

NORTH CAROLINA

BRUNSWICK COUNTY

**EFFLUENT EASEMENT AND IRRIGATION AGREEMENT**

This EFFLUENT EASEMENT AGREEMENT is made and entered into as of \_\_\_\_ day of \_\_\_\_\_, 2023, by Northstar Carolina Corp, d/b/a Sandpiper Bay Golf and Country Club ("Sandpiper"), and 904 Georgetown Treatment Plant, LLC ("904"),

**WITNESSETH THAT:**

WHEREAS, Sandpiper is the owner of the Sandpiper Bay Golf Course which is located on and near Sandpiper Bay Drive off Old Georgetown Road in Sunset Beach, North Carolina; and

WHEREAS, 904 is a public utility company in the business of providing wastewater services to communities such as Sandpiper Bay.

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Sandpiper and 904 intending to be legally bound, agree as follows:

**I. Definitions.**

1.1 "Sandpiper Bay" shall mean the property being developed by Sandpiper located at or near Sandpiper Bay Drive off Old Georgetown Road in Sunset Beach, North Carolina.

1.2 "Reuse Effluent Pumping Station" shall mean that certain pump house, pumps and controls located near the Effluent Irrigation Pond at Sandpiper Bay, the function of which is to pump Reuse Effluent to and through the Spray Irrigation Facilities.

1.3 "Upset Storage Pond" shall mean the existing five-day retention pond approved by DWQ and located near the WWTP at Sandpiper Bay for the retention of wastewater during WWTP upsets.

1.4 "Effluent Irrigation Pond" shall mean the existing storage pond at Sandpiper Bay owned and operated by 904 pursuant to this Effluent Easement and Irrigation Agreement in which the Reuse Effluent (as described below) is stored after treatment at the WWTP (as defined below) and from which the Reuse Effluent is then pumped to Effluent Irrigation Pond to be sprayed on the Spray Areas (as defined below).

1.5 "Golf Course Pump Station" shall mean the pump station operated by Sandpiper for the purpose of irrigating the golf course facility.

1.6 "Certified Spray Irrigation Operator" shall mean the person certified by the State of North Carolina for operating spray application of treated effluent systems.

1.7 "DWQ" shall mean the Division of Water Quality of the North Carolina Department of Environment and Natural Resources.

1.8 "Effluent Easement and Irrigation Agreement" shall mean this Effluent Easement and Irrigation Agreement, including all exhibits and schedules hereto, if any, as may be amended from time to time.

1.9 "Golf Course" shall mean the golf course and areas appurtenant to the golf course at Sandpiper Bay Golf and Country Club.

1.10 "Permit" shall mean the permit for the Wastewater Utility System (as defined below) and Spray Irrigation Facilities as defined below) issued by DWQ, as the same may be modified or renewed from time to time.

1.11 "Reuse Effluent" shall mean the wastewater that has been treated by 904 to the point that it meets the effluent quality standards required by the Permit.

1.12 "Spray Areas" shall mean all areas on the Golf Course, Golf Course buffers, Golf Course rough, Golf Course cart paths and Golf Course access areas, and other specific tracts of land at Sandpiper Bay that have been or may in the future be permitted by DWQ for spray irrigation of Reuse Effluent. The Reuse Effluent currently sprayed onto holes 19, 20, 21, 22, 23, 24, 25, and 26 of the Golf Course.

1.13 "Spray Irrigation Facilities" shall mean the Reuse Effluent Pumping Station and all Reuse Effluent irrigation lines, pumps, booster pumps, irrigation and spray devices, controls and other devices used in the application of Reuse Effluent upon the Spray Areas.

1.14 "Wastewater Utility System" shall mean the WWTP, the collection system that delivers wastewater to the WWTP, the Upset Storage Pond, the Effluent Irrigation Pond, all lift stations, and other facilities used in the collection, treatment, holding and discharge of the wastewater, except the Spray Irrigation Facilities.

1.15 "WWTP" shall mean the wastewater treatment plant located within Sandpiper Bay.

2. Treatment and Storage. 904 will treat the wastewater created by customers and common area facilities within Sandpiper Bay in the WWTP and then discharge the Reuse Effluent into the Effluent Irrigation Pond. The Reuse Effluent will be treated by 904 to the tertiary standards established by DWQ in its Permit No. WQ0013398, and any modified or successive Permits issued by DWQ. The permitted flow from Sandpiper Bay based upon this DWQ Permit is 550,000 gallons per day ("gpd").

3. Withdrawal and Spray Irrigation. Sandpiper shall be responsible for the operation, maintenance, repair, and replacement of the Golf Course Pump Station, and for all aspects of the daily operation of the Spray Irrigation Facilities by a Certified Spray Irrigation Officer.

4. Spraying Activities and Reports. Sandpiper will cause its Certified Spray Irrigation Operator to spray the Reuse Effluent onto the Spray Areas. The spray irrigation shall be performed in compliance with all DWQ requirements subject to oversight by 904 as the DWQ permittee. Sandpiper will cause its Certified Spray Irrigation Operator to provide to 904 all information required on 904's monthly reports to DWQ including, but not limited to, amounts withdrawn from the Effluent Irrigation Pond, amounts sprayed on

each DWQ approved Spray Area, and application rates. This information shall be provided in a timely manner each month signed by Sandpiper's Certified Spray Irrigation Operator.

5. Application.

5.1 Sandpiper shall cause its Certified Spray Operator to spray onto the Spray Areas all of the available Reuse Effluent up to a maximum annual amount of 54.75 million gallons.

6. 904's Right to Assume Spraying Operations. Sandpiper shall operate the Spray Irrigation Facilities in such a manner and with sufficient frequency to distribute Reuse Effluent in accordance with Section 5. If, in the reasonable opinion of 904, Sandpiper is not operating or maintaining the Spray Irrigation Facilities in accordance with the term of this Effluent Easement and Irrigation Agreement or DWQ requirements, then 904 shall give Sandpiper written notice to make such repairs or improve such operation and maintenance procedures. If Sandpiper fails or refuses to do so within thirty (30) calendar days after receipt of said written notice, then, at 904's option, 904 shall have the right to enter the Irrigation Pump Station and the Spray Areas and undertake such responsibilities to the extent necessary to operate the Spray Irrigation Facilities to accomplish the purposes of this Effluent Easement and Irrigation Agreement, and charge Sandpiper for the reasonable and necessary costs actually incurred thereby; provided, however, that nothing herein shall relieve Sandpiper from the continuing obligation of operation and maintenance of the Spray Irrigation Facilities. Should 904 assume the responsibility to operate and maintain the Spray Irrigation Facilities, it shall have no obligation to maintain the Spray Areas or Spray Irrigation Facilities for any purpose other than the irrigation with the Reuse Effluent; provided, however, that 904 shall use commercially reasonable efforts to avoid damage to the Spray Irrigation Facilities and the Spray Areas.

7. Testing and Inspections. 904 shall have the right, at any time and upon reasonable notice to Sandpiper, to enter the Spray Areas and inspect and review the operation and maintenance of the Spray Irrigation Facilities, take tests including water samples, soil borings, and conduct other tests and monitoring of the Spray Areas (including the installation and maintenance of monitoring wells) in relation to the operations to be conducted under this Effluent Easement and Irrigation Agreement; provided, however, that (i) 904's testing and inspection activities on the Spray Areas shall not interfere with the intended use of the Spray Areas, and (ii) 904 shall use commercially reasonable efforts to avoid damage to the Spray Irrigation Facilities and the Spray Areas.

8. Reuse Effluent Quality. 904 SHALL NOT BE RESPONSIBLE FOR ACHIEVING WATER QUALITY LEVELS IN THE REUSE EFFLUENT OTHER THAN THE REQUIREMENTS OF THE SPRAY IRRIGATION PERMIT ISSUED BY DWQ.

9. Maintaining Effluent Irrigation Pond Level. Sandpiper shall require its Certified Spray Irrigation Operator to monitor the level of the Reuse Effluent in the Effluent Irrigation Pond and to maintain the level in the Effluent Irrigation Pond at or below the DWQ required freeboard. During the spring, summer, and fall months, Sandpiper shall remove Reuse Effluent from the Effluent Irrigation Pond and spray it onto the Spray Areas, to the maximum extent practicable, to maximize storage capacity for winter months when demand for irrigation is low. During winter months, Sandpiper shall remove Reuse Effluent from the Effluent Irrigation Pond and spray it onto the Spray Area as conditions permit. Notwithstanding the foregoing, nothing in this document shall be construed to require Sandpiper or its Certified Spray Irrigation Operator to take any action that would constitute a violation of the Permit or of any law or regulation.

10. Service Interruption. In the event of service interruptions caused by the malfunction of the wastewater utility system, 904 shall exercise due diligence in completing the necessary repairs and restoring Reuse Effluent delivery to the Effluent Irrigation Pond. In the event of service interruption caused by a malfunction of the Spray Irrigation Facilities, Sandpiper shall exercise due diligence in completing the necessary repairs and restoring Reuse Effluent irrigation to the Spray Areas; failing which 904 may undertake such repairs as provided in Section 6 above.

11. Grant of Easement. Sandpiper previously granted to 904, its successors and assigns an easement which was filed with the Commission on August 27, 2007, in Docket No. W-1141, Sub 4 and recorded in the Office of the Register of Deeds in Brunswick County in Book 2662, Page 1302. It is a perpetual non-exclusive Reuse Effluent spray irrigation easement within all the Spray Areas, for the purpose of spraying Reuse Effluent, operating the Spray Irrigation Facilities, and other activities related thereto, as more fully set forth in this Effluent Easement and Irrigation Agreement. Sandpiper shall not further encumber the Spray Areas, or engage in any activity, therein, or grant any other interest or privilege therein to any other party, that would interfere with 904's enjoyment of its right or fulfillment of its obligations created by this Effluent Easement and Irrigation Agreement.

12. Right of Entry. Sandpiper hereby grants to 904, its successors and assigns, a right of ingress, egress, regress, and access to and from the Easement Areas, and over, across, upon, and through the Spray Areas, as necessary for 904 to enjoy the rights and fulfill its obligations under this Effluent Easement and Irrigation Agreement. 904's right of ingress, egress, regress and access shall be non-exclusive; provided, however, Sandpiper shall not interfere with or permit any other party to interfere with 904's right of ingress, egress, regress and access, which shall exist so long as this Effluent Easement and Irrigation Agreement remains in force and shall inure to the benefit of 904's successors and assigns. In the exercise of 904's right of ingress, egress, regress, and access, 904 shall where possible, use existing roads, paths, and other ways of travel, but shall exercise ordinary care in its use of the roads, paths, and other ways of travel. Where roads, paths, or other ways of travel do not exist, Sandpiper shall make reasonable efforts to specify ways of travel for 904's use to permit 904 to enjoy the privileges and fulfill the obligations created by this Effluent Easement and Irrigation Agreement without undue interference. 904 shall use its best efforts to conduct its activities on the Spray Areas to avoid any unreasonable and adverse interference with the normal use of the Golf Course and Spray Areas.

13. Payments for Reuse Effluent or Operation of the Irrigation Facilities. 904 shall remit payments to Sandpiper for the Reuse Effluent that will be sprayed on the Spray Areas (also referred to as the Effluent Water Application Charge). The initial amount of the Effluent Water Application Charge will be \$2,518.05, which is based on the actual cost incurred to provide the service. The amount of the charge may be revised on an annual basis beginning on January 1, 2025. The amount of the Effluent Water Application Charge cannot at any time exceed the actual cost incurred to provide the service and beginning on January 1, 2025, and in subsequent years, shall be based on the actual cost to provide the service during the year immediately preceding the date that the new charge is implemented. Sandpiper represents that the proposed Effluent Water Application Charge is based on its actual cost to provide the service without markup and that any future adjustments to the Effluent Water Application Charge will be based on its actual cost. At its discretion, 904 shall have the right to obtain any information and, at its option, conduct an audit to assure that the Effluent Water Application Charge is based on actual costs.

14. Replacement of the Spray Irrigation Facilities. If it becomes necessary to replace any portion of the Spray Irrigation Facilities, it shall be Sandpiper's sole responsibility to replace such portion of the Spray Irrigation Facilities at Sandpiper's cost.

15. General Provisions.

15.1 Binding upon Successors and Assigns. This Effluent Easement and Irrigation Agreement shall be binding upon and shall inure to the benefit of Sandpiper and 904, and the successors and assigns of each.

15.2 No Third Party Beneficiary Rights. Nothing expressed or referred to in this Effluent Easement and Irrigation Agreement will be construed give any person other than the parties to this Effluent Easement and Irrigation Agreement any legal or equitable right, remedy or claim under or with respect to this Effluent Easement and Irrigation Agreement or any provision of this Effluent Easement and Irrigation Agreement, except such rights as shall inure to a successor or permitted assignee pursuant to the "Binding Upon Successors and Assigns" in Section 15.1 above.

15.3 Enforcement of Effluent Easement and Irrigation Agreement. Each party acknowledges and agrees that the other party would be irreparably damaged if any of the provisions of this Effluent Easement Agreement are not performed in accordance with their specific terms and that any breach of this Effluent Easement and Irrigation Agreement by a party could not be adequately compensated in all cases by monetary damages alone. Accordingly, in addition to any other right or remedy to which a party may be entitled, at law or in equity, it shall be entitled to enforce any provision of this Effluent Easement and Irrigation Agreement by a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent any breach or threatened breach of any of the provisions of this Effluent Easement and Irrigation Agreement, without posting any bond or other undertaking.

15.4 Entire Agreement. This writing and any other documents referred to herein embody the entire agreement and understanding between the parties hereto and there are no other agreements or understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

15.5 Modifications in Writing. This Effluent Easement and Irrigation Agreement shall not be modified, amended, or changed in any respect except in writing, duly signed by the parties hereto, and each party hereby waives any right to amend this Effluent Easement and Irrigation Agreement in any other way.

15.6 Consent to Jurisdiction. The parties agree that the General Court of Justice of North Carolina shall have exclusive jurisdiction over this Effluent Easement and Irrigation Agreement and shall have exclusive right to resolve any controversies arising out of, relating to, or referring to this Effluent Easement and Irrigation Agreement, the formation of this document, and actions undertaken by the parties hereto as a result of this Effluent Easement and Irrigation Agreement, whether such controversies sound in tort law, contract law or otherwise. Each of the parties hereto expressly and irrevocably consents to the personal jurisdiction of the General Court of Justice and agrees to accept service of process by mail and expressly waives any jurisdictional or venue defenses otherwise available.

15.7 Governing Law. This Effluent Easement and Irrigation Agreement shall be governed by the internal substantive laws of the State of North Carolina, without regard to such State's conflict of law or choice of law rules.

15.8 Recordation. The Effluent Easement and Irrigation Agreement remains the same and is recorded in the Register of Deeds office of Brunswick County, North Carolina in Book 2662, Page 1302.

15.9 Signatures. Authorized Representatives of Each Party with a Notary Attestation below.

IN WITNESS WHEREOF, the parties have caused this Effluent Easement and Irrigation Agreement to be duly executed in their respective corporate names, all by authority duly given, the day and year first above written.

<SIGNATURES ON NEXT PAGE>

Northstar Carolina Corp, d/b/a Sandpiper Bay Golf and Country Club

\_\_\_\_\_

By

\_\_\_\_\_

Printed Name/Title

904 Georgetown Treatment Plant, LLC

\_\_\_\_\_

By

Printed Name/Title

\_\_\_\_\_

The undersigned Notary Public hereby certifies that the above named individuals personally appeared before me and in the capacities indicated stated that they were authorized to execute this document and that that the information contained in this Agreement are true to the best of his/her knowledge and belief.

This \_\_\_\_\_ day of \_\_\_\_\_, 2023.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Address

My Commission Expires:

\_\_\_\_\_