

- a. Ten Thousand and NO/100 Dollars (\$10,000.00) has been deposited in an escrow account established with a Bank of mutual acceptability and is to be administered by the Owner;
 - b. Thereafter, upon the issuance of a building permit by the authorized county authority for the lots described herein, Owner shall cause to be deposited an additional Two Thousand Seven Hundred Twenty-Eight and NO/100 Dollars (2,728.00) into such escrow account. As the lots are improved with a structure, the escrow balance will progressively increase to a total of Seventy Thousand and NO/100 dollars (\$70,000.00). The amount of this escrow is deemed adequate by SCDHEC. This amount includes a fee not to exceed \$100.00 per lot for disposal of septage by pumping once every year and also includes a fee not to exceed \$300.00 for monthly inspections of the system. In order to maintain the balance of \$70,000.00 in the escrow account, any amount expended from the account shall be replaced by Owner by funds derived from user fees charged, or special assessments charged pursuant to the covenants and restrictions, to property owners who are benefitting from the system.
5. The engineer shall be entitled to reasonable compensation for its services for the costs of inspections and reporting the condition of the sewer system to the party responsible for maintenance and repairs, but such charges shall be disclosed in writing to Owner prior to the engineer's rendering of services.
6. Owner or its successors or assigns shall be entitled to reimbursement for actual expenditures made to repair or replace any portion of the sewer system which becomes necessary plus a 10% administrative fee from user fees charged, or special assessments charged pursuant to the covenants and restrictions, to property owners who are benefitting from the system. If Owner is unable or unwilling to made any required repairs or replacements or to perform any maintenance, the engineer will have the same performed and will be reimbursed from the escrow account upon presentation of an appropriate detailed statement showing the costs and expenses.
7. In the event the sewer system is ever determined to be unnecessary, the remaining

balances of the escrow account shall revert to Terrapin Pointe Property Owners Association, its successors or assigns, after a deduction of all costs in inspection payable to the engineer, the accrued charges for maintenance and repairs and after written approval of SCDHEC or its successor.

8. It is understood that any approval by SCDHEC or any department thereof shall extend only to the lots described hereinabove, unless a modification is approved by SCDHEC.
9. In the event that the engineer terminates its service agreement as servicing entity, then Owner has the option and the responsibility to locate a new service provider within sixty (60) days from the date of such termination with such new service provider to be approved by SCDHEC.
10. This agreement meets the requirements of R. 61-9.505.8, for Construction of Individual Sewage Treatment and Disposal Systems serving more than one (1) piece of deeded property.
11. If Owner is unable or unwilling to make any required repairs or replacements or to perform any maintenance (including closure and elimination of the discharge), SCDHEC may allow a certified Operator, SC registered engineer, engage a public or private system with certified operators of an appropriate grade and classification, or another contractor to perform such repairs or replacements, or another public or private facility to operate, maintain, repair or close this onsite wastewater system. This designee, as applicable, will be paid from the Escrow Account upon presentation of an invoice approved by SCDHEC.
12. If the Owner is unable or unwilling to provide a certified operator, SCDHEC may

hire a certified Operator, SC registered engineer, or engage a public or private system with certified operators of an appropriate grade and classification, and will be paid from the Escrow Account upon presentation of an invoice approved by SCDHEC.

13. In the event Owner determines to sell or otherwise transfer or convey the property, the collection system, the onsite wastewater treatment facility and/or the property upon which the onsite wastewater treatment facility is located, SCDHEC must approve the transfer and this Agreement must be modified to recognize the new Proposed Owner and the obligations of each party. At that time, the escrowed funds will either be refunded to Owner with approval from SCDHEC or transferred to an account in the new Proposed Owner's name to serve the same function as this account. If refunded to the Owner, deductions for all outstanding costs of inspection and accrued charges for maintenance and repairs, if any, payable to the certified Operator will be made out of the fund prior to refund. Prior to transfer, Owner must send written application to transfer the system to SCDHEC's Bureau of Water, Attn: Domestic Wastewater Permitting Section, 2600 Bull Street, Columbia, South Carolina 29201. Owner has complied with this Agreement and the onsite wastewater system is in compliance with state and federal statutory and regulatory requirements.
14. Failure to notify SCDHEC of the Escrow Account balance upon written request and to maintain these funds as described above may result in the revocation of the SCDHEC permits to Operate, or approvals to place in operation requiring the system to be taken out of operation, and then occupancy of a unit will be in

violation of 61-56III(A). SCDHEC may take action to have utilities to the units terminated.

- 15. If, during the Term of this Agreement, any event or events arise that would inhibit or prohibit Owner from complying with its duties, obligations, or responsibilities under this Agreement, the Owner, will give immediate notice of such event or events to SCDHEC at the address referenced above in Paragraph 13.
- 16. Nothing in the Agreement shall be construed to limit any authority of SCDHEC to issue any orders to take any other actions, which it deems necessary to protect the environment or the public health and safety, or to compel compliance with the environmental laws of this State. The Owner's failure to comply with this Agreement shall subject them to all applicable enforcement actions in accordance with SCDHEC's authority under the Pollution Control Act, S.C. Code Ann. §§48-1-10 through 350, including but not limited to the assessment of civil penalties.

This agreement executed the aforesaid date.

Owner: Terrapin Pointe Property Owners Association, Inc.

By: _____

_____, President

SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL CONTROL

DOMESTIC WASTE WATER PERMITTING
SECTION OF BUREAU OF WATER

By: _____

Michael J. Montebello, Manager

ATTEST:

APPROVED BY:

STAFF COUNSEL OF SOUTH CAROLINA

DEPARTMENT OF HEALTH AND

ENVIRONMENTAL CONTROL

DOMESTIC WASTE WATER PERMITTING

SECTION BUREAU OF WATER

services on the Owner's system located at Terrapin Pointe.

- a. The Engineer shall inspect the system at least once a month.
- b. The Engineer shall perform the following routine maintenance procedures semi-annually in accordance with the conditions of the Operation Permit:
 - (1) Check and set pressure heads.
 - (2) Manually operate pumps.
 - (3) Manually operate alarms.
 - (4) Visually inspect tanks, grounds, etc.
 - (5) Check sludge level in septic tanks.
- c. The Engineer shall report the above results of each semi-annual inspection to the local health department.
- d. If an inspection indicates the need for system repairs, the Engineer/Operator shall notify the local health department within 48 hours of the inspection.
- e. The Engineer shall notify the Owner of needed repairs which are outside of the scope of routine maintenance described in subparagraph (b) above. The Engineer shall perform or have performed necessary repairs to the system at the request of the Owner and shall be entitled to payment therefor at the Engineer's normal charge for services and materials.
- f. The Engineer shall employ or shall contract with a certified operator(s) if necessary.
- g. The Engineer shall respond to a request for a non-scheduled service or maintenance call within 12 hours after receipt of such request.

2. The Owner's Obligations.

- a. The Owner shall pay to the Engineer the sum of \$300.00 monthly for inspections, routine operation procedures and reports. This fee does not include costs per subcontractor. The fee may be amended upon sixty (60) days advance notice to the Owner. The Owner shall pay to the Engineer his normal and customary fees for any work performed on the system as a result of non-scheduled service or maintenance calls. All fees are due and payable within thirty (30) days of billing. Payments due to the Engineer and unpaid by the Owner after thirty (30) days shall accrue interest from the due date until paid at a rate of 1.5 percent per month.
- b. Within 2 days of receipt of notice of needed repairs pursuant to paragraph 1.3 above, the Owner shall request the Engineer to complete needed repairs or shall provide to the Engineer evidence that the needed repairs were satisfactorily completed by another entity, or an acceptable time schedule has been established to complete the repairs.
- c. The owner shall provide Engineer with such access to the system as is reasonably necessary for the Engineer to comply with the terms of this Agreement.

3. Term. This Agreement shall remain in effect until terminated.
 - a. Automatic Termination. This agreement shall automatically terminate if the Operation Permit for the system is revoked and all appeals of the revocation are exhausted or time for taking any appeal has passed.
 - b. Termination by Mutual Consent. The Parties may mutually agree to terminate this Agreement by giving written notice of termination by mutual consent to the local health department thirty (30) days in advance of the date of termination.
 - c. Termination by the Owner. The Owner may terminate this Agreement by giving notice to the Engineer and to the local health department thirty (30) days in advance of the date of termination.
 - d. Termination by the Engineer.

(1) The Engineer may terminate this Agreement for cause by giving written notice of intent to terminate this Agreement to the Owner and to the local health department thirty (30) days in advance of the date of termination. Cause shall be defined as:

- a. failure to remit payment for any bill for services performed under and in accordance with this Agreement if said bill is not paid within thirty (30) days of receipt by the owner of the bill. If said bill is paid after notice of termination is given but prior to the date of termination of this Agreement, this Agreement shall continue in effect; or
- b. failure of the Owner to provide to the Engineer authorization to complete needed repairs or satisfactory evidence that needed repairs or satisfactory evidence that needed repairs to the system were completed by another entity within 4 days of receipt of notice of needed repairs pursuant to paragraph 1.e above. If said authorization to complete needed repairs or evidence of completion of said repairs is provided after notice of termination is given but prior to the date of termination of this Agreement, this Agreement shall continue in effect;
- c. failure of the Owner to allow the Engineer such access to the system as is reasonably necessary in order for the Engineer to comply with the terms of this Agreement.

(2) The Engineer may not terminate this Agreement without cause, but may assign its rights and duties under this Agreement as provided in paragraph 4, below.

4. Assignment.

- a. Assignment by the Owner. The Owner shall notify the Engineer of the name and address of any purchaser of the property on which the system is located. The Owner shall also notify any purchaser of the property on which the system is

located of the existence of this Agreement and shall assign all rights and duties under this agreement to said purchaser.

- b. Assignment by the Engineer. The Engineer may assign its rights and duties under this Agreement to another management entity which is qualified the system upon thirty (30) days written notice to the Owner and to the local health department.
5. Use of Subcontractors. The Engineer may subcontract with such manufactures, suppliers and contractors as it deems desirable to perform any of the Engineer's duties under this Agreement. The engineer shall at all times remain responsible for the performance of any payments for all work performed by all subcontractors.
6. Representations. The parties represent to each other that each has the power, authority and legal right to enter into and perform its obligations as set forth in this Agreement.
7. Regulatory Amendments. References in this Agreement Regulations 61.56 shall include such rules as they may be amended in the future.
8. No Implied Waiver. The waiver by either party of a default or a breach by the other party of any provision of this agreement shall not operate or be construed to operate as a waiver of any subsequent default or breach. The failure at any time of either party to enforce any provision of this Agreement (a) shall not be construed to be a waiver of such provisions, or of any other provision; and (b) shall not in any way affect the validity of this Agreement, or any part of this Agreement, or the right of either party thereafter to enforce each and every provision of this Agreement.
9. Notice. Every notice required under this Agreement shall be in writing and shall be deemed sufficiently given if delivered in person or registered mail, return receipt, requested, postage prepaid to the party to be notified and addressed as

follows:

To the Owner Terrapin Pointe Property Owners Association, Inc.
7 Washington Park
Greenville, SC 29601

To the Engineer: Mark Amick
3319 County Farm Road
Greenwood, SC 29646

To the DHEC Health Department Upper Savannah District Office
613 South Main Street
Greenwood, SC 29646

The date of any notice shall be the date of personal delivery or the date shown on the return receipt as the date of delivery or attempted delivery, as the case may be. Changes in the respective addresses to which notice may be directed may be made from time to time by either party by notice to the other party.

10. Place of Agreement. This Agreement and any questions concerning its validity, construction or performance shall be governed by the laws of the State of South Carolina, notwithstanding the place of execution or the order in which the signatures of the parties are affixed.
11. Entire Agreement and Amendment. This agreement supersedes all prior negotiations, agreements and understandings between the parties with respect to the subject matter hereof and constitutes the entire agreement between the parties with respect to the subject matter hereof. To be effective, any amendment or modification to this Agreement must be in writing and must be signed by the parties.
12. Severability. In the event that any provision of this Agreement shall, for any

reason, be determined to be invalid, illegal or unenforceable in any respect, the parties shall negotiate in good faith and agree to such amendments, modifications or supplements of or to this agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected on the agreement, and the other provisions of this Agreement shall, as so amended, modified, supplemented or otherwise affected by such action, remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate original, one of which is retained by each of the parties, the date and year first above written.

Terrapin Pointe Property Owners Association, Inc.

By: _____
_____, President

Attest:

_____, P.E.

By: _____
Engineer

Attest:
