

## LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made and entered into as of the date set forth below between **OLE MILL STREAM POOL ASSOCIATION**, hereinafter referred to as "Lessor" and **OLE MILL STREAM HOMEOWNERS ASSOCIATION**, hereinafter referred to as "Lessee" (both Lessor and Lessee occasionally referred to herein as "Parties"):

### WITNESSETH:

WHEREAS, the Lessee is a non-profit North Carolina corporation incorporated in or about August 2001;

WHEREAS, the Lessor is a non-profit North Carolina corporation incorporated in or about August 2006;

WHEREAS, the Lessor was deeded certain real property containing a pool, which pool is contained within that certain tract of land containing 2.134 acres, more or less, and designated as "Open Space" on a plat and survey prepared by Brennan Land Surveying, P.A. entitled "Recombination Plat Lot 92, 93 Open Space Lot Ole Mill Stream," dated 8/3/04 and recorded in Plat Book 67, page 25, Johnston County Registry;

WHEREAS, such land deeded to the Lessor was described in that certain deed dated 2 May 2008 and recorded at book 3541, page 577 of the Johnston County Registry;

WHEREAS, the Lessor desires to lease all portions of the property described in the above deed, save and except the actual pool itself within that tract of land and Lessee desires to lease such land from the Lessor under the terms and conditions contained herein;

WHEREAS, under the Articles of Incorporation for the Lessor, specifically, Article 8 of the Articles of Incorporation, Lessor has the right to purchase, receive, lease or otherwise deal with its property wherever located;

NOW THEREFORE, for the mutual considerations and promises exchanged below, the adequacy of which the Parties expressly acknowledge, the Parties agree as follows:

1. **LEASED PREMISES:** In consideration of the rents, terms, provisions and covenants of this Lease, Lessor hereby leases, lets and demises to Lessee property commonly known as the Ole Mill Stream Pool Septic Lot and more particularly shown on **Exhibit A** as is attached hereto. Such property shall include the tract of land upon which the pool is situated, however, shall not include the pool itself. (hereinafter, "Leased Premises").

2. **TERM:** (a) Subject to and upon the considerations set forth below, the term of the Lease shall commence on the date set forth below (effective date) and shall expire fifteen (15) years from said date, unless terminated in accordance with this Section 2 of the Lease.

(b) The Lease may be terminated by either the Lessor or the Lessee at any time during the initial fifteen year period without penalty to either party so long as said termination is completed by means of a mutual agreement between the two Parties.

(c) The Lease may be terminated by either the Lessor or the Lessee at any time during the initial fifteen year period without penalty, save those set forth below, to either party so long as the party wishing to terminate provides no less than a one year notice to the other Party.

3. **RENT:** (a) Lessee agrees to pay an annual rental during the term of this Lease in the sum of Two Thousand One Hundred dollars (**\$2,100**), which shall be payable to Lessor at the address shown below. The initial payment will be due on the date of execution of the Lease (effective date) and all subsequent annual rental payments will be made on or before the annual anniversary of the effective date.

(b) The annual rental set forth above may be adjusted by the Lessor on an annual basis so long as the Lessor provides the Lessee with a written notice of such an increase and so long as said notice is provided to the Lessee no less than sixty (60) calendar days prior to any annual payment coming due. In no event, however, shall the annual rental be increased more than 10% from the previous rental sum without the express written consent of both Party to the Lease.

(c) Any adjustments made to the annual rental by the Lessor that causes an increase in the rental must be justified by cause of an increase in ownership costs on their behalf and at no time shall the annual adjustment exceed more than ten (10) percent of the previous year's rental.

4. **PROPERTY IMPROVEMENTS:** (a) It is anticipated by the Lessee and understood by the Lessor that the Lessee will be making certain improvements to the Leased Premises and Lessor hereby consents and agrees to allowing such improvements to be made on the Leased Premises. These improvements may include but are not limited to installing playground equipment, grading and installing turf for playing fields, and constructing picnic shelters. By execution of this agreement, both parties agree that any improvements made to the Leased Premises by the Lessee will be at the sole expense of the Lessee and will be the exclusive property of the Lessee.

(b) The Lessor reserves the exclusive right to review any plans for improvements to the Leased Premises that may be proposed by the Lessee prior to construction

of such improvements. Should the Lessor find said plans to be in conflict with their existing facilities, septic lines, septic repair areas, etc. the Lessor will have the right to alter the type, nature, size or location of said improvements to the extent necessary to prevent the improvements from being in conflict with their existing facilities, septic lines, septic repair areas, etc. on the Leased Premises.

(c) Any improvements made to the Property by the Lessee will be kept in a functional, safe, and aesthetically pleasing state. Failure to do so will result in action being taken by the Lessor to bring the improvements into compliance and any costs incurred for doing so will be assessed to the Lessee.

(d) If any of the property improvements require electricity or other utility services it will be the sole responsibility of the Lessee to secure such service and pay for such service.

(e) If the Lessor chooses to terminate the Lease Agreement at any point during the Lease Term, and so long as Lessor provides written notice to the Lessee no less than one year prior to terminating in accordance with Section 2 (c) above, any improvements made to the property by the Lessee prior to receiving such notice will be paid for by the Lessor. The price for any such improvements shall be an amount equal to its appraised value at the completion of one year notice period, or the cost to construct such improvements whichever is greater. An appraisal of the improvements will be completed by a licensed appraiser and at the sole cost of the Lessor. The appraiser's valuation of the improvements shall be binding on both Parties. The payment shall be made by Lessor to Lessee within thirty (30) days of receipt of the appraisal. If an appraisal is not possible, then the purchase price shall be the cost of the Lessee to construct such improvements and the payment shall be made within thirty (30) days of the date of termination by the Lessor.

(f) If the Lessee chooses to terminate the Lease Agreement at any point during the Lease Term and so long as they provide written notice to the Lessor no less than one year prior to terminating, any improvements made to the property by the Lessee prior to issuing such notice will become the property of the Lessor upon completion of the one year notice period and Lessee shall not be entitled to any payments from the Lessor.

- 5. INDEMNITY:** (a) As a part of this lease agreement it will be the responsibility of the Lessee to obtain and maintain insurance, to the extent available, that will protect any improvements made to premises and any users of those improvements. They shall have the Lessor shown as an additionally insured party on that policy(s) and shall defend, hold harmless and indemnify the Lessor if any law suits or legal claims arise from the Lessee's use of the premises or improvements made there on, provided, however, such defense and indemnity obligations shall not extend to any acts of negligence of the Lessor's own officers or directors.

(b) In the event that the Lessor loses their ownership of the property or causes the premises to become subject to a law suit or legal claim, the Lessor will be required to protect to the fullest extent allowed by law, the Lessee's rights to the property and any improvements that they have made to the premises.

6. **RIGHT OF ENTRY:** Lessor shall have the right to enter the leased premises to confirm the Lessee's use of the premises, inspect or maintain the existing sewer facilities located on the premises, install new sewer facilities on the premises, perform mowing operations, or complete any other duties required of a Lessor.
7. **MISCELLANEOUS MATTERS.** In no event shall any of the lease payments under Article 3 of this Agreement be deemed an initiation fee or lease for the pool itself located within the Leased Premises, it being the intent of this Agreement to lease all aspects of the Leased Premises, except the pool itself. Nor shall this Agreement be deemed or construed to amend, alter or change any other applicable rules or legal documents governing the rights of members of the Lessor and Lessee to use the pool itself.
8. **LESSOR'S RIGHT UNDER DEFAULT:** In the event that the Lessee shall fail to pay the annual rent within 60 days of the due date and not provide the required one year written notice of termination the Lessor shall have the right to take immediate possession of any improvements made to the premises by the Lessee. Should such a default occur and the Lessor does exercise their right to claim the property of the Lessee there shall be no recourse available to the Lessee and this Lease Agreement shall be null and void.
9. **NOTICE:** (a) All rent or other correspondence submitted by the Lessee to the Lessor shall be payable and/or addressed to the Lessor at the address set forth below, or at any other address as Lessor may specify from time to time by written notice to the Lessee.

(b) All correspondence submitted by the Lessor to the Lessee shall be addressed to the Lessee at the address set forth below, or at any other address as Lessee may specify from time to time by written notice to the Lessor.

(c) Any notice or document required or permitted to be delivered by this Lease shall be deemed to be delivered (whether or not actually received) when deposited with the United States Postal Service for their delivery.

#### **Exhibit A**


All portions of that certain tract of land containing 2.134 acres, more or less, and designated as "Open Space" on a plat and survey prepared by Brennan Land Surveying,

P.A. entitled "Recombination Plat Lot 92, 93 Open Space Lot Ole Mill Stream," dated 8/3/04 and recorded in Plat Book 67, page 25, Johnston County Registry, such land being deeded to the Lessor was described in that certain deed dated 2 May 2008 and recorded at book 3541, page 577 of the Johnston County Registry, save and except, the actual pool itself within that 2.134 acres, more or less tract of land owned by Lessor.

Scott Carroll - OMSPA

 1/21/2010

Camille Altman - OMSPA

 1-29-2010

## Acknowledgement

STATE OF NORTH CAROLINA

COUNTY OF Johnston

I certify that Scott Carroll and Camille Altman personally appeared before me this day, acknowledging to me that he or she signed the foregoing document: Lease Agreement  
Name or description of attached document

I further certify that:

☐ I have personal knowledge of the identity of the principal(s)

☒ I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a NCDL, NCDL  
type of identification

☐ A credible witness, \_\_\_\_\_, has sworn or affirmed to me the  
name of credible witness  
identity of the principal, and that he or she is not a named party to the foregoing document, and has no interest in the transaction.

Date: January 29, 2010

(Official Seal)

Susan H. Perdue  
Notary Public

Susan H. Perdue  
Typed or Printed Notary Name

My commission expires: August 13, 2014

OLE MILL STREAM  
HOMEOWNERSASSOCIATION

By: Carl C. Morgan  
Board Chairman  
Carl C. Morgan

ATTEST:

Mark Altman  
Board Member

STATE OF NORTH CAROLINA

ACKNOWLEDGMENT

COUNTY OF WAKE

I, Jennifer Price, a Notary Public of the County and State aforesaid, certify that Mark Altman & Carl Morgan, personally came before me this day and acknowledged that he/she is a Member of the Board of the Ole Mill Stream Homeowner's Association, a North Carolina non-profit corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Chairman and attested by Mark Altman a Member of the Board.

Witness my hand and official stamp or seal, this 30 day of January, 2010.

My commission expires:

10/24/12

Notary Public

Jennifer Price