

Sewer Service Agreement and Restrictive Covenant

SEWER SERVICE AGREEMENT AND RESTRICTIVE COVENANT (herein referred to as this "Agreement") is made between ("Owner"), and the Town of Lyman ("Town").

WHEREAS, the property belonging to the undersigned property owner(s) is located outside the Town's municipal limits; and,

WHEREAS, the property is located in an area in which annexation to the Town is or may become possible; and,

WHEREAS, the Town is under no obligation to furnish sewer services to property located outside municipal limits, except by contract with the property owner(s); and,

WHEREAS, Owner(s) wishes to obtain sewer services by contract without the necessity of waiting until an annexation into Town takes place; and,

WHEREAS, Owner(s) requests the Town to furnish such sewer service to the property without regard to whether or not such property is within the Town limits; and,

WHEREAS, Owner(s) acknowledges and agrees that as part of this contract to provide services outside the Town limits, it is appropriate for the property to be developed to current Town sewer standards and the sewer use Ordinance of the Town to ensure compatibility at the time of future annexation; and,

WHEREAS, Owner(s) specifically agrees to sign any and every annexation petition which relates to the property when presented such petition; and,

WHEREAS, Owner(s) agrees that he will pay all Town fees that are applicable to the property upon annexation; and,

WHEREAS, Owner(s) understands that the obligation to execute any and every annexation petition relating to the property, when presented, is a requirement for sewer service outside the Town limits and that failure to satisfy this obligation may, at the election to the Town, cause discontinuance and termination of the sewer service to the property; and,

WHEREAS, Owner(s) will inform any subsequent owner of the property that the obligations created hereunder shall continue and run with the land; and,

WHEREAS, Owner(s) hereby expressly imposes a RESTRICTIVE COVENANT upon property as set forth herein.

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

1. **Recitals Incorporated.** The above recitals are hereby incorporated in and made a part of this Agreement as fully as if set forth verbatim herein. These recitals are true and correct and the parties are bound thereby. By signing this Agreement, Owner(s) acknowledge that Owner(s) has read all of these recitals and understands and agrees to them.
2. **Utility Service.** As used in this Agreement, utility service means and refers to sewer service provided by the Town, including but not limited to, (i) ongoing sewer service, (ii) a service tap from existing sewer lines; (iii) an extension of sewer mains; or (iv) the issuance of a letter of willingness and capability.
3. **Covenants by Town.** The Town will furnish sewer service to the property upon the terms, conditions and covenants set forth herein. In no event shall the Town be obligated to provide or continue to provide sewer service to the property, or any portion thereof, if any obligation of Owner(s) contained in this Agreement is breached or any covenant made by Owner(s) in this Agreement is false. Any actions or statements, (including and letter of willingness and capability) by the Town in relation to providing sewer service to the property is made subject to the terms of this Agreement. If the Agreement is breached by Owner(s), then all such actions or statements may be, in the Town's sole discretion, declared null and void and no reliance by any entity may be placed thereon.
4. **Covenants by Owner.** Owner(s) makes the following covenants, warranties, agreements and representations, each of which shall be deemed material to the agreement:
 - (a) Owner(s) and Owner's heirs and assigns covenants and agrees to sign any and every annexation petition which relates to the property ("Annexation Petition") immediately upon presentment of such petition by the Town of Lyman. As used in this Agreement, an Annexation petition shall be construed to relate to the property if the property to be annexed pursuant to and described in the petition includes the property or any portion thereof. Owner(s) and Owner's heirs and assigns acknowledges that a purpose of this Agreement is to ensure, as a material benefit and consideration to the Town, Owner's full and complete cooperation with any effort to annex the property. Owner(s) and Owner's heirs and assigns agrees, that upon request by the Town, such further acts, agreements and assurances as may be requested and reasonable necessary for the full completion and consummation of the purpose contemplated herein. These further acts shall specifically include, but are not limited to, signing successive Annexation Petitions; in the event prior annexation efforts are unsuccessful. Owner(s) and Owner's heirs and assigns has not and will not subdivide or otherwise manipulate the property, or other property owned or previously owned by Owner(s) and Owner's heirs and assigns, to hinder or impede the Town's ability to annex the property. Owner(s) and Owner's heirs and assigns agree not to sign a petition to annex into another municipality.
 - (b) To receive sewer service, Owner(s) and Owner's heirs and assigns agrees that any work done to the Property shall be completed in accordance with the Town's sewer use Ordinance and sewer standards and other regulations referenced therein. Owner(s) and Owner's heirs and assigns agree to provide installation

copies of all plans to the Town's sewer department for review and approval. Owner(s) and Owner's heirs and assigns agrees that no final verification of the provision of sewer service, including issuance of letters or receipts for fees paid, will be given until such Town review and approval is complete. Regardless of any permits or approvals issued by other agencies, Owner(s) and Owner's heirs and assigns agrees that the responsibility to meet Town standards lies solely with the Owner(s) and Owner's heirs and assigns.

- (c) Owner(s) and Owner's heirs and assigns agrees that the obligations contained in the Agreement shall continue in full force and effect until the earlier of the following:
 - (a) The property, in its' entirety, has been successfully annexed into and lies within the municipal limits of the Town, or (b) the property, in its' entirety, is no longer served by the Town.
 - (d) Owner(s) and Owner's heirs and assigns covenants and warrants that Owner and Owner's heirs and assigns is the sole owner in fee simple absolute of the property. Further, Owner(s) and Owner's heirs and assigns covenants and warrants that he will not transfer, alienate devise, encumber, or otherwise affect title to the property for a period of seven days from the date of this Agreement, which will allow the Town time to have the opportunity to record the Agreement and plat(s) in the Register of Deeds office in the County in which the property lies. Owner(s) and Owner's heirs and assigns will inform any subsequent owner of the property, or any part thereof, that the obligations contained in this Agreement continue and run with the land.
 - (e) Owner(s) and Owner's heirs and assigns acknowledges that certain fees may be charged to Owner(s) and Owner's heirs and assigns by the Town upon annexation into the Town. Owner(s) and Owner's heirs and assigns further agrees that he will pay all such fees.
 - (f) Owner(s) and Owner's heirs and assigns agrees that any breach of conditions of any and all agreements associated with sewer service made in accordance with this Agreement, shall be breach of this Agreement. Such conditions may include, but are not limited to payment of all fees referred to above and payment to the Town when due, all such sewer charges or user fees as may be imposed from time to time.
5. **Restrictive Covenant.** Owner(s) hereby imposes upon the property a RESTRICTIVE COVENANT requiring that future owners of the property, or any part thereof, be bound by Owner(s) and Owner's heirs and assigns of the same terms, conditions and covenants as are set forth in this Agreement. This Restrictive Covenant shall continue in full force and effect until the earlier of the following: (a) the property, in its' entirety, has been successfully annexed into an lies within the municipal limits of the Town; or (b) the property, in its' entirety, is no longer served by the Town's sewer service. Any and every future owner of the property, and Owner's heirs and assigns or any part thereof, is bound by the terms contained in this Agreement by acceptance of a deed to the property subject to this Restrictive Covenant.
6. **Recordation of Plat.** Owner(s) hereby expressly agrees and directs that this Agreement and the plat referenced herein be recorded in the Register of Deeds office

for the County in which the property lies in order to give record notice to any future prospective purchaser that this Agreement is an obligation upon the land and runs with the land until the occurrence of either of the two events set forth in the preceding paragraph. Owner(s) and Owner's heirs and assigns shall place the following language on final plats of the property:

This property is served with the Town of Lyman sewer service and Owner(s) and Owner's heirs and assigns agrees to sign any and every annexation petition which relates to the property when presented with such petition by the Town of Lyman. The obligation to execute all annexation petitions relating to the property, when presented, is a requirement for sewer service outside the municipal limits.

7. **Description of Property.** This Agreement and RESTRICTIVE COVENANT applies to the property Owner(s) and Owner's heirs and assigns as is more fully described on the attached Exhibit "A".
8. **Grant Power of Attorney.** In the event Owner(s) and Owner's heirs and assigns fails to meet the obligations imposed herein and does not sign any Annexation Petition upon request, Owner(s) and Owner's heirs and assigns hereby irrevocably a person designated by the Town as Attorneys in Fact for Owner(s) and Owner's heirs and assigns of the property, with full power to sign any Annexation Petition when requested by the Town.
9. **Default; Remedies.** As used in this Agreement, a default of this Agreement occurs immediately upon any breach, failure or nonoccurrence of any term, condition, obligation, affirmative act, covenant, representation or warranty. Immediately upon any default by Owner(s) and Owner's heirs and assigns, the Town may, in its sole discretion, void this Agreement and thereby void any statements, actions or commitments by the Town to provide utility services to the property. Additionally, upon any default by Owner(s) and Owner's heirs and assigns, the Town may elect to enforce this Agreement. If any effort to enforce the terms of this Agreement fails for any reason, the Town may thereafter elect to rescind and void this Agreement. In the event this Agreement is rescinded or voided, the Town shall be under no obligation to provide sewer service to the property or any portion thereof. In the event of any default of this Agreement by Owner(s) and Owner's heir and assigns, the Town shall be entitled to recover from Owner(s) and Owner's heirs and assigns the costs and attorney's fees incurred by the Town as a result of or in response to Owner(s) and Owner's heirs and assigns default.
10. **Remedies Cumulative.** Every right and remedy provided in this Agreement is distinct from and cumulative to every other right or remedy under this Agreement or available at law or in equity. The provision of certain rights and remedies in this Agreement does not abrogate, limit or affect any rights or remedies as provided at law or in equity. Every right and remedy may be exercised concurrently, independently, or successively.
11. **Exhibits Incorporated by Reference.** All exhibits referenced in this Agreement are incorporated herein as integral parts of this Agreement and shall be considered reiterated herein as fully as if such provisions had been set forth verbatim in this Agreement.

- 12. Copies.** All copies or other reproduction of this document shall be as effective, valid and conclusive as the original.
- 13. Entire Agreement.** The parties acknowledge that no representations or inducements have been made other than those expressed herein; that this Agreement supersedes any and all prior memoranda, correspondence, conversations, negotiations and agreements pertaining to the matters herein expressed and that this Agreement constitutes the entire agreement between them.
- 14. Modification.** The terms of this Agreement may be modified in whole or in part only by a written instrument signed by Owner(s) and Owner's heirs and assigns and the Town. Any oral agreement to modify this Agreement shall be void and of no force and effect.
- 15. Captions.** The captions and headings of the Paragraphs of this Agreement are for convenience only and may not be used to interpret or define the provisions of this Agreement.
- 16. No Waiver.** No waiver of a breach of any of the covenants or promises of this Agreement shall be construed as a waiver of any succeeding breach of the same or other covenant or promise.
- 17. Severability.** In the event that any provision or clause of this Agreement conflicts with any applicable law, the other provisions of this Agreement shall be given effect as fully as possible without the conflicting provision, and to this end the provisions of this Agreement are declared to be severable.
- 18. References Herein.** Wherever appropriated, all words herein the male gender shall be deemed to include the female or neuter gender, all singular words shall include the plural and all plural words shall include the singular.
- 19. Successors and Assigns.** The covenants and agreements contained in this Agreement and the obligors created hereunder shall ensure to the benefit of and be binding on the Town, Owner(s) and all heirs, successors, and assigns of Owner(s) to the property, or any part thereof.
- 20. Governing Law and Forum.** The validity, construction and effect of this Agreement shall be governed by the laws of the State of South Carolina, and the parties hereby consent to the exclusive jurisdiction of the Courts of the State of South Carolina for resolution of any dispute arising hereunder.
- 21. Sealed Instrument.** Owner(s) agrees that by signing below Owner(s) intends to place Owner(s) hand and seal upon this Agreement and that his Agreement shall be considered in every respect to be a sealed instrument.

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

Property Owner: _____

Property Address: _____

Parcel No. _____

WITNESSES:

OWNER(S):

(1st Witness)

(2nd Witness)

By: Authorized Agent

ACCEPTED BY THE TOWN:

Date: _____

Authorized Representative of the
Town of Lyman, SC

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

BEFORE ME Personally appeared the undersigned witness and made oath that he/she saw the within named Owner(s) sign, seal and as the Owner's act and deed, deliver the within written Sewer Service Agreement and Restrictive Covenant; and that he/she, with the other witness whose signature appears above, was present and witnessed the execution thereof. The subscribing witness is not a party to or beneficiary of the transaction.

1st Witness Signs Here

SWORN to and SUBSCRIBED before me
This ____ Day of _____, 20____

Notary Public for South Carolina
My Commission Expires: _____