

SUBDIVISION AGREEMENT
CYPRESS CREEK, PHASE VI, SECTION 2

THIS SUBDIVISION AGREEMENT, made this ____ day of _____, 2022 by and between CYPRESS INVESTMENT HOLDINGS, LLC, a Delaware limited liability company, of the first part, herein referred to as "Developer"; and TOWN OF SMITHFIELD, a Virginia municipal corporation situate in Isle of Wight County, of the second part, herein referred to as "Town".

WHEREAS, the Developer is the successor in interest to the original developer of approximately 450 single-family lots (the "Homes"), a golf course with a 4200 square foot clubhouse and cart storage and maintenance facilities (the "Golf Course Amenities"), which have been under construction and a homeowner's association clubhouse and swimming pool, (the "Homeowner's Amenities") on a certain tract or parcel of land situate in the Town of Smithfield known as Cypress Creek (the "Development") and desires to have a plat for Phase 6, Section 2 of the Development containing fifty-one (51) single-family lots entitled "Cypress Creek, Phase VI, Section 2 Subdivision Plan " approved by the Town and admitted to record in the Clerk's Office of the Circuit Court of Isle of Wight County, Virginia (the "Subdivision Plat"); and

WHEREAS, installation of sewer, water, streets lights, entrance signage, and street improvements required by the Subdivision Ordinance of the Town by Developer has not commenced and Developer desires to enter into this Agreement and to furnish the financial assurances required by the Subdivision Ordinance of Town so that the subdivision plat may be approved for recordation, upon Town's assurances that Town will accept such improvements and thereafter operate and maintain same; and

WHEREAS, Developer is required to pay the costs of designing and installing certain sewer lines within the Development.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That for and in consideration of the approval of the Subdivision Plat and the covenants and agreements herein contained, it is agreed as follows:

ARTICLE I

1. Town hereby authorizes the necessary Town officials to approve the Subdivision Plat of Cypress Creek, Phase VI, Section 2 for recordation subject to compliance with the design and review standards of the Subdivision Ordinance of the Town and in line with the current Hampton Roads Planning District Commission (HRPDC) Regional Construction Standards along with Town Design Standards. From here on in, any reference to Town Design Standards will also include the current Hampton Roads Planning District Commission (HRPDC) Regional Construction Standards.

2. Within twelve (12) months from the date of approval of the Subdivision Plat for Cypress Creek, Phase VI, Section 2, Developer agrees to have completed the construction and installation of the sewer, water, and street improvements in the property shown on the plat of Cypress Creek, Phase VI, Section 2, as required by the Subdivision Ordinance of the Town and Town Design Standards.

3. The sewer system improvements, including certain off-site improvements to the sewer system of the Town as required by the Subdivision Ordinance of the Town ("Sewer Improvements"), water system improvements ("Water Improvements"), and street lights and street improvements ("Street Improvements"), are collectively referred to herein as ("the Improvements"). The design, construction and installation of the improvements shall be in compliance with all requirements of the Town, the State Health Department, the State Water Control Board, and the Virginia Department of Transportation and shall be subject to final approval by Town at all steps of design and construction. No construction of the improvements shall commence until the plans and specifications have been approved by the Town and the financial assurances provided as required by Article II of this Agreement. No changes in the plans and specifications shall be made without further approval by Town. All such plans, as finally approved by Town, shall become part of this Subdivision Agreement, Developer shall dedicate and convey the Improvements to the Town upon as hereinafter, and Town shall accept the same. No buildings shall be connected to the sewer or water improvements prior to acceptance of the Improvements by Town, except that in hardship cases temporary use may be made with the approval of Town and where Developer accepts full responsibility and bears the cost of such operation.

4. Town reserves the right and shall fix, and retain all appropriate sewer and water tap fees for properties connected to the sewer and/or water lines constructed and installed by

Developer. The initial sewer connection fee for each residential or equivalent connection in Phase VI, Section 2 of the Cypress Creek Subdivision shall be \$1,580.00 with and availability charge of \$4,120.00 per residential or equivalent connection. The initial water connection fee for each residential or equivalent connection in Phase VI, Section 2 of the Cypress Creek Subdivision shall be \$660.00 with and availability charge of \$2,720.00 per residential or equivalent connection. These fees are subject to change from time to time upon the action of Town Council in accordance with the provisions of the Town Code and applicable state law. All connection fees shall be payable to the Town in full when application is made for a zoning permit for that lot or parcel of land. In addition to fees due and owing to the Town of Smithfield, there are connection fees due and owing to the Hampton Roads Sanitation District in connection with connection to the Town's sewer system.

ARTICLE II

1. Developer will, upon execution of this Subdivision Agreement, in order to comply with the Subdivision Ordinance of the Town, provide Town with an unconditional and irrevocable letter of credit in the initial amount of \$_____ which shall serve as Developer's bond for performance and shall be calculated at 120% of the total estimated cost of construction of the Improvements, on the itemized cost estimate sheet, as verified by the Department of Public Works and Utilities. The letter of credit and the performance bond, totally \$_____ will be conditioned upon the performance of all covenants and provisions of this Subdivision Agreement. The form and substance of the letters of credit shall be subject to the approval of Town's attorney.

2. In the event Developer fails to complete the Improvements provided hereinabove in the time designated, Town may complete or cause the same to be completed, and Developer shall be liable to pay to Town the cost necessary to complete the Improvements up to the amount set forth in paragraph 1 of this Article. Any requests by Developer for an extension in the time for completion shall be delivered to Town in writing no later than forty-five (45) days prior to the date for completion as established by the provisions of Article 1, paragraph 2. of this agreement. Any requests for extensions shall be considered and reviewed by the Town council. In the event that an extension is granted, the Developer shall pay an administrative review fee equal to two and one-half

percent (2.5%) of the amount of the surety being extended to compensate Town for its significant administrative costs caused as a result of Developer not completing the improvements within the time period established by this agreement.

3. In the event of default by Developer described above, Town may, at its option, collect the cost for the completion of the Improvements hereof from Developer prior to the actual construction of same. In the event the estimated cost is greater than the cost necessary to complete the Improvements, Town shall refund difference to Developer.

4. Reductions in the amount of the surety held by Town may be made by the Town as construction progresses and is approved by Town, except that in no instance shall the amount of the surety be reduced to less than twenty percent 20% of the cost of construction of the Improvements, as determined by the Department of Public Works and Utilities.

5. If Developer shall faithfully execute each and all requirements of this Subdivision Agreement, then the aforementioned letter of credit shall be released by Town to Developer within 30 days of Town's final inspection and after written notification by the Town to Developer of Town's acceptance of the Improvements.

ARTICLE III

1. Developer will not under any circumstances permit the discharge of sewage originating on any other property or premises, either directly or indirectly, into the Sewer Improvements without the specific prior approval of Town. With the approval of Town, Developer may agree with owners of adjacent properties to construct joint facilities to be connected to the Sewer Improvements.

2. Developer agrees that no residence shall be connected to, and that no effluent shall be discharged into the Sewer Improvements prior to infiltration tests and notification by the Town to Developer of Town's tentative acceptance of the Sewer Improvements or portions thereof.

3. Developer shall pay to Town a fee assessed for the inspection of the Improvements constructed as part of the subdivision, which fee is to be paid prior to the construction of the Improvements and equal to two and one half percent (2.5%) of the estimated construction costs of the Water and Sewer Improvements and one and one half percent (1.5%) of the estimated construction costs of the Road Improvements, as submitted by the Developer on the itemized cost

estimate sheet, and verified by the Department of Public Works and Utilities.

4. The execution of this agreement authorizes Town staff entry upon the properties for the purposes of Inspections of the Improvements.

5. Town shall have the right at any and all times to make, connect, or permit the connection of any other sewer or sewer connections or extensions with the Sewer Improvements, at any point or points, and shall have the right to at any and all times to take and dispose of sanitary sewage, through the Sewer Improvements from persons beyond and adjacent to the Development and originating on properties other than that described in this agreement provided the number of connections and capacity necessary for the Homes, the Golf Course Amenities, and the Homeowner's Amenities is reserved.

6. Developer will not under any circumstances permit the flow of water from Town's existing water system into the Water Improvements without the specific prior approval of Town. With the approval of Town, Developer may agree with the owners of adjacent properties to construct joint facilities to be connected to the Water Improvements.

ARTICLE IV

1. Upon completion of the construction of the Sewer Improvements, and the final inspection and acceptance of construction by Town, Developer shall forthwith convey to Town, free and clear of any encumbrances, and in form approved by Town, all of Developer's right, title and interest to the Improvements, including but not limited to sewer and water mains, force mains, laterals, lines, pipes, pumping stations, and other related facilities, street lights and street improvements, and shall grant and convey to Town, with General Warranty of title any lots or sewage pumping station sites, with access or right-of-way and/or easements of which said force main, gravity mains or any other facility is constructed, all without cost to Town. Such transfer and conveyance shall include but not be limited to all facilities capable of serving more than one customer plus laterals (house or building connections) up to but outside private property lines. Facilities on private property serving one customer shall become the property of that customer.

2. Developer hereby grants to the Town, the exclusive right to establish and re-establish rates for sewer and water service to be furnished by Town after acceptance of the Improvements by Town.

Developer covenants and agrees that any contracts for sewer service which it may enter into with customers in Cypress Creek, Phase VI, Section 2 at any time prior to its conveyance of the Improvements to Town shall incorporate by reference the provisions of this Subdivision Agreement.

3. Developer shall indemnify Town and keep and hold Town free and harmless from any contractual liability to Developer and from all claims on account of injury to Developer or any other person, firm or corporation, or damage to the property of Developer or any other person, firm or corporation arising from or growing out of Developer design, and/or approval, construction and/or installation of the Improvements, and in the event that suit shall be brought against Town, either independently or jointly with such Developer, on account hereof, Developer shall defend the Town in such suit at no cost to Town. In the event of a final judgement being obtained against Town, either independently or jointly with Developer, then Developer shall pay such judgement with all costs and hold the Town harmless therefrom.

4. Developer, or its lessee or purchaser of any property in the aforesaid subdivision hereby waives as against Town, any and all rights or claims which they may now have, or may hereafter have on account of injury or damage to Developer, lessee or purchaser or on account of injury or damage to the property of Developer, lessee or purchaser directly or indirectly resulting from the failure of Town to supply sewer or water service to Developer, lessee or purchaser in whole or in part under this Agreement; provided, however, that this waiver shall not be construed to relieve Town from any of its contractual obligations to Developer under this Subdivision Agreement.

5. The approval of any final plat or plan of this subdivision or any section thereof under this Subdivision Agreement shall not be deemed an acceptance by the Town of the Improvements for their maintenance, repair, or operations. Until accepted in writing by the Town, the Developer shall be fully responsible for maintenance, repairs, and operations of and shall assume all risks and liability associated with the Improvements. The Developer shall pay the costs of repairing or replacing the Improvements because of defects due to inferior materials or faulty workmanship appearing within one (1) year after acceptance by the Town. The Developer shall post a bond or other security (the "Defect Bond") in form approved by the Town's attorney and with surety acceptable to the Town in the amount of twenty percent (20%) of the total construction costs of the

Improvements. The Defect Bond shall guarantee the repair of defects in the Improvements due to the inferior materials or faulty workmanship as required by this Subdivision Agreement.

6. The Town agrees to accept, operate and maintain the aforesaid Improvements upon conveyance to the Town by the Developer, provided that all terms and conditions of this Subdivision Agreement are complied with by the Developer, and especially that (1) the Developer has completed the Improvements in accord with the plans and specifications approved by the Town; (2) the Developer has tendered such appropriate instruments approved by the Town pursuant to Article IV, paragraph 1. of this Subdivision Agreement; (3) satisfactory evidence is provided by the Developer that the Improvements have been paid for in full by the Developer; (4) upon receipt by the Town of five hard copies and PDF versions of "as built" construction plans prepared by the engineering firm which designed the improvements; one copy of CCTV videos, the submission of CAD files; and (5) upon full compliance with the provisions of the Town's street lighting policy and all ordinances relating to street lights in effect at the time of the installation of street lights.

ARTICLE V

1. The Developer shall bear its pro rata share of the cost of upgrading the Town's existing water system, (the off-site systems).

2. The design and construction of the upgrading of the off-site systems shall be performed by the Town at its expense.

3. In accordance with the terms of that certain agreement entitled "SUPPLEMENTAL UTILITY AGREEMENT FOR THE CYPRESS CREEK DEVELOPMENT", dated February 1, 2005 and in consideration of Developer's agreement to construct the offsite water system improvements identified in said agreement as the Cypress Creek water main, the Town agrees that the remaining lots in the Cypress Creek Subdivision, including the lots in Phase VI, Section 2 shall not be subject to the per lot charge currently assessed to individual lots as a pro rata contribution to offset the costs of off-site water improvements.

ARTICLE VI

1. Upon execution of this Subdivision Agreement it shall be recorded in the Clerk's Office of the Circuit Court of Isle of Wight County at the Developer's expense.

2. Developer agrees to obtain the full release of any deed of trust lien on its land in so far as it shall apply to the Improvements and any and all land and easements to the Improvements and any and all land referred to in Article IV, Paragraph 1. of this Agreement, and Town shall not be required to accept the Improvements or connect them to Town facilities until such release has been obtained.

3. Developer and its lessee or purchaser of any property in the aforesaid subdivision hereby agrees that any such property remaining or becoming subject to any existing or subsequent easements, including any scenic easement heretofore or hereafter recorded, shall continue to be subject to such to the extent provided for by the provisions of said easement of record. Developer specifically agrees to reserve unto itself and unto the Town the right of entry upon the lots being conveyed, an easement of entry upon the property for the purpose of removing any obstructions to the drainage easements, ditches and other drainage structures and facilities located upon the property.

4. Developer and its Lessee or purchaser of any property in the aforesaid subdivision hereby recognizes that no buffer component of a Resource Preservation area in aforesaid Subdivision shall be disturbed, cleared or mowed in contravention of any Federal, State or Municipal law or regulation to which the Resource Preservation Area is then legally subject and shall include a covenant to this effect in its declaration of restrictions and conditions.

5. This Subdivision Agreement shall not be assignable or transferable by Developer without the prior consent of Town.

6. This Subdivision Agreement shall be binding upon Developer's successors and assigns.

SIGNATURE PAGES TO FOLLOW

WITNESS the following signatures, Cypress Investment Holdings, LLC, a Delaware limited liability company, having caused these presents to be executed Limehouse Street, LLC its sole member, by Wharf Street, LLC, its majority member, by Todd Kuhl its authorized representative with due authority, and Town of Smithfield having caused these presents to be executed on its behalf by its Town Manager pursuant to resolutions duly adopted by the Town Council of the Town of Smithfield on _____, 2022.

CYPRESS INVESTMENT HOLDINGS, LLC,
a Delaware limited liability company
By Limehouse Street, LLC, its sole member,
By Wharf Street, LLC, its majority member

By: _____
Todd Kuhl, Authorized Representative

STATE OF _____

CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2022 by Todd Kuhl, Authorized Representative of Wharf Street, LLC, the majority member of Limehouse Street, LLC, as sole member of Cypress Investment Holdings, LLC, a Delaware limited liability company.

Notary Public

My Commission Expires: _____

TOWN OF SMITHFIELD

By: _____
Michael Stallings, Town Manager

STATE OF VIRGINIA

CITY/COUNTY OF _____ to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2022 by Michael Stallings, as Town Manager of the Town of Smithfield.

Notary Public

My Commission Expires: _____