



THE HAMPTONS APPLICATION FOR APPROVED BUILDER STATUS

The Architectural and Landscape Guidelines for the residential development known as The Hamptons ("The Hamptons") provide that only builders then in good standing under The Hamptons Approved Builder Program ("Approved Builder Program") may construct homes and related improvements on lots in The Hamptons. To qualify as an Approved Builder under the Approved Builder Program, a builder must satisfy certain criteria and requirements established by The Hamptons developer, Windjam 23, LLC, and the satisfaction of such criteria and requirements must be reconfirmed from time to time. Even though a builder may satisfy all qualifications, only a limited number of builders will be selected, and all selections shall be in Windjam 23, LLC's sole and absolute discretion. Moreover, Windjam 23, LLC shall have no obligation whatsoever to give any reason or cause to a builder or anyone else why any particular builder was not selected to participate in the Approved Builder Program. Admission of a builder to the Approved Builder Program does not assure that the builder will remain in the Approved Builder Program for any specific tenure, and any builder may be removed by Windjam 23, LLC from the Approved Builder Program at any time in the exercise of Windjam 23, LLC's sole and absolute discretion, and no reason or cause need be given or established for any such removal.

To induce Windjam 23, LLC to consider (the "Builder") for admission to, or continuation in, the Approved Builder Program, the undersigned individual representative of the Builder, being duly sworn, hereby certifies as follows to Windjam 23, LLC on the _____ day of _____, 20__:

1. The Builder is currently a licensed builder in good standing under the laws of the State of North Carolina; the Builder's North Carolina builder's license number is _____; the monetary limit of the Builder's North Carolina builder's license is UNLIMITED; and a true and complete copy of the Builder's North Carolina current builder's license is attached hereto as Exhibit 1 and incorporated herein by reference. The Builder shall promptly forward to Windjam 23, LLC a true and complete copy of the Builder's North Carolina builder's license following each reissuance or renewal thereof; in addition, if such builder's license is ever challenged, suspended, revoked or otherwise lapses, expires or becomes ineffective, the Builder, if then a Approved Builder under the Approved Builder Program, will immediately notify Windjam 23, LLC in writing of such condition or circumstance.
2. Listed on Exhibit 2 attached hereto is a complete and accurate list of all completed construction projects with regard to which the Builder has served as general contractor during the two (2) year period immediately preceding the date of this Application for Approved Builder Status (this "Application"), and such list includes the name and telephone number of each of the owners for whom the Builder performed such work.
3. All of the names and assumed names under which the Builder has previously operated or conducted business are set forth on Exhibit 3 attached hereto and incorporated herein by reference (the "Affiliates").
4. Except as specifically described on Exhibit 4 attached hereto and incorporated herein by reference, neither the Builder nor any of the Affiliates (if any) has ever (i) been the debtor in any proceeding (whether voluntary or involuntary) under the United States Bankruptcy Code or any state insolvency or bankruptcy statute or law or (ii) failed or been unable generally to pay its debts as such debts have become due.
5. Except as specifically described on Exhibit 5 attached hereto and incorporated herein by reference, neither the Builder nor any of the Affiliates (if any) has been within the five (5) year period immediately preceding this Application a party to a foreclosure action against any real property owned by the Builder or any of the Affiliates or a party in any other legal proceeding or lawsuit which resulted in the entry of a judgment against the Builder or any of the Affiliates; furthermore, no tax lien (federal, state or otherwise) has ever been filed against the Builder or any of the Affiliates.
6. Except as specifically described on Exhibit 6 attached hereto and incorporated herein by reference, within the three (3) year period immediately preceding the date of this Application, neither the Builder nor any of the Affiliates (if any) has ever

filed a lien or a claim of lien with regard to any work performed by such party, and no lien or claim of lien has been filed by any third party (including any subcontractor, mechanic, materialman, laborer or supplier) with regard to any work performed by either the Builder or any of the Affiliates within the three (3) year period immediately preceding the date of this Application.

7. A true and complete copy of the Builder's commercial general liability insurance policy (with coverage of at least \$2,000,000.00) is attached hereto as Exhibit 7. In the event the Builder is admitted to the Approved Builder Program, the Builder hereby covenants and agrees to (i) cause such liability insurance policy to be promptly endorsed to:

- (a) name Windjam 23, LLC as an additional insured, and
- (b) require the issuing insurance company to give Windjam 23, LLC not less than thirty (30) days written notice of any non-renewal of such coverage, any reduction in such coverage (including any increase in the deductible thereunder) or any change in Windjam 23, LLC's status as an additional insured under the policy;

(ii) require the issuing insurance company to promptly deliver the original insurance policy endorsement to Windjam 23, LLC; (iii) either renew such liability insurance policy annually with the same insurance company or obtain new insurance coverage (which satisfies all of the requirements set forth herein) with an issuing insurance company acceptable to Windjam 23, LLC (as provided below in this Paragraph 7); and (iv) keep such liability insurance policy in effect at all times during the Builder's participation in the Approved Builder Program.

8. The Builder's current source(s) of construction financing, including the name, address and telephone number of the contact person at each financial institution, are listed on Exhibit 8 attached hereto.

9. Listed on and/or appended to Exhibit 9 attached hereto is complete and accurate organizational information for Builder, as follows:

- (a) Copy of Articles of Incorporation, Articles of Organization, Application for Registration or Certificate of Limited Partnership (including all amendments),
- (b) Recorded copy of each Assumed Name Certificate (if applicable),
- (c) Copy of By-Laws/Shareholders' Agreement/Operating Agreement/Partnership Agreement (including all amendments),
- (d) Name, title, U.S. post office mailing address, phone number, fax number and email address of each shareholder, member or partner,
- (e) Name, title, U.S. post office mailing address, phone number, fax number and email address of each director or manager, and
- (f) Name, title, U. S. post office mailing address, phone number, fax number and email address of each officer and each person other than those having authority under applicable law by virtue of holding a title identified above in (d) or (e) authorized to execute documents as the binding act and obligation of Builder.

10. In the event the Builder is admitted to the Approved Builder Program, as a condition to remaining in the Approved Builder Program, the Builder shall update the information provided herein on an annual basis (or on a more frequent basis if requested by Windjam 23, LLC) in a format approved by Windjam 23, LLC.

11. In the event the Builder is admitted to the Approved Builder Program, the Builder agrees that any controversy, dispute or claim involving Windjam 23, LLC (or any affiliate of Windjam 23, LLC) and the Builder arising out of the Approved Builder Program or relating to The Hamptons (except for the removal of the Builder from the Approved Builder Program, which shall be within Windjam 23, LLC's sole and absolute discretion at all times) shall be settled by arbitration governed by and under the Federal Arbitration Act and, to the extent consistent therewith, the North Carolina Revised Uniform Arbitration Act, in accordance with the Commercial Arbitration Rules of the American Arbitration Association currently in effect (unless the parties mutually agree otherwise). The award rendered by the arbitrator or arbitrators shall be final and any judgment upon the award rendered by the arbitrator or arbitrators shall be entered in a state court in Chatham County, North Carolina. The party (whether the Builder or Windjam 23, LLC) demanding arbitration of any such controversy, dispute or claim shall file a written notice of such demand with the other party and with the American Arbitration Association. Such written notice shall be given not later than sixty (60) days after the controversy, dispute or claim arises, and the three (3) year statute of limitations specified in North Carolina General Statutes Section 1-52(1) shall apply. At Windjam 23, LLC's election, any such arbitration may include any other party that is or may be involved in the controversy, dispute or claim that is the subject matter of the arbitration proceeding. Neither the Builder nor Windjam 23, LLC nor the arbitrator or arbitrators

may make any public disclosure of (i) the existence of any such controversy, dispute or claim, (ii) the existence of any such arbitration proceeding or (iii) the results of any such arbitration proceeding, unless the Builder and Windjam 23, LLC both consent in writing to such public disclosure; provided, however, the filing of a civil action in a state court in Chatham County, North Carolina, confirming an arbitration award pursuant to this paragraph shall not be deemed a violation of this confidentiality provision.

12. In the event the Builder is admitted to the Approved Builder Program, the Builder covenants and agrees that an employee or individual owner of the Builder (who is currently licensed as a general contractor under the laws of the State of North Carolina) shall be actively involved (ie., present, on-site) in the day-to-day activities of the Builder at The Hamptons. Furthermore, as a condition to the Builder remaining in the Approved Builder Program, an employee or individual owner of the Builder (who is currently licensed as a general contractor under the laws of the State of North Carolina) shall be actively involved (ie., present, on-site) in the day-to-day activities of the Builder at The Hamptons.

13. In the event the Builder is admitted to the Approved Builder Program, the Builder hereby covenants and agrees that all sales, promotional and advertising materials, and all forms for deeds, contracts for sale and other closing documents for the sale of property in The Hamptons by the Builder shall be provided by Windjam 23, LLC or approved in advance in writing by Windjam 23, LLC. Notwithstanding the foregoing, Builder is solely responsible for consulting with Builder's counsel with regard to all aspects of Builder's agreements with its customers, including the enforceability of such agreements and the transactions documented therein and the compliance thereof with all applicable laws. Builder acknowledges and agrees that Windjam 23, LLC shall have no liability whatsoever to Builder or any customer of Builder with respect to any such agreement or the form or content thereof and Builder agrees to hold harmless and indemnify Windjam 23, LLC with respect thereto, including reasonable attorneys fees incurred by Windjam 23, LLC.

14. In the event the Builder is admitted to the Approved Builder Program, the Builder hereby acknowledges and agrees that Windjam 23, LLC and its agents and affiliates are not joint venturers with or partners of the Builder relative to the Builder's ownership of, development of, construction upon, or resale of any property (real or personal) within The Hamptons.

15. In the event the Builder is admitted to the Approved Builder Program, the Builder hereby agrees to indemnify, defend and hold Windjam 23, LLC and any affiliated companies or persons harmless from any and all claims, losses, damages, causes of action, demands, and proceedings (including, without limitation, all claims related to construction defects, grading/drainage defects, water intrusion/moisture damage, and mold or other microbiological or environmental contamination) arising out of, or directly or indirectly related to, the Builder's construction activities and the activities of its employees, agents, and subcontractors at The Hamptons, including, without limitation, (i) claims or liens by mechanics and materialmen, (ii) claims by The Hamptons Owners Association, Inc. for assessments or violations of covenants or rules and regulations, (iii) claims by any third party arising out of any contract with the Builder, (iv) any advice or representations or alleged advice or representations by Windjam 23, LLC or any affiliated companies or persons to third parties concerning the qualifications of the Builder to construct houses; (v) the Builder's ownership and development of, construction upon, or resale of property within The Hamptons; (vi) the Builder's insurance coverage (or lack thereof); (vii) the Builder's solvency or financial status; (viii) the Builder's failure or alleged failure to comply with any contractual obligation; (ix) the Builder's failure or alleged failure to comply with any industry standard or any other reasonable standard or practice with respect to the Builder's work or the materials it uses in its construction of houses and other activities engaged in by the Builder; (x) the Builder's use of any substance or material (including, without limitation, any stucco or synthetic stucco material) in the construction of any improvements within The Hamptons, and any defects or faulty workmanship with respect thereto; (xi) the Builder's failure or alleged failure to comply with any building codes or other requirements, rules and ordinances of federal, state and local governmental and quasigovernmental bodies and agencies relating to the construction of improvements and other activities engaged in by the Builder; and (xii) any failure or alleged failure on the part of the Builder to comply with any licensing requirements imposed by federal, state and/or local governmental and quasi-governmental bodies and agencies, including, without limitation, the maintenance of any required builder's and/or contractor's license (collectively, the "Losses"; each, a "Loss"). This indemnity against Losses shall include reasonable attorneys' and paralegals' fees and investigation costs and all other costs, expenses, and liabilities incurred by Windjam 23, LLC and any affiliated companies or persons. The right of Windjam 23, LLC and/or any affiliated companies or persons to collect upon and/or enforce the indemnification provided above in this Paragraph 15 shall accrue automatically and immediately upon the incidence of any Loss by Windjam 23, LLC and/or any affiliated companies or persons. In addition, Builder's obligation to Windjam 23, LLC and any affiliated companies or persons with respect to the indemnification in this Paragraph 16 shall include the payment of all Losses as they are incurred by Windjam 23, LLC or any affiliated companies or persons. Builder's obligation to Windjam 23, LLC and any affiliated companies or persons with respect to an asserted right to indemnification shall continue until the entire amount of indemnification is paid and satisfied in full.

Windjam 23, LLC or their agents shall promptly notify the Builder in writing of any third-party claim or claims asserted against Windjam 23, LLC and/or any affiliated companies or persons which give rise to a right of indemnification under this Paragraph 15. The Builder's failure to indemnify Windjam 23, LLC or any affiliated companies or persons as and to the extent set forth above shall constitute a breach of the terms of this Application and will entitle Windjam 23, LLC, in addition to any other remedies available under this Application or at law, to immediately terminate the Builder's participation in the Approved Builder Program.

Builder's obligations under this Paragraph 15 shall survive the expiration or termination of Builder's participation in the Approved Builder Program indefinitely.

16. The Builder hereby acknowledges that there are or may be other builders admitted to the Approved Builder Program and that other builders are or may be carrying on construction related activities within The Hamptons. Other builders may be admitted to the Approved Builder Program in Windjam 23, LLC's sole discretion and no consent or approval of the Builder shall be required. The Builder agrees to refrain from interfering with or hindering the construction-related activities necessary for such other builders to proceed with, complete and sell their houses within The Hamptons.

17. The undersigned has the full right, power and authority to complete this Application on behalf of the Builder and to bind the Builder in accordance with the terms hereof.

Executed and delivered as of the day and year first above written.

APPROVED AND AGREED TO as of this _____ day of _____, 20__:

BUILDER:

By: _____

Printed Name:

Its: _____

Exhibit 1

Copy of Builder's
North Carolina Builder's License

[TO BE SUPPLIED BY BUILDER]

Exhibit 2

List of Construction Projects
and Related Information

[TO BE SUPPLIED BY BUILDER]

Exhibit 3

List of Names and Assumed Names

[TO BE COMPLETED BY BUILDER; IF THE CORRECT
RESPONSE IS "NONE," THEN WRITE "NONE" BELOW]

Exhibit 4

Bankruptcy and Insolvency Disclosures

[TO BE COMPLETED BY BUILDER; IF THE CORRECT
RESPONSE IS "NONE," THEN WRITE "NONE" BELOW]

Exhibit 5

Foreclosures, Legal Proceedings, Lawsuits and Tax Liens

[TO BE COMPLETED BY BUILDER; IF THE CORRECT
RESPONSE IS "NONE," THEN WRITE "NONE" BELOW]

Exhibit 6

Liens and Claims of Liens

[TO BE COMPLETED BY BUILDER; IF THE CORRECT
RESPONSE IS "NONE," THEN WRITE "NONE" BELOW]

Exhibit 7

Copy of Commercial General Liability Insurance Policy

[TO BE SUPPLIED BY BUILDER]

Exhibit 8

Current Source(s) of Construction Financing

[TO BE SUPPLIED BY BUILDER]

Exhibit 9

Builder Organizational Information

[TO BE SUPPLIED BY BUILDER]