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02:03:19 PM		<b>TAMMY THEUSCH BEASLEY</b>		
BY: ANDREA CRESWELL		<b>REGISTER OF DEEDS</b>		
ASSISTANT				

**State of North Carolina**  
**County of New Hanover**

**AMENDED DECLARATION OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR BROOKSIDE  
GARDENS**

THIS AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereinafter "Declaration") is made this the 13 day of October, 2016, by **BROOKSIDE GARDENS HOMEOWNERS' ASSOCIATION, INC.**, a North Carolina non-profit corporation (the "Association"), on behalf of itself and all Owners of parcels of real property or lots as shown on a plat recorded in the Office of the Register of Deeds of New Hanover County, North Carolina, in Map Book 41, Page 322, to which reference is made for a more particular description (the "Property"), who have approved this Declaration through separate written execution for the purposes hereinafter stated

WITNESSETH:

WHEREAS, Brookside Gardens, LLC, a North Carolina limited liability company (the "Declarant"), placed certain restrictive covenants on record which apply to land conveyed when the deed or deeds for such land made specific reference to the restrictive covenant recorded in Book 3117, Page 698, of the New Hanover County Registry; and

WHEREAS, the Original Declaration was subsequently amended by instruments recorded in Book 3665, Page 219 (the "First Amendment"), Book 3795, Page 549 (the "Second Amendment"), Book 3910, Page 375 (the "Third Amendment") and "Book 5451, Page 269 (the "2009 Amendment"); and

WHEREAS, the Association is the successor in interest to the rights of the Declarant; and

WHEREAS, the First Amendment was executed for the purpose of making the Original Declaration conform to the provisions of State Stormwater Management Permit Number SW8 990906 for the Brookside Gardens development; and

WHEREAS, certain language was inadvertently omitted from the 2009 Amendment; and

WHEREAS, the present amendment changes Article VIII, Section 1 to conform to the First Amendment; and

WHEREAS, that amendment was presented for consideration by the membership of the Association; and

WHEREAS, Owners representing more than sixty-seven percent (67%) of the Owners of Assessable Properties subject to the Original Declaration, as amended, as of July 18, 2016, have signified acceptance and approval of this Declaration; and

WHEREAS, the Board of Directors of Brookside Gardens Homeowners' Association, Inc. has certified this Declaration in accordance with Article VIII, Section 5 of the Amended Declaration of Covenants, Conditions and Restrictions for Brookside Gardens and has attached hereto the certification required therein.

NOW, THEREFORE, the Association declares that the Property described above shall be held, sold and conveyed subject to the North Carolina Planned Community Act set forth in Chapter 47F of the North Carolina General Statutes (the "Act"), as well as the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. These easements, covenants, restrictions and conditions shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall inure to the benefit of each owner thereof.

It is the intent of the undersigned that this AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BROOKSIDE GARDENS shall revoke, supersede and replace the covenants and restrictions recorded in Book 5451, Page 269 of the New Hanover County Registry, and all previous covenants and restrictions referenced in this preamble.

## ARTICLE I.

### DEFINITIONS

**SECTION 1. Allocated Interest** shall mean the Common Expense Liability and votes in the Association allocated to each Lot.

**SECTION 2. Association and Successor Declarant** shall mean and refer to Brookside Gardens Homeowners' Association, Inc., a North Carolina non-profit corporation, its successors and assigns, the owners association organized pursuant to the Act for the purposes set forth herein.

**SECTION 3. Common Elements** shall mean and refer to all lands and easements within or appurtenant to the Planned Community owned by the Association, other than a Lot, and intended for the common use and enjoyment of the Owners, including gated entrance, all streets, swimming pool and cabana, memorial Murray cemetery, Emma Murray Park and gazebo,

swales, and deeded wetlands, including paths, without limitation any private roads and storm water retention ponds within the Planned Community. Any and all areas labeled or denominated "open space" on any map of Brookside Gardens shall be included within the definition of common area.

**SECTION 4. Common Expenses** means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

**SECTION 5. Common Expense Liability** means the liability for Common Expenses allocated to each Lot as permitted by the Act, this Declaration or otherwise by law.

**SECTION 6. Declaration** shall mean this instrument as it may be from time to time amended or supplemented.

**SECTION 7. Executive Board** shall be used interchangeably with the Board of Directors and means the body, regardless of name, designated in this Declaration or otherwise to act on behalf of the Association.

**SECTION 8. Lot(s)** shall mean and refer to any portion of the Planned Community designated for separate ownership by a Lot Owner.

**SECTION 9. Member** shall mean and refer to every person or entity that has a membership in the Association.

**SECTION 10. Membership** shall mean and refer to the rights, benefits, duties and obligations, which shall inure to the benefit of and burden each member of the Association.

**SECTION 11. Owner** shall mean the Person who owns a fee simple title to any Lot, excluding those having such interest merely as security for the performance of an obligation.

**SECTION 12. Properties** shall mean and refer to all of Brookside Gardens, as described above, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

## ARTICLE II.

### PROPERTY RIGHTS AND EASEMENTS

**SECTION 1. Owners' Easement of Enjoyment.** Every Owner shall have and is hereby granted a right and easement of enjoyment in and to the Common Elements, if any, including an undivided interest in the open spaces shown on the map which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The Association may make and amend reasonable rules and regulations governing use of the Common Elements by the Owners;

- (b) The Board of Directors on behalf of the Association, as Common Expense, may at all times keep the Common Elements and other assets of the Association, if any, insured against loss or damage by fire or other hazards and such other risks, including public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect such property, which insurance shall be payable in case of loss to the Association for all Members. The Association shall have the sole authority to deal with the insurer in the settlement of claims. In no event shall the insurance coverage obtained by the Association be brought into contribution with insurance purchased by Members or their mortgagees.

**SECTION 2. Easements in Favor of the Association.** The following easements are reserved to the Association, their successors and assigns:

- (a) an easement of unobstructed access over, on, upon, through and across each Lot and the Limited Common Elements located thereon, if any, at all reasonable times to perform any maintenance and repair to the Limited Common Elements required by this Declaration. This easement shall also run in favor of the Association and the Association's agents, employees, successors and assigns.
- (b) an easement is hereby granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services, to enter upon all Lots and Common Elements in the performance of their duties.
- (c) in case of any emergency originating in or threatening any Lot or Common Elements, regardless of whether any Lot Owner is present at the time of such emergency, the Association or any other person authorized by it, shall have the right to enter any Lot for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the Lot Owners, and such right of entry shall be immediate.
- (d) the Association is granted an easement over each Lot for the purposes of providing Lot maintenance when an Owner fails to provide maintenance and upkeep in accordance with this Declaration.

**SECTION 3. Nature of Easements.** All easements and rights described herein are perpetual easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the Association, their successors and assigns, and any Owner, purchaser, mortgagee and other person having an interest in the Property or any Additional Property, or any part or portion thereof, regardless of whether or not reference is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

## ARTICLE III.

### HOMEOWNERS' ASSOCIATION

**SECTION 1. Formation of Association.** The Association is a nonprofit corporation organized pursuant to the Nonprofit Corporation Act of the State of North Carolina for the purpose of establishing an association for the Owners of Lots to operate and maintain the Common Elements and any Limited Common Elements in accordance with this Declaration, its Charter and Bylaws. The Association shall be, and hereby is, empowered to perform and/or exercise those powers set forth in the Act as it may be amended from time to time, in addition to any powers and authority otherwise granted to it.

**SECTION 2. Membership.** Every Lot Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Lot ownership.

**SECTION 3. Voting Rights.** Members shall be all Owners 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. Fractional voting with respect to any Lot is prohibited.

**SECTION 4. Common Elements.** The Association shall at its sole cost and expense be responsible for the operation and maintenance of each Common Element within the Development from the date of completion of its construction or improvement by the Developer, whether or not such Common Element has actually been deeded to the Association.

**SECTION 5. Management and Control.** Management of the affairs of the Association shall be the right and responsibility of its Board of Directors in accordance with the Declaration and the By-Laws.

## ARTICLE IV.

### COVENANTS FOR ASSESSMENTS

**SECTION 1. Creation of the Lien and Personal Obligation of Assessments.** Each Lot Owner covenants and agrees to pay to the Association the following assessments (collectively the "Assessments"):

- A. Annual Assessments;
- B. Special Assessments for Capital Improvements;
- C. Insurance Assessments;
- D. Ad Valorem Tax Assessments; and

### E. Working Capital Assessments.

The 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 respective Lot against which the Assessments are made. Each such Assessment, together with the interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

**SECTION 2. Purpose of Annual Assessments.** The Annual Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Property and Additional Property and for the maintenance, repair and replacement of the Common Elements and any Limited Common Elements. The funds arising from said assessments or charges, may be used for any or all of the following purposes: Operations, maintenance and improvement of the Common Elements, and any Limited Common Elements, including payment of utilities; enforcing this Declaration; paying taxes, insurance premiums, legal and accounting fees and governmental charges; establishing working capital; paying dues and assessments to any organization or master association of which the Association is a member; and in addition, doing any other things necessary or desirable in the opinion of the Association to keep the Common Elements and Limited Common Elements in good operating order and repair.

**SECTION 3. Annual Assessments.** The Executive Board shall adopt a proposed annual budget at least 90 days before the beginning of each fiscal year. Within 30 days after adoption of the proposed budget for the Planned Community, the Executive Board shall provide to all of the Lot Owners a summary of the budget and notice of a meeting to consider its ratification, including a statement that the budget may be ratified without a quorum. The budget is ratified unless at the meeting a majority of all of the Lot Owners in the Association rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Executive Board. The Annual Owners Assessment for each Lot shall be established based on the annual budget thus adopted; provided, however, that the first Annual Assessment shall be set by the Declarant prior to the conveyance of the first Lot to an Owner. The due date for payment shall be established by the Executive Board. The Executive Board shall have the authority to require the assessments to be paid in periodic installments. 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.

**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 the 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 Elements and any Limited Common Elements, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the Members of each class who are voting in person or by proxy at a meeting duly called

for this purpose. Written notice of any meeting of Owners called for the purpose of approving Special Assessment shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting.

**SECTION 5. Insurance Assessments.** All premiums on insurance policies purchased by the Board of Directors or its designee and any deductibles payable by the Association upon loss shall be a common expense, and the Association may in any assessment year levy against the Owners equally an "Insurance Assessment", in addition to the Annual Assessments, which shall be in an amount sufficient to pay the annual cost of all such deductibles and insurance premiums not included as a component of the Annual Assessment.

**SECTION 6. Ad Valorem Tax Assessments.** All ad valorem taxes levied against the Common Elements, if any, shall be a common expense, and the Association may in any assessment year levy against the Owners equally an "Ad Valorem Tax Assessment", in addition to the Annual Assessments, which shall be in an amount sufficient to pay such ad valorem taxes in such year not included as a component of the Annual Assessment.

**SECTION 7. Rate of Assessment.** The Association may differentiate in the amount of Assessments charged when a reasonable basis for distinction exists, such as between vacant Lots of record and Lots of record with completed dwellings for which certificates of occupancy have been issued by the appropriate governmental authority, or when any other substantial difference as a ground of distinction exists between Lots. However, Assessments must be fixed at a uniform rate for all Lots similarly situated.

**SECTION 8. Commencement of Assessments.** Assessments for each Lot shall commence upon the date of acceptance by an Owner of a deed to a Lot.

**SECTION 9. Effect of Nonpayment of Assessments and Remedies Of The Association.** Any Assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowable by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Owner's Lot. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Elements or abandonment of his Lot. All unpaid installment payments of Assessments shall become immediately due and payable if an Owner fails to pay any installment within the time permitted. The Association may also establish and collect late fees for delinquent installments.

**SECTION 10. Lien for Assessments.** The Association may file a lien against a Lot when any Assessment levied against said Lot remains unpaid for a period of 30 days or longer.

- A. Filing of Lien.** The lien shall constitute a lien against the Lot when and after the claim of lien is filed of record in the office of the Clerk of Superior Court of the county in which the Lot is located. The Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. Fees, charges, late charges, fines, interest, and

other charges imposed pursuant to Sections 47E-3-102, 47F-3-107, 47F-3-107A and 47F-3-115 of the Act are enforceable as Assessments.

- B. **Process.** A claim of lien shall set forth the name and address of the Association, the name of the record Owner of the Lot at the time the claim of lien is filed, a description of the Lot, and the amount of the lien claimed.
- C. **Exceptions:**
  - (1) The lien under this section shall be prior to all liens and encumbrances on a Lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments and charges against the Lot.
  - (2) The lien for unpaid assessments is extinguished unless proceedings to enforce the tax lien are instituted within three years after the docketing of the claim of lien in the office of the Clerk of Superior Court.
- D. **Fees.** Any judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party.
- E. **Foreclosures.** Where the holder of a first mortgage or deed of trust of record, or other purchaser of a Lot obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors and assigns shall not be liable for the Association against the Lot which became due prior to the acquisition of title to the Lot by such purchaser. The unpaid Assessments shall be deemed to be Common Expenses collectible from all of the Lot Owners including such purchaser, its heirs, successors and assigns.

## ARTICLE V.

### ARCHITECTURAL CONTROL AND MAINTENANCE

**SECTION 1. Approval of Building and Site Improvements.** No dwelling, wall, deck, patio, or other structure shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition to or change in alteration therein (including painting or repainting of exterior surfaces) be made until the plans and specifications showing the nature, kind, shape, heights, materials, colors 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 Board of Directors of the Association, or by an advisory Architectural Control Committee (ACC), comprised of three (3) or more representatives appointed by the Board. The ACC shall provide immediate, dated acknowledgment (delivered by hand, registered mail, or email) of receipt of the plans and shall approve or reject the plans in a timely manner, no later than the thirtieth (30<sup>th</sup>) day following receipt of the dated request. Refusal or approval of any



such plans, location, or specification may be based upon any ground, including purely aesthetic and environmental considerations, that in the sole discretion of the ACC shall deem sufficient. One copy of all plans and related data shall be furnished to the Board or the ACC, as the case may be, for its records. Neither the Association as Successor Declarant, the Board, nor the ACC shall be responsible for any structural or other defects in plans and specifications submitted to it or any structure erected according to such plans and specifications. In the event that the Association's Board, or the ACC, 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. Minimum Standards for Site Improvements.**

- A. **Minimal square footage.** Each dwelling shall have a minimum of 1400 square feet of enclosed, heated dwelling area, provided, however, the Architectural Control Committee may permit a dwelling to have a minimum of 1350 square feet if the Committee in its sole discretion finds that the variance will not adversely impact property values within the Planned Community. The term "enclosed, heated dwelling area" as used in the minimum requirements shall be the total enclosed area within a dwelling which is heated by a common heating system, provided, however, that such term does not include garages, terraces, decks, open porches, and like areas.
- B. **Setback lines.** Since the establishment of inflexible building setback lines for location of houses on lots tends to force construction of houses directly to the side of other homes with detrimental effects on privacy, view, preservation of important trees and other vegetation, ecological and related considerations, no specific setback lines shall be established by this Declaration. In order to assure, however, that the foregoing considerations are given maximum effect, the site and location of any house or dwelling or other structure upon any lot shall be controlled by and must be approved absolutely by the Board, or the Architectural Control Committee, as the case may be, provided, however, that no structure shall be constructed closer to any adjoining property line than is permitted by applicable governmental regulations.
- C. **Construction deadlines.** The exterior of all dwellings and other structures must be completed within twelve (12) months after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner or builder, due to strikes, fires, national emergency, or natural calamities.
- D. **Service utilities, fuel tanks, trash and refuse containers, wood piles, mail boxes, and clothes lines.** All service utilities, fuel tanks, and wood piles are to be enclosed within a wall or plant screen of a type and size approved by the Declarant, the Board, or the Architectural Control Committee, so as to preclude the same from causing an unsightly view from any highway, street, or way within the subdivision, or from any other residence within the subdivision. All mail and newspaper boxes

shall be uniform in design. Design for mail and newspaper boxes shall be furnished by Declarant. Clothes lines are not permitted on any Lot

- E. **Fences.** Fences shall be permitted on any Lot, provided, however, that the design, placement, and materials of any fence are approved by the Board, or the Architectural Control Committee, as the case may be. All wooden fencing constructed to enclose Lots, trash bins, and fuel tanks shall be made of treated pine, stockade or shadow box in design, and shall be stained the same color as existing fencing throughout the community. Fences constructed to enclose Lots shall be either four (4) feet, (5) feet, (6) feet in height, subject to their location.
- F. **Parking.** Off-street parking for not less than two (2) passenger automobiles must be provided on each Lot prior to the occupancy of any dwelling constructed on said Lot which parking areas and the driveways thereto shall be constructed of concrete, brick, asphalt, or turf stone, or any other material approved by the Board, or the Architectural Control Committee.
- G. **Exterior Lighting.** All light bulbs or other lights installed in any fixture located on the exterior of any building or any Lot for the purpose of illumination shall be clear, white, or non-frost lights or bulbs.

### **SECTION 3. Maintenance by Association.**

- A. **Utility and drainage lines, and pipes.** The Association, as Successor Declarant, shall be responsible for insuring that Duke Progress Energy and other utilities maintain, repair, and replace all utility and drainage facilities, swales, lines, and pipes located on the properties that principally serve the subdivision, except those lines and pipes damaged by homeowners or their contractors, and except for those lines and pipes which service only the structure on the lot on which they are situated. The Association shall have the right to go onto the lots at reasonable times for the purpose of ascertaining need for maintenance, repairs, and replacements of all commonly shared utility and drainage facilities, swales, lines and pipes which might be located on such lots, and each Owner hereby grants permission to the Association to enter his or her lot for such purposes upon reasonable notice.
- B. **Common Areas.** The Association shall maintain all common areas, including walkways located thereon, lawn and pool care, plantings and shrubbery, gated entrance, and lighting fixtures (other than street lights) and shall pay all costs of operation thereof, including premiums associated with general liability insurance insuring the Association from liability arising from ownership and operation thereof, including errors and omissions coverage for elected officers and committee members appointed or approved by the Board while engaged in association-assigned tasks.

- C. **Lot maintenance.** The Association shall include all Lots in its annually contracted lawn and landscape services, the cost of which shall be included in each Owner's membership dues, in order to insure each Lot's maintenance on a regular basis. Any owner may elect to drop any of these contracted services and thereby assume some of the contractor's responsibility for the Lot's regular maintenance without refund, setoff, or other return of annual dues allocated for this purpose.

#### **SECTION 4. Maintenance by Owner.**

- A. **Lot Maintenance.** All Owners shall keep their Lots free from weeds, underbrush or other unsightly growth, and refuse piles, including vegetative waste and hazardous chemicals; shall maintain well-watered lawns to ensure healthy grass; and shall re-sod areas where insects or other pests have destroyed grass.
- B. **Exterior Home Maintenance.** Painted surfaces shall be kept in good repair and condition, with repainting, as needed, in colors approved by the Architectural Control Committee. All structures, including fences, decks, and patios, shall be kept clean and in good repair and condition so as to conform to the well-maintained overall appearance of the community.

### **ARTICLE VI.**

#### **USE RESTRICTIONS**

**SECTION 1. Land Use and Building Type.** No Lot shall be used for any purpose other than residential. Each numbered Lot is restricted for construction of one single family dwelling, and therefore none may be subsequently converted into a commercial property by an Owner. No detached garages or other outbuildings shall be permitted. Any building erected, altered, or placed on any Lot shall be subject to the provisions of the amended and restated Article VI of this Declaration relating to Architectural Control.

**SECTION 2. Rental of Residence.** No Owner shall enter into a lease of the Owner's Lot for a period less than one year. All leases for Lots and residences thereon shall be in writing and shall contain the following provisions:

Homeowner must provide Association with a copy of the lease. Homeowner acknowledges receipt of a copy of the *Covenants, Conditions, and Restrictions for Brookside Gardens* and any rules and regulations adopted by Brookside Gardens Homeowners' Association, Inc. and must provide same to tenant.

Each Owner shall be liable to the Association for (i) any violation of this Declaration or Association rules and regulations and (ii) for any damage to the Common Areas, committed or caused by the Owner's tenants the tenant's agents, guests, and invitees. All amounts due the Association by an Owner pursuant to the terms of this paragraph shall be added to the Owner's

Annual Assessment and become a part thereof, collectible and subject to being a lien against the Owner's Lot, as provided for in this Declaration.

**SECTION 3. Subdividing.** No Lot shall be subdivided, or its boundary lines changed.

**SECTION 4. Common Areas.**

- A. **Construction or alteration.** No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Areas, except at the direction of or with the expressed written consent of the Association.
- B. **Pool.** Pool use shall be strictly limited to Lot owners and renters and their guests. Host owners or renters shall accompany any guest not staying at the hosts' residences and are responsible for the conduct and safety of their guests and children, including those under the age of 18. Due to liability issues and nuisance concerns, the pool shall not be used or reserved for a private party hosted by an Owner or renter. The Association shall reserve the right to deny use of the pool to anyone who violates posted pool rules at any time.
- C. **Wildlife area.** No camping, trapping, or hunting shall be allowed in the Wildlife Area. No motorized vehicles shall be allowed on the pathway or Wildlife Area except to respond to emergencies or to accommodate handicapped Owners and their guests. No discharge of any weapons, BB guns, etc. is allowed.

**SECTION 5. Nuisances**

- A. **Activities.** 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 in the neighborhood.
- B. **Plants and objects.** No plants, devices, or things of any sort whose normal activities or existence shall be allowed on any Lot if they are in any way noxious, dangerous, unsightly, or unpleasant, as may diminish or destroy the enjoyment of Lots of other Owners.
- C. **Animals.** No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling, except that dogs, cats, or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are not allowed to run free, are at all times kept properly leashed or under the control of their owners, and do not become a nuisance to the neighborhood. All pet owners shall be responsible for removal and disposal of their own pets' waste deposited in their own yards or elsewhere throughout the community's Properties.

## **SECTION 6. Temporary Structures and Other Structures.**

- A. **Temporary structures.** Subsequent to the Declarant's completion of all home construction on all Lots and improvements to all Common Areas, no structure of a temporary character, trailer, tent, shack, garage, barn, or other outbuilding shall be used on any Lot anytime as a residence, either temporarily or permanently.
- B. **Playground equipment.** The installation or erection of a swing set or other similar playground apparatus shall be limited to wooden sets and shall only be allowed inside fenced yards. The installation, construction, or erection of a permanent basketball goal or other similar apparatus or sports equipment shall not be allowed. A movable or portable goal shall be allowed on an individual homeowner's property so long as it is kept hidden from street view when not in use.

## **SECTION 7. Recreational and Other Vehicles.**

- A. **Recreational vehicles.** No boat, motor boat, camper, trailer, motor or mobile home, or similar type vehicle shall be permitted to remain on any Lot, any street, or Common Area at any time without the timely notification of and subsequent approval of the Architectural Control Committee. Such a vehicle may be allowed on the Lot temporarily for the Owner's maintenance, loading, unloading, or cleaning, or for parking for guests who are visiting the Owner's residence. In all cases, no recreational vehicles shall remain on these properties longer than three (3) days.
- B. **Commercial conveyances.** No commercial conveyance shall be parked at any time on any lot, private drive or street within the community for more than 10 (10) hours in any one-day period, or thirty (30) hours in any 30-day period without the prior approval of the Board of Directors. As a pre-condition to requesting such written approval, the homeowner of record must provide proof that he or she, or the homeowner's direct business entity, is the legally registered owner of the vehicle. Commercial conveyances include any vehicle that meets the NCDOT definition of a commercial vehicle and/or requires a DOT placard; any vehicle with a load rating over one (1) ton; any type of conveyance, motorized or not, wheeled or not, that has a sign attached to and/or painted on it advertising and/or identifies any type of business; or any type of conveyance, motorized or not, wheeled or not, that has rigging on it for the purpose of carrying and/or transporting equipment such as ladders, tools, and pipes. Any conveyance which contains, or has at any time contained, any corrosives, chemicals, fuels and/or gases may not be parked overnight in the community under any circumstances.
- C. **Inoperable or unregistered cars.** No inoperable vehicle or vehicle without current registration and insurance shall be permitted to remain on any Lot, street, or Common Areas. The Association shall have the right to have all such vehicles towed away at the owner's expense.

- D. **Automobile repairs and maintenance.** No substantial or unsightly repairs or maintenance to any vehicles shall be made on the streets, in driveways, or in the Common Areas, but confined to the Lot owner's garage. Minor maintenance that cannot be easily done in a garage—such as washing a car or changing a tire—is allowable in an owner's driveway. Lubrication or caustic materials that may cause damage to the driveway proper cannot be used.
- E. **Other parking concerns.** To avoid traffic congestion on neighborhood streets, Owners who engage in internet or off-property businesses shall not meet regularly with clients or customers on their Lots or on streets or in any Common Areas.

**SECTION 8. TV satellite dishes and radio antennas.** No subscription TV satellite signal-receiving dishes or other television antennas shall be erected or installed on any Lot without the prior notification of the Architectural Control Committee. The size and placement of satellite dishes must conform to federal regulations. Radio antenna towers are expressly forbidden.

**SECTION 9. Window Treatments and Coverings.** Window treatments or coverings shall be light and neutral in color and uniform in appearance from the front exterior of the home.

**SECTION 10. Outdoor Adornments and Displays.**

- A. **Garden adornments.** Statuary, metal sculptures, trellises, garden benches, decorative rocks or slate, or other garden adornments may be placed in or on flower beds, front porches, decks, and patios on any Lot, provided that they enhance the attractiveness of the Lot and the Properties' appeal and provided that they do not hinder the maintenance of lawns and shrubbery. No manufactured ponds or streams or permanent structures shall be placed on any Lot without the written approval of the Architectural Control Committee. If a written complaint is received regarding garden adornments, final approval or denial will be made by the Association.
- B. **Flags.** The display of a decorative flag shall be allowed so long as it does not materially diminish the value of the adjoining lots and does not exceed two and one-half (2 ½) feet by four (4) feet in size. The display of an American flag of no size greater than four (4) feet by six (6) feet shall be allowed on any Lot; this allowance does not apply to common areas, easements, or rights-of-way.
- C. **Signs.** No commercial signs shall be permitted on any Lot or in the Common Areas. "For sale" or "for rent" signs are allowable with the written permission of the Board of Directors. Political signs are permitted within the confines of the Planned Community Act of NC.
- D. **Holiday Lights.** The installation or display of holiday lights shall be limited to a reasonable period of time not to exceed 30 days prior to any holiday and shall be of

a style, color, or arrangement appropriate to the holiday. All lights shall be taken down within 14 days after the holiday.

## ARTICLE VII.

### ENFORCEMENT OF COVENANTS

**SECTION 1. Lots subject to Declaration.** The covenants and restrictions contained in this Declaration are for the purpose of protecting the value and desirability of **Brookside Gardens, Inc.**, and the Lots contained in it. All present and future Owners, tenants, and occupants of Lots and their guests or invitees shall be subject to and shall comply with the provisions of the Declaration, and as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such Owner, tenant, or occupant. The covenants and restrictions of this Declaration shall run with and bind the land and shall bind any person having at any time any interest or estate in any Lot, their heirs, successors, and assigns, as though such provisions were made a part of each and every deed of conveyance or lease.

**SECTION 2. Enforcement and Remedies.** The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable (by proceedings at law or in equity) by the Association, or the Owner of any Lot, their respective legal representatives, heirs, successors, and assigns. The Executive Board shall be entitled to enforce its Articles of Incorporation, Bylaws, and Rules and Regulations. All remedies available to the Association to achieve compliance with this Declaration are intended to be cumulative and are in addition to any other remedies provided by law. In addition to the remedies otherwise provided for herein concerning the collection of Assessments, the following remedies shall be available:

A. **Association to Remedy Violation.** In the event an Owner (or other occupant of a Lot) is in violation of or fails to perform any maintenance or other activities required by this Declaration, the Association's Bylaws, Charter, or Rules and Regulations, the Executive Board shall serve said Owner thirty (30) days' notice by certified letter and/or by posting on the front door of the Owner's residence between the hours of 8 a.m. and 7 p.m. The Association reserves the right of entry onto the Lots for this purpose. Remedies for violation may include one or more of the following:

1. **Fines.** The Association may in accordance with the procedures set forth in N.C.G.S. 47F establish a schedule of and collect fines for the violation of this Declaration or of the Association's Articles of Incorporation or its Bylaws and Rules and Regulations. Fines shall not be less than \$100 and not exceed the maximum provided in the Planned Community Act or other applicable laws, as the same are from time to time amended. If an Owner does not pay the fine when due, the fine shall immediately become a part of and be added to the Annual Assessment against the Owner's Lot and may be enforced by the Association as all other Assessments provided for in ARTICLE IV of this Declaration.

2. **Suspension of Services and Privileges.** In accordance with the procedure set forth in the Planned Community Act, the Association may suspend all services and privileges provided by the Association to an Owner (other than right of access to Lots) for any period during which any Assessments against the Owner's Lot remain unpaid for at least 30 days or for any period that the Owner or the Owner's Lot is otherwise in violation of this Declaration or the Association's Charter, Bylaws, or Rules and Regulations.
3. **Maintenance Liens.**
  - a. **Failure to Maintain Lot and/or Dwelling.** Should a Lot Owner or other occupant fail to maintain his house and/or yard in accordance with Article VI of this Declaration after (30) days' notification by registered mail or posting, the Executive Board or its designee may enter upon the lot and remedy the violation or perform the required maintenance or other activities, and such entry shall not be deemed a trespass. The full amount of the cost of remedying the violation or performing such maintenance or other activities shall be chargeable to the Lot, including collection costs and reasonable attorney's fees and shall constitute a lien on the Lot in favor of the Association. Such amounts shall be due and payable within 30 days after the Owner is billed. Such lien shall be enforceable by Court proceedings as provided by law for enforcement liens.
  - b. **Damage to Common Areas.** In the event that any maintenance activities are necessitated to any Common or Limited Common Areas by the willful act or active or passive negligence of any Owner, his family, guests, invitees or tenants, and the cost of such maintenance, repair, or other activity is not fully covered by insurance, then, at the sole discretion of the Board of Directors of the Association the cost of the same shall be the personal obligation of the Owner and if not paid to the Association upon demand, may immediately be added to and become a part of the Annual Assessment levied against said Owner's Lot. Notwithstanding the foregoing, the Association shall not have a lien for the cost of any maintenance in this section if the Association is obligated to make such repairs or conduct such maintenance by virtue of yards or structures being Common Areas.
  - c. **Willful negligence.** In the event that need for maintenance, repair, or replacement of commonly shared utilities and drainage facilities located on an Owner's lot is caused through the willful or negligent act of the Owner, his family, guests or invitees, the cost of such maintenance, replacement, or repairs shall be added to and become a part of the assessment to which such Lot is subject.
- B. **Appeal Processes.** In compliance with N.C.G.S. 47F-3-107.1, a hearing shall be held to determine if any Lot Owner should be fined or if planned community privileges or services should be suspended pursuant to powers granted to the Association. A Lot



Owner charged with a violation shall be given notice of the charge, an opportunity to be heard and to give evidence, and notice of the decision.

1. **Adjudicatory Panel.** The Lot Owner charged with a violation may request an appeal to adjudicatory panel appointed by the Board from nominations made by the Association. Panel members may not be officers in the Association or members of the Architectural Control Committee or the Executive Board. To initiate the appeal, the Lot Owner shall send a written request to the Board within fifteen (15) days of delivery of the notice. If the panel determines that a fine should be imposed, a fine not less than \$100.00 may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation or delinquency occurs. Such fines shall be assessments secured by liens secured by N.C.G.S. 47F-3-116. If the panel determines that a suspension of Brookside Gardens' privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured.
2. **Board Hearing.** The Lot Owner may appeal the decision of an adjudicatory panel to the full Executive Board by delivering written notice of appeal within fifteen (15) days after the date of the panel's decision. The appeal process shall allow the appellant, where appropriate, to bring experts as the appellant sees fit, at the appellant's sole expense. Pending the agreement of the Board and the appellant, any Lot Owner in good standing may attend the hearing. The Board may affirm, vacate, or modify the prior decision of the adjudicatory panel and shall render a determination not more than fifteen (15) days from service of the written letter of intent to appeal.

**SECTION 3. Miscellaneous.** 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.

## ARTICLE VIII.

### GENERAL PROVISIONS

**SECTION 1. Enforcement of Storm Water Runoff Regulations.** The following covenants are intended to ensure ongoing compliance with State Stormwater Management Permit Number SW8 990906, as issued by the Division of Water Quality under NCAC 2H.1000:

- A. The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the stormwater management permit.
- B. These covenants are to run with the land and be binding on all persons and parties claiming under them.

C. 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.

D. Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the Division of Water Quality.

E. The maximum allowable built-upon area per lot is as follows:

Lots #1-61, BUA: 4000 square feet;

Lots #62-89, BUA: 3480 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, coquina and parking areas, but does not include raised, open wood decking or the water surface of swimming pools.

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

G. Each lot will maintain a 30- wide vegetated buffer between all impervious areas and surface waters.

H. All roof drains shall terminate at least 30' from the mean high water mark of surface waters.

I. Filling in, piping or altering any designated 5:1 curb outlet swale associated with the development is prohibited by any persons.

J. This project proposes a curb outlet system. Each designated curb outlet swale shown on the approved plan must be maintained at a minimum of 100' long with 5:1 (H:V) side slopes or flatter, have a longitudinal slope no steeper than 5%, carry the flow from a 10 year storm in a non-erosive manner; and maintain a dense vegetated cover.

**SECTION 2. Rights of Institutional Note Holders.** Any institutional holder of a first lien on a Lot will, upon request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual audited financial statement of the Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and right to designate a representative to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the Planned Community or the Property securing its loan, (e) receive written notice of any sixty-day (60) delinquency in the payment of assessments or charges owed by any Owner of any property which is security for the loan, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, (g) receive written notice of any proposed action that requires the content of a

specified percentage of mortgage holders, and (h) be furnished with a copy of any master insurance policy.

**SECTION 3. Utility Service.** Declarant reserves the right to subject the Property to contracts for the installation of utilities, cable TV and street lighting, which may require an initial payment and/or a continuing monthly payment by the Owner of each Lot. Each Lot Owner will be required to pay for any water connections, sewer connections, impact fees or any other charges imposed by any entity furnishing water, sewer or other utility service to the Lots. In the alternative, the Developer may collect such connection, impact and other fees, and charges directly from the Lot Owners. All Lot Owners shall be required, for household purposes, to use water and sewer supplied by the companies/governmental units servicing the Planned Community. Separate water systems for outside irrigation and other outdoor uses shall not be permitted without the consent of the Declarant or the Association.

**SECTION 4. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**SECTION 5. Amendment of Declaration.** Except in cases of amendments that may be executed by the Declarant under this Declaration or by certain Lot Owners under Section 47E-2-118(b) of the Act, this Declaration may be amended by affirmative vote or written agreement signed by the Owners of Lots to which at least sixty-seven percent (67%) of the voices in the Association are allocated, or by the Declarant if necessary for the exercise of any Special Declarant Right or development or other right reserved to the Declarant herein.

**SECTION 6. FHA/VA Approval.** So long as there is Class B membership, annexation of Additional properties, dedication of Common Elements and amendments to this Declaration must be approved by the Federal Housing Administration and/or the Department of Veterans Affairs, as the case may be, if either of those agencies has approved the making, insuring or guaranteeing of mortgage loans within the Planned Community.

**SECTION 7. North Carolina Planned Community Act.** It is the intent of the Declarant to comply with the requirements imposed on the Planned Community by the Act and to the extent any of the terms of this Declaration violate the Act, the terms of the Act shall control.

IN WITNESS WHEREOF, the parties hereto, have caused this Declaration to be executed in their corporate name and the corporate seal affixed by its duly authorized officers as of the day and year first above written.

BROOKSIDE GARDENS  
HOMEOWNERS' ASSOCIATION, INC.

By: Kathryn B. Smith  
Kathryn B. Smith, President

ATTEST:

[Signature]  
Secretary

(seal)



STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

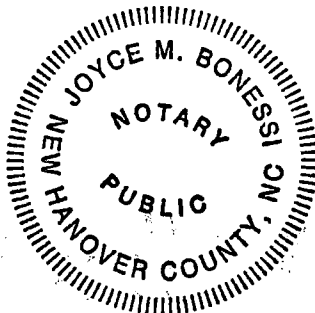
I, Joyce M. Bonessi, a Notary Public in and for the State and County aforesaid, do hereby certify that George Schwartz personally appeared before me this day and acknowledged that he/she is the Secretary of Brookside Gardens Homeowners' Association, Inc., a North Carolina non-profit corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by himself/herself, as its Secretary.

Witness my hand and official seal this is 13<sup>th</sup> day of October 2016.

[Signature]  
Notary Public  
Print Name: Joyce M. Bonessi

My commission expires:

3/31/2017



CERTIFICATION OF VALIDITY OF AMENDED  
COVENANTS, CONDITIONS AND RESTRICTIONS OF  
BROOKSIDE GARDENS

In accordance with Article VIII, Section 5, of the Declaration of Covenants, Conditions and Restrictions of Brookside Gardens Homeowners' Association, Inc., recorded in Book 3117, Page 698 of the New Hanover County Registry as of November 27, 2001, the Owners of the Lots of the Assessable Properties Brookside Gardens met to approve the Amended Declaration of Covenants, Conditions and Restrictions by affirmative vote of at least 67% of the Owners of the Lots of the Association so allocated; and

On July 18, 2016, the Board of Directors presented to the Owners of Lots of the Assessable Properties of Brookside Gardens the foregoing Amended Declaration of Covenants, Conditions and Restrictions; and

By authority of its Board of Directors, Brookside Gardens Homeowners' Association, Inc. certifies that the foregoing instrument was duly approved by 81% of the Owners of Lots of the Assessable Properties of Brookside Gardens and is, therefore, a valid amendment to the existing covenants, conditions and restrictions of Brookside Gardens.

This the 13<sup>th</sup> day of October, 2016.

BROOKSIDE GARDENS  
HOMEOWNERS' ASSOCIATION, INC.

By:

Kathryn B. Smith  
Kathryn B. Smith President

ATTEST:

[Signature]  
Secretary

(Seal)



STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

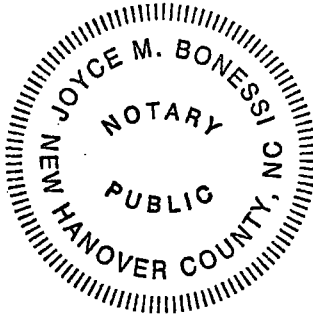
I, Joyce M. Bonessi, a Notary Public in and for the State and County aforesaid, do hereby certify that George Schwartzman personally appeared before me this day and acknowledged that he/she is the Secretary of Brookside Gardens Homeowners' Association, Inc., a North Carolina non-profit corporation, and that by authority duly given and as the act of the corporation, the foregoing Certification of Validity was signed in its name by its President, sealed with its corporate seal, and attested by himself/herself, as its Secretary.

Witness my hand and official seal this is 13<sup>th</sup> day of October, 2016.

Joyce M. Bonessi  
Notary Public  
Print Name: Joyce M. Bonessi

My commission expires:

3/31/2017



TAMMY THEUSCH  
BEASLEY  
Register of Deeds

# New Hanover County

## Register of Deeds

320 CHESTNUT ST SUITE 102 • WILMINGTON, NORTH CAROLINA 28401  
Telephone 910-798-4530 • Fax 910-798-7751



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State of North Carolina, County of NEW HANOVER  
Filed For Registration: 10/14/2016 02:03:19 PM  
Book: RB 6009 Page: 2539-2561  
23 PGS \$54.00  
Real Property \$54.00  
Recorder: ANDREA CRESWELL  
Document No: 2016033535

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**DO NOT REMOVE!**

This certification sheet is a vital part of your recorded document. Please retain with original document and submit when re-recording.