



MEMORANDUM

TO: Town of Bluffton Town Council
FROM: Shawn Leininger, AICP, Director of Growth Management
RE: Consideration of the Modified Agreement for Oyster Factory Park Between Beaufort County and Town of Bluffton
DATE: September 8, 2015

REQUEST: Town Staff requests Town Council approve the Modified Agreement for Oyster Factory Park between Beaufort County and Town of Bluffton.

BACKGROUND: The Oyster Factory Park consists of five contiguous parcels owned by Beaufort County and the Town of Bluffton as follows:

Owner	Parcel Number	Acreage	Notes
Beaufort County	R620 039 00A 0165 0000	2.28	Eastern Parcel – Restroom & Pavilion Site
Beaufort County	R620 039 00A 0190 0000	2.13	Western Parcel – Garvin House Site
Beaufort County	R620 039 00A 0261 0000	0.16	River Access Area
Beaufort County	R620 039 00A 0262 0000	0.44	Bluffton Oyster Factory – Operation Zone
Town of Bluffton & Beaufort County	R620 039 00A 0165 0000	1.863	The Town and County each contributed \$750,000 for the \$1.5M purchase.
Total Acreage		6.873	

The Town of Bluffton and Beaufort County originally entered into an Agreement in 2004 that allowed for the joint use and shared expenses associated with Oyster Factory Park. As part of the 2015 Strategic Plan, Town Council established Oyster Factory Park Master Plan amendment and funding strategy as a top priority. In this regard, the Strategic Plan Action Plan listed establishing a modified Agreement that clarified maintenance and ownership as a milestone activity. The completion of this action would thereby provide the Town more control of the park operations and improvements. The Modified Agreement transfers responsibilities and provisions for the management, maintenance, and improvements for the Oyster Factory Park from Beaufort County (County) to the Town of Bluffton (Town). These responsibilities and provisions include:

- Ownership of the Oyster Factory Park properties will remain as detailed in the table above.
- The Town will be the operator of Oyster Factory Park.
- The Town will provide maintenance for the Oyster Factory Park which streamlines efforts and reduces maintenance costs.

- The Town will assume the Lease Agreement with D & L Seafood Corporation, doing business as the Bluffton Oyster Factory, and will serve as landlord.
 - The Lease Agreement commenced on December 30, 2002 for a term of five years and allows for two additional terms of five years which results in an expiration date of December 29, 2027.
 - The Bluffton Oyster Factory's base rent is \$1.00 per year with the monthly rental amount of \$400.00 for September through April and \$200.00 per month for May through August.
 - The Bluffton Oyster Factory is responsible for operating costs per Section 5.1 of the Lease Agreement which includes premiums for any insurance whatsoever including loss or damage to the building in which it operates whether by fire or other hazard, general public liability and business interruption insurance.
- The Town will schedule, manage, and collect fees for Community Events with revenues being directed towards the Oyster Factory Park.
- The Town will be responsible for the prioritization and scope of Capital Improvement Projects for the Oyster Factory Park which allows for alignment of long term improvements.
- The County will continue to provide financial support of Capital Improvement Projects as their budget allows.
- The Town agrees to be the primary responsible party for any and all liability resulting from the use of Oyster Factory Park and will acquire the necessary insurance coverage.
- The Code of Ordinances for the Town of Bluffton will govern the use of the Oyster Factory Park and Community Events.

NEXT STEPS: The process for approval is as follows:

	Meeting	Meeting Date & Time	Task Description/Applications for Review	Actions
1.	Town of Bluffton Town Council Quarterly Workshop	July 21, 2015 6:00 pm	Oyster Factory Park Revised Master Plan	COMPLETE - Review & Provide Comments
			Modified Agreement for Oyster Factory Park	
2.	Beaufort County Council Public Facilities Committee	August 17, 2015 4:00 pm	Oyster Factory Park Revised Master Plan	COMPLETE - Recommendation of Approval to Beaufort County Council
			Modified Agreement for Oyster Factory Park	
3.	Beaufort County Council	August 24, 2015 4:00 pm	Oyster Factory Park Revised Master Plan	COMPLETE - Approval by Majority Vote
			Modified Agreement for Oyster Factory Park	
4.	Town of Bluffton Town Council	September 8, 2015 6:00 pm	Oyster Factory Park Revised Master Plan	Approval by Majority Vote
			Modified Agreement for Oyster Factory Park	

As a result of the execution of the Modified Agreement, Town and County Staffs will evaluate the current fees paid to the County and make any transfers deemed necessary. Additionally, Town Staff will submit to Town Council a proposed revision to the Master Fee Schedule that includes a recommended

fee structure for rental use of the park. This fee structure will be based on current County fees and that of comparative communities in our region and State. Upon Town Council request, Town Staff will also outline existing park rules as they would be applied at the park and make any revisions deemed necessary.

ATTACHMENTS:

1. Modified Agreement for Oyster Factory Park Between Beaufort County and Town of Bluffton – Redlined Copy
2. Modified Agreement for Oyster Factory Park Between Beaufort County and Town of Bluffton – Clean Copy
 - a. Exhibit A - Lease Between Open Land Trust and D Seafood Corporation
 - b. Exhibit B - November 2002 Conceptual Master Plan
 - c. Exhibit B - DRAFT September 2015 Conceptual Master Plan *(Will replace November 2002 Conceptual Master Plan Once Approved)*

AGREEMENT

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) Modified Agreement Between Beaufort
) County and Town of Bluffton

STATE OF SOUTH CAROLINA →
) In Re: Bluffton Oyster Factory and Park

COUNTY OF BEAUFORT →

This Modified Agreement (hereinafter "Agreement") is made and entered into this ___ day of _____, 2004 May, 2015 by and between Beaufort County, a political subdivision of the State of South Carolina (hereinafter the "County;"), and the Town of Bluffton, South Carolina (hereinafter the "Town;").

RECITALS

WHEREAS, the County, a political subdivision of the State of South Carolina, is the owner of a parcel of real property located in the Town of Bluffton, South Carolina commonly referred to as the Oyster Factory Park, consisting of 5.024 acres as shown in the plat recorded at Plat Book 90 at Page 188, (hereinafter "County Property the Park;"); and

WHEREAS, the County purchased the County Property Park subject to a Lease between the Beaufort County Open Land Trust, and Tenant, D&L Seafood Corporation, d/b/a The Bluffton Oyster Company, the lease being attached hereto as Exhibit A and made part hereof; and

WHEREAS, the Park-County Property is subject to a conservation easement recorded at Book 01548 at Page 0626 of the Beaufort County Register of Deeds, which was later modified per the Modification of Conservation Easement recorded at Book 1693 at Page 2002 and then assigned per the Assignment of Modified Easement recorded at Book 1693 at Page 2010; and

WHEREAS, the County and the Town recognize the historic significance of the Bluffton Oyster Company as the last oyster processing facility in South Carolina; and

~~WHEREAS, the County and the Town desire to foster the historic use of the Park as, in part, an oyster processing factory, honor the terms of the conservation easement, and continue~~

~~the traditional uses of the property as a place to gather for oyster roasts, community events and the like; and~~

WHEREAS, the County and the Town are co-owners of that parcel of real property located in the Town of Bluffton, South Carolina which is immediately adjacent to the County Property consisting of 1.863 acres, as shown in the plat recorded at Plat Book 118 at Page 100; and

WHEREAS, the 5.024 acre County Property and the 1.863 acre County and Town property comprise the 6.887 acres, is commonly referred to as the Oyster Factory Park, (hereinafter "the Park"); and

WHEREAS, the County and the Town desire to foster the historic use of the Park as, in part, an oyster processing factory, honor the terms of the conservation easement, and continue the traditional uses of the property as a place to gather for oyster roasts, community events and the like; and

~~WHEREAS, the County and the Town ~~desire~~desired to enter into this Agreement to transfer responsibility for the maintenance, liability and operation of the Park property as well as the adjacent Operations Zone in exchange for the Town being able to exclusively manage the Park and receive all income generated therefrom; and; for a joint undertaking to share in the use and expenses associated with the Park and maintain the historic character of the Park to the extent permitted by the Conservation Easement now in effect or as may be amended from time to time by the Grantee and the County and to further outline the joint responsibilities and duties associated with the funding, operation, maintenance, and general conditions of the Park.~~

~~NOW THEREFORE, ~~WHEREAS, on October 25, 2004,~~ the County and the Town ~~enter~~entered into this ~~an~~ Agreement ~~under~~for the following terms ~~joint undertaking to share in the use and expenses associated with the Park and maintain the historic character of the Park to the extent permitted by the Conservation Easement now in effect or as may be amended from time to time by the Grantee and the County; and~~~~

~~WHEREAS, the parties desire to amend the October 25, 2004 Agreement (hereinafter the "2004 Agreement"); and~~

~~WHEREAS, the County and the Town agree to assign all duties and responsibilities associated with the funding, operations, maintenance, and general conditions of the Park and the adjacent Operations Zone Property to the Town.~~

NOW THEREFORE, for due and valuable consideration, the parties agree as follows:

1. The Park is occupied, in part, by the Tenant D&L Seafood Company, Inc., d/b/a Bluffton Oyster Company. D&L Seafood Company, Inc. operates an oyster processing/retail establishment in the an area designated in the Park as the "Operations Zone." ~~The Operations Zone is not subject to this Agreement.~~ The Operations Zone is presently committed to a use by D&L Seafood Company, d/b/a

Bluffton Oyster Company under the terms and conditions of a lease and assignment of same to the County. D&L Seafood Company has been granted the use of the Operation Zone which consists of the Building in which the Bluffton Oyster Factory operates together with the land as shown and labeled on the plat attached hereto for the limited purposes provided by the Lease. The County shall assign all of its rights in interest in the Lease to the Town of Bluffton who shall accept such assign and be responsible for the enforcement of the Lease and all of its corresponding provisions. The remainder of the Park property, exclusive of the Operations Zone, is operated by Beaufort County and committed to use by the general public.

~~2.~~ The Park shall be maintained as open space, as a passive park, and ~~an~~ open gateway to scenic vistas and accesses to the May River for recreational boating. There shall be no improvements constructed thereon without the express, written consent of the County. ~~Further~~ Furthermore, such construction shall be subject to the applicable ~~ordinances~~ ordinance(s) of the ~~Town of Bluffton~~. The Park shall be made available to the general public ~~for recreational use and access to scenic vistas and the May River~~ for recreational boating; provided, however, the Town may conduct organized events within the Park upon notice ~~to and approved by the Beaufort County Parks & Leisure Services Division.~~

2.

3. Operation of the Park is under the supervisory authority of the ~~Beaufort County Parks & Leisure Services Division. For purposes of this Agreement, the liaison between Beaufort County and the Town is the Beaufort County Parks and Leisure Services Director or his designee.~~ Town.

4. ~~The Park shall operate as follows; provided, however,~~ This Agreement and these terms may be amended, changed, modified or altered by the ~~County~~ Town if doing so, in ~~theirs~~ theirs discretion ~~of the County~~, is in the public's best interests. Nothing in this Agreement shall operate to limit the County's authority, as owner of a public facility, to ~~operate~~ limit the use of the Park in a manner ~~in which~~ it deems most beneficial to the public at large.

a. Hours of Operation: The Park shall be open to the general public daily, during daylight hours, and at such other times as may be approved by the ~~Beaufort County Parks and Leisure Services Department~~ Town as provided herein. The boat ramp shall be open for use by the general public daily, twenty-four (24) hours a day.

b. Special Events: A special event means the congregation of persons on the Park premises, at a function hosted or approved by the ~~County or the~~ Town, and where food, beverages, events, entertainment, or a concert are provided. ~~The County~~

~~b.c. Process of Handling of Special Events: Special Events at the Park will be procedurally and Town may host, directly, a substantively handled like all other special event or the County or the Town may sponsor a third party to conduct a special event. A special event may be an event to which the general public is invited or an event to which admission is limited to a specified group to the exclusion of the general public during the duration of the event. Special events may be fee based or non-fee based. Fees may include fees for admission and charges for food, beverages, entertainment, and other vendors typical of such events. All fee based special events shall be for a public or charitable purpose as provided herein. These special event provisions shall be construed to secure the beneficial use of the Park for the general public and invitees and to secure the public's or the invitee's safety, health and general welfare by assuring the structural strength and stability of any temporary structures erected for use at a special event, and secure sanitation and safety to life and property from fire and other hazards incidental to the congregation of persons at an outdoor public assembly at a special event in the Town.~~

~~a. Scheduling: A special event shall be scheduled as follows:~~

~~i. The County or the Town must write the Beaufort County Parks and Leisure Services Director to request approval to schedule a special event to be hosted by the County or the Town. When the County or the Town intends to sponsor a third party to conduct a special event, the request must be made by the County or the Town. The request must include the information provided below:~~

~~ii. All special events must obtain prior written approval from the Beaufort County Parks and Leisure Services Department Director or his designee.~~

~~iii. The request to schedule a special event must include: (a) the proposed date, (b) time, (c) duration of the special event, (d) description of the special event and purpose of the event, (e) the amount of an admission fee, if any, (f) the amount charged for food, beverage and entertainment, if any, (g) whether the event is open to the general public or a named, specified group, and (h) when the County or the Town is sponsoring a third party, the third party's owner, authorized agent, promoter or individual which desires to be sponsored to host a special event must be included along with the event organizer's address and telephone number and a contact name and telephone number.~~

~~iv. The Beaufort County Parks and Leisure Services Director~~

~~shall notify the Town, in writing, of the disposition of the request. The County and the Town recognize that the Park is committed to use by the general public. The County and the Town agree exclusion of the general public to access and free use of the Park should be an exception rather than the rule and special events shall be approved based on frequency, time, the nature of the event and the imposition of fees, if any.~~

~~e.d.~~ Disposition of Fees from Special Events: The gross receipts from Special Events shall inure to the benefit of the Park unless prior approval has been given to host a Special Event as a "fund-raiser" for a public or charitable purpose. Other than permitted public purpose or charitable "fund-raisers," the gross receipts from Special Events shall be remitted to the ~~Beaufort County Parks & Leisure Services Director within thirty days of the conclusion of the special event. In return, the Beaufort County Parks & Leisure Services Director shall notify the Town of Bluffton of such remittances.~~ Special Event funds shall be expended solely for the general upkeep, maintenance and improvement of the Park and Park facilities.

~~b.~~ General Provisions for Special Events:

~~i.~~ The approval to conduct a special event shall expire at the conclusion of the special event or at midnight on the day of the special event, whichever comes first. Special events may be held for more than one day if prior approval is granted and in that event, the approval shall expire at midnight on the last day of the special event.

~~ii.~~ Temporary Structures: The erection of all temporary structures intended for use at a special event shall be inspected and approved by a Beaufort County Building Codes Officer prior to the day of the event. A temporary structure includes a tent, all similar temporary structures and all temporary seating, platforms and the like. If the Building Codes Officer finds the temporary structure or the construction thereof is, in his or her opinion, unsafe, then he or she shall notify the Beaufort County Parks and Leisure Services Department Director or his designee and the contact person for the special event. The Building Codes Officer shall notify the County, the Town or the third party of the corrections to be made. The Building Codes Officer shall again inspect the work or apparatus. No temporary structures may be used at a special event without approval of the Beaufort County Building Codes Official. Tents shall not be located in areas where underbrush, grass or other products

~~of combustion exist in substantial amounts. The grounds within and adjacent to tents may be cleared, with prior approval of the Beaufort County Parks and Leisure Services Department Director or his designee, of all such materials or similar fire hazards. No tent shall be erected closer than fifty feet to a public right of way or be situated in such a manner that it could create a traffic hazard. No tent shall be erected within 100 feet of an open flame cooking source, i.e., an oyster roast it and similar outdoor cooking facilities.~~

~~iii. Security and Safety. Prior to the issuance of any approval to conduct a special event, the host shall arrange for a minimum of two paid law enforcement officers for every anticipated 500 persons in attendance. The law enforcement officers are to be paid by the host of the event. The host shall provide written advance notice to the Beaufort County Emergency Management Officer and the Town of Bluffton Police Department of the location and time of the event. An unobstructed path of travel for access and egress to the Park shall be maintained at all times during the special event for the use of emergency vehicles.~~

~~iv. Sanitation Toilet facilities. The Park shall have two toilet facilities, one for men and one for women. If attendance is anticipated to exceed an average daily attendance in excess of two hundred and fifty (250) people, the Beaufort County Parks and Leisure Services Director may require that the host provide additional portable toilets.~~

~~v. Solid waste disposal and recycling of oyster shells. All solid waste and litter shall be removed from the Park immediately following the special event. All oyster shells shall be removed to an approved oyster shell recycling site.~~

~~vi. Parking spaces for vehicles. Parking is available on the Park premises. The host of a special event shall ensure that adequate parking space for anticipated attendance is available within the Park premises or obtain permission for alternate site parking. Parking along the shoulder of the Park's entry road or frontage road is prohibited unless prior special permission is obtained from the Town of Bluffton. Parking in any major thoroughfare and in any manner that would create a traffic hazard shall be prohibited.~~

~~vii. Discharge of Fireworks. Discharging fireworks on the Park premises shall be prohibited except by prior written approval by the County Administrator. Approval must be obtained twenty four hours in advance of planned fireworks display.~~

~~viii. Other than approved, special events, the Park shall remain free for use by the general public. Neither the County nor the Town may charge Park users for use of the Park unless the charge is associated with a special event previously approved by the County.~~

5. Public Beach. To the extent that the sandy area lying in and adjacent to the boat ramp in the Park premises may be used as a public beach, the County and Town agree to enforce the following restrictions. Driving or operating any motor vehicle on the public beach other than in the designated areas for purposes of launching a boat is prohibited. Using a surfboard or a motorized device including a personal watercraft in the area of the beach and in any manner as to become a hazard to bathers, swimmers, boaters or others shall be prohibited. Glass bottles, drinking glasses or other glass containers shall be prohibited on the beach.
6. Use of Alcoholic Beverages. County owned recreation facilities are publicly funded and for the purpose of carrying on leisure, recreation and sporting events. ~~It is the policy of the County and~~ As such, the Town ~~to~~shall regulate the Park in a manner that shall provide for the greatest public use. Alcoholic beverages may be permitted for family outings, social events, fund raising events and special events provided that its use is not in conflict with any other County or Town ordinance or state law.
7. The Town shall regulate parking within the Park and restrict boat and boat trailer parking to the area designated for such purpose.
8. The ~~County shall~~ Town maintain the boat ramp in ~~its current configuration and in a~~ condition suitable for recreation boating.
9. ~~The County shall notify the Town of the date the Park is open for public use. After the Park is opened for public use, the Town shall provide at least two (2) refuse containers on the Park property outside of the Operations Zone. Thereafter, the Town shall provide, at~~ The Town shall provide, at least weekly, regular refuse, litter and garbage pick-up free of charge to the County, in all the Park areas exclusive of the Operations Zone. Additionally, the Town shall be responsible for providing all maintenance and cleaning of the restroom facilities located at the Park.
10. The County and the Town shall notify their respective property and liability insurers, which provide the County and the Town general liability insurance now and in the future of ~~this joint~~ the modifications to the initial undertaking. ~~The County~~ As the party responsible for the operation, maintenance, use and condition of the Park and all related facilities, the Town ~~expressly agree to share equally in~~ agrees to

be the primary responsible party for any and all liability resulting from the use of the Park ~~and that same shall be shared equally~~ to the extent that immunity has been waived ~~by the~~ under State of South Carolina law.

11. Capital Improvements, including demolition, shall be jointly reviewed by the County and the Town. The Town shall advise the County of Town zoning and land use regulations which may apply to the subject property. Such improvements shall conform to Town regulations. In the event that a variance(s) are required, such variance shall not be unreasonably withheld. The Concept plan dated November 2002 (~~Exhibit B~~) shall serve as an initial and general guide concerning capital improvements. The Town shall be responsible for updating the Concept plan as necessary. Upon approval, the updated Concept plan shall replace the Concept plan dated November 2002 as Exhibit B of this Agreement. ~~Initial capital improvements consisting of sanitary facilities shall be the responsibility of the County. Thereafter, the County and~~ The Town shall ~~jointly fund~~ manage all capital improvements ~~on such terms and conditions as both parties mutually. The Town and County agree to cooperate to secure funds for capital improvement from any available source.~~ Funds collected ~~by from grants and/or~~ non-profit/private entities for ~~this purpose capital improvements~~ may be accepted on terms ~~agreed upon by~~ acceptable to the ~~County and~~ Town.
12. The County and the Town acknowledge the presence of a structure on the southwest side of the Park with potentially historic significance. Any improvements or disposition of the structure shall conform to the Town's Historic Preservation Commission guidelines.
13. Signage and associated lighting shall be mutually agreed on by the County and the Town. Design of the signage shall be guided by the Town's sign ordinance.
14. The Town shall provide law enforcement with back up by the County Sheriff's office, as required.
15. It is agreed that either of the parties shall have the right and privilege of terminating this Agreement at any time upon giving one (1) months notice, in writing, to the other party of its intention to do so, and in the event this Agreement is terminated, then all rights and interests of the parties shall cease, and any permanent building or improvements erected by Town shall then be, and become the property of the County.

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~~Notice shall be provided as follows:~~

For the Town: _____ For the County:
Town Manager _____ County Administrator
P.O. Box 386 _____ P.O. Drawer 1228
Bluffton, SC 29910 _____ Beaufort, SC 29901-1228

~~The laws of the State of South Carolina shall govern this Agreement.~~

IN WITNESS WHEREOF, the parties have ~~set caused this Agreement to be executed by~~
their ~~hands and seals~~duly appointed officers this day and year as aforewritten.

WITNESSES:

BEAUFORT COUNTY COUNCIL

By: _____
Its: _____

WITNESSES:

By: _____
Gary Kubic
County Administrator

TOWN OF BLUFFTON

By: _____
Its: _____

By: _____
Marc Orlando

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Factory Park.docx

WHEREAS, on October 25, 2004, the County and the Town entered into an Agreement for the joint undertaking to share in the use and expenses associated with the Park and maintain the historic character of the Park to the extent permitted by the Conservation Easement now in effect or as may be amended from time to time by the Grantee and the County; and

WHEREAS, the parties desire to amend the October 25, 2004 Agreement (hereinafter the "2004 Agreement"); and

WHEREAS, the County and the Town agree to assign all duties and responsibilities associated with the funding, operations, maintenance, and general conditions of the Park and the adjacent Operations Zone Property to the Town.

NOW THEREFORE, for due and valuable consideration, the parties agree as follows:

1. The Park is occupied, in part, by the Tenant D&L Seafood Company, Inc., d/b/a Bluffton Oyster Company. D&L Seafood Company, Inc. operates an oyster processing/retail establishment in the an area designated in the Park as the "Operations Zone." The Operations Zone is presently committed to a use by D&L Seafood Company, d/b/a Bluffton Oyster Company under the terms and conditions of a lease and assignment of same to the County. D&L Seafood Company has been granted the use of the Operation Zone which consists of the Building in which the Bluffton Oyster Factory operates together with the land as shown and labeled on the plat attached hereto for the limited purposes provided by the Lease. The County shall assign all of its rights in interest in the Lease to the Town of Bluffton who shall accept such assign and be responsible for the enforcement of the Lease and all of its corresponding provisions.
2. The Park shall be maintained as open space, as a passive park, and open gateway to scenic vistas and accesses to the May River for recreational boating. There shall be no improvements constructed thereon without the express, written consent of the County. Furthermore, such construction shall be subject to the applicable ordinance(s) of the Town. The Park shall be made available to the general public for recreational boating; provided, however, the Town may conduct organized events within the Park upon notice.
3. Operation of the Park is under the supervisory authority of the Town.
4. This Agreement and these terms may be amended, changed, modified or altered by the Town if doing so, in its discretion, is in the public's best interests. Nothing in this Agreement shall operate to limit the County's authority, as owner of a public facility, to limit the use of the Park in a manner it deems most beneficial to the public at large.
 - a. Hours of Operation: The Park shall be open to the general public daily, during daylight hours, and at such other times as may be approved by the Town as

provided herein. The boat ramp shall be open for use by the general public daily, twenty-four (24) hours a day.

- b. Special Events: A special event means the congregation of persons on the Park premises, at a function hosted or approved by the Town, and where food, beverages, events, entertainment or a concert are provided.
 - c. Process of Handling of Special Events: Special Events at the Park will be procedurally and substantively handled like all other special events in the Town.
 - d. Disposition of Fees from Special Events: The gross receipts from Special Events shall inure to the benefit of the Park unless prior approval has been given to host a Special Event as a “fund-raiser” for a public or charitable purpose. Other than permitted public purpose or charitable “fund-raisers,” the gross receipts from Special Events shall be remitted to the Town. Special Event funds shall be expended solely for the general upkeep, maintenance and improvement of the Park and Park facilities.
5. **Public Beach**. To the extent that the sandy area lying in and adjacent to the boat ramp in the Park premises may be used as a public beach, the County and Town agree to enforce the following restrictions. Driving or operating any motor vehicle on the public beach other than in the designated areas for purposes of launching a boat is prohibited. Using a surfboard or a motorized device including a personal watercraft in the area of the beach and in any manner as to become a hazard to bathers, swimmers, boaters or others shall be prohibited. Glass bottles, drinking glasses or other glass containers shall be prohibited on the beach.
 6. **Use of Alcoholic Beverages**. County owned recreation facilities are publicly funded and for the purpose of carrying on leisure, recreation and sporting events. As such, the Town shall regulate the Park in a manner that shall provide for the greatest public use. Alcoholic beverages may be permitted for family outings, social events, fund raising events and special events provided that its use is not in conflict with any other County or Town ordinance or state law.
 7. The Town shall regulate parking within the Park and restrict boat and boat trailer parking to the area designated for such purpose.
 8. The Town maintain the boat ramp in a condition suitable for recreation boating.
 9. The Town shall provide, at least weekly, regular refuse, litter and garbage pick-up free of charge to the County, in all the Park areas exclusive of the Operations Zone. Additionally, the Town shall be responsible for providing all maintenance and cleaning of the restroom facilities located at the Park.
 10. The County and the Town shall notify their respective property and liability

insurers, which provide the County and the Town general liability insurance now and in the future of the modifications to the initial undertaking. As the party responsible for the operation, maintenance, use and condition of the Park and all related facilities, the Town agrees to be the primary responsible party for any and all liability resulting from the use of the Park to the extent that immunity has been waived under State of South Carolina law.

11. Capital Improvements, including demolition, shall be jointly reviewed by the County and the Town. The Town shall advise the County of Town zoning and land use regulations which may apply to the subject property. Such improvements shall conform to Town regulations. In the event that a variance(s) are required, such variance shall not be unreasonably withheld. The Concept plan dated November 2002 Exhibit B shall serve as an initial and general guide concerning capital improvements. The Town shall be responsible for updating the Concept plan as necessary. Upon approval, the updated Concept plan shall replace the Concept plan dated November 2002 as Exhibit B of this Agreement. The Town shall manage all capital improvements. The Town and County agree to cooperate to secure funds for capital improvement from any available source. Funds collected from grants and/or non-profit/private entities for capital improvements may be accepted on terms acceptable to the Town.
12. The County and the Town acknowledge the presence of a structure on the southwest side of the Park with potentially historic significance. Any improvements or disposition of the structure shall conform to the Town's Historic Preservation Commission guidelines.
13. Signage and associated lighting shall be mutually agreed on by the County and the Town. Design of the signage shall be guided by the Town's sign ordinance.
14. The Town shall provide law enforcement with back up by the County Sheriff's office, as required.
15. It is agreed that either of the parties shall have the right and privilege of terminating this Agreement at any time upon giving one (1) months notice, in writing, to the other party of its intention to do so, and in the event this Agreement is terminated, then all rights and interests of the parties shall cease, and any permanent building or improvements erected by Town shall then be, and become the property of the County.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers this day and year as aforewritten.

BEAUFORT COUNTY COUNCIL

By: _____
Gary Kubic
County Administrator

TOWN OF BLUFFTON

By: _____
Marc Orlando
Town Manager

DRAFT

**ARTICLE 2
DEMISED PREMISES**

2.1 Landlord hereby leases to Tenant and Tenant hereby takes and hires from Landlord, upon and subject to the terms, covenants and provisions hereof, the Demised Premises" consisting of "the Operations Zone" consisting of the Bluffton Oyster Factory located at the foot of Wharf Street at the May River in Bluffton, Beaufort County, South Carolina, and situated on the property further described as:

All those certain pieces, parcels or lots of land, with improvements thereon, situate, lying and being in the Town of Bluffton, Beaufort County, South Carolina, and being described and shown on a plat of the property prepared by T Square Surveying, a copy of which is attached hereto and incorporated herein by reference, as the Operations Zone and the River Access Zone. It is understood that the title to said property is bounded by the mean high water mark of the May River.

2.2 Provided further that the Landlord and the Tenant agree that the Demised Premises is divided into two parts: to wit: (1) The Operations Zone; and (2) the River Access Zone as shown on the plat attached hereto.

2.3 The "Operations Zone" consists of the Building in which the Bluffton Oyster Factory operates, together with the land as shown and labeled on said plat. The Tenant shall be entitled to exclusive possession and use of the Operations Zone.

2.4 "The River Access Zone" consists of the area shown and designated on the Plat as such. The Tenant shall have the non-exclusive right with the general public to use the River Access Zone. The Tenant shall have the right to cross this zone so as to gain access to the Operations Zone, and property taxes are addressed in Article 5.

**ARTICLE 3
TERMS**

3.1 The term (the "Term") of this Lease shall be for Five (5) years, commencing on 12/30, 2002 (the "Commencement Date"), and expiring on 12/29, 2007. Provided there is no continuing event of default hereunder by Tenant, Tenant shall have the right to extend the term of this lease for up to FOUR (4) consecutive terms of Five (5) years each (the "Extended Term") upon the same terms and conditions contained herein, except the basic and additional rent, by giving written notice to Landlord of Tenant's intent to extend the then existing term at least three (3) months prior to the expiration of the then existing term.

WDM
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**ARTICLE 4
RENT AND OPERATING COSTS**

4.1 Tenant shall pay the following:

- A. Tenant shall pay a base rent to Landlord on an annual basis on the anniversary of the Commencement Date. The rent shall be One and 00/100 (\$1.00) Dollar per year.**
- B. Tenant shall pay all personal property taxes; hazard, flood and liability insurance costs (see Article 5, infra); and all utilities, including, without limitation, charges for electricity, water, sewer, heating and air-conditioning.**
- C. Tenant shall make such improvements to the building on the Demised Premises as may be necessary or required so as to remain permitted by the appropriate state regulatory agency as a seafood, an oyster processing plant and a retail seafood store.**
- D. As additional rent, the Tenant shall also pay to the Landlord Four Hundred Dollars (\$400.00) per month for the months of September, October, November, December, January, February, March and April. The rent shall be due and payable on the first (1st) day of each month, and past due on the tenth (10th) day of each month.**
- E. In all other months the Tenant shall pay to the Landlord the sum of Two Hundred Dollars(\$200.00) per month. The rent shall be due and payable on the first (1st) day of each month, and past due on the tenth (10th) day of each month.**
- F. All Operating Costs as further defined in Article 5.**
- G. If any payment of rent, either base or additional, is paid more than five (5) days after the date the same was due, it shall thereafter bear interest at the rate of Twenty and 00/100 (\$20.00) Dollars per day.**

**ARTICLE 5
OPERATING COSTS**

5.1 Tenant shall pay all "operating costs" as defined herein. "Operating Costs" shall mean all capital and non-capital expenditures required to be made in the operation, management, repair and maintenance of the Land and Building constituting the "Bluffton Oyster Factory" located in the Operations Zone of the Demised Premises, including, but not limited to, any additional construction of an addition to the existing dock, wharf and pier located in the Operations Zone and all charges, fees and taxes of whatever kind attributable thereto including the following:

- A. All ad valorem, special assessment, personal property taxes and any tax or fee, including impact fees, attributable to the Land and Building within the Operations Zone of the**

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Demised Premises. The Tenant shall not be responsible for any ad valorem, special assessment, personal property taxes and any tax or fee, including impact fees, attributable to the River Access Zone.

B. All charges for water and sewer use, electricity, gas and other public utilities supplied to the Building and grounds within the Operations Zone of the Demised Premises.

C. Heating, ventilation and air conditioning supplied to the "Building" in the Operations Zone including any capital expenditures for same.

D. Wages, social security taxes, unemployment taxes and insurance for all employees of the Tenant who are full time or part time, and whose services are used for the operation and maintenance of the Bluffton Oyster Factory, the Building and grounds within the Operations Zone and River Access Zone of the Demised Premises.

E. The Cost of labor, materials and supplies for cleaning, maintaining and securing the Building in which the Bluffton Oyster Factory operates including the grounds, windows, hallways, bathrooms, elevators, offices and food service areas, whether performed by employees of the Tenant or by independent contractors or subcontractors engaged by the Tenant, within the Operations Zone or for the picking of trash and litter within the River Access Zone.

F. Premiums for any insurance whatsoever including insurance against loss or damage to the Building in which the Bluffton Oyster Factory operates, whether by fire or other hazard, general public liability insurance, worker's compensation insurance and business interruption insurance; and,

G. Any and all expenses for repair maintenance, decoration or redecoration of the common areas within the Operations Zone and the Building in which the Bluffton Oyster Factory operates including the grounds, gardening and landscaping.

H. Tenant shall make such improvements to the Operations Zone as may be necessary or required so as to remain permitted by the appropriate state regulatory agency as a seafood plant, an oyster processing plant and a retail seafood store; and,

I. Tenant shall be solely liable and responsible to pay any and all assessments, fees or other charges to or on the Operations Zone of the Demised Premises, or any activities conducted thereon as may now or hereafter be charged to the Operations Zone of the Demised Premised during the Term or any renewal term.

J. Tenant shall be responsible for picking up and disposing of trash and litter in the Operations Zone and River Access Zone.



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**ARTICLE 6
USE OF PREMISES**

6.1 Tenant shall use the Premises to operate a seafood plant, an oyster processing facility and a retail seafood store and specified uses ancillary thereto. It shall comply with any and all applicable local, state and federal ordinances and regulations, including, without limitation, the Beaufort County Hazardous Materials Ordinance, OSHA requirements, the Americans with Disabilities Act and rules imposed by permit issuers charged with the regulation of Tenant's activities.

6.2 Tenant shall have the right to use the Operations Zone for those uses presently permitted and allowed by the Town of Bluffton under its current zoning ordinances, and the Parties hereto acknowledge that the Tenant's use of the Operations Zone is grand-fathered and a permitted use. Those uses consist of and are limited to the following: sale of seafood, both retail and wholesale, the sale of mercantile goods exclusive of wine, beer and alcoholic beverages, the operation of a seafood factory, the harvesting of seafood and the operation of seafood mariculture operations, provided that same are approved by all appropriate agencies of the State of South Carolina.

6.3 If during the Initial Term or any Extended Term, the application of any statute, code or ordinance of any government, authority, agency, official or officer applicable to the Building or the Demised Premises makes it impossible or not economical for Tenant to operate in the Demised Premises in accordance with subparagraph 6.1, then Tenant, at its option, may terminate this Lease, whereupon the Base Rent and Additional Rent and all other charges payable to the Landlord hereunder by Tenant shall be apportioned as of such date of termination.

**ARTICLE 7
ASSIGNMENT AND SUBLETTING**

7.1 Tenant shall have no right to assign this Lease or sublet the Demised Premises, in whole or in part, to any person or entity including a State agency, institution, department, bureau, political subdivision or State or political subdivision operated entity or to any other successor or assign. In the event that the Tenant is involved in bankruptcy or insolvency proceedings and the Tenant's trustee fails to perform or rejects any of the Tenant's obligations provided under this Lease, this Lease shall immediately terminate.

**ARTICLE 8.
NOTICE THAT NO SERVICES OR INSURANCE IS PROVIDED**

8.1 Tenant expressly acknowledges and agrees that the Landlord is not providing any service whatsoever to the Tenant in this Lease. Tenant expressly acknowledges and agrees that Landlord is not providing any form of insurance, which would inure to the benefit of the Tenant, in this Lease.

8.2 Tenant expressly acknowledges and agrees that the Landlord is not obtaining, providing or otherwise insuring the Building in which the Bluffton Oyster Factory operates against loss, in

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whole or in part, due to fire, flood, or any other hazard including acts of God. Tenant further acknowledges and agrees that Landlord is not providing any form of insurance, which would inure to the benefit of the Tenant.

8.3 Tenant expressly acknowledges and agrees that the Landlord is not providing lighting, heating or air conditioning, ventilation, electricity, janitorial service, security service, grounds maintenance, repair and maintenance to or about the Building in which the Bluffton Oyster Factory operates or any other service or supply necessary or convenient to maintain and /or operate the Bluffton Oyster Factory, the Building in which it operates and the real property on which the Building is sited including any improvements made thereto by the Tenant. Tenant expressly agrees that Tenant shall be obligated to pay for any service, maintenance or repair required by State, Federal or Local Law ordinance or regulation.

8.4 Tenant shall use separately metered utilities servicing the Operations Zone of the Demised Premises and make direct payment for such utility services to the suppliers thereof.

ARTICLE 9 ARCHITECTURAL BARRIERS

9.1 Tenant covenants and agrees that those portions of the Land, Building and Demised Premises, open to the public, shall comply with any and all applicable State and Federal law, rules and regulations with respect to architectural barriers or design that would prohibit free and full access to and use of those portions of the Land, Building, Demised Premises or any part thereof within the Operations Zone of the Demised Premises open to the aged, disabled or physically handicapped. In the event the Land, Building or Demised Premises within the Operations Zone of the Demised Premises do not so comply as of the Commencement Date of this Lease, Tenant shall, at Tenant's sole cost and expense and within ninety (90) days following the Commencement Date, alter, repair, renovate or otherwise provide at the Land, Building and Demised Premises within the Operations Zone of the Demised Premises all reasonable access and use thereof for the aged, disabled or physically handicapped as required by Law, taking into account any grand-fathering compliance permitted by law.

ARTICLE 10 IMPROVEMENTS, ALTERATIONS AND MAINTENANCE

10.1 Tenant shall have the following responsibilities and privileges for improvements, alterations and maintenance:

A. Tenant may develop, construct and operate within the Operations Zone, at its sole cost and expense, any additional improvements (the "Tenant's Improvements") necessary or convenient for Tenant to conduct its business. Tenant's improvements which are not permanently affixed, may be removed by the Tenant at the expiration of the Term provided; however, Tenant shall repair, cause to repair, or compensate Landlord for any repairs,

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construction or reconstruction required to return the Demised Premises to its original condition existing prior to this Lease which are caused or resulted from removal of Tenant's improvements. Any such construction and operations shall be pursuant to permit by the applicable state, county or town agency.

B. Tenant agrees, except for normal wear and use, to keep and maintain the exterior and interior of the Leased Premises and any improvements thereon, including roofs, doors, windows, walls and any other structural elements in good condition and repair. Tenant shall make and be responsible for the costs of any electrical repairs, heating and air conditioning repairs, plumbing repairs and replacement, including the replacement of heating and air conditioning equipment and water heaters, all of which shall be deemed to be affixed, except in the case of personalty, such as window air conditioning units.

C. Tenant shall, at its sole expense, keep the Operations Zone (as defined hereinafter) free and clear of trash and debris, and the River Access Zone free of trash and litter.

D. Tenant agrees to perform such maintenance actions as may be commercially reasonable to keep the Building in which the Bluffton Oyster Factory operates and any improvements within the Operations Zone in the condition required by the appropriate state regulatory agencies to allow the use as a seafood plant, an oyster processing facility and a retail seafood store.

E. Tenant agrees to take such actions as may be necessary to prevent any unlawful discharge from the Operations Zone of the Leased Premises into the waters of the May River and further shall not store or allow hazardous or toxic waste or substances, which are defined as those substances, materials and wastes, including but not limited to, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials and wastes which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyl's, (iv) designated as a "Hazardous substance" pursuant to Section 331 of the Clean Water Act, 33 U.S.C. Sec 1251, et. seq. (33 U.S. C. 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Sec 1371), (v) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sec 6901, et. seq. (42 U.S.C. sec 9601), et seq. (42 U.S.C. 9601) within the Operations Zone of the Leased Premises.

F. Tenant shall be liable, at its sole cost and expense, for any fines, penalties and/or recovery of costs and expenses associated with any improper or unlawful discharge into the May River from the Operations Zone. **The Tenant shall have no right to make any discharge from the River Access Zone into the May River.**

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**ARTICLE 11
CONDEMNATION AND CASUALTY**

11.1 If any damage or destruction occurs, in whole or in part, to the Bluffton Oyster Factory Building, or if proceedings or negotiations are instituted which do or may result in a taking by condemnation or eminent domain ("Taking"), each party will promptly give notice thereof to the other, describing the nature and extent thereof.

11.2 If any damage or destruction occurs, in whole or in part, to the Bluffton Oyster Factory Building and the dock(s), wharf(s), and pier(s) from any cause whatsoever, including acts of God, Landlord shall have no duty, obligation or liability to Tenant to restore, replace or rebuild the Bluffton Oyster Factory Building, any structure associated therewith, the dock(s), wharf(s) and pier(s), including Tenant Improvements made thereto.

11.3 If any damage to or destruction occurs, in whole or in part, to the Bluffton Oyster Factory Building, or any structure associated with it, including docks, wharfs, and piers, Tenant may elect, at its sole cost and expense, to restore the Bluffton Oyster Factory Building, any structure associated therewith, and the docks, wharfs, and piers to the original condition subject to permitting by state and local authorities. If Tenant elects not to restore or rebuild any damaged structure as provided herein including the Bluffton Oyster Factory Building, the Tenant shall terminate this Lease by notice to Landlord within ten (10) days from the date Tenant elects not to restore or rebuild the structure.

11.4 Nothing contained in this Lease shall be deemed or construed to grant the Tenant a claim or cause of action against the Landlord, its successors and assigns, for the value of the Tenant's leasehold estate, its leasehold improvements, lost income and /or rents, moving and related costs or any other damages whatsoever. Tenant expressly waives any claim or cause of action against the Landlord and its successors and assigns.

**ARTICLE 12
INSURANCE**

12.1 Tenant shall obtain and maintain throughout the Term the following:

A. At all times during the term of this lease, Tenant shall keep in full force and effect a Commercial General Liability Policy insuring against bodily injury, including death, or damage to tangible property, with minimum limits of liability in the amount of One Million (\$1,000,000.00) Dollars for a single occurrence for activities on the Operations Zone. The Landlord shall be shown as an additional insured.

B. At all times during the term of this lease, Tenant shall keep in full force and effect a Workers' Compensation Insurance policy with statutory benefits.

C. At all times during the term of this lease, Tenant shall keep in full force and effect an Employer's Liability insurance policy with minimum limits of liability in the amount of

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Three Hundred Thousand (\$300,000.00) Dollars.

12.2 The policies or certificates of insurance shall include a provision that written notice of cancellation or notice of any material change to the insurance policy, including the limits of liability in said policy(s), shall not be effective until after the Landlord is given thirty (30) days written notice of such change

12.3 The landlord shall not be required to maintain hazard or all risk insurance on the Bluffton Oyster Factory Building or the improvements of the Operations Zone. Tenant elects not to maintain hazard or all risk insurance on the Bluffton Oyster Factory Building, the improvements thereto and the contents thereof, and shall occupy and make improvements to it at its own risk.

ARTICLE 13 INDEMNITY

13.1 Tenant hereby agrees to indemnify and hold harmless Landlord, its successors and assigns, from any and all costs, expenses, losses, liabilities, causes of action or other obligations in any way connected or associated with its occupation of the Leased Premises pursuant to this Lease. In the event any claim or demand is made on Landlord for any such obligation, Tenant shall promptly defend, remove, bond or otherwise dispose of such claim or demand and save and hold Landlord harmless against all expenses, costs and attorney's fees which may arise from any action taken by Landlord in response to said claim or demand.

ARTICLE 14 DEFAULTS

14.1 Any of the following shall constitute an Event of Default by Tenant under this Lease:

A. If Tenant shall fail to perform any of Tenant's obligations to pay the base rent or additional rent hereunder on or before the due date thereof, and such default remains uncured for period of Ten (10) Days after written notice of such default; or,

B. If Tenant fails to observe or perform any of Tenant's other obligations under any of the terms, covenants, conditions and provisions of this Lease and such default shall remain uncured for a period of Thirty (30) days after written notice of such default, provided the notice sets forth the specific actions necessary for Tenant to undertake, to correct or cure such default. No event of default shall be deemed to have occurred if Tenant commences necessary corrective or remedial action within the thirty (30) day notice period and diligently pursues and completes same.

14.2 If an event of default as defined in Section 14.1 A, B occurs, then (a) Landlord shall have the immediate right to give a written termination notice to Tenant specifying a date on which this Lease shall terminate, and on such date, the Term of this Lease shall expire and terminate, and all rights of Landlord and Tenant under this Lease shall cease; or, (b) if Tenant has not (i) cured such default or (ii) made arrangements to address the default and such arrangements have not been approved by

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Landlord, which approval shall not be unreasonably withheld, within thirty (30) days of written notice of such default, Landlord shall have the right to cure such default by any reasonable means including, without limitation, the expenditure of funds, in which case Tenant shall pay to Landlord the reasonable cost of curing such default on demand of Landlord.

14.3 If within thirty (30) days after receipt by Landlord of written notice from Tenant to Landlord specifying any failure by Landlord to observe or perform any of Landlord's obligations under any of the terms, covenants, conditions and provisions of this Lease, Landlord has not commenced diligently to correct or otherwise to cure the default or defaults so specified or has not thereafter diligently pursued such correction.

14.4 If an event of default as defined in Section 14.3 shall have occurred, Tenant shall have the immediate right at any time thereafter to give a written termination notice to Landlord specifying a date on which this Lease shall terminate, and on such date, the Term of this Lease shall expire and terminate, and all rights of Landlord and Tenant under this Lease shall cease. Or in the alternative, Tenant shall have the right to cure such default by any reasonable means including, without limitation, the expenditure of funds and Tenant shall be entitled to recoup the reasonable cost of curing such default by offsetting such expenses against the basic rent due.

ARTICLE 15 NOTICE

15.1 Any notice to be given by either party to the other pursuant to the provisions of this Lease shall be given by personal delivery or by first-class United States mail, postage paid, addressed to the party for whom it is intended at the address first stated above or at such other address as may be designated in writing

ARTICLE 16 SUCCESSORS AND ASSIGNS

16.1 The covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of the Landlord and its respective successors and assigns. Unless repugnant to the context, the word "Landlord" appearing in this Lease shall be construed to mean the Landlord named above and its successors and assigns, and those claiming through or under it respectively.

16.2 The covenants, conditions and agreements contained in this Lease shall not bind or inure to the benefit of the Tenant's successors and assigns or those claiming through or under it.

ARTICLE 17 MISCELLANEOUS

17.1 The Lease shall be subject to the following:

A. Landlord agrees that upon Tenant's payment of the base and additional rent and

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performing and observing the terms, covenants, conditions and provisions on its part to be performed and observed, Tenant shall and may peaceably and quietly have, hold and enjoy the Operations Zone exclusively and the non-exclusive right in the River Access Zone of the Demised Premises during the Term without any manner of hindrance, interruption or molestation from Landlord or anyone claiming under Landlord, subject, however, to the terms of this Lease.

B. If any term in this Lease shall be declared invalid or unenforceable, the remaining terms of this Lease shall not be affected thereby and shall continue to be enforced and recognized as valid agreements of the parties.

C. This agreement represents the entire understanding of the parties with reference to the subject matter hereof, and shall be construed and enforced in accordance with the laws of South Carolina.

D. Tenant shall neither assign this Lease nor sublet any portion of the Leased Premises.

E. The failure of either party to call any one default under the provisions of this Lease shall not be construed as a waiver of the right to call any other or future default.

F. Tenant shall not encumber the Demised Premises or any part thereof or permit any lien or charge to be taken against the Demised Premises or any part thereof.

G. Nothing herein shall be construed as a subordination by Landlord of its interests in the Leased Premises. Landlord shall not be required to subordinate its interest in the Leased Premises to any other party.

ARTICLE 18 SPECIAL PROVISIONS

18.1 The following special provisions apply to the parties herein:

A. The Demised Premises shall consist of the two areas as shown on the plat affixed hereto as Exhibit "1", the Operations Zone and the River Access Zone. The Tenant shall be entitled to the sole and exclusive possession and use of the Operations Zone. Tenant shall be entitled to non-exclusive possession and use of the River Access Zone. The Operations Zone shall include all appurtenances and improvements affixed to the property, including the docks, wharfs and piers emanating from that property.

B. Entry and access to the Operations Zone shall be limited to the Tenant and its guests and invitees.

C. Tenant shall have the right to terminate this Lease in the event of any of the following:
(i) the improvements on the Leased Premises are damaged, by fire, flood, storm or other casualty to the extent that repairs by the Tenant are not financially feasible by the Tenant

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and there are no insurance proceeds available to Tenant to effect repairs or rebuild; Tenant acknowledges that Landlord is not providing any form of insurance including hazard insurance which would inure to the benefit of the Tenant; or, (ii) in the event that a regulatory agency having jurisdiction over the business operations of the Tenant shall issue an order, make such findings or enact such regulation(s) as will substantially impair the ability of the Tenant to conduct the permitted uses of the Leased Premises. In the event of termination under the provisions of this Paragraph, Tenant shall give the Landlord sixty (60) days written notice of its intent to terminate and this Lease shall terminate on the 60th day and all obligations of the parties hereunder shall terminate.

D. Tenant agrees that prior to making any structural modifications of the Building it will obtain the consent of the Landlord in writing, which consent shall not be unreasonably withheld.

E. Tenant shall have, subject to Tenant obtaining at it's sole and exclusive cost, all necessary permits and authorization from governmental entities having jurisdiction over such activities, the right to construct additions to the dock, wharf and pier at the eastern (down river) side of the existing structure and located in the Operations Zone. The costs related to the construction shall be the sole and exclusive responsibility of the Tenant. The additional dock, wharf and pier shall be used for purposes related to the permitted uses of the Leased Premises and shall not be used for marina type activities such as the rental or leasing of dockage to non-commercial vessels or boats or the sale of motor fuel. Landlord shall consent to any application by Tenant for all necessary permits and approvals for the construction and operation of the above specified improvements. In the event the Landlord desires to construct a dock, wharf or pier on the River Access Zone portion of the Leased Premises, the Tenant agrees to assist in the application for all necessary permits and approvals for such construction provided, that the construction will not result in the imposition of material limitations on the Tenant's use of the existing dock, wharf or pier and will not interfere with the Tenant's expansion of the facilities as contemplated under this paragraph.

F. Tenant shall have the right, subject to appropriate governmental approval, to construct fencing on the boundary between the Operations Zone and the River Access Zone to limit access to the Operational Zone of the Leased Premises. Tenant may not construct any fencing without prior written approval of Landlord. Landlord's approval right shall be limited to the location, design and specifications of the fence, and its approval shall not be unreasonably withheld.

G. Tenant agrees that it will keep the River Access Zone clean and free of trash and litter at its sole and exclusive expense. Tenant shall provide appropriate trash receptacles and shall empty same on an as-needed basis. In the event that special events sponsored by the Landlord results in Tenant incurring extra expense in the upkeep and cleaning of the River Access Zone, the Landlord shall bear the extra expense of such cleanup.

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H. Landlord shall be responsible for the upkeep and maintenance of all improvements located in the River Access Zone other than trash receptacles.

I. Landlord shall post appropriate signs setting rules and regulations for the use of the River Access Zone. Such rules shall not, by their content or operation, interfere with Tenant's possession or use described in this Lease.

J. Landlord shall take all steps necessary to prevent the parking of vehicles within the River Access Zone and on or beside Wharf Street, except while engaged in launching and recovering boats. The parties further agree to take such action as may be required to have the appropriate governmental authority designate that portion of Wharf Street between the Premises and Bridge Street a "No Parking" zone or area.

K. Landlord agrees that it shall provide parking area(s) for persons utilizing the River Access Zone, and said parking shall not be located on the Demised Premises. The Landlord shall also be responsible for providing public restroom facilities with sewer disposal to include all necessary sewer, water and utility lines.

L. The Tenant shall have the right, as a permitted use of the Leased Premises, to engage in mariculture type activities in the Operations Zone, subject to compliance with applicable rules, regulations and laws of the State of South Carolina. Tenant shall obtain, at its sole cost, all necessary permits and authorizations from governmental authorities having jurisdiction over such activities. Tenant shall have the right to construct such improvements in the Operations Zone as may be necessary to conduct mariculture type activities in the Operations Zone.

M. Landlord expressly acknowledges that Tenant, as part of its permitted use in the Operations Zone, may conduct private parties in the Operations Zone.

In witness whereof, the Parties hereto have caused these presents to be executed in each entities' respective name and the seals to be affixed, on the date above written.



Landlord's Initials



Tenant's Initials

WITNESSES:

Sharon C. Raines
Stacy D. Bradshaw
[Signature]

WITNESSES

[Signature]
Karen B. [Signature]

**LESSOR:
BEAUFORT COUNTY OPEN LAND
TRUST**

By: [Signature]
It's President
Attest: [Signature]
It's Treasurer
Attest: [Signature]
It's Secretary

**LESSEE:
D&L SEAFOOD CORPORATION**

By: [Signature]
It's President
Attest: [Signature]

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STATE OF SOUTH CAROLINA)
)
) PROBATE
COUNTY OF BEAUFORT)

Personally appeared before me Sharon C. Raino, who first being duly sworn, states that they saw the within named William F. Moss, President ~~Dean Ford, Secretary~~ sign, seal and as their act and deed deliver the within written document, and that they with C. Scott Graker witnessed the execution thereof.

Sharon C. Raino

SWORN to before me this 9
day of January 2002. 2003

[Signature]
Notary Public for South Carolina
My Commission expires: June 25, 2012

STATE OF SOUTH CAROLINA)
)
) PROBATE
COUNTY OF BEAUFORT)

Personally appeared before me William F. Meischer III, who first being duly sworn, states that they saw the within named Larry Turner, President of D+L Services sign, seal and as their act and deed deliver the within written document, and that they with Karen Patterson witnessed the execution thereof.

[Signature]

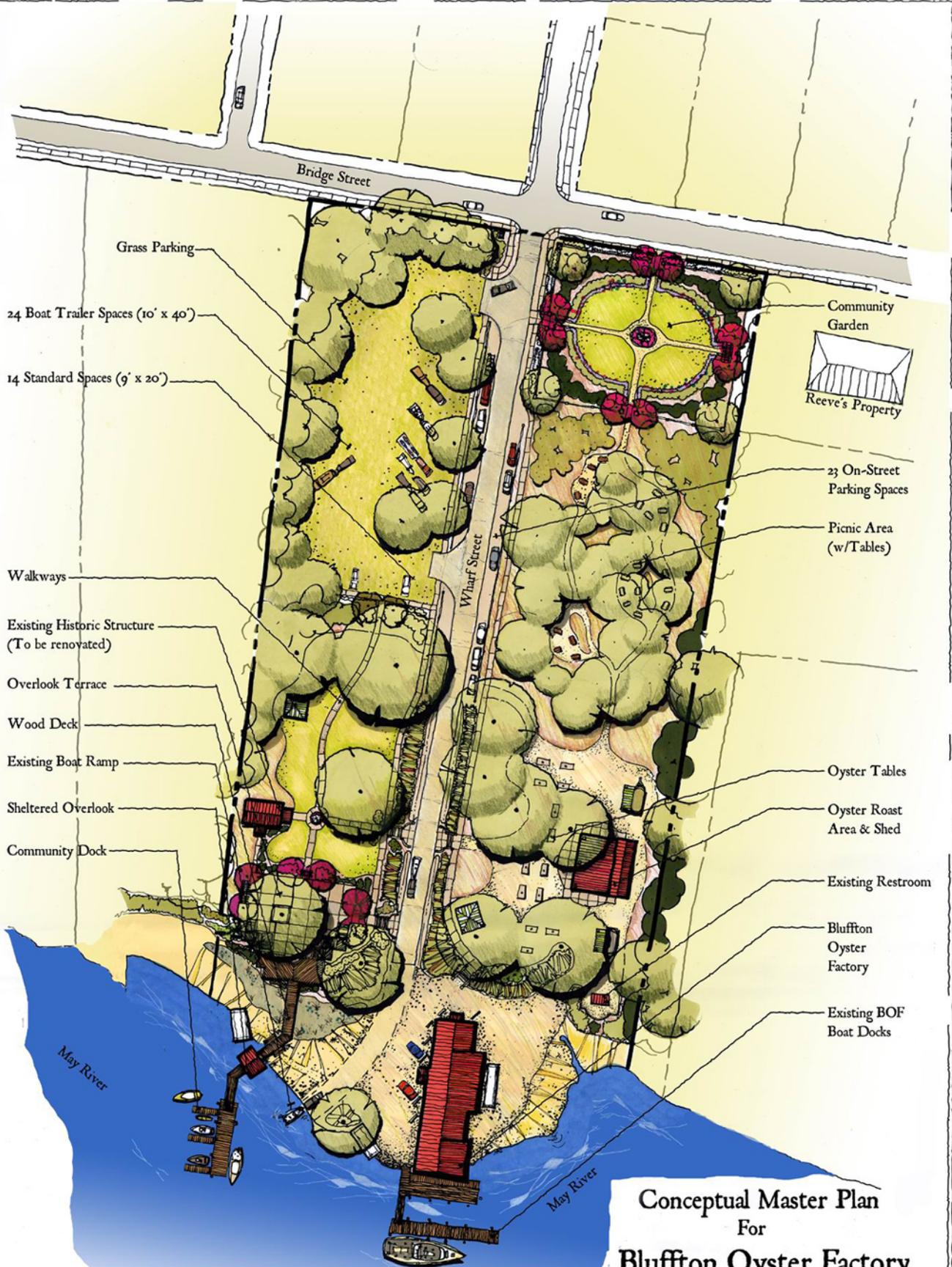
SWORN to before me this 30th
day of December 2002.

Karen B. Patterson
Notary Public for South Carolina
My Commission expires: 11/10/09

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[Signature]
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Exhibit B



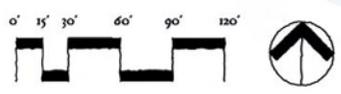
Grass Parking
 24 Boat Trailer Spaces (10' x 40')
 14 Standard Spaces (9' x 20')

Walkways
 Existing Historic Structure (To be renovated)
 Overlook Terrace
 Wood Deck
 Existing Boat Ramp
 Sheltered Overlook
 Community Dock

Community Garden
 Reeve's Property

23 On-Street Parking Spaces
 Picnic Area (w/Tables)

Oyster Tables
 Oyster Roast Area & Shed
 Existing Restroom
 Bluffton Oyster Factory
 Existing BOF Boat Docks



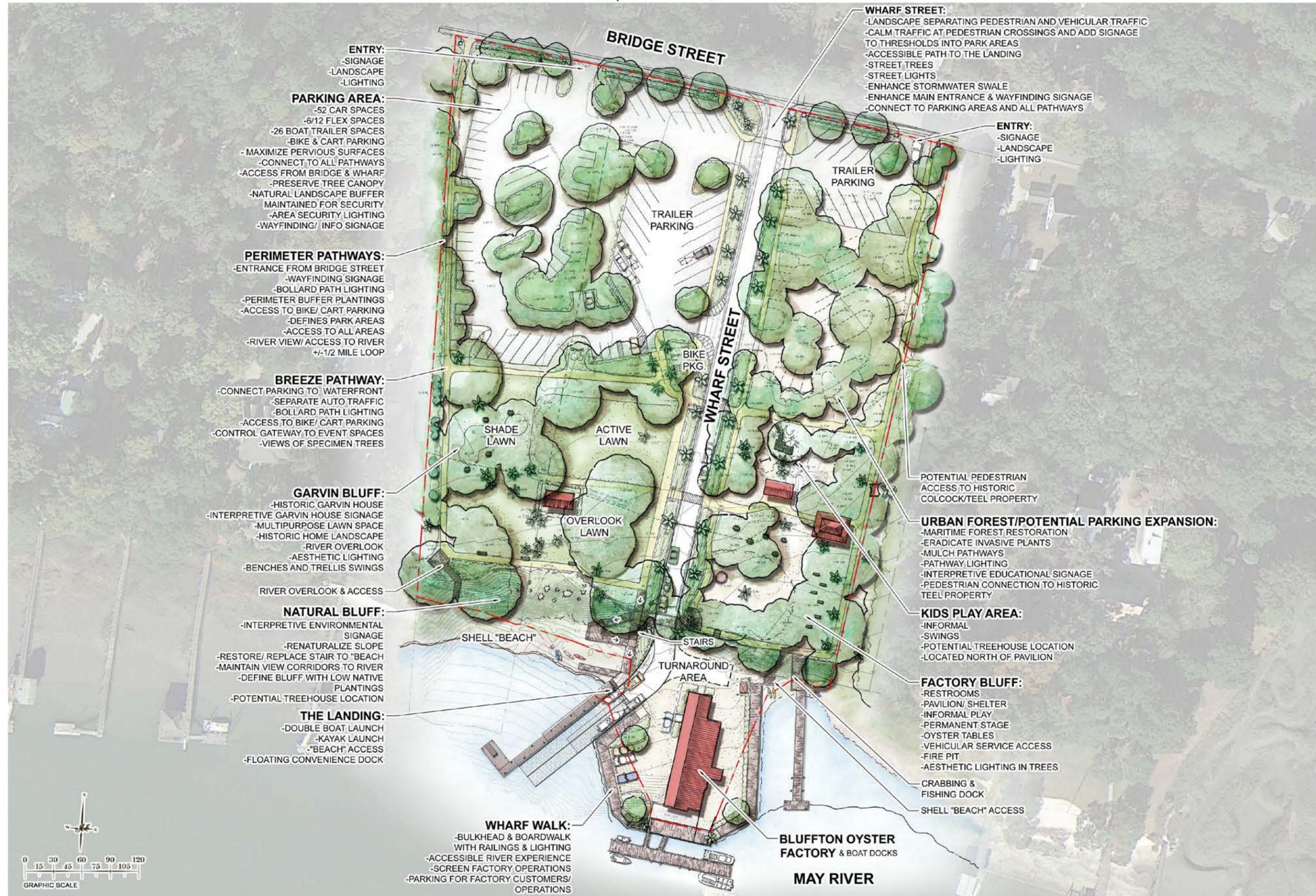
Conceptual Master Plan For Bluffton Oyster Factory

Town of Bluffton
 November 12, 2002



Master Plan

September 8, 2015



Oyster Factory Park - Bluffton, SC

