

DECLARATION OF DEFERRED WATER AND SEWER CHARGES
(COURTS OF WOODSIDE)

THIS DECLARATION OF DEFERRED WATER AND SEWER CHARGES (“**Declaration**”) is made this 14th day of April, 2008, by **NOYES 3, LLC**, a Maryland limited liability company, hereinafter referred to as the “**Declarant**”.

RECITALS:

A. The Declarant is the developer and/or owner of certain real property located in the Thirteenth (13th) Election District of Montgomery County, Maryland, as more particularly described on the legal description attached hereto and made a part hereof as Exhibit “A” (the “**Property**”), which Property has been or will be divided into a number of separate subdivided lots of record, as shown, or as will be shown, upon the plats of subdivision for the Property recorded, or to be recorded, among the Land Records of Montgomery County, Maryland (the “**Land Records**”).

B. The terms “**Lot**” and “**Lots**” as used herein shall mean and refer to any plot of land designated as a separate subdivided lot of record upon any recorded subdivision plat of the Property upon which the planned or actual improvements are intended for use and occupancy as a residential dwelling unit. The terms “**Lot**” and “**Lots**” shall not include common areas or other property dedicated for public use.

C. The Declarant (or its affiliates) intend to provide the Lots with access to and service from sewer pipes and transmission lines in the streets and/or in the public or private rights-of-way and the public or private utility easements surrounding and/or within the Lots, including, without limitation, connections (all of such pipes, transmission lines, connections and appurtenances being hereinafter collectively referred to as the “**Sewer Facilities**”).

D. The Declarant (or its affiliates) intend to provide the Lots with access to and service from water pipes and transmission lines in the streets and/or in the public or private rights-of-way and the public or private utility easements surrounding and/or within the Lots, including, without limitation, connections (all of such pipes, transmission lines, connections and appurtenances being hereinafter collectively referred to as the “**Water Facilities**”). The Water Facilities and Sewer Facilities are hereinafter collectively referred to as the “**Water and Sewer Systems**”.

E. Any portion of the Water and Sewer Systems (after construction thereof) which are located within a Lot, and are not located in public rights-of-way or public utility easements, shall be maintained by the “**Owner**” (as defined below) of such Lot and those portions of the Water and Sewer Systems which are located within public rights-of-way or public utility easements shall be maintained by the Washington Suburban Sanitary Commission (“**WSSC**”). Neither the Declarant

or its affiliates shall have any responsibility for maintaining, repairing or replacing the Water and Sewer Systems. The term **“Owner”** as used herein shall mean and refer to the record owner, whether one (1) or more persons or entities, of a fee simple interest in any Lot which is a part of the Property, including contract sellers, but excluding those having such interest solely as security for the performance of an obligation.

F. The water and sewer service supplied to and used by each Lot is to be furnished by WSSC, and billed for by WSSC to the Owner of such Lot from time to time, which billings are separate and apart from the **“Water and Sewer Charges”** (as defined below) established by this Declaration.

G. The Declarant desires to impose certain charges upon the Lots, to be paid to the Declarant, its successors, transferees and assigns, whereby the costs related to the construction and installation of the Water and Sewer Systems serving the Lots are to be paid by the Owners of the Lots in annual installments (except as expressly provided otherwise herein) over a period of twenty-three (23) years, provided that the Declarant shall have the right to collect Water and Sewer Charges in advance and to collect Water and Sewer Charges in monthly, quarterly, or bi-annual installments, as provided herein. Each such installment is hereinafter referred to individually as a **“Water and Sewer Charge”** and collectively as the **“Water and Sewer Charges”**, and such terms shall also be deemed to refer to all applicable interest, costs, late fees and attorneys’ fees. The term **“Builder”** as used herein shall mean and refer to any person or entity that acquires one (1) or more **“unimproved Building Sites”** (as defined below) from the Declarant, its successors, transferees and assigns, for the purpose of constructing residential dwelling units on such unimproved Building Sites for sale to others. The term **“unimproved Building Sites”** as used herein shall mean and refer to any subdivided lot and/or parcel of record within the Property prior to substantial completion of a residential dwelling unit on such lot and/or parcel, which shall be deemed to occur no later than the first issuance of a final inspection and/or a certificate of use and occupancy (as applicable) for the dwelling unit or units on such lot and/or parcel by applicable governmental authorities or agencies.

NOW, THEREFORE, the Declarant hereby declares that all of the Lots now or hereafter included within the Property shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, occupied and used subject to the covenants, conditions, restrictions, obligations and charges set forth in this Declaration, which are for the purpose of reimbursing the Declarant (or its affiliates) for the costs related to constructing and installing the Water and Sewer Systems serving the Lots, and which shall run with such Lots and be binding on all parties having any right, title or interest in all or any portion of such Lots, their respective heirs, personal representatives, successors, transferees and assigns, and which shall inure to the benefit of the Declarant and its respective successors, transferees and assigns:

1. **INCORPORATION OF RECITALS.** The recitals set forth above are hereby incorporated in and made a material part of this Declaration.
2. **ESTABLISHMENT OF LIEN AND PERSONAL OBLIGATION.** Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such

deed, (a) covenants and agrees to pay to the Declarant all Water and Sewer Charges assessed against that Lot hereby which are due and unpaid as of the date such Owner accepts title to such Lot, (b) covenants and agrees to pay to the Declarant all future Water and Sewer Charges assessed against that Lot hereby for as long as such Owner shall be a record owner of a fee simple interest in such Lot, (c) grants to the Declarant a lien to secure payment of the aforesaid Water and Sewer Charges upon the Lot against which the aforesaid Water and Sewer Charges are assessed, and (d) grants to the Declarant a power of sale, and assents to the entry of a decree and order for the sale of that Lot upon a default by the Owner under this Declaration. Each such Water and Sewer Charge shall also be the personal obligation of the Owner of the Lot as of the time when the Water and Sewer Charge is assessed. In the event that any Owner shall fail to pay the Water and Sewer Charges applicable to that Owner's Lot in accordance with this Declaration, the Declarant shall be entitled to all legal and/or equitable relief as may be available under applicable law, including, without limitation, the right (i) to accelerate and declare to be immediately due and payable the full amount of all future installments of the Water and Sewer Charges assessed against that Owner's Lot hereby (discounted to present value in accordance with Paragraph 7 hereof), (ii) to bring an action at law against any Owner personally obligated to pay the Water and Sewer Charges, (iii) to foreclose on the lien against the Lot or Lots then belonging to said Owner in the manner now or hereafter provided for the foreclosure of mortgages, deeds of trust or other liens on real property in the State of Maryland pursuant to the power of sale or assent to a decree set forth herein, or otherwise, (iv) to foreclose on the lien against the Lot or Lots then belonging to said Owner in the manner now or hereafter provided for pursuant to the Maryland Contract Lien Act, and/or (v) to institute such other legal and/or equitable proceedings as may otherwise from time to time be provided by applicable law. In the event that any Owner shall fail to pay the Water and Sewer Charges applicable to that Owner's Lot in accordance with this Declaration, and the Declarant shall institute any legal and/or equitable proceedings to collect such delinquent Water and Sewer Charges, then interest, costs, late fees, and attorneys' fees equal to twenty percent (20%) of the sum claimed shall be added to the amount of the Water and Sewer Charges due and shall constitute additional Water and Sewer Charges. A certificate in writing, signed by a representative of the Declarant, will be given promptly after receipt by the Declarant of a written request for such certificate from any Owner of a Lot liable for the Water and Sewer Charges, setting forth the amount of any accrued and unpaid Water and Sewer Charges outstanding with respect to that Lot, interest thereon in accordance with Paragraph 4 of this Declaration, late charges in accordance with Paragraph 4 of this Declaration, and all costs and expenses incurred by the Declarant in connection with its collection of such Water and Sewer Charges, including, without limitation, attorneys' fees, and such certificate shall be binding on the Declarant as of the date of issuance. A charge not to exceed Fifty Dollars (\$50.00) may be collected by the Declarant in advance for each such certificate so issued. All rights and remedies contained in this Declaration are cumulative, and the Declarant shall also have all other rights and remedies provided by law or in equity.

3. **POWER OF SALE.** In the event that the Declarant shall elect to collect any delinquent Water and Sewer Charges by foreclosing its lien pursuant to the power of sale granted to it in this Declaration, the Declarant hereby designates James C. Myers as its agent for purposes of instituting and conducting the foreclosure sale (the "**Collection Agent**"). The Declarant reserves the right from time to time, in its sole discretion, to designate one or more substitute

Collection Agents by an instrument in writing and recorded among the Land Records. In the event that the Declarant shall designate a substitute Collection Agent, the prior Collection Agent shall thereupon be deemed to have been removed and the new Collection Agent shall thereafter have full power and authority to exercise such power of sale in accordance with this Declaration and applicable law, to the same extent as the Collection Agent originally named in this Declaration.

4. **AMOUNT AND PAYMENT OF CHARGES.** Except as provided otherwise herein, the Water and Sewer Charges (exclusive of interest, costs, late fees, and attorneys' fees) shall be payable annually in advance by each Owner to the Declarant over a period of twenty-three (23) years in the amount of **FOUR HUNDRED SIXTY SEVEN DOLLARS (\$467.00) per year for each Lot**; provided, however, that the first and last installments may be prorated as provided in this Declaration. The Water and Sewer Charges described herein shall commence (the "**Commencement Date**") with respect to each Lot upon the first to occur of: (i) the day of conveyance of such Lot from the Declarant or any Builder to any other Owner, other than the Declarant or any Builder, (ii) the day upon which the dwelling unit located upon such Lot is first occupied and/or used for residential purposes, whether pursuant to a lease of such dwelling unit or otherwise, by any person or entity, including, without limitation, by any Builder, or (iii) the day that is twenty (20) years after the date this Declaration is recorded among the Land Records. Unless sooner paid in full as provided below, the Water and Sewer Charges for each Lot shall cease to be payable (except as to any unpaid Water and Sewer Charges, including, without limitation, interest, costs, late fees and attorneys' fees) on the date that is twenty-three (23) years after the Commencement Date (the "**Termination Date**"). Nothing in this Declaration shall be deemed to excuse the payment of any Water and Sewer Charges which accrue through and remain unpaid as of the Termination Date, including, without limitation, interest, costs, late fees and attorneys' fees, and the obligation to pay such sums shall survive the Termination Date. The initial installment of Water and Sewer Charges for each Lot (the "**Initial Payment**") shall be prorated on a per diem basis for the period from the Commencement Date for that Lot through the next December 31st following the Commencement Date, and shall be due and payable, in advance, on the Commencement Date for that Lot (unless the Commencement Date shall be January 1st, in which case the Initial Payment shall be the full amount of the annual Water and Sewer Charge for that Lot). Each installment of the Water and Sewer Charges subsequent to the Initial Payment shall be due and payable, in advance, on each January 1st following the Commencement Date for a period of twenty-three (23) years. The final installment of the Water and Sewer Charges for each Lot (the "**Final Payment**") shall be prorated on a per diem basis for the period from January 1st of the 23rd year through the Termination Date, and shall be due and payable, in advance, on January 1st of the 23rd year (unless the Commencement Date shall be January 1st, in which case the Final Payment shall be the full amount of the annual Water and Sewer Charge for that Lot). [For example, and for purposes of illustration only, assuming that the Commencement Date for a Lot is November 1, 2007, then the Initial Payment for that Lot would be due and payable on November 1, 2007 in the amount of \$78.05 ($\$467.00 \times 61/365$), following which 22 equal annual installments of the Water and Sewer Charges for that Lot would be due and payable beginning on January 1, 2008 through and including January 1, 2029 in the amount of \$467.00 each, and the Final Payment for that Lot would be due and payable on January 1, 2030 in the amount of \$388.95 ($\$467.00 \times 304/365$). As a further example, and for purposes of illustration only, assuming that the

Commencement Date for a Lot is January 1, 2008, then the Initial Payment for that Lot would be due and payable on January 1, 2008 in the amount of \$467.00, following which 22 equal annual installments of the Water and Sewer Charges for that Lot would be due and payable beginning on January 1, 2009 through and including January 30, 2030 in the amount of \$467.00 each.] It is the intent of this Declaration that the total Water and Sewer Charges (exclusive of interest, costs, late fees, and attorneys' fees) for each Lot shall be as follows: **TEN THOUSAND SEVEN HUNDRED FORTY ONE DOLLARS (\$10,741.00) per Lot (\$467.00 x 23)**. Notwithstanding the foregoing, the Declarant, in its sole and absolute discretion, may allow or can require (i) any Owner to pay the annual Water and Sewer Charges in monthly, quarterly or bi-annual installments as determined by the Declarant, and (ii) any Owner's mortgagee to escrow and pay to the Declarant the Water and Sewer Charges. Any Water and Sewer Charges not paid within fifteen (15) days after the due date shall bear interest from the due date until paid at the rate determined by the Declarant not to exceed the maximum rate permitted by law. **In addition to bearing interest, for any Water and Sewer Charge which is fifteen (15) or more days delinquent, the Declarant may elect to collect a late fee that is the greater of: (1) ten percent (10%) of the Water and Sewer Charge due for each month that any installment remains outstanding (up to a maximum of three (3) such monthly late fees), or (2) 1.5% of the Water and Sewer Charge due for each month that any installment remains outstanding. The late fee imposed by the Declarant may not exceed the maximum amount permitted by law and shall be in addition to interest, collection costs and attorneys' fees.** No Owner may waive or otherwise escape liability for the Water and Sewer Charges provided for herein by non-use of the Water and Sewer Systems or abandonment of a Lot.

5. **PRIORITY OF LIEN.** The lien for all Water and Sewer Charges (including, without limitation, all interest, costs, late fees and attorneys' fees) provided for herein shall have priority from the date upon which this Declaration is recorded among the Land Records over any subsequently recorded or created lien, deed of trust, mortgage or other instrument encumbering any Lot. The sale or transfer of any Lot shall not affect any lien imposed against such Lot pursuant to this Declaration. The purchaser of a Lot shall be jointly and severally liable with the selling Lot Owner for all unpaid Water and Sewer Charges (including, without limitation, all interest, costs, late fees and attorneys' fees) against the Lot, without prejudice to the purchaser's right to recover from the selling Owner amounts paid by the purchaser therefor; provided, however, that no purchaser from an Owner, other than the Declarant or any Builder, shall be liable for, nor shall any Lot be conveyed subject to a lien for, any accrued and unpaid Water and Sewer Charges greater than the amount stated in any written certificate provided by the Declarant in accordance with Paragraph 2 of this Declaration. No sale or transfer shall relieve any Lot or Owner from liability for any Water and Sewer Charges thereafter becoming due or from the lien thereof.

6. **BILLING STATEMENT.** All Water and Sewer Charges, interest, costs, late fees and attorneys' fees payable in accordance with this Declaration shall be payable to the Declarant, its successors, transferees and assigns, in accordance with such billing statements as may be issued by the Declarant, or its designee. Failure to receive a bill for the Water and Sewer Charges shall not relieve any Owner of such Owner's liability to pay any Water and Sewer Charges, interest, costs, late fees, or attorneys' fees due hereunder.

7. **PREPAYMENT.** Any Owner may prepay at any time the Water and Sewer Charges attributable to such Owner's Lot by paying the amount computed by the Declarant in accordance with this Paragraph, on or before the due date for the next installment of Water and Sewer Charges for that Lot; provided, however, that such Owner is not then in default under this Declaration, and is then current in the payment of all then due installments of the Water and Sewer Charges (including, without limitation, all interest, costs, late fees and attorneys' fees). With respect to each Lot, the prepayment amount applicable at any given time shall be an amount equal to the present value of the sum of each then outstanding installment of the Water and Sewer Charges applicable to that Lot through the Termination Date, discounted at a rate of six percent (6%) per annum. In return for such prepayment, including, without limitation, payment of all outstanding interest, costs, late fees and attorneys' fees, the Owner shall receive a full release hereunder, in recordable form, from the Declarant certifying that all payments hereunder have been so prepaid. No Owner, or former Owner, shall be entitled to reimbursement from the Declarant or the Declarant of any prepaid Water and Sewer Charges.

8. **ASSIGNMENT; TRANSFER.** All or any portion of the rights, reservations, interests, exemptions, powers, and/or privileges of the Declarant hereunder may be assigned and transferred (exclusively or non-exclusively) by the Declarant to any other individual or entity, without notice to the Owners. The Declarant shall have the right to transfer, assign, pledge, or in any other fashion encumber its or their right to any or all of the Water and Sewer Charges, interest, costs, late fees and attorneys' fees due hereunder.

9. **WITHDRAWAL.** The Declarant may withdraw any Lot from the operation and effect of this Declaration for a period of twenty (20) years from the date of recordation of this Declaration, without the consent of the Owners or any other individual or entity. Such withdrawn Lot shall no longer be subject to the covenants, conditions, restrictions, obligations and charges of this Declaration except for (i) any rights, reservations, interests, exemptions, powers, or privileges reserved to the Declarant pursuant to this Declaration which affect the withdrawn Lot, and (ii) any other rights, reservations, interests, exemptions, powers, or privileges which are expressly reserved to the Declarant in the instrument effectuating such withdrawal. Such withdrawal shall be made by recording a Supplementary Declaration among the Land Records, withdrawing the effect of the covenants, conditions, restrictions, obligations and charges of this Declaration from the withdrawn Lot.

10. **DECLARANT'S POWER OF ATTORNEY.** The Declarant hereby reserves for itself (and its successors, transferees and assigns to whom such right has been specifically assigned by the Declarant in writing), for a period of twenty (20) years from the date of the recordation of this Declaration among the Land Records, the right, but not the obligation, to execute on behalf of all contract purchasers, Owners, mortgagees, and other lienholders or parties claiming a legal or equitable interest in all or any portion of the Property any such agreements, documents, amendments and supplements to this Declaration which may be required by the Federal National Mortgage Association, the Federal Housing Administration, the Department of Veterans Affairs, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, Montgomery County, Maryland, any governmental or quasi-

governmental agency or authority having regulatory jurisdiction over the Property, any public or private utility Declarant designated by the Declarant, any institutional lender or title insurance Declarant designated by the Declarant, or as may be required to comply with any applicable laws or regulations.

(a) By acceptance of a deed to all or any portion of the Property, or by the acceptance of any other legal or equitable interest in all or any portion of the Property, each and every such contract purchaser, Owner, mortgagee and other lienholder or party having a legal or equitable interest in all or any portion of the Property does automatically and irrevocably name, constitute, appoint and confirm the Declarant (and its successors, transferees and assigns to whom such right has been specifically assigned by the Declarant in writing) as attorney-in-fact for the purpose of executing such agreement, document, amendment, supplement and other instrument(s) necessary to effect the foregoing subject to the limitations set forth herein.

(b) No such agreement, document, amendment, supplement or other instrument which materially and adversely affects the value of the Property, or any portion thereof, or substantially increases the financial obligations of an Owner, shall be made without the prior written consent of the affected Owner(s) and all owners of any mortgage(s) encumbering the portion of the Property owned by the affected Owner(s). Any such agreement, document, amendment, supplement or instrument which materially and adversely affects the priority or validity of any mortgage which encumbers the Property, or any portion thereof, shall not be made without the prior written consent of the owners of all such mortgages.

(c) The power of attorney aforesaid is expressly declared and acknowledged to be coupled with an interest in the subject matter hereof and the same shall run with the title to all and any portion of the Property, and be binding upon the heirs, personal representatives, successors, transferees and assigns of any of the foregoing parties. Further, said power of attorney shall not be affected by the death or disability of any principal and is intended to deliver all right, title and interest of the principal in and to said power of attorney. Said power of attorney shall be vested in the Declarant (and its successors, transferees and assigns to whom such right has been specifically assigned by the Declarant in writing) until the expiration of same.

11. **WAIVER.** No restriction, condition, obligation or provision of this Declaration shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

12. **SEVERABILITY.** The terms and provisions of this Declaration are severable and in the event that any term or provision of this Declaration is invalid or unenforceable for any reason, the remaining terms and provisions hereof shall remain in full force and effect.

13. **RUN WITH THE LAND.** All provisions of this Declaration, including the benefits and burdens, shall touch, concern and run with the land, shall be binding upon the Owners and their respective heirs, personal representatives, successors, transferees and assigns, and shall inure to the benefit of the Declarant and its respective successors, transferees and assigns.

14. **CAPTIONS AND GENDER.** The captions contained in this Declaration are for convenience only and are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration. Whenever the context so requires, the male or female shall include all genders and the singular shall include the plural.

15. **ENFORCEMENT AND RECORDATION.** This Declaration shall be construed and enforced in accordance with the laws of the State of Maryland, and shall be effective upon recordation among the Land Records.

16. **COUNTERPARTS.** This Declaration may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

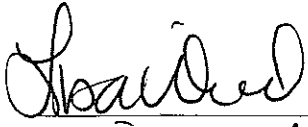
[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this instrument the day and year first above written.

WITNESS:

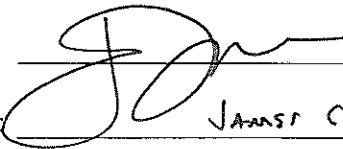
DECLARANT:

NOYES 3, LLC
a Maryland limited liability company



Lisa Ward

[PRINT NAME]

By: 

Name: JANSI C. NOYES

Title: MANAGER

[SEAL]

* * *

STATE/Commonwealth of Maryland

*

to wit:

CITY/COUNTY OF Montgomery

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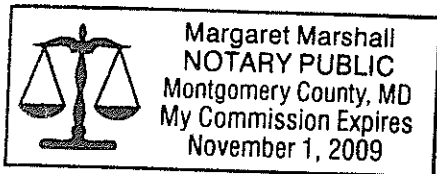
I HEREBY CERTIFY that on this 14th day of April, 2008, before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared James C Myers, known to me (or satisfactorily proven) to be the Manager of Noyes 3, LLC, a Maryland limited liability company, and that such individual, in such capacity and being authorized to do so, executed the foregoing and annexed instrument on behalf of such limited partnership for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Margaret Marshall
Notary Public

My Commission Expires: 11-1-09

[NOTARIAL SEAL]



* * *

ATTORNEY'S CERTIFICATION

I HEREBY CERTIFY that the foregoing instrument was prepared by or under the supervision of the undersigned, an attorney duly licensed to practice before the Court of Appeals of Maryland.

Douglas M. Irvin

**COURTS OF WOODSIDE
THIRTEENTH (13TH) ELECTION DISTRICT
MONTGOMERY COUNTY, MARYLAND**

Lots 53 through 68, inclusive, Block 4, and Parcels B, C and D, Block 4, as shown on a plat of subdivision entitled "WOODSIDE" recorded among the Land Records of Montgomery County, Maryland on August 23, 2007, as Plat No. 23666.

Lots 19 through 28, inclusive, Block 3, and Parcels A and B, Block 3, as shown on a plat of subdivision entitled "WOODSIDE" recorded among the Land Records of Montgomery County, Maryland on August 23, 2007, as Plat No. 23665.

In addition to the rights of the Declarant to modify and amend the foregoing Declaration of Deferred Water and Sewer Charges ("Declaration") as set forth therein, the Declarant reserves the right to unilaterally amend the foregoing Declaration as may be necessary or desirable, as determined by the Declarant in its sole discretion, (i) to correct the legal description set forth on this Exhibit "A", including, without limitation, corrections to the Lot types set forth on this Exhibit "A", and/or (ii) to confirm the lien, operation and effect of the foregoing Declaration with respect to any Lots or parcels that are re-subdivided.

AFTER RECORDING PLEASE RETURN TO:

**LINOWES AND BLOCHER LLP
7200 WISCONSIN AVENUE, SUITE 800
BETHESDA, MARYLAND 20814
ATTN: DOUGLAS M. IRVIN, ESQ.**

Exhibit "A"

Description of Property