

WHEN RECORDED RETURN TO:
Berry's Pond Homeowners Association
c/o Light Property Management
PO Box 8046
Spartanburg, SC 29305

DEE-2017-2775



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Office of REGISTER OF DEEDS, SPARTANBURG, S.C.
Dorothy Earle, Register Of Deeds

**DECLARATION OF AMENDED RESTRICTIONS
FOR BERRY'S POND PHASE 1, BERRY'S POND PHASE II
AND BERRY'S POND PHASE III
TO RUN WITH THE LAND AND SUPERSEDES ALL
PRIOR RESTRICTIONS OR COVENANTS**

STATE OF SOUTH CAROLINA)	DECLARATION OF AMENDED RESTRICTIONS
)	FOR BERRY'S POND PHASE I, BERRY'S POND PHASE II
)	AND BERRY'S POND PHASE III,
)	TO RUN WITH THE LAND AND SUPERSEDES ALL
COUNTY OF SPARTANBURG)	PRIOR RESTRICTIONS OR COVENANTS

WHEREAS, Berry's Pond Phase One is a single-family residential subdivision in Spartanburg County and shown on a plat of survey by Wolfe & Huskey, Inc. dated February 12, 1990, and recorded on March 9, 1990, Plat Book 109, Page 486 in the Office of Register of Deeds for Spartanburg County, South Carolina.,

WHEREAS, Berry's Pond Phase Two is a single-family residential subdivision in Spartanburg County and shown on a plat of survey by Wolfe & Huskey, Inc. dated September 6, 1990 and recorded on September 28, 1990 in Plat Book 111, Page 313 in the Office of Register of Deeds for Spartanburg County, South Carolina.

WHEREAS, Berry's Pond Phase Three is a single-family residential subdivision in Spartanburg County and shown on a plat of survey by Wolfe & Huskey, Inc. dated February 27, 1995 and recorded on June 2, 1995 in Plat Book 129, Page 493 in the Office of Register of Deeds for Spartanburg County, South Carolina.

WHEREAS, L. P. Pitts did record a Declaratory Statement of Covenants and Restrictions to Run with the Land for Berry's Pond Phase One and Berry's Pond Phase Two, on September 28, 1990, in Deed Book 56-Z Page 532 in the Office of Register of Deeds for Spartanburg County, South Carolina.

WHEREAS, Beta, LLC did record a Declaratory Statement of Covenants and Restrictions to Run with the Land for Berry's Pond Phase Three, on May, 31, 1996, in Deed Book 64-H Page 010 in the Office of Register of Deeds for Spartanburg County, South Carolina.

WHEREAS, the property owners of Berry's Pond Phase One, Berry's Pond Phase Two, and Berry's Pond Phase Three desire to consolidate and revise the Covenants and Restrictions into a single Declaration of Covenants and Restrictions to Run with the Land.

NOW THEREFORE, the property owners of Berry's Pond Phase One, Berry's Pond Phase Two, and Berry's Pond Phase Three, herein, make the following declaration of limitations, restrictions, and uses to which the lots shown on the plats referred to as Berry's Pond Phase One, Berry's Pond Phase Two, and Berry's Pond Phase Three, may be put and hereby specified that such declaration shall constitute a covenant to run with the land as provided by law which shall be binding on all parties and all persons claiming under them, and for the benefit of a limitation on all future owners of Berry's Pond Phase One, Berry's Pond Phase Two, and Berry's Pond Phase Three.

The purpose of these restrictions is to ensure the use of the property for residential purposes only, to prevent nuisances, to increase the attractiveness of the property, to maintain the desired tone of the community, and thereby to secure each lot owner the full benefit and enjoyment of his or her property with no greater restriction on the free and undisturbed use of his or her property than is necessary to ensure the same advantages to other property owners. Throughout this document, Berry's Pond Phases I and II will be referred to as "Berry's Pond". Berry's Pond Phase III will be referred to as "The Shores".

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Section I - Architectural Approval

1. Architectural Approval is required for additions or changes to the residence or Property:
 - a. New construction, to include, but not limited to, modification, or replacement to an existing structure including garages, additions, porches, decks, patios, pools, and solar panels, walkways.
 - b. Reconstruction or repair due to damages.
 - i. Re-shingling due to hail or other damage does not need approval. However, changing shingle color to a non-neutral color or changing shingles to a different type of roof would require Architectural Approval.
 - c. Fences, sidewalks, decorative light poles.
 - d. Addition of outbuilding or shed.
 - e. Energy saving window tint applied to windows visible from the street.
 - f. Approval must be received prior to the start of any work.
2. No building (Dwelling or Structure) shall be erected on any Lot until the design, exterior materials and location thereof have been approved in writing by Berry's Pond/The Shores Homeowners Board Architectural Review Committee (ARC). The design of the house and any/all additions shall conform to and be in harmony with the existing Structures in the Neighborhood.
 - a. The exterior of the homes shall be considered in harmony as follows:
 - i. Berry's Pond exteriors may be: brick, wood siding, vinyl siding, stucco, stone, or other such conventional exterior covering.
 - ii. The Shores exteriors may be brick, stucco or stone with vinyl siding accents where the other materials cannot be used.
3. In addition, all changes and additions must also follow county ordinances in place at the time of construction including building permits and inspections.
4. Architectural Approval process:
 - a. The required form (sample in Section XVI) must be completed and submitted as stated on the form. The approval process is outlined on the form itself.
 - i. The most recent copy of this form is available upon request.
 - ii. The Architectural Review Committee and the Board of Directors has the authority to update or amend the form as needed.
 - b. All Plans shall be included with the form.
5. Appeals: If an ARC request is denied, the homeowner will receive a letter or email explaining why, and listing the covenants the board based their decision on. The Homeowner may request additional information or ask that the request be reconsidered via Light Property Management or the HOA website.
6. The ARC may at its option; employ outside professional services for initial review and may pay them accordingly for this service. The board must approve the hiring of professionals for this purpose.
7. Neither the ARC nor the Board shall be responsible or liable in any way for the defects, structural, or otherwise in any Plans or specifications approved by the Architectural Review Committee nor for any defects in work done according to the Plans and specifications approved by the Board or ARC. Every person who submits Plans and specifications to the ARC for approval agrees by submission of such plan

and specifications and every Owner of any Lot agrees that he will not bring any action or suit against the Association, its Board or the ARC.

Section II - Land and Buildings

1. Building:
 - a. No building or Structure of any kind whatsoever other than a single family Dwelling not to exceed 2 ½ stories in height shall be placed on any Lot, and such Dwelling shall be used for residential purposes only.
 - b. No more than one Dwelling may be built on any one Lot.
 - c. No trailer, mobile home, tent, shack, garage or other outbuilding shall be placed or erected on any lot unless approved by the Berry's Pond/The Shores Homeowners Board Architectural Review Committee (HOA ARC) nor shall any such building or any temporary Structure be used as a residence.
 - d. No Dwelling or portion of another Dwelling can be moved into the Neighborhood.
2. Square footage: No Dwelling with less than 1,200 square feet of heated, enclosed, livable floor space, which shall not include garages, porches, unheated basements or breezeways, shall be placed on any Lot.
3. Building Material: No residence or Structure utilizing "boxed" or "sheet metal" or "concrete block" construction shall be built in the neighborhood, unless the same shall be covered on all outside walls with brick, wood siding, vinyl siding or stucco or stone or other such conventional exterior covering.
4. Driveways: All driveways are required to be paved with pre-mixed concrete.
5. Rent/Lease: If the Owner elects to rent or lease their Property, the Owner remains responsible for the Property's adherence of these covenants.
6. Placement: No building shall be located nearer the front of any Lot than the building line recited in the deed conveying such Lot, or as shown in the recorded Plat of the Neighborhood, except unless the grantor files a variance thereof. In the event no such building line is shown, no building shall be located nearer the front of any Lot than twenty (20) feet. If the above requirements cannot be met The HOA ARC reserves the right to approve site location of each house prior to the beginning of construction. No building or any part thereof, Structure, outbuilding or appurtenances of any nature shall be located on any Lot nearer than ten (10) feet to any interior Lot line, subject to the Spartanburg County building codes.
7. Easement: All land between streets and setback lines shall be used solely for lawn, landscaping, driveways and walks.
8. Drainage/Erosion: Proper grading and drainage must be maintained on all Lots in order to prevent any erosion and/or runoff on the Owner's Lot, on any other Lot or onto any street in the Neighborhood caused by surface run-off from the Owner's Lot.

Section III - Fences and Storage Buildings

1. All fencing must be incorporated on a site plan, both written and drawn, and submitted for approval to the HOA ARC before construction begins
2. Fence Location:
 - a. No fence shall be located between the easement and any street
 - b. No fence shall be constructed on any Lot between the setback line and the street or streets that it fronts.

3. No barbed wire, chain link, or similar type fence shall be erected. Other kinds of fences may be constructed provided that their design, height, location and color shall be in harmony with existing Structures and land topography.
4. All fencing must have "finished" side facing out. All fences must be painted or stained and well maintained.
5. Any outbuilding must be submitted on a site plan for approval to the HOA ARC before construction begins.
6. No metal carports or awnings, either temporary or permanent, shall be allowed.
7. Outbuildings cannot be forward of the back line of the Dwelling.
8. No exposed sheet metal utility building or similar Structure shall be allowed

Section IV – Commercial Use of Property

Commercial and Business Use Prohibited.

1. No commercial operations, business operations, manufacture or production shall be permitted upon any part of the property.
2. The selling, showing or marketing from a Family Dwelling Unit of any kind of goods, products or apparel is expressly prohibited.
3. The occasional sale of a small number of articles of furniture, appliances, and similar items shall be permitted so long as they do not include the utilization of auctioneers or other professionals, or include signs placed anywhere on the Lot or the Neighborhood and do not attract large volumes of traffic.
4. The provisions of this item shall not be construed to prohibit the making of handcrafted items for occasional off premises sale.
5. Notwithstanding the provisions herein, the Association may communicate more specific guidelines permitting limiting, and/or governing these activities upon the property.
6. Upon written request, the Board of the Association may grant exceptions to these restrictions on a case-by-case basis.

Section V - Owner's Maintenance Responsibilities

The Association shall have the authority to enforce an Owner's maintenance responsibilities under this Article, pursuant to remedies set forth in this Declaration.

1. Garbage and Trash Containers:
 - a. All garbage or trash containers shall have closed secure lids, and be located behind the back line of the Dwelling.
 - b. Trash containers shall not be placed by the roadside for collection more than twelve (12) hours prior to pick up and are to be removed from street view the same day as pick-up.
 - c. Owner shall maintain their trash container in such a manner as to prevent any foul or unpleasant odors from disturbing others, or odors that may attract animals.
2. Construction or Building Trash Containers: It is the responsibility of the Home Owner that receptacles containing building or construction waste and debris are maintained in a manner keeping with the requirements of this Section, including without limitation the responsibility of keeping said receptacles

from becoming overloaded with waste and debris or becoming an aesthetic eyesore or potential danger for others in the Neighborhood.

3. **Garbage/Trash Collection:** None of the foregoing shall be construed to prohibit temporary deposits of trash, rubbish and other debris for pickup by garbage and trash removal service units.
4. **Clothes lines:** No clothes hanging device is permitted on the outside of residence on any Lot. Clotheslines shall be located in screened areas which are not visible from the street or other properties.
5. **Tools and Lawn Equipment:** All tools, lawnmowers, or equipment of any kind must be contained within a fenced or an enclosed area and hidden from public view.
6. **Children's Items:** Swing sets, sandboxes, gym sets, and any such similar devices or Structures primarily for children's use and enjoyment must be located behind the back line of the house.
7. **Road Hazards:** Shrubbery, hedges and trees must be kept trimmed to limits such that they do not interfere or obscure street signs, stop signs, and streetlights.
8. **Lot Maintenance:** The Owner shall be responsible for:
 - a. Maintaining their grass, hedges, shrubs, vines and plants of any type on any Lot or portion of the Property shall be trimmed and shall at regular intervals be mowed and be in a well-groomed appearance. Trees, shrubs, vines and plants that die shall be promptly removed from a Lot. Curbs shall be maintained and kept free and clear of grass, weeds and the like at all times.
 - b. All maintenance and repair of a Lot, together with all portions of the Dwelling and other Structures on the Lot including without limitation landscaping maintenance. The responsibility of each Owner shall include but not limited to, the painting, maintenance, repair, and placement of walls or fences, and all siding, exterior doors, fixtures, mailboxes, equipment, lawns, trees, shrubs, fences, grass, driveways, walkways or sidewalks and any other landscaping component on the Lot.
 - c. Include, but not be limited to, the maintenance, repair, and replacement of all glass, lights and exterior light fixtures, awnings, window boxes, window screens, and all screen or glass enclosed porches, balconies, or decks which are a part of the Dwelling.
 - d. No aluminum foil, newspaper, reflective film or similar treatment shall be placed on windows and/or glass doors.
 - e. Maintain roof, gutters, and downspouts in a good state of repair.
9. Should any Structure be damaged in whole or in part, by fire or act of God, reconstruction is to be completed or debris must be moved in a timely manner.

Section V - Fines

In the event an Owner of any Lot fails or neglects to maintain his Lot in the Neighborhood, the HOA Board shall first give written notice to the Owner of the specific items and the Owner shall have the time set forth in said notice within which to perform such maintenance himself or to satisfy the HOA Board that the required maintenance or repair will be completed in a timely manner. The determination as to whether an Owner has neglected or failed to maintain his Lot in a manner consistent with other Lots, shall be made by the Board of the Association.

Failure to comply within thirty (30) days will result in either a monthly fine as set by the board and/or action being taken by the board with expenses to be charged back to the homeowner.

Section V fines will be established yearly and announced at the annual homeowners meeting. If no changes are announced, then the prior year schedule will remain in effect.

Failure to pay fines may result in a lien filed against the property.

Section VI - Appearance of Property

1. Lot: No Lot shall be used for the storage of waste material of any character whatsoever, or for the storage of any Property or thing that will cause the Lot to appear in an unclean or untidy condition, that will be obnoxious to the eye or that emits foul or obnoxious odors.
2. Mailboxes:
 - a. Each mailbox shall be well maintained and neat in appearance at all times.
 - b. In the Shores section new and replacement mailboxes should:
 - i. Mailboxes shall be uniform and similar.
 - ii. The mailbox itself should be white and the post should be green.
3. Antennas/Dishes: No aerial, radio receiving or transiting antenna, satellite dish exceeding thirty-six (36) inches or similar apparatus shall be erected in front of the house. Such items should be placed so as to be as non-obtrusive as possible and must be concealed from street view as much as possible.
4. Solar panels: These items shall be placed so as to be as non-obtrusive as possible and must be concealed from street view as much as possible.
5. Gas Tanks: Propane and/or natural gas tanks must not be located forward of the back line of the Dwelling.
6. Light Poles: Other than street lights erected by Duke Energy, no other similar light poles shall be erected. Decorative walkway lighting not to exceed eight (8) feet in height near the Dwelling is permissible.
7. Holiday Lights: Temporary decorative lights in the yards of Property Owners are permissible. All Holiday decorations and outside lighting may be placed thirty (30) days prior to the holiday and must be removed within twenty (20) days of said holiday.
8. Signs:
 - a. No signage shall be placed or displayed on any Common Area except for the purposes of yard/garage sales, homes for sale, open houses. Limit of two (2) signs per event.
 - b. Signs shall not exceed two feet by three feet (2'x3') in size.
 - c. Signs shall be placed only in the median or the Owner's Property.
 - d. All signs are to be removed at the end of the event.
 - e. No vulgar or offensive material or wording shall appear on any sign.
 - f. Campaign signs:
 - i. Limited to one (1) per candidate
 - ii. Shall be placed only on the Owner's Property
 - iii. Must be removed within forty-eight (48) hours of the election.

Section VII - Health, Safety and Sanitation

1. Pollution:
 - a. In the interest of health and sanitation, and so that the land herein, and all other land in the same locality may be benefitted by a decrease in the hazards or air and stream pollution and by the protection of water supplies, recreation, wildlife, and other public uses thereof, Property Owners will not use any Lot in any manner or for any purpose which may result in the pollution of the air or an waterway which flows through or adjacent to such Property.
 - b. Collection of any material, which might tend to pollute the air or water or otherwise impair the ecological balance of the surrounding land is prohibited.
2. Fires: Open burning of yard or other debris is not permitted.

3. Fire Pits: The use of a decorative fire pit not to exceed thirty-six (36) inches in diameter is allowed.
4. Street Lighting: With street lighting being provided, Owners shall share equally in the cost of operation and maintenance of the same.
5. Water source: All Dwellings shall connect to the public water supply and there shall be no wells in the Neighborhood used to provide potable drinking water.
6. Storm Drains: Mowing of grass clippings into the street and thus being allowed to wash or be pushed down storm drains is prohibited.
7. Pools: Pools must be placed behind the back line of the house and meet all county regulations.
8. Speed Limits: The posted speed limit is to be observed by all vehicles driving within the Neighborhood.
9. Sports equipment: For safety reasons, basketball goals, bike ramps or any other recreational apparatus or equipment are not permitted either permanently or temporarily, in any street in the Neighborhood.
10. Firearms: Hunting of all wild animals, fowl, and game is hereby prohibited within the Neighborhood, and the discharge of firearms in the Neighborhood for any purpose is prohibited. The term "firearms" includes guns of all types and crossbows.

Section VIII - Animal and Pets

1. No animals, livestock or poultry of any kind shall be raised, bred, pastured or maintained on any Lot except household pets which may be kept thereon as pets for the sole purpose and use of the occupants, not for any commercial use or purpose. Dogs, which are household pets, shall at all times, when not on the Owner's Property be on a leash.
2. Pet Waste: No pet is allowed to defecate in any part of the common area or another owner's property. If the pet does poop, it is the pet owner's responsibility to remove and properly dispose of any poop.

Section IX - Vehicles

1. No commercial automobiles or vehicles of any type whose capacity exceeds one (1) ton shall be parked on any Lot, driveway, between the hours of 6:00 p.m. and 7:00 a.m. any day of the week, or at any time of the day or night on Sunday.
2. No boats, boat trailers, utility trailers, recreational vehicles, campers, camper trucks shall be parked forward of the back line of the house for a period of time longer than 72 hours.
3. No inoperable, unlicensed, or unregistered vehicles shall be stored on any Lot unless it is an enclosed garage or behind a fence or other means where it cannot be observed from the street or adjoining properties.
4. No vehicle shall remain on the property:
 - a. whose registered and legal owner of record disclaims ownership or releases his rights thereto or
 - b. which has been left on private property with or without the consent of the owner, occupant or
 - c. lessee thereof for a period of time exceeding twenty-four (24) consecutive hours
5. All resident's vehicles must be parked in their driveways or garage. Parking of any vehicle on the front lawn is prohibited.
6. If a car is parked on the street, it must follow the flow of traffic so that its taillights point to oncoming traffic.
7. Parking of any vehicles on any street for more than seventy-two (72) consecutive hours is prohibited.

Section X - Owner's Dues

1. On 9-6-1990 (Berry's Pond) and 5-6-1995 (The Shores) a Property Owners' Association was organized. All Property Owners shall be Members of the same, and shall pay applicable Dues and assessments lawfully imposed on such membership.
2. Due Date: Each Lot in the Neighborhood shall owe the Association a sum to be paid yearly, no later than February 15 of each year.
3. Notification: Written notice of the regular assessment and adjustment thereof along with a copy of the budget or any amended budget and shall be sent to every Owner subject thereto. The notification will identify the amount(s), due date(s), and the address to which payments are to be sent and will be mailed at least thirty (30) days in advance of the due date of the first (or only) installment of each regular assessment.)
4. Setting the Dues:
 - a. The HOA Board shall at all times fix the Dues based on the Associations budget for the period of Regular Assessment. The amount of the Dues shall be uniform for each Lot except as set forth herein and shall be assessed against all Lots at the time of the Assessment.
 - b. The Board shall once each year create a budget and fix the dues based on the budget for the period. If the Board fails to set a regular assessment, then the previous assessment or the previous installment schedule shall continue until the regular assessment is set.
 - c. The Board shall have the right to adjust the amount and installment schedule of the regular assessment without membership approval for the purpose of meeting the budgetary obligations of the Association and in times of a cash flow shortfall.
 - d. Annually, the Dues may be increased, as the Board of Directors may determine, but by a sum of no greater than fifteen percent (15%) of the amount of the Dues assessed the previous year.
5. The Dues levied by the Members of the Association shall be used exclusively for the purposes of the general operation of the Association, for the promotion of the health, safety and welfare of the residents of the Neighborhood, and in particular for the payment of Insurance on the Common Areas, insurance thereon, repair, replacement and additions thereof, materials, cost of lawn and landscaping maintenance, electric bill for the street lights, and all other debts or obligations incurred by the Association.
 - a. Paid Professional Manager: The Board of Directors may employ a manager or managerial firm to supervise all work, labor, services and material required in the operation and maintenance of the Common Area and in the discharge of the Associations duties throughout the Neighborhood.
 - b. Attorney's Fees and Cost: Should the Association employ counsel to enforce the Declaration, or the reasonable rules, regulations and policies established or amended by the Board of Directors from time to time because of a breach of the same, all costs incurred in such enforcement, including a reasonable fee for the Association's counsel and other reasonable costs of collection, shall be paid by the Owner of such Lot or Lots in breach thereof.
6. Nonpayment:
 - a. If an Owner has not paid within thirty (30) days after the due date, a late fee of fifteen percent (15%) of the outstanding dues balance will be assessed beginning one month after the due date, and continuing until such time as the Dues and late fees are paid in full
 - b. Any fees including but not limited to court cost, legal fees, fees charged by management company for court appearance for collection of unpaid Dues will be the responsibility of the past due Owner.

- c. Any Dues not paid when due and owing, including late charges and interest, shall be deemed to constitute a lien against the Lot or Lots for which they are due and owing, and shall be subject to payment, under all circumstances, at such time as Ownership of any interest.
 - d. If any Owner has not paid any assessment or installment, or any late charges or expenses related thereof, with sixty (60) days after the Due Date of the assessment or installment, the Association shall have the right to notify any or all mortgages having a security interest in such Owner's Lot or Lots that such Owner is in default in the performance of their obligations under the Development Documents, and of those actions taken or proposed to be taken by the Association as a result of the default.
 - e. The assessment, delinquency charges, interest, and costs of collection, including court costs, the expenses of sale, any costs required for the protection and preservation of the Lot, and reasonable attorney's fees, shall be a binding personal obligation of such Owner, as well as the lien on such Owner's Lot enforceable in accordance with the provisions of the Declaration.
9. **Certificate Of Payment**
- Upon written demand by an Owner, the Association shall within a reasonable period of time, issue and furnish to such Owner a written statement:
- a. Stating that all Dues or assessments (including penalties, interest and costs, if any) have been paid with respect to Lot Owner as of the date of such certificate, or
 - b. That all Dues or assessments, interest and costs have not been paid, setting the amount then due and payable.

Section XI – Membership and Voting Rights

1. Every person or entity who is an Owner of any Lot shall be a Member of the Association.
2. Membership shall be mandatory for all Owners.
3. The Association shall have one (1) class of voting Membership. Each Member shall be entitled to one (1) vote for each Lot they own. When more than one (1) person holds such interest or interests in any Lot, the entire vote attributable to such lot shall be exercised by one (1) individual who is duly authorized in writing by all Owners of that Lot.

Section XII– Board Reporting

1. The HOA Board shall prepare annually a general itemized statement showing the Associations reviews, costs and expenses for such physical year. A copy of such statement shall be made available to each Member upon request to a member of the Board or the Property Management Firm of record.
2. Roster: A roster of the Home Owners shall be kept and maintained, and be opened to inspection by any Owner.

Section XIII – General Provisions

1. Easement for Utilities: Berry's Pond/The Shores Homeowners Board reserves to itself and its heirs and assigns, an easement along side and rear Lot lines of each Lot for the construction, maintenance, replacement, removal and extension of underground electric, telephone, water and other service lines. Said easements shall be 14 feet wide, 7 feet on each side of common Lot lines. In the event of resubdivision of a Lot or Lots said easement shall extend along the resulting new Lot lines in lieu of extending along the original Lot lines as shown on Plat provided that the easement for any utility line in place at the time of any such resubdivision shall continue in addition to the easement or easements along new Lot line's thus created. The term utility lines shall be construed to include necessary transformers or other equipment, which good engineering practices require placing above ground to use with underground utility installations. Drainage easements are also reserved within the same bounds, or as shown on recorded Plat referred to above.
2. Selling portion of lots: The Owners and subsequent purchasers of Property in the Neighborhood may sell and convey a portion of any Lot to the Owner of the adjoining Lot in this Neighborhood provided that any such sale of a portion of a Lot does not result in the creation of another Lot or a greater number of Lots shown on a Plat referred herein. No part of said Property shall be used as a roadway or easement to serve other Property outside the Neighborhood without prior written consent of the Association.
3. Gas and Mineral rights: Should the Owner of any Lot in the Neighborhood acquire the oil, gas and minerals located in or under and to be produced from said Lot, said Owner, their heirs, successors and/or assigns, shall never have the right to conduct any drilling, exploring or other operations on the surface of said Lot.

Section XIV – General Provisions – as Related to Covenants

1. The Association shall remain in effect so long as the Protective Covenants hereby amended remain in effect.
2. These covenants, restrictions and conditions shall continue in full force and effect until December 31, 2026, and shall thereafter be automatically extended for successive periods of 10 years each, unless by a duly executed and recorded instrument the then owners of fifty percent or more of the lots shown on all of the recorded plats designated as part of the Berry's Pond development elect to terminate or amend the restrictions in whole or in part.
 - a. Effective Date: This Declaration shall become effective upon its recordation in the office of the Register of Deeds for the county in which the Property is located.
 - b. Amendment: In addition to any other manner herein provided for the amendment of this Declaration, the covenants, restrictions, easements, charges, and liens for this Declaration may be amended, changed, added to, derogated or deleted at any time and from time to time upon the execution and recordation of any instrument executed by Owners holding not less than a majority of votes of the Owners of the Membership of the Association have the right to cause this document to be amended to correct any clerical or scrivener's error(s) or to conform to the requirements of the Federal Housing Administration or the Veterans Administration or the Federal

National Mortgage Corporation (FNMA or any other insurer or purchaser of mortgages secured by the Lots as the same may be amended from time to time.

3. Any failure by the Association or any Owner to enforce any covenant or restriction herein contained or contained in the Declaration or to enforce any of the Regulations shall in no event be deemed a waiver or right to do so thereafter.
4. Each and all of the covenants, conditions, and restrictions contained herein shall be deemed and construed to be continuing; no waiver of a breach of any of the covenants, conditions or restrictions herein contained shall be construed to be a waiver of any other breach of the same.
5. Invalidation of any one or more of these covenants and restrictions shall in no way affect any of the other covenants and restrictions, and they shall remain in full force and effect.
6. Private Right of Action: If any parties hereto, or any of them, or their assigns, shall violate or attempt to violate any of the covenants or restrictions herein, it shall be lawful for any person or persons owning any other Lot in the Neighborhood to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants or restrictions and either prevent them from doing so or to recover damages or other Dues for such violation.
7. Access by the Association: For the purpose of performing its function under this or any other Article of this Declaration, the Association and their duly authorized agents and employees, shall have the right to enter upon any Lot to:
 - a. Make necessary examination in connection of any violation of this Declaration or Regulations
 - b. Respond to the request of demand of a governmental body, district, agency or authority exercising jurisdiction over a portion of the Property or
 - c. In the sole discretion of the Association, prevent an anticipated request or demand of a governmental body, district, agency, or authority exercising jurisdiction over a portion of the Property.
8. With regard to the aforementioned Association's right of access in the context of responding to, or preventing a request from a governmental body, district, agency, or authority, the Association's right of access shall remain in effect for as long as said governmental body, district, agency, or authority as enforcement power over the Association.
9. Notice: Any notice required to be sent to any Member or Owner under the provision of this Declaration and service of any legal proceedings shall be deemed to have been properly sent and received when personally delivered or mailed, postpaid to the last known address of the person who appears as that person authorized to receive notice or to vote as shown on the records of the Association at the time of such mailing. Any such notice shall be deemed validly given if provided in English, unless otherwise approved by the Board of Directors of the Association. It shall be the responsibility of an Owner to have notices or other correspondence translated to the language of their origin or language of common usage. The Association shall in no event bear any responsibility or cost for providing translators or translated notices.
10. It shall at all times be the responsibility of the Owner to provide written notice with the Association of the name and address of the person(s) authorized to receive written communications or notifications from the Association. In the event an Owner fails to provide notice to the Association, the Owner(s) agree(s) and acknowledge(s) that the deeded title owner's name and physical address of the property shall suffice for the purposes of accepting written communications or notifications from the Association.

Section XV – Definitions

The following capitalized words when used in this Declaration, any Supplement or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings.

- (A) **ARCHITECTURAL REVIEW COMMITTEE:** (ARC) shall mean and refer to the Board of Directors of the Association, its appointees or volunteers, or an ARC appointed by the Board of Directors of the Association.
- (B) **ASSOCIATION:** shall mean and refer to Berry's Pond/The Shores Homeowners Association, its successors and assigns.
- (C) **BERRY'S POND PHASE I AND II:** shall refer to Berry's Pond.
- (D) **BERRY'S POND PHASE III:** shall refer to The Shores.
- (E) **BOARD, BOARD OF DIRECTORS, HOMEOWNER'S BOARD, and BOARD OF THE ASSOCIATION:** shall mean and refer to the Berry's Pond/The Shores Homeowners Association Board and refer to the members of the board of directors of the Association whether elected or appointed.
- (F) **BPHOA:** Berry's Pond/The Shores Homeowner's Association
- (G) **COMMON AREA:** shall mean and refer to those areas of land within the Property shown as "Common Area" on any recorded Plat of the Property, included but not limited to, any and all Structures thereon, or equipment thereon, entrance signs, lights, shrubs, landscaping, or other easements used, owned or maintained by the Association for the benefit of the Neighborhood, whether or not located within the street right-of-ways. Such areas are intended to be devoted to the common use and enjoyment of Members of the Association and are not dedicated for use by the general public.
- (H) **DECLARATION:** shall mean and refer to this Amended and Restated Declaration of Covenants, Conditions and Restrictions any future amendment or modification thereof, and any supplements thereto that annex additional land.
- (I) **DUES** shall have the meaning specified in Section IX.
- (J) **DWELLING:** shall mean and refer to a single family home if constructed in the Neighborhood.
- (K) **HOA:** See BPHOA
- (L) **HOMEOWNER:** Shall have the same meaning as Owner.
- (M) **LOT:** shall mean and refer to any parcel of land with such improvements, Structures, or Dwellings as may be erected thereon, shown and described as a "LOT" on any recorded subdivision Plat of the Property, but shall not include the Common Area, or the streets or road right-of-ways in the Neighborhood.
- (N) **MEMBER:** shall mean and refer to any Owner, as provided in the definitions hereof.
- (O) **NEIGHBORHOOD:** shall mean and refer to the subdivisions (Berry's Pond and The Shores) of the Property.
- (P) **OWNER:** shall mean and refer to the record Owner or Owners, whether one (1) or more persons or entities, of the fee simple title to any of the Lots, but shall not mean or refer to any mortgagee or subsequent hold of a mortgage unless and until such mortgagee or holder has acquired title to the Lot pursuant to foreclosure or any proceedings in lieu of the foreclosure. Said term Owner shall also refer to the heirs, successors, and assigns of any Owner.
- (Q) **PLANS:** shall mean and refer to and encompass the plans, specifications, elevations and exterior designs of any Structure built or to be built on any Lot, as well as a site plan showing building setbacks, locations of all Structures or other items.
- (R) **PLAT:** shall mean that certain plat recorded in Book/ Page of the Spartanburg County Register of Deeds.
- (S) **PROPERTY** shall mean and refer to all property, including but not limited to the Lots, streets or road right-of-ways and Common Area subjected to these Covenants.

(T) **STRUCTURE:** shall mean and refer to any thing or object upon any portion of the Property including by way of illustration and not limitation, any Dwelling or building or part thereof, garage, porch, shed, mailbox, covered or uncovered patio, open or enclosed porches, siding, doors, fixtures, exterior fixtures, awnings, window boxes, art, statuary, swimming pool, temporary or permanent sports equipment (such as basketball goals), fence, curbing, paving, driveways, walkways, wall or hedge, antenna or satellite dishes, yard, lawn, landscaping, trees, shrubs, bushes, grass, septic system, sign, or other thing or device which affects or alters the flow of any waters in any natural or artificial stream, wash or draining channel from, upon or across any portion of the Property; and any change in the grade of any portion of the Property of more than six (6) inches.

Section XVI – Architectural Review Form**BERRY'S POND/THE SHORES****HOMEOWNER INFORMATION:**

NAME: _____ STREET ADDRESS: _____

CONTACT INFO: Preferred Phone Nbr. Day: _____ Eve: _____

EMAIL: _____

The homeowner acknowledges that they will:

1. Review Berry's Pond/The Shores Covenants prior to submitting the request to ensure project is in compliance.
2. Obtain any county required permits and comply with applicable county ordinances.
3. Contact Public Utility Locating service if any digging will be performed. www.sc811.org or call 811.
4. Determine if utility easements are located along the property boundaries. Should the utility need to access the easement it is the responsibility of the homeowner to remove any item installed on the easement.

Please initial that you have read and understand the above as it applies to your project: _____

PROJECT INFORMATION: APPROX. START DATE: _____ APPROX. COMPLETION DATE _____

Contractor Information: _____

*Blue print with site plan must be submitted along with this form.***NATURE OF PROJECT (check all that apply)****Residence:** New Construction: _____ Addition: _____ Modification: _____ Reconstruction: _____**Premises:** Driveway: _____ Deck: _____ Porch: _____ Sidewalk: _____ Pool: _____ Fence: _____ Outside Building: _____

Other: _____ Describe: _____

Submission Checklist:

- _____ Blueprint with site plan
- _____ Location site, easements, and change of site plan
- _____ Photograph, brochure, or sketch of proposed change
- _____ Written proposal of idea/change
- _____ Grading/Landscaping plan
- _____ Type of material to be used for driveway, porch, fence and outside building, exterior of residence if applicable

Send completed form & required attachments to: Light Property Management, Inc., PO Box 8046, Spartanburg, SC 29305

Or email to: lpn@lightpropertymanagement.com

Please call 864-585-2525 if you have any questions.

Architectural Review Approval process:

The Berry's Pond/The Shores Homeowners Architectural Committee (HOA ARC) will acknowledge receipt of the form within five (5) days by either email or phone depending on the information provided on the request form.

If no acknowledgement received by the homeowner within 5 days, the form must be resubmitted.

The HOA ARC will approve or disapprove within thirty (30) days after confirmation is made. HOA ARC has the option to hire a third party to review submitted design. In the event that HOA ARC shall fail to approve or disapprove such design or location within thirty (30) days after confirmation that request was received by HOA ARC, approval shall not be required.