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DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
MCKINLEY PARK TOWNHOMES

20<sup>th</sup>

P/U ISAACSON

DRAWN BY AND ~~RETURN~~ TO: Marc L. Isaacson, Esq., P. O. Box 1888, Greensboro, NC 27402

COUNTY OF GUILFORD

STATE OF NORTH CAROLINA

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 2<sup>nd</sup> day of March, 2006 by NEW GARDEN TOWNHOMES, LLC, a North Carolina limited liability company (hereinafter referred to as "Declarant").

STATEMENT OF PURPOSE

Declarant is the owner of certain property in Guilford County, North Carolina, which is more particularly described on the Plat as defined and described in Article I, Section 6 herein (the "Plat"), reference to which is hereby made. Declarant desires to create thereon an exclusive residential community of single family attached residences to be named MCKINLEY PARK TOWNHOMES.

Declarant desires to ensure the attractiveness of MCKINLEY PARK TOWNHOMES, and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of all properties within MCKINLEY PARK TOWNHOMES and to provide for the maintenance and upkeep of all Common Elements in MCKINLEY PARK TOWNHOMES. Declarant intends by the covenants and restrictions contained herein to promote harmony and compatibility between and among the single family attached lots within the Development as described herein. To this end the Declarant desires to subject the real property described herein to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is

and are for the benefit of said property and each owner thereof.

Declarant further desires to create an organization to which will be delegated and assigned the powers of owning, maintaining and administering the Common Elements in MCKINLEY PARK TOWNHOMES, administering and enforcing the covenants and restrictions contained herein, and collecting and disbursing the assessments and charges hereinafter created in order to efficiently preserve, protect and enhance the values and amenities in MCKINLEY PARK TOWNHOMES to ensure the residents' enjoyment of the specific rights, privileges and easements in the common amenities, and to provide for the maintenance and upkeep of the common amenities.

To that end the Declarant has or will cause to be incorporated under North Carolina law, MCKINLEY PARK HOMEOWNERS ASSOCIATION, INC., as a nonprofit corporation for the purpose of exercising and performing the aforesaid functions.

NOW, THEREFORE, Declarant, by this Declaration of Covenants, Conditions and Restrictions, does declare that all of the property described herein is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens set forth in this Declaration which shall run with the real property and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE I DEFINITIONS

Section 1. "Association" shall mean and refer to MCKINLEY PARK HOMEOWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation, its successors and assigns.

Section 2. "Common Elements" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Elements to be owned by the Association at the time of the conveyance of the first Lot is all of the area labeled as "Common Elements" on the Plat and on any Plats of any additions to the Property. "Common Elements" shall include the completed permanent water retention area or bio-cell, if any, as shown on the Plat (the "Water Quality Device") and all private streets, if any, shown on said plats as now recorded or shall be recorded in the Guilford County Register of Deeds. "Limited Common Elements" shall have the meaning described in Section 47F-1-103 (18) of the Act (as defined below) and shall mean a portion of the Common Elements allocated by the Declaration or by operation of law, or as shown on the Plat, for the exclusive use of one or more, but fewer than all, of the Lots. Limited Common Elements shall include, but not be limited to, decks and patio areas attached to a residential unit on a Lot.

Section 3. "Declarant" shall mean and refer to NEW GARDEN TOWNHOMES, LLC, its successors and assigns, and also shall mean and refer to any person, firm or corporation which shall also be designated as a "Declarant" by NEW GARDEN TOWNHOMES, LLC hereafter when such designee becomes vested with title to two or more undeveloped Lots for the purpose of causing dwellings to be constructed thereon, and any such successor in title to NEW GARDEN TOWNHOMES, LLC shall be a Declarant during such period of time as said party is vested with title to two or more such Lots (whether undeveloped or developed and unconveyed), but no longer. Said designation as a Declarant shall automatically terminate if such party no longer owns at least two (2) Lots.

Section 4. "Development" shall mean and refer to MCKINLEY PARK TOWNHOMES, a single family attached residential development, proposed to be developed on the Property by the Declarant.

Section 5. "Lot" shall mean and refer to any plot of land, with delineated boundary lines, appearing on the Plat with the exception of the Common Elements and public roads and streets. Each Lot shall be designated and referred to as a Class "A" Lot as shown on the Plat. Each plot of land is the area for one (1) residential unit, designed for single-family ownership.

Section 6. "Plat" shall mean and refer to the Plat of the Property as recorded in Plat Book 1163 at Page 128, 129 in the Guilford County, North Carolina, Public Registry, and the Plats of any additions to the Property which may be recorded by Declarant in the Guilford County, North Carolina, Public Registry hereafter.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 8. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including the Declarant if it owns any Lots, and including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 9. "Property" or "Properties" shall mean and refer to the "Existing Property" as described in Article II, Section 1, and additional real estate dedicated in additional Phases as described in Section 1 and Section 2 in Article II hereof, and such other property as may hereafter be made subject to this Declaration and brought within the jurisdiction of the Association.

Section 10. "Act" shall mean and refer to "The North Carolina Planned Community Act", Chapter 47F, North Carolina General Statutes.

Section 11. "Special Declarant Rights" shall mean and refer to the rights as defined in Section 47F-1-103(28) of the Act for the benefit of the Declarant including, but not limited to, the following: to exercise any development right as defined in the Act, to maintain sales offices, management offices, models and signs advertising MCKINLEY PARK TOWNHOMES; and to elect, appoint or remove any officer or Board Member of the Association during any period of Declarant control.

**ARTICLE II  
PROPERTY SUBJECT TO THIS DECLARATION  
AND WITHIN THE JURISDICTION OF  
MCKINLEY PARK HOMEOWNERS ASSOCIATION, INC.**

Section 1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, and within the jurisdiction of the Association, is located in Guilford County, North Carolina, and is that certain property shown on the Plat in the Guilford County Public Registry (the "Existing Property").

Section 2. Additional Properties.

(a) Additional property (the "Additional Property" or "Additional Properties") adjoining the Existing Property or any additions to the Existing property may be brought within the scheme of this Declaration in one or more additional Phases and within the jurisdiction of the Association in future stages of development, without the consent of the Association or its members, provided that such annexations occur within twenty (20) years after the date of the filing of this instrument. Declarant shall not be obligated to subject any Additional Property to this Declaration.

(b) The additions authorized under subsection (a) above shall be made by filing Supplementary Declarations of Covenants, Conditions and Restrictions with respect to the Additional Properties in the Guilford County, North Carolina, Public Registry which shall extend the scheme of this Declaration and the jurisdiction of the Association to such Properties and thereby subject such additions to the benefits, agreements, restrictions and obligations set forth herein, including, but not limited to, assessments as herein determined. At the time of the filing of each such Supplementary Declaration, there shall be recorded in the Guilford County, North Carolina, Public Registry a Plat which shows the boundary line of each Lot annexed pursuant to such Supplementary Declaration and which delineates all Common Elements annexed pursuant to such Supplementary Declaration.

(c) The obligation for Owners of Lots in any portion of the Additional Properties to pay the assessments described in Article IV hereof shall commence as to such Lots on the date a particular Lot is conveyed to an Owner from Declarant. The Owners of such Lots shall have the same voting rights as the Owners of Lots in the Existing Property, and such voting rights shall commence as of the date of the filing of Supplementary Declarations described in Section 2(b) of this Article II.

**ARTICLE III  
MEMBERSHIP, VOTING RIGHTS AND CONTROL  
OF THE ASSOCIATION**

Section 1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The Association shall have two (2) classes of voting membership as described in Section 5 below.

Section 2. Availability of Documents. The Association shall maintain current copies of the Declaration, the Bylaws and other rules concerning the Development as well as its own books, records and financial statements available for inspection by all Owners, mortgagees and insurers and guarantors of mortgages that are secured by Lots. All such documents shall be available upon reasonable notice and during normal business hours. In addition, any mortgagee may, at its own expense, have an audited statement prepared with respect to the finances of the Association.

Section 3. Maintenance. Certain features that are deemed common amenities, being of benefit to all Lots, shall be maintained exclusively by the Association. Said common amenities shall include, without limitation, sidewalks (if any), common walks, entry and other signage, irrigation, landscaping and street lighting; and the Water Quality Device and related facilities as directed by the governmental office having jurisdiction for watershed protection.

Section 4. Reserve Fund. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of all common amenities which the Association is obligated to maintain. Such reserve fund shall be maintained out of the annual assessments described in Article IV hereof.

Section 5. Voting Rights and Classes of Lots. The voting rights of the Membership shall be appurtenant to the ownership of Lots. There shall be two classes of Lots with respect to voting rights:

(a) Class A Lots. Class A Lots shall be all single family attached Lots as shown on the Plat. Each Class A Lot shall entitle the Owner(s) of said Lot to one (1) vote. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Class A Lot

(b) Class B Lots. Class B Lots shall be all Lots owned by Declarant which have not been conveyed to purchasers who are not affiliated with the Declarant. The Declarant shall be entitled to three (3) votes for each Class B Lot owned by it. The Class B Lots shall be converted to Class A Lots on the happening of either of the following events, whichever occurs earlier: (i) when the total votes outstanding in the Class A Lots equals the total votes outstanding in the Class B Lots, or (ii) on December 31, 2012.

Section 6. Amendment. Notwithstanding the provisions of Section 5 above, so long as the Declarant owns any Lot, the Bylaws of the Association may not be amended without its written consent.

Section 7. Board of Directors. The Association shall be governed by a Board of Directors in accordance

with the Bylaws. Until Class B Members are converted to Class A Members, Declarant is entitled to appoint all members of the Board of Directors, and the Association need not hold a meeting to elect directors until conversion of all Class B Members.

**ARTICLE IV  
COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation for Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments or charges, damage assessments and special assessments for capital improvements, established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs and reasonable attorneys' fees, shall be a charge and a continuing lien upon the Lot against which each such assessment or charge is made. Each such assessment or charge, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments or charges shall not pass to an Owner's successors in title unless expressly assumed by them. The Board of Directors of the Association may provide for payment of the annual assessments on a monthly basis for the convenience of the Owners.

Section 2. Purpose of Annual Assessments. The annual assessments levied by the Association shall be used as follows:

- (a) to maintain any landscaping within the boundaries of the Common Elements;
- (b) to maintain and replace, as necessary, any and all Common Elements and related equipment, if any, located within the Properties;
- (c) to keep the Common Elements clean and free from debris and to maintain same in a clean and orderly condition;
- (d) to pay all ad valorem taxes, if any, levied against the Common Elements and any other property owned by the Association;
- (e) to maintain an entrance sign, landscaping and lighting fixtures at the entrance to the Property within the sign, fence and landscape easement area shown on the Plat;
- (f) to pay the premiums on all hazard and liability insurance carried by the Association;
- (g) to pay all legal, accounting and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws;
- (h) to pay all costs for repair and/or maintenance of the Water Quality Device which will include but not be limited to the cost of repairs, replacements and additions, and the cost of labor, equipment, materials and management, and supervision as directed by the governmental office having jurisdiction for watershed protection. If the Association should be dissolved or cease to exist, then in that event, all Owners of record at the time of required maintenance shall be jointly and severally liable for any and all costs attendant thereto;
- (i) to pay all costs and assessments for public and private improvements made to or for the benefit of the Common Elements;
- (j) to pay all costs associated with the maintenance of all property owned or maintained by the Association;
- (k) to maintain a contingency reserve as determined from time to time by the Board of the Association

as described in Article III, Section 4.

Section 3. Maximum Annual Assessment. Until January 1 of the calendar year following the conveyance of the first Lot by the Declarant to another Owner, the maximum annual assessment for each Class A Lot shall be Eighteen Hundred Dollars (\$1,800.00).

(a) The maximum annual assessments established above may be increased, effective January 1 of each calendar year following the conveyance of the first Lot by the Declarant to another Owner, without a vote of the membership by an amount not to exceed the greater of (i) fifteen percent (15%) per year over the previous year or (ii) the percentage increase, if any, in the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for all cities over the immediately preceding twelve (12) month period which ended on the previous October 1. If the annual assessment is not increased by the maximum amount permitted under the terms of this provision, the difference between any actual increase which is made and the maximum increase permitted for that year shall be computed and the assessment may be increased by that amount in a future year at the election of all members of the Board of Directors without a vote of the membership, in addition to the maximum increase permitted under the terms of the preceding sentence.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, said maximum annual assessments may be increased without limitation if such increase is approved by Members entitled to no less than sixty-seven percent (67%) of all of the votes (appurtenant to each class of Lots) to which all Members of the respective classes of Lots are entitled. Such voting may be represented in person or by proxy at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessments at amounts not in excess of the maximum. If the Board of Directors shall levy less than the Maximum Regular Annual Assessment for any calendar year and thereafter, during such calendar year, determine that the important and essential functions of the Association cannot be funded by such lesser Assessment, the Board may, by majority vote, levy a Supplemental Assessment. In no event shall the sum of the initial and Supplemental Assessments for that year exceed the applicable Maximum Regular Annual Assessment.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, as required under this Declaration, upon a common amenity, including fixtures and personal property related thereto, provided that any such assessment requires the same assent of the Members as provided in Section 3(b) of this Article.

Section 5. Assessment Rate. Both annual and special assessments must be fixed at a uniform rate for all Lots within the Development. As provided in the Bylaws of the Association, the Board may appoint a Committee to establish the budget and assessment rate for the Lots. The Board shall establish a total budget, based on such committee budgets, which shall also include the costs of maintaining the Common Elements such as the entrance sign and landscaping and the Water Quality Device/area.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At such meeting, the presence of Members or of proxies entitled to cast fifty-one percent (51%) of all the votes of each Class of membership shall constitute a quorum. If the required quorum is not present, subsequent meetings may be called, subject to the same notice requirement, until the required quorum is present. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting,

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the date a particular Lot is conveyed to an Owner from Declarant. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The

Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance. In no event shall a mortgagee of a Lot be required to collect any unpaid assessments owed by the Owner of such Lot.

Section 8. Damage Assessment. In the event the Association finds that an Owner has damaged any of the common amenities, the Association may levy an assessment on such Owner's Lot for the purpose of paying for the cost of any construction, reconstruction, repair or replacement of any damaged component of the common amenities, including the sidewalks and street lighting fixtures serving the Development, and the amount of said assessment shall be a lien with respect to said Lot.

Section 9. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser of (i) eighteen percent (18%) per annum, or (ii) the then current maximum rate of interest allowed by law of the State of North Carolina. In addition to such interest charge, the delinquent Owner shall also pay such late charge as may have been theretofore established by the Board of Directors of the Association to defray the costs arising because of late payment. The Association may bring an action at law against the delinquent Owner or foreclose the lien against the Lot, and interest, late payment charges, costs (including administration expenses) and reasonable attorneys' fees of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by not using the Common Elements or abandoning his Lot. Failure to pay an assessment when due on a particular Lot shall not constitute an event of default under any mortgage or deed of trust encumbering such Lot.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust on a Lot or any mortgage or deed of trust to the Declarant. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer; provided, however, that the Board of Directors may, in its sole discretion, determine such unpaid assessments to be an annual or a special assessment, as applicable, collectable pro rata from all Owners, including the foreclosure sale purchaser. Such pro rata portions are payable by all Owners notwithstanding the fact that such pro rata portions may cause the annual assessment to be in excess of the maximum permitted under Section 3. No sale or transfer shall relieve the purchaser of such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the lien provided for herein shall continue to be subordinate to the lien of any mortgage or deed of trust as above provided.

Section Eleven. Working Capital Fund. At the time of closing of the sale of each Lot, a sum equal to at least two months' assessment for each Lot shall be collected and transferred to the Association for use as working capital. The purpose of said fund is to insure that the Association will have adequate cash available to satisfy expenses, and to acquire additional equipment or services deemed necessary or desirable. Amounts paid shall not be considered advance payment of monthly installments of annual assessments.

Section Twelve. Default By Association: Upon default by the Association in the payment to the jurisdiction entitled thereto of any assessments for public improvements or ad valorem taxes levied against the Common Elements, which default shall continue for a period of six (6) months, each Owner of a Lot shall become personally obligated to pay the jurisdiction a portion of the taxes or assessments in an amount determined by dividing the total taxes and/or assessments due to the jurisdiction by the total number of Lots in the Properties. If the sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, the sum shall become a continuing lien on the property of the Owner, his or her heirs, devisees, personal representatives, and assigns. The taxing or assessing jurisdiction may either bring an action at law against the Owner personally obligated to pay the same, or may elect to foreclose the lien against the property of the Owner.

**ARTICLE V**  
**EXTERIOR MAINTENANCE AND PARTY WALLS**

Section One. In addition to maintenance of the Common Elements, the Association shall provide exterior maintenance upon each Lot as follows: paint and/or stain the exterior of the residential unit on the Lot; repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs (excluding those planted by an Owner), grass, walks, mailboxes, exterior post lights (excluding electricity therefor), and other exterior improvements, except for any Limited Common Elements which shall be maintained by the respective Owner of each Lot where such Limited Common Elements are located. Such exterior maintenance shall not include glass surfaces. Further, the Owner of any Lot may, at his or her election, plant flowers in the front and rear beds established by Declarant in developing the Lot, provided that such maintenance by the Owner does not hinder the Association in performing its maintenance of the exterior of the residential unit and the remaining yard spaces. No maintenance by an Owner shall reduce the assessment payable by him or her to the Association. The Owner shall not plant any vegetation in the front yard except with the prior written approval of the Association.

(As a matter of information to future Members of the Association, the Declarant desires to make it known that due to differing amounts of exposure to the elements and other factors, some Lots may require more maintenance than others and that it is in the best interest of the entire Association that all units be properly maintained and that the Association shall be required to provide such maintenance provided for herein and make a uniform charge without regard to the actual cost of maintenance of each Lot.)

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his or her family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject, which is not subject to any maximum. The Association is hereby granted an easement right of access to go upon any Lot for performance of repairs or maintenance, the responsibility of which is the Association's hereunder.

Subject to the provisions of this Declaration as expressly set forth in the obligations of the Association, all maintenance, repair or replacement of the Lot and all structures, and other improvements, including the Limited Common Elements, located within the Lot shall be the sole responsibility of the Owner thereof who shall perform such maintenance in a manner consistent with the community and the applicable provisions of this Declaration.

Section Two. Party Walls.

(a) General Rules of Law to Apply. Each wall which is built as a part of the original construction of the residential units upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. No alterations may be made to any party wall other than alterations to the interior surfaces.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

(c) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his or her negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.



(e) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

## ARTICLE VI ARCHITECTURAL CONTROL

Section 1. Architectural Committee. Except for improvements made upon the Properties, or any Lot, by Declarant or except as otherwise provided under this Declaration, no building, fence, wall or other structure or improvement shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Committee. For purposes of this Article VI, the Declarant shall function as the Architectural Committee (the "Committee") so long as Declarant is a Class B Member of the Association and does not surrender its right of architectural control. After the termination of the Declarant's right to be the Committee, the Board of Directors of the Association shall appoint the members of the Committee to carry out the functions set forth in this Article. In the event the Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Section 2. Definitions. For purposes of this Article VI, the following terms shall have the following meanings unless the context clearly requires a different meaning:

(a) "accessory building" means every detached garage, carport, tool shed storage or utility building, detached guest quarters, detached servants' quarters or other similar building constructed on a Lot or incidental thereto which is not a dwelling;

(b) "buildings" means accessory buildings and dwellings;

(c) "dwelling" means a building constructed for single family attached residential use but excluding detached servants' quarters and guest quarters; and

(d) "improvements" or "structures" mean buildings, walls, fences, decks, patios, planters, statuary, terraces, swimming pools, tennis courts or anything else constructed or placed on a Lot.

Section 3. General Guidelines. The placement and construction of improvements on the Lots shall be subject to the following general requirements:

(a) Since the establishment of standard inflexible building setback lines for the location of dwellings on Lots tends to force construction of dwellings both directly behind and directly to the side of other dwellings with detrimental effects on privacy, preservation of important trees, etc., no specific setback lines are established by these covenants except as shown on the Plat, which comply with the regulations and guidelines of the applicable governmental authorities. In order to assure, however, that location of dwellings will be staggered where practical and appropriate, so that the maximum amount of view will be available to each dwelling, that all structures will be located with regard to the topography of each individual Lot, taking into consideration the elevation contours of the Lot, the location of large trees and fields and similar considerations, the Declarant reserves unto itself, its successors and assigns, the right to control absolutely and solely to decide the precise site and location of any structure, improvements and utilities upon all Lots and every Lot within the subdivision; provided, however, that such location shall be determined only after reasonable opportunity is afforded the Owner to recommend a specific site, and in any event, all buildings shall be constructed beyond the minimum setback lines established on the Plat.

(b) Any storage areas and facilities must be screened and hidden from view, placed in accordance

with Article VII, Section 15 of this Declaration.

(c) Unless specifically otherwise approved in writing by the Committee, all structures constructed or placed on any Lot shall be built of substantially new materials and no used structures shall be relocated or placed on any such Lot.

(d) All structures approved by the Committee must be completed within one (1) year after the receipt of such approval; provided, however, the Committee may waive this requirement if construction delays have been caused by strikes, war, fire, acts of God or other events which render the completion of construction within such time impossible.

(e) All driveways, turning areas and parking areas shall be paved and must be completed prior to the occupancy of any dwelling on the Lot. If any driveway is to cross a drainage ditch, the Owner will be required to install, at his own expense, all necessary culverts and coverings prior to the commencement of any other construction on the Lot. The installation of the culvert and any covering must be approved by the Committee and by any local, state or other governing agency or authority.

(f) The Committee shall have the right to approve or disapprove the design and construction of all mailboxes.

Section 4. Approval of Plans, Specifications, and Construction. In addition to the requirements imposed by all applicable governmental agencies governing the issuance of building permits and certificates of occupancy, no structure shall be erected on any Lot without the approval of the Committee as provided in this Section.

(a) Prior to commencing any construction or reconstruction on a Lot, the Owner thereof shall submit to the Committee one set of all building plans and specifications (the "Plans") covering such construction which have been prepared by a qualified registered architect or reviewed, approved and sealed by a registered architect for the specific use of the Owner submitting the same. The Plans shall contain the following: (i) foundation plans, (ii) elevation drawings of all exterior walls, (iii) roof plan, (iv) plot plan showing location and orientation of all structures proposed to be built on the Lot, (v) the square footage of the proposed structures on a floor-by-floor basis, (vi) a list and description of all proposed building materials, and (vii) the location of any driveway, and, where the driveway is to cross a drainage ditch adjacent to any roadway, the installation of the culvert and covering to be used under the proposed driveway.

(b) The Committee shall have the absolute and exclusive right to refuse to approve the proposed Plans. In passing upon such Plans and samples, the Committee may take into consideration the suitability and desirability of the proposed construction and the proposed materials to the Lot involved, and the harmony of the external design with the natural features and the existing structures of the surrounding neighborhood and the appearance of such proposed improvements as viewed from neighboring Lots. Refusal to approve the proposed Plans may be based by the Committee on any grounds, including purely aesthetic considerations. If the Committee approves the construction of such improvements, it shall issue a letter evidencing such approval. No alterations in the external appearance of any structure shall be made without approval by the Committee as provided herein; provided, however, that no approval by the Committee granted hereunder shall constitute or be construed as approval by Declarant or any other person of the structural stability or quality of any structure.

(c) Upon completion of approved construction, the Committee shall inspect the construction to ensure that the approved Plans and samples were complied with by the Owner. If the construction is approved by the Committee and the Owner so requests, the Committee will issue to the Owner a letter of compliance. The letter of compliance shall be issued by the Committee without fee; provided, however, that in the event that the Committee's first inspection of the construction reveals deviations or deficiencies from the approved Plans and samples, the Committee may charge a fee of \$50 for every subsequent inspection which is necessary to ensure compliance with the approved Plans and samples. Any such fee must be paid before the issuance of the compliance letter.

(d) Notwithstanding the foregoing, the Declarant shall not be subject to the provisions set forth in this

Article V, Section 4.

**ARTICLE VII  
USE RESTRICTIONS**

Section 1. Subdivision of Lots. No Lot shall be subdivided by sale or otherwise so as to reduce the total Lot area shown on the Plat, except by and with the written consent of the Declarant and provided same is also permitted under applicable governmental regulations and private restrictions affecting said Lot.

Section 2. Right of First Refusal Respecting Unimproved Lots. INTENTIONALLY DELETED.

Section 3. Transfer to Declarant. INTENTIONALLY DELETED.

Section 4. Reserved Easements. The Declarant reserves for itself, its successors and assigns, a permanent easement in and the right any time in the future to grant a permanent right-of-way over, under and along an area uniformly ten (10) feet in width along the rear and five (5) feet in width along the sidelines of each Lot for the installation and maintenance of poles, lines, conduits, pipes and other equipment necessary or useful for furnishing electrical power, gas, water, sewer, telephone service and other utilities, as well as within those areas shown as easements on the Plat. Within such areas, no structures, planting, fences or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities or which may obstruct or retard the flow of water through drainage channels in such areas. The area of each Lot containing the easement and all improvements thereon shall be maintained continuously by the Owner of the Lot except for those improvements for which a public authority or utility company is responsible. In the event that any Lot is subdivided pursuant to Section 1 hereof an easement uniformly ten (10) feet in width shall exist both along the rear and five (5) feet in width along the sidelines of the Lot both as shown on the Plat and along the rear and sidelines as exist upon the Lot as so subdivided; provided, however, that upon request by the Owner of the subdivided Lot, the Declarant may release the easement reserved along the rear or sideline of the Lot if doing so would not interfere with the installation or maintenance of any utilities or the drainage within the Property. In the event two or more Lots are combined into one building Lot with the residence to be constructed over the common interior lot lines, the easements reserved along sidelines shall be released provided that the easements have not previously been used for the installation of utilities and their release shall not interfere with the drainage within the Property.

Section 5. Residential Use of Property. All Lots shall be used for residential purposes only and no structure shall be erected, placed or permitted to remain on any Lot other than one single family attached dwelling (as shown on the Plat), and any necessary structure customarily incidental to such residential use. The construction and maintenance of "garage apartments" on any Lot is expressly prohibited. Notwithstanding the foregoing, a Lot may be used by a professional home builder as a "model home" and for sales or marketing purposes so long as such professional home builder owns at least one other Lot on the Property upon which is built, is being built, or is planned to be built, a home for sale to third parties.

Section 6. Minimum Size of Dwelling. Single-family attached dwellings shall contain not less than a minimum of : (i) one thousand four hundred (1,400) square feet of finished ground floor area for any dwelling comprised of one story; (ii) one thousand four hundred (1,400) square feet of finished ground floor area for any dwelling comprised of one and one half stories; and (iii) one thousand five hundred (1,500) square feet of finished ground floor area for any dwelling comprised of two stories. A minimum finished ground floor area herein referred to shall not include basements, attached or detached garages, unheated areas, carports or open porches of any type.

Section 7. Building Restrictions. No building on a Lot shall be located nearer to either side line of each such Lot nor nearer to the rear line thereof than as shown on the building setback lines and side lines shown on the Plat. For the purposes of this covenant, eaves and stoops shall not be considered as part of a building; provided, however, this shall not be construed to be deemed to permit the encroachment of any improvement onto another Lot. All structures must comply with all applicable building and zoning codes.

Section 8. Building Line Requirements. The minimum setback lines described hereinabove and as shown

on the Plat are not intended to create uniformity of setback. They are meant to create a sense of spaciousness and to avoid monotony. For such purposes, it is the Declarant's intent that setback lines may be staggered where appropriate. The Declarant reserves the right to select the precise site location of each house or other structure on each Lot and to arrange the same in such manner and for such reasons as the Declarant deems sufficient; provided, however, the Declarant shall make such determination so as to ensure that the development of the Lots subject to this Declaration is consistent with the provisions set forth herein.

Section 9. Outbuildings and Similar Structures. No trailer, camper or other structure of a temporary nature shall be erected or allowed to remain upon any Lot, and no trailer, camper, shack, tent, garage, barn or other structure of a similar nature shall be used as a residence either temporarily or permanently upon any Lot; provided, however, that this Section shall not be construed to prevent the Declarant from permitting any party building a structure upon any Lot to erect or maintain temporary structures during construction. No wells shall be installed, used or maintained on any Lot for human domestic water consumption nor shall any well be connected in any manner whatsoever to the water mains, laterals and piping serving the dwelling which furnish domestic water from sources beyond the boundaries of the Lots.

Section 10. Nuisances and Unsightly Materials. No noxious, offensive or illegal activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance to the neighborhood. No person may keep any animal upon any part of the Lot except that any owner then occupying a residence upon a Lot may keep customary household pets upon such Lot, provided that such pets are not kept, bred or maintained for any commercial purposes or in such a manner as to become a nuisance to the other Owners or residents of the subdivision. No decorative statues, birdbaths, fountains, ornaments, figurines or any other decorative structures or items are permitted in the front or side yards of any Lot. All playground equipment, including without limitation, sandboxes, children's wading pools, swings, gym sets, soccer goals, volleyball or badminton sets and basketball goals, as well as lawn equipment, shall only be placed or kept in the rear of residences and garages and shall not be placed or kept in front or side yards or in the street or sidewalk or right of way.

Section 11. Maintenance of Lots. Each Owner shall keep his Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair, promptly repairing any damage thereto by fire or other casualty. Such repairs shall include, without limitation, (a) repairing and painting (or otherwise appropriate external care) of all structural improvements; (b) seeding watering and mowing of all lawns; and (c) pruning and trimming of all trees, hedges and shrubbery so that the same do not obstruct the view of pedestrians and motorists of street traffic. No clothes-line may be erected or maintained on any Lot. No Lot shall be used in whole or in part for storage of rubbish of any character whatsoever nor for the storage of any property or thing that will cause any noise that will disturb the peace and quiet of the occupants of surrounding Lots, and no trash, rubbish, stored materials, wrecked or inoperable vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish or other debris for collection by governmental or other similar garbage and trash removal units. In the event that any Owner fails or refuses to comply with any of the foregoing, the Declarant may demand that the Owner promptly comply with the same by mailing a notice thereof to the Owner at his address, specified in his contract to purchase such Lot and by posting such notice on the Lot. If the Owner has not complied therewith within five (5) days thereafter, the Declarant may enter and correct the same at Owner's expense. Each Owner, by acquiring a Lot(s) subject to these restrictions, agrees to pay such cost promptly upon demand by Declarant. No such entry as provided herein shall be deemed a trespass.

Section 12. Signboards. No signboard, billboard or advertising sign of any description shall be displayed upon or above any Lot, with the exception of:

a. Signs displaying or marketing a Lot as a "Model Home" and listing applicable sales information regarding the construction and sale of homes on such Lot and other Lots, which signs shall not exceed four feet by eight feet in dimension, shall refer only to the Lot on which displayed and shall be limited to one sign per Lot,

b. Signs stating "For Rent" or "For Sale," which signs shall not exceed two feet by three feet in dimension, shall refer only to the Lot on which displayed and shall be limited to one sign per Lot, and

c. The name of the resident of any Lot and the street address, the design of which shall be furnished to Declarant and shall be subject to approval by Declarant.

Section 13. Antennas, Satellite Dishes or Discs. No satellite dishes or discs, radio or television aerial, antennas, towers or any other external electronic equipment or devices may be installed or maintained on any exterior of any structure erected on a Lot or elsewhere upon any Lot or within the Property without the prior written approval of the Committee pursuant to Article V hereof and, so long as Declarant shall own a lot, without the prior written approval of Declarant, which approval Declarant may withhold in its sole and absolute discretion; provided, however, that satellite dishes which are eighteen (18) inches or less in size, ground mounted and screened from view from the street, may be installed without such approval.

Section 14. Fences. Except as may be approved by the Architectural Control Committee, no fence or wall shall be erected on any Lot closer to the street than ten (10) feet from the front building pad corner except for temporary decorative fencing installed by a builder on a model home. Perimeter fencing and privacy fencing around patios, decks, or pools may not exceed six (6) feet in height and must be approved prior to construction by the Architectural Control Committee. Chain link or other metal fencing is expressly prohibited.

Section 15. Metal Garages, Carports, Buildings and Accessory Structures. No metal carport, metal garage or metal storage shall be erected on any Lot or attached to any residence located on the Lot. No building or accessory structure of any kind shall be placed on any Lot. No chain link or metal fabricated animal enclosures shall be placed on any Lot.

Section 16. Pools. No in-ground or above-ground pools shall be erected or constructed on a Lot.

Section 17. Changing Elevations. No Owner shall excavate or extract earth for any business or commercial purpose from any Lot. No elevation changes shall be permitted which materially affect surface grade of surrounding Lots, unless approved in writing by the Architectural Control Committee.

Section 18. Tanks. Fuel oil tanks may not be installed on any Lot. Small fuel containers for lawn mowers and similar equipment may be kept on Lots.

Section 19. Garbage Cans. Garbage cans and equipment shall be screened to conceal them from view of adjacent Lots and streets. No garbage incinerators shall be permitted on any Lot.

Section 20. Firearms and Weapon Discharge. Any firearm or weapon discharge or release, other than for defense or protection of one's life or property, is strictly prohibited on any and all Property in the Development. Firearms and weapons shall include, without limitation, rifle, gun, pistol, shotgun, black powder gun, pellet or BB gun, bow and arrow, crossbow and arrow, and any other weapon from which any bullet, shot or projectile may be discharged or released.

Section 21. Off-Street Parking. Provisions must be made by each Owner of a Lot for the parking of at least two automobiles belonging to occupants or guests off the adjacent streets and in the driveways on Lots. The parking of guest or occupant vehicles on streets for long or repeated periods of time during the day or night or both, except for occasional, non-regular social gatherings and functions, shall not be permitted. No vehicles shall be permitted to be parked on Lots except on driveways.

Section 22. Driveways and Entrances to Garages. All driveways shall be concrete or a substance approved in writing by the Architectural Committee and of a uniform quality.

## ARTICLE VIII EASEMENTS

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Section 23. Easements Reserved by Declarant. Declarant reserves easements for the installation and maintenance of driveways, walkways, parking areas, telephone and electric power lines, cable television lines, water and sewer lines, drainage ditches and for other utility installations over the Properties. Each Owner, by his acceptance of a deed to a Lot, acknowledges such reservations and the rights of Declarant to transfer such easements to the Association or to such utility companies as Declarant may choose. The easements reserved by the Declarant include the right to cut any trees, bushes or shrubbery, make any gratings of the soil or take any similar action reasonably necessary to provide economical utility installation and to maintain the overall appearance of the Development. Certain easements reserved by the Declarant and the Association for the benefit of themselves and others are shown on the Plat. Within any such easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation of utilities, or which may change the direction of flow or drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements. In addition, the Declarant shall have the continuing right and easement to maintain all sewer and water lines located on the Lots.

#### ARTICLE XIV PROPERTY RIGHTS

Section 1. Ownership of Common Elements. Prior to the conveyance of the first Lot by Declarant to a non-affiliated Owner, Declarant shall convey the Common Elements to the Association free and clear of all liens and encumbrances other than the lien of ad valorem property taxes and all valid and enforceable easements and restrictions of record. Notwithstanding the recordation of any Plat or any other action by Declarant or the Association, all Common Elements shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public; provided, however, that Declarant or the Association may offer roads and streets previously a part of the Common Elements for dedication to the appropriate governmental authorities and if such roads or streets are accepted for dedication by such governmental authorities, then such roads or streets shall then be considered dedicated to the use and enjoyment of the public.

Section 2. Owners' Rights to Use and Enjoy Common Elements. Each Owner shall have the right to use and enjoy the Common Elements which shall be appurtenant to and shall pass with the title to his Lot, subject to the following:

- (a) the right of the Association to promulgate and enforce reasonable regulations governing the use of the Common Elements to ensure the safety and rights of all Owners;
- (b) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Elements;
- (c) the right of the Association to suspend the voting rights in the Association and right to use the Common Elements by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (d) the right of the Declarant or the Association to grant utility, drainage and other easements of the type and for the purposes set forth in Article VII across the Common Elements; and
- (e) the right of the Association to mortgage all or any part of the Common Elements or to dedicate or transfer all or any part of the Common Elements to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such mortgage, dedication or transfer shall be effective unless such mortgage, dedication or transfer is approved by at least two-thirds (2/3) of each class of Members.

Section 3. Owner's Easements for Ingress and Egress. Every Lot shall be conveyed with a perpetual, nonexclusive right to use any roadway which may be constructed by the Declarant and dedicated to the public and accepted for maintenance by the State Highway Department, for the purpose of providing access to and from each Lot.

Section 4. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Association, his right of enjoyment to the Common Elements and facilities to the members of his family, his guests, his tenants, or contract purchasers who reside on his Lot.

#### ARTICLE X DECLARANT'S RIGHTS

The right is reserved by Declarant, or its agents, to place and maintain on the Properties all model homes, sales offices, advertising signs and banners and lighting in connection therewith and other promotional facilities at such locations and in such forms as shall be determined by Declarant. There is also reserved unto Declarant, its agents and prospective purchasers and tenants, the right of ingress, egress and transient parking in and through the Properties for such sales purposes. Declarant also reserves the right to maintain on the Properties without charge (a) a general construction office for Declarant's contractors and (b) appropriate parking facilities for the employees of Declarant's agents and contractors. Notwithstanding any other provision to the contrary, no annual or special assessment shall be due for any models of the Declarant. Notwithstanding any provision herein to the contrary, the rights and easements created under this Declaration are subject to the right of Declarant to execute all documents and do all other acts and things affecting the premises, which in the Declarant's opinion, are required to implement any right of Declarant set forth in this Declaration (including the making of any dedications or conveyances to public use) provided any such document or act is not inconsistent with the then existing property rights of any Owner.

In any event, Declarant reserves the right and power, and each Owner by acceptance of a deed to a Lot is deemed to and does give and grant to Declarant a power of attorney, which right and power is coupled with an interest and runs with the title to a Lot and is irrevocable (except by Declarant), without the consent, approval or signature of each Owner, to (i) amend the Declaration and all attachments, to the extent necessary to conform to the requirements then governing the purchases or insurance of mortgages by The Mortgage Corporation, Federal National Mortgages Association, Governmental National Mortgages Association, Federal Home Loan Mortgage Corporation, Mortgage Guaranty Insurance Corporation, Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, or any other similar agency or organization, (ii) induce any such agencies or entities to make, purchase, sell, insurance or guarantee first mortgages covering Lot ownership, (iii) to correct typographical errors, surveyor errors in descriptions or otherwise, or obvious factual errors or omissions, the correction of which would not impair the interest of any Owner or mortgagee, (iv) bring this Declaration into compliance with the Act, (v) to amend any Exhibits, or (vi) to exercise any Special Declarant Rights or development rights; and further provided that if there is an Owner other than the Declarant, the Declaration shall not be amended to increase the scope or the period of control of the Declarant. Each deed, mortgage, other evidence of obligation, or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and consent to the reservation of, the power of Declarant to vote in favor of, make, execute and record any of the foregoing amendments. The rights of Declarant under this Section shall terminate at such time as Declarant no longer holds or controls title to a Lot and the right of Declarant to add the Additional Property has expired.

#### ARTICLE XI DISPUTE RESOLUTIONS AND LIMITATIONS ON LITIGATION

Section One. Agreement to Avoid Costs of Litigation and to Limit Rights to Litigate Disputes. The Association, Declarant, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties in order to avoid the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Properties including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the By-Laws, the Association rules, or the Articles (collectively "Claim"), except for those Claims authorized in Section Two, shall be resolved using the procedures set forth in Section Three in lieu of filing suit in any court or initiating

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proceedings before any administrative tribunal seeking redress or resolution of such Claim.

Section Two. Exempt Claims. The following Claims ("Exempt Claims") shall be exempt from the provisions of Section Three;

(a) Any suit by the Association against any Bound Party to enforce the provisions of Article IV (Assessments);

(b) Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article VI (Architectural Control) and Article VII (Use Restrictions);

(c) Any suit between Owners (other than Declarant) seeking redress on the basis of a Claim which would constitute a cause of action under federal law or the laws of the State of North Carolina in the absence of a claim based on the Declaration, By-Laws, Articles or rules of the Association, if the amount in controversy exceeds \$5,000.00;

(d) Any suit arising out of any written contract between Owners, or between the Declarant and any Builder, which would constitute a cause of action under the laws of the State of North Carolina in the absence of the Declaration, By-Laws, and Articles of the Association; and

(e) Any suit in which all parties are not Bound Parties.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section Three, but there shall be no obligation to do so. The submission of an Exempt Claim involving the Association to the alternative dispute resolution procedures of Section Three shall require the approval of the Association.

Section Three. Mandatory Procedures for All Other Claims. All claims other than Exempt Claims shall be resolved using the following procedures:

(a) Notice. Any Bound Party having a claim ("Claimant") against any other Bound Party ("respondent"), other than an Exempt Claim, shall notify each respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

- (1) The nature of the Claim, including date, time, location, persons involved and respondent's role in Claim;
- (2) The basis of the Claim ("Claimant") (i.e., the provisions of this Declaration, the By-Laws, the Articles or rules or other authority out of which the claim arises);
- (3) What Claimant wants Respondent to do or not to do to resolve the Claim;
- (4) The Claimant wishes to resolve the Claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Negotiation.

- (1) Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good negotiation.



(2) Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

(c) Mediation.

- (1) If the Parties do not resolve the Claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days within which to submit the Claim to mediation under the auspices of any dispute resolution center or other such independent agency providing similar services in the Guilford County or the metropolitan Greensboro, North Carolina area upon which the Parties may mutually agree.
- (2) If Claimant does not submit the Claim to mediation within 30 days after termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.
- (3) If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the Parties met, that the parties are at an impasse, and the date that mediation was terminated.
- (4) Each Party shall, within five days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The Respondent shall make a formal written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(d) Final and Binding Arbitration.

- (1) If the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "B" or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.
- (2) This subsection (d) is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration laws of the State of North Carolina. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of

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North Carolina.

Section Four. Allocation of Costs of Resolving Claims.

Each Party shall bear its own costs incurred prior to and during the proceedings described in Section Three (a), (b) and (c), including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Section Three (c).

Each Party shall bear its own costs (including the fees of its attorney or other representative) incurred after the Termination of Mediation under Section Three (c) and shall share equally in the costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs"), except as otherwise provided in subsection Section Four (c).

Any Award, which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add such Claimant's Post Mediation Costs to the Award, such Costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than Respondent's Settlement Offer to that Claimant shall also award to such Respondent its Post Mediation Costs, such Costs to be borne by all such Claimants.

Section Five. Enforcement of Resolution. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section Three and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with the terms of any Award following arbitration, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section Three, in such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys fees and court costs.

Section Six. Commencement of Litigation. Any litigation by the Association other than the "Exempt Claims" set out in Section Two shall require an affirmative vote of 75% of the Members of the Association prior to the institution of such litigation.

## ARTICLE XII GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. This Declaration may be amended prior to January 1, 2025 only by an instrument signed by the Owners of not less than ninety percent (90%) of the Lots and by the Declarant, so long as any such Declarant still owns any Lots. After January 1, 2025, this Declaration may be amended by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots. Amendments to this Declaration, the Articles of Incorporation of the Association or the Bylaws of the Association relating to the maintenance and ownership of the permanent Water Quality Device shall not be permitted without review and approval by the governmental office having jurisdiction for watershed protection.

Section 4. FHA/VA Approval. Notwithstanding anything to the contrary contained in this Declaration, as long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans' Administration: (i) annexation of additional properties other than those defined as "Additional Properties" herein, (h) dedication of Common Elements for public use, (iii) amendment of this

Declaration, (iv) mergers and consolidations, and (v) dissolution of the Association.

Section 5. Waiver of Unintentional Violations. Declarant reserves the right, but shall not be obligated, to waive in writing any violation of the designated and approved building location line or either side lot line, provided that such violation does not exceed ten percent (10%) of the applicable requirements and the violation thereof was unintentional.

Section 6. Default by Association. Upon default by the Owner's Association in the payment to the jurisdiction entitled thereto for any assessments for public improvements or ad valorem taxes levied against the Common Elements, which default shall continue for a period of six (6) months, each owner of a lot in the development shall become personally obligated to pay to the jurisdiction a portion of the taxes or assessments in an amount determined by dividing the total taxes and/or assessments due to the jurisdiction by the total number of lots in the development. If the sum is not paid by the owner within thirty (30) days following receipt of notice of the amount due, the sum shall become a continuing lien on the property of the owner, his heirs, devisees, personal representatives, and assigns. The taxing or assessing jurisdiction may either bring an action at law against the owner personally obligated to pay the same, or may elect to foreclose the lien against the property of the owner.

Section 7. Amendments to Declaration of Covenants, Conditions and Restrictions. Amendments to this Declaration of Covenants, Conditions, and Restrictions relating to the maintenance and ownership of the permanent Water Quality Device shall not be permitted without review and approval by governmental office having jurisdiction for watershed protection.

Section 8. Planned Community Act. Except as otherwise provided herein, all applicable required terms of the Act are incorporated herein by reference. To the extent any conflict exists between the terms hereof and a required provision of the Act, the required provisions of the Act shall govern and control such conflict.

Section 9. Insurance. Each owner shall be responsible for insurance on his or her Lot and improvements thereon.

Section 10. Maintenance of Water Quality Device. The Association is responsible for maintaining the completed Water Quality Device as directed by the governmental office having jurisdiction for watershed protection. If the Association should be dissolved or should cease to exist, then in that event, all Owners of record at the time of required maintenance shall be jointly and severally liable for any and all costs attendant thereto.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed by its general partner thereunto duly authorized, under seal, all the day and year first above written.

DECLARANT:

NEW GARDEN TOWNHOMES, LLC,  
a North Carolina limited liability company (Seal)

By: *[Signature]*  
Manager

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STATE OF NORTH CAROLINA  
COUNTY OF GUILFORD

I, Elizabeth A. Duffy, a Notary Public of the County and State aforesaid, certify Michael A. Murray, Manager of NEW GARDEN TOWNHOMES, LLC, a North Carolina limited liability company, personally came before me this 2<sup>nd</sup> day of March, 2006 and acknowledged the execution of the foregoing instrument on behalf of the limited liability company.

Elizabeth A. Duffy  
Notary Public Elizabeth A. Duffy

(NOTARIAL SEAL)

My commission expires: June 21, 2009

