



**Town of Hilton Head Island  
Special Planning Commission Meeting  
Thursday, January 9, 2014  
3:00 p.m. Benjamin M. Racusin Council Chambers  
AGENDA**

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As a Courtesy to Others Please Turn Off All Cell Phones and Pagers during the Meeting.

- 1. Call to Order**
- 2. Pledge of Allegiance to the Flag**
- 3. Roll Call**
- 4. Freedom of Information Act Compliance**  
Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.
- 5. Approval of Agenda**
- 6. Appearance by Citizens on Items Unrelated to Today's Agenda**
- 7. New Business**  
**Hearing**  
**APL130009:** Request from Jeffrey D. Kaplan. The appellant is appealing the Town's decision on July 13, 2013 to issue the Notice of Action (approval) for subdivision application SUB130006. The subject subdivision subdivided a .20 acre parcel out of a larger tract of land within Hilton Head Plantation; the larger tract is designated as Beaufort County Tax Parcel 510-003-000-0060-0000. *Presented by: Teri Lewis*
- 8. Unfinished Business**
- 9. Commission Business**
- 10. Chairman's Report**
- 11. Committee Reports**
- 12. Staff Reports**
- 13. Adjournment**

*Please note that a quorum of Town Council may result if four or more of their members attend this meeting.*



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# TOWN OF HILTON HEAD ISLAND

## *Community Development Department*

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**TO:** Planning Commission  
**VIA:** Jayme Lopko, *Senior Planner and Board Coordinator*  
**FROM:** Teri Lewis, *LMO Official*  
**DATE:** November 21, 2013  
**SUBJECT:** Appeal 130009

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Staff has received an appeal from Jeffrey D. Kaplan regarding the issuance of a Notice of Action for SUB130006 on July 13, 2013. Application for Subdivision 130006 subdivided a .20 acre parcel out a larger tract of land within Hilton Head Plantation.

The appellant is appealing the Town's decision to issue the Notice of Action for SUB130006 on the grounds that (1) Nicole Dixon, Senior Planner, lacked the authority to approve or disapprove SUB130006, (2) the approval of the subdivision as a minor subdivision violates the express provisions of Land Management Ordinance Section 16-3-603 and (3) the approval of the subdivision of the .20 acre tract for use as a cell phone tower violates applicable recorded restrictive covenants, in violation of Section 6-29-1145 of the State Enabling Act.

Staff believes that the appellant is wrong and that the Notice of Action for SUB130006 was properly issued based on the following information.

Mr. Chester C. Williams and Mr. Roberts T. Vaux, Jr., on behalf of the appellant, submitted a narrative to the subject appeal. In the Arguments for Appeal, Mr. Williams and Mr. Vaux argue that no authority has been established to document that I, Teri B. Lewis, am the LMO Official and therefore it is incorrect for me or my designee to act as the Administrator of the Land Management Ordinance (LMO).

LMO Section 16-2-101 states that, "The Administrator to whom reference is made throughout this Title shall be the LMO Official or his/her designee." Furthermore, a review of LMO Section 16-10-201, Defined Terms, defines Administrator as, "The Administrator to whom reference is made throughout this Title shall be the LMO Official or his/her designee."

In addition to the fact that there is a Class Specification for 'LMO Official' and that this title is reflected on my official documents with the Town, a search of Town Staff on the Town's website lists the title associated with Teri Lewis as LMO Official. The Town believes that there is no question that I, Teri Lewis, am the LMO Official. Additionally Mr. Williams and Mr. Vaux question my ability, as the LMO Official, to designate the approval of SUB130006 to Nicole Dixon, a Senior Planner with the Town of Hilton Head Island. LMO Section 16-2-101 states that the Administrator is I or my designee.

I understand that Mr. Williams and Mr. Vaux are concerned about the Quail Hill case (referenced in their narrative) and their ability to rely on permits which I or my designee may issue and therefore I

certify for the record that the Town has authorized me, as the LMO Official, and my designee Nicole Dixon to review and approve SUB130006. This certification is expressly designed to remove from this appeal the appellant's concern about Quail Hill. Further the appellant in this case is not the permittee and therefore lacks standing to bring this issue before you. My designee, Nicole Dixon, made the decision to issue the Notice of Action for SUB130006 in consultation with me and with my full authority.

The second argument that Mr. Williams and Mr. Vaux make is that the approval of SUB130006 as a minor subdivision violates the express provisions of LMO Section 16-3-603 which states that the minor subdivision process can only be used to divide land into five or fewer *residential* [emphasis added] lots. The Town acknowledges that an incorrect application was submitted but the same has been cured and a revised Notice of Action has been issued to reflect the change in the application.

Please note that the use of one application over the other does not change the boundaries of the subdivision or the review process that was used to approve SUB130006. Staff believes that the corrected application and revised Notice of Action make this argument moot.

The third and final argument that Mr. Williams and Mr. Vaux make is that the approval of SUB130006 violates applicable recorded restrictive covenants, in violation of Section 6-29-1145 of the State Enabling Act. Mr. Kaplan did not provide a copy of the covenants as part of his appeal although the covenants are referenced in his appeal. Staff has provided a copy of the covenants with this memo; the deed to the subject property is provided as part of the SUB130006 file.

State Enabling Act Section 6-29-1145 states that,

“...If a local planning agency has actual notice of a restrictive covenant on a tract or parcel of land that is contrary to, conflicts with, or prohibits the permitted activity...the local planning agency must not issue the permit unless the local planning agency receives confirmation from the applicant that the restricted covenant has been released from the tract or parcel of land by action of the appropriate authority or property holders or by court order...”

Staff has not received notice that there is a conflict rather staff has notice that Mr. Williams and Mr. Vaux claim that there is a conflict.

When I review the underlying documents [the covenants and the deed] I see no conflict with what is being proposed for the subject property. Staff cannot believe that the legislative intent of Section 6-29-1145 was to make an applicant wait for a court to decide a claim of conflict with restrictive covenants.

For someone to say that utilities were never intended to be allowed in open space is disingenuous. The deed for the subject property lists it as ‘Open Space’. Exhibit B [Open Space Conditions, Restrictions, Limitations and Reservations] is referenced in the deed. This document states that the property is to be used solely as Open Space and for no other use whatsoever, as a part of the “Common Properties” as defined in Article IV, Section 6 of the Amended and Restated Declaration of Covenants and Restrictions of the Hilton Head Plantation Property Owners’ Association, Inc [‘the covenants’]. Article VI, Section 1 (h) and (k) and Article VI, Section 2 (t) make it abundantly clear that utilities were contemplated on open space property; therefore staff does not believe that the claim of violation of the recorded covenants is substantiated.

Based on all of the above, staff believes that the Notice of Action for SUB130006 was appropriately issued.

The record for this appeal consists of the following documents: Staff Memo, Appellant Submittal, SUB130006 file, copy of LMO Sections 16-2-101, 16-10-201 and 16-3-603, Class Specification for LMO Official, copy of Community Department Contact List from Town of Hilton Head Island website, copy of Section 6-29-1145 of the State Enabling Act and the Amended and Restated Declaration of Covenants and Restrictions of the Hilton Head Plantation Property Owners' Association, Inc.

Staff reserves the right to submit additional documents.

If you have any questions, please contact Teri Lewis at 341-4698 or [teril@hiltonheadislandsc.gov](mailto:teril@hiltonheadislandsc.gov).



Town of Hilton Head Island  
 Community Development Department  
 One Town Center Court  
 Hilton Head Island, SC 29928  
 Phone: 843-341-4757 Fax: 843-842-8908  
[www.hiltonheadislandsc.gov](http://www.hiltonheadislandsc.gov)

FOR OFFICIAL USE ONLY	
Date Received:	11/8/13
Accepted by:	HC
App. #: APL	130009
Meeting Date:	1/2/14

Applicant/Agent Name: Jeffrey D. Kaplan Company: \_\_\_\_\_  
 Mailing Address: 65 Dolphin Head Drive City: Hilton Head Island State: SC Zip: 29926  
 Telephone: 508-944-3797 Fax: \_\_\_\_\_ E-mail: jkaplan1320@gmail.com

R510 0030 0000 0600 460 Whooping Crane Wetland

**APPEAL (APL) SUBMITTAL REQUIREMENTS**

*If you are interested in submitting your appeal electronically please call 843-341-4757 for more information.*

The following items must be attached in order for this application to be complete:

- A detailed narrative stating the Town Official or Body who made the decision, the date of the decision being appealed, the decision being appealed, the basis for the right to appeal, the grounds of the appeal, cite any LMO Section numbers relied upon; **and** a statement of the specific decision requested of the review body.
- Any other documentation used to support the facts surrounding the decision.
- Filing Fee - \$100.00 cash or check made payable to the Town of Hilton Head Island.

To the best of my knowledge, the information on this application and all additional documentation is true, factual, and complete. I hereby agree to abide by all conditions of any approvals granted by the Town of Hilton Head Island. I understand that such conditions shall apply to the subject property only and are a right or obligation transferable by sale.

I further understand that in the event of a State of Emergency due to a Disaster, the review and approval times set forth in the Land Management Ordinance may be suspended.

Applicant/Agent Signature:  Date: November 8, 2013  
 Jeffrey D. Kaplan



LAW OFFICE OF  
CHESTER C. WILLIAMS, LLC

17 Executive Park Road, Suite 2  
Post Office Box 6028  
Hilton Head Island, SC 29938-6028  
Telephone (843) 842-5411  
Telefax (843) 842-5412  
Email [Firm@CCWLaw.net](mailto:Firm@CCWLaw.net)

**Chester C. Williams**  
ALSO MEMBER LOUISIANA BAR

**Thomas A. Gasparini**  
ALSO MEMBER CALIFORNIA BAR  
(Inactive)  
ALSO MEMBER OHIO BAR  
(Inactive)

08 November 2013

Teri B. Lewis, AICP  
LMO Official  
Town of Hilton Head Island  
One Town Center Court  
Hilton Head Island, SC 29928

**HAND DELIVERED**

RE: Minor Subdivision Application SUB130006 – Application for Appeal by Jeffrey D. Kaplan – Our File No. 01720-001

Dear Teri:

We are pleased to deliver to you herewith for filing an Application for Appeal by Jeffrey D. Kaplan regarding the Town's approval of Minor Subdivision Application SUB130006. Our check for \$100.00 as the appeal application filing fee is also enclosed.

Because this is an appeal of Town Staff action on a subdivision plan, the Planning Commission has jurisdiction to hear this appeal. Considering the LMO's application filing deadline, we assume you and your Staff will be able to place this application on the agenda for the 02 January 2014 Planning Commission meeting.

We also ask that you give Hilton Head Plantation Property Owners' Association, Inc., the property owner, and EMECG, Inc., the permittee under SUB130006, notice of this appeal and the Planning Commission's hearing on this appeal.

With best regards, we are

Very Truly Yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

  
Chester C. Williams

CCW/rec  
Enclosures

cc: Mr. Jeffrey D. Kaplan  
James P. Scheider, Esq.  
R. Tabor Vaux, Jr., Esq.  
Town of Hilton Head Island Planning Commissioners (without enclosures)

STATE OF SOUTH CAROLINA	)	BEFORE THE PLANNING COMMISSION
	)	OF THE TOWN OF HILTON HEAD
	)	ISLAND, SOUTH CAROLINA
	)	REQUEST FOR APPEAL
COUNTY OF BEAUFORT	)	NO. APL13000_____

**ATTACHMENT 1  
TO THE APPEAL APPLICATION OF  
JEFFREY D. KAPLAN**

**NARRATIVE**

**I. INTRODUCTION**

This Attachment 1 is part of the Request for Appeal (this “Appeal”) filed by Jeffrey D. Kaplan (the “Appellant”) regarding the approval of Subdivision Application SUB130006 (“SUB130006”), as evidenced by that certain Notice of Action of July 13, 2013 (the “Notice of Action”)<sup>1</sup> issued by Nicole Dixon, Senior Planner in Community Development Department of the Town of Hilton Head Island, South Carolina (the “Town”).

SUB130006 purports to subdivide a 0.20 acre parcel (the “0.20 Acre Tract”) out of a large tract of Open Space that is part of Pineland Subdivision in Hilton Head Plantation, designated as Beaufort County Tax Parcel R510-003-000-0060-0000.

The Appellant alleges that the approval of SUB130006 is illegal on a number of different grounds, as more fully set forth below. This Narrative is submitted to the Town as part of this Appeal, for inclusion in the record of this Appeal, and for review by the Town’s Planning Commission (the “Planning Commission”).

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<sup>1</sup> A copy of the Notice of Action is attached to this Narrative as Exhibit A.



The Appellant and his wife bought Lot 12 Deerfield Road Subdivision in Hilton Head Plantation in July of this year, less than a week before the issuance of the Notice of Action.<sup>2</sup> The mailing address of the Appellant's home is 65 Dolphin Head Drive, which is within one hundred feet of, and almost directly across Dolphin Head Drive from, the 0.20 Acre Tract.

This Appeal seeks to reverse the approval of SUB130006.

## **II. BACKGROUND**

SUB130006 was filed with the Town on June 20, 2013 as a minor subdivision application by Terry Thomas of EMEGC, Inc. It identifies the Project Name as "Hilton Head Plantation Cell Tower", located at 68 Dolphin Head Drive, and states that the tax parcel number for the subject property is R510-003-000-0060-0000. The application materials include a Town form entitled "Affidavit of Ownership and Hold Harmless Permission to Enter Property" in which T. Peter Kristian states under oath that he is the owner of the property which is the subject of SUB130006, and that he authorizes David Worley to act as his agent for purposes of SUB130006.<sup>3</sup> The Appellant notes that SUB130006 was not filed by Mr. Worley.

The Notice of Action was issued on July 13, 2013. It identifies the property owner as "Hilton Head Plant Prop" and the Applicant as EMEGC, Inc. ("EMEGC"). It refers to a parcel with a mailing address of 460 Whooping Crane Way, and is based on untitled plans drawn by William R. Gore dated April 2, 2013.

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<sup>2</sup> A copy of the Appellant's deed, which is dated July 17, 2013 and was recorded in the Beaufort County Register of Deeds Office on July 22, 2013, is attached to this Narrative as Exhibit B.

<sup>3</sup> Contrary to Mr. Kristian's sworn statement, the materials submitted with the application for SUB130006 include a copy of a deed from Southeast Holding Company, Ltd. conveying property that is the subject of SUB130006, including the 0.20 Acre Tract, to Hilton Head Plantation Property Owners' Association, Inc., which was recorded in Beaufort County Deed Book 385 at Page 211 on December 30, 1983.



### **III. THE AUTHORITY AND POWER OF THE PLANNING COMMISSION – APPEALS OF TOWN STAFF ACTION ON A SUBDIVISION APPLICATION**

Section 6-29-1150(A) of the Code of Laws of South Carolina (1976), as amended (the “SC Code”), which is part of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (the “State Enabling Act”), provides that land development regulations adopted by a municipality “must include a specific procedure for the submission and approval or disapproval [of a subdivision plan] by the planning commission or designated staff.” Section 16-3-602 of the Town’s Land Management Ordinance (the “LMO”) provides that, “The Planning Commission may delegate to the Administrator review and approval authority for all subdivisions.” LMO Section 16-2-102(B) grants to the Administrator the duty and power to, among other things, “Review and take action on ... subdivisions ....”

Section 6-29-1150(C) of the State Enabling Act says,

Staff action, if authorized, to approve or disapprove a land development plan may be appealed to the planning commission by any party in interest. The planning commission must act on the appeal within sixty days, and the action of the planning commission is final.

Under the State Enabling Act, land development plans include subdivision plans.<sup>4</sup>

LMO Section 16-3-608 says,

Staff approval or disapproval of a subdivision plan may be appealed to the Planning Commission by any party in interest. The Planning Commission must act on the appeal within 60 days of receipt of the appeal, and the action of the Planning Commission is final, except as appellate rights

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<sup>4</sup> See Section 6-29-1110(2) of the State Enabling Act.



provided in section 6-29-1150(C) of the State Code of South Carolina.

Accordingly, the Planning Commission has jurisdiction to hear an appeal of the Town's approval of SUB130006.

#### **IV. SUB130006**

A review of the Town's file on the SUB130006 will clearly indicate that SUB130006 was filed with and reviewed by the Town as a minor subdivision application.

#### **V. STANDING**

The standing requirements for an appeal of Town Staff action on a subdivision application under both the State Enabling Act and the LMO are minimal. Any party in interest has the right to appeal the Town Staff's approval or disapproval of a subdivision application. The Applicant alleges that his ownership of property located within one hundred feet of the 0.20 Acre Tract confers standing on him to appeal the approval of SUB130006.<sup>5</sup>

The Appellant further alleges that he has suffered specific damage or injury as a result of the approval of SUB130006, in that SUB130006 is a lynchpin approval for the Town's subsequent approval of Zoning Map Amendment Application ZMA130006, and is integral to the Town's review and processing of Expedited Development Plan Review Application XDPR130035 ("XDPR130035"), the approval of which will violate applicable recorded restrictive covenants that the Appellant, as a property owner in Hilton Head Plantation, has the right to enforce.<sup>6</sup>

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<sup>5</sup> The Appellant notes the provisions of LMO Section 16-3-2001 which says that "any property owner within 350 feet of the property for which a decision or determination has been rendered" has standing to file an appeal to the Town's Board of Zoning Appeals.

<sup>6</sup> The Appellant notes that the application for SUB130006 refers to Restrictive Covenants as being applicable, and includes a copy of the deed referred to in Footnote 3 above. That deed says, among other things, that the property conveyed therein, which includes the 0.20 Acre Tract, "... is to be used as Open Space and for no other use whatsoever ...".



The Applicant further alleges that neither the State Enabling Act nor the LMO require the filing of an appeal of Town Staff action on a subdivision application within any set time.

## **VI. NECESSARY PARTIES**

Hilton Head Plantation Property Owners' Association, Inc. ("HHPPOA"), as the owner of the 0.20 Acre Tract, and EMEGC, as the permittee under the Notice of Action, may be necessary parties to this Appeal. Accordingly, the Appellant asks that HHPPOA and EMEGC receive notice of all matters and hearings associated with this Appeal.<sup>7</sup>

## **VII. GROUNDS FOR APPEAL**

The Appellant alleges that the Notice of Action was improperly issued by Ms. Dixon, as she lacked the authority to approve or disapprove SUB130006; that the approval of the subdivision of the 0.20 Acre Tract as a minor subdivision violates the express provisions of the LMO; and that the approval of the subdivision of the 0.20 Acre Tract for use as a cell phone tower violates applicable recorded restrictive covenants, in violation of Section 6-29-1145 of the State Enabling Act.

## **VIII. ARGUMENTS FOR APPEAL**

### **A. AUTHORITY TO REVIEW AND ACT ON SUB130006**

LMO Section 16-2-102(B) grants to the Administrator the duty and power to, among other things, "Review and take action on ... subdivisions ...." The Administrator is supposedly identified in LMO Section 16-2-101 as "the LMO Official or his/her designee." However, the LMO contains no method for the designation or identification of the LMO Official.

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<sup>7</sup> See *Spanish Wells Property Owners Association, Inc. v. Board of Adjustment of the Town of Hilton Head Island*, 367 S.E.2d 160 (SC 1988), a copy of which is attached to this Narrative as Exhibit C.



It is a well-known fact that Teri B. Lewis, AICP holds herself out as, and it is generally accepted that she is, the LMO Official. Nevertheless, despite repeated efforts by a party other than the Applicant, Stephen G. Riley, AICP, the Town Manager, has been unwilling or unable to produce any written documentation establishing Mrs. Lewis' authority to act as, or her appointment as, the LMO Official.

Even assuming for the sake of argument that Mrs. Lewis is the LMO Official, the Appellant is aware of no written documentation or other evidence in existence at the time of the issuance of the Notice of Action by which Mrs. Lewis, as the LMO Official, delegated her authority to review and act on SUB130006 to Ms. Dixon.

The law in South Carolina is that the holder of a permit or approval issued by someone other than the official designated as having the authority under applicable ordinance to do so has no right to rely on such permit or approval.<sup>8</sup> Ms. Dixon is not the LMO Official, and there is no evidence available to the Appellant, or, to the knowledge of the Appellant, to HHPPOA or EMEGC, that she was properly designated by the LMO Official to review and act on SUB130006. Therefore, neither HHPPOA nor EMEGC have any right to rely on the approval of SUB130006; and, if neither HHPPOA nor EMEGC have any right to rely on the approval of SUB130006, neither does the Town.

Because no person was properly designated as the LMO Official at the time of the issuance of the Notice of Action, there was no one authorized under the LMO to review and act on SUB130006. Further, even if Mrs. Lewis has been properly designated as the LMO Official, she did not issue the Notice of Action, and, to the Appellant's knowledge, there is nothing in the Town's records by which Mrs. Lewis properly delegated her authority as the LMO Official to Ms. Dixon, such that Ms. Dixon was properly authorized under the LMO to review and act on SUB130006.

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<sup>8</sup> See *Quail Hill, LLC v. County of Richmond*, 692 S.E.2d 499 (SC 2010), a copy of which is attached to this Narrative as Exhibit D.



The Appellant readily admits that the authority argument is a quite technical, legal argument; however, the Appellant is compelled to make the argument here, lest he waive his right to do so at a later stage of this Appeal.

The Appellant submits that because Ms. Dixon was not authorized to review and act on SUB130006, her issuance of the Notice of Action is invalid. Accordingly, the Appellant asks that the Planning Commission reverse the approval of SUB130006, and either deny SUB13006, or remand SUB13006 to the LMO Official or his/her designee for further review and action.

## **B. THE MINOR SUBDIVISION APPROVAL PROCESS**

LMO Section 16-3-603 says, "A minor subdivision is a division of land into 5 or fewer residential lots. All other divisions shall be considered major subdivisions." The Appellant calls the Planning Commission's attention to the fact that only residential lots can properly be the subject of a minor subdivision application.

The minor subdivision provisions were originally included in the LMO in an effort to facilitate the subdivision and distribution of heirs' property tracts to family members, hence the limitation of the minor subdivision process to residential lots.

The application for SUB130006 clearly states on its fact that the Project Name is "Hilton Head Plantation Cell Tower", and that the applicable zoning district is "Open Space".<sup>9</sup> Other documents included with the application for SUB130006 refer to "Cell Tower Project", "Hilton Head Plantation Telecommunications Facility", and "Hilton Head Plantation Wireless Facility".

The subdivision plat stamped for approval by Ms. Dixon as part of SUB130006 and recorded in Beaufort County Plat Book 137 at Page 44 refers to "Tower Easement", "Tower Easement Area 3500 SF", and "tower equipment and improvements".

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<sup>9</sup> Actually, as noted in the Notice of Action, the applicable zoning district is PD-1.



The deed to HHPPOA included with the application materials for SUB130006 refer to the property as being “Open Space”.

Under the LMO, telecommunications facilities are not a residential use; instead, they are a utility use, a subcategory of Public and Civic Uses.<sup>10</sup>

The Appellant submits that there is no way anyone can stretch the definition of “residential” to include a cell phone tower, and further that there is no way any member of the Town Staff could conclude from the materials submitted with and as part of application for SUB130006 show a subdivision of a residential lot. Clearly, SUB130006 was intended to facilitate the development of a telecommunications facility on the 0.20 Acre Tract.

The LMO Official does not have the authority to alter or waive the provisions of the LMO.<sup>11</sup> Therefore, neither the LMO Official nor Ms. Dixon had the authority to review and approve SUB130006 as a minor subdivision.<sup>12</sup>

Because the approval of SUB130006 did not result in a residential lot, the LMO’s minor subdivision process was not available for use in reviewing and acting on SUB13006. Therefore, the Appellant asks that the Planning Commission reverse the approval of SUB130006, and either deny SUB13006, or remand SUB13006 to the LMO Official or his/her designee for further review and action.

### **C. VIOLATION OF APPLICABLE RECORDED RESTRICTIVE COVENANTS**

The application form for SUB130006, in response to a question asking if there are recorded private covenants and/or restrictions that are contrary to, conflict with, or prohibit the proposed request, states on its face that there are no such applicable covenants and/or restrictions. The reason the application

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<sup>10</sup> See the Use Table at LMO Section 16-4-1204.

<sup>11</sup> See LMO Section 16-2-102 for the scope of the Administrator’s powers and duties.

<sup>12</sup> See *McCrowey v. Zoning Board of Adjustment of the City of Rock Hill*, 599 S.E.2d 617 (SC 2004), a copy of which is attached to this Narrative as Exhibit E.



form asks this question is grounded in Section 6-29-1145(A) of the State Enabling Act, which places an affirmative obligation on the Town to ask the question. Section 6-29-1145(B) goes on to say that if the Town has actual notice of a restrictive covenant on a tract of land that is contrary to, conflicts with, or prohibits the activity from the application, from the materials or information submitted by the person requesting the permit, or from any other source including, but not limited to, other property holders, the Town is prohibited from issuing the permit unless the Town receives confirmation from the applicant that the restrictive covenant has been released for the tract by action of the appropriate authority or property holders or by court order.

Notwithstanding the application's assertion that the requested subdivision was not contrary to, in conflict with, or prohibited by recorded covenants and/or restrictions, the application includes a copy of the 1983 deed to HHPPOA that conveys the 0.20 Acre Tract and other lands subject to specific covenants,<sup>13</sup> and to the provisions of the Hilton Head Plantation covenants<sup>14</sup> as part of the materials and information submitted by the applicant for SUB130006. In addition, the Town's records clearly show that it had actual notice of the covenants that are applicable to the 0.20 Acre Tract as early as March 22, 2013, well before the filing of the application for SUB130006.

The subdivision plat of the Whitetail Deer Lane and Bobcat Lane areas of Pineland Subdivision in Hilton Head Plantation recorded in Beaufort County Plat Book 30 at Page 60 show the 0.20 Acre Tract as part of the designated Open Space. The applicant for SUB130006 clearly knew of this recorded plat, as it is referred to on the subdivision plat stamped for approval by Ms. Dixon

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<sup>13</sup> The language used in the deed to HHPPOA says, "The property being conveyed herein is accepted by the Grantee [HHPPOA] subject to those certain Covenants, Restrictions, Reservations and Limitations which are set forth on the attached Exhibit 'B'." Among other things, the provisions of Exhibit B to that deed say that the property conveyed "... is to be used solely as Open Space and for no other use whatsoever, as part of the 'Common Properties' as defined in [the Hilton Head Plantation POA covenants] ...".

<sup>14</sup> The Hilton Head Plantation POA covenants provide that the Appellant, as a member of HHPPOA, "a right and easement of ingress and egress, use, and enjoyment in and to the Common Properties" owned by the HHPPOA, including the 0.20 Acre Tract. Other applicable Hilton Head Plantation covenants provide that areas designated as Open Space, including the 0.20 Acre Tract, "will remain as undeveloped and natural woodland, shoreline or tidal marsh".



as part of SUB130006 and recorded in Beaufort County Plat Book 137 at Page 44.

The Appellant believes that the sole purpose for the filing of SUB130006 was to subdivide the 0.20 Acre Tract out of a larger Open Space parcel for use as a telecommunications facility.

The Appellant submits that the representation in the application for SUB130006 was clearly factually inaccurate, and that the Town was aware of the misrepresentation when that application was submitted, and intentionally chose to ignore the effect of the applicable covenants, in violation of Section 6-29-1145(B) of the State Enabling Act.

The Appellant suspects that the Town Staff, in response to this Appeal, will argue that they relied on advice of legal counsel in determining that the covenants applicable to the 0.20 Acre Tract do not prohibit the approval of SUB130006 and the further permitting of the development of a telecommunications facility on the 0.20 Acre Tract pursuant to XDPR130035, notwithstanding the clear, unambiguous provisions of those covenants and Section 6-26-1145 of the State Enabling Act. If the Town Staff does put forth that argument as a justification for their approval of SUB130006, then the Appellant would request that the Planning Commission demand that legal counsel providing such advice be available to testify at the hearing on this Appeal.

The Appellant submits that the application for SUB130006 contains a material misrepresentation regarding applicable restrictive covenants that went unchallenged by the Town Staff despite their actual knowledge of those covenants, and that SUB130006 was approved by the Town in violation of Section 6-29-1145 of the State Enabling Act. Therefore, the Appellant the Appellant asks that the Planning Commission reverse the approval of SUB130006, and either deny SUB13006, or remand SUB13006 to the LMO Official or his/her designee for further review and action.

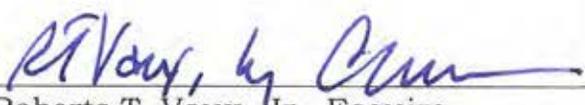


## IX. CONCLUSION

Because (a) the Notice of Action approving SUB130006 was issued by Ms. Dixon without authority under the LMO to do so, (b) the use of the LMO's minor subdivision process to review and approve SUB130006 violates the provisions of the LMO, (c) the application for SUB130006 contains a material misrepresentation that was known to, and ignored by the Town Staff, or (d) the approval of SUB130006 violates the provisions of Section 6-29-1145 of the State Enabling Act, the Notice of Action should be revoked and the approval of SUB130006 reversed, and SUB130006 should be denied or remanded back to the Town Staff for further review and action. Accordingly, the Appellant asks that the Planning Commission (a) consider the issues raised in this Appeal and the pertinent provisions of the State Enabling Act, the LMO, and other applicable law, (b) find that the Notice of Action should be revoked and the approval of SUB130006 reversed, and (c) deny SUB130006, or remand SUB130006 back to the LMO Official for further review and action.

The Appellant reserves the right to submit additional materials, documents, and information to the Planning Commission in connection with this Appeal.

Respectfully submitted on behalf of Jeffrey D. Kaplan this 8 day of November, 2013.

 Chester C. Williams, Esquire Law Office of Chester C. Williams, LLC 17 Executive Park Road, Suite 2 Post Office Box 6028 Hilton Head Island, SC 29938-6028 843-842-5411 843-842-5412 (fax) <a href="mailto:Firm@CCWLaw.net">Firm@CCWLaw.net</a>	 Roberts T. Vaux, Jr., Esquire Vaux & Marscher, P. A. 1251 May River Road Post Office Box 769 Bluffton, SC 29910 843-757-2888 843-757-2889 <a href="mailto:Tabor.Vaux@Vaux-Marscher.com">Tabor.Vaux@Vaux-Marscher.com</a>
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**EXHIBIT A (1 Page)**

TOWN OF HILTON HEAD ISLAND COMMUNITY DEVELOPMENT DEPARTMENT

**NOTICE OF ACTION**

ONE TOWN CENTER COURT HILTON HEAD ISLAND, SC 29928 843-341-4681 843-842-8908

**APPROVAL DATE**

07/23/2013

**EXPIRATION DATE**

07/13/2015

This approval expires on the above date unless a complete building permit application is submitted or a Certificate of Compliance is obtained.

**OWNER**

HILTON HEAD PLANT PROP

**APPLICANT**

EMEGC INC

**AGENT**

**PROJECT INFORMATION**

Number: SUB130006

Name: HILTON HEAD PLANTATION

Address: 460 WHOOPING CRANE WAY \*\*\*\*

District/Map/Parcel: R51000300000600000

**SITE INFORMATION**

Zoning District: PD-1

Overlay District(s):

Gross Acreage: 0 acre (s)

#Lots: 1

Transportation District:52

**RELATED CASES**

DRB #: BZA #: PPR #: ZMA #:

The Town of Hilton Head Island Planning Staff has reviewed this project and has determined that it is in accordance with the provisions of the Land Management Ordinance (LMO) for Subdivision Review.

This approval is based on plans drawn by William R. Gore entitled and dated or last revised on 04/02/2013 and is subject to the attached conditions.

A Certificate of Compliance must be issued by the Engineering Division before a Certificate of Occupancy can be issued by the Building Official. For a Certificate of Compliance inspection, contact the Engineering Technician at 341-4773 or 341-4778 when the project is complete.

Approved By: Nicole Dixon Title: Senior Planner  
NICOLE DIXON

pc: Project File Inspections/Compliance Division Engineering Division PIC



shown on the plat thereof recorded in Plat Book 21 at Page 172 in the Beaufort County Records.

This being the same property conveyed to the within Grantor by Deed of Billy K. Rowe and Norma H. Rowe, recorded May 19, 2005 in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 2151 at Page 1788.

THE within Deed was prepared in the law offices of West Olivetti, LLC, P.O. Box 7906, Hilton Head Island, SC 29938.

**THIS CONVEYANCE IS MADE SUBJECT TO** all other easements and restrictions of record and otherwise affecting the property.

**TOGETHER** with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

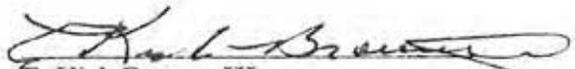
**TO HAVE AND TO HOLD**, all and singular, the said Premises before mentioned unto the said Grantees, as joint tenants with the right of survivorship and not as tenants in common, their Heirs and Assigns, forever, in fee simple.

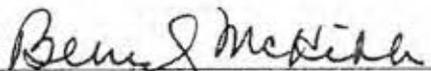
**AND** the within Grantors do hereby bind themselves and their Heirs, Assigns, Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the said Grantees, their Heirs, Assigns, Personal Representatives and Administrators, against Grantors, their Heirs and Assigns, and all persons whomsoever may come lawfully claiming, or to claim the same or any part thereof.

WITNESS our Hands and Seals this 17<sup>th</sup> day of July, 2013.

**SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:**

  
Signature of 1<sup>st</sup> Witness

  
E. Kirk Brown, III

  
Signature of Notary Public / 2<sup>nd</sup> Witness

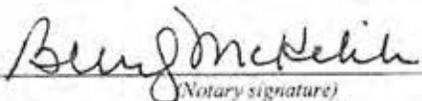
  
Barbara S. Brown

STATE OF SOUTH CAROLINA     )  
  )  
COUNTY OF BEAUFORT            )

**ACKNOWLEDGMENT**

I, the undersigned Notary Public, do certify that **E. Kirk Brown, III and Barbara S. Brown** personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my official seal this the 17<sup>th</sup> day of July, 2013.

 (SEAL)

Notary Public for South Carolina

My Commission Expires: 8-22-15

**H**

Supreme Court of South Carolina.  
 SPANISH WELLS PROPERTY OWNERS  
 ASSOCIATION, INC., Respondent,

v.

BOARD OF ADJUSTMENT OF the  
 TOWN OF HILTON HEAD ISLAND,  
 South Carolina, Petitioner.

In re CALIBOGUE SQUARE SUBDIVI-  
 SION.

No. 22859.

Heard March 8, 1988.  
 Decided April 11, 1988.

After town planning commission granted preliminary development permit, property owners association appealed the commission's action to the Board of Adjustment. The Board of Adjustment denied the appeal, and association appealed to the Court of Common Pleas. The Court of Common Pleas, Beaufort County, John H. Waller, Jr., J., granted Board of Adjustment's motion to dismiss, and association appealed. The Court of Appeals, 292 S.C. 542, 357 S.E.2d 487, reversed, and board sought review. The Supreme Court granted certiorari to review, and held that party, who was granted development permit, was necessary party to appeal of its permit.

Reversed.

West Headnotes

**Zoning and Planning 414 ↪ 1602**

414 Zoning and Planning

414X Judicial Review or Relief

414X(B) Proceedings

414k1600 Parties

414k1602 k. Necessary and indispensable parties. Most Cited Cases

(Formerly 414k582.1, 414k582)

Party who was granted development permit was necessary party to appeal of its permit. \*\*161 \*67 Curtis L. Coltrane and James M. Herring, of Herring, Meyer & Coltrane, P.A., Hilton Head Island, for petitioner.

Phillip C. Lyman, of Lyman & Howell, P.A., Hilton Head Island, for respondent.

**\*68 PER CURIAM:**

This case involves a development dispute on Hilton Head Island. This Court granted certiorari to review the decision of the Court of Appeals in *Spanish Wells Property Owners Ass'n v. Board of Adjustment*, 292 S.C. 542, 357 S.E.2d 487 (Ct.App.1987). We now reverse and remand.

The Hilton Head Island Planning Commission granted a preliminary development permit to Calibogue Yacht Properties, Inc. (Calibogue). Respondent Spanish Wells Property Owners Association, Inc. (Spanish Wells) objected to the issuance and appealed to petitioner Board of Adjustment (Board). The Board denied the appeal, and Spanish Wells appealed to the circuit court. The Board moved to dismiss under Rule 12(b)(7), SCRCF, arguing that Calibogue was a necessary party to the appeal under Rule 19, SCRCF. The circuit court granted the motion to dismiss, but allowed Spanish Wells fifteen days leave to join Calibogue. Spanish Wells instead appealed the order; the Court of Appeals reversed, holding that Calibogue was a proper, but not necessary, party to the appeal.

The sole question we address here is whether a permittee is a necessary party to an action to revoke a development permit.

Other jurisdictions are divided on whether the permittee or successful applicant is a necessary party to an appeal instituted by an aggrieved party. The emerging majority view is that the permittee is a necessary party. See 3 Rathkopf, *The Law of Zoning and Planning* § 42.05[3] (4th Ed.1980 & Supp.1987) (citing numerous cases espousing "ascending" view); 101A C.J.S. *Zoning and Planning* § 301 (1979).

We find the reasoning behind the majority rule convincing. Designating the permittee a necessary party insures the most vitally interested party's participation in the appellate process. See *Cathcart-Maltby-Clearview Community Council v. Snohomish County*, 96 Wash.2d 201, 634 P.2d 853 (1981) (owner-applicant is party "most affected" and is necessary to any proceeding to invalidate his interest). Participation\*69 by the most interested party serves judicial economy. Additionally, the majority rule insures that where a circuit court reverses a permit approval, the permittee will be bound because it is a party to the appeal. See *Hidden Lake Development Co. v. District Court*, 183 Colo. 168, 515 P.2d 632 (1973); accord *Board of Commissioners of Mesa County v. Carter*, 193 Colo. 225, 564 P.2d 421 (1977); *Lanaux v. City of New Orleans*, 489 So.2d 329 (La.Ct.App.1986); *Schroeder v. Burleigh County Board of Commissioners*, 252 N.W.2d 893 (N.D.1977).

For the foregoing reasons, we adopt the majority rule and hold that a development permittee is a necessary party to an appeal of its permit. The trial court therefore correctly ruled that Calibogue was a necessary party to Spanish Wells' appeal of the permit approval. Accordingly, the decision of the Court of Appeals to the contrary is \*\*162 reversed and the circuit court's order

is affirmed.

REVERSED.

S.C.,1988.

Spanish Wells Property Owners Ass'n, Inc.  
v. Board of Adjustment of Town of Hilton  
Head Island

295 S.C. 67, 367 S.E.2d 160

END OF DOCUMENT

**H**

Supreme Court of South Carolina.  
**QUAIL HILL, LLC**, Respondent,  
 v.  
**COUNTY OF RICHLAND**, South Carolina,  
 Petitioner.  
**No. 26788.**

Heard Jan. 7, 2010.  
 Decided March 22, 2010.

**Background:** Real property purchaser which relied on representation of county officers and staff regarding zoning of tract brought action against county, claiming equitable estoppel, negligence, negligent misrepresentation, and inverse condemnation. The Circuit Court, Richland County, Roger M. Young, J., granted summary judgment to county. Purchaser appealed. The Court of Appeals, 379 S.C. 314, 665 S.E.2d 194, affirmed in part, reversed in part, and remanded. County petitioned for a writ of certiorari.

**Holdings:** The Supreme Court, Beatty, J., held that:

- (1) doctrine of equitable estoppel did not lie to prevent enforcement of the residential zoning classification;
- (2) purchaser's negligence and negligent misrepresentation claims were required to be treated solely as one claim for negligent misrepresentation; and
- (3) purchaser could not have justifiably relied on county's erroneous zoning representations as required to support claim for negligent misrepresentation.

Affirmed in part, and reversed in part.

Pleicones, J., concurred in result only.

## West Headnotes

**[1] Judgment 228** ⚡185(2)

228 Judgment  
 228V On Motion or Summary Proceeding  
 228k182 Motion or Other Application  
 228k185 Evidence in General  
 228k185(2) k. Presumptions

and burden of proof. **Most Cited Cases**  
 In determining whether any triable issue of fact exists on motion for summary judgment, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. Rules Civ.Proc., Rule 56.

**[2] Appeal and Error 30** ⚡863

30 Appeal and Error  
 30XVI Review  
 30XVI(A) Scope, Standards, and Extent, in General  
 30k862 Extent of Review Dependent on Nature of Decision Appealed from  
 30k863 k. In general. **Most Cited Cases**

**Judgment 228** ⚡181(2)

228 Judgment  
 228V On Motion or Summary Proceeding  
 228k181 Grounds for Summary Judgment  
 228k181(2) k. Absence of issue of fact. **Most Cited Cases**

An appellate court reviews the granting of summary judgment under the same standard applied by the trial court: summary judgment should not be granted even when

there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts. Rules Civ.Proc., Rule 56.

### [3] Estoppel 156 ⚡62.1

156 Estoppel

156III Equitable Estoppel

156III(A) Nature and Essentials in General

156k62 Estoppel Against Public, Government, or Public Officers

156k62.1 k. In general. Most Cited Cases

As a general rule, estoppel does not lie against the government to prevent the due exercise of its police power or to thwart the application of public policy.

### [4] Estoppel 156 ⚡62.1

156 Estoppel

156III Equitable Estoppel

156III(A) Nature and Essentials in General

156k62 Estoppel Against Public, Government, or Public Officers

156k62.1 k. In general. Most Cited Cases

Estoppel will not lie against a government entity where a government employee gives erroneous information in contradiction of statute; simply stated, equity follows the law.

### [5] Estoppel 156 ⚡62.1

156 Estoppel

156III Equitable Estoppel

156III(A) Nature and Essentials in General

156k62 Estoppel Against Public, Government, or Public Officers

156k62.1 k. In general. Most Cited Cases

If estoppel is applicable against a government agency, a relying party must prove: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) justifiable reliance upon the government's conduct, and (3) a prejudicial change in position.

### [6] Zoning and Planning 414 ⚡1770

414 Zoning and Planning

414XI Enforcement of Regulations

414k1767 Defenses to Enforcement

414k1770 k. Estoppel or inducement. Most Cited Cases

Equitable estoppel did not lie against county to prevent enforcement of residential zoning classification of land, which prohibited manufactured homes, based on county agent's misstatement of law to property purchaser that the property was zoned under agricultural classification, which permitted manufactured homes.

### [7] Zoning and Planning 414 ⚡1770

414 Zoning and Planning

414XI Enforcement of Regulations

414k1767 Defenses to Enforcement

414k1770 k. Estoppel or inducement. Most Cited Cases

Assuming that doctrine of equitable estoppel were applicable to estop county from enforcing residential zoning classification, based on misstatement in tax records and by county official that property was under agricultural zoning classification, property purchaser had "means of knowledge" to determine correct zoning classification and, thus, did not justifiably rely on the erroneous information, as required to support its estoppel claim; purchaser presented no evidence that it examined the publicly-accessible zoning map or consulted with anyone other than the official to determine proper zoning classification of land which

it purchased as a site for manufactured housing.

**[8] Fraud 184 ↪41**

184 Fraud

184II Actions

184II(C) Pleading

184k41 k. Allegations of fraud in general. Most Cited Cases

Real property purchaser's separately pled claim against county for negligence was essentially subsumed in its negligent misrepresentation cause of action, thus, requiring both claims to be treated solely as one claim for negligent misrepresentation, based on county's conduct in mistakenly advising purchaser on the applicable zoning restrictions on its property.

**[9] Fraud 184 ↪13(3)**

184 Fraud

184I Deception Constituting Fraud, and Liability Therefor

184k8 Fraudulent Representations

184k13 Falsity and Knowledge

Thereof

184k13(3) k. Statements recklessly made; negligent misrepresentation. Most Cited Cases

To prove a claim for the common law tort of negligent misrepresentation, plaintiff must establish the following elements: (1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance on the representation.

**[10] Fraud 184 ↪13(3)**

184 Fraud

184I Deception Constituting Fraud, and Liability Therefor

184k8 Fraudulent Representations

184k13 Falsity and Knowledge

Thereof

184k13(3) k. Statements recklessly made; negligent misrepresentation. Most Cited Cases

**Fraud 184 ↪22(1)**

184 Fraud

184I Deception Constituting Fraud, and Liability Therefor

184k19 Reliance on Representations and Inducement to Act

184k22 Duty to Investigate

184k22(1) k. In general. Most

Cited Cases

There is no liability for negligent misrepresentation as to casual statements, representations as to matters of law, or matters which plaintiff could ascertain on his own in the exercise of due diligence.

**[11] Fraud 184 ↪20**

184 Fraud

184I Deception Constituting Fraud, and Liability Therefor

184k19 Reliance on Representations and Inducement to Act

184k20 k. In general. Most Cited Cases

**Judgment 228 ↪181(33)**

228 Judgment

228V On Motion or Summary Proceeding

228k181 Grounds for Summary

Judgment

228k181(15) Particular Cases

228k181(33) k. Tort cases in

### general. Most Cited Cases

While issues of reliance are ordinarily resolved by the finder of fact, there can be no reasonable reliance to show negligent misrepresentation based on a misstatement if the plaintiff knows the truth of the matter; thus, if the undisputed evidence clearly shows the party asserting reliance has knowledge of the truth of the matter, there is no genuine issue of material fact to preclude summary judgment in action for negligent misrepresentation.

### [12] Fraud 184 ↪20

#### 184 Fraud

184I Deception Constituting Fraud, and Liability Therefor

184k19 Reliance on Representations and Inducement to Act

184k20 k. In general. Most Cited Cases

### Fraud 184 ↪23

#### 184 Fraud

184I Deception Constituting Fraud, and Liability Therefor

184k19 Reliance on Representations and Inducement to Act

184k23 k. Relations and means of knowledge of parties. Most Cited Cases

A determination of justifiable reliance to support finding of negligent misrepresentation involves the evaluation of the totality of the circumstances, which includes the positions and relations of the parties.

### [13] Counties 104 ↪146

#### 104 Counties

##### 104VII Torts

104k146 k. Acts of officers or agents. Most Cited Cases

Real property purchaser did not justifiably rely on erroneous representations of county

staff and tax records indicating that the property was zoned to permit manufactured housing, as required to support claim against county for negligent misrepresentation; purchaser's agent, an experienced real estate broker, could have reviewed the official zoning map to ascertain the correct zoning classification.

\*501 Andrew F. Lindemann, William H. Davidson, II, Michael B. Wren, of Davidson & Lindemann, of Columbia, for Petitioner.

Charles E. Carpenter, Jr., Carmen V. Ganjehsani, Sharon Plyler Besley, of Carpenter Appeals and Trial Support, of Columbia, and Clifford O. Koon, Jr., Paul D. deHolczer, Robert L. Brown, of Moses Koon and Brackett, of Columbia, for Respondent.

Justice BEATTY.

In this zoning dispute case, this Court granted Richland County's (County's) petition for a writ of certiorari to review the decision of the Court of Appeals in *Quail Hill, LLC v. County of Richland, South Carolina*, 379 S.C. 314, 665 S.E.2d 194 (Ct.App.2008), in which the Court of Appeals affirmed in part and reversed in part the grant of summary judgment in favor of County as to **Quail Hill, LLC's** ( **Quail Hill's**) claims stemming from the issuance of inaccurate zoning information by County employees. We affirm in part and reverse in part.

### FACTUAL/PROCEDURAL HISTORY

In late 2002, **Quail Hill** sought to acquire a 72.5 acre parcel of property in Richland County to develop a manufactured-home subdivision. To assist in procuring this property, **Quail Hill** contacted Phillip Aylan Brown, Jr., a licensed real estate

broker, and authorized him to act as its agent. In January 2003, Brown met with Carl Gosline, the Richland County Subdivision Coordinator, to determine whether the parcel was suitable for the development of manufactured housing. According to Brown, Gosline told him the parcel was zoned RU (rural) based on information obtained from Gosline's computer. Brown also testified the tax bill from the Tax Assessor's office listed the parcel's zoning as RU. A zoning classification of RU allows the property to be developed as a manufactured-home subdivision.

On March 13, 2003, **Quail Hill** purchased the property and then surveyed, platted, and prepared it for development. In September 2003, **Quail Hill** filed an application with the Richland County Planning Commission ("Planning Commission") for site plan approval for the development of the subject property as a twenty-lot, manufactured-housing subdivision. On October 6, 2003, the Richland County Development Services Department issued a report for the Planning Commission in which it recommended approval of **Quail Hill's** subdivision plan. Subsequently,<sup>502</sup> the Planning Commission voted unanimously to approve **Quail Hill's** site plan for the property. In turn, **Quail Hill** began marketing and selling lots for the subdivision. According to **Quail Hill**, five lots were then sold, with manufactured homes being installed on two of the lots.

In November 2004, neighboring landowners contacted their County Council representative and asked him to attend a meeting regarding **Quail Hill's** subdivision. Geonard Price, the County's Zoning Administrator,<sup>FN1</sup> accompanied the County Council member to the meeting, where the neighbors inquired about zoning restric-

tions and expressed opposition to **Quail Hill's** development. Following this meeting, Price consulted the County's Official Zoning Map<sup>FN2</sup> and found the subject property was zoned RS-1, a residential classification that prohibits manufactured homes.

FN1. Richland County Code sections 26-34, 26-501, and 26-502 authorize the County Zoning Administrator to interpret, administer, and enforce County's zoning ordinances. Richland County, S.C., Code art. 3, § 26-34; art. 11, §§ 26-501, -502 (2005).

FN2. Richland County Code section 26-33 provides that the Official Zoning Map is available for inspection by the general public and states that it is the "only official description of the location of zoning district boundaries, and persons having recourse to this ordinance for any purpose are hereby so notified." Richland County, S.C., Code art. 3, § 26-33 (2005).

Based on the RS-1 zoning classification, County staff informed **Quail Hill** on November 4, 2004, that it was prohibited from developing manufactured housing on the property. On November 17, 2004, Price issued an order requiring **Quail Hill** to cease development of the subdivision except for those uses permitted under the RS-1 zoning district.

Following this order, **Quail Hill** representatives met with County staff who revealed that Gosline had erroneously advised **Quail Hill** the property was zoned RU, and that records from the Planning Development Services Division and the Tax Assessor's office differed from the Official Zoning

Map. According to **Quail Hill**, County staff advised it to apply for a zoning map change. However, after **Quail Hill** applied for the zoning map change, the Planning Commission's report recommended the change be denied. Ultimately, County Council denied **Quail Hill's** request.

**Quail Hill** did not appeal County Council's finding, but instead filed suit against County. In its Complaint, **Quail Hill** requested an injunction and asserted causes of action against County for equitable estoppel, negligent misrepresentation, negligence, and inverse condemnation. Additionally, **Quail Hill** sought an order requiring County to change zoning of the subject property from RS-1 to RU. Alternatively, **Quail Hill** sought actual damages and attorney's fees and costs.

After filing an Answer to **Quail Hill's** allegations, County moved for summary judgment as to all causes of action. In opposition to this motion, **Quail Hill** introduced a printout of the website for the Richland County Development Services Division, where Gosline worked. The website stated in part:

Since 1997 the department has performed the planning, zoning and land use management staff functions of county government. The department provides principal staff support to the Planning Commission, and Board of Zoning Appeals. Subdivisions, site plans, map amendments, variances, special exceptions and sign permit applications are filed at the Development Services Counter. The Development Services counter is the key point of public contact for the planning and zoning functions of the County. It is the primary information resource of property owners and land use professionals who often need to know "What can and

can not [sic] be done with a piece of property."

The site also contained a section of "Frequently Asked Questions." Amongst these questions was the following: "How do I find out how my property is zoned?" The answer states:

A request for zoning verification of any parcel within the unincorporated area of Richland County can be obtained from: Richland County Planning Development.... Please include the current Tax Parcel Number, Street Address, if available,\*503 size of tract, or any information that will assist us in locating the correct parcel.

Another question on the site is: "Who should I talk to about Zoning Issues?" The answer lists the Development Services Manager and the Zoning Administrator, and provides a brief explanation that the "staff can informally respond to any concerns or requirements that must be complied with and also inform you of anything that may impact your project."

At the conclusion of the hearing on the summary judgment motion, the circuit court judge ruled in favor of County as to all of **Quail Hill's** causes of action.<sup>FN3</sup> In a subsequent written order, the circuit court judge explained his ruling.

FN3. The Court of Appeals affirmed the grant of summary judgment as to **Quail Hill's** claim of inverse condemnation. **Quail Hill** does not challenge that portion of the opinion.

In terms of equitable estoppel, the judge prefaced his discussion with the fact that the "Richland County Zoning Ordinances provide that the official zoning map of

Richland County constitutes the only official description of the location of zoning district boundaries, and that the zoning administrator is the only representative on behalf of Richland County that can interpret the official zoning map.” The judge further noted that zoning ordinances and state law authorize County Council as the only entity that can adopt or amend zoning designations in the County. Additionally, the judge found that neither Gosline nor the Tax Assessor's office had the authority to interpret, alter, or amend the zoning classifications of property, and any such act would clearly be outside the scope of their authority.

As a result, the judge concluded that “equitable estoppel cannot be applied to frustrate Richland County's attempts to enforce its zoning ordinances.” The judge further found **Quail Hill** had the means to acquire knowledge of the zoning designation of the property because the Official Zoning Map and County ordinances are public record; thus, **Quail Hill** could not claim to have been misled.

As to **Quail Hill's** causes of action for negligence and negligent misrepresentation, the trial judge found it was well settled that the South Carolina Tort Claims Act (the Act)<sup>FN4</sup> governs all tort claims against governmental entities and that the Act is the exclusive civil remedy available in an action against a governmental entity or its employees. Based on the Act, the judge concluded that a governmental entity is liable for its torts in the same manner and to the same extent as a private individual under like circumstances.

FN4. S.C.Code Ann. §§ 15-78-10 to -220 (2005 & Supp.2009).

In view of these rules, the judge concluded

that County could be liable for negligence and negligent misrepresentation in enforcing and administering zoning “only if a private person can also be held liable for breach of that same duty under South Carolina law.” The judge found the duty of care regarding zoning is a uniquely governmental function with no analogous private counterpart.

The judge further held that sections 15-78-40 and 15-78-50(b) of the Act, by their express language, “do not allow for tort liability in this action.” Based on this reasoning, the judge concluded that to allow **Quail Hill** to recover would hold County liable for the negligence of its employees where a private person could not be held liable under state law. Accordingly, the judge found County's sovereign immunity had not been waived.

As an additional basis for granting summary judgment, the judge found that County would be immune from liability under section 15-78-60(4) of the Act “for any compliance, enforcement or failure to enforce” the applicable zoning ordinances. Based on the language of the statute, the judge concluded that County was entitled to absolute sovereign immunity for its compliance or enforcement of its zoning ordinances, which included the designations on the Official Zoning Map. The judge also found County could not be liable for failing to adopt or enforce an RU zoning classification on the property.

Finally, the judge found **Quail Hill's** claims for negligence and negligent misrepresentation failed because **Quail Hill** “with the exercise\*504 of reasonable diligence could have acquired knowledge as to the zoning of the subject property from the public record and cannot claim to have been misled.”

**Quail Hill** appealed the circuit court judge's order to the Court of Appeals. In a divided opinion, the Court of Appeals affirmed in part<sup>FN5</sup> and reversed in part the decision of the circuit court judge. *Quail Hill, LLC v. County of Richland, South Carolina*, 379 S.C. 314, 665 S.E.2d 194 (Ct.App.2008).

FN5. Initially, the Court of Appeals rejected **Quail Hill's** challenges regarding the validity of County's zoning ordinances and the circuit court judge's grant of summary judgment as to **Quail Hill's** claim for inverse condemnation. Because **Quail Hill** has not appealed these findings, we have not included the Court of Appeals' analysis regarding these issues.

With respect to **Quail Hill's** causes of action for negligence and negligent misrepresentation, the majority of the Court of Appeals concluded that the circuit court judge erred in granting summary judgment. *Id.* at 323, 665 S.E.2d at 199. Although the majority acknowledged there is federal authority to support the circuit court judge's resolution of this issue,<sup>FN6</sup> it noted that the Court of Appeals' decision relied on by the circuit court judge had recently been reversed.<sup>FN7</sup> Thus, the majority found there was no South Carolina precedent to support the circuit court's determination that "it is necessary to have a private analogue in order for liability to exist against a governmental entity under the South Carolina Tort Claims Act." *Id.* at 323, 665 S.E.2d at 198. The Court of Appeals declined, "at this premature stage of the litigation," to hold that **Quail Hill** could not pursue its claims for negligence and negligent misrepresentation based on the provisions of the South Carolina Tort Claims Act. *Id.*

FN6. Specifically, the Court of Appeals referenced the case relied upon by the circuit court judge. *United States v. Olson*, 546 U.S. 43, 43, 126 S.Ct. 510, 163 L.Ed.2d 306 (2005) (interpreting Federal Tort Claims Act and holding United States waives sovereign immunity under circumstances where local law would make a "private person" liable in tort, not where local law would make state or municipal entity liable even where uniquely governmental functions are at issue).

FN7. *Sloan Constr. Co. v. Southco Grassing, Inc.*, 368 S.C. 523, 629 S.E.2d 372 (Ct.App.2006), *rev'd*, 377 S.C. 108, 659 S.E.2d 158 (2008) (concluding Court of Appeals erred in finding subcontractor's claims for negligence and breach of contract under Suppliers' Payment Protection Act (SPPA) did not give rise to a private right of action against the South Carolina Department of Transportation pursuant to statutory bond requirements; noting the Act was not relevant to the government's liability for failure to comply with a duty under the SPPA).

Additionally, the Court of Appeals viewed **Quail Hill's** claims for negligence and negligent misrepresentation as arising from County's actions in mistakenly advising **Quail Hill** regarding the applicable zoning restriction on the subject property, not as emanating from the adoption or the enforcement of County's zoning ordinances. Based on this reasoning, the Court of Appeals held the circuit court judge erred in finding section 15-78-60(4) of the Act, which grants a municipal entity sovereign

692 S.E.2d 499

(Cite as: 692 S.E.2d 499)

immunity for the adoption or enforcement of an ordinance, barred **Quail Hill's** claims. *Id.* at 323, 665 S.E.2d at 199.

In terms of **Quail Hill's** equitable estoppel claim, the Court of Appeals found the circuit court judge erred in granting summary judgment to County. In reaching this conclusion, the Court of Appeals cited and analyzed the three elements of estoppel.

Initially, the Court of Appeals addressed whether **Quail Hill** lacked the knowledge to discover the correct zoning classification of the property. *Id.* at 324-25, 665 S.E.2d at 199. The Court of Appeals held the circuit court judge's finding as to whether Price, the Zoning Administrator, was the only person who could interpret the official zoning map "ignores the clear import of the County's website which directs the public to the Development Services Counter as 'the primary information resource of property owners and land use professionals' " to determine " '[w]hat can and can not [sic] be done with a piece of property.' " *Id.* The court also referenced the "Frequently Asked Questions" portion of the website that advised the public to check the zoning of a parcel prior to its development by consulting with the Department of Development Services, and suggested that it is advisable to meet with the Planning Staff to discuss any upcoming projects.\*505 The court further emphasized that nowhere on the website did it state that the Official Zoning Map must be consulted to determine a property's correct zoning designation. *Id.*

Based on this reasoning, the court concluded a genuine issue of material fact existed as to whether **Quail Hill** possessed the knowledge or the means to acquire the knowledge concerning the true zoning of this property. *Id.* at 325, 665 S.E.2d at 199.

The court also instructed that both parties would have the opportunity to develop evidence on the issue of whether or not the Official Zoning Map in Richland County is the exclusive means for acquiring zoning information. *Id.* at 325, 665 S.E.2d at 199-200.

In terms of justifiable reliance, the court noted that **Quail Hill** purchased the parcel, then surveyed, platted and prepared it for development based on information conveyed by County's staff. *Id.* at 326, 665 S.E.2d at 200. In view of this evidence, the court held a genuine issue of material fact existed as to whether **Quail Hill's** reliance on the representations of County officers and staff, acting within their proper scope of authority, was justified. *Id.*

## ISSUES

We granted County's petition for a writ of certiorari to review the following issues:

1. Did the Court of Appeals err in failing to apply prior precedent from the Supreme Court and in concluding that the government cannot be estopped for mistaken statements of law?
2. Did the Court of Appeals err in failing to apply long-standing principles in this state limiting the use of equitable estoppel to thwart the police power where an unauthorized person provides erroneous information?
3. Did the Court of Appeals err in reversing summary judgment on the negligence and negligent misrepresentation causes of action where those claims are premised entirely on misstatements of law upon which **Quail Hill** had no justifiable right to rely?

4. Did the Court of Appeals err in declining to rule on County's sovereign immunity defense based upon the application of sections 15-78-40 and 15-78-50(b) of the Act and also in failing to affirm summary judgment on the basis of sovereign immunity?

## DISCUSSION

### I. Standard of Review

Rule 56(c) of the South Carolina Rules of Civil Procedure provides that a trial court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC.

[1][2] "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Pye v. Estate of Fox*, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006). An appellate court reviews the granting of summary judgment under the same standard applied by the trial court under Rule 56, SCRPC. *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 379, 534 S.E.2d 688, 692 (2000). "Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts." *Id.* at 378, 534 S.E.2d at 692.

### II. Equitable Estoppel

County generally argues the Court of Appeals erred in finding there existed any genuine questions of material fact with respect to **Quail Hill's** cause of action for equitable estoppel. In support of this argument, County raises two claims.

First, relying on this Court's decision in *Greenville County v. Kenwood Enterprises, Inc.*, 353 S.C. 157, 577 S.E.2d 428 (2003), overruled on other grounds by *Byrd v. City of Hartsville*, 365 S.C. 650, 620 S.E.2d 76 (2005), and the Court of Appeals' decision in \*506 *Morgan v. South Carolina Budget and Control Board*, 377 S.C. 313, 659 S.E.2d 263 (Ct.App.2008), County avers that administrative officers of a governmental entity cannot estop that entity through mistaken statements of law. Because the zoning designation of a particular piece of property is established by ordinance and governed by the Official Zoning Map, it constitutes a matter of law. In turn, a zoning designation may be changed only through legislative action by the Richland County Council. Thus, any misrepresentation by a County official is a mistaken statement of law that cannot subject the governmental entity to estoppel. Furthermore, given **Quail Hill** could have consulted the Official Zoning Map and related ordinances, but failed to do so, it cannot establish estoppel.

Secondly, County asserts equitable estoppel does not apply given the incorrect zoning information was provided by Gosline and the Tax Assessor's Office, neither of which were authorized to provide zoning information. Because the County Zoning Administrator was the only authorized person to provide this information, County contends **Quail Hill** was not justified in its reliance on information furnished by unauthorized staff members. Additionally, giv-

en **Quail Hill** could have with reasonable diligence acquired the correct zoning of the property by consulting the Official Zoning Map or contacting the Zoning Administrator, it cannot assert estoppel against County.

[3][4] “As a general rule, estoppel does not lie against the government to prevent the due exercise of its police power or to thwart the application of public policy.” *Kenwood Enters.*, 353 S.C. at 171, 577 S.E.2d at 435. This Court has explained:

No estoppel can grow out of dealings with public officers of limited authority, and the doctrine of equitable estoppel cannot ordinarily be invoked to defeat a municipality in the prosecution of its public affairs because of an error or mistake of ... one of its officers or agents....

....

A governmental body is not immune from the application of the doctrine of estoppel *where its officers or agents act within the proper scope of their authority ... The public cannot be estopped, however, by the unauthorized or erroneous conduct or statements of its officers or agents which have been relied on by a third party to his detriment.*

*DeStefano v. City of Charleston*, 304 S.C. 250, 257-58, 403 S.E.2d 648, 653 (1991) (citations omitted)(emphasis added). Furthermore, “ ‘administrative officers of the state cannot estop the state through mistaken statements of law.’ ” *Kenwood Enters.*, 353 S.C. at 172, 577 S.E.2d at 436 (quoting *Kelso & Irwin, P.A., v. State Ins. Fund*, 134 Idaho 130, 997 P.2d 591, 599 (2000)). Specifically, “[e]stoppel will not lie against a government entity where a government employee gives erroneous information in contradiction of statute.

Simply stated, equity follows the law.” *Morgan*, 377 S.C. at 319, 659 S.E.2d at 267 (citations omitted).

[5] If estoppel is applicable against a government agency, a relying party must prove: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) justifiable reliance upon the government's conduct, and (3) a prejudicial change in position. *Grant v. City of Folly Beach*, 346 S.C. 74, 80, 551 S.E.2d 229, 232 (2001).

For reasons that will be discussed, we believe the Court of Appeals erred in reversing the circuit court's grant of summary judgment to County as to **Quail Hill's** claim of equitable estoppel.

[6] Initially, to estop County from enforcing the RS-1 zoning classification would be in direct contravention of the general rule that a governmental entity may not be estopped by the unauthorized or erroneous conduct or statements of its officers or agents. Here, neither Gosline nor the Tax Assessor's office was authorized to interpret or alter the zoning classification designated on the Official Zoning Map. Notably, Gosline did not work for the Zoning Administrator, and his zoning information was “fed” through the Tax Assessor's office and not that of the Zoning Administrator. Pursuant to the Richland County ordinances, the only authorized County employee was the Zoning Administrator.\*507 FN8 There is no evidence that **Quail Hill** consulted the Zoning Administrator prior to its purchase and subsequent development of the property at issue. Because the erroneous zoning information relied on by **Quail Hill** was conveyed by unauthorized individuals, the doctrine of equitable estoppel may not, as a matter of law, be invoked against County.

FN8. Richland County, S.C., Code art. 3, § 26-34; art. 11, § 26-502 (2005).

Furthermore, we disagree with the Court of Appeals' finding that the statements on the Richland County website created a genuine issue of material fact. Although the website language states that the Development Services counter is the "primary information resource of property owners and land use professionals," there is no evidence that **Quail Hill** relied on these statements. More importantly, the statements cannot supersede what is authorized by the Richland County ordinances. Significantly, the website states that Planning Staff can "informally respond to any concerns or requirements that must be complied with and also inform you of anything that may impact your project." (Emphasis added). The site also directs interested persons to the online Richland County zoning code.

A decision to affirm the circuit court judge's grant of summary judgment to County on this claim is consistent with our state's jurisprudence regarding the applicability of the doctrine of equitable estoppel to a government entity. See *DeStefano*, 304 S.C. at 257-58, 403 S.E.2d at 653 (finding City was not estopped from refusing to issue building permits even though Deputy City Engineer and Zoning Administrator made errors which led to the recording of citizen's plat); *McCrowey v. Zoning Bd. of Adjustment of the City of Rock Hill*, 360 S.C. 301, 306, 599 S.E.2d 617, 620 (Ct.App.2004) (holding doctrine of equitable estoppel was not applicable to City where Zoning Administrator erroneously issued a certificate of zoning compliance given Zoning Administrator "did not have the authority to alter or waive the zoning ordinance in question" and "equitable es-

toppel could not be applied to frustrate the attempts by [City] to enforce its zoning code as written"); see also *Am. Legion Post 15 v. Horry County*, 381 S.C. 576, 674 S.E.2d 181 (Ct.App.2009) (concluding County was not estopped from raising statute of limitations against non-profit corporations seeking refunds of fees where corporations paid fees based on County employee's conduct that was in contradiction of a statute); *Morgan*, 377 S.C. at 319-22, 659 S.E.2d at 267-68 (holding Retirement Systems was not estopped from calculating the cost of plaintiff's service credit using his current, career-high salary even though Retirement Systems' misinformation and delays prevented plaintiff from completing his purchase before his salary increase given eligibility to purchase service credit is purely statutory and, thus, Retirement Systems lacked authority to contradict the statute).

More importantly, we agree with County's argument that the RU zoning classification was a mistaken statement of law and, thus, could not be used to estop County from enforcing it. Cf. *Kenwood Enters.*, 353 S.C. at 173, 577 S.E.2d at 436 (concluding County was not estopped from enforcing zoning ordinance where County official's representations regarding the constitutionality of the subject ordinance was an "erroneous statement of the law"); see *Meyer v. Santema*, 559 N.W.2d 251, 255 (S.D.1997) (recognizing that misrepresentations regarding interpretation and implementation of a zoning ordinance constitute misrepresentations of matters of law).

[7] Alternatively, even if the doctrine of estoppel were applicable to County in the instant case, we find **Quail Hill** failed to establish the requisite elements.

Admittedly, **Quail Hill** experienced a pre-

judicial change of position due to the erroneous zoning information. However, **Quail Hill** had the “means of knowledge” to determine the correct zoning classification and could not justifiably rely solely on information provided by staff members. There is no evidence that **Brown**, an experienced real estate broker,<sup>FN9</sup> ever examined the publicly-accessible zoning \*508 map or consulted with anyone other than Gosline to determine the zoning classification. *See Grant*, 346 S.C. at 82, 551 S.E.2d at 233 (holding City, which had issued erroneous building permits, was not estopped from enforcing zoning ordinance where building owner could have easily ascertained flood limitations on his building by reviewing the zoning/flood ordinance); *cf. Abbeville Arms v. City of Abbeville*, 273 S.C. 491, 257 S.E.2d 716 (1979) (holding City was estopped from denying building permit on basis of corrected zoning after discovering the zoning map had been made up defectively given developer checked the zoning ordinance, including the Official Zoning Map, and received written confirmation from the City Zoning Administrator).

FN9. Significantly, **Quail Hill's** pleadings characterize **Brown** as “experienced in the development of manufactured home subdivisions.”

### III. Negligence/Negligent Misrepresentation

For several reasons, County contends the Court of Appeals erred in reversing the grant of summary judgment as to **Quail Hill's** claims for negligence and negligent misrepresentation. We agree with each of County's arguments.

As a threshold matter, County claims the negligence claim should be treated solely

as a cause of action for negligent misrepresentation because the crux of **Quail Hill's** complaint is that County furnished erroneous information regarding the subject property's zoning.

Next, County asserts the Court of Appeals failed to address the fact that **Quail Hill** did not present any evidence to support its negligent misrepresentation claim. Specifically, County contends **Quail Hill** could not have justifiably relied on a mistaken representation regarding the proper zoning classification. County avers that a misrepresentation as to the correct zoning status is not actionable given the zoning of the property was a legal issue, not a factual issue, and claims for negligent misrepresentation cannot be based on mistaken statements of law. Finally, County contends **Quail Hill** could have discovered the proper zoning classification had it exercised reasonable diligence.

[8] We agree with County that **Quail Hill's** claims of negligence and negligent misrepresentation should be treated as solely one for negligent misrepresentation. Notably, the circuit court judge and the Court of Appeals did not address these two claims in seriatim, but instead merely ruled on the negligent misrepresentation cause of action. Although pled separately, we find **Quail Hill's** claim for negligence is essentially subsumed in the negligent misrepresentation cause of action.

[9] To prove a claim for the common law tort of negligent misrepresentation, **Quail Hill** was required to establish the following elements:

- (1) the defendant made a false representation to the plaintiff;
- (2) the defendant had a pecuniary interest in making the statement;
- (3) the defendant owed a duty

of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance on the representation.

*West v. Gladney*, 341 S.C. 127, 134, 533 S.E.2d 334, 337 (Ct.App.2000).

[10][11][12] “There is no liability for casual statements, representations as to matters of law, or matters which plaintiff could ascertain on his own in the exercise of due diligence.” *AMA Mgt. Corp. v. Strasburger*, 309 S.C. 213, 223, 420 S.E.2d 868, 874 (Ct.App.1992). “[W]hile issues of reliance are ordinarily resolved by the finder of fact, ‘there can be no reasonable reliance on a misstatement if the plaintiff knows the truth of the matter.’” *McLaughlin v. Williams*, 379 S.C. 451, 457-58, 665 S.E.2d 667, 671 (Ct.App.2008) (quoting *Gruber v. Santee Frozen Foods, Inc.*, 309 S.C. 13, 20, 419 S.E.2d 795, 800 (Ct.App.1992)). “Thus, if the undisputed evidence clearly shows the party asserting reliance has knowledge of the truth of the matter, there is no genuine issue of material fact.” *Id.* at 458, 665 S.E.2d at 671. A determination of justifiable reliance involves the evaluation of the totality of the circumstances, which includes the positions and relations of the parties. *West*, 341 S.C. at 134, 533 S.E.2d at 337.

\*509 [13] Turning to the facts of the instant case, we disagree with the Court of Appeals that there exists a genuine issue of material fact with respect to **Quail Hill's** claim for negligent misrepresentation. We find this claim is controlled by the question of whether **Quail Hill** could have justifiably relied on the representations of

County staff. As previously stated, **Quail Hill** could have reviewed the Official Zoning Map to ascertain the correct zoning classification. Moreover, given the fact that Brown, as the agent of **Quail Hill**, was an experienced real estate broker, it would be difficult to conclude that his reliance solely on the statements of Gosline and the Tax Assessor's records was reasonable.

Furthermore, there is authority to support County's contention that misrepresentations as to matters of law are not actionable. *See, e.g., Meyer v. Santema*, 559 N.W.2d 251, 255 (S.D.1997) (affirming grant of summary judgment to City as to purchasers' cause of action for negligent misrepresentation stemming from erroneous representations regarding zoning given the misrepresentation involved a matter of law and “county officials may not be held liable in damages when they negligently misrepresent the legal requirements of their zoning ordinance to members of the public who rely on that misrepresentation”).

In view of our conclusion that **Quail Hill's** negligence/negligent misrepresentation claim fails as a matter of law, we need not address County's remaining argument regarding immunity under the Tort Claims Act.

## CONCLUSION

Because there is no challenge to the Court of Appeals' decision affirming the grant of summary judgment regarding **Quail Hill's** claim of inverse condemnation and the validity of the County's zoning ordinances, we affirm those portions of the opinion. We reverse, however, the Court of Appeals' decision regarding **Quail Hill's** claims of equitable estoppel, negligence, and negligent misrepresentation.

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**AFFIRMED IN PART AND RE-  
VERSED IN PART.**

TOAL, C.J., KITTREDGE, J., and Acting  
Justice JAMES E. MOORE, concur.  
PLEICONES, J., concurring in result only.  
S.C., 2010.  
Quail Hill, LLC v. County of Richland  
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**H**

Court of Appeals of South Carolina.  
Kevin McCROWEY, Appellant,

v.

The ZONING BOARD OF ADJUST-  
MENT OF THE CITY OF ROCK HILL,  
South Carolina, Respondent.

No. 3845.

Submitted May 13, 2004.

Decided July 12, 2004.

**Background:** Landowner appealed from decision of the Circuit Court, York County, John C. Hayes, III, J., sustaining the decision of the Zoning Board of Adjustment which found landowner's business to be in violation of local zoning ordinances.

**Holding:** The Court of Appeals held that, because landowner's property violated zoning ordinance, zoning administrator exceeded his authority when he approved landowner's parking plan, and because zoning administrator's actions in initially approving landowner's parking plan were in error, equitable estoppel could not be applied so as to estop Zoning Board of Adjustment from subsequently finding the property in violation of the zoning ordinance.

Affirmed.

West Headnotes

**[1] Zoning and Planning 414 ↪1624**

414 Zoning and Planning

414X Judicial Review or Relief

414X(C) Scope of Review

414X(C)1 In General

414k1624 k. Decisions of boards or officers in general. Most Cited

Cases

(Formerly 414k605)

**Zoning and Planning 414 ↪1631**

414 Zoning and Planning

414X Judicial Review or Relief

414X(C) Scope of Review

414X(C)1 In General

414k1627 Arbitrary, Capricious, or Unreasonable Action

414k1631 k. Decisions of boards or officers in general. Most Cited Cases

(Formerly 414k610)

**Zoning and Planning 414 ↪1649**

414 Zoning and Planning

414X Judicial Review or Relief

414X(C) Scope of Review

414X(C)1 In General

414k1645 Matters of Discretion

414k1649 k. Decisions of boards or officers in general. Most Cited Cases

(Formerly 414k621)

A decision of a municipal zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion.

**[2] Zoning and Planning 414 ↪1333(1)**

414 Zoning and Planning

414VII Administration in General

414k1325 Boards and Officers in General

414k1333 Power and Authority

414k1333(1) k. In general.

Most Cited Cases

(Formerly 414k353.1)

## Zoning and Planning 414 ↪1770

### 414 Zoning and Planning

#### 414XI Enforcement of Regulations

##### 414k1767 Defenses to Enforcement

##### 414k1770 k. Estoppel or inducement. Most Cited Cases (Formerly 414k762)

Since town's zoning code gave zoning administrator only the power to administer and enforce the code, zoning administrator did not have authority to alter or waive zoning ordinance, and because landowner's property violated zoning ordinance, zoning administrator exceeded his authority when he approved landowner's parking plan, and because zoning administrator's actions in initially approving landowner's parking plan were in error, equitable estoppel could not be applied so as to estop town's zoning board of adjustment from subsequently finding the property in violation of the zoning ordinance.

## [3] Estoppel 156 ↪52.15

### 156 Estoppel

#### 156III Equitable Estoppel

##### 156III(A) Nature and Essentials in General

##### 156k52.15 k. Essential elements. Most Cited Cases

Typically, equitable estoppel is found to exist when the following elements are present: (1) conduct by the party estopped which amounts to false representation or concealment of material facts or which is calculated to convey impression that facts are otherwise than and inconsistent with those which party subsequently attempts to assert; (2) intention or at least expectation that such conduct shall be acted upon by other party; (3) knowledge of true facts; (4) lack of knowledge or means of knowledge of facts by other party; (5) reliance upon conduct by other party; and (6) detrimental

change of position by other party because of his reliance.

**\*\*617 \*302** R. Chadwick Smith, of Rock Hill, for Appellant.

W. Mark White, of Rock Hill, for Respondent.

### PER CURIAM:

Kevin McCrowey ("Appellant") appeals a circuit court ruling sustaining the decision of the Zoning Board of Adjustment of Rock Hill ("Respondent"), which found Appellant's **\*\*618** business to be in violation of local zoning ordinances. We affirm.<sup>FN1</sup>

FN1. Because oral argument would not aid the court in resolving the issues on appeal, we decide this case without oral argument pursuant to Rules 215 and 220(b)(2), SCACR.

### FACTS

Kevin McCrowey is the owner of property ("the Property") located at 1151 Saluda Street in Rock Hill. On March 24, 1998, Appellant submitted an application for a Certificate of Occupancy along with a diagram of the building located on the Property. In March 1999, Rock Hill granted Appellant a Certificate of Occupancy for the operation of a pool hall.

**\*303** At the time Appellant submitted the application, he was leasing the Property. Appellant later subleased the Property to Carlondo Brown, who was granted a Commercial Zoning Permit to operate a game room on October 29, 1999. In February 2000, Appellant purchased the Property. On October 20, 2000 Appellant obtained a Certificate of Zoning Compliance for the operation of a sports bar under the name of Infinity 2000 Sports Lounge.

One of Rock Hill's inspectors noted on the Application for Certificate of Zoning Compliance that the parking lot did not conform to the zoning code's design standards, as it appeared the Property did not have enough parking spaces available to accommodate a nightclub. This notation also requested the submission of a parking plan for the site. Appellant submitted the requested parking plan and an additional notation was later added by Rock Hill's zoning administrator stating that the application was "[a]pproved for zoning compliance per plan revised [November 10, 2000]."

However, despite this apparent approval, the same zoning administrator who approved Appellant's parking plan issued a Notice of Violation to Appellant on September 6, 2001, which stated that the parking area and signs located on the Property were in violation of Rock Hill's Zoning Code. Appellant filed a notice of appeal on September 21, 2001 and a hearing was held before the Rock Hill Board of Zoning Appeals ("the Board") on November 20, 2001.

Despite the fact that he previously found Appellant's parking plan in compliance with the applicable zoning ordinance, the zoning administrator stated at the hearing that the Property did not currently, nor did it ever, comply with the zoning ordinance since the nightclubs were first opened on the property in 1998. On January 11, 2002, the Board issued a letter denying Appellant's appeal and affirming the decision of the zoning administrator.

Accordingly on February 8, 2002, Appellant appealed the Board's decision to the circuit court pursuant to S.C.Code Ann. § 6-29-820 (Supp.2002).<sup>FN2</sup> At the hearing before the \*304 circuit court, Appellant ar-

gued that Respondent should be estopped from finding the Property in violation of the zoning ordinances based on its earlier conduct. Appellant offered this argument, in part, based on the fact that nightclubs have operated on the Property since 1998 without incident and all with approval of Respondent. In addition, as noted above, the zoning administrator who issued the Notice of Violation previously approved Appellant's parking plan. Therefore, Appellant averred he relied on this past conduct to his detriment when he decided to purchase the Property.

FN2. A person who may have a substantial interest in any decision of the board of appeals or an officer or agent of the appropriate governing authority may appeal from a decision of the board to the circuit court in and for the county by filing with the clerk of the court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty days after the decision of the board is mailed.

S.C.Code Ann. § 6-29-820  
(Supp.2002).

Relying on several South Carolina authorities, Respondent averred that under the facts of this case, the doctrine of equitable estoppel should not be applied. By order dated May 23, 2002, the trial court agreed with Respondent and affirmed the Board's decision.

#### STANDARD OF REVIEW

Because Rock Hill enacted the zoning ordinance in question pursuant to the South Carolina\*\*619 Local Government Comprehensive Planning Enabling Act of 1994, the

scope of review is governed by statute. See S.C.Code Ann. §§ 6-29-310-1200 (Supp.2002). Accordingly, as stated in Section 840, “[t]he findings of fact by the board of appeals shall be treated in the same manner as a finding of fact by a jury.” S.C.Code Ann. § 6-29-840 (Supp.2002); see also *Heilker v. Zoning Bd. of Appeals for City of Beaufort*, 346 S.C. 401, 405, 552 S.E.2d 42, 44 (Ct.App.2001). Furthermore, “[i]n determining the questions presented by the appeal, the court shall determine only whether the decision of the board is correct as a matter of law.” *Id.*

[1] It is important to note “[a] court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision.” *Restaurant Row Assocs. v. Horry County*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999) (citation omitted). “However, a decision of a municipal zoning board will be overturned if it is arbitrary, capricious, has no \*305 reasonable relation to a lawful purpose, or if the board has abused its discretion.” *Id.*

#### LAW/ANALYSIS

[2] Appellant argues the trial court erred in finding the doctrine of equitable estoppel not applicable because the zoning administrator erroneously issued a certificate of zoning compliance. We disagree.

[3] Typically, equitable estoppel is found to exist when the following elements are present:

(1) [C]onduct by the party estopped which amounts to a false representation or concealment of material facts or which is calculated to convey the impression that the facts are otherwise than and inconsistent with those which the party

subsequently attempts to assert; (2) the intention or at least expectation that such conduct shall be acted upon by the other party; (3) knowledge, actual or constructive, of the true facts; (4) lack of knowledge or the means of knowledge of the facts by the other party; (5) reliance upon the conduct by the other party; and (6) a detrimental change of position by the other party because of his reliance.

*Oswald v. Aiken County*, 281 S.C. 298, 305, 315 S.E.2d 146, 151 (Ct.App.1984) (citing *Frady v. Smith*, 247 S.C. 353, 147 S.E.2d 412 (1966)).

However, it is generally held that “[n]o estoppel can grow out of dealings with public officers of limited authority, and the doctrine of equitable estoppel cannot ordinarily be invoked to defeat a municipality in the prosecution of its public affairs because of an error or mistake of ... one of its officers or agents....” *DeStefano v. City of Charleston*, 304 S.C. 250, 257-258, 403 S.E.2d 648, 653 (1991) (quoting *Farrow v. City Council of Charleston*, 169 S.C. 373, 382, 168 S.E. 852, 855 (1933)) (further citations omitted). See also *South Carolina Coastal Council v. Vogel*, 292 S.C. 449, 452, 357 S.E.2d 187, 189 (Ct.App.1987) (holding that the doctrine of equitable estoppel cannot be used to deprive the State of the due exercise of its police power or to frustrate its application of public policy).

Significantly, in spite of this general rule, South Carolina courts have held that “[a] governmental body is not immune \*306 from the application of equitable estoppel where its officers or agents act within the proper scope of their authority.” *South Carolina Coastal Council v. Vogel*, 292 S.C. 449, 453, 357 S.E.2d 187, 189 (Ct.App.1987) (citing *Oswald v. Aiken County*, 281 S.C. 298, 315 S.E.2d 146

(Ct.App.1984)).

Although Appellant acknowledges the general rule, he argues the zoning administrator was acting within the proper scope of his authority, and thus, the doctrine should be applicable. Specifically, Appellant avers that in the current case “the Zoning Administrator acted within his proper authority when he concluded that [his] parking area met Rock Hill's zoning requirements.” The Appellant goes on to state “the decision of whether a piece of property conforms to zoning compliance is a determination the zoning administrator would appear to have authority to make.”

However, the zoning administrator did not have the authority to alter or waive the zoning ordinance in question. Rock Hill's \*\*620 Zoning Code gives zoning administrators the power to administer and enforce the Zoning Code. Rock Hill's Zoning Code does not grant power to an administrator to alter, modify, or waive provisions contained in the Zoning Code. Further, the zoning administrator was not granted with the authority to grant a variance. The Zoning Code only grants the Zoning Board of Appeals the discretion of whether and when to grant a variance. Because the parties do not dispute that the Property did in fact violate the zoning ordinance, the zoning administrator exceeded his authority when he approved Appellant's parking plan in October 2000. As the zoning administrator's actions in approving Appellant's parking plan were in error, the trial court did not err in concluding, based on the authority cited above, that equitable estoppel could not be applied to frustrate the attempts by Rock Hill to enforce its zoning code as written.

#### **CONCLUSION**

Accordingly, based on the foregoing,

the decision of the trial court is

#### **AFFIRMED.**

HEARN, C.J., ANDERSON and BEATTY, JJ., concur.

S.C.App.,2004.

McCrowey v. Zoning Bd. of Adjustment of City of Rock Hill  
360 S.C. 301, 599 S.E.2d 617

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**Town of Hilton Head Island**  
**Community Development Department**  
 One Town Center Court  
 Hilton Head Island, SC 29928  
 Phone: 843-341-4757 Fax: 843-842-8908  
[www.hiltonheadislandsc.gov](http://www.hiltonheadislandsc.gov)

FOR OFFICIAL USE ONLY	
Date Received:	_____
Accepted by:	_____
App. #: SUB	_____
Meeting Date:	_____

Applicant/Agent Name: Terry Thomas Company: EMEGC, Inc.  
 Mailing Address: 3615 E/ Lake Ave City: Tampa State: FL Zip: 33610  
 Telephone: 813.241.9000 Fax: 813.241.9001 E-mail: terry.thomas@emegc.com  
 Business License # G109224

Project Name: Hilton Head Plantation Cell Tower Project Address: 68 Dolphin Head Drive  
 Parcel Number [PIN]: R510 003 0000 0060 0000  
 Zoning District: Open Space Overlay District(s): \_\_\_\_\_

**SUBDIVISION (SUB) SUBMITTAL REQUIREMENTS – SIX (6) OR MORE LOTS**

*To be filled out by Community Development Staff- Applicants may use this checklist as a guide*

*\*These items (if determined applicable by staff) are required at the time of submittal to be distributed for review.*

- X \*Filing Fee (\$200 + \$10 per lot)
- X \*Owner's Consent
- X \*Restrictive Covenants
- X \*Property Deed/Title Source
- N/A \*Open Space/Public Dedication

**Written Narrative**

- X \*Specific Use Proposed
- X \*Zoning District
- N/A \*Number of Lots
- N/A \*Phasing Plan
- N/A \*Type of Recreational Uses
- N/A \*Maintenance Responsibility
- N/A \*Dedicated Improvements
- N/A Other Government Approvals

**Phasing Plan/Schedule Report**

- N/A \*Graphic Scale
- N/A \* Number of Lots
- N/A \*Open Space Calculations
- N/A \*Site Improvements
- N/A \*Public Dedication

**Tree Protection**

- N/A \*Application
- N/A \*Tree Survey (no older than 2 years)
- N/A \*Written Narrative on Tree Protection
- N/A \*Tree Tally Sheets

**Landscape Plan (2 COPIES)**

Part of DRB Application Planting Plan & Schedule

**Site Lighting Plan**

- N/A Graphic Scale
- N/A Location Plan
- N/A Light levels
- N/A Fixture Schedule
- N/A Manufacturer's Photometric Data

**Site Development Plan (6 Copies)**

- X \*Name of Development
- X \*Graphic Scale & North Arrow
- X \*Tax Map & Parcel Number
- X \*Date & Revisions
- X \*Vicinity Sketch
- X \*Topographic Information
- X \*Trees 6" Diameter & Over
- X \*Existing Structures within 50 Feet
- N/A \*Drainage Location
- N/A \*Impervious Surface Calculations
- X \*Open Space Calculations
- N/A \*Setback and Buffer Areas
- N/A \*Zoning Boundaries
- N/A \*Wetlands Delineation
- X \*FEMA Flood Zone Information
- X \*Fire Hydrants and Fire Lanes
- N/A \*Trash Receptacles & Enclosures
- N/A Archeological Information

*(Continued on Back)*





Town of Hilton Head Island  
 Community Development Department  
 One Town Center Court  
 Hilton Head Island, SC 29928  
 Phone: 843-341-4757 Fax: 843-842-8908  
[www.hiltonheadislandsc.gov](http://www.hiltonheadislandsc.gov)

**FOR OFFICIAL USE ONLY**  
 Date Received: \_\_\_\_\_  
 App. #: \_\_\_\_\_  
 Form revised 10-2012

**AFFIDAVIT OF OWNERSHIP AND  
 HOLD HARMLESS PERMISSION TO ENTER PROPERTY**

The undersigned being duly sworn and upon oath states as follows:

1. I am the current owner of the property which is the subject of this application.
2. I hereby authorize David Woreley to act as my agent for this application only.
3. All statements contained in this application have been prepared by me or my agents and are true and correct to the best of my knowledge.
4. The application is being submitted with my knowledge and consent.
5. Owner grants the Town, its employees, agents, engineers, contractors or other representatives the right to enter upon Owner's real property, located at Hilton Head Plantation (address), R510 003 00 00060 0000 (parcel ID) for the purpose of application review, for the limited time necessary to complete that purpose.
6. Owner agrees to hold the Town harmless for any loss or damage to persons or property occurring on the private property during the Town's entry upon the property, unless the loss or damage is the result of the sole negligence of the Town.
7. I acknowledge that the Town of Hilton Head Island Municipal Code requires that all construction in a Special Flood Hazard Zone be constructed in accordance with the following provisions:
  - a. That any enclosed area below the base flood elevation will be used solely for parking of vehicles, limited storage or access to the building. This space will never be used for human habitation without first becoming fully compliant with the Town's Flood Damage Controls Ordinance in effect at the time of conversion.
  - b. That all interior walls, ceilings and floors below the base flood elevation will be constructed of flood resistant materials.
  - c. That all mechanical, electrical and plumbing devices will be installed above base flood elevation.
  - d. That walls of the enclosed area below base flood elevation will be equipped with at least two openings which allow automatic entry and exit of flood water. Openings will be on two different walls with at least one square inch of free area for every square foot of enclosed space and have the bottom of openings no more than a foot above grade.
  - e. That the structure may be subject to increased premium rates for flood insurance from the National Flood Insurance Program.
8. I understand that failure to abide by Town permits, any conditions, and all codes adopted by the Town of Hilton Head Island deems me subject to enforcement action and/or fines.

Print Name: T Peter Kristian Owner Signature: [Signature]  
 Phone No.: (843) 681-8800 Email: pkristian@hhpva.org  
 Date: 7/2/13

The foregoing instrument was acknowledged before me by T. Peter Kristian, who is personally known to me or has produced Drivers License as identification and who did not take an oath.

WITNESS my hand and official seal this 2<sup>ND</sup> day of July

[Signature]  
 Notary Public Signature

My Commission expires: August 21, 2022  
 Please affix seal or stamp

**SHARON P. WHITE**  
 Notary Public, South Carolina  
 My Commission Expires  
 August 21, 2022

385 p 211

Form No. 119-QUIT-CLAIM DEED  
224567890  
REVISED 8/82

The State of South Carolina,  
COUNTY OF BEAUFORT.

To All Whom These Presents May Come:

WHEREAS: SOUTHEAST HOLDING COMPANY, LTD., doing business as HILTON HEAD PLANTATION COMPANY SEND GREETING:

FILED IN DEED BOOK 385 PAGE 211  
FILED AT 164702 ON 12/28/82

NOW, KNOW ALL MEN BY THESE PRESENTS, That the said SOUTHEAST HOLDING COMPANY, LTD., doing business as HILTON HEAD PLANTATION COMPANY

in consideration of the premises and also in consideration of the sum of One (\$1.00)-----dollars

to it in hand paid at and before the sealing and delivery of these presents by HILTON HEAD PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., Post Office Box 1940, Hilton Head Island, S.C. 29925

(the receipt whereof is hereby acknowledged) have remised, released and forever quit-claimed, and by these presents do remise, release and forever quit-claim unto the said HILTON HEAD PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., Its Successors and Assigns forever, the following described real property, to-wit:

SEE EXHIBIT "A" ATTACHED

The property intended to be conveyed herein is a portion of the same property conveyed by deed dated December 9, 1971, recorded in the records of the Office of the Clerk of Court for Beaufort County, South Carolina in Deed Book 193 at Page 1626, by Fred C. Hack and Fredrick C. Hack, Jr., as Trustees to Hilton Head Development Corp., which thereafter became Hilton Head Plantation Company, Inc., and has now become Southeast Holding Company, Ltd., doing business as Hilton Head Plantation Company.

The property being conveyed herein is accepted by the Grantee subject to those certain Covenants, Restrictions, Reservations and Limitations which are set forth on the attached Exhibit "B".

The within deed was prepared in the law offices of Bethea, Jordan & Griffin, P.A., Hilton Head Island, South Carolina.

BEAUFORT COUNTY TAX MAP REFERENCES

Dist	Map	Subcap	Parcel	Block

TOGETHER with all and singular the rights, members, hereditaments and appurtenance to the said premises belonging or in anywise incident or appertaining:

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said HILTON HEAD PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., Its Successors

and assigns, forever—so that neither the said SOUTHEAST HOLDING COMPANY, LTD., doing business as Hilton Head Plantation Company

its successors or assigns, nor / heirs, nor any other person or persons, claiming under it or them, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part of parcel thereof, forever.

Witness the hand and seal this 29th day of December in the year of our Lord one thousand nine hundred and eighty-three and in the two hundred and eighth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered }  
in the presence of

Gordon J. Calmer

Virginia L. Fitzhugh

SOUTHEAST HOLDING COMPANY, LTD. doing  
business as HILTON HEAD PLANTATION COMPANY  
\_\_\_\_\_  
(L. S.)

By:  Howard A. Davis  (L. S.)  
Howard A. Davis, Vice President

Attest:  Paul A. Graf  (L.S.)  
Paul A. Graf, Assistant Secretary

FILED IN DEED BOOK 385 PAGE 212  
FILED AT 154700 ON 12/30/83

EXHIBIT "A"

All those certain pieces, parcels or tracts of land located within Hilton Head Plantation on Hilton Head Island, Beaufort County, South Carolina, consisting of "OPEN SPACE", being six (6) in number and being shown as those shaded, cross-hatched areas, and a forty (40') foot easement, labeled as "40' Leisure Trail Easement", said Open Space area consisting of a total of 110,737 S.F., as more particularly shown and described on a plat entitled "A Plat of Dolphin Head Four, Tract 25, A Section of Hilton Head Plantation, Hilton Head Island, South Carolina," which plat was prepared by Coastal Surveying Co., Inc. and certified to by Jerry L. Richardson, R.L.S. (S.C.) #4784, said plat was dated November 11, 1981 and recorded in the Office of the Clerk of Court for Beaufort County, South Carolina in Plat Book 30 at Page 56 on January 28, 1982. For a more complete description of the property comprising the "OPEN SPACE" of Dolphin Head Four, Tract 25, reference is had to the above mentioned plat of record.

\*\*\*\*\*

All that certain piece, parcel or tract of land located within Hilton Head Plantation on Hilton Head Island, Beaufort County, South Carolina, consisting of "OPEN SPACE", being two (2) in number and shown as containing 119,013 S.F. and 16,441 S.F., as more particularly shown on a plat entitled "A Plat of A Portion of Pineland Subdivision, Quail Walk Lane, Sheet No. 1, Lots 116 thru 130, A Section of Hilton Head Plantation, Hilton Head Island, Beaufort County, South Carolina," which plat was prepared by Thomas & Hutton Engineering Company and certified to by William G. Foster, R.L.S. (S.C.) #2753, said plat was dated December, 1981, and was recorded in the Office of the Clerk of Court for Beaufort County, South Carolina, in Plat Book 30 at Page 57 on January 28, 1982. For a more complete description of the property comprising the "OPEN SPACE" of Pineland Subdivision, Sheet No. 1, reference is had to the above mentioned plat of record.

\*\*\*\*\*

All those certain pieces, parcels or tracts of land located within Hilton Head Plantation on Hilton Head Island, Beaufort County, South Carolina, consisting of "OPEN SPACE", being four (4) in number and being shown as those shaded, cross-hatched areas, and a forty (40') foot easement, labeled as "40' Leisure Trail Easement", said Open Space area consisting of a total of 154,306 S.F., as more particularly shown and described on a plat entitled "A Plat of Dolphin Head Five, Tract 26, A Section of Hilton Head Plantation, Hilton Head Island, South Carolina," which plat was prepared by Coastal Surveying Co., Inc. and certified to by Jerry L. Richardson, R.L.S. (S.C.) #4784, said plat was dated November 10, 1981 and recorded in the Office of the Clerk of Court for Beaufort County, South Carolina in Plat Book 30 at Page 58 on January 28, 1982. For a more complete description of the property comprising the "OPEN SPACE" of Dolphin Head Five, Tract 26, reference is had to the above mentioned plat of record.

\*\*\*\*\*

All those certain pieces, parcels or tracts of land located within Hilton Head Plantation on Hilton Head Island, Beaufort County, South Carolina, consisting of "OPEN SPACE", being three (3) in number and shown as containing 51,119 S.F., 32,890 S.F. and 14, 278 S.F., as more particularly shown and described on a plat entitled "A Plat of A Portion of Myrtle Bank Subdivision IV, Tree Swallow Court, Pine Warbler Circle, Sheet No. 1, Lots 101 thru 115, A Section of Hilton Head Plantation, Hilton Head Island, Beaufort County, South Carolina," which plat was prepared by Thomas & Hutton Engineering Company and certified to by William G. Foster, R.L.S. (S.C.) #2753, said

BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	Submap	Parcel	Block
530	2	A	563	
	2	A	569	
	2	A	564	
	2	A	408	
	2	A	505	

FILED IN DEED BOOK 385 PAGE 213  
FILED AT 164700 ON 12/30/83

plat being dated November 17, 1981 and recorded in the Office of the Clerk of Court for Beaufort County, South Carolina in Plat Book 30 at Page 59 on January 28, 1982. For a more complete description of the property comprising the "OPEN SPACE" of Myrtle Bank Subdivision IV, Sheet No. 1, reference is had to the above mentioned plat of record.

\*\*\*\*\*

All those certain pieces, parcels or tracts of land located within Hilton Head Plantation on Hilton Head Island, Beaufort County, South Carolina, consisting of "OPEN SPACE", being ten (10) in number and being shown as those shaded, cross-hatched areas, and a forty (40') foot easement, labeled as "40' Leisure Trail R/W" and an eighty (80') foot easement, labeled as "80' Leisure Trail R/W", said Open Space area consisting of a total of 466,178 S.F., as more particularly shown and described on a plat entitled "A Plat of Pineland Subdivision, Whitetail Deer Lane & Bobcat Lane, Tract 27, A Section of Hilton Head Plantation, Hilton Head Island, South Carolina," which plat was prepared by Coastal Surveying Co., Inc. and certified to by Jerry L. Richardson, R.L.S. (S.C.) #4784, said plat being dated December 11, 1981 and recorded in the Office of the Clerk of Court for Beaufort County, South Carolina in Plat Book 30 at Page 60 on January 28, 1982. For a more complete description of the property comprising the "OPEN SPACE" of Pineland Subdivision, Tract 27, reference is had to the above mentioned plat of record.

FILED IN DEED BOOK 385 PAGE 214  
FILED AT 164700 ON 12/30/85

EXHIBIT "B"

OPEN SPACE  
CONDITIONS, RESTRICTIONS, LIMITATIONS AND RESERVATIONS

This conveyance is made by the Grantor herein pursuant to the provisions of Article IV of the Declaration which is referred to hereinafter and is subject to the following conditions, restrictions, limitations and reservations:

1. That certain AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS OF THE HILTON HEAD PLANTATION PROPERTY OWNERS ASSOCIATION AND HILTON HEAD PLANTATION COMPANY, INC., which is dated March 28, 1983 and was recorded in the Office of the Clerk of Court for Beaufort County, South Carolina on April 19, 1983 in Deed Book 367 at Page 656.
2. The above described property is to be used solely as Open Space and for no other use whatsoever, as a part of the "Common Properties" as defined in Article IV, Section 6 of the above referenced Declaration; provided, however, that the Grantor reserves the right, with the concurrence of The Hilton Head Plantation Property Owners' Association, Inc., to redesignate said property, or such portions thereof as both parties agree upon as "Restricted Common Properties" as that term is defined in the above referenced Declaration; provided, further, that such redesignation, if any, must be accomplished in accordance with the procedures prescribed for adopting amendments to the above referenced Declaration.
3. Subject to all other Restrictions of record, if any, as provided in Article IV, Section 3 of the above referenced Declaration.
4. Subject to all easements as shown on plats of record.
5. Subject to the provisions of Part V of that certain DECLARATION OF RIGHTS, RESTRICTIONS, AFFIRMATIVE OBLIGATIONS, CONDITIONS, ETC., recorded in the Office of the Clerk of Court for Beaufort County, South Carolina in Deed Book 211 at Page 1470, as amended in Deed Book 223 at Page 2054, Deed Book 224 at Page 1012 and Deed Book 376 at Page 1437, dealing with "Special Restrictions affecting Open Space Areas" which provisions shall be applicable to the above described property in the same manner as if they were expressly set forth herein.
6. The Grantor herein reserves unto itself, its successors and assigns, the right to go on, over and under any of the streets or rights-of-way described herein to erect, maintain and use wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, cable television or public conveniences or utilities in said rights-of-way and the Grantor herein further reserves the right to grant easements for the installation of the aforementioned utilities of the utility companies actually installing same. These reservations and rights expressly include the right to cut any trees, bushes or shrubbery, the right to make any gradings of the soil or take any other similar action reasonably necessary to provide the economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. The Grantor herein further reserves unto itself, its successors and assigns the right to locate wells, pumping stations and tanks or other similar equipment within areas of the right-of-way where such would not be detrimental to vehicular traffic. Such rights as reserved herein may be exercised by any licensee of the Grantor, but this reservation shall not be considered an obligation on the part of the Grantor to provide or maintain any such utility or service.

The State of South Carolina,

BEAUFORT County.

PERSONALLY appeared before me Gordon S. Colman

and made oath that s/he saw the within named SOUTHEAST HOLDING COMPANY, LTD., doing business as HILTON HEAD PLANTATION COMPANY, by its appropriate officers sign, seal, and as its act and deed, deliver the within written

Deed; and that s/he with Virginia L. Litchfield

witnessed the execution thereof.

SWORN to before me, this 29th day of December A. D. 19 83

(SEAL) Virginia L. Litchfield  
Notary Public for South Carolina  
My Commission Expires: 4/3/84

Gordon S. Colman

FILED IN DEED BOOK 385 PAGE 21E  
FILED AT 164700 ON 12/30/83

The State of South Carolina,

County.

RENUNCIATION OF DOWER.

NOT NECESSARY. GRANTOR A CORPORATION.

I,

do hereby certify unto all whom it may concern, that Mrs.

the wife of the within named

did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within named

Heirs and Assigns, all her interest and estate, and also all her right and claim of dower, of, in or to all and singular the premises within mentioned and released.

Given under my Hand and Seal, this \_\_\_\_\_ day of

Anno Domini, 19

(SEAL) \_\_\_\_\_

B, J&G MB:V11  
The State of South Carolina,

SOUTHEAST HOLDING COMPANY, LTD.,  
doing business as HILTON HEAD  
PLANTATION COMPANY

HILTON HEAD PLANTATION PROPERTY  
OWNERS' ASSOCIATION, INC.

QUIT-CLAIM DEED

Filed \_\_\_\_\_ day

of \_\_\_\_\_ A. D. 19

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.,

and recorded in Book

Page \_\_\_\_\_ Fee, \$

R. M. C. or Clerk Court C. P. & G. S.

County, S. C.

Recorded this \_\_\_\_\_ day

of \_\_\_\_\_ 19

in Book \_\_\_\_\_ Page \_\_\_\_\_

Fee, \$ \_\_\_\_\_

Auditor \_\_\_\_\_  
County, S. C.

*BJ&G*

FILED IN DEED BOOK 385 PAGE 217  
FILED AT 164788 ON 12/30/83 27975  
BOOK NUMBER 385 PAGES 211- 217  
FILING FEE 7.00  
STATE STAMPS .00  
COUNTY STAMPS .00  
TOTAL FEES 7.00  
HENRY JACKSON  
CLERK OF COURT 8th CNTY, SC



June 27, 2013

Bradley Oravsky  
E.M. Enterprises General Contractors, Inc.  
3615 E. Lake Ave.  
Tampa, FL 33610

Dear Mr. Oravsky:

SUBJ: Letter of Intent to Provide Service for: **Hilton Head Plantation Wireless Facility**  
68 Dolphin Head Dr, Hilton Head Island, SC

Hargray Engineering Services has reviewed the master plan for the above referenced project. Hargray Communications has the ability and intent to serve the above referenced project. Forward to our office a digital copy of the plan that has been approved by the county/town for use with Microstation or AutoCAD. Our office will then include owner/developer conduit requirements on the approved plan and return to your office.

By accepting this letter of intent to serve, you also accept sole responsibility to forward the requirements and Project Application Form to the owner/developer. The Project Application Form identifies the minimum requirements to be met as follows:

- Commercial buildings – apartments – villas: Minimum 4 inch diameter conduit Schedule 40 PVC with pull string buried at 24 to 30 inch depth, from the equipment room or power meter location to a point designated by Hargray at the road right-of-way or property line. Conduits are required from each building site and multiple conduits may apply.
- Commercial buildings with multiple "units" may require conduit(s) minimum 3/4" from main equipment entry point to termination point inside unit. Plenum type ceilings require conduits or flame retardant Teflon wiring to comply with code.
- Hotel or large commercial project requirements would be two (2) 4 inch diameter Schedule 40 PVC underground conduits.
- Equipment rooms to have 3/4 inch 4'x8' sheet of plywood mounted on wall to receive telephone equipment.
- A power ground accessible at equipment room or an insulated #6 from the service panel or power MGN to the backboard.
- Residential wiring requires CAT5E wiring (4 or 6 Pair) twisted wire for Telephone and Data. Industry Standard.
- All interior wiring should be pulled to the area immediately adjacent to the plywood backboard or power meter location. A minimum of 5' of slack is required for terminations.

Aid in or Aid to Construction may apply to certain projects.

Easements are required prior to installing facilities to your site.

Should there be any changes or additions to the original master plan, this letter will only cover those areas which are shown on the original master plan. All changes or additions would require another Letter of Intent to supply service. All costs incurred by the Telephone Company resulting from any requested change or failure to comply with minimum requirements shall be borne by the Developer. Commercial projects require pre-construction meeting with Telco Company to review requirements. I am available to discuss these requirements in more detail at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'Frankie Denmark', written over the word 'Sincerely'.

Frankie Denmark  
Developer Relations Manager  
843-816-1032  
Hargray Engineering (843) 815-1676

## Dixon Nicole

---

**From:** Cox, John [coxjh@dhec.sc.gov]  
**Sent:** Thursday, June 13, 2013 12:26 PM  
**To:** Bradley Oravsky  
**Subject:** Re: FW: OCRM and DHEC permits - Hilton Head Island, Cell Tower Project

Bradley,

Since no NPDES Permit is required, OCRM does not need to issue a CZC certification. You are good to go.

On Thu, Jun 13, 2013 at 10:52 AM, Bradley Oravsky <[bradley.oravsky@emegc.com](mailto:bradley.oravsky@emegc.com)> wrote:

John,

Please see attached letter.

Thanks,

### **Bradley Oravsky**

E. M. Enterprises General Contractors, Inc.

3615 E. Lake Ave.

Tampa, FL 33610

[bradley.oravsky@emegc.com](mailto:bradley.oravsky@emegc.com)

Desk: (813) 470-7205

Cell: (813) 267-1010

Fax: (813) 241-9001

**From:** Cox, John [mailto:[coxjh@dhec.sc.gov](mailto:coxjh@dhec.sc.gov)]  
**Sent:** Monday, June 10, 2013 3:22 PM

**To:** Bradley Oravsky

**Subject:** Re: FW: OCRM and DHEC permits - Hilton Head Island, Cell Tower Project

Bradley,

I can only speak to the ETA for OCRM CZC Certification...our goal is 30 business days turnaround from date of receipt of complete submittal; however, if the project qualifies for General Certification I'm usually able to turn it around within a few days of receipt of the NOI from BOW - C.

On Mon, Jun 10, 2013 at 3:16 PM, Bradley Oravsky <[bradley.oravsky@emegc.com](mailto:bradley.oravsky@emegc.com)> wrote:

Richard,

Please see the signed D-0451 form. If you need anything else please let me know.

If you have any ETA's on how long processing takes I will pass that info to my client. Thanks for all of your help!

Sincerely,

**Bradley Oravsky**

E. M. Enterprises General Contractors, Inc.

3615 E. Lake Ave.

Tampa, FL 33610

[bradley.oravsky@emegc.com](mailto:bradley.oravsky@emegc.com)

Desk: (813) 470-7205

Cell: (813) 267-1010

Fax: (813) 241-9001

**From:** Geer, Richard [mailto:[geerry@dhec.sc.gov](mailto:geerry@dhec.sc.gov)]

**Sent:** Monday, June 10, 2013 2:37 PM

**To:** Bradley Oravsky

**Subject:** Re: FW: OCRM and DHEC permits - Hilton Head Island, Cell Tower Project

Mr Oravsky,

It looks good.

Respectfully,

Richard V. Geer  
Engineer Associate

Coastal Stormwater Section

EQC Bureau of Water

Department of Health and Environmental Control

1362 McMillan Ave Suite 400

Charleston SC 29405  
P: 843-953-0238 / F: 843-953-0201  
[geerrv@dhec.sc.gov](mailto:geerrv@dhec.sc.gov)

On Mon, Jun 10, 2013 at 2:29 PM, Bradley Oravsky <[bradley.oravsky@emegc.com](mailto:bradley.oravsky@emegc.com)> wrote:

Hello Richard,

Please review the attached form. If everything looks ok I'll have the project owner sign it for submission.

Thanks,

**Bradley Oravsky**

E. M. Enterprises General Contractors, Inc.

3615 E. Lake Ave.

Tampa, FL 33610

[bradley.oravsky@emegc.com](mailto:bradley.oravsky@emegc.com)

Desk: (813) 470-7205

Cell: (813) 267-1010

Fax: (813) 241-9001

**From:** Geer, Richard [mailto:[geerrv@dhec.sc.gov](mailto:geerrv@dhec.sc.gov)]

**Sent:** Friday, June 07, 2013 8:39 AM

**To:** Bradley Oravsky

**Cc:** Koczera, Christine

**Subject:** Re: FW: OCRM and DHEC permits - Hilton Head Island, Cell Tower Project

Mr Oravsky,

As we just discussed on the phone, this project qualifies for automatic coverage under the NPDES Construction General Permit. The guidance for making a submittal for this type of project can be found at <http://www.dhec.sc.gov/environment/water/swater/docs/coastal-LT1A.pdf>. Please note that this guidance is for two different types of "small" projects: those that do not require coverage (<1 acre, **not** w/in 1/2 mile of CRW & non-LCP) and those like yours the qualify for automatic coverage (0.1-0.5 acre, w/in 1/2 mile of CRW & non-LCP) because the information to submit is the same.

If you have any questions, feel free to contact me.

Respectfully,

Richard V. Geer  
Engineer Associate

Coastal Stormwater Section

EQC Bureau of Water

Department of Health and Environmental Control

1362 McMillan Ave Suite 400

Charleston SC 29405

P: 843-953-0238 / F: 843-953-0201

[geerrv@dhec.sc.gov](mailto:geerrv@dhec.sc.gov)

--

John Cox PG, CGWP, LEED AP

CZC Coordinator

SCDHEC - OCRM

843-953-0860

[coxjh@dhec.sc.gov](mailto:coxjh@dhec.sc.gov)

1362 McMillan Avenue

Suite 400

Charleston, SC

29405

--

John Cox PG, CGWP, LEED AP

CZC Coordinator

SCDHEC - OCRM

843-953-0860

[coxjh@dhec.sc.gov](mailto:coxjh@dhec.sc.gov)

1362 McMillan Avenue

Suite 400

Charleston, SC

29405

## Dixon Nicole

---

**From:** Madlinger, Geordy J. [madlingj@dhec.sc.gov]  
**Sent:** Thursday, May 30, 2013 3:04 PM  
**To:** Bradley Oravsky  
**Subject:** Re: OCRM and DHEC permits - Hilton Head Island, Cell Tower Project

Bradley,

It appears there will be no critical area or wetland issues with this project. You may want to contact Christine Koczera with our Stormwater/Land Disturbance Section in our Charleston Office (843) 953-0702 to see if they have any concerns.

Geordie Madlinger

On Thu, May 30, 2013 at 10:24 AM, Bradley Oravsky <[bradley.oravsky@emegc.com](mailto:bradley.oravsky@emegc.com)> wrote:

Gentlemen,

I'm trying to get in contact with someone who can let me know which permits I need to apply for on my proposed cell tower project. I have attached a set of drawings but also wanted to point out a few things about the project:

- >We're not proposing any UG water or sewer lines
- >We're not located in a flood zone
- >Disturbance is less than 0.5 acres
- >We are subdividing a parcel
- >Address will be 68 Dolphin Head Drive, Hilton Head Island, SC.

I look forward to hearing from you.

Thanks,

**Bradley Oravsky**

E. M. Enterprises General Contractors, Inc.

3615 E. Lake Ave.

Tampa, FL 33610

[bradley.oravsky@emegc.com](mailto:bradley.oravsky@emegc.com)

Desk: (813) 470-7205

Cell: (813) 267-1010

Fax: (813) 241-9001

--

Geordie Madlinger  
Senior Wetland Project Manager  
SCDHEC's Office of Ocean & Coastal Resource Management  
104 Parker Drive  
Beaufort, SC 29906  
office 843.846.9400 fax 843.846.9810  
[madlingj@dhec.sc.gov](mailto:madlingj@dhec.sc.gov)



Catherine B. Templeton, Director

*Promoting and protecting the health of the public and the environment*

June 13, 2013

David Worley  
CROWN CASTLE  
2000 CORPORATE DR  
CANONSBURG, PA 15317

RE: **Stormwater Construction – Coastal Exemption Notification**  
HILTON HEAD PLANTATION TELECOMMUNICATIONS FACILITY, Beaufort County  
**Notification No. 07-13-06-06**

Dear David Worley:

Based on your Notification to the Department and certification that this project will disturb less than 1.0 acre, is not part of a Larger Common Plan (LCP) for development or sale, and is not located within ½ mile of a coastal receiving water, this project will not require coverage under the NPDES General Permit for Storm Water Discharges from Large and Small Construction Activities. As indicated in your Notification disturbed area for this site is **.2 acres**.

**Please note the following requirements of this notification:**

- 1. This notification is only for the activity identified in Notification No. 07-13-06-06;**
- 2. This notification does not constitute DHEC's approval of the stormwater management and sediment control plan.**
- 3. You are responsible for ensuring your contractor complies with the site development plan prepared for this project.**
- 4. You must obtain federal, state, or local permits that may be required for this project. In particular, if this project is located in an area of the state where a local government implements a stormwater program, such as an MS4, a permit may be required for this activity.**
- 5. The Department does not regulate the placement of fill in floodplains. You must contact your local city or county official for such approvals; and**
- 6. You are responsible for overall compliance with the Storm Water Management and Sediment Reduction Act of 1991, South Carolina Pollution Control Act and the Federal Clean Water Act.**

Please note that the Department does not send a copy of this letter to any county or city building official. You must provide a copy of this letter to these agencies, as appropriate. Any future submittals to the Department for this project and/or this site, should reference this project/site name (as listed on the notification form), county, and assigned notification number (**Notification No. 07-13-06-06**).

**The Department may conduct periodic inspections of this site to ensure compliance with all related requirements, including LCP status. Failure to comply with the site plan resulting in discharge of sediment to Waters of the State and/or adjacent properties may subject you to applicable penalties under the S. C. Pollution Control Act. Additional construction activities beyond the scope of this notification may require permit coverage.**

If you have any questions, please call me at 843-953-5324.

Sincerely,

Holli Dawn Martin  
Stormwater, Construction, and Agricultural Permitting Division

cc: EQC Region - Region 8



South Carolina Department of Health  
and Environmental Control

**Coastal Stormwater Permitting Section**  
**1362 McMillan Avenue, Suite 400**  
**Charleston, SC 29405**

David Worley  
CROWN CASTLE  
200 CORPORATE DR  
CANONSBURG, PA 15317



111 Mathews Drive P.O. Box 23619 Hilton Head Island, SC 29925-3619 843-681-5551

June 7, 2013

E. M. Enterprises General Contractors, Inc.  
3615 E. Lake Ave.  
Tampa, FL 33610

RE: 68 Dolphin Head Drive Hilton Head Island, SC 29926

Dear Mr. Oravsky:

There is electrical power availability at the above location. If I can assist you further please contact me directly at 843-681-0057.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Nasuti", with a long horizontal line extending to the right.

Jim Nasuti  
Hilton Head District Operations Department



---

# Commitment for Title Insurance

ALTA PLAIN LANGUAGE COMMITMENT



## INFORMATION

The Title Insurance Commitment is a legal contract between you and the Company. It is issued to show the basis on which we will issue a Title Insurance Policy to you. The Policy will insure you against certain risks to the land title, subject to the limitations shown in the Policy.

The Company will give you a sample of the Policy form, if you ask.

The Policy contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or you as the exclusive remedy of parties. You may review a copy of the arbitration rules at <http://www.alta.org/>

The Commitment is based on the land title as of the Commitment Date. Any changes in the land title or the transaction may affect the Commitment and the Policy.

The Commitment is subject to as Requirements, Exceptions, and Conditions.

THIS INFORMATION IS NOT PART OF THE TITLE INSURANCE COMMITMENT. YOU SHOULD READ THE COMMITMENT VERY CAREFULLY.

If you have any questions about the Commitment, contact (888) 406-5166.

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SCHEDULE A	Insert
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2. Policies to be Issued, Amounts and Proposed Insureds	
3. Interest in the Land and Owner	
4. Description of the land	
SCHEDULE B	
SCHEDULE B-I ----- REQUIREMENTS	Insert
SCHEDULE B-II ---- REQUIREMENTS	Insert

By: (initials) UN Date 5/16/13 Doc Type A  
BUN: 217914 Lease/Lic -

## SCHEDULE A

Commitment 01-13040973-01T

1. Commitment Effective Date: 03/11/2013 at 7:00 AM

2. Policy (or Policies) to be issued:

(a) ALTA OWNER'S POLICY 06-17-06

Policy Amount: \$ (TO BE DETERMINED)

Proposed Insured: (TO BE DETERMINED)



(b)

Policy Amount:

Proposed Insured:

(c)

Policy Amount:

Proposed Insured:

(d)

Policy Amount

Proposed Insured:

3. Fee Simple Interest in the land described in this Commitment is owned, at the Commitment Date by:

HILTON HEAD PLANTATION PROPERTY OWNERS' ASSOCIATION, INC.

4. The land referred to in this Commitment is described as follows:

SEE ATTACHED EXHIBIT "A"

**EXHIBIT "A"**

SITUATE IN THE COUNTY OF BEAUFORT, AND STATE OF SOUTH CAROLINA:

ALL THOSE CERTAIN PIECES, PARCELS OR TRACTS OF LAND LOCATED WITHIN HILTON HEAD PLANTATION ON HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA, CONSISTING OF "OPEN SPACE", BEING TEN (10) IN NUMBER AND BEING SHOWN AS THOSE SHADED, CROSS-HATCHED AREAS, AND A FORTY (40') FOOT EASEMENT, LABELED AS "40' LEISURE TRAIL R/W" AND EIGHTY (80') FOOT EASEMENT, LABELED AS "80' LEISURE TRAIL R/W", SAID OPEN SPACE AREA CONSISTING OF A TOTAL OF 466,178 S.F., AS MORE PARTICULARLY SHOWN AND DESCRIBED ON A PLAT ENTITLED "A PLAT OF PINELAND SUBDIVISION, WHITETAIL DEER LAND & BOBCAT LANE, TRACT 27, A SECTION OF HILTON HEAD PLANTATION, HILTON HEAD ISLAND, SOUTH CAROLINA," WHICH PLAT WAS PREPARED BY COASTAL SURVEYING CO., INC. AND CERTIFIED TO BY JERRY L. RICHARDSON, R.L.S. (S.C.) #4784, SAID PLAT BEING DATED DECEMBER 11, 1981 AND RECORDED IN THE OFFICE OF THE CLERK OF COURT FOR BEAUFORT COUNTY, SOUTH CAROLINA IN PLAT BOOK 30 AT PAGE 60 ON JANUARY 28, 1982.

THAT PORTION OF THE FOLLOWING DESCRIBED LAND WHICH IS INCLUDED WITHIN THE LEASED PREMISES AS SET OUT IN THE LEASE OR MEMORANDUM THEREOF EXECUTED BY \_\_\_\_\_ AS LESSOR, AND \_\_\_\_\_ AS LESSEE, RECORDED \_\_\_\_\_.

TAX I.D. NUMBER: R510 003 000 0060 0000

END OF SCHEDULE A

## SCHEDULE B – SECTION I REQUIREMENTS

THE FOLLOWING REQUIREMENTS MUST BE MET:

- (1) PAY THE AGREED AMOUNTS FOR THE INTEREST IN THE LAND AND/OR THE MORTGAGE TO BE INSURED.
- (2) PAY US THE PREMIUMS, FEES AND CHARGES FOR THE POLICY.
- (3) DOCUMENTS SATISFACTORY TO US CREATING THE INTEREST IN THE LAND AND/OR THE MORTGAGE TO BE INSURED MUST BE SIGNED, DELIVERED AND RECORDED.
- (4) YOU MUST TELL US IN WRITING THE NAME OF ANYONE NOT REFERRED TO IN THIS COMMITMENT WHO WILL GET AN INTEREST IN THE LAND OR WHO WILL MAKE A LOAN ON THE LAND. WE MAY THEN MAKE ADDITIONAL REQUIREMENTS OR EXCEPTIONS.
- (5) PAY ALL TAXES, CHARGES AND ASSESSMENTS WHICH ARE DUE AND PAYABLE.  
TAX I.D. NUMBER: R510 003 000 0060 0000

TAX YEAR: 2012 - ANNUAL  
AMOUNT: \$34,904.02 - PAID 01/15/2013

TAX AUTHORITY INFORMATION:

BEAUFORT COUNTY TAX COLLECTOR  
100 RIBAUT ROAD  
BEAUFORT, SC 29901  
(843)255-2600

NOTE: THE ABOVE REAL ESTATE TAX INFORMATION IS A REFLECTION OF THE TAX AUTHORITY RECORDS AVAILABLE AS OF THE DATE HEREOF. PLEASE NOTE THAT PRIOR TO CLOSING, SETTLEMENT AGENT IS ADVISED TO CONTACT TAXING AUTHORITY TO VERIFY ANY CHANGES TO THE RECORD.

- (6) WITH RESPECT TO HILTON HEAD PLANTATION PROPERTY OWNERS' ASSOCIATION, INC. THE FOLLOWING MUST BE SUBMITTED:
  - A) THIS ITEM HAS BEEN INTENTIONALLY DELETED.
  - B) THIS ITEM HAS BEEN INTENTIONALLY DELETED.
  - C) A CERTIFIED TRUE COPY OF A RESOLUTION OF THE BOARD OF DIRECTORS AUTHORIZING THE CONVEYANCE OF CAPTION PREMISES TO BE INSURED HEREUNDER.
  - D) THIS ITEM HAS BEEN INTENTIONALLY DELETED.
  - E) THIS ITEM HAS BEEN INTENTIONALLY DELETED.
- (7) THIS ITEM HAS BEEN INTENTIONALLY DELETED.

END OF SCHEDULE B-I

## SCHEDULE B – SECTION II EXCEPTIONS

ANY POLICY WE ISSUE WILL HAVE THE FOLLOWING EXCEPTIONS UNLESS THEY ARE TAKEN CARE OF TO OUR SATISFACTION.

- (1) FACTS WHICH WOULD BE DISCLOSED BY A COMPREHENSIVE SURVEY OF THE PREMISES HEREIN DESCRIBED.
- (2) RIGHTS OR CLAIMS OF PARTIES IN POSSESSION.
- (3) MECHANICS', CONTRACTORS' OR MATERIAL MEN'S LIENS AND LIEN CLAIMS, IF ANY, WHERE NO NOTICE THEREOF APPEARS OF RECORD.
- (4) ANY CHANGES IN TITLE OCCURRING SUBSEQUENT TO THE EFFECTIVE DATE OF THIS COMMITMENT AND PRIOR TO THE DATE OF ISSUANCE OF THE TITLE POLICY.
- (5) TAXES AND SPECIAL ASSESSMENTS FOR CURRENT TAX YEAR DUE AND ALL SUBSEQUENT YEARS.
- (6) SUBJECT TO COVENANTS, RESTRICTIONS, RESERVATIONS, EASEMENTS, AND RIGHTS OF WAY AND BUILDING SETBACKS AS SHOWN ON THE HILTON HEAD PLANTATION A PORTION OF HONEY HORN PLANTATION, AS RECORDED IN PLAT BOOK 21, PAGE 66 OF BEAUFORT COUNTY RECORDS.
- (7) EASEMENT AND RIPARIAN RIGHTS AS CONTAINED IN A DEED FROM THE HILTON HEAD COMPANY TO ISLAND DEVELOPMENT CORPORATION, RECORDED 12/10/1971, AS BOOK 193, PAGE 1626 OF BEAUFORT COUNTY RECORDS.
- (8) DECLARATION OF RIGHTS, RESTRICTIONS, AFFIRMATIVE OBLIGATIONS, CONDITIONS, ETC., WHICH CONSTITUTE COVENANTS RUNNING WITH THE CERTAIN LANDS OF HILTON HEAD PLANTATION COMPANY, INC., BY BETWEEN HILTON HEAD PLANTATION COMPANY, INC., RECORDED 07/11/1973, AS BOOK 211, PAGE 1470 OF BEAUFORT COUNTY RECORDS.

NOTE: LIMITATION OF APPLICATION OF CLASS "A" RESTRICTIVE COVENANTS DATED FEBRUARY 15, 1973, APPLICABLE TO HILTON HEAD PLANTATION COMPANY, INC., BY HILTON HEAD PLANTATION COMPANY, INC., RECORDED 09/23/1974, AS BOOK 223, PAGE 2054 OF BEAUFORT COUNTY RECORDS.

NOTE: AMENDMENT TO DECLARATION OF RIGHTS, RESTRICTIONS, AFFIRMATIVE OBLIGATIONS, CONDITIONS, ETC. WHICH CONSTITUTE COVENANTS RUNNING WITH CERTAIN LANDS OF HILTON HEAD PLANTATION COMPANY, INC. - CLASS "A" COVENANTS, FEBRUARY 15, 1973, BY HILTON HEAD PLANTATION COMPANY, INC., RECORDED 10/17/1974, AS BOOK 224, PAGE 1012 OF BEAUFORT COUNTY RECORDS.

NOTE: AGREEMENT CONCERNING CERTAIN RESERVED RIGHTS (CLASS "A" COVENANTS), BY AND BETWEEN HILTON HEAD PLANTATION COMPANY, INC., AND THE HILTON HEAD PLANTATION PROPERTY OWNERS ASSOCIATION, INC., RECORDED 07/21/1995, AS BOOK 791, PAGE 1356 OF BEAUFORT COUNTY RECORDS.

CONTINUED ON NEXT PAGE.

CONTINUATION OF SCHEDULE B-II.

- (9) AMENDMENT TO DECLARATION OF RIGHTS, RESTRICTIONS, AFFIRMATIVE OBLIGATIONS, CONDITIONS, ETC., WHICH CONSTITUTE COVENANTS RUNNING WITH CERTAIN LANDS OF HILTON HEAD PLANTATION COMPANY, INC. OF CLASS "A" RESTRICTIVE COVENANTS DATED FEBRUARY 15, 1973, AS AMENDED, BY HILTON HEAD PLANTATION COMPANY, INC., RECORDED 06/30/1983, AS BOOK 375, PAGE 1437 OF BEAUFORT COUNTY RECORDS.

NOTE: AMENDED DECLARATION OF THE HILTON HEAD PLANTATION PROPERTY OWNERS' ASSOCIATION, INC. AND AMENDED BY-LAWS OF THE HILTON HEAD PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., BY HILTON HEAD PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., RECORDED 04/17/1997, AS BOOK 936, PAGE 746 OF BEAUFORT COUNTY RECORDS.

NOTE: AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS OF THE HILTON HEAD PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., BY THE HILTON HEAD PLANTATION PROPERTY OWNERS ASSOCIATION INC., RECORDED 04/06/2007, AS BOOK 2549, PAGE 652 OF BEAUFORT COUNTY RECORDS.

- (10) SUBJECT TO COVENANTS, RESTRICTIONS, RESERVATIONS, EASEMENTS, AND RIGHTS OF WAY AND BUILDING SETBACKS AS SHOWN ON THE A PLAT OF PINELAND SUBDIVISION, WHITETAIL DEER LANE & BOBCAT LANE, TRACT 27, A SECTION OF HILTON, AS RECORDED IN PLAT BOOK 30, PAGE 60 OF BEAUFORT COUNTY RECORDS.
- (11) COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS AS CONTAINED IN A DEED FROM SOUTHEAST HOLDING COMPANY, LTD., DOING BUSINESS AS HILTON HEAD PLANTATION COMPANY TO HILTON HEAD PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., RECORDED 12/30/1983, AS BOOK 385, PAGE 211 OF BEAUFORT COUNTY RECORDS.
- (12) ACCESS, DRAINAGE AND MAINTENANCE EASEMENT, BY AND BETWEEN HILTON HEAD PLANTATION PROPERTY OWNERS ASSOCIATION, INC., AND THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, RECORDED 08/13/2008, AS BOOK 2755, PAGE 1238 OF BEAUFORT COUNTY RECORDS.
- (13) NON-EXCLUSIVE FACILITIES EASEMENT, BY AND BETWEEN HILTON HEAD PLANTATION PROPERTY OWNERS ASSOCIATION, INC., AND HARGRAY COMMUNICATIONS GROUP, INC., RECORDED 11/12/2008, AS BOOK 2782, PAGE 2337 OF BEAUFORT COUNTY RECORDS.
- (14) ANY TITLE OR RIGHTS, INCLUDING BUT NOT LIMITED TO RIPARIAN RIGHTS AND LITTORAL RIGHTS, IF ANY, INCIDENT TO THE LAND, ASSERTED BY ANYONE INCLUDING, BUT NOT LIMITED TO, PERSONS, GOVERNMENTS OR OTHER ENTITIES, TO TIDELANDS, OR LANDS COMPRISING THE SHORES OR BOTTOMS OF NAVIGABLE RIVERS, LAKES, BAYS, OCEAN OR SOUND, OR LAND BEYOND THE LINE OF THE HARBOR LINES AS ESTABLISHED OR CHANGED BY THE UNITED STATES GOVERNMENT.

END OF SCHEDULE B-II

# Commitment to Insure



## ALTA PLAIN LANGUAGE COMMITMENT

### AGREEMENT TO ISSUE POLICY

We agree to issue a policy to you according to the terms of this commitment. When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the Commitment Date shown in Schedule A.

If the Requirements shown in this Commitment have not been met within six (6) months after the Commitment Date, our obligation under this Commitment will end. Also, our obligation under this Commitment will end when the Policy is issued and then our obligation to you will be under the Policy.

Our obligation under this Commitment is limited by the following:

- The Provisions in Schedule A.
- The Requirements in Schedule B-I.
- The Exceptions in Schedule B-II.
- The Conditions below.

This Commitment is not valid without SCHEDULE A and Sections I and II of SCHEDULE B.

### CONDITIONS

1. Definitions. (a) "Mortgage" means mortgage, deed of trust or other security instrument.  
(b) "Public Records" means title records that give constructive notice of matters affecting your title – according to the state statutes where your land is located.
2. Later Defects. The Exceptions in Schedule B – Section II may be amended to show any defects, liens or encumbrances that appear for the first time in the public records or are created or attach between the Commitment Date and the date of which all of the Requirements (a) and (c) of the Schedule B – Sections I are met. We shall have no liability to you because of this amendment.
3. Existing Defects. If any defects, liens or encumbrances existing at Commitment Date are not shown in Schedule B, we may amend Schedule B to show them. If we do amend Schedule B to show these defects, liens or encumbrances, we shall be liable to you according to Paragraph 4 below unless you knew of this information and did not tell us about it in writing.
4. Limitation Of Our Liability. Our only obligation is to issue to you the Policy referred to in this Commitment, when you have met its Requirements. If we have any liability to you for any loss you incur because of an error in this Commitment, our liability will be limited to your actual loss caused by your relying on this Commitment when you acted in good faith to:

Comply with the Requirements in Schedule B – Section I

or

Eliminate with our written consent any Exceptions shown in Schedule B – Section II.

We shall not be liable for more than the Policy Amount shown in Schedule A of this Commitment and our liability is subject to the terms of the Policy form to be issued to you.

5. Claims Must Be Based On This Commitment. Any claim, whether or not based on negligence, which you may have against us concerning the title to the land must be based on this Commitment and is subject to its terms.

IN WITNESS WHEREOF, Old Republic National Title Insurance Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers on the date shown in Schedule A, to be valid when countersigned by a validating officer or other authorized signatory.

Issued through the Office of:

Old Republic National Title Ins. Co. .  
530 South Main St., Suite 1031  
Akron, OH 44311  
1-888-406-5166

  
Authorized Officer or Agent

### OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

A Stock Company  
400 Second Avenue South, Minneapolis, Minnesota 55401  
(612) 371-1111

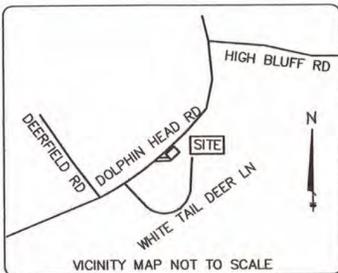
By


President

Attest

Secretary



UGT = UNDERGROUND TELEPHONE  
 UOD = UNDERGROUND TELEVISION  
 UOP = UNDERGROUND POWER

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN. ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.

NOTE: THIS PROPERTY MAY ALSO BE SUBJECT TO EASEMENTS, SETBACKS, OR REGULATIONS NOT SHOWN ON THIS PLAT BUT WHICH MAY BE ON RECORD IN THE CLERK OF COURT'S OFFICE.

THIS PROPERTY IS NOT LOCATED IN A FLOOD HAZARD AREA ACCORDING TO F.I.A. FLOOD MAP 4502500003D ZONE C DATED SEPT 29, 1986.



REFERENCE PLAT  
PINELAND SD TRACT 27  
PB 30, PG 60

N: 153915.88  
E: 2086546.19  
Z: 9.89

PK NAIL  
N: 153770.09  
E: 2086599.56  
Z: 13.45'

**TOWN OF HILTON HEAD ISLAND, SC  
SUBDIVISION APPROVAL**

The Town has found this plan to be in compliance with the Town's Land Management Ordinance and has authorized this approval.

Application #: SUB13006

Certified By: Walter Dean

Title: Senior Planner Approval Date: 7-23-13

A vested right is established for two (2) years upon the final approval of a site specific development or phased development plan.

**Disclaimer**

The Town of Hilton Head Island makes an expressed declaration of policy that the public regulation of land is entirely separate from and independent of private restrictions. This approval in no way implies that the proposed development is in conformance with any restrictive covenants, private easements or deed restrictions.

BEAUFORT COUNTY SC- ROD  
BK 00137 PG 0044  
DATE: 07/25/2013 04:05:48 PM  
INST # 2013042973 RCPT# 718110

**SUBDIVISION PLAT**  
68 DOLPHIN HEAD DRIVE  
PINELAND S/D HILTON HEAD

FOR: CROWN CASTLE  
SITE: DOLPHIN HEAD  
BUN: 813914  
ADDRESS: 68 DOLPHIN HEAD DRIVE  
HILTON HEAD ISLAND, S.C. 29928  
BEAUFORT COUNTY

**CROWN CASTLE**  
3530 TORRINGTON WAY, SUITE 300, CHARLOTTE, NC 28277  
NATIONAL SURVEY SERVICES COORDINATION BY:

**GEOLINE SURVEYING, INC.**  
13430 NW 104th Terrace, Suite A, Alachua, FL 32615  
Office: (386) 418-0500 Fax: (386) 462-9988  
WWW.GEOLINEINC.COM

**William R. Gore**  
PROFESSIONAL LAND SURVEYORS, INC.  
1804 CENTRAL AVE AUGUSTA, GEORGIA 30904  
TEL: (706) 738-8771 FAX: (706) 738-6249

DRAWN BY: WRG CHECKED BY: WRG JOB #:

**SURVEYOR'S NOTES**  
1. BASIS OF BEARING GEODETIC NORTH  
2. NO SUBSURFACE INVESTIGATION WAS PERFORMED TO LOCATE UNDERGROUND UTILITIES. UTILITIES SHOWN HEREON ARE LIMITED TO AND ARE PER OBSERVED EVIDENCE ONLY.  
3. THIS SURVEY DOES NOT REPRESENT A BOUNDARY SURVEY OF THE PARENT PARCEL.  
4. ALL VISIBLE TOWER EQUIPMENT AND IMPROVEMENTS ARE CONTAINED WITHIN THE DESCRIBED AREA EXCEPT AS NOTED.

**SURVEYOR'S CERTIFICATION**  
I HEREBY CERTIFY TO CROWN CASTLE AND OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

WILLIAM R. GORE PROFESSIONAL LAND SURVEYING

William R. Gore  
WILLIAM R. GORE  
LAND SURVEYOR - S.C. 11811

Date: 04-02-2013

**LEGEND**

- ( ) : RECORD DESCRIPTION DATA.
- P.O.B. : POINT OF BEGINNING.
- P.O.C. : POINT OF COMMENCEMENT.
- X- : FENCE AS NOTED.
- OH : OVER HEAD UTILITY LINES.
- ⊙ : WOOD UTILITY POLE.
- ⊞ : ELECTRIC TRANSFORMER.
- ⊕ : TELCO PEDESTAL.
- ⊞ : WATER METER.
- CTV : CABLE TELEVISION



LINE	BEARING	DISTANCE
L1	N 46°29'38" E	20.14'
L2	S 43°30'22" E	20.00'
L3	S 17°17'06" W	26.35'

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	1780.04'	126.87'	126.85'	N 48°37'49" E	04°05'02"
C2	1780.04'	32.50'	32.50'	N 50°08'57" E	01°02'46"
C3	1780.04'	94.38'	94.37'	N 48°06'26" E	03°02'16"

General Manderson HHPPOA AS OWNER OF RECORD OF PARCEL R510 003 000 0060 0000, AGREE TO THE RECORDING OF THIS PLAT.

**FLOOD DISCLOSURE STATEMENT**  
Some or all areas on this plat are flood hazard areas and have been identified as having at least a one percent chance of being flooded in any given year by rising tidal waters associated with possible hurricanes. Local regulations require that certain flood hazard protective measures be incorporated in the design and construction of structures in these designated areas. Reference shall be made to the development covenants and restrictions of this development and requirements of the Town Building Official. In addition, federal law requires mandatory purchase of flood insurance as a prerequisite to federally insured mortgage financing in these designated flood hazard areas.

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SITE: DOLPHIN HEAD  
BUN 813914  
PARCEL 1  
CREATED BY THIS OFFICE

ALL THAT TRACT OF LAND LYING, SITUATE, AND BEING IN BEAUFORT COUNTY,  
STATE OF SOUTH CAROLINA AND BEING MORE PARTICULARLY DESCRIBED AS  
FOLLOWS.

BEGINNING AT A #4 REBAR SET ON THE SOUTHERN RIGHT-OF-WAY OF DOLPHIN  
HEAD DRIVE, SAID REBAR BEING N63°03'31"E 182.12' FROM THE CENTERLINE  
INTERSECTION OF DOLPHIN HEAD DRIVE AND WHITE TAIL DEER LANE SAID REBAR  
BEING THE POINT OF BEGINNING.

THENCE ALONG SAID RIGHT-OF-WAY ALONG A CURVE TO THE LEFT 126.87' TO A  
CONCRETE MONUMENT FOUND, DAID CURVE HAVING A RADIUS OF 1780.04' AND A  
CHORD OF N48°37'49"E 126.85';

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY N46°29'40"E 47.00' TO A #4  
REBAR SET;

THENCE LEAVING SAID RIGHT-OF-WAY S43°30'22"E 62.86' TO A #4 REBAR SET;

THENCE S46°29'38"W 97.75' TO A #4 REBAR SET;

THENCE S88°08'07"W 101.71' TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 0.20 ACRES ( 8,558 S.F.)

HILTON HEAD PLANTATION PROPERTY OWNERS ASSOCIATION INC.  
PLAT BOOK 30, PAGE 60  
TM R510 003 000 0060 0000  
WHITE TAIL DEER LANE  
HILTON HEAD ISLAND, S.C. 29926  
BEAUFORT COUNTY

SITE: DOLPHIN HEAD  
BUN 813914  
TOWER EASEMENT  
CREATED BY THIS OFFICE

ALL THAT TRACT OF LAND LYING, SITUATE, AND BEING IN BEAUFORT COUNTY,  
STATE OF SOUTH CAROLINA AND BEING MORE PARTICULARLY DESCRIBED AS  
FOLLOWS.

BEGINNING AT A POINT, SAID POINT BEING N63°03'31"E 182.12', N50°08'57"E 32.50',  
N48°06'26"E 94.37, S17°17'06"W 26.35' FROM THE CENTERLINE INTERSECTION OF  
DOLPHIN HEAD DRIVE AND WHITE TAIL DEER LANE SAID REBAR BEING THE POINT  
OF BEGINNING.

THENCE N46°29'38"E 70.00' TO A POINT;

THENCE S43°30'22"E 50.00' TO A POINT;

THENCE S46°29'38"W 70.00' TO A #4 REBAR SET;

THENCE N43°30'22"W 50.00' TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 0.08 ACRES ( 3,500 S.F.)

HILTON HEAD PLANTATION PROPERTY OWNERS ASSOCIATION INC.  
PLAT BOOK 30, PAGE 60  
TM R510 003 000 0060 0000  
WHITE TAIL DEER LANE  
HILTON HEAD ISLAND, S.C. 29926  
BEAUFORT COUNTY

OLD REPUBLIC TITLE INSURANCE COMPANY  
COMMITMENT 01-13040973-01T  
DATED 03-11-2013  
SCHEDULE B - SECTION II  
EXCEPTIONS  
(1)-(14)  
DO NOT CONTAIN PLOTTABLE INFORMATION.

SITE: DOLPHIN HEAD  
BUN 813914  
20' ACCESS & UTILITY EASEMENT  
CREATED BY THIS OFFICE

ALL THAT TRACT OF LAND LYING, SITUATE, AND BEING IN BEAUFORT COUNTY,  
STATE OF SOUTH CAROLINA AND BEING MORE PARTICULARLY DESCRIBED AS  
FOLLOWS.

BEGINNING AT A #4 REBAR SET ON THE SOUTHERN RIGHT-OF-WAY OF DOLPHIN  
HEAD DRIVE, SAID REBAR BEING N63°03'31"E 182.12' FROM THE CENTERLINE  
INTERSECTION OF DOLPHIN HEAD DRIVE AND WHITE TAIL DEER LANE SAID REBAR  
BEING THE POINT OF BEGINNING.

THENCE ALONG SAID RIGHT-OF-WAY ALONG A CURVE TO THE LEFT 32.50' TO A  
POINT, SAID CURVE HAVING A RADIUS OF 1780.04' AND A CHORD OF N50°08'57"E  
32.50';

THENCE LEAVING SAID RIGHT-OF-WAY N88°08'07"E 68.50' TO A POINT;

THENCE N46°29'38"E 20.14' TO A POINT;

THENCE S43°30'22"E 20.00' TO A #4 REBAR SET;

THENCE S46°29'38"W 27.75' TO A POINT;

THENCE S88°08'07"W 101.71' TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 0.20 ACRES ( 2,179 S.F.)

HILTON HEAD PLANTATION PROPERTY OWNERS ASSOCIATION INC.  
PLAT BOOK 30, PAGE 60  
TM R510 003 000 0060 0000  
WHITE TAIL DEER LANE  
HILTON HEAD ISLAND, S.C. 29926  
BEAUFORT COUNTY

## RAW LAND SURVEY

WHITE TAIL DEER LANE  
PINELAND S/D HILTON HEAD

FOR: CROWN CASTLE

SITE: DOLPHIN HEAD  
BUN: 813914  
ADDRESS: WHITE TAIL DEER LANE  
HILTON HEAD ISLAND, S.C. 29926  
BEAUFORT COUNTY

**CROWN  
CASTLE**

3530 TORINGDON WAY, SUITE 300, CHARLOTTE, NC 28277

NATIONAL SURVEY SERVICES COORDINATION BY:

**G E O L I N E**  
SURVEYING, INC.

13430 NW 104th Terrace, Suite A, Alachua, FL 32615  
Office: (386) 418-0500 Fax: (386) 462-9986  
WWW.GEOLINEINC.COM

SURVEY WORK PERFORMED BY:

**William R. Gore**

PROFESSIONAL LAND SURVEYORS, INC.  
1804 CENTRAL AVE AUGUSTA, GEORGIA 30904  
TEL: (706) 738-8771 FAX: (706) 736-6249

DRAWN BY: WRG CHECKED BY: WRG JOB #:

SURVEYOR'S NOTES

1. BASIS OF BEARING GEODETIC NORTH
2. NO SUBSURFACE INVESTIGATION WAS PERFORMED TO LOCATE UNDERGROUND UTILITIES. UTILITIES SHOWN HEREON ARE LIMITED TO AND ARE PER OBSERVED EVIDENCE ONLY.
3. THIS SURVEY DOES NOT REPRESENT A BOUNDARY SURVEY OF THE PARENT PARCEL.
4. ALL VISIBLE TOWER EQUIPMENT AND IMPROVEMENTS ARE CONTAINED WITHIN THE DESCRIBED AREA EXCEPT AS NOTED.

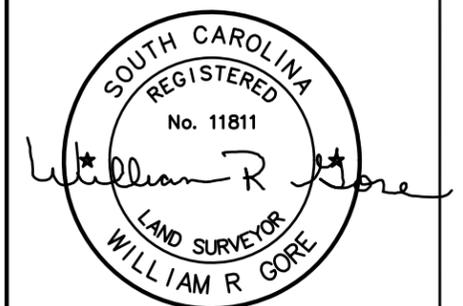
SURVEYOR'S CERTIFICATION  
I HEREBY CERTIFY TO CROWN CASTLE  
AND OLD REPUBLIC NATIONAL TITLE  
INSURANCE COMPANY

WILLIAM R. GORE PROFESSIONAL LAND  
SURVEYING

*William R. Gore*

WILLIAM R. GORE  
LAND SURVEYOR - S.C. 11811

Date: 04-02-2013



TOWN OF HILTON HEAD ISLAND COMMUNITY DEVELOPMENT DEPARTMENT

NOTICE OF ACTION

ONE TOWN CENTER COURT HILTON HEAD ISLAND, SC 29928 843-341-4681 843-842-8908

APPROVAL DATE

07/23/2013

Revised Date  
11-26-13

EXPIRATION DATE

07/13/2015

This approval expires on the above date unless a complete building permit application is submitted or a Certificate of Compliance is obtained.

OWNER

HILTON HEAD PLANT PROP

APPLICANT

EMEGC INC

AGENT

PROJECT INFORMATION

Number: SUB130006  
Name: HILTON HEAD PLANTATION  
Address: 460 WHOOPING CRANE WAY \*\*\*\*  
District/Map/Parcel: R51000300000600000

Revised to change application from a minor subdivision to a major subdivision.

Neil Dixon  
11-26-13

SITE INFORMATION

Zoning District: PD-1  
Overlay District(s):  
Gross Acreage: 0 acre (s)  
#Lots: 1  
Transportation District:52

RELATED CASES

DRB #: BZA #: PPR #: ZMA #:

The Town of Hilton Head Island Planning Staff has reviewed this project and has determined that it is in accordance with the provisions of the Land Management Ordinance (LMO) for Subdivision Review.

This approval is based on plans drawn by William R. Gore entitled and dated or last revised on 04/02/2013 and is subject to the attached conditions.

A Certificate of Compliance must be issued by the Engineering Division before a Certificate of Occupancy can be issued by the Building Official. For a Certificate of Compliance inspection, contact the Engineering Technician at 341-4773 or 341-4778 when the project is complete.

Approved By: Neil Dixon Title: Senior Planner  
NICOLE DIXON

pc: Project File Inspections/Compliance Division Engineering Division PIC

Hilton Head Island, South Carolina, Land Management Ordinance >> **CHAPTER 2. - REVIEW AND DECISION-MAKING BODIES >> ARTICLE I. - ADMINISTRATOR >>**

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**ARTICLE I. - ADMINISTRATOR**

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[Sec. 16-2-101. - Identified](#)

[Sec. 16-2-102. - Powers and Duties](#)

[Sec. 16-2-103. - Appeal](#)

**Sec. 16-2-101. - Identified**

The Administrator to whom reference is made throughout this Title shall be the LMO Official or his/her designee.

*(Revised 2/3/09—Ordinance 2009-02)*

**Sec. 16-2-102. - Powers and Duties**

The Administrator shall perform the duties and possess the powers as set forth in this Title as follows:

- A. Make administrative interpretations of this Title;
- B. Review and take action on development plans, tree protection and wetland alteration applications, conditional uses, minor sign permits, new development names, subdivisions, certificates of compliance and development sureties;
- C. Review and take action on certain traffic impact analysis plans;
- D. Review and take action on minor amendments to PUD master plans; and
- E. To review applications and prepare staff reports regarding other applications as required in [Chapter 3](#)

**Sec. 16-2-103. - Appeal**

Appeal from any administrative decision of the Administrator shall follow the procedures established in [Chapter 3](#), Article XX.

Hilton Head Island, South Carolina, Land Management Ordinance >> **CHAPTER 10. - DEFINITIONS** >> **ARTICLE II. - DEFINITIONS** >>

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**ARTICLE II. - DEFINITIONS**

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[Sec. 16-10-201. - Defined Terms](#)

**Sec. 16-10-201. - Defined Terms**

Except as specifically noted herein, each word or term used in this Title has its customary dictionary definition or the definition from any other published source determined appropriate by the Administrator. For purposes of this Title, certain words or terms used herein are defined below and shall have the meanings ascribed to them.

**"A" Terms**

**Abandoned Sign:** Any permitted sign or sign structure which was erected on a premises in conjunction with a particular use which use has been discontinued for a period of 30 days or more, or a permitted temporary sign for which the permit has expired.

**Access:** The right or ability of pedestrians, vehicles and boats to enter and leave property.

**Accessory Use or Building:** A use or building that is subordinate to the principal use or building and which is located on the same lot.

**Accessory Structure:** A building or structure subordinate and incidental to, and located on the same lot with, a principal building, the use of which is customarily found in association with and is clearly incidental to that of the main building or to the use of the land, and which is not attached by any part of a common wall or roof to the principal building.

*(Revised 1/15/08—Ordinance 2008-01)*

**Adjusted Caliper Inches (ACI):** The number derived from the multiplication of the Tree Value Factor times the actual measured Diameter at Breast Height (DBH) of trees in each respective category of trees.

**Administrator:** The Administrator to whom reference is made throughout this Title shall be the LMO Official or his/her designee.

*(Revised 2/3/09—Ordinance 2009-02)*

**Adopted Traffic Service Level:** See [Sec. 16-5-1103.](#)

*(Revised 8/19/03—Ordinance 2003-24)*

**Airport Runway Primary Surface Area:** A surface longitudinally centered on the runway which extends beyond the runway. The width and length of the primary surface area are set forth in [Chapter 4](#), Article IV. The elevation of any point on the primary surface area is the same as the elevation of the nearest point on the runway centerline.

**All-weather Driving Surface:** A driving surface capable of supporting the imposed load of fire apparatus weighing at least 60,000 pounds.

*(Revised 6/21/05—Ordinance 2005-19)*

**Amenity:** A natural or man-made feature which enhances a particular property.

*(Revised 1/15/08—Ordinance 2008-01)*

**Antenna:** A device, dish, or array used to transmit or receive telecommunications signals

**Applicant:** A person, developer or landowner who has submitted an application for review under applicable provisions of this Title.

**Application for Development:** Pursuant to the requirements of this Title, the appropriate application form and all accompanying documents, exhibits and narratives pursuant to an applicant's official request for the

### **Sec. 16-3-603. - Definition of Major and Minor Subdivision**

A minor subdivision is a division of land into 5 or fewer residential lots. All other divisions shall be considered major subdivisions.

### **Sec. 16-3-605. - Minor Subdivision Submission Requirements**

A minor subdivision plat shall be submitted with each of the items set forth in [Sec. 16-3-604](#), with the exception of the following:

- A. Item C., Certification of Owner's Consent;
- B. Item F., Open space and Public Dedication narrative; and
- C. Item H., Subdivision in Phases.

*(Revised 10/21/03—Ordinance 2003-31)*



# Town of Hilton Head Island, South Carolina

## Class Specification

**This is a class specification and not an individualized job description. A class specification defines the general character and scope of responsibilities of all positions in a job classification, but it is not intended to describe and does not necessarily list every duty for a given position in a classification.**

<b>Class Title</b>	<b>LMO Official</b>
<b>Class Code Number</b>	<b>3066</b>

### General Statement of Duties

Serves as LMO Official for the Town, is authorized to enforce the LMO and has the authority to render all interpretations of this code. Performs administrative and supervisory work directing, managing, and reviewing development activities and implementing the Land Management Ordinance; performs directly related work as required.

### Distinguishing Features of the Class

The principal function of an employee in this class is to provide a full range of management, leadership, administrative and field services to develop, maintain and implement the Comprehensive Plan and Land Management Ordinance through coordination with State and Federal agencies and the general public. The work is performed under the supervision and direction of the Deputy Director of Community Development, but considerable leeway is granted for the exercise of independent judgement and initiative. Supervision is exercised over Development Review, Natural Resource, and Urban Design. The nature of the work performed requires an employee in this class to establish and maintain effective working relationships with the Deputy Director of Community Development, Plans Review Administrator, Applications Manager, other Town management and personnel, outside agencies, service users, special interest groups, review boards, and the general public. The principal duties of this class are performed in a general office environment.

### Examples of Essential Work

- Oversees fair and equitable work program delegation of regular and special projects and applications, provides guidance and monitors deadlines;
- Supervises various planning positions to include establishing and implementing training program and professional advancement, and meeting on daily basis to provide guidance and encouragement;
- Performs wide range of administrative duties in the hiring process, to include advertising, reviewing applications, interviewing, and recommending new hires for Divisions;

- Develops annual Division goals and budget, to include monitoring expenditures, researching, collaborating with staff, writing proposal, and assisting with similar process at departmental level;
- Ensures coordination with and participation of various regional, state and federal agencies involved in planning and land use regulation;
- Serves as LMO Administrator and oversees researching, drafting, adopting, maintaining and interpreting the Land Management Ordinance;
- Oversees and directs coordination of all applications for development, subdivision, rezoning, public project, sign, and requests for variances, special exceptions, and appeals, to include reviewing submitted materials/site plans, meeting with developers to discuss/design site revisions, pre-clearing inspection on site to ensure implementation of site design, conducting final inspection, and monitoring site after development;
- Advises and assists Town Council on disaster planning and recovery policies; develops post-disaster community sustainability strategies; assists with the Economic Restoration of the Business Community; analyzes the applicability of the Comprehensive Plan for post-disaster re-development;
- Assists in review and approval of business license applications, residential, commercial and industrial building permit applications and manufactured housing review process;
- Works closely with each board coordinator and board chairperson to oversee the board agendas, packet preparation and training;
- Works closely with Legal Services Department, Plans Review Administrator and inspectors to enforce Land Management Ordinance, to include reviewing citizen complaints and observed violations, contacting property owner in violation to resolve issue, negotiating resolution to ensure compliance with legal issues during planning processes, referring cases to Code Enforcement Officer and Code Inspectors, and functioning as expert witness in Municipal Court and/or at jury trial;
- Serves in a leadership role in addressing regional planning issues;
- Provides public education on planning issues, to include writing and presenting papers and programs at conferences and to special interest groups and general public, addressing citizen questions, working with various agencies, designing and publishing educational brochures, and conducting media interviews;
- Represents the Town at County, State, and Federal conferences, and as a member of working committees;
- Acts as planning consultant to governing entities, to include answering questions, explaining concepts, and suggesting solutions to Town Council, Planning Commission, Design Review Board and other boards and commissions;
- Represents Divisions on internal action teams and committees providing input and recommending direction for the benefit of the organization as a whole;
- Establishes on-going relationships and meets with Town staff, media, public, and community, State, and Federal organizations;
- Provides dependable professional advice and assistance to the general public and Town staff on related LMO and Comprehensive Plan provisions in a timely manner;
- Implements Town Council goals and the Town Manager's Work Program;
- Assumes duties and responsibilities of Deputy Director of Community Development in his/her absence;
- Performs emergency or disaster-related duties as assigned;

- Keeps immediate supervisor and designated others accurately informed concerning work progress, to include present and potential work problems and suggestions for new or improved ways of addressing such problems;
- Communicates regularly and facilitates effective working relationships with appropriate others to maximize the effectiveness and efficiency of interdepartmental operations and activities and build cooperation;
- Attends meetings, conferences, workshops, and training sessions and reviews publications and audio-visual materials to become and remain current on principles, practices, and new developments in assigned work areas;
- Demonstrates regular attendance consistent with assigned schedule;
- Performs other directly related duties consistent with the role and function of the classification.

### **Safety Responsibilities**

*See Safety Manual for detailed responsibilities (Supervisor Safety Responsibilities)*

- Provide leadership and direction concerning the Town's safety program;
- Enforce safety rules;
- Continually assess workplace and work activities for safety risks; notify Safety Committee representative or Facilities Management of risks requiring attention;
- Complete required annual safety training;
- Insure that staff understands Town, work group, and position safety rules and procedures and completes required annual job safety training.

### **Required Knowledge, Skills, and Abilities**

- Comprehensive knowledge of principles, practices, methods, and strategies in the field of urban and regional planning and urban design, to include zoning land use law, transportation, and land use;
- Comprehensive knowledge of local government political processes and operations as it relates to planning, development issues, strategic planning, management, and organization of planning;
- Comprehensive knowledge of planning law, environmental law, fundamental development codes, ordinances, code enforcement, and building inspection;
- Comprehensive knowledge of principles of architecture, landscape architecture, land management concepts, traffic engineering, civil engineering, and Geographic Information Systems;
- Ability to establish and maintain effective working relationships with the Director of Community Development and Deputy Director of Community Development, other Town departments and Town employees and the general public;
- Ability to effectively lead, motivate and influence others;
- Ability to identify core issues and resolving problems;
- Ability to communicate effectively with others, both orally and in writing, using both technical and non-technical language;
- Ability to understand and follow oral and/or written policies, procedures, and instructions;

- Ability to prepare and present accurate and reliable reports containing findings and recommendations;
- Ability to operate or quickly learn to operate a personal computer using standard or customized software applications appropriate to assigned tasks;
- Ability to use logical and creative thought processes to develop solutions according to written specifications and/or oral instructions;
- Ability to perform a wide variety of duties and responsibilities with accuracy and speed under the pressure of time-sensitive deadlines;
- Ability and willingness to quickly learn and put to use new skills and knowledge brought about by rapidly changing information and/or technology;
- Integrity, ingenuity, and inventiveness in the performance of assigned tasks.

#### **Acceptable Experience and Training**

- Bachelors Degree in Regional/Urban Planning or closely related field and extensive planning experience: or
- Masters Degree in Regional/Urban Planning or closely related field and considerable experience in planning, architecture, landscape architecture, technical planning, government operations, community development, redevelopment, code application: or
- Any combination of experience and training which provides the equivalent scope of knowledge, skills, and abilities necessary to perform the work.

#### **Required Special Qualifications**

- None.

#### **Essential Physical Abilities**

- Sufficient clarity of speech and hearing or other communication capabilities, with or without reasonable accommodation, to enable the employee to communicate effectively;
- Sufficient vision or other powers of observation, with or without reasonable accommodation, to enable the employee to review a wide variety of materials in electronic or hard copy form;
- Sufficient manual dexterity, with or without reasonable accommodation, to enable the employee to operate a personal computer, telephone, and other related equipment;
- Sufficient personal mobility and physical reflexes, with or without reasonable accommodation, to enable the employee to efficiently function in a general office environment and to perform required functions in forested areas, wetlands, or other outdoors environments.

## Town of Hilton Head Island Municipal Government Website

Text Size: A A A

## Town of Hilton Head Island Staff Search Results

## Community Services

## Community Development Department

Name	Title	Phone
<a href="#">Adams, Wayne</a> ✉	Codes Inspector	(843)341-4659
<a href="#">Benson, Marcy</a> ✉	Senior Grants Administrator	(843)341-4689
<a href="#">Browder, Rocky</a> ✉	Environmental Planner	(843)341-4682
<a href="#">Carlin, Kathleen</a> ✉	Administrative Assistant-Community Development	(843)341-4684
<a href="#">Colin, Heather</a> ✉	Development Review Administrator	(843)341-4607
<a href="#">Colin, Shawn</a> ✉	Deputy Director of Community Development	(843)341-4696
<a href="#">Cousins, Charles</a> ✉	Director of Community Development	(843)341-4692
<a href="#">Cyrn, Anne</a> ✉	Senior Planner - DRZ	(843)341-4697
<a href="#">Dixon, Nicole</a> ✉	Senior Planner - DRZ	(843)341-4686
<a href="#">Durden, Waymon</a> ✉	Commercial Combination Inspector	(843)341-4657
<a href="#">Farrar, Shea</a> ✉	Senior Planner	(843)341-4768
<a href="#">Foster, Jill</a> ✉	Deputy Director of Community Development	(843)341-4694
<a href="#">Hayward, Sarah</a> ✉	Community Development Assistant	(843)341-4674
<a href="#">Heath, Nancy</a> ✉	Applications/Records Manager	(843)341-4663
<a href="#">Horsman, Donna</a> ✉	Community Development Assistant	(843)341-4605
<a href="#">Klein, Bob</a> ✉	Building Official	(843)341-4664
<a href="#">Krebs, Sally</a> ✉	Sustainable Practices Coordinator	(843)341-4690
<a href="#">Lewis, Teri</a> ✉	LMO Official	(843)341-4698
<a href="#">Lopko, Jayme</a> ✉	Senior Planner	(843)341-4695
<a href="#">O'Donnell, Kisha</a> ✉	Community Development Assistant	(843)341-4673
<a href="#">Ray, Jennifer</a> ✉	Urban Designer	(843)341-4665
<a href="#">Spruce, Richard</a> ✉	Plans Examiner	(843)341-4651
<a href="#">Torin, Marc</a> ✉	Special Projects Inspector	(843)341-4661
Vacant	Commercial Combination Inspector	(843)341-4679
<a href="#">Wilson, Eileen</a> ✉	Senior Administrative Assistant-Community Development	(843)341-4691
<a href="#">Yates, Chris</a> ✉	Commercial Combination Inspector	(843)341-4675

[Search Again](#)[Contact Us Home](#)

**Title 6 - Local Government - Provisions Applicable to Special Purpose Districts and Other Political Subdivisions**

CHAPTER 29.

SOUTH CAROLINA LOCAL GOVERNMENT COMPREHENSIVE PLANNING ENABLING ACT OF 1994

**SECTION 6-29-1145.** Determining existence of restrictive covenant; effect.

(A) In an application for a permit, the local planning agency must inquire in the application or by written instructions to an applicant whether the tract or parcel of land is restricted by any recorded covenant that is contrary to, conflicts with, or prohibits the permitted activity.

(B) If a local planning agency has actual notice of a restrictive covenant on a tract or parcel of land that is contrary to, conflicts with, or prohibits the permitted activity:

(1) in the application for the permit;

(2) from materials or information submitted by the person or persons requesting the permit; or

(3) from any other source including, but not limited to, other property holders, the local planning agency must not issue the permit unless the local planning agency receives confirmation from the applicant that the restrictive covenant has been released for the tract or parcel of land by action of the appropriate authority or property holders or by court order.

(C) As used in this section:

(1) "actual notice" is not constructive notice of documents filed in local offices concerning the property, and does not require the local planning agency to conduct searches in any records offices for filed restrictive covenants;

(2) "permit" does not mean an authorization to build or place a structure on a tract or parcel of land; and

(3) "restrictive covenant" does not mean a restriction concerning a type of structure that may be built or placed on a tract or parcel of land.

HISTORY: 2007 Act No. 45, Section 3, eff June 4, 2007, applicable to applications for permits filed on and after July 1, 2007; 2007 Act No. 113, Section 2, eff June 27, 2007.

54  
/ 322

**AMENDED DECLARATION  
OF THE  
HILTON HEAD PLANTATION  
PROPERTY OWNERS' ASSOCIATION,  
INC.**

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AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS

OF THE HILTON HEAD PLANTATION PROPERTY OWNERS' ASSOCIATION, INC.

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS, hereinafter referred to as the "Declaration", executed this 16th day of April, 1997, by Hilton Head Plantation Property Owners' Association, Inc., a South Carolina non-profit corporation, hereinafter called "Association".

WITNESSETH:

WHEREAS, The Hilton Head Plantation Company, Inc., created a planned development community known as Hilton Head Plantation with certain facilities, amenities and services for the use and benefit of all property owners within such community and subjected said property with such additions as may thereafter have been made, to a Declaration of Covenants and Restrictions dated July 11, 1973, which was recorded in the R.M.C. Office for Beaufort County, South Carolina, Deed Book 211 at Page 1487; "(Original Declaration)";and

WHEREAS, The Hilton Head Plantation Company, Inc. caused to be incorporated under the laws of the State of South Carolina, a non-profit corporation, the Hilton Head Plantation Property Owners' Association, Inc., for the purpose of exercising the functions aforesaid, and which are hereinafter more fully set forth; and

That Original Declaration of Covenants and Restrictions was previously amended by amendments which were recorded in the Beaufort County, South Carolina Records as follows:

Record Dates	Deed Book Page
1/02/79	276/282
1/20/81	314/663
5/26/81	323/663
9/22/81	332/2033
4/12/82	345/5
6/28/82	350/79

WHEREAS, on or about June 9, 1981, there was recorded a certain "Covenant Agreement" verifying the fact that a certain 4.96 acre parcel of land along Skull Creek was encumbered by the aforementioned Declaration. The said "Covenant Agreement" was recorded, in the Office of the Clerk of Court for Beaufort County, South Carolina, in Deed Book 324 at Page 1239; and

WHEREAS, on or about the 19th day of January, 1982, a certain "Covenant Agreement" pertaining to a 0.13 acre parcel of land in Hilton Head Plantation was likewise recorded to verify the fact that said 0.13 acre parcel of land was affected by said Original Declaration. The said Covenant Agreement was recorded in the Office of the Clerk of Court for Beaufort County, South Carolina, in Deed Book 340 at Page 1523; and

WHEREAS, on the 28<sup>th</sup> day of March, 1983, Hilton Head Plantation Property Owners' Association, Inc., and Hilton Head Plantation Company, Inc., did cause to be executed and recorded that certain AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS OF HILTON HEAD PLANTATION PROPERTY OWNERS' ASSOCIATION AND HILTON HEAD PLANTATION COMPANY, INC., hereafter referred to as the "RESTATED DECLARATION" which was recorded in the Office of the Clerk of Court for Beaufort County, South Carolina in Book 367 at Page 656 et sec and

WHEREAS, the Restated Declaration was amended by amendments recorded in the Beaufort County, South Carolina records as follows:

Record Dates	Deed Book Page
2/09/84	388/26
5/3/84	393/1421
4/30/86	447/18
5/22/87	447/929
8/27/87	484/1473
6/1/88	502/1903

WHEREAS, on the 10<sup>th</sup> day of May, 1990, the Hilton Head Plantation Company, Inc., did execute Amendatory Declaration to the above mentioned Restated Declaration that verified the fact that a certain 7.5 acre parcel of land now known as The Bay Club encumbered by said Restated Declaration, which Addendum was recorded in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina, on May 16, 1990, in Deed Book 553 at Page 953; and

WHEREAS, on the 29<sup>th</sup> day of August, 1991, the Hilton Head Plantation Property Owners' Association, Inc., did execute a further Amendatory Declaration to the above mentioned Restated Declaration, that verified the fact that a certain 15.87 acre and 6.26 acre (total 22.13 acres) parcel of land, formerly known as the "Brown Out-Parcel" was encumbered by said Restated Declaration, which Amendatory Declaration was recorded in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina, on September 26, 1991, in Deed Book 583 at Page 2478; and

WHEREAS, the Hilton Head Plantation Company, Inc., did, on or about July 1, 1995, convey to the Association all of the "Declarant Rights" under the aforementioned covenants and restrictions, which assignment was recorded in the R.M.C. Office for Beaufort County, South Carolina, on July 21, 1995, in O.R.B. 791 at Page 1349; and,

WHEREAS, on the 19th day of November, 1996, the Hilton Head Plantation Property Owners' Association, Inc., did execute a further Amendatory Declaration to the above mentioned Restated Declaration, verifying the fact that a certain 10.08 acre parcel of land, now know as Oyster Reef Crossing Subdivision, was encumbered by said Restated Declaration, which Addendum was recorded in the Office of the Register of Mesne Conveyance or Beaufort County, South Carolina, on January 2, 1997, in Deed Book 912 at Page 504; and

WHEREAS, pursuant to Article VIII Section 2 of Restated Declaration, the Declaration may be amended by the affirmative vote of three-fourth (3/4) of the votes cast at a duly called meeting. This Amendment was adopted at a duly called meeting on March 22, 1997.

WHEREAS, the total number of votes was 4, 376 with 4,134 voting in favor of this Amendment, 242 voting in opposition, and 0 votes abstaining. The affirmative vote was in excess of the required three-fourths (3/4) affirmative vote required for passage. This Declaration shall become effective sixty (60) days from March 22, 1997.

NOW-THEREFORE, the Association declares that the Restated Declaration of Covenants and Restrictions and all amendments thereto are hereby replaced by the following Amended and Restated Declaration of Covenants and Restrictions called Declaration for the real property described in Exhibit A and such additions thereto as may hereinafter be made is and shall be held, transferred, sold, conveyed, given, donated, leased, occupied and used, subject to the covenants, restrictions, conditions, easements, changes, assessments, and affirmative obligations herein.

## ARTICLE I

DEFINITIONS

Section 1. The following words and terms when used in this Declaration or any supplemental Declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

(a) "Association" shall mean and refer to the Hilton Head Plantation Property Owners' Association, Inc., a South Carolina non-profit corporation, its successors and assigns.

(b) "Covenants" shall mean the Land Use Restrictions and Protective Covenants collectively referred to as the Class "A" covenants dated February 15, 1973 as amended (originally recorded in Deed Book 211 at page 1470); the Class "B" covenants dated April 18, 1974 as amended (originally recorded in Deed Book 219 at page 1882); the Class "C" covenants dated November 12, 1986 as amended (originally recorded in Deed Book 463 at page 1514); and the Class "D" Covenants dated March 3, 1987 as amended (originally recorded in Deed Book 425 at page 1790).

(c) "By-Laws" shall mean the Amended and Restated By-Laws of the Hilton Head Plantation Property Owners Association, Inc. originally recorded on September 30, 1978, as amended. A copy of Amended By-Laws of the Hilton Head Plantation Property Owners' Association effective March 21, 1997 is hereto as Exhibit B.

(d) "Board" shall mean those Members elected to govern the affairs of the Association.

(e) "Company" shall mean Hilton Head Plantation Company, Inc., its successors and assigns.

(f) "Master Plan" shall mean and refer to the conceptual plan for the development of Hilton Head Plantation originally prepared by the Company, as revised.

(g) "Intended Use" shall mean the use shown on the current Master Plan of Hilton Head Plantation or the use to which a particular parcel of land is restricted by applicable local law or by this Declaration.

(h) The "Properties" shall mean and refer to the Existing Property described in Article II hereof, and additions or deletions thereto.

(i) "Common Properties" shall mean and refer to any and all real and personal property and easements and other interests therein, together with the betterments and improvements located thereon, now or hereafter owned or leased by the Association for the common use and enjoyment of the Members. All common Properties are to be devoted to and intended for the common use and enjoyment of the Members, persons occupying dwelling units, Members' guests or tenants, and visiting members of the general public (to the extent permitted by the Board) subject to the fee schedule and operating rules adopted by the Association, provided, however, that any lands leased by the Association for use as Common Properties shall lose their character as Common Properties upon the expiration of such lease. Common Properties shall not include those tracts of land falling within the definition of Restricted Common Properties herein. The Common Properties shall include, but are not limited to:

- (1) All community roads and rights-of-way;
- (2) All common-use leisure trails, water courses and lagoons which are wholly contained within a public or commercial site, multi-family tract, or development unit parcel.
- (3) The Cypress Swamp Conservancy;
- (4) The Salt Marsh Conservancy;
- (5) A portion of Seabrook Farm containing 25 acres, more or less; and
- (6) The Pine Island and Dolphin Head Recreation area.

(j) "Restricted Common Properties" shall mean and refer to those tracts of land with any improvements thereon which are actually deeded or leased to the Association and designated in all such deed or lease as "Restricted Common Properties." All Restricted Common Properties are to be devoted to and intended for the common use and enjoyment of Owners of Residential Lots and Family Dwelling Units, their immediate families, guests accompanying such Owners, tenants of such Owners holding leases of 9 months duration or longer, and to be closed to use of (1) tenants of such Owners holding leases less than 9 months duration; and, (2) visiting members of the general public; with all use of Restricted Common Properties to be subject to the fee schedules and operating rules adopted by the Association. Any lands which are leased by the Association for use as Restricted Common Properties shall lose their character as Restricted Common Properties upon the expiration of such leases. The Restricted Common Properties shall include, but are not limited to (1) areas between the lot line and state owned beaches and marshes below the mean high water mark adjacent to lots fronting thereon, estimated to contain approximately 25 acres; and (2) the Whooping Crane Pond conservancy of approximately 137 acres.

(k) "Private Open Space" shall mean land designated on recorded plats which is subject to an easement of enjoyment limited to Owners and their guests and tenants of property contiguous and adjacent to such land.

(l) "Private Recreational Property" shall mean and refer to those parcels or tracts of land conveyed by the Company to third parties under Covenants and Restrictions permitting or requiring development and operation of such property as a private-member recreational facility for golf, tennis, hand ball or similar recreational activity to be a private facility located within the Properties, the membership criteria of which shall be totally selected and determined by the governing body of such private recreational property. Any such "Private Recreational Property" has imposed upon it Covenants running with the land which provide such restrictions to reasonably ensure aesthetic control regarding the Property so transferred.

(m) "Owner" shall mean and refer to the Owner as shown by the real estate records in the Office of the Clerk of Court for Beaufort County, South Carolina, whether it be one or more persons, firms, associations, corporations, or other legal entities, of fee simple title to any Residential Lot, Family Dwelling Unit, Multi-Family Tract, Public and Commercial Site, Public and Commercial Unit, Development Unit Parcel, or Unsubdivided Land situated upon the Properties but, notwithstanding any applicable theory of a mortgage, shall not mean or refer to the mortgagee or holder of a security deed, its successors or assigns, unless and until such mortgagee or holder of a security deed has acquired title pursuant to foreclosure or a proceeding or deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner.

In the event that there is recorded in the Office of the Clerk of Court for Beaufort County, South Carolina, a long-term contract of sale covering any lot or parcel of land within the Properties, the Owner of such lot or parcel of land shall be the purchaser under said contract and not the fee simple title holder. A long-term contract of sale shall be one where the purchaser is required to make payments for the property for a period extending beyond 9 months from the date of the contract, and where the purchaser does not receive title to the property until such payments are made although the purchaser is given the use of said property.

(n) "Member" shall mean and refer to all those Owners who are Members of the Association as provided in Section 1 of Article III hereof.

(o) "Family Dwelling Unit" shall mean and refer to any improved property intended for use as a single-family dwelling, including any single family detached dwelling, patio home, condominium unit, townhouse unit, cooperative apartment unit, or apartment unit.

(p) "Public and Commercial Unit" shall mean and include any improved parcel of land within the Properties which is intended and designed to accommodate public, commercial or business enterprises to serve residents and guests of Hilton Head Plantation and/or the public, including but not limited to all those enterprises enumerated in subparagraph (f) above.

(q) "Improved Property" shall mean a parcel of land on which the improvements constructed thereon have their roof and windows installed.

(r) "Residential Lot" shall mean any unimproved parcel of land located within the Properties which is intended for use as a site for a single family detached dwelling, townhouse, or patio dwelling as shown upon any recorded final subdivision map of any part of the Properties. Property shall not be classified for the purposes of the covenants and the annual assessments as a Residential Lot until the first day of January after the recording of a plat in the office of the Clerk of Court of Beaufort County, South Carolina showing such Residential Lot.

(s) "Multi-Family Tract" shall mean any unimproved parcel of land located within the Properties, intended for use as sites for multi-family dwellings including, without limitations, condominium regimes, cooperative apartments, or apartments. For the purposes of this Declaration, a parcel of land shall not be deemed a "Multi-Family Tract" until such time as a plat identifying such property for multi-family use is recorded in the Office of Clerk of Court of Beaufort County, South Carolina.

(t) "Public and Commercial Site" shall mean any unimproved parcel of land within the Properties, intended for use as a site for improvements designed to accommodate commercial or business enterprises to serve residents and guests of Hilton Head Plantation and/or the public, including but not limited to business and professional offices, facilities for the retail sale of goods and services, social clubs, restaurants, inns, lounges, indoor recreational facilities, marinas, and automobile parking facilities; provided, however, that a parcel of land shall not be deemed a "Public and Commercial Site" until such time as a plat identifying such property as a public or commercial site is recorded in the Office of the Clerk of Court of Beaufort County, South Carolina.

(u) "Development Unit Parcels" shall mean and refer to those parcels or tracts of land of five (5) acres or more conveyed by the Company to third parties under covenants and restrictions permitting the division of such parcel or tract into smaller units such as Residential Lots, Multi-family Residential Tracts, or Public and Commercial Sites.

"Unsubdivided Land" shall mean and refer to all land in the existing property described in Article II hereof, and additions thereto, as are subjected to this Declaration or any Supplemental Declaration under the provisions of Article II hereof which has not been subdivided into Residential Lots, Multi-Family Residential Tracts, Public and Commercial Sites, or Development Unit Parcels, through metes and bounds subdivision plats filed for record in the Office of the Clerk of Court of Beaufort County, South Carolina. For the purposes of this Declaration, the following classifications of Property shall not be deemed "Unsubdivided Land" and shall be expressly excepted from the definition thereof.

(1) All lands committed to the Association through express written notification by the Company to the Association of intent to convey.

(2) All lands designated on the Master Plan for intended use, or by actual use if applicable, for outdoor recreation facilities, operating farms, woodland, marsh and swamp conservancies, medical centers, hospitals, clinics, nursing, care, rest and convalescent homes and charitable institutions.

(3) All lands below the mean high water mark.

(4) All lands designated in any way as Common Properties or Restricted Common Properties.

## ARTICLE II

EXISTING PROPERTY AND ADDITIONS OR DELETIONS THERETO

Section 1. Existing Property. The real property which is, and shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to this Declaration is described as follows:

All that tract or parcel of land, situated, lying and being on Hilton Head Island, Beaufort County, South Carolina, which is more particularly described in Exhibit "A" attached hereto and by specific reference made a part hereof.

Section 2. Additions to or Deletions from the Properties. Additions to or deletions from the Properties may be made upon receiving three fourths (3/4) of the Member vote in accordance with the procedure in Article VI of the By-Laws. In the case of an addition, the Association shall file or record an addendum to the Declaration and the Land Use Restrictions and Protective Covenants with respect to the additional property which shall extend the operation and effect of these documents to such additional property.

Section 3. Mergers and Consolidations. Upon merger or consolidation of the Association with another association, as provided for in the By-Laws of the Association, its property rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or in the alternative, the properties, rights and obligation of another association may, by operation of law, be added to the properties of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the existing property, together with the covenants and restrictions established upon any other properties, as one plan. No merger or consolidation shall effect any revocation, change or addition to the covenants established by this Declaration within the Existing Property, including, without limitation, the maximum limits on assessments and dues of the Association, or any other matter substantially affecting the interests of Members of the Association.

ARTICLE III

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MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every Owner shall be a Member of the Association. The Hilton Head Plantation Company, Inc., may be a Member of the Association by virtue of property ownership within Hilton Head Plantation.

An Owner shall automatically become a member of the Association upon taking title to his property and shall remain a member for the entire period of ownership. As may be more fully provided below, a spouse of a member may exercise the powers and privileges of the member. Membership does not include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. Membership shall be appurtenant to the property and shall be transferred automatically by conveyance of that property and may be transferred only in connection with the transfer of title.

Section 2. Entity Members. In the event an Owner is a corporation, partnership, trust, or other legal entity not being a natural person or persons, then any natural person who is an officer, director, or other designated agent of such corporation, partner of such partnership, beneficiary or other designated agent of such trust, or manager of such other legal entity shall be eligible to represent such entity in the affairs of the Association. Such person's relationship with the Association shall terminate automatically upon the termination of such person's relationship with the entity which is the Owner. This will create a vacancy in any elected or appointed position within the Association in which such person may have been serving.

Section 3. Voting Rights. The Association shall have four types of regular voting membership:

TYPE "A" - Type "A" Members shall be all those Owners of Residential Lots and any type of Family Dwelling Units, whether detached or multi-family. A Type "A" Member shall be entitled to two votes for each Family Dwelling Unit which he owns. An owner of a Residential Lot upon which a Family Dwelling Unit has not been constructed shall be entitled to one vote for each Residential Lot which he owns. It is the intent of this provision that so long as property qualifies as a Residential Lot by virtue of the fact that improvements have not been constructed thereon the owner thereof shall have only one vote; but that once improvements are constructed on said Lot and it loses its character as a Residential Lot and becomes a Family Dwelling Unit, the Owner thereof shall have a total of two votes for the ownership of such property. If a Family Dwelling Unit is constructed on more than one (1) Residential Lot, the Owner shall have two (2) votes for the Family Dwelling Unit and one (1) lot and one (1) additional vote for each other Residential Lot comprising a part of the total consolidated home or building site.

TYPE "B" - Type "B" Members shall be all those owners, of platted Public or Commercial Sites and Multi-Family Tracts. A Type "B" Member shall be entitled to one vote for each one-fourth (0.25) of one acre contained in the Public or Commercial Site(s) or Multi-Family tract(s) which such Member owns, provided, however, that in computing the number of votes such Member shall have, the area contained in such property shall be rounded off to the nearest 0.25 of an acre.

TYPE "C" - Type "C" Members shall be all such owners, of Public and Commercial Units and Private recreational property. All Type "C" Members shall be entitled to One (1) vote for each amount in annual assessments paid to the Association equal to the amount currently assessed to and paid by the owner of a residential lot upon which a family dwelling unit has not been constructed. In computing the amount of votes that such an owner shall have, the amount of assessments will be rounded off to the nearest multiple of the assessment for a residential lot.

TYPE "D" - Type "D" Members shall include all those owners of Unsubdivided Lands and Development Unit Parcels held and intended for future development. A Type "D" Member shall be entitled to One (1) vote for each amount in annual assessments paid to the Association equal to the amount currently assessed to and paid by the owner of a residential lot upon which a family dwelling unit has not been constructed. In computing the amount of votes that such an owner shall have, the amount of assessments will be rounded off to the nearest multiple of the assessment for a residential lot.

When any property entitling the Owner to membership as a Type "A", "B", "C" or "D" Member of the Association is owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership or in any other manner of joint or common ownership, or if two or more persons or entities have the same fiduciary relationship respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs and it or a copy thereof is filed with the secretary of the Association, their acts with respect to voting shall have the following effect:

- (1) If only one vote, in person or by proxy, his act binds all;
- (2) If more than one vote, in person or by proxy, the act of the majority so voting binds all;
- (3) If more than one vote in person or by proxy, but the vote is evenly split on any particular matter, each fraction shall be entitled its proportionate share of the vote or votes;
- (4) If the instrument or order so filed shows that any such tenancy is held in unequal interest, a majority or even split for purposes of this paragraph shall be a majority or even split in interest;

The principles of Section 3 paragraph shall apply, insofar as possible, to the execution of proxies, waivers, consents or objections and for the purpose of ascertaining the presence of a quorum.

The Type "A", "B", "C" and "D" Members are sometimes hereinafter collectively referred to as the "Members."

**Section 4. Board of Directors.** The Association shall be governed by a Board of Directors consisting of a nine (9) or eleven (11) members as determined by the Board. The positions will be filled by those receiving the largest number of votes in accordance with Article VII, Section 6 of the By-Laws. There shall be no cumulative voting.

**Section 5. Members Right to Approve or Disapprove Certain Board Actions.** - Where specifically provided for in the Declaration, the Members shall have the power to approve or reject certain actions by written ballot in accordance with the procedures in Article VI of the By-Laws. In the event of a dispute as to whether a Member vote is required, the following action may be taken: Within sixty (60) days after the adoption by the Board of any action which is, in the opinion of the Members, subject to a Member vote, a petition signed by not less than twenty-five percent (25%) of the total membership of the Association may be filed with the Secretary of the Association requesting that any such action be submitted to a vote of the Members.

ARTICLE IV  
PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Easements for Use and Enjoyment. Every member and every tenant and guest of a member shall have a right and easement of ingress and egress, use, and enjoyment in and to the Common Properties which shall be appurtenant to and shall pass with the title to his property. Any member who leases his property shall be deemed to have delegated his rights under this Article I to the lessee of the property. This easement shall be subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Properties and Restricted Common Properties; to limit the number of guests of members and tenants who may use the Common Properties and Restricted Common Properties; and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by a Member, his or her family, tenants, guests, and invitees.
- (b) the right of the Association to suspend the voting rights of a Member and the right of a Member to use the recreational facilities in the Properties for any period during which any assessment against his property which is provided for herein remains unpaid and for a reasonable period of time for an infraction of the Declaration, Covenants, By-Laws, or rules and regulations.
- (c) the right of the Association to enforce Declarations, Covenants, By-Laws, and rules and regulations promulgated by the Board.
- (d) the right of the Association to borrow money as may be set forth in the By-Laws. The lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for any Property or Property Owner or the holder of any Mortgage, regardless of when executed, which encumbers any property located within the Property. Any provision in this Declaration or in any such mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of any property or Member or the holder of any Mortgage, regardless of when executed, which encumbers any Lot or other property located within the Property.
- (e) the right of the Association to dedicate or transfer, to any public or private utility, utility easements or any other required easements on any part of the Common Properties and Restricted Common Properties.

- (f) the right of the Association to charge a reasonable fee or toll for the use of the roads belonging to the Association, provided, however, that such rights of the Association shall not be construed to impair or qualify an Owner's rights of ingress and egress to his property. The Board shall have full discretion to determine the amount of the fee or toll for use of said roads; provided, however, that such fee or toll shall be limited to an amount which generates sufficient sums to the Association to cover the cost of the operation of entry control security stations; to repair, rehabilitate, resurface and otherwise maintain said roads; to provide for the maintenance and clean-up of right-of-ways; to provide drainage along said roads and to provide for motorized security patrols. The Board shall further have the power to place any reasonable restrictions upon the use of the Association's roads, subject to an Owner's right of ingress and egress, including but not limited to the type and size of vehicles permitted to use said roads, the maximum and minimum speeds of vehicles using said roads, all other necessary traffic and parking regulations, and the maximum noise levels of vehicles using said roads. The fact that such restrictions on the use of the roads shall be more restrictive than the laws of any state or local government having jurisdiction over the Properties shall not make such restrictions unreasonable.

The Association may supplement, with an allocation of a portion of the receipts from the annual assessment on the property, the funds (if any) received from road use fees or tolls to carry out the functions and activities as discussed in this paragraph.

- (g) the right of the Association to give or sell all or any part of the Common Properties and Restricted Common Properties, including lease-hold interests, to any public agency, authority, public service district, utility or private concern or to make additions thereto for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such gift, sale, acquisition, or determination as to the purposes or as to the conditions thereof shall be effective unless such dedication, transfers and determinations as to purposes and conditions shall be authorized by the affirmative vote of three-fourths (3/4) of the votes cast in accordance with Article VI of the By-Laws. A true copy of such resolution together with a certificate of the results of the vote taken thereon shall be made and acknowledged by the President and Secretary of the Association and such certificate shall be annexed to any instrument of dedication or transfer affecting the Common Properties or Restricted Common Properties prior to the recording thereof. Such certificates shall be conclusive evidence of authorization by the membership. The above may not apply in the event of condemnation by a public entity.

Section 2. Easement for Utilities and for Entry.

- (a) Easement for Utilities. There is hereby reserved to the Association blanket easements upon, across, above and under all property within the Property for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Property or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other services such as, but not limited to, a master television antenna system, cable television system, or security system which the Association may have installed to serve the Property. It shall be expressly permissible for the Association or its designee, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.
- (b) Easement for Entry. The Association shall have an easement to enter onto any property for emergency, security, safety, and for other purposes reasonably necessary for the proper maintenance and operation of the Property, which right may be exercised by the Board, officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after notice to the Owner or occupant. This right of entry shall include the right of the Association to enter a property to cure any condition which may increase the possibility of a fire or other hazard in the event that an Owner fails or refuses to cure the condition upon request by the Board.

ARTICLE V

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ASSESSMENTS

Section 1. Power and Purpose of Assessments The Association shall have the power to levy assessments as provided for herein. The assessments for Common Expenses shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and occupants as may be authorized by the Board.

Section 2. Creation of the Lien and Personal Obligations of Assessments. Each Owner of any Residential Lot, Family Dwelling Unit, Multi-Family Tract, Public and Commercial Site, Public and Commercial Unit, Development Unit Parcel, or Unsubdivided Land, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to all terms and provisions of this Declaration and to pay to the Association: (1) Annual assessments or charges; and (2) Special assessments or charges for the purposes set forth in this Article, such assessments to be fixed, established and collected from time to time as hereinafter provided. The Annual and Special assessments together with such interest or late charges thereon and costs of collection therefor as hereinafter provided, shall be a charge and continuing lien on the real property and improvements thereon against which each such assessment is made. Each such assessment, together with such interest or late charges thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such real property at the time the assessment first became due and payable. In the case of co-ownership of a Residential Lot, Family Dwelling Unit, Multi-Family Tract, Public and Commercial Site, Public and Commercial Unit, Development Unit Parcel, or any Unsubdivided Land, all of such co-owners shall be jointly and severally liable for the entire amount of the assessment.

Section 3. Application of Minimum and Maximum Assessment. There shall be a minimum and a maximum annual assessment range as set forth in the schedule hereinbelow. The minimum annual assessment shall be levied unless the Board of the Association determines that the important and essential functions of the Association may be properly funded only by an assessment above the minimum but not more than the maximum annual assessment for that year. The assessment amount approved by the Board each year shall be known as the annual assessment and shall in no event exceed the applicable maximum annual assessment.

The annual assessment minimum and maximum amounts shall be the sums calculated in accordance with the following schedule as may be increased in each instance by an inflation adjuster as set forth in paragraph "m" hereinbelow.

<u>Category</u>	<u>Minimum Annual Assessment</u>	<u>Maximum Annual Assessment</u>
Note: 1997 figures. May change annually by Board vote under paragraph "m" or "n".		
(a) Residential Lots:	\$273.00 per lot	\$547.00 per lot
(b) Family Dwelling Unit:	\$457.00 per unit	\$911.00 per unit
(c) Public and Commercial Unit:		
(1) Motels, inns, and any other commercial facility offering year-round overnight transient accommodations:	\$.58/sq.ft. of enclosed heated & air-conditioned space	\$1.16/sq. ft. of enclosed heated & air-conditioned space
(2) Other Commercial Units operated for profit (restaurant, retail store, real estate sales office, etc):	\$.58/sq.ft. of enclosed heated & air-conditioned space	\$1.16/sq. ft. of enclosed heated & air-conditioned space
(3) Commercial Office Space:	\$.58/sq. ft. of enclosed heated & air-conditioned space	\$1.16/sq. ft. of enclosed heated & air-conditioned space
(4) All agencies renting bicycles, automobiles, electric carts, or other vehicles within the properties shall pay an assessment on their site, whether owned or leased, of:	5.71% of gross receipts	11.41% of gross receipts
(5) Outdoor Recreation Facilities:	2.28% of revenues from hourly, daily, or weekly user fees	4.57% of revenues from hourly, daily, or weekly user fees
For purposes of the above assessment hourly, daily, or weekly user fees shall be strictly construed to exclude any annual Member dues or initiation fees.		
(d) Private Recreational Property:	\$79.00 per acre or 1% of annual operating budget, whichever is greater	\$158.00 per acre or 1% of annual operating budget, whichever is greater
(e) All Unsubdivided Land contained within the property:	\$58.00/acre	\$118.00/acre
(f) Multi-Family Tract:	.58 % of bona fide sales price	1.16 % of bona fide sales price
(g) Public and Commercial Site:	.58 % of bona fide sales price	1.16 % of bona fide sales price
(h) All Development Unit Parcels contained within the property:	.58 % of bona fide sales price	1.16 % of bona fide sales price
For purposes of (f), (g), and (h) assessments, "bona fide sales price" shall be the sales price at which such property was originally conveyed by the Company, or its successors or assigns, to a third party purchaser.		

- (i) The Company shall pay as assessments one percent (1%) of land sales contracts entered into by the Company for sale of its own land (but not brokerage accounts) for Residential Lots, Multi-Family Tracts, and Public or Commercial Sites, as such sales are recognized as current (rather than deferred) revenues in accordance with generally accepted accounting practices. For voting purposes, this provision shall be construed to mean that the Company shall be considered a Type "C" Member by virtue of its payment of this assessment and, as such, entitled to one (1) vote for each amount in annual assessments paid to the Association equal to the amount currently assessed to and paid by the owner of a residential lot upon which a family dwelling unit has not been constructed. In computing the amount of votes that such an owner shall have, the amount of assessments will be rounded off to the nearest multiple of the assessment for a residential lot.
- (j) For purposes of these assessments and voting rights hereunder, a property will be classed as unimproved, and not as a Family Dwelling Unit or Public or Commercial Unit until roof and windows have been installed; and assessment at the improved property rate shall begin on the next January 1st thereafter.
- (k) The Company will provide to the Association upon request a copy of all plats of Hilton Head Plantation properties recorded at the Office of the Clerk of Court, Beaufort County, by the Company.
- (l) The assessments charged by the Association shall be rounded off to the nearest dollar.
- (m) From and after January 1, 1997, the minimum and maximum annual assessment may be increased each year by the Board by an amount not in excess of five (5%) percent per year, or the percentage increase between the first month and the last month on an annual assessment period in the Consumer Price Index, U.S. City Average, All Items (1967-100) (hereafter "C.P.I.") issued by the U.S. City Average, Labor Statistics in its monthly report entitled "The Consumer Price Index, U.S. City Average and Selected Areas" whichever of these two percentage figures is larger, unless three-fourths (3/4) of the votes cast in accordance with Article VI of the By-Laws, vote to increase or decrease the minimum and maximum annual assessment. In the event that the C.P.I. referred to above shall be discontinued there shall be used the most similar index published by the United States Government that may be procured indicating changes in the cost of living. Any increase or decrease in the amount of the minimum or maximum annual assessment shall be made in such a manner that the proportionate increase or decrease in such minimum or maximum annual assessment is the same for Owners of Residential Lots, Family Dwelling Units, Multi-Family Tracts, Public and Commercial Sites, Public and Commercial Units, Development Unit Parcels, Unsubdivided Land or Private Recreational Property.

- (n) The Board may, after consideration of current costs and future needs of the Association, fix the annual assessment for any year at an amount less than the applicable minimum annual assessment; but such action shall not constitute a waiver by the Association of its right to revert to an assessment within the minimum and maximum annual assessment range in subsequent years. However, if the Board fixes such an assessment at an amount less than the minimum and it subsequently is determined by the Board that the amount assessed will not be sufficient, the Board shall have the power to make a supplemental annual assessment; but in no event shall the sum of the initial and supplemental annual assessment in any one year exceed the applicable maximum annual assessment. Any time the annual assessment levied by the Board is less than the minimum annual assessment such decrease shall be apportioned among the Owners of Residential Lots, Family Dwelling Units, Multi-Family Tracts, Public and Commercial Sites, Public and Commercial Units, Development Unit Parcels, Unsubdivided Land, and Private Recreational Property, such that the proportionate decrease received by each type of Owners of the various types of property may be altered only by the favorable vote of ninety (90%) percent of the votes cast in accordance with Article VI of the By-Laws and with a ninety percent (90%) approval by the Members of each type of membership whose proportionate share is being altered.

**Section 4. Special Assessments for Improvements and Additions.** In addition to the annual assessments authorized by Section 3 hereof, the Association may levy special assessments for (a) construction, reconstruction, repair, or replacement of capital improvements upon the Common Properties, including the necessary fixtures and personal property related thereto, (b) additions to the Common Properties or Restricted Common Properties, (c) to provide for the necessary facilities and equipment to offer the services authorized herein, or (d) to repay any loan made to the Association to enable it to perform the duties and functions authorized herein, provided that such assessments shall be approved by the members by written ballot in accordance with the provisions in Article VI of the By Laws. However, additions to the Common Properties or Restricted Common Properties requires approval by three-fourths (3/4) of the Member votes.

Owners of each type of property shall pay a special assessment in an amount that is proportionate to their share for annual assessments. Such special assessment in any one year may not exceed the amount of the maximum annual assessment for such year except for emergency and other repairs required as a result of storm, fire, natural disaster or other casualty loss.

**Section 5. Budget Reserve.** The Board may establish funds equal to fifteen (15%) percent of its receipts from its annual assessments to be held in reserve in an interest drawing account or investments as a reserve for (a) major rehabilitation or major repairs, and (b) for emergency and other repairs required as a result of storm, fire, natural disaster or other casualty loss.

Section 6. Responsibility of the Board. Unless otherwise provided herein the Board shall prior to January 1 of each assessment year:

- (a) assess all property according to its character as of January 1 of the assessment year,
- (b) determine the applicable Minimum and Maximum assessments and the actual amount of assessment of each type of property,
- (c) fix the date upon which assessment notices are to be sent to the property owners,
- (d) fix the date upon which the assessments shall become due and payable, but not less than 30 days after the assessment notices are sent to the property owners,
- (e) determine whether the annual assessment may be paid in more than one installment, and if so, on what terms,
- (f) confirm that the collection and Late Charge program described in Section 7 hereafter continues to be applicable,
- (g) cause to be prepared an index of the properties and assessments applicable thereto which shall be open to inspection by any property owner.

The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 7. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner, the Lien, Remedies of Association. An assessment not paid on or before the due date established by the Board shall be delinquent.

The Association may bring an action at law against Owners personally for the collection of delinquent assessments. There shall be added to delinquent assessment amounts, until judgment, the late charges as hereinafter provided, along with the costs of preparing and filing the complaint in such action. In the event a judgment is obtained, such judgment shall include interest on the assessment amount at the rate of eighteen percent (18%) per annum, or the maximum rate as permitted by the laws of the State of South Carolina, and reasonable attorney fees to be fixed by the court, together with the costs of the action.

Those assessments not paid on or before the due date shall be delinquent and a late charge will be added to the assessment as follows:

- (a) If payment is received within thirty (30) days after the due date, the late charge shall be fifteen percent (15%) of the assessment, which amount shall be added thereto and shall be collectable as a part of said assessment.
- (b) If payment is received more than thirty (30) days after the due date, but on or before sixty (60) days after the due date, the late charge shall be twenty-one percent (21%) of the assessment, which amount shall be added thereto and shall be collectable as a part of said assessment.
- (c) If payment is received more than sixty (60) days after the due date, but on or before ninety (90) days after the due date, the late charge shall be twenty-six percent (26%) of the assessment, which amount shall be added thereto and shall be collectable as a part of said assessment.
- (d) If payment has not been received within (90) days after the due date of any assessment, the assessment, together with the applicable late charge as set forth in the immediately preceding paragraph (c), shall begin to accrue a continuing late charge of one and one-half percent (1½%) per month of such amount, compounded monthly, until payment of all assessments, together with all late charges, attorney fees, and the cost of the action are received.

All unpaid obligations resulting from a delinquent assessment shall become a charge and continuing lien on the land and all improvements thereon. Such amount shall also be the personal obligation of the person who is the owner of such Lot at the time when the assessment fell due. Each owner and his grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance.

In addition to the rights set forth above, the Board may suspend the membership rights of any Owner for the period during which the Owner's delinquent assessment remains unpaid. Upon payment of such assessment and late charges and all judgment amounts, the Owner's suspended membership rights shall be automatically restored. Provided, however, that this provision, stated immediately above, shall not be interpreted as empowering the Board to suspend the Owner's rights of access to the assessed property or to use the roads within the Plantation.

**Section 8. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding or deed in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments accruing after conveyance by mortgage to a subsequent owner.

**Section 9. Exempt Property.** The following property, individuals, partnerships or corporations, subject to this Declaration shall be exempted from the assessment, charge and lien created herein:

- (a) The grantee in conveyances made for the purpose of granting utility easements;
- (b) All Common Properties and Restricted Common Properties
- (c) Property which is used for any of the following purposes:
  - (1) Maintenance and service of facilities within the properties;
  - (2) Operating farms; woodland, marsh and swamp conservancies; hospitals, clinics, nursing care, rest and convalescent homes; facilities of non-profit associations; and charitable institutions;
  - (3) All lands below the mean high water mark.

**Section 10. Annual Statements.** The Board shall cause an annual audit of the Association's finances to be performed. Copies of said annual audit may be mailed to the members at the discretion of the Board or shall be available at the Association's office during normal business hours for review.

ARTICLE VI

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FUNCTIONS OF THE ASSOCIATION

Section 1. Ownership and Maintenance of Common Properties and Restricted Common Properties. The Association shall be authorized but not required to own and maintain Common Properties and Restricted Common Properties, equipment, furnishings, and improvements devoted to the following uses:

(a) for roads or roadways, and parkways along said roads or roadways throughout the Properties;

(b) for sidewalks, walking paths, or trails and leisure paths throughout the properties;

(c) for transportation facilities throughout the Properties other than privately owned automobiles, e.g., buses, electric vehicles, etc.;

(d) for police protection and security including police, guardhouses and police equipment; and buildings used in maintenance functions;

(e) for emergency health care including ambulances and emergency care medical facilities and the equipment necessary to operate such facilities;

(f) for purposes set out in deeds or long-term leases by which Common Properties and Restricted Common Properties are conveyed or leased to the Association, provided that such purposes shall be approved by the Members of the Association as set forth in Article IV, Section 1 (g);

(g) for lakes, lagoons, play fields, tennis and golf facilities, historic parks, wildlife areas, fishing facilities, open spaces, wildlife conservancies other recreational facilities of any nature; and community meeting facilities serving the Properties;

(h) for water and sewage facilities and any other utilities, if not provided by a private utility or public service district;

(i) for insect control within the Plantation;

(j) for drainage facilities serving the Plantation;

(k) for providing any of the other services which the Association is authorized to offer under Section 2 of this Article.

Section 2. Services. The Association shall be authorized but not required to provide the following services:

(a) cleanup and maintenance of all roads, roadways, parkways, lakes, lagoons and other Common Properties and Restricted Common Properties, within the Properties and also all public properties which are located within or in a reasonable proximity to the Properties such that their deterioration would affect the appearance of the Properties as a whole;

(b) lighting and/or landscaping of roads and parkways, sidewalks and walking paths and any other Common Properties or Restricted Common Properties;

(c) internal transportation facilities other than privately owned automobiles, e.g., buses, electric vehicles, etc.;

(d) police protection and security, including but not limited to the employment of police and security guards, maintenance of electronic and other security devices and control centers for the protection of persons and property within the Existing Property, and assistance in the apprehension and prosecution of persons who violate the laws of South Carolina within the Properties;

(e) fire protection and prevention;

(f) garbage and trash collection and disposal;

(g) insect and pest control to the extent that it is necessary or desirable in the judgement of the Board to supplement the service provided by the state and local governments;

(h) maintenance of lakes and lagoons located within the properties, including the stocking of such lakes and lagoons;

(i) to take any and all actions necessary to enforce all covenants and restrictions affecting the Properties and to perform any of the functions or services delegated to the Association in any covenants or restrictions applicable to the Properties;

(j) to operate an Architectural Review Board;

(k) improvement of fresh and salt water fishing available to Members within the Properties;

(l) to conduct recreation, sport, craft, and cultural programs of interest to Members, their children and guests;

(m) to provide legal and scientific resources for the improvement of air and water quality within the Properties;

(n) to maintain water search and rescue boats for the protection and safety of those in the waters located on or adjacent to the Properties;

(o) to provide safety equipment for storm emergencies;

(p) to construct improvements on Common Properties, or Restricted Common Properties, for use for any of the purposes or as may be required to provide the services as authorized in this Article;

(q) to provide administrative services including but not limited to: legal; accounting and financial; and communication services informing Members of activities, notice of meetings, etc., incident to the above listed services;

(r) to provide liability and hazard insurance covering improvements and activities on the Common Properties, Restricted Common Properties, and Purchased Common Properties;

(s) to provide insurance to indemnify Officers and Directors;

(t) to provide water, sewage and any necessary utility services;

(u) to provide, conduct, or maintain shoreline erosion abatement measures including, without limitation, maintenance and repair of shore revetments and groins, nourishment of beaches with sand reclaimed from drift deposits from the beach or adjacent areas or other sources, and the employment of consultants who are specialists in that field, as may be needed, in the judgment of the Board; and

(v) the services or coverage necessary or desirable in the judgment of the Board to carry out the Association's obligations and business under the terms of this document.

**Section 3. Mortgage and Pledge.** The Board shall have the power and authority to mortgage the property of the Association and to pledge the revenues of the Association as security for loans made to the Association which loans shall be used by the Association in performing its authorized functions subject to Article IX, Section 3 of the By-Laws.

ARTICLE VII  
ARCHITECTURAL CONTROL

Section 1. Establishment of the Architectural Review Board. The Board shall establish an Architectural Review Board (hereinafter the ARB) as a function of the Association. The Board will establish the ARB's mission and authority. Subject to the Board's approval, the ARB will develop Guidelines, Review Procedures, Rules and Regulations. The ARB shall have the authority to (a) review plans and approve or disapprove all plans for real property improvements, (b) accept property owners' compliance deposits, (c) establish and collect fees, (d) assess fines subject to the Board's approval, and (e) other functions as designated by the Board.

Section 2. Review and Approval of Plans The ARB shall review for approval the plans and specifications for new construction, additions, alterations, landscaping and drainage on all residential lots, Common Properties, and Restricted Common Properties.

(a) No building, wall, fence, swimming pool or any other structure shall be commenced, erected or maintained upon any residential lot or lots, Common Properties or Restricted Common Properties without written approval from the ARB.

(b) No significant alteration to landscaping shall be done nor shall any exterior addition to or alteration to, including re-staining or re-roofing, any existing structure be done until the plans and specifications thereof have been approved in writing by the ARB.

(c) Plans and specifications must show the nature, kind, shape, height, materials, finishes, colors, and location of all buildings, additions, alterations, landscaping, or changes to any of them.

(d) The standard of approval of such improvements shall include but not be limited to aesthetic consideration, materials to be used, harmony with the external design of the existing buildings, lots, structures and the location in relation to surrounding structures and topography.

(e) As a condition of approval for an architectural change, modification, addition, or alteration, an Owner, on behalf of himself and his successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on such change, modification, addition, or alteration. In the discretion of the Board or the ARB, an Owner may be made to verify such condition of approval of himself and all successors-in-interest.

(f) Review and approval of any application pursuant to this paragraph may be made on any basis, including solely the basis of aesthetic considerations, and neither the Board nor the ARB shall bear any responsibility for ensuring the design, quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations and other governmental requirements. Neither the Board, the ARB, or any member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner, design, or quality of approved construction on or modifications to any Property.

(g) In respect to waiver of future approvals each Owner acknowledges that the members of the Board and the ARB will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. The approval of either the Board or the ARB of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval of the Board or the ARB shall not constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

In addition to the above, the Board shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this paragraph and its decisions or those of the ARB.

If an Owner or Occupant makes any exterior change, alteration, or construction (including landscaping) upon the Common Property in violation of this Paragraph, he or she does so at his or her sole risk and expense. The Board may require that the change, alteration or construction remain on the Common Property without reimbursement to the Owner or Occupant for any expense he or she may have incurred in making the change, alteration, or construction.

## ARTICLE VIII

GENERAL PROVISIONS

Section 1. Duration and Ability to Terminate. This Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a period of twenty-five (25) years from the date this Declaration becomes effective and shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if, during the last year of the initial 25 year period or during the last year of any subsequent ten (10) year renewal period, three-fourths (3/4) of the votes cast in accordance with Article VI of the By-Laws and Section 3 of this Article vote in favor of terminating this Declaration at the end of its then current term. . It shall be required that written notice of any vote at which such a proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given each Member at least 30 days in advance of said vote. In the event that the Association votes to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the resolution of termination adopted by the Association, the date vote on which such resolution was adopted, the date that notice of such vote was given, the total number of votes of Members of the Association, the total number of votes required to constitute a quorum, the number of votes necessary to adopt a resolution terminating the Declaration, the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution. Said certificate shall be recorded in Official Real Estate Records for Beaufort County, South Carolina and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

Section 2. Amendment Procedure. This Declaration may be amended at any time as follows: All proposed amendments shall be submitted to a vote of the Members in accordance with Article VI of the By-Laws and Section 3 of this Article; and any such proposed amendment shall be deemed approved if three-fourths (3/4) of the votes cast vote in favor of such proposed amendment. If any proposed amendment to this Declaration is approved by the Members as set forth above, the President and Secretary of the Association shall execute an Addendum to this Declaration which shall set forth the amendment, the effective date of the amendment (which in no event shall be less than sixty (60) days after the date of the certification of the election results), the date ballots were distributed and the deadline for their receipt, the number of responses needed to meet the quorum requirements, the percentage of votes needed for approval, and the number of votes cast for and against the amendment. Such Addendum shall be recorded in the Official Real Estate Records of Beaufort County, South Carolina.

Section 3. Quorum for Termination or Amendment. The quorum required for any action authorized to be taken by the Association under Sections 1 and 2 shall be as follows:

The first time any vote of the Members is called to take action, the participation of the Members or proxies entitled to cast more than fifty percent (50%) of the total vote of the Membership shall constitute a quorum. If the required quorum is not forthcoming, a second vote may be called subject to the giving of proper notice; and the required quorum for such subsequent vote shall be the participation of Members or proxies entitled to cast forty percent (40%) of the total vote of the Association.

Section 4. Notices. Any notice required to be sent to any Member or Owner under the provisions of the Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, with the proper postage affixed, to the last known address of the person or entity who appears as Owner in the public records of Beaufort County, South Carolina, on the first day of the calendar month in which said notice is mailed. Notice to one of two or more co-owners of a Residential Lot, Family Dwelling Unit, Multi-Family Tract, Public and Commercial Site, Public and Commercial Unit, Development Unit Parcel, Unsubdivided Land or Private Recreational Property shall constitute notice to all co-owners. It shall be the obligation of every Member to immediately notify the Secretary of the Association in writing of any change of address. Any person who becomes an Owner and Member following the first day in the calendar month in which said notice is mailed shall be deemed to have been given notice if notice was given to his predecessor in title.

Section 5. Enforcement. The Association shall have the rights of enforcement as provided below:

(a) Authority and Enforcement. Upon the violation of the Declaration, the Covenants, the By-Laws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any assessments, the Board shall have the power (1) to impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot or Dwelling, (2) to suspend an Owner's right to vote in the Association, or (3) to suspend an Owner's right (and the right of such Owner's family, guests, and tenants and of the co-Owners of such Owner and their respective families, guests, and tenants) to use any of Recreational Amenities; and the Board shall have the power to impose all or any combination of these sanctions. An Owner shall be subject to the foregoing sanctions in the event of such a violation by such Owner, his family, guests, or tenants or by his Co-Owners or the family, guests, or tenants of his Co-Owners. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter not to exceed sixty (60) days.

(b) Due Process Procedure. Unless an Owner is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association, in which case such penalties shall be automatic, the Board shall not impose a fine or suspend the right to vote or to use the Common Property unless and until notice of the violation is given as provided in subsection (1) below. Any such penalties may be effective or commence upon the sending of such notice or such later date as may be set forth in such notice, notwithstanding the violator's right to request a hearing before the Board to challenge such penalties under subsection (2) below.

(1) Notice. If any provision of the Declaration, the Covenants, the By-Laws, or any rule or regulation of the Association is violated, the Board shall serve the violator with written notice sent certified mail, return receipt requested, which shall state: (i) the nature of the alleged violation; (ii) the proposed sanction to be imposed; (iii) a statement that the violator may challenge the fact of the occurrence of a violation, the proposed sanction; or both, by written challenge and written request for a hearing before the Board, which request must be received by the Board within ten (10) days of the date of the notice; (iv) the name, address, and telephone number of a person to contact to challenge the proposed action. If a timely challenge is made and the violations cured within ten (10) days of the date of the notice, the Board, in its discretion, may, but is not obligated to waive any sanction or portion thereof. In the event of a continuing violation, each day the violation continues or occurs again constitutes a separate offense; and fines may be imposed on a per diem basis without further notice to the violator.

(2) Hearing. If the alleged violator timely challenges the proposed action, a hearing before the Board shall be held in executive session affording the violator a reasonable opportunity to be heard. The hearing shall be set at a reasonable time and date by the Board, and notice of the time, the date and place of the hearing, and an invitation to attend the hearing and produce any statements, evidence, and witnesses shall be sent to the alleged violator. The date shall be not less than ten (10) days from the giving of notice without the consent of the alleged violator. The minutes of the meeting shall contain a written statement of the results of the hearing. This section shall be deemed complied with if a hearing is held and the violator attends and is provided an opportunity to be heard, notwithstanding the fact that the notice requirements contained herein are not technically followed.

(3) Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through the Board, may elect to enforce any provisions of the Declaration, the Covenants, the By-Laws, or the rules and regulations by self-help which may include, but is not limited to, the towing of vehicles that are in violation of parking rules and regulations. The Association may initiate a legal proceeding to enjoin any violation or to recover monetary damages or both without the necessity for compliance with the procedure set forth in Section 5 of this Article. In any such action, to the maximum extent permissible, the Owner or Occupant responsible for the violation for which abatement is sought shall pay all costs, including attorney's fees.

The Association or its duly authorized agents shall have the power to enter a property or upon any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing, or condition which violates the Declaration, the By-Laws, or the rules and regulations. All costs of self help, including reasonable attorney's fee, shall be assessed against the violating property Owner.

Section 6. Severability. Should any covenant or restriction herein contained, or any Article, Section, Subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

Section 7. Interpretation. The Board shall have the right to determine all questions arising in connection with this Declaration and to construe and interpret its provisions, and its determination, construction or interpretation, shall be final and binding. In all cases, the provisions of this Declaration shall be given that interpretation or construction that will best tend toward the consummation of the general plan of improvements. Wherever in the Declaration a pronoun is used in the masculine it shall be read and construed in the feminine or neuter as an alternative if applicable or more appropriate; and whether a word is used in the singular or plural it shall be read and construed as whichever would best apply.

Section 8. Authorized Action. All actions which the Association is allowed to take under this instrument shall be authorized actions of the Association if approved by the Board in the manner provided for in the By-Laws of the Association, unless the terms of this instrument provide otherwise.

Section 9. Result of Termination of Declaration. If the Members of the Association should vote not to renew and extend this Declaration as provided for in Article VIII, Section 1, all Common Properties and Restricted Common Properties owned by the Association at such time shall be transferred to a Trustee appointed by the Court of Common Pleas of Beaufort County, South Carolina, which Trustee shall own and operate said Common Properties and Restricted Common Properties for the use and benefit of Owners within the Properties subject to the provisions of this Declaration.

IN WITNESS WHEREOF, HILTON HEAD PROPERTY OWNER'S ASSOCIATION, INC., has caused this instrument to be executed the day and year first above written pursuant to a resolution duly and unanimously adopted by its Board of Directors.

HILTON HEAD PLANTATION PROPERTY OWNERS' ASSOCIATION, INC.

Bette Aweseman  
Bonnie Haroff  
Bette Aweseman  
Bonnie Haroff

By: W. J. Mottel  
W. J. MOTTEL  
Its President

Attest: Rupert S. Hughes  
RUPERT S. HUGHES  
Its Secretary

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF BEAUFORT        )

PROBATE

PERSONALLY appeared before me, Bette A. Weseman, who states on oath that she saw the within named Hilton Head Plantation Property Owners' Association, Inc., a South Carolina corporation by W. J. Mottel, its President, sign, seal and deliver the within and foregoing Quit Claim Deed and Rupert S. Hughes, its Secretary, attest the same, and that she with BONNIE HAROFF witnessed the execution thereof.

Bette Aweseman

SUBSCRIBED AND SWORN to before me this 16<sup>th</sup> day of April, 1997.

[Signature]  
Notary Public for South Carolina  
My Commission Expires: 5-22-05

## EXHIBIT "A"

## Legal Description

**Hilton Head Plantation**

Hilton Head Island, South Carolina

All that tract or parcel of land, lying and being in Beaufort County, Hilton Head Island, South Carolina, and being known as Hilton Head Plantation and being in the area of the Hilton Head Property Owners Association, and being more particularly described as follows:

Commencing at a point at the intersection of the northern right of way of U.S. Highway 278 and the western right of way of Whooping Crane Road, said point having coordinates based on the South Carolina Grid Coordinate System of N 138767.5392, E 2086081.1048 and being also the **Point of Beginning**; Thence running in a northerly direction along the western right of way line of said Whooping Crane Road, a direction of N 13-43-57 E 128.758 Feet to a point; Thence 449.308 Feet along a curve of radius 412.060 Feet, a central angle of 62-28-30; Thence a direction of N 48-44-34 W 165.600 Feet to a point; Thence 658.163 Feet along a curve of radius 1536.570 Feet, a central angle of 24-32-30; Thence a direction of N 23-56-28 W 56.735 Feet to a point; Thence leaving said right of way and running in a westerly direction, S 5-39-37 W 259.531 Feet to a point; Thence a direction of S 1-33-17 E 212.680 Feet to a point; Thence a direction of S 48-32-14 W 637.900 Feet to a point; Thence a direction of S 52-15-25 W 36.420 Feet to a point; Thence a direction of S 52-15-25 W 147.170 Feet to a point; Thence a direction of S 77-54-55 W 48.350 Feet to a point; Thence a direction of N 68-07-41 W 55.230 Feet to a point; Thence a direction of N 17-26-13 W 64.190 Feet to a point; Thence a direction of N 65-20-40 W 65.296 Feet to a point; Thence a direction of S 73-52-32 W 77.350 Feet to a point; Thence a direction of N 89-23-28 W 161.820 Feet to a point; Thence a direction of N 74-28-43 W 199.500 Feet to a point; Thence a direction of N 53-10-13 W 291.150 Feet to a point; Thence a direction of N 53-10-13 W 36.860 Feet to a point; Thence a direction of N 53-10-13 W 177.250 Feet to a point; Thence a direction of N 40-18-36 W 202.100 Feet to a point; Thence running in a northeasterly direction, 27.786 Feet along a curve of radius 371.130 Feet, a central angle of 4-17-23; Thence a direction of N 43-47-56 E 45.130 Feet to a point; Thence a direction of N 32-13-55 E 105.060 Feet to a point; Thence a direction of N 57-46-05 W 50.000 Feet to a point; Thence a direction of N 32-13-55 E 194.690 Feet to a point; Thence a direction of N 46-43-07 W 257.550 Feet to a point; Thence a direction of N 50-39-29 E 205.109 Feet to a point; Thence a direction of N 48-58-31 E 1132.990 Feet to a point; Thence running in a northwesterly direction, N 48-22-45 W 390.870 Feet to

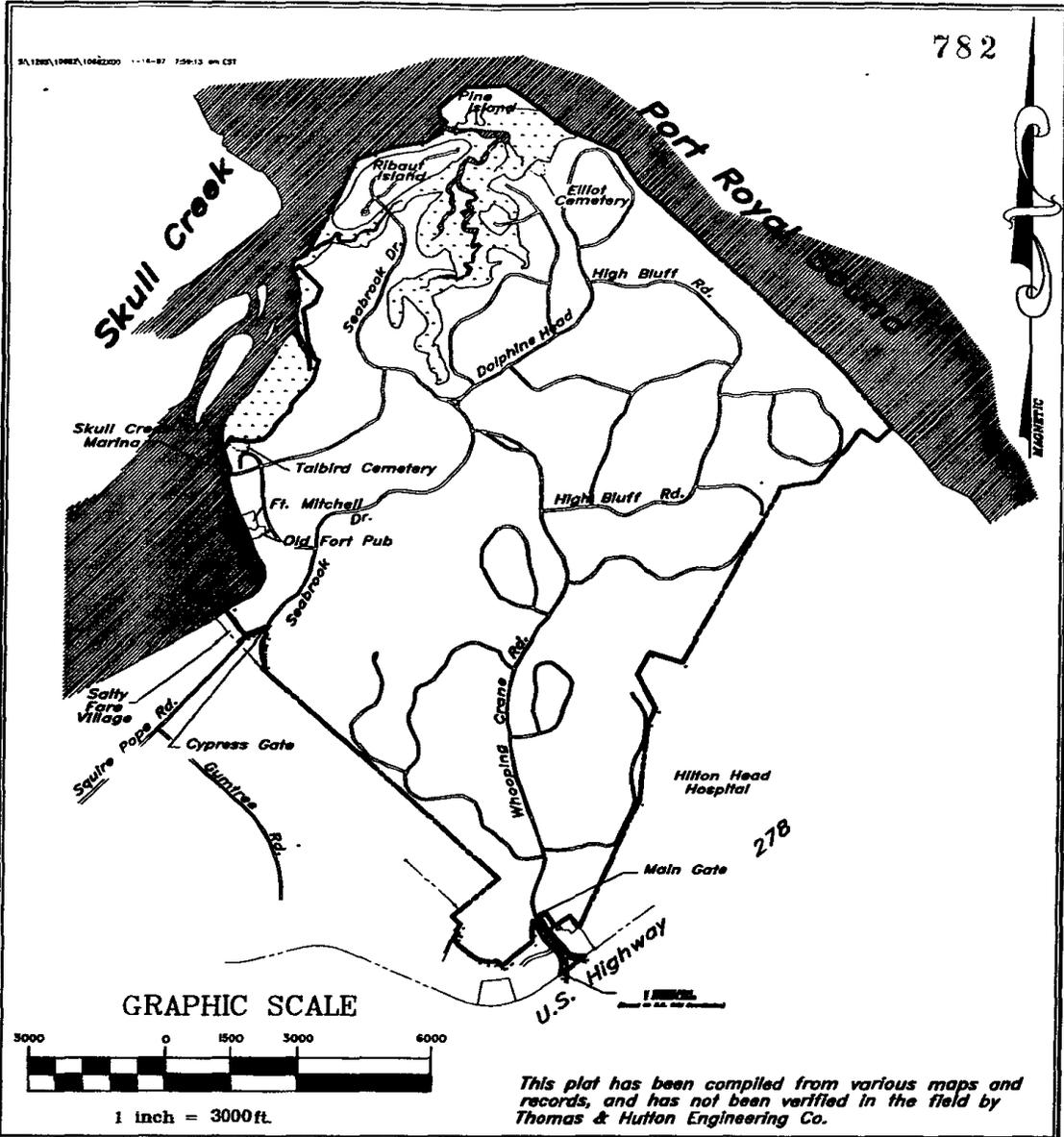
a point; Thence a direction of N 48-13-56 W 2162.510 Feet to a point; Thence a direction of N 48-03-44 W 1771.890 Feet to a point; Thence a direction of N 48-20-05 W 359.070 Feet to a point; Thence a direction of N 51-35-35 W 258.550 Feet to a point; Thence a direction of N 48-29-05 W 150.500 Feet to a point; Thence a direction of N 48-06-38 W 1751.237 Feet to a point; Thence a direction of N 20-03-03 E 19.118 Feet to a point; Thence a direction of N 18-46-07 W 193.740 Feet to a point; Thence a direction of N 7-26-06 W 62.920 Feet to a point; Thence a direction of N 1-58-18 W 59.780 Feet to a point; Thence a direction of N 0-49-26 E 97.070 Feet to a point; Thence a direction of N 9-26-49 E 57.640 Feet to a point; Thence a direction of N 21-49-01 E 56.090 Feet to a point; Thence a direction of N 28-23-04 E 162.460 Feet to a point; Thence a direction of N 24-06-04 W 165.020 Feet to a point; Thence a direction of S 70-22-23 W 310.610 Feet to a point; Thence 130.009 Feet along a curve of radius 645.459 Feet, a central angle of 11-32-26; Thence a direction of N 43-03-49 W 211.650 Feet to a point; Thence a direction of N 30-03-01 W 230.930 Feet to a point; Thence a direction of N 43-00-49 W 283.647 Feet to a point; Thence running in a northerly direction, N 51-53-15 E 144.606 Feet to a point; Thence a direction of N 58-23-03 E 325.950 Feet to a point; Thence a direction of N 62-23-47 E 218.430 Feet to a point; Thence a direction of N 48-24-21 E 193.440 Feet to a point; Thence a direction of N 24-04-46 E 293.080 Feet to a point; Thence a direction of N 2-55-49 W 224.360 Feet to a point; Thence a direction of N 29-36-05 W 439.680 Feet to a point; Thence a direction of N 22-57-01 W 428.570 Feet to a point; Thence a direction of N 24-36-26 W 451.380 Feet to a point; Thence a direction of N 22-16-42 W 316.010 Feet to a point; Thence a direction of N 13-37-17 W 521.050 Feet to a point; Thence a direction of N 12-21-18 E 229.070 Feet to a point; Thence a direction of N 19-38-38 W 469.130 Feet to a point; Thence a direction of N 32-02-16 E 277.780 Feet to a point; Thence a direction of S 83-22-19 E 456.530 Feet to a point; Thence a direction of N 78-18-45 E 267.690 Feet to a point; Thence a direction of N 78-12-50 E 33.600 Feet to a point; Thence a direction of N 46-59-14 E 214.870 Feet to a point; Thence a direction of N 31-22-49 E 175.030 Feet to a point; Thence a direction of N 40-40-54 E 287.480 Feet to a point; Thence a direction of N 50-19-28 E 197.920 Feet to a point; Thence a direction of N 12-19-32 E 162.850 Feet to a point; Thence a direction of N 40-38-37 E 348.490 Feet to a point; Thence a direction of N 49-17-01 E 107.330 Feet to a point; Thence a direction of N 37-16-46 E 245.120 Feet to a point; Thence a direction of N 18-36-40 E 187.530 Feet to a point; Thence a direction of N 12-37-35 E 187.580 Feet to a point; Thence a direction of N 23-18-40 E 110.670 Feet to a point; Thence a direction of N 66-41-16 W 109.280 Feet to a point; Thence a direction of N 20-40-42 W 375.790 Feet to a point; Thence a direction of N 9-21-47 W 800.530 Feet to a point; Thence a direction of N 59-58-18 E 314.000 Feet to a point; Thence a direction of N 19-38-22 E 345.980 Feet to a point; Thence a direction of N 42-41-33 W 718.680 Feet to a point; Thence a direction of S 46-17-31 W

204.730 Feet to a point; Thence a direction of N 5-15-44 W 162.880 Feet to a point; Thence a direction of N 28-36-08 E 134.790 Feet to a point; Thence a direction of N 63-19-20 E 288.750 Feet to a point; Thence a direction of N 26-39-39 E 180.830 Feet to a point; Thence a direction of N 27-38-58 E 1319.300 Feet to a point; Thence a direction of N 23-42-35 E 942.610 Feet to a point; Thence a direction of N 69-31-34 E 861.880 Feet to a point; Thence a direction of N 79-09-54 E 829.570 Feet to a point; Thence a direction of N 12-54-25 E 618.190 Feet to a point; Thence a direction of N 50-15-09 W 202.940 Feet to a point; Thence a direction of N 3-37-42 W 186.590 Feet to a point; Thence a direction of N 46-10-32 E 358.620 Feet to a point; Thence a direction of N 54-42-59 E 474.760 Feet to a point; Thence running in a southeasterly direction, S 24-17-25 E 18.910 Feet to a point; Thence a direction of N 86-40-09 E 871.110 Feet to a point; Thence a direction of S 54-54-06 E 854.460 Feet to a point; Thence a direction of S 51-51-23 E 950.610 Feet to a point; Thence a direction of S 66-04-43 E 50.800 Feet to a point; Thence a direction of S 66-07-39 E 688.920 Feet to a point; Thence a direction of S 65-35-35 E 132.840 Feet to a point; Thence a direction of S 65-34-50 E 131.810 Feet to a point; Thence a direction of S 33-06-30 E 314.510 Feet to a point; Thence a direction of S 32-56-20 E 604.620 Feet to a point; Thence a direction of S 46-57-20 E 506.520 Feet to a point; Thence a direction of S 46-54-20 E 622.620 Feet to a point; Thence a direction of S 49-26-20 E 507.170 Feet to a point; Thence a direction of S 44-31-20 E 508.960 Feet to a point; Thence a direction of S 47-25-50 E 2051.980 Feet to a point; Thence a direction of S 46-38-50 E 2166.390 Feet to a point; Thence a direction of S 38-18-50 E 1652.870 Feet to a point; Thence running in a southerly direction, S 44-34-05 W 419.620 Feet to a point; Thence a direction of N 53-31-24 W 442.730 Feet to a point; Thence a direction of S 43-20-10 W 106.590 Feet to a point; Thence a direction of S 25-13-10 W 66.700 Feet to a point; Thence a direction of S 31-29-10 W 89.330 Feet to a point; Thence a direction of S 37-22-10 W 179.770 Feet to a point; Thence a direction of S 28-28-10 W 68.870 Feet to a point; Thence a direction of S 41-57-10 W 170.010 Feet to a point; Thence a direction of S 53-50-40 W 78.780 Feet to a point; Thence a direction of S 37-50-40 W 330.970 Feet to a point; Thence a direction of S 34-58-40 W 249.330 Feet to a point; Thence a direction of S 39-59-10 W 180.680 Feet to a point; Thence a direction of S 81-36-56 W 803.564 Feet to a point; Thence a direction of S 29-10-36 W 2185.410 Feet to a point; Thence a direction of S 29-11-32 W 2359.833 Feet to a point; Thence a direction of N 73-34-04 W 783.290 Feet to a point; Thence a direction of S 29-10-27 W 550.000 Feet to a point; Thence a direction of S 28-50-07 E 900.800 Feet to a point; Thence a direction of S 29-10-26 W 354.577 Feet to a point; Thence a direction of S 6-10-58 W 1801.122 Feet to a point; Thence a direction of S 24-42-22 W 3166.949 Feet to a point; Thence running in a northwesterly direction, N 36-42-21 W 347.109 Feet to a point; Thence a direction of S 53-32-44 W 359.390 Feet to a point; Thence a direction of S

S3-40-51 W 62.183 Feet to a point; Thence a direction of N 34-44-05 W 336.300 Feet to a point; Thence a direction of S 55-15-55 W 148.538 Feet to a point, said point being on the eastern right of way line of said Whooping Crane Road; Thence running in a southeasterly direction along said right of way, S 23-56-28 E 57.374 Feet to a point; Thence 364.952 Feet along a curve of radius 1336.566 Feet, a central angle of 15-38-41; Thence a direction of S 43-45-20 E 214.580 Feet to a point; Thence a direction of S 48-21-35 E 165.600 Feet to a point; Thence a direction of S 34-21-35 E 220.000 Feet to a point; Thence a direction of S 52-36-35 E 50.000 Feet to a point; Thence a direction of S 72-36-35 E 225.530 Feet to a point; Thence a direction of N 87-23-25 E 138.640 Feet to a point said point being on the northern right of way line of said U.S. Highway 278; Thence running in a southwesterly direction along said right of way, S 53-14-17 W 687.360 Feet to a point, said point being the same **Point of Beginning**.

Above described tract containing 3,711.022 Acres, more or less, and is shown on a plat titled "A Composite Map of Hilton Head Plantation, by Thomas & Hutton Engineering Co., dated 1/17/97, said above described tract in more or less and subject to field survey.

SALENOVA, 1982, 1042200 11-14-87 7:56:13 AM CST



*This plat has been compiled from various maps and records, and has not been verified in the field by Thomas & Hutton Engineering Co.*

A Composite Map  
of  
**Hilton Head Plantation**  
Hilton Head Island, South Carolina  
Prepared For  
**Hilton Head Plantation Property Owners Association**  
Date: 1/17/97 Dwg: DET Scale: 1"=3000'

**EXHIBIT B**

**AMENDED BY-LAWS  
OF THE  
HILTON HEAD PLANTATION  
PROPERTY OWNERS' ASSOCIATION,  
INC.**

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**AMENDED AND RESTATED BY-LAWS  
OF  
HILTON HEAD PLANTATION PROPERTY OWNERS' ASSOCIATION, INC.**

**ARTICLE I  
NAME AND LOCATION**

The name of the corporation is Hilton Head Plantation Property Owners' Association, Inc., hereinafter referred to as the "Association". The principal office of the corporation shall be located at Hilton Head Plantation, Hilton Head Island, Beaufort County, South Carolina; but meetings of members and directors may be held at such places within the State of South Carolina, as may be designated by the Board of Directors.

**ARTICLE II  
DEFINITIONS**

Section 1. The following words and terms when used in these By-Laws or any modification thereto, unless the context shall clearly indicate otherwise, shall have the following meanings:

(a) "Declaration" shall mean and refer to the Declaration of Covenants and Restrictions of the Hilton Head Plantation Property Owners' Association, Inc. and Hilton Head Plantation Company, Inc., dated July 11, 1973, and recorded July 11, 1973, in the Office of the Clerk of Court for Beaufort County, South Carolina, in Deed Book 211 at Page 1487, as amended.

(b) "Covenants" shall mean the Land Use Restrictions and Protective Covenants collectively referred to the Class "A" covenants dated February 15, 1973 as amended (originally recorded in Deed Book 211 at page 1470); the Class "B" covenants dated April 18, 1974 as amended (originally recorded in Deed Book 219 at page 1882); the Class "C" covenants dated November 12, 1986 as amended (originally recorded in Deed Book 463 at page 1514); and the Class "D" Covenants dated March 3, 1987 as amended (originally recorded in Deed Book 425 at page 1790).

(c) "Board" shall mean those Members elected to govern the affairs of the Association.

(d) "Company" shall mean Hilton Head Plantation Company, Inc., and its successors and assigns.

(e) "Owner" shall mean and refer to the Owner as shown by the real estate records in the Office of the Clerk of Court for Beaufort County, South Carolina, whether it be one or more persons, firms, associations, corporations, or other legal entities of fee simple title to any Residential Lot, Family Dwelling Unit, Multi-Family Tract, Public and Commercial Site, Public and Commercial Unit, Development Unit Parcel, or Unsubdivided Land situated upon the Properties; but, notwithstanding any applicable theory of a mortgage, shall not mean or refer to the mortgagee or holder of a security deed, its successors or assigns, unless and until such mortgagee or holder of a security deed has acquired title pursuant to foreclosure or a proceeding or deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner. In the event that there is recorded in the Office of the Clerk of Court for Beaufort County, South Carolina, a long term contract of sale covering any lot or parcel of land within the Properties, the Owner of such lot or parcel of land shall be the purchaser under said contract and not the fee simple title holder. A long term contract of sale shall be one in which the purchaser is required to make payments on the property for a period extending beyond nine (9) months from the date of the contract, and where the purchaser does not receive title to the property until such payments have been made although the purchaser is given the use of said property.

(f) "Member" shall mean and refer to all those Owners who are Members of the Association as provided in Section 1 of Article III of the Declaration.

(g) "Common Expenses" mean the expenses incurred or anticipated to be incurred by the Association for the general benefit of the members, including, but not limited to, those expenses incurred from maintaining, repairing, replacing, and operating the Common Property.

(h) "Properties" shall mean and refer to that certain "Existing Property" described in the Declaration, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

(i) "Common Properties" shall mean and refer to any and all real and personal property and easements and other interests therein, together with the betterments and improvements located thereon, now or hereafter owned or leased by the Association for the common use and enjoyment of the Members. All Common Properties are to be devoted to and intended for the common use and enjoyment of the Members, Members' guests or tenants, and visiting members of the general public subject to the fee schedule and rules adopted by the Association; provided, however, that any lands leased by the Association for use as Common Properties shall lose their character as Common Properties upon the expiration of such lease. Common Properties shall not include those tracts of land falling within the definition of Restricted Common Properties.

(j) "Restricted Common Properties" shall mean and refer to those tracts of land with any improvements thereon which are actually deeded or leased to the Association and designated in such deed or lease as "Restricted Common Properties". All Restricted Common Properties are to be devoted to and intended for the common use and enjoyment of Owners of Residential Lots and Family Dwelling Units, their immediate families, guests accompanying such Owners, tenants of such Owners holding leases of nine (9) months duration or longer and to be closed to use of tenants of such Owners holding leases less than nine (9) months duration and visiting members of the general public; with all use of Restricted Common Properties to be subject to the fee schedules and operating rules adopted by the Association. Any lands which are leased by the Association for use as Restricted Common Properties shall lose their character as Restricted Common Properties upon the expiration of such leases.

(k) "Residential Lot" shall mean any unimproved parcel of land located within the Properties which is intended for use as a site for a single-family detached dwelling, townhouse, or patio dwelling as shown upon any recorded final subdivision map or any part of the Properties.

(l) "Family Dwelling Unit" shall mean and refer to any improved property intended for use as a single-family dwelling, including any single-family detached dwelling, patio home, condominium unit, townhouse unit, cooperative apartment unit, or apartment unit.

(m) "Improved Property" shall mean a parcel of land on which the improvements constructed thereon have been completed or have been completed to the point where their roof and windows have been installed.

(n) "Multi-Family Tract" shall mean any unimproved parcel of land located within the Properties intended for use as sites for multi-family dwellings including, without limitation, condominium regimes, cooperative apartments, or apartments. For the purposes of these By-Laws a parcel of land shall not be deemed a "Multi-Family Tract" until such time as a plat identifying such property for multi-family use is recorded in the Office of the Clerk of Court for Beaufort County, South Carolina.

### ARTICLE III MEMBERSHIP

Section 1. Membership. An Owner shall automatically become a member of the Association upon taking title to his property and shall remain a member for the entire period of ownership. As may be more fully provided below, a spouse of a member may exercise the powers and privileges of the member. Membership does not include persons who hold an interest merely as security for the performance of an obligation; and the giving of a security interest shall not terminate the Owner's membership. Membership shall be appurtenant to the property and shall be transferred automatically by conveyance of that property and may be transferred only in connection with the transfer of title.

Section 2. Entity Members. In the event an Owner is a corporation, partnership, trust, or other legal entity not being a natural person or persons, then any natural person who is an officer, director, or other designated agent of such corporation, partner of such partnership, beneficiary or other designated agent of such trust, or manager of such other legal entity shall be eligible to represent such entity in the affairs of the Association. Such person's relationship with the Association shall terminate automatically upon the termination of such person's relationship with the entity which is the Owner. This will create a vacancy in any elected or appointed position within the Association in which such person may have been serving.

Section 3. Assessments. The rights of membership are subject to the payment of annual and special assessments levied by the Association. The obligation for such assessments is imposed against each owner and becomes a lien upon the property against which such assessments are made as provided by Article V of the Declaration.

Section 4. Suspension of Voting and Use Rights. The voting and use rights of any person whose interest in the Properties is subject to assessments, whether or not he be personally obligated to pay such assessments, shall be automatically suspended during the period when the assessments remain unpaid; but upon payment of such assessments his right shall be automatically restored.

#### ARTICLE IV VOTING RIGHTS

Section 1. General. Voting rights in the Association shall be as set forth in Article III of the Declaration.

Section 2. Majority. As used in these By-Laws, the term "majority" shall mean those Members entitled to cast more than fifty percent (50%) of the total vote of the membership. Unless otherwise specifically stated, the words "majority vote" shall mean more than fifty percent (50%) of the votes cast by those voting in person or by proxy. Except as otherwise specifically provided in the Declaration or these By-Laws, all decisions shall be by majority vote.

#### ARTICLE V ASSOCIATION PURPOSES AND POWERS

Section 1. Purpose. The Association shall have the responsibility of administering the Properties, establishing the means and methods of collecting the contributions to the Common Expenses, arranging for the management of the Properties and performing all of the other acts that may be required to be performed by the Association pursuant to the South Carolina Nonprofit Corporation Code and the Declaration. Except as to those matters which the Declaration or the South Carolina Nonprofit Corporation Code specifically require to be performed by the vote of the Association membership, the administration of the foregoing responsibilities shall be performed by the Board as more particularly set forth in Article IX.

Section 2. Additions to or Deletions from the Properties. Additions to or deletions from the Properties described in Exhibit A attached to the Declaration may be made as provided in the Declaration. Additions shall extend the jurisdiction, functions, duties, and membership of this Association to such properties.

Section 3. Mergers and Consolidations. Subject to the provisions of the Declaration and the By-Laws and to the extent permitted by law, the Association may participate in mergers and consolidations with other non-profit corporations organized for the same purposes; provided that any such merger or consolidation shall have the assent of three fourths (3/4) of the Member votes in accordance with the procedure in Article VI of the By-Laws.

Section 4. Mortgages and Other Indebtedness. The Board shall have the power and authority to mortgage the property of the Association and to pledge the revenues of the Association as security for loans made to the Association which loans shall be used by the Association in performing its authorized functions.

Section 5. Transfer of Real Property The Association shall have power to dispose of its real properties only as authorized under the Declaration.

ARTICLE VI  
MEETINGS OF MEMBERS

Section 1. Annual Meetings. The Annual Meeting will be held in March of each year at a time and place to be designated by the Board, and such information shall be set forth in the Notice of Meeting.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board or upon a petition signed by Members entitled to vote one fourth (1/4) of all the votes of the membership. Any such petition by the Members must be submitted to the Association's Secretary. The Secretary shall then verify that all of the required number of Members have joined in the petition and shall submit all proper petitions to the Association's President. The President shall then promptly call a special meeting for the purpose stated in the petition and the Secretary shall send notice of the meeting in accordance with these By-Laws.

Section 3. Notice of Meetings. Written notice of each meeting of the Members shall be given by or at the direction of the Secretary or person authorized or qualified to call the meeting, by mailing a copy of such notice, with proper postage affixed and at least thirty (30) days before such meeting, to each member entitled to vote thereat at the last known address of the person or entity who appears as Owner in the Public Records of Beaufort County, South Carolina, on the first day of the calendar month in which said notice is mailed. Notice to one of two or more Co-owners of a Residential Lot, Family Dwelling Unit, Multi-Family Tract, Public and Commercial Site, Public and Commercial Unit, Development Unit Parcel, or Unsubdivided Land shall constitute notice to all Co-owners. It shall be the obligation of every Member to immediately notify the Secretary of the Association in writing of any change of address. Any person who becomes an Owner and Member following the first day in the calendar month in which said notice is mailed shall be deemed to have been given notice if notice was given to his predecessor in title. The mailing or delivering of a meeting notice as provided in this section shall constitute proper service of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting the purpose of the meeting.

Section 4. Waiver of Notice. Waiver of notice of a meeting of the Owners shall be deemed the equivalent of proper notice. Any Owner may, in writing, waive notice of any Association meeting, either before or after such meeting. Attendance at a meeting by an Owner, whether in person or represented by proxy, shall be deemed waiver by such Owner of notice of the time, date, and place thereof unless such Owner specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted at such meeting unless objection to lack of notice is raised before the business, of which proper notice was not given, is put to a vote.

Section 5. Quorum. The presence at the beginning of the meeting in person or by proxy of Members entitled to cast more than fifty percent (50%) of the Member vote shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat, or the person initially calling the meeting, shall have power to adjourn the meeting and to call a second meeting subject to the giving of proper notice; and the required quorum at such meeting shall be the presence in person or by proxy of Members entitled to cast twenty five percent (25%) of the total vote of the Membership of the Association. In the event the required quorum is not forthcoming at the second meeting, a third meeting may be called in the same manner as the second meeting subject to the giving of proper notice and there shall be no quorum requirement for such third meeting. This provision shall not apply when the proposed action is the termination or amendment of the Declaration; and the quorum requirement established by Article VIII, Section 3 of said Declaration shall govern in that instance. For the purpose of this section, "proper notice" shall be deemed to be given when notice of such meeting and the general nature of said meeting is given each member not less than thirty (30) days prior to the date of the meeting at which any proposed action is to be considered. Evidence of such notice having been given may consist of an Affidavit of Mailing evidencing that the requisite notice was posted at least thirty (30) days prior to said meeting. Once a quorum is established for a meeting it shall be conclusively presumed to exist until the meeting is adjourned and shall not need to be reestablished throughout the meeting.

Section 6. Proxy. Any member entitled to vote may do so by written proxy duly executed by the member setting forth the meeting at which the proxy is valid. To be valid, a proxy must be signed, dated, and filed with the Secretary prior to the opening of the meeting for which it is to be used. Proxies may be delivered to the Board by personal delivery, U. S. mail, or telefax transmission to any Board member or the property manager. Proxies may be revoked by written notice delivered to the Association or by request in person by the proxy giver at a meeting for which the proxy is given. A proxy holder may not appoint a substitute proxy holder unless expressly authorized to do so in the proxy.

Section 7. Member Action Without a Meeting. Where specifically provided for in the Declaration or these By-Laws, the Members shall have the power to approve or reject certain actions or proposed actions by a ballot including, without limitation (a) levying a special assessment, (b) borrowing in excess of ten percent (10%) of the projected total of that year's annual assessment, (c) increasing or decreasing the minimum or maximum annual assessment, and (d) merger or consolidation of the Association. In addition, any action that may be taken at an annual, regular, or special meeting of Members may be taken without a meeting if the Association delivers a written ballot to every Member entitled to vote on the matter.

Such voting will take place according to the following procedure. The Board shall deliver a ballot to every Member entitled to vote on the matter. The ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting. All solicitations for votes by written ballot shall (a) indicate the number of responses needed to meet the quorum requirements, (b) state the percentage of approvals necessary to approve each matter other than election of directors, and (c) specify the time by which a ballot must be received by the Association in order to be counted. A written ballot may not be revoked. The Association shall maintain such ballots in its file for at least three (3) years.

ARTICLE VII  
BOARD OF DIRECTORS

Section 1. Number. The affairs of this Association shall be governed by a Board of Directors, who must be Members of the Association. The Board may be composed of either nine (9) or eleven (11) Directors, as determined by the Board. No Director may serve more than two (2) consecutive terms or a total of six (6) consecutive years. The Directors shall be owners of lots or spouses of such owners; provided, however, no owner and his or her spouse may serve on the Board at the same time, and no Co-owners may serve on the Board at the same time.

Section 2. Term of Office. Those Directors serving on the date these By-Laws are adopted shall remain in office until the term for which they were elected expires. All successor Directors shall be elected for three year terms and shall hold office until their successors are elected.

Section 3. Removal of Members of the Board. At any regular or special Association meeting any one or more Board members may be removed with or without cause by a majority of the Association members, and a successor may then and there be elected to fill the vacancy created. Any Director whose removal has been proposed shall be given ten (10) days notice of the calling of the meeting to consider his removal and shall be given an opportunity to be heard at the meeting. However, any Director who has had three consecutive unexcused absences from regularly scheduled Board meetings or is more than thirty (30) days past due in the payment of any assessment may be removed by the vote of a majority of the other Directors.

Section 4. Compensation. No Director shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties upon approval of such expenses by the Board.

Section 5. Nomination. Nomination for election to the Board shall be made by a Nominating Committee. Candidates for election to the Board shall be solicited from all Members in writing at least one hundred twenty (120) days prior to the annual membership meeting. The Nominating Committee shall consist of a Chairman, who shall be a Member of the Board and two or more Members of the Association. The Nominating Committee shall be appointed by the Board prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting.

The Nominating Committee shall make as many nominations for election to the Board as it shall, in its discretion, determine, but not less than the number of vacancies that are to be filled. The Committee should consider the length of residency, service to the Plantation, prior experience, education, conflicts of interest, and all other relevant qualifications of the proposed nominees. Nominations may be made only from among Members; and no Member shall be nominated for election to the Board or be permitted to run for election if he is more than thirty (30) days past due in the payment of any assessment. Nominations may also be made by a petition of not less than one hundred (100) Members in good standing, with such nominations being submitted to the Secretary of the Board at least forty-eight (48) hours prior to the date and time set for the annual meeting. Nominations shall be announced to the Members at least thirty (30) days prior to the annual meeting. If there should be a failure to comply with any time requirements of this Section which, in the judgment of the Board, was due to unavoidable circumstances it shall not invalidate the election of Directors who are otherwise nominated in accordance with the provisions of this Section.

Section 6. Election. Election will be by mail ballot in accordance with Article VI, Section 7 of these By-Laws, and the results will be announced at the annual meeting. The persons receiving the greatest number of votes shall be elected. In the event of a tie, a run-off will be conducted at the annual meeting. That vote will be by written ballot from those in attendance in person or by proxy. The persons receiving the greatest number of votes shall be elected. There shall be no cumulative voting.

Section 7. Vacancies on Board. If the office of any Director or Directors becomes vacant by reason of death, resignation, retirement, or disqualification, a majority of the remaining members of the Board, though less than a quorum, may choose a successor or successors, who shall hold office for the balance of the unexpired term.

Section 8. Resignation and Disqualification of Directors. Any Director may resign at any time by sending a written notice of such resignation to the office of the Association, delivered to the Secretary. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by the Secretary. If a Director is no longer a property owner, the transfer of title of his property shall automatically constitute a resignation.

Section 9. Director Conflicts of Interest. Nothing herein shall prohibit a Director from entering into a contract and being compensated for services or supplies furnished to the Association in a capacity other than as Director, provided that the Director's interest is disclosed to the Board and the contract is approved by a Majority of the Directors who are at a meeting of the Board at which a quorum is present. The interested Director shall not count for purposes of establishing a quorum of the Board nor shall he vote on the matter under consideration. The interested Director shall be entitled to be present at any meeting at which the proposed contract is discussed and to discuss the proposed contract unless requested by any other Director to leave the room during the discussion.

ARTICLE VIII  
MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board shall be held monthly without notice at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two Directors, after not less than three (3) days notice to each Director. Notice shall be given by mail, in person, by telephone, or by facsimile transmission and shall state the date, time, place, and purpose of the meeting.

Section 3. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 4. Place of Meetings. Meetings of the Board shall be held on Hilton Head Island, South Carolina, whenever practical. However, this provision is in no way intended to invalidate, in any way whatsoever, meetings held somewhere other than Hilton Head Island, South Carolina, so long as such meetings are proper in all other respects.

Section 5. Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of a majority of the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors. The written approvals shall be filed with the minutes of the Board.

**ARTICLE IX**  
**POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

**Section 1. Powers and Duties.** The Board shall manage the affairs of the Association and shall have all the powers and duties necessary for the administration of the Property and may do all such acts and things as are not directed by the Declaration, the Articles of Incorporation, or these By-Laws be done and exercised exclusively by the Members. In addition to the duties imposed by these Bylaws, the Board shall have the power to and shall be responsible for the following, in way of explanation, but not limitation:

- (a) preparation and adoption of an annual budget;
- (b) making assessments to defray the Common Expenses and establishing the means and methods of collecting such assessments;
- (c) providing for the operation, care, upkeep, and maintenance of all Common Properties;
- (d) designating, hiring, compensating, and dismissing the personnel necessary for (i) the operation of the Association, (ii) the maintenance, repair, and replacement of the Common Properties and Association property, and (iii) the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;
- (e) collecting the assessments, depositing the proceeds thereof in a financial depository or institution which it shall approve, or otherwise investing the proceeds in accordance with any limitations set forth, and using the proceeds to administer the Association;
- (f) making and amending rules and regulations governing the use of the Common Properties, Residential Lots, Multi-family Tracts, Family Dwelling Units, and Restricted Common Properties and imposing sanctions for violation thereof, including reasonable monetary fines;
- (g) opening of bank or other financial accounts on behalf of the Association and designating the signatories required;
- (h) contracting for the making of repairs, additions, improvements, or alterations to the Common property as needed;
- (i) enforcing by legal means the provisions of the Declaration, the Covenants, these Bylaws, including, without limitation, the judicial foreclosure of delinquent assessment liens, and the rules and regulations adopted by it, and bringing any proceedings which may be instituted on behalf of or against an Owner or Owners concerning the Association;
- (j) obtaining and carrying insurance against casualties and liabilities, and paying the premium cost thereof;

- (k) paying the costs of all services rendered to the Association or its members and not directly chargeable to specific Owners;
- (l) pay taxes, if any, on Common Properties and facilities;
- (m) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration and causing an annual audit to be performed;
- (n) contracting with any person for the performance of various duties and functions. The Board shall have the power to enter into common management agreements with trusts, condominium associations, or other associations or corporations. Any and all functions of the Association shall be fully transferable by the Board, in whole or in part, to any other entity.

Section 2. Management Agent. The Association may, but shall not be required to, hire a professional management agent or agents at a compensation established by the Board to perform such duties and services as the Board shall authorize.

Section 3. Borrowing. The Board shall have the power to borrow money for the purpose of maintenance, repair, restoration or improvement of the Common Property and facilities without the approval of the members of the Association. The Board shall also be authorized to borrow money for other purposes; provided, however, the total amount of such borrowing does not exceed ten percent (10%) of the income portion of the annual budget. To borrow in excess of ten percent (10%) of the projected total amount of that year's income portion of the annual budget, the Board shall obtain membership approval in accordance with Article VI, Section 7 of the By-Laws.

Section 4. Liability and Indemnification of Officers and Directors. The Association shall indemnify every Officer and Director against any and all expenses, including attorney fees, reasonably incurred by or imposed upon such Officer or Director in connection with any action, suit, or other proceeding—including settlement of any such action, suit, or proceeding, if approved by the then Board—to which he may be made a party by reason of being or having been an Officer or Director, whether or not such person is an officer or Director at the time such expenses are incurred. He shall not be liable for any mistake of judgment, negligent or otherwise, or for injury or damage caused by any such officer or Director in the performance of his duties, except for his own individual willful misfeasance or malfeasance. The Officers and Directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association except to the extent that such Officers or Directors may also be members of the Association, and the Association shall indemnify and forever hold each such Officer and Director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any Officer or Director, or former Officer or Director, may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and, if obtainable, Officers' and Directors' Liability Insurance.

ARTICLE X  
OFFICERS AND THEIR DUTIES

Section 1. Officers and Executive Committee. The Officers of this Association shall be a President, Vice President, a Secretary, a Treasurer, and such other Officers as the Board may, from time to time by resolution create, all of whom shall be Members of the Board. The Officers shall comprise the Executive Committee of the Association, whose primary responsibilities shall include assisting in designating how problems and issues are to be addressed, overseeing the work of the General Manager, preparing recommendations on issues for the Board, functioning as the Personnel Committee for the Board, assuming the duties of the General Manager if necessary, and acting for the Board in emergencies.

Section 2. Election of Officers. The election of Officers shall take place at the first meeting of the Board following each annual meeting of the Members.

Section 3. Term. The Officers of the Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, be removed, or otherwise be disqualified to serve.

Section 4. Special Appointments. The Board may elect such other Officer as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any Officer may be removed from office by the Board. Any Officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by the Board. The Officer elected to such vacancy shall serve for the remainder of the term of the Officer he replaces.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the Officers are as follows:

- (a) President. The President shall preside at all meetings of the Board; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds, contracts, and other written instruments; and shall co-sign promissory notes.
- (b) Vice President. The Vice President shall act in the place and stead of the President in the event of his absence, inability, or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.
- (c) Secretary. The Secretary shall be responsible for recording the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association, together with their addresses; and perform such other duties as required by the Board. The Secretary may delegate all or a part of the preparation of the minutes and other duties associated with the above responsibilities to a member of the Association's staff.
- (d) Treasurer. The Treasurer shall be responsible for receiving and depositing, or cause to be deposited, in appropriate bank accounts all monies of the Association; shall disburse such funds to pay for authorized functions approved by the Board; shall co-sign promissory notes of the Association; shall cause an annual audit of the Association's books to be made by a public accountant at the completion of each fiscal year; shall develop proper financial records and supervise maintenance of appropriate books of accounts; and shall prepare an annual budget. The budget shall be distributed to Members; and the audit may be mailed to Members at the discretion of the Board or shall be available at the Association's office during normal business hours for review. The Treasurer may delegate all or part of the above responsibilities to a member of the Association's staff.

**ARTICLE XI  
COMMITTEES**

Section 1. General. The Association's Board shall appoint a Nominating Committee as provided in these By-Laws. In addition, the Board shall appoint other committees as deemed appropriate in carrying out its purpose. All committees of the Association shall comply with the written guidelines established by the Board.

Section 2. Service on Committees. Unless otherwise provided in these By-Laws or in the resolution authorizing a particular committee, the Members of any committee shall be appointed by the President and shall serve at the pleasure of the Board. All committees of the Association shall comply with the written guidelines established by the Board. Any committee member may be removed with or without cause at any time and with or without a successor being named.

ARTICLE XII  
BOOKS AND RECORDS

A Member may inspect and copy the following records upon written notice at least five (5) business days before the date on which the Member wishes to inspect and copy if (a) the Member's demand is made in good faith and for a proper purpose that is reasonably relevant to the Member's legitimate interest as a Member, (b) the Member describes with reasonable particularity the purpose and that the records the Member desires to inspect are directly connected with this purpose, and (c) the records are to be used only for the stated purpose:

- (a) excerpts from minutes of any Board meeting, records of any action of a committee of the Board while acting in place of the Board on behalf of the Association, minutes of any meeting of the Members, and records of action taken by the Members or the Board without a meeting;
- (b) accounting records of the Association; and
- (c) the membership list only if for a purpose related to the Member's interest as a Member. Without the consent of the Board, a membership list or any part thereof may not be used to solicit money or property (unless such money or property will be used solely to solicit the votes of the Members in an election to be held by the Association), used for any commercial purpose, or sold to or purchased by any person.

The Association may impose a reasonable charge covering the cost of labor and material for copies of any documents provided to the Member.

ARTICLE XIII  
RULE MAKING

Section 1. Rules and Regulations. Subject to the provisions hereof, the Board may establish reasonable rules and regulations consistent with the purposes and provisions of the Declaration and the Covenants concerning the use of Residential Lots, Family Dwelling Units, Multi-Family Tracts, Common Properties, Restricted Common Properties, and the facilities located thereon. Copies of such rules and regulations and amendments thereto shall be furnished by the Association to all Owners prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations shall be binding upon the Owners, their families, tenants, guests, invitees, servants, and agents, until and unless any such rule or regulation be specifically overruled, canceled, or modified by the Board or in a regular or special meeting of the Association by the vote of the Owners in accordance with Article VI of the By-Laws.

ARTICLE XIV  
CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: HILTON HEAD PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., or an appropriate abbreviation thereof.

ARTICLE XV  
MISCELLANEOUS

Section 1. Amendment. These By-Laws may be amended by Members in accordance with Article VI. Any such proposed amendment shall be deemed approved if three fourths (3/4) of the votes cast vote in favor of such proposed amendment, provided that any matter stated herein to be or which is in fact governed by the Declaration may not be amended except as provided in the Declaration.

Section 2. Conflicts. In the case of any conflict between the Articles of Incorporation of Hilton Head Plantation Property Owners Association and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

Section 3. Fiscal Year. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year.

Section 4. Gender and Grammar. Wherever in these By-Laws a pronoun is used in the masculine it shall be read and construed in the feminine as an alternative if applicable or more appropriate; and whether a word is used in the singular or plural it shall be read and construed as whichever would best apply.

Section 5. Robert's Rules of Order. Any meeting of the Members and/or Board of Directors shall be held in accordance with the then existing current edition of Robert's Rules of Order.

Section 6. Severability. The invalidity of any part of these By-Laws shall not impair or affect in any manner the validity, enforceability or affect the balance of these By-Laws or the Declaration.

*Ruth + Mck*  
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