

**RESOLUTION NO.: R-2013-100**

*Authorizing the City Manager to execute a Water Main Extension Agreement  
between the City of Columbia and County of Lexington  
for construction of a water main extension and internal distribution system  
to service Palmetto Shores*

ORIGINAL  
STAMPED IN RED

BE IT RESOLVED by the Mayor and City Council this 15th day of October, 2013, that the City Manager is authorized to execute the attached Water Main Extension Agreement, or in a form to be approved by the City Attorney, between the City of Columbia and County of Lexington for construction of a water main extension and internal distribution system to service Palmetto Shores.

Requested by:

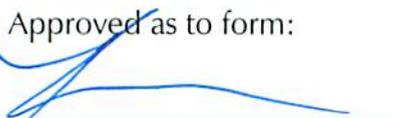
Assistant City Manager Gentry

  
\_\_\_\_\_  
Mayor

Approved by:

  
\_\_\_\_\_  
City Manager

Approved as to form:

  
\_\_\_\_\_  
City Attorney

ATTEST:

  
\_\_\_\_\_  
City Clerk

Introduced: 10/15/2013  
Final Reading: 10/15/2013

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

WATER MAIN EXTENSION AGREEMENT  
FOR PALMETTO SHORES,  
LEXINGTON COUNTY TMS \_\_\_\_\_

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2013 by and between the County of Lexington, a body politic and subdivision of the State of South Carolina (hereinafter the County) and the City of Columbia, a body politic and subdivision of the State of South Carolina (hereinafter the City).

WITNESSETH:

For and in consideration of the mutual covenants of the parties, the sufficiency of which is hereby acknowledged, it is agreed as follows:

1. The County agrees to:

a. **Water Main Extension.** Install, entirely at its own upfront expense, a water main extension of appropriate size in accordance with the plans and specifications, dated March 12, 2007, prepared by Civil Engineering of Columbia, as approved by and on file in the office of the City's Director of Utilities and Engineering to serve the Palmetto Shores Subdivision (City File No. 302-03A (R-1)) (hereinafter the Plans), located on Lake Murray, in Lexington County, accessed by the Old Lexington Highway and Quail Walk Trail, west of the Town of Chapin, further described as Lexington County Tax Map Sheet 01700, Block 04, Lot 025 and generally depicted on the vicinity map attached hereto as Attachment 1 (hereinafter the Property). The County agrees that no construction of the water main extension shall be commenced until this Agreement is fully executed. The water main extension so constructed to serve the Property shall be constructed generally along the Old Lexington Highway and shall extend from the City's existing 12" water main at Wessinger Road and Old Lexington Highway to the Property boundary as shown on the Plans.

b. **Internal Distribution System.** Install any required water distribution system internal to the Property in accordance with plans prepared by Civil Engineering of Columbia, dated April 6, 2007, and previously approved by and on file in the office of the City's Director of Utilities and Engineering (City File No. 302-03 (R-1)) (hereinafter the Internal Plans) and to provide one or more connection points at the boundary of the Property as shown on the Internal Plans.

c. Construct the water main extension and internal distribution system described above within exclusive easements previously approved by the City's Director of Utilities and Engineering. The County understands and agrees that for the purpose of determining the total cost of construction of the water main extension, only the construction costs for the water main extension outside of the Property, and necessary in order to serve the Property, will be included. The City will not reimburse the County for design, permitting, engineering or easement acquisition costs associated with the water main extension or any aspect of the internal distribution system for the Property. Any such costs shall be the sole responsibility of the County.

d. Upon completion of construction and final inspection and approval by the City, convey by deed to the City marketable title, free of encumbrances, to all of the following:

(1) The water main extension and all associated fixtures and real property necessary for its operation and maintenance.

(2) So much of the internal distribution system as may be required by the City.

(3) Exclusive easements for construction, maintenance, operation and access related to those items listed in Paragraph 1, d (1) and (2) above.

2. The City agrees to:

a. Upon completion of construction, final inspection and approval of the above-described water main extension and internal distribution system, accept title to the water main extension and so much of the internal distribution system as it shall require, and shall operate and maintain them as it does the remainder of its municipal water system. The date of acceptance by the City for the water main extension shall be the date on the letter from the City accepting the water main extension for ownership, operation and maintenance. The date of acceptance by the City for any portions of the internal distribution system shall be the date on the letter from the City accepting the required portions of the internal distribution system for ownership, operation and maintenance.

b. Reimburse the County for the construction costs only of the water main extension in City Water Tap Certificates, at a value of 75% of the total construction cost of the water main extension, providing, however, such reimbursement shall be limited and defined as follows:

(1) No reimbursement shall be made by the City until all required deeds, easements, any necessary mortgage releases and/or other required documents and forms have been properly executed and delivered to the City to complete the conveyances required by this Agreement. This requirement shall not be deemed satisfied until such deeds, easements, mortgage releases and/or other required documents and forms have been reviewed and approved by the City Attorney.

(2) Reimbursement by the City shall not exceed 75% of the County's total cost of construction of the waterline extension as more fully defined in Paragraph 2, b (3) below.

(3) The County's total cost of construction shall be equal to the actual contract cost for the construction portion of the water main extension only and does not include design, permitting, engineering or easement acquisition costs. The estimated cost of construction of the water main extension under this Agreement is \$443,428.89 which includes a 15% contingency and an allowance for rock excavation. The engineer of record shall certify the total construction cost for the water main extension. The estimated cost of construction is based on bid totals provided to the City from the County. The City shall not be responsible for reimbursement to the County for any portion of construction costs for the water main extension that exceed \$443,428.89. The County agrees to reduce the amount to be reimbursed by the City if the actual costs are less than the estimated cost of \$443,428.89.

(4) The number of Water Tap Certificates to be issued to the County shall be determined by dividing 75% of the total construction cost of the water main extension by \$1,062.00, the City's current charge for water meter installation for a 3/4 inch water meter (with existing developer installed infrastructure), , and shall not exceed 313 Certificates. The value of a Water Tap Certificate is based on meter costs for locations where the service line and meter box is in place and the only action needed by the City is installation of the actual meter itself. See City Code § 23-145. If the installation of a meter requires additional action by the City at a particular location (tap a waterline, extend a service line and set a meter box), then additional Water Tap Certificates may be required per location to compensate the City for the cost of the meter with the additional action by the City. The cost of a meter under those conditions where additional action by the City is required is \$2,512.00.

i. Each Certificate to be issued shall be good for one residential equivalent unit.

ii. Certificates shall be assignable (if approved in advance by the City) by the County and useable within the City's water service area. The City agrees not to withhold approval of an assignment upon request provided there is an identified location that the assigned taps will be utilized and the City approves water service to that location. The City shall not be obligated to extend water to any site identified for use of the tap certificates. The City shall be the sole entity responsible for determining if sufficient water is available to an area identified for use of the taps.

iii. Certificates shall be valid for eight (8) years from the date delivered to the County.

3. It is mutually agreed by the parties that:

a. Applications for individual services, i.e., water meters, will be accepted upon satisfactory completion of construction of water mains and:

(1) Receipt of properly prepared and certified "record drawing" plans.

(2) Receipt of Engineering Division Form #2, attached hereto and as may be amended from time to time by the City, executed by the County, requesting acceptance of the water system.

(3) Receipt of Engineering Division Form #3, attached hereto and as may be amended from time to time by the City, Waiver of Lien and list of materials installed from the contractor installing the water system.

(4) Satisfactory completion of pressure and bacteriological testing of the water system.

(5) Evidence of an approved wastewater disposal system.

(6) Receipt of the SCDHEC Permit to Operate.

(7) The building permit and plumbing permit for the residential units, building or other facilities to be served have been issued by the appropriate Building Official or Inspection Department.

b. Applications shall not be accepted for the project, or phase of the project if phasing is approved, until properly executed deeds and easements or other necessary documents or forms are received by the City's Director of Utilities and Engineering and reviewed and approved by the City Attorney.

c. This agreement is contingent upon, and shall not be effective, until such time as the current owner of the Property shall sign and deliver to the City a declaration of covenant in the form attached hereto as Attachment 2.

4. This Agreement shall be binding on the parties, their heirs, personal representatives, successors and assigns as are applicable.

5. The County may terminate this Agreement at any time with not liability for completion of the water main extension and/or the internal distribution system should the County decide not to construct the water main extension and/or the internal distribution system as referenced herein. Likewise, the City shall have no responsibility or liability, under any circumstances, to the County and/or any third parties for the construction and/or completion of the water main extension and/or the internal distribution system should the County decide not to construct the water main extension and/or the internal distribution system.

6. This Agreement is the complete agreement of the parties and no amendment may be made unless in writing and signed by both parties.

**\*\*SIGNATURES APPEAR ON NEXT PAGE\*\***

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals on the date first hereinabove written.

WITNESSETH:

COUNTY OF LEXINGTON

\_\_\_\_\_

BY: \_\_\_\_\_

(Print Name)

Ashley M. Jenkins  
Nick B. Name

ITS: \_\_\_\_\_

CITY OF COLUMBIA

BY: Teresa B. Wilson  
Teresa B. Wilson

ITS: City Manager

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2013 by \_\_\_\_\_ of the County of  
(Name of Officer and Title)  
Lexington.

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

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

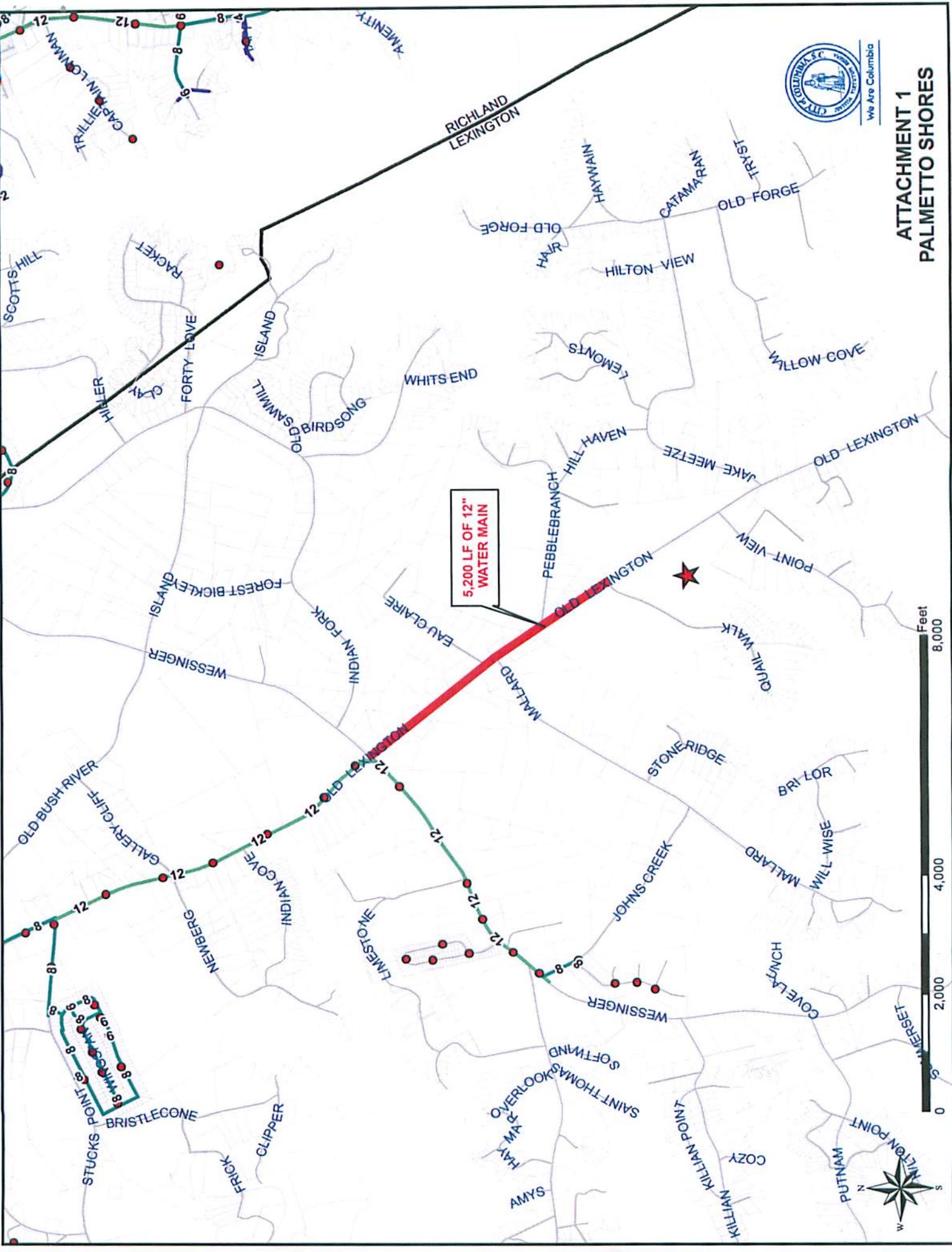
ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2013 by Teresa B. Wilson, City Manager of the City of Columbia, South Carolina.

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



# ATTACHMENT 1 PALMETTO SHORES



5,200 LF OF 12"  
WATER MAIN

ATTACHMENT 2  
TMS # \_\_\_\_\_

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

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF \_\_\_\_\_ )

DECLARATION OF COVENANT

THIS DECLARATION OF COVENANT is made this \_\_\_\_\_ day of \_\_\_\_\_  
20\_\_\_\_\_, by \_\_\_\_\_

(CHECK APPLICABLE TERM)

- a corporation, limited liability corporation, or company, incorporated under the laws of the State of \_\_\_\_\_(Insert name of State of incorporation)
- general/limited partnership (Strike inapplicable term)
- an individual doing business as \_\_\_\_\_  
(Insert name doing business as)
- individual(s),
- church, non-profit organization, educational institution, recreation commission, governmental body politic & other

hereinafter referred to as Declarant.

WHEREAS, Declarant is the owner of real property which is described on Exhibit A which is attached hereto and incorporated herein by specific reference thereto, the same being hereinafter referred to as real property; and,

WHEREAS, the real property is not contiguous to the City limits of the City of Columbia, South Carolina; and,

WHEREAS, Declarant has requested that the City of Columbia provide sewer and/or water service to the real property; and,

WHEREAS, Declarant has entered into a Water Service Contract or Sewer Service Contract or Water Main Extension Agreement or Sanitary Sewer Agreement with the City of Columbia in order to secure water or sewer service to the real property from the City of Columbia; and,

WHEREAS, the City of Columbia, for and in consideration of providing water or sewer service to the real property, which is not contiguous to the City of Columbia City limits, has required the Declarant to agree to cause the real property to be annexed to the City of Columbia in the event the real property, or any portion thereof, becomes contiguous to the City limits of the City of Columbia; and,

WHEREAS, Declarant desires to insure future compliance with such contractual agreement made with the City of Columbia;

NOW THEREFORE, the Declarant hereby declares as follows:

IMPOSITION OF COVENANT

From this day forward, the real property shall be held, transferred, sold or conveyed subject to the covenant contained herein which is for the purpose of providing future water or sewer service to the real property by the City of Columbia. The covenant shall touch and concern and run with title to the real property. This Declaration of Covenant and all provisions hereof shall be binding on all persons or entities having any right, title or interest in the real property, or any portion thereof, including the Declarant and/or Declarant's respective successors, successors in title, heirs, personal representatives and assigns, as the case may be, and shall inure to the benefit of each owner thereof. The enumerated covenant shall be deemed a covenant and not a condition.

COVENANT

At any future time should any part of the real property become contiguous to the City limits of the City of Columbia, all then current owner(s) of the entire parcel of real property will petition to have the real property annexed into the City of Columbia by submitting a proper and sufficient annexation petition at such time as the City of Columbia makes a written request to the then current owner(s) to submit the petition for annexation required by this Covenant.

ENFORCEMENT OF COVENANT

Failure of the owner(s) to submit the petition for annexation required by the Covenant upon written request by the City of Columbia to cause such real property to be annexed into the City of Columbia upon any portion thereof becoming contiguous to the City limits of the City of Columbia will result in a termination of water or sewer service to all of the real property until such time the owner(s) of the real property cause the real property to be annexed into the City of Columbia. Additionally, this Covenant may be enforced by an action for specific performance. In addition to the remedies specifically set forth herein, all public and private remedies allowed by law or in equity against anyone in violation of this Covenant shall be available. All of the remedies set forth herein are cumulative and not exclusive. Any person or entity having any right, title or interest in the real property, or any portion thereof, including the Declarant and/or Declarant's respective successors, successors in title, heirs, personal representatives and assigns, as the case may be, or the City of Columbia shall be entitled to bring an action for enforcement of the Covenant at such time as the City of Columbia has made the written request upon the then current owner(s) to submit a proper and sufficient annexation petition as required by the Covenant and the then current owner(s) have failed to submit the aforesaid petition within thirty (30) days of the written request.

The failure of any person or entity having any right, title or interest in the real property, or any portion thereof, including the Declarant and/or Declarant's respective successors, successors in title, heirs, personal representatives and

ATTACHMENT 2

assigns, as the case may be, or the City of Columbia to bring an action to enforce this Covenant shall not operate as a waiver of the right to do so for any subsequent violations or of the right to enforce any other part of this Covenant at any future time. The failure of any person or entity having any right, title or interest in the real property, or any portion thereof, including the Declarant and/or Declarant's respective successors, successors in title, heirs, personal representatives and assigns, as the case may be, or the City of Columbia to exercise or to delay in exercising any right or remedy available hereunder or at law or in equity shall not operate as a waiver. Notice of default or violation shall not be deemed as a condition precedent to the exercise of any right or remedy available hereunder or at law or in equity. Should any person or entity having any right, title or interest in the real property, or any portion thereof, including the Declarant and/or Declarant's respective successors, successors in title, heirs, personal representatives and assigns, as the case may be, or the City of Columbia fail to bring action for enforcement of this Covenant or seek any other remedy allowed at law or in equity such shall not create any liability for the recovery of damages for the failure to so act.

DURATION OF COVENANT

This covenant shall run with the land and shall be binding upon any person or entity having any right, title or interest in the real property, or any portion thereof, including Declarant and/or Declarant's respective successors, successors in title, heirs, personal representatives and assigns, as the case may be, forever.

INTERPRETATION

In interpreting words in this Declaration of Covenant, unless the context shall otherwise provide or require, singular shall include the plural, the plural shall include the singular, and the use of any gender shall included all genders.

The headings are included for purposes of convenient reference and such shall not affect the meaning or interpretation of this Declaration of Covenant.

IN WITNESS WHEREOF, Declarant has executed this Declaration of Covenant on the day and year first above written.

WITNESSES:

DECLARANT:

\_\_\_\_\_  
Signature of Witness #1

\_\_\_\_\_  
(Insert Name)

\_\_\_\_\_  
Signature of Witness #2

BY: \_\_\_\_\_  
Signature

ITS: \_\_\_\_\_  
(Print or Type Name)

BY: \_\_\_\_\_  
(Print or Type Title)

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

ACKNOWLEDGMENT

20\_\_\_\_ The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
by \_\_\_\_\_ of \_\_\_\_\_ on behalf of the  
(Name of Officer and Title) (City and State)

within-named Declarant.

\_\_\_\_\_  
(Notary's Signature)

NOTARY PUBLIC FOR STATE OF \_\_\_\_\_

MY COMMISSION EXPIRES \_\_\_\_\_