

**DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR UPTOWN WEST TOWNHOMES**

**THIS DOCUMENT REGULATES THE DISPLAY OF THE FLAG OF THE UNITED  
STATES OF AMERICA AND THE FLAG OF THE STATE OF NORTH CAROLINA.  
THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL  
SIGNS.**

**DRAWN BY AND MAIL TO:**

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**DECLARATION OF  
COVENANTS CONDITIONS AND RESTRICTIONS  
FOR  
UPTOWN WEST TOWNHOMES**

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR UPTOWN WEST TOWNHOMES (this “Declaration”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by SCP UPTOWN HEIGHTS, LLC, a Delaware limited liability company, and HC UPTOWN WEST TOWNHOMES, LLC, a North Carolina limited liability company (together with their successors and assigns, “Declarants”). Each capitalized term used in this Declaration shall have the meaning for such term defined herein unless otherwise required by context.

WITNESSETH:

WHEREAS, Declarants are the owners of the property described in Exhibit A attached hereto and made a part hereof, which property, together with such Additional Property as shall have been from time to time brought under the scheme of this Declaration by Supplemental Declaration filed in the Registry (collectively, the “Property”), has been or will be developed into building lots and related amenities for use as a community of townhome lots, upon which townhome units will be constructed (each a “Townhome” and collectively “Townhomes”), said community to be known as Uptown West (provided, however, Declarants reserve the right to change said name as to all or any portion of the Property at any time and from time to time); and

WHEREAS, Declarants desire to insure the attractiveness of the Lots and community facilities within the Property and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect, and enhance the values and amenities of the Property, and to provide for the maintenance and upkeep of the Common Areas, the Located Easements, and other community facilities and utilities within the Property; and, in order to accomplish these objectives, Declarants deem it advisable to subject the Property to the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth; and

WHEREAS, Declarants deem it desirable, in order to insure the efficient preservation, protection, and enhancement of the values and amenities of the Property and the residents’ enjoyment of the specific rights, privileges, and easements in the Common Areas, the Located Easements, and the other community facilities and utilities within the Property, that an organization be created to which will be delegated and assigned the powers of maintaining the Common Areas, the Located Easements, and the other community facilities and utilities within the Property, administering and enforcing this Declaration, and collecting and disbursing the assessments and charges hereinafter imposed; and

WHEREAS, Declarants have caused or will cause to be created for the purposes aforesaid, a North Carolina non-profit corporation under the name and style of Uptown West Townhome Association, Inc. (“Association”).

NOW, THEREFORE, the Declarants declare that the Property is and shall be owned, held, leased, transferred, sold, mortgaged, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, charges, and liens, which shall run with the title to Property

and be binding upon and inure to the benefit of all Owners thereof and their heirs, personal representatives, successors, and assigns.

## **ARTICLE 1** **DEFINITIONS**

Without limitation of other capitalized terms defined herein, certain of the capitalized terms used in this Declaration are defined in and shall have the meanings given them in this Article 1.

**Section 1.1.** “16’ Lots” shall mean Lots each having sixteen feet (16’) of property fronting the street on which said Lots are located. The 16’ Lots and 20’ Lots may be referred to collectively as “Lots”.

**Section 1.2.** “20’ Lots” shall mean Lots each having twenty feet (20’) of property fronting the street on which said Lots are located. The 16’ and 20’ Lots may be referred to collectively as “Lots”.

**Section 1.3.** “Act” shall mean the North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes.

**Section 1.4.** “Additional Property” shall mean the property described on Exhibit B attached hereto, all of any portion of which may from time to time be made subject to the Declaration pursuant to Article 2 hereof and which, when so subjected, shall become a part of the Property.

**Section 1.5.** “Annual Assessment” shall have the meaning set forth in Article 7, Section 6.3.

**Section 1.6.** “Assessment Year” shall mean such one year period as shall be specified by the Board in its discretion.

**Section 1.7.** “Association” shall mean South Point Townhome Association, Inc., a North Carolina non-profit corporation.

**Section 1.8.** “Authority” over any parcel of property shall mean a right of ownership or control (whether in whole or in part) over such parcel of property.

**Section 1.9.** “Board” shall mean the Board of Directors of the Association. Notwithstanding anything to the contrary set forth in this Declaration or the Charter Documents, so long as Declarants owns any portion of the Property, Declarants shall have the right at any time and from time to time to appoint and remove any and all members of the Board.

**Section 1.10.** “Charter Documents” shall mean the Articles of Incorporation and Bylaws of the Association, as applicable, as the same may be amended.

**Section 1.11.** “Common Areas” shall mean all portions of the Property which are deeded to the Association for the common use and enjoyment of all Members or owned by

Declarants and designated for the common use and enjoyment of the Association and its Members, and all improvements and facilities constructed thereon for such purposes, including, but not limited to (without any obligation by Declarants to construct or install the same), any signage, irrigation, drainage facilities, sidewalks, entrance monuments, landscaped areas, lighting, green or natural area, private drives and other amenities constructed on portions of Common Areas on the Property.

**Section 1.12.** “Declarants” shall mean SCP Uptown Heights, LLC, and HC Uptown West Townhomes, LLC, their successors and assigns.

**Section 1.13.** “General Utility Easements” shall have the meaning set forth in Article 4, Section 4.1.

**Section 1.14.** “Improvement” shall mean any structure and all appurtenances thereto of every type and kind, including but not limited to: buildings, outbuildings, patios, tennis courts, garages, doghouses, swimming pools, basketball goals, mailboxes, aerials, roads, driveways, parking areas, fences, walls, retaining walls, stairs, decks, landscaping, plantings, planted trees and shrubs, ponds, lakes, changes in grade or slope, site preparation, poles, signs, exterior air conditioning, external facilities used in connection with utilities (including water, sewer, gas, electric, telephone, regular, cable or satellite television or computer service), exterior illumination, front doors, window blinds, changes in any exterior color, and any new exterior construction or exterior improvement not included in any of the foregoing. The definition of Improvement includes both original Improvements and all later changes and/or repairs to Improvements, except that it does not include replacement of trees or shrubs with those of the same or similar species or replacement or repair of Improvements previously approved by the Architectural Control Committee provided such replacement or repair does not change any exterior color, material, design or appearance from that previously approved by the Architectural Control Committee.

**Section 1.15.** “Individual Assessments” shall have the meaning set forth in Article 7, Section 7.5.

**Section 1.16.** “Located Easements” shall have the meaning set forth in Article 4, Section 4.1.

**Section 1.17.** “Lot” shall mean a portion of the Property which has been included as a numbered or lettered plot of land on a Plat.

**Section 1.18.** “Member” shall have the meaning set forth in Article 5, Section 5.1.

**Section 1.19.** “Owner” shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot, but excluding those having such interest merely as security for the performance of an obligation.

**Section 1.20.** “Person” shall mean any individual, corporation, partnership, association, trust, or other legal entity.

**Section 1.21.** “Plats” shall mean such plats of all or any portion of the Property as shall have been from time to time recorded in the Registry (each a “Plat”).

**Section 1.22.** “Property” shall mean the property described in Exhibit A hereto, together with such Additional Property as shall have been from time to time brought under the scheme of this Declaration by Supplemental Declaration filed in the Registry.

**Section 1.23.** “Registry” shall mean the office of the Register of Deeds for Mecklenburg County, North Carolina.

**Section 1.24.** “Special Assessments” shall have the meaning set forth in Article 7, Section 7.4.

**Section 1.25.** “Supplemental Declaration” shall mean a Supplemental Declaration of Covenants, Conditions and Restrictions filed in the Registry pursuant to Article 2, Section 2.2.

**Section 1.26.** “Townhome” shall mean one individual dwelling located on a Lot.

**Section 1.27.** “Working Capital Contributions” shall have the meaning set forth in Article 7, Section 7.13.

## **ARTICLE 2** **PROPERTY**

**Section 2.1. Property Subject to Declaration.** The Property shall be owned, held, leased, transferred, sold, mortgaged, conveyed and occupied subject to this Declaration.

**Section 2.2. Scope of Additional Coverage.** Declarants shall have the right, at its election without the consent of any Owner, to bring within the scheme of this Declaration and subject to the jurisdiction of the Association any portion of the Additional Property which Declarants shall elect, by filing a Supplemental Declaration in the Registry. At such time as any Additional Property is brought within the scheme of this Declaration set forth above, it shall be part of the Property.

**Section 2.3. Additional Declaration Documents.** Declarants may supplement the provisions of this Declaration, whether with regard to the entire Property or any portion thereof, including any modifications as may be necessary to reflect the different character of any portion of the Property, provided the same are not inconsistent with the plan and spirit hereof. So long as Declarants own any part of the Property, Declarants’ prior written consent shall be required for any Person to supplement the provisions of this Declaration in regard to any portion of the Property.

## **ARTICLE 3** **RIGHTS IN COMMON AREAS**

**Section 3.1. Owner’s Easements of Enjoyment.** Subject to the provisions of Section 3.5 of this Article and other provisions of this Declaration, each Owner shall have a right

and easement of use and enjoyment in and to the Common Areas, and such easements shall be appurtenant to and shall pass with the title to such Owner's Lot; provided, however, that such easements shall not give such Owner the right to make alterations, additions, or improvements to any part of any Common Area.

**Section 3.2. Delegation of Use.** The rights and easements of use and enjoyment granted to each Owner in Section 3.1 of this Article may be exercised by the members of the Owner's family who occupy the Owner's Lot, and may be delegated by the Owner to such Owner's tenants who occupy said Lot as their principal residence.

**Section 3.3. Title to the Common Areas.**

(a) Declarants shall convey to the Association (by special warranty deed) fee simple title to the Common Areas, free and clear of all encumbrances and liens other than the lien of current taxes and assessments not in default, restrictive covenants and utility easements, and any other title exceptions of record. Common Areas may be conveyed by Declarants to the Association in whole or in part from time to time.

(b) While it is anticipated that the Common Areas shall be limited to those properties specifically set forth on the Plats, nothing contained herein shall prevent the Declarants, by Supplemental Declaration or otherwise, to create, and to convey to the Association, any Common Areas.

**Section 3.4. Control of Common Areas.** Subject to other provisions in this Declaration, the Association shall have sole and exclusive Authority over the usage of and guidelines applicable to the Common Areas.

**Section 3.5. Extent of Owner's Easement.** The rights and easements of use and enjoyment created in this Article shall be subject to the following:

(a) The right of the Association to prescribe regulations governing the use, operation, and maintenance of the Common Areas (including limiting the number of guests of Owners who may use such Common Areas) subject to limitations established by the Declarants or the Association, as applicable, on such right to impose regulations.

(b) Subject to affirmative vote of eighty percent (80%) of the votes of the Class A Members and the vote of the Class B Member (for so long as Class B Membership exists), the right of the Association to borrow money for the purpose of improving the Common Areas and in aid thereof to mortgage such Common Areas; provided that the rights of such mortgagee in the Common Areas shall be subordinate to the rights of the Owners hereunder.

(c) The right of the Association to take such steps as are reasonably necessary to protect the Common Areas against foreclosure.

(d) Subject to the affirmative vote of eighty percent (80%) of the votes of the Class A Members and the vote of the Class B Member (for so long as Class B Membership exists), the right of the Association to dedicate or transfer all or any part of

the Common Areas, subject to the provisions of Section 47F-3-112 of the Act; provided that this paragraph shall not preclude the Association from either granting easements for the installation and maintenance of electrical, telephone, cablevision, water and sewerage, utilities and drainage facilities upon, over, under and across the Common Areas without the assent of the Members when such easements are requisite for the convenient use and enjoyment of the Property, as determined by the Board in its sole discretion or the reconfiguration of Lots and Common Areas by Declarants.

(e) The right of the Association to grant easements, leases and licenses through or over the Common Areas.

(f) The rights of the Association and Declarants to use the easements for ingress and egress over, in, to and throughout the Common Areas.

(g) The right of Declarants, their successors and assigns to make any improvements for any reason, they deem proper upon the Common Areas, even after their conveyance to the Association. Declarants hereby reserve an easement over the Common Areas for the purpose of development of the remainder of the Property or Additional Property owned by the Declarants. Although not limited in scope of this easement, this easement shall include the right of access at all times for Declarants' employees, agents, subcontractors, invitees, etc., over the Common Areas and shall include the right to construct, maintain and dedicate any additional utility easements, drainage easements or any additional sanitary sewer or water line easements across any of the Common Areas. This Easement shall terminate upon the completion of the development of Uptown West or ten (10) years from the date hereof, whichever occurs first.

#### **ARTICLE 4** **EASEMENTS**

**Section 4.1. Located Easements.** An easement on each Lot is hereby reserved by the Declarants along, over, under, and upon a strip of land five (5) feet in width parallel and contiguous to the front and rear Lot lines of each Lot, (collectively, the "General Utility Easements"). The purpose(s) of the General Utility Easements shall be to provide for installation, maintenance, construction, and operation of drainage facilities and utility service lines to, from, or for each of the Lots. In addition, the Declarants have reserved (and may hereafter reserve) the following other easements (which, together with the General Utility Easements are collectively sometimes referred to herein as the "Located Easements"), which Located Easements are reserved by Declarants for themselves, their successors and assigns, over, under, and across the Property, and which Declarants may modify or extinguish when in its sole discretion adequate easements are otherwise available:

(a) Landscape easements, consisting of: (i) those areas shown on the Plats as easements dedicated for the installation, maintenance, repair, and removal of landscaping amenities, including, but not limited to, monumentation, signage and sitework; (ii) street medians, shoulder, and boulevard areas within street rights of way;

(b) Specific utility easements, consisting of those areas shown on the Plats as easements dedicated for the installation, maintenance, repair, and removal of public and private utilities, including without limitation gas, electric, telephone, cable, sewer, and water;

(c) Irrigation easements, consisting of those areas shown on the Plats as easements dedicated for the installation, maintenance, repair, and removal of irrigation facilities; and

(d) Drainage easements, consisting of those areas shown on the Plats as easements dedicated for the installation, maintenance, repair, and removal of drainage facilities.

(e) Construction easements, consisting of those areas over the Lots and adjoining Common Areas as easements for purposes reasonably related to the installation of streets and construction of Townhomes on the Lots. Declarants and their contractors shall have full rights of ingress and egress to and through, over, and about the Lots and adjoining Common Areas during such period of time that Declarants are engaged in any construction or improvement work on or with the Property and shall further have an easement for the purpose of storing the materials, vehicles, tools, equipment, etc., which are being utilized in such construction. No Owner or his/her guests or invitees, shall in any way interfere or hamper Declarants or their employees or contractors in the exercise of these rights and easements.

(f) Repair and maintenance easements are reserved for the benefit of Declarants and the Association over, under, and through that portion of each Lot upon which is located any wall or any portion thereof for the construction, replacement, maintenance, and continued location of such wall, together with a general right of ingress, egress, and regress over and upon each Lot for the purpose of accessing such construction and location easement. Easements are reserved for the benefit of Declarants and the Association over, under, and through each Lot in order to perform any maintenance, alteration, or repair required or permitted herein to be performed by the Declarants or the Association, including, without limitation, the matters set forth in Sections 6.1(a), 6.1(b) and 6.1(c) of Article 6 (and the Owner of each Lot shall permit the Declarants and the Association and any representative of either to enter for such purposes at reasonable times and with reasonable advance notice), and for immediate entry onto each Lot in the case of any emergency threatening such Lot or any other Lot for the purpose of remedying or abating the cause of such emergency. The Declarants or the Association may, without consent or approval of any Owner, grant or convey any of the easement rights hereinabove reserved for the purposes set forth herein to any person, public or private utility or service company or any agent of Declarants or the Association.

(g) Settlement and overhang easements consisting of those areas over the Lots and adjoining Common Areas as easements for building encroachments created by initial construction and by subsequent settling and overhangs. A valid easement for said encroachments and for maintenance of same shall continue so long as said encroachments exist. In the event a Townhome is partially or totally destroyed, and then rebuilt, minor

encroachments over parts of the adjoining Lots or Common Area(s) resulting from the reconstruction shall also be permitted and a valid easement for said encroachments and the maintenance thereof shall continue.

**Section 4.2. Rights and Limitations With Regard to Located Easements.** With regard to the Located Easements, the following shall apply:

(a) Since the locations of certain of the Located Easements may not have been finally determined as of the date of recording of this Declaration in the Registry, for a period of ten (10) years after the date of recording of this Declaration in the Registry, Declarants reserve to themselves and their successors and assigns, and shall be vested with, the right to establish and adjust the locations of such of the Located Easements as are not finally established as of such date of recording and to record in the Registry on behalf of each and every affected Owner such revisions or supplements to the Plats as may be necessary or desirable to reflect the final locations of the Located Easements.

(b) Within the Located Easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction or flow of drainage channels. Except as otherwise specifically provided in this Declaration and except for maintenance and repairs for which a public authority or public utility shall be responsible, the Located Easements on each Lot and all Improvements therein shall be maintained continuously by the Owner.

(c) It is anticipated that Declarants shall assign to the Association Declarants' rights with respect to the Located Easements.

(d) Declarants shall have the right to assign to any public authority or public utility company, in whole or in part, any easement reserved by Declarants under this Declaration.

**Section 4.3. Easement of Ingress and Egress.** Full rights of ingress and egress are reserved for the benefit of Declarants and the Association for the exercise of the Located Easement rights, as well as the maintenance and repair rights (as set forth in Article 11) in accordance with the provisions hereof for the carrying out by Declarants and/or the Association of the rights, functions, duties, and obligations of each hereunder (to the extent applicable); provided, that any such entry by Declarants or the Association upon any Lot shall be made with as minimum inconvenience to the Owner of such Lot as reasonably practical, and any damage caused as a result of the gross negligence of Declarants' or the Association's employees or agents shall be repaired by Declarants or the Association (as the case may be) at the expense of Declarants or the Association (as the case may be).

**Section 4.4. Reservation of Special Declarant Rights.** Declarants hereby reserve all Special Declarant Rights as defined in Section 47F-1-103(28) of the Act, including, but not limited to the following: the right to complete, repair, maintain, replace and operate improvements on the Property; the right to exercise any development rights; the right to maintain sales offices, management offices, models and signs advertising the Property; the

right to use easements through the Common Area and through any Lot or Lots for the purpose of making, repairing, maintaining, replacing and operating improvements within the Property; and the right to elect, appoint or remove any officer or board member of the Association during any period of Declarants' control. These Special Declarant rights shall expire one year after the conveyance of Declarants' last Lot in the Property.

Declarant may transfer any Special Declarant Rights created or reserved hereunder to any person or entity, by an instrument evidencing the transfer duly recorded in the Office of the Register of Deeds for Mecklenburg County. The instrument shall not be effective unless it is executed by the transferor and the transferee. Upon the transfer of any Special Declarant Rights, the liability of the transferor and the transferee shall be as set forth in N.C.G.S. §47C-3-104.

**Section 4.5. Easements for Driveway Encroachments.** Declarants hereby establish an easement for any Lot ("Benefited Lot") whose driveway, as installed by Declarants, encroaches onto the adjoining Lot ("Burdened Lot"). This easement shall be non-exclusive and perpetual and shall allow the portion of the Benefited Lot's encroaching driveway, as installed by Declarants, to remain on the Burdened Lot. This easement is appurtenant to the Benefited Lot and shall burden and run with the title to the Burdened Lot and shall be binding on all Owners, successors and assigns of the Benefited Lots and Burdened Lots. The foregoing easement shall also apply to any replacement driveway in conformance with the original driveway installed and constructed by Declarants.

## **ARTICLE 5** **MEMBERSHIP IN THE ASSOCIATION**

**Section 5.1. Membership in the Association.** Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot. The voting rights of the Members shall be appurtenant to the ownership of the Lots. When more than one Person owns an interest (other than a leasehold or security interest) in a Lot, all such Persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot owned by a Class A Member.

**Section 5.2. Classes of Members.** The Association shall have two classes of membership:

(a) Class A. Class A Members shall be all Members with the exception of Declarants. Each Class A Member shall be entitled to one vote (1) per Lot owned by such Member.

(b) Class B. The Class B Member shall be the Declarants. The Class B Member shall be entitled to five (5) votes for each Lot owned by it.

Notwithstanding anything contained herein to the contrary, Class B Membership shall cease on the earliest of (a) December 31, 2027, (b) within 120 days after the date on which Declarants no longer own any part of the Property, or (c) the date

Declarants shall elect, in their discretion, that Class B Membership cease and be converted to Class A Membership (which election may be made upon Declarants giving written notice of the election to the Board).

**Section 5.3. Voting, Quorum, and Notice Requirements.** Except as may be otherwise specifically set forth in this Declaration or in the Charter Documents, the vote of the majority of the aggregate votes entitled to be cast by all classes of the Members present or represented by legitimate proxy at a legally constituted meeting at which a quorum is present shall be the act of the Members meeting. The Charter Documents will set forth (a) the number of votes present that will constitute a quorum at a properly called meeting of Members and (b) the notice requirements for all action to be taken by the Members.

In any instance in this Declaration in which the affirmative vote of a number or percentage of votes of the Association is called for, it shall be interpreted to mean the following: The affirmative vote of that number or percentage of votes of the Association that: (i) are entitled to be cast and (ii) are present or represented by proxy at a Proper Meeting. A “Proper Meeting” shall mean a meeting of the members of the Association: (a) at which a quorum is present and (b) which is duly called and held for the purpose of casting such vote.

## **ARTICLE 6**

### **POWERS RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

**Section 6.1. Powers and Obligations of the Association.** The Association, for the benefit of the Owners, shall have the following specific powers and rights (without limitation of other powers and rights the Association may have) and obligations:

(a) The power, right, and obligation to improve, maintain, or cause to be maintained the Common Areas and Located Easements (or particular portions thereof or particular improvements therein, as determined from time to time by the Association in its discretion);

(b) The power, right and obligation to periodically paint, stain, repair, replace, and care for all exterior building surfaces (including without limitation: external brick, siding, roof surfaces, roof systems, gutters, and downspouts; but excluding: patios, porches, stoops, entry doors, rooftop terraces and garage doors and their appurtenant hardware, and all exterior glass including windows and patio doors, all of which shall be maintained, repaired, and replaced by the Owner, with any replacement windows and doors being the same as originally installed); provided, however, the Owner, and not the Association, shall maintain any exterior improvements made by the Owner;

(c) The power, right and obligation to maintain, repair, and replace the landscaping (including irrigation system) in the front and rear yards of the Townhomes on the Lots, including, but not limited to, trees, hedges, shrubs, flowers, ground cover and grass, but excluding any additional landscaping installed by any Owner (any such landscaping being required to be approved in writing by the Architectural Control Committee).

Notwithstanding Subsections (b) and (c) above, if the need of replacement, maintenance, or repair is caused through the willful or negligent act of the Owner, the Owner's family, guest, or invitees, the cost of such replacement, maintenance, or repairs shall be the obligation of that Owner and shall be assessed by Individual Assessment.

(d) The power and right to own the Common Areas and the facilities and improvements thereon;

(e) The power and right to enter into agreements to enable the Association to improve and maintain the Common Areas and Located Easements or portions thereof;

(f) The power and right to make (without being obligated to do so) rules and regulations and establish guidelines for the use and operation of and activities on the Lots and the Common Areas and Located Easements (including, without limitation, guidelines, rules, and regulations related to architectural control), and to amend and enforce them from time to time;

(g) The power and right to enter into agreements or contracts with insurance companies with respect to insurance coverage relating to the Common Areas, Located Easements, and the Association;

(h) The power and right to enter into agreements or contracts with utility companies with respect to utility installation, consumption, and service matters relating to the Common Areas, Located Easements, and the Association;

(i) The power and right to borrow funds to pay costs of operation of the Association, which borrowings may be secured by assignment or pledge of rights against delinquent Owners or by liens on other Association assets, if the Board sees fit;

(j) The power and right to enter into contracts (specifically including, without limitation, street light leases), maintain one or more bank accounts, and generally to have all the powers necessary or incidental to the operation and management of the Association;

(k) The power and right to sue or defend in any court of law in on behalf of the Association and to provide reserves for repairs and replacements;

(l) The power, right, and obligation to make available to each Member within sixty (60) days after the end of each Assessment Year an annual report of the Association and, upon resolution adopted by the Board or upon the written request of the Class A Members holding at least three-fourths (3/4) of the eligible votes of Class A Members of the Association at such time, to have such report audited (at the expense of the Association) by an independent certified public accountant, which audited report shall be made available to each Member within thirty days after completion;

(m) The power, right, and obligation to adjust the amount, collect, and use any insurance proceeds to repair damage to or replace lost property of the Association;

and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency;

(n) The power and right to exercise all powers, duties, and authority vested in the Association by this Declaration or the Charter Documents and not reserved to the Members or Declarants by other provisions of this Declaration or the Charter Documents;

(o) The power and right to employ a manager or firm to manage the affairs and property of the Association (including, without limitation, collection of assessments provided for in this Declaration and enforcement of the other provisions of this Declaration), to employ independent contractors, or such other employees as the Board may deem necessary, and to prescribe their duties and to set their compensation;

(p) The power and right to retain the services of legal and accounting firms;

(q) The power and right to the extent permitted hereby, to enforce the provisions of this Declaration and any rules made hereunder and to enjoin and, at its discretion, seek damages or other relief for violation of such provisions or rules, and to fine Owners for violations after proper notice and opportunity to be heard as required by the Act;

(r) The power and right to contract with any third party or any Member (including Declarants) for performance, on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms hereof, such contracts to be at competitive rates and otherwise upon such terms and conditions and for such consideration as the Board may deem proper, advisable, and in the best interests of the Association;

(s) The power and right to take any and all other actions and to enter into any and all other agreements as may be necessary or proper for the fulfillment of its rights or obligations hereunder or for the operation or protection of the Association;

(t) The power and right to set the Assessments; and

(u) Anything contained herein to the contrary notwithstanding, except as specifically set forth herein, none of the above-described rights and powers of the Association shall be obligatory on the part of the Association, and the failure or refusal by the Association to implement any such rights and powers shall not constitute a breach or default by the Association or the Board or the officers of the Association of any duties or obligations arising hereunder or otherwise owing to its Members.

**Section 6.2. Liability Limitations.** Neither Declarants, nor any Member, nor the Board, nor any member or manager of Declarants nor any officer or director of the Association shall be liable for: (a) debts contracted for or otherwise incurred by the Association or for a tort of another Member, whether or not such other Member was acting on behalf of the Association or otherwise; (b) any incidental or consequential damages for failure to inspect

any premises, improvements, or portions thereof or for failure to repair or maintain the same; or (c) any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof. The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, expense, damage, liability, action, or cause of action relating to the performance by the Board of its duties except for any such loss, expense, damage, liability, action, or cause of action resulting from the gross negligence or willful misconduct of the person to be indemnified.

## **ARTICLE 7** **ASSESSMENTS**

**Section 7.1. Covenant for Assessments.** The Owner of a Lot (except for Declarants), by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) Annual Assessments; (b) Special Assessments; (c) Individual Assessments; and (d) Working Capital Contributions (collectively “Assessments”). Any such Assessments or charge, together with interest, costs, fines and reasonable attorney’s fees shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment or charge is made. Each such Assessment, together with interest, costs, fines 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 or charge fell due.

**Section 7.2. Purposes of Assessments.** The Assessments shall be used to carry out of the rights, powers, and obligations of the Association pursuant to the terms of this Declaration, and to promote the enjoyment and welfare of the Property, including in particular, but without limitation, to (i) maintain and repair the Common Areas and Located Easements; (ii) pay ad valorem taxes, premiums for hazard insurance in connection with the Common Areas and Located Easements, and public liability and other insurance of the Association, including directors and officers liability insurance; (iii) carry out the duties of the Association; (iv) carry out the purposes of the Association and its Architectural Control Committee as stated in the Charter Documents and this Declaration; (v) as more particularly described in Article 6, Section 6.1(b), repair and replacement of exterior surfaces of the Townhomes (excluding, entry doors, garage doors, light fixtures, and windows); (vi) as more particularly described in Article 6, Section 6.1(c), repair and replacement of the landscaping (including irrigation systems) in the front yards of the Townhomes on the Lots, including, but not limited to, trees, hedges, shrubs, flowers, ground cover and grass, but excluding any additional landscaping installed by any Owner; (vii) pay all utility expenses of the Common Areas; (viii) maintenance of insurance as provided in Article 10, Section 10.6; and (ix) pay all utilities that are master metered. All costs and expenses associated with operating, maintaining, repairing, and replacing the improvements within the Common Areas and Located Easements benefiting the Property in general (as determined from time to time in the sole discretion of the Board) shall be the responsibility of the Association.

In addition to the general purposes set forth above, the Assessments shall expressly be used for repayment of any loan incurred, payment of any sum due under any lease entered into, and

satisfaction of any other expense of installation, maintenance, repair, or replacement incurred by Declarants or the Association in connection with the acquisition of decorative street light poles, fixtures, bulbs, wiring, and all equipment related to the use thereof within the Property. However, to the extent that there is any fee or payment due on account of the maintenance of any such poles not located on streets dedicated to the public, such fees or expenses shall be borne entirely by the Owners of Lots and assessed in such manner as shall be determined by the Board.

**Section 7.3. Annual Assessments.** For each Assessment Year, in accordance with the provisions of the Act and this Declaration, the Board shall determine the amounts of the annual assessments provided for in this Article 7 (the “Annual Assessment”). Based on the fact that there will be different Townhome designs located on the 16’ Lots and the 20’ Lots, there may be different maintenance costs associated with each of the different Lot types issued, the Board reserves the right to assess different Annual Assessment amounts against 16’ Lots and 20’ Lots. In so doing, the Annual Assessment levied against all 20’ Lots will be uniformly applied against each of the 20’ Lots; and the Annual Assessment levied against all 16’ Lots shall be uniformly applied against each of the 16’ Lots, to the extent local ordinances allow assessments to be applied against such lots. In making such determination, the Board shall take into consideration, among other things, estimated development and maintenance costs to be borne by the Association under this Article 7, and future needs of the Association under this Article 7. The time of payment of the Annual Assessment shall be determined by the Board from time to time as set forth in statements of amounts due sent to each Lot Owner.

**Section 7.4. Special Assessments.** In addition to the Annual Assessment, the Board may levy in any Assessment Year, in accordance with the provisions of the Act and this Declaration, special assessments (each a “Special Assessment”) for the purpose of defraying, in whole or in part, any costs incurred by the Association under this Article 7 which are not paid for out of funds on hand in the Association or out of the Annual Assessment collected by the Association, as determined by the Board in its discretion. Any Special Assessment shall be subject to the approval of two-thirds of the Owners entitled to vote on such matters. The Board reserves the right to assess different Special Assessment amounts against 16’ Lots and 20’ Lots. In so doing, the assessment levied against all 20’ Lots will be uniformly applied against each of the 20’ Lots; and the assessment levied against all 16’ Lots shall be uniformly applied against each of the 16’ Lots, to the extent local ordinances allow assessments to be applied against such lots. In the event a Special Assessment is made against less than all of the Lots, then only the Owners of a particular Lot type (i.e. 16’ or 20’ Lots) may vote on such Special Assessment.

**Section 7.5. Individual Assessments.** The Board may levy particular assessments against an individual Owner (“Individual Assessments”) for: (i) reimbursement to the Association for repairs to the Common Areas or Located Easements occasioned by the willful or negligent acts of such Owner; or (ii) payment of fines, penalties, or other charges imposed against an individual Owner relative to such Owner’s failure to comply with the terms and provisions of this Declaration, the Charter Documents, or any rules or regulations promulgated hereunder, including, without limitation, reimbursement to the Association for all expenses incurred in connection with the enforcement of the provisions of Article

XI, or otherwise specifically allocable to such Owner hereunder or (iii) a benefit or service to fewer than all the Lots shall be assessed exclusively against the Lot benefitted.

**Section 7.6. Assessment Limitations on Declarant Owned Lots.** Notwithstanding any other provision of this Declaration, no Lot owned by Declarants shall be subject to any Assessment.

**Section 7.7. Use of Working Capital Contributions.** The Working Capital Contributions provided for in Section 7.15 below may be used by the Association for any of the purposes described in Section 7.2 above, as determined from time to time by the Board in its discretion.

**Section 7.8. Commencement of Annual Assessments.** The first Annual Assessment shall commence with the Assessment Year in which any Lot is conveyed to an Owner other than Declarants or any later Assessment Year as determined by the Board in its discretion. Annual Assessments shall continue thereafter for each Assessment Year.

**Section 7.9. Due Date of Assessments; Payment.** Annual Assessments shall be due and payable on a monthly basis on the first day of each month of each Assessment Year or on such other basis as shall be determined from time to time by the Board in its discretion. The due date of any Special Assessment or Individual Assessment shall be fixed in the Board resolution authorizing such Special Assessment or Individual Assessment.

**Section 7.10. Notice.** In the event of the establishment or revision in the amount or rate of an Annual Assessment, Special Assessment, or Individual Assessment, the Board shall fix the amount thereof, and in regard to any Special Assessment or Individual Assessment, the applicable due date(s) for the payment of such Special Assessment or Individual Assessment, and shall provide written notice thereof to each Owner subject thereto.

**Section 7.11. Omission by Board.** The omission by the Board, before the expiration of any Assessment Year, to fix the Annual Assessment hereunder for that or any subsequent Assessment Year shall not be deemed to waive or modify in any respect any of the provisions of this Declaration or to release any Owner from the obligation to pay the Annual Assessment due for that or any subsequent Assessment Year. The Annual Assessment fixed for the preceding Assessment Year shall continue until a new Annual Assessment is fixed.

**Section 7.12. Owner's Personal Obligation for Payment.** Each Assessment provided for herein shall be the personal and individual debt of the Owner (as of the due date of the applicable Assessment) to which such Assessment relates. The personal obligation to pay any such Assessment, together with interest thereon and costs of collection, shall not pass to the successors in title of such Owner unless expressly assumed by such successors. Although unpaid Assessment charges are not the personal obligation of such Owner's successors in title unless expressly assumed by them, as provided in Section 7.13 below, the unpaid Assessment charges continue to be a lien on the Lot against which the Assessment has been made. In the event of default in the payment of any such Assessment, the defaulting Owner shall be obligated to pay interest, late fees, and all costs and expenses

of collection, including reasonable attorneys' fees, as determined from time to time by the Board consistent with the provisions of the Act.

**Section 7.13. Assessment Lien and Foreclosure.** All sums assessed in the manner provided in this Article but unpaid, are, together with interest, late fees, and the costs of collection, including reasonable attorney's fees as provided in this Article, a continuing lien and charge on the Lot owned by the defaulting Owner as of the Assessment due date and shall bind and run with the title to such Lot. Except as provided below, the aforesaid lien shall be superior to all other liens and charges against such Lot. Further provided, that the Board shall have the power to subordinate the aforesaid assessment lien to any other lien, and such power shall be entirely discretionary with the Board. The Association may bring an action at law against the Owner personally obligated to pay the Assessment, or to foreclose the lien against the Lot as provided in the Act.

**Section 7.14. Subordination of the Lien to Mortgages.** The lien of the Assessments shall be subordinate and inferior to the lien of any first priority mortgage or deed of trust encumbering a Lot; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the foreclosure sale or other transfer of the Lot pursuant to the terms and conditions of any such first priority mortgage or deed of trust. Such sale or transfer shall not relieve such Lot from liability for the amount of any Assessment thereafter becoming due or from the lien thereof.

**Section 7.15. Working Capital Contributions.** In addition to, and not in lieu of, the Annual Assessments, Special Assessments, and Individual Assessments provided for above in this Article 7, Declarants hereby impose against each Lot the working capital contribution requirements set forth below. Each capital contribution required hereunder is herein referred to as a "Working Capital Contribution." With regard to each Lot, a Working Capital Contribution shall be paid to the Association by the purchaser of such Lot at the initial closing where such Lot is conveyed by Declarants to the initial homeowner. Each Working Capital Contribution shall not be considered to be an advance payment of any Annual Assessment, Special Assessment, or Individual Assessment. The amount of each Working Capital Contribution shall be equal to twice the monthly installment of the Annual Assessment.

## **ARTICLE 8**

### **USE OF PROPERTY – PROTECTIVE COVENANTS**

The Property shall be occupied and used as follows:

**Section 8.1. Residential Purposes Only.** Each Lot shall be used exclusively for single-family, non-transient residential purposes, and garages, carports, and parking spaces shall be used exclusively for the parking of passenger automobiles or light (noncommercial) vans or trucks therein or thereon; provided, however, each Developer shall have the right to use Lots owned by it for the purpose of construction and operation of sales and marketing centers (and for related uses) for the Property. No structure shall be erected, placed, altered, used, or permitted to remain on any Lot other than one single-family private dwelling and private garage(s) approved by the Architectural Control Committee in accordance with the

requirements of Article 9 of this Declaration. No Lot or portion thereof may be used for hotel or other transient residential purposes.

**Section 8.2. Obstructions, etc.** Except with the prior written consent of the Association, there shall be no obstruction of the Common Areas or Located Easements, nothing shall be kept or stored in the Common Areas or Located Easements, nor shall anything be altered, or constructed or planted in, or removed from the Common Areas or Located Easements. Notwithstanding the above, Declarants shall have the right to install signs in the Common Areas and Located Easements.

**Section 8.3. Restricted Actions by Owners.** No waste shall be committed in the Common Areas or Located Easements. Each Owner shall comply with all laws, regulations, ordinances (including, without limitation, applicable zoning ordinances), and other governmental rules and restrictions in regard to such Owner's Lot.

**Section 8.4. Signs.** No sign of any kind shall be displayed to the public view on any Lot except no more than one professional sign which is consistent with such rules, regulations, and guidelines as shall from time to time be issued by the Architectural Control Committee, approved in writing by the Architectural Control Committee (and, for so long as Class B Membership exists, approved in writing by Declarants), and which is for the purpose of advertising the Lot for sale or rent; however, the foregoing shall not act to restrict or prohibit Declarants from erecting and maintaining signs and billboards advertising the Property, or to restrict the Association from posting permanent signs designed to aid in vehicular access and related information.

**Section 8.5. Attachments.** No permanent attachments of any kind or character whatsoever shall be made to the roof or exterior walls of any dwelling on a Lot, except for: (a) a satellite disc or dish no larger than one (1) meter in diameter that is not (nor is any cable, wire, or other apparatus connected thereto) visible from any street adjoining the Lot; or (b) solar collectors or panels provided they are installed on a roof surface approved by the Architectural Control Committee. The Owner shall be responsible for all damages caused by the installation, existence, or removal of any satellite dish or solar collector and shall hold harmless and indemnify the Association for any damages caused by the installation, existence, or removal of any satellite dish or solar collector. The Association shall not be responsible for maintenance, repair, replacement, or removal of any satellite dish or solar collector.

**Section 8.6. Animals.** No animals, livestock, or poultry shall be raised, bred, or kept on any Lot except that dogs, cats, or other household pets may be kept, but not for any commercial purposes, provided that they do not create a nuisance (in the judgment of the Board in its sole discretion) such as, but without limitation, by noise, odor, damage or destruction of property, or refuse. At any time and from time to time the Board, in its sole discretion, may require any animal to be removed from any Lot. No dog run may be constructed or maintained on any Lot unless such dog run has been approved in writing by the Architectural Control Committee prior to commencement of construction. Notwithstanding the foregoing, in no event shall more than three (3) dogs be maintained

on any Lot, nor shall any Pit Bull breed of dog (whether or not mixed) be maintained on any Lot.

**Section 8.7. Vehicles/Parking.** All vehicles must be parked in garages or in parking spaces as designated by the Association. Any street parking and parking in the Common Areas shall be in the areas designated by the Association only and shall be on a first-come, first-serve basis and subject to any rules or regulations that may be promulgated by the Association. No house trailer or mobile home, school bus, truck or commercial vehicle over three-fourths (3/4) ton capacity or having ladders, pipes, or similar racks or utility beds, boat or boat trailer, jet ski or jet ski trailer, motor home, camper, or van (not to include passenger vans for non-commercial use), junked or wrecked vehicles, or vehicles on blocks shall be kept, stored, or parked overnight on any street, Common Area, or Lot. Any such vehicle must be currently licensed (if applicable) and must be parked in an enclosed garage. No significant automobile repair shall be allowed on the Property. The Association shall have the right to tow any vehicle parked on the Common Area in violation of this Section at the vehicle owner's expense.

**Section 8.8. Waste.** No Lot shall be used or maintained as a dumping ground for rubbish, trash, or garbage. Waste of any nature shall not be kept on any part of the Property except on a temporary basis in sanitary containers.

**Section 8.9. New Construction.** Construction of new buildings only shall be permitted on Lots, it being the intent of this covenant to prohibit the moving of any existing building onto a Lot.

**Section 8.10. No Temporary Structures.** No structure of a temporary character on any Lot, such as a trailer, tent, shack, or other outbuilding, shall be used at any time as a dwelling.

**Section 8.11. Mailboxes.** The mailboxes for the Property shall be located within cluster mailbox modules. Each Owner is responsible for their key.

**Section 8.12. No Drilling or Mining.** No oil drilling, oil development operation, oil refining, quarrying, or mining operations of any kind shall be permitted on any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted on any Lot. No derrick or other structure designed for use in quarrying or for drilling for oil or natural gas shall be erected, maintained, or permitted on any Lot.

**Section 8.13. Diligent Construction.** All construction, landscaping, or other work which has been commenced on any Lot must be continued with reasonable diligence to completion and no partially completed houses or other Improvements shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion.

**Section 8.14. No Subdivision or Combination of Lots.** No Lot shall be subdivided by sale, lease, or otherwise so as to reduce the total Lot area as shown on the Plat of such Lot and no Lot shall be combined with another Lot. The foregoing shall not apply to Declarants.

**Section 8.15. Governmental Requirements.** Nothing herein contained shall be deemed to constitute a waiver of any governmental requirement applicable to any Lot and all applicable governmental requirements or restrictions relative to the construction of improvements on and/or use and utilization of any Lot shall continue to be applicable and shall be complied with in regard to each Lot.

**Section 8.16. Nuisance.** No noxious or offensive activity shall be carried on in or upon any Lot or Common Areas nor shall anything be done thereon which may be or become an unreasonable annoyance, inconvenience or nuisance to the residents of the Property or unreasonably interfere with the quiet enjoyment of occupants of Lots. No Owner shall permit anything to be done or kept on his or her Lot which would result in the cancellation of insurance on said Lot or any other dwelling or any part of the Common Area or which would be in violation of any law.

**Section 8.17. Leases.** Each lease relating to any Lot must be for a term of at least six (6) months, be in writing, and provide that the tenant shall abide by all of the terms and provisions of this Declaration, the Charter Documents and any rules and regulations adopted by the Board.

**Section 8.18. Window Treatments.** No window treatments of any sort (including but not limited to curtains, draperies, blinds, or shutters) shall be installed or hung in any window of any Townhome, unless approved in writing by the Architectural Control Committee. If a uniform "standard" window treatment is approved by the Association from time to time, then any such approved standard window treatment may be installed at the sole expense of each Owner. All approved window treatments as viewed from the exterior of the home must be white, off white or another color approved by the Architectural Control Committee.

## **ARTICLE 9** **ARCHITECTURAL CONTROL**

**Section 9.1. General.** Notwithstanding any other provision of this Declaration, no Improvement, including, without limitation, site preparation on any Lot or change in grade or slope of any Lot or erection of building or exterior addition or alteration to any building situated upon the Property or erection of or changes or additions to front doors, window blinds, fences, hedges, walls, storage buildings, mail boxes, and other structures, or construction of any swimming pools or other improvements, shall be commenced, erected, or maintained on any portion of the Property until the Architectural Control Committee appointed as hereinafter provided, has approved the plans and specifications therefor and the location of such Improvements. Subject to approval by the Board, the Architectural Control Committee shall have the authority to issue and amend from time to time (but shall not be required to do so) guidelines, rules, and regulations with respect to the erection, commencement or construction of Improvements.

**Section 9.2. Composition.** The Architectural Control Committee shall be composed of at least three individuals (the exact number to be designated by the Board from time to time), annually appointed by the Board, each to be generally familiar with residential and

community development design matters and knowledgeable about the Association's concern for high level design standards within the Property. In the event of the death, removal, or resignation of any member of the Architectural Control Committee, the Board shall have full authority to designate and appoint a successor. Members of the Architectural Control Committee may be removed and replaced by the Board at any time, with or without cause, and without prior notice. For so long as Declarants own any portion of the Property, Declarants shall also have the right at any time and from time to time to appoint and remove any and all members of the Architectural Control Committee.

**Section 9.3. Procedure.** No Improvement of any kind or nature shall be erected, remodeled, or placed on any portion of the Property until all plans and specifications and a site plan therefor have been submitted to and approved in writing by the Architectural Control Committee.

**Section 9.4. Authority.** The Architectural Control Committee is authorized and empowered to consider and review any and all aspects of the construction of any Improvements on any portion of the Property which may, in the opinion of the Architectural Control Committee, affect the living enjoyment of any Owner or the general value of the Property or any portion thereof.

**Section 9.5. Enforcement.** The Architectural Control Committee shall have the specific right (but no obligation) to enforce the provisions contained in this Article 9, and/or to prevent any violation of the provisions contained in this Article 9 by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions contained in this Article 9. The Association shall also have the right (but not obligation) to enforce these provisions.

**Section 9.6. Limitation of Liability.** Neither the Architectural Control Committee, nor the members thereof, nor Declarants shall be liable in damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans or specifications.

**Section 9.7. Miscellaneous.** No member of the Architectural Control Committee shall be entitled to compensation for, or be liable for claims, causes of action, or damages (except where occasioned by gross negligence or arbitrary and capricious conduct) arising out of, services performed pursuant to this Article 9. The Association shall reimburse members of the Architectural Control Committee for reasonable out-of-pocket expenses associated with its activities hereunder.

## **ARTICLE 10** **INSURANCE**

**Section 10.1. Insurance Requirements under the Act.** Section 47F-3-113 of the Act requires certain insurance to be carried by the Association and provides for the distribution of insurance proceeds. Sections 10.2 through 10.5 of this Article 10 set forth the

requirements of Section 47F-3-113 of the Act. In the event the insurance requirements set forth in the Act or any portion of the Act are changed, amended, or deleted, the insurance requirements set forth in Sections 10.2 through 10.5 of this Article 10 shall likewise be changed, amended, or deleted to conform with the insurance provisions of the Act without the requirement of a formal amendment to this Declaration.

**Section 10.2. Property Insurance.** The Association shall maintain, to the extent reasonably available, property insurance on the Common Areas and Located Easements insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall not be less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies. Any loss covered by this property insurance shall be adjusted with the Association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the Association shall hold any insurance proceeds in trust for Owners and lien holders as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged property, and Owners and lien holders are not entitled to receive payment of any portion of the proceeds, unless there is a surplus of proceeds after the property has been completely repaired or restored, or the planned community is terminated.

**Section 10.3. Liability Insurance.** The Association shall maintain, to the extent reasonably available, liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Areas and Located Easements. The liability insurance shall be for the benefit of the Owners, occupants, the Association, the Board, the managing agent, if any, the Declarants, and their respective officers, directors, members, managers, agents, and employees in such amounts and with such coverage that shall be determined by the Board; provided that such liability insurance shall be for at least One Million Dollars (\$1,000,000.00) per occurrence for death, bodily injury, and property damage.

**Section 10.4. Required Provisions for Property and Liability Insurance.** Insurance policies carried pursuant to Sections 10.2 and 10.3 above shall provide that:

(a) Each Owner is an insured person under the policy to the extent of the Owner's insurable interest;

(b) The insurer waives its right to subrogation under the policy against any Owner or member of the Owner's household;

(c) No act or omission by any Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under the policy; and

(d) If, at the time of a loss under the policy, there is other insurance in the name of the Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

**Section 10.5. Insurance Repairs.** Any portion of the planned community for which insurance is required under Sections 10.2 and 10.3 hereinabove which is damaged or destroyed shall be repaired or replaced promptly by the Association unless: (a) the planned community is terminated; (b) repair or replacement would be illegal under any State or local health or safety statute or ordinance; or (c) the Owners decide not to rebuild by an eighty percent (80%) vote. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense if any portion of the planned community is not repaired or replaced, (a) the insurance proceeds attributable to the damaged Common Area or Located Easement shall be used to restore the damaged area to a condition compatible with the remainder of the planned community; (b) the insurance proceeds attributable to limited common elements which are not rebuilt shall be distributed to the Owners of the Lots to which those limited common elements were allocated, or to lien holders, as their interests may appear; and (c) the remainder of the proceeds shall be distributed to all the Lot Owners or lien holders, as their interests may appear, in proportion to the common expense liabilities of all the Lots. Notwithstanding the provisions of this Section 10.5, Section 47F-2-118 (termination of the planned community) governs the distribution of the insurance proceeds if the planned community is terminated.

**Section 10.6. Casualty Insurance Maintained By the Association.** The Association shall procure and maintain casualty insurance upon the Lots and the Townhomes thereon for the benefit of the Association and the Owners and their mortgagees, as their interests may appear, and provisions shall be made for the issuance for certificates or mortgagee endorsements to the mortgagees of Owners upon request therefor by any Owner. Each Lot shall be insured in an amount equal to one hundred percent (100%) of its insurable replacement value of the Townhome thereon as determined annually by the Association with the assistance of the insurance company providing coverage.

(a) Coverage. Such coverage shall provide protection against: loss or damage by fire and other hazards, including extended coverage, vandalism and malicious mischief, and such other risks as from time to time shall be reasonably required by the Association.

(b) Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association and shall be included as part of the Annual Assessment.

(c) Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their mortgagees, as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein or stated in the Bylaws and for the benefit of the Association, the Owners and their mortgagees in the following shares:

(i) If an insured casualty shall occur resulting in damage to a Lot or Lots, proceeds from insurance shall be held in undivided shares for the affected Owners in proportion to the cost of repairing the damage insured against in said policy, which cost shall be determined by the Association;

(ii) In the event a mortgagee endorsement has been issued for any Lot, the share of the Owner of that Lot shall be held in trust for the mortgagee and the other Owners, as their interests may appear.

(d) Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Association as insurance trustee shall be distributed in the following manner: First, all expenses of the insurance trustee shall be first paid or provisions made therefor; and then any remaining proceeds shall be paid to defray the cost of the covered item.

(e) Responsibility for Repair. If the proceeds of insurance are insufficient to repair damage or destruction to any portion of the Townhomes by fire or other casualty, or if such casualty is not insured against, then the reconstruction or repair of any damaged improvements contained within any Lot shall be accomplished promptly by the Owner(s) of such Lot or Lots, and the extent of such repairs shall be an expense of such Owner(s). If the Owner of the affected Lot fails to promptly accomplish such repair or reconstruction, the Association may perform such repairs or reconstruction on his behalf, and the expense of such repair or reconstruction may be assessed against that Lot, and if not paid shall be a lien on the Lot having all of the priorities provided in this Declaration.

**Section 10.7. Public Liability Insurance.** The Association shall procure public liability insurance with limits of liability of no less than One Million Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group, to a single Owner. If an insured casualty shall occur resulting in damage or injury to a claimant whose claim is insured against in said policy, proceeds from the Association shall be applied as follows: all expenses of the insurance trustee shall be first paid or provisions made therefor; and the balance held in undivided shares for compensation for injuries suffered by each claimant whose claim is insured against in said policy, all as determined by the Association.

**Section 10.8. Insufficient Proceeds.** If the insurance proceeds received by the Association are insufficient to reimburse, to repair and/or replace any damage or destruction to person or property, the Board may levy a Special Assessment against the Owners to cover the deficiency.

**Section 10.9. Owner's Personal Property.** The Association or Declarants shall not be liable in any manner for the safekeeping or condition of any personal property belonging to or used by any Owner or such Owner's family, guests, or invitees, located on or used at the Common Areas or Located Easements. Further, the Association or Declarants shall not be responsible or liable for any damage or loss to any personal property of any Owner, such Owner's family, guests or invitees located on or used at the Common Areas or Located Easements. Each Owner shall be solely responsible for all personal property and for any

damage thereto or loss thereof, and shall be responsible for the purchase of, at such Owner's sole cost and expense, any liability or other insurance for damage to or loss of such property.

**Section 10.11. Security.** The Association may, in its sole discretion, but shall not be obligated to, provide certain security and fire protection measures, and maintain or support certain other activities within the Property designed to make the Property safer than it might otherwise be. Provided, however, should the Association provide, maintain, or support any such measures or activities, then neither the Association, the Board, Declarants, nor any successor of Declarants shall in any way be considered insurers or guarantors of security or fire protection within the Property, and neither the Association, Declarants nor any successor of Declarants shall be held liable for any loss or damage by reason of failure to provide or take any security or fire protection measures or for the ineffectiveness of any such measures undertaken. Each Owner of any Lot and each tenant, guest, and invitee thereof acknowledges and understands that neither the Association, the Board, Declarants nor any successor of Declarants are insurers, and each such Owner of a Lot, and such Owner's tenants, guests, and invitees hereby assume all risks for loss or damage to persons, property, or contents belonging to any such persons.

## ARTICLE 11 MAINTENANCE

**Section 11.1. Duty of Maintenance.** The Owner of each Lot shall have the duty and responsibility, at such Owner's sole cost and expense, to keep the Lot owned by such Owner in a well-maintained, safe, clean, and attractive condition at all times. Such maintenance includes, but is not limited to, the following:

- (a) Prompt removal of all litter, trash, refuse, and waste;
- (b) Keeping exterior lighting and mechanical facilities in working order;
- (c) Complying with all governmental health regulations; and
- (d) Maintaining the landscaping not maintained by the Association as set forth in Section 6.1(c).
- (e) Maintaining those exterior portions of Townhomes not maintained by the Association as set forth in Section 6.1(b).
- (f) Repair of damage to Improvements; it being understood and agreed that if any Improvements are damaged or destroyed by fire, or other casualty covered by the policy of insurance maintained by the Association pursuant to Article 10, Section 10.6, the proceeds from such insurance policy shall be used to repair the damage insured against in said policy. In the event that the proceeds are insufficient to repair the damage or destruction to any portion of the Townhomes or if such casualty is not insured against, then the Owner(s) of the damaged Townhomes shall be responsible for the reconstruction or

repair of any damaged improvements as provided in Article 10, Section 10.6(e) of this Declaration.

**Section 11.2. Enforcement.** If the Owner of any Lot has failed in any of the duties or responsibilities of such Owner as set forth in this Declaration, then the Association and Declarants, jointly or severally, may enforce the duties and responsibilities of such Owner in any manner available at law or in equity (subject, however, to any limitations imposed by the Act), including, without limitation, by entering onto the Lot of such Owner and performing such care and maintenance without any liability for damages for wrongful entry, trespass, or otherwise to any Person. The Owner of the Lot on which such work is performed shall be liable for the cost of such work and, without limiting any other remedy, the Association may impose an Individual Assessment against such Owner. Declarants have the right to assign to the Association the rights of Declarants under this Section.

Notwithstanding the foregoing, if an Owner is in violation of Article 8, Section 8.4 of this Declaration, the Association and Declarants, jointly or severally, may give such Owner written notice of such failure and such Owner must within 24 hours after receiving such notice (which notice shall be deemed received when handed to Owner or prominently posted on the front entry door of the dwelling on the Lot) remove the unauthorized sign(s). Should such Owner fail to fulfill this duty within such 24 hour period, then the Association and Declarants, jointly or severally, shall have the right and power to enter onto the Lot and remove and dispose of such unauthorized sign(s) without any liability for damages for wrongful entry, trespass or otherwise to any Person.

## **ARTICLE 12** **PARTY WALLS**

**Section 12.1. Definition.** Each wall or fence separating two Townhomes as a part of the original construction of the Townhomes, and any replacement thereof, shall constitute a “party wall” for purposes of this Article.

**Section 12.2. General Law.** To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to all party walls.

**Section 12.3. Encroachment.** If any portion of any structure originally constructed by Declarants or any party wall, or any common fence, protrudes over an adjoining Lot or into any Common Area, such structure, wall, or fence shall be deemed to be a permitted encroachment upon the adjoining Lot or Common Area, and the Owners and the Association shall neither maintain any action for the removal of the encroaching structure, wall, or fence, nor any action for damages. In the case of such a protrusion, it shall be deemed that the affected Owners or the Association have granted perpetual easements to the adjoining Owner for continuing maintenance and use of the encroaching structure, wall, or fence. The foregoing provision shall also apply to any replacements in conformance with the original structure, wall, or fence constructed by Declarants.

**Section 12.4. Sharing of Repair and Maintenance.** The cost of replacement, repair, and maintenance of a party wall shall be equally divided by the Owners which share the wall,

except that (i) if the damage necessitating the replacement, repair, or maintenance is covered under the terms of any fire or casualty insurance policy maintained by the Association, the proceeds of such policy shall first be used to effect such replacement, repair, and maintenance; and (ii) if the portion of the wall which requires the replacement, repair, or maintenance is an outside wall for one of the Townhomes, but not for the other (that is, not common to both Townhomes) the replacement, repair, or maintenance cost of that portion of the wall shall be borne by the Owner of the Townhome utilizing that portion of the wall, if, and to the extent that, the Association does not have that responsibility.

**Section 12.5. Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty or requires replacement, repair, or maintenance in excess of the benefits payable under any fire or casualty insurance policy maintained by the Association, and one of the common Owners of the wall repairs, replaces, or performs necessary maintenance work, the other Owner shall promptly reimburse the Owner who effects the work in an amount equal to one-half of the cost thereof; provided that this obligation shall not be absolute, but shall be subject to the general rules of law regarding negligence and wrongful acts.

**Section 12.6. Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

**Section 12.7. Easement and Right of Entry for Repair, Maintenance and Reconstruction.** Every Owner shall have an easement and right of entry upon the Lot of any other Owner to the extent reasonably necessary to perform repair, maintenance, or reconstruction of a party wall. Such repair, maintenance, or construction shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Lot or Lots to as near the same condition as that which prevailed prior to the commencement of the work as possible.

**ARTICLE 13**  
**EMINENT DOMAIN (CONDEMNATION)**

In the event of a taking of all or any portion of a Lot or all any portion of the Common Areas or Located Easements by eminent domain, or by conveyance in lieu thereof, the awards paid on account thereof shall be applied in accordance with Section 47F-1-107 of the Act.

**ARTICLE 14**  
**TERMINATION OF PLANNED COMMUNITY**

The Property, a planned community under the Act, may be terminated only in strict compliance with Section 47F-2-118 of the Act.

**ARTICLE 15**  
**AMENDMENT**

This Declaration may be amended only in strict compliance with the Act, including, without limitation, Section 47F-2-117 of the Act, except that no amendment altering or impairing rights reserved by Declarants hereunder may be made without the written consent of the Declarants

and except that the Declarants shall have the unilateral right to add Additional Property by Supplemental Declaration without the joinder of any party.

**ARTICLE 16**  
**GENERAL PROVISIONS**

**Section 16.1. Enforcement.** The Declarants, the Association or any Owner, shall have the right to enforce, by any proceeding at law or in equity against any person or persons violating or attempting to violate any restriction, condition, covenant, reservation, lien, and charge now or hereafter imposed by the provisions of this Declaration, either to restrain or to enjoin violation or to recover damages, and against the land to enforce any lien created by this Declaration. Failure or forbearance by the Declarants, 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 16.2. Conflict with the Act; Severability.** Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provisions of the Act, the provisions of the Act shall control unless the Act permits this Declaration to override the Act, in which event this Declaration shall control. The invalidity of any covenant, restriction, condition, limitation, provision, paragraph, or clause of this Declaration, or any part of the same, or the application thereof to any person or circumstance, shall not impair or affect in any manner the validity, enforceability, or affect of the rest of this Declaration, or the application of any such covenant, restriction, condition, limitation, provision, paragraph, or clause to any other person or circumstance.

**Section 16.3. Term.** This Declaration shall run and bind the Property for a term of twenty five (25) years from the date this Declaration is recorded in the Registry, after which time this Declaration shall be automatically extended for successive periods of ten (10) years, unless terminated or altered in accordance with the provisions of the Act; provided, however, that Declarants' rights hereunder may not be amended or altered without Declarant's prior written consent. Any amendment must be properly recorded in the Registry and shall take effect only upon such recording. For the purposes of this section, additions to the Property as provided in Article 2, Section 2.2 hereof shall not constitute an "amendment".

**Section 16.4. Interpretation of Declaration.** Whenever appropriate, singular may be read as plural, plural may be read as singular, and the masculine gender may be read as the feminine or neuter gender. Compound words beginning with the prefix "here" shall refer to this entire Declaration and not merely the part in which they appear.

**Section 16.5. Captions.** The captions herein are only for convenience and reference and do not define, limit, or describe the scope of this Declaration, or the intent of any provision.

**Section 16.6. Law Controlling.** This Declaration shall be construed and controlled by and under the laws of the State of North Carolina.

**Section 16.7. Notices.** Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, by

ordinary mail, post paid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

**Section 16.8. Conflicts.** In the case of any conflict between this Declaration and any of the Charter Documents, this Declaration shall control.

**Section 16.9. Condemnation.** In the event any Common Area or Located Easement or any portion thereof is made the subject matter of any condemnation or eminent domain proceedings or other sought to be acquired by a condemning authority, the proceeds of any award or settlement shall be distributed to the Association for the common benefit of the Owners and their mortgagees, as their interests appear.

**Section 16.10. Disclaimer.** Notwithstanding anything contained herein or in the Charter Documents, rules or regulations issued by the Association, or any other document governing or binding the Association (collectively the "Association Documents"), the Association and the Declarants shall not be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety, or welfare of any Member, occupant, or user of any portion of the Property, including, without limitation, Owners and their respective families, guests, invitees, agents, servants, contractors, or subcontractors or for any property of any such persons. It is the express intent of the Association Documents that the various provisions thereof that are enforceable by the Association and govern or regulate the uses of the Property have been written, and are to be interpreted and enforced, for the sole purpose of maintaining the enjoyment of the Property. The Association and the Declarants are not empowered, and have not been created, to act as an entity which enforces or ensures any other individual's or entity's compliance with the laws of the United States, State of North Carolina or any other jurisdiction or the prevention of criminal, tortuous, or like regulated activities. Every Owner, by taking title to any part of the Property, covenants and agrees to hold harmless and to indemnify the Association and the Declarants, and their respective directors, trustees, officers, members, managers, agents, parties, and affiliates from and against all claims of any kind whatsoever by an invitee, licensee, family member, employee, or other representative or agent of that Member for any loss or damage arising in connection with the use, ownership, or occupancy of any portion of the Property.

**Section 16.11. Construction Activities.** All Owners, occupants, and users of Lots are hereby placed on notice that Declarants and/or their agents, contractors, subcontractors, licensees, and other designees, successors, or assigns, may, from time to time, conduct blasting, excavation, construction, and other activities within the Property. By the acceptance of a deed or other conveyance or mortgage, leasehold, license, or other interest, and by using any portion of a Lot or the Property generally, the Owners and all occupants and users of Lots acknowledge, stipulate, and agree (a) such activities shall not be deemed nuisances, or noxious or offensive activities, under any applicable covenants or at law generally; (b) not to enter upon, or allow their children or other Persons under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise) any property within or in proximity to the Lot where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours); (c) that Declarants and all of their agents, contractors, subcontractors,

licensees, and other designees, successors, and assigns, shall not be liable but, rather, shall be held harmless for any and all losses, damages (compensatory, consequential, punitive, or otherwise), injuries, or deaths arising from or relating to the aforesaid activities; (d) that any purchase or use of any portion of a Lot has been and will be made with full knowledge of the foregoing; and (e) this acknowledgment and agreement is a material inducement to Declarants to sell, convey, lease, and/or allow the use of Lots within the Property.

**Section 16.12. No Liability for Third Party Acts.** Owners and occupants of Lots, and their respective guests and invitees, are responsible for their own personal safety and for their property. The Association may, but is not obligated to, maintain or support certain activities within the Property which promote or enhance safety or security within the Property. However, the Association and Declarants shall not in any way be considered insurers or guarantors of safety or security within the Property, nor shall they be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including fire protection, burglar alarm, or other security monitoring systems, or any mechanism or system for limiting access to the Property cannot be compromised or circumvented, nor that any such systems or measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all occupants of such Owner's Lot that the Association, the Board and its committees and Declarants are not insurers or guarantors of security or safety and that each Person within the Property assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.

**Section 16.13. Assignment.** Declarants may assign its rights hereunder (either in their entirety, or with respect to a portion of the Property) by a written instrument recorded in the Registry that complies with the Act.

**Section 16.14. No Exemption.** No Owner shall become exempt from the coverage hereof or obligations imposed hereby (including, without limitation, the obligation to pay Assessments) by non-use of such Owner's Lot or the Common Areas.

**Section 16.15. Changes to Master Plan for the Property.** Nothing contained herein shall be deemed to incorporate, by reference or otherwise, any plans or proposals promulgated by Declarants with respect to the Property, and Declarants reserve the right to change any master plans for the Property at any time and from time to time as Declarants may determine to be necessary based upon Declarants' continuing research and design program and/or market conditions and Declarants' plans for the Property shall not bind Declarants or their successors and assigns to adhere to such plans in the development of the Property or any part thereof.

**Section 16.16. Asserting Certain Claims.** Notwithstanding any other provision in this Declaration or Charter Documents, in no event shall the Association assert a claim against, or institute any legal proceeding against, the Declarants, nor shall the Association file any

complaint with any governmental agency or authority which has regulatory or judicial authority over South Point on account of any alleged act or omission of the Declarants, unless the asserting of such claim, the instituting of such legal proceeding or the filing of such complaint shall be approved in writing by the Owners of no less than seventy-five percent (75%) of the Lots prior to the date any such claim is asserted, legal proceeding instituted or complaint filed, as the case may be. In the event that such claim is asserted, legal proceeding instituted or complaint filed without the approval of the Owners of the Lots that is herein required, then the Declarants shall have the right to require the claim, legal proceeding or complaint be dismissed. No amendment to this Section 16.16 shall be effective unless such amendment is approved in writing by the Declarants.

## **ARTICLE 17** **MORTGAGEE PROTECTIONS**

**17.1 General Provisions.** This Article 17 establishes certain standards and covenants for the benefit of Mortgagees. This Article 17 is supplemental to, and not in substitution for, any other provisions of the Charter Documents, but in the event of any conflict between the provisions of the Charter Documents and the provisions of this Article 17, the provisions of this Article 17 shall control.

**17.2 Percentage of Mortgagees.** Wherever in the Charter Documents the approval or consent of a specified percentage of Mortgagees is required, it shall mean the approval or consent of Mortgagees holding Mortgages on Lots which have allocated to them that specified percentage of votes in the Association, as compared to the total votes in the Association allocated to all Lots then subject to Mortgages held by Mortgagees.

**17.3 Rights to Examine Books and Records.** Any Mortgagee, and any insurer or guarantor of a loan secured by a Mortgage, shall have the right to examine, during normal business hours and upon reasonable notice, the books and records of the Association, including copies of the Charter Documents, as amended, and the financial statements of the Association, and to be furnished, upon written request, at least one copy of the annual financial statement and report of the Association, such annual statement and report to be furnished within ninety (90) days following the end of each fiscal year. If any Mortgagee requests, and agrees to pay the cost of the audit, the financial statement shall be audited by an independent certified public accountant.

**17.4 Mortgagee's Rights to Notice.** Any Mortgagee (including, for purposes of this Section 17.4, any insurer or guarantor of a loan secured by a Mortgage that has notified the Association in writing of its name and address, and that it insures or guarantees a Mortgage) shall have the right to receive from the Association prompt written notice of the following:

- (a) Default under any of the terms and provisions of the Charter Documents by any Owner owning a Lot encumbered by a Mortgage held, insured, or guaranteed by such Mortgagee, which default remains uncured for a period of sixty (60) days.

- (b) Any loss or damage to or condemnation or taking of the Common Areas or any loss or damage to or condemnation or taking of a Lot encumbered by a mortgage held, insured or guaranteed by such Mortgagee.
- (c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

**17.5 Consent and Notice Required.** Notwithstanding any other provision of this Declaration or the Charter Documents, no amendment of any material provision of the Charter Documents described in this Section 17.5 shall be effective without notice to all Mortgagees, the vote of at least sixty-seven percent (67%) of the Owners (or any greater percentage required by the terms of the Charter Documents), and the approval of at least fifty-one percent (51%) of the Mortgagees (or any greater percentage required by the terms of the Charter Documents). A change to any of the following items will be considered material:

- (a) Voting rights.
- (b) Increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of assessment liens.
- (c) Reductions in reserves for maintenance, repair, and replacement of the Common Areas.
- (d) Responsibility for maintenance and repairs of the Townhomes, the Located Easements, or the Common Areas.
- (e) The requirements for insurance and fidelity bonds.
- (f) The imposition of any restrictions on the leasing of a Townhome.
- (g) The imposition of any restrictions on an Owner's right to sell or transfer his Lot or Townhome.
- (h) The restoration or repair of the Property after casualty damage or partial condemnation in a manner other than that specified in the Charter Documents.
- (i) Any provision that expressly benefits the Mortgagees.

**17.6 Other Mortgagee Rights.** Notwithstanding any other provision of this Declaration or the Bylaws, the Association may not change the period for collection of regularly budgeted Annual Assessments to other than monthly without the consent of all Mortgagees. Any representative of a Mortgagee may attend and address any meeting that an Owner may attend.

**17.7 Enforcement.** The provisions of this Article 17 are for the benefit of all Mortgagees and their successors, and may be enforced by any of them by any available means.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be duly executed this \_\_\_\_ day of \_\_\_\_\_, 2018.

**SCP Uptown Heights, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
J. Bart Hopper, Authorized Signatory

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public for said County and State, do hereby certify that J. Bart Hopper as Authorized Signatory of SCP Uptown Heights, LLC, a Delaware limited liability company, being personally known to me, personally appeared before me this day and acknowledged the voluntary due execution of the foregoing instrument by him for the purposes stated therein.

Witness my hand and Notarial stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**HC Uptown West Townhomes, LLC,**  
a North Carolina limited liability company

By: \_\_\_\_\_  
J. Bart Hopper, Manager

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public for said County and State, do hereby certify that J. Bart Hopper as Manager of HC Uptown West Townhomes, LLC, a North Carolina limited liability company, being personally known to me, personally appeared before me this day and acknowledged the voluntary due execution of the foregoing instrument by him for the purposes stated therein.

Witness my hand and Notarial stamp or seal, this \_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**EXHIBIT A**  
**PROPERTY**

**EXHIBIT B**

ADDITIONAL PROPERTY

All property adjoining that property described on the preceding Exhibit A.

**CONSENT AND SUBORDINATION OF MORTGAGEE**

\_\_\_\_\_, holder of that certain Promissory Note secured by that certain Deed of Trust, dated as of \_\_\_\_\_ recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ in the Mecklenburg County Public Registry (“Deed of Trust”) do hereby consent to the terms, conditions, and covenants in the attached Declaration of Covenants, Conditions and Restrictions for Uptown West Townhomes (“Declaration”) and agree that the lien of said Deed of Trust, and the interest of the beneficiary therein, are subject and subordinate, in all respects, to the terms, conditions, and covenants contained in said Declaration.

IN WITNESS WHEREOF, the undersigned has caused this Consent to be duly executed this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

BENEFICIARY:

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public for said County and State, certify that \_\_\_\_\_ of \_\_\_\_\_, personally appeared before me this day and acknowledged to me that he voluntarily signed the foregoing document on behalf of said Bank for the purpose stated therein.

WITNESS my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public  
Notary Typed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_