

## OUTLINE OF RESTRICTIVE COVENANTS

- ARTICLE I Definitions: Association; Owner; Common Area; Lot; Declarant
- ARTICLE II Property Rights:
1. Easement of enjoyment to:
    - a. Common Area;
    - b. Recreational Area (subject to suspension for assessment nonpayment);
    - c. Utility Easements
  2. Persons with absolute right to use Common Area: Residential family, tenants, contract purchasers
  3. Utility Easement to Declarant
- ARTICLE III Membership and Visitation Rights:
1. Owners of assessed lot and a member
  2. 2 voting class of members: Class A: All owners except Declarant (1 vote per lot) Class B: Declarant who has 3 votes per lot owned until 2021 when becomes Class A
- ARTICLE IV Covenant for Maintenance Assessment
1. Annual and special assessments
  2. Assessment purpose
  3. Maximum Annual Assessments: \$170.00 for 1998; increasable 10%/year by Board or more by 2/3 of each class members; current rate \$170.00/year
  4. Special assessment for capital improvements requires 2/3 vote of each class
  5. Notice & Quorum for action under Section 3
  6. Uniform rate required for all lots
  7. Annual assessment due date set by Board
  8. Nonpayment of Assessment
  9. Subordination of assessment lien to meeting
  10. Exempt properties from assessment; Utility lots and unsold lots of Declarant
  11. Loans to Association
  12. Reserves and Surplus
  13. Contractual Authority
  14. Basis of current assessments 9/1/97, Lots 26250
- ARTICLE V General Provisions:
1. Enforcement
  2. Severability
  3. Amendment: 75% members during first 20 years; thereafter 66 2/3%
  4. Annotation: Requires 2/3 members except Declarant may unilaterally annex their land and subsequent phases can have different use restrictions (i.e. party walls, townhouses, different square footage restrictions, higher density)
- ARTICLE VI Use Restrictions:
1. Land use Building Type: Single family detached house (See Article V, No. 4 as to later sections)
    - a. Multiple unscreened outbuildings or garage
    - b. No lot subdivided or lines unangled without Declarant or assignee consent; Declarant may replat, architectural control by Declarant or appointee

2. Residences must be 1350 heated square feet
3. Setback; See Plat
4. No mobile or modular homes or temporary residences
5. No Nuisances
6. Signs: Only 1 professional sign not more than 5 square feet allowed.
7. Animals: only usual pets; no commercial breeding; leash or restraint required.
8. Garbage, clothesline, woodpiles screened
9. Vehicles: No visible junk vehicles; no parking on right-of-way
10. Damaged Property
11. Satellite Dish and antenna location and visibility
12. Site Distances Restrictions within 25 feet of street on plantings/structures
13. Driveway Pipes
14. Guns Restricted
15. Fences Restricted: Board approval required
16. No Highway 42 access from lot.
17. All Terrain or other Off Road Vehicles.
18. Street Lighting.

## ARTICLE VII

### Easements:

1. Private Road Easement
2. Utilities and Drainage Easements

**RESTRICTIVE COVENANTS  
FOR THE GARDENS AT FLOWERS PLANTATION, SECTION TWO, INC  
STATE OF NORTH CAROLINA COUNTY OF JOHNSTON  
Lots 2635, 3771 & 7581**

This declaration was made on the date hereinafter set forth by Neuse Park Development, LLC, hereinafter referred to as "Declarant."

WITNESSETH:

Declarant is the owner of Lots 2635, 3771 & 7581 of The Gardens at Flowers Plantation, Section Two described in Exhibit "A"; lying and being in Wilders Township, Johnston County, North Carolina as surveyed by plat prepared by Dennis R. Blackmon, Registered Land Surveyor, according to plat recorded in Plat Book 52 page 238 of the Johnston County Registry.

Now, therefore, Declarant hereby declares that all of the properties referred to above and described in Exhibits "A" and such portions of property which may be annexed in the future shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I  
DEFINITIONS**

Section 1. "Foundation" shall mean and refer to Flowers' Plantation Foundation, a North Carolina nonprofit corporation, and anticipated to be a tax exempt entity under either Section 501(c)(4) or 501(c)(3) of the Internal Revenue Code, which has certain rights and obligations relating to Flowers' Plantation as set forth in the Development Agreement (defined below) and the Covenant to Share Costs (defined below).

Section 2. "Development Agreement" shall mean and refer to that certain Development Agreement for Flowers' Plantation recorded by Rebecca Flowers Finch for the benefit of all present and future owners of property within Flowers' Plantation, as it may be amended from time to time, and recorded in Book 1615, Page 601 of the Johnston County registry.

Section 3. "Covenant to Share Costs" shall mean and refer to that certain Declarations of Easements and Covenant to Share Costs for Flowers' Plantation, as it may be amended from time to time, and recorded in Book 1615, Page 611 of the Johnston County Registry.

Section 4. "Association" shall mean and refer to The Gardens at Flowers Plantation Association, Section Two, Inc., its successors and assigns.

Section 5. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for performance of an obligation.

Section 6. "Common Area" shall mean and refer to the fact that the Association, through actions of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees may convey to the Association improved or unimproved real estate, or interests in real estate located within the properties, personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. The Declarant shall convey the initial Common Area to the Association free and clear of all encumbrances prior to the conveyance of a Unit to any person other than a Builder.

Section 7. "Unit/Lot" shall mean and refer to a portion of the Properties, whether improved or unimproved, which may be independently owned and is intended for development use and occupancy as an attached Or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. In the case of a building within a condominium or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to be a single Unit until such time as a subdivision plat or condominium plat is filed of record on all or a portion of the parcel.

Thereafter the portion encompassed by such plat shall contain the number of Units determined as set forth in the preceding paragraph and any portion not encompassed by such plat shall continue to be treated in accordance with this paragraph.

Section 8. "The Community and Properties" shall mean and refer to that certain real property herein before described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 9. "Declarant" shall mean and refer to Neuse Park Development Co. LLC, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 10. "Declarant Control Period" shall mean and refer to the period of time during which the Declarant, by virtue of its Class "B" membership, is entitled to appoint a majority of the members of the Board of Directors.

Section 11. "Governing Documents" shall mean and refer to the Articles of Incorporation, By-Laws, Declaration, Covenant to Share Costs, and the Development Agreement.

Section 12. "Builders" shall mean a licensed general contractor constructing a dwelling or other structure on a Lot.

## **ARTICLE II PROPERTY RIGHTS**

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of ingress and egress, and use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the easements reserved for or granted to the Flowers Foundation in the Development Agreement and the Covenant to Share Costs;

(b) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(c) the right of the Association to suspend the voting rights and right to use of the recreational facilities 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 Association to dedicate or transfer all or any part of the Common Area 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 dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract with the Declarant and the Association for blanket easement upon and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the community or any portion thereof, including, but not limited to, gas, water, sanitary, sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Declarant and the Association might decide to have installed for either themselves or their designee, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables, and other equipment related to the providing of any such utility or service. Should any party requesting such utility or service, request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.

## **ARTICLE III MEMBERSHIP AND VOTING RIGHTS**

Section 1. Membership. Lot Owners have automatic Class "A" membership and voting rights in the Association. Class "A" members shall have one equal vote for each unit. There shall be only one vote per unit. Additionally, each Lot Owner is empowered to enforce the Declaration, By-Laws, and rules and regulations of the Association under the Declaration. The Declarant shall be the sole Class "B" Member. In addition to the rights of the Class "B" Member set forth in the governing documents there shall be one vote for each lot it owns.

Section 2. Voting Structure.

1. Directors during Developer Control Period. Initially, the Declarant, as the Class "B" member, shall be entitled to appoint, remove and replace the directors in its sole discretion during the Declarant Control Period. Unless earlier terminated by the Declarant in its discretion, the Declarant Control Period shall terminate upon the first to occur of the following:

- (a) Sixty (60) days after the date as of which 75% of the maximum number of Lots planned for development have (i) been conveyed by the Declarant and (ii) have been improved with dwellings for which a certificate of occupancy has been issued;
- (b) December 31, 2005.

The Class "B" membership shall terminate and convert to Class "A" membership upon the termination of the Declarant control period.

2. Election and Term of Office. Notwithstanding any other provision of this Declaration or the By-Laws.

(a) Not later than sixty (60) days after conveyance by Declarant of 25% of the maximum numbers of Lots planned for development, the Board shall be increased to five (5) directors. The President shall call for an election by which the Class "A" members shall be entitled to elect one (1) of the five (5) directors. The remaining four (4) directors shall be appointees of the Class "B" member. The director elected by the Class "A" members shall be elected for a term of two (2) years or until the happening of the event described in subsection (b), whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (b), a successor shall be elected for a like term.

(b) Not later than sixty (60) days after conveyance by Declarant of 50% of the maximum number of Lots planned for development, one of the directors appointed by the Class "B" member shall resign and the President shall call for an election by which the Class "A" members shall be entitled to elect two(2)of the five(5) directors. The remaining three (3) directors shall be appointees of the Class "B" member. The directors elected by the Class "A" members shall be elected for a term of two (2) years or until the happening of the event described in subsection (c) below, whichever is shorter. If such directors' terms expire prior to the happening of the event described in subsection (c) below, successors shall be elected for a like term.

(c) Not later than the first annual meeting after the termination of the Declarant Control Period, the President shall call for an election, and four (4) of the five (5) directors shall be elected by the Class "A" members. Two (2) directors shall serve a term of two (2) years and two (2) directors shall serve a term of one (1) year, as such directors determine among themselves. The Class "B" member shall be entitled to appoint the remaining director so long as the Declarant or a Builder own any property within the Community for development and sale, after which time the Board shall elect a director who shall serve until the next annual meeting. If such meeting is scheduled to occur within sixty (60) days, the election of this director position shall be made at the annual meeting. The member elected to this directorship shall serve a term of two (2) years.

(d) Upon the expiration of the term of office of each director elected by the Class "A" members, such members shall be entitled to elect a successor to serve a term of two (2) years. The directors elected by the members shall hold office until their respective successors have been elected.

COMPOSITION OF BOARD OF DIRECTORS				
Initial Board	25%of homes sold	50%of homes sold	Termination of Declarant Control (75% sold or December 31, 2005)	All Homes sold
Declarant	Declarant	Declarant	Owners	Owners
Declarant	Declarant	Declarant	Owners	Owners
Declarant	Owners	Declarant	Owners	Owners
		Owners	Owners	Owners
		Owners	Declarant	Owners

\*Notes to Chart:

"Declarant" indicates position is filled by Declarant appointment.

"Owners" indicates position is filled by election of Class "A" members.

The column entitled "Termination of Declarant Control" reflects the Board composition after the first annual meeting in accordance with subsection (d).

### 3. Additional Rights Reserved to Declarant

1. **Withdrawal of Property.** Declarant reserves the right to amend this Declaration, so long as it has a right to expand the Community pursuant to Section 5 of Article V, for the purpose of removing any portion of the property within the community from the coverage of this Declaration provided such is not unequivocally contrary to the overall scheme of development. Such an amendment shall not require the consent of any person other than the Owner of the property to be removed,

2. **Marketing and Sales Activities.** Declarant and Builders authorized by Declarant may maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and authorized Builders shall have easements for access to and use of such facilities.

3. **Right to Develop.** Declarant and its employees, agents, and designees shall have a right, and easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

For so long as Declarant owns any portion of the Community, Declarant may designate sites which it owns within the Community for public or quasi-public facilities and neither the Association nor any Owner shall have a right to object to such designation. The Declarant may also designate such sites on property which it does not own, provided the Owner consents to such use.

4. **Right to Approve Additional Covenants,** No person shall record any declaration of covenants, conditions, and restrictions or similar instrument affecting any portion of the Community without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by Declarant and recorded in the public records.

5. **Right to Approve Changes in Community Standards.** No amendment to or modification of the Use Restrictions or the Design Guidelines made after termination of the Declarant Control Period shall be effective, without prior notice to and the written approval of Declarant so long as Declarant owns any portion of the Community primarily for development and sale.

6. **Right to Transfer or Assign Declarant Rights.** Any or all of the special rights and obligations of Declarant set forth in this Declaration or the By-Laws may be transferred or assigned in whole or in part to other persons provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant possesses under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the public records.

The Declarant may permit other persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right permanently or in its entirety, and in such case it shall not be necessary to record any written assignment except as may be required to evidence Declarant's consent to such exercise.

7. **Termination of Rights.** The rights set forth in this Article shall terminate upon the earlier of (a) fifteen (15) years from the date this Declaration is filed in the public records, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

## ARTICLE IV

## COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association; (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation or delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Declarant's Obligation for Assessments. During the Class "B" membership, Declarant may annually elect either to pay assessments on all of its unsold Units or to pay the difference between the amount of assessments levied on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year; provided, regardless of the Declarant's election, the Declarant's Units shall be considered in computing the annual assessment rate. Unless the Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. The Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class "B" membership, the Declarant shall pay assessments on its unsold Units in the same manner as any other Owner.

Section 3. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for improvement and maintenance of the common easements located on each Lot as well as any Common Area later added pursuant to the terms of this Declaration. Part of the assessments levied by the Association shall be used to fulfill its obligations under the Covenant to Share Costs, and to maintain the Common Area in accordance with the Development Agreement.

Section 4. Special Assessments. Any common expenses of a non-routine nature, or which were not anticipated in the Association's annual operating budget, or which exceed budgeted amounts, may be assessed as a Special assessment. Special assessments shall be allocated equally among all Units subject to assessment. Special assessments shall be payable in such manner as the Board may determine, and may be payable in installments over a period of more than one year. Notice of any special assessment shall be sent to each Owner at least 30 days prior to the due date of such special assessment (or the first installment thereof). Any special assessment must be approved by a majority of the Class "A" Members subject to such special assessment and by the Class "B" Member, if any.

Section 5. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be One Hundred Seventy and no 1/100ths (\$170.00) per Lot; this shall be paid at closing and shall not be prorated. Thus, if a Lot closes December 31, 1998, or June 1, 1998, the Owners pay the same \$170.00 for the year 1998.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above ten percent (10%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 6. Notice and Quorum for Any Action Authorized Under Section 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 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 the first such meeting called, the presence of members or of proxies entitled to cast sixty (60%) percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 8. Date of Commencement of Annual Assessments Due Dates. The annual assessments provided for herein shall commence as to all Lots upon sale by Declarant beginning 1/1/98. The first annual assessment shall be due in full at closing. 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, but in no event shall the Board fix such amount before the Association receives the notice of annual contribution from the foundation, pursuant to the Covenant to Share Costs. Written notice of the annual assessment shall be sent to every Owner subject thereto. 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.

Section 9. Effect of Nonpayment of Assessments. Remedies of the Association. Any assessments not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve (12%) percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, bid on the property at the foreclosure sale, and sell the property to satisfy the lien. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his 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. 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. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. Exempt Properties. Each Lot owned by Declarant, shall be exempt from these covenants until the Lot is sold by Declarant and the deed to the Lot is recorded. (This exemption applies regardless of possibly apparent contradictory language elsewhere in these covenants). No dwelling Lot (except those owned by Declarant) shall be exempt from special assessments. All properties dedicated to and accepted by a local public authority, utility, Common Area, or any restricted Common Area such as parking lots, streets, or utility and drainage easements, shall be exempt from the assessments created herein.

Section 12. Loans to the Association. The Association's Board of Directors may borrow monies from time to time, so long as the repayment of the principal borrowed and the interest thereon shall be accomplished within the term of five (5) years. Loans that shall require repayment over a longer term shall first be approved by two-thirds (2/3) of the votes of the members present in person or by proxy at a meeting duly called for this purpose. In order to secure the repayment of any and all sums borrowed by it from time to time, the Association is hereby granted the right and power: (1) to assign and pledge revenues received, and to be received by it under any provision of this Declaration; (2) to enter into an agreement with Noteholders with respect to the collection and disbursement of funds; (3) to apply funds received by the Association first to the payment of principal and interest, when due, on such loans; and (4) to establish such collection, payment and lien enforcement procedures as may be required by the Association's Board of Directors.

Section 13. Reserves and Surplus. The Association's Board may establish, from time to time, reserves for such lawful purposes as in its sole discretion it may determine necessary to be desirable for the greater financial security of the Association and the effectuation of its purposes. The Association shall not be obligated to spend in any fiscal year all of the sums collected in such year, and may carry forward as surplus any balances remaining; nor shall the Association be obligated to apply any such surplus to the reduction of the amount of the annual assessment in the succeeding year but may carry forward the same from year to year,

Section 14. Contractual Authority. The Association is subject to the Covenant to Share Costs, is an "Association Entity," as defined therein, and shall make an annual contribution to the Foundation as set forth therein. The Association shall be entitled to contract with any corporation, firm or other entity for the performance of the various duties imposed on the Association hereunder and the performance by any such entity shall be deemed the performance of the Association hereunder.

Section 15. Insurance. The Association is required to purchase the following types of insurance:

1. Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common area and within the Common Area to the extent that the Association has assumed responsibility in the event of a casualty, regardless of ownership. All property insurance policies obtained by the Association "should have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;
2. Commercial general liability insurance on the Common Area insuring the Association and its members for damage or injury caused by the negligence of the Association or any of its members, employees, agents, or contractors while acting on its behalf;
3. Workers compensation insurance and employers liability insurance, if and to the extent required by law;
4. Directors and officers liability coverage;
5. Commercial crime insurance, including fidelity insurance covering all persons responsible for handling Association funds in an amount determined in the Boards business judgment. However, the amount of insurance should not be less than an amount equal to one-sixth (1/6) of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies should contain a waiver of all defenses based upon the exclusion of persons serving without compensation; and
6. Such additional insurance as the Board, in the exercise of its business judgment, determines advisable.

## **ARTICLE V GENERAL PROVISIONS**

Section 1. Enforcement. The Association may impose sanctions for violations of this Declaration, any applicable supplemental Declaration, the By-Laws, or Association Rules in accordance with the procedures set forth in the By-Laws, including reasonable monetary fines and suspension of the right to vote.

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 an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The court may award reasonable attorney's fees to the prevailing party.

In accordance with the By-Laws, the Association may exercise self-help to cure violations and may suspend any services it provides to the Unit of any Owner who is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association.

The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action.

The Association, by contract or other agreement may, but shall not be obligated to, enforce county and city ordinances, if applicable, and permit local governments to enforce their ordinances within the properties for the benefit of the Association and its members.

Section 2. Design Guidelines. The Declarant shall prepare initial design and development guidelines and application and review procedures (the "Design Guidelines") for the Properties; however, such Design Guidelines must have approval pursuant to the Development Agreement before they may be implemented. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary according to land use and from one portion of the Properties to another depending upon the location, unique characteristics, and intended use. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the committees in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the committees and compliance with the Design Guidelines does not guarantee approval of any application.

Assuming the Design Guidelines have been approved pursuant to the Development Agreement, the NCC shall adopt such Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them. Any amendments to the Design Guidelines shall be first approved pursuant to the Development Agreement, shall be prospective

only, and shall not act to require modifications to or removal of structures previously approved once the approved construction or modification has commenced.

The NCC shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties. In the Declarant's discretion, such Design Guidelines may be recorded in the Public Records, in which event the recorded version, as it may unilaterally be amended by the NCC from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

The MC may promulgate detailed procedures and standards governing its area of responsibility, consistent with those set forth in the Design Guidelines and subject to review and approval or disapproval by the NCC. Any architectural guidelines and standards adopted by the MC may be more restrictive than the Design Guidelines, but under no circumstances shall they be inconsistent with the Design Guidelines.

Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

Section 4. Amendment. This Declaration may be amended as provided in this section. Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein.

(a) By Declarant. So long as Declarant owns any property described on Exhibits "A" or "B", it may unilaterally amend this Declaration to (a) bring any provision hereof into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) enable any title insurance company to issue title insurance coverage; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans; or (d) if such amendment is necessary to enable any governmental agency or private insurance company to insure or guarantee Mortgage loans. However, any such amendment shall not adversely affect the title to any Owners Unit unless any such Unit Owner shall consent thereto in writing. Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Unit Owners hereunder, nor shall it adversely affect title to any Unit without the consent of the affected Unit Owner,

(b) By the Owners. In addition to subsection (a), this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of the members holding at least two-thirds (2/3) of the total number of Class "A" votes in the Association, and the consent of Declarant (so long as the Declarant owns any of the property described in Exhibits "A" or "B" for development and/or sale or has the right to unilaterally subject additional property to this Declaration).

No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" member without the written consent of the Declarant or the Class "B" member, respectively (or the assignee of such right or privilege).

Any amendment shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within one (1) year of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

Section 5. Annexation. Additional residential property and a Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members except for the following: additional land owned by the Declarant may be annexed by the Declarant without the consent of the members within ten (10) years of the date of this instrument. Later phases of the development of Declarant's land may be annexed into the Homeowners Association even though the phase annexed is subject to the restrictive covenants with different use restriction (i.e., such as provisions for party walls and townhouses or provision increasing the square footage requirements of the dwelling). Furthermore, Declarant may create sub-associations to cover special problems involving later phases with special needs. (i.e. such as the care of common party walls or building exteriors in townhouses or condominiums) with the approval of the Board of Directors of this Association.

Section 6. HUDNA Approval. During the period of Declarant Control, the following actions shall require the prior approval of the U.S. Department of Housing and Urban Development ("HUD") or the U.S. Department of Veterans Affairs ("VA"), if either such agency is insuring or guaranteeing the mortgage on any Lot: merger, consolidation or dissolution of the Association;

annexation of additional property other than that described in Exhibit "B" to the Declaration; dedication, conveyance or mortgaging of Common Area; or material amendment of this Declaration. The granting of easements for utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a conveyance within the meaning of this Section.

If either HUD or VA insures or guarantees the mortgage on any Unit then the following actions shall require the prior approval of not less than two-thirds (2/3) of the total Class "A" votes in the Association and the consent of the Class "B" member, if such exists: merger, consolidation or dissolution of the Association; annexation of additional property other than that described in Exhibit "B;" and dedication, conveyance or mortgaging of Common Area. Notwithstanding the foregoing to the contrary, the Association may grant easements over the Common Area for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Area, without the approval of the membership.

Section 7. The following provision has been added to comply with the requirements of HUD and the VA: (a) Absolute liability will not be imposed on Lot Owners for damage to the Common Area or Lots in the project.

## **ARTICLE VI USE RESTRICTIONS**

Section 1. Land Use and Building Type, No Lot shall be used except for residential purposes and for single family houses. No building shall be erected, altered, placed, or permitted to remain on any Lot other than a single detached one family dwelling, except that each Lot may also have in addition to the dwelling, a detached or attached private garage or one out building. Any out building shall be completely screened from view from the street. No Lot shall be subdivided or boundary lines amended, except with the written consent of the Declarant and in compliance with the subdivision regulations of Johnston County. The grantors hereby expressly reserve to themselves, and their successors and/or assigns the right to replat one or more Lots shown on the plat of said subdivision in order to create a modified building Lot.

In order to maintain architectural beauty in this subdivision and to guard against the erection therein of poorly designed or proportioned structures, no building shall be erected, altered, or permitted to remain on any building Lot until blueprint plans have been submitted for approval pursuant to the Development Agreement and been accepted by the Declarant. In the event Declarant or the person designated in writing by it fails to approve or disapprove such design or location within thirty (30) days after said plans and specifications have been submitted as herein required, such approval will not be required and this covenant shall be deemed to have been fully complied with. Furthermore, if no suit to enjoin the erection of such structure has been commenced prior to one hundred and twenty (120) days after the completion of the structure, such approval shall not be required.

Section 2. Dwelling Size and Design. Dwellings shall have. the following minimum square footage of heated floor space exclusive of porches, carports and garages; 1,350 square feet.

Section 3. The building setback distances from property line shall be as shown on the recorded plat.

Section 4. Character of Structures. No trailer, basement, tent, shack, garage, barn, or other outbuilding erected in the tract shall at any time be used as a residence temporarily or permanently, nor shall any structure of temporary character be used as a residence on the property. No mobile homes or modular homes shall be permanently or temporarily located on a Lot.

Section 5. Nuisances. No noxious or offensive activity shall be carried on upon any Unit nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 6. Signs. No sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than five (5) square feet advertising property for sale or rent. During the construction phase I: If the development the following signage shall be authorized: (I) the original builder shall be entitled to a sign not greater than five square feet identifying the name and address of the builder; (ii) a sign that identifies the Realtor who is marketing the property for the builder no greater than five square feet; and (iii) signage for any model home no larger than three square feet in an area to indicate whether a model home is open and the hours of operation. The Architectural Review Committee, however, shall be entitled to, in its sole discretion, enlarge signage rights during the initial stages of the development. Otherwise, no bandit signs, banners, or flags of any kind are permitted for any Lot/Unit. For purposes of this section, the permit box, which is required by County Government, shall not be considered a sign.

Section 7. Animals. No animals, livestock or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of the following pets: (1) dogs; (2) cats; (3) birds; and (4) other usual or common household pets. The Board may

regulate the number of pets allowed any Owner. Pets which are being walked through the area, pets which are permitted to roam free or which, in the sole discretion of the Board, appear to endanger the health of the Community, making objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Lots or the Owner of any property located adjacent to the Community may be removed by the Board. No pets shall be kept, bred or maintained for any commercial purpose. No household pet that has caused damage or injury may be walked in the Community. Pets shall be leashed, penned or physically restrained at all times within each Lot. The president of the Association shall authorize the county dog warden to apprehend any pet seen in violation of these restrictions and to impound or dispose of the same pursuant to the county dog ordinance. The rights of the Association to restrict animals as specified herein are non-waivable.

Section 8. Garbage, Clotheslines and Woodpiles. All Lots, whether occupied or unoccupied, shall be well maintained and no unattractive growth or accumulation of rubbish or debris shall be permitted. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

All clotheslines, garbage containers, woodpiles and other similar items shall be located or screened so as to be concealed from view of neighboring Lots, streets, or passing vehicles.

Section 9. Vehicles. No stripped, partially wrecked, or junk motor vehicles, or part thereof, nor any off-road or all-terrain vehicle shall be permitted to be parked or kept on any street or Lot, in such a manner as to be visible to the occupants of any other Lot or the users of any street.

The Association may, if its officers and directors so choose, acquire and set aside a fenced Lot for the storage of vehicles mentioned above in this section that are owned or held by Lot Owners. The Declarant itself is under no obligation to provide such a Lot or convey such a Lot to the Association. '

Section 10. Damaged property. Any dwelling or outbuilding on any Lot which may be destroyed in whole or in part by fire, windstorm or for any other cause or act of God must be rebuilt or all debris removed and the Lot restored to a slightly condition with reasonable promptness,

Section 11. Satellite dishes and Antennae. Satellite dishes, antennae and similar devices for the transmission of television, radio, satellite, or other signals of any kind shall be prohibited, except that (a) antennae or satellite dishes designed to receive direct broadcast satellite service which are one (1) meter or less in diameter; (b) antennae or satellite dishes designed to receive video programming services via multipoint distribution services which are one (1) meter or less in diameter or diagonal measurement; or (c) antennae or satellite dishes designed to receive television broadcast signals ("Permitted Devices") shall be permitted, provided that any such Permitted Device is placed in the least conspicuous location on the Unit in which an acceptable quality signal can be received and is screened from the view of adjacent Units in an acceptable manner.

Section 12. Site Distances. No fence, well, hedge, or shrub planting which obstructs street lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines or, in the case of a rounded property, corner from the intersection of the street property lines extended. The same site line limitations shall apply on any Lot within ten (10) feet from the intersection of street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such site lines.

Section 13. Driveway Pipes. Roadway and guttering pipes for drainage, if required, under driveways at or near their point of access, shall be a minimum of fifteen (15) inches in diameter, but in no event less than that required by the North Carolina Department of Transportation.

Section 14. Guns. The use of firearms on the Properties or in the Community is prohibited. This includes "BB" guns, pellet guns and small firearms of all types.

Section 15. Fences. No fence or fencing type barrier of any kind shall be placed, erected, allowed, or maintained upon any portion of the Community, including any Lot, without the prior written consent of the Board or its designee. The Board may issue guidelines detailing acceptable fence styles or specifications, but in no event may hog wire be approved. Chain link fences shall not be visible within fifty (50) feet of the roads within the subdivision. Forty-eight (48) inch picket type fence, with slats five and one-half (5 1/2) inches in width, with the pickets pointed top or round, are specifically approved. The purpose of this

provision is to ensure a uniform, high quality appearance to the yards. The Declarant anticipates that the Board will approve guidelines allowing forty-eight (48) inch high wooden picket fences with slats five and one-half (5 1/2) inches in width, pickets pointed or rounded on the top and will review particular requests for chain link or other less attractive fencing. At no time will a fence of any kind be approved that will be placed forward of the rear foundation line of the house.

Section 16. Access to Highway No. 42. In order to ensure the uniform high quality appearance of the subdivision, all Lots adjacent to Highway No. 42 shall have no driveways or access roadways directly connecting the Lot to the roadway of Highway No. 42, but shall provide the road access through the streets of the community maintained in the subdivision.

Section 17. All Terrain or Other Off-road Vehicles. All terrain or other off-road vehicles are prohibited from all Common Areas unless they are used by the Association for maintenance or other purposes authorized by the Association Board of Directors.

Section 18. Street Lighting. The power Company (now CP&L) is providing the street lighting for the properties. Each Lot owner will be billed by the Power Company directly for their pro-rata share of the cost of operating and maintaining these lights. Owner covenants and agrees to pay these charges when due.

## **ARTICLE VII EASEMENTS**

Section 1. Private Road Easement. If private roads and streets servicing the subdivision appear in the recorded plat but in the event and to the extent fills, cuts, slopes, or part of the street itself extend past the surveyed right-of-way, the Declarant reserves a permanent construction easement extending 15 feet from the right-of-way perpendicularly into each Lot along each street or roadway as an easement for the maintenance of the existing street and road system and the supporting cuts, ditches, or slopes therefore.

Section 2. Utilities and Drainage Easements, Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

Section 3. Easement for Maintenance Over Joint Property. The Declarant reserves an easement over, under and across the Properties to perform any and all necessary repairs and maintenance over the "Joint Property" as defined in the Covenant to Share Costs.

Section 4. Ingress/Egress Easement. Every Owner shall have an easement of ingress and egress which is appurtenant to and that passes with any conveyance or encumbrance.

Section 5. Provisions deterring litigation.

1. Limitation of Litigation by Association. The Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of persons entitled to cast seventy-five (75%) of the total Class "A" votes in the Association, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the Declarant Control Period;
- (b) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;
- (c) initiated to challenge ad valorem taxation or condemnation proceedings;
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

2. **Right to Cure.** Prior to filing a civil action against the Declarant, the Association, or any Builder of any portion of the Garden at Flowers' Plantation, a homeowner must give the Declarant, the Association, or any Builder a reasonable opportunity to cure the alleged deficiency or violation prior to instituting a suit.
3. **Prerequisites to Action against Builders.** Prior to filing a civil action against Declarant, any Developer, or any Builder of any portion of Properties, the Association must notify the Declarant, Developer, or Builder, participate in alternative dispute resolution, and give the Declarant, Developer, or Builder an opportunity to inspect and make a settlement offer prior to instituting a suit.
4. **Retention of Expert for Litigation Purposes.** Prior to the Association's or any member's retaining an expert for litigation purposes related to the construction or design of any portion of Properties or any improvements thereon, including Units and Common Areas, the Association or member, as appropriate, shall notify the Declarant and any Builder involved in the design or construction of such portion of the Properties.
5. **Easement to Inspect and Right to Correct.**
  - (a) Declarant reserves for itself and such other persons as it may designate perpetual nonexclusive easements throughout Properties to the extent reasonably necessary for the purposes of access, inspecting, testing, redesigning, or correcting any portion of Properties, including Units and the Common Area. Declarant shall have the right to redesign or correct any part of the Common Area, and the designees of Declarant shall have the right to redesign or correct any Unit or portion of a neighborhood in which they were the Developer.
  - (b) Entry onto a Unit shall be after reasonable notice, except in an emergency. Entry into a structure on a Unit shall be only after Declarant notifies the Unit's Owner and agrees with the Owner regarding a reasonable time to enter the structures on such Unit to perform such activities.
  - (c) Any damage to a Unit or the Common Area resulting from the exercise of the easement or right of entry described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the person exercising the easement right. The exercise of these easements shall not unreasonably interfere with the use of any Unit and entry onto any Unit shall be made only after reasonable notice to the Owner or Occupant.

#### **Exhibit A**

Being all of lots 26-35, 37-71, 6, 75-81 of all The Gardens at Flowers Plantation, Section Two, lying and being in Wilders Township, Johnston County, North Carolina as surveyed by plat prepared by Dennis R. Blackmon, Registered Land Surveyor, according to plat recorded in Plat Book 52, Page 238, Johnston County Registry.