

**WATER AND/OR SEWER SERVICE AGREEMENT
AND
RESTRICTIVE COVENANT**

THIS AGREEMENT AND RESTRICTIVE COVENANT (hereinafter referred to as this "Agreement") is made between _____ ("Owner"), and the City of Rock Hill ("City").

WITNESSETH:

WHEREAS, Owner owns property located at _____ with a tax map number of _____ as described on Exhibit "A" ("Subject Property") located outside the City's municipal limits;

WHEREAS, the Subject Property is located in an area in which annexation to the City is or may become appropriate;

WHEREAS, the City is under no obligation to furnish sewer and/or water services to property located outside municipal limits, except by contract with the property owner;

WHEREAS, Owner wishes to obtain Utility Services by contract without the necessity of waiting until an annexation makes the Subject Property a part of the City;

WHEREAS, Owner requests the City to furnish such utility service to the Subject Property without regard to whether or not such property is within the City;

WHEREAS, the owner acknowledges and agrees that as part of this contract to provide services outside of the City, it is appropriate for the property to be developed to current City

standards to ensure compatibility at the time of future annexation;

WHEREAS, Owner specifically agrees that he will sign any and every annexation petition which relates to the Subject Property when presented with such petition;

WHEREAS, Owner agrees that he will pay all City fees that are applicable to the Subject Property upon annexation;

WHEREAS, Owner understands that the obligation to execute any and every annexation petition relating to the Subject Property, when presented, is a requirement for Utility Service outside the City and that failure to satisfy this obligation may, at the election of the City, cause discontinuance and termination of Utility Services to the Subject Property;

WHEREAS, Owner will inform any subsequent owner of the Subject Property that the obligations created hereunder do so continue and run with the land; and

WHEREAS, Owner hereby expressly imposes a **RESTRICTIVE COVENANT** upon the Subject Property as set forth herein.

NOW THEREFORE, in consideration of the foregoing and the promises, undertakings and mutual agreements contained herein, Owner and the City covenant and agree as follows:

1. **Recitals Incorporated.** The above recitals are hereby incorporated in and made a part of this Agreement as fully as if set forth verbatim herein. These recitals are true and correct and the parties are bound thereby. By signing this Agreement, Owner and City acknowledge reading, understanding and agreeing to all of these recitals.

2. **Utility Services.** As used in this Agreement, "Utility Services" means and refers to water and/or sewer services provided by the City, including but not limited to, (i) ongoing water and/or sewer service; (ii) a service tap from existing water and/or sewer lines, (iii) an extension of water and/or sewer mains, or (iv) the issuance of a letter of willingness and capability.

3. **Covenants by City.** The City will furnish Utility Services to the Subject Property upon the terms, conditions and covenants set forth herein. In no event shall the City be obligated to provide or continue to provide Utility Services to the Subject Property, or any portion thereof, if any obligation of Owner contained in this Agreement is breached or any covenant made by Owner in this Agreement is false. Any actions or statements (including any letter of willingness and capability) by the City in relation to providing Utility Services to the Subject Property is made subject to the terms of this Agreement and if this Agreement is breached by Owner then all such actions or statements may be, in the City's sole discretion, declared null and void and no reliance by any entity may be placed thereon.

4. **Covenants by Owner.** Owner makes the following covenants, warranties, agreements and representations, each of which shall be deemed material to this Agreement:

(a) Owner covenants and agrees that he will sign any and every annexation petition which relates to the Subject Property ("Annexation Petition") immediately upon presentment of such petition. As used in this Agreement, an Annexation Petition shall be construed to relate to the Subject Property if the property to be annexed pursuant to and described in the petition includes the Subject Property or any portion thereof. Owner acknowledges that a purpose of this Agreement is to ensure, as a material benefit and consideration to the City, Owner's full and complete cooperation with any effort to annex the Subject Property; and Owner agrees, that upon request by the City, Owner will do, execute, acknowledge and deliver, all such further acts, agreements, and assurances as may be requested and reasonably necessary for the full completion and consummation of the purpose contemplated herein. These further acts shall specifically include, but are not limited to, signing successive Water and/or Sewer Service Agreement and Restrictive Covenant documents or agreements, signing successive Annexation Petitions, in the event prior annexation efforts are unsuccessful. Owner warrants and covenants that Owner has not and will not subdivide or otherwise manipulate the Subject Property, or other property owned or

previously owned by Owner, to hinder or impede the City's ability to annex the Subject Property. In addition to the above, Owner agrees and recognizes that in the event an Annexation Petition relating to the Subject Property may have already been signed or may be signed in the future, the Owner shall not object to the annexation of the Subject Property as contemplated by this Agreement in any manner whatsoever and hereby voluntarily agrees to such annexation in the event an Annexation Petition related to the Subject Property has already been executed.

(b) Owner agrees that any new development, additions or expansions on the Subject Property shall be completed in accordance with the City Zoning Ordinance design standards and other regulations referenced therein, where those regulations are not in direct conflict with any York County design or development regulation. Owner agrees to provide copies of all plans to the City Planning & Development Department for review and approval simultaneous to submission to York County. Owner agrees that no final verification of the provision of utility service, including issuance of letters or receipts for fees paid, will be given until such City review and approval is complete. Regardless of any permits or approvals issued by other agencies, Owner agrees that the responsibility to meet City standards lies solely with the Owner.

(c) Owner agrees that the obligations contained in this Agreement shall continue in full force and effect until the earlier of the following: (a) the Subject Property, in its entirety, has been successfully annexed into and lies within the municipal limits of the City or (b) the Subject Property, in its entirety, is no longer being served by the City's Utility Services.

(d) Owner covenants and warrants that he is the sole owner in fee simple absolute of the Subject Property and that the undersigned has the full right and authority to sign this Agreement on behalf of the Owner. In the event the undersigned does not have the

full right and authority to sign this Agreement on behalf of the Owner, then Owner shall be required to immediately sign successive and/or corrective Water and/or Sewer Service Agreement and Restrictive Covenant documents or agreements, in addition to any default remedies in favor of the City as set forth below. Further, Owner covenants and warrants that he will not transfer, alienate, devise, encumber, or otherwise affect title to the Subject Property for a period of seven days from the date of this Agreement, which will allow the City time to have this Agreement and plat recorded in the Office of the Clerk of Court for York County, South Carolina. Owner will inform any subsequent owner of the Subject Property, or any part thereof, that the obligations contained in this Agreement continue and run with the land.

(e) Owner acknowledges that certain fees may be charged to the Owner by the City of the Subject Property upon annexation into the City. Owner further agrees that he will pay all such fees that are charged to the Owner of the Subject Property upon annexation.

(f) Owner agrees that any breach of conditions of any and all agreements associated with Utility Services made in accordance with this Agreement, shall be a breach of this Agreement. Such conditions may include, but are not limited to: payment of all fees referred to above and payment to the City when due all such water and/or sewer charges or user fees as may be imposed from time to time.

5. **Restrictive Covenant.** Owner hereby imposes upon the Subject Property a **RESTRICTIVE COVENANT** requiring that future owners of the Subject Property, or any part thereof, be bound by the same terms, conditions and covenants as are set forth in this Agreement. This Restrictive Covenant shall continue in full force and effect until the earlier of the following: (a) the Subject Property, in its entirety, has been successfully annexed into and lies within the municipal limits of the City or (b) the Subject Property, in its entirety, is no longer being served by the City's Utility Services. Any and every future owner of the Subject Property, or any part thereof, is bound by

the terms contained in this Agreement by acceptance of a deed to property subject to this Restrictive Covenant.

6. Recordation of Plat. Owner hereby expressly agrees and directs that this Agreement and the plat referenced herein be recorded in the real estate records in the Office of the Clerk of Court for York County, South Carolina, so as to give record notice to any future prospective purchaser that this Agreement is an obligation upon the land and runs with the land until the occurrence of either of the two events set forth in the preceding Paragraph. Owner shall place the following language on final plats of Subject Property:

This property is served with the City of Rock Hill water and/or sewer services and the owner agrees that he will sign any and every annexation petition which relates to the Subject Property when presented with such petition and that the obligation to execute all annexation petitions relating to the Subject Property, when presented, is a requirement for water and/or sewer services outside of the municipal limits.

7. Description of Property. This Agreement and **RESTRICTIVE COVENANT** applies to the property of Owner as is more fully described as the Subject Property.

8. Grant of Power of Attorney. In the event Owner fails to meet the obligations imposed herein and does not sign any Annexation Petition upon request, Owner hereby irrevocably appoints the City Manager or his/her designee as Attorneys in Fact for Owner of Subject Property with full power to sign any Annexation Petition when requested by the City.

9. Default; Remedies. As used in this Agreement, a default of this Agreement occurs immediately upon any breach, failure or nonoccurrence of any term, condition, obligation, affirmative act, covenant, representation or warranty. Immediately upon any default by Owner, the City may, in its sole discretion, void this Agreement and thereby void any statements, actions or commitments by the City as to providing Utility Services to the Subject Property. Additionally, upon any default by Owner, the City may elect to enforce this Agreement. If any effort to enforce the terms of this Agreement fails for any reason, the City may thereafter elect to rescind and void

this Agreement. In the event this Agreement is rescinded or voided, the City shall be under no obligation to provide Utility Services or to continue to provide Utility Services to the Subject Property or any portion thereof. In the event of any default by Owner of this Agreement, the City shall be entitled to recover from Owner the costs and attorneys' fees incurred by the City as a result of or in response to Owner's default.

10. Remedies Cumulative. Every right and remedy provided in this Agreement is distinct from and cumulative to every other right or remedy under this Agreement or available at law or in equity. The provision of certain rights and remedies in this Agreement does not abrogate, limit or affect any rights or remedies as provided at law or in equity. Every right and remedy may be exercised concurrently, independently or successively.

11. Exhibits Incorporated by Reference. All exhibits referenced in this Agreement are incorporated herein as integral parts of this Agreement and shall be considered reiterated herein as fully as if such provisions had been set forth verbatim in this Agreement.

12. Copies. A photostatic or other reproduction of this document shall be as effective, valid and conclusive as the original.

13. Entire Agreement. The parties acknowledge that no representations or inducements have been made other than those expressed herein; that this Agreement supersedes any and all prior memoranda, correspondence, conversations, negotiations and agreements pertaining to the matters herein expressed; and that this Agreement constitutes the entire agreement between them.

14. Modification. The terms of this Agreement may be modified in whole or in part only by a written instrument signed by Owner and the City. Any oral agreement to modify this Agreement shall be void and of no force and effect.

15. Captions. The captions and headings of the Paragraphs of this Agreement are for convenience only and may not be used to interpret or define the provisions of this Agreement.

16. **No Waiver**. No waiver of a breach of any of the covenants or promises of this Agreement shall be construed as a waiver of any succeeding breach of the same or other covenant or promise.

17. **Severability**. In the event that any provision or clause of this Agreement conflicts with any applicable law, the other provisions of this Agreement shall be given effect as fully as possible without the conflicting provision, and to this end the provisions of this Agreement are declared to be severable.

18. **References Herein**. Wherever appropriate, all words herein in the male gender shall be deemed to include the female or neuter gender, all singular words shall include the plural, and all plural words shall include the singular.

19. **Successors and Assigns**. The covenants and agreements contained in this Agreement and the obligations created hereunder shall inure to the benefit of and be binding on the City, Owner and all heirs, successors and assigns of Owner to the Subject Property, or any part thereof and shall run with the Subject Property and land.

20. **Governing Law and Forum**. The validity, construction and effect of this Agreement shall be governed by the laws of the State of South Carolina, and the parties hereby consent to the exclusive jurisdiction of the courts of the state of South Carolina for resolution of any dispute arising hereunder

21. **Sealed Instrument**. Owner agrees that by signing below he intends to place his hands and seals upon this Agreement and that this Agreement shall be considered in every respect to be a sealed instrument.

This Agreement shall be effective upon the date of the last party affixing his signature.

WATER AND/OR SEWER SERVICE AGREEMENT AND RESTRICTIVE COVENANT
SIGNATURE PAGE

(Owner is an LLC)

WITNESSES:

OWNER:

(1st Witness)

(Print name of LLC)

(Signature)

By: _____
(Print Name)

Its: Authorized Managing
Member

(2nd Witness)

ACCEPTED BY THE CITY:

Authorized Representative of
the City of Rock Hill

Date: _____

STATE OF _____

ACKNOWLEDGEMENT

COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day
of _____, 20___, by _____ as _____
of _____, on behalf of the company.

SWORN to and subscribed before me
this ___ day of _____, 20__.

Notary Public for South Carolina
My Commission Expires: _____

Exhibit A

A copy of either the plat of
the property and/or a legal
description of the property
goes here.