



# **The Town of Hilton Head Island Regular Town Council Meeting**

**October 1, 2013**

**4:00 P.M.**

## **AGENDA**

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**As a Courtesy to Others Please Turn Off All Mobile Devices During  
the Town Council Meeting**

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- 1) Call to Order**
- 2) Pledge to the Flag**
- 3) Invocation**
- 4) FOIA Compliance** – Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.
- 5) Proclamations and Commendations**
  - a. Fire Prevention Week
- 6) Approval of Minutes**
  - a. Town Council Meeting– September 17, 2013
- 7) Report of the Town Manager**
  - a. Town Manager’s Items of Interest
- 8) Reports from Members of Council**
  - a. General Reports from Council
  - b. Report of the Intergovernmental Relations Committee – George Williams, Chairman
  - c. Report of the Personnel Committee – Lee Edwards, Chairman
  - d. Report of the Planning & Development Standards Committee – John McCann, Chairman
  - e. Report of the Public Facilities Committee – Kim Likins, Chairman
  - f. Report of the Public Safety Committee – Marc Grant, Chairman
  - g. Report of the LMO Rewrite Committee – Kim Likins, Ex-Officio Member
- 9) Appearance by Citizens**
- 10) Unfinished Business**

None.

**11) New Business**

**a. Consideration of a Resolution – Hilton Head Plantation Drainage Contract**

Consideration of a Resolution of the Town Council of the Town of Hilton Head Island, South Carolina, authorizing the execution of that certain amended and restated drainage agreement and modification of access, drainage and maintenance easement and partial assignment with Hilton Head Plantation Property Owners Association, Inc. across property located in Hilton Head Plantation.

**12) Executive Session**

**a.** Land Acquisition

**b.** Legal Matters

**13) Adjournment**

# Proclamation

BY

## THE TOWN OF HILTON HEAD ISLAND

***WHEREAS**, the Town of Hilton Head Island is committed to ensuring the safety and security of all those living in and visiting our Town, and Hilton Head Island residents are responsive to public education measures identifying personal steps to increase their safety from fire, especially in their homes; and*

***WHEREAS**, fire is a serious public safety concern both locally and nationally, and homes are the locations where people are at greatest risk from fire; and*

***WHEREAS**, cooking is the leading cause of home fires, with two out of every five home fires starting in the kitchen, and unattended equipment being a factor in one-third of reported cooking fires; and*

***WHEREAS**, people should stay in the kitchen when frying food on the stovetop, keep a 3-foot kid-free zone around cooking areas, and keep anything that can catch fire away from stovetops; and*

***WHEREAS**, the 2013 Fire Prevention Week theme, “Prevent Kitchen Fires!” effectively serves to remind us during this Week and year-round to stay alert and use caution when cooking to reduce the risk of kitchen fires.*

***NOW, THEREFORE, I, Drew A. Laughlin, Mayor of the Town of Hilton Head Island, hereby proclaim that the week of October 6 - 12, 2013 shall be known as***

## ***FIRE PREVENTION WEEK***

*on Hilton Head Island, and urge all citizens to protect their homes and families by heeding the important safety messages of Fire Prevention Week 2013.*

***IN TESTIMONY WHEREOF**, I have hereunto set my hand and caused this seal of the Town of Hilton Head Island to be affixed this **First day of October, Two Thousand and Thirteen.***

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*Drew A. Laughlin, Mayor*

*Attest:*

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*Esther Coulson, Town Clerk*

# THE TOWN OF HILTON HEAD ISLAND

## REGULAR TOWN COUNCIL MEETING

**Date:** Tuesday, September 17, 2013

**Time:** 4:30 P.M.

**Present from Town Council:** Drew A. Laughlin, *Mayor*; Bill Harkins, *Mayor Pro Tem*, George Williams, Kim Likins, Lee Edwards, Marc Grant, John McCann, *Council Members*

**Present from Town Staff:** Steve Riley, *Town Manager*; Greg DeLoach, *Assistant Town Manager*; Charles Cousins, *Director of Community Development*; Lavarn Lucas, *Fire Chief*; Scott Liggett, *Director of Public Projects and Facilities/Chief Engineer*; Susan Simmons, *Director of Finance*; Jill Foster, *Deputy Director of Community Development*; Brad Tadlock, *Deputy Fire Chief – Operations*; Tom Fultz, *Director of Administrative Services*; Brian Hulbert, *Staff Attorney*; Bret Martin, *Deputy Director of Finance*; Jeff Buckalew, *Town Engineer*; Julian Walls, *Facilities Manager*; Darrin Shoemaker, *Traffic & Transportation Engineer*; Bryan McIlwee, *Assistant Town Engineer/Storm Water* Victoria Shanahan, *Accounting Manager*; Vicki Pfannenschmidt, *Executive Assistant*

**Present from Media:** Tom Barton, *Island Packet*

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### 1) CALL TO ORDER

Mayor Laughlin called the meeting to order at 4:30 p.m.

### 2) PLEDGE TO THE FLAG

### 3) INVOCATION

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

### 5) Proclamations and Commendations

None.

### 6) Approval of Minutes

#### a. Town Council Meeting– September 3, 2013

Mr. Harkins moved to approve. Mrs. Likins seconded. The minutes of the September 3, 2013 Town Council meeting we approved by a vote of 7-0.

### 7) Report of the Town Manager

#### a. Island Entry Beautification Project Proposal

Bruce Fairchild, Mark Baker and Leslie Richardson conducted a presentation concerning the proposed Hilton Head Island Entrance Beautification Project. They asked Council to consider some level of funding when preparing the budget for the coming year.

#### b. Presentation of the Certificate of Achievement for Excellence in Financial Reporting for the Fiscal Year ending June 30, 2012

Mayor Laughlin presented the Award to Susan Simmons, Director of Finance and Victoria Shanahan, Accounting Manager.

**c. Lemoyne Avenue – Public Meeting Results – Scott Liggett**

Mr. Liggett reviewed the results from the Public Hearing held on August 29. He noted the majority of the public present was against extending the road from South Forest Beach Drive to Cordillo Parkway for vehicular traffic connection. Mr. Williams suggested that due to public input against the extension of the road Council consider just improving what is there. Mr. Liggett stated the funding for the project as proposed is Traffic Impact Fees and if the project would be changed to road improvements they could not use that funding source. Discussion ensued concerning not completing the project and Mr. Riley said that the right of way was purchased with Traffic Impact Fees and if they choose not to do the project, they will have to look at the original source of payment and repay the funds. Mr. Edwards suggested giving the right of way back to the adjacent properties and have them maintain the property as a driveway. Mr. Williams stated he was against that option. After discussion, Mayor Laughlin stated further study needs to be completed before proceeding.

Mr. Liggett updated Council on the status of the shrimp boats that capsized in the waters close to the Island. After discussion, it was decided the item would be referred to the Public Safety Committee for review and a recommendation.

**d. Town Manager's Items of Interest**

Mr. Riley reported on some items of interest.

**e. August, 2013 Policy Agenda, Management Targets and CIP Updates**

Mr. Riley noted he was available for any questions concerning the updates that were included in the packet.

**8) Reports from Members of Council**

**a. General Reports from Council**

Mr. McCann asked if second reading of the proposed ordinance concerning the burning ban could be placed on the Town Council agenda for the October 1 Town Council meeting. After lengthy discussion, Mayor Laughlin said the Public Safety Committee will review issues concerning alternatives for elimination of yard debris.

Mr. Grant stated he recently attended an event at Hilton Head Island High School Visual and Performing Arts Center which was an exhibit for the Mitchelville Museum. He said it included the rich history of Hilton Head Island after the Civil War and was very informative and educational. He stated the materials used for the exhibit were on loan from the University of South Carolina. Mr. Grant emphasized the need for the materials to be kept on Hilton Head Island for all to benefit from the information and history. He encouraged Council to find some way for the materials have a permanent home on the Island. He proposed this as an item for discussion at the workshop scheduled later this year.

**b. Report of the Intergovernmental Relations Committee – George Williams, Chairman**

No report.

**c. Report of the Personnel Committee – Lee Edwards, Chairman**

No report.

**d. Report of the Planning & Development Standards Committee – John McCann, Chairman**

No report.

- e. Report of the Public Facilities Committee – Kim Likins, Chairman

No report.

- f. Report of the Public Safety Committee – Marc Grant, Chairman

No report.

- g. Report of the LMO Rewrite Committee – Kim Likins, Ex-Officio Member

Mrs. Likins stated the Committee is moving forward and an upcoming item for discussion is Tree Protection Regulation.

## 9) Appearance by Citizens

Mary Amonitti addressed Council concerning recycling at events held at Town parks.

## 10) Unfinished Business

### a. Second Reading of Proposed Ordinance 2013-15

Second Reading of Proposed Ordinance 2013-15 to amend the Municipal Code of the Town of Hilton Head Island by adding an exception for Public Safety personnel to be able to use electronic devices while operating a motor vehicle in the course and scope of their official duties, by amending Section 12-1-611 (c) of Chapter 1 of Title 12, Text Messaging; and providing for severability and an effective date.

Mr. Harkins moved to approve. Mr. McCann seconded. The motion was unanimously approved by a vote of 7-0.

### b. Second Reading of Proposed Ordinance 2013-16

Second Reading of Proposed Ordinance 2013-16 of the Town of Hilton Head Island, South Carolina establishing the rollforward millage required by Section 12-37-251, Code of Laws of South Carolina, 1976, As Amended; and providing for severability and an effective date.

Mr. Harkins moved to approve. Mr. Williams seconded. Mr. Williams expressed concern that the figures provided by the County were incorrect and would create future problems. The motion was approved by a vote of 6-1. (Mr. McCann opposed)

## 11) New Business

### a. Consideration of a Recommendation – Naming of Park

Consideration of a Recommendation that the Town Council of Hilton Head Island adopt an official name for the new park facility to be constructed at 133 Squire Pope Road with the name of the park to be as follows: **“Rowing and Sailing Center at Skull Creek Park.”**

Mr. Edwards moved to approve. Mrs. Likins seconded. Mr. Grant stated that the residents of the area have a concern that the proposed name does not reflect the community. He said they have requested this name be denied and proposed the name Squire Pope/Stoney Rowing and Sailing Community Park. He explained the request is due to the rich history and culture of the area and it is an opportunity for everyone to understand that it is not just a rowing and sailing center. Mr. Williams agreed with Mr. Grant. Veronica Miller, representative of Baygall, Grasslawn, Chaplin and Marshland, Spanish Wells, Jonesville and Squire Pope/Stoney POA's of Hilton Head Island explained the community support for rowing and sailing at the park along with the anticipation for crabbing, fishing, arts and crafts festivals, etc. that will take place at the location. She stated that with the proposed name the focus is on rowing and sailing and the community does not support the name. She suggested the park be

named Squire Pope/Stoney Rowing and Sailing Community Park. Dot Law, President of Marshland/Chaplin/Gardner POA spoke in support of Ms. Miller's request. The Mayor suggested the name of the park be Rowing and Sailing Center at Squire Pope Community Park. Various members of Council expressed appreciation concerning the time the Parks and Recreation Commission took to review and gather input concerning the proposed name and also stated they understood the community's request. After discussion, Mr. Harkins moved to amend the motion for the name of the park to be **Rowing and Sailing Center at Squire Pope Community Park**. Mrs. Likins seconded. Perry White and Lou Strayer spoke in support of the amended motion. The amended motion was approved unanimously by a vote of 7-0.

**b. Consideration of a Recommendation – Island Wide Beach Renourishment**

Consideration of a Recommendation that the Town Council of the Town of Hilton Head Island direct placement of sand as part of our next Island-wide Beach Renourishment Project to occur along a limited reach of shoreline just north of South Beach, between Alder Lane (in South Forest Beach) and the Folly along our Atlantic Oceanfront shoreline and between the Port Royal Beach House and Tattnall Place along the Port Royal Sound-front shoreline.

Mr. Harkins moved to approve. Mr. McCann seconded. Mrs. Likins stated that some of her constituents in the Folly Beach area asked that she convey concerns that the beach was getting too wide in certain areas. It was noted by Mr. Liggett and he assured Council there are no plans to place sand in the area of concern. The motion was unanimously approved by a vote of 7-0.

**c. Consideration of a Resolution – ZMA-130004 – Salty Fare**

Consideration of a Resolution by the Town Council of the Town of Hilton Head Island denying the application for Zoning Map Amendment ZMA130004 which requests an amendment to Chapter 4 of Title 16, "The Land Management Ordinance" (LMO), of the Municipal Code of the Town of Hilton Head Island, South Carolina, by amending Section 16-4-102, the Official Zoning Map specifically amending the allowed uses on 4.6 acres identified as Parcels 127, 128 and 089a on Beaufort County Tax Map 3 to include water-oriented embarkation facilities and other water-oriented uses.

Agenda item withdrawn by the applicant. Email attached.

**d. Consideration of a Resolution – ZMA130003 – Beach City Place**

Consideration of a resolution by the Town Council of the Town of Hilton Head Island denying the application for Zoning Map Amendment ZMA130003 which requests an amendment to Chapter 4 of Title 16, "The Land Management Ordinance" (LMO), of the Municipal Code of the Town of Hilton Head Island, South Carolina, by amending Section 16-4-102, the Official Zoning Map specifically rezoning 8.56 acres identified as Parcels 8, 336 through 342, and 344 through 375 on Beaufort County Tax Map 5 from RM-4, Low Density Residential to RM-12 Moderate to High Density Residential.

Agenda item withdrawn by the applicant. Letter attached.

**12) Executive Session**

Mr. Riley stated he needed an Executive Session for contractual matters pertaining to land acquisition including the possible sale of town-owned land; contractual matters pertaining to a request for a franchise agreement; and legal matters pertaining to amendments to the Hilton Head Plantation Master Drainage Agreement.

At 6:22 p.m. Mr. Harkins moved to go into Executive Session for the reasons given by the Town Manager. Mr. Williams seconded. The motion was unanimously approved by a vote of 7-0.

Mayor Laughlin called the meeting back to order at 6:45 p.m. and stated there was no business as a result of the Executive Session.

**13) Adjournment**

Mr. Williams moved to adjourn. Mr. McCann seconded. The meeting was adjourned at 6:46 p.m.

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Vicki L. Pfannenschmidt  
Executive Assistant

Approved:

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Drew A. Laughlin, Mayor





# Items of Interest

## October 1, 2013

### 1. Town News



As you are aware, 2013 is an important year in the history of the Town and Hilton Head Island. Captain William Hilton sighted Hilton Head Island in 1663 and the Town of Hilton Head Island was incorporated in 1983. The 350/30 Celebration week is underway with events scheduled through October 5, 2013.

The 350/30 Celebration Week will culminate with a Community Birthday Party on Coligny Beach on Saturday, October 5, 2013 from 12:00 p.m.-6:00 p.m.

Go to [www.celebrationhhi.org](http://www.celebrationhhi.org) for the full schedule of remaining events and details,

(Contact: Faidra Smith, Administration Manager/Public Information Coordinator, (843) 341-4640 or [faidras@hiltonheadislandsc.gov](mailto:faidras@hiltonheadislandsc.gov))

The *Cultural Planning Group*, the consultant contracted to draft a 10 year strategic plan for possible arts collaboration, will seek input from property owners in a community survey at <http://www.keysurvey.com/f/547624/142e/>. This survey will be available beginning October 3<sup>rd</sup> for the entire month. The survey will gauge the community's support for different types of cultural and performing arts, a vision for the arts, and willingness to fund the arts. Please participate in this survey and send us your thoughts!

(Contact Jill Foster, Deputy Director of Community Development at (843) 341-4694 or [jillf@hiltonheadislandsc.gov](mailto:jillf@hiltonheadislandsc.gov))

The Town of Hilton Head Island Preliminary Unaudited Financial Statements for the fiscal year ending June 30, 2013 and the Financial Statements for the period ending July 31, 2013, as well as the Financial Dashboards were posted on the Town's website on September 19, 2013. You can view them at [www.hiltonheadislandsc.gov](http://www.hiltonheadislandsc.gov)

(Contact: Susan Simmons, Director of Finance – 341-4645)

## 2. Noteworthy Events

- a) Some of the upcoming meetings at Town Hall:
- Planning Commission – October 2, 2013, 9:00 a.m.
  - Comprehensive Plan Committee – October 2, 2013, 10:00 a.m.
  - Public Safety Committee – October 7, 2013, 10:00 a.m.
  - Design Review Board – October 8, 2013, 1:15 p.m.
  - LMO Rewrite Committee – October 10, 2013, 8:30 a.m.
  - Parks and Recreation Commission – October 10, 2013, 3:30 p.m.
  - Town Council – October 15, 2013, 4:00 p.m.

(Meetings subject to change and/or cancellation. Please visit the Town of Hilton Head Island website at [www.hiltonheadislandsc.gov](http://www.hiltonheadislandsc.gov) for meeting agendas.

### 2013 Hilton Head Island Events

Wednesdays, thru October 30, 2013 9:00am-1:00pm	Farmers Market	Shelter Cove Community Park
Saturday, October 5, 2013 12:00pm-6:00pm	350/30 Island Celebration	Coligny Beach
Sunday, October 6, 2013 8:00am-1:00pm	Fire Prevention Pancake Breakfast	Fire Station 4 Squire Pope Road



## **MEMORANDUM**

**TO:** Stephen G. Riley, ICMA-CM, Town Manager  
**FROM:** Bryan McIlwee, PE, Assistant Town Engineer / Storm Water Manager  
**VIA:** Scott Liggett, PE, Director of Public Projects and Facilities / Chief Engineer  
Jeff Buckalew, PE, Town Engineer  
**DATE:** September 19, 2013  
**SUBJECT:** Revised Storm Water Agreement and Easement with Hilton Head Plantation

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### **Recommendation:**

Staff recommends that the Town enter into revised storm water maintenance and access agreements with Hilton Head Plantation Property Owners Association, Inc. ("HHPOA").

### **Summary:**

These revised agreements reflect the current standards being used on the acquisition of other PUD systems and contain a more accurate exhibit delineating the areas of our responsibilities. The Town will continue to use storm water utility fee revenues to provide maintenance and improvements on those systems in accordance with the agreement. As the Hilton Head Plantation systems have been accounted for in current inventories and budgets, staff does not recommend a rate increase to the storm water utility fee.

### **Background:**

After the creation of the Storm Water Utility, the Town offered to accept the maintenance responsibility of the storm water systems located within planned unit developments. In August 2008, HHPOA entered into a comprehensive storm water agreement with the Town. Since then, the current PUD drainage agreements have been improved and refined to more clearly define each party's roles and responsibilities. The Town approached HHPOA earlier this year requesting that revised agreements consistent with the other PUD's be executed to supersede the original. HHPOA concurred and agrees to execute the attached agreements.

### **Attachments:**

- HHPOA Amended and Restated Drainage Agreement
- HHPOA Modification of Access, Drainage and Maintenance Easement and Partial Assignment
- HHPOA Drainage Easement Exhibit (area of responsibility)

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF THAT CERTAIN AMENDED AND RESTATED DRAINAGE AGREEMENT AND MODIFICATION OF ACCESS, DRAINAGE AND MAINTENANCE EASEMENT AND PARTIAL ASSIGNMENT WITH HILTON HEAD PLANTATION PROPERTY OWNERS ASSOCIATION, INC. ACROSS PROPERTY LOCATED IN HILTON HEAD PLANTATION.**

WHEREAS, Hilton Head Plantation Property Owners Association, Inc. (“HHPPOA”) owns improved and unimproved real property and easements, and holds certain rights under covenants and restrictions affecting certain real property, located within Hilton Head Plantation; and

WHEREAS, Beaufort County, South Carolina adopted Ordinance 99-101 et seq., as amended, creating a Storm Water Utility with the power to impose Storm Water Service Fees on all residents of Beaufort County, South Carolina and which also provides that fees collected from within the municipal limits of the Town of Hilton Head Island, South Carolina (“Town”) are returned to the Town to be used for the purposes set forth in the Ordinance including the construction and maintenance of planned and existing infrastructure which collects and disposes of surface and storm water within the municipal limits of the Town; and

WHEREAS, HHPPOA desires for the Town to utilize Storm Water Service Fees to undertake the maintenance and improvement of the storm and surface water drainage system within Hilton Head Plantation to facilitate the flow of storm water drainage through and from areas within Hilton Head Plantation; and

WHEREAS, on August 6, 2008, the Town and HHPPOA entered into a “Drainage Agreement” and “Access, Drainage and Maintenance Easement” relating to certain real property of HHPPOA which, among other things, set forth the obligations of the parties as relates to the

performance of maintenance and related actions to the Drainage System located within Hilton Head Plantation, and to grant the necessary easement(s) in connection therewith to the Town; and,

WHEREAS, the Town and HHPPOA now wish to modify the “Drainage Agreement” and the “Access, Drainage and Maintenance Easement” for the purpose of including additional property into the included areas of the aforementioned documents and for revisions to language as contained within the aforementioned documents; and,

WHEREAS, it is necessary for the Town to obtain from HHPPOA an “Amended and Restated Drainage Agreement” and a “Modification of Access, Drainage and Maintenance Easement and Partial Assignment”, copies of which are attached hereto as Exhibit “A”; and

WHEREAS, the Town Council for the Town of Hilton Head Island, South Carolina has determined that it is in the best interests of the citizens and visitors of the Town of Hilton Head Island to undertake the actions stated above.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA:**

1. The Mayor and/or Town Manager are hereby authorized to execute and deliver an Amended and Restated Drainage Agreement and a Modification of Access, Drainage and Maintenance Easement and Partial Assignment in forms substantially similar to that which is attached hereto as Exhibit “A”; and
2. The Mayor and/or Town Manager are hereby authorized to take such other and further action as may be necessary to complete the actions authorized hereby.

**PASSED AND APPROVED BY THE TOWN COUNSEL THIS \_\_\_\_\_ DAY OF  
OCTOBER, 2013.**

\_\_\_\_\_  
**Drew Laughlin, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Victoria L. Pfannenschmidt, Acting Town Clerk**

**Approved as to form:**

\_\_\_\_\_  
**Gregory M. Alford, Town Attorney**

**Introduced by Council Member:\_\_\_\_\_**

**EXHIBIT "A"**

<b>STATE OF SOUTH CAROLINA</b>	)	<b>AMENDED AND RESTATED</b>
	)	<b>DRAINAGE AGREEMENT</b>
<b>COUNTY OF BEAUFORT</b>	)	

This Amended and Restated Drainage Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between Hilton Head Plantation Property Owners Association, Inc. having an address of 7 Surrey Lane, Hilton Head Island, SC 29926; and the Town of Hilton Head Island, South Carolina, having an address of One Town Center Court, Hilton Head Island, South Carolina, 29928.

**WITNESSETH**

WHEREAS, on August 6, 2008, the parties herein entered into a "Drainage Agreement" relating to certain real property of the Hilton Head Plantation Property Owners Association, Inc. located on Hilton Head Island, Beaufort County, South Carolina, which real property is more accurately and fully described in said "Drainage Agreement"; and,

WHEREAS, the purpose of said "Drainage Agreement", among other things, was to set forth the obligations of the parties as relates to the performance of maintenance and related actions to the Drainage System located within the included property; and,

WHEREAS, the parties herein wish to modify the "Drainage Agreement" for the purpose of including additional property into the included area and for revisions to language as contained within the original "Drainage Agreement"; and,

**EXHIBIT "A"**

WHEREAS, Hilton Head Plantation is a planned unit development lying and being within the Town of Hilton Head Island, Beaufort County, South Carolina; and,

WHEREAS, Hilton Head Plantation Property Owners Association, Inc. is the owner of improved and unimproved real property and easements within Hilton Head Plantation, in the Town of Hilton Head Island, South Carolina; and,

WHEREAS, Beaufort County, South Carolina, has adopted Ordinance 99-101, *et seq.*, as amended, creating a Storm Water Utility with the power to impose Storm Water Service Fees on all residents of Beaufort County, South Carolina, and which also provides that Storm Water Service Fees collected from within the municipal limits of the Town of Hilton Head Island, South Carolina, are returned to the Town of Hilton Head Island, South Carolina, less administrative fees, to be used for the purposes set forth in Ordinance 99-101, *et seq.*; and,

WHEREAS, the imposition and collection of Storm Water Service Fees results in a fund available to the Town of Hilton Head Island, South Carolina, for the construction and maintenance of existing and planned infrastructure which collects and disposes of surface and storm water within the municipal limits of the Town of Hilton Head Island, South Carolina; and,

WHEREAS, Hilton Head Plantation Property Owners Association, Inc. desires for the Town of Hilton Head Island, South Carolina, to utilize Storm Water Service Fees to undertake the maintenance and improvement of the storm



**EXHIBIT "A"**

and surface water drainage system within Hilton Head Plantation, consisting of, without limitation, drainage lagoons, canals, underground pipes, culverts, manholes, weirs, valves, gates, related equipment and related infrastructure, to facilitate the flow of storm water drainage through Hilton Head Plantation and from areas within Hilton Head Plantation; and,

WHEREAS, Hilton Head Plantation Property Owners Association, Inc. has agreed to grant access, drainage and maintenance easements to the Town of Hilton Head Island, South Carolina, in order to facilitate the maintenance and improvement of the storm and surface water drainage system within certain areas of Hilton Head Plantation.

NOW, THEREFORE, know all men by these presents, Hilton Head Plantation Property Owners Association, Inc. and the Town of Hilton Head Island, South Carolina, for and in consideration of the sum of One and No/100 (\$1.00) Dollar, each paid to the other at and before the execution and delivery of this Agreement, the receipt and sufficiency whereof is acknowledged, the Parties hereto agree as follows:

1. **Defined Terms:** As used herein, the following terms shall mean:

(a) *Agreement:* This "Drainage System Maintenance Agreement".

**EXHIBIT "A"**

(b) *Association:* Hilton Head Plantation Property Owners Association, Inc. with the address first above written, a South Carolina not-for-profit corporation.

(c) *Casualty:* The destruction of all or any part of the Drainage System through a natural or other disaster.

(d) *Covenants:* The Amended Declaration of Covenants, Conditions, and Restrictions for Hilton Head Plantation Subdivision and Provisions for the Hilton Head Plantation Property Owners Association, Inc. recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Official Record Book 936 at Page 746.

(e) *Drainage System:* The existing system of ditches, drains, lagoons, pipes, culverts, structures, facilities and any related storm water improvements, lying within the limits of the easement areas as depicted on the map attached hereto as Exhibit "A" which facilitate the collection, storage and conveyance of storm and surface water runoff through and from within Hilton Head Plantation. For purposes of this Agreement, the Drainage System shall not include any bridges, docks, retaining walls, road or pathway asphalt, or structural bulkheads.

(f) *Drainage System Deficiency:* A Drainage System

Deficiency is anything which prevents, impairs or impedes the adequate flow or drainage of storm and surface water through the Drainage System, areas needing improvements to facilitate the adequate flow of storm and surface water through the Drainage System, soil erosion, or any structural inadequacies. Drainage System Deficiencies do not include the appearance or appeal of the lagoons, banks of lagoons, landscaping, drains, canals, or other visible components of the Drainage System, including, but not limited to, structures, bridges, bulkheads, pipes, culverts, valves and gates. Drainage System Deficiencies do not include the introduction of pollution or pollutants into the Drainage System from any source.

(g) *Emergency:* A blockage, structural or mechanical failure, collapse or other sudden catastrophic event affecting any part of the Drainage System which prevents the flow of storm and surface water through all or any part of the Drainage System, or which otherwise results in an imminent peril to life or property within Hilton Head Plantation.

(h) *Hilton Head Plantation:* A planned unit development lying and being on Hilton Head Island, Beaufort County, South Carolina,

**EXHIBIT “A”**

which is shown and described on the map attached as Exhibit “B”

hereto.

(i) *Storm Water Service Fees:* The fees collected by Beaufort County, South Carolina, under the authority of Beaufort County Ordinance 99-101, *et seq.*, as amended, and which are remitted by Beaufort County, South Carolina, to the Town of Hilton Head Island, South Carolina; or any similar fee, however denominated, imposed and collected by any subsequent or successor Storm Water Utility operated by The Town of Hilton Head Island, South Carolina, under the authority of Ordinance Number 2002-43.

(j) *Storm Water Project Prioritization and Annual Budget Process:* The Town shall at all times maintain a current, prioritized list of all known Drainage System Deficiencies within the Town limits that qualify for service using Storm Water Fees. Prior to each fiscal year, the Town shall establish an annual Storm Water budget which defines all revenues and expenditures associated with the Storm Water Fees. This budget shall include those known projects intended to be completed within that fiscal year.

(k) *Town:* The Town of Hilton Head Island, South Carolina.

**EXHIBIT "A"**

2. **Grant of Easements:** Simultaneous with the execution and delivery of this Agreement, the Association shall grant a "Modification of Access, Drainage and Maintenance Easement and Partial Assignment" to the Town to allow the Town to access, maintain, improve and utilize the Drainage System within Hilton Head Plantation, with said easement being in the form attached hereto as Exhibit "C"

3. **Upkeep and Maintenance of Drainage System:** Upon the execution and delivery of this Agreement and the Access, Drainage and Maintenance Easement, the Town shall be responsible for any improvement, repair or maintenance necessary to correct any Drainage System Deficiency under the terms and conditions of this Agreement.

4. **Procedure for Town's Maintenance of Drainage System:** The Parties acknowledge that the Town intends to provide for the maintenance of the Drainage System and the correction of identified Drainage System Deficiencies, other than those caused by an Emergency or Casualty, through the development of its Storm Water Project Prioritization and Annual Budget Process. Other than in the case of an Emergency or Casualty, as described in Articles 7 and 8 below, the Parties agree to the following procedure for the Town's improvement, repair and maintenance of the Drainage System:

- (a) *Identifying Drainage System Deficiencies:* The Association shall identify any Drainage System Deficiencies.

**EXHIBIT “A”**

(b) *Schedule for Submission:* The Association shall submit its or their written description of all known or perceived Drainage System Deficiencies to the Town Storm Water Administrator, describing the nature, location and cause, if known, of each Drainage System Deficiency, as well as potential solutions and preliminary cost estimates. Drainage System Deficiencies that are reported to the Town, or which are discovered by the Town but not identified by the Association, by the end of any calendar year will be considered in the development of the Storm Water Project Prioritization and Annual Budget Process for the following fiscal year. The Town shall submit to the Association by the end of any calendar year, a written description of any Drainage System Deficiencies identified by the Town through maintenance activity or inspections during that year.

(c) *Completion of Maintenance:* The Town shall develop a Storm Water Project Prioritization and Annual Budget Process that will address the identified Drainage System Deficiencies as follows:

(i) The Town shall determine the scope and extent of the improvement, repair or maintenance that is necessary to correct any Drainage System Deficiencies, and the means, methods and materials needed to accomplish the same.

**EXHIBIT “A”**

(ii) Determine the priority of the correction of the Drainage System Deficiencies and schedule the improvement, repair or maintenance to correct the Drainage System Deficiencies for a specific year within the Storm Water Project Prioritization and Annual Budget Process. The determination of the priority, scheduling and funding of the correction of Drainage System Deficiencies shall be made by the Town, taking into account the following:

(A) The availability and amount of revenue from bonds or Storm Water Service Fees in any given fiscal year;

(B) All other projects, or requested improvements, repair and maintenance that are to be funded with Storm Water Service Fees.

(iii) Complete the work necessary to correct the Drainage System Deficiencies in the fiscal year as determined by the Town as a part of the Storm Water Project Prioritization and Annual Budget Process, unless emergency projects alter the prioritization such that funds are insufficient to correct all drainage system deficiencies as intended within the same fiscal year.

**EXHIBIT "A"**

(d) Other than in the case of an Emergency, the Town and the Association shall mutually agree in writing as to the scheduling of any work to be performed hereunder in Hilton Head Plantation in advance of the commencement of the work.

(e) The Association shall be solely responsible for the notification of its owners and guests regarding any Town maintenance or emergency work that may disrupt normal activities.

(f) The Town cannot guarantee that the amount of available Storm Water Service Fees, the number of projects to be funded with Storm Water Service Fees in any given fiscal year, and events such as weather related emergencies and drainage system failures in other parts of Hilton Head Island will not cause delays in the correction of Drainage System Deficiencies within Hilton Head Plantation and elsewhere. The parties acknowledge that the Town's determinations with respect to the priority, funding and timing of the correction of any Drainage System Deficiency shall be final.

**5. Further Obligations of Hilton Head Plantation Property Owners Association, Inc.:**

The Association agrees that during the term or any renewal term of this Agreement, it shall take no action which obstructs or impedes the flow of storm



**EXHIBIT "A"**

and surface water through the Drainage System; provided, however, that to the extent the Association has a continuing obligation under the Covenants to repair and maintain various improvements located within the Common Properties and/or Recreational Areas (as such terms are defined in the Covenants and which Common Properties and/or Recreational Areas may include lagoons and lagoon banks, roads, pathways, utilities, etc.), this Agreement is not intended to in any way restrict or limit the Association from taking reasonable actions to perform said obligations.

6. **Payments as Current Expense of Town:** Any payments to be made by the Town hereunder shall be made from Stormwater Service Fees as budgeted for by the Town in any given fiscal year. The Town and the Association intend that the payment obligations of the Town shall constitute a current expense of the Town and shall not in any way be construed to be a debt of the Town in contravention of any applicable constitutional or statutory limitations concerning indebtedness of the Town, nor shall anything contained herein constitute a pledge of general tax revenues, funds, money or credit of the Town.

7. **Emergency:** The Parties agree that in the event of an Emergency, the following procedure shall apply:

- (a) *Responsibilities of the Association:* The Association shall take such steps as may be necessary to secure any area affected by

**EXHIBIT "A"**

the Emergency. The Association shall notify the Town as soon as is practical after discovery of the Emergency.

(b) *Town Responsibilities:* Upon receipt of such notification from the Association, the Town shall determine the scope and extent of the work that is necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same. The Town shall correct or repair the damage caused by the Emergency as soon as is practical, taking into account the threat presented by the Emergency, the cause of the Emergency or the existence of any general emergency affecting the Town and availability of funding. The Town may seek reimbursement for any costs incurred by the Town as a result of any Emergency from Storm Water Service Fees.

8. **Casualty:** The Parties agree that in the event of a Casualty, the following procedure shall apply:

(a) *Agreement Not Terminated:* This Agreement shall remain in full force and effect.

(b) *Design of Drainage System:* The Town shall produce engineering and design plans at its expense for any necessary reconstruction of the Drainage System.

**EXHIBIT "A"**

(c) *Approval of Plans:* The engineering and design plans must be approved by the Association, prior to any reconstruction of the Drainage System. In the event such reconstruction requires work outside of the Easement limits as depicted in Exhibit "A," the parties agree to modify the Access, Drainage and Maintenance Easement and/or any amendments or modifications thereof by a written agreement to be recorded in the Office of Register of Deeds for Beaufort County, South Carolina increasing the Easement areas as reasonably necessary to accommodate such reconstruction and the Association agrees to grant any temporary license allowing the Town temporary access to those Common Areas of Hilton Head Plantation reasonably necessary to accommodate such reconstruction.

(d) *Reconstruction of Drainage System:* Following the approval of the engineering and design plans and specifications by the Association and the completion of an Access, Drainage and Maintenance Easement Amendment and any temporary license agreement as set forth above in subsection (c), the Town shall complete the reconstruction of the Drainage System as soon as is practical, taking into account the threat presented by the cause of the Casualty, the existence of any general emergency affecting the

**EXHIBIT "A"**

Town and availability of funding. The Town may seek reimbursement for any costs incurred by the Town as a result of any Casualty from Storm Water Service Fees, bond, or other government aid and assistance programs.

**9. Maintenance of Drainage System by Hilton Head Plantation**

**Property Owners Association Inc.:** Nothing herein shall prohibit the Association from performing any improvement, repair or maintenance necessary to correct or repair any Drainage System Deficiency in advance of the time that any such work is scheduled as a part of the Town's Storm Water Project Prioritization and Annual Budget Process, in the event that the Association determines that it is in its interest to do so. Other than in the case of an Emergency (which is addressed in Article 10, below), the Association shall be entitled to reimbursement for any such work from Stormwater Service Fees, in the fiscal year that such work is scheduled to be done as a part of Town's Storm Water Project Prioritization and Annual Budget Process, for the cost of any such work upon compliance with the following;

(a) The Association shall submit its plans, quantities, and specifications for any improvement, repair or maintenance necessary to correct or repair any Drainage System Deficiency.

(b) Unless the Town determines that:

**EXHIBIT "A"**

- (i) The proposed improvement, repair or maintenance does not correct an existing Drainage System Deficiency; or,
  - (ii) The scope of the proposed improvement, repair or maintenance exceeds what is necessary to correct an existing Drainage System Deficiency, the Town, through authorized staff, shall grant its written approval.
- (c) The Association shall bid the work in accordance with the Town's Procurement Code, § 11-1-111, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983), as the same may be amended from time to time, only upon receipt of the Town's written approval.
- (d) Any changes in the agreed scope of work resulting in additional work or cost to the Town must be approved in writing by the Town prior to commencement of any additional work.
- (e) The Association shall notify the Town within forty-eight (48) hours of the commencement of work and at any key junctures of the work whereas the Town may need to inspect the work.
- (f) Upon completion of the work as approved by the Town, The Association shall submit its request for payment to the Town, which shall detail the work done and the payments made, and be accompanied by any required test reports, construction data /

**EXHIBIT “A”**

measurements or as-built surveys, and its written certification that the work was completed in accordance with the approved plans and specifications.

(g) The Town shall thereafter budget funds for the payment of the reimbursement to the Association from Storm Water Service Fees in the fiscal year that the work is scheduled for completion in the Town’s Storm Water Project Prioritization and Annual Budget Process.

10. **Emergency Work by the Association:** In the event that the Town is unable to repair or correct the damage caused by an Emergency in a time frame that is acceptable to the Association, the following shall apply:

(a) The Association shall consult with the Town to determine a cost efficient scope and extent of the work that is necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same.

(b) The Association shall complete the work that is necessary to repair or correct the damage caused by the Emergency.

(c) Upon completion of the work, the Association shall submit its or their request for payment to the Town, which shall detail the work performed and the cost for the same, and be accompanied by any required test reports, construction data / measurements or as-

**EXHIBIT "A"**

built surveys, with a written certification that the work was necessary to repair or correct the damage caused by an Emergency.

(d) Within one (1) fiscal year following the completion of the work by the Association necessary to repair or correct the damage caused by the Emergency, the Town shall budget funds for the payment of the reimbursement to the Association and shall pay the same in accordance with the approved budget.

11. **No Guarantees Regarding Flooding:** The Association acknowledges that the Town's performance of its obligations under this Agreement does not guarantee or insure that property within Hilton Head Plantation will be free of events of flooding or erosion, and that the Town does not represent or warrant to the Association that the performance of the Town's obligations under this Agreement will operate to prevent events of flooding or erosion within Hilton Head Plantation.

12. **Waiver of Stormwater Service Fee Credit:** Upon the execution and delivery of this Agreement, and for and during the term or any extensions hereof, the Association acknowledges it shall not be entitled to receive and hereby waives any Stormwater Service Fee Credit from Beaufort County or the Town with respect to any real property located within the limits of the PUD, as indicated on the map attached hereto as Exhibit "B", for and during the term of this Agreement or any renewal of this Agreement.

**EXHIBIT "A"**

13. **Term:** This Agreement shall remain in place for a period of Five (5) year(s), and shall renew automatically for successive one (1) year terms thereafter, unless either Party notifies the other, in writing, of its intention to terminate this Agreement. Any such notice shall be delivered more than one hundred and twenty (120) days prior to the end of the Town fiscal year (June 30) at the end of the then-current term in which such Party wishes to terminate. Upon delivery of such notice, this Agreement shall terminate on July 1 of the calendar year in which the notice is delivered. The parties shall thereafter execute and deliver such documents as may be necessary to cancel the Access, Drainage and Maintenance and Construction Easements delivered pursuant to this Agreement.

14. **Representation and Warranties of Hilton Head Plantation  
Property Owners Association Inc.**

The Association represents and warrants:

- (a) As is shown by the Resolutions of the Board of Directors of the Association attached hereto as Exhibit "C", the Association represents that it has full authority to execute, deliver and perform this Agreement and to execute and deliver the Access, Drainage and Maintenance and Construction Easement to be delivered pursuant to this Agreement.



**EXHIBIT "A"**

(b) That it is not now a party to any litigation affecting the property burdened by the easements herein which could impair the obligations of the Association under this Agreement or the easements, and the Association knows of no litigation or threatened litigation affecting their ability to grant the easements.

(c) That as to any pipes or other portions of the Drainage System as shown on Exhibit A hereto which are located in whole or in part on private residential lots (i.e. not within golf course, common area or open space parcels), the Association has full authority the Covenants to convey and/or assign the rights contemplated in this Agreement and the Access, Drainage and Maintenance Easement and Partial Assignment and/or any amendments or modifications thereof, and the Association specifically designates the Town as "designee" of the Association pursuant to the Covenants and the rights contemplated in the aforementioned documents.

**15. Town Representation and Warranties:** The Town represents and warrants to the Association:

(a) As is shown by the Resolution of the Town that is attached hereto as Exhibit "D", the Town represents that it has the power

**EXHIBIT "A"**

and authority to enter into this Agreement and complete its obligations hereunder; and,

(b) That it is not now a party to any litigation which could impair the obligations of the Town under this Agreement, and the Town knows of no litigation or threatened litigation affecting its ability to perform hereunder.

16. **Taxes:** The Association shall pay, prior to delinquency, all taxes on Association properties within Hilton Head Plantation burdened by the easements granted under this Agreement. Should the Association fail to pay said taxes prior to delinquency, then the Town may pay said taxes and the Association shall reimburse the Town for such tax payment within fifteen (15) days of the Town's notification to the Association of its tax payment along with a copy of the Town's tax payment receipt.

17. **Default:** The Town and the Association agree that in the event of a default or breach of any provision or term of this Agreement, the non-defaulting party or parties shall give written notice to the defaulting party or parties of the default or breach. In the event that the defaulting party or parties fail to cure the default or breach within thirty (30) days of the date of the written notice specifying the default or breach, then the non-defaulting party or parties shall be entitled to pursue any remedy at law or in equity against the defaulting party or parties, including but not limited

to an action for damages, injunction or specific performance of this Agreement.

18. **Attorney's Fees:** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default or misrepresentation in connection with any of the provisions or terms of this Agreement, the prevailing party or parties shall be entitled to recover its or their reasonable attorney's fees and any costs incurred as a result of any such action or proceeding, whether incurred before the commencement of suit or after the commencement of suit, and including appellate proceedings, in addition to any other relief to which the prevailing party or parties is or are entitled.

19. **General Provisions:**

(a) *Binding Effect:* This Agreement shall inure to the benefit of and be binding upon the Association and the Town, and their respective successors and assigns.

(b) *Amendment, Changes and Modifications:* Except as is otherwise provided herein, this Agreement may not be effectively modified, amended, changed or altered without the written consent of the Town and the Association.

(c) *Severability:* In the event that any term or provision of this Agreement shall be held to be invalid or unenforceable by any court

**EXHIBIT "A"**

of competent jurisdiction, such holding shall not invalidate or render unenforceable any other term or provision hereof.

(d) *Execution in Counterparts:* This Agreement may be simultaneously executed in several counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument.

(e) *Applicable Law:* This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

(f) *Captions:* The captions or headings used herein are for convenience only and in no way define, limit, expand or describe the scope or intent of any term or provision of this Agreement.

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

(h) *No Third Party Beneficiaries:* The Town and the Association affirmatively represent that this Agreement is made solely for the benefit of the Parties hereto and their respective successors and assigns and not for the benefit of any third party who is not a signature party hereto. It is the express intent of the Town and the Association that no other party shall have any

**EXHIBIT "A"**

enforceable rights hereunder, or any right to the enforcement hereof, or to any claim for damages as a result of any alleged breach hereof.

(i) *Notices:* All notices, applications, requests, certificates or other communications required hereunder shall be sufficiently given and shall be deemed given on the date when such is delivered in person, or deposited in the United States Mail, by regular first class mail, postage prepaid, at the following addresses, or at such other address as may be designated, in writing, by the Parties:

To the Town:                   The Town of Hilton Head Island,  
South Carolina  
Stephen G. Riley, Town Manager  
One Town Center Court  
Hilton Head Island, SC 29928

To the Association:       Hilton Head Plantation Property  
Owners Association, Inc.  
T. Peter Kristian, General Manager  
7 Surrey Lane  
Hilton Head Island, SC 29926

(j) *No Waiver:* No failure of any Party hereto to exercise any power or right given to such Party hereunder, or to insist on strict compliance by any other Party of its obligations hereunder, and no custom or practice of the Parties at variance with the terms and

**EXHIBIT "A"**

provisions hereof shall constitute a waiver of any Party's right to thereafter demand strict compliance with the terms of this Agreement.

(k) *Further Assurances and Corrective Documents:* The Town and the Association agree to do, execute, acknowledge, deliver or cause to be done all such further acts as may be reasonably determined to be necessary to carry out this Agreement and give effect to the terms and provisions hereof. The Town and the Association agree that each shall, upon request, execute and deliver such other or further or corrective documents as may be reasonably determined to be necessary to carry out this Agreement and each of the terms and provisions hereof.

(l) *This Agreement shall control:* This document shall fully replace the "Drainage Agreement" between the parties herein, dated August 6, 2008. If there are any discrepancies between said previous agreement and this agreement, the provisions of this agreement shall control.

(m) *Incorporation of WHEREAS clauses:* Each and every "WHEREAS" clause is incorporated herein, as if set forth verbatim.

**EXHIBIT "A"**

IN WITNESS WHEREOF, The Town of Hilton Head Island, South Carolina; and Hilton Head Plantation Property Owners Association Inc. by and through their duly authorized officers, have executed and delivered this Agreement as of this \_\_\_\_ day of \_\_\_\_\_, 2013.

WITNESSES:

HILTON HEAD PLANTATION  
PROPERTY OWNERS ASSOCIATION, INC.

\_\_\_\_\_

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

Its: \_\_\_\_\_

\_\_\_\_\_

Attest: \_\_\_\_\_

\_\_\_\_\_

Its: \_\_\_\_\_

THE TOWN OF HILTON HEAD  
ISLAND, SOUTH CAROLINA

\_\_\_\_\_

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

Drew A. Laughlin, Mayor

\_\_\_\_\_

Attest: \_\_\_\_\_

Stephen G. Riley, Manager

**CONTINUATION OF EXHIBIT "A"**

<b>STATE OF SOUTH CAROLINA</b>	)	<b>MODIFICATION OF ACCESS,</b>
	)	<b>DRAINAGE AND MAINTENANCE</b>
<b>COUNTY OF BEAUFORT</b>	)	<b>EASEMENT AND PARTIAL</b>
	)	<b>ASSIGNMENT</b>

WHEREAS, on August 6, 2008, the Grantor herein and the Town of Hilton Head Island, South Carolina, entered into an "Access, Drainage and Maintenance Easement" relating to certain real property of the Grantor located on Hilton Head Island, Beaufort County, South Carolina, which real property is more accurately and fully described in said "Access, Drainage and Maintenance Easement"; and,

WHEREAS, said "Access, Drainage and Maintenance Easement" was recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 2755 at Page 1238; and,

WHEREAS, the purpose of said "Access, Drainage and Maintenance Easement", among other things, was to grant the Town of Hilton Head Island, South Carolina, an easement over and upon Grantor's property or property rights assigned to Grantor for the purpose of performing maintenance and related actions to the Drainage System located within the included property; and,

WHEREAS, the Grantor and the Town of Hilton Head Island, South Carolina, wish to modify the "Access, Drainage and Maintenance Easement" for the purpose of including additional property into the easement area and for revisions to language as



**CONTINUATION OF EXHIBIT "A"**

contained within the original "Access, Drainage and Maintenance Easement".

NOW, THEREFORE, know all men by these presents, that Hilton Head Plantation Property Owners Association, Inc. (Attn. General Manager), 7 Surrey Lane, Hilton Head Island, SC, 29926 and The Town of Hilton Head Island, South Carolina, One Town Center Court, Hilton Head Island, SC, 29928, for and in consideration of the sum of One and No/100 (\$1.00) Dollar, each paid to the other at and before the execution and delivery of this Modification of Access, Drainage and Maintenance Easement and Partial Assignment, the receipt and sufficiency whereof is acknowledged, agree as follows:

1. Defined Terms: As used herein, the following terms shall mean:
  - (a) *Association*: Hilton Head Plantation Property Owners Association, Inc.
  - (b) *Covenants*: The Amended Declaration of Covenants and Restrictions for Hilton Head Plantation Subdivision and Provisions for the Hilton Head Plantation Property Owners Association, Inc. recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 936 at Page 746.
  - (c) *Drainage System*: The existing system of ditches, drains, lagoons, pipes, culverts, structures, facilities and any related storm water improvements, lying within the limits of the Drainage Easement Areas as shown on the attached Exhibit "A" which facilitate the collection, storage and conveyance of storm and surface water runoff through and from

**CONTINUATION OF EXHIBIT "A"**

within Hilton Head Plantation. For purposes of this Agreement, the Drainage System shall not include any bridges, docks, retaining walls, road or pathway asphalt, or structural bulkheads.

(d) *Emergency*: A blockage, structural or mechanical failure, collapse or other sudden catastrophic event affecting any part of the Drainage System which prevents the flow of storm and surface water through all or any part of the Drainage System, or which otherwise results in an imminent peril to life or property within Hilton Head Plantation.

(e) *Setback*: An area measured inward from the property line, right-of-way line or a specified line defining the limits within which no structure not otherwise authorized shall be located, per Sec 16-10-201 Town of Hilton Head Island Land Management Ordinance, rev 01/15/08 Ordinance 2008-1 as may be amended.

(f) *Hilton Head Plantation*: A planned unit development lying and being on Hilton Head Island, Beaufort County, South Carolina, which is shown and described within the area detailed on the map attached as Exhibit "B" hereto.

(g) *Permanent Structure*: Any structure, including, but not limited to, the following: buildings (including sheds), walls, and other masonry structures, tennis courts, and swimming pools.

(h) *Town*: The Town of Hilton Head Island, South Carolina.

2. *Grant of Easements*: The Association does hereby grant, transfer, sell and convey

**CONTINUATION OF EXHIBIT "A"**

to the Town, and its agents, assigns, employees and contractors, and create and establish for the benefit of the Town, the following easements:

(a) A non-exclusive Access Easement on, over and across any roads and streets within Hilton Head Plantation, and on, over and across any property owned by The Association, encumbered by all or any part of the Drainage System. This Access Easement includes a non-exclusive and partial assignment of any and all easement rights for access held by the Association, and/or specifically designates the Town as a "designee" of the grantor, under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within Hilton Head Plantation and upon which any part of the Drainage System lies or passes on, across, under or through.

(b) A non-exclusive Maintenance Easement on, under, over, through and across any property of The Association, encumbered by all or any part of the Drainage System. This Maintenance Easement includes a non-exclusive and partial assignment of any and all easement rights for maintenance, construction, or otherwise, held by The Association, and/or specifically designates the Town as a "designee" of the grantor, under the Covenants or any other recorded declaration of covenants and restrictions or recorded easements over property that The Association does not own within Hilton Head Plantation and upon which any part of the Drainage

**CONTINUATION OF EXHIBIT "A"**

System lies or passes on, across, under or through. This Maintenance Easement shall include all facilities or structures directly related to the collection, storage and conveyance of storm and surface water now or hereafter existing within Hilton Head Plantation, and sufficient property beside or over any part of the Drainage System as shown on Exhibit "A" to allow for excavation and any other work necessary to improve, repair or maintain the Drainage System as allowable under the Covenants.

(c) A non-exclusive Drainage Easement for the conveyance of any storm and surface water originating from within or without the boundaries of Hilton Head Plantation through the Drainage System, at such rates and in such amounts as may occur from time to time.

(d) This Drainage Easement includes a non-exclusive and partial assignment of any and all easement rights for drainage held by The Association, and/or specifically designates the Town as a "designee" of the grantor, under the Covenants or any other recorded declaration of covenants and restrictions or recorded easements over property that the Association does not own within Hilton Head Plantation and upon which any part of the Drainage System lies or passes on, across, under or through; provided however, that the Town shall provide timely written notification to the Association of any potentially disruptive improvements and/or modifications to the systems conveying storm and surface water originating without the boundaries of Hilton Head Plantation and through

**CONTINUATION OF EXHIBIT "A"**

the Hilton Head Plantation Drainage System.

3. This Access, Drainage and Maintenance Easement is granted and accepted subject to the following:

(a) The Town agrees that the use of the easements granted herein shall be restricted to the hours of 7:00 o'clock, A. M., to 5:00 o'clock, P. M., Monday through Friday excluding public holidays, except in the event of an Emergency.

(b) Other than in the case of an Emergency, the Town and The Association shall determine the scheduling of any work to be performed hereunder, on its or their property, in advance of the commencement of the work.

(c) This Access, Drainage and Maintenance Easement and Assignment is conveyed subject to all other easements, licenses, and conveyances of record, the limitations and reservations of rights under the Covenants and is subject to the rights herein reserved by The Association, or any of them, their successors and assigns, to utilize their property at any time, in any manner, and for any purpose, provided, however, that such use by the Association shall not be inconsistent with nor prevent the full utilization by the Town of the rights and privileges granted herein.

(d) The Town agrees to plan, lay out, and execute or build improvements, repairs and maintenance of the Drainage System, and further agrees that the Town's exercise of the rights granted in this Access,

**CONTINUATION OF EXHIBIT "A"**

Drainage and Maintenance Easement shall be under the exclusive control of the Town and that the Town shall at all times comply with all applicable laws, rules, codes, and regulations.

(e) The Association shall not erect any Permanent Structure on, under, over, through and across any property of The Association, encumbered by all or any part of the Drainage System without the Town's prior written approval, which approval shall not be unreasonably withheld. The Association shall not impede, obstruct, or allow to be obstructed, the natural flow of storm and surface water runoff through the Drainage System, or from any part of the Drainage Areas through the Drainage System; provided, however, that the Association have a continuing obligation under the Covenants to repair and maintain various improvements located within the Common Properties (lagoons and lagoon banks, roads, pathways, utilities, etc.), and this Agreement is not intended to in any way restrict or limit Association from taking reasonable actions to perform said obligations.

(f) The rights conveyed under this Access, Drainage and Maintenance Easement are limited to the parties and purposes stated herein. This Access, Drainage and Maintenance Easement conveys no rights of access or otherwise to the general public.

4. The Association acknowledges that the Town shall have no obligation to perform or pay for any work to repair, improve or maintain the appearance or appeal of the

**CONTINUATION OF EXHIBIT "A"**

lagoons, banks of lagoons, landscaping, drains, canals, or other visible components of the Drainage System, including, but not limited to, structures, bridges, bulkheads, pipes, culverts, valves and gates, unless the Town materially alters the configuration of the same.

5. The Town agrees to cause all work contemplated hereunder to be performed in a workmanlike fashion with minimal interference to the Grantors, their successors, assigns, invitees, guests, licensees, and agents. The Town further agrees to cause the work contemplated hereunder to be completed in an expeditious and timely fashion, and that all materials, debris, and construction materials shall be promptly removed. The Town shall restore any other part of the property of The Association which may be damaged as a result of the Town's exercise of the rights granted hereunder to its pre-existing state.

6. The Town hereby warrants to the Association that the granting of this Access, Drainage and Maintenance Easement will not affect any Setback lines with respect to any property currently owned by The Association.

7. That as to any pipes or other portions of the Drainage System as shown on Exhibit A hereto which are located in whole or in part on private residential lots (ie. not within golf course, common area or open space parcels), the Association has full authority under the Covenants to convey and/or assign the rights contemplated herein.

8. Each and every "Whereas" clause is incorporated herein, as if set forth verbatim.

9. This document shall fully replace the "Access, Drainage and Maintenance Easement" as recorded in the Office of the Register of Deeds for Beaufort County, South

**CONTINUATION OF EXHIBIT "A"**

Carolina, in Deed Book 2755 at Page 1238. If there are any discrepancies between said previous agreement and this agreement, the provisions of this agreement shall control.

To have and to hold, all and singular, the rights, privileges, and easements aforesaid, subject to the aforementioned Covenants, unto the Town of Hilton Head Island, South Carolina, its successors and assigns, forever.

In Witness whereof, the parties hereto have caused the within Access, Drainage and Maintenance Easement to be executed by their duly authorized officers as of this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**SIGNATURES BEGIN ON NEXT PAGE:**



**CONTINUATION OF EXHIBIT "A"**

WITNESSES:

HILTON HEAD PLANTATION PROPERTY  
OWNERS ASSOCIATION, INC.

\_\_\_\_\_ By: \_\_\_\_\_  
\_\_\_\_\_ Its: \_\_\_\_\_  
\_\_\_\_\_ Attest: \_\_\_\_\_  
\_\_\_\_\_ Its: \_\_\_\_\_

**STATE OF SOUTH CAROLINA**

)

**UNIFORM ACKNOWLEDGMENT**

)

**COUNTY OF BEAUFORT**

)

**S.C. CODE § 30-5-30 (SUPP. 2011)**

I, the undersigned Notary Public do hereby certify that  
\_\_\_\_\_ and \_\_\_\_\_ personally appeared  
before me on this day and duly acknowledged the execution of the foregoing instrument  
on behalf of Hilton Head Plantation Property Owners Association, Inc.

Sworn to and Subscribed before me  
on this \_\_\_\_\_ Day of \_\_\_\_\_, 2013.

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

**CONTINUATION OF EXHIBIT "A"**

WITNESSES:

THE TOWN OF HILTON HEAD ISLAND,  
SOUTH CAROLINA

\_\_\_\_\_

By: \_\_\_\_\_  
Drew A. Laughlin, Mayor

\_\_\_\_\_

Attest: \_\_\_\_\_  
Stephen G. Riley, Manager

**STATE OF SOUTH CAROLINA**

)

**UNIFORM ACKNOWLEDGMENT**

)

**COUNTY OF BEAUFORT**

)

**S.C. CODE § 30-5-30 (SUPP. 2011)**

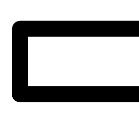
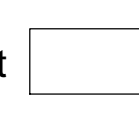
I, the undersigned Notary Public do hereby certify that Drew A. Laughlin and Stephen G. Riley personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of The Town of Hilton Head Island, South Carolina.

Sworn to and Subscribed before me  
on this \_\_\_\_\_ Day of \_\_\_\_\_, 2013.

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

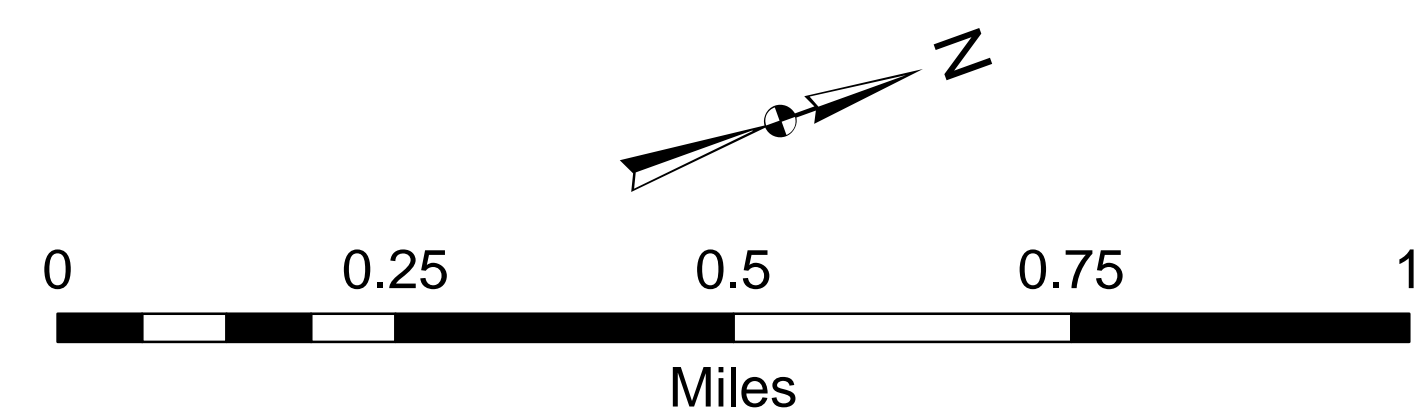




 HHP Limits  Drainage Easement  Parcels

Note: Drainage easement widths are 20 feet around pipes that convey public runoff and 15 feet from the edge of bank of lagoons that receive public runoff.

# Hilton Head Plantation Drainage Easement Exhibit



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