

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-1297, SUB 14

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Pinnacle Bank, as successor by merger)
with Bank of North Carolina,)
Complainant)
v.) ORDER SERVING COMPLAINT
Harkers Island Sewer Company,)
Respondent)

BY THE COMMISSION: Notice is hereby given of the filing with this Commission on May 2, 2019, of a complaint by Pinnacle Bank (Complainant), against Harkers Island Sewer Company (Respondent).

In accordance with the Commission's Rules of Practice and Procedure, service of the complaint is hereby made on Respondent by copy thereof attached to this Order Serving Complaint, by electronic mail, delivery confirmation requested. Respondent is hereby directed to either satisfy the demands of Complainant or to file an answer with the Commission on or before May 24, 2019. The answer should comply with Rule R1-9 of the Commission's Rules of Practice and Procedure.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of May, 2019.

NORTH CAROLINA UTILITIES COMMISSION



Janice H. Fulmore, Deputy Clerk

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

Docket No.: W-1297, Sub 14

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

PINNACLE BANK, as successor by merger)
with BANK OF NORTH CAROLINA,)
)
Complainant,)
)
v.) COMPLAINT OF PINNACLE BANK
)
HARKERS ISLAND SEWER COMPANY,)
)
Respondent.)
)
)
)

NOW COMES the Complainant, PINNACLE BANK, as successor by merger with BANK OF NORTH CAROLINA (hereinafter referred to as "**Pinnacle**"), through counsel, pursuant to N.C. Gen. Stat. 62-73 and files this Complaint against Harkers Island Sewer Company ("**HISCO**"). For its Complaint, Pinnacle respectfully shows the Commission as follows:

1. That Complainant, PINNACLE BANK, as successor by merger with BANK OF NORTH CAROLINA is a banking corporation organized and existing under the laws of the State of Tennessee with offices and a place of business in Guilford County, North Carolina, and has authority to transact business in the State of North Carolina.

2. That, upon information and belief, Defendant HISCO is a North Carolina public utility sewer company. Upon further information and belief, HISCO primarily provides wastewater services to various subdivisions and residential homes located on Harkers Island, Carteret County, NC.

3. On February 24, 2011 BLE Development, LLC executed and delivered to Pinnacle's predecessor in interest, Bank of North Carolina, a promissory note in the original principal amount of Two Million Four Hundred Five Thousand Dollars (\$2,405,000.00) (as extended, modified, renewed and substituted, the "**Note**").

4. The Note was secured by a Deed of Trust of even date recorded on February 25,

2011 in Book 1368, at Page 387 of the Carteret County, North Carolina Public Registry (the “**Deed of Trust**”), said deed of trust being executed by BLE Development, LLC and James Creek Investment Partners, LLC and pledging as collateral for the Note, in relevant part, numerous lots included in that certain tract identified hereinbelow as James Creek.

5. On or about October 7, 2013, BLE Development, LLC and BLE, Inc. caused to be recorded a plat map entitled “James Creek, Phase One” (hereinafter “**James Creek**”) in Plat Book 32, at Page 403 of the Carteret County Registry (the “**Plat Map**”). A true and accurate copy of the Plat Map is attached hereto as **Exhibit A**, and incorporated herein by reference.

6. BLE Development, LLC and HISCO have the same principal, namely Matthew Laws.

7. The Plat Map contains a utility certification providing in relevant part that “streets, utilities and other improvements have been installed in an acceptable manner...”

8. The Plat Map contains a certification signed by Matthew Laws acting in his capacity as principal of HISCO that all of the lots shown on the Plat Map “will be served by Harkers Island Sewer Company for a new sewer system, and that said system has been installed in an acceptable manner and in accordance with the requirements of Carteret County and the State of North Carolina.”

9. On May 18, 2011, HISCO, via its principal Matthew Laws, filed with the North Carolina Utilities Commission an amended application to include James Creek Subdivision in its franchise territory (the “**Amended Application**”). A true and accurate copy of the Amended Application is attached hereto as **Exhibit B**, and incorporated herein by reference.

10. Upon information and belief, HISCO’s initial application to operate as a utility was deemed insufficient to solely serve the Westbay Subdivision, so James Creek was added to the initial application, thus giving rise to the Amended Application, to make HISCO viable as an operating utility.

11. At all relevant times since the filing of the Amended Application, HISCO represented that James Creek was to be provided sewer service via the West Bay Wastewater Treatment Facility.

12. In the Amended Application, in response to the question ‘Are there any major improvements/additions required in the next 5 years? The next 10 years?’ provides, in relevant part, “0 – BLE Development has already installed all lines, inside West Bay and James Creek Subdivisions. This included services lines, meter connection boxes at each individual lot.” (emphasis added).

13. The Amended Application includes as an attachment thereto a Letter of Intent (the “**Letter of Intent**”), signed by Matthew Laws on behalf of BLE Development, LLC, to service

all of James Creek's sewer needs by transporting waste to the treatment plant in the Westbay subdivision. While the Letter of Intent is an Exhibit to the Amended Application, a true and accurate copy is attached as **Exhibit C** for convenience.

14. The Amended Application specifies, in relevant part, that James Creek would consist of 80 residential lots receiving sewer services from HISCO, and that the connection fee for each lot was to be \$2,500.00.

15. On July 30, 2013, in response to the Amended Application, the North Carolina Utilities Commission entered an Order (the "**Order**") granting the franchise to provide wastewater sewer services to the James Creek Subdivision (specifically identifying 80 lots within James Creek Subdivision). A true and accurate copy of the Order is attached hereto as **Exhibit D**, and incorporated herein by reference.

16. On or about November 26, 2013, the original developer of James Creek, BLE Development, LLC, acting through its Member/Manager Matthew Laws, caused to be recorded a Declaration of Covenants, Conditions, Restrictions, and Easements for James Creek Subdivision (the "**Declarations**"), said Declarations being recorded in Book 1466, at Page 246 of the Carteret County Register of Deeds (the "**Declarations**"). A true and accurate copy of the Declarations is attached hereto as **Exhibit E**, and incorporated herein by reference.

17. **The Declarations expressly represent, as follows:**

"Declarant has caused to be created and chartered a public utility company by the name of Harkers Island Sewer Company, LLC (hereafter "Sewer Company"). The Sewer Company has constructed a sewage treatment plant outside of the Development to handle the sewage and wastewater disposal requirements of the residences within the Development, **along with pumps, pipelines, lift stations and other equipment installed and located within reserved easements and properties in the Development** (hereafter "Sewage Treatment Facilities"). The Sewage Treatment Facilities have been designed with sufficient mechanical capacity to also handle the sewage and wastewater disposal requirements of other properties located outside of the Development and owned by third parties which may subsequently seek to be added and connected to such Sewage Treatment Facilities as contract customers (hereafter "Third Party Customers"). Declarant reserves the right, and hereby assigns such right to the Sewer Company, to engage in such contracts with such Third Party Customers in its sole discretion, **as long as such contracts do not impair the capability of such Sewage Treatment Facilities to properly handle the sewage and wastewater requirements of residences within the Development.** Further, Declarant has labeled a certain site on the recorded Plat of the Development as "AREA RESERVED FOR ON-SITE SEWER COLLECTION STATION" Declarant reserves the right to install other sewage and wastewater disposal systems and facilities within this Area to supplement and facilitate the operations of the Sewer Company with respect to its objective of supplying the sewer and wastewater disposal needs of the Lots within the Development as well as properties located outside of the

Development owned by Third Party Customers.”

(emphasis added).

18. Following a default under the terms and conditions of the Note and the Deed of Trust, on or about June 5, 2013, BLE Development, LLC and HISCO, among others, executed and conveyed to Pinnacle’s predecessor in interest a loan modification agreement (the “**Loan Modification Agreement**”). A true and accurate copy of the Loan Modification Agreement is attached hereto as **Exhibit F**, and incorporated herein by reference.

19. In the Loan Modification Agreement, HISCO joined in its execution and expressly agreed to “provide waste water treatment for the James Creek Subdivision. Upon the closing of the sale of each Lot within the James Creek Subdivision, HISC will collect and receive at closing a tap on fee of \$2,500.00. HISC covenants and agrees to set aside any and all such tap on fees received from the sales of Lots within the James Creek Subdivision for future capital expenditures and/or to retire debt owed by HISC arising out of the construction of the waste water treatment plant and the purchase of equipment related thereto.”

20. Pinnacle became record title owner of the majority of the lots comprising the James Creek Subdivision by way of that certain Trustee’s Deed recorded on December 9, 2014 in Book 1496, at Page 98 of the Carteret County Registry (“**Trustee’s Deed**”), said Trustee’s Deed resulting from a foreclosure special proceeding in connection with the Deed of Trust. A true and accurate copy of the Trustee’s Deed is attached hereto as **Exhibit G**, and incorporated herein by reference.

21. The developed and platted lots located in James Creek owned by Pinnacle at issue herein are identified as follows:

Lot 1 per Map Book 32, Page 403, Carteret County Registry, 207 Tall Pines Way
Lot 2 per Map Book 32, Page 403, Carteret County Registry, 203 Tall Pines Way
Lot 3 per Map Book 32, Page 403, Carteret County Registry, 221 Tall Pines Way
Lot 4 per Map Book 32, Page 403, Carteret County Registry, 227 Tall Pines Way
Lot 5 per Map Book 32, Page 403, Carteret County Registry, 237 Tall Pines Way
Lot 6 per Map Book 32, Page 403, Carteret County Registry, 313 Clam Bed Court
Lot 7 per Map Book 32, Page 403, Carteret County Registry, 317 Clam Bed Court
Lot 8 per Map Book 32, Page 403, Carteret County Registry, 321 Clam Bed Court
Lot 9 per Map Book 32, Page 403, Carteret County Registry, 318 Clam Bed Court
Lot 10 per Map Book 32, Page 403, Carteret County Registry, 314 Clam Bed Court
Lot 11 per Map Book 32, Page 403, Carteret County Registry, 312 Clam Bed Court
Lot 29 per Map Book 32, Page 403, Carteret County Registry, 128 James Creek Way
Lot 30 per Map Book 32, Page 403, Carteret County Registry, 138 James Creek Way
Lot 31 per Map Book 32, Page 403, Carteret County Registry, 182 James Creek Way
Lot 48 per Map Book 32, Page 403, Carteret County Registry, 314 Skiff Court
Lot 67 per Map Book 32, Page 403, Carteret County Registry, 236 Tall Pines Way

Lot 68 per Map Book 32, Page 403, Carteret County Registry, 315 Skiff Court
Lot 69 per Map Book 32, Page 403, Carteret County Registry, 321 Skiff Court
Lot 70 per Map Book 32, Page 403, Carteret County Registry, 329 Skiff Court
Lot 80 per Map Book 32, Page 403, Carteret County Registry, 328 Skiff Court

(hereinafter the “**Platted Lots**”).

22. Upon information and belief, certain portions of real property not yet developed and reserved in the Plat Map for future development purposes may potentially provide up to fifty-eight (58) additional developable residential lots (hereinafter the “**Future Development Lots**”).

23. By Letter dated January 7, 2015 the North Carolina Department of Environmental and Natural Resources issued a permit in response to HISCO’s permit renewal form submitted September 30, 2014 (the “**2015 Permit Renewal**”). A true and accurate copy of the 2015 Permit Renewal is attached hereto as **Exhibit H**, and incorporated herein by reference.

24. The 2015 Permit Renewal identifies three phases of HISCO’s operations, as follows:

- a. Phase 1 outlined continued operation of the presently existing Wastewater Treatment Facility located in the West Bay Subdivision (hereinafter the “**West Bay WWTF**”), said presently existing treatment facility serving 28 lots at West Bay Subdivision “**and an additional 22 lots from James Creek Subdivision via force main.**”
- b. Phase 2 outlined capacity expansion of the existing West Bay Wastewater Treatment Facility.
- c. Phase 3 outlined the construction of James Creek Wastewater treatment facility and “[t]he proposed phased construction includes the connection of a portion of the flows to be generated at the James Creek Subdivision with the West Bay Wastewater Treatment Facility.”

25. Pinnacle is presently planning to sell and/or continue development of James Creek. Pinnacle, or its successor in interest, is ready to procure and pay the previously agreed tap fee(s) of \$2,500.00 per; however, HISCO has denied its ability to serve the presently existing Platted Lots located at James Creek until such time as Pinnacle, or its successor in interest, provides the funds necessary to construct a new wastewater treatment facility within the James Creek Subdivision. This position is inconsistent with statements of HISCO previously held out to the public that systems necessary to serve these Platted Lots at the West Bay WWTF have already been installed.

26. Upon information and belief, the Commission has not removed James Creek from

HISCO's franchise territory.

27. As the record title owner of the parcel of real property at issue herein from December 2014 through the present, neither Pinnacle, nor its predecessor in interest Bank of North Carolina, ever received notice that HISCO sought to remove James Creek from HISCO's franchise territory.

28. To date, no hearing has taken place to address removal of James Creek from HISCO's franchise territory.

29. HISCO has held out to the public, including in multiple filings and applications with the Commission, that sewer service to the Platted Lots within James Creek has already been installed and is available upon payment solely of a \$2,500 tap fee.

30. HISCO's numerous additional applications filed with the Commission to add new territories specifically identify the James Creek as one of its existing territories eligible to receive HISCO sewer treatment services.

31. All of the foregoing documentation conclusively provide as follows:

- a. It has at all times been the intention of HISCO to provide wastewater treatment services to the Platted Lots located within James Creek by transporting such, via force main, to the presently existing West Bay WWTF;
- b. That a new wastewater treatment facility would eventually be constructed in Lot 7 per the Plat Map for the purposes of expanding wastewater treatment services to Future Development Lots located within James Creek, as well as providing wastewater treatment services to other subdivisions and residences located outside of James Creek.

32. Upon information and belief, Matthew Laws is the current or former owner, member and manager of BLE Development, LLC. Upon information and belief, Matthew Laws is a current or former owner and officer of BLE, Inc. Upon information and belief, Matthew Laws is the current or former owner, member and manager of HISCO.

33. By letter dated December 1, 2017, Pinnacle formally requested that HISCO confirm the above-referenced Platted Lots would receive wastewater treatment services by HISCO upon payment of the \$2,500.00 tap fee (the "**2017 Demand Letter**"). In the 2017 Demand Letter, Pinnacle specifically and directly requested HISCO to provide sewer services to the above-referenced lots in James Creek. A true and accurate copy of the 2017 Demand Letter, less and except the attachments referenced there (which have been attached to this complaint), is attached hereto as **Exhibit I**, and incorporated herein by reference.

34. By letter dated December 5, 2017, HISCO responded to the 2017 Demand Letter

(the “**HISCO Response**”). A true and accurate copy of the HISCO Response, and attachments enclosed therewith, is attached hereto as **Exhibit J**, and incorporated herein by reference.

35. The HISCO Response references N.C.U.C. Rule R10-12(c) and provides, in relevant part, that Pinnacle is an applicant seeking to expand service to a new subdivision; however, James Creek is not a new subdivision and HISCO has already agreed to provide services to the above-referenced Platted Lots located within James Creek, and has done so with many publicly filed documents.

36. The HISCO Response also claims that, because HISCO lost rights in Lot 7 per the Plat Map and thus lost the ability to construct the James Creek waste water treatment facility planned for such lot, HISCO lost all capacity to provide sewer services to the entirety of James Creek.

37. As is provided in the Plat Map, the Letter of intent, the Declarations and the 2015 Permit Renewal, at all relevant times herein, HISCO has represented that the initial twenty-two Platted Lots within James Creek were to receive sewer services via the West Bay WWTF and that, in fact, the system had already been installed.

38. On or about May 11, 2018, HISCO filed with the Commission a letter seeking a reduction of its bond, said letter being labeled W-1297, Sub 13 (the “**Bond Reduction Request Letter**”). A true and accurate copy of the Bond Reduction Request Letter is attached hereto as **Exhibit K**, and incorporated herein by reference.

39. The Bond Reduction Request Letter provides, in relevant part, “When HISCO was granted its franchise, its territory was Westbay Subdivision containing 8 established homes and 24 unbuilt [sic] upon lots.” Upon information and belief, the foregoing statement is inaccurate, in that HISCO’s initial franchise was amended via the Amended Application specifically to include James Creek prior to its approval.

40. The Bond Reduction Request Letter further provides, in relevant part, “Currently, HISCO has expanded to cover with its sewer main extensions the entire island, along Island Road east and west, and several extensions on north and south roads. HISCO can serve with its current sewer mains approximately 60 percent of the Island’s existing and future homes, and businesses. Harkers Island consist [sic] of approximately 1,200 existing homes and businesses. HISCO current established territories [sic], along with contiguous [sic] territory possibly served by HSCO [sic] represents approximately 460 more homes and businesses than its current equivalent 140 current users.”

41. According to the Bond Reduction Request Letter, HISCO has acquired a second wastewater treatment facility further increasing its capacity and has no debt regarding said facility.

42. The Bond Reduction Request Letter highlights HISCO’s readiness and willingness to continue to grow its service area.

43. Despite HISCO's claims to have an alleged ability to facilitate growth, HISCO has refused to commit to provide wastewater services to James Creek and, in fact, has demanded that Pinnacle construct a new wastewater treatment facility in order to obtain services.

44. Without a commitment for sewer utility service, Pinnacle cannot proceed with alienation and/or construction of residential structures on the above-referenced lots.

45. As a public utility, HISCO is obligated to provide reasonably adequate service and accurate information to the public regarding available services and costs.

46. Prior to the recordation of the Trustee's Deed, in numerous documents and filings, HISCO represented that all required systems had already been installed and agreed to provide service to the above-referenced James Creek lots by transporting waste water to the West Bay WWTF via force main. After the recordation of the Trustee's Deed, HISCO has declined to provide any such sewer services unless and until such time as a new treatment facility has been constructed at Pinnacle's expense. HISCO's demands are unreasonable and inadequate, and amount to a *de facto* denial of service.

WHEREFORE, Pinnacle Bank respectfully prays as follows:

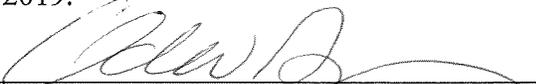
1. That this matter be treated as a formal Complaint against HISCO pursuant to N.C. Gen. Stat. §62-73 and the Commission's Rules of Practice and Procedure; and
2. That the Commission determine that HISCO has unreasonably refused to provide wastewater sewer service to the above-referenced lots located in James Creek pursuant to G.S. §62-42(a)(2), and that HISCO be ordered to provide the requested sewer utility services, pursuant to HISCO's existing terms and conditions of service as filed with the Commission; and
3. That the Commission determine that the utility service provided to the above-referenced lots located in James Creek by HISCO, or the lack thereof, is inadequate, insufficient or unreasonably discriminatory, pursuant to G.S. §62-42(a)(1); and
4. That the Commission appoint an Emergency Operator for HISCO for the purposes of determining HISCO's current capacity, and for the additional purposes of establishing wastewater services to all of HISCO's franchise territories, specifically including James Creek; and
5. That the Commission deny HISCO's request for a bond reduction; and
6. That to the extent HISCO's own actions and activities prevent HISCO from being able to provide wastewater treatment services to James Creek as has been previously publicly represented, the Commission determine that additions, extensions, improvements or repairs to HISCO's existing facilities ought to be made at HISCO's sole and exclusive expense pursuant to G.S. §62-42(a)(3); and

7. That the Commission determine, pursuant to G.S. §62-42(a)(5), any other act necessary to provide reasonable and adequate service to the above-referenced lots located in James Creek. To the extent that the Commission determines construction of a new wastewater treatment facility is necessary to provide reasonable and adequate service to James Creek despite HISCO's prior representations to utilize the facility located in the West Bay Subdivision, Pinnacle requests that the Commission determine that Pinnacle, or any future owner/developer of James Creek, not be deemed solely obligated to fund the construction of a new waste water treatment facility, since any such facility is intended to serve multiple subdivisions and residences located outside of James Creek; and

8. For such other relief as the Commission deems just and proper.

Respectfully submitted this the 2nd day of May, 2019.

By:


Alan B. Powell, N.C.S.B. No. 17555
Andrew D. Irby, N.C.S.B. No. 35353
Christopher C. Finan, N.C.S.B. No. 27820
Attorneys for Pinnacle Bank

OF COUNSEL:

ROBERSON HAWORTH & REESE, PLLC
300 N. Main Street; Suite 300
P.O. Box 1550
High Point, NC 27261
Telephone: 336-889-8733
Facsimile: 336-885-1280
Email: apowell@rhrlaw.com
airby@rhrlaw.com
cfinan@rhrlaw.com

Orig.
FORM REVISED 8/00

OFFICIAL COPY

W-1297, Sub D
Continuation

NOTIFICATION OF INTENTION TO BEGIN OPERATIONS
IN AREA CONTIGUOUS TO PRESENT SERVICE AREA

MM
AG
BROWN
WTE
Pseco
PSACTS
PSwater

Date submitted: 5/16/2011
Date proposed for service to begin: 6/20/2011

OFFICIAL COPY
FILED
MAY 18 2011

UTILITY

- Trade name used for utility business: RLE UTILITY COMPANY LLC
- Mailing address: P O Box 370
City and State: HARKERS ISLAND, NC Zip Code: 28531
- Business telephone number: _____
- Docket number of certification of present service area: W-1297, SUB D
- Description of present service area (subdivision, county, type of service):
PENDING: (WESTRAY SUBDIVISION) HARKERS ISLAND, NC
OLD FERRY DOCK RD
- Description of new service area:
 - Name of subdivision or service area: JAMES CREEK SUBDIVISION, OAK HAMMOCK DR HARKERS IS.
 - County or counties: CARTER
 - Type of service proposed (water, sewer, etc.): SEWER
 - DENR System I.D. No. and/or NPDES or Nondischarge Permit No.: _____

Clerk's Office
N.C. Utilities Commission

PROPOSED RATES

- Metered Residential Service:
 - Water: N/A
 - Sewer: N/A
- Flat Rate Residential Service:
 - Water: N/A
 - Sewer: \$160 MONTHLY
- Nonresidential Service (explain):
 - Water: N/A
 - Sewer: SAME
- Tap-on fees:
 - Water: N/A
 - Sewer: \$2500

SERVICE DATA

NOTE: If new area is to be served by a separate system, fill in only the first column. If new area is to be served by an extension of an existing system, show totals for the combined systems in the second column.

	Proposed Addition	Combined System
WATER SERVICE:		
11. Source of water supply (wells, from whom purchased)		<u>HARKERS IS. WATER DISTRICT</u>
12. Number of wells in service		<u>0</u>
13. Pumping capacity of wells		<u>N/A</u>
14. Elevated storage capacity		<u>N/A</u>
15. Pressure tank capacity		<u>N/A</u>
16. Types of water treatment		<u>N/A</u>
17. Number of fire hydrants		<u>N/A</u>
18. Number of water meters by size		<u>N/A</u>
19. Number of service taps by size		
20. Number of current customers:		
Residential		
Commercial		
21. Number of customers that can be served by:		
Mains		
Pumping capacity		
Storage capacity		

ALL-STATE LEGAL®
EXHIBIT
B

OFFICIAL COPY
May 02 2019

	Proposed Addition	Combined System
SEWER SERVICE:		
1. Sewage disposal by septic tank or sewer system		SEWER SYSTEM
2. Is sewer service metered?		NO
3. Capacity of sewage treatment plant (gallons per day)		49,600 gpd
4. Number of service taps by size		108 1 1/2"
5. Number of current customers:		
Residential		5
Commercial		0
6. Number of customers that can be served by:		
Collection Mains		108
Treatment Plant		108

FINANCIAL INFORMATION

7. Cost of Utility Systems (new system and additions to present system) Cost is actual or estimated	\$ 136,504 ESTIMATED
8. Actual cost is for year ended	2011

Show the total original cost to construct and establish the system(s) whether or not paid for by the present owner or the notifying utility.

	Balance at End of Year	
	Water	Sewer
9. Land and rights-of-way	\$ M/A	\$ 60,000
10. Structures and site improvement	\$	\$ 48,000
11. Wells	\$	\$ 16,000
12. Pumping equipment	\$	\$ 110,804
13. Treatment equipment	\$	\$ 182,000
14. Storage tanks	\$	\$ 55,000
15. Mains (excluding service connections)	\$	\$ 86,000
16. Service connections	\$	\$ 20,000
17. Meters (including spare meters)	\$	\$ 0
18. Office furniture and equipment	\$	\$ 0
19. Transportation equipment	\$	\$ 0
20. Other utility property in service (describe in remarks below)	\$	\$ 6,000
21. Total utility property in service (Lines 9 thru 20)	\$	\$ 583,804
22. Less: accumulated depreciation	\$	\$ 32,700
23. Less: accumulated tap fees and other contributions in aid of construction	\$	\$ 0
24. Less: customer advances	\$	\$ 0
25. Net investment in utility property (Line 21 minus 22, 23, & 24)	\$	\$ 551,104

	Balance at End of Year	
	Water	Sewer
26. Construction work in progress	\$	\$
27. Property held for future use	\$	\$
28. Other (describe in remarks below)	\$	\$

	Remarks
29.	LINE 20 - Pumps on hand for Emergency use.
30.	
31.	
32.	

RECOVERY OF PLANT COST

The utility proposes to recover the cost of the plant listed on Line 21 of Page 2 as follows:

	Water	Sewer
1. Amount to be contributed by developer	\$ N/A	\$ 583,804
2. Amount to be recovered through tap fees	\$	\$ 200,000 (working capital)
3. Amount to be recovered through rates	\$	\$ 80 lots @ 2500
4. Other (please describe below on Line 6)	\$	\$
5. Total cost of plant	\$	\$ 0

6. Description of other:

THE DEVELOPER WILL COVER ALL COST ASSOCIATED WITH EXTENSION & PLANT EXPANSION.

ANNUAL DEPRECIATION

7. If annual depreciation is claimed using a composite rate for the entire system, show rate of depreciation used:

Water: N/A
Sewer: 5% REC 20

8. If annual depreciation is claimed using individual rates for each type of equipment, show rates of depreciation used:

N/A

OTHER FINANCIAL INFORMATION

NOTE: IF THE CONTIGUOUS EXTENSION IS TO SERVE A NOMINAL NUMBER OF CUSTOMERS, THE COMPANY MAY REQUEST A WAIVER FOR QUESTIONS ON PAGES 4 AND 5.

1. Please provide the following capital structure information for the Company prior to the purchase of the new water and/or sewer system(s):

a. Capital structure as of \$ 551,104

b. Capital structure balances:

	Amount	Percent Of Total Capital
Long-term debt/loans	\$ 0	
Preferred stock (if any)	\$ 0	
Common equity:		
Common stock	\$ 0	
Retained earnings	\$ 0	
Total common equity	\$ 0	
Total capital	\$ 551,104	100%

2. The purchase price of the system will be financed as follows:

a. Long-term debt	\$ 0
b. Short-term debt	\$ 0
c. Common stock	\$ 0
d. Retained earnings	\$ 0
e. Other (please describe below on Line g)	\$
f. Total purchase price	\$ 0

g. Description of other: BLE DEVELOPMENT TO TRANSFER ALL EQUIPMENT, LINES, PLANT REAL ESTATE ETC. FOR PWB PROJECTS TO BLE UTILITY CO. LLC

3. Please provide the following for improvements/additions to be made in the first year:

a. Brief description: NONE

b. Financing:

(1) Long-term debt	\$ 0
(2) Short-term debt	\$
(3) Common stock	\$
(4) Retained earnings	\$
(5) Other (please describe below on Line (7))	\$
(6) Total improvements/additions	\$

(7) Description of other:

1. Are there any major improvements/additions required in the next five years and the next ten years? Indicate the estimated cost of each improvement/addition, the year it will be made, and how it will be financed (long-term debt, short-term debt, common stock, retained earnings, and other (please explain)).

0 - BLE DEVELOPMENT HAS ALREADY
 INSTALLED ALL LINES INSIDE WESTBAY & JAMES
 CREEK SUBDIVISIONS THIS INCLUDES SERVICE LINES,
 METER CONNECTION BOXES AT EACH INDIVIDUAL LOT
 \$136,504 EXPANSION TO JAMES CREEK IS ALREADY
 UNDERWAY BY BLE DEVELOPMENT CO. and will
 BE COMPLETED BY JULY 30, 2011.

2. Are there any major replacements required in the next five years and the next ten years? Indicate the estimated cost of each replacement, the year it will be made, and how it will be financed (long-term debt, short-term debt, common stock, retained earnings, and other (please explain)).

NONE

3. Please fill out the attached addendum showing the projected cash flows and income statement for the first five years of operation of this system. This addendum should be for the utility system for which the subject application is being submitted, exclusively. Instructions are included on page 3 of the addendum. The following information may be provided instead of filling the addendum:

- (1) Audited financial statements for the utility and/or parent company.
- (2) Budgets, capital and operating, for the company's North Carolina utility operations for the next five years.
- (3) The most recent fiscal year budgets, capital and operating, and the actual amounts for that year for the utility's and/or parent company's North Carolina utility operations.

EXHIBITS

PROVIDE THE FOLLOWING EXHIBITS WITH THIS NOTIFICATION:

- 1. Copy of letter from the Department of Environment and Natural Resources granting approval of plans for each water system.
- ② *N/A* Exhibit 2: Copy of letter from the Department of Environment and Natural Resources granting approval of plans for each sewer system.
- 3. Copy of Division of Environmental Health (DEH) report on chemical analysis of untreated water from each well. (Not to be confused with the monthly samples submitted to DEH for bacteriological analysis. Contact DEH for instructions to obtain a sample for chemical analysis.)
- ④ *N/A* Exhibit 4: Copies of documents showing how ownership or control of the water or sewer system(s) has been or will be acquired by the utility.
- ④ Exhibit 5: Copies of contracts or agreements, including all attachments, exhibits, and appendices, between the utility and any other party (land developers, customers, etc.) regarding the proposed utility services, including contracts regarding tap fees, construction costs, easements, and rights-of-way. (If no such contracts exist, indicate "none").
- ⑥ Exhibit 6: Vicinity map showing the location of the intended extension in relation to the current service territory and indicating points of contiguity.
- ⑦ Exhibit 7: Subdivision maps of the intended extension in sufficient detail to show the layout of streets, lots, water or sewer mains, hydrants, wells, pumping equipment, treatment facilities, storage facilities, etc.
- ⑧ Exhibit 8: Enclose a copy of the workpapers supporting the estimate of plant costs, including a breakdown by type of plant item, showing the detail of how the estimated cost was determined, and indicating which plant items, if any, will be contributed to the utility.
- 9. Enclose a copy of the most recent fiscal year financial statements, audited if available, for the Applicant.
- ⑩ Enclose a copy of the most recent fiscal year financial statements, audited if available, for the parent company of the Applicant.
- 11. If the information requested in Exhibits 9 and 10 is not available, enclose a copy of the most recent fiscal year financial statements or statement of net worth for the principals of the utility and/or parent company.

SEE PREVIOUS APPLICATION DOCKET NO. W-1287, SUBD.

FILING INSTRUCTIONS

- 12. Eight (8) copies of the notification and exhibits shall be filed with the North Carolina Utilities Commission, 4325 Mail Service Center, Raleigh, North Carolina 27699-4325. One of these copies must have an original signature. (Applicants must also provide any copies to be returned to them.)

Utility BLE UTILITY COMPANY LLC
 By [Signature] *Michael L. Lewis*

Original = [Signature]

ADDENDUM TO NOTIFICATION OF INTENTION TO BEGIN OPERATIONS IN AREA CONTIGUOUS TO PRESENT SERVICE AREA

Projected Income Statement

Line No.	Item	Year 1	Year 2	Year 3	Year 4	Year 5
<u>Operating revenue</u>						
1.	Metered service revenue					
2.	Fixed rate service revenue	2,880	5,760	11,520	18,720	33,120
3.	EPA testing surcharge					
4.	Re-connect fees					
5.	Returned check charge					
6.	Late payment charge					
7.	Other operating revenue	10,000	10,000	20,000	25,000	50,000
8.	Total operating revenue (Sum of Line 1 thru Line 7)	12,880	15,760	31,520	43,720	83,120
<u>Operating expenses</u>						
9.	Total salaries and wages (employees only)					
10.	Outside labor expenses (non-employees)					
11.	Administrative and office expense			12,000	36,000	60,000
12.	Maintenance and repair expense					
13.	Purchased water					
14.	Purchased sewage treatment					
15.	Electric power expense (exclude office)	1,440	1,600	1,800	2,200	2,600
16.	Chemicals expense					
17.	Testing fees					
18.	Transportation expense					
19.	Other operating expense					
20.	Total operation and maintenance expenses (Sum of Line 9 thru Line 19)	1,440	1,600	13,800	38,200	62,600
21.	Annual depreciation expense					
22.	Property taxes paid on utility property					
23.	Payroll taxes					
24.	Franchise (gross receipts) tax					
25.	Annual NGLC regulatory fee	175	187	455	928	1,101
26.	Total operating expenses (Sum of Line 20 thru Line 25)	1,615	1,787	14,255	39,128	63,701
<u>Income Taxes</u>						
27.	State income taxes					
28.	Federal income taxes					
29.	Total income taxes (Line 27 + Line 28)					
30.	Net operating income (loss) (Line 8 - Line 26 - Line 29)	11,265	13,973	17,265	4,592	19,419
31.	Interest expense					
32.	Net income (loss) (Line 30 - Line 31)	11,265	13,973	17,265	4,592	19,419

ADDENDUM TO NOTIFICATION OF INTENTION TO BEGIN OPERATIONS IN AREA CONTIGUOUS TO PRESENT SERVICE AREA

Statement of Cash Flows

Line No.	Item	Year 1	Year 2	Year 3	Year 4	Year 5
<u>Cash Flows From Operating Activities</u>						
1.	Pre-tax operating income (loss):					
2.	Total operating revenue	12,880	15,760	31,520	43,720	83,120
3.	Less: Operation and maintenance expenses					
4.	Less: Taxes other than income	1,615	1,287	14,255	39,128	63,701
5.	Pre-tax operating income (loss)	11,265	13,973	17,265	4,592	19,419
6.	Income tax calculation:					
7.	Pre-tax operating income (loss)					
8.	Plus: Contributions in aid of construction					
9.	Less: Tax depreciation					
10.	Less: Interest expense					
11.	Taxable income (loss)					
12.	State income tax					
13.	Federal income tax					
14.	Total income taxes to be paid					
15.	Net cash provided by (used in) operating activities	11,265	13,973	17,265	4,592	19,419
<u>Cash Flows From Investing Activities</u>						
16.	Purchases of utility plant					
17.	Plus: Cash bonds posted					
18.	Less: Contributions in aid of construction					
19.	Less: Proceeds from disposal of utility plant					
20.	Net cash used (provided) by investing activities					
<u>Cash Flows From Financing Activities</u>						
21.	Proceeds from issuing short term debt					
22.	Less: Principal repayment of short term debt					
23.	Plus: Proceeds from issuing long term debt					
24.	Less: Principal repayment of long term debt					
25.	Less: Interest payment for short and long term debt					
26.	Plus: Proceeds from issuing stock					
27.	Less: Dividends paid					
28.	Plus: Funds provided by owner					
29.	Net cash provided (used) by financing activities	11,265	13,973	17,265	4,592	19,419
30.	Net increase (decrease) in cash					
31.	Cash balance at beginning of year					
32.	Cash balance at end of year	11,265	25,238	42,503	47,095	66,514

ADDENDUM TO NOTIFICATION OF INTENTION TO BEGIN OPERATIONS IN AREA CONTIGUOUS TO PRESENT SERVICE AREA

Instructions

1. These schedules should reflect all revenues, costs, investment, etc. associated with or to be associated with the utility system for which the subject franchise application is being submitted, exclusively.
2. For purposes of forecasting future expenses, as a simplifying assumption, it may be assumed that increases in such costs due to increases in general price levels, (i.e., inflation) will on average be offset by concurrent rate increases. Thus, no provision(s) for such offsetting changes will need to be made in forecasting costs.
3. A written detailed narrative explanation of all assumptions underlying the information and data contained in this addendum and five (5) copies of all worksheets developed in completing the addendum are to be filed with the Commission's Chief Clerk concurrent with the filing of the franchise application.
4. Computations for Statement of Cash Flows (Page 2 of Addendum)
 - (a) Line 2 should agree with Addendum Page 1 - Projected Income Statement, Line 8.
 - (b) Line 3 should agree with Addendum Page 1 - Projected Income Statement, Line 20.
 - (c) Line 4 should agree with Addendum Page 1 - Projected Income Statement, Sum of Line 22 thru Line 25.
 - (d) Line 14 should equal Line 4 plus Line 13.
 - (e) Line 15 should equal Line 5 less Line 14.
 - (f) Line 30 should equal Line 15 less Line 20 plus Line 29.
 - (g) Line 31 should equal the cash balance at the end of the prior year, except for the beginning balance for Year 1, which should be zero.
 - (h) Line 32 should equal Line 30 plus Line 31.



Exhibit 2
original

North Carolina Department of Environment and Natural Resources

Division of Water Quality

Coleen H. Sullins
Director

Beverly Eaves Perdue
Governor

Dee Freeman
Secretary

July 22, 2009

Sidney N. Bazemore – Managing Partner
BLE Development, LLC
P.O. Box 370
Harkers Island, North Carolina 28531

Subject: Permit No. WQ0034190
James Creek Subdivision
High-Rate Infiltration System
Currituck County

Dear Mr. Bazemore:

In accordance with your permit application received July 7, 2009, and subsequent additional information received July 20, 2009, we are forwarding herewith Permit No. WQ0034190, dated July 22, 2009, to BLE Development, LLC for the construction and operation of the subject wastewater treatment and high-rate infiltration facilities.

This permit shall be effective from the date of issuance until June 30, 2014, and shall be subject to the conditions and limitations as specified therein. Please pay particular attention to the monitoring requirements listed in Attachments A, B and C. Failure to establish an adequate system for collecting and maintaining the required operational information shall result in future compliance problems.

If any parts, requirements or limitations contained in this permit are unacceptable, the Permittee has the right to request an adjudicatory hearing upon written request within 30 days following receipt of this permit. This request shall be in the form of a written petition, conforming to Chapter 150B of the North Carolina General Statutes, and filed with the Office of Administrative Hearings at 6714 Mail Service Center, Raleigh, NC 27699-6714. Unless such demands are made, this permit shall be final and binding.

AQUIFER PROTECTION SECTION
1636 Mail Service Center, Raleigh, North Carolina 27699-1636
Location: 2728 Capital Boulevard, Raleigh, North Carolina 27604
Phone: 919-733-3221 \ FAX 1: 919-715-0588; FAX 2: 919-715-6048 \ Customer Service: 1-877-623-8748
Internet: www.ncwaterquality.org

An Equal Opportunity / Affirmative Action Employer

One
North Carolina
Naturally

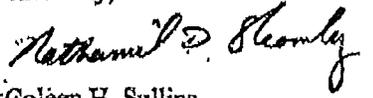
OFFICIAL COPY

May 02 2019

Mr. Bazemore
July 22, 2009
Page 2 of 2

One set of approved plans and specifications is being forwarded to you. If you need additional information concerning this matter, please contact Lori Montgomery at (919) 715-6187 or lori.montgomery@ncdenr.gov.

Sincerely,


for Colleen H. Sullins

cc: Carteret County Health Department
Wilmington Regional Office, Aquifer Protection Section
James Forman, Jr., PE – Coastal Science & Engineering, P.O. Box 1643, Morehead City, NC 28557
Technical Assistance and Certification Unit
APS Central Files
LAU Files

NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
RALEIGH
HIGH-RATE INFILTRATION SYSTEM PERMIT

In accordance with the provisions of Article 21 of Chapter 143, General Statutes of North Carolina as amended, and other applicable Laws, Rules and Regulations

PERMISSION IS HEREBY GRANTED TO

BLE DEVELOPMENT, LLC
Carteret County

FOR THE

construction and operation of a 38,880 gallon per day (GPD) wastewater treatment and high-rate infiltration facility consisting of:

one (1) trash trap with ¼-inch bar spacing; one (1) 10,800-gallon aerated flow equalization basin with a coarse bubble diffuser system served by dual (2) 180 cubic feet per minute (CFM) blowers; dual (2) 54 gallon per minute (GPM) equalization transfer pumps; one (1) electromagnetic influent flow meter;

a dual train package Zenon[®] Membrane Bioreactor (MBR) plant where each train consists of: one (1) 2,950-gallon anoxic chamber with eductor mixing; one (1) 4,900-gallon aerobic basin with a fine air diffusion system served by four (4) 430 CFM main plant blowers, a methanol metering system, and dual (2) 135 GPM recirculating pumps for RAS recycle to the anoxic chamber; one (1) 3,925-gallon membrane chamber with dual (2) 28 GPM permeate/backpulse pumps; one (1) 5,100-gallon clearwell/backpulse tank; one (1) 10,500-gallon dosing tank with dual (2) 65 GPM irrigation pumps and audible/visual high water alarms;

dual (2) ultraviolet (UV) disinfection units with 8 UV lamps each; one (1) turbidity meter; one (1) electromagnetic effluent flow meter; one (1) 28,550-gallon aerobic digester with a coarse air diffusion system served by the two (2) 180 CFM shared equalization blowers, a sludge flow meter; and airlift decant to the headworks; one (1) 251,450-gallon 5-day upset pond with a return pump station served by dual (2) 59 GPM return pumps; one (1) diesel powered auxiliary generator with an automatic power transfer switch; four (4) high rate drip irrigation zones with a total area of 1.14 acres (approximately 12,400 square feet (ft²) per zone) with a design loading rate of 0.782 gallons per day per square foot (GPD/ft²),

to serve James Creek Subdivision, with no discharge of wastes to surface waters, pursuant to the application received July 7, 2009, and subsequent additional information received by the Division of Water Quality, and in conformity with the project plans, specifications, and other supporting data subsequently filed and approved by the Department of Environment and Natural Resources and considered a part of this permit.

This permit shall be effective from the date of issuance until June 30, 2014, and shall be subject to the following specified conditions and limitations:

I. SCHEDULES

1. In accordance with 15A NCAC 02T .0116, upon completion of construction and prior to operation of this permitted facility, a certification (attached) shall be submitted from a licensed North Carolina Professional Engineer certifying that the permitted facility has been installed in accordance with this permit, Division approved plans and specifications, and other supporting documentation, including the location of all monitoring wells as applicable. If this project is to be completed in phases and partially certified, the Permittee shall retain the responsibility to track further construction approved under the same permit, and shall provide a final certificate of completion once the entire project has been completed. Mail the Certification to the Division of Water Quality, Aquifer Protection Section, 1636 Mail Service Center, Raleigh, NC 27699-1636.
2. The Wilmington Regional Office, telephone number (910) 796-7215, shall be notified at least 48 hours in advance (excluding weekends and holidays) of operation of the installed facilities such that an in-place inspection can be made. Notification to the Aquifer Protection Section's regional supervisor shall be made from 8:00 a.m. until 5:00 p.m. on Monday through Friday, excluding State Holidays.
3. The Wilmington Regional Office, telephone number (910) 796-7215, shall approve monitoring wells MW-1, MW-2, and MW-2 prior to installation, and the monitoring wells shall be installed prior to beginning waste disposal operations. The regional office shall be notified at least 48 hours prior to the construction of any monitoring well, and such notification to the Aquifer Protection Section's regional supervisor shall be made from 8:00 a.m. until 5:00 p.m. on Monday through Friday, excluding State Holidays. The monitoring wells shall be constructed such that the water level in the well is never above or below the screened (open) portion of the well at any time during the year, and in accordance with 15A NCAC 02C .0108. The general location and name for each monitoring well is marked on Figure 2.
4. Within 60 days of completion of the monitoring wells, the Permittee shall submit two original copies of a site map with a scale no greater than 1-inch equals 100 feet; however, special provisions may be granted upon prior approval for large properties. At a minimum, the map shall include the following information:
 - a. The location and identity of each monitoring well.
 - b. The location of major components of the waste disposal system.
 - c. The location of property boundaries within 500 feet of the disposal areas.
 - d. The latitude and longitude of the established horizontal control monument.
 - e. The elevation of the top of the well casing (i.e., measuring point) relative to a common datum.
 - f. The depth of water below the measuring point at the time the measuring point is established.
 - g. The location of compliance and review boundaries.
 - h. The date the map is prepared and/or revised.

Control monuments shall be installed in such a manner and made of such materials that the monument will not be destroyed due to activities taking place on the property. The map and any supporting documentation shall be sent to the Division of Water Quality, Aquifer Protection Section, 1636 Mail Service Center, Raleigh, NC 27699-1636.

5. A gauge to monitor waste levels in the 5-day upset pond shall be installed prior to operation. Caution shall be taken not to damage the integrity of the liner (if present) when installing the gauge.
6. No later than six months prior to the expiration of this permit, the Permittee shall request renewal of this permit on official Division forms. Upon receipt of the request, the Division will review the adequacy of the facilities described therein, and if warranted, will renew the permit for such period of time and under such conditions and limitations as it may deem appropriate. Please note Rule 15A NCAC 02T .0105(d) requires an updated site map to be submitted with the permit renewal application.

7. In accordance with 15A NCAC 02H .0404(e), if the subject wastewater treatment or disposal facilities are in noncompliance with the terms and conditions of this permit, governing statutes or regulations, the subject facilities shall be connected to an operational publicly owned wastewater collection system within 180 days of its availability. Prior to the initiation of these connection activities, appropriate Division approval shall be received.

II. PERFORMANCE STANDARDS

1. The subject non-discharge facilities shall be effectively maintained and operated at all times so there is no discharge to surface waters, nor any contravention of groundwater or surface water standards. In the event the facilities fail to perform satisfactorily, including the creation of nuisance conditions due to improper operation and maintenance, or failure of the infiltration areas to adequately assimilate the effluent, the Permittee shall take immediate corrective actions including Division required actions, such as the construction of additional or replacement wastewater treatment or disposal facilities.
2. This permit shall not relieve the Permittee of their responsibility for damages to groundwater or surface water resulting from the operation of this facility.
3. All wells constructed for purposes of groundwater monitoring shall be constructed in accordance with 15A NCAC 02C .0108 (Standards of Construction for Wells Other than Water Supply), and any other jurisdictional laws and regulations pertaining to well construction.
4. Effluent limitations shall not exceed those specified in Attachment A.
5. Application rates, whether hydraulic, nutrient or other pollutant, shall not exceed those specified in Attachment B.
6. The Operational Agreement (attached) between the Permittee and the Environmental Management Commission is incorporated herein by reference and shall be a condition of this permit. Noncompliance with the terms of the Operational Agreement shall subject the Permittee to all sanctions provided by North Carolina General Statutes §143-215.6A to §143-215.6C for violation of or failure to act in accordance with the terms and conditions of this permit.
7. A usable green area shall be maintained for effluent disposal. The green area shall have the capability of accommodating the facility's average daily flow without exceeding the green area loading rates. As defined in 15A NCAC 02H .0404(g)(7), a "green area" is an area suitable for waste disposal, either in its natural state or which has been modified by planting a vegetative cover of grasses or low growing shrubbery.
8. The compliance boundary for the disposal system shall be specified in accordance with 15A NCAC 02L .0107(b). This disposal system was individually permitted on or after December 30, 1983; therefore, the compliance boundary is established at either 250 feet from the effluent disposal area, or 50 feet within the property boundary, whichever is closest to the effluent disposal area. An exceedance of groundwater standards at or beyond the compliance boundary is subject to remediation action according to 15A NCAC 02L .0106(d)(2) as well as enforcement actions in accordance with North Carolina General Statute 143-215.6A through 143-215.6C.
9. In accordance with 15A NCAC 02T .0108, the review boundary is established midway between the compliance boundary and the effluent disposal area. Any exceedance of groundwater standards at the review boundary shall require action in accordance with 15A NCAC 02L .0106.
10. The Permittee shall apply for a permit modification to establish a new compliance boundary prior to any sale or transfer of property affecting a compliance boundary.
11. In accordance with 15A NCAC 02L .0107(d), no wells, excluding Division approved monitoring wells, shall be constructed within the compliance boundary except as provided for in 15A NCAC 02L .0107(g).

12. Except as provided for in 15A NCAC 02L .0107(g), the Permittee shall ensure any landowner who is not the Permittee and owns land within the compliance boundary shall execute and file with the Carteret County Register of Deeds an easement running with the land containing the following items:
- a. A notice of the permit and number or other description as allowed in 15A NCAC 02L .0107(f)(1);
 - b. Prohibits construction and operation of water supply wells within the compliance boundary; and
 - c. Reserves the right of the Permittee or the State to enter the property within the compliance boundary for purposes related to the permit.

The Director may terminate the easement when its purpose has been fulfilled or is no longer needed.

13. The facilities permitted herein shall be constructed according to the following setbacks:
- a. The setbacks for high-rate infiltration sites permitted after September 1, 2006 (Zones 1-4) shall be as follows (all distances in feet):
 - i. Any habitable residence or place of public assembly under separate ownership: 100***
 - ii. Any habitable residence or place of public assembly owned by the Permittee: 50***
 - iii. Any private or public water supply source: 100
 - iv. Surface waters: 100*
 - v. Groundwater lowering ditches: 100*
 - vi. Surface water diversions: 50
 - vii. Any well with exception of monitoring wells: 100
 - viii. Any property line: 50***
 - ix. Top of slope of embankments or cuts of two feet or more in vertical height: 100
 - x. Any water line from a disposal system: 10
 - xi. Subsurface groundwater lowering drainage systems: 100*
 - xii. Any swimming pool: 100
 - xiii. Public right of way: 50
 - xiv. Nitrification field: 20
 - xv. Any building foundation or basement: 15
 - xvi. Impounded public water supplies: 500**
 - xvii. Public shallow groundwater supply: 500**

* Setbacks to surface waters, groundwater lowering ditches and subsurface groundwater lowering drainage systems have been reduced to 100 feet because the treatment units are designed to meet a Total Nitrogen of 7 mg/l and a Total Phosphorus of 3 mg/l in accordance with 15A NCAC 02T .0706(b).

** Setbacks to impounded public water supplies and public shallow groundwater supply are only for interim treatment and disposal facilities as defined in 15A NCAC 02H .0404(g).

*** Setbacks to offsite residences, onsite residences, and property lines have been reduced to 100 feet, 50 feet, and 50 feet respectively in accordance with the Division's High Rate Policy for Alternative Setbacks to Property Lines and Habitable Residences effective October 27, 2006.

- b. The setbacks for storage and treatment units permitted after September 1, 2006 shall be as follows (all distances in feet):
 - i. Any habitable residence or place of public assembly under separate ownership: 100
 - ii. Any private or public water supply source: 100
 - iii. Surface waters: 50
 - iv. Any well with exception of monitoring wells: 100
 - v. Any property line: 50

III. OPERATION AND MAINTENANCE REQUIREMENTS

1. The facilities shall be properly maintained and operated at all times. The facilities shall be effectively maintained and operated as a non-discharge system to prevent the discharge of any wastewater resulting from the operation of this facility. The Permittee shall maintain an Operation and Maintenance Plan pursuant to 15A NCAC 02T .0707, which at a minimum shall include operational functions, maintenance schedules, safety measures and a spill response plan.
2. Upon the Water Pollution Control System Operators Certification Commission's (WPCSOCC) classification of the subject non-discharge facilities, in accordance with 15A NCAC 08G .0200 the Permittee shall designate and employ a certified operator in responsible charge (ORC) and one or more certified operator(s) as back-up ORC(s). The ORC or their back-up shall visit the facilities in accordance with 15A NCAC 08G .0200, and shall comply with all other conditions specified in the previously cited rules.
3. Adequate measures shall be taken to prevent effluent runoff from the infiltration sites listed in Attachment B.
4. Infiltration shall not be performed during inclement weather or when the ground is in a condition that will cause ponding or runoff.
5. All infiltration equipment shall be tested and calibrated at least once per permit cycle. Calibration records shall be maintained at the facility for a period of no less than five years, and shall be made available to the Division upon request.
6. Only effluent from James Creek Subdivision shall be infiltrated on the sites listed in Attachment B.
7. An automatically activated standby power source capable of powering all essential treatment units shall be on site and operational at all times. If a generator is employed as an alternate power supply, it shall be tested weekly by interrupting the primary power source.
8. No automobiles or machinery shall be allowed on the infiltration sites except during equipment installation or while maintenance is being performed.
9. Public access to the infiltration sites and wastewater treatment facilities shall be prohibited. Methods of restricted access shall include fencing around the high rate infiltration areas and the wastewater treatment plant.
10. The residuals generated from the wastewater treatment facilities shall be disposed or utilized in accordance with 15A NCAC 02T .1100. The Permittee shall maintain a residual management plan pursuant to 15A NCAC 02T .0708.
11. Diversion or bypassing of untreated or partially treated wastewater from the treatment facilities is prohibited.
12. Freeboard in the 5-day upset pond shall not be less than two feet at any time.

13. A gauge to monitor waste levels in the 5-day upset pond shall be provided. This gauge shall have readily visible permanent markings indicating the following elevations: maximum liquid level at the top of the temporary liquid storage volume; minimum liquid level at the bottom of the temporary liquid storage volume; and the lowest point on top of the dam.
14. A protective vegetative cover shall be established and maintained on all earthen embankments (i.e., outside toe of embankment to maximum allowable temporary storage elevation on the inside of the embankment), berms, pipe runs, erosion control areas, and surface water diversions. Trees, shrubs, and other woody vegetation shall not be allowed to grow on the earthen dikes or embankments. Earthen embankment areas shall be kept mowed or otherwise controlled and accessible.
15. All effluent shall be routed to the five day upset pond should the limit for fecal coliform (e.g., daily maximum concentration of 25 colonies per 100 ml) or turbidity (e.g., instantaneous maximum of 10 NTU) be exceeded, until the problems associated with the wastewater treatment plant have been corrected. The wastewater in the five day upset pond shall be pumped back to the treatment plant headworks for re-treatment or treated in the five day upset pond prior to infiltration.

IV. MONITORING AND REPORTING REQUIREMENTS

1. Any Division required monitoring (including groundwater, plant tissue, soil and surface water analyses) necessary to ensure groundwater and surface water protection shall be established, and an acceptable sampling reporting schedule shall be followed.
2. Per 15A NCAC 02H .0800, a Division certified laboratory shall conduct all laboratory analyses for the required effluent, groundwater or surface water parameters.
3. Flow through the treatment facility shall be continuously monitored, and daily flow values shall be reported on Form NDMR.

The Permittee shall install and maintain an appropriate flow measurement device to ensure the accuracy and reliability of flow measurement consistent with accepted engineering and scientific practices. Selected flow measurement devices shall be capable of measuring flows with a maximum deviation of less than ten percent from true flow; accurately calibrated at a minimum of once per year; and maintained to ensure the accuracy of measurements is consistent with the selected device's accepted capability. The Permittee shall maintain records of flow measurement device calibration on file for a period of at least five years. At a minimum, documentation shall include:

- a. Date of flow measurement device calibration,
 - b. Name of person performing calibration, and
 - c. Percent from true flow.
4. The Permittee shall monitor the effluent from the subject facilities at the frequencies and locations for the parameters specified in Attachment A.

5. The Permittee shall maintain adequate records tracking the amount of effluent infiltrated. At a minimum, these records shall include the following information for each infiltration site listed in Attachment B:
 - a. Date of infiltration;
 - b. Volume of effluent infiltrated;
 - c. Site infiltrated;
 - d. Length of time site is infiltrated;
 - e. Continuous weekly, monthly, and year-to-date hydraulic (inches/acre) loadings;
 - f. Continuous monthly and year-to-date loadings for any non-hydraulic parameter specifically limited in Attachment B;
 - g. Weather conditions; and
 - h. Maintenance of drip field (vegetation removal).
6. Freeboard (i.e., waste level to the lowest embankment elevation) in the 5-day upset pond shall be recorded weekly. Weekly freeboard records shall be maintained at the facility for a period of no less than five years, and shall be made available to the Division upon request.
7. Three copies of all monitoring data (as specified in Conditions IV.3. and IV.4.) on Form NDMR for each PPI and three copies of all operation and disposal records (as specified in Conditions IV.5 and IV.6. on Form NDAR-1 for every site in Attachment B shall be submitted on or before the last day of the following month. If no activities occurred during the monitoring month, monitoring reports are still required documenting the absence of the activity. All information shall be submitted to the following address:

Division of Water Quality
Information Processing Unit
1617 Mail Services Center
Raleigh, North Carolina 27699-1617

8. A record shall be maintained of all residuals removed from this facility. This record shall be maintained at the facility for a period of no less than five years, and shall be made available to the Division upon request. At a minimum, this record shall include:
 - a. Name of the residuals hauler;
 - b. Non-Discharge permit number authorizing the residuals disposal, or a letter from a municipality agreeing to accept the residuals;
 - c. Date the residuals were hauled; and
 - d. Volume of residuals removed.
9. A maintenance log shall be maintained at this facility. This log shall be maintained at the facility for a period of no less than five years, and shall be made available to the Division upon request. At a minimum, this log shall include:
 - a. Date and results of power interruption testing on alternate power supply;
 - b. Date of calibration of flow measurement device;
 - c. Visual observations of the plant and plant site; and
 - d. Record of preventative maintenance (e.g., changing of equipment, adjustments, testing, inspections and cleanings, etc.).
10. Monitoring wells shall be sampled after construction and within 3 months prior to initiating non-discharge disposal operations. Monitoring wells shall be sampled thereafter at the frequencies and for the parameters specified in Attachment C. All mapping, well construction forms, well abandonment forms and monitoring data shall refer to the permit number and the well nomenclature as provided in Attachment C and Figure 2.

11. For initial sampling of monitoring wells, the Permittee shall submit a Compliance Monitoring Form (GW-59) and a Well Construction Record Form (GW-1) listing this permit number and the appropriate monitoring well identification number. Initial Compliance Monitoring Forms (GW-59) without copies of the Well Construction Record Forms (GW-1) are deemed incomplete, and may be returned to the Permittee without being processed.
12. Two copies of the monitoring well sampling and analysis results shall be submitted on a Compliance Monitoring Form (GW-59), along with attached copies of laboratory analyses, on or before the last working day of the month following the sampling month. The Compliance Monitoring Form (GW-59) shall include this permit number, the appropriate well identification number, and one GW-59a certification form shall be submitted with each set of sampling results. All information shall be submitted to the following address:

Division of Water Quality
Information Processing Unit
1617 Mail Service Center
Raleigh, North Carolina 27699-1617

13. Noncompliance Notification:

The Permittee shall report by telephone to the Wilmington Regional Office, telephone number (919) 796-7215, as soon as possible, but in no case more than 24 hours, or on the next working day following the occurrence or first knowledge of the occurrence of any of the following:

- a. Any occurrence at the facility resulting in the treatment of significant amounts of wastes that is abnormal in quantity or characteristic, including the known passage of a hazardous substance.
- b. Any process unit failure (e.g., mechanical, electrical, etc.), due to known or unknown reasons, rendering the facility incapable of adequate wastewater treatment.
- c. Any facility failure resulting in a by-pass directly to receiving surface waters.
- d. Any time self-monitoring indicates the facility has gone out of compliance with its permit limitations.
- e. Runoff from the infiltration sites.

Any emergency requiring immediate reporting (e.g., discharges to surface waters, imminent failure of a storage structure, etc.) outside normal business hours shall be reported to the Division's Emergency Response personnel at telephone number (800) 662-7956, (800) 858-0368, or (919) 733-3300. Persons reporting such occurrences by telephone shall also file a written report in letter form within five days following first knowledge of the occurrence. This report shall outline the actions taken or proposed to be taken to ensure the problem does not recur.

V. INSPECTIONS

1. The Permittee shall provide adequate inspection and maintenance to ensure proper operation of the wastewater treatment and disposal facilities.
2. The Permittee or their designee shall inspect the wastewater treatment and disposal facilities to prevent malfunctions, facility deterioration and operator errors resulting in discharges, which may cause the release of wastes to the environment, a threat to human health or a public nuisance. The Permittee shall maintain an inspection log that includes, at a minimum, the date and time of inspection, observations made, and any maintenance, repairs, or corrective actions taken. The Permittee shall maintain this inspection log for a period of five years from the date of the inspection, and this log shall be made available to the Division upon request.
3. Any duly authorized Division representative may, upon presentation of credentials, enter and inspect any property, premises or place on or related to the wastewater treatment and disposal facilities permitted herein at any reasonable time for the purpose of determining compliance with this permit; may inspect or copy any records required to be maintained under the terms and conditions of this permit, and may collect groundwater, surface water or leachate samples.

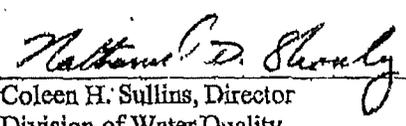
VI. GENERAL CONDITIONS

1. Failure to comply with the conditions and limitations contained herein may subject the Permittee to an enforcement action by the Division in accordance with North Carolina General Statutes 143-215.6A to 143-215.6C.
2. This permit shall become voidable if the permitted facilities are not constructed in accordance with the conditions of this permit, the Division approved plans and specifications, and other supporting documentation.

3. This permit is effective only with respect to the nature and volume of wastes described in the permit application, Division approved plans and specifications, and other supporting documentation. No variances to applicable rules governing the construction or operation of the permitted facilities are granted, unless specifically requested and approved in this permit pursuant to 15A NCAC 02T .0105(n).
4. The issuance of this permit does not exempt the Permittee from complying with any and all statutes, rules, regulations, or ordinances, which may be imposed by other jurisdictional government agencies (e.g., local, state, and federal). Of particular concern to the Division are applicable river buffer rules in 15A NCAC 02B .0200; erosion and sedimentation control requirements in 15A NCAC Chapter 4 and under the Division's General Permit NCG010000; any requirements pertaining to wetlands under 15A NCAC 02B .0200 and 02H .0500; and documentation of compliance with Article 21 Part 6 of Chapter 143 of the General Statutes.
5. In the event the permitted facilities change ownership or the Permittee changes their name, a formal permit modification request shall be submitted to the Division. This request shall be made on official Division forms, and shall include appropriate property ownership documentation and other supporting documentation as necessary. The Permittee of record shall remain fully responsible for maintaining and operating the facilities permitted herein until a permit is issued to the new owner.
6. The Permittee shall retain a set of Division approved plans and specifications for the life of the facilities permitted herein.
7. The Permittee shall maintain this permit until all permitted facilities herein are properly closed or permitted under another permit issued by the appropriate permitting authority pursuant to 15A NCAC 02T .0105(j).
8. This permit is subject to revocation or unilateral modification upon 60 days notice from the Division Director, in whole or part for the requirements listed in 15A NCAC 02T .0110.
9. Unless the Division Director grants a variance, expansion of the permitted facilities contained herein shall not be granted if the Permittee exemplifies any of the criteria in 15A NCAC 02T .0120(b).
10. The Permittee shall pay the annual fee within 30 days after being billed by the Division. Failure to pay the annual fee accordingly shall be cause for the Division to revoke this permit pursuant to 15A NCAC 02T .0105(e)(3).

Permit issued this the 22nd day of July, 2009

NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION


 for Colleen H. Sullins, Director
 Division of Water Quality
 By Authority of the Environmental Management Commission

Permit Number WQ0034190

Permit No. WQ0034190
BLE Development, LLC
James Creek Subdivision

High Rate Infiltration System
July 22, 2009
Carteret County

ENGINEERING CERTIFICATION

Partial Final

In accordance with 15A NCAC 02T .0116, I _____
as a duly registered Professional Engineer in the State of North Carolina, having the Permittee's
authorization to periodically weekly fully observe the construction of the permitted facility,
hereby state to the best of my abilities that due care and diligence was used in the observation of the
construction, such that the facility was built within substantial compliance and intent of this permit, the
Division approved plans and specifications, and other supporting documentation.

Any variation to this permit, the Division approved plans and specifications, and other supporting
documentation has been documented in the attached as-built drawings, and shall serve as the
Permittee's minor modification request to amend the permit accordingly.

Provide a brief narrative description of any variations: _____

Professional Engineer's Name			NC PE Seal, Signature & Date
Engineering Firm			
Mailing Address			
City	State	Zip	
Telephone	E-mail		

**THE COMPLETED ENGINEERING CERTIFICATION, INCLUDING ALL SUPPORTING
INFORMATION AND MATERIALS, SHALL BE SENT TO THE FOLLOWING ADDRESS:
NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
DIVISION OF WATER QUALITY
AQUIFER PROTECTION SECTION
LAND APPLICATION UNIT**

By U.S. Postal Service:
1636 MAIL SERVICE CENTER
RALEIGH, NORTH CAROLINA 27699-1636

By Courier/Special Delivery:
2728 CAPITAL BOULEVARD
RALEIGH, NORTH CAROLINA 27604

ATTACHMENT A - LIMITATIONS AND MONITORING REQUIREMENTS

Permit Number: WQ0034190

Version: 1.0

PPI 001 – WWTP Effluent

EFFLUENT CHARACTERISTICS	EFFLUENT LIMITS								MONITORING REQUIREMENTS	
	Monthly Average		Monthly Geometric Mean		Daily Minimum		Daily Maximum		Measurement Frequency	Sample Type
Flow, in conduit or thru treatment plant - 50050	38,800	GPD							Continuous	Recorder
BOD, 5-Day (20 Deg. C) - Concentration - CO310	10	mg/l					15	mg/l	2 X Month	Composite
Solids, Total Suspended - 00530	5	mg/l					10	mg/l	2 X Month	Composite
Coliform, Fecal MF, M-FC Broth, 44.5C - 31616 (geom.mean)			14	#/100 ml			25	#/100 ml	2 X Month	Grab
Nitrogen, Ammonia Total (as N) - 00610	4	mg/l					6	mg/l	2 X Month	Composite
Nitrogen, Nitrate Total (as N) - 00620									2 X Month	Composite
Nitrogen, Total (as N) - Concentration - CO600	7	mg/l							2 X Month	Composite
Phosphorus, Total (as P) - Concentration - CO665	3	mg/l							2 X Month	Composite
pH - 00400					6.0	9.0		s.u.	5 X Week	Grab
Solids, Total Dissolved - 70295									3 X Year ¹	Composite
Chloride (as Cl) - 00940									3 X Year ¹	Composite
Turbidity, HCH Turbidimeter - 00076							10	ntu	Continuous	Continuous

1. 3 X Year sampling shall be conducted in March, July, and November.

ATTACHMENT C – GROUNDWATER MONITORING AND LIMITATIONS

Permit Number: WQ0034190

Version: 1.0

Monitoring wells: MW-1, MW-2, MW-3

GROUNDWATER CHARACTERISTICS	GROUNDWATER STANDARDS		MONITORING REQUIREMENTS		
	Parameter Description - Parameter Code	Daily Maximum	Frequency Measurement	Sample Type	Footnotes
Water level, distance from measuring point - 82546			3 X Year	Calculated	1,2,3
pH - 00400	6.5-8.5	s.u.	3 X Year	Grab	1,2
Coliform, Fecal MF, M-FC Broth, 44.5C - 31616			3 X Year	Grab	1
Carbon, Tot Organic (TOC) - 00630			3 X Year	Grab	1,5
Chloride (as Cl) - 00940	250	mg/l	3 X Year	Grab	1
Nitrogen, Ammonia Total (as N) - 00610			3 X Year	Grab	1
Nitrogen, Nitrate Total (as N) - 00620	10	mg/l	3 X Year	Grab	1
Solids, Total Dissolved - 70295	500	mg/l	3 X Year	Grab	1
Phosphorus, Total (as P) - Concentration - C0665			3 X Year	Grab	1
Volatile Compounds, (GC/MS) - 78732			Annually	Grab	1,4,5

- 3 x Year monitoring shall be conducted in March, July & November; Annual monitoring shall be conducted every November.
- The measurement of water levels shall be made prior to purging the wells. The depth to water in each well shall be measured from the surveyed point on the top of the casing. The measurement of pH shall be made after purging and prior to sampling for the remaining parameters.
- The measuring points (top of well casing) of all monitoring wells shall be surveyed to provide the relative elevation of the measuring point for each monitoring well. The measuring points (top of casing) of all monitoring wells shall be surveyed relative to a common datum.
- Volatile Organic Compounds (VOC) - in November only, analyze by one of the following methods:
 - Standard Method 6230D, PQL at 0.5 µg/L or less
 - Standard Method 6210D, PQL at 0.5 µg/L or less
 - EPA Method 8021, Low Concentration, PQL at 0.5 µg/L or less
 - EPA Method 8260, Low Concentration, PQL at 0.5 µg/L or less
 - Another method with prior approval by the Aquifer Protection Section Chief

Any method used must meet the following qualifications:

 - A laboratory must be DWQ certified to run any method used.
 - The method used must, at a minimum, include all the constituents listed in Table VIII of Standard Method 6230D.
 - The method used must provide a PQL of 0.5 µg/L or less that must be supported by laboratory proficiency studies as required by the DWQ Laboratory Certification Unit. Any constituents detected above the MDL but below the PQL of 0.5 µg/L must be qualified (estimated) and reported.
- If any volatile organic compounds (VOC) are detected as a result of monitoring as provided in Attachment C, then the Wilmington Regional Office Aquifer Protection Supervisor, telephone number (910) 796-7215, must be contacted immediately for further instructions regarding any additional follow-up analyses required.
- If TOC concentrations greater than 10 mg/l are detected in any downgradient monitoring well, additional sampling and analysis must be conducted to identify the individual constituents comprising this TOC concentration. If the TOC concentration as measured in the background monitor well exceeds 10 mg/l, this concentration will be taken to represent the naturally occurring TOC concentration. Any exceedances of this naturally occurring TOC concentration in the downgradient wells shall be subject to the additional sampling and analysis as described above.
- Monitoring wells shall be reported consistent with the nomenclature and location information provided in Figure 2 and this attachment.

OPERATIONAL AGREEMENT

This AGREEMENT made pursuant to G.S. 143-215.1 (d1) and entered into this 15th day of July, 2009, by and between the North Carolina Environmental Management Commission, an agency of the State of North Carolina, hereinafter known as the COMMISSION; and BLE Development, LLC, a corporation/~~general partnership~~ registered/~~licensed~~ to do business in the State of North Carolina, hereinafter known as the DEVELOPER.

RECEIVED / DENR / DWQ
AQUIFER PROTECTION SECTION

JUL 20 2009

WITNESSETH:

1. The DEVELOPER is the owner of the certain lands lying in Carteret County, upon which it is erecting and will erect dwelling units and other improvements, said development to be known as James Creek Subdivision (hereinafter the Development).
2. The DEVELOPER desires, to construct a wastewater collection system with pumps, wastewater treatment works, and/or disposal facilities (hereinafter Disposal System) to provide sanitary sewage disposal to serve the Development on said lands.
3. The DEVELOPER has applied to the COMMISSION for the issuance of a permit pursuant to G.S. 143-215.1 to construct, maintain, and operate the Disposal System.
4. The DEVELOPER has created or shall create unit ownership in said dwellings units, other improvements and lands through filing of a Declaration of Unit Ownership (hereinafter Declaration), pursuant to Chapter 47C of the North Carolina General Statutes.
5. The DEVELOPER has caused to be formed or will cause to be formed at the time of filing of the Declaration, the James Creek Property Owners Association, Inc. (hereinafter Association), a non-profit corporation organized and existing under and by the virtue of the laws of the State of North Carolina, for the purpose, among others, of handling the property, affairs and business of the Development; of operating, maintaining, re-constructing and repairing the common elements of the lands and improvements subject to unit ownership, including the Disposal System; and of collecting dues and assessments to provide funds for such operation, maintenance, re-construction and repair.
6. The COMMISSION desires to assure that the Disposal System of the Development is properly constructed, maintained and operated in accordance with law and permit provisions in order to protect the quality of the waters of the State and the public interest therein.

NOW, THEREFORE, in consideration of the promises and the benefits to be derived by each of the parties hereto, the COMMISSION and DEVELOPER do hereby mutually agree as follows:

1. The DEVELOPER shall construct the Disposal System in accordance with the permit and plans and specifications hereafter issued and approved by the COMMISSION, and shall thereafter properly operate and maintain such systems and facilities in accordance with applicable permit provisions and law.
2. The DEVELOPER shall not transfer ownership and/or control of the Disposal System to the Association until construction has been completed in accordance with the permit and approved plans, and the staff of the Division of Water Quality has inspected and approved of the facilities. In order to change the name of the permit holder, the DEVELOPER must request that the permit be reissued to the Association. The request must include a copy of the Association Bylaws and Declaration.
3. The DEVELOPER shall not transfer, convey, assign or otherwise relinquish or release its responsibility for the operation and maintenance of its Disposal System until a permit has been reissued to the DEVELOPER's successor.

4. The DEVELOPER shall provide in the Declaration and Association Bylaws that the Disposal System and appurtenances thereto are part of the common elements and shall thereafter be properly maintained and operated in conformity with law and the provisions of the permit for construction, operation, repair, and maintenance of the system and facilities. The Declaration and Bylaws shall identify the entire wastewater treatment, collection and disposal system as a common element, which will receive the highest priority for expenditures by the Association except for Federal, State, and local taxes and insurance.
5. The DEVELOPER shall provide in the Declaration and Association Bylaws that the Disposal System will be maintained out of the common expenses. In order to assure that there shall be funds readily available to repair, maintain or construct the Disposal System, beyond the routine operation and maintenance expenses, the Declaration and Association Bylaws shall provide that a fund be created out of the common expenses. Such fund shall be separate from the routine maintenance funds allocated for the facility and shall be part of the yearly budget.
6. In the event the common expense allocation and separate fund are not adequate for the construction, repair, and maintenance of the Disposal System, the Declaration and Association Bylaws shall provide for special assessments to cover such necessary costs. There shall be no limit on the amount of such assessments, and the Declaration and Bylaws shall provide that such special assessments can be made as necessary at any time.
7. If a wastewater collection system and wastewater treatment and/or disposal facility provided by any city, town, village, county, water and sewer authorities, or other unit of government shall hereinafter become available to serve the Development, the DEVELOPER shall take such action as is necessary to cause the existing and future wastewater of the Development to be accepted and discharged into said governmental system, and shall convey or transfer as much of the Disposal System and such necessary easements as the governmental unit may require as condition of accepting the Development's wastewater.
8. Recognizing that it would be contrary to the public interest and to the public health, safety and welfare for the Association to enter into voluntary dissolution without having made adequate provision for the continued proper maintenance, repair and operation of its Disposal System, the DEVELOPER shall provide in the Association Bylaws that the Association shall not enter into voluntary dissolution without first having transferred its said system and facilities to some person, corporation or other entity acceptable to and approved by the COMMISSION by the issuance of a permit.
9. The agreements set forth in numbered paragraphs 1, 2, 3, 4, 5, 6, 7, and 8 above shall be conditions of any permit issued by the COMMISSION to the DEVELOPER for the construction, maintenance, repair and operation of the Disposal System.
10. A copy of this agreement shall be filed at the Register of Deeds in the County(ies) where the Declaration is filed and in the offices of the Secretary of State of North Carolina with the Articles of Incorporation of the Association.

IN WITNESS WHEREOF, this agreement was executed in duplicate originals by the duly authorized representative of the parties hereto on the day and year written as indicated by each of the parties named below:

FOR THE ENVIRONMENTAL
MANAGEMENT COMMISSION

Nathan D. Shouly
for Coleen H. Sullins, Director
Division of Water Quality

BLE Development, LLC
Name of DEVELOPER

By: *Sidney N. Bazemore* *Managing Partner*
(Signature)

Sidney N. Bazemore, Managing Partner
Print Name and Title

7/22/09
(Date)

July 15, 2009
(Date)



EXHIBIT 4
original

PO Box 370
Harkers Island, NC 28531
April 26th 2011

LETTER OF INTENT

TO WHOM IT MAY CONCERN:

It is the full intent of BLE Development of Harkers Island, NC to the following processes, rates, fees, and construction expenses, in favor of BLE Utility Company LLC.

- 1) The real estate property transfer of Westbay property containing, 1.71 acres, pin no: 733514341889000 Westbay Subdivision. This property includes, existing sewer plant, tanks, and surrounding drainfill areas, to: BLE Utility Co. LLC.
- 2) To engineer, permit, and construct approximately 3900ft of sewer transmissions between subdivisions, Westbay and James Creek.
- 3) To obtain all necessary utility easements, from private landowners as well as NCDOT.
- 4) The engineering, permitting, and construction of mechanical upgrades necessary for serving both Westbay and James Creek Subdivisions with sewer service from existing Westbay plant.
- 5) The payment of tap fees in the amount of \$2500 at closing of all lots.
- 6) The placement of statements in James Creek Covenants which allow for each and every James Creek residence to experience sewer fees beginning at the rate of \$60 per month.

Signed:

BLE Development member managers

Sid Bazemore

Michael Laws

Handwritten signatures of Sid Bazemore and Michael Laws, with a date "March 2011" written to the right of the signatures.

Exhibit 8



Engineering, Surveying & Land Planning

December 16, 2010

Mr. Mark Lewis
Bank of North Carolina
415 Jake Alexander Boulevard
Salisbury, North Carolina 28147

Re: James Creek Subdivision, Harkers Island, Carteret County, North Carolina
Wastewater Treatment Facilities (10279)

Dear Mr. Lewis

I am the Engineer of record for both the West Bay and James Creek subdivisions developed by BLE Development, LLC of Harkers Island, NC. I designed, engineered, and permitted wastewater treatment plants (WWTP) for both subdivisions. The West Bay Plant was completed in 2008. The James Creek plant was permitted in 2009 but has not been constructed.

Mike Laws and Sid Bazemore of BLE Development have requested that we evaluate expansion of the West Bay WWTP to accommodate flows from the James Creek subdivision. The expansion concept includes a two or three phased expansion. The first phase would increase the flow of the plant from 10,080 gpd to 20,160 gpd. Subsequent expansions would be to 40,000 gpd and 59,000 gpd. Measured peak flows would serve as triggering threshold for when the next phase of expansion would be constructed. When peak flows reach 80 percent of the constructed capacity, construction of additional capacity would be initiated.

We have had preliminary discussions concerning the constructability and regulatory feasibility of this expansion concept with Lori Montgomery, the permitting engineer with the Division of Water Quality, Aquifer Protection Section in Raleigh, and with the treatment plant manufacturer, GE Water & Process Technologies. We have received positive responses from both. I can state with a high degree of certainty, that the plant can eventually be expanded to serve the James Creek subdivision in its entirety.

BLE has requested that Bay Design Group proceed with preparation of design and permitting documents for the phased upgrade of the West Bay WWTP. The residual capacity designed into the West Bay Plant initially should permit expansion to 20,160 gpd at minimal costs. It does present a need for additional

December 16, 2010

engineering, surveying and soil science investigations as required for permitting of the phased expansion plan. Once permitted, BLE will be able to expand the plant without additional permitting actions and associated engineering costs. BLE Development plans to operate the plants as a public utility licensed by the N. C. Utilities Commission.

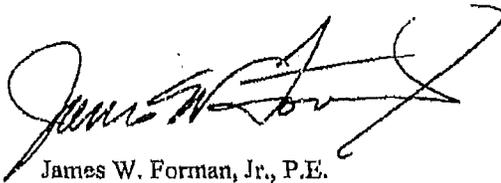
BLE Development has requested that I include with this letter an estimate of the costs of professional services for engineering and permitting of the WWTP expansion, a preliminary estimate of the first phase of the expansion, an estimate of the paving costs for the James Creek Subdivision, and an estimate of constructing a sewer pump station and force mains to convey wastewater from the James Creek site to the WWTP at the West Bay subdivision. A preliminary estimate of those costs is as follows:

Engineering, surveying and soil scientist fees	\$35,000
Construction of sewer lift station and force main	\$68,000
Road stone base and paving	<u>\$388,000</u>
Total	\$491,000

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

Sincerely,

BAY DESIGN GROUP, P.C.



James W. Forman, Jr., P.E.
Senior Engineer

CC: Mike Laws, BLE Development, LLC
Sidney Bazemore, BLE Development, LLC

December 16, 2010



PO Box 370
Harkers Island, NC 28531
April 26th 2011

LETTER OF INTENT

TO WHOM IT MAY CONCERN:

It is the full intent of BLE Development of Harkers Island, NC to the following processes, rates, fees, and construction expenses, in favor of BLE Utility Company LLC.

- 1) The real estate property transfer of Westbay property containing, 1.71 acres, pin no: 733514341889000 Westbay Subdivision. This property includes, existing sewer plant, tanks, and surrounding drainfill areas, to: BLE Utility Co. LLC.
- 2) To engineer, permit; and construct approximately 3900ft of sewer transmissions between subdivisions, Westbay and James Creek.
- 3) To obtain all necessary utility easements, from private landowners as well as NCDOT.
- 4) The engineering, permitting, and construction of mechanical upgrades necessary for serving both Westbay and James Creek Subdivisions with sewer service from existing Westbay plant.
- 5) The payment of tap fees in the amount of \$2500 at closing of all lots.
- 6) The placement of statements in James Creek Covenants which allow for each and every James Creek residence to experience sewer fees beginning at the rate of \$60 per month.

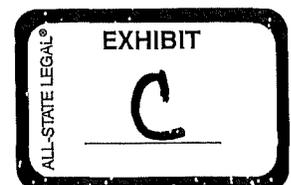
Signed:

BLE Development member managers

Sid Bazemore

Michael Laws

Handwritten signatures of Sid Bazemore and Michael Laws, with a large, stylized signature in the middle that appears to be a combination of the two names.



STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. W-1297, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
Application by Harkers Island Sewer Company LLC,)	ORDER GRANTING
Post Office Box 370, Harkers Island, North Carolina)	FRANCHISE,
28531, for a Certificate of Public Convenience and)	APPROVING RATES,
Necessity to Provide Wastewater Utility Service in)	AND REQUIRING
Westbay Subdivision and James Creek Subdivision)	CUSTOMER NOTICE
on Harkers Island, Carteret County, North Carolina,)	
and for Approval of Rates)	

BY THE COMMISSION: On December 22, 2010, BLE Utility Company LLC (BLE), filed an application with the Commission seeking to acquire a sewer utility franchise for Westbay Subdivision in Carteret County, North Carolina, and approval of rates. On May 18, 2011, BLE filed an amended application to add James Creek Subdivision to the service area. On August 7, 2012, BLE filed updated information for the application that included a name change to Harkers Island Sewer Company, LLC (HISC or Applicant). On July 22, 2013, the Public Staff and Applicant filed a Stipulation of Agreement for purposes of amending the application..

On March 26, 2013, the Commission issued its Order Requiring Customer Notice and Requiring Bond.

On the basis of the verified application, updated information, Stipulation of Agreement, and the records of the Commission, the Commission makes the following

FINDINGS OF FACT

1. There are presently six residential customers being served in Westbay Subdivision. HISC expects eventually to serve 28 residential customers in the Westbay Subdivision and 80 residential customers in the James Creek Subdivision. The existing customers received notice of the franchise application and proposed rates, and no protests have been received.

2. The service area is shown on the plans attached as Exhibit 9 to the application form.



3. The Public Staff has recommended that HISC be required to post a \$100,000 bond for Westbay Subdivision and James Creek Subdivision. HISC has filed a \$100,000 bond and irrevocable letter of credit surety.

4. HISC has the technical, managerial, and financial capacity to provide sewer utility service in these service areas,

5. HISC has filed all exhibits required with the application.

6. The NNC Division of Water Quality has issued a plan approval letter for the planned sewer system in Westbay and James Creek Subdivisions consisting of a 59,040 gallons per day (GPD) wastewater treatment facility, to be installed in three phases, consisting of flow equalization, dual aeration basins, Zenon Ultrafiltration, disinfection, and disposal by high rate drip irrigation. The plans are approved under Permit No. WQ0024023, dated September 24, 2004, and Permit No. WQ0034190, dated July 22, 2009, and reissued on July 13, 2012.

7. The rates agreed to by the Public Staff and the Applicant are as follows:

<u>Monthly Flat Rate Sewer Service:</u>	\$65.00 per Residential Equivalent Unit (REU)
<u>Connection Charges:</u>	\$2,500 per REU
<u>Reconnection Charge:</u>	\$50.00

The agreed upon rates and the Stipulation of Agreement that supports the rates are reasonable.

Based upon the foregoing, the Commission is of the opinion that an Order should be issued accepting and approving the bond, granting a certificate of public convenience and necessity, approving rates, and requiring customer notice.

IT IS, THEREFORE, ORDERED as follows:

1. That the bond and surety in the amount of \$100,000, filed in this proceeding as required by the Commission, is accepted and approved.

2. That Harkers Island Sewer Company, LLC, is granted a certificate of public convenience and necessity to provide wastewater utility service in Westbay Subdivision and James Creek Subdivision on Harkers Island, Carteret County, North Carolina.

3. That Appendix A constitutes the Certificate of Public Convenience and Necessity.

4. That the Schedule of Rates attached as Appendix B is approved and deemed to be filed with the Commission pursuant to G.S. 62-138. Said Schedule of Rates is authorized to become effective for service rendered on and after the date of this Order.

5. That the Notice to Customers, attached as Appendix C, be mailed with sufficient postage or hand delivered by the Applicant to all customers affected by the new rates no later than 10 days after the date of this Order; and that the Applicant submit to the Commission the attached Certificate of Service, properly signed and notarized not later than 15 days from the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 30th day of July, 2013.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Chief Clerk

rb072913.06

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

APPENDIX A

DOCKET NO. W-1297, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

HARKERS ISLAND SEWER COMPANY, LLC

is granted this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

to provide sewer utility service

in

WESTBAY SUBDIVISION AND JAMES CREEK SUBDIVISION

Carteret County, North Carolina,

subject to any orders, rules, regulations,
and conditions now or hereafter lawfully made
by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 30th day of July, 2013.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Chief Clerk

APPENDIX B

SCHEDULE OF RATES

for

HARKERS ISLAND SEWER COMPANY, LLC

for providing sewer utility service in

WESTBAY SUBDIVISION AND JAMES CREEK SUBDIVISION

Carteret County, North Carolina

<u>Monthly Flat Rate Sewer Service:</u>	\$65.00 per Residential Equivalent Unit (REU)
<u>Connection Charges:</u>	\$2,500 per REU
<u>Reconnection Charge:</u>	\$50.00
<u>Returned Check Charge:</u>	\$20.00
<u>Bills Due:</u>	On billing date
<u>Bills Past Due:</u>	25 days after billing date
<u>Billing Frequency:</u>	Shall be monthly for service in arrears
<u>Finance Charges for Late Payment:</u>	1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-1297, Sub 0, on this the 30th day of July, 2013.

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

APPENDIX C

NOTICE TO CUSTOMERS
DOCKET NO. W-1297, SUB 0
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Notice is given that the North Carolina Utilities Commission has granted Harkers Island Sewer Company, LLC, a Certificate of Public Convenience and Necessity to provide wastewater utility service in Westbay Subdivision and James Creek Subdivision on Harkers Island, Carteret County, North Carolina. The Commission has approved the following rates, effective for service rendered on and after the date of the Commission's Order:

<u>Monthly Flat Rate Sewer Service:</u>	\$65.00 per Residential Equivalent Unit (REU)
<u>Connection Charges:</u>	\$2,500 per REU
<u>Reconnection Charge:</u>	\$50.00
<u>Bills Due:</u>	On billing date
<u>Bills Past Due:</u>	25 days after billing date
<u>Billing Frequency:</u>	Shall be monthly for service in arrears
<u>Returned Check Charge:</u>	\$20.00
<u>Finance Charges for Late Payment:</u>	1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

This the 30th day of July, 2013.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Chief Clerk

CERTIFICATE OF SERVICE

I, _____, mailed with sufficient postage or hand delivered to all affected customers the attached Notice to Customers issued by the North Carolina Utilities Commission in Docket No. W-1297, Sub 0, and the Notice was mailed or hand delivered by the date specified in the Order.

This the ____ day of _____, 2013.

By: _____
Signature

Name of Utility Company

The above named Applicant, _____, personally appeared before me this day and, being first duly sworn, says that the required Notice to Customers was mailed or hand delivered to all affected customers, as required by the Commission Order dated _____ in Docket No. W-1297, Sub 0.

Witness my hand and notarial seal, this the ____ day of _____, 2013.

Notary Public

Printed Name

(SEAL) My Commission Expires: _____
Date



FILE # 1466246

FOR REGISTRATION REGISTER OF DEEDS
Joy Lawrence
Carteret County, NC
November 26, 2013 12:27:37
HBD DECL 37 P
FEE \$114.00
FILE # 1466246

NORTH CAROLINA, CARTERET COUNTY
This instrument and this certificate are duly filed at
the date and time and in the Book and Page shown
on the first page hereof.

Joy Lawrence, Register of Deeds
By: *Mike Laws*
Deputy, Register of Deeds

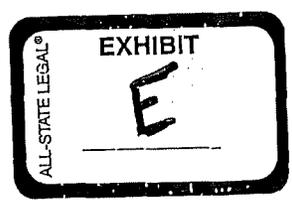
COVER SHEET FOR NON-CONFORMING DOCUMENT FORMAT

<u>Type of Document:</u>	Declaration of Covenants, Conditions, Restrictions, and Easements for James Creek Subdivision
<u>Identity of Signing Party:</u>	Mike Laws
<u>Date Document Signed:</u>	11/22/2013
<u>Cover Sheet Prepared By:</u>	James W. Thompson, Attorney, Morehead City, NC
<u>Return Recorded Document To:</u>	James W. Thompson, Attorney, Morehead City, NC

L:\HGMMisc 1\cover.sheet.non-conforming.doc

BOOK 1466 PAGE 246

(37)



DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, AND EASEMENTS
FOR
JAMES CREEK SUBDIVISION

THIS DECLARATION is made and executed on this the 22ND day of NOVEMBER, 2013 by BLE DEVELOPMENT, LLC, a North Carolina limited liability company, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property located at Harkers Island, Carteret County, North Carolina which is more particularly described on that plat entitled "Joyce L. Godwin Property for BLE, Inc.", prepared by True Line Surveying, P.C., dated April 15, 2006, and recorded in map book 31, page 4, Carteret County Register of Deeds Office (hereinafter "Acquisition Tract").

WHEREAS, it is the intent of the Declarant to subdivide all or a portions of the Acquisition Tract into one or more phases divided into residential lots and common areas, and to subject some or all of said phases to this Declaration of Covenants, Conditions, Restrictions, and Easements.

WHEREAS, Declarant has developed the first phase of the Acquisition Tract into residential lots and common areas, a plat thereof being entitled "James Creek, Phase One", prepared by True Line Surveying, P.C., dated August 15, 2011, and recorded in map book 32, page 403, Carteret County Register of Deeds Office (hereinafter "Phase One").

WHEREAS, Declarant has also developed a certain Boat Slip Area with ten (10) Boat Slips (as hereafter defined) for the use and benefit of lot owners in the James Creek community, as hereafter provided in Article X, below.

NOW, THEREFORE, Declarant hereby declares that all of Phase One, and any other property subsequently annexed to the subdivision regime in the manner hereafter provided, shall be held, sold and conveyed subject to, and shall have the rights, and benefits provided by, the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

BOOK 1466 PAGE 246

ARTICLE I
DEFINITIONS

SECTION 1. "Association" shall mean and refer to James Creek Property Owners Association, Inc., its successors and assigns.

SECTION 2. "Common Area" shall mean all road right of ways, cul de sacs, areas designated as "OPEN SPACES", and any area labeled as "Common Area" on any plat recorded subject to this Declaration. Any areas having a notation which includes the word "RESERVED" is not a Common Area and is exempt from this Declaration, as well as any area designated as "WETLAND", "CONSERVATION AREA", or similar designation which is outside the boundary of any Lot, all of which exempt areas are reserved for potential future development or use by Declarant.

SECTION 3. "Common Facilities" shall mean and refer to all improvements constructed on or made to the Common Areas, including any ponds, drainage facilities, roads, driveways, buildings, benches, picnic tables, shelters, boat ramps, piers or docks, parking areas, walking trails, play equipment or otherwise. The recitals contained herein are for illustration only, and nothing contained in this Section or in the Declaration shall obligate Declarant or the Association to construct any specific facilities.

SECTION 4. "Declarant" shall mean and refer to BLE DEVELOPMENT LLC, as well as its successors and assigns, if Declarant shall make an express written conveyance of its rights as developer hereunder to such successor or assign and the same is recorded upon the public registry of Carteret County.

SECTION 5. "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions and Easements for James Creek Subdivision, as the same may be amended, renewed or extended from time to time in the manner herein provided.

SECTION 6. "Development" shall mean all Lots and Common Areas described on the Plat referred to as Phase One above, and shown on any future Plats of any subsequent phases which are specifically made subject to this Declaration, excluding any property designated for future development with the notation of "future", "conservation area", "proposed", or "possible" use.

SECTION 7. "Lot" shall mean and refer to any separately numbered plot of land shown upon any recorded subdivision map brought within the jurisdiction of this Declaration, with the exception of Common Areas, that parcel identified as "Lot 7, AREA RESERVED FOR ON-SITE SEWER COLLECTION STATION, 145167 SF, 3.333 AC" on the Phase One Plat above referenced, or parcels designated on a plat for future development.

SECTION 8. "Member" shall mean and refer to every person or entity who holds membership with voting rights in the Association.

SECTION 9. "Owner" shall mean and refer to any one or more persons or entities, other than Declarant or its assigns, which is the record owner of a fee simple title to any Lot which is a part of the Development, as hereinafter defined, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 10. "Plat" shall mean that certain plat described as Phase One above and all

future recorded plats of any additional phases, if any, made subject to this Declaration as set forth herein. Notwithstanding the foregoing, for so long as the Deed of Trust recorded on February 25, 2011, in Book 1368 at Page 387 of the Carteret County, North Carolina Public Registry remains uncanceled and of record, no future recorded plat shall be effective to make any additional real property subject to this Declaration unless such plat is approved and bears the signature of Bank of North Carolina or its successors or assigns.

SECTION 11. "Roads" shall mean all areas labeled as roads, private roads, access easements, or right of way on any Plat recorded subject to this Declaration.

SECTION 12. "Wetlands Declaration" shall mean that instrument entitled "Declaration of Covenants, Conditions and Restrictions for Stormwater Management and Wetlands Conservation for James Creek Subdivision" recorded in book 1258, page 348, Carteret County Registry, which instrument requires continuing compliance of all Lots and Common Areas with those certain restrictions and limitations set forth therein.

SECTION 13. "Conservation Area" shall mean any area depicted on any Plat as "Conservation Area". Such Area is not part of the Development.

ARTICLE II
PROPERTY RIGHTS

SECTION 1. OWNERS' BASEMENTS OF ENJOYMENT. Every Owner shall have a right and easement of enjoyment in and to the Common Area and Common Facilities as provided for herein, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to regulate and control the use of, and to charge reasonable fees for the use and maintenance of, the Common Area and Common Facilities.
- (b) the right of the Association to suspend the voting rights and rights of use of the Common Facilities and Common Area (but not the Roads) of an Owner for any period during which any assessment against his Lot remains unpaid; and, for a period not to exceed sixty (60) days, for any infraction of its published rules and regulations;
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area or Roads to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless approved by the Members by a vote of not less than two-thirds of the votes entitled to be cast and until an instrument effectuating such dedication or transfer has been recorded;
- (d) the right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and Common Facilities. No pledge of the Common Area and Common Facilities as security for any such borrowing shall be effective unless approved by the Members by a vote of not less than two-thirds of the votes entitled to be

BOOK 1466 PAGE 246

cast and until an instrument effectuating such pledge has been recorded.

(e) the right of the Association to exchange portions of Common Area with the Declarant for substantially equal areas for the purpose of eliminating unintentional encroachments of improvements onto portions of the Common Area, or for any other purpose or reason.

SECTION 2. DELEGATION OF USE. Any Owner may delegate, in accordance with the By-Laws, his rights of enjoyment of the Common Area and Common Facilities to the members of his family, his accompanied guests, or his tenants who reside on the Lot of such Owner, or to contract purchasers of his Lot, but to no other third parties.

SECTION 3. LEASES OF LOTS. Any lease agreement between an Owner and a lessee for the lease of such Owner's residence on its Lot shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, and By-Laws of the Association, and that any failure by the lessee to comply with the terms of such documents shall be a default under the terms of the lease. All leases of Lots shall be in writing. Other than the foregoing, there is no restriction on the right of any Owner to lease his Lot. Notwithstanding anything to the contrary in this Section or elsewhere herein, no Owner shall enter into any rental or lease agreement with any tenant or lessee of a Lot for a term of less than 90 days.

ARTICLE III

MEMBERSHIP, VOTING RIGHTS, POWERS OF ASSOCIATION

SECTION 1. Declarant has formed the James Creek Property Owners Association, Inc. as a North Carolina nonprofit corporation. Every owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

SECTION 2. The Association shall initially have two classes of voting membership:

Class A. Class A Members shall be all Lot owners other than the Declarant. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B Member shall be the Declarant or its successors or assigns, and shall be entitled to three (3) votes for each Lot it owns. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) the date on which the total votes outstanding in the Class A membership first exceeds the total votes outstanding in the Class B membership; or
- (b) when Declarant elects by notice to Association in writing to terminate its Class B membership.

BOOK 1466 PAGE 246

SECTION 3, Power of the Association. The Association, through its board of directors and officers, shall also have the following powers and authority:

- (a) To hire managing agents, employees, and other contract workers as are necessary to carry out the purposes of the Association.
- (b) To institute, defend, or intervene in its own name in litigation or administrative proceedings on matters affecting the Development.
- (c) Determine the level of maintenance, repair, replacement, and improvement of the Common Area and Common Facilities in conformance with the purposes set forth in this Declaration.
- (d) Acquire, hold, encumber, and convey in its own name any real or personal property purchased by the Association as a Common Area and Common Facilities.
- (e) Mortgage the Common Area and Common Facilities, incur liabilities and other debt as necessary to the operation of the Association and in the best interest of the Members.
- (f) Determine any fees or charges for use or operation of the Common Area and Common Facilities and collect said fees or charges.
- (g) Impose charges for late payment of assessments and collect past due assessments as provided in this Declaration and by applicable law.
- (h) Provide statements on the current status of assessments, late payment charges, fines, and any other fees or payments to contract purchasers of a Lot. A reasonable charge may be made for such statements.
- (i) Provide indemnification to and maintain liability insurance for directors and officers of the Association for actions taken in their capacity as officers and directors.
- (j) Adopt and amend By-laws and establish rules and regulations for the Association.
- (k) Determine and adopt a budget for revenues, expenditures, and reserves and collect assessments for common expenses from Lot Owners as established by this Declaration. It is specifically authorized that the Association may place funds from current assessments in reserve accounts to provide for future maintenance of Common Areas and Facilities and Association property.
- (l) Make contracts on behalf of the Association as are necessary to perform the Association's business.
- (m) Grant easements over the Common Areas and Common Facilities as are necessary and for the benefit of the Members.

BOOK 1466 PAGE 246

(n) Make additional improvements to the Common Areas and Common Facilities.

(o) After notice and an opportunity to be heard, levy reasonable fines as set by the board of directors of the Association for violations of the Declaration, Bylaws and Rules and Regulations of the Association.

(p) Exercise all powers necessary and proper for administration of the Association and perform any ancillary functions necessary to the operation of the Association and in conformance with its purposes.

(q) Exercise any powers given to property owners associations generally by North Carolina General Statute 47F-3-101 or any successor statute dealing with the same purpose and not in conflict with the above powers.

(r) The Association may maintain a fidelity bond to protect the funds of the Association equal to the maximum funds held by the Association or three (3) months assessments, whichever is greater.

(s) The election, removal, terms of office, and meetings of the board of directors of the Association shall be governed by the By-laws.

ARTICLE IV

COVENANT FOR MAINTENANCE AND ASSESSMENTS.

SECTION 1. ASSOCIATION'S RESPONSIBILITIES AND CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. The Association shall maintain and keep in good repair the Common Area and Common Facilities. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Area and Common Facilities. The Association shall also maintain: (a) all entry features, including the expenses for water and electricity, if any, provided to all such entry features; (b) streetscapes located at other street intersections within the development; (c) all cul-de-sac islands located in the development; (d) landscaping originally installed by the Declarant whether or not such landscaping is on a Lot; (e) all drainage and detention areas which were originally maintained by the Declarant, to the extent such areas are not maintained on an ongoing basis by a local governmental entity; and (f) all property either within or outside of Lots located within the Development which was originally maintained by Declarant, including those areas designated as wetlands, landscape/conservation easements or rights of way. The board of directors of the Association may contract with another property owners association, municipality or private contractor for performance of the maintenance, repair and replacement of the Common Area and Common Facilities or for the management and administration of the Association, for a specific sum to be negotiated between the board of directors and the contractor without vote or approval by the Members of Association. The Owner of each Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay (a) to the Association: (i) annual assessments or charges; (ii) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided; and (b) to the appropriate governmental taxing authority: (i) a pro rata share of ad valorem taxes levied

against the Common Area; and (ii) a pro rata share of assessments for public improvements to or for the benefit of the Common Area if the Association shall default in the payment of either or both for a period of six (6) months as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment became. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

SECTION 2. PURPOSE OF ASSESSMENTS.

(a) The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Lots and in particular for the acquisition, improvement and maintenance of the Common Areas and Common Facilities, including but not limited to, the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against the Common Area and Common Facilities; the maintenance of water and sewer mains in and upon the Common Area and Common Facilities; the maintenance of open spaces and streets which have not been accepted for dedication by a public authority, wetlands, landscape easements, roadway medians and islands (including medians and islands located in dedicated rights-of way), driveways and parking areas within the Common Area, the procurement and maintenance of insurance in accordance with the By-Laws or this Declaration; the maintenance of lakes, ponds, retention areas or other bodies of water located within the Common Area; the maintenance of dams and areas surrounding such water; the maintenance of any "sign easement" areas located on any Lot, as shown on a recorded plat; the maintenance of entrance ways, landscaping and lighting of Common Area, road medians, islands and entrance ways, the lighting of streets (whether public or private); the payment of charges for garbage collection and municipal water and sewer services furnished to the Common Area; the costs associated with duties of the Architectural Control Committee; the employment of attorneys and other agents to represent the Association when necessary; the provision of adequate reserves for the replacement of capital improvements including, without limiting the generality of the foregoing, paving, and any other major expense for which the Association is responsible; and such other needs as may arise.

(b) The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Area and Common Facilities, and those other portions of the Development which the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for common expense.

(c) All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Development, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the By-Laws of the Association. As monies for any assessment are paid to the Association by any Lot Owner, the same may be commingled with monies paid to the Association by the other

BOOK 1466 PAGE 246

Owners. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot. When a Lot Owner shall cease to be a member of the Association by reason of his divestment of ownership of his Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Development.

SECTION 3. INITIAL AND SUBSEQUENT ANNUAL ASSESSMENTS. For the calendar years 2013 and 2014, the annual assessment shall be \$250.00 per Lot. For the purpose of the initial Lot closings from Declarant to the initial buyers, the pro-rated portion of the applicable assessment shall be paid at closing in advance for the remainder of the calendar year. Except for the establishment of these initial assessments, all subsequent annual assessments shall be established by the Association. The Association shall have the authority to increase annual assessments by 10% over the prior year's assessment without a vote of the members of the Association. Any increase in excess of 10% shall require the approval of not less than two-thirds of the votes entitled to be cast by the Members in person or by proxy. At the board's option, assessments may be collected monthly, quarterly, semi-annually or annually.

SECTION 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment for the purpose of defraying in whole or in part the costs of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area and Common Facilities, including fixtures and personal property related thereto, provided that any such assessment shall have the approval of not less than two-thirds (2/3) of the votes entitled to be cast by the Members in person or by proxy at a meeting duly called for this purpose. All special assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

SECTION 5. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 AND 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article IV shall be sent to all Members not less than ten (10) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

SECTION 6. RATE OF ANNUAL ASSESSMENT. Both annual and special assessments may be fixed by the board of directors at a uniform rate for all vacant Lots, and a uniform rate for all Lots on which a Residence has been completed, or upon the discretion of the

board of directors of the Association, a uniform rate may be applied to all Lots irrespective of the current use of the Lot. Said assessments may be collected on a monthly, quarterly, semiannual or annual basis.

SECTION 7. DATE AND COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATES.

The annual assessments provided for herein shall commence as to a Lot on the first day of the month following the conveyance of the Lot to an Owner from the Declarant. Declarant or its assigns, shall not be obligated to pay assessments on Lots it owns. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. At least thirty (30) days in advance of each annual assessment period, the board of directors shall fix the amount of the annual assessment and promptly thereafter the board of directors shall cause written notice thereof to be sent to every Owner subject thereto. In the event the board of directors shall fail to fix the amount of annual assessments as described above, the assessment fixed for the immediately preceding year shall continue in effect until a new assessment amount is fixed. The due dates shall be established by the board of directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

SECTION 8. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION.

Failure to pay delinquent assessments by a Lot Owner could result in the forced sale of the Lot at public auction in the manner hereafter set forth. In the event the Owner of such Lot also owns a Boat Slip as provided in Article X below, any such forced sale would also include the sale of the Boat Slip as well since any such Boat Slip is an appurtenant easement attached to the Lot. (See Article X for greater detail.) The procedure for collection of any delinquent assessments, fines, fees, or other costs by the Association and the foreclosure of any lien filed against a delinquent Lot shall be pursuant to Article 3 of Chapter 47F of the North Carolina General Statutes. In accordance with said Article, any assessment levied against a Lot remaining unpaid for a period of 30 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of Carteret County in the manner provided herein. Prior to filing a claim of lien, the Association must make reasonable and diligent efforts to ensure that its records contain the Lot owner's current mailing address. No fewer than 15 days prior to filing the lien, the Association shall mail a statement of the assessment amount due by first-class mail to the physical address of the Lot and the Lot owner's address of record with the Association, and, if different, to the address for the Lot owner shown on the Carteret County tax records and real property records for the Lot. If the Lot owner is a corporation, the statement shall also be sent by first-class mail to the mailing address of the registered agent for the corporation. Fees, charges, late charges, and other charges imposed pursuant to North Carolina General Statute 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are enforceable as assessments under this section. Except as provided in subsections (a1) and (a2) of 47F-3-116, the Association, acting through the executive board, may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale or under Article 2A of Chapter 45 of the General Statutes, if the

BOOK 1466 PAGE 246

assessment remains unpaid for 90 days or more. The association shall not foreclose the claim of lien unless the executive board votes to commence the proceeding against the specific lot.

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the interest rate set by the board of directors of the Association not exceeding eighteen percent (18%) per annum or the highest lawful rate, whichever is less, and shall constitute a continuing lien on the Lot in favor of the Association. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use or abandonment of the Lot.

If the executive board votes to commence foreclosure of the lien against the delinquent Lot, the foreclosure proceeding shall be undertaken pursuant to the provisions of North Carolina General Statute 47F-3-116 (and other statutes referenced therein), which statutes are incorporated verbatim herein. A proceeding to enforce the lien for unpaid assessments, charges, repair, or maintenance costs must be commenced within three (3) years after the delivery of notice of the assessments, charges, repair, or maintenance costs to the Lot owner. Each assessment or charge together with fines, interest, late fees, court costs, collection costs, and reasonable attorneys fees incurred or expended by the Association in collection thereof, shall also be the personal obligation of the Lot Owner. The personal obligation for any delinquent assessment or charge, together with interest, late payment fees, fines, charges, and reasonable attorneys fees, however, shall not pass to the Lot owner's successors in title unless expressly assumed by them. The proceeds of the sale, after the trustee appointed to conduct the sale by the court retains a commission, together with any reasonable attorneys fees incurred by the trustee/commissioner in such proceeding, shall be applied to the costs of sale, including, but not limited to, cost of collection, taxes, assessments, cost of recording, service fees and incidental expenditures, the amount due on the assessment and any accrued interest thereof which the lien secures and any advancements and other sums expended by the Association according to the provisions hereof and otherwise as required by the then existing law relating to foreclosures under power of sale. The trustee's commission shall be five percent (5%) of the gross proceeds of sale or the minimum of Five Hundred Dollars (\$500.00), whichever is greater, for completed foreclosure. In the event foreclosure of the lien is commenced but not completed, the Lot Owner shall pay all expenses incurred by the trustee, including reasonable attorney's fees and the trustee's commission computed on five percent (5%) of the outstanding indebtedness or the above stated minimum sum, whichever is greater.

Except as otherwise provided above in this Section, the provisions of Section 3 of Chapter 47F of the North Carolina General Statutes shall apply to the collection of delinquent assessments and the enforcement of the lien securing the same.

SECTION 9. SUBORDINATION OF THE LIEN TO MORTGAGES. The liens provided for herein shall be subordinate to the lien of any first mortgage or deed of trust securing a loan to a Lot Owner. Sale or transfer of any Lot shall not affect the assessment lien or liens provided for in the preceding section. However, the sale or transfer of any Lot in connection with a foreclosure of such first mortgage or deed of trust shall extinguish the lien of such assessments as to the payment thereof which become due prior to such sale or transfer, but shall not extinguish the personal liability of the Owner of the Lot at the time of the Assessment. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming

due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any such first mortgage or deed of trust.

ARTICLE V
ARCHITECTURAL CONTROL

SECTION 1. COMMITTEE ESTABLISHED. There shall be an Architectural Control Committee which shall be responsible for reviewing the plans of all proposed new construction, additions, or modifications. Such committee shall be responsible to ascertain that the plans and subsequent construction meet the building requirements set forth in this Declaration. The Architectural Control Committee shall consist of three (3) members, who shall be appointed by the Declarant until such time as the Declarant controls less than a majority of the votes in the Association. The initial members shall serve until replaced by Declarant or until Declarant no longer controls a majority of the votes, after which time new members will be appointed by the board of directors of the Association for varying terms so as to achieve staggered terms and continuity of membership of such committee. To achieve this purpose, one Member of the Committee shall be appointed annually by the board of directors of the Association to serve a three year term.

SECTION 2. IMPROVEMENTS. No building, fence, wall, pier, bulkhead or other structure or planting or landscaping shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein including without limitation any plantings or landscape be made unless they comply with the building and use restrictions contained herein and until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee. Provided that nothing herein contained shall be construed to permit interference with the development of the Acquisition Tract by the Declarant so long as said development follows the general plan of development of the Development previously approved by Carteret County.

SECTION 3. PROCEDURES.

(a) Any person desiring to make any improvement, alteration or change described in Section 1 above shall submit 2 copies of the plans and specifications therefor, showing the nature, kind, shape, height, materials and location of the same, along with a reasonable application fee to be established by the board of directors of the Association, to the Architectural Control Committee. The Committee shall evaluate such plans and specifications to determine in the sole discretion of said committee that the structure proposed will be of quality materials, craftsmanship and detailing, that it will be proportionally, architecturally and aesthetically pleasing in design and location, and that the quality and appearance of the structure will be in harmony and in keeping with the high quality residences and vacation homes for which the Development was developed, and that it will not detract in any way from the general appearance of the subdivision as a whole. The Committee may also evaluate plans based on the committee's determine that the elevation, site plan, building footprint or location of the structure will result in unnecessary clearing or vegetation removal, or will create drainage, erosion or sedimentation problems.

BOOK 1466 PAGE 246

(b) Upon approval by the Architectural Control Committee of any plans and specifications submitted pursuant to this Declaration, a copy of such plans and specifications, as approved, shall be deposited for permanent record with the Architectural Control Committee and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Lot of any plans and specifications shall not be deemed a waiver of the Architectural Control Committee's right, in its discretion, to disapprove similar plans and specification or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot. Approval of such plans and specifications relating to any Lot, however, shall be final as to that Lot and such approval may not be reviewed or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

(c) Neither Declarant, Association, nor any other member of the Architectural Control Committee, shall be responsible or liable in any way for any defects in any plans or specifications approved by the Architectural Control Committee, nor for any structural defects in any work done according to such plans and specifications approved by the Architectural Control Committee. FURTHER, NEITHER DECLARANT, ASSOCIATION, NOR ANY MEMBER OF THE ARCHITECTURAL CONTROL COMMITTEE SHALL BE LIABLE IN DAMAGES TO ANYONE BY REASON OF MISTAKE IN JUDGMENT, NEGLIGENCE, MISFEASANCE, MALFEASANCE OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS OF SPECIFICATIONS OR THE EXERCISE OF ANY OTHER POWER OR RIGHT OF THE ARCHITECTURAL CONTROL COMMITTEE PROVIDED FOR IN THIS DECLARATION. EVERY PERSON WHO SUBMITS PLANS AND SPECIFICATIONS TO THE ARCHITECTURAL CONTROL COMMITTEE FOR APPROVAL AGREES, BY SUBMISSIONS OF SUCH PLANS AND SPECIFICATIONS, AND EVERY OWNER OF ANY LOT WAIVES ANY AND ALL CLAIMS, AGAINST, AND COVENANTS AND AGREES NOT TO BRING ANY ACTION OR SUIT AGAINST DECLARANT, ASSOCIATION, ITS OFFICERS OR DIRECTORS, OR ANY MEMBER OF THE ARCHITECTURAL CONTROL COMMITTEE, TO RECOVER ANY DAMAGES AND HEREBY RELEASES SAME FROM ANY AND ALL SUCH CLAIMS, DEMANDS, CAUSES OF ACTION AND LIABILITY, AND FURTHER WAIVES ANY CLAIMS ARISING OUT OF OR IN CONNECTION WITH ANY LAW WHICH PROVIDES THAT SUCH A RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS, AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN.

ARTICLE VI
EXTERIOR MAINTENANCE

The Association shall maintain the Common Area and Common Facilities. Each Owner shall be responsible for the exterior maintenance of their Lot and the exterior of any buildings thereon, as follows: painting, replacement and care of roofs, gutters, downspouts, exterior building surfaces, lawn, trees, shrubs, driveways, walks and other exterior improvements. In the

BOOK 1466 PAGE 246

event that the Owner neglects or fails to maintain their Lot and/or the exterior of their buildings in a manner consistent with other Lots and buildings in the Development, the Association may provide or contract for such exterior maintenance. Provided, however, that the Association shall first give written notice to the Owner of the specific items of exterior maintenance or repair the Association intends to perform and the Owner shall have twenty (20) days from the date of mailing of said notice within which to perform such exterior maintenance their self. The determination as to whether an Owner has neglected or failed to maintain their Lot and/or building in a manner consistent with other Lots and buildings in the Development shall be made by the board of directors of the Association, in its sole discretion. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over and upon each Lot at all reasonable times to perform maintenance as provided in this Article. In the event the Association performs such exterior maintenance, repair or replacement, the cost of such maintenance, replacement or repairs shall be added to and become a part of the assessment to which such Lot is subject and shall be collectable by the Association by the same procedures. In the event that the Association determines that the any maintenance, repair, or replacement, of the Common Areas, Common Facilities or other property which is the responsibility of the Association to maintain hereunder, is caused through the willful or negligent act of an Owner or the family, guests, lessees, or invitees of any Owner, and is not covered and paid for by insurance, in whole or in part, then the Association may perform such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs thereof shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot of such Owner.

ARTICLE VII
USE RESTRICTIONS

SECTION 1. RESIDENTIAL USE OF PROPERTY. All Lots shall be used for single-family, residential purposes, and no business or business activity or storage of business equipment, vehicles, inventory or supplies, shall be carried on or upon any Lot at any time, except with the written approval of the Architectural Control Committee; provided, however, that nothing herein shall prevent Declarant or any builder of homes approved by Declarant from using any Lot owned by Declarant or such builder of homes for the purpose of carrying on business related to the development, improvement, and sale of property in the Development.

SECTION 2. SETBACKS AND BUILDING LINES. Each dwelling which shall be erected on any Lot shall be situated on such Lot in accordance with the building and setback lines set forth herein before commencement of lot clearing preparatory to construction unless either a variance shall have been granted by Declarant or the Association. In no event shall any dwelling be erected and located upon any such Lot in a manner which violates the requirements and provisions of any applicable zoning ordinances, subdivision, environmental or other local, state or federal regulations. Unless more restrictive governmental regulation apply, setback requirements shall be as follows:

Front building setback shall be 20' from the front Lot line. Rear building setback shall be 30' from the rear Lot line. Side building setback shall be 12' from the side Lot line or side street. For the purpose of determining compliance or noncompliance with the foregoing building set back requirements, retaining walls, terraces, stoops, eaves, wing-walls, on-grade

patios, and steps extending beyond the outside wall of a structure shall not be considered as a part of the structure.

SECTION 3. WALLS AND FENCES. Border fencing and or walls along Lot lines will be allowed subject to approval by the Architectural Control Committee.

SECTION 4. COMBINATION AND SUBDIVISION OF LOTS. One or more Lots may be combined with adjacent Lots to form a single building Lot when approved, in writing, by Architectural Review Committee, and in such event, the building line requirements provided herein shall apply to such Lots as re-combined and lot line easements as provided in this Declaration and as shown on the plat shall be moved to follow the new lot line. No existing Lot shall be subdivided to create two or more Lots, or otherwise modified in shape or area without approval of the Architectural Control Committee and the board of directors of the Association, and in no event may any Lot be modified or created which contains less than 4/10ths of an acre in area. Approval from the Carteret County Planning Department is necessary before the combination or further subdivision of lots within the Development.

SECTION 5. DETACHED GARAGES AND OUTBUILDINGS. All detached garage or accessory outbuildings shall not extend beyond the front of the residence on any Lot, and shall be placed within the side and rear yard set backs applicable to residences. The number, location, materials and design of all detached garages, or other accessory or out buildings shall be approved, in writing, by the Architectural Control Committee.

SECTION 6. BUILDING REQUIREMENTS. The heated living areas of the main structure, exclusive of open porches, porte cocheres, garages, carports and breezeways, shall be not less than 1,400 on any Lot. All buildings shall be constructed on pier foundations at minimum floor elevations per state and local building code, flood zone requirements, and other regulations. All residences shall have a concrete pad under the entire structure. A minimum of 8 foot from finished concrete to bottom of first floor of house must be maintained. All applicable flood zone and building codes apply.

SECTION 7. DRIVEWAYS. All Residences shall be served by a concrete or asphalt driveway connecting the residence to the street, and providing enough parking area for all allowed vehicles which are regularly kept on a Lot.

SECTION 8. DELIVERY RECEPTACLES AND PROPERTY IDENTIFICATION MARKERS. The Architectural Control Committee shall have the right to specify the location, color, size, design, lettering and all other particulars of receptacles for the receipt of mail, newspapers or similarly delivered materials, and of name signs for such receptacles, as well as property identification markers. All mailboxes serving the Lots within the Development shall be identical. Each Owner shall be responsible for the installation, maintenance and replacement of mailboxes and posts as specified by the Architectural Control Committee.

SECTION 9. USE OF OUTBUILDINGS AND SIMILAR STRUCTURES. No structure of temporary nature (unless approved in writing by the Architectural Control Committee) shall be erected or allowed to remain on any Lot, and no trailer, camper, shack, tent, garage, barn or other structure of a similar nature shall be used as a residence, either temporarily

BOOK 1466 PAGE 246

or permanently, provided, this Section shall not be construed to prevent the Declarant and those engaged in construction from using sheds or other temporary structures during construction.

SECTION 10. COMPLETION OF CONSTRUCTION. The Association shall have the right to take appropriate legal action, whether at law or in equity, to compel the immediate completion of any residence not completed within one (1) year from the date of commencement of construction.

SECTION 11. ANIMALS. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other small household pets may be kept provided that they are not kept, bred, or maintained for any commercial purposes. Such household pets must be restrained or controlled by their owners at all times and must not constitute a nuisance or cause unsanitary conditions. The Association is hereby granted specific authority to enact rules and regulations governing the manner in which permitted pets can be kept and maintained in the Development, including the number of such pets owned by a Lot Owner or occupant of a residence on a Lot.

SECTION 12. OFFENSIVE ACTIVITIES. No noxious, offensive or illegal activities shall be carried on upon any Lot, nor shall anything be done thereon which is or may become an annoyance or nuisance to the Owners of other Lots in the Development.

SECTION 13. SIGNS. No advertising signs or billboards, including real estate "For Sale", "For Rent", or "For Sale by Owner" signs shall be erected on any Lot except as allowed by the Architectural Control Committee. This restriction shall not apply to signs used to identify and advertise the subdivision as a whole. Also, the provisions of this Article shall not apply to notices posted in connection with judicial or foreclosure sales. After issuance of building approval by the Architectural Control Committee and prior to the issuance of certificate of occupancy or completion by the County or other municipality only, a builder may maintain a sign less than 9 square feet in total area which identifies the builder.

SECTION 14. REMOVAL OF TREES. No clearing, cutting, timbering or tree or vegetation removal shall be commenced or permitted on any Lot, other than in connection with construction of a residence approved by the Architectural Control Committee, until the Owner thereof shall have submitted a clearing plan ("Clearing Plan") to the Architectural Control Committee for approval. Such Clearing Plan shall denote specifically the amount of vegetation to be removed, and the final grade after clearing and shall make adequate provision to prevent damage from drainage, runoff, sedimentation and erosion. The Architectural Control Committee may, in its sole discretion, require that any Clearing Plan be certified by a licensed engineer to pose no harm to adjoining land or water.

SECTION 15. AESTHETICS, SCREENING, UNDERGROUND UTILITY SERVICE. Clotheslines, garbage cans and equipment, shall be screened to conceal them from view of neighboring Lots and streets. All utility service and lines of any kind whatsoever on any Lot, Road, or Common Area shall be underground.

SECTION 16. ANTENNAE. No radio or television transmission or reception towers or antennae shall be erected on any structure or within the Development without the prior

written approval of the Architectural Control Committee. "Mini" satellite dishes or disks are permitted, provided that said dishes and/or disks do not exceed 24" in diameter. In no event shall free standing transmission or receiving towers be permitted.

SECTION 17. TRAILERS, TRUCKS, SCHOOL BUSES, BOATS, BOAT TRAILERS.

No house trailers or mobile homes, school buses, trucks or commercial vehicles over one (1) ton capacity, vehicles having more than two axles, motor homes, motorcycles, campers, or vans or inoperable vehicles shall be kept, stored or parked overnight either on any Road or on any Lot, except within enclosed garages or screened from the streets, bay and adjoining lots. There may be parked on the visible part of each Lot only operable cars and light trucks used regularly by the occupants of the residence, and one operable boat and/or boat trailer. Non-operable boats, additional boats or additional boat trailers must be stored in a closed garage, or under a house and adequately screened from the street, bay, and neighboring Lots. Jet-skis or other personal watercraft shall be subject to the same regulations as boats with the exception that 2 personal watercraft that are stored on one trailer shall be considered as one boat. The Association is hereby granted specific authority to enact rules and regulations governing the manner in which vehicles, boats, and trailers can be kept and maintained in the Development, including the number of such vehicles, boats, and trailers owned by a Lot Owner or occupant of a residence on a Lot.

SECTION 18. GARBAGE AND REFUSE DISPOSAL.

No Lot shall be used or maintained as a dumping group for rubbish. Trash, garbage or other waste shall be kept in sanitary containers designed for that purpose. All containers for the storage or disposal of such waste material shall be kept in a clean and sanitary condition and placed behind a screen or lattice approved by the Architectural Control Committee so as not to be visible from the Road. If such litter or other materials is found on any Lot, the same will be removed by the Lot Owner of such Lot, at the Lot Owner's expense, upon written request of the Association. The Association is hereby granted specific authority to enact rules and regulations governing the manner in which waste receptacles can be kept and maintained in the Development, including the number of such receptacles.

SECTION 19. CHANGING ELEVATIONS.

No Lot Owner shall excavate or extract earth for any business or commercial purpose. No elevation changes shall be permitted which materially affect surface grade of surrounding Lots, unless approved in writing by the Architectural Control Committee.

SECTION 20. WAIVER OF SETBACKS, BUILDING LINES AND BUILDING REQUIREMENTS.

The Declarant or Architectural Control Committee may, for good cause, waive violations of the setbacks and building lines provided for in Section 2 of this Article VII and the building requirements provided for in Section 6 of this Article VII. Such waiver shall be in writing and recorded in the Carteret County Register of Deeds Office. A document executed by the Architectural Control Committee or Declarant, shall be, when recorded, conclusive evidence that the requirements of Sections 2 and 6 of this Article VII have been complied with. Nothing contained herein shall be deemed to allow the Architectural Control Committee to waive violations which must be waived by an appropriate governmental authority.

SECTION 21. FIREARM AND WEAPON DISCHARGE.

The use of any kind of

weapon, explosive or firearm other than for defense or protection of one's life or property is prohibited on all property shown on the Plat. Firearms shall include rifle, gun, pistol, shotgun, black powder gun, bow and arrow or other weapon from which any bullet, shot or projectile may be discharged, or any explosive device.

SECTION 22. WATER SOURCE. Water for the Development and the homes located therein will be supplied by a publicly owned water company located on Harkers Island. For this purpose, the Declarant has entered into a contract with such water company for water supply, which contract will require each Lot Owner to pay certain tap on and meter fees to the water company at the time a house is constructed on the Lot at standard prevailing rates, in addition to paying the standard rates for water consumption.

SECTION 23. BUILDING, FIRE CODE, AND WETLANDS REQUIREMENTS/LIMITATIONS. Because the Development is located in a sensitive environmental area in a coastal region, building and fire codes, as well as "wetlands" requirements and limitations can sometimes be more restrictive than developments located elsewhere through the interior of this state. Therefore, every person contemplating the purchase of a Lot in the Development, prior to entering into a contract to purchase, is encouraged to make inquiry of the local building inspections office and any other governmental regulatory authority having jurisdiction over the improvement of lots to determine what these specific requirements and limitations are.

ARTICLE VIII
SEWAGE TREATMENT FACILITIES

Declarant has caused to be created and chartered a public utility company by the name of Harkers Island Sewer Company, LLC (hereafter "Sewer Company"). The Sewer Company has constructed a sewage treatment plant outside of the Development to handle the sewage and wastewater disposal requirements of the residences within the Development, along with pumps, pipelines, lift stations and other equipment installed and located within reserved easements and properties in the Development (hereafter "Sewage Treatment Facilities"). The Sewage Treatment Facilities have been designed with sufficient mechanical capacity to also handle the sewage and wastewater disposal requirements of other properties located outside of the Development and owned by third parties which may subsequently seek to be added and connected to such Sewage Treatment Facilities as contract customers (hereafter "Third Party Customers"). Declarant reserves the right, and hereby assigns such right to the Sewer Company, to engage in such contracts with such Third Party Customers in its sole discretion, as long as such contracts do not impair the capability of such Sewage Treatment Facilities to properly handle the sewage and wastewater requirements of residences within the Development. Further, Declarant has labeled a certain site on the recorded Plat of the Development as "AREA RESERVED FOR ON-SITE SEWER COLLECTION STATION" Declarant reserves the right to install other sewage and wastewater disposal systems and facilities within this Area to supplement and facilitate the operations of the Sewer Company with respect to its objective of supplying the sewer and wastewater disposal needs of the Lots within the Development as well as properties located outside of the Development owned by Third Party Customers. As a public utility, all rates, charges, and expenses shall be consistent with, and approved by, the North

BOOK 1466 PAGE 246

Carolina Utilities Commission or other state regulatory authority having jurisdiction.

All easements reserved by Declarant as set forth in Article IX below are hereby declared to be also reserved to the joint use and benefit of the Sewer Company to the fullest extent necessary in order that said Sewer Company shall have the right and ability to install, repair, replace, maintain, inspect, and operate the Sewage Treatment Facilities for the benefit of Lots within the Development and properties located outside the Development owned by Third Party Customers.

All Owners of Lots, when a residence has been constructed thereon, shall be required to connect to such Sewage Treatment Facilities and pay all reasonably determined tap-on, connection, impact and usage fees in amounts consistent with the prevailing standard as determined by the North Carolina Utilities Commission or other state regulatory authority having jurisdiction. No Lot Owner may install a separate sewage disposal system on a Lot.

Notwithstanding anything to the contrary stated in this Article VIII or elsewhere in this Declaration, in the event a public waste water and sewage disposal facility becomes available to serve the sewage and wastewater disposal needs of the Lots, then all Owners of Lots shall be required to connect to such public system, whereupon ownership of the Sewage Treatment Facilities and all property upon which it is situated shall revert in fee to the Declarant for such use as Declarant shall determine in its sole discretion.

ARTICLE IX
EASEMENTS

SECTION 1. UTILITY EASEMENTS. Easements for installation and maintenance of general service utilities (including, but not limited by, cable television service, electricity, water, telephone, sewage and wastewater disposal, and drainage facilities) are reserved under and across all Roads, over a strip of land 10 feet in width along all side, front, and rear lines of each Lot as indicated on any recorded Plats. Within these easements no structures, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change, obstruct, or retard the intended flow of drainage channels in the drainage easements. An easement is hereby established for the benefit of any other person or firm providing services to the Development under agreement with or at the direction of the Association over all Common Area as may be reasonably necessary for the setting, removal and reading of water meters, and the maintenance and replacement of water, sewer and drainage facilities and for the fighting of fires and collection of garbage. The Declarant and the Association shall have the power and authority to grant and establish upon, over and across the Roads and Common Area such additional easements as are necessary or desirable for the providing of service or utilities to the Common Area or Lots. Declarant specifically reserves the right to grant any and all utility easements to any third party for construction, maintenance, and replacement of any utility in the easement area described herein. All such easements are also hereby reserved to the joint use and benefit of the Sewer Company as more specifically set forth in Article VIII above.

SECTION 2. SIGN EASEMENTS. Easements for the maintenance of subdivision signs, landscaping, and lighting surrounding the same are reserved as indicated on

recorded plats. Declarant hereby grants, gives and conveys to the Association a perpetual, non-exclusive easement over any portions of Lots designated as "sign easements" or "landscape easements" on the Plats to maintain, repair and replace the subdivision signs which may be located thereon, as well as the lighting fixtures and any landscaping thereon. The costs of all such maintenance, repair and replacement shall be part of the common expenses of the Association. In addition to the easement granted above as to the portion of Lots designated "sign easements", or "landscaping easements" Declarant hereby gives, grants and conveys to the Association the right of ingress, egress and regress over other portions of such Lots as shall be reasonably necessary to effectuate the purposes stated above. The easements hereby granted shall run with the land in perpetuity and be binding upon and inure to the benefit of all persons and entities now owning or subsequently acquiring any Lot in the Development.

SECTION 3. LANDSCAPE/SIDEWALK EASEMENTS. The Declarant reserves for itself and for the Association, an easement 15 feet in width across the front line of each Lot adjacent to a Road, for the maintenance of such area for sidewalks, street trees, grass or other hardscape or landscape (hereinafter the "Landscape Easement"). No Owner shall clear, remove, or plant any tree or other vegetation from or within said Landscape Easement, or build any fence or other structure in said easement area without the consent of the Architectural Control Committee. The Declarant and the Association shall have the right, but not the obligation, to clear, construct sidewalks, plant trees, grass or other groundcover, landscape and maintain said areas. It shall be the right, but not the obligation, of the Association to maintain the Landscape Easement to create and preserve a unified and attractive appearance throughout the Development.

SECTION 4. EASEMENTS AND SPECIAL ENTITLEMENTS TO AND FOR JOYCE GODWIN (Trustee) PROPERTY. The Declarant acquired ownership of the property which now constitutes James Creek Subdivision from Joyce L. Godwin, Trustee, by deed dated July 12, 2006 of record in book 1180, page 36, Carteret County Registry (the "Vesting Deed"). At the time Declarant negotiated with Godwin, Trustee, for the purchase of this property, contractual concessions were made in her favor by Declarant, one of which concessions requires Declarant to provide Ms. Godwin, Trustee, with an easement over and upon the primary right of way of the Development for general access, including utilities, to a portion of her property she withheld from the sale and which adjoins the Development to the west, so that her withheld property would have general access to the public road. The property which she withheld and which is the beneficiary of this easement is identified upon the recorded Plat of the Development as "JOYCE L. GODWIN REC. TRUST, DB 1051 PG 24" and consists of 145,369 square feet (3.37 acres) as shown upon said Plat (hereafter referred to as the "Godwin, Trustee, Withheld Property"). The easement to this property from James Creek Way is identified as "50' ACCESS EASEMENT" upon the Plat, and connects her property to James Creek Way, the primary right of way in the Development. Therefore, the Declarant hereby dedicates this "50' ACCESS EASEMENT" as a perpetual, non-exclusive easement to and for the benefit of the Godwin, Trustee, Withheld Property, to be used and enjoyed as a right of way for ingress, egress, and regress (including utilities) to said property from James Creek Way. Further, Declarant hereby dedicates a perpetual, non-exclusive easement over and upon James Creek Way itself, to and for the benefit of the Godwin, Trustee, Withheld Property, to be likewise used and enjoyed as a right of way for ingress, egress, and regress (including utilities)

to said property from the public road (Oak Hammock Drive).

The terms of other contractual concessions made in favor of Godwin, Trustee, appear in the Vesting Deed. Because of the 404 "wetlands" limitations affecting the Godwin, Trustee, Withheld Property, the property would not support a 4-lot division as contemplated by the referenced contractual concessions. Therefore, this Declaration specifically provides the following benefits and entitlements to the Godwin, Trustee, Withheld Property:

1. That for so long as the Godwin, Trustee, Withheld Property is not divided into more than two single family residential lots and Godwin, Trustee, continues to be the sole owner of said property:

a. Said property shall be exempt from any Association dues, assessments, charges or fees that the Declarant, its successors or assigns may establish or record as the same may in any way relate to the Lots in the Development; and,

b. Said property shall nevertheless have the full use, enjoyment and privilege of all amenities established or to be established by Declarant, its successors or assigns, to include but not limited to roads, roadways, pool, clubhouse, tennis courts, and water access (to include usage of a boat ramp or docking facility), if any. Declarant does not have the obligation to construct such amenities, however.

c. Said property shall nevertheless be bound to the use restrictions set forth in Article VII of this Declaration (but not Article V – Architectural Control).

2. That in the event the Godwin, Trustee, Withheld Property is divided into three or more single family residential lots and Godwin, Trustee, continues to be the sole owner of said three lots:

a. Then any two of said lots (as irrevocably designated by Godwin, Trustee in a written and signed instrument delivered to the Association and duly recorded in the Carteret County Public Registry) shall retain the exemptions set forth in subparagraph 1a. above, but the third lot shall not be so exempt and shall pay dues and assessments to the Association in the same manner and amount as all other Lots in the Development; and,

b. All three lots shall nevertheless be entitled to the benefits of subparagraphs 1b. above; and,

c. All three lots shall nevertheless be bound to the use restrictions as set forth in subparagraph 1c. above.

3. That in the event Godwin, Trustee makes a conveyance of the Godwin, Trustee, Withheld Property, in whole or in part (e.g., the entire tract or just a lot), and such conveyance is to a third party other than a lineal descendant of Joyce L. Godwin or a legal entity (i.e., corporation, limited liability company, trust) formed or owned, in whole or in part, by Godwin, Trustee or Joyce L. Godwin, then upon such occurrence said third party(ies) shall be bound by

BOOK 1466 PAGE 246

all covenants, conditions, and/or restrictions formed by Declarant, their successors, or assigns to include the obligation to pay all Association fees, dues and assessments after the date of the conveyance.

SECTION 5. GENERAL EASEMENTS.

(a) Access Easement. Appurtenant to each Lot is an easement over the Roads for necessary pedestrian and vehicular ingress and egress to the Lot from the public road.

(b) Construction and Maintenance Easement. An easement is hereby reserved in favor of the Declarant and granted to the Association in, on, over and through the Common Areas, Road, and Common Facilities for the purposes of constructing, maintaining, cleaning, repairing, improving, regulating, operating, policing, replacing and otherwise dealing with the Common Areas, Roads and Common Facilities.

(c) Easement for Sales and Promotional Activity by Declarant. An easement is hereby reserved in favor of Declarant and their permittees over the Common Areas and Common Facilities for the purpose of advertising or promoting sales of Lots in the Development.

(d) Reservation of Access and Use Easement by Declarant. Declarant reserves an easement for itself, its grantees, successor and assigns, to enter upon the Development for use of Common Areas and Facilities, and for access, including ingress and egress for both vehicles and pedestrians, to and from any public street, road, land, walkway or right-of-way. Declarant further reserves the right to connect, at Declarant's expense, to any street, roadway, walkway or other means of access that are located on the Common Areas of the Development. This reservation of access easements and the right of connection should be construed liberally in favor of the Declarant, in order to facilitate the development of all or any portion of the Development or any future additions to the property made pursuant to this Declaration. The easements and grants reserved for and granted to the Declarant also benefit and bind any successors and assigns of Declarant and their respective guests, invitees or lessees, including, without limitation, grantees or assignees of Declarant who do not own property within the Development.

(e) Easement to Assign Capacity in the Sewage Treatment Facilities.
Declarant hereby reserves an easement over, under, upon, and within all utility easements and roads located upon the Development for the purpose of installing sewage and wastewater disposal infrastructure to meet the sewage and wastewater disposal requirements of any other property annexed to the Development pursuant to Declarant's reserved right to do so, or to any other property to which is assigned excess sewage and wastewater disposal capacity by Declarant pursuant to its reserved right to do so.

(f) Easements to Run with Land. All easements and rights described in this Article which are easements appurtenant, shall run with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on the Declarant, its successors and assigns, and any Owner, purchaser, mortgagee, and other person or entity now or hereafter having an interest in the Development, or any part or portion of it.

BOOK 1466 PAGE 246

ARTICLE X
BOAT SLIP AND BOAT SLIP AREA

SECTION 1. General. Declarant is the owner of a certain parcel of land lying along Oak Hammock Drive which borders James Creek Subdivision on the east. A map of this property is recorded in map book 32, page 418, Carteret County Registry. Adjacent to this parcel is a navigable body of public waters presently suitable for the use of boat owners, Lot Owners who don't own a boat, boat launching, and docks. Upon this property Declarant has constructed certain improvements including a boat slip dock with "finger piers" and appropriate mooring pilings which will accommodate the moorage of 10 boats; a boat ramp for launching boats; a smaller "viewing dock" for casual temporary use; and a fish cleaning station located at the north end of the boat slip dock. Each boat slip is identified by number. The boat slip located at the northern end of the dock is boat slip 1; the boat slip adjacent to the south of boat slip 1 is boat slip 2; and so forth continuing southerly to and including boat slip 10 at the southernmost end of the dock. Declarant constructed the boat launching ramp within the property for the use and benefit of Owners of Lots who do not also have rights to a boat slip. These amenities are restricted solely for the use and benefit of Owners of Lots. There are five electric outlets and five water outlets located at approximate one-fifth intervals along the boat slips dock which will provide electric power and water for the use of Owners purchasing boat slips as hereafter provided. There is no electricity or water serving the viewing dock. There is one electric meter and one water meter which will register electric usage of all boat slip owners, the cost of which usage shall be an expense of the James Creek Boat Slip Association, Inc. hereafter referenced. All of such described property and facilities, including the boat slips, the boat slip dock, the finger piers, the boat launching ramp, the viewing dock, and fish cleaning station, are hereafter referred to collectively as the "Boat Slip Area". The boat slips are hereafter referred to collectively as the "Boat Slips" and each individually as a "Boat Slip"; the boat slip dock, exclusive of the "finger piers", is hereafter referred to as "Boat Slip Dock".

Declarant reasonably believes that all Lot and Boat Slip owners share a common objective in assuring that the Boat Slip Area and its related amenities are kept and maintained in a uniform and structurally sound state of repair, and that use of the Boat Slip Area is subject to reasonable and enforceable rules and regulations. In furtherance of this objective, the Declarant has created an association (hereafter "The James Creek Boat Slip Association, Inc." or the "Boat Slip Association") of Boat Slip owners for the fee ownership, regulation, insuring (if reasonably available), maintenance, and repair of the Boat Slip Area and its related features.

Declarant will convey fee ownership of the Boat Slip Area, its fixtures, and appurtenances to the James Creek Boat Slip Association, Inc. for such purposes as hereafter provided. Each initial purchaser of a Boat Slip from Declarant will be granted a sole and exclusive easement, right of possession and use to the specific Boat Slip purchased.

This Section 1 is intended to be a general description of the Declarant's intent regarding the Boat Slip Area, the more specific covenants and conditions regarding the same being set forth in the following Sections of this Article. To the extent any provision in such Sections conflicts with this Section 1, the provisions of such subsequent Sections shall control.

BOOK 1466 PAGE 246

Declarant does hereby annex the Boat Slip Area to the common scheme of development at James Creek Subdivision, but subjects the Boat Slip Area only to the covenants and conditions contained in this specific Article X, and to no other Article in this Declaration.

SECTION 2. Specific Characteristic of Boat Slip. A Boat Slip is an easement interest in real property. Once conveyed, a Boat Slip becomes a fixed, exclusive, and perpetual easement appurtenant to the Lot which is owned by the Boat Slip purchaser. The fee ownership of the Boat Slip Area shall be with the Boat Slip Association, subject to such easement rights of the Boat Slip owners and also subject to the easement rights of all other Lot owners in the Boat Slip Area as hereafter provided.

SECTION 3. Use Restrictions. The Boat Slips are hereby dedicated and restricted for ownership only by Lot Owners and only for use incident to moorage of recreational vessels, except that Lot Owners who own no boat may nevertheless come upon the Boat Slip Dock for temporary and casual purposes, provided no such Lot Owner shall do so in any way which interferes with the exclusive rights of the Boat Slip owners to their respective Boat Slips. The launching ramp within the Boat Slip Area is hereby dedicated for the use and benefit of all Lot Owners, as regulated by the Boat Slip Association as hereafter provided. No other physical improvements shall be permitted upon a Boat Slip or within the Boat Slip Area except by the Boat Slip Association, with the exception that a Boat Slip owner may construct a boat lift within the Boat Slip as provided below. All uses of the Boat Slips and Boat Slip Area shall be in compliance with any and all applicable permit requirements, including the CAMA regulations.

No owner of a Boat Slip shall make any commercial use thereof (such as a charter boat or commercial fishing operation) or assign such rights to others, nor shall any vessel owned in time-share intervals by owners not also Owners of Lots be moored in any Boat Slip. No boat moored at a Boat Slip may be used as a "live-aboard" by an owner or an owner's permittee.

SECTION 4. Specific Regulatory Authority. The Boat Slip Association shall be vested with sole authority to regulate all uses of the Boat Slips by the individual owners thereof and all uses incident to all other features of the Boat Slip Area, including the launching ramp, the viewing dock, and the fish cleaning station.

SECTION 5. Conveyances of Boat Slips. Notwithstanding Declarant's conveyance of the Boat Slip Area to the Boat Slip Association, Declarant reserves the right to convey Boat Slips to the initial purchasers thereof. Such conveyance shall be made and identified within the deed to the Lot being purchased. If such conveyance is made by Declarant to an Owner who already owns a Lot, such conveyance shall be made in deed form and identifying the Lot to which the Boat Slip is appurtenant, and recorded at the Register of Deeds Office under the names of both parties. Boat Slips, once conveyed, shall thereafter constitute an easement appurtenant to the Lot to which it initially attached. Thereafter, and whether or not specifically identified in subsequent conveyances of the Lot to which the Boat Slip is appurtenant, all rights in the Boat Slip follow the title to the Lot, and do not require a separate instrument of conveyance. A Lot owner who also owns a Boat Slip subjects the Boat Slip to

any deed of trust or deed such owner may execute for the Lot, whether or not such Boat Slip is identified in the description contained in the deed or deed of trust.

No owner of a Boat Slip shall convey or otherwise transfer such Boat Slip to anyone other than to another fee owner of a Lot, nor shall the Owner of any Lot who is also an owner of an appurtenant Boat Slip convey or otherwise transfer only the Lot without also conveying the appurtenant Boat Slip. It is the intent of this Section to restrict ownership of Boat Slips to Lot Owners only, and to provide that no owner may own a Boat Slip without also simultaneously owning a Lot to which it is appurtenant. No more than one Boat Slip may be appurtenant to a single Lot. ANY CONVEYANCE OR TRANSFER IN VIOLATION OF THE FOREGOING LIMITATION SHALL BE TOTALLY VOID AND OF NO EFFECT.

SECTION 6. James Creek Boat Slip Association. The Declarant has created the Boat Slip Association and delegates to such Boat Slip Association the specific powers and authority set forth herein, and such other powers and authority as are reasonably and necessarily related thereto. Declarant hereby specifically delegates to, authorizes, and empowers the Boat Slip Association to enact reasonable rules and regulations pertaining to the personal use and enjoyment of the Boat Slip Area and all features associated therewith, including, without limitation, rules and regulations pertaining to the proper operation and mooring of vessels, discharges from vessels, dock clutter, fish cleaning operations, noise control, stowage, storage, and placement of personal property, fixtures, and other such items on or about Boat Slips, maintenance of landscaping, grass, and weed control on the Boat Slip Area, regulations regarding the use and times of use of the boat ramp, regulations regarding the use of the viewing dock, and so forth. Such rules and regulations shall fairly and equitably apply to all Lot Owners, not just Boat Slip owners. However, no rule or regulation shall grant Lot Owners who are not also Boat Slip owners any rights to Boat Slips, such Boat Slip rights being exclusively in favor of the Boat Slip owners themselves. No such rule or regulation shall become effective unless and until ratified by a simple majority of votes entitled to be cast by members of the Boat Slip Association.

The Declarant also deems it to be highly desirable and mutually beneficial to all Lot and Boat Slip owners that the sole and exclusive obligation to maintain, repair, and replace (if necessary) the dock, finger piers, pilings, ramp, viewing dock, fish cleaning station, and other features of the Boat Slip Area, or portions thereof, should be with the Boat Slip Association, and not with the individual owners of Boat Slips, in order to assure the continued safety and structural integrity of the Boat Slips and the Boat Slip Area, to preserve and enhance property values in the Development, and to assure that Boat Slips are repaired or replaced (if necessary) as and when necessary. For such purpose and objective, the Declarant hereby irrevocably assigns the full maintenance, repair, and replacement obligation of the Boat Slip Area and Boat Slips to the Boat Slip Association exclusively. Thus, no owner of a Boat Slip shall have the authority to maintain, repair, or replace any Boat Slip or portion thereof, except as may be mandated by the Boat Slip Association's rules and regulations concerning personal use or as may be specifically approved by the Boat Slip Association.

It is the intent of the Declarant that the Boat Slip Association also determine if a reasonable plan of scheduled maintenance for the Boat Slips and Boat Slip Area is appropriate,

BOOK 1466 PAGE 246

to implement any such plan, to make repairs to the Boat Slips (including replacements, if necessary) and Boat Slip Area which are reasonably necessary for the continued safety and functional utility thereof, to assure that the Boat Slips and Boat Slip Area continue to be reasonably capable of safely and securely performing the functions for which they were initially designed to perform, and to assess dues to enable the Boat Slip Association to meet such responsibilities. Except as otherwise provided herein, the consent of the owner of a Boat Slip shall not be required as a prerequisite to the Boat Slip Association's performance of its obligations herein. For the accomplishment of its duties, and notwithstanding the ownership of a Boat Slip by a Lot Owner, the Boat Slip Association, as the fee owner of the Boat Slip Area, shall have the right to go upon any Boat Slip for the purpose of performing such maintenance and making such repairs and/or replacements as are determined to be reasonably necessary by the Boat Slip Association, and in compliance with all applicable regulatory and permitting authorities.

The operating governance, membership, and authority of the Boat Slip Association is more particularly set forth in Section 12 below.

SECTION 7. Boat Lifts. An owner of a Boat Slip may install a boat lift on the Boat Slip. However, the following limitations apply:

- a. Any owner desiring to install a boat lift shall not commence to do so until a plan of installation and description of the boat lift shall first be submitted to the Boat Slip Association for consideration.
- b. No boat lift shall be installed except as specifically approved by the Boat Slip Association.
- c. No insurance which the Boat Slip Association may elect to acquire covering casualty loss or damage to the Boat Slip Area shall provide affirmative coverage to any boat lift. The Boat Slip Association is given authority to change this rule to provide such coverage provided, however, the owner of the boat lift insured pays the Boat Slip Association an equitable portion of the total premium that bears upon the premium increase caused by adding such coverage.
- d. Ownership of a boat lift remains with the Boat Slip owner installing the same as in the nature of a fixture, and may be removed by the owner at any time.

SECTION 8. Insurance. To the extent possible and financially feasible, the Boat Slip Association shall obtain property damage casualty insurance covering the Boat Slip Area against risks of loss or damage due to natural disasters, collisions, and other casualty events. Deductible amounts shall be a common expense of the Boat Slip Association, subject to the provisions below relative to damage caused by owners or others for whom owners are made responsible.

SECTION 9. Mortgages. Owners of Lots who also own an appurtenant Boat Slip may mortgage their Lot and their Boat Slip but may not mortgage either without mortgaging

BOOK 1466 PAGE 246

both. The reason for this provision is to assure that in the event of a foreclosure, a Boat Slip could not become severed from its appurtenant Lot and potentially owned by a person who did not own a Lot. As set forth above, a Lot owner who also owns a Boat Slip subjects the Boat Slip to any deed of trust such owner may execute for such Lot, whether or not such Boat Slip is identified in the deed of trust description or not. No foreclosure of a deed of trust encumbering a Boat Slip shall in any way impair the rights of any other Boat Slip owner.

Where a mortgagee, or other person claiming through such mortgagee pursuant to the remedies provided in a mortgage or deed of trust, or by foreclosure, or by deed in lieu of foreclosure, obtains rights in a Boat Slip, the liability of such mortgagee, or such other aforementioned person, for dues assessed against such Boat Slip shall be limited to dues commencing after acquisition of title. For purposes hereof, rights in a Boat Slip shall be deemed acquired by foreclosure upon expiration of the applicable period of redemption.

SECTION 10. James Creek Property Owners Association. All owners of Boat Slips, by virtue of their ownership of a Lot to which their Boat Slip is appurtenant, are members of the Association and bound to all of the provisions, rights, and obligations which are attendant to such membership. However, except as specifically provided in Section 12 below, the Association shall have no obligations or authority with respect to the Boat Slip Area, nor shall dues or assessments be levied against such Boat Slips by said Association. It is the intent of the Declarant that ownership, maintenance, and regulation of the Boat Slip Area shall at all times be with the Boat Slip Association. It is the further belief of the Declarant that the Boat Slip Area provides a "value added" benefit to all of the Development, and thus any depreciation in the condition of the Boat Slip Area would adversely and indirectly cause a depreciation in the Lots. Therefore, the Association is hereby made an intended third party beneficiary of the provisions set forth in this Article X and may maintain an action at law or equity to assume the powers, authority, and function of the Boat Slip Association in the event of a substantial failure of the Boat Slip Association to fulfill its responsibilities and obligations set forth herein. Further, nothing shall impair both the Association and the Boat Slip Association from entering into an agreement which shifts or alters the burdens and benefits set forth herein, provided no such agreement shall impair the rights of use of a Boat Slip owner.

SECTION 11. Maintenance of the Boat Launching Ramp Area. As set forth above, the boat launching ramp is dedicated to the use and benefit of all Lot Owners, not just those owning Boat Slips. The boat launching ramp and the area around it may need maintenance from time to time, and the cost thereof shall be the responsibility of both the Association and the Boat Slip Association in proportion to the extent that members of each such Association have utilized the boat launching ramp. Therefore, Declarant imposes an affirmative obligation on both the Association and the Boat Slip Association to determine, in good faith, the portion of such repair costs which should be paid by each such Association. For such purpose, the Declarant requires both the Association and the Boat Slip Association to include a specific line item in their annual budgets for such purpose. Under no circumstances shall the Boat Slip Association erect any physical impediment or obstacle to the launching of boats by any Owner of a Lot. The Association shall have no authority to levy assessments against Lot Owners for any share of the maintenance, repair, or replacement of any finger piers or mooring pilings, that expense being solely the responsibility of the Boat Slip Association.

BOOK 1466 PAGE 246

SECTION 12. Operating Governance, Membership, and Authority of the Boat Slip Association.

Every owner of a Boat Slip shall be a member of the Boat Slip Association which has been formed by the Declarant to serve the common interests of such owners.

a. Membership. The Boat Slip Association shall have two classes of voting membership until such time as the Declarant has conveyed eight (8) Boat Slips to initial purchasers:

i. Class A Members: Class A members shall be all of the owners of a Boat Slip, other than Declarant.

ii. Class B Member: The Class B Member shall be the Declarant for so long as it has the right to convey a Boat Slip to a Lot Owner pursuant to Section 5 of this Article X. However, Declarant shall no longer be the Class B Member at such time as Declarant has conveyed eight (8) of the ten (10) Boat Slips, at which time Declarant shall become a Class A Member with all of the obligations imposed upon such Class A Members as herein provided. However, Declarant still shall retain the sole right to convey the remaining two (2) Boat Slips to subsequent purchasers.

b. Voting Rights. For Class A Members, there shall be only one vote entitled to be cast for each Boat Slip. Members shall be entitled to vote at all annual and special meetings of the general membership on matters required by the by-laws of the Boat Slip Association or any applicable statute to be voted upon. In cases where two people own the same Boat Slip (such as husband and wife, parent and child, or brother and sister), a unanimous vote of the two will be required; and in the case of three or more people (such as heirs, partners), a simple majority shall be required. In the event that only one of multiple owners of a Boat Slip attends a meeting of the Boat Slip Association at which a vote is taken, or votes in some other fashion by approved proxy or otherwise, such vote for the Boat Slip so represented will be presumed to be, and recorded as, the approved vote for that Boat Slip.

The Class B Member, the Declarant, shall have ten (10) votes per Boat Slip which it has the right to convey, for so long as Declarant holds such right with respect to more than two (2) Boat Slips.

c. Suspension of Voting Right. The right of any member of the Boat Slip Association to cast a vote for a Boat Slip may be suspended by the Boat Slip Association for a substantial violation of the Boat Slip Association's rules and regulations or the provisions of this Article. However, nothing stated within this Article shall impair Declarant's absolute right to convey a Boat Slip.

d. Dues and Special Assessments. All Class A Boat Slip owners are obligated to pay to the Boat Slip Association the following:

BOOK 1466 PAGE 276

(i.) Dues. Annual dues for routine operations and responsibilities for the first full fiscal year (calendar year) beginning on January 1, 2014, are in the amount of \$100.00 per Boat Slip. For the initial purchasers of Boat Slips from the Declarant during 2013, no dues are payable for the 2013 fiscal year; however, such purchasers shall commence paying dues for the 2014 fiscal year and subsequent years as hereafter provided. The initial purchasers of Boat Slips who purchase during fiscal year 2014 or during subsequent years shall pay a pro rated dues amount based upon the date of closing during that year. The annual dues amount for a fiscal year shall be determined by the board of directors of the Boat Slip Association no later than December 20 of the prior year. No later than December 31 of each year, the Boat Slip Association shall inform all Class A Boat Slip owners of the dues amount for the coming fiscal year, in the absence of which the dues amount shall be the same as for the prior year. The board of directors of the Boat Slip Association shall have the right to increase the annual dues by an amount not exceeding ten percent (10%) of the amount for the previous fiscal year without approval of the membership. Any increase above that amount shall require approval of at least two-thirds of the votes entitled to be cast voting in person or by proxy at an annual meeting or at a special meeting called for that purpose. Notwithstanding anything stated above in this subparagraph, Declarant shall have the sole authority to increase the annual dues for fiscal year 2015 to an amount which takes into account a realistic and reasonable forecast of future maintenance and repair costs to the Boat Slip Area. Upon doing so, Declarant shall send notice of such increase to all Boat Slip owners and that shall fix the dues for fiscal year 2015. However, in no event shall Declarant have the right to increase the dues for such fiscal year in excess of \$200.00, without the consent of all Boat Slip owners.

(ii.) Special Assessments. Special assessments for extra-ordinary and necessary repair/restoration/replacement of all aspects of the Boat Slip Area, the cost of which cannot be met from general dues, are subject to the approval of at least two-thirds of the votes entitled to be cast voting in person or by proxy at an annual meeting or at a special meeting called for that purpose.

(iii.) Uniform Application of Dues/Assessments Obligation. Each Class A member of the Boat Slip Association shall pay the same dues and special assessment amount. However, in the event of any required repair or replacement to a Boat Slip, such as the Boat Slip Dock, pilings, and finger piers necessitated by the negligent, accidental, or intentional acts of an owner of a specific Boat Slip, their guests, or invitees, the Boat Slip Association is specifically authorized to assess the Boat Slip whose owner, guests, or invitees were the proximate cause of the condition or accident or act of negligence necessitating the repair, for the entire cost of the repair. (Note: An example of this would be an owner inadvertently damaging some aspect of the dock, pilings, or finger pier. Presumably, though, such owner may have indemnity for himself through his own personal liability coverage applicable to the operation and ownership of his boat.)

e. Use of Dues and Special Assessments. Dues and special assessments shall be used to meet the Boat Slip Association's general obligation for maintenance and repair of the Boat Slip Area as may be required from time to time, and for all reasonable and necessary other costs and expenses of administering its purposes.

f. Effect of Nonpayment of Dues and Special Assessments. Remedies of the Association.

BOOK 1466 PAGE 246

Failure to pay delinquent dues and special assessments by a Boat Slip owner could result in the forced sale of the Boat Slip at public auction in the manner hereafter set forth. The procedure for collection of any delinquent dues, assessments, fines, fees, or other costs by the Boat Slip Association and the foreclosure of any lien filed against a delinquent Boat Slip shall be pursuant to Article 3 of Chapter 47F of the North Carolina General Statutes. In accordance with said Article, any dues or special assessments levied against a Boat Slip remaining unpaid for a period of 30 days or longer shall constitute a lien on that Boat Slip when a claim of lien is filed of record in the office of the clerk of superior court of Carteret County in the manner provided herein. Prior to filing a claim of lien, the Boat Slip Association must make reasonable and diligent efforts to ensure that its records contain the Boat Slip owner's current mailing address. No fewer than 15 days prior to filing the lien, the Boat Slip Association shall mail a statement of the dues amount due by first-class mail to the physical address of the Boat Slip owner's Lot and, if different, the mailing address of record with the Boat Slip Association, and, if different, to the address for the Lot shown on the Carteret County tax records and real property records for the Lot. If the Boat Slip owner is a corporation, the statement shall also be sent by first-class mail to the mailing address of the registered agent for the corporation. Fees, charges, late charges, and other charges imposed pursuant to North Carolina General Statute 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are also collectible under this section. Except as provided in subsections (a1) and (a2) of 47F-3-116, the Boat Slip Association, acting through the executive board, may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale or under Article 2A of Chapter 45 of the General Statutes, if the dues or special assessments remain unpaid for 90 days or more. The Boat Slip Association shall not foreclose the claim of lien unless the executive board votes to commence the proceeding against the specific Boat Slip.

Any dues or special assessments not paid within thirty (30) days after the due date shall bear interest from the due date at the interest rate set by the board of directors of the Boat Slip Association not exceeding eighteen percent (18%) per annum or the highest lawful rate, whichever is less, and shall constitute a continuing lien on the Boat Slip in favor of the Boat Slip Association. No owner of a Boat Slip may waive or otherwise escape liability for dues and special assessments provided for herein by non-use or abandonment of the Boat Slip.

If the executive board votes to commence foreclosure of the lien against the delinquent Boat Slip, the foreclosure proceeding shall be undertaken pursuant to the provisions of North Carolina General Statute 47F-3-116 (and other statutes referenced therein), which statutes are incorporated verbatim herein. A proceeding to enforce the lien for unpaid dues, special assessments, charges, repair, or maintenance costs must be commenced within three (3) years after the delivery of notice of the dues, special assessments, charges, repair, or maintenance costs to the Lot owner. All dues and special assessments or charge together with fines, interest, late fees, court costs, collection costs, and reasonable attorneys' fees incurred or expended by the Boat Slip Association in collection thereof, shall also be the personal obligation of the Boat Slip owner. The personal obligation for any delinquent dues, special assessment or charge, together with interest, late payment fees, fines, charges, and reasonable attorneys fees, however, shall not pass to the Boat Slip owner's successors in title unless expressly assumed by them. The proceeds of the sale, after the trustee appointed to conduct the sale by the court retains a

BOOK 1466 PAGE 246

commission, together with any reasonable attorneys fees incurred by the trustee/commissioner in such proceeding, shall be applied to the costs of sale, including, but not limited to, cost of collection, taxes, assessments, cost of recording, service fees and incidental expenditures, the amount of dues and special assessments and any accrued interest thereof which the lien secures and any advancements and other sums expended by the Boat Slip Association according to the provisions hereof and otherwise as required by the then existing law relating to foreclosures under power of sale. The trustee's commission shall be five percent (5%) of the gross proceeds of sale or the minimum of Five Hundred Dollars (\$500.00), whichever is greater, for completed foreclosure. In the event foreclosure of the lien is commenced but not completed, the Boat Slip owner shall pay all expenses incurred by the trustee, including reasonable attorney's fees and the trustee's commission computed on five percent (5%) of the outstanding indebtedness or the above stated minimum sum, whichever is greater.

PROVIDED, HOWEVER, THAT NOTWITHSTANDING ANY PROVISION SET FORTH IN THIS SECTION 12 OR ELSEWHERE IN THIS ARTICLE X OR ANY PROVISION OF APPLICABLE LAW:

(i) ANY SALE INCIDENT TO A FORECLOSURE ACTION OF A BOAT SLIP ASSOCIATION LIEN BROUGHT BY THE BOAT SLIP ASSOCIATION AGAINST A BOAT SLIP SHALL BE LIMITED TO THE BOAT SLIP ASSOCIATION AND TO THE OWNERS OF LOTS AT JAMES CREEK ONLY, WHICH MEANS THAT ONLY THE BOAT SLIP ASSOCIATION AND OWNERS OF LOTS CAN PARTICIPATE AS BIDDERS AT SUCH A SALE. EXCEPT FOR THIS LIMITATION, THE PROVISIONS OF SECTION 3 OF CHAPTER 47F OF THE N.C. GENERAL STATUTES SHALL APPLY TO THE COLLECTION OF DELINQUENT BOAT SLIP DUES AND THE ENFORCEMENT OF THE LIEN SECURING THE SAME.

(ii) ANY SALE INCIDENT TO A FORECLOSURE ACTION OF A JAMES CREEK PROPERTY OWNERS ASSOCIATION LIEN BROUGHT BY THE JAMES CREEK PROPERTY ASSOCIATION AGAINST A LOT WITH AN APPURTENANT BOAT SLIP SHALL HAVE NO SUCH LIMITATION AS TO BIDDERS, AND ANYONE CAN PARTICIPATE AS BIDDERS IN SUCH A SALE. THEREFORE, THE PROVISIONS OF SECTION 3 OF CHAPTER 47F OF THE N.C. GENERAL STATUTES SHALL APPLY TO THE COLLECTION OF DELINQUENT LOT ASSESSMENTS AND THE ENFORCEMENT OF THE LIEN SECURING THE SAME.

g. AS PROVIDED IN SECTION 8 OF ARTICLE IV ABOVE, THE LIEN FOR DELINQUENT ASSESSMENTS AGAINST A LOT IN FAVOR OF THE JAMES CREEK PROPERTY OWNERS ASSOCIATION, IF FILED, ALSO CONSTITUTES A LIEN ON ANY BOAT SLIP APPURTENANT TO SUCH LOT. THEREFORE, EVEN IF A BOAT SLIP OWNER IS CURRENT ON THE OBLIGATION TO PAY DUES TO THE BOAT SLIP ASSOCIATION, THE BOAT SLIP IS AT RISK OF BEING SOLD AT PUBLIC AUCTION ALONG WITH THE LOT TO WHICH IT IS APPURTENANT IN CONNECTION WITH A LIEN FORECLOSURE ACTION BROUGHT AGAINST SUCH LOT.

BOOK 1466 PAGE 246

SECTION 13. Amendment by Declarant. For so long as Declarant is a Class B member of the Boat Slip Association, Declarant shall have the unilateral right to amend this Article so long as such amendment does not materially alter or unreasonably affect the substantive rights, benefits, or obligations of any other owner of a Boat Slip or mortgagees holding security interests in a Boat Slip. Further, for so long as the Deed of Trust recorded on February 25, 2011, in Book 1368 at Page 387 of the Carteret County, North Carolina Public Registry remains uncanceled and of record, no such amendment shall be effective unless approved by, and bears the signature of, Bank of North Carolina or its successors or assigns. All such amendments, as approved, shall be ineffective unless and until recorded upon the public registry of Carteret County.

SECTION 14. Annexation of Subsequent Property to the Boat Slip Regime.

Declarant reserves the unilateral right to annex additional properties it owns, or comes to own, to this Boat Slip regime, and to subject such annexed properties to amended covenants and conditions through a supplemental declaration.

SECTION 15. Declarant Rights Assignable. All rights of Declarant hereunder may be assigned to a third party, in whole or in part, if Declarant shall make an express written conveyance of its rights as Declarant hereunder to such successor or assign and the same is recorded upon the public registry of Carteret County.

SECTION 16. Waiver of Right of Partition. All owners of Boat Slips, by acceptance and recordation of a deed conveying the same to them, hereby waive all rights of partition with respect to such Boat Slips.

SECTION 17. North Carolina Planned Community Act. Since the Boat Slip Area is restricted to non-residential uses only, the North Carolina Planned Community Act (Chapter 47F) does not automatically apply. However, pursuant to N.C.G.S. 47F-1-102(b)(2), the Declarant hereby voluntarily imposes the provisions of such Act upon the Boat Slip Area and upon the administration of the Boat Slip Association, but only to the extent such provisions do not directly conflict with any provision of this Article. To the extent permitted by said Act or other controlling law, in the event any conflict between the terms and provisions of this Article X and the Act arises, the terms and provisions of this Article X shall control.

SECTION 18. Easement Reserved by Declarant. Declarant hereby reserves for itself, its successors, and assigns as easement over, under, and upon the Boat Slip Area for the construction or completion of any improvement to the Boat Slip Area which is reasonably necessary in order to make the Boat Slip Area conform to the objectives of Declarant as a valuable amenity for the Development.

SECTION 19. Amendment by Boat Slip Owners. By a vote of at least two-thirds of votes entitled to be cast by all Boat Slip owners, this Article may be amended. However, no amendment shall be made which adversely affects the substantive right of enjoyment of any owner of any Lot . Further, for so long as the Deed of Trust recorded on February 25, 2011, in

BOOK 1466 PAGE 246

Book 1368 at Page 387 of the Carteret County, North Carolina Public Registry remains uncanceled and of record, no such amendment shall be effective unless approved by, and bears the signature of, Bank of North Carolina or its successors or assigns. All such amendments, as approved, shall be ineffective unless and until recorded upon the public registry of Carteret County.

SECTION 20. Payment of Property Taxes. The Carteret County Tax Office will assess ad valorem taxes against the Boat Slip Area as follows:

(i) Once a proper tax valuation has been assigned to such Boat Slip by the tax office, the value of each Lot to which a Boat Slip is appurtenant shall be valued using the Boat Slip as an "added feature" to such Lot. The owner of such Lot shall then pay the resulting tax accordingly.

(ii) All other Lots having no assigned Boat Slip shall be valued using the remaining tax value of the Boat Slip Area as an "added feature" assigned equally to the value each such Lot. The owner of such Lot shall then pay the resulting tax accordingly.

SECTION 21. Term of Article X. The covenants and restrictions of this Article X shall run with and bind the Boat Slip Area for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of twenty (20) years unless during the last year of such initial or then current renewal term the owners of seventy-five percent (75%) of the Boat Slips agree in writing to terminate this Declaration at the end of such term.

ARTICLE XI
GENERAL PROVISIONS

SECTION 1. ENFORCEMENT. The Declarant, the Association or the Boat Slip Association (as applicable), or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration, the Articles of Incorporation or By-Laws of the Association. Failure by the Declarant, the Association or the Boat Slip Association (as applicable) or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to request that law enforcement, public safety and animal control officers come on to the Development to facilitate the enforcement of the laws, codes and ordinances of any governmental authority.

SECTION 2. SEVERABILITY. Invalidation of any one of the covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

SECTION 3. TERM AND AMENDMENT. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of twenty (20) years unless during the last year of such initial or then current renewal

term the Owners of seventy-five percent (75%) of the Lots agree in writing to terminate this Declaration at the end of such term. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to this Declaration; (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure or guarantee mortgage loans on the Lots subject to this Declaration; or (e) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration; (f) in order to add additional property to the jurisdiction of this Declaration as provided herein; (g) so long as Declarant has the right unilaterally to subject additional property to this Declaration as provided herein, Declarant may unilaterally amend this Declaration for any other purpose, if such unilateral amendment is otherwise permitted by any applicable law. However, no such unilateral amendment shall be permitted if such amendment materially and adversely affects the substantive rights of any lender secured by a first mortgage or deed of trust encumbering one or more Lots affected thereby, or materially and adversely affects title to any Lot without the consent of the affected Lot Owner and any lender secured by a first mortgage or deed of trust encumbering one or more Lots affected thereby. In addition to the above, this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy-five (75%) percent of the Lot Owners, and thereafter by an instrument signed by not less than sixty-five (65%) percent of the Lot Owners. Any amendment must be properly recorded. Notwithstanding anything hereinabove, no provision of this Declaration which reserves or grants special rights to the Declarant shall be amended without the Declarant's prior written approval so long as the Declarant owns any property which is subject to this Declaration or which Declarant has the right to have added to the property subject to this Declaration. Provided, however, that for so long as the Deed of Trust recorded on February 25, 2011, in Book 1368 at Page 387 of the Carteret County, North Carolina Public Registry remain uncanceled and of record, no such amendment shall be effective unless approved by, and bears the signature of, Bank of North Carolina or its successors or assigns.

SECTION 4. GOVERNMENTAL REQUIREMENTS. Notwithstanding Article XI, Section 3 above, Declarant may (at Declarant's option) amend and modify this Declaration without obtaining the consent or approval of the Owners if such amendment or modification is necessary to cause this Declaration to comply with the requirements of the Department of Housing and Urban Development, the North Carolina Department of Natural Resources, the US Army Corps of Engineers, the North Carolina Division of Coastal Management or other similar agency. Any such amendment must be with the consent and approval of such agency and must be properly recorded.

BOOK 1466 PAGE 246

SECTION 5. ADDITION OF PROPERTY.

(a) Except as provided in subparagraph (b) below, additional property and Common Area may be annexed to the Development only with the approval of not less than two-thirds (2/3) of the votes entitled to be cast by the Members in person or by proxy at a meeting duly called for this purpose.

(b) Notwithstanding the above, additional land lying within or outside of the Development described herein above (hereinafter referred to as "Additional Land") may be brought within the scheme of this Declaration by the Declarant without the consent of Members by the filing of a Plat referencing these restrictions or filing an amendment to these restrictions, or by granting a deed for said Additional Land which expressly subjects the Additional Land to this Declaration. Notwithstanding anything contained herein which might otherwise be interpreted to produce a contrary result, this Declaration does not create any charge, lien or other encumbrance or restriction on any part of the Additional Land, or affect in any way the title thereto or any part thereof, nor does this Declaration create an obligation upon Declarant to improve and develop all or any portion of the Additional Land, nor does anything herein obligate the Declarant to develop the remaining land in a similar fashion to the Development. Notwithstanding the foregoing, for so long as the Deed of Trust recorded on February 25, 2011, in Book 1368 at Page 387 of the Carteret County, North Carolina Public Registry remains uncanceled and of record, no future recorded plat shall be effective to make any additional real property subject to this Declaration unless such plat is approved and bears the signature of Bank of North Carolina or its successors or assigns.

SECTION 6. AMPLIFICATION. The provisions of this Declaration are amplified by the Articles of Incorporation and Bylaws of the Association; but no such amplification shall alter or amend any of the rights or obligations of the Owners set forth in this Declaration. Declarant intends that the provisions of this Declaration on the one hand, and the Articles of Incorporation and Bylaws of the Association on the other, be interpreted, construed, and applied to avoid inconsistencies or conflicting results. If such conflict necessarily results, however, Declarant intends that the provisions of this Declaration control anything in the Articles of Incorporation or Bylaws of the Association to the contrary.

SECTION 7. TRANSFER OF STORMWATER CONTROL FACILITIES AND STORMWATER PERMIT TO ASSOCIATION.

Pursuant to the Storm Water Management Permit described in the Wetlands Declaration, the Declarant installed certain stormwater erosion and control facilities in the Development. Included in such facilities are certain physical features of the Development, including certain "level spreaders", which are designed to mitigate the effects of stormwater runoff into adjoining water bodies. As a prerequisite to permit approval, Declarant has entered into an operations and maintenance agreement with the Division of Water Quality of the N.C. Department of Environment and Natural Resources requiring Declarant to maintain all of such facilities, including the level spreaders, to assure their proper functioning and operation. Such facilities constitute part of the Common Areas of the Development and will be transferred, along with all other Common Areas, to the Association. However, no transfer of such facilities, including the level spreaders, shall be made to the Association unless and until at least 50% of the Lots have been sold and conveyed,

BOOK 1466 PAGE 246

and the Declarant no longer holds a majority of the votes in the Association. Until such time, the Declarant shall be responsible for such maintenance.

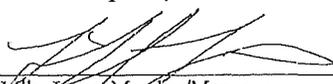
At such time as at least 50% of the Lots have been sold and conveyed, and the Declarant no longer holds a majority of the votes in the Association, then upon the legal transfer of such facilities to the Association, the Declarant shall initiate the permit transfer process by completing and signing the "Name/Ownership Change" form provided by the N.C. Department of Environment and Natural Resources (or such other form that may have been since promulgated by the N.C. Department of Environment and Natural Resources for the same purpose) and submitting it to the Association for signature. If the facilities are not in compliance with the permit, then the Declarant shall undertake such remediation as is directed by the Division to make the facilities compliant. After the facilities are determined to be in compliance with the permit, then the Association shall sign the Name/Ownership Change form and the Operation and Maintenance Agreement, and submit both documents to the Division of Water Quality, along with all other listed documentation from page 2 of the Name/Ownership Change form. After the Division approves the transfer of the permit, the Association shall thereafter be solely responsible for maintaining compliance with the Stormwater Management Permit for the Development.

ARTICLE XII
NORTH CAROLINA PLANNED COMMUNITY ACT

Except as otherwise specifically provided herein, the North Carolina Planned Community Act (North Carolina General Statutes, Chapter 47F) shall apply to all matters and issues arising in the Development which come under the subject matter jurisdiction of said Act. To the extent permitted by said Act or other controlling law, in the event any conflict between the terms and provisions of this Declaration and the Act arises, the terms and provisions of the Declaration shall control.

IN WITNESS WHEREOF, the undersigned, has caused these presents to be executed in its company name by its duly authorized Manager this the 22ND day of November, 2013.

BLE Development, LLC



Mike Laws, Member/Manager

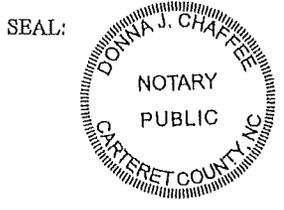
BOOK 1466 PAGE 246

NORTH CAROLINA
CARTERET COUNTY

I, the undersigned Notary Public for the state and county aforesaid do hereby certify that Mike Laws, Member/Manager of BLE Development, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of these Restrictive Covenants by and on behalf of said limited liability company.

This the 22ND day of November, 2013.

Donna J. Chaffee DONNA J. CHAFFEE
Print and sign name of Notary Public
My commission expires: 5/11/2018



L:\HGM\James Creek Subdivision\restrictive.covenants.final.11.21.doc

BOOK 1466 PAGE 246

STATE OF NORTH CAROLINA

LOAN MODIFICATION AGREEMENT

COUNTY OF GUILFORD

THIS LOAN MODIFICATION AGREEMENT ("Agreement") is made and entered into effective June 5th, 2013 (the "Effective Date") by and among BLE DEVELOPMENT, LLC ("Borrower"); JAMES CREEK INVESTMENT PARTNERS, LLC ("JCIP"); MICHAEL WILLIAM LAWS ("Laws"); SIDNEY N. BAZEMORE ("Bazemore") and BANK OF NORTH CAROLINA ("BNC" or "Lender"). Laws and Bazemore are collectively referred to herein as "Guarantors" and each individually as a "Guarantor". Borrower, JCIP and Guarantors are collectively referred to as "Obligors" and each individually as an "Obligor". HARKERS ISLAND SEWER COMPANY, LLC ("HISC") joins in this Agreement but is not obligated on the Loan as that term is defined herein. MICHAEL PRICE ("Price") joins in this Agreement but has not to date been obligated on the Loan as that term is defined herein. Lender, Obligors, HISC and Price are referred to collectively as the "Parties" and each individually as a "Party". Capitalized terms used but not defined in the Agreement shall have the meaning set forth in the Existing Loan Documents (as defined below).

RECITALS:

A. Borrowers reaffirm and confirm that they are presently indebted and obligated to Lender pursuant to the provisions of a Promissory Note dated February 24, 2011 in the original principal amount of Two Million Four Hundred Five Thousand Dollars (\$2,405,000.00) (as extended, modified, renewed and substituted, the "Note"), executed and delivered by Borrower and secured by a Deed of Trust of even date recorded on February 25, 2011, in Book 1368 at Page 387 of the Carteret County, North Carolina Public Registry (the "Deed of Trust") executed and delivered by Borrower and JCIP pledging as collateral for the Note several parcels of real property more particularly described in the Deed of Trust (the "Real Property") together with such other additional rights and appurtenances described as "Property" in the Deed of Trust, including assignment of rents and leases (all such additional collateral together with the Real Property collectively hereinafter the "Real Property Collateral");

B. In conjunction with the Note, the Guarantors reaffirm and confirm that they executed and delivered the following documents, instruments, and agreements as an inducement to Lender entering into and advancing funds pursuant to the Note (collectively referred to herein, as modified and amended, as the "Guaranties" and each as a "Guaranty"):

1. A Guaranty dated February 24, 2011 duly executed and delivered by Laws absolutely and unconditionally guaranteeing the payment and performance of each and every debt of Borrower, including without limitation the Note;

2. A Guaranty dated February 24, 2011, duly executed and delivered by Bazemore absolutely and unconditionally guaranteeing the payment and performance of each and every debt of Borrower, including without limitation the Note;

C. Obligors reaffirm and confirm that the following documents were executed and delivered in connection with the Note:

1. Construction Loan Agreement dated February 24, 2011 entered into by and between Borrower and Lender.



2. Security Agreement executed and delivered to Lender by Borrower dated February 24, 2011 granting Lender a security interest in a certain property more particularly described therein (the "Pledged Assets") to secure the Note (as modified and amended, the "Security Agreement").

3. Collateral Assignment of Licenses and Contracts by and between BLE and Lender assigning to Lender certain licenses, permits, approvals, certificates, rights, agreements and contracts as more particularly described therein (the "Additional Collateral") to secure the Note (as modified and amended, the "Collateral Assignment").

D. The documents described in Paragraphs A through C above, together with any other documents prepared, filed or executed in conjunction therewith or executed in conjunction with any modification or amendment thereof, are collectively referred to as the "Existing Loan Documents". The loan as described by the Existing Loan Documents, as modified and amended in this Agreement, is referred to herein as the "Loan". This Agreement and all documents executed pursuant to this Agreement, including without limitation the documents executed pursuant to paragraphs 2, 3 and 4 herein below, are collectively referred to as the "New Loan Documents." The Existing Loan Documents and New Loan Documents are collectively referred to as the "Loan Documents". All of the property subject to Lender's liens under the Loan Documents, including, without limitation, the Real Property Collateral, the Pledged Assets and the Additional Collateral, is collectively referred to as the "Collateral". The Deed of Trust, together with the Security Agreement portions of the Note, the Security Agreement and the Collateral Assignment, and any and all documents modifying, amending, or superseding such documents, are hereinafter collectively referred to as the "Collateralization Documents."

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, the parties do hereby stipulate, covenant and agree as follows:

1. Representations, Warranties and Acknowledgements. The Obligors, jointly and severally, hereby represent, warrant and acknowledge to Lender, upon which Lender is relying, that:

1.1. The foregoing Recitals are true and correct.

1.2. They are authorized under applicable law to execute, deliver and perform this Agreement and all documents, instruments and agreements executed in connection herewith. The Existing Loan Documents are, and the New Loan Documents will be, legal, valid and binding obligations of the Obligors in accordance with their respective terms. Neither the execution and delivery of this Agreement nor the fulfillment of or compliance with any of the terms and conditions of this Agreement will conflict with or result in a breach of the terms, conditions or provisions of or constitute a violation or default under any applicable law, regulation, judgment, writ, order or decree to which Obligors or their properties are subject.

1.3. That any misrepresentation by an Obligor, or any failure of an Obligor to comply with the covenants, conditions and agreements contained in the Note, the Guaranties, the Collateralization Documents, the New Loan Documents, this Agreement or in any other agreement, document or instrument at any time executed and/or delivered by any Obligor with, to or in favor of Lender shall constitute a default hereunder and under the Note, the Guaranties and the Collateralization Documents and each and every one of the New Loan Documents. In the event any person or entity, other than Lender, shall at any time exercise for any reason any of its rights or remedies against Borrower, Guarantors or against the properties, assets or rights encumbered pursuant to the Collateralization Documents, such event shall constitute a default hereunder and in

regards to the Note, the Guaranties, the Collateralization Documents and the New Loan Documents.

1.4. The liens, security interests and other encumbrances in favor of Lender arising under the Existing Loan Documents are valid and binding obligations of Obligors and valid and binding liens upon the Collateral, are duly perfected, constitute first priority liens, subject only to any ad valorem taxes owed, and are not subject to avoidance or invalidation for any reason.

1.5. Neither this Agreement nor any report, schedule, certificate, agreement or any instrument heretofore or contemporaneously herewith provided to Lender by Obligors contains any misrepresentation or untrue statement of facts or omits to state any material facts.

1.6. Each Obligor represents that they have no present intent to file a voluntary petition under any chapter of Title 11 of the United States Code (the "Bankruptcy Code"), or in any manner to seek relief, protection, reorganization, liquidation, dissolution or similar relief for debtors under any local, state, federal or other insolvency laws. Neither the execution and delivery of this Agreement nor the performance of any actions required by this Agreement is being consummated by any Party to hinder, delay or defraud any entity to which Obligors were or are now or will hereafter become indebted.

1.7. Each Obligor represents and warrants that they are in compliance in all material respects with all federal, state and local laws, rules and regulations applicable to their respective properties, operations, businesses and finances.

1.8. Each Obligor or responsible officer thereof has read this Agreement and understands the consequences hereof and any officer or manager executing this Agreement on behalf of a corporation, limited liability company or other entity is empowered to do so and thereby binds such corporation, limited liability company or entity.

1.9. Each Obligor for itself represents and warrants that they will, at Lender's request, execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this Agreement.

1.10. As of June 5, 2013, the balance due under the Note, inclusive of accrued interest through June 5, 2013 but exclusive of all interest accruing thereafter and exclusive of attorneys' fees and costs, is/was \$ 2,436,205.7

1.11. ~~All Obligors acknowledge and agree that Lender has fully and completely performed any and all duties and obligations imposed upon it by virtue of the Existing Loan Documents~~

1.12. Except as described in Schedule 1.12 there are no pending, nor to the best knowledge of Obligors, any threatened actions, litigation, disputes, alleged defaults or breaches, suits or proceedings against or in any way relating adversely to Obligors or their properties before any court, arbitrator or governmental or administrative body or agency.

1.13. Except as described in Schedule 1.13 or as described in this Agreement, Obligors received no notice of default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which its properties are bound.

1.14. At all times from the inception of the Note through and including the date hereof, Obligors have handled and independently exercised their own business judgment in regards to all aspects of the operations of Borrower and its businesses.

2. Harkers Island Sewer Company, LLC.

2.1 New LOC Note. HISC shall execute and deliver to Lender at Closing a future advances promissory note in the maximum principal amount of \$100,000.00 (the "New LOC Note"), a true and accurate copy of which is attached hereto as Schedule 2.1 and incorporated herein by reference, together with the terms and conditions of this Agreement contained herein. In order to secure the New LOC Note, the complete terms and conditions of which are contained within said document, Borrower and JCIP shall execute and deliver to Lender a deed of trust pledging the Real Property Collateral as security for the New LOC Note (the "New Deed of Trust"); Obligors represent and warrant that the New Deed of Trust shall be a second priority lien on the Real Property Collateral, subject only to the Deed of Trust, and shall cause Lesley E. Laws and wife, Helen H. Laws to execute and record a subordination agreement, in a form satisfactory to Lender, subordinating the lien of that certain deed of trust dated December 5, 2008 and recorded on December 10, 2008 in Book 1292, Page 392 of the Carteret County Public Registry to the lien of the New Deed of Trust. The New LOC Note will be further secured by the unconditional and unlimited guaranties of BLE, Laws and Price (the "New LOC Note Guaranties"), an absolute assignment and first priority lien upon any and all rights to payments to be received by BLE from HISC (the "Assignment of Payments") and a first priority lien upon the Certificate of Deposit described below. The proceeds of the New LOC Note shall be used for the sole and designated purpose of securing the irrevocable letter of credit issued by Lender in favor of HISC for the purpose of complying with that Order Requiring Customer Notice and Bond issued March 26, 2013 by the North Carolina Utilities Commission (the "NCUC Letter of Credit"). Obligors agree to execute and deliver to Lender such other and further documents as Lender deems necessary to secure and guaranty the New LOC Note as provided herein. Any further reference herein to the "Notes" shall include the New LOC Note; any further reference to the "Guaranties" shall include the New LOC Note Guaranties; any further reference to "Deeds of Trusts" shall include the New Deed of Trust; any further reference herein to "Real Property Collateral" shall include all of the rights and appurtenances described as "Property" in the New Deed of Trust any further reference herein to "Collateralization Documents" shall include the Assignment of Payments and the New Deed of Trust.

2.2 Future Tap On and Impact Fees. The Parties acknowledge and agree that ~~HISC will provide waste water treatment for the James Creek Subdivision. Upon the closing of the sale of each Lot within the James Creek Subdivision, HISC will collect and receive at closing a tap on fee of \$2,500.00. HISC covenants and agrees to set aside any and all such tap on fees received from the sales of Lots within the James Creek Subdivision for future capital expenditures and/or to retire debt owed by HISC arising out of the construction of the waste water treatment plant and the purchase of equipment related thereto.~~

2.3 New Guaranty from Michael Price. In consideration of the foregoing, Price, a principal of HISC who is receiving a direct and substantial benefit from the extension of credit by Lender to HISC, shall execute and deliver to Lender a Guaranty, in a form satisfactory to Lender, absolutely and unconditionally guaranteeing the payment and performance of each and every debt of Borrower, including without limitation the Note, the New LOC Note, and the New Working Capital Note. Any further reference to "Guarantor", "Guarantors", "Obligor" or "Obligors" shall include Price.

3. BLE Development, LLC.

3.1 New Working Capital Note. Borrower shall execute and deliver to Lender at Closing a future advances promissory note in the maximum principal amount of \$67,000.00 (the "New Working Capital Note"), a true and accurate copy of which is attached hereto as Schedule 3

and incorporated herein by reference, together with the terms and conditions of this Agreement contained herein. The New Working Capital Note, the complete terms and conditions of which are contained within said document, shall be secured by the New Deed of Trust. The New Working Capital Note will be further secured by the unconditional and unlimited guarantees of Laws and Michael Price (the "New Working Capital Note Guaranties"), the Assignment of Payments and a first priority lien upon the Certificate of Deposit described below. The proceeds of the New Working Capital Note shall be used for the sole and designated purpose of paying for the costs of installation of electrical lines and wiring to the Lots within the James Creek Subdivision ("Permitted Development Costs") and for purposes of funding payments of interest due under the Note. Any all requested draws for Permitted Development Costs shall be accompanied by a report certified by a duly qualified engineer, approved by Lender, that has inspected the work for which payment is being requested. Obligor agrees to execute and deliver to Lender such other and further documents as Lender deems necessary to secure and guaranty the New Working Capital Note as provided herein. Any further reference herein to the "Notes" shall include the New Working Capital Note and any further reference to the "Guaranties" shall include the New Working Capital Note Guaranties.

3.2 Modification of the Note. Subject to the terms and conditions of this Agreement, the Note is modified and amended effective as of Closing according to the terms and conditions of that certain Debt Modification Agreement, a true and accurate copy of which is attached hereto as Schedule 4 and incorporated herein by reference, together with the terms and conditions of this Agreement contained herein.

4. Certificate of Deposit. At Closing, BLE shall establish a non-interest bearing certificate of deposit with Lender solely for the express purposes set forth herein (the "Certificate of Deposit"). BLE shall execute and deliver a security agreement granting Lender a first priority lien upon the Certificate of Deposit to secure the Note, the New LOC Note and the New Working Capital Note (the "CD Security Agreement"). Upon the sale of each Lot within the James Creek Subdivision, a portion of the net proceeds from each such sale, as further detailed herein below, shall be deposited into the Certificate of Deposit and held until such time as the Certificate of Deposit has a balance of \$100,000.00. When the Certificate of Deposit reaches a balance of \$100,000.00, if no prior default has occurred giving rise to the use of such funds by Lender as a default remedy, then Obligor shall replace the NCUC Letter of Credit with the \$100,000.00 from the Certificate of Deposit and Lender shall cancel the NCUC Letter of Credit. Any further reference herein to "Collateralization Documents" shall include the CD Security Agreement and any further reference to "Collateral" shall include the Certificate of Deposit.

5. Lot Release Provisions. Any James Creek Subdivision Lots sold during the Forbearance Period shall be subject to the following:

5.1 Permitted Costs and Expenses. Based upon an estimated gross sales price of \$60,000.00 per Lot, Lender shall allow the following maximum costs and expenses for each closing: (i) \$3,600.00 real estate sales commission; (ii) \$2,500.00 sewer impact fee; (iii) \$2,500.00 water impact/tap on fee; (iv) \$500.00 payment to the Audubon Society; (v) \$500.00 attorney fees; and (vi) \$9,500.00 interest payment to Lender, leaving estimated net proceeds of \$40,900.00.

5.2 First Five Lots. With respect to the first five Lots sold, \$20,000.00 of the net proceeds from the sale of each Lot shall be paid into the Certificate of Deposit, to be used for the purposes set forth herein above, and the balance shall be payable to Lender, to be applied to the Notes, in Lender's sole and absolute discretion.

5.3 Remaining Lots. With respect to any remaining Lots sold, once the Certificate of Deposit has reached a \$100,000.00 balance and in the event the Obligors are not in default under the Loan Documents, BLE shall be entitled to receive a payment of \$2,500.00 from the net proceeds of each such Lot sale, and the balance from each such Lot Sale shall be payable to Lender, to be applied to the Notes, in Lender's sole and absolute discretion.

5.4 Lender's Approval Required. Notwithstanding anything contained herein, Lender's agreement to release any Real Property Collateral with respect to this Section is subject to its approval of the HUD Settlement Statement for each such sale prior to closing and to the absence of any Default under this Agreement or the Loan Documents.

5.5 Assignment of Declarant's Rights. As additional collateral security for the Note and the observance and performance of the terms, covenants and conditions of this Agreement, the Note and all other Existing Loan Documents, Borrower agrees, upon request of Lender, to transfer, set over and assign to Lender all Declarant rights with regards to all property serving as Collateral pursuant to the Deed of Trust, to the extent not otherwise assigned and transferred under the Existing Loan Documents or by reason of the exercise of any Default remedies as provided for under the Loan Documents.

6. Forbearance. Subject to compliance by Obligors with each of the "Forbearance Conditions" (as defined below), during the period ("Forbearance Period") commencing on the date hereof and ending on the earlier to occur of (a) February 23, 2014; or (b) the date that any of the Forbearance Conditions are no longer satisfied, Lender agrees that it will not exercise any remedy available to it under the Existing Loan Documents or under any applicable law to enforce collection from Obligors of the indebtedness represented by the Note or foreclose upon its liens and security interests under the Collateralization Documents.

Notwithstanding anything to the contrary contained in this Agreement, Lender shall not be prohibited from exercising any remedy or power available to it excluding only those expressly set forth above.

Except as expressly provided herein, the execution and delivery of this Agreement shall not: (a) constitute an extension, modification or waiver of any aspect of the Notes, Deeds of Trusts, Guaranties or Existing Loan Documents; (b) extend the terms or due dates of the Notes; (c) give rise to any obligation on the part of Lender to extend, modify or waive any term of condition of the Note, Deeds of Trusts, Guaranties, or Existing Loan Documents; (d) give rise to any defenses or counterclaims to the right of Lender to compel payment of the amounts due under the Note or to otherwise enforce its rights and remedies under the Notes, Deeds of Trusts or Existing Loan Documents; or (e) establish a custom or course of dealing between or among the Obligors and the Lender. Except as expressly provided herein, Lender reserves all of its rights and remedies under the Notes, Deeds of Trusts, Guaranties and Existing Loan Documents under applicable law with respect to any and all future defaults.

7. Conditions to Forbearance. Each of the following conditions shall constitute a forbearance condition, the continuing satisfaction of each of which shall be a continuing condition to the agreement of Lender to forbear as set forth herein:

7.1. No Subsequent Defaults. Obligors shall duly observe and perform each and every covenant to be performed under the Loan Documents including, without limitation, fulfillment of all new or modified covenants (including all of the affirmative covenants in paragraph 8 below)

and payment of all of principal, interest, fees, costs and expenses in respect of the New Loan Documents as and when the same are due and payable, and any failure to do so shall constitute a default under this Agreement and under each and every one of the Loan Documents;

7.2. Deposits and Accounting Records. The Obligors shall, upon request by Lender, deliver to the Lender all statements or other records related to the Collateral which are in the possession or under the control of the Obligors; and

7.3. Material Adverse Change. There shall be no subsequent event or condition that causes Lender to deem, reasonably and in good faith, its liens, its Collateral or the debts represented by the Note unsafe or insecure or cause Lender to believe, reasonably and in good faith, that the prospect of Obligors' payment or other performance under the Loan Documents is impaired.

7.4. Representations and Warranties. Any and all representations and warranties made by Obligors or any Obligor in connection with the Loan Documents, including without limitation those contained herein, shall at all times be true and accurate.

8. Affirmative Covenants. In addition to the covenants contained in the Existing Loan Documents, Obligors covenant and agree that, from the date hereof and until payment in full of the Note, they will comply with all of the following:

8.1. Appraisals. Obligors shall cooperate fully with any appraisers, together with their employees and agents, employed by Lender with respect to the Collateral.

8.2. Compliance with Law. Obligors shall comply fully with all applicable statutes, laws and regulations; maintain, preserve and keep all property and assets (including but not limited to the Collateral) in good repair, working order and condition, and make all needed replacements, additions, improvements and renewals thereto, to the extent allowed by the Loan Documents.

8.3. Access to Books and Records. Obligors shall allow Lender and its agents, during normal business hours, to have access to books, records and such other documents of Obligors as Lender shall reasonably require, and allow Lender to make copies thereof.

8.4. Insurance. Obligors shall maintain adequate insurance coverage for all Collateral (with the exception of deposit accounts), including but not limited to, insurance against loss by fire and other hazards included in the term "extended coverage," workmen's compensation insurance, and business interruption insurance in such amounts and with such companies as Lender may from time to time reasonably require, and shall promptly pay all premiums for such when due.

8.5. Payment of Debts. Obligors shall pay and discharge when due, and before subject to penalty or further charge, and otherwise satisfy before maturity or delinquency, all obligations, debts, taxes, and liabilities of whatever nature or amount that may affect any of the Collateral.

8.6. Additional Documents. Obligors shall execute such other ancillary documents as Lender may reasonably request to effectuate the express purposes of this Agreement.

8.7. Additional Advances by Lender to Maintain Collateral. The Obligors acknowledge and agree that Lender may deem it necessary for Lender to advance additional funds to maintain the Collateral, including without limitation the Real Property Collateral, and Obligors agree Lender may, in its sole and absolute discretion, do so pursuant to the provisions of the Deeds of

Trusts and such amounts shall become additional amounts due and owing under the Notes and secured by the Collateral.

9. Rights and Remedies Upon Default. Obligors shall be in default if they fail to perform, keep or observe any term, covenant or condition of this Agreement or any of the Loan Documents or if any representation or warranty made by Obligors or any Obligor in connection with the Loan Documents, including without limitation those contained herein, should become untrue, inaccurate or misleading in any way (collectively, a "Default"). Upon the occurrence of a Default and at any time thereafter, Lender may immediately terminate the Forbearance Period without notice to any of the Obligors; and the Note, the New LOC Note and the New Working Capital Note shall each be immediately due and payable in full and Lender may exercise any and all rights and remedies available to it under the Loan Documents and applicable law without notice to Obligors. In addition to any rights and remedies available to it under the Loan Documents and applicable law, Obligors, with the consent of all the parties hereto, agree as follows:

9.1. In accordance with the provisions of Section 45-21.16(f) of the North Carolina General Statutes, the Obligors shall execute and deliver to the Lender Waivers of Right to Notice and Hearing, prepared by and in form and substance satisfactory to the Lender in its sole discretion, with respect to the Deed of Trust and the New Deed of Trust to allow for the immediate and expedited foreclosure of the Real Property Collateral. Such waivers shall be duly executed and returned to Lender within three (3) business days of delivery to Obligors.

9.2. Upon the occurrence of a Default, the Obligors shall cooperate fully in allowing the Lender to foreclose all of the non-released Real Property Collateral under the terms of the Deed of Trust and the New Deed of Trust. Upon completion of any foreclosure sale or prior thereto upon the request of the Lender, the Obligors shall cooperate fully to allow the successful bidder to take title and possession of all or any portion of the Collateral.

9.3. If and to the extent so requested by the Lender (in Lender's sole and absolute discretion), upon the occurrence of a Default, the Obligors shall convey to the Lender or its designee all or any part of the Real Property Collateral in lieu of foreclosure, subject to any and all liens or encumbrances, "as is" and without covenants, warranties or representations of any kind, with the exception of such ordinary closing representations or warranties that may be required from the Obligors by any title insurance company to issue an owner's and lender's policy of title insurance in regards to such transaction for the purchase of the Real Property Collateral in question, subject to such exceptions in the applicable policies acceptable to the affected owner or lender, including, for instance, lien waivers together with acknowledgements by the record owners of the Real Property Collateral of due and proper corporate or organizational approval, authority and execution of deeds and other ordinary closing documents for such transactions.

9.4. Upon the occurrence of a Default, the Obligors shall promptly execute such other documents as the Lender may request to evidence and facilitate the transactions described in this Agreement and which may assist the Lender and/or the successful bidder(s) at any foreclosure sale(s) in taking title and possession of the Collateral. Such documents shall be prepared by and in form and substance satisfactory to the Lender in its sole discretion.

9.5. Upon the occurrence of a Default, the Obligors shall provide and continue to provide to the Lender such assistance as the Lender may reasonably require in marketing the Collateral or forwarding prospective purchasers to the Lender's broker or other designee and facilitate a smooth transfer of title and possession to any purchaser.

10. Release of Claims and Covenant Not to Sue. As a material inducement to Lender to enter into this Agreement and to grant the additional concessions to Obligors reflected herein, all in accordance with and subject to the terms and conditions of this Agreement, and all of which are to the direct advantage and benefit of Obligors, the Obligors, for themselves, their respective successors, and assigns, (a) do hereby remise, release, acquit, satisfy and forever discharge Lender, and all of the past, present and future officers, directors, employees, agents, attorneys, representatives, participants, heirs, successors and assigns of Lender, from any and all manner of debts, accountings, bonds, warranties, representations, covenants, promises, contracts, controversies, agreements, liabilities, obligations, expenses, damages, judgments, executions, actions, claims, demands and causes of action of any nature whatsoever, whether at law or in equity, either now accrued or hereafter maturing and whether known or unknown, which Obligors now have or hereafter can, shall or may have by reason of any matter, cause or thing, from the beginning of the world to and including the date of this Agreement, including specifically, but without limitation, matters arising out of, in connection with or relating to (i) the Notes, (ii) the Loan Documents or the indebtedness evidenced thereby, including, but not limited to, the administration or funding thereof, and (iii) any other agreement or transaction between Obligors and Lender or any subsidiary or affiliate of such parties relating to the Loan Documents; and (b) do hereby covenant and agree never to institute or cause to be instituted or continue prosecution of any suit or other form of action or proceeding of any kind or nature whatsoever against Lender or any subsidiaries or affiliates of such parties, or any of its past, present or future officers, directors, employees, agents, attorneys, representatives, participants, heirs, successors or assigns, by reason of or in connection with any of the foregoing matters, claims or causes of action, provided, however, that the foregoing release and covenant not to sue shall not apply to any claims arising after the date of this Agreement with respect to acts, occurrences or events after the date of this Agreement.

11. Waiver of Automatic Stay; Supplemental Stay; Cash Collateral. Obligors acknowledge and agree that in the event of the filing of any petition for bankruptcy relief filed by or against any Obligor:

11.1. Each Obligor consents to the entry of an order granting Lender relief from the automatic stay of §362 of the Bankruptcy Code against them and the Collateral, and shall not assert or request any other party to assert that the automatic stay provided by §362 of the Bankruptcy Code shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights it has under the Loan Documents, or any other rights Lender has against any Obligor or against any Collateral;

11.2. Obligors shall not seek or request any other party to seek a supplemental stay or any other relief, whether injunctive or otherwise, pursuant to §105 of the Bankruptcy Code or any other provision of the Bankruptcy Code, to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights it has under the Loan Documents, or any other rights Lender has against any Obligor or against any Collateral.

11.3. Obligors shall not seek, or request any other party to seek, the use of Lender's "cash collateral" as that term is defined by §363(a) of the Bankruptcy Code.

12. Attorneys Fees and Expenses. Obligors shall, upon demand by Lender, pay or reimburse Lender for all costs and expenses incurred by Lender in connection with the Existing Defaults and the preparation and execution of this Agreement, including without limitation all attorneys' fees, premiums for title insurance and policy endorsements, fees incurred by Lender in

connection with appraisals of any Collateral and any environmental compliance assessments and remediation costs (if any) required by law or regulation or otherwise deemed necessary or desirable by Lender, and all recording fees. Notwithstanding any other provisions contained in the Loan Documents, if Lender retains an attorney in order to enforce, defend or protect Lender's rights under the Loan Documents or if Lender retains an attorney in connection with any default or any stated or accelerated maturity of the obligations to Lender in order to collect any debt due Lender or if Lender retains an attorney in connection with any lawsuits, reorganization, bankruptcy or other proceeding involving the Loan Documents or if any Obligor sues Lender, then in any such instance Obligors agree to pay Lender in addition to all principal, interest, late charges and fees, all of Lender's reasonable costs and expenses including reasonable attorneys' fees incurred by Lender. Any amounts due hereunder shall be deemed additional amounts due under the Note, the New LOC Note and the New Working Capital Note and shall be secured by the Guaranties and the Collateralization Documents.

13. Miscellaneous.

13.1. Cumulative Rights. No right, power or remedy conferred upon or reserved to Lender in the Loan Documents is exclusive of any other right, power or remedy conferred upon the Lender hereunder or at law or in equity. Each remedy shall be cumulative and concurrent.

13.2. No Waiver. Lender may, in its sole discretion, from time to time waive or forbear from enforcing any provision contained in the Loan Documents and no such waiver or forbearance shall be deemed a waiver by Lender of any other right or remedy provided herein or therein or by law or be deemed a waiver of the right at any later time to enforce strictly all provisions contained in the Loan Documents and to exercise any and all remedies provided therein and by law.

13.3. Survival of Representations and Warranties. All representations and warranties made in this Agreement or any other document furnished in connection with this Agreement shall survive the execution and delivery of this Agreement and the other documents, and no investigation by Lender or any Closing shall affect the representations and warranties or the right of Lender to rely upon them.

13.4. Admissions. Obligors expressly acknowledge and agree that the waivers, estoppels and releases contained in this Agreement shall not be construed as an admission of wrongdoing, liability or culpability on the part of Lender or an admission by Lender of the existence of any claims of Obligors against Lender.

13.5. Construction of Agreement. Each Party acknowledges that it has participated in the negotiation of this Agreement, and no provision of this Agreement shall be construed against or interpreted to the disadvantage of any Party hereto by any court or other governmental or judicial authority by reason of such Party having or being deemed to have structured, dictated or drafted such provision. Obligors jointly and severally acknowledge that at all times each has been represented by an attorney in the negotiation of the terms of and in the preparation and execution of this Agreement, or has voluntarily decided not to be represented by an attorney, and each has had the opportunity to review and analyze this Agreement for a sufficient period of time prior to the execution and delivery thereof. No representations or warranties have been made by or on behalf of Lender, or relied upon by Obligors, pertaining to the subject matter of this Agreement, other than those set forth in this Agreement. This Agreement and the Loan Documents embody the entire agreement and understanding among the Parties to the subject matter hereof and supersede all prior proposals, negotiations, agreements and understanding relating to such subject matter.

13.6. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed given on the third day following the date deposited in the United States mail, postage prepaid, sent by first class mail and, alternatively, shall be deemed given on the next day following the date such notice is delivered to a nationally recognized overnight delivery service such as Federal Express and addressed as follows:

Borrower: BLE DEVELOPMENT, LLC
PO BOX 370
HARKERS ISLAND, NC 28531

Guarantors: MICHAEL WILLIAM LAWS
PO BOX 370
HARKERS ISLAND, NC 28531

SIDNEY N. BAZEMORE
PO BOX 370
HARKERS ISLAND, NC 28531

JCIP: JAMES CREEK INVESTMENT PARTNERS, LLC
PO BOX 370
HARKERS ISLAND, NC 28531

HISC: HARKERS ISLAND SEWER COMPANY, LLC
PO BOX 370
HARKERS ISLAND, NC 28531

Price: MICHAEL PRICE
270 PINTAIL
LEXINGTON NC 27295

Lender: BANK OF NORTH CAROLINA
Attn: Jeffrey H. Joyce, Sr.
415 Jake Alexander Blvd. West
Salisbury, NC 28147

With a copy to: ROBERSON HAWORTH & REESE, PLLC
Attn: Alan B. Powell
300 N. Main Street, Suite 300
High Point, NC 27260

Any Party may, from time to time, designate a different notice address by notice given as herein provided.

13.7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina without regard to its conflict of law provisions.

13.8. Headings. The headings of the articles, sections and subsections of this Agreement are for the convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof or thereof.

13.9. No Assignment. The rights and obligations of Obligors hereunder may not be assigned or transferred to any person or entity without the express written consent of Lender.

13.10. No Modifications. The terms of this Agreement may not be changed, modified, waived, discharged or terminated orally, but only by an instrument or instruments in writing, signed by the Party against whom the enforcement of the change, modification, waiver, discharge or termination is asserted.

13.11. Invalid Provision to Affect no Others. If, from any circumstances whatsoever, fulfillment of any provisions of this Agreement or any transaction related thereto shall be held invalid, then such provision only shall be deemed invalid, and the remainder of this Agreement shall remain operative and in full force and effect.

13.12. Time of Essence. Time is of the essence in respect of this Agreement.

13.13. Waiver of Punitive Damages. Obligors and Lender agree that no Party shall have a remedy of punitive or exemplary damages against the other in any dispute and hereby waive any right or claim to punitive or exemplary damages they have now or which may arise in the future in connection with any dispute where the dispute is resolved by arbitration or judicially.

13.14. Waiver of Jury Trial. OBLIGORS HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE NOTE, THE NEW LOC NOTE, THE NEW WORKING CAPITAL NOTE, GUARANTIES OR COLLATERALIZATION DOCUMENTS. OBLIGORS ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO LENDER TO ENTER INTO THIS AGREEMENT, THAT LENDER HAS RELIED UPON THIS WAIVER IN ENTERING INTO THIS AGREEMENT AND THAT LENDER WILL CONTINUE TO RELY ON THIS WAIVER IN THE PARTIES' RELATED FUTURE DEALINGS. OBLIGORS WARRANT AND REPRESENT THAT EACH HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

13.15. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all counterparts together shall constitute one and the same instrument.

13.16. Confidentiality. No Party will disclose the existence or terms of this Agreement to any third party, except to such Party's officers, agents, attorneys or accountants or other similar professionals, as required by any order of a Court of competent jurisdiction, or as necessary to effectuate the purposes of this Agreement.

14. Reaffirmation of Guaranties. Laws and Bazemore do each hereby:

- (a) Acknowledge their consent and approval to the terms of this Agreement;
- (b) Waive any right to contest the value received for any Real Property Collateral in the case of any foreclosure proceeding initiated by Lender or assert that any such consideration was inadequate;
- (c) Stipulate that the Guaranties remain in full force and effect, and are not subject to offset, defense, reduction or counterclaim; and

(d) Reaffirm the Guaranties in all respects including, specifically, all of the waivers contained therein.

15. Closing; Conditions Precedent to Closing: The obligation of Lender to close this Agreement is subject to Obligors, as applicable, delivering and/or satisfying each of the following conditions precedent in form and content satisfactory to Lender:

- (a) Executed duplicate originals of this Agreement in the form as approved and submitted by Lender or Lender's counsel for execution;
- (b) Duly executed originals of all documents and instruments required pursuant to paragraphs 2, 3 and 4 hereir above; and
- (c) Such other documents, instruments, agreements and information as Lender may reasonably request.

"Closing" shall occur when Lender declares that the foregoing conditions have been satisfied as evidenced by Lender's execution of this Agreement.

16. Closing Deadline. The Closing must occur on or before June 5, 2013.

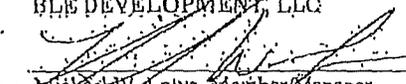
IN WITNESS WHEREOF, the parties have executed and delivered this Agreement under seal, pursuant to authority duly given as of the day and year first above written.

[Signature Page to Follow]

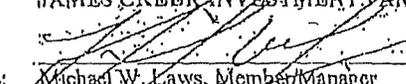
[SIGNATURE PAGE TO LOAN MODIFICATION AGREEMENT DATED JUNE 5, 2013]

THIS AGREEMENT SHALL NOT GIVE RISE TO ANY OBLIGATION ON THE PART OF LENDER TO FURTHER EXTEND, MODIFY OR WAIVE ANY TERM OR CONDITION OF THE LOAN DOCUMENTS UPON THE EXPIRATION OF THE FORBEARANCE PERIOD OR UPON THE MATURITY OF ANY DEBT OR OBLIGATION REFERENCED HEREIN, NOR SHALL IT ESTABLISH A CUSTOM OR COURSE OF DEALING BETWEEN OR AMONG THE OBLIGORS AND THE LENDER OR OBLIGATE LENDER IN ANY WAY TO FURTHER NEGOTIATE WITH OBLIGORS FOLLOWING THE EXPIRATION OF THE FORBEARANCE PERIOD.

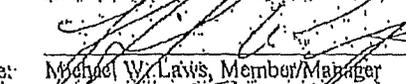
BLE DEVELOPMENT, LLC

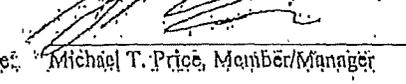
By:  (SEAL)
Title: Michael W. Laws, Member/Manager

JAMES CREEK INVESTMENT PARTNERS, LLC

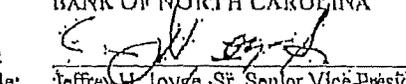
By:  (SEAL)
Title: Michael W. Laws, Member/Manager

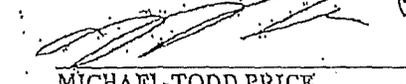
HARKERS ISLAND SEWER COMPANY, LLC

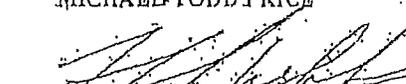
By:  (SEAL)
Title: Michael W. Laws, Member/Manager

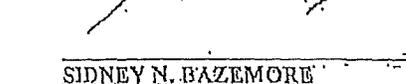
By:  (SEAL)
Title: Michael T. Price, Member/Manager

BANK OF NORTH CAROLINA

By:  (SEAL)
Title: Jeffrey H. Joyce, Sr., Senior Vice President

 (SEAL)
MICHAEL TODD PRICE

 (SEAL)
MICHAEL WILLIAM LAWS

 (SEAL)
SIDNEY N. BAZEMORE

*** Sidney S. Bazemore joins in the execution of this Agreement solely in his capacity as an existing Guarantor and to consent to the modifications of the Note; the Parties acknowledge and agree that, by virtue of his execution of this Agreement, Sidney S. Bazemore in no way obligates himself personally with respect to the New LOC Note or the New Working Capital Note or any new obligations of the Parties hereunder going forward.

SCHEDULE 1.12

(Schedule of threatened actions, litigation, disputes, etc.)

Initials of (i) Manager of Borrower and JCIP and (ii) each Guarantor

SCHEDULE 1.13

(Schedule of defaults)

Initials of (i) Manager of Borrower and JGIP and (ii) each Guarantor

SCHEDULE 2.1

(New LOC Note)

SEE ATTACHED PROMISSORY NOTE

Initials of (i) Manager of Borrower and JCI and (ii) each Guarantor

SCHEDULE 3

(New Working Capital Note)

SEE ATTACHED PROMISSORY NOTE

Initials of (i) Manager of Borrower and JCIP and (ii) each Guarantor

SCHEDULE 4
(Modification to Note)



FILE # 1496098

NORTH CAROLINA, CARTERET COUNTY
This instrument and this certificate are duly filed at
the date and time and in the Book and Page shown
on the first page hereof.

Jerry J. Hardesty, Register of Deeds
By *[Signature]*
Deputy Register of Deeds

FOR REGISTRATION REGISTER OF DEEDS
Jerry J. Hardesty, Jr.
Carteret County, NC
December 09, 2014 12:00:22
LDL DEED 5 P
FEE: \$26.00
NC REVENUE STAMP: \$2,366.00
FILE # 1496098

Mall To: ROBERSON HAWORTH & REESE, PLLC, P.O. BOX 1550, HIGH POINT, NC 27261
This instrument was prepared by: Richard A. Manger, Esq.

TRUSTEE'S DBED FOR SALE OF LAND Revenue Stamps: \$2,366.00

Property address & Tax Parcel ID #: See attached

STATE OF NORTH CAROLINA
Carteret County.

THIS DEED, Made this 19th day of November, 2014, by Richard A. Manger, Substitute Trustee, party of the first part, to Bank of North Carolina, of Davidson County, State of North Carolina, party of the second part, witnesseth:

That Whereas, on February 24, 2011, BLE Development, LLC executed and delivered unto BNC Credit Corp., Trustee, a certain Deed of Trust, which is recorded in the office of the Register of Deeds for Carteret County, in Book 1368, Page 387;

And Whereas, under and by virtue of the authority conferred by the said Deed of Trust, and in accordance with the terms and stipulations of the same, and after due advertisement as in said Deed of Trust prescribed and by law provided, the said Richard A. Manger, Substitute Trustee, did on November 6, 2014, at Carteret County Courthouse, Beaufort, North Carolina expose to public sale the lands hereinafter described, where and when Bank of North Carolina became the last and highest bidder for the same at the price of \$1,182,773.00;

And Whereas, the said purchase price has been fully paid or arranged to be paid as in said Deed of Trust prescribed:

Now Therefore, in consideration of the premises and of the sum of \$1,182,773.00 paid to the said party of the first part by the said party of the second part, and the receipt whereof is hereby acknowledged, and under and by virtue of the power and authority by said Deed of Trust conferred, the said Richard A. Manger, Substitute Trustee as aforesaid, does hereby bargain, sell and convey unto the said Bank of North Carolina, their heirs and assigns, that (those) certain parcel(s) or tract(s) or lot(s) of land lying and being in the County of Carteret, State of North Carolina, and defined and described as follows, to wit:

SEE ATTACHED LEGAL DESCRIPTION

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, wells, ditches and water stock, crops, timber, all diversion payments or third party payments made to crop producers and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described (all referred to as Property).

This property sold subject to all applicable taxes, assessments, easements, rights-of-way, restrictions of record, liens or other prior encumbrances, if any. And further subject to any valid releases recorded prior to the foreclosure sale cited herein.

The Substitute Trustee makes no representation or warranty as to the type or existence of a structure situated on the property conveyed hereby or whether or not said structure has been affixed in any way. Likewise, Substitute Trustee makes no warranties or representations of any kind as to whether title to the mobile/manufactured home(s) on the property conveyed hereby, if any, has been properly cancelled or whether there are any outstanding liens thereon.

Name and Address of Purchaser/Grantee:

Bank of North Carolina
833 Julian Avenue
Thomasville, North Carolina 27360

To have and to hold said land and premises and all privileges and appurtenances thereto belonging unto the said Bank of North Carolina, their heirs and assigns forever, in as full and ample manner as the said Richard A. Manger, Substitute Trustee as aforesaid, is authorized and empowered to convey the same.

In Witness Whereof, the said Richard A. Manger, Substitute Trustee as aforesaid, has hereunto set his hand and affixed his seal, the day and year first above written.

[Signature]
Richard A. Manger Substitute Trustee

(SEAL)

BOOK 1496 PAGE 98

5



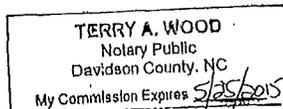
STATE OF NORTH CAROLINA, GUILFORD County.

I, Terry A. Wood, a Notary Public in Davidson County and for the said State, do hereby certify that Richard A. Manger, Substitute Trustee, the grantor named in the foregoing Deed, personally appeared before me this day and acknowledged the due execution of the said Deed for the purposes therein expressed.

Witness my hand and notarial seal, this 19th day of November, 2014.

My Commission expires: 5/25/2015

Terry A. Wood, Notary Public
Terry A. Wood



STATE OF NORTH CAROLINA, _____ County.

The foregoing certificate(s) of _____

is (are) certified to be correct. This instrument was presented for registration this _____ day of _____, 2014, at _____ A.M., P.M., and duly recorded in the office of the Register of Deeds of _____ County, North Carolina, in Book _____, Page _____.

This the _____ day of _____, A.D., 2014.

Register of Deeds

By _____
Assistant, Deputy Register of Deeds

Fee \$ _____ paid.

BOOK 1496 PAGE 98

BLE DEVELOPMENT, LLC & JAMES CREEK INVESTMENT PARTNERS, LLC - TRUSTEE'S DEED ATTACHMENT

<u>Address</u>	<u>Tax Parcel ID #</u>
Lot 1, 207 Tall Pines Way, James Creek Subdivision Phase 1	732512968499000
Lot 2, 203 Tall Pines Way, James Creek Subdivision Phase 1	732512968367000
Lot 3, 221 Tall Pines Way, James Creek Subdivision Phase 1	732512968267000
Lot 4, 227 Tall Pines Way, James Creek Subdivision Phase 1	732512968177000
Lot 5, 237 Tall Pines Way, James Creek Subdivision Phase 1	732512968057000
Lot 6, 313 Clam Bed Court, James Creek Subdivision Phase 1	732512958937000
Lot 7, 317 Clam Bed Court, James Creek Subdivision Phase 1	732512959818000
Lot 8, 321 Clam Bed Court, James Creek Subdivision Phase 1	732512959712000
Lot 9, 318 Clam Bed Court, James Creek Subdivision Phase 1	732512958710000
Lot 10, 314 Clam Bed Court, James Creek Subdivision Phase 1	732512957704000
Lot 11, 312 Clam Bed Court, James Creek Subdivision Phase 1	732512956846000
Lot 29, 128 James Creek Way, James Creek Subdivision Phase 1	733509060618000
Lot 30, 138 James Creek Way, James Creek Subdivision Phase 1	732512968679000
Lot 31, 182 James Creek Way, James Creek Subdivision Phase 1	732512966679000
Lot 48, 314 Skiff Court, James Creek Subdivision Phase 1	732512966431000
Lot 67, 236 Tall Pines Way, James Creek Subdivision Phase 1	732512966137000
Lot 68, 315 Skiff Court, James Creek Subdivision Phase 1	732512966216000
Lot 69, 321 Skiff Court, James Creek Subdivision Phase 1	732512964245000
Lot 70, 329 Skiff Court, James Creek Subdivision Phase 1	732512963248000
Lot 80, 328 Skiff Court, James Creek Subdivision Phase 1	732512964416000
Sewer Collection Station, 349 Skiff Court, James Creek Subdivision	732512960259000
Reserved for future development, James Creek Subdivision	732512879551000
Reserved for future development, James Creek Subdivision	732512964038000
Private roads, James Creek Subdivision	732512965257000
Entrance area, James Creek Subdivision	733509061442000
2.775 acres common area & boat slips, 280 Oak Hammock Drive, James Creek Subdivn	733505078526000
Lot 115, 206 Leeward Lane, Channel Rock Landing Phase 2, Beaufort, NC	733701095469000
Lot 116, 204 Leeward Lane, Channel Rock Landing Phase 2, Beaufort, NC	733701096436000

Exhibit A

Parcel 1:

Being all Lots 115 and 116, Phase II, Channel Rock Landing as more particularly described on that plat entitled "Channel Rock Landing, Phase II - Lots 106A 106B, 115 and 116", dated February 19, 2007, as prepared by Stroud Engineering, P.A., Morehead City, NC, and record in map book 31, page 259, Carteret County Registry.

Parcel 2:

Beginning at an existing iron pipe located on the east line of Fulford Drive, which beginning point is located N 05-37-00 E, 107.75 feet from the northwest corner of Lot 3, Block C, West Mouth Bay, Map Book 12, Page 26, Carteret County Registry; thence from said point of beginning, and with Fulford Drive, N 05-37-00 E, 336.00 feet to a point; thence S 86-25-00 E, and crossing a canal, 355.93 feet to an existing iron pipe in the marsh; thence with the marsh, S 04-24-00 W, 337.29 feet to an existing iron pipe; thence crossing a canal, N 86-11-00 W, 363.00 feet to the point of beginning, and being shown on an Atlantic Coast Professional Surveying Plat dated May 31, 1999. This description is the same property which was conveyed to Grantors herein by deed in Book 1208, Page 62, Carteret County Registry.

Parcel 3:

Being all of that property more particularly described as "N/F BLE, DEVELOPMENT, LLC, DB 1180, PG36, PIN 7325-1296-4732-000" on that survey entitled "Conservation Area Survey of the Jane's Creek Subdivision for BLE, LLC, Harkers Island Township, Carteret County, November 10, 2010", prepared by True Line Surveying, P.C., Clayton, NC, reference to which survey is made for greater certainty of description. THERE IS EXCEPTED FROM THIS PARCEL 3 DESCRIPTION, HOWEVER, THE FOLLOWING PARCELS:

a. Conservation Area Plus Access Easement. That portion of the above described property appearing on the reference survey with "cross-hatched" shading, and shown thereon as "OWNERSHIP IN THESE 48.320 ACRES TO BE TRANSFERRED IMMEDIATELY TO THE AUDUBON ENVIRONMENTAL LAND TRUST UPON RECORDING OF THIS FINAL PLAT, (HATCHED AREA), 2104819 SF, 48.320 ACRES". (This excepted portion was, in fact, conveyed to such Land Trust by deed dated December 9, 2010, recorded in Book 1361, Page 82, as corrected by correction deed in Book 1362, Page 28, Carteret County Registry.) This excepted portion also includes that 30' appurtenant easement for ingress and egress as shown by dotted lines on the referenced survey and appears as "30' INGRESS & EGRESS EASEMENT"

BOOK 1496 PAGE 98

thereon, which easement connects the excepted 48,320 acreage described above to Oak Hammock Drive, which is the public right of way.

b. Joyce Godwin Property Plus Access Easement. That portion of the above described property appearing on the referenced survey as "145369 SF, 3.337 AC, M/F JOYCE L. GODWIN REC. TRUST, DB 1051 PG 24, USE: RESIDENTIAL". This excepted portion also includes that 50' appurtenant easement for ingress and egress shown on said survey as "50' ACCESS EASEMENT" and also as "JAMES CREEK WAY, 50' R/W (PRIVATE)", which easement connects the excepted 3.337 acreage described above to Oak Hammock Drive, which is the public right of way.

c. Lots 14, 25 and 51 Plus Access Easement. That portion of the above described property appearing as Lots 14, 25 and 51 as more particularly shown upon that survey entitled "Preliminary Plat of James Creek Subdivision for BLE, LLC, Harkers Island Township, Carteret County, North Carolina, October 21, 2009, Sheet 1 of 2; prepared by True Line Surveying, P.C., Clayton, NC, reference to which survey is made for greater certainty of description. This excepted portion also includes that 50' appurtenant easement for ingress and egress shown on said survey as "TALL PINES WAY, 50' R/W (PRIVATE)" and also as "JAMES CREEK WAY, 50' R/W (PRIVATE)", which easement connects the excepted three lots described above to Oak Hammock Drive, which is the public right of way.

This Parcel 3 is a portion of that property shown as Tracts 1, 2 and 3 on that recorded Plat in Map Book 31, Page 4, Carteret County which includes, but is not limited to Lots 1-11, 29-31, 48, 67-70 and 80 as recorded in Map Book 32, Page 403.



North Carolina Department of Environment and Natural Resources

Pat McCrory
Governor

Donald van der Vaart
Secretary

January 7, 2015

Michael W. Laws -- Managing Partner
Harkers Island Sewer Company, LLC
P.O. Box 370
Harkers Island, NC 28531-0370

Subject: Permit No. WQ0024023
West Bay WWTF
High-Rate Infiltration System
Carteret County

Dear Mr. Laws:

In accordance with your permit renewal request received September 30, 2014, we are forwarding herewith Permit No. WQ0024032 dated January 7, 2015, to Harkers Island Sewer Company, LLC for the continued operation of the subject wastewater treatment and high-rate infiltration facilities.

This permit shall be effective from the date of issuance until December 31, 2019, and shall be subject to the conditions and limitations as specified therein. Please pay particular attention to the monitoring requirements listed in Attachments A, B and C for they may differ from the previous permit issuance. Failure to establish an adequate system for collecting and maintaining the required operational information shall result in future compliance problems.

For your convenience, customized electronic copies of your facility's NDMR, and NDAR-2 reporting forms are available for download at: <http://portal.ncdenr.org/web/wq/aps/lau/reporting>.

Please note the following permit conditions are new since the last permit issuance:

- Permit description under Phase I is updated to include the 2 anoxic tanks that are shown on the original drawings (submitted in 2004).
- Attachment C -- adding pH to groundwater monitoring parameters.

If any parts, requirements or limitations contained in this permit are unacceptable, the Permittee has the right to request an adjudicatory hearing upon written request within 30 days following receipt of this permit. This request shall be in the form of a written petition, conforming to Chapter 150B of the North Carolina General Statutes, and filed with the Office of Administrative Hearings at 6714 Mail Service Center, Raleigh, NC 27699-6714. Unless such demands are made, this permit shall be final and binding.

Non-Discharge Permitting Unit
1617 Mail Service Center, Raleigh, North Carolina 27699-1617
Phone: 919-807-6464 | Internet: <http://portal.ncdenr.org/web/wq>

An Equal Opportunity/Affirmative Action Employer-- Made in part with recycled paper



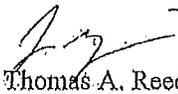
OFFICIAL COPY

May 02 2019

Mr. Laws
January 7, 2015
Page 2 of 2

If you need additional information concerning this permit, please contact Chonticha McDaniel at (919) 807-6337 or chonticha.mcdaniel@ncdenr.gov.

Sincerely,


S. Thomas A. Reeder, Director
Division of Water Resources

cc: Carteret County Health Department (Electronic Copy)
Wilmington Regional Office, Water Quality Regional Operations Section (Electronic Copy)
Digital Permit Archive (Electronic Copy)
Central Files

NORTH CAROLINA
 ENVIRONMENTAL MANAGEMENT COMMISSION
 DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
 RALEIGH
 HIGH-RATE INFILTRATION SYSTEM PERMIT

In accordance with the provisions of Article 21 of Chapter 143, General Statutes of North Carolina as amended, and other applicable Laws, Rules and Regulations

PERMISSION IS HEREBY GRANTED TO

Harkers Island Sewer Company, LLC
 Carteret County

FOR THE

construction and operation of the West Bay WWTF and high rate disposal facility with no discharge of wastes to surface waters, pursuant to the application received September 30, 2014, and subsequent additional information received by the Division of Water Quality, and in conformity with the project plans, specifications, and other supporting data subsequently filed and approved by the Department of Environment and Natural Resources and considered a part of this permit using a three (3) phase construction schedule to be carried out as described below:

Phase I (treatment and disposal = 10,080 GPD):

Phase I system includes the continued operation of a 10,080 GPD wastewater treatment and disposal facilities consisting of a 12,600 gallon flow equalization basin, Omega 37GPM influent flow meter, 2 aeration basins, 2 anoxic tanks (2,758 gallons each), a 5,200 gpd Zenon Ultrafiltration System, tablet chlorination with a minimum of 30 minutes of contact time in the chlorine contact chambers, a 5,650 gallon irrigation pump tank, a generator to power all treatment facilities, a 1.56 acre drip irrigation disposal area (Zones 1 and 2), to serve 28 lots at West Bay Subdivision and an additional 22 lots from the James Creek subdivision (Permit WQ0034190) via force main.

Phase II (treatment and disposal = 20,160 GPD):

Phase II construction shall begin prior to the monthly average wastewater flows under Phase I exceeding 8,064 GPD. Phase II expansion of the West Bay WWTF will increase the capacity to 20,160 GPD. The expansion consists of the addition of two 5040 GPD membrane filters and appurtenances, an additional 4,020 gallon aerated sludge tank, one membrane cassette to each existing train and modify plumbing to make two membrane cassettes operate as a single train, an addition of a Kaeser BB52C blower for the membrane tanks, an additional 0.15 acres of drip irrigation (Zones 3 and 4), vinyl sheet pile containment wall to be constructed around the entire perimeter of the combined 0.306 acres of drip irrigation fields, and necessary green space provided as required by 15A NCAC 02H .0404(g)(7). Phase II may also include the replacement, at the Permittee's discretion, of the tablet chlorination system with a dual Aquafine Optima ultraviolet (UV) disinfection units each with two lamps.

Phase III (Construction of James Creek WWTF (WQ0034190):

Phase III shall begin prior to the monthly average wastewater flows under Phase II exceeding 18,144 GPD. Phase III of the West Bay WWTF shall be the construct of the James Creek WWTF in accordance with plans and specifications as permitted on July 22, 2009.

The proposed phased construction includes the connection of a portion of the flows to be generated at the James Creek Subdivision with the West Bay Wastewater Treatment Facility. This permit does not include approval for construction and operation of the lift station and forcemain connecting the two subdivisions. Separate permitting through the Pretreatment, Emergency Response, and Collection System (PERCS) unit is required. In addition, approval from the Utility Commission may be necessary to demonstrate that Harkers Island Sewer Company, LLC. has the authority to connect and serve the additional subdivision.

This permit shall be effective from the date of issuance until December 31, 2019, and shall be subject to the following specified conditions and limitations:

I. SCHEDULES

1. Upon completion of construction and prior to operation of this permitted facility, a certification (attached) shall be submitted from a licensed North Carolina Professional Engineer certifying that the permitted facility has been installed in accordance with this permit, Division approved plans and specifications, and other supporting documentation, including the location of all monitoring wells as applicable. If this project is to be completed in phases and partially certified, the Permittee shall retain the responsibility to track further construction approved under the same permit, and shall provide a final certificate of completion once the entire project has been completed. Mail the Certification to the Division of Water Resources, Water Quality Permitting Section, 1636 Mail Service Center, Raleigh, NC 27699-1636. [15A NCAC 02T .0116(a)]
2. Prior to construction of Phase II plant upgrade and infiltration Zones 3 and 4 listed in Attachment B, the Permittee must submit for evaluation and approval a soils report for these zones prepared pursuant to 15A NCAC 02T .0704.
3. Prior to construction of Phase II plant upgrade and infiltration Zones 3 and 4 listed in Attachment B, the Permittee must submit the required setback waivers pursuant to 15A NCAC 02T .0706.
4. Prior to the operation of the collection system, influent pumping station, and the force main from the James Creek subdivision to the West Bay WWTF the Permittee shall obtain all necessary permits from the Division's PERCS unit.
5. The Wilmington Regional Office, telephone number (910) 796-7215, shall be notified at least 48 hours in advance (excluding weekends and holidays) of operation of the installed facilities such that an in-place inspection can be made. Notification to the regional supervisor shall be made from 8:00 a.m. until 5:00 p.m. on Monday through Friday, excluding State Holidays. [15A NCAC 02T .0108(b)(2)]
6. No later than six months prior to the expiration of this permit, the Permittee shall request renewal of this permit on official Division forms. Upon receipt of the request, the Division will review the adequacy of the facilities described therein, and if warranted, will renew the permit for such period of time and under such conditions and limitations as it may deem appropriate. Please note Rule 15A NCAC 02T .0105(d) requires an updated site map to be submitted with the permit renewal application.

7. In accordance with 15A NCAC 02H .0404(e), if the subject wastewater treatment or infiltration facilities are in noncompliance with the terms and conditions of this permit, governing statutes or regulations, the subject facilities shall be connected to an operational publicly owned wastewater collection system within 180 days of its availability. Prior to the initiation of these connection activities, appropriate Division approval shall be received. [15A NCAC 02H .0404(e)]

II. PERFORMANCE STANDARDS

1. The subject non-discharge facilities shall be effectively maintained and operated at all times so there is no discharge to surface waters, nor any contravention of groundwater or surface water standards. In the event the facilities fail to perform satisfactorily, including the creation of nuisance conditions due to improper operation and maintenance, or failure of the infiltration areas to adequately assimilate the effluent, the Permittee shall take immediate corrective actions including Division required actions, such as the construction of additional or replacement wastewater treatment or infiltration facilities. [G.S. 143-215.1, 143-213.3(a)]
2. This permit shall not relieve the Permittee of their responsibility for damages to groundwater or surface water resulting from the operation of this facility. [15A NCAC 02B .0200, 02L .0100]
3. All wells constructed for purposes of groundwater monitoring shall be constructed in accordance with 15A NCAC 02C .0108 (Standards of Construction for Wells Other than Water Supply), and any other jurisdictional laws and regulations pertaining to well construction. [15A NCAC 02C .0108]
4. Effluent quality shall not exceed the limitations specified in Attachment A. [15A NCAC 02T .0108(b)(1) and 15A NCAC 02T .0705(b)]
5. Application rates, whether hydraulic, nutrient or other pollutant, shall not exceed those specified in Attachment B. [15A NCAC 02T .0505(o), 02T .0505(n), 02T .0705(m)]
6. A usable green area shall be maintained for effluent disposal. The green area shall have the capability of accommodating the facility's average daily flow without exceeding the green area loading rates. As defined in 15A NCAC 02H .0404(g)(7), a "green area" is an area suitable for waste disposal, either in its natural state or which has been modified by planting a vegetative cover of grasses or low growing shrubbery. [15A NCAC 02H .0404(g)(7)]
7. For utilization sites Zones 1 and 2 permitted prior to September 1, 2006, the compliance and review boundaries are established at the property boundary. Any exceedance of standards at the compliance or review boundary shall require action in accordance with 15A NCAC 02L .0106.
8. For utilization sites Zones 3 and 4 permitted after September 1, 2006, the compliance and review boundaries are established at the utilization area boundaries. Any exceedance of standards at the compliance or review boundary shall require action in accordance with 15A NCAC 02L .0106.
9. The Permittee shall apply for a permit modification to establish a new compliance boundary prior to any sale or transfer of property affecting a compliance boundary. [15A NCAC 02L .0107(c)]
10. In accordance with 15A NCAC 02L .0107(d), no wells, excluding Division approved monitoring wells, shall be constructed within the compliance boundary except as provided for in 15A NCAC 02L .0107(g). [15A NCAC 02L .0107]

11. Except as provided for in 15A NCAC 02L .0107(g), the Permittee shall ensure any landowner who is not the Permittee and owns land within the compliance boundary shall execute and file with the Carteret County Register of Deeds an easement running with the land containing the following items; [15A NCAC 02L .0107(f)]
- a. A notice of the permit and number or other description as allowed in 15A NCAC 02L .0107(f)(1);
 - b. Prohibits construction and operation of water supply wells within the compliance boundary; and
 - c. Reserves the right of the Permittee or the State to enter the property within the compliance boundary for purposes related to the permit.

The Director may terminate the easement when its purpose has been fulfilled or is no longer needed.

12. The facilities permitted herein shall be constructed according to the following setbacks:
- a. The setbacks for high-rate infiltration sites Zones 1 and 2 permitted under 15A NCAC 02H .0200 shall be as follows (all distances in feet):

i. Any on-property residential units that are to be sold (e.g. condominiums, subdivisions)	10
ii. Any private or public water supply source:	100
iii. Surface waters:	200
iv. Any streams classified as WS or B:	200
v. Distance between mean high water and any "SA" or "SB" classified surface waters:	200
vi. Distance between normal high water between high rate infiltration unit and any Class I or Class II impounded reservoir used as a source of drinking water:	200
vii. Subsurface groundwater lowering drainage systems:	200
viii. Public right of way:	50
ix. Impounded public water supplies:	500**

** Setbacks to impounded public water supplies and public shallow groundwater supply are only for interim treatment and disposal facilities as defined in 15A NCAC 02H .0404(g).

Setback to property lines for Zones 1 and 2 were removed per 15A NCAC 02H at the time of initial permitting. Expansion of the fields would require that all current setbacks are met.

- b. The setbacks for high-rate infiltration sites Zones 3 and 4 permitted under 15A NCAC 02U .0700 shall be as follows (all distances in feet):
- | | |
|---|------|
| i. Surface waters (streams – intermittent and perennial, perennial waterbodies, and wetlands) not classified as SA: | 25. |
| ii. Surface waters (streams – intermittent and perennial, perennial waterbodies, and wetlands) classified as SA: | 100 |
| iii. Any well with exception of monitoring wells: | 100. |

No setback between the application area and property lines is required.

- c. The setbacks for storage and treatment units permitted under 15A NCAC 02T shall be as follows (all distances in feet):
- | | |
|---|-----|
| i. Any habitable residence or place of public assembly under separate ownership or not to be maintained as part of the project site | 100 |
| ii. Any private well or public water supply source | 100 |
| iii. Surface waters (streams – intermittent and perennial, perennial waterbodies, and wetlands) | 50 |
| iv. Any well with the exception of monitoring wells | 100 |
| v. Any property line: | 50 |

III. OPERATION AND MAINTENANCE REQUIREMENTS

1. The facilities shall be properly maintained and operated at all times. The facilities shall be effectively maintained and operated as a non-discharge system to prevent the discharge of any wastewater resulting from the operation of this facility. The Permittee shall maintain an Operation and Maintenance Plan pursuant to 15A NCAC 02T .0707, which at a minimum shall include operational functions, maintenance schedules, safety measures and a spill response plan. [15A NCAC 02T .0707]
2. Upon the Water Pollution Control System Operators Certification Commission's (WPCSOCC) classification of the subject non-discharge facilities, in accordance with 15A NCAC 08G .0200 the Permittee shall designate and employ a certified operator in responsible charge (ORC) and one or more certified operator(s) as back-up ORC(s). The ORC or their back-up shall visit the facilities in accordance with 15A NCAC 08G .0200, and shall comply with all other conditions specified in the previously cited rules. [15A NCAC 02T .0117]
3. Adequate measures shall be taken to prevent effluent ponding in or runoff from the irrigation sites listed in Attachment B. [15A NCAC 02T .0108(b)(1)]
4. Irrigation shall not be performed during inclement weather or when the ground is in a condition that will cause ponding or runoff. [15A NCAC 02T .0108(b)(1)]
5. All irrigation equipment shall be tested and calibrated at least once per permit cycle. Calibration records shall be maintained at the facility for a period of no less than five years, and shall be made available to the Division upon request. [15A NCAC 02T .0108(b)(1)]
6. Only effluent from West Bay WWTF shall be irrigated on the sites listed in Attachment B. [G.S. 143-215.1]
7. An automatically activated standby power source capable of powering all essential treatment units shall be on site and operational at all times. If a generator is employed as an alternate power supply, it shall be tested weekly by interrupting the primary power source. [15A NCAC 02H .0404(g)(3)]
8. No automobiles or machinery shall be allowed on the irrigation sites except during equipment installation or while maintenance is being performed. [15A NCAC 02T .0108(b)(1)]
9. Public access to the irrigation sites and wastewater treatment facilities shall be prohibited. [15A NCAC 02T .0705(p)]
10. The residuals generated from the wastewater treatment facilities shall be disposed or utilized in accordance with 15A NCAC 02T .1100. The Permittee shall maintain a residual management plan pursuant to 15A NCAC 02T .0708 [15A NCAC 02T .1100 & 15A NCAC 02T .0708]
11. Diversion or bypassing of untreated or partially treated wastewater from the treatment facilities is prohibited. [15A NCAC 02T .0705(i)]
12. A protective vegetative cover shall be established and maintained on all earthen embankments (i.e., outside toe of embankment to maximum allowable temporary storage elevation on the inside of the embankment), berms, pipe runs, erosion control areas, and surface water diversions. Trees, shrubs, and other woody vegetation shall not be allowed to grow on the earthen dikes or embankments. Earthen embankment areas shall be kept mowed or otherwise controlled and accessible. [15A NCAC 02T .0108(b)(1)]

IV. MONITORING AND REPORTING REQUIREMENTS

1. Any Division required monitoring (including groundwater, plant tissue, soil and surface water analyses) necessary to ensure groundwater and surface water protection shall be established, and an acceptable sampling reporting schedule shall be followed. [15A NCAC 02T .0108(c)]
2. A Division certified laboratory shall conduct all laboratory analyses for the required effluent, groundwater or surface water parameters. [15A NCAC 02H .0800]
3. Flow through the treatment facility shall be continuously monitored, and daily flow values shall be reported on Form NDMR.

The Permittee shall install and maintain an appropriate flow measurement device to ensure the accuracy and reliability of flow measurement consistent with accepted engineering and scientific practices. Selected flow measurement devices shall be capable of measuring flows with a maximum deviation of less than ten percent from true flow; accurately calibrated at a minimum of once per year; and maintained to ensure the accuracy of measurements is consistent with the selected device's accepted capability. The Permittee shall maintain records of flow measurement device calibration on file for a period of at least five years. At a minimum, documentation shall include:

- a. Date of flow measurement device calibration,
- b. Name of person performing calibration, and
- c. Percent from true flow.

[15A NCAC 02T .0105(k)]

4. The Permittee shall monitor the effluent from the subject facilities at the frequencies and locations for the parameters specified in Attachment A. [15A NCAC 02T .0108(c)]
5. The Permittee shall maintain adequate records tracking the amount of effluent irrigated. At a minimum, these records shall include the following information for each irrigation site listed in Attachment B:
 - a. Date of irrigation;
 - b. Volume of effluent irrigated;
 - c. Site irrigated;
 - d. Length of time site is irrigated;
 - e. Continuous weekly, monthly, and year-to-date hydraulic (inches/acre) loadings;
 - f. Continuous monthly and year-to-date loadings for any non-hydraulic parameter specifically limited in Attachment B;
 - g. Weather conditions; and
 - h. Maintenance of cover crops.

[15A NCAC 02T .0108(c)]

6. Three copies of all monitoring data (as specified in Conditions IV.3. and IV.4.) on Form NDMR for each PFI and three copies of all operation and disposal records (as specified in Conditions IV.5) on Form NDAR-2 for every site in Attachment B shall be submitted on or before the last day of the following month. If no activities occurred during the monitoring month, monitoring reports are still required documenting the absence of the activity. All information shall be submitted to the following address:

Division of Water Resources
Information Processing Unit
1617 Mail Service Center
Raleigh, North Carolina 27699-1617

[15A NCAC 02T .0105(l)]

7. A record shall be maintained of all residuals removed from this facility. This record shall be maintained at the facility for a period of no less than five years, and shall be made available to the Division upon request. At a minimum, this record shall include:
 - a. Name of the residuals hauler;
 - b. Non-Discharge permit number authorizing the residuals disposal, or a letter from a municipality agreeing to accept the residuals;
 - c. Date the residuals were hauled; and
 - d. Volume of residuals removed.

[15A NCAC 02T .0108(b)(1)]

8. A maintenance log shall be maintained at this facility. This log shall be maintained at the facility for a period of no less than five years, and shall be made available to the Division upon request. At a minimum, this log shall include:
 - a. Date and results of power interruption testing on alternate power supply;
 - b. Date of calibration of flow measurement device;
 - c. Visual observations of the plant and plant site; and
 - d. Record of preventative maintenance (e.g., changing of equipment, adjustments, testing, inspections and cleanings, etc.).

[15A NCAC 02T .0108(b)(1)]

9. Monitoring wells shall be sampled after construction and within 3 months prior to initiating non-discharge disposal operations. Monitoring wells shall be sampled thereafter at the frequencies and for the parameters specified in Attachment C. All mapping, well construction forms, well abandonment forms and monitoring data shall refer to the permit number and the well nomenclature as provided in Attachment C and Figure A. [15A NCAC 02T .0105(m)]

10. Two copies of the monitoring well sampling and analysis results shall be submitted on a Compliance Monitoring Form (GW-59), along with attached copies of laboratory analyses, on or before the last working day of the month following the sampling month. The Compliance Monitoring Form (GW-59) shall include this permit number, the appropriate well identification number, and one GW-59a certification form shall be submitted with each set of sampling results. All information shall be submitted to the following address:

Division of Water Resources
 Information Processing Unit
 1617 Mail Service Center
 Raleigh, North Carolina 27699-1617

[15A NCAC 02T .0105(m)]

11. An annual representative soils analysis (i.e., Standard Soil Fertility Analysis) shall be conducted on each irrigation site listed in Attachment B. These results shall be maintained at the facility for a period of no less than five years, and shall be made available to the Division upon request. At a minimum, the Standard Soil Fertility Analysis shall include the following parameters:

Acidity	Exchangeable Sodium Percentage	Phosphorus
Base Saturation (by calculation)	Magnesium	Potassium
Calcium	Manganese	Sodium
Cation Exchange Capacity	Percent Humic Matter	Zinc
Copper	pH	

[15A NCAC 02T .0108(c)]

12. Noncompliance Notification:

The Permittee shall report by telephone to the Wilmington Regional Office, telephone number (910) 796-7215, as soon as possible, but in no case more than 24 hours, or on the next working day following the occurrence or first knowledge of the occurrence of any of the following:

- a. Any occurrence at the facility resulting in the treatment of significant amounts of wastes that is abnormal in quantity or characteristic, including the known passage of a hazardous substance.
- b. Any process unit failure (e.g., mechanical, electrical, etc.), due to known or unknown reasons, rendering the facility incapable of adequate wastewater treatment.
- c. Any facility failure resulting in a by-pass directly to receiving surface waters.
- d. Any time self-monitoring indicates the facility has gone out of compliance with its permit limitations.
- e. Ponding in or runoff from the irrigation sites.

Any emergency requiring immediate reporting (e.g., discharges to surface waters, imminent failure of a storage structure, etc.) outside normal business hours shall be reported to the Division's Emergency Response personnel at telephone number (800) 662-7956, (800) 858-0368, or (919) 733-3300. Persons reporting such occurrences by telephone shall also file a written report in letter form within five days following first knowledge of the occurrence. This report shall outline the actions taken or proposed to be taken to ensure the problem does not recur. [15A NCAC 02T .0105]l, 02T .0108(b)(1)]

V. INSPECTIONS

1. The Permittee shall provide adequate inspection and maintenance to ensure proper operation of the wastewater treatment and irrigation facilities. [15A NCAC 02T .0108(b)]
2. The Permittee or their designee shall inspect the wastewater treatment and irrigation facilities to prevent malfunctions, facility deterioration and operator errors resulting in discharges, which may cause the release of wastes to the environment, a threat to human health or a public nuisance. The Permittee shall maintain an inspection log that includes, at a minimum, the date and time of inspection, observations made, and any maintenance, repairs, or corrective actions taken. The Permittee shall maintain this inspection log for a period of five years from the date of the inspection, and this log shall be made available to the Division upon request. [15A NCAC 02T .0108(b)]
3. Any duly authorized Division representative may, upon presentation of credentials, enter and inspect any property, premises or place on or related to the wastewater treatment and irrigation facilities permitted herein at any reasonable time for the purpose of determining compliance with this permit; may inspect or copy any records required to be maintained under the terms and conditions of this permit, and may collect groundwater, surface water or leachate samples. [G.S. 143-215.3(a)(2)]

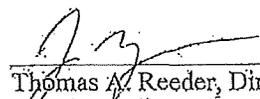
VI. GENERAL CONDITIONS

1. Failure to comply with the conditions and limitations contained herein may subject the Permittee to an enforcement action by the Division in accordance with North Carolina General Statutes 143-215.6A to 143-215.6C.
2. This permit shall become voidable if the permitted facilities are not constructed in accordance with the conditions of this permit, the Division approved plans and specifications, and other supporting documentation. [15A NCAC 02T .0110]

3. This permit is effective only with respect to the nature and volume of wastes described in the permit application, Division approved plans and specifications, and other supporting documentation. No variances to applicable rules governing the construction or operation of the permitted facilities are granted, unless specifically requested and approved in this permit pursuant to 15A NCAC 02T .0105(i). [G.S. 143-21.5.1]
4. The issuance of this permit does not exempt the Permittee from complying with any and all statutes, rules, regulations, or ordinances, which may be imposed by other jurisdictional government agencies (e.g., local, state, and federal). Of particular concern to the Division are applicable river buffer rules in 15A NCAC 02B .0200; erosion and sedimentation control requirements in 15A NCAC Chapter 4 and under General Permit NCG010000; any requirements pertaining to wetlands under 15A NCAC 02B .0200 and 02H .0500; and documentation of compliance with Article 21 Part 6 of Chapter 143 of the General Statutes.
5. In the event the permitted facilities change ownership or the Permittee changes their name, a formal permit modification request shall be submitted to the Division. This request shall be made on official Division forms, and shall include appropriate property ownership documentation and other supporting documentation as necessary. The Permittee of record shall remain fully responsible for maintaining and operating the facilities permitted herein until a permit is issued to the new owner. [15A NCAC 02T .0104]
6. The Permittee shall retain a set of Division approved plans and specifications for the life of the facilities permitted herein. [15A NCAC 02T .0108(b)(1)]
7. The Permittee shall maintain this permit until all permitted facilities herein are properly closed or permitted under another permit issued by the appropriate permitting authority. [15A NCAC 02T .0105(j)]
8. This permit is subject to revocation or unilateral modification upon 60 days notice from the Division Director, in whole or part for the requirements listed in 15A NCAC 02T .0110.
9. Unless the Division Director grants a variance, expansion of the permitted facilities contained herein shall not be granted if the Permittee exemplifies any of the criteria in 15A NCAC 02T .0120(b).
10. The Permittee shall pay the annual fee within 30 days after being billed by the Division. Failure to pay the annual fee accordingly shall be cause for the Division to revoke this permit. [15A NCAC 02T .0105(e)(3)]

Permit issued this the 7th day of January 2015

NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION



 Thomas A. Reeder, Director
 Division of Water Resources
 By Authority of the Environmental Management Commission

Permit Number WQ0024023

Permit No. WQ0024023
Harkers Island Sewer Company, LLC
West Bay WWTF

High Rate Infiltration
January 7, 2015
Carteret County

ENGINEERING CERTIFICATION

Partial Final

In accordance with 15A NCAC 02T .0116, I, _____, as a duly registered Professional Engineer in the State of North Carolina, having the Permittee's authorization to periodically weekly fully observe the construction of the permitted facility, hereby state to the best of my abilities that due care and diligence was used in the observation of the construction, such that the facility was built within substantial compliance and intent of this permit, the Division-approved plans and specifications, and other supporting documentation.

Any variation to this permit, the Division-approved plans and specifications, and other supporting documentation has been documented in the attached as-built drawings, and shall serve as the Permittee's minor modification request to amend the permit accordingly.

Provide a brief narrative description of any variations: _____

Professional Engineer's Name		
Engineering Firm		
Mailing Address		
City	State	Zip
Telephone	E-mail	
NC PE Seal, Signature & Date.		

THE COMPLETED ENGINEERING CERTIFICATION, INCLUDING ALL SUPPORTING INFORMATION AND MATERIALS, SHALL BE SENT TO THE FOLLOWING ADDRESS:
NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES
WATER QUALITY PERMITTING SECTION
NON-DISCHARGE PERMITTING UNIT

By U.S. Postal Service:
1617 MAIL SERVICE CENTER
RALEIGH, NORTH CAROLINA 27699-1617

By Courier/Special Delivery:
512 N. SALISBURY ST.
RALEIGH, NORTH CAROLINA 27604

PPI 001 – WWTP Effluent (Phase D)

EFFLUENT CHARACTERISTICS		EFFLUENT LIMITS					MONITORING REQUIREMENTS	
PCS Code	Parameter Description	Units of Measure	Monthly Average ^{3,4}	Monthly Geometric Mean	Daily Minimum	Daily Maximum ⁵	Measurement Frequency	Sample Type
00610	Nitrogen, Ammonia Total (as N) – Summer	mg/l	4				2 x month ¹	Composite
00610	Nitrogen, Ammonia Total (as N) – Winter	mg/l	4				Monthly ¹	Composite
00530	Solids, Total Suspended – Summer ⁷	mg/l	20				2 x month ¹	Composite
00530	Solids, Total Suspended – Winter ⁷	mg/l	20				Monthly ¹	Composite
00310	BOD ₅ 5-day (20 Deg. C) – Summer	mg/l	10				2 x month ¹	Composite
00310	BOD ₅ 5-day (20 Deg. C) – Winter	mg/l	10				Monthly ¹	Composite
00400	pH	unit			6	9	3 x year ²	Grab
00680	Carbon, Total Organic (TOC)	mg/l					3 x year ²	Grab
00620	Nitrogen, Nitrate Total (as N) ⁷	mg/l	20				3 x year ²	Grab
00940	Chloride (as Cl)	mg/l					3 x year ²	Grab
70295	Solids, Total Dissolved	mg/l					3 x year ²	Grab
31616	Coliform, Fecal MF-FC Broth, 44.5C – Winter	#/100ml		14			Monthly ¹	Grab
31616	Coliform, Fecal MF-FC Broth, 44.5C – Summer	#/100ml		14			2 x month ¹	Grab
50050	Flow, in conduit or thru treatment plant	gpd	10,080				Continuous	Recorder
50060	Chlorine, Total Residual ⁶	mg/l					Daily	Grab

- 2 x month sampling shall be conducted from April through October. During the remainder of the year, the parameters shall be monitored monthly.
- 3 x year monitoring shall be conducted during April, August and December.
- Monthly averages for all but fecal coliform shall be the arithmetic mean of all samples collected during the reporting period.
- Monthly average for fecal coliform shall be the geometric mean of all samples collected during the reporting period.
- Daily maximum shall be the value of all samples collected during the reporting period.
- Chlorine monitoring is required until tablet chlorinator is replaced with a UV disinfection system.
- If groundwater sampling indicates or predicts problems with compliance with the groundwater standards, this permit will be modified to include additional and/or more restrictive limitations.

ATTACHMENT A – LIMITATIONS AND MONITORING REQUIREMENTS

Permit Number: WQ0024023

Version: 2.0

PPI 002 – WWTP Effluent (Effective upon Completion of Phase II)

EFFLUENT CHARACTERISTICS		EFFLUENT LIMITS					MONITORING REQUIREMENTS	
PCS Code	Parameter Description	Units of Measure	Monthly Average	Monthly Geometric Mean	Daily Minimum	Daily Maximum	Measurement Frequency	Sample Type
00610	Nitrogen, Ammonia Total (as N) - Summer	mg/l	4			6	Weekly ¹	Composite
00610	Nitrogen, Ammonia Total (as N) - Winter	mg/l	4			6	2 x month ¹	Composite
00530	Solids, Total Suspended - Summer	mg/l	15			10	Weekly ¹	Composite
00530	Solids, Total Suspended - Winter	mg/l	15			10	2 x month ¹	Composite
00310	BOD, 5-day (20 Deg. C) - Summer	mg/l	10			15	Weekly ¹	Composite
00310	BOD, 5-day (20 Deg. C) - Winter	mg/l	10			15	2 x month ¹	Composite
00400	pH	s.u.			6	9	5 x week	Grab
00680	Carbon, Total Organic (TOC)	mg/l					3 x year ²	Grab
00620	Nitrogen, Nitrate Total (as N)	mg/l	10				3 x year ²	Grab
00940	Chloride (as Cl)	mg/l					3 x year ²	Grab
70295	Solids, Total Dissolved	mg/l					3 x year ²	Grab
31616	Coliform, Fecal MF+FC Broth, 44.5C - Winter	#/100ml		14		25	2 x month ^{1,3}	Grab
31616	Coliform, Fecal MF+FC Broth, 44.5C - Summer	#/100ml		14		25	Weekly ^{1,3}	Grab
50050	Flow, in conduit or thru treatment plant	gpd	20,160				Continuous	Recorder
00076	Turbidity, NCU Turbidimeter	ntu				10	Continuous	Recorder

- Weekly sampling frequency shall be conducted from April through October. During the remainder of the year, the parameters shall be monitored two times per month.
- 3 x year monitoring shall be conducted during April, August and December.
- Monthly average for Fecal Coliform shall be a geometric mean.

Harkers Island Sewer Company, LLC – West Bay WWTP

INFILTRATION AREA INFORMATION							APPLICATION LIMITATIONS		
Zone	Owner	County	Latitude	Longitude	Net Acreage	Dominant Soil Series	Parameter	Rate	Units
1	Harkers Island Sewer Company, LLC.	Carteret	34° 41' 51" N	76° 32' 25" W	0.08	Baymeade	01284 – Application Surface Irrigation	1.5	GPD/ft ²
2	Harkers Island Sewer Company, LLC.	Carteret	34° 41' 51" N	76° 32' 25" W	0.08	Baymeade	01284 – Application Surface Irrigation	1.5	GPD/ft ²
3 ^a	Harkers Island Sewer Company, LLC.	Carteret	34° 41' 51" N	76° 32' 25" W	0.08	Baymeade	01284 – Application Surface Irrigation	0	GPD/ft ²
4 ^a	Harkers Island Sewer Company, LLC.	Carteret	34° 41' 51" N	76° 32' 25" W	0.08	Baymeade	01284 – Application Surface Irrigation	0	GPD/ft ²
Totals					0.32				

^a Conditions 1.2 and 1.3, regarding submission of soils report and setback waivers, shall be met prior to beginning construction of Zones 3 and 4. Any changes to the recommended infiltration rates or water balance calculations that result from the evaluation of Zones 3 and 4 must be approved as part of a permit modification request.

OFFICIAL COPY
May 02 2019

THIS PAGE BLANK

Monitoring wells: MW-1, MW-2, and MW-3

GROUNDWATER CHARACTERISTICS		GROUNDWATER STANDARDS		MONITORING REQUIREMENTS		
PCS Code	Parameter Description	Daily Maximum		Frequency Measurement	Sample Type	Footnotes
82526	Water level, distance from measuring point		ft	3 x year	Calculated	1, 2, 3, 6
00400	pH	6.5 – 8.5	s.u.	3 x year	Grab	1, 2
31616	Coliform, Fecal-MF, MFC Broth, 44.5°C		#/100ml	3 x year	Grab	1, 6
00940	Chloride (as Cl)	250	mg/l	3 x year	Grab	1, 6
00610	Nitrogen, Ammonia Total (as N)	1.5	mg/l	3 x year	Grab	1, 6
00620	Nitrogen, Nitrate Total (as N)	10	mg/l	3 x year	Grab	1, 6
78732	Volatile Compounds (GC/MS)		mg/l	3 x year	Grab	1, 4, 5, 6
70295	Solids, Total Dissolved		mg/l	3 x year	Grab	1, 6

1. 3 x Year monitoring shall be conducted in March, July & November; Annual monitoring shall be conducted every November.
2. The measurement of water levels shall be made prior to purging the wells. The depth to water in each well shall be measured from the surveyed point on the top of the casing. The measurement of pH shall be made after purging and prior to sampling for the remaining parameters.
3. The measuring points (top of well casing) of all monitoring wells shall be surveyed to provide the relative elevation of the measuring point for each monitoring well. The measuring points (top of casing) of all monitoring wells shall be surveyed relative to a common datum.
4. Volatile Organic Compounds (VOC) - In November only, analyze by one of the following methods:
 - a. Standard Method 6230D; PQL at 0.5 µg/L or less
 - b. Standard Method 6210D; PQL at 0.5 µg/L or less
 - c. EPA Method 8021; Low Concentration; PQL at 0.5 µg/L or less
 - d. EPA Method 8260; Low Concentration; PQL at 0.5 µg/L or less
 - e. Another method with prior approval by the Water Quality Permitting Section Chief

Any method used must meet the following qualifications:

 - a. A laboratory must be DWR certified to run any method used.
 - b. The method used must, at a minimum, include all the constituents listed in Table VIII of Standard Method 6230D.
 - c. The method used must provide a PQL of 0.5 µg/L or less that must be supported by laboratory proficiency studies as required by DWR. Any constituents detected above the MDL but below the PQL of 0.5 µg/L must be qualified (estimated) and reported.
5. If any volatile organic compounds (VOC) are detected as a result of monitoring as provided in Attachment C, then the Wilmington Regional Office supervisor, telephone number (910) 796-7215, must be contacted immediately for further instructions regarding any additional follow-up analyses required.
6. Monitoring wells shall be reported consistent with the nomenclature and location information provided in Figure A and this attachment.

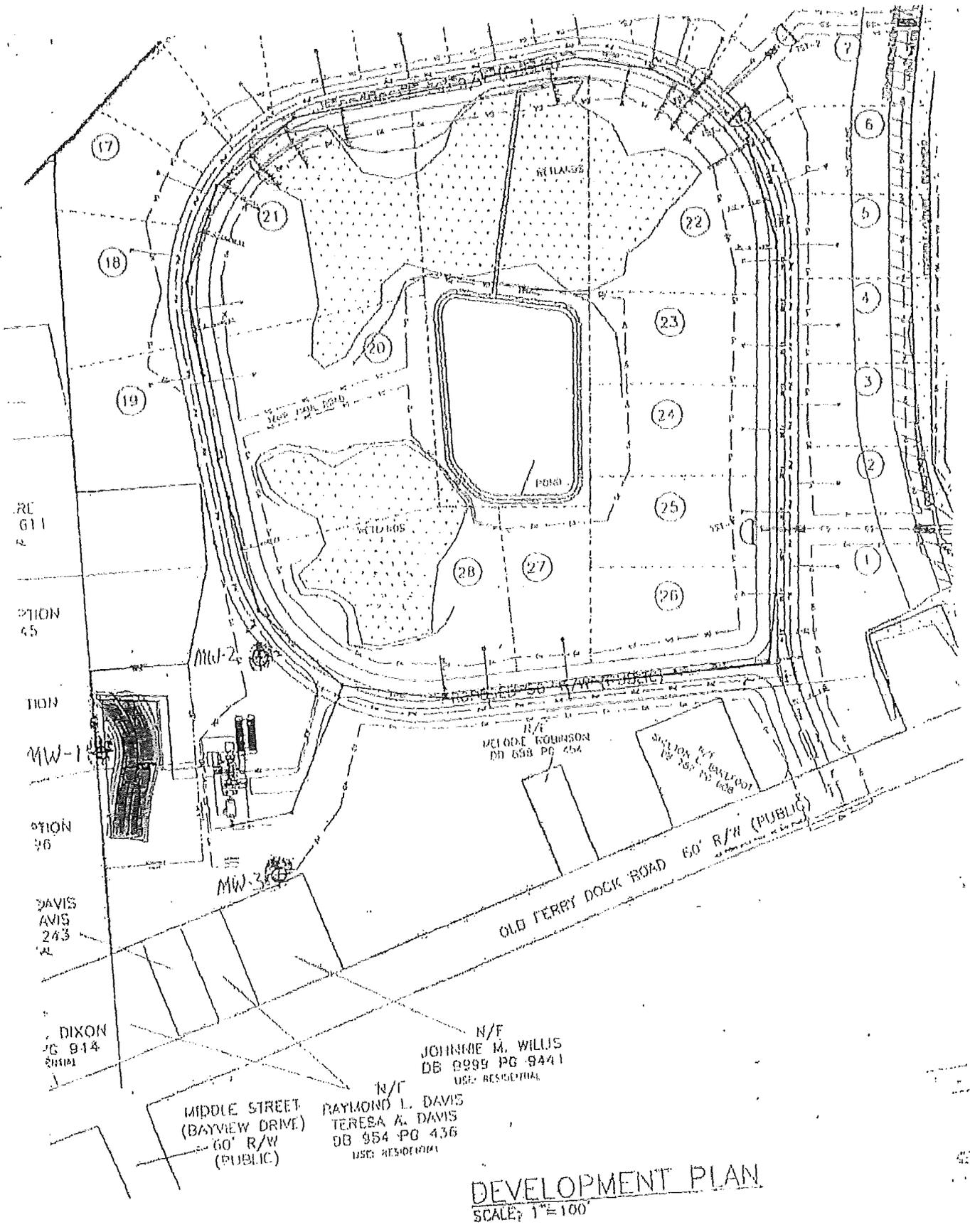


FIGURE A

project: WEST BAY SUBDIVISION



December 1, 2017

Talent · Teamwork · Tradition

Sent via certified mail, return receipt requested

Harkers Island Sewer Company, LLC
Attn: Managing Member, Matthew Laws
1333 Island Road
Harkers Island, NC 28531-9675

Harkers Island Sewer Company, LLC
c/o Its Officer, Director or Managing Agent
P.O. Box 370
Harkers Island, NC 28531

Harkers Island Sewer Company, LLC
Attn: Managing Member, Matthew Laws
270 Pintail Drive
Lexington, NC 27295-5349

Re: Request for Service; James Creek Subdivision

To Whom It May Concern:

As you may be aware, this firm represents Pinnacle Bank (the "Applicant"), successor by merger to Bank of North Carolina, which is record title owner of most of the lots comprising the James Creek Subdivision by way of that certain Trustee's Deed recorded on December 9, 2014 in Book 1496, at Page 98 of the Carteret County Registry. The Applicant is now in a position to prepare for the sale and/or continued development of the James Creek Subdivision. We have been informed, however, that you recently communicated to a potential purchaser of the subdivision that Harkers Island Sewer Company, LLC ("HISCO") was not in a position to commence providing sewer services to the James Creek Subdivision due to a lack of capacity. Please accept this communication as a formal request to confirm that HISCO is in a position to commence providing sewer services to James Creek Subdivision upon payment of the previously agreed upon \$2,500.00 per lot connection fee (and without additional charges not previously stated or agreed upon). The following lots, each being located in the James Creek Subdivision, shall be the first to require sewer services:

- Lot 1 per Map Book 32, Page 403, Carteret County Registry, 207 Tall Pines Way
- Lot 2 per Map Book 32, Page 403, Carteret County Registry, 203 Tall Pines Way
- Lot 3 per Map Book 32, Page 403, Carteret County Registry, 221 Tall Pines Way
- Lot 4 per Map Book 32, Page 403, Carteret County Registry, 227 Tall Pines Way
- Lot 5 per Map Book 32, Page 403, Carteret County Registry, 237 Tall Pines Way
- Lot 6 per Map Book 32, Page 403, Carteret County Registry, 313 Clam Bed Court
- Lot 7 per Map Book 32, Page 403, Carteret County Registry, 317 Clam Bed Court

Attorneys & Counselors at Law



Lot 8 per Map Book 32, Page 403, Carteret County Registry, 321 Clam Bed Court
Lot 9 per Map Book 32, Page 403, Carteret County Registry, 318 Clam Bed Court
Lot 10 per Map Book 32, Page 403, Carteret County Registry, 314 Clam Bed Court
Lot 11 per Map Book 32, Page 403, Carteret County Registry, 312 Clam Bed Court
Lot 29 per Map Book 32, Page 403, Carteret County Registry, 128 James Creek Way
Lot 30 per Map Book 32, Page 403, Carteret County Registry, 138 James Creek Way
Lot 31 per Map Book 32, Page 403, Carteret County Registry, 182 James Creek Way
Lot 48 per Map Book 32, Page 403, Carteret County Registry, 314 Skiff Court
Lot 67 per Map Book 32, Page 403, Carteret County Registry, 236 Tall Pines Way
Lot 68 per Map Book 32, Page 403, Carteret County Registry, 315 Skiff Court
Lot 69 per Map Book 32, Page 403, Carteret County Registry, 321 Skiff Court
Lot 70 per Map Book 32, Page 403, Carteret County Registry, 329 Skiff Court
Lot 80 per Map Book 32, Page 403, Carteret County Registry, 328 Skiff Court

Following development of the aforementioned lots, future development of the James Creek Subdivision will require additional lots to have sewer service. The Applicant, or its successor in interest, is ready to procure and pay the relevant tap fee(s) on a per-lot basis; however, your recent communications regarding HISCO's potential denial of service to James Creek Subdivision have raised concerns.

In support of the foregoing request to confirm HISCO's service of the James Creek Subdivision, please note the following relevant facts:

On May 18, 2011, HISCO filed with the North Carolina Utilities Commission an amended application to include James Creek Subdivision in its franchise territory (the "**Amended Application**"). A copy of the Amended Application has been enclosed herewith for your convenience. The Amended Application includes, in relevant part, a Letter of Intent, signed by you, to service all of James Creek Subdivision's sewer needs by transporting waste to the treatment plant in the Westbay subdivision. The Amended Application specifies that James Creek Subdivision would consist of 80 residential lots receiving sewer services from HISCO, and that the connection fee for each lot was to be \$2,500.00.

On July 30, 2013, in response to the Amended Application, the North Carolina Utilities Commission entered an Order (the "**Order**") granting the franchise to provide wastewater sewer services to the James Creek Subdivision (specifically identifying 80 lots within James Creek Subdivision). A copy of the Order is also attached to this communication for your convenience.

In connection with the foregoing Order, it is not a matter of dispute that HISCO has on numerous occasions agreed to provide sewer services to the James Creek Subdivision following payment of the \$2,500.00 per lot connection charge and continued payment of the monthly flat rate sewer charge. The original developer of James Creek Subdivision, BLE Development, LLC (also a company owned and managed by Mr. Matthew Laws), caused to be recorded a Declaration of Covenants, Conditions, Restrictions, and Easements for James Creek Subdivision (the "**Declarations**"), said Declarations being recorded on November 26, 2013 in Book 1466, at

Page 246 of the Carteret County Register of Deeds (the “Declarations”). A copy of the Declarations is also attached hereto for your convenience. The Declarations specifically identify a per-lot connection fee in the amount of \$2,500.00. There also exist a plat of James Creek Subdivision recorded in Book 32 at Page 403 of the Carteret County Registry (the “Plat”), whereby HISCO signed the plat October 7, 2013, certifying that lots shown on the Plat “will be served by Harkers Island Sewer Company for a new sewer system, and that said system has been installed in an acceptable manner and in accordance with the requirements of Carteret County and the State of North Carolina.” (emphasis added) A copy of this Plat is also attached hereto for your convenience.

In addition to the foregoing, it should be specifically noted that HISCO participated in the execution of a Loan Modification Agreement by and between, among others, BLE Development, LLC and the Applicant (the “Loan Mod Agreement”). In the Loan Mod Agreement, HISCO expressly agreed as a condition of said agreement to “provide waste water treatment for the James Creek Subdivision” and that HISCO would “collect and receive at closing a tap on fee of \$2,500.00.” No other requirements or costs for such service was provided for, nor were there any events or circumstances stated that would terminate or modify this obligation. A copy of the Loan Mod Agreement is also attached hereto for your convenience.

In connection with the Order, the Declarations, the Plat and the Loan Mod Agreement, each were specifically and expressly relied upon by the Applicant and its predecessor in interest. More importantly, in regards to the Order, the Declarations, the Plat, and numerous other public documents, HISCO has held out to the public that sewer service were available, had been installed, and were available for use upon payment of a \$2,500 tap on fee. Additionally, most of HISCO’s applications filed with the Utilities Commission to add new territories specifically identify the James Creek subdivision as one of its existing territories eligible to receive HISCO sewer treatment services.

As I am sure you are aware, pursuant to N.C.G.S. §62-118, the Utilities Commission is the only entity that has the power to allow a utility to abandon or reduce service to one of its territories. Neither the Applicant, not its predecessor in interest, ever received notice to remove James Creek Subdivision from HISCO’s franchise territory. We understand that no hearing has taken place to address removal of James Creek Subdivision from HISCO’s franchise territory. Additionally, a review of the relevant documents filed with the North Carolina Utilities Commission reveals that, to date, no Order has been entered removing the James Creek Subdivision from HISCO’s franchise territory. Given the foregoing, it is the Applicant’s understanding that the 80 lots comprising James Creek Subdivision remain firmly within HISCO’s franchise territory.

Moreover, we understand that on April 11, 2016, Wells Fargo Bank provided an updated Letter of Credit in connection with HISCO’s public utility bond. A review of the documentation filed in connection with the aforementioned letter of credit provides that HISCO’s bond insures sewer services to all of HISCO’s territory at the time it was filed. Because HISCO has previously pledged to provide sewer services to the James Creek Subdivision upon payment of

the \$2,500.00 connection fee, failure to provide such services as agreed will result in our seeking relief from the Utilities Commission and/or the Courts, such relief being sought to include but not be limited to, requesting the Utilities Commission to draw upon such letter of credit to facilitate providing services to James Creek Subdivision as agreed.

Please confirm within ten (10) days of your receipt of this letter that HISCO will provide wastewater/sewer treatment services to the James Creek Subdivision immediately upon payment of the \$2,500.00 per lot connection fee upon closing, as outlined hereinabove, without requiring or demanding any additional fees or costs that have (i) not been previously agreed to by the Applicant, or (ii) not represented to the Utilities Commission. Failure to confirm such, or failure to respond to this communication in a timely manner, will result in the Applicant filing a formal complaint with the North Carolina Utilities Commission for a ruling thereon.

Notwithstanding the foregoing, in the event Applicant files such a complaint with the Utilities Commission, the Applicant reserves any and all causes of action it has, or may have, to be filed in and adjudicated by the General Court of Justice, Superior Court Division, that are not specifically addressed by the Utilities Commission in reviewing Applicant's complaint.

Thank you for your immediate attention to this matter.

Sincerely,

Roberson, Haworth & Reese, PLLC



Alan B. Powell and Andrew D. Irby
Attorneys for Applicant Pinnacle Bank

Michael Laws
Harkers Island Sewer Company LLC
PO Box 370
Harkers Island, NC 28531

December, 5th, 2017

Alan Powell
Roberson, Hawthorne, & Reese PLLC
PO Box 1550
High Point, NC 27261

RE: Response to request for sewer service James Creek Subdivision

Dear Mr. Powell

I am in receipt of your request for public sewer service from Harkers Island Sewer Company LLC (HISCO).

The following describe HISCO's position regarding providing James Creek Subdivision with public sewer.

- 1) You have included a copy of the May 18th, 2011 Amended Application. I would direct your attention page 3, item 6 which states: "The Developer will cover all cost associated with extension and plant expansion." That statement is still true today.
- 2) See attached NCUC Rule R10-12 (c) which states that "An applicant for a sewer collection system extension to serve a new subdivision, tract housing project, industrial, or residential development, or organized service district shall be required to advance to the utility before construction is commenced the estimated reasonable cost of installation of such facilities, including the estimated reasonable cost associated with the installation of any reasonable and prudent amount of excess capacity, if, any, upon approval by the Commission. If additional facilities are required specifically to provide service exclusively for the service requested, the cost of such facilities may be included in the advance upon approval by the Commission.
- 3) See attached November 4th, 2014 letter from HISCO to Specials Assets Manager Lance Miller which states the cost related to serve James Creek Subdivision with public sewer was established and estimated during the process and made known to BNC officials. That cost related to serve James Creek Subdivision with public sewer was established and estimated during the entire process and made known to BNC officials.
- 4) This letter and all permits and some cancellation of permits due to HISCO's loss of control of the property were sent to your office on June 7th, 2016 which should have clarified the loss of capacity HISCO became subject to; due to the absence of a means for HISCO to maintain permits and a small portion of the property designated for the proposed WWTP.
- 5) A review of all applications by HISCO to NCUC after the loss of permits, and property attached to the permits within James Creek Subdivision show the overall capacity stated within those applications to be a reduction of 38,800 gallons per day.

The \$2,500 "Connection Fee" in which you referenced as implied adequate payment for sewer service has nothing to do with the cost to provide sewer service between the developer and the utility



company. The only exception to this is reflected in the fact that the utility which collects those fees from lot buyers, can re-imburse back the developer a part or all of the fees to offset a portion of the developer's cost described in the BNC, BLE Loan Modification dated February 24th, 2011.

The fact that James Creek Subdivision is within the service territory of HISCO does not in any case require the utility to serve at its own cost the sewer service until the system is constructed certified by the Utility's engineer and the completed system is approved to operate by NCDENR officials. HISCO acknowledges this was under way but was stopped completely by the foreclosure process which resulted in the lack of funding to needed to complete the system. Clearly this was addressed in the NCUC application again on pg. 3 item 6, where the funds were expected to come from.

HISCO can and will supply public service to the James Creek Subdivision when all reasonable cost estimated by its engineer and approved by NCUC are forwarded to the utility as required in NCUC R10-12(c).

HISCO has, and will continue to forward these estimates of public sewer service to any legitimate buyer for the James Creek Subdivision to allow for an accurate estimate of the sewer cost of James Creek Subdivision.

Sincerely,


Michael Laws, HISCO Manager.

Cc:
Bill Forman
Clark Wright
George Oliver



PO Box 370
Harkers Island, NC 28531
919-810-4929

November, 4th, 2014

Lance Miller
Special Assets Manager
1420 East Third Street
Charlotte, NC 28204

Re: James Creek Subdivision

Dear Mr. Miller:

In regards to the transfer of ownership of the James Creek Subdivision through foreclosure means the following limitations or "transfer back" to the fee simple ownership of certain property located in Phase 1 of recorded plat of James Creek Subdivision Phase One, PB 32 PG. 403 Carteret County NC Registry, further described as Lot 7 "Area Reserved For On-site Sewer Collection Station, containing 145,167sf 3.333 AC", is highly recommended for the following reasons;

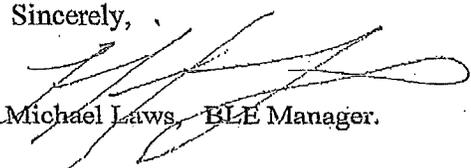
If the current owner loses control of the site, permits, or right to build the WWTP through the foreclosure process, it cannot offer sewer service to the James Creek Subdivision through loses of capacity of said facility. This leaves the new Subdivision owner with no choice but to build its own WWTP facility at an estimated cost of \$950,000 based on Engineer's estimates in 2010. The proposed and recorded lot sizes prohibit the use of septic tanks, as well as unsuitable soils existing on the majority of the lots.

Therefore it is recommended that the site remain in the ownership and control of the current owner's Utility Company, along with dedication of sewer transmission lines already installed along existing roads be dedicated to the Utility Company.

The Utility Company would not be willing, or able to include any purchase price in this transaction since it cannot incur any debt per NCUC regulations.

In turn, the Utility Company is willing to maintain future capacity necessary to develop the 80 single family Subdivision as originally planned for the permits and site dedication.

Sincerely,


Michael Laws, BLE Manager.

OFFICIAL COPY

W-1297, sub 13

Foster
Furr
Hilburn

HARKERS ISLAND SEWER COMPANY LLC
PO Box 370 Harkers Island

28531

FILED

MAY 11 2018

Clerk's Office
N.C. Utilities Commission

May 7th, 2018

Gail Mount

Chief Clerk North Carolina Utilities Commission

4325 Mail Service Center Raleigh, North Carolina 27699-4325

RE: Reduction of bond request

Dear Mrs. Mount:

This notification is to formally request a substantial bond reduction regarding the North Carolina Utilities Commission, (NCUC) requirements currently totaling \$130,000 for Harkers Island Sewer Company LLC, (HISCO).

History:

On July, 30th 2013 HISCO was granted a franchise by the commission, after its application to serve Westbay Subdivision on Harkers Island and its 32 lots. In the following 4 years and 9 months HISCO has successfully added subdivisions; Harkers Village, Harkers Point, Cape Pointe, Beach Hammock, byTheBay subdivisions to its applied for and approved territories. In addition, HISCO has added commercial sewer services to Fish Hook Grille, Harkers Island R/V Park, Sand Bar Club, and most notably Cape Lookout National Seashore managed by the United States National Park Service. The results to date are an 1,800 percent increase in user fee revenue to HISCO since conception in 2013.

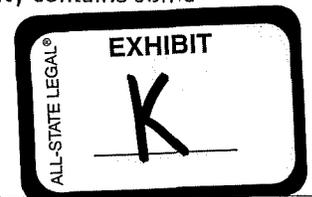
Geography:

When HISCO was granted its franchise, its territory was Westbay Subdivision containing 8 established homes and 24 unbuilt upon lots. Currently, HISCO has expanded to cover with its sewer main extensions the entire Island, along Island Road east and west, and several extensions on north and south roads. HISCO can serve with its current sewer mains approximately 60 percent of the Island's existing and future homes, and businesses. Harkers Island consist of approximately 1,200 existing homes and businesses. HISCO current established territories, along with contiguous territory possibly served by HSCO represents approximately 460 more homes and businesses than its existing equivalent 140 current users.

HISCO acquired a 2nd waste water treatment plant, (WWTP) permitted for 60,000 GPD when it established Harkers Village and Harkers Pointe as served territories. The 6 ½ acre facility contains some

OFFICIAL COPY
OFFICIAL COPY

MAY 11 2018
MAY 02 2019



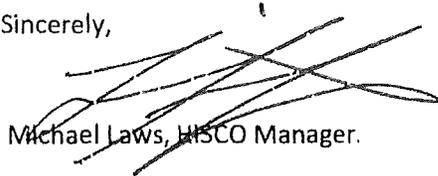
of the highest in elevation land and best soils on the island for drain fields current and future. HISCO acquired all soil scientist reports which are extensive and deemed idea of drain fields on the entire 6 ½ acres site.

HISCO has no debt regarding the Harkers Village WWTP.

HISCO is under construction of Phase 2 sewer service for the Cape Lookout National Seashore facilities. This Federal Government account alone HISCO realizes \$1,220 monthly user fees when completed in late July, 2018.

For these reasons, and the fact that HISCO has proven its ability to grow and thrive since its conception and during a weak real estate economy should lend much consideration to the substantial bond reduction requests. HISCO also stands ready to answer any further inquiries for NCUC staff regarding this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Laws", is written over a large, scribbled-out area of the document.

Michael Laws, HISCO Manager.

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

Docket No.: W-1297, Sub 14

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

PINNACLE BANK, as successor by merger)	
with BANK OF NORTH CAROLINA,)	
)	
Complainant,)	<u>VERIFICATION</u>
)	<u>OF</u>
v.)	<u>COMPLAINT</u>
)	
HARKERS ISLAND SEWER COMPANY,)	
)	
Respondent.)	

Glenn Rackley, being first duly sworn by and before the undersigned notary public, says:

1. That he is the Sr. Vice President with PINNACLE BANK, as successor by merger with BANK OF NORTH CAROLINA ("PINNACLE"), and as such is duly authorized to make this verification on its behalf.
2. That he has read the Complaint filed in this action and that, based upon his review of the business records of PINNACLE BANK, as successor by merger with BANK OF NORTH CAROLINA, and on his personal knowledge of the matters contained therein, all matters contained therein are true to his own knowledge, except matters stated therein upon information and belief, and as to those matters, he believes the same to be true.

Further Affiant sayeth not, this the 5th day of April, 2019.

PINNACLE BANK, as successor by merger
with BANK OF NORTH CAROLINA

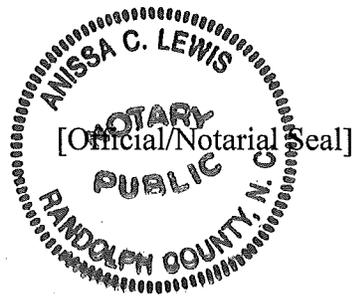
By: Glenn Rackley
Glenn Rackley, Sr. Vice President

STATE OF NORTH CAROLINA
COUNTY OF Swain

I, Anissa C. Lewis ^{Randolph} the undersigned Notary Public of the County and State aforesaid, certify that Glenn Rackley personally came before me this day and acknowledged that he is the Glenn Rackley of PINNACLE BANK, as successor by merger with BANK OF NORTH CAROLINA, and that by authority duly given and as the act of such entity, the foregoing Verification of Complaint was signed in its name by Glenn Rackley sealed with its corporate seal, and attested by himself as its Sr. Vice President

This the 5 day of April, 2019.

Anissa C. Lewis
Notary Public Anissa C. Lewis
(print or type name of Notary Public)
My commission expires: 7-17-2023



STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

Docket No.: W-1297, Sub 14

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

PINNACLE BANK, as successor by merger)	
with BANK OF NORTH CAROLINA,)	
)	
Complainant,)	
)	<u>CERTIFICATE OF SERVICE</u>
v.)	
)	
HARKERS ISLAND SEWER COMPANY,)	
)	
Respondent.)	

THIS IS TO CERTIFY that the undersigned has this date served the foregoing **COMPLAINT AND VERIFICATION OF COMPLAINT** in the above-entitled action upon all other parties to this cause by hand delivery or by depositing a copy thereof in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Post Office Department, properly addressed to said party, or the attorney or attorneys for said parties, as the case may be.

HARKERS ISLAND SEWER COMPANY
c/o Its Managing Member, Matthew Laws
270 Pintail Drive
Lexington, NC 27295-5349

HARKERS ISLAND SEWER COMPANY
c/o Its Managing Member, Matthew Laws
1333 Island Road
Harkers Island, NC 28531-9675

HARKERS ISLAND SEWER COMPANY
c/o Its Officer, Director or Managing Agent
P.O. Box 370
Harkers Island, NC 28531

This this the 2 day of May, 2019.

By: 
Alan B. Powell, N.C.S.B. No. 17555
Andrew D. Irby, N.C.S.B. No. 35353
Christopher C. Finan, N.C.S.B. No. 27820
Attorneys for Pinnacle Bank

OFFICIAL COPY

May 02 2019

OF COUNSEL:

ROBERSON HAWORTH & REESE, PLLC

300 N. Main Street; Suite 300

P.O. Box 1550

High Point, NC 27261

Telephone: 336-889-8733

Facsimile: 336-885-1280

Email: apowell@rhrlaw.com

airby@rhrlaw.com

cfinan@rhrlaw.com