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Onslow County, NC
Rebecca L. Pollard Reg. of Deeds
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Prepared by: LANIER, FOUNTAIN & CERUZZI/ami

STATE OF NORTH CAROLINA
COUNTY OF ONSLOW

DECLARATION
OF RESTRICTIVE COVENANTS, CONDITIONS AND RESTRICTIONS
OF GARDEN'S GATE HOMEOWNERS ASSOCIATION, INC.

THIS DECLARATION OF RESTRICTIVE AND PROTECTIVE COVENANTS, made on the date hereinafter set forth by A. SYDES CONSTRUCTION INC., a corporation organized under the laws of the State of North Carolina with its principal office located in Onslow County, North Carolina, hereinafter called "Declarant".

WITNESSETH:

WHEREAS, the Declarant is the owner of certain property in Richlands Township, Onslow County, North Carolina, which is more particularly described as follows:

Being all of Lots as shown on that Final Plat "Garden's Gate A Planned Residential Development", Richlands Township, Onslow County, North Carolina and recorded in Map Book 64, Page 78, Onslow County Registry.

NOW, THEREFORE, the Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are forth 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. "Association" shall mean and refer to GARDEN'S GATE HOMEOWNERS ASSOCIATION, INC., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entitled, 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 the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Eligible First Mortgage Holder" shall mean any holder of a first mortgage, who files with the secretary of the association, notice, that they are holding a mortgage on the lot.

Section 5. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners.

Section 6. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with exception of the Common Area.

Section 7. "Declarant" shall mean and refer to A. SYDES CONSTRUCTION, INC., its successors and assigns if such successors and assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of 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 right of the Association to suspend the voting rights and right to use of the recreational facilities, if any, 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; and
- b. The right of the Association to dedicated 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 and instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members and fifty-one (51%) of the mortgage holders 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 the family, his tenant, or contract purchasers who reside on the property.

Section 3. Parking Rights. Ownership of each Lot shall entitle the Owner or Owners thereof to the use of not less than two (2) automobile parking spaces, which shall be located on the Lot together with the right of ingress and egress in and upon said parking area. The Association shall insure not less than two (2) vehicle parking spaces for each dwelling.

Section 4. Common Control Areas. The Association shall govern any and all repairs, replacements, and maintenance of the Common Control Areas.

Section 5. Entrance Maintenance. The Association shall maintain in an orderly fashion all traffic islands and entrances which are landscaped or upon which improvement may be placed on any road within the subdivision.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenance to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Voting Rights. The Association shall have two(2) classes of voting membership:

Class A. The Class A member(s) shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- a. Within One Hundred Twenty Days (120) when the total votes outstanding in the Class A membership is seventy-five (75%) percent of the total votes outstanding in the Class B membership, or
- b. On the fifth anniversary of the conveyance of a Lot or other parcel within the development.

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 covenants and agree to pay 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 attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's 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 for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessment. 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 the improvement and maintenance of any Common Area; and for the improvements and maintenance of any Common Control Area to include the maintenance of any roadway until the maintenance of the roadway is accepted by the North Carolina Department of Transportation and the supervision of all wetlands as designated on the plat. In addition, sums shall be collected and amassed to establish a capital account for capital improvements and repairs to the properties.

Section 3. 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 Fifty and 00/100 Dollars (\$150.00) per Lot and may be paid quarterly, semi-annually or annually as determined the Association.

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 (10%) percent 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 may be increased above ten (10%) percent 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 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 upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-third (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. 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 the first such meeting called, the presence of members or of proxies entitled to cast fifty (50%) percent of all 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 (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and shall be collected on a monthly basis. However, notwithstanding this section or any other section contained herein, Declarant shall not be obligated to pay any assessment provided the Lot is unoccupied and has not been deeded by Declarant.

Section 7. Date of Commencement of Annual Assessments Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. 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 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 8. Effective 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 a rate of ten (10%) percent per annum or such other rate as the Association may determine. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. 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 from the lien thereof.

ARTICLE V

ARCHITECTURAL CONTROL

No building, fence, wall, exterior modification or other exterior construction or modification 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 specification showing the nature, kind, shape, height, materials, and located of the same shall have been submitted to an approved in writing as the harmony of external design and located in relation to surrounding structures to topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board, In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (3) days after such plans and specification have been submitted to it, approval will not be required and this Article will be deemed to have been duly complied with.

ARTICLE VI

USER RESTRICTIONS

Section 1. Land Use and Building Type. No lot shall be used except for residential purposes. No building shall be erected, placed, altered, placed or permitted to remain on any Lot other than one single family or duplex townhouse dwelling not to exceed two(2) stories in height unless approved by Declarant. Any building erected, placed or altered on any Lot shall be subject to the provisions of the Article V of this Declaration of Covenants, Conditions and Restrictions relating to architectural control.

Section 2. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 3. Temporary Structures. No structure of a temporary character, such as a basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time

as a residence either temporarily or permanently.

Section 4. Animals. No livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other common household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and are at all times not a nuisance to other Owners, properly leashed or confined in an approved area. No other animals shall be allowed without the prior consent of the Declarant. Declarant may, at its option, assign this right to the Association.

Section 5. Outside Antennas. No outside radio or television antennas in excess of 18 inches in diameter shall be erected on any Lot or dwelling unit within the Properties unless and until permission for the same has been granted by the Board of Directors of the Association or its architectural control committee.

Section 6. Window Coverings. All drapes, curtains, or other similar materials hung at windows, or in any manner so as to be visible from the outside of any building erected upon any Lot shall be of a white or neutral background or material.

Section 7. Exterior Lights. All light bulbs or other lights installed in any fixture located on the exterior of any building or any Lot shall be clear, white or non-front lights or bulbs.

ARTICLE VII

EASEMENTS

Section 1. Utility and Drainage. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and over the front ten (10) feet of each lot. Within these easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of drainage, or which may obstruct or retard the flow of water.

Section 2. Emergency Repairs. The Association is hereby granted a permanent easement to enter any properties, including any individually owned Lot, for the sole purpose of effectuating emergency repairs.

Section 3. Ingress and Egress. Each Lot Owner shall have an unrestricted right of ingress and egress to their Lot. This right shall pass and inure to the benefit of all future Lot Owners.

Section 4. Encroachment. Any and all encroachments and violations of less than one foot shall be deemed a minor violation and each Owner of the Association shall be deemed to have granted an easement appurtenant to the violating Lot for said encroachment.

ARTICLE VIII

INSURANCE AND BONDS

Section 1. Liability Insurance. The Association shall obtain and maintain a Comprehensive General Liability Insurance policy covering all Common Area, public ways and other areas that are under its supervision. The policy shall provide coverage of at least \$100,000.00 for bodily injury and property damage for any single occurrence. The premium for said policy shall be paid by the Association.

Section 2. Fidelity Bond. The Association shall have Fidelity Bonds for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. A management agent that handles funds for the Association shall be covered by its own Fidelity Bond.

Except for Fidelity Bonds that a management agent obtains for its personnel, all other bonds shall name the Association as an obligee and their premiums shall be paid by the Association as a common expense.

The Fidelity Bonds shall be in a sufficient amount to cover the aggregate of the following:

- a. the maximum funds that will be in the custody of the Association or its management agent at any time while the bonds is in force;
- b. the sum of three (3) months assessments of all amounts in the project;
- c. all reserve funds of the Association.

Section 4. Notice to Association and Mortgagors. All insurance policies and bonds must include a provision that calls for ten (10) days written notice to the Association and each holder of a first mortgage before the bond or insurance can be canceled or substantially modified for any reason.

ARTICLE IX

GENERAL PROVISION

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 court order shall in no way effect any other provisions which shall remain in full force and effect.

Section 3. Document Availability. The Association shall have current copies of the Declaration, By-Laws, and other rules concerning the project as well as its own books, records and financial statements available for inspection by Lot Owners or by holders, insurers and guarantors of first mortgages that are secured by Lots and improvements within the development. These documents shall be available during normal business hours and under

other reasonable circumstances.

There shall be an annual audited statement prepared each year with copies made available to the Lot Owner, and any holder, insurer or guarantor of any first mortgage that is secured by a Lot within the development any lot owner or holder insures or guarantees any eligible first mortgage may at their expense obtain an audited statement.

Section 4. Condemnation, Destruction or Liquidation. The Association will be deemed to represent the Owners in any losses or proceeds from condemnation, destruction or liquidation of all or a part of the Common Areas and shall have the authority to negotiate, settle and otherwise make agreements on behalf of all Lot Owners and any and all sums payable shall be distributed to each of the Lot Owners in equal shares. However, all first mortgage holders shall be given ten (10) days notice prior to any disbursements to the Lot Owners.

Section 5. Storm Water Runoff. The following covenants are intended to ensure ongoing compliance with State Stormwater Management Permit Number _____, as issued by the Division of Water Quality under NCAC 2H.1000. The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the stormwater management permit. These covenants are to run with the land and be binding on all persons and parties claiming under them. The covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Water Quality. Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the Division of Water Quality.

The maximum allowable built-upon area per lot is no more than _____ square feet; This allotted amount includes any built-upon area constructed within the lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement. Built upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, and coquina, but does not include raised, open wood decking, or the water surface of swimming pools.

Projects that are meeting density limits by limiting the number of dwelling units to 2 per acre, shall record the following restriction: The project shall not construct in excess of 47 dwelling units . The property may not be further subdivided and the property may not contain more than the permitted number of dwelling units.

Filling in or piping of any vegetative conveyances (ditches, swales, etc.) associated with the development except for average driveway crossings, is strictly prohibited by any persons.

Each lot will maintain a _____ foot wide vegetated buffer between all impervious areas and surface waters and areas designated as wetlands. All roof drains shall terminate at least _____ feet from the mean high water mark of surface waters and areas designated as wetlands.

If permeable pavement credit is desired, the property owner must submit a request, with supporting documentation, to the permittee and receive approval prior to construction fo the permeable pavement.

Nothing in these covenants shall prohibit Declarant from exceeding density limits through permits properly obtained through State Stormwater Rules, which may include engineered systems. Any of the provisions of this instrument may be amended, modified or terminated to comply with stormwater rules now or hereafter adopted by the State of North Carolina by an instrument in writing executed by Declarant, its successors or assigns.

Section 6. Wetlands. The areas shown on the recorded plat of Garden's Gate as recorded in Map 63 Book 231, Onslow County Registry, as conservation or wetlands areas shall be maintained in perpetuity in their natural or mitigated condition. No person or entity shall perform any of the following activities on such conservation area:

- a. fill, grade, excavate or perform any other land disturbing activities
- b. cut, mow, burn, remove, or harm any vegetation
- c. construct or place any roads, trails, walkways, buildings, mobile homes, signs, utility poles or towers, or any other permanent or temporary structures

- d. drain or otherwise disrupt or alter the hydrology or drainage ways of the conservation area
- e. dump or store soil, trash or other waste
- f. graze or water animals, or use for any agricultural or horticultural purpose

This covenant is intended to ensure continued compliance with the mitigation condition of a Clean Water Act authorization issued by the United States of America, U.S. Army Corps of Engineers, Wilmington District, Action ID, and therefore may be enforced by the United States of America. This covenant is to run with the land, and cannot be amended without the written consent of the U.S. Army Corps of Engineers, and shall be binding on the Owner, and all parties claiming under it.

Section 7. Limitation on Ability to Sell and Lease. No Lot Owners right to sell, convey, transfer or mortgage his Lot shall be restricted. However, no Lot shall be leased for less than thirty (30) days.

Section 8. Mortgagee Approval. The following actions will require the prior written approval of at least fifty-one (51%) percent of the eligible mortgage holders: Annexation of additional property, other than contained herein, dedication of Common Area, and amendment of the Declaration of Covenants, Conditions and Restrictions.

Section 9. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of thirty-five (35) years from the date of this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than sixty-seven (67%) percent of the Lot Owners, and thereafter by an instrument signed by not less than fifty (50%) percent of the Lot Owners. However, the Declarant is empowered to make such amendments as may be necessary to comply with the Veterans Administration requirement for loan guarantees within the properties. All material changes, including any transfer of the common area shall require not less than 30 days advance

notice as well as notice to all eligible first mortgage holders. Any amendment must be recorded. As long as there is Class B Membership, the Veterans Administration and/or the Federal Housing Administration shall have the right to veto amendments to the Declaration.

IN WITNESS WHEREOF, the Declarant hereto has set their hand and seal this the

8th day of June, 2012

A. SYDES CONSTRUCTION INC.

a North Carolina corporation

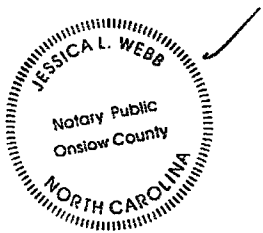
Leah P. Quinn
By: Leah P. Quinn, Assistant Secretary

STATE OF NORTH CAROLINA

COUNTY OF ONSLOW

I, a Notary Public in and for said County and State, certify that Leah P. Quinn personally came before me this day and acknowledged that she is Assistant Secretary of A. Sydes Construction Inc., a corporation, and that she, as Assistant Secretary, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal, this 8th day of June, 2012.



Jessica L. Webb
Notary Public

My commission expires: 12-05-2016

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