deposit. On the date of settlement and closing (the "Closing Date") of the purchase and sale of the Property (the "Closing"), Purchaser shall purchase and buy the Property from the Seller for the purchase price (the "Purchase Price") of \$455,925.00. At Closing, the Purchaser shall pay the Seller the Purchase Price in cash, or by cashier's or certified check, or by wire transfer of funds delivered to the settlement/closing agent for the Purchaser, and which Purchase Price (net of the Seller's costs and expenses of Closing) is to be disbursed by the settlement/closing agent of the Purchaser to Seller on the same day

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recording of the deed conveying title to the Property is accomplished, which recording is to be accomplished within three (3) business days after the Closing Date.

Within fifteen (15) business days of the mutual and full execution and delivery of this Agreement, Purchaser shall deliver in escrow to an "Escrow Agent" an earnest money deposit in the amount of TEN DOLLARS (\$10.00) (the "Deposit"), which Deposit shall be paid by Purchaser in the form of cash or cashier's or certified check, or by wire transfer of funds. The Deposit shall be deposited and held by Escrow Agent. The Deposit is refundable to Purchaser in the event of default hereunder by Seller. If this Agreement is not closed, then the Escrow Agent shall disburse the Deposit as applicable in the manner provided for elsewhere herein, and the parties agree to promptly notify the Escrow Agent in writing upon any termination of this Agreement and which party is entitled to the Deposit.

Unless prior to the Closing Date hereunder the Purchaser or Seller becomes entitled to the Deposit as provided in this Agreement, the Escrow Agent shall, concurrent with Closing, pay over and transfer the Deposit to the settlement agent (if a different party from Escrow Agent) for application and credit of Purchaser towards the payment of Purchase Price.

The Settlement Agent shall be:  
Thomas A. Bendle, Jr.,  
Howell, Gibson & Hughes, P.A.  
Post Office Box 40, Beaufort, SC 29901  
25 Rue Du Bois, Beaufort, SC 29907.

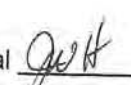
3. Contingencies.

3.1 Environmental Site Assessment. This Agreement is contingent upon the completion of a Phase I Environmental Site Assessment (the "ESA") of the Property to be paid for by Purchaser; and upon there being no items or information contained in said Phase I of the Property that the Purchaser, in its sole and absolute discretion, finds unsatisfactory.

3.2 Survey. This Agreement is contingent upon the completion of an ALTA or appropriate boundary survey depicting the Property and all easements, encumbrances and river frontage, to be paid for by Purchaser; and upon there being no items or information contained in said survey of the Property that the Purchaser, in its sole and absolute discretion, finds unsatisfactory.

4. Title. It shall be a condition precedent to Purchaser's obligation to proceed to Closing that, on the Closing Date, title to the Property shall be good of record and in fact, marketable, free of any liens and encumbrances except the Permitted Encumbrances (as defined below), and otherwise insurable at regular rates by a reputable title insurance company. Purchaser has ordered a commitment from a title company (the "Title Company") to issue an owner's policy of title insurance insuring the Property (the "Title Commitment"), and promptly upon receipt, shall provide the Seller with a true and complete copy of the Title Commitment. At that time Purchaser shall notify Seller in writing as to which (if any) of the matters disclosed in the Title Commitment are unacceptable to the Purchaser, except that the Purchaser shall not be

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obligated to notify the Seller of Purchaser's objections to any financial liens or encumbrances created by Seller that may be released upon payment of a specified or computable sum of money (the "Financial Liens") affecting the Property, as Seller is obligated to cure such Financial Liens before the Closing Date (and if not so cured, Purchaser hereby directs the Escrow Agent to cure such Financial Liens out of the proceeds to be paid to Seller at Closing, and deduct such amounts from the Purchase Price paid to Seller). Within seven (7) days after receipt of the Title Commitment and Purchaser's letter of objections, the Seller shall notify the Purchaser in writing as to which (if any) of the title matters objected to by the Purchaser the Seller is willing to correct. If Seller does not notify Purchaser as set forth above, it shall be deemed that Seller has refused to correct any such matter(s) to which Purchaser has objected. Purchaser shall then have the balance of the Feasibility Study Period to either elect to waive those title defects that the Seller has not agreed to remedy and cure, or to terminate this Agreement if Purchaser remains unsatisfied with the condition of title to the Property. In the event of termination of this Agreement by Purchaser, neither party shall have any further rights or obligations under this Agreement, except for those obligations which survive termination hereunder, and Escrow Agent shall return the Deposit to Purchaser. "Permitted Encumbrances" as used herein shall mean (i) those title matters that appear on Schedule B-2 of the Title Commitment (other than Financial Liens and the so-called "pre-printed exceptions") and to which Purchaser makes no objection and (ii) those title matters to which Purchaser makes objection, and Seller refuses to correct, and in spite of such refusal Purchaser nevertheless elects to proceed hereunder after expiration of the Feasibility Study Period.

5. Disclaimer. Except for the express representations made herein by Seller to Purchaser with regard to the Property, Purchaser acknowledges and agrees that Seller has not made, does not make, and specifically negates and disclaims any other representations, warranties, promises, covenants, agreements, or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present, or future, of, as, to, concerning, or with respect to (a) the value, nature, quality, or condition of the Property, (b) the income to be derived from the Property, (c) the suitability of the Property for any and all activities and uses which Purchaser may conduct thereon, (d) the compliance of or by the Property or its operation with any laws, rules, ordinances, or regulations of any applicable governmental authority or body, (e) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property, (f) the manner, quality, state of repair, or lack of repair of the Property, or (g) any other matter with respect to the Property. Seller is not liable or bound in any manner by any verbal or written statements, representations, or information pertaining to the Property, or the operation thereof, furnished by any real estate broker, agent, servant, or other person. Purchaser further acknowledges and agrees that to the maximum extent permitted by law, the sale of the Property as provided for herein is made on an "AS IS" "WHERE IS" condition and basis with all faults. The provisions of this section/paragraph shall survive Closing.

6. Representations of Seller. Seller represents the following:

6.1 Due Authorization, Ownership, and Authority. Seller is the legal owner of the Property, and does have the legal right, power and authority to enter into this Agreement and to perform its obligations hereunder, including conveying the Property. Seller has not granted any

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options or rights of first refusal or rights of first offer to other third parties to purchase or otherwise acquire an interest in the Property.

6.2 Encroachments. To the best knowledge of Seller there are no encroachments on to the Property from adjoining property, and the Property does not encroach on adjoining property, easements, or streets.

6.3 FIRPTA. Seller hereby represents and warrants to Purchaser that Seller is not a "foreign person or company" within the meaning of Section 1445 of the Internal Revenue Code of 1986, and Seller further agrees, if requested at closing, to furnish Purchaser an affidavit to this effect.

6.4 Litigation. To the best of Seller's knowledge, Seller has received no notice of liens or other special assessments being levied and made against the Property by any governmental authority; there are no actions, suits, or proceedings before any judicial or quasi-judicial body, or by or before any governmental authority, pending or threatened, against or affecting Seller or the Property; and to the best knowledge of Seller there is no basis for any such action. Seller shall comply with all notices, orders, or requirements of any governmental authority asserting jurisdiction over the Property that are noted or issued prior to the Closing Date.

6.5 Bankruptcy. Seller is not the subject of any bankruptcy, reorganization, or receivership proceedings filed or petitioned for under United States Bankruptcy laws.

6.6 Compliance with Laws. Seller has no actual knowledge or notice of and, to the best of Seller's knowledge, no fact or condition currently exists or previously existed on the Property which may give rise to any violation of state, local, or federal law and regulations (zoning, occupancy, fire, environmental) governing the Property.

6.7 Leases. The Property is not subject to any lease or other agreement granting another party possession or occupancy of the Property.

6.8 Environmental. To the Seller's best knowledge, without any independent study or assessment having been made or conducted, the Property is free of all contamination by hazardous waste and materials and toxic substances as those terms are defined under federal and state environmental regulations and laws governing the Property, except as otherwise previously disclosed to Purchaser or identified in the Phase I Environmental Site Assessment acquired by Purchaser. Seller has received no notice and has not been cited for violating such environmental regulations.

All of the above representations and warranties of the Seller set forth in this Agreement shall be true upon the execution of this Agreement and shall be deemed to be repeated by Seller on the Closing Date without the necessity of a separate certificate with respect thereto, and shall survive the delivery of the Deed and other closing instruments and documents for a period of six (6) months.

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7. Covenants and Understandings of the Parties.

7.1 Seller's Actions. From and after the Effective Date of this Agreement, Seller shall refrain from making any other change to the Property without the express written permission of Purchaser having been first obtained; refrain from committing any waste to the Property; and shall observe all laws, ordinances, regulations, and restrictions affecting the Property and the use thereof.

7.2 No Further Encumbrance. From and after the Effective Date of this Agreement, without in each instance first obtaining the prior written consent of Purchaser, the Seller shall not (i) encumber and/or pledge the Property or any portion thereof, or otherwise grant a further lease, lien or security interest to another in the Property or any portion thereof, or (ii) permit to exist any recorded mechanic's, materialmen's, laborer's, judgment or other adversarial lien upon all or any portion of the Property unless such lien is as the result of work performed by or on behalf of the Purchaser.

7.3 Payment of Charges. Seller shall, prior to the Closing Date, (i) pay as and when due and owing all real estate taxes and other public charges assessed against the Property, subject to adjustment at Closing as provided herein; (ii) pay all of its bills for labor, materials, or services for work performed on or with respect to the Property; (iii) pay and keep current without delinquency all existing loan obligations of Seller presently collaterally secured against the Property; (iv) in no way or manner adversely change the state or condition of title to the Property; and (v) not breach or violate the terms of any covenants, restrictions, easements or agreements affecting the Property.

7.4 All of the representations set forth in Section 7 herein are true and correct as if made by Seller as of the Closing Date, unless permitted to be otherwise qualified and/or waived by Purchaser in their sole discretion.

8. Closing. The purchase and sale of the Property shall be consummated as follows:

8.1 Closing Date. Closing on the purchase and sale of the Property shall occur on or before June 30, 2020.

8.2 Location of Closing. The Closing shall be consummated on the Closing Date at the office of Thomas A. Bendle, Jr., 25 Rue Du Bois, Beaufort, South Carolina 29907.

8.3 Conditions to Closing. It is an express precondition to Purchaser's obligation to close hereunder that all of the following are true and correct (or waived in writing by Purchaser) on and as of the Closing Date:

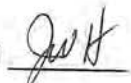
8.3(1) Title to the Property shall be in the condition required by Section 5 herein.

8.3(2) Approval of the acquisition of this Property in all respects by the Board of Directors of the Purchaser.

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8.3(3) Approval and receipt of Federal, State, and County grant funding equal to the Purchase Price.

8.3(4) Satisfactory environmental site assessment report.

In the event of a failure of a condition which the Purchaser refuses to waive, Purchaser may in its sole and absolute discretion, extend the date of Closing up to 30 days from the last date provided in Section 9.1, in order to permit time to satisfy the contingency, or, in the event said contingency(ies) cannot be satisfied in a timeframe agreeable to both parties, terminate this Agreement and receive the prompt return of the Deposit from the Seller or Escrow Agent, or waive such condition and proceed to Closing.

8.4 Seller's Instruments and Items. At Closing, Seller shall (i) deliver or cause to be delivered to Purchaser (a) a customary and recordable General Warranty Deed conveying to the Purchaser fee simple title to the Property (title being in the condition required in Section 5 of this Agreement), and (b) the following other documents: (1) a Non-Foreign Affidavit, and (2) an Owner's Title Affidavit, and (ii) execute such documents or instruments as shall be reasonably required by the Purchaser, and the title company and settlement agent of Purchaser, to consummate the sale of the Property and insure title to the Property in the condition required by the terms hereof.


8.5 Purchaser's Instruments. At Closing the Purchaser shall pay to the Seller the Purchase Price for the Property, and execute such documents or instruments as shall be reasonably required by the title/settlement agent of the Purchaser to consummate the sale of the Property.

8.6 Tender of Settlement. Delivery of all required items and documents by either party to the settlement agent/title company conducting settlement and closing hereunder shall constitute performance of such party's delivery obligations hereunder.

8.7 Costs and Expenses of Closing. At Closing, Purchaser shall pay the Purchaser's attorney's fees, the cost of title examination, title insurance premiums (to the extent any such insurance is purchased), all of the applicable state and county transfer and deed recordation taxes imposed on the Deed (other than the Grantor's tax), and any and all other costs and expenses customarily paid by the Purchaser at Closing. At Closing, Seller shall pay all costs pertaining to the pay-off and release of any existing financial liens or encumbrances, which are required to be released by Seller pursuant to the terms of this Agreement, the Grantor's recording tax assessed by the Clerk of the Circuit Court in recording the Deed, the cost of the preparation of the Deed and any delinquent or current owing real estate taxes that may be then due and owing against the Property and Seller's attorney's fees (if Seller retains an attorney in this matter).

8.8 Adjustments. The payment of all real estate taxes then assessed and owing against the Property by Beaufort County, South Carolina, and any public and/or private utilities

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not otherwise paid for and owing from Seller on the Property, and other revenues and/or expenses affecting the Property, shall all be adjusted and pro rated as of and on the Closing Date as between Seller and Purchaser, and the payment of the real estate taxes and other municipal charges and assessments assumed thereafter by the Purchaser.

8.9 Possession. Possession of the Property shall be delivered by Seller to Purchaser at Closing without any leases or parties in possession or occupancy.

9. Notices. All notices, demands, requests and other communications permitted or required pursuant to the provisions of the Agreement shall be in writing and shall be deemed to have been properly given or served for all purposes on that day when actually presented personally by hand delivery, or the day after deposit with a nationally recognized overnight express delivery/courier service, charges prepaid, or three (3) business days after deposit in the U.S. mail, first class, postage prepaid, properly addressed to the respective addresses as follows:

Seller:  
Harris Pillow Supply, Inc.  
5 Parker Drive  
Beaufort, SC 29906


Purchaser:  
South Carolina Battleground Preservation Trust  
P.O. Box 80668  
Charleston, SC 29416-0668  
Attention: Doug Bostick, Executive Director / CEO

10. Default and Remedies.

10.1 By Purchaser. If Purchaser shall fail to discharge any of its obligations hereunder and shall fail to cure same within fifteen (15) days after receiving written notice of default from Seller (except that no notice shall be required in connection with a failure to timely close the acquisition contemplated herein), then this Agreement is terminated. Thereafter neither Purchaser nor Seller shall have any liability or obligations one to the other under this Agreement.

10.2 By Seller. If Seller shall default in its obligations hereunder, or shall breach a representation made herein, or shall fail to perform any covenant provided herein, and such default, breach, or failure is not cured within fifteen (15) days after written notice of same from Purchaser (except that no such notice shall be required in connection with a failure to timely close the transaction contemplated herein) then Purchaser, upon providing written notice to Seller, shall at Purchaser's option and election be entitled to either (a) terminate this Agreement and declare it null and void; or (b) waive such default or breach and proceed to Closing, without any reduction in the Purchase Price and without any further claim against Seller therefor; or (c) exercise its right to obtain specific performance of such term, provision, covenant, or agreement, and of Seller's obligation to convey the Property pursuant to this Agreement.

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10.3 Both Parties. Anything in this Agreement to the contrary notwithstanding, at any time prior to the Closing Date the Seller (in the event of the occurrence or happening, from time to time, of any one of the following to the Purchaser), or the Purchaser (in the event of the occurrence or happening, from time to time, of any one of the following to the Seller), may, at their sole option and discretion, deem this Agreement to be in breach and elect to terminate this Agreement, and in addition thereto, should the breach be by the Seller, the Purchaser shall be entitled to receive back the Deposit, and should the breach be by the Purchaser, the Seller shall be entitled to receive the Deposit:

(i) If by the order of a court having or claiming jurisdiction, a trustee, receiver or liquidator of the Seller or Purchaser shall be appointed and such order shall not be discharged or dismissed within sixty (60) days after such appointment; or

(ii) If the Seller or Purchaser shall file a petition in bankruptcy or for an arrangement or for reorganization pursuant to the Bankruptcy Reform Act of 1978, as amended, or any similar law, federal or state, or if, by decree of a court having or claiming jurisdiction, the Seller or Purchaser shall be adjudicated a bankrupt, or be declared insolvent, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a custodian, trustee, receiver or liquidator of all or any part of its property, or shall file an answer admitting the material allegations of any petition filed against it in any bankruptcy, reorganization or insolvency proceeding; or

(iii) If any of the creditors of the Seller or of the Purchaser, or any other person shall file a petition in bankruptcy against the Seller or Purchaser pursuant to the Bankruptcy Reform Act of 1978, as amended, or any similar law, federal or state, and if such petition shall not be discharged or dismissed within sixty (60) days after the date on which such petition was filed.


10.4 Prevailing Parties. In any action to enforce the provisions of this Agreement, the prevailing party shall be entitled to the award of its reasonable attorney's fees and costs.

11. Entire Agreement. All prior negotiations between the parties hereto concerning the Property shall be considered integrated into this Agreement, and there are no agreements between the parties not specifically set forth herein. Any amendment to the terms of this Agreement must be in writing signed by the party to be charged therewith. Any letter agreements that have passed between the Seller and Purchaser prior to this Agreement are deemed superceded by this Agreement.


12. Time. Time shall be considered of the essence in the performance of the requirements of this Agreement.

13. Assignment. Purchaser shall have the right to assign this Agreement. In the event of such an assignment by Purchaser of its right hereunder, the Purchaser shall promptly deliver an executed copy of the instrument of assignment to the Seller.

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14. Applicable Law. This Agreement shall be construed in accordance with the laws of the State of South Carolina without regard to its conflicts of laws provisions.

15. No Merger. Unless specifically precluded or limited herein, the rights, obligations, covenants, and agreements of the parties created by this Agreement shall survive the Closing Date and the execution of the Deed to the Property, and shall not be merged therein.

16. Captions/Headings. The captions and headings in this Agreement are for the convenience of reference only of the parties, shall not be considered a material part hereof, and do not in any manner define, describe, or limit the scope or intent of this Agreement or any of the provisions or terms hereof.

17. Binding Effect. The covenants, conditions and agreements herein contained shall inure to the benefit of and bind the heirs, executors, legal representatives, successors and/or assigns of the parties hereto.

18. Counterparts. This Agreement may be executed by the various parties hereto in counterparts, and when all counterpart documents are executed, the counterparts shall constitute a single binding instrument.

19. Relationship of the Parties. Notwithstanding any other provision of this Agreement, or any agreements, contracts or obligations that may derive herefrom, nothing herein shall be construed to make the parties hereto partners or joint venturers, or to render either party liable for any of the debts or obligations of the other party, it being the intention of this Agreement merely to create the relationship of seller and purchaser with regard to the Property to be conveyed hereby.

20. Amendments; Waivers. No change or modification to this Agreement shall be valid unless the same is in writing and signed by Purchaser and Seller. No purported or alleged waiver of any of the provisions of this Agreement shall be binding or effective unless in writing and signed by the party against whom it is sought to be enforced.

21. Risk of Loss. All risk of loss to the Property shall remain with Seller prior to the Closing Date.

22. Expiration. This Agreement shall expire unless executed by the Seller on or before January 25, 2020.

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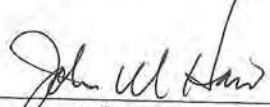


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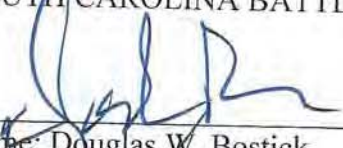


IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have caused this Agreement of Purchase and Sale to be executed effective the date first above written.

SELLER:  
HARRIS PILLOW SUPPLY, INC.

  
\_\_\_\_\_(SEAL)  
Name: JOHN W. HARRIS  
Title: PRESIDENT  
Date: JANUARY 21, 2020

PURCHASER:  
SOUTH CAROLINA BATTLEGROUND PRESERVATION TRUST

  
\_\_\_\_\_(SEAL)  
Name: Douglas W. Bostick  
Title: Executive Director / CEO  
Date: January 20, 2020

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# Exhibit D





# Exhibit A

## AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY (the "Agreement") is made effective as of the 17<sup>th</sup> day of January, 2020 (being the last and latest date affixed hereto next to the signature lines of the Seller and Purchaser, the "Effective Date"), by and between: MICHAEL T. KLING, with a mailing address of 13 Verdier Bluff, Beaufort, South Carolina 29902 (the "Seller"); and SOUTH CAROLINA BATTLEGROUND PRESERVATION TRUST, Inc., a South Carolina non-profit organization, with a mailing address of P.O. Box 80668, Charleston, SC 29416-0668 (the "Purchaser").

### RECITALS:

A. Seller is the fee simple record title owner of a certain parcel of land located in Beaufort County, South Carolina, including a total of approximately 3.73 acres, more or less, located at or near 3020 Trask Parkway (Highway 21), Beaufort, South Carolina 29906, identified as tax parcel #R100-020-000-0047-0000 among the land records of Beaufort County, together with all the improvements and buildings constructed thereon (if any), timber, and all rights, privileges, and easements appurtenant thereto or used in connection therewith, including all of Seller's right, title, and interest in and to any streets, alleys, easements, rights-of-way, public ways, or other rights appurtenant, adjacent, or connected thereto or used in connection therewith (collectively herein referred to as the "Property").

B. Seller desires to sell and convey all of its right, title and interest in and to the Property, and Purchaser desires to buy and acquire the above-described Property AS-IS, WHERE-IS, subject only to the contingencies, terms and conditions herein contained in this Agreement, and as a consequence, Seller and Purchaser are executing and ratifying the Agreement to specify and set forth the terms and conditions under which the Seller will sell and convey, and the Purchaser will buy and acquire the aforesaid Property.

NOW THEREFORE, WITNESSETH: In consideration of the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller hereby agrees to sell to Purchaser, and Purchaser agrees to buy from the Seller in fee simple title, the Property, under the following terms and conditions:

1. Sale of Property. Subject to the terms and conditions of this Agreement, Seller will sell and convey to Purchaser, and Purchaser will buy and acquire from Seller all of Seller's right, title and interest in and to the Property.

2. Purchase Price; Terms of Payment; Deposit. On the date of settlement and closing (the "Closing Date") of the purchase and sale of the Property (the "Closing"), Purchaser shall purchase and buy the Property from the Seller for the purchase price (the "Purchase Price") of \$245,000.00. At Closing, the Purchaser shall pay the Seller the Purchase Price in cash, or by cashier's or certified check, or by wire transfer of funds delivered to the settlement/closing agent for the Purchaser, and which Purchase Price (net of the Seller's costs and expenses of Closing) is to be disbursed by the settlement/closing agent of the Purchaser to Seller on the same day

recording of the deed conveying title to the Property is accomplished, which recording is to be accomplished within three (3) business days after the Closing Date.

Within fifteen (15) business days of the mutual and full execution and delivery of this Agreement, Purchaser shall deliver in escrow to an "Escrow Agent" an earnest money deposit in the amount of TEN DOLLARS (\$10.00) (the "Deposit"), which Deposit shall be paid by Purchaser in the form of cash or cashier's or certified check, or by wire transfer of funds. The Deposit shall be deposited and held by Escrow Agent. The Deposit is refundable to Purchaser in the event of default hereunder by Seller. If this Agreement is not closed, then the Escrow Agent shall disburse the Deposit as applicable in the manner provided for elsewhere herein, and the parties agree to promptly notify the Escrow Agent in writing upon any termination of this Agreement and which party is entitled to the Deposit.

Unless prior to the Closing Date hereunder the Purchaser or Seller becomes entitled to the Deposit as provided in this Agreement, the Escrow Agent shall, concurrent with Closing, pay over and transfer the Deposit to the settlement agent (if a different party from Escrow Agent) for application and credit of Purchaser towards the payment of Purchase Price.

The Settlement Agent shall be:  
Thomas A. Bendle, Jr.,  
Howell, Gibson & Hughes, P.A.  
Post Office Box 40, Beaufort, SC 29901  
25 Rue Du Bois, Beaufort, SC 29907.

### 3. Contingencies.

3.1 Environmental Site Assessment. This Agreement is contingent upon the completion of a Phase I Environmental Site Assessment (the "ESA") of the Property to be paid for by Purchaser; and upon there being no items or information contained in said Phase I of the Property that the Purchaser, in its sole and absolute discretion, finds unsatisfactory.

3.2 Survey. This Agreement is contingent upon the completion of an ALTA or appropriate boundary survey depicting the Property and all easements, encumbrances and river frontage, to be paid for by Purchaser; and upon there being no items or information contained in said survey of the Property that the Purchaser, in its sole and absolute discretion, finds unsatisfactory.

4. Title. It shall be a condition precedent to Purchaser's obligation to proceed to Closing that, on the Closing Date, title to the Property shall be good of record and in fact, marketable, free of any liens and encumbrances except the Permitted Encumbrances (as defined below), and otherwise insurable at regular rates by a reputable title insurance company. Purchaser has ordered a commitment from a title company (the "Title Company") to issue an owner's policy of title insurance insuring the Property (the "Title Commitment"), and promptly upon receipt, shall provide the Seller with a true and complete copy of the Title Commitment. At that time Purchaser shall notify Seller in writing as to which (if any) of the matters disclosed in the Title Commitment are unacceptable to the Purchaser, except that the Purchaser shall not be

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obligated to notify the Seller of Purchaser's objections to any financial liens or encumbrances created by Seller that may be released upon payment of a specified or computable sum of money (the "Financial Liens") affecting the Property, as Seller is obligated to cure such Financial Liens before the Closing Date (and if not so cured, Purchaser hereby directs the Escrow Agent to cure such Financial Liens out of the proceeds to be paid to Seller at Closing, and deduct such amounts from the Purchase Price paid to Seller). Within seven (7) days after receipt of the Title Commitment and Purchaser's letter of objections, the Seller shall notify the Purchaser in writing as to which (if any) of the title matters objected to by the Purchaser the Seller is willing to correct. If Seller does not notify Purchaser as set forth above, it shall be deemed that Seller has refused to correct any such matter(s) to which Purchaser has objected. Purchaser shall then have the balance of the Feasibility Study Period to either elect to waive those title defects that the Seller has not agreed to remedy and cure, or to terminate this Agreement if Purchaser remains unsatisfied with the condition of title to the Property. In the event of termination of this Agreement by Purchaser, neither party shall have any further rights or obligations under this Agreement, except for those obligations which survive termination hereunder, and Escrow Agent shall return the Deposit to Purchaser. "Permitted Encumbrances" as used herein shall mean (i) those title matters that appear on Schedule B-2 of the Title Commitment (other than Financial Liens and the so-called "pre-printed exceptions") and to which Purchaser makes no objection and (ii) those title matters to which Purchaser makes objection, and Seller refuses to correct, and in spite of such refusal Purchaser nevertheless elects to proceed hereunder after expiration of the Feasibility Study Period.

5. Disclaimer. Except for the express representations made herein by Seller to Purchaser with regard to the Property, Purchaser acknowledges and agrees that Seller has not made, does not make, and specifically negates and disclaims any other representations, warranties, promises, covenants, agreements, or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present, or future, of, as, to, concerning, or with respect to (a) the value, nature, quality, or condition of the Property, (b) the income to be derived from the Property, (c) the suitability of the Property for any and all activities and uses which Purchaser may conduct thereon, (d) the compliance of or by the Property or its operation with any laws, rules, ordinances, or regulations of any applicable governmental authority or body, (e) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property, (f) the manner, quality, state of repair, or lack of repair of the Property, or (g) any other matter with respect to the Property. Seller is not liable or bound in any manner by any verbal or written statements, representations, or information pertaining to the Property, or the operation thereof, furnished by any real estate broker, agent, servant, or other person. Purchaser further acknowledges and agrees that to the maximum extent permitted by law, the sale of the Property as provided for herein is made on an "AS IS" "WHERE IS" condition and basis with all faults. The provisions of this section/paragraph shall survive Closing.

6. Representations of Seller. Seller represents the following:

6.1 Due Authorization, Ownership, and Authority. Seller is the legal owner of the Property, and does have the legal right, power and authority to enter into this Agreement and to perform its obligations hereunder, including conveying the Property. Seller has not granted any

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options or rights of first refusal or rights of first offer to other third parties to purchase or otherwise acquire an interest in the Property.

6.2 Encroachments. To the best knowledge of Seller there are no encroachments on to the Property from adjoining property, and the Property does not encroach on adjoining property, easements, or streets.

6.3 FIRPTA. Seller hereby represents and warrants to Purchaser that Seller is not a "foreign person or company" within the meaning of Section 1445 of the Internal Revenue Code of 1986, and Seller further agrees, if requested at closing, to furnish Purchaser an affidavit to this effect.

6.4 Litigation. To the best of Seller's knowledge, Seller has received no notice of liens or other special assessments being levied and made against the Property by any governmental authority; there are no actions, suits, or proceedings before any judicial or quasi-judicial body, or by or before any governmental authority, pending or threatened, against or affecting Seller or the Property; and to the best knowledge of Seller there is no basis for any such action. Seller shall comply with all notices, orders, or requirements of any governmental authority asserting jurisdiction over the Property that are noted or issued prior to the Closing Date.

6.5 Bankruptcy. Seller is not the subject of any bankruptcy, reorganization, or receivership proceedings filed or petitioned for under United States Bankruptcy laws.

6.6 Compliance with Laws. Seller has no actual knowledge or notice of and, to the best of Seller's knowledge, no fact or condition currently exists or previously existed on the Property which may give rise to any violation of state, local, or federal law and regulations (zoning, occupancy, fire, environmental) governing the Property.

6.7 Leases. The Property is not subject to any lease or other agreement granting another party possession or occupancy of the Property.

6.8 Environmental. To the Seller's best knowledge, without any independent study or assessment having been made or conducted, the Property is free of all contamination by hazardous waste and materials and toxic substances as those terms are defined under federal and state environmental regulations and laws governing the Property, except as otherwise previously disclosed to Purchaser or identified in the Phase I Environmental Site Assessment acquired by Purchaser. Seller has received no notice and has not been cited for violating such environmental regulations.

All of the above representations and warranties of the Seller set forth in this Agreement shall be true upon the execution of this Agreement and shall be deemed to be repeated by Seller on the Closing Date without the necessity of a separate certificate with respect thereto, and shall survive the delivery of the Deed and other closing instruments and documents for a period of six (6) months.

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7. Covenants and Understandings of the Parties.

7.1 Seller's Actions. From and after the Effective Date of this Agreement, Seller shall refrain from making any other change to the Property without the express written permission of Purchaser having been first obtained; refrain from committing any waste to the Property; and shall observe all laws, ordinances, regulations, and restrictions affecting the Property and the use thereof.

7.2 No Further Encumbrance. From and after the Effective Date of this Agreement, without in each instance first obtaining the prior written consent of Purchaser, the Seller shall not (i) encumber and/or pledge the Property or any portion thereof, or otherwise grant a further lease, lien or security interest to another in the Property or any portion thereof, or (ii) permit to exist any recorded mechanic's, materialmen's, laborer's, judgment or other adversarial lien upon all or any portion of the Property unless such lien is as the result of work performed by or on behalf of the Purchaser.

7.3 Payment of Charges. Seller shall, prior to the Closing Date, (i) pay as and when due and owing all real estate taxes and other public charges assessed against the Property, subject to adjustment at Closing as provided herein; (ii) pay all of its bills for labor, materials, or services for work performed on or with respect to the Property; (iii) pay and keep current without delinquency all existing loan obligations of Seller presently collaterally secured against the Property; (iv) in no way or manner adversely change the state or condition of title to the Property; and (v) not breach or violate the terms of any covenants, restrictions, easements or agreements affecting the Property.

7.4 All of the representations set forth in Section 7 herein are true and correct as if made by Seller as of the Closing Date, unless permitted to be otherwise qualified and/or waived by Purchaser in their sole discretion.

8. Closing. The purchase and sale of the Property shall be consummated as follows:


8.1 Closing Date. Closing on the purchase and sale of the Property shall occur on or before June 30, 2020.

8.2 Location of Closing. The Closing shall be consummated on the Closing Date at the office of Thomas A. Bendle, Jr., 25 Rue Du Bois, Beaufort, South Carolina 29907.

8.3 Conditions to Closing. It is an express precondition to Purchaser's obligation to close hereunder that all of the following are true and correct (or waived in writing by Purchaser) on and as of the Closing Date:

8.3(1) Title to the Property shall be in the condition required by Section 5 herein.

8.3(2) Approval of the acquisition of this Property in all respects by the Board of Directors of the Purchaser.

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Michael Kling Initial MIK

8.3(3) Approval and receipt of Federal, State, and County grant funding equal to the Purchase Price.

8.3(4) Satisfactory environmental site assessment report.

In the event of a failure of a condition which the Purchaser refuses to waive, Purchaser may in its sole and absolute discretion, extend the date of Closing up to 30 days from the last date provided in Section 9.1, in order to permit time to satisfy the contingency, or, in the event said contingency(ies) cannot be satisfied in a timeframe agreeable to both parties, terminate this Agreement and receive the prompt return of the Deposit from the Seller or Escrow Agent, or waive such condition and proceed to Closing.

8.4 Seller's Instruments and Items. At Closing, Seller shall (i) deliver or cause to be delivered to Purchaser (a) a customary and recordable General Warranty Deed conveying to the Purchaser fee simple title to the Property (title being in the condition required in Section 5 of this Agreement), and (b) the following other documents: (1) a Non-Foreign Affidavit, and (2) an Owner's Title Affidavit, and (ii) execute such documents or instruments as shall be reasonably required by the Purchaser, and the title company and settlement agent of Purchaser, to consummate the sale of the Property and insure title to the Property in the condition required by the terms hereof.

8.5 Purchaser's Instruments. At Closing the Purchaser shall pay to the Seller the Purchase Price for the Property, and execute such documents or instruments as shall be reasonably required by the title/settlement agent of the Purchaser to consummate the sale of the Property.

8.6 Tender of Settlement. Delivery of all required items and documents by either party to the settlement agent/title company conducting settlement and closing hereunder shall constitute performance of such party's delivery obligations hereunder.

8.7 Costs and Expenses of Closing. At Closing, Purchaser shall pay the Purchaser's attorney's fees, the cost of title examination, title insurance premiums (to the extent any such insurance is purchased), all of the applicable state and county transfer and deed recordation taxes imposed on the Deed (other than the Grantor's tax), and any and all other costs and expenses customarily paid by the Purchaser at Closing. At Closing, Seller shall pay all costs pertaining to the pay-off and release of any existing financial liens or encumbrances, which are required to be released by Seller pursuant to the terms of this Agreement, the Grantor's recording tax assessed by the Clerk of the Circuit Court in recording the Deed, the cost of the preparation of the Deed and any delinquent or current owing real estate taxes that may be then due and owing against the Property and Seller's attorney's fees (if Seller retains an attorney in this matter).

8.8 Adjustments. The payment of all real estate taxes then assessed and owing against the Property by Beaufort County, South Carolina, and any public and/or private utilities

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not otherwise paid for and owing from Seller on the Property, and other revenues and/or expenses affecting the Property, shall all be adjusted and pro rated as of and on the Closing Date as between Seller and Purchaser, and the payment of the real estate taxes and other municipal charges and assessments assumed thereafter by the Purchaser.

8.9 Possession. Possession of the Property shall be delivered by Seller to Purchaser at Closing without any leases or parties in possession or occupancy.

9. Notices. All notices, demands, requests and other communications permitted or required pursuant to the provisions of the Agreement shall be in writing and shall be deemed to have been properly given or served for all purposes on that day when actually presented personally by hand delivery, or the day after deposit with a nationally recognized overnight express delivery/courier service, charges prepaid, or three (3) business days after deposit in the U.S. mail, first class, postage prepaid, properly addressed to the respective addresses as follows:

Seller:

Michael T. Kling  
13 Verdier Bluff  
Beaufort, SC 29902

Purchaser:

South Carolina Battleground Trust  
P.O. Box 80668  
Charleston, SC 29416-0668  
Attention: Doug Bostick, Executive Director / CEO

10. Default and Remedies.

10.1 By Purchaser. If Purchaser shall fail to discharge any of its obligations hereunder and shall fail to cure same within fifteen (15) days after receiving written notice of default from Seller (except that no notice shall be required in connection with a failure to timely close the acquisition contemplated herein), then this Agreement is terminated. Thereafter neither Purchaser nor Seller shall have any liability or obligations one to the other under this Agreement.

10.2 By Seller. If Seller shall default in its obligations hereunder, or shall breach a representation made herein, or shall fail to perform any covenant provided herein, and such default, breach, or failure is not cured within fifteen (15) days after written notice of same from Purchaser (except that no such notice shall be required in connection with a failure to timely close the transaction contemplated herein) then Purchaser, upon providing written notice to Seller, shall at Purchaser's option and election be entitled to either (a) terminate this Agreement and declare it null and void; or (b) waive such default or breach and proceed to Closing, without any reduction in the Purchase Price and without any further claim against Seller therefor; or (c) exercise its right to obtain specific performance of such term, provision, covenant, or agreement, and of Seller's obligation to convey the Property pursuant to this Agreement.

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10.3 Both Parties. Anything in this Agreement to the contrary notwithstanding, at any time prior to the Closing Date the Seller (in the event of the occurrence or happening, from time to time, of any one of the following to the Purchaser), or the Purchaser (in the event of the occurrence or happening, from time to time, of any one of the following to the Seller), may, at their sole option and discretion, deem this Agreement to be in breach and elect to terminate this Agreement, and in addition thereto, should the breach be by the Seller, the Purchaser shall be entitled to receive back the Deposit, and should the breach be by the Purchaser, the Seller shall be entitled to receive the Deposit:

(i) If by the order of a court having or claiming jurisdiction, a trustee, receiver or liquidator of the Seller or Purchaser shall be appointed and such order shall not be discharged or dismissed within sixty (60) days after such appointment; or

(ii) If the Seller or Purchaser shall file a petition in bankruptcy or for an arrangement or for reorganization pursuant to the Bankruptcy Reform Act of 1978, as amended, or any similar law, federal or state, or if, by decree of a court having or claiming jurisdiction, the Seller or Purchaser shall be adjudicated a bankrupt, or be declared insolvent, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a custodian, trustee, receiver or liquidator of all or any part of its property, or shall file an answer admitting the material allegations of any petition filed against it in any bankruptcy, reorganization or insolvency proceeding; or

(iii) If any of the creditors of the Seller or of the Purchaser, or any other person shall file a petition in bankruptcy against the Seller or Purchaser pursuant to the Bankruptcy Reform Act of 1978, as amended, or any similar law, federal or state, and if such petition shall not be discharged or dismissed within sixty (60) days after the date on which such petition was filed.

10.4 Prevailing Parties. In any action to enforce the provisions of this Agreement, the prevailing party shall be entitled to the award of its reasonable attorney's fees and costs.

11. Entire Agreement. All prior negotiations between the parties hereto concerning the Property shall be considered integrated into this Agreement, and there are no agreements between the parties not specifically set forth herein. Any amendment to the terms of this Agreement must be in writing signed by the party to be charged therewith. Any letter agreements that have passed between the Seller and Purchaser prior to this Agreement are deemed superceded by this Agreement.

12. Time. Time shall be considered of the essence in the performance of the requirements of this Agreement.

13. Assignment. Purchaser shall have the right to assign this Agreement. In the event of such an assignment by Purchaser of its right hereunder, the Purchaser shall promptly deliver an executed copy of the instrument of assignment to the Seller.

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14. Applicable Law. This Agreement shall be construed in accordance with the laws of the State of South Carolina without regard to its conflicts of laws provisions.

15. No Merger. Unless specifically precluded or limited herein, the rights, obligations, covenants, and agreements of the parties created by this Agreement shall survive the Closing Date and the execution of the Deed to the Property, and shall not be merged therein.

16. Captions/Headings. The captions and headings in this Agreement are for the convenience of reference only of the parties, shall not be considered a material part hereof, and do not in any manner define, describe, or limit the scope or intent of this Agreement or any of the provisions or terms hereof.

17. Binding Effect. The covenants, conditions and agreements herein contained shall inure to the benefit of and bind the heirs, executors, legal representatives, successors and/or assigns of the parties hereto.

18. Counterparts. This Agreement may be executed by the various parties hereto in counterparts, and when all counterpart documents are executed, the counterparts shall constitute a single binding instrument.

19. Relationship of the Parties. Notwithstanding any other provision of this Agreement, or any agreements, contracts or obligations that may derive herefrom, nothing herein shall be construed to make the parties hereto partners or joint venturers, or to render either party liable for any of the debts or obligations of the other party, it being the intention of this Agreement merely to create the relationship of seller and purchaser with regard to the Property to be conveyed hereby.

20. Amendments; Waivers. No change or modification to this Agreement shall be valid unless the same is in writing and signed by Purchaser and Seller. No purported or alleged waiver of any of the provisions of this Agreement shall be binding or effective unless in writing and signed by the party against whom it is sought to be enforced.

21. Risk of Loss. All risk of loss to the Property shall remain with Seller prior to the Closing Date.

22. Expiration. This Agreement shall expire unless executed by the Seller on or before January 22, 2020.

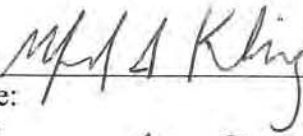
SCBPT Initial



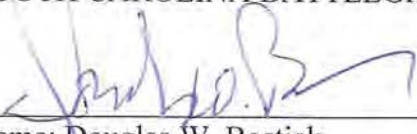
Michael Kling Initial MIK


IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have caused this Agreement of Purchase and Sale to be executed effective the date first above written.

SELLER:  
MICHAEL T. KLING

 (SEAL)  
Name:  
Title:  
Date: 1-17-, 2020

PURCHASER:  
SOUTH CAROLINA BATTLEGROUND PRESERVATION TRUST

 (SEAL)  
Name: Douglas W. Bostick  
Title: Executive Director / CEO  
Date: January 17, 2020

SCBPT Initial 

Michael Kling Initial \_\_\_\_\_

# Exhibit E



## **RESTRICTIVE EASEMENT**

THIS GRANT OF EASEMENT, made this \_\_\_\_ day of \_\_\_\_ by and between Beaufort County, South Carolina having an address at 100 Ribaut Road, Beaufort, S.C., hereinafter referred to as the "county" or "Grantor", and the United States of America, acting by and through the Department of the Navy, Naval Facilities Engineering Command Mid-Atlantic, hereinafter referred to as the "Grantee."

### **WITNESSETH:**

WHEREAS, Grantor owns in fee certain real property in Beaufort County, South Carolina more particularly described in Exhibit "A" attached hereto and incorporated by this reference (the "Property"); and

WHEREAS, the Property is in the vicinity of Marine Corps Air Station Beaufort ("MCAS Beaufort"), a parcel of land owned and operated by the United States of America, the ("Installation"); and

WHEREAS, Grantor and Grantee have entered into an agreement pursuant to 10 U.S.C. Section 2684a to acquire property interests that would be otherwise incompatible with the mission of the Installation and otherwise meets the mutual objectives of the Grantor and Grantee; and

WHEREAS, the Property possesses recognized historical and cultural significance due to the 1779 Revolutionary War Battle of Port Royal Island having taken place on the Property and abutting properties; and

WHEREAS, the American Battlefield Trust, the National Park Service, the South Carolina Battleground Preservation Trust and the South Carolina American Revolution Sestercentennial Commission have initiated a heritage and preservation initiative to recognize South Carolina's leading role in the founding of the United States through the "Liberty Trail," a statewide driving tour that tells the unique story of this campaign that secured victory in America's War for Independence; and

WHEREAS, Grantor supports the opportunity of the public to honor America's first veterans and desires to allow limited public access onto the Property in a manner that also minimizes activities that could otherwise be incompatible with the mission of the Installation; and

WHEREAS, the Installation, while concerned that the Property is subject to both elevated noise and increased aircraft accident potential, also recognizes and honors the sacrifices of South Carolinians who served to fight decisive battles in the founding of our nation; and

WHEREAS, it is in the best interest of the Installation to limit development on the Property and to require significant and substantive advance coordination for any known increases in usage, including exceptional circumstances where closure may be necessary; and

WHEREAS, Grantor, acting through its governing body, the Beaufort County Council, finds that this grant of Restrictive Easement on the Property is in the best interests of Beaufort County, and the public in general inasmuch as the same furthers the government interest of fostering the general health and welfare of the citizens of and visitors to Beaufort County, South Carolina; and

NOW THEREFORE, in consideration of \$ [REDACTED] and the mutual covenants, terms, conditions and restrictions contained herein, Grantor hereby grants and conveys to the Grantee and its successors and

assigns this Restrictive Easement (the "Easement") in perpetuity over the Property described in Exhibit "A", of the nature and character and to the extent set forth herein.

1. Purpose. It is the purpose of this Easement to prevent any improvement, development or use of the Property that would otherwise be incompatible with the mission of the Installation (the "Purpose").

2. Rights of Grantee. To accomplish the Purpose, the following rights are conveyed to the Grantee by this Easement:

a. To prohibit any development or use of the Property inconsistent with the Restricted Uses and Development Rights of paragraph 3 that would encumber, impede, limit or otherwise be incompatible with the mission of the Installation and the Purpose herein, and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to Section 6.

b. To enter upon the Property to cut down, top or trim any naturally occurring trees, plants, vines, and like obstructions extending more than 120 feet above ground level at Grantee's sole expense.

c. To enter upon the Property on an annual basis in order to monitor Grantor's compliance with the terms of this Easement or at any time upon an event of non-compliance with the terms of this Easement to enforce the terms of this Easement; provided that Grantee will provide at least ten (10) days' notice of such entry to Grantor: except when there is a threat of imminent harm of personal injury or property damage. Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.

d. To close or direct Grantor's closure of the gate installed on the Property if the Installation considers the public at heightened risk, with the understanding that the general intent of this agreement is to allow public access during daylight hours. The Installation shall notify Grantor as soon as practicable should the Installation determine a need to secure public access to the Property, which circumstantially may be prior to or after taking such action.

3. Restricted Uses and Development Rights. Any activity or use of the Property inconsistent with the Purpose is prohibited. Without limiting the generality of the foregoing, and except as specifically permitted, the following activities and uses are expressly prohibited:

a. All activities EXCEPT (i.) silviculture and use of natural resources and (ii.) preservation and interpretation of historic resources (as those terms are defined below) are prohibited on the Property.

i. "Silviculture and Use of Natural Resources" means all silvicultural and other use of the Property's natural resources, including but not limited to timber harvesting (to include thinning and clearcutting of marketable timber), mechanical and chemical site preparation, reforestation, and all other activities associated therewith provided such uses are not inconsistent with the restrictions contained in this Agreement or the Purpose. In connection with such uses, fencing may be installed, and maintained on the Property. Notwithstanding anything to the contrary contained herein, no single surface or mineral borrow pit greater in size than one (1) acre, shall be created or excavated on the Property. However, should such surface or mineral borrow pits made attract such a concentration of birds to the extent that they cause a training or operational hazard, or create a safety hazard or attractive nuisance, the Grantor, upon the request of the Grantee, shall remove or alter such

excavations to the extent required to mitigate the training or operational hazard created. Such removal or alterations shall be at the sole cost of the Grantor.

ii. "Preservation and Interpretation of Historic Resources" means protecting the Property's historically significant features, including but not limited to restricting activities that could harm or otherwise cause injury to the archeological integrity of the Property or altering the topography or natural resources of the property in a manner that could harm or otherwise cause injury to the historic resources. In connection with such uses, fencing shall be installed and maintained on the Property in a manner consistent with Grantee's right of closure in paragraph 2(d).

b. Human Habitation. The Property, which includes one existing building, and one existing parking lot, may not be used for passive recreation; active recreation; educational events or other educational opportunities except for those expressly permitted below; human habitation; or transient stays, including but not limited to transient accommodations such as camping, cabins, trailers, RVs, tents, etc.

i. Limited Non-Commercial Public Access. The Grantor may (1) provide limited public access to the Property to allow researchers, scholars, and citizens interested in historic preservation and education to visit the historic site, and (2) allow the site to be a Liberty Trail site. These specific activities by Grantor shall be limited to no more than a 20 person per day occupancy rate and shall be undertaken with the utmost effort to maintain the historic integrity of the Property.

ii. Historic Commemoration Ceremonies and Educational Interpretive Events. The Grantor may allow educational interpretative events and one yearly historic commemoration ceremony so long as the number of persons on the Property does not exceed 20 per day. Should Grantor wish to hold an event or ceremony for a group of more than 20 persons per day, Grantor will notify the Grantee not less than sixty (60) days prior to the date that Grantor intends to allow the educational interpretive event. The notice shall describe the scope, specific location, number of people, length of event, and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the Purpose and/or the restrictions on the use of the Property included herein. Notice should be provided to the Community Plans and Liaison Officer located at MCAS Beaufort via email and written notification. Failure of Grantor to give such notice shall be deemed a breach of the terms of this Agreement. Within thirty (30) days of receipt of the request, the Grantee will grant or withhold its approval in writing. The Grantee's approval may be withheld only upon a reasonable determination by the Grantee that the event would be inconsistent with the Purpose and/or the restrictions on the use of the Property included herein, or would cause a training or operational hazard. If approval or disapproval is not communicated to Grantor within such 30-day period, approval is deemed granted.

c. Number and Location of Existing Structures.

i. Commercial Building. As noted in the Baseline Report, there is one (1) existing commercial building located on Beaufort County Parcel #R100 020 000 0165 0000 of the Property. This building may be repaired, improved or maintained so long as the building is used for no other purpose than for historic education and interpretation. Replacement of the building shall be permitted only upon Grantee's written approval. Grantor and its assigns and successors in interest shall provide Grantee written notice of Grantor's intention to undertake any such replacement construction, together with information on its size, function, capacity and location, not less than sixty days (60) prior to the

construction thereto in accordance with paragraph 5 below. The building may be demolished and removed from the Property in part or in whole.

ii. Parking Lot. There is one (1) existing parking located on Beaufort County Parcels #R100 020 000 0165 0000 and #R100 020 000 047C 0000. This parking lot may be replaced, repaired, improved or maintained so long as the parking is used for no other purpose than for permitted silvicultural and natural resources uses and the Property's historic education and interpretation uses. The parking lot may be demolished and removed from the site in part or in whole.

d. Setbacks. No structure, with the exception of fencing, may be located within 50 feet of any property line abutting the Installation.

e. Height Restrictions. The erection, construction, installation, alteration or cultivation, whether public or private, of any structure, building, antenna, tower, wire, tree or other obstruction, whatever its nature, extending more than 120 feet above ground level (AGL) or penetrating any MCAS Beaufort airspace is prohibited.

f. Lighting. All lighting equipment, to include floodlights and searchlights, and all protective lighting, such as streetlights, shall have positive optical control so that no light is emitted above the horizontal plane.

g. Other Operational & Training Hazards. No operations of any type are permitted that produce smoke, glare or other visual hazards, or encourage concentrations of birds, such as bird feeding stations, ponds (except as otherwise allowed herein) and mature crops left un-harvested, that may be dangerous for aircraft operating from the Installation. Prior to commencing controlled burns for agricultural purposes, habitat improvement and mitigation of fire hazards, Grantor must give as much reasonable prior notice to Grantee as is practical but in no event less than three (3) days' notice, and receive Grantee's approval, which will not be unreasonably withheld. Notice should be provided to the Community Plans and Liaison Officer located at MCAS Beaufort via email.

h. Construction. New construction of any structure or edifice, and any other additions to, or alterations of the Property are prohibited except for those improvements or alterations deemed to be reasonably necessary to the allowed uses of the Property defined within this paragraph 3, and to address any storm water management issues on or affecting the Property authorized pursuant to paragraph 4. Grantor and its assigns and successors in interest shall provide Grantee written notice of Grantor's intention to undertake any such construction, together with information on its size, function, capacity and location, not less than sixty days (60) prior to the commencement thereto in accordance with paragraph 5 below.

i. Subdivision. Except for the already existing subdivision of the Property into three separate tracts identified on tax maps as R100 020 000 0165 0000, R100 020 000 047C 0000 and R100 020 000 0047 0000, no other division, subdivision or de facto subdivision of the Property is permitted, provided, however, that a lease of all or a portion of the Property for an authorized use under this Easement shall not be prohibited.

4. Reserved Rights. In addition to the above allowed uses, Grantor reserves to itself, and its successors and assigns, the following rights:

- a. Controlling predatory and problem animals by the use of selective control techniques.
- b. Establishing retention or detention ponds or impoundments to ameliorate storm water runoff on or affecting the Property. Grantor, in consultation with and with prior approval of Grantee, will be permitted to create such storm water impoundments on the Property, provided they are not enhanced for the attraction of waterfowl. However, should the impoundments or other improvements made attract such a concentration of birds to the extent that they cause a training or operational hazard, the Grantor, upon the request of the Grantee, shall remove or alter the impoundments or improvements to the extent required to mitigate the training or operational hazard created. Such removal or alterations shall be at the sole cost of the Grantor.
- c. To erect and maintain a sign in a prominent location on the Property visible from a public road, bearing information indicating the property is protected by Grantor and the Grantee. Grantor shall be responsible for the costs of erecting and maintaining such signs or markers.

5. Notification and Approval Provisions.

a. Notice of Intent to Undertake New Uses and Construction. Whenever Grantor plans to undertake a new use or perform new construction or reconstruction on the Property, Grantor will notify the Grantee in writing by certified mail not less than sixty (60) days prior to the date that Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the Purpose and/or the restrictions on the use of the Property included herein. Failure of Grantor to give such notice shall be deemed a breach of the terms of this Agreement. Furthermore, should the Grantor undertake to make any improvements to control storm water runoff pursuant to paragraph 4 above, the provisions of this paragraph shall apply.

b. Grantee's Approval. Within twenty (20) days of receipt of the request, the Grantee will grant or withhold its approval in writing. The Grantee's approval may be withheld only upon a reasonable determination by the Grantee that the use or construction proposed would be inconsistent with the Purpose and/or the restrictions on the use of the Property included herein. If approval or disapproval is not communicated in writing to Grantor within such 20-day period, approval is deemed granted.

6. Enforcement and Remedies. In the event of breach by Grantor of any terms, conditions, or obligations created by this Easement, the Grantor shall be afforded sixty (60) days from the receipt of Grantee's notice of non-compliance to cure the subject breach, except where irreparable harm may result from any delay in curing a breach. The Grantee may grant a reasonable extension of time to complete the cure if it is determined by the Grantee to be necessary. In the event that the non-compliance is not cured within the sixty (60) day time frame, or extension of time if granted by the Grantee, the Grantee may:

- a. take necessary actions to correct the non-compliance and upon request by Grantee. Grantor shall reimburse Grantee for its reasonable actual costs incurred to correct the non-compliance; and/or
- b. institute mediation or other alternative dispute resolution strategy that is agreed to-by the parties; and/or

c. institute suits to enjoin any breach or enforce any term by injunction. The Grantee's remedies shall be cumulative and shall be in addition to any other rights and remedies available to the Grantee at law or equity. Enforcement of the terms of this Easement shall be at the discretion of the Grantee. No failure to the part of the Grantee to enforce any term hereof shall discharge or invalidate such term or any other term hereof or affect the right of the Grantee to enforce the same in the event of a subsequent breach or default.

7. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership and maintenance of the Property.

8. Noise and Other Effects of Air Operations. Grantor does hereby fully waive, remise, and release any right or cause of action which Grantor, its successor and assigns, may have due to such noise, noise vibrations, fumes, dust, fuel particles and all other effects that may be caused by the operation of aircraft from the Installation. Grantor represents and warrants that any lease of the Property will contain such waiver of claim by any lessee. Grantor specifically does not waive but retains all rights to causes of action, claims and rights to damages for any aircraft accident affecting the Property or persons thereon, including physical damages, such as contamination from fuel dumping, damage from falling aircraft components, etc. Furthermore, this waiver is with respect to operation of aircraft by or for purposes of the Installation. If the Installation is closed, and the base is converted to private, non-military use, this waiver shall terminate.

i. As used herein, the term "aircraft" shall mean any and all types of aircraft, to include, but not limited to, jet aircraft, propeller driven aircraft, civil aircraft, military aircraft, commercial aircraft, helicopters and all types of aircraft or vehicles now in existence or hereafter developed, regardless of noise levels, for the purpose of military training, and/or transporting persons or property through the air by whomsoever owned or operated.

9. Subsequent Transfers. Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in the Property, including a leasehold interest. Grantor further agrees to give written notice to the Grantee of any such transfer at least 30 days prior to the date of transfer.

10. Notices. Any notice, approval or communication that either party is required to give in writing may be served personally or mailed to:

To Grantor: Beaufort County Administrator  
100 Ribaut Road Post Office Box 1228  
Beaufort, SC 29901-1228  
Attn: County Administrator

With a copy to: Beaufort County Attorney  
25 Rue Du Bois Post Office Box 40  
Beaufort, SC 29901-0040  
Attn: County Attorney

To USA: Department of the Navy

NAVFACENGCOM MID-ATLANTIC  
1322 Patterson Ave. SE, Suite 1000  
Washington Navy Yard, D.C. 20374-5065  
Attn: Real Estate Department

With copy to: Commanding Officer  
P.O. Box 55001 Building 601, Room 219  
Community Plans and Liaison Office  
Marine Corps Air Station  
Beaufort, SC 29904-5001

Or to such other address as either party may designate by written notice to the other.

11. Authority of Grantor. S.C. Code Ann. Section 4-9-30 (2) (1986) authorizes the Grantor to sell or otherwise dispose of real property owned by Grantor pursuant to the provisions set forth in S.C. Code Section 4-9-120 and 4-9-130 (1986). By Ordinance the Beaufort County Council authorized the Beaufort County Administrator to execute this Restrictive Easement by and on behalf of the County of Beaufort.

**IN WITNESS WHEREOF**, of Grantor and Grantee have set their hands to multiple duplicate original copies of this Conservation Easement under seal on the day and year first above written.

**Grantor:**  
Beaufort County

By: \_\_\_\_\_  
County Administrator

Witness:  
  
\_\_\_\_\_  
Signature

Witness:  
  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

STATE OF SOUTH CAROLINA    )  
  )  
COUNTY OF BEAUFORT         )

ACKNOWLEDGMENT

The forgoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2020 by County of Beaufort, Grantor, by \_\_\_\_\_, its County Administrator.

\_\_\_\_\_  
(SEAL)  
Notary Public for the State of South Carolina  
My commission expires: \_\_\_\_\_





# Exhibit F

PROVISIONS OF THIS DECLARATION ARE SUBJECT TO ARBITRATION IN ACCORDANCE WITH THE SOUTH CAROLINA UNIFORM ARBITRATION ACT.

**STATE OF SOUTH CAROLINA** )  
 ) **CONSERVATION EASEMENT**  
**COUNTY OF BEAUFORT** )

**THIS GRANT OF CONSERVATION EASEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 2020, by **BEAUFORT COUNTY**, a political subdivision of the State of South Carolina (hereinafter, along with its successors and assigns, known as the “Grantor”), in favor of **SOUTH CAROLINA BATTLEGROUNDS PRESERVATION TRUST, INC.** (hereinafter “Grantee”), a South Carolina statutory not-for-profit Corporation which is a qualified Charitable Organization under Internal Revenue Code Section 501(c)(3), and a “qualified Organization” as defined in Internal Revenue Code Section 170(h)(3).

**WHEREAS**, Grantor is the sole owner of certain real property which is TMS #s R100 020 000 0165 0000, R100 020 000 047C 0000, R100 020 000 0047 0000 and a portion of R100 020 000 0244 0000 more particularly described as the Battle of Port Royal battlefield, located in the County of Beaufort, South Carolina, and is more particularly set forth on Exhibit A attached hereto (said real property sometimes hereinafter designated “the Protected Property”); and

**WHEREAS**, the Protected Property possesses significant archeological, historical and cultural values (collectively “Conservation Values”) of great importance to the people of this state and of this nation; and

**WHEREAS**, on February 3, 1779, a British Major William Gardner led an infantry attack to occupy Port Royal Island. Learning of the British advance, Patriot General Benjamin Lincoln dispatched Brigadier General William Moultrie to meet this British threat. The Patriot troops lined up across the road and in an open field, just two hundred yards from the British troops. Moultrie deployed two six-pound guns commanded by Thomas Heyward Jr. in the middle of the road and one 2-pound gun in the woods on the right commanded by DeTreville. In the forty-five minute battle, Moultrie and Gardner disengaged just as both sides were about to run out of ammunition. Moultrie sent Captain John Barnwell and his Beaufort militia to pursue the retreating British; and

**WHEREAS**, the Port Royal battlefield will be one stop marketed on the South Carolina Liberty Trail, a statewide driving tour of Revolutionary War battles in South Carolina; and

**WHEREAS**, the Port Royal battlefield is eligible for listing on the National Register of Historic Places; and

**WHEREAS**, the specific Conservation Values of the Protected Property are documented in a report to be held on file at the offices of the Grantee and incorporated herein by this reference (hereinafter “Baseline Documentation”), which consists of maps and other documentation that the parties agree provides, collectively, an accurate representation of the Protected Property at the time

of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant; and

**WHEREAS**, in particular, the Protected Property is a significant Revolutionary War battlefield Beaufort County, South Carolina; and

**WHEREAS**, the Grantor and all successors in interest agree to preserve and protect the Conservation Values of the Protected Property in perpetuity. The Grantor shall coordinate and consult with the Grantee to develop and implement a plan to avoid, minimize or mitigate adverse effects to the significant portions of the site; and

**WHEREAS**, the Grantor and Grantee acknowledge that there is restrictive easement granted to the United States of America, acting by and through the Department of the Navy, Naval Facilities Engineering Command Mid-Atlantic, recorded on \_\_\_\_\_. However, the Grantor desires placing additional protection on the Conservation Values of the battlefield on the Protected Property to take advantage of the battlefield expertise of the Grantee. Both the Grantor and Grantee acknowledge that this easement must work in concert with the restrictive easement; and

**WHEREAS**, the Grantor is willing to forego forever the right to exploit fully the economic potential of the Protected Property by encumbering the Protected Property with a Conservation Easement as herein set forth; and

**WHEREAS**, by act of the Legislature of the State of South Carolina, as recorded in South Carolina Code (1976, as amended) Section 27-8-10 et seq. (The South Carolina Conservation Easement Act of 1991), the State of South Carolina recognizes and authorizes the creation of conservation restrictions and easements; and

**WHEREAS**, the Grantee has been authorized by its directors to effect the transactions contemplated herein;

**NOW THEREFORE**, in consideration of the above and of the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to Section 170(h) of the Internal Revenue Code of 1986 and the laws of the State of South Carolina, as amended, Grantor hereby voluntarily grants and conveys to Grantee and its successors and permitted assigns a conservation easement in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth (hereinafter the “Easement”). **Grantor herein declares that the Protected Property shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions and easements hereinafter set forth, which covenants, conditions, restrictions and easements shall be deemed to run with the land in perpetuity and to be a burden on the Protected Property in perpetuity.**

**1. Purposes of the Easement.**

(A) It is the Purpose of this Easement to assure the historic and cultural features of the Protected Property will be retained and maintained forever substantially in their current condition for conservation and preservation purposes and to prevent any use or change of the Protected Property

that will significantly impair or interfere with the Protected Property's conservation and preservation values.

(B) It is also the purpose of this easement to prevent any use of the Protected Property that will significantly impair or interfere with the Conservation Values of the Protected Property.

(Hereinafter the purposes stated in Section 1. (A) and (B), above, will be known as the Purposes of this Conservation Easement.)

**2. Rights of Grantee.** Subject to the reserved rights set forth in Section 5, below, Grantor hereby grants the following rights to the Grantee:

(A) **Right of Visual Access.** To have visual access to and view of the Protected Property; provided, that such right shall not be construed to permit general public access over or upon the Protected Property, except as specifically permitted herein.

(B) **Right to Document.** To take photographs, drawings or measurements documenting the historical, cultural, or architectural character and features of the Conservation Values and to maintain accurate records on the condition of the Conservation Values. Further, the Grantee may distribute pictures, drawings, images or stories of the Battle of Port Royal Island to magazines, newsletters, or other publicly available publications, or use them in any effort and activity for the preservation and conservation of South Carolina's heritage.

(C) **Right to Monitor.** To enter upon the Protected Property, over, upon and through adjacent lands of the Grantor or Grantor's successors or assigns, at reasonable times in order to monitor compliance with this easement and to further document natural, historic and archeological features of the Protected Property; provided, that such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Protected Property.

(D) **Right to Prevent Inconsistent Uses.** To prevent Grantor, all subsequent owners, or third persons from conducting any activity on or use of the Protected Property that is inconsistent with the Purposes of this Conservation Easement.

(E) **Right to Require Restoration.** To require of Grantor, all subsequent owners, or third persons the restoration of such areas or features of the Protected Property that may be damaged by any prohibited activity or use, or any activity or use inconsistent with the purposes of the Easement.

(F) **Right of Discretionary Consent.** If, owing to unforeseen circumstances, any of the activities prohibited by this Conservation Easement are deemed desirable by both the Grantor and the Grantee, the Grantee may, in its sole discretion, give permission for such activities, subject to the following limitations:

I. The activities do not violate the Purposes of this Conservation Easement.

II. The activities either enhance or do not impair any significant conservation interests associated with the Protected Property.

III. The activities will not adversely affect the status of Grantee under any applicable laws, including Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

IV. In no case shall the Grantee or Grantor have the right or power to agree to any activities that would result in the termination of this Conservation Easement.

(G) **Right to Conduct Educational Visits.** The Grantee shall have the right, upon forty-eight (48) hours notice to the Grantor, to allow or to conduct visits to the Protected Property by individuals or groups interested in Revolutionary War history, or the history of Beaufort County provided that any such visit shall be during daylight hours.

**3. Covenants of Grantor.** Grantor covenants and agrees, for its successors and assigns, to do the following:

(A) **Preservation Plan.** Grantor has prepared a Preservation Plan for the Protected Property to which it shall adhere. Variations from the Preservation Plan shall be allowed only with the prior written permission of the Grantee and of the State Historic Preservation Office (“SHPO”) or their successor agencies. A copy of the Preservation Plan is attached hereto as Exhibit C and is made a part hereof by reference thereto. The Preservation Plan and all other plans developed for the treatment of the Protected Property shall incorporate guidance provided by the Secretary of Interior’s “Standards and Guidelines for Archaeological Documentation” (48 FR 44734-37) and the President’s Advisory Council on Historic Preservation publication “Treatment of Archaeological Properties” (ACHP 1980). In addition, the Preservation Plan will be consistent with “South Carolina Standards and Guidelines for Archaeological Investigations (South Carolina Department of Archives and History, 2000; or as amended). The Preservation Plan may be implemented only after prior written approval of the Grantor and the SHPO.

(B) **Site Preparation.** Grantee will assist and advise the Grantor to remove and clear brush, undercover and dead or dying trees from the area of the Protected Property; provided, however, that Grantor shall not remove any tree larger than four inches in diameter at breast height (4”DBH) without the prior written permission of the Grantee. Further, Grantor may grass the area of the Protected Property so cleared with grasses and other flora designed to impede soil erosion of the cleared area and as shall have been approved in advance in writing by the Grantee.

**4. Prohibited Uses.** Subject to the reserved rights set forth in Section 5, below, Grantor will not perform or permit the following acts or uses on, over or under the Protected Property:

(A) **Subdivision.** There shall be no subdivision of the Protected Property without the prior written consent of the Grantee.

(B) **Activities.** There shall be no residential, commercial or industrial uses, activities or structures that will result in any ground disturbing activity on the Protected Property, other than those previously agreed upon related to interpreting the site to the public through trails and

interpretive signage without the prior written consent of the Grantee. Any removal of structures on the Protected Property shall be coordinated by the Grantee to allow for the investigation of ground disturbing activity to be surveyed and investigated by a qualified archaeologist.

(C) Structures. There shall be no construction or placement of temporary or permanent mobile homes, bridges, piers, radio or telecommunications transmission antennas, utility transmission poles or any other structures upon the Protected Property, other than those previously agreed upon except such utilities, walkways, paths or raised ramps and viewing platforms the placement, construction and materials of which shall have been approved in advance in writing by the Grantee.

(D) Signs. There shall be no construction or placement of any new advertising signs, billboards or other advertising materials on the Protected Property, except as provided in Section 5, below.

(E) Hunting. There shall be no hunting on the Protected Property.

(F) Dumps, USTs. There shall be no installation of underground storage tanks, or the placing, filling, storing, or dumping on the Protected Property of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk or waste on the Protected Property.

(G) Topography. There shall be no uses of the Protected Property that would adversely alter the topography of the Protected Property, except for construction of the improvements permitted in Section 5, below. The Grantor shall notify the Grantee prior to conducting, or allowing to be conducted, upon the Protected Property any activity that would disturb the topography of the Protected Property other than routine grounds keeping or planting as allowed herein.

(H) Roads. There shall be no paved or unpaved roads through the Protected Property except as those previously agreed upon as further described in Section 5.

(I) Lighting. There shall be no unshielded exterior lighting on any portion of the Protected Property of mercury vapor lights or other high powered exterior lights, defined as lighting in excess of 1750 lumen.

(J) Mining, Excavating Archaeological Sites. There shall be no mining, excavating, dredging or removing from the Protected Property of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit. There shall be no removal of artifacts of a historical nature, except with prior written permission of the Grantee.

(K) Utilities. The Grantor shall not place upon the Protected Property any electrical, telephone, water or sewer or other utilities or utility easements without the prior written consent of the Grantee. The Grantee shall not unreasonably withhold such utility consents as long as Grantor remains compliant with this agreement otherwise. If the Grantor receives notification from any utility company, governmental agency or other entity of proposed utilities or utility easements to be placed upon the Protected Property it shall so notify the Grantee as soon as practicable to do so.

(L) Other Uses. There shall be no other uses of the Protected Property or activity which would impair significant conservation interests unless such use or activity is necessary for the protection of the Conservation Values that are the subject of this Easement.

**5. Reserved Rights.** Grantor reserves to itself, and to its successors and assigns and transferees of title to the Protected Property, all rights accruing from its ownership of the Protected Property, including the right to engage in, or permit or invite others to engage in, all uses of the Protected Property that are not expressly prohibited in Section 4, above, and that are not inconsistent with the Purposes of this Easement, including the following (collectively, the “Reserved Rights”):

(A) Routine Maintenance. The right to cut and remove grass or other existing vegetation on the Protected Property, and to perform routine maintenance and upkeep, provided that such maintenance is consistent with the purposes of this Easement and subject to the restrictions in Section 3 (C) and 4, above. The right to cut any tree when it is necessary to salvage timber damaged by insect, disease, hurricane, fire, wind or flood damage, or when cutting is necessary to prevent further timber damage by such agents or when a house or some other structure is in danger from a hazardous tree.

(B) Selective Clearing. The right to selective cutting or clearing of vegetation for habitat enhancement and protection, fire protection, road maintenance, tick control, the preservation of vistas, or otherwise to preserve the natural condition of the Protected Property, subject to the restrictions of Section 4, above, and Section 6, below.

(C) Signs. The right to post “no trespassing” signs, and informational and directional signs. Signs may not exceed 12 inches by 18 inches in size, except for informational or interpretive signs, which may exceed such size, subject to the approval of the Grantee.

(D) Horticulture. The right to plant, grow and maintain decorative grasses, plants and trees upon the Protected Property incidental to residential use; provided, however, that the Grantor must obtain prior written approval from the Grantee to plant any trees.

**6. Prior Approval be and Notice to Grantee.**

(A) The exercise of certain rights reserved by the Grantor under Section 5, above, is subject to the prior approval by or notice to Grantee of such proposed activity when so specifically stated in Section 5, which approval shall not be unreasonably withheld. In evaluating each Grantor request, the Grantee shall take into account the following considerations:

- I. Whether use of the site for the proposed activity would materially and adversely impair the historic qualities of the Protected Property that are visible to the general public;
- II. Whether use of the site for the proposed activity would unnecessarily fragment, harm or obliterate an archaeologically or historically significant site;

- III. Whether use of the site for the proposed activity would create an unreasonable amount of impervious surface;
  - IV. Whether the proposed activity or use of the site for the proposed activity would otherwise materially and adversely affect the Purposes of this Conservation Easement.
- (B) Other Criteria, depending on Conservation Values of the Property:
- I. Any request for Grantee approval of an activity or notification of a new activity as permitted shall be accompanied by a reasonable description of the nature, scope, location, timetable, and any other material aspect of the proposed activity, in sufficient detail to permit Grantee to evaluate and monitor such activity. Grantee shall respond within thirty (30) days of such notice or approval will be deemed to have been granted;
  - II. The Grantor shall give the Grantee notice of any change of possession, ownership or control of the Protected Property or any portion thereof within thirty (30) days of such change, including without limitation, notice of any planned lease or sale of the Protected Property or any lot; and
  - III. The Grantor shall keep the Grantee reasonably informed as to activities being conducted on the Protected Property which are within the scope of this Conservation Easement and as to the identity of any third parties who are conducting or managing such activities.

**7. Arbitration.** In the event there is a disagreement between the Grantor and the Grantee as to whether or not:

- I. The Grantor has acted unreasonably in the exercise of any discretionary power reserved by the Grantor, such as approving certain requests made by the Grantee; or
- II. The Grantee has acted unreasonably in the exercise of any discretionary power granted to the Grantee, such as approving certain requests made by the Grantor

(collectively “Arbitration Issues”), the Grantor and Grantee will attempt amicable resolution of the Arbitration Issues. In the event that amicable resolution is not reached within a time deemed reasonable by the Grantee, the Arbitration Issue shall be resolved by a committee made up of three individuals who have reasonable experience with conservation easements and land uses of similar properties. One individual shall be selected by the Grantee, one individual shall be selected by the Grantor, and the other individual shall be selected by the two individuals selected by the Grantee and Grantor. All shall be members of the American Arbitration Association. The arbitration committee shall determine by majority vote the Arbitration Issue. The determination of the committee shall be binding upon the Grantor and the Grantee. Only Arbitration Issues shall be subject to the South Carolina Uniform Arbitration Act. In the event that a dispute includes issues in addition to an Arbitration Issue, the matter shall not be subject to arbitration.

**8. Grantee’s Remedies.** If Grantee determines that Grantor is in violation of the terms of the Conservation Easement or that a violation is threatened, the Grantee shall notify the Grantor



of the violation or threatened violation and request voluntary compliance. In the event that voluntary compliance is not agreed upon within a time deemed by the Grantee to be reasonable, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the purpose of the Easement, to restore the portion of the Protected Property so injured.

If Grantor fails to cure the violation within thirty (30) days after receipt of the notice thereof from Grantee (or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, if Grantor shall fail to begin curing such violation within said thirty (30) day period, or fail to continue diligently to cure such violation until finally cured), Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement, including damages for the loss of the Conservation Values of the Protected Property, and to require the restoration of the Protected Property to the condition that existed prior to any such injury. Without limiting Grantor's ability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Grantee may pursue its legal and equitable remedies under this paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire.

Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to seek the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of providing either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

**9. Costs of Enforcement.** If Grantee prevails in any action to enforce the terms of this Easement, any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including without limitation, costs of suit and reasonable attorneys' fees, and any reasonable costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by the Grantor. If Grantor prevails in any action to enforce the terms of this Easement, Grantor's cost of suit, including without limitation, reasonable attorneys' fees, shall be borne by Grantee.

**10. Grantee's Discretion.** Enforcement of the terms of this Easement shall be at the discretion of the Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or

omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

**11. Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Protected Property resulting from causes beyond Grantor's control, including, without limitation, trespass by third persons, fire, flood, storm and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Protected Property resulting from such causes.

**12. Access.** No right of public access to any portion of the Protected Property is conveyed by this Easement, except as expressly provided herein.

**13. Costs, Liabilities and Taxes.** Grantor and the successors in title to the Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property, including, but not limited to, the maintenance of general liability insurance coverage.

Each party agrees to release, hold harmless, defend and indemnify the other from any and all liabilities including, but limited to, injury, losses, damages, judgments, costs, expenses and fees that the indemnified party may suffer or incur as a result of or arising out of the activities of the indemnifying party on the Protected Property.

**14. Extinguishment.** If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by mutual consent in writing by both the Grantor and Grantee and recorded at the Beaufort County Register of Deeds. Unless otherwise required by applicable law at the time, on the event of any sale of all or a portion of the Protected Property (or any other property received in connection with an exchange or involuntary conversion of the Protected Property) after such termination or extinguishment, and after satisfaction of prior claims and net of any costs or expenses associated with such sale, Grantor and Grantee shall divide the proceeds from such sale (minus any amount attributable to the value of improvements made after the date of this grant, which amount shall be reserved to Grantor) in accordance with their respective percentage interests in the fair market value of this Protected Property. All such proceeds received by Grantee shall be used in a manner consistent with the conservation purposes of this grant.

**15. Condemnation.** If all or part of the Protected Property is taken, in whole or in part, by exercise of the power of eminent domain, Grantor and Grantee shall be respectively entitled to compensation in accordance with applicable law. In the event that the property taken, in whole or in part, is valued subject to the easement, the Grantor shall receive any and all compensation. In the event that the property taken, in whole or in part, is valued in fee simple without consideration of the easement, any compensation should be allocated between the Grantor and Grantee in accordance with their respective percentage interests in the fair market value of this Protected Property.



**22. Effective Date.** Grantor and Grantee intend that the restrictions arising hereunder take effect on the day and year this DEED OF CONSERVATION EASEMENT is recorded in the RMC office for Beaufort County, South Carolina, after all signatures have been affixed hereto.

**23. Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of South Carolina and in the jurisdiction of Beaufort County, SC.

**24. Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the purpose of this Easement and the policy and purposes of the Grantee. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid should be favored over any interpretation that would rend it invalid.

**25. Severability.** If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement shall not be affected thereby.

**26. Entire Agreement.** The covenants, terms, conditions and restrictions of this Easement shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the Protected Property.

TO HAVE AND TO HOLD unto Grantee, its successors and assigns forever.

By Execution of this Conservation Easement, the Grantee accepts this Conservation Easement and the rights and obligations recited herein.

GRANTOR HEREBY WARRANTS and represents that the Grantor is seized of the Protected Property in fee simple and has good right to grant and convey this Conservation Easement, that the Protected Property is free and clear of any and all encumbrances, except easements of record and prescriptive easements, if any, and that the Grantee and its successors and assigns shall have the use of and enjoy all of the benefits derived from and arising out of this Conservation Easement.

**Remainder of Page Intentionally Left Blank  
Signatures on Following Pages**

IN WITNESS WHEREOF, of Grantor and Grantee have set their hands to multiple duplicate original copies of this Conservation Easement under seal on the day and year first above written.

Grantor:

By: \_\_\_\_\_  
Ashley M. Jacobs





**EXHIBIT A**

*The Protected Property*

A portion of TMS # \_\_\_\_\_, totaling \_\_\_\_\_ acres, located in the County of Beaufort, State of South Carolina, and shown more particularly on Exhibit “B” and made a part hereof by reference thereto.

**EXHIBIT B**  
Plat of the Protected Property



**EXHIBIT C**  
*Preservation Plan*

The Grantor agrees to preserve the Protected Property “as is.” Grantor shall make no material changes or alterations to the topography of the Protected Property and shall not give any other individual or entity permission to make such changes. The Grantor maintains the right to conduct routine maintenance and upkeep. The Grantor maintains the right to remove vines and invasive species of plants that may compete with the trees upon the Protected Property.

Small trees less than four inches in diameter at breast height (4” DBH) and underbrush on the ground may be removed. Trees in excess of four inches in diameter at breast height (4” DBH) may not be removed without the prior written permission of the Grantee.

Decorative grasses, plants, and trees may be planted on the Protected Property with prior written permission of Grantee.

There shall be no structures, temporary or permanent, placed or constructed upon the Protected Property, except such walkways or paths, the placement, construction, and materials of which shall have been approved in advance in writing by the Grantee. Foot traffic on the Protected Property shall be limited to the established public walkways and paths.

There shall be no metal detecting or digging on the Protected Property, however, the Grantor shall not be responsible for constantly enforcing this restriction.

The Protected Property will be used for educational and recreational purposes as outlined in Section 5 – “Reserved Rights.” The Grantee shall have the right to conduct educational visits to the Protected Property as provided for in Section 2, part (G).

The Grantee agrees to serve as an advisor to the Grantor on the proper care and use of the battlefield.

**ORDINANCE NO. 2020 / --**

**AN ORDINANCE TO AMEND THE BEAUFORT COUNTY ORDINANCE NUMBER 1975-2 AND BEAUFORT COUNTY COUNCIL OCTOBER 24, 2005 UPDATE APPROVAL SO AS TO PROVIDE AN UPDATED FEE SCHEDULE FOR EMERGENCY MEDICAL SERVICES (EMS) AMBULANCE SERVICES**

**WHEREAS**, Beaufort County currently provides for a fee schedule for the cost of Emergency Medical Services (EMS) ambulance service; and

**WHEREAS**, Beaufort County Council originally adopted a fee schedule in 1975 and subsequently updated the schedule in 2005; and

**WHEREAS**, Beaufort County believes the taxpayers of Beaufort County fund the basic operation to maintain a highly advance Emergency Medical Services (EMS) ambulance system for all citizens and visitors county-wide with ad valorem taxes; and

**WHEREAS**, Beaufort County desires to maintain the most advance Emergency Medical Service (EMS) for the citizens of Beaufort County by collecting updated user fees to off-set costs of maintaining such service; and

**WHEREAS**, in consideration of the effect COVID-19 is having on the citizens of Beaufort County, the updated user fees shall be effective not earlier than January 1, 2021; and

**NOW, THEREFORE, BE IT ORDAINED** by Beaufort County Council that the following amendments be included within the Beaufort County Code of Ordinances not earlier than January 1, 2021 as follows:

Beaufort County Emergency Medical Services (EMS) ambulance fee schedule:

<b><u>Level of Service</u></b>	<b><u>Fee</u></b>
<b>ALS E A0427</b>	<b>\$725.00</b>
<b>BLS E A0429</b>	<b>\$535.00</b>
<b>ALS 2 A0433</b>	<b>\$1,070.00</b>
<b>SPECIALTY CARE TRANSPORT</b>	<b>\$1,085.00</b>
<b>ALS TREATMENT NO TRANSPORT</b>	<b>\$150.00</b>
<b>BLS TREATMENT NO TRANSPORT</b>	<b>\$75.00</b>
<b>MILEAGE</b>	<b>\$17.25</b>
<b>ALS DISPOSABLE SUPPLIES</b>	<b>\$100.00</b>
<b>BLS DISPOSABLE SUPPLIES</b>	<b>\$50.00</b>

<b>IV SUPPLIES</b>	<b>\$50.00</b>
<b>OXYGEN SUPPLIES</b>	<b>\$50.00</b>

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

COUNTY COUNCIL OF BEAUFORT COUNTY

BY: \_\_\_\_\_

Joseph Passiment, Chairman

ATTEST:

\_\_\_\_\_  
Sarah W. Brock, Clerk to Council



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## BEAUFORT COUNTY COUNCIL

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### Agenda Item Summary

#### Item Title:

AN ORDINANCE AUTHORIZING THE CONVEYANCE OF REAL PROPERTY ASSOICATED WITH BOUNDARY OF 50' RIGHT OF WAY KNOWN AS FIDDLER DRIVE LOCATED ON LADY'S ISLAND

#### Council Committee:

Public Facilities Committee

#### Meeting Date:

April 6, 2020

#### Committee Presenter (Name and Title):

Brittany Ward, Beaufort County Deputy Attorney; Patty Wilson, Beaufort County Right of Way Manager

#### Issues for Consideration:

Beaufort County paved Fiddler Drive as part of paving contract 31. During this time period, County Maintained roads were considered prescriptive Right of Way and although the County does not have a clear instrument of ownership, plats dating back to the 1970's and prior Beaufort County Tax maps designate Fiddler Drive as a ROW. The County has maintained the road for over 25 years. County paving plans are dated May 12, 2006 with County Council approval of the paving contractor on June 26, 2006. County Council also approved restriping of the road on October 27, 2014. The County has invested a lot of time and money into improving and maintaining the road. Title research reflects the County's interest in the road. Surveys and plats of surrounding subdivisions and parcels include the 50' ROW so there does not appear to be a conflict of ownership with other adjacent properties.

#### Points to Consider:

Green Heath, LLC is trying to clear up acreage discrepancies associated with parcel R200 010 000 0022 0000 which abuts Fiddler Drive on Lady's Island. Green Heath, LLC is requesting a Quit Claim Deed and Certificate of Abandonment associated with a "GAP" area outside the platted 50 ROW. Green Heath, LLC has provided a Quit Claim Deed for any interest they have in Fiddler Drive. By the County accommodating Green Heath, LLC, the County will also have recorded documents that can be used in support of the County's claim on the ROW.

#### Funding & Liability Factors:

Fiddler Drive is a County Maintained Road with Liability responsibilities.

#### Council Options:

Approve or disapprove County Quit Claim Deed and Certificate of Abandonment to Green Heath, LLC and Quit Claim Deed From Green Heath, LLC to County

#### Recommendation:

Approve County Quit Claim Deed and Certificate of Abandonment to Green Heath, LLC and Quit Claim Deed From Green Heath, LLC to County

**ORDINANCE 2020/ \_\_\_\_\_**

**AN ORDINANCE AUTHORIZING THE CONVEYANCE OF REAL PROPERTY  
ASSOCIATED WITH BOUNDARY OF 50' RIGHT OF WAY KNOWN AS FIDDLER  
DRIVE LOCATED ON LADY'S ISLAND**

**WHEREAS**, Beaufort County ("County") has ownership interests in the Right of Way known as Fiddler Drive located on Lady's Island, said interest is supported by County maintenance history in excess of 25 years, plats dating back to the 1970's and prior County Tax Maps; and

**WHEREAS**, the County paved Fiddler Drive as part of contract 31 according to Road Improvement Plans dated May 12, 2006 designed by Beaufort County Engineering Department; and

**WHEREAS**, Green Heath, LLC is trying to clear up a boundary gap between Fiddler Drive 50' Right of way and parcel R200 010 000 0022 0000 which abuts Fiddler Drive Right of Way; and

**WHEREAS**, Green Heath, LLC is requesting Beaufort County grant a Quit Claim Deed attached as Exhibit "A" and an associated Certificate of Abandonment attached as Exhibit "B"; and

**WHEREAS**, Green Heath, LLC desires to grant Beaufort County any interest in Fiddler Drive 50' Right of Way more particularly described in the Quit Claim Deed attached as Exhibit "C"; and

**WHEREAS**, Beaufort County Council has determined that it is in its best interest to convey to Green Heath, LLC real property described in Quit Claim Deed attached as Exhibit "A" and the associated Certificate of Abandonment attached as Exhibit "B" and accept conveyance from Green Heath, LLC a Quit Claim Deed for Right of Way associated with Fiddler Drive as described in attached Exhibit "C"; and

**WHEREAS**, S.C. Code Ann. §4-9-130 requires that the transfer of any interest in real property owned by the County must be authorized by the adoption of an Ordinance by Beaufort County Council.

**NOW, THEREFORE, BE IT ORDAINED** by Beaufort County Council as follows:

1. the County Administrator is hereby authorized to execute the quit claim deed referenced herein and as shown in Exhibit A; and
2. the County Administrator is hereby authorized to execute the Certificate of Abandonment referenced herein and as shown in Exhibit B; and

3. the County Administrator is hereby authorized to accept conveyance of real property associated with 50' Right of Way known as Fiddler Drive from Green Heath, LLC referenced herein and as shown in Exhibit C.

DONE this \_\_\_\_ day of \_\_\_\_\_ 2020.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: \_\_\_\_\_  
Joseph Passiment, Chairman

ATTEST:

\_\_\_\_\_  
Sarah W. Brock, Clerk to Council

Third and Final Reading:

Public Hearing:

Second Reading:

First Reading:

Exhibit "A"  
Beaufort County Quit Claim Deed to Green Heath, LLC

Exhibit "A"

----- SPACE ABOVE THIS LINE FOR RECORDING DATA -----

**Return recorded document to:**

David L. Tedder, P.A..  
1001 Craven Street  
Beaufort, SC 29902

**STATE OF SOUTH CAROLINA**

**QUITCLAIM DEED**

**COUNTY OF BEAUFORT**

**KNOW ALL MEN BY THESE PRESENTS**, that **BEAUFORT COUNTY**, a political subdivision of the State of South Carolina (hereinafter "Grantor"), in consideration of the sum of Ten and NO/100 Dollars (\$10.00), to Grantor in hand paid at and before the sealing of these presents by **GREEN HEATH, LLC**, a South Carolina limited liability company (hereinafter "Grantee"), whose address is c/o Fred Trask, P.O. Box 1256, Beaufort, SC 29901, for which the receipt whereof is hereby acknowledged, has granted, bargained, conveyed, released and does forever quitclaim unto the said Grantee, its Successors and Assigns forever, all of Grantor's right, title and interest in and to the following described property, to-wit:

SEE ATTACHED LEGAL DESCRIPTION

**TOGETHER** with all and singular, the rights, members, hereditament and appurtenances to the said Premises belonging, or in anywise incident or appertaining thereto.

**TO HAVE AND TO HOLD**, all and singular, the said premises before mentioned unto the said Grantee, its Successors and Assigns, forever – so that neither the said Grantor nor its successors and assigns, nor any other person or persons, claiming under Grantor or them, shall at any time hereinafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part of parcel thereof, forever.



WITNESS the Hand and Seal of the undersigned, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**BEAUFORT COUNTY, a political subdivision of the State  
of South Carolina**

By: \_\_\_\_\_  
**Ashley M. Jacobs, County Administrator**

WITNESSES:

\_\_\_\_\_  
Signature of 1st Witness

\_\_\_\_\_  
Signature of 2nd Witness/Notary Public

STATE OF SOUTH CAROLINA    )  
  )  
COUNTY OF BEAUFORT        )

**ACKNOWLEDGMENT**

I, \_\_\_\_\_ the undersigned Notary Public, do certify that Ashley M. Jacobs, County Administrator of Beaufort County, a political subdivision of the State of South Carolina, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public  
Name of Notary: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

[NOTARIAL SEAL]

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

ALL that certain piece, parcel or tract of land situate, lying and being on Lady's Island, Beaufort County, South Carolina, containing 0.603 acres, more or less, and being more particularly shown and designated as "Area 1 (To Be Acquired By Parcel A) 26,286.56 Sq. Ft. 0.603 Ac" on Sheet 1 of 3 on that certain plat prepared by Jeremy W. Reeder, P.L.S., last revised January 3, 2020, and recorded in Plat Book \_\_\_\_\_ at Page \_\_\_\_\_ in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more complete description as to metes, courses, distances and bounds of said property, reference may be had to the aforementioned plat.

ALSO, ALL that certain piece, parcel or tract of land situate, lying and being on Lady's Island, Beaufort County, South Carolina, containing 0.050 acres, more or less, and being more particularly shown and designated as "Area 2 (To Be Acquired By Parcel B, 2,181.32 Sq. Ft. 0.050 Ac" on Sheet 1 of 3 on that certain plat prepared by Jeremy W. Reeder, P.L.S., last revised January 3, 2020, and recorded in Plat Book \_\_\_\_\_ at Page \_\_\_\_\_ in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more complete description as to metes, courses, distances and bounds of said property, reference may be had to the aforementioned plat.

Exhibit “B”  
Beaufort County Certificate of Abandonment

Exhibit “B”

----- SPACE ABOVE THIS LINE FOR RECORDING DATA -----

**Return recorded document to:**

Stuart R. Halpern, Esq.  
Weiner, Shearouse, Weitz, Greenberg & Shawe  
P.O. Box 10105  
Savannah, GA 31412

**STATE OF SOUTH CAROLINA**

**CERTIFICATE OF ABANDONMENT  
OF REAL PROPERTY**

**COUNTY OF BEAUFORT**

**KNOW ALL MEN BY THESE PRESENTS**, that **BEAUFORT COUNTY, SOUTH CAROLINA** (hereinafter, the "Grantor"), whose address is c/o Beaufort County Administrator, P.O. Drawer 1228, Beaufort, SC 29901, hereby acknowledges that it has abandoned and surrendered, and hereby **ABANDONS AND SURRENDERS**, any and all right, title and interest it has or may have in or otherwise with respect to those certain strips or parcels of land lying, being and situated on Lady's Island, Beaufort County, South Carolina, comprising approximately 0.653 acres of land, more or less, and being more specifically described on Exhibit "A" attached hereto and made a part hereof by this reference, together with all and singular, the rights, members, hereditament and appurtenances to the said Premises belonging, or in anywise incident or appertaining thereto (the "Property"), such that Grantor claims no interest whatsoever in said Property.

This Certificate of Abandonment was prepared by the law firm of Weiner, Shearouse, Weitz, Greenberg & Shawe, LLP, 14 East State Street, Savannah, Georgia 31401.

**WITNESS** Grantor's hand and seal, this \_\_\_ day of \_\_\_\_\_, 2020.

Signed, sealed and delivered in the presence of:

**BEAUFORT COUNTY, SOUTH CAROLINA**

Attest: \_\_\_\_\_  
County Clerk to Council

By: \_\_\_\_\_  
Ashley Jacobs

\_\_\_\_\_  
Signature of Notary Public / 2nd Witness

Title: Beaufort County Administrator

**STATE OF SOUTH CAROLINA )**  
**) )**  
**COUNTY OF BEAUFORT        ) )**

**ACKNOWLEDGMENT**

I, \_\_\_\_\_ the undersigned Notary Public do certify that Ashley Jacobs, in her capacity as Beaufort County Administrator, personally appeared before me this day of and acknowledged the due execution of the foregoing instrument.

Witness my official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public

Commission Expiration Date: \_\_\_\_\_

[NOTARIAL SEAL]

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

ALL that certain piece, parcel or tract of land situate, lying and being on Lady's Island, Beaufort County, South Carolina, containing 0.603 acres, more or less, and being more particularly shown and designated as "Area 1 (To Be Acquired By Parcel A) 26,286.56 Sq. Ft. 0.603 Ac" on Sheet 1 of 3 on that certain plat prepared by Jeremy W. Reeder, P.L.S., last revised January 3, 2020, and recorded in Plat Book \_\_\_\_\_ at Page \_\_\_\_\_ in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more complete description as to metes, courses, distances and bounds of said property, reference may be had to the aforementioned plat.

ALSO, ALL that certain piece, parcel or tract of land situate, lying and being on Lady's Island, Beaufort County, South Carolina, containing 0.050 acres, more or less, and being more particularly shown and designated as "Area 2 (To Be Acquired By Parcel B, 2,181.32 Sq. Ft. 0.050 Ac" on Sheet 1 of 3 on that certain plat prepared by Jeremy W. Reeder, P.L.S., last revised January 3, 2020, and recorded in Plat Book \_\_\_\_\_ at Page \_\_\_\_\_ in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more complete description as to metes, courses, distances and bounds of said property, reference may be had to the aforementioned plat.

Exhibit “C”

Green Heath, LLC Quit Claim to Deed Beaufort County

Exhibit “C”

Prepared in the Law Office of David L. Tedder, P.A., 1001 Craven Street, Beaufort, SC 29902 **without benefit of title examination and without title certification**

STATE OF SOUTH CAROLINA            )  
  )  
COUNTY OF BEAUFORT                )                   QUIT-CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, That **GREEN HEATH, LLC, a South Carolina limited liability company** (hereinafter "Grantor"), in consideration of the premises and also in consideration of the sum of **TEN AND NO/100 (\$10.00) DOLLARS** to Grantor in hand paid at and before the sealing and delivery of these presents by **BEAUFORT COUNTY, a political subdivision of the State of South Carolina** (hereinafter "Grantee"), whose address is **P. O. Drawer 1228, Beaufort, SC 29901** (the receipt whereof is hereby acknowledged) has remised, released and forever quit-claimed, subject to the easements, restrictions, reservations and conditions ("Exceptions"), if any, and by these presents does remise, release and forever quit-claim unto the said Grantee, its Successors and Assigns forever, all of Grantor's right, title and interest in and to the following described real estate, to-wit:

SEE ATTACHED LEGAL DESCRIPTION

**THIS CONVEYANCE IS MADE SUBJECT TO:** All covenants, restrictions, easements and rights-of-ways of record affecting the property.

TOGETHER with, subject to the above Exceptions, if any, all and singular the rights, members, hereditaments and appurtenance to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, subject to the above Exceptions, if any, all and singular the said premises before mentioned unto the said Grantee, its Successors and Assigns, forever -- so that neither the said Grantor nor its successors and assigns, nor any other person or persons, claiming under Grantor or them, shall at any time hereinafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part of parcel thereof, forever.



IN WITNESS WHEREOF, Frederick G. Trask, as sole Member of Green Heath, LLC, a South Carolina limited liability company, has hereunto set his Hand and Seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

WITNESSES:

GREEN HEATH, LLC, a South Carolina limited liability company

By: SEASTONE PROPERTIES, LLLP, Member

\_\_\_\_\_  
Signature of 1<sup>st</sup> Witness

By: \_\_\_\_\_  
Frederick G. Trask, President  
Wiseblood, Inc., its General Partner

\_\_\_\_\_  
Signature of 2<sup>nd</sup> Witness/Notary

STATE OF SOUTH CAROLINA    )  
  )  
COUNTY OF BEAUFORT        )     ACKNOWLEDGMENT

I, the undersigned Notary, do hereby certify that the Grantor by Frederick G. Trask, its authorized signatory, personally appeared before me this day, and having satisfactorily proven to be the person whose name is subscribed above, has acknowledged the due execution of the foregoing instrument.

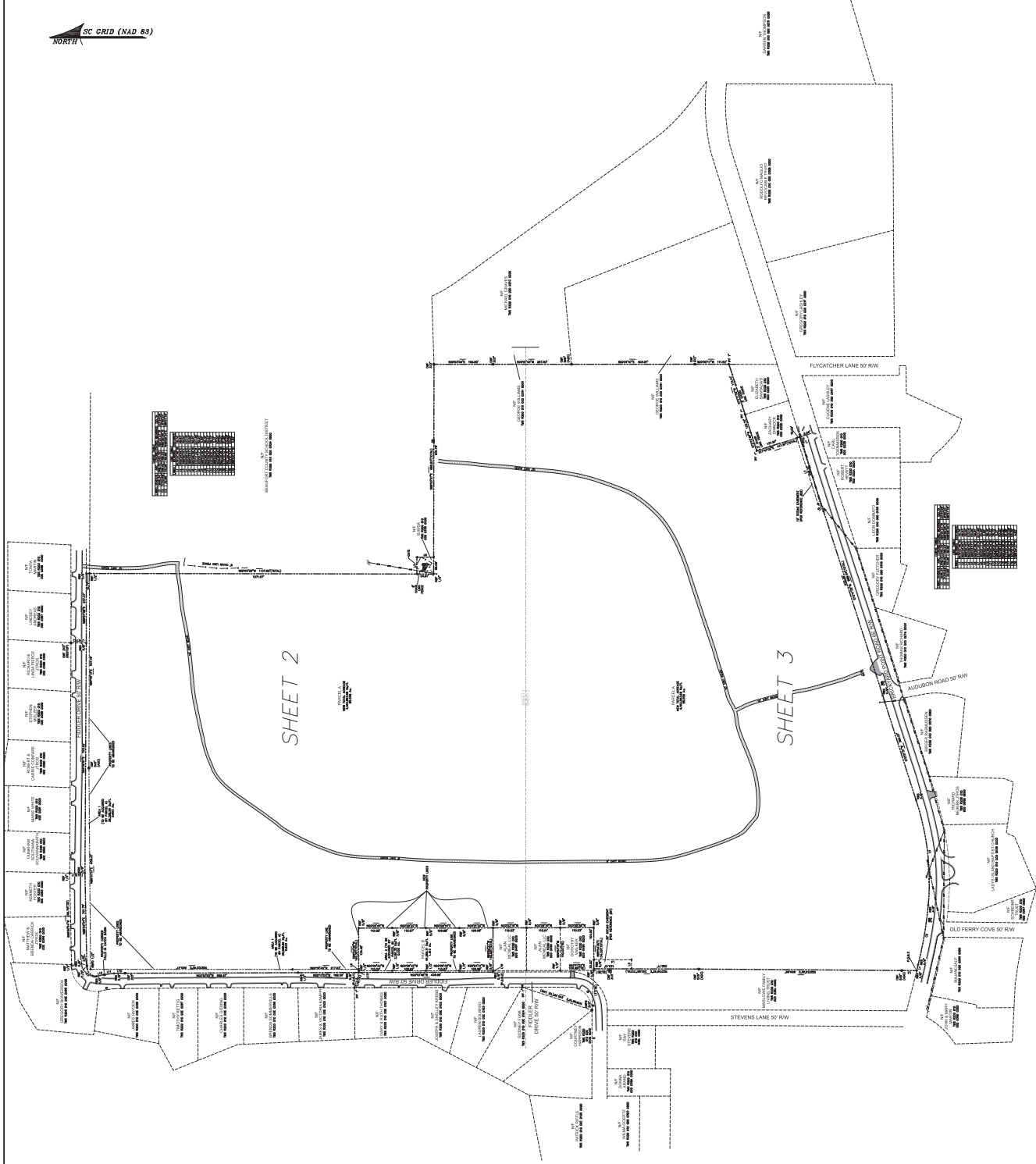
Witness my Hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_(SEAL)  
Signature of Notary Public  
Name of Notary: \_\_\_\_\_  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My Commission Expires: \_\_\_\_\_

## LEGAL DESCRIPTION

ALL that certain piece, parcel or tract of land situate, lying and being on Lady's Island, Beaufort County, South Carolina, being a fifty (50') foot right-of-way known as Fiddler Drive, said property being shown and designated as "Fiddler Drive 50' R/W" on that certain plat prepared by Jeremy W. Reeder, P.L.S., last revised on January 3, 2020, and recorded in Plat Book \_\_\_\_\_ at Page \_\_\_\_\_ in the Office of the Register of Deeds for Beaufort County, South Carolina.

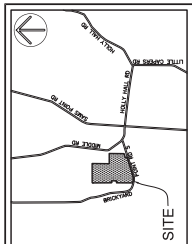
SC CRID (NAD 83)  
NORTH



- LEGEND**
- CONC. MONUMENT FOUND
  - ARTHUR OLIVER CHRISTENSEN
  - IRON PIPE FOUND - DISTURBED
  - IRON REBAR FOUND - DISTURBED
  - IRON REBAR FOUND - UNDISTURBED
  - POINT OF BEGINNING
  - FENCE LINE
  - OVERHEAD POWER LINE
  - UNDERGROUND DRAINAGE LINE
  - EDGE OF DRIVE EASEMENT
  - CONCRETE
  - GRAVEL
  - REGULATORY CONTROL VALVE
  - ELECTRIC JUNCTION BOX
  - WATER METER
  - WATER LATERAL OR SUBROUT
  - WATER VALVE
  - TRANSFORMER-ELECTRIC

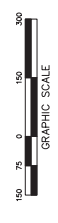
**ACREAGE CHART**

PANSEL A	41,582,751.52 SQ. FT.	948.66 AC.
AREA 1 (TO BE ACQUIRED BY PANSEL A)	26,288,596 SQ. FT.	600.00 AC.
NEW PANSEL A TOTAL	41,745,347.52 SQ. FT.	950.00 AC.
PANSEL B	61,256,111 SQ. FT.	1,413 AC.
AREA 2 (TO BE ACQUIRED BY PANSEL B)	2,181,820.00 SQ. FT.	50.00 AC.
NEW PANSEL B TOTAL	63,437,931.00 SQ. FT.	1,463 AC.



- NOTES**
- THIS PARCEL APPEARS TO LIE IN FLOOD ZONE G.
  - VERTICAL DATUM IS SOUTH CAROLINA STATE PLANE CRID (NAD 83).
  - LEGEND IS LOCATED ON SHEET 1.
  - BROADWAY POINT ROAD RIGHT OF WAY IS PER REFERENCE #21 AND #22.
  - SEWAGE PLACEMENTS WERE SCALED IN PER REFERENCE #21 AND #22.

- REFERENCES**
- DEED BOOK #674 PAGE 1369 W/ PLAT
  - DEED BOOK #674 PAGE 1370 W/ PLAT
  - DEED BOOK #674 PAGE 1371 W/ PLAT
  - DEED BOOK #674 PAGE 1372 W/ PLAT
  - DEED BOOK #674 PAGE 1373 W/ PLAT
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  - DEED BOOK #674 PAGE 1500 W/ PLAT



**ATLAS SURVEYING, INC.**



PREPARED FOR:  
**FRED TRASK**  
A SURVEYOR/RECONSTRUCTION FIRM OF  
THE GLEASON TRACT,  
PARCELS A & B  
TAX PARCEL NO. P200 010 000 0022 0000  
LADY'S ISLAND  
BEAUFORT COUNTY, SOUTH CAROLINA

**SHEET 1 OF 3**

THIS DOCUMENT IS THE PROPERTY OF ATLAS SURVEYING, INC. AND IS TO BE USED ONLY FOR THE PROJECT AND PARCELS SPECIFICALLY IDENTIFIED THEREIN. ANY REUSE OR DISTRIBUTION OF THIS DOCUMENT WITHOUT THE WRITTEN PERMISSION OF ATLAS SURVEYING, INC. IS STRICTLY PROHIBITED.

*Handwritten signature/initials*

NOT VALID UNLESS OWNED BY THIS FIRM

SC CRID (NAD 83)

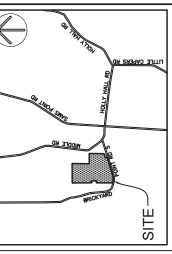


PARCEL	OWNER	AREA (AC)
1	TONYA	0.0000
2	LINDSEY	0.0000
3	RICHARD & LINDA PIERCE	0.0000
4	STEPHEN	0.0000
5	OSCEOLA & CARRIE CONFARE	0.0000
6	MARIE WHITE	0.0000
7	QUINNAM	0.0000
8	SOUTHANNA	0.0000
9	KENNETH	0.0000
10	MATHEW & BRENDA CARRICK	0.0000
11	GREGORY BOWERSOX	0.0000
12	JAMES HAYDEN	0.0000
13	TIMOTHY METTIG	0.0000
14	CHARLES CODDING	0.0000
15	BRENDA SOMMERVILLE	0.0000
16	JAMES & VICTORIA KAMPEP	0.0000
17	GARY & RUTH THOMAS	0.0000
18	JOSEPH & SHELLEY KREBS	0.0000
19	LAUREN SOLBERG	0.0000
20	RODNEY FUNK	0.0000
21	TONYA	0.0000
22	LINDSEY	0.0000
23	RICHARD & LINDA PIERCE	0.0000
24	STEPHEN	0.0000
25	OSCEOLA & CARRIE CONFARE	0.0000
26	MARIE WHITE	0.0000
27	QUINNAM	0.0000
28	SOUTHANNA	0.0000
29	KENNETH	0.0000
30	MATHEW & BRENDA CARRICK	0.0000
31	GREGORY BOWERSOX	0.0000
32	JAMES HAYDEN	0.0000
33	TIMOTHY METTIG	0.0000
34	CHARLES CODDING	0.0000
35	BRENDA SOMMERVILLE	0.0000
36	JAMES & VICTORIA KAMPEP	0.0000
37	GARY & RUTH THOMAS	0.0000
38	JOSEPH & SHELLEY KREBS	0.0000
39	LAUREN SOLBERG	0.0000
40	RODNEY FUNK	0.0000

BEAUFORT COUNTY, DISTRICT

PARCELA  
NEW TOTAL AREA  
4,185.259 AC.

SHEET 2



- NOTES
- THIS PARCEL APPEARS TO BE IN FLOOD ZONE G. THE FLOOD ZONE DETERMINATION IS BASED ON THE HORIZONTAL DATUM AS SOUTH CAROLINA STATE PLANE CRID (NAD 83).
  - LEGEND IS LOCATED ON SHEET 1.
  - BROADWAY NORTH ROAD RIGHT OF WAY IS PER REFERENCE #21 AND #22.

- REFERENCES
- 2001 BOOK #174 PAGE 1138 1/1 PLAT
  - 2001 BOOK #174 PAGE 1139 1/1 PLAT
  - 2001 BOOK #174 PAGE 1140 1/1 PLAT
  - 2001 BOOK #174 PAGE 1141 1/1 PLAT
  - 2001 BOOK #174 PAGE 1142 1/1 PLAT
  - 2001 BOOK #174 PAGE 1143 1/1 PLAT
  - 2001 BOOK #174 PAGE 1144 1/1 PLAT
  - 2001 BOOK #174 PAGE 1145 1/1 PLAT
  - 2001 BOOK #174 PAGE 1146 1/1 PLAT
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  - 2001 BOOK #174 PAGE 1150 1/1 PLAT
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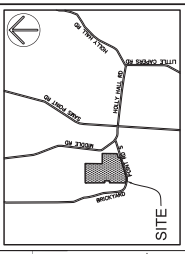
ATLAS SURVEYING, INC.



PREPARED FOR:  
FRED TRASK  
A SUBDIVISION/RECONSTRUCTION PLAT OF  
THE GLEASON TRACT  
PARCELS A & B  
TAX PARCEL No. F000 010 000 0022 0000  
LADY'S ISLAND  
BEAUFORT COUNTY, SOUTH CAROLINA

SHEET 2 OF 3  
THIS SURVEY WAS MADE IN ACCORDANCE WITH THE SURVEYING ACT OF 1962 AND THE SURVEYING REGULATIONS OF 1974. THE SURVEYOR HAS REVIEWED THE RECORDS OF THE BEAUFORT COUNTY REGISTER OF DEEDS AND HAS FOUND NO RECORDS OF ANY PREVIOUS SURVEY AS SPECIFIED THEREIN.

NOT MADE OWNED BY S&S



**VICINITY MAP NOT TO SCALE**

- NOTES**
1. THIS PARCEL APPEARS TO BE IN FLOOD ZONE G.
  2. HORIZONTAL DATUM IS SOUTH CAROLINA STATE PLANE GRID (NAD 83).
  3. LEGEND IS LOCATED ON SHEET 1.
  4. BROWARD POINT ROAD RIGHT OF WAY IS PER REFERENCE #21 AND #22.
  5. SEAGRAM EASEMENTS WERE SCALED IN PER REFERENCE #21 AND #22.

- REFERENCES**
1. DEED BOOK #74 PAGE 1389 WY / PLAT
  2. DEED BOOK #139 PAGE 1432
  3. DEED BOOK #139 PAGE 1432
  4. DEED BOOK #139 PAGE 1432
  5. DEED BOOK #139 PAGE 1432
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  20. DEED BOOK #139 PAGE 1432
  21. DEED BOOK #139 PAGE 1432
  22. DEED BOOK #139 PAGE 1432
  23. DEED BOOK #139 PAGE 1432
  24. S.E.T. OF ROAD PLANS FOR BROWARD DRIVE BY S-11-2006.
  25. S.E.T. OF ROAD PLANS FOR BROWARD & ASSOCIATED DATED 5-24-10.



**ATLAS SURVEYING, INC.**

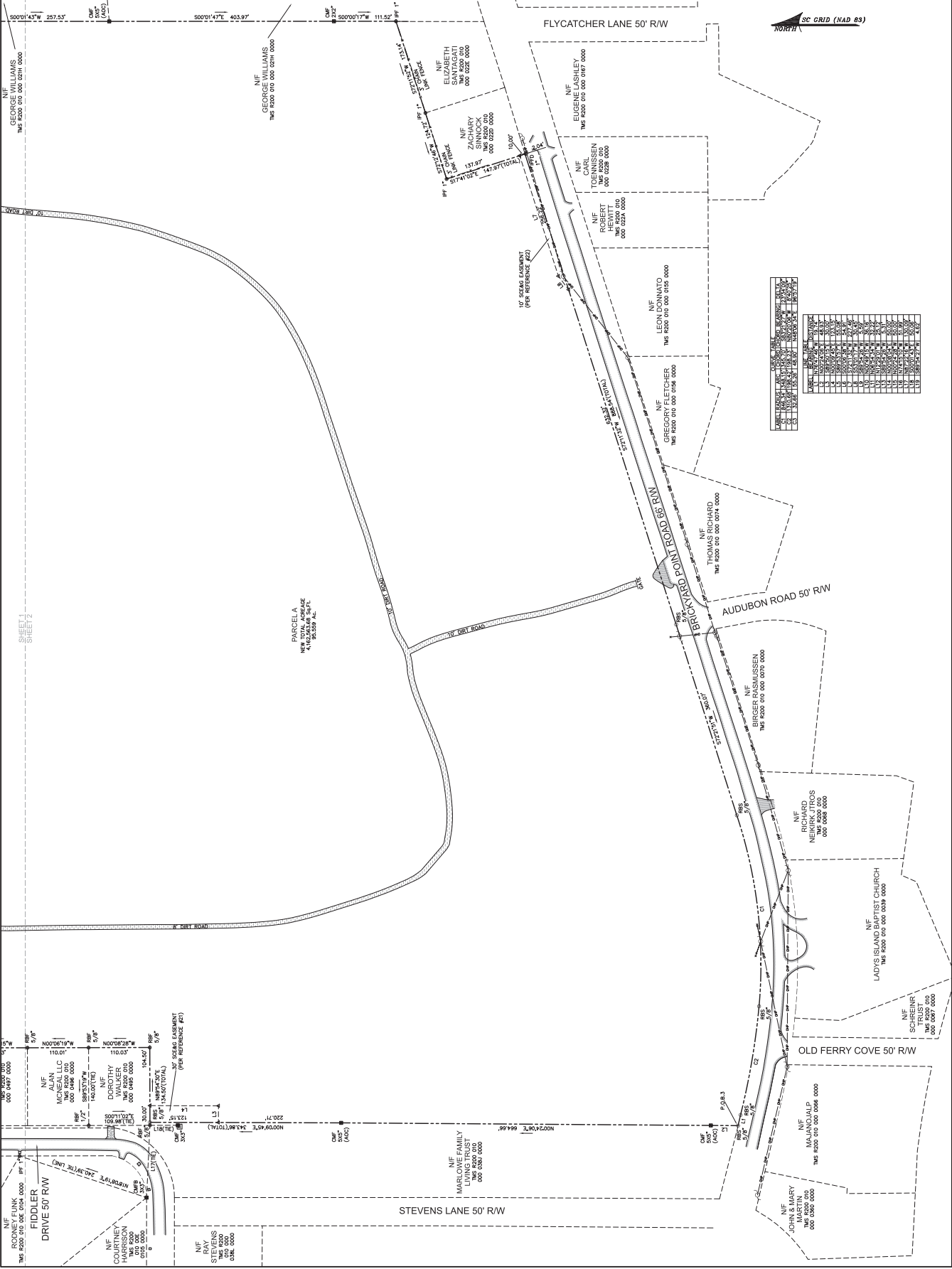
BRUNNEN'S COVE ROAD, SUITE #F  
 PHOENIX (602) 444-3274  
 MOBILE (252) 433-9999  
 WWW.ATLAS-SURVEYING.COM



PREPARED FOR:  
**FRED TRASK**  
 A SUBDIVISION/RECONSTRUCTION PLAN OF  
**THE GLEASON TRACT,**  
 PARCELS A & B  
 TAX PARCEL NO. 8200 010 000 0022 0000  
 LADY'S ISLAND  
 BRUNNEN'S COVE ROAD, SUITE #F  
 PHOENIX, ARIZONA 85008  
 MOBILE, ALABAMA 36688  
 FAX: 252-433-9999

SHEET 2 OF 2  
 INFORMATION IN THIS PLAN IS THE PROPERTY OF ATLAS SURVEYING, INC. AND IS TO BE USED ONLY FOR THE PROJECT AND PARCELS IDENTIFIED THEREIN. ANY REUSE OR MODIFICATION OF THIS PLAN WITHOUT THE WRITTEN CONSENT OF ATLAS SURVEYING, INC. IS STRICTLY PROHIBITED. THE MATERIALS AND METHODS USED IN THE PREPARATION OF THIS PLAN ARE IN ACCORDANCE WITH THE STANDARDS AND PRACTICES OF THE PROFESSION OF SURVEYING AS SPECIFIED THEREIN.

ATLAS SURVEYING, INC.  
 252.433.9999  
 800.444.3274  
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## BEAUFORT COUNTY COUNCIL

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### Agenda Item Summary

#### Item Title:

Friends of Fort Fremont Facility Use Agreement

#### Council Committee:

County Council - Natural Resources Committee recommended approval on March 2, 2020

#### Meeting Date:

March 23, 2020

#### Committee Presenter (Name and Title):

Stefanie M. Nagid, Passive Parks Manager

#### Issues for Consideration:

A Facility Use Agreement (FUA) between the County and the Friends of Fort Fremont (Friends) for the use of the Preserve and the interpretive center.

#### Points to Consider:

In April 2019, the County and the Friends entered into a Memorandum of Understanding authorizing the Friends to utilize the property according to a Facility Use Agreement and annual Operating Plan. County staff and Friends have agreed to the FUA terms and conditions, which specify in detail the use of the Property as an historic interpretive facility and the responsibilities of the Friends and the County.

#### Funding & Liability Factors:

There are no funding requirements. Liability is waived between the parties. County retains responsibility for the management and maintenance of the property and its structures as a public passive park.

#### Council Options:

1) Approve the FUA as written, 2) Approve the FUA with revisions, 3) Do not approve the FUA

#### Recommendation:

Approve and authorize the County Administrator to execute the Friends of Fort Fremont Facility Use Agreement as written.

**ORDINANCE 2020/ \_\_\_\_\_**

**AN ORDINANCE AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE A FACILITY USE AGREEMENT ENCUMBERING PROPERTY OWNED BY BEAUFORT COUNTY KNOWN AS FORT FREMONT PRESERVE**

**WHEREAS**, Beaufort County (“County”) owns 17 acres of real property (“Property”) known as Fort Fremont Preserve located at 1124 Lands End Road and being recorded in the Beaufort County Register of Deeds in Deed Book 2044 at Page 1468, Deed Book 259 at Page 275 and Deed Book 2958 at Pages 481-488; and

**WHEREAS**, the County and Friends of Fort Fremont (“Friends”) have previously entered into a Memorandum of Understanding dated April 8, 2019 and wish to further specify Property authorization, use and responsibilities with a Facility Use Agreement, which is attached hereto and incorporated by reference as “Attachment A”; and

**WHEREAS**, pursuant to Beaufort County Rules and Procedures, Beaufort County Procurement Code, S.C. Code Ann. §4-9-130 and state common law, Council approval, an ordinance, and public hearing are required for the lease of any public land; and

**WHEREAS**, Beaufort County Council has determined that it is in its best interests to authorize the execution of the facility use agreement to the Friends.

**NOW, THEREFORE, BE IT ORDAINED BY BEAUFORT COUNTY COUNCIL** duly assembled, does hereby authorize the County Administrator to execute a Facility Use Agreement with Friends of Fort Fremont for the property known as Fort Fremont Preserve, as attached hereto and incorporated by reference as “Attachment A”.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2020.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: \_\_\_\_\_  
Stewart H. Rodman, Chairman

ATTEST:

\_\_\_\_\_  
Sarah Brock, Clerk to Council

- Chronology:
- Third Reading
- Second Reading
- Public Hearing
- First Reading

**ATTACHMENT A**

COUNTY OF BEAUFORT            )  
  )  
STATE OF SOUTH CAROLINA )                   **FACILITY USE AGREEMENT**

**THIS FACILITY USE AGREEMENT** (“Agreement”) is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2020, between **Beaufort County**, a political subdivision of the State of South Carolina, (“County”) having a mailing address of County of Beaufort, Attention Beaufort County Administrator, P.O. Drawer 1228, Beaufort, South Carolina 29901-1228, and **Friends of Fort Fremont Historical Park, Inc.**, a nonprofit corporation organized under the laws of the State of South Carolina, (“Friends”) having a mailing address of P.O. Box 982, St. Helena Island, South Carolina 29920; collectively hereinafter referred to as the “Parties”.

**WHEREAS**, the County is the owner of certain real property in Beaufort County, South Carolina known as the Fort Fremont Preserve (“Property”) by virtue of the general warranty deed recorded in the Beaufort County Register of Deeds in Deed Book2044 at Page 1468, Deed Book 259 at Page 275 and Deed Book 2958 at Pages 481-488; and

**WHEREAS**, the County and Friends have previously entered into a Memorandum of Understanding dated April 8, 2019, and is attached hereto and incorporated by reference as “Exhibit A”; and

**WHEREAS**, this Agreement is supplementary to, and does not supplant the aforementioned Memorandum of Understanding, and is subject to the terms and conditions stated therein; and

**WHEREAS**, the Parties intend by this Agreement to establish the rights, duties, and obligations in respect to the use of the Property.

**NOW, THEREFORE**, in consideration of the Property and in consideration of the mutual promises, covenants, terms and conditions set forth herein, the Parties mutually agree as follows:

- 1. DESCRIPTION OF PROPERTY.** All that certain, piece, parcel or tracts of land, with buildings, structures, equipment and improvements known as Fort Fremont Preserve located at 1124 Lands End Road, St. Helena Island, County of Beaufort, State of South Carolina.
  
- 2. TERM.** The initial term of this Agreement shall cover a period of twelve months (12) months, commencing on the 1<sup>st</sup> day of July, 2020, and terminating on the 30<sup>th</sup> day of June, 2021, unless terminated sooner pursuant to the provisions of this Agreement.
  - a. **Renewal.** This Agreement may be extended for four (4) additional one-year periods thereby extending the possible termination date until June 30, 2025 upon the written approval of the Parties. Any renewal shall include the same terms and conditions set forth in the initial term.
  
- 3. COMPENSATION.** In substitution to a monetary sum, Friends agrees to pay, without demand, to County as rent for the Property, the sum of ZERO AND NO/100 DOLLARS (\$0.00) per month, in exchange for considerations and obligations as outlined heretofore.



4. **HEAT, WATER, TELEPHONE and OTHER UTILITY CHARGES.** County shall be responsible for paying all utility expenses associated with the Property.

5. **HOURS OF OPERATION.** Friends shall be allowed the use of the Property from dawn to dusk, Monday through Sunday. Friends will provide greeters to staff the interpretive center building between the hours of 10:00am and 2:00pm, Fridays and Saturdays, for the term of this Agreement. Any additional interpretive center staffing will be mutually agreed upon by Friends and the County. The general public shall have access and use of the Property from dawn to dusk, Monday through Sunday, and access and use of the interpretive center display rooms during the Friends staffing hours.

6. **OPERATING PLAN.** Friends shall provide to County an Operating Plan at the initial execution of this Agreement. Thereafter, Friends shall provide to County an Operating Plan on or before May 1 of each year for the County to review. The Operating Plan will be made effective from July 1<sup>st</sup> through June 30<sup>th</sup> of the following year. The Parties agree to mutually cooperate in the development of the Operating Plan.

- a. **Purpose.** The Operating Plan shall provide the Parties with an overview of the activities and functions scheduled throughout the year, along with any specific groups that may use the Property on a scheduled basis for purposes of education or tourism.
- b. **Activities and Functions.** The Operating Plan shall describe the tourist related activities scheduled throughout the applicable year; including, but not limited to, greeting bus tours, school groups and providing services to tour groups. Additionally, a description of how Friends intends to manage the participants of the said activity or function, and the number of Friends' staff will be present shall be included in the Operating Plan.

7. **USE OF PROPERTY.** The Property shall be used and occupied by Friends exclusively as an historic interpretive facility, and neither the Property nor any part thereof shall be used at any time during the term of this Agreement by Friends for any other purpose than more particularly described herein. Friends shall comply with all the sanitary laws, ordinances, rules, and orders of appropriate governmental authorities affecting the cleanliness, occupancy, and preservation of the Property during the term of this Agreement.

a. **Use Defined.** Use of the Property is more particularly described as follows:

- i. Friends may use the Property for storage of artifacts and/or equipment as approved by the Passive Parks Manager. Any Friends' property such as the diorama, displays, reference material, and electromagnetic media stored on the Property will be the responsibility of the Friends, and the County is not liable for its loss or damage. The County reserves the right to relocate or remove any such artifact and/or equipment in order to meet the needs of the County upon 24-hour notice to the Friends via email, or immediately upon an emergency situation.

ii. Friends is authorized to engage in tourist related activities including, but not limited to, greeting bus tours, school groups and providing services to tour groups, according to terms of the annual Operating Plan, as approved by the County.

iii. Friends is authorized to purchase and sell interpretive, recreational and historic literature and materials to visitors on the Property at its own expense. If Friends pay for the literature and materials, Friends may retain and use the proceeds to pay the costs associated with purchasing and selling the materials. All materials purchased and/or developed by Friends for sale on the Property will receive final approval from the Passive Parks Manager. Friends agree to use any net proceeds to support the Friends non-profit mission.

iv. Friends is authorized to apply for grants as well as seek in-kind and financial donations to support County preservation, promotional, and educational objectives for the Property. Grant applications/proposals will be submitted to the County for approval prior to the application submittal date. Depending on the nature of the grant or donation, the funds may be administered by either Friends or the County as the Parties mutually agree is most appropriate. All solicitations authorized under this provision shall be in accordance with the South Carolina Solicitation of Charitable Funds Act Section 33-56-10 et seq. and other applicable State and Federal law.

v. Friends will greet visitors and provide orientation, talks, and answer questions as described in the annual Operating Plan.

vi. Friends will provide docents, as described in the annual Operating Plan, to lead tours of the Property.

vii. Friends may use the interpretive center conference room for monthly board meetings, free of charge, pursuant to the County's Passive Parks Facility Rental Policy.

viii. Any requested events on the Property, whether County or Friends sponsored or by third-parties, will be coordinated and scheduled by the County through the use of the Passive Parks Facility Rental Policy. Friends will inform the County of any requests for reservation or use that is not already authorized by this Agreement.

County retains management and decision-making authority on the Property including, but not limited to, maintenance, security, repairs, and improvement projects.

b. ***Compliance with Laws.*** Friends shall not make or permit any use of the Property which will be unlawful, improper, or contrary to any applicable law or ordinance, including without limitation all zoning, building, or sanitary statutes, codes, rules, regulations or ordinances, or which will make voidable or increase the cost of any insurance maintained on the Property by County.

**8. CONDITION OF THE PROPERTY.** Friends is fully familiar with the physical condition of the Property. County has made no representation in connection with the Property and shall not be liable for any latent defects therein; provided, however, that if such latent defects

render the Property un-useable for the purposes of this Agreement, Friends may at its option, and upon written notice to County, terminate this Agreement.

Friends stipulates that they have examined the Property, including the grounds and all buildings, structures and improvements, and that Friends are fully aware of the conditions of the Property at the time of this Agreement.

**9. FRIENDS OBLIGATIONS.** Friends agrees and shall maintain the interpretive center on the Property as follows: (1) comply with all obligations primarily imposed by applicable provisions of building and housing codes materially affecting health and safety; (2) keep the Property reasonably safe and clean; (3) dispose from the interpretive center building all garbage, rubbish, and other waste in a reasonably clean and safe manner; (4) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating air-conditioning, and other facilities and appliances in the Property ; (5) not deliberately or negligently destroy, deface, damage, impair, or remove any part of the Property or knowingly permit any person to do so who is on the Property with the Friend's permission or who is allowed access to the Property by Friends; (6) provide notice to the County of any issues on the Property regarding damage or destroyed items; (7) conduct themselves and require other persons on the Property with the Friend's permission or who are allowed access to the Property by Friends to conduct themselves in a manner that will not disturb the public or neighboring property owner's peaceful enjoyment of their Property; (8) dispel or cause to have dispelled from the property any individual(s) who do not have the express authorization or permission to occupy said Property either from Friends or the County; and (9) comply with this Agreement and rules and regulations which are enforceable pursuant to S.C. Code of Laws Section 27-35-75.

In addition to the obligations stated above, Friends shall also assist the County in educating visitors about the prohibition of metal detection and shall report the unauthorized use of metal detectors to the County.

**10. MAINTENANCE AND REPAIRS.** County will, at its sole expense, keep and maintain the Property and appurtenances in good and sanitary condition during the term of this Agreement and any renewal thereof subject to applicable law, the County shall keep and maintain the Property and all equipment and fixtures thereon or used therewith, whole and of the same kind, quality and description and in such good repair, order and condition as the same are at the beginning of the Term of this Agreement or may be put in thereafter, reasonable and ordinary wear and tear and damage by fire and other unavoidable casualty (not due to County or Friends negligence) only excepted. County shall have the sole authority on any decision to repair or replace any items. If any repair or replacement is needed that is due to the negligence of the Friends, Friends shall be responsible for the costs of such repairs and/or replacements.

**11. ALTERATIONS AND IMPROVEMENTS.** Friends and County will mutually agree to a decorating plan for the interpretive center building, including but not limited to placement of the diorama, displays, signage, media and reference materials. Any work done by the Friends or County shall be done in accordance with all applicable laws and regulations, with a proper permit, using first class materials and in a workmanlike manner. Any and all improvements must be approved by the County prior to the commencement of said alteration or improvement.

The improvements and or fixtures caused to be located or affixed to the real estate shall become the property of the County at the end of the Term of this Agreement, unless County has provided written approval to Friends to retain and remove such items. In the event that Friends is granted permission to remove any fixtures or improvements, said removal costs shall be the sole responsibility of Friends. Should any damage or defacement be caused to occur as a result of the removal of any fixture, Friends agrees to repair any damage to the satisfaction of the County.

**12. LOCKS.** Friends agrees not to change any locks on any door, mailbox, gate, or otherwise. Should it become necessary, from time to time, for the County to change out any locks on the Property, County will provide notice to Friends and ensure that Friends continues to have uninterrupted access for the remainder of the Term of this Agreement.

**13. LOCKOUT.** If Friends becomes locked out of the Property, Friends shall contact the County to regain entry.

**14. RIGHT OF INSPECTION.** County and their agents shall have the unfettered right at all times during the term of this Agreement and any renewal thereof to enter the Property for any reason whatsoever, without notice.

**15. INSURANCE.** County has obtained insurance to cover liability and fire damage to the Property. Friends must obtain, and annually provide a copy of to the County, a Commercial General Liability Insurance policy with a minimum amount of \$1 million, listing the County as an additional insured, to cover damage or loss resulting from Friend's negligence.

**16. QUIET ENJOYMENT / PERMITTED OCCUPANTS.** County covenants that upon Friend's performance of the covenants and obligations herein contained, Friends shall peacefully and quietly have, hold, and enjoy the Property for the agreed term. County shall not allow or permit the Property to be occupied for purposes that may injure the reputation, safety, or welfare of the Property. County shall have the right to terminate this agreement should Friends fail to comply with the terms of this provision.

**17. SURRENDER OF PROPERTY.** At the expiration of the Term of this Agreement, Friends shall quit and surrender the Property in as good state and condition as they were at the commencement of this Agreement, reasonable use and wear thereof excepted.

**18. ABANDONMENT.** If County's right of entry is exercised following abandonment of the Property by Friends, then County may consider any property belonging to Friends and left on the Property to also have been abandoned, in which case County may keep or dispose of all such property in any manner County shall deem proper and is hereby relieved of all liability for doing so.

**19. DEFAULT.** In the event that Friends shall default in the observance or performance of any other of Friend's covenants, agreements or obligations hereunder and such default shall not be corrected within thirty (30) days after written notice thereof, County may elect to enter upon said Property and to take possession thereupon, whereupon this Agreement shall absolutely terminate

and it shall be no defense to Friends that previous violations of any covenants have been waived by County either expressly or impliedly. Any such election by County shall not discharge Friend's obligations under this Agreement.

**20. TERMINATION.** Friends agrees to quit and deliver up the Property peaceably and quietly to County at the expiration or other termination of this Agreement. This Agreement may be terminated by either party prior to the date identified in Section 2, upon sixty (60) days written notice, or upon the occurrence of any default event as set forth in Section 19.

**21. INDEMNIFICATION.** Friends hereby agrees to indemnify and hold harmless the County against and from any and all claims or property damage, or personal injury, arising out of or with respect to Friend's use of the Property or from any activity, work, or thing done, permitted or suffered by Friends in or about the Property .

**22. NOTICES.** All official notices as required by this Agreement shall be given in hand or in writing through certified mail addressed to the receiving Party's address shown in the initial paragraph of this Agreement. Such notice shall be deemed delivered, if by hand when hand delivered or if by mail when deposited with the U.S. Postal Service. Additionally, all informal notices by County to Friends, or Friends to County, shall be given in writing through email.

**23. OTHER PROVISIONS.**

a. ***Independent Parties.*** It is mutually agreed that County is independent of Friends, and as such Friends shall exercise complete control over the actions performed by its employees, volunteers, or contractors. Additionally, the Parties mutually agree that this Agreement is for the sole purpose of the provisions of services set forth in this Agreement and does not establish an agency or employment relationship.

b. ***Mutual Cooperation.*** The Parties shall cooperate with each other, and will use all reasonable efforts to cause the fulfillment of the terms and conditions of this Agreement.

c. ***Disputes.*** All claims, disputes, and controversies arising out of or in relation to the performance, interpretation, application, or enforcement of this Agreement, including but not limited to breach thereof, shall be first submitted to an agreed upon mediator. The Parties shall be equally responsible for the cost of mediation.

d. ***Conflicting Terms.*** If the terms of this Agreement conflict with the terms included in any prior agreements, including but not limited to, the Memorandum of Understanding dated April 8, 2019; then terms in this Agreement shall prevail.

e. ***Amendment or Modification.*** This Agreement cannot be amended or modified orally or by a single party. No amendment or modification to this Agreement shall be valid unless in writing and signed by both Parties to this Agreement.

b. ***Binding Effect.*** This Agreement is to take effect as a sealed instrument; sets forth the entire agreement between the parties; is binding upon and inured to the benefit of the parties

hereto and may be cancelled, modified, or amended only by written instrument signed by both County and Friends.

c. **No Third Party Beneficiaries.** This Agreement is intended solely for the benefit of the Parties and not for the benefit of any other person or entity.

d. **Assignment and Subletting.** Friends shall not assign this Agreement, or sublet or grant any concession of license to use the Property or any part thereof. An assignment, subletting, concession of license, or an assignment or subletting by operation of law, shall be void and shall at County's option, terminate this Agreement.

e. **Counterparts.** This Agreement may be executed in multiple counterparts, and all such executed counterparts shall constitute the same agreement. The Parties agree that this Agreement may be communicated by use of a fax or other electronic means, such as electronic mail and the internet, and that the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed valid and binding upon the Parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents.

f. **Captions.** The section headings appearing in this Agreement are for convenience of reference only and are not intended to any extent for the purpose, to limit or define the test of any section or any subsection hereof.

g. **Severability.** If any portion of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

h. **Waiver.** No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party waiving its rights. No delay or omission by either party to exercise any right or remedy it has under this Agreement shall impair or be construed as a waiver of such right or remedy. A waiver by either party of any covenant or breach of this Agreement shall not constitute or operate as a waiver of any succeeding breach of the covenant or of any other covenant.

i. **Applicable Law.** This Agreement is enforceable in the State of South Carolina and shall in all respects be governed by, and constructed in accordance with, the substantive Federal laws of the United States and the laws of the State of South Carolina. Any claims for default, non-performance or other breach shall be filed in Beaufort County, South Carolina.

***Signature Page to Follow***

**IN WITNESS THEREOF**, the Parties hereto have executed this Facility Use Agreement the day and year first above written.

**COUNTY:**  
Beaufort County

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Ashley M. Jacobs, County Administrator

\_\_\_\_\_  
Witness

**FRIENDS:**  
Friends of Fort Fremont Historical Park, Inc.

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
Witness

**NOTICE: State law establishes rights and obligations for parties to rental agreements. If you have a question about the interpretation or legality of a provision of this agreement, you may want to seek assistance from a lawyer or other qualified person.**

## EXHIBIT A

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

### Agreement No. 2019/ 11

8th This Memorandum of Understanding (hereinafter “Agreement”) is entered into on this April day of April, 2019 by and between Beaufort County, a political subdivision of the State of South Carolina (hereinafter the “County”), and the Friends of Fort Fremont Historical Park, Inc., a nonprofit corporation organized under the laws of the State of South Carolina (hereinafter the “Friends”).

**WHEREAS**, a purpose of the Rural and Critical Land Preservation program is to preserve, interpret, and manage its passive parks properties for the benefit, education, and enjoyment of the citizens and visitors of Beaufort County; and

**WHEREAS**, in 2004 and 2010 the County purchased what is known today as Fort Fremont Preserve (hereinafter the “Preserve”) through the Rural and Critical Lands Preservation Program; and

**WHEREAS**, the County desires to enhance the historical and cultural value of the Preserve by interpreting the place in American History that the Fort held in the late 19<sup>th</sup> and early 20<sup>th</sup> Century; and,

**WHEREAS**, the Friends is a South Carolina Nonprofit Corporation in good standing formed on September 21, 2009; the Friends is a public charity qualified under Internal Revenue Code § 501(c)(3) by an IRS determination letter dated January 21, 2011; all individuals from Friends providing services hereunder, and all of its officers, directors, and members, are not compensated and are volunteers as defined in the Volunteer Protection Act, 42 USC §§ 14501 – 14505; and

**WHEREAS**, the Friends mission is to preserve and promote the Preserve as an educational, historical, natural, and cultural resource of the Spanish American War era; and

**WHEREAS**, the Friends, by extending its services to the County, is willing to assist in interpreting the Preserve to citizens and visitors as may be necessary from time to time; and,

**WHEREAS**, County is in the process of constructing a building expected to be used by the Friends subject to a separate “Facility Use Agreement” and “Operating Plan”; and

**WHEREAS**, the Friends shall function as volunteers to supplement and not supplant the rightful role of the County to determine the management and the operation of the Preserve; and,

**WHEREAS**, the County and the Friends recognize the value of the successful implementation of this agreement.



**NOW, THEREFORE**, under the authority of the Community Development Code in Division 5.10.10 Historic Preservation of Historic Properties, the parties agree to the following:

**DEFINITIONS**

As used throughout this Agreement, the following items shall have meaning set forth below:

“County” shall mean The Beaufort County Government and all departments that fall within the structure of the Beaufort County Council and the Beaufort County Administration.

“Friends” shall mean the Friends of Fort Fremont Historical Park, Inc. or any entity performing services under this Agreement, and shall include all personnel (officers, directors, members, or volunteers) thereof.

“Preserve” shall mean the Fort Fremont Preserve including the land, buildings, and structures that fall within the parcel boundaries.

**TERM**

The initial term of this Agreement shall cover a period of twelve (12) months commencing on the date entered, unless terminated sooner pursuant to the provisions of the Agreement. The term of this Agreement may be extended for four (4) additional one-year periods upon the written approval of both the County and the Friends.

**AUTHORIZATION**

The County hereby authorizes the Friends to access and utilize the Preserve, and to provide services to the citizens and visiting public at the Preserve, subject to the terms and conditions stated in the Facility Use Agreement and annual Operating Plan.

**MUTUAL SUPPORT**

The Friends may use any monies and gifts raised to further support the purposes of the Preserve. The County agrees to use gifts or monies derived from special events held at the Preserve sponsored by the Friends to support the shared mission of the parties.

**COMPENSATION**

This agreement does not obligate County funds. Any endeavor involving reimbursement or contribution of funds between the parties to this agreement will be handled in accordance with applicable laws, regulations and procedures. The Friends will provide non-compensated volunteers to the County.

## **HISTORIC PRESERVATION, SAFETY, MAINTENANCE, UPKEEP AND APPEARANCE**

The Friends may use the Preserve to provide interpretive displays, services, assistance, and activities as provided for in the Facility Use Agreement and Operating Plan and as approved by the County.

### **The following guidelines shall apply:**

- a. The County shall be responsible for historic preservation and safety of the Preserve.
- b. The County shall be responsible for all exterior and interior maintenance and repair, for all grounds maintenance, and for janitorial services.
- c. The County shall provide and pay for all utility services necessary for the operation of the Preserve, as determined by the County.
- d. The Friends shall comply with all the sanitary laws, ordinances, rules, and orders of appropriate governmental authorities affecting the cleanliness, occupancy, and preservation of the premises.
- e. The Friends shall keep the premises reasonably safe and clean by locking the interpretive center upon exiting and disposing of garbage, rubbish, and other waste generated during the Friends use of the Preserve in a clean and safe manner.
- f. The Friends will use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating air-conditioning, and other facilities and appliances in the premises. Air-conditioning and heating settings will be agreed upon by both parties.
- g. The Friends will not deliberately or negligently destroy, deface, damage, impair, or remove any part of the premises or knowingly permit any person to do so who is on the premises with the Friends permission or who is allowed access to the premises by the Friends.
- h. The Friends shall notify the County of any structural/utility problems and/or vandalism.

## **FISCAL OPERATION**

The Friends shall conduct its fiscal operations in accordance with accepted business practices in compliance with IRS mandates for non-profit organizations.

## **OPERATING PLAN**

The Friends shall annually, by December 1, submit to the Passive Parks Manager an Operating Plan for the ensuing calendar year which shall be subject to the approval by the County. The Friends rights under this Agreement are conditioned upon the existence of an approved Operating Plan. The Operating Plan shall include proposed services, activities, events, and/or programs the Friends plan for the Preserve.

## **ANNUAL REPORT**

The Friends shall annually, by March 1, submit to the Passive Parks Manager an Annual Report for the previous year's operation at the Preserve.

#### **APPEALS OF PASSIVE PARKS MANAGER**

Any decision of the Passive Parks Manager authorized under this Agreement that affects Friends, may be directly appealed to County Council. An authorized representative of Friends may submit a written request to the County Administrator to appeal a decision of the Passive Parks Manager. Upon receiving a written request for an appeal, the County Administrator shall place the item on the next scheduled County Council meeting that allows for meeting all notice requirements for meetings of public bodies under the South Carolina Freedom of Information Act.

#### **ACCESS TO PREMISES**

The County shall have the right of access to any portion of the premises at any time by any of its officers, employees, or agents to ensure compliance with the terms of this agreement, or for any other reason in carrying out its responsibilities for the operation of the Preserve.

The Friends shall have access to the premises to carry out its responsibilities as agreed upon in the Facility Use Agreement and Operating Plan.

#### **ADVERTISEMENT**

The Friends shall acknowledge the County in any advertising related to activities undertaken pursuant to this Agreement. Any advertising or display materials shall clearly identify the Preserve or facility as a County Passive Park. The County shall acknowledge the Friends in appropriate publications and announcements, in accordance with County policies and State and Federal law.

#### **AMENDMENTS**

This Agreement may not be altered, amended, or waived except by written instrument executed by both parties.

#### **ASSIGNMENT**

No transfer or assignment of this Agreement in whole or in part shall be made unless approved in writing by the County.

#### **COMPLIANCE WITH LAWS**

In the performance of this Agreement, the Friends shall comply with all applicable federal and state laws, including the IRS, as now in effect or hereafter enacted or amended. Nothing herein shall be interpreted as a waiver by either party of any provision of South Carolina or Federal law.

#### **DISCLAIMER OF RELATIONSHIP**

Nothing contained in this Agreement nor any act of the County and/or the Friends shall be deemed or construed by either of the parties, nor by any third person, to create any other legal relationship between the parties, including, but not limited to, that of employer/employee, third-party beneficiary, principal, agent, limited or general partnership, joint venture, landlord/tenant, or other relationship.

#### **INTELLECTUAL PROPERTY**

The Friends retain all intellectual property rights to any material they develop, subject to review and approval by the Passive Parks Manager, unless County funds are used in the development of said material.

#### **TERMINATION**

This Agreement may be terminated for convenience by either party with 90 days written notice. The Agreement may be terminated by either party with 30 days written notice for breach of terms. This Agreement will automatically terminate if the Friends lose its tax-exempt 501(c)(3) status. The Facility Use Agreement, as referenced herein, is automatically terminated if this Agreement is terminated.

#### **INSURANCE**

Friends shall maintain at all times no less than \$1,000,000 in general liability insurance coverage (each occurrence) and no less than \$2,000,000 general liability insurance in the aggregate. The County shall be named as an additional insured on the Friends insurance policy.

#### **AUTHORITY**

The parties herein represent and warrant each to the other that they have all the requisite power and authority to enter into this Agreement and perform their obligations under this Agreement.

WITNESSES:

BEAUFORT COUNTY

Cheryl Harris

Sarah W. B.

SMC

[Signature]

By: [Signature]

Name: John Weaver

Title: Interim County Administrator

Date: 3/29/2019

FRIENDS OF FORT FREMONT  
HISTORICAL PARK, INC.

By: Roderick E. Keating

Name: RODERICK E. KEATING

Title: President Board of Directors

Date: 4/8/2019

Approved as to Form:

By: Thomas J. Keaveny

Name: Thomas J. Keaveny, II

Title: County Attorney

Date: April 2, 2019



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## BEAUFORT COUNTY COUNCIL

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### Agenda Item Summary

#### Item Title:

Widgeon Point Preserve 2020 Joint Ownership and Operating Agreement

#### Council Committee:

County Council - Natural Resource Committee recommended approval on March 2, 2020

#### Meeting Date:

March 23, 2020

#### Committee Presenter (Name and Title):

Stefanie M. Nagid, Passive Parks Manager

#### Issues for Consideration:

A Joint Ownership and Operating Agreement between the County and BCOLT for Widgeon Point Preserve.

#### Points to Consider:

With the construction of the new passive park improvements at Widgeon Point Preserve, revisions to the original 2008 Joint Ownership Agreement are necessary. County staff and BCOLT agree to the 2020 Joint Ownership and Operating Agreement as written and the 2008 Joint Ownership Agreement will be terminated.

#### Funding & Liability Factors:

County will maintain the property and appropriate insurance for constructed structures.  
County will retain all revenue from property rental, which will be used towards property maintenance.

#### Council Options:

1) Approve the 2020 Joint Ownership and Operating Agreement as written; 2) Approve the 2020 Joint Ownership and Operating Agreement with revisions; 3) Do not approve the 2020 Joint Ownership and Operating Agreement

#### Recommendation:

Approve and authorize the County Administrator to execute the Widgeon Point Preserve 2020 Joint Ownership and Operating Agreement as written.

**ORDINANCE 2020/ \_\_\_\_**

**AN ORDINANCE AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE  
THE WIDGEON POINT PRESERVE 2020 JOINT OWNERSHIP AND OPERATING  
AGREEMENT WITH THE BEAUFORT COUNTY OPEN LAND TRUST**

**WHEREAS**, Beaufort County (“County”) and the Beaufort County Open Land Trust (“BCOLT”) are joint owners of certain real property in Beaufort County, South Carolina known as Widgeon Point Preserve (R600 007 000 0001 0000) on Lemon Island under and by virtue of that certain general warranty deed dated August 23, 2007 and recorded at Deed Book 02616, Pages 1609-1614, Beaufort County, South Carolina recorded (said real property being referred to hereinafter as “Property”); and

**WHEREAS**, the County is the owner of a 7/8 undivided interest in the Property and BCOLT is the owner of 1/8 undivided interest in the Property; and

**WHEREAS**, the County and BCOLT previously entered into a joint ownership agreement dated August 26, 2008; and

**WHEREAS**, the County and BCOLT desire to terminate the aforementioned agreement and enter into the Joint Ownership and Operating Agreement attached hereto and incorporated by reference as “Attachment A”; and

**WHEREAS**, County Council finds that it is in the best interest of County citizens, residents and visitors to enter into a Joint Ownership and Operating Agreement with BCOLT, which designates shared ownership, intent, operating and maintenance responsibilities between the parties.

**NOW, THEREFORE, BE IT ORDAINED** by Beaufort County Council, duly assembled, does hereby authorize the County Administrator to execute the Widgeon Point Preserve 2020 Joint Ownership and Operating Agreement with Beaufort County Open Land Trust, attached hereto as Attachment A and incorporated herein fully as if repeated verbatim.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2020.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: \_\_\_\_\_  
Stewart H. Rodman, Chairman

ATTEST:

\_\_\_\_\_  
Sarah W. Brock, Clerk to Council

Third and Final Reading:  
Public Hearing:  
Second Reading:  
First Reading:





### 3. TERM

The term of this Agreement shall cover a period of twenty-five (25) years, commencing on the entered upon date, unless terminated sooner pursuant to the provisions in this Agreement. The term of this Agreement may be extended for three (3) additional twenty-five (25) year terms upon the mutual agreement and written approval of both the County and BCOLT.

### 4. USE OF PROPERTY

The Property shall be used as a nature preserve and passive park for passive recreation open to the public; and subject to all applicable County rules and regulations. It is further intended that the Natural Area of the Property, which is generally designated as that area between the interior bridge and the Port Royal Sound and as further shown in "Exhibit B", be restricted from structural improvements, excluding signage, benches and picnic tables, with the remainder of the Property being used for passive park buildings and structures.

a. **Access to Property.** The Property shall be open to the public seven (7) days a week from dawn to dusk. Pursuant to Ordinance 2018/53 Section 91-104, operating hours shall be posted at the Property's designated entrance.

b. **Scheduling of Events.** County shall be responsible for scheduling events and functions on the Property, will maintain a schedule and calendar of such events and shall develop a method of sharing such event information with BCOLT.

c. **Private Functions.** County may offer to rent the Property and/or its facilities, in whole or part, for private functions at a rental rate stipulated by the Passive Park Facility Rental Policy. All revenue generated by the private functions shall be retained by County to be utilized for passive park operations, maintenance and management expenses incurred by County under the terms of this Agreement.

d. **BCOLT Events.** In addition to the events open to the public and private events or functions as provided for above, BCOLT shall be entitled to use the Property for events and functions at no cost to BCOLT. BCOLT events and functions may be scheduled after consultation with County to determine that another event or function is not scheduled on the same time and date. BCOLT shall be responsible for any and all site and grounds set-up and clean-up necessary as the result of any BCOLT event.

### 5. ROUTINE AND MAJOR MAINTENANCE

County shall be responsible for routine and major maintenance of the Property. Routine and major maintenance shall include but not be limited to grass cutting, debris removal, maintenance and repair of the barns, fences, gates, trails, roads, bridges, and other structures now or hereinafter erected on the Property. County shall also be responsible for paying the utility costs for electricity, water and the portable toilet facility.

BCOLT shall be responsible for coordinating volunteer efforts to assist the County's routine maintenance efforts, upon mutual consent between BCOLT and the County's Passive Parks Manager.

### 6. MAJOR ALTERATIONS AND CAPITAL IMPROVEMENTS

Any major alterations or capital improvements on the Property shall be mutually agreed to by both Parties and shall be undertaken under the supervision of the County and their policies and procedures. The cost of

such major repairs or capital improvements shall be the County's responsibility. For purposes of this Agreement the term "major alteration" or "capital improvement" shall be deemed to be any alteration or capital improvement having a cost or expense including all labor, materials, permits, and related items totaling in excess of \$2,500.00.

## **7. INSURANCE**

County shall obtain a policy or policies of insurance providing fire insurance protection with extended coverages to include windstorm and hail damage at replacement cost on all buildings and structures on the Property. In addition, County and BCOLT each shall at all times maintain a policy of general liability insurance with limits of liability of at least \$1,000,000.00 per occurrence. All policies of insurance shall identify the County and BCOLT as named insureds.

## **8. SECURITY AND INSPECTIONS**

It shall be the duty of County to assure adequate security is maintained on the Property through the maintenance of the fences and gates and assuring that gates and secured areas are locked when the Property is not in use.

It shall be the duty of BCOLT to adhere to the security plan and measures, as mutually agreed upon by the Parties, and to assure that gates and secured areas remain locked when the Property and/or its structures are not in use.

## **9. NOTICE**

Each party shall give the other notice of any adverse circumstances or situations arising in connection with the use of the Property including notice of any claim or dispute arising from its use. Any such notice including and any other notice necessary or appropriate under this Agreement shall be given as follows:

To BCOLT:	Beaufort County Open Land Trust Attn: Executive Director P.O. Box 75 Beaufort, SC 29901
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To County:	Beaufort County Attn: County Administrator P.O. Box 1228 Beaufort, SC 29901
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## **10. BREACH OF CONTRACT**

If a party to this Agreement determines that the other party is in breach of the terms of this Agreement, the claiming party shall notify the other party of the breach with a First Notice and request voluntary compliance. In the event that voluntary cure is not agreed upon within sixty (60) days of receipt of First Notice, the claiming party shall give written notice to the other party of such breach with a Second Notice and demand corrective action. If the noticed party fails to cure the breach within sixty (60) days after receipt of the Second Notice, the claiming party may bring an action of law or in equity in a court of competent jurisdiction.

## 11. TERMINATION

Either party shall have the right to terminate this Agreement for any reason upon six (6) months' prior written notice beginning with the delivery to and acceptance of the designated authority of the other party. In the event either party wishes to terminate this Agreement, the noticing party shall offer to purchase the ownership interest of the other party in the Property based upon a current professional (MAI) appraisal of the Property. The noticed party shall have sixty (60) days to respond to the terminating notice.

BCOLT shall not convey its ownership interest in the Property without express approval of the South Carolina Conservation Bank.

## 12. OTHER PROVISIONS

a. **Definition of Terms.** For the purpose of this Agreement, all terms, specifically "passive park" and "passive recreation", shall be defined pursuant to Beaufort County Ordinance 2018-53.

b. **Mutual Cooperation.** The Parties shall cooperate with each other, and will use all reasonable efforts to cause the fulfillment of the terms and conditions of this Agreement.

c. **Liability.** To the extent the law provides, each Party shall be responsible for its own acts, omissions and negligence and shall not be responsible for the acts, omission and negligence of the other Party. Neither party shall be liable to the other party for any claims, demands, expenses, liabilities or losses (including attorney's fees) which may arise out of any acts or failures to act by the other party, its employees or agents, in connection with the performance of services or responsibilities pursuant to this Agreement.

d. **Disputes.** All claims, disputes, and controversies arising out of or in relation to the performance, interpretation, application, or enforcement of this Agreement, including but not limited to breach thereof, shall be first submitted to an agreed upon mediator. The disputing party shall be responsible for cost of mediation.

e. **Entire Agreement.** This Agreement contains the entire agreement between the Parties pertaining to the subject matter contained herein. All prior agreements by or between the Parties shall be deemed to have merged into this Agreement, including the Widgeon Point Joint Ownership Agreement dated August 26, 2008. If there are conflicting terms between this Agreement and any documents merged into this Agreement, this Agreement shall supersede.

f. **Amendment or Modification.** This Agreement cannot be amended or modified orally or by a single party. No amendment or modification to this Agreement shall be valid unless in writing and signed by both Parties to this Agreement.

g. **Binding Nature and Assignment.** This Agreement shall bind the Parties and their respective successors in interest as may be permitted by law. Neither party to this Agreement may assign their rights or obligations arising under this Agreement without the prior written consent of the other party.

h. **No Third Party Beneficiaries.** This Agreement is intended solely for the benefit of the Parties and not for the benefit of any other person or entity.

i. **Counterparts.** This Agreement may be executed in multiple counterparts, and all such executed counterparts shall constitute the same agreement. The Parties agree that this Agreement may be communicated by use of a fax or other electronic means, such as electronic mail and the internet, and that

the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed valid and binding upon the Parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents.

j. **Captions.** The section headings appearing in this Agreement are for convenience of reference only and are not intended to any extent for the purpose, to limit or define the test of any section or any subsection hereof.

k. **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

l. **Waiver.** No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party waiving its rights. No delay or omission by either party to exercise any right or remedy it has under this Agreement shall impair or be construed as a waiver of such right or remedy. A waiver by either party of any covenant or breach of this Agreement shall not constitute or operate as a waiver of any succeeding breach of the covenant or of any other covenant.

m. **Applicable Law.** This Agreement is enforceable in the State of South Carolina and shall in all respects be governed by, and constructed in accordance with, the substantive Federal laws of the United States and the laws of the State of South Carolina. Any claims for default, non-performance or other breach shall be filed in Beaufort County, South Carolina.

**IN WITNESS WHEREOF**, and in acknowledgement that the Parties hereto have read and understood each and every provision hereof, the Parties have caused this Agreement to be executed on the date first written above.

WITNESSES:

BEAUFORT COUNTY

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

By: \_\_\_\_\_  
Name: Ashley M. Jacobs  
Title: County Administrator

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

BEAUFORTY COUNTY  
OPEN LAND TRUST

By: \_\_\_\_\_  
Name: Kristin Williams  
Title: Executive Director

## **EXHIBIT A**

### *Legal Description*

All those certain pieces, parcels or lots of land, situate, lying and being in the Bluffton Township, County of Beaufort, State of South Carolina, being the eastern part of Lemon Island, containing seven (7) parcels of high ground containing 51.28 acres, more or less, together with a portion of a Lake containing 20.74 acres, more or less, all of which is more fully shown on a plat entitled "Boundary Survey of 162.24 Acre Tract, Okatie Highway – S.C. Highway 170, A Section of Widgeon Point, Lemon Island, Okatie, Beaufort County, South Carolina", Prepared for the Trust for Public Land and Beaufort County, Dated July 18, 2007, prepared by Surveying Consultants, Terry G. Hatchell, R.L.S. S.C. No. 11059. For a more complete description as to metes, bounds, courses and distance, reference is made to the above referenced plat which is recorded in the Office of the Register of Deeds for Beaufort County in Plat Book 120 at Page 193.

# EXHIBIT B

