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STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BILTMORE TERRACE
NOW KNOWN AS
WOODCREST AT BILTMORE TERRACE

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BILTMORE TERRACE NOW KNOWN AS WOODCREST AT BILTMORE TERRACE is made and entered into this the 21st of August, 2015 by and between HIGHLAND PROPERTY GROUP, LLC, a North Carolina limited liability company (herein "Declarant" and/or "Developer") and Owner(s) of Lots representing at least sixty-seven percent (67%) of votes in the BILTMORE TERRACE HOME OWNERS ASSOCIATION, INC., a North Carolina non-profit corporation (herein collectively "Owners").

WITNESSETH:

THAT WHEREAS, Biltmore Terrace Development, LLC (herein "Original Developer"), by recordation of that certain Declaration recorded in Record Book 4142 at Page 1412, Buncombe County, NC Registry (the "Declaration") created that certain development known as "Biltmore Terrace" (herein "Biltmore Terrace") consisting of those Lots shown on that plat recorded in Plat Book 96 at Page 70 of the said Registry; and

WHEREAS, Developer is the successor in interest to those certain lots within Biltmore Terrace pursuant to those deeds recorded in Record Book 5255 at Page 1830 and Record Book 5327 at Page 1035, Buncombe County, NC Registry, wherein Original Developer further conveyed unto Developer all of the declarant rights under the Declaration as to all of the property conveyed to Developer (which was all remaining lots of Original Developer); and

WHEREAS, the Declaration requires compliance with the North Carolina Planned Community Act (the "Act") for purposes of any amendment or modification of the Declaration, which Act requires signatures by owners representing more than 67% of the votes in the Association; and

WHEREAS, Developer's votes in the Association represent more than 67% of the total votes and therefore, desires to amend and restate the Declaration in its entirety as set forth herein and to add certain additional lots as shown on .

WHEREAS, the Developer desires for the protection and benefit of all persons who may hereafter become owners of lots located within Biltmore Terrace that the Declaration be hereafter terminated in its entirety and that the Property hereafter be developed with limitations, restrictions and uses as set forth herein.

AGREEMENT:

NOW THEREFORE, the Developer and Owners do hereby revoke the Declaration recorded in Record Book 4142 at Page 1412 in its entirety and hereby replace and supplement with following declaration as to limitations, restrictions and uses to which the above-described and herein-defined Property now known as "Woodcrest at Biltmore Terrace" (herein "Subdivision") shall be and are hereby subjected:

ARTICLE I
DEFINITIONS

SECTION 1: "Association" shall mean and refer to Biltmore Terrace Home Owners Association, a North Carolina non-profit corporation. Declarant may, at its option, subject additional portions of the property to restrictions which are similar in form to those contained herein, in furtherance of the scheme of development set forth herein. Owners of lots in additional phases of the Subdivision shall become members of the Association upon recordation of Declarations for such additional phases, which define the Association as that Association which is formed hereby.

SECTION 2: "Assessments" shall mean and refer to any and all fees or other charges levied by the Association, as determined by a simple majority vote of all Members of the Association.

SECTION 3: "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 part of this or subsequent phases of the Subdivision, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 4: "Property" shall mean and refer to that certain real property shown on those Plats as are recorded in Plat Book 96 at Page 70 for Phase I and Plat Book 146 at Page 4 for Phase II (herein the "Plats"), both of the Buncombe County, North Carolina Register's Office and any additional property added by the Developer as permitted herein.

SECTION 5: "Common Elements" shall mean and refer to (i) private roads designated on the Plat or any other subdivision Plat recorded by Declarant, as well as any other private road constructed by the Developer serving the Subdivision or any property adjoining the Subdivision; (ii) any property designated as such by the Developer; and (iii) any real estate owned by the Association, other than a Lot.

SECTION 6: "Common Expenses" shall mean and include: (a) all sums lawfully assessed against the owner of any lot by the Association; (b) expenses of administration, operation, maintenance, repair, replacement of the Common Elements and facilities; (c) expenses agreed upon as Common Expenses by the Association; (d) hazard and liability insurance premiums as required.

SECTION 7: "Lot" shall mean and refer to any numbered plot of land shown on the Plat, or subsequent additional Plats incorporated into the Subdivision, with the exception of the Common Elements.

SECTION 8: " Dwelling" shall mean and refer to a building situated upon a Lot and intended for use and occupancy

as a residence.

SECTION 9: "Member" shall mean and refer to any person or entity who holds membership with voting rights in the Association, which membership shall be derived from ownership of any Lot within the Subdivision and any Lots added thereto, and specifically governed under the provisions of Article II, Section 2 provided herein.

SECTION 10: "Control Period" shall mean the time expiring upon the later of January 1, 2025, or upon the sale of the last lot owned by Developer (other than to a related entity) as shown on the Plats or any subsequently recorded plat adding property as an additional Phase to the Subdivision; whichever shall first occur.

ARTICLE II MEMBERSHIP AND VOTING RIGHTS

SECTION 1: Every Owner of a Lot which is subject to assessments 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 Association shall have three (3) voting memberships:

- (A) **CLASS A:** Class A Members shall be all owners of a Lot (with the exception of Declarant) each of whom shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members; the vote for such lot shall be exercised as the Owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.
- (B) **CLASS B:** The Class B Member shall be the Declarant as hereinabove defined and shall be entitled to three (3) votes for each platted Lot owned by the Developer within various phases of the Subdivision. The Class B Member, in consideration of its financial expenses relating to the construction of subdivision streets or other Common Elements, shall be entitled to a waiver of all Assessments levied by the Association as long as the Declarant owns any Lot or property subject to these Restrictions. Said waiver shall continue even after the Class B membership is converted to Class A membership. Class B membership shall be converted to Class A membership upon the happening of any of the following events, whichever occurs first:
 - (1) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
 - (2) When the Developer elects to convert to Class A membership; or
 - (3) On the 1st day of January, 2025.

ARTICLE III SPECIAL EASEMENTS RESERVED WITHIN BILTMORE TERRACE

SECTION 1: Landscaping and Lawn Maintenance Easement:

An easement is hereby established and granted to the Association for the maintenance and upkeep of landscaping and lawn care of each lot within the Subdivision. It is the responsibility of each Lot Owner to maintain their Lot in an attractive condition, however, if in the exclusive opinion of the Developer and/or the Home Owners Association, any Lot has not been maintained in an attractive condition comparable to the other Lots within the Subdivision, then the Developer and/or the Home Owners Association, or their agents, may enter upon such Lot and perform necessary maintenance and upkeep to restore the condition of the Lot to an acceptable standard as determined in the exclusive discretion of the Developer and/or the Home Owners Association. In the event the Developer and/or

Home Owners Association elects to take action under this Section, then it may access any water sources located on such Lot and may charge any expenses incurred as a Special Assessment against the Lot Owner.

SECTION 2: Subdivision Roads, Sidewalks & Street Lamps:

An easement is hereby established for the Subdivision Roads, Sidewalks & Street Lamps located within the subdivision, as shown on the plat for the Subdivision. The Subdivision Roads, Sidewalks & Street Lamps are Common Elements hereunder and shall be appurtenant to and shall run with the Lots within the Subdivision.

ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENTS

SECTION 1: CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS.

The Declarant hereby covenants and each Owner of a Lot, by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association any annual Assessments or special Assessments to be established and collected as herein provided. The amount of such Assessments shall be determined by majority vote as of the Association. The Declarant shall bear the responsibility of maintenance of Common Elements from the time of the recording of this Declaration until the conveyance of Common Elements from the Declarant to the Association; however, the Declarant may seek reasonable financial contribution from the Association for the cost of such maintenance of the Common Elements, and the Association shall thereafter be obligated to maintain the Common Elements so conveyed. Assessments, together with interest, costs and reasonable attorney 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 fees, shall be the personal obligation of the person or entity who was the Owner of a Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to their successors in title unless expressly assumed by such successors.

SECTION 2: PURPOSE OF ASSESSMENTS.

The Assessments levied by the Association shall be used exclusively to maintain Common Elements, including, but not limited to the following: the cost of repairs, replacements, and additions; the cost of labor, equipment, materials, management, and supervision; the procurement and maintenance of insurance related to the use of the Common Elements in accordance with the By-Laws of the Home Owners Association; payment of property tax assessments; the employment of attorneys to represent the Association when necessary; and such other needs as may arise, as determined by the Association. Any such Assessment charged and collected shall relate to the cost of maintenance of the Common Elements and may include a reserve fund in a reasonable amount in anticipation of such costs, as determined by the Association.

SECTION 3: STREET MAINTENANCE.

The Subdivision contains private roads and easements whereby Lots shall access the public right of way for School, including but not limited to Lamar Avenue, Loblolly Lane and Meeting Street, as shown on the Plats. Such Subdivision rights of way are hereby dedicated as private roadways, until such time as said right of way may be accepted into the North Carolina Secondary Road System, if ever. All future Owners, and their heirs successors and assigns covenant and agree to be jointly responsible, on an equal pro-rata basis, for the maintenance and upkeep, repair and service of such rights of way, unless and until such time as the right of way is accepted into the North Carolina Secondary Road System, even in the event that this Declaration is terminated. The Association shall maintain the Subdivision Roads, and such expense shall be included in the assessments, as a Common Expense to be shared on an equal basis by all Class A Members.

SECTION 4: NOTICE AND QUORUM FOR ANY ACTION FOR COLLECTION.

Written notice of any meeting called for the purpose of taking any action authorized under Article IV, Section 7 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast twenty percent (20) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the quorum shall apply at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

SECTION 5: UNIFORM RATE OF ASSESSMENT.

Annual Assessments must be fixed at a uniform rate for all Lots. Special Assessments may be applied to any specific Lot(s), or as reasonably necessary to make improvements or perform maintenance for the exclusive benefit of any such assessed Lot(s).

SECTION 6: DUE DATES OF ASSESSMENTS.

A. Annual assessments shall be assessed on a calendar year basis and shall be due and payable on or before January 1 of each calendar year; or shall be prorated to the date of closing for those Lots purchased within a calendar year. Such assessments, together with interest at the legal rate and the costs of collection, shall be charged upon the land and shall be a continuing lien from and after the due date until paid, upon the lot against which each such assessment is made. The annual assessment will be determined annually by the Developer or may be changed by a vote of fifty-one percent (51%) of the Association members who are voting in person or by proxy at a meeting called for this purpose.

B. At least thirty (30) days in advance of each annual assessment, Developer or after the control period, the Association, shall fix the amount of the annual assessment against each Lot and send written notice of assessment to each Owner subject thereto. The due dates of such assessments shall be established by the Association; such assessments shall be payable on the due date, but may be collected in monthly, quarterly, or by annual installments, as established by the Association. 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 7: EFFECT OF NONPAYMENT OF ASSESSMENTS & REMEDIES.

Any assessment not paid within thirty (30) days of the due date shall bear interest from the due date at a rate of eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose its lien against the Lot against which the delinquent assessment has been levied. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of Common Elements and/or Secondary Streets, abstention from Association actions, or abandonment of their Lot.

SECTION 8: SUBORDINATION OF THE LIEN TO MORTGAGES.

The lien for the Assessments provided for herein shall be subordinate to the lien of any mortgage. Sale or transfer of any Lot shall not affect the Assessment lien. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding *in lieu* (not to include a deed given as settlement *in lieu* of foreclosure) thereof shall extinguish the lien of such assessments as to payments which became due prior to such exempted sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof. Nothing herein shall prevent and any mortgagee from, at its option, paying any delinquent obligations of an Owner. The Association shall notify by registered mail, return receipt requested, any mortgagee of any delinquency or default in the presence

of any obligations of an Owner prior to taking any action against such Owner which would affect the mortgagee.

ARTICLE V
ARCHITECTURAL CONTROL

SECTION 1: APPROVAL OF PLANS AND SPECIFICATIONS.

No building, fence, wall, deck, mailbox or other structure shall be commenced, erected or maintained within the Subdivision, nor shall any exterior addition to, change or alteration thereof be made until the plans and specifications shall have been submitted and approved in writing by an Architectural Committee composed of two (2) or more representatives appointed by the Declarant. The Declarant may transfer, at its sole discretion, its right to appoint members of the Architectural Committee to the Association. In the event that an Architectural Committee has not been formed, then the Declarant (or the Association's Board in the event of a transfer of such rights) shall act as the Architectural Committee.

Submissions to the Architectural Committee shall include a site plan showing landscaping which complies with standards published by Architectural Committee which shows the location of all planned driveways, walks, parking areas or other improvements, where applicable, and the relation of the location of such improvements to the building setback lines provided for in this declaration or as shown on the plat(s) for the Subdivision. Any documents submitted shall also name the licensed general contractor, proposed builder, or other proposed individuals who shall be responsible for construction or installation of the improvement and compliance with this article. Plans for Dwellings, structures, and any other proposed improvements shall show front, side and rear elevations and shall include the kind, material and basic exterior finishes of and colors to be used in the construction of such improvement(s). The Architectural Committee shall have the right to enforce compliance with this Declaration, and shall have the sole discretion to determine the standards referenced herein and to approve or deny any submission.

In the event the Architectural Committee fails to approve or disapprove any submission of plans, specifications and/or site plans within thirty (30) days after said submissions have been properly delivered, approval will not be required and this article will be deemed to have been fully complied with.

The Architectural Committee shall have the right to charge a reasonable fee for reviewing each application for approval of plans and specifications, a construction deposit (to be returned upon completion of construction) and a road impact fee. The Owner shall be obligated to begin construction and complete the same in conformity with such plans as have been previously approved by the Architectural Committee and upon payment of any required fees and/or deposits, and the Architectural Committee shall be entitled to stop, through injunction or any other legal means, all construction in violation of these restrictions.

SECTION 2: ARCHITECTURAL STANDARDS.

In addition to those general rules of the Architectural Committee promulgated pursuant to this article, construction of improvements on any Lot shall conform to the following standards:

- (A) All Dwellings shall be constructed pursuant to the North Carolina Building Code by duly licensed building contractors.
- (B) All Dwellings or other improvements must be roofed with architectural shingles or other coverings as approved by the Architectural Committee.
- (C) The construction of any dwelling, storage shed, garage or other out building must be pre-approved by the Architectural Committee.
- (D) Landscaping shall be provided for in the plan and construction of the Dwelling and landscaping shall be completed within five months after receiving a Certificate of Occupancy, Certificate of Compliance, or upon completion of construction of the Dwelling located on the Lot. To the extent that the front lawn is not otherwise

landscaped (e.g. with trees, bushes, etc.), the front lawn must be sodded.

(E) Vinyl siding shall not be permitted on the front elevation of the dwelling. The front elevation may have natural stone, cultured stone, brick, stucco or cement board. In the event natural stone or brick is used, it must wrap around the corners of the left and right elevations a minimum of twenty four (24) inches.

(F) The Architectural Committee shall retain the right to amend these requirements from time to time as they deem necessary to uphold the architectural standards of the community.

SECTION 3: APPROVAL OF CONTRACTORS.

The Architectural Committee shall have the right to approve or reject submission from an Owner solely based on its rejection of the licensed general contractor named in the application.

SECTION 4: BUILDING SIZE AND REQUIREMENTS.

The ground floor area of the dwelling shall not be less than nine hundred (900) square feet of heated living space for a one story dwelling and for two story dwellings, the ground floor area, shall not be less than five hundred (500) square feet of heated living space and not less than a total of nine hundred (900) square feet of heated living space for both floors. Under this restriction, split-level split-foyer homes shall be regarded as two-story residences. Heated, finished living space excludes; basements (whether daylight or underground), porches, breezeways, garages, patios, sunrooms and greenhouses. Additionally, no floor or level of any Dwelling, which floor or level is wholly or partially below the natural grade of the front elevation of the Dwelling shall be considered heated, finished living space.

SECTION 5: EXTERIOR FINISHES.

All exposed chimneys and foundations shall be veneered with brick or stone, or other such materials as approved by the Architectural Committee. All materials used on exteriors of Dwellings and other improvements shall be approved in advance by the Architectural Committee. Retaining or decorative walls shall be brick, stone or other material approved by the Architectural Committee. Unpainted sheet metal may not be exposed to the exterior. All roof stacks and vents shall conform to the color of the roofing material used and shall be installed on the rear side of the roof ridgeline of a Dwelling, as viewed from the subdivision streets.

ARTICLE V PROTECTIVE COVENANTS

SECTION 1: RESIDENTIAL USE.

All Lots shall be used, improved and devoted exclusively to residential use. No buildings shall be erected, altered, placed or permitted to remain on any Lot other than one single-family Dwelling not to exceed two stories in height above the highest natural ground elevation existing under the foundation of same and not including more than one underground, one story basement or crawlspace, unless the same shall be approved in advance by the Developer. Any detached garage shall be constructed in the same style and of the same materials as that of the dwelling located upon the lot.

SECTION 2: NUISANCES.

No noxious or offensive activities shall be conducted upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. No plant, animal, device or thing of any sort whose normal use or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the Subdivision by the Lot Owners, tenants and guests thereof may be maintained.

SECTION 3: RESTRICTION ON FURTHER SUBDIVISION.

No Lot shall be subdivided, or its boundary lines relocated, for any purpose other than to merge an additional Lot or part thereof so as to create a Lot larger than or of size equal to the original Lot, or for the adjustment of Lot boundaries as may be reasonably necessary in order to comply with zoning ordinances, building codes, or Health Department requirements.

SECTION 4: ANIMALS.

Generally recognized house or yard pets, in reasonable numbers, may be kept and maintained at a Lot, provided such pets are not kept or maintained for commercial purposes and the pets are kept, maintained and controlled pursuant to all applicable city and/or county regulations and ordinances. Further, all pets must be kept under the control of their owner when they are outside the occupants' premises and must not become a nuisance to other residents at any time. The Association shall have the exclusive right to determine "reasonableness" as it applies in this section.

SECTION 5: PARKING.

No parking or storage of un-licensed, un-inspected or non-operable vehicles shall be allowed on any lot outside a Dwelling. Except for emergency repairs, no person shall repair, restore or store any vehicle, boat, trailer or recreational vehicle upon any lot outside a Dwelling. Such parking, storage or repair may be undertaken only within a closed wall garage, or at the sole discretion of the Developer and/or Home Owners Association, in such other area which is not visible from any dwelling situated on other Lots or from any subdivision streets within the Subdivision.

SECTION 6: MOTOR VEHICLES.

All motor vehicles shall be maintained in proper operating condition so as not to be a nuisance by noise, exhaust emissions or otherwise. No motor vehicles shall be driven on pathways, unpaved Common Areas, or any roadway shoulders within the Subdivision.

SECTION 7: OUTSIDE ANTENNAE.

No outside radio or television antennae or satellite dishes shall be erected on any Lot, except as approved in writing by the Developer and/or Home Owners Association. Any approved antennae or satellite dishes shall be installed so as to not be visible from subdivision roads and shall be compliant with all applicable guidelines of the Federal Communication Commission.

SECTION 8: TRASH RECEPTACLES.

All trash shall be kept only in trash receptacles such that said receptacles shall not be visible from any subdivision street; except as for such times as said receptacle is placed at the curb for trash pick up.

SECTION 9: SIGNS.

No permanent signs of any kind shall be displayed or in such a way that is in public view on any Lot. After occupancy, a sign of not more than five square feet advertising the property for sale or rent shall be allowed upon any Lot. Nothing in this paragraph shall be construed to prevent Declarant from erecting an entrance display sign, signs designed to designate areas within the Subdivision, or any street signs for subdivision streets.

SECTION 10: TEMPORARY STRUCTURES.

No structure of a temporary character, including trailers, mobile homes, tents or shacks shall be placed upon anywhere within the Subdivision at anytime. Outbuildings or partially completed buildings shall not at any time be used as residences on either a temporary or permanent basis. This provision shall not apply to tents or similar enclosures erected for the purpose of special functions, such as weddings or social events, provided however that such enclosure shall not exist upon the lot for more than Forty Eight (48) hours.

SECTION 11: SETBACKS.

No portion of any building shall be located on any Lot closer than fifteen (15) feet from the front and back of the property line and six (6) feet from the sides of the property line.

SECTION 12: TRADE OR BUSINESS.

No trade or business shall be carried on upon any Lot, but this restriction shall not prohibit a home office which does not cause any noxious or offensive activity within.

SECTION 13: LIVESTOCK.

No livestock or poultry may be kept on any Lot.

SECTION 14: STORAGE TANKS.

Any fuel, gas, oil, and water storage receptacles installed on any Lot shall not be exposed to view and must be placed either within the Dwelling or underground.

SECTION 15: STREETS.

The streets, roadways and rights of way shown on the plat(s) for the Subdivision, as currently recorded or those to be recorded in the future, are intended to provide perpetual, non-exclusive ingress, egress, regress and installation of utilities to all the Property now identified as the Subdivision and any additional property added thereto as herein provided.

SECTION 16: FENCES.

The Developer and/or the Home Owners Association must pre-approve any fencing to be placed on any Lot in writing. Pet fencing or fencing other than of a decorative nature shall be confined to rear yard of the Dwelling, as viewed from subdivision streets. In no event shall any form of wire or chain link fencing be installed on any lot. Lots may have privacy fencing provided that written pre-approval is obtained from the Developer and/or Home Owners Association and such fence shall not exceed one-half the height of the lowest part of the roof overhang of the residence and such privacy fence shall only be placed in the rear yard and/or the back one-half of the property.

SECTION 17: PLAYGROUNDS ETC.

All playground equipment, children's toys, sports equipment, vegetable gardens, patio furniture, outdoor grilling apparatus and swimming pools shall be located only in side or rear yard of Dwelling, as viewed from subdivision streets, and any placement thereof shall be subject to the sole discretion of the Developer and/or Home Owners Association. Above ground swimming pools shall not be permitted.

SECTION 18: GRASS AND LANDSCAPING MAINTENANCE.

Grass and weeds on all Lots shall be maintained such that the height in order to prevent an unsightly and unsanitary condition. This obligation shall apply to the area of the Lot shown on the Plats and that area within the right of way of the adjoining such Lot, which obligation is that of the Owner of the Lot in question and is to be done at his expense. Any determination of the sufficiency of any Owners compliance with this section shall be the sole discretion of the Developer and/or Home Owners Association. Upon the direction of the Developer and/or the Home Owners Association, the Developer and/or Association may enter a Lot for the purpose of mowing grass and weeds, and the cost associated with such maintenance shall be charged to the Owner as a special Assessment as provided herein.

SECTION 19: MOTORCYCLES.

Unlicensed motorcycles, minibikes, dune buggies, motorized bikes or similar recreational vehicles may not be operated within the bounds of the Subdivision. Any such vehicles shall at all times be stored within the dwelling, garage or out building. This provision shall not prohibit the operation of licensed motorcycles being used as transportation to and from the residence to the public road outside the subdivision.

SECTION 20: EASEMENTS.

Utility and drainage easements affecting all Lots are hereby reserved six (6) feet in width along interior Lot lines and over the front and rear fifteen (15) feet of each Lot for the installation and maintenance of utilities and drainage facilities. Neither Declarant, nor any utility company using the easements herein referred to, shall be liable for any damage done by them or their assigns, agents, employees or servants, to shrubbery, trees, flowers, other landscaping, improvements or to any personal property situated on the land covered by said easements.

SECTION 21: ENERGY CONTRACT.

The Declarant reserves the right to enter into a contract, on behalf of all Owners of property within the Subdivision, with Duke Power or any other viable energy company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or continuing payment to Progress Energy by the Owner of each Lot. Furthermore, any street lighting installed shall be billed to the Association pursuant to a contract and lease agreement between the Declarant and said energy company.

SECTION 22: ROAD MAINTENANCE, EASEMENTS AND RESTRICTIONS.

The road maintenance, easement and restrictive provisions contained herein shall be binding upon and inure to the benefit of all successors in interest, shall be appurtenant to, and shall run with the Property bound and identified herein.

SECTION 23: LIMITATION OF ACCESS.

Except as to Developer, the private roadways shall not be used so as to provide access to any property except the Lots within the subdivision. No part of a Lot shall be used for any access to any property which lies outside of the Subdivision. No other easements, rights of ways or rights of access shall be deeded, granted, or in any way given by any lot owner to any other person through or over any Lot so as to permit any portion of a Lot or subdivision property to be used for access to or from any adjoining property. This paragraph shall not be construed so as to prevent the Developer from having the special right to re-designate a previously designated Lot, or any portion thereof, as an easement or right of way for access to adjoining property whether now or hereafter owned by Developer. The Developer specifically reserves the right to establish such easements or rights of way as Developer deems necessary or desirable for access to adjoining property whether now or hereafter owned by Developer; and such rights of way within the Subdivision shall then be considered appurtenant to such adjoining property and such adjoining property shall thereafter be deemed to be benefitted by road rights of way within the Subdivision.

SECTION 24: NATIVE GROWTH.

It shall be the obligation of the lot owner to preserve, so far as practicable, the native appearance of each lot. No clear cutting shall be allowed. It is the intention that where reasonably practicable large trees shall remain on all Lots and that planting and landscaping be provided so as to allow the lot to harmonize with its natural surroundings. Any tree, or any portion thereof, within a side setback that is, in the sole opinion of the developer and/or home owners association, a danger to surrounding dwellings or persons shall be removed or trimmed by the lot owner. Payment for removal or trimming of a dangerous tree shall be the sole responsibility of the lot owner.

ARTICLE VI
OBLIGATIONS TO MORTGAGEES

The following provision are established for the benefit of the holders of mortgages (the definition of mortgage to include deeds of trust or other security instruments) encumbering any Lots located within the Subdivision:

SECTION 1: The Association shall be obligated to notify the holder of any mortgage on a Lot, upon request of such holder, of any default by the Lot Owner in the performance of any such Owners obligations described herein (including failure to pay assessments as when due) which is not cured within sixty (60) days from date of such default.

SECTION 2: All actions taken under the powers of the Association, not specifically provided for herein, and any amendment of this Declaration of Restrictions must be in accordance with the provisions of the North Carolina Planned Community Act, as amended or then in effect.

SECTION 3: Written notice by the Association shall be sent, upon request, to the holder of any mortgage encumbering any of the Lots located within the subdivision setting forth the purpose of the meeting not less than thirty (30) days in advance of any meeting called for the purpose of amending, extending or renewing any of the provisions of the Declaration(s), Articles of Incorporation or by-laws of the Association. No such amendment, extension or renewal shall alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any mortgage encumbering any Lot located within the subdivision unless such holder shall consent thereto in writing.

SECTION 4: Mortgagees of Lots, may jointly or singly, twenty (20) days after sending a notice of its intent to pay, pay taxes or other charges, which are in default and in which may or have become a charge against any of the Common Elements and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of policy, for such Common Elements and mortgagees making payments shall be owed immediate reimbursement from the Association. Any mortgagee entitled to reimbursement shall forward a copy of the same to the Declarant or Association.

ARTICLE VII
GENERAL PROVISIONS

SECTION 1: DURATION.

The covenants and restrictions contained in this Declaration shall run with and bind the properties which are made subject hereto for a period of twenty (20) years from the date this Declaration is recorded in the Office of the Register of Deeds for Buncombe County, North Carolina, after which time, such covenants and restrictions shall be automatically extended for successive periods of ten (10) years each.

SECTION 2: AMENDMENT.

This Declaration may be amended as follows:

- (A) Prior to the conveyance of the Common Elements from the Declarant to the Association, the Declarant may make any amendments necessary in order to correct any obvious error or inconsistency in drafting, typing reproduction of this Declaration, or to issue rules or regulations which interpret, explain or make more definite and certain provisions hereof and are in furtherance of this Declaration, which amendment can be made without the joinder of Lot Owners or the Association. Declarant may not, without joinder of Lot Owners in accordance with the North Carolina Planned Community Act, make any amendment which expand or substantially alters the powers, rights and duties provided herein.
- (B) Any other Amendment or other alteration of the terms of this Declaration shall be in accordance with the provisions of the North Carolina Planned Community Act.

SECTION 3: ENFORCEMENT.

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

SECTION 4: SEVERABILITY.

Invalidation of any one of these covenants or restrictions by judgement or court order shall in no way affect any other provision in this Declaration, which shall remain in full force and effect.

SECTION 5: GOVERNING LAW

This Declaration shall be construed and controlled by and under the laws of the State of North Carolina.

SECTION 6: CONSENT AND SUBORDINATION OF MORTGAGEE.

The consent and subordination of the Property mortgagee attached hereto as Exhibit A is incorporated herein by reference.

IN WITNESS WHEREOF, the Developer has hereunto set its hand and seal, as of the day and year first above written.

SIGNATURE PAGE TO FOLLOW



SIGNATURE PAGE
TO
AMENDED & RESTATED DECLARATION

DEVELOPER:

HIGHLAND PROPERTY GROUP, LLC
a North Carolina limited liability company

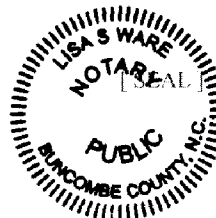
[Signature]
By: Brian Etheridge, Member/Manager

[Signature]
By: Kyle Gilliland, Member/Manager

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, the undersigned Notary Public of the County and State aforesaid, certify the following person(s) personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed: BRIAN ETHERIDGE. Witness my hand and Notarial stamp or seal this the 18th day of August, 2015.

[Signature]
NOTARY PUBLIC Lisa S. Ware
COMMISSION EXPIRATION: 1-11-2020



STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, the undersigned Notary Public of the County and State aforesaid, certify the following person(s) personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed: KYLE GILLILAND. Witness my hand and Notarial stamp or seal this the 19th day of August, 2015.

[Signature]
NOTARY PUBLIC Lisa S. Ware
COMMISSION EXPIRATION: 1-11-2020

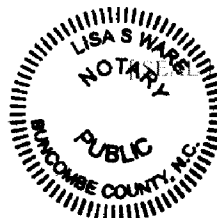


EXHIBIT A
CONSENT AND SUBORDINATION OF PROPERTY MORTGAGEE

Yadkin Bank, as Beneficiary of the indebtedness secured by that certain Deed of Trust and Security Instrument recorded in Record Book 5304 at Page 808 and as modified by that certain Amendment to Deed of Trust and Security Instrument recorded in Record Book 5335 at Page 1869 in the Buncombe County, NC Registry (herein collectively "Deed of Trust"), which Deed of Trust encumbers all or any portion of the Property as described in this Amended and Restated Declaration (herein "Declaration"), hereby consent to the recording of this Declaration and subordinates the lien of the Deed of Trust to this Declaration. The execution of this Consent and Subordination by Beneficiary is solely for the purpose set forth herein and shall not be deemed or construed to have the effect of creating, between Beneficiary and Highland Property Group, LLC (herein "Declarant") the relationship of partnership or of joint venture, nor shall it be deemed to impose upon Trustee any of the liabilities, duties or obligations of Declarant under the Declaration.

YADKIN BANK, a North Carolina banking corporation,

Bill G. Bickett
By: Bill G. Bickett
As: DIRECTOR BUILDER FINANCE

STATE OF North Carolina
COUNTY OF Mecklenburg

I, a Notary Public of the County and State aforesaid, certify that the following person(s) personally came before me this day and acknowledged the due execution of the foregoing for the purpose(s) therein expressed: Bill G. Bickett ^{Union}. Witness my hand and Notarial seal this the 20th day of August, 2015.

Geri H. Beane
NOTARY PUBLIC
COMMISSION EXPIRATION: 3/8/2020

