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**DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR HANDSMILL ON LAKE WYLIE**

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STATE OF SOUTH CAROLINA  
COUNTY OF YORK

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR HANDSMILL ON LAKE WYLIE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HANDSMILL ON LAKE WYLIE is made as of the \_\_\_\_\_ day of April, 2007 (the "**Effective Date**"), by HANDSMILL ENTERPRISES, LLC, a South Carolina limited liability company ("**Declarant**").

STATEMENT OF PURPOSE

A. Declarant is the owner of certain land located in York County, South Carolina, as more particularly described in the attached **Exhibit A** (the "**Land**"); and

B. Declarant desires to establish a general plan of development for the development, administration, maintenance and preservation of a planned community to be known as Handsmill on Lake Wylie (the "**Planned Community**" or "**Handsmill**").

C. Declarant will convey all of the Land and such Additional Property as it decides to annex into the Planned Community, subject to the declarations, conditions, restrictions, covenants, conditions, reservations, easements, liens and charges in this Declaration.

NOW, THEREFORE, Declarant hereby declares that all of the Land described in **Exhibit A** and such Additional Property as it decides to annex into the Planned Community, shall be held, sold and conveyed subject to the following declarations, conditions, restrictions, covenants, reservations, easements, liens and charges, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Planned Community. These declarations, conditions, restrictions, covenants, reservations, easements, liens and charges shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in any portion of the Planned Community, and shall inure to the benefit of each Owner, and their heirs, successors and assigns.

1. **DEFINITIONS.** The following capitalized terms shall be defined as set forth below:

1.1. "**Additional Association**" means a condominium association, townhome association, or other association of Owners, if any, having jurisdiction over any property within the Planned Community, which may be subsequently created by Declarant to take into account the particular needs associated with particular portions of the Additional Property which may be added, from time to time, pursuant to Section 2.2.

1.2. "**Additional Property**" means any additional real property that is contiguous to the Land or within 5,000 feet of any boundary of (a) the Land, or (b) any Additional Property which may be annexed into this Declaration by Declarant, from time to time, pursuant to Section 2.2.

1.3. "**Amenities**" mean the recreational facilities, if any, constructed, erected or installed on the Common Areas.



1.4. “**Architectural Review Committee**” or “**ARC**” shall mean and refer to the committee appointed by (a) Declarant prior to the Turnover Date, or (b) by the Board following the Turnover Date, to oversee the development and enforcement of architectural control standards and restrictions with respect to the Planned Community and to perform other functions described in this Declaration.

1.5. “**Architectural Review Fee(s)**” means the reasonable fees, costs and expenses incurred or required by the Board, Declarant and/or ARC from time to time for engaging appropriate professionals to assist the Board, Declarant and/or the ARC in enforcing the Planned Community’s Design Guidelines and in performing its various functions relating to the Planned Community, including, but not limited to, those functions described in the Declaration, the Design Guidelines and the Rules and Regulations. The Architectural Review Fees shall include, but not be limited to (i) fees for professional and other services, (ii) fees or charges that are a condition of commencement of construction, (iii) administrative charges for reviewing site plans, building plans and other submissions, and (iv) a construction escrow deposit.

1.6. “**Articles**” mean the Articles of Incorporation for the Association, attached as **Exhibit C**.

1.7. “**Assessments**” mean any one or more of the following: Annual Assessments, Special Assessments, Supplemental Annual Assessments, Special Individual Assessments, Initial General Assessments, Sewer Assessments, Initial Low Pressure Sewer Assessments, and Initial Working Capital Assessments.

1.8. “**Association**” means Handsmill Property Owners Association, Inc., a South Carolina non-profit corporation, its successors and assigns.

1.9. “**Board**” means the Board of Directors of the Association, which shall be elected and serve pursuant to the Bylaws.

1.10. “**Boatslip**” means any dock or mooring facility constructed within the Planned Community, which may include any Private Boatslip constructed by the Lot Owner of a Waterfront Lot with a Pier Zone as a private amenity for that Lot Owner’s Waterfront Lot, as well as any Marina Boatslip located within one or more Community Marinas which are commercial for-profit facilities to be developed by Declarant for the purpose of use, sale, lease and/or license to Single Family Lot Owners who are not able to construct a Private Boatslip because their Waterfront Lot does not have a Pier Zone, or because they own an Interior Lot.

1.11. “**Building Envelope**” shall have the meaning in Section 9.10.

1.12. “**Bylaws**” mean the Bylaws for the Association, the initial draft of which is attached as **Exhibit D**.

1.13. “**Class**” shall mean and refer to the three (3) classes of voting membership and/or the members of one or more of such classes in the Association, as the context may require.

1.14. "**Class A Members**" or "**Class A Membership**" shall mean all of the Lot Owners of residential Single Family Lots, except Declarant, who have the rights and duties of Class A Members, as set forth in Article 4.

1.15. "**Class B Members**" or "**Class B Membership**" shall mean all of the Owners of Patio Home Lots, Townhome Lots, and Condominium Units, except Declarant, who have the rights and duties of Class B Members, as set forth in Article 4. Class B Members shall be allocated votes based on the formula established by Declarant in each Supplemental Declaration which subjects Patio Home Lots, Townhome Lots, and Condominium Units in future Phases to this Declaration, and Declarant reserves the unilateral right to amend the Bylaws at the time it subjects any Patio Home Lots, Townhome Lots, and Condominium Units in future Phases to this Declaration to provide for such voting rights; provided, however, no vote shall be exercised for any property which is exempt from Assessments under Section 5.10.

1.16. "**Class C Member**" or "**Class C Membership**" shall mean Declarant, who has the rights and duties of the Class C Member, as set forth in Article 4.

1.17. "**Commercial Lot**" means any Lot within the Planned Community which is designated as a Commercial Lot or a Nonresidential Lot.

1.18. "**Common Area**" or "**Common Areas**" mean all real and personal property, including easements, which the Association owns, leases or holds possession or use rights in for the common use and enjoyment of the Owners. The Common Area to be owned by the Association shall be described in deeds to the Association and designated on each recorded Map of the Land.

1.19. "**Common Expense Liability**" means the liability for Common Expenses allocated to each Lot which is declared, permitted, required or not prohibited by the Declaration, the Bylaws or otherwise by law.

1.20. "**Common Expenses**" mean the actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Owners, including any reasonable reserves as the Board determines from time to time. Common Expenses shall not include any expenses incurred by Declarant during the Declarant Control Period for initial development or other construction costs. Common Expenses shall include, but are not limited to the following:

1.20.1. All sums lawfully assessed by the Association against its Members;

1.20.2. Expenses of administration, lighting, oil, gas, electricity, water, sanitary and storm sewer, telephone, cable TV, internet connection and other utilities, landscaping, maintenance, repair or replacement of the Common Areas or of Improvements located within easements or serving the easement areas reserved or granted in favor of the Association;

1.20.3. Expenses declared, permitted or not prohibited to be Common Expenses by the provisions of this Declaration, the Bylaws or otherwise by law;

1.20.4. Hazard, liability or such other insurance premiums as the Declaration or the Bylaws may declare, permit, require or not prohibit the Association to purchase;

1.20.5. Ad valorem taxes and public assessment charges lawfully levied against Common Areas;

1.20.6. Expenses of maintaining, repairing and replacing recreational Amenities located within the Common Areas;

1.20.7. Expenses of planning, designing, locating, placing, installing, constructing, maintaining, repairing and replacing, and the establishment of appropriate reserves for maintenance, repair, rebuilding, restoring, reconstructing and replacement of the Low Pressure Sewer System providing sewage service to the Planned Community as provided for in this Declaration;

1.20.8. Expenses of planning, designing, locating, placing, installing, constructing, maintaining, repairing and replacing, and the establishment of reserves for maintenance, repair, rebuilding, restoring, reconstructing and replacement of private roads and gated access control points, pedestrian walkways and trails within the Planned Community;

1.20.9. Accounting, legal and other professional services, including management services rendered by a Management Company retained by the Association; and

1.20.10. Unpaid Assessments resulting from the purchase of a Lot at a foreclosure sale (such Assessments shall be collectible from all Members of the Association, including the purchaser at the foreclosure sale).

1.21. **"Community Marina"** means any facility developed within the Planned Community by Declarant as a commercial for-profit enterprise for the purpose of selling, leasing and/or licensing Marina Boatslips to Lot Owners. The Community Marina shall be deemed to include, in Declarant's sole discretion, any Boat Storage Area or RV/Trailer Storage Area which Declarant decides to include as part of the Community Marina. The Community Marina shall not be constructed on the Common Area.

1.22. **"Complete Submittal"** shall mean (i) full and complete information and plans and specifications, and (ii) all Architectural Review Fees required of an Owner by the ARC, the Design Guidelines and this Declaration in order for the ARC to perform its functions as described in this Declaration.

1.23. **"Condominium Unit"** or **"Unit"** means a separate apartment or unit developed for condominium ownership in a horizontal property regime located within the Planned Community pursuant to the South Carolina Horizontal Property Act, as amended, modified or replaced from time to time.

1.24. **"County Registry"** means the Office of the Clerk of Court, York County, South Carolina.

1.25. **"Covenant to Share Costs"** means any declaration of easements and covenant to share costs of a similar instrument which is recorded in the County Registry by Declarant which creates certain easements for the benefit of the Association and the present or future owners of the real property subject to the Covenant to Share Costs and which obligates the Association and such Owners to share the costs of maintaining certain property described in the Covenant to Share Costs.

1.26. **"CPI"** means the Consumer Price Index, All Urban Consumers, United States, All Items (1982-84 = 100) issued by the United States Bureau of Labor Statistics for the most recent 12-month period for which the CPI is available. If the CPI is discontinued, the Board shall use the index that is most similar to the CPI published by the United States government to indicate changes in the cost of living.

1.27. **"Crescent Deed Restrictions"** mean the General Deed Restrictions attached as Exhibit B to the special warranty deed from Crescent Resources, LLC to Declarant dated February 15, 2006, and recorded February 17, 2006 in Book 7803, at Pages 182 through 195, inclusive, in the County Registry.

1.28. **"Declarant"** means **HANDSMILL ENTERPRISES, LLC**, a South Carolina limited liability company, its successors and assigns, to whom Declarant's Special Declarant Rights are transferred.

1.29. **"Declarant Control Period"** means that period commencing with the recording of this Declaration in the County Registry and ending at the Turnover Date, as defined in Section 4.2.

1.30. **"Declaration"** means this Declaration of Covenants, Conditions and Restrictions for Handsmill On Lake Wylie, all supplements, revisions and amendments hereto, and all Exhibits to such supplements, revisions and/or amendments, whether or not designated as a Supplemental Declaration, Additional Declaration or otherwise.

1.31. **"Design Guidelines"** mean the Architectural and Site Design Guidelines for the Planned Community, as revised, amended, supplemented and/or adopted by the ARC from time to time.

1.32. **"DHEC"** means the South Carolina Department of Health and Environmental Control.

1.33. **"Director"** means any Person elected or appointed to the Board.

1.34. **"Duke"** means Duke Power Company LLC, d/b/a Duke Energy Carolinas, LLC, its successors and assigns, through its division, Duke Energy Lake Services.

1.35. **"Dwelling"** means a residential structure constructed or erected on any Single Family Lot within the Planned Community. In the event that any Patio Home Lots, Townhome Lots or Condominium Units are subsequently added by Declarant to the Planned Community, Declarant reserves the right to redefine the term Dwelling to include the structures that may be

constructed on the Patio Home Lots, Townhome Lots or containing Condominium Units or to create new definitions for such Improvements.

1.36. **"Exhibit"** shall mean a document attached to and/or referenced in this Declaration, each of which is incorporated by reference.

1.37. **"FERC"** means the Federal Energy Regulatory Commission.

1.38. **"Improvements"** mean any and all man made changes or additions to any portion of the Property.

1.39. **"Interior Lots"** means a Single Family Lot that does not front on Lake Wylie, and specifically Lots 47, 62, 63, 64, 71, 72, 73, 74, 75, 77, 78, 88, 91, 92, 93, 94, 95, 105, 106, 109, 110, 111, 112, 113, 114, 115, 116, 130, 131, 132, 133, 134, 135, 136, and 137, as shown on the Map. Lot 96 and Lot 117 shall each be considered an Interior Lot for the limited purpose of leasing a Marina Boatslip.

1.40. **"Lake"** means Lake Wylie located in York County, South Carolina.

1.41. **"Lake Buffer Area"** shall mean and refer to the area that is (a) fifty (50) feet from the 570' MSL contour or (b) the 580' MSL contour of the shoreline of the Lake, whichever is greater.

1.42. **"Land"** means the real property described in **Exhibit A**.

1.43. **"Legacy Builder"** means a contractor or home builder who is licensed to build homes in the State of South Carolina and who has been permitted by Declarant to participate in the Legacy Builder Program within the Planned Community.

1.44. **"Limited Common Area"** means any portion of the Common Areas designated by this Declaration or shown on any recorded Maps designated for the use of one or more, but fewer than all, of the Lots and/or the Lot Owners.

1.45. **"Limited Common Expense Liability"** means the liability for Limited Common Expenses allocated to each Lot which has the right to use the Limited Common Area.

1.46. **"Limited Common Expenses"** means all expenses relating to the use, operation, maintenance, repair or replacement of Limited Common Areas.

1.47. **"Lot"** means any physically subdivided portion of the Land within the Planned Community designated for separate ownership or occupancy by an Owner, including a Single Family Lot, a Waterfront Lot, a Condominium Unit, a Townhome Lot, a Patio Home Lot, or a Commercial Lot, but excluding all Common Areas and all Limited Common Areas.

1.48. **"Lot in Use"** means any Lot owned or occupied by any Person other than Declarant or a Legacy Builder.

1.49. **“Lot Owner”** shall mean the record owner, whether one or more Persons, of fee simple title to any Lot which is a part of the Planned Community, including contract sellers, but excluding Mortgagees. All Lot Owners shall be Members of the Association and the terms “Lot Owner” and “Member” may be used interchangeably where the context requires in this Declaration.

1.50. **“Lot Owner’s Easement”** shall have the meaning set forth in Section 3.2.

1.51. **“Low Pressure Sewer System”** shall have the meaning set forth in Section 10.1.

1.52. **“Management Company”** means any accredited property management company, possessing all qualifications, bonds and licenses to manage real estate owners’ associations within the State of South Carolina, hired by the Association to manage its business, including the collection of all Assessments and the payment of all Common Expenses.

1.53. **“Map”** means (a) the following Map recorded in the County Registry entitled “Final Subdivision Plat of Handmill on Lake Wylie, Phase 1, Sheets 1-3, Bethel Township, York County, South Carolina,” dated February 27, 2007 and prepared by CBS Surveying and Mapping, Inc., No. L00499, Ted M. Beverly, SCPLS No. 7823, recorded on March 2, 2007 in Plat Book D-194, Pages 7-9, in the County Registry, (b) any Maps of any portion of the Additional Property that is annexed into the Planned Community pursuant to Section 2.2, and (c) any revisions to such Map(s) recorded in the County Registry.

1.54. **“Marina Boatslip”** means any Boatslip constructed within and/or as a part of a Community Marina to be developed by Declarant as a commercial, for-profit enterprise for the purpose of sale, lease and/or license to Lot Owners.

1.55. **“Master Plan”** means Declarant’s plan of development for the Property and any Additional Property which is annexed into this Planned Community. The Master Plan is a flexible document which may reflect Declarant’s development plans at a particular time, but is established only as a planning tool for Declarant, and is not intended to create any binding obligations to any Person. Inclusion of all or any portion of the Additional Property on the Master Plan shall not obligate Declarant to submit it to the terms of this Declaration or the jurisdiction of the Association, and the fact that property is not contained on the current Master Plan shall not preclude its later inclusion or submission to this Declaration.

1.56. **“Member”** means every Person who holds a membership in the Association. There shall be three (3) classes of voting membership in the Association as set forth in Section 4.2.

1.57. **“Mortgage”** means any mortgage or deed of trust constituting a first lien on a Lot. As of the date hereof, Branch Banking and Trust Company is the holder of a Mortgage against each Lot.

1.58. **“Mortgagee”** means the owner and holder of any Mortgage.

1.59. **“Openness Test”** shall have the meaning set forth in Section 9.7.

1.60. **“Owner”** means one or more Persons who hold record title to any Lot in the Planned Community and/or the legal representatives, heirs, successors and assigns.

1.61. **“Patio Home”** means a Dwelling located within the Planned Community on a Patio Home Lot subdivided for and restricted to use as a single family patio home or zero lot line home.

1.62. **“Patio Home Lot”** means any Lot intended for and restricted to use as a single family Patio Home.

1.63. **“Person”** means any natural person, corporation, partnership, joint venture, limited partnership, limited liability company, limited liability partnership, association, trust, trustee, or other legal entity.

1.64. **“Phase”** means any phase, section or portion of the Property for which separate Maps are recorded in the County Registry.

1.65. **“Phase 1”** means Lots numbered 47, 62, 63, 64, 71, 72, 73, 74, 75, 77, 88, 91-101, 105, 106, 109-137 as shown on “Final Subdivision Plat of Handsmill on Lake Wylie, Phase 1, Sheets 1-3, Bethel Township, York County, South Carolina,” dated February 27, 2007 and prepared by CBS Surveying and Mapping, Inc., No. L00499, Ted M. Beverly, SCPLS No. 7823 recorded on March 2, 2007 in Plat Book D-194, Pages 7-9, in the County Registry.

1.66. **“Pier Zone”** means the portion of any Waterfront Lot that is approved for construction of a Private Boatslip.

1.67. **“Planned Community”** means the development named **HANDSMILL ON LAKE WYLIE** to be developed on the Land and on such Additional Properties annexed in accordance with the terms and conditions of this Declaration.

1.68. **“Private Boatslip”** means a Boatslip constructed by the Owner of a Waterfront Lot within a designated Pier Zone.

1.69. **“Property”** means the Land and all Improvements.

1.70. **“Record,” “recording,” or “recorded”** means the act of filing a legal instrument or map in the County Registry or a term describing an instrument which has been so filed.

1.71. **“Rules and Regulations”** means the written rules and regulations established by the Association, from time to time, to govern the Common Areas, Limited Common Areas and/or Amenities.

1.72. **“Service and Maintenance Agreement” or “SMA”** shall mean and refer to that certain agreement by and among the Association, the Lot Owner(s) and the service provider that provides for pumping wastewater from the Planned Community’s Low Pressure Sewer System to York County’s sanitary sewer system operated by York County High Pressure Sewer, a form of which is attached to this Declaration as **Exhibit C**.

1.73. **"Single Family Home"** means a Dwelling located within the Planned Community on a Single Family Lot subdivided for and restricted to use as a single family detached Dwelling.

1.74. **"Single Family Lot"** means any Lot within a subdivided and platted portion of the Planned Community which is intended for and restricted to use as a Single Family Home.

1.75. **"SMA Contractor"** shall mean and refer to a qualified service provider approved by the Association and York County to provide the services to be provided under the SMA for pumping wastewater from the Planned Community.

1.76. **"Special Declarant Rights"** shall have the meaning set forth in Section 2.3 of the Declaration, including, without limitation, those rights reserved by Declarant under this Declaration, the Articles and the Bylaws. Declarant reserves the right to assign one or more of its reserved Special Declarant Rights, from time to time, to any Person, in Declarant's sole discretion.

1.77. **"Supplemental Declaration"** or **"Additional Declaration"** shall mean and refer to any supplemental declaration of covenants, conditions and restrictions filed in the County Registry to bring any portion of Additional Property within the coverage of this Declaration and the jurisdiction of the Association, as more particularly described in Section 2.2.

1.78. **"Townhome"** means a Dwelling located within the Planned Community on a Townhome Lot subdivided for and restricted to use as a townhome Dwelling.

1.79. **"Townhome Lot"** means any Lot within a subdivided and platted portion of the Planned Community intended for and restricted to use as a single family Townhome.

1.80. **"Turnover Date"** shall have the meaning set forth in Section 4.2.

1.81. **"Use Restrictions"** shall mean and refer to the restrictions on use with respect to the Single Family Lots in the Planned Community contained in Article 9. Declarant reserves the right to modify the Use Restrictions or create Additional Use Restrictions with respect to any portion of the Planned Community which is subsequently designated for Commercial Lots, Patio Homes, Townhomes or Condominium Units.

1.82. **"Voting Cluster"** means a group of Class B Lots or Units designated in any Supplemental Declaration for purposes of Representational Voting as described in Section 4.3. A Supplemental Declaration may add Lots or Units to an existing Voting Cluster or may establish a new Voting Cluster.

1.83. **"Water System"** shall have the meaning set forth in Section 9.33.

1.84. **"Waterfront Home"** means a Single Family Home that fronts on Lake Wylie which has been assigned a Pier Zone as shown on the recorded Map.

1.85. **"Waterfront Lot"** means any Single Family Lot that fronts on Lake Wylie which has been assigned a Pier Zone, as shown on the recorded Map. Lot 96 and 117 shall be



considered Waterfront Lots for all purposes set forth in this Declaration, with the exception of Section 9.34, Section 9.35 and Section 9.36.

1.86. **“York County”** means York County, South Carolina.

1.87. **“Zoning Ordinance”** shall have the meaning set forth in Section 9.3.

## **2. PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE ASSOCIATION.**

2.1. **Property.** The Property is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, and within the jurisdiction of the Association, together with any Additional Property which is subsequently added to this Declaration.

2.2. **Additions to the Property.** Declarant may cause Additional Property (including, but not limited to, Common Areas and Limited Common Areas) to be made subject to the terms of this Declaration by filing one or more Supplemental Declarations and/or Additional Declarations in the County Registry containing a description of the Additional Property and a statement of Declarant’s intent to extend the operation and effect of this Declaration to the Additional Property.

2.2.1. Any Supplemental Declaration and/or Additional Declaration may contain complementary additions to this Declaration as may be necessary in Declarant’s judgment to reflect the different character of the Additional Property. No Supplemental Declaration and/or Additional Declaration shall revoke, modify or add to the covenants and restrictions contained herein with respect to the Property, or revoke, modify, change or add to the covenants and restrictions established by previously filed Supplemental Declarations and/or Additional Declarations, without meeting the requirements for amendment set forth in this Declaration unless Declarant has reserved the right to do so in this Declaration as one of Declarant’s Special Declarant Rights. Declarant or the Association shall have the right, without meeting the requirements for amendment set forth in Section 12.3 of this Declaration, to amend this Declaration to reconfigure any proposed Amenities to reflect the actual final configuration of such areas and the “as-built” construction of such Amenities.

2.2.2. So long as Declarant owns any part of the Property, the prior written consent of Declarant shall be required to modify, change and/or amend, in whole or in part, the terms and provisions of this Declaration, any Supplemental Declaration and/or any Additional Declaration or to impose new or additional declarations, conditions, reservations, restrictions, covenants, easements, liens and/or charges on any part of the Property.

2.3. **Special Declarant Rights.** Subject to all applicable governmental ordinances, until the expiration of Declarant Control Period, Declarant reserves the following development rights (**“Special Declarant Rights”**): (i) to add Land to the Planned Community in accordance with Section 2.2 of this Declaration; (ii) to add Common Areas and/or Limited Common Areas to the Planned Community in accordance with Section 2.2 of this Declaration; (iii) to designate portions of the Common Areas as Limited Common Areas; (iv) to reallocate and reconfigure Lots within the Planned Community; (v) prior to a conveyance of all or any portion of the Land made subject to this Declaration to a Lot Owner, to withdraw all or any portion of such Land

from the Planned Community; (vi) to complete Improvements indicated on Maps filed with the Declaration; (vii) to exercise any development right; (viii) to maintain sales offices, management offices, and signs advertising the Planned Community; (ix) to use easements through the Common Areas and/or Limited Common Areas for the purpose of making Improvements within the Planned Community or within Additional Property which may be added to the Planned Community; (x) to make the Planned Community part of a larger Planned Community or group of Planned Communities; (xi) to make the Planned Community subject to a master association; (xii) to appoint or remove any officer or Director of the Association or any master association during the Declarant Control Period; (xiii) to increase the Initial Low Pressure Sewer Assessment and/or the Initial Working Capital Assessment pursuant to Section 5.3.4 and/or Section 5.3.5, from time to time, during the Declarant Control Period; (xiv) to develop, or provide for the development of horizontal property regimes of Condominium Units and/or neighborhoods of Patio Homes or Townhomes within the Planned Community and to modify definitions or provisions in this Declaration which Declarant has reserved the right to do, only as they apply to such horizontal property regimes and/or Patio Home or Townhome neighborhoods; (xv) to develop, or provide for the development of commercial and/or recreational projects on Land designated as or reserved for Commercial Lots within the Planned Community; (xvi) to determine Assessments pursuant to Section 5.11; (xvii) to impose additional restrictions or waive restrictions on Townhome Lots, Condominium Units, Waterfront Lots, Single Family Lots, Commercial Lots, Private Boatslips, Marina Boatslips and/or Patio Home Lots; (xviii) to develop one or more Community Marinas within the Planned Community as commercial, for-profit enterprises, and to sell, lease and/or license Marina Boatslips to be located therein; (xix) to dedicate and convey easements for private roads and streets and other Common Areas and Limited Common Areas to provide all Lots with access, ingress, egress, regress and utilities; (xx) to file proceedings to abandon public roads and streets now located within the Planned Community and to replace them with private roads and streets; (xxi) to grant to landowners of property outside the Planned Community formerly served by public roads and streets located within the Planned Community which are abandoned nonexclusive and perpetual easements across private roads and streets replacing such abandoned roads and streets, together with all privileges of access to such private roads and streets through controlled access points and facilities, as well as use of recreational Amenities, other than any Community Marina, located within the Planned Community or such terms as Declarant determines are appropriate; (xxii) to impose a Covenant to Share Costs when it annexes any Additional Property into the Planned Community; (xxiii) to dedicate any roads to the general public if required by governmental authorities; (xxiv) to amend the Bylaws in the event that any Supplemental Declaration provides for Voting Clusters or representational voting with respect to Class B Lots or Units; (xxv) add, relocate, remove, or redesign any of the trail system or trail system easements, pursuant to Section 7.11; and (xxvi) to exercise such other rights as are included in this Declaration or any portion thereof.

### **3. PROPERTY RIGHTS.**

3.1. **Title to Common Areas.** On or before the Turnover Date as defined in Section 4.2, Declarant shall convey fee simple title in the Common Areas to the Association, subject to this Declaration, the then current and subsequent years' ad valorem taxes, and rights-of-way, declarations, conditions, restrictions, covenants, reservations, easements, liens and charges of record. To the extent that Declarant does not hold title to the Common Areas, but

only holds a lease or a license, Declarant shall assign its rights under the applicable easement, lease or license in and to the Association as of the Turnover Date. Notwithstanding the recordation of any Map, all Common Areas and any private roads within the Planned Community shall remain private property and shall not be dedicated to the use or enjoyment of the general public.

3.2. **Lot Owner's Easement of Enjoyment.** Each Lot Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Areas, and those Limited Common Areas benefiting a Lot Owner (collectively and individually, as the context may require, the "**Lot Owner's Easement**"), specifically including, but not limited to, an easement for access, ingress, egress and regress from and to public roads and streets, private roads and streets, Common Areas, walkways and Amenities. Each Lot Owner's Easement shall be appurtenant to and shall pass with the title to their Lot subject to the following provisions:

3.2.1. **Conveyance or Encumbrance of Common Areas.** Subject to the right of Declarant to convey or encumber the Common Areas and/or Limited Common Areas with utility, road, street, parking, walkways and other rights of ways, easements and amenities, and subject to all applicable governmental ordinances, the Association's right to convey or encumber by Mortgage title to all or any part of the Common Areas and/or Limited Common Areas in compliance with the terms of this Declaration and South Carolina law. Except for conveyances or encumbrances made by Declarant pursuant to its Special Declarant Rights or otherwise expressly permitted by the Declaration, no such conveyance or encumbrance shall be effective (i) as to Common Areas unless pursuant to a recordable instrument signed by at least two-thirds (2/3) of (A) the affected Members of each Class and (B) the Lot Owners to which such Common Areas are allocated agreeing to the conveyance or encumbrance and (ii) as to Limited Common Areas unless pursuant to a recordable instrument signed by all of (A) the affected Members of each Class and (B) the Lot Owners to which such Limited Common Areas are allocated agreeing to the conveyance or encumbrance which instrument as to item (i) and/or (ii), as applicable, shall be recorded in the County Registry. Any conveyance or encumbrance shall be made subject to that portion of the Lot Owner's Easement providing for access, ingress, egress and regress to public roads and streets, private roads and streets, Common Areas, walkways and Amenities.

3.2.2. **Borrowing for Improvements.** The Association's right, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Areas, Limited Common Areas and facilities and to mortgage those properties to secure those borrowings, provided the Mortgage is subordinate to each Lot Owner's Easement and the other easements provided for in this Declaration.

3.2.3. **Rules and Regulations.** The Association's right to impose and enforce Rules and Regulations which may restrict the use and enjoyment of the Common Areas, Limited Common Areas and/or Amenities.

3.2.4. **Additional Easements.** The Association and Declarant shall have the authority to grant and/or establish upon, over, under and across the Common Areas further easements (including, but not limited to those provided in this Declaration) as are required for the convenient use and enjoyment of the Planned Community.

3.2.5. **Admission and Other Fees.** Subject to all applicable governmental ordinances, the right of the Association to charge reasonable admission and other use fees for the use of any Amenities.

3.2.6. **Suspension of Privileges or Services.** The right of the Association as provided in this Declaration or in the Association's Articles and Bylaws to suspend privileges or services of any Lot Owner who violates the terms and conditions of this Declaration, the Bylaws or Rules or Regulations adopted by the Association.

3.3. **Delegation of Use.** Any Lot Owner may delegate, in accordance with the Bylaws and the Rules and Regulations, his right of use and enjoyment to the Common Areas, Limited Common Areas and Amenities to members of his family, tenants who reside at his Lot, and/or to his guests.

#### **4. THE ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS.**

4.1. **Membership.** Each Owner shall be a Member of the Association; provided, however, their voting rights and privileges may vary depending on the Owner's Membership Class.

4.2. **Membership Classes.** The Association shall have three (3) classes of voting membership, each of which is a "**Class**":

4.2.1. Class A Members shall be all Single Family Lot Owners with the exception of Declarant. Declarant may, however, be a Class A Member upon the termination of Class C Membership. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an interest in any one Single Family Lot, all such Persons shall be Members, provided, however, that the vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Single Family Lot. Fractional voting is prohibited.

4.2.2. Class B Members shall be all Owners of Patio Home Lots, Townhome Lots and Condominium Units, except Declarant. Class B Members shall be allocated votes based on the formula set forth in the Supplemental Declaration that subjects them to this Declaration, together with the conforming changes amending the Bylaws, which Declarant has reserved the right to do as one of its Special Declarant Rights.

4.2.3. The Class C Member shall be Declarant. The Class C Member shall be entitled to ten (10) votes for each Lot or Unit owned. The Class C Membership shall cease and be converted to Class A Membership upon the earlier of the following, which shall be the "**Turnover Date**":

(i) the date on which all of the Class A Lots and Class B Lots or Units are conveyed to Persons other than Declaration; provided that the Class C Membership shall not be terminated so long as Declarant has the unexpired right to add Additional Property to the Planned Community, as provided in the Declaration;

(ii) December 31, 2027; or

(iii) the effective date of Declarant's written consent to termination recorded in the County Registry.

4.2.4. After the Turnover Date, and for so long as Declarant owns any part of the Property, Declarant shall be a Class A Member.

4.2.5. Declarant's rights as a Class C Member are Special Declarant Rights which may be transferred by an instrument recorded in the County Registry.

4.3. **Exercise of Voting Rights for Class B Lots or Units in a Voting Cluster.** Declarant reserves the right in any Supplemental Declaration which subjects Patio Home Lots, Townhome Lots or Condominium Units to this Declaration to provide that the Class B Lots or Units will have representational voting rights based on the number of Class B Lots or Units contained in the specific neighborhood of Patio Home Lots, Townhome Lots or Condominium Units which are being added to the Planned Community. Declarant reserves the right to amend these Bylaws to provide for different levels of Class B voting rights, to add Class B Lots or Units to an existing Voting Cluster or to establish a new Voting Cluster.

4.4. **Availability of Documents.** The Association shall maintain current copies of the Declaration, the Bylaws, and the Rules and Regulations concerning the Development, as well as its own books, records, and financial statements available for inspection by all Owners, Mortgagees and insurers and guarantors of Mortgages that are secured by Lots. All such documents shall be available upon reasonable notice and during normal business hours. In addition, any Mortgagee may, at its own expense, have an audited statement prepared with respect to the finances of the Association.

4.5. **Management Contracts.** The Association may engage the services of any person, firm or corporation to act as the Management Company for the Association at a compensation level to be established by the Board and to perform all of the powers and duties of the Association. The term of any such agreement with a Management Company shall not exceed one (1) year and shall only be renewed by agreement of the parties for successive one (1) year terms. Any such contract shall be terminable by the Association with or without cause upon ninety (90) days prior written notice to the Management Company without payment of a termination fee.

4.6. **Maintenance.** All roads within the Planned Community will be maintained by the Association as private roads; provided, however, in the event any roads are subsequently required to be dedicated to the public and accepted for maintenance by York County or other governmental entity, maintenance shall conform to the standard of maintenance which would be required by York County or other applicable governmental entity.

The Common Areas, together with all utilities, easements and amenities located within the Common Areas and not otherwise maintained by public entities or utilities, shall be maintained by the Association as more particularly described below:

4.6.1. Maintenance of the entrance monument(s) shall include maintenance, repair and reconstruction, when necessary, of the monuments, signage, irrigation, planters and

lighting located thereon and providing and paying for landscaping, utility charges for irrigation and lighting of the monuments and signage located thereon.

4.6.2. Maintenance of any parking area(s) shall include repair and reconstruction of the pavement and payment of the costs of lighting.

4.6.3. All Common Areas (and all Improvements located thereon), shall be clean and free from debris and maintained in an orderly condition, together with the landscaping and irrigation thereon (if any) in accordance with the standards of similar amenities in comparable developments within the vicinity of the Planned Community, including any removal and replacement of any landscaping, utilities, or Improvements.

4.6.4. The Association shall not be responsible for the maintenance of any Lot or any portion of any Lot or the Improvements within the boundaries thereof, including, without limitation, any Private Boatslip located within the Pier Zone adjacent to any Waterfront Lot. The Owners of Waterfront Lots shall be solely responsible for such maintenance.

4.6.5. The Association shall have the right, but not the obligation, to maintain and repair areas within the right-of-way of any roads which are adjacent to Common Areas, adjacent to Lots without a completed Dwelling, or adjacent to Lots where the Owner is failing to maintain landscaping and where trash or litter is present, and to charge back the cost of such assumed maintenance as a Special Individual Assessment against the Owner who is failing to properly maintain their Lot.

4.6.6. The Association shall have the right, but not the obligation, to maintain and repair areas within the Lake Buffer Area that are not being properly maintained by the applicable Lot Owner. and to charge back the cost of such assumed maintenance as a Special Individual Assessment against the Owner who is failing to properly maintain their Lot's Lake Buffer Area.

4.6.7. The Association shall be responsible for the maintenance or repair of all private roads within the Planned Community. Such maintenance shall include cleaning, maintaining, repairing, reconstruction and replacing (if destroyed), the private roads, and such maintenance practices shall conform to the same standards of maintenance which would be required by the York County or other governmental entity for that of public roads.

4.7. **Reserve Fund.** The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of Improvements located on all Common Areas and in order to fund unanticipated expenses of the Association or to acquire equipment or services deemed necessary or desirable by the Board. The reserve fund shall be collected and maintained out of the various types of Assessments.

## **5. ASSESSMENTS AND TRANSFER FEES.**

### **5.1. Lien of Assessments.**

5.1.1. Each Lot Owner within the Planned Community, by acceptance of a deed therefor (whether or not it shall be so expressed in such deed) covenants and agrees to pay

all relevant assessments to the Association as set forth in this Declaration. In addition, each Owner receiving a deed to a Lot from Declarant covenants and agrees to pay Initial Low Pressure Sewer Assessments, Initial Working Capital Assessments and Initial General Assessments, as applicable. The Association shall also have the authority, through its Board, to establish, fix and levy a special individual assessment on any Lot to secure the liability of a Lot Owner to the Association arising from the Lot Owner's breach of any of the provisions of this Declaration (the "**Special Individual Assessment**").

5.1.2. The Annual Assessments shall be set on a calendar year basis (the "**Annual Assessment Period**") beginning on January 1, 2008. Assessments for Single Family Lots, Waterfront Lots, Townhome Lots, Patio Home Lots, Condominium Units and Commercial Lots need not be uniform, but may be different based on rational, good faith estimates of the differing costs allocable to the respective categories as determined initially by Declarant, and thereafter by the Board, and may be collected on a monthly, quarterly, semi-annual or annual basis, as determined by Declarant or the Board. Assessments, including fees, charges, late charges, fines, interest and other charges imposed by or permitted under this Declaration shall, upon the filing of a claim of lien in the County Registry be a lien on the applicable Lot until paid in full, as well as a personal obligation of the Person who was the Lot Owner of the Lot at the time the Assessment became due. While any unpaid amounts shall remain a lien on the applicable Lot, the personal obligation shall not pass to that Lot Owner's successors in title unless expressly assumed by the successor(s).

5.2. **Purpose of Assessments.** The Assessments shall be used exclusively for the payment of Common Expenses, the health, safety and welfare of the Lot Owners, and the improvement and maintenance of the Common Areas and as otherwise set forth in this Declaration. The Association shall maintain a reserve fund for periodic installation, maintenance, repair, and replacement of Improvements to the Common Areas.

5.3. **Annual and Initial Assessments.** Subject to the rights of Declarant set forth in Section 6.1.1, on or before December 1st of each calendar year preceding an Annual Assessment Period, the Association's Board shall adopt the Budget for the upcoming fiscal year. The annual budget for the Association shall include all anticipated revenues (including revenues from Annual Assessments, to be charged in the next Annual Assessment Period (the "**Anticipated Annual Assessments**") and anticipated costs for the Association for the upcoming fiscal year (together, the "**Budget**"). Within thirty (30) days after adoption of any proposed Budget for the Planned Community, the Board shall provide to all of the Lot Owners a summary of the proposed Budget and a notice of the meeting to consider ratification of the proposed Budget, including a statement that the proposed Budget may be ratified without a quorum. The Board shall set a date for a meeting of the Lot Owners to consider ratification of the proposed Budget, such meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. A quorum need not be present at the meeting. The proposed Budget shall be ratified and adopted as the Budget, unless at that meeting seventy-five percent (75%) of all Lot Owners reject the proposed Budget. In the event the proposed Budget is rejected at that meeting, the Budget for the previous Annual Assessment Period shall be continued until a subsequent Budget proposed by the Board is ratified and adopted by the Lot Owners in the manner set forth above. Each Lot Owner (other than Declarant) shall pay an Annual Assessment established by the Board from time to time. With respect to all Lots that obtain sewer service

through the Planned Community's Low Pressure Sewer System requiring "**Pump Units**", the Association may levy an additional sewer assessment for the design, engineering, placement, construction, installation, maintenance, repair and replacement of Pump Units and reserves for such installation, maintenance, repair, rebuilding, restoration, reconstruction and replacement costs to the extent not covered by the Initial Low Pressure Sewer Assessments described in Section 5.3.4 below ("**Sewer Assessment**"). The Anticipated Annual Assessments for the approved Budget shall be the basis for calculating the Annual Assessment to be charged each Lot Owner for the upcoming Annual Assessment Period.

5.3.1. **Maximum Initial Annual Assessment.** The Board, by a vote in accordance with the Bylaws, without a vote of the Members, may increase the Annual Assessment each year by a maximum amount equal to the previous year's Annual Assessment times the greater of (i) ten percent (10%) or (ii) the annual percentage increase in the CPI (the "**Maximum Annual Assessment**"). If the Annual Assessments are not increased by the maximum amount permitted under the terms of this provision, the difference between any actual increase which is made and the maximum increase permitted for that year shall be computed and the Annual Assessments may be increased by that amount in the following two years, in addition to the maximum increase permitted under the terms of the preceding sentence for such future year, by a vote of the Board, without a vote of the Members.

The Maximum Annual Assessment may be increased above the maximum amount by a vote of a majority of the votes appurtenant to the Lots, plus the written consent of Declarant (so long as Declarant owns any part of the Property).

5.3.2. **Supplemental Annual Assessment.** If the Board levies less than the Maximum Annual Assessment for any calendar year and thereafter, during such calendar year, determines that important and essential functions of the Association cannot be funded by such lesser amount, the Board may, by vote in accordance with the Bylaws, levy a supplemental Annual Assessment ("**Supplemental Annual Assessment**"). In no event shall the sum of the Annual and Supplemental Annual Assessments for any year exceed the applicable Maximum Annual Assessment for such year, other than as set forth in Section 5.3.1.

5.3.3. **Loans from Declarant.** As long as Declarant holds a majority of the total votes in the Association, Declarant may loan the Association monies to the extent that Annual Assessments paid by the Lot Owners are inadequate. This advance shall be to the Association and on terms generally available to Declarant from its lending institution. Such loans shall be repaid from future Annual Assessments and shall be budgeted for in future Budgets adopted by the Association.

5.3.4. **Initial Low Pressure Sewer Assessments.** In addition to any other Assessments provided for herein, each time Declarant sells a Lot to a third party (including, without limitation, any Legacy Builder) and the Lot requires a Pump Unit in order to obtain sewer service through the Planned Community's Low Pressure Sewer System, the Association shall assess, and Declarant shall collect on behalf of the Association at closing, and remit to the Association's Management Company to be held in a special escrow account on behalf of the Association, an Initial Low Pressure Sewer Assessment, sufficient to cover the contract costs for the design, engineering, placement, construction and installation of Low Pressure Sewer System



connections and a Pump Unit on such Lot together with an amount equal to two (2) years of maintenance costs and estimated reserves for repairing, rebuilding, restoring, reconstructing and replacing same (and/or portions thereof) from time to time (the “**Service and Maintenance Costs**”) which shall be held and disbursed in accordance with **Section 10**.

5.3.5. **Initial Working Capital Assessments**. In addition to the other Assessments provided for in this Declaration, each time Declarant sells a Lot to a third party (including, without limitation, any Legacy Builder), the Association shall assess and Declarant shall collect on behalf of the Association at closing, and remit to the Association an initial working capital assessment (the “**Initial Working Capital Assessment**”), which initially shall be set forth in the Association’s annual budget to provide working capital and reserves to the Association. Declarant reserves the right during the Declarant Control Period (i) to increase such Initial Working Capital Assessments and (ii) to create, set, assess, increase and collect separate initial general assessments for other Lots or Units, such as Condominium Units, Townhomes, Patio Homes and Commercial Lots (“**Initial General Assessment**”), which may or may not be in addition to any assessments provided by the Additional Association that may be created to deal with the particular needs and circumstances of those Lots or Units.

5.4. **Special Assessments**. In addition to the Annual Assessments, the Association may levy in any Annual Assessment Period a special assessment applicable to that Annual Assessment Period only for the purpose of defraying in whole or in part the cost of any expenditures (including, without limitation, capital improvements and real estate acquisition costs) not otherwise included in the Budget (“**Special Assessment**”). Provided, however, any Special Assessment must be approved by Declarant (so long as Declarant owns any part of the Property) and by a vote of a majority of the votes appurtenant to the Lots which are then subject to this Declaration.

5.5. **Fines and Suspension of Privileges or Services**. In the event any Lot Owner is in default for a period of thirty (30) days or longer with respect to the payment of any Assessment(s) due the Association under this Declaration, the Association may suspend privileges (including, but not limited to, such Lot Owner’s rights to vote as a Member of the Association) or services (except rights of access to such Lot Owner’s Lot) provided by the Association to such Lot Owner. In addition, if any Lot Owner violates any of the terms and conditions of the Declaration or of the Association’s Bylaws or any Rules and Regulations adopted by the Association, the Association may impose a reasonable fine upon such Lot Owner or suspend privileges or services (except rights of access to such Lot Owner’s Lot). Prior to imposing a fine upon any Lot Owner or suspending any privileges or services provided to such Lot Owner by the Association, the Board shall give the Lot Owner notice of the charged violation, notice of a hearing and an opportunity to be heard and present evidence at such hearing. The hearing shall be conducted before the Board. After rendering a decision, the Board shall give the affected Lot Owner notice of its decision. If it is decided that a fine should be imposed, a fine in an amount set, from time to time, by the Board may be imposed for the violation for each day after notice of the decision is given to the Lot Owner that the violation continues to occur. The fine or fines shall constitute a Special Individual Assessment secured by liens under this Declaration. If it is decided that a suspension of privileges or services should also be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured to the reasonable satisfaction of the Board.

5.6. **Uniform Rate of Assessment.** Assessments must be fixed at a uniform rate within all Lots in Use within the same category.

5.7. **Date of Commencement of Annual Assessment/Due Dates.** The Annual Assessments shall commence as to all then existing Lots in Use on the first day of the calendar month following the conveyance of the first Lot to a third party. Thereafter, the Annual Assessments shall commence as to a Lot on the first day of the calendar month following the date the Lot becomes a Lot in Use. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. Written notice of the Annual Assessment shall be sent to every Lot Owner at least thirty (30) days in advance of each Annual Assessment Period. The due date shall be established by the Board. The Association shall, upon written request at any time, furnish a certificate in writing signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. These certificates shall be conclusive evidence of payment or non-payment of any Assessment as to third parties acting in reliance on the statement.

5.8. **Non-Payment of Assessment; Remedies of the Association.** Any Assessments which are not paid when due shall be delinquent. The Association shall have the option to declare the outstanding balance of any Assessment due and payable if any installment thereof becomes delinquent. If the Assessment is not paid within thirty (30) days after the due date, the Assessment shall incur a late charge of Twenty-Five Dollars (\$25.00) and bear interest from the date of delinquency at the lesser of eighteen percent (18%) per annum or the maximum rate allowed by South Carolina law. The Association may bring an action at law against the responsible Lot Owner and/or foreclose the lien against the applicable Lot. Interest, costs, expenses and reasonable attorneys' fees of any such action shall be added to the amount of the delinquent Assessment. Each Lot Owner, by the acceptance of a deed to a Lot, expressly acknowledges their personal liability for the debt, expressly vests in the Association, its agents and/or assigns, the right and power to bring all actions against the Lot Owner personally liable for the collection of the debt and to enforce the lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in any manner permitted under South Carolina law, including the manner for foreclosing Mortgages. The lien provided for in this Article shall be in favor of the Association acting on behalf of the Lot Owners, which shall have the power to bid in at foreclosure and to acquire and hold, lease, mortgage and convey the foreclosed Lot. No Lot Owner may waive or otherwise escape liability for Assessments by non-use of the Common Areas, any portion of the Planned Community or abandonment of his or her Lot.

5.9. **Subordination of the Lien.** The lien of the Assessments shall be subordinate to the lien of the first Mortgage on a Lot. Except in those instances described below, the sale or transfer of a Lot shall not release or otherwise affect the lien of delinquent Assessments. Provided the Association is given prior written notice, the sale or transfer of a Lot pursuant to the foreclosure of a first Mortgage or pursuant to a deed in lieu given in satisfaction of a first Mortgage shall extinguish the lien of the delinquent Assessments for that Lot. In no event, however, shall a sale or transfer relieve the Lot Owner from liability for any Assessments subsequently becoming due or from the lien thereof.

5.10. **Exempt Land.** Common Areas shall be exempt from the Assessments. Annual, Supplemental Annual and Special Assessments for each Lot owned by Declarant shall be one-third (1/3) of the Annual, Supplemental Annual and Special Assessments for each other Lot in the Planned Community not owned by Declarant.

5.11. **Declarant Control of Assessments during Declarant Control Period.** Notwithstanding anything to the contrary contained in this Declaration, or in the Association's Articles or Bylaws, during Declarant Control Period, Declarant shall have the right to determine all Assessments, and may set different levels of any or all Assessments for Single Family Lots, Waterfront Lots, Condominium Units, Townhome Lots, Patio Home Lots, Commercial Lots and Marina Boatslips. Declarant shall, however, use its reasonable discretion and judgment in setting such various levels of Assessments in a manner aimed at equitably apportioning the anticipated costs of maintaining the Common Areas among Owners reasonably proportionate to the relative degrees of use one might expect among the various types of Lots or Boatslips. In the event that the current level of Assessments is not sufficient for the Association to meet its financial obligations for Common Expenses, Declarant will be responsible for any deficit by paying a subsidy during the Declarant Control Period.

5.12. **Authority and Transfer Fee Provisions.** The Board shall have the authority to establish and collect a transfer fee (the "**Transfer Fee**") from the transferring Owner upon each transfer of title to a Lot in the Property, which fee shall be payable at the closing of the transfer and shall be an Assessment secured by the Association's lien for Assessments. Except as otherwise provided in Section 5.14, the Board shall have the sole discretion to determine the amount of the Transfer Fee; provided, however, the amount of the Transfer Fee for the initial sale to an Owner that is not Declarant or a Legacy Builder shall be in the amount of twenty-five hundredths of one percent (0.25%) of the greater of (a) the Gross Selling Price of the Lot (and Dwelling if the Lot is improved), or (b) the assessed tax value of the Lot (and Dwelling if the Lot is improved). For the purpose of determining the amount of the Transfer Fee, the Gross Selling Price shall be the total cost to the purchaser of the Lot (including the Dwelling and all other Improvements thereon).

5.13. **Purpose.** All Transfer Fees which the Association collects shall be held as reserves, to be administered by the Board in its sole discretion for community marketing efforts or community capital improvements for the Planned Community.

5.14. **Exempt Transfers.** Notwithstanding the above, no Transfer Fee shall be levied upon transfer of title to a Lot or Dwelling:

5.14.1. by or to Declarant;

5.14.2. to a Legacy Builder who is holding title solely for purposes of development and resale;

5.14.3. by a Legacy Builder on the initial sale of a Lot and Dwelling to a third party purchaser;

5.14.4. by a co-Owner of a Lot or Dwelling to any Person who was also a co-Owner of such Lot or Dwelling immediately prior to such transfer;

5.14.5. to the Owner's estate, surviving spouse or child upon the death of the Owner;

5.14.6. to an entity wholly owned by the grantor (provided, however, upon any subsequent transfer of an ownership interest in such entity, the Transfer Fee shall become due); or

5.14.7. to an institutional lender pursuant to a Mortgage or upon foreclosure of a Mortgage.

5.15. **Transfer Fee Calculation on Exchanges or Other Non-Cash Transactions.** If a transfer of a Lot subject to a Transfer Fee is a like-kind exchange or other non-cash transaction, then the Gross Selling Price shall be the greater of the value of the exchanged real estate or other non-cash consideration as agreed upon by the parties to the transaction, or the assessed tax value of the Lot (including the Dwelling and all other Improvements on the Lot).

5.16. **Community Marketing Fund.** A community marketing fee for the initial sale of a Lot from a Legacy Builder shall be one-half of one percent (0.5%) of the amount of the sales price of the completed Lot and Dwelling (including any amounts attributable to Improvements that a Legacy Builder has contracted to provide after closing) (the "**Community Marketing Fee**"). The Community Marketing Fee shall be paid to Declarant for purposes of advertising and promoting the Planned Community, as determined by Declarant, in Declarant's sole discretion.

## **6. INSURANCE.**

6.1. **Authority to Purchase Insurance.** Insurance policies upon the Land and Improvements located within the Planned Community (except title insurance policies insuring Lot Owners and/or their Lenders) shall be purchased by the Association in the name of the Board of the Association, as trustees for the benefit of the Lot Owners and their respective Mortgagees, as their interests may appear, and shall provide for the issuance of certificates or mortgage endorsements to the holders of first Mortgages on the Lots. The policies shall also contain provisions waiving the insurer's rights of subrogation as to any claims against Lot Owners, the Association and their respective servants, agents or guests.

6.2. **Insurance Coverage to be Maintained; Use and Distribution of Insurance Proceeds.** The following insurance coverage shall be maintained in full force and effect by the Association covering the operation and management of the Common Areas:

6.2.1. Commencing not later than the time of the first conveyance of a Lot to a person other than Declarant, the Association shall maintain:

6.2.1.1. Property insurance on the Common Areas insuring all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of such insurance after application of any deductibles shall not be less than eighty percent (80%) of the replacement costs of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property insurance policies; and

6.2.1.2. Liability insurance in reasonable amounts covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership, installation in, on or through, or maintenance, repair or replacement of, the Common Areas.

6.2.2. The following provisions apply to insurance coverage to be maintained by the Association pursuant to Section 6.2.1:

6.2.2.1. Each Lot Owner is an insured person under the policy to the extent of such Lot Owner's insurable interest;

6.2.2.2. The insurer waives its right to subrogation under the policy against any Lot Owner or member of the Lot Owner's household;

6.2.2.3. No act or omission by any Lot Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under the policy; and

6.2.2.4. If, at the time of a loss under the policy, there is other insurance in the name of a Lot Owner covering the same risk covered by the policy, the Association's policy provides primary insurance coverage.

6.2.3. Any loss covered by the property policies provided for in Section 6.2.1 shall be adjusted with the Association, but the insurance proceeds for that loss are payable to any trustee designated by the Association for that purpose, or otherwise to the Association, and not to any Mortgagee. The insurance trustee or the Association shall hold any insurance proceeds in trust for Lot Owners and lienholders as their interests may appear. Property insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, and Lot Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely rebuilt, repaired, restored, replaced or reconstructed or the Planned Community is terminated.

6.2.4. Any portion of the Planned Community for which insurance is required under Section 6.2.1, which is damaged or destroyed shall be rebuilt, restored, repaired, replaced or reconstructed promptly by the Association unless (i) the Planned Community is terminated, (ii) rebuilding, restoration, repair, replacement or reconstruction would be illegal under any applicable state or local health or safety statute or ordinance, or (iii) the Lot Owners decide by an eighty percent (80%) vote not to rebuild, repair or restore the damaged property, including one hundred percent (100%) approval of the Lot Owners assigned to any Limited Common Areas not to be rebuilt, restored, repaired, replaced or reconstructed. The cost of rebuilding, restoration, repair, replacement or reconstruction in excess of insurance proceeds and reserves is a Common Expense. If any portion of the Common Areas is not rebuilt, restored, repaired, replaced or reconstructed, the insurance proceeds attributable to Limited Common Areas which are not rebuilt, restored, repaired, replaced or reconstructed shall be distributed to the Lot Owners of the Lots to which those Limited Common Areas interests were allocated, or to lienholders, as their interests may appear, and the remainder of the proceeds shall be distributed to all of the Lot

Owners or lienholders, as their interests may appear, in proportion to the Common Expense Liabilities of all the Lots.

6.2.5. Fidelity Coverage protecting against dishonest acts by Association officers, Directors, trustees, and employees and all others who are responsible for handling funds of the Association shall be maintained in the amount of one (1) year's operating budget, plus the projected reserve balance during the Budget year. If the Management Company retained by the Association has this coverage and it handles the funds, then this requirement will be deemed to be satisfied.

6.2.6. In the event a mortgagee endorsement has been issued as to a Lot, the share of the Lot Owner shall be held for the benefit of the Mortgagee and the Lot Owner, as their respective interests may appear, but no Mortgagee shall have the right to participate in the determination of reconstruction or repair.

6.2.7. Each Lot Owner at their expense, may obtain additional insurance coverage on their Lot, on their personal property and for personal liability and any additional insurance shall contain a waiver of subrogation clause.

6.2.8. Immediately after the casualty causing damage to property, the Association shall obtain reliable and detailed estimates of the cost to place the damaged real property in condition as good as that before the casualty. Such costs may include fees for the contract with the Management Company and premiums for such bonds as the Board of the Association deems appropriate.

6.2.9. Each Lot Owner delegates to the Board the right to adjust with insurance companies all losses under policies purchased by the Association.

6.3. **Repair/Reconstruction.** Any rebuilding, restoring, repairing, replacing or reconstruction of any Improvements damaged by fire or other casualty shall be substantially in accordance with the original plans and specifications, as revised.

6.4. **Premiums.** Premiums for insurance policies purchased by the Association shall be paid by the Association as a Common Expense.

6.5. **Prohibited Acts.** No Lot Owner shall do or keep anything within the Planned Community which shall cause an increase in the premiums for, or the cancellation of, any insurance coverage maintained by the Association.

## **7. EASEMENTS.**

7.1. **Blanket Utility Easement.** Declarant reserves a blanket easement upon, across, over, and under all of the Common Areas, and, to the extent reasonably necessary, the portions of the Lots on which no portion of any Dwelling is or is to be constructed, is reserved for access, ingress, egress, regress, planning, designing, installing, rebuilding, restoring, reconstructing, replacing, repairing and maintaining all utilities, including, but not limited to water, sewer, gas, telephones, electricity, and a master antenna system. No sewers, gas lines, telephone lines, electrical lines, water lines, antennae or other utility equipment or facilities may be installed or

relocated in the Common Areas, except as approved by Declarant or, after the Turnover Date, by the Association or the Board. If any utility furnishing a service covered by this general easement requests a specific easement by separate recordable documents, Declarant or, after the Turnover Date, the Association or the Board will have the right and authority to grant such easement. The blanket easement provided for in this Article shall not affect other recorded easements within the Planned Community.

7.2. **Association Easements.** Declarant reserves an easement in favor of the Association, its officers, agents, employees, and to any Management Company retained by the Association to enter in or to cross over the Common Areas. An easement is also granted to the Association over such portion(s) of the Land and/or Additional Property owned by Declarant on which Improvements, including utilities, are located, which serve the Planned Community and over such portion(s) of the Land and/or Additional Property which provide access to such Improvements, subject to Declarant's right to designate the exact location of such easements. Every Lot shall be subject to an easement for entry by the Association (and the Persons described above) for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot and that endangers any Improvement or portion of the Common Areas. Declarant, on behalf of the Association, may reserve easements as shown on recorded Maps of the Property made subject to this Declaration for planning, designing, locating, installing, rebuilding, restoring, reconstructing, replacing, repairing and maintaining of entrance monuments, landscaping and lighting.

7.3. **Temporary Construction Access and Disturbance Easement.** Declarant reserves an easement over, through and to the Common Areas for its benefit and for the benefit of the Association and all Lot Owners for purposes of use, access, ingress, egress, regress, conducting construction activity, storing construction materials and the necessary disturbance of land for construction on any Lot. This easement shall be used only as and when necessary to facilitate the construction of Improvements at any time on a Lot by Declarant or Lot Owner, the extension of driveways, sidewalks, underground drainage and utility conduit and hookups to any Dwelling situated on a Lot and the installation and connection of any and all utilities, including, but not limited to, those described in Section 7.1. In each instance, each Person exercising these easement rights shall use its best efforts to minimize any soil or land disturbance activities and shall restore the land to a condition which is graded smooth and in harmony with surrounding areas. If the Person fails to restore the disturbed land as required, the Association may restore the land to the required condition and the Person shall indemnify the Association for the reasonable fees, costs and expenses incurred in performing the restoration and matters related thereto. This easement shall be restricted to the portion of the Common Areas which is reasonably servient and proximate to the Lot(s) upon which the construction is taking place.

7.4. **Drainage Easement.** For a period of eighteen (18) months following the last conveyance of a Lot to a Lot Owner by Declarant, that Lot shall be subject to an easement for entry and encroachment by Declarant for the purpose of correcting any grading or drainage problems with respect to that Lot or adjoining Lots. After such an entry, Declarant, at its expense, shall, to the extent reasonably practicable, restore the affected Lot(s) to their original condition.

7.5. **Governmental Easements.**

7.5.1. Declarant reserves an easement for the benefit of the appropriate governmental entity over all Common Areas and over an area five (5) feet behind the curb line of any street or road within the Planned Community existing now or in the future for the setting, removal, and reading of water meters, the maintenance and replacement of water, sewage, and drainage facilities and the collection of garbage.

7.5.2. An easement is also granted to all police, fire protection, garbage, mail delivery, ambulance, and all similar persons to enter upon the Planned Community's roads and streets and the Common Areas in the performance of their duties.

7.6. **Access, Parking and /or Utility Easements.** All Lots and the Common Areas shall be subject to all such access, drainage and/or utility easements as are shown on any recorded Maps, and any such access easements shall be considered part of the Common Areas, whether or not owned in fee simple by the Association, and the costs of maintenance, repair and upkeep of the areas within such access easements shall be Common Expenses.

7.7. **Easements and Access for Maintenance of Low Pressure Sewer System.** Declarant reserves for the benefit of the Association, the Management Company hired by the Association, and York County, as well as any contractors and/or service providers hired by the Association, the Management Company, and/or York County, a general easement over all of the Land and any portion of the Additional Property now or hereafter made subject to this Declaration, including all Common Areas and Lots, for the purpose of planning, designing, locating, installing, accessing, rebuilding, restoring, reconstructing, replacing, repairing, maintaining and improving the Low Pressure Sewer System serving the Planned Community. Without limiting the foregoing, the foregoing easements include a non-exclusive easement on each Lot Owner's Lot for ingress, egress, regress and access from, to and over the area in which the privately owned Pump Unit is located on each Lot, as well as a non-exclusive easement over the area of the Lot which is ten (10) feet on each side of the Pump Unit.

7.8. **Easements to Access Community Marina.** Declarant reserves easements over the private roads to access the Community Marina.

7.9. **Easements for Sales Offices.** Declarant reserves easements to construct sales and marketing offices, trailers or other structures on the Property, and further reserves the right to maintain sales offices in any clubhouse that may be constructed as an Amenity, without payment of rent during the Declarant Control Period. Declarant further reserves the right to designate, from time to time, one Legacy Builder as having the right to maintain on-site sales offices and one or more model homes (the "**Anchor Builder**").

7.10. **Easement to Designate Roads as Public or Private.** Declarant intends for this Planned Community to be a gated community with private roads; provided, however, in the event any roads are subsequently required to be dedicated to the public and accepted for maintenance by York County or other governmental entity, maintenance shall conform to the standard of maintenance which would be required by York County or other applicable governmental entity.



7.11. **Easements for Trails.** Declarant reserves the right to locate trails across any portion of the Planned Community, including any Lots and/or Common Area, for the development of a trail system as an Amenity for the use and enjoyment of all Lot Owners. The trail easement affecting any Lot shall be designated on a recorded Map at a location within the sole discretion of Declarant. A copy of the recorded Map shall be retained by the ARC. The purchaser of any Lot is encouraged to review the recorded documents in the County Registry or in the ARC files to determine the placement of any such trail easement on the Lot.

7.12. **Easement for Encroachment.** Declarant hereby reserves, for the benefit of itself, its successors in interest and assigns, and grants to the Association, the Owners, their successors and assigns, easements for encroachments, to the extent necessary, in the event any portion of the Improvements located on any portion of the Property now or hereafter encroaches upon any of the remaining portions of the Property as a result of minor inaccuracies in survey, construction or reconstruction, or due to settlement or movement. Any easement(s) for encroachment shall include an easement(s) for the maintenance and use of the encroaching Improvements in favor of Declarant, the Association, the Owners and all their designees.

7.13. **Declarant's Right to Assign Easements; Maintenance of Easement Areas.** Declarant shall have the right to assign and convey, in whole or in part, the easements reserved by it hereunder. The above ground areas burdened by the easements and rights-of-way reserved by Declarant on each Lot or other portion of the Property pursuant hereto, including any Improvements in such areas, shall be maintained continuously by each Owner of such Lot or other portion of the Property. No structures, plantings or other material shall be placed or permitted to remain upon such areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems. Declarant and/or the Association may exercise the rights reserved in this Article for the purpose of enforcing the provisions of this Section 7.13. Notwithstanding the above, the Association and/or Declarant shall have the right, but not the obligation, to maintain the landscaping in the easement areas on any Lot.

7.14. **Easement Reserved for the Association and Declarant.** Full rights of access, ingress and egress are hereby reserved by Declarant for itself and the Association at all times over and upon any Lot or other portion of the Property for the exercise of the easement rights described in this Article as well as the maintenance and repair rights described below and for the carrying out by Declarant or the Association of the rights, functions, duties and obligations of each hereunder; provided, that any such entry by Declarant or the Association upon any Lot or portion of the Property shall be made with the minimum inconvenience to the Owner of such property as is reasonably practical, and any damage caused as a result of the gross negligence of Declarant, the Association or their employees or agents shall be repaired by Declarant or the Association, as the case may be, at the expense of Declarant or the Association, as the case may be.

7.15. **Additional Easements.** Declarant shall have the right to grant over, under, across and upon any portion of the Property owned by Declarant, and the Board shall have the authority, in its sole discretion, to grant over, under, across and upon the Common Areas, such easements, rights-of-way, licenses and other rights in accordance with or to supplement the

provisions of this Declaration or as may otherwise be desirable for the development of the Planned Community, by the execution, without further authorization, of such grants of easement or other instruments as may from time to time be necessary or desirable. Such easements may be for the use and benefit of persons who are not Association Members or Owners.

7.16. **No Merger of Easements.** The easements hereby established shall not be terminated by merger or otherwise, except upon execution and recordation of an instrument specifically terminating any such easement.

## **8. ARCHITECTURAL REVIEW COMMITTEE.**

8.1. **Architectural Control.** No Dwelling, Improvements, outbuilding, fence, sign, wall, Private Boatslip or other structure shall be commenced, constructed, erected, maintained, changed or altered upon, adjacent or proximate to a Lot, nor shall any major landscaping, re-landscaping or tree removal beyond what is necessary to accommodate a driveway and Dwelling foundation be commenced or made (such construction, alteration and landscaping are referred to as the "**Improvements**") until plans and specifications showing the nature, kind, shape, heights, materials, color and location of the Improvements (together with such other information as Declarant may reasonably require) shall have been submitted to and approved in writing by Declarant. If a Complete Submittal is made and Declarant fails to approve or disapprove such plans and specifications for proposed Improvements within forty-five (45) days after a complete set of the plans and specifications have been received by Declarant, such plans and specifications shall be deemed to have been approved by Declarant. Declarant shall have the right to charge a reasonable Architectural Review Fee, as set forth in the Design Guidelines, for receiving and processing each application. Declarant shall have the right (but not the obligation) to promulgate and from time to time and to amend written architectural standards and construction specifications which, together with "**Use Restrictions**" set forth in Section 9.4, shall establish, define and limit the standards and plans and specifications which will be approved, including, but not limited to, architectural style, exterior color or finish, roofing material, siding material, driveway material, landscape design and construction techniques (collectively, the "**Design Guidelines**" or "**Guidelines**"). Declarant shall not approve any Improvements which it determines, in its reasonable discretion, violate the Design Guidelines or are not in harmony of external design, construction and/or location in relation to the surrounding structures, topography or the Master Plan of the Planned Community. All Private Boatslips must be constructed of materials and in accordance with design standards approved by Declarant, which will require design and materials at least equal to those utilized for the construction of Marina Boatslips, and must also meet design standards and requirements promulgated by Duke and FERC.

8.2. **Architectural Review Committee.** Declarant may, at any time, delegate the review and approval authority contained in Section 13.2 of this Declaration to the Board, which may delegate such authority to an ARC composed of at least three (3) but not more than five (5) individuals, all as more particularly described in Section 13.2. The delegation shall be made by Declarant by recording in the County Registry a partial assignment of Declarant's Special Declarant Rights. Declarant shall delegate such authority no later than ninety (90) days after the date upon which Declarant no longer owns any Lots within the Properties, and no termination of Special Declarant Rights shall be deemed a termination or assignment of the rights reserved to Declarant in Article 8, Article 9 or elsewhere in this Declaration. Any use of the term

**“Declarant”** in this Article 8 shall be deemed to apply to Declarant and, when appropriate, to the Board of the Association or the ARC. Nothing herein shall be construed to permit interference by the ARC with the development of the Lots by Declarant in accordance with its Master Plan.

8.3. **Liability.** Neither Declarant nor the Association, nor any officer, director, manager, member or employee of either, nor any member of the ARC shall be liable for damages to any person by reason of mistaken judgment, negligence, or nonfeasance in connection with the approval or disapproval or failure to approve or disapprove any plans, specifications and/or Improvements. Reference is hereby made to Article 13 for additional provisions regarding the ARC. Neither Declarant, the Association, the ARC, nor any officers, directors, managers, members, employees, agents or affiliates of any of them, shall be liable for claims, demands, causes of action, damages or otherwise to any Person submitting plans and specifications, and other submittals for approval or to any Owner by reason of mistake of judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval of, or the failure to approve or disapprove of, any plans, specifications, other submittals and/or Improvements.

## 9. **USE RESTRICTIONS.**

9.1. **Existing Restrictions.** The Land is subject to the Crescent Deed Restrictions which is a portion of the property identified as Parcel 1 in the Crescent Deed Restrictions. In addition, the Crescent Deed Restrictions shall apply to all other portions of the Additional Property which are made subject to the Crescent Deed Restrictions by Declarant.

9.2. **Conflict; Declarant Requests for Amendment, Modification or Variance of Crescent Deed Restrictions.** To the extent of any conflict between the Use Restrictions and the Crescent Deed Restrictions, the Crescent Deed Restrictions shall control. As long as Declarant holds title to any portion of the Land described as Parcel 1 in the Crescent Deed Restrictions, Declarant, and thereafter the Board, shall be the only party entitled to request an amendment, modification or variance of the Crescent Deed Restrictions from Crescent. Notwithstanding any reference contained in this Declaration, it is expressly understood that neither the Crescent Deed Restrictions nor present zoning ordinances permit the use of any of the Land within Parcel 1 of the Crescent Deed Restrictions for commercial purposes, and the Crescent Deed Restrictions do not permit the use of any of such land for condominiums (including, but not limited to, Condominium Units). Therefore, future development of any part of such land for such purposes would require rezoning and an amendment, modification or variance of the Crescent Deed Restrictions.

9.3. **Building Setbacks; Dwelling Location.** No Dwelling shall be erected or maintained on any Lot outside of the building envelope shown on any recorded Map of the Planned Community or as otherwise required or permitted by applicable local zoning ordinances (the **“Zoning Ordinance”**). Any Dwelling erected on a Lot, other than a corner Lot, shall face the street on which the Lot abuts. On corner Lots, a Dwelling may be erected so as to face the intersection of the two streets on which the Lot abuts.

9.4. **Use Restrictions.** Except for portions of the Additional Property which may be subsequently added by Supplemental Declaration to create Commercial Lots, Community Marina, Condominium Units, Patio Home Lots or Townhome Lots, each Lot shall be used

exclusively for single-family, non-transient residential purposes; provided, however, Declarant shall have the right to use the Lots designated from time to time by Declarant for the purpose of construction and operation of construction offices and sales/marketing offices (and for related uses) for the Development until the Turnover Date. No trade, business or business activity of any kind shall be conducted upon a Lot or Dwelling except (a) by Declarant as described in this Section 9.4; (b) with the written approval of the Board; or (c) a home office or home based business or business activity, so long as such business does not otherwise violate the provisions of this Declaration, does not create a disturbance and does not unduly increase traffic flow or parking congestion on the Property or in the Planned Community. The Board may also issue reasonable rules regarding permitted business activities, from time to time. Leasing of a Dwelling shall not be considered a business or business activity.

Except for construction offices or sales marketing offices established, maintained and operated by Declarant, no structure shall be erected, placed, altered, used or permitted to remain on any Single Family Lot other than one detached single-family private Dwelling and one private garage (either attached or detached from the Dwelling) for not less than two (2) standard size automobiles and only such other accessory structures which receive the prior written approval of Declarant or the ARC pursuant to the Design Guidelines. No Lot and no Improvements may be used for hotel or other transient residential purposes. Each lease of a Dwelling shall be for a term of at least twelve (12) months, must be in writing, and must provide that the tenant is obligated to observe and perform all of the terms and provisions of this Declaration applicable to such Dwelling.

Subject to the requirements of this Declaration and the Design Guidelines, a Private Boatslip is allowed only within the Pier Zone of Waterfront Lots upon the condition that it is not rented, leased, licensed or otherwise used for remuneration. Furthermore, no boat (including a houseboat), whether existing on a Lot, docked at a Private Boatslip appurtenant to any Waterfront Lot in the Planned Community, may at any time be used as a Dwelling or residence.

9.5. **Dwelling Size**. The square footage requirements set forth below are for enclosed heated floor area and are exclusive of the areas in heated or unheated basements, vaulted ceiling areas and attics, unheated porches of any type, attached or detached garages, porte cocheres and unheated storage areas, decks and patios.

Any Dwelling erected upon any Single Family Lot shall contain not less than the following heated floor areas:

|                                             | Minimum Total<br>Heated Area | Minimum Ground<br>Floor Heated Area                              |
|---------------------------------------------|------------------------------|------------------------------------------------------------------|
| 1 Story                                     | 2,800                        | 2,800                                                            |
| 1½ story, bi-level,<br>tri-level and others | 3,000                        | 1,600 main floor for bi-level;<br>upper two floors for tri-level |
| 2 story, 2½ story                           | 3,200                        | 1,600                                                            |
| Waterfront Lots                             | 3,200                        | 1,600                                                            |

Notwithstanding the foregoing requirements, the ARC shall have the right (but not the obligation), because of restrictive topography, Lot dimensions, unusual site related conditions, or other reasons, to allow variances from such minimum square footage requirements of up to ten percent (10%) of such minimum square footage requirements by granting a specific written variance.

No Dwelling erected upon a Lot shall contain more than two and one-half (2½) stories above ground level; provided, however, the ARC shall have the right but not the obligation, (because of steep topography, unique Lot configuration or similar reasons), to allow Dwelling heights greater than two and one-half (2½) stories on rear and side elevations.

9.6. **HVAC Equipment.** No heating, ventilation or air conditioning equipment or apparatus shall be installed on the ground in front of, or attached to any front wall of, any Dwelling on a Lot. Additionally, heating, ventilating and air conditioning equipment and apparatus shall be screened from view from streets by landscape Improvements, as more particularly provided in the Design Guidelines.

9.7. **Fences.** No fence or wall (regardless of the materials) shall be erected on a Lot without the prior written approval of Declarant or the ARC. No fence may be erected nearer the front lot line of the Lot than the front face of the Dwelling located on such Lot. In the case of a corner Lot, no sideyard fence shall be located nearer than the side face of the Dwelling located on such Lot. No wooden fences, or brick or stone walls, greater than six (6) feet in height are permitted. Chain link or other metal fencing is not permitted. Perimeter fencing shall not have more than fifty percent (50%) of any of its surface closed as viewed from a point on a line of sight perpendicular to the line of the fence ("**Openness Test**"). A wall constructed of brick or stone and used in lieu of a fence is exempt from the Openness Test. All fences and walls shall be erected in accordance with the provisions of the Design Guidelines. The restrictions described herein shall not apply to any Improvements originally installed by Declarant on any Common Area and/or Limited Common Area.

9.8. **Erosion and Sediment Controls.** Prior to any earth-disturbing activity, erosion and sediment control measures shall be implemented and undertaken by the Owner or Owner's Legacy Builder in accordance with the applicable provisions of the Design Guidelines.

9.9. **Waste.** No Lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. During construction of Improvements on a Lot, all rubbish and debris shall be stored and disposed of in accordance with the Rules and Regulations set forth in the Design Guidelines.

9.10. **Building Envelope.** No Dwelling or other Improvements on any Lot (including, without limitation, any stoops or porches, patios, decks, terraces, pergolas, gazebos, or garages) shall be erected or permitted to remain outside of the building envelope for that particular Lot as established by the ARC (as to each Lot, the "**Building Envelope**"). The Building Envelope approved for any Lot will be available from Declarant or the ARC on an unrecorded map, provided, however, (i) docks, piers and Private Boatslips are exempt from this Building Envelope restriction, provided that they are approved by Declarant or the ARC in accordance with the applicable provisions of the Design Guidelines; (ii) exterior steps at the front and rear of a Dwelling may project into the setback area established by the Building Envelope up to a

distance of five (5) feet; and (iii) fireplace chimney structures projecting from the side of a Dwelling may encroach no more than eighteen (18) inches into the side yard setback established by the Building Envelope. Declarant or the ARC shall have the right in its sole discretion to make exceptions to any Building Envelope to recognize any special topography, vegetation, Lot shape or dimension, or other site-related conditions. If the Zoning Ordinance or any subdivision ordinance, floodway regulation or other ordinance, law or regulation applicable to a Lot shall prescribe greater setbacks, then all Improvements erected while such requirements are in effect shall comply with such greater setback requirements.

9.11. **Temporary Structures.** No Improvements of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, basement, shack, tent, shed, garage, barn, or any other building of a similar nature shall be used as a Dwelling on any Lot, either temporarily or permanently. Declarant reserves the right to use temporary structures, such as a trailer, as its sales office until a more permanent sales office can be constructed.

9.12. **Parking; Driveways and Parking Pads; Abandoned Vehicles.** Vehicles may be parked or stored only on portions of a Lot improved for that purpose, i.e., garage, driveway, carport or parking pad. No unenclosed parking shall be constructed or maintained on any Lot except a paved driveway and an attached paved parking pad, which pad shall be designed for the parking of not more than two (2) standard-size passenger vehicles. All driveways or parking pads constructed upon any Lot shall have a concrete or brick paver surface. No mobile house trailer (whether on or off wheels), vehicle or enclosed body of the type which may be placed on or attached to a vehicle (known generally as "campers"), tractor trailer trucks or cabs, or commercial vehicle of any kind shall be parked on any street or any Lot within the Planned Community. A commercial vehicle is a vehicle which has any kind of commercial signage or writing on its exterior or which have a carrying capacity greater than or equal to three-fourths (3/4<sup>th</sup>) ton. No boat or boat trailer shall be parked on any street within the Planned Community. A boat and/or boat trailer may be parked or kept on a Lot only if it is parked in a garage or in an area of the Lot which is fully screened from the street and adjacent Lots. Screening may be either by fence or plantings, but in any case, the screening must comply with the Zoning Ordinance, be approved by the ARC and maintained by the Lot Owner at all times. No vehicle of any type which is abandoned or inoperative shall be stored or kept on any Lot in such manner as to be seen from any other Lot, any street within the Planned Community, the Common Area or any Limited Common Area, and no automobiles or mechanical equipment may be dismantled or allowed to accumulate on any Lot.

9.13. **Animals.** No animals, livestock or poultry shall be raised, bred or kept on any portion of the Property, except that dogs, cats or other household pets may be kept, but not for any commercial purposes, provided that they do not create a nuisance (in the judgment of the Board) such as, but without limitation, by noise, odor, refuse, type or damage or destruction of property or threat to the person of any Lot Owner or other person permissibly on the Property. The number of household pets kept or maintained outside the Dwelling on a Lot shall not exceed three (3) in number, except for newborn offspring of such household pets which are all under (9) months in age. Whenever they are outside of a Dwelling, dogs shall always be on a leash or otherwise confined in a manner acceptable to the Board. Animal control authorities shall be permitted to enter the Planned Community and the Property to patrol and remove pets, livestock, poultry and wild animals. All pets shall be registered, licensed and inoculated as required by

law. No fenced dog enclosure or other structure for pets may be constructed or maintained on any Lot unless approved in writing by the ARC.

9.14. **Nuisances; Business Activity.** No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No business trade or activity may be conducted on any Lot, unless permitted by the Zoning Ordinance or by Section 9.4.

9.15. **Restricted Activities in Common Areas.** No cutting of vegetation, dumping, digging, filling, destruction or other waste shall be committed in or on the Common Areas or Limited Common Areas. There shall be no obstruction of the Common Areas or Limited Common Areas, nor shall anything be kept or stored in or on the Common Areas or Limited Common Areas, nor shall anything be altered, or constructed or planted in, or removed from the Common Areas or Limited Common Areas, without the prior written consent of Declarant and the Association. Each Owner shall be liable to the Association and/or Declarant for any damage to any Common Areas or Limited Common Areas caused by the negligence or willful misconduct of the Owner or his or her family, tenants, guests, agents, employees, or invitees; provided, however, the provisions in this Section 9.15 shall not apply to Declarant in connection with Declarant's construction activities on the Property.

9.16. **Unsightly or Unkempt Conditions.** The pursuit of hobbies or other activities, including, without limitation, the assembly and disassembly of motor vehicles, lawn mowers, boats and boat engines and other mechanical devices and construction, repair and/or maintenance activities which might tend to cause disorderly, unsightly, noisy or unkempt conditions, shall not be pursued or undertaken on any Lot, other than in enclosed garages.

9.17. **Signs.** Except as otherwise required by the Zoning Ordinance, any subdivision ordinance, any sign ordinance and/or any and all applicable local ordinances, no sign of any kind shall be displayed to the public view on any Lot or Common Area, except with the prior written approval of Declarant or the ARC. The provisions of this Section 9.17 shall not apply to the placement of permanent signs identifying the Planned Community at its entrance, nor shall it prevent Declarant, its agents, or Legacy Builders from placing signs to advertise the Planned Community during the construction and sale period, including signs on the Common Area and on any Lot(s) owned by Declarant. If any Owner violates the provisions of this Section 9.17, and fails to cure such violation within ten days after receiving written notice of such failure from Declarant or the ARC, then Declarant or the ARC shall have the power and authority to enter upon the Lot of such Owner and remove any sign or signs which violate the provisions of this Section 9.17 without any liability for damages for wrongful entry, trespass, or otherwise to any Person.

9.18. **Swimming Pools.** No above ground swimming pools shall be permitted in the Planned Community, except that small, inflatable wading pools for small children not larger than 100 square feet and not higher than two (2) feet shall be permitted from April 1 – September 30 of each calendar year.

9.19. **Mail and Newspaper Boxes.** All mail and newspaper boxes shall be constructed or installed on any Lot as provided by the Design Guidelines.

9.20. **Maintenance of Lot; Construction.** Each Owner shall keep their Lot in an orderly condition and shall keep the Dwelling and the Improvements in a suitable state of repair. In the event that any residence or structure on any Lot is destroyed or partially destroyed by fire, Act of God, or as a result of any other act or thing, the Owner of such Lot shall repair the damage and reconstruct the damaged Dwelling and/or Improvements within twelve (12) months after such damage or destruction; provided, however, if the damaged Improvements are not part of or attached to the Dwelling or detached garage constructed on such Lot, the Owner may, at his/her option, either completely remove the damaged Improvements and landscape the area on which the Improvements stood or repair or reconstruct the Improvements. All construction, landscaping or other work which has been commenced on any Lot shall be continued with reasonable diligence to completion and no partially completed Dwelling or other Improvements shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion which shall not exceed the limitations set forth in Section 5(g) of the Crescent Deed Restrictions. The Owner of each Lot shall at all times keep contiguous public streets free from any dirt, mud, garbage, trash or other debris resulting from any such construction and/or reconstruction on his/her Lot or removal activities for the Owner's Lot.

9.21. **Diligent Construction.** All construction, landscaping or other work which has been commenced on any Lot must be continued with reasonable diligence to completion and no partially completed Dwelling or other Improvements shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion. All exterior construction must be completed within one (1) year after the date upon which it commenced with issuance of a certificate of occupancy within eighteen (18) months after construction is commenced, unless a longer time is approved by the ARC. Any damage to the roads, curbs or sidewalks or any part of any Common Area or any utility system caused by an Owner or Owner's Legacy Builder or such Legacy Builder's contractors or subcontractors shall be repaired by such responsible Owner. Any Legacy Builder of Improvements (and such Legacy Builder's contractors and subcontractors) on any portion of the Property shall keep such portion of the Property free of unsightly construction debris, in accordance with the construction rules established by the ARC, and shall similarly keep contiguous public and private areas free from any dirt, mud, garbage, trash, or other debris which is occasioned by construction of Improvements. The Board may levy a Special Individual Assessment against an Owner's Lot to pay for the cost of repairing any damage to roads, streets, curbs or sidewalks or any part of any road, street, Common Area, Limited Common Area or utility system, to pay for the cost of cleaning public and private areas, including public and/or private roads and streets located within the Planned Community, and to pay for the cost of the removal of dirt, mud, garbage, trash or other debris, which is occasioned by the activities of an Owner or Owner's Legacy Builder or such Legacy Builder's contractors or subcontractors during the planning, designing, locating, installing, constructing, reconstructing, rebuilding, restoring, replacing, repairing or removing of Improvements. Declarant, and each Owner, shall be responsible for erosion control protection during any earth-disturbing operation, which may be set forth in the Design Guidelines, from time to time.

9.22. **Clotheslines.** No exterior clothesline or clothes hanging device may be erected or maintained on any Lot.



9.23. **Garbage; Unsightly Storage.** All trash and rubbish shall be kept in garbage cans stored in such a manner as not to be visible from the street upon which the house fronts. No trash, rubbish, stored materials, wrecked or inoperable vehicles, mechanical devices or construction, repair and/or maintenance equipment or similar unsightly items shall be allowed to remain on any Lot; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, and other debris for collection by governmental or other similar garbage and trash removal units. Curbside trash and/or garbage pickup, trash and/or garbage cans may be moved to the street on the night before the scheduled pickup, but all garbage cans must be returned to an approved enclosure the night of the scheduled pickup.

9.24. **Exterior Maintenance.** The Owner of each Lot shall maintain the grounds and Improvements on their Lot, including, but not limited to, foundation, siding, windows, roof, soffits, driveways, sidewalks, fences, walls, plantings, landscaping and lawns, at all times in a neat and attractive manner.

9.25. **Easements.** Easements for the planning, designing, locating, installing, constructing, rebuilding, restoring, reconstructing, replacing, repairing, removing and maintaining of sanitary sewer and storm water drainage facilities and other utilities and services are reserved as shown on the Map. Within such easements, no structure, planting, or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of the utilities, or which may change the direction of flow or otherwise impede or retard the flow of water through the drainage channels within such easements. Any easements located on a Lot shall be maintained continuously by the Owner of such Lot, except for any such Improvements for which a public authority, utility company or other utility provider or service provider is responsible. Declarant reserves the right to create and impose additional easements or rights-of-way over any unsold Lot or Lots by the recording of appropriate instruments in the County Registry, and such instruments shall not be construed to invalidate any of the provisions of this Declaration. Declarant reserves an easement in and right at any time in the future to grant a ten (10) foot right-of-way over, under and along the rear and side lines of each Lot for the installation and maintenance of poles, lines, conduits, pipes and other equipment necessary to or useful for furnishing electric power, gas, telephone service, cablevision and/or other utilities, including water, sanitary sewage service and storm drainage facilities. In addition, there are trail system easements reserved by Declarant for creating a trail system within the Planned Community, as shown on the Maps. Declarant also reserves certain sight easements as shown on the Maps.

9.26. **Combination or Subdivision of Lots.** If the Owner of two (2) or more adjacent Lots desires to combine them as one Lot, then such Lots shall (except in connection with the payment of Assessments and except as provided herein) be considered as one Lot upon approval of the ARC and the recordation in the County Registry identifying the Lots to be combined. In each such case, Building Envelopes, setback lines, and easements reserved in this Declaration shall be adjusted accordingly by Declarant or the ARC. No Lot shall be subdivided by sale, lease or otherwise without the prior written consent of Declarant or the ARC, and in no case shall such consent be granted, unless such subdivision would comply with the Zoning Ordinance, the subdivision ordinance and the Crescent Deed Restrictions; provided, however, Declarant reserves the right to change the size, boundaries or dimensions of any Lot owned by Declarant for any reason.

9.27. **Unintentional Violations.** Declarant or the ARC, may, but shall not be obligated to, waive any violation of the designated and approved building setback lines on any Lot, provided that no waiver may be granted for a violation in excess of ten percent (10%) of the applicable requirements. No such waiver shall be effective unless the Lot and all Improvements are in full compliance with the applicable provisions of the Zoning Ordinance, the applicable subdivision ordinance and the Crescent Deed Restrictions, or appropriate variances have been obtained for such violation. Waivers shall be effective upon recording in the County Registry.

9.28. **Street Lighting.** Declarant reserves the right to subject the Planned Community to a contract for installation, operation and maintenance of street lighting, which contract requires continuing monthly payments to the local power company or street light provider by each residential customer.

9.29. **Enforcement.** Enforcement of this Declaration shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant herein and enforcement shall be to either restrain violation and/or to recover damages resulting therefrom. This Declaration may also be enforced by the Association pursuant to its Bylaws.

9.30. **Severability.** Invalidation of any one or more of these provisions of this Declaration by judgment or court order shall not in any way affect any of the other provisions, which shall remain in full force and effect.

9.31. **Removal of Vegetation.** No vegetation or landscaping may be removed down to the bare ground within the Lake Buffer Area or any other place on a Lot, except as specifically approved in writing by the ARC.

9.32. **Tree Removal.** Except to the extent necessary to install a driveway and dwelling foundation, trees may not be removed from any Lot without strict compliance with the Crescent Deed Restrictions and the prior written consent of Declarant or the ARC. Without limiting the foregoing, no trees shall be removed from the Lake Buffer Area or any tree buffer or tree preservation areas designated on any Map of any part of the Planned Community. The ARC may promulgate additional restrictions in the Design Guidelines with respect to tree removal and the Design Guidelines may require that all Legacy Builders provide plans for removal of any trees as part of their required submission to the ARC.

9.33. **Public Water System; No Wells for Potable Water.** Declarant shall cause to be constructed a central water system in order to provide water supplies necessary to serve the Planned Community (the "**Water System**"). All water mains, pipes and other equipment necessary for the operation and maintenance of the Water System shall be located within the utility easements described in this Declaration, or within the roadway rights-of-way. Upon completion of the Water System, Declarant or the Association shall use reasonable good faith efforts to dedicate the Water System to a regulated utility or governmental authority. All Owners are required to connect into the Water System for domestic water service. The Water System shall be the sole provider of the potable water supply to the Planned Community, and no well may be dug or constructed on any Lot for the purpose of obtaining potable water; provided, however, an Owner may submit a request to the ARC to construct a covered well for irrigation purposes.

9.34. **Marine Toilets**. No watercraft equipped with a marine toilet having a fixed or portable holding tank, or a through hull or overboard discharge toilet, shall be permitted at (i) any Waterfront Lot Owner's dock or pier, or at any Private Boatslip unless otherwise approved in writing by Declarant or the ARC, or (ii) any Marina Boatslip.

9.35. **Docks and Piers**. The Owner of a Waterfront Lot with a Pier Zone shown on the recorded Map may construct one (1) Private Boatslip within the area designated as "Pier Zone" on the Map or in any Supplemental Declaration or other document which may be filed pursuant to the provisions of this Declaration (in accordance with the applicable provisions of the Guidelines), provided that such Lot is not located in an area where the narrowness of a cove precludes construction of a Private Boatslip as determined by Duke and/or any governmental entity having jurisdiction at the time such Improvements are to be constructed. The planning, designing, locating, placement, installation, construction, rebuilding, restoring, reconstructing, replacing, repairing and maintaining or use of any Private Boatslip or other Improvements within or upon the waters of the Lake is and shall be subject to each of the following:

9.35.1. Easements, restrictions, rules and regulations for construction and use promulgated, established, and/or recorded by various parties, including but not limited to the Association, Declarant, the ARC, and Duke;

9.35.2. All laws, statutes, ordinances and regulations of all federal, state and local governmental bodies having jurisdiction thereof, including without limitation, FERC; and

9.35.3. Rules and regulations, privileges and easements affecting the Property and the waters and submerged land of the Lake established by Duke, its successors and assigns. (Duke controls access to, and the use and level of, the waters of the Lake.) All Owners, the Association, Declarant and the ARC must receive a permit from Duke (or a successor manager of the Lake, under authority from the FERC) prior to any alterations therein.

No Private Boatslip or other similar Improvements shall be constructed by Waterfront Lot Owners outside of the Pier Zone. In addition, no boat (including a houseboat) docked at a fixed pier or a floating boat dock (appurtenant to any Waterfront Lot) shall be located outside the Pier Zone and no boat or houseboat may ever be used as a Dwelling or residence. Generally, any Private Boatslip or other waterfront Improvements shall have a low profile and open design to minimize obstruction of neighbors' views. Two (2) level boat houses or docks of more than one story in height will not be allowed.

9.36. **Boat Ramps**. No boat ramps of any kind shall be permitted on any Lot, no vehicles (including, without limitation, construction vehicles) shall be allowed in the Lake Buffer Area, and no boat shall be placed in (or removed from) the waters of the Lake from any Lot, provided, however, small watercraft such as rowboats, canoes, dinghies, kayaks, paddle boats and jet skis may be launched from any Lot if launched without a ramp and without the use of a vehicle. Declarant reserves the right to create community boat ramps for which Declarant may or may not charge a fee, in Declarant's sole discretion.

9.37. **Applicability of Use Restrictions**. The foregoing Use Restrictions shall be applicable to all Single Family Lots and Waterfront Lots within the Planned Community, and

Declarant may, at its option, impose any or all of these Use Restrictions, as well as different or additional Use Restrictions, on Lots for the development of Townhomes, Patio Homes, Condominium Units and/or Commercial Lots within the Planned Community by Supplemental Declaration or other instrument.

9.38. **Compulsion to Build.** In the event that any Owner of a Single Family Lot or Waterfront Lot fails to commence construction within two years from the date of Closing, Declarant reserves the repurchase rights contained in Section 16.2 with respect to this Lot.

9.39. **Exterior Lighting.** Exterior lighting on Lots shall be subject to the applicable requirements and limitations in the Design Guidelines. Night lighting of recreational facilities on Lots is not permitted.

## **10. LOW PRESSURE SEWER SYSTEM.**

10.1. **Low Pressure Sewer System to Serve Planned Community.** Due to the Planned Community's proximity to Lake Wylie, the sewerage needs of most Single Family Lots within the Planned Community will be served by a low pressure sewer system designed to minimize the environmental impact of the development of the Planned Community on Lake Wylie and its surrounding environs (the "**Low Pressure Sewer System**"). The Low Pressure Sewer System will be monitored by and must meet performance standards acceptable to the South Carolina Department of Health and Environmental Control ("**DHEC**"). DHEC places primary responsibility for the maintenance and performance of the Low Pressure Sewer System on the County in which the Low Pressure Sewer System is located (York County, South Carolina). York County has made it clear to Declarant that it would approve no developments with a Low Pressure Sewer System unless adequate controls and funding mechanisms are put in place to ensure that the developments served by a Low Pressure Sewer System assume primary responsibility for planning, designing, locating, placing, installing, constructing, rebuilding, restoring, reconstructing, replacing, repairing and maintaining such Low Pressure Sewer System. Accordingly, the provisions of this Article 10, and the provisions of Section 1.51, Section 5.3.4 and 7.7 may not be amended, revoked or modified without the express written consent of York County, which express written consent must be approved in the manner prescribed by law by the York County Board of County Commissioners or its successor. The Non-Reimbursable Agreement with Developer for Extension of County Water and Sewer Utility Service is attached as **Exhibit B** to this Declaration (the "**Non-Reimbursable Agreement**").

10.2. **Development of Low Pressure Sewer System.** Declarant shall, at its sole cost and expense, design, construct and pay for all capital costs required for the design, placement, installation and construction of the water lines and sewer collection lines to serve the Planned Community, and shall convey such water lines and sewer collection lines, together with all pump stations, elevated storage tanks, treatment facilities, necessary easements and rights of way within the Planned Community to service all of the foregoing and such other facilities and appurtenances necessary and appropriate to provide water, sewer or other utility services through, under, over or beyond the Planned Community. Without in any way limiting the foregoing, Declarant represents that it has entered into the Non-Reimbursable Agreement attached as **Exhibit B**.

10.3. **Installation and Maintenance of Privately Owned Pump Units.** Each Lot Owner who is served by the Low Pressure Sewer System authorizes Declarant to construct, or contract with a third party to construct a Pump Unit to obtain its sewerage service through the Low Pressure Sewer System. The Lot Owner agrees to have installed on such Lot, at such Lot Owner's sole fee, cost and expense, prior to applying for a Certificate of Occupancy for such Lot, an individual grinder pump and a 1 1/4" diameter schedule 80 PVC pump line from the Dwelling to the valve box at the public right-of-way fronting the Lot (each such grinder pump unit, all equipment associated therewith, and the line are collectively referred to as a "**Pump Unit**"). The Sample Grinder Pump Unit Installation Agreement is attached as Exhibit A to the Non-Reimbursable Agreement.

10.4. **Initial Low Pressure Sewer Assessments.** As provided in Section 5.3.4, each time Declarant sells a Lot which is to be connected to and served by the Low Pressure Sewer System to a third party, whether a Legacy Builder or otherwise, the Association shall assess, and Declarant shall collect on behalf of the Association at Closing, and remit to the Association's Management Company, to be held in a special escrow account on behalf of the Association, an Initial Low Pressure Sewer Assessment. The amount of the Initial Low Pressure Sewer Assessment shall be sufficient to cover the contract costs for the design, placement, construction and installation of a Pump Unit on such Lot together with an amount equal to two (2) years of maintenance costs and estimated reserves for repairing, rebuilding, restoring, reconstructing and replacing the same (and/or portions thereof) from time to time (the "**Service and Maintenance Costs**"), which shall be held and disbursed by the Association's Management Company as follows: (i) to the costs of planning, engineering, locating, designing, placing, constructing and installing a Pump Unit on the Lot for which such Initial Low Pressure Sewer Assessment was collected; (ii) to the first year's service and maintenance costs required for such Lot under the SMA; and (iii) to the second year's service and maintenance costs required for such Lot under the SMA. Any Lot that is served by the Low Pressure Sewer System shall also be subject to Sewer Assessments, as provided in Section 5.3.

10.5. **Service and Maintenance Agreements for Pump Units.** At the time each Lot Owner acquires a Lot from Declarant which is to be connected to and served by the Low Pressure Sewer System, the Lot Owner and the Association shall enter into a Homeowner's Service & Maintenance Agreement – Subdivision Grinder Pump Units ("**SMA**") with a qualified contractor designated by the Association and approved by York County ("**SMA Contractor**") substantially in the form set forth in Exhibit B to the Non-Reimbursable Agreement. Notwithstanding the foregoing, it is understood that any costs or rates described in Exhibit B to the Non-Reimbursable Agreement are for illustrative purposes only, and that the SMA Contractor may set its own rates above or below such illustrative rates. If, for any reason, the Lot Owner fails to execute and deliver the SMA to the appropriate parties, the Lot Owner as well as the Lot Owner's personal representatives, heirs, successors and assigns and the Association shall and agree to be bound to the SMA Contractor designated by the Association and approved by York County for the then current fees charged by the SMA Contractor for SMAs in the Planned Community with the Lot Owner being bound to the same extent as if the Lot Owner had signed the SSC (as defined in Section 10.6), the terms and conditions of which SMA are incorporated herein by reference and which is hereby modified to apply to such Lot Owner's Lot. The Association shall have the right to collect such fees charged by the SMA Contractor as Special Assessments in the same manner and with the same remedies for other uncollected

Assessments provided for in Article 5. The SMA applicable to each Lot Owner's Lot shall in all events be binding on each Lot Owner as well as on such Lot Owner's personal representatives, heirs, successors and assigns and shall be both a personal obligation and a covenant running with the Land constituting each Lot and a lien enforceable against the Lot.

10.6. **Residential/Commercial Sewer Service Contracts.** At the time each Lot Owner acquires a Lot from Declarant which is to be connected to and served by the Low Pressure Sewer System, the Lot Owner shall be required to execute and deliver to York County a Residential/Commercial Sewer Service Contract Agreement ("**SSC**") substantially in the form attached as Exhibit C to the Non-Reimbursable Agreement. If, for any reason, the Lot Owner fails to execute and deliver the SSC to York County, the Lot Owner, as well as the Lot Owner's personal representatives, heirs, successors and assigns shall and agree to be bound to York County to the same extent as if the Lot Owner had signed such SSC, the terms and conditions of which SSC are incorporated herein by reference and which is hereby modified to apply to such Lot Owner's Lot. The Association shall have the right to collect any sums due York County under the SSC as Special Individual Assessments in the same manner and with the same remedies for other uncollected Assessments provided for in Article 5. The SSC applicable to each Lot Owner's Lot shall in all events be binding on each Lot Owner as well as on such Lot Owner's personal representatives, heirs, successors and assigns and shall be both a personal obligation and a covenant running with the Land constituting each Lot and a lien enforceable against the Lot. In addition, the form of easement which each Lot Owner will need to grant is attached as Exhibit D to the Non-Reimbursable Agreement,

## **11. COMMUNITY MARINA.**

11.1. **Community Marina.** Declarant reserves the right to develop within the Planned Community one or more Community Marinas as commercial for-profit enterprises containing Marina Boatslips for sale, lease and/or license to Lot Owners, as well as boat storage areas or R/V trailer storage. In order to create the Community Marina(s), Declarant may annex land for the Community Marina(s) and may unilaterally amend and/or supplement this Declaration, or at Declarant's option create a separate Declaration, Master Deed, Master Lease and/or other organizational documents to create a horizontal property regime pursuant to which the Community Marina shall be owned, leased, licensed and/or operated. Declarant shall file plats or maps showing the location of and identifying each Marina Boatslip within the Planned Community, including the location over the waters of the Lake of each Marina Boatslip, so that the right to use the same may be conveyed to Lot Owners purchasing, leasing, licensing and/or obtaining a license for any such Marina Boatslip (as applicable), and so that any such Marina Boatslip interest to the extent conveyable and/or transferable may be subsequently conveyed and transferred to other Lot Owners. Declarant may retain the right to the land and facilities comprising the Community Marina, or convey it to another party. Notwithstanding how title is held to the land and improvements comprising the Community Marina, all compensation paid by purchasers, lessees, licensees and/or other users of Marina Boatslips within the Community Marina shall be payable to and remain the property of Declarant, its successors and assigns. Declarant further reserves the right to unilaterally impose additional rules and regulations in the organizational documents of the Community Marina (or in other documents) as to the use of the Marina Boatslips and related Amenities within the Community Marina. The Community Marina may also be made available for owning, leasing, and/or licensing by Owners of Lots or Units

contained in any Additional Property, but subject to the terms and conditions of this Article 11 and such other terms and conditions as Declarant, its successors and assigns shall impose, provided, however, that nothing shall obligate Declarant, its successors and assigns to make the same available to any Owner of any Lots or Units located on any Additional Property.

11.2. **Number of Boatslips.** The number of Marina Boatslips located within the Community Marina shall be determined by Declarant's permits to be obtained in accordance with rules and regulations promulgated by Duke and the FERC.

11.3. **Reservation of Shoreline.** The total number of linear feet of the Lake's shoreline contained in the Land subjected to this Declaration (described in Exhibit A), plus the total number of linear feet of the Lake's shoreline contained in any Additional Property which may be annexed to the Planned Community pursuant to Section 2.2, shall be used in the calculation of how many Marina Boatslips within the Community Marina may be located within the Planned Community pursuant to rules and regulations adopted by Duke and FERC. The reservation of shoreline for purposes of calculating how many Marina Boatslips within the Community Marina may be permitted shall not prevent a Waterfront Lot Owner with a Pier Zone shown on a recorded Map from constructing a Private Boatslip within such Pier Zone in accordance with Section 9.35.

## **12. GENERAL PROVISIONS.**

12.1. **Enforcement.** Declarant (as long as Class C Membership exists), the Association or any Lot Owner shall have the right to enforce, by a proceeding at law or in equity, the terms, covenants, conditions and restrictions of the Declaration. Failure by the Association or by any Lot Owner to enforce any term, covenant, condition or restriction herein shall not be deemed a waiver of the right to do so thereafter.

12.2. **Severability.** Invalidation of any one or more of these covenants, conditions or restrictions by judgment or court order shall not affect any other of the same or any other provision of this Declaration, all of which shall remain in full force and effect.

### **12.3. Amendment.**

12.3.1. This Declaration shall run with the land for a term of twenty (20) years from the date of recording of this Declaration or the last Supplemental Declaration or amendment thereto, and shall inure to the benefit of Declarant (as long as Class C Membership exists), the Association or any Lot Owner or their respective personal representatives, heirs, successors, and assigns. This Declaration shall thereafter automatically be extended for an unlimited number of successive periods of ten (10) years.

12.3.2. Except as otherwise expressly provided and subject to the limitations hereinafter contained, this Declaration may be amended or modified at any time by a vote of no less than sixty-seven percent (67%) of all votes entitled to be cast by the Members, which vote is taken at a duly held meeting of the Members at which a quorum is present, all in accordance with the Bylaws. Provided, however, if sixty-seven percent (67%) of all votes entitled to be cast by the Members is not obtained at such a meeting, then this Declaration may also be amended by obtaining the additional written consents to such amendment of Members holding a sufficient

number of votes to comprise, along with such voting Members, a total of sixty-seven percent (67%) of all votes entitled to be cast by Members. In addition, any amendment or modification to this Declaration must be consented to by Declarant so long as Declarant is the Owner of any Lot or other portion of the Property, which consent Declarant may grant or withhold in its sole discretion. Any amendment or modification upon which the vote of Members is required pursuant to this Section 12.3.2 shall become effective when an instrument executed by the Members voting for such amendment or modification is filed of record in the County Registry; provided, however, such an amendment or modification, in lieu of being executed by the Members voting for such amendment or modification, may contain a certification of the Secretary of the Association (as set forth in Section 12.3.3) stating that the amendment or modification has been voted on and approved by the requisite number of votes of the Members, as provided in this Section 12.3.2.

12.3.3. If an amendment is executed, each such amendment shall be delivered to the Association's Board which shall, within sixty (60) days:

To reasonably assure itself that the amendment has been executed or approved by the Lot Owners of the required number of Lots (for this purpose, the Board may rely on its roster of Members, and shall not be required to cause the title to any Lot to be examined); and

Attach a certification in substantially the following form:

*CERTIFICATION*

*By authority of its Board, Handsmill Property Owners Association, Inc. certifies that the foregoing instrument has been duly executed or approved by Lot Owners of sixty-seven percent (67%) of the Lots in the Planned Community and is therefore a valid amendment to the Declaration recorded in Book \_\_\_\_\_ Page \_\_\_\_\_ in the Office of the Clerk of Court for York County, South Carolina.*

*Handsmill Property Owners Association, Inc.*

By: \_\_\_\_\_  
*Secretary*

Within thirty (30) days after its certification of the amendment, the Association's Board shall cause the amendment to be recorded in the County Registry. All amendments shall be effective from the date of recordation in the County Registry.

12.3.4. Notwithstanding the terms of Section 12.3.2, for a period of ten (10) years after the recordation of this Declaration, Declarant, without obtaining the approval of any Member or any Owner or Owners other than Declarant, shall have the unilateral right, in its sole and absolute discretion, to make any amendments or modifications which Declarant deems necessary or desirable, including, without limitation, amendments or modifications to any procedural, administrative or substantive provision of this Declaration. Furthermore, at any time during the term of this Declaration, Declarant, without obtaining the approval of any Member or any Owner, shall have the unilateral right, in its sole and absolute discretion, to make any amendments or modifications which are either (i) correctional in nature and do not involve a



change which materially adversely affects the rights, duties or obligations specified herein, or (ii) necessary to cause this Declaration or any Supplemental Declaration to comply with the requirements of FHA, VA, the Federal National Mortgage Association or other governmental agency. In no event shall any provision of this Declaration which creates a right in favor of Declarant, including without limitation this Section 12.3.4, be amended without Declarant's prior written consent, which consent may be withheld in Declarant's sole discretion. Any amendment to this Declaration by Declarant need only be executed by Declarant, and shall be effective when recorded in the County Registry.

12.4. **Disputes.** In the event of any dispute arising concerning a provision of this Declaration, such dispute shall be settled by legal proceedings or the parties may, by mutual agreement, submit the dispute to a committee appointed by the Association for this purpose, and once submitted, the parties agree to be bound by the decision of that committee.

12.5. **Voting.** Voting by Members of the Association shall be in accordance with the applicable provisions set forth in this Declaration and the Bylaws.

12.6. **Member Addresses.** Each Owner agrees to keep the Association informed, in writing, of his or her address at all times and any notice sent or delivered to that address shall be sufficient. Each new Owner agrees to provide the Association with evidence of ownership of his Lot for preparation of a membership roster and the roster, as so completed, shall be sufficient evidence as to the ownership of each Lot.

12.7. **Gender and Grammar.** All words and phrases in this Declaration shall be construed to include the singular or plural number, and the masculine, feminine, or neuter gender, as the context requires.

12.8. **Lot Owner Responsibility.** Notwithstanding anything in this Declaration to the contrary, a Lot Owner shall be responsible for any and all violations of these Declarations by his or her employees, agents, tenants, visitors, guests, immediate family members, invitees and licensees. When a party to this Declaration consists of more than one individual or entity, such party's liability hereunder shall be joint and several.

12.9. **Construction.** This Declaration shall be construed in accordance with the laws of South Carolina without giving effect to its conflict of laws principles. In case of any conflict among the Declaration and the Articles or the Bylaws, the Declaration shall control, except to the extent it is inconsistent with the Crescent Deed Restrictions. To the extent any provisions of the Declaration, the Association's Articles or Bylaws violate the Crescent Deed Restrictions, such provisions shall be deemed amended and shall be construed to the extent necessary to comply with the Crescent Deed Restrictions.

12.10. **Exhibits.** All Exhibits and Schedules, if any, attached to this Declaration are hereby incorporated by reference and made a part of this Declaration. The term "**Declaration**" as used herein shall be deemed to include all supplements and amendments (however the same may be denominated) including, but not limited to, any Supplemental Declaration and/or Additional Declaration and all Exhibits and Schedules (however the same may be denominated) to any and all of the foregoing.

12.11. **Remedies.** In the event of any default in and/or breach of any of the terms, covenants, conditions, restrictions and provisions of this Declaration (either actual or threatened) the party or parties who are thereby aggrieved shall have the right to specific performance and/or injunction in addition to any and all other rights and remedies at law or in equity. The rights and remedies provided by this Declaration are distinct and cumulative and the use of any one right or remedy by any party shall not preclude or waive its right to use any or all other remedies. No delay or omission of a party to exercise any right or power arising from any default on the part of the other shall impair any such right or power, or shall be construed to be a waiver of any such default or acquiescence therein. The rights and remedies provided herein are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

12.12. **Termination.** Any termination of the Planned Community shall be effected by a vote of no less than one hundred percent (100%) vote of each class of membership in the Association entitled to vote, together with approval by Declarant and one hundred percent (100%) of the Eligible Mortgagees.

12.13. **Attorneys' Fees.** In any action brought to enforce provisions of this Declaration, the Association's Articles or Bylaws, or rules or regulations duly adopted by the Association, the prevailing party in such action shall be entitled to collect reasonable attorneys' fees awarded by the court having jurisdiction over such action.

### **13. ARCHITECTURAL AND SITE DESIGN.**

13.1. **General.** No Improvements, including, without limitation, any type of site preparation or land disturbing activity on any Lot, or erection of Dwellings, buildings or exterior additions or alterations to any Dwelling or building situated upon the Property, or any landscaping, heavy underbrushing, or tree removal on any Lot or in the Lake Buffer Area, shall be commenced, erected or maintained on any portion of the Property, until: (a) Declarant or ARC has approved the plans and specifications therefor and the location of such Improvements and has given its written approval for commencement of construction, in accordance with the terms and requirements in the Design Guidelines; and (b) the fees set forth in the Design Guidelines have been paid. The provisions of this Section 13.1 shall not apply to the construction of any Improvements commenced, erected or maintained by Declarant on any Lot or upon any of the Common Areas or Limited Common Areas. The Board may delegate to the ARC any powers or authority reserved or granted to the Board.

13.2. **Composition of Architectural Review Committee.** So long as Declarant owns any Lot or other portion of the Property, the members of the ARC shall be appointed and removed by Declarant. When Declarant no longer owns any Lot or other portion of the Property or at an earlier date if Declarant releases its right to appoint the members of the ARC, the Board shall have the authority to appoint and remove the members of the ARC. The ARC will be composed of at least three (3) and not more than five (5) individuals, the exact number of members of the ARC to be designated from time to time by the party then having the authority to appoint such members (Declarant or the Board, as the case may be). The members of the ARC need not be Owners of Property in the Planned Community. In the event of the death, resignation or removal of any member of the ARC, the party then having the authority to appoint members to the ARC shall have full authority to designate and appoint a successor. Members of

the ARC may be removed and replaced at any time, with or without cause, and without prior notice, by the party then having the authority to appoint such members. The ARC shall have the right, power and authority to employ and/or use the services of any architects, engineers and/or other professionals as it deems necessary or advisable, in its sole discretion, to carry out the duties and obligations of the ARC as described herein. Reference is hereby made to Article 8 for additional provisions regarding the ARC.

13.3. **Design Guidelines.** The ARC shall, from time to time, publish and promulgate Architectural and Site Design Guidelines (the “**Design Guidelines**” or “**Guidelines**”). The Design Guidelines shall be explanatory and illustrative of the general intent of the development of the Property and are intended as a guide to assist the ARC in reviewing plans and specifications for Improvements. The Design Guidelines shall also set out, among other things, the procedures for submission, review and approval of plans and specifications (for the construction of Improvements) to the ARC and the fees to be imposed by the ARC, as more specifically described in Section 13.8. The Design Guidelines may be revised, amended, supplemented and/or adopted at any time by Declarant or by the ARC, with Board approval, and shall not constitute, in every event, the basis for approval or disapproval of plans, specifications and other materials (for the construction of Improvements) submitted to the ARC for approval.

13.3.1. The Design Guidelines shall also be explanatory and illustrative of the general intent of the landscape development of the Property and are intended as a guide to assist the ARC in reviewing plans and specifications for landscape Improvements. In addition, the Design Guidelines shall establish approved standards, methods and procedures for landscaping, landscape management and landscape maintenance in the Property, including the removal of trees and allowed activities within the Lake Buffer Areas. Such authorized standards, methods and procedures shall be used by Owners and their contractors and subcontractors, and the approval by the ARC of any landscaping plan or other landscaping improvement in connection with landscaping on a Lot or other portion of the Planned Community shall be primarily, but not exclusively, based upon the conformity of such plan or landscaping improvement with the Design Guidelines.

13.3.2. The ARC is also hereby authorized to publish and promulgate from time to time, and revise and amend at any time in its sole discretion, construction rules to be followed by all Owners and Legacy Builders performing work or constructing or installing Improvements (including landscape Improvements) on the Property. Upon approval of the Board, the ARC may issue and amend the Design Guidelines from time to time.

13.3.3. The ARC and the Board may work together to jointly develop a process for appealing ARC decisions by creating, through a separate agreement, a fair and reasonable mechanism for perfecting or submitting an appeal.

13.4. **Definition of “Improvements”.** The term “**Improvement**” or “**Improvements**” shall mean and include any and all man-made changes or additions to any portion of the Property, including, but not limited to, the location, materials, size, construction and design of all buildings (including any exterior devices attached to or separate from buildings, such as heating, ventilating and air conditioning equipment, solar heating devices, antennae, satellite dishes, etc.); pools, courts (basketball, tennis, shuffleboard, volleyball, handball, racquetball, croquet, bocce,

badminton, baseball, football, soccer, and any other type of court or playing field), play yards and playground facilities; piers, docks and boatslips; roofed structures; parking areas; fences; statuary and fountains; pet "runs," lines and similar tethers or enclosures; landscaping (including cutting trees); hedges; mass plantings; irrigation equipment, apparatus and systems; driveways; signs; site preparation; changes in grade or slope; exterior illumination; and changes in any exterior color, size, configuration or shape. The definition of Improvements includes both original Improvements and all later changes to Improvements. The definition of Improvements, however, does not include the rebuilding, restoring, reconstructing, replacing or repairing of Improvements previously approved by the ARC, provided the same does not change exterior colors, materials, designs, color, size, configuration, shape, quality or appearances from those previously approved by the ARC.

### 13.5. **Enforcement.**

13.5.1. Declarant intends that the architectural control provisions of this Declaration shall permit control of the architectural design and landscaping, establish quality standards for construction and construction activity in the Planned Community, and help preserve values of properties in the Planned Community. All Owners, by purchasing property subject to this Declaration, acknowledge that a violation of any such provisions could result in irreparable harm and damage to other Owners of property in the Planned Community and to Declarant, and to the values of their respective properties in the Planned Community, a monetary measure of which harm and damage would be difficult to establish. Accordingly, the Association shall have the specific right (but not the obligation) to enforce and/or to prevent any violation of these provisions by a proceeding at law or in equity against the Person or Persons violating or attempting to violate any such provisions. Declarant hereby specifically reserves and grants unto itself and the ARC, the Board and any agent or member thereof, the right of entry and inspection upon any portion of the Property for the purpose of determination by the ARC, Declarant and/or the Board whether there exists any construction of any Improvement which violates the terms of any approval by the ARC, the terms of the Design Guidelines, the terms of this Declaration or any Supplemental Declaration or Additional Declaration, or the terms of any revisions, amendments or supplements to any of the foregoing.

13.5.2. As to nonconforming or unapproved Improvements, the Association may require any Owner to restore such Owner's Improvements to the condition existing prior to the construction thereof (including, without limitation, the demolition and removal of any unapproved Improvements) if such Improvements were commenced or constructed in violation of Article 8, this Article or any other portion of this Declaration. In addition, the Association may, but has no obligation to, cause such demolition, removal and restoration to be performed and to levy the amount of the cost thereof as a Special Individual Assessment against the Lot and/or portion of the Property upon which such Improvements were commenced or constructed. In the event that it becomes necessary to resort to litigation to determine the propriety of any constructed Improvement, to remove any non-conforming or unapproved Improvement or otherwise to remedy a violation of the Design Guidelines, the Association shall be entitled to recover court costs, attorneys' fees and expenses incurred by the Association, the Board and/or the ARC in connection therewith, which costs, fees and expenses may be levied as a Special Individual Assessment against the Lot and/or other portion of the Property upon which such Improvement was commenced or constructed.

13.6. **Failure of the Architectural Review Committee to Act.** All submittals to the ARC shall (i) be full and complete, (ii) be accompanied by the required Architectural Review Fees and (iii) comply with this Declaration and the Design Guidelines including, but not limited to, the provisions of Article 8 ("**Complete Submittal**"). If the ARC fails to notify a Person making a submittal that the same is not a Complete Submittal or approve or disapprove any Complete Submittal within thirty (30) calendar days after receipt, the party that made the submittal or Complete Submittal, respectively, shall give the ARC ten (10) business days prior written notice to act upon such submittal or Complete Submittal. If the ARC fails to act within such ten (10) business day period, the submittal or Complete Submittal, as the case may be, shall be deemed to be approved. If the plans and specifications submitted do not constitute a Complete Submittal, the ARC may, in addition to its other rights, reject them as being inadequate or may approve or disapprove part, conditionally or unconditionally, and reject or approve the balance. The ARC may request the submission of samples of proposed construction materials and the party receiving the request shall provide the same promptly. The ARC shall be the sole and absolute arbiter as to when a submittal is a Complete Submittal.

13.7. **Variances.** Upon submission of a written request for a variance, the ARC may, from time to time, in its sole discretion, permit Owners to construct, erect or install Improvements which are at variance with restrictions, requirements or provisions of this Declaration. In any case, however, such variances shall conform and blend effectively with the general architectural style and design of the Planned Community and shall not materially change the scheme of Use Restrictions and/or other restrictions, covenants and conditions established by this Declaration. Written requests for variances shall be deemed to be disapproved in the event the ARC has not given written approval within thirty (30) business days of the submission of such request. No member of the ARC shall be liable to any Owner for any claims, causes of action, or damages arising out of the grant or denial of any variance to any Owner pursuant to this Article 13 (except where caused by willful misconduct of such member). Each request for a variance shall be separately reviewed on its own merits and the grant of a variance to any Owner shall not constitute a waiver of the ARC's right to strictly enforce the covenants, conditions, restrictions and architectural standards (including, but not limited to, the Design Guidelines) provided under this Declaration against any other Owner.

13.8. **Fees and Construction Escrow Deposit Required by the Architectural Review Committee.** The Design Guidelines require that each Person submitting plans and specifications for Improvements to the ARC pay one or more fees to the ARC or to Declarant as a condition to commencement of construction of such Improvements. Such fee(s), including the amount(s), payee and purpose(s) thereof shall be established by, and may be increased from time to time by, the ARC and shall be set forth in the Design Guidelines. The ARC, in its sole discretion, may require that each Lot Owner submitting plans and specifications for construction pay a construction escrow deposit to the Association to be held for the purposes set forth in the Design Guidelines.

13.9. **No Construction without Payment of Fees.** Plans and specifications for Improvements to be constructed on a Lot or other portion of the Property shall not be deemed to be a Complete Submittal unless and until any and all fees required by the Design Guidelines, have been paid to the ARC or Declarant.

13.10. **Notices and Submittals.** Notices and submittals to the ARC shall be in accordance with the notice provisions set forth from time to time in the Design Guidelines.

13.11. **Limitation of Liability.** No member of the ARC shall be liable for claims, causes of action or damages (except where caused by willful misconduct of such member) arising out of services performed pursuant to this Article 13. Neither Declarant, the Association, the ARC, nor any officers, directors, managers, members, employees, agents or affiliates of any of them, shall be liable for claims, demands, causes of action, damages or otherwise to any Person submitting plans and specifications, and other submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval of, or the failure to approve or disapprove of, any plans, specifications, other submittals and/or Improvements. The approval of plans and specifications by the ARC shall not be deemed or construed as a representation or warranty of the ARC, Declarant, or any officer, director, manager, member, employee, agent or affiliate of any of them: (i) that Improvements constructed in accordance with such plans and specifications will comply with the Zoning Ordinance or any other applicable zoning ordinance, subdivision ordinance, building code, or other governmental or quasi-governmental laws, ordinances, rules and regulations or (ii) as to the structural soundness, quality, durability, suitability, fitness or proper functioning of Improvements constructed in accordance with such plans and specifications. Every Person who submits plans and specifications, and every Owner, agrees that such Owner will not bring any action or suit against Declarant, the Association, any other association, the ARC, the Board, and/or the officers, directors, managers, members, employees, agents or affiliates of any of them, to recover any such damages and each said Person and Owner hereby releases, demises, and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given. Declarant shall be the sole party responsible for the performance of Declarant's obligations under this Declaration, and no other person, firm or entity, including, without limitation, any entity affiliated with Declarant, shall have any obligation or liability for Declarant's obligations under this Declaration.

13.12. **Miscellaneous.** Members of the ARC, in the sole discretion of the party appointing such members (i.e., either Declarant or the Board, as the case may be) may be compensated for their services. The Association shall reimburse members of the ARC for reasonable out-of-pocket expenses associated with performing their duties as ARC members. All costs, expenses and fees (including reasonable attorneys' fees) of the ARC, including those incurred in connection with the exercise of their enforcement or other powers as provided herein, shall be borne by the Association; provided, however, nothing shall be deemed to negate the Association's right to an award of court costs, attorneys' fees and expenses in accordance with Section 13.5.

13.13. **Compulsion to Build.** Declarant intends to impose a requirement on selected Lots to commence construction within twenty-four (24) months of the closing on the Lot. This requirement will be imposed as a deed restriction, and will run with the land. In the event that an Owner who has this deed restriction fails to commence construction within the twenty-four (24) month period, the provisions of Article 16 will apply, and Declarant may exercise its right to repurchase the Lot.

## 14. RIGHTS OF MORTGAGEES.

14.1. **Rights of Mortgagees.** Any Mortgagee shall have the following rights:

14.1.1. to be furnished at least one (1) copy of the annual financial statement and report of the Association, such annual statement and report to be furnished once each calendar year within ninety (90) days following the end of each fiscal year;

14.1.2. to be given notice by the Association of the call of any meeting of the Association's membership, and to designate a representative to attend such meetings;

14.1.3. to be given notice of default under the Declaration, the Bylaws or any rules and regulations promulgated by the Association by any Owner owning a Lot encumbered by a Mortgage held by the Mortgagee, such notice to be sent to the principal office of such Mortgagee or the place which it may designate in writing;

14.1.4. to be given notice of any material casualty loss to the Common Areas, or material loss by eminent domain or other taking of (i) the Common Areas, or (ii) any Lot encumbered by a Mortgage held by the Mortgagee;

14.1.5. to be given notice of any casualty loss or loss by eminent domain or other taking of any Lot encumbered by a Mortgage held by the Mortgagee;

14.1.6. to be given notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

14.1.7. to be given notice of any eminent domain or condemnation proceeding affecting a material portion of, or a portion of the Property that has a material impact on, the Property secured by Mortgagee's Mortgage.

14.2. **Notice; Definition of Eligible Mortgagee.** Whenever any Mortgagee desires the provisions of this Section 14.2 to be applicable to it, it shall serve written notice of such fact upon the Association by certified mail, return receipt requested, addressed to the Association and sent to its address stated in the Bylaws. The notice shall identify the Lot or Lots upon which any such Mortgagee holds any Mortgage or identify any Lot owned by it, together with sufficient pertinent facts to identify any Mortgage which may be held by it and which notice shall designate the place and Person to which notices are to be given by the Association to such Mortgagee. When a Mortgagee has given the written notice permitted by this Section 14.2, it shall be considered an Eligible Mortgagee.

14.3. **Books and Records.** Any Eligible Mortgagee will have the right to examine the books and records of the Association once during each calendar year during reasonable business hours upon reasonable prior written notice to the Association.

14.4. **Payment of Taxes and Insurance Premiums.** The Eligible Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may become or have become a charge or lien against the Common Areas and/or Limited Common Areas and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon

the lapse of a policy for property owned by the Association and the Persons making such payments shall be owed immediate reimbursement from the Association.

## **15. CONDEMNATION.**

15.1. **Partial Taking without Direct Effect on Lots.** If part of the Property shall be taken or condemned by any authority having the power of eminent domain, but no Lots are taken, all compensation and damages for and on account of the taking of the Common Areas and/or Limited Common Areas, exclusive of compensation for consequential damages to certain affected Lots, shall be paid to the Board in trust for all Owners and their Mortgagees according to the loss or damages to their respective interests in such Common Areas and/or Limited Common Areas. The Association, acting through the Board, shall have the right to act on behalf of the Owners with respect to the negotiation and litigation of the issues with respect to the taking and compensation affecting the Common Areas and/or Limited Common Areas, without limitation on the right of the Owners to represent their own interests. Each Owner, by acceptance of a deed to a Lot, hereby appoints the Association as his or her attorney-in-fact to negotiate, litigate or settle on his or her behalf all claims arising from the condemnation of the Common Areas and/or Limited Common Areas. The proceeds from any condemnation shall be used to restore the Common Areas and/or Limited Common Areas with the excess, if any, to be retained by the Association and applied to future operating expenses by the Board, in its sole and absolute discretion. Nothing prevents Owners whose Lots are specifically affected by the taking or condemnation from joining in the condemnation proceedings and petitioning on their own behalf for consequential damages relating to loss of value of the affected Lots, or the Improvements, fixtures and/or personal property located on the affected Lots, exclusive of damages relating to the Common Areas and/or Limited Common Areas. In the event that the condemnation award does not allocate consequential damages to specific Owners, but by its terms includes an award for reduction in value of Lots without such allocation, the award shall be divided between affected Owners and the Association, as their respective interests may appear, by the Board in its sole and absolute discretion.

15.2. **Partial or Total Taking Directly Affecting Lot.** If part or all of the Property shall be taken or condemned by any authority having the power of eminent domain, such that any Lot or a part thereof (including specific easements assigned to any Lot) is taken, the Association shall have the right to act on behalf of the Owners with respect to Common Areas and/or Limited Common Areas as provided in Section 15.1 and the proceeds shall be payable as outlined therein. The Owners directly affected by such taking shall represent and negotiate for themselves with respect to the damages affecting their respective Lots. All compensation and damages for and on account of the taking of any one or more of the Lots or improvements, fixtures and/or personal property thereon, shall be paid to the Owners of the affected Lots and their Mortgagees, as their interests may appear. If all of the Property shall be taken such that the Association no longer has reason to exist and shall thereafter be dissolved and/or liquidated, all compensation and damages for and on account of the taking of the Common Areas shall be distributed with the other assets of the Association in accordance with the Articles.

15.3. **Notice to Mortgagees.** A notice of any eminent domain or condemnation proceeding shall be sent to all Mortgagees who have served written notice upon the Association in accordance with Section 14.1.



## 16. LOT RESALES

16.1. **Applicability.** Except for sales and conveyances by Declarant, no Lot (whether improved or unimproved) may be sold by any Owner except in compliance with the provisions of this Article 16.

16.2. **Right of First Refusal.** Before any Lot (or any ownership interest therein) may be sold to any Person other than Declarant or its successors for less than the contract purchase price paid to Declarant by the first Owner of such Lot other than Declarant (the "**Original Purchase Price**"), the Owner or Owners of such Lot shall first offer in writing to sell the Lot to Declarant (or its successors in title and assigns) for the Original Purchase Price less ten percent (10%) ("**Declarant's Repurchase Price**"). Before acceptance by an Owner of a bona fide offer to purchase a Lot, such Owner shall send to Declarant a copy of such bona fide offer along with written notice that the Owner is offering the Lot for sale to Declarant pursuant to this Section 16.2. If Declarant does not accept or reject in writing the offer of sale within ten (10) days from the date of receipt of the same, then the Owner of such Lot shall have the right to sell the Lot to the third party upon the terms and conditions of the bona fide offer, without any further additional obligation to offer the Lot to Declarant. Declarant shall have this right of first refusal with regard to each bona fide offer which an Owner receives for purchase of a Lot. Any Owner who buys a Lot from another Owner shall be governed by the provisions of this Article and the waiver of the right of first refusal with respect to any sale shall not limit Declarant's rights of first refusal with respect to any subsequent sale of any Lot. Provided, however, the right of first refusal reserved by Declarant shall be valid and enforceable with respect to any Lot only for a period of twenty (20) years from the date of the first conveyance of such Lot from Declarant to an Owner other than Declarant, and upon the expiration of said twenty (20) year period, the Owner or Owners of such Lot shall have the right to sell the Lot to any Person at any price without the obligation to offer the Lot to Declarant. This Section 16.2 and each subpart thereof and Section 16.3.2 (a) and Section 16.3.2 (d) shall not be applicable with respect to any foreclosure sale of a first lien Mortgage on a Lot or deed in lieu thereof which is made and delivered in good faith. In each instance where an offer to purchase a Lot is presented to Declarant by an Owner pursuant to the right of first refusal granted herein, Declarant shall determine in its sole discretion and on a case by case basis whether to exercise its right of first refusal, and such determination may be made on such basis and for such reason as Declarant in its sole discretion shall choose. If an Owner fails to comply with the provisions of this Section 16.2 and sells a Lot without first offering it to Declarant in accordance with the terms hereof, then the purchaser of such Lot shall purchase such Lot subject to the right of first refusal herein granted, and Declarant shall thereafter at any time have the right to purchase such Lot, whether or not it is subsequently improved, from the purchaser thereof at Declarant's Repurchase Price, and shall also be entitled to any other rights and remedies available at law or in equity for the violation of this Section 16.2.

16.2.1. The personal representative, heirs, successors and assigns of any Owner who dies while owning any Lot, or the donee of a gift of a Lot from an Owner, shall become an Owner subject to the terms and conditions of this Declaration and any subsequent sale, transfer and conveyance of such Lot shall be governed by the provisions of this Article.

16.2.2. In the event Declarant exercises its right of first refusal pursuant to Section 16.2., the closing of the conveyance of such Lot shall occur within sixty (60) days after receipt by the Owner of written notice from Declarant or its successors that it elects to exercise its right of first refusal with respect to such Lot. At the closing, Declarant shall make payment to such Owner of Declarant's Repurchase Price in cash or cash equivalent. The Owner shall deliver to Declarant a special warranty deed conveying fee simple marketable title to the Lot free and clear of all exceptions except those that existed at the time of the acquisition of the Lot by such Owner, the lien of ad valorem taxes for the current year and any other exceptions which may be approved by Declarant. In the event the closing occurs after the death of an Owner, Declarant may, in its discretion, require the personal representative of the Owner to post such bonds or other assurances as Declarant may deem reasonable in order to protect Declarant from any loss which might be caused by the failure to pay any federal or state inheritance tax or the failure to pay the claims of any creditors who may have a lien on the Lot superior to Declarant's rights as a purchaser of the Lot.

16.2.3. The right of first refusal reserved by Declarant in this Article 16 shall run with the title to each Lot in the Project and be binding upon each purchaser of a Lot from Declarant and upon any subsequent Owner of a Lot, whether such Owner purchased such Lot from Declarant or from a third party. The provisions of this Article 16 shall constitute record notice to all purchasers of Lots in the Project of the reserved right of first refusal, and no additional language in any deed of conveyance of a Lot and no recording of any additional instrument shall be required to make all Owners of Lots in the Project subject to the provisions of this Article 16.

**16.3. Re-Sale Certificate and Agreement.**

Before any Lot or any ownership interest therein (whether such Lot is improved or unimproved) may be sold by any Person other than Declarant to any Person other than Declarant, the seller of such Lot must comply with the following procedures and requirements:

16.3.1. Promptly following the execution of any agreement for sale of a Lot, but in no event later than ten (10) business days prior to the closing of the sale and conveyance of such Lot, the Owner thereof shall submit the copy of such agreement to Declarant (if such agreement is executed prior to the end of the Declarant Control Period) or to Association (if such agreement is signed after the end of the Declarant Control Period). Such agreement must state the consideration for the transfer or conveyance of the Lot (and, if such consideration is not cash, the cash equivalent or monetary value for such non-cash consideration); and such agreement must also contain all provisions required under the terms of this Declaration and all provisions required under the purchase and sale agreement pursuant to which such selling Owner purchased the Lot; and must contain any and all provisions required by any Re-Sale Certificate and Agreement or other agreement between such Owner and Declarant or the Association.

16.3.2. Promptly following the execution of any agreement for sale of the Lot, but in no event later than ten (10) business days prior to the closing of the sale and conveyance of such Lot, the Owner seller of such Lot and the purchaser of such Lot must sign and deliver to the Association and Declarant a Re-Sale Certificate and Agreement (the "**Re-Sale Certificate and Agreement**") containing the following agreements, acknowledgments, disclosures, and

waivers, and such other agreements, acknowledgments, disclosures and waivers as Declarant or Association shall deem reasonable or necessary in order to fully inform the purchaser as to the requirements of this Declaration, the requirements of any agreement entered into by and between Declarant or Association and such selling Owner with respect to the subdivision, the Lot, or the Association, and the requirements of any prior Re-Sale Certificate and Agreement:

(a) Acknowledgement of the right of first refusal and resale requirements and procedures set forth in this Article 16;

(b) Acknowledgement of the requirement for ARC review and approval before the commencement of any construction on the Property;

(c) Acknowledgement of marketing fees to be received by any listing broker in connection with the construction and/or sale of a Lot and other Improvements on the Lot;

(d) Agreement to payment of the Transfer Fee payable upon the transfer by such Owner to the purchaser, and acknowledgement of the obligation to pay Transfer Fees on subsequent conveyances, including agreement to the amount of the Transfer Fee payable upon the sale and conveyance contemplated by the agreement between such selling Owner and the purchaser;

(e) Disclosures and waivers concerning the Lake;

(f) Disclosures of the current amount of Annual Assessments, and the date through which Annual Assessments have been paid by the selling Owner;

(g) The amount of any pending or current Special Assessments, or Special Individual Assessments; and

(h) Disclosures and waivers concerning Legacy Builders.

Both the selling Owner and the purchaser shall be subject to the levy of fines pursuant to the terms of this Declaration for failure to obtain and execute a Re-Sale Certificate and Agreement in connection with any transfer, until such Re-Sale Certificate and Agreement is executed and the required Transfer Fee is paid.

**[BALANCE OF PAGE LEFT INTENTIONALLY BLANK  
- SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed by its duly authorized Manager/Member, as of the Effective Date.

HANDSMILL ENTERPRISES, LLC,  
a South Carolina limited liability company

Malisa L Neelands  
Witness #1 (Signature)

Malisa L Neelands  
Witness #1 (Print Name)

By: [Signature]  
Manager/Member

Carol DeGiulio  
Witness #2 (Signature)

CAROL DeGiulio  
Witness #2 (Print Name)

STATE OF South Carolina  
COUNTY OF York

Personally appeared before me, Malisa L Neelands (First Witness) and made oath that he/she saw the within named HANDSMILL ENTERPRISES, LLC, a South Carolina limited liability company, by Jerry Pettus Jr., its Manager/Member, execute and deliver the within written instrument, as the act and deed of the limited liability company, and that he/she with Carol DeGiulio (Second Witness) witnessed the execution thereof.

Sworn to before me this 1  
day of May, 2007.

Malisa L Neelands  
First Witness

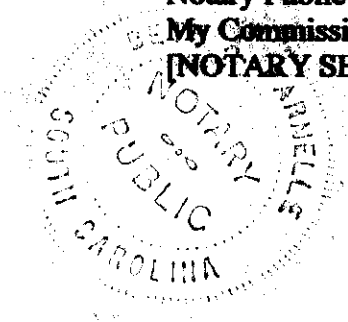
Beth A. Parnelle (L.S.)

Notary Public for South Carolina

My Commission Expires \_\_\_\_\_

[NOTARY SEAL]

My commission expires September 15, 2016



**BRANCH BANKING AND TRUST COMPANY** as owner and holder of a Promissory Note secured by a Mortgage and Security Agreement recorded February 17, 2006 in Record Volume 7803, at Pages 200 et seq., in the Office of the Clerk of Court for York County, South Carolina joins in the execution of this Declaration for the purpose of making said Mortgage and Security Agreement subject and subordinate to the terms and conditions of this Declaration, but solely as such Declaration relates to the following real property and as to no other real property of the Declarant: All those certain Lots numbered 47, 62, 63, 64, 71, 72, 73, 74, 75, 77, 88, 91-101, 105, 106, 109-137 as shown on "Final Subdivision Plat of Handsmill On Lake Wylie, Phase 1, Sheets 1-3, Bethel Township, York County, South Carolina," dated February 27, 2007 and prepared by CBS Surveying and Mapping, Inc., No. L00499, Ted M. Beverly, SCPLS No. 7823, recorded on March 2, 2007 in Plat Book D-194, Pages 7-9, Office of the Clerk of Court, York County, South Carolina.

**BRANCH BANKING AND TRUST  
COMPANY**, a North Carolina state banking  
corporation

John R. Hunter  
Witness #1 (Signature)

JoAnn R. Hunter  
Witness #1 (Print Name)

Cindy H. Bynum  
Witness #2 (Signature)

Cindy H. Bynum  
Witness #2 (Print Name)

By: Beverly W. Bradhan  
Sr. Vice President

STATE OF North Carolina

COUNTY OF Gaston

Personally appeared before me, Joann R Hunter (First Witness)  
and made oath that he/she saw the within named **BRANCH BANKING AND TRUST  
COMPANY**, a North Carolina state banking corporation, by Beverly W. Badshaw  
its SR Vice President, execute and deliver the within written instrument, as the act and deed  
of the limited liability company, and that he/she with Cindy H Bynum (Second  
Witness) witnessed the execution thereof.

Sworn to before me this 3rd

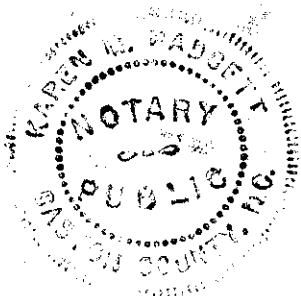
day of MAY, 2007.

Karen R. Paddett (L.S.)

Notary Public for North Carolina

My Commission Expires 5/22/2010

[NOTARY SEAL]



Joann R Hunter  
First Witness

## **EXHIBIT A**

### **Legal Description**

All those certain Lots numbered 47, 62, 63, 64, 71, 72, 73, 74, 75, 77, 88, 91-101, 105, 106, 109-137 as shown on "Final Subdivision Plat of Handsmill On Lake Wylie, Phase 1, Sheets 1-3, Bethel Township, York County, South Carolina," dated February 27, 2007 and prepared by CBS Surveying and Mapping, Inc., No. L00499, Ted M. Beverly, SCPLS No. 7823, recorded on March 2, 2007 in Plat Book D-194, Pages 7-9, Office of the Clerk of Court, York County, South Carolina.

**EXHIBIT B**

**Non-Reimbursable Agreement**



COPY

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

NON-REIMBURSABLE AGREEMENT WITH DEVELOPER FOR  
EXTENSION OF COUNTY WATER AND SEWER UTILITY SERVICE

For: *Beaver Dam Subdivision, Lake Wylie, South Carolina*

THIS AGREEMENT made and entered into this 5 day of April, 2006,  
by and between York County, South Carolina, a body politic and political subdivision of the State of  
South Carolina, hereinafter referred to as the "County" and ~~Frescent Resources, a corporation~~  
hereinafter referred to as the "Developer" *HANDSMILL ENTERPRISES, LLC  
A SC LIMITED LIABILITY  
CORPORATION*

WITNESSETH:

WHEREAS, the County owns and operates a public water system and a public sewer system  
within portions of the unincorporated area of York County; and

WHEREAS, it is the desire of the County to develop a plan for the orderly extension and  
construction of water and sewer facilities within the County's designated service area; and

WHEREAS, the County has prepared a plan for the orderly provision of water and sewer  
facilities and extensions in the county's service area; and

WHEREAS, the Developer owns certain property in York County for which the Developer  
requires water and sewer utility services; and

WHEREAS, the Developer is willing to design, construct and pay for all capital costs  
required for the installation and construction of certain water lines and sewer collection lines,  
hereinafter referred to as the subject water and sewer lines and to convey such water and sewer lines  
and facilities to York County in consideration of the extension of county water and sewer service to  
developer's property; and

WHEREAS, York County is willing to allow the developer to extend water and sewer service  
to the Developer's property on the terms and conditions provided in this agreement;

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and  
conditions herein contained and imposed and for other good and valuable consideration, the receipt,  
adequacy and sufficiency of which is hereby acknowledged by the undersigned parties, the  
undersigned parties, intending to be legally bound, hereby agree as follows:

County of York  
y  
Developer  
y

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1. Construction of Subject Water and Sewer Facilities

- (a) The Developer agrees, at the Developer's sole cost and expense, to provide all design, planning and engineering services required for the design, construction, installation, permitting and start-up of the water and sewer facilities and systems, including sewer laterals to the lot line and water service lines to the lot line, including meter boxes and appurtenances, to be constructed pursuant to this agreement as shown on the Drawings entitled "**Beaver Dam Tract Preliminary Plat**" drawn by Jordan Jones & Goulding, dated June 2000 and which are on file with the York County Engineer and incorporated herein by reference (the subject water and sewer facilities) through architects, engineers or professional planners to be approved by York County. All such designs, plans, specifications and blueprints shall be submitted to and approved by York County and by South Carolina Department of Health and Environmental Control in advance of construction. York County will set the meters after it receives a request for service and upon payment of water and sewer tap fees and deposits.
- (b) The Developer agrees to obtain all necessary easements and rights of way for the construction, installation, operation and maintenance of water and sewer lines, pump stations, elevated storage tanks, treatment facilities or other construction, installation, equipment, facilities or appurtenances which may be necessary or appropriate in order to provide water, sewer or other utility service to, through, under, over or beyond property owned or controlled by the Developer. Such easements and rights of way shall be in form satisfactory to and approved by York County before execution and delivery; shall name York County, its successors and assigns, as grantee; shall be executed and delivered to York County upon request; and shall be obtained by the Developer at the Developer's sole cost and expense to or for York County without payment of consideration.
- (c) The Developer agrees to construct the subject water and sewer facilities and systems as shown on the Drawings entitled "**Beaver Dam Tract Preliminary Plat**" drawn by Jordan Jones & Goulding, dated June 2000 which are on file

County of York  
by

Developer  
by

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with the York County Engineer and incorporated herein by reference, through engineers and contractors approved by York County in advance, in accordance with plans, specifications, designs and blueprints which shall be submitted to and approved by York County and South Carolina Department of Health and Environmental Control, copies of which are on file with the York County Engineer and incorporated into and made a part of this agreement by reference, with such changes, additions, modifications or amendments as may be approved by York County from time to time. The design, plans, specifications and blueprints for such water and sewer facilities and system, including, but not limited to the location, layout, design and construction standards, materials and construction time tables and schedules shall be submitted by the Developer to York County and must be reviewed and approved by York County prior to the commencement of construction of such facilities and systems or any expansion, renovation, addition, or alteration thereto.

- (d) Construction of the subject water and sewer facilities and systems shall be commenced within ninety (90) days after the execution of this agreement, and construction of such facilities and systems shall proceed continuously, without interruption, until completed. Construction of the subject water and sewer facilities and systems shall be completed within twelve (12) months of the date of this agreement unless an extension of time for construction of such facilities and systems shall be granted in writing by York County.
- (e) The subject water and sewer facilities shall be constructed solely at the cost and expense of the Developer, without payment of consideration, costs or expenses by York County. The County engineer and other personnel and representatives of the County, independent testing laboratories and governmental agencies with jurisdictional interests will have access to the subject water and sewer facilities and systems and all work performed thereon at reasonable times for their observation, inspection and testing. The County engineer may reject any work which does not comply with plans and specifications, or which does not conform to County standards and requirements, and if such defective or non-conforming work or materials are not corrected or replaced, York County may have and exercise any right or

County of York  
by  
Developer  
by

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remedy provided by this agreement or at law or in equity. Claims, disputes and other matters relating to acceptability of the work, sufficiency of plans and specifications, or conformity of work or materials to County standards and requirements, shall be referred to the County engineer and the final decision of the County engineer on any such claim, dispute or matter shall be final and binding upon the owner and the owner's contractor.

- (f) The Developer warrants and represents to York County that the final plans, specifications, and blueprints for the design, layout, construction, installation and start-up of the subject water and sewer systems and facilities will cover all items of work, labor and materials needed for the construction of such systems and facilities. The Developer recites, represents, covenants and agrees with York County that the Developer will enter into a construction agreement with a licensed general utility contractor acceptable to and approved by York County within sixty (60) days after the execution of this agreement, pursuant to which such contractor shall furnish all work, labor and materials required for the construction and installation of the subject water and sewer facilities. Such facilities shall be constructed in accordance with plans, specifications, blueprints, layouts and standards approved by York County and South Carolina Department of Health and Environmental Control in "turn key condition" so that, upon completion of the contractor's obligations, York County will not be required to perform any work or furnish any labor or material in order to use and operate the water and sewer systems and facilities as fully equipped operational and functional systems and facilities. If anything is omitted from the plans, specifications, blueprints or layout which is required in order to furnish fully equipped and operational water and sewer system, facilities and appurtenances, complete in every respect and ready for operation, the omitted items shall be deemed to be included within the scope of work to be performed by the Developer or the Developer's contractor, and the Developer or the Developer's contractor shall furnish all work, labor and materials as may be necessary to provide, complete, finish, equip and install the same, subject to the approval of York County, as evidenced by written approval by a duly authorized county official, without payment of consideration or additional costs or expense by York County.

County of York  
by

Developer  
by

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- (g) Upon completion of the subject water and sewer systems, facilities and appurtenances, and upon inspection and acceptance thereof by York County and by all regulatory agencies and codes officials having jurisdiction over the construction or operation of such systems and facilities, the Developer agrees to transfer and convey the subject water and sewer facilities with all related equipment, pumps, tanks, required easements, appurtenances and related facilities to York County by general warranty deed or assignment conveying fee simple title to the water and sewer systems and facilities free of all liens, encumbrances, reservations, exceptions or conditions, without payment of consideration, costs or fees. Contemporaneously with the transfer and conveyance of the subject water and sewer systems and facilities, the Developer agrees to provide to York County "as built" plans and specifications for the subject water and sewer facilities, including all related improvements, equipment, appurtenances and related facilities.
- (h) All water and sewer systems and facilities described in this agreement shall be owned and operated by York County.
- (i) Charges for water and sewer service and taps provided by York County shall be based upon applicable rates, fees and charges under the County's standard schedule of rates, fees and charges for water and sewer service and taps, as such rates may be established, amended or modified from time to time by the York County Council. Such charges shall apply without exception, regardless of the purpose for which water and/or sewer services are used. No adjustments shall be made to any consumers' water or sewer bills because of leaks, malfunctions, or breaks in any portion of the consumers' utility system. A surcharge in addition to other sewer charges will be billed to any consumer for industrial waste discharged by such consumer into the county sewage collection system. York County shall be authorized to increase the rates charged by the County for water and sewer service to such rates as the County, in its sole discretion, determines to be appropriate. York County will bill consumers connected to its water and sewer systems periodically according to the County's standard billing schedules.

County of York  
by  
Developer  
by

- (j) York County may expand and upgrade its water and sewer systems and facilities as warranted by usage, demand, engineering considerations, growth or other similar considerations in the County's sole discretion. The parties acknowledge that York County cannot provide unlimited water and/or sewer service. The County's responsibilities under this agreement concerning water service are to provide water solely for governmental, commercial, residential or other similar or related purposes in the County's service area, subject to the limitations contained in any agreement, including this agreement, to which the County may be a party. Although York County intends to adopt a design and engineering standard for the development of its water system based on commercial uses, no water is warranted for fire protection purposes. The Developer hereby acknowledges that water and sewer service is subject to suspension or termination under the provisions of this agreement or any agreement to which York County is a party or applicable provisions of the Code of York County. Temporary interruptions in water and sewer service or reductions in water pressure may occur from time to time, and such interruptions or reductions in pressure shall not be construed to be a violation of this agreement or any service agreement between York County and any consumer.
- (k) In order to induce York County to enter into this agreement for the expansion of its water and sewer systems and facilities, the Developer agrees that the Developer, its successors and assigns, including all purchasers or lessees of property from the Developer shall be required by contract or restrictive covenants to connect to and use the water and sewer systems and facilities owned and operated by York County on property owned or controlled by the Developer as shown on the Drawings entitled "***Beaver Dam Tract Preliminary Plat***" drawn by Jordan Jones & Goulding, dated June 2000, which are on file with the York County Engineer and incorporated herein by reference.
- (l) The obligations of York County to own, operate and maintain the subject water and sewer systems and facilities are subject to the following conditions, which shall constitute conditions precedent to the obligations of York County:

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- (1) the performance of all promises, obligations, covenants and conditions of the Developer under this agreement;
  - (2) the submission by the Developer to York County of all plans, specifications, blueprints, designs and development plans for the subject water and sewer systems and facilities in advance of construction and the approval by York County of the plans, specifications, blueprints, designs and development plans for such systems and facilities;
  - (3) the grant, reservation, acquisition, transfer and conveyance of all easements and rights of way required by York County for the ownership, maintenance and operation of the subject water and sewer systems and facilities, including, but not limited to distribution lines, storage tanks, pumping facilities, flow regulators, meters and all other necessary or appropriate systems, facilities and equipment required for the construction or operation of the subject water and sewer systems and facilities;
  - (4) the approval and permitting by South Carolina Department of Health and Environmental Control and any other regulatory agency having jurisdiction over the construction and operation of the subject water and sewer systems and facilities described in this agreement.
- (m) The Developer agrees, at the request of York County, to correct any defects due to faulty design, materials or workmanship in the subject water and sewer systems and facilities, without costs or expense to York County, for a period of one (1) year after the issuance of operating permit(s) for the operation of the subject water and sewer facilities, and the final acceptance of the subject water and sewer facilities, which final acceptance shall not relieve the Developer or the Developer's contractor from responsibility for remedying, correcting or repairing any defect in design, materials or workmanship in the subject water and sewer systems and facilities. The provisions of this paragraph shall not be deemed merged into the final deed of conveyance, but

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shall be independent of and survive such conveyance and may be enforced by York County, its successors and assigns, after transfer of the subject water and sewer systems and facilities.

2. Capital Costs

Except as otherwise expressly provided in this agreement, the Developer shall bear the entire capital costs for the design, engineering, construction, installation and permitting of the subject water and sewer facilities described in Section 3 above. Both County and the Developer recognize and agree that the actual costs will be based upon the actual construction bids received, change orders and other unforeseen conditions. All change orders to the subject water and sewer systems and facilities shall be approved by the County. The Developer agrees to pay all costs actually incurred in the design, engineering, planning, construction, installation, permitting or acquisition of rights of way or easements required for the construction and start-up of the subject water and sewer systems and facilities.

3. Payments

The Developer shall make progress payments to the Developer's contractor on work completed on the subject water and sewer facilities in accordance with a schedule approved by York County. The Developer agrees to pay to the contractor within thirty (30) days of billing an amount equal to each billing, less any approved amount for retention. The Developer shall retain an amount of not less than ten (10%) percent of each and every billing until the project is satisfactorily completed. The Developer agrees to pay, within thirty (30) days of billing, all costs, fees and expenses incurred in the design, engineering, planning, construction, installation, acquisition of easements or permitting relating to the subject water and sewer systems and facilities.

4. Developer Owned Water and Sewer Facilities

If the Developer intends to construct water and sewer lines and facilities which will be owned and maintained by the Developer, the Developer agrees to submit designs, engineering drawings, plans, specifications, layouts and construction schedules for

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Developer-owned water and sewer facilities to the County. The design, plans, specifications, layout and construction of all such facilities must be approved in advance by the County and South Carolina Department of Health and Environmental Control. All terms, covenants, conditions and requirements of Section 3 of this agreement relating to water and sewer systems and facilities to be conveyed to and operated by the County shall be applicable to the design, engineering, planning, construction and installation of Developer facilities to the same extent as though the provisions of Section 3 of this agreement were incorporated herein by reference verbatim and made applicable to Developer owned water and sewer facilities. The Developer acknowledges and agrees that the Developer must obtain a franchise from York County and a franchise from the South Carolina Public Service Commission for the ownership and operation of privately owned and operated water and sewer utilities. The parties agree that the County will not own, operate and maintain systems within golf courses or green areas, except for mains which traverse through such areas to serve other properties, and which are conveyed to York County.

5. Alternative Low Pressure Collection Systems

(a) If the Developer intends to construct a sewer system which consists of individual grinder stations for each lot that pump into a common low pressure force main and intends to convey this system to York County, the individual grinder stations shall be owned by the property owners. The Developer agrees to submit designs, engineering drawings, plans, specifications, layouts and construction schedules for these low-pressure collection facilities to the County. The design, plans, specifications, layout, concept, feasibility and construction of all such facilities must be approved in advance by the County and South Carolina Department of Health and Environmental Control. The terms, covenants, conditions and requirements of this agreement relating to water and sewer systems and facilities to be conveyed to and operated by the County shall be applicable to the design, engineering, planning, construction and installation of low-pressure facilities. The Developer acknowledges and agrees that the Developer shall provide for the installation and lifetime service of the privately owned grinder stations by the execution and delivery of installation and service agreements in form and content with reliable vendors and contractors approved by York County in advance of construction. Agreements for the installation and service of these stations shall be

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submitted to and approved by York County prior to final plat approval. These provisions for grinder pump installation and service may include agreements with a County approved third party service contractor that may be administered by an established Home Owners Association with restrictive covenants approved in advance by York County which require a county approved third party contractor. Each customer shall be required to sign a Residential/Commercial Sewer Service Contract Agreement during the application process prior to receiving sewer service through York County's system. The County will only service these private units as a backup to the developer's service and shall charge the homeowner three (3) times the cost of the repairs including but not limited to parts and labor in accordance with the customer service contract.

The developer acknowledges and agrees that if County water is available to the development the developer must tie onto the County's water system in order to be allowed to tie onto the County's Sewer System with a low-pressure system. The developer also acknowledges and agrees that low-pressure systems are subject to all other requirements of York County and SCDHEC.

(b) If developer intends to construct a low pressure sewer system as described in paragraph 5(a) above, the obligation of York County under this agreement shall be subject to the following conditions precedent, each of which shall be deemed material and all of which shall survive the execution of this agreement, the construction of the low pressure sewer system, and the acceptance and treatment of wastewater by York County:

(1) the execution and delivery of a Grinder Pump Unit Installation Agreement by developer and a county-approved contractor substantially in the form attached hereto as Exhibit A;

(2) the execution and delivery of a Grinder Pump Service Agreement by developer and a county-approved service contractor substantially in the form attached hereto as Exhibit B;

(3) the execution, delivery and recordation of a service contract agreement and easement by the owner of each lot to be served by a low

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pressure sewer system substantially in the form attached hereto as Exhibit C;

(4) the execution of easements granting York County an easement and right-of-way to inspect and, if required, to operate and maintain on-site sewer components by each property owner using a low pressure sewer system substantially in the form attached hereto as Exhibit D; and

(5) the incorporation of provisions into restrictive covenants relating to all lots to be served by a low pressure sewer system of terms and conditions required by and in form and content satisfactory to York County for such restrictive covenants and the recordation of such restrictive covenants in the public records in the Office of the Clerk of Court for York County.

6. Failure of Developer or Developer's Contractor to Perform

If the Developer or the Developer's contractor shall fail to perform according to the terms and provisions of this agreement, or if the Developer or the Developer's contractor shall breach, fail or refuse to perform any of the covenants, agreements, warranties or representations contained in this agreement, or if the subject water and sewer systems and facilities are being constructed in violation of this agreement or in violation of any covenants, restrictions, easements, laws, ordinances, codes or regulations affecting the construction or operation of the subject water and sewer systems and facilities, or if it appears to the County that the Developer or the Developer's contractor will not complete construction of the subject water and sewer systems and facilities within the time specified, or if any claim or lien affecting the subject water or sewer systems or facilities is filed of record, or if the Developer or the Developer's contractor shall become insolvent, or if there is filed a voluntary or involuntary petition in bankruptcy by the Developer or the Developer's contractor or any trustee or receiver for either, or if the Developer or the Developer's contractor execute an assignment for the benefit of creditors, then and in such event, the Developer and the Developer's contractor shall be considered in default under this agreement and York County, at its option, may give the Developer written notice to cure such default, and upon failure of the Developer or the Developer's contractor to cure such default within thirty (30) days after notice shall have been mailed, York

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County may:

- (a) declare this agreement to be terminated without further liability on the part of York County; or
- (b) enter into and take possession of the subject water and sewer projects and assume full control for the construction of such water and sewer systems and facilities and complete, or enter into one or more contracts with third parties to complete such water and sewer systems and facilities, charging all costs incurred in connection therewith against the Developer; or
- (c) pursue any right or remedy provided by this agreement or at law or in equity.

7. Remedies

In the event the Developer or the Developer's contractor shall default or fail to perform according to the terms and provisions of this agreement, and if such default or failure to perform is not timely cured, York County shall have one or more of the following remedies:

- (a) York County may terminate this agreement without liability on the part of York County by giving written notice of termination to the Developer;
- (b) without affecting its liability in any way, York County may grant the Developer a reasonable time to cure any defect or default; provided, however, that such conduct on the part of the County shall not obligate York County in any respect under any provision of this agreement;
- (c) York County may exercise any right or option or take any action permitted under this agreement; or
- (d) York County may institute a suit or proceeding at law or in equity seeking damages for breach of contract or for specific performance of this agreement by the Developer.

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- (e) Any right or remedy provided under this agreement shall be cumulative to any other right or remedy provided under this agreement or existing at law or in equity.

8. Force Majeure

If any party to this agreement is prevented from complying with any term, covenant or condition of this agreement by acts of God, floods, storms, explosions, fires, labor disputes, strikes, insurrection, riots, acts of the public enemy or the application of federal, state or local laws, orders, rules or regulations, then while so prevented, the condition shall be suspended, and the party shall be relieved of the obligation of complying with such covenant and shall not be liable for damages or for failure to comply with it, and any obligation of such party shall be extended for as long as such party is so prevented from complying with any covenant or condition contained in this agreement. No party shall be excused from performing any term, covenant or condition of this agreement because of the act or omission of any such party.

9. Non Merger

The obligations of the Developer under this agreement shall not be merged into the deed of conveyance but shall survive the same and continue as enforceable obligations under the terms and provisions of this agreement after conveyance of the subject water and sewer systems and facilities to York County.

10. Non Waiver

No performance or execution of this agreement in whole or in part by York County; no course of dealing between or among the parties hereto; and no delay or failure on the part of York County in exercising any rights hereunder or at law or in equity shall operate as a waiver of any rights of York County, except to the extent expressly waived in writing by York County. No waiver of any breach or breaches of any provision of this agreement shall be construed to be a waiver of any preceding or succeeding breach of any such provision or of any other provision hereof.

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11. Third Party Beneficiaries

The parties agree that York County shall be a third party beneficiary of all promises, covenants or agreements by or between the Developer and the Developer's architects, engineers, planners or contractors, including, but not limited to agreements relating to the design, engineering, planning, construction, installation, acquisition of easements, permitting or operation of the subject water and sewer systems and facilities, but York County shall not be obligated to perform any obligation of the Developer or the Developer's architects, engineers, planner or contractors.

12. Governing Law

This agreement shall be deemed made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of South Carolina.

13. Notices

Any notice, demand or other communication required or permitted under this agreement shall be deemed sufficiently given or served if given in writing and served personally or by certified or registered mail, postage prepaid, addressed as follows:

To the County:                      Mr. Alfred W. Greene  
                                                 County Manager  
                                                 Post Office Box 66  
                                                 York, South Carolina 29745

Copy to:                                Melvin B. McKeown, Jr., Esquire  
                                                 York County Attorney  
                                                 Post Office Box 299  
                                                 26 W. Liberty Street  
                                                 York, South Carolina 29745

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Developer  
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To the Developer:

*Handsmill Enterprises, LLC*  
*54 Marina Road*  
*Lake Wylie, SC 29710*  
*(803) 831-8772*

Copy to:

*Jordan Jones & Goulding*  
*9101 Southern Pine Blvd., Suite 160*  
*Charlotte, NC 28273*  
*(704) 527-4106*

or to such other place or places or to such other person or persons  
as shall be designated in writing by the respective parties.

14. Time of Essence

Time is of the essence in each and every provision of this agreement.

15. Non Assignment

This agreement may not be assigned or transferred nor may the rights and obligations of any party under this agreement be assigned or transferred without the express written consent of York County. Any attempt at any such assignment or transfer shall be utterly null and void. If this agreement is assigned or transferred with the written consent of York County, no such assignment or transfer shall release the Developer from any of its obligations hereunder.

16. Amendments

This agreement may be modified or amended only by an instrument in writing duly authorized and executed by both the Developer and the County. This agreement may not be amended or modified by oral agreements or understandings between the parties unless the same shall be reduced to writing duly authorized and executed by both the Developer and the County.

County of York  
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17. Entire Agreement

This agreement sets forth all of the covenants, promises, agreements, conditions and understandings between the parties. There are no covenants, promises, agreements, conditions or understandings, either oral or written, between the parties other than those set forth herein.

18. Severability

If any term, covenant or condition of this agreement or any application thereof to any person or circumstance shall, to any extent, be declared invalid or unenforceable by the final order of a court of competent jurisdiction, the remainder of this agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant and condition of this agreement shall be valid and enforceable to the fullest extent permitted by law.

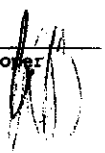
19. Binding Effect

This agreement shall inure to the benefit of and shall be binding upon the parties hereto, their respective successors and assigns.

20. Multiple Counterparts

This agreement is executed in multiple counterparts, each of which shall be deemed an original, but all of which collectively shall constitute but one agreement.

County of York

Developer  






**EXHIBIT A**

**SAMPLE GRINDER PUMP UNIT  
INSTALLATION AGREEMENT**

THIS GRINDER PUMP UNIT INSTALLATION AGREEMENT (this "Agreement") is made by and between the **Developer** ("Developer") and the **Service Contractor** ("Contractor") for the installation of grinder pump units at the **Development**, a residential community in York County, South Carolina.

WHEREAS, **Developer** is developing course residential community off **location** in York County, South Carolina known as **Development** and

WHEREAS, sewer service at **Development** shall be provided by pumping wastewater to the sewer system operated by the York County and

WHEREAS, single family residential lots in **Development** will each require the installation of an individual grinder pump unit and the installation of a 1 1/4" schedule 80 PVC diameter pump line from the unit to the valve box at the public right of way (each such grinder pump unit, all equipment associated therewith, and line shall be together hereinafter referred to as a "Pump Unit"); and

WHEREAS, **Service Contractor** and **Developer** have a contractual agreement where **Service Contractor** installs the Pump Units and **Developer** pays **Service Contractor** per the terms of the agreement.

NOW, THEREFORE, in consideration for the terms and mutual obligations set forth below, **Developer** and **Service Contractor** hereby agree as follows:

1. Scope of Services

**Service Contractor** shall furnish and install the Pump Units as follows:

- a. Furnish the complete Pump Unit and accessories as specified by **Engineer**, ("Engineer"), including fiberglass basin, pump, piping and valves, floats, control panel, alarm light and wall mounting plate and hardware.
- b. Install an individual Pump Unit on residential lots in **Development** designated by **Engineer**, and approved by the County and **Developer** in writing at the location on each lot approved by the Architectural Control Committee or Home Owners Association for **Development**, as follows:
  - i. Excavated maximum 6'6" deep by 3'0" diameter hole to receive pump basin;

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- ii. Install pump basin in excavated hole, connect house 4" diameter plumbing, vent pipe to basin and backfill around basin. The house plumbing lateral and vent pipe to the Pump Unit shall be installed by others. The lateral shall be no less than 2' nor more than 3' deep at the Pump Unit basin;
  - iii. Furnish to the house electrical contractor the pump control panel specified by Engineer.
  - iv. Furnish and install minimum two inch (2") diameter electrical conduit from pump basin to control panel; including but not limited to wiring for Pump Unit power cable, seal warning sensor, and floats:
  - v. Furnish a four-inch (4") sanitary plug and install it in the four-inch (4") house sewer line at the inlet to the basin at the time of installation. The plug shall remain in the basin until start-up, at which time **Service Contractor** will remove the plug after **Service Contractor** has tested the Pump Unit using clean water supplied by others.
  - vi. Furnish and install the 1 1/4" diameter (schedule 80 PVC) Pump Unit discharge line in accordance with the ACC approved route. Minimum 30 inch (30") bury from the Pump Unit basin to the valve box at the public right of way. (Note: Clearing of the right of way and landscaping shall be performed by others, but **Service Contractor** shall backfill trench following installation of line);
  - vii. Start-up and test Pump Unit, including control panel, floats, amperage draw at start-up and run conditions and provide a written report to the relevant homebuilder or homeowner (as the case may be). Builder is required to contact **Service Contractor** after power is turned on to schedule start-up; and
  - viii. Furnish an alarm light, wall plate and hardware for mounting inside the house by others.
- c. **Service Contractor** shall ensure that each Pump unit shall be clearly and conspicuously posted with **Service Contractor's** telephone number and instructions to contact **Service Contractor** in the event of an alarm from such Pump Units.

## 2. Installation Request

Within thirty (30) calendar days of receipt of written request from the homebuilder, or the Lot Owner for installation of the Pump Unit on a given Lot, **Service Contractor** shall commence and complete installation of the Pump Unit on subject Lot. Such thirty (30) day period to commence and complete the work may be extended by homeowner, homebuilder, or **Developer** (as the case may be) due to adverse weather conditions that

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may prevent completion of the work within such time period. Written request shall include the following:

- (1) Lot Number
- (2) Street Address
- (3) Phone Numbers
- (4) Builders Name
- (5) Contact on site whit phone number
- (6) Building permit number

Power wiring to the control panel shall be by other. After hook-up of power, **Service Contractor** shall perform start-up as specified above in Section 1, b, vii, at the requested of the homebuilder, or the homeowner. Prior to any request for installation, the site shall have been graded to receive the Pump Unit, plumbing shall have been extended to the proposed basin location, and wiring shall have been installed to the location of the control panel (all such work to have been performed by others).

All work shall be subject to inspection and approval by representatives of **Developer**, Engineer, York County and SCDHEC. The homebuilder shall be responsible for grading the site to assure drainage away from pump basin.

3. Compensation

Upon completion of installation of the Pump Unit to the satisfaction of the County and Engineer, approval as evidenced by Engineer's written certification and **Service Contractor** shall submit an invoice to **Developer** in the amount of (The "Installation Fee"), which amount **Developer** shall pay within thirty (30) days following **Developer's** receipt of the relevant invoice. Each invoice shall clearly indicate the subject lot number and street address.

4. The Installation Fee shall be increased or decreased on an annual basis by the percentage change during the previous year in the Consumer Price Index, All Urban Consumers, U.S. City Average, and All Items (1982-84=100) issued by the U.S. Bureau of Labor Statistics.

5. Rock

If, upon attempting an installation of a Pump Unit at a location approved by the HOA or ACC, rock is encountered requiring blasting for removal, then installation process shall be modified as follows:

- (1) If a reasonable adjustment in the location of the Pump Unit can be made to avoid

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the rock, then approval for such relocation shall be granted by the HOA or ACC, and any costs associated with extending the house plumbing and vent connections to the Pump Unit will be the sole responsibility of the homebuilder or lot owners.

- (2) If the relocation to avoid the rock requires significant additional piping or electrical cost by **Service Contractor**, then **Service Contractor** shall be compensated for these expenses directly by the homebuilder or lot owner.
- (3) If Engineer determines that the Pump Unit cannot be relocated so as to avoid rock excavation, then the homebuilder's or lot owner's expense, or (ii) instruct **Service Contractor** to remove the rock (in which case homebuilder or lot owner shall reimburse **Service Contractor** for such excavation work).

6. Warranty

**Service Contractor** hereby warrants each Pump Unit installed for a period of one (1) year from the date the Pump Unit is operational on each Lot against poor workmanship and defective parts for each Pump Unit.

7. Terms of Contract

This agreement shall continue in full force and effect for ten (10) years from the date hereof, unless sooner terminated as provided below.

8. Governing Law

This Agreement shall be construed and enforced in accordance with the laws of the State of South Carolina.

9. Amendment

Any amendment to this Agreement shall be in writing and executed by each party hereto.

10. Termination

In the event **Developer** determines, in its sole discretion, that **Service Contractor** has failed to satisfactorily perform its duties under this Agreement, **Developer** shall have the right to terminate this Agreement upon thirty (30) days prior written notice to **Service Contractor** at the address specified below.

11. Integration

The entire Agreement between the parties with respect to the matters contained herein are contained in the provisions of the Agreement, and any stipulations,

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representations, promises, or agreements, written or oral, made prior to or contemporaneous with this Agreement shall have no legal effect unless contained herein.

IN WITNESS WHEREOF, the undersigned have executed this agreement effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Homeowners Association

Owner

By: \_\_\_\_\_  
Print Name/Title

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

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

\_\_\_\_\_  
Signature  
Lot#: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Service Contractor

Telephone#: \_\_\_\_\_  
Day

By: \_\_\_\_\_  
Signature  
Print Name/Title \_\_\_\_\_

Telephone#: \_\_\_\_\_  
Evening/Alternate

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

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## EXHIBIT B

### SAMPLE GRINDER PUMP UNIT SERVICE AGREEMENT

THIS GRINDER PUMP SERVICE AGREEMENT (the "Agreement") is made between **Developer** (the "Developer"), \_\_\_\_\_ (the "Owner"), and **Service Contractor** for the maintenance of the Pump Unit (as defined herein) on the Owner's property located at \_\_\_\_\_ in the **Development**.

WHEREAS, **Developer** is developing a residential community off **Location** in York, South Carolina known as **Development**.

WHEREAS, sewer service at **Development** shall be provided by pumping wastewater to the sewer system operated by York County.

WHEREAS, **Service Contractor** has installed, or will install, a grinder pump unit and 1 1/4" diameter pump line from the grinder pump unit to the valve box at the public right-of-way on the lot owned by the Owner (the "Pump Unit").

NOW, THEREFORE, in consideration of the terms and mutual obligations set forth below, the Association, Owner and **Service Contractor** hereby agree as follows:

1. Scope of Services.

**Service Contractor** shall provide complete operation and maintenance services for the Pump Unit on a year-round basis with both annual and routine inspections and shall be available 24-hour per day, 365 days per year to perform emergency services.

The scope of services included shall be as follows:

a. Annual – **Service Contractor** shall inspect the Pump Unit annually, as follows:

- 1) Check amperage draw, starting and running;
- 2) Check float control operation and alarm function;
- 3) Clean wet well of grease build-up;
- 4) Check gate and check valve operation;
- 5) Check control panel; and
- 6) Pull pump and check wear on cutter assemblies.

At the annual inspection, worn or defective parts shall be replaced as necessary for preventative maintenance. A full inspection report shall be submitted to the Owner, the Association and York County Water and Sewer Department immediately upon completion of each annual inspection of the Pump Unit. The annual inspection of the Pump Units shall be conducted within two weeks of the anniversary of the original installation of the Pump Unit.

- b. **Emergency** – **Service Contractor** shall respond to emergency calls for the Owner and shall maintain a 24-hour emergency service, with dispatch within two hours of the time the call received by **Service Contractor**. **Service Contractor** shall further provide repair and/or maintenance as necessary to all components of the Pump Unit including:

- 1) Pump Basin;
- 2) Piping and Valves;
- 3) Floats;
- 4) Electrical Wiring from Pump Unit to Control Panel;
- 5) Force Main from Pump Unit to Cut-off Valve at the public right-of-way;
- 6) Grinder Pump;
- 7) Control Panel.

**Service Contractor** shall provide a service report to the Association, York County Water and Sewer Department and the Owner immediately upon completion of all emergency calls. If upon reaching a home with an emergency, **Service Contractor** discovers that the problem exists in (i) house (ii) from home to Pump Unit or (iii) on the street-side of the valve box that runs into the public right-of-way, then **Service Contractor** shall notify the Owner and recommend a plumbing contractor or assist with contact of appropriate service personnel for York County Water and Sewer Department; **Service Contractor's** telephone number and instructions to contact **Service Contractor** in the event of an alarm for such Pump Unit.

- c. **Reporting of Overflows and Spills**. **Service Contractor** shall immediately upon becoming aware of a spill or an overflow (or any similar leakage) from a Pump Unit report such spill or overflow to York County Water and Sewer Department.
2. **Stocking Required**. **Service Contractor** shall maintain at its primary place of business on **Location**, a sufficient stock of spare parts or complete Pump Units as necessary to effectively respond to annual maintenance requirements or to any and all emergencies, and at all times. **Service Contractor** shall verify said stock at any time upon written request from the Association or York County Water and Sewer Department. Storage of this stock at a local supplier's place of business shall not be acceptable. The stock shall be in storage within thirty (30) days of the installation of the first Pump Unit at **Development**.



3. Compensation.

- a. Annual. For each annual inspection visit **Service Contractor** shall receive from the Association a lump sum payment of \$ \_\_\_\_\_. In addition, the Association shall pay **Service Contractor** the actual cost of any replacement parts, plus \_\_\_\_\_% of the actual cost of such parts for overhead and profit. The Owner shall reimburse the Association for replacement part costs (including overhead and profit) within ten (10) days following receipt of an invoice from the Association. **Service Contractor** shall submit a separate invoice to the Association for each annual inspection within thirty (30) days following the completion of such inspection. Each invoice shall be accompanied by an inspection report, and the Association shall pay all invoices for annual service within thirty (30) days following the Association's receipt of an invoice subject to resolution of any invoicing questions.
- b. Emergency. For each emergency call response, **Service Contractor** shall be compensated directly by the Owner as follows:

|                                  |                 |
|----------------------------------|-----------------|
| Travel Time                      | \$ _____/hr     |
| On-Site Time - Crew Rate         | \$ _____/hr     |
| Vehicle - Crew Truck             | \$ _____/mile   |
| Trencher or Back-Hoe (if needed) | \$ _____/hr     |
| Parts                            | Cost plus ____% |

**Each emergency response shall be billed directly to the Association.** Each invoice shall provide a detailed breakdown of all costs at the rates listed above. An inspection report shall accompany each invoice. The Owner shall reimburse the Association for all invoices for emergency service within thirty (30) days after the Owners receipt of an invoice subject to resolution of any invoicing questions.

Owner hereby acknowledges that it is solely responsible for all costs and expenses with respect to replacing worn or defective parts in the Pump Unit as well as any charges associated with steam cleaning the unit due to excessive grease buildup.

The above hourly rates shall be increased or decreased on an annual basis by the percentage change during the previous year in the consumer Price Index, All Urban Consumers. U.S. City Average, All items (1982-84=100) issued by the U.S. Bureau of Labor Statistics.

4. Term.

This agreement shall continue in full force and effect for ten (10) years from the date hereof, unless sooner terminated as provided below.

5. Termination.

In the event the Association determines, in its sole discretion that **Service Contractor** has failed to satisfactorily perform its duties under this Agreement, the Association shall have the right to terminate this Agreement upon thirty (30) days prior written notice to **Service Contractor** at the address specified below.

6. Delivery of Agreement.

Owner acknowledges that it shall deliver one (1) fully executed copy of this agreement to **Service Contractor** and that until Owner has so delivered this Agreement, **Service Contractor** has no obligation to install the Pump Unit or provide service to the Pump Unit.

7. Governing Law.

This Agreement shall be construed and enforced in accordance with the law of the State of South Carolina.

8. Amendment.

Any amendment to this Agreement shall be in writing and executed by each party hereto.

9. Integration.

The entire agreement between the parties with respect to the matters contained herein are contained in the provisions of this Agreement, and any stipulations, representations, promises, or agreements, written or oral, made prior to or contemporaneous with this agreement shall have no legal effect unless contained herein.

10. Assignment.

In the event that Owner conveys the Lot prior to the end of the Term, Owner shall require its purchaser, as a condition to closing, to either (a) accept assignment of this Agreement, and assume all responsibilities of Owner, or (b) enter into a new Agreement with the Service Contactor.

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective  
the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Homeowners Association

Owner

By: \_\_\_\_\_  
Print Name/Title

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

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

Lot#: \_\_\_\_\_

Address: \_\_\_\_\_ Address: \_\_\_\_\_

City: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Service Contractor

Telephone #: \_\_\_\_\_  
Day

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

Telephone#: \_\_\_\_\_  
Evening/Alternate

Print Name/Title \_\_\_\_\_

Signature

Address:

**EXHIBIT C**

**STATE OF SOUTH CAROLINA     )**

**)**

**COUNTY OF YORK              )**

**RESIDENTIAL/COMMERCIAL SEWER**

**SERVICE CONTRACT AGREEMENT**

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the York County Water and Sewer Department (hereinafter referred to as the "County", and \_\_\_\_\_ ("Owner") as the Owner of the parcel of land identified as Lot \_\_\_\_\_ in Handsmill Subdivision, York County, South Carolina, as more fully described on Schedule 1 attached hereto (the "Property").

**RECITAL**

WHEREAS, the County owns and operates a sewer transportation system in the Handsmill Subdivision area of York County and

WHEREAS, due to the unique design of the sewer system, i.e., the effluent from solids interceptor tanks is collected and pumped through small diameter force mains which are not sized to transport solids to the treatment facility, special conditions must be met by the Owner prior to being permitted to connect to the County's sewer system; and

WHEREAS, the Owner wishes to convey to the County an easement which will provide the County the right of ingress and egress across the Owner's Property for the purpose of inspecting the sewer components owned by the Owner as well as providing operation and maintenance services to the Owner's sewer components should the Owner fail to do so as provided for herein.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein,  
the parties agree as follows:

## ARTICLE I

**The County shall:**

- (1) Have no property rights or interest in the on-site sewer components on the Owner's Property.

CLT 1035016v2

BK 09069 PG 0218

- (2) Provide transportation and treatment of the wastewater originating from the residence/business located on the subject property, in an average daily amount not to exceed 400 gallons-per-day (gpd);
- (3) Upon installation by the Owner of the necessary sewer components required by the County/DHEC regulations, the County will inspect the Owner's pump station and on-site service lines for conformance with the County/DHEC standards and specifications.
- (4) All costs associated with operation and maintenance of the Owner's sewer components shall be the responsibility of the Owner, including power costs, pump system repairs, on-site service line repairs, solids interceptor tank maintenance as prescribed by the County/DHEC regulations, pump tank, or any other operation and/or maintenance cost for the Owner's on-site sewer components. Notwithstanding the above, the County will respond in providing necessary operation and maintenance services to the on-site improvements if the property Owner fails to do so. The Owner shall pay the County, in responding to the necessary repairs, cost equal to three times the County's direct cost plus all costs incurred by the County to correct any and all operation and/or maintenance problems. The County shall provide a written statement outlining the cost incurred which shall be due and payable in its entirety within twenty (20) days from the date of such statement. Failure of the Owner to pay such cost within the twenty (20) day period shall result in termination of service until such time as payment is made.

## **ARTICLE II**

The Owner shall:

- (1) Construct the on-site portion of the sewer system in accordance with the County/DHEC standards, specifications, and plans;
- (2) At the time of final inspection by the County, provide to the County an accurate "as-built" drawing of the on-site portion of the sewer system;
- (3) Convey to the County an easement(s) for ingress and egress covering an area 7.5 feet on each side of such on-site components (tanks and lines);

CLT 1035016v2

**BK 09069PG0219**

- (4) Provide access to the on-site sewer system and be responsible for the cost of removal and restoration of fences, shrubbery and/or any other site improvements which deny or may impair access to the on-site sewer system components by the County for the purpose of inspection, operation or maintenance;
- (5) Retain ownership of, and be responsible for all costs of operation and maintenance of the on-site components of the sewer system in accordance with County/DHEC requirements;
- (6) Pay applicable service charges to the County for services it provides, in accordance with its established schedule of rates and fees. If the Owner's account becomes delinquent, the sewer service shall be disconnected until such time as past due amounts, along with any other applicable costs, are paid;
- (7) Pay all appropriate connection charges associated with the provision of sewer service to the specific property prior to connection to the system;
- (8) Arrange and pay for the electrical service required to operate the sewer pump(s) installed on the Owner's Property; and
- (9) Ensure that neither solids nor toxic wastes are introduced into sewer system. Yard and roof drains, catch-basins, other sources of storm water, swimming pools and heat pumps shall not be connected to any component of the sewer system. Oil, grease or any petroleum product shall not be introduced into the sewer system. Violation of these provisions shall result in sewer service being disconnected until violations have been corrected, and shall expose the customer to other possible legal actions by the County, including the imposition of fines in accordance with the provisions of law.
- (10) Execute an Easement in a form satisfactory to County to comply with Article II, Sections 3 and 4.
- (11) This Agreement is binding on the Owner, his heirs and assigns. In the event that Owner conveys Owner's Property, Owner shall require its purchaser, as a condition to closing, to either (a) accept assignment of this Agreement and assume all responsibilities of Owner, or (b) enter into a new Agreement with York County.

CLT 1035016v2

**BK 09069PG0220**

WITNESSES:

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

WITNESSES:

(#1) \_\_\_\_\_  
(#2) \_\_\_\_\_

YORK COUNTY

BY: \_\_\_\_\_  
County Manager

PROPERTY OWNER(S)

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

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF YORK )

PERSONALLY appeared before me, (witness #1),  
who being duly sworn says: That (s)he saw the within named \_\_\_\_\_,  
property owner, sign, seal and as their act and deed, deliver the within-written instrument for the  
uses and purposes therein mentioned, and (s)he with (witness#2) \_\_\_\_\_ witnessed  
the execution thereof.

Witness #1

Sworn to before me this the

\_\_\_\_\_ day of \_\_\_\_\_,

20 \_\_\_\_\_

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

# Notary Public for South Carolina

My commission expires: \_\_\_\_\_



STATE OF SOUTH CAROLINA )

COUNTY OF YORK )

PERSONALLY appeared before me, (witness #1),  
who being duly sworn says: That (s)he saw the within named \_\_\_\_\_ sign, seal  
and as their act and deed, deliver the within-written instrument for the uses and purposes therein  
mentioned, and (s)he with (witness#2) witnessed the execution thereof.

Sworn to before me this the

**SCHEDULE 1**  
**DESCRIPTION OF PROPERTY**

**CLT 1035016v2**

**BK09069PG0224**

**EXHIBIT D**

STATE OF SOUTH CAROLINA )

)

## EASEMENT

COUNTY OF YORK )

)

IN CONSIDERATION of the sum of one (\$1.00) dollar to me/us in hand paid, the receipt and sufficiency of which is hereby acknowledged, \_\_\_\_\_ ("Grantor") does/do hereby grant to York County, its successors and assigns ("Grantee"), an easement and right-of-way twenty (20') feet in width (10 feet on each side of Grantor's on-site sewer components) located on the Lot owned by Grantor, which is more particularly described on Schedule I, attached to this Easement ("Property"). The easement is for the purpose of inspecting and, if required, for the operation and maintenance of Grantor's on-site sewer components, with the right to remove, at Grantor's expense, shrubbery, trees and other obstructions of any kind from the right-of-way area to accomplish the above purposes, said easement and right-of-way to burden the Property. The easement shall begin at a point where the York County's sewer system connection abuts the Grantor's property and running a width of twenty (20') feet, being 10 feet on each side of all the lines and tanks comprising the Grantor's on-site sewer components and the easement ends on the influent side of the solids interceptor tank. Grantor agrees to bear the expense of a more specific survey if required to identify the exact location of the easement.

Grantor and Grantee hereby incorporate into this easement by reference the terms of the Residential/Commercial Sewer Service Contract Agreement entered into by parties on this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, which is binding on the Grantor(s), his or her heirs and assigns.

TO HAVE AND TO HOLD the aforesaid rights to the grantee, its successors and assigns,  
as aforesaid.

And the Grantor agrees to warrant and forever defend the above granted rights against himself herself, his or her heirs and against any other person lawfully claiming or to claim the same or any part thereof.

CLT 1035017v2

BK 09069PG0225

IN WITNESS WHEREOF, Grantor has executed this Easement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2007 ("Effective Date").

WITNESSES:

\_\_\_\_\_  
Witness #1

\_\_\_\_\_  
Homeowner(s)

\_\_\_\_\_  
Witness #2

\_\_\_\_\_

CLT 1035017v2

BK09069PG0226

[illegible]

PERSONALLY appeared before me, (witness #1) \_\_\_\_\_, who  
being duly sworn says: That (s)he saw the within named \_\_\_\_\_  
\_\_\_\_\_ as property owner, sign, seal and as their act and  
deed, deliver the within-written instrument for the uses and purposes therein mentioned,  
and (s)he with (witness#2) \_\_\_\_\_ witnessed the execution thereof.

Signature of Witness #1

Sworn to before me this the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

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

Notary Public for South Carolina

My commission expires: \_\_\_\_\_

**Schedule 1**

**Legal Description of Property Encumbered by the Easement**

**[Insert Legal Description]**

CLT 1035017v2

**BK09069PG0228**

**EXHIBIT C**  
**Articles of Incorporation**

58

CLT 952080v21

**BK09069PG0229**

ARTICLES OF INCORPORATION  
OF  
HANDSMILL PROPERTY OWNERS ASSOCIATION, INC, A NONPROFIT CORPORATION

STATE OF SOUTH CAROLINA  
SECRETARY OF STATE  
NONPROFIT CORPORATION  
ARTICLES OF INCORPORATION

TYPE OR PRINT CLEARLY IN BLACK INK

Pursuant to Section 33-31-202 of the South Carolina Code of Laws, as amended, the undersigned corporation submits the following information:

1. The name of the nonprofit corporation is Handsmill Property Owners Association, Inc.
2. The initial registered office of the nonprofit corporation is 54 Marina Road  
Street Address  
Lake Wylie York SC 29710  
City County State Zip Code

The name of the registered agent of the nonprofit corporation at that office is

Jerrold Hughes Pettus, Jr.  
Print Name

I hereby consent to the appointment as registered agent of the corporation.

Jerrold Hughes Pettus, Jr.  
Agent's Signature

3. Check "a", "b", or "c" whichever is applicable. Check only one box:
  - a. ☐ The nonprofit corporation is a public benefit corporation.
  - b. ☐ The nonprofit corporation is a religious corporation.
  - c. ☒ The nonprofit corporation is a mutual benefit corporation.
4. Check "a" or "b", whichever is applicable:
  - a. ☒ This corporation will have members.
  - b. ☐ This corporation will not have members.
5. The address of the principal office of the nonprofit corporation is  
54 Marina Road Lake Wylie York South Carolina 29710  
Street Address City County State Zip Code
6. If this nonprofit corporation is either a public benefit or religious corporation (when box "a" or "b" of paragraph 3 is checked), complete either "a" or "b", whichever is applicable, to describe how the remaining assets of the corporation will be distributed upon dissolution of the corporation.
  - a. ☐ Upon dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501 (c)(3) of the Internal Revenue Code, or the corresponding section of any future Federal tax code, or shall be distributed to the Federal government, or to a state or local government, for a public purpose. Any such asset not so disposed of shall be disposed of by the Court of Common Pleas of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.



Handsmill Property Owners Association, Inc.  
Name of Corporation

b. ☐ Upon dissolution of the corporation, consistent with the law, the remaining assets of the corporation shall be distributed to

7. If the corporation is a mutual benefit corporation (when box "c" of paragraph 3 is checked), complete either "a" or "b", whichever is applicable, to describe how the (remaining) assets of the corporation will be distributed upon dissolution of the corporation.

a. ☒ Upon dissolution of the mutual benefit corporation, the (remaining) assets shall be distributed to its members, or if it has no members, to those persons to whom the corporation holds itself out as benefiting or serving.

b. ☐ Upon dissolution of the mutual benefit corporation, the (remaining) assets, consistent with the law, shall be distributed to

8. The optional provisions which the nonprofit corporation elects to include in the articles of incorporation are as follows (See 33-31-202(c) of the 1976 South Carolina Code of Laws, as amended, the applicable comments thereto, and the instructions to this form)

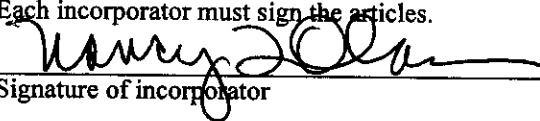
9. The name and address of each incorporator is as follows (only one is required)

|                             |                                                                      |              |
|-----------------------------|----------------------------------------------------------------------|--------------|
| <u>Nancy L. Olah, Esq.,</u> | <u>401 South Tryon Street, Suite 3000, Charlotte, North Carolina</u> | <u>28202</u> |
| Name                        | Address                                                              | Zip Code     |
| Name                        | Address                                                              | Zip Code     |
| Name                        | Address                                                              | Zip Code     |

10. Each original Director of the nonprofit corporation must sign the articles but only if the Directors are named in these articles:

|                                  |                       |
|----------------------------------|-----------------------|
| Name (Only if named in articles) | Signature of Director |
| Name (Only if named in articles) | Signature of Director |
| Name (Only if named in articles) | Signature of Director |

11. Each incorporator must sign the articles.

|                                                                                     |
|-------------------------------------------------------------------------------------|
|  |
| Signature of incorporator                                                           |
| Signature of incorporator                                                           |
| Signature of incorporator                                                           |

**EXHIBIT D**

**Bylaws**

**BYLAWS  
OF  
HANDSMILL PROPERTY OWNERS ASSOCIATION, INC.**

**ARTICLE I**

**NAME, LOCATION, AND PURPOSE**

Section 1.1. Name. The name of the nonprofit corporation is HANDSMILL PROPERTY OWNERS ASSOCIATION, INC. (the "Association").

Section 1.2. Location. The principal office of the Association shall initially be located in York County, South Carolina at 54 Marina Rd., Lake Wylie, South Carolina 29710. The registered office of the Association may be, but need not be, identical with the principal office.

Section 1.3. Purpose. The purpose for which the Association is organized is to further social activities of Owners of Lots and Units in Handsmill On Lake Wylie Subdivision located in York County, South Carolina, to provide services to the Owners, manage and maintain the Common Areas and Limited Common Areas and administer and enforce all covenants and restrictions dealing with the Property located in the Subdivision, and any other purposes allowed by law.

**ARTICLE II**

**DEFINITIONS**

All capitalized terms when used in these Bylaws, or any amendment hereto (unless the context shall otherwise require or unless otherwise specified herein or therein) shall have the meanings set forth in that certain Declaration of Covenants, Conditions and Restrictions for Handsmill On Lake Wylie (as supplemented and amended, from time to time, the "Declaration") executed by Handsmill Enterprises, LLC ("Declarant"), and duly recorded in the Office of the Clerk of Court of York County, South Carolina (the "County Registry").

**ARTICLE III**

**MEETINGS OF MEMBERS**

Section 3.1. Annual Meetings. The first annual meeting of the Members shall be held sometime during the month of October, 2008, as determined by a vote of the Board of Directors, and each subsequent regular annual meeting of the Members shall be held on or about the anniversary date of the first annual meeting thereafter, at a reasonable time to be determined by the Board. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held on the first day following which is not a legal holiday.

Section 3.2. Special Meeting. Special meetings of the Members may be called at any time by the President of the Association, by the Board of Directors, or upon the written request of the Members who are entitled to vote at least ten percent (10%) of all of the votes appurtenant to the Lots.

Section 3.3. Meetings of Groups of Certain Lot Owners. From time to time, meetings of less than all of the Members using, owning, leasing or licensing a portion of the Property including, but not limited to (i) certain Classes of Members, or (ii) the Members using, leasing or licensing Marina Boatslips (each, a "Member Group") or other Members may be called at any time (a) by the President of the Association, (b) by the Board of Directors, or (c) upon the written request of the Members who are entitled to vote at least ten percent (10%) of all of the votes appurtenant to the relevant Member Group, for the purpose of discussing and voting on matters affecting the Member Group. Such meetings may be held at, before, or immediately following the annual meeting of the Members or at a special meeting of the Member Group.

Section 3.4. Place of Meetings. All meetings of the Members and all meetings of any of the Member Group shall be held at such place within York County, South Carolina, as shall be determined by the Board of Directors, from time to time.

Section 3.5. Notice of Meeting. Written notice of each meeting of the Members and each meeting of the Member Group shall be given by, or at the direction of, the Secretary of the Association or other person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, not less than ten (10) days nor more than sixty (60) days before the date of such meeting to each Member entitled to vote, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for notice purposes. The 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 3.6. Classes of Lots and Voting Rights. The voting rights of the Members shall be appurtenant to the ownership of Lots or Units. There shall be three (3) classes of Membership with respect to voting rights:

- 3.6.1 Class A. Class A Members shall be all Single Family Lot Owners with the exception of Declarant. Declarant may, however, be a Class A Member upon the termination of Class C Membership. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an interest in any one Single Family Lot, all such Persons shall be Members, provided, however, that the vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Single Family Lot. Fractional voting is prohibited.
- 3.6.2 Class B. Class B Members shall be all Owners of Patio Home Lots, Townhome Lots and Condominium Units, except Declarant. Class B Members shall be allocated votes based on the formula set forth in the Supplemental Declaration that subjects them to this Declaration, together with the conforming changes amending the Bylaws, which Declarant has reserved the right to do as one of its Special Declarant Rights.
- 3.6.3 Class C. The Class C Member shall be Declarant. The Class C Member shall be entitled to ten (10) votes for each Lot or Unit owned.

Section 3.7. Declarant Control Period. The Class C Membership shall cease and be converted to Class A Membership on the first to occur of the following events:

- 3.7.1 the date on which all of the Class A Lots and Class B Lots or Units are conveyed to Persons other than Declarant; provided that the Class C Membership shall not be terminated so long as Declarant has the unexpired right to add Additional Property to the Planned Community by Declarant, as provided in the Declaration
- 3.7.2 December 31, 2027; or
- 3.7.3 upon the election of Declarant, in its sole discretion, to terminate its Class C Membership and to convert the Class C Lots or Units to Class A Lots. Any such election, to be effective, must be in writing and recorded in the County Registry.

The earliest to occur of Section 3.7.1, Section 3.7.2 or Section 3.7.3 shall be referred to as the "Turnover Date." After the Turnover Date and for so long as Declarant owns any part of the Property, Declarant shall be a Class A member.

Section 3.8. Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, twenty percent (20%) of the votes appurtenant to the Lots (or to the Lots of any Member Group) shall constitute a quorum for any action, except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum is not present or represented at any meeting, subsequent meetings may be called, subject to the same notice requirement, until the required quorum is present. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 3.9. Proxies. At all meetings of Members or any Member Group, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary of the Association. Every proxy shall be revocable and shall automatically cease upon conveyance of a Member's Lot.

Section 3.10. Action by Members. Except as provided otherwise in the Articles of Incorporation, the Declaration or these Bylaws, any act or decision approved by a majority vote of all votes entitled to be cast by all classes of Members, present or represented by legitimate proxy at a legally constituted meeting at which a quorum is present, shall be regarded as the act of the Members. Notwithstanding any term or provision herein, the affirmative vote of no less than two-thirds (2/3) of all votes entitled to be cast by all classes of Members shall be required in order for the Association to (a) file a complaint, on account of an act or omission of Declarant, with any governmental agency which has regulatory or judicial authority over the Subdivision or any part thereof, or (b) assert a claim against or sue Declarant.

Section 3.11. Action by Members of a Member Group. Except as otherwise provided in the Articles of Incorporation, the Declaration or these Bylaws, any act or decision approved by a majority vote of all votes entitled to be cast by the Members of any Member Group, present or represented by legitimate proxy at a legally constituted meeting at which a quorum of the Members of the Member Group is present, shall be regarded as the act of such Member Group.

Section 3.12. Waiver of Notice. Any Member may, at any time, waive notice of any meeting of the Members (or any meeting of any Member Group) in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Member at any such meeting shall constitute a waiver of notice by such Member of the time and place thereof, except where such Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all of the Members are present at any meeting of the Members (or a Member Group), no notice shall be required and any business may be transacted at such meeting.

Section 3.13. Informal Action by Members. Any action which may be taken at a meeting of the Members (or a Member Group), may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the persons who would be entitled to vote upon such action at a meeting and filed with the Secretary of the Association to be kept in the Association's minute book.

Section 3.14. Class Voting Prohibited. Class voting is expressly prohibited under these Bylaws.

ARTICLE IV

BOARD OF DIRECTORS

Section 4.1. Number. Prior to the Turnover Date, a Board of five (5) Directors shall be appointed by Declarant. The Directors appointed by Declarant do not need to be Members of the Association. The Board shall manage the business and affairs of the Association. At the first annual meeting of the Members following the Turnover Date, a Board of five (5) Directors shall be elected in accordance with Section 4.4 and Section 4.5.

Section 4.2. Initial Directors.

- 4.2.1 The initial Board of Directors shall be appointed by Declarant. The initial Board of Directors shall serve at the election of the Declarant from the date upon which the Declaration is recorded in the County Registry, until such time as their successors are duly appointed in accordance with Section 4.1, or duly elected and qualified as described in Section 4.4 and Section 4.5.
- 4.2.2 The names of the persons who shall serve on the initial Board of Directors are as follows:

| <u>Name</u>            | <u>Address</u>                               |
|------------------------|----------------------------------------------|
| Jerrold H. Pettus, Sr. | 1 Sunrise Point Lane<br>Lake Wylie, SC 29710 |
| Jerrold H. Pettus, Jr. | 68 Timberidge Drive<br>Lake Wylie, SC 29710  |

|                  |                                                |
|------------------|------------------------------------------------|
| Jim Heller       | 11282 Ballanvilla Drive<br>Charlotte, NC 28277 |
| Allison Chriscoe | 14040 York Road<br>Charlotte, NC 28053         |
| David Hoyle      | P.O. Box 2567<br>Gastonia, NC 28053            |

Section 4.3. Nomination. Subject to Section 4.1, nominations for the first election of the Board of Directors after the Turnover Date shall be made from the floor at a meeting of the Members. After such first election of Directors, a Nominating Committee shall make nominations for election to the Board of Directors, but nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to the annual meeting following the first election of Directors and at each annual meeting of the Members thereafter, to serve from the close of such annual meeting until the close of the next annual meeting. The appointment of the next Nominating Committee shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

Section 4.4. Election. After the Turnover Date, the Board of Directors shall be elected at the annual meeting of the Members by written ballot. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Articles of Incorporation, these Bylaws and the Declaration. Subject to the terms of this ARTICLE IV, the persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Section 4.5. Term of Office. Each Director shall hold office for the term for which such Director was elected, or until his death, resignation, retirement, removal disqualification or until his successor is elected and qualified. Subject to Section 4.1, at the first election of Directors following the Turnover Date, the Members shall elect five (5) Directors. The two (2) Members who receive the most votes shall serve for a three (3) year term. The two (2) Members who get the next highest number of votes shall serve for a two (2) year term. The Member receiving the next highest number of votes shall serve for a one (1) year term. Votes shall be tallied at the meeting at which they are cast, and in the event of a tie vote, a run-off election shall be conducted at the same meeting. After the initial election of Directors, each Director shall thereafter serve for a three (3) year term. Any Director may be elected for an unlimited number of successive terms.

Section 4.6. Removal. After the Turnover Date, any Director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a Director, such Director's successor shall be selected by the remaining members of the Board and shall save for the unexpired term of his predecessor. The Members may elect a Director at any time to fill any vacancy not filled by the remaining members of the Board.

Section 4.7. Compensation. No Director shall receive compensation for any service rendered to the Association. However, each Director may be reimbursed for his actual expenses incurred in the performance of his or her duties.

## ARTICLE V

### MEETINGS OF DIRECTORS

Section 5.1. Regular Meetings. Meetings of the Board of Directors shall be held on a regular basis as often as the Board sees fit, but no less often than annually, on such days and at such place and hour as may be fixed from time to time by resolution of the Board. If the meeting falls upon a legal holiday, then that meeting shall be held at the same time on the next day that is not a legal holiday.

Section 5.2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two (2) Directors, after not less than three (3) days notice to each Director.

Section 5.3. 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 5.4. Informal Action by Directors. Action taken by a majority of the Directors without a meeting is nevertheless Board action if written consent to the action in question is signed by all of the Directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 5.5. Chairman. A Chairman of the Board of Directors shall be elected by the Directors and shall preside over all Board meetings until the President of the Association is elected. Thereafter, the President shall serve as Chairman. In the event there is a vacancy in the office of the President, a Chairman shall be elected by the Board of Directors and serve until a new President is elected.

Section 5.6. Liability of the Board. The members of the Board of Directors shall not be liable to the Members for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Members shall indemnify, defend and hold harmless each of the Directors against all contractual liability to others arising out of contracts made by the Board on behalf of the Association, unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or these Bylaws. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Association, except to the extent that they are also Members.

Section 5.7. Participation by Conference Telephone. Any one or more Directors may participate at a meeting of the Board by means of a conference telephone, video conferencing system or similar communication device that allows all Directors participating to simultaneously hear each other during the meeting, and such participation shall be deemed in person presence at such meeting.



## ARTICLE VI

### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 6.1. Powers. The Board of Directors, for the benefit of the Members, shall have the following specific powers and rights (without limitation, however, with respect to any other powers and rights which the Board may possess under South Carolina law or under the Declaration):

- 6.1.1 To adopt and publish Rules and Regulations governing the use of the Common Areas and facilities and the personal conduct of the Members and their families, guests and invitees thereon, and to establish penalties for the infraction or violation thereof;
- 6.1.2 To suspend any Member's voting rights and right to use the Common Areas during any period in which such Member is in default in the payment of any Assessment levied by the Association. Such rights may also be suspended (after notice and hearing) for a period not to exceed sixty (60) days for infraction or violation of published Rules and Regulations;
- 6.1.3 To exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the Members by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;
- 6.1.4 To declare the office of a Director to be vacant in the event such Director is absent from three (3) consecutive regular meetings of the Board of Directors;
- 6.1.5 To employ a manager, an independent contractor, or such other employee(s) as the Board deems necessary, and prescribe their duties;
- 6.1.6 To grant all necessary easements and rights-of-way upon, over, under and across the Common Areas when it deems such action to be necessary and appropriate, including, but not limited to, easements for the installation and maintenance of electrical, telephone, cablevision, water, sanitary sewer and other utilities or drainage facilities, provided, however, until such time as Declarant no longer owns any portion of the Property, the Board may not grant such an easement or right-of-way without the prior written approval of Declarant;
- 6.1.7 To appoint and remove all officers, agents and employees of the Association, prescribe their duties, set their compensation and require of them such security or fidelity bonds as it may deem expedient;
- 6.1.8 To enter into agreements or contracts with utility companies with respect to utility installation, consumption and service matters relating to the Common Areas and/or the Association;
- 6.1.9 To enter into agreements or contracts with builders regarding the construction of Improvements on Lots located in the Subdivision;

- 6.1.10 To retain the services of legal, accounting and other professional firms;
- 6.1.11 To maintain contingency reserves for the purposes set forth in the Declaration;
- 6.1.12 To enforce the provisions of the Declaration and any Additional or Supplemental Declaration and any rules or regulations made hereunder or thereunder;
- 6.1.13 To levy Assessments as more particularly set forth in the Declaration; and
- 6.1.14 To take any and all other actions, and to enter into any and all other agreements, as may be necessary for the fulfillment of its obligations under the Declaration or these Bylaws.

Section 6.2. Duties. The Board, for the benefit of the Members, shall have the following specific duties (without limiting other duties the Board may have):

- 6.2.1 To maintain current copies of the Declaration, these Bylaws and other rules concerning the Subdivision, as well as Association books, records and financial statements, available for inspection upon reasonable notice and during normal business hours by all Owners, Mortgagees and insurers and guarantors of Mortgages that are secured by Lots;
- 6.2.2 To supervise all officers, agents and employees of the Association to ensure that their duties are properly performed;
- 6.2.3 As more fully provided in the Declaration:
  - 6.2.3.1 To set the amount of Assessments;
  - 6.2.3.2 To send written notice of each Assessment to every Owner subject thereto before its due date; and
  - 6.2.3.3 To foreclose the lien against any Lot for which Assessments are not paid or to bring an action at law against the Owner personally obligated to pay the same;
- 6.2.4 To issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any Assessment has been paid, which certificate shall be conclusive evidence of such payment;
- 6.2.5 To procure and maintain adequate liability insurance covering the Association and the Directors and officers thereof and adequate hazard insurance on the property owned by the Association, all in accordance with the Declaration;
- 6.2.6 To cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate, in accordance with the Declaration; and

- 6.2.7 To maintain or cause to be maintained the Common Areas (including the upkeep and maintenance of associated improvements) in accordance with the Declaration.

## ARTICLE VII

### OFFICERS AND THEIR DUTIES

Section 7.1. Officers. The officers of the Association shall be a President, a Vice President, a Secretary, a Treasurer, and such other officers as the Board may, from time to time, by resolution create.

Section 7.2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 7.3. Term. The Board shall elect each officer of the Association and each shall hold office for one (1) year or until his death, resignation, retirement, removal, disqualification, or his successor is elected and qualified.

Section 7.4. Special Appointment. The Board may elect such other officers 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 7.5. Resignation and Removal. The Board may remove any officer from office with or without cause. 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 7.6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7.7. Multiple Offices. The same person may hold the offices of Secretary and Treasurer. 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 7.4.

Section 7.8. Compensation. No officer shall receive any compensation for acting as an officer from the Association. However, any officer may be reimbursed for actual expenses incurred in performing his or her duties.

Section 7.9. Duties. The duties of the officers are as follows:

- 7.9.1 President - The President shall be the chief executive officer of the Association, and subject to the control of the Board, shall supervise and control the management of the Association. The President shall perform the following duties: (a) preside at all meetings of the Board of Directors; (b) see that orders and resolutions of the Board are carried out; (c) sign all leases, mortgages, deeds and other written instruments; and (d) co-sign all checks and promissory notes.

- 7.9.2 Vice President - The Vice President shall act in the place and stead of the President in the event of his or her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.
- 7.9.3 Secretary - The Secretary shall perform the following duties: (a) record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; (b) keep the corporate seal of the Association and affix it on all papers requiring the corporate seal; (c) serve notice of meetings of the Board and of the Members; (d) keep appropriate current records showing the Members of the Association, together with their addresses; and (e) perform such other duties as required by the Board.
- 7.9.4 Treasurer - The Treasurer shall perform the following duties: (a) receive and deposit in appropriate bank accounts all monies of the Association; (b) disburse such funds as directed by resolution of the Board of Directors; (c) sign all checks and promissory notes of the Association; (d) keep proper books of account; and (e) prepare an annual budget and a statement of income and expenditures to be presented to the Members at their regular annual meeting.

## ARTICLE VIII

### COMMITTEES

Subject to Section 4.3, the Board shall appoint a Nominating Committee. In addition, the Board shall appoint other committees as it deems appropriate, from time to time, in carrying out its purposes.

## ARTICLE IX

### BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, upon reasonable notice and during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation and these Bylaws shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at a reasonable cost.

## ARTICLE X

### ASSESSMENTS

As more particularly described in the Declaration, each Member is obligated to pay any Assessments established by the Association. Any Assessments which are not paid when due shall be delinquent. If an Assessment is not paid by its due date, as set forth in the Declaration, the Assessment shall bear interest as provided therein. Any late charges, costs of collection and reasonable attorneys' fees related to any such delinquent Assessment may be added to the amount of such Assessment. No Member may waive or otherwise escape liability for Assessments by non-use of the Common Area or abandonment of its Lot.

## ARTICLE XI

### CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words HANDSMILL PROPERTY OWNERS ASSOCIATION, INC. - 2007 - S.C.

## ARTICLE XII

### AMENDMENTS

Section 12.1. Procedure for Amendment by Members. Subject to the limitations hereinafter contained, the Articles of Incorporation and these Bylaws may be amended or modified at any time by a vote of no less than a majority of all votes entitled to be cast by the Members, which vote is taken at a duly held meeting of the Members at which a quorum is present, all in accordance with these Bylaws. Provided, however, if a majority of all votes entitled to be cast by the Members cannot be obtained at such a meeting, then the Articles of Incorporation and these Bylaws may be amended by obtaining the vote of a majority of all votes present at a duly held meeting of the Members at which a quorum is present, and, within ninety (90) days of such vote, by obtaining written consent to such amendment by Members holding a sufficient number of votes to comprise, along with such voting Members, a majority of all votes entitled to be cast by the Members. Further provided, that any amendment or modification to the Articles of Incorporation and these Bylaws must be consented to by Declarant so long as Declarant is the Owner of any Lot or other portion of the Property, which consent Declarant may grant or withhold in its sole discretion.

Section 12.2. Procedure for Amendment by Declarant. In addition, Declarant, as Class C Member, without obtaining the approval of any other Member or any other Owner or Owners, may make amendments or modifications to the Articles of Incorporation and these Bylaws which either: (a) are correctional in nature and do not involve a change which materially adversely affects the rights, duties or obligations specified herein or therein; (b) apply only to the portions of the Property then owned by Declarant; or (c) are necessary to effectuate the exercise of any of Declarant's reserved Special Declarant Rights. Any amendment or modification effected pursuant to this Section 12.1 shall become effective with respect to these Bylaws when an instrument is filed of record in the County Registry, provided, however, such an amendment or modification in lieu of being executed by the Members voting for such amendment or modification, may contain a certification of the Secretary of the Association stating that the amendment or modification has been voted on and approved by the requisite number of votes of the Members, as provided in this Section 12.1, and when with respect to the Articles of Incorporation any amendment or modification is filed with the Office of the South Carolina Secretary of State. Notwithstanding anything in this ARTICLE XII to the contrary, Declarant, as the Class C Member, may at its option, amend the Articles of Incorporation and these Bylaws without obtaining the consent or approval of any other person or entity if such amendment is necessary to cause these Bylaws or the Articles of Incorporation to comply with the requirements of the FHA, VA, Federal National Mortgage Association or any other governmental agency.

Section 12.3. Resolution of Conflict. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control. In the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

### ARTICLE XIII

#### MISCELLANEOUS

The fiscal year of the Association shall be the calendar year and shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

### ARTICLE XIV

#### INDEMNIFICATION OF DIRECTORS AND OFFICERS

Neither Declarant, nor any Member, nor the Board, nor the Association, nor any officers, Directors, agents or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Member, whether or not such other Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their Directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. Declarant, the Association or any other person, firm or entity making such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof.

The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

The Association shall indemnify (a) any Director or officer of the Association, (b) any former Director or officer of the Association, or (c) any person who may have served at the request of the Association as a director or officer of another corporation, whether for profit or not for profit, against expenses (including reasonable attorneys' fees) or liabilities actually and reasonably incurred by him or her in connection with the defense of or as a consequence of any threatened pending or completed action, suit or proceeding (whether civil or criminal) in which he or she is made a party or was (or is threatened to be made) a party by reason of being or having been such director or officer, except in relation to matters as to which he or she shall be adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of a duty.

The indemnifications provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute, bylaw, agreement, vote of Members

or any disinterested Directors or otherwise and shall continue as to any person who has ceased to be a Director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

The Association may purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or agent of the Association, or is or was serving at the Association's request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him or her against such liability.

The Association's indemnification of any person who is or was a Director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person may collect as indemnification (i) under any policy of insurance purchased and maintained on his or her behalf by the Association, or (ii) from such other corporation, partnership, joint venture, trust or other enterprise.

Nothing contained in this ARTICLE XIV, or elsewhere in these Bylaws, shall operate to indemnify any Director or officer if such indemnification is for any reason contrary to any applicable state or federal law.

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

200700379377  
Filed for Record in  
YORK COUNTY, SC  
DAVID HAMILTON  
10-25-2007 02:54 pm.  
DECLARATION OF COVENANTS, 10.00  
OR Vol 9542 Page 81 - 84  
**FIRST AMENDMENT TO  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
HANDSMILL ON LAKE WYLIE**

**THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HANDSMILL ON LAKE WYLIE ("First Amendment")** is made as of the 25<sup>th</sup> day of October, 2007 (the "**Effective Date**") by Handsmill Enterprises, LLC, a South Carolina limited liability company ("**Declarant**").

**STATEMENT OF PURPOSE**

Instrument Vol Page  
200700379377 OR 9542 81

A. Declarant recorded a Declaration of Covenants, Conditions and Restrictions for Handsmill on Lake Wylie on May 8, 2007 recorded in Book 9069, Page 127 in the Office of the York County Clerk of Court (the "**Declaration**").

B. In Section 12.3.4 of the Declaration, Declarant reserved the unilateral right, in its sole and absolute discretion, to make certain amendments or modifications which Declarant deems necessary or desirable, including, without limitation, amendments or modifications to any procedural, administrative, or substantive provision of the Declaration.

C. Declarant desires to exercise its rights to amend certain procedural, administrative, or substantive provisions of the Declaration by the execution of this First Amendment.

NOW, THEREFORE, Declarant amends the Declaration as follows:

1. In Section 5.3.4, the words "at closing" in the fourth line are omitted and the following words are substituted in their place: "...at or before the issuance of the final building permit or lot disturbance permit and prior to final ARC approval. . .".

2. The first sentence of Section 10.4 is deleted in its entirety and the following is substituted as a new first sentence to Section 10.4: "As provided in Section 5.3.4, each time Declarant sells a Lot which is to be connected to and served by the Low Pressure Sewer System to a third party, whether a Legacy Builder or otherwise, the Association shall assess and Declarant shall collect an Initial Low Pressure Sewer Assessment on behalf of the Association at or before the issuance of the building permit or lot disturbance permit and final to prior ARC approval, and shall remit to the Association's management company, to be held in a special escrow account on behalf of the Association."

3. Section 13.9 is revised to include the following as a new final sentence to this section: "The Initial Low Pressure Sewer Assessment shall be paid on or before the issuance of the building permit or land disturbance permit and final to ARC approval."

4. Section 16.2 is amended by deleting the following words in the first sentence: "less ten percent (10%)."

CLT 1072887v1

**NO 9542 NO 081**



5. Section 13.13 is modified by deleting the words "twenty-four (24)" in the second line and inserting in its place the words "thirty-six (36)".

**[BALANCE OF PAGE LEFT INTENTIONALLY BLANK  
SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

IN WITNESS WHEREOF, Declarant has caused this First Amendment to be executed by its duly authorized Manager/Member as of the Effective Date.

[Signature]  
Witness #1 (Signature)

HANDSMILL ENTERPRISES, LLC, a South Carolina limited liability company

Chuck Hester  
Witness #1 (Print Name)

By: [Signature]  
Its: Manager/Member

[Signature]  
Witness # 2 (Signature)

Ronda Seiwert  
Witness #2 (Print Name)

STATE OF South Carolina  
COUNTY OF York

PROBATE

Personally appeared before me, Chuck Hester (First Witness) and made oath that he/she saw the within named Handsmill Enterprises, LLC, a South Carolina limited liability company by Serry Pettus Jr, its Manager/Member, execute and deliver the within written instrument, as the act and deed of the limited liability company, and that he/she with Ronda Seiwert (second witness) witness the execution thereof.

[Signature]  
First Witness

Sworn to before me this 25<sup>th</sup>  
day of October, 2007.

Malisa L Myers  
(Signature of Notary Public)

Notary Public for S. Carolina

My Commission Expires: 11-30-07

[NOTARY SEAL]

Branch Banking and Trust Company, as owner and holder of a promissory note secured by a Mortgage and Security Agreement recorded February 17, 2006 in Record Volume 7803 at Pages 200, *et seq.* in the Office of the Clerk of Court for York County, South Carolina, joins in the execution of this Amendment to Declaration for the purpose of making this Mortgage and Security Agreement subject and subordinate to the terms and conditions of this Declaration, but solely as such Declaration relates to the following real property and as to no other real property of the Declarant: All those certain lots numbered 62, 63, 64, 71, 72, 73, 74, 77, 88, 91-101, 105, 106, 109, 110, and 112-136 as shown on "Final Subdivision Plat of Handsmill on Lake Wylie, Phase 1, Sheets 1-3, Bethel Township, York County, South Carolina," dated February 27, 2007 and prepared by CBS Surveying and Mapping, Inc. No. L00499, Ted Beverly, SCPLS Number 7823, recorded on March 2, 2007 in Plat Book D-194, Pages 7-9, Office of the Clerk of Court, York County, South Carolina.

Cindy H. Bynum  
Witness #1 (Signature)

Cindy H. Bynum  
Witness #1 (Print Name)

Harnisha Patel  
Witness #2 (Signature)

Harnisha Patel  
Witness #2 (Print Name)

BRANCH BANKING AND TRUST  
COMPANY, a North Carolina state banking  
corporation

By: Beverly Bradshaw  
Its: Senior Vice President

STATE OF North Carolina  
COUNTY OF Gaston

PROBATE

Personally appeared before me, Cindy H. Bynum (First Witness) and made oath that he/she saw the within named Branch Banking and Trust Company, a North Carolina state banking corporation, by Beverly Bradshaw, its Sr.V. President, execute and deliver the within written instrument, as the act and deed of the state banking corporation, and that he/she with Harnisha Patel (second witness) witness the execution thereof.

Cindy H. Bynum  
First Witness

Sworn to before me this 24  
day of October, 2007.  
Barbara J. Jones  
(Signature of Notary Public)

Notary Public for North Carolina

My Commission Expires: 12/14/2008

[NOTARY SEAL]

STATE OF SOUTH CAROLINA

COUNTY OF YORK

**SUPPLEMENTAL DECLARATION TO  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
HANDSMILL ON LAKE WYLIE**

THIS SUPPLEMENTAL DECLARATION is made this 31<sup>st</sup> day of January, 2010 by Handsmill Enterprises, LLC ("Declarant").

WHEREAS, Declarant executed a Declaration of Covenants, conditions and Restrictions for Handsmill on Lake Wylie ("Declaration") and recorded said Declaration on May 8, 2007 in Record Book 9069 at Page 127 in the Office of the Clerk of Court for York County, South Carolina;

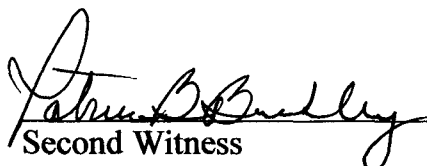
WHEREAS, the provisions of Section 2.2 of the Declaration provide for all or any portion of the Additional Property, as defined in the Declaration, to be made subject to the terms of the Declaration by the filing of a supplemental declaration in the Office of the Clerk of Court for York County, South Carolina containing a description of the Additional Property and a statement of Declarant's intent to extend the operation and effect of the Declaration to the Additional Property;

WHEREAS, Declarant is the owner of property within the Additional Property and which is described on Exhibit A attached hereto and wishes to extend the operation and effect of the Declaration to the property described on Exhibit A.

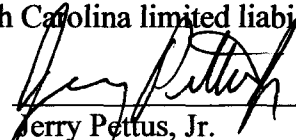
NOW, THEREFORE, Declarant does hereby incorporate the real property described on Exhibit A attached hereto and extends the operation and effect of the Declaration to said property.

IN WITNESS WHEREOF, Declarant, on the day and year first written above, has caused this document to be duly executed.

  
\_\_\_\_\_  
First Witness

  
\_\_\_\_\_  
Second Witness

HANDSMILL ENTERPRISES, LLC,  
a South Carolina limited liability company

By:   
\_\_\_\_\_  
Name: Jerry Pettus, Jr.  
Its: Manager

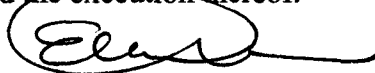
Drawn by and Mail To:  
G. Robert Turner, III, Esq.  
Horack Talley Pharr & Lowndes, P.A.,  
301 S. College Street, Suite 2600  
Charlotte, NC 28202

201000089312  
Filed for Record in  
YORK COUNTY, SC  
DAVID HAMILTON  
01-14-2010 At 10:20 am.  
RESTR COVEN 10.00  
QR Vol 11218 Page 228 - 230

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Beth A Parnelle, a Notary Public in and for the aforesaid State and County, personally appeared before me the undersigned Witness, who being duly sworn, deposes and says that he/she saw the within named Jerry Pettus, Jr., Manager of Handsmill Enterprises, LLC, sign, and as its act and deed, deliver the foregoing instrument for the uses and purposes therein mentioned, and that he/she, together with Patricia Buckley Witness #2), the other witness subscribed above, witnessed the execution thereof.



(Witness #1 sign here)

Elena Turner

(Print Name of Witness #1)

Sworn to before me this 8th  
day of January, 2010.

[NOTARY SEAL BELOW]

Beth A Parnelle  
Notary Public for SC  
My commission expires: \_\_\_\_\_

My commission expires September 15, 2016

## **EXHIBIT A**

All platted lots, common areas, common open space, playground areas and private rights-of-way in Handsmill on Lake Wylie subdivision as shown on the following recorded plats in the Office of the Clerk of Court for York County, South Carolina:

1. Plat Book D-317, Page 3;
2. Plat Book D-338, Page 8;
3. Plat Book D-249, Page 8;
4. Plat Book D-249, Page 10;
5. Plat Book D-275, Page 3;
6. Plat Book D-309, Page 3;
7. Plat Book D-340, Page 5;
8. Plat Book D-391, Page 6;
9. Plat Book D-348, Page 6;
10. Plat Book D-231, Page 10;
11. Plat Book D-250, Pages 1 and 2; and
12. Plat Book D-323, Page 1.

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

**SECOND AMENDMENT TO  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
HANDSMILL ON LAKE WYLIE**

**THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTITONS FOR HANDSMILL ON LAKE WYLIE ("Second Amendment")** is made as of the 30th day of November, 2009 (the "**Effective Date**") by Handsmill Enterprises, LLC, a South Carolina limited liability company ("**Declarant**").

**STATEMENT OF PURPOSE**

A. Declarant recorded a Declaration of Covenants, Conditions and Restrictions for Handsmill on Lake Wylie on May 8, 2007 recorded in Book 9069, Page 177 in the Office of the York County Clerk of Court (the "**Declaration**").

200900085994  
Filed for Record in  
YORK COUNTY, SC  
DAVID HAMILTON  
12-09-2009 AT 10:37 AM  
Page 177 of 255  
OR Vol 11163 Page 254 - 255

B. Declarant recorded a First Amendment to Declaration of Covenants, Conditions and Restrictions for Handsmill on Lake Wylie on October 25, 2007 recorded in Book 9542, Page 81 in the Office of the York County Clerk of Court.

C. In Section 12.3.4 of the Declaration, Declarant reserved the unilateral right, in its sole and absolute discretion, to make certain amendments or modifications which Declarant deems necessary or desirable, including, without limitation, amendments or modifications to any procedural, administrative, or substantive provision of the Declaration. The Bylaws of Handsmill Property Owners Association, Inc. (the "**Bylaws**") are attached to the Declaration as Exhibit D and in Section 12.2 thereof, Declarant reserves the unilateral right to make certain amendments to the Bylaws.

D. Declarant desires to exercise its rights to amend certain provisions of the Declaration and the Bylaws.

NOW, THEREFORE, Declarant amends the Declaration and Bylaws as follows:

1. Section 9.38 of the Declaration, entitled "Compulsion to Build", is deleted in its entirety.
2. Section 16 of the Declaration, entitled "Lot Resales", is deleted in its entirety.
3. In Section 9.5 of the Declaration, entitled "Dwelling Size", the minimum heated area square footage requirements are deleted and replaced by the following:

|                                              | Minimum Total<br>Heated Area | Minimum Ground<br>Floor Heated Area                              |
|----------------------------------------------|------------------------------|------------------------------------------------------------------|
| 1 Story                                      | 2,000                        | 2,000                                                            |
| 1 ½ story, bi-level,<br>tri-level and others | 2,200                        | 1,200 main floor for bi-level;<br>upper two floors for tri-level |
| 2 story, 2 ½ story                           | 2,600                        | 1,500                                                            |
| Waterfront Lots                              | 2,600                        | 1,500                                                            |

IN WITNESS WHEREOF, Declarant has caused this Second Amendment to be executed by its duly authorized Manager/Member as of the Effective Date.

Elena Turner  
Witness #1 (Signature)

Elena Turner  
Witness #1 (Print Name)

Heidi O. Pettus  
Witness #2 (Signature)

HEIDI O. PETTUS  
Witness #2 (Print Name)

HANDSMILL ENTERPRISES, LLC,  
a South Carolina limited liability company

By: Jerry Pettus, Jr.  
Name: Jerry Pettus, Jr.  
Title: Manager/Member

STATE OF SC

COUNTY OF York

Personally appeared before me, Elena Turner (First Witness) and made oath that he/she saw the within named Handsmill Enterprises, LLC, a South Carolina limited liability company by Jerry Pettus, Jr., its Manager/Member, execute and deliver the within written instrument, as the act and deed of the limited liability company, and that he/she with Heidi Pettus (Second Witness) witness the execution thereof.

Elena Turner  
First Witness

Sworn to before me this 30th  
day of November, 2009.

Beth A. Parnell  
(Signature of Notary Public)

Notary Public for SC

My Commission Expires;  
~~My commission expires September 15, 2016~~

[NOTARY SEAL]



STATE OF SOUTH CAROLINA )  
 )  
 )  
 )  
 COUNTY OF YORK )  
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**THIRD AMENDMENT TO  
 DECLARATION OF COVENANTS,  
 CONDITIONS AND RESTRICTIONS FOR  
 HANDSMILL ON LAKE WYLIE**

THIS THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HANDSMILL ON LAKE WYLIE is made this 10<sup>th</sup> day of November, 2014 by Handsmill Associates Property, LLC ("Declarant").

WHEREAS, Handsmill Enterprises, LLC, as the original developer, recorded the Declaration of Covenants, Conditions and Restrictions for Handsmill on Lake Wylie and recorded said Declaration on May 8, 2007 in Record Book 9069 at Page 127 in the Office of the Clerk of Court for York County, South Carolina (as subsequently amended, supplemented and assigned, the "Declaration");

WHEREAS, the Declaration was later amended and supplemented by a First Amendment to Declaration of Covenants, Conditions and Restrictions for Handsmill on Lake Wylie recorded on October 25, 2007 in Record Book 9542 at Page 81, a Second Amendment to Declaration of Covenants, Conditions and Restrictions for Handsmill on Lake Wylie recorded on December 9, 2009 in Record Book 11163 at Page 254, a Supplemental Declaration of Covenants, Conditions and Restrictions for Handsmill on Lake Wylie recorded on January 1, 2010 in Record Book 11218, Page 228, a Second Supplemental Declaration of Covenants, Conditions and Restrictions for Handsmill on Lake Wylie recorded on NOV. 13, 2014 in Record Book 14496, Page 267;

WHEREAS, Handsmill Enterprises, LLC assigned its rights and benefits under the Declaration to Declarant pursuant to an Assignment of Declarant's Rights recorded on June 29, 2012 in Record Book 12707 at Page 159, aforesaid records;

WHEREAS, Section 12.3.4 of the Declaration allows Declarant to amend the Declaration without the approval of any Member or Owners other than Declarant; and

WHEREAS, Declarant desires to amend the Declaration as set forth below.

NOW, THEREFORE, Declarant does hereby amend the Declaration as follows:

1. Exhibit A-1 of this Amendment is added to the Declaration for the purpose of establishing the boundaries of neighborhoods in the Planned Community; provided, however, that any real property shown on Exhibit A-1 that is not currently subject to the Declaration shall not be deemed to be subjected to the Declaration by virtue of being shown on Exhibit A-1. Such neighborhoods shall become subject to the Declaration only when and if a formal supplement to the Declaration is recorded, adding those neighborhoods.
2. Section 1.43 of the Declaration, providing the definition of "Legacy Builder," shall be deleted in its entirety and replaced with "Intentionally Omitted" such that the numbering in Article 1 will remain unchanged.

3. Section 1.48 of the Declaration, providing the definition of "Lot in Use," shall be amended and restated to provide as follows:

"Lot in Use" means any Lot owned or occupied by any Person other than Declarant.

4. The following defined terms are added to the Declaration as new Sections, with the respective Section number being set forth below:

1.88. **'Neighborhood'** shall mean a sub-community within the Planned Community, with the boundaries of each being generally shown on Exhibit A-1, provided that where a legal description is provided, such legal description shall control.

1.90. **'The Pinnacle'** shall mean the Neighborhood designated as such on Exhibit A-1 and commonly referred to as The Pinnacle at Handsmill on Lake Wylie, and incorporated into the Declaration by the Second Supplemental Declaration of Covenants, Conditions and Restrictions for Handsmill on Lake Wylie.

1.91. **'The Abbey'** shall mean the Neighborhood designated as such on Exhibit A-1 and commonly referred to as The Abbey at Handsmill on Lake Wylie.

5. The following development right is hereby added to the end of Section 2.3 of the Declaration: ", and (xxvii) to construct such Improvements within any Common Areas, Limited Common Areas, and any roads or road right-of-ways, as Declarant deems reasonable and appropriate in Declarant's sole and absolute discretion, without review or approval by the ARC and without encumbrance of the Use Restrictions."
6. Section 5.3.4 of the Declaration, entitled "Initial Low Pressure Sewer Assessments," shall be amended to delete the parenthetical reading "(including, without limitation, any Legacy Builder)."
7. Section 5.3.5 of the Declaration, entitled "Initial Working Capital Assessments," shall be amended to delete the parenthetical reading "(including, without limitation, any Legacy Builder)."
8. Section 5.10 of the Declaration, entitled "Exempt Land," shall be amended and restated to provide as follows:
- Common Areas and any Lots owned by Declarant shall be exempt from any and all Assessments.
9. Section 5.12 of the Declaration, entitled "Authority and Transfer Fee Provisions," shall be amended to delete the words "or a Legacy Builder."

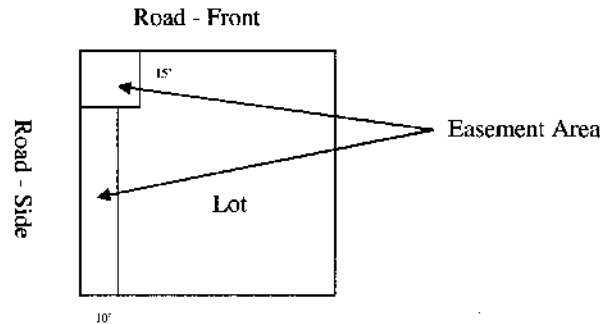
10. Section 5.14 of the Declaration, entitled "Exempt Transfers," shall be amended to delete Sections 5.14.2 and 5.14.3 and replace each with "Intentionally Omitted" such that the numbering in Section 5.14 shall remain unchanged.
11. Section 5.16 of the Declaration, entitled "Community Marketing Fund," shall be deleted in its entirety.
12. Section 7.9 of the Declaration, entitled "Easements for Sales Offices," shall be amended and restated to provide as follows:

Declarant reserves easements to construct sales and marketing offices, trailers or other structures on the Property, and further reserves the right to maintain sales offices in any clubhouse that may be constructed as an Amenity, without payment of rent during the Declarant Control Period. In connection with the foregoing, Declarant may construct and maintain on any property owned by it such facilities, activities, and things as, in Declarant's opinion, may reasonably be required, convenient, or incidental to the construction or sale of Lots. Such permitted facilities, activities, and things shall include business offices, signs, flags (whether hung from flag poles or attached to a structure), model homes, sales offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, Declarant and its designees may park vehicles in areas other than garages or driveways, including on streets. Declarant further reserves the right to authorize, at Declarant's sole discretion, any builder to construct and maintain sales and marketing offices or trailers and/or model homes on any Lot(s) owned by such builder and to carry on the foregoing activities incidental to the builder's construction and sales; provided that such authorization shall be in writing, but need not be recorded, and may include such conditions or restrictions as Declarant deems reasonable or appropriate in its sole discretion.

13. The current Section 7.16 is renumbered as Section 7.17, and a new Section 7.16 is added to the Declaration, as follows:

*[remainder of page intentionally left blank; text of new 7.16 begins on next page]*

7.16. **Corner Lot Landscape Easement.** With respect to each corner Lot in The Pinnacle, Declarant hereby reserves, for the benefit of itself and the Association and their respective successors and assigns, a perpetual easement over such Lots to construct, install and maintain landscape features or fences within an area (i) being a square measuring fifteen feet (15') on all sides, with two sides of such square being the Lot lines in the corner of the Lot nearest the road intersection, and (ii) being a strip of land measuring ten feet (10') wide running the length of the sideyard along the road, such easement area being roughly sketched below. Nothing contained herein shall be interpreted as requiring Declarant or the Association to install or maintain landscape features or fences within the easement area.



14. Section 9.5 of the Declaration, entitled "Dwelling Size", shall be amended and restated to provide as follows:

The Heated Area minimums set forth below exclude basement areas (defined as any level in which at least one perimeter wall is below, or partially below, grade) unless such basement areas have two or more perimeter walls above surrounding grade, and such basement areas are fully heated and air-conditioned and constructed to a quality equal to the above grade levels of the Dwelling. In addition, the Heated Area minimums exclude vaulted ceiling areas, attics, unheated porches, attached or detached garages, porte-cocheres and unheated storage areas, decks and patios. The term 'story' means a finished horizontal division of Heated Area extending from the floor of such division to the ceiling above it. A half story means a story which contains fifty percent (50%) or less Heated Area than the story in the Dwelling containing the most Heated Area.

Except as expressly set forth below for individually designated Neighborhoods, any Dwelling erected upon any Single Family Lot shall contain not less than the following Heated Areas:

|                                           | Minimum Total Heated Area | Minimum Ground Floor Heated Area                              |
|-------------------------------------------|---------------------------|---------------------------------------------------------------|
| 1 Story                                   | 2,000                     | 2,000                                                         |
| 1 ½ story, bi-level, tri-level and others | 2,200                     | 1,200 main floor for bi-level; upper two floors for tri-level |
| 2 story, 2 ½ story                        | 2,600                     | 1,500                                                         |
| Waterfront Lots                           | 2,600                     | 1,500                                                         |

Any Dwelling erected upon a Single Family Lot in The Pinnacle shall contain not less than the following Heated Areas:

|                                           | Minimum Total Heated Area | Minimum Ground Floor Heated Area |
|-------------------------------------------|---------------------------|----------------------------------|
| 1 Story                                   | 2000                      | 2000                             |
| 1 ½ story, bi-level, tri-level and others | 2200                      | No requirement                   |
| 2 story, 2 ½ story                        | 2400                      | No requirement                   |

Notwithstanding the foregoing requirements, the Declarant or the ARC, as applicable, shall have the right (but not the obligation), because of restrictive topography, Lot dimensions, unusual site related conditions, or other reasons, to allow variances from such minimum square footage requirements of up to ten percent (10%) of such minimum square footage requirement by granting a specific variance.

No Dwelling erected upon a Lot shall contain more than two and one-half (2 ½) stories above ground level; provided, however, that Declarant or the ARC, as applicable, shall have the right, but not the obligation, (because of steep topography, unique Lot configurations or similar reasons) to allow Dwelling heights greater than two and one-half (2 ½) stories on rear and side elevations.

15. Section 9.7 of the Declaration, entitled "Fences," shall be amended and restated to read as follows:

No fence or wall (regardless of the materials) shall be erected on a Lot without the prior written approval of Declarant or the ARC, as applicable. With respect to

any Lot that is not a corner Lot, no fence may be erected nearer the front lot line of the Lot than a hypothetical line set ten feet (10') back from the front face of the Dwelling located on such Lot and running parallel to such front face of the Dwelling. With respect to corner Lots, (i) no fence may be erected nearer the front lot line of the Lot than a hypothetical line set ten feet (10') back from the front face of the Dwelling located on such Lot and running parallel to such front face of the Dwelling from Lot line to Lot line, and (ii) the sideyard fence shall be located as near as practical to the side lot line of the Lot or at such other location as is specified by the Declarant or ARC. Notwithstanding the foregoing, the Declarant or the ARC may, on a case-by-case basis, approve landscape fencing in the front and sideyard, at a different location than that described above, where deemed reasonable and appropriate by Declarant or ARC, as applicable, in their sole and absolute discretion. Declarant or the ARC, as applicable, may set forth requirements for fences in the Design Guidelines from time to time, including without limitation, restrictions on materials, height and openness, and all fences and walls shall be erected in accordance with the provisions of the Design Guidelines. The restrictions described herein or in the Design Guidelines shall not apply to any Improvements originally installed by Declarant on any Common Area and/or Limited Common Area or within the easement area described in Section 7.16 entitled "Corner Lot Landscape Easement."

16. Section 9.8 of the Declaration, entitled "Erosion and Sediment Controls," shall be amended and restated to provide as follows:

Prior to any earth-disturbing activity, erosion and sediment control measures shall be implemented and undertaken by the Owner or Owner's contractors or subcontractors in accordance with the applicable provisions of the Design Guidelines.

17. Section 9.17 of the Declaration, entitled "Signs," shall be amended and restated to provide as follows:

Except as otherwise required by the Zoning Ordinance, any subdivision ordinance, any sign ordinance and/or any and all applicable local ordinances, no sign of any kind shall be displayed to the public view on any Lot or Common Area, except with the prior written approval of Declarant or the ARC or as may be expressly allowed under the Design Guidelines. The provisions of this Section 9.17 shall not apply to the placement of permanent signs identifying the Planned Community at its entrance, nor shall it prevent Declarant or its agents from placing signs to advertise the Planned Community during the construction and sale period, including signs on the Common Area and on any Lot(s) owned by Declarant. Declarant further reserves the right to authorize, at Declarant's sole discretion, any builder or its agents to place "For Sale" signs and other advertising items incidental to any activity authorized by Declarant pursuant to Section 7.9; provided that such authorization shall be in writing, but need not be recorded, and may include such conditions or restrictions as Declarant deems reasonable or appropriate in its sole discretion. If any Owner violates the provisions of this

Section 9.17, and fails to cure such violation within ten days after receiving written notice of such failure from Declarant or the ARC, then Declarant or the ARC shall have the power and authority to enter upon the Lot of such Owner and remove any sign or signs which violate the provisions of this Section 9.17 without any liability for damages for wrongful entry, trespass, or otherwise to any Person.

18. Section 9.18 of the Declaration, entitled "Swimming Pools," is amended and restated to provide as follows:

No above ground swimming pools shall be permitted in the Planned Community, except that (i) hot tubs and saunas shall be allowed to the extent allowed under the Design Guidelines, and (ii) small, inflatable wading pools for small children not larger than 100 square feet and not higher than two (2) feet shall be permitted from April 1 – September 30 of each calendar year.

19. Section 9.21 of the Declaration, entitled "Diligent Construction," shall be amended and restated to provide as follows:

All construction, landscaping or other work which has been commenced on any Lot must be continued with reasonable diligence to completion and no partially completed Dwelling or other Improvements shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion. All exterior construction must be completed within one (1) year after the date upon which it commenced with issuance of a certificate of occupancy within eighteen (18) months after construction is commenced, unless a longer time is approved by the ARC; provided, however, that such time periods shall be tolled during the period of any circumstance which prevents construction and which is outside the control of Owner and Owner's contractors, such as acts of God, war, civil disturbance, and government imposed moratoriums (except to the extent such moratorium arises from the act or omission of Owner or Owner's contractors). Any damage to the roads, curbs or sidewalks or any part of any Common Area or any utility system caused by an Owner or such Owner's contractor or subcontractors shall be repaired by such responsible Owner. Each Owner and its respective contractors and subcontractors shall keep all Lots upon which it is constructing Improvements free of unsightly construction debris, in accordance with the construction rules established by the ARC, and shall similarly keep contiguous public and private areas free from any dirt, mud, garbage, trash, or other debris which is occasioned by construction of Improvements. The Board may levy a Special Individual Assessment against an Owner's Lot to pay for the cost of repairing any damage to roads, streets, curbs or sidewalks or any part of any road, street, Common Area, Limited Common Area or utility system, to pay for the cost of cleaning public and private areas, including public and/or private roads and streets located within the Planned Community, and to pay for the cost of the removal of dirt, mud, garbage, trash or other debris, which is occasioned by the activities of an Owner or Owner's contractors or subcontractors during the planning, designing, locating, installing, constructing, reconstructing, rebuilding, restoring, replacing, repairing or removing of Improvements. Declarant, and each

Owner or Owner's contractors or subcontractors, shall be responsible for erosion control protection during any earth-disturbing operation, which may be set forth in the Design Guidelines, from time to time.

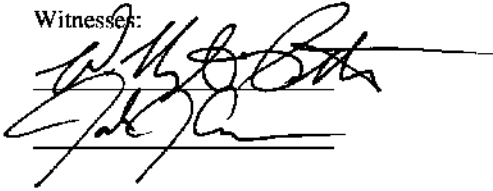
20. Section 9.32 of the Declaration, entitled "Tree Removal," is deleted in its entirety.
21. Section 10.4 of the Declaration, entitled "Initial Low Pressure Sewer Assessments," shall be amended to delete the phrase "whether a Legacy Builder or otherwise."
22. Section 13.3.2 of the Declaration is amended and restated to provide:

13.3.2. The ARC is also hereby authorized to publish and promulgate from time to time, and revise and amend at any time in its sole discretion, construction rules to be followed by all Owners and their contractors and subcontractors performing work or constructing or installing Improvements (including landscape Improvements) on the Property. Notwithstanding the foregoing, no rule or regulation shall be adopted unreasonably limiting the hours and days of the week a builder's construction activities may be conducted. Upon approval of the Board, the ARC may issue and amend the Design Guidelines from time to time; provided that such new or amended Design Guidelines shall not apply to any Lots for which house plans were submitted by a builder and approved by the Declarant or the ARC pursuant to Articles 8 and/or 13 of the Declaration, as applicable, prior to the effective date of such new or amended Design Guidelines. As used in this Section 13.3.2, the term "builder" shall mean an entity that acquires one or more Lots for the purpose of constructing a new home on the Lot and selling it to a consumer, and specifically excludes, without limitation, subcontractors of builders and entities or individuals performing alterations, repairs or maintenance to existing Improvements already owned by consumers.
23. Except as expressly amended hereby, the Declaration shall remain in full force and effect.

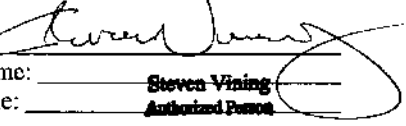


IN WITNESS WHEREOF, Declarant, on the day and year first written above, has caused this document to be duly executed.

Witnesses:



Handsmill Associates Property, LLC

By: 

Name:

Steven Vining

Title:

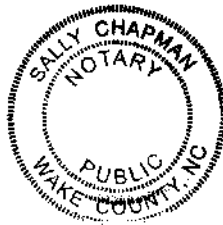
Authorized Person

State of North Carolina )

County of Wake )

I, Sally Chapman, Notary Public for the state of North Carolina, do hereby certify that Steven Vining, the Authorized Person of Handsmill Associates Property, LLC, personally appeared before me this day and acknowledge the due execution of the foregoing instrument.

Subscribed to and sworn before me this 10<sup>th</sup> day of November, 2014.



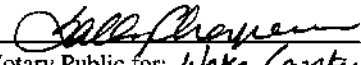
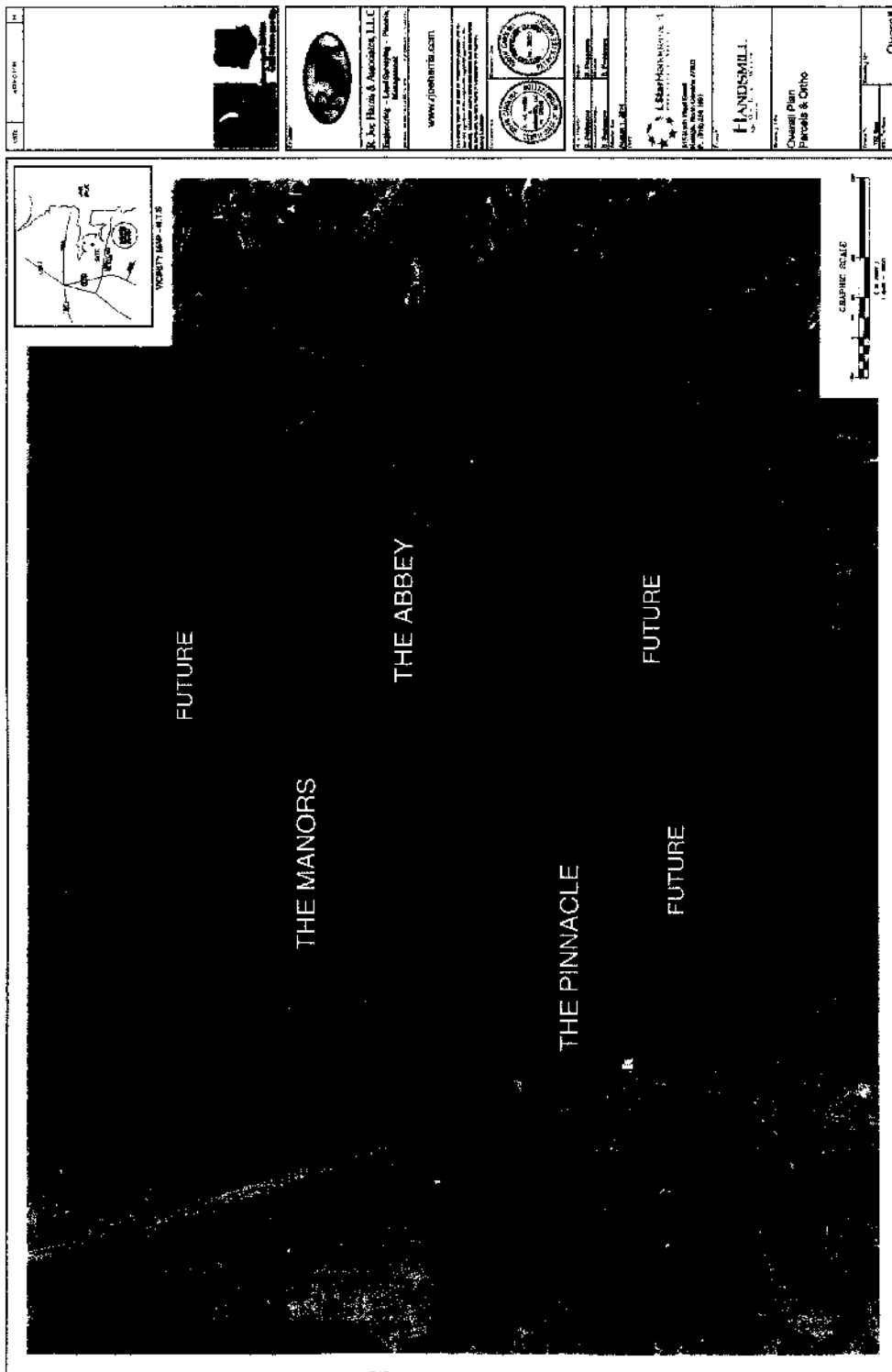
 (LS)  
Notary Public for: Wake County, NC  
My Commission Expires: 8-3-2015

EXHIBIT A-1

*[follows on subsequent page]*

Instrument Vol Page  
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STATE OF SOUTH CAROLINA )

THIRD AMENDMENT TO

DECLARATION OF COVENANTS,

CONDITIONS AND RESTRICTIONS FOR

COUNTY OF YORK )  
Instrument Vol Page  
201400278190 OR 14510 177 HANDSMILL ON LAKE WYLIE

THIS THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HANDSMILL ON LAKE WYLIE is made this 10<sup>th</sup> day of November, 2014 by Handsmill Associates Property, LLC ("Declarant").

WHEREAS, Handsmill Enterprises, LLC, as the original developer, recorded the Declaration of Covenants, Conditions and Restrictions for Handsmill on Lake Wylie and recorded said Declaration on May 8, 2007 in Record Book 9069 at Page 127 in the Office of the Clerk of Court for York County, South Carolina (as subsequently amended, supplemented and assigned, the "Declaration");

WHEREAS, the Declaration was later amended and supplemented by a First Amendment to Declaration of Covenants, Conditions and Restrictions for Handsmill on Lake Wylie recorded on October 25, 2007 in Record Book 9542 at Page 81, a Second Amendment to Declaration of Covenants, Conditions and Restrictions for Handsmill on Lake Wylie recorded on December 9, 2009 in Record Book 11163 at Page 254, a Supplemental Declaration of Covenants, Conditions and Restrictions for Handsmill on Lake Wylie recorded on January 1, 2010 in Record Book 11218, Page 228, a Second Supplemental Declaration of Covenants, Conditions and Restrictions for Handsmill on Lake Wylie recorded on NOV. 13, 2014 in Record Book 14496, Page 267;

WHEREAS, Handsmill Enterprises, LLC assigned its rights and benefits under the Declaration to Declarant pursuant to an Assignment of Declarant's Rights recorded on June 29, 2012 in Record Book 12707 at Page 159, aforesaid records;

WHEREAS, Section 12.3.4 of the Declaration allows Declarant to amend the Declaration without the approval of any Member or Owners other than Declarant; and

WHEREAS, Declarant desires to amend the Declaration as set forth below.

NOW, THEREFORE, Declarant does hereby amend the Declaration as follows:

1. Exhibit A-1 of this Amendment is added to the Declaration for the purpose of establishing the boundaries of neighborhoods in the Planned Community; provided, however, that any real property shown on Exhibit A-1 that is not currently subject to the Declaration shall not be deemed to be subjected to the Declaration by virtue of being shown on Exhibit A-1. Such neighborhoods shall become subject to the Declaration only when and if a formal supplement to the Declaration is recorded, adding those neighborhoods.
2. Section 1.43 of the Declaration, providing the definition of "Legacy Builder," shall be deleted in its entirety and replaced with "Intentionally Omitted" such that the numbering in Article 1 will remain unchanged.

3. Section 1.48 of the Declaration, providing the definition of "Lot in Use," shall be amended and restated to provide as follows:

"Lot in Use" means any Lot owned or occupied by any Person other than Declarant.

4. The following defined terms are added to the Declaration as new Sections, with the respective Section number being set forth below:

1.88. 'Neighborhood' shall mean a sub-community within the Planned Community, with the boundaries of each being generally shown on Exhibit A-1, provided that where a legal description is provided, such legal description shall control.

1.90. 'The Pinnacle' shall mean the Neighborhood designated as such on Exhibit A-1 and commonly referred to as The Pinnacle at Handsmill on Lake Wylie, and incorporated into the Declaration by the Second Supplemental Declaration of Covenants, Conditions and Restrictions for Handsmill on Lake Wylie.

1.91. 'The Abbey' shall mean the Neighborhood designated as such on Exhibit A-1 and commonly referred to as The Abbey at Handsmill on Lake Wylie.

5. The following development right is hereby added to the end of Section 2.3 of the Declaration: ", and (xxvii) to construct such Improvements within any Common Areas, Limited Common Areas, and any roads or road right-of-ways, as Declarant deems reasonable and appropriate in Declarant's sole and absolute discretion, without review or approval by the ARC and without encumbrance of the Use Restrictions."
6. Section 5.3.4 of the Declaration, entitled "Initial Low Pressure Sewer Assessments," shall be amended to delete the parenthetical reading "(including, without limitation, any Legacy Builder)."
7. Section 5.3.5 of the Declaration, entitled "Initial Working Capital Assessments," shall be amended to delete the parenthetical reading "(including, without limitation, any Legacy Builder)."
8. Section 5.10 of the Declaration, entitled "Exempt Land," shall be amended and restated to provide as follows:
- Common Areas and any Lots owned by Declarant shall be exempt from any and all Assessments.
9. Section 5.12 of the Declaration, entitled "Authority and Transfer Fee Provisions," shall be amended to delete the words "or a Legacy Builder."

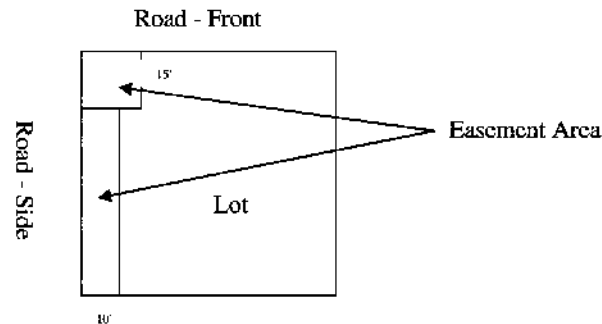
10. Section 5.14 of the Declaration, entitled "Exempt Transfers," shall be amended to delete Sections 5.14.2 and 5.14.3 and replace each with "Intentionally Omitted" such that the numbering in Section 5.14 shall remain unchanged.
11. Section 5.16 of the Declaration, entitled "Community Marketing Fund," shall be deleted in its entirety.
12. Section 7.9 of the Declaration, entitled "Easements for Sales Offices," shall be amended and restated to provide as follows:

Declarant reserves easements to construct sales and marketing offices, trailers or other structures on the Property, and further reserves the right to maintain sales offices in any clubhouse that may be constructed as an Amenity, without payment of rent during the Declarant Control Period. In connection with the foregoing, Declarant may construct and maintain on any property owned by it such facilities, activities, and things as, in Declarant's opinion, may reasonably be required, convenient, or incidental to the construction or sale of Lots. Such permitted facilities, activities, and things shall include business offices, signs, flags (whether hung from flag poles or attached to a structure), model homes, sales offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, Declarant and its designees may park vehicles in areas other than garages or driveways, including on streets. Declarant further reserves the right to authorize, at Declarant's sole discretion, any builder to construct and maintain sales and marketing offices or trailers and/or model homes on any Lot(s) owned by such builder and to carry on the foregoing activities incidental to the builder's construction and sales; provided that such authorization shall be in writing, but need not be recorded, and may include such conditions or restrictions as Declarant deems reasonable or appropriate in its sole discretion.

13. The current Section 7.16 is renumbered as Section 7.17, and a new Section 7.16 is added to the Declaration, as follows:

*[remainder of page intentionally left blank; text of new 7.16 begins on next page]*

7.16. **Corner Lot Landscape Easement.** With respect to each corner Lot in The Pinnacle, Declarant hereby reserves, for the benefit of itself and the Association and their respective successors and assigns, a perpetual easement over such Lots to construct, install and maintain landscape features or fences within an area (i) being a square measuring fifteen feet (15') on all sides, with two sides of such square being the Lot lines in the corner of the Lot nearest the road intersection, and (ii) being a strip of land measuring ten feet (10') wide running the length of the sideyard along the road, such easement area being roughly sketched below. Nothing contained herein shall be interpreted as requiring Declarant or the Association to install or maintain landscape features or fences within the easement area.



14. Section 9.5 of the Declaration, entitled "Dwelling Size", shall be amended and restated to provide as follows:

The Heated Area minimums set forth below exclude basement areas (defined as any level in which at least one perimeter wall is below, or partially below, grade) unless such basement areas have two or more perimeter walls above surrounding grade, and such basement areas are fully heated and air-conditioned and constructed to a quality equal to the above grade levels of the Dwelling. In addition, the Heated Area minimums exclude vaulted ceiling areas, attics, unheated porches, attached or detached garages, porte-cocheres and unheated storage areas, decks and patios. The term 'story' means a finished horizontal division of Heated Area extending from the floor of such division to the ceiling above it. A half story means a story which contains fifty percent (50%) or less Heated Area than the story in the Dwelling containing the most Heated Area.

Except as expressly set forth below for individually designated Neighborhoods, any Dwelling erected upon any Single Family Lot shall contain not less than the following Heated Areas:

|                                           | Minimum Total Heated Area | Minimum Ground Floor Heated Area                              |
|-------------------------------------------|---------------------------|---------------------------------------------------------------|
| 1 Story                                   | 2,000                     | 2,000                                                         |
| 1 ½ story, bi-level, tri-level and others | 2,200                     | 1,200 main floor for bi-level; upper two floors for tri-level |
| 2 story, 2 ½ story                        | 2,600                     | 1,500                                                         |
| Waterfront Lots                           | 2,600                     | 1,500                                                         |

Any Dwelling erected upon a Single Family Lot in The Pinnacle shall contain not less than the following Heated Areas:

|                                           | Minimum Total Heated Area | Minimum Ground Floor Heated Area |
|-------------------------------------------|---------------------------|----------------------------------|
| 1 Story                                   | 2000                      | 2000                             |
| 1 ½ story, bi-level, tri-level and others | 2200                      | No requirement                   |
| 2 story, 2 ½ story                        | 2400                      | No requirement                   |

Notwithstanding the foregoing requirements, the Declarant or the ARC, as applicable, shall have the right (but not the obligation), because of restrictive topography, Lot dimensions, unusual site related conditions, or other reasons, to allow variances from such minimum square footage requirements of up to ten percent (10%) of such minimum square footage requirement by granting a specific variance.

No Dwelling erected upon a Lot shall contain more than two and one-half (2 ½) stories above ground level; provided, however, that Declarant or the ARC, as applicable, shall have the right, but not the obligation, (because of steep topography, unique Lot configurations or similar reasons) to allow Dwelling heights greater than two and one-half (2 ½) stories on rear and side elevations.

15. Section 9.7 of the Declaration, entitled "Fences," shall be amended and restated to read as follows:

No fence or wall (regardless of the materials) shall be erected on a Lot without the prior written approval of Declarant or the ARC, as applicable. With respect to



any Lot that is not a corner Lot, no fence may be erected nearer the front lot line of the Lot than a hypothetical line set ten feet (10') back from the front face of the Dwelling located on such Lot and running parallel to such front face of the Dwelling. With respect to corner Lots, (i) no fence may be erected nearer the front lot line of the Lot than a hypothetical line set ten feet (10') back from the front face of the Dwelling located on such Lot and running parallel to such front face of the Dwelling from Lot line to Lot line, and (ii) the sideyard fence shall be located as near as practical to the side lot line of the Lot or at such other location as is specified by the Declarant or ARC. Notwithstanding the foregoing, the Declarant or the ARC may, on a case-by-case basis, approve landscape fencing in the front and sideyard, at a different location than that described above, where deemed reasonable and appropriate by Declarant or ARC, as applicable, in their sole and absolute discretion. Declarant or the ARC, as applicable, may set forth requirements for fences in the Design Guidelines from time to time, including without limitation, restrictions on materials, height and openness, and all fences and walls shall be erected in accordance with the provisions of the Design Guidelines. The restrictions described herein or in the Design Guidelines shall not apply to any Improvements originally installed by Declarant on any Common Area and/or Limited Common Area or within the easement area described in Section 7.16 entitled "Corner Lot Landscape Easement."

16. Section 9.8 of the Declaration, entitled "Erosion and Sediment Controls," shall be amended and restated to provide as follows:

Prior to any earth-disturbing activity, erosion and sediment control measures shall be implemented and undertaken by the Owner or Owner's contractors or subcontractors in accordance with the applicable provisions of the Design Guidelines.

17. Section 9.17 of the Declaration, entitled "Signs," shall be amended and restated to provide as follows:

Except as otherwise required by the Zoning Ordinance, any subdivision ordinance, any sign ordinance and/or any and all applicable local ordinances, no sign of any kind shall be displayed to the public view on any Lot or Common Area, except with the prior written approval of Declarant or the ARC or as may be expressly allowed under the Design Guidelines. The provisions of this Section 9.17 shall not apply to the placement of permanent signs identifying the Planned Community at its entrance, nor shall it prevent Declarant or its agents from placing signs to advertise the Planned Community during the construction and sale period, including signs on the Common Area and on any Lot(s) owned by Declarant. Declarant further reserves the right to authorize, at Declarant's sole discretion, any builder or its agents to place "For Sale" signs and other advertising items incidental to any activity authorized by Declarant pursuant to Section 7.9; provided that such authorization shall be in writing, but need not be recorded, and may include such conditions or restrictions as Declarant deems reasonable or appropriate in its sole discretion. If any Owner violates the provisions of this

Section 9.17, and fails to cure such violation within ten days after receiving written notice of such failure from Declarant or the ARC, then Declarant or the ARC shall have the power and authority to enter upon the Lot of such Owner and remove any sign or signs which violate the provisions of this Section 9.17 without any liability for damages for wrongful entry, trespass, or otherwise to any Person.

18. Section 9.18 of the Declaration, entitled "Swimming Pools," is amended and restated to provide as follows:

No above ground swimming pools shall be permitted in the Planned Community, except that (i) hot tubs and saunas shall be allowed to the extent allowed under the Design Guidelines, and (ii) small, inflatable wading pools for small children not larger than 100 square feet and not higher than two (2) feet shall be permitted from April 1 – September 30 of each calendar year.

19. Section 9.21 of the Declaration, entitled "Diligent Construction," shall be amended and restated to provide as follows:

All construction, landscaping or other work which has been commenced on any Lot must be continued with reasonable diligence to completion and no partially completed Dwelling or other Improvements shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion. All exterior construction must be completed within one (1) year after the date upon which it commenced with issuance of a certificate of occupancy within eighteen (18) months after construction is commenced, unless a longer time is approved by the ARC; provided, however, that such time periods shall be tolled during the period of any circumstance which prevents construction and which is outside the control of Owner and Owner's contractors, such as acts of God, war, civil disturbance, and government imposed moratoriums (except to the extent such moratorium arises from the act or omission of Owner or Owner's contractors). Any damage to the roads, curbs or sidewalks or any part of any Common Area or any utility system caused by an Owner or such Owner's contractor or subcontractors shall be repaired by such responsible Owner. Each Owner and its respective contractors and subcontractors shall keep all Lots upon which it is constructing Improvements free of unsightly construction debris, in accordance with the construction rules established by the ARC, and shall similarly keep contiguous public and private areas free from any dirt, mud, garbage, trash, or other debris which is occasioned by construction of Improvements. The Board may levy a Special Individual Assessment against an Owner's Lot to pay for the cost of repairing any damage to roads, streets, curbs or sidewalks or any part of any road, street, Common Area, Limited Common Area or utility system, to pay for the cost of cleaning public and private areas, including public and/or private roads and streets located within the Planned Community, and to pay for the cost of the removal of dirt, mud, garbage, trash or other debris, which is occasioned by the activities of an Owner or Owner's contractors or subcontractors during the planning, designing, locating, installing, constructing, reconstructing, rebuilding, restoring, replacing, repairing or removing of Improvements. Declarant, and each

Owner or Owner's contractors or subcontractors, shall be responsible for erosion control protection during any earth-disturbing operation, which may be set forth in the Design Guidelines, from time to time.

20. Section 9.32 of the Declaration, entitled "Tree Removal," is deleted in its entirety.
21. Section 10.4 of the Declaration, entitled "Initial Low Pressure Sewer Assessments," shall be amended to delete the phrase "whether a Legacy Builder or otherwise."
22. Section 13.3.2 of the Declaration is amended and restated to provide:

13.3.2. The ARC is also hereby authorized to publish and promulgate from time to time, and revise and amend at any time in its sole discretion, construction rules to be followed by all Owners and their contractors and subcontractors performing work or constructing or installing Improvements (including landscape Improvements) on the Property. Notwithstanding the foregoing, no rule or regulation shall be adopted unreasonably limiting the hours and days of the week a builder's construction activities may be conducted. Upon approval of the Board, the ARC may issue and amend the Design Guidelines from time to time; provided that such new or amended Design Guidelines shall not apply to any Lots for which house plans were submitted by a builder and approved by the Declarant or the ARC pursuant to Articles 8 and/or 13 of the Declaration, as applicable, prior to the effective date of such new or amended Design Guidelines. As used in this Section 13.3.2, the term "builder" shall mean an entity that acquires one or more Lots for the purpose of constructing a new home on the Lot and selling it to a consumer, and specifically excludes, without limitation, subcontractors of builders and entities or individuals performing alterations, repairs or maintenance to existing Improvements already owned by consumers.
23. Except as expressly amended hereby, the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, Declarant, on the day and year first written above, has caused this document to be duly executed.

Witnesses:

[Signature]  
[Signature]

Handsmill Associates Property, LLC

By: [Signature]

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Steven Vining

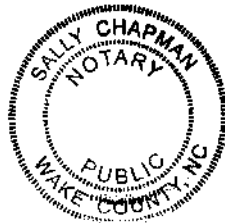
Authorized Person

State of North Carolina )

County of Wake )

I, Sally Chapman, Notary Public for the state of North Carolina, do hereby certify that Steven Vining, the Authorized Person of Handsmill Associates Property, LLC, personally appeared before me this day and acknowledge the due execution of the foregoing instrument.

Subscribed to and sworn before me this 10<sup>th</sup> day of November, 2014.



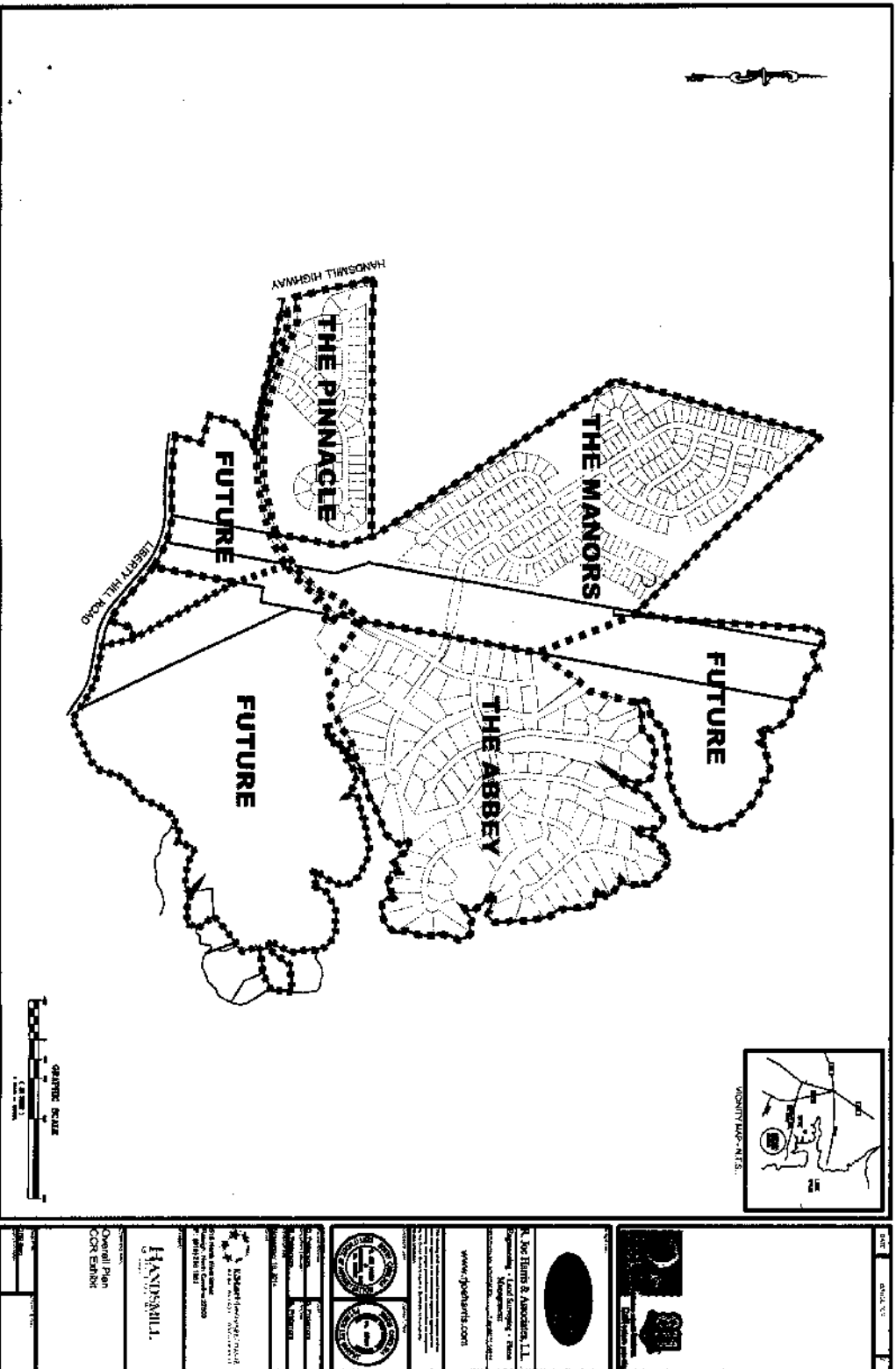
[Signature] (LS)  
Notary Public for: Wake County, NC  
My Commission Expires: 8-3-2015

EXHIBIT A-1

*[follows on subsequent page]*

Instrument Vol Page  
201400278190 DR 14510 126  
In

Instrument: V01 Page: 14519 187  
261430278193 DR



STATE OF SOUTH CAROLINA ) SECOND SUPPLEMENTAL DECLARATION TO  
 ) DECLARATION OF COVENANTS,  
 ) CONDITIONS AND RESTRICTIONS FOR  
COUNTY OF YORK ) HANDSMILL ON LAKE WYLIE

THIS SECOND SUPPLEMENTAL DECLARATION is made this 11<sup>th</sup> day of November, 2014 by Handsmill Associates Property, LLC ("Declarant").

WHEREAS, Handsmill Enterprises, LLC, as the original developer, recorded the Declaration of Covenants, Conditions and Restrictions for Handsmill on Lake Wylie and recorded said Declaration on May 8, 2007 in Record Book 9069 at Page 127 in the Office of the Clerk of Court for York County, South Carolina (as subsequently amended, supplemented and assigned, the "Declaration");

WHEREAS, the Declaration was later amended and supplemented by a First Amendment to Declaration of Covenants, Conditions and Restrictions for Handsmill on Lake Wylie recorded on October 25, 2007 in Record Book 9542 at Page 81, a Second Amendment to Declaration of Covenants, Conditions and Restrictions for Handsmill on Lake Wylie recorded on December 9, 2009 in Record Book 11163 at Page 254, and a Supplemental Declaration of Covenants, Conditions and Restrictions for Handsmill on Lake Wylie recorded on January 1, 2010 in Record Book 11218, Page 228;

WHEREAS, Handsmill Enterprises, LLC assigned its rights and benefits under the Declaration to Declarant pursuant to an Assignment of Declarant's Rights recorded on June 29, 2012 in Record Book 12707 at Page 159, aforesaid records;

WHEREAS, Section 2.2 of the Declaration allows the Declarant to make any portion of the Additional Property subject to the terms of the Declaration by recording a supplemental declaration in the Office of the Clerk of Court for York County, South Carolina containing a description of the Additional Property and a statement of Declarant's intent to extend the operation and effect of the Declaration to the Additional Property;

WHEREAS, Declarant is the owner of property within the Additional Property and which is described on Exhibit A attached hereto and wishes to extend the operation and effect of the Declaration to the property described on Exhibit A;

NOW, THEREFORE, Declarant does hereby incorporate the real property described on Exhibit A attached hereto and extends the operation and effect of the Declaration to said property.

201400277396  
Filed for Record in  
YORK COUNTY, SC  
DAVID HAMILTON, CLERK OF COURTS  
11-13-2014 At 12:27 pm.  
RESTR COVEN 10.00  
OR Vol 14496 Page 267 - 269

Instrument  
201400277396 DR  
Vol  
14496  
Page  
267

IN WITNESS WHEREOF, Declarant, on the day and year first written above, has caused this document to be duly executed.

Witnesses:

[Signature]  
Brooks White

Handsmill Associates Property, LLC

By: [Signature]  
Name: Steven Vining  
Title: Authorized Person

State of North Carolina )

County of Wake )

I, Sandra M. Maher, Notary Public for the state of North Carolina, do hereby certify that Steven Vining, the Authorized Person of Handsmill Associates Property, LLC, personally appeared before me this day and acknowledge the due execution of the foregoing instrument.

Subscribed to and sworn before me this 11<sup>th</sup> day of November, 2014.

Sandra M. Maher (LS)  
Notary Public for: North Carolina  
My Commission Expires: 09/03/2017  
Sandra M. Maher

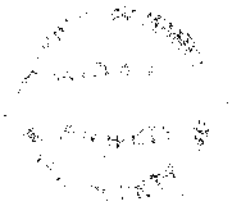




EXHIBIT A

Legal Description

THE PINNACLE AT HANDSMILL

TAX PARCEL ID # 555-00-00-005 AND A PORTION OF 555-00-00-167

Being a certain parcel of land, lying and being in Bethel Township, York County, South Carolina and being more particularly described as follows:

Beginning at an iron set on the easterly margin of Handsmill Hwy.- also known as S.C. Hwy. 274 (a variable public right-of-way), said point also being S 81°35'54"W 1449.83' from NGS Monument "Thomas" (N=1,177,734.35 i.FT.; E=1,971,166.78 i.FT.; NAD '83 [2007]); thence from said beginning point with the common line of the property owned by Handsmill Associates Property, LLC. (hereinafter referred to as the subject property) as recorded in DB. 12747, PG. 35 in the York County Register of Deeds and the Forestwinds subdivision as recorded in PB. 73 PG. 40, S 88°35'33"E a distance of 279.15' to a 3/4" pin found; thence S 88°38'17"E a distance of 84.15' to a 1" pin found; thence N 89°56'25"E a distance of 116.25' to a 1/2" pin found; thence S 89°58'38"E a total distance of 1482.30' to a #5 rebar found (passing #4 rebar at 321.60' and 724.80'); thence leaving said common line and along the common line of the subject property and the property owned by Handsmill Associates Prop., LLC. as recorded in DB. 12721 PG. 82 in aforesaid public registry S 16°36'56"E a distance of 255.34' to an iron set; thence S 10°28'25"W a distance of 493.00' to a point on the northerly margin of Pinnacle Way (a 50' public right-of-way); thence leaving said common line and along said northerly margin the following 10 (ten) calls: 1) with a curve to the right having a radius of 974.99', and arc length of 164.65', and a chord bearing and distance of S 73°24'37"W, 164.45' to a point. 2) S 78°14'50"W a distance of 179.76' to a point. 3) with a curve to the right having a radius of 974.99', an arc length of 229.80', and a chord bearing and distance of S 84°59'58"W, 229.27' to a point. 4) N 88°14'54"W a distance of 202.01' to a point. 5) with a curve to the right having a radius of 724.98', an arc length of 165.79', and a chord bearing and distance of N 81°41'51"W, 165.43' to a point. 6) N 75°08'47"W a distance of 356.46' to a point. 7) with a curve to the right having a radius of 475.02', an arc length of 96.43', and a chord bearing and distance of N 69°19'51"W, 96.26' to a point. 8) N 63°30'55"W a distance of 177.60' to a point. 9) with a curve to the left having a radius of 250.00', an arc length of 151.76', and a chord bearing and distance of N 80°54'20"W, 149.44' to a point. 10) S 81°42'15"W a distance of 116.26' to a point on the easterly margin of said Handsmill Hwy.; thence along said easterly margin the following 4 (four) calls: 1) with a curve to the left having a radius of 1947.34', an arc length of 238.58', and a chord bearing and distance of N13°05'45"W, 238.43' to a point. 2) N16°36'19"W a distance of 158.58' to a point. 3) N 89°57'13"E a distance of 2.61' to a point. 4) N 16°36'19"W a distance of 226.12' to the **Point and Place of Beginning**, containing 32.318 acres, more or less, as shown on survey entitled "Recombination Boundary of Pinnacle" by R. Joe Harris & Associates and dated March 20,2014.