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STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
Morningside Mews Townhomes

THIS DECLARATION IS MADE THIS 17th day of November, 2016, by Morningside Mews Townhomes, LLC, a North Carolina limited liability company (hereinafter referred to as "Declarant").

THIS DOCUMENT REGULATES THE DISPLAY OF POLITICAL SIGNS. (See Article X, Section 10)

WITNESSETH:

WHEREAS, Declarant is the owner of the real property shown on map of the Morningside Mews subdivision, recorded in Map Book Mecklenburg County, North Carolina, Public Registry, which property is more particularly described in Section 1 of Article II below; and

WHEREAS, Declarant desires to create thereon an exclusive residential community of single-family attached residential units to be named **Morningside Mews Townhomes**; and

WHEREAS, Declarant desires to insure the attractiveness of the community, to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of all Property within the community: to provide for the maintenance and upkeep of the Common Areas, as hereinafter defined; and including the private streets, parking areas, fencing and any entrance monuments; and of the exterior of all residential units and those areas of the lots which are outside the exterior walls of the residential units and not within the Common Area, and to this end desires to subject the real property described in Section 1 of Article II to the covenants, conditions, restrictions, easements, charges and liens

hereinafter set forth, each and all of which is and are for the benefit of said property described below and each owner thereof; and

WHEREAS, to achieve the above objectives, Declarant has deemed it desirable to create an organization to which will be delegated and assigned the power of owning, maintaining and administering the Common Area, maintaining and repairing the exterior of the residential units, administering and enforcing the covenants and restrictions applicable to the community and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has incorporated under North Carolina law, Morningside Mews Townhomes Homeowner's Association, Inc. as a non-profit corporation for the purpose of exercising and performing the aforesaid functions;

NOW, THEREFORE, Declarant, by this Declaration of Covenants, Conditions and Restrictions (also referred to as the "Declaration"), does declare that all of the Property shown on the aforesaid map of Morningside Mews and described in Section 1. of Article II below, and such additions thereto as may be hereafter made pursuant to Article II hereof, is and shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions, charges and liens set forth in this Declaration, which are for the purpose of protecting the value and desirability of the Property, and which shall run with the title to the real property, shall be binding on all parties having any right, title or interest in the described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Morningside Mews Townhomes Homeowner's Association, Inc., a North Carolina non-profit corporation, its successors and/or assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, but excluding those having an interest merely as security for the performance of an obligation.

Section 3. "Property" shall mean and refer to the "Property" described in Article II, Section 1., hereof, together with any real property subsequently added by Declarant pursuant to the provisions of any Supplemental Declaration of Covenants, Conditions and Restrictions.

Section 4. "Lot" shall mean and refer to any plot of land, with delineated boundary lines appearing on any recorded subdivision map of the Property (with the exception of Common Area), and shall include all improvements thereon.

Section 5. "Declarant" shall mean and refer to Morningside Mews, LLC., a North Carolina limited liability company, and any such successor in title to MORNINGSIDE MEWS TOWNHOMES, LLC. and its successors and assigns, if any, to whom the rights of Declarant hereunder are specifically transferred by written instrument, subject to those terms and conditions as the Declarant (or the particular entity transferring its rights, as applicable) may impose. Upon any transfer by Declarant or any or all of its Declarant rights and obligation hereunder, Declarant shall be relieved of any and all obligations and liabilities with respect to the rights and obligations so transferred.

Section 6. "Common Area" shall mean and refer to all real property owned by the Association for the common use and enjoyment of the Owners. Common Areas, with respect to the property subject to this Declaration, shall be shown on the various plats of Morningside Mews Townhomes recorded or to be recorded in the Mecklenburg Public Registry and designated thereon as "Common Area", "Common Open Space", "COS" or other similar designations, but shall exclude all Lots as hereinabove defined which are

shown thereon. "Common Area" shall include all mailboxes, private streets and parking areas, fencing, any entrance monuments, and wastewater and storm water collection systems and/or disposal facilities and other various areas and facilities shown as Common Area on plats as now recorded or as hereafter recorded in the Mecklenburg Public Registry. The Common Area to be owned by the Association pursuant to any Deed from the Declarant.

Section 7. "Member" shall mean and refer to every person or entity that holds membership in the Association.

Section 8. "Act" shall mean and refer to the North Carolina Planned Community Act, Chapter 47F, North Carolina General Statutes.

Section 9. "Special Declarant Rights " shall mean the rights as defined in Section 47F-1-103(28) of the Act for the benefit of a Declarant, including, but not limited to the following: to complete improvements indicated on plats or plans filed with or referenced in the Declaration; to exercise any development right as defined in the Act; to maintain sales offices, management offices, models and signs advertising Morningside Mews Townhomes; to use easements through the Common Area for the purpose of making improvements within Morningside Mews Townhomes or within real estate which may be added to Morningside Mews Townhomes; and to elect, appoint or remove any officer or Board member of the Association during any period of Declarant control.

Section 10. "Morningside Mews Townhomes" shall mean that certain residential townhome community to be known and identified as "Morningside Mews Townhomes" which is being developed on the Property in the City of Charlotte, Mecklenburg County, North Carolina.

Section 11. "Board of Directors" or "Board" shall mean and refer to an initial two (2) member board which shall be appointed by the Declarant and later elected by the Association, as further defined in the Bylaws of the Association which shall include a President, Vice President, Treasurer and Secretary among the two (2) or more board members, vested with the responsibility of managing and/or directing the management of the Association.

Section 12. "Bylaws of the Homeowners Association" or "Bylaws" shall mean and refer to the Bylaws of Morningside Mews Townhomes Homeowner's Association, Inc. as amended from time to time, and initial copy being attached to this Declaration as "Exhibit A" and incorporated herein.

Section 13. "Designated Builder" shall mean and refer to NVR, Inc. and such other persons in the business of building and selling homes to individuals and selected by Declarant to purchase Lots and construct homes for sale in the Property.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Property. The property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration and within the jurisdiction of the Association is located in Mecklenburg County, North Carolina, and is described as follows:

Lying and being in the City of Charlotte, Mecklenburg County, North Carolina, and being more particularly described as follows:

BEING all of that property as reflected on that certain "A Map Showing Morningside Mews Townhomes," prepared by Andrew S. Baker, N.C.P.L.S. (L-4542) of R.B. Pharr & Associates, P.A., dated April 28, 2016 (Job Number: 84933) and recorded on August

17, 2016 in Map Book 59 at Page 780 of the Mecklenburg County, North Carolina Registry and as further reflected on Exhibit C.

To also include such additional property that may be added to this Declaration pursuant to the terms of this Declaration that is located within three (3) miles of the foregoing described property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. 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 any Lot, which is subject to assessment.

Section 2. The voting rights of the membership shall be appurtenant to the ownership of the Lots. The Association shall have two (2) classes of voting membership.

(a) Class A. Except as provided below, Class A Members shall be all Owners except the Declarant; and Class A Members shall be entitled to one (1) vote for each Lot (Class A Lot) owned. When more than one (1) person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the vote 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.

(b) Class B. Class B Member shall be the Declarant (as defined in this Declaration); and such Member shall be entitled to seven (7) votes for each Lot (Class B Lot) owned.

The Class B membership shall cease to exist and shall be converted to Class A membership with one vote for each Lot owned, on the happening of either of the following events, whichever occurs earlier:

- (1) When the Class B Member no longer owns a Lot; or
- (2) On December 31, 2025; or
- (3) When in its sole discretion, the Class B member so determines.

When the Class B Lots cease to exist and are converted to Class A Lots, Declarant shall have the same voting rights as other Owners of Class A Lots.

Provided, further, that nothing herein shall be construed to prohibit Declarant from converting all or part of the Class B membership to Class A membership, with the results set forth above at any time earlier than the alternative events referred to above, by written statement executed by the Declarant and delivered to the Association.

Section 3. Suspension of Voting Rights. Voting rights attributable to an ownership interest in a Lot shall be after notice and opportunity suspended throughout the term for any default under the Bylaws or of this Declaration of Covenants, Conditions and Restrictions by an Owner of such Lot.

Section 4. Control by Declarant. Notwithstanding any other language or provision to the contrary in this Declaration or in the Bylaws, Declarant hereby retains the right to appoint and remove any Members of the Board of Directors of the Association and any officer or officers of the Association until ninety (90) days after the first of the events to transpire outlined in Section 2(b) herein concerning the termination of the Class B membership status of Declarant or until the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to the Declaration of Covenants, Conditions and Restrictions executed and recorded by Declarant. Upon the expiration of the

period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section, such right shall automatically pass to the Owners, including Declarant, if it then owns one or more Lots, and a special meeting of the Association shall be called and held within ninety (90) days after the date of the expiration of Declarant's rights hereunder. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of running the Association and Declarant shall deliver to the new Board of Directors the books, accounts, and records which it has kept on behalf of the Association, as well as any agreements or contracts executed by or on behalf of the Association which may still be in effect or operation. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant such authority to appoint and remove directors and officers of the Association as is provided in this Section.

Section 5. Relation to North Carolina Planned Community Act. In the event the Property contains twenty (20) or more Lots or as may be affirmatively stated herein, the North Carolina Planned Community Act, N.C.G.S. 47F-101 et seq., as the same may be amended from time to time ("Act"), shall apply to the Property, and the Association shall have, but not be limited to, all the powers, rights and privileges which may be exercised by a Planned Community (as defined in the Act) pursuant to the Act, even if such powers, rights or privileges are not specifically set forth herein or in the Association's Articles of Incorporation or Bylaws. In the event of a conflict between the Act or this Declaration, this Declaration shall control.

ARTICLE IV

PROPERTY RIGHTS

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

(a) The right of the Association after notice and opportunity to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area and to limit the use of said facilities to Owners who occupy a residence on the Property as their principal residence in Mecklenburg County, North Carolina, and to their families, tenants, contract purchasers and guests as provided in Section 2. of this Article IV;

(b) The right of the Association to suspend the voting rights and right of use of the recreational facilities by an Owner for any period during which any assessment against the Owner's Lot remains unpaid; and for any infraction of its published rules and regulations, if any;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless the Members entitled to at least eighty percent (80%) of the votes appurtenant to each Class of Lots (Class A and Class B) agree to such dedication or transfer and signify their agreement by a signed and recorded written document; provided that the foregoing shall not preclude the Association or Declarant, without such agreement by the Members, from granting easements to public authorities or utilities, or to others for the installation and maintenance of electrical, telephone, cablevision, water and sewerage service and drainage facilities upon, over, under and across the Common Area without the assent of the membership when, in the sole opinion of the Board of Directors or Declarant, such easements do not interfere with the use and enjoyment of the Property or are necessary for the convenient use and enjoyment of the Property;

(d) The right of the Association to limit the number of guests of Members;

(e) The right of the Association, with the written assent of Members entitled to at least eighty percent (80%) of the votes appurtenant to each Class of Lots (Class A and Class B) to mortgage,

pledge and deed in trust any and all of its real or personal property as security for money borrowed or debts incurred for the purpose of improving the Common Area and facilities, with the rights of such creditors to be subordinate to the rights of the Owners hereunder;

(f) The right of the Association to adopt, publish, amend and enforce rules and regulations as provided in Article X;

(g) The right of the Association or its representative to enter any Lot in order to perform any maintenance, alteration, or repair required herein to be performed by the Association, and the Owner of such Lot shall permit the Association or its representative to enter for such purposes at reasonable times and with reasonable advance notice;

(h) The right of the Association or its representative to enter any 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. Such right of entry shall be immediate;

Section 2. Delegation of Use.

(a) Family. The rights and easement of enjoyment granted to every Owner in Section 1. of this Article IV may be exercised by members of the Owner's family who occupy the residence of the Owner within the Property as their principal residence in Mecklenburg County, North Carolina.

(b) Tenants or Contract Purchasers. The right and easement of enjoyment granted to every Owner in Section 1. of this Article IV may be delegated by the Owner to his or her tenants or contract purchasers who occupy a residence within the Property as their principal residence in Mecklenburg County, North Carolina.

(c) Guests. Common Area may be utilized by guests of Owners, tenants or contract purchasers subject to the rules and regulations of the Association governing said use, as established by the Board of Directors.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot other than a Designated Builder, 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 or charges and (b) special assessments for capital improvements; such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due, but not of an Owner's successors in title unless expressly assumed by such successor.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Property and in particular for the improvement and maintenance of the Common Areas and of the exterior of the dwellings including the maintenance, repair, and reconstruction of private streets, driveways, walks, street lights, parking areas, fencing and any entrance monuments, the cutting and removal of weeds and grass (excluding in the fenced areas on each Lot, which shall be the responsibility of the Owner), and the removal of trash and rubbish, and for the exterior maintenance of the residences situated upon the Property, as hereinafter provided, all for the use and enjoyment of the Common Area, including, but not limited to, the cost of

repairs, replacements, and additions; the cost of labor, equipment, materials, management, and supervision; the payment of taxes and public assessments assessed against the Common Area. In addition, the assessments may be used for the procurement and maintenance of insurance in accordance with this Declaration; the employment of attorneys to represent the Association when necessary; the provision of adequate reserves for the replacement of capital improvements, including, without limiting the generality of the foregoing, roofs, paving, exterior painting, and any other major expense for which the Association is responsible; and such other needs as may arise. The Assessments shall exclude any of the Association's obligations to apply any assessments to the maintenance, repair or reconstruction with respect to any Lot owned by the Designated Builder as such Lots owned by the Designated Builder shall be maintained, insured and repaired solely by the Designated Builder at its sole cost and expense, but once a Lot owned by Designated Builder is transferred to an Owner subject to pay Assessments, said Lot shall be maintained, insured and repaired by the Association pursuant to the terms hereof.

Section 3. Reserves. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Areas and to those other portions of the Property, which the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for common expense.

Section 4. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$3,000 per Lot. Declarant shall not be required to pay any dues upon which there is not a completed residence. For each Lot owned by Declarant on which there is a completed residence, Declarant shall pay only that portion of dues attributable towards reserves (as described in Section 3 above) and landscape maintenance. The assessments shall be payable annually or in installments, as determined by the Board of Directors. In the event Class B Lots are occupied by persons under leases, options or installment sales contracts with Declarant, the Declarant shall be assessed at the same rate as Class A Lots, beginning at the time of occupancy.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased by the Board of Directors, effective January 1 of each year, without a vote of membership, but subject to the limitation that any such increase shall not exceed the greater of ten percent (10%) or the percentage increase in the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for All Cities over the preceding twelve (12) month period.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the increase permitted in Section 4(a) above if such increase is approved by Members entitled to no less than two-thirds (2/3rds) of the votes appurtenant to each Class of Lots represented in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.

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

Section 5. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment or assessments ("Special Assessments") for the purpose of defraying, in whole or in part, any costs incurred by the Association which are not paid for out of funds on hand in the Association or out of the annual assessments collected by the Association. Such costs may include, but shall not be limited to, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or in connection with exterior maintenance of improvements constructed on the Lots, including fixtures and personal property related thereto. Notwithstanding the above, all fees and costs incurred by the Association in

exploring or waging a complaint or suit against Declarant must be paid for out of a Special Assessment and, for this purpose only, such Special Assessment must be approved by a vote of the Members entitled to cast no less than two-thirds (2/3rds) of all votes entitled to be cast by the Members. Any Special Assessment shall have the same assent of the Members as provided in Section 4(b) of this Article. Notwithstanding the foregoing, in no event shall Declarant be required to pay any Special Assessment on any Lot upon which there is not a completed residence, and for each Lot owned by Declarant on which there is a completed residence, Declarant shall pay only that portion of any Special Assessment attributable towards reserves and landscape maintenance.

Section 6. Notice and Quorum for any Action Authorized Under Section 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 or 5 shall be sent to all Members no less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members and proxies entitled to cast sixty percent (60%) of the votes appurtenant to each Class of Lots (Class A and Class B) shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement; and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Uniform Rate of Annual Assessment. Annual assessments shall, except as herein otherwise specifically provided for a difference in Class A and Class B Lots, be fixed at uniform rates for all Lots and shall be collected on a schedule established by the Board of Directors. Special Assessments shall be fixed by the Board of Directors and approved by the Members as set forth in Section 5 hereof.

Section 8. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots within a building on the first day of the month following the conveyance of the first Lot in that building. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. At least thirty (30) days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessment against each Lot and in the event the Board elects not to affix such assessment as herein provided, the amount of the prior year's annual assessment shall be the fixed amount. Written notice of any change in the assessment rate shall be sent to every Owner. The Board of Directors shall establish the due dates for the payment of annual and special assessments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 9. Effect of Non-Payment of Assessments; Remedies of the Association. Any assessment not paid within fifteen (15) days after the due date shall be assessed a late charge in the amount of Fifteen and No/100 Dollars (\$15.00) or in an amount to be determined from time to time by the Board of Directors, and the assessment with late charge may bear interest from the due date at an annual rate of twelve percent (12%) per annum. The Association, or its agent or representative, may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien as provided in Section 47F-3-116 of the Act against the Lot to which the assessment related; and, in either event interest, costs and reasonable attorney's fees of any such action shall be added to the assessment to the extent allowed by law. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of such Owner's Lot.

The Association shall have the right, after notice of hearing, to levy fines for infractions of the provisions of this Declaration or rules and regulations promulgated by the Board provided that the Owner shall be notified in writing of a previous infraction in the preceding one year.

No charge may be imposed more than once for the delinquency of the same payment, provided, however, that the imposition of a late charge on any delinquent payment shall not eliminate or

supersede charges imposed on prior delinquent payments. When an assessment is paid more than fifteen (15) days after the due date of the assessment, late charges shall accrue from the first day following the due date of the assessment. The Association may bring legal action against the Owner personally obligated to pay a delinquent assessment or fine and the Association may suspend the delinquent Owner's membership rights in the Association and/or right to use any of the amenities within Morningside Mews_Townhomes while the assessment or fine remains unpaid. In any legal action to enforce payment of any assessment or fine, the Association shall be entitled to recover interest, costs and reasonable attorneys' fees.

All payments shall be applied to first costs and attorneys' fees, then to fines, then to late charges, then to interest, then to delinquent assessments, then to an unpaid installments of the annual assessment or special assessments which are not the subject matter of suit, in the order of their coming due, and then to an unpaid installments of the annual assessment or special assessments which are the subject matter of suit, in the order of their coming due.

Section 10. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust on a Lot and to any ad valorem taxes on such Lot. Sale or transfer of any Lot shall not affect any assessment lien. However, the sale or transfer of any Lot which is subject to any mortgage or deed of trust pursuant to a foreclosure thereof, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer (but shall not affect the personal liability of the Owner for payment of such assessments). No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. Exempt Property. Lots owned by Declarant or Designated Builders shall be exempt from all assessments while they are owned by the Declarant or the Designated Builder, and any assessments shall not begin to accrue until the Designated Builder conveys the Lots to a Class A Member. Any Lot which Declarant may hereafter designate for common use as part of the Common Area shall also be exempt and all property conveyed to a local public authority, and all land granted to or used by a utility company shall be exempt from the assessments created herein and all Property dedicated to, and accepted by, a local public authority and all Property, other than Lots, owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. No other Lots shall be exempt from assessments.

Any prior assessments, charges and liens created under this Article shall not apply to the Common Area, nor shall they apply to any Lot the title to which is vested either in any first mortgagee subsequent to foreclosure or any state or federal governmental agency which acquires title by reason of such agency's guarantee or insurance of a foreclosed mortgage loan; provided, however, that upon the resale of such Lot by such first mortgagee or such governmental agency, the assessments herein provided shall again commence and accrue and shall be fully applicable to such Lot upon the foreclosure or acquisition of such Lot by such first mortgagee or such governmental agency as well as upon the conveyance to any subsequent Owner. Any Lot which Declarant may hereafter designate for common use as part of the Common Area shall also be exempt and all property conveyed to a local public authority, and all land granted to or used by a utility company shall be exempt from the assessments created herein.

No Owner may waive or otherwise exempt himself or herself from liability of the assessment provided herein, including, by way of illustration, but not limitation, by nonuse of Common Areas or abandonment of the Lot. No diminution or abatement of assessment or set off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Bylaws, or for improvements which are the responsibility of the Association, or from any action taken to comply with any

law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

Section 12. Operating/Working Capital Fund. At the time of closing of the transfer of each Lot from the Designated Builder or the Declarant to an Owner containing a completed townhome dwelling, a sum equal to two (2) month's assessment for each Lot shall be collected and transferred to the Association to be held as a Operating/Working Capital Fund. The purpose of said Operating/Working Capital Fund is to insure that the Association Board will have adequate operating funds and possible cash available to meet Association expenses, and to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the Fund shall not be considered advance payment of regular assessments. This Operating/Working Capital Fund contribution shall not be due upon re-sale or re-conveyance of any Lot after the initial sale from the designated Builder or Declarant.

Section 13. Prepaid Dues At Closing. At the time of closing of the transfer of each Lot from the Designated Builder or the Declarant to an Owner containing a completed townhome dwelling, there shall be paid an initial assessment of two (2) month's advance dues to the Association.

ARTICLE VI

MAINTENANCE, REPAIR AND REPLACEMENT

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Common Area and all improvements located thereon. This maintenance shall include without limitation maintenance, repair and replacement of all landscaping and grass areas, streets, sewer lift stations / pumps, private roads, retaining walls, driveways, sidewalks, street lights, water/sewer pipes, electrical lines, irrigation system, any private drainage easements shown on the record maps depicting these Lots, and other improvements situated on the Common Area or within a Lot boundary if not maintained by the Lot Owner as described below (which areas are the fenced-in courtyards).

Within the boundaries of Lots and, at the discretion of the Board of Directors, the Association shall keep in good repair all landscaping installed by Declarant and/or Association within the boundaries of the Lots. The Association shall maintain and keep in good repair all paved, gravel or concrete walkways, driveways and parking areas originally installed on Lots in connection with the construction of residence buildings and shall maintain and keep in good repair the water, sewer, gas and electricity lines, including those located partially or wholly within the boundaries of a Lot. The Association shall maintain and keep in good repair all water and sewer pipes or facilities, which serve more than one (1), Lot, whether located within or without the boundary of a Lot. The Association's responsibility for maintaining water lines shall cease at the point they cross into individual townhome and sewer lines to the individual cleanouts in front of each townhome. Owners shall not perform any maintenance or replacement work on any landscaping or grass areas on the front portion of their Lot, except that an Owner may plant seasonal plantings (i.e., "annuals") in the areas provided. Lot Owners shall be solely responsible for maintaining plantings within the flower boxes and urns placed in front of their Lot. All plantings shall be subject to review by the Association.

The Association shall provide exterior maintenance upon Lot improvements as follows: (i) paint, stain, repair, replace and care for all exterior building surfaces [including, without limitation: external brick, siding, roof surfaces, roof systems, gutters and downspouts, caulking, irrigation and sprinklers, courtyard walls, and shall maintain an annual termite/pest control contract on all exteriors at all times. The Association shall not provide for maintenance of entry doors, garage doors, and their appurtenant hardware, or exterior glass including windows and patio doors, exterior light fixtures, HVAC units or any interior improvements, all of which shall be maintained, repaired and replaced by the Lot Owner, with any replacement windows and doors being the same as originally installed by Declarant or by the Association];

and (ii) maintain and repair all fences, gates and/or private walls installed on the perimeter by the Declarant; provided, however, the Owner, and not the Association, shall maintain any exterior improvement, including additional landscaping, made by the Owner, after such approval has been approved in writing by the Architectural Control Committee or Board of Directors.

The determination of the need, quality, extent and cost of such maintenance and repairs shall be made by the Board of the Association, which determination shall be reasonable and made upon consistent and non-arbitrary principles adopted by the Board. The Association shall cause the vapor barrier and mitigation systems on the Lots to be inspected on a yearly basis, provided, however, each Owner shall be responsible for making any necessary repairs to vapor barrier and/or mitigation systems installed on its Lot. If Owner does not make repairs within thirty (30) days of notification of the need for such repairs, the Association shall perform such repairs and the cost of such repairs shall be added to and become a part of the assessment to which such Lot is subject. In the event that the need for replacement, maintenance or repair is caused through the willful or negligent act of the Owner, the Owner's family, guests, or invitees, the cost of such replacement, maintenance or repairs shall be the obligation of that Owner and shall be added to and become a part of the assessment to which such Lot is subject. The Association is hereby granted a right of access to each Lot for performance of repairs or maintenance, whether the work is to be accomplished to fulfill the Association's responsibility therefor or to perform work, which is the unfulfilled obligation of the Lot Owner.

The Assessments shall exclude any of the Association's obligations to maintain, repair or replace any portion of any Lot or improvements within said Lot with respect to any Lot owned by the Designated Builder as such Lots owned by the Designated Builder shall be maintained, repaired and any replacement made solely by the Designated Builder at its sole cost and expense. The Designated Builder shall cause regular maintenance and prompt repair and replacement.

Section 2. Owner's Responsibility. Except as provided in Section 1 above, all replacement, maintenance and repair of the improvements on the Lot shall be the responsibility of the Owner thereof (including a Designated Builder), including all replacement and repair necessitated by a fire or other casualty against which the Owner is required to maintain insurance under the provisions of Article IX hereof. Each Owner shall maintain, repair and replace, at his or her expense, all exterior light fixtures attached to the Owner's dwelling and all interior portions of the improvements which shall need repair, including bathroom and kitchens fixtures, light fixtures or other electrical or plumbing equipment, pipes and fittings serving the Lot. Further, each Owner shall repair, maintain and replace, at his or her expense, the heating and air-conditioning systems servicing said Owner's dwelling, whether located on the Owners Lot or in the Common Area adjacent to the Lot. Each Owner shall be responsible for interior pest control. In addition, each Owner shall maintain, repair, replace or remove any exterior improvement, including additional landscaping within the fenced-in courtyard, fencing installed by the Owner, after such approval has been approved in writing by the Architectural Control Committee or Board of Directors. Each Owner shall be responsible for making any necessary repairs to vapor barrier and/or mitigation systems installed on its Lot, including, without limitation, periodic inspections (not fewer than twice per year), maintenance and repair of the fan that constitutes and integral component of the vapor barrier and/or mitigation systems installed on its Lot.

In the event that the Board of Directors of the Association determines (a) that an Owner has failed or refused to discharge properly the Owner's obligations with regard to the maintenance, repair or replacement of items for which the Owner is responsible hereunder; or (b) that the need for maintenance, repair or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees or invitees, the Association may perform the repair, replacement or maintenance at the Owner's cost and expense with credit, however, for the proceeds from any insurance payments; provided that except in emergency situations, the Association shall give the Owner written notice of the necessity of the maintenance, repairs or replacement deemed necessary. The

Owner shall have ten (10) days within which to complete such maintenance, repair or replacement or if the maintenance, repair or replacement cannot be completed within a ten (10) day period, Owner must commence such work within the ten (10) day period and complete the work within a reasonable time. If the Owner does not comply with the provisions hereof, the Association may provide the work and the cost thereof shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

Section 3. Management Agreement. The Association shall have the right to hire a management company to undertake any of its responsibilities set forth in the Declaration. However, any such management agreement shall be terminable by the Association, without liability, upon not more than ninety (90) days' notice to the other party.

ARTICLE VII

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall that is built as a part of the original construction of the homes, garages or storage units upon the Property and placed on the dividing line between Lots shall constitute a party wall, and, 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 thereto.

Section 2. Ownership and Sharing of Repair and Maintenance. Without specific reference in the deed of conveyance of a Lot, conveyance of each Lot separated by any other Lot by a party wall shall be deemed to include an undivided interest in so much of the width of the entire length of said party wall separating such Lot from the adjoining Lot as is located on said Lot, together with a grant of easement of lateral support for such part of said wall as is situated on the adjoining Lot; and there shall be deemed reserved in the conveyance of each of such Lots a like easement of lateral support. The cost of replacement, repair and maintenance of a party wall shall be equally divided by the Owners of the homes, garages and storage units 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 homes, garages or storage units, but not for the other (that is, not common to both homes, garages or storage units) the replacement, repair or maintenance cost of that portion of the wall shall be borne by the Owner of the home, garage or storage unit utilizing that portion of the wall, if, and to the extent that, the Association does not have that responsibility.

Section 3. Destruction by Fire or Other Casualty. Subject to the provisions of Section 2, above, 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 4. 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 5. Special Provision as to Courtyards for each individual Lot. The Morningside Mews Townhomes are constructed such that there are "courtyards" encompassed by the Party Walls for

those Lots with access from the front door located thereon. These courtyards are for the sole and exclusive use owners and are not Common Area.

ARTICLE VIII

ARCHITECTURAL CONTROL

Until the plans and specifications showing the nature, kind, shape, height, color, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee, if the Board of Directors shall elect to establish such a committee, composed of three (3) or more representatives appointed by the Board (said committee being hereinafter referred to as the "Architectural Control Committee"), (i) no building, fence, sign, wall, landscaping, statuary or other structure or improvement of any kind (including a paved surface) shall be commenced, erected, installed, or maintained upon any Lot or upon the Common Area; (ii) no exterior addition to or change or alteration thereto be made, including, but not limited to, color or painting of the exterior or change of the type of exterior finish, the installation of aerials or awnings or the placement of reflective or other material in the windows of a dwelling, or the addition of an exterior attachment (such as a storm door); and (iii) no penetrations of the roof of a building may be made. All structures shall be of standard design employed in the original construction of the Morningside Mews Townhomes in the project. In the event the Association or its designated committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications and have been submitted to it, approval will not be required, and this Article shall be deemed to have been fully complied with. Provided, however, that nothing herein contained shall be construed to permit the interference with the development of the Property by the Declarant.

The installation of antennae and of satellite dishes or disks shall be permitted on a Lot if accomplished in strict compliance with the limitations and conditions imposed by the Telecommunications Act of 1996, as amended from time to time, but no antenna or disk which is in any dimension larger than prescribed by the Act or which is not installed in accordance with the advance notice requirements and location guidelines of the Act may be installed or maintained on any Lot except with the prior written approval of the Board or the Architectural Control Committee. No antenna or satellite dish may be installed in such a way that it is visible from any public street. The Association shall have the authority, but not the duty, to require a "sole source" cable television provider for all Lots within the Property.

In the event an Owner of a Lot shall make an unauthorized change to the Lot, as described in the two preceding paragraphs, the Board of Directors (or the Architectural Control Committee, if any) shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain and restore its appearance, as nearly as reasonably possible, to the same as it was prior to the unauthorized change. The cost of such work and any other costs or attorney's fees incurred in the enforcement of these provisions shall be added to and become a part of the assessments to which such Lot is subject.

The provisions of this Article VIII shall not apply to improvements of any kind constructed upon any Lot or upon the Common Area by Declarant and Declarant is expressly exempt from the provisions of this Article VIII. In addition, notwithstanding the foregoing, as to any Designated Builder, Declarant may provide, in a purchase contract or otherwise, an exemption from the foregoing approval requirements or blanket approval of site plans, general housing styles and finishes which may then be constructed on any Lot without the need for additional submission of, or written approvals for, specifications, exterior color and finish, landscape plan, site development or any other matter related to the construction of a dwelling and the improvement of a Lot by a Designated Builder. Once such an exemption or blanket approval is granted, it shall be irrevocable and binding on the Board of Directors and the Architectural Control Committee as to any Lots owned by the Designated Builder or subject to any contract to purchase or option

to purchase of the Designated Builder. Once exemption or blanket approval is granted, a Designated Builder shall not be obligated to obtain any other approvals from the Declarant, Association or Architectural Committee unless otherwise stated in said purchase contract or otherwise made between the Declarant and a Designated Builder.

ARTICLE IX
INSURANCE

Section 1. **By Owners.** Each Owner shall procure and maintain, at such Owner's own cost and expense, insurance coverage as follows:

(a) **Coverage:**

(i) **Public Liability.** Each Owner shall procure and maintain such public liability insurance as, in each owner's sole discretion, is appropriate.

(ii) **Contents.** Each Owner shall procure and maintain insurance on the contents of the dwelling and other buildings on his or her Lot with limits no less than the replacement value of such contents.

Section 2. **By Association.** The Association shall procure and maintain insurance coverage as follows:

(a) **Coverage.**

(i) **Townhomes.** Insurance policies upon the improvements on each Lot shall be purchased by the Association 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 townhome unit shall be insured in an amount equal to one hundred percent (100%) of its insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

(a) Loss or damage by fire and other hazards, including extended coverage, vandalism and malicious mischief, and

(b) Such other risks as from time to time shall be reasonably required by the Association.

(ii) **Common Areas.** All insurance policies upon the Common Area shall be purchased by the Association 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. All buildings and insurable improvements upon the Common Areas and all personal property of the Association included in the Common Areas and facilities shall be insured in an amount equal to one hundred percent (100%) insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

(a) Loss or damage by fire and other hazards, including extended coverage, vandalism and malicious mischief, and

(b) Such other risks as the Association may from time to time elect to protect against.

(iii) Public Liability. Public liability insurance shall be secured by the Association with limits of liability of no less than One Million and No/100 (\$1,000,000.00) Dollars per occurrence and shall include an endorsement to cover liability of the Owners, as a group, to a single Owner.

(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 described in Article V above.

(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 Owners and their mortgagees in the following shares:

(i) Proceeds on account of damage to Common Areas and facilities shall be paid to and held by the Association;

(ii) If an insured casualty shall occur on the Common Area, resulting in damage to Lots or to personal property of Owners or injury to an Owner or members of an Owner's family, proceeds from Association insurance shall be held in undivided shares for the affected Owners in proportion to the cost of repairing the damage or injuries suffered by each Owner, which cost shall be determined by the Association;

(iii) 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.

Section 3. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Association as insurance trustee shall be distributed in the following manner:

(a) Expense of the Trust. All expenses of the insurance trustee shall be first paid or provisions made therefor.

(b) Reconstruction or Repair. The remaining proceeds shall be paid to defray the cost of repairs to the Common Area. Any proceeds remaining after defraying such cost shall be distributed to the affected Owners as provided in Section 2(c)(ii) of this Article.

Section 4. Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds or otherwise execute control over the assets of the Association or those held in trust, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to six (6) months' assessments, plus reserves accumulated at the time of the bonding.

Section 5. Restricted Actions by Owners. No Owner shall permit anything to be done or kept within their Lot or in the Common Area which would result in the cancellation or increase in the costs of any insurance carried by the Association, or any other Owner, or which would be in violation of any law, ordinance, regulation or other governmental rule governing these Lots. No Owner shall enter into any agreement with any other Owner or any owner of property which adjoins the subdivision. All power to enter into any such agreement is vested solely in the Association and any purported agreement by an Owner in violation of this provision shall be NULL AND VOID. No waste shall be permitted in the Common Areas, Tree Save Areas or Driveway Easement areas. Each Owner shall comply with all laws, regulations, ordinances (including without limitation, applicable zoning ordinances) and other governmental rules and regulations applicable to each Owners Lot.

Section 6. By Designated Builders. Each designated Builder shall procure and maintain, at such Designated Builder's own cost and expense, adequate insurance coverage for public liability, contents and the Townhome improvements.

ARTICLE X

USE RESTRICTIONS

Section 1. Use Restrictions and Rules and Regulations. Use and enjoyment of the Property shall be subject to the easements, restrictions, covenants and conditions, charges and liens set forth in this Declaration. In addition, the use and enjoyment of the Property shall be further governed and regulated by rules and regulations promulgated or adopted by the Board of Directors of the Association, as amended or supplemented from time to time by the Board. The Board of Directors of the Association shall have the power to formulate, amend, publish and enforce rules and regulations, as amended or supplemented from time to time, and may provide for imposition of fines and other penalties for the violation of any such rules and regulations or for the violation of any of the restrictions, covenants and conditions contained in this Declaration.

Section 2. Residential Use. Except as may be otherwise expressly provided in this Declaration, each Lot shall be used for residential purposes only. Lease or rental of a townhouse for residential purposes shall not be considered to be a violation of this Covenant, so long as the lease is in compliance with the provisions of this Declaration, the Bylaws and reasonable Rules and Regulations adopted by the Board. No trade or business shall be operated or conducted on any Lot.

Section 3. Prohibition of Renting for Transient or Hotel Purposes. No Owner shall rent his Lot for transient or hotel purposes, which, for the purposes of this Declaration shall be defined as either a rental for any period less than one hundred eighty (180) days or any rental if the lessee of the Lot is provided customary hotel services. Each permitted lease shall be in writing and shall be subject to this Declaration, the Bylaws, and the Rules and Regulations adopted hereunder and any failure of the lessee to comply with the terms of such documents shall be a default under the lease. Other than the foregoing restrictions, each Owner shall have the full right to lease all or any portion of his Lot.

Section 4. Antennas/Satellite Dishes. As provided in Article VIII, except for such as are covered by, and installed in strict compliance with, the requirements of the Telecommunications Act of 1996, as amended, no outside radio or transmission tower or receiving antenna, including a satellite dish antenna, and no outdoor television antenna or satellite dish may be erected or installed by an Owner or permitted by an Owner to remain on his or her Lot without the prior written approval of the Board of Directors or the Architectural Control Committee, if any. No solar panels or other similar receiving, transmission or energy-generating equipment shall be erected or installed by an Owner or permitted by an Owner unless approved in writing by the Association.

Section 5. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Property, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood.

Section 6. Dwelling Size. The total square footage of the main structure located on a Lot, exclusive of one-story open porches and garages, shall not be less than 1,500 square feet.

Section 7. Nuisances. No activity deemed noxious or offensive by the Board of Directors or the Architectural Control Committee, if any, shall be carried on upon any Lot or within the Common Area, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood as determined by said Board or Committee. Examples of such offensive activities shall include, but not be limited to, the origination or emission of any loud or disturbing noise or vibrations,

failure of townhome occupants to insure that garage doors are closed at all times except when automotive traffic is moving in or out; the maintenance of an auto repair site; the maintenance of unsightly outdoor storage of personal property (including toys, motorcycles or other motor vehicles, tricycles, bicycles, wood piles, appliances, interior furniture, or other miscellaneous items) on porches, patios, terraces or yards; and similar unsightly activity (such as use of outdoor clothes drying lines) not in keeping with the aesthetic character and high level of appearance of the community. Nothing in this section shall be interpreted to restrict customary construction activities of Designated Builders that are conducted in accordance with the City of Charlotte noise ordinance requirements.

No potentially hazardous or toxic materials or substances shall be used or stored on any Lot other than normal household, lawn and garden products which shall be used by Owner in a manner that will not permit spills or runoff of such materials anywhere within the Property. No activity shall be allowed which violates local, state or federal laws or regulations and the Board shall have the right, but not the obligation, to take enforcement action in the event of a violation.

Section 8. Animals. No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. The number of household pets generally considered to be outdoor pets, such as dogs and cats, shall not exceed three (3) in number, except for newborn offspring of such household pets, which are under six (6) months in age. Notwithstanding the foregoing, the Association shall have the right to prohibit, or require the removal of, any dog or other animal which the Association, in its sole discretion, deems to be undesirable, a nuisance or a safety hazard after consideration of factors such as size, breed and disposition of the animal, likely interference by the animal with the peaceful enjoyment of the Property by Owners and the security measures taken by the Owner with respect to such animal. Owners shall be responsible for the removal of animal waste from the Lot and Common Areas. Animals shall not be kept unattended and shall not be tied outside a townhome. No kennels, dog runs or animal holding pen of any type shall be allowed on a Lot or on the Common Area.

Section 9. Temporary Structures and Parking of Vehicles Onstreet and Offstreet. No residence or other improvement of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, basement, shack, tent, garage, barn or any other building of a similar nature shall be used as a residence on any Lot, either temporarily or permanently. No mobile house trailers, on or off wheels, recreational vehicles ("RVs"), motor homes, vehicles or enclosed bodies of the type which may be placed on or attached to a vehicle, known generally as "campers", commercial vehicles of any kind or boats or boat trailers shall be permitted, parked or stored in the Common Area or within any Lot, unless inside the garage of that Lot with the garage door closed; provided that the temporary parking of commercial vehicles will be permitted while the driver thereof is on business delivering goods or services to a customer within the Property.

No vehicle of any type which is abandoned or inoperative shall be stored, parked or kept in the Common Area nor shall any such vehicle be stored, parked or kept on any Lot if it can be seen from any other Lot or from any street within the Property, and no automobiles or other mechanical equipment may be dismantled or parts thereof stored on any said Lot. No vehicles of any type shall be parked on the sidewalk or within a street right-of-way, nor shall vehicles of any type be parked or stored on any part of a Lot not improved for that purpose (a garage, driveway or parking pad). This prohibition shall not preclude occasional, overnight or temporary daytime overflow parking within the street right-of-way by Owner, guests of an Owner, or tenant of an Owner, as long as no inconvenience is imposed upon one or more Owners of other Lot(s).

Nothing in this section shall be interpreted to restrict customary construction activities of Designated Builders that are in compliance with applicable law. The provisions of this Section 9. shall not preclude the parking of construction trailers within the Property or the construction, maintenance and use

by Declarant of temporary buildings and other structures while there are new townhome construction and/or sales activities within the Property. Daytime and overnight parking of trucks and other construction vehicles shall also be permitted throughout the Lot development and townhome construction periods.

The Association may, from time to time, adopt such reasonable parking rules and regulations as it deems appropriate to promote the safe and orderly use of parking areas within the Property.

Section 10. Signs. No signs or other advertising devices shall be erected upon or displayed or otherwise exposed to view on any Lot, or any improvement thereon, without the prior written consent of the Association, except that "For Sale" and "For Rent" signs not exceeding 18" x 35" may be placed in the window of a townhouse unit and provided, further, that Declarant may post temporary "For Sale" and other advertising signs anywhere on the Property until such time as all Lots owned by Declarant have been sold and conveyed.

Section 11. Street Lamps. The street lamps installed in the Common Areas at or near the roads upon which Lots face shall be maintained, repaired and replaced at the expense of the Association and the Association shall pay the electricity bills. No Owner may or shall disconnect a streetlight or remove any element thereof or in any way damage or deface a streetlight.

Section 12. Control of Dogs. Every person owning or having possession, charge, care, custody or control of a dog shall keep such dog exclusively upon his or her Lot; provided, that such dog may be off premises if it is under the control of a competent person and restrained by a chain, leash or other means of adequate physical control.

Section 13. Garbage and Refuse Disposal. No Lot shall be used in whole or in part for storage of rubbish of any character whatsoever and no trash, rubbish, stored materials, wrecked or inoperable vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure; provided however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish and other debris for collections by governmental or other similar garbage and trash removal units. In addition, all trash, garbage and other waste shall be stored in sanitary containers in the space provided in the garage or in the fenced area on each lot designated for sanitary container storage, and in accordance with the rules and regulations of the Association and of any health or public safety authority having jurisdiction over the Property. Rollout garbage containers shall be rolled out to the street in rear of the townhouse (or such other area as designated by Declarant or the Association) in the evening before the regularly scheduled pickup and rolled back into the garage by 10:00 p.m. the day of the pickup; provided that no garbage container shall obstruct the driveway/alley at the rear of the townhomes which is shared access for all Lot Owners.

Section 14. Garages. Garages are included in the required number of parking spaces and shall not be converted into living space or into a storage room without area for a motor vehicle. Garage doors must be kept closed at all times, except as needed to enter and exit the garage.

Section 15. Holiday Decorations. Decorations for holidays shall not be displayed for more than forty-five (45) days prior to and after any such holiday.

Section 16. Mail Boxes, Newspaper/Mail Boxes. No mailbox, newspaper or news box shall be erected or maintained on any Lot unless approved by the Association. The Developer and/or Association reserve the right to select a standard mail box for all Owners to use and if so selected, then all Owners shall be required to use the same and no other.

Section 17. No Clothes Line. No clothes lines or any description or type, or the outside drying of clothes in any manner, shall be allowed on the outside of any Unit.

Section 18. Hoses and Pipes. Except for the temporary use of hoses and the like which are reasonably necessary in connection with normal lawn maintenance, no hose, water pipe, sewer pipe,

gas pipe, drainage pipe, television cable or other similar transmission or receiving line shall be installed or maintained outside of an Unit above the surface of the ground, unless such installation is expressly approved in writing by the Association.

ARTICLE XI
EASEMENTS

Section 1. General. All of the Property, including Lots and Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewer lines, storm drainage facilities, gas lines, telephone lines, electric power lines and other public utilities, shared courtyard walls and roofs as shall be established by the Declarant, and Declarant, prior to conveying the Common Area to the Association, and the Association, after conveyance of the Common Area to the Association, shall have the power and authority to grant and establish upon, over, under, and across the Common Areas such further easements as are in the opinion of either of them, requisite for the convenient use, development and enjoyment of the Property. In addition, there is hereby reserved in the Declarant and its agents and employees an easement and right of ingress, egress, and regress across all Common Areas now or hereafter owned by the Association, for the purpose of development of the Property and construction of improvements within the Property. Each Lot and the Common Area shall be and is subject to an easement 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 multi-family building covering parts of two or more Lots is partially or totally destroyed, and then rebuilt, minor encroachments over parts of the adjacent Lots or Common Area resulting from the reconstruction shall also be permitted and a valid easement for said encroachments and the maintenance thereof shall continue.

Section 2. Construction. Declarant hereby reserves for itself and any Designated Builder a construction easement over the Property for the purposes reasonably related to installation of streets and utilities and construction of dwellings on the Lots and improvements on the Common Areas, and Declarant and its contractors shall have full rights of ingress and egress to and through, over and about the Property during such period of time that Declarant or any Designated Builder is engaged in any construction or improvement work on or within 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, nor his/her guests or invitees, shall in any way interfere or hamper Declarant or any Designated Builder or their employees or contractors in the exercise of these rights and easements.

Section 3. Emergency. There is hereby reserved, without further assent or permit, and to the extent permitted or required by law, a general easement exercisable by all firemen, ambulance personnel, policemen and similar persons to enter upon any portion of the Property in the performance of their respective duties. The Association and its agents shall also have the right to enter the Lots and any improvements located thereon for the purpose of making emergency repairs or replacements.

Section 4. Ingress and Egress. Declarant reserves and hereby dedicates easements for pedestrian and vehicular ingress and egress over the streets, sidewalks and "Tree Save Areas" shown on the record maps described in Article II Section 1 of the Property and easements for pedestrian traffic over and along the Common Areas within the Property, which easements may and shall be freely enjoyed by all Owners, and by their families and invitees, so long as such use and enjoyment is not in violation of law, of the Use Restrictions set out in Article X or of any rules and regulations promulgated by the Board of Directors.

Section 5. Shared Private Driveway/Alley. There is a "Driveway Easement" and "Tree Save Area" shown on the record maps described in Article II Section 1 at the rear of each Lot, in which the Developer has constructed the private driveway each Lot Owner shall use to access their property. These areas are intended for vehicular and pedestrian access (ingress/regress) and are reserved for those purposes only. Lot Owners shall NOT have the right to use these areas for any other purpose, and same shall not be obstructed in any manner or otherwise used by any Lot Owner that restricts the free use of all Lot Owners of this private driveway to access their townhome. There shall be no obstruction of these areas, nor shall anything be kept or stored in these areas, nor shall anything be altered, constructed, planted in, or removed from these areas without prior written consent of the Association.

Section 6. Tree Save Area. There is a "Tree Save Area" shown on the record map depicting the Lots that is regulated by the City of Charlotte. The Owners shall not do anything in this area without prior written approval of the City of Charlotte and the Association, as these areas are subject to strict guidelines.

ARTICLE XII

INDEMNIFICATION OF DIRECTORS AND OFFICERS

Neither Declarant, nor any member of Declarant, nor any Member, nor the Board (individually or collectively), nor the Association, nor any officers, directors, agents or employees of any of them, shall be personally liable for debts contracted for, or otherwise incurred by, the Association or for a tort of Member, whether such Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their directors, officers, agents, members or employees, shall be liable for any incidental or consequential damages for failure to inspect the Lots, the Common Areas or any other portion of the Property, or any improvements thereon, or for failure to repair or maintain the same. Neither Declarant, the Association nor any other person, firm or association making such repairs or maintenance shall be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any Property or improvements.

The Association shall, to the extent permitted by applicable law, indemnify, defend and save harmless all members of the Board from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

The Association shall indemnify every director, officer, former director and former officer of the Association and any person who may have served at the request of the Association as a director or officer of another corporation, whether for profit or not-for-profit, against expenses (including attorneys' fees) and liabilities actually and reasonably incurred by him or her in connection with the defense of, or as a consequence of any threatened, pending or completed action, suit or proceeding (whether civil or criminal) in which he or she is made a party or was (or is threatened to be made) a party by reason of being, or having been, such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of a duty.

The indemnifications provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute, by-law, agreement, vote of members or of disinterested directors, or otherwise, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

The Association shall undertake to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust

or other enterprise, against any liability asserted against him or her and incurred by him or her in such capacity, or arising out of his or her status as such, whether or not the Association would have the power to indemnify him or her against such liability.

The Association's indemnity of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person may collect as indemnification (i) under any policy of insurance purchased and maintained on his or her behalf by the Association or (ii) from such other corporation, partnership, joint venture, trust or other enterprise.

Nothing contained in this Article XII, or in the Bylaws, shall operate to indemnify any director or officer if such indemnification is for any reason contrary to any applicable state or federal law.

ARTICLE XIII

ADDITIONAL RIGHTS RESERVED TO DECLARANT

Section 1. Right to Develop. The Declarant and its employees, agents, contractors and designees shall have a right of access and use and an easement over and upon all of the Common Areas for the purpose of making, constructing and installing such improvements to the Common Areas as it deems appropriate in its sole discretion. Damage done to the Common Areas shall be repaired, with the Common Area being restored to its original condition, to the extent such repair and restoration is reasonably practicable.

Section 2. Right to Transfer or Assign Declarant Rights. Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the Bylaws may be transferred in whole or in part to other persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the Bylaws. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Mecklenburg County Register of Deeds. The foregoing sentence shall not preclude Declarant from permitting other persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

Section 3. Declarant's Right to Unilaterally Amend; Control of Board.

- (a) **Reservation of Development Rights.** Pursuant to N.C. Gen. Stat. § 47F-1-103(28), Declarant hereby reserves unto itself for so long as it owns any interest in any Lot in the Property the right, without further notice and without the joinder or consent of any Owner, (i) to add real estate to the Property, (ii) to create Lots, residential units, or add additional Common Area, (iii) to subdivide Lots, (iv) to realign or change the boundaries of any Common Areas, (v) to withdraw real estate from the Property or from the Common Areas, and (vi) to amend this Declaration in order to ensure development of the Property in accordance with Declarant's development plan for the Property, or for the exercise of any development right or Special Declarant Right (collectively, "Development Rights").
- (b) **Reservation of Special Declarant Rights.** Pursuant to N.C. Gen. Stat. § 47F-1-103(28), Declarant hereby reserves unto itself for so long as it owns any interest in any Lot in the Property the right, without further notice and without the joinder or consent of any Owner, (i) to exercise Special Declarant Rights as reserved elsewhere in this Declaration, (ii) to complete improvements indicated on plats and plans recorded before, with or pursuant to this Declaration, (iii) to exercise any

Development Right, (iv) to maintain sales offices, management offices, signs advertising the Property, and models, (v) to use easements through the Common Areas for making improvements within the Property or within real estate which may be added to the Property, (vi) to make the Property part of a larger planned community or group of planned communities, (vii) to make the Property part of a master association, and (viii) to appoint or remove any Director or officer of the Association or of any master association during any period when Class B membership exists (collectively, "Special Declarant Rights").

ARTICLE XIV

GENERAL PROVISIONS

Section 1. Enforcement. The Association, and each Owner, shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions for this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 3. Amendment and Termination. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless abrogated by a written termination agreement signed by seventy-five (75) percent of the Members and filed in the Register of Deeds of Mecklenburg County within sixty (60) days prior to the beginning of a ten (10) year extension period. Other than as may be afforded under Article XIII, this Declaration may also be amended by an instrument signed by the Owners entitled to not less than sixty-seven (67) percent of the votes eligible to be cast at the time of the amendment. Any such amendment shall not be effective until such amendment has been filed for record in the Mecklenburg County Public Registry.

Section 4. Rights of Note holders. Any institutional holder of a first mortgage on a Lot will, upon written request therefor (acknowledged by the Association), be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual financial statement of the Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and the right to designate a representative to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the Property or the Lot securing its mortgage, (e) receive written notice of any sixty (60) day delinquency in the payment of dues, assessments or charges owed by the Owner of the Lot on which it holds the mortgage, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, (g) receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, and (h) be furnished with a copy of the master insurance policy.

Section 5. Enforcement. If any Owner shall violate or attempt to violate any of these restrictions, failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Board of Directors on behalf of the Association or any other Owner to enforce any of the foregoing restrictions or other provisions shall in no event be deemed a waiver of their right to do so thereafter. Invalidation of any covenant, condition or restriction or other provision of this Declaration shall not affect the validity of the remaining portions

thereof which shall remain in full force and effect.

Section 6. Headings. Headings are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular paragraphs to which they refer.

Section 7. Unintentional Violation of Restrictions. In the event of unintentional violation of any of the foregoing restrictions with respect to any Lot, Declarant or its successors reserves the right (by and with the mutual written consent of the then Owner or Owners of such Lot) to change, amend, or release any of the foregoing restrictions as the same may apply to that particular Lot.

Section 8. Severability. The provisions of this Declaration are severable and the invalidity of one or more provisions hereof shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder hereof. This Declaration and the separate provisions thereof shall be construed and enforced in accordance with the laws of the State of North Carolina without regard to principles of conflict of laws.

Section 9. Declarant Voting Rights and Ties. Should a vote of the Declarant or Owners result in a tie, the issue voted upon shall be settled by arbitration in Charlotte, North Carolina, in accordance with the Commercial Arbitration Rules of the American Arbitration Association currently in effect (unless the parties mutually agree otherwise). The decision rendered by the arbitrator or arbitrators shall be final. The party hereunder demanding arbitration of any issue arising out of this Declaration shall file a written notice of such demand for arbitration with the other party and with the American Arbitration Association. Such written notice shall be given not later than thirty (30) days after the controversy arises, and the three (3) year statute of limitations specified in North Carolina General Statutes Section 1-52(1) (as amended) shall apply.

[SIGNATURES APPEAR ON NEXT PAGES]

IN WITNESS WHEREOF, the undersigned Declarant hereby causes this instrument to be executed the day and year first above written.

DECLARANT:

MORNINGSIDE MEWS TOWNHOMES, LLC,
a North Carolina limited liability company

By: Robert J. Drakeford
Name: Robert T. Drakeford, its Manager

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

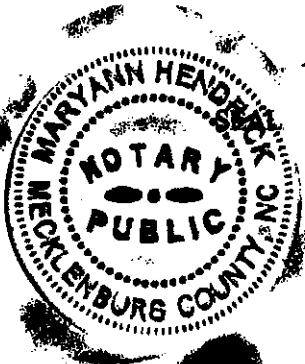
I, Mary Ann Hendrick, the undersigned, a Notary Public of the County and State aforesaid, certify that Robert T. Drakeford personally appeared before me this day and acknowledged that he is the Manager of MORNINGSIDE MEWS TOWNHOMES, LLC, a North Carolina limited liability company and that as Manager being authorized to do so, executed the foregoing instrument on behalf of MORNINGSIDE MEWS TOWNHOMES, LLC.

Witness my hand and official stamp or seal, this 21 day of November 2016.

Mary Ann Hendrick
Notary Public
Printed Name: Mary Ann Hendrick

My Commission Expires:

3-30-19



STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

The foregoing certificate of _____, Notary Public of the County and State aforesaid is certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

REGISTER OF DEEDS FOR MECKLENBURG COUNTY

By: _____
Deputy/Assistant-Register of Deeds

CONSENT OF MORTGAGEE

THIS CONSENT OF MORTGAGEE (the "Consent") is executed as of this 17 day of November, 2016, by Bank of North Carolina ("Beneficiary").

Statement of Purpose

Beneficiary is the beneficiary under, and owner and holder of, certain Construction Deed of Trust Securing Future Advances executed by Morningside Mews Townhomes, LLC (the "Borrower"), and recorded in the Mecklenburg County, North Carolina Public Registry in Book 30810, at Page 850, as may have been amended from time to time (as so amended, collectively, the "Deed of Trust").

Borrower is the "Declarant" under the Declaration of Covenants, Conditions and Restrictions for MORNINGSIDE MEWS TOWNHOMES Subdivision, to which this Consent is attached (the "Declaration").

Terms

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Beneficiary does hereby consent to the recordation of the Declaration and the imposition of the Declaration upon the Property (as defined in the Declaration). Beneficiary further agrees that any subsequent foreclosure of the Deed of Trust shall not extinguish the Declaration but shall merely vest in the purchaser at such foreclosure sale the rights appurtenant to the Property, or portion thereof, conveyed to the extent the same are granted in Declaration. The execution of this Consent by Beneficiary shall not be deemed or construed to have the effect of creating between Beneficiary and Borrower the relationship of partnership or of joint venture, nor shall anything contained herein be deemed to impose upon Beneficiary any of the liabilities, duties or obligations of Borrower under the Declaration and First Supplement.

IN WITNESS WHEREOF, Beneficiary has executed this Consent of Mortgagee as of the day and year first above written.

BENEFICIARY:

Bank of North Carolina

By: 
Name: Thad Downs
Its: Vice President

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Ellen M Palmer Notary Public of the County and State aforesaid, do hereby certify that Thad Downs personally came before me this day and acknowledged that s/he is the Vice President of Bank of North Carolina, and that s/he, as V.P., being authorized to do so, executed the foregoing on behalf of said Bank of North Carolina.

Witness my hand and official seal and subscribed and sworn to before me this the 17th day of November 2016.

Ellen M Palmer
Notary Public

Printed Name: Ellen M Palmer

My Commission Expires: 9-15-17

[NOTARY SEAL]

